

Case Law Update
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Supreme Court of the United States

[Thompson v. Clark](#), 20-659 (April 4, 2022)

For a malicious prosecution claim under 42 U.S.C. s. 1983, a plaintiff must prove that he or she obtained a favorable termination of the underlying criminal prosecution. The Supreme Court held that this can be accomplished by showing that the prosecution ended without a conviction. It did not require an affirmative showing of innocence such as an acquittal or a dismissal of the criminal case. In this case, the prosecution had moved to dismiss the pending case, which the trial court judge did, and the prosecution never provided a reason for dismissing the case. That was sufficient for proving a favorable termination of the underlying criminal prosecution.

Eleventh Circuit Court of Appeals

[United States v. Sanchez](#), 19-14002 (April 5, 2022)

The Eleventh Circuit affirmed convictions and sentences for multiple sex offenses involving minors. The primary issue on appeal was a challenge to the denial of a suppression motion in which Sanchez sought to exclude evidence based on the seizure of a cell phone during the search of a house, evidence obtained from a cell phone seized at the time of his arrest at the restaurant at which he worked, and statements made to detectives who came to his house.

Sanchez, after an evidentiary hearing, was found to have consented to the seizure of the first phone. He told officers that he was “fine” with giving them the phone and that his parents knew where the phone was. His mother then gave an officer at least nonverbal consent to follow her into the house. After finding that the seizure of the first phone was consensual, the Eleventh Circuit then concluded that there was no basis for Sanchez to argue that the seizure of the first phone tainted the seizure of the second phone, as there was no fruit of the poisonous tree.

The Court also rejected several challenges to Sanchez’s sentence. A 25-year mandatory minimum sentence had been imposed under 18 U.S.C. s. 2251(e), which

requires proof of one or more qualifying prior predicate convictions. Sanchez argued that his prior conviction under Article 120 of the Uniform Code of Military Justice did not qualify. The Court disagreed. The relevant language in section 2251(e), included convictions under “section 920 of title 10 (article 120 of the Uniform Code of Military Justice.” Arguments presented by Sanchez, which the Court rejected, were based on congressional intent, earlier versions of the statute, the rule of lenity, and the “absurdity doctrine.” The latter argument was based on the contention that a conviction for “an indecent act” should not trigger a 25-year minimum sentence. The prior military conviction was for Sanchez’s transmission of a photo of his exposed penis and a woman’s bare breasts and buttocks to a 13-year old girl, conduct which the Eleventh Circuit observed was far from a “minor sexual indiscretion.”

The Court also briefly addressed and rejected challenges to four separate guidelines enhancements that were applied.

Finally, the Court rejected double jeopardy challenges to dual convictions for offenses under 18 U.S.C. ss. 2251 and 2422, concluding that the two offenses do not have the same elements under Blockburger analysis. The offense under section 2422 requires proof that the defendant attempted to persuade a minor to engage in “sexual activity for which any person can be charged with a criminal offense.” Section 2251 requires proof that the defendant attempted to persuade the minor to engage in sexually explicit conduct “for the purpose of any visual depiction of such conduct.” Each offense includes an element that is not included in the other.

Supreme Court of Florida

[Valentine v. State](#), SC20-1805 (Apr. 7, 2022)

The Supreme Court affirmed the denial of a second successive motion for postconviction relief under Fla.R.Crim.P. 3.851.

The primary claim was one of newly discovered evidence, based on an affidavit from an eyewitness, Terry Spain. Spain did not testify at the defendant’s trials in this case. The affidavit stated that he saw a white male standing 40-50 yards away from him, and that after hearing two gunshots, he fled. He spoke to the police on several occasions and was provided \$300 cash, a hotel room and meals by law enforcement during Valentine’s first trial. The affidavit further alleged that defense counsel never spoke to Spain. The same affidavit was used as the basis for related Brady and Giglio claims.

The Rule 3.851 motion was denied without an evidentiary hearing. The Supreme Court concurred in that, agreeing that the record from the second trial conclusively refuted the claim. Police reports and the trial transcript contained much of the information set forth in Spain's affidavit. The only new information pertained to the \$300 cash, the hotel room and the meals during the first trial. As the record reflected trial counsel's awareness of Spain's involvement in the case, with due diligence, this further information could have been discovered at the time of the trial.

With respect to the Brady claim, based on what defense counsel was shown to be aware of at the first trial, Valentine could not demonstrate that the State suppressed favorable evidence. Valentine abandoned the Giglio claim in the Supreme Court appeal.

First District Court of Appeal

[Davis v. State](#), 1D20-3013 (April 6, 2022)

At sentencing, for which private counsel had been appointed for the indigent defendant, counsel stated that a bill for \$26,000 was being submitted to the Justice Administrative Commission, and the trial court ordered the JAC to pay the fee. The trial court erred, however, in imposing the fee against the Appellant personally, "as recovery from both the JAC and Appellant would be impermissible."

