

Case Law Update  
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Supreme Court of Florida

[Morris v. State](#), SC20-155 (Apr. 8, 2021)

The Supreme Court affirmed the denial of a Rule 3.851 motion. The motion alleged claims of newly discovered evidence, ineffective assistance of counsel, and a Brady violation.

In the claim of newly discovered evidence, Morris argued that a prison inmate, who knew one of the State’s witnesses, stated that that witness, Price, “testified against Morris because she was pressured by the State and law enforcement and that Morris never confessed to her.” Morris failed to satisfy the first prong of the test for newly discovered evidence: he did not demonstrate “that the evidence was unavailable at trial and could not have been discovered with due diligence.” Baird, the prison inmate, was known to have had a relationship with Price as of the time of the trial, and Morris, in his 3.851 motion, did not “allege that the defense team was unable to obtain Baird’s testimony prior to trial and offer[ed] no explanation as to why Baird, who was in a relationship with Price at the time of trial and was the father of her unborn child, was not contacted by trial counsel.” Baird testified that he did not come forward with this information because he did not know Morris or his attorneys. This does not establish that Baird was unavailable or that trial counsel was unable to discover his evidence.”

Additionally, the testimony from Baird was “not likely to produce an acquittal upon retrial” and failed the second prong of the test for newly discovered evidence. Baird’s testimony regarding Price was based on what Price allegedly told Baird, and would have been inadmissible hearsay at a trial; its use would be limited to impeachment of Price. At the postconviction evidentiary hearing, Price testified that the “police did not pressure her” and she insisted “that she did not discuss her involvement in the case with Baird.”

One of the claims of ineffective assistance of counsel – the failure to present evidence of worthless checks cashed in the defendant’s name while he was in prison – failed because Morris did not want this type of evidence developed at trial, and

counsel “considered this course of action and ultimately deferred to the defendant’s wishes.”

Counsel was not ineffective for failing to cross-examine Ashley Price about pending child dependency proceedings, financial problems, or a violation of probation charge. Morris argued that “these pieces of evidence show that Price as predisposed to give in to pressure by [the police] to falsely testify against Morris.” Ashley testified that Morris confessed to killing the two victims – Tampa police officers. The jury already heard about these matters and any further impeachment “would have been largely cumulative and failing to present cumulative evidence is not ineffective assistance of counsel.”

At trial, the State presented dashcam footage showing the confrontation between the defendant and the victim officers. The last two minutes of it showed “other officers attempting to revive the victims.” Morris argued that counsel was ineffective for failing to object to this portion as being inflammatory. The Supreme Court concluded that once the initial part of the footage was shown to the jury, trial counsel had “strategic reasons” for wanting the final two minutes shown, “namely record preservation and to show that the crime scene’s integrity was in question.”

Counsel was not ineffective for failing to object to the use of the racial slur “cracker” during trial. An objection might not have been granted if asserted, as the term was used by Morris to describe the men he shot, “so the term itself was probative of identifying a victim.” “The term was further probative of Price’s credibility as the race of the officers was not yet released to the public.”

Counsel was not ineffective for failing to obtain a video from a jail visit between Morris and his mother, in which Morris “exhibited paranoid behavior and stated he was hearing voices.” A doctor examined Morris for mental health issues. That doctor “did not testify that the video would have changed her diagnosis or her testimony at trial.” Thus, Morris failed to establish prejudice from counsel’s failure to obtain the video. Additionally, Morris had made a statement that he repented for the killing. The judge “precluded trial counsel from submitting lay or expert testimony of Morris’ mental state of mind at the time of this statement, so counsel reasonably concluded that his mental state could not be addressed by providing more evidence from the direct observation records.”

Penalty-phase counsel was not ineffective for obtaining a full psychosocial evaluation and for failing to present evidence of Morris’ family background. Morris had been “uncooperative during the preparation for the penalty phase and

discouraged his family from cooperating as well.” And, trial counsel “is limited by how much evidence a defendant wishes to present and his cooperation with the investigation.” Nor was counsel ineffective for failing to present mental health evidence. At the postconviction hearing, trial counsel testified that two doctors “advised that there was a strong likelihood of an antisocial personality disorder diagnosis and that their opinions might be more harmful than helpful if presented to the jury.” Counsel “is entitled to rely on the evaluations conducted by qualified mental health experts.”

