

Case Law Update
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Supreme Court of Florida

[Hojan v. State](#), SC18-2149 (Dec. 3, 2020)

The Supreme Court affirmed two death sentences that had been reimposed after a prior decision of the Court ordered resentencing based on Hurst errors.

During voir dire, defense counsel sought to pose a hypothetical question to the jury, concluding by asking what the jurors' feelings were about the death penalty, as the "only appropriate penalty for a guilty murderer of that innocent victim." The trial court sustained the State's objection to the question. Defense counsel explained what counsel was trying to ask the venire and the court permitted an alternative line of inquiry that was deemed sufficient by the Supreme Court to assess the jurors' ability to decide the case impartially. Even if the trial court's ruling was viewed, as suggested by Hojan, as prohibiting all hypothetical questions, any such error was deemed harmless. A review of the record as a whole led to the conclusion that defense counsel was permitted to explore attitudes towards the death penalty.

The Supreme Court also briefly addressed and rejected claims that the trial court improperly restricted voir dire regarding premeditation and heightened premeditation, an understanding that the law is satisfied with a sentence of life with parole, and an alleged rebuke of counsel for attempting to inquire if life imprisonment was sufficient for first-degree murder. The Court briefly went through each of these and found that the assertions were not an accurate portrayal of the record. The opinion of the Court quotes the portions of the record which the Court relied upon.

Eleventh Circuit Court of Appeals

[United States v. Bobal](#), 19-10678 (Nov. 30, 2020)

Bobal appealed convictions and sentences for attempting to persuade a minor to engage in sexual activity and committing a felony involving a minor while required to register as a sex offender. The Eleventh Circuit affirmed the convictions and sentences.

Bobal challenged two comments by the prosecutor in closing argument. The prosecutor stated that Bobal stipulated to the second count, as opposed to just one element of that count. The government, on appeal, acknowledged that this was just “a slip of the tongue.” The Court found that in the context of the entirety of the prosecutor’s argument, the jury would have realized that the prosecutor was contending only that Bobal stipulated to one of the elements. The prosecutor couched that assertion in statements that Bobal acknowledged that he was required to register as a sex offender, without referring to the commission of a felony involving a minor while required to register.

The second comment was that “the only verdict as to Count 2 is a verdict of guilty.” The Eleventh Circuit found that this was “clearly an argument meant to persuade the jury, not an instruction as to how it must vote.” Additionally, the two charges had been severed, and the jury had previously found the defendant guilty of the underlying felony of attempting to persuade a minor to engage in sexual activity. As Bobal had stipulated to the element that he was required to register as a sex offender, the prosecutor’s statement, at a literal level, was “nothing more than elementary logic.”

As a special condition of supervised release, the district court prohibited Bobal from “using a computer except for work and with the prior permission of the district court.” This was not an unconstitutional infringement of the First Amendment, where the condition applied while the sentence was still being served, even if it was for life, where the offender is a convicted sex offender serving a sentence for an offense involving electronic communications sent to a minor. The Court’s opinion distinguishes the Supreme Court’s decision in Packingham v. North Carolina, which, the Eleventh Circuit noted, involved a state statute that applied even after a sentence had been completed; and, the statute applied to all registered sex offenders, not just those who had used computers or electronic devices when committing their offenses.

[United States v. Johnson](#), 19-10915 (Dec. 2, 2020)

Federal statutes prohibit one who has been convicted of a “misdemeanor crime of domestic violence,” “one where the victim was essentially a member or former member of the perpetrator’s family, and the crime necessarily involved physical force,” from possessing a firearm. The Supreme Court, in Rehaif v. United States, held that that prohibition on firearm possession does not apply if the accused does not know he or she is a domestic violence misdemeanant at the time of

possessing the firearm. “This case raises the question of what it means for a person to know he is a domestic-violence misdemeanor. As we explain below, we conclude that a person knows he is a domestic-violence misdemeanor, for *Rehaif* purposes, if he knows all the following: (1) that he was convicted of a misdemeanor crime, (2) that to be convicted of that crime, he must have engaged in at least ‘the slightest offensive touching,’ . . . and (3) that the victim of the misdemeanor crime was, as relevant here, his wife.”

Although the Court found plain errors existed, those errors were then found not to violate Johnson’s substantial rights, and his conviction and sentence were affirmed.

This case proceeded to a bench trial, and the defendant argued, in part, that the stipulated facts were insufficient “to prove that he knew his status as a domestic-violence misdemeanor.” The Court rejected the government’s argument that appellate review was barred under the invited error doctrine because the defendant stipulated that the facts adduced in the district court were sufficient for a conviction.

