

Case Law Update
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Supreme Court of the United States

[Ruan v. United States](#), 20-1410 (June 27, 2022)

18 U.S.C. s. 841 provides that it is unlawful “[e]xcept as authorized[,] . . . for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance” such as opioids. Registered doctors may prescribe these substances, but such prescriptions are limited by federal regulations, for a “legitimate medical purpose.” In this case, the Court held that “the statute’s ‘knowingly or intentionally’ *mens rea* applies to authorization. After a defendant produces evidence that he or she was authorized to dispense controlled substances, the Government must prove beyond a reasonable doubt that the defendant knew that he or she was acting in an unauthorized manner, or intended to do so.”

The Supreme Court did not address the issue of whether jury instructions given in the two cases at issue were sufficient to convey the requisite *mens rea* and the Court left that issue, as well as possible harmless error issues, for the lower courts to address on remand.

[Concepcion v. United States](#), 20-1650 (June 27, 2022)

“The First Step Act [of 2018] authorizes district courts to reduce the prison sentences of defendants convicted of certain offenses involving crack cocaine.” A reduce sentence may then be imposed “‘as if’ the revised penalties for crack cocaine enacted in the Fair Sentencing Act of 2010 were in effect at the time the offense was committed. The question in this case is whether a district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.” The Supreme Court held that the district court could consider such intervening changes.

As part of the motion for reduction of sentence, Concepcion asked the district court to consider that recent amendments to the Sentencing Guidelines had reduced his sentencing range; and that there was “postsentencing evidence of rehabilitation,” including completion of drug and vocational programming, along with a “stable

reentry plan.” The district court limited its consideration to only the “changes in law that the Fair Sentencing Act enacted.”

The Court’s conclusion that the subsequent changes should have been considered was based on its review of prior decisions in which “federal courts resentencing individuals whose sentences were vacated on appeal regularly consider evidence of rehabilitation developed after the initial sentencing.” Federal district courts, when conducting resentencing hearings, “have also considered unrelated Guidelines changes in their discretion.” Reviewing the text of the First Step Act, the Court found no evidence of Congress prohibiting district courts from considering the types of post-sentencing change at issue here.

[Oklahoma v. Castro-Huerta](#), 21-429 (June 29, 2022)

The Court addressed the jurisdictional question of whether the Federal Government has exclusive jurisdiction to prosecute “crimes committed by non-Indians against Indians in Indian country,” or whether the Federal Government and the State had concurrent jurisdiction for such prosecutions. The Court held that concurrent jurisdiction existed.

Castro-Huerta was charged, in a state court of Oklahoma, with child neglect; the victim, his step-daughter, was a Cherokee Indian. The crime was committed in eastern Oklahoma, an area which is recognized as Indian country. Castro-Huerta challenged the authority of the state court to entertain the prosecution, asserting that two federal laws preempted the state’s authority to prosecute.

The General Crimes Act provides: “Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.” “By its own terms, the Act does not preempt the State’s authority to prosecute non-Indians who commit crimes against Indians in Indian country. The text of the Act simply ‘extend[s]’ federal law to Indian country, leaving untouched the background principle of state jurisdiction over crimes committed within the State, including in Indian country.”

“Public Law 280 affirmatively grants certain States broad jurisdiction to prosecute state-law offenses committed by or against Indians in Indian country.” This law “does not preempt any preexisting or otherwise lawfully assumed jurisdiction that States possess to prosecute crimes in Indian country. Indeed, the

Court has already concluded as much: ‘Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest States of pre-existing and otherwise lawfully assumed jurisdiction.’”

Finally, the Bracker balancing test, which considers “tribal interests, federal interests, and state interests,” did not bar prosecution by the state. State prosecution would not infringe on tribal self-government because, as a general rule, “Indian tribes lack criminal jurisdiction to prosecute crimes committed by non-Indians such as Castro-Huerta, even when non-Indians commit crimes against Indians in Indian country.” And, state prosecution would supplement, not supplant, federal authority, as the state’s jurisdiction would be concurrent with federal jurisdiction. The state also “has a strong sovereign interest ensuring public safety and criminal justice within its territory, and in protecting all crime victims.”

