

Case Law Update  
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Prepared by  
Richard L. Polin

Supreme Court of the United States

[Banister v. Davis](#), 18-6943 (June 1, 2020)

Banister filed a timely Rule 59(e) motion to amend a final order denying a habeas corpus petition. Such a motion, filed within the allowed 28 days after the judgment, does not constitute a successive federal habeas corpus petition. As a result, it tolled the time for initiating an appeal from the denial of the habeas corpus petition, and the appeal was timely filed after the denial of the Rule 58(e) motion.

The Court distinguished Rule 59(e) motions from Rule 60(b) motions, as Rule 59(e) motions are limited in nature as they must be filed within 28 days and are subject to a limited scope of issues that may be raised. Appeals from the denial of Rule 59(e) motions then provide a unified appeal as to both the Rule 59(e) motion and the denial of the federal habeas corpus petition itself.

Supreme Court of Florida

[Wheeler v. State](#), SC19-1916 (June 11, 2020)

An unelaborated order of a district court of appeal, which struck Wheeler's appellate court brief, was not reviewable under the Florida Supreme Court's discretionary review jurisdiction.

[Cave v. State](#), SC18-1750 (June 11, 2020)

In an appeal from the summary denial of a successive Rule 3.851 motion, the Supreme Court held that Cave was not entitled to relief on his claim of intellectual disability. The Florida Supreme Court had previously held, in [Phillips v. State](#), that the decision of the United States Supreme Court, in [Hall v. Florida](#), did not apply retroactively.

And, Cave was not entitled to relief on his [Hurst](#) claim. The unanimity requirement of [Hurst](#) was satisfied because the jury convicted Cave of one count each of first-degree murder, armed robbery, and kidnapping. As a result, jury

necessarily made a unanimous finding of at least one aggravating circumstance – murder during the course of either a robbery or kidnapping.

### Eleventh Circuit Court of Appeals

[United States v. Yarbrough](#), 18-10624 (June 11, 2020)

The Eleventh Circuit reversed an order suppressing evidence. During the course of an arrest with warrants for Yarbrough and his wife, the officer reentered the residence and conducted a “protective sweep.” The Court held that the protective sweep was justified as the officer had reasonable suspicion that a dangerous person may have been in the residence.

Key facts in the case included: an anonymous tip regarding possible drug activity and a lot of traffic at the residence; the presence of two vehicles at the residence, suggesting that multiple people could have been present in the residence; the flight of Yarbrough’s wife to a bathroom when the officer called her name (evasive or furtive behavior factors into reasonable suspicion). The Court further emphasized that the sweep was limited in scope, lasting about one minute, and its brevity was a “point in favor of its justification.”

### First District Court of Appeal

[Hooks v. State](#), 1D19-1338 (June 12, 2020)

Dual convictions for traveling to meet a minor to engage in sexual conduct and unlawful use of a two-way communications device to facilitate the commission of a felony constituted a double jeopardy violation.

The traveling offense was alleged to have been committed on or about March 4, 2018; the communications-device offense between March 1<sup>st</sup> and 4<sup>th</sup>. The defendant was found guilty “as charged.” The evidence before the jury included email communications over the four-day period, and the traveling was on the 4<sup>th</sup>. “Because the charging document does not foreclose the possibility that the State relied on the same act for both charges, we must vacate Appellant’s conviction for unlawful use of a two-way communications device.”

[Butler v. State](#), 1D18-2848 (June 11, 2020)

A conviction for failing to immediately stop at the scene of a crash causing serious bodily injury was affirmed. The defendant argued that he “never left the scene of the crash.” Butler conceded “that he kept driving his SUV after the crash. But he claims that the ‘scene’ of the crash encompassed the area surrounding the crash site and included all the places he drove his car before landing in the ditch.” The First District disagreed.

