Case Law Update
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Supreme Court of Florida

Boyd v. State, SC20-108 (May 13, 2021)

The Supreme Court affirmed the denial of a successive Rule 3.851 motion.

Upon the filing of a Rule 3.851 motion, the trial court is required to hold a case management hearing, pursuant to Huff v. State, 622 So. 2d 982 (Fla. 1993). That requirement applies only to initial, not successive, postconviction motions, although "the better practice is to hold such a hearing on any postconviction motion in a case involving the death penalty." Any error in failing to hold the hearing on a successive motion "is harmless if the motion is legally insufficient to warrant either relief or an evidentiary hearing."

To the extent that Boyd's motion was relitigating a prior claim concerning a juror's failure to disclose her criminal history, the motion was procedurally barred. Boyd was also presenting the claim in conjunction with alleged new evidence ascertained at a postconviction hearing in federal court. The claim was also legally insufficient "to establish that juror Striggles answered any material question dishonestly during voir dire." One portion of Boyd's argument, regarding the juror's federal court disclosures regarding her medication, did not relate "to any question asked on voir dire," and thus could not serve as a basis for a claim of juror misconduct. Another aspect of the claim regarding the juror's familial connection to Boyd did relate to material questions in voir dire, but did not show any dishonesty. The juror did not learn about the familial connection until a break in voir dire, which was after the questions regarding familiarity with Boyd. And, at the federal hearing, the juror testified that she was "not really" familiar with the Boyd family and knew nothing about Boyd until she ended up on the jury. The Supreme Court also looked at several other questions posed during voir dire and concluded that the juror's responses did not demonstrate dishonesty.

The failure to reveal her full criminal history in voir dire was characterized by the Supreme Court, quoting the federal district court from the prior postconviction proceeding, as not being the "result of a desire to deceive, but instead . . . 'the product of confusion of her own creation.'" A voir dire response that she lived in Fort

Lauderdale "for about 30 something years on and off" was not materially inconsistent with her federal court testimony that she had "lived in one place for most of her life but had traveled often due to her father's position in the Army."

The Rule 3.851 motion also failed to establish the required "actual bias" of the juror. The juror testified in federal court that upon learning of a distant familial connection to Boyd, that connection did not impress her "one way or the other." Her federal court testimony referenced her having overheard family discussions of the case, but the content of those discussions was not detailed. One voir dire response, that what she had heard prior to trial could not affect her case because she didn't know, was construed as meaning "that she did not know at that time whether Boyd was guilty." She also made other statements in federal court that she did not "go in trying to convict the man" and that she did not know anything about him until she was on the jury and that her verdict was based on information presented in the courtroom and nothing else. A "preconceived notion about the case" "does not necessarily remove a juror's ability o be impartial," and is "not a clear prejudgment of" guilt.

Eleventh Circuit Court of Appeals

United States v. Edwards, 19-13366 (May 13, 2021)

The First Step Act permits a district court "that originally sentenced a criminal defendant for a crack-cocaine-related offense" to impose a reduced sentence under certain circumstances. Edwards filed a motion to modify his life sentence, citing both the First Step Act and 18 U.S.C. s. 3582(c)(1)(B). The district court reduced the sentence from life imprisonment without release to 262 months of imprisonment, followed by eight years of supervised release. On appeal, Edwards argued that the First Step Act authorized only reductions of sentences, and that the addition of the term of supervised release exceeded the district court's authority. The Eleventh Circuit disagreed and affirmed.

The Court first addressed a procedural issue: "is the First Step Act self-executing, such that a defendant can proceed under it directly, or *must* a defendant seeking First Step Act relief do so (as many do) in conjunction with, and through, s. 3582(c)(1)(B) the reason that question matters here: If a defendant has to pursue First Step Act relief through s. 3582(c)(1)(B), then a district court's authority is limited to 'modify[ing] *an imposed term of imprisonment*' – which does not include supervised release, which the district court adjusted here. If, however, the First Step Act is self-executing, such that we needn't even involve s. 3582(c)(1)(B), then it

seems to us that the power to impose a 'reduced sentence' is broad enough to include the authority to add a term of supervised release – it being but one component of a 'sentence' so long as the *overall* 'sentence" is in fact 'reduced.'"

The Court then held that "the First Step Act is a self-contained, self-executing, independent grant of authority empowering district courts to modify criminal sentences in the circumstances to which the Act applies." As a result, the district court was authorized to add the term of supervised release.

