

Case Law Update
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Supreme Court of the United States

[Caniglia v. Strom](#), 20-157 (May 17, 2021)

In a civil action, the Supreme court addressed the scope of Cady v. Dombrowski, 413 U.S. 433 (1973), regarding warrantless searches.

Caniglia, with a gun in front of him, asked his wife to shoot him and get it over. She left their home for the night and returned the next morning with police, when she was unable to reach her husband by phone. Officers, believing Caniglia was a risk to himself, had an ambulance on call. Caniglia agreed to go to the hospital for a psychiatric evaluation, but only after the officers “allegedly promised not to confiscate his firearms.” After the ambulance left, the officers seized the weapons, entering the home after allegedly misinforming the wife about Caniglia’s wishes.

In a civil action, Caniglia argued that his Fourth Amendment rights were violated by the warrantless entry into his home. The First Circuit Court of Appeals upheld the search under the community caretaking exception to the warrant requirement, relying on Cady. Cady pertained to a warrantless search of an impounded vehicle, which was significantly different from a home. And the First Circuit’s “community caretaking” rule, however, goes beyond anything this Court has recognized.” The lower appellate court did not discuss any exigent circumstances. “nor did it find that respondents’ actions were akin to what a private citizen might have had authority to do if petitioner’s wife had approached a neighbor for assistance instead of the police.”

[Edwards v. Vannoy](#), 19-5807 (May 17, 2021)

In Ramos v. Louisiana, 590 U.S. ____ (2020), the Court “held that a state jury must be unanimous to convict a criminal defendant of a serious offense.” In Edwards, the Court held that the Ramos decision did not apply “retroactively to overturn final convictions on federal collateral review.” The Court, in its opinion, abandoned part of the retroactivity analysis that had prevailed for the prior 32 years.

The Court addressed the retroactivity principles announced in Teague v. Lane, 489 U.S. 288 (1989), and observed that in the 32 years since Teague, “this Court has announced many important new rules of criminal procedure. But the Court has not applied *any* of those new rules retroactively on federal collateral review.”

The Court first held that the unanimity requirement announced in Ramos constituted a new rule of criminal procedure, as opposed to the application of a settled rule. Having made that determination, the Court considered “whether that new rule falls within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review.” Prior decisions which were critical to the Court’s conclusion that the watershed exception was not implicated included decisions which declined to give retroactive effect to holdings regarding the right to a jury trial in a state criminal case; the interpretation of the Confrontation Clause announced by the Court in Crawford v. Washington; and Batson v. Kentucky, which “revolutionized day-to-day jury selection” by prohibiting discrimination in the use of peremptory challenges. All of those were viewed as “momentous and consequential,” yet none applied retroactively.

Given the lengthy post-Teague history in which no new procedural rules were deemed to satisfy Teague’s “watershed exception” for retroactivity, and the belief that the watershed exception “would likely never be satisfied,” the Court abandoned the watershed exception: “As noted above, no *stare decisis* values would be observed by continuing to indulge the fiction that Teague’s purported watershed exception endures. No one can reasonably rely on a supposed exception that has never operated in practice. And perpetuating what has become an illusory exception misleads litigants and judges, and needlessly expends the scarce resources of defense counsel, prosecutors, and courts. . . . the purported watershed exception retains no vitality.”

Summarizing the status of retroactivity analysis in the aftermath of this decision, the Court held: “New substantive rules alter ‘the range of conduct or the class of persons that the law punishes.’ . . . Those new substantive rules apply to cases pending in trial courts and on direct review, and they also apply retroactively on federal collateral review. New procedural rules alter ‘only the manner of determining the defendant’s culpability.’ . . . Those new procedural rules apply only to cases pending in trial courts and on direct review. But new procedural rules do not apply retroactively on federal collateral review.”

Three justices dissented. They would not have discarded the watershed exception and would have concluded that the Ramos decision did qualify under the watershed exception of Teague.

