Case Law Update
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Supreme Court of Florida

McDonald v. State, SC19-634 (June 4, 2020)

The Supreme Court affirmed the denial of a successive Rule 3.851 motion which raised two claims - newly discovered evidence and Giglio - both of which were based on a 2014 letter from the Justice Department, criticizing portions of testimony by a forensic hair analyst from the FBI during McDonald's 1995 trial.

A Giglio claim could not be based on a letter that was written and provided to the State about 20 years after the trial. The Justice Department letter found that the analyst overstated the certainty of the comparison analysis that was used. The jury also heard limiting testimony from the same witness. At any retrial, the jury would still hear the same forensic analysis as the science behind it has not been discredited. The forensic testimony would still enable the jury to link the defendant to relevant to key pieces of physical evidence. And, the hair analysis linking McDonald to a sweatshirt was not the only evidence linking McDonald to that sweatshirt. The 2014 letter was therefore not likely to produce a different outcome at trial and the claim of newly discovered evidence was properly denied by the trial court.

Patrick v. State, SC19-140 (June 4, 2020)

The Supreme Court affirmed the denial of a Rule 3.851 motion in which Patrick alleged that counsel was ineffective for failing to challenge a biased juror. The juror had expressed an explicit bias against anyone who was a homosexual. In a prior appeal, the Supreme Court concluded that the juror was biased, and remanded the case for an evidentiary hearing on counsel's alleged ineffectiveness. Evidence at trial included testimony regarding homosexual acts between the defendant and the victim.

At the evidentiary hearing, trial counsel stated that he did not have any independent recall of the juror in question, adding that he had no reason for believing the juror should have been stricken, and that "he had never left a juror on the panel without a strategic basis for doing so unless he had no remaining peremptory strikes, in which case he would have asked for more." Another trial attorney added that "no

juror was either stricken or kept on the panel without the approval of Patrick," who was engaged in the process and "had strong opinions."

One defense attorney posited reasons why the juror would have been viewed as a good juror for the guilt phase of the trial. One defense theory was that the victim preyed on the defendant. One attorney focused on statements by the juror suggesting the juror would be a good defense juror for the penalty phase. The juror stated during voir dire that after the verdict in the guilt phase of the trial, "I don't think any of us here want to bear that burden when we leave here . . . of thinking wow, I just sent somebody off to be executed, oh my God, I hope we all make the right decision." Additionally, notes by defense counsel during jury selection indicated that "defendant wants out," followed by the word peremptory, but that those words were "struck through." There was also a note that the juror believed that a life sentence might be worse than death. At the end of jury selection, the defendant advised the court that he was "fine" with the jury selected and that his attorneys had consulted him about the jurors.

Based on the evidence at the postconviction hearing, the Supreme Court concluded that trial counsel made a strategic decision and that that decision was not objectively unreasonable. Notwithstanding the bias of the juror, which may have made the juror more likely to return a guilty verdict than other jurors, it was logical for counsel to conclude that "this juror was more likely than other potential jurors to recommend a life sentence."

Valentine v. State, SC18-1102 (June 4, 2020)

A Hurst claim raised in a Rule 3.851 motion was properly denied because Valentine waived his right to a penalty-phase jury.

First District Court of Appeal

Smith v. State, 1D19-1908 (June 3, 2020)

Based on the Court's recent decision in Rogers v. State, the Court again held that when the trial court orders a resentencing hearing pursuant to a Rule 3.800(a) motion to correct illegal sentence, the trial court retains authority to reconsider the order granting relief. Rogers receded from prior decisions of the First District.

Baldwin v. State, 1D19-1953 (June 3, 2020) (on rehearing)

In 1989, Baldwin was sentenced for offenses committed while he was a juvenile: sexual battery, armed robbery, and possession of a firearm by a convicted felon, and kidnapping. He received an overall sentence of 25 years for the first of his two cases; 40 years for the second; and those sentences were consecutive. In 2016, he sought postconviction review of the sentences. The State argued that based upon a combination of gain time and anticipated life expectancy, Baldwin could expect to be released at age 61, with a life expectancy of an additional 16 years.

The First District affirmed the denial of postconviction relief, finding that the 65-year sentence did not constitute a de facto life sentence. The Court also reiterated its previous holding that since this case arose out of a 3.800(a) motion to correct illegal sentence, the trial court was able to vacate its order granting a new sentencing hearing. Conflict on that issue was one again certified to the Florida Supreme Court.

Second District Court of Appeal

D.T.M. v. Judd, Sheriff of Polk County, 2D18-4631 (June 5, 2020)

Section 790.401, Florida Statutes, mandates that a court must, based on clear and convincing evidence that a respondent "poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition," issue a "risk protection order." The resulting risk protection order mandates the surrender of the respondent's firearms and ammunition.

