

Case Law Update
April 25, 2022
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Supreme Court of the United States

[Brown v. Davenport](#), 20-826 (April 21, 2022)

In state court, Davenport argued that his conviction should be overturned because he was shackled during trial absent the finding of a special need. When the case reached the state supreme court, that court reversed for the trial court to determine whether the error in shackling without a special need was harmless beyond a reasonable doubt. An evidentiary hearing was held, and after testimony from jurors that the shackling did not affect their verdict, the error was found to be harmless.

The same issue was then raised in federal habeas corpus proceedings. After relief was denied in the federal district court, the Sixth Circuit granted relief. The Court applied the harmless error test used in federal habeas corpus proceedings, set forth in Brecht v. Abrahamson, which requires the federal habeas petitioner to show that the error had a “substantial and injurious effect of influence” on the outcome of the trial. The Sixth Circuit found that it did and granted habeas relief.

The case then proceeded to the Supreme Court which found that the Sixth Circuit did not apply the full harmless error analysis. While the Brecht test applies in federal habeas proceedings, when a state court has found harmless error beyond a reasonable doubt, the federal habeas court must apply not only the Brecht harmless error analysis, but, the analysis required under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The analysis under AEDPA requires that when the state court has adjudicated the claim on the merits, which includes a finding that the error was harmless beyond a reasonable doubt, the federal habeas petitioner must demonstrate that the state court adjudication was contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. Alternatively, the petitioner may demonstrate that the state court reached its conclusion based on an “unreasonable determination of the facts.”

Even if the federal Sixth Circuit was correct under the Brecht harmless error analysis, Davenport’s claim failed under AEDPA analysis, as he could not demonstrate that the state court adjudication was contrary to clearly established

federal law. The Supreme Court’s analysis focused on its own decision of Holbrook v. Flynn, which rejected a claim that a defendant was denied due process by the prejudice from supplemental security in the courtroom during the trial. Nothing in that decision was contrary to the state appellate court’s reliance on the post-trial testimony of the jurors who said that they were not affected by the use of shackling.

Eleventh Circuit Court of Appeals

United States v. Smith, 19-13056 (April 19, 2022)

The Eleventh Circuit reversed the denial of a motion for reduction of sentence under the First Step Act of 2018 for further proceedings because the defendant was not provided “an opportunity to be heard as to why he merited a sentence reduction.”

The case had a complicated history, starting with Smith’s pro se letter to the district judge inquiring whether he qualified for a sentencing reduction under the First Step Act. Without briefing or response, the judge denied relief. Smith then filed a pro se motion for reconsideration, and the judge appointed the federal public defender, and both that office and Smith, individually, filed pleadings seeking a reduction. The government filed a response, and both counsel and Smith, pro se, filed motions seeking leave to reply to the government’s response, and that request was denied. With respect to the motion for reconsideration, the district court made two rulings: first, that the penalties for Smith’s offense had not changed and that he was therefore not eligible under the Act for a reduction; second, that even if he were eligible, reduction was not warranted because he had perjured himself at trial, brandished a firearm, stipulated that the cocaine he possessed was 94% pure, and had already obtained two sentencing reductions.

On appeal, the Eleventh Circuit first concluded that Smith was eligible under the Act. The First Step Act made the Fair Sentencing Act of 2010 retroactive to a narcotics offense involving less than 28 grams of crack cocaine, and that offense now carries a statutory penalty of up to 20 years in prison with no mandatory minimum. With a section 851 enhancement, the offense now carries a maximum of 30 years in prison, with no mandatory minimum. Smith’s sentence for his drug offense was originally 210 months, and, prior to the current motion for reduction, had already been reduced twice, first to 168 months, and then to 135 months.

A defendant may file only one motion for reduction under the First Step Act. The complete denial of an opportunity to be heard results in a due process violation. Based on the proceedings described above, Smith did not have his opportunity to

present his arguments as to why the court should exercise its discretion and grant a reduction.

[United States v. Stowers](#), 18-12569 (April 20, 2022)

In ten consolidated appeals from multiple defendants, the Court addressed “several questions of first impression about Title III of the Omnibus Crime Control and Safe Streets Act, ‘which regulates the interception of wire, oral, and electronic communications.’” As part of a state investigation of a suspected drug trafficking conspiracy, state law enforcement obtained a wiretap authorization from a state court judge.

This appeal involved three challenges to the wiretap. First, it was argued that “the state judge did not correctly seal the wiretap recordings as required under Title III.” Second, it was argued “that the government impermissibly delayed sealing the wiretap recordings without providing a satisfactory explanation for that delay.” Third, it was argued that “the state court’s wiretap authorization exceeded its authority.” The Eleventh Circuit affirmed the denial of the motions to suppress.