The statutory offense is not based on leaving the scene; it is based on failing to stop immediately at the scene. After the crash, the defendant drove into a condominium carport, hit it several times, backed up and drove onto the road, crossed the median of a four-lane highway, and did not stop until the car was stuck in a ditch. The evidence was sufficient for the jury to determine whether the defendant failed to stop immediately. The Court also rejected the argument that the scene included all of those locations. The Court resorted to standard dictionary definitions of “scene.”

The Court did not reach the merits of the claim that the inclusion of victim injury points for severe injury were erroneously included on the scoresheet because a jury failed to make the determination of severe injury. Any error was harmless because the jury found the defendant guilty of two offenses which included the element of serious bodily injury. “Severe” is not defined in the Criminal Punishment Code. “Serious bodily injury” is defined in the statutory offenses, as a physical condition “that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.” The Court looked to the common usage of the term “severe,” based on dictionary definitions – “serious” or of a “great degree” – and concluded that any rational jury would have found the injuries in this case to be severe had it been so instructed. The injuries were described by a doctor as being permanent, serious and having had the possibility of death or paralysis.

[Knox v. State](#), 1D19-499 (June 10, 2020)

In an appeal from a conviction for possession of a firearm by a convicted felon, the First District concluded that a motion to suppress was properly denied and the conviction was affirmed.

An officer had been following recent reports about the theft of guns from a gun shop. Several days later, a call was received reporting a man believed to be

selling stolen firearms from his car. The vehicle was described, the suspect's description was provided, and a second call was placed, providing the license plate. The police responded to the location about ten minutes later and found the various descriptions consistent with what was observed by the police. One officer further described the suspect as making furtive gestures in front of his chest. The defendant had been observed vacuuming his car when the police arrived.

An officer approached and secured the defendant's hands and patted him down for safety. Police had checked the defendant's background and it included a history involving guns or violence, although the officer could not recall the details at the suppression hearing. During the pat-down, a firearm was found inside the defendant's waistband. In a subsequent search of the trunk of the car, stolen firearms were found.

The trial court, when upholding the search, found that the anonymous caller qualified as a citizen informer and that the information provided was therefore reliable and provided reasonable suspicion for the initial detention and pat-down. Knox challenged those findings. The First District agreed with the trial court, as the caller had provided his phone number if the police needed to contact him, and there was "no indication that the caller was motivated by anything other than a concern for safety."

Alternatively, even if the caller was treated as a lesser anonymous tipster, the information was still sufficient to provide the officers with reasonable suspicion based upon their own investigation to corroborate the anonymous tip. The officers ran a criminal history check based on the license tag of the vehicle they observed; the name they found was consistent with that provided by the caller; the vehicle was found at the location described by the caller; one officer recognized the vehicle immediately as one connected to the reports from days earlier regarding the stolen firearms from the gun shop; and the defendant was observed making secretive gestures.

[Sampaio v. State](#), 1D19-1508 (June 10, 2020)

The defendant was charged with home invasion robbery with a firearm and grand theft of a firearm. In a petition alleging ineffective assistance of appellate counsel, he argued that the counsel should have argued on direct appeal that the information was defective.

The defendant was convicted on the lesser included offense of robbery. Contrary to the defendant's argument, the jury was properly instructed on this lesser offense. All of the elements of simple robbery are encompassed within the elements of home invasion robbery. Robbery is a necessarily lesser included offense of home invasion robbery.

[Bowling v. State](#), 1D19-2331 (June 10, 2020)

The defendant's score on the Criminal Punishment Code scoresheet was less than 22 points and the jury did not make the statutorily required finding of dangerousness required for imposition of a sentence greater non-state prison. Consistent with recent Florida Supreme Court decisions, the sentence was reversed and remanded for further proceedings, including the possibility, at the State's option, of empaneling a new jury to make the sentencing determination.

[Blalock v. State](#), 1D19-3398 (June 10, 2020)

Blalock appealed a revocation of probation and a conviction for a new law offense. The First District affirmed as to the probation revocation, but reversed the new conviction.

