CASE LAW SUMMARY

FEBRUARY 2025

POSTCONVICTION RELIEF-DEATH PENALTY: Rule 3.851, which limits the filing of a motion for postconviction relief to within one year of the date the defendant's conviction and sentence become final in death penalty cases, absent certain narrow exceptions, applies to defendants under an active death warrant. All terms and conditions of direct appeal and collateral review are strictly enforced, including the application of procedural bars, to ensure that all claims of error are raised and resolved at the first opportunity. Ford v. State, SC2025-0110 (2/7/25)

https://supremecourt.flcourts.gov/content/download/2447001/opinion/Opinion_SC2025-0110.pdf

CRUEL AND/OR UNUSUAL PUNISHMENT: The conformity clause of Article I, §17 of the Florida Constitution, providing that Florida's prohibition against cruel or unusual punishment shall be construed in conformity with decisions of the U.S. Court's interpretation of the cruel and unusual clause of the Eighth Amendment means that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida. Ford v. State, SC2025-0110 (2/7/25)

https://supremecourt.flcourts.gov/content/download/2447001/opinion/Opinion_SC2025-0110.pdf

CRUEL OR UNUSUAL PUNISHMENT: Florida is precluded from interpreting its prohibition against cruel or unusual punishment to exempt individuals eighteen or more years old from execution on the basis of their age at the time of their crimes. Ford v. State, SC2025-0110 (2/7/25)

https://supremecourt.flcourts.gov/content/download/2447001/opinion/Opinion_SC2025-0110.pdf

DEATH PENALTY-UNANIMOUS VERDICT: Jury must unanimously agree to the existence of an aggravating circumstance necessary for the death penalty; it need not unanimously agree to death. Erlinger's holding that a jury must decide beyond a reasonable doubt whether ACCA predicate offenses occurred on different dates does not apply. Ford v. State, SC2025-0110 (2/7/25)

https://supremecourt.flcourts.gov/content/download/2447001/opinion/Opinion_SC2025-0110.pdf

DEATH PENALTY: Determinations of whether the aggravating factors are sufficient to justify the death penalty and whether those factors outweigh the mitigating circumstances is not subject to the beyond a reasonable doubt standard of proof. Ford v. State, SC2025-0110 (2/7/25)

https://supremecourt.flcourts.gov/content/download/2447001/opinion/Opinion_SC2025-0110.pdf

HUMAN SMUGGLING: The prohibition on human smuggling of aliens continues until the subjects arrive at their destination. State v. Padilla-Valladares, 5D2023-2201 (2/7/25)

https://5dca.flcourts.gov/content/download/2446963/opinion/Opinion_2023-2201.pdf

VOP: Court must set forth those specific conditions of probation that Defendant admits to violating and upon which the revocation and termination

of probation are based. Fetterly v. State, 5D2023-2296 (2/7/25)

https://5dca.flcourts.gov/content/download/2446964/opinion/Opinion_2023-2296.pdf

HABITUAL VIOLENT FELONY OFFENDER: Erlinger v. United States, 602 U.S. 821 (2024)--holding that a jury must decide beyond a reasonable doubt whether ACCA predicate offenses occurred on different dates–did not overrule Florida precedent about judges, not juries, making predicate findings for HVFO sentences. "We reject this argument because even if the HVFO sentence was rendered in error, the error is harmless on this record." Capra v. State, 5D2024-0090 (2/7/25)

https://5dca.flcourts.gov/content/download/2446967/opinion/Opinion_2024-0090.pdf

APPEAL-MOTION TO WITHDRAW PLEA: Where a notice of appeal is filed first, the trial court is divested of of jurisdiction to consider a motion to withdraw plea. Hickman v. State, 5D2024-2146 (2/7/25)

https://5dca.flcourts.gov/content/download/2446966/opinion/Opinion_2024-2146.pdf

RULES-AMENDMENT: Rules 1.070, 1.410, and 1.550 amended to remove the word "praecipe." In Re: Amendments to Florida Rules of Civil Procedure, No. SC2024-0774 (2/6/25)

https://supremecourt.flcourts.gov/content/download/2446888/opinion/Opinion_SC2024-0774.pdf

POSTCONVICTION RELIEF: Court may not summarily deny motion for postconviction relief without attaching relevant portions of the record. Citing the record numerous times is insufficient. Touchton-Williams v. State, 1D2023-1275 (2/5/25)

https://1dca.flcourts.gov/content/download/2446808/opinion/Opinion_2023-1275.pdf

JUDGMENT OF ACQUITTAL: Because direct evidence of intent is rare, and intent is usually proven through inference, a trial court should rarely, if ever, grant a motion for JOA on the issue of intent. Dorsey v. State, 1D2023-2113 (2/5/25)

https://1dca.flcourts.gov/content/download/2446812/opinion/Opinion_2023-2113.pdf

RESISTING-LAWFUL EXECUTION: Officer who had reasonable suspicion of criminal activity based on an anonymous tip and made observations matching the description was therefore engaged in the lawful execution of a legal duty. Dorsey v. State, 1D2023-2113 (2/5/25)

https://1dca.flcourts.gov/content/download/2446812/opinion/Opinion_2023-2113.pdf

POSTCONVICTION RELIEF: Defendant is not entitled to relief on an untimely and successive postconviction challenge to a trial court's subject matter jurisdiction based on a prosecutor's alleged failure to take the sworn testimony of a material witness before filing the charging document. Carsten v. State, 1D2024-0183 (2/5/25)

https://1dca.flcourts.gov/content/download/2446818/opinion/Opinion_2024-0183.pdf

IMMUNITY: Use immunity forbids testimony to be used against the witness in any criminal prosecution of the witness. Transactional immunity provides complete immunity from prosecution for the matter concerning which the testimony was elicited. Transactional immunity extends further, therefore, because it not only immunizes the witness for any use of his or her testimony or its fruits in a subsequent trial, but it also provides absolute immunity against future prosecution for the offense to which the question relates. State v. Perez, 3D23-1152 (2/5/25)

https://3dca.flcourts.gov/content/download/2446831/opinion/Opinion_2023-1152.pdf

MOTION FOR NEW TRIAL: Court shall grant a new trial only if new and material evidence is discovered which is of such a nature that it would probably produce an acquittal on retrial, which, if introduced at the trial would probably have changed the verdict or finding of the court, and which the defendant could not with reasonable diligence have discovered and produced at trial. Defendant-police officer convicted of battery on suspect–is not entitled to a new trial because the charges against the victim were later dropped. State v. Perez, 3D23-1152 (2/5/25)

https://3dca.flcourts.gov/content/download/2446831/opinion/Opinion_2023-1152.pdf

MOTION FOR NEW TRIAL: Generally, impeachment evidence does not justify a new trial, other than in certain limited circumstances. State v. Perez, 3D23-1152 (2/5/25)

https://3dca.flcourts.gov/content/download/2446831/opinion/Opinion_2023-1152.pdf

MOTION FOR NEW TRIAL: A new trial based on newly discovered evidence, even if it existed, that charges were dropped against the victim in retun for his testimony against officer would not justify a new trial where CCTV and body camera videos showing Defendant/Officer kicking and hitting handcuffed Victim on the floor and lifting him from the ground by his handcuffs and dropping him on his chin. State v. Perez, 3D23-1152 (2/5/25)

https://3dca.flcourts.gov/content/download/2446831/opinion/Opinion_2023-1152.pdf

BELATED APPEAL: If a petitioner seeking a belated appeal presents a facially sufficient petition consistent with the rule's requirements, the burden shifts to the State to specifically dispute the petitioner's allegations. If the State raises a good faith basis to dispute the petitioner's claims through affidavit or specific contrary allegations, the appellate court may order an evidentiary hearing in the trial court to determine the limited disputed issues of fact. Delgado v. State, 3D24-1925 (2/5/25)

https://3dca.flcourts.gov/content/download/2446847/opinion/Opinion_2024-1925.pdf

GAIN TIME: The authority to regulate gain time resides exclusively within the Department of Corrections. The burden falls upon the defendant to seek credit for this time pursuant to the appropriate administrative procedures. Parker v. State, 3D24-2057 (2/5/25)

https://3dca.flcourts.gov/content/download/2446865/opinion/Opinion_2024-2057.pdf

SENTENCING-CORRECTION: Where Defendant's conviction was scored as a Level 8–it should have been Level 7–Defendant is entitled to resentencing if the reviewing court cannot determine conclusively from the record that the trial court would have imposed the same sentence despite the erroneous scoresheet. Reid v. State, 4D2023-1954 (2/5/25)

https://4dca.flcourts.gov/content/download/2446804/opinion/Opinion_2023-1954.pdf

SENTENCING-DEPARTURE/VARIANCE: When a court determines that a guidelines sentence will not adequately further sentencing purposes and imposes a higher or lower sentence from the guidelines range, that's a variance. A departure, by contrast, is a term of art under the Guidelines and refers only to non-Guidelines sentences imposed under the framework set out in the Guidelines, including the departure provisions. USA v. Olson, No. 23-1193 (11th Cir 2/3/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311939.pdf

SENTENCING-DEPARTURE/VARIANCE: Advance notice to the parties is generally required for a departure but not for a variance. A primary indicator that the court departed is if it cited a specific guidelines departure provision in setting the defendant's sentence. If, instead, the court's rationale was based on §3553(a) factors and a determination that the guidelines range was inadequate, then that indicates a variance. USA v. Olson, No. 23-1193 (11th Cir 2/3/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311939.pdf

SENTENCING-DEPARTURE/VARIANCE: In some cases determining whether the court imposed a departure or variance may matter, but in others the lack of clarity, or even confusion about, which framework was being used won't matter. Where Court said, "I find the advisory guidelines range is not appropriate to the facts and circumstances of this case, and the sentence here, whether an upward departure or a variance," it doesn't matter. Plainly, that means the district court would have imposed the same sentence either way. USA v. Olson, No. 23-1193 (11th Cir 2/3/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311939.pdf

SENTENCING-SUNSTANTIVE REASONABLENESS-UPWARD VARIANCE: Court is free to weigh the §3553(a) factors as it sees fit. The weight to be assigned to any one factor falls squarely within the court's broad sentencing discretion. USA v. Olson, No. 23-1193 (11th Cir 2/3/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311939.pdf

FYI: 97.2% of federal criminal cases settled with a plea bargain in the fiscal year 2023. USA v. Olson, No. 23-1193 (11th Cir 2/3/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311939.pdf

JANUARY 2025

JUDGMENT OF ACQUITTAL-ELEMENT: Where Child is charged with robbery, Court may not find him guilty of the lesser offense of aggravated assault where the petition alleged that he carried deadly weapon, not that he assaulted the victim with a deadly weapon. Error is fundamental. J.M. v. State, 2D2022-3344 (1/31/25)

https://2dca.flcourts.gov/content/download/2446617/opinion/Opinion_2022-3344.pdf

FUNDAMENTAL ERROR: "It is a fundamental principle of due process that a defendant may not be convicted of a crime that has not been charged by the state; an error that directly results in such a conviction is by definition fundamental." J.M. v. State, 2D2022-3344 (1/31/25)

https://2dca.flcourts.gov/content/download/2446617/opinion/Opinion_2022-3344.pdf

SENTENCING-DOWNWARD DEPARTURE: In determining whether to depart from the sentencing guidelines, a trial court must engage in a two-step process: First, the court must determine whether it can depart, i.e., whether there is a valid legal ground and adequate factual support for that ground in the case pending before it (step 1). Second, it must determine whether it should depart, weighing the totality of the circumstances in the case, including aggravating and mitigating factors. Where it is unclear whether the court rejected Defendant's request for downward departure based upon an erroneous conclusion that it lacked the authority to depart, an insufficiency of the evidence presented, or the exercise of trial court's discretion not to depart, resentencing is required, either with or without a new sentencing hearing. Manyak v. State, 2D2023-1558 (1/31/25)

https://2dca.flcourts.gov/content/download/2446619/opinion/Opinion_2023-1558.pdf

COSTS PER CASE/COUNT: The minimum cost of prosecution is "per case," not per charge. Granison v. State, 5D2024-1690 (1/31/25)

https://5dca.flcourts.gov/content/download/2446613/opinion/Opinion_2024-1690.pdf

DEATH PENALTY: Court did not abuse its discretion by denying the Defendant's motion to withdraw his jury waiver following his penalty phase as filed in bad faith for the purpose of the delay. Caylor v. State, SC2023-0338 (1/30/25)

https://supremecourt.flcourts.gov/content/download/2446581/opinion/Opinion_SC2023-0338.pdf

DEATH PENALTY: Prove beyond a reasonable doubt is not required in determining the relative weight of the aggravators and the mitigators in a death penalty case. Sentencing determinations are neither elements of an offense nor their functional equivalent. Caylor v. State, SC2023-0338 (1/30/25)

https://supremecourt.flcourts.gov/content/download/2446581/opinion/Opinion_SC2023-0338.pdf

APPEAL-ISSUE PRESERVATION: Defendant waives objection to improper prosecutorial comments by failing to contemporaneously object and move for mistrial during closing argument. Koehler v. State, 3D23-0736 (1/29/25)

https://3dca.flcourts.gov/content/download/2446528/opinion/Opinion_2023-0736.pdf

OPINION-MENTAL CONDITION: An expert cannot testify as to the truthfulness of a witness or to a defendant's mental condition when such condition is not at issue. Calixte v. State, 3D24-0270 (1/29/25)

https://3dca.flcourts.gov/content/download/2446530/opinion/Opinion_2024-0270.pdf

OPINION-MENTAL CONDITION: A defense expert testimony may testify about Defendant's mental condition and ability to understand his Miranda rights. Calixte v. State, 3D24-0270 (1/29/25)

https://3dca.flcourts.gov/content/download/2446530/opinion/Opinion_2024-0270.pdf

JOA-POSSESSION OF FIREARM BY FELON: Where State did not introduce a certified copy of Defendant's prior felony conviction at trial, he may not be convicted of possession of a firearm by felon. Harris v. State, 3D24-0486 (1/29/25)

https://3dca.flcourts.gov/content/download/2446506/opinion/Opinion_2024-0486.pdf

POSSESSION OF FIREARM BY FELON: Without a valid stipulation, the only methods for the State to prove at trial that Defendant was a convicted felon would be to admit the whole record pertaining to the prior felony conviction or providing a certified copy of the conviction. Defendant must personally acknowledge the stipulation and his voluntary waiver following an on the record stipulation. Harris v. State, 3D24-0486 (1/29/25)

https://3dca.flcourts.gov/content/download/2446506/opinion/Opinion_2024-0486.pdf

POSSESSION OF FIREARM BY FELON: When a criminal defendant offers to stipulate to the convicted felon element of the felon-in-possession of a firearm charge, the Court must accept that stipulation. Harris v. State, 3D24-0486 (1/29/25)

https://3dca.flcourts.gov/content/download/2446506/opinion/Opinion_2024-0486.pdf

MOTION TO CORRECT CREDIT FOR TIME SERVED: Court may not summarily deny motion to correct sentence without attaching to the order those portions of the files and records that conclusively demonstrate no entitlement to relief. Icon v. State, 3D24-1121 (1/29/25)

https://3dca.flcourts.gov/content/download/2446514/opinion/Opinion_2024-1121.pdf

YOUTHFUL OFFENDER: No one who has been found guilty of a life felony can be sentenced as a youthful offender. Jones v. State, 3D24-1544 (1/29/25)

https://3dca.flcourts.gov/content/download/2446533/opinion/Opinion_2024-1544.pdf

STATUTE OF LIMITATIONS-INFORMATION: A criminal information filed without a waiver of indictment is "instituted" and tolls the statute of limitations for an indictment. The later indictment filed years later related back to the date of the filing of the information. "Although the Fifth Amendment and Rule 7(b) protect Webster from prosecution by information without a waiver of indictment, the statute of limitations does not serve this same function." USA v. Webster, No. 23-11526 (1/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311526.pdf

DEFINITION-"INSTITUTE": "Institute" means "to establish" and "to enact." "The meaning of the word 'institute' has not changed since. . .1790." USA v. Webster, No. 23-11526 (1/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311526.pdf

STATUTE OF LIMITATIONS-NOTICE: "[W]e have not held that actual notice is required to toll the statute of limitations." USA v. Webster, No. 23-11526 (1/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311526.pdf

STATUTE OF LIMITATIONS-NOTICE (J. JORDAN, CONCURRING): "Our decision today leaves room for potential prosecutorial manipulation of the statute of limitations. If the timely filing of an information tolls the limitations period even without a waiver of indictment, the government can file an information just before that period expires, not provide the defendant any notice, and then wait years—there is, after all, no time limit under § 3282(a) for statutory tolling—to obtain an indictment.. . .And nothing. . .can prevent the government from proceeding in this fashion and tolling the statute of limitations for an indefinite period of time." USA v. Webster, No. 23-11526 (1/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311526.pdf

WHO COULD DISAGREE? (J. JORDAN, CONCURRING): "Whenever you encounter a word with a long history, it's safe to assume that the meaning has changed . . . or that it has stayed the same." USA v. Webster, No. 23-11526 (1/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311526.pdf

PRISON RELEASEE REOFFENDER: A PRR sentence is not illegal because the trial court, instead of a jury, made the finding that the offense was committed within three years after Defendant's release from prison. The key fact pertinent to PRR sentencing—whether the defendant committed the charged offense within three years of release from prison—is not an ingredient of the charged offense. Rather, it relates to the fact of a prior conviction. Denson v. State, 5D2024-1318 (1/28/25)

https://5dca.flcourts.gov/content/download/2446448/opinion/Opinion_2024-1318.pdf

PRISON RELEASEE REOFFENDER (J. EISNAUGLE, CONCURRING): Simmons, which held that the Sixth Amendment permits a judge, rather than a jury, to decide a defendant's date of release from prison from a prior sentence for purposes of imposing a PRR sentence, was wrongly decided but is binding. "Stated simply, the Erlinger Court enforced the constitutional right to a jury trial even where the 'inquiry will be straightforward' and 'regardless of how overwhelmin[g] the evidence may seem to a judge.'. . .Erlinger now makes plain what Apprendi signaled years ago—the exception for the fact of a prior conviction is questionable to begin with, and as a result, it must be applied narrowly. In short, the Sixth Amendment will not tolerate an expansion of the exception—even if the bench might view it as logical or slight." Denson v. State, 5D2024-1318 (1/28/25)

https://5dca.flcourts.gov/content/download/2446448/opinion/Opinion_2024-1318.pdf

PRO SE-MOTION-REPRESENTED DEFENDANT: *Pro se* motion for jail credit should be stricken when Defendant was represented by counsel. Wells v. State, 2D2024-1305 (1/24/25)

https://2dca.flcourts.gov/content/download/2446271/opinion/Opinion_2024-1305.pdf

APPEAL-SUPPLEMENTING RECORD: Where appellate court granted Appellant's motion to supplement the record on appeal after the appellate record had been transmitted, and Appellant moved the trial court for transcripts to be prepared, the trial court lacked jurisdiction to deny the transcription requests absent an order that relinquished jurisdiction to the trial court. "[W]e share [the Chief Judge's] confusion as to why PD10 sought certain transcripts. For example, it demanded transcripts of multiple status hearings where the trial court took no evidence and issued no substantive ruling. . .[T]his Court may give more careful consideration to PD10's future supplementation requests." Justiniano-Nazario v. State, 6D2024-0832 (1/24/25)

https://6dca.flcourts.gov/content/download/2446289/opinion/Opinion_2024-0832.pdf

POSTCONVICTION RELIEF-DISCOVERY: Order deciding that Appellant is not entitled to postconviction discovery is not among the class of orders independently appealable by a defendant pursuant to R. 9.140(b)(1). Burks v. State, 1D2024-1673 (1/23/25)
https://1dca.flcourts.gov/content/download/2446237/opinion/Opinion_2024-1673.pdf

POSTCONVICTION RELIEF: Failure to investigate or call a witness whose testimony, when not hearsay, was "confusing and scattered" is not sufficient to support an ineffective assistance claim. In assessing prejudice

under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently, but rather whether it is reasonably likely the result would have been different. The likelihood of a different result must be substantial, not just conceivable. State v. McReynolds, 2D2023-1900 (1/22/25) https://2dca.flcourts.gov/content/download/2446170/opinion/Opinion_2023-1900.pdf

STALKING: To support an injunction for stalking, courts use a reasonable person standard, not a subjective standard, in determining if an incident causes substantial emotional distress. A reasonable person does not suffer substantial emotional distress easily. Calls saying "[W]ait, wait, let me talk" followed by a hang up are not enough. Abercrombie v. Nenneman, 2D2023-2110 (1/22/25) https://2dca.flcourts.gov/content/download/2446169/opinion/Opinion_2023-2110.pdf

REOPENING CASE: Trial court may allow the State to reopen its case after it rested and defense moved for acquittal. Destin v. State, 2D23-1403 (1/22/25) https://3dca.flcourts.gov/content/download/2446181/opinion/Opinion_2023-1403.pdf

POSTCONVICTION RELIEF: When evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief. In reviewing a federal habeas corpus action challenging state court's denial of postconviction relief, the ultimate question is whether a fair minded jurist could disagree that the evidence so infected the trial with unfairness as to render the resulting conviction or sentence a denial of due process. Andrew v. White, No. 23–6573 (U.S. S. Ct. 1/21/25) https://www.supremecourt.gov/opinions/24pdf/23-6573_m647.pdf

HOLDING: When the Supreme Court relies on a legal rule or principle to decide a case, that principle is a "holding" of the Court for purposes of AEDPA. "To be sure, this Court did not hold in *Payne* that the introduction of all irrelevant evidence violates the Due Process Clause. *Payne* established, rather, that due process protects defendants from the introduction of evidence so prejudicial as to affect the fundamental fairness of their trials." To the extent that the Court of Appeals thought itself constrained by AEDPA to limit *Payne* to its facts, it was mistaken. Andrew v. White, No. 23–6573 (U.S. S. Ct. 1/21/25) https://www.supremecourt.gov/opinions/24pdf/23-6573_m647.pdf

AEPDA-HOLDING: General legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court. Certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt. Andrew v. White, No. 23–6573 (U.S. S. Ct. 1/21/25) https://www.supremecourt.gov/opinions/24pdf/23-6573_m647.pdf

AEPDA-HOLDING (J. THOMAS, DISSENTING): "We have instructed lower courts. . .to carefully distinguish holdings from dicta; and to refrain from treating reserved questions as though they have already been answered. The Tenth Circuit followed these rules. The Court today does not. . .And, worst of all, it redefines 'clearly established' law to include debatable interpretations of our precedent." A contestable interpretation of precedent cannot be clearly established law. Andrew v. White, No. 23–6573 (U.S. S. Ct. 1/21/25) https://www.supremecourt.gov/opinions/24pdf/23-6573_m647.pdf

JUDGMENT OF ACQUITTAL-PRINCIPAL: In order to be a principal in a crime, one must have a conscious intent that the crime be done and must do some act or say some word which was intended to and does incite, cause. Mere presence at the scene of an offense is not sufficient to support a principal instruction. Intent cannot be circumstantially proved unless one or

more of the circumstances demonstrate knowledge. Dixon v. State, 2D2022-2549 (1/17/25)

https://2dca.flcourts.gov/content/download/2446054/opinion/Opinion_2022-2549.pdf

WEAPON: An object not designed to inflict bodily harm may be a "weapon" if it was threatened to be used in a manner likely to cause bodily harm[1]. Whether an object is being used as a weapon during the commission of a felony is a question of fact for the jury. Hatcher v. State, 2D2023-1691 (1/17/25)

https://2dca.flcourts.gov/content/download/2446059/opinion/Opinion_2023-1691.pdf

BOND REVOCATION (C.J. SLEET, CONCURRING): Court may forfeit the bond of Defendant who appears late to court for trial, but has discretion to set aside the forfeiture. "It seems to me the interest of justice, as well as judicial economy, would have been better served by setting aside the forfeiture ruling and proceeding with Henderson's trial." Henderson v. Gualtieri, Sheriff of Pinellas County, 2D2024-1286 (1/17/25)

https://2dca.flcourts.gov/content/download/2446058/opinion/Opinion_2024-1286.pdf

HUMAN SMUGGLING: The human smuggling statute provides that "[a] person who transports into this state an individual who the person knows, or should know, is illegally entering the United States from another country

[1]Such as a spatula. *See*, *e.g.*, Buffy, the Vampire Slayer, Season 3, Episode 5, "Homecoming."

commits a felony of the third degree" applies to someone who transports illegal aliens in Florida before reaching their final destination; the "illegal entering" is not complete when the Mexican/U.S. border is crossed. Illegal entering" plainly contemplates the continuous act of entering the United States until the illegal alien is delivered by the smuggler to his final destination in the interior. Defendant's reading of the phrase "is illegally entering." "is strained and unduly limits all that the language may be fairly read to mean. State v. Yanes-Blanco, 5D2023-1997 (1/17/25)

https://5dca.flcourts.gov/content/download/2446039/opinion/Opinion_2023-1997.pdf

HUMAN SMUGGLING-GRAMMAR: To "enter" means "to come or go in; make an entry." The statute's phrase "is illegally entering" is in the present progressive tense, which indicates a continuing action or course of conduct, and Florida courts have long presumed that the Legislature knows the meaning of words and the rules of grammar when writing our laws. Rather than a singular event occurring at an instantaneous, identifiable moment in time—an illegal alien's entry into the United States is a continuous process. State v. Yanes-Blanco, 5D2023-1997 (1/17/25)

https://5dca.flcourts.gov/content/download/2446039/opinion/Opinion_2023-1997.pdf

APPEAL-BREACH OF PLEA AGREEMENT-ISSUE PRESERVATION (J. PRATT, CONCURRING): Where Defendant claims a plea-agreement violation, he must move to withdraw his plea in order to preserve his claim for appeal. A Quarterman willfulness challenge does not concern a sentencing error. When a court erroneously determines that the defendant has breached his deferred-sentencing agreement and pronounces a sentence harsher than the one for which he bargained, the court violates his plea agreement and does not commit a sentencing error. "[W]here Rule 9.140 requires a motion to

withdraw plea to preserve a claim, it means what it says." Gore v. State, 5D2023-2807 (1/17/25)

https://5dca.flcourts.gov/content/download/2446043/opinion/Opinion_2023-2807.pdf

QUARTERMAN PLEA AGREEMENT: In consideration for the privilege to remain free, the defendant agrees that if he does not appear for sentencing at the agreed upon time and place, the trial court can sentence the defendant to any lawful sentence even if it is a sentence in excess of the sentence specified in the negotiated plea agreement. This practice is known as a Quarterman agreement. Gore v. State, 5D2023-2807 (1/17/25)

https://5dca.flcourts.gov/content/download/2446043/opinion/Opinion_2023-2807.pdf

FINE: $500 fine us surcharges stricken for first degree murder conviction. §775.083(1) does not authorize the imposition of a fine. "A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment." Constant v. State, 5D2023-2829 (1/17/25)

https://5dca.flcourts.gov/content/download/2446042/opinion/Opinion_2023-2829.pdf

APPEAL: Defendant may not challenge as fundamental error a written sentence for not comporting with its oral pronouncement on appeal if he has not preserved the issue by either filing a motion under rule 3.800(b) or by objecting during the sentencing hearing. O'Neil v. State, 6D2023-0677 (1/17/25)

https://6dca.flcourts.gov/content/download/2446068/opinion/Opinion_2023-0677.pdf

DEATH PENALTY-RELATIVE CULPABILITY: Relative culpability cannot provide a basis for vacating a death sentence. Doty v. State, SC2023-1123 (1/16/25)

https://supremecourt.flcourts.gov/content/download/2445993/opinion/Opinion_SC2023-1123.pdf

DEATH PENALTY-SELF-REPRESENTATION: The Constitution does not forbid a State from insisting that a criminal defendant proceed to trial with counsel when the defendant is found to be mentally competent to stand trial but not mentally competent to conduct that trial himself. Doty v. State, SC2023-1123 (1/16/25)

https://supremecourt.flcourts.gov/content/download/2445993/opinion/Opinion_SC2023-1123.pdf

POSTCONVICTION RELIEF-TIMELY (J. WINOKUR, CONCURRING): If a trial court issues a nonfinal, nonappealable order under rule 3.850(f)(2) granting a defendant sixty days to file an amended motion—and provided the court has not issued a final order denying the motion with prejudice—Defendant cannot file a second motion beyond the sixty days but before expiration of the two-year deadline contained in R. 3.850(b) without the motion considered untimely or successive, even though this rule, as it has been interpreted by Daise and Ivory, is plainly at odds with the rule as identified by the Supreme Court in Spera. Owens v. State, 1D2023-1235 (1/15/25)

https://1dca.flcourts.gov/content/download/2445929/opinion/Opinion_2023-1235.pdf

POSTCONVICTION RELIEF-TIMELY (J. WINOKUR, CONCURRING): History of postconviction motions explained. "Although rule 3.850 falls within the rules of criminal procedure, and although pleadings under the rule contain the same caption as the defendant's criminal case, postconviction proceedings are technically civil, not criminal...They are civil in nature because their roots lie in the writ of habeas corpus." Owens v. State, 1D2023-1235 (1/15/25)

https://1dca.flcourts.gov/content/download/2445929/opinion/Opinion_2023-1235.pdf

VOLUNTARY INTOXICATION: Voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substance as described in chapter 893 is not a defense to any offense proscribed by law. Evidence of a defendant's voluntary intoxication is not admissible to show that the defendant lacked the specific intent to commit an offense and is not admissible to show that the defendant was insane at the time of the offense, except when the defendant's lack of specific intent or insanity is attributable to the use of a prescription medicine lawfully prescribed and taken as prescribed. McCauley v. State, 3D23-0410 (1/15/25)

https://3dca.flcourts.gov/content/download/2445963/opinion/Opinion_2023-0410.pdf

JUDGMENT OF ACQUITTAL-POSSESSION OF FIREARM BY FELON: Defendant is entitled to a JOA on the possession of a firearm by a felon count where the State did not enter Defendant's prior felony conviction and sentence into evidence, did not ask the trial court to read any stipulation to the jury, nor enter a stipulation into evidence, and where the jury was never told that the

defense stipulated that he was a felon. Defendant's bodycam recorded statement implying that he knew he was a felon (Detective: "I'm asking, as a convicted felon, are you allowed to have a gun? Defendant: "Nah. You know that.") is legally insufficient to prove his status. Error is fundamental. Presha v. State, 3D23-2254 (1/15/25)

https://3dca.flcourts.gov/content/download/2445954/opinion/Opinion_2023-2254.pdf

JUDGMENT OF ACQUITTAL-POSSESSION OF FIREARM BY FELON: When requested by a defendant in a felon-in possession of a firearm case, the trial court must approve a stipulation whereby the parties acknowledge that the defendant is a convicted felon. But out of the jury's presence and after consultation with counsel, the defendant must personally acknowledge the stipulation and his voluntary waiver of his right to have the State otherwise prove the convicted felony status element beyond a reasonable doubt. Presha v. State, 3D23-2254 (1/15/25)

https://3dca.flcourts.gov/content/download/2445954/opinion/Opinion_2023-2254.pdf

JUDGMENT OF ACQUITTAL-FUNDAMENTAL ERROR: An argument that the evidence is totally insufficient as a matter of law to establish the commission of a crime need not be preserved. Such complete failure of the evidence meets the requirements of fundamental error-i.e., an error that reaches to the foundation of the case and is equal to a denial of due process. Presha v. State, 3D23-2254 (1/15/25)

https://3dca.flcourts.gov/content/download/2445954/opinion/Opinion_2023-2254.pdf

RETURN OF PROPERTY: Title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency 60 days after the conclusion of the proceeding. "Conclusion of the proceeding" means the date the judgment and sentence became final. Montero v. State, 3D24-1123 (1/15/25)

https://3dca.flcourts.gov/content/download/2445960/opinion/Opinion_2024-1123.pdf

ATTORNEY-MOTION TO WITHDRAW: While trial courts are accorded broad discretion to make appropriate inquiry to determine whether any of the grounds for attorney withdrawal are present, or whether the attorney-client relation has deteriorated to a point where counsel can no longer give effective aid in the fair presentation of a defense, such an inquiry may not (absent a valid waiver) include requiring counsel to reveal confidential communications with the client. Bair v. State, 3D24-2171 (1/15/25)

https://3dca.flcourts.gov/content/download/2445969/opinion/Opinion_2024-2171.pdf

STATE ATTORNEY REMOVAL-MOOTNESS: Action for reinstatement to office by State Attorney after Governor had removed him is moot where the term of office had expired. Warren v. DeSantis, No. 23-10459 (11th Cir. 1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op3.pdf

COMPLAINT-DAMAGES: Boilerplate language requesting "such other and further relief as the Court deems just and proper" does not constitute a

complaint for money damages. Warren v. DeSantis, No. 23-10459 (11th Cir. 1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op3.pdf

SELF-REPRESENTATION: . An individual does not have a right to hybrid representation. Whenever a party has appeared by attorney, the party cannot thereafter appear or act on the party's own behalf in the action or proceeding, or take any step therein, unless an order of substitution shall first have been made by the Court USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

CONSPIRACY-SEX TRAFFICKING: There is sufficient evidence of the conspiracy to commit sex trafficking where Defendant and another person transported the victim from Fort Lauderdale to Orlando together and the accomplice participated in creating and posting an advertisement for a prostitution website. USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

HEARSAY: When offered against an opposing party, statements made by the party's coconspirator during and in furtherance of the conspiracy are not hearsay. Cell phone records of a co-conspirator made in furtherance of the conspiracy are not hearsay. USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

HEARSAY: Text message in which co-conspirator discusses the accusation that Defendant had sex with a 15-year old is not hearsay because it is not introduced for the truth of the matter asserted, but rather to show that Defendant knew the age of the victim. USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

SPEEDY TRIAL: Continuances due to COVID are excludable from speedy trial calculations. USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

MISTRIAL-JURY: Defendant is not entitled to a mistrial where Court mistakenly read to the jury the first count from the original indictment rather than from the superseding indictment. Any error was cured by the Court's instruction, including its admonition that the indictment is not to be considered as evidence and is not evidence of guilt. USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

THINGS THAT MAKE YOU SAY "HMM": Defendant's a.k.a. is "Slime." USA v. Brown, No. 22-14056 (1/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202214056.pdf

DRIVER LICENSE/DRIVER'S LICENSE: "[R]eferences will be to a "driver license," the phrase used in Florida Statutes, rather than the colloquial "driver's license." See § 322.01(18)." Crist v. State, 5D2022-2966 (1/10/25)

https://5dca.flcourts.gov/content/download/2445818/opinion/Opinion_2022-2966.pdf

DRIVER LICENSE-SEXUAL PREDATOR: Requirement that the "Sexual Predator" designation appear on the one's driver license is unconstitutional as government compelled speech. "A Florida driver license is a forum in which a license holder, who has been convicted of a sexual offense, is compelled to disclose the fact of his criminal history against his wishes. That a fact is compelled rather than a political opinion or policy doesn't matter." The SEXUAL PREDATOR designation on driver licenses is not a narrowly tailored means to inform only those persons who have the greater need to know about an individual's past sexual criminality. Question certified. Crist v. State, 5D2022-2966 (1/10/25)

https://5dca.flcourts.gov/content/download/2445818/opinion/Opinion_2022-2966.pdf

DRIVER LICENSE-SEXUAL PREDATOR: "The conclusion that the "SEXUAL PREDATOR" designation on Crist's driver license is impermissibly compelled speech under the prevailing judicial test in no way involves the use of judicial power to compel a specific change to the statutory law. It merely holds that this specific designation is off-limits under the Bill of Rights." Crist v. State, 5D2022-2966 (1/10/25)

https://5dca.flcourts.gov/content/download/2445818/opinion/Opinion_2022-2966.pdf

DRIVER LICENSE-SEXUAL PREDATOR (**J. SOUD, DISSENTING**): [T]he majority races into a dangerously wayward opinion that ends in a repugnant

result with deleterious effect. . .[T]he majority. . .opens the door to others who seek editorial control over information on a driver license that more fits the whim of the licensee. This Court should immediately return that door to its closed and locked position." Crist v. State, 5D2022-2966 (1/10/25)

https://5dca.flcourts.gov/content/download/2445818/opinion/Opinion_2022-2966.pdf

AND NOW FOR SOMETHING COMPLETELY DIFFERENT: Something about chocolate encased toy animals from Australia. Atlantic Candy Company v. Yowie, 5D2023-1513 (1/10/25)

https://5dca.flcourts.gov/content/download/2445820/opinion/Opinion_2023-1513.pdf

POST CONVICTION RELIEF: "Both Moradi's lawyers testified they were unfamiliar with a four-year-old case—binding at the time—that held it was fundamental error to deliver a justifiable use of deadly force instruction that referred to a burden when discussing the forcible felony that can be used to establish a self-defense claim. Although trial counsel failed to object to a jury instruction, Defendant suffered no prejudice because there is no reasonable probability that the verdict would have been different even if his trial counsel had submitted the appropriate justifiable use of deadly force instruction. A near-seven-inch, heart-piercing stab with a five-inch blade is not a "poke." Plus, Defendant then beat the victim and placed his hands around his neck while blood gushed out of his body. Moradi v. State, 6D2023-1319 (1/10/25)

https://6dca.flcourts.gov/content/download/2445811/opinion/Opinion_2023-1319.pdf

POST CONVICTION RELIEF: The fundamental error standard is inapplicable to postconviction proceedings. Moradi v. State, 6D2023-1319 (1/10/25)

https://6dca.flcourts.gov/content/download/2445811/opinion/Opinion_2023-1319.pdf

FLIGHT: Evidence of flight is admissible as consciousness of guilt where the defendant flees from police after committing a murder. Moradi v. State, 6D2023-1319 (1/10/25)

https://6dca.flcourts.gov/content/download/2445811/opinion/Opinion_2023-1319.pdf

HABEAS CORPUS: If a prisoner files a habeas corpus petition in circuit court, the petition must be filed in the circuit court of the county in which the prisoner is detained. Jones v. Florlda D.O.C., 6D2023-3814 (1/10/24)

https://6dca.flcourts.gov/content/download/2445812/opinion/Opinion_2023-3814.pdf

SEXUAL BATTERY-AGE: Defendant's statement that he is eighteen years old is legally sufficient to establish his age. Scott v. State, 1D20231988 (1/8/24)

https://1dca.flcourts.gov/content/download/2445676/opinion/Opinion_2023-1988.pdf

BOLSTERING: State's argument that the officer has been doing his job for "two years, not for. . .a month and a half" and characterizing the arrest as "proper" constitutes improper bolstering. Quintanilla v. State, 3D22-2003 (1/8/25)

https://3dca.flcourts.gov/content/download/2445687/opinion/Opinion_2022-2003.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION-FIREARM: Stopping a person solely on the ground that the individual possesses a gun violates the Fourth Amendment. Officer who sees Defendant remove a gun from a waistband holster and transfer it into his backpack lacks reasonable suspicion to detain him. Due to the statutory change to §790.01, non-licensure is an element of, rather than an affirmative defense to, the crime of carrying a concealed weapon. Mere possession of a concealed weapon does not constitute criminal activity. Sheppard v. State, 3D23-0752 (1/8/25)

https://3dca.flcourts.gov/content/download/2445697/opinion/Opinion_2023-0752.pdf

VOP-SEX OFFENSE: Where a condition of sex offender probation includes that Defendant is prohibited from possessing pornographic materials "that are relevant to the offender's deviant behavior pattern," possessing DVDs titled "Sex from the North," "Brunettes Have More Fun," "Hometown Amateurs," "One on One," and "Sorority Self-Masturbation Satisfaction" are not relevant to the defendant's deviant behavior pattern unless they depicted or suggested the following viewing or touching a minor or against a person's will. All the DVD "artwork" appeared to show young women, but the State offered no proof that they were children or adolescents. College-age women are adults—they are not children or adolescents. "We note that had Tindall's offenses occurred on or after October 1, 2014, he would not have been permitted to possess any pornography." Tindall v. State, 4D2023-2703 (1/8/25)

https://4dca.flcourts.gov/content/download/2445689/opinion/Opinion_2023-2703.pdf

WRITTEN THREAT: §836.10, which prohibits threats of violence sent through electronic social media, is not overbroad nor vague. Grigoriou v. State, 4D2024-0724 (1/8/25)

https://4dca.flcourts.gov/content/download/2445709/opinion/Opinion_2024-0724.pdf

COSTS: Court may not impose the $26 cost charged for certain county court traffic cases in a making social media threats case. Grigoriou v. State, 4D2024-0724 (1/8/25)

https://4dca.flcourts.gov/content/download/2445709/opinion/Opinion_2024-0724.pdf

SEARCH AND SEIZURE-K-9 ALERT: In the past, an alert by a properly trained police dog was usually accepted as providing probable cause for a search. But whether the substance dog smells is legal or illegal is not readily apparent, his alert, alone, cannot provide the probable cause needed to justify a warrantless search. "[P]lain smell—whether perceived by man or man's best friend–of a distinct odor which may have emanated from a legal substance does not, by itself, supply probable cause to conduct a warrantless search of a vehicle." Ford v. State, 5D2023-1995 (1/7/25)

https://5dca.flcourts.gov/content/download/2445655/opinion/Opinion_2023-1995.pdf

SEARCH AND SEIZURE-K-9 SNIFF: "Is the undifferentiated alert behavior of a properly trained police drug-sniffing dog sufficient to supply the sole probable cause for a warrantless search of a car, when that K-9 officer. . .cannot distinguish between illegal pot and legal medical marijuana or hemp? In other words, is that sniff up to snuff? Going forward, that dog won't hunt." Ford v. State, 5D2023-1995 (1/7/25)

https://5dca.flcourts.gov/content/download/2445655/opinion/Opinion_2023-1995.pdf

SEARCH AND SEIZURE-K-9 ALERT-GOOD FAITH: Although K-9 alert alone no longer justifies the search of a vehicle, the good-faith exception to the exclusionary rule applies to cases arising before this change in the law. Ford v. State, 5D2023-1995 (1/7/25)

https://5dca.flcourts.gov/content/download/2445655/opinion/Opinion_2023-1995.pdf

SEARCH AND SEIZURE-PROBABLE CAUSE: Probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules. Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, have no place in the determination of probable cause. Whether the basis for probable cause is proved by machine, man, or beast, all we have required is the kind of fair probability on which reasonable and prudent people, not legal technicians, act. Ford v. State, 5D2023-1995 (1/7/25)

https://5dca.flcourts.gov/content/download/2445655/opinion/Opinion_2023-1995.pdf

SEARCH AND SEIZURE-K-9 ALERT (J. PRATT, CONCURRING): "[G]oing forward,. . .dogs trained to alert on cannabis can no longer provide the sole basis for a stop or search. . .[C]annabis legalization no doubt has triggered a setback for drug-detecting canine officers. But it need not mark their retirement. An alert by a dog trained not to alert to cannabis—or to alert to cannabis differently than it alerts to other drugs—can still on its own supply probable cause. And for another thing, even without such canine training, an

undifferentiated alert can supply probable cause when combined with an officer's questions ruling out the presence of lawful cannabis." Ford v. State, 5D2023-1995 (1/7/25)

https://5dca.flcourts.gov/content/download/2445655/opinion/Opinion_2023-1995.pdf

BENCH TRIAL: A written waiver of the right to a jury trial is required to hold a bench trial. Szwec v. State, 1D2022-4060 (1/2/25)

https://1dca.flcourts.gov/content/download/2445375/opinion/Opinion_2022-4060.pdf

PROBATION-CONDITIONS: Court may not order defendant to complete GED or vocational training, only that she make a good faith effort to do so. Parker v. State, 1D2023-0760 (1/2/25)

https://1dca.flcourts.gov/content/download/2445376/opinion/Opinion_2023-0760.pdf

POST CONVICTION RELIEF: Relative culpability is a valid sentencing consideration. Disparate treatment of codefendants is permissible in situations where a particular defendant is more culpable. Parker v. State, 1D2023-0760 (1/2/25)

https://1dca.flcourts.gov/content/download/2445376/opinion/Opinion_2023-0760.pdf

PROBATION-CONDITIONS: A condition of probation is valid if it satisfies one of the following factors: (1) has a relationship to the crime for which the offender was convicted, (2) relates to conduct that is criminal in nature, or (3)

requires or forbids conduct that is reasonably related to future criminality. Defendant who murdered her daughter's father may not be required to take a parenting class. Murdering the child's father does not involve any act of parenting. "Requiring Parker to complete parenting classes in the distant future, once she is released from her 53-year incarceration and long after the daughter reaches majority, can have no bearing on any future criminality whether involving Parker's daughter or otherwise." Parker v. State, 1D2023-0760 (1/2/25)

https://1dca.flcourts.gov/content/download/2445376/opinion/Opinion_2023-0760.pdf

PROBATION-CONDITIONS: Where Defendant murdered her daughter's father, she may be prohibited from having contact with her daughter for life. As the next of kin of a homicide victim, her child is a "victim" under the Florida Constitution. Parker v. State, 1D2023-0760 (1/2/25)

https://1dca.flcourts.gov/content/download/2445376/opinion/Opinion_2023-0760.pdf

REVERSE WILLIAMS RULE EVIDENCE: The threshold for admission of both Williams rule evidence and reverse Williams rule evidence is relevance. The "degree of similarity" required to admit such evidence is the same regardless of whether it is the state or the defense seeking admission. Peterson v. State, 1D2023-2589 (1/2/25)

https://1dca.flcourts.gov/content/download/2445384/opinion/Opinion_2023-2589.pdf

REVERSE WILLIAMS RULE EVIDENCE: Defendant's unprovoked drive-by shooting motivated by mutual dislike between people from "the northside" and

people from "the southside" is too dissimilar from a planned shooting motivated by a fight over a woman at a football game for latter to be admissible as reverse Williams rule evidence. Peterson v. State, 1D2023-2589 (1/2/25)

https://1dca.flcourts.gov/content/download/2445384/opinion/Opinion_2023-2589.pdf

ATTORNEY-PERJURY: The right to counsel includes no right to have a lawyer who will cooperate with planned perjury. There is no permissible choice to testify falsely. For defense counsel to take steps to persuade a criminal defendant to testify truthfully, or to withdraw, deprives the defendant of neither his right to counsel nor the right to testify truthfully. Ruiz v. State, 3D22-499 (1/2/25)

https://3dca.flcourts.gov/content/download/2445460/opinion/Opinion_2022-0499.pdf

HEARSAY-IDENTIFICATION: A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is one of identification of a person made after perceiving the person Photographs which witnesses used to identify Defendant are not admissible when they include accusatory narratives such as "He came into my brother's home. . .with a firearm." But the error here was harmless because the statements were merely cumulative. Garlobo v. State, 3D22-1174 (1/2/24)

https://3dca.flcourts.gov/content/download/2445394/opinion/Opinion_2022-1174.pdf

POSTCONVICTION RELIEF-JURORS: Defendant is not entitled to postconviction relief due to counsel's failure to strike a juror who stated she was unsure whether she could be fair. Only where a juror's bias is so clear can a defendant show the necessary prejudice under Strickland that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Merely expressing doubt does not establish actual bias against the defendant. Fluctuating equivocations do not demonstrate actual bias. Nixon v. State, 3D22-1833 (1/2/25)

https://3dca.flcourts.gov/content/download/2445393/opinion/Opinion_2022-1833.pdf

POSTCONVICTION RELIEF-JURORS (J. BOKOR CONCURRING): "I believe we have a problem with our standard of proof for an ineffective assistance of counsel claim as it relates to the failure to challenge a juror for cause or use a preemptory strike. . . I believe this should be revisited by our supreme court considering the holding of the Eleventh Circuit Court of Appeals in Guardado v. Secretary, Florida Department of Corrections, 112 F.4th 958 (11th Cir. 2024)." Nixon v. State, 3D22-1833 (1/2/25)

https://3dca.flcourts.gov/content/download/2445393/opinion/Opinion_2022-1833.pdf

COMPETENCY: Not every manifestation of mental illness demonstrates incompetence to stand trial. Neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial. Essix v. State, 3D22-1842 (1/2/24)

https://3dca.flcourts.gov/content/download/2445449/opinion/Opinion_2022-1842.pdf

AGGRAVATED ASSAULT: Where Defendant fired his shotgun twice through

victim's apartment window while yelling "Let's go bitch. Let's go bitch." he is not entitled to a JOA for lack of evidence that he knew the Victim was inside. Grimes v. State, 3D23-1064 (1/2/24)

https://3dca.flcourts.gov/content/download/2445397/opinion/Opinion_2023-1064.pdf

VIDEO: "It has oft been said that a picture is worth a thousand words; a video is undoubtedly worth exponentially more." Grimes v. State, 3D23-1064 (1/2/24)

https://3dca.flcourts.gov/content/download/2445397/opinion/Opinion_2023-1064.pdf

EVIDENCE: Police officers and lay witnesses may 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. Objective observations based on observable signs and conditions are not classified as "scientific." Malakhov v. State, 3D23-1105 (1/2/24)

https://3dca.flcourts.gov/content/download/2445459/opinion/Opinion_2023-1105.pdf

BOLSTERING: Officer's testimony that witness was a hundred percent sure of his identification of the defendant in the photo line up did not constitute improper bolstering because he did not opine on the ultimate issue of the witness's credibility. Johnson v. State, 3D23-2183 (1/2/25)

https://3dca.flcourts.gov/content/download/2445416/opinion/Opinion_2023-2183.pdf

SEARCH AND SEIZURE: Relevant factors in assessing the reasonableness of a stop pursuant to a BOLO) include: (1) the length of time and distance from the offense; (2) route of flight; (3) specificity of the description of the vehicle and its occupants; and (4) the source of the BOLO information. T.W., a Juvenile v. State, 3D24-0353 (1/2/24)

https://3dca.flcourts.gov/content/download/2445455/opinion/Opinion_2024-0353.pdf

HABEAS CORPUS-MANIFEST INJUSTICE: Appellate courts have the authority to correct a manifest injustice by way of habeas corpus, but this exception only applies to a narrow category of cases. The mere incantation of the words "manifest injustice" does not make it so. Leach v. State, 3D24-1597 (1/2/25)

https://3dca.flcourts.gov/content/download/2445415/opinion/Opinion_2024-1597.pdf

MEDICAL RECORDS: Court may not *sua sponte* order disclosure of private medical and psychological records to the county jail where the direct filed fourteen-year-old defendant is in custody. A patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet constitutional muster. "[W]e caution that trial courts must be mindful of the limits imposed by the judicial role. With very few exceptions, the court's role does not include initiating matters but instead is limited to adjudicating matters properly raised by interested parties." Rosa v. State, 3D24-1662 (1/2/25)

https://3dca.flcourts.gov/content/download/2445420/opinion/Opinion_2024-1662.pdf

DECEMBER 2024

LEWD AND LASCIVIOUS-AGE OF VICTIM: It is fundamental error to adjudicate Defendant guilty of a first-degree felony and to sentence him accordingly when the jury never found him guilty of that crime. Where the information's time frame spanned when the child was between eleven and twelve years of age, the evidence and arguments show that she was twelve, and the jury instruction alluded to the victim being between the ages of twelve and sixteen, the Clerk of Court Disposition Memorandum "Guilty as charged" erroneously reflected that Defendant was found guilty as charged of lewd molestation as a first-degree felony punishable by life, Defendant may be adjudicated and sentenced only for a second degree felony. The judgment of the Court must conform to the verdict of the jury. Lincoln v. State, 6D2023-0235 (12/30/24)

https://6dca.flcourts.gov/content/download/2445295/opinion/Opinion_2023-0235.pdf

OOPS: "At the sentencing hearing, the State argued for life in prison in accordance with that charge, notwithstanding its argument during the hearing that the victim was twelve at the time of the offense. The defense argued mitigating factors and requested leniency but did not bring the error in the PSI or scoresheet to the court's attention. No one addressed the error, and the trial judge sentenced Lincoln to life in prison." Lincoln v. State, 6D2023-0235 (12/30/24)

https://6dca.flcourts.gov/content/download/2445295/opinion/Opinion_2023-0235.pdf

DOUBLE JEOPARDY: Double Jeopardy does not bar a retrial after a mistrial without prejudice is declared following a Brady violation. Unless the prosecution's misconduct was intended to provoke the defendant into moving for a mistrial, when a trial court declares a mistrial, double jeopardy does not bar a retrial, even if the Defendant moved that the mistrial be with prejudice. A request for a mistrial with prejudice does not constitute an objection to a mistrial without prejudice or create a double jeopardy issue, particularly when Defendant rejected other possible remedies. D'Auria v. State, 5D2023-2751 (12/27/24)

https://5dca.flcourts.gov/content/download/2445224/opinion/Opinion_2023-2751.pdf

SEARCH AND SEIZURE-DOG SNIFF: Search was not unlawfully prolonged for a K9 search where driver said he could get proof of insurance in a few minutes by contacting the vehicle owner, but did not. State v. Denoncourt, 5D2024-0947 (12/27/24)

https://5dca.flcourts.gov/content/download/2445228/opinion/Opinion_2024-0947.pdf

SEARCH AND SEIZURE-PAT DOWN: Officer was justified in conducting a pat-down search of Defendant where he acted "very odd," messed with his pants, and had a notable bulge in it that "was 150 percent clearly not of a

human body part unless you have just a massive hernia or something going on with you." State v. Denoncourt, 5D2024-0947 (12/27/24)

https://5dca.flcourts.gov/content/download/2445228/opinion/Opinion_2024-0947.pdf

SEARCH AND SEIZURE: Where defendant Is lawfully detained, officer may order him to exit vehicle, even if he did not have particularized basis to believe defendant was a threat to his safety. State v. Denoncourt, 5D2024-0947 (12/27/24)

https://5dca.flcourts.gov/content/download/2445228/opinion/Opinion_2024-0947.pdf

COMPETENCY-MOOTNESS: Where underlying indictment is dismissed due to his continuing incompetency but Defendant remains confined due to civil commitment proceedings, his appeal challenging his detention is moot. Where new statutory bases supersede the original bases for orders challenged on appeal, appeals of the original orders are moot. USA v. Alhindi, No. 24-10595 (11th Cir. 12/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202410595.pdf

PLEA WITHDRAWAL: A motion to withdraw a plea is a critical stage of the proceedings during which an indigent defendant is entitled to court-appointed, conflict free counsel. Failure to offer appointed counsel before summarily denying such a motion requires reversal. Young v. State, 2D2023-1507 (12/20/24)

https://2dca.flcourts.gov/content/download/2445045/opinion/Opinion_2023-1507.pdf

VOP: Where defendant was ordered to pay a $85,000 restitution at the rate of $200 per month, he may not be found to have violated probation when he received $75,000 from a divorce settlement and used that money to pay off other debts. There is no term in the probation order that addresses what effect, if any, a change in his financial circumstances would have vis-à-vis payment of his entire restitution obligation. "We understand the circuit court's frustration with what transpired in this case. . .Mr. Watson avoided prison under the assumption he would make restitution to the victims of his financial crime. But, having determined that Mr. Watson complied with the letter, if not the spirit, of his restitution obligation during his probation's term, we must reluctantly reverse the order revoking Mr. Watson's probation." Watson v. State, 2D2023-2306 (12/20/24)

https://2dca.flcourts.gov/content/download/2445044/opinion/Opinion_2023-2306.pdf

TRANSCRIPTS DURING TRIAL: Court's comment that it would not order preparation of trial transcripts on a daily basis is not unlawful. The speculative argument that Defendant may need transcripts is legally insufficient. Lugo v. State, 3D24-2128 (12/20/24)

https://3dca.flcourts.gov/content/download/2445054/opinion/Opinion_2024-2128.pdf

POSTCONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to file motion to suppress when discrepancies between the weight of drugs seized and those tested suggest improper chain of custody. A trial attorney's failure to investigate a factual

defense or a defense relying on the suppression of evidence, which results in the entry of an ill-advised plea of guilty, constitutes a facially sufficient attack upon the conviction. Reyna-Duran v. State, 6D2023-1876 (11th Cir. 12/20/24)

https://6dca.flcourts.gov/content/download/2445085/opinion/Opinion_2023-1876.pdf

POSTCONVICTION RELIEF: A pro se defendant—even if he has standby counsel—cannot later complain that the quality of his defense was substandard or amounted to ineffective assistance of counsel. Craft v. State, SC2023-1501 (12/19/24)

https://supremecourt.flcourts.gov/content/download/2444994/opinion/Opinion_SC2023-1501.pdf

ZIP CODE: "ZIP" refers to the U.S. Postal Service's Zone Improvement Plan, a system of codes introduced in 1963. Fogarty v. State, 1D2021-2233 (12/18/24)

https://1dca.flcourts.gov/content/download/2444893/opinion/Opinion_2021-2233.pdf

JOA: A defendant moving for a legal acquittal effectively admits not only the facts stated in the evidence adduced, but also every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence. For a JOA, the evidence presented by the State must have been so wanting that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law. "A key legal point here. . .is that not just direct or circumstantial evidence counts toward the sufficient-evidence assessment, but also all reasonable inferences that could be drawn

from that evidence to conclude the element has been adequately demonstrated." Fogarty v. State, 1D2021-2233 (12/18/24)

https://1dca.flcourts.gov/content/download/2444893/opinion/Opinion_2021-2233.pdf

JOA-SEXUAL BATTERY-HELPLESS VICTIM: Sexual battery on a victim physically helpless to resist includes a victim who is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. Although neither Victim nor Defendant recalled the two having sex the night of the incident, the combination of evidence of Victim's debilitating state of drunkenness, her breasts exposed, her pants pulled down, his semen on her underwear and in her vagina, and Defendant running out the back of the apartment is sufficient to infer that Defendant had sex with Victim only after she was so drunk that there was no way she could have given intelligent, knowing, and voluntary consent. Fogarty v. State, 1D2021-2233 (12/18/24)

https://1dca.flcourts.gov/content/download/2444893/opinion/Opinion_2021-2233.pdf

INFERENCE-PERIPHERY OF THE SPHERE: An inference is a permissible analytical move a factfinder may make in determining whether a proponent of a factual proposition has met the legally required burden of proof. Of course if none of the inferences on the one hand accords with logic and reason or human experience, while on the other hand an inference which does square with logic and reason or human experience is deducible from the evidence, the question is not for the jury but is one of law for the court. Often astute lawyers fail to appreciate the fact that when an appellate court has spoken of inferences which may be drawn from circumstantial evidence it meant assuredly that such inferences had to be susceptible of being deduced from within the periphery of the sphere of the circumstantial evidence and that when

one goes beyond such point he has entered the field of conjecture and speculation. Fogarty v. State, 1D2021-2233 (12/18/24)

https://1dca.flcourts.gov/content/download/2444893/opinion/Opinion_2021-2233.pdf

TRIAL-ABSENT DEFENDANT: Where Defendant failed to appear for trial after the jury was chosen because he had been drinking and drugging, nearly died, was taken to the hospital, and had not been discharged, Court erred in finding that he had voluntarily absented himself from the trial ("Everything the witness just stated sounds very voluntary to me") and continuing with the trial in his absence. Where Defendant's counsel provided ample explanation—through a witness who found him unresponsive and an attending nurse who could speak to his current medical status in the hospital—for why he was not present in court, it may not. "The most that can be inferred. . .is that Nipper engaged in terribly reckless behavior that nearly killed him. . .[T]he trial court erred when it relied on the voluntariness of Nipper's misconduct. . .to find, essentially, a 'forfeiture by wrongdoing.' The judicially developed forfeiture doctrine does not extend this far." Nipper v. State, 1D2022-1381 (12/18/24)

https://1dca.flcourts.gov/content/download/2444944/opinion/Opinion_2022-1381.pdf

SAT CITO SI RECTE (J. ROWE, CONCURRING): "Sat Cito Si Recte—Soon enough if correct." Nipper v. State, 1D2022-1381 (12/18/24)

https://1dca.flcourts.gov/content/download/2444944/opinion/Opinion_2022-1381.pdf

APPEAL-TIMELINESS OF OPINION (J. ROWE, CONCURRING): Rule 2.250(a)(2) establishes 180 days from the oral argument date as the "presumptively reasonable" time for appellate courts to render a decision. As a matter of judicial integrity and humility, judges must strive to render decisions consistent with the motto Sat cito, si recte. But there are no shortcuts to justice. The legal principles and constitutional rights which have preserved us a nation are either observed or they are violated. No matter how well intended, there cannot be any 'homespun', 'living room' approaches to matters of such grave consequence to one's freedom. Nipper v. State, 1D2022-1381 (12/18/24)

https://1dca.flcourts.gov/content/download/2444944/opinion/Opinion_2022-1381.pdf

JOA-ATTEMPTED SECOND DEGREE MURDER: To establish attempted second-degree murder, the State must show that (1) defendant intentionally committed an overt act that could have resulted in the death of the victim but did not, (2) the act was imminently dangerous to another and demonstrated a depraved mind without regard for human life, and (3) the overt act went beyond mere preparation. Shooting at the victim through a privacy curtain into the bathroom area because the victim was complaining about Defendant ("that slick mouth pissed [him] off") evinces a depraved mind. That, and being "the baddest motherfucker . . . in Dixie County." Mooney v. State, 1D2022-4160 (12/18/24)

https://1dca.flcourts.gov/content/download/2444901/opinion/Opinion_2022-4160.pdf

LESSER INCLUDED-2ND° MURDER-AGGRAVATED ASSAULT: An instruction on aggravated assault as a lesser included to attempted second degree murder is not required where there was no evidence that the victim had

a well-founded fear that Defendant was going to shoot her from the next room. Mooney v. State, 1D2022-4160 (12/18/24)

https://1dca.flcourts.gov/content/download/2444901/opinion/Opinion_2022-4160.pdf

APPEAL: Two letters filed with the trial court stating that he felt "rushed" during his plea hearing and he wished to appeal the plea offer is not a notice of appeal. The letters should be treated as a motion to withdraw plea. Appeal dismissed. Rhodes v. State, 1D2023-0463 (12/18/24)

https://1dca.flcourts.gov/content/download/2444906/opinion/Opinion_2023-0463.pdf

APPEAL-ANDERS BRIEF: Anders brief which fails to state that the appeal would be frivolous is legally insufficient. Anderson v. State, 1D2023-2573 (12/18/24)

https://1dca.flcourts.gov/content/download/2444937/opinion/Opinion_2023-2573.pdf

APPEAL-ANDERS BRIEF: Appointed counsel for appeal must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal." Anders brief which consists of a single page containing only limited facts, lacks references to the record evidence or legal authorities and fails to address the testimony of several witnesses, disputes about the offense elements, Defendant's designation as a violent felony offender of special concern, and the propriety of a downward departure sentence is insufficient. Anderson v. State, 1D2023-2573 (12/18/24)

https://1dca.flcourts.gov/content/download/2444937/opinion/Opinion_2023-2573.pdf

APPEAL-ANDERS BRIEF: "[W]e turn now to the continued viability of our current Anders procedures. Addressing the recurring of inadequacy in briefing led us to evaluate the procedures more broadly. . ., we found them to be in tension with our core neutral adjudicatory power." Appellate court's duty to scour record for issues conflicts with duty to address only properly raised issues. Question Certified: Does R. 9.140(g)(2) continue to accord with the fundamental principles of appellate review in a manner sufficient to invoke the court 's jurisdiction, and, if so, does it require appellate courts to depart from their roles as neutral arbiters? Anderson v. State, 1D2023-2573 (12/18/24)

https://1dca.flcourts.gov/content/download/2444937/opinion/Opinion_2023-2573.pdf

SEARCH AND SEIZURE-DOG SNIFF-PROLONGED DETENTION: Detention was unlawfully prolonged where canine did not arrive at twelve minutes after it determined that no one in the car at a warrant or had committed an ascertainable crime. A traffic stop may last no longer than necessary for an officer to address the traffic violation that warranted the stop and attend to related safety concerns. If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission. A traffic stop prolonged beyond that point is unlawful. Officer's equivocal testimony about what he was doing is insufficient to meet the State's burden to establish that the stop was not attenuated. Beecher v. State, 1D2024-0383 (12/18/24)

https://1dca.flcourts.gov/content/download/2444939/opinion/Opinion_2024-0383.pdf

AGGRAVATED ANIMAL CRUELTY: Defendant who shot two dogs which had attacked his chickens inside a fenced-in chicken coop in his fenced-in yard, one of which was caught eating one of his chickens, is entitled to dismissal the charge of aggravated animal cruelty. Chickens by statute are domesticated animals. Barnes v. State, 1D2024-0701 (12/18/24)

https://1dca.flcourts.gov/content/download/2444942/opinion/Opinion_2024-0701.pdf

POSTCONVICTION RELIEF: Two requirements must be met for a conviction to be set aside based on newly discovered evidence: First, the evidence 'must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of due diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Leggett v. State, 3D23-0305 (12/18/24)

https://3dca.flcourts.gov/content/download/2444923/opinion/Opinion_2023-0305.pdf

STATEMENT OF DEFENDANT: Once a suspect has requested the help of a lawyer, no state agent can reinitiate interrogation on any offense throughout the period of custody unless the lawyer is present. The admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his right to cut off questioning was scrupulously honored. State v. Lainez, 3D23-0755 (12/18/24)

https://3dca.flcourts.gov/content/download/2444922/opinion/Opinion_2023-0755.pdf

HABEAS CORPUS: Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct appeal, or which could have been, should have been, or were raised in post-conviction proceedings. Diaz v. Dixon, 3D24-0956 (12/18/24)

https://3dca.flcourts.gov/content/download/2444899/opinion/Opinion_2024-0956.pdf

DUI-PROBABLE CAUSE: An officer may not arrest a DUI suspect on the basis of witnesses who saw drunk bar patron start her car but prevented her from leaving. LEO may execute a warrantless misdemeanor arrest for DUI in only three circumstances: (1) the officer witnesses each element of a prima facie case, (2) the officer is investigating an accident and develops probable cause to charge DUI, or (3) one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest. Officer may not arrest for DUI when by the time the officer arrived, Defendant was outside of her car, which was turned off. Atwell v. State, 4D2024-0618 (12/18/23)

https://4dca.flcourts.gov/content/download/2444883/opinion/Opinion_2024-0618.pdf

CITIZEN'S ARREST: To effectuate a valid citizen's arrest, the private citizen arrestor must deprive the defendant of her freedom to leave. A security guard does not effectuate a valid citizen's arrest by positioning his golf cart to block drunk Defendant from driving off. Atwell v. State, 4D2024-0618 (12/18/23)

https://4dca.flcourts.gov/content/download/2444883/opinion/Opinion_2024-0618.pdf

SEARCH AND SEIZURE-DOG SNIFF-PROLONGED DETENTION: Stop was not unlawfully prolonged for canine to arrive where the sniff was performed within approximately five minutes of the initiation of the traffic stop and the investigating officer had not yet written the traffic violation warning. Green v. State, 6D2023-0835 (12/20/24)

https://6dca.flcourts.gov/content/download/2445084/opinion/Opinion_2023-0835.pdf

SPEEDY TRIAL-SIXTH AMENDMENT: To determine whether a defendant has been deprived of his constitutional right to a speedy trial, courts weigh four factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) the prejudice to the defendant. A defendant generally must show actual prejudice unless the first three factors all weigh heavily against the government. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL-SIXTH AMENDMENT: Although trial was delayed for well over a year, Defendant's constitutional speedy trial right was not violated because the reasons for the delay (COVID, Defendant's motions to extend time) do not weigh heavily against the government. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL-SIXTH AMENDMENT-ACTUAL PREJUDICE: To show actual prejudice, Defendant must show (1) oppressive pretrial incarceration, (2) his own anxiety and concern, or (3) the possibility that his defense was

impaired because of the delay. Pretrial incarceration alone ordinarily does not amount to prejudice. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL ACT: Speedy Trial Act requires the government to file an information or indictment within 30 days from the defendant's arrest. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL ACT: Speedy Trial Act requires the government to bring the case to trial within 70 days from the defendant's arrest, excluding any time periods when the ends of justice outweigh the best interest of the public and the defendant in a speedy trial, considering whether the failure to grant the continuance would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice; whether the case is so complex that it is unreasonable to expect adequate preparation within the time limits; and whether the denial of a continuance would deny either party reasonable time necessary for effective preparation. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL: Defendant's failure to move for dismissal prior to trial constitutes waiver of the right to dismissal for failure to indict within thirty days. His motion to dismiss based on the seventy day rule (trial) is not a motion to dismiss based on the thirty day rule (indictment). USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

STATUTORY CONSTRUCTION: When Congress drafts new legislation, it divides that legislation into sections, subsections, paragraphs, subparagraphs, clauses, subclauses, and items and refers to each level of that hierarchy by a unique word. A section is a unit below the subpart but above the subsection, whereas a paragraph starts with "(1)," a subparagraph begins with "(A)," and a clause commences with "(I)." USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

SPEEDY TRIAL ACT: In deciding whether to grant an ends-of-justice continuance, a district court must consider a multiplicity of factors, i.e., adequate time for defense counsel and the government to prepare, number of witnesses, pending motions, anticipated trial time, conflicts in schedules of judges and trial counsel, etc., including the anticipated filing of a superseding indictment. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

POSTCONVICTION RELIEF: Trial counsel was not ineffective for failing to obtain a delay of the Faretta hearing because he knew that Defendant had frontal lobe brain damage that could be impairing his judgment where Defendant had already had two court-appointed experts who found him competent to proceed notwithstanding potential brain damage from a past car accident and his mother's use of drugs and alcohol. USA v. Ogiekpolor, No. 22-13428 (11th Cir. 12/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213428.pdf

DUI-EXPERT-BLOOD LEVEL: Defendant's expert may testify about the Widmark formula for calculating blood-or breath-alcohol level at a particular point in time notwithstanding that no blood/breath test was performed. The

statute criminalizes driving under the influence, regardless of whether based on the impairment of normal faculties or on an excessive blood-or breath alcohol level. Panaro v. State, 2D2023-1369 (12/13/24) https://2dca.flcourts.gov/content/download/2444702/opinion/Opinion_2023-1369.pdf

EVIDENCE-EXPERT: Where evidence tends in any way, even indirectly, to establish a reasonable doubt of the defendant's guilt, it is admissible. While the defense is bound by the same rules of evidence as the state, the question of what is relevant to show a reasonable doubt may present different considerations than the question of what is relevant to show the commission of the crime itself. "Simply put, Panaro gets the benefit of any doubt on the relevance of the proffered expert testimony." Panaro v. State, 2D2023-1369 (12/13/24) https://2dca.flcourts.gov/content/download/2444702/opinion/Opinion_2023-1369.pdf

FINES/COST: Court must individually pronounce discretionary fees, costs, and fines during a sentencing hearing to comply with due process requirements. Jenkins v. State, 5D2023-2800 (12/13/24) https://5dca.flcourts.gov/content/download/2444699/opinion/Opinion_2023-2800.pdf

STAND YOUR GROUND: When a jury rejects a claim of self-defense at trial beyond a reasonable doubt, there is no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof. James v. State, 6D2023-1486 (12/13/24) https://6dca.flcourts.gov/content/download/2444748/opinion/Opinion_2023-1486.pdf

CARRYING CONCEALED WEAPON BY FELON: How or if the weapon is used is not dispositive as to whether it is a deadly weapon. Possession of or carrying a concealed, common pocketknife by a convicted felon, without more,

is not a crime. The same does not hold true for a machete. Whether a machete is a deadly weapon that could not be carried concealed by a convicted felon is for the jury to decide.

CARRYING CONCEALED WEAPON BY FELON: How or if the weapon is used is not dispositive as to whether it is a deadly weapon. Possession of or carrying a concealed, common pocketknife by a convicted felon, without more, is not a crime. The same does not hold true for a machete. Whether a machete is a deadly weapon that could not be carried concealed by a convicted felon is for the jury to decide. The initial analysis as to whether an object is an "other deadly weapon" under the concealed weapon statute at issue is guided by the object's design and construction, not its use. State v. Ivory, 6D2024-0121 (12/13/24)
https://6dca.flcourts.gov/content/download/2444765/opinion/Opinion_2024-0121.pdf

BANK ROBBERY: Federal bank robbery is a crime of violence under the elements clause of §924(c)(3). USA v. Armstrong, No. 21-11252 (11th Cir. 12/11/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202111252.rem.pdf No. 21-11252

ATTEMPTED BANK ROBBERY: Attempted bank robbery under §2113(a) is a crime of violence because it requires as an element that the defendant acted "by force and violence, or by intimidation" in committing the inchoate crime. USA v. Armstrong, No. 21-11252 (11th Cir. 12/11/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202111252.rem.pdf No. 21-11252

CATEGORICAL APPROACH: An indivisible statute is one which sets out a single (or "indivisible'') set of elements to define a single crime, even though it may also spell out "various factual ways of committing some component of the offense." When faced with an indivisible statute, the categorical approach

is used to determine whether the offense is a crime of violence. A divisible statute, on the other hand, may list elements in the alternative, and thereby define multiple crimes. When parsing a divisible statute, the modified categorical approach is used to determine whether the defendant committed a crime of violence, considering a limited set of documents—the indictment, jury instructions, plea agreement, and plea colloquy—to determine which specific crime, comprising which elements, the defendant committed. USA v. Armstrong, No. 21-11252 (11th Cir. 12/11/24) https://media.ca11.uscourts.gov/opinions/pub/files/202111252.rem.pdf No. 21-11252

ROBBERY/EXTORTION: Robbery and extortion are two distinct crimes, criminalizing the two separate offenses of bank robbery, on the one hand, and bank extortion, on the other. Robbery and extortion are alternate elements—amounting to separate crimes—not alternate means of committing one crime; the modified categorical approach applies. USA v. Armstrong, No. 21-11252 (11th Cir. 12/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202111252.rem.pdf No. 21-11252

SEXUAL PREDATOR: A Colorado conviction is a qualifying predicate for a Florida sexual predator designation. The Colorado "position of trust" is similar to Florida's "position of familial or custodial authority." "Given the identification in the Sexual Predators Act of a 'compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity,' we strive to ensure that any interpretation of the phrase 'similar law of another jurisdiction' furthers the Act's stated purpose, rather than reading it so narrowly that we thwart its purpose." The Sexual Predators Act is meant to apply to offenders who have committed a sex crime (especially a sex crime against minors) in a foreign jurisdiction, regardless of whether the sex crime is identical to a Florida sex crime. Conflict certified. Debose v. State, 1D2022-0995 (12/11/24)

https://1dca.flcourts.gov/content/download/2444595/opinion/Opinion_2022-0995.pdf

VENUE: Venue is an appropriate question for the jury; a defendant may move for JOA on the ground that the State failed to prove proper venue. Question certified. Debose v. State, 1D2022-0995 (12/11/24)
https://1dca.flcourts.gov/content/download/2444595/opinion/Opinion_2022-0995.pdf

VENUE: Venue for unlawful use of a communication device may lie in the county where the message is received. Debose v. State, 1D2022-0995 (12/11/24)
https://1dca.flcourts.gov/content/download/2444595/opinion/Opinion_2022-0995.pdf

VENUE (J. WINOKUR, CONCURRING): "I raise practical issues that occur when a jury is required to determine whether the State has proved venue, issues that demonstrate essential contradictions that call into question the entire concept of making venue a jury issue. . .[A]n analysis of the constitutional right to trial before a jury in the county where the crime was committed leads to the conclusion that venue is a question of law for the court and should never be brought before the jury as a question of fact at all." "[I]f the State has violated a defendant's constitutional rights by trying him in the wrong county, then a jury composed of citizens from the wrong county is vested with the responsibility of deciding whether it is the right jury to try the defendant. . .This seems to violate the very notion of a constitutional right to trial by a jury in the county where the crime occurred." Debose v. State, 1D2022-0995 (12/11/24)
https://1dca.flcourts.gov/content/download/2444595/opinion/Opinion_2022-0995.pdf

EVIDENCE: Evidence that Defendant brought a second weapon–not the murder weapon but one with matching projectiles–is admissible, or if error, would be harmless. Johnson v. State, 1D2022-4051 (12/11/24) https://1dca.flcourts.gov/content/download/2444594/opinion/Opinion_2022-4051.pdf

APPEAL-NONVERBAL SIGNALS: Claim that counsel was ineffective for not investigating whether witness's counsel was giving the witness nonverbal signals during her trial is not cognizable on direct appeal. Johnson v. State, 1D2022-4051 (12/11/24) https://1dca.flcourts.gov/content/download/2444594/opinion/Opinion_2022-4051.pdf

VOP-UNCHARGED CONDUCT: A trial court may not revoke probation based on a ground not alleged in the violation of probation affidavit, but when a trial court relies on both proper and improper grounds to revoke probation, reliance on improper grounds does not require reversal when it is clear from the record that the trial court would have revoked probation based solely on proper grounds. Morrow v. State, 1D2024-0445 (12/11/24) https://1dca.flcourts.gov/content/download/2444627/opinion/Opinion_2024-0445.pdf

VOP: Where a condition of sex offender probation prohibited Defendant from accessing the Internet, watching Netflix movies online may constitute a willful and substantial violation. "Morrow's argument that using the internet should be considered a substantial violation only when the offender uses the internet to access pornography or to contact a minor is an effort to rewrite the probation statute and second-guess the legislature's policy choices." Morrow v. State, 1D2024-0445 (12/11/24) https://1dca.flcourts.gov/content/download/2444627/opinion/Opinion_2024-0445.pdf

WILLIAMS RULE NOTICE: No Williams Rule notice is required for evidence of offenses used for impeachment or on rebuttal. Paylan v. State, 2D2022-0304 (12/11/24)
https://2dca.flcourts.gov/content/download/2444588/opinion/Opinion_2022-0304.pdf

POSTCONVICTION RELIEF: "The recurring theme in all her challenges, from the initial investigation to date, has been that someone on the other side or in cahoots with the other side is lying, whether out of personal animus, for personal gain, or to cover their own incompetence. But even if she were right, it would not be our role to 'fix' it. We may not be swayed by concerns of factual guilt or innocence. Nor may we decide the credibility of witnesses. To the contrary, we are affirmatively precluded from doing those things." Paylan v. State, 2D2022-0304 (12/11/24)
https://2dca.flcourts.gov/content/download/2444588/opinion/Opinion_2022-0304.pdf

HABITUAL FELONY OFFENDER: Before a trial court may impose a habitual felony offender sentence, it must find, based on record evidence, that the defendant has been previously convicted of any combination of two or more felonies and that the current felony occurred either (a) while the defendant was serving a prison sentence or lawfully imposed supervision as a result of a prior felony conviction; or (b) within five years from the date of conviction for the defendant's last prior felony or within five years from the date of the defendant's release from prison or supervision for a prior felony offense. Thus, the State must provide record evidence of the date of the current felony offense, the date of the conviction for the last prior felony, and the date the defendant was released from any prison term or supervision imposed for the last felony conviction. Mathis v. State, 2D2023-1764 (12/11/24)
https://2dca.flcourts.gov/content/download/2444590/opinion/Opinion_2023-1764.pdf

PRISON RELEASEE REOFFENDER: Before a PRR sentence may be imposed, the State is required to submit evidence that the offender's current offense was committed within three years of his release from custody on a prior offense. Mathis v. State, 2D2023-1764 (12/11/24)
https://2dca.flcourts.gov/content/download/2444590/opinion/Opinion_2023-1764.pdf

HFO/PRR SENTENCING: Where Court received and reviewed sentencing packet that was made part of the record, but it was never removed or received in evidence, evidence is insufficient to support the trial court's finding that defendant qualifies as a HFO or a PRR. Mathis v. State, 2D2023-1764 (12/11/24)
https://2dca.flcourts.gov/content/download/2444590/opinion/Opinion_2023-1764.pdf

CIVIL RESTITUTION LIEN: If inmate is convicted for a capital or life felony, the convicted offender is liable for incarceration costs and other correctional costs in the liquidated damage amount of $250,000. DOC may use this civil restitution lien to offset damages owed to the inmate for his treatment in prison. "Although we may share the trial court's concerns about the use of the civil restitution lien in this manner, the FDOC pursued a remedy which it was entitled to pursue." D.O.C. v. O'Neal, 2D2023-2495 (12/11/24)
https://2dca.flcourts.gov/content/download/2444593/opinion/Opinion_2023-2495.pdf

ATTORNEY-CONFLICT: Attorney is disqualified from representing Defendant where he had earlier twice consulted with the co-Defendant on the same case and the co-Defendant, with other counsel, later flipped on Defendant and then died. Although the Sixth Amendment's right to counsel creates a presumption favoring a defendant's choice of counsel, that right is not absolute and may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict. The fact that the codefendant died does not render the trial court's decision as error because the privilege continues after the individual's death. Landis v. State, 4D2023-0390 (12/11/24)

https://4dca.flcourts.gov/content/download/2444645/opinion/Opinion_2023-0390.pdf

SENTENCING-CONSIDERATIONS: Cumulative 40 year sentence, intended to ensure that the Defendant "never see the light of day" is lawful and not based on improper considerations. State's argument that Defendant "is not just a drug trafficker in Martin County, he is the drug trafficker in Martin County" is not improper. Judges are routinely made aware of information which may not be properly considered in determining a cause. Our judicial system is dependent upon the ability of trial judges to disregard improper information and to adhere to the requirements of the law in deciding a case or in imposing a sentence. Landis v. State, 4D2023-0390 (12/11/24) https://4dca.flcourts.gov/content/download/2444645/opinion/Opinion_2023-0390.pdf

VOP-CONDITIONS: Court may not revoke probation based upon defendant's failure to remain confined to his approved residence after curfew and his failure to obey instructions from his probation officer. Although these are standard conditions of probation, the trial court did not orally pronounce these conditions at sentencing, nor were these conditions included in the written sentencing order. Okwor v. State, 4D2023-0495 (12/11/24) https://4dca.flcourts.gov/content/download/2444622/opinion/Opinion_2023-0495.pdf

VOP: Court cannot revoke probation for violating a condition unilaterally imposed by his probation supervisor under the general condition requiring compliance with a probation supervisor's instructions. Okwor v. State, 4D2023-0495 (12/11/24) https://4dca.flcourts.gov/content/download/2444622/opinion/Opinion_2023-0495.pdf

TRIAL-REMOVAL FROM COURTROOM: Defendant who routinely interrupted the trial judge and spoke out of turn, even after multiple warnings,

may be removed from the proceedings. Bless v. State, 4D2023-2007 (12/11/24)
https://4dca.flcourts.gov/content/download/2444639/opinion/Opinion_2023-2007.pdf

APPEAL-ISSUE PRESERVATION: Defendant did not preserve the issue where he did not make a timely, contemporaneous objection to his removal from the courtroom. Bless v. State, 4D2023-2007 (12/11/24)
https://4dca.flcourts.gov/content/download/2444639/opinion/Opinion_2023-2007.pdf

COST OF INCARCERATION: DOC—as an agent of the State— may move for liquidated damages (a civil restitution lien order) for costs of incarceration: Dixon v. Montero, 4D2024-1318 (12/11/24)
https://4dca.flcourts.gov/content/download/2444635/opinion/Opinion_2024-1318.pdf

PRISON RELEASEE REOFFENDER: The holding in Lewars--that release from jail rather than prison does not qualify Defendant for later PRR sentencing– does not apply retroactively. Conflict certified. Linden v. State, 4D2024-1544 (12/11/24)
https://4dca.flcourts.gov/content/download/2444644/opinion/Opinion_2024-1544.pdf

CIVIL LIABILITY-SOCIAL MEDIA: Where the complaint fails to allege actual knowledge, online social media platform that randomly places anonymous people in video chatrooms where some (known as “cappers”) induce children to perform sex acts online is not civilly liable for knowingly possessing child pornography nor knowingly benefitting from participation in a sex trafficking venture. M.H. v. Omegle.com, No. 22-10338 (11th Cir. 12/9/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210338.pdf

EVIDENCE-ARGUMENT: Where a video is admitted into evidence but only a part of it published--the balance was objected to as not authenticated--Defendant may not publish during closing argument, nor invite the jury to view during deliberations, the unpublished portions. "Simmons relies on the fact that the entire exhibit had already been admitted into evidence, but that does not move the needle. The district court was operating well within its discretion here when it concluded that Simmons was trying to introduce new evidence rather than summarize and argue from evidence the jury had already heard." USA v. Simmons, No. 22-12148 (11th Cir. 12/6/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212148.pdf

VOP: Defendant did not willfully violate probation by not reporting to the probation office within 72 hours when the office had relocated, he was given an incorrect address, and he tried to report there. Del Corral v. State, 5D2023-2205 (12/6/24)
https://5dca.flcourts.gov/content/download/2444396/opinion/Opinion_2023-2205.pdf

VOP: Before a probationer can be imprisoned for failure to pay a monetary obligation such as restitution, the trial court must inquire into a probationer's ability to pay and make an explicit finding of willfulness. In all probation revocation proceedings in which the violation alleged is a failure to pay a monetary obligation, the State must present sufficient evidence of the probationer's willfulness, which includes evidence on ability to pay, to support a finding of willfulness. Del Corral v. State, 5D2023-2205 (12/6/24)

https://5dca.flcourts.gov/content/download/2444396/opinion/Opinion_2023-2205.pdf

POST CONVICTION RELIEF-DEATH PENALTY-NEWLY DISCOVERED EVIDENCE: Newly discovered evidence that birth parents were former high school students who later went to college and had successful careers dowe

not warrant relief from his death sentence. Randolph v. State, SC2024-0273 (12/5/24)
https://supremecourt.flcourts.gov/content/download/2444349/opinion/Opinion_SC2024-0273.pdf

WILLIAMS RULE: In child sex abuse case, four witness's testimony about unrelated sexual molestation is admissible. Gianino v. State, 1D2022-4154 (12/4/24)
https://1dca.flcourts.gov/content/download/2444224/opinion/Opinion_2022-4154.pdf

COST OF PROSECUTION: The minimum cost of prosecution is mandatory regardless of whether the State requests it. Harris v. State, 1D2023-0027 (12/4/24)
https://1dca.flcourts.gov/content/download/2444226/opinion/Opinion_2023-0027.pdf

AUTOPSY PHOTOS: Where photographs are relevant, Court must determine whether the gruesomeness of the portrayal is so inflammatory as to create undue prejudice. Crime scene and autopsy were relevant to explain the crime scene and to show the victim's position (standing and at close range) when shot. Harris v. State, 1D2023-0027 (12/4/24)
https://1dca.flcourts.gov/content/download/2444226/opinion/Opinion_2023-0027.pdf

TEXT MESSAGES-AUTHENTICITY: The requirement that evidence be authenticated as a condition of its admissibility is satisfied by evidence sufficient to support a finding that a matter in question is what its proponent claims. Text messages on witness's phone and identified as coming from Defendant are sufficiently authenticated. Harris v. State, 1D2023-0027 (12/4/24)
https://1dca.flcourts.gov/content/download/2444226/opinion/Opinion_2023-0027.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: There cannot be a cognizable claim for ineffective assistance of appellate counsel once a panel of the appellate court, in the underlying appeal, has conducted the Anders review to discover any arguable issues. Martin v. State, 1D2024-0261 (12/4/24)
https://1dca.flcourts.gov/content/download/2444246/opinion/Opinion_2024-0261.pdf

MISTRIAL: The granting of a motion for mistrial is not based on whether the error is prejudicial. Rather, the comments must either deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than that it would have otherwise. Marin v. State, 3D23-1061 (12/4/24)

https://3dca.flcourts.gov/content/download/2444282/opinion/Opinion_2023-1061.pdf

JOA: The standard to be applied in all cases when analyzing the sufficiency of the evidence is whether the State presented competent, substantial evidence to support the verdict. Tufenkjian v. State, 3D23-1897 (12/4/24)
https://3dca.flcourts.gov/content/download/2444284/opinion/Opinion_2023-1897.pdf

POSSESSION: Knowledge of the presence of the contraband and its illicit nature can be inferred or presumed when Defendant is in exclusive possession of the automobile when it is stopped. Tufenkjian v. State, 3D23-1897 (12/4/24)
https://3dca.flcourts.gov/content/download/2444284/opinion/Opinion_2023-1897.pdf

PARAPHERNALIA: Factors to be considered in determining whether an object is drug paraphernalia include the proximity of the object to controlled substances and expert testimony concerning its use. Tufenkjian v. State, 3D23-1897 (12/4/24)
https://3dca.flcourts.gov/content/download/2444284/opinion/Opinion_2023-1897.pdf

POST CONVICTION RELIEF: A second or successive motion is an extraordinary pleading. As such, it is subject to dismissal if it fails to allege new or different grounds for relief and the prior determination was on the merits. Pickett v. State, 3D24-0401 (12/4/24)

https://3dca.flcourts.gov/content/download/2444291/opinion/Opinion_2024-0401.pdf

HABEAS CORPUS-JIMMY RYCE: Absent an allegation of ineffective assistance of counsel, a habeas corpus petition to challenge an involuntary commitment as a sexually violent predator must be filed in the county where the facility in which the subject is confined. Jordan v. State, 3D24-0811 (12/4/24)
https://3dca.flcourts.gov/content/download/2444271/opinion/Opinion_2024-0811.pdf

EXPERT/LAY WITNESS: When a witness testifies in a dual capacity, i.e., as both a lay witness and an expert witness, the district court must ensure that the lay opinions satisfy R. 701 and that the expert opinions satisfy R. 702. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

EXPERT-GANGS: Court erred in excluding Defendants' expert on gangs to rebut Government's extensive evidence suggesting that their Miami gang activity was affiliated with the Bloods gang or a Bloods-affiliated gang. "In the law, what's sauce for the goose is normally sauce for the gander." Where the

government presents evidence to support a certain theory, a defendant is entitled to rebut that theory with evidence of his own. Expert testimony can be used to counter an opponent's fact or lay opinion testimony. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

EXPERT: With the exception of testimony on the mental state or condition of a defendant, there is no categorical prohibition on expert testimony concerning an ultimate issue of fact. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

EXPERT-RICO: In RICO case, Defendants' qualified expert in criminal gangs should have been allowed to give his opinion that the gang was not a criminal enterprise involved in or affecting interstate commerce. Just because an element of an offense has a legal definition (or prescribed legal parameters) does not mean that it is transformed into a question of law. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

ON THE OTHER HAND...: "We pause for a moment here to note that several circuits have held that the existence of an enterprise is not an element of a §1962(d) conspiracy. . .But others have come to a different conclusion. . .Some of our decisions suggest the that the existence of an enterprise is not an element of a §1962(d) offense. . . But one of our early cases points in a different direction." USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO-ENTERPRISE: In addition to predicate crimes, a RICO conspiracy charge requires proof of an enterprise, of the continuing racketeering activity, and of the defendant's knowledge of, agreement to, and participation in the conspiracy. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO-ENTERPRISE: An enterprise must have an ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages. An association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

CONSPIRACY: 21 U.S.C. §846 does not require proof that a coconspirator commit an overt act in furtherance of the conspiracy. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SEARCH AND SEIZURE-INCIDENT TO ARREST: Where Defendant is handcuffed and taken to police station for questioning, gun may be seized incident to arrest even though officers subjectively believed Defendant was not under arrest or that he went to the police station "voluntarily" while handcuffed in the back of a police car. The character of a seizure as arrest or Terry stop depends on the nature and degree of intrusion, not on whether the officer pronounces the detainee "under arrest." USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

ARREST-PROBABLE CAUSE: Defendant may be lawfully arrested for driving an unregistered vehicle in violation of §320.02, a second-degree misdemeanor. It does not matter that the officers could have issued traffic citations rather than execute an arrest. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SEARCH AND SEIZURE-CARPORT: Entering open carport to talk to Defendant seated there is lawful under the knock-and-talk exception. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SEVERANCE: As a general rule, defendants who are indicted together are usually tried together. A defendant does not suffer compelling prejudice, sufficient to mandate a severance simply because much of the evidence at trial is applicable only to co-defendants. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

JURORS-PEREMPTORY CHALLENGE-BATSON: In evaluating a claim that a peremptory strike is racially discriminatory: First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race. Second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question. Third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

JURORS-PEREMPTORY CHALLENGE-BATSON: In assessing discriminatory intent, Court should consider how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy. Other relevant factors at include (1) statistical evidence about the prosecutor's use of peremptory strikes against black prospective jurors as compared to white prospective jurors in the case; (2) evidence of a prosecutor's disparate questioning and investigation of black and white prospective jurors in the case; (3) "side-by-side comparisons of black prospective jurors who were struck and white prospective jurors who were not struck in the case; (4) a prosecutor's misrepresentations of the record

when defending the strikes during the Batson hearing; and (5) other relevant circumstances. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

JURORS-PEREMPTORY CHALLENGE-BATSON: No discriminatory intent is shown where nearly 1/3 of the jury pool was black and the jury ultimately selected was 1/3 black. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

JURORS-PEREMPTORY CHALLENGE-BATSON: No discriminatory intent shown where the "government took some liberties in describing some of the prospective Black jurors' answers, but its descriptions were not a 'series of factually inaccurate explanations.'" Mistaken explanations should not be confused with racial discrimination. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

JURORS-PEREMPTORY CHALLENGE-BATSON: A juror's familiarity with—and thus potential bias for or against—the particular geographic setting of a case (and the defendants who hail from that area) can be a legitimate reason for the use of a peremptory strike. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

ISSUE-PRESERVATION: Where Court denied motion in limine without prejudice and advised Defendant to reassert the objection at trial, but he did not, he did not preserve the issue. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

EVIDENCE-SOCIAL MEDIA POSTS: Defendant's social media post ("My uncle fish gave me the game, my Aunte Danielle showed me the way, and ma n****s got me this far.") is admissible as a statement against Defendant's

interest. "It is true that there is nothing facially self-inculpatory about Jerimaine's Facebook post. . .But a 'facially neutral statement[ ] might actually be against a declarant's interest. . . And a statement's context elucidates its meaning. . . '[T]he game" likely meant 'narcotics sales.'" USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

CONFRONTATION CLAUSE: Admission of Facebook post as a prior consistent statement does not violate the Confrontation Clause. "Simply put, Jerimaine could not have reasonably anticipated that a social media post, made years before his arrest, would be used in court. The statement is therefore nontestimonial and the Confrontation Clause does not apply." USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

HEARSAY-PRIOR CONSISTENT STATEMENT: A prior consistent statement by a witness is not hearsay if (1) the declarant testifies and is subject to cross-examination on the statement; and (2) the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

EVIDENCE-REHABILITATION: R. 801(d)(1)(B) does not limit the scope of rehabilitation to the precise issues on which witness was impeached. The scope of the use of a recording for rehabilitation is within the discretion of the court. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

ADOPTIVE ADMISSION: The issue is close, but Court did not abuse its discretion in admitting Defendant's "giggle and smirk" reaction to a co-conspirator's statement about participating in a murder. Non-verbal reactions

like silence and a head-nod may be adoptive admissions. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

ADOPTIVE ADMISSION: When a statement is offered as an adoptive admission, Court must determine as a whether (1) the statement was such that, under the circumstances, an innocent defendant would normally be induced to respond and (2) there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

APPEAL-ISSUE: Where Appellants insufficient brief and argue an issue, it will not be considered on appeal. Appellants "do not tell us with sufficient specificity what 'other acts' were actually and improperly introduced against them at trial; for what purpose those 'other acts' were presented; and when during the trial those 'other acts' were introduced. Saying that they included acts of mugging, auto theft, fleeing and eluding, possession of firearms, etc. is not enough." To properly present an issue on appeal, appellants must identify exactly the evidence they challenge. "We decline to sift through a transcript of nearly 8,000 pages to figure out and resolve their arguments." And specifying those matters in the reply brief is too late. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RULE OF SEQUESTRATION: A violation of the rule of sequestration does not require the automatic exclusion of testimony. Court erred in excluding testimony of witness who viewed parts of the trial before changing her mind about testifying. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

APPEAL-HARMLESS ERROR: Where Government fails to argue on appeal harmless error, the appellate court has discretion to sua sponte determine

whether an error is harmless. But that discretion is not an obligation. "Nothing about this case is amenable to a sua sponte review for harmlessness. . .The trial transcript is nearly 8,000 pages long, and the exhibit pages number in the thousands. . .To determine the effect of the exclusion of Dr. de la Cruz on the six defendants convicted of the RICO conspiracy charge, we would have to sift through the voluminous record. . .--a task not generally befitting of an appellate court." USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

FAIR TRIAL: "We do not vacate convictions in cases like this one lightly. And we appreciate the immense undertaking required of all parties to bring this case to trial, and acknowledge that it would be equally or even more burdensome to do it again years later. But paramount to our sensitivity for the government's limited resources and the district court's docket is our duty to ensure that the defendants receive a fair trial." USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO-UNANIMOUS VERDICT: For a RICO conspiracy charge the jury need only be unanimous as to the types of racketeering acts that the defendants agreed to commit. It is not necessary to prove the specific predicate acts that supported a RICO conspiracy charge in order to prove a defendant's participation in a RICO conspiracy. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO: Government does not have to establish that each conspirator explicitly agreed with every other conspirator to commit the substantive predicate RICO crime described in the indictment. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO: One who uses a gang handshake may be regarded as a gang member. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO-JUVENILE: Defendant may be found guilty of RICO notwithstanding that a large portion conspiracy occurred while he was a juvenile and therefore were delinquencies rather than felonies. When there was one continuous conspiracy and the defendant's membership in that conspiracy straddled his 18th birthday, his juvenile acts can be the sole basis for guilt. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SENTENCING: A RICO conspirator may be held accountable for his co-conspirator's actions (here, murder) if they were reasonably foreseeable and in furtherance of the conspiracy, even if he did not personally participate in those actions. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SENTENCING-GUIDELINES-DRUG QUANTITY: A drug quantity may be based on the lowest estimated figures for daily sales. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

RICO-PARTICIPATION-DRUG QUANTITY: "Bryant asserts that he should not be held accountable for crack cocaine sold during the three years he spent in prison after joining the DSBF in 2010. The evidence, however, showed that he joined the narcotics conspiracy as early as 2010 and, other than his self-serving assertion to the contrary, he provided no evidence to establish that he withdrew from the conspiracy when he went to prison." Neither arrest nor incarceration automatically triggers withdrawal from a conspiracy. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24) https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SENTENCING-FIREARM-ENHANCEMENT: Firearm enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. Proximity between guns and drugs alone is sufficient for the enhancement. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

SENTENCING-GUIDELINES-ENHANCEMENT-THREAT OF VIOLENCE: A single incident of violence is enough for application of the threat of violence enhancement. USA v. Graham, No. 19-10332 (11th Cir. 12/2/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201910332.pdf

HABEAS CORPUS-PRETRIAL DETENTION-NEBBIA HEARING: Court may not maintain a Nebbia hold on Defendant after bondsman and Defendant's mother established that the funds for the bond came from a non-criminal sources (social security check, her checking account, and some funds that were sent to her from friends and relatives). Mother's ability to pay the promissory note to the bail bondsman is not relevant to the Nebbia analysis. Her ongoing financial status has nothing to do with whether the funds used to post the appearance bond were derived from illegal sources, and verges on the proscription against pretrial detention merely for being indigent. Jenkins v. State, 3D2024-1998 (12/2/24)
https://3dca.flcourts.gov/content/download/2444104/opinion/Opinion_2024-1998.pdf

HABITUAL OFFENDER: Defendant may not be habitualized on the basis of a prior conviction that did not sufficiently identify him by anything except the name. A certified copy of conviction with illegible fingerprints, no picture no date of birth nor a Social Security number is insufficient. State can prove that a prior conviction belongs to a defendant in several ways, such as fingerprint analysis, photographic evidence, or social security number, but may not be proved by name identity alone. Williams v. State, 4D2023-2253 (12/4/24)

https://4dca.flcourts.gov/content/download/2444244/opinion/Opinion_2023-2253.pdf

SENTENCING: Court's oral pronouncement of a sentence controls over the written sentencing document. When the written document results in a sentence that is more severe than the sentence announced in court, the sentence is illegal. Dimitrion v. State, 4D2023-2259 (12/4/24)
https://4dca.flcourts.gov/content/download/2444250/opinion/Opinion_2023-2259.pdf

INVESTIGATIVE COSTS: Court may not impose $50 investigative costs if requested by the law enforcement agencies. A prosecutor cannot seek costs on behalf of an agency without that agency's request. Dimitrion v. State, 4D2023-2259 (12/4/24)
https://4dca.flcourts.gov/content/download/2444250/opinion/Opinion_2023-2259.pdf

EVIDENCE-OTHER BAD ACTS: In car burglary/robbery with a shooting case, Williams Rule evidence of forty or fifty other car burglary/robberies committed by the Defendant while wearing a mask is inadmissible as in sufficiently similar and unduly prejudicial, particularly where the testimony about the earlier burglaries came from a flipping codefendant without corroboration. Music v. State, 4D2024-0018 (12/4/24)

https://4dca.flcourts.gov/content/download/2444257/opinion/Opinion_2024-0018.pdf

INCOMPETENCE-COMMITMENT: Court's findings that Defendant "meets the criteria for commitment. . .and restoration of competency related abilities" based on being "clearly delusional. . . [with] irrational beliefs and opinions," and having "no family or friends in Jacksonville" and no place to live fall short of making the required specific findings. Involuntary commitment quashed. D.L.D. v. State, 5D2024-2623 (12/3/24)

https://5dca.flcourts.gov/content/download/2444143/opinion/Opinion_2024-2623.pdf

NOVEMBER 2024

JUDGE-DISCIPLINE: A 60-day suspension without pay and a public reprimand imposed on the judge who yelled at a litigant who was trying to find a seat ("[C]ould you shut up and sit down. . .You want to be held in contempt and go to jail? I asked you a f*****g question, a*****e."). Judges must conduct themselves with integrity and be patient, dignified, and courteous toward others in official settings. Inquiry Concerning a Judge re: Hon. Wayne Culver, SC2022-0846(11/27/24)
https://supremecourt.flcourts.gov/content/download/2444076/opinion/Opinion_SC2022-0846.pdf

JUDGE-DISCIPLINE: A 25-day suspension without pay and a public reprimand imposed on a judge who ran on a platform that he would support law enforcement and that criminals would not be happy to see him on the bench. A judicial candidate may not impliedly pledge to favor law enforcement. There are few campaign tactics more corrosive to the integrity and impartiality of the judicial system than a candidate broadcasting his or her support for one party or another. Inquiry Concerning a Judge re: Hon. John B. Flynn, SC2023-1435 (11/27/24)
https://supremecourt.flcourts.gov/content/download/2444077/opinion/Opinion_SC2023-1435.pdf

DOUBLE JEOPARDY: Convictions for both first-degree and second-degree murder violates double jeopardy. First-degree felony murder and second-degree murder are degrees of the same offense. Gould v. State, 1D2023-0821 (11/27/24)

https://1dca.flcourts.gov/content/download/2444025/opinion/Opinion_2023-0821.pdf

DOUBLE JEOPARDY-FUNDAMENTAL ERROR: A double jeopardy violation is fundamental error that may be addressed for the first time on appeal. Gould v. State, 1D2023-0821 (11/27/24)
https://1dca.flcourts.gov/content/download/2444025/opinion/Opinion_2023-0821.pdf

APPEAL-PRESERVED ISSUE: Although the trial court failed to make the required written findings on whether Defendant posed a danger to the community, he failed to preserve the issue by filing a motion to correct. Norman v. State, 1D2023-1069 (11/27/24)
https://1dca.flcourts.gov/content/download/2444026/opinion/Opinion_2023-1069.pdf

POSTCONVICTION RELIEF: When a defendant challenges a conviction by asserting ineffective assistance of counsel, he must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Defendant, who had beaten his cellmate to death over the course of days cannot show prejudice. "An assessment of the likelihood of a result more favorable to the defendant must exclude the possibility of arbitrariness, whimsy, caprice, 'nullification,' and the like. A defendant has no entitlement to the luck of a lawless decisionmaker." Johnson v. State, 1D2023-1640 (11/27/24)
https://1dca.flcourts.gov/content/download/2444027/opinion/Opinion_2023-1640.pdf

MANDAMUS: Court must rule on Defendant's motion to mitigate, notwithstanding that it was not separately docketed with the circuit court; it is considered filed on the date it was conveyed to prison officials for mailing. Shirah v. State, 1D2023-1833 (11/27/24)
https://1dca.flcourts.gov/content/download/2444029/opinion/Opinion_2023-1833.pdf

STATEMENTS OF a DEFENDANT: A confession cannot be found to be involuntary without coercive police conduct. Brown v. State, 1D2023-2080 (11/27/24)
https://1dca.flcourts.gov/content/download/2444030/opinion/Opinion_2023-2080.pdf

APPEAL-INMATE: Access to a prison law library is not necessary to prepare and transmit a simple notice of appeal and lack of that access did not demonstrate a right to a belated appeal. Edenfield v. State, 1D2024-2191 (11/27/24)
https://1dca.flcourts.gov/content/download/2444052/opinion/Opinion_2024-2191.pdf

SENTENCING-CONSIDERATIONS: Court may not consider dismissed charges, unsubstantiated allegations of misconduct, or speculation about defendant committing future crimes. Court improperly considered charges that had been dropped in prior shootings involving the Defendant in determining the sentence. If the record is at all unclear whether a trial court considered improper sentencing factors, the sentence must be reversed. Alhasani v. State, 2D2023-1525 (11/27/24)
https://2dca.flcourts.gov/content/download/2444008/opinion/Opinion_2023-1525.pdf

SENTENCING-CONSIDERATIONS: Reliance on improper sentencing factors is a due process violation that results in fundamental error; an appellant raising such an argument is not required to have preserved that argument below. Alhasani v. State, 2D2023-1525 (11/27/24)
https://2dca.flcourts.gov/content/download/2444008/opinion/Opinion_2023-1525.pdf

CREDIT FOR TIME SERVED: No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that he or she shall be sentenced to serve. Probation is a minimal restraint on

liberty compared with incarceration, and a probationary period is not considered to be a "sentence." Kelly v. State, 2D2024-1934 (11/27/24) https://2dca.flcourts.gov/content/download/2444011/opinion/Opinion_2024-1934.pdf

POSTCONVICTION RELIEF: Where an initial motion for post-conviction relief raises the claim of ineffective assistance of counsel, the trial court may summarily deny a successive motion which raises additional grounds for ineffective assistance. Barrett v. State, 3D24-0546 (11/27/24) https://3dca.flcourts.gov/content/download/2444044/opinion/Opinion_2024-0546.pdf

JUDGE-DISQUALIFICATION: When a trial judge's spouse or immediate family member is employed by the State Attorney's Office in the same judicial circuit where the trial judge is presiding over criminal cases and does not have supervisory authority over prosecutors appearing before the judge, recusal of the trial judge is not required. Guzzi v. State, 3D24-0659 (11/27/24) https://3dca.flcourts.gov/content/download/2444062/opinion/Opinion_2024-0659.pdf

VFOSC: Where a court orally pronounces a reason for its finding that the defendant, as a violent felony offender or of special concern, poses a danger to the community, but fails to provide written reasons for its finding, the proper remedy is to affirm the revocation of the defendant's probation, but remand for entry of a written order conforming to the court's oral pronouncement. Resentencing is not required. Hart v. State, 4D2023-1691 (11/27/24) https://4dca.flcourts.gov/content/download/2444064/opinion/Opinion_2023-1691.pdf

DISMISSAL-INVITED ERROR: Where State reneged on its waiver of jury trial and refused to call witnesses, Court may dismiss the case. In the absence of a motion to dismiss or a statute permitting the dismissal, the prosecutor generally has the sole discretion to dismiss criminal charges. But where the

state refuses to proceed without a good faith reason, the trial court does not abuse its discretion by dismissing charges. "Here, the state never formally sought to revoke its consent to the jury trial waiver, waited until the day of trial to seek a jury trial, and did not move for a continuance. . .This cavalier refusal by the new ASA was compounded by her failure to suggest . . .a reasonable alternative. . .The state cannot now complain of error for which the state itself is responsible and which the state, in essence, invited the trial court to make." State v. Poitier, 4D2024-01206 (11/27/24)
https://4dca.flcourts.gov/content/download/2444078/opinion/Opinion_2024-0106.pdf

POSTCONVICTION RELIEF: Court may not summarily deny motion for postconviction relief without attaching records showing no entitlement for relief. Sending hearing and trial transcripts up on appeal is not enough. The State's argument requires that this Court replace the trial court and examine the record in the first instance, which would actually hurt judicial efficiency. To accept the State's position, the work of trial courts would shift to the appellate court, unfairly and adversely affecting other litigants. Jackson v. State, 4D2024-0126 (11/27/24)
https://4dca.flcourts.gov/content/download/2444080/opinion/Opinion_2024-0126.pdf

POSTCONVICTION RELIEF: Where Defendant voluntarily dismisses his motion for postconviction relief, Court errs in dismissing it with prejudice. Johnson v. State, 6D2023-1929 (11/27/24)
https://6dca.flcourts.gov/content/download/2444083/opinion/Opinion_2023-1929.pdf

SEARCH AND SEIZURE-ABANDONMENT: Where Defendant abandoned backpack while fleeing, Officers did not need a warrant to open it and break the lock to the container in it. State v. Howard, 6D2023-4057 (11/27/24)
https://6dca.flcourts.gov/content/download/2444085/opinion/Opinion_2023-4057.pdf

SEARCH AND SEIZURE-ISSUE PRESERVATION-MARIJUANA: Defendant failed to adequately challenge the frisk of his person where the motion challenged only the search of the car based on the odor of marijuana. "[T]he item Simmons seeks to suppress—the firearm—was not found in the car. He has not presented us with any legal argument regarding why the search of his person was unlawful, and we are not at liberty to craft that argument for him." Simmons v. State, 2D2023-0953 (11/22/24)
https://2dca.flcourts.gov/content/download/2443743/opinion/Opinion_2023-0953.pdf

SEARCH AND SEIZURE-MARIJUANA: The odor of burnt marijuana, perhaps combined with erratic driving—not raw marijuana alone–justifies a search. Simmons v. State, 2D2023-0953 (11/22/24)
https://2dca.flcourts.gov/content/download/2443743/opinion/Opinion_2023-0953.pdf

DICTA/HOLDING: A holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta. Any statement of law in a judicial opinion that is not a holding is dictum. Simmons v. State, 2D2023-0953 (11/22/24)
https://2dca.flcourts.gov/content/download/2443743/opinion/Opinion_2023-0953.pdf

OTHER BAD ACTS-CHILD SEX ABUSE: When a defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. A defendant's commission of other acts of child molestation is admissible regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity. Court must make a finding of relevancy

(whether the evidence tends to prove or disprove a material fact) before performing the balancing test (probative value versus unfair prejudice). State v. Riggleman, 2D2024-0691 (11/22/24)
https://2dca.flcourts.gov/content/download/2443753/opinion/Opinion_2024-0691.pdf

EVIDENCE-GENERAL CHARACTERISTICS: General criminal behavior testimony based upon an officer's experience with other cases is inadmissible as substantive proof of a defendant's guilt. General criminal behavior testimony used to show that a defendant's conduct mirrored that of other drug sellers is inadmissible. A defendant has a right to be tried based on the evidence against him or her, not on the characteristics or general behavior of certain classes of criminals. Lawrence v. State, 5D2023-3653 (11/22/24)
https://5dca.flcourts.gov/content/download/2443752/opinion/Opinion_2023-3653.pdf

COSTS OF PROSECUTION: Imposition of the cost of prosecution is mandatory and need not be requested. Conflict recognized. J.S., A Child v. State, 5D2024-0295 (11/22/24)

https://5dca.flcourts.gov/content/download/2443750/opinion/Opinion_2024-0295.pdf

POSTCONVICTION RELIEF: Claim that counsel was ineffective for failing to pursue and file a mental health evaluation is legally insufficient where Defendant does not claim to be incompetent to stand trial, but he must be provided an opportunity to amend his claim. Villaba-Santos v. State, 5D2024-0875 (11/22/24)
https://5dca.flcourts.gov/content/download/2443755/opinion/Opinion_2024-0875.pdf

POSTCONVICTION RELIEF: Claim that counsel was ineffective for failing to retain an expert to rebut State's expert that the gun was functional is legally

insufficient where Defendant does not allege the substance of an expert's testimony and how that omitted testimony prejudiced him, but he must be provided an opportunity to amend his claim. Villaba-Santos v. State, 5D2024-0875 (11/22/24)
https://5dca.flcourts.gov/content/download/2443755/opinion/Opinion_2024-0875.pdf

COST OF PROSECUTION: Imposition of the statutorily specified minimum cost of prosecution is mandatory and State does not need to specifically request it. Beauty v. State, 5D2024-1166 (11/22/24)
https://5dca.flcourts.gov/content/download/2443760/opinion/Opinion_2024-1166.pdf

POSTCONVICTION RELIEF: A claim that should have been raised on direct appeal is procedurally barred. Mosley v. State, SC2023-1091 (11/21/24)
https://supremecourt.flcourts.gov/content/download/2443730/opinion/Opinion_SC2023-1091.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Upon remand, Defendant may not raise a new claim of recently discovered evidence (that the medical examiner was impaired) which exceeds the scope of the remand. Mosley v. State, SC2023-1091 (11/21/24)
https://supremecourt.flcourts.gov/content/download/2443730/opinion/Opinion_SC2023-1091.pdf

NEWLY DISCOVERED EVIDENCE: To succeed on a claim of newly discovered evidence, Defendant must establish two prongs: first, that the evidence was not known by the trial court, the party, or counsel at the time of trial and it could not have been discovered through due diligence at the time of trial; and, second, that the newly discovered evidence is of such a nature that it would probably produce an acquittal on retrial. Here, it would not have. The mother was immolated and the child asphyxiated. Mosley v. State, SC2023-1091 (11/21/24)

https://supremecourt.flcourts.gov/content/download/2443730/opinion/Opinion_SC2023-1091.pdf

APPEAL: Defendant may not appeal an order granting a judgment of acquittal. A party to the cause may appeal only from a decision that is in some respect adverse to him. Wakely v. State, 1D2023-0245 (11/20/24) https://1dca.flcourts.gov/content/download/2443644/opinion/Opinion_2023-0245.pdf

CONTINUANCE: When faced with a party's motion to continue for insufficient time to prepare for trial, a trial court should take account of the following factors: 1) the time available for preparation, 2) the likelihood of prejudice from the denial, 3) the defendant's role in shortening preparation time, 4) the complexity of the case, 5) the availability of discovery, 6) the adequacy of counsel actually provided, and 7) the skill and experience of chosen counsel and his pre-retention experience with either the defendant or the alleged crime. Rasmussen v. State, 1D2023-1984 (11/20/24) https://1dca.flcourts.gov/content/download/2443657/opinion/Opinion_2023-1984.pdf

POSTCONVICTION RELIEF: Counsel is not ineffective for failing to call civilian witnesses to support Defendant's insanity due to anxiolytic withdrawal syndrome defense (she had abruptly stopped taking Xanax) where they would have undermined the timeline of the expert witness. Thomason v. State, 3D22-1991 (11/20/24) https://3dca.flcourts.gov/content/download/2443615/opinion/Opinion_2022-1991.pdf

STATEMENTS OF DEFENDANT: Generally, on-the-scene questioning which is customarily made by investigating officers during the fact-finding process does not constitute custodial interrogation because during this early on-the-scene investigatory stage, where the police have not focused on a suspect, and the questioning is not accusatory or has its core purpose the intent to elicit

a confession, Miranda is not implicated. Thomason v. State, 3D22-1991 (11/20/24)
https://3dca.flcourts.gov/content/download/2443615/opinion/Opinion_2022-1991.pdf

POSTCONVICTION RELIEF: Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. decisions are generally not subject to postconviction attack. A particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Thomason v. State, 3D22-1991 (11/20/24)
https://3dca.flcourts.gov/content/download/2443615/opinion/Opinion_2022-1991.pdf

ARGUMENT: Courts allow attorneys wide latitude to argue to the jury during closing argument. Logical inferences may be drawn, and counsel is allowed to advance all legitimate arguments. Walker v. State, 3D23-0735 (11/20/24)
https://3dca.flcourts.gov/content/download/2443623/opinion/Opinion_2023-0735.pdf

COSTS: Twenty-five dollar community service administrative fee as a special condition of probation must be stricken if not orally pronounced at sentencing; it is not specifically authorized by statute or rule. Guzman v. State, 4D2024-0791 (11/20/24)
https://4dca.flcourts.gov/content/download/2443642/opinion/Opinion_2023-0791.pdf

DEATH PENALTY-EXECUTION: Execution by nitrogen hypoxia without sedation does not violate the Eighth Amendment. The Eighth Amendment does not demand the avoidance of all risk of pain in carrying out executions.

"There may exist a form of execution that induces psychological terror or pain that is severe enough to support an Eighth Amendment claim [but]. . .[n]othing in our Eighth Amendment jurisprudence suggests a special exemption for psychological terror or pain from the prohibition on cruelty." Grayson v. Commissioner, Alabama D.O.C., No. 24-13660 (11/18/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202413660.pdf

SENTENCING-CONSIDERATIONS: Defendant is entitled to a new sentencing hearing before a different judge where Court considered nolle prossed cases and testimony about those cases. A sentence cannot stand if the sentencing judge considered constitutionally impermissible factors in arriving at the sentence. Relying on pending or dismissed charges, in effect deeming such charges established without proof or a conviction, violates a defendant's right to due process. Grant v. State, 5D2023-3019 (11/15/24)
https://5dca.flcourts.gov/content/download/2443443/opinion/Opinion_2023-3019.pdf

VFOSC: Court must enter a written order as to whether Defendant, as a violent felony offender of special concern, poses a danger to the community. King v. State, 5D2024-0585 (11/15/24)
https://5dca.flcourts.gov/content/download/2443445/opinion/Opinion_2024-0585.pdf

POSTCONVICTION RELIEF: Court may not summarily deny Defendant's claim that the Court erred in relying on certain predicate convictions to support adjudicating him as a Habitual Felony Offender. Court must conduct a hearing or attach portions of the record that conclusively refute Defendant's claim. Robinson v. State, 5D2024-1742 (11/15/24)
https://5dca.flcourts.gov/content/download/2443448/opinion/Opinion_2024-1742.pdf

POSTCONVICTION RELIEF: Where Defendant alleged that the Court orally pronounced a sentence of thirty months but entered a written order imposing

a 6.78 year sentence, the Court's order denying the motion to correct, merely stating that it had reviewed the recording of that proceeding in the motion and that it had no merit, is insufficient. Court must attach the sentencing transcript. Brown v. State, 5D2024-2036 (11/15/24)
https://5dca.flcourts.gov/content/download/2443450/opinion/Opinion_2024-2036.pdf

CREDIT FOR TIME SERVED: R. 3.801 to correct credit for time served requires Defendant to seek relief within one year of the final sentence. Any procedural case law on jail credit preceding rule 3.801's enactment is irrelevant. No manifest injustice results from Defendant's failure to follow established procedural rules. Murray v. State, 6D2023-1816 (11/15/24)
https://6dca.flcourts.gov/content/download/2443458/opinion/Opinion_2023-1816.pdf

INCONSISTENT VERDICTS: Where jury found the Defendant guilty of committing sexual battery on the victim by penetrating her vagina with his penis but also made a special verdict finding that he did not penetrate the victim's vagina with his penis during the course of committing the offense (Defendant neither objected to the verdict nor filed a motion for arrest judgment), the verdict is truly inconsistent. Where the jury finds the defendant guilty of a charge but also makes a specific verdict finding that directly negates a necessary element of that charge, the verdicts are truly inconsistent and is fundamental error. Lai v. State, 6D2023-2390 (11/15/24)
https://6dca.flcourts.gov/content/download/2443464/opinion/Opinion_2023-2390.pdf

DOUBLE JEOPARDY: Convictions for Soliciting a Person Believed to Be a Child to Commit an Illegal Act and Transmitting Material Harmful to a Minor do not violate Double Jeopardy. Each offense has different elements. Blockburger. State v. Banda, 6D2023-4217 (11/15/24)
https://6dca.flcourts.gov/content/download/2443463/opinion/Opinion_2023-4217.pdf

JOA-RACKETEERING-ENTERPRISE: Deputy who planted narcotics on people during multiple traffic stops for years cannot be convicted of RICO. The RICO Act does not criminalize one person's use of his or her place of employment to commit related crimes. Under the RICO Act, the State must prove that the enterprise in which the defendant is alleged to have participated or been employed by was being used by at least two persons with the understood purpose of accomplishing some illegal objective or end. Question certified. Wester v. State, 1D2021-2114 (11/13/24) http://1dca.flcourts.gov/content/download/2443265/opinion/Opinion_2021-2114.PDF

RICO-GRAMMAR: The plain language of the RICO statute and its syntax dictate that a RICO violation is dependent on "any person" being associated with an enterprise. "The Legislature's deliberate use. . . of the ordinary term 'person' along with the distributive determiner 'any' requires recognition of its singular tense. But the 'any person" reference should not be interpreted blindly as declaring the Act's applicability to a sole bad actor, as such an application eviscerates the remaining provision of the statute. Logically, the use of the singular noun "person" may indicate a charging or procedural component." Wester v. State, 1D2021-2114 (11/13/24) http://1dca.flcourts.gov/content/download/2443265/opinion/Opinion_2021-2114.PDF

DEFINITION-"THROUGH": "Thus, we contemplate the meaning of the qualifying preposition 'through.'" Wester v. State, 1D2021-2114 (11/13/24) https://1dca.flcourts.gov/content/download/2443265/opinion/Opinion_2021-2114.pdf

STATUTORY INTERPRETATION: The Harmonious-Reading Canon means that the provisions of a text should be interpreted in a way that renders them compatible, not contradictory. . .The imperative of harmony among provisions is more categorical than most other canons of construction because it is

invariably true that intelligent drafters do not contradict themselves (in the absence of duress). Wester v. State, D2021-2114 (11/13/24) https://1dca.flcourts.gov/content/download/2443265/opinion/Opinion_2021-2114.pdf

RICO: Cutting off pig ears may constitute RICO. Wester v. State, 1D2021-2114 (11/13/24) https://1dca.flcourts.gov/content/download/2443265/opinion/Opinion_2021-2114.pdf

EVIDENCE-GROOMING: CPT interviewer may give limited testimony defining grooming and giving examples of general behaviors that could constitute grooming. "We express no opinion on whether the investigator could have been allowed to testify as to her opinion or conclusions—an issue not before us." McKee v. State, 1D2023-0607 (11/13/24) https://1dca.flcourts.gov/content/download/2443273/opinion/Opinion_2023-0607.pdf

LESSER INCLUDED: A permissive lesser-included offense is one where the greater and lesser offenses appear to be separate on the face of the statutes, but the facts alleged in the accusatory pleadings are that the lesser offense cannot help but be perpetrated once the greater offense has been. McKee v. State, 1D2023-0607 (11/13/24) https://1dca.flcourts.gov/content/download/2443273/opinion/Opinion_2023-0607.pdf

LESSER INCLUDED: A court must instruct on a permissive lesser included offense, if requested, if the information alleges all the statutory elements of the permissive lesser included offense and there is some evidence adduced at trial establishing all of these elements. McKee v. State, 1D2023-0607 (11/13/24) https://1dca.flcourts.gov/content/download/2443273/opinion/Opinion_2023-0607.pdf

POSTCONVICTION RELIEF: Defendant's postconviction claim that prosecution for capital sex battery must be by indictment rather than by information is not cognizable under R. 3.800(a). R. 3.800 is not the correct procedural vehicle for attacking the merits of an underlying criminal conviction. Voegele v. State, 1D2024-0341 (11/13/24)
https://1dca.flcourts.gov/content/download/2443289/opinion/Opinion_2024-0341.pdf

POSTCONVICTION RELIEF: Claim that life sentences for sexual battery on a child violate the constitutional prohibition against cruel and unusual punishment is not cognizable under rule 3.800(a). And even if it were cognizable, it wholly lacks merit. Voegele v. State, 1D2024-0341 (11/13/24)
https://1dca.flcourts.gov/content/download/2443289/opinion/Opinion_2024-0341.pdf

POSTCONVICTION RELIEF: A claim that the trial court improperly departed from the recommended sentencing guidelines may not be brought pursuant to R. 3.800(a) if the departure sentence is within the legal maximum because it does not constitute an illegal sentence. Birdsong v. State, 1D2024-0516 (11/13/24)
https://1dca.flcourts.gov/content/download/2443287/opinion/Opinion_2024-0516.pdf

HABEAS CORPUS-COMPETENCY-COMMITMENT: A defendant who has been involuntarily committed to state hospital as incompetent may seek pro se habeas corpus relief notwithstanding that he is represented by counsel on the underlying criminal case. McDaniel v. State, 2D2024-0672 (12/13/24)
https://2dca.flcourts.gov/content/download/2443260/opinion/Opinion_2024-0672.pdf

POSTCONVICTION RELIEF: Counsel has a duty to make reasonable investigations or to make a reasonable decision, but a particular decision not to investigate must be directly assessed for reasonableness in all the

circumstances, applying a heavy measure of deference to counsel's judgments. Lugo v. State, 3D23-0454 (11/13/24) https://3dca.flcourts.gov/content/download/2443286/opinion/Opinion_2023-0454.pdf

CREDIT FOR TIME SERVED: A R. 3.801 motion to correct credit for time served must be under oath. Lloyd v. State, 3D24-1150 (11/13/24)

https://3dca.flcourts.gov/content/download/2443299/opinion/Opinion_2024-1150.pdf

CREDIT FOR TIME SERVED: A motion to correct sentence to account for prison time is governed by R. 3.800(a), not R. 3.801. Lloyd v. State, 3D24-1150 (11/13/24) https://3dca.flcourts.gov/content/download/2443299/opinion/Opinion_2024-1150.pdf

CONFRONTATION-ZOOM: The right of confrontation is violated where U.S. Marshall testifies by Zoom from Texas. Staff shortages and convenience are legally insufficient justifications to satisfy the necessity analysis. The fact that a witness resides in a state other than Florida does not mean that the witness is beyond the territorial jurisdiction of Florida. But error here is harmless because the witness gave limited testimony, which the defense apparently did not find significant enough to merit cross examination. encounter. Lopez v. State, 4D2023-0104 (11/13/24) https://4dca.flcourts.gov/content/download/2443302/opinion/Opinion_2023-0104.pdf

CONFRONTATION (J. ARTAU, CONCURRING): "The Confrontation Clause 'comes to us on faded parchment' and has 'a lineage that traces back to the beginnings of Western legal culture[,]' at least as early as the Roman Empire. . .As the Roman Governor Festus put it, 'It is not the manner of the Romans

to deliver any man up to die before the accused has met his accusers face to face'" Lopez v. State, 4D2023-0104 (11/13/24) https://4dca.flcourts.gov/content/download/2443302/opinion/Opinion_2023-0104.pdf

CONFRONTATION (J. ARTAU, CONCURRING): The word "confront" has two Latin roots: (1) "con" and (2) "frons." The prefix "con" is derived from "contra," meaning "against" or "opposed," and the noun "frons" means "forehead." Thus, the word "confront" necessarily requires a face-to-face encounter. Lopez v. State, 4D2023-0104 (11/13/24) https://4dca.flcourts.gov/content/download/2443302/opinion/Opinion_2023-0104.pdf

CONSTITUTION (J. ARTAU, CONCURRING): "[O]ur Constitution is not a fungible document that can be selectively enforced based on public policy preferences." Lopez v. State, 4D2023-0104 (11/13/24) https://4dca.flcourts.gov/content/download/2443302/opinion/Opinion_2023-0104.pdf

JUROR MISCONDUCT: Defendant is entitled to a mistrial where a juror googled the defendant on the Internet, saw that he was a felon, and told other jurors that she had looked him up. Green v. State, 4D2023-0774 (11/13/24) https://4dca.flcourts.gov/content/download/2443313/opinion/Opinion_2023-0774.pdf

RESISTING LEO: To be guilty of unlawfully resisting an officer, an individual who flees must know of the officer's intent to detain him, and the officer must be justified in making the stop at the point when the command to stop is issued. The vague description from an untested CI that someone named "Nephew" was going to sell drugs does not justify the stop of someone whom officers believed to be "Nephew" without testimony as to why they believed that. Rivera v. State, 2D2023-2053 (11/8/24)

https://2dca.flcourts.gov/content/download/2443139/opinion/Opinion_2023-2053.pdf

SEARCH AND SEIZURE-CLOSED CONTAINER: Warrantless search of closed containers removed from detainee's person is unlawful. Even if the arrest is lawful, search of an item from which a defendant has been physically separated cannot be upheld as a search incident to the defendant's arrest. Rivera v. State, 2D2023-2053 (11/8/24)
https://2dca.flcourts.gov/content/download/2443139/opinion/Opinion_2023-2053.pdf

APPEAL-JURISDICTION-RESTITUTION: Trial court lacks jurisdiction to enter a restitution order wile an appeal of the underlying conviction is open. Lutgens v. State, 5D2023-1924 (11/8/24)
https://5dca.flcourts.gov/content/download/2443138/opinion/Opinion_2023-1924.pdf

APPEAL: Defendant may not file a motion to correct sentencing error while an appeal is pending after the party's first brief is served, nor may he strike his initial brief to circumvent the rule. Ashford v. State, 5D2024-0070 (11/8/24)
https://5dca.flcourts.gov/content/download/2443144/opinion/Opinion_2024-0070.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA-GOOD FAITH: Although the odor of cannabis alone can no longer be the sole basis supporting reasonable suspicion for an investigatory detention, because the deputy reasonably relied on binding precedent at the time of the arrest, the search of the back seat passenger upon officer's smell of marijuana comes within the good-faith exception and is not properly subject to the exclusionary rule. Leggett v. State, 5D2024-0527 (11/8/24)
https://5dca.flcourts.gov/content/download/2443149/opinion/Opinion_2024-0527.pdf

RULES-AMENDMENT-TRANSCRIPTS: The provision setting a 200 page limitation for transcripts is deleted and rules otherwise tweaked. In Re: Amendments to Florida Rule of General Practice and Judicial Administration 2.535, SC2023-1170 (11/7/24)
https://supremecourt.flcourts.gov/content/download/2443082/opinion/Opinion_SC2023-1170.pdf

COMPETENCY: Where defense counsel's motion for a competency evaluation does not provide reasonable grounds to believe that Defendant is not mentally competent to proceed, failing to hold a competency hearing is not fundamental error. Richardson v. State, 1D2022-1743 (11/6/24)
https://1dca.flcourts.gov/content/download/2442996/opinion/Opinion_2022-1743.pdf

ISSUE PRESERVATION: Defendant may not appeal the admission into evidence of a video where he had not moved to exclude or otherwise objected to its admission. Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

EVIDENCE: Videos of Defendant's Trump flags were admissible to show motive where Defendant yelled at the victim that Biden was a child molester, called him a Mexican child rapist, tore down his Biden flag, chased him at 60 MPH on jet skis, shot at him and, after the victim fell in the water, pointed the gun at him while commanding him to admit that he was a child molester. And then he took his jet ski. Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

ROBBERY: Defendant may be convicted of robbery of the victims' jet ski when he took it after the victims were thrown off it and left treading water, and when it was floating away from them. Property is taken from the person or custody of another if it is sufficiently under the victim's control so that the victim could

have prevented the taking if she had not been subjected to the violence or intimidation by the robber. The State presented sufficient evidence showing that the Defendant–he shot at them--instilled fear in the victims and this fear prevented them from swimming back to the jet ski. Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

JOA-AFTERTHOUGHT DEFENSE: Defendant is not entitled to a judgment of acquittal on the basis of an"afterthought" defense where it was reasonable for the jury to find that the Defendant's goal was to take the jet ski. "The Defendant ripping the Biden flag off the victims' jet ski and his comments disparaging Biden could reasonably indicate he did not want the victims driving the jet ski around the island flying the Biden flag ever again." Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

APPEAL-VIDEO REVIEW: A court can independently review a video and find that testimony allegedly contradicting that video is incompetent and insufficient in first-tier review of a DUI license suspension, but the law in Florida is currently unsettled as to whether, in other contexts, a court can review a video and independently find that it completely invalidates other evidence. Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

VIDEO-EVIDENCE: "[T]he extent to which a video can ever conclusively show intent is questionable. Particularly here where the video is taken from far away and is grainy. The splash the Defendant claims was the result of the bullet landing, could also be the result of any number of things, including a fish jumping out of the water. Even if the splash was from the bullet hitting the water, its location merely suggests that the Defendant's aim was off. It does

not indicate whether he intended to pull the trigger." Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

APPEAL-REVIEW: The validity of the jury's finding on a question of fact that triggers a mandatory sentence (whether Defendant discharged a firearm) is not a technical issue and is reviewable on direct appeal. Acosta v. State, 3D23-0434 (11/6/24)
https://3dca.flcourts.gov/content/download/2443011/opinion/Opinion_2023-0434.pdf

ASSAULT: The fact the victim did not testify, and thus could not describe or articulate any fear, does not bar a conviction for assault. Instead, if the circumstances are such as would ordinarily induce fear in the mind of a reasonable person, then the victim may properly be found to have been in fear. Richards v. State, 3D23-0957 (11/6/24)
https://3dca.flcourts.gov/content/download/2442956/opinion/Opinion_2023-0957.pdf

JOA-OBSTRUCTION: Officer was in the lawful execution of a legal duty at the time he ordered Child to stop running away where the Child matched the description of a suspect in an armed robbery three days earlier and who had shown a gun in his pocket. The element of lawful execution of a legal duty is satisfied if an officer has either a founded suspicion to stop the person or probable cause to make a warrantless arrest. T.I.J., a Juvenile v. State, 3D23-1268 (11/6/24)
https://3dca.flcourts.gov/content/download/2443009/opinion/Opinion_2023-1268.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Reasonable suspicion is a less demanding standard than that for probable cause, and considerably less than proof of wrongdoing by preponderance of the evidence. When

Defendant, who matched the description of the suspect from an armed robbery in the area three days earlier, removed a concealed firearm from inside the pocket of his hoodie, threw it into the air and started to run away, there is reasonable suspicion. T.I.J., a Juvenile v. State, 3D23-1268 (11/6/24) https://3dca.flcourts.gov/content/download/2443009/opinion/Opinion_2023-1268.pdf

SEARCH AND SEIZURE-FWC: FWC has authority to stop boats to inspect licenses, registration, and safety equipment. A person's expectation of privacy in a motorboat is less than the same expectation of privacy in an automobile. State v. Vinokurov, 3D23-1930 (11/6/24) https://3dca.flcourts.gov/content/download/2443041/opinion/Opinion_2023-1930.pdf

RESENTENCING-HFO: Upon resentencing, Court may take judicial notice of the testimony presented at the original sentencing hearing in support of a Habitual Offender sentence. Gilbert v. State, 4D2023-1359 (11/6/24) https://4dca.flcourts.gov/content/download/2442974/opinion/Opinion_2023-1359.pdf

SENTENCING-DOWNWARD DEPARTURE: A trial court's decision to grant a downward departure is a two-step process. First, the court must determine whether it can depart, i.e., whether there is a valid legal ground and adequate factual support for that ground in the case pending before it (step 1). Second, the trial court "must determine whether it should depart, i.e., whether departure is indeed the best sentencing option for the defendant. Coniglio v. State, 4D2023-1484 (11/6/24) https://4dca.flcourts.gov/content/download/2442975/opinion/Opinion_2023-1484.pdf

DOWNWARD DEPARTURE: Court errs in finding that there is no legal reason to depart where two mental health experts testified that the defendant suffered from multiple psychiatric disorders, including PTSD from childhood

sexual, and was determined to be 100% disabled by the VA as a result of these disorders. Defendant who is treated for both his psycho-sexual mental disorder and substance abuse qualifies for a downward departure. These are two separate treatments. Thus, his psycho-sexual mental disorder is unrelated to his alcohol abuse. Coniglio v. State, 4D2023-1484 (11/6/24) https://4dca.flcourts.gov/content/download/2442975/opinion/Opinion_2023-1484.pdf

DOWNWARD DEPARTURE: A court cannot refuse to consider a downward departure in child pornography cases as a general policy. Court's statements that "I find these child porn cases and child porn pictures to be a truly heinous crime creating multiple child victims" and that earlier cases caused him loss of sleep and appetite show lack of impartiality. "[T]rial judges are required to rise above the disturbing nature of these and other crimes and to provide every defendant a fair opportunity to be heard by an impartial judge who will consider only the evidence presented to the court within that case. Reversed and remanded for resentencing before another judge. Coniglio v. State, 4D2023-1484 (11/6/24) https://4dca.flcourts.gov/content/download/2442975/opinion/Opinion_2023-1484.pdf

COSTS OF PROSECUTION: Assessment of prosecution costs need not be supported by evidence if the defendant affirmatively agrees to pay the requested amount. Brown v. State, 4D2023-2886 (11/6/24)

https://4dca.flcourts.gov/content/download/2442993/opinion/Opinion_2023-2886.pdf

PRO SE DEFENDANT-DEPOSITIONS: Upon good cause, *pro se* Defendant may conduct depositions. Court may not prohibit all discovery depositions by *pro se* defendant on the basis of R. 3.220(h)(7), which prohibits defendants' physical presence at depos, without discussing good cause or any particular witnesses. Gallagher v. State, 4D2024-1289 (11/6/24)

https://4dca.flcourts.gov/content/download/2443012/opinion/Opinion_2024-1289.pdf

SAFETY VALVE: Defendant who cooperated, but was caught trafficking in narcotics again while sentencing remained pending, is eligible for safety valve. Under the plain text of the safety valve statute, a defendant's cooperation need not be disregarded because it was prompted by a government investigation or because it was not provided all at one time. The tell-all provision is not coextensive with acceptance of responsibility or substantial assistance. USA v. Maisonet, No. 22-13124 (11th Cir. 11/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213124.pdf

SAFETY VALVE: The safety valve statute does not condition a defendant's eligibility on whether he has been caught in a lie or whether he has continued his criminal activity. The statute merely requires that the defendant provide all the information he has not later than the time of the sentencing hearing. USA v. Maisonet, No. 22-13124 (11th Cir. 11/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213124.pdf

DEFINITION-"PROVIDE": "Provide" means "to make available (something needed or desired); furnish." USA v. Maisonet, No. 22-13124 (11th Cir. 11/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213124.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Certiorari granted to determine how to evaluate multiple IQ scores when considering Defendant's competency to be executed. Hamm v. Smith, No. 23–167 (U.S. S.Ct 11/4/24)
https://www.supremecourt.gov/opinions/24pdf/23-167_heim.pdf

OCTOBER 2024

ARMED CAREER CRIMINAL ACT: ACCA mandates a 15-year minimum sentence for any defendant who possesses a firearm in violation of §922(g) and is an "armed career criminal," meaning they have 3 prior convictions for "violent felonies" or "serious drug offenses" committed on separate occasions. See § 924(e)(1). USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24) https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

CATEGORICAL APPROACH: The categorical approach is applied to determine whether a defendant's prior state conviction is a predicate offense under ACCA, looking at the statutory definition of the state offense, not the facts of the crime as committed. A state conviction qualifies as a "serious drug offense" or "violent felony" only if the state statute of conviction defines the offense in the same way as, or more narrowly than, ACCA's definition. In other words, the least culpable conduct prohibited by the state statute must fall within ACCA's definition of the qualifying predicate offenses. USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

ARMED CAREER CRIMINAL ACT-CONTROLLED SUBSTANCE: ACCA defines a "serious drug offense," as "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." The definition incorporates the law in effect at the time of the prior drug conviction—as to both the state statute and the federal drug schedules—and not the law in effect at the time of the subsequent § 922(g) conviction. A prior state drug conviction may constitute an ACCA predicate if the drugs on the federal and state schedules matched when the state drug offense was committed. USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

ARMED CAREER CRIMINAL ACT-CONTROLLED SUBSTANCE-IOFLUPANE: Because at the time of his predicate conviction, both Florida

law and federal law criminalized ioflupane, it is an ACCA predicate offense. USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

CATEGORICAL APPROACH-ARMED CAREER CRIMINAL ACT-VIOLENT FELONY: ACCA defines a "violent felony" as any crime punishable by more than one year in prison and which "has as an element the use, attempted use, or threatened use of physical force against the person of another." This definition comprises the "elements clause." Attempted armed robbery qualifies as a categorical crime of violence under ACCA's elements clause. USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

PRIOR PANEL PRECEDENT RULE: Under the prior-panel precedent rule, a holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*, even if the reasoning of an intervening high court decision is at odds with a prior appellate court decision. The Supreme Court holding that attempted Hobbs Act robbery (18 U.S.C. § 1951) is not a "crime of violence" under ACCA's elements clause is not a holding that Florida's attempted robbery is not a crime of violence. USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

CREEPILY DISCORDANT: "And, while Taylor's reasoning may creep towards that which we applied in Joyner, discordant reasoning provides an insufficient basis for departure from our precedent." USA v. Lightsey, No. 20-13682 (11th Cir. 10/31/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013682.pdf

RULES-BAR-AMENDMENT-CLE/PRO BONO: R 6-10.3 is modified to allow lawyers to earn one hour of general CLE credit for every hour of pro bono service, up to five credit hours of CLE during a three-year reporting cycle, and

no CLE credit will be awarded for monetary donations. In Re: Amendments to Rules Regulating the Florida Bar – Rule 6-10.3, SC2024-0964 (10/31/24) https://supremecourt.flcourts.gov/content/download/2442770/opinion/Opinion_SC2024-0964.pdf

HABEAS CORPUS-AEDPA: AEDPA establishes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt. A federal habeas court cannot grant a state petitioner habeas relief on any claim that was adjudicated on the merits in state court unless the state court's adjudication of the claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. "Clearly established Federal law" means the holdings, as opposed to the dicta, of the Supreme Court's decisions as of the time of the relevant state-court decision. Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24) https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf ub/files/201814671.pdf

AEDPA-DOUBLY DEFERENTIAL: Establishing that a state court's application of Strickland was unreasonable under AEDPA is all the more difficult because the standards created by Strickland and §2254(d) are both highly deferential, and when the two apply in tandem, review is doubly so. Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24) https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf ub/files/201814671.pdf

APPEAL: A party may not raise, and the Court will not consider, arguments not raised in a party's initial brief and made for the first time at oral argument. Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24) https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf

HABEAS CORPUS-AEDPA: In death penalty case, even though counsel failed to discover or present significant mitigation evidence, it was not objectively unreasonable for the state court to conclude that there was no reasonable probability of a different outcome. Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY (J. BRANCH, CONCURRING): Counsel is not constitutionally required to go on a fishing expedition and scour a defendant's background to look for potential abuse when the defendant fails to mention such abuse to counsel. An attorney does not render ineffective assistance by failing to discover and develop evidence of childhood abuse that his client does not mention to him. Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY (J. ROSENBAUM, DISSENTING): "Counsel made two serious errors that may well have changed the outcome of the penalty phase. . .from life imprisonment to death. Neither error stemmed from a strategic choice. Rather, they both resulted directly from counsel's ignorance of the law and failure to investigate as a competent attorney would have." Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY (J. ROSENBAUM, DISSENTING): "Based solely on the fact that Davis and his abusive mother did not affirmatively volunteer that she had abused him, the state courts went so far as to accuse Davis of deliberately misleading trial counsel and participating in a 'conspiracy of silence' with his mother and family to hide his abuse. . .The Concurring Opinion endorses this fiction, again blaming Davis, his abusive mother, and his family members. . .But this conspiracy theory is

like something out of another universe. . .[I]t is absurd to suggest. . .that Davis is somehow to blame for Lillie's failure to affirmatively volunteer the horrific abuse she inflicted upon Davis. . .Even if I wore a tin-foil hat, I couldn't understand how the Concurring Opinion and state courts' conclusion. . .—based on an implausible and outlandish conspiracy theory—is not unreasonable." Davis v. Commissioner, Alabama D.O.C., No. 18-14671 (11th Cir. 10/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201814671.pdf

APPEAL-POSTCONVICTION RELIEF: Where there is no contemporaneous objection during a sentencing hearing and where the error does not qualify as a sentencing error that can be raised in a R. 3.800(b) motion, the error can still be considered and remedied on appeal if the error is fundamental. But even then, before a defendant can challenge on appeal that the plea was involuntary, he must first move to withdraw the plea in the trial court. Parker v. State, 1D2023-0760 (10/30/24)
https://1dca.flcourts.gov/content/download/2442645/opinion/Opinion_2023-0760.pdf

CONSTITUTIONALITY: R. 3.800(b) can be used to allege that a sentencing statute was unconstitutional or to preserve Eighth Amendment claims. Parker v. State, 1D2023-0760 (10/30/24)
https://1dca.flcourts.gov/content/download/2442645/opinion/Opinion_2023-0760.pdf

SENTENCING: Court's comparison of relative culpability of co-defendants does not deprive Defendant of her right to an individualized sentence determination. Parker v. State, 1D2023-0760 (10/30/24)
https://1dca.flcourts.gov/content/download/2442645/opinion/Opinion_2023-0760.pdf

APPEAL-ISSUE PRESERVATION: The Statewide Prosecutor is not a principal prosecuting attorney of a political subdivision, and therefore lacks authority to procure a wiretap under the Federal Wiretap Act. But although Defendant raised the issue in his motion to suppress, he did not preserve it. "In both the plea colloquy and in the written plea agreement Wallace gave up his right to appeal anything. . .other than the legality of sentence yet to be imposed. Neither the transcript of his plea hearing, nor the written plea agreement included any reservation of Wallace's right to appeal the denial of the motion to suppress." Wallace v. State, 1D2024-1862 (10/30/24) https://1dca.flcourts.gov/content/download/2442656/opinion/Opinion_2024-1862.pdf

RECLASSIFICATION-FIREARM: Attempted premeditated murder and attempted felony murder are first-degree felonies but become life felonies if Defendant personally uses a firearm. If he discharges the firearm there is a 25-year mandatory minimum. Ragan v. State, 3D23-1042 (10/30/24) https://3dca.flcourts.gov/content/download/2442714/opinion/Opinion_2023-1042.pdf

DOUBLE JEOPARDY: Dual convictions for attempted felony murder and attempted premeditated murder of a single victim is permissible under the Blockburger test and in light Maisonet-Maldonado, which eliminated the "single homicide victim" rule from Florida's double jeopardy jurisprudence. Unlike double jeopardy, the "single homicide rule" or related merger doctrine is not a principle of constitutional law but rather a principle of statutory construction. Ragan v. State, 3D23-1042 (10/30/24) https://3dca.flcourts.gov/content/download/2442714/opinion/Opinion_2023-1042.pdf

EVIDENCE-COLLATERAL CRIMES: Where Defendant used the same firearm in other crimes committed a week earlier and two weeks later, the evidence of those collateral crimes is admissible to prove identity. Ragan v. State, 3D23-1042 (10/30/24)

https://3dca.flcourts.gov/content/download/2442714/opinion/Opinion_2023-1042.pdf

EVIDENCE-COLLATERAL CRIMES: Collateral crime evidence may not become a feature of the trial, but there is no singular test to determine when collateral crime evidence becomes an impermissible feature of trial. Considerations are the number of references the prosecution made to such evidence; whether the collateral crimes evidence was a focus of closing argument; and how the trial court, through its instructions, guided and limited the jury's consideration and use of this evidence. Collateral crimes evidence becomes an impermissible feature of the trial when the evidence transcends the bounds of relevancy to the charge being tried and the prosecution devolves from development of facts pertinent to the main issue of guilt or innocence into an assault on the character of the defendant. Ragan v. State, 3D23-1042 (10/30/24)
https://3dca.flcourts.gov/content/download/2442714/opinion/Opinion_2023-1042.pdf

POSTCONVICTION RELIEF: In first-degree felony murder and aggravated child abuse case, Defendant is entitled to a hearing on the claim that victim had asthma. Beer v. State, 4D2023-1314 (10/30/24)
https://4dca.flcourts.gov/content/download/2442672/opinion/Opinion_2023-1314.pdf

POSTCONVICTION RELIEF: To state a facially sufficient ineffective assistance claim based on counsel's failure to call a witness, the defendant must (1) identify the witness, (2) specify the content of their testimony, (3) allege that they were available to testify at trial, and (4) sufficiently allege that the failure to call them to testify resulted in prejudice. Beer v. State, 4D2023-1314 (10/30/24)
https://4dca.flcourts.gov/content/download/2442672/opinion/Opinion_2023-1314.pdf

POSTCONVICTION RELIEF: In first-degree felony murder and aggravated child abuse case, Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to preserve for appeal the claim that his due process rights were violated when he was convicted of an offense that was neither charged nor a necessarily lesser included offense of first-degree felony murder. Beer v. State, 4D2023-1314 (10/30/24)
https://4dca.flcourts.gov/content/download/2442672/opinion/Opinion_2023-1314.pdf

HABEAS CORPUS-TIMELINESS-NUNC PRO NUNC-INESS: AEDPA creates a 1-year period of limitation to apply for a writ of habeas corpus from the date on which the judgment becomes final. When a state court issues an amended judgment or sentence *nunc pro tunc* to the date of the original judgment, her petition for writ of habeas corpus filed 12 years after the original judgment is untimely. The federal court must accept that designation and refrain from evaluating whether it was proper under state law. An amended sentence issued *nunc pro tunc* does not constitute a new judgment because it relates back to the date of the original judgment. Because the state court unambiguously issued Batson's amended sentences *nunc pro tunc*, her petition is untimely. Batson v. Florida D.O.C., No. 23-13367 (11th Cir. 10/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202114257.pdf

HABEAS CORPUS-TIMELINESS-NUNC PRO NUNC-INESS: AEDPA creates a 1-year period of limitation to apply for a writ of habeas corpus from the date on which the judgment becomes final. Where the state court enters an amended judgment and does not designate it *nunc pro tunc*, the amended judgment constitutes a new judgment that restarts the federal statute of limitations. The Petition for Writ of habeas corpus is timely. Cassidy v. Florida D.O.C., No. 21-14257 (11th Cir. 10/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202114257.pdf

HABEAS CORPUS-TIMELINESS-NUNC PRO NUNC-INESS (J. HULL, CONCURRING): The clear intent of the state court was for the amended sentence to be *nunc pro tunc* because in two places the state court dated it as "done and ordered on August 8, 2012," the date of his original sentencing. But the words "nunc pro tunc" are required. Cassidy v. Sec'y, Florida D.O.C, No. 21-14257 (11th Cir. 10/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202114257.pdf

COSTS OF INVESTIGATION: Court may assess $100 in cost of prosecution where the State does not request it. Issue pending before Supreme Court. Jones v. State, 5D2023-2427 (10/25/24)
https://5dca.flcourts.gov/content/download/2442477/opinion/Opinion_2023-2427.pdf

PUBLIC DEFENDER APPLICATION FEE: Public Defender application fee is $50, not $100. Dortch v. State, 5D2023-3547 (10/25/24)
https://5dca.flcourts.gov/content/download/2442481/opinion/Opinion_2023-3547.pdf

POST CONVICTION RELIEF: Where Court in its Order alluded to points raised in, and exhibits attached, to a State response hundreds of pages long, but did not attach any records conclusively demonstrating that Defendant was not entitled to relief to its order, it must attach these records if they exist or conduct an evidentiary hearing. Nicholas v. State, 6D2023-0681 (10/25/24)
https://6dca.flcourts.gov/content/download/2442514/opinion/Opinion_2023-0681.pdf

REMOVAL TO FEDERAL COURT: Defendants indicted for interfering in the certification of the 2020 presidential election by issuing fraudulent elector certificates and claiming to be "contingent Republican Presidential Electors" acting with federal authority at the direction of Trump are not entitled to remove their state criminal prosecutions to federal court under the federal-officer removal statute. Even if nominated electors could be considered federal

officers under the removal statute, the statute does not apply to former officers. The federal-officer removal statute applies only to current federal officers. State of Georgia v. Shafer, No. 23-13360 (11th Cir. 10/24/24) https://media.ca11.uscourts.gov/opinions/pub/files/202313360.pdf

REMOVAL TO FEDERAL COURT (J. ROSENBAUM, Concurring): Defendants—who assert they were "contingently elected presidential electors"—can't remove their Georgia criminal case to federal court because, they "were not 2020 presidential Electors, no matter the modifiers they add to the title. The people of Georgia did not vote for them to be Electors. Nor does the purported position of 'contingently elected presidential elector' exist in the Constitution or federal or state law. And Defendants were no more presidential Electors simply because they give themselves the title than Martin Sheen was ever the President because he went by President Bartlet." State of Georgia v. Shafer, No. 23-13360 (11th Cir. 10/24/24) https://media.ca11.uscourts.gov/opinions/pub/files/202313360.pdf

REMOVAL TO FEDERAL COURT: Former Acting Assistant Attorney General charged with state RICO for his role attempting to overturn presidential election is not entitled to removal to federal court as a "high-ranking U.S. Justice Department official." A former officer has no right of removal to federal court. The removal statute applies only to current officers. State of Georgia v. Clark, No. 23-13360 (11th Cir. 10/24/24) https://media.ca11.uscourts.gov/opinions/pub/files/202313368.pdf

REMOVAL TO FEDERAL COURT (J. ROSENBAUM, Concurring): "The federal-officer removal statute is not a get-out-of-state court-free card for federal officers." It allows a federal officer to remove his criminal prosecution from state court to federal court only if the action is for or relating to any act under color of office. But a defendant conspiring to interfere with the results of the 2020 Presidential election in violation of Georgia's RICO Act bears no connection to his positions at the United States Department of Justice. State of Georgia v. Clark, No. 23-13360 (11th Cir. 10/24/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202313368.pdf

DOUBLE JEOPARDY: There are three separate guarantees embodied in the Double Jeopardy Clause. It protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. Dettle v. State, SC2022-0417 (10/24/24) https://supremecourt.flcourts.gov/content/download/2442452/opinion/Opinion_SC2022-0417.pdf

DOUBLE JEOPARDY: The holding in Lee--to determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court must review only the charging document--does not apply retroactively. Dettle v. State, SC2022-0417 (10/24/24) https://supremecourt.flcourts.gov/content/download/2442452/opinion/Opinion_SC2022-0417.pdf

DOUBLE JEOPARDY-RETROACTIVITY: New rules of law announced by the Florida Supreme Court or the United States Supreme Court generally do not, normally, apply retroactively, unless the change: (a) emanates from this Court or the United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance. Lee does not constitute a development of fundamental significance. Dettle v. State, SC2022-0417 (10/24/24) https://supremecourt.flcourts.gov/content/download/2442452/opinion/Opinion_SC2022-0417.pdf

JUROR INTERVIEW: Defendant is time-barred from conducting a post-conviction juror interview forty years later upon learning that the juror is the second cousin of a person who was married to the victim's sister. Rule 3.575 requires that a motion seeking to interview a juror be filed within 10 days after

the rendition of the verdict,unless good cause is shown. Bates v. State, SC2023-1683 (10/24/24)
https://supremecourt.flcourts.gov/content/download/2442453/opinion/Opinion_SC2023-1683.pdf

DISCOVERY-RICHARDSON HEARING: When faced with an allegation of a discovery violation, the trial court is required to make an adequate inquiry into the totality of the circumstances, including whether the violation was inadvertent or willful, whether it was trivial or substantial, and most important, whether it prejudiced the opposition's ability to prepare for trial. Montgomery v. State, 2D202203874 (10/23/24)
https://2dca.flcourts.gov/content/download/2442350/opinion/Opinion_2022-3874.pdf

SENTENCING-PREDETERMINATION: Court did not predetermine the sentence by commenting that it would put Defendant on probation but did not say for how long (court sentenced her to 330 days in county jail followed by two years of community control and two years of probation). Taylor v. State, 4D2023-1079 (10/23/24)
https://4dca.flcourts.gov/content/download/2442372/opinion/Opinion_2023-1079.pdf

SENTENCING-GUIDELINES-22 POINTS: A sentence of 330 days in county jail followed by two years of community control and two years of probation does not violate §775.082(10) (if the total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction). Taylor v. State, 4D2023-1079 (10/23/24)
https://4dca.flcourts.gov/content/download/2442372/opinion/Opinion_2023-1079.pdf

POSTCONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call an alibi witness. Holland v. State, 4D2024-0382 (10/23/24)

https://4dca.flcourts.gov/content/download/2442380/opinion/Opinion_2024-0382.pdf

APPEAL: Where State appeals Defendant's motion for mistrial with prejudice, Defendant's attorney's motion to withdraw in the trial court does not relieve him from the responsibility of representation in the appellate court. Mercado v. Sec'y, DOC, No. 22-11903 (10/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211903_(2).pdf

AEDPA-INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: AEDPA permits a district court to grant habeas relief on a claim that was adjudicated on the merits by a state court only if its decision was contrary to, or involved an unreasonable application of, clearly established Federal law, as deter whommined by the Supreme Court of the United States. The phrase "clearly established Federal law" refers to the holdings, not the dicta. Petitioner must show far more than that the state court's decision was merely wrong or even clear error; the decision must be objectively unreasonable. Mercado v. Sec'y, DOC, No. 22-11903 (10/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211903_(2).pdf

AEDPA-INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Defendant/appellant's attorney's failure to file an answer brief in State's appeal of a judgment of acquittal does not entitle him to federal habeas corpus relief. Because the Supreme Court has never held that counsel's failure to file an answer brief is presumptively prejudicial, under AEDPA Petitioner is not entitled to habeas corpus relief. Mercado v. Sec'y, DOC, No. 22-11903 (10/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211903_(2).pdf

AEDPA (J. PRYOR, CONCURRING): "Mercado fell through the cracks in Florida's criminal justice system. After he secured a mistrial and an order barring retrial from the state trial judge who presided over his criminal trial, the State of Florida appealed. Mr. Mercado's counsel filed no brief or other

response on Mr. Mercado's behalf because counsel believed that he had withdrawn from representing Mr. Mercado. In fact, he had not. Florida's Fifth District Court of Appeal then decided the State's appeal of the trial court's order barring retrial without any input whatsoever from Mr. Mercado. . .[I]t is beyond dispute that Mr. Mercado's Sixth Amendment rights were violated because he was denied the assistance of counsel at a critical stage in his criminal proceedings. . .But our review of Mr. Mercado's post-conviction challenge is circumscribed by. . .AEDPA. Mercado v. Sec'y, DOC, No. 22-11903 (10/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211903_(2).pdf

FIFTH DCA SCOLDED/DEFENDANT SCREWED (J. PRYOR, CONCURRING): "In the State's appeal, there was no adversarial testing of its argument at this critical stage that determined whether Mr. Mercado would be retried. The fact that there was "No Appearance for Appellee" in the appeal should have given the Florida appellate court pause—yet it proceeded to the merits anyway. . .By considering the State's appeal without any response from Mr. Mercado, the Florida Fifth District Court of Appeal allowed the State to point to and put its own gloss on any contradictory evidence, without any opposition from the defense to argue against its position and direct the court toward the evidence that led two trial court judges to conclude that the State intentionally provoked a mistrial by violating the trial court's redaction ruling. The appellate court thus 'deprived both [Mr. Mercado] and itself of the benefit of an adversary examination and presentation of the issues.'" Mercado v. Sec'y, DOC, No. 22-11903 (10/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211903_(2).pdf

DEATH PENALTY: The indictment does not need to allege the aggravating factors for imposition of the death penalty. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

JURY SELECTION-PUBLICITY: Individual voir dire to determine juror impartiality in the face of pretrial publicity is constitutionally compelled only if the trial court's failure to allow it renders the trial fundamentally unfair. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

VOIR DIRE-EVIDENCE: Court did not abuse its discretion in denying Defendant's motion to show a representative sample of crime scene and autopsy photographs to prospective jurors during voir dire and to question prospective jurors about their ability to deliberate fairly and impartially after viewing those photographs. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

STRIKING JURY PANEL: Defendant is not entitled to have the entire jury panel stricken when jury selection extended until 10:00 p.m., particularly where Defendant agreed to extending the voir dire into the night and the panel was given the choice to stay late or break for the night. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

CHALLENGE FOR CAUSE-APPEAL: Where Defendant supports his appeal of the denials of his challenges for cause with a transcript citation to where defense counsel, based on his recollection of the individual's responses, indicated the basis for the cause challenges, but does not mention the judge's

differing recollection or provide citations to the individuals' actual responses, he waives the issue. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

HEARSAY: Defendant telling accomplice to stab the victim is not hearsay. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

STARE DECISIS-OMINOUS FORESHADOWING-DEATH PENALTY-CONFRONTATION: "This Court has broadly stated on several occasions that hearsay in the penalty phase must also satisfy the right to confrontation. . .Indeed, this Court has described as 'uncontroverted' the 'proposition that the Sixth Amendment right of confrontation applies to all three phases of the capital trial.'. . .We have no occasion here to reexamine our precedent, but we note that other courts disagree with that broad proposition." Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

DEATH PENALTY-PREMEDITATION: Murder videos showing that Defendant procured two shanks in advance of the murder, blocked the dayroom door, and viciously attacked Victim for more than ten minutes before stomping on a shank in the back of his neck, along with his statement that he decided days earlier to kill him at the earliest opportunity, shows premeditation. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

WAIVER OF PENALTY PHASE JURY: A waiver of the right to a penalty-phase jury trial is lawful if knowing, intelligent, and voluntary. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

DEATH PENALTY: Florida's death penalty scheme does not create so broad a range of death-eligible cases as to violate the Eighth Amendment. Boatman v. State, SC2022-1547 (10/17/24)

https://supremecourt.flcourts.gov/content/download/2442185/opinion/Opinion_SC2022-1547.pdf

SPEEDY TRIAL: Court improperly dismissed re-filed charges after State nolle prossed the original case due to witness unavailability and after Court denied its motion to continue. In view of the State's "right to nolle prosse," its actions could not be considered improper. State v. Oliff, 1D2023-1964 (10/16/24)

https://1dca.flcourts.gov/content/download/2442050/opinion/Opinion_2023-1964.pdf

APPEAL-TIMELINESS: Rule 2.514(b) (when service is made by mail, 5 days are added to the times to act) does not apply to the 30-day period within which the notice of appeal must be filed because that period commences upon

rendition of the challenged order rather than service of the order. Scott v. State, 1D2023-2978 (10/16/24)

https://1dca.flcourts.gov/content/download/2442064/opinion/Opinion_2023-2978.pdf

SEARCH AND SEIZURE-BOLO: Stop is lawful where citizen informant described the suspects as "four black males wearing shorts but no shirts" but Defendant was of mixed race and had a shirt on. State v. L.C., 2D2023-0634 (10/16/24)

https://2dca.flcourts.gov/content/download/2442011/opinion/Opinion_2023-0634.pdf

SHOW-UP IDENTIFICATION: Presenting the suspect to a witness in handcuffs or with flanking officers does not make the procedure unnecessarily suggestive. State v. L.C., 2D2023-0634 (10/16/24)

https://2dca.flcourts.gov/content/download/2442011/opinion/Opinion_2023-0634.pdf

CONTINUANCE: Where State filed an amended information adding a new charge of witness tampering five days before trial, on the Friday before jury selection, Defendant is entitled to a continuance. Defense counsel must be afforded an adequate opportunity to investigate and prepare any applicable defense. Santiago v. State, 2D2023-1150 (10/16/24)

https://2dca.flcourts.gov/content/download/2442012/opinion/Opinion_2023-1150.pdf

SEARCH AND SEIZURE-DUI MANSLAUGHTER-BLOOD DRAW: State is not entitled to draw blood without a warrant on exigent

circumstances/inevitable discovery grounds. In DUI cases the dissipation of blood alcohol levels alone is not a legally cognizable exigency. State v. Harris, 2D2023-1430 (10/16/24)

https://2dca.flcourts.gov/content/download/2442014/opinion/Opinion_2023-1430.pdf

QUARTERMAN AGREEMENT: Where Defendant entered a Quarterman agreement that the Court would not be bound by the plea agreement if Defendant failed to appear for sentencing, a non-willful failure to appear will not vitiate a plea agreement and permit the trial court to impose some greater sentence. The trial court must make a factual determination as to whether the failure to appear was willful. "[N]othing in the record contradicts Matos's explanation that she missed her originally scheduled sentencing hearing because she was suicidal, had sought help, and had been hospitalized that day. Given the lack of evidence that her failure to appear was willful and of any findings by the trial court as to willfulness, . . .the court erred in imposing a longer sentence than called for in the plea agreement." Matos v. State, 2D2023-2501 (10/16/24)

https://2dca.flcourts.gov/content/download/2442013/opinion/Opinion_2023-2501.pdf

SPEEDY TRIAL-COVID: A crisis or emergency such as COVID constitutes a constitutionally valid reason for postponing trial. The fourfold balancing test in assessing potential speedy trial violations weighs the length of the delay between arrest and trial; the reasons for the delay; the timely assertion of speedy trial; and whether the defendant was prejudiced by delay attributable to the State. McCartney v. State, 3D22-1527 (10/16/24)

https://3dca.flcourts.gov/content/download/2442036/opinion/Opinion_2022-1527.pdf

APPEAL-PRESERVED ISSUE: Defendant may not argue on appeal that the item used did not constitute a firearm where he never made this argument to the trial court, either by motion for JOA or new trial. Azin v. State, 3D22-1622 (10/16/24)

https://3dca.flcourts.gov/content/download/2442102/opinion/Opinion_2022-1622.pdf

JOA-PRESERVED ISSUE: A generalized motion for judgment of acquittal that State failed to establish a prima facie case is not enough. "Such boilerplate motions are of course legally insufficient." Azin v. State, 3D22-1622 (10/16/24)

https://3dca.flcourts.gov/content/download/2442102/opinion/Opinion_2022-1622.pdf

JOA-FIREARM: The fact that no firearm was recovered does not compel a Judgment of Acquittal where victim testified he was slapped in the face with a pistol. Azin v. State, 3D22-1622 (10/16/24)

https://3dca.flcourts.gov/content/download/2442102/opinion/Opinion_2022-1622.pdf

ARGUMENT-VOUCHING: State's argument that the victims "told the truth" is not improper vouching where the prosecutor was responding to defense counsel's theory of defense, which focused on attacking the victims' credibility and motives, including directly suggested one of the victims was lying to the jury. Azin v. State, 3D22-1622 (10/16/24)

https://3dca.flcourts.gov/content/download/2442102/opinion/Opinion_2022-1622.pdf

IMPROPER ARGUMENT-ISSUE PRESERVATION: Where State implied that Defendant had intimidated witnesses into not testifying, the defense objected and the court sustained the objection and directed the State to "move on," any issue of improper argument was not preserved in the absence of a motion for mistrial. A defendant who objects to prosecutor's comment in final argument must make a motion for mistrial at some point during closing argument or, at the latest, at the conclusion of the prosecutor's argument. Azin v. State, 3D22-1622 (10/16/24)

https://3dca.flcourts.gov/content/download/2442102/opinion/Opinion_2022-1622.pdf

ISSUE PRESERVATION: In order to preserve a Confrontation Clause challenge for appeal, a defendant must object on Confrontation Clause grounds in the trial court. To preserve an error for appeal, three requirements must be met: First, a litigant must make a timely, contemporaneous objection. Second, the party must state a legal ground for that objection. Third, in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below. Burnell v. State, 3D22-1901 (10/16/24)

https://3dca.flcourts.gov/content/download/2442136/opinion/Opinion_2022-1901.pdf

RECROSS EXAMINATION: Court has discretion whether to allow recross examination. Discretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court. Burnell v. State, 3D22-1901 (10/16/24)

https://3dca.flcourts.gov/content/download/2442136/opinion/Opinion_2022-1901.pdf

JURY DELIBERATIONS: Videotaped out-of-court interviews with child victims introduced into evidence under §90.803(23) shall not be allowed into the jury room during deliberations. But there is no reviewable order where parties agreed to allow the jury to review the video alone in the empty courtroom. "Undoubtedly, the judicial best practice would have been for the trial judge to expressly inform Salgado-Mantilla of this right. . .The cases, however, do not go so far as holding that the failure to expressly inform the defendant on the record always constitutes fundamental error if other circumstances in the record indicate the waiver was knowing and voluntary." Defendant may seek R. 3.850 relief. Salgado-Mantilla v. State, 3D22-2151 (10/16/24)

https://3dca.flcourts.gov/content/download/2442101/opinion/Opinion_2022-2151.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Based on the plain language of section §924.051(3), unpreserved claims of ineffective assistance of counsel cannot be raised or result in reversal on direct appeal because the statute requires the more demanding showing of fundamental error. Felder v. State, 3D23-0634 (10/16/24)

https://3dca.flcourts.gov/content/download/2442137/opinion/Opinion_2023-0634.pdf

PRINCIPAL: A principals jury instruction is appropriate when evidence exists that another individual may have been involved in the underlying crime. Felder v. State, 3D23-0634 (10/16/24)

https://3dca.flcourts.gov/content/download/2442137/opinion/Opinion_2023-0634.pdf

JURY INSTRUCTION-HOMICIDE: A trial court must read the definitions of excusable and justifiable homicide in all murder and manslaughter cases. Felder v. State, 3D23-0634 (10/16/24)

https://3dca.flcourts.gov/content/download/2442137/opinion/Opinion_2023-0634.pdf

APPEAL: In conducting competent, substantial evidence review, the trial court's factual findings are presumed correct. State v. Harris, 3D2023-0904 (10/16/24)

https://3dca.flcourts.gov/content/download/2442076/opinion/Opinion_2023-0904.pdf

DISCOVERY VIOLATION: Harmless error analysis applies to trial court's failure to conduct Richardson hearing. Pinkney v. State, 3D23-1053 (10/16/24)

https://3dca.flcourts.gov/content/download/2442085/opinion/Opinion_2023-1053.pdf

POST CONVICTION RELIEF: A motion to correct illegal sentence under R. 3.800(a) is not cognizable where the defendant seeks to challenge the validity of the conviction and, only by extension, the legality of the resulting sentence. An attack on the sufficiency of the evidence for the probation revocation is not cognizable in a R. 3.800(a) motion. Utile v. State, 3D23-2130 (10/16/24)

https://3dca.flcourts.gov/content/download/2442110/opinion/Opinion_2023-2130.pdf

HABEAS CORPUS: Habeas corpus may not be used to raise issues which would be untimely if considered as a motion for postconviction relief under rule 3.850. The manifest injustice exception to revive otherwise procedurally barred claims applies only to an extraordinarily narrow category of claims and merely incanting the term does not make it so. LoCascio v. State, 3D23-2292 (10/16/24)

https://3dca.flcourts.gov/content/download/2442069/opinion/Opinion_2023-2292.pdf

SEARCH AND SEIZURE: The rationale for permitting brief, warrantless seizures is, after all, that it is impractical to demand strict compliance with the Fourth Amendment's ordinary probable-cause requirement in the face of ongoing or imminent criminal activity demanding swift action predicated upon the on-the-spot observations of the officer on the beat. Davis v. State, 3D24-0382 (10/16/24)

https://3dca.flcourts.gov/content/download/2442142/opinion/Opinion_2024-0382.pdf

CREDIT FOR TIME SERVED: Court may not summarily deny a facially insufficient rule 3.801 motion without first giving the defendant an opportunity to amend). Perez v. State, 3D24-0557 (10/16/24)

https://3dca.flcourts.gov/content/download/2442114/opinion/Opinion_2024-0557.pdf

HABEAS CORPUS: Habeas corpus cannot be used to seek a second appeal or to litigate issues that could have been or were raised in a motion under R. 3.850. McIntyre v. State, 3D24-1252 (10/16/24)

https://3dca.flcourts.gov/content/download/2442070/opinion/Opinion_2024-1252.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: There is a two-year limitation to file a petition for ineffective assistance of appellate counsel on direct review or four-year limitation where a petition alleges under oath with a specific factual basis that the petitioner was affirmatively misled about the results of the appeal by counsel. Milian v. State, 3D24-1676 (10/16/24)

https://3dca.flcourts.gov/content/download/2442083/opinion/Opinion_2024-1676.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: The requirements for establishing a claim based on ineffective assistance of appellate counsel parallel the standards announced in Strickland, *i.e.*, petitioner must show 1) specific errors or omissions which show that appellate counsel's performance deviated from the norm or fell outside the range of professionally acceptable performance and 2) the deficiency of that performance compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the appellate result. Milian v. State, 3D24-1676 (10/16/24)

https://3dca.flcourts.gov/content/download/2442083/opinion/Opinion_2024-1676.pdf

COST OF PROSECUTION: The cost of prosecution is $100, not $200. Peterson v. State, 4D2023-2754 (10/16/24)

https://4dca.flcourts.gov/content/download/2442060/opinion/Opinion_2023-2754.pdf

INVESTIGATIVE COST: $50 Investigative cost may not be imposed unless the defendant affirmatively agrees to pay the requested amount, and the State is not authorized to request costs on behalf of an agency without that agency's request. Peterson v. State, 4D2023-2754 (10/16/24)

https://4dca.flcourts.gov/content/download/2442060/opinion/Opinion_2023-2754.pdf

STAND YOUR GROUND: A person is immune from criminal prosecution for the use of deadly force against an animal where the person has a reasonable belief that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another. §776.012(2)'s plain, unambiguous text does not require that the deadly force be used against a person, rather than against an animal. "And we will not add words limiting section 776.012(2)'s application to force solely against persons and not animals SYG immunity applies in cruelty to animals where Defendant shot an aggressive pit bull while defending himself and his own dog. Gabriel v. State,4D2024-1502 (10/16/24)

https://4dca.flcourts.gov/content/download/2442087/opinion/Opinion_2024-1502.pdf

STATUTORY INTERPRETATION-RULE OF THE LAST ANTECEDENT (J. ARTAU, CONCURRING): In holding that one is entitled to SYG immunity against an attacking dog, majority errs in applying the rule of lenity; it should have applied the rule of the last antecedent, a traditional canon of statutory construction under which relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote. Either way, you can shoot the dog. Gabriel v. State, 4D2024-1502 (10/16/24)

https://4dca.flcourts.gov/content/download/2442087/opinion/Opinion_2024-1502.pdf

EVIDENCE: Admitting a hearsay statement is not prejudicial when the out-of-court declarant is called as a witness and cross-examined at trial. Any error in admitting deputy's statement about what witness said was cured by the witness's subsequent testimony. USA v. Varazo, No. 23-11461 (11th Cir. 10/10/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311461.pdf

EVIDENCE-CHAIN OF CUSTODY: Challenges to the chain of custody generally go to the weight rather than the admissibility of evidence. USA v. Varazo, No. 23-11461 (11th Cir. 10/10/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311461.pdf

COMPETENCY: A defendant does not have a constitutional right to an adjudication on competency unless the trial court has reasonable grounds to believe that the defendant is incompetent to proceed. It is the violation of the right not to be tried when there are reasonable grounds to question the defendant's competency—not the right to have a hearing and competency determination—that deprives a defendant of due process. Failure to hold a competency hearing is not fundamental error. Davis v. State, 1D2021-3341 (10/9/24)

https://1dca.flcourts.gov/content/download/2441759/opinion/Opinion_2021-3341.pdf

APPEAL-ISSUE PRESERVATION: Defendant may not raise on appeal an issue different than that raised in the trial court. Where Appellant argues that on appeal that the charging documents, jury instructions, and general verdict form used disjunctive language allowing a non-unanimous conviction, but at

trial argued the information was "duplicative" and unclear, the issue is not preserved. Bates v. State, 1D2022-3199 (10/9/24)

https://1dca.flcourts.gov/content/download/2441760/opinion/Opinion_2022-3199.pdf

SEARCH AND SEIZURE: Defendant is not entitled to suppression of inages found on computer where he failed to establish a legitimate expectation of privacy in the laptop because he declined to assert that the computer was his. A defendant who disclaims ownership lacks standing to challenge its search and seizure. Bates v. State, 1D2022-3199 (10/9/24)

https://1dca.flcourts.gov/content/download/2441760/opinion/Opinion_2022-3199.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE: The exclusionary rule does not apply when officers obtain evidence in reasonable reliance on a search warrant even if it is later found that the warrant was unsupported by probable cause. Suppression is reserved as a remedy only in cases where a warrant is based on an affidavit so lacking in any indicia of probable cause as to render an officer's belief in its existence entirely unreasonable. Bates v. State, 1D2022-3199 (10/9/24)

https://1dca.flcourts.gov/content/download/2441760/opinion/Opinion_2022-3199.pdf

OTHER BAD ACTS: Where Defendant is charged with possession of 50 images of child pornography and, at trial, around 500 child pornography images were mentioned, error is not fundamental. "Although we recognize that collateral crime evidence is often extremely prejudicial and presumptively harmful,. . .[t]he mention of additional images did not tip the scales." Bates v.

State, 1D2022-3199 (10/9/24)

https://1dca.flcourts.gov/content/download/2441760/opinion/Opinion_2022-3199.pdf

VOIR DIRE: Court's failure to *sua sponte* declare a mistrial based on prospective juror/correctional officer's comment during jury selection that "the defendant, I don't know if he was at the Bay County Jail when I worked there," if error, is not fundamental. "Even if we assume the comment suggests that Grigges had, at some point, been in custody at the jail, the comment tells the jury nothing beyond that which it can already reasonably infer. It is unextraordinary and entirely reasonable for a jury to assume a defendant charged with first-degree murder was arrested and booked into the jail when first charged. There is no prejudice in such a mundane comment. . .[I]t is not a shock to a criminal trial jury to hear that the defendant has been charged with a crime." Grigges v. State, 1D2022-4069 (10/9/24)

https://1dca.flcourts.gov/content/download/2441763/opinion/Opinion_2022-4069.pdf

COSTS/FINES: A defendant has a right to have discretionary fines orally pronounced at sentencing because such costs may not be imposed without affording the defendant notice and an opportunity to be heard. Defendant may waive oral pronouncement of the breakdown of the costs and fines in open court. The effect of prohibiting waiver could incentivize a defendant to say nothing about fees even when given an opportunity to be heard. Defendants are not prohibited from waiving the oral pronouncement of fees and costs. "We do not intend to be overly formalistic." Grigges v. State, 1D2022-4069 (10/9/24)

https://1dca.flcourts.gov/content/download/2441763/opinion/Opinion_2022-

4069.pdf

CREDIT FOR TIME SERVED: Written sentencing order including a paragraph for the trial court to indicate the time served in jail between the date of arrest for the violation of probation and the date of resentencing, followed by a direction to the DOC to compute and apply the appropriate credit for the time he previously served in prison along with the original jail time credit is lawful, provided the judge remembers to check that box. Welch v. State, 1D2023-0161 (10/9/24)

https://1dca.flcourts.gov/content/download/2441772/opinion/Opinion_2023-0161.pdf

SEARCH AND SEIZURE: Once a driver has been lawfully stopped for a traffic violation, police officers may order the driver out of the vehicle for officer safety reasons without violating the Fourth Amendment's prohibition of unreasonable searches and seizures. Jones v. State, 1D2023-1403 (10/9/24)

https://1dca.flcourts.gov/content/download/2441766/opinion/Opinion_2023-1403.pdf

COSTS OF PROSECUTION: A statutory cost of prosecution can be levied without being specifically requested by the State. Jones v. State, 1D2023-1403 (10/9/24)

https://1dca.flcourts.gov/content/download/2441766/opinion/Opinion_2023-1403.pdf

TRIAL-WITNESS: A judge may advise a witness of his or her rights when

the witness is potentially exposing himself or herself to criminal liability such as perjury. Green v. State, 1D2023-1883 (10/9/24)

https://1dca.flcourts.gov/content/download/2441767/opinion/Opinion_2023-1883.pdf

SEX OFFENDER PROBATION: Sex offender probation can be imposed as a special condition of probation so long as a factor in Biller is satisfied. A special condition is invalid as not reasonably related to rehabilitation if it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. Willis v. State, 1D2023-3063 (10/9/24)

https://1dca.flcourts.gov/content/download/2441768/opinion/Opinion_2023-3063.pdf

COSTS OF INVESTIGATION: $50 for investigative costs may not be imposed unless requested on the record. Bond v. State, 4D2023-2499 (10/9/24)

https://4dca.flcourts.gov/content/download/2441771/opinion/Opinion_2023-2449.pdf

COMPETENCY-CHILD WITNESS: Judge questioning child witness about her competency to testify in presence of jury is not *per se* reversible error, but the better practice is to conduct this examination outside the presence of the jury. McGrady v. State, 4D2023-2600 (10/9/24)

https://4dca.flcourts.gov/content/download/2441775/opinion/Opinion_2023-2600.pdf

FREE SPEECH: Restrictions on personally directed and abusive speech at school board meetings violate the First Amendment. School board meetings qualify as limited public forums. Prohibiting calling people "names that are generally accepted to be unacceptable" is constitutionally problematic because it enables school board to shut down speakers whenever their message is deemed offensive. "No one likes to be called evil, but it is not 'abusive' to use that term. . .[H]ere, the ban on 'abusive' speech is an undercover prohibition on offensive speech." Moms for Liberty, No. 23-10656 (10/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310656.pdf

SEARCH AND SEIZURE-STOP-AUTOMOBILE: Weaving several times over the fog line is grounds for a welfare check stop under the community caretaking doctrine. State v. Sheldon, 5D2023-1668 910/8/24)

https://5dca.flcourts.gov/content/download/2441722/opinion/Opinion_2023-1668.pdf

COST OF PROSECUTION: $150 cost of prosecution may not be imposed without a request. Pedreira v. State, 5D2023-2700 (19/8/24)

https://5dca.flcourts.gov/content/download/2441729/opinion/Opinion_2023-2700.pdf

DOMESTIC VIOLENCE SURCHARGE: $201 domestic violence surcharge improperly assessed or a non-qualifying offense. Pedreira v. State, 5D2023-2700 (19/8/24)

https://5dca.flcourts.gov/content/download/2441729/opinion/Opinion_2023-2700.pdf

COSTS: Costs for the FDLE Operating Trust Fund must be stricken where trhey were not orally pronounced. Youngblood v State, 5D2023-3067 (10/8/24)

https://5dca.flcourts.gov/content/download/2441724/opinion/Opinion_2023-3067.pdf

COSTS OF PROSECUTION: A cost imposed under §938.27(8) is mandatory. Conflict recognized. Scheider v. State, 5D2023-3244 (10/8/24)

https://5dca.flcourts.gov/content/download/2441726/opinion/Opinion_2023-3244.pdf

PROBATION-MODIFICATION: Court must modify or continue probation where Defendant meets all four conditions of §948.06(2)(f) (The term of supervision is probation, the probationer does not qualify as a violent felony offender of special concern, the violation is a low-risk technical violation, and the court has not previously found the probationer in violation). Radi v, State, 5D2024-0256 (10/8/24)

https://5dca.flcourts.gov/content/download/2441728/opinion/Opinion_2024-0256.pdf

COST OF PROSECUTION: A cost of prosecution imposed under §938.27(8) is mandatory. Conflict recognized. Strickland v. State, 5D2024-1325 (10/8/24)

https://5dca.flcourts.gov/content/download/2441714/opinion/Opinion_2024-1325.pdf

POST CONVICTION RELIEF: A court should not deny a postconviction claim as insufficiently pleaded without giving the movant one chance to amend the claim—assuming he can do so in good faith. But the court does not need to order an amendment when denial of the motion was not based on insufficiency in pleading. Bunch v. State, 5D2924-1691 (10/8/24)

https://5dca.flcourts.gov/content/download/2441727/opinion/Opinion_2024-1691.pdf

PLEA: A plea conference is not a meaningless charade to be manipulated willy-nilly after the fact; it is a formal ceremony, under oath, memorializing a crossroads in the case. What is said and done at a plea conference carries consequences. Postconviction movants are bound by their sworn statements. Bunch v. State, 5D2924-1691 (10/8/24)

https://5dca.flcourts.gov/content/download/2441727/opinion/Opinion_2024-1691.pdf

RIOT: Florida's amended criminal riot statute is not impermissibly vague and does not criminalize peaceful protest activity. A peaceful protestor, under the most natural reading of the statute, is no rioter. The statute does not apply to a person who is present at a violent protest, but neither engages in, nor intends to assist others in engaging in, violent and disorderly conduct. Merely attending a violent protest, without more, falls outside the statute's reach. The touchstone of liability under the riot statute is violence. This violence may not be incidental; it must be intentional. Dream Defenders v. Governor, No. 21-13489 (10/7/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113489.pdf

THEFT OF GOVERNMENT PROPERTY: Defendant properly convicted of

theft of government property for drawing disability while helping run a janitorial business. A conviction for theft of government property requires the government prove (1) that the money or property belonged to the government; (2) that the defendant fraudulently appropriated the money or property to his own use or the use of others; and (3) that the defendant did so knowingly and willfully with the intent either temporarily or permanently to deprive the owner of using the property. USA v. Hill, No. 23-10289 (10/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310289.pdf

MAKING A FALSE CLAIM: Receiving direct deposits can satisfy the "making or presenting" *actus reus* of 18 U.S.C. §287. Receiving a direct deposit disability payment to which one is not entitled can constitute a false claim against the government. "[E]very time Hill received an RRB payment via direct deposit to his bank account while failing to disclose his involvement with SparClean, he presented a false claim." USA v. Hill, No. 23-10289 (10/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310289.pdf

INVITED ERROR: Accepting the deliberate avoidance pattern instruction at the charge conference and not objecting after the charges were read to the jury constitutes invited error and a waiver of the right to it upon appeal. USA v. Hill, No. 23-10289 (10/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310289.pdf

DICTA: "[T]here is dicta and then there is dicta, and then there is Supreme Court dicta." Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf

APPEAL-REHEARING: A petition for rehearing *en banc* also functions as a petition for rehearing before the original panel. Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf

BIVENS CLAIMS: Bivens claims are claims for money damages against federal officials and employees who have committed constitutional violations. In all but the most unusual circumstances. Plaintiff may not raise a Bivens claim against federal prison officials, doctors, a nurse, and a kitchen supervisor alleging that they violated his constitutional rights by using excessive force, by failing to protect him from other inmates, and by being deliberately indifferent to his serious medical needs. Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf

BIVENS CLAIMS: Bivens may not be used to recognize new constitutional-claim causes of action. In the last 44 years, the Supreme Court has over and over again refused to extend Bivens to any new context or new category of defendants. Recognizing a cause of action under Bivens outside of the three contexts already allowed by the Supreme Court is a disfavored judicial activity and should be avoided in all but the most unusual circumstances. "[T]hose 'most unusual circumstances' are as rare as the ivory-billed woodpecker." Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf

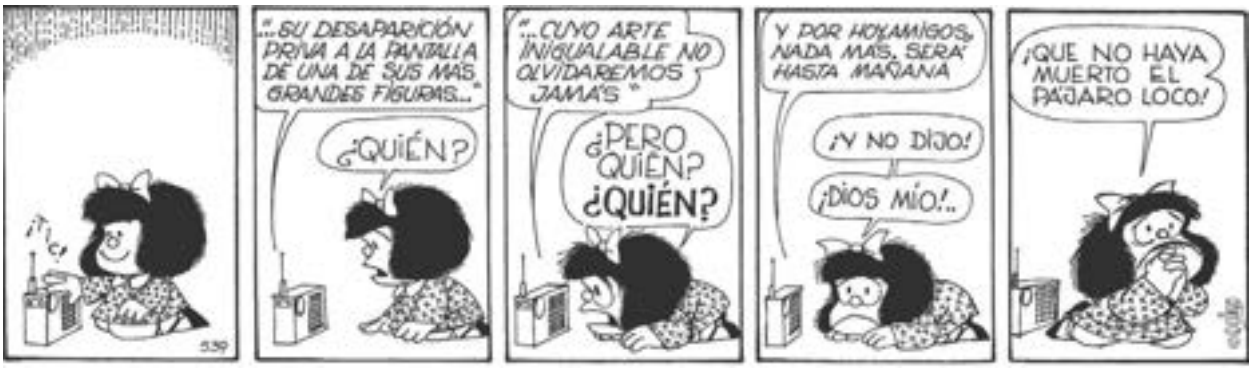
BIVENS CLAIMS: "Theoretically, we may someday see more Supreme Court decisions confirming and extending Bivens. Barring that unlikely event, for the time being the decision will remain on the judiciary's equivalent of an

endangered species list, just like its natural history analogue, the ivory-billed woodpecker. Both the decision and the bird are staring extinction in the face." Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf

WOODPECKERS-A COINCIDENCE OF RARITY: Ornithologists almost pronounced Ivory-billed Woodpeckers extinct, but there may be three of them in bottomland forests of Louisiana. "If that's true, the number of the birds that exist will exactly match the number of Supreme Court decisions that have confirmed and applied Bivens in the last forty-three years: three live ivory-billed woodpeckers and three live Bivens decisions. A coincidence of rarity." Johnson v. Terry, No. 23-11394 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311394.op2.pdf



SENTENCING GUIDELINES-SEX OFFENDER: The "repeat and dangerous sex offender against minors" enhancement does not apply when the Defendant had previously been convicted for the state offense of traveling to meet a minor. In determining whether the Florida conviction is a predicate, the categorical approach, not Defendant's course of conduct, is used. The least culpable conduct that could sustain a conviction under this statute appears to be traveling to meet a minor for the purpose of contributing to the delinquency of a child. That is plainly not a sex offense. USA v. Lusk, No. 22-12078 (11th

Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212078.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: A district court's unjustified reliance on any one §3553(a) factor may be indicative of an unreasonable sentence. The imposition of a sentence well below the statutory maximum penalty is an indicator of reasonableness. USA v. Lusk, No. 22-12078 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212078.pdf

ATTEMPTING TO ENTICE A MINOR: Defendant may be convicted of attempting to entice a minor even where his conduct did not involve an actual minor. USA v. Lusk, No. 22-12078 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212078.pdf

APPEAL WAIVER: An appeal waiver bars a defendant from challenging the constitutionality of the oral pronouncement of his sentence. Defendant who had signed the plea waiver may not appeal the Court's failure to describe the standard discretionary conditions of supervised release in detail. USA v. Read, No. 23-10271 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310271.pdf

CONDITIONS OF SUPERVISED RELEASE-ORAL PRONOUNCEMENT: District court may impose standard conditions of supervised release adopted by the Court in the Middle District without orally describing each condition. A reference to a written list of conditions is enough to afford a defendant the

opportunity to challenge the conditions of supervised release, which is all that due process requires. USA v. Hayden, No. 19-14780 (11th Cir. 10/3/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201914780.pdf

AMENDMENT-JUVENILE PROCEDURE: Juvenile rules rephrased for clarity and new language added to make them more easily understood. In Re: Amendments to Florida Rules of Juvenile Procedure, No. SC2024-0572 (10/2/24)

https://supremecourt.flcourts.gov/content/download/2441466/opinion/Opinion_SC2024-0572.pdf

RE-SENTENCING-SCORESHEET: In general, when the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to be resentenced using a corrected scoresheet unless the record conclusively shows that the trial court would have imposed the same sentence using a corrected scoresheet. Jones v. State, 2D2023-0522 (10/2/24)

https://2dca.flcourts.gov/content/download/2441474/opinion/Opinion_2023-0522.pdf

HEARSAY-EXPERT-BAKER ACT: Evidence from the treating physician that she had reviewed subject's medical records and that he had admitted that he previously failed to comply with treatment is insufficient to support involuntary commitment. An expert's testimony may not merely be used as a conduit for the introduction of the otherwise inadmissible evidence. In the absence of personal knowledge of the witness, or admission of T.M.'s relevant medical records via a records custodian or a business records affidavit, a surrogate expert's testimony is insufficient. T.M. v. State, 3D230148 (10/2/24)

https://3dca.flcourts.gov/content/download/2441499/opinion/Opinion_2023-0148.pdf

HEARSAY-BUSINESS RECORD: In order to lay a proper foundation for the admission of a business record, the affidavit must show that the record was: 1) made at or near the time of the event recorded, 2) by, or from information transmitted by, a person with knowledge, 3) kept in the course of a regularly conducted business activity, and 4) it was the regular practice of that business to make such a record. T.M. v. State, 3D230148 (10/2/24)

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https://3dca.flcourts.gov/content/download/2441499/opinion/Opinion_2023-0148.pdf

HEARSAY-BOLO: The contents of a BOLO are generally inadmissible, but when the victim testifies to the same information during the trial, courts have often considered the admission of the BOLO's contents cumulative in nature, and, therefore, harmless. Solivan v. State, 3D23-0665 (10/2/24)

https://3dca.flcourts.gov/content/download/2441548/opinion/Opinion_2023-0665.pdf

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https://3dca.flcourts.gov/content/download/2441499/opinion/Opinion_2023-0148.pdf

DNA TESTING: It is the defendant's burden to explain, with reference to specific facts about the crime and the items requested to be tested, how the DNA testing will exonerate the defendant of the crime or will mitigate the defendant's sentence. A trial court does not err in denying a motion for DNA testing where the defendant cannot show that there is a reasonable probability that the absence or presence of DNA at a crime scene would exonerate him or lessen his sentence. Jackson v. State, 3D24-1160 (10/2/24)

https://3dca.flcourts.gov/content/download/2441560/opinion/Opinion_2024-

1160.pdf

FARETTA: An accused has the right to self-representation, but the trial court has an obligation to ensure that a defendant who elects to waive counsel does so "with eyes open" by making the defendant "aware of the dangers and disadvantages of self-representation. Faretta violations at a critical stage of the criminal proceeding are *per se* reversible error. Harmless error analysis is not available. Sherrod v. State, 4D2023-0881 (10/2/24)

https://4dca.flcourts.gov/content/download/2441477/opinion/Opinion_2023-0881.pdf

FARETTA-STAND YOUR GROUND: Court must conduct a full Faretta hearing before allowing Defendant to represent himself in a SYG hearing. Sherrod v. State, 4D2023-0881 (10/2/24)

https://4dca.flcourts.gov/content/download/2441477/opinion/Opinion_2023-0881.pdf

STATEWIDE PROSECUTOR-PERJURY: Statewide prosecutor has jurisdiction in multiple counties. Where jurors in multiple counties convened virtually (COVID), the Statewide prosecutor has jurisdiction to prosecute a witness for perjury before that a grand jury so assembled. The alleged perjury occurred, in two or more judicial circuits as part of a related transaction. Florida v. Runcie, 4D2023-1061 (10/2/24)

https://4dca.flcourts.gov/content/download/2441481/opinion/Opinion_2023-1061.pdf

LEWD OR LASCIVIOUS MOLESTATION: Defendant can be convicted of lewd or lascivious molestation by applying the principal theory for inducing two minors to perform sexual acts upon each other. McCaw v. State, 4D2023-1105 (10/2/24)

https://4dca.flcourts.gov/content/download/2441489/opinion/Opinion_2023-1105.pdf

COSTS OF PROSECUTION: Costs of prosecution are mandatory. Conflict recognized. Morales v. State, 5D2023-2968 (10/1/24)

https://5dca.flcourts.gov/content/download/2441349/opinion/Opinion_2023-2968.pdf

SEPTEMBER 2024

VOP: Written revocation of probation orders must identify the terms and conditions of probation violated. Reyes v. State, 5D2023-3585 (9/27/24)

https://5dca.flcourts.gov/content/download/2441314/opinion/Opinion_2023-3585.pdf

CREDIT FOR TIME SERVED: When a defendant is arrested in a foreign county on a warrant from another county, the defendant may be entitled to credit for the time spent in the foreign county. Milliord v. State, 5D2024-1490 (9/27/24)

https://5dca.flcourts.gov/content/download/2441309/opinion/Opinion_2024-1490.pdf

HEARSAY-COCONSPIRATORS: Excluded from the definition of hearsay are out-of-court statements made by the party's coconspirator during and in furtherance of the conspiracy. The word "conspiracy" means an arrangement to work together toward a shared goal. There must be evidence of a conspiracy before a court can admit coconspirator statements, but it need not find that the conspiracy was unlawful before admitting those statements. USA v. Holland, No. 22-14219 (9/25/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202214219.op2.pdf

APPEAL-DEPARTURE: Appellate review of the trial court's denial of a downward departure sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Thayer v. State, 1D2023-0342 (9/25/24)

https://1dca.flcourts.gov/content/download/2441255/opinion/Opinion_2023-0342.pdf

VOTER FRAUD: The Office of Statewide Prosecution has authority under §16.56(1)(a) to bring voting fraud charges against a voter because the offense occurred in two Florida Judicial Circuits. State v. Wood, 3D22-1925 (9/25/24)

https://3dca.flcourts.gov/content/download/2441226/opinion/Opinion_2022-1925.pdf

JIMMY RYCE-HABEAS CORPUS: In Jimmy Ryce cases, detainee may file a petition for habeas corpus alleging ineffective assistance of counsel in the county in which the judgment was rendered within two years after the judgment becomes final. All other habeas corpus petitions must be filed in the county where the facility in which he is confined is located. Shaw v. State, 3D22-1869 (9/25/24)

https://3dca.flcourts.gov/content/download/2441228/opinion/Opinion_2023-1869.pdf

POSTCONVICTION RELIEF-SUMMARY DENIAL: Court may not summarily deny a motion for postconviction relief as successive without attaching records necessary to support the ruling. Lucas v. State, 3D23-2190 (9/25/24)

https://3dca.flcourts.gov/content/download/2441242/opinion/Opinion_2023-2190.pdf

YOUTHFUL OFFENDER: Offenders are not entitled to sentencing under the Youthful Offender Act for offenses committed prior to its effective date. Williams v. State, 3D24-0723 (9/25/24)

https://3dca.flcourts.gov/content/download/2441222/opinion/Opinion_2024-0723.pdf

SEARCH AND SEIZURE-INEVITABLE DISCOVERY: Whether the Government employs its own surveillance technology or leverages the technology of a wireless carrier, an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. Because acquisition of CSLI data is a search, the Government must generally obtain a warrant supported by probable cause before acquiring such records, but where Defendant was ultimately found with his cell phone without the use of CSLI, the inevitable discovery doctrine applies. CSLI only confirmed to law enforcement that appellant's phone was present at the address, which law enforcement had already ascertained through lawful means, and to which they were already headed. Craig v. State, 4D2022-1728 (9/25/24)

https://4dca.flcourts.gov/content/download/2441235/opinion/Opinion_2022-1728.pdf

SEARCH AND SEIZURE-FACEBOOK RECORDS: In murder case, after police were denied a search warrant for Defendant's Facebook records for lack of probable cause, review of the same Facebook records, which had been lawfuly acquired in an unrelated fraud case, for evidence on the homicide constituted an unlawful search. A warrant authorizing officers to search through a large amount of Facebook data for evidence relevant to proving only theft or fraud does not give officers authority to search the Facebook records for evidence of homicide. Good faith exception does not apply." Young v. State, 4D2023-1056 (9/25/24)

https://4dca.flcourts.gov/content/download/2441234/opinion/Opinion_2023-1056.pdf

SEARCH AND SEIZURE-SOCIAL MEDIA: People have a reasonable expectation of privacy in their private social media content." Young v. State, 4D2023-1056 (9/25/24)

https://4dca.flcourts.gov/content/download/2441234/opinion/Opinion_2023-1056.pdf

SEARCH WARRANT: To obtain a search warrant, an officer must submit an affidavit setting forth facts establishing two elements: (1) the commission element—that a particular person has committed a crime; and (2) the nexus element—that evidence relevant to the probable criminality is likely to be located in the place searched. Further, a search warrant must contain a particular description of the items of property it authorizes the officers to seize. A warrant authorizing officers to search through a large amount of Facebook

data for evidence relevant to proving only theft or fraud does not give officers authority to search the Facebook records for evidence of homicide." Young v. State, 4D2023-1056 (9/25/24)

https://4dca.flcourts.gov/content/download/2441234/opinion/Opinion_2023-1056.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE: State's argument that the Exclusionary Rule should not apply because the law was unsettled is wrong. "Were we to agree with this argument. . .we would effectively be holding that when the law is unsettled, an officer or the prosecutor is free to make an independent conclusion concerning the legality of a search or seizure, and even if a court subsequently disagrees with that conclusion, the illegally obtained evidence will not be suppressed. Under this approach, an officer would have an incentive not to seek a warrant when caselaw is unclear because the request might be denied. Young v. State, 4D2023-1056 (9/25/24)

https://4dca.flcourts.gov/content/download/2441234/opinion/Opinion_2023-1056.pdf

SEARCH AND SEIZURE-WARRANT: "The rule on searches in questionable areas of law is simple and unequivocal: Get a warrant." Young v. State, 4D2023-1056 (9/25/24)

https://4dca.flcourts.gov/content/download/2441234/opinion/Opinion_2023-1056.pdf

STATEMENT OF DEFENDANT: Defendant's post-Miranda confession was not voluntary where officers had threatened to take his truck if he did not talk ("So, either you cooperate with us, or we take your truck. Permanently. . .[B]ecause it was used in the commission of the crime."). In order for a

confession or an incriminating statement of a defendant to be admissible in evidence, it must be shown that the confession or statement was voluntarily made, *i.e.*, the product of free will and rational choice, and not elicited by direct or implied promises, however slight. Vera v. State, 4D2023-1311 (9/25/24)

https://4dca.flcourts.gov/content/download/2441232/opinion/Opinion_2023-1311.pdf

STEALING-INTENT: Defendants charged with violating 18 U.S.C. §661, which prohibits taking and carrying way, "with intent to steal or purloin, any personal property of another" are not entitled to a jury instruction that the jury must find that defendants took the fishing gear with the intent to keep the gear for themselves or to convert it to their own use. The text of §661 does not explicitly include any language requiring a *lucri causa* element. USA v. Moore, No. 23-10579 (9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310579.pdf

STEALING-INJUSTICE (J LAGOA, J., CONCURRING): "John Moore, Jr., and Tanner Mansell are felons because they tried to save sharks from what they believed to be an illegal poaching operation. They are the only felons I have ever encountered. . .who called law enforcement to report what they were seeing and what actions they were taking in real time. They are felons who derived no benefit, and in fact never sought to derive any benefit, from the conduct that now stands between them and exercising the fundamental rights from which they are disenfranchised. What's more, they are felons for having violated a statute that no reasonable person would understand to prohibit the conduct they engaged in." USA v. Moore, No. 23-10579 (9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310579.pdf

LES MISERABLES (J LAGOA, J., CONCURRING): "For reasons that defy understanding, Assistant United States Attorney Tom Watts Fitzgerald . . .—taking a page out of Inspector Javert's playbook—. . .decided to pursue this indictment despite the following undisputed facts: Moore and Mansell (1) called law enforcement to report what they were doing, (2) were comfortable involving their tourism customers in their actions, (3) encouraged Kuehl to record what was happening, and (4) returned the gear to the marina dock as instructed. USA v. Moore, No. 23-10579 (9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310579.pdf

INJUSTICE (J LAGOA, J., CONCURRING): Assume that Hypothetical Bob disarms a robber who was holding up an old woman and turns the gun over to the police. "Has Bob stolen from the robber? . . .[B]ased on the government's theories and the instructions given in our case, Bob's conduct would be criminally 'willful' because he intended to do the thing the law forbids: he intended to take the gun from its owner to prevent the owner from using it, and that is forbidden under §661." USA v. Moore, No. 23-10579 (9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310579.pdf

EVIDENCE-OTHER BAD ACTS: Evidence of uncharged or past crimes is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character, but may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The government must offer prior notice of its intent to present the evidence, including an explanation of its permitted purpose unless the evidence is intrinsic to the charged crime. USA v. Cenephat, No. 22-1374 (11th Cir. 9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213741.pdf

EVIDENCE-OTHER BAD ACTS: Evidence of the details of a drive-by shooting shortly before his arrest, including gunshot residue on his hands is admissible in possession of a firearm by a felon charge. USA v. Cenephat, No. 22-1374 (11th Cir. 9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213741.pdf

EVIDENCE-OTHER BAD ACTS: In Possession of a Firearm by Felon case, Defendant's prior felon-in-possession convictions are admissible to prove intent. There is a logical connection between a convicted felon's knowing possession of a firearm at one time and his knowledge that a firearm is present at a subsequent time. USA v. Cenephat, No. 22-1374 (11th Cir. 9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213741.pdf

SENTENCING: A district court may rely on any statements in the PSI that the defendant did not object to with specificity and clarity. USA v. Cenephat, No. 22-1374 (11th Cir. 9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213741.pdf

SENTENCING-GUIDELINES-COMMENTARY: Guidelines commentary may only be used to construe a guideline if, having exhausted all the traditional rules of statutory interpretation, the guideline's main text is ambiguous. USA v. Cenephat, No. 22-1374 (11th Cir. 9/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213741.pdf

INVESTIGATIVE COSTS: Court may not impose $50.00 for investigative costs where State did not specifically request them. Porter v. State, 5D2023-1553 (9/20/24)

https://5dca.flcourts.gov/content/download/2441033/opinion/Opinion_2023-1553.pdf

ATTORNEY-DISCIPLINE: Attorney sentenced to 60 days in jail, 50 suspended upon 5 months of probation with psychological treatment for contempt for continuing to practice law after disbarment. The Florida Bar v. Norkin, SC2021-1025 (9/17/24)

https://supremecourt.flcourts.gov/content/download/2440973/opinion/Opinion_SC2021-1025.pdf

POSTCONVICTION RELIEF: When a defendant brings any claim in a successive motion more than one year after the judgment and sentence became final, he must meet an exception to the time-limit rule. Where Defendant could have discovered that a witness against him expected a favorable deal from the State, his claim is time barred. Stein v. State, SC2022-1787 (9/19/24)

https://supremecourt.flcourts.gov/content/download/2440976/opinion/Opinion_SC2022-1787.pdf

REVOCATION OF RIGHT OF SELF-REPRESENTATION-APPEAL: The standard of review for a trial court's revocation of right of review is *de novo*, not

abuse of discretion. USA v. Butler, No. 22-12798 (11th Cir. 9/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212798.pdf

REVOCATION OF RIGHT SELF-REPRESENTATION: Court may revoke a defendant's right of self-representation and to dispense with a lawyer's help where a defendant deliberately engages in serious and obstructionist misconduct such as frequently interrupting and insulting the court, walking out of hearings, refusing to attend other proceedings, and threatening not to show up at the trial itself. An "attorney with the combined skill of John Adams, Clarence Darrow, and Louis Brandeis could not have satisfied Mr. Butler." Cooperation and respect in the courtroom are not mere formalities. They are necessary components of the judicial process. USA v. Butler, No. 22-12798 (11TH Cir. 9/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212798.pdf

YOUTHFUL OFFENDER: For youthful offender sentencing for crimes committed before October 1, 2024, Defendant must have been under 21 at the time of sentencing. His age at the time of the offense under the statute then in effect is irrelevant. The amendment to the statute making YO sentencing available for defendants who were under 21 at the time of the offense is not retroactive. Hutchinson v. State, 1D2022-2988 (9/18/24)

https://1dca.flcourts.gov/content/download/2440781/opinion/Opinion_2022-2988.pdf

COSTS: For second degree murder, Court improperly imposed the $3 cost under §318.13(11)(b)(2) and the $2 cost under §938.15. Hutchinson v. State, 1D2022-2988 (9/18/24)

https://1dca.flcourts.gov/content/download/2440781/opinion/Opinion_2022-2988.pdf

COSTS: Defendant cannot challenge for the first time on appeal the written waiver of the required oral pronouncement of discretionary costs. Issue must first be raised in the trial court. Hutchinson v. State, 1D2022-2988 (9/18/24)

https://1dca.flcourts.gov/content/download/2440781/opinion/Opinion_2022-2988.pdf

COMPETENCY: Where psych evals were ordered and reports prepared, but no hearing is held, Court must make a retroactive finding of competency or grant a new trial. Davis v. State, 1D2022-385 (9/18/24)

https://1dca.flcourts.gov/content/download/2440783/opinion/Opinion_2022-3857.pdf

RIGHT TO TESTIFY: Defendant is not deprived of his right to testify where 3 times he declined to testify, then changed his mind during the reading of jury instructions Thomas v. State, 1D2023-1856 (9/18/24)

https://1dca.flcourts.gov/content/download/2440782/opinion/Opinion_2023-1856.pdf

MOTION TO WITHDRAW PLEA: Defendant is not entitled to withdraw a plea more than 30 days after its original imposition but fewer than 30 days after its correction. The striking of the mandatory condition of a sentence already served for technical reasons while the defendant is serving much longer concurrent sentences is an act ministerial in nature that does not rise to the level of a sentence rendition re-starting the deadlines in R. 3.170(l). Sanchez

v. State, 3D22-0817 (9/18/24)

https://3dca.flcourts.gov/content/download/2440891/opinion/Opinion_2022-0817.pdf

MOTION TO WITHDRAW PLEA: Once a sentence has been imposed, a defendant must demonstrate manifest injustice or prejudice in order to withdraw a guilty plea. "[W]e find no manifest injustice in the denial of his request to withdraw his plea twenty-six years later." Sanchez v. State, 3D22-0817 (9/18/24)

https://3dca.flcourts.gov/content/download/2440891/opinion/Opinion_2022-0817.pdf

PHOTO LINEUP: "[W]e reiterate the unremarkable adage that a photographic identification procedure is not suggestive 'solely because the display [does] not depict persons of the same race or ethnic group, although displaying persons of markedly different race or ethnicity may be unduly suggestive." Sukhwa v. State, 3D23-1051 (9/18/24)

https://3dca.flcourts.gov/content/download/2440864/opinion/Opinion_2023-1051.pdf

JUROR-CHALLENGE FOR CAUSE: Juror who indicated he had strong feelings about theft cases because several of his family members were robbery victims, and that "I don't know how it would affect my opinion on this. I don't think it would, but just going through that. . .I can't say for sure I wouldn't think of it. But I would try not to" should have been removed for cause. When a juror's last response indicates that the juror is potentially

prejudiced, and the response is not retracted or modified, the juror must be stricken for cause. Sciallo v. State, 3D23-2078 (9/18/24)

https://3dca.flcourts.gov/content/download/2440872/opinion/Opinion_2023-2078.pdf

QUALIFIED IMMUNITY: Officers do not have qualified immunity for detaining in handcuffs a driver on a no-flight list. Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged conduct, but the right not to be unlawfully detained like this was clearly established. Meshal v. Commissioner, Georgia Dep't of Public Safety, (No. 23-10128 (11th Cir. 9/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310128.pdf

SEARCH AND SEIZURE-PROLONGED DETENTION: Temporary detention of individuals during the stop of an automobile, even if only for a brief period and for a limited purpose, constitutes a Fourth Amendment seizure. Calling the FBI during a routine traffic stop to see if detainee is on the no-fly list is not reasonably related to the mission of writing a ticket or warning. "But even assuming [it were], the call extended Meshal's detention beyond what the Fourth Amendment allows. . .The officers maintain that the length of the detention was dictated by the timing of the FBI's response and therefore justified. But what if the FBI had taken two hours to respond? Or six hours? Or a whole day? It cannot be that any length of detention was permissible until the officers received an all-clear from the FBI. . .The logical implication of the officers' argument is that individuals on the No Fly List can be subjected to prolonged detention any time they travel to or from a public place. We cannot countenance that result." Meshal v. Commissioner, Georgia Dep't of Public Safety, (No. 23-10128 (11th Cir. 9/16/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310128.pdf

SUPERSEDEAS BOND: In considering superseas bond, Court must consider the following factors: (1) whether the appeal is taken for delay or in good faith on grounds not frivolous but fairly debatable; (2) the habits of the individual regarding respect for the law; (3) local attachments to the community by way of family ties, business or investment; (4) the severity of the sentence imposed, and circumstances relevant to the question of whether the defendant would remove himself from the jurisdiction of the court. Conclusory findings unsupported by the record or a mere verbatim recital of the considerations are insufficient. Torolopez v. State, 3D23-2255 (9/16/24)

https://3dca.flcourts.gov/content/download/2440672/opinion/Opinion_2023-2255.pdf

SIGHS: Defendant's "sighs at trial during witness testimony. . .do not support the trial court's finding of lack of respect for the justice system." Torolopez v. State, 3D23-2255 (9/16/24)

https://3dca.flcourts.gov/content/download/2440672/opinion/Opinion_2023-2255.pdf

APPEAL: Defendant may not raise on appeal arguments that differ from those raised in the trial court. Walker v. State, 4D2022-3397 (9/18/24)

https://4dca.flcourts.gov/content/download/2440876/opinion/Opinion_2022-3397.pdf

TESTIMONY-FEDERAL OFFICIAL (J. WARNER, CONCURRING): Deputy

serving on U.S. Marshals Service Fugitive Task Force cannot be compelled to testify for defendant on a motion to suppress as to whether cell phone illegally used to arrest him. 28 C.F.R. § 16.22(a) provides that in any case where the United States is not a party, no employee or former employee of Department of Justice shall, in response to a demand disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official. Nevertheless, the Justice Department's refusal to allow this witness to testify to whether he used CSLI to locate appellant and whether he secured a warrant does not seem to comport with its own regulations. "What one gleans from this record is an effort to hide the fact that the deputy acted without a warrant, thus making the search for appellant illegal. Although the officer may not be held in contempt for following the directions of his superiors, that does not preclude the superior from being held in civil contempt." Walker v. State, 4D2022-3397 (9/18/24)

https://4dca.flcourts.gov/content/download/2440876/opinion/Opinion_2022-3397.pdf

MOTION TO CORRECT-APPEAL: If an appeal is pending, a defendant may file in the trial court a motion to correct a sentencing error. Sawyer v. State, 4D2023-2555 (9/18/24)

https://4dca.flcourts.gov/content/download/2440875/opinion/Opinion_2023-2555.pdf

JUROR MISCONDUCT: Where Defendant moved for a new trial, and while that was pending received a report of potential juror misconduct but did not seek to amend his original motion, but instead later filed a second motion for new trial, the second motion was untimely. Karcewski v. State, 2D2021-3443 (9/13/24)

https://2dca.flcourts.gov/content/download/2440395/opinion/Opinion_2021-3443.pdf

COST OF INVESTIGATION: $50 cost of investigation stricken because it was not orally pronounced nor requested by the State. Lamie v. State, 5D2023-2530 (9/13/24)

https://5dca.flcourts.gov/content/download/2440389/opinion/Opinion_2023-2530.pdf

JURY-READ BACK: When the jury requests transcripts of testimony, the court must advise the jury of its right to request a read-back. New trial required. McDermott v. State, 5D2023-3013 (9/13/24)

https://5dca.flcourts.gov/content/download/2440390/opinion/Opinion_2023-3013.pdf

APPEAL-JURY-READ BACK: Appellate counsel was ineffective for not raising the issue of the trial court not advising the jury of its right to request a read-back of testimony. McDermott v. State, 5D2023-3013 (9/13/24)

https://5dca.flcourts.gov/content/download/2440390/opinion/Opinion_2023-3013.pdf

SEARCH AND SEIZURE: Police may conduct a traffic stop when a person stops or parks in a designated handicapped parking space without a displayed permit. State v. Diaz, 6D2023-3742 (9/13/24)

https://6dca.flcourts.gov/content/download/2440421/opinion/Opinion_2023-3742.pdf

DEATH PENALTY-COSTS OF DEFENSE: A trial court's decision to deny a motion for funds for a PET scan and travel expenses for mitigation specialist in preparation for the penalty phase of a death case will be upheld absent an abuse of discretion. Sexton v. State, SC2023-0079 (9/12/24)

https://supremecourt.flcourts.gov/content/download/2440351/opinion/Opinion_SC2023-0079.pdf

DEATH PENALTY-COURT WITNESS: Court erred by calling the defense mitigation specialist as a court witness, but error is harmless. Sexton v. State, SC2023-0079 (9/12/24)

https://supremecourt.flcourts.gov/content/download/2440351/opinion/Opinion_SC2023-0079.pdf

JUDGE DISQUALIFICATION: Court need not be disqualified for ordering defense counsel not to persist in heated language ("[P]erhaps. . .we should just go out to the nearest tree and hang Mr. Sexton."). Sexton v. State, SC2023-0079 (9/12/24)

https://supremecourt.flcourts.gov/content/download/2440351/opinion/Opinion_SC2023-0079.pdf

JUDGE DISQUALIFICATION (J. LABARGA, CONCURRING): "The trial court's response to defense counsel's improper comment was insufficient to demonstrate the requisite bias for granting a motion to disqualify. However, I must note that considering the trial court's strong response to defense counsel's comment, the court did not offer a sufficient response to improper prosecutorial comments that preceded those made by defense counsel. .