[Fudge v. State](#), 1D21-2466 (Apr. 6, 2022)

A petition alleging ineffective assistance of appellate counsel was denied. Appellate counsel may not be deemed ineffective for failing to argue on direct appeal that trial counsel was ineffective.

[Nixon v. State](#), 1D22-242 (Apr. 6, 2022)

A petition alleging ineffective assistance of appellate counsel was denied on the merits.

Nixon argued that appellate counsel should have argued "that his convictions for the uncharged crime of lewd or lascivious battery amounted to fundamental error" 1) because "the information did not charge the theory of encouraging, enticing, or forcing any person under sixteen years old to engage in any act involving sexual activity," and 2) "because lewd or lascivious battery applies only when the

victim is twelve-to-sixteen years old, and the information specifically charged that the victim was nine. . . .”

Lewd or lascivious battery was a permissive lesser included offense of the charged offense of sexual battery. The lesser offense may be committed in two ways: engaging in sexual activity with a person between the ages of 12 and 16; or “by encouraging, forcing, or enticing any person less than sixteen years old to engage in any other act involving sexual activity.” “The definitions of sexual battery and sexual activity under the relevant statutes are identical.” The information charged the victim was under 12, and the lesser offense of lewd or lascivious battery was included “because the charged offense subsumed the conviction offense.”

Appellate counsel was not ineffective for failing to challenge the sufficiency of the verdict for the lesser included offenses based on a general verdict without special findings. “Lewd or lascivious battery as a lesser-included offense could be established by sexual union or penetration. . . . Penetration requires entry, and union only means contact. . . . Because a penetration by its nature includes contact, a finding of guilt on a lesser-included offense based on union, even where penetration was charged, is not illegal.”

Second District Court of Appeal

[State v. Donaldson](#), 2D21-1195 (Apr. 8, 2022)

In a capital case charging four separate murders, Donaldson sought severance on the grounds that the crimes were not part of a spree and that there was no causal connection between them. The State sought certiorari review and the Second District granted the petition.

The four murders were committed over a five-week period of time. The trial court, in granting severance, departed from the essential requirements of law because the murders were admissible evidence in each case “under the State’s alternative theory of identity that did not rely on establishment of a modus operandi.” The trial court did not depart from the essential requirements of law in concluding that the State did not establish modus operandi, however.

Admissibility of similar crimes based on modus operandi requires proof of “a manner or method of commission peculiar enough to suggest they were probably not committed by different people. The fatal shootings of which Donaldson is accused occurred in somewhat close temporal and geographic proximity to one another, and

the victims all seemed similarly random insofar as there is no known affiliation with the accused. But these pedestrian similarities are a round peg ill-suited to the square hole of the modus operandi test, which requires *unusually* similar characteristics that ‘pervade the compared factual situations’ and ‘have some special character’ that indicates the same individual carried out the crimes.”

Proof of modus operandi was not required however, based on the theory that the murders were all committed with the same firearm. Here, “the fact that the same gun was used in each of the homicides makes the evidence relevant to establish Donaldson’s identity as the perpetrator of the crimes. The evidence of the other homicides is admissible to prove identity without having to establish the heightened similarity requirement, which is ‘reserved for determining the admissibility of collateral crime evidence, where the State seeks to prove identity through modus operandi, common plan, or scheme.’”

[Creller v. State](#), 2D19-3085 (Apr. 6, 2022)

The Second District reversed convictions for possession of a controlled substance and resisting an officer without violence, “[b]ecause the K-9 officer’s command for Creller to exit his vehicle was not necessary for the officers to safely complete the traffic stop.”

An undercover officer observed Creller’s vehicle cut through a gas station parking lot in order to avoid a red light at an intersection. That officer, in an unmarked car, called for assistance to conduct a traffic stop. The vehicle was stopped and two officers approached, one on each side. The officers obtained Creller’s license and registration, and Creller refused to give consent for a search. Creller remained in his car while one officer radioed for a K-9 unit to conduct a sweep of the vehicle. One officer waited on the driver’s side next to Creller.

One officer started writing the traffic citation, which entailed the use of a computer to “run” the subject and his vehicle. The process of issuing the citation, per testimony from the officer, generally takes about five minutes. The K-9 officer arrived four minutes after being called. Creller again refused to give consent for a search of the vehicle and was asked to exit so that the officer and K-9 could safely do a vehicle sweep. The officer testified that it was dangerous for a person to remain in the vehicle as the officer did not know what was in the front of the vehicle and the driver could put the car in drive during the search. After more requests to exit, a struggle ensued, and the officer processing the citation dropped his computer and went to assist the other officers to get Creller out of the vehicle. Creller was

subsequently searched and a clear baggie with methamphetamine was found on him. From the time of the stop until the struggle, between five and ten minutes had elapsed. The traffic citation was never issued.

