

FACDL AMICUS CURIAE COMMITTEE



by
Benjamin
Eisenberg

The FACDL Amicus Curiae Committee's directive is to address significant legal matters that affect the practice of criminal defense lawyers throughout the state of Florida. Comprised primarily of appellate attorneys, the amicus curiae committee has in recent years grappled with legal issues ranging from the due process rights implicated by remote proceedings¹ to the constitutionality of pre-bond mental health screenings.² It is a great honor of mine to co-chair this committee for the upcoming year with **Jackie Perczek**.

Most recently, FACDL filed an amicus curiae brief in *Laurent Dorivert v. State*, 5D22-929, a case that is pending in the Fifth District Court of Appeal. The amicus brief — which was co-authored by former Florida Supreme Court Justice **Raoul Cantero** — addressed the difficulties defendants face when presenting the conclusions of a conviction integrity unit (“CIU”)

under the existing postconviction rules.

As background, a CIU is a unit within a state attorney's office tasked with conducting non-adversarial, fact-based investigations of past convictions for evidence of actual innocence or other factors showing a conviction may have been wrongful.³ Before 2017, Florida was the most populous state without at least one operating CIU. There are now five Florida judicial circuits that have CIUs: the 4th (Clay, Duval, and Nassau counties), the 9th (Orange and Osceola counties), the 13th (Hillsborough County), the 15th (Palm Beach County), and the 17th (Broward County). To date, investigations from Florida CIUs have resulted in six exonerations.

After nearly two years of re-investigating the physical and documentary evidence used at Mr. Dorivert's murder trial, the CIU for the Ninth Judicial Circuit's State Attorney's Office concluded that the evidence used to convict Mr. Dorivert — in particular, the DNA evidence — was so unreliable the State could no longer stand behind it, and that a re-trial would not obtain a conviction.⁴ Because there currently are no rules permitting the State itself to challenge a defendant's conviction, Mr. Dorivert with the help of the Innocence Project filed a postconviction motion

asserting newly discovered evidence based upon the CIU's findings. The State did not oppose the motion. However, the trial court denied it, characterizing the underlying evidence as “defense-driven” and not sufficiently material.

In its amicus curiae brief, FACDL argued that evidence uncovered during a CIU's investigation must be given deference and satisfy the requirements for newly discovered evidence. Where the State has conducted its own investigation and disavowed the evidence used to convict the defendant, FACDL asserted the overriding interest must be ensuring that the wrongfully convicted are exonerated.

All FACDL amicus curiae briefs — including the *Dorivert* brief — are available for members on our website. The amicus curiae committee looks forward to providing further support on matters of criminal and constitutional law. 🏠

¹ *Clarrington v. State*, 314 So. 3d 495 (Fla. 3d DCA 2020).

² *Jessica J. Yeary v. Chief Judge of the Second Judicial Circuit*, 1D21-2583.

³ §119.071(2)(q), Fla. Stat.

⁴ The CIU presented its materials to a three-person civilian board, which made independent findings calling into doubt Mr. Dorivert's conviction.

BENJAMIN EISENBERG is an appellate attorney at the Public Defender's Office for the Fifteenth Judicial Circuit in West Palm Beach. He is a 2012 graduate of the Florida State University College of Law and currently serves as the co-chair of FACDL's Amicus Curiae Committee