Supreme Court of Florida

[Velazco v. State](#), SC20-506 (June 30, 2022)

The Supreme Court held that dual convictions for driving under the influence causing damage to property, and driving under the influence causing serious bodily injury to a person, under section 316.193(3)(c), Florida Statutes, “are degree variants of the same criminal offense so that double jeopardy is violated.” The incident from which Velazco’s convictions arose resulted in both damage to victim Rodas’s vehicle and serious bodily injury to Rodas.

Although the two offenses had different elements under Blockburger analysis, they were degree-variants of the same offense. Both offenses are located in the same DUI statute. “The statutory language and framework of the DUI statute evinces a degree relationship. The various offenses included in the statute reflected “varying penalties for certain aggravating conduct.” The elements for the two offenses contained “nearly identical elements,” with the sole difference being property damage as opposed to injury to a person.

[Thach v. State](#), SC20-1656 (June 30, 2022)

The Supreme Court addressed the question of whether “midtrial amendments to a charging document that alter the elements of a criminal offense are per se prejudicial.” The Court held “that any such amendments should be assessed on a case-by-case basis to determine, based on the totality of the circumstances, if they prejudice the substantial rights of the defendant.”

In this case, a second amended information charged “three counts of capital sexual battery, nine counts of sexual battery, and three counts of lewd or lascivious molestation,” all of which were committed against the defendant’s three stepdaughters.

At trial, the three stepdaughters testified with respect to two of the capital sexual battery charges and two sexual battery charges, but the testimony as to these did not establish the statutory element of penetration or union with the victim’s body part. When Thach moved for a judgment of acquittal, the State moved to amend the four counts to allege lewd or lascivious molestation.

Much of the Supreme Court’s opinion analyzes prior decisions to explain why the rule of per se prejudice was not applicable. Finding a lack of prejudice based on the facts of the case, the Supreme Court adopted the findings of the First District, in its prior decision in the case, emphasizing that the defendant’s “trial tactics on these counts never suggested that the stepdaughters misinterpreted Appellant’s touching, or that he did not conduct those acts in a sensual manner. Appellant cross-examined each victim, knowing that he was charged with multiple counts, including other lewd or lascivious acts, without questioning how he touched them. Instead, Appellants’ defensive posture was that his victims’ allegation were all fabricated.” Additionally, the Supreme Court noted that even after the amendment to the information was permitted after the motion for judgment of acquittal, the defense did not seek to recall witnesses for additional cross-examination; nor did defense counsel request a continuance. Rather, the defense proceeded to closing argument and reasserted the same defense as referenced in opening argument – that the charges were fabrications.

[Jackson v. State](#), SC19-1624 (June 30, 2022)

The Supreme Court affirmed the denial of a Rule 3.851 motion and denied a habeas corpus petition alleging ineffective assistance of appellate counsel.

Trial counsel was not ineffective for failing to challenge the State’s fingerprint evidence. “Trial counsel conceded during opening statement that the sink fingerprint was Jackson’s but later called Royal who indicated that the print had no value. Though the concession might be at odds to some extent with portions of Royal’s testimony, Jackson has cited no caselaw which holds counsel deficient merely for presenting alternative theories to the jury.”

Defense counsel also did not object to the prosecutor's criticism of Royal, the police forensic analyst the defense had presented, as being "old school." Jackson "has not demonstrated that counsel lacked a reasonable strategic reason for not objecting. Notably, as part of the comments on Royal, the prosecutor praised Royal in certain respects. Thus, viewing the comments in their entirety, counsel may have determined that the negative aspects were not so unfavorable as to warrant an objection."

A claim that counsel were ineffective for giving Jackson conflicting advice was unpreserved, as it was not asserted in the trial court, but was also without merit, as "Jackson has supplied no authority requiring all attorneys on a defense team to be in agreement on the *defendant's* decision to testify." Jackson was provided "sensible views on the benefits and drawbacks of testifying – giving Jackson the benefit of both perspectives but leaving the ultimate decision to him."