United States v. Dominguez, 19-11378 (May 13, 2021)

Dominguez's sentence was affirmed in part and reversed in part. The district court applied the five-level enhancement of U.S.S.G. s. 2G2.2(b)(5), which applies to certain sexual offenses involving a minor if the defendant "engaged in a pattern of activity involving the sexual abuse or exploitation of a minor." The issue on appeal was whether the term "sexual activity" "requires interpersonal physical contact." The Court held that it did not require interpersonal contact. The Court concluded "that the ordinary public meaning of 'sexual activity' around 1998 was an action or pursuit relating to intercourse *or* to the desire for sex or carnal pleasure." As a result, Dominguez's act of sending the minor "a photo of his penis and ask[ing] her for naked pictures," during Instagram chat sessions, qualified for the application of the enhancement, as it was "clear to us that he did so for his own sexual gratification."

However, application of the enhancement entailed a further determination of whether the "sexual activity" under the enhancement is activity "for which any person can be charged with a criminal offense." The district court had not analyzed this provision of the enhancement correctly, and the case was therefore remanded with directions to the district court to determine whether Dominguez's conduct "with respect to the nine-ear-old girl was conduct 'for which any person can be charged with a criminal offense.'"

First District Court of Appeal

Warren v. State, 1D19-2706 (May 12, 2021)

The First District affirmed Warren's convictions without addressing the claims raised in his appeal, but granted part of the State's cross-appeal. A jury found Warren guilty of multiple sex offenses. Prior to sentencing, the court dismissed several on double jeopardy grounds. The State challenged those dismissals. The

State's argument was waived as to three of the counts because it stipulated to the dismissal of those counts. As to one, the Court agreed with the State that double jeopardy did not bar dual convictions for sexual battery and lewd and lascivious molestation.

Bagley v. State, 1D19-4242 (May 12, 2021)

The First District affirmed convictions for first-degree murder, robbery and tampering wit physical evidence. The trial court did not abuse its discretion in admitting a witness's prior consistent statement.

An eyewitness, who was in a car with the defendant prior to and after the shooting, gave her account of what she saw and heard. When first questioned by officers, she did not want to be involved and gave different versions of the events she witnessed. On cross-examination, she was asked about whether officers "corrected her and asked her to restate what they told her." She was also asked about having changed her version of events "as a result of the officers' statements." On redirect examination, the State presented a prior consistent statement she made to a friend "to rebut the defense's accusation that the officers improperly influenced her testimony." "Therefore, her statement was made before the existence of the facts giving rise to the charge of fabrication because the statement was made before she spoke to the officers."

Pendergrass v. State, 1D20-0645 (May 12, 2021)

The First District affirmed a conviction for burglary. There was no abuse of discretion in allowing the State "to introduce testimony that a law enforcement officer had contact with Mr. Pendergrass during a traffic stop before the burglary."

Video surveillance of the burglary "showed the perpetrator in a red Dodge Charger." That car was later found, containing items stolen during the burglary. An officer testified that a few weeks earlier, she stopped the defendant for a traffic stop and he was driving a red Dodge Charger. It had the same license plate as the one found with the stolen items after the burglary. The trial court excluded testimony as to the "reason for, or outcome of, the traffic stop."

The evidence of the prior traffic stop was relevant to establish the identity of the defendant as the perpetrator of the burglary. The defendant's argument, that such testimony was not "necessary," because of DNA testimony establishing the same link, was rejected. Even if "the traffic stop testimony did imply a prior bad act," it

was not improper if it was relevant for a purpose other than proving bad character or propensity to commit crime.

Second District Court of Appeal

Melton v. State, 2D20-734 (May 14, 2021)

The Second District affirmed a conviction for possession of drug paraphernalia, but reversed convictions for trafficking in amphetamines and trafficking in synthetic cannabinoids. The evidence was insufficient as to those two charges.

Detectives were executing a search warrant of a residence and its curtilage and vehicles. Melton, who, according to testimony, was "staying" in the trailer on the property, was observed during the search near a car parked on the side of the house; he was "under the hood" of the vehicle. Inside the car, rolling papers were found in an open center console, which photos showed to be in plain view. A pillowcase found on the front passenger seat was closed and contained a clear bag with synthetic cannabis in it.

The State failed to establish actual possession as to the contents of the pillowcase because it was not in the defendant's hand or person and it was not within arm's reach. As Melton was next to the car and leading under the hood, "he would have had to walk to the passenger door and bend down into the car to make the pillowcase within his reach." And, for constructive possession, the State "did not establish that Melton had exclusive control over the car. The State did not present any evidence as to who owned the car or who typically used the car. Someone who owned the car may have given Melton the key so he could open the car and work on it. Even if Melton had been in possession of the key, with the key in the ignition and the door open, anyone on the premises could have had access to the car." While the State did present evidence of Melton exercising "dominion and control over the car," by working under the hood and being "actively engaged" with the car, and by being the only person close to the car, although others were elsewhere on the premises, the State "failed to present independent proof of Melton's knowledge of the synthetic cannabis hidden in the pillowcase." It was not in plain view, and knowledge could not be inferred.

