

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

MANDI JACKSON,

Appellant,

v.

Case No. 5D19-3411

STATE OF FLORIDA,

Appellee.

_____ /

Decision filed February 19, 2021

Appeal from the Circuit Court
for Seminole County,
Jessica J. Recksiedler, Judge.

H. Kyle Fletcher, Jr., of Fletcher Law Firm,
P.A., Oviedo, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

WALLIS and EDWARDS, JJ., concur.
LAMBERT, J., concurs with opinion.

Appellant, Mandi Jackson, appeals her convictions after trial for first-degree felony murder, burglary of a dwelling with an assault or battery, and robbery. I write briefly to address one of the two arguments that Appellant raises for reversal in this direct appeal: namely, that the trial court violated her Fifth Amendment right under the United States Constitution against self-incrimination when it granted the State's motion compelling her to orally produce the passcode to her cellphone so as to allow the State to access her phone to execute a previously-issued search warrant. The trial court, relying on the Second District Court of Appeal's decision in *State v. Stahl*, 206 So. 3d 124 (Fla. 2d DCA 2016), which, at the time, was the only appellate decision in the state courts of Florida that had directly addressed this issue, ordered the production of the passcode under what is known as the "foregone conclusion" exception to the Fifth Amendment privilege against self-incrimination.¹

In *Garcia v. State*, 302 So. 3d 1051, 1055–57 (Fla. 5th DCA 2020), a decision released after briefing in the instant appeal, we disagreed with the Second District Court's opinion in *Stahl*, holding instead that the compelled oral disclosure from a defendant of his or her cellphone's passcode was a testimonial communication protected by the Fifth Amendment and that the "foregone conclusion" exception to the Fifth Amendment did not

¹ The trial court correctly relied on *Stahl* because it was obligated to do so. See *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district [court] level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision." (quoting *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976))).

apply to compelled oral testimony.²

Despite our recent decision in *Garcia*, I concur in the affirmance of Appellant's convictions because she has not shown that any error in the trial court's ruling was harmful. Appellant's codefendant, who at an earlier separate trial was convicted of the same charges as Appellant, raised the identical issue in his direct appeal that is now being raised here: that the trial court's order compelling him to provide his cellphone passcode to the police violated his Fifth Amendment privilege against self-incrimination. See *Love v. State*, 293 So. 3d 1065, 1065–66 (Fla. 5th DCA 2020). We affirmed the codefendant's convictions, and, in specific response to this argument, wrote that while the issue was "interesting," there was "nothing to analyze" because "[the codefendant] does not identify anything that the police obtained from his phone nor how anything obtained from his phone was used for purposes of their investigation or as evidence at trial." *Id.*³

Much like her codefendant, Appellant in the present appeal has failed to identify any evidence that the police obtained from the cell phone or how it was used against her for purposes of their investigation or as evidence at trial. Accordingly, affirmance is appropriate.

² We certified conflict with *Stahl* and also certified two questions to the Florida Supreme Court as being of great public importance. *Garcia*, 302 So. 2d at 1057. The court has accepted jurisdiction of the case. *State v. Garcia*, No. SC20-1419, 2020 WL 7230441 (Fla. Dec. 8, 2020).

³ Our decision in *Garcia* where we addressed this issue was released after the opinion and mandate issued in *Love*.