Overcalculating Jackson's prior felony convictions – five as opposed to four – resulting in Jackson erroneously testifying that he had five, was an error by counsel, but not a serious one and was deemed "not significant" for impeachment purposes.

A claim of ineffective assistance of counsel was rejected, after an evidentiary hearing, based on a reasonable strategic decision of counsel to avoid highlighting the fact that the defendant was serving a lengthy sentence for a serious crime. A claim that counsel inadequately prepared a defense witness prior to her testimony, by spending only 15 minutes with her, was rejected because her trial testimony involved "a straightforward account as to Jackson's whereabouts during the relevant time frame," and Jackson did not identify any additional testimony that would have been elicited with further preparation. And, while defense counsel could probably have elicited more ameliorating facts regarding this witness's prior bad-check conviction, had counsel done so, the State, on re-cross, would have been able to elicit and emphasize the elements of the crime, including the mens rea of intentional dishonesty.

Counsel was not ineffective for failing to seek dismissal of the murder charge based on prosecutorial delay. The Court addressed the balancing test that it had previously adopted in *Rogers v. State*, 511 So. 2d 526 (Fla. 1987), for the purpose of determining whether preindictment delay violated due process. Noting that the test had been based on a federal Fifth Circuit decision, which the Fifth Circuit had subsequently abandoned, the Florida Supreme Court likewise abandoned that test. Adopting the standard now required by the majority of federal circuits, the Supreme

Court held “that a due process claim for preindictment delay requires a showing of substantial prejudice to the defendant and bad faith on the part of the State.” In this case, there was no showing of bad faith on the part of the State, and absent such bad faith, there was no due process violation. There had been a four-year delay between the murder and the indictment.

The claim that defense counsel were ineffective in challenging DNA evidence was rejected based on prejudice analysis, in large part because of the other evidence of guilt, including a bloody fingerprint on the kitchen sink in the home where the crime was committed. Jackson also lied to a detective about not knowing the victim and falsely claimed he had never been in her home, thus evincing a guilty mind. The victim’s vehicle was also found near Jackson’s residence several weeks after the murder.

Claims of ineffective assistance of appellate counsel, for failing to argue that two comments, for which there were no objections, constituted fundamental error, were rejected. The prosecutor’s reference to the defendant’s fingerprint being on the victim’s body was erroneous; it was on the kitchen sink. The statement, however, “was brief and the only occasion where the prosecutor conflated the fingerprint and DNA evidence.” It was viewed as a “slip of the tongue.”

A comment that there were two sides to every story, as defense counsel had indicated in opening argument, but that “there can be only one truth,” and that this case was the equivalent of a blow-out in a basketball game, was not impermissible, as the prosecutor “was merely giving his view of the strength of the State’s case.” It was also an “invited response,” referencing the same subject previously addressed by defense counsel, in defense counsel’s closing argument.

Eleventh Circuit Court of Appeals

[Riolo v. United States](#), 20-12206 (June 29, 2022)

The Eleventh Circuit affirmed the denial of a motion to vacate under 28 U.S.C. s. 2255.

Riolo argued that counsel was ineffective for failing to review provisions of a plea agreement with him, for failing to review the factual proffer with him prior to the plea hearing, for failing to explain to him the probation officer’s role in sentencing, and for failing to explain to him that there was a binding agreement with the government regarding the offense level and guidelines range. The district court

conducted an evidentiary hearing, and the arguments on appeal largely contended that the district court erred in making its factual determinations after hearing the evidence. The Eleventh Circuit rejected these argument, viewing this as a case of conflicting evidence between Riolo and his former counsel, with the district court crediting the testimony of counsel.

One part of the claim focused on defense counsel’s miscalculation of the guidelines range, underestimating it by more than 100 months. Although this was a substantial underestimate by counsel, an experienced attorney, the Eleventh Circuit held that counsel was not deficient. Counsel had also warned the defendant that “the district court could impose an additional four-point enhancement.” And, although counsel failed to anticipate the application of a second four-point enhancement, counsel had concluded that it had no application “to the defendant’s situation and no authoritative decision offered guidance to the contrary.” The reasonableness of counsel’s representation was “underscored by the fact that the government independently arrived at the same guideline calculation.” Counsel further objected to the probation office’s application of the enhancement at issue.