Supreme Court of Florida

Wall v. State, SC19-1727 (May 20, 2021)

The Supreme Court of Florida affirmed an order granting Wall's motion to dismiss postconviction counsel and proceedings. Wall's counsel had filed a Rule 3.851 motion. His counsel also sought the appointment of two experts to evaluate Wall's competency before holding a hearing on the motion to waive postconviction counsel and proceedings. The trial court denied that motion.

Wall was sentenced to death in 2015 for two murders. After an initial pretrial determination of incompetency in 2013, he was found competent later that same year and subsequent evaluations in 2015 again found him competent. In 2019, at the hearing on Wall's motion to waive postconviction counsel and proceedings, his then-counsel asked for a further competency determination. The judge stated that nothing had changed since the last determination of competency. Counsel asserted that Wall had been engaging in inappropriate courtroom etiquette, profanity, ranting and interrupting. Wall, himself, responded that it was only his own "disregard for authority." Counsel asserted that they had a mental health expert who gave a preliminary opinion that Wall "may have a mental illness that is preventing him from being competent." Wall referenced his own refusal to cooperate with what counsel was trying to force on him. The judge, depending upon the court's own observations of Wall, concluded that nothing had changed and that he was still competent and that no further experts were needed. The Supreme Court concluded that "there were no reasonable grounds for the circuit court – whose observations of Wall remained consistent over time – to order a new competency evaluation of Wall."

With respect to Wall's waiver of counsel and postconviction proceedings, the trial court conducted a colloquy with Wall. Wall wanted to expedite the death sentence, and the colloquy, which is quoted extensively in the Supreme Court's opinion, resulted in the Court's conclusion that "Wall understood what he was waiving and the consequences of his waiver."

[State v. Dortch](#), SC18-681 (May 20, 2021)

Fla.R.App.P. 9.140(b)(2)(A)(ii)(c) permits an appeal by a defendant from an involuntary plea, if preserved by a motion to withdraw the plea. The Fourth District Court of Appeal held that there was a “fundamental error” exception to that rule, enabling a defendant to appeal such fundamental errors absent a motion to withdraw the plea. The Florida Supreme Court resolved a conflict between the Fourth District and three other district courts of appeal. The Supreme Court concluded that there is no fundamental error exception, and a “defendant who does not comply with the rule’s preservation requirement must seek any available relief through collateral review.”

In Dortch’s case, experts had been appointed to make a competency determination, but Dortch, through counsel, had waived the requirement of Rule 3.210(b) that a competency hearing be set within 20 days. There was nothing in the appellate record to show whether any competency hearing had ever been held, or what the results of the competency evaluation were. Dortch then entered a no contest plea and, without filing a motion to withdraw the plea, pursued a direct appeal, in which he argued that the plea was involuntary and that the failure to conduct the competency hearing constituted fundamental error. The Fourth District had remanded the case to the trial court for a nunc pro tunc determination of competency, if possible; and, if not, the judgment and sentence were to be vacated and the case would proceed to trial when Dortch was deemed competent. As the issue had not been preserved by a motion to withdraw the plea, the Supreme Court quashed the decision of the Fourth District.

Three justices dissented from the Court’s ruling. The dissent concluded that applying the preservation requirement would deny the meaningful appeal that is constitutionally guaranteed by the Florida Constitution.

Eleventh Circuit Court of Appeals

[United States v. Garcon](#), 19-14650 (May 18, 2021)

The government appealed a sentence that had been imposed under the “safety valve” provision of the First Step Act, 18 U.S.C. s. 3553(f). Certain drug offenders, with minimal criminal history, may be sentenced under the Guidelines “without regard to any statutory mandatory minimum sentence.” Section 3553(f)(1) makes certain drug offenders eligible for relief if they do not have a) more than 4 criminal history points, b) a prior 3-point offense, and c) a prior 2-point offense.

The district court construed the word “and” in the conjunctive, and imposed a sentence lower than the statutory mandatory minimum. The Eleventh Circuit held that “and,” based on “the text and structure” of section 3553(f)(1), was “disjunctive.” Thus, if a defendant has any of the three enumerated items, the defendant is not eligible for sentencing under the safety valve provision.