The original wiretap order required a report to the court within 40 days of the order or 10 days from the date of the last interception, which was earlier. Subsequent orders, all including the same 10-day language, were obtained for three additional wiretaps and one extension of the first wiretap. Agent Bridges, who obtained the orders, believed “that he would have ten days from the last interception to return the recordings and that they would be sealed when returned.” Officers finished with the wiretaps about eight days after the last interception.

The defendants argued that “the recordings were never properly sealed both because the judge did not issue a separate, written sealing order after receiving the recordings and because the government ‘maintained access’ to the original recordings after sealing.” The procedure followed for sealing was correct. An agent and prosecutor “took the four original recordings to the judge in a tamper-proof evidence bag, Agent Bridges placed a seal on the tamper-proof evidence bag in front of the judge, and both the judge and Agent Bridges initialed the bag. The judge directed Agent Bridges to place the sealed recordings in the custody of the clerk, and Agent Bridges did so, taking the sealed, initialed evidence bag to the clerk. Agent Bridges and the clerk both signed the evidence receipt and noted in the ‘purpose of change of custody’ column: ‘Sealed in Stephens County Clerk of Court.’” Additionally, there was no evidence to support the defendants’ claim that the

recordings were later accessed or that the prosecutor was the one to physically unseal the recordings.

The wiretap statute requires that the recordings be sealed “immediately upon the expiration of the period of the order, or extensions thereof.” Previous decisions of the Eleventh Circuit have held that “immediately” includes up to two days after the wiretap order expires. In addition to that two-day period, which prevents the statute from being construed to require sealing “before” expiration of the order, the manner in which “immediately” is construed will depend on the circumstances. In this case, the agents complied with the 10-day orders of the court. That satisfies the immediacy requirement “because it serves the central ‘purpose of the statute, that recorded confidences be handled under direction of the court.’”

Even assuming, for purposes of this appeal, that the recordings were not returned immediately, the statute provides that a “satisfactory explanation” will excuse the delay. Such an explanation “must be more than a reason for the delay and ‘proof of nontempering.’” The “government must ‘explain not only why a delay occurred but also why it is excusable.’” Three explanations were provided in this case: 1) compliance with the judge’s 10-day return period; 2) independent belief by the government that the 10 days was correct because it had been included in prior judge-approved orders; and 3) “the government thought that it had to finish making all the transcripts and copies of the recordings before returning the originals.”

In this case, there was “no reasonable argument that the tapes were tampered with before they were sealed.” There was no evidence of alteration. Second, the government’s actions were not in bad faith; “any delay-causing mistake was an honest one.” Third, “the delay was not lengthy,” either five or seven days after the two-day safe-harbor period, depending on whether weekends were included in the calculation. In one Supreme Court case, the Court found that a misunderstanding of the law could excuse a delay of 118 days. Fourth, there was no evidence that the “government gained any tactical advantage or that the defendants were prejudiced in any way.” Fifth, the government’s reasons were objectively reasonable, notwithstanding the defense argument that the officers should have engaged in legal research, which would have disclosed the two-day period. Here, the officers were entitled to rely in good faith on the court’s order providing ten days. The Eleventh Circuit emphasized that the judge carefully reviewed drafts of orders submitted and that the judge revised them and specifically told Agent Bridges to add the ten-day language.

Finally, the Court rejected the defense argument that due to “territorial jurisdiction” of the court issuing the wiretap orders, the calls made outside Georgia were unlawfully intercepted and the wiretap orders were facially invalid because they permitted such interceptions of communications. The Eleventh Circuit looked to Georgia law to see if the state court exceeded its jurisdiction. Under Georgia law, the state court had jurisdiction to authorize interceptions anywhere in Georgia, and “interception” “occurs both at the ‘listening post’ where the call is heard and at the location of the targeted phones when it makes or receives a call.” As the listening post was in Georgia, the state court did not exceed its jurisdiction.

[United States v. Mosley](#), 20-11146 (April 21, 2022)

On direct appeal, Mosley’s sentence for possessing a firearm after being convicted of a felony was vacated and remanded for further proceedings. Under [United States v. Jones](#), 899 F. 2d 1097 (11th Cir. 1990) (overruled on other grounds), a district court must “elicit fully articulated objections, following imposition of sentence, to the court’s ultimate findings of fact and conclusions of law.” Mosley was not given the required opportunity to object.

At the sentencing hearing, the district court adopted the PSI, which included factual statements about the offense. In a post-sentence Statement of Reasons, the district court referenced the firearm having been stolen from a police department. This had not been addressed at the sentencing hearing itself, and the language in the PSI report was not clear on this. As the fact relied upon by the district court was first referenced in the post-sentencing Statement of Reasons, Mosley was not given an adequate opportunity to object to the factual basis for the sentence.