The defendant moved to disqualify the judge in both cases, and further alleged insufficient plea colloquies in both cases. With respect to the probation revocation, the issue of disqualification of the judge was not a "dispositive" issue and thus could not be the subject of an appeal after the entry of a plea of no contest or guilty.

As to the conviction for the new offense, Blalock was not sworn in, he did not enter a plea, and he was not informed of the consequences of entering a plea. Nevertheless, the parties proceeded to sentencing under an erroneous assumption that there had been a prior plea. The judge referred to the allegations in the motion to disqualify as being "patently false." Such assertions by the judge exceeded the proper scope of inquiry into the legal sufficiency of the motion. The conviction for the new offense was therefore reversed with directions that the case proceed with a new judge on remand.

[Daniels v. State](#), 1D17-3675 (June 8, 2020)

The evidence was sufficient to sustain a conviction for aggravated assault while possessing and discharging a firearm.

During the course of an argument with his then-girlfriend, while driving, the defendant threatened to shoot and kill his girlfriend multiple times. When the car stopped, he took out his gun and fired it several times through the window. Although the victim did not testify that she was in fear, and actually denied being in fear, the Court applied an objective standard and found that such fear could be inferred under the facts of the case.

[Jones v. State](#), 1D18-4885 (June 8, 2020)

The First District affirmed a conviction for DUI manslaughter. Jones and his friend had been out drinking and Jones was later driving, with his friend as the passenger, when he had a one-car accident. Five seconds before the accident, the car was traveling at a speed of 100 miles per hour in a 45 mile per hour zone. The car was traveling at 85 miles per hour when it struck a curb and went airborne. The car collided with several poles, struck a tree, started coming apart and caught fire. The victim was not wearing a seatbelt and was ejected from the car.

The defendant argued in the trial court that the victim grabbed the steering wheel because he wanted to go to another club and the accident occurred while they were fighting over the steering wheel. Jones' argument, based on the circumstantial evidence standard of review, failed because of the Supreme Court's recent decision in [Bush v. State](#), in which the Supreme Court abandoned the special circumstantial evidence standard of review. And, even under the circumstantial evidence standard of review, the argument would fail because the evidence in the case was not entirely circumstantial. There was direct evidence of the defendant's impairment and his operation of the car at the time of the accident. And, even accepting the defendant's claim that the victim grabbed the steering wheel, there was still evidence that the defendant contributed to the accident, as his blood alcohol level was three times the legal limit, the car was traveling at 100 miles per hour, and there were no signs of braking to slow the car.

[Stillions v. State](#), 1D18-5308 (June 8, 2020)

The defendant, an elementary school teacher, appealed convictions for three counts of child abuse without causing serious bodily injury. The First District affirmed, and found that the evidence was sufficient.

Stillions argued that she was entitled to acquittal because the child was not injured. The statute under which she was charged, however, section 827.03(1)(b)2., did not require actual injury. It requires only an intentional act that "could

reasonably be expected to result in physical or mental injury to a child.” And, under that standard, there was sufficient evidence for the case to go to the jury. In one of the three incidents, the defendant was seen kneeling a young child in the torso with enough force for the child to bounce backwards. This was observed on several occasions.

In the second incident, the defendant used her foot to block the child from leaving the lunchroom, and the child tripped and fell. The impact caused a loud noise and the child was crying. In the third incident, the defendant pushed the child hard and the child fell. This happened in what was described as a hazardous area.

[Woods v. State](#), 1D18-5319 (June 8, 2020)

Woods appealed convictions for multiple offenses and the First District affirmed.

One of the witnesses against the defendant, Meyers, cooperated with officers and obtained recorded conversations with the defendant after the incidents. Meyers died prior to trial, but the conversations he had were admitted through the testimony of an officer who identified Meyers’ voice from the recording. Woods tried to use Meyers’ prior criminal history as a form of impeachment evidence, and the trial court disallowed it.

