Case Law Update
June 13, 2022
Prepared by
Richard L. Polin

Supreme Court of Florida

State v. Burns, SC18-1208 (June 2, 2022)

The Supreme Court quashed the decision of the First District and remanded for reconsideration in light of the recent decision in Davis v. Stat, 332 So. 3d 970 (Fla. 2021). In Davis, the Court held that when a defendant voluntarily chooses to allocute at a sentencing hearing, the sentencing court is permitted to consider the defendant's freely offered statements, including those indicating a failure to accept responsibility."

In this case, the Court noted that Davis was based on the more expansive decision in United States v. Grayson, 438 U.S. 41 (1978), which applied the same principles to statements other than those made during an allocution – i.e., the defendant's in-court statements which contained falsehoods. The facts of Burns were that the defendant gave a sworn, pretrial confession, but retracted the confession during his trial testimony and the First District Court of Appeal had reversed the sentence imposed when the sentencing judge relied upon that retraction when imposing the sentence.

Ritchie v. State, SC20-1422 (June 9, 2022)

The Supreme Court affirmed multiple convictions, including first-degree murder, and the sentences, including a death sentence.

Ritchie challenged the cumulative impact of several comments by the prosecutor during the penalty phase closing argument. Only one was objected to during the trial. After imploring the jury to consider the horrendous acts that were perpetrated on the child victim before her death, the prosecutor asked the jury to consider "whether you should personally extend mercy to this defendant. Did he extend mercy to this little girl?" Defense counsel objected to the "same mercy" argument and moved for a mistrial on its basis. The trial court continued with the proceedings without having ruled on either the objection or the motion for mistrial. The prosecutor then again referenced the "same mercy" argument, and there was

neither a new objection, motion for mistrial, nor reminder that the court had not ruled on the original motion.

The Supreme Court held that although there was no objection and/or ruling to these arguments, the Court had to consider the preservation issue because the only issue raised on appeal was the cumulative effect of the multiple comments, and under Florida Supreme Court case law, cumulative error analysis must "'examine [] the entire closing argument, paying specific attention to the challenged comments – whether preserved or not.'" Here, where the first comment by the prosecutor was not objected to, and a ruling was not obtained on the subsequent comment, the challenge to these comments was not preserved for review. As a result, the harmless error standard of review did not apply; it would apply only if the trial court had overruled the objection.

Turning to the merits of the comment, the Court found that although the State may not ask the jury to show a defendant the same mercy the defendant showed the victim, the prosecutor, in this case, "referenced mercy while arguing for the HAC aggravator, where the mercy or lack thereof shown to the victim by the defendant is relevant." The first comment at issue here was therefore not improper. The second comment, however, asked the jurors to consider the lack of mercy shown the victim "'when you're considering whether you should give him life and whether you should personally extend mercy to this defendant.'" This was not clearly linked to the prior HAC argument. This part of the argument was therefore improper.

Ritchie further argued that three comments were improper golden rule arguments. In the first, the prosecutor asked: "'Can you imagine the dread of knowing that your life is ending and you're feeling pain all over your body as it's bleeding internally. . . .'" In the second, the prosecutor invited the jury to "'go back' to the minute of silence he had included in his guilt-phase closing argument to demonstrate how long Ritchie would have choked the victim while waiting for her to die." The first comment was an improper golden rule argument; the second was not. Both were made in the context of the HAC aggravator, but the first, in addition to using pronouns like "you" and "your" while referencing the evidence of the victim's suffering, "expressly asked the jurors whether they could 'imagine' what it would be like if that was happening to them." The second was limited to focusing on the actual evidence as to the length of the attack and what the victim experienced.

The third alleged golden rule comment involved Ritchie's contention that the prosecutor asked the jury to put the prosecutor's "'own imaginary words in the victim's mouth.'" This included a reference to when the victim would have placed

a 911 call, but "there was no evidence establishing when the 911 call was made relative to the attack, including whether the call was made before or after any kissing, fondling, or undressing had occurred, or what the victim's state of mind was during the call." Attempting to fill the silence heard in the 911 call involved "improper speculation" and violated the "'imaginary script' variant of the prohibition on golden rule arguments."

