

Case Law Update
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Supreme Court of the United States

[United States v. Sineneng-Smith](#), 19-67 (May 7, 2020)

Sineneng-Smith operated an immigration-consulting firm and assisted clients in applying for “labor certification,” a step that once accomplished would assist in obtaining lawful permanent residence. To obtain such certification, the applicant had to have been in the United States prior to December 21, 2000, and the application for certification had to be filed prior to April 30, 2001.

Sineneng-Smith was charged with violating 18 U.S.C. s. 1324(a)(1)(A)(iv), which prohibits encouraging or inducing “an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of the law.” The alleged conduct which formed the basis for the criminal charges was Sineneng-Smith’s charging her clients approximately \$6,000 for the application process described above, knowing that her clients could not meet the application deadline, which had long passed.

After her conviction in the district court, on appeal to the Ninth Circuit Court of Appeals, Sineneng-Smith argued that the criminal statute did not cover her conduct, and if it did, the statute violated the First Amendment’s Petition and Free Speech Clauses. Rather than adjudicate the issues as briefed by the parties, the Ninth Circuit appointed three *amici* to brief an issue that Sineneng-Smith did not raise: “[W]hether the statute of conviction is overbroad . . . under the First Amendment.” The Ninth Circuit ultimately held that the statute was overbroad.

On review in the Supreme Court, the Court held that the Ninth Circuit panel “departed so drastically from the principle of party representation as to constitute an abuse of discretion.” That principle relies on the parties before the court to frame and litigate the issues and permit the court to engage in the role of a neutral arbiter of matters presented by the parties. While there are limited and narrow exceptions permitting the court to reframe issues, the Ninth Circuit’s acts in this case went far beyond what was permissible.

[Kelly v. United States](#), 18-1059 (May 7, 2020)

Kelly, the Deputy Chief of Staff of former New Jersey Governor Christie, was charged and convicted, along with the Port Authority's Deputy Executive Director, William Baroni, and one other official, for the offense of wire fraud under 18 U.S.C. s. 1343. When the mayor of Fort Lee, New Jersey, did not support Governor Christie's election campaign, the three defendants reduced the number of lanes of the George Washington Bridge, at the Fort Lee toll plaza, for Fort Lee morning commuters entering the bridge to New York City. The possibility of this being viewed as political retribution was covered up by a scheme, referring to the lane reduction as part of a traffic study.

The Supreme Court overturned the convictions. The wire-fraud statute prohibits "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." The scheme at issue did not seek to obtain property or money and thus was beyond the scope of the wire-fraud statute.

Convictions were also obtained under the federal program-fraud statute, 18 U.S.C. s. 666(a)(1)(A), which likewise pertained to fraudulent efforts to obtain property or money, and which convictions were overturned for the same reason.

Supreme Court of Florida

[Franqui v. State](#), SC19-203 (May 7, 2020)

The Supreme Court affirmed the denial of a Rule 3.851 motion. Franqui argued that the trial court, which conducted an evidentiary hearing on an intellectual disability claim, failed to conduct the "holistic" analysis required under decisions of the United States Supreme Court. The Florida Supreme Court disagreed.

Franqui argued that the Florida Supreme Court should recede from a prior decision, Salazar v. State, in which the Court held that in order to prevail on an intellectual disability claim, the defendant must prove all of the components of intellectual disability. The claim was not raised in the trial court and was therefore not preserved for appellate review.

Alternatively, the trial court conducted a full inquiry and made findings as to each component of the intellectual disability test and those findings were supported by the evidence. Franqui did not demonstrate "significantly subaverage intellectual

functioning.” “Mr. Franqui has not shown, by clear and convincing evidence, that his intellectual functioning is two standard deviations below the norm of 100.” This finding of the trial court was based on IQ scores, which took the standard error of measurement into account. The trial court also evaluated “the conceptual, social, and practical domains of adaptive behavior, and it concluded that Franqui failed to demonstrate adaptive deficits.” And, there was no manifestation of adaptive deficits before age eighteen.

The Florida Supreme Court also rejected Hurst claims regarding juror unanimity because in this case the jury found at least one aggravating circumstance beyond a reasonable doubt. In each of the homicide cases for which Franqui received the death sentence, a contemporaneous armed robbery was found to have been committed, and each of those robberies served as an aggravating circumstance.

First District Court of Appeal

[Barr v. State](#), 1D19-147 (May 8, 2020)

In a one-paragraph opinion, the Court reversed a conviction for possession of cocaine with intent to sell, citing Thomas v. State, 212 So. 3d 410 (Fla. 4th DCA 2017), as being indistinguishable, concluding that the evidence was insufficient to support the intent element. The opinion does not provide the facts of the case.

One judge dissented.

[Wiley v. State](#), 1D18-4988 (May 6, 2020)

On remand from the Florida Supreme Court, the First District reversed and remanded for resentencing, pursuant to Gayman v. State, 288 So. 3d 1087 (Fla. 2020), which held that “the proper remedy for harmful error resulting from the court, not the jury, finding the fact of dangerousness under section 775.082(10) is to remand for resentencing with instructions to either impose a nonstate sanction of up to one year in county jail or to empanel a jury to make the determination of dangerousness, if requested by the State.”