.[R]eferring to certain court proceedings as 'a racket,' questioning the legitimacy of experts, and accusing those experts of 'fleec[ing] the public'—in a death penalty case, no less—were also deserving of the trial court's rebuke." Sexton v. State, SC2023-0079 (9/12/24)

https://supremecourt.flcourts.gov/content/download/2440351/opinion/Opinion_SC2023-0079.pdf

POSTCONVICTION RELIEF: Defendant is not entitled to postconviction relief in DUI manslaughter case for counsel's alleged failure to adequately object to some of the prosecutor=s comments in closing argument, failure to seek a mistrial concerning a sustained golden rule objection, and failure to object to the voluntary intoxication instruction for general intent crimes. To prove ineffective assistance of counsel, a defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Weber v. State, 1D2022-1734 (9/11/24)

https://1dca.flcourts.gov/content/download/2440235/opinion/Opinion_2022-1734.pdf

WITHDRAWAL OF PLEA: Where, before sentencing, Defendant filed a pro se motion to withdraw his guilty plea, alleging that trial counsel had not visited Appellant in a year, had not deposed certain witnesses, and had not raised other challenges to the charges, he is entitled to conflict-free counsel. Counsel's statement that he did not agree that the motion to withdraw plea had any merit sufficiently demonstrated an adversarial relationship between Appellant and his trial counsel. Morrow v. State, 1D2022-2947 (9/11/24)

https://1dca.flcourts.gov/content/download/2440233/opinion/Opinion_2022-2947.pdf

APPEAL-POSTCONVICTION RELIEF: Defendant may not raise for the first time on appeal from the denial of a motion for postconviction relief that her life sentence was disproportionate in light of her co-defendants' term-of-years sentences. There is no manifest injustice exception to the rules for preservation of issues for appeal. Vowell v. State, 1D2022-3840 (9/11/24)

https://1dca.flcourts.gov/content/download/2440243/opinion/Opinion_2022-3840.pdf

POSTCONVICTION RELIEF: Counsel was not ineffective for failing to prepare Defendant to testify at the proffer and trial where he had told her to be honest in her proffer, warned her that half-truths would be discovered, and told her to try not to get upset, but she had disregarded this advice. "Given the 'cocktail of pills' she was continually ingesting, the postconviction court reasonably questioned what amount of preparation would have been sufficient to overcome her own behavior." Vowell v. State, 1D2022-3840 (9/11/24)

https://1dca.flcourts.gov/content/download/2440243/opinion/Opinion_2022-3840.pdf

DISCHARGE OF ATTORNEY: A Nelson hearing is required (1) when the defendant makes a clear and unequivocal statement that he wishes to discharge appointed counsel; (2) the reason for the requested discharge is a claim of incompetence; and (3) the alleged ineffectiveness arises from the current representation by counsel, not past indiscretions. The fact that the *pro se* motion for appointment of substitute counsel did not contain a completed certificate of service is not dispositive. Hoskins v. State, 1D2023-0422 (9/11/24)

https://1dca.flcourts.gov/content/download/2440257/opinion/Opinion_2023-0422.pdf

HEARSAY: A text message, sent before the shooting, from the victim to a third party noting that Defendant had a firearm is not hearsay where it was offered into evidence not for the truth of the matter asserted but to show the victim's state of mind to explain the victim's actions before the shooting. McGowan v. State, 1D2023-0578 (9/11/24)

https://1dca.flcourts.gov/content/download/2440256/opinion/Opinion_2023-0578.pdf

MOTION/APPEAL: Where Defendant simultaneously files both a timely motion to withdraw plea with the trial court and a notice of appeal, the appeal, not the motion, must be held in abeyance. Brown v. State, 1D2023-0888 (9/11/24)

https://1dca.flcourts.gov/content/download/2440267/opinion/Opinion_2023-0888.pdf

JOA-LEWD AND LASCIVIOUS MOLESTATION: Defendant touching "[n]ear [her] vagina" and "[n]ot far above it" is sufficient to convict for lewd and lascivious molestation. The version of §800.04 in effect on the date of the offense did not define "genital area" or "genitals." Because the legislature has not defined lewd or lascivious behavior, whether the defendant's behavior violated the statute is a question of fact that must be decided by the jury. White v. State, 1D2023-0966 (9/11/24)

https://1dca.flcourts.gov/content/download/2440266/opinion/Opinion_2023-0966.pdf

JURY INSTRUCTION: When an appellant's counsel has requested the instruction challenged on appeal, that instruction cannot constitute fundamental error, because any error in the instruction was invited. Johnson

v. State, 1D2023-1266 (9/11/24)

https://1dca.flcourts.gov/content/download/2440273/opinion/Opinion_2023-1266.pdf

SEARCH AND SEIZURE: The Fourth Amendment allows a K-9 officer arriving midway through a lawful traffic stop to command the driver to exit the vehicle for officer safety before conducting a lawful vehicle sweep. Davis v. State, 1D2023-2399 (9/11/24)

https://1dca.flcourts.gov/content/download/2440275/opinion/Opinion_2023-2399.pdf

SELF-REPRESENTATION: A Faretta hearing is unnecessary when a defendant makes an ambiguous statement about self-representation rather than an unequivocal request for self-representation. Taylor v. State, 1D2023-2490 (9/11/24)

https://1dca.flcourts.gov/content/download/2440276/opinion/Opinion_2023-2490.pdf

POSTCONVICTION RELIEF: A claim that the trial court misunderstood its sentencing options is not cognizable under R. 3.800(a). Martinez v. State, 1D2024-0451 (9/11/24)

https://1dca.flcourts.gov/content/download/2440281/opinion/Opinion_2024-0451.pdf

APPEAL: Trial court has the authority to reconsider an order granting a new trial, deny it, and reinstate the original sentence. A motion for a new trial (R.

3.800) falls under the portion of the rules governing the trial, and conceptually occurs before the postconviction proceedings. An order granting a new trial is not considered a final order. "It would create an absurd result if we were to read into the law a prohibition on the trial court's inherent ability to set aside an order that was rendered incorrect based on a subsequent change in law." Kinley v. State, 3D20-1725 (9/11/24)

https://3dca.flcourts.gov/content/download/2440230/opinion/Opinion_2020-1725.pdf

APPEAL-MOTION TO MITIGATE: An order denying a motion to mitigate sentence under R. 3.800(c) is not an appealable order. Viera v. State, 3D24-1197 (9/11/24)

https://3dca.flcourts.gov/content/download/2440251/opinion/Opinion_2024-1197.pdf

COST OF INVESTIGATION: State may not request investigative costs on the agency's behalf without the agency's request. Woods v. State, 4D2023-1647 (9/11/24)

https://4dca.flcourts.gov/content/download/2440262/opinion/Opinion_2023-1647.pdf

COURT COSTS: Court costs imposed must be broken down. "[C]ertain of the costs were required. . .But an additional $70 in court costs remains for which we are unsure as to the statutory basis." Remanded for evidentiary hearing. Woods v. State, 4D2023-1647 (9/11/24)

https://4dca.flcourts.gov/content/download/2440262/opinion/Opinion_2023-1647.pdf

EVIDENCE-EXPERT-PTSD: Expert testimony that Defendant suffered from PTSD in support of his self-defense claim is inadmissible. The peculiarity of a defendant=s mental state is not germane to the question of whether a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. The self-defense test is not a subjective one, and it does not follow that a defendant's misperceptions—his misunderstanding of reality as altered by a disorder such as PTSD—are relevant. Conflict certified. Cowins v. State, 4D2023-2364 (9/11/24)

https://4dca.flcourts.gov/content/download/2440270/opinion/Opinion_2023-2564.pdf

SENTENCE-CORRECTION: Although R. 3.800(a)'s plain language does not expressly prohibit defendants from seeking to correct unlawfully lenient sentences, they are not entitled to such relief under the rule absent a showing of prejudice. Careaga v. State, 4D 023-2728 (9/11/24)

https://4dca.flcourts.gov/content/download/2440271/opinion/Opinion_2023-2728.pdf

COMPETENCY: A Defendant can have a mental illness and still be competent to stand trial. Mental illness alone isn't enough to be incompetent; the key is a defendant's ability to assist counsel and understand the charges. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

RICO: To establish a RICO conspiracy, the government must prove that the defendants objectively manifested, through words or actions, an agreement to participate in the conduct of the affairs of the enterprise through the

commission of two or more predicate crimes. Agreement to participate in a RICO conspiracy can be proven in one of two ways: (1) by showing an agreement on an overall objective or (2) by showing that a defendant agreed personally to commit two predicate acts. An agreement on an overall objective may be proven by circumstantial evidence showing that each defendant must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

RICO-JURY INSTRUCTION: The general statutory maximum sentence under the RICO is twenty years, but if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment, life imprisonment may be imposed. Where the Court instructed the jury to consider whether the defendants had engaged in "acts involving murder," defined to "include[] murder, attempted murder, and/or conspiracy to murder"—and the special verdict form contained the language "involve[d] murder," the instruction does not imply that attempted murder (a non-life-sentence offence) applies. Critically, the district court specifically defined "murder" to include only actual murder under Georgia law, which is "a racketeering activity for which the maximum penalty includes life imprisonment." The verdict form asked whether the conspiracy involved "murder," not "acts involving murder." USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

RICO-JURY INSTRUCTION: The jury instruction that in order to find RICO "you must unanimously decide whether the Defendant joined or remained in the RICO conspiracy knowing that the enterprise engaged in this type of racketeering activity" did not mirror the substantive conspiracy element instruction, but any Apprendi error is harmless. It is clear beyond a reasonable

doubt that a rational jury would have found the facts necessary for the enhanced sentencing provision to apply to the defendants, absent the alleged knowledge-versus-intent error. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

JURY INSTRUCTION-RICO LESSER INCLUDED: Defendant is not entitled to a lesser included voluntary manslaughter finding in the special verdict form. Lesser-included-offense instructions for predicate crimes are not applicable in the context of a RICO conspiracy. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

EVIDENCE: Any error in admitting evidence of guilty pleas and convictions for the limited purpose of explaining why certain individuals were not part of the trial was harmless because it was merely cumulative. Several Gangster Disciples witnesses testified that they had pleaded guilty, and the knowledge that a few more people had been convicted would not have appreciably changed the jury's assessment of the evidence. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

EVIDENCE-OPINION: An agent presented as an expert may not interpret or speculate about the meaning of unambiguous conversations. But an agent who is not presented as an expert may. A lay witness may offer an opinion that is (1) rationally based on the witness's perception, (2) helpful to the jury, and (3) not founded on scientific or expert knowledge A lay witness also may

offer “opinion testimony based on his professional experiences. USA v. Wall, No. 20-10730 (11th Cir. 9/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202010730.pdf

VOP-JURISDICTION: Court’s order that "[i]f no written objection is received by March 21, 2022, the Court will grant the motion [for early termination of probation] on without further notice" is not an order termination probation. Where a day before the deadline Defendant committed a new crime, and a month later a VOP affidavit was filed, Court retains jurisdiction to revoke probation. The earlier order was not self-executing. Hart v. State, 2D2022-3992 (9/6/24)

https://2dca.flcourts.gov/content/download/2440076/opinion/Opinion_2022-3992.pdf

FINE: A discretionary fine must be orally pronounced. Where Court orally imposed imposed only "a one thousand dollar fine," and "all mandatory court costs,” the written fee order which included a $4,500 fine must be stricken.

COSTS-WEIRD: In DUI Manslaughter/Vehicular Homicide case, Court erred in assessing recording costs of $9 and $10 pursuant to §28.24(12), which deals with "examining, certifying, and recording plats and . . . recording condominium exhibits larger than 14 inches by 8 ½ inches." Mattice v. State, 2D2022-4166 (9/6/24)

https://2dca.flcourts.gov/content/download/2440082/opinion/Opinion_2022-4166.pdf

HABEAS CORPUS: Court in the county properly dismissed Petitioner's petition for writ of habeas filed in the county of his conviction, not the county where he is serving a life sentence. The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the claims raised in the petition concern issues. But to the extent that the petition also included a claim that the life sentence was illegal because it exceeded the applicable statutory maximum, the court of conviction and sentence should have considered the petition as a mislabeled motion for relief under R. 3.800(a), and denied it on the merits. Mollica v. State, 2D2023-2433 (9/6/24)

https://2dca.flcourts.gov/content/download/2440086/opinion/Opinion_2023-2433.pdf

WITHHELD ADJUDICATION: Adjudication of guilt may not be withheld on second degree felonies unless the state attorney so requests in writing or the court makes written findings that the withholding of adjudication is reasonably justified based on the same statutory criteria for a downward departure sentence. State v. Coney, 5D2024-0223 (9/6/24)

https://5dca.flcourts.gov/content/download/2440080/opinion/Opinion_2024-0223.pdf

COSTS OF PROSECUTION: Court may not assess costs of excess of $100 in the absence of a request and evidence. Golphin v. State, 6D2023-0775 (9/7/24)

https://6dca.flcourts.gov/content/download/2440079/opinion/Opinion_2023-0775.pdf

COSTS OF SUPERVISION: Defendant who received a life sentence and did not receive a sentence of probation or community control may not be assessed costs supervision. Golphin v. State, 6D2023-0775 (9/7/24)

https://6dca.flcourts.gov/content/download/2440079/opinion/Opinion_2023-0775.pdf

PRIOR PANEL PRECEDENT RULE: "Our prior-precedent rule requires us to follow Eleventh Circuit precedent—even if we disagree with it or think that prior panels have overlooked important arguments—unless and until the Supreme Court or our court sitting *en banc* abrogates the precedent." USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

GUIDELINES-ENHANCEMENT-PHYSICAL RESTRAINT: Where Defendant walked into a store, pointed a gun at the cashier while demanding money from the register, received the money, and then left, all within about one minute, he is subject to the two-level enhancement for physically restraining the victim. Defendant's argument that pointing a gun is not a physical restraint may have merit, but "our precedent binds us to conclude that the enhancement applies to conduct like Deleon's, and 'we have categorically rejected an overlooked reason or argument exception to the prior-panel-precedent rule.'. . .End of story." But *en banc* review suggested. USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

PHYSICAL RESTRAINT ENHANCEMENT-DOUBLE COUNTING: Imposing the two-level enhancement for physical restraint during a robbery is not impermissible double counting. USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

GUIDELINES-ENHANCEMENT-PHYSICAL RESTRAINT (J. ROSENBAUM CONCURRING): "The issue in this case is ripe for en banc review. . . Quite simply, a plain reading of the text of section 2B3.1(b)(4)(B) does not support our precedent's standard or application of that guideline here." A restraint that is solely mental or psychological in nature should not qualify under section 2B3.1(b)(4)(B)'s plain text. Not only does a non-physical restraint fail to comport with the definition of "physically," but construing "physically restrained" to include non-physical restraints—no matter how intimidating a non-physical restraint may be—makes "physically" meaningless in the guideline. USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

STARE DECISIS (J. ROSENBAUM CONCURRING): Appellate court must reconcile prior panel decisions whenever possible. Only the holdings of prior decisions are binding; legal principles set forth outside of the decision's holding do not. USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

STATUTORY INTERPRETATION-ARTIFICIAL INTELLIGENCE (J. NEWSOM, CONCURRING): "Those, like me, who believe that 'ordinary meaning' is the foundational rule for the evaluation of legal texts should consider—consider—whether and how AI-powered large language models like OpenAI's ChatGPT, Google's Gemini, and Anthropic's Claude might—might—inform the interpretive analysis." USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

STATUTORY INTERPRETATION-ARTIFICIAL INTELLIGENCE (J. NEWSOM, CONCURRING): Statutory interpretation of a composite, multi-word phrase poses a challenge because the entire phrase—"physically restrained"—isn't defined in any reputable dictionary, the tool to which plain-language interpreters typically turn. Sometimes a phrase really is just the sum of its parts, but that's not uniformly true. "In those instances where a phrase is more than the sum of its component parts, I think that LLMs [Large Language Models] may well help to fill the gaps left by word-centric dictionaries." USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

STATUTORY INTERPRETATION-ARTIFICIAL INTELLIGENCE (J. NEWSOM, CONCURRING): "I continue to believe—perhaps more so with each interaction—that LLMs have something to contribute to the ordinary meaning endeavor. . . [I]t would be myopic to ignore them. . .No one should mistake my missives for a suggestion that AI can bring scientific certainty to the interpretive enterprise. . .I'm not advocating that we give up on traditional interpretive tools—dictionaries, semantic canons, etc. But I do think—and increasingly so—that LLMs may well serve a valuable auxiliary role as we aim to triangulate ordinary meaning. Again, just my two cents. I remain happy to be shouted down." USA v. Deleon, No. 23-10478 (9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310478.pdf

CHILD PORN: Statute prohibiting visual depiction -- including a drawing or cartoon -- of a minor engaging in sexually explicit conduct is not overly broad or vague. USA v. Ostrander, No. 22-14160 (11th Cir. 9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202214160.pdf

CHILD PORN: Obscene material is not protected by the First Amendment, but the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime. The First Amendment does not include a right to possess child pornography, even in the privacy of one's home. USA v. Ostrander, No. 22-14160 (11th Cir. 9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202214160.pdf

CHILD PORN: The First Amendment does not protect the distribution or transportation of obscene material, but the mere possession of obscene material in a private home cannot be criminalized. This does not extend to the possession of obscene material involving real children, because of the state's powerful interest in protecting children victimized by obscenity. But this exception does not apply to virtual child pornography because there are no children victimized by these images. The First Amendment protects the private possession in one's own home of obscene material depicting virtual minors, so long as no real children are victimized. Defendant is properly convicted where he possessed the pornographic cartoon images in a public place. And perhaps the acquisition of the cartoon child porn is not protected even in one's home. USA v. Ostrander, No. 22-14160 (11th Cir. 9/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202214160.pdf

AMENDMENT-RULES-ATTORNEYS: Rules governing attorney discipline and suspension tweaked. In Re: Amendments to Rules Regulating the Florida Bar – Chapter 3, No. SC2024-0029 (9/5/2024)

https://supremecourt.flcourts.gov/content/download/2440038/opinion/Opinion_SC2024-0029.pdf

AMENDMENTS-RULES-CRIMINAL-COMPETENCY: The hearing on a motion to determine if a defendant is competent to proceed is to be held within 45 days of the motion, rather than 20 days. Status hearing(s) must be held no later than 20 days after the motion date and as otherwise necessary to ensure prompt resolution, and absent good cause, a final hearing conducted no later than 45 days from the motion date. In Re: Amendments to Florida Rule of Criminal Procedure 3.210, SC2024-0147 (9/5/24)

https://supremecourt.flcourts.gov/content/download/2440039/opinion/Opinion_SC2024-0147.pdf

AMENDMENTS-RULES-JUVENILE-SUBPOENAS: Rules amended to allow digital delivery of items subpoenaed. In Re: Amendments to Florida Rule of Juvenile Procedure 8.245, No. SC2024-0382 (9/5/24)

https://supremecourt.flcourts.gov/content/download/2440040/opinion/Opinion_SC2024-0382.pdf

MISTRIAL: Even when a prosecutor makes an improper comment on a defendant's right to remain silent, a trial court does not abuse its discretion in denying a mistrial where the comment was not so prejudicial as to vitiate the entire trial. Trotman v, State, 1D2022-1604 (9/4/24)

https://1dca.flcourts.gov/content/download/2439969/opinion/Opinion_2022-1604.pdf

SENTENCING-DELINQUENCY: A juvenile court is not required to articulate an understanding of the respective characteristics of the opposing restrictiveness levels and logically and persuasively explain why one level is better suited before sentencing a Child to non-secure commitment. D.D.G. v. State, 1D2023-2254 (9/4/24)

https://1dca.flcourts.gov/content/download/2440000/opinion/Opinion_2023-2254.pdf

CHILD HEARSAY: Abuse of discretion review is applied to a trial court's determination of the reliability and admissibility of child hearsay statements. Martinez-Urbina v. State, 3D22-1668 (9/4/24)

https://3dca.flcourts.gov/content/download/2439987/opinion/Opinion_2022-1668.pdf

HEARSAY-BUSINESS RECORD: In order to lay a foundation for the business record exception to the hearsay rule, it is not necessary to call the person who actually prepared the document. The record custodian or any qualified witness who has the requisite knowledge to testify as to how the record was made can lay the necessary foundation. Martinez-Urbina v. State, 3D22-1668 (9/4/24)

https://3dca.flcourts.gov/content/download/2439987/opinion/Opinion_2022-1668.pdf

POSTCONVICTION RELIEF: Strategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct. Barnes v. State, 3D2300839 (9/4/24)

https://3dca.flcourts.gov/content/download/2439994/opinion/Opinion_2023-0839.pdf

STAND YOUR GROUND: Once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial SYG

Immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity. Where the trial court was diligent in weighing and assessing the evidence, its ruling is clothed with a presumption of correctness. Gazapo Figueroa v. State, 3D23-2215 (9/4/24)

CONCURRENT SENTENCE: Concurrent sentences do not necessarily begin at the same time, and unless they are ordered to be coterminous, they will expire on different dates. Toussant v, State, 3D24-0059 (9/4/24)

https://3dca.flcourts.gov/content/download/2439992/opinion/Opinion_2024-0059.pdf

POSTCONVICTION RELIEF: Counsel is not deficient in failing to call witnesses who refuse to cooperate with the defense and are therefore unavailable for trial. Barnes v. State, 3D23-0839 (9/4/24)

https://3dca.flcourts.gov/content/download/2439994/opinion/Opinion_2023-0839.pdf

JUVENILE OFFENDER-SENTENCE REVIEW: A juvenile offender convicted for first degree murder with a firearm and attempted first-degree murder with a firearm and sentenced to life imprisonment is entitled to sentence review. A juvenile offender sentenced to a term of more than 15 years under is entitled to a review of his or her sentence after 15 years. Williams v. State, 4D2023-0987 (9/4/24)

https://4dca.flcourts.gov/content/download/2439945/opinion/Opinion_2023-0987.pdf

COSTS OF INVESTIGATION: Court may not impose investigation costs of $50 because the State did not request them. Sosa v. State, 4D2023-1133 (9/4/24)

https://4dca.flcourts.gov/content/download/2439946/opinion/Opinion_2023-1133.pdf

RESTITUTION: Court may not award $3,416.36 as the alleged cost of repairing deputy's vehicle because the state had not presented any evidence during the restitution hearing that the vehicle for which the state had sought restitution was the vehicle which the defendant had damaged. The State presented witness testimony, but failed to call any of the officers to the stand to testify that the unit damaged in the incident involving the defendant was the vehicle repaired. Perez v. State, 4D2023-1252 (9/4/24)

https://4dca.flcourts.gov/content/download/2439956/opinion/Opinion_2023-1252.pdf

AUGUST 2024

JURY SELECTION-PEREMPTORY CHALLENGE-PRESERVATION: The three-step process for handling race-based objections to the use of peremptory challenges: A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. If these initial requirements are met (step 1), the court must ask the proponent of the strike to explain the reason for the strike. At this point, the burden of production shifts to the proponent of the strike to come forward with a raceneutral explanation (step 2). If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the strike, the explanation is not a pretext, the strike will be sustained (step 3). Richardson v. State, 5D2023-0411 (8/30/24)

https://5dca.flcourts.gov/content/download/2439813/opinion/Opinion_2023-0411.pdf

JURY SELECTION-PEREMPTORY CHALLENGE-RESERVATION: To preserve its Melbourne challenge for appellate review, the objecting party must affirmatively challenge and obtain adverse rulings on the race-neutrality and genuineness of the reason given by the proponent for the strike. Where State strikes a jury for a facially race neutral reason (the juror wore torn shorts and a hat), Defendant must object that the reason is pretextual and seek a ruling on the genuineness of the reason. Richardson v. State, 5D2023-0411 (8/30/24)

https://5dca.flcourts.gov/content/download/2439813/opinion/Opinion_2023-0411.pdf

FINE: Court may not impose a fine for capital sex battery. §775.083(1) provides that "[a] person who has been convicted of an offense ***other than a capital felony*** may be sentenced to pay a fine." [emphasis added]. Carroll v. State, 5D2023-0820 (8/30/24)

https://5dca.flcourts.gov/content/download/2439818/opinion/Opinion_2023-0820.pdf

APPEAL-ISSUE PRESERVATION: In order for an issue to be preserved for appellate review, it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation. The issue raised on appeal–that there was not a factual basis to find him to be a VFOSC–is different from the issue raised below of the Court's failure to make written findings. Booker v. State, 5D2023-1024 (8/30/24)

https://5dca.flcourts.gov/content/download/2439828/opinion/Opinion_2023-1024.pdf

DANGEROUSNESS FINDING: The holding in Brown that a jury must make a

finding of dangerousness, or defendant must admit to it, for a defendant with a non-forcible third-degree felony and 22 points or fewer to be sentenced to prison applies to a resentencing that occurs after the revocation of a defendant's original probationary sentence. Klick v. State, 6D2023-0825 (8/30/24)

https://6dca.flcourts.gov/content/download/2439836/opinion/Opinion_2023-0825.pdf

DANGEROUSNESS FINDING: The correct dangerousness finding is whether sentencing Defendant to a nonstate prison sentence could present a danger to the public, not whether the defendant himself is a danger to the public. The two are not the same. Klick v. State, 6D2023-0825 (8/30/24)

https://6dca.flcourts.gov/content/download/2439836/opinion/Opinion_2023-0825.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY-RETROACTIVITY: Death is not a constitutionally suitable punishment for a mentally retarded criminal. But Hall, clarifying the standards for determining mental retardation and requiring them to be applied retroactively, was later overturned. Even though Defendant's case was remanded for a hearing on competency to be executed before Hall was overturned by Phillips, he is not entitled to a hearing. The rule that once a mandate requiring a hearing is issued the hearing must be held does not apply. Phillips was an intervening change in the law, so no hearing is required. Defendant is procedurally barred. Foster v. State, SC2023-0831 (8/29/24)

https://supremecourt.flcourts.gov/content/download/2439769/opinion/Opinion_SC2023-0831.pdf

RULES-AMENDMENT-TRANSLATORS-PRO SE LITIGANTS: Rules revised for pro se litigants and interpreters. in Re: Amendments to Florida Rules of General Practice and Judicial Administration, No. SC2023-1321 (8/29/24)

https://supremecourt.flcourts.gov/content/download/2439770/opinion/Opinion_SC2023-1321.pdf

RULES-AMENDMENT-ENDORSEMENTS: Rules tweaked on celebrity endorsements and artificial intelligence. In Re: Amendments to Rules Regulating the Florida Bar – Chapter 4, SC2024-0032 (8/29/24)

https://supremecourt.flcourts.gov/content/download/2439771/opinion/Opinion_SC2024-0032.pdf

RULES-AMENDMENT-LEGAL INTERNS: Rules amended to allow a client to orally consent to representation by a certified legal intern on the record at a hearing and for the intern to be remotely supervised. In Re: Amendments to Rules Regulating the Florida Bar – Rules 11-1.2 and 11-1.3, SC2024-0236 (8/29/24)

https://supremecourt.flcourts.gov/content/download/2439772/opinion/Opinion_SC2024-0236.pdf

AMENDMENT-RULES-CRIMINAL: Child pornography cannot be copied. Other tweaks. In Re: Amendments to Florida Rules of Criminal Procedure – 2024 Legislation, No. SC2024-1044 (8/29/24)

https://supremecourt.flcourts.gov/content/download/2439774/opinion/Opinion_SC2024-1044.pdf

\AEDPA: The Antiterrorism and Effective Death Penalty Act gives a state prisoner one chance to bring a federal habeas challenge to his conviction, but disallows a second or successive application unless he shows that a claim has not been raised before and that it is either based on a new rule of constitutional law or newly discovered evidence proving factual innocence, and then only after obtaining approval from the federal court of appeals. When a federal habeas petitioner files a motion to amend a petition while an appeal from the denial or dismissal of it is pending, even when based on evidence

adduced at the hearing, the motion is properly characterized as second or successive. Boyd v. Secretary, D.OC., No 22-10299 (8/28/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210299.pdf

COSTS-FIRST STEP: Condition in probation order that Defendant pay $1 per month to First Step stricken where it was not orally imposed. A form listing costs signed by Defendant's attorney with an unchecked box for First Step is not sufficient. Addison v. State, 1D2022-3068 (8/28/24)

https://1dca.flcourts.gov/content/download/2439701/opinion/Opinion_2022-3068.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Defendant's claim that appellate counsel was ineffective for filing an Anders Brief is legally insufficient where it merely claimed he should be allowed "a reasonable period of time in which to file a pro se brief." Perry v. State, 1D2023-2475 (8/28/24)

https://1dca.flcourts.gov/content/download/2439699/opinion/Opinion_2023-2475.pdf

VFOSC: For a violent felony offender of special concern, the trial court must make written findings articulating that he poses a danger to the community. Gonzalez v. State, 3D21-1445 (8/28/24)

https://3dca.flcourts.gov/content/download/2439726/opinion/Opinion_2021-1445.pdf

COLLATERAL CRIMES EVIDENCE: In attempted second-degree murder case, Court erred by admitting into evidence a prior uncharged sexual assault involving the same victim because it was necessary to establish the entire context from which the charged crimes arose and to explain his motive for shooting the victim. Barnes v. State, 3D22-0115 (8/28/24)

https://3dca.flcourts.gov/content/download/2439723/opinion/Opinion_2022-

0115.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is not entitled to a new trial based on newly discovered evidence unless it is of such a nature that it would probably produce an acquittal on retrial. Wimblery v. State, 3D23-0038 (8/28/24)

https://3dca.flcourts.gov/content/download/2439728/opinion/Opinion_2023-0038.pdf

SEARCH AND SEIZURE-FWC: The Florida Fish and Wildlife Conservation Commission has authority to stop boats to inspect licenses, registration, and safety resource equipment. Spot checks of motorboats are not unreasonable under the Fourth Amendment. A person's expectation of privacy in a motorboat is less than the same expectation of privacy in an automobile. State v. Vinokurov, 3D23-1930 (8/28/24)

https://3dca.flcourts.gov/content/download/2439748/opinion/Opinion_2023-1930.pdf

POSTCONVICTION RELIEF: Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct appeal, or which could have been, should have been, or were raised in post-conviction proceedings. Wilson v. State, 3D24-1413 (8/28/24)

https://3dca.flcourts.gov/content/download/2439725/opinion/Opinion_2024-1413.pdf

PRETRIAL DETENTION: §907.041(5)(d), which requires pretrial detention If a defendant is arrested for a dangerous crime that is a capital felony, a life felony, or a felony of the first degree, and the court determines there is a substantial probability that he committed the offense and no conditions of release or bail will be adequate, is constitutional. Thorough discussion. Armstrong v. State, 6D2024-1093 (8/26/24)

https://6dca.flcourts.gov/content/download/2439592/opinion/Opinion_2024-1093.pdf

PRETRIAL DETENTION: Court errs in ordering pretrial detention under §907.041(5)(d) where its order did not contain both findings of fact and conclusions of law to support it. The judge who heard and granted the motion for pretrial detention did not make any findings of fact and a second judge who heard and denied Defendant's related motion for pretrial release merely referred to his predecessor's ruling without making any findings based upon the evidence presented to him at the subsequent hearing over which he presided. Armstrong v. State, 6D2024-1093 (8/26/24)

https://6dca.flcourts.gov/content/download/2439592/opinion/Opinion_2024-1093.pdf

DEATH PENALTY-POSTCONVICTION RELIEF: Florida's recently acknowledged atrocities at the Dozier School for Boys combined with Defendant's recently recovered repressed memories of abuse he suffered and witnessed there do not constitute recently discovered mitigation evidence in a death penalty case. Cole v. State, SC2024-1170 (8/23/24)
https://supremecourt.flcourts.gov/content/download/2439558/opinion/Opinion_SC2024-1170.pdf

DEATH PENALTY-POSTCONVICTION RELIEF: Defendant's claim of postconviction neglect and mistreatment in prison as an Eighth Amendment violation warranting relief of the death penalty is untimely filed, and even if it were, it would not provide a basis for relief. Cole v. State, SC2024-1170 (8/23/24)
https://supremecourt.flcourts.gov/content/download/2439558/opinion/Opinion_SC2024-1170.pdf

DEATH PENALTY-LETHAL INJECTION: Defendant's Parkinson's disease, which may make placing the intravenous lines necessary to carry out lethal injection difficult or painful, does not make imposition of the death penalty cruel and unusual punishment. Being pricked numerous times in the course of having an IV inserted is not cruel and unusual punishment, however uncomfortable it may be. Cole v. State, SC2024-1170 (8/23/24)
https://supremecourt.flcourts.gov/content/download/2439558/opinion/Opinion_SC2024-1170.pdf

DEATH PENALTY-POSTCONVICTION RELIEF: Denial of Defendant's requests for records related to lethal injection protocol is not an abuse of discretion because the constitutionality of Florida's current lethal injection protocol had been upheld, and the records therefore were unlikely to lead to a colorable claim for postconviction relief. Cole v. State, SC2024-1170 (8/23/24)
https://supremecourt.flcourts.gov/content/download/2439558/opinion/Opinion_SC2024-1170.pdf

VOP-VFOSC: Court must make written findings as to whether Defendant is a danger to the community before sentencing him as a Violent Felony Offender of Special Concern. Brock v. State, 5D2023-1905 (8/23/24)
https://5dca.flcourts.gov/content/download/2439520/opinion/Opinion_2023-1905.pdf

SUSPENDED SENTENCE: Before imposing a previously suspended prison sentence Court must allow the defendant an opportunity to present evidence and argument regarding the sentence. A trial court's refusal to hear evidence and argument regarding a sentence constitutes a denial of due process and is fundamental error. Alston v. State, 5D2023 (8/23/24)
https://5dca.flcourts.gov/content/download/2439532/opinion/Opinion_2023-3696.pdf

RULES-JUVENILE-AMENDMENT: Rules amended to provide that a motion for rehearing must be filed with the trial court to preserve for appeal a claim that the trial court failed to make the required findings of fact in the final order. In Re: Amendments to Florida Rule of Juvenile Procedure 8.265, No. SC2024-0127 (8/22/24)
https://supremecourt.flcourts.gov/content/download/2439476/opinion/Opinion_SC2024-0127.pdf

RULES-AMENDMENT-FLORIDA BAR: Rules modified for board certification and re-certification. In Re: Amendments to Rules Regulating the Florida Bar – Rules 6-3.5 and 6-3.6, SC2024-0237 (8/22/24)
https://supremecourt.flcourts.gov/content/download/2439483/opinion/Opinion_SC2024-0237.pdf

POSTCONVICTION RELIEF: Sixth Amendment does not require a lawyer to make arguments based on predictions of how the law may develop. Counsel was not ineffective for failing to advise Defendant that in order to have been "used" within the meaning of § 2251(a), a child must have actually engaged in sexually explicit conduct, rather than merely present, where case law so holding did not yet exist at the time of her plea. Ritchie v. USA, No. 22-12117 (11th Cir. 8/21/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212117.pdf

MOTION FOR NEW TRIAL: Court did not abuse its discretion in finding that conflicts in Victim's statements and testimony, and conflicting testimony from the defense's witnesses were not sufficient to undermine other evidence presented. McBride v. State, 1D2022-3231 (8/21/24)
https://1dca.flcourts.gov/content/download/2439393/opinion/Opinion_2022-3231.pdf

APPEAL AFTER PLEA: Failure of a plea colloquy to comport with Rule 3.172 is not an authorized ground for appeal. A defendant cannot complain about an insufficient plea colloquy unless it rendered the plea involuntary.

"Evans maintains that he must make a claim that is prohibited from being raised on direct appeal by the rules of procedure, or he will be barred from making the same claim in a procedurally correct manner by postconviction motion. Thankfully, no such rule of law exists." Evans v. State, 1D2023-0916 (8/21/24)
https://1dca.flcourts.gov/content/download/2439401/opinion/Opinion_2023-0916.pdf

DOUBLE JEOPARDY: Convictions for both lewd or lascivious exhibition and indecent exposure do not violate double jeopardy. Harvill v. State, 1D2023-1355 (8/21/24)
https://1dca.flcourts.gov/content/download/2439419/opinion/Opinion_2023-1355.pdf

DOUBLE JEOPARDY: Defendant can be convicted of multiple counts of lewd or lascivious exhibition arising out of a single incident. The allowable unit of prosecution is the number of victims, not the number of lewd acts. But Defendant cannot be convicted of multiple counts of indecent exposure arising out of a single incident. For indecent exposure, the allowable unit of prosecution is the number of lewd acts, not the number of victims. Harvill v. State, 1D2023-1355 (8/21/24)
https://1dca.flcourts.gov/content/download/2439419/opinion/Opinion_2023-1355.pdf

EVIDENCE-IDENTIFICATION: Officer's testimony that he is familiar with the Defendant as the resident of a neighborhood the officer patrols does not, by itself, imply the resident committed a prior bad act. "I knew it was you, Maurice. I knew it was you." is properly admitted as a statement of identification. Struggs v. State, 1D2023-1738 (8/21/24)
https://1dca.flcourts.gov/content/download/2439411/opinion/Opinion_2023-1738.pdf

EVIDENCE-OTHER BAD ACTS: For obstruction, officers may testify that they pursued Defendant because "We had probable cause to make an arrest for multiple – for cases" and "We were there for a previous case, so –." Testimony is admissible because the lawfulness of the arrest was an element of resisting an officer without violence. Martinez v. State, 3D22-2145 (8/21/24) https://3dca.flcourts.gov/content/download/2439407/opinion/Opinion_2022-2145.pdf

SIX-PERSON JURY: Florida's use of six-member jury in non-capital cases does not violate the Sixth Amendment right to trial by jury. Kain v. State, 3D23-1189 (8/21/24) https://3dca.flcourts.gov/content/download/2439443/opinion/Opinion_2023-1189.pdf

POSTCONVICTION RELIEF: Counsel is not ineffective for not moving to disqualify judge because of the Judge's expressions of impatience, dissatisfaction, annoyance, and even anger, which are within the bounds of what imperfect men and women sometimes display. Mitchell v. State, 2D23-1755 (8/21/24) https://3dca.flcourts.gov/content/download/2439447/opinion/Opinion_2023-1755.pdf

APPEAL-EXTENSION OF TIME: Denial of a motion for extension of time to file a R. 3.850 motion for postconviction relief is not an appealable final order. Kovacs v. State, (8/21/24) https://4dca.flcourts.gov/content/download/2439436/opinion/Opinion_2023-2983.pdf

FIREARM-MANDATORY MINIMUM: A dripping wet gun under a dry bed in Defendant's efficiency apartment is sufficient to establish Defendant, a felon, possessed it, but is insufficient to establish actual possession. Mandatory minimum vacated. Rock v. State, 4D2023-2996 (8/21/24)

https://4dca.flcourts.gov/content/download/2439437/opinion/Opinion_2023-2996.pdf

SEARCH AND SEIZURE: Probable cause for a traffic stop does not turn on whether a traffic violation occurred, but rather whether, whether viewed under an objective lens, the totality of the facts known to the officer at the time would cause a reasonable person to believe that an offense has been committed. A finding of probable cause does not require absolute certitude. A patrol officer who observed a vehicle in a turn-only lane cut in front of a line of traffic when the stoplight turned green has probable cause to stop the vehicle for careless driving. Staten v. Crume, 6D2023-2304 (8/21/24)
https://6dca.flcourts.gov/content/download/2439460/opinion/Opinion_2023-2304.pdf

SENTENCING-DOWNWARD DEPARTURE: "[T]here is no separate written order entered by the trial court. Rather, the trial court 'checked' one of the boxes on the guidelines scoresheet . . and no separate order was entered by the trial court. To be clear, . . .Florida trial courts must enter a written order. . .when imposing a departure sentence." State v. Hauter, 5D2022-2997 (8/19/24)
https://5dca.flcourts.gov/content/download/2439226/opinion/Opinion_2022-2997.pdf

SENTENCING-DOWNWARD DEPARTURE: Neither Defendant's emotional stability not being the greatest, his thirteen months of abiding by the rules of pretrial release, nor the 39 months of a life sentence he had previously served are valid grounds for a downward departure. State v. Hauter, 5D2022-2997 (8/19/24)
https://5dca.flcourts.gov/content/download/2439226/opinion/Opinion_2022-2997.pdf

IMPEACHMENT-HEARSAY: Where Defendant introduces his exculpatory hearsay statements through another witness, his prior convictions are admissible as impeachment. But Defendant's statement, adduced through another witness, that their wives were in the bathroom and that they intended to leave were offered to prove that Defendant was trying to diffuse the situation, and therefore were not hearsay. Impeachment by prior convictions was improper. Fernandez v, State, 2D2022-1630 (8/16/24)

https://2dca.flcourts.gov/content/download/2439159/opinion/Opinion_2022-1630.pdf

VFOSC: A violent felony offender of special concern is a probationer who has committed an enumerated offense. Court may not dismiss a VFOSC VOP without a hearing and must make written findings as to whether or not he poses a danger to the community. Jackson v. State, 2D2023-2441 (8/16/24)

https://2dca.flcourts.gov/content/download/2439160/opinion/Opinion_2023-2441.pdf

POSTCONVICTION RELIEF-ADVISE: Defendant, a VFOSC, is entitled to a hearing on claim that counsel was ineffective for not learning that Defendant had had a new offense that had been dismissed on technical grounds and not warning him that the Judge would likely find him to be a danger to the community because of it. Jackson v. State, 2D2023-2441 (8/16/24)

https://2dca.flcourts.gov/content/download/2439160/opinion/Opinion_2023-2441.pdf

JOA-UNLAWFUL INTERCEPTION OF ORAL COMMUNICATION: Defendant cannot be convicted of interception of oral communication by secretly recording phone calls with police officers. Officers do not have an actual subjective expectation of privacy, along with a societal recognition that the

expectation is reasonable, in official phone calls. Waite v. State, 5D2023-1354 (8/16/24)

https://5dca.flcourts.gov/content/download/2439154/opinion/Opinion_2023-1354.pdf

APPEAL-ISSUE-PRESERVATION: Where Defendant failed to appear for sentencing and when caught was sentenced to more than the original agreement, he may not argue on appeal that he FTA'ed because he was in the hospital but at the trial level he merely asked for leniency (he's just "a kid" who "made a stupid, stupid decision not to show.".) To be preserved for appeal, the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard. Jones v. State, 5D2023-2204 (8/16/24)

https://5dca.flcourts.gov/content/download/2439178/opinion/Opinion_2023-2204.pdf

QUARTERMAN AGREEMENT (J. MAKAR, CONCURRING): Beyond the preservation issue, the lessons learned in this case are fourfold. First, criminal defendants must assiduously adhere to the terms of a Quarterman agreement, particularly the requirement that they timely appear for sentencing or risk drastic results, such as here, where a five-year sentence . . .was transformed into a twenty-four-year sentence. . .Second, the law erects a high hurdle for voiding a Quarterman agreement: proof that a defendant willfully failed to show up at sentencing. This standard isn't met when a defendant had a reason beyond his control for non-appearance. . .Third, if the State seeks to void a Quarterman agreement it should formally move to do so and demonstrate that the defendant's non-appearance was willful. . .Fourth, the State should shoulder the evidentiary burden of proving a breach. Jones v. State, 5D2023-2204 (8/16/24)

https://5dca.flcourts.gov/content/download/2439178/opinion/Opinion_2023-2204.pdf

INCARCERATION COSTS: According to D.O.C., it costs an average of $84.61 per day to house an inmate in Florida. Jones v. State, 5D2023-2204 (8/16/24)
https://5dca.flcourts.gov/content/download/2439178/opinion/Opinion_2023-2204.pdf

COSTS OF INVESTIGATION: Court may not impose $100 of investigation costs because that were neither part of the plea agreement nor requested by the State. Streeter v. State, 5D2023-3211 (8/16/24)

https://5dca.flcourts.gov/content/download/2439186/opinion/Opinion_2023-3211.pdf

JURISDICTION DURING APPEAL-MODIFICATION: Trial court lacks jurisdiction to correct sentence by adding statutorily required no contact condition while appeal is pending. While the State may move to correct sentence during a defendant's appeal, its scope is limited to correcting errors benefitting the defendant or scrivener's errors. Dixon v, State, 6D2023-0708 (8/16/24)

https://6dca.flcourts.gov/content/download/2439216/opinion/Opinion_2023-0708.pdf

PRISON RELEASEE REOFFENDER/HABITUAL FELONY OFFENDER: For a third degree felony, a ten-year HFO sentence running concurrently with a five-year PRR sentence would be legal, but Court cannot impose consecutive PRR and HFO sentences for a single offense. A sentence of five years as a PRR followed by five years as an HFO is illegal. Lovett v. State, 6D2023-2137 (8/16/24)

https://6dca.flcourts.gov/content/download/2439175/opinion/Opinion_2023-2137.pdf

PRISON RELEASEE REOFFENDER/HABITUAL FELONY OFFENDER: Court can impose both PRR and HFO sentences for a single offense, but it cannot impose equal PRR and HFO sentences if it runs them concurrently; the PRR sentence must be longer. A sentence of five years as a PRR followed by five years as an HFO is illegal. Lovett v. State, 6D2023-2137 (8/16/24)

https://6dca.flcourts.gov/content/download/2439175/opinion/Opinion_2023-2137.pdf

FRAUD: Foreign currency vendors who deceived investors about a core attribute of the Iraqui dinar--the odds of its appreciation, leaving them to believe that it would imminently skyrocket in value, are properly convicted of fraud. A deception need not have a calculable price difference or result in a different tangible good or service being received to constitute fraud. "We have never held that the federal fraud statutes are categorically inapplicable to fraudulent inducement schemes." USA v. Bell, No. 22-12750 (11th Cir. 8/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

FALSE STATEMENT: One cannot be convicted of perjury based on an ambiguous question because of the unfairness when the questions forming the basis of the charge are vaguely and inarticulately phrased by the interrogator. But the distinction between ambiguous questions and ambiguous answers is crucial: a criminal defendant cannot wriggle out of the same charge through an evasive answer. USA v. Bell, No. 22-12750 (11th Cir. 8/14/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

EVIDENCE: News reports and press releases known to Defendant that dinar sales were a scam are admissible to prove that the sellers were on notice of

the wrongfulness of their conduct. Evidence admitted to prove the listener's state of mind is not hearsay. USA v. Bell, No. 22-12750 (11th Cir. 8/14/24) https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

EVIDENCE: Court did not abuse its discretion by permitting witnesses to read from exhibits about which they had no personal knowledge. Anyone can state what a document says or read from it if it has been admitted into evidence. USA v. Bell, No. 22-12750 (11th Cir. 8/14/24) https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

SENTENCING-ENHANCEMENT-OBSTRUCTION OF JUSTICE: Court may apply the two level obstruction-of-justice enhancement based on Defendant's false testimony during a suppression hearing. USA v. Bell, No. 22-12750 (11th Cir. 8/14/24) https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

SENTENCING-ENHANCEMENT-EX POST FACTO: The Ex Post Facto Clause bars a defendant from being sentenced under a version of the guidelines that would provide a higher sentencing range than the version in place at the time of his criminal conduct. But applying the six-level enhancement for causing substantial financial hardship to 25 or more victims here is not plain error because the earlier version allowed for the same enhancement where there 250 or more victims. Although Government highlighted only 32 of the over 600 victims, Defendant would likely have qualified for the six-level enhancement available under the earlier version. USA v. Bell, No. 22-12750 (11th Cir. 8/14/24) https://media.ca11.uscourts.gov/opinions/pub/files/202212750.pdf

MURDER-YOUTH: "EIghteen is the dividing line between adult privileges and responsibilities and the privileges and responsibilities of children. We decline the invitation to treat this adult murderer as a child." Stoddard v. State, 1D2023-2017 (8/14/24)

https://1dca.flcourts.gov/content/download/2439067/opinion/Opinion_2023-2017.pdf

ORGANIZED FRAUD: Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud. Vento v. State, 3D23-0120 (8/14/24)
https://3dca.flcourts.gov/content/download/2439058/opinion/Opinion_2023-0120.pdf

POSTCONVICTION RELIEF-PLEA: Where Defendant alleges ineffective assistance in advising client as to a plea, Defendant must demonstrate a reasonable probability, defined as a probability sufficient to undermine confidence in the outcome, that (1) he or she would have accepted the offer had counsel advised the defendant correctly, (2) the prosecutor would not have withdrawn the offer, (3) the court would have accepted the offer, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Rivera v. State, 3D23-0723 (8/14/24)
https://3dca.flcourts.gov/content/download/2439065/opinion/Opinion_2023-0723.pdf

STATUTE OF LIMITATIONS: Defendant is not entitled to a continuance charged to the State and a speedy trial discharge where State filed an amended information correcting the defendant's name and modifying the language of the charge after the Defendant filed a notice of expiration of speedy trial but within the recapture period. Restating and clarifying the same battery charge contained in the initial information does not allege a new charge. A defendant is not prejudiced by an amended information that clarifies an already existing charge and does not substantively change the elements of the charged offense. State v. Beach, 3D23-1444 (8/14/24)
https://3dca.flcourts.gov/content/download/2439029/opinion/Opinion_2023-1444.pdf

CYBER STALKING: Cyber stalking can include communications with third parties, including social media postings that are not sent directly to an individual but may nonetheless be directed at an individual in a number of ways. Hollis v. State, 3D23-1530 (8/14/24)
https://3dca.flcourts.gov/content/download/2439064/opinion/Opinion_2023-1530.pdf

JUDGE-DISQUALIFICATION: Judge may not be disqualified for being married to the executive director of the State Attorney's Office with supervisory capacity over non-attorney staff, but not over any assistant state attorney. When a trial judge's spouse or immediate family member is employed by a government entity such as the State Attorney's Office in the same judicial circuit where the trial judge is presiding over criminal cases and the spouse or immediate family member does not have supervisory authority over prosecutors appearing before the judge, recusal of the trial judge is not required. Laurence v. State, 3D24-0657 (8/14/24)
https://3dca.flcourts.gov/content/download/2439045/opinion/Opinion_2024-0675.pdf

ARGUMENT: Prosecutor's repeated argument that the defendant did not seize the opportunity to dispel the officers' suspicions that he was driving while impaired improperly shifted the burden of proof. Sheely v.State, 4D2023-2171 (8/14/24)
https://4dca.flcourts.gov/content/download/2439019/opinion/Opinion_2023-2171.pdf

RECORD: Appellant has the vital obligation of demonstrating error, and this obligation necessarily includes the burden of making, preserving, and presenting an adequate record for appellate review. "Unfortunately, some of what the parties said at sidebar during trial was unintelligible and could not be transcribed by the court reporter. . .Consequently, we decline to find the trial court erred in admitting the body camera recording into evidence." Sheely v.State, 4D2023-2171 (8/14/24)

https://4dca.flcourts.gov/content/download/2439019/opinion/Opinion_2023-2171.pdf

CONSPIRACY-HOBBS ACT ROBBERY: §924(c) imposes a mandatory minimum consecutive sentence for possession of a firearm for Carrying a Firearm During a Drug Trafficking Crime or a Crime of Violence**.** Its residual clause (a felony that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense) is unconstitutionally void for vagueness**.** Neither Conspiracy to Commit not Attempting to Commit Hobbs Act Robbery are predicate crimes of violence under the residual clause. Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

CONSPIRACY-HOBBS ACT ROBBERY: Conspiracy or Attempt to commit Hobbs Act robbery is not a "crime of violence" under the elements clause, either. Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

POST CONVICTION RELIEF: Petitioner, who had been convicted of conspiracy to commit Hobbs Act Robbery and Possession of a Firearm in Furtherance of a Crime of Violence (§924(c)) must prove by contemporaneous precedent from when the conviction occurred that his §924(c) conviction rested solely on §924(c)'s residual clause to obtain habeas corpus relief from hIs required consecutive sentence. Because the district court could have—wrongly—believed that attempted Hobbs Act robbery was a valid predicate under the elements clause, and because the appellate court is bound by the prior panel precedent rule, even if convinced that its precedent is also wrong, Petitioner is not entitled to relief. Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

CRIME OF VIOLENCE: For § 924(c), neither conspiracy to commit Hobbs Act robbery nor attempted Hobbs Act robbery qualify as a "crime of violence" under the elements clause. Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

PRIOR PRECEDENT RULE (J. ROSENBAUM, CONCURRING): "Luis Fernandez stands convicted of and will spend twenty five years in prison for something that Congress did not make a crime. That is so even though Congress enacted a mechanism by which we can correct this error—28 U.S.C. § 2255. We must affirm this result because. . .our prior-precedent rule. . .requires us to deny Fernandez's habeas petition. . . .Beeman demands that we set our legal flux capacitors to the moment of the petitioner's conviction and place ourselves in the legal landscape as it existed then. And if we misunderstood the law at the time of the petitioner's conviction to authorize that conviction, we must leave that conviction in place. We must do that even if the Supreme Court has since found our understanding of the law to be wrong and has held that the statute of conviction does not now and has not ever covered the petitioner's conduct." Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

DEFINITION-"CONTAIN: "Contain" meant "comprise" or "include." Fernandez v. USA, No. 21-12915 (11th Cir. 8/13/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202112915.pdf

AEDPA: For habeas claims resolved in state court, appellate court reviews the last state-court adjudication on the merits. Guardado v. Secretary, D.O.C., No. 22-10957 (11th Cir. 8/12/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210957.pdf

AEDPA: AEDPA requires that the state-court decision be given the benefit of the doubt and precludes federal habeas relief unless the state court's adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court. A prisoner must show far more than that the state court's decision was merely wrong or even clear error, but rather that the state court's decision was so obviously wrong that its error lies beyond any possibility for fairminded disagreement. Guardado v. Secretary, D.O.C., No. 22-10957 (11th Cir. 8/12/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210957.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: In penalty phase of death case, Defendant failed to show prejudice by counsel's failure to present cumulative or background information by lay witness testimony and letters. Guardado v. Secretary, D.O.C., No. 22-10957 (11th Cir. 8/12/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210957.pdf

HABEAS CORPUS-DEATH PENALTY: Mental health experts' different characterizations of Defendant's diagnoses do not warrant habeas corpus relief from the death penalty where "the circumstances described were largely the same—Guardado decided to murder while suffering from emotional stress and under the influence of crack cocaine." Guardado v. Secretary, D.O.C., No. 22-10957 (11th Cir. 8/12/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210957.pdf

AEDPA-PREJUDICE: To be entitled to AEDPA deference, the state court must apply the correct standard for ineffective assistance of counsel as set out in Strickland. Court applied an incorrect standard for prejudice in exercising juror challenges–actual bias rather than a reasonable probability that, absent counsel's errors the result would have been different. Strickland's prejudice standard applies to a habeas claim that counsel failed to challenge for cause or strike a juror. Guardado v. Secretary, D.O.C., No. 22-10957 (11th Cir. 8/12/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210957.pdf

SENTENCING GUIDELINES CALCULATION-CATEGORICAL APPROACH: §2K2.1(a)(1) requires a base-offense level of 26 if defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions for a crime of violence. Under the categorical approach, which looks to 'the elements of the statute of conviction' and determines if the least of the acts criminalized qualifies as a crime of violence, armed robbery would not be a crime if violence because it includes sudden snatching, which can be non-violent. But because robbery is a "divisible" statute--one which has multiple, alternative elements, and so effectively creates 'several different crimes in one provision--the modified categorical approach applies and a limited class of documents may be looked at, These Shepard documents show the predicate robberies were crimes if violence. USA v. Brooks, No. 22-11456 8/9/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211456.pdf

SENTENCING GUIDELINES-RELEVANT CONDUCT-FIREARM: Defendant is subject to a two-level enhancement under U.S.S.G. §2K2.1(b)(4)(A) because his relevant conduct included possessing another stolen pistol three months later. USA v. Brooks, No. 22-11456 8/9/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211456.pdf

SENTENCING GUIDELINES--FIREARM-IN CONNECTION WITH: Defendant convicted of possession of a firearm by a felon who was found with a different, stolen, firearm three months later is subject to a four-level increase under §2K2.1(b)(6)(B) for use of a firearm in connection with another felony offense. A felon possesses a firearm "in connection with" theft by receiving the stolen firearm itself. USA v. Brooks, No. 22-11456 8/9/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211456.pdf

DEATH PENALTY-EX POST FACTO: §921.141(2)(c), which became effective April 2023, requires the jury to recommend a sentence of death if

eight or more jurors determine that death is the appropriate sentence. Retroactive application of the amended statute does not violate the Ex Post Facto Clauses of the United States and Florida Constitutions. The amendment to §921.141 is a quintessentially procedural change that has no substantive effect. Lyons v. State, 2D2023-2358 (8/9/24) https://2dca.flcourts.gov/content/download/2438819/opinion/Opinion_2023-2358.pdf

BINDING PRECEDENT: The decisions of the district courts of appeal represent the law of Florida. The proper hierarchy of decisional holdings demands that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court is required to follow that decision. That a decision of the district court of appeal is not yet final when a trial court rules on an issue does not affect the binding nature of the appellate decision. Lyons v. State, 2D2023-2358 (8/9/24) https://2dca.flcourts.gov/content/download/2438819/opinion/Opinion_2023-2358.pdf

ESCAPE-MENS REA-DURESS: Court improperly instructed jury that §751(a) required Governmnent to prove that Defendant knew he was not allowed to leave the facility without permission but intentionally left the facility anyway, and not that he did not know leaving the facility, even without permission. Instruction failed to account for willfulness. "Although the instruction stated that Bush had to have known that he was 'not allowed' to leave Keeton 'without permission,' it didn't specify that he had to have acted 'unlawfully,' or with an intent to do something 'that the law forbids.' In fact, it said just the opposite." USA v. Bush, No. 22-13867 (8/8/24) https://media.ca11.uscourts.gov/opinions/pub/files/202213867.pdf

DEFINITION-"WILLFULLY": The term "knowingly" merely requires proof of knowledge of the facts that constitute the offense whereas the term "willfully" requires proof of "knowledge that the conduct was unlawful. USA v. Bush, No. 22-13867 (8/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213867.pdf

MENS REA: "It's difficult to imagine an issue more central to a finding of criminal responsibility than mens rea. If the government can't prove that the defendant acted with the requisite state of mind, the defendant is entitled to an acquittal." USA v. Bush, No. 22-13867 (8/8/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213867.pdf

DENATURALIZATION: Where Defendant was granted citizenship by falsely swearing that he had never sold narcotics and was later convicted for having done so before becoming a citizen, he may be denaturalized and deported, but he is not estopped from challenging the factual basis. USA v. Munoz, No 22-11574 (11th Cir. 8/7/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211574.pdf

COLLATERAL ESTOPPEL: Collateral estoppel forecloses relitigation of an issue of fact or law that has been litigated and decided in a prior suit. Collateral estoppel is not available unless four conditions are met: (1) the relevant issue must be identical to the issue involved in the prior proceeding, (2) the issue must have been actually litigated in the prior proceeding, (3) the issue's determination must have been a critical and necessary part of the prior proceeding, *i.e.* the final outcome hinges on it, and (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding. USA v. Munoz, No 22-11574 (11th Cir. 8/7/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211574.pdf

DENATURALIZATION-COLLATERAL ESTOPPEL: The Defendant's stipulation in the factual basis of his plea to the date he sold narcotics does not collaterally estop him in his denaturalization case because the starting date was unnecessary to the conspiracy conviction. Subject may litigate whether

his participation in the conspiracy began after he became a citizen. USA v. Munoz, No 22-11574 (11th Cir. 8/7/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211574.pdf

JUDICIAL ESTOPPEL: Judicial Estoppel prevents the perversion of the judicial process and protects its integrity by prohibiting parties from deliberately changing positions according to the exigencies of the moment. For judicial estoppel, a party prove 1) that the other party's position was clearly inconsistent with his earlier position, 2) the adverse party succeeded in persuading a court to accept his earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled, and 3) the adverse party would derive an unfair advantage or impose an unfair detriment if not estopped. USA v. Munoz, No 22-11574 (11th Cir. 8/7/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211574.pdf

DENATURALIZATION-JUDICIAL ESTOPPEL: The Defendant's stipulation in the factual basis of his plea to the date he sold narcotics does not judicially estop him in his denaturalization case. Subject may litigate whether his participation in the conspiracy began after he became a citizen. USA v. Munoz, No 22-11574 (11th Cir. 8/7/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211574.pdf

RENEWAL OF OFFER OF COUNSEL: Where Defendant dismissed appointed counsel and proceeded to trial *pro se*, Court erred in failing to renew the offer of counsel before hearing his motion for new trial. After a trial court finds that a defendant has waived his right to counsel, the offer of assistance of counsel shall be renewed by the court at each subsequent crucial stage of the proceedings, which includes any stage that may significantly affect the outcome of the proceedings. Bryan v. State, 1D2022-0957 (8/7/24)
https://1dca.flcourts.gov/content/download/2438737/opinion/Opinion_2022-0957.pdf

CONSECUTIVE HFO SENTENCES: When multiple sentences for offenses committed during a single criminal episode have been enhanced under the Habitual Felony Offender statute, the total penalty cannot be further increased by imposing consecutive sentences, absent specific legislative authority. Bryan v. State, 1D2022-0957 (8/7/24)
https://1dca.flcourts.gov/content/download/2438737/opinion/Opinion_2022-0957.pdf

POSTCONVICTION RELIEF: Inadmissible hearsay cannot establish the value of the damage. Trial counsel was deficient in failing to object to based on an estimate she was given. Cooper v. State, 1D2022-4074 (8/7/24)
https://1dca.flcourts.gov/content/download/2438739/opinion/Opinion_2022-4074.pdf

FAILURE TO REGISTER-JOA:. A prerequisite to finding a violation of §943.0435(4)(b)1--failing to establish or maintain a residence or failing to report a change in residences—is that the sexual offender establish one of the three types of statutorily-defined residences in the first place. Where State established only that Defendant never lived at the address that he registered but failed to present any evidence that he ever established a permanent, temporary, or transient residence and thereafter changed his residence or vacated his residence without establishing another permanent, temporary, or transient residence, JOA is required. Dennis v. State, 1D2023-0866 (8/7/24)
https://1dca.flcourts.gov/content/download/2438743/opinion/Opinion_2023-0886.pdf

POSTCONVICTION RELIEF: Court did not err in finding that trial counsel was not ineffective for failing to properly cross-examine child sex abuse victim on inconsistencies, i.e. never saw his penis vs. it had freckles on it, because counsel did not want to risk inflaming the jury. Wendell v. State, 1D2023-2478 (8/7/24)

https://1dca.flcourts.gov/content/download/2438744/opinion/Opinion_2023-2478.pdf

POSTCONVICTION RELIEF: Counsel was not ineffective for not asking the trial court to order the victim to undergo a medical examination where Defendant cited no authority that would have authorized the trial court to order such an examination and the victim did not report the abuse until months afterward. Wendell v. State, 1D2023-2478 (8/7/24)
https://1dca.flcourts.gov/content/download/2438744/opinion/Opinion_2023-2478.pdf

BELATED APPEAL: Access to a prison law library is not necessary to prepare and transmit a simple notice of appeal and lack of that access did not demonstrate a right to a belated appeal. Greene v. State, 1D2023-3354 (8/7/24)
https://1dca.flcourts.gov/content/download/2438747/opinion/Opinion_2023-3354.pdf

TWELVE-PERSON JURY-CAPITAL SEX BATTERY: Although sexual battery of a child is labeled a "capital" offense, it is not a "capital case" requiring a twelve-person jury. Death was not a permissible penalty at the time of the offenses. Recent legislation now permits imposition of the death penalty for capital sexual battery of a child committed on or after October 1, 2023. Serrano-Delgado v. State, 2D2023-1086 (8/7/24)
https://2dca.flcourts.gov/content/download/2438682/opinion/Opinion_2023-1086.pdf

TWELVE-PERSON JURY: Florida's use of a six-person jury does not violate the Sixth or Fourteenth Amendment. U.S. Supreme Court has denied cert on this issue over Justice Gorsuch's dissent ("If there are not yet four votes on this Court to take up the question whether Williams should be overruled, I can only hope someday there will be."). "With all due respect, Justice Gorsuch is but one voice on the Supreme Court. We are bound by precedent, not by what

one Supreme Court Justice wishes." Serrano-Delgado v. State, 2D2023-1086 (8/7/24)
https://2dca.flcourts.gov/content/download/2438682/opinion/Opinion_2023-1086.pdf

DISCOVERY: Even if the State committed a discovery violation by failing to disclose the two vulgar words the juvenile yelled at his mother while threatening to kill her, charging at her, and brandishing a metal pipe. Child was not materially hindered in his defense. C.H., a Juvenile v. State, 3D22-1713 (8/7/24)
https://3dca.flcourts.gov/content/download/2438716/opinion/Opinion_2022-1713.pdf

HABEAS CORPUS: When an inmate seeks immediate release from custody, he should seek a writ of habeas corpus from the circuit court in the county where his institution is located. Mane v. State, 3D24-0116 (8/7/24)
https://3dca.flcourts.gov/content/download/2438710/opinion/Opinion_2024-0116.pdf

POSTCONVICTION RELIEF: The mere incantation of the words "manifest injustice" does not make it so. Jones v. State, 3D24-0484 (8/7/24)
https://3dca.flcourts.gov/content/download/2438711/opinion/Opinion_2024-0484.pdf

DEADLY WEAPON: The question of whether a particular weapon is to be classed as "deadly" is a factual question to be resolved by the jury, based upon evidence or reasonable inferences therefrom of the likelihood to produce death or great bodily injury. The jury may consider the character of the assault and the way the weapon is used. Jones v. State, 3D24-0484 (8/7/24)
https://3dca.flcourts.gov/content/download/2438711/opinion/Opinion_2024-0484.pdf

POSTCONVICTION RELIEF: The mere incantation of the words "manifest injustice" does not make it so. Fuentes v. State, 3D24-0638 (8/7/24) https://3dca.flcourts.gov/content/download/2438715/opinion/Opinion_2024-0638.pdf

JURY INSTRUCTION-REASONABLE DOUBT: The omission of Standard Jury Instruction 3.7, including its instruction on reasonable doubt, missed by the prosecutor, defense counsel, and the trial judge, is fundamental error. "We find no support for the State's argument that giving instructions on the presumption of innocence and reasonable doubt during jury selection in combination with similar instructions given sporadically throughout the course of the trial is a proper substitute for giving the complete instructions during the final charge to the jury." Ramirez v. State, 4D2023-0508 (8/7/24) https://4dca.flcourts.gov/content/download/2438718/opinion/Opinion_2023-0508.pdf

PRR-FLEEING AND ELUDING: Fleeing or eluding does not qualify for PRR sentencing. Ramirez v. State, 4D2023-0508 (8/7/24) https://4dca.flcourts.gov/content/download/2438718/opinion/Opinion_2023-0508.pdf

BILL OF PARTICULARS: Where the State charged ongoing sexual abuse of a child over an eight month period, no error existed in having charged the incidents as having occurred on one or more occasions as long as each charge contained only a single ongoing offense against the child. State may charge one count for each type of sexual act, where the victim had been continually abused and could not remember specific dates or narrow the time period. Gracia v. State, 4D2023-0750 (8/7/24) https://4dca.flcourts.gov/content/download/2438729/opinion/Opinion_2023-0750.pdf

DISCOVERY VIOLATION: Disclosure on day of trial of photos of the RV where the child sex abuse occurred is a discovery violation but is not prejudicial. Gracia v. State, 4D2023-0750 (8/7/24) https://4dca.flcourts.gov/content/download/2438729/opinion/Opinion_2023-0750.pdf

SUPERSEDEAS BOND: In considering supersedeas bond, Court must consider (1) whether the appeal is taken for delay or in good faith on grounds not frivolous but fairly debatable; (2) the habits of the individual regarding respect for the law; (3) local attachments to the community by way of family ties, business or investment; (4) the severity of the sentence imposed, and circumstances relevant to the question of whether the defendant would remove himself from the jurisdiction of the court. Court must state in writing its reasons for the denial. Torolopez v. State, 3D23-2255 (8/6/24) https://3dca.flcourts.gov/content/download/2438631/opinion/Opinion_2023-2255.pdf

SUPERSEDEAS BOND: The fact that Defendant is an immigrant from Cuba should not be a reason to deny a suprsedeas bond. Torolopez v. State, 3D23-2255 (8/6/24) https://3dca.flcourts.gov/content/download/2438631/opinion/Opinion_2023-2255.pdf

SUPERSEDEAS BOND: Court may not analyze whether appeal is likely ti be successful in considering whether it is taken in good faith. Good faith does not mean there is probable cause to believe the judgment will be reversed, but simply that the appeal is not vexatious and the defendant has assigned errors that are open to debate and about which reasonable questions exist. The good-faith requirement establishes a relatively low threshold. "The fact that Torolopez can make a colorable argument. . .renders the merits of the appeal 'fairly debatable.'" Torolopez v. State, 3D23-2255 (8/6/24)

https://3dca.flcourts.gov/content/download/2438631/opinion/Opinion_2023-2255.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Because the "plain smell" of cannabis is no longer clearly indicative of criminal activity, it alone cannot provide reasonable suspicion to support an investigatory detention. A potentially lawful activity cannot be the sole basis for a detention. If this were allowed, the Fourth Amendment would be eviscerated. "The incremental legalization of certain types of cannabis at both the federal and state level has reached the point that its plain smell does not immediately indicate the presence of an illegal substance. As a result, the smell of cannabis cannot on its own support a detention." Conflict certified. Baxter v. State, 5D2023-0118 (8/2/24)
https://5dca.flcourts.gov/content/download_/2438575/opinion/Opinion_2023-0118.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Asking Defendanr after he was detained whether he had a marijuana card (he did not) is too late to cure the unlawful detention. Baxter v. State, 5D2023-0118 (8/2/24)
https://5dca.flcourts.gov/content/download_/2438575/opinion/Opinion_2023-0118.pdf

APPEAL-PRESERVED ISSUE (J. EISNAUGLE, CONCURRING): There are three elements of a properly preserved argument. First, the party must make a timely, contemporaneous objection at the time of the alleged error. Second, the party must state a legal ground for that objection. Third, argument on appeal must be the specific contention asserted as legal ground below. Although this case was "hardly a model of preservation," the " rule on preservation does not require an eloquent presentation. Baxter v. State, 5D2023-0118 (8/2/24)
https://5dca.flcourts.gov/content/download/2438575/opinion/Opinion_2023-0118.pdf

NEOLOGISM-"ENBANCWORTHINESS": "Assuming that Baxter's supplemental memorandum meets the minimum bar for preservation, however, the convolution and tardiness in his presentation of the issue both weigh against enbancworthiness. Baxter v. State, 5D2023-0118 (8/2/24) https://5dca.flcourts.gov/content/download/2438575/opinion/Opinion_2023-0118.pdf

CONTEMPT: Courtt erred in finding Defendant in contempt of court 22 days after he allegedly "yelled" at the court. Court's failure to scrupulously follow the requirements of R. 3.830 constitutes fundamental error. Beyond a perfunctory request whether there was just cause not to hold Petitioner in contempt, the trial court did not provide Petitioner with the opportunity to present evidence of excusing or mitigating circumstances. This is fundamental error. Gillespie v. State, 5D2023-0888 (8/2/24) https://5dca.flcourts.gov/content/download/2438536/opinion/Opinion_2023-0888.pdf

SENTENCING-ORAL PRONOUNCEMENT: Written order for $150 in restitution to be paid to the Division of Victim Services in a child porn case must be stricken where not orally pronounced. Where a conflict exists between the oral pronouncement of entence and written sentencing documents, the oral pronouncement controls. Vavra v. State, 5D2023-2240 (8/2/24)

https://5dca.flcourts.gov/content/download/2438540/opinion/Opinion_2023-2240.pdf

COST OF INVESTIGATION: $50 cost of investigation that was not part of the plea agreement, requested by the State, or orally pronounced must be stricken. Sanders v. State, 5D2023-3472 (8/2/24) https://5dca.flcourts.gov/content/download/2438543/opinion/Opinion_2023-3472.pdf

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CHILD HEARSAY: Sheriff's policy against recording child sexual abuse victims does not violate due process. There is no statutory or common law duty to record these interviews. Oliver v. State, 2D2022-1085 (7/31/24)
https://2dca.flcourts.gov/content/download/2438391/opinion/Opinion_2022-1085.pdf

RESTITUTION: Mechanical damage and the depreciation in value of a stolen vehicle may be factored into the restitution calculation. Quintero v. State, 3D23-1153 (7/31/24)
https://3dca.flcourts.gov/content/download/2438432/opinion/Opinion_2023-1153.pdf

ODOR OF MARIJUANA: Even if smoking marijuana were legal altogether, the officers would have had probable cause based on the fact that Defendant was operating a car. The possibility that a driver might be a medical marijuana user does not automatically defeat probable cause. Rosales v. State, 3D23-1857 (7/31/34)
https://3dca.flcourts.gov/content/download/2438418/opinion/Opinion_2023-1857.pdf

STATEMENT OF DEFENDANT: Miranda warnings are not required where co-Defendant willingly and at his own suggestion assists officers in eliciting incriminating and secretly recorded statements by Defendant. Miranda warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement. Miranda forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner. A casual conversation is not the functional equivalent of interrogation. Marotta v. State, 4D2023-0448 (7/31/24)
https://4dca.flcourts.gov/content/download/2438426/opinion/Opinion_2023-0448.pdf

BRIBERY-GRATUITIES: Government official who steered a contract to a company which gave her $10,000, a diamond ring, free landscaping, and, later, a new job is properly convicted of bribery. The key difference between a gratuity and a bribe is whether the official and the payer agreed to a payment for the official act. The timing of the agreement, not of the payment, is the key. Defendant is not entitled to a jury instruction that a payment received after the act is a gratuity, not a bribe. USA v. Macrina, No. 23-10734 (7/30/24) x USA v. Macrina, No. 23-10734 (7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310734.pdf

RULE OF COMPLETENESS: The Rule of Completeness (R.106) provides that when a party introduces only part of a writing or recorded statement, the opposing party may introduce other portions of that in fairness ought to be considered at the same time, regardless of the kind of writings or recorded statements. It is not limited to custodial statements. But the objecting party must point to the specific portions she wants admitted. USA v. Macrina, No. 23-10734 (7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310734.pdf

EVIDENCE-BRIBERY: The city Code of Ethics is admissible in a bribery case to show corrupt intent. USA v. Macrina, No. 23-10734 (7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310734.pdf

SEARCH AND SEIZURE-STANDING-GEOFENCE WARRANT: A geofence warrant is a specific type of warrant used to collect information on the presence of a cell phone or other device within a specific area during a set time frame. Defendant lacks Fourth Amendment standing to challenge a geofence warrant identifying his girlfriend's phone in the vicinity of robberies because he had no privacy interest in the search of his girlfriend's phone or her daughter's Google account. Even if a person has a privacy interest in the data on his own phone, he does not have that interest in the data on someone else's phone. USA v. Davis, No. 23-10184 (11th Cir. 7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310184.pdf

NEOLOGISMS: "anonymized" and "deanonymized" USA v. Davis, No. 23-10184 (11th Cir. 7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310184.pdf

STATEMENTS OF DEFENDANT: Defendant's right to presentment in federal court does not vest until he is arrested for the federal crime, even when he is arrested for state charges which are likely to be converted to federal charges. USA v. Davis, No. 23-10184 (11th Cir. 7/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310184.pdf

SEARCH AND SEIZURE-QUALIFIED IMMUNITY: "Until now, neither we nor the Supreme Court has explicitly defined the standard for strip searches of a free person visiting a jail or prison. We now hold that correctional officers must have at least reasonable suspicion that a visitor is concealing contraband (e.g., drugs or weapons) before they may strip-search that visitor." But Prison officials had qualified immunity from suit for highly intrusive strip search of prison visitors because their Fourth Amendment right to be free from strip searches without reasonable suspicion was not clearly established at the time of the search. "[W]e do not look to persuasive authority—even a 'robust consensus' of it—to determine whether the law was 'clearly established.'" Gilmore v. Georgia D.O.C., No. 23-10343 (11TH Cir. 7/29/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310343.pdf

SEARCH AND SEIZURE-QUALIFIED IMMUNITY (J. ROSENBAUM, CONCURRING): "For more than a quarter of a century, the Supreme Court has repeatedly directed that 'a robust 'consensus of cases of persuasive authority' can 'clearly establish' a constitutional violation for qualified-immunity purposes. . .Yet we have consistently dodged that directive. It's time to bring our precedent into the twenty-first century." Gilmore v. Georgia D.O.C., No. 23-10343 (11TH Cir. 7/29/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310343.pdf

PRIOR PANEL PRECEDENT RULE-QUALIFIED IMMUNITY (J. NEWSOM, CONCURRING): "[I]f a court concludes that a defendant's conduct violated the Constitution, but then goes on to hold that the law wasn't clearly established at the time he acted and that he is therefore entitled to qualified immunity, its merits holding is effectively dictum." "It's just weird. . .It may be that. . .the time is coming (has come?). . .,for [the Supreme] Court to consider a major league reassessment of its qualified-immunity jurisprudence." Gilmore v. Georgia D.O.C., No. 23-10343 (11TH Cir. 7/29/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310343.pdf

SENTENCING-UNREASONABLENESS: Miscalculation of Criminal History Category and upward variance from guidelines recommended range does not render the sentence substantively nor procedurally unreasonable where Court's comments show it would have varied upward regardless of the miscalculations. USA v. Thomas, No. 22-14119 (7/29/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202214119.pdf

JIMMY RYCE: Petitioner fails to show probable cause that he is no longer a dangerous sex offender, and thus to be entitled to a trial on continued commitment, where his personality disorder continues to drive his actions and he continues to resist treatment. Donovan v. State, 5D2022-2978 (7/26/24)
https://5dca.flcourts.gov/content/download/2438173/opinion/Opinion_2022-2978.pdf

SELF-INCRIMINATION: Defendant's hesitation before giving a DNA sample does not constitute exercising his right to remain silent. Testimony about it is not improper. "While he may have initially 'balked' in response to one question—in the context of consenting to the buccal swab—that did not transform his willing cooperation with Detective Caswell into the exercise of his right to remain silent. . .[H]esitating before speaking is not the same as staying quiet." Newman v. State, 5D2023-2639 (7/26/24)

https://5dca.flcourts.gov/content/download/2438179/opinion/Opinion_2023-2639.pdf

FLEEING OR ELUDING: Courts are without legal prerogative to withhold adjudication of guilt on fleeing or attempting to elude. State v. Hanberry, 5D2023-3322 (7/26/24)
https://5dca.flcourts.gov/content/download/2438180/opinion/Opinion_2023-3322.pdf

ISSUE PRESERVATION-SUPPRESSION: Where Defendant's pretrial motion to suppress his confession was denied, and his counsel said "no objection" when the State sought to admit it at trial, he failed to preserve the issue for appeal. §90.104(1) says that when a "court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal." But the Florida Supreme Court has held otherwise. Under §90.104(1), "Xolo seemingly preserved for appeal a challenge to the admission of his confession at trial. But under the precedent, he did not." Xolo v. State, 6D2023-0846 (7/26/24)
https://6dca.flcourts.gov/content/download/2438188/opinion/Opinion_2023-0846.pdf

ISSUE PRESERVATION-CONUNDRUM: "To be sure, someone in. . .Xolo's position faces a conundrum. . [W]hat should the response be when the court again asks whether there is any objection? A party either objects or does not. If the response is yes, then the party has necessarily renewed the objection. But that is what section 90.104(1) states is unnecessary to preserve the claim of error. If the response is no, then under Carr the objection is abandoned and not preserved even though—once again—the statute explicitly says that 'a party need not renew an objection to preserve a claim of error for appeal.' . . .Qualifying the response with "pursuant to my prior objection" or "subject to my prior objection" does not resolve this conundrum." "The most we can do here is flag the tension between the statute and the precedent for another look by

the Florida Supreme Court." Xolo v. State, 6D2023-0846 (7/26/24) https://6dca.flcourts.gov/content/download/2438188/opinion/Opinion_2023-0846.pdf

APPEAL: Motions filed under rule 3.800(b)(1) (correction of jail time credit) toll rendition of the final order for purposes of appeal. Brannon v. State, 6D2023-2765 (7/26/24) https://6dca.flcourts.gov/content/download/2438187/opinion/Opinion_2023-2765.pdf

PLEA WITHDRAWAL: When a motion to withdraw plea is filed by an unrepresented defendant, trial courts are obligated to renew the offer of counsel prior to addressing the merits of the motion Court must inform the Defendant of his right to the assistance of counsel in preparing and presenting a motion to withdraw plea. A motion to withdraw plea filed pursuant to rule 3.170(l) is a critical stage of the proceedings. Brannon v. State, 6D2023-2765 (7/26/24) https://6dca.flcourts.gov/content/download/2438187/opinion/Opinion_2023-2765.pdf

WIRETAP-STATEWIDE PROSECUTOR: The Federal Wiretap Act only authorizes the (1) the "principal prosecuting attorney of any State" or (2) the "principal prosecuting attorney of any political subdivision to apply to state courts for wiretaps. It preempts the field of wiretapping and electronic surveillance and limits a state's authority to legislate in this area. Fla. Stat. §934.07 grants the statewide prosecutor power to apply for a search warrant, but the Statewide prosecutor is not the "principal prosecuting attorney of any political subdivision" so it may not request a wiretap under that provision. The issue of whether the Statewide prosecutor is authorized under the "principal prosecuting attorney of any State" provision is a "more interesting issue" but was not properly raised nor preserved. State v. Rogers, 1D2023-0506 (7/24/24) https://1dca.flcourts.gov/content/download/2438095/opinion/Opinion_2023-

0506.pdf

WIRETAPS-STATUTORY INTERPRETATION: "The State argues that reading the statute the way the Defendant does would lead to an absurd result, noting it would basically brush aside almost 40 years of practice. There was no testimony regarding how long the Statewide Prosecutor has been authorizing wiretaps, but the Court cannot see how it would matter. Interpreting a federal law clearly designed to preempt state laws, having been held to preempt state laws, and having been applied to override portions of Florida's law to again override the state law is not an absurd result. Instead, the State is simply arguing that a result contrary to its view is absurd." State v. Rogers, 1D2023-0506 (7/24/24)
https://1dca.flcourts.gov/content/download/2438095/opinion/Opinion_2023-0506.pdf

OBSTRUCTION: The element of lawful execution of a legal duty is satisfied if an officer has either a founded suspicion to stop the person or probable cause to make a warrantless arrest. McNeill v. State, 3D23-0106 (7/24/24)
https://3dca.flcourts.gov/content/download/2438063/opinion/Opinion_2023-0106.pdf

DNA TESTING: In order to be entitled to postconviction DNA testing, a defendant's motion must lay out with specificity how the DNA testing of each item requested to be tested would give rise to a reasonable probability of acquittal or a lesser sentence. Rodriguez v. State, 3D24-0951 (7/24/24)
https://3dca.flcourts.gov/content/download/2438073/opinion/Opinion_2024-0951.pdf

JURY INSTRUCTION-SEXUAL BATTERY: Court erred in instructing the jury with the 2022 amended, expanded definition ("genital female penetration" rather than the earlier definition ("vaginal penetration"). Flores v. State, 4D2023-1837 (7/24/24)

https://4dca.flcourts.gov/content/download/2438092/opinion/Opinion_2023-1837.pdf

ISSUE PRESERVATION-FUNDAMENTAL ERROR: A tactical decision to stand mute regarding an erroneous instruction will not support fundamental error. "[W]e caution that parties will not be rewarded for standing mute and permitting an erroneous instruction to go to the jury because of counsel's tactical inaction." Flores v. State, 4D2023-1837 (7/24/24) https://4dca.flcourts.gov/content/download/2438092/opinion/Opinion_2023-1837.pdf

FUNDAMENTAL ERROR-TRIPARTITE DUTY: "A tripartite duty exists within the judicial system to ensure a defendant receives due process within the framework of a fair trial. Regrettably, the State, defense counsel, and the trial court did not meet their responsibility in this regard. The State injected fundamental error into the trial by requesting a jury instruction it either knew or should have known was based on the incorrect version of the statute. . .This obvious error was then compounded by the ineffective assistance of defense counsel, whose failure to object. . .allowed the jury to be charged under a less stringent standard. . . Finally, the trial court had the ultimate responsibility as the backstop to ensure the correct jury instruction was given. . .This lack of due attention by all these participants will now require a new trial, which was entirely preventable." Flores v. State, 4D2023-1837 (7/24/24) https://4dca.flcourts.gov/content/download/2438092/opinion/Opinion_2023-1837.pdf

HABEAS CORPUS: Before filing a second or successive §2254 petition in the district court, a state prisoner must move in the court of appeals for an order authorizing the district court to consider the application. A second-in-time §2254 petition raising Brady and Giglio claims is a second or successive petition, even though Petitioner had not known of the grounds at the time of the original petition. Jennings v. Florida, DOC, 20-12555 (11th Cir. 7/22/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202012555.pdf

PRIOR-PANEL-PRECEDENT RULE: Under the prior-panel-precedent Rule, a holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by the appellate court sitting en banc. For a Supreme Court decision to abrogate a panel precedent it must be clearly on point and clearly contrary to the panel precedent. Jennings v. Florida, DOC, 20-12555 (11th Cir. 7/22/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202012555.pdf

RESTITUTION-KICKBACKS: Restitution must be based on actual loss, not on the total amount of kickbacks paid. The purpose of restitution is not to provide a windfall for crime victims, nor to punish the defendant, but rather to ensure that victims, to the greatest extent possible, are made whole for their losses. "So barring a very good reason not to construe the statute to mean what it says, we must conclude that the government bears the burden of showing loss. Government cannot show loss without also establishing that the prescriptions were not medically necessary or were fraudulently obtained." USA v. Young, No. 20-13091 (7/22/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202013091.pdf

SEARCH AND SEIZURE-LOITERING AND PROWLING: The Fourth Amendment does not require a misdemeanor to occur in an officer's presence to conduct a warrantless arrest. A common law rule is not a constitutional rule. USA v. Grandia Gonzalez, No. 23-10578 (11th Cir. 7/19/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310578.pdf

FIREARMS: The 2011 amendment to the Joe Carlucci Uniform Firearms Act (§790.33) preempted all agency regulation regarding firearms. "For lack of a

better term, we characterize the 2011 amendments to the statute as 'un-delegating' (rather than preempting) some of the regulatory power previously provided [to FDLE]". The 2011 amendments withdrew all legislative authority for future firearms or ammunition regulations when such regulations are based only on the general language of an agency's enabling statute. FDLE's implementation of the three-day waiting period for firearms purchases may be challenged under the preemption statute. Pretzer v. Swearingen, 1D2022-1863 (7/19/24)

https://1dca.flcourts.gov/content/download/2437878/opinion/Opinion_2022-1863.pdf

SEARCH AND SEIZURE: An officer need not know, for sure, that the item is contraband in order to seize it. White powder in a sandwich bag is identifiable as contraband. Ferrell v. State, 2D2023-0521 (7/19/24)

https://2dca.flcourts.gov/content/download/2437879/opinion/Opinion_2023-0521.pdf

WEAPON: A pocketknife constitutes a "dangerous weapon." Ferrell v. State, 2D2023-0521 (7/19/24)

https://2dca.flcourts.gov/content/download/2437879/opinion/Opinion_2023-0521.pdf

JURY INSTRUCTION-SELF-DEFENSE: Defendant is entitled to have the jury instructed on his or her theory of defense if there is any evidence to support this theory, so long as the theory is recognized as valid under the law of the state, no matter how weak or flimsy. A Defendant is entitled to a justifiable use of deadly force instruction where he thought the Victim had a gun

regardless of whether he actually did. "Although the evidence that Cabrera was armed with a deadly weapon as he approached Greenlee's vehicle was slight, it was sufficient under Florida law to obligate the trial court to include. . .the jury instruction on the justifiable use of deadly force." Espichan v. State, 6D2023-0921 (7/19/24)

https://6dca.flcourts.gov/content/download/2437884/opinion/Opinion_2023-0921.pdf

COMPETENCY: Where a trial court authorizes a competency evaluation, and the evaluation report determines a criminal defendant is competent to stand trial, there is no legal error, much less fundamental error, where a further hearing on the report is not conducted, no evidence or argument is presented that the defendant is not competent, and the trial record reveals no indication raising any reasonable doubt of the defendant's competency. Hicks v. State, 1D2022-0701 (7/17/24)

https://1dca.flcourts.gov/content/download/2437353/opinion/Opinion_2022-0701.pdf

DOUBLE JEOPARDY: Convictions for burglary with battery and a separate conviction for simple battery violate Double Jeopardy. Smith v. State, 1D2022-1259 (7/17/24)

https://1dca.flcourts.gov/content/download/2437354/opinion/Opinion_2022-1259.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: A citizen tip may provide a basis for approaching a person dozing in a car, but if the officer's initial investigation reveals no medical emergency or drug use, there is no

reasonable suspicion to hold Defendant for an additional 10 minutes to wait for the K-9 to arrive. There is no *de minimis* exception to an unlawful detention. Ridgeway v. State, 1D2022-275 (7/17/24)

https://1dca.flcourts.gov/content/download/2437358/opinion/Opinion_2022-2275.pdf

APPEAL: The absence of any objection at the time of disposition followed by the failure to file a motion to correct a disposition error precludes consideration even of fundamental disposition errors on direct appeal. M.P., a child v. State, 2D2022-4209 (7/17/24)

https://2dca.flcourts.gov/content/download/2437347/opinion/Opinion_2022-4209.pdf

SEARCH AND SEIZURE-ABANDONED PROPERTY: Abandoned property does not fall under the aegis of the Fourth Amendment. Defendant who left his car with the door open and the engine running when he fled the scene of a shootout abandoned the car, allowing the police to find the drugs inside it. Muhammad v. State, 2D2023-0502 (7/17/24)

https://2dca.flcourts.gov/content/download/2437346/opinion/Opinion_2023-0502.pdf

VOTER FRAUD-STATEWIDE PROSECUTOR: Defendant filled out a voter registration Dade County and voted there, but the registration was transmitted to the Secretary of State in Leon County for approval. Registering to vote in Dade County and subsequently voting in Dade County invokes the jurisdiction of the Office of Statewide Prosecution. Statewide Prosecutor has authority to bring charges of voter fraud because the alleged acts occurred in two or her

more judicial circuits as part of a related transaction. While Defendant himself acted only in one jurisdiction, the chain of events that led to the consummation of the crime necessarily occurred in two or more jurisdictions. State v. Miller, 3D2022-2180 (7/17/24)

https://3dca.flcourts.gov/content/download/2437386/opinion/Opinion_2022-2180.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Regardless of whether the smell of marijuana is indistinguishable from that of hemp, the smell of marijuana emanating from a vehicle provides probable cause for a warrantless search of a vehicle. Aldama v. State, 3D22-2189 (7/17/24)

https://3dca.flcourts.gov/content/download/2437391/opinion/Opinion_2022-2189.pdf

EVIDENCE-INEXTRICABLY INTERTWINED: Evidence is inextricably intertwined if the evidence is necessary to (1) adequately describe the deed; (2) provide an intelligent account of the crime(s) charged; (3) establish the entire context out of which the charged crime(s) arose; or (4) adequately describe the events leading up to the charged crime(s). Almaguer v. State, 3D23-0555 (7/17/24)

https://3dca.flcourts.gov/content/download/2437369/opinion/Opinion_2023-0555.pdf

JUDGE-WITNESS: A judge may advise a witness of his or her rights when the witness is potentially exposing himself of herself to criminal liability such as perjury. However, the judge may not threaten or effectively drive the witness off the stand. Almaguer v. State, 3D23-0555 (7/17/24)

https://3dca.flcourts.gov/content/download/2437369/opinion/Opinion_2023-0555.pdf

ARGUMENT: A prosecutor may comment to a jury during closing arguments on the absence of evidence on a particular issue. Galmadez v. State, 3D23-0908 (7/17/24)

https://3dca.flcourts.gov/content/download/2437370/opinion/Opinion_2023-0908.pdf

POST CONVICTION RELIEF: A defendant may not claim a sentence is illegal based on an alleged discrepancy between an oral pronouncement and a written sentence without a transcript of the sentencing hearing or other indisputable evidence of record to support the claim. Lopez v. State, 3D24-0927 (7/17/24)

https://3dca.flcourts.gov/content/download/2437377/opinion/Opinion_2024-0927.pdf

FIREARM-MANDATORY MINIMUM: Vicarious liability will not substitute for actual possession or discharge of the firearm for imposition of the 25-year mandatory minimum. Roberts v. State, 4D2022-0689 (7/17/24)

https://4dca.flcourts.gov/content/download/2437373/opinion/Opinion_2022-0689.pdf

COMPETENCY: Once a trial court has reasonable grounds to believe that a criminal defendant is not competent to proceed, the trial court has no choice but to conduct a competency hearing. Perkins v. State, 4D2022-3276

(7/17/24)

https://4dca.flcourts.gov/content/download/2437375/opinion/Opinion_2022-3276.pdf

VOTER FRAUD-STATEWIDE PROSECUTOR: The participation in Leon County by the Secretary of State in the approval process of a Florida voter application in Broward County and the later certification of the vote makes unlawful registration to vote and voting a multi-county offense, thereby conferring jurisdiction on the Office of Statewide Prosecution. Submitting a fraudulent voter registration in Broward County is an act which requires subsequent involvement of the Secretary of State in Leon County. So too does voting in an election in Broward County. Hubbard v. State, 4D2022-3429 (717/24)

https://4dca.flcourts.gov/content/download/2437380/opinion/Opinion_2022-3429.pdf

VOTING LAW: 2023 Amendment to the voting law expanding the jurisdiction of the Office of Statewide Prosecution applies retroactively. Hubbard v. State, 4D2022-3429 (7/17/24)

https://4dca.flcourts.gov/content/download/2437380/opinion/Opinion_2022-3429.pdf

OFFICE OF STATEWIDE PROSECUTION (J. MAY, DISSENTING): "During the incubation period of the constitutional and statutory authority for the OSP, there were expressed concerns that the OSP 'could be used to harass political enemies and centralize prosecutorial authority away from local elected state

attorneys.' . . . For this very reason, the Commission and the legislature narrowly tailored the OSP's jurisdiction. . .Yet, the OSP now seeks to extend its reach into the local discretion afforded the Office of the State Attorney for single judicial circuit crimes. The OSP is not some Marvel superhero that can magically extend its long arm of the law into a single judicial circuit and steamroll over the local state attorney. In short, this is a stretch the majority is willing to condone, but I am not." Hubbard v. State, 4D2022-3429 (717/24)

https://4dca.flcourts.gov/content/download/2437380/opinion/Opinion_2022-3429.pdf

OFFICE OF STATEWIDE PROSECUTION (J. MAY, DISSENTING): "One need only follow a simple logical syllogism: (1) The OSP was created to prosecute multi-judicial circuit crimes. (2) The Information does not allege a multi-judicial circuit crime. (3) The OSP does not have jurisdiction to prosecute the defendant for these charges." Hubbard v. State, 4D2022-3429 (717/24)

https://4dca.flcourts.gov/content/download/2437380/opinion/Opinion_2022-3429.pdf

COLLATERAL CRIME EVIDENCE: Evidence of Defendant's fraudulent transfer of property shield it from creditors in a bankruptcy case is not admissible in a theft case. Evidence of a collateral crime is inherently prejudicial because it creates the risk that a conviction will be based on the defendant's bad character or propensity to commit crimes, rather than on proof the defendant committed the charged offense. The improper admission of Williams rule evidence is presumed to be harmful error, especially, but not only, when the State relies on the improper evidence in its closing argument. Soto Gutierrez v. State, 4D2023-0106 (7/17/24)

https://4dca.flcourts.gov/content/download/2437381/opinion/Opinion_2023-

0106.pdf

TWELVE-PERSON JURY: The Sixth and Fourteenth Amendments to the United States Constitution do not require a twelve person jury. Harris v. State, 4D2023-0869 (7/17/24)

https://4dca.flcourts.gov/content/download/2437387/opinion/Opinion_2023-0860.pdf

SENTENCING CONSIDERATIONS: In sentencing, the Court erred by considering the injuries a victim sustained at the hands of a co-defendant despite the Defendant being acquitted of causing the injuries. It is a violation of due process for the court to rely on conduct of which the defendant has actually been acquitted when imposing a sentence. Harris v. State, 4D2023-0869 (7/17/240

https://4dca.flcourts.gov/content/download/2437387/opinion/Opinion_2023-0860.pdf

SENTENCING-DOWNWARD DEPARTURE-KIDNAPPING: Kidnapping is not a capital felony for which the defendant would be ineligible for consideration of a downward departure. Harris v. State, 4D2023-0869 (7/17/24)

https://4dca.flcourts.gov/content/download/2437387/opinion/Opinion_2023-0860.pdf

COSTS OF PROSECUTION: Court may not impose a $746 prosecution cost exceeding where the state had not presented any evidence to impose such costs in excess of $100. Harris v. State, 4D2023-0869 (7/17/24)

https://4dca.flcourts.gov/content/download/2437387/opinion/Opinion_2023-0860.pdf

VICTIM-DOMESTIC VIOLENCE: Under §741.28, a person cannot be considered a current domestic violence victim, or have an objectively reasonable fear of becoming one, based on actions that are too remote in time and therefore stale. Thomas v. Linglong LI, 4D2023-1437 (7/17/24)

https://4dca.flcourts.gov/content/download/2437388/opinion/Opinion_2023-1437.pdf

SENTENCING-DOWNWARD DEPARTURE: To determine whether a downward departure sentence is appropriate, the trial court follows a two-step process. First, the court must determine whether there is a valid legal ground for the departure sentence, set forth in statute or case law, supported by facts proven by a preponderance of the evidence. The second step requires the trial court to determine whether the departure is the best sentencing option for the defendant. Henderson v. State, 4D2023-1593 (7/17/23)
https://4dca.flcourts.gov/content/download/2437393/opinion/Opinion_2023-1593.pdf

SENTENCING-DOWNWARD DEPARTURE-COOPERATION: Where police were already aware of the defendant's crimes at the time they questioned him, his cooperation is not grounds for a downward departure. Henderson v. State, 4D2023-1593 (7/17/23)
https://4dca.flcourts.gov/content/download/2437393/opinion/Opinion_2023-1593.pdf

SENTENCING-CONSIDERATIONS: Court''s gratuitous comments regarding the effect which other child pornography cases had upon the circuit court's views and/or feelings towards that crime are inappropriate but did not warrant

resentencing. "We. . .caution the circuit court—and other courts throughout our district and the state—that generalized comments such as those which the circuit court voiced here as part of its gratuitous second-step analysis, undermine the appearance that the defendant is being sentenced by an impartial judge who will consider only the evidence presented to the court within that case." Henderson v. State, 4D2023-1593 (7/17/23)
https://4dca.flcourts.gov/content/download/2437393/opinion/Opinion_2023-1593.pdf

POSTCONVICTION RELIEF: Court abuses its discretion when it has determined the initial R. 3.850 motion to be legally insufficient but then fails to allow the defendant at least one opportunity to amend. Loveland v. State, 6D2023-0057 (7/17/24)
https://6dca.flcourts.gov/content/download/2437419/opinion/Opinion_2023-0057.pdf

POSTCONVICTION RELIEF: Under the "mailbox rule, a petition, notice, or motion from a pro se inmate is deemed filed at the moment in time when the inmate loses control over the document by entrusting its further delivery or processing to agents of the state. Loveland v. State, 6D2023-0057 (7/17/24)
https://6dca.flcourts.gov/content/download/2437419/opinion/Opinion_2023-0057.pdf

SENTENCING-REASONS: When a defendant does not object to a district court's failure to explain its sentence in violation of §3553(c), plain error review applies on appeal, not automatic reversal. USA v. Steiger, No. 22-10742 (7/16/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210742.op2.pdf

SENTENCING-PROCEDURAL REASONABLENESS: A district court commits a significant procedural error in imposing a sentence if it fails to calculate the guidelines range, calculates the range incorrectly, or fails to consider the §3553(a) factors. However, the district court is not required to

state on the record that it has explicitly considered each of the §3553(a) factors or to discuss each of them. USA v. Steiger, No. 22-10742 (7/16/24) https://media.ca11.uscourts.gov/opinions/pub/files/202210742.op2.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: Although there is no proportionality principle in sentencing, a major variance does require a more significant justification than a minor one. A twenty-year sentence on the VOP, concurrent with the state court sentence of life imprisonment, for defendant who planned and carried out the murder of his girlfriend on her child's first birthday and in the child's presence and stashed her body in a barrel for months is substantively reasonable. USA v. Steiger, No. 22-10742 (7/16/24) https://media.ca11.uscourts.gov/opinions/pub/files/202210742.op2.pdf

INVESTIGATIVE COSTS: $50 investigative may not be imposed if not orally pronounced. Piechota v. State, 5D2023-0448 (7/12/24)

https://5dca.flcourts.gov/content/download/2437127/opinion/Opinion_2023-0448.pdf

COSTS OF PROSECUTION: State is not required to request $100 in costs of prosecution before the sentencing court assesses them. Issue is pending before the Supreme Court. Catledge v. State, 5D2023-3020 (7/12/24)

https://5dca.flcourts.gov/content/download/2437138/opinion/Opinion_2023-3020.pdf

COST OF PROSECUTION: Costs of prosecution are mandatory at a minimum of $100 per case for felony cases and need not be requested. Williams v. State, 5D2024-0093 (7/12/24)

https://5dca.flcourts.gov/content/download/2437140/opinion/Opinion_2024-0093.pdf

MURDER FOR HIRE-JURY INSTRUCTION: The federal offense of murder for hire, which requires "intent that a murder be committed in violation of the laws of any State," does not require that the jury be instructed on excusable or justifiable homicide when neither is supported by evidence. There is no need to prove an actual state law crime as an essential element of the federal murder for trial charge. The gravamen of a federal murder-for-hire prosecution is the violation of federal law, not state law. USA v. Buselli, No. 23-10272 (11th Cir. 7/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310272.pdf

RULES-APPELLATE-AMENDMENT: Orders in death penalty postconviction proceedings must be served on the judge who issued the order to be reviewed, rather than a copy of the petition simply being furnished to the judge. In Re: Amendments to Florida Rules of Appellate Procedure 9.142 and 9.210, No. SC2024-0750 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437091/opinion/Opinion_SC2024-0750.pdf

RULES-AMENDMENT-APPELLATE: Rule amended to add a limit of 20,000 words to the 75-page limitation for initial and answer briefs and a limit of 6,500 words to the 25-page limitation for reply briefs. In Re: Amendments to Florida Rules of Appellate Procedure 9.142 and 9.210, No. SC2024-0750 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437091/opinion/Opinion_SC2024-0750.pdf

DEATH PENALTY-MITIGATION: The nonstatutory mitigator of "early signs of dementia" implies progressive dementia. Static dementia may properly be rejected as a mitigating factor. Cox v. State, No. SC2022-1553 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437072/opinion/Opinion_SC2022-1553.pdf

DEATH PENALTY-ARGUMENT: A prosecutor's argument that recommending death would be the easy thing to do, if error, is not fundamental. Executing certain defendants with brain damage does not violate the Eighth Amendment. Cox v. State, No. SC2022-1553 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437072/opinion/Opinion_SC2022-1553.pdf

DEATH PENALTY: Florida's death penalty scheme does not risk arbitrary and capricious application of the death penalty in violation of the Eighth and Fourteenth Amendments. Cox v. State, No. SC2022-1553 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437072/opinion/Opinion_SC2022-1553.pdf

DEATH PENALTY: The death penalty does not categorically violate evolving standards of human decency under the Eighth Amendment. Cox v. State, No. SC2022-1553 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437072/opinion/Opinion_SC2022-1553.pdf

EVIDENCE-INTERROGATION: A jury may hear an interrogating detective's statements about a crime when they provoke a relevant response from the defendant being questioned. Questions during interrogation highlighting contradictions in the Defendant's version are admissible. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

APPEAL-PRESERVED ISSUE: Where State made sure that witness (who had testified in death penalty phase that Defendant had not been abused as a child) "was aware of the risk of criminal liability if he elected to change his earlier sworn testimony," Defendant may not raise on appeal the claim that the threat of perjury for recanting the earlier testimony violated the Fourteenth or Eighth Amendments To be preserved for appeal, the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal. Defendant's motion for new trial never mentioned the Eighth and Fourteenth Amendments or the "threat" of perjury. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

DEATH PENALTY-MITIGATOR-"IMPAIRED CAPACITY": Court did not err in assigning little weight to Defendant's impairment of his ability to conform his conduct to the requirements of the law because of his lack of prior criminal history and his years of military service and work at various jobs. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

DEATH PENALTY-MITIGATOR-"NO SIGNIFICANT HISTORY": A trial court may not factor a contemporaneous conviction for the other murder into the "no significant history" mitigator and give it only moderate weight. But error is harmless. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

EVIDENCE-OTHER CRIMES: Court did not abuse its discretion when it denied Defendant's mistrial motion after officer speculated that a $100 bill in Defendant's wallet was counterfeit. The spontaneous, non-responsive statement was objectionable, but in context was not "so prejudicial as to vitiate the entire trial. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

DICTA: Language in earlier cases that irrelevant evidence of a crime not charged is "presumed harmful error" is dicta. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

PRESERVED ISSUE-MISLEADING ARGUMENT: State's closing argument that Defendant failed to prove diminished capacity ("But you have not heard a mental health defense. You have not heard insanity. There's been no doctor who's. . .told you that he was insane...") Is misleading because diminished capacity is not a viable defense. But the issue was not preserved and is not fundamental error. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

VICTIM IMPACT: Court did not abuse its discretion by allowing the State to show a victim impact video of the child victim that included the voice of his mother, the other victim. Florida's statutory scheme for victim impact evidence is not facially unconstitutional. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

DEATH PENALTY-COMPARATIVE PROPORTIONALITY: Comparative proportionality review is not mandated by the Eighth Amendment. Johnson v. State, SC2023-0055 (7/11/24)

https://supremecourt.flcourts.gov/content/download/2437080/opinion/Opinion_SC2023-0055.pdf

EIGHTH AMENDMENT-DELIBERATE INDIFFERENCE: The Cruel and Unusual Punishments Clause prohibits government officials from exhibiting deliberate indifference to the serious medical needs of prisoners. A deliberate-indifference plaintiff must prove that the defendant acted with subjective recklessness, *i.e.* that the defendant/prison official actually knew of a substantial risk of serious harm, not just that he should have known. Plaintiff must show that the defendant was subjectively aware that his own conduct put the plaintiff at substantial risk of serious harm—with the caveat that, in any event, a defendant who responds reasonably to a risk, even a known risk, cannot be found liable under the Eighth Amendment. Wade v. McDade, No. 21-14275 (11th Cir. 7/10/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202114275.enb.pdf

MEA CULPA: "We lost our way—and bollixed our caselaw—by straying from Farmer. [W]e should scrap our confusing negligence-based formulations—whether 'more than mere' or 'more than gross'— in favor of a

return to Farmer's criminal-recklessness benchmark." Wade v. McDade, No. 21-14275 (11th Cir. 7/10/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202114275.enb.pdf

COMPETENCY: Defense counsel, when raising concerns about a defendant's competency, must be conscientious in bringing an issue of competency before the trial court and preserving the issue for appeal. Awolowo v. State, 1D2022-2062 (7/10/24)

https://1dca.flcourts.gov/content/download/2437043/opinion/Opinion_2022-2062.pdf

COMPETENCY: A trial court's decision to order a psychological evaluation does not create a constitutional entitlement to a competency hearing, regardless of whether the information available to the trial court met the evidentiary threshold for invoking the R. 3.210 competency procedures in the first place. Failure to hold a competency hearing in such circumstances is not fundamental error. Question certified. Awolowo v. State, 1D2022-2062 (7/10/24)

https://1dca.flcourts.gov/content/download/2437043/opinion/Opinion_2022-2062.pdf

COMPETENCY: A motion for competency motion stating, "The undersigned Counsel has a good faith belief that the Defendant suffers from mental illness or disability and as a result he/she may be incompetent to proceed" is legally insufficient. Awolowo v. State, 1D2022-2062 (7/10/24)

https://1dca.flcourts.gov/content/download/2437043/opinion/Opinion_2022-2062.pdf

COSTS: $2 cost under §318.18(11)(d) may not be imposed for a non-traffic infraction. Farris v. State, 1D2022-2360 (1/10/24)

https://1dca.flcourts.gov/content/download/2437003/opinion/Opinion_2022-2360.pdf

COSTS PER COUNT: §938.05 allows imposition of court costs per case, not per count. Court may not impose a $100 misdemeanor cost and a $225 felony cost under that provision. Farris v. State, 1D2022-2360 (1/10/24)

https://1dca.flcourts.gov/content/download/2437003/opinion/Opinion_2022-2360.pdf

COSTS: Court my not impose a $201 domestic violence trust fund cost and a $151 rape crisis fund cost for armed kidnapping because neither of those costs are authorized for that crime. Smith v. State, 1D2023-0626 (7/10/24)

https://1dca.flcourts.gov/content/download/2437026/opinion/Opinion_2023-0626.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel was ineffective. Court attaching only excerpts of trial testimony it deemed sufficient to overcome the prejudice prong is insufficient where other relevant portions of the trial and suppression hearing transcripts are omitted. Thomason v. State, 1D2023-1339 (7/10/24)

https://1dca.flcourts.gov/content/download/2437028/opinion/Opinion_2023-1339.pdf

RESTITUTION: Where Defendant was charged with dealing in stolen property (jewelry), not with burglary or theft, the $2.500 taken from Victim's jug should not have been included in the restitution order. "[N]o mention of the $2,500 in cash contained in the stolen jug appears in the affidavits or the information, and it does not appear in the record at all until the restitution hearing itself." Error was fundamental. Franklin v. State, 2D2023-0710 (7/10/24)

https://2dca.flcourts.gov/content/download/2436951/opinion/Opinion_2023-0710.pdf

RESTITUTION: Victim's testimony regarding the amount of cash that was taken is sufficient to support a restitution award. It is not speculative. Franklin v. State, 2D2023-0710 (7/10/24)

https://2dca.flcourts.gov/content/download/2436951/opinion/Opinion_2023-0710.pdf

RESTITUTION-DOUBLE JEOPARDY: Where at the sentencing hearing State said there was no restitution, Double Jeopardy precludes the court from ordering restitution days later. Once the court has entered an order setting the amount of restitution, jeopardy attaches, notwithstanding that its entry was the result of faulty information. "It is clear from the record that Lopez's sentence was not incomplete. The trial court inquired about restitution, the State effectively waived it, and the court imposed Lopez's sentence without further addressing the issue." Lopez v. State, 2D2023-0809 (7/10/24)

https://2dca.flcourts.gov/content/download/2436952/opinion/Opinion_2023-0809.pdf

POSTCONVICTION RELIEF-APPEAL: After an evidentiary hearing on a claim of ineffective assistance of counsel, the deficiency and prejudice prongs as are reviewed as mixed questions of law and fact subject to a de novo review standard but the trial court's factual findings are to be given deference. Fernandez v. State, 3D22-0594 (7/10/24)

https://3dca.flcourts.gov/content/download/2436990/opinion/Opinion_2022-0594.pdf

POSTCONVICTION RELIEF: Since no evidentiary hearing is allowed under R. 3.800(a), a claim of error that the petitioner can establish only by relying on facts that are not evident on the face of the record is a claim that cannot be adjudicated under that rule provision. Jules v. State, 3D23-0605 (7/10/24)

https://3dca.flcourts.gov/content/download/2437001/opinion/Opinion_2023-0605.pdf

DOUBLE JEOPARDY: Modification of a sentence after it has begun to be served does not violate double jeopardy where the defendant agreed to the modification. Jules v. State, 3D23-0605 (7/10/24)

https://3dca.flcourts.gov/content/download/2437001/opinion/Opinion_2023-0605.pdf

VOP: A probationer may not validly invoke a Fifth Amendment privilege to refuse to answer questions at a probation violation hearing regarding non-criminal conduct alleged to constitute the violation of probation, and the trial court may infer a probationer's silence, or refusal to answer questions, as evidence of noncompliance with the terms of his probation. Defendant was

properly compelled to testify about his absconsion; he was not questioned about the attempted homicide allegation. Simmons v. State, 3D23-0666 (7/10/24)

https://3dca.flcourts.gov/content/download/2437018/opinion/Opinion_2023-0666.pdf

APPEAL-PRESERVED ISSUE: Where a defendant fails to contemporaneously object to the written revocation order or fails to file a motion to correct sentence, the order will not be reversed on appeal (absent fundamental error) but is subject to an appropriately filed postconviction motion. Simmons v. State, 3D23-0666 (7/10/24)

https://3dca.flcourts.gov/content/download/2437018/opinion/Opinion_2023-0666.pdf

POSTCONVICTION RELIEF: In determining whether a reasonable probability exist that the defendant would have insisted on going to trial, a court should consider the totality of the circumstances surrounding the plea, including factors such as whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible sentence the defendant faced at trial. State v. Beliziare, 3D23-117 (7/10/24)

https://3dca.flcourts.gov/content/download/2437002/opinion/Opinion_2023-1717.pdf

DNA TESTING: In order to be entitled to postconviction DNA testing, a defendant's motion must 1) include a description of the physical evidence containing DNA to be tested and, if known, the present location or last known

location of the evidence and how it originally was obtained, 2) allege that the evidence was not previously tested or that the results of such testing were inconclusive and 3) explain how the DNA testing will exonerate the defendant or mitigate the sentence. Toirac-Aguilera v. State, 3D24-0857 (7/11/24)

https://3dca.flcourts.gov/content/download/2437007/opinion/Opinion_2024-0857.pdf

MISTRIAL-OPENING STATEMENT: Defendant is not entitled to mistrial based on State's assertion in opening statement that Defendant's B.A.L. was .17 based on retrograde extrapolation where the testimony of the State's expert witness was less conclusive and more nuanced. The statement was not so prejudicial as to vitiate the entire trial. Surit-Garcias v. State, 4D2022-3368 (7/10/24)

https://4dca.flcourts.gov/content/download/2437012/opinion/Opinion_2022-3368.pdf

VICTIM INJURY-VAGUENESS: The Portions of the Criminal Punishment Code describing victim injury as "Severe," "Moderate," and "Slight" are not unconstitutionally vague. To be void for vagueness, a statute must be impermissibly vague in all of its applications. Surit-Garcias v. State, 4D2022-3368 (7/10/24)

https://4dca.flcourts.gov/content/download/2437012/opinion/Opinion_2022-3368.pdf

VICTIM INJURY-RULE OF LENITY: "Severe," "moderate," and "slight" victim injury are not defined by the Criminal Punishment Code, but are defined by Merriam-Webster's dictionaries. Any uncertainty as to the application of these

terms is resolved in favor of the defendant. Surit-Garcias v. State, 4D2022-3368 (7/10/24)

https://4dca.flcourts.gov/content/download/2437012/opinion/Opinion_2022-3368.pdf

SENTENCE STACKING-FIRST STEP ACT: The First Step Act, §403(a), prohibits district courts from engaging in sentence "stacking" (for a §924(c) conviction, 5-year and 20-year consecutive mandatory sentences), but §403(b) provides that the modified stacking rule does not apply if a sentence for the offense had already been imposed as of the date of enactment of the First Step Act. A criminal sentence that was pronounced before the First Step Act's effective date but was later vacated counts as "a sentence" that "has … been imposed." "We hold that. . . a sentence that was pronounced pre-Act but thereafter vacated does qualify as "a sentence" that "has … been imposed" for § 403(b) purposes. If that's not the result that Congress intended, it is of course free to amend the statute. We are not." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

STATUTORY INTERPRETATION-"SENTENCE": A "sentence" is the judgment that a court formally pronounces after finding a criminal defendant guilty." That "definition fits Hernandez's original sentence to a T. . .Had Congress wanted to specify the sorts of 'sentence[s]' to which §403(b) applies or otherwise limit that term's reach, it could have done so in any number of ways—for instance, by referring to 'a final sentence' or 'a valid sentence'" or perhaps even to 'the sentence.' Conspicuously, it did none of those things." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

STATUTORY INTERPRETATION-"HAS NOT BEEN": "Next up, 'has not been.' For reasons we'll explain, . . .that phrase is best read to refer to a completed act. . .Here, though, Hernandez and the government . . .insist that Congress's use of the phrase "has not been" rather than "had not been". . .indicates that it meant to refer to a sentence that 'continues up to the present'—i.e., one that has continuing validity. . .We disagree." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

EVANESCING: "The construction pressed by Hernandez and the government envisions that a criminal sentence can pass into and out of existence. On that view, the target is always moving—and always capable of evanescing. But that's tough to square with the concrete, point-in-time benchmark denoted by §403(b)'s 'date of enactment" language, in that it provides no way of knowing in real time, as of the 'date of enactment,' whether or not 'a sentence has … been imposed.'" USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

DEFINITION-"IMPOSED": When used in reference to a criminal sentence, the term "imposed" in §403(b) refers to the historical fact of pronouncement. "[Precedent dictates that a sentence is 'imposed,' somewhat unsurprisingly, when the district court imposes it. . .Needless to say, the pronouncement of a sentence is something that occurs at a particular point in time and space: A district judge enters a courtroom, faces the defendant and his lawyer, and orally delivers remarks that constitute the criminal sentence. That oral pronouncement. . .is a historical fact. For better or worse, it happened, and nothing—not even the sentence's later vacatur—can erase the historical record." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

VACATUR (J. ROSENBAUM, DISSENTING): Sentence vacatur happens. When it does, we have been very clear about any effect the original sentence might have: zero, zilch, nada. . .[A]s far as the law recognizes, upon sentence vacatur, no sentence has ever been imposed. . .So the question is, for purposes of §403(b), has 'a sentence' been "imposed" if it is later vacated? The answer is no. And no amount of textual parsing can change that." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

STATUTORY INTERPRETATION-"SENTENCE" (J. ROSENBAUM, DISSENTING): "Everyone understands that 'touchdowns' that are called back legally don't count. And that's precisely how we also understand 'sentences' that have been vacated: they don't count." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

TEXTUALISM (J. ROSENBAUM, DISSENTING): "[T]he Majority Opinion never explains why our 'plain and ordinary meaning' understanding of 'sentence' doesn't apply to the First Step Act. Instead, it woodenly parrots Black's Law Dictionary's definition of 'sentence' and then assumes that definition includes a vacated sentence, even though we've said that vacated sentences are nullities. The Majority Opinion never engages with our jurisprudence that vacated sentences are void from the outset and wipe the slate clean. . . Textualism is not so one-dimensional." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

BILLY PRESTON (J. ROSENBAUM, DISSENTING): "And 'the juxtaposition of [nothing] alongside [nothing] and [nothing]' is nothing." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

SENTENCE STACKING-FIRST STEP ACT (J. ROSENBAUM, DISSENTING): "The question before this Court is whether Section 401 applies where a prior sentence has been vacated and the case remanded for plenary resentencing. The answer, unequivocally, is yes. . .§403(a)'s non-stacking rule should be applied at all sentencings that occur after enactment of the First Step Act—regardless of whether those are initial sentencings or resentencings because a pre-Act sentencing was vacated. Any other reading abandons the Act's text, purpose, and common sense." USA v. Hernandez, No. 22-13311 (11th Cir. 7/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213311.pdf

STATEMENT OF DEFENDANT: Where during questioning Defendant asked for an attorney, but then said, "Hold on, hold on. If I get an attorney do I gotta wait?" followed by "I don't want an attorney," his statements are admissible. When a suspect unequivocally invokes the Miranda right to counsel, the officers must immediately stop questioning. But if the suspect reinitiates contact with the police; and then knowingly and voluntarily waives his earlier-invoked Miranda rights, interrogation can proceed. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

STATEMENT OF DEFENDANT: Miranda warnings are not required unless the defendant is both in custody and under interrogation. Entirely spontaneous and unprompted statements are not the product of interrogation. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

STATEMENT OF DEFENDANT-VOLUNTARINESS: When the voluntariness of a confession is in dispute, it is the State's burden to prove voluntariness by a preponderance of the evidence. Interrogation over twelve hours is not coercive where he was fed, was allowed to take at least three naps totalling 3.5 hours, with at least two bathroom breaks. "While this Court found it unsettling that Defendant urinated twice in his McDonald's cup, he was in fact afforded bathroom breaks." Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

STATEMENT OF DEFENDANT-RIGHT TO COUNSEL: Executing a "Notice of Defendant's Invocation of His/Her Right to Remain Silent and Right to Counsel" at first appearance does not prevent police questioning him anout a different crime. A claim of rights form is ineffective to invoke a suspect's Miranda right to counsel if signed before custodial interrogation has begun or is imminent. Sixth Amendment right to counsel is offense-specific. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

EVIDENCE: Notebooks containing information about Defendant's gang membership is admissible to support the racketeering and gang-related charges in the indictment. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

EXPERT INTERROGATION: Court did not abuse its discretion in excluding expert testimony about false confessions and related inherent problems with the "Reid Technique" where the expert was unprepared to testify reliably to the interrogation techniques—including any safeguards against false confessions—used in this case. "[W]e need not decide whether expert testimony about the phenomenon or prevalence of false confessions could ever be admissible." Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

DEATH PENALTY: Proof of contemporaneous and prior violent felony convictions amply satisfied the Sixth Amendment] requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

DEATH PENALTY: Under the law of principals, it is not necessary for the State to prove that Defendant was the actual shooter for him to be eligible for the death penalty. Herard v. State, No. SC2015-0391(7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

JURY DISMISSAL-ATTORNEY AVAILABILITY: Court properly dismissed entire panel mid-jury selection when penalty phase co-counsel was called away to deal with a death warrant in another case. Herard v. State, No. SC2015-0391 (7/3/24)

https://supremecourt.flcourts.gov/content/download/2436822/opinion/Opinion_SC2015-0391.pdf

AMENDMENT-RULES-BAR: No member of the Bar is excused from having an e-mail address and internet services. In Re: Amendments to Rules Regulating the Florida Bar – Rule 1-3.3, No. SC2024-0493 (7/3/24)

https://supremecourt.flcourts.gov/content/download/2436833/opinion/Opinion_SC2024-0493.pdf

ANDERS BRIEF: An Anders brief is deficient if it fails to refer to every legal point in the record that might support an appeal. An Anders brief is not compliant simply because it states an appeal would be frivolous. The brief may not say that the appellate Court "should determine whether the trial court erred when it denied Appellant's motion for judgment of acquittal." "This Court has an obligation to independently review the record, . . . but only after appointed counsel has complied with her obligations under Anders, its progeny, and rule 9.140(g)(2)(A)." Blackmon v. State, 1D2022-2943 (7/3/24)

https://1dca.flcourts.gov/content/download/2436747/opinion/Opinion_2022-2943.pdf

COSTS: Court may not impose cost of $151 pursuant to §938.085 because

first-degree murder is not one of the enumerated qualifying offenses. Burns v. State, 1D2023-0257 (7/3/24)

https://1dca.flcourts.gov/content/download/2436760/opinion/Opinion_2023-0257.pdf

SENTENCING-DOWNWARD DEPARTURE: Absent a valid reason for departure a trial court should impose—at a minimum—the LPS. Neither testimony that Defendant is a model citizen nor about his harsh childhood, the trauma of his father's suicide, and the abuse he suffered from his biological family support a downward departure. State v. Gibson, 1D2023-0617 (7/3/24)

https://1dca.flcourts.gov/content/download/2436759/opinion/Opinion_2023-0617.pdf

WRIT OF CERTIORARI: Unlike other writs, certiorari must be filed within 30 days. A motion for rehearing does not toll the deadline. Nor is a motion for rehearing of a non-final order a tolling motion under the appellate rules. Martin v. State, 1D2024-1609 (7/3/24)

https://1dca.flcourts.gov/content/download/2436810/opinion/Opinion_2024-1609.pdf

HEARSAY-EXCITED UTTERANCE: The essential elements necessary to fall within the excited utterance exception are that (1) there must be an event startling enough to cause nervous excitement; (2) the statement must have been made before there was time to contrive or misrepresent; and (3) the statement must be made while the person is under the stress of excitement caused by the event. Arcamone v. State, 3D23-1836 (7/3/24)

https://3dca.flcourts.gov/content/download/2436762/opinion/Opinion_2022-

1836.pdf

COST OF SUPERVISION: A monthly probation supervision fee in excess of §948.09(1)(b)'s forty-dollar fee without any accompanying oral pronouncement explaining the deviation is unlawful. Arcamone v. State, 3D23-1836 (7/3/24)

https://3dca.flcourts.gov/content/download/2436762/opinion/Opinion_2022-1836.pdf

POST CONVICTION RELIEF-ILLEGAL SENTENCE: A claim that the charging document did not allege the facts necessary to support the enhanced sentence (actual possession of a firearm) is not cognizable in a rule 3.800(a) motion. Louis v. State, 3D23-2021 (7/3/24)

https://3dca.flcourts.gov/content/download/2436753/opinion/Opinion_2023-2021.pdf

POST CONVICTION RELIEF: R. 3.800(a) is designed for judges to correct an improperly imposed sentence. It is not intended to remedy later errors by the agencies charged with administering the sentence imposed. If the agency incorrectly administers a sentence legally imposed so that the prisoner spends more time in prison than the sentence provides, his remedy is within the agency first and, if not corrected by the agency, on judicial review by extraordinary writ." Smith v. State, 3D24-0171 (7/3/240

https://3dca.flcourts.gov/content/download/2436754/opinion/Opinion_2024-0171.pdf

MOTION TO DISMISS: On a R. 3.190(c)(4) motion to dismiss, the state is not only entitled to receive the most favorable construction of the evidence but

also to have all inferences resolved against the defendant. In considering whether driving at the speed at issue constitutes recklessness, each case turns on its specific facts. A vehicle travelling 100 miles per hour on an interstate highway does not pose the same level of wanton conduct as does a vehicle travelling ninety miles an hour on a street with various side streets, driveways entering the street, and overall additional congestion. The rate of speed of a vehicle can be firmly shown by the evidence to be so excessive under the circumstances that to travel that fast under the conditions is by itself a reckless disregard for human life or the safety of persons exposed to the speed. Jackson v. State, 4D2023-1567 (7/3/24)

https://4dca.flcourts.gov/content/download/2436788/opinion/Opinion_2023-1567.pdf

PRESIDENTIAL IMMUNITY: "The President is not above the law. But. . ." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY: President has absolute immunity from criminal prosecution for actions performed within the outer perimeter of his official responsibilities. The nature of Presidential power requires that a former President have some immunity from criminal prosecution for official acts during his tenure in office. In the exercise of his core constitutional powers, this immunity must be absolute. As for his remaining official actions, he is also entitled to immunity. "[W]e need not and do not decide whether that immunity must be absolute, or instead whether a presumptive immunity is sufficient." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY: In dividing official from unofficial conduct, courts may not inquire into the President's motives. Nor may courts deem an action unofficial merely because it violates a generally applicable law. Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY: Seeking to overturn the legitimate results of a presidential election, conspiring to obstruct the congressional counting of electoral votes, and attempting to leverage the Justice Department's power and authority to convince certain States to replace their legitimate electors with fraudulent slates of electors fall within the scope of presidential immunity. When a president attempts to pressure the Vice President to throw out legitimate electoral votes, he is at least presumptively immune from prosecution. Exhorting supporters to storm the Capitol falls within the President's power of the "bully pulpit." "[M]ost of a President's public communications are likely to fall comfortably within the outer perimeter of his official responsibilities." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY: Presidential immunity extends to all official discussions between the President and his Attorney General. Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. THOMAS, CONCURRING): "In this case, there has been much discussion about ensuring that a President 'is not above

the law.' But. . .the President's immunity from prosecution for his official acts is the law." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. BARRETT, CONCURRING): "Properly conceived, the President's constitutional protection from prosecution is narrow. . .Though I agree that a President cannot be held criminally liable for conduct within his 'conclusive and preclusive. authority and closely related acts, . . .the Constitution does not vest every exercise of executive power in the President's sole discretion. . .Congress. . .may sometimes use [its] authority to regulate the President's official conduct, including by criminal statute. Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. BARRETT, CONCURRING): "[T]he indictment alleges that the President 'asked the Arizona House Speaker to call the legislature into session to hold a hearing' about election fraud claims. . .The President has no authority over state legislatures or their leadership, so it is hard to see how prosecuting him for crimes committed when dealing with the Arizona House Speaker would unconstitutionally intrude on executive power." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR): Today's decision. . .makes a mockery of the principle, foundational to our Constitution and system of Government, that no man is above the law. . . Because our Constitution does

not shield a former President from answering for criminal and treasonous acts, I dissent." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "The Court now confronts a question it has never had to answer in the Nation's history: Whether a former President enjoys immunity from federal criminal prosecution. The majority thinks he should, and so it invents an atextual, ahistorical, and unjustifiable immunity that puts the President above the law.". . .Whether described as presumptive or absolute, under the majority's rule, a President's use of any official power for any purpose, even the most corrupt, is immune from prosecution. That is just as bad as it sounds, and it is baseless." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "[T]his majority's project will have disastrous consequences for the Presidency and for our democracy. . .The main takeaway of today's decision is that all of a President's official acts, defined without regard to motive or intent, are entitled to immunity that is 'at least. . . presumptive,' and quite possibly 'absolute.' . . .Whenever the President wields the enormous power of his office, the majority says, the criminal law (at least presumptively) cannot touch him. . .No matter how you look at it, the majority's official-acts immunity is utterly indefensible." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY-TEXTUALISM (J. SOTOMAYOR, DISSENTING): "The majority calls for a 'careful assessment of the scope of Presidential power under the Constitution.'. . . For the majority, that 'careful assessment' does not involve the Constitution's text. I would start there. The Constitution's text contains no provision for immunity from criminal prosecution for former Presidents." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "Alexander Hamilton wrote that former Presidents would be 'liable to prosecution and punishment in the ordinary course of law. . .For Hamilton, that was an important distinction between 'the king of Great Britain,' who was 'sacred and inviolable,' and the 'President of the United States,' who 'would be amenable to personal punishment and disgrace.'" Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "In sum, the majority today endorses an expansive vision of Presidential immunity that was never recognized by the Founders, any sitting President, the Executive Branch, or even President Trump's lawyers, until now. Settled understandings of the Constitution are of little use to the majority in this case, and so it ignores them." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "There is a twisted irony in saying, as the majority does, that the person charged with 'tak[ing] Care that the Laws be faithfully executed' can break them with impunity." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "Not content simply to invent an expansive criminal immunity for former Presidents, the majority goes a dramatic and unprecedented step further. It says that acts for which the President is immune must be redacted from the narrative of even wholly private crimes committed while in office. They must play no role in proceedings regarding private criminal acts. Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): Even though the majority's immunity analysis purports to leave unofficial acts open to prosecution, its draconian approach to official-acts evidence deprives these prosecutions of any teeth. If the former President cannot be held criminally liable for his official acts, those acts should still be admissible to prove knowledge or intent in criminal prosecutions of unofficial acts.". . .Imagine a President states in an official speech that he intends to stop a political rival from passing legislation that he opposes, no matter what it takes to do so (official act). He then hires a private hitman to murder that political rival (unofficial act). Under the majority's rule, the murder indictment could include no allegation of the President's public admission of premeditated intent to support the mens rea of murder." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): Today's decision to grant former Presidents immunity for their official acts is deeply wrong. . . First, the majority declares all of the conduct involving the Justice Department and the Vice President to be official conduct, . . .Second, the majority designates certain conduct immune while refusing to recognize anything as prosecutable. . .Remarkably, the majority goes further and declines to deny immunity even for the allegations that Trump organized fraudulent elector slates, pressured States to subvert the legitimate election results, and exploited violence at the Capitol to influence the certification proceedings." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "The Court effectively creates a law-free zone around the President, upsetting the status quo that has existed since the Founding. This new official-acts immunity now 'lies about like a loaded weapon' for any President that wishes to place his own interests, his own political survival, or his own financial gain, above the interests of the Nation. . .Orders the Navy's Seal Team 6 to assassinate a political rival? Immune. Organizes a military coup to hold onto power? Immune. Takes a bribe in exchange for a pardon? Immune. Immune, immune, immune. Let the President violate the law, let him exploit the trappings of his office for personal gain, let him use his official power for evil ends. . .That is the majority's message today." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. SOTOMAYOR, DISSENTING): "With fear for our democracy, I dissent." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

PRESIDENTIAL IMMUNITY (J. JACKSON, DISSENTING): "[T]he seeds of absolute power for Presidents have been planted. And, without a doubt, absolute power corrupts absolutely. . .I worry that, after today's ruling, our Nation will reap what this Court has sown." Trump v. United States, No. 23–939 (U.S. S. Ct. 7/1/24)

https://www.supremecourt.gov/opinions/23pdf/23-939_e2pg.pdf

JUNE 2024

HOMELESSNESS-CRUEL AND UNUSUAL PUNISHMENT: A public camping ordinance outlawing using streets, sidewalks, parks, or public places for camping does not violate the Cruel and Unusual Punishments Clause. The Cruel and Unusual Punishments Clause focuses on the question what method or kind of punishment a government may impose after a criminal conviction, not on whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense. None of the sanctions qualifies as cruel because none is designed to superadd terror, pain, or disgrace, nor are they unusual. City of Grants Pass, Oregon v. Johnson, No. 23–175 (U.S. S.Ct. 6/28/24)

https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

EIGHTH AMENDMENT (J. SOTOMAYOR, DISSENTING): "Sleep is a biological necessity, not a crime. For some people, sleeping outside is their only option. The City of Grants Pass jails and fines those people for sleeping anywhere in public at any time, including in their cars, if they use as little as a blanket to keep warm or a rolled-up shirt as a pillow. For people with no access to shelter, that punishes them for being homeless. That is

unconscionable and unconstitutional. Punishing people for their status is 'cruel and unusual' under the Eighth Amendment." City of Grants Pass, Oregon v. Johnson, No. 23–175 (U.S. S.Ct. 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

EIGHTH AMENDMENT (J. SOTOMAYOR, DISSENTING): "Under the majority's logic, cities cannot criminalize the status of being homeless, but they can criminalize the conduct that defines that status. The Constitution cannot be evaded by such formalistic distinctions." City of Grants Pass, Oregon v. Johnson, No. 23–175 (U.S. S.Ct. 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

EIGHTH AMENDMENT (J. SOTOMAYOR, DISSENTING): "The majority countenances the criminalization of status as long as the City tacks on an essential bodily function—blinking, sleeping, eating, or breathing. That is just another way to ban the person." City of Grants Pass, Oregon v. Johnson, No. 23–175 (U.S. S.Ct. 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

OBSTRUCTION OF OFFICIAL PROCEEDING: 18 U. S. C. §§1512(c)(1) and (2), which impose criminal liability on anyone who corruptly alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding and on anyone who "otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so" does not prohibit rioters from storming the Capitol to prevent the certification of the presidential election. Fischer v. United States, No. 23–5572 (U.S. S.Ct., 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-5572_l6hn.pdf

OBSTRUCTION OF OFFICIAL PROCEEDING: To prove a violation of Section 1512(c)(2), the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or other things used in the proceeding, or attempted to do

so." January 6th rioter cannot be convicted of violating §1512(c)(2). Fischer v. United States, No. 23–5572 (U.S. S.Ct., 6/26/24) https://www.supremecourt.gov/opinions/23pdf/23-5572_l6hn.pdf

DEFINITION-"OTHERWISE": The "otherwise" clause should be read in light of the limited reach of the specific provision that precedes it. "[W]e should not give this 'otherwise' provision the broadest possible meaning. . . Although the Government's all-encompassing interpretation may be literally permissible, it defies the most plausible understanding of why (c)(1) and (c)(2) are conjoined, and it renders an unnerving amount of statutory text mere surplusage." Fischer v. United States, No. 23–5572 (U.S. S.Ct., 6/26/24) https://www.supremecourt.gov/opinions/23pdf/23-5572_l6hn.pdf

OBSTRUCTION OF OFFICIAL PROCEEDING (J. BARRETT, DISSENTING): "Fischer allegedly joined a mob of rioters that breached the Capitol on January 6, 2021. At the time, Congress was meeting in a joint session to certify the Electoral College results. . .The Court does not dispute that Congress's joint session qualifies as an 'official proceeding'; that rioters delayed the proceeding; or even that Fischer's alleged conduct. . .was part of a successful effort to forcibly halt the certification of the election results. Given these premises, the case that Fischer can be tried for 'obstructing, influencing, or impeding an official proceeding' seems open and shut. So why does the Court hold otherwise? Because it simply cannot believe that Congress meant what it said. . .The Court. . .does textual backflips to find some way—any way—to narrow the reach of subsection (c)(2)." Fischer v. United States, No. 23–5572 (U.S. S.Ct., 6/26/24) https://www.supremecourt.gov/opinions/23pdf/23-5572_l6hn.pdf

STATUTORY INTERPRETATION (J. BARRETT, DISSENTING): The noscitur a sociis and ejusdem generis canons "are valuable tools. But applying either to (c)(2) is like using a hammer to pound in a screw—it looks like it might work, but using it botches the job." Fischer v. United States, No. 23–5572 (U.S. S.Ct., 6/26/24)

https://www.supremecourt.gov/opinions/23pdf/23-5572_l6hn.pdf

CHEVRON RULE: The Chevron doctrine–that courts must defer to an agency's interpretation of statutes administered by it if it is based on a permissible construction of the statute–is abolished. Courts, not agencies, decide legal questions by applying their own judgment, even those involving ambiguous laws, and are directed to set aside any action inconsistent with the law as they interpret it. Agency interpretations of the law are not entitled to deference. Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STATUTORY INTERPRETATION: "Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STATUTORY INTERPRETATION: "It. . .makes no sense to speak of a 'permissible' interpretation that is not the one the court. . .concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STARE DECISIS: "The only question left is whether stare decisis, the doctrine governing judicial adherence to precedent, requires us to persist in the Chevron project. It does not. Stare decisis is not an 'inexorable command.'" Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

CHEVRON: "Because Chevron in its original, two-step form was so indeterminate and sweeping, we have instead been forced to clarify the doctrine again and again. Our attempts to do so have only added to Chevron's

unworkability, transforming the original two-step into a dizzying breakdance." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STARE DECISIS (J. GORSUCH, CONCURRING): "Today, the phrase 'common law judge' may call to mind a judicial titan of the past who brilliantly devised new legal rules on his own. The phrase 'stare decisis' might conjure up a sense that judges who come later in time are strictly bound to follow the work of their predecessors. But neither of those intuitions fairly describes the traditional common-law understanding of the judge's role or the doctrine of stare decisis." Historical roots of stare decisis discussed. Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STARE DECISIS (J. GORSUCH, CONCURRING): "I see at least three lessons about the doctrine of stare decisis. . .Each concerns a form of judicial humility. First, a past decision. . .provides this Court no authority in future cases to depart from what the Constitution or laws of the United States ordain. . .Second, . . .[w]hile judicial decisions may not supersede or revise the Constitution or federal statutory law, they merit our 'respect as embodying the considered views of those who have come before.' . . .Third, it would be a mistake to read judicial opinions like statutes. . ." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STARE DECISIS (J. GORSUCH, CONCURRING): "Stare decisis's true lesson today is not that we are bound to respect Chevron's 'startling development,' but bound to inter it." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

CHEVRON (J. KAGAN, DISSENTING): The majority gives courts the power to make all manner of scientific and technical judgments. It gives courts the

power to make all manner of policy calls. It puts courts at the apex of the administrative process as to every conceivable subject. Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

CHEVRON (J. KAGAN, DISSENTING): Under Chevron, a court uses all its normal interpretive tools to determine whether Congress has spoken to an issue. If the court finds Congress has done so, that is the end of the matter. . . But if. . .Congress has left an ambiguity or gap, then a choice must be made. Who should give content to a statute when Congress's instructions have run out? Should it be a court? Or should it be the agency Congress has charged with administering the statute? The answer Chevron gives is that it should usually be the agency, within the bounds of reasonableness. That rule has formed the backdrop against which. . .all have operated for decades. . .It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds—to name a few, keeping air and water clean, food and drugs safe, and financial markets honest. And the rule is right. . .Today, the Court flips the script: It is now 'the courts (rather than the agency)' that will wield power when Congress has left an area of interpretive discretion. A rule of judicial humility gives way to a rule of judicial hubris." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

STARE DECISIS (J. KAGAN, DISSENTING): "Just my own defenses of stare decisis—my own dissents to this Court's reversals of settled law—by now fill a small volume." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

AMBIGUITY (J. KAGAN, DISSENTING): "There are ambiguity triggers all over the law. Somehow everyone seems to get by." Loper Bright Enterprises v. Raimondo, No. 22–451 (U.S. S.Ct., 6/28/24) https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

SENTENCING-DOWNWARD DEPARTURE: A trial court's decision whether to depart from the guidelines is a two-part process. First, the court must determine whether it can depart, i.e., whether there is a valid legal ground and adequate factual support for that ground. Second, the trial court further must determine whether departure is indeed the best sentencing option. The decision to depart is a judgment call within the sound discretion of the court. District courts of appeal have divided over their authority to review a trial court's discretionary decision to deny a downward-departure request; the issue is pending before the Florida Supreme Court. Nelson v. State, 5D2022-0703 (6/28/24)
https://5dca.flcourts.gov/content/download/2436563/opinion/Opinion_2022-0703.pdf

SENTENCING-CONSIDERATIONS-FUNDAMENTAL ERROR: Trial court's consideration of unsubstantiated allegations of misconduct in sentencing constitutes a due process violation. Where State at sentencing presented photos of firearms found in Defendant's home, alluded to unrelated homicides in the area and the Court stated that this factor was "what hurts you the most," the Court probably considered an improper factor ("We can think of few more direct ways to indicate that a factor motivated a sentence than to say. . .that the factor is what hurts the defendant the most."). But error is not fundamental because the sentence was at the bottom of the sentencing guidelines range. Nelson v. State, 5D2022-0703 (6/28/24)
https://5dca.flcourts.gov/content/download/2436563/opinion/Opinion_2022-0703.pdf

STAND YOUR GROUND: Trial court's initial failure to apply the correct standard in SYG hearing is cured by the jury's guilty verdict. State v. Boutiette, 5D2022-1598 (6/28/24)
https://5dca.flcourts.gov/content/download/2436568/opinion/Opinion_2022-1598.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: The smell of marijuana emanating from a vehicle continues to provide probable cause for a warrantless search of a vehicle. No recent case law has affirmatively held that marijuana odor alone is insufficient to establish probable cause. Hoehaver v. State, 5D2023-1188 (6/28/24)
https://5dca.flcourts.gov/content/download/2436573/opinion/Opinion_2023-1188.pdf

APPEAL: §924.051(3) precludes appellate review of unpreserved claims of ineffective assistance of trial counsel on direct appeal. Gary v. State, 6D23-2452 (6/28/24)
https://6dca.flcourts.gov/content/download/2436559/opinion/Opinion_2023-2452.pdf

BRIBERY: Federal bribery statute does not make it a crime for state and local officials to accept commonplace gratuities that may be given as a token of appreciation after the official act. A $13,000 check to a mayor is a gratuity. 18 U. S. C. §666 is a bribery statute and not a gratuities statute. §666 requires a corrupt state of mind and the intent to be influenced in the official act. Snyder v. United States, No. 23–108 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-108_8n5a.pdf

BRIBERY: "In sum, . . .[a] state or local official can violate §666 when he accepts an up-front payment for a future official act or agrees to a future reward for a future official act. . . But a state or local official does not violate §666 if the official has taken the official act before any reward is agreed to, much less given." Snyder v. United States, No. 23–108 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-108_8n5a.pdf

RULE OF LENITY (J. GORSUCH CONCURRING): "Lenity may sometimes, as it does today, go unnamed. It may be deployed under other guises, too. 'Fair notice' or 'fair warning" are especially familiar masks. . .But make no mistake: Whatever the label, lenity is what's at work behind today's decision,

just as it is in so many others. Rightly so. I am pleased to join." Snyder v. United States, No. 23–108 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-108_8n5a.pdf

BRIBERY (J. JACKSON, DISSENTING): "James Snyder, a former Indiana mayor, was convicted by a jury of violating §666 after he steered more than $1 million in city contracts to a local truck dealership, which turned around and cut him a $13,000 check. He asks us to decide whether the language of §666 criminalizes both bribes and gratuities, or just bribes. And he says the answer matters because bribes require an upfront agreement to take official actions for payment, and he never agreed beforehand to be paid the $13,000 from the dealership. Snyder's absurd and atextual reading of the statute is one only today's Court could love." Snyder v. United States, No. 23–108 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-108_8n5a.pdf

FREE SPEECH-STANDING: States and social media users lack standing to seek to enjoin government from pressuring or encouraging social media companies (Facebook, Twitter, and YouTube) from disseminating disinformation (COVID, election fraud propaganda). A federal court cannot redress injury that results from the independent action of some third party not before the court. Murthy v. Missouri, No. 23-411 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-411_3dq3.pdf

TRUTH-STANDING: "[T]he plaintiff cannot rest on 'mere allegations,' but must instead point to factual evidence. . .The primary weakness in the record of past restrictions is the lack of specific causation findings with respect to any discrete instance of content moderation. "[T]he plaintiffs. . .have not pointed to any past restrictions likely traceable to the Government defendants. . . These plaintiffs. . .are thus particularly ill suited to the task of establishing their standing." Murthy v. Missouri, No. 23-411 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-411_3dq3.pdf

STANDING-FREE SPEECH: "The plaintiffs, without any concrete link between their injuries and the defendants' conduct, ask us to conduct a review of the years-long communications between dozens of federal officials, across different agencies, with different social-media platforms, about different topics. This Court's standing doctrine prevents us from 'exercis[ing such] general legal oversight' of the other branches of Government." Murthy v. Missouri, No. 23-411 (U.S. S. Ct. 6/26/24)
https://www.supremecourt.gov/opinions/23pdf/23-411_3dq3.pdf

VERDICT-LEGAL INCONSISTENCY: Convictions for assault on two adults and child abuse (Defendant had shot into a home) are not legally inconsistent because the child abuse offenses are not dependent upon the jury's finding that Appellant shot into the home or committed aggravated assault with a firearm on either of the adults. A true inconsistent verdict requires more than just factual or logical inconsistency. Instead, in a "true" inconsistent verdict an acquittal on one count negates a necessary element for conviction on another count. Wodford v. State, 1D 2022-3949 (6/26/24)
https://1dca.flcourts.gov/content/download/2436406/opinion/Opinion_2022-3949.pdf

APPEAL: An issue is dispositive only if, regardless of whether the appellate court affirms or reverses the lower court's decision, there will be no trial of the case. Jackson v. State, 1D2023-0065 (6/26/24)
https://1dca.flcourts.gov/content/download/2436411/opinion/Opinion_2023-0065.pdf

APPEAL-PLEA WITHDRAWAL: An appeal following a plea should never be a substitute for a motion to withdraw a plea. If the record raises issues concerning the voluntary or intelligent character of the plea, that issue should first be presented to the trial court as a motion to withdraw that plea, and if the trial court denies the motion, then it would be subject to review on direct appeal. Jackson v. State, 1D2023-0065 (6/26/24)

https://1dca.flcourts.gov/content/download/2436411/opinion/Opinion_2023-0065.pdf

CONTINUANCE: Court does not abuse its discretion in denying a motion to continue the hearing for postconviction relief where a witness had not been personally subpoenaed to appear at the hearing. Williams v. State, 3D22-1753 (6/26/24)
https://3dca.flcourts.gov/content/download/2436454/opinion/Opinion_2022-1753.pdf

STATEMENTS OF DEFENDANT-MIRANDA: Where Defendant said, "I think I should have a lawyer," officers said "If at any point you think we're being mean to you or anything like that, then you can just tell us you don't want to talk to us anymore, okay?", and Defendant then asked, "[i]f I want a lawyer later on, can I get one?" and the interrogation continued, the confession is admissible. In context with his subsequent questions about getting a lawyer "later on," Defendant's "I think I should have a lawyer" statement constituted, at best, an equivocal statement. Police are not required to stop a custodial interrogation unless the suspect has made an unequivocal and unambiguous request for counsel. State v. Myers, 3D22-2019 (6/26/24)
https://3dca.flcourts.gov/content/download/2436460/opinion/Opinion_2022-2019.pdf

APPEAL-EVIDENCE-STATEMENT OF DEFENDANT: Appellate court's applies a less deferential standard to factual findings made by the trial court where the Appellate court has the video. When findings are based mainly on review of a videotape, the trial court has no superior vantage point from that of the appellate court. Whether Defendant made an unequivocal request to invoke his right to counsel is not a factual determination, credibility determination, weighing of the evidence, or the like. Trial court did not perform a fact-finding function, but rather a legal function. Review is de novo. State v. Myers, 3D22-2019 (6/26/24)

https://3dca.flcourts.gov/content/download/2436460/opinion/Opinion_2022-2019.pdf

ATTORNEY-NELSON: Whether a trial court conducted an adequate Nelson 's review for harmless error. Where Defendant proceeded to trial with his court-appointed counsel, and made no additional attempt to dismiss counsel or request self-representation, and there is no evidence in the record of any conflict or lack of communication during the trial. Any error in the Nelson inquiry is harmless. Wilson v. State, 3D23-0089 (6/26/24)
https://3dca.flcourts.gov/content/download/2436429/opinion/Opinion_2023-0089.pdf

EVIDENCE-INEXTRICABLY INTERTWINED: Evidence of uncharged crimes which are inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged, is admissible under §90.402 because 'it is a relevant and inseparable part of the act which is in issue Evidence is inextricably intertwined if the evidence is necessary to (1) adequately describe the deed, (2) provide an intelligent account of the crime(s) charged; (3) establish the entire context out of which the charged crime(s) arose; or (4) adequately describe the events leading up to the charged crime(s)." L.X.A., a Juvenile v. State, 3D23-1566 (6/26/24)
https://3dca.flcourts.gov/content/download/2436437/opinion/Opinion_2023-1566.pdf

RESENTENCING-PRESENCE OF DEFENDANT: Where resentencing does not involve the consideration of any additional evidence, and where the trial court does not have any discretion in the new sentence it imposes, resentencing is a ministerial act. Resentencing a defendant in his absence will be harmless where it involves only a ministerial act. Bernard v. State, 3D23-2132 (6/26/24)
https://3dca.flcourts.gov/content/download/2436436/opinion/Opinion_2023-2132.pdf

COSTS OF SUPERVISION: Monthly costs of supervision are statutorily mandated by §948.09 and need not be orally pronounced. However, because no statutory authority sets that cost amount, an evidentiary hearing on the proper amount is required. Frank v. State, 4D2022-1339 (6/26/24) https://4dca.flcourts.gov/content/download/2436433/opinion/Opinion_2022-1339.pdf

JURY-RECIDIVISM STATUTE-ACCA: For the purposes of ACCA sentencing, the Fifth and Sixth Amendments require that the issue of whether predicate offenses occurred on different occasions or during a single criminal episode must be decided by a unanimous jury beyond a reasonable doubt or freely admitted in a guilty plea. Judges may not assume the jury's factfinding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard. "Really, this case is as nearly on all fours with Apprendi and Alleyne as any we might imagine." Erlinger v. United States, No. 23–370 (U.S. S/ Ct. 6/21/24) https://www.supremecourt.gov/opinions/23pdf/23-370_i4dj.pdf

5TH/6th AMENDMENT: "There is no efficiency exception to the Fifth and Sixth Amendments." The Fifth and Sixth Amendments' jury trial rights provide a defendant with entirely complementary protections at a different stage of the proceedings by ensuring that, once a jury is lawfully empaneled, the government must prove beyond a reasonable doubt to a unanimous jury the facts necessary to sustain the punishment it seeks. Erlinger v. United States, No. 23–370 (U.S. S/ Ct. 6/21/24) https://www.supremecourt.gov/opinions/23pdf/23-370_i4dj.pdf

JURY-RECIDIVISM STATUTE-ACCA (J. JACKSON): "Today, the Court concludes that. . .under Apprendi, for sentencing purposes, facts that relate to a defendant's prior crimes cannot be determined by judges but instead must be found by juries. I disagree for several reasons, including my overarching view that Apprendi was wrongly decided. . .I recognize, of course, that Apprendi is a binding precedent of this Court. . .[and] untangling the knots

Apprendi has tied is probably infeasible at this point in our Court's jurisprudential journey. But. . .I cannot join today's effort to further extend Apprendi's holding." Erlinger v. United States, No. 23–370 (U.S. S/ Ct. 6/21/24)
https://www.supremecourt.gov/opinions/23pdf/23-370_i4dj.pdf

HEARSAY-CONFRONTATION: The Confrontation Clause applies to forensic reports. Use of a "substitute expert"—who had not participated in any of the relevant drug testing—violates the Confrontation Clause. State may not introduce the testimonial out-of-court statements of a forensic analyst at trial through a surrogate analyst who did not participate in their creation. And nothing changes if the surrogate presents the out-of-court statements as the basis for his expert opinion. A defendant has the right to cross-examine the person who made them. Smith v. Arizona, No. 22–899. (U.S. S. Ct. 6/21/24)
https://www.supremecourt.gov/opinions/23pdf/22-899_97be.pdf

CONFRONTATION CLAUSE (J. THOMAS, CONCURRING): "I continue to adhere to my view that 'the Confrontation Clause is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions.'" Smith v. Arizona, No. 22–899. (U.S. S. Ct. 6/21/24)
https://www.supremecourt.gov/opinions/23pdf/22-899_97be.pdf

SECOND AMENDMENT: Statute prohibiting a person subject to a domestic violence restraining order from possessing a firearm does not violate the Second Amendment. When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed. United States v. Rahimi, No. 22-915 (6/21/24)
https://www.supremecourt.gov/opinions/23pdf/22-915_8o6b.pdf

SECOND AMENDMENT (J. SOTOMAYOR, CONCURRING): "In short, the Court's interpretation permits a historical inquiry calibrated to reveal something useful and transferable to the present day, while the dissent would make the

historical inquiry so exacting as to be useless, a too-sensitive alarm that sounds whenever a regulation did not exist in an essentially identical form at the founding." United States v. Rahimi, No. 22-915 (6/21/24) https://www.supremecourt.gov/opinions/23pdf/22-915_8o6b.pdf

CONSTITUTIONAL INTERPRETATION (J. GORSUCH, CONCURRING): "Discerning what the original meaning of the Constitution requires in this or that case may sometimes be difficult. Asking that question, however, at least keeps judges in their proper lane, seeking to honor the supreme law the people have ordained rather than substituting our will for theirs. And whatever indeterminacy may be associated with seeking to honor the Constitution's original meaning in modern disputes, that path offers surer footing than any other this Court has attempted from time to time. Come to this Court with arguments from text and history, and we are bound to reason through them as best we can. . .Allow judges to reign unbounded by those materials, or permit them to extrapolate their own broad new principles from those sources, and no one can have any idea how they might rule. . .Faithful adherence to the Constitution's original meaning may be an imperfect guide, but I can think of no more perfect one for us to follow." United States v. Rahimi, No. 22-915 (6/21/24) https://www.supremecourt.gov/opinions/23pdf/22-915_8o6b.pdf

ORIGINALISM (J. BARRETT, CONCURRING): "[I]t is worth pausing to identify the basic premises of originalism. The theory is built on two core principles: that the meaning of constitutional text is fixed at the time of its ratification and that the 'discoverable historical meaning . . . has legal significance and is authoritative in most circumstances.'" United States v. Rahimi, No. 22-915 (6/21/24) https://www.supremecourt.gov/opinions/23pdf/22-915_8o6b.pdf

SEARCH AND SEIZURE-TERRY STOP: Officer may not perform a Terry stop of a person for wearing an inside-the-waist firearm holster. Neither

carrying a concealed weapon nor ignoring the officer's questions are sufficient to permit involuntary detention. Approaching suspect and commanding him to keep his hands away from his waist is a seizure. To warrant an investigatory stop, the law requires not just a mere suspicion of criminal activity, but a reasonable, well-founded one. Carrying a concealed firearm is not sufficient, without more, to justify a Terry stop. Carter v. State, 2D2022-3275 (6/21/24)
https://2dca.flcourts.gov/content/download/2436280/opinion/Opinion_2022-3275.pdf

SEARCH AND SEIZURE-TERRY STOP: In the absence of a reasonable suspicion of criminal activity or probable cause to arrest, an individual asked questions by an officer has a right to ignore the police and go about his business. "Any other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine." Carter v. State, 2D2022-3275 (6/21/24)
https://2dca.flcourts.gov/content/download/2436280/opinion/Opinion_2022-3275.pdf

SEARCH AND SEIZURE-TERRY STOP: Neither possession of a concealed firearm nor presence in a high crime area nor ignoring officer inquiries are sufficient, standing alone or in combination, establish a reasonable suspicion justifying a Terry stop. Carter v. State, 2D2022-3275 (6/21/24)
https://2dca.flcourts.gov/content/download/2436280/opinion/Opinion_2022-3275.pdf

SPEEDY TRIAL: The Court's administrative order extending speedy trial due to a hurricane closure is effective, even if it was issued after the Child's right to discharge had vested. D.W. v. State, 2022-3494 (6/21/24)
https://2dca.flcourts.gov/content/download/2436274/opinion/Opinion_2022-3494.pdf

DISCOVERY VIOLATION: Where state provided a police report describing the existence of several photographs, but not the photographs themselves (except for a noticed that "Photograph(s) is furnished via Evidence.com"), Child is entitled to a full Richardson hearing. Although the State had noticed the report, it never disclosed that it intended to rely upon the photographs mentioned—but not included—therein. The failure to give pretrial notice of its intent to rely on these photographs at trial was a violation of the plain language of rule 8.060(a)(2)(K). D.W. v. State, 2022-3494 (6/21/24)
https://2dca.flcourts.gov/content/download/2436274/opinion/Opinion_2022-3494.pdf

POST CONVICTION RELIEF: Dismissal of a motion for postconviction relief for failure to comply with an order to acknowledge the postconviction court's warnings is not authorized by R. 3.850. While nothing prohibits a postconviction court from advising a movant of the ramifications of a successful postconviction motion or warning a movant of the postconviction court's authority to impose sanctions, the rule simply does not allow for dismissal, let alone dismissal with prejudice, should a movant not expressly acknowledge that there may be adverse consequences to prevailing on his motion. There is no requirement that a defendant verify or otherwise certify anything other than the initial motion itself. Zuniga-Mejia v. State, 2D2023-1001 (6/21/24)
https://2dca.flcourts.gov/content/download/2436275/opinion/Opinion_2023-1001.pdf

RETALIATORY ARREST CLAIM: As a general rule, a plaintiff bringing a retaliatory-arrest claim must plead and prove the absence of probable cause for the arrest. But if she produces objective evidence that she was arrested when similarly situated individuals not engaged in the same sort of protected speech had not been, the suit may go forward. Gonzalez v. Trevino, No. 22-1025 (U.S. S.Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/22-1025_1a72.pdf

RETALIATORY ARREST CLAIM: Candidate for office who was arrested for intentionally removing a government record–a petition to remove the city manager from office for misfeasance of office– is entitled to pursue her suit for retaliatory arrest where she showed that the anti-tampering statute had never before been used in the county to criminally charge someone for trying to steal a nonbinding or expressive document. Plaintiff is not required to proffer comparative evidence of similarly situated individuals who engaged in the same criminal conduct but were not arrested. The only express limit on the sort of evidence a plaintiff may present for that purpose is that it must be objective. Gonzalez v. Trevino, No. 22-1025 (U.S. S.Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/22-1025_1a72.pdf

RETALIATORY ARREST CLAIM (J.THOMAS, DISSENTING): "I . . .remain 'skeptical that 42 U. S. C. §1983 recognizes a claim for retaliatory arrests under the First Amendment.'" Gonzalez v. Trevino, No. 22-1025 (U.S. S.Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/22-1025_1a72.pdf

MALICIOUS PROSECUTION: To succeed on a Fourth Amendment malicious-prosecution claim under 42 U. S. C. §1983, a plaintiff must show that a government official charged him without probable cause, leading to an unreasonable seizure of his person. When the official brings multiple charges, only one of which lacks probable cause, the valid charges do not insulate the official from a Fourth Amendment malicious-prosecution claim relating to the invalid charge. The valid charges do not create a categorical bar. Chiaverini v. City of Napoleon, No. 23–50 (U.S. S. Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/23-50new_2co3.pdf

MALICIOUS PROSECUTION (J. THOMAS, DISSENTING): "I continue to adhere to my belief that a 'malicious prosecution claim cannot be based on the Fourth Amendment. . .' [A]n unreasonable seizure under the Fourth

Amendment requires a seizure; a malicious-prosecution claim does not." Chiaverini v. City of Napoleon, No. 23–50 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-50new_2co3.pdf

MALICIOUS PROSECUTION (J. GORSUCH, DISSENTING): "Section 1983 performs vital work by permitting individuals to vindicate their constitutional rights in federal court. But it does not authorize this Court to expound new rights of its own creation. . .§1983 does not turn the Constitution into a 'font of tort law.'. . Despite that settled rule, the Court today doubles down on a new tort of its own recent invention—what it calls a 'Fourth Amendment malicious-prosecution' cause of action. . .Respectfully, it is hard to know where this tort comes from. Stare for as long as you like at the Fourth Amendment and you won't see anything about prosecutions, malicious or otherwise." Chiaverini v. City of Napoleon, No. 23–50 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-50new_2co3.pdf

EXPERT-ULTIMATE ISSUE: Agent may testify that most couriers know that they are transporting drugs, provided he does not testify that the defendant on trial knew. An expert's conclusion that "most people" in a group have a particular mental state is not an opinion about the defendant" and thus does not violate Rule 704(b). Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

ULTIMATE ISSUE: An opinion is not objectionable just because it embraces an ultimate issue, except that in a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. "Although the ultimate-issue rule's exact origins are unclear, legal scholars agree that several States had adopted it by the late 1800s. . .'The mist the gods drew about them on the battlefield before Troy was no more dense than the one enshrouding the origins of the [ultimate-issue] rule.'"). Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

ULTIMATE ISSUE (J. JACKSON CONCURRING): "I write separately to emphasize that. . .Rule 704(b) is party agnostic. Neither the Government nor the defense can call an expert to offer her opinion about whether the defendant had or did not have a particular mental state at the time of the offense. . .But a corollary is also true. Both the Government and the defense are permitted. . .to elicit expert testimony 'on the likelihood' that the defendant had a particular mental state, 'based on the defendant's membership in a particular group.'" Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

ULTIMATE ISSUE (J. GORSUCH, DISSENTING): "There's no Rule 704(b) problem, the Court holds, as long as the government's expert limits himself to testifying that most people like the defendant have the mental state required to secure a conviction. The upshot? The government comes away with a powerful new tool in its pocket. Prosecutors can now put an expert on the stand—someone who apparently has the convenient ability to read minds—and let him hold forth on what 'most' people like the defendant think when they commit a legally proscribed act. Then, the government need do no more than urge the jury to find that the defendant is like 'most' people and convict. What authority exists for allowing that kind of charade in federal criminal trials is anybody's guess." Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

JUNK SCIENCE (J. GORSUCH, DISSENTING): "The problem of junk science in the courtroom is real and well documented. . . And perhaps no 'science' is more junky than mental telepathy. Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24) https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

ULTIMATE ISSUE (J. GORSUCH, DISSENTING): "No one, at least outside the fortuneteller's den, can yet claim the power to conjure reliably another's past thoughts." Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24)

https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

ULTIMATE ISSUE (J. GORSUCH, DISSENTING): "Observe, as well, where today's tiptoeing around the Rule promises to lead. The Court adopts the government's muddled view that an expert cannot offer a probabilistic opinion about the mental state of the defendant explicitly but can offer a probabilistic opinion about the mental state of a group that includes the defendant. So what happens next?. . .We will draw some as-yet unknown line and say an expert's probabilistic testimony went too far. Or we will hold anything goes and eviscerate Rule 704(b) in the process. Rather than face either of those prospects, how much easier it would be to follow where the Rule's text leads." Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

MENS REA (J. GORSUCH, DISSENTING): "Why does our law generally insist not just on a bad act but also a culpable state of mind? A significant part of it has to do with respect for the individual and his liberty in a free society." Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

DEFINITION-"ABOUT" (J. GORSUCH, DISSENTING): The word "about" means "concerning, regarding, with regard to, in reference to; in the matter of." Diaz v. United States, No. 23–14 (U.S. S. Ct. 6/20/24)
https://www.supremecourt.gov/opinions/23pdf/23-14_d1o2.pdf

CONSPIRACY-EVIDENCE: Evidence of multiple firearms and almost two kilograms of heroin found in Defendant's home more than two years after the end of the charged drug-dealing conspiracy is inadmissible as evidence of the conspiracy itself. It is admissible as 404(b) evidence, but only with a limiting instruction. USA v. Harding, No 23-10479 (11th Cir. 6/20/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310479.pdf

FREE SPEECH-PROHIBITING RIOT: A person does no commit the crime of riot (§870.01(2)) if he attends a protest and the protest comes to involve a violent public disturbance, but the person does not engage in, or intend to assist others in engaging in, violent and disorderly conduct. To obtain a conviction, the State must prove beyond a reasonable doubt that the defendant intended to engage or assist two or more other persons in violent and disorderly conduct. DeSantis v. Dream Defenders, SC2023-0053 (6/20/24)
https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

RIOT: "Riot" is generally understood as a crime against the public peace and not necessarily against a specific victim or victims. A riot often, but not always, had a point. Crucially, violence is intrinsic to a riot. To protest passionately, without more, is not to "riot" in the historic sense of the term. DeSantis v. Dream Defenders, SC2023-0053 (6/20/24)
https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

DEFINITION-"INVOLVING": "Involving" connotes not a smaller component of a larger thing, but a necessary feature of the thing described, to have as a necessary feature or consequence. DeSantis v. Dream Defenders, SC2023-0053 (6/20/24)
https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

DEFINITION-"VIOLENT PUBLIC DISTURBANCE": A "violent public disturbance" is "a tumultuous disturbance of the peace" that is carried out in "a violent and turbulent manner" and "involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct." DeSantis v. Dream Defenders, SC2023-0053 (6/20/24)
https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

DEFINITION-"PARTICIPATE": "Participate" means "to take part in something." DeSantis v. Dream Defenders, SC2023-0053 (6/20/24) https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

DEFINITION-"WILLFULLY": "Willfully," like many words, in law as in life, means different things when it appears in different places. DeSantis v. Dream Defenders, SC2023-0053 (6/20/24) https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

AMBIGUITY: "Where lawyers seek ambiguity, there often is it found." DeSantis v. Dream Defenders, SC2023-0053 (6/20/24)

https://supremecourt.flcourts.gov/content/download/2436202/opinion/Opinion_SC2023-0053.pdf

JUDGE-DISCIPLINE: Referring to oneself as "conservative" in a judicial election campaign does not violate Canon 7's prohibition on partisanship. The statement "I am a conservative" is not partisan, either inherently or (when made during an election campaign in a predominantly Republican community. Inquiry Concerning a Judge, NO. 2023-029 (6/20/24) https://supremecourt.flcourts.gov/content/download/2436203/opinion/Opinion_SC2023-1706.pdf

VOP: In probation revocation proceedings for failure to pay a monetary obligation, the trial court must find that the defendant's failure to pay was willful—i.e., that he had the ability to pay the obligation and purposefully did not do so. Defendant who spent $70,605 on various things, including restaurants, bars, clothing, Uber, Lyft, Amazon, and liquor had the ability to pay more than $1,1535 in restitution over six years. Noel v. State, 4D2021-2552 (6/20/24)

https://4dca.flcourts.gov/content/download/2436209/opinion/Opinion_2021-2552.pdf

PLEA-WITHDRAWAL: Defendant is entitled to orally withdraw his guilty plea before sentencing. The motion need not be in writing. Hasbrouk v. State, 4D2023-2791 (6/20/24)
https://4dca.flcourts.gov/content/download/2436216/opinion/Opinion_2023-2791.pdf

JOA-AGGRAVATED STALKING: Defendant who was subject to an injunction for protection is entitled to a judgment of acquittal for leaving a series of voice mails from prison to a former teacher whose feet he had begun to fixate on.. Evidence of substantial emotional distress is required, Being "very concerned" and "worried" is not enough. Ford v. State, 1D2022-0102 (6/19/24)
https://1dca.flcourts.gov/content/download/2436110/opinion/Opinion_2022-0102.pdf

SUBSTANTIAL EMOTIONAL DISTRESS: To be substantial, the emotional distress must be greater than just an ordinary feeling of distress. A reasonable person does not suffer substantial emotional distress easily. Ford v. State, 1D2022-0102 (6/19/24)
https://1dca.flcourts.gov/content/download/2436110/opinion/Opinion_2022-0102.pdf

TOO WEIRD: "To be fair, . . Ford has a documented foot fetish and an extensive history of calling 911 to ask female dispatch officers about their feet. He eventually racked up over one hundred and eighty misdemeanor convictions, mostly related to 911 misuse." Ford v. State, 1D2022-0102 (6/19/24)
https://1dca.flcourts.gov/content/download/2436110/opinion/Opinion_2022-0102.pdf

DOUBLE JEOPARDY: Double Jeopardy bars dual convictions for both detainee battery and simple felony battery based on a prior conviction. Richardson v. State, 1D2022-0617 (6/19/24)
https://1dca.flcourts.gov/content/download/2436111/opinion/Opinion_2022-0617.pdf

DOUBLE JEOPARDY: A double jeopardy violation is fundamental error that may be addressed for the first time on appeal. Richardson v. State, 1D2022-0617 (6/19/24)
https://1dca.flcourts.gov/content/download/2436111/opinion/Opinion_2022-0617.pdf

DOUBLE JEOPARDY: The scope of the Double Jeopardy Clause is the same in both the federal and Florida Constitutions. Richardson v. State, 1D2022-0617 (6/19/24)
https://1dca.flcourts.gov/content/download/2436111/opinion/Opinion_2022-0617.pdf

DOUBLE JEOPARDY: When both counts involve felonies of the same degree, the proper remedy for a double jeopardy violation is to vacate the count with the lower scoresheet level. Richardson v. State, 1D2022-0617 (6/19/24)
https://1dca.flcourts.gov/content/download/2436111/opinion/Opinion_2022-0617.pdf

POUTING JUDGE (J. KELSEY, DISSENTING): "To hasten disposition of this case, I will not belabor my dissent, which after all is of no real legal effect." Richardson v. State, 1D2022-0617 (6/19/24)
https://1dca.flcourts.gov/content/download/2436111/opinion/Opinion_2022-0617.pdf

STAND YOUR GROUND: Although Defendant may have been engaged in a crime and may have been in a place where he did not have a right to be, that

just means that he had a duty to retreat—if he reasonably could—before he could use deadly force to defend himself. But since he was huddled in a corner of the motel room behind the inward-opening door, shielding himself from the deceased's repeated punches, he had exhausted all reasonable means of escape before shooting his assailant 8 times, and therefore has SYG immunity. Decedent was beating him up to take away his gun because Defendant had talked about shooting his cheating girl. Smith v. State, 1D2022-3034 (6/19/24)
https://1dca.flcourts.gov/content/download/2436123/opinion/Opinion_2022-3034.pdf

WILLIAMS RULE-CAPITAL SEX BATTERY: Williams Rule evidence of sexual abuse on a different child similar in age, with shared similar experiences, and the occurring at the same location is admissible. When a defendant is charged with child molestation, relevant evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible if the trial court first finds that the State proved the prior acts by clear and convincing evidence, i.e., the evidence is credible; the facts distinctly remembered; and the testimony precise and explicit. The child witness responding "yes" to several of the State's specific questions about the sexual conduct is sufficient. Simmons v. State, 1D2022-3059 (6/19/24)
https://1dca.flcourts.gov/content/download/2436112/opinion/Opinion_2022-3059.pdf

LEADING QUESTION: A question is not leading simply because it calls for a yes or no answer. Instead, a question is leading when it points out the desired answer. A question which suggests only the answer yes is leading; a question which suggests only the answer no is leading; but a question which may be answered either yes or no, and suggests neither answer as the correct one, is not leading. Simmons v. State, 1D2022-3059 (6/19/24)
https://1dca.flcourts.gov/content/download/2436112/opinion/Opinion_2022-3059.pdf

WILLIAMS RULE-CAPITAL SEX BATTERY: Similar-act evidence is admissible notwithstanding that the State nolle prossed the criminal charges related to the other child victim. Florida law is clear that even when the State nolle prosses charges, the facts supporting the dismissed charges may be admissible. This is because unlike an acquittal, the State's decision to nolle pros charges is not necessarily related to the strength of the evidence. Simmons v. State, 1D2022-3059 (6/19/24)
https://1dca.flcourts.gov/content/download/2436112/opinion/Opinion_2022-3059.pdf

HAPPY FAMILY: "Webb then saw Heath shooting an AR-15 out of the back window of the truck. Johnson was jumping up and down with excitement saying, "shoot, daddy, shoot." Heath v. State, 1D2022-4126 (6/19/20)
https://1dca.flcourts.gov/content/download/2436113/opinion/Opinion_2022-4126.pdf

CONTINUANCE: Court did not abuse its discretion in denying a continuance in a 16 month old murder case. When ruling on a motion to continue based on an assertion of insufficient time to prepare for trial, a trial court should consider the McKay factors: 1) the time available for preparation, 2) the likelihood of prejudice from the denial, 3) the defendant's role in shortening preparation time, 4) the complexity of the case, 5) the availability of discovery, 6) the adequacy of counsel actually provided and 7) the skill and experience of chosen counsel and his pre-retention experience with either the defendant or the alleged crime. Heath v. State, 1D2022-4126 (6/19/20)
https://1dca.flcourts.gov/content/download/2436113/opinion/Opinion_2022-4126.pdf

COLLATERAL CRIME EVIDENCE: Past incidents of abuse or violence between Defendant and co-Defendant in a love triangle homicide are admissible as inextricably intertwined with the charged offenses. The testimony about domestic violence between the two provided context for the

events leading to the shooting and explained her involuntary participation in the shooting. Heath v. State, 1D2022-4126 (6/19/20) https://1dca.flcourts.gov/content/download/2436113/opinion/Opinion_2022-4126.pdf

COLLATERAL CRIME EVIDENCE: There are two categories of admissible evidence of uncharged crimes: similar fact evidence and dissimilar fact evidence. Similar fact evidence is governed by the requirements and limitations of §90.404, and dissimilar fact evidence is governed by the general rule of relevancy in §90.402. Dissimilar fact evidence is admissible to establish the relevant context in which the charged criminal acts occurred, including evidence of uncharged crimes which are inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged. The State is allowed to admit dissimilar fact evidence that paints an accurate picture of the events surrounding the crimes charged. Heath v. State, 1D2022-4126 (6/19/20) https://1dca.flcourts.gov/content/download/2436113/opinion/Opinion_2022-4126.pdf

SPEEDY TRIAL: Court improperly struck Defendant's notice of expiration of speedy trial based on its mistaken belief that he had waived his speedy trial rights during earlier hearings. The Clerk's minutes contained check boxes reflecting a speedy trial waiver, but review of the transcripts establishes that Defendant did not waive them. Defendant is entitled to discharge. Gonzalez-Hernandez v. State, 3D22-1124 (6/19/24) https://3dca.flcourts.gov/content/download/2436130/opinion/Opinion_2022-1124.pdf

SEARCH AND SEIZURE-PROBATION: A warrantless search of a probationer's home, based on reasonable suspicion and a probation condition allowing warrantless searches is reasonable under the Fourth Amendment, and is not rendered unreasonable because the home was occupied by another person (a girlfriend) who knew about the probation. The reasonable

expectation of privacy inside the probationer's home is similar to what it would be if the home was not occupied by another person—it is diminished. USA v. Harden, No. 20-14004 (11th Cir. 6/18/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202014004.pdf

JUDGE-DISQUALIFICATION: Judge's effort in his order to refute some of the facts alleged in the motion to disqualify him compels disqualification. "To be clear, we specifically take no position as to whether the motion [itself] was legally sufficient. . .for the disqualification of the trial judge." Holt v. Nelson, 6D24-966 (6/17/24)
https://6dca.flcourts.gov/content/download/2435963/opinion/Opinion_2024-0966.pdf

FELONIES CLAUSE-MDLEA-EEZ: The Maritime Drug Law Enforcement Act ("MDLEA") makes it a crime to engage in drug trafficking on board a vessel subject to the jurisdiction of the United States. It is a valid exercise of Congress's power under the Felonies Clause of of the Constitution (Article I, §8, Clause 10), not limited by international law. Any stateless vessel on the high seas may be boarded by the United States under the Felonies Clause. A nation's Exclusive Economic Zone ("EEZ") is part of the "high seas." The modern recognition of the EEZ in the twentieth century has no bearing on the original meaning of "high seas" in the Felonies Clause. USA v. Alfonso, No 22-10576 (11th Cir. 6/14/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210576.pdf

EEZ: An Exclusive Economic Zone (EEZ) is the area of water just beyond a nation's territorial waters but within 200 miles of the coastal baseline where coastal nations have certain rights to natural resources and jurisdiction over marine research and protection of the marine environment. But "[a]ny allocation of economic rights. . .is a far cry from conferring on a nation the exclusive authority. . .to define and punish criminal violations." USA v. Alfonso, No 22-10576 (11th Cir. 6/14/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210576.pdf

HIGH SEAS-CANNON SHOT RULE: In the eighteenth century, the concept took root that a nation could exercise sovereignty over waters within the range of its on-shore artillery , between 1 to 3 miles (the "Cannon Shot Rule"). Thomas Jefferson considered the utmost range of a cannon ball to be 3 miles (a league). USA v. Alfonso, No 22-10576 (11th Cir. 6/14/24) https://media.ca11.uscourts.gov/opinions/pub/files/202210576.pdf

MINIMUM FINE-CRIMINAL ENTERPRISE-MODIFICATION: Court may not amend the sentence imposed a year earlier to add the omitted $500,000 minimum fine for engaging in a criminal entrprise. The omission of the fine did not result in an "illegal sentence" under R. 3.800(a), so it is not correctable. The trial court lacked authority to add the $500,000 fine more than a year after issuing his original judgment and sentence. Further, the imposition of the $500,000 fine is discretionary §893.20(2). Generally, a trial court has no authority to modify a sentence after a defendant has begun serving it. Islaam v. State, 2D2023-0419 (6/14/24) https://2dca.flcourts.gov/content/download/2435897/opinion/Opinion_2023-0419.pdf

MINIMUM FINE-CRIMINAL ENTERPRISE-CRIMINAL ENTERPRISE-MODIFICATION: "The State did not cite any provision of rule 3.800—or, indeed, any legal authority—in its motion to correct Mr. Islaam's sentence or at the hearing that followed. . . The motion seemed to sound in the key of rule 3.800(b), asking the court to 'correct' a sentence that the State described merely as 'incomplete.' But the correction the State sought would have neither fixed a mere scrivener's error nor benefitted Mr. Islaam, so rule 3.800(b) would have been inapplicable." Islaam v. State, 2D2023-0419 (6/14/24) https://2dca.flcourts.gov/content/download/2435897/opinion/Opinion_2023-0419.pdf

MINIMUM FINE-CRIMINAL ENTERPRISE-MODIFICATION: §893.20 provides that a person who commits the offense of engaging in a continuing

criminal enterprise is guilty of a life felony, punishable by a fine of $500,000. "Punishable by" does not mean "punished in every case by"; it means "able to be punished by." Islaam v. State, 2D2023-0419 (6/14/24) https://2dca.flcourts.gov/content/download/2435897/opinion/Opinion_2023-0419.pdf

NEWLY DISCOVERED EVIDENCE: Where Defendant filed a successful motion to suppress under the substantive case one month after his VOP hearing, suppression of the same evidence that was used to revoke his probation constitutes newly discovered evidence. Revocation vacated pending further proceedings. Edwards v. State, 5D2022-1479 (6/14/24) https://5dca.flcourts.gov/content/download/2435888/opinion/Opinion_2022-1479.pdf

COSTS: $100 cost for the FDLE Operating Trust Fund vacated where it was not orally pronounced, but may be re-imposed as a civil final judgment on remand. Brown v. State, 2023-1178 (6/14/24) https://5dca.flcourts.gov/content/download/2435891/opinion/Opinion_2023-1178.pdf

DUI-BREATH TEST-COLOR OF OFFICE: Outside his or her territorial jurisdiction, a municipal officer may not assert official authority to gather evidence not otherwise obtainable by a private citizen. City police officer outside city limits at the county jail may not request/procure a DUI breath test. Courts cannot grant extraterritorial police power to municipalities. Conflict certified. State v. Repple, 6D23-1448 (6/14/24) https://6dca.flcourts.gov/content/download/2435916/opinion/Opinion_2023-1448.pdf

COLOR OF OFFICE: When an officer obtains evidence by using the appearance of official power, in a jurisdiction where the officer has no power, the officer is said to act under the “color of office.” The first known use of this expression comes from a thirteenth century English statute prohibiting King

Edward's sheriffs from acting without authority. State v. Repple, 6D23-1448 (6/14/24)
https://6dca.flcourts.gov/content/download/2435916/opinion/Opinion_2023-1448.pdf

POST CONVICTION RELIEF: Postconviction claims under R. 3.851 are legally insufficient or procedurally barred if filed more than a year after the judgment and sentence became final. When a newly discovered evidence claim is brought as a successive claim, the defendant must demonstrate an exception to the rule's time limitations, of which there are 3: (A) the facts on which the claim is predicated were unknown and could not have been ascertained with due diligence, or (B) the fundamental constitutional right asserted was not established within 1 year after the judgment and sentence became final and has been held to apply retroactively, or (C) postconviction counsel, through neglect, failed to file the motion. Sparre v. State, SC2023-0163 (6/13/14)
https://supremecourt.flcourts.gov/content/download/2435848/opinion/Opinion_SC2023-0163.pdf

POST CONVICTION RELIEF: Defendant's claim that PSI omitted important facts is procedurally barred as untimely filed as newly discovered evidence where filed more than a year after his conviction becomes final. Sparre v. State, SC2023-0163 (6/13/14)

https://supremecourt.flcourts.gov/content/download/2435848/opinion/Opinion_SC2023-0163.pdf

POST CONVICTION RELIEF-ENHANCEMENT: Whether a defendant convicted of a permissive lesser included offense, which was not properly charged in the information is not an issue of sentencing enhancement and therefore does is not present a sentencing error that can be raised under R. 3.800(b). Melton v. State, 1D2022-0574 (6/12/24)

https://1dca.flcourts.gov/content/download/2435754/opinion/Opinion_2022-0574.pdf

BURGLARY-ENHANCEMENT: Burglary of an occupied structure is a not a sentencing enhancement to the crime of burglary of a structure. An alleged error regarding the existence or propriety of one of the elements of burglary, as set forth in §810.02, is not an alleged sentencing error pursuant to Rule 3.800(b). Melton v. State, 1D2022-0574 (6/12/24)
https://1dca.flcourts.gov/content/download/2435754/opinion/Opinion_2022-0574.pdf

MARSY'S LAW: "Marsy's Law" is a colloquial reference to a Florida constitutional amendment that provides crime victims with meaningful and enforceable rights and protections. Marsy's Law applies to VOP sentencing. At VOP sentencing hearing, Court may consider Victim's sworn statement to police as a victim impact statement under Marsy's Law. Camel v. State, 1D2022-2267 (6/12/24)
https://1dca.flcourts.gov/content/download/2435765/opinion/Opinion_2022-2267.pdf

ORAL PRONOUNCEMENT: Where Court orally pronounced that "you'll get credit for 129 days on each of those counts" but the written judgment only awarded the credit on the first count, the oral pronouncement controls. Whipple v. State, 1D202204117 (6/12/24)
https://1dca.flcourts.gov/content/download/2435757/opinion/Opinion_2022-4117.pdf

COSTS OF PROSECUTION: The $100 cost for the state attorney is a mandatory minimum cost and is not an investigative' cost incurred by an agency, which can only be imposed if requested by the agency. Roberts v. State, 1D2023-0464 (6/12/24)
https://1dca.flcourts.gov/content/download/2435778/opinion/Opinion_2023-0464.pdf

STATEMENT OF DEFENDANT-RIGHT TO REMAIN SILENT: Police must stop a custodial interrogation if the suspect unequivocally invokes any Miranda rights during the interrogation, but need not stop the interview or ask any clarifying questions if a defendant makes only an equivocal or ambiguous request to terminate an interrogation after having validly waived his Miranda rights. Defendant softly uttering "Listen man, 'cause it don't matter, shit, 'cause I feel like I'm being tricked into it. I just don't want to say nothing, you feel me?" is an equivocal invocation of the right to remain silent. Officers were nor required to seek clarification and were entitled to continue the interrogation. "Mr. Denson did not make the statement at the beginning of the substantive questioning or when being asked about whether he wished to talk. . .Mr. Denson did not make repeated statements or clear desires to stop the discussion entirely." State v. Denson, 1D2023-0919 (6/12/24) https://1dca.flcourts.gov/content/download/2435779/opinion/Opinion_2023-0919.pdf

EVIDENCE-REPUTATION FOR PEACEFULNESS: Court did not abuse its discretion in denying the defense motion to present the testimony about Defendant's general reputation for peacefulness where he threatened to kill the victim, admitted to the act itself and multiple witnesses saw it. "On these facts, 'general reputation' was worthless as a defense against guilt; and even if it had been error to exclude the evidence, it would be harmless." Atkins v. State, 1D202-1007 (6/12/24) https://1dca.flcourts.gov/content/download/2435789/opinion/Opinion_2023-1007.pdf

RESTITUTION: Court may not award lost-wages restitution to the victim corresponding to the loss of illicit work. N.C.D., A Child, 1D2023-1255 (6/12/24) https://1dca.flcourts.gov/content/download/2435798/opinion/Opinion_2023-1255.pdf

RESTITUTION: Court may not award lost-wages restitution to the victim corresponding to the loss of work from an illegal cosmetology practice. K.R., A Child, 1D2023-1257 (6/12/24)
https://1dca.flcourts.gov/content/download/2435805/opinion/Opinion_2023-1257.pdf

POST-CONVICTION RELIEF: Court erred in finding that Counsel was ineffective and defendant entitled to a new trial where Counsel had failed to object to the witness's allusion to Defendant's release from prison, in violation of an order in limine, where it was unclear whether the witness was alluding to himself or the defendant and the witness had not been speaking loudly or clearly. Had trial counsel moved for a mistrial, it is not apparent that the court would have granted it. It cannot be said that trial counsel's decision not to object or move for a mistrial was unreasonable or that no competent trial attorney would have made the decision that counsel made here. State v. Jenkins, 2D2022-3623 (6/12/24)
https://2dca.flcourts.gov/content/download/2435749/opinion/Opinion_2022-3623.pdf

HARMLESS ERROR: The harmless error test requires the State to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction. The overwhelming evidence of a defendant's guilt may be considered in the harmless-error analysis. Rivera v. State, 3D22-1307 (6/12/24)
https://3dca.flcourts.gov/content/download/2435787/opinion/Opinion_2022-1307.pdf

CREDIT FOR TIME SERVED-VOP: Defendant is entitled to receive credit for the time he spent in the Florida county jail prior to the original sentence. But the term "county jail" in §921.161 does not apply to various places of incarceration in other jurisdictions, such as Louisiana. Adams v, State, 3D23-737 (6/12/24)

https://3dca.flcourts.gov/content/download/2435823/opinion/Opinion_2023-0737.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: The standard to obtain a new trial based on newly discovered evidence includes the requirement that defendant or his counsel could not have known of it by the use of diligence. Profete v. State, 3D23-1199 (6/12/24)

https://3dca.flcourts.gov/content/download/2435792/opinion/Opinion_2023-1199.pdf

ARGUMENT: A suggestion that the defendant suborned perjury or that a defense witness manufactured evidence, without a foundation in the record, is completely improper. Johnson v. State, 3D23-1578 (6/12/24)
https://3dca.flcourts.gov/content/download/2435791/opinion/Opinion_2023-1578.pdf

EXPERTS: Experts may not comment on the credibility of other witnesses. Johnson v. State, 3D23-1578 (6/12/24)
https://3dca.flcourts.gov/content/download/2435791/opinion/Opinion_2023-1578.pdf

MARCHMAN ACT: Upon the filing of a petition under Florida's Marchman Act, one of the qualified professionals who executed the involuntary services certificate must be a witness. As such, it is reversable error for the trial court to grant a petition without the testimony of a qualified professional who executed the involuntary services certificate. C.W.R.K., v. SMA, 5D2024-0354 (6/12/24)
https://5dca.flcourts.gov/content/download/2435829/opinion/Opinion_2024-0354.pdf

POST CONVICTION RELIEF: Where Defendant claimed in her motion for post-conviction relief under R.3.800 that the Court had sentenced her to 120

days but the Clerk erroneously entered a judgment that she serve 220 days, the Court should treat the motion as one filed under R. 3.850. George v. State, 2D2024-0384 (6/7/24)
https://2dca.flcourts.gov/content/download/2435567/opinion/Opinion_2024-0384.pdf

VOP-JUDGMENT: The trial judge must specify, in the written order or judgment, which conditions of probation or community control have been violated. Collins v. State, 5D2023-0299 (6/7/24)
https://5dca.flcourts.gov/content/download/2435596/opinion/Opinion_2023-0299.pdf

PLEA WITHDRAWAL: Where a defendant files a pro se motion to withdraw a plea which contains specific allegations that give rise to an adversarial relationship, such as misadvise, affirmative misrepresentations, or coercion that led to the entry of a plea, the trial court must hold a limited hearing to determine whether an adversarial relationship exists between the defendant and defense counsel that would entitle the defendant to appointment of conflict-free counsel. If an adversarial relationship exists, it must appoint conflict-free counsel to represent the defendant on his motion to withdraw plea. Where Defendant's motion is insufficient, but he supplements it with allegations of misadvise, counsel must be appointed. Mathis v. State. 5D2023-1980 (6/7/24)
https://5dca.flcourts.gov/content/download/2435615/opinion/Opinion_2023-1980.pdf

POST CONVICTION RELIEF: A rule 3.850 motion cannot be used to go behind representations the defendant made to the trial court, and the court may summarily deny post-conviction claims that are refuted by such representations. Post-conviction movants are bound by the statements they make under oath in plea colloquies. Hastings v. State, 5D2023-3296 (6/7/24)
https://5dca.flcourts.gov/content/download/2435617/opinion/Opinion_2023-3296.pdf

DOUBLE JEOPARDY: Double jeopardy principles bar dual convictions for possessing a drug and possessing that same drug with the intent to sell it, but double jeopardy is not implicated by dual convictions for possessing a drug and selling it. Hastings v. State, 5D2023-3296 (6/7/24)
https://5dca.flcourts.gov/content/download/2435617/opinion/Opinion_2023-3296.pdf

JUDGE-DISQUALIFICATION: All judges in a county need not be disqualified where Defendant is charged with threatening one of them. The fact that the victim had been a judge in the county does not mean that all judges in that county have to be disqualified. Watkins v. State, 5D2023-3374 (6/7/24)
https://5dca.flcourts.gov/content/download/2435616/opinion/Opinion_2023-3374.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for advising him to plead notwithstanding his claim that the threatening letter he allegedly sent to the judge was a forgery. The Motion is timely notwithstanding that Defendant did not file it until after he had been arrested for violating probation. "Although Appellant is challenging the underlying conviction, not the revocation proceedings, the motion is nonetheless timely from both judgments." Watkins v. State, 5D2023-3374 (6/7/24)
https://5dca.flcourts.gov/content/download/2435616/opinion/Opinion_2023-3374.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that his plea was involuntary because he was never informed that he could be sentenced up to the statutory maximum and he was also unaware he would later be designated a violent felony offender of special concern. Watkins v. State, 5D2023-3374 (6/7/24)
https://5dca.flcourts.gov/content/download/2435616/opinion/Opinion_2023-3374.pdf

PROBATION-TOLLING: Probation is tolled of Defendant's warrantless arrest for violation of probation and the filing of an affidavit alleging a violation of her probation and the issuance of a warrant thereon, But Defendant cannot be found in violation of probation for any expired terms. Nealy v. State, 2023-0745 (6/7/24)
https://6dca.flcourts.gov/content/download/2435573/opinion/Opinion_2023-0745.pdf

QUO WARRANTO-STATE ATTORNEY-SUSPENSION: Governor may suspend the elected State Attorney for being "clearly and fundamentally derelict as to constitute both neglect of duty and incompetence" by "permitt[ing] violent offenders, drug traffickers, serious juvenile offenders, and pedophiles to evade incarceration when otherwise warranted under Florida law." The Governor's Executive Order only needs to show that it "contains allegations that bear some reasonable relation to the charge made" against the State Attorney. Where the executive order of suspension contains factual allegations relating to an enumerated ground for suspension, the Constitution prohibits the courts from examining or determining the sufficiency of the evidence supporting those facts. Worrell v. DeSantis, SC2023-1246 (6/6/24)
https://supremecourt.flcourts.gov/content/download/2435518/opinion/Opinion_SC2023-1246.pdf

DEMOCRACY (J. LABARGA, DISSENTING): "Where the suspension involves an elected official not subject to impeachment, such as Worrell, the Florida Constitution in effect authorizes the governor to override the will of the majority of voters who elected the official and to appoint a replacement of the governor's choosing. Because the bedrock of our democracy is the right to elect our public officials in fair and open elections, the suspension of a duly elected constitutional officer must be viewed as an enormous undertaking that requires clear justification. At the very least, the allegations must be confined to the specific grounds permitted by article IV, section 7(a), and the official in question should be apprised of the specific allegations giving rise to the suspension to ensure an opportunity to mount a meaningful defense. . .An

executive order which presents only general or conclusory allegations will not suffice. This is not a demanding standard, but it is nonetheless a substantive requirement imposed by the Florida Constitution, and this Court is obligated to vacate any suspension which does not satisfy it." Worrell v. DeSantis, SC2023-1246 (6/6/24)
https://supremecourt.flcourts.gov/content/download/2435518/opinion/Opinion_SC2023-1246.pdf

QUALIFIED IMMUNITY: Officers do not have qualified immunity for tasing then shooting someone's dog. An official clearly violates the Fourth Amendment when he uses deadly force against a dog that is incapacitated and incapable of harming anyone. "We have never addressed the specific question whether shooting a domestic animal constitutes a seizure under the Fourth Amendment. Now, we join with almost every other circuit in holding that it does." Plowright v. Miami Dade County, No. 23-10425 (11th Cir. 6/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310425.pdf

DOGS: "Even as living creatures—and often, beloved members of the family—domestic animals qualify as 'effects' for the purposes of the Fourth Amendment. An officer may not use deadly force against a domestic animal unless that officer reasonably believes that the animal poses an imminent threat to himself or others. Plowright v. Miami Dade County, No. 23-10425 (11th Cir. 6/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310425.pdf

DOGS: "Although Niles was barking when the officers approached the residence, and he 'sensed [the officers'] aggressive tone,' he was 'wagging his tail' when Rondon tased him and was 'incapacitated' by the taser and 'incapable of harming anyone' when Cordova fired the fatal shots. . .[T]he fact that a dog is barking and unrestrained is hardly enough by itself to convince a reasonable officer that he is in imminent danger. "[N]o reasonable officer could ever believe that it was appropriate to shoot an incapacitated, non-threatening domestic animal during a 911 investigation." Plowright v. Miami

Dade County, No. 23-10425 (11th Cir. 6/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310425.pdf

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: To state a valid claim for intentional infliction of emotional distress, a plaintiff must plausibly allege that the defendant's conduct was outrageous, beyond all bounds of decency, and odious and utterly intolerable in a civilized community. Whether conduct is outrageous enough is a question of law, defined as the sort of thing that would make an average member of the community to exclaim, 'Outrageous!'" Like shooting an incapacitated pet. Plowright v. Miami Dade County, No. 23-10425 (11th Cir. 6/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310425.pdf

RESENTENCING-SCORESHEET ERRORS: Defendant is not entitled to resentencing because he received an unlawful downward departure based on an improperly calculated scoresheet and the errors all benefitted him. Boyd v. State, 1D2022-0351 (6/5/24)
https://1dca.flcourts.gov/content/download/2435467/opinion/Opinion_2022-0351.pdf

LAWYERS DO MATH[2]-SCORESHEET ERRORS: The parties thought there

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[2] *See Richard Pryor in* ***The Bingo Long Traveling All-Stars & Motor Kings:*** *"We'll start with something easy, like batting averages. See, you take the number of times a man been at bat, and you divide that by the number of times a man got a hit. Like me, I been at bat a hundred times, I got twenty-five hits. That's simple, right? Twenty-five go into a hundred four times. Gives me a batting average of four! That's wrong. That ain't no way to do that. What you gotta do is the number of times a man's been at bat and got a hit. Divide that by the number of times he swung. See I been at bat a lot, and I swung a lot! Let me see, seventy-five into a hundred... no. That would give me a batting average of two! Couldn't have a batting average of two! Nobody could have a batting average that bad. Could they?"*

was an error of .15 months for an improperly included prior misdemeanor (24 months vs. 24.15 months). Actually, Defendant should have scored 159 months. Errors included listing the wrong primary offense, scoring it as a Level 6 instead of 7, not including 40 Victim Injury points for Sexual Contact, and omitting the enhancement for an"Adult-on-Minor Sex Offense." Boyd v. State, 1D2022-0351 (6/5/24)
https://1dca.flcourts.gov/content/download/2435467/opinion/Opinion_2022-0351.pdf

JURY INSTRUCTION-LACK OF KNOWLEDGE: Knowledge of the illicit nature of a controlled substance is not an element of trafficking in methamphetamine or heroin. But it is an affirmative defense. Absent Defendant's testimony or other evidence of lack of knowledge of the nature of the substance, an instruction that Defendant did not know what the drug was is not warranted. Goldsby v. State, 1D2022-3133 (6/5/24)
https://1dca.flcourts.gov/content/download/2435469/opinion/Opinion_2022-3133.pdf

COSTS OF PROSECUTION: Costs of prosecution may be imposed regardless of whether the State requests them. Hepburn v. State, 1D2022-3810 (6/5/24)
https://1dca.flcourts.gov/content/download/2435470/opinion/Opinion_2022-3810.pdf

WRIT OF PROHIBITION: Prohibition may only be granted when it is shown that a lower court is without jurisdiction or attempting to act in excess of jurisdiction. Frazier v. State, 1D2024-1288 (6/5/24)
https://1dca.flcourts.gov/content/download/2435477/opinion/Opinion_2024-1288.pdf

WRIT OF PROHIBITION: Prohibition may only be granted when it is shown that a lower court is without jurisdiction or attempting to act in excess of jurisdiction. Case v. State, 1D2024-1289 (6/5/24)

https://1dca.flcourts.gov/content/download/2435478/opinion/Opinion_2024-1289.pdf

ILLEGAL SENTENCE-ESTOPPEL: Where a defendant has already served his sentence and he has reaped the benefit of an illegal sentence, he is estopped from challenging the sentence, especially in the context of a negotiated plea. Hamilton v. State, 3D23-1878 (6/5/24)
https://3dca.flcourts.gov/content/download/2435437/opinion/Opinion_2023-1878.pdf

STAND YOUR GROUND-WRIT: Prohibition does not lie where a defendant claims that the trial court applied the wrong procedure, rather than asserting on the merits that a defendant is entitled to immunity against further prosecution. Rather, a petition for writ of certiorari would be the remedy. But the appellate court lacks jurisdiction to consider a petition for writ of certiorari when it was filed more than thirty days after rendition of the trial court's order. Bembridge v. State, 3D23-2050 (6/5/24)
https://3dca.flcourts.gov/content/download/2435445/opinion/Opinion_2023-2050.pdf

DOUBLE JEOPARDY: A traditional double jeopardy challenge attacks both the conviction and, by default, the sentence, while R. 3.800(a) is limited to claims that a sentence itself is illegal, without regard to the underlying conviction. Fleurimond v. State, 3D23-2181 (6/5/24)
https://3dca.flcourts.gov/content/download/2435438/opinion/Opinion_2023-2181.pdf

HFO/PRR-CONSECUTIVE SENTENCES: Court lawfully sentenced Defendant to an enhanced ten-year sentence as an HFO for Resisting with Violence with the first five years as a PRR, and to five years for Battery on a LEO consecutively, non-enhanced, for an aggregate sentence of fifteen years. The trial court is not authorized to both enhance the defendant's sentence as a habitual offender and make each of the enhanced habitual offender

sentences consecutive, but the second count is not enhanced, so it may be imposed consecutively. Toombs v. State, 4D2022-2978 (6/5/24) https://4dca.flcourts.gov/content/download/2435449/opinion/Opinion_2022-2978.pdf

HFO/PRR-CONSECUTIVE SENTENCES (J. WARNER, CONCURRING): "I concur because I believe, under Cotto, the sentences imposed are legal. But I think. . .Cotto has gutted Hale's holding in cases such as this, where even though the trial court finds a defendant an HFO, a court can sentence some charges with the HFO enhancement but not apply that same enhancement to others, so that the unenhanced sentence can run consecutive to the HFO sentence. . .I do not understand how a court could consider that the HFO designation was appropriate for some charges within a single criminal episode but not others. If the court could, it would have to find that an HFO sentence was not necessary for one charge but was necessary for others, which makes no sense. . .[But] Cotto appears to allow this, and I must concur with the affirmance of the sentences in this case." Toombs v. State, 4D2022-2978 (6/5/24) https://4dca.flcourts.gov/content/download/2435449/opinion/Opinion_2022-2978.pdf

HFO/PRR-CONSECUTIVE SENTENCES: Court lawfully sentenced Defendant as both a Habitual Felony Offender and Prison Releasee Reoffender to 25 years for robbery, but must designate that only the first fifteen years are to be served as a PRR. Pollock v. State, 4D2023-1310 (6/5/24) https://4dca.flcourts.gov/content/download/2435455/opinion/Opinion_2023-1310.pdf

RE-CROSS-DNA: Court did not abuse discretion in disallowing re-cross of State's DNA expert on Defendant's father where the original cross had already covered the Defendant's hypothetical brother. "Here, the trial court did not abuse its discretion because the questions the defendant wanted to ask raised

a new matter. Namely, the defendant wanted to ask about the defendant's father. All prior questioning concerned the defendant's brothers—not his father." Lange v. State, 4D2023-1717 (6/5/24)
https://4dca.flcourts.gov/content/download/2435458/opinion/Opinion_2023-1717.pdf

JUDGMENT-VOP: Duplicative adjudications of guilt after revocation of probation or community control are superfluous, are unauthorized, and can cause undue confusion in future proceedings. McCrae v. State, 4D2023-2029 (6/5/24)
https://4dca.flcourts.gov/content/download/2435459/opinion/Opinion_2023-2029.pdf

ANIMAL ABANDONMENT: Simply knowing that an animal is confined with an insufficient quantity of good and wholesome food and water, or is in an enclosure without wholesome exercise and change of air does not make one guilty of animal abandonment. The statute requires one's participation in the confining or keeping of an animal in an enclosure in violation of the statute. Defendant is entitled to a JOA where there is no evidence that the outside dogs were even owned by her and the evidence was undisputed that her husband was responsible for their care. Moore v. State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

ANIMAL ABANDONMENT-ARGUMENT: State's argument that "Ms. Moore . . .knew it was wrong for these dogs to be in these cages, but she did nothing about it." and "[S]he wasn't legally obligated to do so, except she was because this was not okay" misstates the law. Moore v. State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

DEFINITION-"WHOEVER": "Whoever" means "whatever person." Moore v.