The prosecutor addressed mitigating evidence about the defendant's family life in Jamaica, and noted that there were neighborhoods in the United States that were also ghettoes or slums or high crime areas. The prosecutor contrasted these with the privileged life that the defendant grew up with versus his ability to immigrate to the United States and enjoy the benefits of this country. These benefits, included, inter alia, the right to a jury trial. The reference to the jury trial, although at times an improper comment, in this case was done "in a positive fashion in describing how far Ritchie had come from his troubled life in Jamaica without negatively reflecting upon Ritchie's exercise of that right or any other constitutional right."

Portions of this argument went too far. Although the prosecutor is permitted to address mitigating evidence and can demonstrate his ability to manipulate others, the ability to "pull himself up out of [his] situation" in Jamaica was a comment that went too far. "Ritchie was not on trial in Jamaica. Thus, it was improper for the prosecutor to comment about the Jamaican legal system or to compare it to the legal system in the United States." The Court was also concerned about the prosecutor's comparison of Richie's "'comfortable' life while awaiting trial in jail, to what his life would have been like had he been on trial in Jamaica." These comparisons "served no purpose except to imply that he had 'bit the hand that fed him.'"

Comparing Ritchie's troubled childhood to the difficult childhood of President Reagan was permissible: the comments were made "in the context of arguing the appropriate *weight* that the jury should give to Ritchie's proposed mitigation related to his difficult and abusive childhood where the record also showed that Ritchie had been able to 'pull himself up out of [his] situation' in Jamaica by immigrating to the United States."

Ritchie presented video evidence of individuals who were interviewed as a presentation of mitigation. The prosecutor argued that none of them were subjected to cross-examination and queried what they might have said had they been cross-examined. This was not improper speculation or bolstering. The prosecutor was viewed as accurately stating that they had not been subject to cross-examination.

And, the argument about not knowing the "possible biases or motives" they may have had was supported by the evidence in the penalty phase, "namely the testimony of a witness who suggested that the people who were interviewed for the video may have been motivated by Ritchie's father's status in their community."

When summing up the strength of the aggravators, the prosecutor stated that the aggravating testimony was "the kind of evidence that would support that decision [death sentence]and give you the firm belief and knowledge that it's the true and just verdict in this case. . . ." This was not an improper argument that a vote for life would be "irresponsible and a violation of the juror's lawful duty." "Rather, after explaining why the aggravation was sufficient to support a recommendation of death and why the aggravation outweighed the mitigation, the above comments constituted the prosecutor's argument as to why the jury should determine that the death penalty was an appropriate sentence."

Finally, the Court addressed the cumulative error argument, addressing it under the fundamental error standard of review, as none of the comments were the subject of proper objections for preservation purposes. The Court emphasized the proper jury instructions on the aggravators and the State's proof of "substantial aggravation, including the HAC factor. The mitigation was deemed to have been minimal.

Facial challenges to the constitutionality of the admission of victim impact evidence were rejected on the basis of prior holdings of the Court. In an as-applied challenge, the victim's mother's testimony was found to have exceeded what was permissible, when she concluded her testimony with the reading of a verse from the Bible. Here, too, there was no objection and the impermissible testimony did not constitute fundamental error. It was a small portion of otherwise permissible victim impact evidence." It was not a feature of the penalty phase and the prosecutor did not reference it in closing argument.

As to the mitigation video presented by Ritchie, he challenged the trial court's redactions of certain audio and video portions based on a lack of relevancy. This was within the trial court's discretion. The State presented a rebuttal witness, a native of Jamaica who immigrated to the United States, and testified "about how community leaders live and are viewed in the area." This was an apparent reference to the status of Ritchie's father in Jamaica. No error was found, as the testimony "was appropriately limited to either the specific or general matters with which she was familiar."

There are multiple separate opinions, consisting of concurrences, partial concurrences, a concurrence in result, and a partial dissent. The dissent found the cumulative improper comments warranted a new sentencing hearing.

Eleventh Circuit Court of Appeals

United States v. Jackson, 21-13963 (June 10, 2022)

Addressing an issue under the Armed Career Criminals Act (ACCA), the Court held "that due process fair-notice considerations require us to apply the version of the Controlled Substance Act Schedules in place when the defendant committed the federal firearm-possession offense for which he is being sentenced."

The factual question was whether Jackson's Florida state convictions for sale of cocaine and possession with intent to sell cocaine qualified as ACCA predicates as "serious drug offenses." The Florida statutory offense at the time of his convictions, defined cocaine by referencing section 102 of the Controlled Substances Act, 21 U.S.C. s. 802. At that time, the definition of cocaine in the Controlled Substances Act did not include ioflupane.