A Brady claim was procedurally barred because the video at issue “was known to the defense team prior to trial.”

[State v. Gabriel](#), SC19-2155 (Apr. 8, 2021)

The Supreme Court addressed the following certified question of great public importance:

IS THE LOWEST PERMISSIBLE SENTENCE AS DEFINED AND APPLIED IN SECTION 921.0024(2), FLORIDA STATUTES, AN INDIVIDUAL MINIMUM SENTENCE AND NOT A COLLECTIVE MINIMUM SENTENCE WHERE THERE ARE MULTIPLE CONVICTIONS SUBJECT TO SENTENCING ON A SINGLE SCORESHEET?

Gabriel was convicted for multiple offenses. The Criminal Punishment Code Scoresheet resulted in a score that provided for the lowest permissible sentence of 107.25 months. The trial court and State agreed that that was an individual minimum to be applied to each offense before the court “if the LPS exceeds each individual statutory maximum sentence.” Thus, for two third-degree felonies, the court imposed the sentence of 107.25 months, even though the statutory maximum was five years for a third-degree felony. On appeal, the appellate disagreed and held that the LPS was a collective statutory maximum, and, in order to be applied, the LPS had to exceed the collective statutory maximum, not each individual statutory maximum.

The Supreme Court reversed the appellate court and concluded that “the LPS is an individual minimum sentence where there are multiple convictions subject to sentencing on a single scoresheet.”

[Earl v. State](#), SC19-1506 (Apr. 8, 2021)

Earl filed a motion to correct illegal sentence under Rule 3.800(a). The alleged failure to impose a 10-year mandatory minimum sentence, however, did not prejudice Earl, as its omission from his sentence did not change his incarceration. The First District dismissed the ensuing appeal, concluding that “Earl was not entitled to challenge his sentences on that ground [the absence of the mandatory minimum sentence] because he benefitted from the error.” That holding was in conflict with holdings from two other district courts of appeal, and the First District certified conflict to the Supreme Court.

The Supreme Court approved the decision of the First District. While Rule 3.800(a) “does not expressly prohibit defendants from seeking to correct unlawfully lenient sentences,” “defendants are not entitled to such relief under the rule absent a showing of prejudice.” Earl was serving two mandatory life sentences. Even if the 10-year mandatory minimum term had been added, he would still serve the same mandatory life terms.

Eleventh Circuit Court of Appeals

[Parker v. United States](#), 19-14943 (Apr. 6, 2021)

The Eleventh Circuit affirmed the denial of a successive section 2255 challenge to his convictions and sentences. Parker was convicted of conspiring to use and using a firearm during a crime of violence or drug trafficking offense. He argued that “the only crime-of-violence that the jury could have relied on to predicate the challenged convictions – conspiracy to commit Hobbs Act robbery – is not actually a crime of violence.” Although that was correct, the section 2255 motion still failed. “In addition to the Hobbs act conspiracy, the district court instructed the jury that it could predicate the challenged s. 924(c) and (o) convictions on two drug trafficking offenses, attempt and conspiracy to possess cocaine with intent to distribute.” As the invalid Hobbs Act conspiracy predicate was intertwined with the drug trafficking offenses, each of which remained valid predicates for the use-of-firearm conviction, the section 2255 motion failed.

One problem was noted – Parker’s jury instructions “failed to instruct the jury that it had to unanimously decide which predicate or predicates supported the conviction.” Although that raised a possibility that the jurors may not have been unanimous, the record refuted that possibility as the “predicate offenses were inextricably intertwined so that if the jurors found one applicable – which given their

guilty verdicts on Counts 4 and 5, we know they did – they had to reach the same conclusion with respect to the others.”

Based on the foregoing, Parker’s effort to circumvent the procedural bar through a claim of “actual innocence” failed. And, for the same reason that the actual innocence argument failed, the ultimate challenge to the existence of an adequate predicate for the firearm offense was without merit.

[United States v. Elysee](#), 18-14214 (Apr. 8, 2021)

Elysee appealed a conviction and sentence for possessing a firearm while a felon. The Eleventh Circuit addressed three claims and affirmed.