State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

DEFINITION-"CONFINE": "Confine" means "to hold within a location." Moore v. State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

DEFINITION- "IMPOUND": "Impound" means "to shut up in or as if in a pound." Moore v. State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

DEFINITION-"KEEP": "Keep" means "to retain in one's possession or power." Moore v. State, 4D2023-2151 (6/5/24)
https://4dca.flcourts.gov/content/download/2435462/opinion/Opinion_2023-2151.pdf

QUALIFIED IMMUNITY: No cause of action is available for continuing to shoot a detainee well after he is unconscious and unresponsive after the initial flurry of shots. Recognizing a cause of action for money damages against a federal task force member could impact cooperation among law enforcement agencies and the operation of these task forces, and allowing such claims could chill recruitment for the task forces. Mother of decedent should submit a grievance by filling out an online form or file a complaint with DOJ Office of Inspector General. Robinson v. Sauls, No. 23-10719 (11th Cir. 6/4/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202310719.pdf

IMPERSONATING AN OFFICER: For impersonating an officer, evidence is sufficient to convict if it shows that the defendant falsely assumed and pretended to be a federal officer and committed any overt act in keeping with that assumed character. Presenting a fake badge and claiming to be a senior

air marshal to get out of a speeding ticket is sufficient. USA v. Diamond, No. 21-13528 (11th Cir. 6/4/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202113528.pdf

IMPERSONATING AN OFFICER: The Defendant is not entitled to a special jury instruction that "acts as such" means ""committed some overt act involving an assertion of claimed authority derived from the office he pretended to hold." The proposed instruction is superfluous and questionable; it seems to require some separate or distinct secondary act to be taken that was derived from the impersonated office a defendant pretended to hold. But there is no such derivative second-act requirement. USA v. Diamond, No. 21-13528 (11th Cir. 6/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113528.pdf

EVIDENCE-OTHER BAD ACTS: When intent is a material issue, prior bad act evidence may be admissible to prove intent, but it must be established by sufficient proof and] the probative value of the evidence must not be substantially outweighed by its undue prejudice. Defendant's prior impersonation of a federal officer, attested to by his wife, is admissible to show that Defendant impersonated a senior air marshal to get out of a speeding ticket. USA v. Diamond, No. 21-13528 (11th Cir. 6/4/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202113528.pdf

LESSER INCLUDED: An elements test is used for evaluating whether one offense is a lesser-included offense of another offense. For an offense to be a lesser-included offense of a parent offense, its elements must be contained within the elements of the parent offense. Possessing a false official ID is not a lesser included of Impersonating an officer. §912 does not require that a defendant possess any type of badge at all as part of his impersonation. USA v. Diamond, No. 21-13528 (11th Cir. 6/4/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202113528.pdf

SENTENCING-DOWNWARD DEPARTURE: In deviating from the statutorily enumerated mitigating factors, the trial court cannot rely on a non-statutory factor when that factor is encompassed within a listed statutory factor. A finding that Defendant was substantially impaired because of the combination of his upbringing, the poor environment in which he was raised, the abuse he has suffered, and his prior addictions is a finding of diminished capacity. But evidence in the form of letters from his family do not prove a diminished capacity. Caulkins v. State, 2D2023-0152 (5/31/24) https://2dca.flcourts.gov/content/download/2435258/opinion/Opinion_2023-0152.pdf

SENTENCING-DOWNWARD DEPARTURE: The parameters of nonstatutory mitigation are largely undefined, but potentially valid nonstatutory mitigators include enticement, sentencing manipulation, sentencing entrapment, and a lower sentence of an equally or more culpable codefendant. Caulkins v. State, 2D2023-0152 (5/31/24) https://2dca.flcourts.gov/content/download/2435258/opinion/Opinion_2023-0152.pdf

SENTENCING-DOWNWARD DEPARTURE: A defendant is not required to offer expert medical testimony to establish a lack of capacity, but such testimony is often critical in making that showing. Caulkins v. State, 2D2023-0152 (5/31/24) https://2dca.flcourts.gov/content/download/2435258/opinion/Opinion_2023-0152.pdf

SENTENCING-DOWNWARD DEPARTURE: The trial court's personal observations that Defendant appeared overwhelmed or confused in court are not sufficient alone to constitute competent substantial evidence of Mr. Caulkins' diminished capacity and ability to conform his conduct to the requirements of the law. Caulkins v. State, 2D2023-0152 (5/31/24) https://2dca.flcourts.gov/content/download/2435258/opinion/Opinion_2023-

0152.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Summary denial of a motion for postconviction relief is rarely appropriate if the trial court needs to assess the credibility of the new testimony. A newly discovered evidence inquiry typically requires an evidentiary hearing. The mere fact that an affidavit is contradicted by trial testimony is not necessarily grounds for a summary denial. Harold v. State, 5D2023-2891 (5/31/24) https://5dca.flcourts.gov/content/download/2435259/opinion/Opinion_2023-2891.pdf

APPEAL-ISSUE PRESERVATION-WRITTEN THREAT: Whether §836.10 is a specific, intent crime–Child had sent a text with a gun emoji and "ima run from 22" to a classmate who had called his girlfriend "cute"--is not preserved for appeal, notwithstanding State's concession that it is. I.R. v. State, 6D23-966 (5/31/24) https://6dca.flcourts.gov/content/download/2435277/opinion/Opinion_2023-0966.pdf

EX POST FACTO-DEATH PENALTY-TRIAL PROCEDURE: Amended statute concerning jury's recommendation as to imposition of the death penalty–a super majority of 8-12 rather than unanimity is enough, and the Court must enter a written order explaining its decision–does not violate the ex post facto clause. New statute applies. Trial court's ruling that it does not is quashed. State v. Lobato, 6D23-3201 (5/31/24) https://6dca.flcourts.gov/content/download/2435280/opinion/Opinion_2023-3201.pdf

EX POST FACTO-DEATH PENALTY-TRIAL PROCEDURE (J. WHITE, DISSENTING): The trial court ruled that the new statute "would violate the ex post facto clause of the United States Constitution and the ex post facto clause of the Florida Constitution." Neither State's petition for certiorari nor the majority opinion addressed the ex post facto clause of the Florida constitution,

only that of the U.S. constitution. The State fails to cite the Florida Ex Post Facto Clause or point to a single binding decision interpreting the Florida Ex Post Facto Clause that the trial court departed from when it rendered the challenged order. Without such controlling precedent, we cannot conclude that the court violated a clearly established principle of law. State v. Lobato, 6D23-3201 (5/31/24)
https://6dca.flcourts.gov/content/download/2435280/opinion/Opinion_2023-3201.pdf

COMPETENCY-INTELLECTUAL DISABILITY: The only way a trial court may stave off dismissal of the case of a Defendant who has remained incompetent for more than two years because of intellectual disability is if its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become so. Reina v. State, 6D23-3738 (5/31/24)
https://6dca.flcourts.gov/content/download/2435281/opinion/Opinion_2023-3738.pdf

POST CONVICTION RELIEF-DEATH PENALTY: In death penalty case, where federal Court of Appeals downplayed the serious aggravating factors and overstated the strength of mitigating evidence that differed very little from the evidence presented at sentencing, it erred in reversing the District Court's decision denying habeas relief. Thornell v. Jones, No. 22–982 (U.S. S.Ct. 5/30/24)
https://www.supremecourt.gov/opinions/23pdf/22-982_bq7d.pdf

POST CONVICTION RELIEF-DEATH PENALTY: When an ineffective-assistance-of-counsel claim is based on counsel's performance at the sentencing phase of a capital case, a defendant is prejudiced only if there is a reasonable probability that, absent counsel's errors, the sentencer would have concluded that the balance of aggravating and mitigating circumstances did not warrant death. There must be a substantial, not just conceivable,

likelihood of a different result. Court must take into account any weighty aggravating circumstances and must assess the relative strength of expert witness testimony. Thornell v. Jones, No. 22–982 (U.S. S.Ct. 5/30/24)
https://www.supremecourt.gov/opinions/23pdf/22-982_bq7d.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Defendant's mental illness, mental impairment, or claim of childhood abuse are not weighty mitigating evidence when no causal connection between these factors and his conduct on the night of the murders is shown. Evidence of causation is required before these can be considered to be significant mitigating factors. Thornell v. Jones, No. 22–982 (U.S. S.Ct. 5/30/24)
https://www.supremecourt.gov/opinions/23pdf/22-982_bq7d.pdf

POST CONVICTION RELIEF-DEATH PENALTY (J. JACKSON, DISSENTING): "In its search for legal error in this capital habeas case, the Court makes many mistakes of its own. . .To be sure, the Ninth Circuit's discussion of the aggravating factors was concise. But there is no benchmark length for any such discussion. Indeed, this Court has granted habeas relief after similarly succinct evaluations of aggravating factors. . .We can hardly fault the Ninth Circuit for using the same approach that this Court itself has previously used. Thus, to me, the Court's claim that the Ninth Circuit 'all but ignored' the aggravators. . .rings hollow. . .[W]e are not the right tribunal to parse the extensive factual record in this case." Thornell v. Jones, No. 22–982 (U.S. S.Ct. 5/30/24)
https://www.supremecourt.gov/opinions/23pdf/22-982_bq7d.pdf

RULES-AMENDMENT-JUVENILE PROCEDURE: New Spanish forms for juvenile procedure created. Still working on the Creole translations. "[W]e ask that the Committee. . .file a report proposing accurate Creole translations." In Re: Amendments to Florida Rules of Juvenile Procedure, SC2023-1707 (5/30/24)
https://supremecourt.flcourts.gov/content/download/2435226/opinion/Opinion_SC2023-1707.pdf

APPEAL-MOOTNESS: Where one is challenging the legality of a sentence or seeking jail credit against that sentence, and he has completed the sentence during the pendency of the appeal, the appeal may be dismissed as moot. Davis v. State, 1D2023-2247 (5/29/24)
https://1dca.flcourts.gov/content/download/2435120/opinion/Opinion_2023-2247.pdf

APPEAL: An appeal in a criminal case outside of the time permitted in R. 9.110(b) may be pursued only by a petition for belated appeal. Murphy v. State, 1D2023-2731 (5/29/24)
https://1dca.flcourts.gov/content/download/2435128/opinion/Opinion_2023-2731.pdf

VOP-PLEA AGREEMENT: Where the original plea agreement expressly provided that if the trial court found he violated probation again, Defendant could be sentenced to thirty years with a twenty-five year minimum mandatory sentence for the underlying conviction, he had notice of the potential sentence and was subject to it once probation was revoked. Balbin v. State, 3D21-1770 (5/29/24)
https://3dca.flcourts.gov/content/download/2435174/opinion/Opinion_2021-1770.pdf

VOP: The standard of review for the trial court's decision to revoke probation is abuse of discretion. If reasonable persons could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. Balbin v. State, 3D21-2343 (5/29/24)
https://3dca.flcourts.gov/content/download/2435160/opinion/Opinion_2021-2343.pdf

APPEAL-PRESERVED ISSUE: Failure to make contemporaneous objections to trial judge's comments or to seek disqualification) prevents appellate review. Gray v. State, 3D22-1664 (5/29/24)

https://3dca.flcourts.gov/content/download/2435184/opinion/Opinion_2022-1664.pdf

POST CONVICTION RELIEF: Court's decision to decline to sentence Defendant as a Youthful Offender does not make the sentence illegal. Lee v. State, 3D24-0003 (5/29/24)
https://3dca.flcourts.gov/content/download/2435199/opinion/Opinion_2024-0003.pdf

JUROR-PEREMPTORY CHALLENGE: When a party challenges the opponent's exercise of a peremptory strike, the trial court must follow the three-step Melbourne procedure:

•**Step 1**--A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venire person is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. If these initial requirements are met, the court must ask the proponent of the strike to explain the reason for the strike.

•**Step 2**--At this point, the burden of production shifts to the proponent of the strike to come forward with a race neutral explanation.

•**Step 3**--If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the strike, the explanation is not a pretext, the strike will be sustained. Hastings v. State, 4D2023-0379 (5/29/24)
https://4dca.flcourts.gov/content/download/2435148/opinion/Opinion_2023-0379.pdf

JUROR-PEREMPTORY CHALLENGE: Defense counsel's explanation for its use of a peremptory challenge on an Indian-American–the juror considers police to be generally trustworthy and he likes to watch CSI–is race neutral. Court improperly relieved the State of its burden to show that the proffered reasons were not genuine. No record was made of the collective failure at the

trial level to make a sufficient record of factors relevant to genuineness, such as the racial make-up of the venire, prior strikes exercised against the racial group of the challenged juror, or whether the reason proffered for the strike was equally applicable to unchallenged jurors. Hastings v. State, 4D2023-0379 (5/29/24)
https://4dca.flcourts.gov/content/download/2435148/opinion/Opinion_2023-0379.pdf

FIRST-DEGREE MURDER-PREMEDITATION: Premeditation is a fully formed conscious purpose to kill that may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act about to be committed and the possible result of that act. Whether a premeditated design to kill was formed prior to a killing is a question of fact for the jury that may be established by circumstantial evidence. Defendant's admission that he did not like his daughter's abusive boyfriend, told her to leave him, wore a hoodie with the hood upon a very hot day, and told the victim "I promise you to the death, you will not hurt my child again" before shooting him show premeditation, as does his flight from the scene afterwards. Hamilton v. State, 4D2023-0870 (5/29/24)
https://4dca.flcourts.gov/content/download/2435151/opinion/Opinion_2023-0870.pdf

JURY INSTRUCTION-JUSTIFIABLE HOMICIDE: Defendant's objection to the standard jury instruction on the justifiable use of deadly force for including the phrase "necessarily done" fails. The standard jury instructions, viewed as a whole, fairly state the applicable law. Hamilton v. State, 4D2023-0870 (5/29/24)
https://4dca.flcourts.gov/content/download/2435151/opinion/Opinion_2023-0870.pdf

JURY INSTRUCTION-JUSTIFIABLE HOMICIDE: Jury instruction 7.2 is adequate. Its omission of the definition of premeditation as a "settled and fixed purpose to take the life of a human being" does not render it inadequate. Hamilton v. State, 4D2023-0870 (5/29/24)

https://4dca.flcourts.gov/content/download/2435151/opinion/Opinion_2023-0870.pdf

SPECIAL JURY INSTRUCTION: Defendant is not entitled to special additional instructions on intent that "Extremely reckless behavior is an insufficient basis from which to infer any premeditation. Moreover, an impulsive overreaction to an attack or injury is itself insufficient to prove premeditation." (First degree murder) or "Extremely reckless behavior is an insufficient basis from which to infer any malice. Moreover, an impulsive overreaction to an attack or injury is itself insufficient to prove ill will, hatred, spite or evil intent." (Second degree murder). Hamilton v. State, 4D2023-0870 (5/29/24)
https://4dca.flcourts.gov/content/download/2435151/opinion/Opinion_2023-0870.pdf

COMPETENCY HEARING: Once an issue of competency is raised, a hearing is required. On remand, if the court is able to make a *nunc pro tunc* finding as to competency based upon evaluations performed contemporaneously with trial and without relying solely on a cold record, and can do so in a manner which abides by due process guarantees, it should do so. Jones v. State, 4D2023-1226 (5/29/24)
https://4dca.flcourts.gov/content/download/2435152/opinion/Opinion_2023-1226.pdf

COSTS OF INCARCERATION: DOC is entitled to liquidated damages for Defendant's incarceration costs, notwithstanding that the restitution lien was not imposed at sentencing. Court retains continuing jurisdiction over the convicted offender for the sole purpose of entering civil restitution lien orders for the duration of the sentence and up to 5 years from release from incarceration or supervision, whichever occurs later. A civil restitution judgment is not a component of criminal punishment and therefore does not violate equal protection or substantive due process when imposed by the court after sentencing. Florida D.O.C. v. De La Paz, 4D2023-2244 (5/29/24)
https://4dca.flcourts.gov/content/download/2435150/opinion/Opinion_2023-

2244.pdf

PEREMPTORY CHALLENGE-BACKSTRIKE: Before the jury is sworn, a trial judge has no authority to infringe upon a party's right to challenge any juror, either peremptorily or for cause. Where a defendant has accepted the jury panel but has not exhausted his peremptory strikes, the trial court abuses its discretion when it refuses to entertain a peremptory challenge before the jury is sworn (defense counsel noticed that a juror who he thought had been dismissed had not). The right to challenge any juror before the jury is sworn includes the right to retract acceptance of the panel and backstrike a prospective juror using an available peremptory challenge. Frederick v. State, 4D2023-2526 (5/29/24)
https://4dca.flcourts.gov/content/download/2435157/opinion/Opinion_2023-2526.pdf

CERTIFICATE OF APPEALABILITY: A party who seeks to appeal the denial of a motion for relief from a judgment denying habeas relief must obtain a certificate of appealability, which may be issued only if the applicant has made a substantial showing of the denial of a constitutional right. The applicant must establish that jurists of reason could disagree with the resolution of his constitutional claims or that jurists could conclude that the issues presented are adequate to deserve encouragement to proceed further. Mills v. Commissioner, Alabama D.O.C., No. 24-11661 (11th Cir. 5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411661.Ord.pdf

CERTIFICATE OF APPEALABILITY-DEATH PENALTY: A motion for a certificate of appealability must be made no more than a year after the entry of the judgment or order from which the movant seeks relief. Three-and-a-half years is "more than a year." The "fraud on the court" exception to the one-year time limit requires that the alleged fraud be "highly probable." Mills v. Commissioner, Alabama D.O.C., No. 24-11661 (11th Cir. 5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411661.Ord.pdf

CERTIFICATE OF APPEALABILITY-DEATH PENALTY: Where Defendant obtained an affidavit from the co-Defendant's trial attorney that the State had falsely affirmed that it did not offer the flipping co-defendant a promise or hint that she would receive a favorable plea should she testify, and circumstances support that such a deal existed, he is not entitled to a C.O.A. years after the trial. Mills v. Commissioner, Alabama D.O.C., No. 24-11661 (5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411661.Ord.pdf

CERTIFICATE OF APPEALABILITY-DEATH PENALTY (J. ABUDU, CONCURRING): "Unfortunately, even when a petitioner's life hangs in the balance, our case law does not extend sufficient procedural and substantive due process protections." Mills v. Commissioner, Alabama D.O.C., No. 24-11661 (5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411661.Ord.pdf

DEATH PENALTY-ACCESS TO COURT: Strapping a condemned prisoner to the gurney in the execution chamber for an undue length without access to counsel does not violate his right to access to the courts. Mills v. Hamm, No. 24-11689 (11th Cir. 5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411689.Ord.pdf

DEATH PENALTY-STAY OF EXECUTION: A court may grant a stay of execution only if the movant establishes that he is substantially likely to succeed on the merits, he will suffer irreparable injury absent the stay, and the stay would not substantially harm the opposing party or the public interest. Mills v. Hamm, No. 24-11689 (11th Cir. 5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411689.Ord.pdf

DEATH PENALTY-STAY OF EXECUTION: Condemned prisoner should not move for a stay of execution "on the cusp of a three-day-holiday weekend. A reasonably diligent plaintiff would have sought a stay much sooner." Mills v. Hamm, No. 24-11689 (11th Cir. 5/28/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202411689.Ord.pdf

SIXTH AMENDMENT: The Sixth Amendment right to assistance of counsel in all does not extend beyond the first appeal. The right to counsel during execution does not exist. Mills v. Hamm, No. 24-11689 (11th Cir. 5/28/24) https://media.ca11.uscourts.gov/opinions/pub/files/202411689.Ord.pdf

COSTS OF INVESTIGATION: $50 cost of investigation may not be imposed where it is not part of the plea agreement, requested by the State, or orally pronounced. Gandy v. State, 5D2023-3132 (5/24/24)

https://5dca.flcourts.gov/content/download/2434986/opinion/Opinion_2023-3132.pdf

APPEAL: If the trial court does not file an order ruling on a motion to correct sentence within 60 days, the motion shall be deemed denied and may be appealed. Thompson v. State, 6D23-2376 (5/24/24)

https://6dca.flcourts.gov/content/download/2435005/opinion/Opinion_2023-2376.pdf

ARMED CAREER CRIMINAL ACT-SERIOUS DRUG OFFENSE: A state drug conviction counts as an ACCA predicate if it involved a drug on the federal schedules at the time of that conviction. A prior cocaine conviction, notwithstanding the removal of ioflupane from the federal statutory definition of cocaine, remains a predicate offense. ACCA requires sentencing courts to examine the law as it was when the defendant violated it, even if that law is subsequently amended. Brown v. United States, No. 22–6389 (U.S. S.Ct. 5/23/24)

https://www.supremecourt.gov/opinions/23pdf/22-6389_6537.pdf

ARMED CAREER CRIMINAL ACT- SERIOUS DRUG OFFENSE: A state crime constitutes a "serious drug offense" if it involved a drug that was on the federal schedules when the defendant possessed or trafficked in it but was later removed. The fact that the federal cannabis statute was amended in 2018–hemp was removed from the definition–and no longer matched the state definition does not mean that the Defendant's prior possession of cannabis with intent to sell does not qualify as a predicate offense. Brown v. United States, No. 22–6389 (U.S. S.Ct. 5/23/24)

https://www.supremecourt.gov/opinions/23pdf/22-6389_6537.pdf

ARMED CAREER CRIMINAL ACT-CATEGORICAL APPROACH: ACCA imposes a 15-year mandatory minimum sentence on defendants who are convicted of the illegal possession of a firearm and have a criminal history that is thought to demonstrate a propensity for violence. ACCA requires an enhanced penalty if, among other things, they have three previous convictions for a serious drug offense, i.e. an offense carrying a maximum sentence of at least 10 years' imprisonment and involving a controlled substance. Brown v. United States, No. 22–6389 (U.S. S.Ct. 5/23/24)

https://www.supremecourt.gov/opinions/23pdf/22-6389_6537.pdf

ARMED CAREER CRIMINAL ACT- SERIOUS DRUG OFFENSE (J. JACKSON, CONCURRING): ACCA's "serious drug offense" definition necessarily directs sentencing courts to consult the current federal drug schedules, rather than some earlier version of those lists. "When it comes time to interpret a statute, courts typically plug the referenced provision. . .into the statutory text. . .[But] [t]he Government rejects the foregoing description of how statutory cross-references operate. . .The Government insists that, instead of merely calling for insertion of the referenced law, the appearance of a cross-reference in a statute can have 'different temporal branches depending on

context.'. . .That cannot be right. We have never viewed statutory cross-references as a gateway to the multiverse." Brown v. United States, No. 22–6389 (U.S. S.Ct. 5/23/24)

https://www.supremecourt.gov/opinions/23pdf/22-6389_6537.pdf

STATUTORY INTERPRETATION (J. JACKSON, CONCURRING): The majority "has taken a strange and unwarranted departure from this Court's ordinary interpretive practices. Before today, we have consistently used all aspects of a statute's text to ascertain its meaning, including the verbs that Congress chooses. . .Any other approach risks chaos." Brown v. United States, No. 22–6389 (U.S. S.Ct. 5/23/24)

https://www.supremecourt.gov/opinions/23pdf/22-6389_6537.pdf

PROFFER LETTER: If the government breaches a proffer agreement at sentencing, the defendant must either be resentenced by a new judge or allowed to withdraw his plea, regardless of whether the judge was influenced. USA v. Guerra Blanco, No. 22-10419 (11th Cir. 5/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210419.pdf

PROFFER LETTER: The government's use of a video threatening the assassination of a Spanish judge—with English subtitles inserted by Defendant--did not constitute a breach of the proffer agreement. Statements concerning violent acts, or violence in any form, were excluded from the proffer agreement not to use information derived from the proffer. Threatening the assassination of a Spanish judge falls squarely within the violence exclusion. USA v. Guerra Blanco, No. 22-10419 (11th Cir. 5/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210419.pdf

DEFINITION-"IN ANY SHAPE OR FORM": "In any shape or form" means "of any kind" or "in any manner." USA v. Guerra Blanco, No. 22-10419 (11th Cir. 5/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210419.pdf

ENHANCEMENT-STANDARD OF PROOF: The preponderance of the evidence standard is sufficient to establish the predicate facts for a sentencing adjustment or enhancement. USA v. Guerra Blanco, No. 22-10419 (11th Cir. 5/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210419.pdf

ENHANCEMENT-TERRORISM: Specific intent to influence, affect, or retaliate against government conduct is not required for the promoting terrorism enhancement. "Mr. Guerra's conduct places him a long ways away from being a mere translator. USA v. Guerra Blanco, No. 22-10419 (11th Cir. 5/23/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210419.pdf

SEARCH AND SEIZURE: Once a driver has been lawfully stopped for a traffic violation, police officers may order the driver out of the vehicle for officer safety reasons without violating the Fourth Amendment's prohibition of unreasonable searches and seizures. A K-9 officer who arrives midway through a lawful traffic stop to perform a dog sniff sweep of a vehicle's exterior may order occupants to get out of the car for officer safety reasons. State v. Crelier, SC2022-0524 (5/23/24)

https://supremecourt.flcourts.gov/content/download/2434943/opinion/Opinion_SC2022-0524.pdf

SEARCH AND SEIZURE (LABARGA, DISSENTING): "Creller's right to personal security carries more weight than the majority affords it. An exit order is not an innocuous request. While police search the vehicle, the driver must stand on the side of the road in view of all passersby. The implications heighten when. . . the scene involves two or more police cars with lights glaring and with an active K-9 unit. . .The stigma associated with the exit order jeopardizes the driver's reputation in the community. This is especially the case in our contemporary social media environment in which videos are constantly uploaded with little or no context given. A driver forced to exit the vehicle for a K-9 sweep may be viewed not only by passersby, but also by anyone around the world." State v. Crelier, SC2022-0524 (5/23/24)

https://supremecourt.flcourts.gov/content/download/2434943/opinion/Opinion_SC2022-0524.pdf

SUPERVISED RELEASE-CONDITION: Defendant on supervised release for threatening a magistrate may be ordered to stay away from the courthouse. Condition does not infringe on Defendant's right to access to the courts. USA v. Etienne, No. 23-10266 (11th Cir. 5/22/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310266.pdf

SUPERVISED RELEASE-CONDITION: Court may order as a condition of supervised release that Defendant make a financial disclosure statement. USA v. Etienne, No. 23-10266 (11th Cir. 5/22/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310266.pdf

COMPETENCY: A trial court's decision to order a psychological evaluation

does not create a constitutional entitlement to a subsequent competency hearing if the information available to the trial court did not meet the evidentiary threshold for invoking R. 3.210 competency procedures. It is the violation of the right not to be tried when there are reasonable grounds to question the defendant's competency—not the right to have a hearing and competency determination—that deprives a defendant of due process. Awolowo v. State, 1D2022-2062 (5/22/24)

https://1dca.flcourts.gov/content/download/2434832/opinion/Opinion_2022-2062.pdf

COMPETENCY: "Failure to hold a competency hearing is not fundamental error. And so, when the record does not show reasonable grounds for the trial court to have believed that the defendant was incompetent to proceed, the trial court does not fundamentally err by failing to hold a competency hearing and failing to enter a written order on the defendants' competency. This is so even if the trial court has ordered an expert evaluation of the defendant's competency." Prior precedents receded from. Awolowo v. State, 1D2022-2062 (5/22/24)

https://1dca.flcourts.gov/content/download/2434832/opinion/Opinion_2022-2062.pdf

COMPETENCY: Defense counsel must recite facts in the motion for competency evaluation that would support counsel's belief that there are reasonable grounds to doubt the defendant's competency. A boilerplate motion "good faith belief that the Defendant suffer[ed] from mental illness or disability and that as a result he/she may be incompetent to proceed" is not nearly enough. Awolowo v. State, 1D2022-2062 (5/22/24)

https://1dca.flcourts.gov/content/download/2434832/opinion/Opinion_2022-2062.pdf

COMPETENCY: "We remind counsel that when a trial court has ordered a competency evaluation of the defendant, as an officer of the court, counsel has a duty to bring to the trial court's attention the need for a competency hearing and determination. . .Defense counsel, when raising concerns about a defendant's competency, must be conscientious in bringing an issue of competency before the trial court and preserving the issue for appeal. Awolowo v. State, 1D2022-2062 (5/22/24)

https://1dca.flcourts.gov/content/download/2434832/opinion/Opinion_2022-2062.pdf

SEARCH AND SEIZURE-FINDINGS: Court must provide sufficient factual findings to support its ruling on motion to suppress. Conclusory findings--"[a]fter hearing testimony of the witnesses, argument of the attorneys, this Court finds that the State has not met its burden"--fail to provide an adequate record for appellate review. State v. Dennard, 1D2023-0083 (5/22/24)

https://1dca.flcourts.gov/content/download/2434856/opinion/Opinion_2023-0083.pdf

CREDIT FOR TIME SERVED: Court has discretion to award jail credit against each term of consecutive prison sentences on multiple charges. Coffin v. State, 1D2023-1287 (5/22/24)

https://1dca.flcourts.gov/content/download/2434869/opinion/Opinion_2023-1287.pdf

CREDIT FOR TIME SERVED-CORRECTION: Court may not *sua sponte* eliminate the jail credit originally applied to each term of consecutive prison sentences on multiple charges. A trial court has inherent authority to *sua sponte* correct sentencing documents that overreport the amount of jail time

served by a defendant, but only within the framework and time limits of and in compliance with rule 3.800(b), and only if the errors constituted scrivener's errors. Coffin v. State, 1D2023-1287 (5/22/24)

https://1dca.flcourts.gov/content/download/2434869/opinion/Opinion_2023-1287.pdf

FALSE IMPRISONMENT: A civil suit for false imprisonment cannot survive a finding of probable cause for the arrest. Kimbrel v. Clark, 1D2023-1901 (5/22/24)

https://1dca.flcourts.gov/content/download/2434874/opinion/Opinion_2023-1901.pdf

EXCESSIVE FORCE: A police officer may be liable for the use of excessive force for committing battery while effectuating a lawful arrest, but officers are only liable for damage where the force used is clearly excessive. Kimbrel v. Clark, 1D2023-1901 (5/22/24)

https://1dca.flcourts.gov/content/download/2434874/opinion/Opinion_2023-1901.pdf

APPEAL: A motion to correct an illegal sentence dismissed without prejudice is not a final, appealable order. Griffin v. State, 1D2023-2271 (5/22/24)

https://1dca.flcourts.gov/content/download/2434873/opinion/Opinion_2023-2271.pdf

VOIR DIRE: No fundamental error occurs when trial court offers "prosecution-friendly" hypotheticals during voir dire. However, the trial judge should rely

upon, and seldom stray from, Florida's Standard Jury Instructions. Caldevilla v. State, 3D22-0881 (5/22/24)

https://3dca.flcourts.gov/content/download/2434831/opinion/Opinion_2022-0881.pdf

VOP: Hearsay evidence that would be inadmissible during a trial is admissible in a probation revocation hearing to prove a violation of probation, but may not form the sole basis for revocation. The hearsay evidence must be supported by non-hearsay evidence. Probation improperly revoked on the allegation of a new robbery where no eyewitnesses testified. Bryant v. State, 3D23-183 (5/22/24)

https://3dca.flcourts.gov/content/download/2434885/opinion/Opinion_2023-0183.pdf

VOP: Probation improperly revoked for failing to pay drug testing fees, failing to complete an anger management course and failing to complete a firearm safety course where Defendant still had time to complete these conditions. Bryant v. State, 3D23-183 (5/22/24)

https://3dca.flcourts.gov/content/download/2434885/opinion/Opinion_2023-0183.pdf

APPEAL-MOTION TO CORRECT: As a defendant has thirty days to file a notice of appeal of a judgment and sentence, chronologically, a R. 3.800(a)(1) motion cannot be filed within the first 30 days of sentencing. Motion to Correct an Illegal sentence filed 3 days after re-sentencing is premature. Bryant v. State, 3D23-183 (5/22/24)

https://3dca.flcourts.gov/content/download/2434885/opinion/Opinion_2023-0183.pdf

DISMISSAL: Court may not dismiss charges due to difficulties in getting witness–a retired officer now residing out of state–to sit for a deposition to perpetuate testimony where State did not cause the problem and less drastic remedies existed. State v. Cerulia, 4D2022-1941 (5/22/24)

https://4dca.flcourts.gov/content/download/2434853/opinion/Opinion_2022-1941.pdf

POST CONVICTION RELIEF-DNA TESTING: Defendant is entitled to post conviction DNA testing of the victim's dress and underwear. Merritt v. State, 4D2023-2459 (5/22/24)

https://4dca.flcourts.gov/content/download/2434860/opinion/Opinion_2023-2459.pdf

STAND YOUR GROUND: Court may deny a SYG motion without a hearing where the motion fails to allege sufficient facts that affirmatively show or tend to show that Defendant had a reasonable belief that his show of force was necessary to defend himself against some imminent use of unlawful force. Maslo v. State, 3D24-0562 (5/21/24)

https://3dca.flcourts.gov/content/download/2434783/opinion/Opinion_2024-0562.pdf

APPEAL-MOTION TO CORRECT: Defendant may not file a pro se R. 3.800(a) motion to correct before counsel withdraws. A defendant does not have a constitutional right to "hybrid" representation, to be represented by both

counsel and by himself. Such a motion is a nullity. Crandall v. State, 5D2024-078 (5/21/24)

https://5dca.flcourts.gov/content/download/2434798/opinion/Opinion_2024-0798.pdf

DEPORTATION-LEWD AND LASCIVIOUS-CATEGORICAL APPROACH: A Florida conviction for lewd and lascivious battery under the 2008 version of Fla. Stat. §800.04(4)--statutory rape–does not constitutes the sexual abuse of a minor, and is therefore not an aggravated felony under the INA. The generic federal definition of "sexual abuse of a minor," requires an age difference of at least one year between the perpetrator and the victim. Applying the categorical approach, the least culpable conduct under the statute is consensual sexual activity between adolescents who are 12 to 15 years old, with no minimum age required for the perpetrator and no age differential between the participants. The statute therefore sweeps more broadly than the generic federal definition of "sexual abuse of a minor. Leger v. US Attorney General, (11th Cir. 5/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210971.pdf

DEPORTATION-CATEGORICAL APPROACH: "We realize that this short summary may be unintelligible to those who are unversed in the intricacies of immigration law and unfamiliar with the Supreme Court's categorical approach for determining which state offenses constitute aggravated felonies—and maybe even to those who profess some expertise. In the pages that follow, we'll do our best to explain." Leger v. US Attorney General, (11th Cir 5/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210971.pdf

CATEGORICAL APPROACH: Under the categorical approach, courts ask

whether the state statute defining the crime of conviction categorically fits within the generic federal definition of a corresponding aggravated felony. Courts must presume that the state conviction rested upon the least of the acts criminalized by the statute, and then determine whether that conduct would fall within the federal definition of the crime. The Defendant's actual conduct is not considered. Leger v. US Attorney General, (11th Cir 5/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210971.pdf

SEXUAL ABUSE: "The generic federal offense of sexual abuse of a minor requires some age differential between the perpetrator and the victim. . . [W]e do not go as far as. . .declaring that the age differential must be at least four years. Instead, we hold only that the age differential must be at least one year, and leave for another day whether the required age differential is any more than that." Leger v. US Attorney General, (11th Cir 5/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210971.pdf

DEPORTATION-MARIJUANA: A conviction for marijuana possession does not constitute a controlled substance offense under the INA. Not all substances that §893.02(3) proscribes are federally controlled." Because §893.02(3) includes all parts of the marijuana plant, while 21 U.S.C. § 802(16) does not, a Florida conviction for possession of marijuana is not a controlled substance offense as defined under federal law. Leger v. US Attorney General, (5/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210971.pdf

MALICIOUS PROSECUTION-QUALIFIED IMMUNITY: Officers have qualified immunity for procuring an arrest warrant for the person who they wrongly

identify as the man in the surveillance video using a stolen debit card. "None of us is perfect. . . [T]he Fourth Amendment does not require a perfect investigation before an arrest is made or a charge is brought. What it requires is a reasonable investigation within the bounds of what can be expected of imperfect people." Harris v. Hixson, No. 22-12493 (11th Cir. 5/17/24**)**

https://media.ca11.uscourts.gov/opinions/pub/files/202212493.pdf

DEFINITION-

"PROBABLE CAUSE": Probable cause does not require proof beyond a reasonable doubt or even proof by a preponderance of the evidence that the person arrested for a crime is guilty. Probable cause only requires substantial chance of criminal activity. Sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment. Harris v. Hixson, No. 22-12493 (11th Cir. 5/17/24**)**

https://media.ca11.uscourts.gov/opinions/pub/files/202212493.pdf

MALICIOUS PROSECUTION/FALSE ARREST: There are differences between a §1983 malicious prosecution claim arising from a warrant-based arrest and a §1983 false arrest claim arising from a warrantless arrest. Warrantless arrests concern whether the facts known to the arresting officer establish probable cause. Warrant-based arrests, by contrast, concern whether the judicial officer who approved the seizure had sufficient information to find probable cause. In most, but not all, circumstances if the arrest affidavit doesn't independently establish probable cause, it cannot be rehabilitated by relying on information that the officer had but didn't disclose to the judicial officer when he sought the warrant. But if the period of detention after arrest is brief, information known to the officers but not communicated to the judicial officer may be considered to uphold the seizure. Harris v. Hixson, No. 22-12493 (11th Cir. 5/17/24**)**

https://media.ca11.uscourts.gov/opinions/pub/files/202212493.pdf

CONTEMPT-INDIRECT: Court erred in finding that subject violated the order entered in a dependency case that he treat "everyone in the System" with respect by spraying disinfectant on a mirror of a transport van. Indirect criminal contempt must be based on an affidavit of a person having personal knowledge of the facts. A community care provider's report is not an affidavit, and the witness testified that she had no personal knowledge of the relevant facts in the report, A.N.W. v. State, 2D2023-1300 (5/17/24)

https://2dca.flcourts.gov/content/download/2434656/opinion/Opinion_2023-1300.pdf

COSTS: Court may not impose an unrequested and unannounced $100 cost of investigation. Davis v. State, 52022-1817 (5/17/24)

https://5dca.flcourts.gov/content/download/2434646/opinion/Opinion_2022-1817.pdf

APPEAL-PRESERVED ERROR: Acquiescing to an incorrect instruction constitutes a failure of preservation that does not preclude fundamental-error review. It is not necessarily invited error. Cooper v. State, 1D2022-2143 (5/15/24)

https://1dca.flcourts.gov/content/download/2434512/opinion/Opinion_2022-2143.pdf

JURY-DEADLOCK: Any error in Court giving an Allen charge when jury did not declare itself deadlocked but rather asked to re-convene in the morning was not fundamental error. Without an objection to an Allen charge being given to a jury that is not deadlocked, there can be no reversible error. Cooper v. State, 1D2022-2143 (5/15/24)

https://1dca.flcourts.gov/content/download/2434512/opinion/Opinion_2022-2143.pdf

JURY-DISCHARGE: The trial judge did not err by bringing back the jurors, after they had been discharged, to re-poll them once the judge realized that he had made a mistake in his reading of the verdict form to the jurors in connection with the first poll. While a discharged jury cannot be recalled, a trial court does not err by doing so after it simply uses the term "discharged." A jury may remain undischarged and retain its functions, though the word "discharge" may have been spoken by the court, if, after such announcement, it remains an undispersed unit, within control of the court, with no opportunity to mingle with or discuss the case with other. Cooper v. State, 1D2022-2143 (5/15/24)

https://1dca.flcourts.gov/content/download/2434512/opinion/Opinion_2022-2143.pdf

HABEAS CORPUS: Habeas corpus may not be used as a means to seek a second appeal or to litigate issues that could have been or were raised in a motion under R. 3.850. Lowe v. State, 1D2023-1351 (5/15/24)

https://1dca.flcourts.gov/content/download/2434518/opinion/Opinion_2023-1351.pdf

POST CONVICTION RELIEF-RIGHT TO TESTIFY: Counsel was not ineffective for advising client not to testify where he intended to say some other dude did it and he was not even there when he had earlier told his attorney that he was there and was the shooter. Trial counsel properly advised Defendant that he should not testify because he was not going to allow him to lie on the stand. Parks v. State, 2D2022-0987 (5/15/24)

https://2dca.flcourts.gov/content/download/2434498/opinion/Opinion_2022-0987.pdf

APPEAL-PRESERVED ISSUE: An argument on appeal which differs from the argument in the postconviction court is not preserved. Parks v. State, 2D2022-0987 (5/15/24)

https://2dca.flcourts.gov/content/download/2434498/opinion/Opinion_2022-0987.pdf

FALSE TESTIMONY (LaROSE, CONCURRING): Regardless of the client's wishes, defense counsel must refuse to aid the defendant in giving perjured testimony and also refuse to present testimony that he knows is fabricated. "Trial counsel was truly stuck in the 'worst dilemma,' facing a legal and ethical Catch-22. Trial counsel handled this tricky situation with aplomb, and. . .was not deficient for advising Mr. Parks not to testify at trial." Parks v. State, 2D2022-0987 (5/15/24)

https://2dca.flcourts.gov/content/download/2434498/opinion/Opinion_2022-0987.pdf

SEARCH WARRANT: The statement in the affidavit for the search warrant that Defendant showed pornographic Disney videos to a child was not false or misleading. The chid's omitted statement attributing the videos popping up due to a "glitch" was not a material fact that would create substantial possibility that, if aware of the fact, the magistrate would not have issued the search warrant. The omitted facts are only material if there is a substantial possibility that had the magistrate been aware of the omission he would not have found probable cause. Andrews v. State, 2D2022-1981 (5/15/24)

https://2dca.flcourts.gov/content/download/2434499/opinion/Opinion_2022-1981.pdf

APPEAL-PRESERVED ISSUE: For appellate review, an issue can only be preserved if the objection is sufficiently precise. On appeal, Defendant may not argue that the admittance of 7,119 URLs related to porn sited is improper character evidence or unduly cumulative where those grounds were not sufficiently articulated as the basid for the objection. An objection on relevance grounds only will not preserve an argument of unfair prejudice on appeal. "We will not entertain a modified claim of prejudice based on the apparent salacious nature of the URLs." Andrews v. State, 2D2022-1981 (5/15/24)

https://2dca.flcourts.gov/content/download/2434499/opinion/Opinion_2022-1981.pdf

JUDGMENT OF ACQUITTAL: Defendant is not entitled to a JOA for showing pornography to a child when the girl said it "popped up" due to a "glitch" where Defendant then asked to girl to perform the acts shown on him. Andrews v. State, 2D2022-1981 (5/15/24)

https://2dca.flcourts.gov/content/download/2434499/opinion/Opinion_2022-1981.pdf

ARGUMENT: Prosecutor stating that his personal belief that Defendant was "guilty of all counts" is improper, but is not fundamental error. Andrews v. State, 2D2022-1981 (5/15/24)

https://2dca.flcourts.gov/content/download/2434499/opinion/Opinion_2022-1981.pdf

ARGUMENT: State's closing arguments emphasizing the leading questions nature of the cross-examination did not improperly denigrate the defense. The prosecutor did not imply that defense counsel's cross-examination was improper or attack defense counsel for asking leading questions, but merely highlighted that the child was vulnerable to shutting down on cross-examination. Andrews v. State, 2D2022-1981 (5/15/24)

https://2dca.flcourts.gov/content/download/2434499/opinion/Opinion_2022-1981.pdf

POSTCONVICTION RELIEF: Generally, defense counsel is obligated to advise the defendant of all pertinent matters bearing on the choice of which plea to enter, including the strength of the case brought by the State against the defendant. However, an erroneous strategic prediction about the outcome of a trial is not necessarily deficient performance. Cobb v. State, 3D22-1140 (5/15/24)

https://3dca.flcourts.gov/content/download/2434533/opinion/Opinion_2022-1140.pdf

POST CONVICTION RELIEF-ISSUES-REMAND: On appellate remand, Court may not consider new issues beyond the scope of the mandate. A trial court does not have discretionary power to alter or modify the mandate of an appellate court in any way, shape or form. Cobb v. State, 3D22-1140 (5/15/24)

https://3dca.flcourts.gov/content/download/2434533/opinion/Opinion_2022-1140.pdf

DISMISSAL: Court may not *sua sponte* dismiss a case based on the prosecutor's absence from the first appearance hearing. City of Miami Beach v. Guyton, 3D22-1875 (3/15/24)

https://3dca.flcourts.gov/content/download/2434535/opinion/Opinion_2022-1875.pdf

RESTITUTION: Court may not impose restitution to the Sexual Assault Treatment Center (SATC) because the SATC is not a victim of a crime within the statutory definition. To get restitution, a government agency must be both a "direct victim" of a crime and not be merely providing public services in response to the crime. Lucas v. State, 4D2022-2497 (5/15/24)

https://4dca.flcourts.gov/content/download/2434526/opinion/Opinion_2022-2497.pdf

TWELVE PERSON JURY: The Constitution does not require a twelve person jury. Lucas v. State, 4D2022-2497 (5/15/24)

https://4dca.flcourts.gov/content/download/2434526/opinion/Opinion_2022-2497.pdf

EVIDENCE: Detective testified that a mark on the victim's back looked like it came from an iron; an iron with blood on it was found on the scene. The detective's testimony that the "markings on the decedent that would be consistent with an iron" would have been within the permissible range of lay observation and ordinary police experience. Moore-Bryant v. State, 4D2023-0855 (5/15/24)

https://4dca.flcourts.gov/content/download/2434538/opinion/Opinion_2023-0855.pdf

SPEEDY TRIAL: Where Court consolidated a homicide case with the possession of a firearm by a felon case, both based on the same incident but separate informations, and Defendant thereafter moved to continue the consolidated case, Defendant is not entitled to a speedy trial discharge on latter count (he had not been charged with possession of a firearm until 520 days after the homicide arrest). A continuance motion filed after the 175-day speedy trial period constitutes an ongoing waiver to all charges arising out of the same criminal episode forming the continued case, except where that continuance is a nullity. And the continuance was not a nullity because Defendant was not entitled to an automatic discharge. A motion for discharge is not a substitute for a notice of expiration, which provides the State a 15-day recapture period to fix any delays. State v. Jenkins, 4D2023-1745 (5/15/24)

https://4dca.flcourts.gov/content/download/2434557/opinion/Opinion_2023-1745.pdf

APPEAL-PRESERVED ISSUE: Issues not properly raised in the lower tribunal are typically waived on appeal. State v. Major, 4D2023-1923 (5/15/24)

https://4dca.flcourts.gov/content/download/2434567/opinion/Opinion_2023-1923.pdf

ABSENCE FROM TRIAL: Argumentative defendant who refuses to remain in the courtroom during trial is not entitled to a warning that he could return to the courtroom if he agreed to behave. A defendant may lose his right to be present at trial by disruptive behavior, express waiver, or voluntarily absenting himself from trial by leaving the trial or failing to appear. Seay v. State, 2D2-2022-3757 (5/10/24)

https://2dca.flcourts.gov/content/download/2434277/opinion/Opinion_2022-3757.pdf

PRISON RELEASEE REOFFENDER: In designating Defendant a PRR, Court may not take judicial notice of records that the State used in a different case to establish his PRR Status without including them in the court file for the case at issue. Dupree v. State, 2D2023-1114 (5/10/24)

https://2dca.flcourts.gov/content/download/2434280/opinion/Opinion_2023-1114.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to claim stand-your-ground immunity, notwithstanding that his theory of defense at trial was that he was not the shooter. Carver v. State, 5D2023-1877 (5/10/24)

https://5dca.flcourts.gov/content/download/2434287/opinion/Opinion_2023-1877.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to interview and then call at trial available witnesses who would have established that one of the victims had stalked him and done certain violent things to him and his belongings. Carver v. State, 5D2023-1877 (5/10/24)

https://5dca.flcourts.gov/content/download/2434287/opinion/Opinion_2023-1877.pdf

FORFEITURE: In civil forfeiture cases, the Due Process Clause requires a timely forfeiture hearing, but does not require a separate preliminary hearing. Government may hold seized cars until the final forfeiture hearing. Culley v. Marshall, No. 22–585 (U.S. S.Ct. 5/9/24)

https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

FORFEITURE (J. GORSUCH, CONCURRING): "Why does a Nation so jealous of its liberties tolerate expansive new civil forfeiture practices that have 'led to egregious and well-chronicled abuses'? . . .Perhaps it has something to do with the relative lack of power of those on whom the system preys. Perhaps government agencies' increasing dependence on forfeiture as a source of revenue is an important piece of the puzzle." Culley v. Marshall, No. 22–585 (U.S. S.Ct. 5/9/24)

https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

FORFEITURE (J. GORSUCH, CONCURRING): "In this Nation, the right to a jury trial before the government may take life, liberty, or property has always been the rule. Yes, some exceptions exist. But perhaps it is past time for this Court to examine more fully whether and to what degree contemporary civil forfeiture practices align with that rule and those exceptions." Culley v. Marshall, No. 22–585 (U.S. S.Ct. 5/9/24)

https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

FORFEITURE (J. GORSUCH, CONCURRING): "[I]n future cases, with the benefit of full briefing, I hope we might begin the task of assessing how well the profound changes in civil forfeiture practices we have witnessed in recent decades comport with the Constitution's enduring guarantee that '[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.'" Culley v. Marshall, No. 22–585 (U.S. S.Ct. 5/9/24)

https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

WORD OF THE DAY-"DEODAND" (J. GORSUCH, CONCURRING: T]he archaic common-law deodand. . . required the forfeiture of any object esponsible for a death—say, a knife, cart, or horse—to the Crown. . .Today, the idea seems much the same even if the practice now sweeps more broadly,

requiring almost any object involved in almost any serious offense to be surrendered to the government in amends. The hardships deodands often imposed seem more than faintly familiar, too. . . Not infrequently, the practice left impoverished families without the means to support themselves. . .[H]as something not wholly unlike it gradually reemerged in our own lifetimes?" Culley v. Marshall, No. 22–585 (U.S. S.Ct. 5/9/24)

https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

RULES-AMENDMENT: R. 3.116(c) is created, requiring a judge to grant a request to use communication technology for a nonevidentiary pretrial conference scheduled for 30 minutes or less unless the judge determines that good cause exists to deny the request. In Re: Amendments to Florida Rule of Criminal Procedure 3.116. No. SC2023-0803 (5/9/24)

https://supremecourt.flcourts.gov/content/download/2434155/opinion/Opinion_SC2023-0803.pdf

RULES-AMENDMENT: Rules amended to provide that only members of the Bar in good standing may elect inactive status, and that the Bar can waive or extend continuing legal education or basic skills course requirements upon a showing of hardship. Bar members must practice under their official Bar names and must notify the Bar of any other states where they are licensed to practice. In Re: Amendments to Rules Regulating the Florida Bar – Miscellaneous Petition, SC2024-0030 (5/9/24)

https://supremecourt.flcourts.gov/content/download/2434156/opinion/Opinion_SC2024-0030.pdf

RULES-AMENDMENT: Graduates of an ABA-approved law school who has received an initial clearance letter from the Florida Board of Bar Examiners may appear for the maximum term of certification of 18 months from

graduation for the same entities and under the same restrictions that apply to students in law school practice programs. In Re: Amendments to Rules Regulating the Florida Bar – Miscellaneous Petition, SC2024-0030 (5/9/24)

https://supremecourt.flcourts.gov/content/download/2434156/opinion/Opinion_SC2024-0030.pdf

CHILD HEARSAY: R. 90.803(23), which renders admissible reliable hearsay statements of a "child victim," can be used to introduce evidence to prove a collateral sex offense. The child victim need not be the victim of the charged offense. A victim is a victim regardless of any charging document. Had the child been merely a witness to the assault on the named victim, her hearsay statements would be inadmissible. But as the child witness was herself a victim, and she was the victim of the sexual assault that was recounted in her out-of-court statements, the child hearsay was admissible. Aboagye v. State, 1D2021-3953 (5/8/24)

https://1dca.flcourts.gov/content/download/2434127/opinion/Opinion_2021-3953.pdf

SECOND-DEGREE MURDER-DEPRAVED MIND: Defendant initiating an altercation with his girlfriend's ex-boyfriend and killing by a gunshot to the back of the head is suffcient evidence of ill will, malice, hatred, spite, or evil intent to sustain a conviction for second-degree murder. Ford v. State, 1D2022-1409 (5/8/24)

https://1dca.flcourts.gov/content/download/2434109/opinion/Opinion_2022-1409.pdf

SECOND-DEGREE MURDER-DEPRAVED MIND: "[W]e write to discuss the difficulty posed by the elements necessitated to show 'depraved mind," as

required to convict for second-degree murder." Defendant who shot victim because he "got under [his] skin" and later performed an original rap song about the shooting is sufficient to show a depraved mind. "Depraved mind" is not limited to ill will, hatred, or evil intent; it includes an inherent deficiency of moral sense and rectitude, or a wicked and corrupt disregard of the lives and safety of others, a failure to appreciate social duty. Porter v. State, 1D2022-2132 (5/8/24)

https://1dca.flcourts.gov/content/download/2434110/opinion/Opinion_2022-2132.pdf

TRESPASS: A teacher lacks authority to issue a trespass warning to the visiting team's head coach after his ejection from the game and refusal to leave the field. But as a reserve deputy, he does, if the principal had authorized him to do so. The warning person's status as a law enforcement officer or school security guard is not enough. But "although Deputy Rimes' testimony was ambiguous, the jury could infer that his authority was authorized by the Union High School principal." Rollins v. State, 1D2022-3288 (5/8/24)

https://1dca.flcourts.gov/content/download/2434115/opinion/Opinion_2022-3288.pdf

COST OF PROSECUTION: The $100 cost for the state attorney is a minimum cost that need not be requested. Wood v. State, 1D2023-0276 (5/8/24)

https://1dca.flcourts.gov/content/download/2434116/opinion/Opinion_2023-0276.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failure to contact a witness supplied to him, but there is no prejudice where there is no showing that the outcome of the trial would have been different had he testified. Given

the lack of evidence that the witness's trial testimony would have contradicted the prosecution's theory of the case, Defendant suffered no prejudice. Lofton v. State, 1D2023-0571 (5/8/24)

https://1dca.flcourts.gov/content/download/2434117/opinion/Opinion_2023-0571

POST CONVICTION RELIEF: Counsel was not ineffective for failure to include in his motion for a new trial--based on an allegation that a juror had overheard witnesses discussing whether to give exculpatory evidence--the name of the juror or an affidavit from him where, despite reasonable attempts, defense counsel did not have that information available to include in his motion. Davidson v. State, 1D2023-0797 (5/8/24)

https://1dca.flcourts.gov/content/download/2434118/opinion/Opinion_2023-0797.pdf

SEARCH AND SEIZURE-FALSE AFFIDAVIT: Where officer makes false statements in the warrant affidavit, but the false statements are not necessary to the finding of probable cause, the Fourth Amendment does not require suppression. If the affidavit's false material are set to one side, and the affidavit's remaining content is sufficient to establish probable cause, the search warrant is lawful. "[W]e need not analyze every statement in detail to parse all of the accuracies from falsehoods, or dissect and piece back together a Frankenstein-like version of the affidavit, in order to [find]. . . that the trial court erred by excluding the multitude of files containing child pornography." State v. Domenech, 2D2022-3005 (5/8/24)

https://2dca.flcourts.gov/content/download/2434034/opinion/Opinion_2022-3005.pdf

SEARCH AND SEIZURE-FALSE AFFIDAVIT: "While the temptation to advance the prophylactic purpose of the exclusionary rule by disincentivizing heedless and irresponsible law enforcement conduct may be understandable, in this case the falsities in the affidavit do not negate a finding of probable cause." State v. Domenech, 2D2022-3005 (5/8/24)

https://2dca.flcourts.gov/content/download/2434034/opinion/Opinion_2022-3005.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim counsel had rendered ineffective assistance by failing to advise him that the victim denied during the forensic interview that anyone had touched her inappropriately. In determining whether a reasonable probability exists that the defendant would have insisted on going to trial, a court should consider the totality of the circumstances surrounding the plea. Jenkins v. State, 2D2023-1547 (5/8/24)

https://2dca.flcourts.gov/content/download/2434035/opinion/Opinion_2023-1547.pdf

POST CONVICTION RELIEF-PLEA: Two part test for ineffective assistance of counsel requires a showing of material errors and that such deficient performance prejudiced the defense amounting to a deprivation of the right to a fair trial. To show prejudice after Defendant pleas, he must demonstrate a reasonable probability that (1) he or she would have accepted the plea offer had counsel advised the defendant correctly, (2) the prosecutor would not have withdrawn the offer, (3) the court would have accepted the offer, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Davis v. State, 3D22-2035 (5/8/24)

https://3dca.flcourts.gov/content/download/2434074/opinion/Opinion_2022-2035.pdf

CRIMINAL MISCHIEF-TRANSFERRED INTENT: The criminal mischief statute requires that when a defendant acts with malice toward another person, rather than toward property, that malice does not transfer to the property. The doctrine of transferred intent does not satisfy the requirement of scienter. Silva v. State, 3D22-2140 (5/8/24)

https://3dca.flcourts.gov/content/download/2434079/opinion/Opinion_2022-2140.pdf

CRIMINAL MISCHIEF: In escalating road rage episode, in which 70-year old Dr. Silva, the defendant, threatened to "defile" the 86 year old's mother, and then tried to hit him with a golf club but instead hit his car, he may be convicted of criminal mischief. "Silva persuasively argues that he first struck the vehicle while unsuccessfully attempting to hit Martin. . . But. . .Silva [struck] the vehicle three times. Because the first swing made contact, it was reasonable for the trial court to infer that Silva intended to achieve the same result with each successive swing. . .even though Martin retreated after the first swing." Silva v. State, 3D22-2140 (5/8/24)

https://3dca.flcourts.gov/content/download/2434079/opinion/Opinion_2022-2140.pdf

CRIMINAL MISCHIEF: Criminal mischief is a general intent crime, notwithstanding that the injury or damage must be done willfully and maliciously. "Willfully" means "intentionally, knowingly, and purposely." "Maliciously" means "wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person." Silva v. State, 3D22-2140 (5/8/24)

https://3dca.flcourts.gov/content/download/2434079/opinion/Opinion_2022-2140.pdf

JUDGE-NEUTRALITY: While it bears reminding that every trial judge owes a duty of neutrality, he has broad discretion afforded to the court to manage and regulate the course of the trial. A.L.M., a Juvenile, v. State, 3D23-0937 (5/8/24)

https://3dca.flcourts.gov/content/download/2434089/opinion/Opinion_2023-0937.pdf

CONCEALED FIREARM: A firearm need not be absolutely invisible in order to be concealed, so long as the weapon was concealed from the casual and ordinary observation of another in the normal associations of life, and the weapon was physically on the person or readily accessible to its bearer. A.L.M., a Juvenile, v. State, 3D23-0937 (5/8/24)

https://3dca.flcourts.gov/content/download/2434089/opinion/Opinion_2023-0937.pdf

ATTORNEY'S FEES-CONFLICT ATTORNEY: Court may not order hourly attorney fees to conflict attorney at the rate of $100 per hour rather than $75 per hour in this non-capital case. The rate is statutorily and contractually limited to $75 per hour where State did not file a notice of intent to seek the death penalty. The JAC Registry Contract clearly and unambiguously defines a capital death case as one requiring the State to file a notice of intent to seek death. The JAC Registry Contract is an enforceable contract. Justice Administrative Comm'n v. Wahid, 3D23-2209 (5/8/24)

https://3dca.flcourts.gov/content/download/2434088/opinion/Opinion_2023-2209.pdf

POST CONVICTION RELIEF-JURISDICTION: Trial court lacks jurisdiction to adjudicate a post-conviction motion for relief while the defendant's direct appeal is pending. Drayton v. State, 3D24-0165 (5/8/24)

https://3dca.flcourts.gov/content/download/2434095/opinion/Opinion_2024-0165.pdf

TAMPERING WITH EVIDENCE-SPECIFIC INTENT: Defendant merely taking the knife from the homicide scene, without any evidence that his purpose in doing so was to impair the knife's availability for a criminal trial or investigation, is insufficient to establish the crime of tampering with physical evidence, regardless of the fact that the police never recovered the knife. Evidence tampering is a specific intent crime. Magneson v. State, 4D2022-3409 (5/8/24)

https://4dca.flcourts.gov/content/download/2434065/opinion/Opinion_2022-3409.pdf

SEVERANCE-SEX CRIMES: Defendant is entitled to severance of charges relating to sexual abuse involving 2 victims at different times over a three-to-four-year period. The rules do not warrant joinder of criminal charges based on similar but separate episodes, separated in time, which are connected only by similar circumstances and the accused's alleged guilt in both or all instances. Trader v. State, 4D2023-0538 (5/8/24)

https://4dca.flcourts.gov/content/download/2434066/opinion/Opinion_2023-0538.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to investigate and impeach eye witness/victim of shooting, who claimed to know Defendant from middle school and to have had a sexual relationship with him, which Defendant disputes. Her positive identification of him as the shooter may have carried more weight with the jury based on their prior history than if the two had never met. The reliability of her testimony may have been adversely impacted if her stated

basis of knowing him since middle school had been impeached for being untrue. Dennis v. State, 5D2025-2570 (5/3/24) https://5dca.flcourts.gov/content/download/2431334/opinion/Opinion_2023-2570.pdf

STARE DECISIS: "[W]e now recede from Shelly's categorical remind-or-readvise requirement." State v. Penna, SC2022-0458 (5/2/24) https://supremecourt.flcourts.gov/content/download/2427776/opinion/Opinion_SC2022-0458.pdf

STATEMENTS OF DEFENDANT-MIRANDA: When a defendant voluntarily reinitiates contact with law enforcement, there is no *per se* requirement that an officer remind or readvise an accused of his Miranda rights. Contrary precedent overruled. But "[a]s best as we can tell, Shelly based its categorical rule on the federal constitution. For his part, Penna has not asked us to consider whether a higher standard should be adopted as a matter of Florida constitutional law." State v. Penna, SC2022-0458 (5/2/24) https://supremecourt.flcourts.gov/content/download/2427776/opinion/Opinion_SC2022-0458.pdf

STATEMENTS OF DEFENDANT-MIRANDA (J. LABARGA, DISSENTING): Our state constitution provides protection against self incrimination and states that '[n]o person shall . . . be compelled in any criminal matter to be a witness against oneself.' . . .Notwithstanding the majority's conclusion that this Court's interpretation in Shelly constitutes an 'improper[] expan[sion]' of decisions from the United States Supreme Court and this Court, . . .state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution. . .Because the majority has not chosen to do so, I respectfully dissent." State v. Penna, SC2022-0458 (5/2/24) https://supremecourt.flcourts.gov/content/download/2427776/opinion/Opinion_SC2022-0458.pdf

HEARSAY: The hearsay rule does not prevent a witness from testifying as to what he has heard; it is rather a restriction on the proof of fact through extrajudicial statements. The hearsay objection is unavailing when the inquiry is not directed to the truth of the words spoken, but, rather, to whether they were in fact spoken. Jones v. State, 1D2023-0496 (5/1/24) https://1dca.flcourts.gov/content/download/2425774/opinion/Opinion_2023-0496.pdf

HEARSAY-IMPEACHMENT: A party generally cannot call a witness solely for the purpose of impeaching that witness with inconsistent prior statements. But in a case where a witness gives both favorable and unfavorable testimony, the party calling the witness should usually be permitted to impeach the witness with a prior inconsistent statement. Jones v. State, 1D2023-0496 (5/1/24) https://1dca.flcourts.gov/content/download/2425774/opinion/Opinion_2023-0496.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: Defendant is not entitled to relief on claim that counsel was ineffective for failing to object to hearsay that a different suspect was not the shooter because he gave a post-Mirandized statement where he admitted to shooting the victim. As a result, the alleged ineffectiveness of counsel did not prejudice him. Jones v. State, 1D2023-0496 (5/1/24) https://1dca.flcourts.gov/content/download/2425774/opinion/Opinion_2023-0496.pdf

MANDAMUS-PAROLE REVIEW: Ordinarily, for a court to issue a writ of mandamus, a plaintiff must establish that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him. Although in limited circumstances mandamus may be used as a tool of judicial review of the constitutional sufficiency of a quasi-judicial prison or parole commission proceeding, a petition seeking an order directing the Commission to conduct a new parole

interview is a request for traditional mandamus relief. Only the legal sufficiency of the petition's allegations are reviewable. Coto v. Florida Commission on Offender Review, 1D 2023-0798 (5/1/24) https://1dca.flcourts.gov/content/download/2425776/opinion/Opinion_2023-0798.pdf

DISCOVERY VIOLATION: Where discovery included a police report which directed the reader to "see supplement" in reference to the confession, but there was no supplement attached or provided, a mid-trial Richardson hearing is required. T.M. v. State, 2D2023-0025 (5/1/24) https://2dca.flcourts.gov/content/download/2425694/opinion/Opinion_2023-0025.pdf

VOP-BASIS: The fact that Defendant was acquitted of the substantive charge by a jury does not mean that his probation cannot be revoked based on the same facts. Johnson v. State, 2D2023-1482 (5/1/24) https://2dca.flcourts.gov/content/download/2425695/opinion/Opinion_2023-1482.pdf

VOP-HEARING: In the absence of stipulation or consent, the trial of the criminal case should not be construed as a probation revocation hearing but can be treated as such upon stipulation or consent made before or after the trial. Johnson v. State, 2D2023-1482 (5/1/24) https://2dca.flcourts.gov/content/download/2425695/opinion/Opinion_2023-1482.pdf

POST CONVICTION RELIEF: Claims of trial court error are not cognizable in a R 3.850 motion. Johnson v. State, 2D2023-1482 (5/1/24) https://2dca.flcourts.gov/content/download/2425695/opinion/Opinion_2023-1482.pdf

OFFICIAL MISCONDUCT: In order to establish a prima facie case of official misconduct, the State must present evidence sufficient to establish that

Defendant/police officer falsified an official record or document. Officer's description in the arrest affidavit "painted with too broad a brush" but did not rise to the level of knowing or intentional falsification. No objective, concrete facts were patently false or inaccurate. Whether the loud and argumentative tone and other actions of the ironically named lady he arrested constituted "causing a scene" and "disruptive behavior" is a matter of degree and perception. [*Editor's note: It is lawful to use an adjective instead of an adverb–"Ms. Loving began acting belligerent"–but it shouldn't be.*] Giraldo v. State, 3D22-1276 (5/1/24)
https://3dca.flcourts.gov/content/download/2425765/opinion/Opinion_2022-1276.pdf

DWLS: For driving while license suspended, the element of knowledge is satisfied if the person has been previously cited, admits to knowledge of the cancellation, suspension, or revocation, or received notice. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the department's records for any case except for one involving a suspension for failure to pay a traffic fine or for a financial responsibility violation. A driving record showing a license suspension is sufficient to prove that a defendant had notice that his or her license was suspended. Ramirez v. State, 3D22-2192 (5/1/24)
https://3dca.flcourts.gov/content/download/2425770/opinion/Opinion_2022-2192.pdf

JIMMY RYCE-APPEAL: in a Jimmy Ryce case, the appellate court lacks jurisdiction to hear an appeal of the denial of the Detainee's motion challenging probable cause and the Court's failure to conduct an adversarial probable cause hearing. Because Jimmy Ryce Act proceedings are civil in nature, appeals are limited to final orders that end judicial labor in the case. The trial court's order's language that detainee had thirty days to appeal does not confer jurisdiction. Irizarry v. State, 3D23-1418 (5/1/24)
https://3dca.flcourts.gov/content/download/2425783/opinion/Opinion_2023-1418.pdf

PRIVACY-CELL PHONE: The right to privacy is implicated by the production of a broad sweep of cell phone records. Requiring the imaging and production of the entire contents of one's cell phone cannot be justified merely because it is the quickest and most efficient method to obtain the discovery sought. "Requiring that the entire contents of a cellphone be imaged by a forensic expert (consisting of every photo, video, text, email, note, download, and all data and metadata, including every deleted item) and requiring disclosure of it to Roque's own attorney, is simply insufficient, without more, to protect Roque's privacy rights and ensure that she is not compelled to disclose to anyone the entirety of her life's experiences and innermost thoughts as captured, created, uploaded or stored on her cell phone." Roque v. Swezy, 3D23-1836 (5/1/24)
https://3dca.flcourts.gov/content/download/2425789/opinion/Opinion_2023-1836.pdf

POST CONVICTION RELIEF: A motion under R. 3.850 cannot be used for a second appeal to consider issues that either were raised in the initial appeal or could have been raised in that appeal. Real v. State, 3D23-2284 (5/1/24)
https://3dca.flcourts.gov/content/download/2425760/opinion/Opinion_2023-2284.pdf

DOUBLE JEOPARDY: Dual convictions for Medicaid Provider Fraud, with a value of $50,000 or more and Grand Theft with a value of $100,000 violate Double Jeopardy. A defendant is placed in double jeopardy when, based upon the same conduct, the defendant is convicted of two offenses, each of which does not require proof of a different element. The crime of Medicaid Provider Fraud requires specific intent to submit a false claim for payment thereby depriving another of money. Although worded differently, the statutory elements of Grand Theft are included in the offense of Medicaid Provider Fraud. State v. Courts, 4D2022-2855 (5/1/24)

https://4dca.flcourts.gov/content/download/2427364/opinion/Opinion_2022-

2855.pdf

BURGLARY: State established prima facie evidence of intent to commit a crime where Defendant made an unconsented early morning entry into the victim's home, stood over her bed with his hand inside his pants, and appeared to masturbate, notwithstanding that she did not see his penis when she woke up, nor had he committed any other crime before he jumped out of the bedroom window. Ford v. State, 4D2023-0208 (5/1/24)

https://4dca.flcourts.gov/content/download/2425749/opinion/Opinion_2023-0208.pdf

TWELVE-PERSON JURY: The Sixth and Fourteenth do not entitle one to a twelve-person jury. Ford v. State, 4D2023-0208 (5/1/24)

https://4dca.flcourts.gov/content/download/2425749/opinion/Opinion_2023-0208.pdf

COSTS: Court may not impose a $5,000 public defender fee, where the defendant had received the assistance of a private conflict attorney, but the Court had not given the defendant the defendant an opportunity to contest the fee, nor had the private conflict attorney made a showing of sufficient proof of the higher fees incurred or the Court made factual findings warranting the higher fees. The private conflict attorney's statement at sentencing that "$5,000…is the flat fee," and the Court's response "[I]f that's [the] fixed amount…I will assess $5,000" do not justify the fee in excess of $100. Ford v. State, 4D2023-0208 (5/1/24)

https://4dca.flcourts.gov/content/download/2425749/opinion/Opinion_2023-0208.pdf

APRIL 2024

ACCA-VIOLENT FELONY: ACCA's definition of "violent felony" requires that the offense involves the use, or attempted use, or threatened use of physical force against another. "Use" requires active employment of physical force, which means violent force, *i.e.* force capable of causing physical pain or injury. A prior Georgia conviction for threatening physical harm to a witness qualifies as a "violent felony." USA v. Ferguson, No. 22-12013 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212013.pdf

GUIDELINES-CRIME OF VIOLENCE: A prior Georgia conviction for aggravated assault with a deadly weapon qualifies as a crime of violence when calculating the total offense level. Aggravated assault with a deadly weapon qualifies as a crime of violence under the enumerated offenses clause because it has substantially the same elements as generic aggravated assault. USA v. Ferguson, No. 22-12013 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212013.pdf

CATEGORICAL APPROACH: Under the categorical approach, a court must ask whether the least of the acts criminalized by the statute of conviction has an element requiring the use, attempted use, or threatened use of physical force. A court must look only to the elements of the statute of conviction rather than the specific conduct of a particular offender. If the offense is divisible–one which lists multiple, alternative elements, and thus creates several different crimes--courts apply the modified categorical approach. Under the modified categorical approach, the court looks beyond the elements enumerated in the statute to Shepard documents—the indictment, jury instructions, plea agreement, and plea colloquy—to determine which

specific crime the defendant committed. USA v. Ferguson, No. 22-12013 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212013.pdf

CIRCUMSTANTIAL EVIDENCE: Defendant's mere presence at a drug deal is insufficient to sustain a conviction. But evidence that he engaged in frequent and suspicious communications before the deal, then drove the car with a briefcase full of narcotics to the site and stood watchfully across the parking lot while his associate dealt with the CI is enough to show his knowing participation. USA v. Morley, No. 22-12988 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212988.pdf

SEARCH AND SEIZURE-AUTOMOBILE EXCEPTION: Officers may search Defendant's car and seize the cocaine inside it after he drove to a drug deal and loitered some distance away while his associate and the CI did the deal. The automobile exception to the Fourth Amendment's warrant requirement allows law enforcement to conduct a warrantless search of a vehicle if the vehicle is readily mobile and law enforcement has probable cause, *i.e.*, a fair probability that evidence of a crime will be found. USA v. Morley, No. 22-12988 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212988.pdf

SAFETY VALVE: Safety valve eligibility has a three-prong test: (A) no more than four criminal history points, excluding any points from one-point offenses, (B) no prior three-point offense, and (C) no prior two-point violent offense. Any prior three-point offense disqualifies a defendant from safety valve relief, regardless of whether he qualifies under the other two prongs. The trial court

would have been in error in denying Defendant's eligibility, but Pulsifer, a later Supreme Court decision, overruled previous precedents. USA v. Morley, No. 22-12988 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212988.pdf

PRIOR PANEL PRECEDENT RULE: A prior panel's holding binds subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*. There is no overlooked reason or argument, or a perceived defect in the prior panel's reasoning or analysis, exception to the prior-panel-precedent rule. USA v. Hicks, No. 23-10280 (11th Cir. 4/30/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310280.pdf

SENTENCE-REASONS: Court must articulate its reasons for imposing a particular sentence. But a district court's failure to explain its reasons for the chosen sentence does not affect the defendant's substantial rights. The failure to explicitly state the reasons for an upward variance is not plain error where the reasons are apparent on the face of the record. The reasons for an upward variance to twenty years in prison are apparent where on his baby's first birthday, two months after being placed on federal probation for wire fraud, Defendant strangled his girlfriend with their baby in her arms then stashed her body in a 55-gallon barrel. The 11th Circuit's previous *per se* rule of reversal for failure to explain the reasons for a sentence is overruled. USA v. Steiger, No. 22-10742 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210742.enb.pdf

SENTENCE-REASONS: Where one strangles one's girlfriend with one's

baby in her arms then hides her body in a big barrel out of fear of losing custody if it were found, the Court's failure to explain its reason for an upward variance is harmless error. If someone can understand the reasons for the sentence imposed, then a district court's technical violation does not warrant reversal. "A remand in this circumstance would be a wasteful formality for the district court to state on the record what everyone already knows." USA v. Steiger, No. 22-10742 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210742.enb.pdf

EASY CASES-BAD LAW (J. JORDAN, CONCURRING): "Justice Holmes once remarked that 'hard cases' can 'make bad law.'...But easy cases sometimes bring difficulties of their own. . . I doubt very much that many cases in the future will be this cut and dry.". . .[A] really easy case like this one can make it difficult to provide broad guidance for the future. USA v. Steiger, No. 22-10742 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210742.enb.pdf

EQUAL JUSTICE: The notion that '[n]o man is above the law and no man is below it' is fundamental to our democratic republic's continuing viability." USA v. Hill, No. 23-10934 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310934.pdf

EIGHTH AMENDMENT: In any custodial setting, officials may not use gratuitous force against a prisoner who has already been subdued or incapacitated. Force, including passive restraints, is excessive if it is not rationally related to a legitimate nonpunitive governmental purpose. Restraint chairs are "force." USA v. Hill, No. 23-10934 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310934.pdf

EIGHTH AMENDMENT: Sheriff is properly convicted of willfully depriving detainees of their constitutional right to be free from excessive force where multiple times he had ordered nonviolent detainees into a restraint chair with their hands cuffed behind their backs for hours, causing open and bleeding wounds, lasting scars, and nerve damage (When one detainee asked for a lawyer. Sheriff replied, "You think you're a big badass. . .Put his ass in the chair."). Such use of force was clearly established as constitutionally excessive. USA v. Hill, No. 23-10934 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310934.pdf

JUROR: Court did not err either in twice questioning a juror during deliberations and leaving him on jury, nor in requiring further deliberations, after the foreperson complained that the juror was inarticulate or crazy, could not recall a large chunk of testimony, was having difficulty construing sentences, exhibited the inability to understand the court's instructions, displayed general confusion with basic words, altered meanings of words to conform with personal opinion, and stated that the Sheriff and the President are above the law and are not required to follow the Constitution. J. Marcus, concurring: "[Q]uestioning a juror repeatedly is not a path that should be taken lightly or without meticulous care. The terrain is dangerous and the traveler must proceed with great caution." USA v. Hill, No. 23-10934 (11th Cir. 4/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310934.pdf

RULES-AMENDMENT-BOND: Rule amended to clarify that a first appearance judge can revoke pretrial release on a case not assigned to that judge in accordance with §903.047. In Re: Amendments to Florida Rule of

Criminal Procedure 3.131, SC2023-1294 (4/25/24)

https://supremecourt.flcourts.gov/content/download/2422886/opinion/Opinion_SC2023-1294.pdf

POST CONVICTION RELIEF-HABITUAL OFFENDER-NOTICE: Failure by the State to serve written notice of intent to habitualize does not result in an illegal sentence; a claim based on such a failure is not cognizable under R. 3.800(a). Williams v. State, 1D2023-1797 (4/24/24)

https://1dca.flcourts.gov/content/download/2418843/opinion/Opinion_2023-1797.pdf

POST CONVICTION RELIEF: Strategic decisions of counsel rarely rise to the level of ineffective assistance. Valdes v. State, 3D23-1028 (4/24/24)

https://3dca.flcourts.gov/content/download/2418903/opinion/Opinion_2023-1028.pdf

MOTION TO MITIGATE: Because a trial court's adjudication of a criminal defendant's motion seeking to mitigate a sentence is purely discretionary, orders denying such motions are not subject to appeal. Gonzalez v. State, 3D23-2188 (4/24/24)

https://3dca.flcourts.gov/content/download/2418855/opinion/Opinion_2023-2188.pdf

COST OF SUPERVISION: Court may not impose a cost of supervision in excess of $40, the amount authorized by section §948.09(1)(b) Mobley v.

State, 4D2022-3208 (4/24/24)

https://4dca.flcourts.gov/content/download/2418766/opinion/Opinion_2022-3208.pdf

JURY TRIAL: To obtain a valid oral waiver of a defendant's right to jury trial, the trial court must conduct a colloquy that focuses a defendant's attention on the value of a jury trial and makes a defendant aware of the likely consequences of the waiver. Defense counsel's statement to the court that the defendant has agreed to a non-jury trial is not a valid oral waiver in the absence of the court's requisite inquiry, even if the statement is made in the defendant's presence and with the defendant's oral confirmation. Error is fundamental. Baker v. State, 2023-2642 (4/24/24)

https://4dca.flcourts.gov/content/download/2418769/opinion/Opinion_2023-2642.pdf

COSTS: A written order imposing court costs must cite the statute authorizing each cost regardless of whether it is mandatory or discretionary. Court may not order lump sum fines and court costs. Lombardi v. State, 2D2023-0552 (4/19/24)

https://2dca.flcourts.gov/content/download/2408718/opinion/Opinion_2023-0552.pdf

JUDGE-DISQUALIFICATION: Disbelief in the witness's testimony, as evidenced by a trial judge's discomforting inquiry, are ordinarily no basis for disqualification. Disqualifying a judge because his examination of a witness on relevant matters gives a clue as to how he may be inclined to rule at the end of the evidence would wreak administrative havoc by inviting mid-hearing motions for recusal. Martinez v. State, 3D24-0629 (4/19/24)

https://3dca.flcourts.gov/content/download/2409777/opinion/Opinion_2024-

0629.pdf

SECOND-DEGREE MURDER: Defendant is not entitled to a judgment of acquittal for second-degree murder when he was found just off his front porch with a bloody butcher knife in his hand and a a body at his feet in a pool of blood. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE: Defendant is entitled to a full jury instruction on self-defense based on his statement to police that the drunk victim grabbed him by the throat and and punched him in the jaw. Court erred by not giving Instruction 3.6(f) ("The use of deadly force is justifiable if defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself while resisting any attempt to commit [applicable felony]). Instruction 7.1 alone is insufficient. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE: In most cases, a person in a fist fight lacks a sufficient justification to use deadly force, but the question of self-defense is one of fact and is one for the jury to decide where the facts are disputed. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE: Defendant's statement to the police is evidence warranting a self-defense instruction regardless whether Defendant testifies at trial or otherwise introduces evidence. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE (J. MIZE, CONCURRING): A defendant is entitled to a jury instruction on self-defense as a matter of right if there is any evidence at all to support the instruction, no matter how weak or flimsy. A defendant is not required to testify at trial to receive a jury instruction on self-defense. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE (J. MIZE, CONCURRING): Standard Jury Instruction 7.1 is not a substitute for a trial court giving the entirety of all applicable portions of Standard Jury Instruction 3.6(f). Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-0509.pdf

JURY INSTRUCTION-SELF-DEFENSE (J. MIZE, CONCURRING): Defendant is not forfeit his right to self-defense by leaving his house to confront a trespasser with a butcher knife. Gonzalez v. State, 6D23-509 (4/19/24)

https://6dca.flcourts.gov/content/download/2409333/opinion/Opinion_2023-

0509.pdf

SEARCH AND SEIZURE-ABANDONMENT: Defendant abandoned the backpack he threw into someone's parked car in his flight from the checkpoint set up in response to a residential burglary. A person who voluntarily abandons property lacks standing to challenge its search and seizure. A defendant's subjective intent as to the property does not play a dominant role; whether abandonment occurred is determined using an objective test. Hargrove v. State, 6D23-1787 (4/19/24)

https://6dca.flcourts.gov/content/download/2409335/opinion/Opinion_2023-1787.pdf

SEARCH AND SEIZURE: A law enforcement officer's subjective intent in stopping a driver is irrelevant to the determination of whether probable cause existed to support the stop. An apparent window tint violation alone provided probable cause for a stop. Probable cause exists where an officer trained in narcotics surveillance, sees an apparent drug buy. State v. Hall, 6D23-2396 (4/19/24)

https://6dca.flcourts.gov/content/download/2409337/opinion/Opinion_2023-2396.pdf

FORFEITURE: Failure to enter a preliminary order of forfeiture does not bar a judge from ordering forfeiture at sentencing. R. 32.2(b)(2)(B), which requires a preliminary order in advance of sentencing, is a time-related directive, rather than a jurisdictional deadline or a mandatory claim-processing rule. If missed, it does not deprive the judge of her power to order forfeiture against the defendant. McIntosh v. United States, No. 22–7386. (U.S. S.Ct. 4/17/24)

https://www.supremecourt.gov/opinions/23pdf/22-7386_10n2.pdf

TAMPERING WITH EVIDENCE: Defendant who from jail gave his Google account password to his wife and asked her to "crash that shit so the cops can't go through my shit" is guilty of Conspiracy to Tamper with Evidence. Cruz v. State, 3D22-0815 (4/17/24)

https://3dca.flcourts.gov/content/download/2400510/opinion/Opinion_2022-0815.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Recantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial, but usually requires an evidentiary hearing. Victim's affidavit may be materially inconsistent with his trial testimony, but "this is the very nature of a recantation, and it would be circular reasoning to suggest that summary denial is appropriate simply because a witness' recantation is inconsistent with his trial testimony." Defendant is entitled to an evidentiary hearing. Palmer v. State, 3D22-0693 (4/17/24)

https://3dca.flcourts.gov/content/download/2400511/opinion/Opinion_2023-0134.pdf

CORPUS DELICTI-CONFESSION (J. ATKINSON, DISSENTING): §92.565, which creates a bright-line exception to the corpus delicti rule for victims under the age of twelve, requires the State to prove that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement made by the defendant for it to be admissible. The memorialized confession or admission cannot corroborate itself, but the corroborating evidence can take the form of other statements made by the defendant, which

themselves might be confessional in nature or constitute admissions to crimes. "More simply put, not every statement made by the defendant constitutes a 'memorialized confession or admission' subject to the trustworthiness analysis." Defendant's Facebook and controlled call statements were sufficient corroboration. State v. Jackson, 2D23-0212 (4/12/24)

https://2dca.flcourts.gov/content/download/2382319/opinion/Opinion_23-0212.pdf

VOP-SENTENCING: Defendant is entitled to resentencing where Court sentenced him to prison under the misconception that it was required to impose the full term of the suspended sentence originally imposed. Court could have revoked, modified, or continued probation. Lawrence v. State, 2D 23-2045 (4/12/24)

https://2dca.flcourts.gov/content/download/2382324/opinion/Opinion_23-2045.pdf

PRETRIAL RELEASE-REVOCATION: First appearance judge may not revoke the bond from an earlier case at the request of the judge presiding over it. Rule only provides for the judge who initially set bail to authorize the first appearance judge to modify or set conditions of release; it says nothing about the assigned trial judge authorizing the first appearance judge in a subsequent case involving the defendant to revoke bail in the defendant's prior, assigned case. Sarac v. Gualtieri, Sheriff, 2D24-0338 (4/12/24)

https://2dca.flcourts.gov/content/download/2382339/opinion/Opinion_24-0338.pdf

SENTENCING-DOWNWARD DEPARTURE: A defendant's self-report of a

mental disorder (here,PTSD and depression) does not constitute competent, substantial evidence supporting a downward departure. A psychological report that ppears to recite Defendant's own self-reporting and does not specify the source of the information, cites no documentation of past diagnoses, and does not state that the psychologist made any full, formal diagnoses herself is insufficient. State v. Avery, 5D22-1603 (4/12/24)

https://5dca.flcourts.gov/content/download/2382873/opinion/Opinion_22-1603.pdf

SEARCH AND SEIZURE-PORCH: An enclosed porch—encased with opaque black vinyl and furnished and used like an interior room—is a constitutionally protected area of the home for which a warrant (or warrant exception) is required to enter. The Fourth Amendment's protection against unreasonable searches and seizures includes a home and its curtilage. A front porch permanently attached to a home—whether enclosed or open air—is normally within the home's curtilage. Rudolph v. State, 5D22-2108 (4/12/24)

https://5dca.flcourts.gov/content/download/2382951/opinion/Opinion_22-2108.pdf

SEARCH AND SEIZURE-CURTILAGE: Four factors that relate to curtilage: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Rudolph v. State, 5D22-2108 (4/12/24)

https://5dca.flcourts.gov/content/download/2382951/opinion/Opinion_22-2108.pdf

SEARCH AND SEIZURE- FLASHLIGHT- CURTILAGE: Officers conducting a neighborhood canvas in investigating a homicide, violated Defendant's 4th Amendment rights by using a flashlight to look inside his enclosed front porch where they observed him with the murder weapon on his lap. Rudolph v. State, 5D22-2108 (4/12/24)

https://5dca.flcourts.gov/content/download/2382951/opinion/Opinion_22-2108.pdf

POST CONVICTION RELIEF: When an ineffective assistance of counsel claim is raised on direct appeal and the appellant's conviction and sentence are affirmed without a written opinion, the law of the case does not establish that the claim was rejected on the merits. Lafortune v. State, 5D22-2281 (4/12/24)

https://5dca.flcourts.gov/content/download/2382874/opinion/Opinion_22-2281.pdf

WIRETAPPING: Under Florida's wiretapping statute, it is unlawful for any person to intentionally intercept or endeavor to intercept any wire, oral, or electronic communication. The statute does not apply to citizens recording telephone conversations with police officers acting in their official capacities. There is a First Amendment right to record police officers conducting their official duties in public. It cannot be said that any of the deputies exhibited a reasonable expectation of privacy that society is willing to recognize. All conversations concerned matters of public business, occurred while the deputies were on duty, and involved phones utilized for work purposes. Deputies do not have a reasonable expectation of privacy when talking to a citizen over the phone in their official capacities as law enforcement officers regarding public business; such recordings do not fall within the definition of "oral communication" in §934.02(2). Waite v. State, 5D23-1354 (4/12/24)

https://5dca.flcourts.gov/content/download/2382881/opinion/Opinion_23-1354.pdf

POST CONVICTION RELIEF: When a defendant files a facially insufficient motion, he is entitled to one opportunity to amend the motion. Claim that trial counsel was ineffective for advising him to enter the plea when he had a defense to the requires a hearing, if Defendant properly alleges prejudice. McCorvey v. State, 5D23-2658 (4/12/24)

https://5dca.flcourts.gov/content/download/2382884/opinion/Opinion_23-2658.pdf

POST CONVICTION RELIEF: Defendant's motion for postconviction relief alleging the violation of a plea agreement was improperly filed under R. 3.800, and if filed now under R.3.850 would be untimely. But Court should have treated the motion as filed under R.350, and accordingly must afford Defendant a hearing or attach records showing no entitlement to relief. Sanchez v. State, 5D23-3268 (4/12/24)

https://5dca.flcourts.gov/content/download/2382886/opinion/Opinion_23-3268.pdf

COMPETENCY-CERTIORARI: Court's conclusion that the Defendant is competent to proceed may be raised on direct appeal, not by certiorari. Fleming v. State, 5D23-3328 (4/12/24)

https://5dca.flcourts.gov/content/download/2382887/opinion/Opinion_23-3328.pdf

VOP-PLEA: An admission to an alleged probation violation is not formally a "plea." "Confusion arises when courts persist in the loose use of the term 'plea' in the context of VOP proceedings. There simply is no such thing as a plea to a charged VOP." Pleas do not occur after disposition in a criminal case. "To say that a trial court took a plea from a defendant after disposition of a criminal case. . .makes no sense." Maxwell v. State, 1D2022-0478 (4/10/24)

https://1dca.flcourts.gov/content/download/2384575/opinion/Opinion_2022-0478.pdf

APPEAL-TIMELINESS- PLEA WITHDRAWAL-VOP: Because the admission of the violation of probation is not technically a "plea," the motion to withdraw the "plea" did not toll the rendition date of the revocation and sentencing orders. Ergo, the notice of appeal was untimely. Maxwell v. State, 1D2022-0478 (4/10/24)

https://1dca.flcourts.gov/content/download/2384575/opinion/Opinion_2022-0478.pdf

SEARCH WARRANT-KNOCK AND ANNOUNCE: Where officers knock, announce their authority and purpose, and then enter with such haste that the occupant does not have a reasonable opportunity to respond, the search violates §933.09. State v. Times, 1D2022-0887 (4/10/24)

https://1dca.flcourts.gov/content/download/2384413/opinion/Opinion_2022-0887.pdf

SEARCH WARRANT-KNOCK AND ANNOUNCE: "In his final announcement

before entry, an officer stated: 'police department, search warrant, step away from the door to avoid injury.' Whether the phrase 'police department' landed on the sixth or seventh second of time before the entry, or whether the phrase 'search warrant' landed on the sixth or seventh second of time before the entry,. . .neither Times nor other occupants had time to respond to the door is supportable by the evidence." State v. Times, 1D2022-0887 (4/10/24)

https://1dca.flcourts.gov/content/download/2384413/opinion/Opinion_2022-0887.pdf

SEARCH WARRANT-KNOCK AND ANNOUNCE: Nobody is required to answer their door just because somebody knocks on it. There's no requirement to answer the door just because the police officers are at the door. State v. Times, 1D2022-0887 (4/10/24)

https://1dca.flcourts.gov/content/download/2384413/opinion/Opinion_2022-0887.pdf

EXCLUSIONARY RULE-SEARCH WARRANT-KNOCK AND ANNOUNCE: The exclusionary rule continues to apply to violations of the knock-and-announce statute. Question certified. State v. Times, 1D2022-0887 (4/10/24)

https://1dca.flcourts.gov/content/download/2384413/opinion/Opinion_2022-0887.pdf

STARE DECISIS (J. NORDBY, CONCURRING): "[W]e are wary of any invocation of multi-factor stare decisis tests or frameworks. . .They are malleable and do not lend themselves to objective, consistent, and predictable application. They can distract us from the merits of a legal question and encourage us to think more like a legislature than a court. And they can lead

us to decide cases on the basis of guesses about the consequences of our decisions, which in turn can make those decisions less principled. We believe that the proper approach to stare decisis is much more straightforward. In a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield." State v. Times, 1D2022-0887 (4/10/24)

https://1dca.flcourts.gov/content/download/2384413/opinion/Opinion_2022-0887.pdf

12 PERSON JURY-FIRST PBL: There is no right to a 12 person jury for a first-degree felony punishable by life. "[T]he Sixth Amendment's drafters removed language in the initial draft specifying that the jury-trial right in the Sixth Amendment must include its 'accustomed requisites,'—language which likely would have eliminated any grounds for deviating from a twelve-member jury." Salmon v. State, 1D2022-1135 (4/10/24)

https://1dca.flcourts.gov/content/download/2384577/opinion/Opinion_2022-1135.pdf

CONFESSION-COERCION: The confession by Defendant/school administrator that she had participated with her daughter in a fake elector Homecoming Queen election scheme is not suppressible on grounds of being coerced. For immunity for incriminatory statements provided to her employer, she must show she was threatened with an adverse employment action if she failed to answer her employer's questions. The threat of an adverse employment action may be direct or implied, but defendant's subjective fear is not enough. The belief has to be objectively reasonable. Carroll v. State, 1D2022-3114 (4/10/24)

https://1dca.flcourts.gov/content/download/2383788/opinion/Opinion_2022-3114.pdf

APPEAL-ISSUES: An issue not raised in the initial or amended initial brief is deemed waived or abandoned. Schock v. State, 2D23-661 (4/10/24)

https://2dca.flcourts.gov/content/download/2364306/opinion/Opinion_23-0661.pdf

JURY INSTRUCTION: Failure to give a jury instruction on a foreign language recording translation is not fundamental error because such an instruction would not go to an essential element of the offenses charged. Buddoo v. State, 3D22-1587 (4/10/24)

https://3dca.flcourts.gov/content/download/2378069/opinion/Opinion_2022-1587.pdf

DISCOVERY-RICHARDSON: Court erred in mid-trial because the State failed too provide a discovery a one-page supplemental report containing almost nothing, and certainly nothing contradictory, from the reports already provided. State v. Denninghoff, 3D23-0464 (4/10/24)

https://3dca.flcourts.gov/content/download/2374702/opinion/Opinion_2023-0464.pdf

APPEAL: Arguments raised for first time in reply brief are waived. Kopp v, State, 3D23-1337 (4/10/24)

https://3dca.flcourts.gov/content/download/2374707/opinion/Opinion_2023-1337.pdf

EVIDENCE: It is not fatal to the prosecution if the state does not introduce the weapon into evidence where the direct evidence and the circumstantial evidence support conviction. Kopp v, State, 3D23-1337 (4/10/24)

https://3dca.flcourts.gov/content/download/2374707/opinion/Opinion_2023-1337.pdf

SPEEDY TRIAL: If the State fails to file formal charges against the defendant within the 90-day (or, for a felony, 175-day) period, the defendant can seek final discharge without first filing the Notice of Expiration, but the uniform traffic citation constitutes a formal charge. (Note: a pending proposed rule change would change this). Patino v. State, 3D23-1702 (4/10/24)

https://3dca.flcourts.gov/content/download/2382346/opinion/Opinion_2023-1702.pdf

SPEEDY TRIAL-WRIT OF PROHIBITION-DELAY: A petition for writ of prohibition (filed following the denial of Defendant's 1st motion for speedy trial discharge) does not delay the trial. Where Defendant later files a notice of speedy trial expiration, even while the first petition for writ of prohibition remains pending, Defendant must be brought to trial within 15 days or be discharged. "Because this court did not issue an order to show cause or otherwise impose a stay of the trial court proceedings during the pendency of the petition, and because the trial court retained jurisdiction to proceed, the petition for writ of prohibition did not delay Patino's trial and the speedy trial period continued to run during the pendency of the prohibition proceeding in this court." Patino v. State, 3D23-1702 (4/10/24)

https://3dca.flcourts.gov/content/download/2382346/opinion/Opinion_2023-

1702.pdf

SPEEDY TRIAL-WRIT OF PROHIBITION-APPEAL: "More recent opinions. . .have called our decisions [that a petition for writ of prohibition does not constitute an appeal] into question. . .In any event, we need not reach the question. . ., since, as explained, it is undisputed that Patino's trial was not delayed by the earlier prohibition proceeding in this court. We therefore leave this separate question for another day. Patino v. State, 3D23-1702 (4/10/24)

https://3dca.flcourts.gov/content/download/2382346/opinion/Opinion_2023-1702.pdf

STATUTORY CONSTRUCTION: A fundamental canon of statutory construction is that courts must endeavor to give meaning to each word and phrase contained in a statute or rule, and courts should avoid readings that would render part of a statute meaningless. Words cannot be meaningless, else they would not have been used. If possible, every word and every provision is to be given effect (verba cum effectu sunt accipienda). Patino v. State, 3D23-1702 (4/10/24)

https://3dca.flcourts.gov/content/download/2382346/opinion/Opinion_2023-1702.pdf

COSTS Of INVESTIGATION: Court may not impose costs investigation where there is no agency requests or evidence of the amount. Costs may not be reimposed on remand. Pannier v. State, 4D2022-1361 (4/10/24)

https://4dca.flcourts.gov/content/download/2373431/opinion/Opinion_2022-1361.pdf

COSTS OF PROSECUTION: Costs of prosecution may not exceed $100 absent request and sufficient proof. Pannier v. State, 4D2022-1361 (4/10/24)

https://4dca.flcourts.gov/content/download/2373431/opinion/Opinion_2022-1361.pdf

DOUBLE JEOPARDY: Once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles. But where the trial court's pronouncements at the original sentencing hearing were unclear and inconsistent, clarification is permitted. State v. Coello, 4D2022-1699 (4/10/24)

https://4dca.flcourts.gov/content/download/2373433/opinion/Opinion_2022-1699.pdf

RESENTENCING- PRESENCE OF DEFENDANT: Where the trial court had no discretion but to impose his original sentence of life with the possibility of parole for juvenile offender, based upon the decisional law at the time of resentencing, Defendant's presence is not required. A full resentencing hearing is not necessary when the resentencing is a ministerial act. McCoggle v. State, 4D2023-1267 (4/10/24)

https://4dca.flcourts.gov/content/download/2373444/opinion/Opinion_2023-1267.pdf

LIFE SENTENCE-JUVENILE OFFENDER: Juvenile offenders sentenced to

life with possibility of parole after twenty-five years are not entitled to resentencing under Miller and the 2014 amendments. Juvenile offenders' sentences of life with the possibility of parole after 25 years under Florida's parole system do not violate Graham's requirement that juveniles have a meaningful opportunity to receive parole. McCoggle v. State, 4D2023-1267 (4/10/24)

https://4dca.flcourts.gov/content/download/2373444/opinion/Opinion_2023-1267.pdf

INVITED ERROR: The invited error doctrine precludes appellate review of an argument that a party expressly disclaimed before the district court. USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

PATTERN OF ACTIVITY ENHANCEMENT: Where Defendant did not object to the procedural reasonableness the sentencing hearing he can prevail on appeal only by showing plain error. Plain error requires clear statutory language or controlling precedent establishing that an error has occurred. USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

PATTERN OF ACTIVITY ENHANCEMENT: Pattern of activity enhancement applies if the defendant engages in prohibited sexual conduct on at least two separate occasions, regardless of whether the crimes were committed against the same victim or different victims. "Separate occasions" does not require two events that are unrelated. It requires only events that are independent and distinguishable from each other. USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: 840-month sentence for recording and distributing his extreme sexual abuse of his 4-year-old daughter is not substantively unreasonable. A sentence within the advisory guidelines sentence is presumed to be reasonable. USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: the fact that a sentence is longer than the Defendant's life expectancy does not render it substantively unreasonable. "Given the nature of Boone's offense—specifically, the fact that it involved planning and chatting about, engaging in, and recording the sexual abuse of his four-year-old child—the fact that Boone is not likely to outlive his sentence does not mean the sentence was substantively unreasonable." USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

SENTENCING-MILITARY SERVICE: Military service may be a mitigating factor, but it also may be an aggravating factor as a violation of a position of trust and authority. USA v. Boone, No. 22-11153 (11th Cir. 4/9/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211153.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for failing to call a police officer to impeach the victim. Duff-Porter v. State, 5D22-1055 (4/9/24)

https://5dca.flcourts.gov/content/download/2356923/opinion/Opinion_22-1055.pdf

QUALIFIED IMMUNITY: To defeat a qualified immunity defense on a motion to dismiss, the operative complaint must plausibly plead that the defendant violated the plaintiff's clearly established federal rights. Jackson v. City of Atlanta, No. 22-12946 (11th Cir 4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212946.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officer lacked reasonable suspicion to detain a lady who have moved a barricade a few feet so that she could leave a mall parking lot. Moving a barricade does not violate the law. "And it is no wonder why it doesn't. Presumably barricades are used to stop people from getting into private or otherwise restricted locations. Here, Jackson was moving the barricade so that she could get out of a private or otherwise restricted area." Jackson v. City of Atlanta, No. 22-12946 (11th Cir 4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212946.pdf

QUALIFIED IMMUNITY-SEARCH AND SEIZURE-REASONABLE SUSPICION: Officer who told plaintiff to "[g]et out of the fucking car." called

her stupid, pulled a gun on her, body slammed her into the pavement, and broke her clavicle is not entitled to sovereign immunity. But his partner is. Jackson v. City of Atlanta, No. 22-12946 (11th Cir 4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212946.pdf

JUDGMENT OF ACQUITTAL: Circumstantial evidence is sufficient to sustain a conviction for attempted smuggling of weapons into Iraq where Defendant failed to disclose the firearms on his bill of lading and is seen loading the container with the hidden guns. It is not necessary that the evidence exclude every reasonable hypothesis of innocence. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

APPELLATE BRIEF: Brief which omits a distinct statement of facts section and fails to explain how the evidence is insufficient is inadequate. Appellate judges are not like pigs, hunting for truffles buried in briefs. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

DOUBLE JEOPARDY: Dual convictions for attempted smuggling charge and failure to notify a common carrier and submitting a false or misleading export information charge do not violate Double Jeopardy/Blockburger. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

IMPROPER ARGUMENT: Misstating the caliber of a firearm the defendant was convicted of smuggling does not constitute prosecutorial misconduct, much less violate due process. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

IMPROPER ARGUMENT: Prosecutorial misconduct justifies a new trial only if the remarks in question were both (a) improper and (b) prejudicial to the defendant's substantial rights. Statements logically inferred from supporting

evidence are proper. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: A district court's failure to specifically mention certain mitigating factors does not compel the conclusion that the sentence was substantively unreasonable. A sentence imposed well below the statutory maximum penalty is an indicator of a reasonable sentence. A 94-month sentence within the Guidelines' range and i26 months below the statutory maximum is reasonable. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

SENTENCE-PROCEDURALLY UNREASONABLE: A district court commits a procedural sentencing error when it imposes a sentence based on clearly erroneous facts, fails to calculate (or improperly calculates) the Guidelines range, fails to consider the §3553(a) factors, treats the Guidelines as mandatory, or fails to explain the chosen sentence. USA v. Al Jaberi, No. 22-12852 (4/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202212852.pdf

RAPE SHIELD STATUTE-CROSS-EXAMINATION: **The** rape statute, by its express terms, only bars evidence of specific instances of prior consensual activity between the victim and any person other than the offender in sexual battery cases. Non-consensual molestation of the minor victim is not covered by the rape shield statute. Moreover, the rape shield statute does not exclude evidence that would otherwise be admissible. The fact that the Victim, in disclosing other instances of being sexually abused by Defendant's sister's boyfriend two other people, denied that anyone else had molested her is a fair subject of cross-examination to show bias against him. Lydecker v. State, 2D22-2489 (4/5/24)
https://2dca.flcourts.gov/content/download/2302143/opinion/Opinion_22-2489.pdf

COLLATERAL CRIMES EVIDENCE: The collateral crimes evidence instruction may be given where it pertains to acts charged in other counts of the information. The instruction is not limited to uncharged counts. Lydecker v. State, 2D22-2489 (4/5/24)
https://2dca.flcourts.gov/content/download/2302143/opinion/Opinion_22-2489.pdf

COSTS: Courts may only impose an amount higher than $100 for the cost of prosecution and the cost of the public defender upon showing of sufficient proof of higher fees or costs incurred. Brooks v. State, 5D22-1385 (4/5/24)
https://5dca.flcourts.gov/content/download/2302286/opinion/Opinion_22-1385.pdf

WILLIAMS RULE: Collateral-crime evidence of a sexual offense is admissible even if offered to show propensity, but the State must still demonstrate that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. Evidence of Defendant's earlier, similar sexual battery is admissible in his rape/murdertrial. The time lapse between the different crimes is important, but not so much when Defendant was in prison for 13 of the intervening years. Jackson v. State, 5D23-1169 (4/5/24)
https://5dca.flcourts.gov/content/download/2302290/opinion/Opinion_23-1169.pdf

HABEAS CORPUS: A habeas petition attacking the validity of a conviction and asserting issues related to the trial court proceedings, must be brought in the circuit court of the county that rendered the judgment of conviction. Trammell v. State, 5D23-3421 (4/5/24)
https://5dca.flcourts.gov/content/download/2302300/opinion/Opinion_23-3421.pdf

SENTENCE: Where there is a discrepancy between the oral pronouncement

and the written sentence, the written sentence must be corrected to conform to the oral pronouncement. Rowan v. State, 6D23-590 (4/5/24) https://6dca.flcourts.gov/content/download/2302823/opinion/Opinion_23-0590.pdf

VOP: Negligence or ineptitude does not support a finding of a willful and substantial violation. A defendant's failure to comply with a probation condition is not willful where his conduct shows a reasonable, good faith attempt to comply and factors beyond his control, rather than a deliberate act of misconduct, caused his noncompliance. Bean v. State, 6D23-786 (4/5/24) https://6dca.flcourts.gov/content/download/2302825/opinion/Opinion_23-0786.pdf

VOP: A trial court is not permitted to revoke probation on conduct not charged in the affidavit of revocation. Bean v. State, 6D23-786 (4/5/24) https://6dca.flcourts.gov/content/download/2302825/opinion/Opinion_23-0786.pdf

VOP: Probation is improperly revoked where Defendant testified without contradiction that, Bean testified that he did not have the $55 for the psychological evaluation that was required for the anger management course and for this reason, the administrators told him not to come. Bean v. State, 6D23-786 (4/5/24) https://6dca.flcourts.gov/content/download/2302825/opinion/Opinion_23-0786.pdf

COMPASSIONATE RELEASE: Compassionate release allows a court to reduce a defendant's term of imprisonment upon motion of the defendant after the defendant has fully exhausted all administrative rights, where the

court has considered the §3553(a) factors, and found that extraordinary and compelling reasons warrant such a reduction. To award compassionate release, the court must also find the defendant not be a danger to the safety of any other person or to the community. USA v. Handlon, No. 22-13699 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213699.pdf

COMPASSIONATE RELEASE: There are four categories of "extraordinary and compelling" reasons that could make a movant eligible for a sentence reduction: (1) the defendant's medical condition, (2) the defendant's age, (3) the defendant's status as the only potential caregiver for a minor child or spouse, or the incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent and (4) "other reasons" as determined by the Director of the Bureau of Prisons. That last "catch-all" category does not grant discretion to courts to develop other reasons. USA v. Handlon, No. 22-13699 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213699.pdf

COMPASSIONATE RELEASE: The "extraordinary and compelling" reason of the incapacitation of the inmate's parent did not exist at the time of the filing of the motion for compassionate release and the amendment does not apply retroactively. However, inmate may file a new motion and start over. USA v. Handlon, No. 22-13699 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202213699.pdf

SPEEDY TRIAL: A 35-month delay between indictment and arrest does not violate the Sixth Amendment right to a speedy trial where Defendant was not prejudiced by the delay and there were reasons for the delay, including COVID: USA v. Vargas, No. 22-10604 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210604.pdf

SPEEDY TRIAL: The analysis for whether the delay between indictment and arrest violates Speedy Trial starts by asking if the length of the delay has

been long enough--typically about a year--to trigger a full-fledged constitutional analysis. If it is, the court then must decide whether a consideration of (1) the length of the delay, (2) the reason for the delay and (3) the defendant's assertion of his speedy-trial right weighs heavily against the government. If these factors uniformly do so, prejudice is presumed; if not, the defendant must establish actual prejudice from the delay in order to prevail. For a defendant to avoid making a showing of actual prejudice, all three factors must weigh heavily against the government. USA v. Vargas, No. 22-10604 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210604.pdf

SPEEDY TRIAL-HISTORY: The right to a speedy trial dates back to as early as the Magna Carta of 1215. USA v. Vargas, No. 22-10604 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210604.pdf

DEFINITION-"HEAVILY": "Heavily" is defined as "ponderously, massively; burdensomely, oppressively." USA v. Vargas, No. 22-10604 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210604.pdf

DEFINITION-"DILIGENCE": "Diligence" means a "persevering effort to accomplish something undertaken." USA v. Vargas, No. 22-10604 (11th Cir. 4/3/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210604.pdf

ISSUE PRESERVATION: Defendant's objection to recording which included cross-talk between officers can not be raised on appeal where there was no contemporaneous objection. Byrd v. State, 1D 2022-1460 (4/3/24)
https://1dca.flcourts.gov/content/download/2295374/opinion/Opinion_2022-1460.pdf

EVIDENCE: No legal principle excludes statements or conduct of a party solely on the ground that such statements or conduct is self-serving. It would

be the rare instance indeed, and a pointless act, when a party offers evidence which did not serve that party. Byrd v. State, 1D 2022-1460 (4/3/24) https://1dca.flcourts.gov/content/download/2295374/opinion/Opinion_2022-1460.pdf

MISTRIAL: A declaration of mistrial is an act of last resort. A mistrial is appropriate only where the error is so prejudicial as to vitiate the entire trial and should be exercised only in cases of absolute necessity. Byrd v. State, 1D 2022-1460 (4/3/24) https://1dca.flcourts.gov/content/download/2295374/opinion/Opinion_2022-1460.pdf

APPEAL-JURISDICTION: Timeliness of an appeal is jurisdictional. An order of dismissal of the petition for writ of prohibition is a final order. Appellate court lacks jurisdiction to hear appeal of the order filed more than 30 days after its rendition. When a notice of appeal has been untimely filed, dismissal is the only course of action. Peek v. Florida Commission on Offender Review, 1D2023-2258 (4/3/24)) https://1dca.flcourts.gov/content/download/2295378/opinion/Opinion_2023-2258.pdf

RESENTENCING: Defendant is entitled to be present when his sentence is increased by imposition of a nondiscretionary fine because a sentencing proceeding in which a sentence is increased is a critical stage of trial at which the defendant's presence would contribute to the fairness of the procedure. Foster v. State, 2D22-2966 (4/3/24) https://2dca.flcourts.gov/content/download/2289621/opinion/Opinion_22-2966.pdf

RESENTENCING (J. LaROSE, CONCURRING): "With hesitation, I join the court's opinion. . . Of course, we know how the story will end. The trial court will impose a nondiscretionary fine. . .This strikes me as 'make-work.'. .

.Nothing will be gained by Mr. Foster's attendance at the hearing. The trial court's hands are tied. Foster v. State, 2D22-2966 (4/3/24)

https://2dca.flcourts.gov/content/download/2289621/opinion/Opinio or n_22-2966.pdf

DEFINITION-"MAKE-WORK": "Make-work" is "work assigned or done chiefly to keep one busy." Foster v. State, 2D22-2966 (4/3/24)
https://2dca.flcourts.gov/content/download/2289621/opinion/Opinion_22-2966.pdf

PLEA WITHDRAWAL-JURISDICTION: Where defendant files a pro se motion to withdraw plea after filing a notice of appeal, the trial court lacks jurisdiction and must dismiss rather than deny it. Navarro v. State, 2D23-974 (4/3/24)
https://2dca.flcourts.gov/content/download/2289635/opinion/Opinion_23-0974.pdf

HABEAS CORPUS-INVOLUNTARY COMMITMENT: A habeas petition challenging an involuntary commitment to a State mental treatment facility may be brought by the forensic client herself or a party acting on behalf of the client. Court improperly dismissed the petition on the grounds that the Defendant was represented by counsel on the underlying charge. Wood v. State, 2D23-1927 (4/3/24)
https://2dca.flcourts.gov/content/download/2289646/opinion/Opinion_23-1927.pdf

HEARSAY: Many courts have concluded that a hearsay statement made in a 911 call is not testimonial, because the statement is not made in response to police questioning, and because the purpose of the call is to obtain assistance, not to make a record against someone. Cordovi v. State, 3D22-1393 (4/3/24)
https://3dca.flcourts.gov/content/download/2295984/opinion/Opinion_2022-

1393.pdf

JUDGMENT-DISQUALIFICATION: Allegation that judge refused to allow the presence of a court reporter at a hearing is legally sufficient to compel disqualification. Pimienta v. Rosenfeld, 3D23-0858 (4/3/24) https://3dca.flcourts.gov/content/download/2294258/opinion/Opinion_2023-0858.pdf

PRR/HFO: Because the prison releasee reoffender statute only authorizes the court to deviate from Its sentencing scheme to impose a greater sentence of incarceration, a trial court is without authority to sentence a defendant to an equal sentence under the Habitual Felony Offender statute, even where such sentence is imposed concurrently with the PRR sentence. Jefferson v. State, 4D2022-1104 (4/3/24) https://4dca.flcourts.gov/content/download/2294674/opinion/Opinion_2022-1104.pdf

VOUCHING: Testimony and argument that CI would not be used or his services would be discontinued if he were unreliable is improper vouching. Improper vouching or bolstering of witness testimony occurs when the State places the prestige of the government behind the witness. Goldsmith v. State, 4D2022-1632 (4/3/24) https://4dca.flcourts.gov/content/download/2297562/opinion/Opinion_2022-1632.pdf

COSTS OF PROSECUTION: To set a higher amount than the story minimum, the state attorney must demonstrate the amount spent on prosecuting the defendant and the trial court must consider the defendant's financial resources. Goldsmith v. State, 4D2022-1632 (4/3/24) https://4dca.flcourts.gov/content/download/2297562/opinion/Opinion_2022-1632.pdf

COSTS-INVESTIGATION: A defendant must pay investigation costs only if theagency which incurs that cost requests it. Prosecutors are not authorized to request costs on behalf of an agency without that agency's request. Goldsmith v. State, 4D2022-1632 (4/3/24) https://4dca.flcourts.gov/content/download/2297562/opinion/Opinion_2022-1632.pdf

COMPETENCY: District courts have authority to order more than one competency evaluation and commitment order. §4241 places no limits on when or how often a participant in the case may seek competency proceedings for the defendant. USA v. Alhindi, No. 23-11349 (4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

COMPETENCY: The four-month limitation for commitment for incompetence begins with the defendant's hospitalization and applies to the hospitalization period only. Procedures for determining mental competency to stand trial explained. USA v. Alhindi, No. 23-11349 (4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

DEFINITION-"ANY TIME": The phrase "any time" means "at whatever time." § 4241 places no limits on when or how often a participant in the case may seek competency proceedings for the defendant. USA v. Alhindi, No. 23-11349 (4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

COMPETENCY: Mental competency can be fluid during criminal proceedings, and courts must always be alert to changes in competency to ensure against trying incompetent defendants. USA v. Alhindi, No. 23-11349

(4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

COMPETENCY: "[W]e take a moment to emphasize the importance of district courts' continued close supervision of competency proceedings. Alhindi has been stuck in competency limbo for over twenty months, less than nine of which have been for hospital treatment. . .Adherence to Congress's enumerated procedures is critical to ensure that defendants whose trial proceedings are delayed because of competency issues are receiving the help they need so timely trial proceedings may occur." USA v. Alhindi, No. 23-11349 (4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

COMPETENCY (J. ROSENBAUM, CONCURRING): "[Wh]ile we hold that the four-month time limit that §4241(d) expressly mandates applies to only the hospitalization period, it is equally clear that the statute does not authorize unreasonable prehospitalization wait times. USA v. Alhindi, No. 23-11349 (4/1/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202311349.pdf

RIGHT TO PRIVACY-ABORTION: There is no right to abortion in the Privacy Clause. Statute outlawing abortion if the gestational age of the fetus is more than 15 weeks[1], subject to certain exceptions, does not violate the Privacy Clause of the Florida Constitution. Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

STARE DECISIS: "[W]e recede from our prior decisions in which. . .we held that the Privacy Clause guaranteed the right to receive an abortion through the end of the second trimester." Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

RIGHT OF PRIVACY: Prior Supreme Court pronouncement on the Right of Privacy in abortion context "was flawed in several respects. . .T.W. did not look to dictionaries, contextual clues, or historical sources bearing on the text's meaning. . .Compounding these errors, the T.W. majority failed to apply longstanding principles of judicial deference to legislative enactments and failed to analyze whether the statute should be given the benefit of a presumption of constitutionality." Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

PRIVACY: The word "private" carries the idea of being secluded from the sight, presence, or intrusion of others, the chief example being "a private bathroom." An abortion does not involve privacy. "The decision to have an abortion may have been made in solitude, but the procedure itself included medical intervention and required both the presence and intrusion of others." Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

PRIVACY-THE RIGHT TO BE LET ALONE: The right to be let alone has little to do with the autonomy of an individual to make decisions free from government control. Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

STANDING (J. SASSO, CONCURRING): Court should reconsider its standing precedent. We need to clarify the scope of any standing requirements, such as whether parties may assert both legal and factual injuries or whether only a legal injury will suffice, whether standing requirements are truly subject to waiver, or instead whether they are jurisdictional in nature, and we need to provide a principled methodology to help litigants understand which tests to apply when. Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

STANDING (J. SASSO, CONCURRING): The Florida Constitution does not contain an explicit cases and controversies clause, yet courts sometimes adopt the federal test for standing. Standing standards in Florida have been "somewhat logically inconsistent." Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

RIGHT OF PRIVACY (J. LABARGA, DISSENTING): "The decision is an affront to this state's tradition of embracing a broad scope of the right of

privacy. Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

RIGHT OF PRIVACY (J. LABARGA, DISSENTING): "I lament that what the majority has done today supplants Florida voters' understanding—then and now—that the right of privacy includes the right to an abortion. The majority concludes that the public understanding of the right of privacy did not encompass the right to an abortion. However, the dominance of Roe in the public discourse makes it inconceivable that in 1980, Florida voters did not associate abortion with the right of privacy. Because of this, and with deep dismay at the action the majority takes today, I dissent." Planned Parenthood of Southwest and Central Florida v. State, SC2022-1050 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285280/opinion/Opinion_SC2022-1050%20&%20SC2022-1127.pdf

CONSTITUTIONAL AMENDMENT-BALLOT-ABORTION: Ballot initiative to create a right to abortion before viability is approved. The proposed amendment embraces but one subject—limiting government interference with abortion—and matter directly connected therewith. It does not violate the single-subject provision of Florida's Constitution. Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion, SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285282/opinion/Opinion_SC2023-1392.pdf

CONSTITUTIONAL AMENDMENT-BALLOT-SUMMARY: "And we see no

basis in law or common sense to require a ballot summary to announce, as if in a warning label, 'caution: this amendment contains terms with contestable meanings or applications.' Voters can see and decide for themselves how the specificity of the proposal's terms relates to the proposal's merits." Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion, SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285282/opinion/Opinion_SC2023-1392.pdf

QUOTE-AMBIGUITY: "Lawyers are adept at finding ambiguity. Show me the text and I'll show you the ambiguity. The predominant reasoning in the dissents would set this Court up as the master of the constitution with unfettered discretion to find a proposed amendment ambiguous and then to deprive the people of the right to be the judges of the merits of the proposal. It would open up a playground for motivated reasoning and judicial willfulness. . .We decline to encroach on the prerogative to amend their constitution that the people have reserved to themselves. Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion, SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285282/opinion/Opinion_SC2023-1392.pdf

CONSTITUTIONAL AMENDMENT-BALLOT-SUMMARY (J. GROSSHANS, DISSENTING): "[O]ur statutory duty requires more than simply inspecting the summary for technical compliance. Instead, we determine if the summary clearly explains the chief purpose of the amendment. This will, at times, require the summary do more than simply echo the amendment's text. . .I disagree with the majority's suggestion that if the summary is an 'almost verbatim recitation of the text of the proposed amendment" it cannot be misleading. Advisory Opinion to the Attorney General Re: Limiting

Government Interference with Abortion, SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285282/opinion/Opinion_SC2023-1392.pdf

CONSTITUTIONAL AMENDMENT-BALLOT-SUMMARY (J. FRANCIS, DISSENTING): "[T]he issue of abortion—far from the people settling the matter—will continue to be decided by each iteration of this Court. And the summary hides the ball as to the chief purpose of the proposed amendment: which, ultimately, is to—for the first time in Florida history—grant an almost unrestricted right to abortion. Because the summary only parrots the language of the proposed amendment, it explains nothing, and does not disclose its chief purpose. . . It is my view that while the constitution enshrines the reserved right of the people to amend their constitution, this Court also has a role in ensuring the people can exercise that right free of anything that would mislead them or present them with ambiguity. Advisory Opinion to the Attorney General Re: Limiting Government Interference with Abortion, SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285282/opinion/Opinion_SC2023-1392.pdf

MARIJUANA-RECREATIONAL-BALLOT PROPOSAL: The "Adult Personal Use of Marijuana" initiative to modify Article X, §29 of the Florida Constitution, which would legalize personal use of marijuana by adults, may appear on the ballot. The amendment will immediately allow a Medical Marijuana Treatment Center (MMTC)—an entity already licensed to sell medical marijuana—to distribute cannabis for personal use. Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opini

on_SC2023-0682.pdf

DEFINITION-"ALLOW" (J. MUÑIZ, CONCURRING): To "allow" means to "permit the presence of" or to "let happen." Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

DEFINITION-"ONE" (J. MUÑIZ, CONCURRING): The word "one" means "being a single unit or entire being or thing and no more," or "existing alone in a specified sphere." Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

DEFINITION-"DIRECTLY" (J. MUÑIZ, CONCURRING): "Directly" means "straight on along a definite course without deflection or slackening . . . purposefully or decidedly and straight to the mark . . . in a straightforward manner without hesitation, circumlocution, or equivocation." Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

CONSTITUTIONAL AMENDMENT-SINGLE SUBJECT-HUH? (J. MUÑIZ, CONCURRING): "A narrow reading, I believe, best protects the people's right to self-governance by replacing the Court's nebulous 'oneness of

purpose' analysis with a straightforward, analytical framework for examining these proposed amendments. By eliminating the malleable standard associated with 'oneness of purpose"—the definition of which can change depending on the makeup of the Court, and under which many subjects can be construed as one—we both guard electoral integrity, and shift power back to the voters by ensuring they are presented with a proposal that is not 'radically defective.'" Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

ONENESS (J. MUÑIZ, CONCURRING): "What may be 'oneness' to one person might seem a crazy quilt of disparate topics to another. 'Oneness,' like beauty, is in the eye of the beholder." Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

LEGALIZED MARIJUANA (J. SASSO, DISSENTING): Ballot initiative for legalized marijuana is deceptive for falsely claiming that it allows recreational marijuana use. A state has no power to authorize its residents to participate in conduct that would constitute a federal crime. Consequently, this initiative does not "allow" anything. Instead, whether Floridians are "allowed" to possess marijuana for recreational use will depend on the federal government. A marijuana user in Florida would remain exposed to potential prosecution under federal law. Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, No. SC2023-0682 (4/1/24)

https://supremecourt.flcourts.gov/content/download/2285281/opinion/Opinion_SC2023-0682.pdf

MARCH 2024

PHOTO LINE UP: "This is the person that shot and robbed me. . .Get that mother f---ker," is an unambiguous identification. USA v. Daniels, No. 22-13590 (11th Cir. 3/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213590.pdf

EVIDENCE-OPINION-IDENTIFICATION: Expert testimony on eyewitness identification is generally disfavored. A district court does not abuse its discretion when it excludes it. USA v. Daniels, No. 13590 (11th Cir. 3/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213590.pdf

PHOTO LINE UP: Whether a photo line up identification is reliable depends on (1) the witness's opportunity to view the accused; (2) the witness's degree of attention; (3) the accuracy of the witness's description; (4) the witness's level of certainty; and (5) the length of time between the crime and the identification. Photo line up of people in civilian clothes is not unduly suggestive. USA v. Daniels, No. 13590 (11th Cir. 3/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213590.pdf

EVIDENCE-IDENTIFICATION-VIDEO: Officer may offer his lay opinion on the identity of the suspect based on the surveillance ideo where the officer had a high enough level of familiarity with the defendant's appearance. USA v. Daniels, No. 13590 (11th Cir. 3/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213590.pdf

VOP: A willful and substantial violation of probation must be supported by competent, substantial evidence. Wilmore v. State, 5D23-0400 (3/28/24)

https://5dca.flcourts.gov/content/download/2262683/opinion/Opinion_23-0400.pdf

HABEAS CORPUS: Court must dismiss, rather than deny, a petition for writ of habeas corpus challenging a conviction and sentence. Burns v. State, 5D23-2972 (3/28/24)

https://5dca.flcourts.gov/content/download/2262686/opinion/Opinion_23-2972.pdf

LESSER INCLUDED: Defendant, charged with burglary of a structure with assault or battery but convicted of burglary of an occupied structure may not challenge the conviction pursuant to R. 3.800(b) on the ground that the lesser was not properly pled. It may appear at first glance that a finding that a structure is occupied is an enhancement to the crime of burglary of an unoccupied structure, but it isn't. Error, if any, is not fundamental. Melton v. State, 1D2022-0574 (3/27/24)

https://1dca.flcourts.gov/content/download/2263716/opinion/Opinion_2022-0574.pdf

DISCOVERY: No discovery violation occurred where State provided discovery to appointed counsel prior to Defendant choosing to proceed pro se, and even though it did not timely respond to his later discovery request. Even if the State violated the rules of discovery, dismissal of a case due to a discovery violation is a drastic remedy which should only be used sparingly and in extreme situations. Melton v. State, 1D2022-0574 (3/27/24)

https://1dca.flcourts.gov/content/download/2257515/opinion/Opinion_2022-0574.pdf

HABEAS CORPUS: "Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct

appeal, or which could have been, should have been, or were raised in post-conviction proceedings. Dortley v. State, 1D2022-1650 (3/27/24)

https://1dca.flcourts.gov/content/download/2261543/opinion/Opinion_2022-1650.pdf

POST CONVICTION RELIEF (J. WETHERELL, CONCURRING: "The postconviction process and the appellate courts do not exist simply to give prisoners something to do while they serve their sentences, and there comes a point in every criminal case that the defendant needs to accept the finality of his judgment and sentence and just do his time." Dortley v. State, 1D2022-1650 (3/27/24)

https://1dca.flcourts.gov/content/download/2261543/opinion/Opinion_2022-1650.pdf

COST OF PROSECUTION: The $100 cost of prosecution is a minimum cost, and thus need not by requested by State. Rhodes v. State, 1D2022-1945 (3/27/24)

https://1dca.flcourts.gov/content/download/2253045/opinion/Opinion_2022-1945.pdf

POST CONVICTION RELIEF-TIMELINESS: Defendant is not entitled to file a belated R. 3.850 motion for post-conviction relief more than two years later where he had not filed the motion based on counsel's affirmative misadvice that a pending R. 3.800 motion would toll the time to file the R. 3.850. Defendant could have discovered that his counsel misadvised him about the timeliness of his first 3.850. Davis v. State, 1D2022-3617 (3/27/24)

https://1dca.flcourts.gov/content/download/2261557/opinion/Opinion_2022-3617.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Ineffective assistance of appellate counsel cannot be argued where the issue was not preserved for appeal. Parker v. State, 1D2022-4057 (3/27/24)

https://1dca.flcourts.gov/content/download/2253365/opinion/Opinion_2022-4057.pdf

DOUBLE JEOPARDY: Double jeopardy is not implicated in the context of a resentencing following an appeal of a sentencing issue. Bruce v. State, 1D2023-2730 (3/27/24)

https://1dca.flcourts.gov/content/download/2257607/opinion/Opinion_2023-2730.pdf

POST CONVICTION RELIEF: A prematurely filed motion for postconviction relief should be dismissed by a trial court and may be refiled after the direct appeal is final. Moreno Mujica v. State, 2D23-2594 (3/27/24)

https://2dca.flcourts.gov/content/download/2251706/opinion/Opinion_23-2594.pdf

JURY INSTRUCTION: Appellate courts review the denial of a criminal defendant's request for a special jury instruction under an abuse of discretion standard. Defendant must establish (1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct statement of the law and not misleading or confusing. Thomas v. State, 3D22-0785 (3/27/24)

https://3dca.flcourts.gov/content/download/2251747/opinion/Opinion_2022-0785.pdf

EVIDENCE: Court did not err in excluding evidence that Defendant appeared disoriented during the crime and that the victim had met with the

State's attorney prior to the trial. Ray v. State, 3D2022-3250 (3/27/24)

https://4dca.flcourts.gov/content/download/2254590/opinion/Opinion_2022-3250.pdf

PROBATION-CONDITIONS: Where the oral pronouncement is silent with regard to the terms and, more specifically, does not specify either a payment schedule or a time limit for paying costs, Defendant has the entire term of supervision to do so. Ray v. State, 3D2022-3250 (3/27/24)

https://4dca.flcourts.gov/content/download/2254590/opinion/Opinion_2022-3250.pdf

PROBATION-CONDITIONS: A court's oral pronouncement of sentence controls over the written document. The oral announcement of conditions of probation--Defendant must "enroll" in a batterer's intervention program–controls over the written order--Defendant must "complete" a batterer's intervention program. Ray v. State, 3D2022-3250 (3/27/24)

https://4dca.flcourts.gov/content/download/2254590/opinion/Opinion_2022-3250.pdf

COSTS: Prosecution cost above the $100 minimum absent evidence supporting it. A request is not enough. Ray v. State, 3D2022-3250 (3/27/24)

https://4dca.flcourts.gov/content/download/2254590/opinion/Opinion_2022-3250.pdf

RESENTENCING-MANDATE: Where appellate court issued a mandate requiring re-sentencing, the circuit court may not revive the original sentence unless the appellate court recalls the mandate, which it cannot do more than

120 days after it was issued. Intervening Supreme Court change to the law does not matter. Re-sentencing is required. German v. State, 4D2023-0118 (3/27/24)

https://4dca.flcourts.gov/content/download/2253553/opinion/Opinion_2023-0118.pdf

COMPETENCY: Defendant is entitled to appointment of counsel in hearing for retroactive determination of competency. A *nunc pro tunc* competency hearing is a crucial stage of the proceedings. Ball v. State, 5D23-0617 (3/22/24)

https://5dca.flcourts.gov/content/download/2187946/opinion/Opinion_23-0617.pdf

CONSECUTIVE SENTENCES-MANDATORY MINIMUM: 25 year mandatory minimum for aggravated assault with a firearm (discharge) and 5 years with a 3 year mandatiry minimum consecutive for possession of a firearm by a felon is unlawful. Sentences under §775.087(2) must be concurrent where the two crimes were committed during a single criminal episode where there was one victim and with a single shot being discharged that did not strike the victim. There is no authority for imposition of a consecutive sentence for the conviction of possession of a firearm by a convicted felon in the course of the single criminal episode. Gullo v. State, 5D23-2434 (3/22/24)

https://5dca.flcourts.gov/content/download/2187951/opinion/Opinion_23-2434.pdf

CONSECUTIVE SENTENCES-MANDATORY MINIMUM (J. LAMBERT, CONCURRING): "I concur with the majority opinion because the cited binding precedent requires as much. My view, however, is that the text of section 775.087(2) permits Gullo's consecutive sentences, although I concede that the application of this statute to various factual scenarios has,

at times, led appellate courts to conflicting views." Gullo v. State, 5D23-2434 (3/22/24)

https://5dca.flcourts.gov/content/download/2187951/opinion/Opinion_23-2434.pdf

POST CONVICTION RELIEF: Defendant must be given an opportunity to amend a R. 3.850 motion to allege the requisite prejudice. Reyburn v. State, 5D23-2943 (3/22/24)

https://5dca.flcourts.gov/content/download/2187954/opinion/Opinion_23-2943.pdf

HFO-LIFE SENTENCE: Life sentences for sexual battery (2nd degree) and robbery (2nd degree) as a habitual felony offender are unlawful, The maximums are 30 years. Gonzalez Santiago v. State, 6D23-394 (3/22/24)

https://6dca.flcourts.gov/content/download/2093613/opinion/Opinion_23-0394.pdf

HEARSAY: Where Defendant is charged, along with her sisters, with the ambush shooting of the victim to thwart child visitation, her statement that she owned an AR rifle is not hearsay and is admissible as an admission by a party opponent (Rule 801(d)(2)(A)) Admissions of a party opponent may be introduced as nonhearsay. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

ALPR: Court and lower court rulings have failed to directly address ALPR technology (camera systems that capture still photographs of the license plate numbers of vehicles traveling on the road) and whether aggregation of one's public travels implicates Fourth Amendment rights. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

SEARCH AND SEIZURE-GOOD FAITH EXCEPTION-ALPR: There is very little in the caselaw and academic literature about whether the acquisition of ALPR data constitutes a Fourth Amendment search that requires a warrant. But evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule. "We need not decide whether Carpenter requires a search warrant for ALPR data because the good-faith exception to the exclusionary rule applies." Carpenter was fortuitously decided the day after the ALPR inquiries on Defendant's vehicle were conducted. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

EXPERT: Officer need not be an expert to testify about ALPR technology. A lay witness may offer opinion testimony if the testimony is (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge. Testimony regarding ALPR data does not require expertise or specialized knowledge beyond that of a lay person. It's just a camera taking pictures. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

CIRCUMSTANTIAL EVIDENCE-CONSPIRACY: Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and collocation of circumstances. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

CIRCUMSTANTIAL EVIDENCE-DISCHARGE OF FIREARM: Circumstantial evidence is sufficient to convict Defendant Charis of shooting the victim. She was the only Mapson sister who, as a former Marine had trained snipers and had once owned an AR rifle, and had the ability to shoot the victim from 200 yards away. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

CIRCUMSTANTIAL EVIDENCE: Circumstantial evidence is sufficient to place Defendant at the scene of the sniper shooting where her truck was captured on the ALPR data; a similar vehicle was seen near the hill from which the shooting happened; her truck contained wig caps, gloves, earplugs, and a handgun; she had purchased two pairs of binoculars and sent a text referring to herself as "Halo," a video game assassin. USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

CIRCUMSTANTIAL EVIDENCE: Motive, communications with her homicidal sister on the day of the shooting, lying to the victim to keep him at the planned ambush site, and her elaborate and shifting statements to the authorities support conviction. "And fourth, there is common sense." USA v. Mapson, No. 22-11159 (11th Cir. 3/21/24):

https://media.ca11.uscourts.gov/opinions/pub/files/202211159.pdf

RULES-AMENDMENTS-GENERAL PRACTICE: Under a new subdivision of R. 2.215, a party may prompt a judge to rule on a matter that has been pending for more than 60 days by filing a notice with the clerk and serving a copy on the judge. Other minor tweaks. In Re: Amendments to Florida Rules of General Practice and Judicial Administration, SC2023-0837 (3/21/24)

https://supremecourt.flcourts.gov/content/download/2175428/opinion/Opinion_SC2023-0837.pdf

SENTENCING-UPWARD VARIANCE-PROCEDURAL REASONABLENESS: Court may impose an upward variance sentence of 120 months rather than the 60 month recommended sentence from the plea-bargain for possession of a firearm in furtherance of a drug trafficking crime where Defendant continued to deal in drugs, leading to at least one death, while in jail following his arrest. USA v. Owens, No. 22-11799 (3/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211799.pdf

SENTENCING-UPWARD VARIANCE-PROCEDURAL REASONABLENESS: The district court abuses its discretion if the factual findings it uses in a sentencing enhancement are clearly erroneous. But a decision to vary upward from the Sentencing Guidelines' recommendation based on uncharged conduct can be based on evidence presented at the sentencing hearing and reasonable inferences therefrom. Court may conclude that the strips with which the Defendant was caught in jail was Suboxone without the production of a toxicology report. Where the government presents unrebutted, credible firsthand testimony and the defendant presents no evidence at all, the government has proved its version of events is more likely true than not. USA v. Owens, No. 22-11799 (3/20/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211799.pdf

SCORESHEET-VICTIM INJURY: Victim injury points may not be assessed where jury specifically found that appellant had not intentionally caused bodily harm to another. Jones v. State, 4D2022-3184 (3/20/24)

https://4dca.flcourts.gov/content/download/2162155/opinion/Opinion_2022-3184.pdf

SEARCH AND SEIZURE-MARIJUANA-ODOR: The odor of fresh marijuana, fresh or burnt, and the officer's visual observations of marijuana establish probable cause to search a vehicle. §381.986(14)(a) requires that medical marijuana must remain in its original packaging. State v. Fortin, 4D2023-1460 (3/20/24)

https://4dca.flcourts.gov/content/download/2162148/opinion/Opinion_2023-1460.pdf

DURESS: A defendant's self-serving assertion, which is not supported by any other evidence, will not support reversal of a trial court's discretionary decision not to give the duress instruction. Stallworth v. State, 1D 1D2022-2030 (3/20/23)

https://1dca.flcourts.gov/content/download/2176170/opinion/Opinion_2022-2030.pdf

POST CONVICTION RELIEF: Counsel was ineffective for eliciting, and not objecting to, evidence of other, uncharged sexual acts. Johnson v. State, 1D2022-2298 (3/20/24)

https://1dca.flcourts.gov/content/download/2165513/opinion/Opinion_2022-2298.pdf

POST CONVICTION RELIEF: Counsel was ineffective for asking detective whether he had obtained or tried to obtain a statement from Defendant, opening the door to Defendant exercising his Miranda rights. Johnson v. State, 1D2022-2298 (3/20/24)

https://1dca.flcourts.gov/content/download/2165513/opinion/Opinion_2022-2298.pdf

SENTENCING-DOWNWARD DEPARTURE: The trial court's denial of a downward departure sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Baker v. State, 1D2022-3570 (3/20/24)

https://1dca.flcourts.gov/content/download/2167344/opinion/Opinion_2022-3570.pdf

CREDIT FOR TIME SERVED: Defendant is not entitled to credit for time spent on bail subject to electronic monitoring. Baker v. State, 1D2022-3570 (3/20/24)

https://1dca.flcourts.gov/content/download/2167344/opinion/Opinion_2022-3570.pdf

RESTITUTION: Victim is not entitled to restitution for lost wages corresponding to appointments lost in her illicit, unlicensed cosmetologist practice after Defendant stole her occupational supplies. "The expected income from the victim's illicit cosmetology appointments cannot serve as the basis for establishing a fair market value-based restitution award." S.L.L., a Child v. State, 1D2023-1253 (3/20/24)

POST CONVICTION RELIEF-OOPS: After a lengthy, seven-claim, hand-written motion seeking to vacate his convictions and sentence, a "notice of inquiry," a "motion to hear and rule," a petition seeking a writ to compel, an amended motion and an emergency motion to expedite a ruling on his sentencing scoresheet claim, a supplement to that motion, another notice of inquiry, a petition for writ of habeas corpus, and another notice of inquiry, Defendant loses. "Mr. Morris, unfortunately, soon will learn that the sentencing scoresheet claim—which he is spending the most time needling the trial court about—is procedurally barred as an issue he could have raised on direct appeal." Morris v. State. 1D2023-1253 (3/20/24)

https://1dca.flcourts.gov/content/download/2162171/opinion/Opinion_2023-1253.pdf

POST CONVICTION RELIEF: Alleged failure to impeach a testimony on a minor detail does nit warrant a new trial where client had confessed during a controlled call and there was a cell phone recording of he and the victim engaging in unlawful sexual activity on the morning in question. Taluy v. State, 2D23-1213 (3/20/24)

https://2dca.flcourts.gov/content/download/2161275/opinion/Opinion_23-

1213.pdf

MOOTNESS-NO FLY LIST: Voluntary cessation of a challenged practice moots a case only if the defendant can show that the practice cannot reasonably be expected to recur. Removing the Plaintiff from a No Fly List does not render the case moot because he may be relisted. The Government's declaration that the plaintiff "will not be placed on the No Fly List in the future based on the currently available information" is not enough. A live case or controversy cannot be so easily disguised, and a federal court's constitutional authority cannot be so readily manipulated. "Put simply, the government's sparse declaration falls short of demonstrating that it cannot reasonably be expected to do again in the future what it is alleged to have done in the past." FBI v. Fikre, No. 22–1178 (U.S. S. Ct. 3/19/24)

https://www.supremecourt.gov/opinions/23pdf/22-1178_p8k0.pdf

PLEA: Defendant is not entitled to withdraw his plea for taking pornographic images of the sleeping minor girl on the rounds that the Court failing to advise him that the child needed to have volitionally participated in the sexual act. The statute (18 U.S.C. §2251(a)) does not so require. USA v. Wright, No. 22-12338 (11th Cir. 3/19/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212338.pdf

HABEAS CORPUS: A petition for writ of habeas corpus is the appropriate vehicle for challenging an order denying pretrial release. The court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release, even if the new charge is No Info'ed. The statute contains no requirement that the State prosecute the new crime. Irizarry v. State, 6D24-27 (3/18/24)

https://6dca.flcourts.gov/content/download/2136886/opinion/Opinion_24-0027.pdf

SENTENCING-SAFETY VALVE-CRIMINAL HISTORY: To qualify for safety-valve relief, a defendant must not have more than 4 criminal history points, a 3-point offense, and a 2-point violent offense. A person fails to meet the requirement (and so cannot get relief) if he has any one of the three. A prior 3-point offense (a sentence exceeding 13 months) makes one ineligible for safety valve. Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

"AND": "'And,' in grammatical terms, is of course a conjunction—a word whose function is to connect specified items. Both parties here agree with that elementary proposition. . . The word 'and,' each might say, means . . . well, and. . . 'And,' they recite in concert, means 'along with or together with.' . . .Where things get more complicated is in figuring out what goes along or together with what." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

STATUTORY INTERPRETATION: "[G]rammar is not the primary determinant of meaning." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

STATUTORY INTERPRETATION: "[W]e do not demand (or in truth expect) that Congress draft in the most translucent way possible." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

SENTENCING-SAFETY VALVE-CRIMINAL HISTORY (J. GORSUCH, DISSENTING): "Adopting the government's preferred interpretation guarantees that thousands more people in the federal criminal justice system will be denied a chance—just a chance—at an individualized sentence. For them, the First Step Act offers no hope. Nor, it seems, is there any rule of statutory interpretation the government won't set aside to reach that result. Ordinary meaning is its first victim. Contextual clues follow. Our traditional practice of construing penal laws strictly falls by the wayside too. Replacing all that are policy concerns we have no business considering. Respectfully, I would not indulge any of these moves." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

"AND" (J. GORSUCH, DISSENTING): "At the heart of today's dispute lies no specialized term but perhaps the most ordinary of words: Everything turns on what work the word "and" performs." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

CANONS (J. GORSUCH, DISSENTING): "Without question, the canon against superfluity can be a useful tool when seeking the meaning of a statute. It rests on the same principle as the canon of meaningful variation: the presumption that Congress is a careful drafter and each word it chooses 'is there for a reason.'. . .But that fact also makes the government's choice to rest its case on the superfluity canon a curious one. . . Sometimes, it seems, we are supposed to assume Congress was sloppy, other times careful. The only common thread seems to be what benefits the government in the moment." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

RULE OF LENITY (J. GORSUCH, DISSENTING): "[A] free nation operates against a background presumption of individual liberty." Pulsifer v. United States, No. 22–340 (U.S. S. Ct. 3/15/24)

https://www.supremecourt.gov/opinions/23pdf/22-340_3e04.pdf

STATUTE OF LIMITATIONS: Where information was filed within the three years statute of limitations, but never executed until after its expiration, Defendant is entitled to discharge unless the delay can be justified. The term "executed" means completion of service on the defendant, and the filing of a detainer–Defendant was serving a separate prison sentence-- is not the equivalent of the process contemplated by §775.15. Morreale v. State, 5D23-607 (3/15/24)

https://5dca.flcourts.gov/content/download/2092762/opinion/Opinion_23-0697.pdf

DISCOVERY-MEDICAL RECORDS : Government did not violate Brady by failing to disclose confidential medical records held by other medical service providers which were not in the possession of the Government. Although Brady requires the government to tender to the defense all exculpatory evidence in its possession, it establishes no obligation on the government to seek out such evidence. "In other words, the Due Process Clause. . .does not require the prosecution to conduct fishing expeditions for the defense." USA v. Markovich, No. 22-10978 (11th Cir. 3/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210978.pdf

EXPERT TESTIMONY: Government witness is permitted to testify —based

on her unquestioned experience and education in substance-abuse treatment and her in-depth review of a sample of patients' records—about specific instances of misconduct at the Defendants' in pill mill clinic. USA v. Markovich, No. 22-10978 (11th Cir. 3/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210978.pdf

EVIDENCE-SUMMARY TESTIMONY: Summary evidence is admissible to prove the contents of voluminous records that cannot be conveniently examined in court, provided that they are supported by evidence in the record. Summary testimony may be based on a subset of the records. USA v. Markovich, No. 22-10978 (11th Cir. 3/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210978.pdf

APPEAL-FORFEITED ISSUE: An appellant forfeits an issue when he raises it in a perfunctory manner without supporting arguments and authority. USA v. Markovich, No. 22-10978 (11th Cir. 3/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210978.pdf

NEWLY DISCOVERED EVIDENCE: Evidence that witness had been taken to a hospital surely before the trial is not newly discovered evidence to impeach the witness's testimony that he had not used drugs for several months. Even if that were the case, it would be cumulative. USA v. Markovich, No. 22-10978 (11th Cir. 3/14/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210978.pdf

ADVERSARY PRELIMINARY HEARING-CHILD HEARSAY: Inadmissible

child hearsay may not be used to establish probable cause in a 21-day adversary preliminary hearing. Hearsay testimony (not falling within some exception to the rule excluding hearsay) does not, by itself, meet the state's burden at an adversary preliminary hearing under R. 3.133(b). The proper question is not whether the evidence offered is hearsay or nonhearsay, but whether it is admissible or inadmissible hearsay. Larioszambrno v. State, 3D23-0331 (3/14/24)

https://3dca.flcourts.gov/content/download/2085736/opinion/Opinion_2024-0331.pdf

COST OF PROSECUTION: State is not required to request the mandatory court costs of prosecution of $50 for a misdemeanor or $100 for a felony. Brown v. State, 1D2022-3371 (3/13/24)

https://1dca.flcourts.gov/content/download/2081883/opinion/Opinion_2022-3371.pdf

APPEAL: A defendant may appeal an issue following a no contest or guilty plea only when the issue is expressly reserved and legally dispositive, or if based on an asserted involuntariness of the plea if the Appellant first sought to withdraw the plea in the trial court. Leija Moreno v. State, 1D2023-1189 (3/13/24)

https://1dca.flcourts.gov/content/download/2083766/opinion/Opinion_2023-1180.pdf

MOOTNESS: A case is “moot” when it presents no actual controversy or when the issues have ceased to exist. A moot case generally will be dismissed. Appellate court may dismiss an appeal on its own motion if it appears that under no circumstances can the relief prayed be made effective.

Granville v. State, 1D2023-2518 (3/13/24)

https://1dca.flcourts.gov/content/download/2074353/opinion/Opinion_2023-2518.pdf

EVIDENCE-RELEVANCE-GUN: A different gun than the one used in a crime is not relevant. Johnson v, State, 2D23-15 (3/13/24)

https://2dca.flcourts.gov/content/download/2070312/opinion/Opinion_23-0015.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for failing to object to the admission of the firearm because the State had failed to establish a connection between the firearm and the crime, rendering it irrelevant and inadmissible. Johnson v, State, 2D23-15 (3/13/24)

https://2dca.flcourts.gov/content/download/2070312/opinion/Opinion_23-0015.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: For postconviction claims for newly discovered evidence relating to guilty plea, first, the evidence must not have been known by the trial court, the party, or counsel at the time of the plea, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the defendant must demonstrate a reasonable probability that, but for the newly discovered evidence, the defendant would not have pleaded guilty and would have insisted on going to trial. Williams v. State, 3D22-1727 (3/13/24)

https://3dca.flcourts.gov/content/download/2078273/opinion/Opinion_2022-1727.pdf

JUVENILE OFFENDER: In conducting a sentencing hearing pursuant to related §921.1401, the trial court is not required to make factual findings of any statutory factor not relevant nor considered by the court, only that it must make specific findings on the record that all relevant factors have been reviewed and considered prior to imposing a sentence of life imprisonment or its functional equivalent. Morgan v. State, 3D22-1828 (3/13/24)

https://3dca.flcourts.gov/content/download/2080756/opinion/Opinion_2022-1828.pdf

JIMMY RYCE: Where, by the plain and unambiguous terms of the plea agreement, the State agreed to suspend civil commitment in exchange for the fulfillment of certain delineated requirements, and Defendant did not fulfill them, he is subject to involuntary civil commitment as a sex offender. A plea agreement is a contract and the rules of contract law are applicable to plea agreements. Rogers v. State, 3D22-2047 (3/13/24)

https://3dca.flcourts.gov/content/download/2078276/opinion/Opinion_2022-2047.pdf

EVIDENCE-IMPEACHMENT-PRIORS-OPENING THE DOOR: Where witness, impeached by prior felonies, said "none . . . were violent for real," the door is not opened to further testimony about the underlying facts. Facey v. State, 3D23-1323 (3/13/24)

https://3dca.flcourts.gov/content/download/2070874/opinion/Opinion_2023-1323.pdf

SIX-PERSON JURY: A six-person jury Is constitutional. Lee v. State, 4D2022-1806 (3/13/24)

https://4dca.flcourts.gov/content/download/2084592/opinion/Opinion_2022-1806.pdf

HVFO/PRR: Court, rather than a jury, may make the factual finding that Defendant committed his offense within three years of his release from prison for purposes of classifying him as a Habitual Violent Felony Offender and a Prison Release Reoffender. But stay tuned for Erlinger, now pending before the U. S. Supreme Court. Lee v. State, 4D2022-1806 (3/13/24)

https://4dca.flcourts.gov/content/download/2084592/opinion/Opinion_2022-1806.pdf

SCORESHEET-PRIOR RECORD: A "prior record" is "a conviction for a crime committed by the offender prior to the time of the primary offense. The only offenses that may be included under 'prior record' are those committed by the offender prior to the commission of the primary offense. Offenses which occurred after the Defender's primary offense should not be included on the scoresheet as a "prior record. Offenses committed while in custody awaiting trial on the instant offenses are not prior offenses. Quarles v. State, 4D2022-2265 (3/13/24)

https://4dca.flcourts.gov/content/download/2084594/opinion/Opinion_2022-2265.pdf

INVESTIGATIVE COSTS: Before a trial court can impose investigative costs, the investigative agency must request them. State cannot request investigative costs on remand. Cadejuste v. State, 4D2023-0224 (3/13/24)

https://4dca.flcourts.gov/content/download/2086375/opinion/Opinion_2023-0224.pdf

SENTENCING-DOWNWARD DEPARTURE: Court's failure to impose a downward departure sentence is not an illegal sentence subject to a R. 3.800(b)(2) challenge. Defendant cannot raise a new ground for downward departure by way of R. 3.800(b)(2). R. 3.800(b)(2) does not allow a defendant a second bite at the apple. Ocean v. State, 4D2023-0705 (3/13/24)

https://4dca.flcourts.gov/content/download/2086376/opinion/Opinion_2023-0705.pdf

TWELVE PERSON JURY: Nope. Just six. Ocean v. State, 4D2023-0705 (3/13/24)

https://4dca.flcourts.gov/content/download/2086376/opinion/Opinion_2023-0705.pdf

ARREST WARRANT-AFFIDAVIT: Officer who wrote affidavit for arrest warrant which omitted material exculpatory facts (dash cams, security cameras, and cell phone location data confirming the suspect's alibi) violates the 14th Amendment. Officer who provides a probable cause affidavit which intentionally or recklessly makes misstatements or omissions necessary to support the warrant is civilly liable for malicious prosecution. Sylvester v. Fulton County Jail, No, 22-13258 (11th Cir. 3/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213258.pdf

LIFE SENTENCE-JUVENILE OFFENDER: For two murders committed as a juvenile, two consecutive life sentences, each with the possibility of parole after 25 years, do not violate the Eighth Amendment. Homicides and non-homicides distinguished. Garner v. State, 2D22-866 (3/8/24)

https://2dca.flcourts.gov/content/download/2022975/opinion/Opinion_22-

0866.pdf

SENTENCING: A conflict between the trial court's oral pronouncement and its written order of probation should be resolved in favor of the oral pronouncement. Campbell v. State, 6D23-303 (3/8/24)

https://6dca.flcourts.gov/content/download/2023305/opinion/Opinion_23-0393.pdf

DEPORTATION-AGGRAVATED FELONY: Domestic violence battery is an aggravated felony under the INA, which makes one removable and statutorily ineligible for both cancellation of removal and asylum. Edwards v. US Attorney General, (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201915077.op2.pdf

DEPORTATION-AGGRAVATED FELONY: An "aggravated felony" is a crime of violence for which the term of imprisonment is at least one year. An original sentence of 12 months confinement allowed to be served on probation is a term of imprisonment of at least one year, even if Defendant is permitted to serve part or all of that sentence on probation and even if the sentence is later reduced to under one year, unless the modification was because of a defect such as a violation of a constitutional right. Edwards v. US Attorney General, (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201915077.op2.pdf

DEPORTATION-INA: A "term of imprisonment" under the Immigration and Naturalization Act includes all parts of a sentence of imprisonment from which the sentencing court excuses the defendant, even if the court itself describes

the excuse with a word other than "suspend." Edwards v. US Attorney General, (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201915077.op2.pdf

PRIOR PANEL PRECEDENT RULE: Each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled *en banc*, or by the Supreme Court. Under the prior panel precedent rule, Court has a duty to reconcile, where possible, prior precedents that appear to be in tension and to distill from apparently conflicting prior panel decisions a basis of reconciliation and to apply that reconciled rule. Edwards v. US Attorney General, (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201915077.op2.pdf

JURISPRUDENCE: "Relying on and agreeing with a decision is not an all or nothing proposition. If it were, opinions concurring in part and dissenting in part would not exist, yet opinions that do exactly that are abundant in the reporters. We have all written them." Edwards v. US Attorney General, (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201915077.op2.pdf

INDICTMENT: An indictment need not allege in detail the factual proof that will be relied upon to support the charges. An indictment which lists the essential elements of the offense, specifies the date, and the kind of controlled substance distributed is legally sufficient. An indictment does not need to lay out the Government's theory of the case. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

EVIDENCE: Testimony about other companies implicated in pill mill operations, offered to show how the investigation led to the Defendant, was admissible and not unfairly prejudicial where Defendant had raised the issue. The introduction of evidence about other people's convictions was not only invited by defense counsel; it was introduced by him. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

OPINION EVIDENCE: Lay opinion must be rationally based on the witness's perception; helpful to clearly understanding the witness's testimony or to determining a fact in issue; and not based on scientific, technical, or other specialized knowledge. Lay opinion testimony cannot provide specialized explanations or interpretations that an untrained layman could not make if perceiving the same events. Expert opinion, by contrast, is opinion testimony based on scientific, technical, or other specialized knowledge. The distinction sometimes blurs when testimony is based on professional work. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

OPINION-LAY OPINION: Officer's testimony about how pill mill's work is admissible lay opinion, not expert opinion. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

IMPEACHMENT: Court did not err in excluding extrinsic evidence to impeach witness's testimony that he had not been arrested where ultimately

the witness admitted that he had been. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

IMPEACHMENT: Rule 608(b) prohibits extrinsic evidence for the purpose of attacking a witness's "character for truthfulness," not "credibility." The absolute prohibition on extrinsic evidence applies only when the sole reason for proffering that evidence is to attack or support the witness's character for truthfulness. Put differently, the absolute prohibition applies only when extrinsic evidence is offered to prove that a witness is a liar in general. But it does not bar extrinsic evidence offered to prove that a witness lied on the stand. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

FINE: A $200,000 fine is lawful where Defendant failed to prove inability to pay, in part by failing to cooperate with the probation officer's requests for financial information. When a defendant is not forthcoming about his financial circumstances, the district court may find that he has not carried his burden of proving inability to pay. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

PRE-SENTENCE REPORT: Failure to object to allegations of fact in a PSRadmits those facts for sentencing purposes. USA v. Gbenedio, No. 22-12044 (11th Cir. 3/6/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212044.pdf

CHILD HEARSAY: Child hearsay alone (the CPT interview) is sufficient to support a conviction for child molestation where the Child's trial testimony is that she did not remember some of the acts. Failing to remember is distinguishable from recantation. Scott v. State, 1D2021-3118 (3/6/24)

https://1dca.flcourts.gov/content/download/2019278/opinion/Opinion_2021-3118.pdf

EVIDENCE-INFERENCE (J. TANENBAUM, CONCURRING): When a witness testifies as to a fact based not on personal observation, but on his or her own inference from personal observation, the testimony is of questionable competence to prove the fact. A witness's testimony about his own conclusion from what he observed can be said to prove nothing. Scott v. State, 1D2021-3118 (3/6/24)

https://1dca.flcourts.gov/content/download/2019278/opinion/Opinion_2021-3118.pdf

CREDIT FOR TIME SERVED-VOP: Where defendant's sentences were originally all running concurrently to each other, he is entitled to credit on each count for prior time served and sentenced to consecutive time on violation of probation. Brown v. State, 1D2022-0609 (3/6/24)

https://1dca.flcourts.gov/content/download/2015992/opinion/Opinion_2022-0609.pdf

SENTENCE-JUVENILE OFFENDER: Mandatory without parole life or the functional equivalent of life sentences for juvenile homicide offenders violates the 8th Amendment. Two consecutive 30-year sentences, to be served at the conclusion of his life-with-parole (after 25 years) sentence is not the functional equivalent of life, at the least when gain time is figured in. Ingraham v. State,

2D23-0025 (3/6/24)

https://3dca.flcourts.gov/content/download/2014942/opinion/Opinion_2023-0025.pdf

COSTS OF PROSECUTION: When the trial court fails to make the appropriate factual findings regarding prosecution costs above the statutory minimum, costs will be reduced to the mandatory minimum amount ($100). Kee v. State, 4D2002-0416 (3/6/24)

https://4dca.flcourts.gov/content/download/2018469/opinion/Opinion_2022-0416.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to move in limine to exclude an image of Defendant brandishing a gun on a different occasion when it was undisputed that he had shot the victim. State v. Morris, 4D2023-0117 (3/6/24)

https://4dca.flcourts.gov/content/download/2015522/opinion/Opinion_2023-0117.pdf

POST CONVICTION RELIEF: Where trial counsel are experienced, they are entitled to a presumption that he acted reasonably. State v. Morris, 4D2023-0117 (3/6/24)

https://4dca.flcourts.gov/content/download/2015522/opinion/Opinion_2023-0117.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION-DUI: Defendant speeding, driving in the left lane, hitting the right-side lane marker once, and

then drifting at least a couple of inches into the right lane justifies the stop. Tyson v. State, 4D2023-1104 (3/6/24)

https://4dca.flcourts.gov/content/download/2015524/opinion/Opinion_2023-1104.pdf

SECOND AMENDMENT: Second Amendment does not permit felons to possess a firearm. The right to possess a firearm extends only to law-abiding, responsible citizens. Felons are unqualified as a class because they are not law-abiding citizens. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

PRIOR PANEL PRECEDENT RULE: The prior-panel-precedent rule provides that 'a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by the appellate court sitting en banc. An intervening Supreme Court decision abrogates our precedent only if the intervening decision is both clearly on point and clearly contrary to the earlier decision. To abrogate a prior-panel precedent, the later Supreme Court decision must demolish and eviscerate each of its fundamental props. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

CIRCUMSTANTIAL EVIDENCE: Fake names, addresses, and phone numbers for both himself and the recipient; the fact that Defendant falsely certified that this information was accurate; and that he paid for the transaction in cash are legally sufficient evidence that the Defendant had shipped the package contained firearms. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

SENTENCING-GUIDELINES-CONTROLLED SUBSTANCE: A marijuana conviction is a predicate controlled substance offense under the Sentencing Guidelines. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

SENTENCING-GUIDELINES-CONTROLLED SUBSTANCE: A drug regulated by state law is a "controlled substance" for state predicate offenses, even if federal law does not regulate that drug. More precisely, state law defines which drugs qualify as a "controlled substance" if the prior conviction was under state law, and federal law defines which drugs qualify as a "controlled substance" if the prior conviction was under federal law. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

SENTENCING-GUIDELINES-CONTROLLED SUBSTANCE-CATEGORICAL APPROACH: The categorical approach requires the appellate court to compare the guideline definition of "controlled substance offense" with the state statute of conviction. Unless the least culpable conduct prohibited under the state law qualifies as a predicate controlled substance offense, the defendant's state conviction cannot be the basis of an enhancement under the guidelines, regardless of the actual conduct underlying the conviction. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

CONTROLLED SUBSTANCE: A "controlled substance" under §4B1.2(b)'s definition of "controlled substance offense" is, for prior state offenses, a drug regulated by state law at the time of the conviction, even if it is not federally regulated, and even if it is no longer regulated by the state at the time of federal sentencing. "We adopt a time-of-state-conviction rule: the term "controlled substance" . . . means a substance regulated by state law when the defendant was convicted of the state drug offense, even if it is no longer regulated when the defendant is sentenced for the federal firearm offense. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

SENTENCING-GUIDELINES-STOLEN GUN ENHANCEMENT: The two-level stolen-gun enhancement does not require proof that the defendant knew that the gun was stolen. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

PRIOR PANEL PRECEDENT RULE-EARLIEST CASE RULE: Under the earliest case rule, when prior panel precedents conflict, the earlier case controls. A later panel is bound by the reasoning of the first panel's ruling. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

FINE: The guidelines require the district court to impose a fine in every case, unless the defendant establishes that he is presently unable to pay a fine and will not likely become able to pay one in the future. If the defendant did not object to the fine at sentencing, the sentencing court is not required to make specific findings of fact with respect to the Sentencing Guideline factors. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

FINE: Defendant must specifically and clearly object to any disputed facts listed in the presentence investigation report; otherwise, those facts are deemed admitted. A vague, general objection to a fine and sentence as "substantively unreasonable is insufficient. USA v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210829.pdf

FREE SPEECH: Florida companies may not be prohibited from holding mandatory meetings highlighting diversity, equity, and inclusion issues. Florida's Individual Freedom Act ("Stop W.O.K.E. Act) violates the First Amendment. "We. . .reject this latest attempt to control speech by recharacterizing it as conduct. Florida may be exactly right about the nature of the ideas it targets. Or it may not. Either way, the merits of these views will be decided in the clanging marketplace of ideas rather than a codebook or a courtroom." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: "By limiting its restrictions to a list of ideas designated as offensive, the Act targets speech based on its content. And by barring only speech that endorses any of those ideas, it penalizes certain viewpoints—the greatest First Amendment sin." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: "The only way to discern which mandatory trainings are prohibited is to find out whether the speaker disagrees with Florida. That is a classic—and disallowed—regulation of speech." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: Florida's attempt to defend the Individual Freedom Act as a restriction on the conduct of holding the mandatory meeting, not a restriction on the speech that takes place at that meeting "reflects a clever framing,. . "[b]ut the fact that only mandatory meetings that convey a particular message and viewpoint are prohibited makes quick work of Florida's conduct-not-speech defense. . .In short, the disfavored "conduct" cannot be identified apart from the disfavored speech. That duality makes the Act a textbook regulation of core speech protected by the First Amendment." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: 'Florida proposes. . .that even if speech defines the contours of the prohibition, so long as the resulting burden is on the conduct, that conduct is all the state is regulating. That, in turn, means the law does not regulate speech. Remarkable. Under Florida's proposed standard, a government could ban riding on a parade float if it did not agree with the message on the banner. The government could ban pulling chairs into a circle for book clubs discussing disfavored books. And so on. The First Amendment is not so easily neutered." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: "Banning speech on a wide variety of political topics is bad; banning speech on a wide variety of political viewpoints is worse." "No matter how hard Florida tries to get around it,. . .the answer is clear: Florida's law exceeds the bounds of the First Amendment. . . No matter how controversial the ideas, allowing the government to set the terms of the debate is poison, not antidote." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: "This is not the first era in which Americans have held widely divergent views on important areas of morality, ethics, law, and public policy. And it is not the first time that these disagreements have seemed so important, and their airing so dangerous, that something had to be done. But now, as before, the First Amendment keeps the government from putting its thumb on the scale." Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

FREE SPEECH: "Intellectual and cultural tumult do not last forever, and our Constitution is unique in its commitment to letting the people, rather than the government, find the right equilibrium. Because the Individual Freedom Act's mandatory-meeting provision. . ., it must be enjoined. Honeyfund.com, Inc. v. Governor, State of Florida, No. 22-13135 (1th Cir. 3/4/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213135.pdf

APPEAL-JURISDICTION: State may appeal an order dismissing a petition

for delinquency. “But the order on review did not dismiss the State's petition; it simply granted A.M.C.'s motion to dismiss. In the civil context, such an order is nonfinal and nonappealable. . .In criminal cases, however, other districts have found similar orders appealable. . .. . .We agree with the reasoning of our sister courts and conclude that we have jurisdiction to review the order granting A.M.C.'s motion to dismiss. Affirmed.” State v. A.M.C., 2D505 (3/1/24)

https://2dca.flcourts.gov/content/download/1974325/opinion/Opinion_23-0505.pdf

POST CONVICTION RELIEF: In denying motion for postconviction relief, the court must attach portions of the record showing no entitlement to relief addressing all, not some, of the claims raised. Council v. State, 5D23-0488 (3/1/24)

https://5dca.flcourts.gov/content/download/1974903/opinion/Opinion_23-0488.pdf

POST CONVICTION RELIEF-TIMELINESS: The date of the mandate from the appeal, not the date of the entry of the judgment, starts the two-year filing window under R 3.850. Royal v. State, 5D23-2819 (3/1/24)

https://5dca.flcourts.gov/content/download/1974915/opinion/Opinion_23-2819.pdf

PROBATION-CONDITION- NO CONTACT: Where a condition of probation directed Defendant to have no contact with his ex-wife, Defendant does not violate it by taking their son to her home to pick up a few items before school, parking in the street, and waiting in the car. Cruz v. State, 6D23-919 (3/1/24)

https://6dca.flcourts.gov/content/download/1975923/opinion/Opinion_23-0919.pdf

FEBRUARY 2024

APPEAL WAIVER: An appeal waiver does not bar a defendant's claim that the government breached the very plea agreement which purports to bar him from appealing. USA v. Tripodis, No. 22-12826 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212826.pdf

PLEA AGREEMENT: When the plea agreement language is ambiguous, it is construed against the government because a plea agreement is a waiver of substantial constitutional rights requiring that the defendant be adequately warned of the consequences of it. USA v. Tripodis, No. 22-12826 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212826.pdf

PLEA AGREEMENT: A plea agreement in which the Government promised to recommend a total custodial sentence of 60 months does not preclude the Government recommending consecutive supervised release, where the plea colloquy show that the Defendant understood supervised release was possible. "We pause to note that, in the future, the government should make it clear in these circumstances what it is promising—and what it is not—to the defendant. . .As the government is the drafter of the plea agreement, it should dispel any alleged ambiguities by clearly indicating whether it intends to recommend supervised release." USA v. Tripodis, No. 22-12826 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212826.pdf

PLEA AGREEMENT: Court does not impermissibly modify the plea agreement by adding a term of supervised release. USA v. Tripodis, No. 22-12826 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202212826.pdf

KNOWLEDGE OF SUBSTANCE: For conspiracy to transport methamphetamine, the Government is required to prove that the Defendant knew that the unlawful purpose of the plan was distribution of a controlled substance, not that he knew the substance was methamphetamine. All that listing methamphetamine in the indictment did was provide an element of an enhanced penalty under §841(b)—which does not carry a knowledge requirement. Gray v. State, No. 22-13516 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213516.pdf

JOA: A motion for judgment of acquittal may be renewed either at the conclusion of the evidence, after the jury's discharge, or within fourteen days after a guilty verdict. Gray v. State, No. 22-13516 (11th Cir. 2/29/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213516.pdf

DEATH PENALTY: Evidence of Defendant's anti-white and pro-Moorish sovereign beliefs did not improperly inject race, politics and religion into the penalty phase. Evidence tended to establish an all-encompassing motive for the murders of two police officers and . Allowing the State to show that Defendant acted on his hatred of law enforcement contextualized the murders and was not unfairly prejudicial. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

APPEAL-ISSUE-PRESERVATION: A general objection to expert testimony ("I object to that as well") does not preserve the new argument on appeal that content analysis lacks sufficient scientific reliability. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

MURDER-PREMEDITATION-DIMINISHED CAPACITY: Although a defendant is free to argue that premeditation is lacking, a defendant may not present "evidence of diminished mental capacity to negate the specific intent required to convict of first-degree premeditated murder. Argument that Defendant was mentally unwell and thus did not—or could not—form the specific intent to commit premeditated first-degree murder is not permitted. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

DEATH PENALTY: Changes in the law–elimination of proportionality review, elimination of the reasonable hypothesis of innocence standard, and "aggravator creep"–do not unconstitutionally increase the risk of arbitrary infliction of death sentences. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

DEATH PENALTY-MERCY INSTRUCTION: In death penalty case, Defendant is not entitled to a jury instruction on mercy. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

DEATH PENALTY-VICTIM IMPACT: Introduction of victim impact videos-8 minute photo montage without music played in rebuttal just before jury deliberations--is not an abuse of discretion. There does not appear to be any authority for the proposition that victim impact information can only be presented in the State's case-in-chief. Miller v. State, SC2022-0745 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968694/opinion/Opinion_SC2022-0745.pdf

RULES-AMENDMENT-CONTINUING LEGAL EDUCATION: The Rules Regulating The Florida Bar are amended to reduce the required number of required CLE credit hours from 33 to 30. In Re: Amendments to Rules Regulating the Florida Bar - Continuing Legal Education, SC2023-1412 (2/29/24)

https://supremecourt.flcourts.gov/content/download/1968695/opinion/Opinion_SC2023-1412.pdf

PAROLE: Good cause in exceptional circumstances may be used as a stand-alone basis for extending a Presumptive Parole Release Date (PPRD). Kolb v. Florida Commission on Offender Review, 1D2021-3587 (2/28/24)

https://1dca.flcourts.gov/content/download/1965909/opinion/Opinion_2021-3587.pdf

COSTS OF PROSECUTION: A cost of prosecution under §938.27(8) is

mandatory, is not an investigative cost, and need not be requested. Hartfield v. State, 1D2022-2194 (2/28/24)

https://1dca.flcourts.gov/content/download/1966308/opinion/Opinion_2022-2194.pdf

COSTS-PUBLIC DEFENDER: $300 public defender fee is excessive without the requisite findings. Should be $100. Hartfield v. State, 1D2022-2194 (2/28/24)

https://1dca.flcourts.gov/content/download/1966308/opinion/Opinion_2022-2194.pdf

COSTS-FDLE FEE: $100 FDLE fee under §938.055 is discretionary and may not be imposed without affording the defendant notice and an opportunity to be heard. Hartfield v. State, 1D2022-2194 (2/28/24)

https://1dca.flcourts.gov/content/download/1966308/opinion/Opinion_2022-2194.pdf

SECOND AMENDMENT: Florida's statute prohibiting felons from possessing firearms is constitutional. Gulley v. State, 1D 2022-2356 (2/28/24)

https://1dca.flcourts.gov/content/download/1966011/opinion/Opinion_2022-2356.pdf

SECOND AMENDMENT (J. TANENBAUM, CONCURRING): Only law-abiding citizens have the right to bear firearms under the Second Amendment. A convicted felon, by definition, is not a law-abiding citizen. Upon being convicted of a felony, a citizen's legal status changes. With this

adjudicated change in status, the citizen automatically loses several liberties, including the liberty to possess a firearm. Gulley v. State, 1D 2022-2356 (2/28/24)

https://1dca.flcourts.gov/content/download/1966011/opinion/Opinion_2022-2356.pdf

VOP: If a trial court revokes a defendant's probation, the court is required to render a written order noting the specific conditions of probation that were violated. Johnson v. State, 3D22-937 (2/28/24)

https://3dca.flcourts.gov/content/download/1965113/opinion/Opinion_2022-0937.pdf

EVIDENCE-COLLATERAL CRIME: Evidence of a broken car window helped establish the entire context out of which the charged crime, violation of a domestic violence injunction, occurred and further helped to describe the events leading up to the violation. Aviles v. State, 3D22-1593 (2/28/24)

https://3dca.flcourts.gov/content/download/1965320/opinion/Opinion_2022-1593.pdf

JUDGE-ADMONISHMENT: Although the better practice is to excuse the jury before admonishing an attorney in open court, reproving defense counsel in the jury's presence does not, in itself, constitute reversible error. Region v. State, 3D22-0685 (2/28/24)

https://3dca.flcourts.gov/content/download/1965111/opinion/Opinion_2022-0685.pdf

JURY SELECTION: A venire member's expression of an opinion before the entire panel is not normally considered sufficient to taint the remainder of the panel. Moise v. State, 3D22-1610 (2/28/24)

https://3dca.flcourts.gov/content/download/1967933/opinion/Opinion_2022-1610.pdf

CONTINUANCE: The general rule is that the granting or denial of a motion for continuance is within the discretion of the trial court. Moise v. State, 3D22-1610 (2/28/24)

https://3dca.flcourts.gov/content/download/1967933/opinion/Opinion_2022-1610.pdf

APPEAL-PLEA: Appellate court lacks jurisdiction to hear appeal challenging the voluntariness of a plea where Appellant failed to file a motion to withdraw his plea in the trial court. There is no fundamental-error exception to the preservation requirement of R. 9.140(b)(2)(A)(ii)(c). Martinez-Ruiz v. State, 3D23-1178 (2/28/24)

https://3dca.flcourts.gov/content/download/1966679/opinion/Opinion_2023-1178.pdf

SPEEDY TRIAL: If the State fails to file formal charges against the defendant within the 90-day (or, for a felony, 175-day) period, the defendant can seek final discharge without first filing the Notice of Expiration, but the uniform traffic citation constitutes a formal charge. (Note: a pending proposed rule change would change this). Patino v. State, 3D23-1702 (2/28/24)

https://3dca.flcourts.gov/content/download/1965917/opinion/Opinion_2023-1702.pdf

SPEEDY TRIAL-WRIT OF PROHIBITION-DELAY: A petition for writ of prohibition (filed following the denial of Defendant's 1st motion for speedy trial discharge) does not delay the trial. Where Defendant later files a notice of speedy trial expiration, even while the first petition for writ of prohibition remains pending, Defendant must be brought to trial within 15 days or be discharged. "Because this court did not issue an order to show cause or otherwise impose a stay of the trial court proceedings during the pendency of the petition, and because the trial court retained jurisdiction to proceed, the petition for writ of prohibition did not delay Patino's trial and the speedy trial period continued to run during the pendency of the prohibition proceeding in this court." Patino v. State, 3D23-1702 (2/28/24)

https://3dca.flcourts.gov/content/download/1965917/opinion/Opinion_2023-1702.pdf

SPEEDY TRIAL-WRIT OF PROHIBITION-APPEAL: "More recent opinions. . .have called our decisions [that a petition for writ of prohibition does not constitute an appeal] into question. . .In any event, we need not reach the question. . ., since, as explained, it is undisputed that Patino's trial was not delayed by the earlier prohibition proceeding in this court. We therefore leave this separate question for another day." Patino v. State, 3D23-1702 (2/28/24)

https://3dca.flcourts.gov/content/download/1965917/opinion/Opinion_2023-1702.pdf

STATUTORY CONSTRUCTION: A fundamental canon of statutory construction is that courts must endeavor to give meaning to each word and phrase contained in a statute or rule, and courts should avoid readings that would render part of a statute meaningless. Words cannot be meaningless, else they would not have been used. If possible, every word and every provision is to be given effect (verba cum effectu sunt accipienda). Patino v.

State, 3D23-1702 (2/28/24)

https://3dca.flcourts.gov/content/download/1965917/opinion/Opinion_2023-1702.pdf

RECLASSIFICATION: Under the 10-20-Life statute, aggravated battery is reclassified to a first-degree felony when a weapon or firearm is used in committing the felony, except a felony in which the use of a weapon or firearm is an essential element. Aggravated battery is properly reclassified to a first-degree felony because firearm possession is not an essential element of the crime. In order to support the enhancement, the jury must be given the option of finding the defendant guilty of aggravated battery with great bodily harm without also finding the defendant guilty of aggravated battery with a deadly weapon. Garnes v. State, 4D2021-3219 (2/28/24)

https://4dca.flcourts.gov/content/download/1965920/opinion/Opinion_2021-3219.pdf

AGGRAVATED ASSAULT-MANDTORY MINIMUM: Aggravated assault is no longer subject to a mandatory minimum sentence under §775.087. The maximum sentence is five years. Garnes v. State, 4D2021-3219 (2/28/24)

https://4dca.flcourts.gov/content/download/1965920/opinion/Opinion_2021-3219.pdf

10-20-LIFE-MANDATORY MINIMUM: Under the 10-20-Life statute, where defendant discharged a firearm causing great bodily harm, he is subject to a minimum term of imprisonment of not less than 25 years and not more than life in prison, even if that mandatory minimum exceeds the statutory

maximum. But in order to exceed the statutory maximum, the entire sentence must be a mandatory minimum. Garnes v. State, 4D2021-3219 (2/28/24)

https://4dca.flcourts.gov/content/download/1965920/opinion/Opinion_2021-3219.pdf

RETROACTIVITY-AMENDED STATUTE: Savings Clause of the Florida Constitution allows amendments to criminal statutes to be applied retroactively to pending prosecutions or sentences. This means that, where Defendant's offense occurred prior to the amendment to the 10-20-Life statute, since he was sentenced after the amendment, he must be sentenced under the amended version of the statute, which omitted th4 mndatory minimum for aggravated assault. Garnes v. State, 4D2021-3219 (2/28/24)

https://4dca.flcourts.gov/content/download/1965920/opinion/Opinion_2021-3219.pdf

SENTENCE-ORAL PRONOUNCEMENT. No contact orders are a part of sentencing and must be orally pronounced. Garnes v. State, 4D2021-3219 (2/28/24)

https://4dca.flcourts.gov/content/download/1965920/opinion/Opinion_2021-3219.pdf

PRR-HFO: Court may impose a single sentence pursuant to both the Prison Releasee Reoffender and the habitual felony offender statutes, but the HFO portion of the sentence must be longer than the PRR portion of the sentence. Court must divide the portion of the sentence designated as Prison Releasee Reoffender from the habitual felony offender sentence. Roberson v. State, 4D2022-2931 (2/28/24)

https://4dca.flcourts.gov/content/download/1965931/opinion/Opinion_2022-2931.pdf

APPEAL: "[A]n appellate court is not required to wear blinders in addressing a properly preserved argument that lacks citation to legal authority." Paise v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

STAND YOUR GROUND-CONDO: Condo owner has SYG immunity for throwing a roll of duct tape at the property manager and a code inspector, and swatting the cell phone out of the victim's hand, after they opened the private elevator door to her unit's foyer to take a picture. The men were not legally entitled to use a master key fob to override Defendant's exclusive access to her private home, nor were they legally entitled to hold the elevator door open so that the code inspector could continue to intrude on her privacy by taking photographs of its interior. Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

DISSENSION ON THE COURT: "[T]he dissent accuses the majority of departing from neutrality by reaching the very issue argued by her in this appeal. We have unquestionably determined this appeal in a neutral and detached manner with fidelity to the law." Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-

1103.pdf

DISSENSION ON THE COURT-TIPSY COACHMAN: "The dissent also incorrectly asserts that we have improperly used the tipsy coachman rule to grant relief. We have not. The tipsy coachman rule provides that 'if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.'. . .We do not conclude that the trial court reached the 'right result.' To the contrary, we conclude that the trial court reached the wrong result." Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

STAND YOUR GROUND: SYG law (776.031(1)) does not include any requirement of a threat of "physical harm" before a person is justified in using or threatening to use non-deadly force in defense of personal property. Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

STAND YOUR GROUND (J. FORST, CONCURRING): "Paese. . .threw a roll of duct tape into the elevator, and she 'struck' the phone from the purported victim's hand. . .[She] used a minimal level of force, with no indication of an intent to cause pain or harm. She did not swing a bat or any other object, nor did she punch or bite or kick anybody. There is no claim that she threw the duct tape with the intent or ability to harm anybody (the defendant is named Paese, not Nolan Ryan or Sandy Koufax), or that her striking the hand of the individual taking photos/video had the force of a

karate practitioner. . .This minimal force employed here was proportionate and reasonable." Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

DISSENSION ON THE COURT (J. GROSS, DISSENTING): "The majority opinion departs from hundreds of years of settled law. . .The majority opinion mischaracterizes the facts and misapplies the law.. . .This is not a case where brigands were at the door of hearth and home, bent on pillage and plunder." Paese v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

COMMON LAW-TAKING PICTURES INSIDE CONDOS: "In a result-oriented exercise of jurisprudence, the majority opinion holds that the defendant was reasonably using non-deadly force to prevent or terminate the. . .victim's conduct of taking photographs of the interior of the defendant's home. . .The majority's analysis represents a sea change in. . .600 years of the common law." Paise v. State, 4D2023-1103 (2/28/24)

https://4dca.flcourts.gov/content/download/1965962/opinion/Opinion_2023-1103.pdf

HEARSAY/NON-HEARSAY: A witness's out-of-court statement to a police officer may be admissible if offered for a relevant non-hearsay purpose—such as the effect a statement had on a listener—and the probative value of the evidence's non-hearsay purpose is not substantially outweighed by the danger of unfair prejudice. USA v. Kent, No. 22-13068 (11th Cir. 2/26/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213068.pdf

HEARSAY/NON-HEARSAY: In a RICO case involving the predicate acts of murdering a cooperating witness and an earlier attempted murder, officer's testimony from a preliminary hearing that the cooperating witness had said that Defendant had been involved in the earlier attempted murder is admissible to show motive for the murder of the witness by other gang members, who had heard the testimony. The testimony was not hearsay because it was offered for the effect it had on the listeners–it is why they murdered the witness--and not for the truth of the matter asserted. USA v. Kent, 93 F.4th 1213 (11th Cir. 2024).

https://media.ca11.uscourts.gov/opinions/pub/files/202213068.pdf

VOP-HEARSAY: Hearsay evidence that Defendant was discharged from a sex offender treatment program is insufficient to sustain a violation. While hearsay is admissible in a revocation proceeding, it may not be the sole basis for the revocation. But a new revocation proceeding is not required where, as here, it is clear that the Court have imposed the same sentence for other proven allegations. Gibson v. State, 2D22-2305 (2/23/24)

https://2dca.flcourts.gov/content/download/1913252/opinion/Opinion_22-2305.pdf

JUVENILE OFFENDER- LIFE SENTENCE: Attempted felony murder with a firearm requires a mandatory life sentence for a Prison Releasee Reoffender (PRR), but under the"10-20-Life" law, the trial court has discretion to sentence Defendant to anything between twenty-five years and life imprisonment day-for-day. The 8th amendment requires that a juvenile offender–including a P.R.R.-- may not be sentenced to a minimum mandatory

life sentence for a nonhomicide crime without any possibility of release. Graham trumps the P.R.R. staute. Resentencing required. "Because we reverse for a full resentencing, we need not determine whether it is possible to harmonize the statutory prohibition against a defendant ever being released from a PRR life sentence and Graham's specific prohibition against imposing that very sentence for a nonhomicide offense committed by a juvenile." Battle v. State, 2D22-2763 (2/23/24)

https://2dca.flcourts.gov/content/download/1913260/opinion/Opinion_22-2763.pdf

JOA-THEFT-VALUE: JOA is required where there is insufficient evidence to prove the value necessary for first-degree petit theft. Second-degree petit theft judgment to be entered. J.R. v. State, 2D22-3946 (2/23/24)

https://2dca.flcourts.gov/content/download/1913264/opinion/Opinion_22-3946.pdf

DISMISSAL-SEVERED OFFENSES: R. 3.151(c) requires dismissal of severed Possession of Cocaine and Resisting without Violence counts following Defendant's trial and acquittal on the Possession of a Firearm by a Felon count. All counts were charged in the same information, triable in the same court, and were connected episodically, temporally and geographically. James v. State, 5D23-221 (2/23/24)

https://5dca.flcourts.gov/content/download/1914141/opinion/Opinion_23-0221.pdf

COSTS-VOP: On VOP, Court may not reassesses the $100 cost of prosecution, $100 cost of indigency defense, and $50 public defender's application fee previously imposed when Defendant was first sentenced.

Anderson v. State, 5D22-2734 (2/23/24)

https://5dca.flcourts.gov/content/download/1914144/opinion/Opinion_23-2734.pdf

HABITUAL TRAFFIC OFFENDER: Defendant who proves compliance with §318.14(10)(b) is entitled to removal of the Habitual Traffic Offender designation. The clerk of court shall submit an amended disposition to remove the habitual traffic offender designation" if proof of compliance is provided. The clerk of courts is a ministerial officer of the court and, as such, is not endowed with any discretion. Strickland v. State, 5D23-2914 (2/23/24)

https://5dca.flcourts.gov/content/download/1914145/opinion/Opinion_23-2914.pdf

APPEAL-HABITUAL TRAFFIC OFFENDER: Defendant may appeal Court's denial of a motion to remove the HTO designation imposed after a final judgment and finding of guilt have been entered. R. 9.140(b)(1)(D) allows appeals from orders entered after final judgment or a finding of guilt. Strickland v. State, 5D23-2914 (2/23/24)

https://5dca.flcourts.gov/content/download/1914145/opinion/Opinion_23-2914.pdf

DOUBLE JEOPARDY: Double Jeopardy bars court from setting aside the verdicts as logically inconsistent and ordering a retrial. where Defendant was found "not guilty by reason of insanity" with respect to a malice-murder count, but "guilty but mentally ill" for felony murder and aggravated assault. all based on one underlying homicide. McElrath v. Georgia, No. 22–721 (U.S. S.Ct.