The Eleventh Circuit first held that the language of section 802 at the time of the offenses was controlling. Otherwise, "an ordinary person would receive *no notice* . . . that her conduct that falls outside the statute's parameters brings potential criminal consequences." Second, while ioflupane was once included in the CSA schedule, it was removed prior to Jackson's offenses, because it has "value in potentially diagnosing Parkinson's Disease." Third, at the times of the cocaine-related prior convictions, section 893.13, Florida Statutes, "criminalized categorically included activity involving ioflupane."

When the state statute provides alternative means of committing an offense, for purposes of the ACCA, the federal court can consult limited documents to identify the "controlled substance" element for which the offender was convicted. Florida's own state law Schedule II of controlled substances, included ioflupane I 123 until 2017. Thus, at the time of Jackson's offenses, in 1998 and 2004, it remained a possibility that he was convicted for cocaine offenses including ioflupane, which was not included in the Controlled Substances Act (federal) at that time.

Looking to prior decisions of the Eleventh Circuit and United States Supreme Court, the Eleventh Circuit now concluded that the relevant question was "whether

the state offense's elements 'necessarily entail one of the types of conduct' identified in s. 924(e)(2)(A)(ii)" "to determine whether the state offense meets the definition of 'serious drug offense.'" Under that test, the prior state convictions did not satisfy the definition of serious drug offense at the time of the convictions.

First District Court of Appeal

Florida Department of Corrections v. Gould, 1D19-1149 (June 10, 2022)

In an en banc decision, the Court "review[ed] a trial court order granting a writ of mandamus that would require the department to consider McMillan Gould for incentive gain-time." Gould was in prison for a conviction for attempted sexual battery. DOC contended that the trial court erred in granting the writ "because the operative gain-time statute excludes from eligibility those convicted of violating the statute defining sexual battery as a crime." DOC argued that the statutory exclusion applied only to those convicted of an attempted violation of the sexual battery statute.

As a matter of appellate review, the Court first concluded that although DOC sought certiorari review, the trial court's order was reviewable by way of direct appeal. Gould initially sought mandamus in the trial court "to compel the department to exercise its discretion in the first place and consider him for incentive gain-time" based on his assertion of a clear statutory right and a legal duty on the part of DOC. "This type of complaint for mandamus seeks the traditional common-law relief discussed above, so it seeks the relief from the trial court *qua* a trial court, not an appellate court. The final order of the trial court granting Gould relief 'is reviewable by appeal.'"

On the merits, the Court addressed the construction of the sexual battery statute, s. 794.011, en banc, because language in a prior appellate court decision could not be reconciled with language in Florida's attempt statute, s. 777.04. After reviewing the relevant statutory provisions, the Court concluded: ". . . we can say without a doubt that when the Legislature states in section 944.275(4)(e) that incentive gain-time may not be given on a sentence imposed on an offense that 'is a violation of' section 794.011, it means a sentence imposed for the completed offense defined in that provision. Section 774.04 does not modify any criminal offense statutes. It is a standalone crime with its own punishment scheme, and a violation of the statute does not constitute a violation of any other criminal statutes."

Three judges dissented, both with respect to the decision to review the issue en banc, and as to the ultimate conclusion on the merits regarding the applicability of incentive gain-time to attempts.

Preston v. State, 1D21-0904 (June 8, 2022)

Eight years after a conviction for first-degree murder was affirmed on appeal, Preston sought the transcript of the grand jury proceedings, claiming that the prosecutor presented perjured testimony. The trial court denied the motion to obtain the transcripts because there was no postconviction motion pending at the time and the First District affirmed that order.

Postconviction discovery rests within the discretion of the trial court and is permitted only when relevant and there can be no relevancy when a postconviction motion is not pending in the trial court.

Pretell v. State, 1D21-1091 (June 8, 2022)

There is no entitlement to a 12-person jury for the charge of capital sexual battery.

Barnes v. State, 1D22-1663 (June 6, 2022)

A certiorari petition cannot be filed to seek review of an oral order of the trial court; there must be a signed, written and filed order.

Second District Court of Appeal

Hull v. State, 2D20-2772 (June 10, 2022)

In 2008, Hull was sentenced to probation after his guilty plea to lewd or lascivious battery of a minor. His sentence included the imposition of "mandatory court costs" (a public defender fee, filing fees, service charges, the cost of prosecution, and other administrative costs). None of those had been paid. Probation was revoked one year later and Hull was sentenced to four years in prison. Upon his release, he registered and reported as a sex offender. But, in 2019, he was charged with failing to report biannually as a sex offender under section 943.0435(14)(a), Florida Statutes.