The Second District held that the statute was not facially unconstitutional. The phrase "significant danger" was not vague. Arguments that the statute "impermissibly delegates legislative authority to the executive and the judiciary" failed as a result of the ruling that the phrase "significant danger" was not vague. The Court also rejected the argument that the statute improperly delegated prosecutorial authority to law enforcement officers and agencies.

Casaigne v. State, 2D19-1928 (June 5, 2020)

The trial court treated Casaigne's habeas corpus petition as a Rule 3.850 motion and transferred it from the civil division of the court to the felony division. He filed a motion for clarification, which the trial court denied. On appeal, he argued

that the trial court should have denied the motion for clarification with leave to amend, allowing him to add additional postconviction claims.

Although there is appellate court case law finding that due process requires notifying a defendant of the court's intention to treat a habeas corpus petition as a Rule 3.850 motion, affording the defendant with the opportunity to withdraw or amend the pleading, the claim was premature absent evidence that the current pleading would be a successive motion.

Edwards v. State, 2D19-2734 (June 5, 2020)

Edwards had a special condition of probation, requiring that he be at his residence between 10:00 p.m. and 6:00 a.m. every day. On appeal from a revocation of probation based on a violation of that condition, the Second District found the evidence was insufficient to support the revocation.

The probation officer conducted two curfew checks. The first was at 5:00 a.m. The officer called the phone number she had for Edwards, a number belonging to his sister. The officer said that she was at the residence, and the sister said she was not. The officer had knocked on the front door, which was ajar; she heard a television playing and announced her presence. The officer was there for about ten minutes.

Five days later, she approached the front door at 5:30 a.m. and saw a man, whom she did not recognize, sleeping on a couch. The door was, once again, ajar. She knocked, announced her presence, and, after no one responded, she let, spending about seven minutes at the house.

At the revocation hearing, the defendant's mother testified that she did not hear anything; that the defendant was sleeping; and that he was a "hard sleeper."

Davis v. State, 2D17-517 (June 5, 2020)

Davis appealed convictions for second-degree murder and other offenses. The issue before the Court was whether an erroneous denial of a legally sufficient motion to disqualify the judge should be reviewed for harmless error. The Court held that the harmless error standard was applicable and that the question was "whether there is a reasonable possibility that the error denied the defendant a fair trial before a neutral judge."

The presiding judge in the trial court, in a case that was then a pending capital case, announced that he expected to become the chief judge of the circuit and that the case would then be taken over by a different judge. The new judge was a former prosecutor. When the new judge did take over, after the defense unsuccessfully moved to have the original judge remain on the case, the defense moved to disqualify the new judge. The motion alleged that the new judge had previously been an assistant state attorney in the homicide division, which division decided issues as a unit, by committee, rather than by individual prosecutors; that the State had objected to the original judge remaining on the case based on its knowledge of the new judge, including factual research done on the new judge; and that the new judge had attended the hearing before the original judge in which the original judge ruled on the defense motion to retain him as the presiding judge.

After the motion to disqualify was denied, Davis did not challenge that denial with a prohibition petition in the appellate court. The case proceeded to the trial and verdicts and direct appeal.

The Second District held that the motion to disqualify was legally sufficient and should have been granted. As to the issue of whether harmless error analysis was applicable on direct appeal from the convictions, the Court noted that this was an issue of first impression. The Court also noted that this case highlighted the advisability of pursuing pretrial prohibition relief, rather than waiting for convictions and a direct appeal before raising the issue in an appellate court.

Addressing the harmless error issue, the Court then found that an erroneous denial of a motion to disqualify a judge was not per se reversible error. Part of the Court's rationale was based on the nature of a motion to disqualify: courts are required to grant facially sufficient motions without determining the veracity of the factual allegations. Thus, an erroneously denied motion does not mean that the judge who presided was actually biased or unfair. Additionally, when the issue arises on direct appeal, as opposed to a pretrial prohibition petition, the appellate court has the benefit of the entire trial record to see how the case progressed.

The Court then reviewed the trial record and found no indicia of unfairness or partiality on the part of the presiding judge. The Court noted that the defendant, on appeal, did not raise any issues which questioned the neutrality or fairness of the judge.

The Court certified the issue of whether the harmless error standard was applicable to the Florida Supreme Court, as a question of great public importance.

Wiley v. State, 2D18-878 (June 3, 2020)

The Second District reversed multiple convictions for possession of prohibited substances. All of the items were seized from a locked safe in a "jointly occupied master bedroom," and the State failed to prove that Wiley constructively possessed the items.

Wiley's thumbprint was on the inside of the lid of a mason jar containing marijuana, but there were no other items in the safe which could be identified to any particular person. The State relied on the fingerprint to prove constructive possession. The Court found that that was insufficient: "a fingerprint on an item containing contraband does not itself prove the defendant's knowledge of the container's contents, because the fingerprint just as likely could have predated the introduction of the contraband into the container."