2/21/24)

https://www.supremecourt.gov/opinions/23pdf/22-721_kjfl.pdf

ACQUITTAL-DEFINITION: "An acquittal is an acquittal." McElrath v. Georgia, No. 22–721 (U.S. S.Ct. 2/21/24)

https://www.supremecourt.gov/opinions/23pdf/22-721_kjfl.pdf

ACQUITTAL-DEFINITION: An acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. Once rendered, a jury's verdict of acquittal is inviolate. An acquittal might reflect a jury's determination that the defendant is innocent of the crime charged, or be the result of compromise, compassion, lenity, or misunderstanding of the governing law. Whatever the basis, the Double Jeopardy Clause prohibits second-guessing the reason for a jury's acquittal. The jury holds an unreviewable power to return a verdict of not guilty even for impermissible reasons. McElrath v. Georgia, No. 22–721 (U.S. S.Ct. 2/21/24)

https://www.supremecourt.gov/opinions/23pdf/22-721_kjfl.pdf

DOUBLE JEOPARDY (J. ALITO, CONCURRING): "[T]he situation here is different from one in which a trial judge refuses to accept inconsistent verdicts and thus sends the jury back to deliberate further. Some States follow this practice, and our decision does not address it. . .Nothing that we say today should be understood to express any view about whether a not-guilty verdict that is inconsistent with a verdict on another count and is not accepted by the trial judge constitutes an 'acquittal' for double jeopardy purposes. McElrath v. Georgia, No. 22–721 (U.S. S.Ct. 2/21/24)

https://www.supremecourt.gov/opinions/23pdf/22-721_kjfl.pdf

SEX OFFENDER REGISTRATION–JURY INSTRUCTIONS: Homeless offenders must report to the local Sheriff's office; Sexual offenders who have moved must report to the DMV. Where the information cites the statute number for homeless sexual offenders (§943.0435(4)(b)1.), but the language in the information mentions a failure to update an address (which suggests a violation of §943.0435(4)(a)), and the actual jury instruction was a hybrid which fit neither statute, error is not fundamental. Nava v. State, 1D2022-1820 (2/21/24)

https://1dca.flcourts.gov/content/download/1903566/opinion/Opinion_2022-1820.pdf

FUNDAMENTAL ERROR: Failing to instruct on an element of the crime over which the record reflects there was no dispute is not fundamental error. If the jury instruction incorrectly defines an element in a manner that makes it easier for the State to obtain a conviction, no fundamental error occurs if the defendant does not dispute that element at trial. Defendant argued that he never changed his residence at all, and never disputed where he was required to report. Nava v. State, 1D2022-1820 (2/21/24)

https://1dca.flcourts.gov/content/download/1903566/opinion/Opinion_2022-1820.pdf

FUNDAMENTAL ERROR: Appellate courts should find fundamental error in only the rarest of cases. To allow broad direct review of a criminal trial on the basis of fundamental error supplies no motivation whatsoever to a defense attorney to object when various errors occur throughout a trial in order to keep a "hip-pocket" appeal. Nava v. State, 1D2022-1820 (2/21/24)

https://1dca.flcourts.gov/content/download/1903566/opinion/Opinion_2022-1820.pdf

SOVEREIGN IMMUNITY: D.O.C. employees have sovereign immunity against claims that the destroyed Plaintiff's boxes of legal documentsp intentionally and in retaliation. The state is immune from tort claims that are based on an employee acting in bad faith or with a malicious purpose. Dixon v. Scott, 1D2022-2620 (2/21/24)

https://1dca.flcourts.gov/content/download/1894578/opinion/Opinion_2022-2620.pdf

HEARING-TESTIMONY-ADMISSIBILITY: Generally speaking, a defendant's testimony at a pretrial /hearing is admissible in evidence at later proceedings. State v. Lincoln, 1D2022-2868 (2/21/24)

https://1dca.flcourts.gov/content/download/1894582/opinion/Opinion_2022-2868.pdf

MOTION IN LIMINE-SYG TESTIMONY: Where Defendant had testified at his Stand Your Ground hearing (believing he had the burden of proof), his testimony from that hearing is admissible at trial. "Although with hindsight the court and counsel's burden-of-proof mistake might have prompted Appellee to testify earlier than he wanted, nothing indicates that it was coerced or unintelligent as a constitutional matter." Without his testimony, Defendant surely would have lost the SYG hearing anyway; he had shot at an unarmed five-foot three woman 3 times while she was at least ten feet away from him and on the other side of a counter. State v. Lincoln, 1D2022-2868 (2/21/24)

https://1dca.flcourts.gov/content/download/1894582/opinion/Opinion_2022-2868.pdf

TESTIMONY-PRETRIAL HEARING-SYG: The rule that a defendant may not be required to surrender one constitutional right to assert another right does

not extend to self-defense immunity decisions involving a defendant's pursuit of pretrial immunity. Self-defense immunity is entirely a creature of state statute. State v. Lincoln, 1D2022-2868 (2/21/24)

https://1dca.flcourts.gov/content/download/1894582/opinion/Opinion_2022-2868.pdf

NELSON HEARING: When a defendant moves to discharge counsel, a trial court is not automatically required to inform the defendant about his right of self-representation. Shaw v, State, 1D2022-3301 (2/21/24)

https://1dca.flcourts.gov/content/download/1894620/opinion/Opinion_2022-3301.pdf

JOA: Defendant is not entitled to a judgment of acquittal, notwithstanding that in his recorded trial testimony, the 97-year-old victim described the intruder as a stocky white male with short, brownish hair but in the 911 call described him as a black male with dreadlocks, weighing around 250 pounds, driving a red pickup truck, where other evidence–including DNA–implicated Defendant. Shaw v, State, 1D2022-3301 (2/21/24)

https://1dca.flcourts.gov/content/download/1894620/opinion/Opinion_2022-3301.pdf

VOP-HEARSAY: A probation officer's hearsay testimony, by itself, that another person told him or her the probationer no longer lived at the residence is insufficient to support a change of residence violation, even coupled with

the probationer's absence when the officer visited. Hand v. State, 1D 2023-0256 (2/21/24)

https://1dca.flcourts.gov/content/download/1903788/opinion/Opinion_2023-0256.pdf

INEFFECTIVE ASSISTANCE- APPELLATE COUNSEL: Defendant may not claim ineffective assistance of appellate counsel for missing an issue in filing an Anders brief. "There simply cannot be a cognizable claim for ineffective assistance of appellate counsel in this situation because the panel in the underlying appeal presumably conducted its own 'full and independent review of the record to discover any arguable issues.'. . .[A]n affirmance by the appellate court in essence is the court's determination that the appellant has received his constitutionally guaranteed right to effective assistance from counsel." Mack v. State, 1D2023-0414 (2/21/24)

https://1dca.flcourts.gov/content/download/1895287/opinion/Opinion_2023-0414.pdf

POST CONVICTION RELIEF-DISCOVERY: An order of the court deciding that Appellant is not entitled to postconviction discovery is not among the class of orders independently appealable by a defendant pursuant to F.R.App.Pr. 9.140(b)(1). Daniels v, State, 1D2023-1889 (2/21/24)

https://1dca.flcourts.gov/content/download/1898357/opinion/Opinion_2023-1889.pdf

VIDEO-SILENT WITNESS: Video footage derived from a residential surveillance system, properly authenticated, is admissible under the "silent witness" theory. R.V. a Juvenile v. State, 3D22-1697 (2/21/24)

https://3dca.flcourts.gov/content/download/1915645/opinion/Opinion_2022-1697.pdf

EVIDENCE-AUTHENTICATION-SILENT WITNESS: Authentication is a relatively low bar. It only requires evidence sufficient to support a finding that the matter in question is what its proponent claims. To overcome concerns regarding manipulation of photographic evidence, typically, the proponent of the evidence invokes a traditional foundation, commonly referred to as the "pictorial testimony" theory: "Does this photograph fairly and accurately depict [the subject]?" But under the "silent witness" method, a photograph may be admitted upon a showing of the reliability of the production process. R.V. a Juvenile v. State, 3D22-1697 (2/21/24)

https://3dca.flcourts.gov/content/download/1915645/opinion/Opinion_2022-1697.pdf

EVIDENCE-AUTHENTICATION-SILENT WITNESS: Florida courts have developed a non-exhaustive list of guiding factors for use in determining the reliability of the production process. Relevant factors include: (1) whether the evidence establishes the date and time the image was captured; (2) evidence of image manipulation; (3) the condition and capability of the equipment that produced the image; (4) procedural consideration relating to the preparation, testing, operation, and security of the equipment involved; and (5) testimony identifying any participants depicted in the image. R.V. a Juvenile v. State, 3D22-1697 (2/21/24)

https://3dca.flcourts.gov/content/download/1915645/opinion/Opinion_2022-1697.pdf

VOP-ASSOCIATING WITH CRIMINALS: Defendant properly found to be in

violation of probation for associating with people engaged in criminal activity sitting in an alley with a guy smoking cocaine. Association exists if a defendant spends a reasonably long time with someone and the defendant is comfortable around the other person. For an association to be willful, a defendant needs to be aware that the individual he is associating with is engaged in criminal activity during the association. Orta v. State, 3D22-2024 (2/21/24)

https://3dca.flcourts.gov/content/download/1917775/opinion/Opinion_2022-2024.pdf

VOP: Where parties resolved a violation of community control by announcing that Defendant would serve 364 days in jail, to be mitigated by enrolling and successfully completing boot camp, failure to complete boot camp is not a violation of supervision. The terms of the plea agreement did not include any such requirement. Golfin v, State, 3D23-0286 (2/21/24)

https://3dca.flcourts.gov/content/download/1915651/opinion/Opinion_2023-0286.pdf

DOUBLE JEOPARDY: Convictions for both grand theft and defrauding a financial institution violate double jeopardy principles. Grand theft is a lesser included offense of organized fraud for double jeopardy purposes. Koerber v. State, 4D2022-3025 (2/21/24)

https://4dca.flcourts.gov/content/download/1918175/opinion/Opinion_2022-3025.pdf

EVIDENCE-VIDEOS-SILENT WITNESS: Bank manager may authenticate video. Photographs and videos from unmanned cameras are tested for admissibility under the "silent witness" theory, which provides that

photographic evidence may be admitted upon proof of the reliability of the process which produced it. Five factors for admissibility under the "silent witness" theory: (1) evidence establishing the time and date of the photographic evidence; (2) any evidence of editing or tampering; (3) the operating condition and capability of the equipment producing the photographic evidence as it relates to the accuracy and reliability of the photographic product; (4) the procedure employed as it relates to the preparation, testing, operation, and security of the equipment used to produce the photographic product, including the security of the product itself; and (5) testimony identifying the relevant participants depicted in the photographic evidence. Koerber v. State, 4D2022-3025 (2/21/24)

https://4dca.flcourts.gov/content/download/1918175/opinion/Opinion_2022-3025.pdf

COST OF SUPERVISION: $50 monthly cost of supervision as a condition of probation, unless orally pronounced, is unlawful. The appropriate costs supervision is $40 per month. Abernathy v. State, 4D2-2022-3318 (2/21/24)

https://4dca.flcourts.gov/content/download/1916288/opinion/Opinion_2022-3318.pdf

SCORESHEET-VICTIM INJURY POINTS: Law in effect in 1988 permitted addition of victim injury points only once per victim per criminal episode.. Sentencing guidelines were later amended to require penetration points for each offense. Huston v. State, 4D2023-2221 (2/21/24)

https://4dca.flcourts.gov/content/download/1918201/opinion/Opinion_2023-2221.pdf

POST CONVICTION RELIEF-MANIFEST INJUSTICE: Collateral estoppel does not bar relitigation where failure to correct illegal life sentences would be manifestly unjust. Sentencing errors that depend upon the number of criminal episodes and result in an illegal sentence may be raised in a rule 3.800(a) motion if the number of episodes can be determined from the face of the record. Huston v. State, 4D2023-2221 (2/21/24)

https://4dca.flcourts.gov/content/download/1918201/opinion/Opinion_2023-2221.pdf

RE-SENTENCING-NON-STATE PRISON: Where Court improperly sentenced Defendant (who scored non-state prison) to prison, upon remand the Court must impose a non-state prison sanction or, if requested by the State, empanel a jury to make the needed factual determinations. Manago v. State, 5D20-632 (2/16/24)

https://5dca.flcourts.gov/content/download/1845152/opinion/Opinion_20-0632.pdf

VOP: Court must enter a written order stating the conditions that had been violated. Hevia v. State, 5D22-0915 (2/16/24)

https://5dca.flcourts.gov/content/download/1845153/opinion/Opinion_22-0915.pdf

VOP: Court must enter a written order stating the conditions that had been violated. Veltman v. State, 2D22-2838 (2/16/24)

https://5dca.flcourts.gov/content/download/1845154/opinion/Opinion_22-2838.pdf

DOUBLE JEOPARDY: Double jeopardy precludes convictions on both grand theft of a motor vehicle and grand theft of the contents (the gun in the center console) when there is one act of taking (of the car and its contents) with no geographic or temporal separation between two acts of taking. Arroyo v. State, 6D23-0653 (2/16/24)

https://6dca.flcourts.gov/content/download/1842504/opinion/Opinion_23-0653.pdf

HABEAS CORPUS-AEDPA: Under AEDPA, a federal court may not grant habeas relief to a state prisoner with respect to any claim that was adjudicated on the merits in State court, unless the adjudication (1) was contrary to, or unreasonably applied, clearly established Federal law, as determined by the Supreme Court, or (2) resulted in a decision that was based on an unreasonable determination of the facts. A state-court adjudication involves an "unreasonable application of" clearly established federal law only if the decision was so obviously wrong that its error lies beyond any possibility for fairminded disagreement. AEDPA constrains federal-court authority to correct all but the most obvious state-court errors. Bowen v. Sec'y, Florida DOC, No. 22-11744 (11th Cir. 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211744.pdf

HABEAS CORPUS-AEDPA: State court's determination that placing two juvenile co-defendants in a bugged room to record admissions while they talked to each other did not violate the Fifth Amendment is not so obviously wrong as to permit federal relief. Bowen v. Sec'y, Florida DOC, No. 22-11744 (11th Cir. 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211744.pdf

FIFTH AMENDMENT-JUVENILE (J. WILSON, CONCURRING): "[W]hat I do find troubling is how Bowen's age interplays with the voluntariness of his confession. . . I do not contend that age should be dispositive. I do however . . .contend that the 'greatest care' should be exercised to ensure that a juvenile's statements were voluntarily and freely given." Bowen v. Sec'y, Florida DOC, No. 22-11744 (11th Cir. 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202211744.pdf

HABEAS CORPUS-AEDPA: Where Defendant was convicted of felony murder based on the death of his passenger after a pursuing officer performed a 110 M.P.H. pit maneuver (Counsel did not request a proximate cause instruction, although Georgia law requires proximate cause), he is not entitled to federal habeas corpus relief. Because the Georgia Supreme Court held that the PIT maneuver and the manner in which it was performed was not an intervening cause, that is the final answer. What the Supreme Court of Georgia says is Georgia law is Georgia law. Calhoun v. Warden, Calhoun State Prison, No 22-10313 (11TH Cir 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210313.pdf

HUH? WHAT? HUH?: "The proper prejudice standard [for ineffective assistance of counsel claims] is not preponderance. . .Instead of a probability of a different result, there need be only a 'reasonable probability' of a different result. The difference is whether it is more likely than not the result would have been different under the preponderance standard compared to whether there is enough possibility that there would have been a different result that the reviewing court's confidence in the outcome is undermined." Calhoun v. Warden, Calhoun State Prison, No 22-10313 (11TH Cir 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210313.pdf

ARTICULATED NON-FLUBBERY: "A word of caution, or actually a full paragraph of it, is appropriate here: The Supreme Court's decision in Williams and our decision today should not be misread to mean that a state court decision isn't entitled to AEDPA deference unless the opinion quotes with precision, without shorthand references, and with flawless consistency the proper federal standard of reasonable probability of a different result. . .[A] perfectly articulated, non-flub, ambiguity-free discussion of the prejudice component is not required in a state court opinion for AEDPA deference to be due." Calhoun v. Warden, Calhoun State Prison, No 22-10313 (11TH Cir 2/15/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210313.pdf

AMENDMENT-RULE BAR: Rules amended to allow certified legal interns to practice up to 18 months after law school graduation, and to have up to three chances to pass the bar exam. In Re: Amendments to Rule Regulating The Florida Bar 11-1.8, SC2024-0053 (2/15/24)

J. LABARGA, J., DISSENTING IN PART: "I again dissent to the Court's adoption of this amendment on its own motion. . . Even where, as here, a rule change is unlikely to be controversial, I think the better practice in all but the most urgent instances is for this Court to publish proposed rule amendments for comment before adoption." In Re: Amendments to Rule Regulating The Florida Bar 11-1.8, SC2024-0053 (2/15/24)

https://supremecourt.flcourts.gov/content/download/1833656/opinion/Opinion_SC2024-0053.pdf

HABEAS CORPUS: Trial court may dismiss, rather than transfer, a habeas petition when the petitioner seeks relief that "(1) would be untimely if considered as a motion for postconviction relief under rule 3.850, (2) raise claims that could have been raised at trial or, if properly preserved, on direct appeal of the judgment and sentence, or (3) would be considered a second or successive motion under R. 3.850 that either fails to allege new or different grounds for relief that were known or should have been known at the time the first motion was filed. Rogers v. Dixon, 1D2023-0388 (2/14/24)

https://1dca.flcourts.gov/content/download/1826703/opinion/Opinion_2023-0388.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: In order to vacate a conviction after a plea based on newly discovered evidence, Movant must show that he would have reasonably withdrawn from his plea agreement and proceeded to trial. A court should consider the totality of the circumstances surrounding the plea, including such factors as whether a particular defense was likely to succeed at trial. Daise v. State, 1D2022-2955 (2/14/24)

https://1dca.flcourts.gov/content/download/1826693/opinion/Opinion_2022-2955.pdf

JUDGE-DISQUALIFICATION: Judge may not be disqualified for exercising his discretion to reject a plea offer which waived PRR. A judge retains authority to alter a prior plea arrangement up until the time sentence is imposed, so long as the trial court provides the defendant an opportunity to withdraw any plea that was entered in reliance on the promised sentence. Frazier v. State, 3D22-1298 (2/14/24)

https://3dca.flcourts.gov/content/download/1835573/opinion/Opinion_2022-1298.pdf

APPEAL-PRESERVED ISSUE: Defendant may not raise on appeal a conflict between an oral pronouncement and the written finding of a violation of probation absent a quantitative effect on the sentence without a contemporaneous objection or a motion to correct sentence. Frazier v. State, 3D22-1298 (2/14/24)

https://3dca.flcourts.gov/content/download/1835573/opinion/Opinion_2022-1298.pdf

ANTI-SHOPLIFTING DEVICE-POCKETKNIFE: "Because the undisputed facts failed to establish that he used or attempted to use the pocketknife recovered from his person, let alone that the instrument itself satisfied the plain and unambiguous statutory definition of 'any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device,' we are constrained to reverse and remand with instructions to dismiss the challenged charge." Mocombe v. State, 3D23-184 (2/14/24)

https://3dca.flcourts.gov/content/download/1826170/opinion/Opinion_2023-0184.pdf

MINOR OFFENDER: A defendant may be sentenced to life without parole for one homicide offense, consecutively followed by two concurrent life-without-parole sentences for related non-homicide offenses, because the defendant has an opportunity for a meaningful review after each (up to fifty years later). A State is not required to guarantee eventual freedom to a juvenile offender convicted of a non-homicide crime. Conflict certified. Johnson v. State,

4D2022-0876 (2/14/24)

https://4dca.flcourts.gov/content/download/1823103/opinion/Opinion_2022-0876.pdf

SECOND AMENDMENT-FIREARM: Statute prohibiting possession of a firearm by a convicted felon is constitutional. Paul v. State, 4D2022-1455 (2/14/24)

https://4dca.flcourts.gov/content/download/1824660/opinion/Opinion_2022-1455.pdf

PATIENT BROKERING: The allowable unit of prosecution for patient brokering (receiving payment for patient referrals) is each transaction, not the general arrangement between health care providers. Payments to different entities for referrals of the same patients on the same days can be charged as different violations of the Patient Brokering Act because the correct unit of prosecution is each payment made to induce the referral of patients or patronage. State v. DeSimone, 4D2022-2104 (2/14/24)

https://4dca.flcourts.gov/content/download/1827267/opinion/Opinion_2022-2104.pdf

MOTION TO DISMISS: As a general rule, Court may not hold an evidentiary hearing on a R. 3.190(d) motion to dismiss based on disputed issues of fact (here, the unit of prosecution). Exceptions to the rule include motions to dismiss based on immunity, Stand Your Ground immunity, and prosecutorial misconduct. State v. DeSimone, 4D2022-2104 (2/14/24)

https://4dca.flcourts.gov/content/download/1827267/opinion/Opinion_2022-2104.pdf

SENTENCING-NON STATE PRISON: Where Defendant scores non-state prison (under 22 points), one year in the county jail, to be followed by two years' community control is lawful. Nothing in §775.082(10) restricts the aggregate duration of all nonstate prison sanctions to one year. "[W]e are mindful that if the defendant was to violate his community control or probation, any resulting sentence to a state correctional facility, beyond the one year which the defendant will have already served in the county jail, raises the issue of whether such further incarceration would be illegally excessive. . .However, that issue is not ripe for consideration." Pozos v. State, 4D2023-0248 (2/14/24)

https://4dca.flcourts.gov/content/download/1827275/opinion/Opinion_2023-0248.pdf

RESISTING WITHOUT VIOLENCE-NON-UNANIMOUS VERDICT: Where the State does not affirmatively advise the jury that it can convict using any number of acts as the essential element of the crime, the possibility of a non-unanimous verdict does not constitute fundamental error. Lee v. State, 4D2023-1156 (2/14/24)

https://4dca.flcourts.gov/content/download/1823124/opinion/Opinion_2023-1156.pdf

APPEAL WAIVER: Serial bomber whose plea agreement for multiple life sentences included an appeal waiver may not collaterally attack the sentences for not being for crimes of violence under the categorical approach. Rudolph v. USA, No. 21-12828 (11th Cir. 2/12/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202112828.pdf

HABEAS CORPUS: §2255 habeas actions are vehicles for attacking sentences, not convictions. §2255 cannot be used to challenge convictions, only sentences. "There may be mechanisms by which Rudolph can collaterally challenge his convictions, but 2255 is not one of them." Rudolph v. USA, No. 21-12828 (11th Cir. 2/12/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202112828.pdf

DICTA: As a rule, a statement that neither constitutes the holding of a case, nor arises from a part of the opinion that is necessary to the holding of the case is dicta. And dicta is not binding on anyone for any purpose. "Both of these points are crucial . . to avoiding the risk that stray language will take on importance in a new context that its drafters could not have anticipated." Rudolph v. USA, No. 21-12828 (11th Cir. 2/12/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202112828.pdf

APPEAL WAIVERS: There is no miscarriage of justice exception to the general rule that appeal waivers are enforceable. Even if there were, Rudolph would not qualify for relief for any number of reasons. Rudolph v. USA, No. 21-12828 (11th Cir. 2/12/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202112828.pdf

RISK PROTECTION ORDER: Court may not deny a petition for a Risk Protection Order without a hearing. "Simply put, section 790.401(3)(a) does not provide a trial court with discretion regarding whether a final hearing should be held on a petition for risk protection order." Polk County Sheriff's Office v. A.C,N, A Minor, 6D23-2558 (2/12/24)

https://6dca.flcourts.gov/content/download/1806307/opinion/Opinion_23-2558.pdf

RELINQUISHMENT OF JURISDICTION: If Child is eligible to have his probation terminated pursuant to §985.435(7), appellate court may relinquish jurisdiction to the trial court. R. M. A., a juvenile v. State, 3D23-1110 (2/9/24)

https://3dca.flcourts.gov/content/download/1773385/opinion/Opinion_2023-1110.pdf

CONFESSION-VOLUNTARINESS: "it's okay, sweetie, I'm just here to talk to you" and informed S.G. she was not in trouble. Detective's statements to child ("it's okay, sweetie, I'm just here to talk to you" and informing her that she was not in trouble) did not amount to an implied promise of leniency or coercion. State v. S.G., 6D23-520 (2/9/24)

https://6dca.flcourts.gov/content/download/1772791/opinion/Opinion_23-0520.pdf

HEARSAY-CO-CONSPIRATOR STATEMENTS: When a conspiracy is established, everything said, written, or done by any of the conspirators in execution furtherance of the common purpose is deemed to have been said, done, or written by every one of them and may be proved against each, but only if the conspiracy itself has been established by independent evidence, i.e., not adduced from the hearsay testimony. The requirement of independent evidence is a condition of admissibility. The Child's admissions can constitute that independent evidence. State v. S.G., 6D23-520 (2/9/24)

https://6dca.flcourts.gov/content/download/1772791/opinion/Opinion_23-0520.pdf

PLEA-PRESERVATION-STATUTE OF LIMITATIONS: A defendant waives the right to appeal a court's decision on a pretrial motion by entering a guilty plea. An unconditional guilty plea waives all non-jurisdictional defects,

including a statute of limitations defense. USA v. Sanfilippo, No. 22-11175 (11th Cir 2/8/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211175.pdf

PLEA-PRESERVATION-STATUTE OF LIMITATIONS Government's comment at the end of the sentencing hearing that it would probably allow Defendant's to withdraw his guilty plea and dismiss the charges if a pending appeal in a different, similar case established that the statute of limitations barred a conviction is not sufficient evidence that the issue was preserved. USA v. Sanfilippo, No. 22-11175 (11th Cir 2/8/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211175.pdf

PLEA-PRESERVATION-STATUTE OF LIMITATIONS (JORDAN, CONCURRING): A district court has limited jurisdiction to set aside or modify a federal defendant's conviction or sentence, and it does not possess inherent authority to take such action. "I am therefore not sure how it is that the parties believe that they will be able, months or years from now, to go back to the district court and request that Mr. Sanfilippo be allowed to withdraw his guilty plea in a closed case." USA v. Sanfilippo, No. 22-11175 (11th Cir 2/8/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202211175.pdf

DEFINITION-"UNO ICTI": "Uno icti" means "with one blow." Offenses that are continuous in character and offenses that can be committed by a singular act are called "uno icti." with one blow. Trappman v. State, SC2021-1479 (2/8/24)
https://supremecourt.flcourts.gov/content/download/1762873/opinion/Opinion_SC2021-1479.pdf

DOUBLE JEOPARDY: Double Jeopardy does not preclude separate convictions for shoving an officer and siccing a pit bull on him. The touchstone of Double Jeopardy analysis must be whether there were successive impulses. Defendant's conduct in shoving the officer and subsequently siccing the dog on the officer involved two distinct acts flowing from two separate impulses. Trappman v. State, SC2021-1479 (2/8/24)
https://supremecourt.flcourts.gov/content/download/1762873/opinion/Opinion_SC2021-1479.pdf

DOUBLE JEOPARDY: "We need not and do not hold that when an offense, such as battery, may be committed by a single blow, that each additional blow laid on results in an additional offense. The test is not whether there are successive blows but whether there are successive impulses. We do not suggest that multiple blows may not spring from a single impulse." Contrary precedents disapproved. Trappman v. State, SC2021-1479 (2/8/24)
https://supremecourt.flcourts.gov/content/download/1762873/opinion/Opinion_SC2021-1479.pdf

RULES-AMENDMENT: Petitions, pleadings, and related documents filed for human trafficking victim expunction under §943.0583 must be maintained by the clerk of court as confidential information. In Re: Amendments to Florida Rule of General Practice and Judicial Administration 2.420, SC2024-0059 (2/8/24)
https://supremecourt.flcourts.gov/content/download/1762874/opinion/Opinion_SC2024-0059.pdf

DEPORTATION-DERIVATIVE CITIZENSHIP: Under earlier statute, foreign born resident cannot obtain derivative citizenship through his unmarried father, only through his unmarried mother. The Child Citizenship Act of 2000 is not retroactive. Previous opinion vacated and replaced. Lodge v. US Attorney General, No. 22-10416 (11th Cir. 2/7/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210416.op2.pdf

REPRESENTED DEFENDANT: A pro se writ of prohibition to recuse the trial judge where Petitioner is represented the underlying case must be dismissed. Pro se extraordinary writ petitions filed while a defendant is simultaneously being represented by counsel in ongoing criminal proceedings in either the trial or appellate court are not permitted. Ware v. State, 3D23-1110 (2/7/24)
https://3dca.flcourts.gov/content/download/1784169/opinion/Opinion_2023-1912.pdf

HABEAS CORPUS-BOND-DOMESTIC VIOLENCE: Defendant who has been released from custody during the pendency of his habeas corpus not challenge the statute which prohibits monetary release domestic violence cases before first appearance. Hernandez v. State, 3D24-0063 (2/7/24)
https://3dca.flcourts.gov/content/download/1777125/opinion/Opinion_2024-0063.pdf

PUBLIC DEFENDER FEE: Court may not impose a $500 lien for the public defender's fee without hearing any evidence in support of the amount assessed. Smart v. State, 4D2022-2375 (2/7/24)
https://4dca.flcourts.gov/content/download/1772764/opinion/Opinion_2022-2375.pdf

PLEA WITHDRAWAL: Defendant is entitled to hearing on motion to withdraw plea where he alleges that all cases were to be resolved, including a misdemeanor, and he was to be released. A defendant's guilty plea is considered involuntary if it is induced by a defense counsel's promise which is not kept. "[I]f Mr. Gillette is correct, the manifest injustice he suffered is the very act of not receiving the bargain to which he agreed." Gillette v. State, 2D22-191 (2/7/24)
https://2dca.flcourts.gov/content/download/1751052/opinion/Opinion_22-0191.pdf

PLEA WITHDRAWAL: Counsel's obligation of representation to his client does not end upon the rendition of a judgment of conviction and sentence, but continues thereafter until either a notice of appeal is filed, the time for filing the notice has passed, or good cause is shown upon written motion. Gillette v. State, 2D22-191 (2/7/24)
https://2dca.flcourts.gov/content/download/1751052/opinion/Opinion_22-0191.pdf

PLEA WITHDRAWAL: A limited exception to the rule of striking pro se pleadings as nullities exists where a defendant files a pro se motion to withdraw a plea which contains specific allegations that give rise to an adversarial relationship, such as misadvice, affirmative misrepresentations, or coercion that led to the entry of the plea. Gillette v. State, 2D22-191 (2/7/24)
https://2dca.flcourts.gov/content/download/1751052/opinion/Opinion_22-0191.pdf

PHRASE OF THE DAY: "[T]imeliness is a stickier wicket.]" Gillette v. State, 2D22-191 (2/7/24)
https://2dca.flcourts.gov/content/download/1751052/opinion/Opinion_22-

0191.pdf

QUOTATION: "Even a slight deprivation [of liberty] is anathema to our concept of ordered government." Letter from John Adams to Abigail Adams (July 7, 1775). Gillette v. State, 2D22-191 (2/7/24) https://2dca.flcourts.gov/content/download/1751052/opinion/Opinion_22-0191.pdf

MARCHMAN ACT: Petition for Marchman Act commitment is legally insufficient where, rather than focusing on substance abuse, it alleges that the subject is worshipping the Mexican devil, doing witchcraft, going to a grave site, talking to the devil, and not making sense. There is no context or detail . . .such that a reader could conclude there is a good faith reason to believe the conduct—even presuming it is unorthodox--constitutes 'socially dysfunctional behavior' or exhibits 'mental, emotional, or physical problems.'" D.H. v. K.J.R., 2D22-3523 (2/7/23) https://2dca.flcourts.gov/content/download/1751061/opinion/Opinion_22-3523.pdf

MARCHMAN ACT: "Especially in a society in which the right to freely exercise one's religion is guaranteed. . .a petitioner's perception of a respondent's spiritual practices as peculiar cannot be sufficient to curtail the latter's physical liberty. . . What K.J.R. considers nonsensical could merely be notions misaligned with common sense." D.H. v. K.J.R., 2D22-3523 (2/7/23) https://2dca.flcourts.gov/content/download/1751061/opinion/Opinion_22-3523.pdf

MARCHMAN ACT: "We are not the first. . .to recognize the inconsistency between a person's. . .right to counsel in an involuntary Marchman Act proceeding and the Act's provision for an ex parte procedure." D.H. v. K.J.R., 2D22-3523 (2/7/23) https://2dca.flcourts.gov/content/download/1751061/opinion/Opinion_22-3523.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel misadvised him regarding the use of prior convictions as impeachment and that he opted not to testify at trial because of that

misadvice. Jenkins v. State, 2D23-1237 (2/2/24)
https://2dca.flcourts.gov/content/download/1699852/opinion/Opinion_23-1237.pdf

LESSER INCLUDED: Omitting instruction on lesser included offense is harmless where the lesser offense is two or more steps removed from the offense of conviction. Gibson v. State, 5D22-0490 (2/2/24)
https://5dca.flcourts.gov/content/download/1700269/opinion/Opinion_22-0490.pdf

ENHANCEMENT: The degree of an offense may not be enhanced on the basis of a prior record where the information does not allege the priors. Gibson v. State, 5D22-0490 (2/2/24)
https://5dca.flcourts.gov/content/download/1700269/opinion/Opinion_22-0490.pdf

SPEEDY TRIAL: Postponing prosecution of the charges for which a defendant is initially arrested does not stop the speedy trial clock. Defendant is entitled to a Speedy Trial discharge where Defendant is arrested (but never booked) on an out-of-county warrant for attempted murder, then he is arrested, charged, and convicted for narcotics found on him at the time of that arrest and the attempted murder case stayed on the back burner for years. Robinson v. State, 5D23-0330 (2/2/24)
https://5dca.flcourts.gov/content/download/1700271/opinion/Opinion_23-0330.pdf

SPEEDY TRIAL: Certified Question: Whether the holding in State v. Williams--that the recapture period is not available to the State if it fails to file charges until after the 175 days has lapsed--should be modified to clarify that R. 3.191 does not establish the right to automatic discharge after expiration of the rule's prescribed time period. Robinson v. State, 5D23-0330 (2/2/24)
https://5dca.flcourts.gov/content/download/1700271/opinion/Opinion_23-0330.pdf

DEFINITION-"ARREST": "Whether an arrest has occurred for purposes of Florida's speedy trial rule is not as clear as it could be. The word 'arrest' means different things in different circumstances. . .The potential for

confusion is exacerbated rather than mitigated by the supreme court's use of adjectives to refer to a 'technical arrest' or a 'formal arrest' as neither term is used in rule 3.191. . .To further complicate matters, the definition of "arrest" in Florida speedy trial jurisprudence differs from the federal speedy trial rule even though both are grounded in the same Sixth Amendment right." Robinson v. State, 5D23-0330 (2/2/24)
https://5dca.flcourts.gov/content/download/1700271/opinion/Opinion_23-0330.pdf

DEFINITION-"ARREST": It is uniformly held that an arrest, in the technical and restricted sense of the criminal law, is the apprehension or taking into custody of an alleged offender in order that he or she may be brought into the proper court to answer for a crime. It involves the following elements: (1) A purpose or intention to effect an arrest under a real or pretended authority; (2) An actual or constructive seizure or detention of the person to be arrested by a person having present power to control the person arrested; (3) A communication by arresting officer to the person whose arrest is sought, of an intention or purpose then and there to effect an arrest; and (4) An understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him. Robinson v. State, 5D23-0330 (2/2/24)
https://5dca.flcourts.gov/content/download/1700271/opinion/Opinion_23-0330.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: State's arguments, including that "[W]e see this stuff all the time. We see how these houses are run. We see how the defendants try to outschool the police. Now you see it," is improper. Prosecutor may not give a personal opinion as to the guilt of the accused, nor may he suggest that the government has special knowledge of evidence not presented to jury. Stafford v. State, 5D23-0485 (2/2/24)
https://5dca.flcourts.gov/content/download/1700272/opinion/Opinion_23-0485.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: "[T]he most egregious of the State's improper comments was a blatant misuse of the otherwise properly admitted Williams rule evidence. . . Despite the trial court's directive, the prosecutors made repeated improper references to the 2019 case during

closing argument, not to show knowledge but rather to convince the jury that Stafford was guilty of the same crime a year earlier," such as he 'got away with it in 2019. Don't let him get away with it in 2020.'" Comments were so egregious as to constitute fundamental error. Stafford v. State, 5D23-0485 (2/2/24)
https://5dca.flcourts.gov/content/download/1700272/opinion/Opinion_23-0485.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: "We find the State's reliance on the strength of the evidence presented at trial unpersuasive because the most egregious statements in closing argument inexcusably distorted the State's most powerful evidence of guilt—the Williams rule evidence. While defense counsel's failure to object to any of thesestatements is incomprehensible, prosecutors are nevertheless required to 'refrain from engaging in inflammatory and abusive arguments, to maintain their objectivity, and to behave in a professional manner.'" Stafford v. State, 5D23-0485 (2/2/24)
https://5dca.flcourts.gov/content/download/1700272/opinion/Opinion_23-0485.pdf

CHANGE OF VENUE: Pretrial publicity is normal and expected in certain kinds of cases, and that fact standing alone will not require a change of venue. Davis v. Dixon, SC2021-1778 (2/1/24)
https://supremecourt.flcourts.gov/content/download/1689878/opinion/Opinion_SC2021-1778%20&%20SC2022-0882.pdf

POST-CONVICTION RELIEF-CHANGE OF VENUE: In order to show that counsel was ineffective for failing to move for a change of venue, Defendant must show a probability that a change of venue motion would have been granted. Davis v. Dixon, SC2021-1778 (2/1/24)
https://supremecourt.flcourts.gov/content/download/1689878/opinion/Opinion_SC2021-1778%20&%20SC2022-0882.pdf

POST-CONVICTION RELIEF: Counsel is not ineffective for failing to ask certain questions based on the ABA's jury selection guidelines. The ABA Guidelines are not a set of rules constitutionally mandated under the Sixth Amendment. Davis v. Dixon, SC2021-1778 (2/1/24)

https://supremecourt.flcourts.gov/content/download/1689878/opinion/Opinion_SC2021-1778%20&%20SC2022-0882.pdf

COSTS: Court erred In imposing a lump sum of $2,765 in court costs. Discretionary costs must be orally pronounced at sentencing because such costs may not be imposed without affording the defendant notice and an opportunity to be heard. Martina v. State, 1D20-3776 (2/1/24) https://1dca.flcourts.gov/content/download/1682470/opinion/Opinion_2020-3776.pdf

APPEAL-PRESERVATION: A defendant who pleads nolo contendere with no express reservation of the right to appeal a legally dispositive issue, shall have no right to appeal. There is no fundamental-error exception to the preservation requirement. Brown v. State, 1D21-3233 (2/1/24) https://1dca.flcourts.gov/content/download/1677305/opinion/Opinion_2021-3233.pdf

CONFLICT-ATTORNEY-APPEAL: Public Defender may not withdraw from appeal absent an allegation that the witness at the trial is a current client. A criminal appeal is a different proceeding, and an imputable conflict present at a criminal trial that justifies withdrawal there does not necessarily translate to an imputable conflict that supports withdrawal in the ensuing appeal. Operation of the conflict rule (R. 4-1.9), governing conlicts of interest relating to a former client, is from the perspective of the former client, the witness. Even if the public defender were currently representing the witness, the motion must explain how representation of the Appellant would be directly adverse to the present representation of the witness and/or created a substantial risk that the representation of the Appellant would be materially limited by the responsibilities to the witness. Farmer v. State, 1D22-3273 (2/1/24)

https://scholar.google.com/scholar_case?case=18019934788871765472&hl=en&as_sdt=40006

BOND-MODIFICATION: Court may not impose a new bond or increase the bond based only on the State filing more severe charges than those on which

the Defendant had already bonded out. Where there is a substantial increase in the possible penalties a defendant faces based on new charges, the Court may consider altering the conditions of release, but this does not vitiate a defendant's constitutional right to have a neutral magistrate make an initial probable cause determination as to the charges against him. SalgadoMartinez v. Reyes, 3D24-155 (2/1/24)
https://3dca.flcourts.gov/content/download/1691501/opinion/Opinion_2024-0155.pdf

BOND-MODIFICATION: The prosecutor's assessment of probable cause, standing alone, does not meet the requirements of the Fourth Amendment and is insufficient to justify restraint of liberty pending trial. The filing of an information cannot itself provide probable cause. SalgadoMartinez v. Reyes, 3D24-155 (2/1/24)

https://3dca.flcourts.gov/content/download/1691501/opinion/Opinion_2024-0155.pdf

JANUARY 2024

VOP-YOUTHFUL OFFENDER: A youthful offender who commits a substantive violation of probation–a new law offense–may be sentenced to more than six years. Youthful offender on probation for a sex offense found while wearing nothing but boxer shorts while in bed with a fourteen-year-old girl commits a substantive violation of probation. The affidavit need notallege a Condition 5 violation for the offense to be a subtantive violation. The State need not charge and convict a defendant of a new crime to establish a substantive violation of youthful offender probation, so long as the commission of aseparate criminal offense is alleged and shown during revocation proceedings. Nolan v. State, 1D2021-3690 (1/31/24)
https://1dca.flcourts.gov/content/download/1704335/opinion/Opinion_2021-3609.pdf

APPEAL: Failure to introduce an alibi witness constitutes a claim of ineffective assistance of counsel which cannot be raised on direct appeal unless the appellant demonstrates that fundamental error occurred.

Carmack v. State, 1D2021-3718 (1/31/24)
https://1dca.flcourts.gov/content/download/1700426/opinion/Opinion_2021-3718.pdf

CLERGY-PENITENT: The clergy-penitent privilege does not apply where Defendant confesses to a large group of specially convened church members The clergy-penitent privilege does not apply where Defendant's admission to accusations of sexual abuse of a minor was initiated for disciplinary reasons and not for spiritual counseling. "[W]e reject the argument that a communication which occurs in a church setting and involves seeking forgiveness automatically qualifies it as having been made 'for the purpose of seeking spiritual counsel and advice' and that it therefore becomes privileged." Asking for forgiveness before a pastor and other church leaders does not mean that the party making the communication was seeking spiritual counsel and advice. State v. Martin Gonzalez, 2D22-3707 (1/31/24)
https://2dca.flcourts.gov/content/download/1679381/opinion/Opinion_22-3707.pdf

COMPETENCY: Court must enter a written order consistent with its oral pronouncement of competency. Losada v. State, 3D22-0588 (1/31/24)
https://3dca.flcourts.gov/content/download/1681077/opinion/Opinion_2022-0588.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Witness's newly discovered evidence, deemed not credible by the Court, that she did not see the Defendant at the scene of the crime did not weaken the case to the extent to give rise to reasonable doubt as to his culpability. LaFlippe v. State, 3D22-1173 (1/31/24)
https://3dca.flcourts.gov/content/download/1679511/opinion/Opinion_2022-1173.pdf

IMPEACHMENT-PRIOR STATEMENT: Court did not err in excluding actual text messages as impeachment where the jury received the relevant statements – that the victim had been using drugs on the night of the alleged sexual battery – were summarized and acknowledged or used to refresh the Victim's recollection. Any impropriety in the exclusion of the verbatim text messages were harmless. Carnright v. State, 3D22-1244 (1/31/24)

https://3dca.flcourts.gov/content/download/846101/opinion/Opinion_2022-1244.pdf

RE-SENTENCING-JUVENILE OFFENDER: A continued life sentence for a juvenile offender is lawful following a sentence review where Court holistically considered the rehabilitative testimony but simply gave it little weight. Sawyer v. State, 3D22-1267 (1/31/24)
https://3dca.flcourts.gov/content/download/1679516/opinion/Opinion_2022-1267.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to R. 3.850. Thomas v. State, 3D23-1716 (1/31/24)
https://3dca.flcourts.gov/content/download/1679602/opinion/Opinion_2023-1716.pdf

POST CONVICTION RELIEF-SCORESHEET: The "would-have-been-imposed" harmless error standard is used in considering sentencing scoresheet errors or corrections. Velazco v. State, 3D23-1200 (12/31/24)
https://3dca.flcourts.gov/content/download/1703435/opinion/Opinion_2023-1200.pdf

SEARCH AND SEIZURE-PASSENGER: An officer making a non-criminal traffic stop may order passengers to get out of the car pending completion of the stop. Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

SEARCH AND SEIZURE-PASSENGER (J. TJOFLAT): Officer does not violate the Fourth Amendment by requiring passengers to identify themselves during a non-criminal traffic stop. Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

SEARCH AND SEIZURE-PASSENGER-QUALIFIED IMMUNITY (J. BRANCH, CONCURRING): To overcome a government official's invocation of the defense of qualified immunity, a plaintiff must show (1) that the official

violated a constitutional right and (2) that the right was clearly established" at the time of the official's purported misconduct. Officers have qualified immunity from suit for violating the Fourth Amendment by requiring apassenger to identify himself because the right was not clearly established. "That my colleagues vehemently debate the proper application of Brown and Hiibel to the particular facts of this case is an indication that the caselaw does not clearly establish that a constitutional violation occurred." Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

SEARCH AND SEIZURE-PASSENGER (J. WILSON, DISSENTING): Law enforcement officers cannot require, by threat of arrest, that an individual identify himself absent reasonable suspicion of wrongdoing. No exception for passengers in cars exists. "[T]he Supreme Court has time and again held that law enforcement officers cannot require identification from citizens without reasonable suspicion of wrongdoing, and they certainly cannot arrest those citizens unsuspected of wrongdoing for declining to disclose their identities." Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

QUALIFIED IMMUNITY-CLEARLY (J. WILSON, DISSENTING): Qualified immunity jurisprudence does not require a case directly on point for a right to be clearly established. "A party cannot say that, because we have not yet considered a novel, context-specific exception to the general rule, that the rule itself is not clearly established in that context. But that is what the majority erroneously does here with little reasoning as to why." Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

PRECEDENT-SEARCH AND SEIZURE-PASSENGER-QUALIFIED IMMUNITY (J. BRANCH, CONCURRING): "Because none of the three opinions here garner a majority vote of the panel, none of them represent the views of this Court for precedent purposes." Johnson v. Nocco, No. 21-10670 (11th Cir. 1/30/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202110670.op2.pdf

DEPORTATION-DERIVED CITIZENSHIP: Provision of immigration law

permitting derived citizenship for children of naturalized unmarried mothers but not naturalized unmarried fathers does not violate Equal Protection. Lodge v. U.S. Attorney General, No. 22-10416 (1/26/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210416.pdf

EX POST FACTO-SEX OFFENDER-FAILURE TO REGISTER: §943.0435 (since amended) provided that one qualified as a sex offender, and therefore had a duty to register, upon completion of his sentence. The sentence was not completed until the fine was paid (since amended by statute). Defendant who had not paid the fine cannot be convicted for failing to register. The amendment to the statute is not retroactive. State v. Crose, 2D21-2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

RECENT CONTROVERSY RULE: The "recent controversy rule" provides that when an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. But "[i]f the recent controversy rule is indeed a tool of statutory interpretation, it seems an inconsistent, and awfully slippery, one to wield." "[W]e believe this common law rule can no longer be aligned within current Florida jurisprudence." "Consulting subsequent legislative amendments in response to recent controversies is no longer a viable basis for construing the meaning of a statute." State v. Crose, 2D21-2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

CONFUSED JURISPRUDENCE: "So in the span of eight years, we have three published decisions from our court that have yielded two split panels, two panels effectively decreeing a prior panel's decision dead letter law, one panel construing the recent controversy rule as discretionary, and another two as quasi mandatory. . . Either the rule is mandatory or it's discretionary; either its operation hinges on subsequent legislation's enactment or on prior legislation's ambiguity; either it truly acts as a tool for clarifying legislative intent or it is, truly, 'retroactivity by another name.'" State v. Crose, 2D21-

2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

STATUTORY INTERPRETATION: "Traditionally, Florida courts focused their interpretive work on discerning the 'legislative intent' of statutory text. What did the legislature mean when it enacted a particular piece of legislation? . . .Florida case law contains a plethora of rules and extrinsic aids to guide courts in their efforts to discern legislative intent from ambiguously worded statutes. However, [w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." State v. Crose, 2D21-2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

STATUTORY INTERPRETATION: "[T]he supreme court's marching orders for interpreting legislation have been clear: to derive the meaning of statutes, we are to look to the text itself, as understood in its context, not to any purported intent underlying the text. . .It is not hyperbole to observe that. . .the supreme court's recent embrace of the supremacy-of-text principle constituted a paradigm shift in Florida law." State v. Crose, 2D21-2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

METAPHOR OF THE WEEK: "You can use a hammer for all sorts of things, but it's meant for hammering. When the job at hand no longer calls for hammering, you shouldn't reach for that tool. A court using an atextual, intent-centric tool in a supremacy-of-text analysis would be like a homeowner trying to hammer a lightbulb into a socket to gain more illumination." State v. Crose, 2D21-2784 (1/26/24)
https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

SENTENCE OF THE WEEK: "But discerning an articulable and replicable basis for that refrainment—whether because of the span of time between an

original enactment and its amendment or the length of years between when a controversy arises and when an amendment is enacted in response to the controversy or the degree of interpretive clarification that's necessary to construe a prior statute—has remained an elusive, and largely unsuccessful, endeavor in Florida case law." State v. Crose, 2D21-2784 (1/26/24) https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

NEOLOGISM OF THE WEEK: **(J. ATKINSON, CONCURRING)**: "unignorable." State v. Crose, 2D21-2784 (1/26/24) https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

DEFINITION-"THE": "Here grammar and usage establish that 'the' is 'a function word . . . indicat[ing] that a following noun or noun equivalent is definite or has been previously specified by context.'" "[T]he" does not usually mean the same thing as 'any' or 'a.' Definite articles and indefinite articles typically connote different meanings, and they serve very different communicative functions." State v. Crose, 2D21-2784 (1/26/24) https://2dca.flcourts.gov/content/download/1638876/opinion/Opinion_21-2784.pdf

RULES-AMENDMENT: R. 3.670 amended to clarify that probation is mandatory in felony cases where the judge withholds adjudication. In Re: Amendments to Florida Rule of Criminal Procedure 3.670, SC2023-1093 (1/25/24) https://supremecourt.flcourts.gov/content/download/1633028/opinion/Opinion_SC2023-1093.pdf

JURY INSTRUCTION-EYE WITNESS: Court is not required to instruct the jury to consider whether the witness and the person committing the crime were of different races when considering identification. The 11th Circuit Pattern instructions are sufficient. A district court declining to give a requested jury instruction for which there was a sufficient evidentiary basis is proper if (1) the requested instruction correctly stated the law; (2) the actual charge to the jury did substantially covered the proposed instruction; and (3)

the failure to give the instruction did not substantially impair the defendant's ability to present an effective defense. Court's instruction on evaluating eyewitness identifications does not need to explicitly address every potential problem with eyewitness identifications. USA v. Daniels, No. 22-10498 (1/24/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

EVIDENCE: Detective's testimony that he referred the string of robbery cases to the FBI because they fit the criteria for Hobbs Act robberies was not plain error. A witness may not testify to the legal implications of conduct, but the statement was offered merely as background information. USA v. Daniels, No. 22-10498 (1/24/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

EVIDENCE-OPINION: Unobjected testimony that the suspect in the videos of the various robberies had a distinctive walk, leading to his identification , is neither plain error nor prejudicial. USA v. Daniels, No. 22-10498 (1/24/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

PLAIN ERROR: Plain error is error so obvious that the district court is expected to intervene *sua sponte* even if the defendant does not object. USA v. Daniels, No. 22-10498 (1/24/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

PRESERVED ISSUE: Issue is not preserved where Defendant's objection to testimony is sustained but Defendant neither moved to strike the testimony nor to request a limiting instruction. USA v. Daniels, No. 22-10498 (1/24/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

HOBBS ACT ROBBERY-THREAT OF VIOLENCE: The act of brandishing a firearm is sufficient, on its own, to threaten force or violence. The act of threatening others with a gun is tantamount to saying that the gun is loaded and that the gun wielder will shoot unless his commands are obeyed. USA v. Daniels, No. 22-10498 (1/24/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

EVIDENCE-SUFFICIENCY: An eye witness in one of a string of robberies, mostly of 7-Elevens, is unnecessary where modus operandi evidence suggests that Defendant committed all of them. A brimmed hat, distinctive red boots, Newport cigarettes, and, oh yeah, that red umbrella add up to strong modus operandi evidence. USA v. Daniels, No. 22-10498 (1/24/24) https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

EYE WITNESS IDENTIFICATION (J. JORDAN, CONCURRING): Discussion of unreliability of eye witness identification and cross-racial identifications. "I think we need to revise our pattern jury instructions to allow consideration of a possible cross-racial effect on identifications." USA v. Daniels, No. 22-10498 (1/24/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202210408.pdf

DOUBLE JEOPARDY-LEWD OR LASCIVIOUS: Dual convictions for lewd or lascivious molestation for touching the victim's breast and the victim's buttocks during the course of a do not violate Double Jeopardy. A new act begins each time one touch ends and another is initiated, no matter how closely each one followed the other. Michel v. State, 3D22-1114 (1/24/24) https://3dca.flcourts.gov/content/download/1632496/opinion/Opinion_2022-1114.pdf

APPEAL-PRESERVATION: If a defendant's contemporaneous objection to an improper comment or testimony is sustained, defense counsel must thereafter move for a mistrial to preserve the issue for appellate review. Michel v. State, 3D22-1114 (1/24/24)
https://3dca.flcourts.gov/content/download/1632496/opinion/Opinion_2022-1114.pdf

JOA: Defendant may be convicted for first-degree murder notwithstanding that his codefendant was only convicted of second-degree murder. Curry v. State, 3D23-0529 (1/24/24)
https://3dca.flcourts.gov/content/download/1632511/opinion/Opinion_2023-0529.pdf

COSTS-ILLEGAL SENTENCE: Errors in the assessment of costs are not subject to correction through R. 3.800(a). Patlan v. State, 3D23-1879 (1/24/24)
https://3dca.flcourts.gov/content/download/1630307/opinion/Opinion_2023-1879.pdf

DOUBLE JEOPARDY: Simultaneous convictions for first-degree felony murder and the predicate qualifying felony are not barred by Double Jeopardy. For a short-lived, finite time period they were, but not anymore, and not for a long time. Slattery v. State, 3D23-2012 (1/24/24)

https://3dca.flcourts.gov/content/download/1628943/opinion/Opinion_2023-2012.pdf

CREDIT FOR TIME SERVED: No. R. 3.801(b) motion shall be filed or considered more than 1 year after the sentence becomes final. Battle v. State, 5D23-3614 (1/23/24)
https://5dca.flcourts.gov/content/download/1618094/opinion/Opinion_23-3614.pdf

SEARCH WARRANT: Where the search warrant affidavit showed that CI had purchased cocaine from Defendant, although not at his house, the house had unusually blocked windows, and suspicious phone calls were captured, the statements in the affidavit provided a substantial basis for the search warrant. Even if they did not, the good faith exception applies. State v. Rodriguez Lopez, 2D22-1194 (1/19/24)

https://2dca.flcourts.gov/content/download/1587385/opinion/Opinion_22-1194.pdf

PROBABLE CAUSE: Probable cause is a practical, common-sense question. It is the probability of criminal activity, and not a prima facie showing of such activity, which is the standard of probable cause. The determination of probable cause involves factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable

cause does not disappear simply because an innocent explanation may be consistent with the suspicious facts. State v. Rodriguez Lopez, 2D22-1194 (1/19/24)

https://2dca.flcourts.gov/content/download/1587385/opinion/Opinion_22-1194.pdf

SEARCH WARRANT-GOOD FAITH: The good faith exception to the exclusionary rule exists where evidence has been seized in reasonable reliance on a warrant issued by a magistrate, even if the affidavit in support of the warrant is later found to have been lacking the requisite probable cause. State v. Rodriguez Lopez, 2D22-1194 (1/19/24)

https://2dca.flcourts.gov/content/download/1587385/opinion/Opinion_22-1194.pdf

SENTENCING-DOWNWARD DEPARTURE: In determining whether to impose a downward departure, Court must determine whether it can depart, and if so, whether it should depart. The court's statements that its hands were tied and that the scoresheet prevented the court from departing establish that the court mistakenly believed it could not depart. The court's statement, that there was "nothing really brought forward . . . that would be a legal justification" to depart, is unclear and does not cure the misconception evinced by the first statements. Remand for a new sentencing hearing. Soto v. State, 2D22-1764 (1/19/24)

https://2dca.flcourts.gov/content/download/1587386/opinion/Opinion_22-1764.pdf

CONCEALED FIREARM: Court errs in dismissing carrying concealed firearm charge where the gun was securely encased In a crossbody pack

which Defendant was wearing. The securely encased/automobile exception does not apply to guns on one's person. State v. Valley, 2D22-4133 (1/19/24)

https://2dca.flcourts.gov/content/download/1587388/opinion/Opinion_22-4133.pdf

COSTS OF INCARCERATION: Civil lien for costs of incarceration need not be orally pronounced at sentencing. Incarceration costs are a civil remedy that is not so punitive in nature as to constitute criminal punishment. Acosta v. State, 2D23-324 (1/19/24)

https://2dca.flcourts.gov/content/download/1587389/opinion/Opinion_23-0324.pdf

COSTS OF INCARCERATION: Civil lien for costs of incarceration may be imposed regardless of Defendant's ability to pay. Acosta v. State, 2D23-324 (1/19/24)

https://2dca.flcourts.gov/content/download/1587389/opinion/Opinion_23-0324.pdf

PUBLIC RECORD: Trial Court retains jurisdiction to enforce Defendant's public records request to the SAO following his acquittal. While the motion may not have been appropriately filed in the criminal case, the circuit court has jurisdiction and the authority to grant mandamus relief. Howard v. State, 2D23-1026 (1/19/24)

https://2dca.flcourts.gov/content/download/1587390/opinion/Opinion_23-1026.pdf

CONSTITUTIONALITY-COMMERCE CLAUSE: 18 U.S.C. § 231(a)(3), which prohibits impeding law enforcement officers during a civil disorder affecting interstate commerce, is constitutional under the Commerce Clause. The jurisdictional element of interstate commerce need not link directly to the criminalized act itself as long as the object of the criminal act is sufficiently connected to interstate commerce. Defendant who broke police car window in protest while trying to occupy I-10 is properly convicted. USA v. Pugh, No. 21-13136 (11th Cir. 1/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113136.pdf

CONSTITUTIONALITY-OVERBREADTH: The "overbreadth doctrine" does not apply outside the limited context of the First Amendment. USA v. Pugh, No. 21-13136 (11th Cir. 1/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113136.pdf

CONSTITUTIONALITY-FIRST AMENDMENT: 18 U.S.C. § 231(a)(3), which prohibits impeding law enforcement officers during a civil disorder affecting interstate commerce, is constitutional under First Amendment. "Obstruct" means "to block." "One cannot block a fireman or law enforcement officer with speech alone." "It is hard to see how either 'obstruct' or 'impede' apply to speech or expressive conduct, except at the margins." Defendant who broke police car window in protest while trying to occupy I-10 is properly convicted. USA v. Pugh, No. 21-13136 (11th Cir. 1/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113136.pdf

CONSTITUTIONALITY-DUE PROCESS-VAGUENESS: 18 U.S.C. §

231(a)(3), which prohibits impeding law enforcement officers during a civil disorder affecting interstate commerce, does not violate Due Process as unduly vague. USA v. Pugh, No. 21-13136 (11th Cir. 1/18/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202113136.pdf

ATTORNEY-DISCIPLINE: "[T]he requirement of providing zealous representation is not a sword to wield as an excuse to otherwise engage in misconduct." The Florida Bar v. Schwartz, SC 2019-0983 (1/18/24)

https://supremecourt.flcourts.gov/content/download/1580423/opinion/Opinion_SC2019-0983%20&%20SC2021-0484.pdf

ATTORNEY-DISCIPLINE: Attorney who knowingly procured an inculpatory (and exculpatory as to his client) affidavit from a represented co-Defendant without notifying his Public Defender disbarred. Rule 4-4.2(a) prohibits a lawyer in representing his or her client from communicating about the subject of the representation with a person known to be represented by other counsel without consent of that counsel, even if the represented person initiates or consents to the communication. The Florida Bar v. Schwartz, SC 2019-0983 (1/18/24)

https://supremecourt.flcourts.gov/content/download/1580423/opinion/Opinion_SC2019-0983%20&%20SC2021-0484.pdf

ATTORNEY-ADVERTISEMENT-DISCIPLINE: Advertising rules apply to text messages. Unsolicited text message not complying with advertisement rules, along with other misconduct, warrants disbarment. The Florida Bar v. Schwartz, SC 2019-0983 (1/18/24)

https://supremecourt.flcourts.gov/content/download/1580423/opinion/Opinion_SC2019-0983%20&%20SC2021-0484.pdf

FELONY MURDER-ALTERNATIVE THEORIES: A true inconsistent verdict occurs when the acquittal of one charge negates an element of another. The existence of a valid alternative legal theory does not save a true inconsistent verdict when the issue is preserved. Where the evidence supported two valid alternative theories of first-degree murder (premeditated murder and felony murder during a robbery), Defendant's conviction on the lesser of misdemenor petit theft does not make the murder verdict truly inconsistent. "[I]t is illogical to conclude that despite the arguments and jury instructions defining felony murder exclusively in terms of a robbery or attempted robbery, the jurors mistakenly believed he could be convicted of felony murder based on the underlying offense of theft." Profit v. State, 1D2021-3588 (1/17/24)

https://1dca.flcourts.gov/content/download/1578823/opinion/Opinion_2021-3588.pdf

POST CONVICTION RELIEF: Failure to move for an arrested verdict on grounds of an inconsistent verdict fails where the verdict was not truly inconsistent. An unpreserved claim of ineffective assistance of counsel cannot support reversal on direct appeal unless the defendant establishes that a fundamental error occurred. Profit v. State, 1D2021-3588 (1/17/24)

https://1dca.flcourts.gov/content/download/1578823/opinion/Opinion_2021-3588.pdf

EVIDENCE: Evidence that Defendant was on house arrest waas admissible to show motive for shooting victim, with whom he had been drinking and

smoking marijuana, and to whom he had revealed that he was on house arrest and who he learned was applying to work for D.O.C. Goodson v. State, 1D2022-836 (1/17/24)

https://1dca.flcourts.gov/content/download/1578824/opinion/Opinion_2022-0836.pdf

PHOTO LINE UP: Showing witness the Defendant's Instagram photo after she had identified him from a photo line up does not render the original identification invalid. Goodson v. State, 1D2022-836 (1/17/24)

https://1dca.flcourts.gov/content/download/1578824/opinion/Opinion_2022-0836.pdf

APPEAL-PRESERVATION: Defendant may not argue on appeal a different basis for his Judgment of Acquittal than that argued at trial. In order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below. Egan v. State, 1D2022-3155 (1/17/24)

https://1dca.flcourts.gov/content/download/1573972/opinion/Opinion_2022-3155.pdf

COSTS: $100 cost of prosecution is a minimum cost mandated by statute; it need not be requested' by the State. Egan v. State, 1D2022-3155 (1/17/24)

https://1dca.flcourts.gov/content/download/1573972/opinion/Opinion_2022-3155.pdf

BURGLARY-CONSENT: Burglary is established where Defendant previously had limited, implied consent to enter the home, but the consent was revoked. Vereen v. State, 1D2023-0022 (1/17/24)

https://1dca.flcourts.gov/content/download/1571011/opinion/Opinion_2023-0022.pdf

GAIN-TIME: Both basic gain-time and incentive gain-time are subject to forfeiture by the DOC. All earned gain-time, whether basic or incentive, is granted as a matter of grace and is not automatically retained, but is subject to forfeiture. Adams v. State, 3D23-382 (1/17/24)

https://3dca.flcourts.gov/content/download/1580288/opinion/Opinion_2023-0382.pdf

JUVENILE OFFENDER-LENGTHY SENTENCE: A juvenile offender sentenced to forty years in prison for an offense committed in 1998 is not entitled to a sentence review under §921.1402, which only applies to offenses committed on or after July 1, 2014. Brazley v. State, 3D23-432 (1/17/24)

https://3dca.flcourts.gov/content/download/1570002/opinion/Opinion_2023-0432.pdf

VOP: Court must enter a written order specifying the conditions of probation violated. Williams v. State, 4D2022-2873 (1/17/24)

https://4dca.flcourts.gov/content/download/1570551/opinion/Opinion_2022-2873.pdf

HEARSAY-STATE OF MIND: Testimony by witness that the victim had said,

"[H]e's not here, and when I see him, I'm going to kick his ass," is admissible under the state of mind exception to the hearsay rule. The state of mind exception does not typically authorize admission of a victim's statement in a murder case because the victim's state of mind is not usually at issue; but where a defendant is claiming self-defense, the victim's state of mind becomes relevant and thus can be admissible. However, it may be excluded if remote (made two weeks earlier). Sigismondi v. State, 2D21-2391 (1/12/24)

https://2dca.flcourts.gov/content/download/1525129/opinion/Opinion_21-2391.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. Defendant failed to preserve the issue of the exclusion of the evidence of the victim's state of mind where Defendant did not challenge the basis of the exclusion–the remoteness of the evidence. Sigismondi v. State, 2D21-2391 (1/12/24)

https://2dca.flcourts.gov/content/download/1525129/opinion/Opinion_21-2391.pdf

APPEAL-PRESERVATION-DOWNWARD DEPARTURE: Court's failure to properly apply the two-part test for a downward departure, application of a general policy of not granting a downward departure, and reliance on improper sentencing factors constitute due process violations resulting in fundamental error. A rule 3.800(b) motion is not required, and in fact is an improper mechanism to preserve these issues. Geske v. State, 2D22-729 (1/12/24)

https://2dca.flcourts.gov/content/download/1525130/opinion/Opinion_22-0729.pdf

SENTENCING-DOWNWARD DEPARTURE: A trial court's decision whether to depart from the guidelines is a two-part process. First, the court must determine whether it can depart. Second, it must determine whether it should depart. Typically, a trial court's discretionary decision whether to grant a downward departure is reviewed for abuse of discretion. Geske v. State, 2D22-729 (1/12/24)

https://2dca.flcourts.gov/content/download/1525130/opinion/Opinion_22-0729.pdf

SENTENCING-DOWNWARD DEPARTURE: The threshold for proving a ground for a downward departure is preponderance of the evidence, by the reasonable doubt or by clear and convincing evidence standards. Geske v. State, 2D22-729 (1/12/24)

https://2dca.flcourts.gov/content/download/1525130/opinion/Opinion_22-0729.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Consideration of remorse, or absence of it, is an appropriate consideration at sentencing. Geske v. State, 2D22-729 (1/12/24)

https://2dca.flcourts.gov/content/download/1525130/opinion/Opinion_22-0729.pdf

SENTENCING-DOWNWARD DEPARTURE: Equity sentencing analysis is not a valid basis for a downward departure. A downward departure sentence based on comparison with cases of similarly situated defendants is not supported by competent, substantial evidence where the record failed to show

that the trial court was aware of the particular facts and circumstances surrounding those cases. Brooks v. State, 2D22-3753 (1/12/24)

https://2dca.flcourts.gov/content/download/1525132/opinion/Opinion_22-3753.pdf

POST CONVICTION RELIEF: When a defendant asserts that counsel was ineffective for interfering with his right to testify, the postconviction court must consider 1) whether the defendant voluntarily agreed with counsel not to testify in his own defense and 2) whether counsel's advice was deficient because no reasonable attorney would have discouraged' the defendant from testifying. Defendant is entitled to a hearing where he claimed that he was present but did not participate in the shooting, and physical evidence only showed his presence. Bynum v. State, 2D23-1144 (1/12/24)

https://2dca.flcourts.gov/content/download/1525142/opinion/Opinion_23-1144.pdf

SENTENCING-CONSIDERATIONS-FIREARM: Court may not rely on a defendant's lawful firearm possession in sentencing him. Courts deprive defendants of due process when they rely on uncharged and unproven conduct during sentencing, and this principle holds especially true where the uncharged conduct is the lawful exercise of a constitutional right. Both the Florida and federal constitutions guarantee the fundamental, preexisting right to keep and bear arms. Nelson v. State, 5D22-0703 (1/12/24)

https://5dca.flcourts.gov/content/download/1525158/opinion/Opinion_22-0703.pdf

SENTENCING-DUE PROCESS: Due process prohibits an individual from being sentenced based on unsubstantiated allegations. Nelson v. State,

5D22-0703 (1/12/24)

https://5dca.flcourts.gov/content/download/1525158/opinion/Opinion_22-0703.pdf

SKEPTICISM: "[F]ollowing the court's statement that "'w]hat hurts you most, Mr. Nelson, was . . . the photographs of the guns,' the court declared, I did not take that into account.' We are not persuaded. . .The court's statements indicate that it may have relied upon Nelson's lawful firearm possession in imposing his sentence, and the State has failed to carry its burden to show otherwise. . .At best, the State has shown that the court made two contradictory statements: one that it took the firearm possession into account, and one that it did not. That showing does not suffice." Nelson v. State, 5D22-0703 (1/12/24)

https://5dca.flcourts.gov/content/download/1525158/opinion/Opinion_22-0703.pdf

ABANDONMENT-JURY INSTRUCTION: Florida recognizes the affirmative defense of abandonment. In order to constitute a defense, the abandonment must be complete and voluntary. Defendant was not entitled to an abandonment instruction when he left the bag of stolen merchandise behind when he made eye contact with the store manager and left[3]. Anderson v.

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[3]The image brings to mind this excerpt from Very Good, Jeeves by P.G. Wodehouse:

"Remember what the poet Shakespeare said, Jeeves."

"What was that, sir?"

" 'Exit hurriedly, pursued by a bear.' You'll find it in one of his plays. I remember drawing a picture of it on the side of the page, when I was at school."

State, 5D22-943 (1/12/24)

https://5dca.flcourts.gov/content/download/1525159/opinion/Opinion_22-0943.pdf

JURY INSTRUCTION-PROPOSED (J. EISNAUGLE): By rule, parties should submit requested jury instructions in writing. In the absence of a clear request for specific language, an appellate court cannot discern whether the requested instruction was a correct statement of the law and not misleading or confusing. "It is not this court's responsibility to fill in the blanks for Appellant, nor is the trial court required to craft language for a party's special instruction." Anderson v. State, 5D22-943 (1/12/24)

https://5dca.flcourts.gov/content/download/1525159/opinion/Opinion_22-0943.pdf

COST OF PROSECUTION: State need not request the mandatory $100 cost of prosecution for it to be imposed. Conflict certified. O'Malley v. State, 5D23-159 (1/12/24)

https://5dca.flcourts.gov/content/download/1525162/opinion/Opinion_23-0159.pdf

COST ON INVESTIGATION: Court erred in assessing the cost of investigation when there was no request for same. O'Malley v. State, 5D23-159 (1/12/24)

https://5dca.flcourts.gov/content/download/1525162/opinion/Opinion_23-0159.pdf

STATUTE OF LIMITATIONS: Prosecution is not barred for burglary where the statute of limitations has expired if the identity of the accused is established through the analysis of of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused. But State must present competent substantial evidence that a sufficient portion of the DNA is preserved. Testimony from the detective that he had not authorized destruction of the DNA is insufficient. Bowers v. State, 5D23-2930 (1/12/24)

https://5dca.flcourts.gov/content/download/1525164/opinion/Opinion_23-2930.pdf

FIRST AMENDMENT-RETALIATION: First Amendment bars governor from suspending an elected officer (State Attorney) based on his protected First Amendment statements (on abortion, trans-gender care, capital punishment, and free elections). The political benefit of "bringing down a reform prosecutor" may not be the controlling motivation for the suspension. Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

FIRST AMENDMENT-RETALIATION: The First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech. A plaintiff must show three elements: (1) he engaged in protected activity, (2) he suffered an adverse action, and (3) a causal connection exists between the protected activity and the adverse action. If the plaintiff shows all three, then the government official has a chance to present a "same-decision defense," i.e., that he would have made the same decision even if the plaintiff never engaged in protected activity. Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

FIRST AMENDMENT-RETALIATION: "[I]f a government actor's controlling motivation behind an adverse action is gaining political benefit from punishing protected activity, the government actor flouts the First Amendment. . .The First Amendment prevents DeSantis from identifying a reform prosecutor and then suspending him to garner political benefit. On remand, the district court should reconsider whether DeSantis would have made the same decision based solely on his Low-Level Offense Policy and his Bike Policy. Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

OH, MY: "DeSantis never had probable cause for Warren's suspension." "To have probable cause for the suspension, DeSantis must have reasonably believed that Warren established blanket nonprosecution policies sufficient to constitute neglect of duty or incompetence. DeSantis could not have reasonably believed that." Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

DEMOCRACY: Elected officials do not exercise a significant degree of control over other elected officials. Rather, the electorate controls elected officials and disciplines them by withholding votes if it disapproves of their performance. Governors do not exercise a significant degree of control over state attorneys. Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

DEMOCRACY: "Voters elected Warren; DeSantis did not appoint him. If alignment with DeSantis's political preferences were an appropriate requirement to perform the state attorney's duties, there would be little point in local elections open to candidates across the political spectrum. . . The

First Amendment thus protects Warren's political affiliations." Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

VIBES (J. NEWSOM, CONCURRING): "There are admittedly a few aspects of the FJP statement that give off official-policy vibes." But vibes are not official policy. Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

FIRST AMENDMENT (J. NEWSOM, CONCURRING): "Bottom line: The Supreme Court has made clear—for reasons that cut to the core of our representative democracy—that the First Amendment safeguards elected officials' right to express their views on salient political issues. Whatever one thinks of Warren's particular views about abortion, he is no less entitled to that protection." Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

FIRST AMENDMENT (J. NEWSOM, CONCURRING): "The First Amendment is an inconvenient thing. It protects expression that some find wrongheaded, or offensive, or even ridiculous. But for the same reason that the government can't muzzle so-called 'conservative' speech. . ., the state can't exercise its coercive power to censor so-called 'woke' speech with which it disagrees. What's good for mine is (whether I like it or not) good for thine." Warren v. DeSantis, No. 23-10459 (1/11/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202310459.op2.pdf

DISORDERLY CONDUCT-QUALIFIED IMMUNITY: Yelling, cursing, and making obscene gestures toward police officers (grabbing one's crotch), without more, does not amount to probable cause for a disorderly conduct arrest. The mere fact that other people come outside or stop to watch what is going on is insufficient to support a conviction for disorderly conduct. The arresting officers should have known this, so they are not entitled to qualified immunity. McDonough v. Garcia, No. 22-11421 (11th Cir. 1/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211421.pdf

CYBERSTALKING: Posting a link on YouTube calling an officer a "frigging coward," a "slipttail [sic]," and a "giant twat," and threatening to release his address is cyberstalking. Disseminating a target's address, in conjunction with other evidence that the speaker intends harm to befall the target, can amount to such a threat. McDonough v. Garcia, No. 22-11421 (11th Cir. 1/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211421.pdf

FREE SPEECH: Barring disruptive citizen from future city council meetings violates the First Amendment. "The histories of First Amendment public forum doctrines. . .are jagged, and they lead us to the somewhat uncomfortable conclusion that. . . a city council meeting. . .is a designated public forum." McDonough v. Garcia, No. 22-11421 (11th Cir. 1/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211421.pdf

PRIOR PANEL PRECEDENT RULE: The prior panel precedent rule directs that each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled en banc, or by the Supreme Court." But "all of our not-quite-reconcilable precedents [on

free speech at a city council meeting] are not-quite-overruled. There is no way to chart a new path through our caselaw consistent with all of our precedents unless we twist 'a case in such a way as to avoid the more troublesome prospect of dealing with the conflict of authority.'" McDonough v. Garcia, No. 22-11421 (11th Cir. 1/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211421.pdf

EVIDENCE: Duplicate recordings may be received as evidence unless a genuine question is raised about their authenticity. Williams v. State, 1D2022-1350 (1/10/24)

https://1dca.flcourts.gov/content/download/1523123/opinion/Opinion_2022-1350.pdf

COSTS: Court may assess a mandatory prosecution cost in the absence of a request by the State. Williams v. State, 1D2022-1350 (1/10/24)

https://1dca.flcourts.gov/content/download/1523123/opinion/Opinion_2022-1350.pdf

HEARSAY-IDENTIFICATION: The testimony that one of the victims identified Defendant as the shooter is a statement of identification, not hearsay. McKenzie v. State, 1D2022-2232 (1/10/24)

https://1dca.flcourts.gov/content/download/1518341/opinion/Opinion_2022-2232.pdf

HEARSAY: The statement that Defendant intended to go to a cell phone store was not offered for truth of the matter asserted, and so it was not

hearsay. McKenzie v. State, 1D2022-2232 (1/10/24)

https://1dca.flcourts.gov/content/download/1518341/opinion/Opinion_2022-2232.pdf

HEARSAY-EXCITED UTTERANCE: In attempted murder case, the statement made by one of the victims while Defendant loaded his firearm was properly admitted under the excited utterance exception to the hearsay rule. McKenzie v. State, 1D2022-2232 (1/10/24)

https://1dca.flcourts.gov/content/download/1518341/opinion/Opinion_2022-2232.pdf

SINGLE DEATH RULE-EX POST FACTO: Applying a judicial opinion does not generally constitute a violation of the prohibition on ex post facto laws. Applying Maisonet Maldonado, which abrogated the single homicide rule, does not violate Ex Post Facto. The holding was neither unforeseeable nor indefensible. State v. Dashner, 4D2022-1883 (1/10/24)

https://4dca.flcourts.gov/content/download/1530215/opinion/Opinion_2022-1883.pdf

APPEAL-PRESERVATION: Defendant may not assert on appeal that the Best Evidence Rule was violated where his trial objection was only on the grounds that it was improper opinion testimony interpreting a recording that was in evidence. Bailes v. State, 4D2022-1988 (1/10/24)

https://4dca.flcourts.gov/content/download/1536988/opinion/Opinion_2022-1988.pdf

SENTENCING-VICTIMS' LETTERS: Error, if any, in Court considering unsworn victims' letters is not fundamental. It is debatable whether a court's acceptance of an unsworn victim statement is error at all. Bailes v. State, 4D2022-1988 (1/10/24)

https://4dca.flcourts.gov/content/download/1536988/opinion/Opinion_2022-1988.pdf

SENTENCING-VICTIM INJURIES: Assessment of victim injury points is reviewed for an abuse of discretion. Defendant waived any challenge to the victim injury points during the sentencing hearing when defense counsel stated that she had no objection to the scoresheet. No jury finding is required as to victim injury points. The scoring of victim injury points establishes the lowest permissible sentence, but it is not a fact which increases a mandatory minimum sentence. Bailes v. State, 4D2022-1988 (1/10/24)

https://4dca.flcourts.gov/content/download/1536988/opinion/Opinion_2022-1988.pdf

TWELVE PERSON JURY: Nope. You don't get one. Bailes v. State, 4D2022-1988 (1/10/24)

https://4dca.flcourts.gov/content/download/1536988/opinion/Opinion_2022-1988.pdf

VFOSC: A "new felony conviction" (24 points) for a violent felony offender of special concern does not apply when it was entered after the Court had determined that Defendant had violated his probation. A new scoresheet is required, but not a new sentencing hearing. Court would have imposed the same sentence. Borges v. State, 4D2022-2177 (1/10/24)

https://4dca.flcourts.gov/content/download/1526705/opinion/Opinion_2022-2177.pdf

VFOSC: Court must make a written finding that Defendant is a danger to the community in order to sentence him as a VFOSC. Borges v. State, 4D2022-2177 (1/10/24)

https://4dca.flcourts.gov/content/download/1526705/opinion/Opinion_2022-2177.pdf

HABEAS CORPUS-AEDPA: Under AEDPA, federal habeas corpus relief is only available where the state court's decision is so obviously wrong that its error lies 'beyond any possibility for fairminded disagreement. Trial court's finding that the Strickland prejudice standard was not met by counsel's failure to impeach a witness by his probationary standard is not unreasonable. Mungin v. Secretary, Florida DOC, No. 22-13616 (11th Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213616.pdf

HABEAS CORPUS-AEDPA: Under AEDPA, federal habeas corpus relief is only available where the state court's decision is so obviously wrong that its error lies 'beyond any possibility for fairminded disagreement. Trial court's finding that the Strickland prejudice standard was not met by counsel's failure to call a detective to testify about a witness's hesitation in making the photo line up identification is not unreasonable. Mungin v. Secretary, Florida DOC, No. 22-13616 (11th Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213616.pdf

HABEAS CORPUS-STATUTE OF LIMITATIONS: AEDPA's one-year

statute of limitations clock starts running when there is a new constitutional right at issue, the state court conviction becomes final, or the date on which the factual predicate of the claim or claims presented could have been discovered by due diligence. Mungin v. Secretary, Florida DOC, No. 22-13616 (11th Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213616.pdf

HABEAS CORPUS-STATUTE OF LIMITATIONS-RELATION BACK: A new claim added to an already filed habeas petition may not be filed after the one-year time limitation has expired, is filed. "Relation back is allowed when the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading. But a new claim does not relate back simply because both the original petition and the amended pleading arose from the same trial and conviction. A new claim of counsel's failure to investigate does not relate back. In the habeas context, a new ineffective assistance of counsel claim must relate to the specific facts underlying an already raised claim in the original pleading. Mungin v. Secretary, Florida DOC, No. 22-13616 (11th Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202213616.pdf

ARREST-SOVEREIGN IMMUNITY: Officer lacks sovereign immunity for entering Plaintiff's home and arresting him without a warrant. The Constitution generally requires that officers obtain judicial warrants before entering a home without permission. One has the right to be free from a warrantless arrest in his parents' home absent exigent circumstances. The Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. Police officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home. Bailey v,

Swindell, No. 21-14454 (11th Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202114454.pdf

DEFINITION-"INITIATE": "Initiate" means "to begin, commence, enter upon; to introduce, set going, give rise to, originate." It also means "start." Bailey v, Swindell, No. 21-14454 (11h Cir. 1/8/24)

https://media.ca11.uscourts.gov/opinions/pub/files/202114454.pdf

REVERSE BRIAN'S SONG: A prison official's deliberate indifference to a known, substantial risk of serious harm to an inmate that causes serious harm to that inmate violates the Fourteenth Amendment. Where jail officials assigned as cell mates a white prisoner and a black prisoner who had been arrested for stabbing a white store clerk because he wanted to stab a white guy, and the latter strangles to death the former, the officials may be sued. Nelson v. Tompkins, No. 22-14205 (11th Cir. 1/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/202214205.pdf

PROSTITUTION-PIMPING: Criminal liability for recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing, or soliciting by any means a person—if the defendant knows that the minor will be caused to engage in a commercial sex act under §1591 is not conditioned on the actual occurrence of any commercial sex act. Rather, a defendant need only put the victim in a position where a sex act could occur, regardless of whether a sex act eventually did occur. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

PRODUCTION OF CHILD PORN-INTENT: One who takes a photo of himself having sex with a mInor and takes a picture is as guilty as one who has sex with a mInor in order to take a picture. Child pornography produced

incidentally to a sexual encounter is insufficient. Specific intent does not require that the defendant be "single-minded in his purpose. The government is not required to prove that making explicit photographs was the sole or primary purpose. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

PRODUCTION OF CHILD PORN-INTENT (J. JORDAN, DISSENTING): "The court reasons that a jury could reasonably infer from the pause in the middle of intercourse that, for at least some fraction of the time, Mr. Gatlin was engaged in sexual conduct with E.H. partly for the purpose of recording it. I'm not so sure. . .The government's theory. . .seems to have been that the mere taking of the photograph established Mr. Gatlin's antecedent purpose to produce child pornography. . .That theory is, in my view, legally unsound." USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

WITNESS TAMPERING: For witness tampering, Government must prove that the defendant had the intent to mislead law enforcement in general and that there was a reasonable likelihood that relevant communication would have been made to a federal officer. The likelihood of communication to a federal officer must be more than remote, outlandish, or simply hypothetical. Trying to get a witness to recant to the Defendant's state court public defender when federal charges are not yet pending is not federal witness tampering. The fact that the FBI actually received the recanted statement does not establish that it was reasonably likely that the communication would reach a federal officer. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24)

https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

JURY-VERDICT-DOUBLE JEOPARDY-DELIBERATION: Court did not err in ordering jury to continue deliberation after it rendered an inconsistent verdict (Guilty, but without the necessary special findings to support the verdict). Double jeopardy does not apply because the Court had not

accepted the verdict before clarifying instructions and sending the jury back for continued deliberation. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

INCONSISTENT VERDICTS: Inconsistency between verdicts on different counts does not form an independent basis for review. A conflicting finding by the jury on two counts can equally reflect a mistake, compromise, or lenity. Where such a verdict reflects jury lenity, it may be the jury performing its historic function as a check against arbitrary or oppressive exercises of power by the Executive Branch. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

SENTENCING-GUIDELINES-SUPERVISORY CONTROL: Minor's pimp is subject to the supervisory control enhancement to the sentencing guidelines. (§2G1.3). The guideline commentary mentions "teachers, day care providers, baby-sitters, or other temporary caretakers." But court must consider the actual relationship instead of just the legal status between the defendant and the victim. Stating that a child is in a person's care is simply to say the person is responsible for looking after the child's well being. So it applies to pimps. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

SENTENCING-REASONABLENESS: Life sentence for minor's pimp is not substantively unreasonable. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

RESTITUTION: Apprendi does not apply to the imposition of restitution because the restitution statute does not have a prescribed statutory maximum. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24) https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

RESTITUTION: A sentencing court that misses the 90-day deadline

nonetheless retains the power to order restitution if it made clear prior to the deadline's expiration that it would do. "Restitution shall be ordered" is sufficient. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

RESTITUTION: Evidence used to estimate a restitution total need not be sworn; it merely must bear 'sufficient indicia of reliability to support its probable accuracy. Court may consider hearsay in forming the order of restitution. Court may accept a reasonable estimate of the amount of restitution, and the restitution amount may be approximated. USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

RESTITUTION-INDUCING PROSTITUTION: Restitution for promoting prostitution may be determined by estimates of amounts charged (See opinion for going rates by act, duration, and location). USA v. Gatlin, No. 19-14969 (11th Cir. 1/5/24)
https://media.ca11.uscourts.gov/opinions/pub/files/201914969.pdf

POST CONVICTION RELIEF: Given the absence of any time limitation for filing a R 3.800(a) motion, and the unavailability of an evidentiary hearing, the burden is on the movant to demonstrate that the trial court's error and the defendant's entitlement to relief are apparent from the face of the record. Holiday v. State, 3D23-1851 (1/3/24)
https://3dca.flcourts.gov/content/download/1455301/opinion/Opinion_2023-1851.pdf

VFOSC: In order to sentence Defendant as a violent felony offender of special concern, Court must make written findings that Defendant poses a danger to the community. Henriquez v. State, 4D2022-0242 (1/3/24)
https://4dca.flcourts.gov/content/download/1443920/opinion/Opinion_2022-0242.pdf

JURY READ-BACK: Trial judges have broad discretion in deciding whether to read back testimony. Simmons v. State, 4D2022-1729 (1/3/24) https://4dca.flcourts.gov/content/download/1444168/opinion/Opinion_2022-1729.pdf

SEARCH AND SEIZURE-WARRANTLESS ARREST: Where officer's responded to reports of a disorderly person with a knife, but did not personally observe disorderly conduct, arrest is unlawful and cocaine in the Defendsnt's pocket should have been suppressed. To make a warrantless arrest for a misdemeanor, all elements of the offense must occur in the police officer's presence or have been personally observed by a fellow law enforcement officer. Carlo v. State, 4D2022-2040 (1/3/24) https://4dca.flcourts.gov/content/download/1444169/opinion/Opinion_2022-2040.pdf

SCORESHEET-OUT OF STATE CONVICTIONS: Only the elements of the out-of-state crime should be considered in determining whether the conviction is analogous to a Florida statute for the purpose of calculating points for a sentencing guidelines scoresheet. When the scoring of an out-of-state conviction is contested, the trial court may consider the out-of-state judgment entered, and if necessary, the charging document. Ohio's robbery statue is analogous, and even if it were not, the trial court would have imposed the same sentences Taylor v. State, 4D2022-2291 (1/3/24) https://4dca.flcourts.gov/content/download/1443929/opinion/Opinion_2022-2291.pdf

UNANIMOUS VERDICT: Where Defendant allegedly sold stolen power tools to a pawn shop in two separate sales on two separate days, and State told jury that it could convict him on either sale, verdict is not unanimous. Error is fundamental. Parsons v. State, 4D2023-0680 (1/5/24) https://4dca.flcourts.gov/content/download/1453600/opinion/Opinion_2023-0680.pdf

ARGUMENT: States argument to jury that Defendant had "dragged" certain individuals, including his relatives, into trial to testify is improper. Parsons v. State, 4D2023-0680 (1/5/24)
https://4dca.flcourts.gov/content/download/1453600/opinion/Opinion_2023-0680.pdf

SEARCH WARRANT-AFFIDAVIT: Probable cause is a fluid concept that turns on probability assessments made in context and is not restricted by a neat set of legal rules. An affidavit in which no single piece of evidence is conclusive but where the pieces fit neatly together and, so viewed, support the determination that there was a fair probability that Defendant committed the crime is sufficient. Court should not dissect the affidavit and scrutinize each part in isolation. That piecemeal analysis runs afoul of the totality-of-the circumstances approach. State v. Freeman, 6D23-310 (1/2/24)
https://6dca.flcourts.gov/content/download/1460562/opinion/Opinion_23-0310.pdf

DECEMBER 2023

JURY INSTRUCTION-SELF-DEFENSE-FORCIBLE FELONY INSTRUCTION: Court erred in giving the forcible-felony exception to the justifiable use of nondeadly force instruction ("The use of non-deadly force is not justified if you find that [Mr. Daniels] was attempting to commit, committing, or escaping after the commission of an Aggravated Battery.). The forcible-felony exception to a claim of self-defense applies only when there is a forcible felony independent of the one which the defendant claims he or she committed in self-defense. Showing up late at night at your live-in girl friend's house with another woman is not a forcible felony. Daniels v. State, 2D22-3296 (12/29/23)
http://2dca.flcourts.gov/content/download/1412716/opinion/Opinion_22-3296.pdf

JURY INSTRUCTION-ACQUIESCENCE-FUNDAMENTAL ERROR: "[W]hat constitutes mere acquiescence versus an affirmative agreement has not been fully defined by case law. Instead, the determination is akin to the approach taken by Justice Potter Stewart ["I know it when I see it."]." It is mere acquiescence, not an affirmative agreement, where, as here, there is no suggestion that counsel requested the inappropriate jury instruction or was aware the instruction was incorrect but agreed anyway. New trial required. Daniels v. State, 2D22-3296 (12/29/23)
https://2dca.flcourts.gov/content/download/1412716/opinion/Opinion_22-3296.pdf

EVIDENCE-NOTICE: In Defendant's murder/conspiracy trial, evidence that five years later Defendant plotted to murder a witness is not part of the murder or conspiracy itself. It is extrinsic evidence. Written notice is required under R. 404(b)(3). But error was harmless because the Government's pretrial brief alerted Defendant to the expected testimony. USA v. Fey, *et. al*, No. 22-11373 (11th Cir. 12/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211373.pdf

JURY INSTRUCTION-SPOLIATION: Defendant charged with murdering an informant by intentionally injecting her with a lethal dose of methamphetamine and fentanyl is not entitled to a spoliation of evidence instruction when tissue samples were destroyed after medical officer deemed the overdose accidental. "We have never ruled that a spoliation instruction should be given in a criminal trial; we have affirmed its use only in civil cases. . . [Even if it could be given in a criminal trial, the instruction is required only when the absence of material evidence is predicated on bad faith." USA v. Fey, *et. al*, No. 22-11373 (11th Cir. 12/28/23)
http://media.ca11.uscourts.gov/opinions/pub/files/202211373.pdf

EVIDENCE: Where Defendant is charged with murdering an informant by intentionally injecting her with a lethal dose of methamphetamine and fentanyl, officer's testimony that a witness was unavailable because he had

died of an overdose does not imply that the Defendant had murdered him. If error, it was harmless. USA v. Fey, *et. al*, No. 22-11373 (11th Cir. 12/28/23) http://media.ca11.uscourts.gov/opinions/pub/files/202211373.pdf

COSTS: Court may assess a mandatory prosecution cost without a request by the State. Littleton v. State, 1D2022-2061 (12/27/23) http://1dca.flcourts.gov/content/download/1408377/opinion/Opinion_2022-2061.pdf

APPELLATE RULES-AMENDMENT: Minor tweaks to appellate rules. In Re: Amendments to Florida Rules of Appellate Procedure 9.020 and 9.400, No. SC2023-0836 (12/21/23) https://supremecourt.flcourts.gov/content/download/1351231/opinion/Opinion_SC2023-0836.pdf

COSTS: Court may not impose cost of investigation without a request by State. Collake v. State, 5D22-1453 (12/21/23) https://5dca.flcourts.gov/content/download/1351560/opinion/Opinion_22-1453.pdf

LIMITATION OF ACTIONS: Prosecution is deemed to have commenced when an information is filed, provided the capias, summons, or other process is executed without unreasonable delay. In evaluating whether a delay in execution is reasonable, inability to locate the defendant after diligent search from the state shall be considered. §775.15(4)(b). The period of limitation does not run during any time when the defendant has no reasonably ascertainable place of abode or work within the state. §775.15(5), But each subsection operates independently from the other. Where Defendant does not have a reasonably ascertainable place of abode or work, regardless of whether a diligent search occurred, the statue of limitations is not tolled. Whittamore v. State, 5D23-3126 (12/21/23)

https://5dca.flcourts.gov/content/download/1351572/opinion/Opinion_23-

3126.pdf

WRIT OF PROHIBITION: Prohibition is an extraordinary remedy employed only when necessary to prevent courts from acting where there is no jurisdiction to act (rather than to prevent an erroneous exercise of jurisdiction). This discretionary writ is narrow and to be issued by Florida courts with great caution and only in emergencies where there is no other appropriate and adequate legal remedy. Whittamore v. State, 5D23-3126 (12/21/23) https://5dca.flcourts.gov/content/download/1351572/opinion/Opinion_23-3126.pdf

SEARCH AND SEIZURE-HIGH WATERS: Right-of-approach questioning is authorized by international law and can be conducted by law enforcement in international waters as a matter of course to ascertain the nationality of a vessel. USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

JURISDICTION-HIGH SEAS: A vessel is subject to the jurisdiction of the United States if it is a vessel without nationality or a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law. A person charged with violating the Maritime Drug Law Enforcement Act (MDLEA) does not have standing to raise a claim of failure to comply with international law; only a foreign nation may assert it. USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

JURISDICTION-HIGH SEAS: "We do not patrol the world's oceans, asserting jurisdiction over wrongdoers wherever they may be found regardless of citizenship or flag of nationality. . .To do so would create an untenable fish-eat-fish environment." But "limiting our Coast Guard to only patrolling United States waters or approaching only vessels flying the United States flag—risks transforming international waters into aquatic avenues for piracy, and illegal smuggling of illicit drugs, weapons, and humans. USA v. Acosta Hurtado,

No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

SEARCH AND SEIZURE: The Fourth Amendment does not apply to people who are not United States citizens or resident aliens and who are searched or seized by United States law enforcement outside the United States. USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

DICTA/HOLDING: "Our circuit law is rock-solid and clear as a mountain stream that the only statements in, or parts of, an opinion that are holdings are those that are necessary to the result of the decision that the opinion accompanies." Statements that are not necessary to the result are dicta. "And neither we nor anyone else is required to follow dicta, not even a few steps down the decisional path." USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

DICTA/PRIOR PANEL PRECEDENT RULE: Under the prior panel precedent rule, each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled *en banc*, or by the Supreme Court. This is true even of erroneous precedent. However, the Tinoco decision, which erroneously, or needlessly, conducted a Fourth Amendment analysis should not be followed because it is dicta, not a holding. "This Court should continue to apply the Supreme Court's Verdugo-Urquidez decision as though there was no holding in the Tinoco case about whether Fourth Amendment protections apply to foreign crew aboard foreign vessels in international waters. Which there wasn't." USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

UNECESSARY DELAY: To establish a violation of a defendant's Fifth Amendment rights, the defendant must show that pre-indictment delay caused

him actual substantial prejudice and that the delay was the product of a deliberate act by the government designed to gain a tactical advantage. A delay of a month and a half before bringing the detained drug smuggling crew to shore for arrest–their unseaworthy ship had sunk after the bales of cocaine were found–was not unlawful. USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

OUTRAGE0US CONDUCT DEFENSE: In theory, the outrageous government conduct defense exists only when law enforcement somehow causes the defendant to engage in criminal conduct in a way that violates that fundamental fairness, shocking to the universal sense of justice, mandated by the due process clause of the fifth amendment. "Outrageous conduct is only a potential defense in this circuit because neither the Supreme Court nor this Court has ever found it to actually apply." Like Sasquatch, its actual existence has never been confirmed. "Acosta Hurtado has not found Sasquatch, or—more appropriately here—the Kraken." USA v. Acosta Hurtado, No. 21-12702 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112702.pdf

WILLFULNESS: To prove willfulness for violating export control laws, prosecutors may present evidence that the United States engaged in affirmative efforts to warn the defendant of the regulatory requirement he later violated or that the defendant's conduct indicated that he knew of the fact that a regulation or statute prohibited his conduct at the time he engaged in it. USA v. Solis, No. 22-10256 (11th Cir. 12/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210256.pdf

EVIDENCE-OPINION: An expert may not opine that a Defendant broke the law or did an act knowingly. An expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. An expert witness can give his opinion about an ultimate issue so long as he does not

tell the jury what result to reach. Witness's testimony that he had never seen a case with "this level of willfulness" was improper but unobjected, and not plain error. USA v. Solis, No. 22-10256 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210256.pdf

OPENING THE DOOR-OPINION: Defendant opened the door to Government asking the witness to compare Defendant's willfulness with his experience in other cases by asking whether he could charged Defendant with civil penalties instead of criminal penalties. USA v. Solis, No. 22-10256 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210256.pdf

SENTENCING GUIDELINES-EXPORT CONTROL: The base level guidelines calculation for a defendant convicted of violation of export control laws by selling closed circuit rebreathers (scuba gear which does not emit bubbles) to Libya without a license, should not have 2M5.2(a)(1) (base level 26), but rather §2M5.1(a)(1). The former applies to exportation of military equipment. The latter applies to the export of ordinary commercial goods or dual-use goods (which may have military applications). But error is harmless because the latter still increases the base level to 26 because the offense involved a financial transaction with a country supporting international terrorism. USA v. Solis, No. 22-10256 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210256.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: Although a district court must avoid unwarranted sentence disparities among similarly situated defendants, a well-founded claim of disparity assumes that apples are being compared to apples. USA v. Solis, No. 22-10256 (11th Cir. 12/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210256.pdf

COST OF PROSECUTION: State is not required to request the imposition of the $100 mandatory state attorney cost. Swearengin v. State, 1D2022-2463 (12/20/23)

https://1dca.flcourts.gov/content/download/1341611/opinion/Opinion_2022-2463.pdf

COST OF PROSECUTION: State is not required to request the mandatory cost of prosecution before the trial court may assess it. Cummings v. State, 1D2022-2823 (12/20/23)
https://1dca.flcourts.gov/content/download/1341616/opinion/Opinion_2022-2823.pdf

COST OF DEFENSE: $150 public defender is unlawful absent evidence supporting it. Cummings v. State, 1D2022-2823 (12/20/23)
https://1dca.flcourts.gov/content/download/1341616/opinion/Opinion_2022-2823.pdf

COSTS-FIRST STEP: Court may not assess the $1 per month Florida First Step costs without reference to statutory authority. Cummings v. State, 1D2022-2823 (12/20/23)
https://1dca.flcourts.gov/content/download/1341616/opinion/Opinion_2022-2823.pdf

COSTS: $2 cost for criminal justice education is proper despite the trial court citing to the wrong local ordinance in the written order. There can be no prejudice where the ordinance exists. Getzlaff v. State, 1D2022-2952 (12/20/23)
https://1dca.flcourts.gov/content/download/1341618/opinion/Opinion_2022-2952.pdf

TWELVE PERSON JURY-CAPITAL FELONY: All capital cases shall be tried by twelve-person juries, and all other criminal cases shall be tried by six-person juries. While the crime of sexual battery upon a child is labelled a capital felony, it was not a capital case prior to October 1, 2023. The punishment in effect at the time of the crime controls the penalty at sentencing. Morales-Alaffita v. State, 2D22-1653 (12/20/23)

https://2dca.flcourts.gov/content/download/1341577/opinion/Opinion_22-1653.pdf

SYNTHETIC MARIJUANA: Tetrahydrocannabinol ("THC") derived from the flowers or stems of a cannabis plant does not qualify as a "synthetic cannabinoid." "Synthetic" means "[n]ot natural or genuine." So cereal bars with THC in them, which may have come from genuine marijuana, cannot sustain a conviction for trafficking in 25 and 2,000 pounds of synthetic cannabinoids (*editorial note: That's a lot of cereal bars!*). State v. Arshadnia, 3D22-524 (12/20/23)
https://3dca.flcourts.gov/content/download/1345799/opinion/Opinion_2022-0524.pdf

STATUTORY INTERPRETATION: Courts should presume that the legislature says in a statute what it means and means what it says, even if it "requires an excursion through a maze of dense statutory language that appears, at first blush, nearly impenetrable." State v. Arshadnia, 3D22-524 (12/20/23)
https://3dca.flcourts.gov/content/download/1345799/opinion/Opinion_2022-0524.pdf

MANDATORY MINIMUM: Where jury found that during the course of the commission of an enumerated felony the Defendant discharged a firearm resulting in the death or great bodily harm upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of between 25 years and life. Bailey v. State, 3D23-1759 (12/20/23)
https://3dca.flcourts.gov/content/download/1344510/opinion/Opinion_2023-1759.pdf

JOA-MURDER: Where Defendant is convicted of hiring a hitman to fake a home invasion and shoot his wife in bed, direct testimony, notwithstanding prior inconsistent statements by the witnesses, do not support a judgment of acquittal. A prior inconsistent statement is not substantive evidence of guilt

and standing alone is insufficient to sustain a conviction without corroborating evidence, but direct trial testimony is. A witness's statements at trial may still sustain a conviction even if the witness admitted to previously lying during an investigation. Jenkins v. State, 4D2022-1423 (12/20/23)

https://4dca.flcourts.gov/content/download/1341602/opinion/Opinion_2022-1423.pdf

COSTS-PROSECUTION: The cost of prosecution cannot be less than $100 if a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The State must request the cost of prosecution if it is higher than the statutory minimum. Cabrera v. State, 4D2022-3105 (12/20/23)
https://4dca.flcourts.gov/content/download/1346316/opinion/Opinion_2022-3105.pdf

INVESTIGATIVE COSTS: Court may not impose investigative costs unless requested by the State or by the law enforcement agency. Beauford v. State, 4D 2023-1320 (12/20/23)
https://4dca.flcourts.gov/content/download/1345016/opinion/Opinion_2023-1320.pdf

FEDERAL REMOVAL-FORMER OFFICIALS: The federal-officer removal statute, 28 U.S.C. §1442(a)(1), protects an officer of the United States from having to answer for his official conduct in a state court. It provides a right of removal to federal court if a defendant proves that he is a federal officer, his conduct underlying the suit was performed under color of federal office, and he has a colorable federal defense. It does not apply to *former* federal officers, and even if it did, Defendant's participation in an alleged conspiracy to overturn a presidential election was not related to his official duties. State of Georgia v. Meadows, No. 23-12958 (11th Cir. 12/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202312958.pdf

FEDERAL REMOVAL-ELECTION CONSPIRACY: Participation in a conspiracy to overturn an election by a person holding office is not acting under color of office. The "color of office" element requires acts to be done "in enforcement of federal law." Conspiring to overturn a democratic election is not authorized by the law of the United States. "We cannot rubber stamp Meadows's legal opinion that the President's chief of staff has unfettered authority." The White House Chief of Staff has no role in supervising state elections. State of Georgia v. Meadows, No. 23-12958 (11th Cir. 12/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312958.pdf

HATCH ACT: The Hatch Act applies to the President and his Chief of Staff. The Hatch Act limits a federal officer's electioneering. "Meadows cannot have it both ways. He cannot shelter behind his testimony about the breadth of his official responsibilities, while disclaiming his admissions that he understood electioneering activity to be out of bounds. . .[He recognized] that such activities were forbidden to him as chief of staff." State of Georgia v. Meadows, No. 23-12958 (11th Cir. 12/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312958.pdf

ELECTION INTERFERENCE: "Neither the Constitution. . ., nor any federal statute, nor any precedent permits the President's chief of staff to oversee, disrupt, or change the state results of presidential elections. . .At bottom, whatever the chief of staffs role with respect to state election administration, that role does not include altering valid election results in favor of a particular candidate." State of Georgia v. Meadows, No. 23-12958 (11th Cir. 12/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312958.pdf

FEDERAL REMOVAL (J. ROSENBAUM, CONCURRING): "[F]oreclosing removal when states prosecute former federal officers simply for performing their official duties can allow a rogue state's weaponization of the prosecution power to go unchecked and fester. . .This nightmare scenario keeps me up at night. In my view, not extending the federal-officer removal statute to former officers for prosecutions based on their official actions during their

tenure is bad policy, and it represents a potential threat to our republic's stability." "I respectfully urge Congress to amend Section 1422(a)(1) to protect former federal officers." State of Georgia v. Meadows, No. 23-12958 (11th Cir. 12/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202312958.pdf

FRESH PURSUIT: Officer who begins pursuit in his geographic jurisdiction may continue into the next to complete the arrest (§901.25(2)). State v. Reddin, 2D22-3853 (12/15/23)

https://2dca.flcourts.gov/content/download/1303171/opinion/Opinion_22-3853.pdf

APPEAL-DISMISSAL: State may appeal a mid-trial dismissal based on grounds unrelated to guilt or evidence (here, that officer lacked extra-territorial jurisdiction to make the arrest). State v. Reddin, 2D22-3853 (12/15/23)

https://2dca.flcourts.gov/content/download/1303171/opinion/Opinion_22-3853.pdf

JUDGE-ROLE: A judge must not independently investigate facts in a case and must consider only the evidence presented. Likewise, a court is not authorized to become a party's advocate and raise a legal issue sua sponte. State v. Reddin, 2D22-3853 (12/15/23)

https://2dca.flcourts.gov/content/download/1303171/opinion/Opinion_22-3853.pdf

PLEA-WITHDRAWAL: Once a defendant indicates his desire to avail himself of the rule 3.170(l) procedure to withdraw his plea, the trial court must

appoint conflict-free counsel to advise and assist. Welch v. State, 2D22-3991 (12/15/23)

https://2dca.flcourts.gov/content/download/1303174/opinion/Opinion_22-3991.pdf

POST CONVICTION RELIEF-TOLLING: The two-year time limit of R. 3.850 is tolled while a petition seeking Supreme Court review of the DCA's opinion is pending. Treadwway v. State, 2D23-1690 (12/15/23)

https://2dca.flcourts.gov/content/download/1303188/opinion/Opinion_23-1690.pdf

POST CONVICTION RELIEF: A fact-based challenge to the lawfulness of a conviction is not cognizable in a R 3.800(a) motion and should be raised in a R. 3.850 motion. Villalba-Santos v. State, 5D23-2226 (12/15/23)

POST CONVICTION RELIEF-CREDIT FOR TIME SERVED: A court summarily denying a R. 3.801 motion must attach portions of the record that conclusively refute it. Hurlburt v. State, 5D23-2454 (12/15/23)

https://5dca.flcourts.gov/content/download/1303193/opinion/Opinion_23-2454.pdf

TIME TRAVEL: Time travel has long been popular in literature and pop culture, *c.f.* H.G. Wells's The Time Machine; Quantum Leap; Shakespeare's The Tragedy of MacBeth ("If you can look into the seeds of time."). "Every once in a while, the possibility of going back in time becomes a reality in law, and courts are faced with trying to figure out how an alternative legal reality would have played out in the past." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

FIRST STEP ACT: §404(b) of the First Step Act gives a defendant an opportunity to go back and avail himself of reduced statutory penalties for crack cocaine offenses that were implemented after the sentences became final as if they applied at the time of the commission of the offense, but a defendant may not challenge a drug-quantity finding made at his original sentencing on the ground that he would have disputed the calculation had he known then that the statutory sentencing thresholds would be lowered in the future. A movant cannot relitigate factual predicates for sentencing enhancements in a First Step Act motion "[H]e is bound by ink past spilled." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

DUE PROCESS: "[D]ue process [does not] require[] that a defendant receive notice at the time of sentencing of how hypothetical, future, and ameliorative criminal legislation might affect his rights, even though the terms of such legislation are then unknown. The argument is creative, but it fails." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

ORACLES: "Courts are not oracles of things to come, and it is impossible for them to provide notice of a hypothetical future law whose passage is at best uncertain and whose operative text is anyone's guess." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

ORACLES (J.GRIMBERG, CONCURRING): "[W]hile courts are not oracles of things to come, neither are criminal defendants." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

PHRASE OF THE DAY: "a clairvoyant Due Process Clause." USA v. McCoy, No. 21-13838 (12/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113838.pdf

WRIT 0F PROHIBITION/ALL WRITS-DEATH PENALTY-UNANIMOUS RECOMMENDATION: Defendant may not challenge by petition for writ the retroactive application of the amended statute which authorizes the death penalty upon the recommendation of eight or more jurors. Gonzalez v. State, SC2023-0740 (12/14/23)

https://supremecourt.flcourts.gov/content/download/1294174/opinion/Opinion_SC2023-0740.pdf

RULES-AMENDMENT-LEGAL EDUCATION-APPELLATE JUDGE: New appellate judges' participation in Phase I of the Florida Judicial

College is discretionary rather than mandatory. In Re: Amendment to Florida Rule of General Practice and Judicial Administration 2.320, SC2023-1612 (12/14/23)

https://supremecourt.flcourts.gov/content/download/1294275/opinion/Opinion_SC2023-1612.pdf

INDUCING MINOR INTO PROSTITUTION: Defendant may be found guilty

of inducing minor to engage in prostitution for having paid sex with a minor who was already working as a prostitute. The fact that she had already engaged in prostitution does not mean that she, by definition, could not be persuaded, induced, enticed, or coerced into doing the same at a later point. Her willingness to engage in prostitution was not proof that she was incapable of being persuaded to do so. USA v. Kincherlow, No. 22-11980 (12/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211980.pdf

INDUCING MINOR INTO PROSTITUTION: Offering or agreeing to pay money in exchange for engaging in various sex acts qualifies as inducement. Acts of prostitution, especially by minors, are not naturally occurring, spontaneous events. USA v. Kincherlow, No. 22-11980 (12/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211980.pdf

INDUCING MINOR INTO PROSTITUTION-JURY INSTRUCTION: Jury instruction that the definition of "induce" means "to stimulate the occurrence of or to cause" is appropriate. The meaning of "induce" is broader than, not synonymous with, the word 'persuade." USA v. Kincherlow, No. 22-11980 (12/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211980.pdf

AND/OR: Where a statute lists multiple means of committing the offense and the government's indictment against the defendant charges two or more of them conjunctively, the government may prove one or more of them at trial in the disjunctive. Every federal circuit allows charging in the conjunctive and proving in the disjunctive. USA v. Kincherlow, No. 22-11980 (12/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211980.pdf

COSTS-PER COUNT/PER CASE: $50 cost for Crimes Compensation Fund (§938.03) may be assessed per case, not per count. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: Costs of prosecution/investigation (§938.27) are assessed per case, not per count. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: General costs–$225 for felonies, $60 for misdemeanors and criminal traffic offenses (§938.05(1)1a)–are assessed per case, not per count. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: Additional Court Cost Clearing Trust Fund--$3.00 (§938.01)–is assessed per count, not per case. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: Criminal Justice Education Degree Programs and Training Courses cost Additional Court Cost Clearing Trust Fund--$2.00 (§938.15)–is assessed per count, not per case. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: Fleeing and Eluding cost--$3.00 (§318.18(11)(b)–is assessed per count, not per case. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: Additional county approved cost–up to $65.00 (§939.185)–may be assessed per count, not per case, depending on the wording of the ordinance. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

COSTS-PER COUNT/PER CASE: General cost §775.083(2)--$50.00 (§318.18(11)(b)–is assessed per count, not per case. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

FINES/COSTS: Discretionary fines not orally imposed discretionary must be

stricken. Whitley v. State, 1D2021-1110 (12/13/23)

https://1dca.flcourts.gov/content/download/1288710/opinion/Opinion_2021-1110.pdf

EVIDENCE-RELEVANCE-POSSESSION BY PASSENGER: Where Defendant's defense was that he had the meth in his pocket to keep it away from his addict passenger, Court properly excluded evidence that passenger had drugs, too. Washington v. State. 1D2022-3073 (12/13/23)

https://1dca.flcourts.gov/content/download/1288722/opinion/Opinion_2022-3073.pdf

TEMPORARY POSSESSION-LEGAL DISPOSAL: Where Defendant claimed that he had the meth in his pocket to keep it away from his addict passenger, he is not entitled to a jury instruction on temporary possession for legal disposal because he did not seek to legally dispose of it. Washington v. State. 1D2022-3073 (12/13/23)

https://1dca.flcourts.gov/content/download/1288722/opinion/Opinion_2022-3073.pdf

TEMPORARY POSSESSION-LEGAL DISPOSAL: The standard jury instruction on temporary possession for legal disposal is not necessarily legally correct. Washington v. State. 1D2022-3073 (12/13/23)

https://1dca.flcourts.gov/content/download/1288722/opinion/Opinion_2022-3073.pdf

POST CONVICTION RELIEF-AMENDMENT: Amended motions for post

conviction relief are subject to the two-year time limit for filing rule 3.850 motions unless they merely enlarge an issue or issues raised in the original motion. Court may not dismiss an amended motion on the ground that it had already given the Defendant an opportunity to amend where the court never put him on notice that his claims were facially insufficient and did not provide him with "a meaningful opportunity to amend. Matthews v. State, 2D23-1247 (12/13/23)

https://2dca.flcourts.gov/content/download/1286967/opinion/Opinion_23-1247.pdf

PLEA WITHDRAWAL: A defendant who is allowed to withdraw his plea must either withdraw his plea to all charges or to none when his plea to all charges was part of an agreement with the State. Matthews v. State, 2D23-1247 (12/13/23)

https://2dca.flcourts.gov/content/download/1286967/opinion/Opinion_23-1247.pdf

TWELVE PERSON JURY: The question of whether a Defendant is entitled to a twelve-person jury is currently the subject of a petition for certiorari to the United States Supreme Court. Ryan v. State, 3D23-0589 (12/13/23)

https://3dca.flcourts.gov/content/download/1287208/opinion/Opinion_2023-0589.pdf

SENTENCING-CONSIDERATIONS: A judge may evaluate whether a defendant's in-court statements contained falsehoods and, if so, assess that fact along with all of the other sentencing considerations Court did not err in

considering, among other things, Defendant's pretrial counteroffer to immediately have all the charges dismissed and the officers to write an apology letter published in the Miami Herald. Ryan v. State, 3D23-0589 (12/13/23)

https://3dca.flcourts.gov/content/download/1287208/opinion/Opinion_2023-0589.pdf

APPEAL-PRESERVATION-OPINION: Questioning officers about who they viewed as the aggressor improperly invaded the province of the jury but may not be raised on appeal if it was not objected to. Error is not fundamental. Hayden v. State, 5D23-554 (12/8/23)

https://5dca.flcourts.gov/content/download/1242053/opinion/Opinion_23-0554.pdf

APPEAL: Only dispositive issues may be reserved and appealed. Failure to give a requested jury instruction is not dispositive. Arena v. State, 6D23-1288 (12/8/23)

https://6dca.flcourts.gov/content/download/1242533/opinion/Opinion_23-1288.pdf

RULES-AMENDMENT: There must be a stipulation or a jury finding before the court can sentence a defendant to prison under §775.082(10) In Re: Amendments to Florida Rules of Criminal Procedure 3.030 and 3.704, SC2023-0502 (12/7/23)

https://supremecourt.flcourts.gov/content/download/1235369/opinion/Opinion_SC2023-0502.pdf

RULES-AMENDMENT: If the lowest permissible sentence exceeds the statutory maximum for an individual felony offense, the lowest permissible sentence replaces the statutory maximum and must be imposed for that offense. Sentences for multiple felony offenses may be imposed concurrently or consecutively. In Re: Amendments to Florida Rules of Criminal Procedure 3.030 and 3.704, SC2023-0502 (12/7/23)

https://supremecourt.flcourts.gov/content/download/1235369/opinion/Opinion_SC2023-0502.pdf

RULES-JUVENILE-AMENDMENT: Rules tweaked. The Spanish and Creole translations of forms are deleted. In Re: Amendments to Florida Rules of Juvenile Procedure-2023 Legislation, SC2023-1371 (12/7/23)

https://supremecourt.flcourts.gov/content/download/1235371/opinion/Opinion_SC2023-1371.pdf

COSTS-CITATION-STARE DECISIS: A citation to the applicable ordinances in the written order is not required for the imposition of municipal ordinance costs. Contrary precedent dismissed as confused and mistaken ("there is little doubt that the language we used. . .could cause confusion"). King v. State, 5D21-2985 (12/7/23)

https://5dca.flcourts.gov/content/download/1235439/opinion/Opinion_21-2985.pdf

DUE PROCESS MINIMIZED: The requirement to disclose the authority for the imposition of each cost is based in due process, but due process is flexible and calls for only such procedural protections as the particular situation demands. The requirements of due process of law are not technical, nor is any particular form of procedure necessary. The very nature of due

process negates any concept of inflexible procedures universally applicable to every imaginable situation. King v. State, 5D21-2985 (12/7/23)

https://5dca.flcourts.gov/content/download/1235439/opinion/Opinion_21-2985.pdf

DUE PROCESS-HUH?: "[G]iven our conclusion that the requirement for a citation to authority is based on due process, we reject any technical requirement that citation to local authority must always appear in every written cost order. While a citation in the written order might be the best practice, due process is satisfied, and appellate review possible, when there is citation to authority in the record or when the basis for each cost is otherwise evident in the record." King v. State, 5D21-2985 (12/7/23)

https://5dca.flcourts.gov/content/download/1235439/opinion/Opinion_21-2985.pdf

HUH?-(J. PRATT, CONCURRING): A defendant's inability to ascertain the legal basis for a cost, whether from the record or from the written order, does not in itself preclude him from meaningfully challenging it. King v. State, 5D21-2985 (12/7/23)

https://5dca.flcourts.gov/content/download/1235439/opinion/Opinion_21-2985.pdf

FUNDAMENTAL ERROR-EVIDENCE: Admission of the statement of the witness, to whom victim disclosed sexual abuse, ("I know that, through my experiences. . .it's very normalized behavior upon men."), if error, is not fundamental error. Rivas v. State, 1D2022-2485 (12/6/23)

https://1dca.flcourts.gov/content/download/1228252/opinion/Opinion_2022-2485.pdf

FUNDAMENTAL ERROR-EVIDENCE: Testimony of nurse practitioner that the tear in the victim's hymen occurred from some penetrating force and that "probably over 90 percent of [children] do not have injuries to their genitalia at all because of the nature of the vagina and how much it can stretch" is not error, or if error, it is not fundamental error. Rivas v. State, 1D2022-2485 (12/6/23)

https://1dca.flcourts.gov/content/download/1228252/opinion/Opinion_2022-2485.pdf

RECKLESS DRIVING: Six-month probationary sentence for reckless driving does not exceed the maximum lawful sentence. Daughrey v. State, 1D2022-2881 (12/6/23)

https://1dca.flcourts.gov/content/download/1227902/opinion/Opinion_2022-2881.pdf

PROBATION-CONDITIONS: Court may not impose probation conditions in a written order filed more than sixty days after sentencing, regardless whether they require oral pronouncement. "While the State is correct that the contested conditions did not require oral pronouncement, they did need to be timely imposed." Daughrey v. State, 1D2022-2881 (12/6/23)

https://1dca.flcourts.gov/content/download/1227902/opinion/Opinion_2022-2881.pdf

ATTORNEY-APPEAL: Attorney who failed to file his initial brief reprimanded

and referred to The Florida Bar for disciplinary proceedings. D.A.N. a child v. State, 1D2022-3553 (12/6/23)

https://1dca.flcourts.gov/content/download/1227623/opinion/Opinion_2022-3553.pdf

MOTION TO CORRECT-APPEAL: Trial court lacks jurisdiction to decide the merits of a R. 3.800(a) motion while a direct appeal is already pending. Madson v State, 2022-4013 (12/6/23)

https://1dca.flcourts.gov/content/download/1228326/opinion/Opinion_2022-4013.pdf

HEARSAY: Officer's testimony that another officer told him that the B.B. gun had a CO2 cartridge is inadmissible hearsay, but error is harmless because the fact that the gun was recovered without BBs, pellets, or a gas cartridge is not dispositive. M.D.M. v. State, 2D22-3945 (12/6/23)

https://2dca.flcourts.gov/content/download/1227867/opinion/Opinion_22-3945.pdf

HEARSAY-SPONTANEOUS STATEMENT: The spontaneous statement exception to the hearsay rule requires that the statement be made not only contemporaneously, but also spontaneously, i.e., without the declarant first engaging in reflective thought. The spontaneity requirement is more than merely temporal, focusing also on the absence of reflective thought. To allow one deputy to testify that he heard another say there was a CO2 capsule in the B.B. gun while inspecting evidence allow the spontaneous statement exception to swallow the rule. M.D.M. v. State, 2D22-3945 (12/6/23)

https://2dca.flcourts.gov/content/download/1227867/opinion/Opinion_22-3945.pdf

COMPETENCY HEARING: Defendant's absence from the *nunc pro tunc* competency hearing, in which court ruled that the sbsent expert would have testified consistently with the psych eval report, is not fundamental error. Farmer v. State, 3D22-1175 (12/6/23)

https://3dca.flcourts.gov/content/download/1233803/opinion/Opinion_2022-1175.pdf

EVIDENCE-INEXTRICABLY INTERTWINED-CHILD PORN: Statements in text messages by both the defendant and another suspect referring to sexual fantasies both men have is inextricably intertwined, and were improperly excluded by order in limine. Inextricably intertwined evidence is evidence necessary to: (1) adequately describe the deed; (2) provide an intelligent account of the crime(s) charged; (3) establish the entire context out of which the charged crime(s) arose; or (4) adequately describe the events leading up to the charged crime(s). The question is whether such evidence is necessary to accomplish any of the four objectives described above. State v. Hubbs, 3D2022-3048 (12/6/23)

https://4dca.flcourts.gov/content/download/1233957/opinion/Opinion_2022-3048.pdf

APPEAL-PLEA-PRESERVATION: A defendant who pleads guilty with no express reservation of the right to appeal a legally dispositive issue shall have no right to a direct appeal. Defendant who lost jury trial then entered into a negotiated plea on other charges with an agreed sentence on all cases may not appeal issues from the jury trial. Kandler v. State, 4D2022-2206 (12/5/23)

https://4dca.flcourts.gov/content/download/1229805/opinion/Opinion_2022-2206.pdf

DOUBLE JEOPARDY: Double jeopardy analysis must be conducted without regard to the accusatory pleading or the proof adduced at trial, even where an alternative conduct statute is implicated. Gaffney v. State, 5D23-853 (12/5/23)

https://5dca.flcourts.gov/content/download/1218619/opinion/Opinion_23-0853.pdf

USELESS KNOWLEDGE: Tallahassee and Jacksonville are separated by about 160 miles of interstate highway (and two Busy Bee fuel-and-convenience destination stops). Byrd v. Black Voters Matter, 1D2023-2252 (12/1/23)

https://1dca.flcourts.gov/content/download/1183075/opinion/Opinion_2023-2252.pdf

COUNSEL: It is fundamental error not to renew the offer of assistance of counsel before sentencing. Franklin v. State, 5D22-1996 (12/1/23)

https://5dca.flcourts.gov/content/download/1180919/opinion/Opinion_22-1996.pdf

INFORMATION: Because the substance of the verdict form and written judgment accurately reflect the charge in the Amended Information, the use of the word "aggravated" in each of the aforementioned documents does not on its own make the sentence illegal. Where the information's introductory summary of count II says Aggravated Fleeing or Attempting to Elude a Law Enforcement Officer, but the body does not use the term "aggravated," and tracks the pertinent language of the statute, the erroneous use of the word "aggravated" in the introductory summary, verdict, and judgment are mere scrivener's errors. Thomas v, State, 5D23-0684 (12/1/23)

https://5dca.flcourts.gov/content/download/1180921/opinion/Opinion_23-0684.pdf

MOTION TO CORRECT ILLEGAL SENTENCE: Where Defendant in a drive-by shooting was found guilty of second degree murder, attempted murder and other offenses, all with special verdict forms which did not find that he possessed a firearm, and also possession of a firearm by a felon with a finding of actual possession, the murder/attempted murder charges cannot be reclassified. The lack of any jury finding that a defendant used a weapon typically precludes reclassification, particularly when the jury is given special interrogatories and renders an affirmative finding that the defendant did not possess a firearm, even if that finding contravenes the evidence. Jacoby v. State, 5D23-1362 (12/1/23)

https://5dca.flcourts.gov/content/download/1180923/opinion/Opinion_23-1362.pdf

INCONSISTENT VERDICT: A true inconsistent verdict requires more than just factual or logical inconsistency. Although logically there was no way Defendant could have committed the murder and attempted murder without possessing and discharging a firearm, that does not make the verdict truly inconsistent. Jacoby v. State, 5D23-1362 (12/1/23)

https://5dca.flcourts.gov/content/download/1180923/opinion/Opinion_23-1362.pdf

SECOND DEGREE MURDER-PRISON RELEASEE REOFFENDER: Because second-degree murder is a first degree felony punishable by life in prison, once the court finds that Defendant qualifies as a PRR, it is required to sentence him to life. Jacoby v. State, 5D23-1362 (12/1/23)

https://5dca.flcourts.gov/content/download/1180923/opinion/Opinion_23-1362.pdf

NOVEMBER 2023

RESENTENCING-JUVENILE OFFENDER-JURY: A trial court, on remand after making an Alleyne error, is not foreclosed from empaneling a jury to make a factual determination that affects the legally prescribed range of allowable sentences. Upon resentencing, where Defendant, a juvenile offender, had been convicted of felony murder without a finding that he actually killed the victim (the trial predated Miller/Horsley and the amendments to the statutes on life sentences for juvenile offenders), the Court may neither find by itself that Defendant was the actual killer nor treat him as though he were not. Rather, a new jury must be empaneled to make the determination, unless the error is harmless. State v. Manago, SC2021-1047 (11/30/23)

https://supremecourt.flcourts.gov/content/download/1172656/opinion/Opinion_SC2021-1047.pdf

RESENTENCING-JUVENILE OFFENDER-JURY (J. LABARGA, DISSENTING): "I fundamentally disagree with the majority's conclusion that double jeopardy concerns are not implicated when a resentencing court empanels a new jury to find the facts necessary for sentencing under section 775.082(1)(b)1.. . .[I]t is difficult to view empaneling a jury here as something other than a second bite at the apple." State v. Manago, SC2021-1047 (11/30/23)

https://supremecourt.flcourts.gov/content/download/1172656/opinion/Opini

on_SC2021-1047.pdf

PHRASE OF THE DAY: "precedential juggernaut" USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

PRECEDENT: Decisions of the Supreme Court construing substantive federal criminal statutes must be given retroactive effect. A new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final. Appellate court will not invoke the doctrine of invited error in a criminal appeal involving an instructional error in defining a substantive offense flowing directly from our longstanding and clear precedent and attributable to both parties. USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

PILL MILL: When it comes to whether a physician acted outside the usual course of professional practice, the appropriate focus is on the subjective intent of the doctor in dispensing controlled substances. To establish criminal liability under §841, it is not enough for the government to prove that a defendant acted outside the usual course of professional practice by violating an objective standard of care. Rather, the government must prove that the defendant knowingly or intentionally acted in an unauthorized manner—that he knew he was acting outside the usual course of professional practice or intended to.
USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

DEFINITION- "REASONABLE PROBABILITY": A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. A reasonable probability is less than a preponderance.
USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

INVITED ERROR: The doctrine of invited error applies when an error is attributable to the action of the defense. Someone who invites a court down the primrose path to error should not be heard to complain that the court accepted its invitation. But the doctrine does not apply to an erroneous jury instruction where the "error" invited by a party relied on settled law that changed while the case was on appeal. USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

PRIOR PANEL PRECEDENT RULE: The prior panel precedent rule compels an appellate panel to obey the holding of the first panel in the Circuit to address an issue unless and until the first panel's opinion is overruled or undermined to the point of abrogation by the Supreme Court or by the appellate court sitting en banc. A different circuit's decision does not implicate the prior precedent rule. USA v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013973.op2.pdf

CIVIL RESTITUTION LIEN-PUBLIC DEFENDER: Public Defender may not represent prisoner in defending against a civil restitution lien sought by D.O.C.

Proceedings to impose civil restitution liens pursuant to §960.293 are civil in nature. Florida D.O.C. v. Holt, 2D23-729 (11/29/23)

https://2dca.flcourts.gov/content/download/1166097/opinion/Opinion_23-0729.pdf

POST CONVICTION RELIEF: Defendant's 3.850 motion filed 46 months after his conviction became final is untimely. Under narrow and exceptional circumstances, principles of due process may require permitting a defendant's otherwise untimely post conviction motion to
be considered on its merits, but not when Defendant asserts that the lateness was due to trial counsel withholding documents he needed, but in fact he had almost everything he wanted and did not request anything until 16 months after his convictions became final, leaving him eight months to file a timely motion. Gomez v. State, 3D23-0380 (11/29/23)

https://3dca.flcourts.gov/content/download/1175086/opinion/Opinion_2023-0380.pdf

DOUBLE JEOPARDY-LEWD EXHIBITION-JAIL: Defendant may be convicted for two counts of lewd or lascivious exhibition in the presence of a correctional facility employee for a single act of masturbation seen by two employees. The allowable unit of prosecution for §800.09 is the number of employees, not the number of lewd acts. Brown v. State, 4D2022-1488 (11/29/23)

https://4dca.flcourts.gov/content/download/1166465/opinion/Opinion_2022-1488.pdf

"A"-UNIT OF PROSECUTION": When the word "a" precedes the item

described in a statute, it is the intent of the Legislature to make each separate item subject to a separate prosecution; "when the word "any" precedes the item, an ambiguity may arise as to the intended unit of prosecution. Still, the unit of prosecution is not automatically rendered ambiguous whenever a statute uses the word "any." Brown v. State, 4D2022-1488 (11/29/23)

https://4dca.flcourts.gov/content/download/1166465/opinion/Opinion_2022-1488.pdf

COSTS: $100, not $200, is the cost of prosecution. Brown v. State, 4D2022-1488 (11/29/23)

https://4dca.flcourts.gov/content/download/1166465/opinion/Opinion_2022-1488.pdf

COSTS-LEWD EXHIBITION-JAIL: The $151 cost for the Rape Crisis Trust Fund and the $201 for the Domestic may not be imposed for of lewd or lascivious exhibition in the presence of a correctional facility employee (§800.09). Brown v. State, 4D2022-1488 (11/29/23)

https://4dca.flcourts.gov/content/download/1166465/opinion/Opinion_2022-1488.pdf

PATIENT BROKERING-UNIT OF PROSECUTION: The unit of prosecution for §817.505(1)(a) (patient brokering--paying for patient referrals or fee-splitting) is each payment made to induce the referral of patients or patronage. State v. DeSimone, 4D2022-2104 (11/29/23)

https://4dca.flcourts.gov/content/download/1174168/opinion/Opinion_2022-2104.pdf

A/ANY TEST: The "a/any test" to determine legislative intent should not be applied mechanically, but rather a common-sense approach should be followed to discern the intended unit of prosecution. State v. DeSimone, 4D2022-2104 (11/29/23)

https://4dca.flcourts.gov/content/download/1174168/opinion/Opinion_2022-2104.pdf

MOTION TO DISMISS: Court may not hold n evidentiary hearing on Defendant's R. 3.190(b) motion to dismiss) to determine the unit of prosecution for patient brokering. Motion should have been filed under R. 3.190(c)(4), which would have to be sworn to. State v. DeSimone, 4D2022-2104 (11/29/23)

https://4dca.flcourts.gov/content/download/1174168/opinion/Opinion_2022-2104.pdf

PLEA WITHDRAWAL: Defendant is not entitled to bring a motion to withdraw a plea pursuant to rule 3.170(f) upon court-ordered resentencing. R. 3.170(f) allows a plea to be withdrawn "before a sentence," but the rule does not apply to a re-sentencing hearing. If a motion to withdraw under rule 3.170(f) must be made before a sentence, then the only time that can occur is before the original sentence. Conflict certified. Saffold v. State, 4D2022-2399 (11/29/23)

https://4dca.flcourts.gov/content/download/1166468/opinion/Opinion_2022-2399.pdf

"A": The use of the word "a" in R. 3.170(f) does not mean that it applies to

"any sentencing proceeding." If "a" was to mean "any," then the article "any" should have been used. Saffold v. State, 4D2022-2399 (11/29/23)

https://4dca.flcourts.gov/content/download/1166468/opinion/Opinion_2022-2399.pdf

SENTENCING-REASONS: Prior opinion vacated pending *en banc review.* The prior opinion had required a new sentencing hearing because the trial court failed to explain the reasons for the upward variance (20 years) on the Defendant who, two months into probation, had strangled his girl friend on his (and the victim's daughter's) birthday and stored her body in a 55-gallon barrel in his home. USA v. Steiger, No. 22-10742 (11th Cir. 11/27/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210742.1.pdf

EVIDENCE-OTHER BAD ACTS: In cases involving child molestation, evidence of a defendant's commission of other acts of child molestation is admissible and may be considered subject to a relevancy determination. A trial court must consider whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. Court should at a minimum evaluate (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances. Ivey v. State, 1D2022-0841 (11/29/23)

https://1dca.flcourts.gov/content/download/1168085/opinion/Opinion_2022-0841.pdf

EVIDENCE-OTHER BAD ACTS: Testimony by victim's siblings that Defendant also sexually touched them in his home while serving as a caregiver during the same period as the victim's abuse is admissible. Ivey v. State, 1D2022-0841 (11/29/23)

https://1dca.flcourts.gov/content/download/1168085/opinion/Opinion_2022-0841.pdf

INJUNCTION-SEXUAL VIOLENCE: An anonymous phone call is not enough to constitute a report as required by §784.046(2)(c) of a sexual violence injunction. A petitioner has standing only if the sexual violence is reportd to a law enforcement agency and is cooperating in any criminal proceeding against the respondent. Kuschnitzky v. Marasco, 1D2022-1751 (11/29/23)

https://1dca.flcourts.gov/content/download/1167095/opinion/Opinion_2022-1751.pdf

DOWNWARD DEPARTURE-DURESS: For the purpose of a downward departure, duress usually involves some sort of coercion or threat. State v. McCall, 1D2022-2271 (11/29/23)

https://1dca.flcourts.gov/content/download/1167101/opinion/Opinion_2022-2271.pdf

APPEAL-INVOLUNTARY PLEA: Defendant may not claim on appeal that his plea was involuntary because trial counsel rendered ineffective assistance without filing a motion to withdraw plea. Hauser v. State, 1D2022-2787 (11/29/23)

https://1dca.flcourts.gov/content/download/1167093/opinion/Opinion_2022-2787.pdf

INEFFECTIVE APPELLATE COUNSEL: Appellate counsel cannot be ineffective for failing to raise an issue. A person who asserts ineffectiveness of counsel on appeal must show, first, that there were
specific errors or omissions of such magnitude that it can be said that they deviated from the norm or fell outside the range of professionally acceptable performance; and second, that the failure or deficiency caused prejudicial compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the outcome. Bedgood v. State, 1D2023-0035 (11/29/23)

https://1dca.flcourts.gov/content/download/1167096/opinion/Opinion_2023-0035.pdf

AND/OR: It is not fundamental error to include the "and/or" conjunction between the names of the victims in a jury instruction where the totality of the circumstances indicate that the language did not reach into the validity of the trial itself to the point that a guilty verdict could not have been obtained without it. Defendant who shoots, chokes and hits Victim I with a hatchet, and chokes and hits Victim II with his fists, the hatchet, and the gun–but does not shoot her–is properly convicted of attempted murder on both. Bedgood v. State, 1D2023-0035 (11/29/23)

https://1dca.flcourts.gov/content/download/1167096/opinion/Opinion_2023-0035.pdf

CREDIT FOR TIME SERVED: Court must award Credit for Time Served to a Defendant held in custody for the day of his sentence, rather than have that

day considered against the prison sentence. Defendant is entitled to 766 days, not 765 days, of jail credit against his sentences (25 years, life, and life, concurrent). A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time she or he spent in the county jail before sentence. Perez v. State, 2D22-746 (11/29/23)

https://2dca.flcourts.gov/content/download/1166090/opinion/Opinion_22-0746.pdf

NELSON HEARING: A Nelson hearing, where the trial court assesses counsel's competence, is required only when the defendant makes a clear and unequivocal statement before the commencement of trial that he wishes to discharge appointed counsel, the discharge request is based on a claim of incompetence, and the alleged ineffectiveness arises from counsel's current representation. Dissatisfaction with counsel's trial preparation, trial strategy, witness development, and contact with the defendant are not clear allegations of incompetency. A request to discharge counsel is untimely after the trial begins. Butler v. State, 2D22-3034 (11/29/23)

https://2dca.flcourts.gov/content/download/1166095/opinion/Opinion_22-3034.pdf

FARETTA HEARING: An adequate Faretta inquiry requires ensuring that the defendant knowingly and intelligently waives his right to counsel. This requires advising the defendant of the disadvantages and dangers of self-representation. Butler v. State, 2D22-3034 (11/29/23)

https://2dca.flcourts.gov/content/download/1166095/opinion/Opinion_22-3034.pdf

USELESS KNOWLEDGE II: Red is the color on which humans conducted their first color experiments, achieved their first successes, and then constructed a chromatic universe. Ponzio v. Pinon, No. 21-14503 (11th Cir. 11/27/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202114503.pdf

RULES-AMENDMENT-COMPETENCY: Rules amended to assure that a clinical assessment must be made to ensure the safety of the patient and the community, list specific possible treatment alternatives, and require the expert's written findings to include a full and detailed explanation regarding why alternative treatment options are insufficient. Court must find other services to be inappropriate before committing a defendant for treatment. In Re: Amendments to Florida Rules of Criminal Procedure–2023 Legislation. SC2023-1420 (11/22/23)

https://supremecourt.flcourts.gov/content/download/1103801/opinion/Opinion_SC2023-1420.pdf

RULES-AMENDMENT-COMPETENCY: The time line for facility administrators to file their report is changed No later than 60 days from the date of admission, the administrator of the facility must file with the court a report that shall addresses the issues and considers the factors set forth in rule 3.211, with copies to all parties. In Re: Amendments to Florida Rules of Criminal Procedure–2023 Legislation. SC2023-1420 (11/22/23)

https://supremecourt.flcourts.gov/content/download/1103801/opinion/Opinion_SC2023-1420.pdf

DURESS-JURY INSTRUCTION: Defendant who claimed that he intended to accompany his co-Defendant to buy drugs and only participated in the robbery because he was scared and terrified of his armed co-Defendant (who

ended up shooting and killing the victim) is not entitled to an instruction on duress. A direct threat to Defendant is required. Stallworth v. State, 1D2022-2030 (11/22/23)

https://1dca.flcourts.gov/content/download/1102852/opinion/Opinion_2022-2030.pdf

DURESS: The defense of duress requires that 1) The defendant reasonably believes a danger or emergency existed which was not intentionally caused by himself; 2) The danger or emergency threatened significant harm to himself or a third person; 3) The threatened harm must have been real, imminent, and impending; 4) The defendant had no reasonable means to avoid the danger or emergency except by committing the crime; 5) The defendant's crime must have been committed out of duress to avoid the danger or emergency; 6) The harm that the defendant avoided must outweigh the harm caused by committing the crime. Stallworth v. State, 1D2022-2030 (11/22/23)

https://1dca.flcourts.gov/content/download/1102852/opinion/Opinion_2022-2030.pdf

UNANIMOUS VERDICT: Where information charged Defendant with theft of "a purse and/or a wallet," Defendant was not deprived of a unanimous verdict. The theft of the victim's purse and wallet constituted alternative means of committing a single offense. Florida law permits alternative or disjunctive allegations for a single offense. When a single crime can be committed in various ways, jurors need not agree upon the mode of commission. Blackwell v. State, 3D22-1903 (11/22/23)

https://3dca.flcourts.gov/content/download/1106364/opinion/Opinion_2022-1903.pdf

COTERMINOUS SENTENCE: A coterminous sentence is a sentence that runs concurrently with another and terminates simultaneously. A coterminous sentence is a sentencing decision in which a court exercises its discretion to mitigate a defendant's sentence. Defendant is entitled to writ of habeas corpus and immediate release. Esty v. Reyes, 3D23-1988 (11/22/23)

https://3dca.flcourts.gov/content/download/1104513/opinion/Opinion_2023-1988.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that if counsel had properly advised him that he was facing a thirty-year sentence, and that he did not have a stand your ground defense at trial, he would have taken the deal. Teets v. State, 4D2023-0611 (11/22/23)

https://4dca.flcourts.gov/content/download/1103813/opinion/Opinion_2023-0611.pdf

CREDIT FOR TIME SERVED: A court may correct a final sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing. A defendant may waive entitlement to jail credit when entering a plea but the record must demonstrate a clear and knowing waiver of jail credit in order to refute a later claim for additional credit. A jail credit waiver must be specific, voluntary, and clear from the face of the record. Bowen v. State, 5D23-811 (11/21/23)

https://5dca.flcourts.gov/content/download/1093527/opinion/Opinion_23-0811.pdf

CREDIT FOR TIME SERVED-MOTION TO CORRECT: Motion to correct CTS must allege whether he had waived any county jail credit at the time of

sentencing and, if so, the number of days waived, and whether any other criminal charges were pending during the time for which Defendant claims he was not properly awarded credit. Bowen v. State, 5D23-811 (11/21/23)

https://5dca.flcourts.gov/content/download/1093527/opinion/Opinion_23-0811.pdf

MOTION TO CORRECT: If a trial court does not rule on a motion to correct a sentencing error filed while an appeal is pending within sixty days, the motion shall be deemed denied. Summerson v. State, 6D23-1246 (11/22/23)

https://6dca.flcourts.gov/content/download/1103815/opinion/Opinion_23-1246.pdf

COST OF SUPERVISION: When a trial court fails to orally pronounce the amount of a probation supervision cost for misdemeanor probation at a defendant's sentencing, the court is only authorized to impose the minimum cost of $40.00 per month required by statute. Summerson v. State, 6D23-1246 (11/22/23)

https://6dca.flcourts.gov/content/download/1103815/opinion/Opinion_23-1246.pdf

APPEAL-PRESERVATION: Fundamental error is not an exception to the preservation requirement of Fla.R.App.P. 9.140(b)(2)(A)(ii)c., when defendant has entered voluntary plea. Fleurima v. State, 6D23-1652 (11/22/23)

https://6dca.flcourts.gov/content/download/1103816/opinion/Opinion_23-1652.pdf

EVIDENCE: "Repetition cannot substitute for evidence. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

JUROR-CHALLENGE FOR CAUSE: Exposure to inadmissible and prejudicial information through pretrial publicity is a classic example of a valid ground for a cause challenge, regardless whether potential juror says he could disregard it. Lloyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

JURY INSTRUCTION-INSANITY: The language in the jury instruction on insanity (that clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue) does not confuse the clear and convincing standard with the beyond a reasonable doubt standard. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

ARGUMENT-PREMEDITATION: State's argument that premeditation has to be present in the person's mind during the act and equating it to deciding to smack a mosquito on one's arm rather than brushing it off was not improper nor misleading when taken in context. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

ARGUMENT: It is not improper to ask a jury to "try your best to reach a

unanimous verdict." Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY-VICTIM INJURY: An instrumental soundtrack to a photo/video slide show of the victim during the penalty phase/victim injury presentation is improper, but error is harmless. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

JURY-FELONS: Exclusion of felons from the jury does not violate the Equal Protection Clause of the United States Constitution. "Loyd cites two law review articles for the proposition that 'Florida's juror disqualification law was enacted as part of an effort to keep Blacks oppressed in the wake of emancipation.' In other words, Loyd argues that discriminatory intent underlies the statute because two authors said so. This is not evidence." Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY-JURY INSTRUCTION-MERCY: Defendant in death penalty case is not entitled to a special jury instruction that jury could consider mercy in making its sentencing determination. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

JURY-DEATH QUALIFICATION: Death qualifying the jury does violate the Sixth Amendment by skewing it towards guilt. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY-CONSTITUTIONALITY: Exonerations undermine not the sentence but the conviction. Arguments to the contrary are "gobbledy-gook." "We. . .find it hard to understand how alleged issues in the guilt phase render a certain punishment unconstitutional. The same logic would make life imprisonment unconstitutional if enough people serving life are exonerated." Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY-MENTALLY ILL: Imposition of the death penalty on severely mentally ill Defendant does not violate the Eighth Amendment. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY: The elimination of the safeguards of comparative proportionality review does not render the death penalty unconstitutional. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY: The elimination of the safeguards of the special standard of review that was previously applied in wholly circumstantial evidence cases does not render the Death penalty unconstitutional. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

DEATH PENALTY: The failure to narrow the class of first-degree murderers eligible for the death does not render the Death penalty unconstitutional. Loyd v. State, SC2022-0378 (11/16/23)

https://supremecourt.flcourts.gov/content/download/1042841/opinion/Opinion_SC2022-0378.pdf

PRISON RELEASEE REOFFENDER: A PRR sentence must be served concurrently with a sentence imposed pursuant to §775.087. Perryman v. State, 1D2021-2655 (11/15/23)

https://1dca.flcourts.gov/content/download/1046912/opinion/Opinion_2021-2655.pdf

APPEAL: Issues not raised in the initial brief are considered waived or abandoned. Banks v. State, 1D202203657 (11/15/23)

https://1dca.flcourts.gov/content/download/1033955/opinion/Opinion_2022-3657.pdf

INDEPENDENT ACT: The independent act doctrine applies when one co-felon, who previously participated in a common plan, does not participate in acts committed by his co-felon, which fall outside of, and are foreign to, the

common design of the original collaboration. The doctrine does not apply when a co-felon's act was a foreseeable consequence of the underlying felony. Banks v. State, 1D202203657 (11/15/23)

https://1dca.flcourts.gov/content/download/1033955/opinion/Opinion_2022-3657.pdf

POST CONVICTION RELIEF-INDEPENDENT ACT: Counsel was not ineffective for failing to request an independent act instruction in a case where a marijuana buy turned into a burglary and then a homicide and the defense theory was that Defendant was simply a passenger in the vehicle and never intended to commit any of the underlying crimes. Banks v. State, 1D2022-3657 (11/15/23)

https://1dca.flcourts.gov/content/download/1033955/opinion/Opinion_2022-3657.pdf

INDEPENDENT ACT: Defendant would not have been entitled to an independent act instruction where the underlying crime was burglary and arson because murder and arson are reasonably foreseeable outcomes of burglary. Banks v. State, 1D2022-3657 (11/15/23)

https://1dca.flcourts.gov/content/download/1033955/opinion/Opinion_2022-3657.pdf

INFORMATION-AMENDMENT: Court erred in denying State's mid-trial motion to amend the information by correcting the date of the offense and dismissing the case. Defendant was not deceived when the date was wrong but the crime occurred during a Superbowl tailgate party. The State is permitted to amend an information during trial, even if the defendant objects, unless there is a showing of prejudice to the substantial rights of the defendant. To allow Defendant to wait in ambush until the jury is sworn and

then spring his trap is tantamount to asking the court to referee a game of hide and seek. State v. Sanders, 2D22-881 (11/15/23)

https://2dca.flcourts.gov/content/download/1032840/opinion/Opinion_22-0881.pdf

BAKER ACT: Subject is improperly civilly committed under the Basker Act where the State's doctor's testimony was conclusory, did not identify any recent behavior through which C.D. had caused, attempted, or threatened any serious bodily harm, but merely asserted that he was very argumentative, very paranoid, gets agitated and is threatening to the staff, and would be a possible risk to himself and others without treatment. In re Involuntary Placement of C.D. v. State, No. 2D22-2986 (11/15/23)

https://2dca.flcourts.gov/content/download/1032851/opinion/Opinion_22-2986.pdf

COMPETENCY-INVOLUNTARY COMMITMENT: Incompetent Defendant may not be committed to DCF absent clear and convincing evidence that he will respond to treatment and will regain competency to proceed in the reasonably foreseeable future. A recommendation of competency training in a structured, secured psychiatric setting is insufficient. A finding that a defendant might be restored to competency is not enough. In situations like this the State must either institute civil commitment proceedings or release the defendant. DCF v. State, 2D23-873 (11/15/23)

https://2dca.flcourts.gov/content/download/1032863/opinion/Opinion_23-0873.pdf

ARGUMENT-INVITED RESPONSE: Under the 'invited response' doctrine, the State is permitted to emphasize uncontradicted evidence for the narrow purpose of rebutting a defense argument since the defense has invited the

response. Kitaygorodskiy v. State, 3D22-1270 (11/15/23)

https://3dca.flcourts.gov/content/download/1053005/opinion/Opinion_2022-1270.pdf

SEX OFFENDER: The designation of a person as a sexual offender is not a sentence or a punishment but simply shows the status of the offender which is the result of a conviction for having committed certain crimes. Heath v. State, 3D22-1416 (11/15/23)

https://3dca.flcourts.gov/content/download/1052279/opinion/Opinion_2022-1416.pdf

WRITTEN THREAT: Juvenile who posted an image on Snapchat of himself in a black cap, a red and black skull mask, black sunglasses, a black hoodie, and a pair of fingerless gloves while holdng a gun with text saying "Don't go to school tomorrow" is properly found delinquent for violating §836.10. B.W.B., a child, v. State, 4D2022-1121 (11/15/23)

https://4dca.flcourts.gov/content/download/1033861/opinion/Opinion_2022-1121.pdf

WRITTEN THREAT: §836.10 contains a mens rea component. To prove the a violation §836.10, the trier of fact must find that the defendant transmitted a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. B.W.B., a child, v. State, 4D2022-1121 (11/15/23)

https://4dca.flcourts.gov/content/download/1033861/opinion/Opinion_2022-1121.pdf

THREAT-FIRST AMENDMENT: §836.10 is not unconstitutionally overbroad nor does it infringe on the juvenile's First Amendment rights. §836.10 has a limited objective—to punish "threats" of violence sent through electronic social media. B.W.B., a child, v. State, 4D2022-1121 (11/15/23)

https://4dca.flcourts.gov/content/download/1033861/opinion/Opinion_2022-1121.pdf

SCORESHEET-OUT OF STATE PRIORS: When Defendant contests the proper scoring of an out-of-state conviction on the ground that the points on the scoresheet were not analogous to the Florida crime used for the scoring, State must provide evidence in support of its scoring. But where Defendant merely traveled on legal arguments discussing the various elements of robbery offenses in Ohio and Florida, referring to statutes only, and did not seek an evidentiary hearing, the out-of-state priors are scoreable. Taylor v. State, 4D2022-2291 (11/15/23)

https://4dca.flcourts.gov/content/download/1047673/opinion/Opinion_2022-2291.pdf

SCORESHEET-OUT OF STATE PRIORS: Only the elements of the out-of-state crime should be considered in determining whether the conviction is analogous to a Florida statute for the purpose of calculating points for a sentencing guidelines scoresheet. When the scoring of an out-of-state conviction is contested, the court may consider the out-of-state judgment entered, and if necessary, the charging document, to determine the elements of the out-of-state conviction for comparison with a Florida offense for scoring. Taylor v. State, 4D2022-2291 (11/15/23)

https://4dca.flcourts.gov/content/download/1047673/opinion/Opinion_2022-2291.pdf

TWELVE PERSON JURY: Defendant is not entitled to a twelve-person jury. Owensby v. State, 4D2022-3404 (11/15/23)

https://4dca.flcourts.gov/content/download/1053381/opinion/Opinion_2022-3404.pdf

NEW OFFENSE-PRETRIAL RELEASE-CONSECUTIVE: 18 U.S.C. §3147 provides that if a person commits a felony offense while on pretrial release he shall be sentenced to up to ten years consecutively to the new felony. This sentence may exceed the maximum term prescribed for the underlying offense of conviction. But in such a circumstance the issue of whether the person committed a felony offense while on pretrial release must be submitted to a jury and proven beyond a reasonable doubt pursuant to Apprendi. USA v. Perez, No. 22-10267 (11th Cir. 11/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210267.pdf

NEW OFFENSE-PRETRIAL RELEASE-JURY FINDING: 18 U.S.C. §3147 provides that if a person commits a felony offense while on pretrial release he shall be sentenced to up to ten years consecutively to the new felony. The issue of whether the person committed a felony offense while on pretrial release must be submitted to a jury and proven beyond a reasonable doubt pursuant to Apprendi. USA v. Perez, No. 22-10267 (11th Cir. 11/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210267.pdf

APPRENDI: An Apprendi violation does not automatically lead to reversal. Failure to submit a sentencing factor to the jury to submit an element to the jury, is not structural error. Where, as here, an error is harmless under Apprendi if the fact at issue (that Defendant committed a felony offense while on pretrial release) is uncontested. USA v. Perez, No. 22-10267 (11th Cir. 11/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210267.pdf

POST CONVICTION RELIEF-DNA TESTING: Defendant is not entitled to successive DNA testing on items omitted from his earlier request for DNA testing. Res judicata bars claims that could have been raised in earlier proceedings. Reynolds v. State, SC2022-1221 (11/9/23)

https://supremecourt.flcourts.gov/content/download/977676/opinion/Opinion_SC2022-1221.pdf

DEATH PENALTY: The doctrine of relative culpability no longer exists. Reynolds v. State, SC2022-1221 (11/9/23)

https://supremecourt.flcourts.gov/content/download/977676/opinion/Opinion_SC2022-1221.pdf

PERJURY: For perjury, one must (1) make a false statement, (2) that he does not believe to be true, (3) under oath in an official proceeding, (4) regarding any material matter. The materiality of the statement is not an element of the crime to be proven to the jury. Whether a matter is material in a given factual situation is a question of law, a threshold issue that must be determined by the court prior to trial. Miller v. State, 5D23-0846 (11/9/23)

https://5dca.flcourts.gov/content/download/978168/opinion/Opinion_23-0846.pdf

PERJURY-JOA: County commissioner who was unclear about the timing of certain phone calls cannot be convicted of perjury. "Reviewing the entirety of the sworn statement made by Miller to investigating authorities, it cannot be said he in fact definitively claimed that there were no phone calls with Commissioner Search after January 2021. Indeed, quite the contrary." Miller v. State, 5D23-0846 (11/9/23)

https://5dca.flcourts.gov/content/download/978168/opinion/Opinion_23-0846.pdf

PERJURY-TWISTIFICATION: A charge of perjury may not be sustained by the device of lifting a statement of the accused out of its immediate context and thus giving it a meaning wholly different than that which its context clearly shows. Miller v. State, 5D23-0846 (11/9/23)

https://5dca.flcourts.gov/content/download/978168/opinion/Opinion_23-0846.pdf

PERJURY: The law encourages the correction of erroneous and even intentionally false statements on the part of a witness, and perjury will not be predicated upon such statements when the witness fully corrects his testimony. Miller v. State, 5D23-0846 (11/9/23)

https://5dca.flcourts.gov/content/download/978168/opinion/Opinion_23-0846.pdf

TRUTH: A judicial investigation or trial has for its sole object the ascertainment of the truth, that justice may be done. Miller v. State, 5D23-0846 (11/9/23)

https://5dca.flcourts.gov/content/download/978168/opinion/Opinion_23-0846.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: A defendant must meet two requirements to obtain a new trial based on newly discovered evidence. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must also appear that neither the defendant nor defense counsel could have known of such evidence by the use of diligence. Second, the newly discovered evidence must be of a nature that it would probably produce an acquittal on retrial or yield a less severe sentence. Green v. State, 5D23-1422 (11/9/23)

https://5dca.flcourts.gov/content/download/978169/opinion/Opinion_23-

1422.pdf

NEWLY DISCOVERED EVIDENCE-INHERENT INCREDIBILITY: While an affidavit produced many years after the alleged crime may be inherently suspicious, that suspicion alone does not automatically support summary denial. Defendant is entitled to a hearing on claim that he was seen at a skating rink at the time of the murder 30 years earlier. The passage of time alone does not make the affidavit inherently incredible. Green v. State, 5D23-1422 (11/9/23)

https://5dca.flcourts.gov/content/download/978169/opinion/Opinion_23-1422.pdf

POST CONVICTION RELIEF-AFFIDAVIT (J. BOATWRIGHT, CONCURRING): Where the oath attached to the affidavit is signed by the notary, and not the witness, it is facially insufficient. Further, Defendant must certify under oath that he has read the motion, understands its content, and that all of the facts are true and correct. Green v. State, 5D23-1422 (11/9/23)

https://5dca.flcourts.gov/content/download/978169/opinion/Opinion_23-1422.pdf

POST CONVICTION RELIEF-DNA TESTING: If a motion for post-conviction DNA testing is facially sufficient, the prosecuting authority shall be ordered to respond to the motion within 30 days, but error may be harmless. Ray v. State, 5D23-1457 (11/9/23)

https://5dca.flcourts.gov/content/download/978170/opinion/Opinion_23-1457.pdf

BAKER ACT: Court improperly found that the subject's behavior posed a

substantial danger to others based on the doctor's conclusory testimony which did not identify any recent behavior through which the subject had caused, attempted, or threatened any serious bodily harm. Being "very argumentative" and "very paranoid," and "get[ting] agitated and. . .threatening to the staff" is insufficient. C.D. v. State, 2D22-2986 (11/8/23)

https://2dca.flcourts.gov/content/download/971390/opinion/Opinion_22-2986.pdf

INTERPRETER: The use of an interpreter at trial is a matter within the trial court's discretion. Philippe v. State, 3D22-0500 (11/8/23)

https://3dca.flcourts.gov/content/download/971439/opinion/Opinion_2022-0500.pdf

DISCOVERY: State's non-compliance with discovery rules does not mandate automatic reversal; it is essential that the defendant either raise a timely objection or request a hearing to allow the trial court to specifically rule on the issue. Philippe v. State, 3D22-0500 (11/8/23)

https://3dca.flcourts.gov/content/download/971439/opinion/Opinion_2022-0500.pdf

ARGUMENT: In DUI case, error, if any, in characterizing Defendant's driving as frightful, erratic, horrendous, and scary is not fundamental. Horna v. State, 3D22-1281 (11/8/23)

https://3dca.flcourts.gov/content/download/971570/opinion/Opinion_2022-1281.pdf

JOA-RECKLESS DRIVING: The act of passing cars at a speed of twenty-five to thirty miles per hour for about ten seconds, absent an accident or near accident, is not reckless driving. Kenneth v. State, 3D22-2023 (11/8/23)

https://3dca.flcourts.gov/content/download/971699/opinion/Opinion_2022-2023.pdf

EXPERT: Expert's testimony regarding "ShotSpotter" technology, which can detect the sound of gunfire and notify police, is admissible under Daubert and §90.702. If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if: (1) The testimony is based upon sufficient facts or data; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case. J.A.R., a child, v. State, 4D2022-2469 (11/8/23)

https://4dca.flcourts.gov/content/download/972511/opinion/Opinion_2022-2469.pdf

FIELD SOBRIETY EXERCISES: "Courts have inconsistently applied either reasonable suspicion or probable cause to determine the legality of law enforcement's actions in conducting FSEs." LEO may compel field sobriety exercises based on reasonable suspicion alone. Probable cause is not required to compel the defendant to conduct the exercises. The proper standard for a law enforcement officer to request FSEs is a reasonable suspicion that a driver has committed a law violation. If an officer has reasonable suspicion a defendant has committed a DUI, the defendant can be required to perform FSEs, and consent is immaterial. State v. Barone, 4D2022-2487 (11/8/23)

https://4dca.flcourts.gov/content/download/972512/opinion/Opinion_2022-

2487.pdf

RETURN OF PROPERTY: A trial court in a criminal case has no jurisdiction to order the return of a vehicle that had been forfeited in a parallel civil forfeiture proceeding. Nyenhuis v. State, 2D22-3766 (11/3/23) https://2dca.flcourts.gov/content/download/933590/opinion/Opinion_22-3766.pdf

RE-SENTENCING: Where Court granted Defendant's motion for re-sentencing in 2016, but never got around to holding the hearing, it lacks authority to rescind the order. Keebler v. State, 5D23-1044 (1/3/23) https://5dca.flcourts.gov/content/download/933150/opinion/Opinion_23-1044.pdf

POSSESSION FIREARM FELON: §790.23(1)(a) (prohibition of possession of firearm by felon), is constitutional. Hayes v. State, 1D2021-3654 (11/1/23) https://1dca.flcourts.gov/content/download/923733/opinion/Opinion_2021-3654.pdf

MISTRIAL-CRYING: No fundamental error in not granting a mistrial where a witness cried but was given a tissue. Appellate courts should defer to trial judges' judgments and rulings when they cannot glean from the record how intense a witness's outburst was or its effect on jurors. Swearingen v. State, 1D2022-1362 (11/1/23) https://1dca.flcourts.gov/content/download/923732/opinion/Opinion_2022-1362.pdf

POST CONVICTION RELIEF: If an amended information is filed after the speedy trial time period has expired and the defendant has not previously waived speedy trial, upon proper motion by the defendant, the new charges contained in the amended information must be dismissed if they arose from the same criminal episode as the charges contained in the original

information. But charges may be amended if speedy trial had been waived. Green v. State, 1D2022-3663 (11/1/23) https://1dca.flcourts.gov/content/download/935910/opinion/Opinion_2022-3663.pdf

JURY INSTRUCTION-LESSER INCLUDED: In aggravated battery case (a vehicle was the deadly weapon), counsel is not ineffective for failing to request a jury instruction on a lesser-included offense of reckless driving. Request is in essence one for a jury pardon, which is not permissible. Green v. State, 1D2022-3663 (11/1/23) https://1dca.flcourts.gov/content/download/935910/opinion/Opinion_2022-3663.pdf

SPOLIATION OF EVIDENCE: Lost dashcam footage which might have shown that officers failed to search for fingerprints when they searched his truck without gloves and that they did not search for fingerprints is not spoliation of evidence. Green v. State, 1D2022-3663 (11/1/23) https://1dca.flcourts.gov/content/download/935910/opinion/Opinion_2022-3663.pdf

JAIL CALLS-AUTHENTICATION: The threshold for authentication is relatively low and only requires a prima facie showing that the proffered evidence is authentic. The fact that Defendant used a different inmate's PIN to make jail calls does not undermine the authentication of the jail calls. Green v. State, 1D2022-3663 (11/1/23) https://1dca.flcourts.gov/content/download/935910/opinion/Opinion_2022-3663.pdf

DOUBLE JEOPARDY-MULTIPLE VICTIMS: Two people in a car hit by the Defendant's car supports two convictions for aggravated battery. Green v. State, 1D2022-3663 (11/1/23) https://1dca.flcourts.gov/content/download/935910/opinion/Opinion_2022-3663.pdf

APPEAL-JURISDICTION: Appellate court lacks jurisdiction to hear appeal in the absence of a signed written order. Without a signed written order the threshold requirement for an appeal cannot be met because there is nothing to appeal. Jones v. State, 1D2023-1495 (11/1/23)
https://1dca.flcourts.gov/content/download/923487/opinion/Opinion_2023-1495.pdf

POST CONVICTION RELIEF: Rule 3.800(a) is not available where Defendant seeks to challenge the validity of the conviction (and, only by extension, the legality of the sentence). Jimenez v. State, 3D2022-1906 (11/1/23)
https://3dca.flcourts.gov/content/download/922767/opinion/Opinion_2022-1906.pdf

OCTOBER 2023

ARREST WARRANT-AFFIDAVIT-SOVEREIGN IMMUNITY: Where Plaintiff drove targeted drug dealer to sting transaction, and stayed for the duration of the surveilled transaction, officer has sovereign immunity for procuring an arrest warrant. Various misstatements in the affidavit–i.e., that the Plaintiff was a previously identified target of the undercover investigation and oversaw the transaction as it took place inside his vehicle--do not negate probable cause. Remaining facts give rise to the inference that Plaintiff intended to aid the suspicious happenings. Land v. Sheriff of Jackson County, No. 22-12324 (11th Cir, 10/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202212324.pdf

CONSEQUENCES OF ARREST (J. ABUDU, DISSENTING): Defendant had driven a target to a drug transaction, apparently without foreknowledge. Later, on the basis of an arrest warrant procured by a misleading affidavit, in the presence of his wife, grandmother, and young children after a day at a state park, multiple officers drew their firearms on him. He spent 207 days in jail before posting bond for $47,000 and lost his license for child support, Case was nolle prossed. Land v. Sheriff of Jackson County, No. 22-12324

(11th Cir, 10/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202212324.pdf

ARREST WARRANT-AFFIDAVIT (J. ABUDU, DISSENTING): A warrant supporting an arrest is constitutionally infirm if an official intentionally or recklessly made misstatements or omissions necessary to support the warrant. A two-part test for evaluating whether the misstatements amount to a Fourth Amendment violation: 1) Excise any intentional or reckless misstatements or omissions from the warrant. 2) Determine whether the warrant establishes probable cause without those misstatements. Although probable cause is not a high bar, it still requires the official to show a probability or substantial chance of criminal activity. Land v. Sheriff of Jackson County, No. 22-12324 (11th Cir, 10/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202212324.pdf

ARREST WARRANT-AFFIDAVIT (J. ABUDU, DISSENTING): "Because the warrant contains no true facts supporting a finding that Land had a conscious intent to further Smith's crime, it does not establish probable cause that Land was a principal to the crime." "[T]he legal process by which Land was arrested, relying upon Allen's recklessly if not intentionally false warrant affidavit, did not meet the standard of probable cause. We should decline to expressly permit such baseless arrests without consequence, particularly when we consider the six-month detention Land endured. Otherwise, this Court widens the door for future bad actors to intentionally and maliciously draft bare-bones warrants, unsupported by thorough investigations, and to do so with no fear of consequences for any false statements therein." Land v. Sheriff of Jackson County, No. 22-12324 (11th Cir, 10/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202212324.pdf

WARRANT: Arrest warrant affidavit for child abuse which omitted material exculpatory information that, if disclosed, would have negated probable cause

violates the Fourth Amendment. Material omissions from the affidavit included that the child had chosen to deal with transportation problems rather than switch schools and to fend for himself until 7:00 p.m., that the child had options other than remaining at school, that the child had no house key because he been misbehaving, including by having people in the house, that the Child was prohibited from going to a particular friend's house despite officer's implication that going there should have been an option, and that the Child was trying to trying to drop weight for wrestling (undermining the you're-not- feeding-your-child implication). Butler v. Smith, No. 22-11141 (11th Cir.10/27/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211141.op2.pdf

QUALIFIED IMMUNITY: Officer is not entitled to qualified immunity for arresting a single working mother for child abuse for keeping her 17 year old son–at his request–in his current school for his senior year, rather than transferring him into a new school. Staying in the same school would mean either walking several miles home or waiting a few hours to be picked up. "Given the (1) information that Officer Smith included in her affidavits and (2) the material information that she knew but omitted from those affidavits, could a reasonable officer have believed that probable cause existed to arrest Butler for first- or second-degree child cruelty? . .[W]e hold that the answer is no." No reasonable officer could believe that probable cause existed to arrest Butler for first-degree child cruelty. Butler v. Smith, No. 22-11141 (11th Cir.10/27/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211141.op2.pdf

BITCH: Mother may have been imprudent in referring to officer pejoratively. ("That's what I told that bitch, that Officer Smith or whoever the fuck that was."). "Although she now denies it, a colleague's notes reflect (perhaps not surprisingly) that Officer Smith felt disrespected when she listened to the recording." Butler v. Smith, No. 22-11141 (11th Cir.10/27/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211141.op2.pdf

MALICIOUS PROSECUTION-ELEMENTS: The constituent elements of the common law tort of malicious prosecution include: (1) a criminal prosecution instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff accused's favor; and (4) caused damage to the plaintiff accused. The Fourth Amendment overlay adds two elements: The plaintiff must establish (5) that the legal process justifying her seizure was constitutionally infirm" and (6) that her seizure would not otherwise be justified without legal process. Qualified immunity, adds yet another element— (7) that that the law was clearly established. Butler v. Smith, No. 22-11141 (11th Cir.10/27/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211141.op2.pdf

APPEAL: Defendant who pled guilty without an express reservation of the right to appeal a legally dispositive issue has no right to a direct appeal. Syverson v. State, 5D23-61 (10/27/23)
https://5dca.flcourts.gov/content/download/896804/opinion/Opinion_23-0061.pdf

PLEA WITHDRAWAL: Court lacks jurisdiction to rule on the motion to withdraw plea which was filed after the notice of appeal had been filed. Syverson v. State, 5D23-61 (10/27/23)
https://5dca.flcourts.gov/content/download/896804/opinion/Opinion_23-0061.pdf

SEARCH AND SEIZURE-INVESTIGATORY DETENTION: Officer who activated his emergency lights and approached Defendant's car in tactical gear parked outside of a closed business did not unlawfully detain Defendant. Activation of police lights does not elevate the interaction from a consensual

interaction to a detention. *Per se* rules are inappropriate in the context of Fourth Amendment seizure analyses. Baxter v. State, 5D23-118 (10/27/23) https://5dca.flcourts.gov/content/download/896805/opinion/Opinion_23-0118.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Whether the plain smell doctrine—that is, that the smell of cannabis is itself sufficient to establish probable cause–survives is an open question. "While the recent changes in the law might. . .eliminate the previous doctrine that plain smell alone is sufficient to establish probable cause, that case is not before us" because of totality of the circumstances analysis. Baxter v. State, 5D23-118 (10/27/23) https://5dca.flcourts.gov/content/download/896805/opinion/Opinion_23-0118.pdf

SMELL OF MARIJUANA (J. WALLIS, CONCURRING): Developments in the law "have created confusion about whether officers in Florida still have reasonable suspicion to detain and probable cause to conduct a search based solely on what has been commonly known as the plain smell doctrine." The following question should be certifierd as one of great public importance: Does the plain smell doctrine still apply such that smelling cannabis is itself sufficient to establish reasonable suspicion and probable cause? Baxter v. State, 5D23-118 (10/27/23) https://5dca.flcourts.gov/content/download/896805/opinion/Opinion_23-0118.pdf

SMELL OF MARIJUANA (J. KILBANE, DISSENTING): "State and federal law surrounding marijuana has changed significantly since the 'plain smell' doctrine became an exception to the warrant requirement, and as a result, I believe its underpinnings are no longer sound." Baxter v. State, 5D23-118 (10/27/23) https://5dca.flcourts.gov/content/download/896805/opinion/Opinion_23-0118.pdf

APPELLATE REVIEW-SEARCH AND SEIZURE: To the extent a ruling is based on an audio recording, 'the trial court is in no better position to evaluate such evidence than the appellate court, which may review the tape for facts legally sufficient to support the trial court's ruling. Baxter v. State, 5D23-118 (10/27/23)
https://5dca.flcourts.gov/content/download/896805/opinion/Opinion_23-0118.pdf

JUDGE-DISQUALIFICATION: Where Defendant filing a Motion for Prohibition after judge rejected proposed plea agreements and denied Defendant's motion to disqualify him, Court improperly commented that some relevant portions of the record had not been transmitted to the appellate court and directed State to supplement the record with this court with certain transcripts. This type of extra-record involvement by the judge in the prohibition proceeding is both unauthorized and would put a reasonably prudent person in fear of not receiving a fair and impartial trial. Tocco v. State, 5D23-1986 (10/27/23)
https://5dca.flcourts.gov/content/download/896806/opinion/Opinion_23-1986.pdf

DEATH PENALTY-MITIGATING EVIDENCE: Court does not err in rejecting mental health expert's testimony that Defendant suffered from PTSD at the time of the offense. Trial court may reject expert testimony, even uncontroverted expert testimony, of the existence of the extreme mental or emotional disturbance mitigator. The decision as to whether a mitigating circumstance has been established is within the trial court's discretion. Expert testimony alone does not require a finding of extreme mental or emotional disturbance. Bevel v. State, SC22-210 (10/26/23)
https://supremecourt.flcourts.gov/content/download/890561/opinion/Opinion_SC2022-0210.pdf

DEATH PENALTY-JURY INSTRUCTION: Defendant is not entitled to a jury instruction that regardless of its findings regarding the aggravators and

mitigators, it may always consider mercy in determining whether Defendant should be sentenced to death. Bevel v. State, SC22-210 (10/26/23) https://supremecourt.flcourts.gov/content/download/890561/opinion/Opinion_SC2022-0210.pdf

DEATH PENALTY-ARGUMENT-PROPORTIONALITY: Court did not err in precluding Defendant from arguing to the jury about the proportionality of his possible sentence. The jury is not to compare the aggravation and mitigation applicable to the defendant before it to the aggravation and mitigation applicable to other defendants. Bevel v. State, SC22-210 (10/26/23) https://supremecourt.flcourts.gov/content/download/890561/opinion/Opinion_SC2022-0210.pdf

DEATH PENALTY: The jury's determination regarding the sufficiency and weight of aggravating factors is not subject to proof beyond a reasonable doubt. Bevel v. State, SC22-210 (10/26/23)

https://supremecourt.flcourts.gov/content/download/890561/opinion/Opinion_SC2022-0210.pdf

DEATH PENALTY: Florida's capital sentencing scheme is not unconstitutional for not limiting the class of persons eligible for the death penalty, nor for not providing for comparative proportionality review. Bevel v. State, SC22-210 (10/26/23) https://supremecourt.flcourts.gov/content/download/890561/opinion/Opinion_SC2022-0210.pdf

SENTENCING: It is well settled that the trial court's oral pronouncement of sentence controls over the written sentencing order. Smith v. State, 1D2021-3817 (10/25/23) https://1dca.flcourts.gov/content/download/885060/opinion/Opinion_2021-3817.pdf

STALKING-HARASS: Stalking is committed when a person "willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person." "Harass" means "to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose." Potts v, Lewis, 2D 22-1678 (10/25/23) https://2dca.flcourts.gov/content/download/884327/opinion/Opinion_22-1678.pdf

STALKING: A licensed plumber irritated by a woman, whom he perceived to be an unlicensed general contractor, who relentlessly sent repeated texts to stop, repent, and tell the truth lest he report her to law enforcement does not commit stalking. Acts are insufficient to establish that they would have caused a reasonable person substantial emotional distress. Courts apply an objective standard to determine if an incident causes substantial emotional distress, not a subjective standard. Potts v, Lewis, 2D 22-1678 (10/25/23) https://2dca.flcourts.gov/content/download/884327/opinion/Opinion_22-1678.pdf

SEARCH AND SEIZURE-CHILD PORN: Officer who acessed a peer-to-peer file sharing network (BitTorrent) with folders from Defendant's IP address containing hash values previously identified as containing child porn has probable cause for a search warrant. State v. Peltier, 2D22-2416 (10/25/23) https://2dca.flcourts.gov/content/download/884329/opinion/Opinion_22-2416.pdf

SEARCH AND SEIZURE-CHILD PORN: Detective's description of images of sexual conduct between an adult and child and the female child victim exposing her genitals in a lewd manner is not conclusory. Detective personally viewed several of the images and attested that they constituted child pornography. His descriptions were fulsome. The trial court's insistence that without details of each photograph, there is no way to identify or distinguish child pornography from child rotica is off the mark. State v.

Peltier, 2D22-2416 (10/25/23)
https://2dca.flcourts.gov/content/download/884329/opinion/Opinion_22-2416.pdf

CHILD PORN: The binary suggestion that "child erotica" is not, and never can be, child pornography is mistaken. State v. Peltier, 2D22-2416 (10/25/23)
https://2dca.flcourts.gov/content/download/884329/opinion/Opinion_22-2416.pdf

PROBABLE CAUSE: Probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules. State v. Peltier, 2D22-2416 (10/25/23)
https://2dca.flcourts.gov/content/download/884329/opinion/Opinion_22-2416.pdf

POST CONVICTION RELIEF: Indeterminate sentences of three years to life and three years to five years were lawful. §921.18 authorizes trial courts to impose indeterminate sentences of six months up to the applicable statutory maximum term of incarceration for noncapital felony convictions. Court's use of the word "to" in both the oral pronouncement and written sentences consistently imposed indeterminate sentences. Peterson v. State, 2D22-2958 (10/25/23)
https://2dca.flcourts.gov/content/download/884331/opinion/Opinion_22-2958.pdf

IMPEACHMENT-SUBSTANTIVE EVIDENCE: State may not introduce—ostensibly for impeachment purposes—a video that included a prior inconsistent statement by a recanting witness to the responding deputy, nor the deputy's testimony independently recounting the original statement, and the State should never have been permitted to argue that the jury could consider that unsworn statement as substantive evidence of guilt. Kenney

v. State, 2D22-3712 (10/25/23)
https://2dca.flcourts.gov/content/download/884332/opinion/Opinion_22-3712.pdf

APPEAL-PRESERVATION: Where State improperly introduced a recording that included a prior inconsistent statement by a recanting witness to the responding deputy, elicited hearsay about that statement, and argued that the unsworn statement is substantive evidence of guilt, defense counsel's failure to object on the correct bases precludes appellate review. To preserve an issue for appellate review, the specific legal argument or ground upon which it is based must be presented to the trial court. Kenney v. State, 2D22-3712 (10/25/23)
https://2dca.flcourts.gov/content/download/884332/opinion/Opinion_22-3712.pdf

APPEAL-FUNDAMENTAL ERROR-ARGUMENT: "We do not mean to imply that those arguments necessarily would have established fundamental error. We only observe that Kenney's failure to make them on appeal precludes us from even considering the possibility." Kenney v. State, 2D22-3712 (10/25/23)
https://2dca.flcourts.gov/content/download/884332/opinion/Opinion_22-3712.pdf

JOA: The existence of contradictory, conflicting testimony or evidence does not warrant a judgment of acquittal because the weight of the evidence and the witnesses' credibility are questions solely for the jury. Sthubin v. State, 3D22-93 (10/25/23)
https://3dca.flcourts.gov/content/download/884383/opinion/Opinion_2022-0093.pdf

THEFT-VALUE: Defendant who stole, then sold, his ex-girlfriend's Rolex watch (purchased for $19,750 in 2004), is responsible for $10,000 (for guilt and restitution) based on the amount he sold it to the pawn shop for. Where

the market value cannot be satisfactorily ascertained, value may be determined on the replacement cost of the property. The original market cost of the property, the manner in which it has been used, its general condition and quality, the percentage of depreciation since its purchase are elements of proof to be submitted to the jury. Alfaro v. State, 3D22-1271 (10/25/23) https://3dca.flcourts.gov/content/download/884370/opinion/Opinion_2022-1271.pdf

ISSUE-PRESERVATION-HEARSAY: Victim's testimony that the pawnshop paid Defendant $10,000 for the Rolex watch may have been hearsay, admitted over objection, but "the record also indicates that this information was introduced twice during redirect without objection from defense counsel. As such, our affirmance is without prejudice to raise the hearsay argument in a motion for ineffective assistance of trial counsel." Alfaro v. State, 3D22-1271 (10/25/23) https://3dca.flcourts.gov/content/download/884370/opinion/Opinion_2022-1271.pdf

APPEAL-MOOT: Where Defendant finished serving the subject sentence during the pendency of this appeal, the appeal must be dismissed as moot, unless collateral legal consequences that affect the rights of a party flow from the issue to be determined. Fisher v. State, 3D22-1579 (10/25/23) https://3dca.flcourts.gov/content/download/884381/opinion/Opinion_2022-1579.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Two requirements must be met in order for a conviction to be set aside on the basis of newly discovered evidence. First, in order to be considered newly discovered, the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Major v. State, 3D23-293 (10/25/23)

https://3dca.flcourts.gov/content/download/884397/opinion/Opinion_2023-0293.pdf

VOIR DIRE: Court improperly disallowed Defendsnt's voir dire question "Are you open to the theory that an accident can occur involving a death and there be no criminal culpability in that case?" on the basis that "It's a legal conclusion." To obtain a fair and impartial jury, and for voir dire examination of jurors to have any meaning, counsel must be allowed to probe attitudes, beliefs and philosophies. A trial court abuses its discretion where it precludes prospective juror questioning pertaining to willingness and ability to accept a valid legal theory. The defendant's question was, quite appropriately, targeted at whether a juror would automatically or was more likely to convict where an accident resulted in a death, regardless of criminal fault. The defendant did not delve into the facts of the case or attempt to plant seeds, but was simply exploring the juror's attitudes, namely their willingness and ability to accept the defense's theory. Rivera v. State, 4D22-652 (10/25/23)
https://4dca.flcourts.gov/content/download/884348/opinion/Opinion_2022-0652.pdf

APPEAL-PRESERVATION-VOIR DIRE-QUESTIONING: Defendant who renewed all prior objections when accepting the jury and stated her acceptance was subject to those objections sufficiently preserved the issue on appeal. Rivera v. State, 4D22-652 (10/25/23)
https://4dca.flcourts.gov/content/download/884348/opinion/Opinion_2022-0652.pdf

PROBATION-CONDITIONS: General conditions of probation contained within the Florida Statutes must be included within the order but need not be orally pronounced at the sentencing hearing. Special conditions must be orally pronounced. A condition requiring Defendant to submit to random urinalysis testing is a special condition requiring oral pronouncement, but not for a Defendant on drug offender probation, which includes "random drug

testing." Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: Prohibiting appellant from consuming alcohol is a special condition requiring oral pronouncement. Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: The portion of the condition requiring appellant to pay for random drug testing is a special condition requiring oral pronouncement at sentencing. Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: Condition of probation state authorizing random, warrantless searches by probation officers and/or law enforcement is a general condition as to probation officers but a special condition as to LEOS. Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: Condition requiring Defendant to undergo a substance abuse evaluation at her own expense, and successfully complete any treatment and education determined to be necessary is a special condition. Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: A 10 p.m. and 6 a.m curfew is a special condition. Portuese v. State, 4D22-2935 (10/25/23) https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-

2935.pdf

PROBATION-CONDITIONS: Condition prohibiting visiting any establishment where the primary business is the sale and dispensing of alcoholic beverages is a special condition. Portuese v. State, 4D22-2935 (10/25/23)
https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: Condition requiring Defendsnt to attend a support group with a focus on substance abuse issues at least two times per week is a special condition. Portuese v. State, 4D22-2935 (10/25/23)
https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

PROBATION-CONDITIONS: The requirement that Defendant pay costs in equal monthly installments must be corrected to match the trial judge's oral pronouncement that they be paid over the period of supervision. Portuese v. State, 4D22-2935 (10/25/23)
https://4dca.flcourts.gov/content/download/884350/opinion/Opinion_2022-2935.pdf

POST CONVICTION RELIEF: To support summary denial without a hearing, a trial court must either state its rationale in its decision or attach those specific parts of the record that refute each claim presented in the motion. Boyd v. State, 4D23-203 (10/25/23)
https://4dca.flcourts.gov/content/download/884352/opinion/Opinion_2023-0203.pdf

POST-CONVICTION RELIEF: Where Court dismissed Defendant's motion for postconviction relief for being facially insufficient but did so without prejudice to the filing of an amended motion, Defendant is entitled to add a

2nd, new grounds for postconviction relief which had not been included in the original motion. When the two-year filing requirement had not yet expired, and the court had not issued a final order on original 3.850 motion, it must consider any additional claims raised in the amended motion. Caldwell v. State, 5D23-1888 (10/20/23)

https://5dca.flcourts.gov/content/download/881680/opinion/Opinion_23-1888.pdf

JURISDICTION: Appellate court has jurisdiction over State's appeals of orders dismissing an information, regardless of whether it is final or non-final. Caldwell v. State, 5D23-1888 (10/20/23)
https://5dca.flcourts.gov/content/download/881680/opinion/Opinion_23-1888.pdf

COSTS: The statutory authority for all costs imposed, whether they are mandatory or discretionary, must be cited in the written order. Luck v. State, 5D23-113 (10/20/23)
https://5dca.flcourts.gov/content/download/881677/opinion/Opinion_23-0113.pdf

POST CONVICTION RELIEF: Defendant who entered a plea agreement is entitled to a hearing on claim that counsel was ineffective for failing to investigate viable defenses to the charges and in not taking the depositions of various witnesses. Copies of the information, the State's notice of its intent to seek habitual felony offender sentencing, copies of the written plea agreement and the transcript of the change of plea hearing do not conclusively refute Defendant's claim. The existence of significant evidence of guilt does not mean that Defendant would not have gone to trial. Davis v. State, 5D23-1150 (10/20/23)
https://5dca.flcourts.gov/content/download/881678/opinion/Opinion_23-1150.pdf

POST CONVICTION RELIEF: Defendant who entered a plea agreement is entitled to a hearing on claim that counsel was ineffective for failing to advise him that his plea to 25 years for aggravated battery with a firearm causing great bodily harm was to a mandatory minimum term and that his counsel had misadvised him that he would be eligible for gain time. Copies of the information, the State's notice of its intent to seek habitual felony offender sentencing, copies of the written plea agreement and the transcript of the change of plea hearing do not conclusively refute Defendant's claim. The existence of significant evidence of guiltdoes not mean that Defendant would not have gone to trial. An attorney's affirmative misadvice about such a collateral consequence may render a plea involuntary. Davis v. State, 5D23-1150 (10/20/23)
https://5dca.flcourts.gov/content/download/881678/opinion/Opinion_23-1150.pdf

JURISDICTION: The fact that the Defendant was never seized or personally served with valid process does not permit dismissal of the underlying charge. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will. An illegal or invalid arrest does not provide a basis for dismissal of criminal charges. There is no such thing as dismissal of criminal charges for lack of personal jurisdiction. State v. Bestin, 6D23-476 (10/20/23)
https://6dca.flcourts.gov/content/download/881684/opinion/Opinion_23-0476.pdf

AMENDMENT-RULES-AUTOMATIC SEALING: Fla.R.Gen.Practice 2.420 is amended to reflect a recent statutory change in §943.0595 requiring FDLE to automatically seal criminal history records that meet specified criteria, such as when a judgment of acquittal was rendered as to all counts. FDLE must notify the clerk of court, and the clerk of the court must automatically keep the prior related record confidential. In Re: Amendment to Florida Rule of General Practice and Judicial Administration 2.420. SC2023-1320 (10/19/23)

https://supremecourt.flcourts.gov/content/download/881578/opinion/Opinion_SC2023-1320.pdf

EVIDENCE-OPINION: Officer's opinion that shooting, observed by the officer and captured on bodycam, was not self defense is improper opinion evidence, but the unobjected to evidence is not fundametal error where the State did not make the officer's improper testimony the focus of the trial and the State presented ample evidence, without the officer's improper testimony, of the defendant's guilt. Gainey v. State, 1D2022-1816 (10/18/23) https://1dca.flcourts.gov/content/download/881495/opinion/Opinion_2022-1816.pdf

HABEAS CORPUS: Habeas corpus is not to be used for additional appeals of issues that could have been or were raised on appeal or in other postconviction motions. Heagney v. State, 1D2022-4164 (10/18/23) https://1dca.flcourts.gov/content/download/881490/opinion/Opinion_2022-4164.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Two requirements must be met in order for a conviction to be set aside on the basis of newly discovered evidence. First, the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Rigg v. State, 3D23-603 (10/18/23) https://3dca.flcourts.gov/content/download/881489/opinion/Opinion_2023-0603.pdf

MAXIMUM SENTENCE: A 591-day prison sentence is greater than the maximum allowable sentences for DWLS, RWOV, and LOSA, accumulatively or individually. Luviano v. State, 4D22-1382 (10/18/23) https://4dca.flcourts.gov/content/download/881503/opinion/Opinion_2022-

1382.pdf

TWELVE PERSON JURY: Defendant's is not entitled to a twelve-person jury under the Sixth and Fourteenth Amendments to the United States Constitution. Luviano v. State, 4D22-1382 (10/18/23) https://4dca.flcourts.gov/content/download/881503/opinion/Opinion_2022-1382.pdf

GAIN-TIME-FIREARM-MANDATORY MINIMUM: A defendant is not eligible for statutory gain-time prior to serving the firearm minimum sentence. Gain time does not continue to accumulate toward a longer concurrent sentence while a defendant is serving a firearm minimum mandatory sentence. Jean v. DOC, 2D22-3857 (10/13/23) https://2dca.flcourts.gov/content/download/881208/opinion/Opinion_22-3857.pdf

POST CONVICTION RELIEF: Lack of subject matter jurisdiction can be raised at any time. Defendant's argument that the trial court lacked subject matter jurisdiction over his petit theft charge because it took place on the Jacksonville Naval Air Station, which he contends is exclusively federal land and jurisdiction should have been sdressed on the merits. Virginia v. State, 5D23-256 (10/13/23) https://5dca.flcourts.gov/content/download/881244/opinion/Opinion_23-0256.pdf

RULES-AMENDMENT-APPEALS: Minor tweaks to appellate rules. In Re: Amendments to the Florida Rules of Appellate Procedure, SC2023-0261 (10/12/23) https://supremecourt.flcourts.gov/content/download/881149/opinion/Opinion_SC2023-0261.pdf

POST CONVICTION RELIEF: "We remind postconviction courts that they are required to attach to orders finding that a motion or claim is either

untimely. . .or improperly successive. . .portions of the trial court record supporting those findings." Clark v. State, 2D23-1255 (10/11/23)
https://2dca.flcourts.gov/content/download/881067/opinion/Opinion_23-1255.pdf

POST CONVICTION RELIEF: To be entitled to an evidentiary hearing on a claim of ineffective assistance, the defendant must allege specific facts that are not conclusively rebutted by the record and which demonstrate a deficiency in performance that prejudiced the defendant. Counsel cannot be deemed ineffective for failing to file a baseless motion. Condell v. State, 3D23-1188 (10/11/23)

https://3dca.flcourts.gov/content/download/881074/opinion/Opinion_2023-1188.pdf

RESISTING WITHOUT VIOLENCE-JOA: Officer was not engaged in the lawful execution of a legal duty when he reached into the threshhold of the Defendant's home to pull him out after he had walked inside when officer attempted to arrest him for trespass. A warrantless home entry, accompanied by a search, seizure, and arres State cannot prove that the police are in the lawful execution of a legal duty when they arrest a suspect if the arrest itself is executed unlawfully. Arrest is not justified by hot pursuit when the underlying conduct is a nonviolent misdemeanor. When the officer has time to get a warrant, he must do so—even though the misdemeanant fled. Tellam v. State, 4D22-2360 (10/11/23)
https://4dca.flcourts.gov/content/download/881077/opinion/Opinion_2022-2360.pdf

BREATH TEST: Continuous face to face observation for twenty minutes is not required to achieve substantial compliance with administrative rules for breath tests. Defendant in the patrol car within earshot of the officer is enough. Chiaravalle v. State, 4D22-2646 (10/11/23)

https://4dca.flcourts.gov/content/download/881078/opinion/Opinion_2022-2646.pdf

RETALIATORY LIENS: 18 U.S.C. §1521, which criminalizes the filing of retaliatory liens against the property of "any officer or employee of the United States," does not apply to false liens filed against former federal officers or employees for official duties they performed while in service with the federal government. Defendant (the self-proclaimed heir to the kingdom of Morocco) who claimed a $2.7 million tax refund and filed $96 million liens against the properties of the former Secretary of the Treasury and the Commissioner of the IRS is entitled to a JOA because they were not public officials at the time that the false liens were filed. USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION: When called on to resolve a dispute over a statute's meaning, a court normally ask how a reasonable person, conversant with the relevant social and linguistic conventions, would read the text in context. USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION: Purposes, obvious or otherwise, provide no basis for skirting a statute's plain language.. "Without strong textual or precedential arguments, the government retreats to 'that last redoubt of losing causes, the proposition that the statute at hand should be liberally construed to achieve its purposes." But, "we can't just do whatever would further the purposes that the government attributes to Congress. Doing so would ignore the fact that 'the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations.'" USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION: "Elevating general notions of purpose over the plain meaning of the text is inconsistent with our judicial duty to

interpret the law as written." USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION (J. GRANT, DISSENTING): When interpreting words like "officer" and "employee" we cannot default to the assumption that those terms operate only in the present tense, including current but not former officials. The term "employees" on its own lacks a temporal qualifier. It is not the substantive definitions, however, but the verb tense used in those definitions that moves the needle for the majority. Effectively adding the word "current" to the meaning of "officer" is a big step. Using the tense of a verb imbedded in the definition of a noun to do so is even bigger. USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION-DICTIONARY-(J. GRANT, DISSENTING): I fear that we are over relying on dictionaries when we use them to unpack basic words. . .To be sure, they are often helpful. But not always—and we may risk complicating rather than simplifying a statute's meaning by evaluating minutiae from the definitions of well-understood words." USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

STATUTORY INTERPRETATION (J. GRANT, DISSENTING): "[T]extualism does not begin and end with dictionaries. Hypertechnical interpretation can obscure a text's true meaning just as easily as the righfully rejected purposivist strategies that were more popular in the past." USA v. Pate, No. 20-10545 (11th Cir. 10/11/23) https://media.ca11.uscourts.gov/opinions/pub/files/202010545.enb.pdf

COVID-SPEEDY TRIAL-INDICTMENT-DELAY: Almost ten-month delay between arrest and indictment due to COVID restrictions on convening a grand jury falls within the ends-of-justice exception to the Speedy Trial Act. USA v. Dunn, No. 22-11731 (10/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202211731.pdf

SPEEDY TRIAL: 18 U.S.C. § 3161(h)(7) permits a district court to grant a continuance and to exclude the resulting delay if the court, after considering certain factors, makes on-the-record findings that the ends of justice served by granting the continuance outweigh the public's and defendant's interests in a speedy trial. The fact that all grand jury sessions were temporarily continued due to the COVID-19 pandemic provided sufficient justification to continue the arraignment, without case specific, ends-of-justice findings. USA v. Dunn, No. 22-11731 (10/10//23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211731.pdf

DOWNWARD DEPARTURE: Appellate review of the trial court's denial of a downward departure from a mandatory minimum sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Clark v. State, 1D22-1384 (10/11/23)
https://1dca.flcourts.gov/content/download/881111/opinion/Opinion_2022-1384.pdf

APPEAL-PRESERVATION: Fundamental error is not an exception to the requirement of preservation when the defendant has entered a voluntary plea. C.D.D., Jr., A Child v. State, 1D22-3223 (10/11/23)
https://1dca.flcourts.gov/content/download/881102/opinion/Opinion_2022-3223.pdf

RESTITUTION: Due process requires a formal hearing on the amount of restitution, and where a defendant objects to the amount of restitution and requests a hearing, a trial court's failure to hold such a hearing requires a reversal of the restitution order. Feldman v. State, 2D22-3265 (10/6/23)
https://2dca.flcourts.gov/content/download/880784/opinion/Opinion_22-3265.pdf

POST CONVICTION RELIEF: When failure to depose is alleged as part of

an ineffective assistance of counsel claim, Defendant must specifically set forth the harm from the alleged omission, identifying a specific evidentiary matter to which the failure to depose witnesses would relate. Defendant was not entitled to a hearing where he claimed tht a deposition would have shown his and the officer's "sour relationship,." but attached records show that counsel tried to avoid revealing that relationship so as not to prejudice the defense. Newcomer v. State, 5D23-818 (10/6/23)
https://5dca.flcourts.gov/content/download/880779/opinion/Opinion_23-0818.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failure to obtain the dash-cam or body-cam videos, as well as intersection and business camera footage, from the incident. Defendant's allegation that such cameras exist cannot be dismissed as speculative. Newcomer v. State, 5D23-818 (10/6/23)
https://5dca.flcourts.gov/content/download/880779/opinion/Opinion_23-0818.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel should have advised him to take a 3 or 4.25 year plea offer and that he would have accepted the offer, particularly where counsel's strategy was to do nothing and hope the officer did not show up for trial. Newcomer v. State, 5D23-818 (10/6/23)
https://5dca.flcourts.gov/content/download/880779/opinion/Opinion_23-0818.pdf

STAND YOUR GROUND: Defendant who stabbed a lady in th4 neck with a pocketknife and later explained that she was in the mood to stab someone fails to make a prima facie case of SYG immunity. A boilerplate recitation of the applicable statutes and court decisions devoid of any allegation of fact is legally insufficient. Freeman v. State, 1D21-355 (10/4/23)
https://1dca.flcourts.gov/content/download/880649/opinion/Opinion_2021-3552.pdf

STAND YOUR GROUND-BURDEN OF PROOF: The defendant seeking SYG immunity–not the State--bears the initial burden of presenting evidence at the pretrial immunity hearing sufficient to raise a prima facie claim. A split of authority exists among the district courts as to which party has the initial burden of proof at a self-defense immunity hearing. Freeman v. State, 1D21-355 (10/4/23)
https://1dca.flcourts.gov/content/download/880649/opinion/Opinion_2021-3552.pdf

STATEMENTS OF DEFENDANT-MIRANDA (J. LONG, CONCURRING): "Thanks in large part to Hollywood movies and television programs, . . .the warnings have developed into a sort of American legal and cultural sacred cow. It has created a strange paradox. The average American can recite the warnings, yet few can explain where they came from." Miranda warnings are a court-created prophylactic rule and are not required by the constitution. Courts should not robotically apply Miranda just by identifying an imperfection in the provision of the warnings. Instead, they should carefully balance their costs against their benefits. Freeman v. State, 1D21-355 (10/4/23)

https://1dca.flcourts.gov/content/download/880649/opinion/Opinion_2021-3552.pdf

PLEA-INVOLUNTARY: A claim that a no-contest plea was involuntary cannot be considered on direct appeal unless preserved by a motion to withdraw the plea. White v. State, 1D22-0040 (10/4/23)
https://1dca.flcourts.gov/content/download/880644/opinion/Opinion_2022-0040.pdf

SELLING DEER MEAT: A meat processor cannot sell native venison meat when the hunter had not paid for the contracted processing services. Defendant is properly convicted of selling native venison meat. State v. Berens, 1D22-71 (10/4/23)
https://1dca.flcourts.gov/content/download/880632/opinion/Opinion_2022-

0071.pdf

STIFFING: Neither a hunter's failure to pay for and pick up the meat that he asked to be serviced, nor the processor's subsequent effort to recover the money he is owed, could impact any effort to keep poaching in check. Indeed, the deer here already would have been taken and could not get any deader, and the meat already would have been processed and packaged. There is not a whole lot of financial incentive for a deadbeat hunter to over-hunt and then repeatedly engage in the stiffing of processors. As a remedy for when this stiffing does happen, there are statutorily established commercial protections in place." State v. Berens, 1D22-71 (10/4/23)
https://1dca.flcourts.gov/content/download/880632/opinion/Opinion_2022-0071.pdf

MOTION TO DISMISS (J. TANENBAUM, CONCURRING): R 3.190(c)(4) requires that the defendant allege the facts on which his motion is based with specificity, and the motion must be "sworn to." A jurat that indicates only that Defendant "acknowledged" the motion is legally insufficient. State v. Berens, 1D22-71 (10/4/23)
https://1dca.flcourts.gov/content/download/880632/opinion/Opinion_2022-0071.pdf

PROBATION-EARLY TERMINATION-CERTIORARI: Where plea agreement provided for State to not oppose early termination of probation after five years but Court denied the unopposed motion without a hearing or explanation, writ of certiorari is appropriate to compel the Court to issue an amended order denying the motion for early termination of probation, which must include the court's reasoning. Parson v. State, 1D23-0869 (10/4/23)
https://1dca.flcourts.gov/content/download/880637/opinion/Opinion_2023-0869.pdf

BELATED APPEAL: A petitioner seeking a belated appeal must provide, among other things, a sworn statement of the specific acts that constitute the

basis for entitlement to the relief sought, *i.e.*, the petition must 1) state whether the petitioner requested counsel to proceed with the appeal and the date of any such request; 2) state if the petitioner was misadvised as to the availability of appellate review or the status of filing a notice of appeal; or 3) identify the circumstances. that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal. "Bottom line: The petitioner's own neglect is not a basis for relief." Broxton v. State, 1D23-1399 (10/4/23)
https://1dca.flcourts.gov/content/download/880652/opinion/Opinion_2023-1399.pdf

SENTENCING-REASONS: Where Defendant violated probation within 2 months of its imposition by strangling his girl friend on her daughter's birthday and storing her body in a 55-gallon barrel in his home for six months, the Court's statement of reasons for the upward variance was deficient; it failed to allow reviewing court to understand why the district court imposed it (20 years concurrent with the life sentence on the murder) If a district court imposes an above-guideline sentence, a specific statement of explanation is required. "Although. . .we. . .feel certain that we know what the district court will say on remand," a new sentencing hearing is required. USA v. Steiger, No. 22-10742 (10/3/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210742.pdf

SENTENCING-REASONS (J PRYOR, CONCURRING): Court should rehear this appeal *en banc* to reconsider the *per se* rule of reversal for unobjected-to §3553(c)(2) errors and "abolish our idiosyncratic and unprincipled treatment of section 3553(c) errors". "[E]ncouraging contemporaneous objection[s]. . .avoids the wasteful exercise that we see in this appeal." USA v. Steiger, No. 22-10742 (10/3/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210742.pdf

DEPORTATION: Armed robbery is a "theft offense" within the meaning of 8 U.S.C. §1101(a)(43)(G), and therefore is an "aggravated felony," rendering

the Defendant removable. Kemokai v. U.S. Attorney General, No. 21-12743 (11th Cir. 10/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112743.pdf

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POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on his claim of newly discovered evidence that he had recently received a letter from a retired detective alerting him to the existence of exculpatory surveillance videos. Although it may be unusual that the detective's and the police department's letters to be unsigned, the letters are not inherently incredible. Harris v. State, 2D22-1355 (9/29/23)
https://2dca.flcourts.gov/content/download/880373/opinion/221355_DC13_09292023_094141_i.pdf

SEXUAL BATTERY-EVIDENCE: Evidence that Defendant had had consensual sex with victim of sexual battery on other occasions was improperly excluded but error here is harmless. The plain text of the rape shield statute makes clear it does not apply to specific instances of prior consensual activity between the victim and the offender. Blow v. State, 5D22-1890 (9/29/23)
https://5dca.flcourts.gov/content/download/880367/opinion/221890_DC05_09292023_091004_i.pdf

RULES-AMENDMENT: R. 2.215 is amended to require that individual judge and divisional practices and procedures, as well as local rules and administrative orders, must be located on each circuit's website. The practice of requiring attorneys or parties to communicate with the court solely by written letter is prohibited. In Re: Amendments to Florida Rule of General Practice and Judicial Administration 2.215, SC2023-1114 (9/28/23)
https://supremecourt.flcourts.gov/content/download/880297/opinion/sc2023-1114.pdf

EVIDENCE-LAY OPINION: Generally, a lay witness may not testify in the

form of opinions and conclusions, unless (1) the witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and (2) The opinions and inferences do not require a special knowledge, skill, experience, or training. This type of opinion testimony is usually limited to matters relating to distance, time, size, weight, form, and identity, which are easily observable. Mantecon v. State, 1D22-1167 (9/27/23) https://1dca.flcourts.gov/content/download/880242/opinion/download%3FdocumentVersionID=5730403e-2384-404f-a444-2e8e20df6ba7

EVIDENCE-LAY OPINION: If witness's opinion testimony that Defendant did not have a legitimate reason to shoot the victim and others with his AR-15, the defense opened the door to it during his cross-examination by asking the witness whether he had told the officer that the Defendant might have been afraid of being jumped. Mantecon v. State, 1D22-1167 (9/27/23) https://1dca.flcourts.gov/content/download/880242/opinion/download%3FdocumentVersionID=5730403e-2384-404f-a444-2e8e20df6ba7

ASSAULT-MULTIPLE VICTIMS: Defendant is properly convicted of ten counts of aggravated assault when he fired into a crowd of people with his AR-15 with the primary intent of killing one of them in particular, but the shooting was diffuse and continuing. Mantecon v. State, 1D22-1167 (9/27/23) https://1dca.flcourts.gov/content/download/880242/opinion/download%3Fd

ocumentVersionID=5730403e-2384-404f-a444-2e8e20df6ba7

SIX-PERSON JURY: Trying a defendant with a six-person jury in a non-capital case is not fundamental error. Mantecon v. State, 1D22-1167 (9/27/23)
https://1dca.flcourts.gov/content/download/880242/opinion/download%3FdocumentVersionID=5730403e-2384-404f-a444-2e8e20df6ba7

COSTS: If a defendant agrees in plea agreement to pay certain costs, fines, and fees, that creates binding obligation to pay them—even if for higher than statutory minimums. Gilbert v. State, 1D22-1583 (9/27/23)
https://1dca.flcourts.gov/content/download/880257/opinion/download%3FdocumentVersionID=26898343-d0af-4634-9f5e-e228dc76a2a7

JUROR-CHALLENGE FOR CAUSE: Court erred by disallowing a challenge for cause of a juror who had the "heebie jeebies," and acknowledged that she had some concerns about her ability to remain fair and impartial. A juror must be excused for cause if any reasonable doubt exists as to whether the juror possesses an impartial state of mind. Greathouse v. State, 2D22-990 (9/27/23)
https://2dca.flcourts.gov/content/download/880197/opinion/220990_DC05_09272023_090927_i.pdf

JUROR-CHALLENGE FOR CAUSE-PRESERVATION: Defendant almost preserved for cause to a prospective juror by objecting to the juror, showing that he had exhausted all peremptory challenges and requested more, and identifying a specific juror that he or she would have excused if possible. But he did not renew the objection before the jury was sworn. Oops. Greathouse v. State, 2D22-990 (9/27/23)
https://2dca.flcourts.gov/content/download/880197/opinion/220990_DC05_09272023_090927_i.pdf

SECURE DETENTION: Secure detention may not be extended beyond 21

days based on "the facts of the case and the nature of the charges," or jeopardy to public safety. A finding of good cause for continued detention must be predicated on a record containing competent evidence of the reasons for continuing the detention period. The State fails to demonstrate good cause when it merely parrots the language of good cause in a motion, without supporting competent evidence or specificity. J.S. v. State, 5D23-2879 (9/26/23)
https://5dca.flcourts.gov/content/download/880169/opinion/232879_DC03_09262023_155713_i.pdf

SECURE DETENTION: Child's secure detention may not be extended based on concern that if released he would have access to water and a microwave oven. J.S. v. State, 5D23-2879 (9/26/23)
https://5dca.flcourts.gov/content/download/880169/opinion/232879_DC03_09262023_155713_i.pdf

CREDIT FOR TIME SERVED: Where in-custody Defendant is sentenced to prison, the day of sentencing should be included in his jail credit, rather than be left to DOC for crediting. Defendant is entitled to 766 days, not 765 days, credit for time served on his three life sentences. Perez v. State, 2D22-746 (9/22/23)
https://2dca.flcourts.gov/content/download/879892/opinion/220746_DC08_09222023_083829_i.pdf

HABEAS CORPUS-VENUE: A habeas petition filed in circuit court alleging entitlement to immediate release shall be filed with the clerk of the circuit court of the county in which the prisoner is detained. Teart v. State, 2D23-639 (9/22/23)
https://2dca.flcourts.gov/content/download/879897/opinion/230639_DC13_09222023_084243_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel failed to investigate and present the defense that the victim made a statement that the Defendant was not the perpetrator. Cooper v. State, 5D23-0856 (9/22/23)
https://5dca.flcourts.gov/content/download/879907/opinion/230856_DC05_09222023_092407_i.pdf

DEATH PENALTY-JURISDICTION: DCAs have jurisdiction over cases in which the death penalty is sought but not yet imposed. Where the trial court has not entered a final judgment imposing the death penalty, the Supreme Court's mandatory, exclusive jurisdiction has not attached. State v. Victorino and Hunter, 5D23-1569 (9/22/23)
https://5dca.flcourts.gov/content/download/879949/opinion/231569_NOND_09222023_152907_i.pdf

DEATH PENALTY-UNANIMOUS VERDICT-EX POST FACTO: The old death penalty statute (§921.141) required the State to convince all twelve jurors that death is the appropriate sentence, whereas the current statute mandates only eight. The April 2023 statutory amendment applies to a multiple murder trial from 2004, even when the amendment was passed in the middle of jury selection. State v. Victorino and Hunter, 5D23-1569 (9/22/23)
https://5dca.flcourts.gov/content/download/879949/opinion/231569_NOND

_09222023_152907_i.pdf

DEATH PENALTY-UNANIMOUS VERDICT-EX POST FACTO: A law does not violate the ex post facto clause unless it is retrospective in its effect and alters the definition of a crime or increases the sentence by which the crime is punishable. A procedural change—even one that works to a defendant's disadvantage—is generally not an ex post facto law since it does not alter substantive personal rights. §921.141 is a quintessentially procedural change that has no substantive effect. "[I]t is irrelevant that the current version of section 921.141 became law after jury selection started. Criminal jeopardy attaches when a jury—not a group of prospective jurors—is sworn." State v. Victorino and Hunter, 5D23-1569 (9/22/23)
https://5dca.flcourts.gov/content/download/879949/opinion/231569_NOND_09222023_152907_i.pdf

SPEEDY TRIAL-RECAPTURE-COUNTING-COVID: On May 3rd (Tuesday), Notice of Expiration of Speedy Trial Time is filed. On May 5, (Thursday), Court sets trial for May 17th. Counting for the recapture time period began on May 6th (Friday), so that the 10-day recapture time period would run through May 16th (Monday). "Accordingly, if 10 days was the applicable recapture time period, then we must reverse the denial of Wright's motion for discharge. It wasn't, so we don't." A COVID administrative order had temporarily changed the 10 day recapture window to 30 days. The 30-day recapture period still remains in effect. Wright v. State, 6D23-1356 (9/22/23)
https://6dca.flcourts.gov/content/download/879919/opinion/231356_DC05_09222023_094850_i.pdf

RULE-AMENDMENT-APPEALS-BAKER ACT: New rule created for Baker Act appeals, In Re: Amendments to Florida Rules of Appellate Procedure 9.148 and 9.210, No. SC2023-145 (9/21/23)
https://supremecourt.flcourts.gov/content/download/879831/opinion/sc2023-0145.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant's claim that Fetal Alcohol Syndrome (FAS) is the functional equivalent of an intellectual disability under the Eighth Amendment and Atkins is s untimely, procedurally barred, and meritless. New opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not newly discovered evidence. The categorical bar of Atkins that shields the intellectually disabled from execution does not apply to individuals with other forms of mental illness or brain damage. Zack v. State, SC2023-1233 (9/21/23)
https://supremecourt.flcourts.gov/content/download/879833/opinion/sc2023-1233.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Hurst's now undermined Eighth Amendment prohibition on a non-unanimous death penalty recommendation (here, 11-1) does not apply retroactively. Zack v. State, SC2023-1233 (9/21/23)
https://supremecourt.flcourts.gov/content/download/879833/opinion/sc2023-1233.pdf

POST CONVICTION RELIEF-APPEAL-PRESERVATION: Defendant's claim that counsel was ineffective for failing to preserve for appeal the denial of his motion to suppress is not preserved where he failed to allege that he would not have entered the plea and would have gone to trial if he had known counsel's failure meant that he could not appeal the order denying suppression. An allegation that counsel failed to preserve an issue is not a legitimate ineffective-assistance claim to the extent that it suggests that preservation would have resulted in reversal on appeal. Sapp v. State, 1D21-3679 (9/20/23)

https://1dca.flcourts.gov/content/download/879778/opinion/download%3FdocumentVersionID=925f7236-cb87-41bb-a8d9-576cf4eb543f

VOP: Court may revoke probation without a violation of probation affidavit.