The Court first reviewed the related claim that the indictment was insufficient for plain error, and concluded that plain error existed. The indictment failed to allege, under *Rehaif*, that the defendant “knew he was a domestic-violence misdemeanor when he possessed the firearm in this case.” Similarly, the evidence adduced through the stipulated facts at the bench trial was insufficient and constituted plain error.

The Court next determined whether these plain errors affected the defendant’s substantial rights and reviewed the entirety of the record to make that determination. As part of this analysis, the Court engaged in statutory construction and concluded that the government does not have the burden of proving or disproving certain statutory exceptions to the knowledge requirement, “unless the defendant first brings forward evidence suggesting that his prior conviction is excepted from the definition of ‘misdemeanor crime of domestic violence.’”

The record in this case supported the conclusion that Johnson knew he was a domestic-violence misdemeanor. In addition to the stipulated facts in the district court, the Eleventh Circuit considered “the undisputed facts in [the] PSR.” This included facts to which the defendant made no objection, and was therefore bound. Relevant facts included Johnson’s stipulation that he pled guilty to domestic battery, a misdemeanor under Florida law. The PSR indicated that Johnson had originally been charged with a felony and pled to the lesser charge. He had also served six

months in county jail, another indication that he would have known that he had been convicted for a misdemeanor. He also pled guilty to an offense that required an impermissible touching of another, and thus knew, that at a minimum, he recklessly engaged in at least “the slightest offensive touching.” The district court stipulation also included the fact that with the assistance of counsel, Johnson knowingly and intelligently pled guilty to the battery charge; this meant that he would have been advised of the elements of the charge of battery as part of the knowing and intelligent plea. And, the victim was the defendant’s wife, which he obviously would have known.

Johnson also challenged the constitutionality of 18 U.S.C. s. 922(g), raising challenges under the Equal Protection Clause and the Commerce Clause. The Court reviewed these claims under the plain error standard. Johnson first argued that under the statutory scheme, those who never lost their civil rights in the first place were treated more harshly than those who had their civil rights restored. No Supreme Court or Eleventh Circuit decision has recognized the existence of such a distinction under the relevant statutes, and the claim therefore failed.

Johnson further argued that the “Commerce Clause does not allow Congress to criminalize the intrastate possession of a firearm merely because the firearm once traveled in interstate commerce.” Previous decisions of the Eleventh Circuit had already rejected this claim.

One judge dissented, in part, concluding that the majority diluted “the knowledge-of-status requirement.” The dissent would also have found that the evidence was insufficient to prove that Johnson knew he had “a status that prohibited his possession of a firearm.”

[Campbell v. United States](#), 16-10128 (Dec. 2, 2020)

The Court vacated its prior opinion in the case and agreed to hear the case en banc. The [issue to be decided en banc](#) is whether “the good-faith exception to the exclusionary rule [is] a proper ground for affirming Campbell’s conviction despite the government’s failure to raise that alternative ground before the panel.”

[United States v. Watkins](#), 18-14336 (Dec. 3, 2020)

Watkins, a post office supervisor, was charged with the importation of cocaine with the intent to distribute. “She was caught red-handed and voluntarily confessed,” but the district court suppressed the confession and the government

appealed. The Eleventh Circuit reversed the suppression order on the basis of the inevitable discovery doctrine.

Two packages containing cocaine were received at a postal facility; they originated abroad. Each was addressed to a different individual, one to a post office, one to a UPS facility. Neither had a post office box number, and neither designated facility would accept a package without a box number. The cocaine was discovered in the packages by law enforcement agents, who removed the cocaine and replaced it with fake cocaine, before tracking the packages, through GPS, and letting them proceed to their original destinations. With respect to the individuals to whom the packages had been addressed, neither of the recipient facilities leased a box to either of those named individuals. Law enforcement agents came to the conclusion that the transactions involved a supervisor who would be aware of the incoming packages. Suspicions existed as to Watkins.

While the police were searching one of the postal facilities at the end of a work day, the tracking device on one package, which had not always been operable, started signaling from Watkins' residence. Three agents approached the front door of the residence and smelled marijuana. When they knocked and Watkins opened the door, the odor became more pervasive. When the agents asked if Watkins knew why they were there, she put her head down, and responded, "the boxes" or "the packages."

