

Case Law Update  
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First district Court of Appeal

[Ford v. State](#), 1D20-3350 (Oct. 19, 2022)

The First District affirmed convictions for first-degree murder and attempted first-degree murder.

The trial court did not abuse its discretion in refusing a requested jury instruction on duress. Ford argued that he committed the underlying felony – robbery – for the felony-murder charge, under duress. He argued that “there was evidence to support the duress instruction because he had testified that Goshay [coperpetrator who testified for the State] was waving his gun around and demanding that Ford go get the drugs. Ford contends that this evidence showed he had no choice but to retrieve the container of drugs and deliver it to Goshay.”

“His contention that he was apprehensive in the presence of Goshay’s behavior and that he went to get the drugs only in response to that behavior was inconsistent with the other evidence presented at trial, including his own prior admissions.” There was evidence that he planned the robbery in advance. He spoke, in communications recorded by a wired informant, about “hitting them,” the victims of the robbery, for drugs. And, even if his own version of events were treated as true – i.e., the danger from Goshay’s waving of the gun – that “did not demonstrate that Ford had to retrieve the drugs to avoid any danger from Goshay.”

A claim that the State’s evidence of gang affiliations was unduly prejudicial “because the jurors likely associated his gang membership with criminal offenses,” was not addressed, as it was not preserved for appellate review. Although counsel objected to this evidence, “counsel failed to state a specific legal basis for the objection. This was not enough to preserve Ford’s contention that the testimony’s risk of unfair prejudice outweighed its probative value.” The First District alternatively noted that even a proper objection would not have resulted in reversible error, as Ford’s counsel had previously brought up the issue of gang membership when cross-examining other prosecution witnesses, and the State elicited the testimony of Ford’s membership in response to that.

A claim that counsel was ineffective for failing to object “to the jury’s access to portions of the wire recording in which he discussed his involvement in other, unrelated offenses,” was not addressed on direct appeal, because a claim of ineffective assistance “may be raised on direct appeal only ‘in the context of a fundamental error argument.’” The only viable issue on direct appeal is whether the trial court erred, not whether counsel erred. The Court further noted that “even if counsel should have made that request, there was no fundamental error in the trial court’s failure to step in on its own.”

[Young v. State](#), 1D21-633 (Oct. 19, 2022)

The First District reversed as to the imposition of certain costs in the sentence. There was no evidence to support the assessment of \$1,845 in costs for transportation, payable to the Sheriff, and Young did not affirmatively agree to pay that amount. On remand, the State was permitted to submit evidence to support this assessment.

[Youngblood v. State](#), 1D21-1430 (Oct. 19, 2022)

The First District affirmed a conviction for sexual battery on a child. Evidence of prior bad acts was properly admitted. “Witnesses testified at a pretrial hearing that when they were young girls between the ages of 6 to 8 years old, Appellant abused them much like his sexual battery of the 6-year-old female victim of the charged offense.” Factual details regarding the similarities of the offenses are not included in the opinion. This evidence did not become a central feature of the trial. The testimony of these witnesses “was short.” Brief references were made in opening and closing arguments, and the jury was “repeatedly instructed as to the proper use of the collateral crimes evidence.”

[Scott v. State](#), 1D21-2842 (Oct. 19, 2022)

The First District affirmed convictions and sentences for child abuse and the use of a two-way communication device to facilitate a felony. The convictions were pursuant to a plea. The sole issue on appeal was whether the court erred in considering lack of remorse during sentencing. The issue was not raised in the trial court and was reviewed under the fundamental error standard. The “trial court twice stated that Appellant’s testimony showed a failure to take responsibility for what the objective evidence, including Appellant’s own texts and pictures, established that Appellant had done.” These was neither error nor fundamental error, in light of the Florida Supreme Court’s decision in Davis v. State, 332 So. 3d 970 (Fla. 2021),

which held that the failure to accept responsibility or remorse can be considered by the sentencing judge once the defendant voluntarily allocutes at sentencing.

### Second District Court of Appeal

[Szewczyk v. State](#), 2D21-10 (Oct. 21, 2022)

The Second District issued a new opinion on rehearing in this case. The defendant argued that trial counsel was ineffective for failing to file a motion to suppress contraband found during a warrantless search of her home. Although the defendant was on probation at the time, the “terms of her probation did not include warrantless searches of her home.”

The trial court found that reasonable suspicion did not exist to believe that the defendant was engaged in criminal activity. Both the trial and appellate courts concluded that prejudice was not established. While one piece of evidence found during the search “was heavily relied upon in the State’s case,” three codefendants testified that the defendant “actively participated in obtaining fraudulent prescriptions and trafficking in cocaine,” and the defendant testified that “she and a codefendant had an agreement whereby she would receive oxycodone in exchange for finding a pharmacy that would fill a fraudulent prescription for the codefendant and that she had inserted a codefendant’s name on a prescription that had already been written and signed. This testimony supports the convictions without consideration of the evidence obtained in the warrantless search.”

[Conley v. State](#), 2D22-1807 (Oct. 19, 2022)

A habeas corpus petition challenging placement in close management by the Department of Corrections was erroneously dismissed by the trial court. The appellate court found, contrary to the trial court, that this petition did not present either the same or a similar claim to that which was presented in a prior petition.

### Third District Court of Appeal

[Ruiz v. State](#), 3D22-257 (Oct. 19, 2022)

In 2002, Ruiz entered into a probation plea agreement, pleading guilty to the offense of lewd and lascivious molestation. The agreement did not provide for designation as a sexual predator. Twenty years later the State sought to have Ruiz declared a sexual predator. Ruiz acknowledged that the Supreme Court, in State v.

McKenzie, 331 So. 3d 666 (Fla. 2021), held that jurisdiction existed for such a designation even though the defendant was not designated a sexual predator at the time of sentencing and had completed his sentence. Rather, Ruiz asserted the defense of res judicata, based on the failure to designate him during the original sentencing, which sentence was then affirmed on direct appeal.

The Third District rejected the res judicata argument. Although res judicata bars relitigation of claims “that could have been raised in the prior litigation,” res judicata “does not apply to litigation that constitutes a continuation of the original litigation.” It operates as a bar in “subsequent” actions. This case involved an effort to obtain the designation as part of a continuation of the original criminal case.

#### Fifth District Court of Appeal

[Floyd v. State](#), 5D21-2645 (Oct. 21, 2022)

The summary denial of one claim in a Rule 3.850 motion was reversed for further proceedings. The trial court found, without an evidentiary hearing, that counsel made a strategic decision “to keep certain portions of [Floyd’s] interrogation, at the cost of not redacting other portions of the same interrogation.” “Generally, an evidentiary hearing is required before concluding that certain action or inaction by trial counsel was the result of a strategic decision.”

The portions of the interrogation at issue included statements that “implicitly suggested the detectives’ belief that Floyd was guilty of the alleged offenses.” While those statements of the detectives could be understood by a jury as being techniques used to secure confessions, such evidence from an interrogation is troublesome when it occurs repeatedly. The trial court did not address “the prejudicial effect of the detective’s statements.” The case was remanded for consideration of the prejudice prong of the ineffective assistance claim.