Although a witness’s credibility may be attacked when a hearsay statement by the witness is admitted into evidence, under section 90.806, Florida Statutes, the statements admitted were not hearsay, because they were not used to prove the truth of the matter asserted. Meyers’ statements were used only to provide context for the defendant’s own responses.

Second District Court of Appeal

[Qosaj v. State](#), 2D18-4109 (June 10, 2020)

The Second District affirmed multiple convictions and disagreed with the defendant’s argument that his acquittal on a charge of attempted murder by reason of insanity was legally inconsistent with the guilty verdict for aggravated battery.

Inconsistent verdicts are generally permitted under Florida law. The one exception is for “true” inconsistent verdicts, when an acquittal on one count negates a necessary element of another. That did not exist in this case. One possibility was



that the jury wanted to pardon the defendant. Qosaj argued that the defense of insanity was common to both charges. The Second District declined “to hold that the assertion of such a defense creates an additional exception to the general rule in Florida permitting inconsistent verdicts.” The Court further noted that under the facts of this case, as there were two attacks on the victim, the jury could have concluded that the defendant was insane at the time of one, but not at the time of the other.

[Rich v. State](#), 2D19-4196 (June 10, 2020)

The State charged Rich with second-degree murder, for a killing that arose from the escalation of a drug deal which resulted in arguments. Rich filed a motion for immunity under the stand your ground law. The parties agreed to conduct a limited evidentiary hearing, addressed solely to the issue of whether Rich was engaged in criminal activity – i.e., the drug dealing – at the time, and, if so, whether that precluded immunity. The trial court agreed to that procedure, and, at the evidentiary hearing, one witness, presented by the State, testified that there had been a drug deal, that Cole, the purchaser had left with the contraband he purchased, that he then contacted Rich, the seller, complaining about what he received, that the two met again, and that during the further discussions between the two, the witness saw Rich with a gun and heard shots.

The trial court concluded that Rich was engaged in criminal activity and not entitled to immunity. The Second District criticized the procedure followed by the trial court. The trial court is supposed to rule on the legal sufficiency of a written motion for immunity prior to conducting any evidentiary hearing; that was not done in this case. As a result, the Second District found that there was no ruling on the merits of the motion for immunity and the Court therefore could not entertain the prohibition petition. Rich was not asking the Court to “prohibit the circuit court from considering his case further, rather he ‘seeks a writ of prohibition preventing the trial court from denying his motion on a limited basis, effectively quashing the order denying Petitioner’s motion for declaration of immunity and dismissal.’ In essence, he requests an advisory opinion from this court on a preliminary (but certainly important) legal question about section 776.012’s interpretation.”

One judge concurred in result only, concluding that the petition should be denied because the trial court did not issue a written order.



## Third District Court of Appeal

[David v. State](#), 3D18-1143 (June 10, 2020)

The Third District reversed convictions for three counts of attempted manslaughter and other offenses. The defendant and his wife had been drinking at several bars and were quarreling. Two bystanders became concerned and one pushed the defendant away from his wife; the defendant attempted to strike this person. The fight escalated, and the defendant fell to the ground, got up, started walking away, and one of the other men hit him in the head.

The two men departed, followed by the defendant's wife, with the defendant following all of them from a distance. Another pair of bystanders approached the defendant's wife, who lashed out. The defendant retrieved his gun, for which he had a concealed carry permit, unsuccessfully tried to fire a warning shot in the air, and then fired four shots, striking three individuals, two of whom had not been involved in the preceding altercation. At trial, the defendant asserted that he was acting in the defense of his wife.

The trial court provided instructions to the jury on self-defense and the defense of others. The defense requested a modification of the standard instruction, which the court agreed to, but the language that the court agreed to include was omitted from the instructions that were read to the jury as the court modified and recrafted the language requested by the defense. The additional language would have said: "harm caused to an unintended victim is also justified if the shot fired was the proper and prudent exercise of self-defense or in the defense of others." The judge's modification omitted the reference to "defense of others."