One agent asked to see the packages, and Watkins began walking back into the house. She did not say anything, but the agent construed the act of reentering the house to constitute consent for the agent to follow her in. Two other agents first conducted a security sweep inside the house. The agents had planned to apply for a search warrant based on the smell, and one did so after the sweep. All of the evidence, however, was seized prior to a warrant being obtained, as the packages were observed in plain view during the security sweep. After the security sweep, Watkins was handcuffed, signed a waiver of Miranda rights, and made several incriminating statements.

The district court suppressed the evidence on the basis of the warrantless use of the tracking device, the absence of a warrant for the search of the residence, and the tainting of consent to search the residence due to the prior illegality of using the warrantless tracking device.

In discussing the inevitable discovery doctrine, the Eleventh Circuit noted the requirement that "the lawful means which made discovery inevitable were being

actively pursued prior to the occurrence of the illegal conduct.” “But ‘active pursuit’ in this sense does not ‘require that police have already planned the particular search that would obtain the evidence’ but only ‘that the police would have discovered the evidence by virtue of ordinary investigations of evidence or leads already in their possession.’”

The district court had refused to apply the inevitable discovery doctrine due to the failure to have initiated the process for obtaining the search warrant as of the time of the search. The district court had found it speculative as to whether a warrant would have been obtained.

The Eleventh Circuit, addressing earlier decisions of the Court, found that the requirement that “the alternative means of discovery be actively underway at the time of the violation is limited to cases in which the alternative means was a search warrant.” In this case, however, the police, prior to confronting Watkins, had already been discussing “doing a knock and talk at the house, which would not have required such a search warrant. Not only was it their probable next step, but at the moment the tracking device reactivated, they were actively discussing doing it.”

Second District Court of Appeal

[Alvarado-Contreras v. State](#), 2D18-3383 (Dec. 2, 2020)

The Second District reversed a conviction for sexual battery. The trial court erred in excluding evidence that the victim was biased.

The defendant sought to introduce evidence from the victim’s sister, who would have testified “that her daughter had caused the victim’s former husband to be jailed and deported after accusing him of sexual battery, and she would have testified that the victim considered the accusation against her former husband to have been false.” The victim and her boyfriend both lived in the same residence with the defendant, along with the victim’s sister, with whom the defendant was romantically involved.

The proffered testimony of the victim’s sister was relevant to prove “the victim’s potential interest in falsely accusing Alvarado-Contreras – that the victim’s bias against her sister could have motivated her to provide false testimony against her sister’s boyfriend, Alvarado-Contreras.”

[Forman v. State](#), 2D18-4740 (Dec. 2, 2020)

Forman was resentenced after a prior appeal. On appeal, the new sentence was again reversed. The resentencing court was precluded from relying on evidence admitted at the first sentencing hearing regarding Forman's qualifications as a habitual felony offender, and no new evidence regarding that status was introduced at the resentencing hearing. When the Second District reversed the first sentence in the prior appeal, the Court mandated that the new sentencing hearing be conducted before a different judge.

The State, at the resentencing hearing, asked the new judge to take judicial notice of the evidence adduced at the first sentencing hearing. As the resentencing hearing was a de novo resentencing, the "resentencing court is not simply permitted to reweigh existing evidence at resentencing." Evidence must again be produced at the resentencing even if the facts were previously established.

The sentence was again reversed and remanded for a full de novo resentencing.

[Timke v. State](#), 2D19-1584 (Dec. 2, 2020)

On rehearing, the Court withdrew its prior opinion and issued a new opinion. The Court affirmed an order revoking sex offender probation based on a curfew violation.

Timke admitted the curfew violation, but claimed that it was not willful and substantial because he had been driving home and encountered traffic conditions that were beyond his control. The Court disagreed. Timke resided in the Orlando area and had a 10:00 p.m. curfew. On a Saturday night, he left his residence around 8:30 p.m. and drove to downtown Orlando. He left the downtown area between 9:150 and 9:20 p.m., expecting to be home by 9:50 p.m., but encountered traffic.

Timke chose to leave his residence around 8:30 p.m. on a Saturday night, to drive to a well-known high-traffic area. He did not provide any explanation for undertaking that trip at that late hour approaching his curfew, let alone any exigent circumstances. Nor did he contact his probation officer or seek permission to be out beyond the curfew.

While a relatively short time for a curfew violation may be significant in determining whether the violation is substantial and willful, such a determination

has typically been made in cases where there is context for the violation, such as an explanation as to why the probationer was out when the curfew expired. That was lacking here.

