Case Law Update
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First District Court of Appeal

Lane v. State, 1D21-3751 (Dec. 21, 2022)

In a brief opinion, without any facts, the First District cited prior Florida Supreme Court decisions for the "holding that any *Richardson* violation is harmless where no reasonable probability exists that the defense was materially hindered in its trial preparation."

Phillips v. State, 1D21-2431 (Dec. 20, 2022)

An assessment of investigative costs of $50 under section 938.27, Florida Statutes, was reversed "because no agency requested them."

Sinclair v. State, 1D22-25 (Dec. 20, 2022)

The First District affirmed the denial of a Rule 3.850 motion after an evidentiary hearing.

The motion set forth a claim of newly discovered evidence. A newly found witness, an inmate in the correctional facility with the defendant, provided an affidavit stating that the witness saw a different person commit the robbery for which the defendant was committed. The affidavit was prepared 18 years after the robbery.

At the evidentiary hearing, the witness "admitted that he was ten years of age when he witnessed the robbery." He further admitted that he was serving a life sentence for five felony convictions. He stated that he had been "with his cousin Murray when the robbery happened, but he did not know how old his cousin was or his cousin's last name." He said that the perpetrator, whom he identified as Robert Davis II, was "wearing black clothing, but he did not know if Mr. Davis was wearing all black or just a portion of his clothing was black." He did not know if Davis was wearing anything on is head, and he never saw Davis "get closer than five to six feet from the victim" When asked on redirect examination about his prior statement that he saw Davis take the money from the victim, he stated "that he no longer recalled those facts."

The trial court concluded that the new eyewitness was not credible and that his testimony was not of a nature that would probably have produced an acquittal at trial. The analysis of both the trial and appellate courts included a comparison of the witness's postconviction testimony to the strength of the trial testimony, which included identifications of the defendant by both the victim and a bank teller.

Fifth District Court of Appeal

Phipps v. State, 5D21-2221 (Dec. 22, 2022)

The Fifth District, in a one-paragraph opinion, affirmed convictions for drug offenses and found that any error in the the trial court overruling a hearsay objection to the weight of the controlled substance constituted harmless error "in light of the several unobjected-to statements offered by the investigating officer regarding the weight and nature of the controlled substances at issue.

One judge authored an opinion partially concurring and partially dissenting. The dissent concluded that the evidence at issue was improperly admitted and that the error was not harmless. The dissent notes that the State did not present the testimony of the FDLE chemists "who initially tested and weighed the drugs," and, instead, "called two analysts who simply read the weights off of the reports generated by the original chemists." The dissent further found that the testimony was not harmless because the "other evidence" in the case referred to "the presumed weight, not the measured weight," and "no quantitative analysis was provided."