"[A] probation or community-control violation proceeding is not a separate criminal prosecution. It is therefore a mistake to assume there needs to be a 'charging document' to initiate the proceeding. There is not [such] a statutory requirement." Mosely v. State, 1D22-181 (9/20/23) https://1dca.flcourts.gov/content/download/879779/opinion/download%3FdocumentVersionID=5d0e847d-2366-4d1d-8612-2076e384e785

CREDIT FOR TIME SERVED: Where Court orally pronounces credIt for time served of 797 days for his five cases (for which arrests occurred on different dates) but written judgments showed varying jail credit, Defendant is entitled to the 797 days. When a written sentence conflicts with the sentencing court's oral pronouncement, the oral pronouncement controls. Daniels v. State, 2D21-2737 (9/20/23) https://2dca.flcourts.gov/content/download/879722/opinion/212737_DC08_09202023_090742_i.pdf

INDICTMENT/INFORMATION: The failure to include an essential element of a crime does not necessarily render an indictment so defective that it will not support a judgment of conviction when the indictment references a specific section of the criminal code which sufficiently details all the elements of the offense. S.F. a juvenile v. State, 3D22-2144 (9/20/23) https://3dca.flcourts.gov/content/download/879759/opinion/download%3FdocumentVersionID=dbb7b4d0-2e82-437e-8c81-a3b8844230d4

DEADLY WEAPON: Whether an item is a deadly weapon is a factual question to be determined under the circumstances, taking into consideration its size, shape, material, and the manner in which it was used or was capable of being used. S.F. a juvenile v. State, 3D22-2144 (9/20/23) https://3dca.flcourts.gov/content/download/879759/opinion/download%3FdocumentVersionID=dbb7b4d0-2e82-437e-8c81-a3b8844230d4

HFO: Application of the habitual felony offender provisions of §775.084 do not violate the Ex Post Facto Clause of the United States Constitution where

one of the two prior crimes relied upon to enhance the sentence occurred prior the enactment of the statute. Small v. State, 3D23-0700 (9/20/23) https://3dca.flcourts.gov/content/download/879786/opinion/download%3FdocumentVersionID=8cbf2f93-fc6c-4e29-9c24-89fb724ff142

VOP: An acquittal in a criminal case does not preclude the judge from determining that a parole or probation violation has occurred based on the same conduct. Parks v. State, 3D23-1449 (9/20/23) https://3dca.flcourts.gov/content/download/879764/opinion/download%3FdocumentVersionID=32c0fc49-3adf-4149-b2d1-8afce454b405

JUVENILE OFFENDER-LIFE SENTENCE: Two consecutive life sentences, each with the possibility of parole after twenty-five years, for murders committed by a juvenile offender 1994 do not violate the Eighth Amendment. Evolving case law regarding life sentences for juveniles outlined. Garner v. State, 2D22-866 (9/15/23) https://2dca.flcourts.gov/content/download/879463/opinion/220866_DC05_09152023_083456_i.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-PLEA OFFER: Defendant is not entitled to post conviction relief from his L & L conviction on the claim that counsel, in conveying the one year probation offer, did not clarify whether there would be a withhold of adjudication. "What

[Defendant] contends is competent substantial, evidence of a newly discovered, different, unconveyed plea offer is merely speculation based on misconstrued hearsay allegations in an affidavit contradicted by fragmental recitations of the previous plea offer which are in no way irreconcilable with the plea offer [overheard in the hallway]." State v. Downs, 2D22-3632 (9/15/23)
https://2dca.flcourts.gov/content/download/879501/opinion/223632_DC13_09152023_082905_i.pdf

HABEAS CORPUS: The purpose of a habeas corpus proceeding is to inquire into the legality of a petitioner's present detention, not to challenge the judicial action that put him in jail. Assuming, for the sake of argument, that the trial court committed sentencing errors in 1990 by believing HVFO sentencing to be mandatory, error was not fundamental nor is the motion for relief timely. Richardson v. State, 5D22-3046 (9/15/23)
https://5dca.flcourts.gov/content/download/879454/opinion/223046_DC05_09152023_091312_i.pdf

COSTS: Although the State requested the sum of $150, it offered no proof that costs in excess of $100 had been incurred. $100 Is the cost of prosecution. McCullough v. State, 5D23-670 (9/15/23)
https://5dca.flcourts.gov/content/download/879493/opinion/230670_DC05_09152023_094333_i.pdf

THREE STRIKES LAW: 18 U.S.C. §3559 (the three-strikes law) provides that a person convicted of a serious violent felony shall receive a mandatory life sentence if he has previously been convicted of two or more serious violent felonies. A "serious violent felony" is (1) an enumerated offense, (2) one involving use or threatened use of physical force (elements clause), or (3) one that by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense (residual clause). Reliance on the residual clause may be unconstitutional, but the Supreme Court has not yet so held. Jones v. USA, No. 20-13365

(11th Cir. 9/14/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES: Federal courts have jurisdiction to consider a second or successive motion for post conviction relief only if it is based on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable, or if it is based on newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the movant guilty of the offense. But because the Supreme Court has not ruled on the constitutionality of the residual clause of the three-strikes law, a federal court lacks jurisdiction to rule on the merits. Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES: Only the Supreme Court can announce a new rule of constitutional law. The fact that the Supreme Court has decided that the residual clause of the analogous Armed Career Criminal Act is unconstitutionally vague is not a holding that the residual clause of the three-strikes law is unconstitutional too. "Jones and the dissenting opinion are wrong that a residual clause is a residual clause is a residual clause." "Although the three-strikes law's residual clause is 'similarly worded' to the residual clauses in Johnson, Dimaya, and Davis, we can't pluck the rules announced by those decisions and plop them onto Jones's challenge to a different statute in a different context." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES (J. WILSON, DISSENT): "Viewing the rules of Johnson and Dimaya and Davis as specific only to the statutes they addressed is in essence holding that when the Supreme Court establishes a rule it can govern only that statute,

and that applying the same principle to another statute necessarily requires a new and separate rule. But Supreme Court precedent shows otherwise. . . [N]ot every extension of Supreme Court precedent to a new statute requires a new rule of constitutional law. A rule is not 'new' where it simply applies an existing rule in a way that would be obvious to reasonable jurists." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-JURISDICTION-THREE STRIKES (J. WILSON, DISSENT): "The majority's holding that we lack jurisdiction to hear this appeal is alarming. If the majority's view is correct, then despite the Supreme Court's clear guidance in three recent decisions that residual clauses of this sort are unconstitutional. . .prisoners like Jones will be barred from vindicating their rights. And it is small comfort to suggest that such prisoners wait for us to strike down §3559(c)'s residual clause on plenary appeal. Such an occasion will not arise since the government has conceded that this residual clause is unconstitutional and, therefore, no longer seeks to apply it in criminal prosecutions. The majority thus leaves Jones and others like him to serve out unconstitutional sentences. . .[O]ur precedents do not require this injustice." Jones v. USA, No. 20-13365 (11th Cir. 9/14/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202013365.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: To warrant relief from death penalty, a claim of newly discovered evidence must be of such nature that it would probably produce a less severe sentence upon retrial. Defendant who fails to allege that he probably would be sentenced to life if the jury or trial court were told that he has ASD or PTSD makes a facially insufficient claim. Alleging a reasonable probability of a life sentence at retrial is not equivalent to alleging a probable life sentence at a retrial and yields a facially insufficient claim. While the "reasonable probability" prejudice standard means a probability higher than mere chance, it does not mean a probability greater than fifty percent; conversely, the "probably" prejudice

standard does mean a probability greater than fifty percent. Damren v. State, SC2023-15 (9/14/23)
https://supremecourt.flcourts.gov/content/download/879390/opinion/sc2023-0015.pdf

EVIDENCE-SIMILAR FACT: In homicide case, evidence that Defendant had murdered someone else two days before with the same gun is admissible to prove identity. Snyder v. State, 1D22-275 (9/13/23)
https://1dca.flcourts.gov/content/download/879324/opinion/download%3FdocumentVersionID=6ab8ee43-c98b-408d-be8b-e0c350810b69

COSTS: Costs of prosecution need not be requested. Defendant assented to transportation costs (§938.27(1)) by affirmatively stating he had no objection to it. Ellis v. State, 1D22-2896 (9/13/23)
https://1dca.flcourts.gov/content/download/879314/opinion/download%3FdocumentVersionID=ef621803-52eb-4be5-aaa4-e1b4aa80ac55

HABEAS CORPUS-PRETRIAL DETENTION: A petitioner seeking a writ of habeas corpus must make a prima facie case that his current detention is unlawful by submitting an affidavit or evidence demonstrating that his financial circumstances are such that the bail amount set by the trial court is tantamount to pretrial detention. Martinez v. State, 1D22-3779 (9/13/23)
https://1dca.flcourts.gov/content/download/879320/opinion/download%3FdocumentVersionID=e4471fa2-55f8-436d-9873-27de10018e9c

COSTS: Costs of investigation must be stricken where they had not been requested by the State, but they may be imposed on remand. Bradley v. State, 4D2022-0845 (9/13/23)

https://4dca.flcourts.gov/content/download/879331/opinion/download%3FdocumentVersionID=3cc7827a-ea9a-4df2-b3fc-c27bc3bf48e3

SENTENCING: Following an unsuccessful VOP evidentiary hearing, Defendant is entitled to a separate sentencing hearing on a separate date. Montoya v. State, 4D2022-2757 (9/13/23)

https://4dca.flcourts.gov/content/download/879332/opinion/download%3FdocumentVersionID=e8f86669-b9b0-4ca4-af64-0640c320d575

DISCOVERY VIOLATION-EXPERT: State is required to disclose expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify. The failure to designate a witness in discovery as an expert witness constitutes a discovery violation. State committed a discovery violation by failing to disclose that its lead investigator would testify as an expert. Testimony that the victim's injuries were not consistent with Defendant's claim that he shot at the ground was expert opinion. Gurrola v. State, 5D21-2957 (9/8/23)
https://5dca.flcourts.gov/content/download/877456/opinion/212957_DC13_09082023_094106_i.pdf

VOP: No fundamental error occurred where the affidavit of violation, though citing to an incorrect condition number, put the defendant on notice of the misconduct of which he was accused. Santiago v. State, 6D23-1589 (9/8/23)
https://6dca.flcourts.gov/content/download/877444/opinion/231589_DC05_09082023_095356_i.pdf

COVID: COVID procedure of allowing grand jury to convene by video-conferencing in groups of ten or less at different courthouses, if improper, does not invalidate the indictment. "Graham's argument is missing one key component: prejudice." Even if he were correct that grand jurors must all be present in the same room, that kind of violation of Rule 6 is not a fundamental error. The fact that the grand jurors met in three secure locations and communicated via video-conference did not change the basic nature of the grand jury or fatally infect the indictment. USA v. Graham, No. 22-11809

(11th Cir. 9/7/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211809.op2.pdf

WIRETAP: Affidavits comprehensively outlining why previous sources of information and reasonable alternative methods would not suffice are sufficient for a wiretap. When requesting a wiretap, the government need not show a comprehensive exhaustion of all possible techniques. The law only demands an explanation of the retroactive or prospective failure of several investigative techniques that reasonably suggest themselves. If having some evidence of a crime were enough to bar a wiretap as unnecessary, no wiretap order could ever be issued because evidence is required to get a wiretap in the first place. USA v. Graham, No. 22-11809 (11th Cir. 9/7/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211809.op2.pdf

SUPERVISED RELEASE-TOLLING: Absconding during a term of supervised release does not toll the supervised release period. Amended Affidavit of Violation of Probation alleging a new law violation of a new offense (domestic battery) exceeds Court's jurisdiction. There can be no tolling of the period of supervised release on the basis of fugitive status. USA v. Talley, No. 22-13921 (11th Cir. 9/7/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202213921.pdf

AMENDMENT-RULES-FLORIDA BAR: Discipline rules tweaked. In Re: Amendments to Rules Regulating the Florida Bar—chapters 3 and 14, No. SC2022-1293 (9/7/23)
https://supremecourt.flcourts.gov/content/download/877366/opinion/sc2022-1293.pdf

POST-CONVICTION RELIEF: Defendant's fails on claim that counsel was ineffective for not talking him out of reneging mid-trial on his plea agreement to testify against his co-Defendant. Ingram v. Warden, HCI, No. 22-11459

(11th Cir. 9/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211459.pdf

AEDPA: A determination would (or would not) have accepted a plea offer or would (or would not) have gone to trial but for counsel's deficient advice and performance constitutes a finding of fact. Under AEDPA, that factual finding is presumably unless rebutted clear and convincing evidence. Ingram v. Warden, HCI, No. 22-11459 (11th Cir. 9/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211459.pdf

POST CONVICTION RELIEF-SELF-IMMOLATION: Counsel was not deficient for failing to dissuade client from reneging, mid-trial, on his plea agreement to testify against his co-defendant in a tie-him-up-and-set-him-on-fire murder case. Defendant's rejection of his attorneys' advice (if he did not testify against co-defendant he could receive the death penalty) and his decision to follow another co-defendant's advice ("Nobody talks, everybody walks") is not his attorneys' fault. Counsel was not deficient for not producing an aunt and sister to dissuade him by threats of a "whooping" or "popp[ing] him on the head," assuming they could have made it to the courthouse on time. Death penalty affirmed. Ingram v. Warden, HCI, No. 22-11459 (11th Cir. 9/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202211459.pdf

DEFINITION-"CRASH": Although the term 'traffic crash' reasonably contemplates some degree of damage, it clearly does not imply that damage

must have occurred to the property of another, nor does it set a minimum amount necessary in order for such an incident to legally occur. State v. McCartha, 1D22-794 (9/6/23) https://1dca.flcourts.gov/content/download/877277/opinion/download%3FdocumentVersionID=deb68113-fe15-4c62-8699-1a06099fdd50

SEARCH AND SEIZURE-CRASH: Pickup truck found overturned in a ditch with a damaged headlight, but no evidence that it had hit anything besides the road and ditch was "involved in the crash." The road and the ditch are objects. Warrantless misdemeanor arrest for DUI was lawful. The road and the ditch are objects. State v. McCartha, 1D22-794 (9/6/23) https://1dca.flcourts.gov/content/download/877277/opinion/download%3FdocumentVersionID=deb68113-fe15-4c62-8699-1a06099fdd50

VOP-HEARSAY: Fellow occupants statement that Defendant no longer resided at his home and was hiding out in Opa-Locka is hearsay. But defendant's failure to keep probation appointments and repeated unsuccessful attempts to locate him at his home is non-hearsay evidence. There had been a murder at his home at the time of his disappearance. Revocation upheld. Brownlee v. State, 3D19-551 (9/6/23) https://3dca.flcourts.gov/content/download/877129/opinion/190551_DC08_09062023_100011_i.pdf

VOP-DRUG TEST: Totality of hearsay and non-hearsay evidence of officer performing field drug test, confirmed by laboratory test, is sufficient evidence of violation of probation by possession of narcotic. Brownlee v. State, 3D19-

551 (9/6/23)
https://3dca.flcourts.gov/content/download/877129/opinion/190551_DC08_09062023_100011_i.pdf

VOP-HFO: To effectuate a habitual felony offender sentence upon revocation of probation, a trial court must orally pronounce habitual felony offender status, even when Defendant had been originally sentenced as an HFO. On VOP, Defendant's sentence of ten years as a habitual felony offender was illegal because the judge failed to orally designate him as such. But Court may re-sentence the Defendant as an HFO without a full resentencing hearing. Brownlee v. State, 3D19-551 (9/6/23)
https://3dca.flcourts.gov/content/download/877129/opinion/190551_DC08_09062023_100011_i.pdf

DISCOVERY-CI DISCLOSURE: Disclosure of a CI's identity is required where the defendant is charged with selling or delivering illegal drugs to the informant and no officer or other witness was present. Disclosure of a confidential informant is required if an informant's identity is essential to a fair determination of a cause. This rule centers around the defendant's right to confront the witnesses against him, and has nothing to do with whether the CI has valuable testimony for the defense. State's argument that it intends to rely on the audio/video recording under "silent witness" theory fails. State v. Williams, 3D23-208 (9/6/23)
https://3dca.flcourts.gov/content/download/877145/opinion/230208_DC02_09062023_101728_i.pdf

PLEA-WITHDRAWAL: Defendant is entitled to withdraw his plea where the agreement included a stipulation that Defendant is not a danger to the community but the Court found that he was. A trial judge is never bound to honor a plea agreement, but when there has been a firm agreement for a specified sentence and the judge determines to impose a greater sentence, the defendant has the right to withdraw the plea. Blount v. State, 4D22-2755 (9/6/23)

https://4dca.flcourts.gov/content/download/877272/opinion/222755_DC13_09062023_095740_i.pdf

POST CONVICTION RELIEF-AEDPA: Defendant's claim of ineffective assistance of counsel fails where he does not identify any expert or lay witnesses and the substance of their testimony to support mental health/substance abuse mitigation/lack of sleep mitigation for killing his grandparents. AEDPA only permits a federal court to grant a writ of habeas corpus with respect to a claim adjudicated on the merits in a state court if that adjudication resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. A state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended beyond any possibility for fairminded disagreement. Mashburn v. Commissioner, No. 22-10329 (11th Cir. 9/5/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210329.pdf

DEATH PENALTY-POST-CONVICTION RELIEF: Defendant's argument--not counsel's failure to produce mitigating evidence, but rather his failure to produce even more--fails. Mashburn v. Commissioner, Alabama DOC, No. 22-10329 (11th Cir. 9/5/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210329.pdf

APPEAL-MOTION TO CORRECT-JURISDICTION: Trial court has jurisdiction to rule on a motion to correct sentence while an appeal is pending, but only for 60 days from the filing of the motion. After 60 days, the motion shall be deemed denied and the order is a legal nullity. Case is remanded to re-enter a new corrected order. Dixon v. State, 1D22-1733 (9/1/23)
https://1dca.flcourts.gov/content/download/876866/opinion/download%3FdocumentVersionID=01928277-d8a6-4a09-9448-2aaa48bb19ff

COSTS: $50 agency investigative cost may not be imposed unless requested by the State. Young v. State, 1D22-3105 (9/1/23) https://1dca.flcourts.gov/content/download/876869/opinion/download%3FdocumentVersionID=2688fb4f-23cc-4d0d-8ae8-5f26ad15843e

SENTENCING-CONSIDERATIONS: Defendant pled to LOSA with death and vehicular homicide. A subsequent arrest or charge is not a proper factor for the sentencing judge to consider. Where the PSI referenced uncharged criminal conduct (Defendant hiding his room mate's gun after a shoot out at their house the morning of the accident), the State elaborated on the uncharged conduct in order to give the Court "a better understanding of who this defendant is," and the Court considered it, Defendant is entitled to a new sentencing hearing. Error is fundamental. "[W]e. . .caution trial courts from commenting on impermissible sentencing factors, such as uncharged conduct, if they should be presented—even without objection." Wyrich v. State, 2D22-1458 (9/1/23) https://2dca.flcourts.gov/content/download/876809/opinion/221458_DC13_09012023_083051_i.pdf

COSTS: Court may not impose a $65 fee under §939.185 without a citation to a county ordinance. T.J. v. State, 22-2118 (9/1/23) https://2dca.flcourts.gov/content/download/876816/opinion/222118_DC05_09012023_083231_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: In

situations involving alleged newly discovered evidence in the form of a recantation, an evidentiary hearing is not required to evaluate the veracity of the recanting witness where the trial court accepts the allegations as true, but attaches multiple exhibits conclusively refuting the claim to its order denying relief. Collins v. State, 5D23-251 (9/1/23)
https://5dca.flcourts.gov/content/download/876860/opinion/230251_DC05_09012023_092034_i.pdf

DISCOVERY VIOLATION: Failure to disclose in writing oral statements made by a defendant is a discovery violation. State committed a discovery violation by not disclosing statements made by a Defendant to a detective. The fact that the detective had previously testified to the statements at a hearing when the Defendant was represented by a different attorney does not absolve the State of its duty of disclosure. Anytime a trial court is alerted during a criminal trial to a possible discovery violation, It is required to conduct a Richardson hearing, even where the defendant does not specifically request it. New trial required. Young v. State, 6D23-24 (9/1/23)
https://6dca.flcourts.gov/content/download/876786/opinion/230024_DC08_09012023_081930_i.pdf

AUGUST 2023

RULES-AMENDMENT-JIMMY RYCE: Rules modified for clarity and simplicity. "Shall" becomes "must," "prior to" becomes "before," "pursuant to" becomes "under," etc. Other tweaks to the rule. In Re: Amendments to Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, SC2023-0005 (8/31/23)
https://supremecourt.flcourts.gov/content/download/876701/opinion/sc2023-0005.pdf

RULES-AMENDMENT-APPELLATE PROCEDURE: Rules amended for clarity and simplicity. In Re: Amendments to the Florida Rules of Appellate Procedure, SC2023-0033 (8/31/23)
https://supremecourt.flcourts.gov/content/download/876702/opinion/sc2023-

0033.pdf

RULES-AMENDMENT-FLORIDA BAR: A felony charge alleging conduct reflecting adversely on the lawyer's fitness to practice law can constitute clear and convincing evidence that the lawyer's continued practice of law would cause great public harm, warranting an emergency suspension. The felony charge underlying the suspension must be by an indictment or information in state or federal court. In Re: Amendment to Rule Regulating the Florida Bar 3-5.2, SC2023-0108 (8/31/23)
https://supremecourt.flcourts.gov/content/download/876703/opinion/sc2023-0108.pdf

SEARCH AND SEIZURE: Officers with an arrest warrant followed the Defendant into his garage, arrested him, removed his fanny pack, and searched it. Defendant was secured 8-10 feet away at the time of the search. Once the officers reduced the fanny pack to their exclusive control and there is no longer any danger of the arrestee gaining access to it, the search cannot be justified as a search incident to arrest. Jean v. State, 6D23-1255 (8/31/23)
https://6dca.flcourts.gov/content/download/876741/opinion/231255_DC13_08312023_104051_i.pdf

WITNESS TAMPERING: Defendant is properly convicted of tampering with a witness in an official proceeding by threatening her to keep her from working as a CI. Law enforcement investigations are not "official proceedings," but a defendant can be convicted of federal witness tampering even if an official proceeding is not pending or about to be instituted; it is enough that the defendant foresees that an official proceeding will ensue. USA v. Beach, No. 21-11342 (11th Cir. 8/30/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202111342.pdf

CHILD HEARSAY: Preserving a claim that the trial court failed to make the required factual findings for admission of child hearsay requires a

contemporaneous objection specifically concerning the sufficiency of those findings. A general objection is not enough. Failure to make a specific finding as to the trustworthiness of the witness (here, the child's grandmother) as a source of the victim's hearsay statements is harmless error. Prado v. State, 4D22-1347 (8/30/23)
https://4dca.flcourts.gov/content/download/876459/opinion/221347_DC05_08302023_095250_i.pdf

BAKER ACT: Schizophrenic woman who engaged in continuous bizarre behavior may not be involuntarily committed absent proof of self-harm or self-neglect. A diagnosis of schizophrenia and potential failure to take medication for mental illness do not alone justify Baker Act involuntary placement. Conclusory testimony, unsubstantiated by facts in evidence, is insufficient to satisfy the statutory criteria by clear and convincing evidence. Ross v. State, 4D22-2949 (8/30/23)
https://4dca.flcourts.gov/content/download/876464/opinion/222949_DC13_08302023_100357_i.pdf

COSTS: Court may not impose a $100.00 public defender fee. The fee is $50.00. Lynn v. State, 4D22-3126 (8/30/23)
https://4dca.flcourts.gov/content/download/876465/opinion/223126_DC08_08302023_100625_i.pdf

VOP-CONDITIONS: Probation cannot be revoked for violating a special condition that was not imposed by the court. In determining whether a condition has been properly imposed by the court so as to support a revocation, new, special conditions imposed unilaterally by a probation officer are distinguished from those that fall within the ambit of an existing court directive. But the requirement here that Defendant submit to a sexual offender evaluation fell within the purview of mental health treatment and did not constitute a new, special condition imposed by the probation officer. Facen v. State, 3D22-1249 (8/30/23)
https://3dca.flcourts.gov/content/download/876434/opinion/221249_DC05_

08302023_095011_i.pdf

ENTRAPMENT: Defendant's dubious and disbelieved claims that a CI called him "Mi Amour," touched him on the leg, implied she could be his soul mate, and was kind of intimate with him in an undefined non-physical way (oral sex aside) does not show entrapment. Objective entrapment is a matter of law for the court to decide. Medina v. State, 4D20-1522 (8/30/23) https://4dca.flcourts.gov/content/download/876456/opinion/201522_DC05_08302023_094618_i.pdf

ENTRAPMENT: Failure to supervise a CI will not support dismissal unless the lack of supervision results in unscrupulous conduct by the informant. Medina v. State, 4D20-1522 (8/30/23) https://4dca.flcourts.gov/content/download/876456/opinion/201522_DC05_08302023_094618_i.pdf

DOUBLE JEOPARDY: At sentencing, Court said "I'll. . .sentence you to serve 7.875 months in the Department of Corrections." He meant "years," not "months." Seven seconds after Defendant left the room, the judge corrected himself, but later ruled that Double Jeopardy kept him from changing "months" to "years." Court erred. Correction of a sentence is barred only when the Defendant begins serving the sentence, which does not occur the instant Defendant leaves the courtroom. Double jeopardy does not allow a defendant to take advantage of a trial court's verbal misstep, quickly rectified, during sentencing. "We are not inclined to allow appellant to play 'gotcha' by taking advantage of a verbal mistake made during sentencing that was obvious, immediately recognized, and corrected. . .within seconds." Ward v. State, 4D21-3229 (8/30/23) https://4dca.flcourts.gov/content/download/876457/opinion/213229_DC08_08302023_094834_i.pdf

FIREARM IN FURTHERANCE-AIDING AND ABETTING: Attempted Hobbs Act robbery is not a crime of violence, but aiding and abetting Hobbs Act robbery is. Because an aider and abettor is responsible for the acts of the principal, he necessarily commits all the elements of a principal Hobbs Act robbery. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

JURY SELECTION-CHALLENGE FOR CAUSE-RELIGIOUS BELIEFS: Courts may exclude or remove jurors who make clear that they may not sit in judgment of others based on their religious beliefs. Court did not err in granting Government's challenge for cause of a Jehovah's Witness who said that she would have difficulty judging others because she did not "have a lot of faith in. . .the justice system," that nobody knew the truth about what happened except the people involved and Jehovah, and that she didn't really know if she could be impartial. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

EVIDENCE-IDENTIFICATION: No fundamental error in officer giving his opinion that the person in the surveillance video–the guy with ninja turtle and dollar sign tattoos on his face and a stack of money in his hands--is the Defendant. The admission of the officer's post-arrest familiarity with Defendant, if erroneous, did not affect his substantial rights. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

THREATENING OFFICIAL: In a JQC complaint and a letter, Defendant wrote "Biblical law. . .states an 'eye for an eye,'" accused a judge of being "an

an addier [sic] and abetter to a plot to "refus[e] my heart medication in an effort to kill me", and sent a link to an eye-raising video of him approaching the judge's father in church. Veiled threats to a judge support a conviction for threatening an official. Threats here are true threats. USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

INCOMPETENCE: 18 U.S.C. §4241(d) provides that a district court may commit a defendant for treatment if the court finds him to be mentally incompetent, but only for a reasonable period of time not to exceed four months. But the remedy for violating the four month rule is not dismissal of the indictment. There is simply no firm footing in §4241(d)'s text for a requirement that psychiatric findings be released or received within the four-month period. USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS (J. NEWSOM, CONCURRING): "Our precedent has (albeit haphazardly) categorized a criminal defendant's argument that the district court considered an impermissible factor in imposing a sentence as a challenge to the sentence's 'substantive" reasonableness,' rather than an allegation of 'procedural' error. . .That didn't. . .make much sense to me. So I decided to look into it. The deeper I dug, though, the more problems I uncovered. . .I discovered that our precedent is confused—and frankly, just sloppy. . .[It] is a crazy quilt. . .[W]e've been freakishly inconsistent." USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

APPEAL-MOTION TO CORRECT-JURISDICTION: Trial court has jurisdiction to rule on a motion to correct sentence while an appeal is pending, but only for 60 days from the filing of the motion. After 60 days, the motion shall be

deemed denied and the order is a legal nullity. Case is remanded to re-enter a new corrected order. Dixon v. State, 1D22-1733 (9/1/23)

https://1dca.flcourts.gov/content/download/876866/opinion/download%3FdocumentVersionID=01928277-d8a6-4a09-9448-2aaa48bb19ff

COSTS: $50 agency investigative cost may not be imposed unless requested by the State. Young v. State, 1D22-3105 (9/1/23)

https://1dca.flcourts.gov/content/download/876869/opinion/download%3FdocumentVersionID=2688fb4f-23cc-4d0d-8ae8-5f26ad15843e

SENTENCING-CONSIDERATIONS: Defendant pled to LOSA with death and vehicular homicide. A subsequent arrest or charge is not a proper factor for the sentencing judge to consider. Where the PSI referenced uncharged criminal conduct (Defendant hiding his room mate's gun after a shoot out at their house the morning of the accident), the State elaborated on the uncharged conduct in order to give the Court "a better understanding of who this defendant is," and the Court considered it, Defendant is entitled to a new sentencing hearing. Error is fundamental. "[W]e. . .caution trial courts from commenting on impermissible sentencing factors, such as uncharged conduct, if they should be presented—even without objection." Wyrich v. State, 2D22-1458 (9/1/23)

https://2dca.flcourts.gov/content/download/876809/opinion/221458_DC13_09012023_083051_i.pdf

COSTS: Court may not impose a $65 fee under §939.185 without a citation to a county ordinance. T.J. v. State, 22-2118 (9/1/23)

https://2dca.flcourts.gov/content/download/876816/opinion/222118_DC05_09012023_083231_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: In situations involving alleged newly discovered evidence in the form of a recantation, an evidentiary hearing is not required to evaluate the veracity of the recanting witness where the trial court accepts the allegations as true, but attaches multiple exhibits conclusively refuting the claim to its order denying relief. Collins v. State, 5D23-251 (9/1/23)

https://5dca.flcourts.gov/content/download/876860/opinion/230251_DC05_09012023_092034_i.pdf

DISCOVERY VIOLATION: Failure to disclose in writing oral statements made by a defendant is a discovery violation. State committed a discovery violation by not disclosing statements made by a Defendant to a detective. The fact that the detective had previously testified to the statements at a hearing when the Defendant was represented by a different attorney does not absolve the State of its duty of disclosure. Anytime a trial court is alerted during a criminal trial to a possible discovery violation, It is required to conduct a Richardson hearing, even where the defendant does not specifically request it. New trial required. Young v. State, 6D23-24 (9/1/23)

https://6dca.flcourts.gov/content/download/876786/opinion/230024_DC08_09012023_081930_i.pdf

AUGUST 2023

RULES-AMENDMENT-JIMMY RYCE: Rules modified for clarity and simplicity. "Shall" becomes "must," "prior to" becomes "before," "pursuant to" becomes "under," etc. Other tweaks to the rule. In Re: Amendments to Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, SC2023-0005 (8/31/23)

https://supremecourt.flcourts.gov/content/download/876701/opinion/sc2023-0005.pdf

RULES-AMENDMENT-APPELLATE PROCEDURE: Rules amended for clarity and simplicity. In Re: Amendments to the Florida Rules of Appellate Procedure, SC2023-0033 (8/31/23)

https://supremecourt.flcourts.gov/content/download/876702/opinion/sc2023-0033.pdf

RULES-AMENDMENT-FLORIDA BAR: A felony charge alleging conduct reflecting adversely on the lawyer's fitness to practice law can constitute clear and convincing evidence that the lawyer's continued practice of law would cause great public harm, warranting an emergency suspension. The felony charge underlying the suspension must be by an indictment or information in state or federal court. In Re: Amendment to Rule Regulating the Florida Bar 3-5.2, SC2023-0108 (8/31/23)

https://supremecourt.flcourts.gov/content/download/876703/opinion/sc2023-0108.pdf

SEARCH AND SEIZURE: Officers with an arrest warrant followed the Defendant into his garage, arrested him, removed his fanny pack, and searched it. Defendant was secured 8-10 feet away at the time of the search. Once the officers reduced the fanny pack to their exclusive control and there is no longer any danger of the arrestee gaining access to it, the search cannot be justified as a search incident to arrest. Jean v. State, 6D23-1255 (8/31/23)

https://6dca.flcourts.gov/content/download/876741/opinion/231255_DC13_08312023_104051_i.pdf

WITNESS TAMPERING: Defendant is properly convicted of tampering with a witness in an official proceeding by threatening her to keep her from working as a CI. Law enforcement investigations are not "official proceedings," but a defendant can be convicted of federal witness tampering even if an official proceeding is not pending or about to be instituted; it is enough that the defendant foresees that an official proceeding will ensue. USA v. Beach, No. 21-11342 (11th Cir. 8/30/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111342.pdf

CHILD HEARSAY: Preserving a claim that the trial court failed to make the required factual findings for admission of child hearsay requires a contemporaneous objection specifically concerning the sufficiency of those findings. A general objection is not enough. Failure to make a specific finding as to the trustworthiness of the witness (here, the child's grandmother) as a source of the victim's hearsay statements is harmless error. Prado v. State, 4D22-1347 (8/30/23)

https://4dca.flcourts.gov/content/download/876459/opinion/221347_DC05_08302023_095250_i.pdf

BAKER ACT: Schizophrenic woman who engaged in continuous bizarre behavior may not be involuntarily committed absent proof of self-harm or self-neglect. A diagnosis of schizophrenia and potential failure to take medication for mental illness do not alone justify Baker Act involuntary placement. Conclusory testimony, unsubstantiated by facts in evidence, is insufficient to satisfy the statutory criteria by clear and convincing evidence. Ross v. State, 4D22-2949 (8/30/23)

https://4dca.flcourts.gov/content/download/876464/opinion/222949_DC13_08302023_100357_i.pdf

COSTS: Court may not impose a $100.00 public defender fee. The fee is $50.00. Lynn v. State, 4D22-3126 (8/30/23)

https://4dca.flcourts.gov/content/download/876465/opinion/223126_DC08_08302023_100625_i.pdf

VOP-CONDITIONS: Probation cannot be revoked for violating a special condition that was not imposed by the court. In determining whether a condition has been properly imposed by the court so as to support a revocation, new, special conditions imposed unilaterally by a probation officer are distinguished from those that fall within the ambit of an existing court directive. But the requirement here that Defendant submit to a sexual offender evaluation fell within the purview of mental health treatment and did not constitute a new, special condition imposed by the probation officer. Facen v. State, 3D22-1249 (8/30/23)

https://3dca.flcourts.gov/content/download/876434/opinion/221249_DC05_08302023_095011_i.pdf

ENTRAPMENT: Defendant's dubious and disbelieved claims that a CI called him "Mi Amour," touched him on the leg, implied she could be his soul mate, and was kind of intimate with him in an undefined non-physical way (oral sex aside) does not show entrapment. Objective entrapment is a matter of law for the court to decide. Medina v. State, 4D20-1522 (8/30/23)

https://4dca.flcourts.gov/content/download/876456/opinion/201522_DC05_08302023_094618_i.pdf

ENTRAPMENT: Failure to supervise a CI will not support dismissal unless the lack of supervision results in unscrupulous conduct by the informant. Medina v. State, 4D20-1522 (8/30/23)

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DOUBLE JEOPARDY: At sentencing, Court said "I'll. . .sentence you to serve 7.875 months in the Department of Corrections." He meant "years," not "months." Seven seconds after Defendant left the room, the judge corrected himself, but later ruled that Double Jeopardy kept him from changing "months" to "years." Court erred. Correction of a sentence is barred only when the Defendant begins serving the sentence, which does not occur the instant Defendant leaves the courtroom. Double jeopardy does not allow a defendant to take advantage of a trial court's verbal misstep, quickly rectified, during sentencing. "We are not inclined to allow appellant to play 'gotcha' by taking advantage of a verbal mistake made during sentencing that was obvious, immediately recognized, and corrected. . .within seconds." Ward v. State, 4D21-3229 (8/30/23)

https://4dca.flcourts.gov/content/download/876457/opinion/213229_DC08_08302023_094834_i.pdf

FIREARM IN FURTHERANCE-AIDING AND ABETTING: Attempted Hobbs Act robbery is not a crime of violence, but aiding and abetting Hobbs Act robbery is. Because an aider and abettor is responsible for the acts of the principal, he necessarily commits all the elements of a principal Hobbs Act robbery. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

JURY SELECTION-CHALLENGE FOR CAUSE-RELIGIOUS BELIEFS: Courts may exclude or remove jurors who make clear that they may not sit in judgment of others based on their religious beliefs. Court did not err in granting Government's challenge for cause of a Jehovah's Witness who said that she would have difficulty judging others because she did not "have a lot

of faith in. . .the justice system," that nobody knew the truth about what happened except the people involved and Jehovah, and that she didn't really know if she could be impartial. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

EVIDENCE-IDENTIFICATION: No fundamental error in officer giving his opinion that the person in the surveillance video–the guy with ninja turtle and dollar sign tattoos on his face and a stack of money in his hands--is the Defendant. The admission of the officer's post-arrest familiarity with Defendant, if erroneous, did not affect his substantial rights. USA v. Wiley, No.22-10179 (11th Cir. 8/29/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210179.pdf

THREATENING OFFICIAL: In a JQC complaint and a letter, Defendant wrote "Biblical law. . .states an 'eye for an eye,'" accused a judge of being "an an addier [sic] and abetter to a plot to "refus[e] my heart medication in an effort to kill me", and sent a link to an eye-raising video of him approaching the judge's father in church. Veiled threats to a judge support a conviction for threatening an official. Threats here are true threats. USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

INCOMPETENCE: 18 U.S.C. §4241(d) provides that a district court may commit a defendant for treatment if the court finds him to be mentally incompetent, but only for a reasonable period of time not to exceed four months. But the remedy for violating the four month rule is not dismissal of

the indictment. There is simply no firm footing in §4241(d)'s text for a requirement that psychiatric findings be released or received within the four-month period. USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS (J. NEWSOM, CONCURRING): "Our precedent has (albeit haphazardly) categorized a criminal defendant's argument that the district court considered an impermissible factor in imposing a sentence as a challenge to the sentence's 'substantive" reasonableness,' rather than an allegation of 'procedural' error. . .That didn't. . .make much sense to me. So I decided to look into it. The deeper I dug, though, the more problems I uncovered. . .I discovered that our precedent is confused—and frankly, just sloppy. . .[It] is a crazy quilt. . .[W]e've been freakishly inconsistent." USA v Curtin, No. 22-10509 (11th Cir. 8/28/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210509.pdf

QUOTATION-MALICE-ABRAHAM LINCOLN: "I have endured a great deal of ridicule without much malice; and have received a great deal of kindness, not quite free from ridicule. I am used to it." Tomlinson v. State, SC2021-1204 (8/24/23)

https://supremecourt.flcourts.gov/content/download/876147/opinion/sc2021-1204.pdf

EXTORTION: Defendant's threat to make a civil complaint "go away" in return for payment of $400,000, or to ruin victims' careers by calling the Wall Street Journal and convincing the Department of Business and Professional

Regulation to take away their real estate licenses, is extortion. Tomlinson v. State, SC2021-1204 (8/24/23)

https://supremecourt.flcourts.gov/content/download/876147/opinion/sc2021-1204.pdf

DEFINITION-"MALICE"-EXTORTION: The definition of "maliciously," at least in extortion cases, means "intentionally and without any lawful justification." Malice, in the legal acceptation of the word, is not confined to personal spite against individuals, but consists in a conscious violation of the law, to the prejudice of another. Proof that the threat was made "with ill will, hatred, spite, or an evil intent" is not required. Tomlinson v. State, SC2021-1204 (8/24/23)

https://supremecourt.flcourts.gov/content/download/876147/opinion/sc2021-1204.pdf

RULE OF LENITY: The rule of lenity "is a tool we pull from the box only when others will not do the job." Tomlinson v. State, SC2021-1204 (8/24/23)

https://supremecourt.flcourts.gov/content/download/876147/opinion/sc2021-1204.pdf

APPEAL--DOWNWARD DEPARTURE: Appellate review of the trial court's denial of a downward departure sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Appeal dismissed. Lopez v. State, 1D22-179 (8/23/23)

https://1dca.flcourts.gov/content/download/876088/opinion/download%3Fd

ocumentVersionID=1eaeafcf-1ee5-432c-84ca-ea48b33b8302

APPEAL-DISMISSAL/AFFIRMANCE (J. TANENBAUM, DISSENTING): The judgment of conviction and the sentencing order are separate final orders; the sentence is a post-decretal additional final order. Appellate court has the constitutional authority to consider the judgment of conviction and the sentencing orders. Dismissal, then, is not the proper disposition. The plea agreement prevents a cognizable argument for reversal of his judgment of conviction, and the facts do not advance a persuasive argument for vacating the sentencing order. So the judgments should be affirmed. Lopez v. State, 1D22-179 (8/23/23)

https://1dca.flcourts.gov/content/download/876088/opinion/download%3FdocumentVersionID=1eaeafcf-1ee5-432c-84ca-ea48b33b8302

BOND-PROHIBITION-STANDING: Public Defender lacks standing to petition for Writ of Prohibition against standing order allowing all other judges in the circuit at first appearances on a new arrest to modify the conditions of pretrial release previously set by another judge. And certiorari, not prohibition, would be the correct writ if the PD had standing. Which it does not. Eger v. The Judges of the Twelfth Judicial Circuit, 2D23-1151 (8/23/23)

https://2dca.flcourts.gov/content/download/876043/opinion/231151_DA08_08232023_092816_i.pdf

JURISDICTION-VOP: A circuit court that accepted a guilty plea and granted a criminal defendant probation retains jurisdiction over the violation of that probation when the legislature changes the underlying crime from a felony to a misdemeanor (theft). Meyer v. State, 3D23-238 (8/23/23)

https://3dca.flcourts.gov/content/download/876048/opinion/230238_DC05_08232023_100220_i.pdf

JURISDICTION-VOP (J. GORDO, CONCURRING): "Meyer frames his argument entirely as an attack on the jurisdiction of the circuit court to enter the judgment and sentence at issue. . .A different issue concerns what sentencing limits were available for the violation of probation due to the change in the underlying criminal statute. Because Meyer did not raise this issue, we do not reach it." Meyer v. State, 3D23-238 (8/23/23)

https://3dca.flcourts.gov/content/download/876048/opinion/230238_DC05_08232023_100220_i.pdf

POST CONVICTIION RELIEF-JURISDICTION: Trial court lacks jurisdiction to consider and rule on a post-conviction motion while the direct appeal is pending. Reeves v. State, 3D23-960 (8/23/23)

https://3dca.flcourts.gov/content/download/876050/opinion/230960_DC13_08232023_100639_i.pdf

SEARCH AND SEIZURE: Officers may not use cell phone location to track Defendant absent a search warrant, but because discovery of his precise location was inevitable (they made a controlled call) his arrest pursuant to a warrant was lawful. Flood v. State, 4D22-49 (8/23/23)

https://4dca.flcourts.gov/content/download/876066/opinion/220049_DC05_08232023_095439_i.pdf

SCRIVENER'S ERROR: Correction of a scrivener's error–Defendant was convicted of first degree murder, not felony murder--can be corrected as a ministerial act by the trial court rather than by reversing the judgment. Gilbert v. State, 4D22-223 (8/23/23)

https://4dca.flcourts.gov/content/download/876069/opinion/220223_DC05_08232023_095602_i.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity where Victim called 911 after she was shot, pleaded with Defendant for mercy, fled her home, was chased down the hallway, screamed for help, and was brutally beaten to the extent of suffering 6 or 7 skull fractures resulting in death in front of their neighbor's front door. Error, if any, in Court's denial of the motion for SYG immunity–and there was none-- is cured by the jury's rejection of the self-defense claim. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

EVIDENCE-PHOTOS: Gruesome photographs of victims' burnt bodies are admissible. Those whose work products are murdered human beings should expect to be confronted by photographs of heir accomplishments. The test for admissibility of photographic evidence is relevancy rather than necessity.

O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

APPEAL-PRESERVATION: Any objection to limitations on voir dire questioning is not preserved where Defendant accepts the jury without objection. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

VOIR DIRE: Court's limitations on inquiry into jurors' religious beliefs during voir dire were not an abuse of discretion. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

VOIR DIRE-INDIVIDUAL: Individual voir dire is not required simply because the case is a high-profile death-penalty case. The mere existence of extensive pretrial publicity is not enough to raise a presumption of unfairness

requiring individual and sequestered voir dire. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

DEFENDANT TESTIFYING-COLLOQUY: Although a record colloquy might be helpful for later appellate and postconviction reviews, the right to testify does not fall within the category of fundamental rights which must be waived on the record by the defendant himself. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_08182023_090145_i.pdf

EVIDENCE-PTSD: Court did not err in excluding Defendant's PTSD expert where the expert lacked sufficient facts to opine on his behavior or state of mind leading up to the murders, had not interviewed him, had not reviewed the mental health evaluations performed by other doctors, had not reviewed all the facts of the case, and did not know what happened before the murder or whether there had been any stressor that would have triggered the PTSD. O'Neal v. State, 2D21-2460 (8/18/23)

https://2dca.flcourts.gov/content/download/875749/opinion/212460_DC05_

08182023_090145_i.pdf

SEARCH AND SEIZURE-WARRANT: The knock-and-announce requirement for arrest warrants in §901.19 does not apply to open doors. State v. Wallin, 2D22-3145 (8/18/23)

https://2dca.flcourts.gov/content/download/875770/opinion/223145_DC13_08182023_090552_i.pdf

POST CONVICTION RELIEF-AMENDED MOTION: Court erred in not allowing the Defendant to further amend the amended motion for post-

conviction relief for omitting the required oath in the first amended motion, although the first amended motion stated that the oath would be filed by separate cover. Four months later the oath had not been filed, but the attorney explained that she had been out sick and mistakenly believed that her firm had filed a motion for an extension of time to file a second amended motion on her behalf. Reynolds v. State, 2D22-3834 (8/18/23)

https://2dca.flcourts.gov/content/download/875774/opinion/223834_DC13_08182023_090738_i.pdf

CONSPIRACY: Defendant is properly convicted of conspiracy to commit health care fraud based on her participation in a pharmacy's scheme to bill insurance company for lucrative compound prescriptions by altering the doctors' prescriptions (adding ingredients or continuing non-refillable prescriptions in perpetuity. Efforts to conceal a conspiracy may support the inference that a defendant knew of the conspiracy and joined it while it was in operation. USA v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111621.pdf

IDENTITY THEFT: Changing the addresses on file for patients to allow the pharmacy to continue to bill the insurance companies for prescriptions for patients who no longer need or wish to receive expensive compound prescriptions, and altering a doctor's prescriptions to procure such prescriptions, can constitute aggravated identity theft. Dubin does not

foreclose conviction because the deception centered on the identity of the individual receiving the prescription and the doctor who wrote it. Identity theft covers both when someone steals personal information about and belonging to another and uses the information to deceive others. USA v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111621.pdf

CONSPIRACY-AGGRAVATED IDENTITY THEFT: Defendant, who worked for a pharmacy, is improperly convicted of Aggravated Identity Theft for obtaining a fraudulent prescription for her daughter. Mere facilitation of the predicate offense is not sufficient to support a conviction for conspiracy to commit Aggravated Identity Theft using a pre-filled prescription. The crux of the criminality requires more than facilitation of the offense. The deception at the heart of the conduct was obtaining the medically unnecessary prescriptions; the use of the daughter's identifying information was merely ancillary to the deception. Under Dubin, when a means of identification is used deceptively, this deception goes to who is involved, rather than just how or when services were provided. USA v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111621.pdf

RESTITUTION-HEALTH CARE FRAUD: In healthcare fraud cases, restitution amounts must be offset by the value of medically necessary goods

and services that were provided. Where the Defendant (who worked for the pharmacy) had altered prescriptions in order to overcharge the insurance companies, the fact that some of the medicine fraudulently procured had been used does not serve to diminish the restitution owed. A prescription is not medically necessary just because the intended recipient used some of it. USA v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111621.pdf

FORFEITURE: A defendant convicted of health care fraud must forfeit property that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. To evaluate whether gross proceeds are traceable to the commission of the offense, this Court applies a but-for standard. Defendants may be required to forfeiture the entirety of the income received despite the company having provided some legitimate services unconnected to the health care fraud offenses. Court properly ordered forfeiture of $157,587.33—all but $10,000 of the salary paid to Defendant. Defendant's salary is the proper subject of forfeiture because, in the absence of the conspiracy in which he participated, the company would not have employed and compensated him the way that it did. USA v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111621.pdf

STRUCTURING: "Structuring" means "to break up a single transaction above

the reporting threshold into two or more separate transactions—for the purpose of evading a financial institution's reporting requirement. An individual who breaks a deposit in excess of $10,000 into smaller increments in order to avoid reporting requirements is generally guilty of structuring. 22 cash deposits below $10,000 over seven days, followed by 38 cash deposits under $10,000 over the course of around seven and a half months, all used to purchase a piece of real estate, establishes the crime of structuring. USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

CIRCUMSTANTIAL EVIDENCE: It is inconsequential that evidence leaves room for innocent explanations for the defendant's conduct. A guilty verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt. USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

STRUCTURING-CIRCUMSTANTIAL EVIDENCE: The mens rea element of §5324(a) does not have to be proved directly. "Indeed, we would be rather amazed—and perhaps investigators would be quite appreciative—if individuals engaged in structuring ever wrote on bank deposit slips or in the memo lines of checks: 'For the purpose of evading the reporting requirements of 31 U.S.C. §5313(a).'" USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

FINANCIAL CRIMES: "[F]inancial crimes are often mixtures of legal and

illegal activity—it is the jury's role to act as the sieve." USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

DEFENDANT TESTIFYING: A statement by a defendant, if disbelieved by the jury, may be considered as substantive evidence of the defendant's guilt when combined with other evidence. "While we rarely second-guess trial strategy—and we have no reason to do so here—we repeatedly remind litigants of the potential consequences of testifying at trial." USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

INVITED ERROR: By supplying the proposed jury instructions, Defendant invited any purported error. Appellate courts are precluded from reviewing errors invited by the challenging party, even if plain error would result. "While some arguments stumble right out of the gate, others never see the gate open." USA v. Bird, No. 22-10947 (11th Cir. 8/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210947.pdf

CURRICULUM VITAE: Court did not err in considering Defendant to a be "a high-ranking official" in the Gangster Disciples organization notwithstanding that he denied having personally recruited certain members of the Hate Committee; he was "Chief Enforcer" for the Gangster Disciples—and indeed "Enforcer of the Year" in 2013. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: Defendant argued the he did not "corrupt[] an entire generation of teenagers" but rather "provided encouragement and support to local youth." Court found that Defendant was responsible for "a trail of murder, mayhem, maiming and destruction of life" and "directed [the Hate Committee's] teenage assassins to go out and simply randomly shoot, murder and maim people." A sentence of life plus ten years is not substantively unreasonable. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

RICO-JOA: Defendant's acquittal on two of the predicate acts does not entitle him to a Judgment of Acquittal for RICO. Other predicate Acts not specifically traceable to this Defendant can support a RICO conviction. Further, inconsistency between verdicts on different counts of the indictment does not vitiate convictions on those counts of which the defendant is found guilty. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

VOIR DIRE-UNCONSCIOUS BIAS: Court did not abuse its discretion in denying request that during voir dire the jury view a video on unconscious racial basis (which the Court characterized as "politically correct nonsense") or to pursue an unconscious-bias line of questioning. "Although a court sometimes has an obligation to permit defendants to ask questions about racial bias during voir dire, [w]e have never held that a district court must conduct unconscious bias training or allow unconscious bias questioning during voir dire." USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

EXPERT-GANG ACTIVITY: Notice of expert opinion testimony must be given sufficiently before trial for adequate preparation and does not measure timeliness based on the expected date of the testimony. Disclosure six working days before trial may be considered untmely. Court did not abuse its discretion in excluding Defendants' proffered expert's testimony that the Gangster Disciples gang was not as organized and hierarchical as the Government characterized it to be the opinion was based on vague references to interviewing, field work, and statistical analysis. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

SHACKLING: Use of shackles not visible to the jury during a trial is lawful. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

COURTROOM PROCEDURE: Visibly storing weapons in the courtroom, all of which were admitted in evidence, is not so prejudicial as to deprive the defendants of a fair trial. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

JUDGE-IMPARTIALITY: Judge did not depart from impartiality by asking a witness whether DeKalb County is in the Northern District of Georgia (a question pertaining to venue). The trial judge is more than a referee to an adversarial proceeding. The judge may comment on the evidence, question witnesses, and elicit facts not yet adduced or which may need clarification, provided that a judge must maintain neutrality between the parties. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

WIRETAP: A factual error in an application for a wiretap requires suppression only if the defendant establishes deliberate falsehood or reckless disregard for the truth by the affiant and if, when material that is the subject of the falsity or reckless disregard is set to one side, probable cause would not support the warrant. Further, evidence obtained in good-faith reliance on a court-approved wiretap is not suppressible. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

RICO-ENHANCEMENT-ACTS INVOLVING MURDER: Actual murder–not attempted murder-is required for the RICO sentencing enhancement. "Although the prosecutor in closing arguments elided the difference between the 'acts involving murder' that could serve as predicate racketeering activities. . .and the actual 'murder" required for the enhanced sentencing provision, the district judge did not make the same mistake. He instructed the jury that 'acts involving murder' for the purposes of finding the two racketeering activities needed for conviction extended to Georgia-law conspiracy to commit murder and attempted murder. But the district court never said that the jury should read the phrase 'involve murder' to mean 'involve acts involving murder.' The district court specifically defined 'murder' to include only actual murder." Error, if any, in the lack of clarity in the jury instruction is unpreserved. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

VERDICT FORM-RICO: Defendant charged with RICO is not entitled to an interrogative verdict asking whether he was guilty of "conspiracy to commit murder." That relevant question was not whether the object of the conspiracy was murder, but rather whether Defendant was vicariously liable for a murder that was part of the pattern of racketeering activity that supported the conspiracy in which he was involved. Moreover, the jury is not required to name the victim murdered. Defendant's self-description in text message as a "gd hitman" a month after the murders alleged in the indictment are not exculpatory "Even on its own terms, Gumbs's argument does not make sense; a jury could fairly infer that if Gumbs expressed regret for being a hitman for the Gangster Disciples in August 2015, then he was already a Disciple only a month earlier during the July 2015 wave of violence." USA v.

Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

HUH?-YA MEAN?: "Quantavious Hurt testified that he knew Gumbs was part of the gang, and Gumbs joined the police force with what at least one witness identified as preexisting Gangster Disciples tattoos." USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

SENTENCING CONSIDERATIONS: A district court is entitled to rely on acquitted conduct at sentencing if it finds that the conduct occurred based on a preponderance of the evidence. USA v. Caldwell, et al, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

ACCA: Attempted Hobbs Act robbery is not a crime of violence, and therefore is not a predicate offense under the Armed Career Criminal Act. USA v. Caldwell, *et al*, No. 19-15024 (11th Cir. 8/16/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201915024.pdf

HABEAS CORPUS: Court may dismiss, rather than transfer, a habeas petition when the petitioner seeks relief that (1) would be untimely if considered as a motion for postconviction relief under rule 3.850, (2) raise claims that could have been raised at trial or, if properly preserved, on direct

appeal of the judgment and sentence, or (3) would be considered a second or successive motion under rule 3.850 that either fails to allege new or different grounds for relief that were known or should have been known at the time the first motion was filed. Farrior v. Dixon, 1D22-1498 (1/16/23)

https://1dca.flcourts.gov/content/download/875613/opinion/download%3FdocumentVersionID=4bba0a82-22ec-464c-a72e-c1b6b60c197f

HABEAS CORPUS: Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct appeal, or which could have been, should have been, or were raised in post-conviction proceedings. Parslow v. State, 1D22-1943 (8/16/23)

https://1dca.flcourts.gov/content/download/875612/opinion/download%3FdocumentVersionID=3101ddb7-0190-4b75-97a4-2267ee3b1919

APPEAL: Where Court did not address the issue of the purported unreliability of the drug-sniffing dog in denying Defendant's motion for post-conviction relief, the order is non-final and thus unappealable. Muro v. State, 1D22-2233 (8/16/23)

https://1dca.flcourts.gov/content/download/875610/opinion/download%3FdocumentVersionID=bbf3dfbf-d30e-4ff2-9381-b0991d6a4a42

SECURE DETENTION: Juvenile accused of delinquent acts while on postcommitment probation may not be held in secure detention for more than twenty-one days pending placement in the Statewide Inpatient Psychiatric Program (SIPP). Secure detention may not be used due to the unavailability of a more appropriate facility. N.N.R. v. Grice, 2D23-1062 (8/16/23)

https://2dca.flcourts.gov/content/download/875550/opinion/231062_DC03_

08162023_084451_i.pdf

VOP: Revocation of probation based on an uncharged violation deprives the defendant of due process and constitutes fundamental error. But where it is clear from the record that the trial court would have revoked probation and imposed the same sentence (life) despite consideration of the additional uncharged offense, the sentence stands. Jackson v. State, 3D22-1120 (8/16/23)

https://3dca.flcourts.gov/content/download/875565/opinion/221120_DC08_08162023_103715_i.pdf

SENTENCING-CONSIDERATIONS: Court may consider lack of remorse in sentencing. Jackson v. State, 3D22-1120 (8/16/23)

https://3dca.flcourts.gov/content/download/875565/opinion/221120_DC08_08162023_103715_i.pdf

LENGTHY SENTENCE-JUVENILE OFFENDER: The Graham/Miller line of cases hold that sentencing a juvenile to life in prison without the possibility of parole, for either a homicide or a non-homicide crime, constitutes cruel and unusual punishment. Any lengthy prison term constituting a de facto life sentence that does not include a mechanism to review the defendant's rehabilitation and maturity constitutes a de facto life sentence implicating Graham/Miller. But a 40 year sentence without review is not a de facto life sentence. Smith v. State, 3D22-2073 (8/16/23)

https://3dca.flcourts.gov/content/download/875567/opinion/222073_DC05_08162023_104052_i.pdf

SENTENCING-SIMILARLY SITUATED DEFENDANTS: The fact that co-defendant, after receiving a forty-year sentence, was resentenced to a reduced term in prison, does not mean that Defendant is entitled to a resentencing because he is "similarly situated." Smith v. State, 3D22-2073 (8/16/23)

https://3dca.flcourts.gov/content/download/875567/opinion/222073_DC05_08162023_104052_i.pdf

HOE/HO: "'I'm a hoe beater.'. . .The transcript records that the testimony was that Moore had said 'hoe,' but we doubt that the proclivity he had expressed was for assaulting a particular type of garden tool. Hoe appears to be an alternative spelling of the derogatory and misogynistic term 'ho.'" USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

POSSESSION OF FIREARM-NECESSITY DEFENSE: Defendant who asserted a necessity defense is not entitled to JOA or new trial for possession of firearm by a felon where he took a gun from his girlfriend to shoot her concerned ex-brother-in-law. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

NECESSITY/JUSTIFICATION DEFENSE: To establish a justification defense to a §922(g)(1) charge, Defendant must show that (1) he was under unlawful and present, imminent, and impending threat of death or serious bodily injury; (2) he did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) he had no reasonable legal alternative to violating the law; and (4) there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. USA

v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

JOA: The standard for a judgment of acquittal is whether the evidence is insufficient to sustain a conviction when viewed in the light most favorable to the prosecution. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

MOTION FOR NEW TRIAL: The standard for a motion for a new trial is based on the weight of the evidence. It is not favored and is reserved for really exceptional cases. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

IMPEACHMENT-CONVICTIONS: Convictions more than 10 years old are not admissible for impeachment unless their probative value, supported by specific facts and circumstances, substantially outweighs the prejudicial effect and advance written notice is given. The starting point for the ten-year period is from Defendant's release from physical custody, not from probation. But error here is harmless. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

EVIDENCE: Court properly excluded testimony that witness had told Defendant that her ex-boyfriend, who Defendant shot, had been adjudicated delinquent for homicide years before. The existence of the alleged juvenile conviction was purely speculative, and the court had broad discretion to exclude references to it. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

JURY QUESTION: The Court's response ("You have received all of the testimony, evidence, and. . .law necessary to reaching a verdict.") to a jury question ("Can a convicted felon reside in a house with a weapon?") was proper. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

SENTENCING-GUIDELINES-FIREARM: Court properly applied a four level base offence level enhancement for using a firearm in connection to another felony where he used the gun to shoot the woman's ex-brother-in-law. Court did not err in finding Defendant did not act in self-defense. USA v. Moore, No. 21-12291 (11th Cir. 8/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112291.pdf

POST CONVICTION RELIEF: Court erred in denying claim that the sentence imposed was vindictive when the hearing did not address that claim and Court did not attach records refuting it. Terry v. State, 5D22-1463 (8/11/23)

https://5dca.flcourts.gov/content/download/875285/opinion/221463_DC08_08112023_083600_i.pdf

VOP-PO'S INSTRUCTIONS-HALLOWEEN-DEVIL COSTUME: Probation Officer may not add conditions of probation. Additional condition of probation imposed by PO (no Halloween costumes) is invalid. Defendant at work on Halloween wearing a devil costume does not violate standard condition 44 of sex offender probation because he did not hand out candy. Wells v. State,

5D22-1550 (8/11/23)

https://5dca.flcourts.gov/content/download/875286/opinion/221550_DC08_08112023_084108_i.pdf

COSTS OF INCARCERATION: $401,500 incarceration costs on a 22-year sentence is lawful. Wells v. State, 5D22-1550 (8/11/23)

https://5dca.flcourts.gov/content/download/875286/opinion/221550_DC08_08112023_084108_i.pdf

EVIDENCE-HEARSAY: Court properly excluded the co-Defendant's hearsay statement that a third person had borrowed the Defendant's phone (found at the murder scene) and had been in the house. Chambers v. Mississippi does not apply; the hearsay did not come close to satisfying the required metric of reliability. Simmons v. State, 1D22-332 (8/9/23)

https://1dca.flcourts.gov/content/download/875077/opinion/download%3FdocumentVersionID=14e84bf9-4dca-4943-870f-ddb16f6917ba

APPEAL-SENTENCING ERROR: To raise even fundamental sentencing errors on appeal, defendants must first file a motion under R. 3.800(b). Smith v. State, 1D22-704 (8/9/23)

https://1dca.flcourts.gov/content/download/875078/opinion/download%3FdocumentVersionID=43dff1c3-33ad-4d7a-8349-5756f1b3cff5

COSTS-PUBLC DEFENDER FEE: Assessment of $935 as the fee for the public defender's services, absent a showing of sufficient proof of higher fees,

is unlawful. Pullen v. State, 4D22-769 (8/9/23)

https://4dca.flcourts.gov/content/download/875051/opinion/220769_DC08_08092023_101719_i.pdf

RESTITUTION: Attempted aggravated battery–a lesser of aggravated battery--supports imposition of restitution for damage to the rammed patrol car. In convicting Defendant of the lesser included offense, the jury could have found that he intentionally struck the deputies' vehicle but he did not batter their persons. Anglin v. State, 4D22-818 (8/9/23)

https://4dca.flcourts.gov/content/download/875052/opinion/220818_DC05_08092023_102421_i.pdf

POST CONVICTION RELIEF-MISADVICE: Defendant is entitled to a hearing on claim counsel misadvised him that the plea offer for trafficking in meth included a 15 year day-for-day mandatory minimum; in fact, it is not day-for-day. Shafer v. State, 4D22-3182 (8/9/23)

https://4dca.flcourts.gov/content/download/875055/opinion/223182_DC08_08092023_102321_i.pdf

RESENTENCING: When a conviction is vacated, de novo resentencing with a new scoresheet is required for all counts. The failure to hold de novo resentencing can be raised in a rule 3.800(a) motion. Palmer v. State, 4D23-775 (8/9/23)

https://4dca.flcourts.gov/content/download/875062/opinion/230775_DC13_08092023_103203_i.pdf

JAIL MAIL: Jail's policy of scanning prisoner's legal mail into a machine with a memory chip and uploading into a central database creates a valid claim of a First Amendment violation. A prison official may not open an inmate's properly marked legal mail outside of his presence, and then only to check for contraband. Christmas v. Nabors, No. 21-14230 (11th Cir. 8/8/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202114230.pdf

DEPORTATION-MONEY LAUNDERING: Conspiring to launder money is not a crime of moral turpitude; structuring a transaction to avoid a reporting requirement is not a crime categorically involving moral turpitude. A district court must enter a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts. USA v. Lopez, No. 21-12709 (8/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112709.pdf

CATEGORICAL APPROACH: The modified categorical approach is applied to determine whether a prior conviction qualifies as a crime involving moral turpitude. If the statute of conviction is indivisible—that is, if it defines only one crime with a single set of elements—the question is whether the least culpable conduct that the statute makes criminal qualifies as a crime involving moral turpitude. The categorical approach relies upon elements rather than means. If the statute has multiple alternative elements, and so effectively creates several different crimes, the modified categorical approach applies. Under that approach, a limited class of documents are reviewed to determine

what crime, with what elements, a defendant was convicted of. The least culpable conduct encompassed by that crime is considered. USA v. Lopez, No. 21-12709 (8/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112709.pdf

CATEGORICAL APPROACH (J. GRANT, CONCURRING): "The majority's analysis adds yet another level of complication to the famously bewildering categorical approach. Unfortunately, it is correct. The result is another example of the absurdities that can follow from the categorical approach." USA v. Lopez, No. 21-12709 (8/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112709.pdf

CATEGORICAL APPROACH (J. GRANT, CONCURRING): "The categorical approach flouts the intent of Congress, requires an inordinate amount of judicial energy, and defies common sense. For those reasons and more, I join the list of judges who have criticized the categorical approach or pleaded with Congress to set us free from it." USA v. Lopez, No. 21-12709 (8/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112709.pdf

TWELVE PERSON JURY (J. SOUD, CONCURRING): A twelve-person jury is not constitutionally required. "[T]o insist that a jury under the Sixth Amendment requires exactly twelve members goes beyond the common law influencing the interpretation of the Sixth Amendment; rather, it allows the common law to overcome the language chosen in the amendment that was born in the time and from the circumstances of its writing. . .[A] proper

determination of the original public meaning of the Sixth Amendment is not necessarily the product of an exercise that begins and ends with references to the common law developed by judges in England over the centuries." Simpson v. State, 5D23-128 (8/4/23)

https://5dca.flcourts.gov/content/download/874683/opinion/230128_DC05_08042023_083735_i.pdf

SECOND AMENDMENT (J. PRATT, CONCURRING): Prohibition on felons' possession of firearms questioned. The Second Amendment secures an individual right to keep and bear arms for self defense. An un-incarcerated felon's keeping or bearing of a firearm falls within the Second Amendment's text. That one is a member of the people to whom the right to keep and bear arms is guaranteed does not foreclose the State's authority to strip him of the right. It simply means that the State will have to identify a national tradition that justifies its disarmament policy. Simpson v. State, 5D23-128 (8/4/23)

https://5dca.flcourts.gov/content/download/874683/opinion/230128_DC05_08042023_083735_i.pdf

PRESUMPTIONS (J. PRATT, CONCURRING): "Presumptions are guideposts, not gospels." Simpson v. State, 5D23-128 (8/4/23)

https://5dca.flcourts.gov/content/download/874683/opinion/230128_DC05_08042023_083735_i.pdf

COST OF PROSECUTION: $100 cost for the state attorney is mandated minimum cost, not an "investigative" cost, and must be imposed even where there is no request for it. Parks v. State, 1D22-1566 (8/2/23)

https://1dca.flcourts.gov/content/download/874587/opinion/download%3FdocumentVersionID=c54fe1a7-f307-4260-b215-efb011dfc881

APPEAL-PRESERVATION-COMPETENCY: Defendant did not preserve the issue of the Court failing to order a third competency evaluation until after the hearing and the ruling that Defendant was competent after consideration of the first two conflicting reports. The determination of a defendant's competency is not simply a "battle of the experts" requiring the appointment of a third expert to "break the tie." Andres v. State, 3D21-2185 (8/2/23)

https://3dca.flcourts.gov/content/download/874514/opinion/212185_DC05_08022023_100512_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is not entitled to post conviction relief following his plea to the charge on the basis that the co-occupant of the car convinced the Defendant to claim ownership. The evidence was known to the Defendant and the Defendant failed to show that he otherwise would have gone to trial. Blaise v. State, 3D22-374 (8/2/23)

https://3dca.flcourts.gov/content/download/874516/opinion/220374_DC05_08022023_100734_i.pdf

RAPE SHIELD LAW: Court may not rely on the rape shield statute to preclude the defendant from attempting to either elicit testimony from the victim, or argue to the jury, that someone other than the defendant had raped the victim. The Rape Shield only relates to consensual sexual activity with a person other than the accused. But error here is harmless. Vincent v. State, 4D21-2325 (8/2/23)

https://4dca.flcourts.gov/content/download/874528/opinion/212325_DC05_08022023_094942_i.pdf

SCORESHEET-PRIORS: If a defendant contests the truth of the prior conviction, then the State is required to corroborate the offense by competent evidence. Kearse v. State, 4D22-1175 (8/2/23)

https://4dca.flcourts.gov/content/download/874532/opinion/221175_DC08_

08022023_095522_i.pdf

FIRST AMENDMENT-TRESPASS: Article I, §5 of the Florida Constitution does not confer a right to engage in political activity on private property, here, to ask for signatures to qualify to get on a ballot at a gun show on private property. The Florida Constitution doe not confer political speech rights greater than those provided by the First Amendment to the United States Constitution. Scott v. State, 4D22-1204 (8/2/23)

https://4dca.flcourts.gov/content/download/874533/opinion/221204_DC05_08022023_095624_i.pdf

APPEAL-PRESERVATION: The consequence of not filing exceptions to a general magistrate's report and recommendation is a failure to preserve the issue. Antoine v. State, 4D22-2220 (8/2/23)

https://4dca.flcourts.gov/content/download/874541/opinion/222220_DC05_08022023_100822_i.pdf

COSTS: Investigative costs cannot be imposed where the State fails to request such costs before the judgment. State is not entitled to a second opportunity to request investigative costs on remand because §938.27(1) requires that the request be made before judgment is entered. McNaughton v. State, 4D22-2458 (8/2/23)

https://4dca.flcourts.gov/content/download/874543/opinion/222458_DC08_08022023_101047_i.pdf

COSTS: Prosecution costs above the statutory minimum ($50.00 for a misdemeanor) is not permitted when the State fails to request a higher amount, but may be imposed on remand if sufficient findings are made.

McNaughton v. State, 4D22-2458 (8/2/23)

https://4dca.flcourts.gov/content/download/874543/opinion/222458_DC08_08022023_101047_i.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION-DUI: Speeding, suddenly stopping in the turn lane, a stong odor of alcohol, slurred speech, bloodshot and watery eyes, slurred speech and Defendant's admission that she had had three vodka and lemon drinks and an additional three shots at her birthday party add up to reasonable suspicion. In fact, the speeding, the smell, and the eyes alone would have justified a DUI investigation. State v. Velasco, 23-264 (8/2/23)

https://4dca.flcourts.gov/content/download/874545/opinion/230264_DC13_08022023_101432_i.pdf

CREDIT FOR TIME SERVED-PROBATION: There is no credit against a prison term for time spent on probation or community control. Reed v. State, 5D23-2056 (8/1/23)

https://5dca.flcourts.gov/content/download/874383/opinion/232056_DC05_08012023_093826_i.pdf

SENTENCING-MAINTAINING PREMISES: Defendant's priors, which did not result in an increase in the Criminal History Category, support a modest upward variance. A district court imposes a substantively unreasonable sentence only when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors. A presumption of reasonableness does not necessarily attach to sentences within the guideline range, but such a sentence is ordinarily expected to be reasonable. USA v. Rodriguez, No. 20-13534 (11th Cir. 8/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013534.pdf

SENTENCING-USE OF PREMISES: Court did not clearly err when it found that one of the primary uses of the Defendant's family home was for drug manufacturing and distribution. For a §2D1.1(b)(12) enhancement, manufacturing or distributing a controlled substance need not be the sole purpose for which the residence was maintained, but it must be a primary or principal, rather than an incidental or collateral, use. A premises can have more than one primary use, so long as the drug activity is more than incidental or collateral. USA v. Rodriguez, No. 20-13534 (11th Cir. 8/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013534.pdf

ZOOM: Defendant is not entitled to resentencing because of technical malfunctions during the Zoom hearing where Defendant's counsel's connection was spotty. Any error was not preserved and whatever conversation was missed was repeated upon re-connection. USA v. Rodriguez, No. 20-13534 (11th Cir. 8/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013534.pdf

SENTENCING-CONDITIONS OF SUPERVISED RELEASE: Court erred in imposing additional conditions in the written judgment which were not orally pronounced. Including a sentence in the written judgment that the judge never mentioned when the defendant was in the courtroom is tantamount to sentencing the defendant in absentia. Defendant does not have notice of conditions in an administrative order unless the court expressly incorporates a written list detailing those conditions. USA v. Rodriguez, No. 20-13534 (11th Cir. 8/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013534.pdf

JULY 2023

ACCA: Possessing a listed chemical with reasonable cause to believe it will be used to manufacture a controlled substance is not a serious drug offense

under the Armed Career Criminal Act. An offense is a "serious drug offense" if it proscribes one of the manufacturing, distributing, or possessing with intent to manufacture or distribute. Possessing a listed chemical with reasonable cause to believe it will be used to manufacture is not itself "manufacturing." A conviction for possession of Sudafed is not an ACCA predicate offense. USA v. Miles, No. 21-12609 (11th Cir. 7/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112609.pdf

DEFINITION-"MANUFACTURE": "Manufacture" means "to make" something from raw materials. Making something is a process, but that process does not begin until a person starts working with the component parts. . Simply put, doing an act with reason to believe manufacturing will occur later does not convert the act into manufacturing itself. USA v. Miles, No. 21-12609 (11th Cir. 7/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112609.pdf

DEFINITION-"INVOLVING": "[O]ur precedent requires us to read 'involving' restrictively to mean 'necessarily entail[s].' . . .So for better or worse, we are stuck with it." USA v. Miles, No. 21-12609 (11th Cir. 7/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112609.pdf

CATEGORICAL APPROACH: "[W]e cannot overlook the absurd, factual reality of our decision. Miles was convicted under Section 893.149(1) because

he was literally manufacturing methamphetamine when he set himself and a house on fire. But under the categorical approach, the facts of the conviction do not matter. So we can add this case to the long line of cases where the categorical approach leads to an unusual and, some might say, unjust result. As for that problem, only 'Congress [can] act to end this ongoing judicial charade'." USA v. Miles, No. 21-12609 (11th Cir. 7/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112609.pdf

HABEAS CORPUS-AEDPA-PLEA OFFER: Under AEDPA, a federal court can grant relief to a state prisoner only if he shows that the state court's determination of his claim resulted in a decision that was (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Washington v. Attorney General, Alabama, No. 21-13756 (7/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113756.pdf

HABEAS CORPUS-AEDPA-PLEA OFFER: Defendant is entitled to a hearing on motion for habeas relief where affidavits conflict as to whether counsel conveyed a mid-trial plea offer. Defendant claims he only learned of the offer when State argued that "trial counsel could not have been ineffective because D.A. Anderton was so impressed by their performance at trial that he offered a second mid-trial plea deal of thirty years." Washington v. Attorney General, Alabama, No. 21-13756 (7/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113756.pdf

HABEAS CORPUS-AEDPA-PLEA OFFER: State Court unreasonably concluded that Defendant's pre-trial claim of innocence belies his claim that he would have taken the thirty-year plea offer. "It does not make sense to say that a defendant must admit guilt prior to accepting a deal on a guilty plea.

It therefore does not make sense to say that a defendant's protestations of innocence belie his later claim that he would have accepted a guilty plea. When a petitioner states that he would have taken a plea offer while maintaining his innocence, the state court cannot use that as the only factual determination to support a finding that the petitioner failed to meet the prejudice prong of Strickland. Washington v. Attorney General, Alabama, No. 21-13756 (7/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113756.pdf

QUALIFIED IMMUNITY: Officers are entitled to qualified immunity for arresting attorneys seen stashing their client's cell phone in a bag only minutes before the police executed a search warrant for child pornography on that phone (they had arguable probable cause to arrest), but prosecutors are not immune from suit for defamation for accusing them on the courthouse steps of evidence concealment and possession of child porn. Garcia v. Casey, No. 21-13632 (11th Cir. 7/28/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113632.pdf

QUALIFIED IMMUNITY-ARGUABLE PROBABLE CAUSE: The doctrine of "arguable probable cause" asks whether a reasonable officer could have interpreted the law as permitting the arrests. Unless the law makes it obvious that an officer's acts violated the plaintiff's rights, he has qualified immunity. Garcia v. Casey, No. 21-13632 (11th Cir. 7/28/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113632.pdf

ATTORNEY-OBSTRUCTION: "Garcia and Revill also argue that their status as attorneys undermines probable cause to believe that they intended to hide evidence of a crime. Again, we disagree. Attorney misconduct is all too common. . . [N]o one disputes that an attorney could violate the obstruction statute if she intentionally hid evidence that her client had committed a crime to prevent its discovery by law enforcement. Garcia v. Casey, No. 21-13632 (11th Cir. 7/28/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113632.pdf

CONDITION-PROBATION-ELECTRONIC MONITORING: Electronic monitoring is a standard condition of sex offender probation, including for possession of child porn, when the victim is under 15, regardless whether the sexual activity is with the Defendant. "We conclude that the phrase 'sexual activity' as used in section 948.30(3) as it pertains to section 827.071 does not require any interpersonal physical contact between the offender and the child victim. Therefore, the mandatory monitoring requirement of section 948.30(3). . .is triggered when a defendant is convicted of an offense under section 827.071. de la Rosa v. State, 2D22-1284 (7/28/23) https://2dca.flcourts.gov/content/download/874183/opinion/221284_DC13_07282023_084258_i.pdf

CONDITION-PROBATION-ELECTRONIC MONITORING: Although Defendant is subject to mandatory electronic monitoring, his PO's instruction that he place his RTC device into the charger at 10:00 p.m. was an additional condition of probation that his PO did not have the authority to impose. A probationer may fairly be required to maintain that equipment, including keeping a device charged. But the imposition of a specific time to plug in the RTC device essentially imposes a new condition of probation that is not a routine supervisory direction and cannot support a finding that the probationer is in violation. A probation officer has no authority to impose additional conditions of probation, even if the court has ordered the probationer to follow all instructions the officer may give. Community control or probation should not function as a thinly disguised trap whereby the controlee's slightest misstep results in revocation and a substantial prison term at the whim of the controlee's PO. de la Rosa v. State, 2D22-1284 (7/28/23) https://2dca.flcourts.gov/content/download/874183/opinion/221284_DC13_07282023_084258_i.pdf

APPEAL: District courts must summarily affirm, rather than dismiss, frivolous appeals taken after entry of plea. Crockett v. State, 1D22-965 (7/26/23)

https://1dca.flcourts.gov/content/download/874077/opinion/download%3FdocumentVersionID=00a1c409-a422-4132-910f-bda09ce1b0c3

APPEAL: District courts must summarily affirm, rather than dismiss, frivolous appeals taken after entry of plea. Green v. State, 1D22-2000 (7/26/23) https://1dca.flcourts.gov/content/download/874080/opinion/download%3FdocumentVersionID=c383c173-892b-4242-9179-c65fc0de4e15

MINOR OFFENDER-SENTENCE REVIEW: The trial court's task at a sentence review hearing is to determine whether the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society. Where the unrebutted testimony of a forensic psychologist so shows, Court must modify the sentence and place the Defendant on probation. Court can only reject undisputed testimony from an expert when it is so palpably incredible, illogical, and unreasonable as to be unworthy of belief. Murphy v. State, 2D22-642 (7/26/23) https://2dca.flcourts.gov/content/download/874011/opinion/220642_DC13_07262023_095013_i.pdf

MINOR OFFENDER-SENTENCE REVIEW: Standard of proof on juvenile offender sentence review is preponderance of the evidence, not a balancing test of factors for and against a particular outcome. To allow the nature of the offense to override unrebutted proof of rehabilitation and fitness to reenter society would render illusory the entire sentencing review process. Murphy v. State, 2D22-642 (7/26/23) https://2dca.flcourts.gov/content/download/874011/opinion/220642_DC13_07262023_095013_i.pdf

COMPETENCE: Court is required to make an independent determination that the defendant is competent to proceed, and cannot rely on a stipulation of the defendant or his counsel that defendant is competent to proceed. Court must enter a written order so finding. Graveran v. State, 3D22-549 (7/26/23)

https://3dca.flcourts.gov/content/download/874027/opinion/220549_DC13_07262023_100910_i.pdf

-HEARSAY: Evidence that Defendant was seen near a ransacked car, had the stolen car registration in his pocket and said "I got caught up in it," supports a violation of probation. Non-hearsay evidence corroborated the hearsay evidence. Gallardo v. State, 3D22-703 (7/26/23)

https://3dca.flcourts.gov/content/download/874029/opinion/220703_DC05_07262023_101931_i.pdf

APPEAL: Where the written order fails to conform with the oral pronouncement of the trial court, Defendant must move to correct the sentence in the trial court, not raise the issue directly on appeal. Bucher v. State, 3D23-373 (7/26/23)
https://3dca.flcourts.gov/content/download/874031/opinion/230373_DC05_07262023_103332_i.pdf

POST-CONVICTION RELIEF-DNA TESTING: Defendant is not entitled to post-conviction DNA and fingerprint testing of a Swiss Army knife used in the murder where (1) there is no reasonable probability Defendant would have been acquitted or received a lesser sentence if DNA evidence had been admitted. DNA evidence from the victim on the knife would not have refuted his confession he stabbed the victim with the Swiss Army knife and then cut her throat with a kitchen knife. Narvaez v. State, 3D23-657 (7/26/23)
https://3dca.flcourts.gov/content/download/874032/opinion/230657_DC05_07262023_103419_i.pdf

ACCA: Aggravated Assault qualifies as a violent felony predicate under the Armed Career Criminal Act. An assault offense under Florida law requires a *mens rea* of knowing conduct and an intentional threat to do violence to another person. USA v. Gary, No. 21-13249 (11th Cir, 7/21/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113249.pdf

VOP-SPLIT SENTENCE-MAXIMUM: Where Defendant had previously served more than six months of probation for a third degree felony, upon a VOP he may not be sentenced to 30 months in prison followed by 24 months of probation because the total exceeds 60 months. When a trial court imposes a new term of probation as part of a split sentence following revocation, if the new term of probation, together with the other sanctions imposed, plus the time the defendant previously served on probation, totals more than the statutory maximum for the underlying offense, the trial court is to credit the defendant for time previously served on probation so that the total period of probation and imprisonment does not exceed the statutory maximum. Burgess v. State, 5D22-2761 (7/21/23)
https://5dca.flcourts.gov/content/download/873713/opinion/222761_DC08_07212023_084814_i.pdf

HABEAS CORPUS-AEDPA: Under AEDPA, a federal court may not grant habeas relief on claims that were adjudicated on the merits in state court unless the state court's decision (1) was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or (2) was based on an unreasonable determination of the facts. "Unreasonable" is more than simply incorrect; the state court decision must be so obviously wrong that its error lies beyond any possibility for fairminded disagreement. Sears v. Warden, GCDP, No. 18-13467 (11th Cir. 7/19/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201813467.pdf

HABEAS CORPUS-AEDPA: Georgia's previous inequitable discovery rule (the Sabel discovery rule), under which the Defense must disclose its expert's reports whether the expert is used as a witness or not but the State does not, violated Due Process. Defendant who consistently and persistently challenged the Sabel discovery rule and in the end abandoned his request for

an expert evaluation because of it is entitled to Habeas Corpus Relief. The state court's failure to consider all the evidence in the record amounted to an unreasonable determination of the facts. Death penalty vacated; new hearing required. Sears v. Warden, GCDP, No. 18-13467 (11th Cir. 7/19/23) https://media.ca11.uscourts.gov/opinions/pub/files/201813467.pdf

DEATH PENALTY-LETHAL INJECTION: The possibility of futile attempts to locate a condemned inmate's veins in the course of administering lethal injection does not give rise to a valid claim of an unconstitutional level of pain. Barber v. Governor, No. 23-12242 11th Cir. 7/19/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312242.pdf

DEATH PENALTY-LETHAL INJECTION (J. PRYOR, DISSENTING): "Three botched executions in a row are three too many." Barber v. Governor, No. 23-12242 11th Cir. 7/19/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312242.pdf

DEATH PENALTY-LETHAL INJECTION (J. PRYOR, DISSENTING): "Smith asked. . .to stay his execution because he feared he would be subjected to superadded pain and terror as the State carried out his death sentence. The State called his claim speculative and asked us to trust that ADOC was prepared to perform the execution without incident. We now know that Mr. Smith was right. . . ADOC swears it is ready to try again, with Mr. Barber as its guinea pig." Barber v. Governor, No. 23-12242 11th Cir. 7/19/23) https://media.ca11.uscourts.gov/opinions/pub/files/202312242.pdf

PAROLE: The Florida Commission on Offender Review properly denied parole to offender who had failed to show that he would live and conduct himself as a respectable and law-abiding person, and where record shows the opposite. Swain v. Florida Commission on Offender Review, 1D22-918 (7/19/23) https://1dca.flcourts.gov/content/download/873601/opinion/download%3FdocumentVersionID=9b966671-eb71-45f4-b8b1-b410d7794bc0

JUVENILE OFFENDER-SENTENCE REVIEW: Court improperly denied juvenile offender's application for sentence modification pursuant to F.R.Cr.P. 3.802(b)(1) by giving great weight to the fact that his adult accomplice is not eligible for review of his life sentence. There is a bright line between being a juvenile and an adult; that line is eighteen. Cruz v. State, 2D22-1138 (7/19/23)
https://2dca.flcourts.gov/content/download/873533/opinion/221138_DC13_07192023_084022_i.pdf

COSTS: Court erred in imposing a lump sum of $350 in unspecified court costs. The statutory authority for all costs imposed, whether they are mandatory or discretionary, must be cited in the written order. Weber v. State, 2D22-773 (7/19/23)
https://2dca.flcourts.gov/content/download/873534/opinion/222178_DC08_07192023_084127_i.pdf

CORRECTION OF SENTENCING ERROR-APPEAL: An order to correct a sentencing error during the pendency of an appeal must be filed, not merely signed, within 60 days. The date of filing is the controlling date. A late filed order is a nullity. Weber v. State, 2D22-773 (7/19/23)
https://2dca.flcourts.gov/content/download/873534/opinion/222178_DC08_07192023_084127_i.pdf

JUDGMENT-FORM: Trial courts are required to use a judgment and sentence form which should include details regarding the counts, crimes, statute numbers, and degree of the crimes. Otherwise, it will be void. Reading a breakdown of the fine and costs into to the record is insufficient. Weber v. State, 2D22-773 (7/19/23)
https://2dca.flcourts.gov/content/download/873534/opinion/222178_DC08_07192023_084127_i.pdf

APPEAL-PRESERVATION: The issue of whether officer unlawfully searched Child's backpack while he was handcuffed in the back of the patrol

car id not preserved where not specificly raised, argued, and ruled upon. C.S.V., a juvenile v. State, 3D22-773 (7/19/23)
https://3dca.flcourts.gov/content/download/873571/opinion/220773_DC05_07192023_093648_i.pdf

COSTS: Court erred in imposing a $25 investigative cost robbery/homicide case where agency did not request it. Boesch v. State, 4D22-90 (7/19/23)
https://4dca.flcourts.gov/content/download/873576/opinion/220090_DC08_07192023_095039_i.pdf

LIFE SENTENCE-YOUTH: It is well established mandatory life without parole for persons under eighteen violates the Eighth Amendment's prohibition on cruel and unusual punishment. But it does not for nineteen year olds. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. Boesch v. State, 4D22-90 (7/19/23)
https://4dca.flcourts.gov/content/download/873576/opinion/220090_DC08_07192023_095039_i.pdf

APPEAL-PRESERVATION: "This appeal turns on one word: preservation." The issue of whether State's hypothetical questions in voir dire constitute unlawul "pre-trying" of the case is not preserved where Defendant did not renew the objection before the jury was sworn. The defendant objected only once and did not later renew his objection. O'Brien v. State, 4D22-1643 (7/19/23)
https://4dca.flcourts.gov/content/download/873581/opinion/221643_DC05_07192023_100224_i.pdf

APPEAL-PRESERVATION-JUROR: To prevent a waiver of a juror challenge issue, the opponent must call the court's attention to its objection, if there was an earlier objection, before the jury is sworn, either by renewing its motion or by accepting the jury subject to the earlier objection. To preserve for appeal a denial of a challenge to a juror for cause, it is necessary

to exhaust all remaining peremptory challenges, request additional peremptory challenges, and identify to the trial court which juror the party would have stricken had the peremptory challenges not been exhausted. O'Brien v. State, 4D22-1643 (7/19/23) https://4dca.flcourts.gov/content/download/873581/opinion/221643_DC05_07192023_100224_i.pdf

JUROR-PEREMPTORY STRIKE-RACE: A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. If Court finds the rasons to be genuine, the party opposing the strike then has the burden to prove purposeful racial discrimination, challenge the genuineness of the State's proffered race-neutral reason and make a specific objection to the reason. Defendant failed to preserve the issue by not placing the trial court on notice he was contesting the factual existence of the State's reason. O'Brien v. State, 4D22-1643 (7/19/23) https://4dca.flcourts.gov/content/download/873581/opinion/221643_DC05_07192023_100224_i.pdf

DUI-ARGUMENT-BREATH TEST REFUSAL: State's comment about the defendant's refusal to take a breath test is not an improper comment on the exercise of the right to remain silent. O'Brien v. State, 4D22-1643 (7/19/23) https://4dca.flcourts.gov/content/download/873581/opinion/221643_DC05_07192023_100224_i.pdf

SENTENCING-DEPARTURE: Even if the trial court erred in finding no legal basis to depart, any such error is harmless where Court determined that it would not depart if it could. Borbon v. State, 4D22-1868 (7/19/23) https://4dca.flcourts.gov/content/download/873582/opinion/221868_DC05_07192023_100552_i.pdf

PROBATION-EARLY TERMINATION: Court may not impose a special condition prohibiting early termination of probation without the State's approval; it is impermissible for the trial judge to effectively prevent the circuit court in the future from exercising its authority to discharge Defendant's probation early. Howard v. State, 4D87-3583 (7/19/23) https://4dca.flcourts.gov/content/download/873583/opinion/222656_DC08_07192023_100901_i.pdf

FIRST AMENDMENT: Assistant public defender's First Amendment right to criticize her employer while running to succeed him (she accused him of poor lawyering, racist hiring practices and drug use) does not outweigh the government's interest in the effective management of the public defender's office. "Of course, our conclusion that Green's statements are eligible for First Amendment protection says nothing about the government's countervailing interest in terminating her. The First Amendment does not require that an official nourish the viper in the nest. Green v. Finkelstein, No 21-13894 (11th Cir. 7/17/23) https://media.ca11.uscourts.gov/opinions/pub/files/202113894.pdf

HABEAS CORPUS-INEFFECTIVE APPELLATE COUNSEL-CHANGE OF LAW: Defendant, who was convicted of second degree murder where Court erroneously failed to give an instruction on excusable homicide as to the lesser included offense of manslaughter, is not entitled to relief by habeas corpus claiming ineffective assistance of appellate counsel for failing to raise the issue because the Florida Supreme Court later overturned its precedents

on this point. The result of a proceeding is neither unfair nor unreliable in the present when current law does not provide the right that the defendant seeks to vindicate. Guzman v. Secretary, DOC, No. 20-14181 (11th Cir 7/14/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014181.pdf

DEFENDANT S.O.L.: "Guzman's counsel may have erred in the past, but that error does not prejudice him in the present. . .We do not need to decide whether Guzman's [appellate] counsel made an error—though by all accounts, he did. . .Here, the result for Guzman may have been unlucky, but it was neither unfair nor unreliable because under current Florida law, Guzman got the correct result. Guzman v. Secretary, DOC, No. 20-14181 (11th Cir 7/14/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014181.pdf

CONTEMPT: Court erred in finding Attorney in contempt for repeated tardiness without strictly complying with the provisions of R. 3.830. Court did not inquire as to whether the defendant had any cause to show why she should not be adjudged guilty of contempt, nor provide the defendant the opportunity to present evidence of excusing or mitigating circumstances. While there was an exchange between the trial court and attorney where she offered some explanation as to why she was late, the opportunity for this exchange came after the trial court had already adjudicated her guilty. Micallef v. State, 5D22-549 (7/14/23) https://5dca.flcourts.gov/content/download/873274/opinion/220549_DC13_07142023_082947_i.pdf

EXPERT TESTIMONY: Rule 16(a), upon request, requires the government to provide a written summary of any expert testimony that the government intends to use during its case-in-chief, describing the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications. USA v. Walker, No. 22-10164 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210164.pdf

PROSTITUTION-COERCION: Coercion is shown by evidence that Defendant/Pimp led his prostitute to believe that, if she did not engage in sex work, she was at risk of (1) losing her lodging in Miami, (2) continuing to go hungry, and (3) remaining stuck in an unfamiliar city hundreds of miles from her home and family. USA v. Walker, No. 22-10164 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210164.pdf

APPEAL-PRESERVATION: The issue of whether Agent's expert testimony about how pimps often use romantic relationships to coerce women to engage in prostitution is not preserved by an objection that it invaded the province of the jury. USA v. Walker, No. 22-10164 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202210164.pdf

SIXTH AMENDMENT-COVID: Counsel's refusal to visit client in jail during an overnight recess due to COVID concerns did not violate the Sixth Amendment warranting a mistrial. Defendant must establish that the government or a court—not his own lawyer—deprived him of the opportunity to communicate. The communication deficiencies resulted from his lawyer's caprice, not from the court, government, or criminal justice system. Whether his lawyer's failure to communicate with him amounted to ineffective assistance of counsel cannot be raised for the first time on direct appeal without a sufficiently developed record. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

SHACKLES: Shackles may confuse the defendant, impair his ability to confer with counsel, and, if visible, may prejudice the jury. But in the absence of a contemporaneous objection and where the shackles are not visible, Defendant is not entitled to relief. Defendant's complaint that the shackles hurt his ankles when he was not wearing socks does not entitle him to a new trial. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

TRIAL: Defendant's speculation that the jury could not devote adequate attention to the proceedings because of anxiety over COVID is belied by the record. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

EVIDENCE-QUESTION TO WITNESS: Government's misstatement of the law during questioning of the witness – was she aware that only psychiatric nurses could prescribe drugs under Florida law?--was harmless error. Any intimation that an advanced practice registered nurse may have prescribed psychotropic drugs without authorization had little bearing on whether Defendant committed healthcare fraud. Moreover, the witness responded by explaining to the jury that the prosecutor misunderstood Florida's limitations on nurse practitioners. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

WITNESS: In Health Care fraud case, Court did not abuse its discretion in excluding an expert witness who invoked her Fifth Amendment right against self-incrimination as to questions about her previous employment at the same business for which the Defendant's charge of Health Care fraud arose. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

HEARSAY-BUSINESS RECORDS: Court properly excluded certain documentary evidence--invoices, promissory notes, and hardship exemption forms-- offered, according to the defendant, to establish his efforts to bill patients in good faith. "This argument gains little, if any, traction. . .[U]sing the documentary evidence to support the conclusion that Ahmed properly billed patients presupposes that the information in the documents is true. In other words, for the records to benefit Ahmed's defense, the jury would need to

believe that the invoices contained appropriate and truthful amounts for services rendered. . .Accordingly, Ahmed offered these records for their truth." USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

HEARSAY-BUSINESS RECORDS: Defendant's argument that invoices, promissory notes, and hardship exemption forms are admissible as business records has a lot to commend it, but where Defendant could not explain how the documents ended up in his lawyer's hands, inadequate foundation is laid. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23) https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

EVIDENCE-CHARACTER: Evidence of a person's character or character trait to prove that on a particular occasion the person acted in accordance with the character or trait is ordinarily inadmissible, although a defendant in a criminal case may offer evidence of the defendant's pertinent trait. Such as pertinent trait like honesty and truthfulness in a fraud case, but only by testimony about reputation or an opinion, rather than specific incidents of conduct. In other words, evidence of its good conduct is not admissible to negate criminal intent. Defendant's former attorney may not testify about honest things which the Defendant had done. USA v. Ahmed, No. 20-14264 (11th Cir. 7/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202014264.pdf

RESTITUTION: Defendant who stops paying for and never returns lease-to-own furniture is responsible for restitution for the fair market value of the furniture, not for the unpaid amount remaining on the contract. Mejias Vializ v. State, 1D22-1185 (7/12/23) https://1dca.flcourts.gov/content/download/873027/opinion/download%3FdocumentVersionID=33f05ba0-fb20-42e7-b87d-37c502a499f3

SECOND AMENDMENT-POSSESSION OF FIREARM BY FELON: Florida's statute prohibiting felons from possessing firearms does not violate the Second Amendment. Stafford v. State, 1D22-2468 (7/12/23) https://1dca.flcourts.gov/content/download/873028/opinion/download%3FdocumentVersionID=341ac43e-dba8-4249-bf9a-cf7c8f185907

BOND REVOCATION-FIRST APPEARANCE: Upon Defendant's arrest on a new case, the first appearance Judge may not *sua sponte* revoke bond in the prior pending case; First appearance Judge's assessment that our analysis in Benoit was deficient because it turned on the Florida Rules of Criminal Procedure rather than on the bail statutes was wrong. Until such time as the supreme court overrules an opinion of this court], or we recede from it *en banc*, or the Florida legislature clearly expresses its disapproval of an opinion by a subsequent statutory enactment, trial courts in this district are firmly bound by its holding. "Moreover, to the extent the first appearance judge appeared to reflexively deem statutes that she considered pertinent superior to the rules that this court applied and interpreted in Benoit, we remind her that . . . the Florida Supreme Court [has] the exclusive authority to adopt rules of judicial practice and procedure." The first appearance judge's statement that she was given "authority from every judge in this courthouse. . .to revoke bond in all cases where somebody picks up a new" charge holds no weight. Lindsey v. Gualtieri, Sheriff, 2D23-1116 (7/12/23) https://2dca.flcourts.gov/content/download/873048/opinion/231116_DC03_07122023_093403_i.pdf

LIFE SENTENCE-HOMICIDE-JUVENILE OFFENDER: Juvenile offender. who was originally sentenced to Life with the possibility of parole after 25 years for first degree murder and natural life each for Sexual Battery and Burglary with a Battery (later resentenced to forty years each on the two non-homicide offenses), is not entitle to be re-sentenced on thr homicide. Sentence review considerations are different in §§921.1401 and 921.1402; the latter considers whether the juvenile offender has been rehabilitated.

Review here was only assessed under §921.1401. Boucher v. State, 3D19-439 (7/12/23)
https://3dca.flcourts.gov/content/download/873050/opinion/190439_NOND_07122023_093836_i.pdf

here Court sentenced Defendant as a Violent Felony Offender of Special Concern **APPEAL-VFOSC**: without making written findings that he poses a danger to the community, Defendant may not directly appeal. He must first file a motion to correct. Morris v. State, 3D22-1232 (7/12/23)
https://3dca.flcourts.gov/content/download/873052/opinion/221232_NOND_07122023_094651_i.pdf

HABEAS CORPUS: Defendant may not raise by habeas corpus claims which could have been or were raised in either a motion for post-conviction relief or on direct appeal (illegal seizure, prosecutorial misconduct, fundamental trial court errors, confrontation violations, and ineffective assistance of trial and appellate counsels). Each is addressed individually below. Gerome v. State, 3D23-714 (7/12/23)
https://3dca.flcourts.gov/content/download/873056/opinion/230714_DC02_07122023_095946_i.pdf

APPEAL-JURISDICTION: Trial court lacked jurisdiction to conduct the sentence review proceeding during the pendency of Juvenile Offender's direct appeal from his life sentence. During the pendency of a defendant's direct appeal, the trial court is without jurisdiction to rule on a motion for post-conviction relief. White v. State, 4D22-126 (7/12/23)
https://4dca.flcourts.gov/content/download/873076/opinion/220126_DC13_07122023_095144_i.pdf

ENTRAPMENT: Objective entrapment occurs when the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a

conviction. Defendant's claims that the CI used sex to induce him to commit the crimes of trafficking and conspiracy either were not that outrageous (she called him "Mi Amour [sic]" and touched him on the leg). or were not credible (there was one incident of oral sex). Failure to supervise a CI will not support dismissal unless the lack of supervision results in unscrupulous conduct by the informant. Medina v. State, 4D20-1522 (7/12/23)
https://4dca.flcourts.gov/content/download/873074/opinion/201522_DC05_07122023_094900_i.pdf

JUVENILE OFFENDER-SENTENCE REVIEW: Trial court Is divested of jurisdiction to conduct the sentence review proceeding contemplated by §921.1402 while an appeal is pending. White v. State, 4D22-126 (7/12/23)
https://4dca.flcourts.gov/content/download/873076/opinion/220126_DC13_07122023_095144_i.pdf

SIX PERSON JURY: A six member jury, instead of a twelve-member jury, is constitutional. Stephenson v. State, 4D22-291 (7/12/23)
https://4dca.flcourts.gov/content/download/873077/opinion/220291_DC05_07122023_095253_i.pdf

EXCESSIVE FINES: $210,000 in mandatory fines are not unconstitutionally excessive. Stephenson v. State, 4D22-291 (7/12/23)
https://4dca.flcourts.gov/content/download/873077/opinion/220291_DC05_07122023_095253_i.pdf

DISCOVERY VIOLATION: The Richardson rule applies to evidence submitted during rebuttal. In child porn case, State commits a reversible discovery violation by using a previously undisclosed Gmail record to rebut Defendant's testimony that he did not have a Gmil account. New trial required. An analysis of procedural prejudice does not ask how the undisclosed piece of evidence affected the case as it was actually presented to the jury. Rather, it considers how the defense might have responded had

it known about the undisclosed piece of evidence. McDonald v. State, 4D22-886 (7/12/23)
https://4dca.flcourts.gov/content/download/873078/opinion/220886_DC13_07122023_095442_i.pdf

ARGUMENT: Prosecutor's statement that the majority of the time internet websites like Kik, Omegle, and Mega are used for trading illegal child pornography is improper. A prosecutor must confine closing argument to evidence in the record, and must refrain from comments that could not be reasonably inferred from the evidence. "Improper closing argument has no rightful place in the repertoire of criminal trials and with the barest of trial preparation is easy to avoid. McDonald v. State, 4D22-886 (7/12/23)
https://4dca.flcourts.gov/content/download/873078/opinion/220886_DC13_07122023_095442_i.pdf

INVESTIGATIVE COST: Court may not impose a $50 investigative costs not requested by the State at sentencing. State does not "get the proverbial 'second bite at the apple.'" Blaisdell v. State, 4D22-1603 (7/12/23)
https://4dca.flcourts.gov/content/download/873079/opinion/221603_DC08_07122023_095625_i.pdf

SECURE DETENTION: State is not required to have requested to extend juvenile's secure detention before he was released from his initial 21-day period secure detention. §985.26(2)(b) has been amended to give circuit courts broad discretion to securely detain juveniles charged with enumerated serious offenses, particularly where necessary to protect public safety. M.T., a child, v. DJJ, 4D23-135 (7/12/23)
https://4dca.flcourts.gov/content/download/873083/opinion/231351_DC02_07122023_100623_i.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: In death penalty case, counsel was ineffective for failing to use a mitigation specialist to contact

relevant witnesses where extensive evidence of childhood trauma existed (sexual abuse, early exposure to sexual relations, exposure to domestic violence, parental the abandonment, etc.). Counsel spent minimal time and effort conducting a background investigation for potential mitigating evidence and unreasonably delayed the investigation she did conduct. Counsel's omissions were not a strategic choice. In order to make a strategic choice, counsel needed to first investigate and discover the facts in the first place. Williams v. State of Alabama, No. 21-13734 (11th Cir. 7/11/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113734.pdf

POST CONVICTION RELIEF-DEATH PENALTY (J. GRANT, DISSENTING): "Trial counsel's efforts to investigate Williams's background and prepare for the sentencing phase were unacceptable. . . But . . .I do not agree that Williams can meet his burden of showing a reasonable probability that, if not for counsel's substandard performance, the sentencing authority 'would have concluded that the balance of aggravating and mitigating circumstances did not warrant death. . .The only way to conclude that Williams met that burden is to dismiss the statutory aggravator—that the murder was committed during a burglary and rape." Williams v. State of Alabama, No. 21-13734 (11th Cir. 7/11/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113734.pdf

COMPETENCY: The determination of competence asks whether a defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him. Evidence of low intelligence, mental deficiency, bizarre, volatile, or irrational behavior, or the use of anti-psychotic drugs is not sufficient to show incompetence to stand trial. Where jail calls showed that Defendant's bizarre behavior throughout trial and during the sentencing phase ("sovereign citizenship on steroids") was a contrived and intentional attempt to disrupt proceedings, Court did not err in refusing to order a competency evaluation. Perkins v.

USA, No. 20/14781 (11th Cir 7/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014781.pdf

APPEAL-POST CONVICTION RELIEF: Claims not raised in a post conviction motion presented to the lower court are not preserved for appeal. Ruiz v. State, 2D21-3529 (7/7/23)

https://2dca.flcourts.gov/content/download/872561/opinion/213529_DC05_07072023_083634_i.pdf

ENTRAPMENT: Defendant is not entitled to dismissal on basis entrapment where undercover officer initially identified herself as an adult on an adult chat site but later claimed to be 14. Subjective entrapment is generally a question for the jury, and may be decided as a matter of law only if there are no material facts in dispute, the defendant meets his burden of proof, and the State fails to rebut the evidence of lack of predisposition. Even if law enforcement induces Defendant to commit the crime, he bears the initial burden of proving a lack of predisposition. If there is a factual dispute or if reasonable persons could draw different conclusions from the facts, then the issue of entrapment must go to the jury. State v. Panebianco, 2D20-307 (7/7/23)

https://2dca.flcourts.gov/content/download/872562/opinion/220307_DC13_07072023_083733_i.pdf

SENTENCING: Court may not sentence Defendant on VOP without first allowing him to address the court and present mitigating evidence. Days v. State, 2D22-1957 (7/7/23)

https://2dca.flcourts.gov/content/download/872564/opinion/221957_DC08_07072023_084019_i.pdf

VFOSC: Court may not sentence defendant as a Violent Felony Offender of

Special Concern without making written findings as to whether he poses a danger to the community. Days v. State, 2D22-1957 (7/7/23)

https://2dca.flcourts.gov/content/download/872564/opinion/221957_DC08_07072023_084019_i.pdf

SENTENCING-GUIDELINES-PRIORS-YOUTHFUL OFFENDER: Alabama's Youthful Offender adjudication is not an adult conviction for sentencing guidelines calculations. USA v. Jews, No. 22-10502 (11th Cir 7/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210502.pdf

SENTENCING-GUIDELINES-PRIORS-YOUTHFUL OFFENDER: Under §2K2.1, an adjudication must be an 'adult federal or state conviction" punishable by at least a year in prison. Under Alabama law, an adjudication of youthful offender status is not deemed a conviction of crime at all, let alone an adult conviction. "Alabama's YO system differs from the adult system from stem to stern, in both substance and procedure. To call it 'adult,' we think, would strain credulity." USA v. Jews, No. 22-10502 (11th Cir 7/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210502.pdf

ADULTNESS: "[W]e'll then apply a multifactor test to determine the 'adultness' (our word, if it's a word) of Jews's YO adjudication." USA v. Jews, No. 22-10502 (11th Cir 7/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210502.pdf

DEATH PENALTY: Culpability review (considering the comparative guilt of co-Defendants) is not required in imposing the death penalty. The life sentence imposed on a co-Defendant is irrelevant to and has no bearing on Defendant's death sentence. Prior practice of conducting relative culpability

review was a corollary of our obsolete comparative proportionality review. As a component of comparative proportionality review, a relative culpability review is not constitutionally required. "This Court's relative culpability review was a corollary of its comparative proportionality review, which was determined in Lawrence to be violative of the Florida Constitution. As an integrated part of comparative proportionality review, relative culpability review was rendered obsolete by the Lawrence decision, and it cannot now provide a basis for vacating Cruz's death sentence." Cruz v. State, SC2021-1767 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872472/opinion/sc2021-1767.pdf

DEATH PENALTY-COMPARATIVE REVIEW (J. LASBARGA, DISSENTING): "Surely, in a state that leads the nation with thirty exonerations of individuals from death row, every reasonable safeguard should be retained in this Court's toolkit when reviewing death sentences to ensure that the death penalty is reserved for the most aggravated and least mitigated of murders." Cruz v. State, SC2021-1767 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872472/opinion/sc2021-1767.pdf

POST CONVICTION RELIEF-PUBLIC RECORDS: Court did not err in denying request for records to use in a heaing which had aslready been conducted and ruled on. Calhoun v. State, SC2022-1286 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872474/opinion/sc2022-1286.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: An alleged jailhouse confession to a fellow inmate is not newly discovered evidence where the Court, based on evidence, found that it never occurred. Calhoun v. State, SC2022-1286 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872474/opinion/sc2022-1286.pdf

RULES-AMENDMENT-PROFESSIONALISM: Florida's professionalism standards apply to all forms of communication, including online communication, and to both in-person and remote interactions with others. In Re: Code for Resolving Professionalism Referrals And Amendments to Rule Regulating the Florida Bar 6-10.3, SC2023-0884 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872485/opinion/sc2023-0884.pdf

RULES-AMENDMENT-PROFESSIONALISM: Bar members must complete, during each reporting cycle, a two-hour legal professionalism course. The overall CLE requirement is reduced to 30 hours per reporting cycle. The requirement of legsl education to include "bias elimination" is deleted. In Re: Code for Resolving Professionalism Referrals And Amendments to Rule Regulating the Florida Bar 6-10.3, SC2023-0884 (7/6/23)

https://supremecourt.flcourts.gov/content/download/872485/opinion/sc2023-0884.pdf

EVIDENCE-RE-CALLING WITNESS: Defendant may re-call witness in order to lay predicate for impeachment of the witness's prior testimony by extrinsic evidence. Court abuses discretion in disallowing Defendant re-calling a state witness to ask whether she had told anyone she had not seen anything (a witness existed to testify that she had said that). It is an abuse of discretion for the trial court to deny a request to recall a witness if the denial will deprive the defendant of an opportunity to present evidence crucial to the defense. A witness may be recalled for either direct or cross examination, for the purpose of impeachment. "[F]urtherance of justice should be the guide for courts, rather than the blind following of rules of convenience." McCall v. State, 1D21-3494 97/5/23)

https://1dca.flcourts.gov/content/download/872424/opinion/download%3FdocumentVersionID=d4578d04-5114-43a7-9950-c7f8a2395a98

APPEAL-PRESERVATION-INEFFECTIVE ASSISTANCE: There is no fundamental-error exception to the preservation requirement for claims of ineffective assistance of counsel. A motion to withdraw plea is required. F.L.B. v.State, 1D22-2945 (7/5/23)

https://1dca.flcourts.gov/content/download/872431/opinion/download%3FdocumentVersionID=cbb479d8-6c12-48ba-98a8-697e0780af6b

BELATED APPEAL: When a belated appeal is requested, the appellate court will relinguish jurisdiction to the lower tribunal for the purpose of appointing a special master to issue an appropriate report and recommendation. But the report must do more than acquiesce to the State's acquiescence to a belated appeal. "What facts. . .can we glean from the report and recommendation? What have we learned about the credibility of Jennings' allegations? What exactly was the point of 'relinquishing jurisdiction'. . .? All we now know is that the State Attorney, who most assuredly has better things to do, does not appear to have a particular interest in whether Jennings is granted a belated appeal. . . If we are willing to grant belated appeals based on nothing more than a petitioner's claim and the State Attorney's unwillingness to contest that claim, then it is difficult to see the value in the process." Do it again. Jennings v. State, 22-3560 (7/5/23)

https://1dca.flcourts.gov/content/download/872432/opinion/download%3FdocumentVersionID=76b4f2a4-6823-4755-ad0e-1c1b9e2f2e1a

TRESSPASS-VAGUENESS: The school safety zone statute (§810.0975(2)(b)) is not unconstitutionally vague. D.M.T. argues that §

810.0975(2)(b) is unconstitutionally vague for failure to define "legitimate business." A Defendant who engaged in some conduct clearly proscribed by the plain and ordinary meaning of the statute cannot successfully challenge it for vagueness nor complain of its vagueness as applied to the hypothetical conduct of others. D.M.T., a Juvenile v. State, 3D22-781 (7/5/23)

https://3dca.flcourts.gov/content/download/872396/opinion/220781_DC05_07052023_102949_i.pdf

COLLATERAL CRIME-TRESPASS: Evidence of a prior trespass warning at school is relevant to show knowledge that Child (a suspended student) was not allowed on campus. D.M.T., a Juvenile v. State, 3D22-781 (7/5/23)

https://3dca.flcourts.gov/content/download/872396/opinion/220781_DC05_07052023_102949_i.pdf

POST CONVICTION RELIEF-TIMELINESS: Leave to amend a motion for postconviction relief should be granted where the motion to amend is filed within the limitations period and before the trial court has ruled on the motion for postconviction relief. Green v. State, 3D221787 (7/5/23)

https://3dca.flcourts.gov/content/download/872399/opinion/221787_DC13_07052023_103418_i.pdf

JUNE 2023

PRISON RELEASEE REOFFENDER: Defendant convicted of burglary of

a dwelling with an assault or battery while armed with a firearm, a 1st PBL, who qualifies as a PRR, must be sentenced to life in prison. Court improperly imposed a 50 year sentence. Defendant's argument that the 50 year sentence should be affirmed as the functional equivalent of a life sentence is rejected. Powell v. State, 6D23-68 (6/30/23)

https://6dca.flcourts.gov/content/download/872161/opinion/230068_DC08_06302023_101456_i.pdf

COUNSEL: An indigent defendant has no right to choose a particular court-appointed attorney. The Sixth Amendment does not require a meaningful relationship between an accused and his counsel, only effective assistance. A lack of communication is not a ground for an incompetency claim. Generalized grievances do not provide cause for a Nelson hearing. Reynaldo Figueroa-Sanabria v. State, SC2021-1070(6/29/23)

https://supremecourt.flcourts.gov/content/download/872080/opinion/sc2021-1070.pdf

SEARCH AND SEIZURE-CELL TOWER: If admission of evidence derived from historical CSLI was improper, the error was harmless. Reynaldo Figueroa-Sanabria v. State, SC2021-1070(6/29/23)

https://supremecourt.flcourts.gov/content/download/872080/opinion/sc2021-1070.pdf

COUNSEL-WAIVER-DEATH PENALTY: Where Defendant advised that he did not want to present death penalty mitigation, and Court informed him that appointed counsel would present such evidence, Defendant's waiver of counsel was involuntary. There must be both the capacity to make an understanding choice and an absence of subverting factors so that the choice is clearly free and responsible. "[I]t was unconstitutional for the trial court to misinform Figueroa Sanabria as to the nature of his rights and put him to the

specific choice he faced: have a lawyer present mitigation, or go it alone." Error is fundamental. New penalty phase required. Reynaldo Figueroa-Sanabria v. State, SC2021-1070(6/29/23)

https://supremecourt.flcourts.gov/content/download/872080/opinion/sc2021-1070.pdf

EXCLUSIONARY RULE (J. FRANCIS, CONCURRING): "When the State is considering whether they must seek a warrant, prosecutors and the police should not have to scry a crystal ball, consult a Ouija board, or conduct a group tarot card reading to intuit the law's metaphysical finality before making their choice. Hanging this burden of prophecy around the State's neck fails to accomplish the goals or purposes of the exclusionary rule." Reynaldo Figueroa-Sanabria v. State, SC2021-1070(6/29/23)

https://supremecourt.flcourts.gov/content/download/872080/opinion/sc2021-1070.pdf

AMENDMENT-RULES-CHECKBOX: Under the section "Reasons For Departure – Mitigating Circumstances," an additional checkbox is added. In Re: Amendments to Florida Rule of Criminal Procedure 3.992, No. SC2023-0249 (6/29/23)

https://supremecourt.flcourts.gov/content/download/872085/opinion/sc2023-0249_.pdf

APPEAL-PRESERVATION-COMPETENCY: Where a competency evaluation was ordered, but no competency hearing held nor order of competency entered, Defendant's sentencing was not fundamental and cannot be raised on appeal. A defendant may not appeal from a guilty or nolo contendere plea without preserving the issue. There is no fundamental-error exception to the preservation requirement. Emerson v. State, 1D21-1543 (6/28/23)

https://1dca.flcourts.gov/content/download/871979/opinion/download%3Fd

ocumentVersionID=7ba98e65-b0e9-4bf7-b86f-c954cdfc1f89

APPEAL-PRESERVATION: Defendant may not appeal after a plea of nolo contendere without having reserved the right to appeal by contemporaneously preserving an issue nor having moved to withdraw the plea. Ehrhardt v. State, 4D22-820 (6/28/23)

https://4dca.flcourts.gov/content/download/871999/opinion/220820_DC05_06282023_095050_i.pdf

12 PERSON JURY: Defendant is not entitled to a twelve-person jury under the Sixth and Fourteenth Amendments to the United States Constitution. State v. Tillman, 4D22-1875 (6/28/23)

https://4dca.flcourts.gov/content/download/872003/opinion/221875_DC05_06282023_095857_i.pdf

APPEAL-PRESERVATION-SOLICITATION TO TAMPER WITH A WITNESS. Solicitation to tamper with a witness is a second-degree felony. Because the offense was treated as, and scored as if, a first degree felony, the Defendant is entitled to resentencing An attack on a plea to a non-existent crime can be appealed as fundamental error. A motion to withdraw plea is not required for preservation when Defendant does not argue his plea was involuntary. Nabeack v. State, 4D22-2480 (6/28/23)

https://4dca.flcourts.gov/content/download/872005/opinion/222480_DC13_06282023_100038_i.pdf

EVIDENCE-OPINION: Court erred when it allowed the arresting officer to testify that he arrested Defendant because her actions constituted a battery and that she was the aggressor. A witness's opinion as to the guilt or innocence of the accused is not admissible, regardless of its relevance, because its probative value is substantially outweighed by unfair prejudice to the defendant. The danger of prejudice is heightened when the witness

testifying as to the defendant's guilt is a police officer. Id. at 1080; see also Roundtree v. State, Kugelmann v. State, 4D22-2882 (6/28/23)

https://4dca.flcourts.gov/content/download/872006/opinion/222882_DC08_06282023_100146_i.pdf

FREE SPEECH-THREAT: The First Amendment requires proof that the defendant had some subjective understanding of the threatening nature of his statements to be criminally liable for making threats. A mental state of recklessness-that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence-is sufficient. The standard is subjective, from the viewpoint of the speaker, not objective. The type of subjective standard the First Amendment requires–the mens rea--is recklessness, i.e., whether the speaker consciously disregards a substantial and unjustifiable risk that the conduct will cause harm to another. Hundreds of overly familiar and disturbing Facebook messages to a local singer and musician but without an overt threat, do not establish the required mens rea. Counterman v. Colorado, No. 22-138 (US S. Ct. 6/27/23)

https://www.supremecourt.gov/opinions/22pdf/22-138_43j7.pdf

GOLDILOCKS (J. KAGAN): "The dissent accuses the Court of making a 'Goldilocks judgment' in favoring a recklessness standard. . .But in law, as in life, there are worse things than being 'just right.'" Counterman v. Colorado, No. 22-138 (US S. Ct. 6/27/23)

https://www.supremecourt.gov/opinions/22pdf/22-138_43j7.pdf

1ST AMENDMENT-THREAT (J. SOTOMAYOR): "Without sufficient protection for unintentionally threatening speech, a high school student who is still learning norms around appropriate language could easily go to prison for sending another student violent music lyrics, or for unreflectingly using language he read in an online forum. . . In the heat of the moment, someone may post an enraged comment under a news story about a controversial

topic. Another person might reply equally heatedly. In a Nation that has never been timid about its opinions, political or otherwise, this is commonplace. . . These high First Amendment stakes are further reason for caution when delineating the boundaries of what constitutes a true threat." Counterman v. Colorado, No. 22-138 (US S. Ct. 6/27/23)

https://www.supremecourt.gov/opinions/22pdf/22-138_43j7.pdf

1ST AMENDMENT-THREAT (J. SOTOMAYOR): " I agree with the Court's conclusion that the First Amendment requires a subjective mens rea in true-threats cases, and I also agree that recklessness is amply sufficient for this case. Yet I would stop there, leaving for another day the question of the specific mens rea required to prosecute true threats generally. If that question is reached, however, the answer is that true threats encompass a narrow band of intentional threats. Especially in a climate of intense polarization, it is dangerous to allow criminal prosecutions for heated words based solely on an amorphous recklessness standard. Our society has often concluded that an intent standard sets a proper balance between safety and the need for a guilty mind, even in cases that do not involve the First Amendment. Surely when the power of the State is called upon to imprison someone based on the content of their words alone, this standard cannot be considered excessive." Counterman v. Colorado, No. 22-138 (US S. Ct. 6/27/23)

https://www.supremecourt.gov/opinions/22pdf/22-138_43j7.pdf

COMPETENCY-COMMITMENT: Before a court involuntarily commits a defendant charged with a felony, it must make several findings supported by clear and convincing evidence. Where experts find that restoration of competency is not likely and recommend that Defendant undergo certain treatment but not commitment, Court may not involuntarily commit her. DCF v. Tetley, 5D22-2324 (6/26/23)

https://5dca.flcourts.gov/content/download/871849/opinion/222324_DC03_06262023_094731_i.pdf

IMMIGRATION-FREE SPEECH-OVERBREADTH: Statute prohibiting encouraging or inducing illegal immigration does not violate the 1st Amendment as overbroad. Defendant is properly convicted for scamming foreigners by promising to help them seek US citizenship through non-existent adult adoption. The First Amendment does not shield fraud. United States v. Hansen, No. 22-179 (U.S. S. Ct. 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-179_o75q.pdf

DEFINITION-"ENCOURAGE"-"INDUCE": The terms "encourage" and "induce" should be interpreted consistently with their specialized meaning in criminal law, rather than be given the broader common meaning. "Encourage" and "induce" are terms of art referring to criminal solicitation and facilitation. "[T]he context of these words—the water in which they swim—indicates that Congress used them as terms of art." United States v. Hansen, No. 22-179 (U.S. S. Ct. 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-179_o75q.pdf

CONFRONTATION-CO-DEFENDANTS-BRUTON: The Confrontation Clause does not bar the admission of a nontestifying codefendant's confession where (1) the confession has been modified to avoid directly identifying the nonconfessing codefendant and (2) the court offers a limiting instruction that jurors may consider the confession only with respect to the confessing codefendant. In joint trial, Agent's testimony that codefendant admitted to driving the car at the time of the murder for hire (he said "the other person he was with pulled the trigger on that woman") does not violate Bruton. "[T]he established practice of replacing a defendant's name with a neutral noun or pronoun in a nontestifying codefendant's confession" is adequate. Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

CONFRONTATION-CO-DEFENDANTS-BRUTON: "The Confrontation Clause ensures that defendants have the opportunity to confront witnesses

against them, but it does not provide a freestanding guarantee against the risk of potential prejudice that may arise inferentially in a joint trial." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

CONFRONTATION-CO-DEFENDANTS-BRUTON: "For most of our Nation's history, longstanding practice allowed a nontestifying codefendant's confession to be admitted in a joint trial so long as the jury was properly instructed not to consider it against the nonconfessing defendant. Jurors can be relied upon to follow the trial judge's instructions. Bruton applies to confessions that directly implicate a defendant not to those that do so indirectly. "[N]either Bruton, Richardson, nor Gray provides license to flyspeck trial transcripts in search of evidence that could give rise to a collateral inference that the defendant had been named in an altered confession." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

EFFICIENCY VS. CONSTITUTION-SEVERANCE: "The Confrontation Clause rule that Samia proposes would require federal and state trial courts to conduct extensive pretrial hearings to determine whether the jury could infer from the Government's case in its entirety that the defendant had been named in an altered confession. . .That approach would be burdensome and. . .we decline to endorse it. . . [T]he likely practical consequence. . .would be to mandate severance whenever the prosecution wishes to introduce the confession of a nontestifying codefendant in a joint trial." That is too high a price to pay." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

ORIGINAL INTENT (J. BARRETT, CONCURRING): "[I]n my view, the historical evidence . . .is beside the point. . .The evidence is largely from the late 19th and early 20th centuries—far too late to inform the meaning of the Confrontation Clause 'at the time of the founding.'. . .The Court. . .does not

suggest that the history is probative of original meaning. . .nor does it explain why this seemingly random time period matters. . So why not simply say that the history is inconclusive? And if we are going to pick up the thread in 1878, why drop it in 1896? Are cases from 1896 that much more important than cases from, say, the 1940s?" Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

ORIGINAL INTENT (J. BARRETT, CONCURRING): "At best, the evidence . . . that, during a narrow historical period, some courts assumed and others expressly held that a limiting instruction sufficiently protected a codefendant from a declaration inadmissible on hearsay grounds. In suggesting anything more, the Court overclaims. That is unfortunate. While history is often important and sometimes dispositive, we should be discriminating in its use. Otherwise, we risk undermining the force of historical arguments when they matter most." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

CONFRONTATION (J. KAGAN, DISSENTING): "In describing Bruton's scope, the majority distinguishes 'between confessions that directly implicate a defendant and those that do so indirectly.' That distinction roughly tracks the one this Court has recognized between confessions that themselves incriminate a co-defendant (directly implicate) and those that become incriminating only when linked with later-introduced evidence (indirectly implicate). But the majority distorts that distinction beyond recognition. . .In one blink-and-you-miss-it paragraph of analysis, the majority holds that Stillwell's confession does not 'directly' implicate Samia. . .It 'was redacted to avoid naming Samia. And the redaction was 'not akin to an obvious blank or the word 'deleted.' That analysis altogether fails to capture what our Bruton cases care about." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

EFFICIENCY VS. CONSTITUTION-SEVERANCE-CONFRONTATION (J. KAGAN, DISSENTING): "The practical concerns the majority cites in support of its decision are equally flimsy. On the majority's view, a ruling for Samia would require courts to conduct 'extensive pretrial hearings' reviewing 'the Government's case in its entirety.' But that charge is a strawman.. . .In any event, greater 'convenience in the administration of the law' . . cannot come at the expense 'of fundamental principles of constitutional liberty.'" Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

LIMITING INSTRUCTION (J. KAGAN, DISSENTING): "With nothing else to support it, the majority reaches for two props inconsistent with Bruton itself. One is the 'presumption that jurors follow limiting instructions.' The majority correctly describes that presumption; it just forgets that the presumption does not apply when the evidence at issue is an accusatory co-defendant confession. Bruton could not have been clearer on the point: '[W]e can not accept limiting instructions as an adequate substitute for [a defendant's] constitutional right of cross-examination.'" Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

STARE DECISIS (J. KAGAN, DISSENTING): "Suppose with the majority that at some relevant time, courts conducting joint trials admitted unredacted co-defendant confessions subject only to limiting instructions. If that history controlled, Bruton itself would have been wrongly decided. The majority's real views thus come into focus. The point of its opinion is not to distinguish the confession here from the one in Bruton. The point is to say why Bruton should go. And so one might wonder after reading today's decision whether Bruton is the next precedent on this Court's chopping block. The one reason it may not be is that there is now no need for formal overruling: Under this decision, prosecutors can always circumvent Bruton's protections." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

CONFRONTATION (J. KAGAN, DISSENTING): "Now, defendants in joint trials will not have the chance to confront some of the most damaging witnesses against them. And a constitutional right once guaranteeing that opportunity will no longer. It will become, in joint trials, a shell of its former self." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

CONFRONTATION-BRUTON (J. JACKSON, DISSENTING): "Under the majority's approach, the default rule is that a nontestifying codefendant's incriminating confession is admissible, so long as it is accompanied by a limiting instruction. Thus, for present purposes, the majority repeatedly calls Bruton. . .a 'narrow exception' to this default rule. . . .And the thrust of the majority's holding is that the so-called Bruton exception is—and must be—narrow: Bruton is a pesky deviation that requires the exclusion of otherwise admissible evidence (hence, the ease with which the majority contemplates dispensing with that precedent). That approach inverts the constitutional principles that govern this case. . .. . .[T]he Court has now turned our Bruton cases on their head in a manner that risks undermining a core Sixth Amendment right." Samia v. United States, No. 22-196 (U.S. S Ct 6/23/23)

https://www.supremecourt.gov/opinions/22pdf/22-196_p8k0.pdf

1ST AMENDMENT-INMATE-E-MAIL: Inmate has a protected liberty interest in his outgoing emails, and as a result he is entitled to notice and other procedural safeguards when emails to his sister are intercepted and withheld.

The interest of prisoners and their correspondents in uncensored communication by letter, grounded as it is in the First Amendment, is plainly a 'liberty' interest within the meaning of the Fourteenth Amendment even though qualified of necessity by the circumstance of imprisonment. Emails are the equivalent of physical letters for purposes of a liberty interest. The argument that inmates do not have a protected liberty interest because using the email system is a privilege, and not a right, "misses the mark, and does so by the proverbial country mile." Benning v. Commissioner, Georgia DOC, No. 21-11982 (11th Cir. 6/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111982.pdf

EVIDENCE-OPINION: Officer may not testify that Defendant was the primary aggressor in a battery case based on his post-fight interviews and the victim's injuries. The questioning of the officers about who they viewed as the aggressor improperly invaded the province of the jury. Thomas v. State, 2D22-749 (6/23/23)

https://2dca.flcourts.gov/content/download/871659/opinion/220749_DC13_06232023_075725_i.pdf

HARMLESS ERROR: "[W]e highlight that when an appellate court reviews for harmless error, the test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. . .The focus is on the effect of the error on the trier-of-fact. The question is whether there is a reasonable possibility that the error affected the verdict. . .If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful." Thomas v. State, 2D22-749 (6/23/23)

https://2dca.flcourts.gov/content/download/871659/opinion/220749_DC13_06232023_075725_i.pdf

CREDIT FOR TIME SERVED: When a criminal defendant is sentenced after being convicted of a crime and serves some portion of that sentence, he or she is entitled to receive credit for the actual service of that sentence, or any portion thereof, in a resentencing for the same crime. Brown v. State, 3D23-181 (6/23/23)

https://3dca.flcourts.gov/content/download/871680/opinion/230181_DC08_06232023_104408_i.pdf

COSTS: Court erred in assessing investigative costs in the absence of a

request from the State. Cummings v. State, 22-2265 (6/23/23)

https://5dca.flcourts.gov/content/download/871651/opinion/222265_DC05_06232023_081410_i.pdf

HABEAS CORPUS-REPRESENTED PETITIONER: If a petition clearly indicates that the petitioner is represented by counsel in the pending criminal proceeding, and the petitioner does not unequivocally seek o discharge counsel in that proceeding by way of the petition, the petition will be dismissed as unauthorized. Johnson v. State, 5D87-1653 (6/23/23)

https://5dca.flcourts.gov/content/download/871653/opinion/231382_DA08_06232023_081832_i.pdf

POST CONVICTION RELIEF: Because a defendant must demonstrate prejudice in a R. 3.850 proceeding, post-conviction relief based on a lawyer's incompetence with regard to the composition of the jury is reserved for a narrow class of cases where prejudice is apparent from the record. Martinez v. State, 5D23-1648 (6/23/23)

https://5dca.flcourts.gov/content/download/871655/opinion/231648_DC05_06232023_082157_i.pdf

JUDGMENT OF ACQUITTAL-OFFICIAL MISCONDUCT: Detective/Defendant who repeatedly filed false reports, ranging from claiming that suspects skipped scheduled interview to forging waivers of prosecution is entitled to JOA where the evidence did not establisha benefit for the act of falsification. Jones v. State, 6D23-311 (6/23/23)

https://6dca.flcourts.gov/content/download/871677/opinion/230311_DC13_06232023_095902_i.pdf

DEPORTATION: Noncitizens convicted of an aggravated felony are removable from the United States. The definition of "aggravated felony"

includes federal or state offenses "relating to obstruction of justice." An investigation or proceeding need not be pending for an act be related to obstruction of justice. Dissuading a witness from reporting a crime renders one deportable, as does being an accessory after the fact. Obstruction of justice is not limited to offenses where an investigation or proceeding is pending. One can obstruct the wheels of justice even before the wheels have begun to move." Pugin v. Garland, No. 22-12 (U.S. S.Ct. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/22-23_d18e.pdf

STATUTORY CONSTRUCTION (J. SOTOMAYOR, DISSENTING): Under the series-qualifier canon, a phrase is best read to modify all listed verbs. When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a modifier at the end of the list normally applies to the entire series. Pugin v. Garland, No. 22-12 (U.S. S.Ct. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/22-23_d18e.pdf

DEPORTATION (J. SOTOMAYOR, DISSENTING): "After all, deportation is not only a kind of 'penalty,' but a 'drastic measure' often "the equivalent of banishment [or] exile.'. . .If a non-U. S. citizen is convicted of an aggravated felony, even if she has a green card and has lived in this country for years, she is subject to removal and is also ineligible for readmission and many forms of immigration relief. Pugin v. Garland, No. 22-12 (U.S. S.Ct. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/22-23_d18e.pdf

OBSTRUCTION OF JUSTICE (J. SOTOMAYOR, DISSENTING): "By

rejecting a central feature of core obstruction of justice and adopting a seemingly expansive reading of 'relating to,' the Court leaves generic obstruction of justice without any discernible shape. The Court thus injects further chaos into the already fraught question of how to understand §1101(a)(43)(S) and opens the door for the Government to try to use that provision as a catchall for all sorts of criminal activity, whether aggravated or not. The Court could perhaps have reined in some of that chaos by giving 'obstruction of justice' affirmative shape and boundaries in other ways, but it makes no effort to do so." Pugin v. Garland, No. 22-12 (U.S. S.Ct. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/22-23_d18e.pdf

MAMMAL (J. SOTOMAYOR, DISSENTING): "[I]t is clear that the 'generic' meaning of 'mammal' includes giving birth to live young, even though the platypus is an exception to that rule. Pugin v. Garland, No. 22-12 (U.S. S.Ct. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/22-23_d18e.pdf

POST CONVICTION RELIEF-AEDPA: Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), second or successive §2255 motions are barred unless they rely on either newly discovered evidence or a new rule of constitutional law. A successive §2255 motion based solely on a more favorable interpretation of statutory law (Rehaif–knowledge that one is a convicted felon is an element of unlawful possession of a firearm) adopted after the conviction became final and the initial §2255 motion was resolved is not permitted. §2255(e)'s saving clause does not permit a prisoner asserting an intervening change in statutory interpretation to circumvent AEDPA's restrictions on second or successive §2255 motions by filing a §2241 (habeas corpus) petition. Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

DID YA KNOW?: "It bears mentioning that §2255 was enacted 'eight years before President Eisenhower signed legislation funding the Interstate Highway

System.'" Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

POST-CONVICTION RELIEF (J. SOTOMAYOR, DISSENTING): "A prisoner who is actually innocent, imprisoned for conduct that Congress did not criminalize, is forever barred by 28 U. S. C. §2255(h) from raising that claim, merely because he previously sought postconviction relief. It does not matter that an intervening decision of this Court confirms his innocence. By challenging his conviction once before, he forfeited his freedom. Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

POST-CONVICTION RELIEF (J. JACKSON, DISSENTING): "Today, the Court holds that an incarcerated individual who has already filed one postconviction petition cannot file another one to assert a previously unavailable claim of statutory innocence. The majority says that result follows from a 'straightforward' reading of 28 U.S.C. §2255. . .[T]he majority is. . .wrong to interpret §2255(e)—known as the saving clause—as if Congress designed that provision to filter potential habeas claims through the narrowest of apertures, saving essentially only those that a court literally would be unable to consider due to something akin to a natural calamity. . .This stingy characterization does not reflect a primary aim of §2255(e), which was to 'save' any claim that was available prior to §2255(h)'s enactment where Congress has not expressed a clear intent to foreclose it. . .I am also deeply troubled by the constitutional implications of the nothing-to-see-here approach that the majority takes with respect to the incarceration of potential legal innocents. . .Apparently, legally innocent or not, Jones must just carry on in prison regardless, since. . .no path exists for him to ask a federal judge to consider his innocence assertion. Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

POST CONVICTION RELIEF-SAVING CLAUSE: "Opting for the narrowest

possible view of Congress's intent regarding the saving clause, the majority generally claims that the saving clause only authorizes the filing of a habeas petition if filing a §2255 motion would be 'impossible or impracticable.' And in the majority's telling, that circumstance only occurs, say, if the courthouse . . .has burned to the ground or been carried away by a mudslide." Jones v. Hendrix, No. 21-857 (U.S. S.CT. 6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

ACTUAL INNOCENCE: "The euphemistic manner in which the Court's opinion tiptoes around what Jones is actually arguing is noteworthy. The majority says that . . .prisoners in Jones's position cannot take advantage of 'a more favorable interpretation of statutory law,' which it also obliquely characterizes as 'an intervening change in statutory interpretation,'. . .In fact, the word 'innocence' only appears in the Court's opinion when recounting the Government's arguments. If the majority has spared a thought for the appropriate standard when a petitioner is claiming legal innocence, I could not find it." Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

AEDPA: The majority's bottom line. . .is that a person in prison for noncriminal conduct cannot ask a federal court to review the legality of his detention if he has previously filed a §2255 petition. This position is stunning in a country where liberty is a constitutional guarantee and the courts are

supposed to be dispensing justice. It raises hackles." Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

AEDPA: "Today's ruling follows a recent series of troubling AEDPA interpretations. All of these opinions have now collectively managed to transform a statute that Congress designed to provide for a rational and orderly process of federal postconviction judicial review into an aimless and chaotic exercise in futility. The route to obtaining collateral relief is presently replete with imagined artificial barriers, arbitrary dead ends, and traps for the unwary. And today's turn makes the journey palpably absurd. . .It is quite clear that the Court's rulings in this area of the law reflect a general ethos that convicted prisoners should not be permitted to file §2255 motions or obtain postconviction relief at all." Jones v. Hendrix, No. 21-857 (6/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-857_4357.pdf

QUO WARRANTO: Governor's suspension of State Attorney, had pledged to use his discretion not to promote criminalization of transgender people or abortion seekers/providers, on grounds of "neglect of duty" and "incompetence" upheld A petitioner who unreasonably delays filing a petition for writ of quo warranto may see that petition denied on that basis, regardless of the merits. State Attorney had challenged the suspension in federal court promptly, but waited five months before petitioning for quo warranto relief in state court. Only remedy is in the Senate. "There is no reason to doubt that the elected members comprising that legislative body will 'be just' in carrying out their 'solemn duty.'" Warren v. DeSantis, SC23-247 (6/22/23)

https://supremecourt.flcourts.gov/content/download/871540/opinion/sc2023-0247.pdf

RULES-AMENDMENT-ADVERTISING: Advertising rules/restrictions relaxed. In Re: Amendments to Rules Regulating the Florida Bar – Subchapter 4-7 Information about Legal Services, No. SC2022-1294 (6/22/23)

https://supremecourt.flcourts.gov/content/download/871539/opinion/sc2022-1294.pdf

FIRST STEP ACT-VIOLATION OF SUPERVISED RELEASE: A sentence imposed upon the revocation of supervised release qualifies for a sentence reduction under § 404(b) of the First Step Act when the underlying crime is a covered offense. Post-revocation penalties relate to the original offense. However, a district court may exercise its alternative discretion in denying a First Step Act motion after consideration of the §3553(a) factors. The district court need not always calculate and consider a defendant's new range under the Sentencing Guidelines before exercising their discretion under §404(b) of the First Step Act. United States v. Gonzalez, No. 19-14381 (11th Cir. 6/21/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201914381.rem.pdf

COUNSEL-POST CONVICTION RELIEF: A defendant has no absolute right to counsel in post-conviction proceedings. Where Defendant has less than a high school education, but the issues were not complex, did not require substantial research, and were fairly and thoroughly presented, Court's denial of counsel was lawful. Wade v. State, No. 1D22-1306 (6/21/23)

https://1dca.flcourts.gov/content/download/871415/opinion/download%3FdocumentVersionID=28d84cbb-7817-4cbd-8242-0b150474fb16

SEARCH-WARRANT: Microsoft's notification to the National Center for Missing and Exploited Children (NCMEC) that someone had used OneDrive to store or share child pornography supports a search warrant. Microsoft

acted as a citizen informant in reporting the contraband. Where the information in the warrant affidavit comes from a citizen informant, its reliability is presumed and corroboration is not required. McNeela v. State, 2D22-1418 (6/21/23)

https://2dca.flcourts.gov/content/download/871428/opinion/221418_DC13_06212023_090150_i.pdf

SEARCH AND SEIZURE: Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. State v. Rodriguez, 2D22-3227 (6/21/23)

https://2dca.flcourts.gov/content/download/871435/opinion/223227_DC05_06212023_090249_i.pdf

JUVENILE-SECURE DETENTION: Juvenile charged with making a written threat online to shoot up a school may be held in secure detention beyond 21 days where Court makes written findings that the preservation of public safety warrants an extension of secure detention. A.J.K., a Child v. State, 5D23-2003 (6/21/23)

https://5dca.flcourts.gov/content/download/871420/opinion/232003_DC02_06212023_090225_i.pdf

FIREARM-CONSECUTIVE SENTENCES: 18 U .S.C. §924(c) makes it a crime either to use or carry a firearm during and in relation to any crime of violence or drug trafficking crime, or to possess a firearm in furtherance of any such crime, and requires a mandatory minimum 5 year sentence, to be served consecutively. §924(c)'s requirement that the sentence be served consecutively to the related offens does not extend to violations of §924(j), which provides penalties for causing death by a firearm, and does not itself require that the sentence be served consecutively. A sentence for a §924(j) conviction can run either concurrently with or consecutively. "To state the obvious . . .subsection (j) is not located within subsection (c). Nor does subsection (j) call for imposing any sentence from subsection (c) . . .To be sure, subsection (j) references subsection (c). But it does so only with respect to offense elements, not penalties." Lora v. United States, No. 22-49 (U.S. S.Ct. 6/16/23)

https://www.supremecourt.gov/opinions/22pdf/22-49_d18e.pdf

PRISON RELEASEE REOFFENDER: To qualify as a PRR, Defendant must have been released from a prison facility, including a federal prison facility, but release from federal custody while housed at the county jail is not physical] release from a prison, Hutchinson v. State, 2D22-2562 (6/16/23)

https://2dca.flcourts.gov/content/download/871152/opinion/222562_DC13_06162023_091610_i.pdf

SELF-REPRESENTATION: Court errs in denying Defendant's request to pro se in conducted a Nelson hearing instead (Defendant: "I said I wanted to go pro se. I didn't say nothing with ineffective assistance of counsel. I just said that I wanted to go pro se.") Defendants in a criminal trial have a constitutional right of self-representation, and thus once a defendant makes an unequivocal request for self-representation, the trial court must "old a hearing] to determine whether the defendant is knowingly and intelligently waiving his right to court appointed counsel. A defendant need not articulate a reason to invoke his right of self-representation. Smith v. State, 2D22-2585 (6/16/23)

https://2dca.flcourts.gov/content/download/871153/opinion/222585_DC03_06162023_091718_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Appellate counsel's failure to raise the denial of Defendant's motion to proceed pro se is ineffective assistance. Smith v. State, 2D22-2585 (6/16/23)

https://2dca.flcourts.gov/content/download/871153/opinion/222585_DC03_06162023_091718_i.pdf

INCONSISTENT VERDICTS (J. SOUD, CONCURRING): Inconsistent jury verdicts are permitted in Florida, but not "true" inconsistent verdicts, which are those in which an acquittal on one count negates a necessary element for conviction on another count. Guilty verdicts for burglary of the house and shed are not inconsistent, or at least not truly inconsistent. Goodwin v. State, 5D22-661 (6/16/23)

https://5dca.flcourts.gov/content/download/871124/opinion/220661_DC05_06162023_080718_i.pdf

SPLIT SENTENCE: When a trial court imposes a new term of probation as part of a split sentence following revocation, it must give credit to a defendant for the time the defendant previously served on probation in the case if the new term of probation, together with the other sanctions imposed, plus the time the defendant previously served on probation, totals more than the statutory maximum for the underlying offense. 30 months prison, plus 24 months probation, plus more than 6 months probation served before the violation adds up to more than the permissible 60 months for a 3rd degree felony. Burgess v. State, 5D22-2761 (6/16/23)

https://5dca.flcourts.gov/content/download/871126/opinion/222761_DC08_06162023_082003_i.pdf

INVESTIGATIVE COSTS: Court may not assess sheriff's $100.00 investigative cost under §938.27(1) where State did not request such a cost. Malone v. State, 5D22-2831 (6/16/23)

https://5dca.flcourts.gov/content/download/871129/opinion/222831_DC05_06162023_082356_i.pdf

STATEMENTS OF DEFENDANT: §901.16, providing that a LEO must inform the person to be arrested of the cause of arrest is subject to a substantial compliance analysis; it has no "constitutional dimension." to do so. The

statements of the Defendant, who initially asked if he could have an attorney, then asked why he was being arrested and got no straight answer, are admissible. §901.16 does not provide a remedy of suppression. Brooks v. State, 5D23-11 (6/16/23)

https://5dca.flcourts.gov/content/download/871130/opinion/230011_DC05_06162023_082721_i.pdf

STATEMENTS OF DEFENDANT-MIRANDA: Defendant asking during interrogation whether he could have a lawyer present was not an unequivocal request for counsel, but instead a genuine question about what was allowed during the interview. By clearly and accurately answering the question, the detectives fulfilled their obligation under the law. Error, if any, is harmless given Defendant's jail calls. Brooks v. State, 5D23-11 (6/16/23)

https://5dca.flcourts.gov/content/download/871130/opinion/230011_DC05_06162023_082721_i.pdf

AARDVARKS (J. GORSUCH, DISSENTING): "Suppose you tell your child that he can get a pet so long as it is 'small or a dog.' The child can choose a small animal (like a hamster) or a large dog (like a mastiff). But can the child also choose a small dog? If the 'or' is inclusive. . .the answer is 'yes.' If it is exclusive, the answer is 'no.' Critically, however, neither reading covers a medium-sized aardvark. Such an animal may be somewhat small and somewhat doglike, but two near misses do not add up to a hit. This is a simple point but an important one." Lac du Flambeau Band of Lake Superior Chippewa Indians et al. v. Coughlin, No. 22-227 (U.S. S.Ct. 6/15/23)

https://www.supremecourt.gov/opinions/22pdf/22-227_i426.pdf

DOUBLE JEOPARDY-VENUE-VICINAGE: Double jeopardy does not

preclude retrial when the conviction is vacated because of improper venue/vicinage. Violations of the Venue and Vicinage Clauses do not exempt defendants from retrial. Smith v. United States, No. 21–1576 (U.S. Ct 6/15/23)

https://www.supremecourt.gov/opinions/22pdf/21-1576_e29g.pdf

JUDGMENT OF ACQUITTAL: Defendant's use of meth while being the sole caregiver of a nineteen-day-old infant combined with sharing a bed with the infant Is sufficiently egregious conduct to constitute culpable negligence causing death. Taylor v. State, 1D21-1489 (6/14/23)

https://1dca.flcourts.gov/content/download/870907/opinion/download%3FdocumentVersionID=0ac86ff4-a497-41ee-b729-d3c84de6fa9f

SEARCH WARRANT-AFFIDAVIT-DISCLOSURE: Once the State asserts the existence of protected confidential information in an affidavit for a search warrant, the burden shifts to the defendant to show a specific reason why disclosure is warranted. Leverette v. State, 1D21-1632 (6/14/23)

https://1dca.flcourts.gov/content/download/870948/opinion/download%3FdocumentVersionID=ae14dbc5-997b-4ff0-9f11-1c49648b659d

APPEAL-PRESERVED ISSUE: Where Defendant never asked the trial court to review the search warrant affidavit in camera, it did not become part of the record below, nor part of the record on appeal. Issue is not preserved. Leverette v. State, 1D21-1632 (6/14/23)

https://1dca.flcourts.gov/content/download/870948/opinion/download%3FdocumentVersionID=ae14dbc5-997b-4ff0-9f11-1c49648b659d

STATEMENTS OF DEFENDANT: Officers telling Defendant that telling them what's going on might get him a better deal, that if he failed to tell them where to find the drugs, they might have to "tear up" his residence, that he could get into trouble for DWLS, and that the prosecutor has "the ear of a judge" did not render his confession involuntary. Officers "were not trying to delude Mr. Leverette; they were pragmatic and honest while trying to encourage him to cooperate. Encouraging cooperation is not coercion. Leverette v. State, 1D21-1632 (6/14/23)

https://1dca.flcourts.gov/content/download/870948/opinion/download%3FdocumentVersionID=ae14dbc5-997b-4ff0-9f11-1c49648b659d

DOUBLE JEOPARDY-THEFT: Stealing two chainsaws and a weedeater is a single larceny. To permit the dividing into several larcenies of objects which are the subject of larceny when stolen at the same time, from the same place, and under the same circumstances with the same intent violates Double Jeopardy. Morin v. State, 1D21-2892 (6/14/23)

https://1dca.flcourts.gov/content/download/870949/opinion/download%3FdocumentVersionID=4ac59a3d-bda5-4c81-b1cd-8b209e02a446

HEARING-CONTINUANCE: Court abuses discretion in denying State's Motion to continue a suppression hearing when a subpoenaed police officer failed to appear and dismissing case. In order to obtain a continuance based on the unavailability of a witness, a movant must show (i) prior due diligence in obtaining the witness' presence, (ii) that the witness would offer substantially favorable testimony, (iii) that the witness was available and

willing to testify, and (iv) material prejudice would result if the continuance is denied. State v. Bercaw, 1D22-8 (6/14/23)

https://1dca.flcourts.gov/content/download/870953/opinion/download%3FdocumentVersionID=1a4fd86b-c5f8-4f7b-bcb7-48a12f894495

JUDGMENT OF ACQUITTAL: Defendant is entitled to a judgment of acquittal on Aggravated battery charge for hitting officer's vehicle with his own where there is no testimony that the occupants were jostled or otherwise moved about within their vehicle by the collision or braced themselves to protect against the impending impact, or otherwise physically affected by the collision. Bell v. State, 6D23-790 (6/14/23)

https://6dca.flcourts.gov/content/download/870969/opinion/230790_DC13_06142023_102648_i.pdf

RISK PROTECTION ORDER: Court erred in denying a RPO where a student who had a pending aggravated assault prosecution appeared at a location where he knew weapons were prohibited, was armed with a handgun and enough ammunition to conduct a mass shooting, and gave an explanation so vague as to be unworthy of belief (he was scared "someone" in his neighborhood was trying to kill him). Polk County Sheriff's Office v. T.J.B., Jr., 6D23-498 (6/13/23)

https://6dca.flcourts.gov/content/download/870858/opinion/230498_DC13_

06132023_103110_i.pdf

POST CONVICTION RELIEF-BURGLARY-JURY INSTRUCTION (J. COHEN, DISSENTING): Court erred by neglecting to instruct the jury that the intended crime in a burglary be something other than burglary or trespass. "If the failure to instruct the jury on the issue that went to the heart of the defense, particularly when such an instruction is contained in the standard jury instructions, does not 'undermine confidence in the outcome' it is hard to understand what would." Nieves v. State, 6D23-21 (6/12/23)

https://6dca.flcourts.gov/content/download/870760/opinion/230021_DC05_06122023_101715_i.pdf

POST CONVICTION RELIEF (J. COHEN, DISSENTING): Failure to object to inadmissible testimony of uncharged collateral crimes–-victim had had previous burglaries and Defendant worked at Lowe's, where they make duplicate keys--constitutes deficient performance. Nieves v. State, 6D23-21 (6/12/23)

https://6dca.flcourts.gov/content/download/870760/opinion/230021_DC05_06122023_101715_i.pdf

JUDGMENT OF ACQUITTAL-POSSESSION OF FIREARM (J. COHEN, DISSENTING): JOA should have been granted where the handle of a gun was sticking out under the seat near Defendant's foot, his father said he owned the car and recently purchased the gun and had put it under the seat, and that itwould have been completely invisible when his long-legged son got in the car before adjusting the seat. "Almost everyone pulled over by law enforcement is nervous; nervousness is of little probative value." Little v State, 6D23-95 (6/12/23)

https://6dca.flcourts.gov/content/download/870761/opinion/230095_DC05_06122023_102020_i.pdf

DEATH PENALTY-SANITY TO BE EXECUTED: The Eighth Amendment's ban on cruel and unusual punishments precludes executing a prisoner who has lost his sanity after sentencing. Court's finding that Defendant is feigning insanity is supported by evidence. Defendant was not entitled to a continuance on his competency hearing due to unavailability of expert witnesses where other witnesses and evidence were considered. Owen v. State, SC2023-819 (6/9/23)

https://supremecourt.flcourts.gov/content/download/870645/opinion/sc2023-0819.pdf

FRUIT OF POISONOUS TREE: The fruit of the poisonous tree doctrine is a court-made exclusionary rule which forbids the use of evidence in court if it is the product or fruit of a search or seizure or interrogation carried out in violation of constitutional rights. This bar also extends to verbal evidence, such as statements and declarations made by the accused. Crebo v. State, 2D22-2921 (6/9/23)

https://2dca.flcourts.gov/content/download/870603/opinion/222921_DC13_06092023_081258_i.pdf

STATEMENT OF DEFENDANT: Where Defendant is interrogated during the search of his home under an unlawful search warrant, his admissions are not suppressible as fruit of the poisonous tree because he was not confronted

with anything wrongly seized. There is no causal link between the unlawfully obtained evidence and the content of the statement. Crebo v. State, 2D22-2921 (6/9/23)

https://2dca.flcourts.gov/content/download/870603/opinion/222921_DC13_06092023_081258_i.pdf

CORPUS DELICTI-TAMPERING WITH EVIDENCE: A person's confession to a crime is not sufficient evidence of a criminal act where no independent direct or circumstantial evidence exists to substantiate the occurrence of a crime. The fact that no gun was recovered after Defendant shot the man dating his wife and drove away does not establish tampering with evidence. His admission that he threw the gun into the river to get rid of it is inadmissible. The crime of evidence tampering is a specific intent crime. Without Defendant's confession, the State had no separate substantial evidence of his intent or purpose in taking his gun from the scene. Pender v. State, 5D23-53 (6/923)

https://5dca.flcourts.gov/content/download/870584/opinion/230053_DC08_06092023_083049_i.pdf

PROBATION-RECKLESS DRIVING-ALCOHOL: Ordinarily, the maximum term of probation for reckless driving is six months, not one year. §316.192(5), which requires the court to order the defendant to undergo certain remedial measures commonly ordered in DUI cases, it does not address probation. However, §948.15(1) allows, in relation to misdemeanors in which the use of alcohol is a significant factor, probation up to 1 year. But this requires a court finding that alcohol was a "significant factor," not merely

a “contributing” factor.

Smith v. State, 6D23-384 (6/9/23)

https://6dca.flcourts.gov/content/download/870621/opinion/230384_DC05_06092023_092904_i.pdf

POST CONVICTION RELIEF: Where Defendant enters a negotiated plea to one year of probation for reckless driving, which ordinarily carries a maximum probationary period of six months, his remedy is to withdraw his plea, not to vacate or modify the probation. Smith v. State, 6D23-384 (6/9/23)

https://6dca.flcourts.gov/content/download/870621/opinion/230384_DC05_06092023_092904_i.pdf

RECKLESS DRIVING-PROBATION-LENGTH: The maximum term of probation for reckless driving is six months. Court declines to follow, or certify conflict with, Fonteyne, which held that the probationary term for first-time reckless driving may not exceed the maximum term of incarceration of ninety days. Smith v. State, 6D23-384 (6/9/23)

https://6dca.flcourts.gov/content/download/870621/opinion/230384_DC05_06092023_092904_i.pdf

JUVENILE OFFENDER: A juvenile offender sentenced to a term of 20 years or more under §775.082(3)(c) is entitled to a review of his or her sentence after 20 years. Peterson v. State, 6D23-1498 (6/9/23)

https://6dca.flcourts.gov/content/download/870627/opinion/231498_DC05_06092023_095020_i.pdf

AGGRAVATED IDENTITY THEFT: §1028A(a)(1) is violated only when the defendant's misuse of another person's means of identification is at the crux of what makes the underlying offense criminal, rather than merely an ancillary feature of a billing method. The means of identification specifically must be used in a manner that is fraudulent or deceptive. Defendant who committed health care fraud by over-billing Medicaid for psychological testing did not also commit Aggravated Identity Theft by employing another person's name or other identifying information (the patient's Medicaid reimbursement number) in submitting billing. Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

AGGRAVATED IDENTITY THEFT: Government argued that health care provider who over-billed Medicaid using the patient's Medicaid reimbursement number committed Aggravated Identity Theft. By that theory, "[a] lawyer who rounds up her hours from 2.9 to 3 and bills her client electronically has committed aggravated identity theft. The same is true of a waiter who serves flank steak but charges for filet mignon using an electronic payment method. The text and context of the statute do not support such a boundless interpretation." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

DEFINITION-"USES": The word 'use' poses some interpretational difficulties because of the different meanings attributable to it. It is "elastic," and needs

to be construed in context. Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

DEFINITION-"IN RELATION TO": If "'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes there would be no limits, as really, universally, relations stop nowhere. Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

WORDS: "Words can wound, but names and numbers are not guns." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

STATUTORY INTERPRETATION: "Time and again, this Court has prudently avoided reading incongruous breadth into opaque language in criminal statutes." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

YEAH, RIGHT: "[The Government makes a familiar plea: There is no reason to mistrust its sweeping reading, because prosecutors will act responsibly." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

QUOTATION (J. GORSUCH, CONCURRING): "The United States' maximalist approach has simplicity on its side, yes; an everybody-is-guilty standard is no challenge to administer. But the Constitution prohibits the Judiciary from resolving reasonable doubts about a criminal statute's meaning by rounding up to the most punitive interpretation its text and context can tolerate." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

OUR JOB: "[R]esolving hard cases is part of the judicial job description. Hastily resorting to vagueness doctrine, in contrast, would hobble legislatures' ability to draw nuanced lines to address a complex world." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

QUOTATION (J. GORSUCH, CONCURRING): "Whoever among you is not an 'aggravated identity thief,' let him cast the first stone. The United States came to this Court with a view of 18 U. S. C. §1028A(a)(1) that would affix that unfortunate label on almost every adult American. Every bill splitter who has overcharged a friend using a mobile-payment service like Venmo. Every contractor who has rounded up his billed time by even a few minutes. Every college hopeful who has overstated his involvement in the high school glee club. All of those individuals, the United States says, engage in conduct that can invite a mandatory 2-year stint in federal prison." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

VAGUENESS-QUOTATION (J. GORSUCH, CONCURRING): §1028A(a)(1). . .is not much better than a Rorschach test. Depending on how you squint your eyes, you can stretch (or shrink) its meaning to convict (or exonerate) just about anyone. . .Truly, the statute fails to provide even rudimentary notice of what it does and does not criminalize. We have a term for laws like that. We call them vague."

Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

QUOTATION (J. GORSUCH, CONCURRING): "As an abstract exercise, debating fact patterns like these may seem good fun. But there is nothing entertaining about a 2-year mandatory federal prison sentence. . .I do not

question that the Court today has done the bestit might to make sense of this statute. It's just that it faces an impossible task." Dubin v. United States, No. 22-10 (US S.Ct 6/8/23)

https://www.supremecourt.gov/opinions/22pdf/22-10_ifjn.pdf

AEDPA: Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a federal court can grant relief to a state prisoner only if he shows that the state court's determination of his claim resulted in a decision that was (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Ferguson v. Commissioner, No. 20-12727 (11th Cir. 6/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012727.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: To show intellectual disability for the death penalty, Defendant must show that he has significantly subaverage intellectual functioning (IQ of 70 or below), substantial deficits in adaptive behavior, and the manifestation of those problems before reaching the age of 18. Court is permitted to discount outlier sub-70 IQ scores in light of evidence of malingering. Ferguson v. Commissioner, No. 20-12727 (11th Cir. 6/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012727.pdf

POST CONVICTION RELIEF: Defendant failed to establish that counsel was deficient for arranging Defendant's confession to law enforcement. Ferguson v. Commissioner, No. 20-12727 (11th Cir. 6/7/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012727.pdf

CERTIORARI-EVIDENCE-SEVERITY OF INJURY: A writ of certiorari is a prerogative writ that functions as a safety net to halt a miscarriage of justice when there is no other means of doing so. Court's order excluding evidence of th extent of injury in a battery case is a discretionary call on the part of the judge. If error, it was not so egregious or consequential as to justify extraordinary intervention in an ongoing criminal proceeding in the trial court. State v. Walker, 1D21-361 (6/7/23)

https://1dca.flcourts.gov/content/download/870461/opinion/download%3FdocumentVersionID=328aa69b-b59f-4d96-8e1c-01cc35912f7d

DOUBLE JEOPARDY-THEFT: Double Jeopardy does not preclude separate convictions for theft of a car and the tools that were in it where the tools and car were taken separately and had different owners. Beasley v, State, 1D22-513 (6/7/23)

https://1dca.flcourts.gov/content/download/870463/opinion/download%3FdocumentVersionID=89da2136-5f70-4d51-be59-e490515a9fd8

VOP: Where Defendant admitted to violating his community control, Court's failure to explicitly find he willfully and substantially violated supervision does not support relief. Upon a plea of guilty to an allegation of probation violation, there is no requirement that there be a determination as to the factual basis of the plea. The admission alone is sufficient to establish a willful and substantial violation. Diaz v. State, 3D22-1095 (6/7/23)

https://3dca.flcourts.gov/content/download/870412/opinion/221095_DC05_06072023_101315_i.pdf

VFOSC: If a probationer qualifies as a VFOSC and is found to violate a non-monetary condition of probation, the trial court is required to

make written findings as to whether the probationer poses a danger to the community. The written findings requirement of §948.06(8)(e) is mandatory, not discretionary. Morris v. State, 3D22-1232 (6/7/23)

https://3dca.flcourts.gov/content/download/870413/opinion/221232_DC05_06072023_101717_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW: Driver's consent to a blood draw is not coerced by an officer saying that refusal to consent would require him to get a warrant, provided there is probable cause. The odor of alcohol and glassy eyes is probable cause. State v. Acevedo, 4D21-3218 (6/7/23)

https://4dca.flcourts.gov/content/download/870418/opinion/213218_DC13_06072023_095109_i.pdf

SEARCH WARRANT: To issue a search warrant, the issuing judge must find proof of two elements: (1) the commission element, that a particular person committed a crime; and (2) the nexus element, that relevant evidence of probable criminality is likely to be found in the place searched. In DUI manslaughter case, reckless operation is not an element. State v. Acevedo, 4D21-3218 (6/7/23)

https://4dca.flcourts.gov/content/download/870418/opinion/213218_DC13_06072023_095109_i.pdf

SENTENCING-DOWNWARD DEPARTURE: In an operating a vehicle without a valid license causing death or serious bodily injury case, comparative fault may be a valid basis for a downward departure. Although comparative fault is not one of the enumerated statutory mitigating factors, "As the State does not cite—nor do we find—any opinion prohibiting consideration of comparative fault as a non-statutory mitigating factor, the trial court in this case was permitted to consider comparative fault as a valid legal ground to downward depart." Coto v. State, 4D22-801 (6/7/23)

https://4dca.flcourts.gov/content/download/870419/opinion/220801_DC13_06072023_095234_i.pdf

COSTS: $200 cost of prosecution without evidence from the State to support the cost, nor an opportunity for Defendant to object to the enhanced cost, is unlawful. The cost of prosecution should be $100. Wilsey v. State, 4D22-947 (6/7/23)

https://4dca.flcourts.gov/content/download/870420/opinion/220947_DC08_06072023_095335_i.pdf

INTENT TO SELL: Intent to distribute can be proven circumstantially, including by the quantity of the drug and the existence of implements such as

scales, baggies, and a good luck $2 bill. USA v. Laines, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

APPEAL-PRESERVATION-FORFEITED ISSUE: Where Court sustained objection and instructed jury to disregard officer's opinion ("This is definitely for distribution. This wouldn't be consistent with someone just using it for personal use."), Defendant forfeited the issue on appeal by failing to argue in his initial brief that the error was incurable. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a new trial based on new evidence that police had searched his phone. The claim that absence of evidence of drug dealing on his phone would have resulted in acquittal is not persuasive, and he would have known what was or wasn't on it anyways. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

BRADY/GIGLIO: Government's failure to disclose that an officer was under internal investigation does not entitle Defendant to new trial. Giglio requires proof of perjury. Brady only applies to evidence material either to guilt or to punishment. There is doubt whether Brady applies outside the realm of exculpatory evidence and extends to evidence useful to the defense in a fruit-of-the-poisonous-tree quest. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

ACCA-SERIOUS DRUG OFFENSE-CATEGORICAL APPROACH: Under the Armed Career Criminal Act, if a defendant convicted of being a felon in possession of a firearm has three previous convictions for a violent felony or a serious drug offense, a mandatory minimum sentence of 15 years applies. To determine whether a defendant's prior conviction qualifies as a predicate offense, the categorical approach applies. The least culpable conduct prohibited under the state law must qualify as a predicate offense, and all the controlled substances covered by the state law must also be controlled substances under federal law. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

SERIOUS DRUG OFFENSE ACCA: A predicate drug offense need not carry at least a ten-year mandatory minimum to qualify as a serious drug offense under ACCA. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

APPEAL-PRESERVATION: The issue of whether Florida's definition of cocaine is broader than the federal definition, and therefore not an ACCA predicate offense, was not preserved. Even if preserved, the argument would probably fail. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

STEREOISOMERS: Stereoisomer are isomers that have the same composition but differ in the orientation of those parts in space. Although Florida law encompasses "any" stereoisomer of cocaine, and federal law covers only "optical and geometric isomers, Florida statute's inclusion of "any" stereoisomer of cocaine does not make it broader than the federal prohibition. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

QUOTATION (J. ROSENBAUM, DISSENTING IN PART): "Respect the burden." Napoleon Bonaparte, as quoted by Ralph Waldo Emerson. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

ACCA-OVERBREADTH (J. ROSENBAUM, DISSENTING IN PART): A state statute whose definition covers more than the federal definition is categorically overbroad, so convictions under that state statute cannot categorically qualify as predicates for sentence enhancements. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

STEREOISOMERS (J. ROSENBAUM, DISSENTING IN PART): The government argues that geometric and optical isomers are the two types of stereoisomers, suggesting that no other types of stereoisomers exist. But optical and geometric isomers are not the only kinds of stereoisomers. If nongeometric diastereomers of cocaine exist, then Florida's definition of the substance is categorically overbroad in comparison to the federal definition. USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

QUESTION: "[W]e are left with the question of whether nongeometric diastereomers of cocaine exist in the real world." USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

PLAIN ERROR: "And even though it may seem unusual to find plain error and require the government to prove a negative based on a factual question—whether nongeometric diastereomers of cocaine exist—. . .there is no legal basis for the . . . practice of declining to review certain unpreserved factual arguments for plain error." USA v. Laine, No. 20-12907 (6/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012907.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-MENTAL INCOMPETENCE: Improved brain imaging technology over intervening years is not newly discovered evidence; such technology would at best be a tool that could be used to uncover relevant evidence, and of course not itself evidence. Owen v. State, SC 23-0732 (6/5/23)

https://supremecourt.flcourts.gov/content/download/870233/opinion/sc2023-0732.pdf

DEATH PENALTY: Mental illness is not a complete bar to execution under the 8th and 14th Amendments. Owen v. State, SC 23-0732 (6/5/23)

https://supremecourt.flcourts.gov/content/download/870233/opinion/sc2023-0732.pdf

DEATH PENALTY: 37 years on death row does not violate the Eighth Amendment. Owen v. State, SC 23-0732 (6/5/23)

https://supremecourt.flcourts.gov/content/download/870233/opinion/sc2023-0732.pdf

HABEAS CORPUS-AEDPA: Under AEDPA, state-court decisions must be given the benefit of the doubt in federal habeas proceedings. If a state court adjudicated a claim on the merits, we cannot set aside that adjudication unless it was either contrary to, or involved an unreasonable application of, clearly established federal law or was an unreasonable determination of the facts in the light of the evidence. A state court unreasonably applies federal law only if no fairminded jurist could agree with the state court's determination or conclusion. King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

HABEAS CORPUS-AEDPA: **JURORS-PEREMPTORY STRIKE-RACE/SEX**: Three-step process for evaluating objections that a prosecutor exercised his peremptory strikes on the basis of race or sex. 1) Defendant must establish a prima facie case by producing evidence sufficient to support the inference that the prosecutor exercised peremptory challenges on the basis of race or sex. 2) The burden shifts to the State to come forward with a neutral explanation for its strikes. 3) Court must find whether the defendant has established purposeful discrimination. Typically, the decisive question will be whether Prosecutor's race or sex-neutral explanation should be believed.

King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

HABEAS CORPUS-AEDPA-JURORS-PEREMPTORY STRIKE-RACE/SEX: Prosecutor struck one juror, in part, because "this lady is a black female," struck 87.5% of the qualified black jurors while striking only 8.8% of the qualified white jurors, and twice ranted against Batson and other precedents. Although the record is "troubling," in his federal habeas Petitioner failed to establish that the Georgia Supreme Court did not consider all evidence in rejecting his argument that peremptory challenges were used discriminatorily. State courts are presumed to know and follow the law and federal reviewing courts are highly deferential to them. King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

HABEAS CORPUS-AEDPA-JURORS-PEREMPTORY STRIKE-RACE/SEX (J. WILSON, DISSENTING): Where prosecutor struck seven of eight black potential jurors, one of whom because she was "a black female from Surrency" and launched into two lengthy soliloquies suggesting his open disdain and outright contempt for Batson, there is clear evidence of racial discrimination sufficient to overcome AEDPA deference. The Georgia court's decision was an unreasonable application of Batson and its progeny because it failed to consider all relevant circumstances. "[N]o reasonable jurist could have reviewed this record—replete with evidence of racial discrimination—and not found a Batson violation. . .[J]ust as a prosecutor's discriminatory strikes in other cases can suggest they acted discriminatorily in this case, a finding of discriminatory intent within the same trial is also probative." King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Counsel is not ineffective

for failure to fully develop mental health mitigation in death penalty case. Pretrial investigation need not be exhaustive, only adequate. Counsel was experienced, with only one documented previous episode of ineffective representation, and "even the very best lawyer could have a bad day." King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

ISSUE-FORFEITURE-DEATH PENALTY-MENTAL DEFICIENCY: In habeas corpus case, Petitioner forfeited his argument that Georgia law requiring a defendant to prove his intellectual disability beyond a reasonable doubt in order to secure the immunity from the death penalty ("guilty but mentally retarded" verdict) is unconstitutional. Defendant has to make more than a skeletal argument in his petition to preserve this issue. King v. Warden, Georgia Diagnostic Prison, No. 20-12804 (11th Cir. 6/2/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012804.pdf

WRIT OF PROHIBITION-TIMELY FILING (J. MAKAR, CONCURRING): No set-in-stone temporal yardstick exists for determining reasonableness of timing for filing petitions for extraordinary writs. Each case must be judged on the facts and circumstances presented and not by some *ad hoc* or impromptu litmus test. But a rule change is under consideration. Colbert v. State, 23-087 (6/2/23) https://5dca.flcourts.gov/content/download/870078/opinion/230987_DC02_06022023_090841_i.pdf

IDENTIFICATION-EYE WITNESS-SUGGESTIVE: The abuse of discretion standard of review applies to rulings on admissibility of out-of-court identifications. Conflicting precedents are receded from. Although mixed questions of law and fact are often reviewed under the mixed standard of review, not all mixed questions should be reviewed under that standard. Alahad v. State, SC2021-1450 (6/1/23) https://supremecourt.flcourts.gov/content/download/870021/opinion/sc2021-1450.pdf

IDENTIFICATION-EYE WITNESS-SUGGESTIVE: To determine whether an out-of-court identification made during a police procedure should be suppressed, the trial court conducts a two-prong test: (1) Did the police employ an unnecessarily suggestive procedure in obtaining an out-of-court identification? (2) If so, did the suggestive procedure give rise to a substantial likelihood of irreparable misidentification? An unnecessarily suggestive procedure is impermissibly suggestive if the resulting out-of-court identification is unreliable under the totality of the circumstances. Alahad v. State, SC2021-1450 (6/1/23)
https://supremecourt.flcourts.gov/content/download/870021/opinion/sc2021-1450.pdf

EVIDENCE-EXPERT: Scientific expert testimony is admissible if (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue. USA v. Ware, 21-10539 (11th Cir. 6/1/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110539.pdf

EVIDENCE-EXPERT: Some expert testimony will be so clearly admissible that a district court need not conduct a Daubert hearing. Defendant is not entitled to a Daubert hearing to challenge fingerprint comparison as unreliable science, regardless of recent reports that may cast doubt on the error rate of fingerprint analysis and comparison. Admissibility is a lower bar to clear than credibility. USA v. Ware, 21-10539 (11th Cir. 6/1/32)
https://media.ca11.uscourts.gov/opinions/pub/files/202110539.pdf

EVIDENCE-LAY OPINION IDENTIFICATION: Officers with familiarity with Defendant by the time of the trial may identify the Defendant from surveillance video. USA v. Ware, 21-10539 (11th Cir. 6/1/32)
https://media.ca11.uscourts.gov/opinions/pub/files/202110539.pdf

FLIGHT-CONCEALMENT: Evidence of flight–or hiding under the bed--is admissible to demonstrate consciousness of guilt, but its probative value diminishes if the defendant committed several unrelated crimes or if there has been a significant time delay between the commission of the crime and the time of flight. Court did not err in giving flight/concealment instruction. USA v. Ware, 21-10539 (11th Cir. 6/1/32)
https://media.ca11.uscourts.gov/opinions/pub/files/202110539.pdf

SENTENCING-GUIDELINE-ENHANCEMENT-PHYSICAL RESTRAINT: The physical restraint enhancement applies where a defendant creates circumstances allowing victims no alternative but compliance. When an armed robber uses the threat of deadly force with his firearm to compel a victim to move or to stay in place, the enhancement applies. USA v. Ware, 21-10539 (11th Cir. 6/1/32)
https://media.ca11.uscourts.gov/opinions/pub/files/202110539.pdf

HEALTH CARE FRAUD: Performing cursory patient examinations in a scheme for paying kickbacks to "patients" for non-existent treatment in order to bill Blue Cross makes one an aider and abettor. Signing fraudulent forms later does not make one a mere accessory after the fact. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

EVIDENCE-SUMMARY WITNESS: Summary testimony, in and of itself, is not improper. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

EVIDENCE-BAD ACTS-NOTICE: Prior to 2020, Government was not required to give notice of the purpose for which it intended to use Rule 404(b) evidence. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

LEADING QUESTIONS: Defendant's argument that his trial was unfair

because the government asked too many leading questions fails where 16 of his 18 objections were sustained. The other two made no difference in the result. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

DELIBERATE IGNORANCE Deliberate ignorance of criminal activity is the equivalent of knowledge. A deliberate ignorance instruction is appropriate only when there is evidence in the record showing the defendant purposely contrived to avoid learning the truth. Where there is evidence of actual knowledge but an inference is possible that Defendant put his head in the sand, a deliberate ignorance instruction is appropriate. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

APPEAL-PRESERVATION-SENTENCING GUIDELINES-COMMENTARY-LOSS: Courts may defer to the commentary only when the sentencing guidelines regulation itself is genuinely ambiguous. Where the sentencing guidelines commentary defines "loss" as the greater of the actual or intended loss. Because Defendant did not preserve the question of whether the definition of "loss" is ambiguous, review is for plain error. An error cannot be plain unless the issue has been specifically and directly resolved by. The question of whether "loss" is ambiguous has never been specifically and directly resolved. So guidelines calculation is based on the intended loss of $3.4 million. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

DEFINITION-GUIDELINES-"MINOR ROLE": "Minor" means "inferior in importance, size, or degree: comparatively unimportant." Defendant who held himself out as a physician, interacted with "patients," doctored notes, prescribed physical therapy, and wrote fake reevaluations is not a minor participant in medical insurance fraud case. The fact that a particular defendant may be the least culpable among those who are actually named as defendants does not establish that he performed a minor role in the

conspiracy. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

HUH? WHAT? HUH?: "[I]f Dupree abrogated our precedent and the term 'minor' is ambiguous (or if Dupree didn't abrogate our precedent), then we can continue to rely on our precedent (which relies on the commentary)." But "[i]t's also possible that we've readopted our precedent." USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

RESTITUTION: Defendant may be required to pay restitution beyond the amount caused by his own conduct. Restitution is based on a victim's actual loss directly and proximately caused by the defendant's offense of conviction, but if more than one defendant contributes to the loss of a victim, the court may make each defendant liable for the payment of the full amount of restitution, including uncharged conduct, even conduct that is outside the statute of limitations, as long as the losses were from the defendant's conduct in the course of the scheme. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: A sentence below the guideline range, particularly when Defendant had previously participated in very similar schemes and had attempted to defraud the victim of millions of dollars, is not substantively unreasonable. USA v. Verdeza, No. 21-10461 (5/31/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110461.pdf

PROBATION-CONDITIONS: Court improperly imposes special conditions to the probation of no contact with the victim, GPS ankle monitor, and Batterer's Intervention Program for the offense of violation of condition of pretrial release where the underlying battery was dropped. Violating pretrial release is not inextricably linked to domestic violence. The domestic violence charge does not alone make the special conditions imposed lawful where the

crime for which Appellant was convicted was only related to an arrest for domestic violence. Benson v. State, 1D21-3614 (5/31/23) https://1dca.flcourts.gov/content/download/869957/opinion/download%3FdocumentVersionID=c6d9262d-fa06-4abe-88d2-a43558debb38

PROBATION-CONVICTIONS: Special conditions of probation must be reasonably related to rehabilitation. A condition of probation is valid if it(1) has a relationship to the crime for which the offender was convicted, (2) relates to conduct that is criminal in nature, or (3) requires or forbids conduct that is reasonably related to future criminality. The domestic violence charge does not alone make the special conditions imposed lawful where the crime for which Appellant was convicted was only related to an arrest for domestic violence. Benson v. State, 1D21-3614 (5/31/23)

https://1dca.flcourts.gov/content/download/869957/opinion/download%3FdocumentVersionID=c6d9262d-fa06-4abe-88d2-a43558debb38

CONDITIONS OF PROBATION-QUESTION CERTIFIED: Does §948.039 supercede precedents with respect to the proper factors that a court must consider before imposing a special condition of probation? Benson v. State, 1D21-3614 (5/31/23) https://1dca.flcourts.gov/content/download/869957/opinion/download%3FdocumentVersionID=c6d9262d-fa06-4abe-88d2-a43558debb38

CONDITIONS OF PROBATION (J. WINOKUR, DISSENTING): Amended statute does not require that a special condition of probation be related to rehabilitation or future criminality, only that it have a "relationship to the crime," or be "reasonably related to the circumstances of the offense." Benson v. State, 1D21-3614 (5/31/23) https://1dca.flcourts.gov/content/download/869957/opinion/download%3FdocumentVersionID=c6d9262d-fa06-4abe-88d2-a43558debb38

PROBATIONARY SPLIT SENTENCE: A probationary split sentence that

exceeds the maximum period of incarceration provided for by statute is an illegal sentence. Fifteen years of prison followed by 15 years of probation exceeds the statutory maximum for sexual battery, a second degree felony. Ross v. State, 1D21-390 (5/31/23)
https://1dca.flcourts.gov/content/download/869959/opinion/download%3FdocumentVersionID=4732841c-54c8-4601-8af6-7b10042b96aa

SECOND AMENDMENT-FIREARM-FELON: Statute prohibiting possession of a firearm by a felon does not violate the Second Amendment. The Second Amendment protects an individual right to possess firearms, but like most rights, this one is not unlimited. Only law-abiding, responsible citizens are covered by the Second Amendment. Extensive historical discussion. Edenfield v. State, 1D22-290 (5/31/23)
https://1dca.flcourts.gov/content/download/869960/opinion/download%3FdocumentVersionID=07e47dc6-7af7-4e99-a606-1f10d7501d71

'NUFF SAID (J. LONG, CONCURRING): "Because the Supreme Court's decisions clearly answer the constitutional challenge presented, we should affirm and need not say more." Edenfield v. State, 1D22-290 (5/31/23)
https://1dca.flcourts.gov/content/download/869960/opinion/download%3FdocumentVersionID=07e47dc6-7af7-4e99-a606-1f10d7501d71

HEARING-WHERE YOU SIT: Making the Defendant sit in the jury box, rather than with his attorney, on the sole basis that corrections official says "We don't do that, Judge. Only during trials," is concerning. It is incumbent upon the trial court to identify circumstances that justify precluding a client from sitting next to his or her attorney during an evidentiary hearing. Tarrau v. State, 3D21-2374 (5/31/23)

https://3dca.flcourts.gov/content/download/869902/opinion/212374_DC05_05312023_101147_i.pdf

SEARCH AND SEIZURE: Officers lawfully seized firearm where they

received reports of gunshots, yard and bullet holes in the house, and intoxicated approached officers, told them that she had been having problems with her unfaithful boyfriend who lived there, and spontaneously stated she had a gun. Asking her for the gun for safety reasons is lawful. Rivera v. State, 3D22-443 (5/31/23)
https://3dca.flcourts.gov/content/download/869903/opinion/220443_DC05_05312023_101250_i.pdf

SEARCH AND SEIZURE-WARRANTLESS ARREST-FELLOW OFFICER RULE: Arresting officer who did not witness the defendant operating or in actual physical possession unlawfully arrested her. A public safety aide who witnessed the impaired driving is not a deputized police officer, so the fellow officer rule does not apply. The fellow officer rule does not impute the knowledge of citizen Informants to officers. Wagner v. State, 4D21-3387 (5/31/23)
https://4dca.flcourts.gov/content/download/869914/opinion/213387_DC13_05312023_095451_i.pdf

WARRANTLESS ARREST: A law enforcement officer can arrest a person for misdemeanor DUI without an arrest warrant in only three circumstances: (1) the officer witnesses each element of a prima facie case, (2) the officer is investigating an accident and develops probable cause to charge DUI, or (3) one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest. Wagner v. State, 4D21-3387 (5/31/23)
https://4dca.flcourts.gov/content/download/869914/opinion/213387_DC13_05312023_095451_i.pdf

NON-JURY TRIAL: Where record reflects neither a written waiver of jury trial nor the trial judge's colloquy with Defendant that his waiver of a jury trial was voluntarily, knowingly, and intelligently made, the conviction must be vacated. Eaton v. State, 4D22-2796 (5/31/23)
https://4dca.flcourts.gov/content/download/869916/opinion/222796_DC13_

05312023_100012_i.pdf

COSTS: Investigative costs may not be assessed absent a request. Cooper v. State, 5D22-2230 (5/26/23)

https://5dca.flcourts.gov/content/download/869599/opinion/222230_DC08_05262023_080641_i.pdf

VOP: Court must identify conditions violated. Cooper v. State, 5D22-2230 (5/26/23)

https://5dca.flcourts.gov/content/download/869599/opinion/222230_DC08_05262023_080641_i.pdf

POST CONVICTION RELIEF-REMEDY: Where Defendant rejected a six year plea offer because his attorney had wrongly advised him that the State would have to prove that he had conspired with each and every member of the alleged conspiracy, the remedy upon the granting of the motion for post-conviction relief, with findings that the Court would have accepted the original offer, is to order the State to re-offer the rejected plea deal. Alexander v. State, 5D23-54 (5/26/23)

EVIDENCE-MISHANDLING: Where drugs were seized on different days and mistakenly logged in under the same agency case number (the mistake was later corrected), the evidence is not excludable. To support the exclusion of evidence due to a gap or irregularity in the chain of custody, Defendant must demonstrate a probability of tampering. Covington v. State, 6D23-143 (5/26/23)
https://6dca.flcourts.gov/content/download/869629/opinion/230143_DC05_05262023_100006_i.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Hall does not apply retroactively. Arbelaez v. Dixon, SC2015-1628 (5/25/23)

https://supremecourt.flcourts.gov/content/download/869517/opinion/sc2015-1628.pdf

EIGHTH AMENDMENT-DEATH PENALTY-AGE: The Eighth Amendment does not categorically preclude the execution of offenders who were under age 22 at the time of their crimes. Sliney v. State, SC22-700 (5/25/23) https://supremecourt.flcourts.gov/content/download/869518/opinion/sc2022-0700.pdf

JURORS-CHALLENGE FOR CAUSE: Where juror acknowledges uncertainty as to whether Defendant's failure to testify might affect his deliberations, Court intervenes by instructing jury on BOP and silence, and juror says he/she could follow the law, Court does not err in denying challenge for cause. Fleming v. State, 1D22-0345 (5/24/23) https://1dca.flcourts.gov/content/download/869472/opinion/download%3FdocumentVersionID=fe1f2c1a-d5d3-42fc-8ff0-366f978dd8a9

VOIR DIRE: Voir dire should not be a gotcha game. The common voir dire tactic of asking jurors if they would testify if accused, then asking if they would be concerned about Defendant not testifying is plainly used to manufacture a cause challenge rather than to seriously inquire into juror partiality. "A modified version of this voir dire technique may be useful to help jurors identify their instincts andthen to explain their responsibilities given them. But questioning that simply draws out the known human desire to defend oneself is insufficient to sustain a cause challenge." Fleming v. State, 1D22-

0345 (5/24/23)
https://1dca.flcourts.gov/content/download/869472/opinion/download%3FdocumentVersionID=fe1f2c1a-d5d3-42fc-8ff0-366f978dd8a9

POST CONVICTION RELIEF-BOLSTERING: Prosecutors may not directly or indirectly express their opinions as to the credibility of witnesses or the guilt of the defendant. Defendant is entitled to a hearing on claim that counsel was ineffective for not objecting to improper bolstering ("So she's going to make it up? . . . [S]he's lying about it? . . . ([S]he went through) all of that because why? Because Everett Pearson raped her. That's why."). Pearson v. State, 2D22-3262 (5/24/23)
https://2dca.flcourts.gov/content/download/869398/opinion/223262_DC08_05242023_090128_i.pdf

SCORE SHEET-PRIOR RECORD: Defendant's prior lewd and lascivious offenses from 1997 should not have been scored as Level 7 offenses because that version of the crime had different elements than the current version. Clase v. State, 4D21-2898 (5/24/23)

https://4dca.flcourts.gov/content/download/869431/opinion/212898_DC08_05242023_095144_i.pdf

COSTS-INVESTIGATIVE: $50 in investigative costs are improperly imposed absent competent substantial evidence. Clase v. State, 4D21-2898 (5/24/23)
https://4dca.flcourts.gov/content/download/869431/opinion/212898_DC08_05242023_095144_i.pdf

JOA-SEXUAL MISCONDUCT WITH PATIENT: Defendant–an employee at a drug treatment facility--cannot be convicted of having sex with a patient in violation of §394.4593 where the Victim failed to meet the definition of "patient." To fit within the statutory definition of "patient," the victim would have had to be "held or accepted for mental health treatment." Because the

victim was treated voluntarily she was not "held." And the victim had sought drug treatment, not mental health treatment. DeLoatch v. State, 4D22-538 (5/24/23)
https://4dca.flcourts.gov/content/download/869433/opinion/220538_DC13_05242023_100434_i.pdf

STATUTORY INTERPRETATION (J. FORST, CONCURRING): Generally, words in a constitution, statute or contact are to be understood in their ordinary, everyday meanings. "However. . .definition by the average man or even by the ordinary dictionary with its studied enumeration of subtle shades of meaning is not a substitute for the definition set before us by the lawmakers with instructions to apply it to the exclusion of all others. There would be little use in such a glossary if we were free in despite of it to choose a meaning for ourselves." DeLoatch v. State, 4D22-538 (5/24/23)
https://4dca.flcourts.gov/content/download/869433/opinion/220538_DC13_05242023_100434_i.pdf

EXPUNCTION: Where Defendant had been convicted of a violation of §893.135 for smuggling narcotics from Jamaica as a child and under duress, he is presumptively entitled to expunction under §943.0583, which allows expunction for a victim of human trafficking. A victim of human trafficking encompasses a child recruited for the purpose of smuggling cocaine. Williams v. State, 4D22-767 (5/24/23)
https://4dca.flcourts.gov/content/download/869434/opinion/220767_DC13_05242023_100558_i.pdf

EXPUNCTION: Although there is no right to the expunction of any criminal history record, satisfaction of the statutory criteria creates a presumption in favor of expunction, upon which a trial court abuses its discretion in denying an expungement petition without a factual basis to do so. Williams v. State, 4D22-767 (5/24/23)
https://4dca.flcourts.gov/content/download/869434/opinion/220767_DC13_05242023_100558_i.pdf

STAND YOUR GROUND: Defendant in his yard is entitled to SYG immunity for arming himself, chambering round, and confronting a tree-cutting crew who had made sexually suggestive gestures towards his fiancée, waved a running chainsaw towards his dogs and refused to leave his property. Burns v. State, 4D22-3247 (5/24/23)

https://4dca.flcourts.gov/content/download/869442/opinion/223247_DC03_05242023_101655_i.pdf

FIREARM-DEADLY FORCE: As a matter of law, openly carrying or displaying a firearm, and loading it by advancing a bullet in its chamber, does not constitute the unjustified or threatened use of deadly force. The mere display of a firearm is non-deadly force. Burns v. State, 4D22-3247 (5/24/23) https://4dca.flcourts.gov/content/download/869442/opinion/223247_DC03_05242023_101655_i.pdf

SECOND AMENDMENT: The Second Amendment guarantees an individual right to keep and bear arms, including the right of law-abiding, responsible citizens to use arms in defense of hearth and home. Burns v. State, 4D22-3247 (5/24/23)
https://4dca.flcourts.gov/content/download/869442/opinion/223247_DC03_05242023_101655_i.pdf

SECOND AMENDMENT: One has a lawful right to openly carry his firearm on his home, including in his yard. Burns v. State, 4D22-3247 (5/24/23)
https://4dca.flcourts.gov/content/download/869442/opinion/223247_DC03_05242023_101655_i.pdf

SOVEREIGN IMMUNITY-EIGHTH AMENDMENT: "[S]imple medical malpractice does not rise to the level of a constitutional violation." Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

EIGHTH AMENDMENT-MEDICAL CARE-QUALIFIED IMMUNITY: Prison officials have qualified immunity from suit for their failure to administer anti-seizure medicine to prisoner. A deliberate-indifference plaintiff must prove that the defendant acted with more than gross negligence. Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

EIGHTH AMENDMENT-MEDICAL CARE-QUALIFIED IMMUNITY: Officer and nurses who were subjectively aware of a risk of serious harm to inmate not being given anti-convulsion medicine and who at least partially disregarded that risk may have been grossly negligent but not more than grossly negligent, so they have sovereign immunity from suit. Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

EIGHTH AMENDMENT-MEDICAL CARE-QUALIFIED IMMUNITY: "For more than 25 years now, our case law regarding a deliberate-indifference claim's mens rea element has been hopelessly confused, resulting in what we'll charitably call a 'mess.' We've tried to clean up that mess at least twice, but seemingly to no avail, as panels continue to flip-flop between two competing formulations: 'more than mere negligence" and 'more than gross negligence.' . . .[W]e have pitched back and forth—and back and forth and back and forth—between the 'more than mere negligence' and 'more than gross negligence' standards for the better part of the last three decades." Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

HUH? WHAT? HUH?: "To be clear, the 'issue in question' with respect to which we apply the prior panel-precedent rule here. . .isn't whether 'more than mere negligence' or 'more than gross negligence' is the proper mens rea standard as an initial matter. If that were the proper object of our prior-panel-precedent-rule inquiry, then we would seek out the 'earliest panel opinion' addressing that issue, whatever that opinion might be. . .But. . the prior-panel-

precedent issue that we confront now. . .is which of those two previous efforts to clarify circuit law controls our decision." Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

PRIOR PANEL PRECEDENT RULE: "Were the rule otherwise—such that any panel was free to re-decide what it thought the first-in-time case actually was, even in the face of intervening decisions resolving that very issue—there could, by definition, be no closure. Every day would be a new day. That is precisely the situation that our prior panel-precedent rule is designed to prevent." Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

EIGHTH AMENDMENT (J. NEWSOM, CONCURRING): The Cruel and Unusual Punishments Clause applies only to penalties that are imposed intentionally and purposefully. "Is any negligence-based standard consistent with the plain language and original understanding of the Eighth Amendment, which by its terms applies only to 'punishments? The answer, I think, is pretty clearly no. Just as a parent can't accidently punish his or her child, a prison official can't accidentally—or even recklessly—'punish[]' an inmate." Wade v. McDade, No. 21-14275 (11th Cir. 5/22/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114275.pdf

POST CONVICTION RELIEF-DEATH PENALTY-INTELLECTUAL DISABILITY: Post conviction court's decision to vacate death penalty is proper where Defendant's measured IQ was in the low 70's, and, when his adaptive functioning deficit is taken into account, may be a low as 69. Smith v. Commissioner, Alabama DOC, No. 21-14519 (11th Cir. 5/19/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114519.pdf

POST CONVICTION RELIEF-DEATH PENALTY-INTELLECTUAL DISABILITY: Whether Defendant is intellectually disabled for imposition of

the death penalty turns on whether he has significantly subaverage intellectual functioning, i.e., an IQ equal to or less than 70, but the standard error of measurement must recognize that an IQ test score represents a range rather than a fixed number. Where IQ test scores going back to elementary school show most IQ tests to be in the low 70's, Court must consider Defendant's adaptive functioning to determine whether the Defendsnt is intellectually disabled for imposition of the death penalty. Smith v. Commissioner, Alabama DOC, No. 21-14519 (11th Cir. 5/19/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114519.pdf

POST CONVICTION RELIEF-SCORE SHEET: Defendant is entitled to a hearing on claim that score sheet was improperly calculated (State agreed that it was but Court ruled otherwise). Hartshorn v. State, 2D22-2016 (5/19/23)
https://2dca.flcourts.gov/content/download/869069/opinion/222016_DC13_05192023_080832_i.pdf

POST CONVICTION RELIEF-IMPROPER SCORE SHEET: Defendant must move to withdraw the plea when it was entered on the basis of a mistakenly calculated score sheet. Hartshorn v. State, 2D22-2016 (5/19/23)
https://2dca.flcourts.gov/content/download/869069/opinion/222016_DC13_05192023_080832_i.pdf

SCORE SHEET-FELONY BATTERY: The legislature has not specified a severity level for Felony Battery based on a prior, so the CPC's catch-all provision for third-degree felonies (Level 1) applies. Hartshorn v. State, 2D22-2016 (5/19/23)
https://2dca.flcourts.gov/content/download/869069/opinion/222016_DC13_05192023_080832_i.pdf

COSTS-EXPOSURE OF SEXUAL ORGANS: $151 court cost pursuant to §938.10 may not be imposed for a violation of §800.03, exposure of sexual organs. Henslee v. State, 5D22-2362 (5/19/23)

https://5dca.flcourts.gov/content/download/869085/opinion/222362_DC08_05192023_084553_i.pdf

DISCOVERY VIOLATION: Defendant is entitled to a new trial where State used at trial as impeachment undisclosed statements made by Defendant in an internal Sheriff's Office complaint and email. Only if the appellate court can say beyond a reasonable doubt that the defense was not procedurally prejudiced by the discovery violation can the error be considered harmless. Tyson v. State, 5D23-125 (5/19/23)
https://5dca.flcourts.gov/content/download/869091/opinion/230125_DC13_05192023_091041_i.pdf

DISCOVERY VIOLATION-HARMLESS ERROR: Harmless error analysis focuses on the procedural prejudice from the discovery violation and not whether the violation would have substantively made a difference in the verdict. The relevant inquiry is whether there is a reasonable possibility that the discovery violation 'materially hindered the defendant's trial preparation or strategy. Appellate court must consider every conceivable course of action in determinating regarding whether trial preparation or strategy would have been materially different absent the State's discovery violation. Tyson v. State, 5D23-125 (5/19/23)
https://5dca.flcourts.gov/content/download/869091/opinion/230125_DC13_05192023_091041_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel acted ineffectively when he counseled him not to testify when he would have testified that he was is some other city at the time of the crime. Chambers v. State, 6D23-526 (5/19/23)
https://6dca.flcourts.gov/content/download/869101/opinion/230526_DC08_05192023_092932_i.pdf

SOCIAL MEDIA-LIABILITY: Social media companies (Facebook, Google, Twitter) are not subject to civil liability under 18 U. S. C. §2333 on the theory

that they aided and abetted ISIS by providing a platform to recruit and raise funds for terrorists. "[D]efendants' relationship with ISIS . . .appears to have been the same as their relationship with their billion-plus other users: arm's length, passive, and largely indifferent." Twitter, Inc. v. Taamneh, No 21-1496 (U.S. S. Ct. 5/18/23)
https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf

AID AND ABET: "The mere creation of those platforms. . .is not culpable. To be sure, it might be that bad actors like ISIS are able to use platforms like defendants' for illegal—and some times terrible—ends. But the same could be said of cell phones, email, or the internet generally." Twitter, Inc. v. Taamneh, No 21-1496 (U.S. S. Ct. 5/18/23)
https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf

DEFINITION-"AID AND ABET": Aiding-and-abetting liability applies only to cases of truly culpable conduct. A defendant must in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed before he can be held liable. Twitter, Inc. v. Taamneh, No 21-1496 (U.S. S. Ct. 5/18/23)

https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf

AIDING AND ABETTING: "By their very nature, the concepts of aiding and abetting and substantial assistance do not lend themselves to crisp, bright-line distinctions. . .The point of aiding and abetting is to impose liability on those who consciously and culpably participated in the tort at issue. . .When there is a direct nexus between the defendant's acts and the tort, courts may more easily infer such culpable assistance. But, the more attenuated the nexus, the more courts should demand that plaintiffs show culpable participation through intentional aid that substantially furthered the tort." Twitter, Inc. v. Taamneh, No 21-1496 (U.S. S. Ct. 5/18/23)
https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf

DEATH PENALTY: 30-year delay between the offense and imposition of the death penalty does nor violate the Eighth Amendment or Article I, §17 of the Florida Constitution. Orme v. State, SC22-338 (5/18/23) https://supremecourt.flcourts.gov/content/download/868986/opinion/sc2022-0338.pdf

DEATH PENALTY-FACTORS: There is no "beyond a reasonable doubt" requirement on the sufficiency and weighing determinations in imposing the death penalty Only the finding of the existence of at least one aggravating factor to the beyond a reasonable doubt standard is required. Orme v. State, SC22-338 (5/18/23) https://supremecourt.flcourts.gov/content/download/868986/opinion/sc2022-0338.pdf

DOUBLE JEOPARDY-POST CONVICTION RELIEF: Defendant's new sentence after his successful motion for post-conviction relief, which reduced his offense from home invasion robbery with a deadly weapon to home invasion robbery and his sentence from life to thirty years, does not violate double jeopardy. Because neither the jury nor the trial court acquitted on any offenses, the prohibition against double jeopardy was not violated. Gardner v. State, 1D22-3177 (5/17/23) https://1dca.flcourts.gov/content/download/868938/opinion/download%3FdocumentVersionID=791dd7a8-6721-4208-8f84-7f95c18b6a77

DISCOVERY-RICHARDSON: Where Defendant testified that he did not have the specified Gmail account, linked to a Dropbox account with child pornography, and he denied ever having a Gmail account, the State's use of previously undisclosed Gmail records showing such an account was a prejudicial discovery violation requiring a new trial. The undisclosed Gmail records directly impeached the defendant's testimony that he has never had a Gmail account, and, accordingly, served to damage his credibility. McDonald v. State, 4D22-886 (5/17/23) https://4dca.flcourts.gov/content/download/868918/opinion/220886_DC13_

05172023_103227_i.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: State's argument that internet websites used by the Defendant, including Kik, Omegle, and Mega, are used for trading illegal child pornography the majority of the time is improper as never developed during trial. "Improper closing argument has no rightful place in the repertoire of criminal trials and with the barest of trial preparation is easy to avoid." McDonald v. State, 4D22-886 (5/17/23) https://4dca.flcourts.gov/content/download/868918/opinion/220886_DC13_05172023_103227_i.pdf

MARIJUANA-PROPOSED AMENDMENT: Attorney General requests an opinion as to whether a proposed amendment to the Constitution allowing recreational use of marijuana by adults over 21 may be placed on the ballot. The A.G. submits that it should not. Attorney General Advisory Opinion to the Attorney General Re: Adult Personal Use of Marijuana, SC2023-0682 (5/15/23)

https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/85dca015-d108-4595-8cdb-d4488890aa88/docketentrydocuments/7675ca8a-9610-4d1b-93e2-dee006820cb7

CLERGY COMMUNICATIONS PRIVILEGE: A confession to a church volunteer (a seminary student but not yet an ordained minister) is not privileged. The Clergy communication privilege applies only when (1) the statement is made to a member of the clergy; (2) for the purpose of seeking spiritual counseling or advice; (3) the clergyman receives the statement in the usual course of his practice or discipline; and (4) the statement is made privately and with the intent it not be further disclosed. McDermott v. State, 5D22-113 (5/12/23)

https://5dca.flcourts.gov/content/download/868566/opinion/220113_DC05_

05122023_083938_i.pdf

HUSBAND-WIFE PRIVILEGE: Spousal privilege does not exist when it concerns a crime where the spouse's child (here, Defendant's stepdaughter) is the victim. McDermott v. State, 5D22-113 (5/12/23)

https://5dca.flcourts.gov/content/download/868566/opinion/220113_DC05_05122023_083938_i.pdf

HEARSAY: The grand jury testimony of the witness to her mother's murder (the Defendant is her father) is admissible as substantive evidence when the witness disingenuously claims amnesia or forgetfulness. Unlike prior inconsistent statements that may be used only for impeachment, prior grand jury testimony is not hearsay and may be used as substantive evidence. Maya v. State, 6D23-212 (5/12/23)

https://6dca.flcourts.gov/content/download/868607/opinion/230212_DC05_05122023_092741_i.pdf

IMPEACHMENT-PRIOR INCONSISTENT STATEMENT: A loss of memory is inconsistent with prior testimony if the loss of memory is feigned or contrived. Maya v. State, 6D23-212 (5/12/23)

https://6dca.flcourts.gov/content/download/868607/opinion/230212_DC05_05122023_092741_i.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: "And if you believe in your heart that the defendant is the one that did it and that it was a murder, he should be convicted" is improper argument, but harmless. Maya v. State,

6D23-212 (5/12/23)

https://6dca.flcourts.gov/content/download/868607/opinion/230212_DC05_05122023_092741_i.pdf

VAGUENESS-HONEST SERVICES FRAUD: A private citizen with influence over government decision-making cannot be convicted for wire fraud on the theory that he or she deprived the public of its intangible right of honest services. Jury instruction--that a former and future public official (here, executive deputy secretary to NY governor Cuomo) owed a duty of honest services to the public if (1) he dominated and controlled any governmental business and (2) people working in the government actually relied on him because of a special relationship he had with the government–is wrong. Percoco v. United States, No. 21–1158 (US S. Ct. 5/11/23)x`

https://www.supremecourt.gov/opinions/22pdf/21-1158_p8k0.pdf

VAGUENESS-HONEST-SERVICES FRAUD (J. GORSUCH, CONCURRING): "The Court holds that the jury instructions in this case were 'too vague.'. . .I agree. But to my mind, the problem runs deeper than that because no set of instructions could have made things any better. To this day, no one knows what 'honest-services fraud' encompasses.. . .In the end, we may now know a little bit more about when a duty of honest services does not arise, but we still have no idea when it does." Percoco v. United States, No. 21–1158 (US S. Ct. 5/11/23)

https://www.supremecourt.gov/opinions/22pdf/21-1158_p8k0.pdf

QUOTE-LAWS (J. GORSUCH, CONCURRING): "[T]he Legislative Branch must do the hard work of writing federal criminal laws. Congress cannot give the Judiciary uncut marble with instructions to chip away all that does not resemble David." Percoco v. United States, No. 21–1158 (US S. Ct. 5/11/23)

https://www.supremecourt.gov/opinions/22pdf/21-1158_p8k0.pdf

WIRE FRAUD-RIGHT TO CONTROL THEORY: The right-to-control theory–that a defendant is guilty of fraud if he schemes to deprive the victim of potentially valuable economic information necessary to make discretionary economic decisions is invalid under federal fraud statutes. The "right to control" theory of fraud is not a valid basis for criminal liability for wire fraud. Federal fraud statutes criminalize only schemes to deprive people of traditional property interests, not potentially valuable economic information necessary to make discretionary economic decisions. The right to control one's assets is not "property" for purposes of the wire fraud statute. Defendant is improperly convicted of wire fraud under the "right to control" theory for rigging Requests for Proposals to obtain a lucrative ($750,000,000) development project. Ciminelli v. United States, No. 21–1170 (5/11/23)

https://www.supremecourt.gov/opinions/22pdf/21-1170_b97d.pdf

APPEAL-DOWNWARD DEPARTURE: Appellate review of the trial court's denial of downward departure from a mandatory minimum sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Poole v. State, 1D21-2844 (5/10/23)

https://1dca.flcourts.gov/content/download/868431/opinion/download%3FdocumentVersionID=41ad39df-f4d7-49aa-8749-58bdf14f1593

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to R. 3.850. Reed v. State, 1D22-2537 (5/10/23)

https://1dca.flcourts.gov/content/download/868440/opinion/download%3FdocumentVersionID=27306bff-a5c8-491e-9398-8d7b03f283cc

OPEN HOUSE PARTY: §856.015 prohibits a person having control of any

residence to allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows a out it and fails to take reasonable steps to prevent it. The State must show that the adult in charge stood by and did nothing. While not a model of clarity, "doing nothing" is not unconstitutionally vague. Davis v. State, 2D21-2987 (5/10/23)

https://2dca.flcourts.gov/content/download/868377/opinion/212987_DC13_05102023_083534_i.pdf

EVIDENCE-OPINION ON CREDIBILITY: Officer may not testify as to the reliability of a witness. Davis v. State, 2D21-2987 (5/10/23)

https://2dca.flcourts.gov/content/download/868377/opinion/212987_DC13_05102023_083534_i.pdf

APPEAL-PRESERVATION: Defendant fails to preserve issue for appeal where he successfully objects to improper testimony by officer about a witness's credibility without requesting a curative instruction and, more importantly, requesting a mistrial. But here, the error is fundamental. Davis v. State, 2D21-2987 (5/10/23)

https://2dca.flcourts.gov/content/download/868377/opinion/212987_DC13_05102023_083534_i.pdf

EVIDENCE-OPINION ON CREDIBILITY: Although there is no *per se* rule prohibiting an officer from testifying that a witness was uncooperative, the State's direct examination of the officer elicited the improper opinion that the State witness's testimony was credible and reliable, while the Defense witness's testimony should not be given much weight, is a clear invasion of the jury's exclusive province. Davis v. State, 2D21-2987 (5/10/23)

https://2dca.flcourts.gov/content/download/868377/opinion/212987_DC13_05102023_083534_i.pdf

SCORESHEET ERROR: When a claim of scoresheet error is raised in a rule 3.800(a) motion that would be timely under rule 3.850(b), the court should treat a motion alleging scoresheet error as one filed under rule 3.850 and apply the would-have-been-imposed standard. Armstrong v. State, 2D23-110 (5/10/23)

https://2dca.flcourts.gov/content/download/868392/opinion/230110_DC13_05102023_084021_i.pdf

MEDIATION: Court may not require SAO and Defendant to enter mediation with the end goal of resolving the case via a plea bargain. Compelling the State to participate in a plea-bargaining process against its wishes is an improper intrusion into the executive branch. Compulsory mediation is a square peg, and squeeze it as a trial court might, it does not fit in the round hole of criminal litigation. State v. Delancey, 3D23-367 (5/10/23)

https://3dca.flcourts.gov/content/download/868403/opinion/230367_DC03_05102023_101111_i.pdf

JUVENILE OFFENDER-SENTENCE REVIEW: Where a juvenile offender is convicted of aggravated fleeing or eluding causing death and sentenced to thirty-five years in prison, Court must enter written order providing for judicial review after twenty years pursuant to §921.1402(2)(d). Abraham v. State, 4D19-3973 (5/10/23)

https://4dca.flcourts.gov/content/download/868409/opinion/193973_DC05_05102023_095126_i.pdf

TWELVE PERSON JURY: Defendant is not entitled to a twelve person jury. Enrriquez v. State, 4D22-694 (5/10/23)

https://4dca.flcourts.gov/content/download/868411/opinion/220694_DC08_05102023_095734_i.pdf

COSTS: Court erred in imposing $200 for costs of prosecution where the prosecution costs were not shown to exceed $100 and the state did not request additional prosecution costs. Enrriquez v. State, 4D22-694 (5/10/23)

https://4dca.flcourts.gov/content/download/868411/opinion/220694_DC08_05102023_095734_i.pdf

COSTS OF INVESTIGATION: Court may not impose costs of investigation without evidence of the amount of the costs. Enrriquez v. State, 4D22-694 (5/10/23)

https://4dca.flcourts.gov/content/download/868411/opinion/220694_DC08_05102023_095734_i.pdf

DOMESTIC VIOLENCE SURCHARGE: Court may not impose the domestic violence surcharge for a violation of §800.04. Enrriquez v. State, 4D22-694 (5/10/23)

https://4dca.flcourts.gov/content/download/868411/opinion/220694_DC08_05102023_095734_i.pdf

JURISDICTION-PENDING APPEAL: Court lacks jurisdiction to enter a restitution order after filing of a notice of appeal. Court may memorialize an oral order but may not set a specified amount of restitution which had not been pronounced at sentencing. Court may re-enter the restitution orders on

remand. McGee v. State, 4D22-1022 (5/10/23)

https://4dca.flcourts.gov/content/download/868412/opinion/221022_DC08_05102023_095838_i.pdf

APPEAL-EXTENSIONS OF TIME: "[T]his court has seen multiple instances where counsel attempts to indirectly receive an extension of time to file a brief by seeking supplementation of the record on appeal, usually after counsel has exhausted all their agreed extensions of time. We have also seen that 'no further extensions' orders by this court and resulting deadlines for compliance are being treated by some as mere suggestions that can be ignored with impunity. . .We struggle to think of a legitimate reason for why it took counsel four months to realize a single transcript was missing from the record on appeal. . .We also struggle to think of a reasonable explanation for counsel's decision to file motions for extension of time because of 'workload.' . . . Simply put, this is unacceptable." Personna v. State, 4D22-218 (5/10/23)

https://4dca.flcourts.gov/content/download/868417/opinion/222518_NOND_05102023_100706_i.pdf

APPEAL-RECORD-TRANSCRIPT: Defendant is not entitled to an extension of time to supplement the record in order to obtain transcripts to determine whether an applellate issue exists. "We cannot overstate the point that rule 9.200(f) does not operate as an alternative to [the] process mandated by rule 2.535 for obtaining publicly funded transcripts, especially after the initial record on appeal has been transmitted. The trial court's approval of publicly funded transcription is an administrative matter. Debose v. State, D22-1490 (5/8/23)

https://1dca.flcourts.gov/content/download/860723/opinion/download%3FdocumentVersionID=b9200f0c-cc46-4803-ac7c-ea22417e57a2

APPEAL-RECORD (J. KELSEY, DISSENTING): The holding that there is no right to supplement the record with a transcript if appellate counsel has not first independently arranged for payment of the associated expense or obtained the transcript in some free manner is wrong because 1) it infringes on the Florida Supreme Court's exclusive rulemaking authority, 2) violates concepts of preservation and judicial restraint, 3) originates and pursues an unpreserved and tangential issue, and implicitly raises and leaves unresolved significant procedural questions such as the precedential effect of its holding and the practical steps necessary to implement it. The majority purports to create an exception to the right of supplementation under rule 9.200(f), making that right contingent on counsel's having already obtained and paid for requested transcripts in some way other than through the budget of the public defender handling the appeal. Debose v. State, 1D22-1490 (5/10/23)

https://1dca.flcourts.gov/content/download/868459/opinion/download%3FdocumentVersionID=7b08f5fa-ee82-4702-ac52-15efbe1881ce

DUI-FSE-REASONABLE SUSPICION: When reasonable suspicion exists that a defendant has committed a DUI, the defendant can be required to perform FSE's and consent is immaterial. State v. Johnson, 5D21-2866 (5/5/23)
https://5dca.flcourts.gov/content/download/868043/opinion/212866_DC13_05052023_085756_i.pdf

RESTITUTION: Child may not be required to pay restitution to victim for work missed due to court appearances. Wages lost by a victim due to their attendance as a witness in court proceedings are not causally related to the underlying offense. K.J.H., A Child v. State, 5D22-1407 (5/5/23)
https://5dca.flcourts.gov/content/download/868044/opinion/221407_DC08_05052023_085930_i.pdf

MEDICAL RECORDS: To obtain a subpoena for medical records, the State must present argument and evidence showing a nexus between those

records and the criminal investigation. An unsworn motion unsupported by live testimony at the hearing is legally insufficient for issuance of as subpoena of medical records. Roberts v. State, 6D23-1028 (5/5/23) https://6dca.flcourts.gov/content/download/868059/opinion/231028_DC03_05052023_095652_i.pdf

CERTIORARI/PROHIBITION: A writ of certiorari, not a writ of prohibition, is a more appropriate mechanism to quash an order, here, for a subpoena of medical records. A writ of prohibition cannot undo or revoke an order, but an order may be quashed by a writ of certiorari. Roberts v. State, 6D23-1028 (5/5/23) https://6dca.flcourts.gov/content/download/868059/opinion/231028_DC03_05052023_095652_i.pdf

DEATH PENALTY-NEWLY DISCOVERED EVIDENCE: APA resolution that there is a scientific consensus that the brain does not fully develop until at least 21 years old is not timel asserted new evidence warranting invalidating the death penalty for an offender who was under 21 at the time of his offense, since this fact has been known since st least 2015. Melton v. State, SC2022-1394 (5/4/23) https://supremecourt.flcourts.gov/content/download/867981/opinion/sc2022-1394.pdf

DEATH PENALTY-YOUTH: Roper does not apply to people 18 YOA or older. Melton v. State, SC2022-1394 (5/4/23) https://supremecourt.flcourts.gov/content/download/867981/opinion/sc2022-1394.pdf

AMENDMENT-RULES-JUVENILE: R. 8.013(e)(6) is created to provide that if a child is being detained on an offense that is classified as an act of domestic violence for 48 hours, the detention order must include specific written findings that respite care for the child is not available, and that it is necessary to place the child in secure detention in order to protect the victim

from injury. In Re: Amendments to Florida Rule of Juvenile Procedure 8.013, No. SC2022-1462 (5/4/23)
https://supremecourt.flcourts.gov/content/download/867982/opinion/sc2022-1462.pdf

EXPUNCTION-FEDERAL: Federal district courts lack inherent equitable or constitutional power ancillary to their criminal jurisdiction to order the expungement of criminal records. USA v. Batmasion, No. 21-12800 (11th Cir. 5/3/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112800.op2.pdf