Hull sought dismissal, arguing that he did not qualify as a "sexual offender" under that statute, "because he hadn't paid the costs assessed in his underlying case and thus hadn't been 'released from the sanction imposed.'" His argument was based on the earlier decision of State v. James, 298 So. 3d 90 (Fla. 2d DCA 2020), which held that the failure to pay a fine that was imposed as part of a sanction or lewd or lascivious molestation meant that the defendant had not be released from his sanction and therefore did not qualify as a sexual offender for registration and reporting purposes.

In this case, the Second District rejected Hull's arguments. The Court first noted that during the pendency of this appeal, section 943.0435 was amended because the legislature disagreed with James. The legislature, when enacting the amendment, expressly noted that James did not reflect legislative intent. The Second District held that the statutory amendment was applicable and that the Court's decision in James had been abrogated.

The Court noted that an expression of legislative intent to clarify a preexisting statute, enacted by a prior session of the legislature, raises potential retroactivity issues. Based on prior case law from the Second District, the Court concluded that this case did not involve retroactive application of a statutory amendment; rather, the Court was being asked to "revisit our prior construction of the preamendment version of the statute." Furthermore, the recent expression of legislative intent as to the prior version of the statute was an adequate basis upon which the Court could avoid the application of the doctrine of stare decisis. Next, the Court rejected Hull's argument that a current legislature could not "clarify" the intent of a prior legislature because the makeup of the legislature had changed. The cases upon which Hull relied were not applicable because "none of them examined legislative action taken in response to a judicial interpretation of the statute or other recent controversy regarding its interpretation."

One judge dissented on multiple grounds. The dissent concluded that the doctrine of stare decisis remained applicable with respect to the James decision. As to the "recent controversy" theory upon which the majority relied to support revisiting the interpretation of the statute, the dissent concluded that that rule was "merely retroactivity by another name."

Miles v. State, 2D21-1519 (June 10, 2022)

The Second District affirmed an order denying a motion for postconviction relief and rejected Miles' double jeopardy argument which alleged an impermissible increase in his sentence.

In 2005, Miles was convicted of aggravated battery causing great bodily harm. At the sentencing hearing, the judge orally pronounced the sentence of 25 years, but based on the use of a firearm, but did not refer to it as a mandatory minimum. The judge did not orally pronounce a mandatory minimum term and the sentence was affirmed on direct appeal in 2007. In 2019, Miles filed a Rule 3.800(a) motion to correct the sentence and the State conceded error, because the written sentence included the mandatory minimum term which was not orally pronounced. At a resentencing, Miles was sentenced to a 25-year mandatory minimum term.

On appeal, the Court first held that the claim of a discrepancy between the oral and written pronouncements of sentence could be raised in a Rule 3.800(a) motion, and that the oral pronouncement in 2005 was illegal because it did not include the mandatory minimum term. The failure to specify that the original 25 year term was a mandatory minimum term rendered that original sentence illegal.

Although the sentence was increased at this resentencing, double jeopardy principles did not bar it, because double jeopardy applies only in situations where the person previously sentenced had a reasonable expectation of finality in the sentence as imposed. Where the oral pronouncement was illegal, that expectation of finality did not exist. It did not matter whether the sentence was amended one day later, or twelve years later. "An illegal sentence was, is, and remains illegal until it is corrected. Mr. Miles' subjective expectations of finality do not alter this fact."

Phillips v. State, 2D21-1963 (June 10, 2022)

The Second District reversed an order denying, in part, a Rule 3.850 motion. Convictions for multiple DUI offenses were previously affirmed on direct appeal. The current Rule 3.850 motion alleged that counsel was ineffective for failing to move to "exclude testimony and evidence regarding Phillips' alleged use of K2, a synthetic cannabinoid."

The trial court, in denying this claim, referenced extensive portions of the trial testimony in detail, but did not attach the trial excerpts to the written order, because the facts referenced were set forth in Phillips' own motion, and it was a "safe

assumption [Phillips] would have presented those facts in the light most favorable to himself." Notwithstanding the logic of that proposition, the Second District held that it was still incumbent upon the trial court to attach records that purport to conclusively refute the claim.