[United States v. Jackson](#), 19-14883 (May 18, 2021)

Section 2K2.1(b)(6)(B)(Nov. 2018) of the Sentencing Guidelines increases the offense level “when a criminal uses or possess a gun ‘in connection with’ another felony.” In an appeal from a conviction for selling heroin and possessing a firearm as a felon, the Eleventh Circuit found that a sufficient connection existed to support the application of this provision.

Jackson agreed to sell heroin and a firearm to a confidential informant. He sold the heroin, but did not deliver the firearm at that time. The firearm was provided at a later date by Jackson’s associate, and additional heroin was sold to the informant at that later time as well. “[A]dding a firearm sale to a drug sale can facilitate the drug sale by making the purchase of contraband more efficient and reducing the risk of detection by reducing the number of transactions.” Jackson and his associate were “working closely together.” The delay in the delivery of the firearm was unexpected, and did “not change the fact that the deals were planned to occur at the same time.” And a “package deal” is “not necessary to apply the enhancement.”

[United States v. Stevens](#), 19-12858 (May 19, 2021)

The Eleventh Circuit reversed the denial of a motion for sentence reduction under section 404 of the First Step Act.

As a preliminary matter, the district court erred in finding that Stevens was ineligible under the First Step Act. At the time that the district court ruled on the motion, “it was an open question in this Circuit whether eligibility for a sentence reduction under the First Step Act was based on the statute of conviction or on the defendant’s actual conduct.” The district court based eligibility on actual conduct, but the Eleventh Circuit, in [United States v. Jones](#), 962 F. 3d 1290 (11th Cir. 2020), rejected that view and held that the court “should consider only whether the quantity of crack cocaine satisfied the specific drug quantity elements in [18 U.S.C.] s. 841 – in other words, whether this offense involved fifty grams or more of crack cocaine . . . or between five and fifty grams. . . .”

The district court, however, ruled in the alternative, that even if eligible for a sentence reduction, such a reduction was a matter of discretion. Although the district court indicated that it was basing the denial on its discretion, such a discretionary decision must be accompanied by an adequate explanation to enable an appellate court to determine if an abuse of discretion has occurred. The district court did not provide that minimal explanation in this case. “On remand, the district court must give reasoned consideration to Stevens’s motion and provide an adequate explanation for its discretionary determination of whether or not to reduce his term of supervised release. The explanation must be enough to satisfy this Court that the district court has considered the parties’ arguments and has a reasoned basis for exercising its discretion.” The court “may consider the s. 3553(a) factors, as well as the probation office’s submissions, post-sentence rehabilitation, post-imprisonment rehabilitation, or any other relevant facts and circumstances.”

[United States v. Castaneda](#), 19-12623 (May 19, 2021)

The Eleventh Circuit affirmed convictions for attempted enticement of a minor to engage in unlawful sexual activity and traveling across a state line with the intent to engage in sexual activity with a person under the age of 12 years.

Castaneda argued “that his indictment should have been dismissed because the government’s conduct in investigating him was so outrageous that it violated his Fifth Amendment due process rights.” “Outrageous conduct is only a potential defense in this circuit because neither the Supreme Court nor this Court has ever found it to actually apply and barred the prosecution of any case based on it.” Castaneda argued that he was “exposed” to child pornography during the course of the government’s sting operation. Undercover messaging provided Castaneda, at his request, with a picture of the fictional mother of the fictional child he was planning to sexually abuse. The picture of the fictional mother was accompanied by a link to a public online profile for a child pornographer who was cooperating with the government “by allowing agents to use her online identity and some of her accounts.” Castaneda went beyond looking at the picture of the mother or communicating with her; he used information from that online profile “to see what else he could find.” Castaneda used that information, including an email address and password to another email address, and using that information, logged onto a website where he found child pornography.

The motion to dismiss was properly denied. “No law enforcement agent instructed or encouraged Castaneda to hack into any email account, particularly one

containing child pornography. No agent instructed or encouraged Castaneda to download child pornography onto his home computer. No agent exposed Castaneda to child pornography. He exposed himself to it.”