The trial court denied a motion to suppress the evidence. The Second District first noted that the attempted vehicle sweep did not prolong the traffic stop and removal of Creller from the vehicle was justified. Analysis had to proceed further from that point because drugs were recovered from Creller. It was necessary to inquire whether the command to exit the vehicle constituted an unreasonable seizure in violation of the Fourth Amendment.

“Whether issuing a traffic citation or investigating the presence of contraband, that law enforcement officers are frequently subjected to dangerous situations during roadside stops is unquestionable. However, in this case the testimony indicates unequivocally that officer safety did not necessitate driver removal until the traffic stop evolved into a narcotics investigation.” The first request to exit was when the K-9 officer asked to enable the dog to conduct the sweep. No such request had been made when the first officer approached or even when the K-9 officer first asked for consent to search. Thus, the Court concluded that the safety issue was not related to the traffic citation, but to the vehicle sweep.

The “forced removal of an individual from his vehicle *before* such probable cause of the existence of such contraband has been established – and without any evidence that such seizure is necessary to ensure officer safety during issuance of a traffic citation – constitutes an unreasonable seizure without any justification under the Fourth Amendment.” The motion to suppress was erroneously denied.

[M.M. v. State](#), 2D20-3626 (Apr. 6, 2022)

Without setting forth detailed facts, the Court applied its recent precedent of [T.H. v. State](#), 47 Fla. L. Weekly D681 (Fla. 2d DCA Mar. 18, 2022), and held that an adjudicatory hearing via Zoom, over the juvenile’s objection, was reversible error where the facts were “indistinguishable” from those in [T.H.](#). In [T.H.](#), the Court had held that “a trial court must conduct a hearing on a juvenile’s objection to holding a hearing over Zoom and make a case-specific finding of necessity to limit confrontation rights.”

[White v. State](#), 2D21-1211 (Apr. 6, 2022)

The trial court committed reversible error by failing to “conduct an adequate *Faretta* inquiry before allowing [the defendant], without counsel, to admit that he had violated the conditions of his probation.”

At the violation hearing, White appeared pro se. The court inquired if he wanted counsel, and White said that he “was thinking [he] was just going to get [his probation] reinstated.” An offer with the State was discussed, and the court offered to appoint counsel if White wanted to talk to counsel about his options. White declined and accepted a sentence of 180 days in jail and admitted the alleged violation.

White was entitled to counsel at the probation revocation hearing, and, absent a full inquiry under *Faretta*, to determine whether there was a knowing and intelligent waiver of the right to counsel, fundamental error existed.

Third District Court of Appeal

[Swift v. State](#), 3D20-1160 (Apr. 6, 2022)

Although the trial court made the required finding of competency, the court did not reduce that finding to a written order. The case was remanded with directions to enter the written order nunc pro tunc.

[Smith v. State](#), 3D21-1897 (Apr. 6, 2022)

On rehearing, in an appeal from the denial of a Rule 3.800(a) sentence, the Third District reversed a prison releasee reoffender sentence. Smith’s conviction for burglary of a conveyance with an assault or battery did not qualify him for PRR sentencing under the catchall provision of the PRR statute, s. 775.082(9)(a)1.o, Florida Statutes (2000). Smith’s presence was noted to be required for the resentencing, with counsel.

Fourth District Court of Appeal

[M.S. v. State](#), 4D21-2215 (Apr. 6, 2022)

The State conceded error, and the Court agreed, finding that “nothing in M.S.’s encounter with the officer prior to the pat-down gave rise to a reasonable suspicion to justify the search.”

M.S. and another juvenile were riding bicycles with no lights at about 3:40 a.m. An officer stopped them to issue non-criminal infraction warnings for having no lights. The officer then patted them down and discovered a firearm on M.S. and then obtained incriminating statements from the second juvenile, as well as other evidence. On remand, the trial court was ordered to vacate the delinquency adjudication and discharge M.S. from the charges – three vehicular burglaries and two firearms offenses.

Fifth District Court of Appeal

[Black v. State](#), 5D21-2144 (Apr. 8, 2022)

The Fifth District reversed the summary denial of a Rule 3.850 motion for further proceedings. The motion asserted a claim of newly discovered evidence based on recent exculpatory statements from a codefendant, which could not have been obtained earlier because the codefendant refused to testify or provide a deposition.

The trial court found that the allegations from the codefendant lacked credibility. Credibility determinations, however, require an evidentiary hearing. The motion failed to attach an affidavit from the codefendant, and the defendant alleged that he had lost contact information from the codefendant when he was transferred from one prison to another. As the motion alleged that the codefendant’s statements were discovered on June 4, 2021, on remand, Black had until June 4, 2023 to obtain and file the affidavit.