As to a second claim of ineffective assistance, the trial court adopted the State's written response and, once again, did not attach the relevant portions of the transcript. While a trial court, under the relevant rules of procedure, is not precluded from incorporating the State's postconviction response when it provides the necessary record documents, the better practice is for the trial court to either attach the documents to its own order, or discuss the rationale for the order. In this case the trial court's adoption of the State's response did not suffice because the State appended only two pages of the closing argument at issue and did not include relevant testimony discussed in the closing argument.

Fourth District Court of Appeal

Abraham v. State, 4D19-2408 (June 8, 2022)

On direct appeal, the Fourth District reversed and remanded for resentencing as a result of scoresheet errors. The scoresheet erroneously included points for three offenses for which the defendant was neither charged nor convicted. Other points were erroneously included for a juvenile offense not found in the defendant's record.

The State conceded the existence of the scoring errors and the disputed issue was whether the errors were harmful and required resentencing. On direct appeal, scoresheet errors are harmless if the record "shows the trial judge would have imposed the same sentence in the absence of the scoresheet error." The trial court imposed a downward departure sentence - a sentence of 16.1 years which was near the bottom of the erroneously scored scoresheet (20.86 years) and slightly higher than the 15.8 year minimum sentence under a corrected scoresheet. The Fourth District could not tell with certainty whether the trial court would have imposed the same sentence with a corrected scoresheet and the case was therefore remanded for resentencing.

Tinker v. State, 4D19-3232 (June 8, 2022)

The defendant and his parents were charged with multiple offenses related to corporate real estate fraud, theft and the use of false identities. The Fourth District

reversed the defendant's convictions because a motion for judgment of acquittal should have been granted.

The defendant's arguments regarding the insufficiency of the evidence were not specific to the numerous offenses for which he was convicted. Rather, he presented a general challenge based upon the State's inability to prove that he had the requisite knowledge of the family scheme to support his convictions. The Fourth District addressed the several categories of evidence upon which the State's case and argument relied.

With respect to the criminal use of personal identification information and a deceased person's identification information, which required that the defendant act "knowingly," the State focused on the defendant's act of having signed certain deeds and a power of attorney. His name did not appear in the capacity of a notary, and "his signature was not certifying that he had satisfactory evidence that the person signing the document was in fact the person he or she purported to be." His signature appeared on seven deeds as either a witness or a signor on behalf of one of the family's corporate entities, for transfers of properties between those family corporate entities. However, "no one testified that the signatures . . . were fraudulent, as the signors were all Global Management representatives." As to one of the deeds, there was a suggestion of fraud related to the notarization, which was done by the defendant's mother. But, there was no evidence of the defendant's knowledge of any such fraud. And, the defendant signed that document in the capacity of a witness, and a witness's signature on a deed does not certify the correctness of the information contained in the deed.

Although the defendant was listed as a corporate officer for one of the family corporate entities, that was not sufficient proof of his knowledge of criminal activity. The Court rejected the State's argument that a presumption of knowledge derived from his status as a corporate officer. There was no evidence that the defendant had any corporate "responsibilities for or knowledge of fraudulent activity because of his position as corporate officer, or that his position was anything more than a name on paper."

The fact that the defendant lived at one of the properties that was fraudulently obtained was not evidence of criminal knowledge where he resided there with his parent, he was young, and he could simply have been a young person residing with his parents. The fact that he recorded some of the fraudulently obtained deeds did not serve as proof that he did so with knowledge or intent to defraud. The same held

true for his signature on an eviction notice, which "could have occurred in the regular course of business handling real properties."

Some of the convictions were for the unlawful filing of documents or records against real property. This required an intent to defraud and harass another. The reasons addressed above negated the intent required for these offenses as well, and the same reasons served to compel the conclusion that the evidence was insufficient as to grand theft.

Tinker v. State, 4D19-3233, 4D19-3235 (June 8, 2022)

These two appeals are from the parents of the defendant whose case is discussed above, and these appeals resulted in partial affirmances and partial reversals.

These two defendants argued that the trial court erred in permitting a detective to testify that signatures on certain documents were those of the wife and the defendants' son. The detective was not called as an expert witness. The detective had become familiar with the signatures during the course of the investigation, largely as a result of having seen the signatures on hundreds of checks. Where the detective acquired knowledge of the signatures as part of the investigation, and otherwise lacked personal knowledge of the signatures, the trial court erred in permitting the testimony from the detective.