There was no error in denying a motion to suppress the child pornography contained on five of Castaneda’s computers. A friend who was living with Castaneda after his arrest, inadvertently discovered the child pornography on one of his computers that was in a living room. He contacted another mutual friend, and they informed FBI agents. They gave the FBI the computers out of concern that they might be prosecuted based on continued possession of the computers. The FBI then obtained a search warrant to search the computers and two of them contained hundreds of images and videos of child pornography.

The two friends were acting as private individuals when they turned over the computers and the Fourth Amendment was therefore inapplicable to their actions. Thus, “whether Castaneda consented to those actions makes no difference.” Even if the act of turning the computers over to the FBI resulted in an FBI “seizure” under the Fourth Amendment, “Castaneda’s consent was not needed for that seizure.” Nor was it needed for the FBI to obtain a search warrant based on information provided by the two friends.

Castaneda testified at trial, stating, on direct examination, that he was engaged in “role playing an online fantasy” and, when coming to believe that there was a real child in danger, he intended to travel to rescue the child, not sexually abuse he. On cross-examination, when asked about possessing child pornography, he invoked the Fifth Amendment. The district court advised the jury that he did not have the right to invoke the Fifth Amendment because he chose to testify. That instruction was not an error by the court. A “defendant who takes the stand in his own behalf cannot then claim the privilege against cross-examination on matters reasonably related to the subject matter of his direct examination.” The possession of child pornography was relevant to Castaneda’s intent when he traveled to Atlanta to meet the fictitious child.

The district court did not abuse its discretion in excluding testimony from a defense expert “who would testify that statements made over the internet cannot reliably be taken at face value “because people sometimes create fictitious details on the internet.” That “testimony was not specifically pegged to Castaneda’s communications but only contained generalized background information that some people sometimes mix fact with fiction on the internet. No juror needs expert help

understanding that concept. Everyone knows people sometimes lie and that the internet does not filter out falsehoods.”

A 35-year sentence was imposed, exceeding the 30-year statutory maximum. That sentence was not substantively unreasonable. The Court rejected arguments based on the absence of actual harm or endangerment to a child. The Court rejected arguments based on the harm that Castaneda might suffer in prison based on other prisoners’ attitudes towards pedophiles. Additionally, Castaneda “trolled the internet looking for child victim opportunities” and “meticulously planned a trip across the country, some 2,100 miles, for the sole purpose of sexually abusing a 9-year old child.”

[United States v. Potts](#), 19-12061 (May 19, 2021)

The Eleventh Circuit affirmed the denial of a motion for sentence reduction under section 404(b) of the First Step Act.

During the pendency of this appeal, Potts was granted compassionate release based on his medical conditions rendering him uniquely vulnerable to COVID-19. That rendered the appeal moot as to his prison term, but not as to the remainder of his supervised release. The parties agreed that Potts’ crack cocaine offenses qualified as “covered offenses” under the First Step Act, and that he was eligible for a reduction of his supervised release terms. He had 10- and 5-year terms of supervised release on his two drug convictions.

Sentence reduction under the First Step Act, when authorized, is discretionary. When a motion for reduction is denied, the court must provide an adequate explanation of its decision. The judge, in an alternative ruling, stated that the government’s response, addressing the relevant factors, had been reviewed, as had the probation officer’s memorandum. The judge stated that after reviewing those documents, “it had determined the s. 3553(a) factors indicated that a reduction was not warranted under the facts and circumstances of Potts’ case. The district court’s explanation, while brief, was sufficient, and a remand for a more complete explanation is unnecessary.”

[United States v. Taylor](#), 20-10742 (May 21, 2021)

The Eleventh Circuit affirmed Taylor’s sentence for being a felon in possession of a firearm. The Court rejected arguments that the imposition of a

condition of electronic search for supervised release was erroneous, and that the sentence was substantively unreasonable.

“Although the electronic search condition did not relate directly to Taylor’s firearm offense, it was reasonably related to Taylor’s history as a recidivist and the statutory goals of deterring him from future potentially dangerous offenses.” Taylor was a “chronic lawbreaker” and the court had a valid concern “that Taylor would continue to purchase and possess both drugs and guns” and that this would be done through internet use.

