CASE LAW SUMMARY
WEEK OF OCTOBER 24-28, 2022

APPEAL: State may appeal the dismissal of a criminal traffic citation. The State's right to appeal dismissal of formal charges is not limited to indictments or informations. State v. Erway, 2D21-1265 (10/28/22)

https://www.2dca.org/content/download/851721/opinion/211265_DC13_10282022_085404_i.pdf

TRAFFIC CITATION: A traffic citation is a formal charge despite being neither an indictment nor an information. When issued and served, a uniform traffic citation is the equivalent of an executed information for the purpose of initiating a prosecution. State v. Erway, 2D21-1265 (10/28/22)

https://www.2dca.org/content/download/851721/opinion/211265_DC13_10282022_085404_i.pdf

NVDL: One must have a driver's license to operate a self-propelled gasoline-powered mini-bike. State v. Erway, 2D21-1265 (10/28/22)

https://www.2dca.org/content/download/851721/opinion/211265_DC13_10282022_085404_i.pdf

MOTORIZED BICYCLE-DEFINITION: The term "motorized bicycle" refers only to a "bicycle propelled by a combination of human power and an electric helper motor." State v. Erway, 2D21-1265 (10/28/22)

https://www.2dca.org/content/download/851721/opinion/211265_DC13_10282022_085404_i.pdf

POST-CONVICTION RELIEF: The Strickland standard for postconviction relief based on ineffective assistance of counsel--but for counsel's errors, the defendant would not have pled guilty--has no logical application outside of the context of the entry of a plea. Counsel's failure to challenge the imposition of costs can serve as a basis for postconviction relief. Jackson v. State, 2D21-3827 (10/28/22)

https://www.2dca.org/content/download/851729/opinion/213827_DC08_10282022_085646_i.pdf

AUDIO RECORDING-ILLEGAL INTERCEPTION: Recorded phone call to a child victim of sexual abuse is lawful. By statute, a child under 18 years of age may intercept and record an oral communication if: the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child. §934.03(2)(k). State v. Trinidad, 5D21-3006 (10/28/22)

https://www.5dca.org/content/download/851708/opinion/213006_DC13_10282022_083128_i.pdf

EVIDENCE-IMPAIRMENT: Police officers and lay witnesses have long been permitted to testify as to their observations of a defendant's acts, conduct, and appearance, and also to give an opinion on the defendant's state of impairment based on those observations. Cardoso v. State, 5D22-1152 (10/28/22)

https://www.5dca.org/content/download/851710/opinion/221152_DC05_10282022_091117_i.pdf

APPEAL-JURISDICTION-CERTIORARI: District court of appeal lacks certiorari jurisdiction to review trial court's order compelling Defendant to provide the passcode to his phone pursuant to a searh warrant. For a district court to grant an interlocutory writ of certiorari, the petitioner must demonstrate that the contested order constitutes (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on postjudgment appeal. Although providing the passcode would injury the Defendant's case by providing evidence that the phone is his, any harm would be reparable on postjudgment appeal. State v. Garcia, SC20-1419 (10/27/22)

https://www.floridasupremecourt.org/content/download/851656/opinion/sc20-1419.pdf

PASSCODE-CELL PHONE: "[[T]his case may, if and when properly before us, pose questions we have not previously answered regarding the scope of the Fifth Amendment privilege against self-incrimination, or for which there was no clearly established law binding on the trial court. . .The district courts of appeal have reasoned to differing conclusions about whether disclosure of a smartphone passcode is testimonial. The courts of last resort in several states have disagreed about whether the compulsion of such disclosure in circumstances like these would violate a defendant's constitutional right against self incrimination." State v. Garcia, SC20-1419 (10/27/22)

https://www.floridasupremecourt.org/content/download/851656/opinion/sc20-1419.pdf

APPEAL-REVIEW-BREACH OF PLEA AGREEMENT: The standard

of review for an unpreserved claim the Government breached a plea agreement is for plain-error. Plain error occurs when (1) an error has occurred, (2) the error was plain, and (3) it affected the defendant's substantial rights, and if those prongs are met, appellate court has discretion to correct the error if it (4) seriously affected the fairness of the judicial proceedings. Defendant is not required to move to correct the error by post-conviction motion in the trial court. USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

APPEAL-REVIEW-BREACH OF PLEA AGREEMENT: "Normally, we review de novo whether the government has breached a plea agreement. But that's when the defendant has preserved the issue in the district court. . . In contrast, when, as here, the defendant did not object before the district court that the government breached a plea agreement, we review on direct appeal for plain error." USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