By contrast, the rolling papers in the center console were in plain view and knowledge of their presence could be inferred.

Other items were found in a shed on the property. While testimony linked Melton to both the car and the trailer, there was no testimony linking him to the shed or the items in it. "There was no evidence that Melton was the exclusive occupant of the shed, that he was an occupant of the shed, or that he had recently been in the shed." The doors to the shed were open and accessible to anyone on the property.

Alqawasmeh v. State, 2D20-1979 (May 14, 2021)

The defendant was convicted and sentenced to one-year jail terms for two misdemeanors. Due to overcrowding of the jail, a program was approved by a circuit Court administrative order permitting selected inmates to serve sentences outside the jail facility while subject to electronic monitoring. The sheriff had discretion in selecting inmates unless specifically prohibited by the sentencing court or law. The defendant was selected for the program, but the State subsequently filed a motion to "clarify" the sentence and to prohibit electronic monitoring and to order him back to the jail for the remainder of the sentence.

The defendant sought review of the order granting the State's motion to clarify. The Second District treated his certiorari petition as an appeal and held that the State's motion should have been denied because "the treatment and placement of an inmate serving a county jail sentence is outside a sentencing court's purview. County sheriffs are constitutional officers within the executive branch. . . . As such, the sheriff has the executive duty and authority to operate the county jail pursuant to section 30.49(2)(a), Florida Statutes (2019)."

Harris v. State, 2D19-4266, 2D19-4577 (May 12, 2021)

Orders revoking probation in two cases were reversed on appeal. The alleged violations were based on an incident of reckless driving. The Second District concluded that the evidence was insufficient as to the new offense of reckless driving.

An officer clocked Harris with a radar gun at 94 miles per hour in a 40 mile per hour zone. The road had four lanes and a divided median. The "weather was clear and the road was straight." Harris was neither swerving nor weaving. Other cars were parked in driveways. Pedestrians or bicyclists were not observed on either the adjacent sidewalk or the road. "Excessive speed is clearly concerning and constitutes a civil infraction that is a moving violation, [but] excessive speed alone was insufficient to prove recklessness."

Third District Court of Appeal

Brannon v. State, 3D20-175 (May 12, 2021)

Convictions for criminal trespass and resisting arrest without violence were reversed for a new trial. The "record does not support the trial court's finding that Brannon's race neutral reason for exercising [a peremptory] strike was not genuine."

When questioned as to why he struck a "second male of the Latin [descent]," defense counsel "stated that Juror 14's immediate payment of the traffic ticket and repair of the taillight suggested that the juror wanted to 'curry favor' with the police." The judge did not ask the State to rebut counsel's response and the judge disallowed the peremptory challenge, stating: "I didn't get the sense that [Juror 14] fixed the ticket to curry favor with the police officers. . . . He just said that he fixed what was wrong with his car, it was a taillight. . . . I'm going to deny the cause. I don't find it to be [sic] genuine reason."

While the stated rationale "may have been feeble, it was facially race-neutral." While the record reflected one prior peremptory strike against another Hispanic male, "there is no record evidence that this one, prior strike was racially motivated. Similarly, there is no record evidence that Brannon tried to exercise strikes against any other Hispanic venirepersons. This, coupled with the absence of *any evidence* regarding the racial make-up of the venire, makes it impossible for us to find the necessary support in the record to uphold the trial court's genuineness finding." The court did not ask the State for any argument regarding genuineness, "nor did the trial court articulate a rationale for its genuineness determination."

Francois v. State, 3D21-0649 (May 12, 2021)

The Third District denied a petition for writ of prohibition in which Francois alleged a violation of the speedy trial rule.

Francois was arrested on April 5, 2020 for the misdemeanor charge of carrying a concealed weapon. At arraignment, the State announced its intention to "bind up" the charges and file a felony information. The misdemeanor was nolle prossed by way of a memorandum filed by the State. Several months later, a warrant was issued for the arrest of Francois on the felony charge of possession of a firearm by a convicted felon. Three more months elapsed before the warrant was served. A felony information was filed on December 18, 2020. Francois sought dismissal

under the speedy trial rule because the 175-day speedy trial period expired prior to the filing of the information.

The March 13, 2020 order of the Florida Supreme Court suspending the speedy trial periods preceded the arrest of Francois by three weeks "and remained in effect on the date the amended information was filed." The initial suspension order related to Covid-19 was extended by several subsequent orders of the Supreme Court. Francois argued that the suspension provisions applied "only to trial deadlines implicated by the speedy trial rule," further arguing that the suspensions "do not apply to speedy trial time periods predating the filing of formal charges. "The Third District, concurring with a decision of the First District, Smith v. State, 310 So. 3d 1101 (Fla. 1st DCA 2020), rejected Francois's construction of the suspension orders and held that "suspending all speedy trial procedures, including investigatory time periods, advances the specified goal of ensuring compliance with imitation measures" related to the Covid-19 pandemic.