First District Court of Appeal

[Rhody v. McNeil](#), 1D22-551 (June 29, 2022)

Pursuant to a local judicial administrative order, Rhody was screened for mental health problems prior to the setting of bond. At the first appearance, she was held pending the screening. The screening had been ordered by the judge, who noted potential mental health issues while Rhody was in court. When the hearing resumed the next day, Rhody was released on her own recognizance. The State subsequently dropped the charges. In between the two hearings, Rhody filed this habeas corpus petition, which she subsequently sought to dismiss as moot, but the First District ordered briefing on the issue of mootness and subsequently ordered the State to respond to the merits of the petition.

The First District concluded that an exception to mootness was applicable. The Court had encountered several of these pre-bond mental health screenings, and due to the quickness with which the screenings are conducted, issues regarding them are both likely to be repetitious in other cases and likely to evade review if they are dismissed as moot after the screening is completed and bond or release are set.

Based on the Florida Supreme Court’s recent opinion in Thourtman v. Junior, which addressed the failure to make requisite Arthur hearing findings at a first

appearance, the First District held that the trial court, exercising its discretion, on the basis of in-court erratic behavior indicative of mental health problems, could defer ruling on bail pending the result of the mental health screening. There was no “constitutional right to set pretrial release conditions at the first appearance.”

[Choute v. State](#), 1D22-0566 (June 29, 2022)

The First District granted a petition for writ of prohibition, disqualifying a judge from presiding over the case, because the judge had been the prosecutor in another case against Choute about 15 years earlier. The State conceded in the First District that the petition should be granted. The trial court had denied the motion for disqualification finding that it was untimely. The First District disagreed, but facts regarding the timeliness issue are not set forth in the opinion.

[Coley v. State](#), 1D22-0686 (June 29, 2022)

The First District dismissed this appeal, noting that as a general rule, interlocutory appeals are generally not authorized for defendants in criminal cases.

[Nilio v. State](#), 1D22-0940 (June 29, 2022)

The trial court summarily denied a postconviction motion and simultaneously issued an order directing the defendant to show cause why sanctions should not be imposed for a frivolous pleading. As a result of the pending order regarding sanctions, the trial court characterized the order denying the postconviction motion as nonfinal and nonappealable. That was erroneous. With respect to the postconviction proceeding, the order was final, as no further judicial labor remained.

Second District Court of Appeal

[Williams v. State](#), 2D21-1619 (July 1, 2022)

In an appeal from the denial of several motions to correct illegal sentence, the Second District agreed that the defendant’s sentence for aggravated battery, causing great bodily harm, was erroneously reclassified to a higher degree based on the possession, use or display of a weapon.

The defendant was jointly charged in the count at issue with two codefendants, but the information did not allege which of the defendants possessed or used a weapon. The three were tried together, and the jury verdict found the defendant

guilty as charged. Actual possession of the weapon is required for reclassification. Based on the language in the information, in a joint trial where the verdict was guilty as charged, the jury did not make a clear finding that Williams possessed or used a weapon.

Although such an error is subject to harmless error analysis, based on the evidence at trial, the Second District could not find that the error was harmless. There was testimony that Williams hit one of the victims with a metal bar. There was conflict, however, as to the type of weapon that he possessed, whether he was an active participant, or whether he was the lookout. He, himself, testified that the other codefendants used weapons, denying that he had one, and denying any involvement other than that of an onlooker.

[Youngman v. State](#), 2D21-2472 (July 1, 2022)

The Second District affirmed convictions related to child pornography, finding that a motion to suppress evidence was properly denied. The defendant “lacked a reasonable expectation of privacy in the alphanumeric identification codes unique to each file he shared and otherwise made available to the public over a peer-to-peer file sharing network.”