The 30-months’ imprisonment was less than the 42 months sought by the government and less than the statutory maximum of 10 years. The guideline range was 21-27 months. The district court placed heavy emphasis on relevant factors, including prior criminal history, “promoting respect for the law, and deterring Taylor from continued violations of the prohibition against him possessing a gun.”

First District Court of Appeal

[Forsythe v. State](#), 1D20-781 (May 21, 2021)

The First District dismissed an appeal from a sentence after the judge denied a request for a downward departure. The trial court had “engaged in an appropriate analysis of the factors involved in exercising its discretion,” and an appellate court lacks “authority to review the trial court’s decision” to deny a downward departure sentence. As the Court did in a prior decision, it certified conflict with decisions of the second, Fourth and Fifth Districts.

[Godbolt v. State](#), 1D20-1127 (May 18, 2021)

The First District affirmed convictions for attempted sexual battery and lewd or lascivious molestation. The trial court did not commit fundamental error by convicting the defendant of lewd or lascivious molestation based only on child hearsay statements.

The defendant periodically babysat for the 9-year old victim for two months. Soon afterwards, the victim’s mother noticed changes in her daughter’s behavior, including avoidance of the defendant when he visited. The defendant had previously been a friend of the victim’s mother. The victim, a few months later, told her mother that the defendant “had touched her, rubbed his penis on her, and made her touch him. He had threatened to kill her mother if she told anyone.” The victim provided

further details during an interview by a member of the Child Protective Team. At trial, the victim, then 10-years old, stated that she did not remember whether the defendant did the things she had previously described, but she did remember speaking to the forensic interviewer and telling her what the defendant had done; she agreed that what she told the interviewer was true.

Godbolt argued “that since the victim did not testify at trial that Godbolt touched her buttocks with his penis and forced her to touch his penis, his convictions for lewd or lascivious molestation depended solely on the hearsay statements the victim had made to her mother and Ms. Curtis [the forensic interviewer].” No such objection was made in the trial court, and the claim was therefore reviewed under the fundamental error standard.

In distinguishing this case from preceding appellate court opinions, the Court emphasized that whereas victims in the earlier cases, which found error, had actually contradicted their prior statements at trial, the victim in the instant case the victim did corroborate her out-of-court statements when she acknowledged having spoken to the forensic interviewer and having told the truth at that time. “Because the victim did not totally repudiate her pretrial statements – which the trial court determined carried the requisite safeguards of reliability for admission as substantive evidence – we cannot say that the evidence was insufficient to show that a crime was committed at all. . . . Viewed through the lens of fundamental error, we AFFIRM.”

Second District Court of Appeal

[Frederick v. State](#), 2d20-2768 (May 21, 2021)

The Second District denied a petition for writ of certiorari in which Frederick challenged an order denying his motion for modification of bail conditions. He challenged the conditions “that he wear a GPS monitoring device and ‘pay all associated costs with installation and service to remain on electronic monitoring.’”

The Court treated the petition as a habeas corpus petition because it challenged conditions of pretrial release. Frederick had thus far paid \$565 in monitoring costs and argued that he was unable to continue paying the costs. Further factual details are not included in the opinion, and the Court found that there was no abuse of discretion in denying Frederick’s motion where the court “properly considered all relevant factors.” The Court referenced the statutory criteria for bail determination as set forth in s. 903.046(2), Florida Statutes.

[McMahon v. State](#), 2D20-576 (May 19, 2021)

A written sentencing order neglected to check off the box awarding credit for prior prison time served after having orally awarded such credit during the sentencing hearing.

Fifth District Court of Appeal

[Ramirez v. State](#), 5D20-1824 (May 21, 2021)

The Fifth District affirmed the denial of a Rule 3.850 motion after an evidentiary hearing.