First District Court of Appeal

[State v. Mackendrick](#), 1D20-3362 (April 20, 2022)

The First District reversed an order granting a Rule 3.850 motion, after an evidentiary hearing, where the trial court found that trial counsel was ineffective. The defendant had been convicted for capital sexual battery and lewd or lascivious molestation of his daughter.

The trial court granted the Rule 3.850 motion based on three separate claims: 1) that counsel failed to object to a video of an interview of the child by the Child Protection Team (CPT) going to the jury room during deliberations; 2) that counsel

failed to seek the redaction of the CPT video; and 3) that counsel failed to obtain an expert to assess whether the victim exhibited signs of abuse.

The First District's reversal was based on several factors. At the evidentiary hearing, defense counsel testified that he wanted the CPT tape to go to the jury because it included things that counsel believed hurt the victim's credibility. This was a valid strategic decision. With respect to redaction, the trial court concluded that the video, without redaction, enabled allegations of uncharged offenses as to "Stormy" and "Sabrina" going to the jury. The First District, reviewing the video, concluded that the only thing emerging from the video interview was that the victim stated that she did not know if the defendant had done anything to Stormy and Sabrina.

Finally, defense counsel "was not required to retain experts that she reasonably believed would not provide beneficial testimony." Counsel had consulted, telephonically, two gynecologists, "who both told her that it would not be unusual for the victim's physical examination to be unremarkable given the passage of time." Counsel was not deficient for consulting the two doctors telephonically, without providing them records; "counsel explained that she could not provide records to these doctors because they had not been hired and that she did not want to hire doctors who would only confirm the CPT examiner's testimony." Counsel "reasonably could conclude that the more effective strategy was to cross-examine the state's expert by attacking the credibility of the victim's history, which the expert conceded served as the basis for her opinion given the lack of physical findings, as well as getting the expert to concede that one would expect to see evidence of injury in cases of acute repetitive trauma."

Second District Court of Appeal

[Cintron v. State](#), 2D21-40 (April 20, 2022)

The Second District reversed a conviction for dealing in stolen property. The trial court committed reversible error, over objection, in giving two "inference" instructions.

The first instruction provided that "proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen." There was insufficient evidence of fair market value to support the giving of this instruction.

An "owner's estimate of the value of the property when no other proof is presented is insufficient to prove the fair market value." Here, the victim testified that some of the tools were obtained five-seven years prior to the theft; some were used when originally acquired; and estimates of retail value were given. No testimony as to current condition was provided. "Although the victim provided an estimate of the total value of the stolen tools, he provided minimal testimony about individual tools that were stolen, no testimony as to depreciation, and no testimony as to the general condition or quality of the tools."

The second jury instruction provided that "proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen."

Cintron worked for a company that dispatched trucks for Amazon, and testified that "he purchased the tools from a stranger at a gas station and endeavored to sell them for 'a quick buck.' He listed the tools for sale on Facebook Marketplace using his personal Facebook account. He testified that he does not work with tools in his trade but that his brother helped him determine the list price."

Under section 812.012(2), a dealer in property must be "in the business of buying and selling property." The State did not establish that Cintron met that definition. The Court rejected "the State's argument that a person who, on one occasion, buys property from another and then sells the property constitutes a dealer in the business of buying and selling property."

[Welch v. State](#), 2D21-463 (April 20, 2022)

The summary denial of a motion to correct illegal sentence was reversed as to one of its claims. Welch was convicted of driving without a valid driver's license causing death or serious bodily injury and sentenced as a habitual felony offender to ten years in prison. Welch argued that the crime was a third-degree felony, with a maximum punishment of five years, and was not subject to habitual felony offender sentencing.

Section 322.34(6), Florida Statutes, specifically provides that the offense in question was punishable as a third-degree felony, "as provided in s. 775.082 or s. 775.083." This specifically excluded sentencing under the habitual offender statute, section 775.084.

[Kalogianis v. State](#), 2D21-3770 (April 20, 2022)

The summary denial of a Rule 3.850 motion was reversed for further proceedings because the claim was not conclusively refuted by the record.

The defendant alleged that counsel was ineffective for failing to convey a plea offer to the defendant. The motion alleged that he was originally represented by private counsel, for the purpose of securing a plea deal, but later requested appointment of an assistant public defender, and that attorney, prior to the defendant's open plea, informed the defendant that prior counsel had received a three-year plea offer but that the offer was rejected. The defendant alleged that counsel did not present that offer to him. The claim, as alleged, was facially sufficient.

The trial court found that the defendant alleged that counsel was retained only to secure a probationary sentence and thus was not deficient for not communicating a non-probationary sentence. The appellate court, reviewing the postconviction motion, concluded that the trial court's reading of it was incorrect. The purpose was to "secure a deal," not merely a probationary sentence.