[Saldana v. State](#), 1D19-2093 (May 6, 2020)

The First District affirmed the denial of a Rule 3.850 motion, for which the trial court conducted an evidentiary hearing. One claim related to alleged misadvice of trial counsel regarding a plea offer.

On appeal, Saldana's argument, although couched in terms of the sufficiency of evidence to support the trial court's denial of the claim, was treated as a claim that the trial court erred by prematurely limiting examination of former trial counsel and by excluding the defendant's mother as a witness. The Court found that such limitations are within the discretion of the trial court.

Although the mother had attended most of Saldana's meetings with counsel, her proffered testimony went to Saldana's history of emotional issues, anti-anxiety medications, and attention-deficit disorder; there were no claims regarding competence to proceed and the State objected to the testimony as being irrelevant.

The appellate court alternatively found that any error was harmless, as Saldana testified, and his testimony was consistent with the testimony of his former trial counsel.

Second District Court of Appeal

[State v. J.J.T.](#), 2D19-2008 (May 8, 2020)

The Second District affirmed the suppression of marijuana seized from the juvenile's backpack and subsequent post-Miranda statements. The opinion does not set forth the facts of the case, but notes that the "school's vice principal lacked reasonable suspicion to seize the backpack." And, while the appellate court disagreed with the trial court's finding that J.J.T. did not knowingly and voluntarily waive his Miranda rights, the appellate court found that the statements were the fruit of the poisonous tree based on the prior illegal seizure.

[Bybee v. State](#), 2D17-4515 (May 8, 2020)

Bybee appealed multiple convictions, including kidnapping and exploitation of the elderly.

A challenge to the sufficiency of evidence of kidnapping was not preserved at trial through a motion for judgment of acquittal. Appellate review requires unpreserved errors to rise to the level of fundamental error. In noncapital cases, fundamental error does not exist if the evidence establishes guilt of any offense, including a lesser of the charged offense. "Bybee, who commandeered M.S.'s AOL account and identity to send a fraudulent email to her doctor announcing her intent

to commit suicide, has failed to establish that he did not commit *any* crime.” The fraudulent email resulted in a civil commitment under the Baker Act.

Trial counsel was, however, ineffective on the face of the record for failing to move for judgment of acquittal. An involuntary confinement was established as a result of the fraudulent email. The evidence failed, however, to establish that Bybee confined the victim. Although he set things in motion, the confinement resulted from two independent and intervening causes. Deputies dispatched to the victim’s house after a call from the doctor made their own independent determination upon seeing the victim. And, the hospital’s medical staff made its own independent determination. The conviction for kidnapping was therefore reversed.

The case was also remanded for resentencing on the remaining offenses before a different judge. The sentencing judge erroneously considered conduct for which the defendant had not been convicted, and that constituted fundamental error. There was no need for that claim to be raised in a Rule 3.800(b) motion during the direct appeal, as the claim would not have been cognizable in a 3.800(b) motion; it went to the sentencing process, not to the sentence itself.

[Swilley v. State](#), 2D19-65 (May 6, 2020)

A conviction for second-degree murder was reversed for a new trial because two pieces of evidence relevant to the claim of self-defense were erroneously excluded.

On the State’s pretrial motion in limine to exclude the evidence, the trial court excluded evidence that the victim’s blood alcohol level was .07 and a knife found in the victim’s pocket. The trial court concluded that .07 was too low to be relevant, and the knife in the pocket was never drawn or visible to the defendant.

The defendant testified that the victim was “aggressive when drinking and smelled like alcohol during the incident leading to his death.” “[F]ar from being inconsequential, a .07 BAC is just below the threshold for a DUI conviction. . . . And even if the court was right in doubting what a .07 BAC could prove, any doubt should have been resolved in Swilley’s favor.”

As to the knife, Swilley had testified that the victim frequently carried a knife. The presence of that knife in the pocket would have lent credibility to Swilley’s testimony about the victim’s routine of carrying a knife.

Third District Court of Appeal

Stephens v. State, 3D18-247 (May 6, 2020)

The Third District affirmed convictions for 30 counts of possession of child pornography.

The trial court denied the defendant's request to recall the State's computer expert during the defendant's case-in-chief because that expert had not been listed as a defense witness. Stephens argued that the trial court erred by failing to conduct a Richardson inquiry as to that discovery violation before excluding the testimony. The issue was not properly preserved for appellate review due to the absence of an adequate proffer. Defense counsel stated that he "forgot to cover something," and did not provide greater detail.

The trial court did not abuse its discretion by not ordering a competency evaluation prior to sentencing. Defense counsel referred to the defendant's behavior as "bizarre," exhibiting "a lack of emotional maturity and lack of ordinary intelligence." The defendant's competency had previously been restored, there was nothing in the presence of the trial court after that restoration to suggest that the defendant was no longer competent, and defense counsel's above quotes were not sufficient to trigger a sua sponte inquiry by the trial court.