The motion alleged that counsel was ineffective for “failing to inform him of the alleged adverse immigration consequences resulting from tendering a no contest plea to the charge of tampering with a witness or victim in a misdemeanor proceeding, a third-degree felony.” The plea agreement provided, “I understand that if I am not a United States citizen, entry of this plea may subject me to deportation by the United States Immigration Service.” At the plea colloquy, when asked, “Do you understand that if you are not a United States citizen that as a result of this plea you could be deported or denied citizenship?,” the defendant responded affirmatively. The Rule 3.850 motion alleged that because the defendant was not a United States citizen, his immigration status would be terminated as a result of the plea and that he was now subject to being deported. He had been lawfully in this country under “DACA” status, which he alleged could no longer be renewed.

The only witnesses at the evidentiary hearing were the defendant and counsel. The defendant never told his attorney that he was not a citizen, but claimed his attorney never inquired. And, while he said that he understood the judge during the colloquy, he proceeded with the plea because he “wanted the case to be over” and “did not really think that his plea would cause him any issues.” Counsel testified that “he no longer asks his clients about their citizenship because of a ‘bad experience’ he had with a client several years earlier.” He reviewed his notes from this case and doubted that he discussed citizenship or immigration status with the defendant. If he had, and had learned that his client was not a United States citizen, “his standard practice would have been to refer Defendant to an immigration attorney for further advice.”

At the end of the hearing, the judge announced that he did not find the defendant’s argument or testimony credible. In the written order, the judge did not

reference deficiency of counsel or prejudice to the defendant, and wrote only that the court could not find “any case law that sates that an attorney has the affirmative duty to ask every client if he or she is a U.S. citizen, and that [it was] not convinced every attorney has that obligation.”

The Fifth District rejected the lower court’s analysis: “To the extent that the postconviction court reached a legal conclusion that defense counsel has no duty to inquire of Defendant’s immigration or citizenship status prior to tendering a plea, we disagree.” See Lee v. United States, 137 S.Ct. 1968 (2017) and Padilla v. Kentucky, 559 U.S. 356 (2010). Turning to the question of prejudice, that turned on “whether the equivocal immigration warning given to Defendant by the trial court at the change of plea hearing pursuant to Florida Rule of Criminal Procedure 3.172(c)(8) that Defendant ‘could’ be deported or denied citizenship if he was not a United States citizen, when coupled with defendant’s acknowledgement of the potential adverse immigration consequences from this plea, was sufficient, under the circumstances of the case, to refute his claim of prejudice.”

The Court found, significantly, that the immigration or deportation consequences to the defendant were not “truly clear” or “presumptively mandatory” at the time of the plea. The Court reviewed immigration statutes regarding “moral turpitude,” as well as case law defining “moral turpitude.” The defendant did not provide any “definitive authority showing that the crime of tampering with a victim or witness in a misdemeanor proceeding is a crime involving moral turpitude.” The defendant did not rely on any other authority to show that his plea to the charge would submit him “to virtually automatic deportation and that such presumptive mandatory adverse immigration consequences at the time of his plea were truly clear from the face of the immigration statute.” For those reasons, the Fifth District affirmed the denial of the defendant’s Rule 3.850 motion.

[Daniel v. State](#), 5D21-237 (May 19, 2021)

Daniel was charged under section 836.10, Florida Statutes, with making a written threat to kill or cause bodily harm. He was held without bond under the pretrial detention statute, s. 907.041(4)(c)2., Florida Statutes. The appellate court disagreed with the trial court’s construction of that statute and granted relief to Daniels.

The charge under section 836.10 was based on a “document threatening law enforcement officers that [Daniels] authored and published.” Section 907.041(4)(c)2., applies to threats, with the intent of obstructing the judicial process,

to victims, potential witnesses, jurors, or “judicial officers.” The trial court construed “judicial officer” as including “law enforcement officers.” That statutory construction was contrary to the plain and ordinary meaning of the term judicial officer. The Fifth District further rejected the State’s argument regarding the general intent of the Legislature, looking instead “to what a reasonable reader of the statute would understand it to mean.” The State also argued that the law enforcement officers were potential witnesses, thus implicating the same statutory provision for pretrial detention. The Court would not entertain that argument because “the trial court did not make the factual findings necessary to support this alternate theory,” which had been argued for the first time on appeal.