[York v. State](#), 2D19-4057 (Dec. 2, 2020)

A conviction was affirmed without discussion, and a challenge to a clear sentencing error was dismissed as moot.

At the sentencing hearing, immediately after the trial, the judge imposed sentence and declined to entertain any argument from the defense, notwithstanding repeated requests. The court imposed a sentence of 60 days in county jail plus six months of probation. A sentencing court is required, under Rule 3.720, Fla.R.Crim.P., to hear argument from the defense and any desired statement from the defendant, as well as relevant evidence.

[Crowder v. State](#), 2D19-4217 (Dec. 2, 2020)

The improper imposition of a public defender's fee does not constitute fundamental error, and is a sentencing error which must be raised in a 3.800(b) motion to correct sentence, prior to filing a brief on direct appeal. Otherwise the issue may not be entertained by the appellate court. The claim at issue, which was barred on direct appeal, was that the fee was imposed without oral notification to the defendant.

Third District Court of Appeal

[Aquino v. State](#), 3D20-0145 (Dec. 2, 2020)

The Third District affirmed the summary denial of a Rule 3.850 motion. The motion alleged that trial counsel was ineffective for failing to challenge the sufficiency of the evidence and for objecting to instructions on the lesser included offense of attempted lewd or lascivious conduct.

On direct appeal, the Third District had previously concluded that the evidence from the victim, if believed by the jury, was sufficient. In the Rule 3.850 motion, the defendant argued that the testimony from the victim was not credible. Such an argument would not have been relevant to a motion for judgment of acquittal, and counsel was therefore not ineffective for failing to make such an argument as part of the motion for judgment of acquittal.

The testimony at trial, from the victim, was consistent with a completed offense having been committed, not with any attempt having been committed. As such, there was no evidentiary basis for giving an instruction on the attempted offense, and counsel was not ineffective for objecting to the State's request for such an instruction.

[Evans v. State](#), 3D20-1261, 3D20-1276 (Dec. 2, 2020)

The trial court erred by summarily denying a Rule 3.850 motion as legally insufficient without providing Evans with leave to amend.

[Owens v. State](#), 3D20-1394 (Dec. 2, 2020)

After the trial court denied a pretrial sworn motion to dismiss based on allegations of insufficient evidence, Owens filed a petition for writ of prohibition in the Third District. That Court dismissed the petition, because Owens had an adequate remedy by way of an appeal from any conviction that ensues at trial.

[Clarington v. State](#), 3D20-1461 (Dec. 2, 2020)

Due to the Covid-19 pandemic, the trial court planned on conducting a remote probation violation hearing. Clarington challenged the impending hearing through a prohibition petition in the Third District, raising the issue of whether such a hearing through audio-video technology violated the defendant's state and federal constitutional rights. The Third District denied the petition.

The Court addressed the issue of a defendant's right to be in the courtroom. Rule 3.180, Fla.R.Crim.P., regarding the presence of a defendant, applies to criminal prosecutions. "Presence" is defined in Rule 3.180(b), as physical presence in the courtroom. A probation violation proceeding, however, is not a criminal prosecution and is not subject to the requirements of that rule.

As a matter of constitutional rights, a probation revocation proceeding does not afford the same level of due process as does a criminal prosecution. The Court took into consideration the administrative orders of the Florida Supreme Court, and the interests of health and safety of those in the courthouse, as well as the expeditious adjudication of cases of those remaining in custody.

As a probation revocation hearing is not a criminal prosecution, but a post-adjudicatory hearing, it did not qualify as a critical stage of trial that would mandate the physical presence of an accused. Even in a criminal trial, the Sixth Amendment right to face-to-face confrontation of witnesses is not absolute. The procedures in place had all of the parties participating at different locations.

The Third District deferred addressing the claim that the procedure would result in counsel's ineffective assistance, by interfering with the ability to consult with the defendant. At the pre-hearing stage, this was deemed to speculative, and the defendant would be able to raise that issue, on the basis of a factually developed record, in any direct appeal after a conviction.

Fourth District Court of Appeal

[Shivers v. State](#), 4D19-935 (Dec. 2, 2020)

Shivers, on direct appeal, challenged sentences imposed after a plea of no contest.

Shivers was a juvenile at the time of the offenses. On two of the convictions, the trial court failed to provide for the 20-year judicial review that Shivers was entitled to. Those two offenses were robbery with a deadly weapon while wearing a mask, and burglary of a dwelling with an assault or battery while armed or masked. Both of those offenses were first-degree felonies punishable by a term of years not exceeding life, and felonies punishable by life trigger, for juveniles being sentenced as adults, judicial review after 20 years. The sentences imposed for each of those offenses were concurrent sentences of 25 years.

