

Case Law Update
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Prepared by
Richard L. Polin

First District Court of Appeal

[Roberts v. State](#), 1D19-4086 (Sept. 11, 2020)

The First District affirmed the summary denial of a Rule 3.850 motion, finding that it was a successive motion. The motion alleged that trial counsel was ineffective for failing to determine Roberts' competency prior to trial. The claim included allegations of amnesia and impaired cognitive capabilities.

Roberts sought to avoid the successive motion bar by arguing that his memory of events had now started to come back and that he could not have raised the claim in his prior Rule 3.850 motion because of the cognitive impairment. The First District was not persuaded by that argument and did not believe that Roberts had "demonstrated good cause to be entitled to such an extraordinary proceeding."

Alternatively, the Court found that the claim of ineffective assistance had no merit. "Appellant testified extensively in his own defense at trial. Appellant's testimony was thorough and highly detailed." The Court's opinion then sets forth a detailed narrative of Roberts' trial testimony. Based upon a review of Roberts' trial testimony, the Court concluded that "the trial proceedings thoroughly refute Appellant's allegations that he was suffering from amnesia, an inability to recall events on the night of the incident, or that his cognitive capabilities were otherwise impaired by his injuries."

[Dunlap v. State](#), 1D18-5177 (Sep. 11, 2020)

The trial court erred in imposing a \$1,000 discretionary fine under section 775.083, Florida Statutes, without notice to the defendant and an opportunity to be heard.

[Bartley v. State](#), 1D18-5299 (Sep. 10, 2020)

In an appeal from a conviction for second-degree murder, Bartley challenged his 35-year prison sentence, arguing that the trial court committed fundamental error

by considering his lack of remorse. The First District affirmed the conviction and sentence.

The trial court ordered a PSI report prior to sentencing and the author of that report wrote that Bartley “exhibited no remorse for the victim or his actions.” At sentencing, defense counsel challenged that statement from the PSI. Bartley, at sentencing, asked the victim’s family for forgiveness. He explained that he felt like he was protecting himself, but was hurting someone else, and that was not his intention. Defense counsel then reiterated the request for forgiveness and asserted that Bartley was remorseful.

The State then responded, referring to the quote from the PSI report. The judge, when imposing sentence, posed the question of whether the court should show the defendant mercy. The court then stated that “based on everything” the court had heard, further mercy was not warranted. Bartley argued that the judge’s reference to “everything the court heard” constituted an impermissible reference to lack of remorse.

The First District found that the trial court judge had provided a cogent explanation for the sentence, having found the nature of the crime more compelling than the mitigating evidence Bartlett relied upon. Furthermore, the First District previously held, in Davis v. State, 268 So. 3d 958 (Fla. 1st DCA 2019), that in non-capital cases, the court may take into consideration a defendant’s lack of remorse. Davis is currently pending review in the Florida Supreme Court, which has granted review on the merits. Davis v. State, SC19-716. And, even prior to Davis, the trial court would have been able to refer to a lack of remorse because the defense was seeking a lower sentence based on allegations of remorse.

[Barnes v. State](#), 1D19-889 (Sep. 10, 2020)

The First District affirmed convictions for first-degree murder and child abuse.

On redirect examination, a medical examiner testified that a radiologist had said that abnormalities of the victim’s bones were not observed in x-rays. A motion for mistrial was denied. The motion was properly denied. During defense counsel’s prior cross-examination, it was “suggested that the medical examiner’s opinion was flawed because the witness did not measure the bone density or take a sample of the victim’s spine where the break occurred. In arriving at his expert opinion, the medical examiner was permitted to rely upon the radiologist’s report that the

victim's x-ray revealed no bone abnormalities, as well as upon his own observations of the victim's bones during the autopsy." Defense counsel's cross-examination opened the door to this rehabilitation of the medical examiner on redirect examination.