TESTY COURT: "Because the courts (including ours) have uniformly applied Puckett to require plain-error analysis on direct appeal whenever a defendant claims breach of the plea agreement but did not object in the district court, a reader might wonder why we are bothering to publish this opinion. After all, faithfully applying controlling Supreme Court (and our own) precedent seldom warrants publication. Here, though, our dissenting colleague has asked us to publish. And so we respect that request." USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

PLEA AGREEMENT-BREACH: Where Government breaches condition of plea agreement that it would not object to acceptance of responsibility guidelines reduction, Defendant is entitled to withdraw the plea. USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

PLEA AGREEMENT: A material promise by the government, which induces a defendant to plead guilty, binds the government to that promise. USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

PLEA AGREEMENT-BREACH: Government violates plea agreement for a acceptance of responsibility level reductions where it opposed the reduction based on Defendant's post-arrest, pre-plea conduct of which it was aware at the time of tendering the offer. USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

PLEA AGREEMENT-BREACH: Government breached the plea agreement by, after agreeing to recommend a guidelines sentence, it effectively arguing for a substantially higher sentence ("double or triple [the recommended sentence]" would have been more appropriate"). A promise to recommend a guidelines-range sentence is a material term of the plea agreement. "[T]here is no question that the government breached the agreement, and that is not acceptable. The government must do better." USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

APPEAL-REVIEW-BREACH OF PLEA AGREEMENT (DISSENT, J. TJOFLAT): "The problem with the Majority's analysis is that neither of the errors the Majority identifies on appeal was committed by the District Court. Absent a claim of district court error, plain error review cannot be conducted at all." USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

PLEA AGREEMENT-(DISSENT, J. TJOFLAT): "[T]he government has an affirmative, non-waivable obligation to ensure the district court at sentencing has a correct understanding of all information relevant to imposing a fair and just sentence under the guidelines and the §3553(a) sentencing factors. . .In other words, the government cannot promise to stand silent at sentencing or withhold evidence from the court. . .Any plea agreement that induces a defendant to plead guilty with ultra vires promises that contradict or lessen this obligation is likely to be involuntary because the government cannot keep its obligation. . . [T]he Government does not have a right to make an agreement to stand mute in the face of factual inaccuracies or to withhold relevant factual information from the court. Such an agreement not only violates a prosecutor's duty to the court but would result in sentences based upon incomplete facts or factual inaccuracies, a notion that is simply abhorrent to our legal system." USA v. Malone, No. 20-12744 (11th Cir. 10/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012744.pdf

EVIDENCE: Evidence was admissible showing that the Defendant's brother, who testified for the defendant and was facing separate criminal charges for his participation in a robbery along with other people who testified against the Defendant and were impeached on the fact of the pending charges in that robbery. The pending charges helpexplain why two of the three co-defendants are turning on the other, and so are relevant to show bias. Burney v. State, 1D21-1082 (10/26/22)

https://www.1dca.org/content/download/851609/opinion/211082_DC05_10262022_141145_i.pdf

APPEAL-PRESERVATION: In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved. J.D., a Child v. State, 1D21-3248 (10/26/22)

https://www.1dca.org/content/download/851613/opinion/213248_DC05_10262022_141920_i.pdf

SEARCH AND SEIZURE: Five officers, three with drawn handguns and one with a rifle pointing at a hotel door from near the pool, who loudly knocked on the door and announced themselves as police loudly knocked and announced themselves as the police, then either pulled him out or the room or allowed him to hesitantly exit it, and who then handcuffed the Defendant were not engagede in a peaceful consensual encounter. Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

SEARCH AND SEIZURE-KNOCK AND TALK: The key to the legitimacy of the knock-and-talk technique is the absence of coercive police conduct, including any express or implied assertion of authority to enter or authority to search. Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: "No reasonable person would feel unrestricted and free to leave upon opening his door to be confronted by multiple officers with firearms drawn and with a rifle trained at the room from a few dozen yards away. And Dydek was definitively not free to leave when the officers laid hands on him, hauled him down the hall, attempted to handcuff him, and smashed his face into the ground." Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Finding a firearm in one hotel room which had been occupied by a felon does not justify as an investigatory stop coercively removing the suspect from a different hotel room. Finding a gun in one room (which had been occupied by two people) establishes only a hunch that there is a gun in another room. "First, the officers had no more than a hunch that anyone had committed the crime of felon in possession of a firearm. . .Nor was there any reasonable suspicion that there was a felon possessing a firearm in the second room." Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Stepping outside one's hotel room for a minute or less is not reasonable suspicion of criminal activity. Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