Third District Court of Appeal

[Owens v. State](#), 3D22-0003 (April 20, 2022)

The summary denial of one claim in a Rule 3.850 motion was reversed for further proceedings because it was not conclusively refuted by the record. The claim alleged that counsel was ineffective for failing to "object to appellant's absence at the sentencing hearing."

Furth District Court of Appeal

[Montgomery v. State](#), 4D18-2379, 4D18-3102 (April 20, 2022)

The Fourth District affirmed convictions for two counts of first-degree murder and other offenses, as well as the revocation of probation from a prior case.

After the denial of a cause challenge, the defense requested, and obtained, an additional peremptory challenge. The trial court also gave the State one additional peremptory challenge at that time, and the State used it to strike a juror whom the

defendant wanted. There was no error in giving the State the additional peremptory challenge. “In fact, we have concluded error occurs when the trial court grants unequal peremptory challenges to the parties.”

The evidence was sufficient to support premeditation for the two murder convictions. The defendant argued that there was evidence of rage and that the convictions should be reduced to second-degree murder. The appellate court emphasized evidence that as to the killing of the defendant’s wife, that was preceded by evidence of him saying, “I should shoot you.” And, as to the killing of his stepdaughter, he told his grandmother, “I know how to get you out of here,” prior to grabbing his rifle. After an intervening argument with his stepdaughter, he then shot her eight times. Then he found his wife in the laundry room and told his grandmother to move, before dragging her away so that he could shoot his wife, whom he shot seven or eight times.

The trial court did not abuse its discretion in denying a motion for new trial based on a juror sequestration issue. The jurors were sequestered in a hotel during the guilt phase of the trial. At 3:30 p.m., a hotel employee “slipped an invoice underneath a juror’s door.” An on-duty officer confronted the employee and “led her away from the room.” While the officer was on the phone, the employee returned, entered the hotel room to retrieve the invoice, and caused the juror to wake up; the juror was visibly shaken and sobbing. The juror assumed the officer would notify the judge of the incident and therefore did not do so herself. Post-verdict, the juror left a message with the judge’s office about being uncomfortable being sequestered again for the upcoming penalty phase because of the prior incident. The defense moved for a new trial. The court conducted a hearing with questioning of the juror, who “had no idea what happened other than that someone opened and closed her door.” While the facts of this incident were admittedly “strange,” there was “no proof that it either affected the deliberations the next day or prejudiced the defendant in any way.”

[Cross v. State](#), 4D21-1489 (April 20, 2022)

The Fourth District affirmed a conviction for possession of a firearm by a convicted felon. The opinion includes minimal facts regarding a suppression issue, but notes that the sheriff’s procedures regarding an inventory search were substantially complied with, and the fact that “some personal items discovered in the search were returned to appellant’s girlfriend does not vitiate the inventory search, as the agents testified that the return of such property was permitted in their discretion under the sheriff’s department policy.”

[City of Hollywood v. Haynie](#), 4D21-2847 (April 20, 2022)

Haynie was charged with violating a municipal ordinance for public consumption of an alcoholic beverage and the trial court sua sponte dismissed the charge. During a Zoom hearing for arraignments, when asked whether he wished to plead guilty or no contest, the defendant wanted to say “that that beer was not mine.” The court treated that as a no contest plea. When asked for a factual basis, counsel for the city stated that counsel did not have the factual basis at that time. The judge then stated that the case would be dismissed, and the city objected, “stating it did not receive notice of the case but was prepared to make an offer to resolve the matter.” Discussions about what ensued the prior day between counsel and the judicial assistant ensued, but counsel maintained that counsel had been unaware of this particular defendant’s case.

The judge proceeded to dismiss the case and, on appeal, the Fourth District held that the trial court “abused its discretion in dismissing the open container charge without a written or verbal motion by the defendant. The trial court may adjudicate only those issues properly placed before it. By dismissing the charge, the trial court infringed on the city’s discretion to prosecute.” The decision to prosecute rests solely with the State.

The opinion discusses the Florida Supreme Court’s administrative order, AOSC21-17, which, due to the pandemic, prioritized in-custody defendants, and that was a concern that the trial court judge was discussing in arguments with the prosecutor. The Fourth District stated, “[i]n prioritizing in-custody defendants, the Florida Supreme Court did not authorize courts to overlook the general rule that only the State may dismiss a charge in the absence of a motion to dismiss.”

Fifth District Court of Appeal

[Mayorquin v. State](#), 5D22-904 (April 19, 2022)

The trial court, at first appearance, ordered the defendant to be held without bond on a charge of attempted second-degree murder with a firearm. The defendant filed a petition for writ of habeas corpus in the Fifth District, and that Court ordered the trial court to conduct an expedited hearing to determine the issue of pretrial release.

The offense of attempted second-degree murder with a firearm was not punishable by life in prison, and, as a result, absent a motion for pretrial detention by the State, the defendant was entitled to have conditions of release set by the trial court.