Fourth District Court of Appeal

Moon v. State, 4D19-3002 (May 12, 2021)

The Fourth District affirmed a conviction for attempted second-degree murder.

While the State committed a discovery violation "by announcing mid-trial that it was redesignating the defendant's wife from a Category 'C" witness to a Category 'A' witness," and the trial court failed to conduct a Richardson hearing, the error was harmless "because the state ultimately decided not to call the defendant's wife to testify." As a result, there was no procedural prejudice to the defendant. The defendant's wife had not been expected to testify as a witness, and, as a result, had been in the courtroom throughout jury selection, opening statements, and some of the witnesses' testimony. When the State announced the change from Category A to C, the trial court rejected defense counsel's request to have the State proffer what the wife would testify to if called. At a later time in the trial the State did proffer that it would ask the wife is she knew about problems between the defendant and the next-door neighbor, which could go to whether the shooting was premediated.

On appeal, the Fourth District concluded that the discovery violation was harmless. Defense counsel waived any argument that the violation was willful, by agreeing with the trial court judge that nothing had been done by the prosecution in bad faith. The Fourth District also concluded that the violation was trivial. With

respect to the motive for the shooting and its possibly being premeditated, defense counsel objected in the trial court that the testimony would be barred by spousal privilege. The judge then decided to limit the wife's testimony to "how long she has been married and where she lives," facts which were undisputed and which rendered the violation trivial. Ultimately, the wife was not called to testify. Had the State actually called the wife, the Fourth District "may have found that the defendant's trial preparation was prejudiced, because the defendant may have made that claim [of having problems with the neighbor] knowing the state would call his wife to potentially rebut that claim."

N.J.P. v. State, 4D20-1645, 4D20-1873 (May 12, 2021)

The Fourth District affirmed an adjudication of delinquency but reversed the disposition and cost orders. The disposition orders failed to note the time spent in secure detention prior to disposition and did not list the statutory maximum for each offense. And, a probation violation order did not specify the conditions that had been violated. Cost assessments also exceeded statutory minimums without orally pronouncing the heightened costs and fees and without making factual findings that the higher costs were justified. The costs were costs for prosecution and for a public defender's lien.

Maldonado v. State, 4D20-1893 (May 12, 2021)

The summary denial of a Rule 3.850 motion was reversed for an evidentiary hearing as to one of its claims because it set forth a facially sufficient claim and records to conclusively refute it were not identified by the trial court. The claim in question alleged that the prosecutor offered a plea deal with counsel advised the defendant not to accept because it would remain open until trial, and a better deal could be negotiated in a few months "after the current judge retired." Maldonado rejected the offer, and the prosecutor withdrew it. The motion alleged that but for counsel's advice, the defendant would have accepted the plea offer, it would not have been withdrawn, the judge would have accepted it, and it would have been less onerous than the ultimate sentence.

The Law Office of the Public Defender v. State, 4D21-1233 (May 12, 2021)

The trial court erred by denying the Public Defender's motion to withdraw, where the defendant was not indigent and private counsel entered an appearance. "The circuit court mistakenly believed that the defendant's potential incompetency to proceed in this criminal case equated to a lack of capacity to consent to the

substitution of counsel. However, we are not aware of any authority holding that private counsel may not be substituted for the Public Defender on behalf of a potentially incompetent, yet not indigent, defendant. Thus, the only issue for the circuit court to decide is whether the defendant is competent to proceed with counsel, whomever that counsel may be."

Fifth District Court of Appeal

Dusan v. State, 5D19-2987 (May 14, 2021)

In an appeal from convictions for DUI manslaughter and DUI causing property damage, the Fifth District held that the trial court erred by denying a motion to suppress the results of a blood draw. In the absence of exigent circumstances, "'where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.'"

Officers and emergency medical personnel responded to the scene of a two-car collision. Probable cause existed that the defendant was driving under the influence. The defendant did poorly on field sobriety tests that were administered. The defendant refused two requests for a voluntary blood draw. "Minutes after her arrest, [an office] drove Appellant to a nearby hospital to obtain a forensic blood draw. . . ." No effort was made to obtain a warrant.

Eight officers were on the scene; none tried to contact an on-call assistant state attorney; none tried to contact a judge who might be available. Officers had arrived at the scene around 12:30 a.m. and the blood draw occurred at 3:02 a.m. Given the known severity of the victim's injuries from the outset, officers "were on notice very early in the investigation that a forensic blood draw would be required given the severity of the victim's injuries which was directly communicated by on-scene medical personnel." The officers were obligated to obtain a warrant prior to the blood draw. The Fifth District rejected an argument based on a good-faith exception.