ANCILLARY JURISDICTION: Ancillary jurisdiction can be invoked for two limited purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees. USA v. Batmasion, No. 21-12800 (11th Cir. 5/3/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112800.op2.pdf

EXPUNCTION: "[N]o court has ever held that the Constitution directly provides jurisdiction to hear any expungement motions." USA v. Batmasion, No. 21-12800 (11th Cir. 5/3/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112800.op2.pdf

POST CONVICTION RELIEF: An appellate court does not substitute its judgment for that of the trial court on questions of the credibility of witnesses and the appropriate weight to be given the evidence at the hearing on a motion for post-conviction relief. Allen v, State, 1D22-643 (5/3/23)
https://1dca.flcourts.gov/content/download/867899/opinion/download%3FdocumentVersionID=74d449d9-5387-4040-bad0-0bb55b801a93

PHOTO SHOW UP: The exclusionary rule in respect to Fourth Amendment violations is based upon the deterrence of illegal police or prosecutorial

action; it is not triggered by the actions of private persons however egregious they may be. Medina-Tamayo v. State, 4D22-377 (5/3/23) https://4dca.flcourts.gov/content/download/867863/opinion/220377_DC05_05032023_095304_i.pdf

ZOOM: Due process considerations inherent in delinquency proceedings require the trial court to make case- specific findings of necessity before conducting a remote adjudicatory hearing. V.M.A., a Juvenile v. State, 3D22-467 (5/3/23) https://3dca.flcourts.gov/content/download/867854/opinion/220467_DC13_05032023_101905_i.pdf

EVIDENCE: Admission of a photo of the alleged victim as a small child is relevant to prove the element of the victim's age at the time of the charged offenses, and enabled the victim, who was an eighteen-year-old adult by the time of trial, to better describe, and the jury to better understand, her testimony about her age when the defendant committed the charged offenses. The admissibility of photographs does not depend upon whether the objects depicted could be described by testimony but whether they would be useful in enabling the witness to better describe and the jury to better understand the testimony concerned. Valladares v. State, 4D22-598 (5/3/23) https://4dca.flcourts.gov/content/download/867865/opinion/220598_DC05_05032023_095628_i.pdf

SIX-PERSON JURY: A six-person jury does not violate the Sixth and Fourteenth Amendments to the United States Constitution. Valladares v. State, 4D22-598 (5/3/23) https://4dca.flcourts.gov/content/download/867865/opinion/220598_DC05_05032023_095628_i.pdf

APPEAL-PRESERVATION: Defendant's argument that his convictions for resisting arrest without violence and escape cannot stand because the arrest

was unlawful due to violation of the "knock-and-announce" rule is not preserved where Defendant's argument for JOA differed from his argument on appeal. Albritton v. State, No. 4D22-1060 (5/3/23) https://4dca.flcourts.gov/content/download/867867/opinion/221060_DC05_05032023_095844_i.pdf

KNOCK AND ANNOUNCE: The knock and announce rule does not apply to entry through an open patio door where the entry into the residence does not involve force to cross the threshold of the home. Albritton v. State, No. 4D22-1060 (5/3/23) https://4dca.flcourts.gov/content/download/867867/opinion/221060_DC05_05032023_095844_i.pdf

SIX-PERSON JURY: A six-person jury does not violate the Sixth and Fourteenth Amendments to the United States Constitution. Albritton v. State, No. 4D22-1060 (5/3/23) https://4dca.flcourts.gov/content/download/867867/opinion/221060_DC05_05032023_095844_i.pdf

ZOOM-MISTRIAL: Child is entitled to a new trial when he was repeatedly disconnected during adjudicatory hearing by Zoom. L.T.G., A Juvenile v. State, 3D22-1479 (5/3/23) https://3dca.flcourts.gov/content/download/867857/opinion/221479_DC13_05032023_102333_i.pdf

FIREARM-JUVENILE-MANDATORY MINIMUM: §790.22(9)(a) imposes a fifteen-day minimum secure detention sanction for offenses that involve the use or possession of a firearm (beyond mere possession), regardless whether it was actuslly possessed by the Child. §790.22(5) requires a three-day maximum secure detention sentence for mere possession of a firearm. The fifteen day minimum mandatory applies to carrying a concealed firearm; the use the words "use" or "possess" in the petition is not required. State v. A.G., a Child, 4D22-2193 (5/3/23)

https://4dca.flcourts.gov/content/download/867870/opinion/222193_DC08_05032023_100204_i.pdf

JUVENILE-CREDIT FOR TIME SERVED: §790.22(9) prohibits awarding a juvenile credit for any detention served before adjudication. State v. A.G., a Child, 4D22-2193 (5/3/23)
https://4dca.flcourts.gov/content/download/867870/opinion/222193_DC08_05032023_100204_i.pdf

POST CONVICTION RELIEF: Defendant may not raise before trial court claim that appellate attorney failed to argue the correct issues. Ridore v. State, 3D22-2004 (5/3/23)
https://3dca.flcourts.gov/content/download/867858/opinion/222004_DC05_05032023_102431_i.pdf

POST CONVICTION RELIEF: While Florida's Rules of Appellate Procedure do not contain a specific provision requiring prohibition petitions to be filed within a certain time period, appellate court may exercise its discretion and decline to adjudicate a petition that is not filed within a reasonable time from the rendition of the order being challenged. An unreasonable delay in filing a prohibition petition to challenge a Stand Your Ground order subjects the petition to denial as untimely. State v. Ogunwale, 23-707 (5/3/23)
https://3dca.flcourts.gov/content/download/867878/opinion/230707_DA08_05032023_102925_i.pdf

PRETRIAL-WAIVER-NOTICE: Court improperly issued an FTA capias where Defendant's attorney had filed a waiver of pretrial and Court had not provided advance notice that his presence in court was required. McCutchen v. State, 3D23-473 (5/3/23)
https://3dca.flcourts.gov/content/download/867889/opinion/230473_DC03_05032023_104524_i.pdf

SENTENCING-SCORESHEET-GROUPING: When determining the combined offense level where there are multiple groups of sex abuse victims, the Court must determine the number of units by counting the highest offense level as one unit, then count any offense levels one to four levels less serious than the highest offense as one unit and any offense levels five to eight levels less serious as one-half unit. Any count group that is nine or more levels less serious than the count group with the highest offense level is disregarded. Where the number of units is more than five, five levels should be added to the highest offense level. USA v. Hamilton, No. 21-14266 (11th Cir. 5/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114266.pdf

SENTENCING-GUIDELINES-CALCULATION: Error, if any, in calculating the guidelines is harmless if any calculation renders the maximum level (43). USA v. Hamilton, No. 21-14266 (11th Cir. 5/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114266.pdf

SENTENCING-REASONS-LIFETIME PROBATION: If a recommended sentencing range exceeds 24 months, Court must state in open court the reasons for imposing its sentence at a particular point within the range. The district court is not required to state on the record that it has explicitly considered each of the §3553(a) factors. A separate explanation is not required to explain the length of probation. USA v. Hamilton, No. 21-14266 (11th Cir. 5/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114266.pdf

PROBATION-MITIGATION: A district court may modify, reduce, or enlarge the conditions of supervised release at any time prior to the expiration of the term of supervised release; A district court does not have inherent authority to modify a defendant's incarcerative sentence and may do so only when authorized by a statute or rule. USA v. Hamilton, No. 21-14266 (11th Cir. 5/2/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114266.pdf

APRIL 2023

DEATH PENALTY-DUE PROCESS: Defendant's claim that a compressed time schedule to challenge the death warrant, in light of certain circumstances in this case (Holy Week, Passover, and Ramadan; co-counsel being ill; and the presence of another inmateon Death Watch) rendered litigation too arduous for counsel and thus a violation of Due Process fails. "Indeed, post-warrant litigation is arduous, even without such circumstances. Yet none of the obstacles . . .resulted in a denial of due process." Barwick v. State, SC2023-531 (4/28/23) https://supremecourt.flcourts.gov/content/download/867249/opinion/SC2023-0531.pdf

DEATH PENALTY-EFFECTIVE ASSISTANCE OF COUNSEL: "[T]he 'quality representation' referenced in section 27.711(12) does not create a right to effective assistance of postconviction counsel." Barwick v. State, SC2023-531 (4/28/23) https://supremecourt.flcourts.gov/content/download/867249/opinion/SC2023-0531.pdf

DEATH PENALTY-CRUEL AND UNUSUAL: Neither the age of the Defendant at the time of the offense, nor the combination of a young age with brain damage and a mental and emotional age of less than eighteen years, means that his execution would offend the evolving standards of decency, serve no legitimate penological goal, or violate the Eighth and Fourteenth Amendments. Barwick v. State, SC2023-531 (4/28/23) https://supremecourt.flcourts.gov/content/download/867249/opinion/SC2023-0531.pdf

CRUEL OR UNUSUAL PUNISHMENT: The conformity clause of article I, §17 of the Florida Constitution provides that the prohibition against cruel and unusual punishment in Florida shall beconstrued in conformity with decisions of the United States Supreme Court's interpretation of the Eighth

Amendment. This means that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida. Barwick v. State, SC2023-531 (4/28/23) https://supremecourt.flcourts.gov/content/download/867249/opinion/SC2023-0531.pdf

DEATH PENALTY-BRAIN DAMAGE/MENTAL ILLNESS: The categorical bar of Atkins that shields the intellectually disabled from execution does not apply to individuals with other forms of mental illness or brain damage. Barwick v. State, SC2023-531 (4/28/23) https://supremecourt.flcourts.gov/content/download/867249/opinion/SC2023-0531.pdf

STATEMENT OF DEFENDANT-MIRANDA: Question certified. Where a defendant initially invoked his Fifth Amendment Miranda rights butsubsequently reinitiates contact with law enforcement, does law enforcement automatically violate those rights by generally reminding defendant of his rights rather than fully re-Mirandizing the defendant? Woodberry v. State, 5D21-2737 (4/28/23) https://5dca.flcourts.gov/content/download/867210/opinion/212737_DC05_04282023_082046_i.pdf

COSTS: Court must provide citations to authority for the costs imposed. Colon v. State, 5D22-710 (4/28/23) https://5dca.flcourts.gov/content/download/867213/opinion/220710_DC08_04282023_082758_i.pdf

POST CONVICTION RELIEF-PLEA OFFER: Defendant is entitled to hesring on clsim thast counsel was ineffective for failing to convey plea offer where he alleges that (1) he would have accepted the more favorable offers, (2) the State would not have withdrawn the offers, and (3) the court would have accepted a plea involving one of the more favorable offers. Dungey v. State, 5D22-2603 (4/28/23)

https://5dca.flcourts.gov/content/download/867217/opinion/222603_DC13_04282023_083540_i.pdf

APPEAL-MOOTNESS: The issue of whether a minor defendant charged with first degree murder, ineligible for the death penalty because of his age, is entitled to a twelve person jury is rendered moot by his guilty plea. "Petitioner cannot show that he will be materially injured by the size of a hypothetical jury that will never be empaneled." Fucci v. State, 5D23-749 (4/28/23)
https://5dca.flcourts.gov/content/download/867218/opinion/230749_DA08_04282023_083724_i.pdf

REPRESENTED DEFENDANT: If a petition clearly indicates that the petitioner is represented by counsel in the pending criminal proceeding, and the petitioner does not unequivocally seek to discharge counsel in that proceeding by way of the petition, the petition will be dismissed as unauthorized. Goodwin v. State, 5D23-1375 (4/25/23)
https://5dca.flcourts.gov/content/download/866946/opinion/231375_DA08_04252023_112456_i.pdf

DOUBLE JEOPARDY-KIDNAPPING/AGGRAVATED ASSAULT: Double jeopardy does not prohibit dual convictions for kidnapping with a weapon and aggravated assault. Double jeopardy analysis requires an examination of the elements of the charges, not a review of the factual underpinnings of each specific case. Rojas v. State, 6D23-1231 (4/28/23)
https://6dca.flcourts.gov/content/download/867233/opinion/231231_DC05_04282023_102721_i.pdf

DEATH PENALTY-CLEMENCY: A death-row prisoner's life interest secured by the Due Process Clause necessitates that some minimal procedural safeguards apply to clemency proceedings. The key word is minimal. A clemency board's compliance with state laws or procedures is not part of the minimal procedural safeguards protected by the Due Process

Clause. Barwick v. Governor of Florida. No. 23-11277-P (11th Cir. 4/26/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202311277.Ord.pdf

DEATH PENALTY-EXECUTIVE CLEMENCY: Florida's clemency process for death penalty cases does not violate the Due Process Clause, notwithstanding that there are no standards governing clemency decisions. "[W]e cannot agree that the Due Process Clause requires the State to provide any such standards." Barwick v. Governor of Florida. No. 23-11277-P (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202311277.Ord.pdf

DEATH PENALTY-STAY OF EXECUTION: A stay of execution of a death penalty may be granted only where the prisoner establishes that (1) he has a substantial likelihood of success on the merits, (2) he will suffer irreparable injury unless the injunction issues, (3) the injunction would not substantially harm the other litigant, and (4) the injunction would not be adverse to the public interest. Barwick v. Governor of Florida. No. 23-11277-P (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202311277.Ord.pdf

VOTING RIGHTS: Restiction of felons' voting rights in Alabama was enacted specifically to discriminate against and disenfranchise black Alabamians/to establish white supremacy, but the taint has since been dissipated by legislative re-enactment. "While Alabama once used the moral turpitude standard as part of a racially discriminatory disenfranchisement scheme, it is not forever barred from disenfranchising individuals convicted of felonies involving moral turpitude." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

MORAL TURPITUDE: Alabama senator: "The way I understand it, there is just one or two felonies that don't include moral turpitude. I think stealing

whiskey and transporting are about the only two." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

PRIOR-PANEL-PRECEDENT RULE: The prior-panel-precedent rule requires subsequent panels of the court to follow the precedent of the first panel to address the relevant issue, unless and until the first panel's holding is overruled by the Court sitting *en banc* or by the Supreme Court, even when the later panel is convinced the earlier panel is wrong. Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

EX POST FACTO: Disenfranchisement is punishment for purposes of the Ex Post Facto Clause. Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

DISENFRANCHISEMENT: Florida's felon disenfranchisement law is among the most restrictive in the nation. Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

DICTA: Dicta is a statement that neither constitutes the holding of a case, nor arises from a part of the opinion that is necessary to the holding of the case. Any case law characterizing disenfranchisement as punishment is dicta, except one case, but that case is no longer good law. Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

VOTING-DISENFRANCHISEMENT (J. ROSENBAUM, CONCURRING): "Deceiving an elector in preparation of her ballot. Altering another person's ballot. Failing to count legally cast absentee votes. Illegally voting more than once in an election (second violation). Willfully and intentionally signing the

name of another elector in a poll book.5 Bribery of public servants. And perjury. Perhaps this recitation sounds like a list of felonies that would disqualify an Alabamian from voting under. . .Alabama's constitution—Alabama's felon-disenfranchisement provision. Nope. Those convicted of any of these voting-fraudrelated felonies are A-okay, good to go when it comes to voting. . ."[J]ust what was Alabama trying to accomplish with its felon-disenfranchisement provision?. . .So maybe when Alabama amended its felon-disenfranchisement provision in 1996. . .it sought to cleanse the taint of racism from the provision's history? Nope. We can't say that." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

FELON-DISENFRANCHISEMENT (J. ROSENBAUM, CONCURRING): "If Alabama's purpose was 'strictly housekeeping,' Alabama needs a new housekeeper. When Alabama amended its felon-disenfranchisement provision to preclude those convicted of felonies of moral turpitude from voting, it left felonies strewn all over without identifying whether they went into or outside the 'moral turpitude' closet. In fact, Alabama had no idea what was in its closet and even less of an idea about what it wanted to put there." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

EQUAL PROTECTION CLAUSE (J. ROSENBAUM, CONCURRING): "But our Equal Protection Clause precedent requires us to ignore all these facts. Rather, we simply ask whether the amended version of the law that was originally enacted for discriminatory reasons went through both chambers of the legislature and was properly effected into law. . .What kind of test is that? None at all.". . .[I]f a federal court concludes. . .that a law violates the Equal Protection Clause, and that law is later reenacted, why should that law that continues to have a disparate impact get a free pass. . .? That makes no sense." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

DISENFRANCHISEMENT-RACIAL (J. ROSENBAUM, CONCURRING): History of racial disenfranchisement summarized. Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

EQUAL PROTECTION-DISENFRANCHISEMENT (J. ROSENBAUM, CONCURRING): "[O]ur standard—which doesn't require the legislature to state a nondiscriminatory basis for the new law. . .—lays the bar reenactments must clear flat on the floor. Any law can shuffle right over it so long as legislators are not obtuse enough to state out loud any discriminatory intentions. . .If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

DISENFRANCHISEMENT (J. ROSENBAUM, CONCURRING): "Alabama exempts from its felon-disenfranchisement provision those convicted of election-related fraud—which goes to the heart of the collective honor of our polis. Let's just say it: that's really odd." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

MORAL TURPITUDE-DEFINITION (J. ROSENBAUM, CONCURRING): "As Justice Robert Jackson pointed out seven decades ago, the phrase was 'not one which has settled significance from being words of art in the profession. If we go to the dictionaries, the last resort of the baffled judge, we learn little except that the expression is redundant, for turpitude alone means moral wickedness or depravity and moral turpitude seems to mean little more than morally immoral.'" Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

VOTING: "The Majority Opinion concludes that losing the ability to vote is more like occupational disbarment than imprisonment. . .That conclusion defies logic. . .[V]oting is a fundamental right. . . Because voting is a fundamental right and practicing a particular profession is not, losing the right to vote more closely resembles imprisonment thanlosing the right to practice a particular profession." Thompson v. State of Alabama, No. 21-10034 (11th Cir. 4/26/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110034.pdf

ARMED CAREER CRIMINAL: Aggravated assault under Florida law categorically qualifies as a "violent felony" under the ACCA's elements clause. Somers v. USA, No. 19-11484 (11th Cir. 4/25/23)
https://media.ca11.uscourts.gov/opinions/pub/files/2019

BAIL: At first appearance, Judge lacks jurisdiction to revoke bond on a separate case for which Defendant had already been released on bond. No judge or court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge (A) imposed the conditions of bail or set the amount of bond required; (B) is the chief judge of the circuit in which the defendant is to be tried; (C) has been assigned to preside over the criminal trial of the defendant; or (D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release. Benoit v. Hoffman, 2D23-708 (4/26/23)
https://2dca.flcourts.gov/content/download/867031/opinion/230708_DC03_04262023_090730_i.pdf

JOA-CIRCUMSTANTIAL EVIDENCE: The circumstantial evidence standard of review no longer exists; review is now limited to whether the State presented competent, substantial evidence to support the jury's verdict, regardless of whether the State presented only purely circumstantial evidence of guilt. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

JOA: Defendant is entitled to JOA on theft charge where no evidence was submitted that the two checks written by the victim hsd been procured by force or stealth bfore Defendant murdred her. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

JOA-GRAND THEFT: Defendant is entitled to JOA for online withdrawals from murder victims bank accounts where State failed to show how he could have accessed the accounts. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

STACKING OF INFERENCES: Question certified as to the continued viability of the general prohibition against the pyramiding of inferences in light of the abandonment of the special standard of appellate review applied in purely circumstantial evidence cases. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

JOA-HOMICIDE-CORPUS DELICTI: A person's abrupt unexplained disappearance is sufficient circumstantial evidence that a missing person has died, but the disappearance coupled with Defendant's spending of the Victim's money and accessing her accounts does not prove that he killed her. Inferences are improperly pyramided. "Even in jurisdictions where the 'established fact' exception has been adopted, for the exception to apply – such that inferences may be pyramided upon the 'established fact' inference – the evidence must establish, beyond any reasonable doubt, that no other inference is reasonable." Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

PYRAMIDING OF INFERENCES: An impermissible pyramiding of inferences occurs where at least two inferences in regard to the existence of a criminal act must be drawn from the evidence and then stacked to prove the crime charged; in that scenario, the evidence lacks the conclusive nature to support a conviction." Garcia v. State, 3D15-2815 (4/26/23)

https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

PYRAMIDING OF INFERENCES: Where victim's body was never found, there was no crime scene or other evidence to establish the location, cause or manner of her death, there was no murder weapon, no eyewitness to a murder, and no confession, bits and pieces of evidence are insufficient to compel the conclusion that Defendant killed her. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

CONSCIOUSNESS OF GUILT; Defendant's inconsistent and untruthful statements to the police about why he was driving Victm's car and how he obtained her money is substantive evidence of Mr. Garcia's consciousness of guilt for committing theft, but not for killing her. Garcia v. State, 3D15-2815 (4/26/23)
https://3dca.flcourts.gov/content/download/867034/opinion/152815_NOND_04262023_100024_i.pdf

NEWLY DISCOVERED EVIDENCE-RECANTATION: Defendant is not entiled to a new trial where witness recanted testimony that the victim was unarmed where Defendant had testified that he never saw a gun. Pickett v. State, 3D22-717 (4/26/23)
https://3dca.flcourts.gov/content/download/867043/opinion/220717_DC05_04262023_095022_i.pdf

APPEAL-PRESERVATION-VOP-VFOSC: If a probationer qualifies as a VFOSC and is found to have violated a non-monetary condition of probation, Court must make written findings as to whether the probationer poses a danger to the community, but issue is not preserved if not raised in trial court. Swain v. State, 3D22-883 (4/26/23)
https://3dca.flcourts.gov/content/download/867044/opinion/220883_DC05_04262023_095113_i.pdf

POST CONVICTION RELIEF: A sentence cannot be challenged after it has been fully served and has expired because any sentencing issue is moot thereafter. Seme v. State, 3D23=216 (4/26/23)
https://3dca.flcourts.gov/content/download/867053/opinion/230216_NOND_04262023_100400_i.pdf

INTERFERENCE WITH CUSTODY: The crime of interference wtih custody extends to parents of a child. "The statute is hardly a model of clarity and contains no definition section," but as there is no explicit parental exemption, any person, including a parent, falls within the ambit of the statute. Vanegas v. State, 3D23-682 (4/26/23)
https://3dca.flcourts.gov/content/download/867054/opinion/2023-682_Disposition_118026_DC02.pdf

STATEMENT OF DEFENDANT-CUSTODIAL INTERROGATION: APPEAL-REVIEW-DEFERENCE: When a videotape or audio recording is part of the record on appeal, the trial court is in no better position to evaluate that evidence than the appellate court. To the extent that the trial court's factual findings are based on the bodycam video recording, appellate court applies a less deferential standard of review. State v. Blocker, 4D22-1113 (4/26/23)
https://4dca.flcourts.gov/content/download/867059/opinion/221113_DC13_04262023_100236_i.pdf

ACCIDENT REPORT PRIVILEGE: Where officer who arrived on the scene late was not involved in the accident investigation, he need not change hats

before investigating the DUI. State v. Blocker, 4D22-1113 (4/26/23) https://4dca.flcourts.gov/content/download/867059/opinion/221113_DC13_04262023_100236_i.pdf

STATEMENT OF DEFENDANT-MIRANDA-DUI: Where deputy had not been involved in the crash investigation, he was not required to read Miranda before questioning Defendant about DUI. Defendant was not in custody. State v. Blocker, 4D22-1113 (4/26/23) https://4dca.flcourts.gov/content/download/867059/opinion/221113_DC13_04262023_100236_i.pdf

DELAYED SURRENDER: Where court sentenced Defendant to 5 years in prison, with a promise to mitigate the sentence to 30 months if Defendant timely surrendered after a furlough–he didn't–Court erred in refusing a hearing under R. 3.850 on why he was late (a car accident). Where timely appearance for sentencing is made a condition of a plea agreement, a non-willful failure to appear will not vitiate the agreement and permit the trial court to impose some greater sentence. Court must make a factual determination as to whether a defendant's failure to appear at sentencing was willful, prior to ruling on whether said absence violated a negotiated plea agreement. Ali v. State, 4D22-3065 (4/26/23) https://4dca.flcourts.gov/content/download/867062/opinion/223065_DC13_04262023_101344_i.pdf

AGGRAVATED ASSAULT-MENS REA: Assault cannot be committed in Florida with merely a mens rea of recklessness. As we now understand Florida law, aggravated assault cannot be committed with a mens rea of recklessness. It requires knowing conduct. Somers v. USA, No. 19-11484 (11th Cir. 4/25/23) https://media.ca11.uscourts.gov/opinions/pub/files/201911484.pdf

REPRESENTED DEFENDANT: Defendant may not file a Habeas Corpus petition while represented by counsel in the pending criminal proceeding,

and the petitioner does not unequivocally seek to discharge counsel in that proceeding. Goodwin v. State, 5D23-1375 (4/25/23)
https://5dca.flcourts.gov/content/download/866946/opinion/231375_DA08_04252023_112456_i.pdf

MISTRIAL-NOLLE PROSSED CHARGE: Where original information charged three counts, including carrying a concealed firearm, and the jury, during voir dire was advised of and questioned about that charge, which was then nolle prossed, a mistrial was required. The constitutional right to a trial by an impartial jury is lost when there is a possibility that jurors are unfairly prejudiced by the knowledge of additional charges against a defendant other than those being tried. Any efforts by the trial court to "unring the bell" would have been futile. Thompson v. State, 5D22-781 (4/21/23)

https://5dca.flcourts.gov/content/download/866635/opinion/220781_DC13_04212023_083553_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on clsim that counsel was ineffective for failing to consult expert witnesses who would have established that he did not know he was in a collision because a heart condition caused him to black out while driving. Gonsalez v. State, 5D22-940 (4/21/23)

https://5dca.flcourts.gov/content/download/866636/opinion/220940_DC08_04212023_083821_i.pdf

POST CONVICTION RELIEF-INCONSISTENT JUDGMENTS: Counsel is ineffectve for advising Defendant to enter an open plea to both leaving the scene of an accident with serious bodily injury and leaving the scene of an accident with only property damage, two mutually exclusive crimes. Gonsalez v. State, 5D22-940 (4/21/23)

https://5dca.flcourts.gov/content/download/866636/opinion/220940_DC08

_04212023_083821_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel misadvised him that he could avoid prison on a scoresheet with a lowest permissible sentence to 55.4 months in prison. Gonsalez v. State, 5D22-940 (4/21/23)

https://5dca.flcourts.gov/content/download/866636/opinion/220940_DC08_04212023_083821_i.pdf

COSTS: Court may not impose $809 in costs without including statutory citations for each cost, despite the legal requirement to do so. Carter v. State, 5D22-982 (4/21/23)

https://5dca.flcourts.gov/content/download/866637/opinion/220982_DC05_04212023_084116_i.pdf

VOP: Court must enter a written order identifying the conditions of probation violated. Marshall v. State, 5D22-2623 (4/21/23)

https://5dca.flcourts.gov/content/download/866638/opinion/222623_DC05_04212023_084535_i.pdf

FOREIGN SOVEREIGN IMMUNITIES ACT: 18 U. S. C. §3231, which confers district courts with original jurisdiction of all offenses against the laws of the United States, includes foreign states and their insutrumentalites, as here, a government owned Turkish bank which money lsundered illegal Iranian assets. The Foreign Sovereign Immunities Act does not provide foreign states and their instrumentalities with immunity from criminal proceedings. Halkbank v. United States, No. 21-1450 (U.S. S.Ct 4/19/23)

https://www.supremecourt.gov/opinions/22pdf/21-1450_5468.pdf

§1983-DNA TESTING-STATUTE OF LIMITATIONS: A state prisoner's ability to sue for DNA testing in federal cases is severely limited. Reed v. Goertz, No. 21-442 (U.S. S.Ct. 4/19/23)

https://www.supremecourt.gov/opinions/22pdf/21-442_e1p3.pdf

§1983-DNA TESTING-STATUTE OF LIMITATIONS: The statute of limitations for a §1983 claim to compel DNA testing to challenge a state court conviction is two years, beginning. when the state litigation ended, i.e., when the appellate court denied rehearing of the motion, not from the state trial court's denial of a plaintiff 's motion for DNA testing (or even after the appeal before the plaintiff 's rehearing proceedings). Reed v. Goertz, No. 21-442 (U.S. S.Ct. 4/19/23)

https://www.supremecourt.gov/opinions/22pdf/21-442_e1p3.pdf

ACRONYM-GVR (J GORSUCH, DISSENTING); "[W]e often 'GVR' cases. . .(That is, we grant the petition, vacate the decision below, and remand the case for reconsideration." Reed v. Goertz, No. 21-442 (U.S. S.Ct. 4/19/23)

https://www.supremecourt.gov/opinions/22pdf/21-442_e1p3.pdf

PROBABLE CAUSE-HISTORY: History and meaning of "probable cause" explained. Malden v. State, 1D21-1406 (4/19/23)

https://1dca.flcourts.gov/content/download/866486/opinion/download%3FdocumentVersionID=77a8b9d1-87ca-4c83-8288-2bf73012bf1a

WARRANT-PROBABLE CAUSE-STALENESS: Thirty days is a rule of thumb to determine staleness, and "the passage of time is an important consideration in the probable cause analysis. But we caution against an analysis dependent exclusively on timeliness. No arbitrary timeline (i.e., thirty, sixty, or ninety days) can replace a thorough, case specific probable cause inquiry." 90 day delay in seeking a search warrant, with other circumstances, is sufficient. Malden v. State, 1D21-1406 (4/19/23)

https://1dca.flcourts.gov/content/download/866486/opinion/download%3FdocumentVersionID=77a8b9d1-87ca-4c83-8288-2bf73012bf1a

HOME/CASTLE-LATIN: "For a man's home is his castle, et domus cuique tutissimum refugium." (Sir Edward Coke). Malden v. State, 1D21-1406 (4/19/23)

https://1dca.flcourts.gov/content/download/866486/opinion/download%3FdocumentVersionID=77a8b9d1-87ca-4c83-8288-2bf73012bf1a

PROBABLE CAUSE: The determination of probable cause simply asks whether a reasonably prudent person would think the allegation probable. That the inquiry lacks specificity is by design. Probable cause is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. Probable cause is not rigid nor is it a standard that is particularly difficult to meet—probable cause is a relatively low legal burden, more than a bare suspicion but less than evidence that would justify a conviction. By its nature, it does not include exacting time limits. It is no math equation; it is an exercise of judgment. Malden v. State, 1D21-1406 (4/19/23)

https://1dca.flcourts.gov/content/download/866486/opinion/download%3FdocumentVersionID=77a8b9d1-87ca-4c83-8288-2bf73012bf1a

APPEAL-SUPPRESSION-DISPOSITIVENESS: Defendant may not appeal search of truck where other evidence implicates him in manslaughter/LOSA case. LeBoss v. State, 1D21-3172 (4/19/23)

https://1dca.flcourts.gov/content/download/866488/opinion/download%3FdocumentVersionID=d713ee8b-d4fb-4810-a88f-e911153e9fa7

APPEAL-SUPPRESSION-DISPOSITIVENESS: A defendant may not appeal a judgment or sentence following a guilty or no-contest plea without expressly reserving the right to appeal a legally dispositive issue. "Dispositive" means that the defendant will not face further prosecution if he or she prevails on appeal. The State gives up its ability to prosecute a crime when it stipulates to dispositiveness. LeBoss v. State, 1D21-3172 (4/19/23)

https://1dca.flcourts.gov/content/download/866488/opinion/download%3FdocumentVersionID=d713ee8b-d4fb-4810-a88f-e911153e9fa7

JUVENILE-SENTENCING: Court may not impose a lower restrictiveness level than the one recommended by DJJ absent sufficient reasons to support its decision to disregard DJJ's recommended disposition. In order for a juvenile court to properly explain why one restrictiveness level is more appropriate than the one recommended, it must (1) articulate an understanding of the respective characteristics of the opposing restrictiveness levels and (2) explain why one level is better. State of Florida v. J.J., 1D22-489 (4/19/23)

https://1dca.flcourts.gov/content/download/866489/opinion/download%3FdocumentVersionID=751189a3-faaf-46cd-8879-9b00522c10df

SENTENCING-JUVENILE: When a PDR is ordered, DJJ must evaluate the child's needs and risks, and provide to the juvenile court a recommendation of the most appropriate placement with the minimum program security that

reasonably ensures public safety. State of Florida v. J.J., 1D22-489 (4/19/23)

https://1dca.flcourts.gov/content/download/866489/opinion/download%3FdocumentVersionID=751189a3-faaf-46cd-8879-9b00522c10df

APPEAL-JUVENILE-SENTENCING: State is permitted to appeal a disposition order that imposes a lower restrictiveness level than DJJ recommended. State of Florida v. J.J., 1D22-489 (4/19/23)

https://1dca.flcourts.gov/content/download/866489/opinion/download%3FdocumentVersionID=751189a3-faaf-46cd-8879-9b00522c10df

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel failed to investigate known possibly exculpatory witnesses. Robledo v . State, 2D22-575 (2/19/23)

https://2dca.flcourts.gov/content/download/866413/opinion/220575_DC08_04192023_091302_i.pdf

POST CONVICTION RELIEF-GSR: Defendant is entitled to hearing on claim that counsel was ineffective for failure to have a gunshot residue kit testing. Court erred in denying claim as speculative. Defendant did not assert that the GSR test result might have been negative—he definitively asserted that it would have been negative. Therefore, the claim was not speculative. Robledo v . State, 2D22-575 (2/19/23)

https://2dca.flcourts.gov/content/download/866413/opinion/220575_DC08_04192023_091302_i.pdf

RECANTATION-FALSIFIED REPORTS: Officer charged with falsifying

official reports to avoid punishment for failure to follow office procedures is not entitled to the defense of recantation where he recanted the false information contained in their reports only after suspecting he'd be found out. Melendez v. State, 3D22-885 (4/19/23)

https://3dca.flcourts.gov/content/download/866451/opinion/220885_DC05_04192023_101442_i.pdf

JUROR INTERVIEW: Defendant is not entitled to interview a juror who called the judge's chambers to express his regret over the verdict but did not indicate any wrongdoing. Juror interviews are not permissible unless the moving party has made sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings. Florida Law absolutely forbids any judicial inquiry into emotions, mental processes, or mistaken beliefs of jurors. The mere remorse of a juror is insufficient to warrant an intrusion into the jury's deliberations. Ibar v. State. 4D19-1956 (4/19/23)

https://4dca.flcourts.gov/content/download/866459/opinion/191956_DC05_04192023_095726_i.pdf

PRISON RLEASEE REOFFENDER: Defendant convicted of burglary with an assault or battery is subject to PRR sentencing. PRR encompasses attempts and burglary, which logically includes any enhancements to burglary. March v. State. 4D21-2718 (4/19/23)

https://4dca.flcourts.gov/content/download/866462/opinion/212718_DC05_04192023_100121_i.pdf

POST-CONVICTION RELIEF: Defendant may not challenge as an illegal sentence the failure of the Court to impose a minimum mandatory sentence. Though the plain language of R. 3.800(a) does not expressly prohibit

defendants from seeking to correct unlawfully lenient sentences, defendants are not entitled to such relief absent a showing of prejudice. Coicou v. State, 4D22-329 (4/19/23)

https://4dca.flcourts.gov/content/download/866464/opinion/220329_DC08_04192023_100454_i.pdf

JURISDICTION-EXTRA-TERRITORIALITY-TRANSPORTING ALIENS: Statute prohibiting transporting alien for hire applies extraterritorially. The presumption against extraterritoriality does not apply to criminal statutes which are not logically dependent on their locality for the government's jurisdiction. Congress need not expressly provide for extraterritorial application of a criminal statute if the nature of the offense is such that it may be inferred. USA v. Rolle, No. 19-1134 (11th Cir. 4/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911354.pdf

PRIOR-PRECEDENT RULE: Under the prior-precedent rule, appellate court is bound by its own precedents. USA v. Rolle, No. 19-1134 (11th Cir. 4/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911354.pdf

JURISDICTION-INTERNATIONAL LAW: Pursuant to the law of nations, a nation may exercise criminal jurisdiction under five general principles: (1) the "objective" territorial, (2) the national, (3) the protective, (4) the universal, and (5) the passive personality. The protective principle allows the United States to exercise jurisdiction over human smugglers because national interest is injured. USA v. Rolle, No. 19-1134 (11th Cir. 4/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911354.pdf

EXPERT: Court improperly excluded toxicology expert's testimony about retrograde extrapolation in DUI manslaughter case. State v. Barber, 2D22-2036 (4/14/23)

https://2dca.flcourts.gov/content/download/866058/opinion/222036_DC03_04142023_091205_i.pdf

SEARCH AND SEIZURE-BAKER ACT: Text message implying that a subject is suicidal ("This is it. Once you're done reading this, I will be gone") and a request for a welfare check—standing alone—are insufficient to take a person into protective custody under the Baker Act or to otherwise detain a person in compliance with the Fourth Amendment. Drugs found on Defendant must be suppressed. K.M. v. State, 2D22-564 (4/14/23)

https://2dca.flcourts.gov/content/download/866055/opinion/220564_DC13_04142023_090616_i.pdf

KARMA: Defendant's girl friend dumps him because he won't break up with his wife and takes up with a new guy, who Defendant kills, but Defendant's wife finds his blue spiral notebook with handwritten murder plans and gives it to the police. Defendant is arrested, convicted, and sentenced to life. Wife and girlfriend become best friends forever[4]. Bender v. State, 5D21-1498 (4/14/23)

https://5dca.flcourts.gov/content/download/866045/opinion/211498_DC05_04142023_092505_i.pdf

SEARCH AND SEIZURE-INDEPENDENT SOURCE DOCTRINE: The independent source doctrine applies when evidence is discovered as a result of unlawful police activity but is also discovered independently through a

[4]Fictionalized literary enhancement. I just made up the BFF part.

lawful investigation that occurs either before or after the illegal activity, so long as the independent investigation itself is untainted by the initial activity. The exclusionary rule has no application where the government can show it has learned of the challenged evidence from an independent source. The blue spiral notebook with written plans for the murder delivered to law enforcement by the wife is an independent source for the search warrant, regardless whether there was a previous unlawful sweep of the house. Bender v. State, 5D21-1498 (4/14/23)

https://5dca.flcourts.gov/content/download/866045/opinion/211498_DC05_04142023_092505_i.pdf

JUDGE-DISQUALIFICATION: Judge's expression of sympathy/commiseration for/with prosecutor who failed to achieve the death penalty in a separate case is sufficient to create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial hearing in his own dealth penalty case. Disqualification required. Tundidor v. State, SC2022-1732 (4/13/23)

https://supremecourt.flcourts.gov/content/download/865965/opinion/sc2022-1732.pdf

STANDING-IMMIGRATION: Pro-immigrant groups lack standing to challenge statute requiring local officials to cooperate with federal immigration authorities to surrnder undocumented aliens. An organization cannot sue without proof of an actual injury, that is that it has already been harmed by, or faces certain impending harm. A highly attenuated chain of possibilities resting on speculation about the decisions of independent actors does not satisfy the requirement that threatened injury must be certainly impending." City of South Miami v. Florida Immigrant Coalition, Inc., No. 21-136587 (4/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113657.pdf

FACTS/OPINION (J. MIZELLE, CONCURRING): "Whether a dinner plate should be square or round (or some other shape) might be subject to debate, with each advocate bringing his own subjective views to the table; that a triangle has three sides is true regardless of who says it. Put another way, an objective statement is either true or false, and the speaker's motive in offering it is irrelevant to the statement's veracity. . . An objective statement can also be offered with a racist motive. But the motive of a speaker cannot undermine or taint the truth of an objective statement." City of South Miami v. Florida Immigrant Coalition, Inc., No. 21-136587 (4/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113657.pdf

DEATH PENALTY: Neither the sufficiency nor weighing determination of aggravating factors for imposition of the death penalty is subject to the reasonable-doubt standard. Wells v. State. SC2121-1001 (4/13/23)

https://supremecourt.flcourts.gov/content/download/865962/opinion/sc2021-1001.pdf

DEATH PENALTY: Florida's death-penalty statute is not facially unconstitutional under the Eighth Amendment. The death penalty statute does not violates the Eighth Amendment for failing to sufficiently narrow the class of murderers eligible for the death penalty. Wells v. State. SC2121-1001 (4/13/23)

https://supremecourt.flcourts.gov/content/download/865962/opinion/sc2021-1001.pdf

DEATH PENALTY-MENTAL ILLNESS: Eighth Amendment does not preclude imposition of death penalty for mentally ill people. Wells v. State. SC2121-1001 (4/13/23)

https://supremecourt.flcourts.gov/content/download/865962/opinion/sc2021-

1001.pdf

TWELVE PERSON JURY: "We reject without further discussion Brown's unpreserved and nearly frivolous contention (based on a misleading characterization of Ramos v. Louisiana) that he was entitled to a twelve-member jury on these charges." The fact that the jury at common law was composed of precisely 12 is a historical accident, unnecessary to effect the purposes of the jury system and wholly without significance except to mystics. Brown v. State, 1D21-597 (4/12/23)

https://1dca.flcourts.gov/content/download/850534/opinion/download%3FdocumentVersionID=3dfe738d-b1c0-4cd8-b9a4-fb244822b335

KIDNAPPING: Defendant is properly convicted of kidnapping for forcing the three victims back into the restaurant when they were in the process of leaving. The Faison test for kidnapping requires the State to show that the defendant moved or confined the victim in a way that: (1) is not slight, inconsequential and merely incidental to the other crime; (2) is not of the kind inherent in the nature of the other crime" and (3) has some significance independent of the other crime by making the other crime substantially easier to commit or by substantially lowering the risk of detection. Brown v. State, 1D21-597 (4/12/23)

https://1dca.flcourts.gov/content/download/850534/opinion/download%3FdocumentVersionID=3dfe738d-b1c0-4cd8-b9a4-fb244822b335

HEARSAY-CO-CONSPIRATOR STATEMENT: Co-conspirator is allowed to testify that co-Defendant said that somebody named Kenneth wanted to make some money by committing a robbery. State may elicit a coconspirator's statement, provided the statement is offered against the defendant, by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy, provided the State first show

that a conspiracy existed, that the declarant and the party against whom the statement is offered were members of the conspiracy, and that the statement was made during the course and in furtherance of the conspiracy. Brown v. State, 1D21-597 (4/12/23)

https://1dca.flcourts.gov/content/download/850534/opinion/download%3FdocumentVersionID=3dfe738d-b1c0-4cd8-b9a4-fb244822b335

VOP-INDIGENCY: Failure to complete a mental health evaluation s an insufficient basis for a VOP where Defendant could not pay for it due to other financial obligations–child support for four children, rent, court costs, etc. When factors beyond a defendant's control cause his non-compliance, the violation is not willful. A defendant's failure to satisfy a condition of probation is not willful if he failed to do so because he could not pay for it. Faison v. State, No. 1D21-3905 (4/12/23)

https://1dca.flcourts.gov/content/download/865895/opinion/download%3FdocumentVersionID=884df8e9-7d12-4245-81e9-75f42cd89ad0

APPEAL-MOOTNESS: A case becomes moot, for purposes of appeal, where by a change of circumstances prior to the appellate decision, an intervening event makes it impossible for the court to grant a party any effectual relief. Sipe v. State, No. 1D22-695 (4/12/23)

https://1dca.flcourts.gov/content/download/865896/opinion/download%3FdocumentVersionID=c36927e0-d9d6-4aad-9a91-d1efd9754272

TWELVE PERSON JURY-MINOR: Defendant, who as a minor is not eligible for the death penalty, is not entitled to a twelve person jury. Chavers v. State, No. 1D22-2207 (4/12/23)

https://1dca.flcourts.gov/content/download/865904/opinion/download%3FdocumentVersionID=2919e64c-2685-4582-85c2-2d3ac6208b2e

SIX PERSON JURY: Six person juries remain lawful for non-capital cases. "We do not pretend to be able to divine precisely what the word 'jury' imported to the Framers, the First Congress, or the States in 1789. It may well be that the usual expectation was that the jury would consist of 12, and that hence, the most likely conclusion to be drawn is simply that little thought was actually given to the specific question we face today. But there is absolutely no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury. . .Williams was correctly decided and remains controlling precedent today." Chavers v. State, No. 1D22-2207 (4/12/23)

https://1dca.flcourts.gov/content/download/865904/opinion/download%3FdocumentVersionID=2919e64c-2685-4582-85c2-2d3ac6208b2e

REVOCATION OF BOND: §907.041(4)(c)7 permits a trial court to order pretrial detention when the defendant has violated a condition of pretrial release and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community. Court must make findings of fact. Peterson v. McNeil, No. 1D23-0119 (4/12/23)

https://1dca.flcourts.gov/content/download/865912/opinion/download%3FdocumentVersionID=72ce88f5-d654-4493-a574-853210ae5ff1

REVOCATION OF BOND: Defendant on bond for DUI manslaughter who violates his no-alcohol condition of release may be held without bond. Peterson v. McNeil, No. 1D23-0119 (4/12/23)

https://1dca.flcourts.gov/content/download/865912/opinion/download%3FdocumentVersionID=72ce88f5-d654-4493-a574-853210ae5ff1

PRISON RELEASEE REOFFENDER: Alleyne/Apprendi do not requiefe a jury finding as to the date of a defendant's release from prison for a prior

offense. The relevant factor for a prison releasee reoffender sentencing implicates no element of the charged offense and requires only a mechanical calculation or ministerial determination by the judge of the date of a defendant's release from prison for a prior conviction. A defendant's release date from prison derives directly from a prior conviction and sentence. Accordingly, Florida's prison releasee reoffender statute permissibly empowers a judge, not a jury, to make a release date. Ryland v. State, 3D22-1983 (4/12/23)

https://3dca.flcourts.gov/content/download/865869/opinion/221983_DC05_04122023_100540_i.pdf

POST CONVICTION RELIEF: Defendant may not assert in 2023 via habeas corpus a claim that appellate counsel was ineffective for a conviction which became final in 1997. In no case shall a petition alleging ineffective assistance of appellate counsel on direct review be filed more than 4 years after the judgment and sentence become final on direct review. Defendant may be correct that his dual convictions for armed robbery with a firearm and unlawful possession of the same firearm during the commission of that armed robbery violate double jeopardy, but because no sentence was imposed on that count, there is no cognizable claim for relief. Robinson v. State, 3D23-492 (4/12/23)

https://3dca.flcourts.gov/content/download/865870/opinion/230492_DC02_04122023_100647_i.pdf

POST CONVICTION RELIEF-BRADY: Brady prohibits suppression by the prosecution of evidence favorable to an accused where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution, and extends to impeachment evidence. The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. Evidence that fortifies the defense's case or has impeachment value

is favorable. Connolly v. State, 3D21-1111 (4/12/23)

https://3dca.flcourts.gov/content/download/865864/opinion/211111_DC05_04122023_095916_i.pdf

POST CONVICTION RELIEF-BRADY: Defendant is not entitled to relief where the affidavit from a non-testifying but known witness is conclusory in its assertion that Defendant is innocent, and is contradicted and contradictory. Either it is not Brady evidence or it refers to broadly to otherwise known or discernable matters. Connolly v. State, 3D21-1111 (4/12/23)

https://3dca.flcourts.gov/content/download/865864/opinion/211111_DC05_04122023_095916_i.pdf

VOP-EXILE-ABSCONSION: Where probation condition required Defendant to leave and not return to Monroe County, Defendsnt's move from Broward County to South Carolina without fully completing transfer process may support revocation. Get out of county does not mean get out of state. Altman v. State, 3D21-1186 (4/12/23)

https://3dca.flcourts.gov/content/download/865867/opinion/211186_DC05_04122023_100115_i.pdf

VOP-VINDICTIVENESS: Court may call back Defendant before beginning the next case to change the concurrent sentences to consecutive where Defendant is heard saying "[g]ood luck to you, bitch" as he walked away from the camera. Altman v. State, 3D21-1186 (4/12/23)

https://3dca.flcourts.gov/content/download/865867/opinion/211186_DC05_04122023_100115_i.pdf

SUNSHINE LAW: The Sunshine Law is not unconstitutionally vague due to undefined terms in the statute, namely "meeting" and "reasonable notice." Gilliams v. State, 4D21-2667 (4/12/23)

https://4dca.flcourts.gov/content/download/865874/opinion/212667_DC08_04122023_100136_i.pdf

DEFINITION-"MEETING": The definition of the word "meeting" in the jury instruction for a criminal violation of the Sunshine Law, which includes the language "through wire or electronic means," is proper, notwithstanding the dictionary definition implies personal contact. Meetings which do not occur in person can potentially violate the Sunshine Law. Gilliams v. State, 4D21-2667 (4/12/23)

https://4dca.flcourts.gov/content/download/865874/opinion/212667_DC08_04122023_100136_i.pdf

PERJURY: The questions posed to elicit perjured testimony must be asked with the appropriate specificity necessary to result in an equally specific statement of fact. JOA for is required where Defendant is charged with falsely swearing that he had only one phone conversation with a particular person, the phone records showed multiple calls, but the lengths of the calls are consistent with no answers or voice mails. Gilliams v. State, 4D21-2667 (4/12/23)

https://4dca.flcourts.gov/content/download/865874/opinion/212667_DC08_04122023_100136_i.pdf

SUNSHINE LAW (J. KLINGENSMITH, CONCURENCE): "I think it is important. . .to issue a clarion call to the hundreds of Florida public officials who are subject to the Florida Sunshine Law. . .Whether two or more officials privately discuss, in any manner whatsoever, a foreseeable issue of any

magnitude, inside the other's office or at a coffee shop or in the spectator audience of a child's soccer match or at a statewide education conference or by quick text or whether they do so through surrogates (such as aides, friends, relatives, other government officials) or whether, as in this case, they decide to spontaneously convene an unannounced rally or meeting, so long as two or more are involved, these are all distinctions without a difference. And every individual unauthorized private discussion between two or more officials along the way constitutes an individual statutory crime. . .[T]here is no such thing as an 'informal' conference or 'unofficial"'caucus or pass-you-in-the-hallway information gathering (or sharing) by two or more government officials subject to the Sunshine Law. Gilliams v. State, 4D21-2667 (4/12/23)

https://4dca.flcourts.gov/content/download/865874/opinion/212667_DC08_04122023_100136_i.pdf

SUNSHINE LAW: Sunshine Law is not unconstitutionally vague for failing to define certain phrases ("reasonable notice" and "open to the public at all times"). Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

DEFINITION- "REASONABLE": "Reasonable" is defined, in part, as "fair and sensible" and "as much as is appropriate or fair in a particular situation." Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

DEFINITION- "NOTICE": "Notice" is defined, in part, as "information or warning that something is going to happen," "a sheet or placard put on

display to give information," and "a small announcement or advertisement published in a newspaper." Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

DEFINITION-"OPEN": The word "open" is defined, in part, as "exposed to view or attack; not covered or protected," "admitting customers or visitors; available for business," "accessible or available," "frank and communicative," and "not disguised or hidden." Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

DEFINITION-"PUBLIC": "Public" means "of, relating to, or affecting

the people as an organized community; a place accessible or visible to all members of the community; an organized body of people: community, nation; a group of people distinguished by common interests or characteristics." Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

DEFINITION-"OPEN TO THE PUBLIC": The phrase "open to the public" most reasonably means that meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings. Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

PERJURY: A perjury charge cannot stand where the investigator's questioning was imprecise. Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

PERJURY: A statement regarding a person's recollection is not an assertion of empirical fact that can support a perjury conviction. Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

PERJURY-MATERIALITY: Materiality' is not an element of the crime of perjury in Florida but is a threshold issue that a court must determine as a matter of law prior to trial. To be material, statements must be germane to the inquiry, and have a bearing on a determination in the underlying case. Parris v. State, 4D21-2682 (4/12/23)

https://4dca.flcourts.gov/content/download/865875/opinion/212682_DC08_04122023_095945_i.pdf

POST CONVICTION RELIEF-FACTUAL BASIS-TRAFFICKING: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to plea in the absence of a factual basis for conspiracy to traffic in hydromorphone where the prescription on the date in the information was only 1.2 grams. Because the indictment limits the conspiracy to traffic offense to one date and the Bill of Particulars lists only the victim's name for that date, the factual basis for trafficking is not there. Obermeyer v. State. 4D22-487 (4/12/23)

https://4dca.flcourts.gov/content/download/865877/opinion/220487_DC13_04122023_100715_i.pdf

POST CONVICTION RELIEF-FACTUAL BASIS-SECOND DEGREE MURDER: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to plea in the absence of a factual basis for second degree murder, predicated on the unsupported underlying felony offense of conspiracy to traffic in hydromorphone. Proof that a defendant committed the underlying felony is required even in the context of a plea. "We also question whether the conspiracy offense could have been used as the predicate felony even if it did have a factual basis." Conspiracy is not a predicate offense. Obermeyer v. State. 4D22-487 (4/12/23)

https://4dca.flcourts.gov/content/download/865877/opinion/220487_DC13_04122023_100715_i.pdf

SIX PERSON JURY: The Sixth Amendment does not require a twelve person jury. Sanon v. State, 4D22-713 (4/12/23)

https://4dca.flcourts.gov/content/download/865879/opinion/220713_DC05_04122023_100825_i.pdf

ARGUMENT: State's use in closing argument of a placard with the phrase "motive plus opportunity is not reasonable doubt," referring to the accuser's motive and opportunity to plant evidence, is not improper. Sanon v. State, 4D22-713 (4/12/23)

https://4dca.flcourts.gov/content/download/865879/opinion/220713_DC05_04122023_100825_i.pdf

HUMAN TRAFFICKING: Defendant who engages the sexual services of an underaged girl is guilty of human trafficking, not merely solicitation of prostitution. The Legislature specifically directed that prostitution of minors be prosecuted under the human trafficking statutes and not as misdemeanors. "[P]eople who purchase others for sex can be considered

human traffickers themselves." Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

DEFINITION-EXPLOIT: The verb exploit meams "to make use of meanly or unfairly for one's advantage." The sexual exploitation of a child includes "the act of a child offering to engage in or engaging in prostitution." Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

SIX PERSON JURY: The Sixth Amendment does not require a twelve person jury. Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

COSTS: Court may not impose $200 in costs without the State requesting or offering proof of this cost which was higher than the statutory maximum of $100. Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

HUMAN TRAFFICKING-LIFE SENTENCE: Human Trafficking (§787.06) requires a mandatory life sentence. Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

DEFINITION-"MAY": "May" may mean "must." The word "may" is not always permissive, but may be a word of mandate in an appropriate context. Matos v. State, 4D22-775 (4/12/23)

https://4dca.flcourts.gov/content/download/865880/opinion/220775_DC08_04122023_101015_i.pdf

POST CONVICTION RELIEF: Very minor modifications to the FBI protocol in making a DNA identification (four probes instead of five to eight) would not have made a difference to the jury. Taylor v. Sec'y, Fla. DOC, No. 21-12883 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112883.pdf

POST CONVICTION RELIEF-EXPERT: Trial counsel was not ineffective for failing to request a Frye hearing to challenge both the accuracy of the DNA analysis and the procedure. The DNA likely would have been admitted anyway, and the evidence of guilt independent of DNA evidence was ample. Taylor v. Sec'y, Fla. DOC, No. 21-12883 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112883.pdf

STATEMENT OF DEFENDANT: Interrogation includes any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The question "Why?", in response to Defendant's question about when thr DNA results would be back, is not an interrogation. Taylor v. Sec'y, Fla. DOC, No. 21-12883 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112883.pdf

BRIBERY-INSTRUCTION-INVITED ERROR: Defendant is properly convicted of bribery when he agreed to the pattern jury instruction which referenced the three illustrative examples mentioned in McDonnell, i.e., something similar to a lawsuit before a court, a determination before an agency, or a hearing before a committee regardless of the merits (or demerits) of the instruction. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

BRIBERY: The federal bribery statute's operative provision makes it unlawful for anyone to "corruptly give, offer or promise anything of value to any public official with intent to influence any official act. The term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit. The meaning of the term "official act" does not extend to every meeting, call, or event arranged by a public official. In order to implicate the bribery statute's prohibition, a public official must either engage or agree to engage in (1) a sufficiently serious act (2) concerning a sufficiently serious and concrete matter. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

INVITED ERROR: When a party agrees with a court's proposed instructions, the doctrine of invited error applies. A party may not challenge as error a ruling that he invited. Defendant invited error, if any, by agreeing to the official-act charge instruction for bribery which referenced the three illustrative examples mentioned in McDonnell, i.e., something similar to a lawsuit before a court, a determination before an agency, or a hearing before a committee. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

INVITED ERROR: Invited errors are reviewed narrowly, so as to preserve the opportunity for appellate review in close cases. The invited-error bar is triggered only by unambiguous statements or representations. "And to that end, we have drawn some pretty fine lines distinguishing between invited and merely-unobjected-to errors in jury instructions." USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

BRIBERY: There can be two types of bribery–the "as-the-opportunities-arise" theory of bribery (when a person bribes an individual or entity in exchange for a continuing course of conduct) and the "retainer theory of bribery, "a fraternal (if not quite identical) twin of the as-the-opportunities-arise theory." USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

BRIBERY: All that matters is that, in exchange for something of value, the official agreed to perform an act concerning a sufficiently serious and concrete matter. Execution is immaterial. Liability is not limited by the odds of success of the quo at issue. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

EVIDENCE-IMPEACHMENT: Court might have erred in excluding cross-examination of accomplice that he had bought the bribed official a private dance and oral sex at a strip club (accomplice admitted the lap dance but denied the sex), but the ruling is within his discretion. The absolute

prohibition on extrinsic evidence applies only when the sole reason for proffering the evidence is to attack or support the witness' character for truthfulness. "[T]he line between evidence used to impeach a witness on the ground that he is biased or lacks credibility and evidence presented to show that he has a tendency to lie more generally is a fine (and hazy) one. . .And for that reason, we have been reluctant to hold that district courts have abused their discretion in deciding Rule 608(b) issues. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

EVIDENCE: Court did not abuse discretion in excluding evidence of disputed sexual favors accorded a councilman in bribery case (lap dance and fellatio) on grounds of confusion of issues and fear of a "sideshow mini-trial." USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

FALSE STATEMENT: If a question is so vague as to be fundamentally ambiguous, the answers associated with it are insufficient as a matter of law to support a false-statements conviction. But if a question is only arguably ambiguous and an answer would be true on one construction of the question but false on another, the defendant's understanding of the question is a matter for the jury to decide. Absent any fundamental ambiguity, the jury's general verdict must stand if the evidence is sufficient to support a conviction based on any of the statements made, even in response to a question that might have been arguably ambiguous. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

PHRASE OF THE DAY: A "twisted, asyntactical garble [is] only arguably

ambiguous." USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113990.pdf

BRIBERY (J. JORDAN, CONCURRING): "[W]e think it's fair to say that Burnette views McDonnell as a sea-change, while the government views it as a ripple. As is often the case, the truth, we think, lies somewhere in between. . .Our view is that McDonnell is best understood as having tweaked, but not scrapped, the as-the-opportunities-arise and retainer theories. . . Those of us on what the Constitution calls 'inferior courts,'. . .would do well to tread lightly and await further direction from our bosses before concluding that McDonnell revolutionized bribery law. USA v. Burnette, No. 21-13990 (11th Cir. 4/11/23)

https://media.ca11.uscourts.gov/opinions/pub/files/20211

RULES-AMENDMENT-JUVENILE-WITNESS STATEMENTS: On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code. In Re: Amendments to the Florida Rules of Juvenile Procedure, SC2022-0423 (4/6/23)

https://supremecourt.flcourts.gov/content/download/865390/opinion/sc2022-0423.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Counsel was not ineffective for not presenting at the penalty phase evidence that the Defendant sexually forced himself on a six-year-old boy, had incestuous relationships and sexual deviancy, including bestiality, attempted to sexually

force himself on his former girlfriend, admitted to loving to kill and having killed cats. the jury may have considered all this as additional aggravation. Gaskin v. State, SC2023-415 (4/6/23)

https://supremecourt.flcourts.gov/content/download/865391/opinion/sc2023-0415.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Hurst is not retroactive, and unanimous jury recommendations of death are not required. Rather, what is required is the finding of one or more aggravating factors beyond a reasonable doubt. Gaskin v. State, SC2023-415 (4/6/23)

https://supremecourt.flcourts.gov/content/download/865391/opinion/sc2023-0415.pdf

DEATH PENALTY-DELAY: A three decade delay in imposition of death penalty is not cruel and unusual punishment. Gaskin v. State, SC2023-415 (4/6/23)

https://supremecourt.flcourts.gov/content/download/865391/opinion/sc2023-0415.pdf

COSTS-INVESTIGATIVE: Investigative costs may not be imposed in the absence of a request from the State. Johansen v. State, 5D21-2799 (4/6/23)

https://5dca.flcourts.gov/content/download/865369/opinion/212799_DC05_04062023_081315_i.pdf

SEXUAL EXPLOITATION OF CHILD: Defendant who films himself exposing his genitals and masturbating in the presence of a child where the

child is the object of sexual desire "uses" that child to engage in sexually explicit conduct for purposes of 18 U.S.C. §2251(a). An offender "uses" a minor when the minor's presence is the object and focal point of the offender's sexual desire as the offender, not the minor, engages in the sexually explicit conduct. A minor must be involved in the offender's sexually explicit conduct, but the minor need not necessarily be actively engaging in his or her own sexually explicit conduct. USA v. Dawson, No. 21-11425 (11th Cir. 4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111425.pdf

DEFINITION-"USES": "Uses" means to make use of, to convert to one's service, to avail one's self of, to employ. USA v. Dawson, No. 21-11425 (11th Cir. 4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111425.pdf

NOSCITUR A SOCIIS: Under the canon of noscitur a sociis, " word is known by the company it keeps. Put differently, noscitur a sociis counsels that a word is given more precise content by the neighboring words with which it is associated. USA v. Dawson, No. 21-11425 (11th Cir. 4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202111425.pdf

SEVERANCE-FIREARM BY FELON: Where Defendant is charged with an offense involving a firearm and Possession of a Firearm by a felon, severance is not required. Bifurcation cuts the mustard, constitutionally speaking. The appropriate procedure in a bifurcated trial is to have the jury reconvene, be instructed that the fact that the defendant possessed a firearm had already been established by the verdict in the first phase, and to consider evidence that the defendant is a convicted felon. Pryor v. State, 2D22-563 (4/5/23)

https://2dca.flcourts.gov/content/download/865255/opinion/220563_DC05_04052023_092100_i.pdf

POSSESSION OF FIREARM: The term "VCC" term is sufficientlyprejudicial that it should not be utilized in the jury's presence in a trial for possession of a firearm by a VCC. Pryor v. State, 2D22-563 (4/5/23)

https://2dca.flcourts.gov/content/download/865255/opinion/220563_DC05_04052023_092100_i.pdf

POSSESSION OF FIREARM BY VCC: Juvenile convictions are predicate offenses for possession of a firearm by a violent career criminal. Escape from a prison (§944.40) is enumerated; escape from a juvenile secure detention or residential commitment facility (§39.061) is not. Pryor v. State, 2D22-563 (4/5/23)

https://2dca.flcourts.gov/content/download/865255/opinion/220563_DC05_04052023_092100_i.pdf

APPEAL-PRESERVATION: Although Defendant's juvenile escape conviction is not a predicate offense for VCC sentencing, the issue is not preserved where not specifically articulated. State's failure to prove all elements of a charged offense does not constitute fundamental error which may be raised for the first time on appeal. Defendant may seek collateral relief. Pryor v. State, 2D22-563 (4/5/23)

https://2dca.flcourts.gov/content/download/865255/opinion/220563_DC05_04052023_092100_i.pdf

APPEAL-MOOTNESS: Court errs in dismissing a second tier petition for certiorari review of a DL suspension without making a capable-of-repetition-

but-evading-review exception to mootness analysis. Tyler v. DHSMV, 2D22-1686 (4/5/23)

https://2dca.flcourts.gov/content/download/865257/opinion/221686_DC03_04052023_092429_i.pdf

PRETRIAL RELEASE-HOME CONFINEMENT: A district court may impose home confinement with electronic monitoring in two circumstances: First, as a special condition of probation or supervised release under 18 U.S.C. §3563(b)(19) or, second, to punish a supervised release violation under 18 U.S.C. §3583(e)(4), in either case only as an alternative to incarceration. USA v. Hall, No. 22-10230 (4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210230.pdf

PRETRIAL RELEASE-HOME CONFINEMENT: A district court may not sentence a defendant to home confinement for violating the terms of his supervised release if the district court has already sentenced the defendant to the statutory maximum period of imprisonment for that violation. Because the statutory maximum term of imprisonment for a class C felony upon revocation of supervised release is two years, a sentence of two years' imprisonment—the statutory maximum—followed by a one-year term of home confinement is unlawful. USA v. Hall, No. 22-10230 (4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210230.pdf

SUPERVISED RELEASE: Supervised release sentencing explained. If a defendant violates a condition of his supervised release, the district court may revoke the supervised release and impose a revised sentence, which for a class C felony may not exceed two years. Where Defendant had been sentenced to the statutory maximum term of incarceration of 2 years for his violation, the court may not impose an additional one year of home

confinement as additional punishment. USA v. Hall, No. 22-10230 (4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210230.pdf

DEFINITION-"EXCEPT": "Except" means "other than" or "but." USA v. Hall, No. 22-10230 (4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210230.pdf

DEFINITION-"ALTERNATIVE": The word "alternative" is defined as "providing or being a choice between two or among more than two things," or "a choice limited to one of two or more possibilities, as of things, propositions, or courses of action, the selection of which precludes any other possibility." USA v. Hall, No. 22-10230 (4/5/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202210230.pdf

SENTENCE-VOP-MAXIMUM: Defendant who was originally sentenced to 180 days on two third degree felonies, upon a VOP, may not be sentenced to a general ten yesr sentenced. However, upon remand, the Court may restructure the sentences to accomplish its previously declared sentencing goal by changing concurrent terms to consecutive terms, as long as the new sentences are not vindictive. Duquesne v. State, 3D22-1954 94/5/23)

https://3dca.flcourts.gov/content/download/865292/opinion/221954_DC13_04052023_101702_i.pdf

ATTORNEY-CONFLICT-PLEA WITHDRAWAL: Where a motion to withdraw plea is based on a claim of involuntariness due to ineffective assistance of counsel, conflict-free counsel must be appointed. Court is required to appoint conflict-free counsel if an adversary relationship exists

and the defendant's allegations are not conclusively refuted by the record. Walker v. State, 4D22-349 (4/5/23)

https://4dca.flcourts.gov/content/download/865299/opinion/220349_DC13_04052023_101135_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a a hearing on claim that counsel was ineffective for failing to file a pretrial motion to challenge warrantless hospital blood draws or advise him tht suppressing the blood evidence was a viable defense. Landron v. State, 4D22-1942 (4/5/23)

https://4dca.flcourts.gov/content/download/865304/opinion/221942_DC13_04052023_102010_i.pdf

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APPEAL-VOLUNTARY PLEA-PRESERVATION: Defendant cannot appeal the voluntariness of her plea without first moving to withdraw her plea in the trial court. Beglan v. State, 2D22-1589 (3/31/23)

https://2dca.flcourts.gov/content/download/864922/opinion/221589_DC05_03312023_090543_i.pdf

COSTS: Court may not assess costs in the amount of $304 without citing to any statutory authority. Court is required to provide a citation to the statutory basis for each cost imposed. N.B., A Child v. State, 5D22-1418 (3/31/23)

https://5dca.flcourts.gov/content/download/864900/opinion/221418_DC13_03312023_084931_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to investigate the existence of a potential alibi witness who would have placed him on a bus, rather than at the hotel where and when the crime was committed. Gloston v. State, 5D23-391 (3/31/23)

https://5dca.flcourts.gov/content/download/864905/opinion/230391_DC13_03312023_085819_i.pdf

JUDGMENT OF ACQUITTAL: In moving for a judgment of acquittal, a defendant admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence. However, under this standard, the State is required to prove each and every element of the offense charged beyond a reasonable doubt, and when the State fails to meet this burden, a judgment of acquittal should be granted. Dubois v. State, 6D23-185 (3/31/23)

https://6dca.flcourts.gov/content/download/864915/opinion/230185_DC13_03312023_093107_i.pdf

CONTRACTING WITHOUT A LICENSE: Three requirements must be satisfied in order for a person to be a "contractor." First, the individual must construct, repair, alter, remodel, add to, demolish, subtract from or improve a building or structure for others or for resale to others, or undertake or submit a bid to do so. Second, the individual must engage in such conduct for compensation. Third, the individual who engages in such conduct must have a job scope that is substantially similar to one of the job scopes described in §489.105(3). Dubois v. State, 6D23-185 (3/31/23)

https://6dca.flcourts.gov/content/download/864915/opinion/230185_DC13_03312023_093107_i.pdf

JUDGMENT OF ACQUITTAL-CONTRACTING WITHOUT A LICENSE: Defendant who contracted to install an electrical generator is entitled to a JOA where no evidence suggested she contracted to do more than deliver and plug in the generator without otherwise modifying the home. Simply plugging a generator into a home, even if the generator itself requires substantial work or expertise to set up, may not constitute "adding to" or "altering" the home if the generator could simply be unplugged and removed from the home. Dubois v. State, 6D23-185 (3/31/23)

https://6dca.flcourts.gov/content/download/864915/opinion/230185_DC13_03312023_093107_i.pdf

JUDGMENT OF ACQUITTAL-CONTRACTING WITHOUT A LICENSE: Defendant who made a contract pertaining to a generator is entitled to a JOA where no evidence suggested that Dubois agreed to perform any type of installation. Dubois v. State, 6D23-185 (3/31/23)

https://6dca.flcourts.gov/content/download/864915/opinion/230185_DC13_03312023_093107_i.pdf

ZOOM: Court may not conduct remote adjudicatory hearing absent a case-specific findings of necessity. C.P.-W. v. State, 3D21-1379 (3/29/23)

https://3dca.flcourts.gov/content/download/864687/opinion/211379_DC13_03292023_095103_i.pdf

POST CONVICTION RELIEF-SLEEPING JUROR: Hearing is required on claim that failed to dismiss sleeping juror. A trial court's finding that defense action or inaction is the result of trial strategy will generally be disapproved if the decision is made without the benefit of an evidentiary hearing. Moya v. State, 3D22-1312 (3/29/23)

https://3dca.flcourts.gov/content/download/864700/opinion/221312_DC08_03292023_100204_i.pdf

EVIDENCE-HEARSAY: Question (Why did you arrest Defendant?) and answer (He was the initial aggressor) is improper, and improperly elicited, hearsay. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

EVIDENCE-OPINION: Questioning of the officers about who they viewed as the "aggressor" improperly invaded the province of the jury by soliciting witnesses' opinions about the merits of Defendant's self-defense claim, and ultimately his guilt or innocence. A witness's opinion as to the guilt or innocence of the accused is not admissible. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

EVIDENCE-OPINION: Allowing one witness to offer a personal view on the credibility of a fellow witness is an invasion of the province of the jury to determine a witness's credibility. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: Where the defendant did not testify in a manner inconsistent with his prior silence, comments on a defendant's pre-arrest, pre-Miranda1 exercise of their right to remain silent

are impermissible. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

ARGUMENT-BOLSTERING: Description of the officers' investigation and arrest as "proper" is itself improper, serving only to bolster the officers' testimony by vouching for their credibility. Improper bolstering occurs when the State places the prestige of the government behind the witness or indicates that information not presented to the jury supports the witness's testimony. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

ARGUMENT-MISREPRESENTATION: Misrepresenting facts in evidence can amount to substantial error (here, that Defendant "was walking away" when in fact he only exited the house during the argument before the fight) because doing so may profoundly impress a jury and may have a significant impact on the jury's deliberations. Zangroniz v. State, 3D22-1592 (3/29/23)

https://3dca.flcourts.gov/content/download/864703/opinion/221592_DC13_03292023_100602_i.pdf

POST CONVICTION RELIEF: Court improperly denied Defendant's motion yto mitigate on ground that he was represented by counsel. He wasn't. PD's representation ended when Defendant was sentenced. Ross v. State, 3D22-2064 (3/29/23)

https://3dca.flcourts.gov/content/download/864707/opinion/222064_DC03

_03292023_101522_i.pdf

APPEAL: After service of the initial brief, the court may summarily affirm the order to be reviewed if the court finds that no preliminary basis for reversal has been demonstrated. Boyd v. State, 3D23-26 (3/29/23)

https://3dca.flcourts.gov/content/download/864704/opinion/230026_DC05_03292023_100700_i.pdf

WRITTEN THREAT: A paper found on student's desk with the word "Kill," and the names of two teachers, bolstered by a journal found at her home whi9ch included a written plan to kill others and a list of weapons, amounts to a written threat to kill. Putting the paper on the desk is posting it. N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

DEFINITION-PROBABLE CAUSE: Probable cause is a lighter burden than a preponderance of evidence. "Probable cause" means a reasonable ground of suspicion supported by circumstances strong enough in themselves to warrant a cautious person in belief that the named suspect is guilty of the offense charged. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. It is not a high bar. Probable cause doesn't require proof that something is more likely true than false, only a fair probability, something more than a bare suspicion but less than a preponderance of the evidence. N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

DEFINITION-"POST": "Post" means "to put information or a message where the public can see it." "Post" can be understood as making it unlawful to cause a writing, which threatens to kill or do bodily harm to another person, to be seen in public. The mode or means whereby the written threat to kill is made public does not matter as long as it can be viewed by another person. N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

STATUTORY INTERPRETATION: In defining common words such as "post," it is preferable to refer to common dictionaries such as the Macmillan English Dictionary or the American Heritage Dictionary rather than Black's Law Dictionary. It is more appropriate to use a dictionary that would define the words as to what a reasonable person would understand the words to mean at the time the statute was enacted and not a technical legal definition. N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

STATUTORY INTERPRETATION-SUPREMACY OF TEXT (J. MACIVER, DISSENT): The "supremacyof-text principle" means that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means. When a contested term is undefined in statute or case law, the term presumably bears its ordinary meaning at the time of enactment, taking into consideration the context in which the word appears. Context always matters. N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

WRITTEN THREAT (J. MACIVER, DISSENT): "[T]he State of Florida has not criminalized bad thoughts. Even the most wicked of hypothetical deeds is not against the law when it exists only in one's imagination. Even when those thoughts are reduced to writing." N.H., a Child v. State, 5D23-795 (3/27/23)

https://5dca.flcourts.gov/content/download/864505/opinion/230795_DC02_03272023_165106_i.pdf

EXPUNCTION: District court lacks ancillary jurisdiction to hear the expunction motion of a Defendant who had been pardoned. No federal statute authorizes district courts to hear the type of expungement motion brought. USA v. Batmasion, No. 21-12800 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112800.pdf

CONSTITUTIONAL EXPUNCTION: No court has ever held that the Constitution directly provides jurisdiction to hear any expungement motions. USA v. Batmasion, No. 21-12800 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112800.pdf

ANCILLARY JURISDICTION: Ancillary jurisdiction can be invoked for two limited purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees. Ancillary jurisdiction does not include a general equitable power to expunge judicial records. USA v. Batmasion, No. 21-12800 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112800.pdf

EXPUNCTION: Jurisdiction for equitable expunction does not exist. If jurisdiction for constitutional expungement exists, it would only exist where the motion challenges an arrest or conviction as unconstitutional, not where

Defendant had received a pardon. USA v. Batmasion, No. 21-12800 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112800.pdf

ARMED CAREER CRIMINAL ACT: An individual with three qualifying prior convictions, either for violent felonies or serious drug offenses, is an armed career criminal subject to a fifteen-year mandatory minimum. USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

ARMED CAREER CRIMINAL ACT: Sale of cocaine constitutes a serious drug offense under ACCA, so that two of them results in an ACCA enhancement. USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

ARMED CAREER CRIMINAL ACT: Proof that Defendant knew of the illicit nature of the controlled substances which constituted the predicates for ACCA enhancement is not required. "Our precedent squarely forecloses his mens rea argument about the need to prove knowledge of the controlled substance's illicit nature." USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

ARMED CAREER CRIMINAL ACT: Attempted transfers of a controlled substance are "distributing" as ACCA uses the term. USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

ARMED CAREER CRIMINAL ACT-CATEGORICAL APPROACH: No matter the defendant's underlying conduct, a state conviction cannot be an ACCA predicate if the statute of conviction proscribes a broader range of conduct than what ACCA defines as a "serious drug offense." which requires looking at the least of the acts criminalized by the state statute. Second, if

the statute is "divisible" because it can be violated in alternative ways, if must be analyzed by the elements of the crime of conviction. Because the attempted transfer of a controlled substance for value is the least culpable act covered by §893.13(1)(a)'s proscription of the sale of a controlled substance, and "attempted transfer" fits within the meaning of "distributing," it is a predicate offense. "We think the ordinary meaning of the word 'distribute' . . . encompasses attempted transfers." USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

DEFINITION-"DISTRIBUTE": The word 'distribute,' at its core, refers to the process of passing out or dealing out something to other people. Although the final transfer of an item is part of the core of "distribute," other steps leading up to the ultimate transfer are part of distribution, too. The ordinary meaning of "distributing" encompasses attempted transfers. USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

NEAREST-REASONABLE-REFERENT CANON: The nearest-reasonable-referent canon indicates that the parenthetical modifies only the term "controlled substance"—the parenthetical's nearest reasonable referent—because the syntax of the provision is not a parallel series of nouns or verbs. USA v. Penn, No. 21-12420 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112420.pdf

FIRST STEP ACT: The First Step Act of 2018 allows federal courts to reduce certain drug-related criminal sentences if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed, but a district court is permitted to reduce a defendant's sentence only for a covered offense and is not free to change the defendant's sentences on counts that are not covered offenses. USA v. Files, No. 21-12859 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

PRIOR-PANEL-PRECEDENT RULE: Under the prior-panel-precedent rule, an earlier panel's holding is controlling unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or the appellate court sitting *en banc*. USA v. Files, No. 21-12859 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

HOLDING VS. DICTUM: The mere fact that a panel called its statement a "holding" doesn't make it a holding. A judge cannot transmute dictum into decision by waving a wand and uttering the word "hold.'" To the extent that a] opinion says one thing but does another, what it does is the holding. of the decision. Judicial opinions do not make binding precedents; judicial decisions do. USA v. Files, No. 21-12859 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

HOLDING VS. DICTUM: The mere fact that a panel's key statement was delivered as part of an alternative holding doesn't disqualify it from holding status. Alternative holdings are as binding as solitary holdings. "[U]nder our precedent about precedent, the sort of reasoning employed in Denson—that a particular test doesn't apply but that, even if it does, it isn't satisfied—constitutes a prototypical alternative holding. Indeed, we have said—albeit (ironically) in dicta—that the alternative-holding rule applies in precisely these circumstances. USA v. Files, No. 21-12859 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

HOLDING VS. DICTUM: "With respect to the application of the necessary-to-the-judgment criterion, we'll just come right out and say it: We're in something of a grey area here." USA v. Files, No. 21-12859 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

DEFINITION-"NECESSARY": "[O]ur own precedent and common sense both reveal that "necessary" doesn't mean strictly necessary." USA v. Files,

No. 21-12859 (11th Cir. 3/24/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

PRECEDENT-WHAT THE HECK-INESS?!: "Our precedent about precedent makes clear that strict necessary-ness is not essential to a statement's holding-ness." USA v. Files, No. 21-12859 (11th Cir. 3/24/23) https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

ALTERNATIVE HOLDINGS (J. NEWSOM, CONCURRING): "My worry is that there's likely an inverse relationship between the number of holdings a court purports to issue and the correctness of each. That's not rocket science—or, to be fair, any kind of science. It's just a common-sense observation that the more a court bites off, the less time and attention it has to savor and digest each constituent morsel." USA v. Files, No. 21-12859 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

ALTERNATIVE HOLDINGS (J. NEWSOM, CONCURRING): "I hope that we will all think, and then think, and then think again before embedding alternative holdings in our opinions." USA v. Files, No. 21-12859 (11th Cir. 3/24/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112859.pdf

BAIL-REVOCATION-HEARING: Court may not order Defendant to appear for a hearing and submit to a drug test, then revoke release upon a positive result, all on the basis of an ex parte e-mail accusing, by hearsay, Defendant of using drugs on pretrial release. Because drug testing was not a condition of release, probable cause is required to order him to submit to a drug test. The fact that he tested positive obviously does not establish probable cause to order the test in the first place. Miranda v. Reyes, 3D23-485 (3/24/23) https://3dca.flcourts.gov/content/download/864304/opinion/230485_DC03_03242023_161642_i.pdf

JUDGE-IMPARTIALITY (J. LOGUE, CONCURRING): "Trial courts must be mindful of the limits imposed by the judicial role. With very few exceptions, the court's role does not include initiating investigations to establish that probable cause exists. The court's role is constrained to adjudicating such issues if and when the parties seek such an adjudication." Miranda v. Reyes, 3D23-485 (3/24/23)
https://3dca.flcourts.gov/content/download/864304/opinion/230485_DC03_03242023_161642_i.pdf

JURY INSTRUCTION-SELF-DEFENSE-FORCIBLE FELONY: The forcible felony instruction says that the use of deadly force by Defendant is not justifiable if you find that Defendant had committed or was escaping after the commission of an aggravated assault. When a defendant is charged with multiple crimes claims self-defense as to each offense, the forcible felony instruction is improper because there is no independent forcible felony available and the instruction negates the defendant's self-defense claim. Peterson v. State, 5D22-173 (3/24/23)
https://5dca.flcourts.gov/content/download/864255/opinion/220173_DC13_03242023_081603_i.pdf

PRETRIAL DETENTION-BOND: Court may not order Defendant held without bond upon a finding that he poses a threat of harm to the community without also making a finding that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm. In order for a court to conclude that a defendant poses a threat of harm to the community, the court must make findings that each of the criteria set forth in §907.041(4)(c)(5) have been met. Lax v. Marceno, Sheriff, 23-1726 (3/24/23)
https://6dca.flcourts.gov/content/download/864275/opinion/231726_DC03_03242023_105404_i.pdf

JURY INSTRUCTION-CONSPIRACY-MID-TRIAL: Court may give a mid-

trial instruction on conspiracy to prevent a misunderstanding of the law where Defense asked witness, who had not previously met the Defendant, whether he therefore had not conspired with him. A trial judge is more than a referee to an adversarial proceeding, but rather may question witnesses, comment on the evidence, and interrupt the trial in order to correct an impropriety. The prosecutor's failure to object does not mean that the trial cannot intervene *sua sponte*. USA v. Morel, No. 20-14315 (11th Cir. 3/23/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014315.pdf

PRUDENT-SMUGGLE DOCTRINE-CONSPIRACY-KNOWLEDGE OF NATURE OF CONTRABAND: To prove conspiracy, Government must that Defendant knew the essential nature of the conspiracy, including the type of contraband at issue, but the jury may reasonably infer that prudent smuggler is not likely to suffer the presence of unaffiliated bystanders and may infer the associate's knowing participation, including knowledge of the nature of the contraband involved. USA v. Morel, No. 20-14315 (11th Cir. 3/23/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014315.pdf

FIRST STEP ACT: District court has discretion to deny an eligible movant's request for a reduced sentence under the First Step Act. USA v. Williams, No. 21-12877 (11th Cir. 3/23/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202112877.pdf

RULES-AMENDMENT-SUPPORT ANIMALS: Rules regarding support animals, including miniature horses, in court clarified. "Service animals" are defined as "any dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." An "emotional support animal," is a "companion animal that provides needed emotional support, well-being, or comfort to an individual in the forms of affection and companionship." Notification should be given in advance when an individual intends on seeking an accommodation of using either a

service or emotional support animal; lack of advance notice for the latter may support exclusion of the animal. In Re: Amendments to Florida Rule of General Practice and Judicial Administration 2.540, No. SC22-1277 (3/23/23)
https://supremecourt.flcourts.gov/content/download/864168/opinion/sc22-1277.pdf

INMATE FUNDS: DOC may not deduct COVID Relief Payments from Defendant's inmate trust account. Edwards v. DOC. 1D22-1211 (3/22/23)
https://1dca.flcourts.gov/content/download/864081/opinion/download%3FdocumentVersionID=d8aecdab-7f21-418c-9400-1228f1f5c6b3

HABEAS CORPUS-PRO SE: A criminal defendant cannot proceed pro se on a habeas corpus petition while represented by counsel on the underlying charge. Martin v. State, 1D22-3653 (3/22/23)
https://1dca.flcourts.gov/content/download/864087/opinion/download%3FdocumentVersionID=b7dc2b85-e654-45f3-837f-fde879301a03

RESISTING WITHOUT VIOLENCE: Court commits fundamental error by fail to instruct the jury on the essential element of resisting an officer without violence; that is, whether the officer was engaged in the lawful execution of a legal duty at the time of the alleged resistance. Lopez v. State, 3D22-856 (3/22.23)
https://3dca.flcourts.gov/content/download/864037/opinion/220856_DC13_03222023_103114_i.pdf

EXPERT OPINION: The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible may not be disclosed to the factfinder by the proponent of the opinion or inference unless the court determines that their probative value

in assisting the factfinder to evaluate the expert's opinion substantially outweighs their prejudicial effect. Y.R., a Child v. State, 3D22-318 (3/22/23) https://4dca.flcourts.gov/content/download/864026/opinion/220318_DC05_03222023_095738_i.pdf

POST CONVICTION RELIEF: Claim that the sentencing court misunderstood its options at sentencing is not cognizable under R. 3.800(a) as an illegal sentence. The sentences were technically not illegal because they could have been imposed under Florida's sentencing laws. Robinson v. State, 4D22-535 (3/22/23) https://4dca.flcourts.gov/content/download/864027/opinion/220535_DC05_03222023_095846_i.pdf

MANDATORY MINIMUM-CONSECUTIVE SENTENCES-SHOOTING: Court must impose the mandatory minimum sentences consecutively when the qualifying offenses were committed during separate criminal episodes and were prosecuted in separate cases. Robinson v. State, 4D22-535 (3/22/23) https://4dca.flcourts.gov/content/download/864027/opinion/220535_DC05_03222023_095846_i.pdf

PSI-RESENTENCING: A trial court is not required to order an updated PSI under before resentencing a defendant whose original conviction was otherwise upheld. Sols v. State, 22-1908 (3/22/23)

https://4dca.flcourts.gov/content/download/864031/opinion/221908_DC05_03222023_100828_i.pdf

SENTENCING ERROR-CORRECTION-JURISDICTION: Court lacks jurisdiction to correct judgment to include the mandatory minimal $50,000 fine while a case is on appeal. Court lacks jurisdiction to make even minor clerical corrections. Jolly v. State, 2D21-2162 (3/17/23)

https://2dca.flcourts.gov/content/download/863607/opinion/212162_DC08

_03172023_074846_i.pdf

INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was ineffective for failing to argue that his fifteen-year sentence for DUI manslaughter lacks the required probation. Upshur v. State, 2D22-2520 (3/17/23)

https://2dca.flcourts.gov/content/download/863618/opinion/222520_DC03_03172023_075741_i.pdf

MAXIMUM SENTENCE-DUI MANSLAUGHTER: Defendant cannot be sentenced to the statutory maximum incarceration for offenses which require some period of probation, such as DUI manslaughter. §316.193(5)'s requirements of 'monthly reporting probation and completion of a substance abuse course vitiate a trial court's discretion to impose the maximum fifteen-year prison sentence. Question certified. Upshur v. State, 2D22-2520 (3/17/23)

https://2dca.flcourts.gov/content/download/863618/opinion/222520_DC03_03172023_075741_i.pdf

APPEAL-NEW LAW: Appellate counsel is not ineffective for failing to anticipate changes in the law, and appellate counsel is not ineffective for failing to assert a theory of law which was not at the time of the appeal fully articulated or established in the law, but appellate counsel can be ineffective for failing to raise issues of merit based on law decided during the pendency of a direct appeal and for not filing a motion to file a supplemental brief. "Even though appellate counsel was not expected to raise a novel argument, appellate counsel was expected to be aware of developments in the law. . .and to request supplemental briefing when it could benefit Mr. Upshur." Upshur v. State, 2D22-2520 (3/17/23)

https://2dca.flcourts.gov/content/download/863618/opinion/222520_DC03

_03172023_075741_i.pdf

DNA TESTING (J. MAKAR, CONCURRING): A motion seeking DNA testing is not binding on the trial court, which is required to make legislatively mandated findings. Court may deny Defendant's request for post-conviction DNA testing notwithstanding the State's lack of an objection to, or even whole-hearted agreement with, it. "A reasoned assessment from the State in these types of cases, however, would undoubtedly assist busy trial judges and facilitate their statutory obligations to make findings and decide whether relief is warranted." Pierre v. State, 5D23-168 (3/17/23)

https://5dca.flcourts.gov/content/download/863602/opinion/230168_DC05_03172023_085859_i.pdf

RULES-AMENDMENT-ATTORNEYS: Rules clarified for retired/emeritus attorneys. In Re: Amendments to Rules Regulating the Florida Bar—Miscellaneous, SC22-1292 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863509/opinion/sc22-1292.pdf

RULES-AMENDMENT-ATTORNEYS-CONFIDENTIAL INFORMATION: Confidential information must be disclosed to prevent death or substantial bodily harm to anyone, including a client. In Re: Amendments to Rules Regulating the Florida Bar—Miscellaneous, SC22-1292 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863509/opinion/sc22-1292.pdf

RULES-AMENDMENT-ATTORNEYS-CONFIDENTIAL INFORMATION: A lawyer may reveal confidential information to the extent the lawyer

reasonably believes necessary to respond to specific allegations published via the internet by a former client in a criminal case (e.g. a negative online review). In Re: Amendments to Rules Regulating the Florida Bar—Miscellaneous, SC22-1292 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863509/opinion/sc22-1292.pdf

RULES-AMENDMENT-SHALL/MUST: The word "shall" is largely removed from the rules and replaced with the word "must." In Re: Amendments to Rules Regulating the Florida Bar—Miscellaneous, SC22-1292 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863509/opinion/sc22-1292.pdf

AMENDMENT-RULES-APPELLATE: References to the clerk should be as follows: if the circuit court is the lower tribunal, it should be referred to as "the clerk of the circuit court." If it could be the county or circuit court, an administrative agency, or a DCA, lower tribunal; it should be referred to as "the clerk of the lower tribunal." If the clerk is of the appellate court, it should be referred to as "the clerk of the court." In Re: Amendments to the Florida Rules of Appellate Procedure, (3/16/23) SC22-1784

https://supremecourt.flcourts.gov/content/download/863511/opinion/sc22-1784.pdf

RULES-AMENDMENT-SHALL/MUST: The word "shall" is largely removed from the rules and replaced with the word "must." SC22-1784

https://supremecourt.flcourts.gov/content/download/863511/opinion/sc22-1784.pdf

RULES-AMENDMENT-LIMITED APPEARANCE: Clarification of form of notice of termination of limited appearance. In Re: Amendments to the Florida Rules of Appellate Procedure, SC22-1785 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863512/opinion/sc22-1785.pdf

POST CONVICTION RELIEF-RELATIVE CULPABILITY: New evidence suggesting that the Defendant's co-defendant (a juvenile offender) was the triggerman in the murder/robbery does not warrant resentencing. Relative culpability analysis does not apply when a co-perpetrator is legally ineligible for the death penalty, including because of his age. Sanchez-Torres v. State, SC22-322 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863507/opinion/sc22-322.pdf

POST CONVICTION RELIEF-RELATIVE CULPABILITY: New evidence suggesting that the Defendant's co-defendant (a juvenile offender) was the triggerman in the murder/robbery does not warrant resentencing where Court had explained that it did not make a finding or rely on an inference as to who shot Victim. Sanchez-Torres v. State, SC22-322 (3/16/23)

https://supremecourt.flcourts.gov/content/download/863507/opinion/sc22-322.pdf

STAND YOUR GROUND: Defendant has SYG immunity for shooting the unarmed victim where victim is the initial aggressor ("te voy a matar") and is twice as big and half as old as the Defendant, who suffers from Von Willebrand's disease, which could have led to fatal bleeding if he had been punched in the mouth. State v. Quevedo, 3D21-2450 (3/15/23)

https://3dca.flcourts.gov/content/download/863286/opinion/212450_DC05_03152023_100942_i.pdf

STAND YOUR GROUND: Once a prima facie claim of self defense immunity from criminal prosecution has been raised by the defendant at a pretrial SYG immunity hearing, the burden of proof by clear and convincing evidence is on the State. State v. Quevedo, 3D21-2450 (3/15/23)

https://3dca.flcourts.gov/content/download/863286/opinion/212450_DC05_03152023_100942_i.pdf

STAND YOUR GROUND: The conduct of a person acting in self defense is measured by an objective standard, but the standard must be applied to the facts and circumstances as they appeared at the time of the altercation to the one acting in self defense. The objective standard of what is reasonable must be measured in light of the facts and circumstances as they appeared and were known to the individual defendant. State v. Quevedo, 3D21-2450 (3/15/23)

https://3dca.flcourts.gov/content/download/863286/opinion/212450_DC05_03152023_100942_i.pdf

APPEAL-STANDARD OF REVIEW-POST CONVICTION RELIEF: After an evidentiary hearing on a claim of ineffective assistance of counsel, appellate court reviews the deficiency and prejudice prongs as mixed questions of law and fact subject to a de novo review standard but . . . the trial court's factual findings are to be given deference. Aguilar v. State, 3D22-57 (3/15/23)

https://3dca.flcourts.gov/content/download/863288/opinion/220057_DC05_03152023_101225_i.pdf

PRO SE DEFENDANT-STANDBY COUNSEL: Where pro se Defendant asked to consult with standby counsel (may I "call up just one of my lawyers to give me a little help on the side?"), Court properly denied the request. While standby counsel is constitutionally permissible, it is not required. Nor

does a defendant have a Sixth Amendment right to hybrid representation. A defendant may not manipulate the proceedings by willy-nilly leaping back and forth between the self-representation and assistance of counsel. Van Zagarella v. State, 4D21-3394 (3/15/23)

https://4dca.flcourts.gov/content/download/863297/opinion/213394_DC08_03152023_095306_i.pdf

PRO SE DEFENDANT-STANDBY COUNSEL (J. GROSS, CONCURRING): "It is difficult enough for a trial court to navigate the legal requirements imposed by Faretta. . ._without creating yet another legal Charybdis by imposing similar requirements on the participation of standby counsel, once appointed." Van Zagarella v. State, 4D21-3394 (3/15/23)

https://4dca.flcourts.gov/content/download/863297/opinion/213394_DC08_03152023_095306_i.pdf

DOUBLE JEOPARDY: Defendant may not be convicted of both felony battery (based on a prior battery conviction) and battery on a law enforcement officer because they are both aaggravated forms of simple battery. Felony battery and aggravated battery are the same offense for double jeopardy purposes. Van Zagarella v. State, 4D21-3394 (3/15/23)

https://4dca.flcourts.gov/content/download/863297/opinion/213394_DC08_03152023_095306_i.pdf

APPEAL-PRESERVATION-JURY INSTRUCTION-PRINCIPAL: Where defense initially indicated that he no objection to a principal instruction, but then objected after State's closing argument, the objection was not contemporaneous and therefore was waived/unpreserved. Peart v. State, 4D21-3582 (3/15/23)

https://4dca.flcourts.gov/content/download/863299/opinion/213582_DC05

_03152023_100149_i.pdf

JURY INSTRUCTION-PRINCIPAL: Court errs in giving principal instruction where the evidence showed that Defendant, the passenger, shot from the car driven by his accomplice, and the State's central theory of the case was that the defendant was the shooter. Although on appeal the State argued that Defendant could have been a principal if the co-defendant had been the shooter, the State never made that argument to the jury. But error is not fundamental and is unpreserved. Peart v. State, 4D21-3582 (3/15/23)

https://4dca.flcourts.gov/content/download/863299/opinion/213582_DC05_03152023_100149_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for agreeing to a lesser included jury instruction on an offense not supported by the evidence (attempted leaving of the scene involving death). Cohen v. State, 4D22-1099 (3/15/23)

https://4dca.flcourts.gov/content/download/863305/opinion/221099_DC08_03152023_101858_i.pdf

FIRST STEP ACT: The First Step Act allows retroactive application of specified provisions of the Fair Sentencing Act, but does not permit a reduction when the Fair Sentencing Act could not have benefitted the movant. If the defendant is already serving the statutory minimum sentence that would have applied under the Fair Sentencing Act, the First Step Act offers no relief. USA v. Clowers, No. 20-13074 (11th Cir. 3/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013074.pdf

FIRST STEP ACT: In considering a First Step Act motion to reduce

sentence, District Court is bound by the sentencing court's original drug-quantity finding; Where that drug quantity would still trigger a mandatory life sentence after the Fair Sentencing Act, court may not reduce the sentence. USA v. Clowers, No. 20-13074 (11th Cir. 3/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202013074.pdf

SUBPOENA DUCES TECUM-MENTAL HEALTH RECORDS: Defendant is not entitled to a subpoena duces tecum for the patient/psychotherapist records in case of sexual battery upon a mentally defective person. Only the victim, not the State, owns, and can waive, the privilege. §90.503(4)(c) removes the privilege when the patient relies on his or her own mental condition as an element of his or her claim or defense. "This clearly does not contemplate a criminal prosecution brought by the State and does not authorize the State to waive the privilege on behalf of the individual who holds it." State v. Wilson, 2D22-1802 (3/10/23)

https://2dca.flcourts.gov/content/download/862947/opinion/221802_DC03_03102023_144015_i.pdf

SUBPOENA DUCES TECUM-PATIENT/PSYCHOTHERAPIST PRIVILEGE-IN CAMERA INSPECTION: Because there is no exception to the patient/psychotherapist privilege in criminal cases, Court is not entitled to conduct an *in camera* inspection of the records. "Disclosure of any kind, including an in camera inspection, would let the proverbial cat out of the bag." State v. Wilson, 2D22-1802 (3/10/23)

https://2dca.flcourts.gov/content/download/862947/opinion/221802_DC03_03102023_144015_i.pdf

SECOND AMENDMENT: "Even though 18-to-20-year-olds now account for less than 4% of the population, they are responsible for more than 15%

of homicide and manslaughter arrests." NRA v. Bondi, No. 21-12314 (3/9/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.pdf

SECOND AMENDMENT: The Second Amendment applies to people under 21, but because at the time of Reconstruction, state laws limited the rights of those under 21 to bear arms, the right can be restricted. The understanding of the reach of the Second Amendment depends on what its perceived reach was at the time of Reconstruction, when the 14th Amendment was passed. NRA v. Bondi, No. 21-12314 (3/9/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.pdf

SEX OFFENDER REGISTRATION: Whether a California conviction for oral copulation with the use of force/injury is an offense analgous to a Florida statute, and thus one which requires sex offender registration, is a question of law to be decided by the Court, not a jury. And it is. McGhee v. State, 1D21-3514 (3/8/23)

https://1dca.flcourts.gov/content/download/862442/opinion/download%3FdocumentVersionID=1a171944-87ce-4328-adc8-a8b4ee00a22f

POST CONVICTION RELIEF-APPOINTMENT OF COUNSEL: Court did not abuse discretion in denying appointment of counsel for post conviction relief hearing where the issues were factual, non-complex, and did not require substantial legal research. Loveless v. State, 1D21-3613 (3/8/23)

https://1dca.flcourts.gov/content/download/862443/opinion/download%3FdocumentVersionID=a45e1321-cf44-4ce5-97c4-4167dd8a8fb0

MOTION TO DISMISS: Failure to swear to the facts contained in a motion to dismiss information is fatal). Diekow v. State, No. 1D22-1186 (3/8/23)

https://1dca.flcourts.gov/content/download/862450/opinion/download%3FdocumentVersionID=e1c535aa-3d68-432d-8cbb-439de22fe78c

ATTEMPT-OVERT ACT: To establish the crime of attempt, the State must prove the defendant intended to commit a crime, committed an overt act towards its commission, and failed to successfully complete the crime. An overt act is one that manifests the pursuance of a criminal intent, going beyond mere preparation to the actual commencement of the crime. Soliciting a hitman (undercover officer), providing himwith the victim's personal information, and making a $400 down payment are overt acts. Alcazar v. State, 3D23-83 (3/8/23)

https://3dca.flcourts.gov/content/download/862335/opinion/230083_DC02_03082023_101541_i.pdf

ATTEMPT-OVERT ACT-SOLICITATION (J. EMAS, DISSENT): Hiring an undercover officer to murder an ex-girl friend's husband is solicitation, not attempted murder. The majority opinion blurs the distinction between the discrete offenses of solicitation and attempt. "[T]he State. . ., in square-peg, round-hole fashion, has decided to charge attempted murder in a murder-for-hire scheme that could never have been consummated, given that the solicited 'hitman' was an undercover officer. Alcazar v. State, 3D23-83 (3/8/23)

https://3dca.flcourts.gov/content/download/862335/opinion/230083_DC02_03082023_101541_i.pdf

POSSESSION-FIREARM-DOMESTIC VIOLENCE: It is unlawful for a person who has been convicted in any court of a misdemeanor crime of

domestic violence to possess any firearm or ammunition. 18 U.S.C. §922(g)(9) A "misdemeanor crime of domestic violence" is an offense that both is a misdemeanor and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

POSSESSION-FIREARM-DOMESTIC VIOLENCE: Defendant met his burden of production, but not his burden of persuasion, that the waiver of counsel on the predicate offense was not knowingly and voluntarily made. Defendant charged with Possession of a Firearm after a domestic violence conviction, on the earlier DV offense, had signed a form with options for trial, waiving a jury, or pleading guilty, but no option for pleading not guilty and having a jury trial, and judge found Defendant guilty in bench trial. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

BURDEN OF PRODUCTION/PERSUASION: Defendant who claims that the waiver of counsel was not voluntarily made bears the burden of production. The question of whether a domestic violence conviction-a predicate for an unlawful possession of firearm offence-is an affirmative defense on which the defendant bears the burden of production and persuasion. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

STANDARD OF REVIEW: The standard of review for exclusion of evidence in a "run-of-the-mill evidentiary and trial procedure rulings," i.e. "normal, typical, usual evidentiary and trial procedure rulings" is abuse of discretion. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

BURDEN OF PROOF-PREDICATE OFFENSE: The burden is properly placed on the defendant raising the challenge to show the constitutional invalidity of the prior convictions. Any given conviction might suffer any of a myriad of constitutional defects. It would approach the absurd to require the government to undertake to prove guilt all over again in every predicate conviction. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

APPEALS ARE BAD: "There's another reason that purely evidentiary and trial procedure issues get abuse of discretion review and not de novo review: giving them de novo review would encourage more appeals, which would not be a good thing." USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

TRIAL TAX: "By 'trial tax,' Shamsid-Deen's lawyer meant the 'perception that state-court defendants electing a jury trial face harsher sentences.'" USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

AFFIRMATIVE DEFENSE: The label "affirmative defense" applies to different categories of defenses. One such category is defenses that negative guilt by cancelling out the existence of some required element of

the crime. Other categories of affirmative defenses do not negate an element of the crime, but instead provide a justification sufficient to overcome or mitigate criminal liability. A third type of affirmative defense is based on individual exceptions to substantive crimes. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

DICTA: Dicta is not binding on anyone for any purpose. USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

DICTA: "It's true that we repeated the Laroche dicta in our Johnson opinion. . .But the Johnson opinion's use of the Laroche dicta is itself dicta. . .It was, to be sure, twice told dicta, but as we have explained before, '"twice told dicta is still dicta.'" USA v. Shamsid-Deen, No. 20-11877 (11th Cir. 3/6/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011877.pdf

CREDIT FOR TIME SERVED-PROBATIONARY SPLIT SENTENCE: If a defendant is sentenced to a new prison sentence upon the revocation of the probationary term of a probationary split sentence, the defendant is not entitled to credit for the full amount of the original sentence if he obtained an early release due to gain time—he is entitled to credit for the time he actually served in prison. Forfeiture of gain time is a collateral consequence, and neither the Court nor counsel is required to forewarn the defendant about that collateral consequence. Koppe v. State, 5D22-3069 (3/3/23)

https://5dca.flcourts.gov/content/download/861455/opinion/223069_DC05_03032023_083600_i.pdf

EVIDENCE-AUTHENTICATION-PHOTO (J. LAMBERT, CONCURRING): Authentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic; the ultimate determination of the authenticity of the evidence is a question for the fact-finder. Requiring the State to provide testimony from persons who appear in the video, or from someone who recorded the video, sets the authentication burden too high. Simmons v. State, 5D23-70 (3/3/23)

https://5dca.flcourts.gov/content/download/861456/opinion/230070_DC05_03032023_084237_i.pdf

SEARCH AND SEIZURE-PROBABLE CAUSE: Officer need not know that the object at issue is in fact drug paraphernalia on its face before probable cause is established to seize the item. Observation of a plastic tube sticking out of Defendant's purse with what appeared to be burnt residue on the end. State v. Andreskewicz, 6D23-307 (3/3/23)

https://6dca.flcourts.gov/content/download/861483/opinion/230307_DC13_03032023_090253_i.pdf

APPEAL: Defendant may not directly appeal his plea as being involuntary based on counsel not warning him that his offense was deportable without first moving to withdraw the plea in the trial court. Raducan v. State, 6D23-453 (3/3/23)

https://6dca.flcourts.gov/content/download/861484/opinion/230453_DC05_03032023_090803_i.pdf

SARCASM: "At trial, the Government, in its case in chief, pursued an unorthodox strategy. It undertook to rebut Turner's three affirmative defenses by establishing that they lacked a factual foundation. Its strategy

was successful." USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

EUPHEMISM: "Proactive, saturation detail." The combination of the Alabama Law Enforcement Agency, Dallas County Sheriff's Office, and ATF, which performs traffic stops, handcuffs passengers, and puts them on the ground. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

OPINION-MENTAL STATE: In insanity case, Government may not elicit mental health expert's opinion that Defendant understood the wrongfulness of his actions. FER 704(b) precludes an expert witness in a criminal case from stating an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of a defense. But error here is harmless because Defendant's insanity defense was insufficient as a matter of law. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

INSANITY DEFENSE-NOTICE: A defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing, as well as notice of expert testimony supporting it, within the time provided for filing a pretrial motion A defendant who fails to do so cannot rely on an insanity defense. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

HARMLESS ERROR: It is harmless error if, when all is said and done, the error did not influence the jury, or had but very slight effect, the verdict, the judgment should stand. But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry is rather the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

INSANITY: The mental disease or defect to support the insanity defense must be severe. Proof that a defendant had a mental disorder is not enough. A condition is not severe when it is only a behavioral disorder—a mental condition that causes someone to lack self-control .USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

ENTRAPMENT: An entrapment-by-estoppel defense applies to a defendant who reasonably relies on the assurance of a government official that specified conduct will not violate the law. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

PUBLIC AUTHORITY DEFENSE: Defendant must show only that he relied on apparent authority, as opposed to actual authority. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

TRIAL-PROSECUTORS (J. ROSENBAUM, DISSENT): "Then the government reassured the court that '[i]t doesn't behoove us to go beyond what's allowed.' But behoove the government or not, that's just what the government did." USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

INNOCENT INTENT DEFENSE (J. ROSENBAUM, DISSENT): The difference between an innocent-intent defense and an entrapment-by estoppel defense is that the former does not require proof that the government officer in fact authorized the action; it just requires evidence the defendant honestly believed the action was authorized. USA v. Turner, No. 20-12364 (11th Cir. 3/1/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012364.pdf

VOP: If a revocation is based solely on a conviction and that conviction is subsequently reversed, the revocation must also be reversed. L.A., a juvenile v. State, 3D20-1857 (3/1/23)

https://3dca.flcourts.gov/content/download/861237/opinion/201857_DC13_03012023_101400_i.pdf

ZOOM: Trial court must make case-specific findings of necessity for a remote adjudicatory hearing. L.A., a juvenile v. State, 3D20-1857 (3/1/23)

https://3dca.flcourts.gov/content/download/861237/opinion/201857_DC13_03012023_101400_i.pdf

HABITUAL OFFENDER-CONSECUTIVE SENTENCE: Where a defendant

is convicted of two offenses arising out of a single criminal episode, one of which is enhanceable under the habitual felony offender/habitual violent felony offender statute, and the sentence for that offense is enhanced beyond the statutory maximum, the trial court may lawfully order that the sentence on the remaining unenhanced offense be served consecutively. Pierre v. State, 3D21-2139 (3/1/23)

https://3dca.flcourts.gov/content/download/861239/opinion/212139_DC08_03012023_101737_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to give notice of alibi and calling alibi witnesses. Testimony from other witnesses supporting a defendant's own testimony is not necessarily cumulative. A claim of ineffectiveness in failing to present important exculpatory evidence cannot be resolved on the basis of the mere existence of conflicting evidence in the record. Rather, the record evidence must conclusively rebut the claim if the claim is to be resolved without a hearing. Noa v. State, 4D22-575 (3/1/23)

https://4dca.flcourts.gov/content/download/861252/opinion/220575_DC13_03012023_100644_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for advising client to go to trial because the maximum sentence for aggravated battery was 15 years, when in fact (because Defendant qualified as a H.O.), the maximum sentence was 30 years. Key v. State, 4D22-1495 (3/1/23)

https://4dca.flcourts.gov/content/download/861255/opinion/221495_DC05_03012023_101003_i.pdf

UNANIMOUS VERDICT: Where a single count embraces two or more

separate offenses, albeit in violation of the same statute, the jury cannot convict unless its verdict is unanimous as to at least one specific act. Where the State does not affirmatively advise the jury that it can convict using any number of acts as the essential element of the crime, the possibility of a non-unanimous verdict does not constitute fundamental error. Where the prosecutor argued to the jury that one Resisting with Violence charge was based upon Defendant kicking one officer and the other for slapping another officer, and State never argued that the jury could find appellant guilty based on any other act, the verdicts are lawful. The mere possibility that a juror could look to some act other than the one which the prosecutor argued to satisfy an element of the crime is insufficient to warrant a reversal of a conviction. Johnston v. State, 4D22-1790 (3/1/23)

https://4dca.flcourts.gov/content/download/861257/opinion/221790_DC05_03012023_101141_i.pdf

OBSTRUCTION-LEGAL DUTY: The threshold for establishing the obstruction or resisting is that the officer be in the lawful execution of a legal duty. Detention of the Defendant who was acting bizarrely and fleeing a hospital is lawful performance of a legal duty. Johnston v. State, 4D22-1790 (3/1/23)

https://4dca.flcourts.gov/content/download/861257/opinion/221790_DC05_03012023_101141_i.pdf

PROSECUTORIAL MISCONDUCT: Sarcastic cross-examination of the Defendant is not fundamental error. "This was a very tense situation with the appellant calling the prosecution witnesses dishonest and presenting himself as a victim. Perhaps the prosecutor may have been more aggressive than the tenets of professionalism should allow, but. . .we cannot conclude that his cross-examination vitiated the entire trial." Johnston v. State, 4D22-1790 (3/1/23)

https://4dca.flcourts.gov/content/download/861257/opinion/221790_DC05

_03012023_101141_i.pdf

JURY-SIZE: A defendant is not entitled to a twelve-member jury. Johnston v. State, 4D22-1790 (3/1/23)

https://4dca.flcourts.gov/content/download/861257/opinion/221790_DC05_03012023_101141_i.pdf

JUDGE-NEUTRALITY: Court's inquiry into Defendant's priors does not render him partial against the Defendant. Johnston v. State, 4D22-1790 (3/1/23)

https://4dca.flcourts.gov/content/download/861257/opinion/221790_DC05_03012023_101141_i.pdf

FEBRUARY 2023

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officer may not perform a pat down search of a juvenile stopped for riding a bike without a light when officer sees no bulge indicating the presence of a weapon. O.W. v. State, 2D21-3839 (2/24/23)

https://2dca.flcourts.gov/content/download/860849/opinion/213839_DC13_02242023_092601_i.pdf

POST CONVICTION RELIEF-ILLEGAL SENTENCE-SEXUAL PREDATOR: Whether Defendant is lawfully sentenced as a sexual predator may be raised under R. 3.800, but only when it is apparent from the face of the record that the defendant did not meet the criteria for designation as a

sexual predator. Harlow v. State, 2D22-1374 (2/24/23)

https://2dca.flcourts.gov/content/download/860853/opinion/221374_DC05_02242023_093130_i.pdf

POST CONVICTION RELIEF-ILLEGAL SENTENCE-SEXUAL PREDATOR: A motion to correct for improper designation as a sexual predator requires attached documents demonstrating entitlement to relief or a statement showing where in the record such documents are located. A mere conclusory allegation that the answer lies in the record is insufficient to satisfy the pleading requirements of the rule. Harlow v. State, 2D22-1374 (2/24/23)

https://2dca.flcourts.gov/content/download/860853/opinion/221374_DC05_02242023_093130_i.pdf

POST CONVICTION RELIEF-ILLEGAL SENTENCE: The subject matter of a rule 3.800(a) motion is limited to correcting illegal sentences that can be resolved on the face of the record without holding an evidentiary hearing. Harlow v. State, 2D22-1374 (2/24/23)

https://2dca.flcourts.gov/content/download/860853/opinion/221374_DC05_02242023_093130_i.pdf

DRIVER'S LICENSE SUSPENSION-REVIEW-MOOTNESS: Circuit court erroneously dismissed the second-tier review of the Driver's Licence suspension on grounds of mootness by not applying the capable-of-repetition-but-evading-review exception to mootness. Cornelio v. DHSMV, 2D22-1683 (2/24/23)

https://2dca.flcourts.gov/content/download/860854/opinion/221683_DC03_02242023_093247_i.pdf

HABEAS CORPUS-UNBORN CHILD: Petition for habeas corpus by an unborn child challenging the unborn child's incarceration due to its mother being held in jail as she awaits trial for allegedly murdering someone is dismissed because there is an inadequate factual record to determine whether the unborn child has the standing to file the petition. Unborn Child v. Reyes, 3D23-279 (2/24/23

https://3dca.flcourts.gov/content/download/860872/opinion/230279_DA08_02242023_163256_i.pdf

HABEAS CORPUS-UNBORN CHILD (CONCURRING/DISSENTING, J. GORDO): "The issue squarely before this Court is whether an incarcerated pregnant mother may raise a claim on behalf of her unborn child asserting the child is unlawfully detained. . .To send this part of the petition back for a determination of facts which are undisputed seems odd. . .I see a significant difference between exercising judicial restraint and punting a legal issue placed squarely before the Court." Unborn Child v. Reyes, 3D23-279 (2/24/23

https://3dca.flcourts.gov/content/download/860872/opinion/230279_DA08_02242023_163256_i.pdf

HABEAS CORPUS-UNBORN CHILD (CONCURRING/DISSENTING, J. GORDO): "The argument [that the mother's incarceration unjustly detains the unborn child] is illogical. The mother comes to us as a badly disguised Trojan Horse. In fact, the argument is nothing more than an attempt for the mother to leverage her unborn child as a basis to be released from lawful detention." Unborn Child v. Reyes, 3D23-279 (2/24/23)

https://3dca.flcourts.gov/content/download/860872/opinion/230279_DA08_02242023_163256_i.pdf

APPEALS-TRAFFIC INFRACTION: Jurisdiction to hear traffic infraction appeals have not been transferred to the district courts by virtue of the statutory change. Colley v. State, 5D23-140 (2/24/23)

https://5dca.flcourts.gov/content/download/860824/opinion/230140_DC04_02242023_082732_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Parking in a no-parking zone provides probable cause for a traffic stop. Officer may perform an investigatory stop on a car parked in a no-parking zone. *See* Hickman. State v. Tompkins, 6D23-432 (2/24/23)

https://6dca.flcourts.gov/content/download/860837/opinion/230432_DC13_02242023_094049_i.pdf

VOP-JUDGMENT: When a judgment of guilt has been previously entered, a second judgment should not be entered upon revocation of probation. State v. Webster, 6D23-37 (3/24/23)

https://6dca.flcourts.gov/content/download/860833/opinion/230037_DC05_02242023_092840_i.pdf

APPEAL-PRESERVATION-HEARSAY: The issue of whether the exclusion of witness' testimony as hearsay is not properly preserved where Defendant never proffered the testimony nor is the substance of that testimony not apparent from the record. State v. May, 6D23-179 (2/24/23)

https://6dca.flcourts.gov/content/download/860834/opinion/230179_DC05_02242023_093123_i.pdf

APPEAL-EVIDENCE: When the body cam is included in the record on appeal, the appellate court may draw its own conclusions as to the facts. O.W. v. State, 2D21-3839 (2/24/23)

https://2dca.flcourts.gov/content/download/860849/opinion/213839_DC13_02242023_092601_i.pdf

COPS-TRUTH ISN'T TRUTH: "[O]fficer further testified that O.W. was '[n]ervous, [had] shakiness in his voice," and "didn't really want to look at" the arresting officer. . .This testimony conflicts with what the body cam footage depicts to the extent that this court noted no shakiness in O.W.'s voice and no discernable reticence on O.W.'s part." O.W. v. State, 2D21-3839 (2/24/23)

https://2dca.flcourts.gov/content/download/860849/opinion/213839_DC13_02242023_092601_i.pdf

COPS-TRUTH ISN'T TRUTH: "He explained that he felt the firearm during the sweep of O.W.'s waistband area and that O.W. was placed in handcuffs and the firearm was ultimately removed.. . .Contrary to the arresting officer's testimony, the body cam footage makes it clear that O.W. had been handcuffed and forcibly placed facedown in the road before the firearm was felt in O.W.'s groin area. O.W. v. State, 2D21-3839 (2/24/23)

https://2dca.flcourts.gov/content/download/860849/opinion/213839_DC13_02242023_092601_i.pdf

COPS-JUDGES-TRUTH ISN'T TRUTH: The court denied the motion to suppress without elaboration, stating that 'the [body cam] video speaks for itself.'" O.W. v. State, 2D21-3839 (2/24/23)

https://2dca.flcourts.gov/content/download/860849/opinion/213839_DC13

_02242023_092601_i.pdf

DUE PROCESS-DEATH PENALTY-RETROACTIVITY: Due process in death penalty case requires that Defendant be allowed to inform jury that a life sentence means no parole. Cruz v. Arizona, No. 21-846 (U.S. S.Ct, 2/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-846_lkgn.pdf

DUE PROCESS-DEATH PENALTY-RETROACTIVITY: Lynch–which held that capital defendants have a due process right to inform jurors that a life sentence means no parole--is a significant change in the law ("It is hard to imagine a clearer break from the past"), and applies retroactively. The argument that a "change in the law" is different than a "change in the application of the law" is a distinction without a difference. The dissent fails to grapple with the basic point that Lynch reversed previously binding Arizona Supreme Court precedent. It makes no difference that Lynch did not alter federal law. Cruz v. Arizona, No. 21-846 (U.S. S.Ct, 2/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-846_lkgn.pdf

DUE PROCESS: In exceptional cases where a state-court judgment rests on a novel and unforeseeable state-court procedural decision lacking fair or substantial support in prior state law, that decision is not adequate to preclude review of a federal question. Cruz v. Arizona, No. 21-846 (U.S. S.Ct, 2/22/23)

https://www.supremecourt.gov/opinions/22pdf/21-846_lkgn.pdf

MANDAMUS-PAROLE RELEASE: Petitioner may not seek a writ of

mandamus to change his presumptive parole release date without first seeking relief at the administrative level. Estremera v. Florida Comm'n on Offender Review, 1D21-2156 (2/22/23)

https://1dca.flcourts.gov/content/download/860721/opinion/212156_DC05_02222023_142829_i.pdf

APPEAL-COUNSEL-RECORD: Search warrants and video admitted into evidence at hearing under review must be included and transmitted as part of the appellate record, regardless of whether counsel directs their inclusion. Debose v. State, 1D22-1490 (2/22/23)

https://1dca.flcourts.gov/content/download/860723/opinion/221490_NOND_02222023_143429_i.pdf

APPEAL-COUNSEL-RECORD: Appellate counsel's motion to supplement the record with transcripts from other hearings "to evaluate any issues that may be appropriate to raise on appeal," filed just before the deadline for filing the initial brief, is not legally sufficient. "An order to supplement the record. . . is not there just for the asking." Debose v. State, 1D22-1490 (2/22/23)

https://1dca.flcourts.gov/content/download/860723/opinion/221490_NOND_02222023_143429_i.pdf

APPEAL-COUNSEL-RECORD: "Seeking a last-minute tolling of a briefing deadline and circumventing appointed trial counsel's resource-conserving designations. . .do not strike us as likely being among those permissible uses [under R. 9.140(f)(2)(A)]. . .We hasten to reemphasize here that a motion to supplement is not 'an ongoing mechanism to obtain an indirect extension of time.'" Debose v. State, 1D22-1490 (2/22/23)

https://1dca.flcourts.gov/content/download/860723/opinion/221490_NOND_02222023_143429_i.pdf

APPEAL-COUNSEL-RECORD (J. KELSEY CONCUR/DISSENT): "Trial counsel should do better at the outset, since they are the ones most familiar with the issues and the record. . .[A] lot of lawyers seem to be abusing the extension and supplementation process as a workload management technique—to kick the can down the road. Maybe each of them thinks he or she is the only one doing it, but I doubt that; we are seeing it far too much. That is inappropriate . . ., unprofessional and unethical. . . Our professional obligations demand more. Debose v. State, 1D22-1490 (2/22/23)

https://1dca.flcourts.gov/content/download/860723/opinion/221490_NOND_02222023_143429_i.pdf

APPEAL-ATTORNEY-CONFLICT: Public Defender may not withdraw from appeal on case from which it had withdrawn on the underlying charge absent an assertion and showing that the interests of the Appellant and a witness/client are so adverse or hostile that she cannot adequately do. The mere allegation that one of the PDs had represented a witness who then testified for the State at Appellant's trial is not enough. Operation of Rule 4-1.9 (conflicts of interest relating to a former client) is from the perspective of the only former client (the witness). Even if the PD were currently representing the witness, there would be no basis for an imputable conflict under rule 4-1.7 absent an explanation of how representation of Appellant would be directly adverse to the present representation of the witness. Farmer v. State, 1D22-3273 (2/22/23)

https://1dca.flcourts.gov/content/download/860725/opinion/223273_NOND_02222023_144344_i.pdf

APPEAL-ATTORNEY-CONFLICT: A criminal appeal is a different proceeding from the underlying case. An imputable conflict extant at a criminal trial that justifies withdrawal there does not ineluctably translate into an imputable conflict that supports withdrawal in the ensuing appeal. Farmer v. State, 1D22-3273 (2/22/23)

https://1dca.flcourts.gov/content/download/860725/opinion/223273_NOND_02222023_144344_i.pdf

APPEAL-ATTORNEY-CONFLICT: A motion to withdraw filed in the appellate court must do more than simply recite the fact that there was a conflict in the trial court proceeding. It must make specific averments directed to application of one of the imputable conflicts identified in rules 4-1.7 and 4-1.9. Farmer v. State, 1D22-3273 (2/22/23)

https://1dca.flcourts.gov/content/download/860725/opinion/223273_NOND_02222023_144344_i.pdf

APPEAL-ATTORNEY-CONFLICT: A "personal interest" conflict is not imputable to a public defender's entire office unless it significantly risks limiting representation of the client by the other APDs in the office in a material way. Farmer v. State, 1D22-3273 (2/22/23)

https://1dca.flcourts.gov/content/download/860725/opinion/223273_NOND_02222023_144344_i.pdf

ZOOM: Court may not conduct remote hearing over objection without making case specific findings supporting the need to conduct the proceeding remotely. I.P., a Juvenile v. State, 3D21-2256 (2/22/23)

https://3dca.flcourts.gov/content/download/860663/opinion/212256_DC13_02222023_100648_i.pdf

APPEAL-INVOLUNTARY PLEA: Defendant may not challenge on appeal the voluntariness of his plea without first filing a motion to withdraw the plea in the trial court. The rule for juveniles exempting them from having to first move to withdraw the plea does not extend to adults. Kittles v. State, 4D21-3168 (2/22/23)

https://4dca.flcourts.gov/content/download/860693/opinion/213168_DC05_02222023_095315_i.pdf

EXCEPTIONS TO THE RULE: No matter how emphatically a court stresses that its reasoning is good-for one-case-only, every exception begets demands for more. Kittles v. State, 4D21-3168 (2/22/23)

https://4dca.flcourts.gov/content/download/860693/opinion/213168_DC05_02222023_095315_i.pdf

MOTION IN LIMINE-TIMELINESS: Court improperly denies Defendant's motions in limine to exclude references to the gun in question having been stolen and the hearsay statements of a hotel clerk as untimely. Even if the Court characterized them as motions to suppress (they weren't), they could have been considered during the trial. Lowe v. State, 4D22-101 (2/22/23)

https://4dca.flcourts.gov/content/download/860694/opinion/220101_DC13_02222023_095442_i.pdf

VOP-FAILURE TO PAY: In a VOP hearing involving non-payment, State may show willfulness by showing that the probationer failed to make bona fide efforts to gain employment and/or legally acquire the resources to pay. Craig v. State, 4D22-115 (2/22/23)

https://4dca.flcourts.gov/content/download/860695/opinion/220115_DC05_02222023_095547_i.pdf

PROBATION-CONDITIONS: Any condition of supervision that Defendant must pay for drug/alcohol testing must be orally pronounced. Douchard v. State, 4D22-286 (2/22/23)

https://4dca.flcourts.gov/content/download/860696/opinion/220286_DC08_02222023_095659_i.pdf

PROBATION-CONDITIONS: Time limits for compliance with conditions of probation need not be orally pronounced. Douchard v. State, 4D22-286 (2/22/23)

https://4dca.flcourts.gov/content/download/860696/opinion/220286_DC08_02222023_095659_i.pdf

PROBATION-CONDITIONS: Requirement that Defendant provide prescriptions to PO in furtherance of the no-non-prescribed controlled substances condition does not need to be orally pronounced. Douchard v. State, 4D22-286 (2/22/23)

https://4dca.flcourts.gov/content/download/860696/opinion/220286_DC08_02222023_095659_i.pdf

PROBATION-CONDITIONS: Specific time parameters to complete conditions of probation need not be orally pronounced. Although the conditions should be clearly set out and must mean what they say, every detail need not be spelled out and the language should be interpreted in its

common, ordinary usage. A probationer who has been given the privilege of being placed on probation, in lieu of serving jail time, is put on adequate notice that the treatment program should be undertaken at the beginning of the probationary period and that, if he or she is discharged for nonattendance, he or she may not have another chance to complete it. The inclusion of a time deadline for providing proof of a prescription to the probation officer is a detail that does not require oral pronouncement. Douchard v. State, 4D22-286 (2/22/23)

https://4dca.flcourts.gov/content/download/860696/opinion/220286_DC08_02222023_095659_i.pdf

COSTS: Statutorily mandated costs may be imposed without notice to the defendant. However, the trial court is required to give the defendant notice of the imposition of discretionary costs and to make an oral pronouncement of such costs and their statutory basis. If this does not occur, and discretionary costs are made a condition of probation, they are to be stricken, and cannot be re-imposed. Douchard v. State, 4D22-286 (2/22/23)

https://4dca.flcourts.gov/content/download/860696/opinion/220286_DC08_02222023_095659_i.pdf

CONTINUANCE-NEW COUNSEL: Court may not deny a motion for a request to continue because of retention of new counsel without conducting any inquiry into the surrounding circumstances and making any findings to show that Defendant's right to counsel of his choice was not being arbitrarily denied. Court's statement that it was not going to allow "defendant[s to] run the show around here, picking new lawyers . . . and getting continuances" shows that the denial oc the request for a continuance was based on a general policy, rather than on the circumstances of the case. A wrongful denial of the right to be represented by a privately retained lawyer of defendant's choice is prejudicial per se. Perozo v. State, 4D22-527

(2/22/23)

https://4dca.flcourts.gov/content/download/860697/opinion/220527_DC08_02222023_095806_i.pdf

WILLIAMS RULE-PRIOR DUI; Even if the two DUIs were strikingly similar (Defendant sleeping in car), evidence of a prior DUI is not relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The previous episode did not tend to prove or disprove that he was driving or in actual physical control of the truck or was under the influence of a controlled substance to the extent his normal faculties were impaired. Absence of mistake or accident was not at issue. Gillig v. State, 4D22-1027 (2/22/23)

https://4dca.flcourts.gov/content/download/860699/opinion/221027_DC13_02222023_100049_i.pdf

WILLIAMS RULE-PRIOR DUI: Evidence of a prior, similar DUI is not admissible to rebut the defense that the Defendant was not impaired by medications. Whether he was impaired by the unknown dosage of the medications which he had taken in 2016 had no relevance to whether he was impaired by the unknown dosage of the medication which he took five years later. "Taken to its logical extreme, the state's position would open the floodgates to propensity evidence anytime a defendant denied that alcohol or controlled substances found in his system caused behavior that is otherwise consistent with impairment by those substances, so long as there were some points of similarity between the prior and current episodes, which occur often are in DUI cases." Gillig v. State, 4D22-1027 (2/22/23)

https://4dca.flcourts.gov/content/download/860699/opinion/221027_DC13_02222023_100049_i.pdf

EVIDENCE-OPENED THE DOOR: Defendant did not open the door to evidence about his prior DUI by testifying that his medicine did not make him sedated or sleepy, The "opening the door" theory of admitting otherwise inadmissible evidence of prior bad acts, requires that the defense must first offer misleading testimony or make a specific factual assertion which the state has the right to correct so that the jury will not be misled. State cannot ask a series of impermissible questions concerning prior acts of misconduct on cross-examination, and then claim that the defendant opened the door by answering the impermissible questions. Gillig v. State, 4D22-1027 (2/22/23)

https://4dca.flcourts.gov/content/download/860699/opinion/221027_DC13_02222023_100049_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Parking in a no-parking zone provides probable cause for a traffic stop. Officer may perform an investigatory stop on a car parked in a no-parking zone. State v. Hickman, 6D23-431 (2/17/23)

https://6dca.flcourts.gov/content/download/860355/opinion/230431_DC13_02172023_092800_i.pdf

BINDING PRECEDENT: "We are unbound by our sister courts' precedent, including any prior Second or Fifth District decisions. . .[A] sister district's opinion is merely persuasive." State v. Hickman, 6D23-431 (2/17/23)

https://6dca.flcourts.gov/content/download/860355/opinion/230431_DC13_02172023_092800_i.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Hall, which disallowed a bright-line test for intellectual disability for ineligibility for the death penalty, does not apply retroactively. Case law to the contrary had been receded

from. Walls v. State, SC22-72 (2/16/23)

https://supremecourt.flcourts.gov/content/downlo, ad/860247/opinion/sc22-72.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant with an average IQ of 98 to 100, but who has been diagnosed with fetal alcohol spectrum disorder with prenatal alcohol exposure, is not intellectually disabled from eligibility for the death penalty. Dillbeck v. Dixon, SC23-190 (2/16/23)

https://supremecourt.flcourts.gov/content/download/860248/opinion/sc23-190.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY-NEWLY DISCOVERED EVIDENCE: An intellectual disability claim that is based on newly discovered evidence must be filed within one year of the date upon which the claim became discoverable through due diligence. New opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not generally considered newly discovered evidence. Dillbeck v. Dixon, SC23-190 (2/16/23)

https://supremecourt.flcourts.gov/content/download/860248/opinion/sc23-190.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY-NEWLY DISCOVERED EVIDENCE: Belated attacks on a conviction that has been final for over 40 years fall well short of the necessary showing, particularly where the proposed vehicle for those attacks is a newly discovered evidence claim under rule 3.850 that cannot meet the applicable due-diligence requirement. Dillbeck v. Dixon, SC23-190 (2/16/23)

https://supremecourt.flcourts.gov/content/download/860248/opinion/sc23-190.pdf

CRUEL AND UNUSUAL PUNISHMENT-DEATH PENALTY-DELAY: 30 years on death row awaiting execution does not violate the Cruel and Unusual Punishments. Dillbeck v. Dixon, SC23-190 (2/16/23)

https://supremecourt.flcourts.gov/content/download/860248/opinion/sc23-190.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Eighth Amendment does not require a unanimous jury recommendation of death. Dillbeck v. Dixon, SC23-190 (2/16/23)

https://supremecourt.flcourts.gov/content/download/860248/opinion/sc23-190.pdf

JOA: A motion for judgment of acquittal should be granted only when it is apparent that no legally sufficient evidence has been submitted under which a jury could find a verdict of guilty. Wentworth v. State, 1D21-1773 (2/15/23)

https://1dca.flcourts.gov/content/download/860209/opinion/211773_DC05_02152023_141544_i.pdf

STAND YOUR GROUND: Defendant's SYG is properly denied where evidence establishes that Defendant had blood on his hands, the victim had serious injuries to his head when he woke up in the hospital, when one witness said that Defendant was "acting crazy" and repeatedly hit the victim over the head with a candlestick, with blood everywhere, and Defendant's only injury was a small abrasion to his right hand. Alqadi v. State, 1D21-

2914 (2/15/23)

https://1dca.flcourts.gov/content/download/860213/opinion/212914_DC05_02152023_142612_i.pdf

WRITTEN THREAT-MENS REA: Court erred in determining that Child's intent was irrelevant to the crime of Making a Written Threat where Child posted "at this point I might just start killing people" followed shortly after by "let me stop its just a prank." The statute only applies to "true threats." T.R.W. a Child v. State, 4D21-2396 (2/15/23)

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13_02152023_095540_i.pdf

WRITTEN THREAT-MENS REA: A communication should not be determined to be a threat based on whether a reasonable person would view the communication as a threat; a defendant must know that he is transmitting a communication, and that he intends it to be a threat. "[A] 'reasonable person' standard is a familiar feature of civil liability in tort law, but . . .[h]aving liability turn on whether a 'reasonable person' regards the communication as a threat—regardless of what the defendant thinks—'reduces culpability on the all-important element of the crime to negligence.'" T.R.W. a Child v. State, 4D21-2396 (2/15/23)\

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13_02152023_095540_i.pdf

WRITTEN THREAT-MENS REA: A mens rea element must be read into §836.10. A defendant must have intended to make a true threat, namely that he made a communication with the knowledge that it will be viewed as a

threat. To prove the crime, the trier of fact must find that the defendant transmitted a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. T.R.W. a Child v. State, 4D21-2396 (2/15/23)

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13_02152023_095540_i.pdf

MENS REA; The fact that a statute does not specify any required mental state, does not mean that none exists. The general rule is that a guilty mind is a necessary element in crime. Criminal statutes are generally interpreted to include broadly applicable scienter requirements, even where the statute by its terms does not contain them. T.R.W. a Child v. State, 4D21-2396 (2/15/23)

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13_02152023_095540_i.pdf

VOP: It is a due process violation and fundamental error to revoke probation for violations not alleged in the affidavit of violation of probation. T.R.W. a Child v. State, 4D21-2396 (2/15/23)

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13_02152023_095540_i.pdf

VOP: Where Child is charged with violation of probation for failing to complete his community service hours, Court may not find the Child to be in violation for failing to report the service hours. Due Process does not allow Court to infer that failing to complete the hours means that he never completed them. T.R.W. a Child v. State, 4D21-2396 (2/15/23)

https://4dca.flcourts.gov/content/download/860158/opinion/212396_DC13

_02152023_095540_i.pdf

INSANITY-DEFENDANT'S FUNDAMENTAL DECISION: Because the insanity defense is akin to a plea, a defendant retains the ultimate authority in the decision to assert the defense. Court erred by refusing to allow appellant to assert the defense, even when counsel does not want to pursue that defense. Hostzclaw v. State, 4D21-2447 (2/15/23)

https://4dca.flcourts.gov/content/download/860161/opinion/212557_DC13_02152023_095738_i.pdf

DEFENDANT'S DECISIONS: A defendant retains a fundamental right to determine certain overarching decisions in a criminal case but not the day-to-day trial tactics. A defendant has the ultimate authority to determine whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal. Concerning those decisions, an attorney must both consult with the defendant and obtain consent to the recommended course of action. The assertion of an insanity defense is a decision for which the ultimate authority to assert or not to assert the defense is the defendant's right to make. Hostzclaw v. State, 4D21-2447 (2/15/23)

https://4dca.flcourts.gov/content/download/860161/opinion/212557_DC13_02152023_095738_i.pdf

INSANITY: Court must allow Defendant to assert an insanity defense, even over the objection of his counsel, in his robbery of a yogurt shop with a toy gun case. Because pleading not guilty by reason of insanity is tantamount to a plea decision, which is a fundamental right of the defendant, the court erred in disallowing the presentation of an insanity defense, where some

evidence in the record might have tended to support the plea, such as, you know, robbing a yogurt shop with a toy gun and other indicia of mental illness. Hostzclaw v. State, 4D21-2447 (2/15/23)

https://4dca.flcourts.gov/content/download/860161/opinion/212557_DC13_02152023_095738_i.pdf

DUI-BLOOD DRAW: A driver is deemed to have consented to having blood drawn for testing for alcohol content or the presence of chemical substances or controlled substances where (1) there is reasonable cause to believe the driver has been driving under the influence of alcohol or chemical or controlled substances, (2) the driver appears for treatment at a hospital, and (3) the administration of a breath or urine test is impractical or impossible. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. Buonanotte v. State, 4D22-826 (2/15/23)

https://4dca.flcourts.gov/content/download/860173/opinion/220826_DC05_02152023_102428_i.pdf

DUI-BLOOD DRAW: A breath test is impossible or impractical where Defendant was yelling, thrashing, and refusing to cooperate for an extended period of time, and where Defendant was hospitalized. Great deference must be accorded to the trained medical personnel on scene in determining the practicality of obtaining a breath test. Officer's did not need to ask for consent for a blood draw where Defendant was in a stupor and unable to coherently respond to basic questions. Buonanotte v. State, 4D22-826 (2/15/23)

https://4dca.flcourts.gov/content/download/860173/opinion/220826_DC05_02152023_102428_i.pdf

MAN BITES DOG: "The charges in Count One of the information stem from a dispute between [Father] and his son regarding [Father] playing loud music. . .in the middle of the night in. . .the family home." Guida v. State, 5D22-2694 (2/15/23)

https://5dca.flcourts.gov/content/download/860110/opinion/222694_DC03_02152023_085356_i.pdf

STAND YOUR GROUND: The burden of proof is on the State when dealing with Stand Your Ground immunity motions; the State's burden is to prove by clear and convincing evidence that the statutory immunity does not apply. Guida v. State, 5D22-2694 (2/15/23)

https://5dca.flcourts.gov/content/download/860110/opinion/222694_DC03_02152023_085356_i.pdf

STAND YOUR GROUND: Court errs in denying SYG motion where it did not resolve the highly uncertain and conflicting accounts of the altercation, the Court's oral pronouncement did not suggest that it was convinced without hesitancy that the State had established that Defendant was not entitled to immunity. Guida v. State, 5D22-2694 (2/15/23)

https://5dca.flcourts.gov/content/download/860110/opinion/222694_DC03_02152023_085356_i.pdf

DEFINITION-"CLEAR AND CONVINCING EVIDENCE": Clear and convincing evidence is an intermediate level of proof that entails both a qualitative and quantitative standard. The evidence must be credible; the memories of witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy. Guida v. State, 5D22-2694 (2/15/23)

https://5dca.flcourts.gov/content/download/860110/opinion/222694_DC03_02152023_085356_i.pdf

PILL PUSHING-GOOD FAITH-JURY INSTRUCTION: Jury instruction that dispensing controlled substances outside the usual course of professional practice is to be judged objectively is incorrect. The dispensing physician's subjective belief is what matters. But error is harmless here because the evidence confirms that Defendant subjectively knew he was not prescribing pursuant to professional practices (it never helps that physician/Defendant sleeps with his addict patients). Ruan distinguished. USA v. Heaton, No. 20-12568 (11th Cir. 2/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012568.pdf

PILL PUSHING-JURY INSTRUCTION; Court properly instructed jury that Defendant properly instructed the jury that government must prove that he prescribed medication both outside the course of professional practice ***or*** (not ***and***) for no legitimate medical purpose. Put simply, a prescription for controlled substances is unlawful if it is issued (1) without a legitimate medical purpose or (2) by the physician acting outside the usual course of professional practice. USA v. Heaton, No. 20-12568 (11th Cir. 2/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012568.pdf

VAGUENESS-PILL PUSHING: 21 U.S.C. §841(a)–proscribing prescription outside "the usual course of his professional practice"–is not unconstitutionally vague. USA v. Heaton, No. 20-12568 (11th Cir. 2/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012568.pdf

PILL PUSHING-MENS REA: Mens rea should be incorporated into jury instructions for 21 U.S.C. §841(a) offenses. USA v. Heaton, No. 20-12568 (11th Cir. 2/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012568.pdf

DEFINITION-"LEGITIMATE MEDICAL PURPOSE": The phrases "legitimate medical purpose" and "usual course of professional practice" do not require statutory or regulatory definitions. Rather, they are phrases reasonably understandable by a physician and their factual application will necessarily entail a case-by-case analysis. USA v. Heaton, No. 20-12568 (11th Cir. 2/14/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202012568.pdf

SELF-DEFENSE-PTSD: Expert testimony that Defendant suffered from PTSD, proffered for the theory that Defendant perceived a heightened threat, is properly excluded. The conduct of a person acting in self defense is measured by an objective standard; the law does not ascribe a subjective standard as to a defendant's state of mind but concerns a reasonably prudent person's state of mind. "In other words, the peculiarity of a defendant's mental state is not germane." Conflict certified. Oquendo v. State, 2D21-2408 (2/10/23)

https://2dca.flcourts.gov/content/download/859857/opinion/212408_DC05_02102023_085209_i.pdf

COSTS-PER COUNT: Court properly imposes crime prevention funds per count as part of the court's costs assessment. Crime prevention fund costs shall be imposed on each offense for which a defendant is convicted. As such, the statute does not set a maximum cap per case; this particular

statutory cost is to be imposed per count. The bottom line is that whether a particular statutory cost is to be levied per count or per case must be determined on a statute-by-statute basis. X.S. v. State, 2D21-2751 (2/10/23)

https://2dca.flcourts.gov/content/download/859858/opinion/212751_DC05_02102023_085324_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Appellate counsel was ineffective for failing to challenge Defendant's the reclassification of his offence--attempted first-degree murder–to a life felony where he was a principal and did not possess the firearm. Stewart v. State, 6D23-1236 (2/10/23)

https://6dca.flcourts.gov/content/download/859875/opinion/231236_DC03_02102023_094107_i.pdf

POST-CONVICTION RELIEF: New scientific evidence that subdural hematoma may result from a low impact fall is not newly discovered evidence warranting a new trial for the homicide of a child with "vast and significant" injuries. An expert providing different opinions on the evidence produced at trial is not newly discovered evidence. Vega v. State, 6D23-1161 (2/10/23)

https://6dca.flcourts.gov/content/download/859874/opinion/231161_DC05_02102023_093751_i.pdf

PRISON RELEASEE REOFFENDER-APPRENDI: PRR designation may be made by the judge, not the jury. The date a defendant was released from prison or jail and the nature of the qualifying offense are ministerial in nature and thus do not require jury findings. Maye v. State, 6D23-1438 (2/10/23)

https://6dca.flcourts.gov/content/download/859876/opinion/231438_DC05

_02102023_094426_i.pdf

SEX OFFENDER REGISTRATION-HABEAS CORPUS: A person seeking federal habeas corpus relief from a state court judgment must be in custody. "Custody" generally means physical detention or confinement. Lifetime sex offender registration does not constitute being in custody. Clements v. State, No. 21-12540 (11th Cir. 2/9/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112540.pdf

SEX OFFENDER REGISTRATION-REQUIREMENTS: Requirements of Florida sex offender registration summarized. Sex offenders must provide the state with all of their personal and identifying information, keep their registration up to date by report to their local sheriff's office in person every six months, reporting any changes with respect to a vehicle or residency, travel plans, employment, telephone numbers, email addresses, or internet identifiers. Clements v. State, No. 21-12540 (11th Cir. 2/9/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112540.pdf

SEX OFFENDER REGISTRATION-HABEAS CORPUS-CUSTODY (J. NEWSOM, J., CONCURRING): The definition of "custody," and the nebulous things-that-free-men-can-do standard that it prescribed confers nearly limitless discretion on individual judges. It should be returned to its ordinary meaning: An individual is "in custody" for habeas corpus purposes if, but only if, he is under close physical confinement. Clements v. State, No. 21-12540 (11th Cir. 2/9/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112540.pdf

APPEAL-MOOTNESS: Where one is challenging the legality of his sentence and he completes the sentence during the pendency of the appeal. the appeal may be dismissed as moot. Blackwell v. State, 1D21-1463 (2/8/23)

https://1dca.flcourts.gov/content/download/859688/opinion/211463_DA08_02082023_141046_i.pdf

SEXUAL BATTERY: Defendant is properly convicted of sexual battery with a threat of force–which requires a threat of serious bodly injury–where victim (a fellow inmate) had a black eye. Whether Defendant's threatened use of force was likely to cause serious personal injury or pain is a question for the jury. Argument that jail protocols would make more serious infliction of injury impossible is nonavailing. Givens v. State, 1D21-2900 (2/8/23)

https://1dca.flcourts.gov/content/download/859690/opinion/212900_DC05_02082023_141440_i.pdf

FROM THE FILE MARKED "D-UH": District Court of Appeal lacks appellate jurisdiction over decisions made by the Florida Supreme Court. Townsend v. State, 1D22-800 (2/8/23)

https://1dca.flcourts.gov/content/download/859694/opinion/220800_DA08_02082023_142125_i.pdf

MANDAMUS: It is well settled that mandamus is the proper remedy to compel a court to exercise its jurisdiction when such court possesses jurisdiction and refuses to exercise it. Appellate court can compel an inferior court to act in the exercise of its lawful jurisdiction, but it cannot direct how it should act. Weed v. State, 1D23-42 (2/8/23)

https://1dca.flcourts.gov/content/download/859704/opinion/230042_DA08_02082023_143525_i.pdf

CORPUS DELICTI: . No person can be found guilty of a crime until the State establishes that a crime occurred. Before an admission may be allowed into evidence, the State has the burden of offering direct or circumstantial evidence independent of the admission that establishes the corpus delicti of the crime charged. Juvenile cannot be found delinquent for possession by a delinquent of a firearm based on his overheard admission to his mother that the gun in a box in a car was his. X.S. v State, 2D21-2172 (2/8/23)

https://2dca.flcourts.gov/content/download/859612/opinion/212712_DC13_02082023_084400_i.pdf

CONSTRUCTIVE POSSESSION: To prove constructive possession of a firearm the State must produce evidence establishing that 'the defendant had knowledge of the presence of the gun and the ability to exercise control over it. Proximity to contraband in a jointly occupied car is not sufficient to sustain a conviction based on constructive possession. X.S. v State, 2D21-2172 (2/8/23)

https://2dca.flcourts.gov/content/download/859612/opinion/212712_DC13_02082023_084400_i.pdf

CONSTRUCTIVE POSSESSION-CORROBORATION RULE: The Corroboration Rule-Defendant's statement can establish the corpus delicti if there is substantial evidence of the trustworthiness of the statement–is not the law. "Whether X.S.'s statements to his mother are spontaneous statements, excited utterances, statements against interest, or some other hearsay exception, they remain the only evidence of constructive firearm

possession." They may not be used to establish corpus delicti. X.S. v State, 2D21-2172 (2/8/230

https://2dca.flcourts.gov/content/download/859612/opinion/212712_DC13_02082023_084400_i.pdf

POST CONVICTION RELIEF-RESTITUTION: Entry of a restitution order without a hearing is in illegal order which may be raised under R. 3.800. Mesa v. State, 3D21-960 (2/8/23)

https://3dca.flcourts.gov/content/download/859637/opinion/211960_DC08_02082023_100555_i.pdf

JOA-BATTERY ON LAW ENFORCEMENT OFFICER: Officer was in lawful performance of duty where he took Defendant, a teen-age girl, into custody after she gave disturbing answers to why she was outside school at night. A welfare check of a girl, at night, sitting in front of a closed school located in a high-crime area, who was evasive, responded with false or incomplete information and implausible or inconsistent explanations for her presence, is a lawful basis for taking her into custody when she tried to flee. R.A. v. State, 3D22-546 (2/8/23)

https://3dca.flcourts.gov/content/download/859640/opinion/220546_DC05_02082023_101448_i.pdf

SELF-REPRESENTATION-FARETTA: There is no requirement to revisit Faretta every time the offer of counsel is renewed and rejected, but Court must renew offer of counsel to the defendant at the sentencing hearing. Barrett v. State, 4D21-1693 (2/8/23)

https://4dca.flcourts.gov/content/download/859646/opinion/211693_DC08_02082023_094749_i.pdf

DISCOVERY-RICHARDSON HEARING: Court must hold a Richardson hearing when a potential discovery violation occurs. Whether the discovery violation is intentional or harmful is one of the purposes of conducting a Richardson hearing, and a trial court's belief that a discovery violation is unintentional or harmless cannot act as a substitute for holding a hearing. The fact that the trial prosecutor here is unaware of the existence of the evidence (here, text messages) is not dispositive. Etienne v. State, 4D21-2599 (2/8/23)

https://4dca.flcourts.gov/content/download/859647/opinion/212599_DC05_02082023_094946_i.pdf

DOUBLE JEOPARDY-POSSESSION OF FIREARM BY FELON: Defendant's consent to separate trials obviated any double jeopardy or collateral estoppel concerns. Ealy v. State, 4D21-3002 (2/8/23)

https://4dca.flcourts.gov/content/download/859648/opinion/213002_DC05_02082023_095050_i.pdf

POST CONVICTION RELIEF-FACTUAL BASIS: Defendant is entitled to a hearing on claim that that counsel was ineffective for failing to advise him that the factual basis was insufficient to support the quantity element of the conspiracy to traffic in hydromorphone charge, particularly where the indictment limits the conspiracy to traffic offense to one date and one victim, and that prescription was lower that the threshold trafficking quantity. Obermeyer v. State, 4D22-487 (2/8/23)

https://4dca.flcourts.gov/content/download/859650/opinion/220487_DC13_02082023_095623_i.pdf

RESTITUTION: Documentary evidence is not always a prerequisite to

establishing an amount for an award of restitution. Love v. State, 4D22-1009 (2/8/23)

https://4dca.flcourts.gov/content/download/859653/opinion/221009_DC05_02082023_095830_i.pdf

BOND-PRETRIAL DETENTION: A violation of pretrial release conditions alone cannot supply a basis for pretrial detention without a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process. Burns v. Mascara, Sheriff, 4D22-3346 (2/8/23)

https://4dca.flcourts.gov/content/download/859659/opinion/223346_DC03_02082023_100939_i.pdf

SEARCH AND SEIZURE-STOP-ILLEGAL TURN: Officer's mistaken belief that Defendant was in a left turn lane and the subsequent stop for not turning–officer seems to have thought Defendant delayed him getting to Wawa for his morning coffee–does not justify the stop. Littles v. State, 5D22-944 (2/7/23)

https://5dca.flcourts.gov/content/download/859585/opinion/220944_DC13_02072023_141852_i.pdf

SEARCH AND SEIZURE-STOP-ILLEGAL TURN: An officer's subjective view is not relevant where the evidentiary record demonstrates it is untenable. "Police officers are people, and people make mistakes all the time. That said, mistaken beliefs are not automatically forgiven simply because officers are human and make mistakes; if that were the standard, all mistakes would be overlooked." But stopping Defendant in a non-turn

lane for not turning is not objectively reasonable. "[T]he officer's insistence that he was in a left-turn lane, despite all other evidence to the contrary, is not given weight on the scales of objective reasonableness." Littles v. State, 5D22-944 (2/7/23)

https://5dca.flcourts.gov/content/download/859585/opinion/220944_DC13_02072023_141852_i.pdf

FIRST STEP: The First Step Act permits a court that imposed a sentence for a covered offense to reduce a sentence as if §§2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed. §2(a) increased the quantity of crack cocaine necessary to trigger the mandatory penalties; a defendant now must traffic at least 280 grams of crack cocaine to trigger the higher penalties. USA v Jackson, No. 19-11955 (11th Cir. 2/3/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911955.rem.pdf

FIRST STEP-APPRENDI: Defendant is ineligble for a First Step sentence reduction where the drug quantity (287 grams) has already been determined by the judge, not a jury. The district court is bound by the judge's earlier drug-quantity finding. An Apprendi error that was correctible, but not corrected, on direct appeal may not be asserted on a First Step reduction motion. USA v Jackson, No. 19-11955 (11th Cir. 2/3/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911955.rem.pdf

YA SNOOZE, YA LOSE: "Jackson had a remedy. After Apprendi was decided, he could have challenged his sentence as erroneous. . . Other defendants took this approach. He apparently did not. . . The First Step Act does not offer Jackson a redo of his direct appeal." USA v Jackson, No. 19-

11955 (11th Cir. 2/3/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201911955.rem.pdf

VOP: Trial court must enter a formal order of violation of probation that lists the specific conditions which the defendant violated. An order stating only that "probationer has not properly conducted him/herself and has violated the conditions of probation in a material respect." is legally insufficient. Fernald v. State, 2D22-892 (2/3/23)

https://2dca.flcourts.gov/content/download/859353/opinion/220892_DC05_02032023_083812_i.pdf

POST CONVICTION RELIEF: Unlike R. 3.850(h)(2), R. 3.800(a)(2) provides that a court may dismiss a second or successive motion only if it finds that the motion fails to allege new or different grounds and the prior determination was on the merits. Defendant is not required to demonstrate why a new and different claim was not previously raised. Weston v. State, 2D22-1216 (2/3/23)

https://2dca.flcourts.gov/content/download/859355/opinion/221216_DC13_02032023_083919_i.pdf

SEARCH AND SEIZURE-PHONE: A warrantless seizure of personal property is *per se* unreasonable under the Fourth Amendment. Officers lack probable cause to seize Defendant's phone where the detective knew that the victim was dead, that the trail of evidence led to Defendant's apartment, that Defendant was previously acquainted with the victim, and that Defendant had been "less than forthcoming" during an earlier interview. But error harmless. Jefferson v. State, 6D23-1208 (2/3/23)

https://6dca.flcourts.gov/content/download/859380/opinion/231208_DC05

_02032023_111727_i.pdf

ARGUMENT: State's argument-contrasting the officer to the Defendant–that "Deputy Worth has not been convicted of a felony" was improper (facts not in evidence), but was brief and isolated, and therefore harmless. Brand v. State, 6D23-1217 (2/3/23)

https://6dca.flcourts.gov/content/download/859381/opinion/231217_DC05_02032023_112016_i.pdf

RULES-AMENDMENT-FAIRNESS-DIVERSITY (J. LABARGA, DISSENT): "On its own motion, this Court has expressly removed theterms "fairness" and "diversity" from the course topics that Florida's state court judges may use to satisfy their continuing judicial education ethics requirement. . .[T]his Court sees fit to eliminate an express consideration of fairness and diversity from the continuing judicial education curriculum. . .[S]uch a decision at this level of institutional gravity is, in my opinion, unwarranted, untimely, and ill-advised." In Re: Amendments to Florida Rule of General Practice and Judicial Administration 2.320, SC23-114 (9/2/23)

https://supremecourt.flcourts.gov/content/download/859291/opinion/sc23-114.pdf

COSTS: Discretionary costs must be orally pronounced at sentencing because such costs may not be imposed without affording the defendant notice and an opportunity to be heard. Martina v. State, 1D20-3776 (2/1/23)

https://1dca.flcourts.gov/content/download/859215/opinion/203776_DC05_02012023_140744_i.pdf

VOP-HEARSAY: In VOP hearing, there is no *per se* rule that the State must always present independent, nonhearsay evidence establishing the identity of the probationer as the perpetrator of a new law offense. Non-hearsay evidence does not have to independently establish that Defendant committed the offenses that were the basis of the VOP. The hearsay statement of his ex girlfriend, (that Defendant had battered her) combined with non-hearsay evidence corroborating her statement (injuries, broken door, debris on stairs), was enough proof to sustain the probation revocation. Sims v. State, 1D21-869 (2/1/23)

https://1dca.flcourts.gov/content/download/859218/opinion/210869_DC05_02012023_141353_i.pdf

APPEAL-PRESERVATION: A defendant who pleads nolo contendere with no express reservation of the right to appeal a legally dispositive issue shall have no right to a direct appeal. There is no fundamental-error exception to the preservation requirement. Brown v. State, 1D21-3233 (2/1/23)

https://1dca.flcourts.gov/content/download/859220/opinion/213233_DC05_02012023_141832_i.pdf

APPEAL-COUNSEL-CONFLICT: Public Defender's motion to withdraw from representing Defendant on appeal (he had been represented by Regional Counsel at trial), alleging that one of the PD's lawyers at some time in the past had represented a witness who then testified for the State at Defendant's trial, is legally insufficient. §27.5303 requires certification that during the representation of two or more defendants, the interests of those accused are so adverse or hostile that either all or none of them can be counseled by the public defender without conflict of interest. Fla. Bar Rule 4-1.16(a), which requires withdrawal where there is a substantial risk that the representation will be materially limited by a personal interest of the Assistant PD, is not implicated, and even if it were, such a conflict would not

be imputed to the entire PD Office. Farmer v. State, 1D22-3273 (2/1/23)

https://1dca.flcourts.gov/content/download/859222/opinion/223273_NOND_02012023_142521_i.pdf

APPEAL-COUNSEL-CONFLICT: A motion to withdraw filed in appellate court must do more than simply recite the fact that there was a conflict in the trial court proceeding. The motion should either describe the APD's personal conflict and how that conflict would materially limit her handling of the client's criminal appeal, or it should make specific averments directed to application of one of the imputable conflicts identified in rules 4-1.7 and 4-1.9. Farmer v. State, 1D22-3273 (2/1/23)

https://1dca.flcourts.gov/content/download/859222/opinion/223273_NOND_02012023_142521_i.pdf

VETERAN'S COURT: Admission and participation in a pretrial intervention program, including Veteran's Court, requires consent by the state attorney. State v. Mancuso, 4D22-808 (2/1/23)

https://4dca.flcourts.gov/content/download/859194/opinion/220808_DC03_02012023_101458_i.pdf

VETERAN'S COURT: The decision to charge and prosecute is an executive function, and the state attorney has complete discretion in deciding whether and how to prosecute. The decision to divert a defendant into the Florida pretrial intervention program is within the prosecutor's function of charging and prosecuting. State v. Mancuso, 4D22-808 (2/1/23)

https://4dca.flcourts.gov/content/download/859194/opinion/220808_DC03_02012023_101458_i.pdf

DEFINITION- "JURISDICTION": The word "jurisdiction" ordinarily refers to subject matter or personal jurisdiction, but there is a third meaning--case jurisdiction--which involves the power of the court over a particular case that is within its subject matter jurisdiction. State v. Mancuso, 4D22-808 (2/1/23)

https://4dca.flcourts.gov/content/download/859194/opinion/220808_DC03_02012023_101458_i.pdf

POST CONVICTION RELIEF: Court must grant leave to amend an insufficiently pled motion for post-conviction relief. Thompson v. State, 4D22-136 (2/1/23)

https://4dca.flcourts.gov/content/download/859195/opinion/221136_DC08_02012023_101609_i.pdf

JANUARY 2023

APPEAL-CONTEMPT: A finding of contempt absent the imposition of sanctions is not appealable. A contempt order must be accompanied by a noncontingent sanction to be directly appealable. In Re: Grand Jury Subpoena, FGJ-21-01-MIA (1th Cir. 1/31/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113651.pdf

DEATH PENALTY-LETHAL INJECTION: Defendant fails in his claim that the medication gabapentin had reduced his brain's receptiveness to sedatives, and that lethal injection as a means of execution is cruel and

unusual because he failed to plausibly allege that no alternative injection procedure could constitutionally be performed. So, we reverse in part, affirm in part, and remand for further proceedings. Nance v. Commissioner, Georgia DOC, No. 20-11393 (11th Cir. 1/30/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011393.opn.remand.pdf

DEATH PENALTY-TIME TO CHALLENGE: Defendant has two years from the date he becomes aware that a method of execution might be cruel or unusual as applied. The limitations period in an as-applied challenge does not begin to run until the facts which would support a cause of action are apparent or should be apparent o a person with a reasonably prudent regard for his rights. Nance v. Commissioner, Georgia DOC, No. 20-11393 (11th Cir. 1/30/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202011393.opn.remand.pdf

LESSER INCLUDED: Jury instructions on category two permissive lesser-included offenses must be given when the pleadings and the evidence demonstrate that the lesser offense is included in the offense charged. Defendant charged with robbery is entitled to an instruction on the lesser included offense of robbery by sudden snatching. Corona v. State, 2D21-1162 (1/27/23)

https://2dca.flcourts.gov/content/download/858856/opinion/211162_DC08_01272023_084000_i.pdf

PRINCIPAL-JOA: Where witness saw three juveniles together, two of whom burglarized cars, and all three of whom fled from the police, Judgment

of acquittal is requiered. Proof of Defendant's presence at the scene of the crime, knowledge of the crime, and flight from the scene cannot support beyond a reasonable doubt the conclusion that he was a principal to burglary. N.D. III v. State, 2D21-2660 (1/27/23)

https://2dca.flcourts.gov/content/download/858860/opinion/212660_DC13_01272023_084115_i.pdf

DETAINER: The proper vehicle to challenge a detainer is a petition for writ of mandamus. Susick v. State, 1D 1-2070 (1/25/23)

https://1dca.flcourts.gov/content/download/858716/opinion/212070_DC05_01252023_101538_i.pdf

DETAINER: A detainer is an informal request filed by a criminal justice agency asking the institution where the prisoner is incarcerated either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent. Generally, under such circumstances, a prisoner is not in custody pursuant to the detainer except when the prisoner is subject to release but is being held because a detainer has been lodged. Susick v. State, 1D 1-2070 (1/25/23)

https://1dca.flcourts.gov/content/download/858716/opinion/212070_DC05_01252023_101538_i.pdf

DETAINER: A state court has no power to set aside a state detainer on a prisoner in federal custody, even if the detainer prevents him from participating in certain programs. A state court has no power to interfere with federal custody. Susick v. State, 1D 1-2070 (1/25/23)

https://1dca.flcourts.gov/content/download/858716/opinion/212070_DC05_01252023_101538_i.pdf

DETAINER: There is no mechanism by which a defendant can force the circuit court to dispose of the violation of probation while he is in prison on other charges. Susick v. State, 1D 1-2070 (1/25/23)

https://1dca.flcourts.gov/content/download/858716/opinion/212070_DC05_01252023_101538_i.pdf

DETAINER: A detainer is a request, not an order, and concerns an agreement between two executive branch agencies. Susick v. State, 1D 1-2070 (1/25/23)

https://1dca.flcourts.gov/content/download/858716/opinion/212070_DC05_01252023_101538_i.pdf

POST-CONVICTION RELIEF: A defendant's decision not to testify at trial does not waive a later claim that her trial counsel improperly advised her not to testify. Carballo v. State, 3D21-1583 (1/25/23)

https://3dca.flcourts.gov/content/download/858695/opinion/211583_NOND_01252023_101119_i.pdf

POST-CONVICTION RELIEF: A trial court may not summarily deny a R. 3.850 motion on the ground that trial counsel made rulea reasonable tactical decision, unless it is so obvious from the face of the record that trial counsel's strategy . . . is very clearly a tactical decision. Carballo v. State, 3D21-1583 (1/25/23)

https://3dca.flcourts.gov/content/download/858695/opinion/211583_NOND_01252023_101119_i.pdf

POST-CONVICTION RELIEF: A trial judge is ordinarily not permitted to rule on a matter based on the credibility of witnesses which the judge has not heard, including in postconviction proceedings. Carballo v. State, 3D21-1583 (1/25/23)

https://3dca.flcourts.gov/content/download/858695/opinion/211583_NOND_01252023_101119_i.pdf

POST-CONVICTION RELIEF-ADVICE TO NOT TESTIFY: Defendant is entitled to a hearing on claims that counsel misadvised her not to testify based on inconsistencies in her prior statements where her defense was self-defense, and the only evidence to support that defense would have been her testimony. Carballo v. State, 3D21-1583 (1/25/23)

https://3dca.flcourts.gov/content/download/858695/opinion/211583_NOND_01252023_101119_i.pdf

POST-CONVICTION RELIEF-ADVICE TO NOT TESTIFY: Defendant was not prejudiced, even if counsel's advice to them not to testify was deficient, where trial testimony established that he had stabbed to death the victim in the presence of her children. Bernabeau v. State, 3D22-91 (1/25/23)

https://3dca.flcourts.gov/content/download/858698/opinion/220091_DC05_01252023_101556_i.pdf

INSANITY: The lack of capacity to appreciate the criminality of one's conduct does not constitute insanity. Holmes v. State, 3D22-1363 (1/25/23)

https://3dca.flcourts.gov/content/download/858702/opinion/221363_DC08_01252023_102115_i.pdf

VOP-SENTENCING CONSIDERATIONS: The bright line rule that a trial court may not consider a subsequent arrest without conviction during sentencing does not apply to VOP proceedings. A trial court's decision on a VOP is properly informed by a com lete understanding of the Defendant's behavior under supervision. Sentencing and the attendant considerations at a revocation hearing are different than at a sentencing on a substantive offense. Randolph v. State, 4D21-3052 (1/25/23)

https://4dca.flcourts.gov/content/download/858705/opinion/213052_DC05_01252023_095018_i.pdf

PRISON RELEASEE REOFFENDER: Facts found by the judge under the Prison Releasee Reoffender Act are not elements of the offense and are within the prior conviction exception to Apprendi. Vaughner v. State, 4D22-2169 (1/25/23)

https://4dca.flcourts.gov/content/download/858711/opinion/222169_DC05_01252023_101324_i.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE-SUPERVISED RELEASE: Courts should consider the §3553(a)(2)(A) factors when imposing a prison sentence after revoking supervised release. USA v. King, No. 21-12963 (11th Cir. 1/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112963.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE-SUPERVISED RELEASE: A district court imposes a substantively unreasonable sentence when it (1) fails to afford consideration to relevant §3553(a) factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the

proper factors. Although a major variance should be supported by a more significant justification than a minor variation, a sentence outside of the prescribed guideline range is not presumed to be unreasonable. A 3 year sentence upon violation of supervised release where the guideline recommendation is 6-10 months it is not substantively unreasonable. USA v. King, No. 21-12963 (11th Cir. 1/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112963.pdf

APPEAL-ISSUE-PRESERVATION: Any issue that an appellant wants the Court to address should be specifically and clearly identified in the brief under an appropriate heading and in the statement of issues presented for review. USA v. King, No. 21-12963 (11th Cir. 1/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112963.pdf

SENTENCING CONSIDERATIONS-REHABILITATION: A court may not impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation. USA v. King, No. 21-12963 (11th Cir. 1/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112963.pdf

APPEAL-ISSUE-PRESERVATION-REHABILITATION: Appellant may not argue on appeal that a sentence is not substantively reasonable because the court improperly ordered incarceration to ensure rehabilitation where that specific grounds was not articulated in the statement of issues. "Despite any gray area between procedural and substantive errors, the upshot is that a defendant must specifically challenge consideration of rehabilitation to preserve the issue in district court and on appeal." USA v. King, No. 21-12963 (11th Cir. 1/23/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112963.pdf

WEIRD WORD #1: "instantiation" Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

WEIRD WORD #2: "freewheelingness" Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

MISTAKEN IDENTITY-WRONGFUL DETENTION: An individual detained for three days based on mistaken identity for a valid arrest warrant has no claim for relief under the Fourteenth Amendment for his over-detention. Regardless of whether errors are made, the Fourteenth Amendment is not a constitutional bulwark against a few-days detention. Even though the Due Process Clause affords protections to people deprived of their liberty, those protections do not extend to people with the same name as a person for whom there exists an arrest warrant, regardless of differences in the physical descriptions. Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

PRECEDENT: "If we treated every factual distinction with a precedential decision as necessarily material, the doctrine of precedent would lose most of its function. . .Judges would be freed from the requirement that they apply the law, so long as they could unearth any factual discrepancy between binding caselaw and the case they wanted to decide a different way." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

QUALIFIED IMMUNITY (J. J0RDAN, CONCURRING): "[T]he Supreme Court's governing (and judicially-created) qualified immunity jurisprudence is far removed from the principles existing in the early 1870s, when

Congress enacted what is now 42 U.S.C. § 1983. . .If federal statutes are supposed to be interpreted according to ordinary public meaning and understanding at the time of enactment,. . . and if §1983 preserved common-law immunities existing at the time of its enactment,. . . the qualified immunity doctrine we have today is regrettable. Hopefully one day soon the Supreme Court will see fit to correct it." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

WRONGFUL DETENTION (J. J0RDAN, CONCURRING): "David Sosa must have felt like he had been dropped into a Kafka novel, for 'without having done anything truly wrong, he was arrested.' . . . What happened to Sosa was, in a word, awful." But. . . Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

SUBSTANTIVE DUE PROCESS/PRIVILEGES AND IMMUNITIES (J. J0RDAN, CONCURRING): "Substantive due process is a slippery, shape-shifting doctrine. It can take on any of a number of different forms. In what is, I suppose, its most conventional instantiation, it's the method by which the Supreme Court has gradually 'incorporated' most of the substantive protections of the Bill of Rights against the states through the Fourteenth Amendment's Due Process Clause. . . Some observers—including me—have criticized the Court's reliance on substantive due process even for that limited purpose and have urged it to refocus its attention on the long-lost Privileges or Immunities Clause." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

SUBSTANTIVE DUE PROCESS (J. J0RDAN, CONCURRING): "[S]ubstantive due process has (too) often been invoked as a failsafe doctrine of sorts—a way to plug some perceived gap in the written Constitution and thereby rectify some alleged unfairness that the document's

terms, for one reason or another, just don't address. 'Surely,' the thinking goes, 'the Constitution doesn't permit _____!'. . .I'm a confessed (and longtime) skeptic of substantive due process—in all its various forms. . .[S]ubstantive due process has no footing in constitutional text. Quite the contrary, in fact, it makes a hash of the provision from which it purportedly emanates." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

SUBSTANTIVE DUE PROCESS (J. J0RDAN, CONCURRING): "I'd be game for ditching substantive due process altogether and exploring what I think to be more promising—and principled—vehicles for protecting individual rights against state interference. Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

SUBSTANTIVE DUE PROCESS (J. J0RDAN, CONCURRING): "So, to be clear, while substantive due process is bad on its best day, this case represents the doctrine at 'its abject worst.' . . .We're. . .being asked to use substantive due process as a constitutional gap-filler—to hold, in essence, that because what happened to David Sosa was unfair, it must violate the Constitution." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

SUBSTANTIVE DUE PROCESS (J. J0RDAN, CONCURRING): Not everything that stinks violates the Constitution." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

INJUSTICE (J. ROSENBAUM, DISSENTING): Everyone agrees that David Sosa is an innocent man. . . Yet police officers arrested and detained him in jail on a warrant for another man. . .[D]espite good reason to believe they had arrested the wrong man,. . .officials refused to confirm Sosa's. . .Faced with this sequence of events, my colleagues in the Majority wring their hands

and say too bad for Sosa but insist the Constitution allows it. . . According to these judges, no constitutional violation occurs until the detained person's speedy-trial rights are violated—that is, about a year or more later. . .A year in jail! And for no reason other than that law-enforcement officials refused to engage in less than a minute of work to confirm their prisoner's identity. This misguided view of the Constitution is horrifying." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

INJUSTICE (J. ROSENBAUM, DISSENTING): "[T]he warrant on which Sosa was arrested was 26 years old, from halfway across the country, and sought a person with a name thousands of people shared. On top of all this—and this is the kicker—Sosa also informed the deputies that the Martin County Sheriff's Office had previously mistakenly arrested him on the same wanted Sosa's warrant. Let that sink in: The Martin County Sheriff's Office had already made this same mistake once before. Despite this sea of urgently waving red flags signaling that Sosa was unlikely the wanted, allegedly crack-cocaine-trafficking Sosa, the deputies did nothing. . .So there Sosa sat." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

QUOTATION (J. ROSENBAUM, DISSENTING): "[T]he Constitution does not have an aircraft-carrier-sized loophole in its guarantee that no person shall be deprived of their liberty without due process of law." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

DICTA (J. ROSENBAUM, DISSENTING): "[T]here is dicta and then there is dicta, and then there is Supreme Court dicta." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23) https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

PROBABLE CAUSE (J. ROSENBAUM, DISSENTING): "At the risk of

stating the obvious, if only probable cause to believe that a crime was committed were required for an arrest, anyone could be arrested, without respect to who committed the crime." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

FOURTH AMENDMENT (J. ROSENBAUM, DISSENTING): "[B]lind adherence to past practices can, in the face of new technology, defy constitutional guarantees under the Fourth Amendment." Sosa v. Martin County, No. 20-12781 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.enb.pdf

MOTION TO DISMISS: Generally speaking, a claim that the indictment fails to state an offense must be asserted in a pre-trial motion, but a defendant may assert for the first time on appeal under the plain error doctrine that the indictment against him failed to charge federal offenses. USA v. Scott, No. 21-11467 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202111467.pdf

MEDICARE FRAUD: Testing which uses DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain kinds of cancer in the future, but do not actually test for cancer are not Medicare reimbursable. Defendant is properly convicted of Medicare fraud for billing for such tests. USA v. Scott, No. 21-11467 (11th Cir. 1/20/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202111467.pdf

RACKETEERING: Illegal harvesting of alligator eggs is not a proper predicate offense for racketeering (NOTE: statute has now been amended to encompass this crime), but the RICO conspiracy statute proscribes a defendant's agreement to participate in the conduct of the affairs of an enterprise, not a defendant's agreement to commit predicate acts. Beasley v. State, 2D19-4257 (1/20/23)
https://2dca.flcourts.gov/content/download/858299/opinion/194257_DC05

_01202023_081427_i.pdf

PREEMPTION: Fla. Stat. §379.3751(4) (a misdemeanor) does not preempt §379.409 (a felony). It is not unusual for a course of criminal conduct to violate laws that overlap yet vary in their penalties. Typically, preemption applies to a federal statute preempting a state statute or a state law preempting a local ordinance. Beasley v. State, 2D19-4257 (1/20/23)
https://2dca.flcourts.gov/content/download/858299/opinion/194257_DC05_01202023_081427_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Defendant's role as a farmhand (a "helper" and a "worker bee") in an illegal alligtor harvesting conspiracy supports a downward departure as a minor paricipant. Beasley v. State, 2D19-4257 (1/20/23)
https://2dca.flcourts.gov/content/download/858299/opinion/194257_DC05_01202023_081427_i.pdf

PRETRIAL HEARING: Court may nor proceed on VOP hearing while a motion to suppress is pending. Fla.R.Cr.P. 3.190(g)(3) requires the trial court to consider a motion to suppress evidence before hearing evidence. If the motion was not filed prior to trial, the trial court may entertain the motion or an appropriate objection at the trial. But counsel here acquiesced to proceeding with the hearing. Walker v. State, 2D21-2675 (1/20/23)

https://2dca.flcourts.gov/content/download/858302/opinion/212675_DC08_01202023_082137_i.pdf

VOP-EXCLUSIONARY RULE: The exclusionary rule applies in VOP proceedings. Walker v. State, 2D21-2675 (1/20/23)

https://2dca.flcourts.gov/content/download/858302/opinion/212675_DC08_01202023_082137_i.pdf

HFOSC: Court erred in sentencing Defendant as a violent felony offender

of special concern (VFOSC) without making written findings as to whether or not Defendant poses a danger to the community, and where Court's oral findings did not match any of the factors listed in §948.06(8)(e)1. Walker v. State, 2D21-2675 (1/20/23)
https://2dca.flcourts.gov/content/download/858302/opinion/212675_DC08_01202023_082137_i.pdf

STAND YOUR GROUND-CERTIORARI: An order summarily denying a motion asserting SYG immunity is reviewable by certiorari. Certiorari relief is appropriate SYG proceeding or the trial court's ruling is flawed by legal error. Jimenez v. State, 2D22-1792 (1/20/23)
https://2dca.flcourts.gov/content/download/858304/opinion/221792_DC03_01202023_082236_i.pdf

STAND YOUR GROUND-CERTIORARI: Under §776.012(2), a defendant who is engaged in unlawful activity has a duty to retreat and must use all reasonable means in his power, consistent with his own safety, before his use of deadly force will be justified. Defendant who was carrying a concealed firearm (unlawful activity) is nonetheless entitled to a SYG hearing the motion alleged that circumstances precluded any ability to retreat. That additional allegation entitled Defendant to an evidentiary hearing Jimenez v. State, 2D22-1792 (1/20/23)
https://2dca.flcourts.gov/content/download/858304/opinion/221792_DC03_01202023_082236_i.pdf

PHOTO LINE-UP: Photo line-up in which Defendant's facial tattoo and scar had been digitally erased, and black shirts were digitally added to other photos, is not unduly suggestive. Bowen v. State, 5D22-1546 (1/20/23)
https://5dca.flcourts.gov/content/download/858307/opinion/221546_DC05_01202023_084602_i.pdf

CAREER OFFENDER-INCHOATE OFFENSE: Conspiracy to possess with intent to distribute a controlled substance does not qualify as a "controlled

substance offense," a predicate offense for the career offender sentencing enhancement. The definition of "controlled substance offense" in §4B1.2(b) does not include inchoate offenses, notwithstanding Application Note 1. Prior precedents overruled. USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

INCHOATE OFFENSES: The three inchoate offenses are attempt, conspiracy, and solicitation. USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

SENTENCING GUIDELINES-INTERPRETATION: The Commentary cannot expand the interpretation of unambiguous sentencing guidelines, Application Note 1 in §4B1.2(b), which seems to include conspiracy and attempts in the definition of "controlled substance offense," does not actually do so. The plain language definition of "controlled substance offense" in §4B1.2 unambiguously excludes inchoate offenses. USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

TEXTUAL INTERPRETATION: Deference to an agency's construction of a rule provision, unless it is plainly erroneous and inconsistent with the regulation, suggests a caricature of the deference doctrine, in which deference is reflexive. Rather, a court should not afford deference unless the regulation is genuinely ambiguous; if uncertainty does not exist, there is no plausible reason for deference. The regulation then just means what it means. USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

FOOTNOTE: Discussion of weight to be given footnotes. "Our . . . colleagues point out that the footnote appeared in a section of the opinion that did not garner a majority. . They are correct about that, but they misread our observation about the footnote." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

STARE DECISIS (J. GRANT, CONCURRING): "I understand why our Court and others have thought it necessary to at least consider whether Stinson's deferential posture to the Guidelines commentary still holds after Kisor. But in answering that question, we should not—cannot—rewrite the precedents to better match our view of first principles or even to create a more coherent body of law . . .Our duty to faithfully apply precedent continues even when (some of) the reasoning for an old Supreme Court decision has been undermined by a new case." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

STARE DECISIS-VERTICAL-HORIZONTAL (J. GRANT, CONCURRING): "But a change to Stinson deference will be disruptive—perhaps extremely so. And that sort of disruption should be weighed by the Supreme Court as part of its horizontal stare decisis analysis, not invited by our own rejection of vertical stare decisis." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

PRECEDENT (J. GRANT, CONCURRING): "[T]oday's holding runs the risk of forcing a full-scale disruption of our Sentencing Guidelines caselaw. Virtually every case that has applied the commentary could be considered presumptively overruled. . .[I]t will be interesting to see whether and how we can avoid it. If the Supreme Court overrules Stinson and tells us to reassess all caselaw applying the commentary, then so be it." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

ANALOGY (J.LUCK, DISSENTING): "[T]he Kisor clarification applies to Stinson the same way a magnifying glass applies to an ant on a sunny day—total annihilation." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)

https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

STARE DECISIS (J.LUCK, DISSENTING): "The majority opinion has overturned and set aside Stinson without using the o-word or a-word. But an abrogation by any other name is still an abrogation." USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

TRANSITIVE PROPERTY: "[T]he majority opinion uses the transitive property to find that the Kisor clarification applies to Stinson. 'Stinson' adopted Seminole Rock's formulation of agency deference,' the majority opinion explains, '[s]o it follows that Kisor's clarification of Auer deference applies to the [g]uidelines and its commentary.'. . .In other words, because X relied on Y, and Y has been clarified by Z, then X must also have been clarified by Z. USA v. Dupree, No. 19-13776 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913776.enbanc.pdf

SENTENCE-REASONS: A sentence is procedurally unreasonable if the district court fails to adequately explain the sentence, including any variance from the guidelines range. The court is required at the time of sentencing to state in open court the reasons for its imposition of the particular sentence. If the sentence is within the guidelines range and exceeds 24 months, the court must state the reason for imposing a sentence at a particular point within the range. And if the sentence is outside the guidelines range, the court must not only state the specific reasons for the variance in open court but must also state those reasons with specificity in a statement of reasons form. Upward variance based on Defendant's education, ability, and background in to stealing money from a national benevolence is not procedurally nor substantively unreasonable. USA v. Oudomsine, No. 22-10924 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210924.pdf

POKEMON: Defendant fails on claim that Court varied upward from the

sentencing guidelines because the judge did not like him because he spent $57,789 to buy a single Pokémon card with stolen money. There is nothing in the record to support the proposition that the judge did not "like him" — whatever that means in this context. But it would not be surprising, or disqualifying, if a judge did not "like" a person who defrauded a federal program of funds intended to promote the public good and help small businesses, particularly when the stolen funds were used for the purpose of purchasing a $57,789 Pokémon card. USA v. Oudomsine, No. 22-10924 (11th Cir. 1/18/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202210924.pdf

ZOOM: VOP sentencing during COVID lockdown violated Due Process where Court did not balance the parties' competing interests but rather said that there was nothing"unique about this case that requires an in person sentencing" and Defendant was "in the same position as anyone else. . . accused of violating their probation." Arnold v. State, 3D21-1012 (1/18/23)

https://3dca.flcourts.gov/content/download/858126/opinion/211012_DC08_01182023_100210_i.pdf

ZOOM (J. GORDO, CONCURRING): "The crux of the recurring ill in my view is that courts throughout the pandemic have equated virtual presence with that of physical presence. . .[C]ommon sense understanding of remote technology and social media interactions demonstrates the depersonalizing aspects of acting or speaking via a remote box at a significant distance from the individual being affected. It is far more impactful to be in the physical presence of an individual and pronounce a curtailment of their rights as opposed to doing so in their virtual presence—which is often merely an image of their face appearing in some box on a screen.. . .The question is NOT—what is special or important about this defendant or his case. . . Rather, the question IS—what necessity exists. . to deprive this defendant of his fundamental right to be physically present at a proceeding effecting his

liberty?" Arnold v. State, 3D21-1012 (1/18/23)
https://3dca.flcourts.gov/content/download/858126/opinion/211012_DC08_01182023_100210_i.pdf

PRISON RELEASEE REOFFENDER: Defendant may not be sentenced as a PRR absent evidence in the record of each case admitted into the record. It is permissible for a trial court to take judicial notice of its own files in sentencing Defendant as a PRR, but the trial judge has to put such evidence in the record. Quispe v. State, 3D21-2150 (1/18/23)
https://3dca.flcourts.gov/content/download/858150/opinion/212150_DC08_01182023_101619_i.pdf

NELSON HEARING: A generalized grievance against attorney is insufficient to trigger a full Nelson hearing. Otario-Rosado v. State, 3D22-868 (1/18/23)
https://3dca.flcourts.gov/content/download/858155/opinion/220868_DC05_01182023_102245_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Court may consider a defendant's protestations of innocence and failure to show remorse in determining what sentence to impose. Sibrun v. State, 4D19-1629 (1/18/23)
https://4dca.flcourts.gov/content/download/858158/opinion/191629_DC05_01182023_100444_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to the jury being instructed on aggravated battery with a deadly weapon as a lesser-included offense of attempted first-degree murder where the amended information did not allege that he used a deadly weapon. Korets v. State, 4D22-828 (1/18/23)

https://4dca.flcourts.gov/content/download/858162/opinion/220828_DC08_01182023_101058_i.pdf

POST-CONVICTION RELIEF: Counsel was not deficient in requesting a lesser included instruction without a firearm enhancement, notwithstanding that both th main charge and the lesser still were subject to a potential life sentence. The difference between mandatory life imprisonment and possible life imprisonment is not an illusory benefit. Carey v. DOC, No. 20-14602 (1/17/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014602.pdf

ZOOM-SENTENCING: Defendant generally has a due process right to be physically present in the courtroom at the sentencing hearing upon revocation of probation. In all prosecutions for crime the defendant must be present at the imposition of sentence. Error is not fundamental, but where objected to, the issue is preserved snd re-sentencing is required. Arnold v. State, 3D21-1012 (1/18/23)
https://3dca.flcourts.gov/content/download/858126/opinion/211012_DC08_01182023_100210_i.pdf

ZOOM (J. GORDO, CONCURRING): "I write separately to highlight my concern regarding a common occurrence during the pandemic that ought to send chills through those properly vested with ensuring that constitutional and due process rights be afforded, even in difficult times. . .The crux of the recurring ill in my view is that courts throughout the pandemic have equated virtual presence with that of physical presence. . .Today, common sense understanding of remote technology and social media interactions demonstrates the depersonalizing aspects of acting or speaking via a remote box at a significant distance from the individual being affected. It is far more impactful to be in the physical presence of an individual and pronounce a curtailment of their rights as opposed to doing so in their virtual presence—which is often merely an image of their face appearing in some box on a screen." Arnold v. State, 3D21-1012 (1/18/23)

https://3dca.flcourts.gov/content/download/858126/opinion/211012_DC08_01182023_100210_i.pdf

ZOOM (J. GORDO, CONCURRING): "The question is NOT—what is special or important about this defendant or his case warranting his entitlement to be physically present? Rather, the question IS—what necessity exists at this time to deprive this defendant of his fundamental right to be physically present at a proceeding effecting his liberty?" Arnold v. State, 3D21-1012 (1/18/23)
https://3dca.flcourts.gov/content/download/858126/opinion/211012_DC08_01182023_100210_i.pdf

POST CONVICTION RELIEF-LESSER INCLUDED: Counsel was not ineffective for moving for all lesser includeds notwithstanding that the lesser of second degree murder with a firearm (second degree murder without a firearm) carried the same potential life sentence, which was ultimately imposed. Defendant's argument that any benefit was illusory fails because it ignores the difference between a mandatory sentence and a maximum sentence, and relies on the benefit of hindsight (assuming foreknowledge of the sentence imposed). Carey v. DOC, No. 20-14602 (11th Cir. 1/17/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014602.pdf

LESSER INCLUDED: If a necessary lesser included instruction is requested, trial judge has no discretion in giving it, regardless whether the judge believes it not be supported by the evidence. Carey v. DOC, No. 20-14602 (11th Cir. 1/17/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014602.pdf

SENTENCING ENHANCEMENT/RECLASSIFICATION: A sentencing enhancement is not an element of an offense. A jury's verdict regarding a sentencing enhancement under §775.087 is analytically separate from verdicts for underlying crimes, and neither eliminates nor supplies an element of the underlying crimes. Carey v. DOC, No. 20-14602 (11th Cir. 1/17/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202014602.pdf

HABEAS CORPUS: Federal court may not grant habeas relief where state court has already found the claim to be procedurally barred, here as untimely and successive. An application for a federal writ of habeas corpus must be denied if the applicant has not exhausted the remedies available in the courts of the State. And if the state courts deny the claim based on a state procedural rule that is independent of federal law, the claim is procedurally defaulted and federal courts ordinarily cannot grant relief. Carey v. DOC, No. 20-14602 (11th Cir. 1/17/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202014602.pdf

ATTEMPT-PRODUCTION OF CHILD PORN: Defendant who asked online (on otherwise-wholesome mom-blog sites) for mothers to contribute sexually explicit images of their young daughters for his private collection is properly convicted of attempted child pornography. A defendant's desire alone—wholly without respect to his likelihood of success—can establish his intent. "[T]he sheer unlikelihood that Moran's requests to the mom-bloggers would result in the production of child pornography does not negate his desire—and thus his intent—to produce child pornography." USA v. Moran, No. 21-12573 (11th Cir. 1/13/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202112573.pdf

RESTITUTION: Court may not designate to the probation department the formulation of a payment schedule for restitution. Generally, unless otherwise provided by the court, restitution is payable immediately. Setting a restitution payment schedule is a nondelegable judicial task. Gibson-Capo v. State, 2D21-2776 (1/13/23)

https://www.2dca.org/content/download/857897/opinion/212776_DC08_01132023_095155_i.pdf

SENTENCING-CONSIDERATIONS: Court may not consider Defendant's post-plea conduct (here, sending threatening messages to the victim and her father) in determining the sentence. But where there is no indication that the Court relied on the improper considerations, the sentence stands. "Had the trial court relied upon impermissible factors, we would expect more onerous punishments [than probation]." Mercado v. State, 2D21-3444 (1/13/22)

https://www.2dca.org/content/download/857900/opinion/213444_DC05_01132023_095531_i.pdf

JURY TRIAL-WAIVER: A valid waiver of a criminal defendant's right to a jury trial requires either a written waiver signed by the defendant or the defendant's oral waiver after a proper colloquy with the trial judge. Evans v. State, 2D21-3450 (1/13/23)
https://www.2dca.org/content/download/857901/opinion/213450_DC13_01132023_095642_i.pdf

COMPETENCY: Court must hold a competency hearing and make a competency determination after having entered an order appointing psychological experts. Evans v. State, 2D21-3450 (1/13/23)
https://www.2dca.org/content/download/857901/opinion/213450_DC13_01132023_095642_i.pdf

FILING FALSE LIEN-REHEARING EN BANC: Earlier opinion, holding that 18 U.S.C. §1521 makes it illegal to file a false lien against the property of a federal officer or employee because of something he did as part of his official duties, is vacated pending *en banc* review. USA v. Pate, No. 20-10545 (11th Cir. 1/11/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202010545.1.pdf

APPEAL-PUBLIC DEFENDER-DESIGNATION OF RECORD: The attorney of record for a defendant shall not be relieved of any professional duties, or

be permitted to withdraw as defense counsel of record until complying with R. 9.140(d)(1), which includes taking any steps to have the appellant's trial transcribed. But the public defender may not refuse its designation as appellate counsel based on trial counsel's failure to complete his duties under R. 9.140(d)(1). "[A] motion to refuse designation is not a proper motion in this court. Designation is a matter of concern between the public defenders and not one for this court. All we need is a notice of appearance from counsel who will be representing the appellant in this case." Washington v. State, 1D22-2358 (1/11/23)
https://www.1dca.org/content/download/857759/opinion/222358_NOND_01112023_143646_i.pdf

RIOTING-QUESTION CERTIFIED: 11th Circuit certifies to the Florida Supreme Court the following question of law: What meaning is to be given to the provision of Florida Stat. §870.01(2) making it unlawful to "willfully participate[] in a violent public disturbance involving an assembly of three or persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in . . . [i]njury to another person; . . . [d]amage to property; . . . or [i]mminent danger of injury to another person or damage to property."? Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

RIOTING-QUESTION CERTIFIED: The question of the meaning of "riot" under §870.01(2), a statute designed to crack down on protests of police brutality against racial minorities, is certified to the Florida Supreme Court as a preliminary step in federal review of the constitutionality of the statute. Certification is appropriate to avoid the risk of friction that may arise when a federal court endeavors to construe a novel state law in the first instance. Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

CERTIFICATION TO STATE COURT: "Certification in this circumstance allows us to avoid the friction that could arise if we, as a federal court, addressed the merits of the plaintiffs' pre-enforcement constitutional challenge without first giving the Florida Supreme Court an opportunity to interpret its State's law." Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

FIRST AMENDMENT-VAGUENESS: Under due-process principles, a law is void for vagueness if its prohibitions are not clearly defined. Unconstitutionally vague laws fail to provide 'air warning of what the law requires, and they encourage arbitrary and discriminatory enforcement by giving government officials the sole ability to interpret the scope of the law. The First Amendment context amplifies these concerns because an unconstitutionally vague law can chill expressive conduct by causing citizens to steer far wider of the unlawful zone to avoid the law's unclear boundaries. Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

FIRST AMENDMENT-OVERBREADTH: A statute is overly broad if it punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep. A] statute found to be overbroad is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

RIOTING-QUESTIONS: Fla. Stat. §870.01(2), which bars a person from "willfully participat[ing] in a violent public disturbance" leaves open key questions: What is required for willful participation? And what kind of conduct constitutes the "violent public disturbance" in which a rioter participates? What is the mens rea required for a conviction for rioting? To

be guilty of rioting does a person also need to share the common intent to assist in violent and disorderly conduct? Or can a person outside of the assembly, who does not share that common intent, nonetheless commit the crime? Are the counter-protestors part of the assembly? Have they created a violent public disturbance? Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)

https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

FIRST AMENDMENT-SHIFTY-TWISTIFICATION-RIOTING: "Governor DeSantis's view has shifted during the litigation. In the district court, he initially agreed with Sheriff Williams that the statutory definition simply 'mirror[ed]' the common law. . .But he later changed his view and disclaimed that 'the [L]egislature was . . . simply trying to mirror the common law.'. . .Now, Governor DeSantis says that HB 1 'narrow[ed]' the definition of 'riot' and made it 'more specific' than the common law definition." Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

DEFINITION- "TUMULTUOUS"-"VIOLENT": "Governor DeSantis's position that §870.01(2) narrowed the common-law definition of 'riot' rests on the assumption that there is a distinction between a 'tumultuous' disturbance of the peace. . .and a 'violent' one. . .[H]e provides no example of a public disturbance that would be tumultuous but not violent." Dream Defenders v. Governor, No. 21-13489 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202113489.cert.pdf

CRIME OF VIOLENCE-ROBBERY BY INTIMIDATION: Georgia's robbery by intimidation law is a crime of violence within the meaning of §4B1.2 of the Sentencing Guidelines. USA v. Harrison, No. 21-14514 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114514.pdf

CRIME OF VIOLENCE-ROBBERY BY INTIMIDATION: Georgia's robbery

statute is divisible. Robbery by intimidation is a standalone offense—not a means by which to commit robbery. Therefore, The modified categorical approach to robbery by intimidation is applied. USA v. Harrison, No. 21-14514 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114514.pdf

CATEGORICAL APPROACH: Under the categorical approach, Court does not look to the specific conduct underlying the defendant's conviction, but rather to the elements of the statute of conviction and determines if the least of the acts criminalized qualifies as a crime of violence. If it does not, a conviction under the statute cannot qualify as a crime of violence. But if a statute is divisible, i.e., listing multiple, alternative elements, and so effectively creating several different crimes, the modified approach is employed, whereby the Court looks to a limited class of documents to determine the offense underlying a defendant's prior conviction. A statute is divisible when the alternatives it lists are elements as opposed to means. USA v. Harrison, No. 21-14514 (11th Cir. 1/10/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202114514.pdf

DNA-TESTING: A trial court does not err in denying a motion for DNA testing where the defendant cannot show that there is a reasonable probability that the absence or presence of DNA at a crime scene would exonerate him or lessen his sentence. Robinson v. State, 5D22-2023 (1/10/23)
https://www.5dca.org/content/download/857645/opinion/222023_DC05_01102023_100957_i.pdf

COMPETENCY: Defendant cannot be deemed to have been found competent where "the record is contradictory and unclear whether defense counsel was present at the competency hearing or whether both parties agreed that the trial court could decide the issue of competency based solely on the expert's written report. "On this record, it is impossible to tell whether the trial court truly made an independent determination of competency."

Washington v. State, 2D21-1984 (1/6/23)
https://www.2dca.org/content/download/857400/opinion/211984_NOND_01062023_080939_i.pdf

JURY-HURRICANE: Court does not err in discharging an entire jury panel after selection but before the jury is sworn where an intervening hurricane caused a delay in the trial and not all of the original jurors would have been available for the re-scheduled trial. A defendant only has the right to have his case decided by a particular jury once jeopardy attaches. USA v. Downs, No. 21-10809 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110809.pdf

CHILD PORN-PRODUCTION: The act of transferring pornographic photos from a cell phone to hard drive can constitute the production of pornography. The production statute's use of tthe term "producing" means that it should be understood to reach the act of transferring. Producing child pornography encompasses copying images onto a hard drive. USA v. Downs, No. 21-10809 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110809.pdf

CHILD PORN-INTERSTATE COMMERCE: If the transfer of the photos to the hard drive constitutes the required production (it does), and if the hard drives were manufactured overseas, then the necessary nexus exists between the production and interstate commerce. USA v. Downs, No. 21-10809 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110809.pdf

JOA-FACTUAL IMPOSSIBILITY: Where Victim testified that Defendant took photos of her in a state of undress using a "flip phone," but in fact the photos were taken with a non-flip phone ("a Samsung SCH-S738C isn't a flip phone and can't be confused with one."). "Using a flip- (or non-flip-) phone doesn't make the production of child pornography impossible. . . At worst, that's a factual ambiguity, not a factual impossibility. USA v. Downs, No.

21-10809 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/202110809.pdf

APPEAL-CLEMENCY-DOUBLE JEOPARDY: Appellate court lacks jurisdiction to decide whether a president's grant of clemency bars further prosecution on counts on which the jury the jury hung because the hung counts were not the basis of a final judgment. With limited exceptions, appellate court only reviews final judgments. The hung counts were not part of the basis of the sentence, so they are not part of any judgment which the appellate court has jurisdiction to review. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

DISMISSAL: Dismissal of the indictment is not warranted where Government intercepted and did not adequately screen intercepted attorney client communications between Defendant and his attorney, particularly where those communications were not used at trial. Without demonstrable prejudice, dismissal of an indictment is inappropriate in the case of even the most egregious prosecutorial misconduct. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

PROSECUTOR-CONFLICT OF INTEREST: Prosecutor's professional interest in avoiding sanctions from the district court do not disqualify her as an "interested prosecutor." A prosecutor who exercises her constitutional right to protect her professional reputation does not disqualify herself from further proceedings by that same act. If self-defense of that sort were enough to require recusal, any accused could disqualify his prosecutors by accusing them of misconduct. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

CONFLICT OF INTEREST-ADVOCATE/WITNESS RULE: Prosecutor does

not violate the rule that advocates may not testify in a case by testifying at the hearing to disqualify her. Prosecutor was not a "witness" in the sense governed by the advocate-witness rule. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

EXPERT TESTIMONY: Court did not err in allowing expert testimony without definitively ruling on the Government's Daubert motion. There is no categorical rule that the trial court must never allow the jury to hear an expert's testimony before ruling on it, nor one which constrains the district court's discretion. Neither the Federal Rules of Evidence nor case law categorically require the district court to prevent the jury from hearing evidence that has not yet been admitted. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

EXPERT-ADMISSIBILITY (J. GRANT, CONCURRING): Although the court did not reversibly err by deferring its Daubert ruling until after the jury had heard the witness's testimony, as a general matter, a wait-and-see approach to admissibility for expert testimony is fraught with risk. "[A]s the majority notes, 'there is no authority for that categorical rule of law.'. . .True enough. But there is also no authority for the inverse point—that a district court can wait until the conclusion of an expert's testimony to a jury before it rules on admissibility. Instead, precedent suggests that waiting to qualify expert witnesses until after their testimony is usually misguided." USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

MONEY LAUNDERING: Although transactions that are engaged in for present personal benefit, and not to create the appearance of legitimate wealth do not constitute money laundering, those transactions can constitute money laundering if they are unusually structured to disguise the source of the funds. Purposeful concealment of the proceeds of Medicare fraud can

be money laundering. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

MONEY LAUNDERING: Using shell accounts to pay for limousines, female companions for the Defendant, and to bribe the University of Pennsylvania basketball coach can be money laundering. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

FORFEITURE: The right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection. The criminal jury may calculate the forfeitability of specific property and the judge may calculate a lump-sum money judgment. USA v. Esformes, No. 19-13838 (11th Cir. 1/6/23) https://media.ca11.uscourts.gov/opinions/pub/files/201913838.pdf

MENS REA-GOOD FAITH-JURY INSTRUCTION: Jury instruction which failed to advise that good faith is a defense to the charge of prescribing drugs outside the usual course of professional practice. The "usual course of professional practice" prong must be evaluated using a subjective, not an objective, standard. §841(a)'s scienter provision (requiring the defendant to act "knowingly or intentionally") applies not only to the statute's actus reus—here dispensing—but also to the "except as authorized" exception. Thus, to obtain a conviction under this section, the government must prove beyond a reasonable doubt that a defendant (1) knowingly or intentionally dispensed a controlled substance; and (2) knowingly or intentionally did so in an unauthorized manner. USA v. Ruan, No. 17-12653 (11th Cir. 1/5/23) https://media.ca11.uscourts.gov/opinions/pub/files/201712653.rem.pdf

MENS REA-GOOD FAITH-JURY INSTRUCTION: "The government argues that our cases have conceptually linked 'good faith' and 'knowledge' in the past, and that this instruction gave the 'functional equivalent of a knowledge instruction.' But, at best, even if the concepts are linked, good faith is an

imprecise proxy for knowledge." USA v. Ruan, No. 17-12653 (11th Cir. 1/5/23)
https://media.ca11.uscourts.gov/opinions/pub/files/201712653.rem.pdf

RULES-AMENDMENT-DELINQUENCY-DETENTION: Rule 8.013 is amended to require that all motions to extend supervised release detention be in writing, and that if a child is placed on supervised release detention prior to an adjudicatory hearing, a court must conduct a hearing within 15 days of the 60th day of detention. In Re: Amendments to Florida Rules of Juvenile Procedure 8.013 and 8.350, SC22-1674 (1/5/23)
https://supremecourt.flcourts.gov/content/download/857336/opinion/sc22-1674.pdf

PLEA AGREEMENT-ENFORCEMENT: Where the Defendant's plea agreement provided that in the event of a violation of probation, The defendant would be sentenced to no fewer than 10 years in prison and would not file a motion to mitigate, Court erred, upon the Defendant violating his probation, in imposing the 10 year sentence but then mitigating it to a shorter term of imprisonment. A plea agreement is a contract and the rules of contract law are applicable to plea agreements. Court had no authority or discretion to impose a mitigated or reduced sentence in light of the express terms of the original plea agreement. State v. Rojas, 3D21-1018 (1/4/23)
https://www.3dca.flcourts.org/content/download/857211/opinion/211018_DC08_01042023_101556_i.pdf

ZOOM: Due process considerations inherent in delinquency proceedings require the trial court to make case-specific findings of necessity before conducting a remote adjudicatory hearing. V.M.A. v. State, 3D21-2422 (1/4/23)
https://www.3dca.flcourts.org/content/download/857224/opinion/212422_DC13_01042023_103302_i.pdf

SEARCH AND SEIZURE-FORFEITURE: To establish probable cause for a search warrant, the supporting affidavit must demonstrate a reasonable probability, based on the totality of the circumstances, that evidence of a crime will be found at the place to be searched at the time of the search. Whether probable cause exists must be determined from the four corners of the affidavit. Affidavit for a search warrant is legally insuffiient where officer's training and experience was in road patrol, SWAT operations, and narcotics investigations—not racketeering, bookmaking, or money laundering investigations. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23) https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

SEARCH AND SEIZURE-FORFEITURE: Affidavit which relied on anonymous tips and confidential, reliable sources without demonstrating any basis to conclude that those sources were knowledgeable and reliable is legally insufficient. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23) https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

SEARCH AND SEIZURE-FORFEITURE: Affidavit for search warrant is legally insufficient where the allegations are too stale to establish probable cause to believe that evidence of racketeering, bookmaking, and money laundering offenses would be found in the home at the time of the search (three month lapse in time). Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23) https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

SEARCH AND SEIZURE-FORFEITURE: Search warrant is unlawful where the affidavit was written as if the affiant been directly involved in the investigation and had the necessary training and experience to evaluate the results of the investigation and develop probable cause when in fact another officer draft of the affidavit and did all the things attributed to the affiant.