One hearsay issue included what the Court deemed a “novel sub-issue,” “whether a defendant may introduce, as a defense to his prosecution, evidence that the police failed to conduct a reasonably diligent investigation into the charged crime.”

“Darius Deen appeared at the Homestead Police Station a week after Elysee’s arrest and told Detective Cabrera that he, not Elysee, was the passenger of the Optima at the time of the crash and owned the handgun found at the scene. Elysee argues that the District Court abused its discretion in invoking the hearsay rule to preclude his counsel from questioning Detective Cabrera about the substance of Deen’s confession to show its ‘effect on the listener.’ The effect, he argues was that neither Cabrera nor any other officer involved in the investigation did any additional digging to determine whether Deen’s confession was truthful.”

The Court’s opinion details the extensive procedural history in which this issue arose in the trial court, in numerous alternative postures. Ultimately, the Court rejects the argument on its merits. “First, Deen’s confession was inadmissible because what it tended to show – the ‘affirmative defense’ that Cabrera’s conduct in responding to the confession fell below the reasonable officer standard of performance – was not relevant. Whether Cabrera’s performance satisfied that standard was not an issue the Court would instruct the jury to resolve in deciding whether Elysee was guilty of violating 18 U.S.C. s. 922(g)(1).” “Second, . . . a straightforward application of Federal Rule of Evidence 403 would bar its introduction. The probative value of what Deen said would have been substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.”

In explaining its reasoning, the Court held that existing case law did not support “an affirmative defense based on the failure of police to conduct an investigation as reasonably diligent officers,” and further concluded that no such defense exists. “Elysee’s theory of relevance for Deen’s confession hinges on such a defense, and his theory therefore collapses.”

Alternatively, “[h]ere, the danger of unfair prejudice carried by Deen’s confession was enormous. The consequence of even one jury member taking Deen’s confession for the truth asserted rather than for its effect on the listener would be Elysee’s acquittal.”

The Court next addressed the issue of whether the indictment was insufficient to charge a violation of 18 U.S.C. s. 922(g) pursuant to Rehaif v. United States, 139 S.Ct. 2191 (2019). This was reviewed under the plain error standard. Although the indictment was deficient because it failed to allege that the defendant “knew” his status as a convicted felon, based upon a review of the whole record, Elysee failed to carry his burden of showing a “reasonable probability that, but-for the error in his indictment, the outcome of his trial would have been different.” Elysee stipulated to the fact that he had previously been convicted of a felony and that he was not permitted to possess a firearm. Other evidence, including statements made by Elysee in a recorded jail call corroborated that stipulation.

At trial, the government introduced into evidence one of Elysee’s prior armed robbery convictions under Rule of Evidence 404(b). Elysee argued that the district court should have redacted references to “armed robbery” and “deadly weapon,” leaving only the information that it was a firearm conviction. The Court disagreed. The redacted version was not as probative for its relevant purpose as the unredacted version. The prior conviction showed “that [Elysee] was familiar with how to carry a firearm and to negate any defense that he mistakenly believed the firearm was fake.” The redacted version would not have provided as much information regarding familiarity with firearms.

#### First District Court of Appeal

[Smith v. State](#), 1D20-3045 (Apr. 9, 2021)

A defendant in a criminal case does not have the right, under either statutes or rules of appellate procedure, to pursue an interlocutory appeal.

[Sanders v. State](#), 1D19-4461 (Apr. 8, 2021)

The First District affirmed a conviction and sentence for first-degree murder. Sanders was 17 years old at the time of the murder and he was sentenced to life in prison, with judicial review after 25 years.

Sanders argued that the Miranda warnings as administered during his custodial interrogation were insufficient because he was not put on notice that he was entitled to an attorney during questioning. The Court disagreed. The language in the warnings was that “you have the right to have a lawyer present while being questioned.”

The Court rejected a further argument challenging the voluntariness of the confession. The interrogation lasted for over an hour. There were no threats, promises or coercion. Sanders argued that it “was coercive for the officers to encourage him to provide his side of the story.” Such conduct, however, is not coercive.