The Fourth District rejected the State's argument that the error was harmless. "Defendants' theory of defense at trial was that an employee of one of the Companies had perpetrated the fraud, not the Defendants or the Son." The wife had allegedly signed as a notary, who is required to obtain satisfactory evidence of the identity of the signors of deeds. As the detective established a strong link of the wife to the elements of knowledge and intent, the evidentiary error was not harmless.

A portion of a spreadsheet, referenced as Column H, was permitted to go to the jury room, but it had not been admitted into evidence. It contained the prosecutor's notes on the case and was given to the jury by mistake. Questioning of the jurors, when this was discovered, disclosed that some of the jurors had seen this item and they had discussed it. The defendants' motion for mistrial should have been granted based on this. While much of the information on this document was otherwise admitted into evidence at trial through other sources, some of it was not, and some of the information on the document was prejudicial to the defendants. It referred to an employee of one of the corporate entities witnessing one of the

codefendants forging a signature. There was further evidence in this case that that codefendant was associated with the two defendants in this appeal, and the theory of the two defendants in this case was that that employee was the guilty party. Even if all of the material from Colum H had otherwise been presented to the jury during the trial, the mistrial should still have been granted. The presence of this document in the jury room enabled the State to "metaphorically sit in the jury room with the jurors, and 'explain' to them, point-by-point, count-by-count, the evidence which it believed supported Defendants' guilt, without the Defendants having an opportunity to respond.

Although a curative instruction was given as to this incident, it was not sufficient to cure the error. The main problem was not additional information that the jury might have received; rather, it was the additional argument that the State was able to present while the jurors were deliberating. The error in the case was compounded by the court's refusal to permit the Defendants to have full access to inspect the entirety of the document. The Defendants further argued that absent such full access to the document, they could not fully present their arguments regarding the insufficiency of a curative instruction.

The Fourth District rejected other claims raised on appeal without addressing them, and "affirmed" as to those arguments, but reversed the case for a new trial based on the issues addressed above.

Trottman v. State, 4D20-2717 (June 8, 2022)

A probationary sentence of 40 years in prison, followed by sex offender probation for life, was reversed because it exceeded the statutory maximum for the offense. Trottman's offense was governed by the 1991 sentencing statutes. At that time, for a life felony, for which he was convicted, was subject to a maximum sentence of life in prison, or, alternatively, a prison term not exceeding 40 years.

L.S. v. State, 4D21-3058 (June 8, 2022)

The Fourth District disagreed with the Appellant's argument that the trial court committed fundamental error "by failing to have a statutorily required discussion with her prior to determining and announcing the disposition."

The relevant statutory language, s. 995.433(4)(c), provides, in part, that prior to determining and announcing the disposition, the court "shall . . . [d]iscuss with the child his or her feelings about the offense committed, the harm caused to the

victim or others, and what penalty he or she should be required to pay for such transgression." In this case, no such discussions were held in three post-probation violation proceedings. The Fourth District concluded, however, that the quoted statute did not apply to post-VOP proceedings. The title to the statute refers to "Disposition hearings in delinquency cases." Other portions of the statute also made it clear that the statute was referencing only such disposition hearings in delinquency cases and not post-VOP hearings.

Conover v. State, 4D22-315 (June 8, 2022)

A petition for writ of mandamus could not be used as the vehicle to compel the trial court to rule in a particular way on a motion to dismiss based on stand-your-ground immunity. And, the appellate court could not, in the alternative, treat it as a certiorari petition, as that would be untimely, since more than 30 days expired after the filing of the written order prior to the filing of the petition in the appellate court.

Fifth District Court of Appeal

State v. Redhead, 5D21-1416 (June 10, 2022)

The trial court erred in granting a motion to suppress evidence seized in the search of a residence. The search was lawful under the good-faith exception to the exclusionary rule of United States v. Leon, 468 U.S. 897 (1984).

Although the information in the affidavit for the search warrant was based on a confidential informant who was found to be unreliable by the trial court, the officers could nevertheless rely on the warrant. While the informant's reliability was unproven at the time that he made disclosures to an agent regarding a drug transaction, the agent's affidavit provided independent verification of details provided by the CI, that Redhead would travel to a particular residence, quickly retrieve something, and then return to a different residence. Although the CI's disclosures preceded the agent's affidavit for the warrant by several months, the agent, during that intervening period, had documented ongoing activity at the two residences, on the part of known drug traffickers. As a result, the agents conducting the search were able to rely, in good faith, on the search warrant that had been issued.