[Morgan v. State](#), 1D19-1095 (Sep. 10, 2020)

The First District reversed the summary denial of a Rule 3.850 motion, which alleged newly discovered evidence, for further proceedings. The records attached to the trial court's order did not conclusively refute the claim, and the trial court failed to give the defendant an opportunity to amend the motion.

The affidavit attached to the motion claimed that the perpetrator called the affiant just after the robbery and claimed that the caller had just committed the robbery. The motion failed to allege facts demonstrating how and when the defendant became aware of this information. The timeliness of the motion was therefore not demonstrated.

Second District Court of Appeal

[Shaw v. State](#), 2D17-4664 (Sep. 11, 2020)

The Second District reversed a conviction for battery on a staff member of the Florida Civil Commitment Center. The "trial was tainted by a trial court order requiring Shaw to either wear a stun belt or leave the courtroom."

The order had been entered prior to trial, and Shaw argued, based on his mental and emotional conditions, that "wearing the device would cause him to act out in the court proceeding, disrupt the proceedings, and lead to his being stunned." He suggested that the court post a deputy near him during the trial. Shaw ultimately chose the court's offer to sit outside the courtroom and have his attorney periodically go out to discuss the proceedings with him.

The trial court's order did not make any findings to justify wearing the stun gun in the presence of the jury. Neither the State nor the trial court elaborated upon any prior history of violence in the courtroom. Receipt of notice of what was transpiring through counsel did not render the trial court's order harmless error.

Fifth District Court of Appeal

State v. Rosario, 5D19-1592 (Sep. 11, 2020) (en banc)

After a jury verdict for first-degree murder and arson, and the jury's subsequent recommendation of the death penalty, the trial court granted a motion for a new penalty phase, finding that penalty-phase counsel had been ineffective. The sole basis for that motion and the trial court's order was that penalty-phase counsel was not qualified to be lead counsel in a death penalty case. There were no specific allegations of deficient performance. The motion was filed by new counsel for the defendant. However, that motion had been withdrawn, and the only pending motion before the trial court was a subsequent motion seeking only a new guilt phase.

The Fifth District first rejected the defendant's argument that the trial court was acting on its own motion. The trial court expressly referred to the motion for a new penalty-phase proceeding, which motion had been withdrawn. Furthermore, there were no findings that would support the granting of a motion under Rule 3.600(b). There were no findings that the defendant did not receive a fair penalty phase or that the proceeding was not impartial. And, the motion which was directed to the penalty phase was not timely, as it was filed prior to the actual imposition of any sentence. The Court also concurred with the State's argument that in the absence of ineffective assistance on the face of the record, the trial court could not grant relief without any evidentiary hearing.

One judge, in a partial dissent in which others concurred, would have found that the motion was timely even though filed prior to the imposition of sentence. There are also other partially concurring and partially dissenting opinions.

Caro v. State, 5D19-1818 (Sep. 11, 2020)

The Fifth District reversed a conviction for attempted second-degree murder for a new trial.

The State presented testimony of an "unscientific experiment conducted by a police detective that was intended to prove that the victim was shot at close range." The State did not prove that the conditions of this experiment "were substantially similar to the actual event to make the demonstration admissible." Additionally, the detective was improperly permitted to "state his opinion that of the test shots he fired, the one fired from point-blank range most closely resembled the bullet hole on the victim's shirt."

The primary problem with the demonstrative exhibition was that there was no testimony regarding the caliber of the gun or the size of the bullet fired at the victim. Absent such evidence, “the jury could not reliably draw a conclusion from the detective’s experiment about the shooter’s distance from the [victim].” Additionally, a crime analyst for the State stated that the hole in the shirt may have come from a knife, not from a bullet.

The detective’s opinion about which test shot most closely resembled the hole in the shirt was contrary to the principle that while “[w]itnesses may testify to their own observations of an event or an experiment, [] they usually may not make comparisons between demonstrative aids and actual evidence.”