The evidence was sufficient to support the charge of first-degree premeditated murder. Sanders was charged in the alternative, with premeditated murder and felony murder, but the only issue preserved for review was as to premeditated murder. The evidence of premeditation was established as “Sanders confessed that he choked the victim to the point of unconsciousness after he realized that she was home. When viewed in the light most favorable to the State, the time between Sanders’ realizing the victim was home and deciding to strangle her to death was sufficient time for Sanders to form an intent to kill her.”

In one of the challenges to the sentence, Sanders argued that the trial court had to make a finding that he was a “rare, incorrigible offender.” Sanders argued that this was required by several of the United States Supreme Court’s decisions regarding juvenile life sentences. The issue was not preserved for appellate review. It was also rejected on the merits. The Supreme Court cases applied to juvenile life sentences without the possibility of parole. The sentence Sanders received – life with judicial review after 25 years – was not sentence of life without the possibility of parole.

The victim’s daughters spoke at the sentencing hearing and urged the judge to impose the harshest permissible sentence. Sanders objected to this as being beyond the scope of a victim impact statement. The First District found that there was no



prohibition “on the trial court’s receiving sentencing recommendations from the victim’s family in the context of sentencing a juvenile.”

[Johnson v. State](#), 1D20-361 (Apr. 8, 2021)

Johnson was convicted on four counts of sexually abusing a child, sentenced to life in prison, and fined \$3,000. The fine was a bulk fine, encompassing several statutory fines. The fine was erroneous, as it must be itemized as to the specific statutory fine.

A claim that a conviction for lewd and lascivious molestation was not a permissive lesser included offense of the original charge of sexual battery was not preserved for appellate review. During the motion for judgment of acquittal as to this charge, the State agreed that it failed to present prima facie evidence of sexual battery, but argued that the charge should proceed as to the lesser of lewd and lascivious molestation. Defense counsel stated that counsel did not think that lewd and lascivious molestation was a lesser included offense, but that was not stated as an objection, and the First District concluded that counsel’s statement would not have alerted the judge to the fact that counsel was actually objecting.

[Mims v. State](#), 1D20-1673 (Apr. 8, 2021)

The First District affirmed Mims’ convictions on multiple charges. Mims argued that the trial court erred, pursuant to the rule of completeness, by not requiring the State to present the full video of a car chase. The judge made a preliminary ruling on the admissibility of the omitted portion but “invited Mr. Mims to proffer it to establish admissibility. No proffer was made.” As the judge indicated a willingness to reconsider based upon a subsequent proffer, the failure to make that proffer and then reargue admissibility constituted a failure of Mims to preserve the issue for appeal.

[Summers v. State](#), 1D20-2583 (Apr. 8, 2021)

The First District denied a habeas corpus petition in which Summers argued that the trial court erred by denying his motion to reinstate bond.

Summers was originally placed on bond. After he failed to appear for a hearing, an alias capias was issued, and Summers was subsequently arrested on multiple charges in Tennessee. His bond was revoked and he was held in pretrial detention. Two years later, he moved to reinstate bond and presented several



witnesses who testified as to their beliefs that Summers would appear for future hearings.

The trial court, in denying the motion, emphasized the seriousness of the charges Summers faced, including possession of a firearm by a convicted felon; and the length of potential sentences being faced. The trial court also considered the multiple statutory factors relevant to a determination of an entitlement to pretrial release. Summers did not overcome the presumption of correctness of the lower court's decision.

[Peterson v. State](#), 1D20-3458 (Apr. 8, 2021)

A Rule 3.800 motion to correct sentence could not be used to assert a challenge to a conviction based on matters that transpired during jury deliberations.

[Clark v. State](#), 1D18-3341 (Apr. 8, 2021)

The First District affirmed three convictions for DUI offenses and remanded for correction of the written sentence to conform to the oral pronouncement.

The evidence was sufficient as to DUI manslaughter and DUI with property damage. Clark argued that there was insufficient evidence “that he was in actual physical control of the ATV while impaired or that his operation of the ATV caused or contributed to the Kameron’s death.” “It was undisputed the ATV was operable until just before the accident. Even if the ATV was inoperable right before the accident, the defense of inoperability does not apply where a vehicle is reasonably capable of being rendered operable. . . . The evidence was clear that Appellant drove the ATV in a manner to flip it and caused it to be in the road in danger of oncoming traffic when it was hit. This evidence was sufficient for the jury to find the appellant was in physical control of the ATV, which he drove to a resting place that resulted in Kameron’s death.”