Evidence seized pursuant to a search warrant must be suppressed if the affidavit in support of the search warrant contained false statements made knowingly and intentionally or with reckless disregard for the truth, or omitted facts with intent to deceive or with reckless disregard for whether the facts should have been revealed, and (2) the false statements were necessary to the finding of probable cause, or the omitted facts would have defeated the finding of probable cause. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23)
https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

FORFEITURE: A forfeiture proceeding consists of two stages: (1) the probable cause stage, where the seizing agency must establish probable cause to believe that the property at issue has been used in violation of the Forfeiture Act in order to justify the continued seizure of the property; and (2) the forfeiture trial, where the seizing agency must prove beyond a reasonable doubt that the property has been used in violation of the Forfeiture Act, and must prove by a preponderance of the evidence that the owner knew or should have known that the property was being used in criminal activity, in order to obtain title to the property. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23)
https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

FORFEITURE-STANDING: Sworn proof of a possessory or ownership interest is not required for standing in a forfeiture proceeding. At the probable cause stage, a person can show standing by establishing only that he or she possessed the property at the time it was seized; no proof of an ownership interest is required. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23)
https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

FORFEITURE: Mere suspicion that Claimant is engaged in a scheme to launder and conceal the the cash proceeds from the organization's illegal bookmaking activity is not legally insufficient. Bank deposits alone are legally insufficient to establish where the money came from. Zarcadoolas v. Tony, Sheriff, 4D21-2227 (1/4/23)
https://www.4dca.org/content/download/857230/opinion/212227_DC13_01042023_095526_i.pdf

ACCIDENT REPORT PRIVILEGE: Officer is not required to read defendant her Miranda rights at the moment the crash investigation ended and the DUI investigation began. No such bright line rule exists. State v. Bender, 4D21-2539 (1/4/23)
https://www.4dca.org/content/download/857234/opinion/212539_DC13_01042023_100159_i.pdf

STATEMENTS OF DEFENDANT-CUSTODY-DUI: Court erred when it suppressed Defendant's statement "Oh, God. I'm so stupid. I'm so stupid." Statement was not made in response to questioning while Defendant was in custody. State v. Bender, 4D21-2539 (1/4/23)

https://www.4dca.org/content/download/857234/opinion/212539_DC13_01042023_100159_i.pdf

DISCOVERY-VIOLATION: A Richardson hearing is required where it is clear that there was a possible discovery violation (threatening text messages which Victim testified that he had given to the state). Error harmless. Etienne v. State, 4D21-2599 (1/4/23)
https://www.4dca.org/content/download/857235/opinion/212599_DC05_01042023_100532_i.pdf

APPEAL-TOLLING: Motion for rehearing on the motion to dismiss tolls the time to appeal the order appealed. State v. Acevedo, 4D21-3218 (1/4/23)
https://www.4dca.org/content/download/857238/opinion/213218_NOND_0

1042023_101127_i.pdf

SENTENCING-SCORESHEET-PRIORS: Defendant's prior grand theft convictions should be scored as such, rather than as misdemeanors, notwithstanding that the threshold between petty theft and grand theft was later raised, so that the thefts would have been misdemeanors at the time of the new offense. Because Defendant's grand theft convictions were classified as third-degree felonies at the time of his 2017 convictions, they were properly scored as felonies on the scoresheet. Johnson v. State, 4D21-3557 (1/4/23)
https://www.4dca.org/content/download/857240/opinion/213557_DC08_01042023_101422_i.pdf

COSTS: $200 cost of prosecution it is unlawful where the state did not request a higher amount or present sufficient proof to support the cost. Johnson v. State, 4D21-3557 (1/4/23)
https://www.4dca.org/content/download/857240/opinion/213557_DC08_01042023_101422_i.pdf

COSTS: $25 investigative costs it may not be imposed where the state did not request such costs prior to the judgment. Ramsaran v. State, 4D22-111 (1/4/23)
https://www.4dca.org/content/download/857242/opinion/220111_DC08_01042023_101637_i.pdf

COSTS: $100 prosecution costs for a misdemeanor may not be imposed where the state did not seek or prove costs above the statutory maximum of $50. Ramsaran v. State, 4D22-111 (1/4/23)
https://www.4dca.org/content/download/857242/opinion/220111_DC08_01042023_101637_i.pdf

COSTS: $223 "MM cost" is lawful; $220 of it is statutorily mandated costs §938.19(2), provides for the mandatory assessment of $3 in costs for Teen

Court. Ramsaran v. State, 4D22-111 (1/4/23)
https://www.4dca.org/content/download/857242/opinion/220111_DC08_01042023_101637_i.pdf

COSTS: Where adjudication of delinquency is withheld, Court may not impose teen court costs. Juvenile must have been adjudicated delinquent for teen court costs to be assessed. T.T., a Child v. State, 4D22-909 (1/4/23)
https://www.4dca.org/content/download/857246/opinion/220909_DC06_01042023_102247_i.pdf

POST-CONVICTION RELIEF (J. WARNER, DISSENT): Defendant should be afforded a hearing on allegations that counsel was ineffective for failing to apprise defendant of the overwhelming strength of the State's case before he rejected a favorable plea offer. Smith v. State, 4D22-1074 (1/4/23)
https://www.4dca.org/content/download/857247/opinion/221074_DC05_01042023_102357_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: Attorney may not withdraw from representation upon an assertion of "irreconcilable conflict of interest"; reasons for withdrawal are required by R. 2.505(f)(1). Schluck v. State, 1D22-1380 (1/4/23)
https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: §27.5303(1)(e) requires the public defender to apply the standards contained in the Uniform Standards for Use in Conflict of Interest Cases (*see* Appendix to opinion.) Schluck v. State, 1D22-1380 (1/4/23)

https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: Unmerited motions to withdraw impose an unjustified burden on the public and can harm the client, who may waive any alleged conflict. And unless there is an actual conflict of interest, no waiver is even required. Schluck v. State, 1D22-1380 (1/4/23) https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: The following scenarios are not automatic grounds for conflict: 1) Client files a grievance against an attorney with The Florida Bar, 2) A conflict of interest was present in a closed case involving the client, 3) A victim or state witness has a friend or relative in the office, 4) A personal conflict exists between an assistant public defender and a client, 5) A witness supporting the defendant is a client or former client. Schluck v. State, 1D22-1380 (1/4/23) https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: The Standards specifically provide that information that was obtained during an attorney-client relationship does not necessarily create a conflict if the information is equally available in the public record (e.g. the fact of a felony conviction). In addition, the possession of confidential information concerning a former client does not lead to a conflict if that information is irrelevant to the new matter. Schluck v. State, 1D22-1380 (1/4/23) https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL-APPEAL: The fact that the Public Defender had withdrawn from representing Defendant at trial does not preclude the Public Defender from representing him on appeal. Schluck v. State, 1D22-1380 (1/4/23) https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: There is no conflict of interest because an attorney and client do not like each other, or because a client does not want to follow the attorney's advice (unless it involves perjury, or the commission of a future crime). Schluck v. State, 1D22-1380 (1/4/23) https://www.1dca.org/content/download/857258/opinion/221380_NOND_01042023_101548_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: Attorney may not withdraw from representation due to a conflict based on an ethical duty to a current client without adequately specifying the nature and basis of the asserted conflict. Richardson v. State, 1D22-1743 (1/4/23) https://www.1dca.org/content/download/857259/opinion/221743_NOND_01042023_102214_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL-APPEAL: In case in which Defendant filed a motion to withdraw plea based on ineffective assistance of counsel (Public Defender) and also filed an appeal, Public Defender may not withdraw from representation where the motion to withdraw cites §27.5303(1)(a), which addresses withdrawal of counsel only during representation of two or more defendants when the interests of those defendants are adverse or hostile. Richardson v. State, 1D22-1743 (1/4/23) https://www.1dca.org/content/download/857259/opinion/221743_NOND_01042023_102214_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: "Appellate counsel's contention that the entire Office of the Public Defender must be excluded because of the allegation against trial counsel. . .seems problematic." The motion must show trial counsel's alleged conflict of interest presents a significant risk of materially limiting the representation of the client by other lawyers in the Public Defender's Office. Whitfield v. State, 1D22-2129 (1/4/23) https://www.1dca.org/content/download/857260/opinion/222129_NOND_01042023_102705_i.pdf

DECEMBER 2022

APPEAL-STATE-TRAFFIC INFRACTION: State may appeal Court's ruling on a traffic infraction. Rule of appellate procedure that" [i]f a person is found to have committed an infraction. . ., he or she may appeal that finding to the circuit court does not use any limiting language such as "only a person." "Therefore, we conclude that if the circuit court has jurisdiction over a defendant's appeal in these matters, then it follows that the circuit court has jurisdiction over a State's appeal in these matters. Any other construction would lead to counterintuitive results." State v. Bin Islam, 2D21-17097 (12/30/22)

https://www.2dca.org/content/download/856687/opinion/211797_DC04_12302022_084506_i.pdf

APPEAL-STATE-TRAFFIC INFRACTION (J. ATKINSON, DISSENT): To the extent that the State has any right to appeal an order dismissing a noncriminal infraction, DCA and not the circuit court, would have jurisdiction to hear such an appeal. State v. Bin Islam, 2D21-17097 (12/30/22)

https://www.2dca.org/content/download/856687/opinion/211797_DC04_12302022_084506_i.pdf

APPEAL-STATE-TRAFFIC INFRACTION (J. ATKINSON, DISSENT): §318.16, providing that "a person [who] is found to have committed an infraction by the hearing official" may appeal to the circuit court does not allow the State to appeal to the Circuit Court. In context, the "person" is the accused. The opposite conclusion would be nonsensical: The State cannot be the "person" indicated in the statute who has been "found to have committed an infraction by the hearing official." No reader of the statute could reasonably conclude that the term "person" as used in §318.16(1) includes the State. State v. Bin Islam, 2D21-17097 (12/30/22)

https://www.2dca.org/content/download/856687/opinion/211797_DC04_12302022_084506_i.pdf

APPEAL-TRAFFIC CITATIONS (J. ATKINSON, DISSENT): Appeals from orders rendered by a hearing officer are appealable to the circuit court, but when the hearing officer is a county judge, the appeal should go to the District Court of Appeal. State v. Bin Islam, 2D21-17097 (12/30/22)

https://www.2dca.org/content/download/856687/opinion/211797_DC04_12302022_084506_i.pdf

POST CONVICTION RELIEF-SCRIVENER'S ERROR: Where a written sentencing document fails to conform to an oral pronouncement, such an error is a scrivener's error that may be corrected as a ministerial act. State v. Johnson, 2D21-3220 (12/30/22)

https://www.2dca.org/content/download/856688/opinion/213220_DC05_12302022_084848_i.pdf

COMPETENCY: Because an independent competency finding is a due-process right that cannot be waived once a reason for a competency hearing has surfaced, the trial court fundamentally erred in failing to make such a finding. Once a defendant's competency is called into question, a trial court must make an independent, legal determination that a defendant is competent to proceed, even if the defendant withdraws his notice of incompetence after being evaluated. Jones v. State, 5D22-757 (12/30/22

https://www.5dca.org/content/download/856695/opinion/220757_DC08_12302022_084747_i.pdf

JUDGE-DISQUALIFICATION (J. BILBREY, DISSENT): An inflexible sentencing policy can be a basis to disqualify a trial judge. Meza Manzanares v. State, 1D22-3565 (12/28/22)

https://www.1dca.org/content/download/856496/opinion/223565_DA08_12282022_091201_i.pdf

DOUBLE JEOPARDY-CERTIFIED QUESTION: For purposes of double jeopardy, does a sentence for multiple counts constitute a sentencing package, such that a defendant's challenge to the sentence for one count permits the trial court to reopen the sentence for another count to comply with the law or to effectuate the trial court's sentencing intent? Question certified. Phillips v. State, 2D22-758 (12/28/22)

https://www.2dca.org/content/download/856656/opinion/220758_NOND_12292022_160009_i.pdf

HEARSAY-DRUG WEIGHT-PRESERVATION: Error, if any in admitting FDLE report on the weight of the controlled substances in Florida is harmless in light of the several unobjected-to statements offered by the investigating officer regarding the weight and nature of the controlled substances. Mojicaphipps v. State, 5D21-2221 (12/22/22)
https://www.5dca.org/content/download/856050/opinion/212221_DC05_12222022_083401_i.pdf

HEARSAY-DRUG WEIGHT-PRESERVATION (DISSENT, J. COHEN): Testimony of two analysts who simply read the weights off of the reports generated by the original chemists is inadmissible hearsay. The testimony of the arresting agent related to the presumed weight, not the measured weight; the agent was never proffered as an expert as to the weight of the drugs, but ratheer was merely based on negotiations leading up to the sale

of drugs. Mojicaphipps v. State, 5D21-2221 (12/22/22) https://www.5dca.org/content/download/856050/opinion/212221_DC05_12222022_083401_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-RECANTATION: Defendant is entitled to a hearing on claim of newly discovered evidence where a witness recanted significant aspects of her trial testimony. Roberts v. State, 5D22-2118 (12/22/22) https://www.5dca.org/content/download/856052/opinion/222118_DC13_12222022_083811_i.pdf

DISCOVERY VIOLATION: Any Richardson violation is harmless where no reasonable probability exists that the defense was materially hindered in its trial preparation or strategy because of the discovery violation. Lane v. State, 1D21-3751 (12/21/22) https://www.1dca.org/content/download/855999/opinion/213751_DC05_12212022_122218_i.pdf

COSTS: Court may not impose $50 costs of investigation whereno agency requested them. Phillips v. State, 1D21-2431 (12/20/22) https://www.1dca.org/content/download/855888/opinion/212431_DC08_12202022_131543_i.pdf

POST CONVICTION RELIEF: When determining whether to grant a motion for postconviction relief based on a claim that the defendant has obtained newly discovered evidence, the defendant first must show that the evidence was not known to him, his attorney, or the trial court and could not have been discovered through the use of due diligence. Where some evidence supports the trial court's finding that the newly discovered evidence would not produce an acquittal upon retrial, Defendant is not entitled to relief. Court may reject testimony of a fellow inmate, 18 years later, that he saw some other dude commit the crime. Sinclair v. State, 1D22-25 (12/20/22)

https://www.1dca.org/content/download/855890/opinion/220025_DC05_12202022_132025_i.pdf

PRETRIAL RELEASE-REVOCATION-JUDGE: Only the assigned trial judge–not the emergency duty judge–has authority to order revocation of pretrial release. Little v. Gualtieri, Sheriff 2D22-2613 (12/16/22)

https://www.2dca.org/content/download/855598/opinion/222613_DC02_12162022_085007_i.pdf

PRETRIAL RELEASE-REVOCATION: Judge may not modify bail on a motion by the State without a showing of good cause and with at least 3 hours' notice to the attorney for the defendant. Little v. Gualtieri, Sheriff 2D22-2613 (12/16/22)

https://www.2dca.org/content/download/855598/opinion/222613_DC02_12162022_085007_i.pdf

DEATH PENALTY (J. THOMAS, concurring): "[T]he United States Supreme Court held in Kennedy v. Louisiana. . .that no matter howbrutal and dehumanizing a rapist victimizes a person, even a child, the states are not authorized to impose capital punishment for such heinous crimes. I reiterate my view that both of these decisions are wrong as they are not based on the text or the historical underpinnings of the Eighth Amendment. This case is just another sad example of why those decisions are also wrong based on any moral theory of punishment and justice." Lainhart v. State, 1D21-3832 (12/15/11)

https://www.1dca.org/content/download/855537/opinion/213832_DC05_12152022_140959_i.pdf

JURY-12 PERSON (J. THOMAS, concurring): "Recently, Justice Gorsuch of the United States Supreme Court has opined that a criminal defendant, such as Appellant, is entitled to a twelve-person jury before he may be constitutionally convicted under the Sixth Amendment. . .In my view, the sovereign state of Florida. . .is . . .granted the flexible authority to rely on juries composed of six citizens . . .or eight. . .or any other number of jurors more than five." Lainhart v. State, 1D21-3832 (12/15/11)
https://www.1dca.org/content/download/855537/opinion/213832_DC05_12152022_140959_i.pdf

POST CONVICTION RELIEF-AEDPA: Under AEDPA, a federal court's review of a final state habeas decision is greatly circumscribed, and a federal habeas court cannot grant a state petitioner habeas relief on any claim that was adjudicated on the merits in state court unless the state court's adjudication of the claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Jennings v. Secretary, Fla. DOC, No. 21-11591 (12/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111591.pdf

POST CONVICTION RELIEF-MAIL BOX RULE: Under the mailbox rule, the date that a motion is placed into the hands of prison officials for filing is the date that the motion is considered filed. Where Defemdant's photocopied motion shows that he handed the motion to prison officials for mailing within two years, it is timely. Byram v. State, 1D22-828 (12/14/22)
https://www.1dca.org/content/download/855408/opinion/220828_DC13_12142022_142612_i.pdf

DOUBLE JEOPARDY: In order to determine whether offenses occurred during a single criminal episode, courts look to whether there are multiple

victims, whether the offenses occurred in multiple locations, and whether there has been a temporal break between offenses. Even minimal lapses in time can be sufficient for a defendant to form a new criminal intent between offenses. Aguilar v. State, 3D22-62 (12/14/22)
https://www.3dca.flcourts.org/content/download/855382/opinion/220062_DC05_12142022_102459_i.pdf

SENTENCING-DOWNWARD DEPARTURE-UNSOPHISTICATED: Defendant is not eligible for a downward departure on the ground that the offenses were committed in an unsophisticated manner and were an isolated incident for which Defendant has shown remorse where co-Defendant broke into home with a burglary tool while Defendant waited in the vehicle and acted as a getaway driver. Unsophisticated means artless, simple, and not refined. State v. Anderson, 4D22-171 (12/14/22)
https://www.4dca.org/content/download/855392/opinion/220171_DC13_12142022_101639_i.pdf

SENTENCING-DOWNWARD DEPARTURE-ISOLATED INCIDENT: Where Defendant had three prior burglary convictions from three different years, his new burglary was not an isolated incident. State v. Anderson, 4D22-171 (12/14/22)
https://www.4dca.org/content/download/855392/opinion/220171_DC13_12142022_101639_i.pdf

POST CONVICTION RELIEF-AEDPA: State court's finding that Defendant failed to establish prejudice precludes federal habeas review of whether trial counsel's performance was deficient in investigating death penalty mitigation. Jennings v. Secretary, Fla. DOC, No. 21-11591 (12/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111591.pdf

DEATH PENALTY: In Florida, in order for the jury to recommend a death sentence, the jury must unanimously find the existence of at least one aggravating factor and unanimously agree that the defendant should be

sentenced to death. However, the jury's recommendation that the defendant be sentenced to death is still advisory, and the trial court may override the recommendation. Jennings v. Secretary, Fla. DOC, No. 21-11591 (12/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202111591.pdf

ARMED CAREER CRIMINAL ACT-SERIOUS DRUG OFFENSE: ACCA mandates a fifteen-year minimum sentence for a defendant who possesses a firearm and satisfies any of 18 U.S.C. §922(g)(1)'s conditions while having at least three qualifying previous convictions (a "violent felony or a serious drug offense, or both."). A "serious drug offense" is one "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in §102 of the Controlled Substances Act, with a maximum term of imprisonment of ten years or more. State v. Jackson, No. 21-S13963 (11th Cir. 12/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202113963.op2.pdf

ARMED CAREER CRIMINAL ACT-SERIOUS DRUG OFFENSE: ACCA's "serious drug offense" definition incorporates the version of the controlled-substances list in effect when the defendant was convicted of his prior state drug offense, not the version in effect when he committed the new crime for which he is to be sentenced. The fact that ioflupane was included in the definitions for cocaine but excluded from the definition at the time of Defendant's later crime (the one for which he is to be sentenced now) does not save him from ACCA. Defendant is subject to ACCA sentencing, notwithstanding that ioflupane is no longer included in the definition of cocaine. State v. Jackson, No. 21-13963 (11th Cir. 12/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202113963.op2.pdf

COMMENT: "Still, it is quite remarkable to expect the 'ordinary citizen,'. . .to understand the ins and outs of ACCA—especially when. . .they require historical research of the federal Controlled-substance schedules. State v. Jackson, No. 21-13963 (11th Cir. 12/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202113963.op2.pdf

STARE DECISIS: Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. Assumptions are not holdings. State v. Jackson, No. 21-13963 (11th Cir. 12/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.op2.pdf

ARGUMENT: State's assertion that its witnesses were "honest," "straightforward," and "truthful" is not improper vouching or a personal opinion as to the credibility of the witnesses, but rather a conventional, unremarkable assertion that is well within the lawful scope of closing argument. Hamilton v. State, 1D21-2532 (12/12/22)
https://www.1dca.org/content/download/855170/opinion/212532_DC05_12122022_140653_i.pdf

CERTIORARI: To be entitled to a writ of certiorari, Petitioner must show that it will suffer irreparable harm, which means it has no adequate remedy on appeal. Irreparable harm is jurisdictional. Yeary, Public Defender v. Chief Judge, 1D21-2583 (12/8/22)
https://www.1dca.org/content/download/854795/opinion/212583_DA08_12082022_081332_i.pdf

CERTIORARI (J. TANENBAUM, CONCURRING): Certiorari may not be used to challenge an administrative policy (pre-bond mental health screenings). Further, appellate court has no jurisdiction over the administrative supervision. "This petition never should have been The public defender. . .asks this court to intervene in an apparent spat between her and the chief judge. . .by issuing a writ of certiorari. To a student of ancient prerogative writs, this attempted use of certiorari should seem silly." Yeary, Public Defender v. Chief Judge, 1D21-2583 (12/8/22)
https://www.1dca.org/content/download/854795/opinion/212583_DA08_12082022_081332_i.pdf

POST-CONVICTION RELIEF-SILENCE OF DEFENDANT: A defendant's pre-arrest, pre-Miranda silence cannot be used against him as substantive evidence of consciousness of guilt. Prosecutor's comment that the Defendant walked away from the investigating officer showed consciousness of guilt was an improper comment on Defendant's silence. Counsel was deficient for failing to object, but prejudice is not shown because there no reasonable probability that, but for counsel's error, the result would have been different. Williams v. State, 1D22-1642 (12/8/22)
https://www.1dca.org/content/download/854797/opinion/221642_DC05_12082022_081747_i.pdf

BURGLARY: The statutory definition of dwelling encompasses the statutory definition of structure. If it is a dwelling, it is also a structure. Court did not err in answering "Yes" to jury question asking if all dwellings were structures. Luster v. State, 1D21- 2902 (12/7/22)
https://www.1dca.org/content/download/854712/opinion/212902_DC05_12072022_093454_i.pdf

JURY TRIAL-WAIVER: Counsel's request for an nonjury trial at a pretrial conference at which Defendant was not present is not a valid waiver of a trial by jury. A defendant's right to a jury trial is constitutionally protected; a waiver of that right must be knowing, voluntary, and intelligent and requires either a written waiver signed by the defendant or an oral waiver after a proper colloquy with the trial judge. Counsel's waiver on a defendant's behalf, whether written or oral, is insufficient, without more, to constitute a proper waiver of the defendant's rights. Roberts v. State, 2D21- 2139 (12/7/22)
https://www.2dca.org/content/download/854698/opinion/212139_DC13_12072022_082659_i.pdf

POST-CONVICTION RELIEF-ILLEGAL SENTENCE: Defendant is not entitled to relief on post-conviction claim of an illegal sentence (25 year mandatory minimum term on the aggravated battery charge on the finding

that during the commission of the offense, Defendant discharged a firearm resulting in great bodily harm or death) notwithstanding that the information charged only that he discharged a firearm. The sentence was not illegal, so any claim would have had to have been filed within 2 years, not 14 years later. An alleged defect in the charging document does not constitute an illegal sentence. Cabrera v. State, 2D22-1378 (12/7/22)
https://www.2dca.org/content/download/854702/opinion/221378_DC05_12072022_082831_i.pdf

POST-CONVICTION RELIEF-MISADVISE-PRR: Where counsel was ineffective for not advising Defendant of his exposure as a Prisoner Release Reoffender, leading him to reject the plea offer, the potential remedy available is not confined to simply renegotiating with the State. Rather, remedies for Sixth Amendment violations may vary and should be tailored to the injury suffered from the constitutional violation. Remanded to determine prejudice. Rubright v. State, 2D22-2008 (12/7/22)
https://www.2dca.org/content/download/854707/opinion/222008_DC13_12072022_083120_i.pdf

POST-CONVICTION RELIEF-MISADVISE-PRR (J. LUCAS, CONCURRING): "The vagaries of what exactly a postconviction court is supposed to do in these kinds of cases—how it should exercise its discretion' to redress what is deemed a constitutional deprivation of a favorable plea offer—remain much the same as they were a decade ago. . . .So I sympathize with the postconviction court and the lawyers in this case who, on remand, must now navigate a course through an area of law appellate courts seem incapable of mapping out. . . They are expected to engage in hindsight in a process that is ordinarily prospective in its vantage." Rubright v. State, 2D22-2008 (12/7/22)
https://www.2dca.org/content/download/854707/opinion/222008_DC13_12072022_083120_i.pdf

POST-CONVICTION RELIEF-MISADVISE-PRR (J. LUCAS,

CONCURRING): "Prejudice is to be determined. . .by a process of retrospective crystal-ball gazing posing as legal analysis. . . Hopefully on remand, the postconviction court can find a good, clear crystal ballwith which to work." Rubright v. State, 2D22-2008 (12/7/22)
https://www.2dca.org/content/download/854707/opinion/222008_DC13_12072022_083120_i.pdf

COSTS-PUBLIC DEFENDER FEE: $50 public defender fee may be increased only upon proof of higher costs incurred, and Court must inform the defendant that he has a right to contest the fee at a hearing. Taylor v. State, 4D21-327 (12/7/22)
https://www.4dca.org/content/download/854734/opinion/213277_DC08_12072022_100237_i.pdf

COSTS-PROSECUTION: The minimum prosecution cost in misdemeanor cases is $50. Court may set a higher amount only upon proof of higher costs incurred, and Court must consider the defendant's financial resources. Taylor v. State, 4D21-327 (12/7/22)
https://www.4dca.org/content/download/854734/opinion/213277_DC08_12072022_100237_i.pdf

COSTS-INVESTIGATION COST: The burden of demonstrating the amount of investigation costs incurred is on the state attorney, and may be imposed only if the agency that incurs that cost requests it. Prosecutors are not authorized to request costs on behalf of an agency without that agency's request. Defendant declining to have a hearing regarding these costs does not equate to an agreement to pay the amount charged. Taylor v. State, 4D21-327 (12/7/22)
https://www.4dca.org/content/download/854734/opinion/213277_DC08_12072022_100237_i.pdf

SEARCH AND SEIZURE-WARRANTLESS ARREST: Where the arresting officer did not witness Defendant operating or in actual physical possession

of the car, the warrantless arrest is unlawful and evidence derived from it must be suppressed. *See* §901.15(5). Wagner v. State, 4D21-3387 (12/7/22)
https://www.4dca.org/content/download/854736/opinion/213387_DC13_12072022_100646_i.pdf

FELLOW OFFICER RULE-WARRANTLESS ARREST: Public safety aide is not a deputized police officer, so the fellow law officer rule for a warrantless arrest based on the aide's observations does not apply. The fellow officer rule does not impute the knowledge of citizen informants to officers. If law enforcement support personnel are not vested with arrest powers, they cannot be relied upon to establish probable cause for a warrantless DUI arrest. Wagner v. State, 4D21-3387 (12/7/22)
https://www.4dca.org/content/download/854736/opinion/213387_DC13_12072022_100646_i.pdf

WARRANTLESS ARREST-DUI: An officer can arrest a person for misdemeanor DUI in only three circumstances: (1) the officer witnesses each element of a prima facie case, (2) the officer is investigating an accident and develops probable cause to charge DUI, or (3) one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest. Wagner v. State, 4D21-3387 (12/7/22
https://www.4dca.org/content/download/854736/opinion/213387_DC13_12072022_100646_i.pdf

HFO: For habitual felony offender sentencing, the felony for which the defendant is to be sentenced, and one of the two predicate prior felony convictions must be something other than a violation §893.13 relating to the purchase or the possession of a controlled substance. Robinson v. State, 4D22-1313 (12/7/22)
https://www.4dca.org/content/download/854740/opinion/221313_DC05_1

2072022_101345_i.pdf

DEFINITION-"AND": "The question presented in this appeal. . .is whether. . .the word "and" means "and." It does. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

DEFINITION-"AND": "And" means "along with or together with." When "and" is used to connect a list of requirements, the word ordinarily has a"conjunctive" sense, meaning that all the requirements must be met. The word "and" retains its conjunctive sense when a list of requirements follows a negative. For example, "You must not drink and drive" means you can do one or the other but not both. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

DEFINITION-"AND" (J. ROSENBAUM, CONCURRING): Put simply, just as no amount of canon-based massaging could make "white" mean "black" or "up" mean "down," none can make the word "and" mean "or." USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

SAFETY VALVE: Safety valve empowers a court to grant a criminal defendant relief from a mandatory minimum sentence only if the defendant does not have more than 4 criminal history points, a prior 3-point offense, and a prior 2-point violent offense. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

SAFETY VALVE: Defendant who has a prior 3-point offense but does not have more than 4 criminal history points or a prior 2-point violent offense is

eligible for safety valve relief because he did not have all three characteristics. Because the conjunctive "and" joins together the enumerated characteristics, a defendant must have all three before he becomes ineligible for relief. The plain meaning of the statute requires all three subsections of § 3553(f)(1) to be met before the defendant becomes ineligible for the safety valve. Government's position--that if any of the three subsections apply, he does not qualify for the safety valve– is wrong. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

STATUTORY CONSTRUCTION-ORDINARY-MEANING CANON: The ordinary-meaning canon--the most fundamental semantic rule of interpretation–requires that words be interpreted consistently with their ordinary meaning at the time Congress enacted the statute. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

DISTRIBUTIVE CANON: The "distributive canon" recognizes that sometimes where a sentence contains several antecedents and several consequents, courts should read them distributively and apply the words to the subjects which, by context, they seem most properly to relate. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

SUPERFLUITY: "The superfluity argument has superficial appeal—after all, as our dissenting colleagues helpfully remind us, three plus two is more than four." USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

MATH: "Two added to one—if that could but be done,"

It said, "with one's fingers and thumbs!"
Recollecting with tears how, in earlier years,
It had taken no pains with its sums.
Carroll, Lewis, "Fit the Fifth," The Hunting of the Snark
https://www.poetryfoundation.org/poems/43909/the-hunting-of-the-snark

QUOTATION (J. ROSENBAUM, CONCURRING): "From my seat, the shootout at the Eleventh Circuit Corral between the well-reasoned Majority and Dissenting Opinions here produces no indisputable winner after the smoke clears." USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

DEFINITION-"AND"-DISSENT: The word "and" can be read disjunctively in legal texts. Generally "and" is used as a conjunctive connector of words, phrases, or clauses, but when used in a statute since the mid-19th century, sometimes and = or and or = and. *Sæpa ita comparatum est, ut conjuncta pro disjunctis accipiantur.* USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

DEFINITION-"AND": There are no entries for "and" in the 2019 edition of Black's Law Dictionary or in the 2016 edition of Merriam-Webster's Dictionary of Law. USA v. Garcon, No. 19-14650 (12/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

SENTENCING-SAFETY VALVE-ADVICE-(DISSENT): "The Court's opinion gives you discretion to sentence offenders with serious and violent criminal histories to sentences below the applicable mandatory minimum. But you shouldn't do it." USA v. Garcon, No. 19-14650 (12/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.enb.pdf

SENTENCING-DOWNWARD DEPARTURE-REMORSE-ISOLATED INCIDENT: Embezzlement over a period of 4 years is not unsophisticated nor isolated. "The fact that only one charge was levied against McLaney does not mean, however, that the series of underlying fraudulent acts for almost four years can be deemed a single isolated incident." Florida v. McLaney, 1D22-261 (12/6/22)
https://www.1dca.org/content/download/854636/opinion/220261_DC13_12062022_114423_i.pdf

DOUBLE JEOPARDY: Double jeopardy prohibits multiple convictions and sentences for driving under the influence, causing serious bodily injury and property damage to the same victim. Where one incident and the same victim is involved, driving under the influence causing damage to property and serious bodily injury to a person are degree variants of the same criminal offense so that the prohibition against double jeopardy is violated by multiple convictions. Stridiron v. State, 5D21-2571 (12/2/22)
https://www.5dca.org/content/download/854159/opinion/212571_DC13_12022022_081508_i.pdf

CONTEMPT: Written judgment of direct contempt must specify the conduct upon which the adjudication was based. Chiulli v. State, 5D22-364 (12/2/22)
https://www.5dca.org/content/download/854161/opinion/220364_DC13_12022022_081931_i.pdf

INCONSISTENT VERDICTS: Where information charges that Defendant penetrated the vagina of the victim and the jury found him guilty but also made a special verdict finding that Lai he did not penetrate the vagina of the victim, verdict is inconsistent. Appellate counsel was ineffective for failing to argue fundamental error occurred because the jury returned inconsistent

verdicts. The information did not allege "union." Lai v. State, 5D22-453 (12/2/22)
https://www.5dca.org/content/download/854163/opinion/220453_DA16_12022022_082331_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Appellate counsel's failure to identify fundamental error by the trial court, and the failure to raise it in the direct appeal, generally falls outside of the range of professionally acceptable performance. Lai v. State, 5D22-453 (12/2/22)
https://www.5dca.org/content/download/854163/opinion/220453_DA16_12022022_082331_i.pdf

VOP: Order revoking probation must state in writing conditions which trial court found to have been violated. Hoeft v. State, 22-1572 (12/2/22)

https://www.5dca.org/content/download/854167/opinion/221572_DC05_12022022_083338_i.pdf

APPEAL-COMPETENCY: An order on competency is not independently appealable. Rogers v. State, 5D22-2000 (12/2/22)
https://www.5dca.org/content/download/854170/opinion/222000_DC02_12022022_083845_i.pdf

JUDGMENT OF ACQUITTAL-SUFFICIENCY OF EVIDENCE: DNA and fingerprint evidence, along with Defendant's claim that he did not know the victim and did not recall having contact with her, viewed in the light most favorable to the State, is sufficient to sustain the sexual battery conviction.

The traditional standard of whether the State presented competent substantial evidence to support the verdict should now be used in all cases where the sufficiency of the evidence is analyzed. Stephens v. State, 2D20-3526 (12/2/22)
https://www.2dca.org/content/download/854184/opinion/203256_DC05_12022022_090257_i.pdf

POST CONVICTION RELIEF-PLEA OFFER: To allege prejudice in claims of ineffective assistance from misadvice regarding a plea offer the defendant must allege and prove a reasonable probability, defined as a probability sufficient to undermine confidence in the outcome, that (1) he or she would have accepted the offer had counsel advised the defendant correctly (2) the prosecutor would not have withdrawn the offer (3) the court would have accepted the offer and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Additionally, the favorable plea offer must actually exist. Jefferson v. State, 2D21-1106 (12/2/22) https://www.2dca.org/content/download/854189/opinion/211106_DC08_12022022_090425_i.pdf

POST CONVICTION RELIEF-MOTION TO SUPPRESS: In order to establish a claim of ineffective assistance of counsel based on the failure to file a motion to suppress, a defendant must demonstrate that counsel knew a valid basis existed to suppress the relevant evidence, yet counsel failed to file the motion. In order to establish prejudice, a defendant must demonstrate that the motion to suppress would have been successful. Jefferson v. State, 2D21-1106 (12/2/22) https://www.2dca.org/content/download/854189/opinion/211106_DC08_12022022_090425_i.pdf

POST CONVICTION RELIEF-FAILURE TO IMPEACH: Defendant is entitled to a hearing that counsel was ineffective for failing to impeach detective regarding him being fired for improper and unlawful tactics that caused several people to provide involuntary statements to him, but that counsel declined to do so because he and the ex-detective "had a very close relationship and that he did not want to embarrass him." Jefferson v. State, 2D21-1106 (12/2/22) https://www.2dca.org/content/download/854189/opinion/211106_DC08_12022022_090425_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: If the court, after conducting a VOP hearing determines that a VFOSC has committed a violation of probation other than a failure to pay costs, fines, or restitution, the court must make written findings as to whether or not he poses a danger to the community. Listing the statutory factors without including any specific factual findings particular to Defendant's case or explaining its reasoning for concluding that he was a danger to the community is legally insufficient. Douglas v. State, 2D21-1642 (12/2/22)
https://www.2dca.org/content/download/854191/opinion/211642_DC13_12022022_090647_i.pdf

SENTENCING-COSTS: Court's oral pronouncement at sentencing about costs controls over its written order. Marley v. State, 2D21-2071 (12/2/22)
https://www.2dca.org/content/download/854194/opinion/212071_DC08_12022022_090951_i.pdf

EQUITABLE JURISDICTION: District court lacks jurisdiction to block the United States from using lawfully seized records in a criminal investigation. Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute, which may not to be expanded by judicial decree. Exercises of equitable jurisdiction should be exceptional and anomalous. Trump v. USA, No. 22-13005 (12/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf

EQUITABLE JURISDICTION: "[W]e are faced with a choice: apply our usual test; drastically expand the availability of equitable jurisdiction for every subject of a search warrant; or carve out an unprecedented exception in our law for former presidents. We choose the first option." Trump v. USA, No. 22-13005 (12/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf

EQUAL JUSTICE: "Only one possible justification for equitable jurisdiction remains: that Plaintiff is a former President of the United States. . .To create

a special exception here would defy our Nation's foundational principle that our law applies 'to all, without regard to numbers, wealth, or rank'. . .The law is clear. We cannot write a rule that allows any subject of a search warrant to block government investigations after the execution of the warrant. Nor can we write a rule that allows only former presidents to do so." Trump v. USA, No. 22-13005 (12/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf

EQUITABLE JURISDICTION: "When we examine Plaintiff's arguments. . . , we notice a recurring theme. He makes arguments that—if consistently applied—would allow any subject of a search warrant to invoke a federal court's equitable jurisdiction. . .Our precedents consistently reject this approach. We have emphasized again and again that equitable jurisdiction exists only in response to the most callous disregard of constitutional rights, and even then only if other factors make it clear that judicial oversight is absolutely necessary. Trump v. USA, No. 22-13005 (12/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf

CELINE DION: Donald Trump does not get his Celine Dion pictures back. "Plaintiff's counsel noted that the seized items included 'golf shirts' and 'pictures of Celine Dion.' . . . While Plaintiff may have an interest in these items and others like them, we do not see the need for their immediate return after seizure under a presumptively lawful search warrant." Trump v. USA, No. 22-13005 (12/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf

VOP-HEARSAY: Hearsay evidence is admissible at evidentiary hearings for probation revocation, but a decision to revoke probation cannot be based entirely on hearsay. Acord v. State, 1D21-1708 (1/30/22)
https://www.1dca.org/content/download/854014/opinion/211708_DC13_11302022_170026_i.pdf

NOVEMBER 2022

DEMONSTRATIVE AID: Demonstrative aid of a two-minute computer-generated figure of a woman showing the path of the stab wounds made into the Victim's body is permissible. Johnson v. State, 1D21-1934 (11/30/22) https://www.1dca.org/content/download/854015/opinion/211934_DC05_11302022_122121_i.pdf

DEMONSTRATIVE AIDS: Demonstrative exhibits can be used when they are relevant and provide a reasonably accurate reproduction of the objects and incident involved. Whether a demonstrative exhibit constitutes a sufficiently accurate reproduction is a matter left to the discretion of the trial court. Johnson v. State, 1D21-1934 (11/30/22) https://www.1dca.org/content/download/854015/opinion/211934_DC05_11302022_122121_i.pdf

EVIDENCE-GRAPHIC PHOTOS: Graphic photographs of a victim's injuries are admissible if they are relevant and not so shocking in nature as to defeat the value of their relevance. The test for admissibility of photographic evidence is relevancy, not necessity. Johnson v. State, 1D21-1934 (11/30/22) https://www.1dca.org/content/download/854015/opinion/211934_DC05_11302022_122121_i.pdf

APPEAL-DOWNWARD DEPARTURE-DENIAL: Appellate review of the trial court's denial of downward departure from a mandatory minimum sentence is only appropriate when the trial court misapprehends its discretion to depart or refuses to exercise that discretion as a matter of policy. Barr v. State, 1D21-2166 (11/30/22) https://www.1dca.org/content/download/854018/opinion/212166_DC05_11302022_122849_i.pdf

ENTRAPMENT: Defendant is not objectively entrapped where law enforcement engaged a confidential informant to initiate a drug transaction. "This was a traditional, straightforward sting operation that has long been

understood to be permissible." Rollo v. State, 1D21-2429 (11/30/22) https://www.1dca.org/content/download/854023/opinion/212429_DC05_11302022_124622_i.pdf

CHILD HEARSAY: The trial court made sufficient findings that the 6 year old's hearsay statements that he performed oral sex on Defendant were reliable and in conformity with the requirements of §90.803(23). "While more findings could have been provided here to underscore the trial court's reasoning, the findings that the age-appropriate language used by the child and the open-ended questions during the interview with the Child Protection Team, and other facts, are sufficient. Duffy v. State, 1D21-3774 (11/30/22) https://www.1dca.org/content/download/854026/opinion/213774_DC05_11302022_130020_i.pdf

POST CONVICTION RELIEF-SELF DEFENSE-NO DUTY TO RETREAT: Counsel was ineffective for failing to request a "no duty to retreat" instruction from the SYG law. Because the evidence at trial did not support the giving of the retreat instruction, its omission did not prejudice Defendant. The Stand Your Ground law suspends the common-law duty to retreat only in limited, defined circumstances, which the record demonstrates did not exist here. The threat must be "imminent" in time; and in nature it must be deadly, or sufficient to cause "great bodily harm," or constitute a "forcible" felony. State v. Wagner, 1D21-3802 (11/30/22) https://www.1dca.org/content/download/854027/opinion/213802_DC13_11302022_130357_i.pdf

JURY INSTRUCTION-STAND YOUR GROUND: "Use of an instruction that is based on only part of a statute does not pull in the entire statute. Perhaps this section of the criminal jury instructions could better distinguish between similar statutes and their respective component parts." State v. Wagner, 1D21-3802 (11/30/22) https://www.1dca.org/content/download/854027/opinion/213802_DC13_11302022_130357_i.pdf

SYG: The Stand Your Ground law suspends the common-law duty to retreat only in limited, defined circumstances. The threat must be "imminent" in time; and in nature it must be deadly, or sufficient to cause "great bodily harm," or constitute a "forcible" felony. State v. Wagner, 1D21-3802 (11/30/22)
https://www.1dca.org/content/download/854027/opinion/213802_DC13_11302022_130357_i.pdf

SYG: Claimed fear, asserted by a woman holding a loaded gun trained on her unarmed husband inside the house 30 feet away up a landscaped hill, falls far, far short of the imminent threat circumstances in which the Stand Your Ground law applies. . . There was always absolutely zero chance that her husband could outrun a bullet if he chose to advance on her. There was no threat. State v. Wagner, 1D21-3802 (11/30/22)
https://www.1dca.org/content/download/854027/opinion/213802_DC13_11302022_130357_i.pdf

WILLIAMS RULE: In rape case, evidence of a different rape is admissible where there were sufficient similarities: victims of the same age and ethnicity, both incidents occurred within twenty-four hours of the initial meeting with Defendant, both incidents occurred at the same location, and there was a similar modus operandi. Miles v. State, 1D22-1990 (11/30/22)
https://www.1dca.org/content/download/854036/opinion/221990_DC02_11302022_133930_i.pdf

OBSTRUCTION: Talking loudly on the phone in the vicinity of a police officer's investigation does not constitute obstruction without violence. Words alone, without more, are rarely obstructive conduct. Chapper v. State, 2D21-1278 (11/30/22)

https://www.2dca.org/content/download/853915/opinion/211278_DC13_11302022_082848_i.pdf

DOUBLE JEOPARDY-FAILURE TO REGISTER: Where Defendant fails to register four vehicles (his parents' cars), he may be convicted of only one count. Failure to register "all vehicles owned" during a single reporting event constitutes one distinct act. Hill v. State, 2D21-1444 (11/30/22) https://www.2dca.org/content/download/853916/opinion/211444_DC08_11302022_083126_i.pdf

A/ANY: The "a/any test," is a valuable but nonexclusive means to assist courts in determining the intended unit of prosecution. When the article "a" is used by the Legislature in the text of the statute, the intent of the Legislature is clear that each discrete act constitutes an allowable unit of prosecution. Use of the adjective "any" indicates an ambiguity that may require application of the rule of lenity, although the use of that word should not be interpreted to mean that the intended unit of prosecution is automatically rendered ambiguous. Hill v. State, 2D21-1444 (11/30/22) https://www.2dca.org/content/download/853916/opinion/211444_DC08_11302022_083126_i.pdf

DEFINITION-"ANY": "Any" can mean "one, some, every, or all without specification," and is by definition linguistically ambiguous. Hill v. State, 2D21-1444 (11/30/22) https://www.2dca.org/content/download/853916/opinion/211444_DC08_11302022_083126_i.pdf

DEFINITION-"ALL": "All" is defined as "being or representing the entire or total number, amount, or quantity." The "a/any" test is helpful when analyzing what "all" means. Hill v. State, 2D21-1444 (11/30/22) https://www.2dca.org/content/download/853916/opinion/211444_DC08_11302022_083126_i.pdf

COSTS: Court may not assess a $65 "Court Facility & Legal Aid, etc. Fund" fee pursuant to local ordinance 2004-036 without citing an appropriate Florida authorizing statute. "As we have previously instructed trial courts in

this district, cost orders should reference both the applicable local ordinance and Florida statute." Pierce v. State, 2D21-1145 (11/30/22)
https://www.2dca.org/content/download/853917/opinion/211459_DC08_11302022_083254_i.pdf

POST CONVICTION RELIEF-STANDARD: In order to show ineffective assistance of counsel in the context of a plea, a defendant must demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Here, the postconviction court focused only on its conclusion that counsel could have used the video at trial to show that another individual fired the weapon and that this defense could have succeeded at trial, but failed to consider other factors in determining whether a reasonable probability exists that Defendant would have insisted on going to trial. Olivares Jesus v. State, 2D21-1843 (11/30/22)
https://www.2dca.org/content/download/853918/opinion/211843_DC13_11302022_083359_i.pdf

DOUBLE JEOPARDY-DUI WITH PROPERTY DAMAGE: Convictions for two counts of DUI with property damage violate the prohibition against double jeopardy where the evidence established that the damaged property—two traffic signs—belonged to the same victim. Thompson v. State, 2D21-2602 (11/30/22)
https://www.2dca.org/content/download/853922/opinion/212602_DC08_11302022_084149_i.pdf

DISCOVERY-VIOLATION-WITNESS EXCLUSION: In DUI trial, Court erred in excluding two defense witnesses (FDLE inspector and a sergeant) disclosed at voir dire. Defense counsel's failure to provide a witness list is a discovery violation, but Courr erred in excluding the witnesses. Excluding witnesses implicates the right to a fair trial and should be utilized only under the most compelling circumstances and should be a last resort. Court should have considered allowing the State to talk to the witnesses before the

trial began, allowing a short continuance to conduct depositions, or any other alternative. Neer v. State, 2D21-2680 (11/30/22) https://www.2dca.org/content/download/853923/opinion/212680_DC13_11302022_084305_i.pdf

DISRUPTION OF SCHOOL FUNCTION: Defendant who played loud music and shouted religious messages through a bullhorn at students as they exited the school is properly convicted of trespass within a school safety zone and disruption of a school function. Statutes are not either vague or overly broad. Meinecke v. State, 2D21-2880 (11/30/22) https://www.2dca.org/content/download/853924/opinion/212880_DC05_11302022_084405_i.pdf

VAGUENESS: In order for a criminal statute to withstand a void for-vagueness challenge, the language of the statute must provide adequate notice of the conduct it prohibits when measured by common understanding and practice. The language of a statute must provide a definite warning of what conduct is required or prohibited, measured by common understanding and practice. Meinecke v. State, 2D21-2880 (11/30/22) https://www.2dca.org/content/download/853924/opinion/212880_DC05_11302022_084405_i.pdf

CONSTITUTIONALITY: A federal district or appeals court ruling that a Florida statute is unconstitutional is not binding on Florida state courts. Meinecke v. State, 2D21-2880 (11/30/22) https://www.2dca.org/content/download/853924/opinion/212880_DC05_11302022_084405_i.pdf

OVERBREADTH: A statute is overbroad when it criminalizes legal as well as illegal activity and has a chilling effect on First Amendment freedoms. Under the First Amendment facial overbreadth doctrine, litigants are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption

that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. Meinecke v. State, 2D21-2880 (11/30/22)
https://www.2dca.org/content/download/853924/opinion/212880_DC05_11302022_084405_i.pdf

VOIDNESS/OVERBREADTH: When addressing a facial challenge to a statute, courts should construe the statute using a construction that is constitutional whenever it is possible to do so without rewriting the statute. Rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or to conduct necessarily associated with speech (such as picketing or demonstrating). Meinecke v. State, 2D21-2880 (11/30/22)
https://www.2dca.org/content/download/853924/opinion/212880_DC05_11302022_084405_i.pdf

SENTENCE-REDUCTION: A trial court may not unilaterally modify a previously imposed negotiated sentence between a defendant and the State. At least, the trial court may not modify a defendant's negotiated sentence to a term less than that provided for in the negotiated disposition without first giving the State the opportunity to void the plea agreement. State v. Hall, 2D21-3197 (11/30/22)
https://www.2dca.org/content/download/853926/opinion/213197_DC13_11302022_084711_i.pdf

APPEAL-STATE: State may appeal as an illegal sentence a reduced sentence after the State and the Defense negotiated a plea for a lesser included offense in return for testimony against a codefendant (the codefendant was acquitted). Permitting a defendant to use a rule 3.800(c) motion to evade a negotiated plea is unlawful. State v. Hall, 2D21-3197 (11/30/22)
https://www.2dca.org/content/download/853926/opinion/213197_DC13_1

1302022_084711_i.pdf

RESTITUTION: Court may not modify probation to require a personl representative to disburse trust funds to pay restitution. Hicks v. State, 2D21-3503 (11/30/22)
https://www.2dca.org/content/download/853928/opinion/213503_DC13_11302022_085113_i.pdf

PROBATION-MODIFICATION: "To our knowledge, it is unusual for a nonparty in a criminal case to seek modification of a defendant's probation. Hicks v. State, 2D21-3503 (11/30/22)
https://www.2dca.org/content/download/853928/opinion/213503_DC13_11302022_085113_i.pdf

PROBATION-MODIFICATION: "Understanding the distinction between a mere modification. . .and an enhancement is important. A mere modification to the conditions of probation may be made at any time pursuant to the statute; but 'b]efore probation may be enhanced, a violation of probation must be formally charged and the probationer must be brought before the court and advised of the charge." Hicks v. State, 2D21-3503 (11/30/22)
https://www.2dca.org/content/download/853928/opinion/213503_DC13_11302022_085113_i.pdf

HABITUAL OFFENDER/PRR: Although it is impermissible to impose multiple enhanced HVFO sentences to run consecutively when the offenses arose from the same criminal episode, but a habitual offender sentence may be imposed consecutively to a PRR sentence, and unenhanced sentences may be imposed to run consecutively to an enhanced habitual offender sentence arising from the same criminal episode. Prior contrary case law receded from. Thomas v. State, 2D21-4004 (11/30/22)
https://www.2dca.org/content/download/853929/opinion/214004_DC08_11302022_085613_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel misadvised him to reject the State's plea offer by mis-assessing the chances of success at trial. Bennett v. State, 2D22-768 (11/30/22)
https://www.2dca.org/content/download/853932/opinion/220768_DC08_11302022_090810_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel was ineffective for failing to refresh the victim's recollection of her initial description of the assailant; the description was hearsay but would have been admissible as an excited utterance. Bennett v. State, 2D22-768 (11/30/22)

https://www.2dca.org/content/download/853932/opinion/220768_DC08_11302022_090810_i.pdf

SPEEDY TRIAL-CONSTITUTIONAL: Where Defendant is incarcerated in one county at the time another county files an information and places a hold on him, then sent to DOC without the capias being served for two and a half years, his constitutional (not rule based) right to a Speedy trial is violated. Discharge is required. Murphy v. State, 2D22-2126 (11/30/22)
https://www.2dca.org/content/download/853935/opinion/222126_DC03_11302022_091230_i.pdf

SPEEDY TRIAL-PROHIBITION: The deprivation of a defendant's constitutional right to a speedy trial can be considered and remedied through prohibition. In reviewing a petition for writ of prohibition, appellate court must consider the merits of the defendant's motion to dismiss in the same manner as if it were on direct appeal. Murphy v. State, 2D22-2126 (11/30/22)
https://www.2dca.org/content/download/853935/opinion/222126_DC03_11302022_091230_i.pdf

SPEEDY TRIAL: The constitutional right to a speedy trial attaches upon arrest, filing of an indictment or an information, or other official accusation. Murphy v. State, 2D22-2126 (11/30/22) https://www.2dca.org/content/download/853935/opinion/222126_DC03_11302022_091230_i.pdf

SPEEDY TRIAL: Determining whether a violation of the constitutional right to speedy trial has occurred includes consideration of (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant has timely asserted his rights; and (4) the existence of actual prejudice as a result of the delay. No single factor is either necessary or determinative. State has no compelling for failing to execute a capias warrant for two and a half years on a defendant who had been in State custody the entire time. Murphy v. State, 2D22-2126 (11/30/22) https://www.2dca.org/content/download/853935/opinion/222126_DC03_11302022_091230_i.pdf

SPEEDY TRIAL-COVID: COVID is no excuse for violating the constitutional speedy trial right of a Defendant in continuous county and DOC custody. Murphy v. State, 2D22-2126 (11/30/22) https://www.2dca.org/content/download/853935/opinion/222126_DC03_11302022_091230_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel provided ineffective assistance in advising her not to testify in her own defense, particularly where the only evidence of self-defense (her defense at trial) could have come from her testimony. The fact that the trial court questioned Defendant at trial regarding her decision as to whether to testify is not dispositive. "Given that there were no other eyewitnesses to the crime and the admitted forensic evidence was overwhelmingly inculpatory, without Carballo's testimony, the jury was arguably left without a reasonable basis for inferring self-defense." Carballo v. State, 3D21-1583 (11/30/22)

https://www.3dca.flcourts.org/content/download/853940/opinion/211583_DC08_11302022_102103_i.pdf

BAIL-POST-TRIAL: Court may not deny motion for post-trial release pending appeal without rendering written findings supporting the denial of bail. Lopez v. State, 3D22-1837 (11/30/22)
https://www.3dca.flcourts.org/content/download/853944/opinion/221837_NOND_11302022_102728_i.pdf

CONFRONTATION-HEARSAY: In DUI case, admission of urinalysis toxicology report/forensic report violates right of confrontation where the author of the report does not testify at trial. The testimony of a supervisor of the author is legally insufficient. Forensic lab reports can are testimonial statements and their admission without the preparer's testimony runs afoul of Crawford and the Confrontation Clause. The toxicology report in a DUI case, prepared for the prosecution, is accusatory, tends to prove a material element of the crime, and is a pretrial statement that the declarant would reasonably expect to be used prosecutorially, and thus constitutes a testimonial statement. The analysts who write reports that the prosecution introduces must be made available for confrontation even if they possess the scientific acumen of Mme. Curie and the veracity of Mother Teresa. Bennett v. State, 4D21-2925 (11/30/22)
https://www.4dca.org/content/download/853949/opinion/212925_DC05_11302022_095617_i.pdf

APPEAL-PRESERVATION-CONFRONTATION: For an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection below. The issue of violation of the right of confrontation by the testimony of the supervisor of the the forensic report, rather than the author/analyst, is not preserved when the articulated objection was hearsay, not a Sixth Amendment confrontation violation. "At trial, Bennett objected on the basis of 'hearsay,'. . .[and] did not mention the Sixth Amendment, the Confrontation Clause, or Crawford or its progeny, or

whether the evidence was testimonial, the witness was unavailable, or there was a prior opportunity for cross-examination. Thus, Bennett failed to call the trial court's attention to the salient inquiry." Bennett v. State, 4D21-2925 (11/30/22)
https://www.4dca.org/content/download/853949/opinion/212925_DC05_11302022_095617_i.pdf

QUALIFIED IMMUNITY-DOC-VA BENEFITS: Qualified immunity precludes suit against DOC for taking inmate's VA benefits from his inmate account to satisfy liens and holds stemming from medical, legal, and copying expenses he incurs in prison. Prison officials are entitled to qualified immunity for the alleged violations of 38 U.S.C. §5301 and the prisoner lacks standing to challenge Florida's administrative rule allowing seizure of VA benefits for satisfaction of liens and expenses incurred in prison. Wilson v. Secretary, DOC, No. 18-11842 (11th Cir. 11/29/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201811842.pdf

JUROR-CHALLENGE FOR CAUSE-PRESERVATION: To preserve an objection on a voir dire challenge, the objecting party must renew the objection before the jury is sworn. Where counsel accepted the jury without renewing the objections, the issue is not preserved for appeal. Terry v. State, 1D21-1933 (11/23/22)
https://www.1dca.org/content/download/853469/opinion/211933_DC05_11232022_140235_i.pdf

SEARCH AND SEIZURE-SINGLE DWELLING: When executing a warrant, law enforcement officers may not search a separate dwelling unit that exists on the premises but is not separately identified in the warrant, but here, while Appellant's bedroom and bathroom (out the side door of which the drug deals occurred) were walled off from the remainder of the home's interior, the entire building should be considered a single dwelling. Tyson v. State, 1D21-2178 (11/23/22)
https://www.1dca.org/content/download/853471/opinion/212178_DC05_1

1232022_140631_i.pdf

SEARCH AND SEIZURE-SINGLE DWELLING: The "equipped for independent living" analysis is best suited for distinguishing a multi-unit dwelling from a single-family residence. A property is a "multi-unit dwelling" for search warrant purposes if it is comprised of more than one residence, each of which bears the hallmarks of being truly distinct and independent from the others. Tyson v. State, 1D21-2178 (11/23/22) https://www.1dca.org/content/download/853471/opinion/212178_DC05_11232022_140631_i.pdf

JOA-SEX ABUSE-CHILD HEARSAY: Defendant may be convicted of capital sex battery based on child hearsay of penetration notwithstanding the Child's trial testimony to the contrary (when the prosecutor asked the child if Defendant had used his penis to touch her, she shook her head no). Recanted statements can sustain a sexual battery conviction when other proper corroborating evidence is admitted. "Because the child victim did not totally repudiate her prior out-of-court statements at trial and because there was competent, substantial evidence to corroborate those statements, the trial court did not err when it denied the motion for judgment of acquittal." Stevens v. State, 1D21-2691 (11/23/22) https://www.1dca.org/content/download/853474/opinion/212691_DC05_11232022_141132_i.pdf

HABITUAL FELONY OFFENDER: Defendant may be sentenced as an HFO where he is sentenced to one of the predicate offenses at the same time as the HFO sentence. A sentence of probation or community control can serve as a predicate conviction for purposes of habitualization, even when the HFO sentence is imposed at the same time as the VOP sentence. That the trial court revoked probation and sentenced him to prison on the same day it sentenced him for his new law violations is irrelevant. Spurling v. State, 1D22-765 (11/23/22) https://www.1dca.org/content/download/853484/opinion/220765_DC05_1

1232022_141541_i.pdf

APPEAL-JUDGE-DISQUALIFICATION-POST CONVICTION MOTION: As a general rule, an appellate court can review the denial of a motion to disqualify a trial court judge in one of two ways: (1) by petition for writ of prohibition; or, (2) by direct appeal. But in a case involving the summary denial of all postconviction claims, an appellate court cannot review an order denying a motion to disqualify the trial court judge who presided over the postconviction proceedings. In these types of cases, a petition for writ of prohibition provides the only mechanism for review. Nilio v. State, 1D22-940 (11/23/22)
https://www.1dca.org/content/download/853485/opinion/220940_NOND_11232022_141746_i.pdf

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication of guilt for Fleeing and Eluding. §316.1935)(6) states that "no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section." Williams v. State, 2D21-3755 (11/23/22)
https://www.2dca.org/content/download/853370/opinion/213755_DC08_11232022_084252_i.pdf

JUROR-PEREMPTORY-CHALLENGE-DISCRIMINATION: The three-step procedure to be followed when peremptory strikes are challenged as discriminatory is: First, the party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. Next, the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation. Finally, the trial judge must determine whether or not the explanation proffered by the proponent of a peremptory strike is race-neutral and genuine. In making this determination, the trial judge is not bound to accept the reasons proffered by the proponent at face value. The court must examine “all the circumstances surrounding

the strike to satisfy itself that the strike is not a pretext. If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the peremptory strike, the explanation is not a pretext, the court will sustain the strike. Mays v. State, 3D20-1527 (11/23/22) https://www.3dca.flcourts.org/content/download/853420/opinion/201527_DC13_11232022_103909_i.pdf

JUROR-PEREMPTORY-CHALLENGE-DISCRIMINATION-GENUINENESS: The factors relevant to the trial court's genuineness inquiry include the racial make-up of the venire, prior strikes exercised against the same racial group, or singling out the juror for special treatment. Mays v. State, 3D20-1527 (11/23/22) https://www.3dca.flcourts.org/content/download/853420/opinion/201527_DC13_11232022_103909_i.pdf

JUROR-PEREMPTORY CHALLENGE-GENUINENESS: Court failed to properly evaluate the genuousness of the State's justification for the strike of a juror who said she wanted to be on the jury because there were few black jurors on the panel and the defendants would be terrified if the jury didn't look like like them. Among other things, The court did not consider State's clear pattern of seeking to strike every Black person on the venire. Mays v. State, 3D20-1527 (11/23/22) https://www.3dca.flcourts.org/content/download/853420/opinion/201527_DC13_11232022_103909_i.pdf

POST CONVICTION RELIEF-ADVISING NOT TO TESTIFY: The Sixth Amendment imposes a duty on defense counsel to provide advice regarding the client's decision to testify or not testify at trial. Although a trial court does not have an affirmative duty to make a record inquiry concerning a defendant's waiver of the right to testify,it is advisable for the trial court to make a record inquiry as to whether the defendant understands he has a right to testify. Trial court judges should be encouraged to make such a colloquy a standard part of their trial procedure. "In fact, a trial court might

also do well to discuss with the State and defense, prior to the colloquy, the precise number of prior convictions that may be used to impeach the defendant. . . In this way, the parties can agree on (or the court can determine) the exact number of impeachable convictions, and that information can be shared with the defendant before deciding whether to testify in his own defense." McClenney v. State, 3D22-198 (11/23/22) https://www.3dca.flcourts.org/content/download/853424/opinion/220198_DC05_11232022_104549_i.pdf

MOTION TO MITIGATE: Court's exercise of discretion in ruling on the merits of a motion to reduce or mitigate sentence is not subject to appellate review. Caso v. State, 3D22-1514 (11/23/22) https://www.3dca.flcourts.org/content/download/853426/opinion/221514_DA08_11232022_104814_i.pdf

COSTS-SURCHARGE: Court may not apply a five percent surcharge, pursuant to §938.04 when the trial court did not impose a fine. Barker v. State, 4D21-2575 (11/23/22) https://www.4dca.org/content/download/853403/opinion/212575_DC08_11232022_094923_i.pdf

GOLDEN RULE: Although the most common golden rule violation in criminal cases may occur when the state asks jurors to place themselves in the victim's position, a golden rule violation may occur anytime a party asks jurors to place themselves in any party's position to decide the case on the basis of personal bias, rather than on the evidence. State violated the Golden Rule during voir dire by by asking the venire the following questions: "How important is your driver's license to you?" "[Y]ou really need your car and you really need your driver's license, right?;" "Would you sell your driver's license to me for $5,000? $50,000? $500,000?" '[W]e have written this opinion to better ensure that similar golden rule violations do not recur in DUI cases." Goldbach v. State, 4D21-3545 (11/23/22) https://www.4dca.org/content/download/853408/opinion/213545_DC05_1

1232022_095909_i.pdf

VOIR DIRE-PURPOSE: " We also use this opinion as a reminder that the purpose of voir dire is not—under the guise of 'educating' the venire—to preview the arguments which will be made later in the trial.. . .Such 'pre-trying' of the case is not the purpose of voir dire, nor is it an appropriate use of the amount of time provided for voir dire." Goldbach v. State, 4D21-3545 (11/23/22)

https://www.4dca.org/content/download/853408/opinion/213545_DC05_11232022_095909_i.pdf

VOP: The written order of revocation of probation must conform to the oral pronouncements made at the revocation hearing by the trial judge. Where the two are inconsistent, the inconsistent portions of the written order must be stricken. Allen v. State, 4D22-1246 (11/23/22)

https://www.4dca.org/content/download/853410/opinion/221246_DC08_11232022_100719_i.pdf

VOP-DUPLICATIVE JUDGMENT: Court fundamentally erred in entering a duplicative judgment for the same underlying offenses after revoking the defendant's probation. Allen v. State, 4D22-1246 (11/23/22)

https://www.4dca.org/content/download/853410/opinion/221246_DC08_11232022_100719_i.pdf

DISMISSAL: Fed.R.Cr.P. 48(a) allows the government to dismiss an information (or indictment) before trial with leave of court. But the district court's discretion to grant or deny dismissal is limited and must be without prejudice to future prosecution absent bad faith. USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL: Whenever an indictment or information is dismissed after expiration of the statute of limitation, a new indictment may be returned within six calendar months of the date of the dismissal of the indictment or information, or, in the event of an appeal, within 60 days of the date the dismissal becomes final. USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22) https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL WITH PREJUDICE: Court abused its discretion in dismissing the information with prejudice under R. 48(a) without finding that the government's motion to dismiss was filed in bad faith. The presumption of good faith applies when the government seeks dismissal regardless of whether it has explained the dismissal. USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL: "The district court did not follow the rule 48(a) 'leave of court' requirements. It did not presume that the government's dismissal was in good faith. It did not find bad faith to overcome the good-faith presumption. It did not focus on the government's reasons for moving to dismiss the information. It did not apply the ultimate test for granting 'leave of court.' And it did not dismiss the information without prejudice. Because of these errors of law, the district court's order dismissing the information was an abuse of discretion." USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL WITH PREJUDICE: Where government moves to dismiss information without prejudice, The Court errs in dismissing the information with prejudice. USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL: "The district court did not follow the rule 48(a) 'leave of court' requirements. It did not presume that the government's dismissal was in good faith. It did not find bad faith to overcome the good-faith presumption.

It did not focus on the government's reasons for moving to dismiss the information. It did not apply the ultimate test for granting 'leave of court.' And it did not dismiss the information without prejudice. Because of these errors of law, the district court's order dismissing the information was an abuse of discretion." USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22) https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DEFINITION-"LEAVE": "Leave" means "permission." USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22) https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL-TACTICAL ADVANTAGE-(DISSENT, J. WILSON): Where government had charged Defendant by information but feared it would not be able to procure an indictment before the expiration of the statute of limitations (there was a COVID moratorium on convening grand juries), and therefore moved to dismiss the information without prejudice (with the intent of later availing itself of the recapture rule), Court properly dismissed the information with prejudice. USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

DISMISSAL-TACTICAL ADVANTAGE-(DISSENT, J. WILSON): "There is no question that the government sought to dismiss the information to achieve a tactical advantage in derogation of B.G.G.'s rights—the very definition of bad faith. . .And the government's plan to 'charg[e], dismiss[], and recharg[e]' B.G.G. is the exact conduct the Supreme Court has said constitutes harassment. . . Pandemic or not, the district court was right to root out these corner-cutting tactics. As the Supreme Court recently reminded us, '[i]f men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.'" USA v. B.G.C, No. 21-10165 (11th Cir. 11/22/22) https://media.ca11.uscourts.gov/opinions/pub/files/202110165.pdf

COMPETENCY: A competency hearing is required if Court has reasonable grounds to believe that Defendant is not competent. Failure to hold a competency hearing and enter a written order is fundamental error and requires reversal. Thomas v. State, 1D will20- 82260 (11/22/22)
https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

APPELLATE REVIEW-VIDEO: The Appellate court applies a less deferential standard to the trial court's factual findings to the extent that they are based on a video. Thomas v. State, 1D will20- 82260 (11/22/22)

https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

DISCOVERY-BRADY: The Brady rule only applies to the discovery, after trial, of information which had been known to the prosecution but unknown to the defense. It does not apply to the trial court's denial of a motion to compel discovery. To establish a Brady violation, the defendant must identify specific exculpatory evidence suppressed by the State. A defendant's general request for Brady material is insufficient. Thomas v. State, 1D20- 82260 (11/22/22)
https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

DOMESTIC VIOLENCE SURCHARGE: Domestic violence surcharges do not apply to armed burglary with assault or battery; §810.02(2), is not on the list of offenses for which they apply. Thomas v. State, 1D will20- 82260 (11/22/22)
https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

SCORESHEET-FIRST-DEGREE MURDER: First-degree murder offense

should not be included on the scoresheet. Thomas v. State, 1D will20-82260 (11/22/22)
https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

SCORESHEET-ERROR: Any error in scoresheet calculation is harmless where it is clear that the Court would have imposed the same sentence regardless of the error. Where the scoresheet used called for a lowest permissible sentence of 286.5 months but a correct scoresheet would have come to 243 months, and the sentence imposed was 1,140 months in prison on each count to be served consecutively to each other in the life sentence on the murder count, the scoresheet error is harmless. Thomas v. State, 1D will20- 82260 (11/22/22)
https://www.1dca.org/content/download/853308/opinion/202260_DC08_11222022_140236_i.pdf

STAND YOUR GROUND-REVIEW: There are two paths for a criminal defendant to seek review of a trial court's order denying a motion to dismiss claiming self-defense immunity: Petition for a writ of prohibition (when challenging the Court's ruling on the merits) or petition for writ of certiorari (when challenging the procedure used by the court in considering the self-defense immunity claim). Edwards v. State, 1D21-2838 (11/21/22)
https://www.1dca.org/content/download/853194/opinion/212838_DC02_11212022_120028_i.pdf

STAND YOUR GROUND: To make a prima facie showing of SYG immunity in a homicide case, Defendant needs to point to facts that show or tend to show that he used it before; he reasonably deadly force is necessary to prevent imminent death or great bodily harm to himself or another; he used deadly force while resisting the victim's attempt to murder him, to commit a forcible felony on him, or to commit a forcible felony on or in his dwelling; and he was not engaged in criminal activity and was in a place he had the right

to be. Unsworn allegations in the motion lack evidentiary value. Edwards v. State, 1D21-2838 (11/21/22) https://www.1dca.org/content/download/853194/opinion/212838_DC02_11212022_120028_i.pdf

APPEAL-APPENDIX: Appellant criticized for omitting from his appendices "several critical pieces of evidence considered by the trial court," such as photographs, recordings, and videos. Edwards v. State, 1D21-2838 (11/21/22) https://www.1dca.org/content/download/853194/opinion/212838_DC02_11212022_120028_i.pdf

STAND YOUR GROUND (J. THOMAS, DISSENTING): "The majority opinion reads as though the Legislature never amended section 776.032, Florida Statutes, to place the burden on the State to prove by clear and convincing evidence that a defendant is not entitled to self-defense immunity." Edwards v. State, 1D21-2838 (11/21/22) https://www.1dca.org/content/download/853194/opinion/212838_DC02_11212022_120028_i.pdf

RE-SENTENCING: As part of a de novo resentencing to correct previously imposed illegal sentences on certain counts, Court may not restructure legal sentences on other counts. While an illegal sentence can be corrected at any time, a court loses jurisdiction to modify a legal sentence after sixty days have passed since its imposition. State v. Janes, 5D21-1834 (11/21/22) https://www.5dca.org/content/download/853232/opinion/211834_DC13_11212022_150515_i.pdf

PROSTITUTION-CIVIL PENALTY: Defendant found to have violated §796.07(2)(f) shall be assessed a civil penalty of $5,000; if found to have violated §796.07(2)(e) he/she shall not. The former prohibits soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation; the latter prohibits offering to commit, or to commit, or to

engage in, prostitution, lewdness, or assignation. Bowers v. State, 2D21-2597 (11/18/22)
https://www.2dca.org/content/download/853120/opinion/212597_DC08_11182022_083124_i.pdf

DOUBLE JEOPARDY: Court violated Defendant's rights against double jeopardy when, on its own initiative, it enhanced his sentence sixty days after imposing it. Black v. State, 5D21-2726 (11/18/22)
https://www.5dca.org/content/download/853108/opinion/212726_DC13_11182022_084029_i.pdf

EVIDENCE-POLYGRAPH: Jury instrucion stating that if a polygraph exam had been administered to the flipping co-defendant it would not have been admissible is not an impermissible comment to the jury on how to weigh the evidence, nor an indirect comment on the witness's credibility. Sievers v. State, SC20-225 (11/17/22)
https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

ARGUMENT-POLYGRAPH-OPINION ON GUILT: State's rhetorical question whether officer needed a "lie detector machine" to tell him when witness was lying, is not improper given the narrow circumstances of how issue was raised by Defendant. Sievers v. State, SC20-225 (11/17/22)
https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

EVIDENCE-PRAYER: Witness's testimony that his passing statement that he prayed before deciding to testify does not violate §90.611, which prohibits evidence of one's religious beliefs to show credibility. Sievers v. State, SC20-225 (11/17/22)
https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

EVIDENCE: Court properly excluded questioning suggesting that one of

the hitmen had a sexual relationship with the victim (the defendant's wife) absent evidence or proffer supporting the "tangential and potentially distracting path." Sievers v. State, SC20-225 (11/17/22) https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

EVIDENCE: Neighbor's testimony suggesting that Defendant had scoped out the back yard to look for a good place for hitmen to jump the fence was proper. Sievers v. State, SC20-225 (11/17/22) https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

CONSPIRACY: Defendant may be found guilty of conspiracy with both of the two hitmen who killed his wife, notwithstanding that he did not know and did not want to know the identity of Killer #2. To sustain a conspiracy conviction, the government does not need to prove that the defendant knew the identity of every other person alleged to have been part of the conspiracy. It is enough that the State prove that the alleged co-conspirators shared a common purpose to commit the crime. Sievers v. State, SC20-225 (11/17/22) https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

DEATH PENALTY-NOTICE: If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. Where State filed a notice of intent to seek this building on the 44th day, but did not list the aggravating factors until after the 45th day, imposition of the death penalty is still permissible. Any procedural error is harmless. Sievers v. State, SC20-225 (11/17/22) https://www.floridasupremecourt.org/content/download/853035/allopinion/

sc20-225.pdf

DEATH PENALTY-EVIDENCE: In the penalty phase, The court did not err in ordering that a postcard sent to the Defendant by his daughters be redacted to omit the daughters' wish that Defendant not be executed. Sievers v. State, SC20-225 (11/17/22)
https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

SPENCER HEARING: A Spencer hearing is an aspect of the capital sentencing process that typically occurs after the penalty phase trial and jury recommendation, but before the trial court's imposition of sentence. The purpose of a Spencer hearing is to: (a) give the defendant, his counsel, and the State, an opportunity to be heard; (b) afford, if appropriate, both the State and the defendant an opportunity to present additional evidence; (c) allow both sides to comment on or rebut information in any presentence or medical report; and (d) afford the defendant an opportunity to be heard in person. A special hearing in a position of sentence may occur on the same day. Sievers v. State, SC20-225 (11/17/22)
https://www.floridasupremecourt.org/content/download/853035/opinion/sc20-225.pdf

ASSAULT-ARMED CAREER CRIMINAL ACT: The first element of Florida's assault statute requires not just the general intent to volitionally take the action of threatening to do violence, but also that the actor direct the threat at a target, namely, another person. Aggravated assault with a deadly weapon under §784.021(1)(a) should qualify as a "violent felony" under the elements clause of ACCA. Somers v. USA, SC21-1407 (11/17/22)
https://www.floridasupremecourt.org/content/download/853036/opinion/sc21-1407.pdf

ASSAULT: The first element of assault as defined in §784.011(1)–"an

intentional, unlawful threat by word or act to do violence to the person of another"– does not require specific intent. The first element of the assault statute (§784.011(1)) requires not just the general intent to volitionally take the action of threatening to do violence but also that the actor direct the threat at a target, namely another person. Somers v. USA, SC21-1407 (11/17/22)
https://www.floridasupremecourt.org/content/download/853036/opinion/sc21-1407.pdf

DEFINITION-"THREAT": "Threat" is "an expression of intention to inflict evil, injury, or damage"; "[a]n expression of an intention to inflict pain, injury, evil, or punishment on a person or thing"' or "[a] communicated intent to inflict physical or other harm on any person or on property." Somers v. USA, SC21-1407 (11/17/22)
https://www.floridasupremecourt.org/content/download/853036/opinion/sc21-1407.pdf

DEFINITION-"VIOLENCE": The term "violence" means the use of physical force to cause harm. Somers v. USA, SC21-1407 (11/17/22)
https://www.floridasupremecourt.org/content/download/853036/opinion/sc21-1407.pdf

ASSAULT: The fact that an assault cannot be committed by a reckless act under Florida law means that a violation of §784.011(1) requires at least knowing conduct. Somers v. USA, SC21-1407 (11/17/22)

https://www.floridasupremecourt.org/content/download/853036/opinion/sc21-1407.pdf

AMENDMENT-RULES-JUDGE'S RECORDS: Rule 2.420 and canon 3 govern the treatment of judicial records (including confidential records) and judges' use of nonpublic information obtained in a judicial capacity. A]t the conclusion of service on a court, each justice or judge shall deliver to the

court's chief justice or chief judge any records of the judicial branch in the possession of the departing justice or judge. This amendment accounts for justices' and judges' departure from the bench and formally relieves them of their roleunder rule 2.420 as records custodians. In Re: Amendments to the Florida Rules of General Practice and Judicial Administration and the Code of Judicial Conduct, No. SC22-1387 (11/17/22)
https://www.floridasupremecourt.org/content/download/853037/opinion/sc22-1387.pdf

APPEAL-PRESERVATION: By stating "no objection" to the introduction into evidence of a recording of the Defendant in his hospital room (where he mentioned that he had committed a murder), waives the issue. Reed v. State, 1D21-2473 (11/16/22)
https://www.1dca.org/content/download/852904/opinion/212473_DC05_11162022_140647_i.pdf

EVIDENCE-SECRET RECORDING-PRIVACY: Defendant lacks a reasonable expectation of privacy in his room while in police custody at the hospital. Persons generally lack a reasonable expectation of privacy when in police custody. Reed v. State, 1D21-2473 (11/16/22)
https://www.1dca.org/content/download/852904/opinion/212473_DC05_11162022_140647_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW-CONSENT: In BUI case, Defendant's consent to the blood draw is unlawfully procured where officers told Defendant that they "will draw blood from you" and did not tell him that he could refuse their request and require them to get a search warrant. A blood draw is a search. Individuals cannot be lawfully compelled to submit to a blood draw by statute. Rather, law enforcement officers must obtain a search warrant before drawing blood or gain the subject's consent. Consent to search must be given voluntarily. Florida v. Hamilton, 1D21-3073 (11/16/22)
https://www.1dca.org/content/download/852905/opinion/213073_DC05_1

1162022_140825_i.pdf

CERTIORARI-COMPETENCE: Appellate court lacks the authority by extraordinary writ (certiorari) to review and remedy the lack of an evidentiary foundation for the finding that Defendant is currently competent to stand trial because of the lack of irreparable harm. "[A] criminal defendant's mental status is a potentially variable matter—ebbing and flowing between incompetent and competent during the course of a proceeding—making intermittent appellate review unworkable and potentially wasteful. The balance that has been struck is in favor of dismissing this type of petition for lack of irreparable harm and thereby jurisdiction, but allowing review at the end of the case, however it might end." Odom v. State, 1D22-2652 (11/16/22)

https://www.1dca.org/content/download/852912/opinion/222652_DA08_11162022_142154_i.pdf

ENTRAPMENT: Generally, the issues regarding subjective entrapment present questions of disputed facts for the jury to resolve. However, the issue may be ruled on as a matter of law if the material facts are undisputed, the defendant meets his burden of proof, and the State is unable to rebut the evidence of lack of predisposition. Predisposition refers to whether the accused was awaiting any propitious opportunity or was ready and willing, without persuasion, to commit the offense. Predisposition focuses upon whether the defendant was an unwary innocent or, instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime. Inducement cannot be found by prompting or creating an opportunity. Text messages between Defendant an undercover officer posing as a 14 year old girl do not add up to objective entrapment. Dismissal is inappropriate. State v. Lopez Garcia, 2D21-1492 (11/16/22)
https://www.2dca.org/content/download/852840/opinion/211492_DC13_11162022_083248_i.pdf

APPEAL-JURISDICTION: State may appeal the dismissal of a traffic infraction notwithstanding that Chapter 318 only provides for an appeal by a person upon a finding that an infraction was committed. "While we recognize section 318.16(1) provides that '[i]f a person is found to have committed an infraction by the hearing official, he or she may appeal that finding to the circuit court,' it certainly does not
use any limiting language such as 'only a person . . . .' Therefore, we conclude that if the circuit court has jurisdiction over a defendant's appeal in these matters, then it follows that the circuit court has jurisdiction over a State's appeal in these matters. Any other construction would lead to counterintuitive results." State v. Islam, 2D21-1797 (11/16/22)
https://www.2dca.org/content/download/852842/opinion/211797_DC04_11162022_084552_i.pdf

STATUTORY INTERPRETATION-(J. ATKINSON, DISSENT): Courts must afford statutory language its plain and ordinary meaning, giving due regard to the context within which it is used. State v. Islam, 2D21-1797 (11/16/22)
https://www.2dca.org/content/download/852842/opinion/211797_DC04_11162022_084552_i.pdf

APPEAL-JURISDICTION (J. ATKINSON, DISSENT): §318.16 uses the language "a person is found to have committed an infraction by the hearing official" to indicate who "may appeal [a] finding [that a person has committed a traffic infraction. In context, the "person" is the accused. The opposite conclusion would be nonsensical: The State cannot be the "person" indicated in the statute. In other words, no reader could reasonably conclude that the term "person" as used in §318.16(1) includes the State, and §318.16(1) does not include any language concerning an appeal of a hearing official's decision filed by the State. State v. Islam, 2D21-1797 (11/16/22)
https://www.2dca.org/content/download/852842/opinion/211797_DC04_11162022_084552_i.pdf

STATUTORY INTERPRETATION (DISSENT): "If the majority's rationale were taken to its logical conclusion, the legislature would be required to specifically use the term "only" to limit a general term in a statute that the legislature has already specified using other language. Under the majority's rationale, if a statute were to provide that 'it is unlawful for a person to import an Indian elephant,' a person could be charged with violating the statute for importing an African elephant—a different species of elephant than Indian elephants—or for importing a giraffe—an animal that is not an elephant at all—because the legislature did not specify that importation of only Indian elephants is unlawful." State v. Islam, 2D21-1797 (11/16/22) https://www.2dca.org/content/download/852842/opinion/211797_DC04_11162022_084552_i.pdf

ABSURDITY DOCTRINE (DISSENT): "[This] ostensible conundrum, . . .while arguably incongruous, does not rise to the level of absurd." State v. Islam, 2D21-1797 (11/16/22) https://www.2dca.org/content/download/852842/opinion/211797_DC04_11162022_084552_i.pdf

COSTS: Case remanded to correct the three dollar discrepancy where Court orally ordered "$382.85 investigative costs but the written judgment was entered for $385.85. A written sentence that conflicts with the oral pronouncement of sentence imposed in open court is an illegal sentence. Bustos v. State, 2D21-2485 (11/16/22 https://www.2dca.org/content/download/852847/opinion/212485_DC08_11162022_084051_i.pdf

RESTITUTION: When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. Although a child need not have a present ability to pay restitution, the court must make a finding as to the juvenile's expected earning capacity prior to setting an amount for

restitution." If the court intends on ordering restitution based solely on evidence adduced at the adjudicatory hearing, the child must be given notice. B.P., a Child v. State, 2D21-3074 (11/16/22) https://www.2dca.org/content/download/852858/opinion/213074_DC08_11162022_085702_i.pdf'

POST CONVICTION RELIEF: To plead a facially sufficient claim of ineffective assistance of counsel based on counsel's failure to present an entrapment defense, Defendant must plead facts establishing that his trial counsel's performance was deficient and that he was prejudiced thereby. Pulido Baeza v. State, 2D22-114 (11/16/22) https://www.2dca.org/content/download/852869/opinion/220114_DC08_11162022_085945_i.pdf

ENTRAPMENT: To establish the subjective entrapment defense, defendant must show, by a preponderance of the evidence, that a government agent induced him or her to commit the offense and that he or she was not predisposed to do so. The burden then shifts to the State to rebut this with evidence beyond a reasonable doubt. Defendant's conclusory allegation that his brother, acting as a confidential informant, induced him to commit the offense is legally insufficient to warrant a hearing. Pulido Baeza v. State, 2D22-114 (11/16/22) https://www.2dca.org/content/download/852869/opinion/220114_DC08_11162022_085945_i.pdf

POST CONVICTION RELIEF: Defendant's motion for post conviction relief claiming that counsel was ineffective for failing to assert an entrapment defense is legally insufficient where he does not claim that he was not already predisposed to commit the offense. Pulido Baeza v. State, 2D22-114 (11/16/22) https://www.2dca.org/content/download/852869/opinion/220114_DC08_11162022_085945_i.pdf

POST CONVICTION RELIEF-CONCURRENT/CONSECUTIVE SENTENCES: Defendant is entitled to a hearing on claim of a discrepancy between the oral pronouncement and the written sentence that is not conclusively refuted by the transcription of the trial court's oral pronouncement as to whether sentences were to be served concurrently or consecutively. Norman v. State, 2D22-1912 (11/16/22) https://www.2dca.org/content/download/852885/opinion/221912_DC13_11162022_090403_i.pdf

POST CONVICTION RELIEF: When a person inaccurately titles a motion seeking to collaterally attack his or her judgment or sentence, the postconviction court should treat the motion as filed under the appropriate rule of criminal procedure. Norman v. State, 2D22-1912 (11/16/22)

https://www.2dca.org/content/download/852885/opinion/221912_DC13_11162022_090403_i.pdf

JOA-AGGRAVATED STALKING: Where information charged Aggravated Stalking based on violation of an injunction issued pursuant to §784.046 (repeat violence), but the actual injunction had been entered under §784.0485 (stalking), JOA is required. An injunction for protection against stalking under §784.0485 is not the same as an injunction for repeat violence or dating violence under §784.046, or an injunction for domestic violence under §741.30. Dilver v. State, 3D20-1823 (11/16/22) https://www.3dca.flcourts.org/content/download/852816/opinion/201823_DC13_11162022_100413_i.pdf

JOA-LESSER INCLUDED: Where Defendant is convicted after Court improperly denied a motion for JOA, but the evidence supported lesser included offense, judgment should be entered for the lesser offense. When the appellate court determines that the evidence does not prove the offense for which the defendant was found guilty but does establish guilt of a lesser statutory degree of the offense or a lesser offense necessarily included in

the offense charged, the appellate court shall reverse the judgment and direct the trial court to enter judgment for the lesser degree of the offense or for the lesser included offense. Dilver v. State, 3D20-1823 (11/16/22) https://www.3dca.flcourts.org/content/download/852816/opinion/201823_DC13_11162022_100413_i.pdf

MOOTNESS: Defendant's appeal of denial of motion to correct credit for time served is dismissed as moot where Defendsnat has been released. Dieguez v. State, 3D22-1209 (11/16/22) https://www.3dca.flcourts.org/content/download/852825/opinion/221209_DA08_11162022_102019_i.pdf

DWLS: Defendant cannot be convicted of DWLS with two or more convictions) where he had been designated as a habitual traffic offender. Godwin v. State, 4D22-645 (11/16/22) https://www.4dca.org/content/download/852831/opinion/220645_DC08_11162022_095308_i.pdf

POST CONVICTION RELIEF-WRONG STATUTE-PREJUDICE: Defendant is not entitled to post conviction relief due to alleged IAC where he pled to DWLS with two or more convictions under §322.34(2)(c) where counsel failed to advise him that he could not be prosecuted under that section because he had been designated as a habitual traffic offender under §322.34(2). Defendant was not prejudiced because the State could have been amended the information to charge him under the proper subsection, §322.34(5), if he had raised the issue. Godwin v. State, 4D22-645 (11/16/22) https://www.4dca.org/content/download/852831/opinion/220645_DC08_11162022_095308_i.pdf

COSTS-TEEN COURT: Juvenile must be adjudicated delinquent for teen court costs to be assessed. T.T., a Child v. State, 4D22-909 (11/16/22)

https://www.4dca.org/content/download/852832/opinion/220909_DC05_11162022_095439_i.pdf

GAIN TIME: Where Court awarded jail credit (504 days) on each count but sentenced Defendant to consecutive time on the counts, DOC may take away the credit *sua sponte*. The law does not allow for banking of gain-time. DOC has the authority and a duty to correct errors in the computation of sentences when they are discovered. Hartman v. DOC, 1D20-2332 (11/9/22)

https://www.1dca.org/content/download/852543/opinion/202332_DC05_11092022_141355_i.pdf

GAIN TIME: 85% rule for maximum possible gain time applies to individual sentences, not the over-all sentence. While, a Temporary Release date (TRD) is calculated based on the overall sentence term, 85% rule applies to when a sentence would expire, end, or terminate, or that would result in a prisoner's release. Thus, gaintime might cause an individual sentence to expire, even though the prisoner may not have been released yet. Hartman v. DOC, 1D20-2332 (11/9/22)
https://www.1dca.org/content/download/852543/opinion/202332_DC05_11092022_141355_i.pdf

COMMENT ON SILENCE: State may argue that Defendant had refused to answer certain questions from law enforcement, that he never denied being guilty, and that he never answered "the hard questions" where Defendant had waived his right against self-incrimination when he voluntarily answered detective's questions. Knight v. State, 1D20-3016 (11/9/22)
https://www.1dca.org/content/download/852545/opinion/203016_DC05_11092022_141943_i.pdf

STATEMENTS OF DEFENDANT: Intermittent stops and starts during the

interrogations—choosing to answer some questions and responding in non-verbal ways to others, but sometimes just not responding at all to other questions—do not constitute a re-invoking of the right to remain silent. Knight v. State, 1D20-3016 (11/9/22)
https://www.1dca.org/content/download/852545/opinion/203016_DC05_11092022_141943_i.pdf

SUBPOENA-MEDICAL RECORDS: State is entitled to subpoena medical records where diabetic Defendant is stopped for DUI then taken to hospital for suspected high blood sugar. State v. Richmond, 1D21-1866 (11/9/22)
https://www.1dca.org/content/download/852548/opinion/211866_DC03_11092022_142450_i.pdf

APPEAL-PRESERVATION: Defendant's objection to Court's prohibition on re-cross examination of victim is not preserved where the questions to be asked were not proffered. To preserve an objection to a trial court's ruling excluding evidence, a party must proffer the evidence unless it is clear from the context of the questions what the evidence would have been. In the context of re-cross, this requires at a minimum that the party proffer the proposed question. Martin v. State, 1D21-2113 (11/9/22)
https://www.1dca.org/content/download/852549/opinion/212113_DC05_11092022_142602_i.pdf

BAD BROMANCE: After Victim failed to join Defendant in neighbor's man cave to drink beer and told him that he did not want to be his friend anymore, Defendant texted that "You broke my heart tonight," borrowed a gun, went to the Victim's house, and shot him in the back. Martin v. State, 1D21-2113 (11/9/22)
https://www.1dca.org/content/download/852549/opinion/212113_DC05_11092022_142602_i.pdf

APPEAL-PRESERVATION: Issue of introduction of body cam footage, in which Victim asks to see his children before dying and Wife tells him that she

will still love him if he is paralyzed, is not preserved where counsel had said, "No objection, Your Honor. I've seen the items previously," and only after it was played did he say he hadn't seen the beginning of the clip. Martin v. State, 1D21-2113 (11/9/22)
https://www.1dca.org/content/download/852549/opinion/212113_DC05_11092022_142602_i.pdf

APPEAL: Court minutes are not a rendered order reviewable on appeal, so any appeal based on the minutes is premature. Chestnut v. DOC, 1D21-2974 (11/9/22)
https://www.1dca.org/content/download/852551/opinion/212974_DA08_11092022_143105_i.pdf

APPEAL-PRESERVATION: A defendant may not raise a sentencing error (alleged failure to downward depart) on direct appeal unless there was a contemporaneous objection to the error, or the error was the subject of a R. 3.800(b) motion. Howard v. State, 1D21-3340 (11/9/22)
https://www.1dca.org/content/download/852552/opinion/213340_DC05_11092022_143311_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Appellate Court lacks authority to review a trial court's decision denying a downward departure, where there is no evidence that the trial court misconstrued its discretion to depart or had a blanket policy of refusing to exercise such discretion. Howard v. State, 1D21-3340 (11/9/22)
https://www.1dca.org/content/download/852552/opinion/213340_DC05_11092022_143311_i.pdf

PRR-HFO: Defendant sentenced as a PRR to thirty years may not also be sentenced as a HFO. Because the sentence of thirty years in prison is coterminous with the mandatory minimum imposed as a PRR, there has been no enlargement of the sentence based on the HFO adjudication. That makes the trial court's sentencing of the appellant as an HFO illegal.

McNeill v. State, 1D22-942 (11/9/22)
https://www.1dca.org/content/download/852554/opinion/220942_DC08_11092022_143811_i.pdf

APPEAL-CLERK'S DUTY: Clerks of court in the appeal of a summary postconviction denial are required to provide a copy of the index and record to the parties. Such records are often short as they only consist of the documents set forth in rule 9.141(b)(2)(A). The rule also requires the clerk to transmit the record to this Court along with the certified copy of the record on appeal. Because Appellants must cite to the record for all statements of fact in their initial brief, they must therefore timely receive the record from the clerk. Worrell v. State, 1D22-2011 (11/9/22)
https://www.1dca.org/content/download/852561/opinion/222011_NOND_11092022_145034_i.pdf

LIFE SENTENCE-JUVENILE OFFENDER: In resentencing hearing for juvenile offender sentenced to life imprisonment, a jury, not the judge, must make the finding that Defendant intended or attempted to kill the victim. Landrum v. State. 2D20-3480 (11/9/22)
https://www.2dca.org/content/download/852463/opinion/203480_DC13_11092022_091425_i.pdf

MR. MUSTARD IN THE LIBRARY WITH A BOOMBOX: Where the Defendant and her boy friend beat the victim to death with a hammer, a boombox, and a pot, and the Defendant only admitted to using the pot, and the medical examiner could not attribute the cause of death to any single blow or particular object, intent to kill cannot be inferred. The jury is required to determine whether a defendant actually killed, intended to kill, or attempted to kill the victim. Landrum v. State. 2D20-3480 (11/9/22)
https://www.2dca.org/content/download/852463/opinion/203480_DC13_11092022_091425_i.pdf

HARMLESS ERROR: Harmless error is the standard that is applicable in

the reviewing court; it is not the standard employed by the trial court during resentencing. It is not appropriate for a trial judge to commit error simply because it might be found to be harmless. Landrum v. State. 2D20-3480 (11/9/22)
https://www.2dca.org/content/download/852463/opinion/203480_DC13_11092022_091425_i.pdf

SEARCH AND SEIZURE-CONSENT: Defendant who was acting strangely and put a pocketknife in his pocket is unlawfully detained when told to sit down. An investigatory stop to detain an individual temporarily is a seizure that requires a reasonable suspicion of criminal activity."). Because he was unlawfully detained, he could not have been deemed to have voluntarily consented to the subsequent searches of his pockets or his wallet because consent given after illegal police activity is presumptively tainted and rendered involuntary unless the State shows an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action. Stroud v. State, 2D21-2234 (11/9/22)
https://www.2dca.org/content/download/852469/opinion/212234_DC13_11092022_092356_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that he would have taken offer if his client had told him he was facing a 25 yeasr mandatory minimum. Court erred in determining that Defendant's failure to react to the twenty-five-year minimum mandatory term at sentencing movant that he was aware that it existed. To the extent that the postconviction court reasoned that Mr. Arroyave must have been aware that some minimum mandatory term would apply, given that the State's plea offer included a minimum mandatory term of ten years, this fact does not demonstrate that Mr. Arroyave was made aware that a conviction at trial would result in a minimum mandatory term of twenty-five years' prison. Arroyave v. State. 2D21-3497 (11/9/22)
https://www.2dca.org/content/download/852480/opinion/213497_DC08_11092022_092617_i.pdf

POST CONVICTION RELIEF: Citation in the information to the statutes which provide for mandatory minimum sentences does not mean that Defendant is aware of the mandatory minimums. "Nor could Mr. Arroyave be expected. . .to refer to the statutes cited in the charging information to ascertain for himself the applicable minimum mandatory terms." Arroyave v. State. 2D21-3497 (11/9/22)
https://www.2dca.org/content/download/852480/opinion/213497_DC08_11092022_092617_i.pdf

PLEA-WITHDRAWAL: Once it becomes clear that a defendant and his counsel are in an adversarial relationship with respect to the defendant's entry of his plea, the defendant is entitled to the appointment of conflict-free counsel to represent him and assist him with respect to his motion to withdraw plea. An adversarial relationship may be established by record evidence that counsel may be called as a witness at a later hearing. Coley v. State. 3D21-2439 (11/10/22)
https://www.3dca.flcourts.org/content/download/852587/opinion/212439_DC13_11102022_080643_i.pdf

DEATH PENALTY-NOTICE: Filing of a superseding indictment does not vitiate the already filed and timely notice of intent to impose thee death penalty. "Notice is notice." The superseding indictment was clearly a continuation of the original indictment. The state did not nolle prosse the original indictment, nor did it add aggravating factors to the required notice seeking the death penalty." Question certified. State v. Demons, 4D22-1874 (11/9/22)
https://www.4dca.org/content/download/852508/opinion/221874_DC03_11092022_095821_i.pdf

HISTORY-LIBERTY: "[O]ur Founders' idea of liberty was recognized before the Constitution. As the Declaration of Independence states, we 'are endowed by [our] Creator with certain unalienable Rights, that among these

are Life, Liberty and the pursuit of Happiness.'" T.H. v. State, 2D20-3217 (11/4/22)
https://www.2dca.org/content/download/852300/opinion/203217_DC13_11042022_092209_i.pdf

CONFRONTATION CLAUSE: Because the purpose of the Confrontation Clause is to ensure that the trier of fact has satisfactory means to evaluate the truthfulness of a witness's trial testimony, it provides a number of assurances: 1) the entitlement of the accused to a personal examination of the witness; 2) the witness statement will be under oath; 3) the witness may be forced to submit to cross examination; and 4) the jury or fact finder is permitted to observe the demeanor of the witness. T.H. v. State, 2D20-3217 (11/4/22)
https://www.2dca.org/content/download/852300/opinion/203217_DC13_11042022_092209_i.pdf

ZOOM: Judge violated Due Process by conducting an adjudicatory hearing by Zoom without making a case-specific finding of necessity, and by not affording the Child a hearing on his objection. "[W]e. . .emphasize that the confrontation right afforded by our national and state constitutions is not implicated here. It is the Due Process Clause of the Fourteenth Amendment that is of importance." But the right to confrontation is a component of due process of law and essential to fairness in juvenile proceedings. T.H. v. State, 2D20-3217 (11/4/22)
https://www.2dca.org/content/download/852300/opinion/203217_DC13_11042022_092209_i.pdf

CONFRONTATION CLAUSE: "A purpose of the Confrontation Clause is ordinarily to compel accusers to make their accusations in the defendant's presence—which is not equivalent to making them in a room that contains a television set beaming electrons that portray the defendant's image. Virtual confrontation might be sufficient to protect virtual constitutional rights; I doubt whether it is sufficient to protect real ones." *Quoting* J. Scalia. T.H. v.

State, 2D20-3217 (11/4/22)
https://www.2dca.org/content/download/852300/opinion/203217_DC13_11042022_092209_i.pdf

DELINQUENCY-JURISPRUDENTIAL HISTORY: Under the English Common Law there existed a conclusive presumption that a child under the age of seven was incapable of committing a crime. Other youths were dealt with by the criminal justice system. T.H. v. State, 2D20-3217 (11/4/22)
https://www.2dca.org/content/download/852300/opinion/203217_DC13_11042022_092209_i.pdf

VOP-FINANCIAL-NON-PAYMENT: Court improperly revoked probation based on Defendant's nonpaument of the cost of electronic monitoring ($6.94/day), $368 for court costs and $25 for the cost of prosecution where no due date or schedule was set for the payment of any of these costs. The probation office's creation of a monthly payment schedule is not binding. Failure to abide by a payment schedule devised by a probation officer is not sufficient to support a violation. Absent a court ordered schedule or time frame, Defendant could not have violated his probation by failing to make payments so long as sufficient time remained on probation for him to do so. Bright v. State, 2D21-2172 (11/4/22)

https://www.2dca.org/content/download/852309/opinion/212172_DC13_110420

SENTENCING-DOWNWARD DEPARTURE: Court errs in imposing a downward departure for medical reasons (complete renal failure), supported by a letter from the dialysis provider and various medical records (neither signed nor sworn to). Defendant is required to prove the following three elements: (1) that he has a physical disability which (2) requires specialized treatment, and (3) that he is amenable to that treatment. Amenability has been defined as "a reasonable possibility that treatment will be successful. Competent, substantial evidence as to either amenability or specialized

treatment is required to support a downward departure sentence. A defendant's testimony as to his medical condition, on its own, has been found to be insufficient to support a downward departure. State v. Sawyer, 5D21-242 (11/4/22)
https://www.5dca.org/content/download/852278/opinion/212422_DC13_11042022_083453_i.pdf

SEARCH AND SEIZURE-GEOGRAPHIC JURISDICTION-INTOXYLIZER: Winter Park officer retains the power or authority to request that the defendant submit to a breath test as part of an ongoing DUI investigation at the Orange County Jail, notwithstanding that municipal law enforcement officers can exercise their law enforcement powers only within the territorial limits of the municipality. A municipal officer may continue to act or investigate outside of his or her geographic jurisdiction if the subject matter originates inside their city limits. Question certified. Torres v. State, 5D22-21 (11/4/22)
https://www.5dca.org/content/download/852280/opinion/220021_DC13_11042022_083945_i.pdf

POST CONVICTION RELIEF: In attempted second degree murder case, where there is a discrepancy between the language of the Indictment and that of the special verdict form–the indictment alleged "an act imminently dangerous to another, and evincing a depraved mind" and the special verdict form found that Defendant "did personally carry, display, use, threaten to use, or attempt to use a firearm." Defendant is entitled to an IAC hearing. Defendant, although charged with a second-degree felony, was found guilty of a first-degree felony due to reclassification. which, if properly done, would have reclassified the second-degree felony to a first-degree felony. 5D22-478 (11/4/22)
https://www.5dca.org/content/download/852285/opinion/220478_DC08_11042022_085507_i.pdf

MANDATORY MINIMUM: The proper pursuit of an enhanced mandatory sentence requires that the State allege the grounds for enhancement in the charging document and the jury must make factual findings regarding those grounds. This principle also applies to reclassification under §775.087(1). 5D22-478 (11/4/22)
https://www.5dca.org/content/download/852285/opinion/220478_DC08_11042022_085507_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a hearing on claim that counsel was ineffective for misadvising about his right to testify where his attorney told him that his criminal history would be presented, and he wrongly interpreted that to mean that the State could present the underlying facts of those cases. Scott v. State, 5D22-478 (11/4/22)
https://www.5dca.org/content/download/852285/opinion/220478_DC08_11042022_085507_i.pdf

POST-CONVICTION RELIEF: An order granting a rule 3.800(a)1 motion and determining that a sentence was illegal is not a final order but remains subject to reconsideration until a final order imposing a corrected sentence is entered. Trial Court's order for a resentencing hearing for a minor pursuant ot Atwell may be vacated since Atwell itself was overturned. Orders granting relief under rule 3.800(a) are not final or appealable until resentencing has occurred. In R. 3.800(a) proceedings the process of sentence correction is not complete until an order is entered imposing a corrected sentence. Until that point, there is no final order. The structure of R. 3.800(a) is fundamentally different from R. 3.850, under which resentencing proceedings are separate and distinct from the prior proceedings that result in an order vacating a sentence. The two different rules are structured differently and therefore operate differently. Morgan v. State, SC20-641 (11/3/22)
https://www.floridasupremecourt.org/content/download/852242/opinion/sc20-641.pdf

APPEAL-ABANDONED ISSUE: Appellant must raise an issue in the initial brief or it is considered waived or abandoned (here, the issue of accident report privilege). Menchillo v. State, 2D21-3466 (11/2/22) https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

STATEMENT OF DEFENDANT: Defendant's four-minute-long sworn statement, in which he effectively admitted every element of the crime with which he was later charged, and during which he was not Mirandized, is admissible where Defendant was not in custody. Where Defendant was not handcuffed or otherwise restrained and officers believed that they were conducting a civil investigation to complete the civil crash report, he was not in custody. Menchillo v. State, 2D21-3466 (11/2/22) https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

APPEAL-REVIEW: Insofar as a ruling is based on a video or audio recording, the trial court is in no better position to evaluate such evidence than the appellate court. Menchillo v. State, 2D21-3466 (11/2/22)

https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

CUSTODIAL INTERROGATION: "Custodial interrogation" means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Thus, the right against self incrimination implicates two issues: first, whether a suspect is in custody, and second, whether the suspect is being interrogated. Absent one or the other, Miranda warnings are not required. Menchillo v. State, 2D21-3466 (11/2/22) https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

CUSTODIAL INTERROGATION: Custody for purposes of Miranda encompasses not only formal arrest, but any restraint on freedom of movement of the degree associated with formal arrest. A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest. In making the determination whether a reasonable person would consider himself in custody, the Court considers: (1) the manner in which police summon the suspect for questioning; (2) the purpose, place, and manner of the interrogation; (3) the extent to which the suspect is confronted with evidence of his or her guilt; (4) whether the suspect is informed that he or she is free to leave the place of questioning. Menchillo v. State, 2D21-3466 (11/2/22)
https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

CUSTODIAL INTERROGATION: Two discrete inquiries are essential to the determination whether a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry. Menchillo v. State, 2D21-3466 (11/2/22)
https://www.2dca.org/content/download/852145/opinion/213466_DC05_11022022_083942_i.pdf

VOP-WRITTEN ORDER: A written violation order must specify the conditions that Child was found to have violated. J.K. v. State, 2D22-132 (11/2/22)
https://www.2dca.org/content/download/852149/opinion/220132_DC05_11022022_084354_i.pdf

VOP-WRITTEN ORDER: If the trial court revokes a juvenile's probation, the court is required to render a written order setting forth the conditions of probation that were violated. T.D.W. v. State, 2D22-361 (11/2/22) https://www.2dca.org/content/download/852150/opinion/220361_DC05_11022022_084514_i.pdf

POST CONVICTION RELIEF: Where an evidentiary hearing is held to resolve a timely, facially sufficient R. 3.850 postconviction motion, the trial court shall determine the issues, and make findings of fact and conclusions of law with respect thereto. Clerk's handwritten docket insert card is insufficient. Villatoro v. State, 3D21-834 (11/2/22) https://www.3dca.flcourts.org/content/download/852186/opinion/210834_DC13_11022022_101531_i.pdf

VOP-STANDARD OF PROOF: To revoke probation, the conscience of the court must be satisfied that the State proved by a greater weight of the evidence that, under the totality of the circumstances, the probationer deliberately, willfully, and substantially violated a condition of his or her probation. J.T.J., a Child v. State, 4D21-2735 (11/2/22) https://www.4dca.org/content/download/852193/opinion/212735_DC08_11022022_094951_i.pdf

VOP: When a VOP petition alleges that a defendant has committed a VOP on a specific date, the State must present evidence showing that the VOP occurred on that specific date as opposed to some undetermined date. J.T.J., a Child v. State, 4D21-2735 (11/2/22) https://www.4dca.org/content/download/852193/opinion/212735_DC08_11022022_094951_i.pdf

VOP-HEARSAY-BUSINESS RECORDS: Business records hearsay exception requires that the party seeking to admit certified and authenticated records into evidence shall serve reasonable written notice of that intention upon every other party and shall make the evidence available for inspection

sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence. J.T.J., a Child v. State, 4D21-2735 (11/2/22) https://www.4dca.org/content/download/852193/opinion/212735_DC08_11022022_094951_i.pdf

VOP-HEARSAY-BUSINESS RECORDS: Court improperly revoked probation where school records were improperly admitted into evidence under the business records exception of the hearsay rule and the State failed to present any corroborating non-hearsay evidence to support the information contained within them because none of the witnesses were able to testify as to the specific dates on which Appellant's unexcused school absences occurred. J.T.J., a Child v. State, 4D21-2735 (11/2/22) https://www.4dca.org/content/download/852193/opinion/212735_DC08_11022022_094951_i.pdf

VOP: Court may not revoke probation for conduct not alleged in the charging document. J.T.J., a Child v. State, 4D21-2735 (11/2/22) https://www.4dca.org/content/download/852193/opinion/212735_DC08_11022022_094951_i.pdf

PROBABLE CAUSE-DEFINITION: Probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would warrant a perso] of reasonable caution in the belief that certain items may be useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required. State v. Darter, 4D22-308 (11/2/22) https://www.4dca.org/content/download/852198/opinion/220308_DC13_11022022_095946_i.pdf

SEARCH AND SEIZURE-CELL PHONE: A cyber-tip report regarding Defendant suggesting he had uploaded one image of child pornography,

detectives viewing of the image from the account traceable to Defendant's home and e-mail, Defendant's implausible and contradictory denials and his later nervous swiping on phone screen is probable cause; phone may be seized under the exigent circumstances exception to the Fourth Amendment. State v. Darter, 4D22-308 (11/2/22)
https://www.4dca.org/content/download/852198/opinion/220308_DC13_11022022_095946_i.pdf

SEARCH AND SEIZURE-EXIGENT CIRCUMSTANCES-PHONE: One type of exigent circumstance is the imminent destruction of evidence. The government must show more than a subjective fear of imminent destruction of evidence; the fear must be objectively reasonable. Application of the exigent circumstances exception is particularly compelling in cases involving electronic files, which can easily and quickly deleted. State v. Darter, 4D22-308 (11/2/22)
https://www.4dca.org/content/download/852198/opinion/220308_DC13_11022022_095946_i.pdf

CREDIT FOR TIME SERVED: The trial court is only required to award credit for pre-sentence jail time; it is the function of the Department of Corrections to award credit for any time served in jail after sentencing but before transfer to state prison. Herbert v. State, 4D22-819 (11/2/22)
https://www.4dca.org/content/download/852203/opinion/22081_DC05_11022022_102552_i.pdf

OCTOBER 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

SEX OFFENDER REGISTRATION-LACHES: Petitioner is not barred by doctrine of laches from challenging 2018 amendments to sexual offender registration requirements as unduly onerous more than four years since enactment. Plaintiffs' claims accrued when they were first injured by the actual or threatened enforcement of the allegedly unconstitutional statute. The continuing violation doctrine applies. Jane Doe v. Swearingen, No. 21-10644 (11th Cir. 10/21/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110644.pdf

SEX OFFENDER REGISTRATION: Periodic amendments to sex offender registration requirements are summarized. Jane Doe v. Swearingen, No. 21-10644 (11th Cir. 10/21/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110644.pdf

POST CONVICTION RELIEF: Any deficiency in trial counsel's failure to file a motion to suppress is not prejudicial when other evidence strongly supports the conviction. When a defendant fails to make a showing as to one prong (prejudice), it is not necessary to delve into whether he has made a showing as to the other prong (deficiency). Szewczyck v. State, 2D21-10

(10/21/22)

https://www.2dca.org/content/download/851397/opinion/210010_DC05_10212022_084013_i.pdf

COSTS: Court may not assess additional court costs pursuant to §318.18(11)(b) for a non-traffic offense, but may still assess the same costs on non-traffic charges if the county has been granted the authority to assess these particular costs separate statute. Moore v. State, 5D21-1767 (10/21/22)

https://www.5dca.org/content/download/851384/opinion/211767_DC05_10212022_083325_i.pdf

STATEMENT OF DEFENDANT-REDACTION: Although interrogating detectives' statements can be understood by a jury to be "techniques" used to secure confessions, a witness's opinion as to the credibility, guilt, or innocence of the accused is generally inadmissible, and it is especially troublesome when a jury is repeatedly exposed to an interrogating officer's opinion regarding the guilt or innocence of the accused. Such statements by interrogating officer are inadmissible where they do not elicit incriminating responses. Floyd v. State, 5D21-2645 (10/21/22)

https://www.5dca.org/content/download/851385/opinion/212645_DC08_10212022_083519_i.pdf

DURESS-JURY INSTRUCTION: The six elements of a duress defense are: (1) the defendant reasonably believed that a danger or emergencythat he did not intentionally cause; 2) the danger or emergency threatened significant harm to himself or a third person; 3) the threatened harm must have been real, imminent, and impending; 4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime; 5) the

crime must have been committed out of duress to avoid the danger or emergency; and 6) the harm the defendant avoided outweighs the harm caused by committing the crime. Ford v. State, 1D20-3350 (10/19/22)

https://www.1dca.org/content/download/851281/opinion/203350_DC05_10192022_141313_i.pdf

APPEAL-PRESERVATION-GANG AFFILIATION: Defendant's objection to a question aout him being affiliated with the Pakistan Yulee Clique (PYC), without stating a specific legal basis for the objection fails to preserve his contention on appeal that the testimony's risk of unfair prejudice outweighed its probative value. To preserve a legal argument for appeal, the party must state a legal ground for that objection and assert on appeal that same legal ground as a basis for reversal. Ford v. State, 1D20-3350 (10/19/22)

https://www.1dca.org/content/download/851281/opinion/203350_DC05_10192022_141313_i.pdf

COSTS-TRANSPORTATION: Court may not impose $1,845 in costs for transportation absent any evidence of the costs actually incurred and where Defendant Appellant did not affirmatively agree to pay the requested amount. Young v. State, 1D21-633 (10/19/22)

https://www.1dca.org/content/download/851282/opinion/210633_DC08_10192022_141507_i.pdf

EVIDENCE-OTHER BAD ACTS: In capital sex battery case involving a 6 year old child, evidence that other girls had been similarly abused at a comparable age many years earlier. Youngblood v. State, 1D21-1430 (10/19/22)

https://www.1dca.org/content/download/851283/opinion/211430_DC05_10192022_141655_i.pdf

SENTENCING-LACK OF REMORSE: Court did not err in considering the Defendant's lack of remorse where he had tortured his daughter over a long period, leaving her emaciated and with oozing welts, bruises, cuts, and a lacerated spleen, where Defendant bragged and laughed about what they were doing to the child in texts, i.e. it's your turn to "beat [the child's] ass." Court is entitled to consider defendant's failure to accept responsibility or express remorse once the defendant voluntarily allocutes at sentencing. Scott v. State, 1D21-2842 (10/19/22)

https://www.1dca.org/content/download/851285/opinion/212842_DC05_10192022_142333_i.pdf

CREDIT FOR TIME SERVED: A claim for jail credit beyond the amount agreed to in a plea bargain is not cognizable in a rule 3.801 proceeding. Burke v. State, 1D22-1109 (10/19/22)

https://www.1dca.org/content/download/851289/opinion/221109_DC05_10192022_142935_i.pdf

HABEAS CORPUS-CLOSE MANAGEMENT: A petition for a writ of habeas corpus is the correct mechanism for a prisoner to challenge his or her placement in close management. Court improperly dismisses petition as successive where grounds are different than those previously asserted. Conley v. State, 2D22-1807 (10/19/22)

https://www.2dca.org/content/download/851214/opinion/221807_DC13_10192022_090738_i.pdf

RES JUDICATA-SEXUAL PREDATOR: Defendant may be later designated a sexual predator, notwithstanding that he was not so designated at the time of his sentencing, for lewd and lascivious molestation. A trial

court has jurisdiction to designate a defendant as a sexual predator under §775.21 even though the defendant was not designated as a sexual predator at the time of sentencing and has since completed his sentence. Res Judicata does not apply to cases litigation that constitutes a continuation of the original litigation. Ruiz v. State, 3D22-257 (10/19/22)

https://www.3dca.flcourts.org/content/download/851251/opinion/220257_DC05_10192022_104950_i.pdf

POST CONVICTION RELIEF-APPEAL-EXTENSION: When a motion for extension to file a postconviction motion is denied, the defendant should not appeal that order, but should instead file the intended motion as soon as possible, alleging the grounds for the motion to the best of the defendant's ability and further alleging the reason why the motion is untimely. Gonzalez v. State, 3D22-1259 (10/19/22)

https://www.3dca.flcourts.org/content/download/851253/opinion/221259_DA08_10192022_105336_i.pdf

POST-CONVICTION RELIEF-ILLEGAL SENTENCE: Defendant's claim that his designation as a habitual offender is illegal because he lacks the requisite predicate felony convictions it is cognizable in a R. 3.800(a) motion. As a general rule, a defendant's contention that he does not have the predicate felonies required to support an HFO designation is cognizable under a rule 3.800(a) claim if his entitlement to relief is clear from the face of the record. Battles v. State, 2D22-765 (10/14/22)

https://www.2dca.org/content/download/851050/opinion/220765_DC13_10142022_084646_i.pdf

STAND YOUR GROUND: Motion for SYG immunity is facially insufficient where the motion alleged that Defendant's cellmate: (1) asked if he wanted

to fight him and offered to fight now, (2) made repeated threats to hs life, (3) struck him with his shoulder as he walked by, (4) chest bumped him, and (5) was a member of a gang known for murder and gun violence. None of these amount to an imminent threat by the cellmate to use unlawful force. Court erred in conducting a hearing on the legally insufficient SYG motion. State v. Woodson, 5D21-2251 (10/14/22)

https://www.5dca.org/content/download/851005/opinion/212251_DC13_10142022_083309_i.pdf

DEFINITION-"IMMINENT": "Imminent" means "ready to take place: happening soon." This definition implies that an "imminent" act requires no further measures to manifest; imminence also has a temporal dimension, developing quickly relative to the events that define it. In other words, very little time or preparation may stand between the present moment and an "imminent" event. State v. Woodson, 5D21-2251 (10/14/22)

https://www.5dca.org/content/download/851005/opinion/212251_DC13_10142022_083309_i.pdf

DEFINITION-"PROSPECTIVE"-"IMMINENT": "Prospective' simply means likely to happen, or expected. "Imminent" encompasses a narrower time frame and means "impending" and "about to occur." Thus, while all imminent abuse or neglect is prospective, prospective abuse or neglect is merely in the future, but not necessarily about to happen. State v. Woodson, 5D21-2251 (10/14/22)

https://www.5dca.org/content/download/851005/opinion/212251_DC13_10142022_083309_i.pdf

STAND YOUR GROUND: Accepting an invitation to fight is not defending with force out of necessity against an imminent threat. State v. Woodson,

5D21-2251 (10/14/22)

https://www.5dca.org/content/download/851005/opinion/212251_DC13_10142022_083309_i.pdf

STAND YOUR GROUND: SYG motion requires specificity in its allegations; conclusory allegations are insufficient. State v. Woodson, 5D21-2251 (10/14/22)

https://www.5dca.org/content/download/851005/opinion/212251_DC13_10142022_083309_i.pdf

APPEAL PRESERVATION-DISCOVERY VIOLATION: The issue of whether State's discovery violation in vehicular homicide case by failing to disclose that an officer would testify as an expert is not preserved where the only objection articulated was that the witness's trial testimony contradicted the deposition testimony. Roberts v. State, 5D21-2537 (10/14/22)

https://www.5dca.org/content/download/851006/opinion/212537_DC08_10142022_083637_i.pdf

MOTION FOR NEW TRIAL: A motion for new trial requires the trial court to evaluate whether the jury's verdict is contrary to the weight of the evidence and to act, in effect, as an additional juror. The standard is not sufficiency of the evidence. Case remanded for the trial court to consider the weight of the evidence when ruling on the motion for new trial. Roberts v. State, 5D21-2537 (10/14/22)

https://www.5dca.org/content/download/851006/opinion/212537_DC08_10142022_083637_i.pdf

SEXUAL BATTERY-DUE PROCESS-MENS REA: Defendant who had sex with woman after his roommate had had sex with her, where the woman was unaware that Defendant was a different guy (he approached her from behind and she actively participated, thinking he was Guy #1), may be found guilty of sexual battery. Due Process does not require that Defendant know or should have known that the complainant did not consent to sexual intercourse, or that the defendant knew or should have known anything in particular about the complainant's subjective state of mind. Statler v. State, SC21-119 (10/13/22)

https://www.floridasupremecourt.org/content/download/850951/opinion/sc21-119.pdf

SEXUAL BATTERY: Sexual battery is a crime of general intent, carrying no scienter requirement as to the complainant's nonconsent. Statler v. State, SC21-119 (10/13/22)

https://www.floridasupremecourt.org/content/download/850951/opinion/sc21-119.pdf

SEXUAL BATTERY: Sexual battery does not require the State to prove that a criminal defendant knew or should have known the victim did not consent to sexual intercourse. Statler v. State, SC21-119 (10/13/22)

https://www.floridasupremecourt.org/content/download/850951/opinion/sc21-119.pdf

APPEAL-ISSUE-PRESERVATION: Defendant cannot raise on appeal as an issue that Defendant's statement ("that's [sic] makes victim number 23") is improper Williams rule evidence where the articulated objection in trial was that it was unduly prejudicial. Jack v. State, 1D21-1494 (10/12/22)

https://www.1dca.org/content/download/850925/opinion/211494_DC08_1

0122022_110831_i.pdf

JURY-NUMBER: A six-person jury is lawful. Jack v. State, 1D21-1494 (10/12/22)

https://www.1dca.org/content/download/850925/opinion/211494_DC08_10122022_110831_i.pdf

COSTS: $150.00 discretionary public defender fee imposed under §938.29 and the $10.00 surcharge §938.04 may not be imposed unless specifically pronounced. Jack v. State, 1D21-1494 (10/12/22)

https://www.1dca.org/content/download/850925/opinion/211494_DC08_10122022_110831_i.pdf

SEARCH AND SEIZURE-PROBATIONARY SEARCHES: On warrantless probationary searches, a nonprobationer, cannot reasonably expect privacy in areas of a residence that shared with probationers. A person choosing to live in the same home with another who is subject as a probationer to warrantless searches has a corresponding diminished expectation of privacy. State v. Green, 1D21-1808 (10/12/22)

https://www.1dca.org/content/download/850926/opinion/211808_DC13_10122022_111059_i.pdf

SEARCH AND SEIZURE-CONFORMITY CLAUSE: The conformity clause of the Florida constitution binds Florida courts to decisions of the United States Supreme Court on Fourth Amendment issues. But when the United States Supreme Court has not addressed a particular search and seizure issue, Florida courts may rely on Florida state precedent for guidance. State v. Green, 1D21-1808 (10/12/22)

https://www.1dca.org/content/download/850926/opinion/211808_DC13_10122022_111059_i.pdf

SEARCH AND SEIZURE-PROBATIONARY SEARCHES: Evidence seized in a probationary search may not be used to support new criminal charges unless the search otherwise satisfies the requirements of the Fourth Amendment. "It bears repeating, however, that probationers do not enjoy the same expectation of privacy under the Fourth Amendment as ordinary citizens. Thus, the United States Supreme Court has held that law enforcement may conduct warrantless searches of probationers' homes under a lesser standard of reasonable suspicion (not probable cause) where a condition of probation included consent to a warrantless search." State v. Green, 1D21-1808 (10/12/22)

https://www.1dca.org/content/download/850926/opinion/211808_DC13_10122022_111059_i.pdf

SEARCH AND SEIZURE-PROBATIONARY SEARCHES: When investigating suspected criminal acts after probation offier observes an illegal substance, the state can seek a search warrant to secure the evidence necessary to support new charges. State v. Green, 1D21-1808 (10/12/22)

https://www.1dca.org/content/download/850926/opinion/211808_DC13_10122022_111059_i.pdf

BURGLARY-CURTILAGE: Curtilage is the enclosed space of ground and outbuildings immediately surrounding a building. Fenced in area of a car towing business, and the fence itself, is within its curtilage. Key v. State, 1D21-1187 (10/12/22)

https://www.1dca.org/content/download/850927/opinion/211876_DC05_1

0122022_111247_i.pdf

CURTILAGE-FENCE: "There do not appear to be any Florida cases that directly address whether the fence is itself part of the curtilage. But the fence is inextricably tied to the curtilage and therefore the structure itself. . .The curtilage is not just an area next to the structure. By statute, the curtilage is the structure. . . When a building has a curtilage, the boundaries of the structure are defined by the fence. Just as the building's walls are part of the structure, the curtilage's fence is also part of the structure." Key v. State, 1D21-1187 (10/12/22)

https://www.1dca.org/content/download/850927/opinion/211876_DC05_10122022_111247_i.pdf

BURGLARY-JURY INSTRUCTION: Jury instruction which omitted that the defendant "had the intent to commit an offense other than burglary or trespass in that structure," which is meant to make clear to jurors that the crime intended cannot be burglary or trespass, was error, but not fundamental error because it did not touch on a disputed element of the crime. Failing to instruct on an element of the crime over which there was no dispute is not fundamental error. Key v. State, 1D21-1187 (10/12/22)

https://www.1dca.org/content/download/850927/opinion/211876_DC05_10122022_111247_i.pdf

SEARCH AND SEIZURE-CONSENT-SCOPE: Officer who has been given permission to take Defendant's phone from his pocket, but pulls out his bag of heroin as well exceeds the scope of permission. Atwood v. State, 1D21-2605 (10/12/22)

https://www.1dca.org/content/download/850930/opinion/212605_DC05_10122022_112137_i.pdf

SEARCH AND SEIZURE-REVIEW: "We first ask if Fourth Amendment protections are triggered by the nature of the action. If so, we then address whether those protections were trespassed. And finally, if they were, we evaluate whether the resulting evidence should be excluded." Atwood v. State, 1D21-2605 (10/12/22)

https://www.1dca.org/content/download/850930/opinion/212605_DC05_10122022_112137_i.pdf

SEARCH AND SEIZURE-PLAIN TOUCH: When relying on plain touch, it is the development of probable cause through the otherwise lawful touch that permits the subsequent search and seizure. Based on its feel, the deputy must be reasonably certain the object is contraband. Atwood v. State, 1D21-2605 (10/12/22)

https://www.1dca.org/content/download/850930/opinion/212605_DC05_10122022_112137_i.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE: Use of the exclusionary rule to suppress evidence is a last resort and applies only when its remedial objective is efficaciously served. Defendant's flight upon the removal of narcotics from his pocket, even if the search was unlawful, justifies the detention of the Defendant lawful, so that any dropped drugs were either abandoned or inevitably discovered. Atwood v. State, 1D21-2605 (10/12/22)

https://www.1dca.org/content/download/850930/opinion/212605_DC05_10122022_112137_i.pdf

LIMITATION OF ACTIONS: §775.15(2)(b) requires that prosecution of a second-degree felony must be commenced within three years of the offense, but §775.15(16) extends the statute of limitations to any time after the

identity of the accused is established through DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused. Williams v. State, 1D22-123 (10/12/22)

https://www.1dca.org/content/download/850933/opinion/220123_DC05_10122022_112538_i.pdf

LIMITATION OF ACTIONS: §775.15(13)(a) provides that if the offense is a first or second degree felony violation of §794.011, and the offense is reported within 72 hours after its commission, the prosecution for such offense may be commenced at any time. Williams v. State, 1D22-123 (10/12/22)

https://www.1dca.org/content/download/850933/opinion/220123_DC05_10122022_112538_i.pdf

VOP-INABILITY TO PAY: Homeless Defendant who did not appear at sex offender treatment intake, claiming inability to pay $92.00 fee, may be found to have violated probation and may be sentenced to life in prison. "This situation brings to mind the old adage that where there is a will, there is a way. Here, the trial court found there was no will, hence, not surprisingly, no way." Mendoza v. State, 3D21-1522 (10/12/22)

https://www.3dca.flcourts.org/content/download/850894/opinion/211522_DC05_10122022_102742_i.pdf

VOP-UNEXPIRED TERM: A trial court is well within its discretion to revoke probation for the non-completion of a sex offender program, even when the order does not specify the date by which it needs to be completed. Mendoza v. State, 3D21-1522 (10/12/22)

https://www.3dca.flcourts.org/content/download/850894/opinion/211522_DC05_10122022_102742_i.pdf

COSTS: Court may not assess a $100 prosecution cost above the statutory minimum nor a $35 investigation cost not requested by the State. Skirdulis v. State, 4D21-2380 (10/12/22)

https://www.4dca.org/content/download/850898/opinion/212380_DC13_10122022_095629_i.pdf

APPEAL: Where a movant files an initial brief, and fails to establish that the claim can be amended in good faith, this court will not remand the matter. Jones v. State, 4D22-1034 (10/12/22)

https://www.4dca.org/content/download/850902/opinion/221034_DC05_10122022_100158_i.pdf

JUDGE-TEMPORARY APPOINTMENT: Assuming that a deficiency existed in the temporary appointment of the county court judge to the circuit court, this provides no basis for postconviction relief. Jurisdiction is determined by the court, not the judge. Gray v. State, 4D22-1046 (10/12/22)

https://www.4dca.org/content/download/850903/opinion/221046_DC05_10122022_100415_i.pdf

POST CONVICTION RELIEF: Defendant may not challenge as an illegal sentence pursuant to R. 3.800(a) his designation as a violent career offender by claiming that the Court miscounted the predicate offenses where any such error is not apparent from the face of the record. Williams v. State, 4D22-1234 (10/12/22)

https://www.4dca.org/content/download/850904/opinion/221234_DC05_10122022_100631_i.pdf

SENTENCING-UPWARD DEPARTURE: A jury finding of dangerousness is

required for a judge to sentence a Defendant with fewer than 22 points on his scoresheet. On re-sentencing, Defendant may not be sentenced to prison. Lamberson v. State, 2D21-1557 (10/7/22)

https://www.2dca.org/content/download/850589/opinion/211557_DC13_10072022_083457_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Where the trial court applies an incorrect standard in determining whether to exercise its discretion to depart from the guidelines, a new sentencing hearing is required. In determining whether to grant a motion for downward departure, a trial court is required to engage in a two-part process. First, the court must determine whether it can depart. Second, it should depart. Court's statement ("I do not find that there is a fact or consideration or circumstances that clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice,") fails to apply the test. Resentencing before a different judge is required. White v. State, 2D21-1713 (10/7/22)

https://www.2dca.org/content/download/850591/opinion/211713_DC13_10072022_083558_i.pdf

JURISDICTION-SENTENCE CORRECTION-PENDING APPEAL: A trial court has authority to consider a subsequently filed postconviction motion that raises unrelated issues notwithstanding the pendency of an appeal of an order on a previously filed postconviction motion, but lacks jurisdiction to consider issues related to the subect of the appeal (here, credit for time served). Morrow v. State, 2D22-686 (10/7/22)

https://www.2dca.org/content/download/850613/opinion/220686_DC13_10072022_083850_i.pdf

JURY-SIZE: The fact that the jury at common law was composed of precisely 12 is a historical accident, unnecessary to effect the purposes of

the jury system and wholly without significance except to mystics. Brown v. State, 1D21-597 (10/6/22)

https://www.1dca.org/content/download/850534/opinion/210597_DC05_10062022_100412_i.pdf

KIDNAPPING: For kidnapping, State must show that the defendant moved or confined the victim in a way that: (1) is not slight, inconsequential and merely incidental to theother crime; (2) is not of the kind inherent in the nature of the other crime; and (3) has ifsome significance independent of the other crime by making the other crime substantially easier to commit or by substantially lowering the risk of detection. Forcing victims back into the restaurant when they were in the process of exiting the building is sufficient to support a conviction for kidnapping. Brown v. State, 1D21-597 (10/6/22)

https://www.1dca.org/content/download/850534/opinion/210597_DC05_10062022_100412_i.pdf

HEARSAY-CO-CONSPIRATOR'S STATEMENT: A witness's statement that a third-party told her someone named "Kenneth" wanted to rob the Bojangles is admissible under the statement of co-conspirator exception to the hearsay rule. Brown v. State, 1D21-597 (10/6/22)

https://www.1dca.org/content/download/850534/opinion/210597_DC05_10062022_100412_i.pdf

APPEAL-PRESERVATION-HEARSAY: In order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below. A general hearsay objection, which did not mention the lack of prerequisite conspiracy. Brown v. State, 1D21-597 (10/6/22)

https://www.1dca.org/content/download/850534/opinion/210597_DC05_1

0062022_100412_i.pdf

APPEAL-JURISDICTION: Appellate court lacks jurisdiction to review the lower court's ruling where there is no signed written order; signed court minutes are not an order. State v. Anderson, 1D21-129 (10/6/22)

https://www.1dca.org/content/download/850536/opinion/211297_DA08_10062022_100755_i.pdf

SENTENCING: An orally pronounced sentence is not final and may still be altered until the sentencing hearing is concluded. McClendon v. State, 1D21-1156 (10/6/22)

https://www.1dca.org/content/download/850537/opinion/211565_DC05_10062022_100918_i.pdf

LEGALLY INCONSISTENT VERDICTS: A legally inconsistent verdict occurs when a finding of not guilty on one count negates a necessary element for conviction on another count. While factually inconsistent verdicts are permissible because they result from a jury's inherent authority to acquit, a legally inconsistent verdict cannot stand. Jury may not find Defendant guilty of first-degree felony murder and not guilty of the predicate attempted robbery. The first-degree felony murder is remanded for the entry of a judgment for the lesser-included offense of second-degree murder. Morris v. State, 1D21-1689 (10/6/22)

https://www.1dca.org/content/download/850539/opinion/211689_DC13_10062022_101405_i.pdf

PRR: Prison releasee reoffender status can apply to defendants who

commit qualifying crimes while incarcerated; there is no "release" prerequisite. Carruthers v. State, 1D21-3190 (10/6/22)

https://www.1dca.org/content/download/850541/opinion/213190_DC05_10062022_101903_i.pdf

POST-CONVICTION RELIEF: Habeas corpus may not be invoked to collaterally challenge the merits of a conviction. Swamy v. State, 1D21-35.82 (10/6/22)

https://www.1dca.org/content/download/850543/opinion/213582_DC05_10062022_102551_i.pdf

CONFRONTATION-ZOOM: Failure to render case specific findings of necessity justifying conducting juvenile adjudicatory hearings remotely results in a denial of due process. L.A., a Child v. State, 3D20-1856 (10/6/22)

https://www.3dca.flcourts.org/content/download/850496/opinion/201856_DC13_10062022_101939_i.pdf

SENTENCING-CONCURRENT: A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Walk v. State, 4D21-557 (10/6/22)

https://www.4dca.org/content/download/850507/opinion/210557_DC13_10062022_094716_i.pdf

SENTENCING-CREDIT-MAXIMUM: Defendant is entitled to credit against

each count for the time he served in prison and on probation concurrently on each offense. When a criminal defendant is sentenced after being convicted of a crime and serves some portion of that sentence, he or she is entitled to receive credit for the actual service of that sentence, or any portion thereof, in a resentencing for the same crime. Likewise, if multiple convictions result in concurrent sentences, credit must be awarded for time served on each sentence in any resentencing for the multiple convictions. Walk v. State, 4D21-557 (10/6/22)

https://www.4dca.org/content/download/850507/opinion/210557_DC13_10062022_094716_i.pdf

PRR: Facts found by the judge under the Prison Releasee Reoffender Act are not elements of the offense and are within the "prior conviction" exception to Apprendi. Babrow v. State, 4D22-1456 (10/6/22)

https://www.4dca.org/content/download/850525/opinion/221456_DC05_10062022_100009_i.pdf

QUOTATION: "Just as there is more than one way to skin a cat, there often is more than one way to resolve an appeal." Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

HABEAS CORPUS REVIEW-AEDPA: "Put simply, we have the power to overturn a state court's decision on the merits of a petitioner's habeas claim only in rare circumstances. Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

POST CONVICTION RELIEF-AEDPA: Appellate court may not grant a

petition for writ of habeas corpus based on ineffective assistance of counsel in state court unless unless the state court's adjudication of the claim of IAC (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. A prisoner must show far more than that the state court's decision was merely wrong or even clear error. The decision must be so obviously wrong that its error lies beyond any possibility for fair minded disagreement. Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

AEDPA: AEDPA requires habeas court to defer to the lower court's factual findings, however questionable. The state court's decision to view with caution the affidavit evidence (alleging that counsel failed to investigate death penalty mitigation) was neither contrary to nor an unreasonable application of clearly established federal law. Federal habeas courts require robust evidence before disturbing a state court's credibility determinations. Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

HABEAS CORPUS REVIEW: Federal court in habeas review may consider justifications underlying the state court's decision denying relief despite the lower court having failed to explicitly memorialize the reasons in its written opinion. Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

EVERYONE KNOWS: "[E]veryone recognizes the difference between macro-level reasons and their constituent rationales." Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

HABEAS CORPUS REVIEW-AEDPA (J. PRYOR, DISSENT): "The writ of habeas corpus is illusory—impossible—even, to obtain." Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

HABEAS CORPUS REVIEW-AEDPA (J. PRYOR, DISSENT): The majority opinion's first move is to declare that federal courts may find that a reasoned state court decision withstands AEDPA deference by turning to justifications the state court never even hinted at. The majority's attempt to wiggle out from under Supreme Court precedent is unconvincing. The majority opinion supports its declaration with a half-baked textual analysis. Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

HABEAS CORPUS REVIEW-AEDPA (J. PRYOR, DISSENT): "[T]he majority opinion holds—on an issue of first impression in this Court that was never briefed or argued by the parties—that a state court's findings of fact may be clearly erroneous but not sufficiently important to meet the 'unreasonable' AEDPA standard. . . [T]he holding creates a practically impossible path to relief for habeas petitioners. If federal courts can bury unreasonable findings under an avalanche of new reasons the state court never gave, then unreasonable findings will virtually never be important enough to satisfy the majority's test." Pye v. Warden, No. 18-12147 (11th Cir. 10/4/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201812147.enb.pdf

SEX OFFENDER REGISTRATION: Sex offender registration/restrictions/neighborhood notification rules do not violate the Ex Post Facto clause of the Constitution because they are not punitive, and therefore may be applied retroactively. McGuire v. Marshall, No. 15-10958 (11th Cir. 10/3/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201510958.pdf

EX POST FACTO: The Ex Post Facto Clause prohibits the retroactive application only of laws imposing punishment; a statutory scheme that is civil and regulatory in nature rather than criminal may apply retroactively. McGuire v. Marshall, No. 15-10958 (11th Cir. 10/3/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201510958.pdf

SEX OFFENDER REGISTRATION-BANISHMENT: Limitations on the residency in employment for sex offenders does not bear a sufficient resemblance to the traditional punishment of banishment to constitute a punishment. McGuire v. Marshall, No. 15-10958 (11th Cir. 10/3/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201510958.pdf

BANISHMENT: Banishment dates back more than 4,000 years. It is a form of punishment contained in the Code of Hammurabi, Mosaic law, the Old Testament Book of Esther, the Laws of Manu, and the T'ang Code. In the early 1700s, the United Kingdom banished around 50,000 of its criminals to America. McGuire v. Marshall, No. 15-10958 (11th Cir. 10/3/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201510958.pdf

VOP: Court may not find that Defendant violated community control for being outside his home where State presented no evidence that his absence from home had not been approved. Glispy v. State, 5D21-2172 (10/3/22)

https://www.5dca.org/content/download/850386/opinion/212172_DC05_10032022_081909_i.pdf

LESSER INCLUDED-HOMICIDE: In a homicide prosecution, the jury is not permitted to consider any non-homicide lesser-included offenses (e.g., aggravated battery) even if such lesser-included offenses are subsumed within and necessarily established by proof of the murder charge, unless there is some disputed issue of fact (and some evidence to support a theory) regarding an intervening cause of death. Carver v. State, 5D21-2882 (10/3/22)

https://www.5dca.org/content/download/850388/opinion/212882_DC05_10032022_092844_i.pdf

VOP-JURISDICTION: When a defendant has been placed on probation, the sentencing court loses jurisdiction over the defendant once the probationary period expires unless proceedings to modify or revoke probation have been instituted in the interim. Smith v. State, 5D22-1663 (10/3/22)

https://www.5dca.org/content/download/850394/opinion/221663_DC03_10032022_100444_i.pdf

JURISDICTION-CTS-PROBATION-INCARCERATION: Where the probation order imposes twenty-four months of supervised probation, with the condition that Defendant complete a term of six months in jail with credit for time served. The time spent in jail must be credited toward the entire term of probation. Properly crediting the jail time to the out-of-custody probation period results in the court losing jurisdiction to revoke probation. Smith v.

State, 5D22-1663 (10/3/22)

https://www.5dca.org/content/download/850394/opinion/221663_DC03_10032022_100444_i.pdf

ACCA-PREDICATE OFFENSE: A completed purchase of a narcotic under Florida law requires proof that the defendant both (1) gave consideration for and (2) obtained control of a trafficking quantity of illegal drugs, and further that the requisite control consists of the same range of conduct that qualifies as constructive possession under federal law. Accordingly, Defendant's prior Florida drug trafficking convictions are prior serious drug offenses for purposes of the ACCA, USA v. Conage, N0. 17-13975 (11th Cir. 9/30/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201713975.pdf

ZOOM-CONFRONTATION: Child is deprived of right of confrontation where T.T.W. argues that the trial court violated his constitutional right to confrontation where, over objection, a prosecution witness (a police officer) is allowed to testify via Zoom without any case-specific finding of necessity. T.T.W., a Child v. State, 3D21-1045 (9/30/22)

https://www.3dca.flcourts.org/content/download/850288/opinion/211045_DC13_09302022_100837_i.pdf

STALKING: Determining whether an individual's behavior is merely boorish or juvenile as opposed to illegal stalking subject to criminal penalty can require the drawing of fine lines. Johnstone v. State, 4D21-1411 (9/30/22)

https://www.4dca.org/content/download/850296/opinion/211411_DC05_09302022_095855_i.pdf

STALKING (DISSENT-J. ARTAU): Court errs in broadly defining the term

"harass" to include almost anything that a neighbor finds annoying, such as a father helping his child with a backyard science experiment that causes a foul-smelling odor; a scantily-dressed teenager taking an outdoor shower; a forgetful grandfather repeatedly placing garbage or debris in the wrong place; a mother using a lawnmower too early in the morning; a family enjoying their fire ring on a windy day; a grandmother taking pictures of wildlife she spots in her neighbor's yard; an activist utilizing her fence to post her views; and a resident who curiously looks at a neighbor while on a break from clearing brush with a machete. Johnstone v. State, 4D21-1411 (9/30/22)

https://www.4dca.org/content/download/850296/opinion/211411_DC05_09302022_095855_i.pdf

INFORMATION: Inasmuch as the crime of sexual battery of a child is no longer a capital crime in the sense that conviction thereof is punishable by death, a person may be charged with commission of that crime by information. Mendez v. State, 4D22-1169 (9/30/22)

https://www.4dca.org/content/download/850311/opinion/221169_DC05_09302022_100131_i.pdf

POST CONVICTION RELIEF: Counsel's failure to question prospective jurors about racial bias was a reasonable trial strategy. Truehill v. State, SC20-1589 (9/29/29)

https://www.floridasupremecourt.org/content/download/850195/opinion/sc20-1589.pdf

POST CONVICTION RELIEF: Trial counsel is not ineffective for failing to object to opening statement in which the prosecutor claimed that Defendant attacked a witness and took her purse where the facts ultimately introduced at trial did not support that assertion. Opening remarks are not evidence. The fact that such testimony supporting a claim made in opening is not ultimately elicited at trial does not render the initial comments objectionable.

Truehill v. State, SC20-1589 (9/29/29)

https://www.floridasupremecourt.org/content/download/850195/opinion/sc20-1589.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to question one witness for misidentifying Defendant and another for failing to identify for fear of bolstering any in-court identification ("[I]f somebody's identified somebody on the stand, then you ask them, well, did you misidentify them in the past, and they say, well, yes, I did, but he's the man, all I've done is accomplished a second identification of a man in front of the jury.") Truehill v. State, SC20-1589 (9/29/29)

https://www.floridasupremecourt.org/content/download/850195/opinion/sc20-1589.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-DNA: MIX 13 studies, a series of scientific studies conducted on DNA labs across the country which brings to light inconsistencies in DNA interpretation, is not newly discovered evidence because it is based on information that was previously available to counsel at the time of trial. New opinions or new research studies hav not been recognized as newly discovered evidence. Truehill v. State, SC20-1589 (9/29/29)

https://www.floridasupremecourt.org/content/download/850195/opinion/sc20-1589.pdf

APPEAL-BRIEF: Arguments raised for first time in reply brief are waived. Defendant's argument that the trial court improperly denied his objection to the jury panel based on Florida's statute revoking the voting rights of convicted felons was raised only in his reply brief and not in his initial brief, and is thus waived. Truehill v. State, SC20-1589 (9/29/29)

https://www.floridasupremecourt.org/content/download/850195/opinion/sc20-1589.pdf

VOP: Defendant's argument that Court improperly characterized his violations as "blatant," and thus must have relied on some impermissible considerations in reaching that conclusion. "But this is not a legal finding at all. . .It is a passing comment explaining the court's general evaluation and perception of the case. And the comment was not out of the blue. . .This was far from error." Herring v. State, 1D20-861 (9/28/22)

https://www.1dca.org/content/download/850132/opinion/200861_DC05_09282022_103051_i.pdf

HABEAS CORPUS-DISMISSAL: Court may dismiss, rather than transfer, a habeas petition when the petitioner seeks relief that (1) would be untimely if considered as a motion for postconviction relief under rule 3.850, (2) raise claims that could have been raised at trial or, if properly preserved, on direct appeal of the judgment and sentence, or (3) would be considered a second or successive motion under rule 3.850. Perry v. Fla. DOC, 1D20-2187 (9/28/22)

https://www.1dca.org/content/download/850134/opinion/202187_DC05_09282022_103458_i.pdf

JUVENILE OFFENDER-SENTENCE REVIEW: Juvenile offender convicted of sexual battery with force and sentenced to 30 years in prison qualifies for judicial review after twenty years. However, the Court is not required to pronounce the offender's entitlement to a sentence review, nor is it required to so indicate these facts on the sentencing order. Rather, DOC is required to notify Defendant of his eligibility for a sentence review 18 months in advance. Then, the burden of seeking judicial review falls on the juvenile offender. Parrish v. State, 1D21-1435 (9/28/22)

https://www.1dca.org/content/download/850137/opinion/211435_DC05_09282022_104254_i.pdf

YOUTHFUL OFFENDER: Defendant sentenced to a life felony is not

eligible to be sentenced as a youthful offender. Parrish v. State, 1D21-1435 (9/28/22)

https://www.1dca.org/content/download/850137/opinion/211435_DC05_09282022_104254_i.pdf

JUVENILE OFFENDER-SENTENCE REVIEW (CONCURRENCE): "I urge circuit judges to pronounce eligibility at sentencing and include such eligibility in the commitment documents provided to the Department of Corrections. . .[G]iven that the eligibility for a sentence review for nonhomicide juvenile offenders is to occur after they serve twenty years, it seems the Department is more likely to overlook its obligation if it is not in writing." Parrish v. State, 1D21-1435 (9/28/22)

https://www.1dca.org/content/download/850137/opinion/211435_DC05_09282022_104254_i.pdf

APPEAL: The first document received by the Court must invoke the Court's jurisdiction. "Neither the Florida Constitution nor the Florida Rules of Appellate Procedure requires this Court to open a case just because it receives a document in the mail." Appellant's "Motion for Constitutional Stay Writ," containing only generalized allegations that the lower court violated his constitutional and civil rights, lacking an allegation of a proper basis for relief, is dismissed. McPheeters v. State, 1D22-1869 (9/28/22)

https://www.1dca.org/content/download/850143/opinion/221869_DA08_09282022_110229_i.pdf

APPEAL-JURISDICTION-CERTIORARI-ATTORNEY-CONFLICT-WITHDRAWAL: Appellate court lacks jurisdiction to hear an appeal of the trial court's denial of Public Defender's Motion to Withdraw based on conflict because the order does not act as an end to the judicial labor in the cause, and is not among the appealable nonfinal orders in the appellate rules, nor may the issue be raised by certiorari because no irreparable harm is shown. Jordan v. State, 1D22-2960 (9/27/22)

https://www.1dca.org/content/download/850090/opinion/222960_DA08_09272022_120053_i.pdf

POST CONVICTION RELIEF-AEDPA; Under the Antiterrorism and Effective Death Penalty Act ("AEDPA")., when a state court has adjudicated the petitioner's claim on the merits, a federal court may not grant habeas relief unless the state court's decision was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or was based on an unreasonable determination of the facts. The phrase "clearly established Federal law" refers to the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision. Lukehart v. Sec'y Fla. DOC, No. 21-10099 (11th Cir 9/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110099.pdf

POST CONVICTION RELIEF-AEDPA: Constitutional trial error does not entitle a federal habeas petitioner to relief unless the petitioner can establish that the error resulted in "actual prejudice." "Actual prejudice" means that the error had substantial and injurious effect or influence in determining the jury's verdict. Lukehart v. Sec'y Fla. DOC, No. 21-10099 (11th Cir 9/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110099.pdf

POST CONVICTION RELIEF: Argument that a different strategy would have been better does not meet Defendant;s burden under Strickland; counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken might be considered sound trial strategy." Lukehart v. Sec'y Fla. DOC, No. 21-10099 (11th Cir 9/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110099.pdf

STATEMENT OF DEFENDANT: Interrogation, as conceptualized in the Miranda opinion, must reflect a measure of compulsion above and beyond

that inherent in custody itself. Defendant's statements in abducted/murdered baby case ("what's going on?" and that he had just tried to kill himself), even if admitted in violation of Miranda, does not warrant habeas corpus relief. Lukehart v. Sec'y Fla. DOC, No. 21-10099 (11th Cir 9/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110099.pdf

STATEMENT OF DEFENDANT: Voluntary and spontaneous statements made by a suspect are admissible in evidence whether or not the suspect has previously requested an attorney, as long as the statements are not made in response to questioning by the police. Lukehart v. Sec'y Fla. DOC, No. 21-10099 (11th Cir 9/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110099.pdf

APPEAL-STANDARDS OF REVIEW: Appellate court reviews the legal correctness of a jury instruction de novo, but defers to the district court on questions of style and phrasing absent an abuse of discretion. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

APPEAL-STANDARDS OF REVIEW: Appellate court reviews a district court's determination whether to strike an entire jury panel for manifest abuse of discretion. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

APPEAL-STANDARDS OF REVIEW: Appellate court reviews sentencing issues de novo, including claims that the district court double counted enhancement levels. However, if a double-counting claim is not raised before the district, review is for plain error. To establish plain error, the defendant must show (1) an error, (2) that is plain, and (3) that affected his substantial rights. If a defendant satisfies these conditions, appellate court

may exercise its discretion to recognize the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

SEARCH AND SEIZURE: Where Defendants are detained on an warrant outside a home, officers may still enter the home when they are not positive that the detainees are the subjects of the arrest warrant. The officers need not be absolutely certain that a suspect is at home before entering to execute an arrest warrant. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

SEARCH AND SEIZURE-IRONY: Officers could enter the home of the people they detained and laid face down outside the house where they were not sure whether the detainees were the subjects of the arrest warrants. Checking their wallets for identification would have been unlawful; entering the home to look for them was not. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

VOIR DIRE: Court's voir dire questions minimizing the importance of DNA or fingerprint evidence did not impermissibly lower the government's burden of proof. "As we see it, the court's discussion about television shows and the nature of forensic evidence presented on them was unnecessary, unwise and should have been avoided. . .[but], we cannot say that the district court. . .impermissibly createda mandatory presumption in favor of the government, nor can we say that its words entitled the jury to discount the defense's arguments in closing about whether the absence of fingerprint evidence created a reasonable doubt." USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

SENTENCING-ENHANCEMENT-DOUBLE COUNTING: Court did not engage in improper double counting for assessing a two level increase for possessing device-making equipment. Impermissible double counting occurs only when one part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that has already been fully accounted for by application of another part of the Guidelines. On the other hand, double counting is permissible where: (1) the Sentencing Commission intended the result; and (2) each guideline section in question concerns a conceptually separate consideration related to sentencing. USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

VOIR DIRE-JUDGE'S COMMENTS: Judge's comments during voir dire reinforcing a prosecution-friendly view of the case is improper. "I understand that the district court was trying to use images and concepts that would have registered or connected with prospective jurors in the 21st century. But sometimes using the tried and true—even if boring and unimaginative—is a better and safer alternative." USA v. Grushko, No. 20-10438 (11th Cir. 9/23/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010438.pdf

IMMUNITY-"BUT FOR" CAUSATION: §893.21, providing immunity from prosecution due to evidence obtained as a result of seeking medical assistance, does not apply when an outstanding arrest warrant is discovered, leading to the arrest of the Defendant and the discovery of narcotics in his pocket. The arrest warrant is an intervening cause leading to the discovery of the contraband, sufficient to break the causal chain. Proximate cause, not but for cause, is the appropriate standard. State v. Waiters, 2D21-1477 (9/23/22)
https://www.2dca.org/content/download/849844/opinion/211477_DC13_09232022_081840_i.pdf

IMMUNITY-"BUT FOR" CAUSATION: "Were we to accept the trial court's

"but for" causation test, an individual would enjoy immunity beyond that intended by the statute. According to Mr. Waiters, an arresting officer must turn a blind eye to any contraband discovered pursuant to a search incident to arrest on an outstanding warrant because the series of events leading to that discovery began with Mr. Waiters' need for medical assistance for a suspected drug overdose. This is, indeed, a strained reading of the statute." State v. Waiters, 2D21-1477 (9/23/22)
https://www.2dca.org/content/download/849844/opinion/211477_DC13_09232022_081840_i.pdf

DEFINITION-"RESULT": "Result" is defined as a consequence, effect, or conclusion, or that which is achieved, brought about, or obtained, especially by purposeful action." "Result" is also defined as "something that happens or exists because of something else" and "as a result of something." "These definitions are not helpful." State v. Waiters, 2D21-1477 (9/23/22)
https://www.2dca.org/content/download/849844/opinion/211477_DC13_09232022_081840_i.pdf

WISE WORDS: "Attenuation is key." State v. Waiters, 2D21-1477 (9/23/22)
https://www.2dca.org/content/download/849844/opinion/211477_DC13_09232022_081840_i.pdf

COMPETENCY: Court errs in finding Defendant competent on the basis of a report stipulated to by the parties but which the Court never actually read. A trial court abuses its discretion when it does not independently determine that a defendant is competent to stand trial. What cannot be waived is a defendant's right to have the trial court make an independent, legal determination that he is competent to proceed once his competency has been called into question. The parties cannot stipulate that a defendant is competent. Goonewardena v. State, 5D21-1073 (9/23/22)
https://www.5dca.org/content/download/849858/opinion/211073_DC13_09232022_094014_i.pdf

GENERAL SENTENCE: A general sentence–one which renders one sentence for the entire case rather than a separate sentence on each count-is illegal. King v. State, 5D21-2006 (9/23/22)
https://www.5dca.org/content/download/849860/opinion/212006_DC05_09232022_083335_i.pdf

MOTION TO DISMISS-R 3.190(c)(4): Brandishing and waving an airsoft gun while within shooting range of the victim is an overt act within the meaning of the assault statute sufficient to prove a prima facie case of assault, sufficient to withstand a (c)(4) motion to dismiss. State v. Williamson, 5D21-2624 (9/23/22)
https://www.5dca.org/content/download/849862/opinion/212624_DC13_09232022_083606_i.pdf

COSTS: Trial courts lack the authority to impose costs and fines in criminal cases unless such imposition is specifically authorized by statute and the statutory authority is cited in the written disposition order. State v. Haskins, 5D22-760 (9/23/22)
https://www.5dca.org/content/download/849863/opinion/220760_DC05_09232022_083858_i.pdf

RULES-AMENDMENT-PROBATION: Criminal rules are amended to authorize the DOC to supervise misdemeanor offenders when the offender is placed on probation by a circuit court and to remove the prohibition on private entities providing supervision for misdemeanor offenders. In Re: Amendments to Florida Rule of Criminal Procedure 3.790, SC22-1033 (9/22/22)
https://www.floridasupremecourt.org/content/download/849776/opinion/sc22-1033.pdf

DEATH PENALTY-SEXUAL BATTERY-J. THOMAS, CONCURRING: "[I[n my view, respectfully, the United States Supreme Court's decision barring capital punishment for the rape of an adult was wrongly decided. . .Should

a state determine that the death penalty is an appropriate punishment for aggravated armed sexual battery or the sexual battery of a child, the United States Supreme Court, given the opportunity, should. . hold that such sentences. . .are valid and legitimate." Bicking v. State, 1D21-2981 (9/22/22)
https://www.1dca.org/content/download/849800/opinion/212981_DC05_09222022_170004_i.pdf

RETURN OF STOLEN PROPERTY: Suspect who stole numerous government documents, including top secret documents, later recovered by government via a search warrant, is not entitled to their return, nor to an order prohibiting the government from reviewing the documents for criminal investigative purposes, due to a likelihood of irreparable harm from the threat of future prosecution and the associated stigma. "No doubt the threat of prosecution can weigh heavily on the mind of someone under investigation. But. . . 'if the mere threat of prosecution were allowed to constitute irreparable harm . . . every potential defendant could point to the same harm and invoke the equitable powers of the district court.'" Trump v. USA, No. 22-13005 (11th Cir. 9/21/22)

SUCK IT UP: Bearing the discomfiture and cost of a prosecution for crime is one of the painful obligations of citizenship. Trump v. USA, No. 22-13005 (11th Cir. 9/21/22)

RETURN OF STOLEN PROPERTY: Thief does not have a possessory interest in the the documents he stole, nor does he suffer a cognizable harm if the United States reviews documents he neither owns nor has a personal interest in. Trump v. USA, No. 22-13005 (11th Cir. 9/21/22)

RETURN OF STOLEN PROPERTY: Thief is not entitled to return of seized stolen top secret government documents on the grounds that some personal documents may have been taken. "[N]one of those concerns apply to the roughly one-hundred classified documents at issue here. . .For our part, we

cannot discern why Plaintiff would have an individual interest in or need for any of the one-hundred documents with classification markings." Trump v. USA, No. 22-13005 (11th Cir. 9/21/22)

EVIDENCE-DUI MANSLAUGHTER: In DUI manslaughter case, evidence that Victim had active ingredients of marijuana and opioid analgesics in her body at the time of the accident is ordinarily inadmissible. "[T]ere, there was an obvious danger in admitting evidence, even relevant evidence, that would allow the jury to improperly consider the deceased's intoxication, because the statute requires that any fault of the deceased be the sole cause of the fatal collision to absolve Appellant of guilt. Appellant violated the statute, even if he only contributed to the accident, so the proffered evidence had to show that the victim was 100% at fault for the collision." Mizell v. State, 1D20-3627 (9/21/22)
https://www.1dca.org/content/download/849717/opinion/203627_DC05_09212022_140356_i.pdf

DUI MANSLAUGHTER: An element of DUI manslaughter is that a defendant "cause or contribute to causing" the death of a victim while operating a vehicle while impaired. For a decedent's conduct to constitute a defense to DUI manslaughter, the conduct must be viewed as the sole proximate cause of an accident. Any deviation or lack of care on the part of a driver under the influence to which the fatal accident can be attributed will suffice. Mizell v. State, 1D20-3627 (9/21/22)
https://www.1dca.org/content/download/849717/opinion/203627_DC05_09212022_140356_i.pdf

ATTORNEY-CONFLICT-WITHDRAWAL: Public Defender must be allowed to withdraw on the vague assertion that the interests of the Defendant "are so adverse and hostile to those of another client and/or an attorney within the Office of the Public Defender that a conflict of interest exists." "Although we recognize and appreciate that trial courts are hamstrung by a statute which allows trial courts to conduct a hearing but precludes trial courts from

asking much about the nature of the conflict in cases of alleged conflict like this, it was a departure from the essential requirements of law for the trial court here to deny the public defender's request to withdraw." Hay v. State, 2D21-2167 (9/21/22)
https://www.2dca.org/content/download/849675/opinion/212167_DC03_09212022_083027_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to apprise her of a possible defense and that had she been aware of the defense, she would not have entered a plea of guilty. McGregor v. State, 3D22-971 (9/21/22)
https://www.3dca.flcourts.org/content/download/849701/opinion/220971_DC13_09212022_102117_i.pdf

ELECTRONIC MONITORING: Sheriff lacks authority to release Defendant, who is serving a sentence, to spend the balance of the sentence on electronic monitoring in the absence of a court order. Rhoden v. State, 1D21-2714 (9/21/22)
https://www.1dca.org/content/download/849720/opinion/212714_DC05_09212022_141436_i.pdf

DRIVER'S LICENSE SUSPENSION: Court may not suspend license for five years for a first DUI. Brown v. State, 1D21-2947 (9/21/22)
https://www.1dca.org/content/download/849723/opinion/212947_NOND_09212022_141645_i.pdf

COSTS: In DUI case, Court errs in imposing additional costs of $82 under §§938.27 and 318.18(18). The $50 in prosecution costs for a misdemeanor must be requested. §318.18(18)'s $12.50 administrative fee only applies to noncriminal violations and is thus inapposite to Defendant's DUI conviction. Brown v. State, 1D21-2947 (9/21/22)
https://www.1dca.org/content/download/849723/opinion/212947_NOND_09212022_141645_i.pdf

COSTS: $30 State facilities surcharge imposed under §318.18(13)(a)1. requires adoption by local government ordinance. Brown v. State, 1D21-2947 (9/21/22)

https://www.1dca.org/content/download/849723/opinion/212947_NOND_09212022_141645_i.pdf

COMMUNITY SERVICE: Community service in lieu of paying fines is a permissible this alternative only with respect to DUI, and is not an alternative to costs (*see* §316.193(6)(m)). Brown v. State, 1D21-2947 (9/21/22)
https://www.1dca.org/content/download/849723/opinion/212947_NOND_09212022_141645_i.pdf

APPEAL: Appellate court may not grant any relief from a scrIvener's error in the judgment–Defendant was convicted after trial, not after a plea--where the issue is raised for the first time on appeal. "And if a defendant is precluded from even raising such an error, it follows that for us to respond even by simply noting the error, let alone remanding to allow the trial court to take any action on it, would improperly reward noncompliance with that dictate." Carrion v. State, 2D18-4289 (9/16/22)

https://www.2dca.org/content/download/849103/opinion/184289_DC05_09162022_085715_i.pdf

DEFINITION- "SCRIVENER'S ERROR": A scrivener's error" is a mistake in the written sentence that is at variance with the oral pronouncement of sentence or the record but not those errors that are the result of a judicial determination or error. Question certified. Carrion v. State, 2D18-4289 (9/16/22)

https://www.2dca.org/content/download/849103/opinion/184289_DC05_0

9162022_085715_i.pdf

SENTENCE CORRECTION (CONCURRENCE): Defendant may not raise for first time on direct appeal the scrivener's error. "I do not agree that such preservation must or even can be effectuated by way of a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b) because an error in a judgment is not a "sentencing error." Carrion v. State, 2D18-4289 (9/16/22)

https://www.2dca.org/content/download/849103/opinion/184289_DC05_09162022_085715_i.pdf

A FOUL EXPOSITION: "[A]llowing presentation of an unpreserved scrivener's error that is not fundamental and reviewing such error could run afoul of case law expositing the proscriptions of the contemporaneous objection rule." Carrion v. State, 2D18-4289 (9/16/22)
https://www.2dca.org/content/download/849103/opinion/184289_DC05_09162022_085715_i.pdf

SAY NO MORE: "Until such time as an appellate court's proper course of action regarding a trial court's unpreserved scrivener's error is clarified by statute, rule, or Florida Supreme Court opinion, perhaps nothing more than that need—or should—be said." Carrion v. State, 2D18-4289 (9/16/22)
https://www.2dca.org/content/download/849103/opinion/184289_DC05_09162022_085715_i.pdf

CREDIT FOR TIME SERVED-ORAL PRONOUNCEMENT: Where court orally awarded credit for time served to which Defendant may not have been entitled, and the written sentence did not award the credit for time served, the oral pronouncement controls. Tillman v. State, 2D21-1269 (9/12/22)
https://www.2dca.org/content/download/849108/opinion/211269_DC08_09162022_091202_i.pdf

CREDIT FOR TIME SERVED: A sentencing court has discretion to grant jail credit on each individual consecutive sentence. A trial court is without authority to rescind jail credit at any time even if that credit was awarded improperly. I mean, maybe, y'know. "We recognize that this holding is no longer good law to the extent it conflicts with Spear v. State." Tillman v. State, 2D21-1269 (9/12/22)
https://www.2dca.org/content/download/849108/opinion/211269_DC08_09162022_091202_i.pdf

GENERAL SENTENCE: A trial court may not impose a single general sentence to cover multiple counts. Forty-year concurrent sentences on 35 separate third degree felonies is illegal. Moore v. State, 2D22-298 (9/16/22)
https://www.2dca.org/content/download/849110/opinion/220298_DC08_09162022_091433_i.pdf

POST CONVICTION RELIEF: Claim that State failed to disclose alleged evidence favorable to Defendant is cognizable in a R. 3.850 proceeding. Winters v. State, 5D22-818 (9/16/22)
https://www.5dca.org/content/download/849098/opinion/220818_DC08_09162022_092303_i.pdf

POST CONVICTION RELIEF-PRO SE DEFENDANT: Court must hold a Faretta hearing upon Defendant's Motion to represent himself in Spencer hearing Failure to do so is per se reversible error. Mosley v. State, SC20-195 (9/15/22)
https://www.floridasupremecourt.org/content/download/848980/opinion/sc20-195.pdf

EVIDENCE-CROSS-EXAMINATION: Court permissibly limited the scope of cross examination of witness as to whether he hoped for a sentence reduction due to his testimony where Court finds that the witness was jurisdictionally ineligible for a reduction. Mosley v. State, SC20-195 (9/15/22)

https://www.floridasupremecourt.org/content/download/848980/opinion/sc20-195.pdf

DEATH PENALTY-AGGRAVATING FACTORS: Jury need not be instructed that it must find beyond a reasonable doubt that the aggravating factors were sufficient to justify death and that the aggravating factors outweighed the mitigating factors. "[T]hat is not the law. The sufficiency and weight of aggravating factors in a capital case are not elements that must be determined by the jury beyond a reasonable doubt." Mosley v. State, SC20-195 (9/15/22)
https://www.floridasupremecourt.org/content/download/848980/opinion/sc20-195.pdf

WRITTEN ELECTRONIC THREAT: Message sent to the clerk's online portal comment box ("This Message is for the The No Good Low Down Bastard Mark Mahon. . .I'm coming for your No good Ass! I'm going to Deal with you! . . .I got something for your Ass! Go back to the Pitts of Hell where you come from!") constitutes a sent threat to kill or do bodily injury. Khayrallah v. State, 1D19-2407 (9/14/22)
https://www.1dca.org/content/download/848884/opinion/192407_DC05_09142022_093044_i.pdf

DEFINITION-"SEND": The verb "send" connotes an action that is complete upon the object's being set in motion with a destination in mind, even if the object does not actually reach the intended end of the journey. Khayrallah v. State, 1D19-2407 (9/14/22)
https://www.1dca.org/content/download/848884/opinion/192407_DC05_09142022_093044_i.pdf

SEARCH AND SEIZURE-BLOCKED REAR WINDOW: Stop of a vehicle based on the rear window of the Defendant's vehicle being blocked by shoes, pillows, and blankets is lawful. Knapp v. State, 1D21-1539 (9/14/22)
https://www.1dca.org/content/download/848889/opinion/211539_DC05_0

9142022_094143_i.pdf

EJUSDEM GENERIS: When a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed. Knapp v. State, 1D21-1539 (9/14/22) https://www.1dca.org/content/download/848889/opinion/211539_DC05_09142022_094143_i.pdf

SEARCH AND SEIZURE: In the Fourth-Amendment context, the governing law asks only whether a potentially mistaken interpretation of the statute is objectively reasonable. A search resulting from an objectively reasonable mistake of law by law enforcement does not implicate the exclusionary rule). Knapp v. State, 1D21-1539 (9/14/22) https://www.1dca.org/content/download/848889/opinion/211539_DC05_09142022_094143_i.pdf

APPEAL-RECORD: "We write to note an issue that has arisen in multiple criminal cases. . .[,] an increase of cases where the counsel for an appellant files multiple motions to supplement the record. In many of these cases, the motions have included requests for records or transcripts that could have been requested in one motion had a thorough review of the record been conducted. . .Counsel's obligation of timeliness demands an early, careful, and complete assessment of the need to supplement the record on appeal, so as to avoid unnecessary delay in disposition." Verasso v. State, 1D21-2375 (9/14/22) https://www.1dca.org/content/download/848891/opinion/212375_NOND_09142022_094603_i.pdf

HYBRID REPRESENTATION-WRITS OF PROHIBITION: The general rule against hybrid representation does not apply where Defendant seeks a ruling on a pending motion to discharge court-appointed counsel. When a pro se criminal defendant affirmatively seeks to discharge his or her court appointed attorney, the request is not regarded as unauthorized or a nullity. A petition

for writ of mandamus to compel a ruling on said motion is similarly not improper hybrid representation. Davis v. State, 1D22-1922 (9/14/22) https://www.1dca.org/content/download/848896/opinion/221922_NOND_09142022_095234_i.pdf

ZOOM: Where Juvenile objected to a remote trial, Court erred in holding a remote adjudicatory hearing without making case-specific findings as to why it was necessary. J.D., a Juvenile v. State, 3D21-1055 (9/14/22) https://www.3dca.flcourts.org/content/download/848905/opinion/211055_DC13_09142022_101506_i.pdf

LOWEST PERMISSIBLE SENTENCE (LPS): Where the LPS for one count of lewd and lascivious battery and twenty-four counts of possession of child pornography is 339.6 months in prison (28.3 years), Court may not sentence Defendant to 480 months (40 years) only on the possession charges. If the LPS exceeds the statutory maximum penalty in §775.082, the LPS is both the minimum sentence and the maximum penalty for that offense. Court must sentence Defendant to the calculated LPS of 28.3 years on all counts to be served concurrently. Baker v. State, 4D20-2112 (9/14/22) https://www.4dca.org/content/download/848911/opinion/202112_DC13_09142022_095640_i.pdf

DWLS-DRIVER'S RECORD: State failed to present a prima facie case that Defendant knew his license had been suspended where the DHSMV driving record did not reflect the address to which the notice of suspension had been sent and there was no testimony regarding Defendant's address. While the driving record reflected a notice of suspension was sent, it did not provide where it was sent and there was no evidence of Defendant's last known address on file with DHSMV. Robinson v. State, 4D22-1064 (9/14/22) https://www.4dca.org/content/download/848919/opinion/221064_DC05_09142022_100657_i.pdf

SEARCH AND SEIZURE-DUI-PARKED CAR: Officer may conduct welfare check of driver sleeping in a car at the entrance/exit of a parking lot. Once suspicion of a medical emergency is dispelled, ordinarily a sleeping driver in a parked car should not be detained, but the car's location in the entrance/exit to the parking lot, facing outward, suggests that driver was under the influence of something. Detention was lawful. Daniels v. State, 2D21-702 (9/9/22)
https://www.2dca.org/content/download/848620/opinion/210702_DC05_09092022_092857_i.pdf

SEARCH AND SEIZURE-COLOR OF OFFICE: The color of office doctrine precludes a law enforcement officer who is outside of his territorial jurisdiction from using the power or color of the office to observe unlawful activity or to gain access to evidence that would not be available to a similarly-situated private citizen. An exception to this doctrine allows a municipal officer to continue to act or investigate outside of his or her geographic jurisdiction if the subject matter of the officer's investigation originates inside their city limits. The ongoing investigation exception to the color of office doctrine allows arresting officer to request Defendant to submit to a breath test outside his terrtorial jurisdiction (Winter Park officer at the Orange County Jail). Question certified. State v. Torres, 5D22-21 (9/9/22)
https://www.5dca.org/content/download/848616/opinion/220021_DC13_09092022_085928_i.pdf

JUDGE-DISQUALIFICATION-HARMLESS ERROR: When a defendant asserts in an appeal that the trial court erroneously denied a legally sufficient motion to disqualify the trial judge, an appellate court's review should be for harmless error. " Davis v. State, SC20-1282 (9/8/22)
https://www.floridasupremecourt.org/content/download/848537/opinion/sc20-1282.pdf

JUDGE-DISQUALIFICATION: Re-assignment of a case to a judge who

had been a prosecutor in the homicide division while the case was pending, notwithstanding averments that he had not been involved in the case at issue, requires disqualification. Error in denying motion to disqualify is not harmless where the judge made several consequential decisions that could have altered the outcome of the trial." Davis v. State, SC20-1282 (9/8/22) https://www.floridasupremecourt.org/content/download/848537/opinion/sc20-1282.pdf

STARE DECISIS-JUDGE-DISQUALIFICATION (J. POLSTON, CONCURRING/DISSENTING): "I dissent to the majority's use of the harmless error standard because this cannot be reconciled with our established precedent treating the erroneous denial of a motion to disqualify the trial judge as per se reversible." Davis v. State, SC20-1282 (9/8/22) https://www.floridasupremecourt.org/content/download/848537/opinion/sc20-1282.pdf

AMENDMENT-RULES-EVIDENCE-DIGITAL MAPPING: §90.2035, providing for admissibility and procedures for judicial notice of information taken from web mapping services, global satellite imaging sites, or Internet mapping tools, to the extent it is procedural, is adopted retroactively to the date it became law. In Re: Amendments to the Florida Evidence Code, No. 22-1040 (9/8/22) https://www.floridasupremecourt.org/content/download/848538/opinion/sc22-1040.pdf

INDICTMENT: Statutes criminalizing the intended sexual activity are not themselves additional elements but only means of proving the element of intent. An indictment need only provide those facts showing which particular path the defendant took to commit a crime--the elements of the crime itself–not the means. An indictment for a transport-for-sexual-activity offense need not specify the unlawful sexual act intended. It is best practice to include the statutes criminalizing the sexual activity that the defendant

planned to inflict on the transported child, but it is not required. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

INTENT: Defendant may be convicted of transporting a minor to commit a criminal offense notwithstanding that he had other motives, such as opening a new business or visiting family. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

PRINCIPAL: Spouse of child molester who helped Defendant transport the girls may be convicted as a principal, regardless of whether she did so "with a happy heart" or with "a sense of foreboding." Helping to keep his abuse a secret and abusing (non-sexually) the victims may be sufficient. "The evidence of her initial resistance is not enough to preclude the jury from finding that she acted with intent." "Despite knowing that her husband was raping and abusing the girls, Jaycee Doak committed physical and mental abuse of her own rather than helping the girls as she sometimes promised. What she did help with was family travel, which further perpetuated the abuse." USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

EVIDENCE: Error, if any, in precluding the defense from presenting evidence that another person was the perpetrator, is harmless. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

EXPERT-FORENSIC INTERVIEW: When a witness relies on experience, she must (1) explain how it leads to and supports the conclusion she has reached and (2) show how it can be reasonably applied to the facts. Expert witness may explain the forensic interview process and describe how children pulled out of suspected sexual-abuse situations disclose that

information. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

EVIDENCE: Video of Defendant slapping victims' brother is properly admitted to show that the children did not report the sexual abuse because they were afraid of physical and verbal abuse if they did so. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: Government's appeal of the bottom of the guidelines sentence of the aiding-and-abetting spouse of the child molester, on the grounds of substantive unreasonableness fails. Sentencing court has discretion in weighing factors. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

COSTS/FINE: Evidence that a defendant has failed to disclose assets may support a determination that the defendant is able to pay a fine with those undisclosed assets. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

RESTITUTION: Court properly assessed $150,000 for restitution for victims' estimated therapy costs. USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

RESTITUTION: Court improperly assessed restitution based on $4,000 per month for estimated living expenses where the amount included expenses for all eight children in the Defendant's care, not only the abused victims. "Even though we do not impose a rigid formula for calculating restitution, the government must provide 'reliable and specific evidence.'" USA v. Doak, No. 19-15106 (11th Cir. 9/7/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201915106.pdf

VOP-JURISDICTION: Court has authority, upon revocation or modification of a defendant's probation, to extend a defendant's probationary period for the period of time her case was tolled, but there is nothing in the statute that automatically extends a defendant's probationary period. Instead, a trial court that wants to extend a defendant's probationary period beyond the original probationary term by adding the tolled period of time may do so only by revoking or modifying the original term. Prior violations may have tolled probation, but did not extend it. Court lacked jurisdiction to revoke probation. Bailey v. State, 1D21-2023 (9/7/22) https://www.1dca.org/content/download/848505/opinion/212023_DC13_09072022_141059_i.pdf

PROBATION-REINSTATEMENT: "Although trial courts often use the term 'reinstate' probation, the statute offers only three options: revocation, modification, or continuance." Bailey v. State, 1D21-2023 (9/7/22) https://www.1dca.org/content/download/848505/opinion/212023_DC13_09072022_141059_i.pdf

POST CONVICTION RELIEF-AFFIDAVIT; The supporting affidavit for a motion for post conviction relief is legally sufficient despite not having been sworn by the affiant before an individual authorized to administer oaths because it contained a signed written declaration complying with §92.525(2). A signed written declaration being offered as a legally sufficient verification must show that the affiant has: (1) made the declaration under penalties of perjury; (2) read the foregoing document; and (3) indicated that the facts or matters stated or recited in the document are true, or words of that import or effect. The rule only requires an affidavit; it does not specify how the affidavit is to be sworn. Neeley v. State, 4D21-333 (9/7/22) https://www.4dca.org/content/download/848484/opinion/213335_DC13_09072022_095757_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claims that 1) his plea was involuntary because he did not

understand the terms of the plea agreement, and 2) the trial court failed to determine that a factual basis for the plea existed where the records attached to the trial court's order do not conclusively refute the claims. Robinson v. State, 5D22-1085 (9/2/22)

https://www.5dca.org/content/download/848179/opinion/221085_DC13_09022022_084128_i.pdf

1ST DEGREE MURDER-PREMEDITATION: Premeditation is understood as requiring proof that the defendant was aware of the consequences of the actions that caused death, and that the defendant had the opportunity for reflection prior to committing the fatal act. Premeditation does not require lengthy deliberation on the part of the actor; but may be formed a moment. Gordon v. State, SC20-284 (9/1/22)

https://www.floridasupremecourt.org/content/download/848090/opinion/sc20-284.pdf

JUROR-PEREMPTORY-RACE NEUTRAL REASON: In death penalty case, the issue of whether State impermissibly struck a juror, who had said that "I'm not God," and clarified that the phrase did not connote a religious belief and that she could vote for either death or life on the merits, is not preserved for appeal. The issue is not preserved unless the party opposing a peremptory strike makes a specific objection to the proponent's proffered race-neutral reason for the strike, articulating why the proffered facially race neutral reasons for the strike are not genuine. "On this record, which contains no reasoned, preserved objection regarding the genuineness of the State's proffered race neutral reason for a peremptory strike, we have no basis upon which to revisit the trial court's decision to seat the contested juror." Gordon v. State, SC20-284 (9/1/22)

https://www.floridasupremecourt.org/content/download/848090/opinion/sc20-

284.pdf

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POST CONVICTION RELIEF-DEATH PENALTY: Counsel is not deficient simply because postconviction counsel secures a more favorable expert. Counsel was not ineffective for not procuring neuropsychological testing where two experts did not suggest it. State v. Mullens, SC19-1587 (8/31/22)

https://www.floridasupremecourt.org/content/download/847982/opinion/sc19-1587.pdf

POST CONVICTION RELIEF: Counsel is not deficient for failing to anticipate changes in the law, such as Hurst. State v. Mullens, SC19-1587 (8/31/22)

https://www.floridasupremecourt.org/content/download/847982/opinion/sc19-1587.pdf

COSTS: $398 of costs only described as "ct cost and fine—statute," that does not appear to provide this Court a meaningful way to determine what that $398 represents, is stricken. Grimes v. State,

1D21-3813 (8/31/22)

https://www.1dca.org/content/download/848013/opinion/213813_NOND_08312022_102338_i.pdf

HUH?: A promissory note presumptively is a security. "[I]f it looks like a duck and quacks like a duck, we don't have to ask if it's a pig." Hosner v. State, 2D20-1344 (8/31/22)

https://www.2dca.org/content/download/847955/opinion/201344_DC05_08312022_084133_i.pdf

TIPSY COACHMAN: The trial court's ruling on an evidentiary matter will be affirmed even if the trial court ruled for the wrong reasons, as long as the evidence or an alternative theory supports the ruling. Hosner v. State, 2D20-1344 (8/31/22)

https://www.2dca.org/content/download/847955/opinion/201344_DC05_08312022_084133_i.pdf

JUVENILE OFFENDER-LIFE SENTENCE-REVIEW: Juvenile convicted of attempted robbery with a deadly weapon, (1st PBL) and sentenced to 30 years in prison is not entitled to a sentence review. A 30 year sentence is not a de facto life sentence. Taylor v. State, 2D22-1186 (8/31/22)

https://www.2dca.org/content/download/847972/opinion/221186_DC05_08312022_084352_i.pdf

ILLEGAL SENTENCE: An "illegal sentence" is one that imposes a punishment or penalty that no judge under the entire body of sentencing statutes and laws could impose under any set of factual circumstances. Darling v. State, 3D22-697 (8/31/22)

https://www.3dca.flcourts.org/content/download/848009/opinion/220697_DC05_08312022_105425_i.pdf

AGGRAVATED ASSAULT-RECLASSIFICATION: Aggravated assault is not subject to reclassification under §775.087(1) because a firearm is an essential element of aggravated assault. Darling v. State, 3D22-697

(8/31/22)

https://www.3dca.flcourts.org/content/download/848009/opinion/220697_DC05_08312022_105425_i.pdf

10-29-LIFE-MANDATORY MINIMUM-DISCHARGE OF FIREARM: Mandatory minumum 20 year sentence is not a reclassification. Darling v. State, 3D22-697 (8/31/22)

https://www.3dca.flcourts.org/content/download/848009/opinion/220697_DC05_08312022_105425_i.pdf

MANDATORY MINIMUM-FIREARM-MANSLAUGHTER-RECLASSIFICATION: Use of a firearm is not an element of the offense of manslaughter. Thus, where a jury renders a finding that a firearm was used during the commission of the crime, manslaughter is properly reclassified as a first degree felony. Darling v. State, 3D22-697 (8/31/22)

https://www.3dca.flcourts.org/content/download/848009/opinion/220697_DC05_08312022_105425_i.pdf

POST CONVICTION RELIEF: A motion to correct illegal sentence under R 3.800(a) is not cognizable where the defendant seeks to challenge the validity of the conviction and, only by extension, the "legality" of the resulting sentence. Ramirez v. State, 3D22-1014 (8/31/22)

https://www.3dca.flcourts.org/content/download/848006/opinion/221014_DC05_08312022_105049_i.pdf

APPEAL-PRESERVATION-SEXUAL PREDATOR (J. COHEN, CONCURRING): The defendant who objected to being designated as a sexual predator, but did not articulate the specific basis–that conspiracy to commit the offense of conspiracy to commit sexual battery on a person less than twelve years of age is not a qualifying offense–did not preserve the issue for appeal. Best v. State, 5D21-3114 (8/26/22)

https://www.5dca.org/content/download/846272/opinion/213114_DC05_08262022_085212_i.pdf

EVIDENCE-GOOD CHARACTER: R. 404(a)(1) forbids use of character evidence. Evidence of good conduct is not admissible to negate criminal intent. In medical fraud case, evidence that some patients received proper care is inadmissible. USA v. Ifediba, No. 20-13218 (11th Cir. 8/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013218.pdf

EVIDENCE-CULTURAL NORMS: Evidence that Nigerian cultural norms requiring Defendant to be subservient to her older brother is inadmissible. USA v. Ifediba, No. 20-13218 (11th Cir. 8/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013218.pdf

JUROR MISCONDUCT: Court did not abuse his discretion in investigating an allegation of juror misconduct by excusing the juror and inquiring of the remaining jurors collectively, rather than individually. There is no bright-line rule requiring a district court to investigate the internal workings of the jury whenever a defendant asserts juror misconduct. USA v. Ifediba, No. 20-13218 (11th Cir. 8/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013218.pdf

EVIDENCE-HEALTH CARE FRAUD: Patients need not testify regarding Defendant's fraudulent treatment or fraudulent representations to insurers; medical, insurance, and the billing records are sufficient. USA v. Ifediba, No. 20-13218 (11th Cir. 8/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013218.pdf

SENTENCING-DRUG-QUANTITY: In determining drug quantity for sentencing purposes, Court may extrapolate based on reliable and specific evidence. USA v. Ifediba, No. 20-13218 (11th Cir. 8/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013218.pdf

APPEAL-PRESERVATION-SENTENCING CONSIDERATIONS: The issue of whether the Court improperly considered Defendant's incidents of misconduct occurring after the charged offense is not fundamental error, and thus cannot be raised on appeal absent a contemporaneous objection. State v. Garcia, SC19-1870, (8/25/22)

https://www.floridasupremecourt.org/content/download/846186/opinion/sc19-1870.pdf

PURCHASE: A completed purchase of illegal drugs necessarily entails the defendant purchaser's possession of those drugs, as federal law defines possession. a purchase is not necessarily complete as soon as the would-be purchaser pays for the drugs. Conage v. USA, SC20-1441 (8/25/22)

https://www.floridasupremecourt.org/content/download/846188/opinion/sc20-1441.pdf

DEFINITION-"PURCHASE": As a matter of ordinary meaning, a purchase entails both giving consideration for and obtaining the good being purchased. It would not be reasonable to apply this definition so literally as to require proof that a defendant personally obtained actual, physical possession of the purchased item. Conage v. USA, SC20-1441 (8/25/22)

https://www.floridasupremecourt.org/content/download/846188/opinion/sc20-1441.pdf

PURCHASE: For purposes of § 893.135(1), a completed purchase requires proof that the defendant both (1) gave consideration for and (2) obtained control of a trafficking quantity of illegal drugs. The requisite control consists of the same range of conduct that qualifies as constructive possession under federal law, including control through an agent of the defendant. Conage v. USA, SC20-1441 (8/25/22)

https://www.floridasupremecourt.org/content/download/846188/opinion/sc20-1441.pdf

STATUTORY INTERPRETATON: The maxim that "when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction" is misleading. . . It would be a mistake to think that our law of statutory interpretation requires interpreters to make a threshold determination of whether a term has a "plain" or "clear" meaning in isolation, without considering the statutory context and without the aid of

whatever canons might shed light on the interpretive issues in dispute. Conage v. USA, SC20-1441 (8/25/22)

https://www.floridasupremecourt.org/content/download/846188/opinion/sc20-1441.pdf

POST-CONVICTION RELIEF: Counsel was not ineffective for not presenting evidence by one psychiatrist that Defendant was insane in light of the fact that asking the question would have directly led to the testimony of 4 experts that he was not. Covington v. State. SC21-295 (8/25/22)

https://www.floridasupremecourt.org/content/download/846189/opinion/sc21-295.pdf

POST-CONVICTION RELIEF: Counsel was not ineffective for failing to move to redact the videotaped interrogation which included various subjects that were disturbing, including the prior cat mutilations, child abuse, domestic violence, and other collateral offenses (Defendant had killed the family dog and done worse things to the mother and children). Covington v. State. SC21-295 (8/25/22)

https://www.floridasupremecourt.org/content/download/846189/opinion/sc21-295.pdf

RULES-AMENDMENT-DEPOSITIONS: Visual recording of adult deponents is prohibited unless ordered by a court or agreed to by the parties and the deponent. Visual recording of depositions is required for minors (under 18 years old) unless otherwise ordered by a court. Deponents may not be photographed during discovery depositions. In Re: Amendments to Florida Rule of Criminal Procedure 3.220, Florida Rule of Civil Procedure For Involuntary Commitment of Sexually Violent Predators 4.310, and Florida

Rule of Juvenile Procedure 8.060, No. SC22-312 (8/25/22)

https://www.floridasupremecourt.org/content/download/846192/opinion/sc22-312.pdf

SENTENCING-CONSIDERATIONS: It is not fundamental error for a trial judge to consider evidence of any postarrest misconduct in fashioning a sentence. It may be error, but it is not fundamental error. State v. Garcia, SC19-1870 (8/25/22)

https://www.floridasupremecourt.org/content/download/846186/opinion/sc19-1870.pdf

SENTENCING-GUIDELINES-PENETRATION: Applying victim injury penetration points does not violate the Equal Protection Clause on the reasoning that the assessment of victim injury penetration points would not pass constitutional muster because it would apply only in cases of heterosexual incest. State v. Hardley, 1D19-1515 (8/24/22)

https://www.1dca.org/content/download/846124/opinion/191515_DC13_08242022_141006_i.pdf

SENTENCING-GUIDELINES-PENETRATION: Defendant's argument that because he was convicted of incest, not sexual battery, without a finding that the sex was nonconsensual, so there is no victim, so there can be no penetration points, fails. State v. Hardley, 1D19-1515 (8/24/22)

https://www.1dca.org/content/download/846124/opinion/191515_DC13_08242022_141006_i.pdf

SENTENCING-GUIDELINES-PENETRATION: Sentencing points assessed for sexual penetration stand apart from victim injury points assessed for physical injury to a victim. State v. Hardley, 1D19-1515 (8/24/22)

https://www.1dca.org/content/download/846124/opinion/191515_DC13_08242022_141006_i.pdf

JUDGE-CONSTITUTIONALITY: "A brief word on the trial court's reasoning. The trial court based its rationale on constitutional claims that no party had raised. It should not have done so. We take this opportunity to reiterate the longstanding principle that it is the role of parties to raise constitutional challenges against duly enacted laws, not judges." State v. Hardley, 1D19-1515 (8/24/22)

https://www.1dca.org/content/download/846124/opinion/191515_DC13_08242022_141006_i.pdf

STATEMENTS OF DEFENDANT: Statements of DUI defendant in the back of patrol car aftert her arrest, made in response to questioning and before Miranda, are inadmissible. Hudson v. State, 1D21-99 (8/24/22)

https://www.1dca.org/content/download/846125/opinion/210099_DC13_08242022_141232_i.pdf

STATEMENTS OF DEFENDANT-MIRANDA-CUSTODY: Defendant was in custody for Miranda purposes when the officers stopped her vehicle, handcuffed her, held her in a patrol car for over half an hour, and impounded her vehicle. Hudson v. State, 1D21-99 (8/24/22)

https://www.1dca.org/content/download/846125/opinion/210099_DC13_0

8242022_141232_i.pdf

POST-CONVICTION RELIEF: Counsel cannot be found to be ineffective for failing to retain an expert unless the Defendant alleges with specificity the information the espert would have offered and how it would have affected the case. Kirkpatrick v. State, 1D21-683 (8/24/22)

https://www.1dca.org/content/download/846126/opinion/210683_DC05_08242022_141506_i.pdf

ARGUMENT: Counsel was not ineffective for not objecting to the State's argument that "just about everything the defendant told you from the stand was imaginary and unreasonable." Prosecutors have wide latitude in closing argument to argue and to draw reasonable inferences from the evidence. Kirkpatrick v. State, 1D21-683 (8/24/22)

https://www.1dca.org/content/download/846126/opinion/210683_DC05_08242022_141506_i.pdf

COSTS: Court errs in imposing a $151 court cost under §938.10 for an offense "against a minor" where the victim was not a minor. Matthews v. State, 1D21-1752 (8/24/22)

https://www.1dca.org/content/download/846127/opinion/211752_DC08_08242022_141652_i.pdf

POST CONVICTION RELIEF: Where defendant and his accomplice engaged in a brutal criminal rampage in two counties, during which he pistol whipped three women and crashed into another victim's car, stole another victim's car at gunpoint (the victim was going Christmas shopping), pistol

whipped yet a third woman in the face and head, crashed the stolen car in a high-speed chase, and otherwise behaved badly, counsel was not ineffective for pursuing the only viable strategy in light of the overwhelming evidence of guilt. Fryson v. State, 1D21-2285 (8/24/22)

https://www.1dca.org/content/download/846128/opinion/212285_DC05_08242022_141822_i.pdf

RESTITUTION: Victim is not entitled to $2,880 in claimed lost wages because he spent eight nonconsecutive hours getting his vehicle repaired (Victim is a probate attorney). Court may not include a victim's lost wages unless it the State establishes by a preponderance of the evidence the victim's loss and that it was caused by the child's offense. J.B.E.C. v. State, 21-374 (8/24/22)

https://www.2dca.org/content/download/846067/opinion/210374_DC08_08242022_083340_i.pdf

SUPERSEDEAS BOND: A defendant who has been sentenced for the commission of any non-capital offense for which bail is not prohibited under §903.133 may be released, pending review of the conviction, at the discretion of either the trial or appellate court, provided that the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. A trial court's failure to consider the required factors is a basis for reversal of a denial of supersedeas bond. Court's conclusion that it "does not believe that reversible error was committed at trial or that an appeal is meritorious" is not a basis for denying supersedeas bond. The term "good faith, on grounds fairly debatable, and not frivolous" doesn't require a prognostication of the ultimate outcome of the appeal. But here, although a close call, the denial of supersedeas bond is affirmed. Carnright v. State, 3D22-1244 (8/24/22)

https://www.3dca.flcourts.org/content/download/846101/opinion/221244_NOND_08242022_104248_i.pdf

SEARCH AND SEIZURE-REMOVAL FROM VEHICLE: Defendant was not unlawfully seized when officer removes sleeping defendant from his vehicle which was half on behalf of the roadway underneath an overpass, partially obstructing traffic. State v. Bodrato, 4D22-334 (8/24/22)

https://www.4dca.org/content/download/846097/opinion/220334_DC13_08242022_100409_i.pdf

DEFENSE; Defendant asserted the defense that his narcissistic personality disorder diminished his capacity to steal $169,177,338.00 by mail fraud. Conviction and sentence affirmed. USA v. Utsick, No. 16-16505 (11th Cir. 8/22/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201616505.pdf

EXTRADITION-RULE OF SPECIALTY: The "rule of specialty" stands for the proposition that, in extradition cases, the requesting state, which secures the surrender of a person, can prosecute that person only for the offense for which he or she was surrendered or else must allow that person an opportunity to leave the prosecuting state to which he or she had been surrendered. But the rule of specialty does not limit the other country's ability to consider the facts of a case not orosecuted because of the rule of specialty in determining the sentence. When imposing a sentence for an offense like mail fraud, the proper calculation of the guidelines requires the district court to consider all relevant conduct, not merely charged conduct. While the rule of specialty bars proof of other crimes in order to exact punishment for those other crimes, it does not bar proof of other crimes as a matter germane to the determination of punishment for the extradited

crime. USA v. Utsick, No. 16-16505 (11th Cir. 8/22/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201616505.pdf

COSTS-PUBLIC DEFENDER FEE: Court errs in imposing a $100 public defender application fee; the amount should be $50. Hernandez v. State, 21-1992 (8/19/22)

https://www.2dca.org/content/download/845831/opinion/211992_DC05_08192022_083242_i.pdf

STAND YOUR GROUND: SYG motion need not be sworn to. Court improperly denied the motion because it was unsworn. To raise a claim of immunity under §776.032, an accused must simply allege a facially sufficient prima facie claim of justifiable use of force. The trial court is to assume all facts as true, and if the alleged facts satisfy the requirements of the applicable self-defense statute raised by the accused, the burden shifts to the State to present clear and convincing evidence to overcome the self defense claim. Riggens v. State, 21-3627 (8/19/22)

https://www.2dca.org/content/download/845837/opinion/213627_DC03_08192022_083502_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to discuss with him potential defenses or strategies for trial. An attorney's unsworn statements do not establish facts in the absence of stipulation. Griffen v. State, 2D22-76 (8/19/22)

https://www.2dca.org/content/download/845840/opinion/220076_DC08_08192022_083828_i.pdf

MOTION-DEFENDANT'S PRESENCE: Defendant is not entitled to be present at a hearing on a motion for rehearing which does not result in a change of sentence. Sullivan v. State, 2D22-916 (8/19/22)

https://www.2dca.org/content/download/845843/opinion/220916_DA08_08192022_084431_i.pdf

APPEAL-JURISDICTION: Appellate court lacks jurisdiction on a motion for rehearing which does not constitute the imposition of a sentence. Sullivan v. State, 2D22-916 (8/19/22)

https://www.2dca.org/content/download/845843/opinion/220916_DA08_08192022_084431_i.pdf

POST CONVICTION RELIEF: Defendant who files an "Affidavit of Truth" containing a "plethora of irrelevant and nonsensical allegations," and who, at the hearing, demands that the court address him in a particular way and repeatedly asks if the State would be responding to his incomprehensible "Affidavit of Truth" may be removed from the courtroom without warning. "While we agree that an explicit warning would have been preferable and might have remedied Germain's disruptive conduct, his due process argument nonetheless fails, as it overlooks that his stubborn refusal to proceed and present his case rendered him unable to meet his burden of proof." Germain v. State, 5D21-2553 (8/19/22)

https://www.5dca.org/content/download/845817/opinion/212553_DC05_08192022_082101_i.pdf

POST CONVICTION RELIEF: To establish ineffective assistance of counsel based on a conflict-of-interest claim, Defendant must establish: (1) a conflict of interest that (2) adversely affected counsel's performance. To establish an adverse effect, Defendant must show some plausible alternative defense strategy or tactic that might have been pursued but for the alleged conflict. The allegation that one attorney failed to negotiate a plea bargain because Defendant failed to pay a bribe or kickback which would have benefitted a different client of that attorney is insufficient since Defendant was also represented by several other attorneys. Ochoa v. USA, No. 18-10755 (11th Cir. 8/18/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201810755.pdf

GRAND JURY-SECRECY: A grand jury secrecy law's prohibition on a witness's disclosure of grand jury information that he learned only by virtue of being made a witness does not violate one's right to Free Speech. But to the extent that it prohibits a grand jury witness from disclosing information he learned outside the grand jury room, it violates one's right to free speech. Henry v. Attorney General, No. 21-11483 (11th Cir. 8/18/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111483.pdf

JUVENILE-PROBATION-LENGTH: When a judgment of delinquency is withheld, a court may impose a specific probationary period or an indeterminate period of probation, but a disposition is legally insufficient where a court orders a term of probation but fails to indicate whether the probation is indefinite or for a fixed period. J.H. v. State, 1D21-1114 (8/17/22)

https://www.1dca.org/content/download/845692/opinion/211114_DC08_08172022_142022_i.pdf

STATEMENT OF DEFENDANT: There is no bright-line rule that renders a confession by a juvenile involuntary. In order to determine whether a juvenile defendant's waiver of Miranda rights was voluntary, knowing, and intelligent, the totality of the circumstances is considered. Pertinent factors include: 1) the manner in which the Miranda rights were administered, like cajoling or trickery; 2) the age, experience, background, and intelligence of the defendant; 3) whether the defendant's guardian was contacted, and the juvenile given an opportunity to consult a parent, guardian, or counsel before questioning; 4) whether the interview was conducted in a wepolice station; and 5) whether the interrogators secured a written waiver. Here, the confession was admissible. J.H. v. State, 1D21-1114 (8/17/22)

https://www.1dca.org/content/download/845692/opinion/211114_DC08_08172022_142022_i.pdf

VOCC: Defendant is lawfullly sentenced to two years in prison for violating community control by having Thanksgiving Dinner with his parents next door. White v. State, 1D21-1283 (8/17/22)

https://www.1dca.org/content/download/845695/opinion/211283_DC05_08172022_142412_i.pdf

IMPEACHMENT-SUBSTANTIVE EVIDENCE: Co-Defendant's statements in deposition and at his own earlier sentencing hearing are statements given under oath and are therefore admissible as either substantive evidence or impeachment should he testify differently at trial. Witness should not be excluded on basis that State only called him as a witness in order to impeach, and to use the impeachment as substantive evidence. Mitchum v. State, 1D21-1993 (8/17/22)

https://www.1dca.org/content/download/845697/opinion/211993_DC05_0

8172022_142808_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him not to testify. The Defendant's decision not to testify was voluntary, but the record does not disprove the allegation that no reasonable attorney would have discouraged him from testifying. Scott v. State, 3D20-1813 (8/17/22)

https://www.3dca.flcourts.org/content/download/845643/opinion/201813_NOND_08172022_102027_i.pdf

SENTENCE-MODIFICATION: An order denying a motion to correct, reduce, or modify a sentence (here, for a furough or home confinement due to COVID concerns) is not appealable. Gonzalez-Marham v. State, 3D21-2448 (8/17/22)

https://www.3dca.flcourts.org/content/download/845666/opinion/212448_DA08_08172022_105316_i.pdf

CORPUS DELICTI: Defendant's statement to officer, in response to question, that he did not have a driver's licence, is inadmissible under corpus delicti doctrine where State had no evidence establishing that appellant drove the car without a license. Because driving a motor vehicle is not a crime in and of itself, the State needs to present independent evidence showing Defendant drove without a license. S.I. a Child, v. State, 4D21-1551 (8/17/22)

https://www.4dca.org/content/download/845647/opinion/211551_DC08_08172022_100324_i.pdf

CORPUST DELICTI: Corpus delicti is Latin for "body of the crime" which reflects the simple principle that a crime must be proved to have occurred before anyone can be convicted for having committed it. In criminal trials, the State must independently present substantial evidence tending to show the commission of the charged crime. Substantial evidence need not be uncontradicted or overwhelming, but it must at least show the existence of each element of the crime. A confession in a criminal case is not sufficient evidence of a criminal act where no independent direct or circumstantial evidence exists to substantiate the occurrence of a crime. S.I. a Child, v. State, 4D21-1551 (8/17/22)

https://www.4dca.org/content/download/845647/opinion/211551_DC08_08172022_100324_i.pdf

INCOMPETENCE-DISMISSAL: Court is not required to dismiss charges on the grounds of continued incompetence where Defendant's repeated failure to appear at status conferences prevented the trial court from ordering a subsequent evaluation to determine if she remained incompetent to proceed. A defendant cannot wait out the clock while simultaneously evading the trial court's authority to order a reevaluation. State v. Tillman, 4D21-2348 (8/17/22)

https://www.4dca.org/content/download/845651/opinion/212348_DC13_08172022_101128_i.pdf

CRIME OF VIOLENCE: Murder and Attempted Murder are "crimes of violence" under the "elements clause" of 18 U.S.C § 924(c)(3), , which makes it a crime to use or carry a firearm during and in relation to any crime of violence or drug trafficking, and which defines a crime of violence as one that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Alvarado-Linares v. USA, No. 20-19-14994 (8/16/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914994.pdf

CRIME OF VIOLENCE: Murder is a "crime of violence" if it is defined as the unlawful killing of a human being with malice aforethought. Alvarado-Linares v. USA, No. 20-19-14994 (8/16/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914994.pdf

POST-CONVICTION RELIEF-JURISDICTION: Court lacks jurisdiction to rule on a motion for postconviction relief claiming cumulative error where the underlying claims of error were on appeal at the time. Decola v. State, 2D22-817 (8/12/22)

https://www.2dca.org/content/download/845369/opinion/220817_DC08_08122022_083728_i.pdf

VIOLENT CAREER CRIMINAL: Battery on a person over 65 is not a forcible felony and therefore is not a qualifying offense under the Violent Career Criminal statute. Batta v. State, 5D21-1655 (8/12/22)

https://www.5dca.org/content/download/845334/opinion/211655_DC08_08122022_082505_i.pdf

VOP-ARREST: Florida Statutes do not authorize, nor would our constitution permit, a permanent revocation of probation based solely upon proof of an arrest during the probationary period. Payet v. State, 5D22-547 (8/12/22)

https://www.5dca.org/content/download/845336/opinion/220547_DC05_08122022_083039_i.pdf

APPEAL-PENDING APPEAL-MOTION: Defendant's motion to withdraw a plea, filed during the pendency of his appeal, is a nullity. Court lacks jurisdiction to deny the motion while the appeal is pending. Payet v. State, 5D22-547 (8/12/22)

https://www.5dca.org/content/download/845336/opinion/220547_DC05_08122022_083039_i.pdf

APPEAL: "As an aside, we note that one of these orders provided that the trial court was holding the instant appeal in abeyance. A trial court lacks the authority to rule upon an appellate court's jurisdiction. Payet v. State, 5D22-547 (8/12/22)

https://www.5dca.org/content/download/845336/opinion/220547_DC05_08122022_083039_i.pdf

FILING FALSE LIEN: 18 U.S.C. §1521 makes it illegal to file a false lien against the property of a federal officer or employee because of something he did as part of his official duties, including former federal officers or employees (here, former IRS Commissioner and former Treasury Secretary). §1521's prohibition depends upon what an individual did while acting as a federal officer or employee, and not simply his employment status at the time of the action at issue. USA v. Pate, No. 20-10545 (11th Cir. 8/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010545.pdf

STATUTORY INTERPRETATION: Statutory interpretation analysis begins and ends with the statutory text. USA v. Pate, No. 20-10545 (11th Cir. 8/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010545.pdf

DEFINITION-"ANY": "Any" means "all." USA v. Pate, No. 20-10545 (11th Cir. 8/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010545.pdf

SECOND DEGREE MURDER-DEPRAVED MIND: Slashing the Victim's throat in the course of an argument about the Victim's girlfriend's failure to deliver the title to a car to the Defendant is sufficient evidence of ill will, hatred, spite, or an evil intent, without regard to human lead to support a conviction for second-degree murder. Reynolds v. State, 1D20-2968 (8/10/22)

https://www.1dca.org/content/download/845191/opinion/202968_DC05_08102022_140802_i.pdf

EVIDENCE-PHOTOGRAPHS: Gruesome photographs of the Victim's injury after his throat was slashed are relevant in second-degree murder prosecutionas evidence of the Defender's depraved mind. Reynolds v. State, 1D20-2968 (8/10/22)

https://www.1dca.org/content/download/845191/opinion/202968_DC05_08102022_140802_i.pdf

ARGUMENT: The comment by the prosecutor that he was personally shocked was improper but insufficient to infect the fundamental fairness of the proceeding. Reynolds v. State, 1D20-2968 (8/10/22)

https://www.1dca.org/content/download/845191/opinion/202968_DC05_08102022_140802_i.pdf

VOP: Court improperly revoked probation on those grounds which required a monetary component absent a determination regarding Defendant's ability to pay. Woodward v. State, 1D21-1465 ((8/10/22)

https://www.1dca.org/content/download/845193/opinion/211465_DC05_08102022_141247_i.pdf

VOP (DISSENT-J. TANENBAUM): In VOP hearings, the only process due to the probationer is an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation. Woodward v. State, 1D21-1465 ((8/10/22)

https://www.1dca.org/content/download/845193/opinion/211465_DC05_08102022_141247_i.pdf

VOP-FRUITLESSNESS (DISSENT-J. TANENBAUM): "Oddly enough, . . .the majority . . .instructs the trial court to edit the revocation order by striking a few findings. Mind you, this suggestion for elision does not benefit the defendant at all. This proposed 'improvement' upon the original revocation order will have no effect on the defendant's sentence. He will get a piece of paper in prison titled 'amended order of revocation' that will have three fewer enumerated violations, but he will be serving the same amount of time. In addition to this exercise being a waste of judicial resources, it could prove confusing to the defendant, who will be left wondering: 'My lawyer won, so why didn't I?'" Woodward v. State, 1D21-1465 ((8/10/22)

https://www.1dca.org/content/download/845193/opinion/211465_DC05_0

8102022_141247_i.pdf

APPEAL-(DISSENT-J. TANENBAUM): "There is no source of authority for our remanding a case with an instruction to the trial court to nevertheless correct 'errors' that make no difference. I know this court has engaged in this perplexing practice in the past, which presumably is the reason the majority does so here. Still, practice is not 'precedent.' There is no utility in the remand and no authority behind it." Woodward v. State, 1D21-1465 ((8/10/22)

https://www.1dca.org/content/download/845193/opinion/211465_DC05_08102022_141247_i.pdf

CREDIT FOR TIME SERVED: If a defendant posts bond on one charge and is released, only to be reincarcerated later on other charges, he is then being held only on the charges occasioning the later arrest, until and unless the bond posted on the initial charge is revoked. Mutch v. State, 2D21-3782 (8/10/22)

https://www.1dca.org/content/download/845207/opinion/213782_DC05_08102022_142554_i.pdf

PRISON RELEASEE REOFFENDER: A jury trial is not necessary to determine the date of the Defendant's release from prison in determining whether he qualifies as a Prison Releasee Reoffender. The date of a defendant's release from prison relates to the fact of a prior conviction. Alleyne does not require a jury to make the PRR factual determination. Rivers v. State, 1D22-1190 (8/10/22)

https://www.1dca.org/content/download/845213/opinion/221190_DC05_08102022_142853_i.pdf

JURISDICTION-APPEAL-SEXUAL PREDATOR: Trial court has jurisdiction to designate a person as a sexual predator during the pendency of an appeal. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes. The designation is regulatory and procedural in nature. Alvarez v. State, 3D22-928 (8/10/22)

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PROBATION-CONCURRENT SENTENCE: When a criminal defendant is sentenced after being convicted of a crime and serves some portion of that sentence, he or she is entitled to receive credit for the actual service of that sentence, or any portion thereof, in a resentencing for the same crime. Likewise, if multiple convictions result in concurrent sentences, credit must be awarded for time served on each sentence in any resentencing for the multiple convictions. Because Defendant was serving concurrent sentences during the probationary period prior to his resentencing, he was entitled to credit against each count for the probation he served. Walk v. State, 4D21-557 (8/10/22)

https://www.4dca.org/content/download/845159/opinion/210557_DC13_08102022_095334_i.pdf

INVESTIGATIVE COSTS: Court may not impose investigative costs in the absence of a request. Copeland v. State, 4D21-1651 (8/10/22)

https://www.4dca.org/content/download/845163/opinion/211651_DC08_08102022_100249_i.pdf

SPEEDY TRIAL-COVID: Florida Supreme Court Administrative Order AOSC 20-13 ('AOSC 20-13') and subsequent orders suspended all time

periods involving the speedy trial rule and was not limited to court proceedings, including filing charges past the normal 90-day speedy trial deadline. State v. Guzman Gomez, 4D21-2016 (8/10/22)

https://www.4dca.org/content/download/845165/opinion/212016_DC13_08102022_100948_i.pdf

PROBATION-CONDITIONS: The probation condition prohibiting Defendant from visiting places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used should be modified to reflect the defendant may not "knowingly visit" such prohibited places. Francois v. State, 4D21-2112 (8/10/22)

https://www.4dca.org/content/download/845166/opinion/212112_DC08_08102022_104103_i.pdf

PROBATION-CONDITION: Court may not impose in the written probation order the requirement that the defendant pay the costs of her substance abuse and mental health evaluation and treatment where the oral pronouncement did not address payment. Francois v. State, 4D21-2112 (8/10/22)

https://www.4dca.org/content/download/845166/opinion/212112_DC08_08102022_104103_i.pdf

PROBATION-CONDITIONS-BATTERERS INTERVENTION PROGRAM: Defendant may not be required to attend BIP for the offense of battery on a LEO. Francois v. State, 4D21-2112 (8/10/22)

https://www.4dca.org/content/download/845166/opinion/212112_DC08_08102022_104103_i.pdf

DEPORTATION: Lawful resident convicted of traveling to meet a minor is not eligible for cancellation of removal or asylum for fear of being tortured in Guyana for being transgender. Evidence of discrimination and even physical violence against the LGBT population in Guyana is not the same as torture. K.Y. v. U.S. Attorney General, No. 21-10271 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110271.pdf

APPEAL-PRESERVATION: There is no "perceived futility" exception to the requirement that an issue be raised below in order to be preserved for appeal. K.Y. v. U.S. Attorney General, No. 21-10271 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110271.pdf

DEPORTATION: The fact that the alien has committed a particularly serious crime makes the alien dangerous within the meaning of the statute. The statute does not require two separate findings: first that the alien committed a particularly serious crime, and second that the alien constitutes a danger because it does not connect its two clauses with a conjunction; rather the statute sets forth a cause and effect relationship. K.Y. v. U.S. Attorney General, No. 21-10271 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110271.pdf

DEPORTATION: Defendant who commits the crime of traveling to meet is a danger to the community as a matter of law. K.Y. v. U.S. Attorney General, No. 21-10271 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110271.pdf

MOTION FOR NEW TRIAL: Granting a motion for a new trial occurs—albeit rarely—precisely when the evidence is legally sufficient to convict where the evidence preponderates heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand. USA v. Witt, No. 21-10557 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110557.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: A district court imposes a substantively unreasonable sentence when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors." USA v. Witt, No. 21-10557 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110557.pdf

SENTENCING: A district court does not have the authority to dictate whether a sentence is to be served in prison or in home confinement—that is left to the BOP. A bottom-of-the-Guidelines sentence is not substantively unreasonable. USA v. Witt, No. 21-10557 (11th Cir. 8/9/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110557.pdf

NATURALIZATION-CITIZENSHIP: Sale of Cocaine under New York law is an aggravated felony, which conclusively establishes that a person who commits it is not a person of good moral character, and who therefore cannot become a naturalized US citizen. The statute is divisible, so the Modified Categorical Approach is applied. Morfa Diaz v. Mayorkas, No. 21-10763 (11th Cir. 8/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110763.pdf

ATTORNEY-DILIGENCE: "Although the district court did not pursue it, we note that Morfa Diaz's counsel's inexcusable efforts border on sanctionable conduct. By failing to conduct the proper research—instead offering to 'provide a further comparison of the schedules' only 'if required'—counsel not only consciously and overtly presented a frivolous argument to the district court, but also muddied the record for a spurious challenge on appeal, too." Morfa Diaz v. Mayorkas, No. 21-10763 (11th Cir. 8/5/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202110763.pdf

CONTEMPT-SECURE DETENTION: Court may not order Child held in secure detention absent a finding that the Child willfully violated the court's order because intent is an essential element of contempt. I.M.W., a Child v. State, 1D22-2378 (8/5/22)
https://www.1dca.org/content/download/844862/opinion/222378_DC03_08052022_160410_i.pdf

SEARCH AND SEIZURE-WIRETAP: §934.07(1) (the wiretap statute) does not include a requirement governing the format of such authorizations, nor that the authorization be in writing, nor that technical defects in an authorization will invalidate law enforcement's ability to execute wiretaps. A nunc pro tunc correction of the phone number does not render the authorization ineffective. State v. Phipps, 5D21-2026 (8/5/22)
https://www.5dca.org/content/download/844834/opinion/212026_DC13_08052022_083718_i.pdf

VOP:: Court must specify in its written order the conditions of probation Appellant was found to have violated. Maldonado v. State, 5D21-2801 (8/5/22)

https://www.5dca.org/content/download/844837/opinion/212801_DC05_0

8052022_090753_i.pdf

FREE SPEECH: The free speech rights of the descendants of a Confederate soldier depicted in a monument are not abridged by its removal, nor have they standing to stop the removal. Hale v. Cooks, 1D21-1841 (11th Cir. 8/3/22)
https://www.1dca.org/content/download/844707/opinion/211841_DC05_08032022_140207_i.pdf

PRR: Alleyne and Apprendi do not bar the Court from sentencing a qualifying Defendant as a Prison Releasee Reoffender. Davis v. Moody, 1D22-325 (8/3/22)
https://www.1dca.org/content/download/844712/opinion/220325_DC05_08032022_140922_i.pdf

POST CONVICTION RELIEF-REMEDY: An attorney's failure to inform a defendant of sentencing enhancements such as HVFO when discussing a plea offer constitutes deficient performance. Where Defendant rejected plea offer because counsel failed to advise him that the maximum could be doubled as a HVFO, Tth the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal. Presuming the defendant accepts the offer, the trial court can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed." Kohutka v. State, 2D21-808 (8/3/22)
https://www.2dca.org/content/download/844642/opinion/210808_DC13_08032022_082236_i.pdf

VOP-HEARSAY: Hearsay evidence is admissible in VOP hearings and can sustain a violation when corroborated by direct evidence. Minor victim's hearsay statements that Defendant had sexually abused her, corroborated by DNA evidence, are sufficient to sustain VOP notwithstanding the victim's recantation. Bresile v. State, 3D21-424 (8/3/22)

https://www.3dca.flcourts.org/content/download/844655/opinion/210424_DC05_08032022_100451_i.pdf

POST CONVICTION RELIEF-MANIFEST INJUSTICE: Where the trial court erroneously believed that, once it determined Defendant qualified as a habitual violent felony offender, the imposition of a life sentence for burglary was mandatory rather than permissive, the sentence should be remanded for reconsideration, notwithstanding Defendant's unsuccessful direct appeal and collateral attacks, and notwithstanding the law of the case doctrine. Jordan v. State, 3D21-2075 (8/3/22)
https://www.3dca.flcourts.org/content/download/844697/opinion/212075_DC13_08032022_110823_i.pdf

COSTS: Court errs in imposing an un-requested $35 investigation cost and an extra and $100 prosecution cost, but may impose them on remand upon request and after factual findings justifying them. Skirdulus v. State, 4D21-2380 (8/3/22)
https://www.4dca.org/content/download/844674/opinion/212380_DC13_08032022_095252_i.pdf

DEPORTATION: Culpably negligent child abuse (Fla Stat. §827.03) is a deportable offense. Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

SENTENCING-CLARITY: "And the transcript of Bastias's plea colloquy is hopelessly opaque: The judge stated that he 'w[ould] adjudicate [Bastias] guilty of [the] charge of aggravated child—nope, of child neglect—child abuse, child neglect, a felony of the third degree so it's a lesser included offense of what [he] was originally charged with.' When the clerk asked for the statute number, the judge said, 'Oh, I don't know,' one of the lawyers suggested '827,' and the judge responded, 'Whatever.'" Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

PRIOR PRECEDENT RULE (CONCURRENCE): "As I've said before, we should resist the urge to invoke "flabbier variants" of the prior-panel-precedent rule "to 'write around'" earlier decisions with which we disagree because "a healthy respect for the decisions of [our] Colleagues—both past and present—counsels a fairly rigorous application" of the rule. Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

STATUTORY INTERPRETATION: "Because the statute is silent on the issue, we may defer to the BIA's interpretation of the INA, so long as that interpretation is reasonable and consistent with the statute. . . That's it. No assessment of ordinary meaning, no consideration of the canons, no analysis of statutory structure—no nothing." Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

STATUTORY INTERPRETATION: "The evidence gleaned from contemporaneous dictionary definitions and federal statutes seems to point in the opposite direction from that gleaned from a state-counting approach. . .But that's not the point. The point is that we, as judges in whom the Constitution 'vest[s] exclusively' the judicial power of the United States, should do statutory interpretation before deferring to any reasonable interpretation offered by an executive agency." Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

NATURALIZATION-CITIZENSHIP: Sale of Cocaine under New York las is an aggravated felony, which conclusively establishes that a person who commits it is not a person of good moral character, and who therefore cannot become a naturalized US citizen. The statute is divisible, so the

Modified Categorical Approach is applied. Morfa Diaz v. Mayorkas, No. 21-10763 (11th Cir. 8/5/22)

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ATTORNEY-DILIGENCE: "Although the district court did not pursue it, we note that Morfa Diaz's counsel's inexcusable efforts border on sanctionable conduct. By failing to conduct the proper research—instead offering to 'provide a further comparison of the schedules' only 'if required'—counsel not only consciously and overtly presented a frivolous argument to the district court, but also muddied the record for a spurious challenge on appeal, too." Morfa Diaz v. Mayorkas, No. 21-10763 (11th Cir. 8/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110763.pdf

CONTEMPT-SECURE DETENTION: Court may not order Child held in secure detention absent a finding that the Child willfully violated the court's order because intent is an essential element of contempt. I.M.W., a Child v. State, 1D22-2378 (8/5/22)

https://www.1dca.org/content/download/844862/opinion/222378_DC03_08052022_160410_i.pdf

SEARCH AND SEIZURE-WIRETAP: §934.07(1) (the wiretap statute) does not include a requirement governing the format of such authorizations, nor that the authorization be in writing, nor that technical defects in an authorization will invalidate law enforcement's ability to execute wiretaps. A nunc pro tunc correction of the phone number does not render the authorization ineffective. State v. Phipps, 5D21-2026 (8/5/22)

https://www.5dca.org/content/download/844834/opinion/212026_DC13_08052022_083718_i.pdf

VOP: Court must specify in its written order the conditions of probation Appellant was found to have violated. Maldonado v. State, 5D21-2801 (8/5/22)

https://www.5dca.org/content/download/844837/opinion/212801_DC05_08052022_090753_i.pdf

FREE SPEECH: The free speech rights of the descendants of a Confederate soldier depicted in a monument are not abridged by its removal, nor have they standing to stop the removal. Hale v. Cooks, 1D21-1841 (11th Cir. 8/3/22)

https://www.1dca.org/content/download/844707/opinion/211841_DC05_08032022_140207_i.pdf

PRR: Alleyne and Apprendi do not bar the Court from sentencing a qualifying Defendant as a Prison Releasee Reoffender. Davis v. Moody, 1D22-325 (8/3/22)

https://www.1dca.org/content/download/844712/opinion/220325_DC05_08032022_140922_i.pdf

POST CONVICTION RELIEF-REMEDY: An attorney's failure to inform a defendant of sentencing enhancements such as HVFO when discussing a plea offer constitutes deficient performance. Where Defendant rejected plea offer because counsel failed to advise him that the maximum could be

doubled as a HVFO, Tth the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal. Presuming the defendant accepts the offer, the trial court can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed." Kohutka v. State, 2D21-808 (8/3/22)

https://www.2dca.org/content/download/844642/opinion/210808_DC13_08032022_082236_i.pdf

VOP-HEARSAY: Hearsay evidence is admissible in VOP hearings and can sustain a violation when corroborated by direct evidence. Minor victim's hearsay statements that Defendant had sexually abused her, corroborated by DNA evidence, are sufficient to sustain VOP notwithstanding the victim's recantation. Bresile v. State, 3D21-424 (8/3/22)

https://www.3dca.flcourts.org/content/download/844655/opinion/210424_DC05_08032022_100451_i.pdf

POST CONVICTION RELIEF-MANIFEST INJUSTICE: Where the trial court erroneously believed that, once it determined Defendant qualified as a habitual violent felony offender, the imposition of a life sentence for burglary was mandatory rather than permissive, the sentence should be remanded for reconsideration, notwithstanding Defendant's unsuccessful direct appeal and collateral attacks, and notwithstanding the law of the case doctrine. Jordan v. State, 3D21-2075 (8/3/22)

https://www.3dca.flcourts.org/content/download/844697/opinion/212075_DC13_08032022_110823_i.pdf

COSTS: Court errs in imposing an un-requested $35 investigation cost and an extra and $100 prosecution cost, but may impose them on remand upon request and after factual findings justifying them. Skirdulus v. State, 4D21-2380 (8/3/22)

https://www.4dca.org/content/download/844674/opinion/212380_DC13_08032022_095252_i.pdf

DEPORTATION: Culpably negligent child abuse (Fla Stat. §827.03) is a deportable offense. Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

SENTENCING-CLARITY: "And the transcript of Bastias's plea colloquy is hopelessly opaque: The judge stated that he 'w[ould] adjudicate [Bastias] guilty of [the] charge of aggravated child—nope, of child neglect—child abuse, child neglect, a felony of the third degree so it's a lesser included offense of what [he] was originally charged with.' When the clerk asked for the statute number, the judge said, 'Oh, I don't know,' one of the lawyers suggested '827,' and the judge responded, 'Whatever.'" Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

PRIOR PRECEDENT RULE (CONCURRENCE): "As I've said before, we should resist the urge to invoke "flabbier variants" of the prior-panel-precedent rule "to 'write around'" earlier decisions with which we disagree because "a healthy respect for the decisions of [our] Colleagues—both past and present—counsels a fairly rigorous application" of the rule. Bastias v.