Shivers also sought judicial review after 20 years for his 25-year sentence for aggravated battery with a deadly weapon while masked. Shivers was not entitled to such judicial review because that offense was punishable only by a maximum term of 30 years.

[State v. Stevenson](#), 4D19-3831 (Dec. 2, 2020)

The State charged the defendant with possession of "THC." The trial court dismissed the information, with leave to refile the charge as a misdemeanor in county court. The State appealed and the Fourth District affirmed because the State failed to make out a prima facie case to support the felony charge.

Stevenson was found in possession of three cartridges “containing a liquid for vaping with an electronic cigarette.” Stevenson argued in the trial court that the gross amount possessed was 14.04 grams, which was below the 20 gram threshold for felony possession for marijuana. THC may be either natural or synthetic. The Sheriff’s Office had been unable to conduct testing to determine whether the substance possessed was natural or synthetic. The determination of whether a misdemeanor exception applied in this case hinged on whether the substance possessed was resin.

The State argued that the “misdemeanor exception to possession of cannabis under section 893.13(6)(b) did not apply to the ‘chemical isolation’ of cannabis or THC.” The State modified that argument on appeal, to assert that “misdemeanor possession of cannabis applies only to *plant material* less than twenty grams, as the plant material is not resin.”

The Fourth District reviewed language in multiple statutory provisions and agreed with the defendant’s argument. The relevant misdemeanor exception did not apply to possession of resin or compound, mixture or preparation or such resin. The misdemeanor exception applied to possession of 20 grams or less of all parts of any plant of cannabis, except for the resin or the derivatives of the resin.

At a hearing in the trial court, a chemist testified, and, although he was questioned about resin, “he never was directly asked and never directly testified that his analysis revealed the THC source in this case was cannabis resin. Instead, he repeatedly said he could not conclude whether the source of the THC was natural or synthetic.”

[Williams v. State](#), 4D20-578 (Dec. 2, 2020)

The Fourth District affirmed the denial of a Rule 3.850 motion which asserted multiple claims; the Court addressed only one of the claims.

In the claim at issue, Williams alleged that trial counsel was ineffective for failing to seek the severance of multiple charges pertaining to drug offenses and the use of two-way communication devices. Three or four charged offenses each were alleged to occur on six distinct dates, and the defendant was acquitted as to charges occurring on three of those dates, plus three of four charges on a fourth date.

The defendant’s argument hinged on distinctions between charges for which there were recordings of the defendant’s involvement and those for which there were

not. This did not have significance because the jury acquitted for those offenses for which there were no recordings, even where a confidential informant testified as to his involvement. The defendant did not demonstrate a reasonable probability that the outcome of the trial would have been different had the charges been severed based on the dates of the offenses.

[Caballero v. State](#), 4D20-1954 (Dec. 2, 2020)

Caballero filed a habeas corpus petition in the Fourth District alleging that he was incarcerated on the basis of faulty DNA evidence. Although the Court found that the claim is one that should have been raised in a Rule 3.853 motion, and was also without merit, the Court’s opinion addressed the claim because it was one which applied to many incarcerated offenders.

Caballero was convicted for sexual battery and the offense resulted in the birth of a child. Paternity tests confirmed Caballero’s paternity and sexual intercourse. A DNA expert also testified as to his paternity.

In 2016, the State mailed a Brady notice regarding the crime lab’s inappropriate use of Combined Probability Inclusion (CPI) “to calculate statistical probabilities in complex mixture DNA cases. The notice stated that the inaccuracies *may* have affected the defendant’s case, but only if CIP calculations were used.” “The errors identified in the *Brady* notice apply only where the CPI was used to analyze complex mixtures of DNA. The paternity tests do not involve CPI, as they used DNA from only two persons – the petitioner and the victim.”

[Rodriguez v. State](#), 4D20-2010 (Dec. 2, 2020)

Rodriguez was charged with vehicular homicide. The trial court issued orders permitting the State to subpoena the defendant’s hospital and paramedic records from the date of the incident. Rodriguez sought certiorari review and the Fourth District granted the petition because “there was no reasonable founded suspicion that the records would contain information relevant to the pending charges or an ongoing criminal investigation.”