The Third District treated the issue as one of fundamental error, as there was no objection to the judge's ultimate recrafting of the requested instruction. The defendant was entitled to an adequate instruction based on the defense of others and its omission required reversal. The Court looked to language in other instructions that were provided as to self-defense and found that they did not cure the omission.

## Fourth District Court of Appeal

[Bain v. State](#), 4D19-1247 (June 10, 2020)

In 2015, Bain was placed on probation after a plea agreement. In 2019, his probation was revoked and he was incarcerated. On appeal from the 2019

revocation, he argued that the trial court erred by failing to hold a competency hearing at the time of the original plea after the trial court had entered orders to determine his competency to proceed.

The Fourth District agreed with the State's argument that the issue was procedurally barred when Bain failed to raise it on direct appeal from the original plea in 2015.

#### Fifth District Court of Appeal

[Isom v. State](#), 5D19-1465 (June 12, 2020)

Isom appealed after his plea of nolo contendere and argued that the trial court failed to hold a competency hearing. The Fifth District concluded that it lacked jurisdiction for the appeal because Isom did not file a motion to withdraw plea based on the competency issue.

The Court noted a contrary decision of the Fourth District on the same issue, [Dortch v. State](#), 242 So. 3d 431 (Fla. 4<sup>th</sup> DCA 2018), which is currently pending review in the Florida Supreme Court.

[State v. Ingram](#), 5D19-1804 (June 12, 2020)

The trial court erred by failing to impose the three-year mandatory minimum sentence for possession of a firearm. Ingram pled no contest to charges of possession of a firearm by a convicted felon and three drug offenses. The State alleged that the defendant actually possessed a firearm during the offense of felon-in-possession. The trial court found that the defendant qualified as a chronic drug abuser and imposed a sentence of drug offender probation.

The case involved a conflict between the drug offender probation statute, which authorizes the court to consider a non-prison sentence, section 948.20(1), Florida Statutes, and section 775.087(2), which requires the mandatory minimum prison sentence for enumerated offenses, including possession of a firearm by a convicted felon. The Court relied on the rule of statutory construction that favors the more specific statute, and the mandatory minimum sentence therefore had to be imposed.

[State v. Paul](#), 5D19-2382 (June 12, 2020)

The trial court granted a sworn motion to dismiss drug offenses, finding the absence of a prima facie case of constructive possession. The Fifth District reversed.

Construing the evidence contained in the Appellee's motion and the State's traverse and all inferences derived therefrom in favor of the State, Appellee and the codefendant specifically traveled to a known drug distributor's home to consummate a drug transaction. Shortly thereafter, the vehicle in which appellee and his codefendant were traveling was stopped and searched. A firearm, ammunition, and a bag containing a white substance that tested presumptively positive for methamphetamine were found in Appellee's backpack at his feet on the passenger side floor. A bag containing heroin was located on the passenger floorboard. Methamphetamine was found right next to Appellee, between his seat and the center console.

[Rodriguez v. State](#), 5D19-2860 (June 12, 2020)

Rodriguez was convicted of manslaughter, and the jury made specific findings with respect to the possession and discharge of a firearm causing the death of the victim. He challenged the imposition of a 25-year sentence and argued that the trial court erred in denying a request for a downward departure sentence.

Rodriguez argued that the trial court erred when it found the existence of remorse, but further found no legal basis to find that this was an isolated incident committed in an unsophisticated manner. While the Fifth District had concerns about the trial court's ruling, it was not necessary to address it. The trial court had found sufficient evidence of a second reason for a downward departure that had been requested by the defense, and specifically declined to "depart in this case" after finding the existence of that departure reason. Rodriguez did not challenge the trial court's ruling as to that departure reason.

Thus, the trial court determined that it "could" impose a downward departure sentence, but decided that it "would not" depart in this case. Any error with respect to the reason litigated in this appeal was therefore harmless.