The Sheriff’s Office used a “software program, Torrential Downpour, to scour BitTorrent’s astronomical amount of shared content.” Torrential Downpour “searches for the ‘hash values’ of known child pornographic content.” “A ‘hash value’ is a thirty-two-digit alphanumeric code, a ‘unique digital fingerprint’ for each piece of digital media; no two pieces have the same value.” “To facilitate file searching among users, BitTorrent users manually search by hash value for a particular file.” “Importantly, Torrential Downpour does not allow law enforcement to access a BitTorrent user’s hard drive, or the files stored thereon, only the hash values shared by the user on the BitTorrent network.”

The defendant “installed BitTorrent and shared his computer’s selected content with the public. Through its use of Torrential Downpour, PCSO identified two hash values for known child pornography shared from a device associated with Mr. Youngman’s IP address.” Torrential Downpour then “asked” the defendant’s computer if it still had “the media associated with those hash values; his computer automatically responded in the affirmative.” Law enforcement then obtained a warrant for the defendant’s electronic devices and the ensuing search yielded numerous files containing child pornography.

Those who share files over a peer-to-peer network do not have a reasonable expectation of privacy in those files and thus have no Fourth Amendment protection. The Sheriff’s Office searched only “shared publicly available files.”

Third District Court of Appeal

[J.T.B. v. State, et al.](#), 3D21-0577, et al. (June 29, 2022)

In several consolidated appeals, the Third District addressed the use of Zoom for juvenile adjudicatory hearings, over an objection by the juvenile. In these cases, the Court held that “the trial court was required to render case-specific findings of necessity before ordering delinquency adjudicatory hearings to proceed via a videoconferencing platform.”

The objections to witnesses appearing remotely were denied on the basis of the ongoing Covid-19 pandemic and the threat to public health. The Court’s holding was based on an analysis of Confrontation Clause decisions of the United States Supreme Court. Although the Confrontation Clause applies to criminal cases, and juvenile delinquency adjudicatory proceedings are not criminal cases, the same protection was extended to juvenile proceedings through the Due Process Clause.

The lower court had relied on an administrative order of the court. However, “the notion that the language of the administrative order was sufficient to dispel constitutional concerns is unavailing. It is axiomatic that the trial court is charged with applying procedural rules in a manner consistent with due process. Further, while the administrative order presupposed the continuation of the public health crisis, . . . , this type of generalized presumption cannot serve as a substitute for case-specific findings of necessity.”

[M.D. V. State](#), 3D21-1147 (June 29, 2022)

In a separate opinion, the Third District came to the same conclusion as in [J.T.D.](#).

Fifth District Court of Appeal

[Gutierrez v. State](#), 5D21-3048 (July 1, 2022)

The summary denial of a Rule 3.850 motion was reversed for further proceedings, because the lower court’s order failed to attach records that

conclusively refuted the claims. The motion alleged that trial counsel was ineffective for failing to impeach witnesses, the victim and one of his brothers, with evidence of their prior criminal convictions. The defense was based on “the alleged unreliability of the identification testimony and given the limited nature of the trial excerpts attached to the postconviction court’s order, we cannot agree that Appellant’s claims were conclusively refuted.”

[Reyes v. State](#), 5D22-33 (July 1, 2022)

The summary denial of a Rule 3.850 motion was reversed for further proceedings as to one of its claims.

During the trial proceedings, the trial court conducted a colloquy with the defendant regarding counsel’s decision not to cross-examine the alleged victim for strategic decisions. At that time, the defendant expressed agreement with counsel. The court did not inquire into counsel’s rationale. In the 3.850 motion, Reyes alleged that he agreed with counsel only because counsel “incorrectly assured him that ‘nothing of substance could be gained by cross-examining the alleged victim.’” Reyes argued in the 3.850 motion that inconsistencies could have been established between the alleged victim’s in-court testimony and prior statements to law enforcement.

The lower court’s rejection of the claim was based solely on the defendant’s agreement with counsel during the colloquy at trial. The limited record before the appellate court, however, did not enable the Court to determine whether counsel’s decision was reasonable.