RESISTING WITHOUT VIOLENCE: If officers detain an individual without lawful authority to do so, they are not acting in the lawful execution of their duties; therefore the individual's nonviolent effort to oppose or avoid the detention is not unlawful. Dydek v. State, 2D21-1275 (10/26/22)

https://www.2dca.org/content/download/851555/opinion/211275_DC13_10262022_083659_i.pdf

ZOOM: Due process considerations inherent in delinquency proceedings require case-specific findings of necessity to justify remote or hybrid trials. New trial is required where Judge appeared remotely with the Child and witnesses in the courtroom. P.J.S. v. State, 3D21-1729 (10/26/22)

https://www.3dca.flcourts.org/content/download/851579/opinion/211729_DC13_10262022_102024_i.pdf

ARGUMENT: In attempted murder case in which Defendant suggested that the crime was committed by a person whose ID was

found at the scene, State's argument that it could be fake or Mintz could have been dropped by the Defendant himself while perpetrating the crime is not tantamount to burden shifting. The comments were logical inferences of the evidence and in no way shifted the burden of proof. Mintz v. State, 3D21-1925 (10/26/22)

https://www.3dca.flcourts.org/content/download/851581/opinion/211925_DC05_10262022_102204_i.pdf

STRAW MAN-DEFINITION: A straw man argument is the logical fallacy of distorting an opposing position into an extreme version of itself, a tenuous and exaggerated counterargument that an advocate makes for the sole purpose of disproving it. Mintz v. State, 3D21-1925 (10/26/22)

https://www.3dca.flcourts.org/content/download/851581/opinion/211925_DC05_10262022_102204_i.pdf

APPEAL-PRESERVATION: The issue of an improper comment is preserved if the defendant makes a timely specific objection and moves for a mistrial. Mintz v. State, 3D21-1925 (10/26/22)

https://www.3dca.flcourts.org/content/download/851581/opinion/211925_DC05_10262022_102204_i.pdf

JUVENILE OFFENDER-LIFE SENTENCE: A juvenile offender is only entitled to Eighth Amendment relief if he or she is serving a life sentence or the functional equivalent of a life sentence. A forty-year sentence is not the functional equivalent of a life sentence. Jordan v. State, 3D22-1116 (10/26/22)

https://www.3dca.flcourts.org/content/download/851596/opinion/221116_DC05_10262022_104051_i.pdf

POST CONVICTION RELIEF: Counsel cannot be deemed ineffective for failing to file a meritless motion. Counsel was not ineffective for failing to file a motion to suppress a photo ID where the photo line up was properly administered. Michel v. State, 3D22-1373 (10/26/22)

https://www.3dca.flcourts.org/content/download/851599/opinion/221373_DC05_10262022_104804_i.pdf

JURY-SIX PERSON: A six-person jury does not violate the Sixth and Fourteenth Amendments to the United States Constitution. Guzman v. State, 4D22-148 (10/26/22)

https://www.4dca.org/content/download/851589/opinion/220148_DC05_10262022_100035_i.pdf

JURY-SIX PERSON (CONCURRING): Guzman has a credible argument that the original public meaning of the Sixth Amendment right to a "trial by an impartial jury" included the right to a 12-person jury. "Guzman's legal argument on jury composition presents a classic example of how the law navigates the shifting sands of constitutional analysis. If the United States Supreme Court revisits its earlier precedent, Florida criminal law." Ramos holds that a jury must be unanimous and, based on its originalist analysis, undercuts the functionalist underpinnings Williams, which allowed six-person juries. Guzman v. State, 4D22-148 (10/26/22)

https://www.4dca.org/content/download/851589/opinion/220148_DC05_10262022_100035_i.pdf

BEEP BEEP-QUOTATION: "So, like Wile E. Coyote momentarily suspended in midair after running off a cliff, Williams hovers in the legal ether. Guzman v. State, 4D22-148 (10/26/22)

https://www.4dca.org/content/download/851589/opinion/220148_DC05_10262022_100035_i.pdf

PSI: For a first-time felony offender, a PSI is required but may be waived. A defendant's on-the-record personal waiver of the right to a PSI is not required and a trial court's failure to obtain a personal waiver does not constitute fundamental error." The right to a PSI is not a fundamental, constitutional right, nor does it go to the heart of the adjudicatory process. But a Defendant does nor waive the right to a PSI simply because defense counsel had an opportunity to request a presentence investigation and did not do so. Defendant here waived a PSI because the trial court alerted defense counsel to Guzman's right to a PSI and defense counsel decided to move forward with sentencing without one. Defense counsel did not need to use the magic words "we waive a PSI." Guzman v. State, 4D22-148 (10/26/22)

https://www.4dca.org/content/download/851589/opinion/220148_DC05_10262022_100035_i.pdf