Stephens received 30 consecutive sentences of five years for each count of possession of child pornography. The Third District rejected his argument that the 150-year aggregate sentence was grossly disproportionate to the offense of possession of child pornography. The Court's opinion includes a discussion of several opinions from the Supreme Courts of the United States and Florida and other district courts of appeal.

Williams v. State, 3D19-793 (May 6, 2020)

The Third District affirmed a conviction for burglary of an unoccupied structure during a state of emergency. The premises in question were a store that had been shuttered and locked during the state of emergency in the aftermath of Hurricane Irma. The theory of defense was that Williams was outside the store until an officer had pushed him into it from the sidewalk.

A motion for judgment of acquittal on the issue of intent was properly denied. An officer contradicted Williams' claim that he was pushed inside the store.

Everyone else inside the store was engaged in looting. The store has no power. Its lock had been pried open and it had been ransacked. Williams refused to exist when ordered to do so.

There was no abuse of discretion in instructing the jury on stealthy entry. The jury could make a determination of whether the entry was stealthy based on the entry into a closed and shuttered store during early evening hours, during a state of emergency due to the hurricane, when few people were on the street, a curfew existed, and power was out for much of the county.

[Lee v. State](#), 3D19-2260 (May 6, 2020)

An order imposing sanctions, barring Lee from filing further postconviction motions without counsel was reversed. The record did not show that the trial court issued a preliminary order directing Lee to show cause why such sanctions should not be imposed.

Fourth District Court of Appeal

[Casanas v. State](#), 4D19-1895 (May 6, 2020)

The summary denial of one claim in a Rule 3.850 motion was remanded for further proceedings because it was not conclusively refuted by record attachments to the trial court's order.

The only direct evidence of the defendant's involvement in the offenses for which he was convicted came from a codefendant. Casanas alleged that trial counsel was ineffective for not investigating and calling three of the codefendant's cellmates as witnesses, to corroborate the claim of self-defense. Casanas claimed that they would testify that the codefendant admitted, prior to trial, that he intended to lie about Casanas seeking revenge as a motive for the offenses.

Fifth District Court of Appeal

[Ladue v. State](#) 5D18-1544 (May 8, 2020)

An oral pronouncement of sentence controls over a conflicting written sentence.

[Bugg v. State](#), 5D19-2108 (May 8, 2020)

In an appeal from convictions for manslaughter with a firearm and aggravated battery with a firearm, the Fifth District found that multiple errors were either not preserved for appellate review or were harmless.

The prosecutor's comment in closing argument referring to "illusions, smoke screens, distraction" improperly denigrated defense counsel and the theory of defense. The error was deemed harmless, however.

Officers' testimony regarding descriptions of the suspect provided to them by a witness should have been excluded as hearsay. The hearsay exception for identification of a person after perceiving the person applies only to actual identifications of the person, not to physical descriptions. Again, the error was deemed harmless, as it was cumulative to other testimony.

A claim regarding the exclusion of a prior inconsistent statement was not preserved for appellate review due to an inadequate proffer by defense counsel. The witness, who was in the house where the offenses occurred and who saw the defendant and heard the offenses, had testified that he was not in the victim's bedroom at the time of the shooting. When defense counsel asked, on cross-examination, whether the witness remembered a prior written statement that he was in the bedroom when the shooting occurred, the witness did not directly respond, but asserted "that he was never in the room with Darish [one of the victims]." "Buggs's attempt to impeach McCiskill with a prior inconsistent statement that he *may* have given about his location at the time of the shooting was improperly circumvented by the State's objection and the trial court's sustaining of the objection. At that point, however, it was necessary for Buggs's counsel to provide a proper proffer of the evidence to preserve the error for review. . . . In his answer to counsel's specific question, McCiskill neither admitted nor denied that his earlier written statement contradicted his testimony; rather, he provided a nonresponsive reiteration that he was not in the bedroom with Darish when she was shot. Absent a proffer that McCiskill in fact wrote a prior inconsistent statement, the issue of whether the trial court erred in sustaining the State's objection has not been properly preserved for appellate review."

The Fifth District also rejected an argument that the foregoing errors, cumulatively, constituted reversible error.

[Echavarria v. State](#), 5D19-3074 (May 8, 2020)

The defendant was sentenced to concurrent terms of 20 years in prison followed by probation for life for the offenses of attempted sexual battery on a person less than 12 years of age and lewd or lascivious molestation on a person less than 12. The Fifth District reversed the denial of a Rule 3.800(a) motion to correct illegal sentence.

The offense of attempted sexual battery was a first-degree felony, subject to a maximum sentence of 30 years. Although a sentence up to life can be imposed if the sexual organs of the victim are injured, the order denying the motion did not attach any documents reflecting such injury. Further proceedings were needed to either document that or reduce the sentence.

The attempted lewd and lascivious molestation conviction was a second-degree felony, subject to a maximum term of 15 years. The Court ordered the sentence reduced for that offense.