

Case Law Update
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First District Court of Appeal

[Brown v. State](#), 1D19-2680 (Oct. 16, 2020)

The First District affirmed the summary denial of a Rule 3.850 motion. All but one of the claims advanced in the trial court had been abandoned. The remaining claim, that the trial court failed to conduct an adequate plea colloquy, was procedurally barred when raised in the appellate court. The same claim had been asserted in a prior motion to withdraw plea under Rule 3.170(1). The denial of a claim asserted in a Rule 3.170(1) motion to withdraw plea can be raised in the direct appeal from the conviction and sentence. Brown did not do that. Having failed to avail himself of the remedy that was viable in a direct appeal, Brown could not relitigate the same claim in a Rule 3.850 motion.

[Coleman v. State](#), 1D19-3598 (Oct. 16, 2020)

The trial court conducted an evidentiary hearing and denied a pretrial Stand Your Ground immunity claim. Coleman sought review through a petition for writ of prohibition, which the First District denied on the merits. The trial court, having heard conflicting evidence, expressly found that the victim's account was more credible and that the defendant's account was implausible.

[Libersat v. State](#), 1D19-4489 (Oct. 16, 2020)

The defendant appealed a conviction for aggravated stalking. He challenged the sufficiency of evidence, because the victim remained unaware of the acts of stalking until months later, when the defendant's ex-girlfriend told the victim what the defendant had done. The First District disagreed and affirmed the conviction.

The First District first agreed with the Third District, and held that the absence of contact between the defendant and victim does not preclude a conviction for stalking. The Court then rejected the related claim regarding the emotional distress element of aggravated stalking, and held that the emotional distress suffered by the victim need not be suffered contemporaneously with the stalker's acts. Learning of

the acts of stalking after they have been committed can cause the requisite emotional distress on the part of the victim.

[Manning v. State](#), 1D20-427 (Oct. 13, 2020)

The First District affirmed the denial of a Rule 3.850 motion which alleged ineffective assistance of counsel. One claim alleged that counsel promised the defendant would be released by a specific date based on gain-time. This was refuted by the plea colloquy in which, inter alia, the defendant stated that no other representations, other than those on the record of the colloquy, had been made to her.

A claim based on counsel's failure to move for a change of venue was refuted by the portion of the plea colloquy in which the defendant stated that she was satisfied with counsel's services.

Second District Court of Appeal

[J.A.R. v. State](#), 2D18-4975 (Oct. 16, 2020)

Adjudications of delinquency for burglary of an unoccupied conveyance and grand theft of a motor vehicle were reversed due to insufficient evidence.

The State failed to prove that the vehicle belonged to the victim. Although the vehicle was described, the State did not elicit from the testifying officer the plate number, identification number, year of the vehicle, whether the victim's mother picked up the vehicle or whether the victim or his mother ever identified the vehicle.

An adjudication for resisting an officer was, however, affirmed. Although there was no testimony linking the victim's vehicle to the one that the juvenile was driving, the officer checked the vehicle's registration and discovered that it was reported stolen. When J.A.R. was stopped in an intersection by the officer, and then ran, he ignored the officer's command to stop.

[Shortridge v. State](#), 2D19-1376 (Oct. 16, 2020)

After the trial court granted a Rule 3.850 motion and ordered a new sentencing hearing, and the State failed to appeal that order, the trial court lacked jurisdiction to vacate the order setting the new sentencing hearing.

[Melvis v. State](#), 2D17-3446 (Oct. 14, 2020) (on rehearing)

The Second District affirmed the denial of a Rule 3.800(a) motion to correct illegal sentence.

Melvis had been sentenced to a term of 30 years in prison for an aggravated battery committed while he was 15 years old. After the Supreme Court's decision in [Graham v. Florida](#) and the Florida legislature's adoption of new juvenile sentencing statutes in 2014, Melvis sought resentencing. The trial court denied the motion, concluding that the 30-year sentence was not a life sentence and was not unconstitutional under [Graham](#).

On appeal, the State conceded that the sentence was unconstitutional under [Graham](#) and other Florida Supreme Court decisions, but the Florida Supreme Court receded from those decisions while the appeal was pending. After further briefing on appeal, the Florida Supreme Court issued its decision in [Pedroza v. State](#), which was dispositive of the issue in this case. The 30-year sentence was not the equivalent of a life sentence and Melvis was not entitled to resentencing.

[Fifth District Court of Appeal](#)

[Rosado v. State](#), 5D18-1763, 5D19-262 (Oct. 16, 2020)

Rosado was charged with two counts of attempted second-degree murder of two law enforcement officers. He was found guilty as to one, and guilty of the lesser included offense of battery as to the other.

While an appeal was pending, Rosado filed a Rule 3.800(b) motion, challenging the sentence, on the basis of an alleged [Apprendi](#) violation, which asserted that the jury had not made a finding through a special verdict interrogatory that Rosado knew the victim's status as a law enforcement officer at the time of the offense. The trial court granted the motion, reduced the sentence from life to 30 years, and the State cross-appealed the reduction of the sentence.

The Fifth District ruled that the jury had been properly instructed on all elements of the offense, including knowledge of the status of a law enforcement officer, and that a special interrogatory verdict was not required. The order granting the resentencing was therefore reversed and the original sentence was reinstated.

[McCray v. State](#), 5D20-566 (Oct. 16, 2020)

The Fifth District reversed the denial of one of several claims in a Rule 3.850 motion.

McCray challenged dual convictions for lewd or lascivious molestation as a double jeopardy violation. The acts of touching the victim's breasts and kissing the victim's neck were a part of the same criminal episode and the dual convictions could not stand.

[Dixon v. State](#), 5D20-1544 (Oct. 16, 2020)

The trial court failed to address one claim in a Rule 3.850 motion because it was asserted in a separate memorandum of law, and that memorandum was not under oath. The Fifth District reversed for further proceedings because the trial court failed to give the defendant at least one opportunity to file a sufficiently pled amended motion.