The crash report did not make reference to any influence of alcohol or drugs, nor did it reference any statements made to medical personnel. The defendant declined to give a statement to a detective at the hospital. The detective did not document any signs of impairment and did not ask the defendant for a blood test. A consensual search of the defendant’s car did not disclose any alcohol or drugs. A

probable cause affidavit at one point in the investigation referenced reckless driving at 78 miles per hour in a 40 mile per hour zone.

The trial court had issued the subpoenas based on the evidence of recklessness, finding that blood and urine tests “would be relevant to the question of carelessness.” The Fourth District did not agree that “every reckless driving incident creates a compelling state interest to obtain toxicology records. There must be some reasonable founded suspicion that alcohol or drugs were involved, such as someone smelling alcohol, drug or alcohol containers in the vehicle, or statements or evidence which might suggest drug use or alcohol intoxication.”

Fifth District Court of Appeal

[Francis v. State](#), 5D18-3587 (Dec. 4, 2020)

The Fifth District affirmed convictions for attempted manslaughter of a deputy sheriff and aggravated battery of a deputy sheriff. The officers responded to a call regarding the defendant beating or harming his girlfriend. After trying to determine the status of the girlfriend without success, the officers started removing a fence from the defendant’s property to gain access and the defendant attacked the officers.

Among issues briefly addressed on appeal, the Court found that claims regarding the denial of a continuance of the sentencing hearing in order to obtain a mental health evaluation were not properly preserved as no motions for such an evaluation were presented to the trial court.

In subsequent proceedings regarding the trial judge, the judge conceded and the Supreme Court agreed that the judge’s conduct at trial reflected a dislike for Francis’s counsel that was inappropriate. The comments during trial that evinced this, however, were not the subject of objections, and the judge’s demeanor did not rise to the level of fundamental error. The Fifth District’s opinion does not set forth the comments at issue.

[Howitt v. State](#), 5D19-2604 (Dec. 4, 2020)

In a prior appeal, the Fifth District reversed convictions on two of three counts for a new trial. On remand, the State nolle prossed those two charges and the trial court resentenced the defendant on the one remaining conviction. In a second appeal from the new sentence, the defendant raised issues challenging the conviction that

had been affirmed in the first appeal. Those challenges were barred under the law of the case doctrine.

[Botto v. State](#), 5D19-2790 (Dec. 4, 2020)

In postconviction proceedings stemming from a conviction for lewd or lascivious molestation of a child, the Fifth District reversed the trial court's order denying the motion, and held that trial counsel was ineffective for failing to object to testimony involving uncharged crimes.

Trial counsel failed to object when a videotaped interview of the child victim was admitted, and it included a portion discussing an uncharged incident or oral sex. The trial court found that counsel was deficient but that there was no prejudice in light of the other evidence of the defendant's guilt. The Fifth District, however, concluded that prejudice existed. Trial counsel compounded the error from that failure to object by repeatedly urging the jury to again watch the videotape with that inappropriate discussion.

[Shawl v. State](#), 5D20-619 (Dec. 4, 2020)

The Fifth District affirmed a conviction for possession of methamphetamine.

The Court found that the evidence was sufficient as to constructive possession. "Although the meth was found during a search warrant execution for his girlfriend in her home, it was located underneath Appellant's wallet which contained his driver's license. That fact, coupled with his original statement that he was staying in that room, allowed for an inference that Appellant had knowledge of the methamphetamine." The defendant also made statements that he knew drugs were in the house and that he had been smoking meth there recently, and a jail call referenced burying drugs in the backyard. This was inconsistent with the claim at trial that he was unaware of the presence of the meth.

The defendant belatedly listed a witness on a supplemental witness list, and, upon the State's objection, the court gave the defendant the option of proceeding with a speedy trial without the witness or proceeding with the witness but with a continuance and waiver of a speedy trial. The claim on appeal, that the filing of a supplemental witness list after a demand for speedy trial does not mean that the defendant is not ready for trial, was not raised in the trial court and was not preserved for appeal.

The State was permitted, in its rebuttal case, to introduce a jail call between the defendant and the same witness whom the defendant sought to call. In the jail call, that witness referred to the defendant as a liar. A portion of the call was relevant to the issue of the defendant's knowledge of the meth. Other portions could have been redacted, but no motion for redaction had been made. Under such circumstances, the trial court did not abuse its discretion in admitting the jail call.

The Court also affirmed as to other unpreserved challenges to the admissibility of evidence, noting that the claims could be raised as claims of ineffective assistance of counsel in a subsequent Rule 3.850 motion.