Third District Court of Appeal

Macauley v. State, 3D18-13 (June 3, 2020)

The Third District reversed convictions for two first-degree murders. The trial court erred by excluding exculpatory evidence that another person confessed to the murders.

Two defense witnesses would have testified that there was a confession from Kristian Demblans, and an account of the murders by Adrian Demblans, in which he admitted shooting one of the two victims, and that he and Kristian set up Macauley for the prosecution as the shooter. One of the proffered defense witnesses, Lansford, was the cellmate of Kristian Demblans. Lansford related significant details of the murder, allegedly provided through Kristian's confession. The second witness, Wollweber, was housed with Adrian after Adrian's arrest.

At the time of the trial, Lansford was residing in Alabama. The defense stated that it had made arrangements for his attendance at trial, including an airline ticket. The defense announced, on the day scheduled for Lansford's testimony, that Lansford was refusing to appear based on fear for his life. The defense sought to admit Lansford's prior sworn testimony based on his unavailability.

The Court analyzed the exclusion of the evidence under the United States Supreme Court's decision in Chambers v. Mississippi, assessing factors going to the

reliability of the proffered evidence. The Court ultimately concluded that Kristian's alleged conession was "indisputably against his penal interest," and Lansford's prior sworn testimony had been "tested thoroughly" by the prosecutor and investigator for the State Attorney's Office.

Addressing the factors under Chambers, the Court noted: 1) Kristian's statement was "'spontaneous' in the sense that it does not bear indicia of coercion; 2) there was other corroborative evidence; 3) Kristian's statements were self-incriminatory and against his penal interest; and 4) Kristian was available. Kristian had been transported from jail by the State, as an anticipatory rebuttal witness.

Gonzalez v. State, 3D18-1067 (June 3, 2020)

The Third District affirmed the denial of a Rule 3.850 motion alleging newly discovered evidence.

The motion alleged that Gonzalez learned from his sister that the sister's ex-husband committed the murder for which Gonzalez was convicted. The State obtained the ex-husband's statement denying the allegations. Gonzalez obtained an affidavit from his sister. At a hearing on the motion, the ex-husband, when questioned by the State, invoked the marital privilege of section 90.504, Florida Statutes. The trial court then found that it could not admit the affidavit of Gonzalez's sister into evidence because her ex-husband invoked the privilege and none of the exceptions to the privilege were applicable.

Fourth District Court of Appeal

State v. Morris, 4D19-1729 (June 3, 2020)

The trial court dismissed the information pursuant to section 916.145, Florida Statutes, without prejudice, due to continued incompetence. The Fourth District affirmed the dismissal.

The State argued that the five-year period required for continuous incompetence prior to a dismissal should have been tolled for the significant period of time where the defendant had disappeared and was not under mandated treatment. The Fourth District disagreed. Once the defendant was initially determined to be incompetent, the defendant was presumed to remain incompetent until such time as the court found that competence was restored. Absent such a finding by the court, a

the presumption existed and it was incumbent upon the State to rebut that presumption. The State did not present any evidence to rebut that presumption.

Milanes v. State, 4D19-2435 (June 3, 2020)

The trial court relied on impermissible considerations when revoking probation and did not provide the defendant with an opportunity to be heard at sentencing.

The defendant had a lengthy history of probation violations and alleged violations, some of which never resulted in hearings or adjudications. The most recent one was for violation of a curfew. The court held an evidentiary hearing as to that violation, and, when finding the defendant in violation, specifically stated that the court was influenced by the prior history of violations, which included matters for which there had never been hearings or adjudications. Reliance on those matters was improper. The court then proceeded immediately to the sentencing of the defendant and did not provide him with an opportunity to be heard.

As there were no objections in the lower court, the Fourth District reviewed the issues under the fundamental error standard and found that the errors were fundamental. On remand, the new revocation hearing, and any ensuing sentencing proceeding, would be heard by a new judge.

Morgan v. State, 4D20-720 (June 3, 2020)

Morgan challenged the scoring of his conviction for possession of heroin on the Criminal Punishment Code scoresheet, arguing that it should have been scored as a level one offense, not level three. The Fourth District disagreed.

Morgan was convicted under section 893.13(6)(a), Florida Statutes. That section encompasses possession of both cannabis and heroin. The scoring for level one offenses is only for marijuana offenses, not heroin.

Fifth District Court of Appeal

Palmer v. State, 5D19-3030 (June 5, 2020)

Twenty years after his conviction for first-degree murder, Palmer filed a motion to correct a clerical error on the judgment and sentence. The jury verdict was for first-degree murder, without specifying whether it was premeditated murder

or felony murder. The judgment and sentence referenced premeditated murder. The Fifth District found that the trial court had inherent authority to correct clerical errors at any time and directed the trial court to change the judgment and sentence to reference first-degree murder, without specifying premeditated.