The defendant’s actions need not be the sole cause of the accident resulting in death. And, according to the State’s expert, even if the victim truck driver had been going the speed limit, he would not have avoided the accident.

The First District also reiterated a recent holding that a defendant could not appeal the trial court’s denial of a motion for a downward departure sentence.

## Second District Court of Appeal

### [Andujar-Ruiz v. State](#), 2D19-3655 (Apr. 9, 2021)

An appeal from an order denying a Rule 3.800 motion to correct sentence was dismissed as moot because the sentence had been completed.

In a Rule 3.850 motion, Andujar-Ruiz further argued that the trial court lacked jurisdiction over his two misdemeanors. He was charged with a felony and two misdemeanors. The circuit court granted his pretrial motion to dismiss the felony and then sentenced him to time served when he pled guilty to the remaining misdemeanors. As he no longer faced a felony charge, the circuit court lacked jurisdiction over the remaining misdemeanors and could not sentence him for those offenses. The misdemeanors should then have proceeded in the county court. The Second District therefore vacated the misdemeanor convictions.

### [Getts v. State](#), 2D19-1100 (Apr. 7, 2021)

The Second District reversed a conviction for vehicular homicide for a new trial, and affirmed two DUI convictions. As to the vehicular homicide, the trial court erred by denying Getts the right to present evidence.

Getts had been drinking prior to driving, and the criminal charges were based on an accident in which his vehicle struck a van from behind. The only eyewitness to testify had been driving on the other side of the road and estimated that the two vehicles in the accident had both been driving about 45 miles per hour. An accident reconstruction witness testified for the State and placed the speed of Getts' vehicle at more than 100 miles per hour in a 55 mile per hour zone.

The defense sought to present testimony from the driver of the van, proffering that the van driver would say that he had been drinking that night, pled guilty to a charge of DUI, and that he did not remember the crash itself. He recalled that his blood alcohol level at the time of the crash was .203.

The State's theory of the case was that the initial accident occurred when Getts switched lanes. Getts' theory was that the driver of the van swerved into Getts' lane. Getts argued that although the van driver did not recollect the accident, the testimony of his impairment would enable the jury "to infer . . . that the crash occurred in the right lane." The State argued that this was irrelevant as another's conduct was

irrelevant unless it could be shown that the van driver's intoxication was the sole proximate cause of the accident.

The Second District concluded that the evidence of the van driver's intoxication was relevant "to disproving that Getts caused the crash because the jury may infer that the van driver's impaired driving caused the accident instead." Such evidence could introduce reasonable doubt as to whether Getts caused the accident.

### Third District Court of Appeal

[Rogers v. State](#), 3D20-1083 (Apr. 7, 2021)

The trial court revoked Rogers' probation, but failed to make a finding as to whether the technical violation was willful and substantial. The case was reversed and remanded with directions to the lower court to make such a finding.

### Fourth District Court of Appeal

[Barrios v. State](#), 4D19-2569 (Apr. 7, 2021) (on motion for rehearing)

The Fourth District withdrew its prior opinion and issued a new opinion. The Court affirmed convictions and sentences for first-degree murder and aggravated assault. The opinion addressed "the alleged spoliation of evidence that impacted Appellant's argument of self-defense."

The State's case included DNA evidence based on blood found on multiple parts of a gun, and both the defendant's and victim's DNA and fingerprints were found on various parts of the gun. The defense argued that a detective who processed the gun mishandled it. The defense asserted that the detective used the same pair of gloves to handle both the exterior of the gun and the magazine and bullets, thus resulting in spoliation. The defense argument focused on the possibility that this transferred the victim's DNA from the outside of the gun to the inside and that the relevance, which the State asserted, of the victim's DNA being on the inside of the gun was thus undermined.

"Here, there could be no finding that any evidence was destroyed because there was no evidence to support Appellant's contention that the firearm had been contaminated." The detective testified that he followed protocols and used a clean pair of gloves to disassemble the gun to make it safe for transport. And, the officer who photographed the gun at the crime scene put on a clean pair of gloves before

attempting to clear and remove the magazine before asking the detective to put on a clean pair of gloves and complete that.