U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

STATUTORY INTERPRETATION: "Because the statute is silent on the issue, we may defer to the BIA's interpretation of the INA, so long as that interpretation is reasonable and consistent with the statute. . . That's it. No assessment of ordinary meaning, no consideration of the canons, no analysis of statutory structure—no nothing." Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

STATUTORY INTERPRETATION: "The evidence gleaned from contemporaneous dictionary definitions and federal statutes seems to point in the opposite direction from that gleaned from a state-counting approach. . .But that's not the point. The point is that we, as judges in whom the Constitution 'vest[s] exclusively' the judicial power of the United States, should do statutory interpretation before deferring to any reasonable interpretation offered by an executive agency." Bastias v. U.S. Attorney General, No. 21-11416 (8/2/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202111416.pdf

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CREDIT FOR SERVED (LAMBERT-CONCURRENCE): The standard practice when calculating prison credit is for the trial court to defer prison credit calculations to the Department of Corrections. Courts should separately designate jail credit and leave calculation of prison credit to the

Department of Correction. "Trial judges have difficult and stressful jobs. To perhaps slightly ameliorate their stress, I suggest that trial judges defer prison credit calculations to the Department of Corrections and that they use sentencing documents that differentiate between awards of jail credit and prison credit. I also recommend that judges consider implementing any additional procedures that may further assist them in confirming the accurate calculation and reporting of jail credit." Spear v. State, 5D19-1747 (7/29/22)
https://www.5dca.org/content/download/844371/opinion/191747_DC13_07292022_092808_i.pdf

CONTEMPT-PASSCODE: Defendant may be held in indirect contempt of court for refusing to provide the passcode to access his iPhone in connection with a search warrant. Because the subject has not yet been charged with any crime related to his phone, any arguments challenging the warrant's issuance and the propriety of the traffic stop and seizure of his iPhone are premature. This "should not be understood as ruling on any of the Fourth Amendment arguments Mr. Harris has raised. To the contrary, if the State ultimately pursues charges against him in connection with any evidence found on his iPhone, Mr. Harris will have. . .the full panoply of protections afforded under the state and federal constitutions." Harris v. State, 2D21-02601 (7/29/22)
https://www.2dca.org/content/download/844368/opinion/212601_DC05_07292022_085508_i.pdf

APPEAL WAIVER: A criminal defendant who wishes to plead guilty can waive the right to challenge his conviction and sentence in exchange for a better plea deal. A valid waiver of the right to collateral appeal bars habeas claims brought under 28 U.S.C. § 2255, including when a defendant seeks to challenge his sentence based on a new retroactive constitutional rule. A defendant who signs an appeal waiver gives up even the right to appeal blatant error. King v. USA, No. 20-14100 (11th Cir. 7/28/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014100.pdf

PRO SE-SERVICE OF DOCUMENTS: Defendant seeking post conviction relief or a pro se appeal is not entitled to have the Clerk of Court serve his filings for him. Decuir v. State, 1D22-920 (7/27/22) https://www.1dca.org/content/download/844207/opinion/220920_NOND_07272022_145803_i.pdf

ZOOM: Conducting VOP and sentencing hearings by Zoom is not a fundamental error. Allowing Defendant to consult with his attorney and a breakout room is legally sufficient. A lawyer who is not sitting next to a defendant at counsel table during a hearing is not ineffective as a matter of law. Gonzalez v. State, 3D20-0325 (7/27/22)

https://www.3dca.flcourts.org/content/download/844128/opinion/2020-1525_Disposition_116331_DC05.pdf

SENTENCING-IMPROPER SCORESHEET: Defendant is entitled to resentencing when he was originally sentenced under an improperly calculated scoresheet. The fact that the sentence imposed fell below the statutory maximum does not mean that Defendant is not entitled to resentencing absent a clear intent to impose a sentence harsher sentence regardless of any scoresheet error. Sampson v. State, 3D21-2005 (7/27/22) https://www.3dca.flcourts.org/content/download/844159/opinion/212005_DC13_07272022_102714_i.pdf

ILLEGAL ARREST: An illegal arrest, without more, has never been viewed has a bar to subsequent prosecution nor as a defense to a valid charge. Brown v. State, 3D22-3677 (7/27/22) https://www.3dca.flcourts.org/content/download/844169/opinion/220367_DC05_07272022_104217_i.pdf

COSTS-PUBLIC DEFENDER FEE: Court may not impose a $500 public

defender fee. A $400 fee ($150.00 arising at his first probation modification, $100.00 for the second modification, $100.00 for community control revocation and the $50.00 public defender application fee) it is permissible. Gibson v. State, 4D21-660 (7/27/22)
https://www.4dca.org/content/download/844134/opinion/210660_DC08_07272022_095605_i.pdf

HEARSAY: Responding deputy's testimony that the victim had identified the defendant as the driver of the vehicle which had caused the crash. The declarant—the victim—had not been subject to cross-examination concerning the statement, as required by §90.801(2)(c) (the identification exception to the hearsay rule) because the state, during the victim's earlier testimony, did not ask her whether she had informed the deputy that the defendant had been the driver. Kohler v. State, 4D21-1680 (7/27/22)
https://www.4dca.org/content/download/844135/opinion/211680_DC05_07272022_095734_i.pdf

COSTS-INVESTIGATIVE COST: Court cannot impose investigative costs where the State did not requested reimbursements for these costs. These costs cannot be imposed on remand. Elliot v. State, 4D21- 2541 (7/27/22
https://www.4dca.org/content/download/844139/opinion/212541_DC13_07272022_100212_i.pdf

COSTS: A court may not impose a $200 prosecution cost absent evidence supporting that amount. Elliot v. State, 4D21- 2541 (7/27/22)
https://www.4dca.org/content/download/844139/opinion/212541_DC13_07272022_100212_i.pdf

PLEA-WITHDRAWAL: Court improperly denied Defendant's motions to withdraw plea and to appoint conflict-free counsel where Defendant, through the public defender, moved to withdraw the plea, but, in the absence of conflict-free counsel, deferred articulating the reasons beyond saying that defense counsel had "misadvised him as to what the best pleading decision

was." When a defendant files a facially sufficient motion setting forth an adversarial relationship with counsel, the court is required to appoint conflict-free counsel unless the record conclusively refutes the motion's allegations.

Where defense counsel advised the trial court of his inability to properly argue the motion because of the existing conflict, it was clear that an adversarial relationship existed. Baker v. State, 5D21-3041 (7/22/22).
https://www.5dca.org/content/download/843826/opinion/213041_DC13_07222022_090225_i.pdf

PLEA-WITHDRAWAL: The plea colloquy does not refute the allegation that counsel had misadvised him about the prudence of pleading open. Baker v. State, 5D21-3041 (7/22/22).
https://www.5dca.org/content/download/843826/opinion/213041_DC13_07222022_090225_i.pdf

SENTENCING-CONSIDERATIONS: Court may consider a criminal defendant's failure to take responsibility or express remorse in sentencing. Burns v. State, 1D16-5113 (7/20/22)
https://www.1dca.org/content/download/843687/opinion/165113_DC05_07202022_113828_i.pdf

STAND YOUR GROUND: A SYG motion to dismiss requires a pretrial evidentiary hearing on the applicability of the statutory immunity under §776.032, which has almost nothing to do with the so-called "stand your ground" provisions of §§776.012, 776.013, and 776.031. Swift v. State, 1D21-799 (7/20/22)

https://www.1dca.org/content/download/843690/opinion/210799_DC05_07202022_114920_i.pdf

STAND YOUR GROUND: "Most of the case law refers to this immunity [under §776.032] as 'StandYour-Ground immunity,' but this is a misnomer

because the immunity applies to all self-defense cases, not just ones in which standing one's ground is an element. That is why a better label is 'self-defense immunity.'. . .[W]e should no longer refer to the provisions of section 776.032 as 'Stand Your Ground immunity.'" Swift v. State, 1D21-799 (7/20/22)
https://www.1dca.org/content/download/843690/opinion/210799_DC05_07202022_114920_i.pdf

STAND YOUR GROUND: In SYG hearing, Court does not err in crediting the contradictory evidence presented by the neutral witnesses and responding officers in denying SYG immunity. under §776.032. Swift v. State, 1D21-799 (7/20/22)
https://www.1dca.org/content/download/843690/opinion/210799_DC05_07202022_114920_i.pdf

POST CONVICTION RELIEF: Where Defendant is charged with four discrete acts of child molestation, three other, separate acts on different occasions were not inextricably intertwined. Counsel performed deficiently in failing to object, but Defendant was not prejudiced because there was no reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. State v. Woodruff, 3D19-561 (7/20/22)
https://www.3dca.flcourts.org/content/download/843632/opinion/190561_DC13_07202022_095615_i.pdf

ZOOM: Court erred in conducting adjudicatory hearing by Zoom over objection. K.M., a Juvenile v. State, 3D20-1654 (7/20/22)
https://www.3dca.flcourts.org/content/download/843633/opinion/201654_DC13_07202022_095750_i.pdf

CARRYING CONCEALED FIREARM: Court properly dismissed charge of Carrying a Concealed Firearm where observing officer said that he was able to immediately recognized the questioned object as a weapon. This alone

may demonstrate as a matter of law that the weapon was not concealed. Mayes v. State, 3D21-720 (7/20/22)
https://www.3dca.flcourts.org/content/download/843640/opinion/210720_DC05_07202022_100810_i.pdf

FRAUD: Fraud includes lying about the nature of the bargain itself, including lying about how investment money would be spent, such as here where Charles Barkley was told that his investment would be used as a capital infusion when in fact it was used to pay the Defendant's back alimony and other personal expenses. USA v. Watkins, No. 19-12951 (7/15/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201912951.pdf

BANK FRAUD: Defendant "seems to suggest a bank has no interest in truly knowing who it is lending its money to or what purposes they intend to put the money towards. . .This argument is plainly nonsensical. Banks have a clear interest in knowing to whom they are loaning money and for what purpose." USA v. Watkins, No. 19-12951 (7/15/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201912951.pdf

RESTITUTION: New rule created (R. 3.720(f)) providing that at the sentencing hearing the court must determine restitution, dictate the amount and the method of determining it, and designate who should receive a copy of the restitution order. In Re: Amendments to Florida Rule of Criminal Procedure 3.720, SC21-1680 (7/15/22)
https://www.floridasupremecourt.org/content/download/843198/opinion/sc21-1680%20%26%20sc22-214.pdf

NEW RULE-COSTS: R. 3.720(d) is amended to clarify that the court need not provide notice and a hearing when it assesses fees and costs against an indigent defendant who received the assistance of an appointed attorney unless the amount exceeds the statutory minimum. In Re: Amendments to

Florida Rule of Criminal Procedure 3.720, SC21-1680 (7/15/22)
https://www.floridasupremecourt.org/content/download/843198/opinion/sc21-1680%20%26%20sc22-214.pdf

NEW RULE-RESTITUTION: New rule created (R. 8.115) providing that at the disposition hearing the court must determine restitution, dictate the amount and the method of determining it, and designate who should receive a copy of the restitution order. In Re: Amendments to Florida Rule of Juvenile Procedure 8.115. No. SC22-214 (7/15/22)
https://www.floridasupremecourt.org/content/download/843198/opinion/sc21-1680%20%26%20sc22-214.pdf

PROBATION-CONDITION: Court may not order as a special condition of probation that Defendant consent to random warrantless searches by law enforcement officers. Thompson v. State, 2D21-3734 (7/15/22)
https://www.2dca.org/content/download/843294/opinion/213734_DC13_07152022_085353_i.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on claim that a newly discovered witness saw the fight , and the Defendant was not the aggressor. To prevail on a claim of newly discovered evidence, a defendant must meet the following two requirements: First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Williams v. State, 2D21-3795 (7/15/22)

https://www.2dca.org/content/download/843295/opinion/213795_DC13_07152022_085525_i.pdf

JOA-CONSPIRACY TO OBSTRUCT JUSTICE: Request of former mayor,

through his successor, to obtain the personnel file of a police officer (an adverse witness in other charges against him) is not conspiracy to obstruct justice. "Mr. Rowe requesting and obtaining these files can hardly be said to be illegal, nor considered 'acting falsely under color of law.'" Massad v. State, 2D21-849 (7/15/22)
https://www.2dca.org/content/download/843286/opinion/210849_DC13_07152022_084026_i.pdf

JUDGE-DISQUALIFICATION: Where trial judge made specific comments before evidence was ever introduced in the case that would put a reasonably prudent person in well-founded fear of not receiving a fair or impartial hearing, disqualification is required. A.L.P. a Child v. State, 5D22-1156 (7/15/22)
https://www.5dca.org/content/download/843316/opinion/221566_DC03_07152022_13510

POST-CONVICTION RELIEF: The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) greatly circumscribes a federal court's review of a final state habeas decision; a federal habeas court cannot grant a state petitioner habeas relief on any claim that was adjudicated on the merits in state court unless the state court's adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts. Gavin v. Commissioner, Alabama DOC, No. 20-11271 (11th Cir. 7/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011271.pdf

POST-CONVICTION RELIEF: Whether defense counsel's performance fell below Strickland's standard is not the question before a federal habeas court reviewing a state court's decision under AEDPA. Federal habeas courts must guard against the danger of equating unreasonableness under

Strickland with unreasonableness under AEDPA. Gavin v. Commissioner, Alabama DOC, No. 20-11271 (11th Cir. 7/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011271.pdf

POST-CONVICTION RELIEF: Federal habeas court errs in finding to be wrong state court's finding that death penalty investigation was adequate. Gavin v. Commissioner, Alabama DOC, No. 20-11271 (11th Cir. 7/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011271.pdf

JURY-NO IMPEACHMENT RULE: A juror may not testify in impeachment of the verdict as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror's decision, nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. Evidence that jurors considered the death penalty before determining guilt is barred by the no impeachment rule. Gavin v. Commissioner, Alabama DOC, No. 20-11271 (11th Cir. 7/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011271.pdf

SEARCH AND SEIZURE-COLLATERAL ESTOPPEL: Collateral estoppel/issue preclusion applies only when the same issue has been decided against the same party or a third party who has some kind of privity between the original and current opposing parties. "Privity" is a relationship between two parties who both have a legally recognized, mutual interest in the same subject matter. There it is no privity between the state and federal prosecuting authorities, notwithstanding that the original arrest on state charges occurred when DEA agents had state law enforcement stop the Defendant's car in order to hide their role in investigating the Defendant. While the cooperation between state and federal law enforcement agencies is relevant, is not a sufficient nexus to establish privity. USA v. Lewis, No. 20-12997 (11th Cir/ 7/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202012997.pdf

JUROR-CHALLENGE FOR CAUSE: Court did not error in denying challenge for cause by State of a juror with a masters degree in divinity who would have difficulty standing and judgment of someone else based on her religious convictions and because she would "have difficulty standing in judgment of someone else." USA v. Lewis, No. 20-12997 (11th Cir/ 7/14/22) https://media.ca11.uscourts.gov/opinions/pub/files/202012997.pdf

JUROR-PEREMPTORY CHALLENGE: Court did not err in denying Defendant's peremptory challenge of a white juror upon finding a discriminatory intent. Error, if any, is harmless because juror was qualified to sit on the jury. USA v. Lewis, No. 20-12997 (11th Cir/ 7/14/22) https://media.ca11.uscourts.gov/opinions/pub/files/202012997.pdf

HARMLESS ERROR: Error, if any, in excluding evidence that officer withheld evidence that the original stop was secretly instigated at the behest of DEA is harmless given the overwhelming evidence of guilt. USA v. Lewis, No. 20-12997 (11th Cir/ 7/14/22) https://media.ca11.uscourts.gov/opinions/pub/files/202012997.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: An upward variance of life imprisonment for production of child pornography and sexual abuse of a minor is not substantively unreasonable. A sentencing court may impose an upward variance based upon uncharged conduct as it relates to the history and characteristics of the defendant, as well as the need to promote respect for the law, afford adequate deterrence, and protect the public. USA v. Butler, No. 21-19659 (11th Cir. 7/14/22) https://media.ca11.uscourts.gov/opinions/pub/files/202110659.pdf

RULES-AMENDMENT-REMOTE HEARINGS: Substantial revamping of rules pertaining to remote hearings, other matters. In Re: Amendments to Florida Rules of Juvenile Procedure, Florida Family Law Rules of Procedure, And Florida Supreme Court Approved Family Law Forms, SC21-990 (7/14/22)

https://www.floridasupremecourt.org/content/download/843199/opinion/sc22-1.pdf

POST-CONVICTION RELIEF-APPEAL-STANDARD OF REVIEW: The standard of review for counsel's failure to move for a judgment of acquittal is whether there was a manifest miscarriage of justice. Hesser v. USA, No. 19-13297 (11th Cir. 7/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201913297.pdf

JUDGMENT OF ACQUITTAL-TAX EVASION: Tax evasion requires an affirmative act constituting an evasion or attempted evasion of the tax. Hiding gold in one's house is not tax evasion absent evidence that the gold was subject to a tax levied upon Defendant. "The only way that the action of hiding gold from the IRS would be legally significant to constitute an affirmative act for attempted tax evasion is if the gold had been subject to a tax levied on Hesser. Otherwise, it would not matter how much he wanted to cheat the IRS. He would not be cheating on his taxes because the gold would not be subject to a tax levied on him." Hesser v. USA, No. 19-13297 (11th Cir. 7/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201913297.pdf

ATTEMPT-MISTAKE OF LAW/FACT: "The Government confuses a mistake of law with a mistake of fact." One who shoots a pillow under the covers, thinking arch enemy is there, cannot be convicted of attempted murder (mistake of fact). One who shoots a tree, thinking that it is a crime to kill a tree, cannot be convicted of arbor-icide (mistake of law). "All this is to say, someone can be convicted for attempt when they mistake the facts but not when they simply mistake the law." "Just like shooting at trees on one's own property isn't a crime, hiding gold in and of itself is not tax evasion or attempted tax evasion." Hesser v. USA, No. 19-13297 (11th Cir. 7/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201913297.pdf

POST-CONVICTION RELIEF-JUDGMENT OF ACQUITTAL: Counsel is

ineffective for failing to move for a JOA, then presenting evidence of the missing element(s) through his client's testimony. Hesser v. USA, No. 19-13297 (11th Cir. 7/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201913297.pdf

JUSTICE: "[W] e note the asymmetry between the plight of Hesser's wife and his own. It seems unfair that she now has a felony conviction for filing a false tax return on her record and her husband will have a record free of convictions for tax fraud or evasion based on this case. This is especially so since Hesser was clearly the mastermind behind all the tax and mortgage maneuvers that Hesser and his wife made. We do not rejoice in that outcome. But Hesser's wife chose to plead guilty, and Hesser did not." Hesser v. USA, No. 19-13297 (11th Cir. 7/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201913297.pdf

APPEAL-PRESERVATION-CHILD HEARSAY: In order to preserve any issue as to the admission of child hearsay, Defendant must articulate any objections to the Court's findings. Richardson v. State, 1D21-1022 (7/13/22)
https://www.1dca.org/content/download/843143/opinion/211022_DC05_07132022_131454_i.pdf

APPEAL-PRO SE: A criminal defendant cannot proceed pro se while represented by counsel. Manning v. Ford, 1D22-928 (7/13/22)
https://www.1dca.org/content/download/843152/opinion/220928_DA08_07132022_140034_i.pdf

DOUBLE JEOPARDY: Convictions for both burglary with assault and attempted home invasion robbery violate double jeopardy. The crime of burglary of a dwelling with an assault or battery is subsumed by the offense of home invasion robbery." Estache v. State, 3D18-2322 (7/13/22)
https://www.3dca.flcourts.org/content/download/843102/opinion/182322_DC08_07132022_101652_i.pdf

DOUBLE JEOPARDY: When a defendant is convicted of a felony in which the conviction is enhanced due to use of a firearm, the double jeopardy clause bars both a conviction and sentence for the crime of possession of a firearm during the commission of a felony. Estache v. State, 3D18-2322 (7/13/22)
https://www.3dca.flcourts.org/content/download/843102/opinion/182322_DC08_07132022_101652_i.pdf

DOUBLE JEOPARDY: Once a sentence has been fully satisfied, even if it is an illegal or invalid sentence, a trial court may not increase or amend the sentence, as this would violate a defendant's double jeopardy rights, but Defendant no expectation of finality triggering double jeopardy protection when he completed the sentence while the State's appeal was pending. State v. Rojas, 3D21-1018 (7/13/22)
https://www.3dca.flcourts.org/content/download/843118/opinion/211018_NOND_07132022_103043_i.pdf

SPEEDY-TRIAL-DELAY: Defendant's speedy trial rights are not violated where Government waited four years to seek extradiction from the Bahams and Jamaica, which have onerous requirements for extradition. Defendant's Sixth Amendment right to a speedy trial is violated is determined by considering four factors: [1] Length of delay, [2] the reason for the delay, [3] the defendant's assertion of his right, and [4] prejudice to the defendant. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

DOUBLE JEOPARDY-DUPLICITOUS CHARGES: Indictment for multiple conspiracies to smuggle aliens is not improperly multiplicitous where there are different boats, different captains, and different groups of aliens. A multiplicitous indictment violates double jeopardy principles by giving the jury more than one opportunity to convict the defendant for the same offense. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

DOUBLE JEOPARDY-CONSPIRACY: Five factors to determine whether a defendant committed two separate conspiracies or only one are: "(1) time, (2) persons acting as co-conspirators, (3) the statutory offenses charged in the indictments, (4) the overt acts charged by the government which indicate the nature and scope of the activity which the government sought to punish in each case, and (5) places where the events alleged as part of the conspiracy took place. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

DOUBLE JEOPARDY-MENS REA: Dual convictions for encouraging or inducing an alien to enter the United States while knowing or in reckless disregard of the fact that the alien's coming to the United States is in violation of law and transportation of an alien for the purpose of commercial advantage or private financial gain are permitted. Blockberger. Different mentes reae. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

SENTENCING-ENHANCEMENT-DANGEROUS WEAPON: Court may apply the dangerous weapon enhancement in alien smuggling case based on statement of passenger that Defendant had a gun in his waistband similar to those carried by police in the course of an uncharged event. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

SPEEDY-TRIAL-DELAY: Defendant's speedy trial rights are not violated where Government waited four years to seek extradiction from the Bahams and Jamaica, which have onerous requirements for extradition. Defendant's Sixth Amendment right to a speedy trial is violated is determined by considering four factors: [1] Length of delay, [2] the reason for the delay, [3] the defendant's assertion of his right, and [4] prejudice to the defendant. USA v. Stapleton, No. 19-12708 (11th Cir. 7/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201912708.pdf

POST CONVICTION RELIEF: Court must attach records conclusively refuting allegation that counsel misadvised him on a legal point before sentencing (as opposed to before entering plea agreement), notwithstanding that the claim was buried in verbiage under a misleading heading and was rebutted by an attachment to the motion. R. 3.850(f)(5) unambiguously and unqualifiedly requires that that portion of the files and records that conclusively shows that the defendant is entitled to no relief shall be attached to the final order. Jackson v. State, 2D21-2961 (7/8/22)

https://www.2dca.org/content/download/842690/opinion/212961_DC08_07082022_085944_i.pdf

LESSER INCLUDED-ROBBERY-UNCHARGED OFFENSE: Robbery with a deadly weapon is not a lesser included offense of robbery with a firearm. It fundamentl error to instruct the jury that it is. The permissible lesser is robbery with a weapon. Duffy v. State, 5D22-691 (7/8/22)

https://www.5dca.org/content/download/842682/opinion/220691_DC03_07082022_084518_i.pdf

DEATH PENALTY-MITIGATION: Defendant, who was already serving life imprisonment for murder, and who murdered his cell mate roommate in order to qualify for the death penalty so as to end his own life cannot claim fundamental error for counsel's failure to fully develop mitigating circumstances in light of his failure to cooperate. Fletcher v. State, SC20-1862 (7/7/22)

https://www.floridasupremecourt.org/content/download/842599/opinion/sc20-1862.pdf

DEATH PENALTY-CONSIDERATIONS: Sufficiency and weighing determinations are not subject to the beyond a reasonable doubt standard of proof. Fletcher v. State, SC20-1862 (7/7/22)

https://www.floridasupremecourt.org/content/download/842599/opinion/sc20-1862.pdf

DEPORTATION: State convictions for felony transporting into a state controlled substances with the intent to distribute and conspiracy to transport marijuana into a state are crimes involving moral turpitude ("CIMT") within the INA, rendering lawful permanent resident deportable. Daye v. U.S. Attorney General, No. 20-14340 (7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014340.pdf

DEPORTATION: The phrase "crime involving moral turpitude" in the INA is not unconstitutionally vague. Participation in illicit drug trafficking is categorically a CIMT. Daye v. U.S. Attorney General, No. 20-14340 (7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014340.pdf

DEPORTATION-CIMT: Moral turpitude means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man, or conduct that is inherently base, vile, or depraved. A crime involving moral turpitude must involve conduct that not only violates a statute but also independently violates a moral norm. Daye v. U.S. Attorney General, No. 20-14340 (7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014340.pdf

DEPORTATION-CIMT: In immigration proceedings inchoate offenses such as conspiracy qualify as a CIMT if the underlying substantive offense qualifies as a CIMT. Daye v. U.S. Attorney General, No. 20-14340 (7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014340.pdf

SEARCH AND SEIZURE-STANDING-RENTAL CAR: An unauthorized driver of a rental car has standing to challenge the search of it. The fact that Defendant was not listed on the rental agreement does not defeat his reasonable expectation of privacy, so long as he was otherwise in lawful possession and control of the vehicle. USA v. Cohen, No. 21-10741 (11th Cir. No. 7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110741.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH: Police may conduct an inventory search of a rental car before returning it to the company where the driver is arrested. USA v. Cohen, No. 21-10741 (11th Cir. No. 7/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110741.pdf

SEARCH AND SEIZURE-MARIJUANA: Under the "automobile exception," police may search a vehicle without a warrant so long as they have probable cause to believe that it contains contraband or evidence of a crime. Hatcher v. State, 1D20-3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

PROBABLE CAUSE-DEFINITION: Probable cause is a flexible, common-sense standard, turning on the assessment of probabilities not readily, or even usefully, reduced to a neat set of legal rules. Hatcher v. State, 1D20-

3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

PROBABLE CAUSE-DEFINITION: Probable cause is not a high bar. It is enough if there is the kind of fair probability on which reasonable and prudent people, not legal technicians, act. Innocent behavior frequently will provide the basis for a showing of probable cause. Hatcher v. State, 1D20-3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

MARIJUANA-HEMP-DEFINITION: Hemp is cannabis with a (THC) concentration below 0.3 percent. Hatcher v. State, 1D20-3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

SEARCH AND SEIZURE-MARIJUANA: Where there are other indications that the Defendant had been smoking marijuana, the fact that hemp is legal and indistinguishable by smell from marijuana does not render the search of the vehicle unlawful. Hatcher v. State, 1D20-3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

SEARCH AND SEIZURE-MARIJUANA (CONCURRENCE): "Changes in Florida and federal law have abrogated the basis for our reasoning in Johnson [that the smell of marijuana may support a search]. As a result, I respectfully submit that we should no longer rely on Johnson." Hatcher v.

State, 1D20-3628 (7/6/22)

https://www.1dca.org/content/download/842517/opinion/203628_DC05_07062022_104014_i.pdf

CORPUS DELICTI: The corpus delicti rule requires that the State must independently present substantial evidence tending to show the commission of the charged crime, including at least the existence of each element of the crime. A confession in a criminal case is not sufficient evidence of a criminal act where no independent direct or circumstantial evidence exists to substantiate the occurrence of a crime. S.I., a Child v. State, 4D21-1551 (7/6/22)

https://www.4dca.org/content/download/842508/opinion/211551_DC08_07062022_100424_i.pdf

CORPUS DELICTI: Defendant's admission that he had no license after he fled an accident after hitting a motorcyclist is insufficient to establish the charge of DWLS. Because driving a motor vehicle is not a crime in and of itself, the State needed to present independent evidence showing he had no license. S.I., a Child v. State, 4D21-1551 (7/6/22)

https://www.4dca.org/content/download/842508/opinion/211551_DC08_07062022_100424_i.pdf

VEHICULAR HOMICIDE: A conviction for vehicular homicide requires proof that a defendant caused the death of another human being through the operation of a motor vehicle in a reckless manner likely to cause the death of, or great bodily harm to, another. The defendant must have engaged in intentional conduct demonstrating a conscious disregard of a likelihood of death or injury. Neither carelessness nor ordinary negligence in the operation of a motor vehicle are sufficient to sustain a conviction for

vehicular homicide. "Nothing in section 782.071. . . supports the proposition that a finding of recklessness can be based solely on the numeric value of a driver's excessive speed—which would by itself only constitute a non-criminal traffic offense—in the absence of other determinant factors." Hormaeche v. State, 4D21-2071 (7/6/22)

https://www.4dca.org/content/download/842509/opinion/212071_DC13_07062022_100633_i.pdf

POST CONVICTION RELIEF-VEHICULAR HOMICIDE-ERRONEOUS ADVICE: Defendant is entitled to withdraw his claim entered upon the erroneous advice of counsel that his excessive speed precluded him from mounting a defense to the charge of vehicular homicide. Hormaeche v. State, 4D21-2071 (7/6/22)

https://www.4dca.org/content/download/842509/opinion/212071_DC13_07062022_100633_i.pdf

PLEA-WITHDRAWAL: Once good cause for the defendant to withdraw his plea is shown prior to sentencing – here, erroneous advice of counsel–the trial court is obligated to allow the defendant as a matter of right to withdraw his plea. Hormaeche v. State, 4D21-2071 (7/6/22)

https://www.4dca.org/content/download/842509/opinion/212071_DC13_07062022_100633_i.pdf

RECLASSIFICATION: Where Defendant is charged, along with 2 codefendants with aggravated battery with a deadly weapon, and jury finds him guilty of "aggravated battery causing great bodily harm with a weapon, as charged," the second degree felony cannot be reclassified to a first-degree felony based on the use or possession of the weapon where the jury

does not find, nor does the information allege, that the Defendant actually possessed the weapon. Williams v. State, 2D21-1619 (7/1/22)

https://www.2dca.org/content/download/842124/opinion/211619_DC08_07012022_085309_i.pdf

RECLASSIFICATION: For the application of a reclassification or enhancement statute to an offense, a clear jury finding of the facts is necessary, either by (1) a specific question or special verdict form (which is the better practice), or (2) the inclusion of a reference to the fact necessary for reclassification in identifying the specific crime for which the defendant is found guilty. Williams v. State, 2D21-1619 (7/1/22)

https://www.2dca.org/content/download/842124/opinion/211619_DC08_07012022_085309_i.pdf

SEARCH AND SEIZURE-CHILD PORNOGRAPHY: Defendant lacks a reasonable expectation of privacy in the alphanumeric identification codes unique to each file he shared and otherwise made available to the public over a peer-to-peer file sharing network. A person who shares files over a peer-to-peer network has no expectation of privacy in those files. Youngman v. State, 2D21-2472 (7/1/22)

https://www.2dca.org/content/download/842126/opinion/212472_DC05_07012022_085510_i.pdf

INVESTIGATIVE COSTS: A court may not impose a sentence imposed thereon. However, because the trial court impose a $245 investigative cost in the absence of a request by the State. Osborne v. State, 5D21-2080 (7/1/22)

https://www.5dca.org/content/download/842099/opinion/212080_DC05_07012022_084658_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to impeach a key witness by prior convictions. Gutierrez v. State, 5D21-3048 (7/1/22)

https://www.5dca.org/content/download/842102/opinion/213048_DC13_07012022_085254_i.pdf

POST-CONVICTION RELIEF-STRATEGIC DECISIONS: Defendant is entitled to a hearing on claimant counsel's ineffective for failing to cross-examine witness based on inconsistencies between her trial testimony and pretrial statements. The fact that Defendant assented to his counsel not cross-examining the witness is not dispositive where counsel incorrectly advised him that nothing could be gained from questioning the victim. The denial of a claim of ineffective assistance of counsel based on a finding that counsel was engaged in a reasonable trial strategy should only be made after an evidentiary hearing. Reyes v. State, 5D22-33 (7/1/22)

https://www.5dca.org/content/download/842103/opinion/220033_DC08_07012022_085422_i.pdf

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POST CONVICTION RELIEF: Counsel was not ineffective for failing to give adequate advice on whether to testify. Giving the pros and cons of testifying is not ineffective assistance. Jackson v. State, S19-1624 (6/30/22)

https://www.floridasupremecourt.org/content/download/842024/opinion/sc19-1624.pdf

POST CONVICTION RELIEF: Claim that counsel spent less than fifteen minutes preparing a witness to testify is not ineffectiveness. Jackson v. State, S19-1624 (6/30/22)

https://www.floridasupremecourt.org/content/download/842024/opinion/sc19-1624.pdf

INFORMATION-AMENDMENT DURING TRIAL: Mid-trial (*i.e.*, after State rests) amendments to a charging document that alter the elements of a criminal offense are not *per se* prejudicial. Any such amendments should be assessed on a case-by-case basis to determine, based on the totality of the circumstances, if they prejudice the substantial rights of the defendant. State may amend capital sex battery count to lewd or lascivious molestation upon Defendant's motion for JOA. Thach v. State, SC20-1656 (6/30/22)

https://www.floridasupremecourt.org/content/download/842026/opinion/sc20-1656.pdf

STARE DECISIS: Stare Decisis loses again. Kind of. "We acknowledge that today is the first time we have used the phrase 'totality of the circumstances' in discussing the prejudice analysis. However. . .we break no new ground by saying that the prejudice analysis requires consideration of the totality of the circumstances." Thach v. State, SC20-1656 (6/30/22)

https://www.floridasupremecourt.org/content/download/842026/opinion/sc20-1656.pdf

INFORMATION-AMENDMENT DURING TRIAL (J. LABARGA, DISSENTING): "It is axiomatic that due process of law affords a person charged with having committed a crime with the right to know what the charge is before proceeding to trial. Here, after the defense proceeded throughout the State's entire case-in-chief in reliance on the original charges, the State was permitted to substantively amend four charges. Thach v. State, SC20-1656 (6/30/22)

https://www.floridasupremecourt.org/content/download/842026/opinion/sc20-1656.pdf

INFORMATION-AMENDMENT DURING TRIAL (J. LABARGA, DISSENTING): "For more than two decades, the per se prejudicial rule has guarded the right to due process in cases where the State seeks,during trial, to substantively change a charged offense. This sound rule should have been applied here. It makes absolutely no sense, after not only the conclusion of the State's case, but what turned out to be the presentation of all the evidence, to allow the State to amend four charges to allege crimes that require proof of different elements. For the majority to permit such a clear violation of due process will, in no small measure, facilitate the

very thing that Florida laws. . .are intended to prevent—trials by ambush." Thach v. State, SC20-1656 (6/30/22)

https://www.floridasupremecourt.org/content/download/842026/opinion/sc20-1656.pdf

INFORMATION-AMENDMENT DURING TRIAL (J. LABARGA, DISSENTING): The implications of the majority's decision to reject the per se prejudicial rule cannot be understated. As a result of the majority's disapproval of this decades-long safeguard, citizens will be required to proceed to trial without certainty of what the ultimate charges against them will be. Thach v. State, SC20-1656 (6/30/22)

https://www.floridasupremecourt.org/content/download/842026/opinion/sc20-1656.pdf

DOUBLE JEOPARDY-DUI-BODILY INJURY/PROPERTY DAMAGE: Because the criminal offenses of DUI causing damage to property or person and DUI causing serious bodily injury are degree variants of the same offense, dual convictions for both offenses as to the same victim from a single episode violate the prohibition against double jeopardy. Velazco v. State, SC20-506 (6/30/22)

https://www.floridasupremecourt.org/content/download/842025/opinion/sc20-506.pdf

INDIANS-JURISDICTION: The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. Contrary precedents are "tangential dicta" or "scattered dicta." Indian country is part of the State, not separate from the State. Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIANS-SOVEREIGNTY (GORSUCH, DISSENTING): "Native American Tribes retain their sovereignty unless and until Congress ordains otherwise. *Worcester* proved that, even in the '[c]ourts of the conqueror,' the rule of law meant something. . . Where this Court once stood

firm, today it wilts." Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIAN RESERVATIONS (J. GORSUCH, DISSENTING): "Tribes are not private organizations within state boundaries. Their reservations are not glorified private campgrounds. Tribes are sovereigns." Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIANS-SOVEREIGNTY (GORSUCH, DISSENTING): "[T]he Court cites no proof for its ipse dixit, nor could it. . . Congress took pains to abide its treaty promises. . .and has never revoked them. Nor may this Court abrogate treaties or statutes by wishing them away in passing remarks. In a Nation governed by the rule of law, not men (or willful judges), only Congress may withdraw this Nation's treaty promises or revise its written laws." Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIANS-SOVEREIGNTY (GORSUCH, DISSENTING): The Court's suggestion that Oklahoma enjoys 'inherent' authority to try crimes against Native Americans within the Cherokee Reservation makes a mockery of all of Congress's work from 1834 to 1968. Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIANS-SOVEREIGNTY (GORSUCH, DISSENTING): "This Court may choose to ignore Congress's statutes and the Nation's treaties, but it has no power to negate them. . .[T]oday's decision surely marks an embarrassing new entry into the anticanon of Indian law." Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

INDIANS-SOVEREIGNTY (GORSUCH, DISSENTING): "If the Court's ruling today sounds like a legislative committee report touting the benefits of some newly proposed bill, that's because it is exactly that. . .The Court's decision is not a judicial interpretation of the law's meaning; it is the pastiche of a legislative process." Oklahoma v. Castro-Huerta, No. 21-429 (U.S. S.Ct. 6/29/22)

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

POST CONVICTION RELIEF: Counsel for Ponzi-scheme Defendant was not ineffective for failing to anticipate two four-point enhancements in the PSR i(violation of a commodities law by a commodities trading advisor and jeopardizing the safety and soundness of a financial institution. A miscalculation of sufficient magnitude may constitute deficient performance and cause prejudice under Strickland, but the miscalculation here is not outside the range of effective assistance. Riolo v. USA, No. 20-12206 (11th Cir. (6/29/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012206.pdf

BOND-MENTAL HEALTH SCREENING: Mental health screening without determining pretrial release conditions at first appearance does not constitute an illegal detention. Rhody v. McNeil, 1D22-551 (6/29/22)

https://www.1dca.org/content/download/841943/opinion/220551_DC02_06292022_141131_i.pdf

MOOTNESS: The mootness doctrine generally requires dismissal of an appeal when the controversy ceased to exist, but a narrow exception exists for cases that are capable of repetition while evading review. That exception applies when (1) the challenged action was too short-lived to be completely litigated in time, and (2) there is a reasonable chance that the same party will face the same action again. Pre-bond screening is an exception to the muteness

doctrine because it happens "fast, much too fast for a case to ever beat it to the finish line." Rhody v. McNeil, 1D22-551 (6/29/22)

https://www.1dca.org/content/download/841943/opinion/220551_DC02_06292022_141131_i.pdf

APPEAL-PRESERVATION: It is insufficient to merely pose a question with an accompanying assertion that it was improperly answered in the court below and then dump the matter into the lap of the appellate court for decision. Appellant who merely pays lip service to some basic due process rules and gives only a conclusory statement to say that the mental health screening process breaks those rules does not sufficiently preserve the issue. "Because Rhody merely dropped these issues in our lap expecting us to do the rest, we will not address [them]." Rhody v. McNeil, 1D22-551 (6/29/22)

https://www.1dca.org/content/download/841943/opinion/220551_DC02_06292022_141131_i.pdf

JUDGE-DISQUALIFICATION: Motion to disqualify judge is facially sufficient when it alleges that the judge had prosecuted him while an Assistant State Attorney years before. Although a direct conflict of interest may not exist, a criminal defendant in Defendant's position may have a well-founded fear of not receiving fair treatment. Choute v. State, 1D-22-566 (6/29/22)

https://www.1dca.org/content/download/841944/opinion/220566_DC03_06292022_141852_i.pdf

APPEAL-FINAL JUDGMENT: An order that resolves all of the claims raised in a motion for postconviction relief is a final order because such an order ends udicial labor on that motion, and thus is ripe for appeal. The fact that an order denying postconviction relief also directs a party to show cause why sanctions should not be imposed does not alter the finality or appealability of the order denying relief. Nilio v. State, 1D22-940 (6/29/22)

https://www.1dca.org/content/download/841948/opinion/220940_NOND_06292022_143343_i.pdf

ZOOM HEARING: Absent a case specific finding of necessity, adjudicatory hearings by Zoom violate the Child's right of confrontation. Virtual confrontations offered by closed-circuit television systems fall short of the face-to-face standard because they do not provide the same truth-inducing effect. J.T.B. v. State, 3D21-537 (6/29/22)

https://www.3dca.flcourts.org/content/download/841879/opinion/210537_DC13_06292022_101449_i.pdf

ZOOM HEARING: Court must make case-specific findings before it may conduct an adjudicatory hearing by Zoom. "Because we conclude that at this point in the pandemic, due process requires a case-specific finding of necessity before a trial court may conduct a remote adjudicatory hearing over objection, we reverse and remand for a new adjudicatory hearing." M.D. v. State, 3D21- 1147 (6/29/22)

https://www.3dca.flcourts.org/content/download/841886/opinion/211147_DC13_06292022_102448_i.pdf

HABITUAL OFFENDER-RELEASE FROM PRISON: Lewars, which provided that Defendant had to be physically released from prison, not merely since the present but released on credit time served from a county jail, to qualify as a Habitual Offender does not apply retroactively. Linden v. State, 4D22-353 (6/29/22)

https://www.4dca.org/content/download/841890/opinion/220353_DC05_06292022_100222_i.pdf

FREE SPEECH: Ban on people wearing sandwich signs (here, one with a religious message) on a public sidewalk violates Free Speech. Lacroix v. Town of Fort Myers Beach, No. 21-10931 (11th Cir. 6/28/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110931.pdf

FIRST STEP ACT: The First Step Act, which authorizes district courts to reduce the prison sentences of defendants convicted of certain offenses involving crack cocaine, allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence. Concepcion v. United States, No. 20-1650 (U.S. S.Ct. 6/27/22)

https://www.supremecourt.gov/opinions/21pdf/20-1650_new_4gci.pdf

MENS REA-FRAUDULENT PRESCRIPTION: For the crime of unlawfully dispensing controlled substances (prescriptions), the "knowingly or intentionally" *mens rea* applies. After a defendant produces evidence that he or she is authorized to dispense controlled substances, the Government must prove beyond a reasonable doubt that the defendant knew that he or she was acting in an unauthorized manner, or intended to do so. A doctor's subjective belief that he is meeting a patient's medical needs by prescribing a controlled substance is a complete defense to a §841 prosecution. Ruan v. United States, No. 20-1410 (U.S. S.Ct. 6/27/22)

https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf

MENS REA-FRAUDULENT PRESCRIPTION: The requirement of scienter in §841 ("Except as authorized by this subchapter, it shall be unlawful for any person *knowingly or intentionally* . . . to manufacture, distribute, or dispense . . . a controlled substance.") extends to the "except as authorized" clause. Although the "[e]xcept as authorized" clause is not an element of a §841(a)(1) offense, it is sufficiently like an element for the *mens rea* canon to apply. Ruan v. United States, No. 20-1410 (U.S. S.Ct. 6/27/22)

https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf

MENS REA: As a general matter, our criminal law seeks to punish the vicious will. With few exceptions, wrongdoing must be conscious to be criminal. Ruan v. United States, No. 20-1410 (U.S. S.Ct. 6/27/22)

https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf

ABORTION: "We . . .hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DECISIS: *"Stare decisis*. . .does not compel unending adherence to *Roe*'s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. . . It is time to heed the Constitution and return the issue of abortion to the people's elected representatives." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

LIBERTY: "In interpreting what is meant by the Fourteenth Amendment's reference to 'liberty,' we must guard against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS-RIGHTS: The Due Process Clause protects two categories of substantive rights. The first consists of the great majority of the rights guaranteed by the first eight Amendments. The second category comprises a select list of fundamental rights that are not mentioned

anywhere in the Constitution, but which are deeply rooted in our history and tradition are essential to our Nation's scheme of ordered liberty. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DECISIS: *Stare decisis* is not an inexorable command, and it is at its weakest when we interpret the Constitution. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS-PRIVACY: "[T]he Solicitor General suggests that overruling [*Roe* and its progeny] would 'threaten the Court's precedents holding that the Due Process Clause protects other rights.'. . .That is not correct. . .'[A]bortion is a unique act' because it terminates 'life or potential life.'. . .And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS (J. THOMAS, CONCURRENCE): "Substantive due process" is an oxymoron that lacks any basis in the Constitution. . .[T]he Due Process Clause does not secure *any* substantive rights." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS (J. THOMAS, CONCURRENCE): "Substantive due process . . .has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity." Dobbs v.

Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS (J. THOMAS, CONCURRENCE): "[I]n future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. . . After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DUE PROCESS (J. BREYER, DISSENTING): "So at least one Justice is planning to use the ticket of today's decision again and again and again." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DESISIS (J. KAVANAUGH, CONCURRING): "Every current Member of this Court has voted to overrule precedent. And over the last 100 years Beginning with Chief Justice Taft's appointment in 1921, every one of the 48 Justices appointed to this Court has voted to overrule precedent." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DESISIS (J. KAVANAUGH, CONCURRING): A constitutional precedent may be overruled only when (i) the prior decision is not just wrong, but is egregiously wrong, (ii) the prior decision has caused significant negative jurisprudential or real-world consequences, and (iii) overruling the prior decision would not unduly upset legitimate reliance interests. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

JUDICIAL RESTRAINT (C.J. ROBERTS, CONCURRING): Here, there is a clear path to deciding this case correctly without overruling *Roe* all the way down to the studs: recognize that the viability line must be discarded. . .and leave for another day whether to reject any right to an abortion at all. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

JUDICIAL RESTRAINT (C.J. ROBERTS, CONCURRING): "Both the Court's opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

ABORTION (J. BREYER, DISSENTING): "Whatever the exact scope of the coming laws, one result of today's decision is certain: the curtailment of women's rights, and of their status as free and equal citizens." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

ROE V. WADE (J. BREYER, DISSENTING): "So one of two things must be true. . . .Either the mass of the majority's opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

MODERATION (J. BREYER, DISSENTING): "To the majority 'balance" is a dirty word, as moderation is a foreign concept." Dobbs v. Jackson

Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

WOMEN (J. BREYER, DISSENTING): What rights did those "people" have in their heads at the time? But, of course, "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation. . . .When the majority says that we must read our foundational charter as viewed at the time of ratification (except that we may also check it against the Dark Ages), it consigns women to second-class citizenship. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

CONSTITUTION (J. BREYER, DISSENTING): "The Framers (both in 1788 and 1868) understood that the world changes. So they did not define rights by reference to the specific practices existing at the time. Instead, the Framers defined rights in general terms, to permit future evolution in their scope and meaning. And over the course of our history, this Court has taken up the Framers' invitation. It has kept true to the Framers' principles by applying them in new ways, responsive to new societal understandings and conditions. Nowhere has that approach been more prevalent than in construing the majestic but open-ended words of the Fourteenth Amendment—the guarantees of 'liberty' and 'equality' for all. And nowhere has that approach produced prouder moments, for this country and the Court." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

CONSTITUTION (J. BREYER, DISSENTING): "[T]he constitutional 'tradition' of this country is not captured whole at a single moment. . . Rather,

its meaning gains content from the longsweep of our history and from successive judicial precedents—each looking to the last and each seeking to apply the Constitution's most fundamental commitments to new conditions." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

RIGHTS (J. BREYER, DISSENTING): The majority (or, rather, most of it) tries to assure the public that it has no designs on rights (for example, to contraception) that arose only in the back half of the 20th century—in other words, that it is happy to pick and choose, in accord with individual preferences. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

ORIGINAL INTENT (J. BREYER, DISSENTING): "We are not mindreaders, but here is our best guess as to what the majority means. . . .[A]pparently, the Fourteenth Amendment might provide protection for things wholly unknown in the 19th century; maybe one day there could be constitutional protection for, oh, time travel. But as to anything that was known back then (such as abortion or contraception), no such luck." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

OH MY (J. BREYER, DISSENTING): Justice Kavanaugh's "idea is that neutrality lies in giving the abortion issue to the States, where some can go one way and some another. But would he say that the Court is being 'scrupulously neutral' if it allowed NewYork and California to ban all the guns they want?. . .If the Court allowed some States to use unanimous juries and others not? If the Court told the States: Decide for yourselves whether to put restrictions on church attendance? We could go on—and in fact we will." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct.

6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

WOMEN'S RIGHTS (J. BREYER, DISSENTING): "When the Court decimates a right women have held for 50 years, the Court is not being 'scrupulously neutral.' It is instead taking sides: against women who wish to exercise the right, and for States. . .that want to bar them from doing so. JUSTICE KAVANAUGH cannot obscure that point by appropriating the rhetoric of even-handedness. His position just is what it is: A brook-no-compromise refusal to recognize a woman's right to choose, from the first day of a pregnancy. And that position, as we will now show, cannot be squared with this Court's longstanding view that women indeed have rights (whatever the state of the world in 1868) to make the most personal and consequential decisions about their bodies and their lives." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

CONSTITUTION-SCEPTICISM (J. BREYER, DISSENTING): "Faced with all these connections between *Roe/Casey* and judicial decisions recognizing other constitutional rights, the majority tells everyone not to worry. It can (so it says) neatly extract the right to choose from the constitutional edifice without affecting any associated rights. (Think of someone telling you that the Jenga tower simply will not collapse.) Today's decision, the majority first says, 'does not undermine' the decisions cited by *Roe* and *Casey*—the ones involving 'marriage, procreation, contraception, [and] family relationships'—'in any way.'. . .Should the audience for these too-much-repeated protestations be duly satisfied? We think not." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DEY LYIN' (J. BREYER, DISSENTING): Nor does it even help just to take the majority at its word. Assume the majority is sincere in saying, for

whatever reason, that it will go so far and no further. Scout's honor. Still, the future significance of today's opinion will be decided in the future." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

LAW-EVOLUTION (J. BREYER, DISSENTING): "[L]aw often has a way of evolving without regard to original intentions—a way of actually following where logic leads, rather than tolerating hard-to-explain lines. Rights can expand in that way. . .Rights can contract in the same way and for the same reason—because whatever today's majority might say, one thing really does lead to another. We fervently hope that does not happen because of today's decision. . . But we cannot understand how anyone can be confident that today's opinion will be the last of its kind." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

RIGHTS (J. BREYER, DISSENTING): "The point of a right is to shield individual actions and decisions 'from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.'. . . However divisive, a right is not at the people's mercy." Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DECISIS (J. BREYER, DISSENTING): "The majority has overruled *Roe* and *Casey* for one and only one reason: because it has always despised them,and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law." Dobbs v. Jackson Women's Health Organization,
No. 19–1392. (U.S. S.Ct. 6/24/22)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

STARE DECISIS: "Weakening *stare decisis* threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening *stare decisis* creates profound legal instability. And. . .weakening *stare decisis. . .*calls into question this Court's commitment to legal principle. It makes the Court appear not restrained but aggressive, not modest but grasping. In all those ways, today's decision takes aim, we fear, at the rule of law. Dobbs v. Jackson Women's Health Organization, No. 19–1392. (U.S. S.Ct. 6/24/22) https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

DEATH PENALTY-EXECUTION: A death row inmate may attempt to show that a State's planned method of execution violates the Eighth Amendment if he can 1) establish that the State's method of execution presents a substantial risk of serious harm--severe pain over and above death itself, and 2) identify an alternative method that is feasible, readily implemented, and in fact significantly reduces the risk of harm involved. Nance v. Ward, No. 21-439 (U.S. S.Ct. 6/23/22)
https://www.supremecourt.gov/opinions/21pdf/21-439_bp7c.pdf

DEATH PENALTY-EXECUTION: Prisoner under sentence of death may seek the imposition of an alternative method of execution (he wants a firing squad) not authorized by statute in his state pursuant to 42 U.S.C. §1983 rather than exclusively by a petition for habeas corpus. Even if the alternative route necessitates a change in state law, Defendant's requested relief still places his execution in the State's control. "[T]he State can enact legislation approving what a court has found to be a fairly easy-to-employ method of execution. . .And anyway, Georgia has given us no reason to think that the amendment process would be a substantial impediment. The State has legislated changes to its execution method several times before." Nance v. Ward, No. 21-439 (U.S. S.Ct. 6/23/22)

https://www.supremecourt.gov/opinions/21pdf/21-439_bp7c.pdf

STATEMENT OF DEFENDANT-MIRANDA: The use of an un-Mirandized statement against a defendant in a criminal proceeding violates the Fifth Amendment but may not support a §1983 claim against the officer who obtained the statement. A Miranda violation is not tantamount to a violation of the Fifth Amendment. Vega v. Tekoh, No. 21-499 (U.S. S.Ct. 6/23/22)

https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf

MIRANDA: "Whether this Court has the authority to create constitutionally based prophylactic rules that bind both federal and state courts has been the subject of debate among jurists and commentators. . .But that is what the Court did in Miranda, and we do not disturb that decision in any way. Rather, we accept it on its own terms, and for the purpose of deciding this case, we follow its rationale." Vega v. Tekoh, No. 21-499 (U.S. S.Ct. 6/23/22)

https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf

MIRANDA-(J. KAGAN, DISSENT): "Today, the Court strips individuals of the ability to seek a remedy for violations of the right recognized in Miranda. . .[W]hat remedy does he have for all the harm he has suffered? The point of §1983 is to provide such redress. . .The majority here, as elsewhere, injures the right by denying the remedy." Vega v. Tekoh, No. 21-499 (U.S. S.Ct. 6/23/22)

https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf

SECOND AMENDMENT: The Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home. Statute requiring a "special need" for a license to carry a firearm in public violates the Second Amendment. New York State Rifle & Pistol Ass'n v. Bruen, No. 20-843 (U.S. S.Ct. 6/23/22)

https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

SECOND AMENDMENT: The Second Amendment guarantees to all Americans the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions, such as limiting the intent for which one could carry arms, the manner by which one carries arms, or the exceptional circumstances under which one may not carry arms, such as before justices of the peace and other government officials. New York State Rifle & Pistol Ass'n v. Bruen, No. 20-843 (U.S. S.Ct. 6/23/22)
https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

SECOND AMENDMENT: The Second Amendment's operative clause—"the right of the people to keep and bear Arms shall not be infringed"—guarantee[s the individual right to possess and carry weapons in case of confrontation that does not depend on service in the militia. New York State Rifle & Pistol Ass'n v. Bruen, No. 20-843 (U.S. S.Ct. 6/23/22)
https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

SECOND AMENDMENT: The standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment. New York State Rifle & Pistol Ass'n v. Bruen, No. 20-843 (U.S. S.Ct. 6/23/22)
https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

SECOND AMENDMENT: Firearms may be regulated in "sensitive places." The definition of "sensitive places" does not extend to all places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available. New York State Rifle &

Pistol Ass'n v. Bruen, No. 20-843 (U.S. S.Ct. 6/23/22)
https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

RESTITUTION-TIME LIMIT: There is no jurisdictional deadline for courts to set a hearing to determine restitution. Even though the court set a deadline at sentencing of 60 days for finalizing the the restitution amount, a hearing may be requested and held after the deadline. The sixty-day reservation of jurisdiction approved in the plea agreement did not bar the State from seeking, or the trial court from finalizing the restitution amount for the victims' losses. State v. Bryant, 1D21-694 (6/22/22)

https://www.1dca.org/content/download/841341/opinion/210694_DC13_06222022_133244_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court's failure to impose a downward departure sentence is not reversible where there is no argument that the trial court misconstrued its discretion to depart, or had a blanket policy of refusing to exercise its discretion to depart. Manuel v. State, 1D21-1315 (6/22/22)
https://www.1dca.org/content/download/841342/opinion/211315_DC05_06222022_133755_i.pdf

COMPETENCY: Once a competency evaluation is ordered, a hearing must be held. Diamond v. State, 1D 21-2424 (6/22/22)

https://www.1dca.org/content/download/841345/opinion/212424_DC08_06222022_134712_i.pdf

CREDIT FOR TIME SERVED: A claim for jail credit beyond the amount agreed to in a plea bargain is not cognizable in a R 3.801 proceeding. Rivera v. State, 1D22-315 (6/22/22)

https://www.1dca.org/content/download/841348/opinion/220315_DC05_06222022_140043_i.pdf

PRO SE DEFENDANT-CLERK OF COURT-DUTIES: Clerk has no duty to serve pleadings on a pro se defendant's behalf. It is generally not within the duties and responsibilities of any clerk of court to serve pleadings on behalf of a party. Butts v. State, 1D22-494 (6/22/22)
https://www.1dca.org/content/download/841349/opinion/220494_DA08_06222022_141439_i.pdf

APPEAL-REPRESENTED APPELLANT: Appellant can proceed with counsel; or, he can proceed pro se. What he cannot do is both. Criminal defendants have no
right to engage in 'hybrid representation'—that is, to simultaneously represent themselves and be represented by counsel. Butts v. State, 1D22-494 (6/22/22)
https://www.1dca.org/content/download/841349/opinion/220494_DA08_06222022_141439_i.pdf

CREDIT FOR TIME: Where defendant violated probation after serving a prison sentence, and entered a plea on the VOP to a negotiated agreement was specifically provided that he would be given credit for "all prior prison and again time," and DOC deemed his gain time forfeited, Defendant may seek postconviction relief to get credit for the forfeited gain time. A claim that a forfeiture of gain time by the DOC thwarted the intent of a negotiated plea agreement may be raised in a timely rule 3.850 motion. Curry v. State, 3D-490 (6/22/22)
https://www.3dca.flcourts.org/content/download/841317/opinion/220490_DC13_06222022_102053_i.pdf

JUVENILE-HOME DETENTION: A juvenile may be held on home detention beyond 21 days in extraordinary circumstances posing a threat to public

safety, even if the juvenile does not qualify for commitment. A.T., A Child v. State, 4D22- 1097 (6/22/22)
https://www.4dca.org/content/download/841325/opinion/221097_DC02_06222022_100136_i.pdf

CHILD NEGLECT-JOA: Defendant who drunkenly walked a four-year-old child under his supervision down the middle of Apopka Avenue in Inverness, Florida cannot be convicted of child neglect. Kelley v. State, 5D21-1569 (6/22/22)
https://www.5dca.org/content/download/841125/opinion/211569_1260_06222022_110959_i.pdf

JOA: A motion for Judgment of acquittal admits the facts in evidence and every reasonable inference from the evidence favorable to the State. Trial courts should not grant motions for judgment of acquittal unless, when viewed in the light most favorable to the state, the evidence does not establish a prima facie case of guilt. Kelley v. State, 5D21-1569 (6/22/22)
https://www.5dca.org/content/download/841125/opinion/211569_1260_06222022_110959_i.pdf

CULPABLE NEGLIGENCE: "Culpable negligence" means that the defendant acted with a gross and flagrant character, evincing reckless disregard for human life or an entire want of care which would raise the presumption of indifference to consequences; or such wantonness or recklessness or grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them. Only the most egregious conduct satisfies the culpable negligence standard. Kelley v. State, 5D21-1569 (6/22/22)
https://www.5dca.org/content/download/841125/opinion/211569_1260_06222022_110959_i.pdf

HOBBS ACT-ATTEMPTED ROBBERY-CATEGORICAL APPROACH: The Hobbs Act makes it a federal crime to commit, attempt to commit, or conspire to commit a robbery with an interstate component, with further punishments for those who use a firearm in connection with a "crime of violence." Attempted Hobbs Act robbery does not qualify as a "crime of violence" under the 18 U. S. C. §924(c)(3)(A)because it does not satisfy the elements clause. "Yes, to secure a conviction the government must show an intention to take property by force or threat, along with a substantial step toward achieving that object. But an intention is just that, no more." United States v. Taylor, No. 20-1459 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

HOBBS ACT: The Hobbs Act makes it a federal crime to commit, attempt to commit, or conspire to commit a robbery with an interstate component, with further punishments for those who use a firearm in connection with a "crime of violence." A federal felony qualifies as a "crime of violence" if it meets either of two definitions: 1) The elements clause (offenses that have as an element the use, attempted use, or threatened use of physical force) or 2) the residual clause (for offenses that by their nature involve a substantial risk that physical force may be used). Except the residual clause is unconstitutionally vague, so only the elements clause matters. United States v. Taylor, No. 20-1459 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

CATEGORICAL APPROACH (J. THOMAS, DISSENT): "This holding exemplifies just how this Court's 'categorical approach' has led the Federal Judiciary on a 'journey Through the Looking Glass,' during which we have found many 'strange things.'. . .Rather than continue this 30-year excursion into the absurd, I would hold Taylor accountable for what he actually did and uphold his conviction." United States v. Taylor, No. 20-1459 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

QUOTATION (J. THOMAS, DISSENT): "[O]ur precedents have led the Federal Judiciary to 'a pretend place.'. . ." Like Alice, we have strayed far 'down the rabbit hole,' and '[c]uriouser and curiouser it has all become.'. . .Even Alice, having slaked her curiosity, eventually returned from the land beyond the looking glass. It is high time that this Court do the same." United States v. Taylor, No. 20-1459 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

CATEGORICAL APPROACH (J. ALITO, DISSENT): "The whole point of the categorical approach that the Court dutifully follows is that the real world must be scrupulously disregarded." United States v. Taylor, No. 20-1459 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

ALL WRITS: The All Writs Act authorizes federal courts to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. Shoop, Warden v. Twyford, No. 21-511 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/21-511_o75p.pdf

POST CONVICTION RELIEF: The All Writs Act does not authorize the issuance of transportation orders for medical testing for the purpose of gathering facts for the preparation of a planned Habeas Corpus Motion for Post Conviction Relief based on purported traumatic brain injury. Shoop, Warden v. Twyford, No. 21-511 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/21-511_o75p.pdf

WRIT: A transportation order that allows a prisoner to be sent to a medical facility for an examination hoping for new evidence is not necessary or appropriate in aid of a federal court's adjudication of a habeas corpus action when the prisoner has not shown that the desired evidence would be admissible in connection with a particular claim for relief. Shoop, Warden v. Twyford, No. 21-511 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/21-511_o75p.pdf

APPEAL-COLLATERAL ORDER DOCTRINE (J. BREYER, DISSENT): The collateral order doctrine allows interlocutory appeal from a small class of orders that finally determine claims of right separable from, and collateral to, rights asserted in the action, but the class is narrow and selective in its membership. Transportation orders to an outside medical facility for evaluation do not satisfy the requirements for interlocutory appeal under the collateral order doctrine. Shoop, Warden v. Twyford, No. 21-511 (U.S. S.Ct. 6/21/22)

https://www.supremecourt.gov/opinions/21pdf/21-511_o75p.pdf

JOA-LEWD AND LASCIVIOUS: **JOA**: Testimony by a minor of a momentary "glance" at a man sitting in the driver's seat of a parked truck twenty-eight feet or more away, from the passenger side of the vehicle, giving the witness the impression that Defendant was masturbating and the witness believing he could see the tip of Defendant's penis amounted to no more than inferences based on speculation. Judgment of Acquittal is required. Deamelio v. State, 2D20-878 (6/17/22)
https://www.2dca.org/content/download/840728/opinion/200878_DC13_06172022_084725_i.pdf

WITNESS PERCEPTION: The fact that a witness "sensed" something is

insufficient to establish that he observed something. "[T]he State argued that A.B. 'very clearly said he sensed it.'. . But this is not true; A.B. did not make such a statement. Even if it were true, it would be meaningless. . . There are only five senses, and the only one involved in this case is sight. To the extent that the prosecutor meant to imply or insinuate that 'sense' could mean something other than the five physical senses, we reject this out of hand. . . .[The term] 'senses,' [is] meant to limit those . . .to the five found in the natural world." Deamelio v. State, 2D20-878 (6/17/22) https://www.2dca.org/content/download/840728/opinion/200878_DC13_06172022_084725_i.pdf

JOA-STANDARD: "The standard to be employed for all criminal cases regarding the sufficiency of the evidence is simply whether the State presented competent, substantial evidence to support the verdict. This standard is met when the evidence relied upon to sustain the ultimate finding is sufficiently relevant and material such that a reasonable mind would accept it as adequate to support the conclusion reached." Where the facts adduced by the State are insufficient to prove the elements of the offense beyond a reasonable doubt, the case should not be submitted to the jury, and a judgment of acquittal should be granted. Deamelio v. State, 2D20-878 (6/17/22) https://www.2dca.org/content/download/840728/opinion/200878_DC13_06172022_084725_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Court may consider Defendant's lack of remorse, as shown by his teatimony at trial, in imposing sentence. Piccinini v. State, 5D17-2919 (6/17/22) https://www.5dca.org/content/download/840719/opinion/172919_DC05_06172022_083659_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE (CONCURRENCE): "[P]ermitting a trial court to consider a defendant's statements of innocence as demonstrative of a lack of remorse places a chilling effect upon a

defendant's constitutional rights and amounts to a due process violation." Piccinini v. State, 5D17-2919 (6/17/22) https://www.5dca.org/content/download/840719/opinion/172919_DC05_06172022_083659_i.pdf

APPEAL-PRESERVATION: Defendant who pled guilty failed to preserve issue of whether convictions for leaving the scene of a crash with death and DUI causing death violated double jeopardy where she made no express reservation of the right to appeal. Schaefer v. State, 5D17-2919 (17-2919 (6/17/22) https://www.5dca.org/content/download/840719/opinion/172919_DC05_06172022_083659_i.pdf

CREDIT FOR TIME SERVED-CORRECTION: Subject to the procedural constraints of R 3.800(b), a trial court has the inherent authority to sua sponte correct sentencing documents that over-report the amount of jail time served by a defendant prior to sentencing or the amount of jail time and prison time served by a defendant prior to resentencing. Spear v. State, SC20-676 (6/16/22) https://www.floridasupremecourt.org/content/download/840626/opinion/sc20-676.pdf

CREDIT FOR TIME SERVED-CORRECTION: Trial court may only correct errors of over-calculation of credit for time served on its own motion within the time frames of R.3.800(b) and only if the errors constitute scrivener's errors. Court may not correct over-calculation of credit for time served after the sentence is affirmed on appeal and has become final. Spear v. State, SC20-676 (6/16/22) https://www.floridasupremecourt.org/content/download/840626/opinion/sc20-676.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: FBI records pertaining to witnesses' bank robbery cases are not newly

discovered evidence when Defendant was aware of the bank robbery case 10 years before the filing of his motion. Hutchinson v. State, SC21-18 (6/16/22)
https://www.floridasupremecourt.org/content/download/840627/opinion/sc21-18.pdf

POST-CONVICTION RELIEF-GIGLIO: To obtain relief under Giglio, Defendant needs to demonstrate, among other things, that a State witness gave false or misleading testimony at trial. Defendant must identify with specificity any false or misleading testimony by a State witness at trial. Hutchinson v. State, SC21-18 (6/16/22)
https://www.floridasupremecourt.org/content/download/840627/opinion/sc21-18.pdf

SEARCH AND SEIZURE-PROBATIONARY SEARCH: Information discovered by probation officers during a probationary search can be used to obtain a search
warrant; evidence obtained through such a warrant is admissible in a new criminal case. Ramos v. State, 2D21-598 (6/15/22)
https://www.2dca.org/content/download/840472/opinion/210598_DC05_06152022_085035_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on a claim that counsel was ineffective for failing to inform him of an advantage of accepting the plea, what sentence he might receive if he rejected the plea offer, and bymisinforming him about the extent of his sentence exposure should he go to trial. Dely v. State, 2D21-3625 (6/15/22)
https://www.2dca.org/content/download/840491/opinion/213625_DC08_06152022_085342_i.pdf

DOUBLE JEOPARDY: Double jeopardy does not prohibit convictions for both burglary of a conveyance and grand theft. Blockburger. D.G.D. v. State, 3D21-2257 (6/15/22)

https://www.3dca.flcourts.org/content/download/840524/opinion/212257_DC05_06152022_103831_i.pdf

POST CONVICTION RELIEF-PLEA WITHDRAWAL: Defendant's "Motion for Postconviction Relief Withdrawal of Guilty Plea," which sought to withdraw his plea based upon ineffective assistance of his trial counsel, should have been treated as a timely Rule 3.850 motion rather than an untimlely R. 3.170(l) motion to withdraw plea. Hoskin v. State, 3D21-2300 (6/15/22)
https://www.3dca.flcourts.org/content/download/840525/opinion/212300_DC13_06152022_104210_i.pdf

CREDIT FOR TIME SERVED-CALCULATION: §921.161 requires the trial court to determine and give credit for all time spent in county jail prior to sentencing and for the Department to calculate the time after sentencing, including time in the county jail after sentencing. Court must give credit for time spent in the county jail before Defendant was originally sentenced and credit for county jail time served awaiting any resentencing after Defendant's return to jail from DOC. Wiley v. State, 4D20-1500 (6/15/22)
https://www.4dca.org/content/download/840500/opinion/201500_DC08_06152022_094638_i.pdf

DOUBLE JEOPARDY: The Double Jeopardy Clause does not prohibit twice placing a person in jeopardy for the same conduct or actions. The Double Jeopardy Clause does not bar successive prosecutions of distinct offenses, even if a single sovereign prosecutes them. Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

DOUBLE JEOPARDY-DUAL SOVEREIGNTY DOCTRINE: The Court of Indian Offenses (established by the Bureau of Indian Affairs under the Code of Federal Regulations–hereafter CFR courts) adjudicate Indian tribe rule violations for tribes without their own judicial systems. Defendant may be

convicted and sentenced for sex battery related charges in CFR court (140 days incarceration) and later tried and sentenced in federal district court for the same acts (30 years in prison, consecutive). The double jeopardy clause does not bar successive prosecutions by the same sovereign. Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

DEFINITION-"OFFENCE": 'Offence" means "transgression, . . .an act committed against law, or omitted where the law requires it." Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

DEFINITION-"LAW": "[A] law is defined by the sovereign that makes it, expressing the interests that the sovereign wishes to vindicate." Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

COURT OF INDIAN OFFENSES (J. GORSUCH, DISSENT): "By anyone's account, the Court of Indian Offenses is a curious regime. . . .[No one] pointed to any Act of Congress authorizing the project. On the contrary, from the beginning, federal officials recognized that these 'so-called courts' rested on a 'shaky legal foundation.'. . .Even more than that, one might wonder how an executive agency can claim the exclusive power to define, prosecute, and judge crimes. . .[H]owever. . .those questions—long lingering and incredibly still unanswered—remain for another day." Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

DOUBLE JEOPARDY-DUAL SOVEREIGNTY DOCTRINE (J. GORSUCH, DISSENT): Under the dual sovereignty doctrine, even successive prosecutions under identical criminal laws may be permissible if they are brought by different sovereigns. "To my mind, that doctrine has no place in

our constitutional order." Denezpi v. United States, No. 20–7622 (U.S. S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

POST CONVICTION RELIEF: The ordinary meaning of the term "mistake" in Rule 60(b)(1) includes a judge's legal errors. A party may seek relief from a final judgment in a criminal case under F.R.Civ.P. 60(b)(1) (which authorizes a court to reopen a final judgment under certain circumstances, so long as the motion is filed within a reasonable time) based on a mistake, which includes a judge's error of law. Defendant who failed to meet deadlines for appeal or criminal post conviction relief may proceed civilly based on legal errors by judge. Kemp v. United States, No. 21–5726 (U.S.S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/21-5726_5iel.pdf

POST CONVICTION RELIEF (J. GORSUCH, DISSENTING): "Going forward, every judicial legal error—not just an inadvertent or obvious 'mistake'—is fodder for collateral attack under Rule 60(b)(1). And what is the basis for all this? A mysterious 1946 amendment deleting the word 'his.' Kemp v. United States, No. 21–5726 (U.S.S.Ct. 6/13/22)
https://www.supremecourt.gov/opinions/21pdf/21-5726_5iel.pdf

ACCA-PREDICATE OFFENSES: Cocaine may not be a predicate offense for the ACCA enhancement, depending on when it occurred. Because the drug ioflupane (which has therapeutic value for treating Parkinson's Disease) had been removed from the list of serious drug offenses at the time the Defendant possessed a firearm, and because the Defendant's prior cocaine conviction fell under the same statute which included ioflupane at the time, and because the categorical approach applies to interpreting ACCA, Defendant's prior cocaine conviction is not a predicate for ACCA enhancement. Sentence vacated. USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

ACCA-PREDICATE OFFENSES-COCAINE: "Because we apply the categorical approach. . ., we must presume that Jackson's cocaine-related convictions 'rested upon nothing more than the least of the acts criminalized or the least culpable conduct.'. . .Here, that means we must assume that Jackson sold and possessed with intent to sell ioflupane. But. . .on September 26, 2017—when Jackson possessed the firearm here—the federal Schedule II expressly excluded ioflupane as a cocaine-related controlled substance. . .As a result, Jackson's cocaine-related prior convictions do not qualify under ACCA as 'serious drug offenses.'" USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

DUE PROCESS: Due-process fair-notice considerations require that the version of the Controlled Substance Act Schedules in place when the defendant committed the federal firearm-possession offense for which he is being sentenced, rather than that in effect when he was convicted of his predicate state crimes, applies. USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

CATEGORICAL APPROACH-MODIFIED CATEGORICAL APPROACH: Elements are the constituent parts of a crime's legal definition—the things the prosecution must prove to sustain a conviction. Alternative means, on the other hand, are different ways to satisfy a single element. When a statute lists alternative "elements," rather than alternative "means" of satisfying an element, the statute is "divisible." In that case, the "modified categorical approach" permits a court to consult a limited class of documents for the sole purpose of ascertaining the elements on which the defendant was actually convicted, such as a plea agreement, the transcript of a plea colloquy, the charging document, jury instructions, or a comparable judicial record of this information. But when a statute lists alternative means of

satisfying a single element, the standard categorical approach governs. USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

PRIOR PANEL PRECEDENT RULE: Other cases in which §893.13(1) convictions have been considered to be serious drug offenses are not binding under the prior-panel-precedent rule. Questions which merely "lurk in the record," neitherbrought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. "The question of which version of the Controlled Substance Act's drug Schedules governs under §924(e)(2)(A)(ii)'s definition of "serious drug offense" was not even a twinkle in our eyes." Assumptions are not holdings. Sub silentio holdings, unstated assumptions, and implicit rejections of arguments by prior panel are not binding circuit precedent. USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

PRAEMONITUS: "'Praemonitus, praemunitus' is a Latin proverb that translates loosely to 'forewarned, forearmed.'" Ancient Romans identified the principle that forewarned is forearmed thousands of years ago. USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

DUE PROCESS: Due process contemplates criminal laws that give ordinary people fair notice of the conduct they punish. Fair notice allows the ordinary citizen to conform his or her conduct to the law and ensures uniformity of enforcement by police and courts. '"And if an individual decides to break the law, anyway, the fair notice that due process requires advises him of the maximum (and depending on the statute, minimum) statutory penalty he can expect, so he knows what he risks before he undertakes his crime. . . After all, forewarned is forearmed." USA v. Jackson, No. 21-13963 (11th Cir. 6/10/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202113963.pdf

GAIN TIME: Defendant convicted of sexual battery is not entitled to incentive gain time. But Defendant convicted of attempted sexual battery is. Prior case law receded from. Attempts are violations of Chapter 777, not Chapter 794. Florida D.O.C. v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

ATTEMPT: A criminal attempt is an offense separate from the offense attempted. "No reasonable reading of the text of section 777.04 could give rise to a conclusion that 'criminal attempt' is an offense prohibited by some other statute, '"as modified"' by section 777.04, rather than a separate offense with its own specified punishment." The criminalization of a general "attempt" is the criminalization of intent rather than any particular action or result. Florida D.O.C. v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

STARE DECISIS: Perpetrating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court. Florida D.O.C. v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

MANDAMUS: "Mandamus is an ancient writ rooted in English common law. It was used 'to prevent disorder from a failure of justice' where there was no other remedy but 'where in justice and good government there ought to be one.'" Mandamus is available in Florida to order an officer to exercise his discretion where it is his duty to do so and to control the exercise of discretion that "is abused and illegally violates rights of complaining parties." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

MANDAMUS: Mandamus is the accepted method of judicial review of parole commission quasi-judicial determinations. Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

DEFINITION-"UNDER": "Under" is a preposition which means "with reference to" or "subject to." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

SIGNIFICANCE: "Judge Bilbrey. . .speculates that our opinion will affect application of section 948.30, regarding conditions of sex-offender probation, and that our holding may apply to current terms of probation. . . [W]e do not address how the former provision, as we now have interpreted it, might affect the application of section 948.30. In turn, whether our analysis might apply to an offender who committed a crime or was put on probation prior to this decision is not before us." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

STARE DECISIS (DISSENT): "Little commends devoting the scarce judicial resources of a fifteen-member appellate court to this run-of-the-mill sexual offender gain-time case, which is unworthy of an en banc hearing after languishing for over three years before an en banc vote was even sought. Upending time-honored precedent with no discernable benefit to society or the legal system is ill-advised as well, particularly when doing so directly thwarts the Legislature's clear and obvious intent to deny gain-time to convicted felons suchas Gould, who—because of today's jurisprudential flip-flop—is now eligible for potentially earlier release from prison." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

WORD OF THE DAY-FOOFARAW: "Short of that, the Florida Supreme Court is potentially pulled into the foofaraw unnecessarily because the formerly statewide uniform precedent on the topic has become muddled and conflicting due to this court's jurisprudential turnabout." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)

https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

STARE DECISIS (DISSENT): "The collateral consequences of the court's decision will ripple—both retroactively and prospectively—into other areas of the law, spawning uncertainty, quizzical questions, and unforeseen consequences. En banc review is supposed to bring about uniformity; here, the court's decision—the judicial equivalent of an unprompted cannonball dive into a long-placid wading pool—yields the opposite result." Florida D.O.C. v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

ATTEMPTED SEXUAL BATTERY-DISSENT: "[U]nder the majority's holding any sex offender who completed the offense and is placed on probation. . .will remain automatically required to undertake the applicable conditions of sex offender probation. . . But anyone who attempts any sex offense, up to attempted capitalsexual battery, will now not be statutorily mandated to complete the sex offender conditions of any probation. . .More troubling, the majority's holding seems to me to apply to existing sentences of probation." Florida DOC v. Gould, 1D19-1149 (6/10/22)
https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

FAILURE TO REGISTER: Defendant who has not paid fines and costs must still register as a sexual offender. His argument that he had not been "released from the sanction imposed," and that he was therefore not subject

to registration, is nonavailing. Florida DOC v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

RECENT-CONTROVERSY RULE: A clarifying amendment to a statute that is enacted soon after controversies as to its interpretation arise may be considered as a legislative interpretation of the original law and not as a substantive change. Because the legislature clarified its intent immediately following James (holding that a sex offender who had not paid fines remains under saction and therefore does not have to register), the statutory amendment applies retroactively and Defendant must register. Florida DOC v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

RECENT-CONTROVERSY RULE: The recent controversy rule suggests a court should interpret a preamendment statute in light of a subsequent "clarification" rather than the statute's plain meaning in isolation. In other words, the recent controversy rule purports to use the statute's subsequent legislative history as a guide for determining the legislature's intent in the pre-amendment version of the statute. Florida DOC v. Gould, 1D19-1149 (6/10/22) https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

RECENT-CONTROVERSY RULE: "Our interpretation of Florida Statutes section 943.0435(1)(h)1 in James was correct and felicitous to the operative text of the statute at that time. We also add that we, too, find the recent controversy rule—by which a subsequent legislature's amendment somehow slips free from the bonds of time to recalibrate the meaning of the words that a prior legislature enacted—both puzzling in its application and potentially troubling in its effect. It is, however, a settled facet of the law in our State." Florida DOC v. Gould, 1D19-1149 (6/10/22)

https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

NEWS FROM THE FILE MARKED "D'UH": "Courts from time to time are obliged to apply as written legislative enactments with perplexing or seemingly ridiculous consequences and policy implications." Florida DOC v. Gould, 1D19-1149 (6/10/22)

https://www.1dca.org/content/download/840141/opinion/191149_DC05_06102022_120047_i.pdf

STATUTORY INTERPRETATION (DISSENT): "[W]hat the text says is what the law is, regardless of what future judges or legislators think it should have said." Hull v. State, 2D20-2772 (6/10/22)
https://www.2dca.org/content/download/840092/opinion/202772_DC05_06102022_081113_i.pdf

DOUBLE JEOPARDY-MINIMUM MANDATORY: Where Court orally sentences Defendant to 25 years without characterizing the sentence as a mandatory minimum, the written judgment provides for a mandatory minimum, and the Defendant moves to correct the sentence to conform to the oral pronouncement, The court must impose the minimum mandatory. The trial court was required to impose a ten year mandatory minimum sentence. There was no wiggle room. Jeopardy attaches only to a legal sentence. Because jeopardy has never attached, there can be, as a matter of law, no double jeopardy violation. Whether Defendant's sentence was amended later that same day following oral pronouncement or more than twelve years later, the passage of time does not alter the calculus. An illegal sentence was, is, and remains illegal until it is corrected. Miles v. State, 2D21-1519 (6/10/22)
https://www.2dca.org/content/download/840103/opinion/211519_DC05_06102022_081414_i.pdf

POST CONVICTION RELIEF: In DUI case, Defendant is entitled to a

hearing on the claim that counsel was ineffective for failing to move to exclude testimony and evidence regarding Defendant's alleged use of K2. Court may not avoid its duty to attach record documents supporting its denial by stating that "because the facts it has relied upon to deny [this ground] are from [Phillips'] own motion. It is a safe assumption [Phillips] would have presented those facts in the light most favorable to himself." "While the court's assumption may be true, it does not relieve the court of its obligation to attach records that conclusively refute Phillips' claim." Phillips v. State, 2D21-1963 (6/10/22)

https://www.2dca.org/content/download/840108/opinion/211963_DC08_06102022_081518_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object on the basis of the State's argument which allegedly referred to facts not in evidence, in the absence of contrary attached records. State's assertion that such records exist is insufficient. Phillips v. State, 2D21-1963 (6/10/22) https://www.2dca.org/content/download/840108/opinion/211963_DC08_06102022_081518_i.pdf

SEARCH WARRANT: Search warrant based on allegations by confidential informant and observation of activity at a house are sufficient for warrant, or for application of the good faith exception. The good faith exception to the exclusionary rule precludes the suppression of evidence secured pursuant to an invalid warrant when the officer who conducts the search does so in an objectively reasonable reliance upon the validity of the warrant. The good faith exception applies, precluding the suppression of evidence obtained by officers, if the officers acted in objectively reasonable reliance on the search warrant issued by a detached and neutral magistrate, regardless of whether the warrant was later found by the trial court to be unsupported by probable cause. State v. Redhead, 5D21-1416 (6/10/22)

https://www.5dca.org/content/download/840078/opinion/211416_DC13_06102022_081112_i.pdf

APPEAL-PRESERVATION: To be preserved, the issue or legal argument must be raised and ruled on by the trial court. Counsel failed to preserve any issue with respect to closing argument related to improper reference to mercy to the Defendant where he did not contemporaneously object. The failure to raise a contemporaneous objection when improper closing argument comments are made or to secure a ruling on any such objection waives any claim concerning such comments for appellate review. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

APPEAL-PRESERVATION: To preserve an error founded on an objection at trial, it is necessary to move for a mistrial only when the objection is sustained, not when it is overruled. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

APPEAL-PRESERVATION: An objected-to comment is not adequately preserved where the trial court did not sustain or overrule the objection, but rather agreed with trial counsel that it was improper for the State to argue Defendant deserves no more mercy that he gave the victim and cautioned the prosecutor to limit his argument accordingly is not a definitive ruling. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

APPEAL-PRESERVATION: A general pretrial motion in limine does not constitute a contemporaneous objection to the prosecutor's arguments. §90.104(1), which was amended in 2003 to make a contemporaneous objection to admission or exclusion of evidence unnecessary in order to preserve the issue for appeal where a prior definitive ruling has been obtained does not apply to claims of error in prosecutorial argument. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

GOLDEN RULE: A golden rule argument is an "argument that invites the jurors to place themselves in the victim's position. "Can you imagine the dread of knowing that your life is ending and you're feeling pain all over your body. . ." is an impermissible Golden Rule argument; asking the jury to consider what the evidence showed as to the length of the attack and what the victim experienced while Defendant compressed Victim's neck is not. But error was not objected to and was not fundamental. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

ARGUMENT-IMAGINARY SCRIPT: Asking jury to imagine what the victim was thinking or what was happening during the silence of the 911 call is improper speculation violating the "imaginary script" variant of the prohibition on golden rule arguments. But error was not objected to and was not fundamental. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: Prosecutor improperly

commented upon the Jamaican legal system (where Defendant came from) or to compare it to the legal system in the United States, or commenting upom Defendant's "comfortable" life while awaiting trial in jail, to what his life would have been like had he been on trial in Jamaica. "To the extent the prosecutor's rhetoric could be taken as anti immigrant, we condemn such rhetoric in the strongest possible terms; it has no place in our courts." But error was not objected to and was not fundamental. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT: Prosecutor's argument comparing his difficult childhood to the difficult childhood of Ronald Reagan, the prosecutor did not improperly attach an aggravating label to a mitigating factor nor and improperly appeal to the jury's emotions. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

DEATH PENALTY-VICTIM IMPACT: Victim impact evidence probative of the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death does not violate the United States and Florida Constitutions. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

DEATH PENALTY-VICTIM IMPACT: Victim's mother concluded her

testimony by reading the following Bible verse: “If anyone causes one of these little ones, those who believe in me, to stumble, it would b better for them to have a large milestone [sic] hung around their neck and to be thrown in the depths of the sea,” exceeds the scope of relevant victim impact evidence. But error was not objected to and was not fundamental. Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

PROSECUTORIAL MISCONDUCT-ARGUMENT LABARGA (DISSENT): “[T]he majority’s position sends a strong message to prosecutors that the stronger their case, the stronger the likelihood their improper statements, regardless of their egregiousness, will pass muster. This Court must come to terms with the fact that our long-established prohibitions against ‘same mercy’ arguments, ‘golden rule’ arguments, and arguments designed to stoke anti immigration sentiment are there to be followed. And, when they are not, there must be consequences. We cannot continue to overstate . . .the requirements of fundamental error, in order to ignore the prosecutorial misconduct that the majority agrees occurred in this case. Lawyers, whether prosecutors or defense attorneys, are officers of the Court and, as such, must follow the law. The prosecutor in this case chose to ignore the law.” Ritchie v. State, SC20-1422 (6/9/22)

https://www.floridasupremecourt.org/content/download/839976/opinion/sc20-1422.pdf

POST CONVICTION RELIEF: Defendant is not entitled to discovery in order to prepare a motion for post conviction relief. Post conviction discovery is not automatically allowed and instead it is within the trial judge's inherent authority to allow limited prehearing discovery during postconviction proceedings. That authority should be used only upon a showing of good

cause. Nothing can be relevant or material when there is no postconviction proceeding. Preston v. State, 1D21-904 (6/8/22)

https://www.1dca.org/content/download/839926/opinion/210904_DC05_06082022_132359_i.pdf

JURY: Defendant is not entitled to a twelve person jury for capital sexual battery. Pretell v. State, 1D21-1091 (6/8/22)

https://www.1dca.org/content/download/839927/opinion/211091_DC05_06082022_132733_i.pdf

SENTENCING SCORESHEET: Scoresheet errors at sentencing are subject to harmless error review. A sentence predicated on an inaccurately calculated scoresheet is proper when the record shows the trial judge would have imposed the same sentence in the absence of the scoresheet error, which requires a showing that the final sentence would have been imposed in the absence of error, not merely the sentence could have been imposed. Harmful error occurs when the sentence is close to the bottom of the guidelines and the record does not conclusively show that the trial court would have imposed the same sentence under a corrected scoresheet. Abraham v. State, 4D19-2408 (6/8/22)

https://www.4dca.org/content/download/839886/opinion/192408_DC13_06082022_095521_i.pdf

JUDGMENT OF ACQUITTAL-FRAUDULENT DEEDS: Defendant's signature on fraudulent deeds is insufficient evidence that Defendant had knowledge of any fraudulent scheme because 1) he did not sign as a notary, and thus did not certify that the document was validly signed, and 2) no one testified that the signatures within the five documents were fraudulent.

Tinker v. State, 4D19-3232 (6/8/22)

https://www.4dca.org/content/download/839887/opinion/193232_DC13_06082022_095731_i.pdf

FRAUD-NOTARIZATION: The fact that deed was dated in 2010, but the notary seal showed an expiration in 2017 (notary commissions are valid for only four years) implies fraud, "However, any fraud regarding the date of expiration of the notary's commission does not support an inference that Defendant had knowledge of any fraud with the notarization. We doubt that the average citizen pays attention to the expiration date on the notary's stamp when the citizen's signature as a party is acknowledged by a notary or added as a witness to a party signing, particularly because typically the notary signs last and typically the notary stamp is applied after the notary signs." Further, the signatures of two subscribing witnesses is not certification that any information contained within the document is correct. Tinker v. State, 4D19-3232 (6/8/22)

https://www.4dca.org/content/download/839887/opinion/193232_DC13_06082022_095731_i.pdf

FRAUD-NOTARIZATION: Evidence that Defendant (1) was a corporate officer for Global Management during some portion of the years the fraudulent activity occurred, (2) recorded some of the fraudulent documents, (3) lived in one of the homes that was obtained by fraud, and (4) signed an eviction notice for one of the properties, none of such evidence, singularly or in combination, is sufficient to prove beyond a reasonable doubt that Defendant knew of fraudulent activity to effectuate or assist the criminal scheme. Tinker v. State, 4D19-3232 (6/8/22)

https://www.4dca.org/content/download/839887/opinion/193232_DC13_06082022_095731_i.pdf

FRAUD-JOA: The fact that Defendant was listed as a corporate officer in one of his father's corporations is not sufficient to prove knowledge of criminal activity. When an officer of a corporation makes an affidavit in its behalf, it is not necessary that he should state the sources of his knowledge, or information and belief. A distinct difference exists between the scenario of a corporate officer executing an affidavit (inherently a statement of facts) and a corporate officer signing a document pertaining to a parcel of real property as a party or witness, including an attesting witness. Tinker v. State, 4D19-3232 (6/8/22)

https://www.4dca.org/content/download/839887/opinion/193232_DC13_06082022_095731_i.pdf

JOA-EVIDENCE: JOA is required when the evidence, viewed in the light most favorable to the State, is such that a rational juror could not have found the existence of the knowledge and intent elements beyond a reasonable doubt. Tinker v. State, 4D19-3232 (6/8/22)

https://www.4dca.org/content/download/839887/opinion/193232_DC13_06082022_095731_i.pdf

EVIDENCE-HANDWRITING IDENTIFICATION: Non-expert detective may not identify signature on documents as that of the Defendant based on "his training and experience" after reviewing numerous documents. To be sufficiently acquainted with a signature, a lay witness may identify an individual's signature where the lay witness only if he has has seen the individual sign his or her name on different occasions. However, a lay witness cannot identify a signature where the familiarity with the handwriting was acquired for the purpose of litigation." Familiarity acquired for the purposes of a criminal investigation is the same as familiarity acquired for

the purposes of litigation. Tinker v. State, 4D19-3233 (6/8/20)

https://www.4dca.org/content/download/839888/opinion/193233_DC08_06082022_100107_i.pdf

MISTRIAL: Defendant is entitled to a mistrial when an exhibit (a chart) containing prosecutor's notes on how the State thought the chart proved the counts was mistakenly sent to the jury room. "[T]he main prejudice with Column H is not the extraneous information which the jury could 'disregard,' but instead, the juror's exposure to 'additional' argument from the State." Tinker v. State, 4D19-3233 (6/8/20)

https://www.4dca.org/content/download/839888/opinion/193233_DC08_06082022_100107_i.pdf

JURY QUESTION: Court may not respond to a jury question without affording Defendants an opportunity to be fully heard. Failure to do so is per se reversible error. Tinker v. State, 4D19-3233 (6/8/20)

https://www.4dca.org/content/download/839888/opinion/193233_DC08_06082022_100107_i.pdf

PRISON-PROBATION-CONSECUTIVE: Probation and Imprisonment cannot exceed the maximum sentence. Where Defendant is convicted of a life felony (punishable by a term of imprisonment for life or by a term of imprisonment not exceeding forty years), forty years in prison followed by lifetime sex offender probation exceeds the statutory maximum. Trottman v. State, 4D20-2717 (6/8/22)

https://www.4dca.org/content/download/839890/opinion/202717_DC08_06082022_100249_i.pdf

BAKER ACT: Conclusory testimony, unsubstantiated by facts in evidence, ... is insufficient to satisfy the statutory criteria by the clear and convincing evidence standard for involuntary commitment. The subjective fear of the subject's mother is insufficient. Kogel v. State, 4D21-2093 (6/8/22)

https://www.4dca.org/content/download/839896/opinion/212093_DC13_06082022_101140_i.pdf

SENTENCING-DELINQUENCY-VOP: The statutory requirement that the Court discuss with the child his or her feelings about the offense committed, the harm caused to the victim or others, and what penalty he or she should be required to pay for such transgression does not apply to a post-VOP disposition in which no new law violation is alleged. "Because the trial court is required to have the discussion under section 985.433(4)(c) 'when' the child has been found to have committed the delinquent act, the statute's plain language does not require such a discussion at a later disposition hearing at which the child has not been found to have committed a delinquent act." L.S., A Child v. State, 4D21-3058 (6/8/22)

https://www.4dca.org/content/download/839900/opinion/213058_DC05_06082022_101828_i.pdf

STAND YOUR GROUND-CERTIORARI: Petition for writ of certiorari challenging denial of SYG motion must be filed within 30 days. Conover v. State, 4D22-315 (6/8/22)

https://www.4dca.org/content/download/839902/opinion/220315_DA08_06082022_102100_i.pdf

DEPORTATION-CANCELLATION OF REMOVAL: There are four statutory eligibility criteria for cancellation of removal. Under the exceptional and extremely unusual hardship standard, the BIA considers the ages, health, and circumstances of qualifying relatives to determine whether the

hardship the qualifying relative(s) would face would be substantially beyond that which ordinarily would be expected to result from the alien's deportation. The possibility that alien's daughter might not be able to accompany him out of the country and might become dependent is not necessarily sufficient. "As sympathetic as we are to his plight, we are precluded from reweighing the hardship factors now since our review of his case is jurisdictionally limited to 'constitutional claims or questions of law.'" Flores-Alonso v. U.S. Attorney General, No. 19-14058 (11th Cir. 6/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914058.pdf

CERTIORARI: Appellate court may not dismiss the petition because we cannot review an oral ruling by certiorari. Absent a signed, written order, certiorari jurisdiction may not be invoked. Barnes v. State, 1D22-1663 (6/6/22)

https://www.1dca.org/content/download/839668/opinion/221663_DA08_06062022_160017_i.pdf

EVIDENCE-AUTHENTICATION-AUDIO RECORDING: Recording is sufficiently authenticated when the victim testified that she was a participant in the recorded conversation, that she had listened to the tape before trial, that the voices on the tape were Defendant's and and hers and that the tape fairly and accurately memorialized the conversation. Authentication is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic; the ultimate determination of the authenticity of the evidence is a question for the fact-finder. There is no definitive list of requirements that must be met to authenticate an audio tape. Jabri v. State, 5D21-2317 (6/3/22)

https://www.5dca.org/content/download/839450/opinion/212317_DC05_06032022_082508_i.pdf

APPEAL-PRESERVED ISSUE: Where Court violated the plea agreement ("Despite any labels the State or the trial court may attempt to place on the plea, the transcript of the plea hearing reveals that the trial court clearly offered Melendez a specific sentence in exchange for his guilty plea. Such is a negotiated plea.") but the Defendant neither objected nor sought to withdraw his plea, the issue is not preserved for appellate review. Defendant may not argue on direct appeal that trial counsel was ineffective for failing to object to the violation of the plea agreement. An unpreserved error may only be raised and result in reversal on direct appeal where the error is fundamental. Because a showing of fundamental error is not required to prevail on a claim of ineffective assistance of trial counsel . . . such an unpreserved claim may not be raised or result in reversal on direct appeal. Melendez v. State, 2D20-933 (6/3/22)

https://www.2dca.org/content/download/839458/opinion/200933_DC05_06032022_084756_i.pdf

VOP-JURISDICTION-TOLLING: Upon the filing of an affidavit alleging a violation of probation and following issuance of a warrant, a warrantless arrest, or a notice to appear, the probationary period is tolled until the court enters a ruling on the violation. Under the law at the time (since superseded by statute) a probationary period is not tolled following issuance of a warrant for a noncriminal violation because the statutory language required that the warrant be issued under §901.02, which in turn required that the warrant be issued for a "crime." Rule did not apply where Defendant absconded, but record here does not show absconsion. VOP dismissed. Bourdeau v. State, 2D21-68 (6/3/22)

https://www.2dca.org/content/download/839459/opinion/210068_DC13_06032022_084908_i.pdf

DISQUALIFICATION-PROHIBITION: Defendant's motion to disqualify in

DUI case based on Judge's statement in a sermon about socialism, no fault divorce, and abortion is improperly denied where Judge, in denying it, makes extraneous comments challenging the allegations in the motion as to his religious beliefs and linking the allegation in the motion by analogy to other cases where facts and their intersection with various religious tenets held by judges resulted in criticalexamination of that interrelation. The original motion was legally insufficient, but "[b]ecause the trial court went beyond simply finding the motion to be legally insufficient and did so in a manner which addressed the merits of the motion, we grant the relief sought. . .Judge Bell chose to cite to specific cases and to make certain analogies that surreptitiously refuted Wagner's allegations of bias, thereby taking issue with the motion." Wagner v. State, 2D21-3707 (6/3/22)

https://www.2dca.org/content/download/839461/opinion/213707_DC03_06032022_085719_i.pdf

DISQUALIFICATION-PROHIBITION-DISSENT: "Wagner's argument that the trial court exceeded the proper scope of inquiry relies on the nonsequitur that the Judge commented on the veracity of the allegations by finding that Wagner's fears are not objectively reasonable. To the contrary, the trial court must determine—based on the allegations in the motion—whether the defendant's fears are objectively reasonable in order to reach a conclusion as to the sufficiency of the motion.". . .Whether the judge's extrajudicial activities were advisable is not a relevant matter for this court's contemplation. And the prudence of the trial court's decision to elaborate on its rationale for determining that the motion was legally insufficient. . .are not considerations within this court's ambit of review." Wagner v. State, 2D21-3707 (6/3/22)

https://www.2dca.org/content/download/839461/opinion/213707_DC03_06032022_085719_i.pdf

SENTENCING-CONSIDERATIONS-LACK OF REMORSE: Judge may evaluate whether a defendant's in-court statements contained falsehoods and, if so, assess that fact along with all of the other sentencing considerations. When a defendant voluntarily chooses to allocute at a sentencing hearing, the sentencing court is permitted to consider the defendant's freely offered statements, including those indicating a failure to accept responsibility. The same rule applies when the statements were made during trial rather than an allocution. State v. Burns, SC18-1208 (6/2/22)

https://www.floridasupremecourt.org/content/download/839343/opinion/sc18-1208.pdf

EVIDENCE-COLLATERAL CRIMES: There are two types of collateral crime evidence: similar fact evidence and dissimilar fact evidence. The former (also known as Williams rule evidence) is governed by §90.404 while the latter is subject to §90.402. Hayes v. State, 1D18-3876 (6/1/22)

https://www.1dca.org/content/download/839287/opinion/183876_DC05_06012022_130853_i.pdf

EVIDENCE-COLLATERAL CRIMES: In gang-related drive-by shooting in which a baby was killed, evidence of prior shootings between the 2 gangs, and rap videos describing prior fights and shootings are admissible as inextricably intertwined evidence, to show that the shooting in question was a continuation in consequence of the preceding events, or to show motive, intent, and identity. The evidence is necessary to establish the entire context out of which the charged crimes arose and adequately describe the events leading up to the charged crime. Without the evidence, the State could not have explained why the defendants attacked a woman, her baby, and an elderly grandmother. Hayes v. State, 1D18-3876 (6/1/22)

https://www.1dca.org/content/download/839287/opinion/183876_DC05_06012022_130853_i.pdf

IDENTIFICATION: Suggestive pretrial identification is admissible if the identification possesses certain features of reliability. An out-of-court identification is admissible if (1) the police did not employ any unnecessarily suggestive procedure in obtaining an out-of-court identification; or, (2) if so, considering all the circumstances, the suggestive procedure does not give rise to a substantial likelihood of irreparable misidentification. Where there was no police involvement in a witness's identification of the Defendant from the photograph, any later in-court identification is admissible. Hayes v. State, 1D18-3876 (6/1/22)

https://www.1dca.org/content/download/839287/opinion/183876_DC05_06012022_130853_i.pdf

HEARSAY-EXCEPTION-CO-CONSPIRATOR: Videos showing the co-defendant rapping alone in a vehicle, assuming the videos constituted hearsay, are admissible under the co-conspirator exception. The co-conspirator exception to the hearsay rule (§90.803(18)(e)) allows a statement to be admitted if substantial evidence, independent of the statement itself, is presented showing: (1) that a conspiracy existed; (2) that the declarant/coconspirator and the defendant against whom the statements are offered were members of the conspiracy; and (3) that the statements were made during the course and in furtherance of the conspiracy. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

HEARSAY-VERBAL ACT: A video of Defendant walking down the street

as the codefendant Thompson opposing gang is not hearsay because it is not offered to prove the truth of the matter asserted. Taunts are verbal acts. Verbal acts are not hearsay because they are admitted to show they were actually made and not to prove the truth of what was asserted therein. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

EVIDENCE-AUTHENTICATION-FACEBOOK PHOTOS: For evidence to be authenticated bthere must be enough evidence to support a finding that the matter in question is what its proponent claims. Authentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic; the ultimate determination of the authenticity of the evidence is a question for the fact-finder. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

EVIDENCE-AUTHENTICATION-FACEBOOK PHOTOS: There are two ways to authenticate photos. The "pictorial testimony" method requires testimony to establish that, based on personal knowledge, the photographs fairly and accurately reflect the events or scene. The "silent witness" method provides that the evidence may be admitted upon proof of the reliability of the process which produced the tape or photograph. As to the "pictorial testimony" method, any witness with knowledge that the photograph is a fair and accurate representation may testify to the foundational facts. There is no requirement that the person testifying about the photograph have been present when the photograph was taken (or even know who took the photograph. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

EVIDENCE-AUTHENTICATION-FACEBOOK PHOTOS: Facebook photographs are properly authenticated using the "pictorial testimony" theory notwithstanding that the State did not use the standard predicate, "Does the photograph fairly and accurately depict [the subject of the photograph]?" A witness who knows the subjects of the photographs may testify about who is in them and the meaning of the hand gestures used in the Facebook photos. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

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EVIDENCE-COLLATERAL CRIMES: In gang-related drive-by shooting in which a baby was killed, evidence of prior shootings between the 2 gangs, and rap videos describing prior fights and shootings are admissible as inextricably intertwined evidence, to show that the shooting in question was a continuation in consequence of the preceding events, or to show motive, intent, and identity. The evidence is necessary to establish the entire context out of which the charged crimes arose and adequately describe the events leading up to the charged crime. Without the evidence, the State could not have explained why the defendants attacked a woman, her baby,

and an elderly grandmother. Richardson v. State, 1D18-4084 (6/1/22)

https://www.1dca.org/content/download/839288/opinion/184084_DC05_06012022_131019_i.pdf

LIFE SENTENCE-JUVENILE-OFFENDER: Graham established a categorical rule prohibiting a life without-parole-eligibility sentence for a juvenile who committed a non-homicide offense. Juvenile Offenders who was originally sentenced to life imprisonment with the possibility of parole and later twice violated parole may be resentenced to life imprisonment with the possibility of parole. Lowe v. State, 1D20-2588 (6/1/22)

https://www.1dca.org/content/download/839289/opinion/202588_DC05_06012022_131330_i.pdf

VOP-CHANGING RESIDENCE: Where Probationer was ordered by a court in Delaware to leave his residence where he had resided with his mother following an incident there, his absence from that residence does not constitute a willful violation of probation, even though his own actions resulted in his removal. Lovett v. State, 1D21-846 (6/1/22)

https://www.1dca.org/content/download/839291/opinion/210846_DC08_06012022_132922_i.pdf

STATUTE OF LIMITATIONS-RICO: In a RICO prosecution, the limitations period commences upon the date the crime is completed which means the date of the last charged predicate act committed by the individual defendant. Where the predicate charge in a RICO case (which here includes homicides), the time limit for the predicate offense governs. §775.15(1), read in conjunction with §895.05(10) provides no time limitation on the State's ability to bring a substantive RICO charge based on a predicate

felonious act that resulted in a death. Five year RICO statute of limitation does not apply. Jean-Marie v. State, 3D18-1870 (6/1/22)

https://www.3dca.flcourts.org/content/download/839249/opinion/181870_DC05_06012022_101444_i.pdf

PLEA-WITHDRAWAL-COUNSEL: When a represented defendant files a pro se rule 3.170(f) motion to withdraw plea, the trial court is not required to appoint conflict-free counsel unless it determines: (1) that an adversarial relationship exists,and (2) the defendant's allegations are not conclusively refuted by the record. Masiello v. State, 4D21-1638 (6/1/22)

https://www.4dca.org/content/download/839263/opinion/211638_DC05_06012022_095354_i.pdf

MAY 2022

SENTENCING-GUIDELINES-ILLEGAL EXPORTATION OF WEAPONS: "In this sentencing appeal, we interpret U.S.S.G. §2M5.2(a)(2) for the first time in a published decision." A Defendant who exports enough weapons parts for two operable firearms (AR-15), along with additional parts to service additional firearms, cannot take advantage of the lower base offense level. Defendant who attempted to export 23 weapons parts which were not capable of being converted to more than two firearms, but who had purchased over the years enough parts to make four firearms, is subject to a 12 level enhancement pursuant to §2M5.2(a)(2). USA v. Stines, No. 20-11035 (11th Cir 5/31/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202011035.pdf

SENTENCING-GUIDELINES-ILLEGAL EXPORTATION OF WEAPONS: The Guidelines (§2M5.2(a)(2)) do not distinguish between assembled and

disassembled weapons. USA v. Stines, No. 20-11035 (11th Cir 5/31/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202011035.pdf

SENTENCING-GUIDELINES-ILLEGAL EXPORTATION OF WEAPONS: Weapons parts for guidelines purposes are equal to complete weapons. "In fairness to Stines, we recognize that our interpretation could lead to results that are at least counterintuitive. . . [F]or instance, a defendant exporting just three AR-15 triggers—and nothing else—would get the higher base offense level (because those triggers would service three AR-15s), while a defendant with two fully operable AR-15s would get the lower base offense level." But, oh well. USA v. Stines, No. 20-11035 (11th Cir 5/31/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202011035.pdf

ABSURD RESULTS CANON: The absurd results canon is applied "quite cautiously." USA v. Stines, No. 20-11035 (11th Cir 5/31/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202011035.pdf

DEFINITION-"ONLY" (CONCURRENCE): "'Only' means 'only.'" In Diaz-Gomez. "the court explained that it saw 'no reason to interpret the plain meaning of the term 'only' to mean anything other than 'only.'" USA v. Stines, No. 20-11035 (11th Cir 5/31/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202011035.pdf

ARMED CAREER CRIMINAL-SERIOUS DRUG OFFENSE: To count as a "serious drug offense" under the ACCA, the drug offenses must have a

maximum term of imprisonment of ten years or more. The maximum term of imprisonment is the statutory maximum, not the high end of the presumptive sentencing range. USA v. Gardner, No. 20-13645 (11th Cir. 5/27/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013645.pdf

LIFE SENTENCE-JUVENILE OFFENDER-SENTENCE REVIEW: Life sentence with fifteen year review for remorseless juvenile offender who shot taxi driver in the back of the head and proposed writing a rap song about it is lawful. Falcon v. State, 1D20-2417 (5/25/22)

https://www.1dca.org/content/download/838685/opinion/202417_DC05_05252022_100554_i.pdf

JUVENILE OFFENDER-SENTENCE REVIEW: Juvenile offender convicted of attempted second-degree murder with a firearm and sentenced to 30 years in prison, is entitled to judicial review of his sentence at 25 years. The conviction is deemed to be under §782.04 (the murder statute) rather under §777.04 (the criminal attempt statute). The former calls for a sentence review after 35 years, not 20 years. State v. Davis, 1D20-2860 (5/25/22)

https://www.1dca.org/content/download/838686/opinion/202860_DC13_05252022_100727_i.pdf

CLEMENCY-ALL WRITS: Governor's blanket policy of denying clemency to all sex offenders and murders does not provide Petitioner an avenue of relief under the court's "all writs" provision. Governor has no duty to consider a clemency application without resort to a policy that denies clemency merely based on the type of crime committed. No specific

procedures are mandated in the clemency process. The very nature of clemency is that it is grounded solely in the will of the dispenser of clemency. He need give no reasons for granting it, or for denying it. The governor may agonize over every petition or he may glance at one or all such petitions and toss them away. Bryan v. DeSantis, 1D21-2575 (5/25/22)

https://www.1dca.org/content/download/838687/opinion/212575_DC02_05252022_100823_i.pdf

PROBATION-CONDITION: Court improperly required Defendant to pay $50 per month towards her probation because this amount is greater than what is authorized by statute and was not orally pronounced. Marquis v. State. 4D21-2172 (5/25/22)

https://www.4dca.org/content/download/838722/opinion/212172_DC08_05252022_101956_i.pdf

PROBATION-CONDITION: The condition requiring Defendant to obtain her probation officer's consent before leaving her county of residence does not need to be orally pronounced. Marquis v. State. 4D21-2172 (5/25/22)

https://www.4dca.org/content/download/838722/opinion/212172_DC08_05252022_101956_i.pdf

COMPETENCY HEARING: Where Defendant went to trial, it is fundamental error for the Court to have failed to hold a competency hearing once the issue had been raised. In the case of a voluntary plea, fundamental error is not an exception to the preservation requirement of Fla.R.App.P. 9.140(b)(2)(A)(ii)(c), but in the case of a trial, it is. Walton v. State, 4D20-655 (5/25/22)

https://www.4dca.org/content/download/838713/opinion/200655_DC13_0

5252022_100038_i.pdf

SECOND AMENDMENT: Illegal aliens in the United States do not enjoy the right to keep and bear arms. Federal statute that prohibits illegal aliens from possessing firearms does not violate the Second Amendment. "[T]he people" mentioned in the Second Amendment refers to a class of persons [1] who are part of a national community or [2] who have otherwise developed sufficient connection with this country to be considered part of that community." USA v. Jimenez-Shilon, No. 20-13139 (11th Cir. 5/23/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013139.pdf

SEARCH AND SEIZURE-TIP: A tip provided by woman who identified herself by name and provided police her phone number qualifies as a tip from a citizen informant, and thus falls at the high end of the reliability scale because she was not anonymous. Madsen v. State, 2D21-832 (5/20/220)

https://www.2dca.org/content/download/838278/opinion/211832_DC05_05202022_085156_i.pdf

INVESTIGATIVE COSTS: Court may not assess investigative costs in the absence of a request from the State. Skinkle v. State, 5D21-2504 (5/20/22)

https://www.5dca.org/content/download/838304/opinion/212504_DC05_05202022_083542_i.pdf

EVIDENCE-CONSCIOUSNESS OF GUILT: Defendant's false statement is admissible in the State's case in chief as substantive evidence of consciousness of guilt. State v. Garcia, SC19-1366 (5/19/22)

https://www.floridasupremecourt.org/content/download/838145/opinion/sc19-1366.pdf

JUDGE-MISCONDUCT; Judge disciplined but not removed for presiding over cases involving the attorney representing her son for shooting someone in his home, for initially acting as her son's attorney while serving on the bench, and otherwise attempting to use her office to her son's advantage. Inquiry Concerning a Judge, SC20-605 (5/19/22)

https://www.floridasupremecourt.org/content/download/838146/opinion/sc20-605.pdf

AMENDMENT-RULES OF CRIMINAL PROCEDURE: Rule 3.691 is clarified to provide that post-trial release is available to defendants who otherwise qualify for release where the adjudication was withheld. In Re: Amendment to Florida Rule of Criminal Procedure 3.691, SC21-1189 (5/19/22)

https://www.floridasupremecourt.org/content/download/838148/opinion/sc21-1189.pdf

RULES-AMENDMENT-BELATED APPEAL: Rules clarified to provide for a case by case review as to whether appellate counsel who fails to advise the client of his right to challenge an adverse appellate ruling interfered with the petitioner's ability to file a timely notice to invoke. Fla. R. App. P. 9.141(c)(4)(F)(ii). In Re: Amendments to the Florida Rule of Appellate Procedure 9.141, SC21-673 (5/19/22)

https://www.floridasupremecourt.org/content/download/838147/opinion/sc21-673.pdf

RULES-AMENDMENT-BELATED APPEAL: A new subdivision--(c)(4)(G)–is created requiring a petitioner to show the basis for invoking discretionary review jurisdiction. In Re: Amendments to the Florida Rule of Appellate Procedure 9.141, SC21-673 (5/19/22)

https://www.floridasupremecourt.org/content/download/838147/opinion/sc21-673.pdf

JIMMY RYCE: Court errs in disregarding Defendant's affidavit disputing his future dangerousness and granting summary judgment for involuntary commitment under Jimmy Ryce. Civil commitment is a significant deprivation of liberty that requires due process protections. Court may not cut short Appellant's case by disregarding his affidavit as self-serving. Ridenhour v. State, 1D21-46 (5/18/22)

https://www.1dca.org/content/download/838057/opinion/210046_DC13_05182022_124432_i.pdf

PAROLE-REVIEW-WRIT OF MANDAMUS: Once the commission establishes the initial presumptive parole release date (PPRD), a prisoner has only sixty days to challenge it. After that, the initial PPRD becomes binding. The PPRD may not be changed except for reasons of institutional conduct or the acquisition of new information not available at the time of the initial interview. After that, Defendant may not challenge by writ of mandamus any initial improper calculation of his PPRD, notwithstanding later modification. Clifford v. Florida Commission on Offender Review, 1D21-3871 (5/18/22)

https://www.1dca.org/content/download/838062/opinion/213871_DC05_05182022_125013_i.pdf

APPEAL-POST CONVICTION RELIEF-COUNSEL: Defendant has no absolute right to counsel in post-conviction relief proceedings or appeals from them. Public Defender improperly appointed on appeal. Westfall v. State, 1D22-171 (5/18/22)

https://www.1dca.org/content/download/838063/opinion/220171_NOND_05182022_125222_i.pdf

ALLEN CHARGE: An Allen charge is not required when jury returns a guilty verdict, but during polling, one juror says that she does not agree. Allen charge is only required when there is an impasse, not merely lack of unanimity. Returning the jury for further deliberations is permissible. Blackman v. State, 3D18-1875 (5/18/22)

https://www.3dca.flcourts.org/content/download/838006/opinion/2018-1875_Disposition_115903_DC05.pdf

VIOLATION OF PRETRIAL RELEASE: Defendant who does not post bond may still be found guilty of violating a condition of pretrial release by making phone calls from jail, despite not having been released. The plain language of §§741.29(6) and 903.047(1)(b) support the conclusion that a defendant can violate a condition of pretrial release prohibiting contact with the victim before being released from jail. Caldwell v. State, 4D21-117 (5/18/22)

https://www.4dca.org/content/download/838012/opinion/210117_DC08_05182022_095949_i.pdf

PROBATION-CONDITIONS: Court may not impose a condition of probation that Defendant submit to psychological evaluation where the condition has no relationship to the charged crimes, does not prohibit

conduct that is itself criminal, and does not appear to have any reasonable relationship to Defendant's future criminality. Criminality alone does not justify the imposition of a mental health evaluation as a special condition of probation. Caldwell v. State, 4D21-117 (5/18/22)

https://www.4dca.org/content/download/838012/opinion/210117_DC08_05182022_095949_i.pdf

PROBATION-CONDITIONS-ORAL PRONOUNCEMENT: Where Court orally pronounced a special probation condition requiring the defendant to obtain substance abuse mental health evaluations, but did not orally pronounce that the defendant would be responsible to pay for them, then portion of the written order requiring payment must be stricken. Francois v. State 4D21-2112 (5/18/22)

https://www.4dca.org/content/download/838014/opinion/212112_DC08_05182022_100309_i.pdf

CONDITION OF PROBATION-BIP: Court may not order the Batterer's Intervention Program where the Defendant was convicted of BLEO and Resisting with Violence, not the domestic violence complaint to which the officers had responded. Francois v. State 4D21-2112 (5/18/22)

https://www.4dca.org/content/download/838014/opinion/212112_DC08_05182022_100309_i.pdf

PROBATION-CONDITION-SEX OFFENSE-INTERNET: Court may impose as condition of supervised release for a defendant convicted of a sex offense that Defendant may not possess any medium of digital storage nor the means to access the Internet. USA v. Coglianese, No. 20-12074 (11th Cir.

5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

SENTENCE- SUBSTANTIVE UNREASONABLENESS: Reliance on some §3553(a) factors over others does not necessarily render a sentence unreasonable, nor does the failure to discuss every factor. The bottom of the guideline sentence for a Defendant who enticed a minor, had sex with her despite knowing her age, and then traded nude photos of her is not unreasonable. USA v. Coglianese, No. 20-12074 (11th Cir. 5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

APPEAL-PRESERVATION-OBJECTION: An objection to a condition of supervised release is properly preserved for appeal when it articulates the specific nature of the objection so that the district court may reasonably have an opportunity to consider it. Defendant's objection to "the computer term" (prohibiting Internet access and digital storage devices) is not too broad to apprise the district court of his challenge, and thus to preserve the issue for appeal USA v. Coglianese, No. 20-12074 (11th Cir. 5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

CONDITION OF PROBATION-INTERNET: A condition of supervision which includes a ban on computer and Internet use and on possessing electronic data storage mediums does not unduly restrict a defendant's liberty so long as the defendant has the ability to seek permission from the probation office to use a computer and/or access the internet for specified purposes. USA v. Coglianese, No. 20-12074 (11th Cir. 5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

DEFINITION- "ELECTRONIC DATA STORAGE MEDIUM": An "electronic data storage medium" is a device—such as a flash drive, magnetic disk, floppy disk, hard disk, tape, or optical disk—that can store and transmit information in a form suitable for processing by a computer. USA v. Coglianese, No. 20-12074 (11th Cir. 5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

FYI: Media is the plural of medium. USA v. Coglianese, No. 20-12074 (11th Cir. 5/17/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012074.pdf

DEPORTATION-REVIEW: Federal courts lack authority to review even erroneous BIA judgments about one's eligibility for relief from removal. Patel v. Garland, No. 20-979 (U.S. S. Ct. 5/16/22)

https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf

DEPORTATION (J. GORSUCH, DISSENT): "So under the majority's construction of subparagraph (B)(i), individuals who could once secure judicial review to correct administrative errors at step one in district court are now. . .likely left with no avenue for judicial relief of any kind. An agency may err about the facts, the law, or even the Constitution and nothing can be done about it. . .Until today, courts could correct mistakes like these. But the majority's construction of subparagraph (B)(i) will almost surely end all that and foreclose judicial review for countless law-abiding individuals whose lives may be upended by bureaucratic misfeasance." Patel v. Garland, No. 20-979 (U.S. S. Ct. 5/16/22)

https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf

DEPORTATION-REVIEW (J. GORSUCH, DISSENT): "Altogether, the majority's novel expansion of a narrow statutory exception winds up swallowing the law's general rule guaranteeing individuals the chance to seek judicial review to correct obvious bureaucratic missteps. It is a conclusion that turns an agency once accountable to the rule of law into an authority unto itself. Perhaps some would welcome a world like that. But it is hardly the world Congress ordained." Patel v. Garland, No. 20-979 (U.S. S. Ct. 5/16/22)

https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf

TEXTUALISM (J. BARRETT): "[W]e. . .swerve out of our lane when we put policy considerations in the driver's seat. . .[P]olicy concerns cannot trump the best interpretation of the statutory text." Patel v. Garland, No. 20-979 (U.S. S. Ct. 5/16/22)

https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf

TEXTUALISM (J. GORSUCH, DISSENT): "Often this Court rejects as implausible statutory interpretations that seek to squeeze elephants into mouse holes. . .Today's interpretation seeks to cram a veritable legislative zoo into one clause of one subparagraph of one subsection of our Nation's vast immigration laws." Patel v. Garland, No. 20-979 (U.S. S. Ct. 5/16/22)

https://www.supremecourt.gov/opinions/21pdf/20-979_h3ci.pdf

ANDERS BRIEF: Counsel may not file an Anders brief without supplementing the record with missing transcripts. "[T]he initial absence of

transcripts, including the transcript from the hearing at which LoRusso was first permitted to represent himself, causes us to question whether and how counsel could have asserted that the trial record had been conscientiously examined and that no issues of arguable merit had been found. . . We thus remind appellate counsel of the procedural and ethical requirements involved in the filing of a brief pursuant to Anders and admonish against filing a no merits brief when the record on appeal is incomplete." Lorusso v. State, 2D21-1325 (5/13/22)

https://www.2dca.org/content/download/837656/opinion/211325_DC05_05132022_081459_i.pdf

STAND YOUR GROUND-PROHIBITION-BURDEN OF PROOF: Court improperly required the Defendant to present evidence showing self-defense immunity. However where the error is procedural, such as the Court applying the incorrect evidentiary burden, rather ntan substantive, prohibition is not the appropriate remedy. Defendant must request certiorari If the defendant asserts that on the merits he or she is entitled to immunity, is challenging the legal determinations and factual findings of immunity or lack of immunity, and the relief to be afforded is prohibition against further prosecution, then a petition for writ of prohibition is appropriate to review the claim. However, if the defendant asserts that the trial court applied the wrong procedure, and the relief requested would require remand for further proceedings on the defendant's motion, then certiorari relief is the proper mechanism. Corbett v. State, 5D21-3166 (5/13/22)

https://www.5dca.org/content/download/837671/opinion/213166_DA08_05132022_085106_i.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: A sentence may be substantively unreasonable if it is grounded solely on one factor, relies on impermissible factors, ignores relevant factors in the sentencing context, or balances the relevant factors in an unreasonable manner. Procedural

unreasonableness may be evident when the district court improperly calculates the guideline range, treats the guidelines as mandatory, fails to consider the appropriate statutory factors, bases the sentence on clearly erroneous facts, or fails to adequately explain its reasoning. Defendant's 135-month sentence was not substantively unreasonable. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

SENTENCING-GUIDELINES-QUANTITY OF NARCOTICS: Government meets its burden of establishing the relevant drug quantity by a preponderance of the evidence by convincing the trier of fact that the existence of a fact is more probable than its nonexistence. In making this showing, the government must present reliable and specific evidence. A ledger recovered in the search showing that the conspiracy had distributed approximately 190 kilograms of methamphetamine throughout a six- to seven week period during the course of the fifteen-month conspiracy, plus thirteen kilograms of methamphetamine that were seized in the search of the stash house support the finding of 200 kilograms for guideline purposes. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

APPEAL-ISSUE-PRESERVATION: "As we've said many times, an appellant abandons an issue when he makes only a 'passing reference' to it in his opening brief." USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

CONSPIRACY-WITHDRAWAL: In order to sustain a legally cognizable withdrawal from a conspiracy, a defendant must take steps inconsistent with

the conspiracy and communicate these acts in a manner reasonably calculated to reach the coconspirators, or disclose the illegal activity to law enforcement authorities. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

MINOR ROLE-QUANTITY: Court's determination that Defendant played a minor role in the conspiracy does not imply or compel the conclusion that he could not be held responsible for the full amount of narcotics distributed. Those two determinations are not necessarily mutually exclusive. A participant in a conspiracy may be substantially less culpable than the average participant in the criminal activity while also still being sufficiently involved to be considered a joint participant who may be held culpable for the full quantity of drugs attributed to a conspiracy. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

FIREARM-ENHANCEMENT: Defendant's sentence may be enhanced on the grounds that his co-conspirator had stored a firearm at the stash house. A Defendant may receive a sentencing enhancement for possession of a firearm by a co-conspirator if:(1) the possessor of the firearm was a co-conspirator, (2) the possession was in furtherance of the conspiracy, (3) the defendant was a member of the conspiracy at the time of possession, and (4) the co-conspirator's possession was reasonably foreseeable by the defendant. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

SENTENCING-DOWNWARD DEPARTURE: Court's decision to grant or

deny a defendant a downward departure based on a claim that the guidelines over-represent his criminal history is committed to the court's discretion. Appellate court lacks jurisdiction to review district courts' discretionary decisions in this area. USA v. Rodriguez, No. 20-14681 (11th Cir. 5/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014681.pdf

JUVENILE OFFENDER-LIFE SENTENCE-RE-SENTENCING: Life sentence with possibility of parole for a juvenile offender upon resentencing is lawful where Court considered relevant factors. Kirk v. State, 1D20-3598 (5/11/22)

https://www.1dca.org/content/download/837424/opinion/203598_DC05_05112022_085325_i.pdf

SENTENCING-CONSIDERATIONS: When a defendant voluntarily chooses to allocute at a sentencing hearing, the sentencing court is permitted to consider the defendant's freely offered statements, including those indicating a failure to accept responsibility. Life sentence with 25 year review for juvenile offender is lawful where Defendant gave conflicting versions but ultimately blamed the co-defendant, indicating a failure to take responsibility. Kirk v. State, 1D20-3598 (5/11/22)

https://www.1dca.org/content/download/837424/opinion/203598_DC05_05112022_085325_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to R. 3.850. Sanders v. State, 1D22-747 (5/11/22)

https://www.1dca.org/content/download/837434/opinion/220747_DA08_05112022_090657_i.pdf

RETURN OF PROPERTY: When the defendant seeks the return of seized property as the true owner, the applicable procedure is similar to the procedure for the consideration of a motion for postconviction relief. The trial court first must determine whether the motion is facially sufficient—that it alleges with specificity the property to be returned and "that the property at issue was his personal property, was not the fruit of criminal activity, and was not being held as evidence. Property does not permanently vest with the Sheriff until 60 days after the appellate decision becomes final. O'Connell v. State, 2D20-142 (5/11/22)

https://www.2dca.org/content/download/837437/opinion/200142_DC13_05112022_083753_i.pdf

RETURN OF PROPERTY: §§705.101(6) (defining evidence as unclaimed only if no claim of ownership has been made within the sixty days) and 705.105(1) tacitly create a sixty-day deadline before which a defendant must move for a return of her property, notwithstanding that the motion must be filed within 60 days. O'Connell v. State, 2D20-142 (5/11/22)

https://www.2dca.org/content/download/837437/opinion/200142_DC13_05112022_083753_i.pdf

LIFE SENTENCE-JUVENILE OFFENDER: Eventual freedom to a juvenile offender convicted of a nonhomicide is not required, but the offender must be given some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. A juvenile offender's sentence does not implicate Graham and Miller[v. Alabama, unless it meets the threshold requirement of being a life sentence or the functional equivalent

of a life sentence. 35 years is not the functional equivalent of a life sentence. Nugent v. State, 2D21-2196 (5/11/22)

https://www.2dca.org/content/download/837448/opinion/212196_DC05_05112022_084217_i.pdf

LIFE SENTENCE-JUVENILE OFFENDER: Juvenile offender whose crime occurred before July 1, 2014 is not entitled to sentence review under §921.1402. Nugent v. State, 2D21-2196 (5/11/22)

https://www.2dca.org/content/download/837448/opinion/212196_DC05_05112022_084217_i.pdf

JOA-SALE OF COUNTERFEIT SUBSTANCE: For the State to prove a violation of §831.31(1)(a), the State must present evidence either of some labelling, which contains some identifying mark, number, or likeness of a trademark of a manufacturer other than the person who in fact manufactured the product. Alternatively, the State must prove that the substance is falsely identified as a controlled substance listed in §893.03. Packaging the items to look like crack cocaine does not constitute the necessary false identification of the substance. Graham v. State, 4D21-1763 (5/11/22)

https://www.4dca.org/content/download/837500/opinion/211763_DC13_05112022_102947_i.pdf

HELPFUL INFORMATION: "At trial, the government asked Agent Green to describe what a VCR was—'a unit that would play the VHS tapes,' he responded—and asked him what a VHS tape was. Agent Green explained that 'VHS tapes preceded DVDs for video recordings'; they 'utilized magnetic tape to record audio and video onto them; and they were '6 or 7 inches wide and a few inches deep.'" USA v. Moon, No. 20-13822 (11th Cir. 5/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013822.pdf

SEARCH WARRANT-SCOPE: Videotapes are not too obsolete a technology for a reasonable agent to believe they might contain evidence of pill mill's operations, so officer is justified in viewing them when the warrant includes authorization to seize tapes. USA v. Moon, No. 20-13822 (11th Cir. 5/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013822.pdf

PUBLIC TRIAL: A Defendant may waive his right to a public trial Defendant is not deprived of a public trial when court room is cleared when videos depicting nude children are shown, and Defendant fails to object to the exclusion of the public for related testimony. USA v. Moon, No. 20-13822 (11th Cir. 5/10/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013822.pdf

AIDING AND ABETTING: To prove the Defendant guilty of possession of firearms by a felon–-the guns were taken by his co-defendant in a car burglary while Defendant drove the getaway car--under an aiding and abetting theory, the Government must prove that the Defendant knew that his co-defendant was a convicted felon. Seabrooks v. USA, No. 20-13459 (1th Cir. 5/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013459.pdf

POST-CONVICTION RELIEF: Rehaif announced a new rule of substantive law that applies retroactively to an initial motion to vacate. Seabrooks v. USA, No. 20-13459 (1th Cir. 5/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013459.pdf

PROCEDURAL DEFAULT: To overcome a procedural default, a defendant must show either (1) cause and prejudice, or (2) a miscarriage of justice, or actual innocence. Seabrooks v. USA, No. 20-13459 (1th Cir. 5/6/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013459.pdf

APPEAL: Government may not raise on appeal of Defendant's §2255 motion the the affirmative issue of procedural default where in the lower court the Government included only passing references to procedural default, and the district court did not raise the issue sua sponte. Seabrooks v. USA, No. 20-13459 (1th Cir. 5/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202013459.pdf

APPEAL-PROCEDURAL DEFAULT-PROCEDURAL BAR: The terms "procedurally barred" and "procedurally defaulted" have distinct meanings. A procedural bar prevents a defendant from raising arguments in a §2255 proceeding that were raised and rejected direct appeal. A defendant can overcome a procedural bar when there is an intervening change in law. By contrast, a procedural default occurs when a defendant raises a new challenge to his conviction or sentence in a §2255 motion. If a defendant fails to raise an issue on direct appeal, he may not present the issue in a §2255 proceeding unless his procedural default is excused. To overcome a procedural default, a defendant must show either (1) cause and prejudice, or (2) a miscarriage of justice, or actual innocence. Seabrooks v. USA, No. 20-13459 (1th Cir. 5/6/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202013459.pdf

RULES-AMENDMENT-POST-CONDITION RELIEF-DEATH PENALTY: A capital defendant may waive pending post conviction proceedings but not post conviction counsel, and that a subsequent post conviction motion is allowable to raise certain specified claims after a waiver of pending post

conviction proceedings. A capital defendant may not represent him or herself in state post conviction proceedings. The only basis for a capital defendant to seek to discharge post conviction counsel in state court is pursuant to statute due to an actual conflict of interest, which, if granted, will result in the appointment of conflict-free Counsel In Re: Amendments to Florida Rule of Criminal Procedure 3.851 and Florida Rule of Appellate Procedure 9.142, No. SC21-537 (5/6/22)
https://www.floridasupremecourt.org/content/download/836730/opinion/sc21-537.pdf

CONTEMPT-FTA: Failure to appear pursuant to an order should be treated as indirect criminal contempt, not direct contempt. Brown v. State, 2D20-2651 (5/6/22)
https://www.2dca.org/content/download/836821/opinion/202651_DC08_05062022_084918_i.pdf

DRIVER'S LICENSE SUSPENSION: Where DHSMV permanently suspends Driver's on the basis of the disputed out-of-state conviction for DUI, and tells him that his only review is in the Circuit Court, rather than by any further challenge through agency channels, Driver is entitled to first tier certiorari review in which he could present evidence that no Michigan DUI conviction existed. Both due process and express statutory language entitles Driver to a review of any DHSMV orders in this case within the scope of first-tier certiorari review. Parker v. DHSMV, 2D21-1472 (5/6/22)
https://www.2dca.org/content/download/836825/opinion/211472_DC03_05062022_085644_i.pdf

SENTENCE: A general sentence covering multiple counts is an illegal sentence. A trial court may not impose a single general sentence to cover multiple counts. Garner v. State, 2D21-2009 (5/6/22)
https://www.2dca.org/content/download/836827/opinion/212009_DC08_05062022_085758_i.pdf

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on the claim that counsel failed to convey a plea offer for 20 years in prison with no probation. A plea offer known to trial counsel but not conveyed to the defendant may constitute newly discovered evidence for the purpose of the time limitation for filing a motion under R.3.850. Tribbitt v. State, 2D21-2100 (5/4/22)
https://www.2dca.org/content/download/836583/opinion/212100_DC13_05042022_082724_i.pdf

DEFINITION-"OR": The word "or" is generally construed in the disjunctive when used in a statute or rule. The use of this particular disjunctive word in a statute or rule normally indicates that alternatives were intended. Tribbitt v. State, 2D21-2100 (5/4/22)
https://www.2dca.org/content/download/836583/opinion/212100_DC13_05042022_082724_i.pdf

PRISON RELEASEE REOFFENDER: Apprendi and Alleyne, which hold that any fact that increases the mandatory minimum sentence must be found by a jury, do not include sentencing enhancements for recidivist offenders. The fact of Defendant's date of release from a prior prison sentence is directly derivative of a prior conviction, and need not be found by a jury beyond a reasonable doubt in order for a defendant to qualify as a PRR. Robinson v. State, 2D21-3127 (5/4/22)
https://www.2dca.org/content/download/836587/opinion/213127_DC05_05042022_083024_i.pdf

BINDING PRECEDENT: If the district court of the district in which the trial court is located has decided the issue, the trial court is bound to follow it. A sister district's opinion is merely persuasive. Robinson v. State, 2D21-3127 (5/4/22)
https://www.2dca.org/content/download/836587/opinion/213127_DC05_05042022_083024_i.pdf

INSANITY-DIMINISHED CAPACITY: Florida is a binary state that does not provide for a defense of diminished capacity in any permutation other than a specifically pled defense of insanity. Evidence of Defendant's sickle cell disease and related neurological impairment it is inadmissible in delinquency trial. T.E.B., A Child v. State, 3D21-2218 (5/4/22)
https://www.3dca.flcourts.org/content/download/836604/opinion/212218_DC05_05042022_103115_i.pdf

APPEAL-PRESERVATION: Where Child had proffered, and the court had excluded, evidence of the Child's sickle-cell anemia and related neurological malfunctioning as evidence of diminished capacity, and did not separately move to admit the evidence of the sickle-cell, the exclusion of it is not preserved as an appellate issue. T.E.B., A Child v. State, 3D21-2218 (5/4/22)
https://www.3dca.flcourts.org/content/download/836604/opinion/212218_DC05_05042022_103115_i.pdf

DELINQUENCY-PRIOR BATTERY: A withheld adjudication for simple battery in juvenile court may not be used as a predicate offense to elevate misdemeanor battery to felony battery. T.E.B., A Child v. State, 4D21-2218 (5/4/22)
https://www.4dca.org/content/download/836611/opinion/202699_DC08_05042022_101808_i.pdf

ALLOCUTION: Defendants may make an unsworn statement to the judge prior to the imposition of sentence, but where the Defendant did not request to make a statement until the Court began pronouncing the sentence, her right to allocution was waived. Wattiez v. State, 4D 21-1146 (5/4/22)
https://www.4dca.org/content/download/836613/opinion/211146_DC05_05042022_102338_i.pdf

BATTERY BY STRANGULATION: Evidence that the Defendant helped the victim in the air by her neck in the crook of his arm while she was trying to get a breath is sufficient to establish battery by strangulation. Evidence that

the Defendant impeded victim's breath, rather than cutting iit off entirely is sufficient. Dennis v. State, 4D21-1723 (5/4/22)
https://www.4dca.org/content/download/836615/opinion/211723_DC05_05042022_102751_i.pdf

J.A.C.-EXCEEDING CAP-APPEAL-CERTIORARI: Challenge to denial of JAC attorney's fees must be made by appeal, not cert. Statutory changes render inoperable precedents to the contrary. Weisman v. J.A.C., 1D19-4577 (5/4/22)
https://www.1dca.org/content/download/836669/opinion/194577_DC05_05042022_141817_i.pdf

ATTORNEY'S FEES-J.A.C. RATES: Attorney is not entitled fees in excess of the J.A.C. rate on the ground that the case required extraordinary and unusual efforts and absence of the attorney's unsworn statements, affidavits or documents, or witnesses supporting the Attorney's claim. Weisman v. J.A.C., 1D19-4577 (5/4/22)
https://www.1dca.org/content/download/836669/opinion/194577_DC05_05042022_141817_i.pdf

FREE SPEECH: City which allows different groups to fly their flags in the City Hall plaza may not prohibit the flying of a religious group's flag. When a government does not speak for itself, it may not exclude speech based on religious viewpoint. To do so violates the First Amendment. Shurtleff v. City of Boston, No 20-1800 (5/2/22)
https://www.supremecourt.gov/opinions/21pdf/20-1800_7lho.pdf

DISSING WARREN COURT: "To be fair, at least some of the blame belongs here and traces back to Lemon v. Kurtzman. . . issued during a 'bygone era' when this Court took a more freewheeling approach to interpreting legal texts. . .[T]he only sure thing Lemon yielded was new business for lawyers and judges.". Shurtleff v. City of Boston, No 20-1800 (5/2/22)

https://www.supremecourt.gov/opinions/21pdf/20-1800_7lho.pdf

FREE SPEECH: University violates First Amendment by its "discriminatory harassment" policy which prohibits speech such as "abortion is immoral," that the government "should not be able to force religious organizations to recognize marriages with which they disagree," that "affirmative action is deeply unfair," etc. Viewpoint discrimination is anathematic to the First Amendment. Speech First, Inc. v. Cartwright, No. 21-12583 (11th Cir. 5/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.op2.pdf

FREE SPEECH: "Humans are not smart enough to have ideas that lie beyond challenge and debate." Speech First, Inc. v. Cartwright, No. 21-12583 (11th Cir. 5/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.op2.pdf

FREE SPEECH: A university that turns itself into an asylum from controversy has ceased to be a university; it has just become an asylum. Speech First, Inc. v. Cartwright, No. 21-12583 (11th Cir. 5/2/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.op2.pdf

APRIL 2022

EVIDENCE-DRUGS-JOA: Defendant is entitled to a Judgment of Acquittal on charge of possession of marijuana with the State did not introduce the evidence into evidence. When a defendant is charged with possession of a controlled substance, that substance, if available, must be introduced into evidence. Zetrouer v. State, 2D21-1693 (4/29/22)
https://www.2dca.org/content/download/836190/opinion/211693_DC08_04292022_080732_i.pdf

SENTENCING-SCORESHEET: When the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to

be resentenced using a corrected scoresheet. Zetrouer v. State, 2D21-1693 (4/29/22)
https://www.2dca.org/content/download/836190/opinion/211693_DC08_04292022_080732_i.pdf

POST-CONVICTION RELIEF: Where no evidentiary hearing is held by the post conviction court, an appellate court must accept a defendant's factual allegations contained in the rule 3.850 motion, to the extent that the allegations are not refuted by the record. Court may not enter a summary denial of a legally sufficient motion without attaching records conclusively showing the Defendant is not entitled to relief. Harrell v. State, 5D21-674 (4/29/22)
https://www.5dca.org/content/download/836207/opinion/210674_DC08_04292022_085340_i.pdf

COSTS: A court may not impose $100 cost which is neither part of a plea agreement nor requested by the state. Giddens v. State, 5D21-2267 (4/29/22)
https://www.5dca.org/content/download/836209/opinion/212267_DC05_04292022_085836_i.pdf

SPEEDY TRIAL-HABEAS CORPUS: Defendant is not entitled to federal habeas corpus relief for failure to bring the Defendant to a speedy trial in state court where he had not raised a Sixth Amendment claim in the state court. Defendant must exhaust all state remedies before seeking habeas relief in federal court. Defendant may not complain about the state courts' delay in considering his 6th Amendment claim since he never raised it in the state court. Johnson v. State of Florida, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202013301.pdf

ABSTENTION DOCTRINE: Based on principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings where the state court conviction and/or sentence is not yet final. Johnson

v. State of Florida, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202013301.pdf

BRADY: Defendant is not entitled to a new trial based on the Government's failure to disclose that the arresting officer had been disciplined for mishandling evidence in an unrelated case. Any possible impeachment of the officer would not have affected the verdict in this case. The officer's misconduct in an unrelated case had nothing to do with the evidence in this case, so his lack of credibility would tell the jury nothing about the credibility of the other officers, who did handle evidence in this case. USA v. Clark, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010672.pdf

SEARCH AND SEIZURE: Stop of a vehicle is not unlawful merely because the in car video failed to capture the alleged weaving of Defendant's car. "The problem with Clark's argument is that he seeks to impermissibly heighten the probable cause standard to require officers to have perfect memory as to why they stopped an individual. We decline his implied invitation to raise the standard for probable cause." USA v. Clark, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010672.pdf

JURY INSTRUCTION-REASONABLE DOUBT-INVITED ERROR: When a party affirmatively accepts a jury instruction, any resulting error is invited. Defendant is not entitled to a new trial based on the Court not having instructed the jury that proof that a reasonable doubt is required as to the question of the weight of the methamphetamine. "By separating weight out from the other two elements of the offense, the District Court distanced weight from the beyond-a-reasonable-doubt language in such a way that the jury may have assumed that weight did not need to be proven beyond a reasonable doubt. But, even if we agree with Clark that there was error in the jury instruction, we are powerless to continue in the plain error analysis because Clark invited the error." USA v. Clark, No. 20-13301 (11th Cir.

4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010672.pdf

INVITED ERROR-STRUCTURAL ERROR: "Our Circuit has not decided the interplay between invited error and structural error, but we need not flesh it out today." USA v. Clark, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010672.pdf

POSSESSION OF FIREARM BY FELON-KNOWLEDGE: In possession of a firearm by felon case where Defendant does not stipulate that he is a felon, The court did not abuse its discretion in allowing the admission of 8 certified copies of conviction. "So far as we can tell, no other circuit has addressed how many prior felony convictions are acceptable for the Government to admit after Rehaif. The answer likely depends on the circumstances of each case. As a general matter, though, we think it imprudent to hamstring the Government in the case where a defendant refuses to stipulate to felony status." USA v. Clark, No. 20-13301 (11th Cir. 4/28/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202010672.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Hall v. Florida, which altered the rules for asserting intellectual disability to be executed, does not apply retroactively. Defendant's challenge to his death sentence on the grounds of intellectual disability is untimely. Pittman v. State, SC21-1185 (4/28/22)
https://www.floridasupremecourt.org/content/download/836111/opinion/sc21-1185.pdf

STATUTORY RAPE: Statutory rape is a strict liability offense that does not require the State to prove the defendant knew the minor's age or allow for an affirmative defense based on lack of knowledge. Toyens v. State, 1D21-2754 (4/27/22)
https://www.1dca.org/content/download/836042/opinion/212754_DC05_04272022_141204_i.pdf

HABEAS CORPUS: A criminal defendant cannot proceed pro se on an original petition while represented by counsel in the lower tribunal. Jackson v. State, 1D22-7 (4/27/22)
https://www.1dca.org/content/download/836044/opinion/220007_DA08_04272022_141450_i.pdf

SENTENCE-MISDEMEANOR: Defendant's sentence of life imprisonment in the county jail for a simple battery is erroneous. Defendant's concurrent life sentences to prison for various felonies are not. When the transcript and record establish what the trial court intended a sentence to be, yet its oral pronouncement of sentence did not make plain this intention. Edmonds v. State, 2D20-448 (/27/22)
https://www.2dca.org/content/download/835985/opinion/200448_DC08_04272022_082455_i.pdf

CRIMINAL PUNISHMENT CODE: Sentence points do not authorize imposition of a life sentence for a simple battery conviction under the Criminal Punishment Code. The Criminal Punishment Code does not apply o the simple battery charge because simple battery is a misdemeanor, notwithstanding that there are other felony offenses related to the same criminal episode. Edmonds v. State, 2D20-448 (/27/22)
https://www.2dca.org/content/download/835985/opinion/200448_DC08_04272022_082455_i.pdf

ZOOM: Court may not hold an adjudicatory hearing via Zoom without a case-specific finding of necessity. A.S. v. State, 2D21-460 (4/27/22)
https://www.2dca.org/content/download/835990/opinion/210460_DC13_04272022_082737_i.pdf

COSTS: Court may not assess prosecution costs in excess of $50 absent a showing of higher costs incurred. Sikich v. State, 4D21-1704 (4/27/22)
https://www.4dca.org/content/download/836025/opinion/211704_DC08_0

4272022_095731_i.pdf

COSTS OF SUPERVISION: Court may not impose a $50 costs of supervision; the statutory amount is $40. Sikich v. State, 4D21-1704 (4/27/22)
https://www.4dca.org/content/download/836025/opinion/211704_DC08_04272022_095731_i.pdf

SENTENCING-GUIDELINES-MAINTAINING RESIDENCE: Defendant need not reside onthe premises for the purposes of distributing drugs for the entire conspiracy to be eligible for the sentencing enhancement under §2D1.1(b)(12); he merely needed to do so for a portion of the conspiracy. USA v. Thomas, No. 19-11670 (11th Cir. 4/25/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201911670.pdf

SAFETY VALVE- FIREARM ENHANCEMENT: Not all defendants who receive the firearm enhancement under §2D1.1(b)(1) are precluded from relief under the safety valve; one may still secure safety valve relief upon a showing that it is more likely than not that the possession of the firearm was not in connection with the offense. USA v. Thomas, No. 19-11670 (11th Cir. 4/25/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201911670.pdf

COSTS: Court improperly imposed a $100 cost of investigation in the absence of a request by the State. Scaggs v. State,5D21-2842 (4/22/22)
https://www.5dca.org/content/download/835705/opinion/212842_DC05_04222022_084402_i.pdf

EQUAL PROTECTION: The equal-protection component of the Fifth Amendment's Due Process Clause does not require that SSI benefits be made available to residents of Puerto Rico to the same extent that they are available to residents of the States. Puerto Rican resident who moved from

New York to the island must repay $28,000 in SSI benefits accrued after he moved to the island. USA v. Madero, (4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

EQUAL PROTECTION (J. THOMAS, CONCURRING): "I write separately to address the premise that the Due Process Clause of the Fifth Amendment contains an equal protection component whose substance is 'precisely the same' as the Equal Protection Clause of the Fourteenth Amendment. . . Although I have joined the Court in applying this doctrine, . . I now doubt whether it comports with the original meaning of the Constitution." "[T]he Fifth Amendment's text and history provide little support for modern substantive due process doctrine." USA v. Madero, (4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

EQUAL PROTECTION-TERRITORIES (J. GORSUCH, CONCURRING): "A century ago in the Insular Cases, this Court held that the federal government could rule Puerto Rico and other Territories largely without regard to the Constitution. It is past time to acknowledge the gravity of this error and admit basedwhat we know to be true: The Insular Cases have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law." USA v. Madero, (4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

EQUAL PROTECTION-TERRITORIES (J. GORSUCH, CONCURRING): "The flaws in the Insular Cases are as fundamental as they are shameful. . .The Insular Cases can claim support in academic work of the period, ugly racial stereotypes, and the theories of social Darwinists. But they have no home in our Constitution or its original understanding." USA v. Madero, (4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

INSULAR CASES: I hope the Court will soon recognize that the

Constitution's application should never turn on. . .the misguided framework of the Insular Cases.. . .[T]he time has come to recognize that the Insular Cases rest on a rotten foundation. And I hope the day comes soon when the Court squarely overrules them." USA v. Madero, (4/21/22) https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

TERRITORIES-CAPITAL "T" (J. GORSUCH, CONCURRING): "When Congress supposedly 'incorporated' Hawaii as a Territory, it included Palmyra, then a Hawaiian possession. . .Ultimately, however, the atoll was not folded into Hawaii on statehood, and it remained under federal control. . . So today our bureaucracies endow that Territory alone a capital "T" in their official lists while the others, Puerto Rico included, earn only a lowercase "t." USA v. Madero, (4/21/22) https://www.supremecourt.gov/opinions/21pdf/20-303_6khn.pdf

HABEAS CORPUS-AEDPA: Where the state court had ruled on the merits (that the Defendant's shackling during trial did not effect the verdict), Defendant is not entitled to federal habeas corpus relief. Court must look beyond the Brecht rule (that a state prisoner seeking to challenge his conviction in collateral federal proceedings must show that the error had a substantial and injurious effect or influence on the outcome of the trial) and apply the AEDPT rule. Brecht and AEDPA ask analytically distinct questions. Both tests must be satisfied before habeas relief becomes permissible. Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22) https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

WRIT OF HABEAS CORPUS: History of the Writ of Habeas Corpus explained. Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22) https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

DICTA: The language of an opinion is not always to be parsed as though we were dealing with the language of a statute. Defendant and the dissent "would have override a lawful congressional command. . .on the basis of a

handful of sentences extracted from decisions that had no reason to pass on the argument Mr. Davenport presents today. We neither expect nor hope that our successors will comb these pages for stray comments and stretch them beyond their context. . .Such an exalted view of this Court's every passing remark would turn stare decisis from a tool of judicial humility into one of judicial hubris." Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

JUDICIAL SNIPING (J. SOTOMAYOR, DISSENTING): "Because the majority begins with some law-chambers history. . .I do too—though fair warning: My discussion is no more relevant than the majority's to the issue before us. Not surprisingly, neither of the parties to this small and legally mundane case thought it a suitable occasion for a from-Blackstone-onward theory of habeas practice." Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

JURISPRUDENCE (J. SOTOMAYOR, DISSENTING): "I hate to assign homework to readers of Supreme Court opinions, but if you don't know what to make of the majority's and my contrasting descriptions of Fry and Ayala: well, just go read them." Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

HABEAS CORPUS (J. SOTOMAYOR, DISSENTING): All today's holding does going forward is compel habeas courts, and the parties before them, to spin their wheels. . .Of course, it is not the worst thing in the world to have to do unnecessary work of this kind. . . But really, why should they have to?" Brown v. Davenport, No. 20-826 (U.S. S. Ct. 4/21/22)
https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

FREE SPEECH: University policy prohibiting "discriminatory harassment"

or "Bias-Relatred incidents" violate the First Amendment. The discriminatory-harassment policy objectively chills speech because its operation would cause a reasonable student to fear expressing potentially unpopular beliefs. Neither formal punishment nor the formal power to impose it is strictly necessary to exert an impermissible chill on First Amendment rights—indirect pressure may suffice. Speech First, Inc. v. Cartwright, No. 21-12583 (4/21/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.pdf

FREE SPEECH: "Nowhere is free speech more important than in our leading institutions of higher learning. Colleges and universities serve as the founts of—and the testing grounds for—new ideas. Their chief mission is to equip students to examine arguments critically and, perhaps even more importantly, to prepare young citizens to participate in the civic and political life of our democratic republic." Speech First, Inc. v. Cartwright, No. 21-12583 (4/21/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.pdf

FREE SPEECH (CONCURRENCE): "History provides us with ample warning of those times and places when colleges and universities have stopped pursuing truth and have instead turned themselves into cathedrals for the worship of certain dogma. By depriving itself of academic institutions that pursue truth over any other concern, a society risks falling into the abyss of ignorance. Humans are not smart enough to have ideas that lie beyond challenge and debate. . .A university that has placed its highest premium on the protection of feelings or safe intellectual space has abandoned its core mission. The protection of feelings or the creation of safe space rightly might be the foremost goal in some settings, like at a family dinner, but it is not right for a university." Speech First, Inc. v. Cartwright, No. 21-12583 (4/21/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.pdf

FREE SPEECH: "A university that turns itself into an asylum from

controversy has ceased to be a university; it has just become an asylum." Speech First, Inc. v. Cartwright, No. 21-12583 (4/21/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202112583.pdf

SENTENCING-UPWARD VARIANCE: Court erred in failing to state facts on which it based its upward variance and to elicit fully articulated objections to the court's ultimate findings of fact and conclusions of law. Re-sentencing required where the Court's written Statement of Reasons included the fact that the weapon used had been stolen from the police department where such fact was neither articulated, included in the PSR, nor discussed during the sentencing hearing. USA v. Mosely, No. 20-11146 (11th Cir. 4/21/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011146.pdf

MOTION TO SUPPRESS-STANDARD OF REVIEW: The standard of review of a district court's finding of satisfactory explanation for officer's delay in sealing the wiretap recordings is mixed. Recordings held by the clerk in an unopened tamper-proof evidence bag is sufficiently sealed. A separate, written sealing order is not required. USA v. Stowers, No. 18-12569 (11th Cir. 4/20/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201812569.pdf

WIRETAP-SEALING: A delay in sealing should be excused if the government provides a satisfactory explanation for the delay. The government must explain not only why a delay occurred but also why it is excusable. The reasons for the delay here, including that the government thought that it had to finish making transcripts and copies first. USA v. Stowers, No. 18-12569 (11th Cir. 4/20/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201812569.pdf

WIRETAP-JURISDICTION: An interception of phone calls occurs both where the call is heard and at the location of the targeted phone when it makes or receives a call. The safeguard on the scope of state court's

wiretap authority is the requirement that law enforcement establish probable cause for the intrusion, not a geographical limit on the phone calls that can be monitored. USA v. Stowers, No. 18-12569 (11th Cir. 4/20/22) https://media.ca11.uscourts.gov/opinions/pub/files/201812569.pdf

PRECEDENTS: State courts are not bound by the decisions of the lower federal courts on issues of federal law. USA v. Stowers, No. 18-12569 (11th Cir. 4/20/22) https://media.ca11.uscourts.gov/opinions/pub/files/201812569.pdf

POST CONVICTION RELIEF: Videotaped out-of-court interviews with child victims are not allowed into the jury room during deliberations because of the real danger that the child's statements will be unfairly given more emphasis than other testimony. Where defense counsel failed to object to the video being taken to the jury room for tactical reasons, claim of ineffective assistance fails. State v. Mackendrick, 1D20-3362 (4/20/22) https://www.1dca.org/content/download/835524/opinion/203362_DC13_04202022_141353_i.pdf

POST CONVICTION RELIEF-REDACTION: Defendant is not entitled to post conviction relief for failure to redact CPT video to delete references to two other possible victims where victim conceded to the CPT interviewer that she did not really know if Defendant had done anything to "Stormy" or "Sabrina." State v. Mackendrick, 1D20-3362 (4/20/22) https://www.1dca.org/content/download/835524/opinion/203362_DC13_04202022_141353_i.pdf

POST CONVICTION RELIEF-EXPERT: Defendant is not entitled to post conviction relief for failure to retain an expert to testify that Victim, if penetrated, would have suffered some injury. Lawyers have limited time and resources, and so must choose from among countless strategic options. Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite

expert from the defense. State v. Mackendrick, 1D20-3362 (4/20/22) https://www.1dca.org/content/download/835524/opinion/203362_DC13_04202022_141353_i.pdf

JURY INSTRUCTION-DEALING IN STOLEN PROPERTY: The inference instruction–-sale of goods substantially below fair market value gives rise to an inference of knowledge that the goods were stolen-- should not be given unless there is evidence of the fair market value of the stolen property. An owner's estimate of the value of the property when no other proof is presented is insufficient to prove the fair market value. New trial required. Cintron v. State, 2D21-40 (4/20/20) https://www.2dca.org/content/download/835435/opinion/210040_DC13_04202022_084917_i.pdf

JURY INSTRUCTION-DEALING IN STOLEN PROPERTY: Instruction that "proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business. . .unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen" is improper when the Defendant in not a "dealer in property." An Amazon truck dispatcher is not a "dealer in property." A person who, on one occasion, buys property from another and then sells the property is not a dealer in the business of buying and selling property. Cintron v. State, 2D21-40 (4/20/20) https://www.2dca.org/content/download/835435/opinion/210040_DC13_04202022_084917_i.pdf

HABITUAL OFFENDER-NVDL WITH DEATH: No valid driver's license with death or serious bodily injury is a third degree felony which cannot be enhanced as a Habitual Offender. Ten year imprisonment is not lawful. Welch v. State, 2D21-463 (4/20/22) https://www.2dca.org/content/download/835439/opinion/210463_DC08_04202022_085626_i.pdf

POST-CONVICTION RELIEF-PLEA OFFER: Failure of counsel to convey a plea offer can constitute ineffective assistance of trial counsel. To establish prejudice, the movant must allege and prove a reasonable probability that (1) he or she would have accepted the offer, (2) the prosecutor would not have withdrawn the offer, (3) the court would have accepted the offer, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Court improperly reasoned that the Defendant would not have accepted the 3 year prison offer because he had hired an attorney to get a probationary offer. Kalogianis v. State, 2D21-3770 (4/20/22)
https://www.2dca.org/content/download/835457/opinion/213770_DC13_04202022_090100_i.pdf

JURY SELECTION-PEREMPTORY CHALLENGE: When giving the Defendant an 11th peremptory challenge, Court does not abuse its discretion in similarly awarding an 11th peremptory challenge to the State. Montgomery v. State, 4D18-2379 (4/20/22)
https://www.4dca.org/content/download/835471/opinion/182379_DC05_04202022_095143_i.pdf

MURDER-PREMEDITATION: Premeditation is established by evidence that Defendant told his wife, "I should shoot you," and told his grandmother, "I know how to get you out of here" before fetching his rifle and shooting his stepdaughter 8 times, then his wife 7 to 8 times. Montgomery v. State, 4D18-2379 (4/20/22)
https://www.4dca.org/content/download/835471/opinion/182379_DC05_04202022_095143_i.pdf

JUROR-SEQUESTRATION: Defendant is not entitled to a mistrial based on a hotel employee entering a sequestered juror's room at night to retrieve an invoice. Montgomery v. State, 4D18-2379 (4/20/22)
https://www.4dca.org/content/download/835471/opinion/182379_DC05_0

4202022_095143_i.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH: The fact that some personal items discovered in the search were returned to Defendant's girlfriend does not vitiate the inventory search. Cross v. State, 4D21-1149 (4/20/22)
https://www.4dca.org/content/download/835479/opinion/211489_DC05_04202022_100507_i.pdf

MICHIGAN: Michigan is part of the United States[1]. "Hakim refused to admit that he was a United States citizen and instead affirmed only that he was 'a citizen of Detroit, Michigan, born and raised, in the Michigan republic. . . But see Definitive Treaty of Peace Between the United States of America and his Britannic Majesty, U.S.-Gr. Brit., arts. I–II, Sept. 3, 1783, 8 Stat. 80; An Act to admit the State of Michigan into the Union, ch. 6, 5 Stat. 144 (1837)." USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

WAIVER OF COUNSEL: Defendant's purported waiver of his right to counsel was not knowing where Court gives materially incorrect or misleading information about his potential maximum sentence, i.e, where the magistrate wrongly informs him that the maximum sentence is 12 months when, if stacked consecutively, 36 months is possible. USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

KNOWING WAIVER OF ATTORNEY: A defendant must have an awareness of the penal consequences of conviction before his decision to represent himself can constitute a knowing waiver of his Sixth Amendment right to counsel. Defendant's unknowing waiver of right to counsel at

arraignment is structural error. Court's acceptance of an invalid waiver of the Sixth Amendment right to counsel is not subject to harmless error analysis. Conviction vacated. USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

OBSCURANTISM: Example of obscurantism: "I am Saleem Naazir, family of Hakim, a living male on the land and soil jurisdiction, as one of the people of the several states, having owner's equity and beneficial interest in the all caps style, Capitis Diminutio Maxima Saleem Naazir Hakim, which is an ens legis aka Saleem N. Hakim, all caps, and aka Saleem Hakim, who is allegedly being charged here as a defendant." USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

CONTEMPORANEOUS OBJECTION RULE: Defendant is not obliged to contemporaneously object to the validity of his own waiver of attorney because he lacked an opportunity to object to that ruling. "It makes no sense to suppose that a defendant must have enough knowledge to object before he is advised of the dangers of proceeding without the assistance of counsel. . .It would be nonsensical to require that a prospective pro se defendant object to the district court's inquiry into the defendant's rationale and ability to proceeding pro se." USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

DEFINITION-"CONTEMPORANEOUS": "Contemporaneous" means "living, occurring, or existing at the same time."). USA v. Hakim, No. 19-

11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

WAIVER OF ATTORNEY-PLAIN ERROR (DISSENT): Plain error review should apply where a defendant challenges the validity of his right-to-counsel waiver for the first time on appeal where the Defendant was ultimately represented by counsel before trial and still failed to challenge his earlier waiver. USA v. Hakim, No. 19-11970 (11th Cir. 4/14/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911970.pdf

SEXUAL BATTERY-FAMILIAL OR CUSTODIAL AUTHORITY: Teacher did not stand in familiar or custodial authority over student with whom he established a sexual relationship where the sexual acts occurred off campus. The fact that the events occurred during the school year is insufficient in and of itself to establish custodial authority these events occurred during the school year. "We note that had Teet been charged with the same conduct today, pursuant to section 800.101, Florida Statutes (2018), custodial authority would not have been an issue." Teet v. State, 5D21-735 (4/14/14)

https://www.5dca.org/content/download/835054/opinion/210735_DC13_04142022_083916_i.pdf

STATEMENTS OF DEFENDANT-CUSTODY-MIRANDA: Defendant was not in custody when interrogated in a police van after officers raided his home after identifying the IP address (from which adolescent girls had been extorted to make pornographic images and videos). Admissions are not suppressible. Even if a reasonable person would not have felt at liberty to leave, one may still be deemed not in custody if the relevant environment does not present the same inherently coercive pressures as the type of

station house questioning at issue in Miranda. Only if the environment presented the same inherently coercive pressures are the warnings required. USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

STATEMENTS OF DEFENDANT-CUSTODY-MIRANDA: The actual, subjective beliefs of the defendant and the interviewing officer on whether the defendant was free to leave are irrelevant. USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

STATEMENTS OF DEFENDANT-CUSTODY-MIRANDA: Neither the brief handcuffing and detention of the Defendant, the large number of officers, the confiscation of his cell phone, nor the hour-long questioning in the police van render the Defendant in custody. "To be sure, the hour-long interview falls along

the spectrum between questioning that lasts 'only a few minutes' and the prolonged station house interrogations 'in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek. . .But 'there is no fixed limit to the length of questioning' after which an interrogation is necessarily custodial." USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: 50 year sentence for Defendant who infiltrated social media accounts of hundreds of adolescent girls one by one, using an account of the victims' friends to gain access to their accounts, locking them victim out of the accounts, and

demanding that they produce pornographic material to get their accounts back, where the recommended guideline range is between or 30 to 117 years, is not substantively unreasonable. USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: Court need not explain why it was imposing a sentence at any particular point within the sentencing range. If a sentencing range exceeds 24 months, the district court must state the reason for imposing a sentence at a particular point within the range, but need not state that a particular factor is not applicable in a particular case. The requirement is satisfied where the record reflects that the district court considered many of the §3553(a) factors. USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

SENTENCING: Defendant is not entitled to a sentence near the bottom of the guidelines because he did not target prepubescent children. "That argument is shocking. Through technology, Woodson and his team tapped into the vulnerabilities of hundreds of girls, and then degraded, humiliated, and threatened them. We cannot discern how his methods diminish the seriousness—indeed, the depravity—of his offenses." USA v. Woodson, No. 20-10443 (11th Cir. 4/13/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202010443.pdf

AUTHENTICATION-VOICE MAIL: Testifying about a phone call does not require authentication if the call is within the witness's personal knowledge. Victim may testify that the call was from the Defendant. Patterson v. State,

1D21-832 (4/13/22)

https://www.1dca.org/content/download/835000/opinion/210832_DC05_04132022_141832_i.pdf

HFO-CONSECUTIVE SENTENCES: Court may not sentence Defendant as a habitual felony offender to two consecutive thirty-year sentences for attempted manslaughter with a firearm. Court may not designate him as an HFO and then further increase the sentence by running the two HFO-enhanced terms consecutively. Upon remand, Court may impose a maximum sentence of thirty years for count one, with a fifteen-year minimum mandatory term, based on the HFO designation, and a consecutive term of fifteen years in state prison for count two as a Prison Releasee Reoffender, for a total sentence of forty-five years in state prison. Harris v. State, 1D20-829 (4/13/22)

https://www.1dca.org/content/download/834998/opinion/200829_DC13_04132022_141413_i.pdf

LESSER INCLUDED: It is not fundamental error to convict a defendant under an erroneous lesser included charge when he had a chance to object and failed to do so when the improperly charged offense is lesser in degree and penalty than the main offense or defense counsel requested the improper charge or relied on it. Robinson v. State, 1D20-2614 (4/13/22)

https://www.1dca.org/content/download/834999/opinion/202614_DC08_04132022_141610_i.pdf

RETROACTIVITY-ENHANCEMENT-AGGRAVATED ASSAULT WITH FIREARM: The 2016 amendment to the 10-20-Life statute to remove aggravated assault from the list of enumerated offenses does not apply

retroactively. Pappas v. State, 1D21-1596 (4/13/22)

https://www.1dca.org/content/download/835002/opinion/211596_DC05_04132022_142145_i.pdf

RETROACTIVITY: The analysis of retroactive application of constitutional changes in the law as provided in Witt is misplaced as to statutory law. Pappas v. State, 1D21-1596 (4/13/22)

https://www.1dca.org/content/download/835002/opinion/211596_DC05_04132022_142145_i.pdf

POST-CONVICTION RELIEF: Counsel's failure to renew objection to certain testimony is not ineffective where counsel elicited testimony from other witnesses on the point. Knowles v. State, 1D21-3051 (4/13/22)

https://www.1dca.org/content/download/835004/opinion/213051_DC05_04132022_142528_i.pdf

VETERANS COURT: Where Defendant qualifies for the pretrial veteran's treatment intervention court program (PVTIP), Court may not rely upon the State's rejection of the Defendant's admittance into it, but rather must exercise its discretion to determine whether the Defendant qualifies for admission. §948.16(2)(a), as it previously existed, does not confer authority upon the State to approve or disapprove of the admission of any eligible veteran charged with any misdemeanor, including a DUI, into the misdemeanor PVTIP [NOTE: the statute has since been amended]. Allowing the State to act as gatekeeper and divert veterans charged with misdemeanor DUIs only to the postadjudicatory veterans' intervention program departs from the requirements of law. Maderi v. State, 2D21-957 (4/13/22)

https://www.2dca.org/content/download/834939/opinion/210957_DC03_04132022_083428_i.pdf

LIFE FELONY: Kidnapping is a 1st PBL, enhanced to a life felony by the use of a firearm. For a life felony unless sentenced to life, the maximum sentenced the Defendant can receive is 40 years. A 50 year sentence for a life felony is unlawful. Ryan v. State, 2D21-1572 (4/13/20)

https://www.2dca.org/content/download/834943/opinion/211572_DC08_04132022_083534_i.pdf

BOND-REMISSION: Court shall order remission of the forfeiture if it determines that there was no breach of the bond and when application for remission occurs within two years from the forfeiture. Where bondsman reaches the bond by failing to pay the forfeiture within sixty days of the notice of forfeiture, bondsman is not entitled to remission. Clerk of Court v. U.S. Specialty Insurance Company 2D21-1769 (4/13/22)

https://www.2dca.org/content/download/834944/opinion/211769_DC13_04132022_083633_i.pdf

SUBPOENA DUCES TECUM-VIDEOS: In DUI case, video camera recordings of the police station at the time of Defendant's arrest may be exempt from disclosure pursuant to a public records request under the "security system plan" exemption, but only following *in camera* review. When certain statutory exemptions are claimed by the party against whom the public records request has been filed or when doubt exists as to whether a particular document must be disclosed, the proper procedure is to furnish the document to the trial judge for an in camera inspection. City of Miami v. Blanco, 3D22-295 (4/13/22)

https://www.3dca.flcourts.org/content/download/834967/opinion/220295_DC03_04132022_101938_i.pdf

MARSY'S LAW: Defendant, sentenced to life upon his conviction for felony murder based on the death of his accomplice during a burglary, is not entitled to a resentencing on the claim that the victim's mother's wish that he be given fifteen years was not adequately considered in violation of Marcy's Law. The State must satisfy the requirements of Marsy's Law, but those requirements do not limit prosecutorial discretion. Defendant's conviction and sentence are affirmed. Dean v. State, 4D20-2706 (4/13/22)

https://www.4dca.org/content/download/834977/opinion/202706_DC05_04132022_100141_i.pdf

OH, MY: "A trust-based system is only as good as the people who are trusted. Douglas Moss is one of those who was trusted but not trustworthy." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

OH MY: "He appeals, challenging the convictions, sentence, restitution amount, and forfeiture amount, which is nearly every component of the judgment against him. And he loses on every component of his appeal." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

OH MY: "The jury also heard evidence about how the representations Moss made in the billings were impossible: his claiming to have performed more than 24 hours of services a day, his claiming to have seen over 50 patients

a day, and his claiming to have seen patients in Georgia when he was actually in Las Vegas." "The services Moss billed on one stellar day would have required him to put in nearly 100 hours in that one 24-hour period. People sometimes wish there were more hours in a day, but Moss alone miraculously stretched some of his days to far more than 24 hours." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

APPEAL-PROCEDURE: When an opinion of the court includes a citation to materials available on a website, the writing judge will send a copy of the cited internet materials to the clerk for placement on the docket. USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

ATTORNEY-SUBPOENA: Court did not err in quashing subpoena on the attorney for the purpose of impeaching on whether the witness had been instructed to hold back evidence in his proffer. The attorney and witness both said that he had so instructed him. "That's agreement not disagreement, corroboration not contradiction." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

CHARACTER WITNESS: Court did not err in limiting Defendant's character witnesses to five. USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

ARGUMENT: In Medicare fraud case, Court did not err in cutting off Defense counsel's argument that Defendant had not profited. "It is one thing to argue that a defendant was not motivated by profit and another to argue that he didn't commit a crime because there was no proof that he had netted a profit. . . The government does not have to prove a penny of profit to establish the elements of fraud. A paucity of proof of profit is no defense. Defense counsel was not entitled to argue that it was." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

SENTENCING-GUIDELINES-LOSS: In calculating loss for the purpose of guidelines calculations in Medicare fraud case, Court may determine the amount paid to the doctor, then deduct by percentage which the Court estimates as being the value of legitimate services performed. A district court need not make a precise determination of loss amount, but only a reasonable estimate of it given the available information. USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

LOSS: "Loss" is the greater of actual loss or intended loss. "Intended loss" is the pecuniary harm that the defendant purposely sought to inflict, including pecuniary harm that would have been impossible or unlikely to occur. When it comes to federal health care offenses involving government health care programs there is a rebuttable presumption that the intended loss equals the amount the defendant billed a government agency. The aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss. USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

OH MY!-RESTITUTION-MEDICAL FRAUD: "The burden was on Moss to show that the services he provided were medically necessary. . .Because of that, it does not matter how many medically unnecessary visits Moss and his employees may have made to patients, which was the basis of Moss' estimate. Zero times a thousand is still zero. Because Moss' estimate failed to embrace, salute, or even nod at medical necessity, the district court did not clearly err in giving it little or no value." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

FORFEITURE: Just because the loss and restitution amounts were reduced by 10 percent does not necessarily mean the forfeiture amount must be. Unlike restitution, forfeiture is also a punitive action against the defendant. Forfeiture may encompass the proceeds doctor who committed Medicare fraud received for providing legitimate services. USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

DEFINITION-"BUT FOR": "But for" means that if one thing hadn't happened another thing would not have happened. In other words, a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause. "[T]ake away the fraudulent billing and what's left? The record does not reveal any of Moss' claims that were both for legitimate services and properly billed. . .Not a single one. As far as the record shows, it's all fraudulent billing." USA v. Moss, No. 19-14548 (11th Cir. 4/12/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914548.pdf

WILLIAMS RULE: Evidence at the same firearm was used in 4 separate murders is not admissible to establish modus operandi, but is admissible to establish identity where the fatal shootings occurred in close temporal and geographic proximity and the victim's seem to be randomly chosen. The fact that the same gun was used in each of the homicides makes the evidence relevant to establish Defendant's identity as the perpetrator without any heightened similarity requirement. State v. Donaldson, 2D21-5 (4/8/22)

https://www.2dca.org/content/download/834574/opinion/211195_DC03_04082022_081730_i.pdfIN

CERTIORARI: State may challenge order excluding Williams rule evidence by pretrial petition for writ of certiorari. State v. Donaldson, 2D21-5 (4/8/22)

https://www.2dca.org/content/download/834574/opinion/211195_DC03_04082022_081730_i.pdfIN

POST-CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to an evidentiary hearing on claim of newly discovered evidence. Generally, it is inappropriate to determine a witness's credibility without a hearing. Black v. State, 5D21-2144 (4/8/22)

https://www.5dca.org/content/download/834598/opinion/212144_DC13_04082022_084549_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is not entitled to hearing on claim of newly discovered evidence where the only new information was that the State had provided a witness with a hotel room, meals, and $300 in cash during the first trial. Valentine v. State, SC20-1905 (4/7/22)

https://www.floridasupremecourt.org/content/download/834503/opinion/sc20-

1805.pdf

POST CONVICTION RELIEF-BRADY: To prevail on a Brady claim, Defendant must show that favorable evidence which is exculpatory or impeaching was suppressed. Where, as here, evidence would not likely produce an acquittal on retrial Defendant is not entitled to relief. Valentine v. State, SC20-1905 (4/7/22)

https://www.floridasupremecourt.org/content/download/834503/opinion/sc20-1805.pdf

COSTS-ATTORNEY'S FEE: Court may not order Defendant to pay a $26,000 fee to Justice Administration Commission, which is the amount JAC ultimately paid the Defendant's conflict counsel. "We have found nothing in that statute. . .that would permit imposition of the fee against Appellant personally, and recovery from both the JAC and Appellant would be impermissible. Further briefing ordred. Davis v. State, 1D20-3013 (4/6/22)

https://www.1dca.org/content/download/834422/opinion/203013_NOND_04062022_140900_i.pdf

POST CONVICTION RELIEF: Defendant who was charged with capital sexual battery (victim under 12 yoa) is properly convicted of the lesser included offense of Lewd and Lascivious Battery, which extends to enticing a child under the age of sixteen to engage in sexual activity. Nixon v. State, 1D22-242 (4/6/22)

https://www.1dca.org/content/download/834436/opinion/220242_DC02_04062022_144645_i.pdf

SEARCH AND SEIZURE-PROLONGED DETENTION: Canine sniff search did not unlawfully prolong the stop where it takes about 5 minutes to write a citation for cutting through a parking lot. Creller v. State, 2D19-3085 (4/6/22)

https://www.2dca.org/content/download/834347/opinion/193085_DC13_04062022_084010_i.pdf

SEARCH AND SEIZURE: Officer unlawfully ordered the Defendant out of his vehicle where he was stopped for cutting through a parking lot. Officer safety does not justify removing the Defendant from his car where it is clear that the safety issue was not related to the issuance of the traffic citation but rather to the vehicle sweep. The government's officer safety interest stems from the mission of the traffic stop itself whereas on-scene investigation into other crimes detours from that mission and a seizure would not be justified for that purpose even if necessitated by officer safety. Conflict certified. Creller v. State, 2D19-3085 (4/6/22)

https://www.2dca.org/content/download/834347/opinion/193085_DC13_04062022_084010_i.pdf

ZOOM HEARING: A hearing conducted by Zoom is lawful if the Court makes a case-specific finding of necessity. M.M. v. State, 2D20-3626 (4/6/22)

https://www.2dca.org/content/download/834350/opinion/203626_DC08_04062022_084557_i.pdf

VOP-SELF-REPRESENTATION: Order finding the Defendant in violation of probation is reversed where The court asked Defendant if he wanted counsel be appointed but did not conduct a Faretta hearing. Failing to

inquire whether a probationer has knowingly and intelligently waived the right to counsel constitutes fundamental error requiring reversal. White v. State, 2D21-1211 (4/6/22)

https://www.2dca.org/content/download/834351/opinion/211211_DC13_04062022_084710_i.pdf

PRISON RELEASEE REOFFENDER: Burglary of a conveyance with an assault or battery does not qualify as a predicate offense under the catchall provision of §775.082(9)(a)1.o. Smith v. State, 3D21-1897 (4/6/22)

https://www.3dca.flcourts.org/content/download/834376/opinion/211897_NOND_04062022_102239_i.pdf

SEARCH AND SEIZURE-PAT-DOWN: Officer may not pat down juveniles after stopping them for a non-criminal infraction of riding their bicycles without lights at 3:40 in the morning. M.S., a Child v. State, 4D21- 2215 (4/6/22)

https://www.4dca.org/content/download/834384/opinion/212215_DC13_04062022_095314_i.pdf

SEARCH AND SEIZURE-CONSENT: Consent can be non-verbal; stepping aside and yielding the right-of-way to officers at the front door is valid consent to enter and search, as is silently accepting an officer's expressed intent to enter the house solely for the purpose of retrieving a phone. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCING-MILITARY CONVICTION: A previous conviction under Article 120 (pertaining to sundry sex crimes) of the Uniform Code of Military Justice is a qualifying offense under 18 U.S.C. § 2251(e). Defendant's "position is not correct because its central premise is that the statute doesn't really mean what it clearly says. A conviction under Article 120 of the Uniform Code of Military Justice is on that list, plain as day. . . The gist of his argument is that there was only a brief period during which his conduct would have triggered the §2251 enhanced penalty; he does not dispute that his conduct occurred during that period." USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCING-ENHANCEMENT: Defendant who had child victim make videos of herself inserting foreign objects into her vagina is subject to the 4-level increase under §2G2.1(b)(4) for production of child pornography that portrays sadistic or masochistic conduct. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCING-ENHANCEMENT-SEXUAL ACT: Defendant argues that he is not subject to a 2-level increase under §2G2.1(b)(2)(A) because he did not touch, penetrate, or film the two victims and their masturbation, and therefore it would "not amount to a sexual act or sexual contact within the meaning of the guidelines provision. Yes it does." USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

DOUBLE JEOPARDY: Defendant argues that he should not be sentenced

for violating both 18 U.S.C. §2251 and §2422 based on his criminal conduct of enticing two minors to make lewd videos because the statutes have identical elements. "No, they don't." USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

DOUBLE JEOPARDY: §2422(b) requires the government to prove that he defendant attempted to persuade a minor to engage in sexual activity for which any person can be charged with a criminal offense. This element is not found in §2251. And §2251 requires the government to prove that the defendant attempted to persuade a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. This element is not contained in §2422(b). Blockburger. Defendant may be convicted of both. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCING-ENHANCEMENT-SEXUAL CONTACT: The plain meaning of 'sexual contact' under U.S.S.G. §2G2.1(b)(2)(A) and 18 U.S.C. §2246(3) includes the act of masturbating. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCING-ENHANCEMENT-PATTERN OF SEXUAL CONDUCT: Defendant "challenges a 5-level increase under U.S.S.G. § 4B1.5(b)(1) for 'engag[ing] in a pattern of activity involving prohibited sexual conduct.' He certainly did that." Among other things, the fact that Defendant produced child pornography on two separate occasions means that the pattern enhancement applies. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: Defendant's guidelines-range sentence of imprisonment for life (plus a 10-year consecutive mandatory minimum term) is substantively reasonable. USA v. Sanchez, No. 19-14002 (11th Cir. 4/5/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201914002.pdf

FOURTH AMENDMENT-MALICIOUS PROSECUTION: A Fourth Amendment claim under §1983 for malicious prosecution does not require the plain tiff to show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that the criminal prosecution ended without a conviction. Defendant who was charged with resisting without violence (for refusing to allow officers to come into his house to investigate what turned out to be a baby's diaper rash) may sue for malicious prosecution where the underlying case is dismissed without the judge or prosecutor explaining why. Thompson v. Clark, No. 20–659 (U.S. S. Ct 4/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

STATUTORY INTERPRETATION: "To resolve [the meaning of the favorable termination element of a malicious prosecution claim], we must look to American malicious prosecution tort law as of 1871." Thompson v. Clark, No. 20–659 (U.S. S. Ct 4/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

CHIMERA (J. GORSUCH, dissenting): "Homer described the mythical

chimera as a 'grim monster' made of 'all lion in front, all snake behind, all goat between.'" Thompson v. Clark, No. 20–659 (U.S. S. Ct 4/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

WORD OF THE DAY-(J. GORSUCH, dissenting): "Damnified" Thompson v. Clark, No. 20–659 (U.S. S. Ct 4/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

HVFO: Improper sentencing as a habitual violent felony offender is cognizable under a rule 3.800(b) motion because the error affects the ultimate sanction imposed. When sentencing a defendant who qualifies as a habitual offender to a more lenient sentence than what the habitual offender statute requires, the judge has necessarily decided that a habitual offender sentence is not necessary. If the trial court does not impose a habitual violent offender sentence at the original sentencing, then a habitual violent offender sentence may not be imposed upon revocation of probation. Gloster v. State, 2D21-601 (4/1/22)

https://www.2dca.org/content/download/834029/opinion/210601_DC08_04012022_084858_i.pdf

DUPLICATIVE JUDGMENT: A duplicative judgment of guilt entered upon revocation of probation for the same underlying crime is unauthorized when the defendant has previously been adjudicated guilty. Gloster v. State, 2D21-601 (4/1/22)

https://www.2dca.org/content/download/834029/opinion/210601_DC08_04012022_084858_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not objecting to a photograph which had already been ruled inadmissible. The fact that the admission of the evidence was challenged on direct appeal does not preclude a 3.850 motion. The appellate opinion did not discuss the issue of the photograph, nor was ineffective assistance raised on appeal. Unless a direct appeal is affirmed with a written opinion that expressly addresses the issue of ineffective assistance of counsel, an affirmance on direct appeal should rarely, if ever, be treated as a procedural bar to a claim for ineffective assistance of counsel on a postconviction motion. Brown v. State, 2D21-2240 (4/1/22)

https://www.2dca.org/content/download/834035/opinion/212240_DC08_04012022_085018_i.pdf

MARCH 2022

APPEAL-PRESERVATION-SELF-REPRESENTATION: Where appellate counsel's brief failed to make any argument about whether the appellate court can review the denial of the right to self-representation following a guilty plea, the issue is waived. USA v. Williams, No. 18-13890 (11th Cir. 3/30/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201813890.pdf

SOVEREIGN CITIZEN: Sovereign citizens believe the United States Government is illegitimate and has drifted away from the true intent of the Constitution. These groups generally do not adhere to federal, state, or local laws and believe federal and state officials have no real authority. USA v. Williams, No. 18-13890 (11th Cir. 3/30/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201813890.pdf

APPEAL-SELF-REPRESENTATION: The improper denial of the right to

self-representation under Faretta is structural error, and so requires reversal on direct appeal when the error is both preserved and not waived. A voluntary, subsequent guilty plea represents a break in the chain of events which has preceded it in the criminal process and operates as a waiver of claims of constitutional error that occurred prior to the plea. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. A defendant's voluntary guilty plea waives a claim of structural error. USA v. Williams, No. 18-13890 (11th Cir. 3/30/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201813890.pdf

DEATH PENALTY-COMPETENCY: Hall v. Florida, establishing framework for analysis of intellectual competency to be executed, does not apply retroactively. The Florida Supreme Court's reversal of prior case law saying that it does has the effect of preventing the Defendant from having a hearing as to his competency, does not apply here because Defendant's death sentence had not been vacated. Thompson v. State, SC20-1847 (3/31/22)

https://www.floridasupremecourt.org/content/download/833893/opinion/sc20-1847.pdf

LAW OF THE CASE DOCTRINE: The Law of the Case Doctrine requires that questions of law actually asserted on appeal must govern the case in the same course of the trial court through all subsequent stages of the proceedings. But the doctrine does not apply where there has been an intervening change of controlling law, such as here where the law regarding retroactivity of the standard for competency to be executed was changed. Thompson v. State, SC20-1847 (3/31/22)

https://www.floridasupremecourt.org/content/download/833893/opinion/sc20-1847.pdf

COSTS: Court may not impose discretionary fines and costs without providing the statutory authority and an explanation as to what the costs represent. Mayhugh v. State, 1D21-825 (3/30/22)

https://www.1dca.org/content/download/833822/opinion/210825_DC08_03302022_135304_i.pdf

POST-CONVICTION RELIEF: Court properly denied motion for postconviction relief upon finding the attorney's testimony that he had explained relevant offenses to the Defendant credible. A claim of ineffective assistance of counsel must establish both deficient performance and prejudice. Where Defendant had entered a plea, the prejudice prong requires showing a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. A court should consider the totality of the circumstances surrounding the plea, including such factors as whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible sentence the defendant faced at trial. Chambers v. State, 1D21-990 (3/30/22)

https://www.1dca.org/content/download/833826/opinion/210990_DC05_03302022_140116_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on claimant counsel was ineffective for failing to call a tire marks expert to support his claim that his vehicle hit the Victim's vehicle accidentally rather than intentionally. Motion must allege what testimony defense counsel could

have elicited from witnesses and how defense counsel's failure to call, interview, or present the witnesses would have prejudiced the case. Identification of the specific expert is not necessary to establish a legally sufficient claim. Cooper v. State, 2D20-3721 (3/30/22)

https://www.2dca.org/content/download/833739/opinion/203721_DC08_03302022_084351_i.pdf

FAILURE TO REGISTER-SEXUAL PREDATOR: §775.21(10)(a) (Register as a sexual predator) requires registration of one's phone number; §943.0435(4)(b) (Failure to register as a sexual offender) does not. Defendant who had never been designated a sexual predator is improperly convicted of failure to register as a sexual predator. "Patlan pleaded no contest to an offense he did not commit. He was not required to register as a sexual predator. . .because he is not and never has been designated as a sexual predator." Patlan v. State, 2D21-326 (3/30/22)

https://www.2dca.org/content/download/833741/opinion/210326_DC08_03302022_084545_i.pdf

APPEAL-FUNDAMENTAL ERROR-FACTUAL BASIS: Defense counsel's stipulation to a factual basis without the State having articulated one and where factual basis does not exist, is fundamental error which may be raised on direct appeal. Where the record affirmatively demonstrates that a defendant has pleaded guilty or no contest to a crime he did not commit, fundamental error occurs. Patlan v. State, 2D21-326 (3/30/22)

https://www.2dca.org/content/download/833741/opinion/210326_DC08_03302022_084545_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE:

Defendant is entitled to an evidentiary hearing for postconviction relief based on recanted testimony, where a witness claimed that his trial testimony (that the Defendant was present with a "chopper" at the shooting) when in fact he wasn't there, and that the detectives had coerced him into testifying falsely. Scott v. State, 2D21-1827 (3/30/22)

https://www.2dca.org/content/download/833744/opinion/211827_DC13_03302022_084755_i.pdf

CONCESSION OF GUILT: Defendant who stabbed to death his girl friend/victim after she came home with an apparent hickey is not entitled to a new trial based on counsel's concession of guilt to manslaughter. For a structural Sixth Amendment violation to lie, a defendant must make his intention to maintain innocence clear to his counsel, and counsel must override that expressed objective by conceding guilt despite the client's intransigent and unambiguous objection to this strategy. Recalde v. State, 3D108-.1981 (3/30/22)

https://www.3dca.flcourts.org/content/download/833750/opinion/181981_DC05_03302022_100403_i.pdf

CONCESSION OF GUILT: In juvenile trial, counsel is ineffective on the face of the record for conceding that the battery counts could be enhanced to felony battery based on prior adjudications of delinquency for battery. For purposes of juvenile delinquency proceedings, an adjudication of delinquency is not deemed a conviction, so a prior adjudication of delinquency for battery cannot be used to enhance a new battery case to felony battery. Counsel was ineffective for stipulating that Child was guilty of felony battery because of his prior adjudication of delinquency for battery. T.E.B., a Child v. State, 4D20- 2699 (3/30/22)

https://www.4dca.org/content/download/833773/opinion/202699_DC08_0

3302022_101741_i.pdf

DIMINISHED CAPACITY: Expert evidence of diminished capacity is inadmissible on the issue of mens rea. Evidence of Defendant's sickle cell disease is inadmissible in guilt phase. T.E.B., a Child v. State, 4D20- 2699 (3/30/22)

https://www.4dca.org/content/download/833773/opinion/202699_DC08_03302022_101741_i.pdf

COSTS: Court erred in imposing supervision costs above $40 in the absence of an oral pronouncement. Rivera v. State, 4D21-1178 (3/30/22)

https://www.4dca.org/content/download/833777/opinion/211786_DC08_03302022_102218_i.pdf

COSTS: An award of public defender fees need not be supported by evidence if a defendant affirmatively agrees to pay the requested amount. Defendant affirmatively agreed to the $500 P.D. fee through her counsel. Any act by the attorney in a proceeding will be accepted as the act of the client, even though done without consulting him and even against the client's wishes. Rivera v. State, 4D21-1178 (3/30/22)

https://www.4dca.org/content/download/833777/opinion/211786_DC08_03302022_102218_i.pdf

SIDEWALKS: Sidewalks in ancient Rome and Pompeii discussed ("they were useful for not walking on the road.") Keister v. Bell, No. 20-12152 (11th Cir. 3/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012152.pdf

SIDEWALKS: "Sidewalks have long been a part of Americana. Cultural anthropologist Margaret Mead remarked that '[a]ny town that doesn't have sidewalks doesn't love its children.' And Shel Silverstein named an entire book after his famous poem 'Where the Sidewalk Ends.'" Keister v. Bell, No. 20-12152 (11th Cir. 3/25/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012152.pdf

APPEAL-PRESERVATION-STANDING: In the absence of any fundamental error, the State may not raise the issue of Fourth Amendment "standing" for the first time on appeal when the it did not preserve the issue in the trial court. Thorough discussion. Prior case law receded from. Question Certified. State v. Fernandez, 2D19-1184 (3/25/22)

https://www.2dca.org/content/download/833326/opinion/191184_DC05_03252022_090358_i.pdf

BEST EVIDENCE RULE: The Best Evidence Rule requires that an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph. Witnesses may not testify about the events they saw the video recording without the recording itself being admitted. A witness's in court description of actions depicted in the video recording is content based testimony that violates the best evidence rule when offered to prove the crime without introduction of the video itself. Derrick v. State, 2D21-62 (3/25/22)

https://www.2dca.org/content/download/833332/opinion/210062_DC08_03252022_084044_i.pdf

RESTITUTION: Court may order restitution in excess of the monetary

thresholds of the adjudicated offense, i.e., may order restitution of $600 even though the verdict reflected damages of $200 or less. Derrick v. State, 2D21-62 (3/25/22)

https://www.2dca.org/content/download/833332/opinion/210062_DC08_03252022_084044_i.pdf

PUBLIC RECORDS-COST: State may not prohibit the Defendant from ever again requesting public records based on his having failed to pay for the records previously requested but which were not provided where he belatedly tried to pay for the records. Smith v. State, 2D21-1874 (3/25/22)

https://www.2dca.org/content/download/833342/opinion/211874_DC13_03252022_085437_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not advising him that he qualified as a habitual violent felony offender where, even though some of the items relied on by the Court conflicts with the Defendant's allegations, they do not conclusively refute them.

Turner v. State, 5D21- 1245 (3/25/22)

https://www.5dca.org/content/download/833316/opinion/211245_DC13_03252022_084110_i.pdf

COSTS: Court may not impose a $3.00 pursuant to §318.18(11)(b) for the Defendant who was not convicted of a driving offense. Oropeza v. State, 4D21-1525 (3/25/22)

https://www.5dca.org/content/download/833317/opinion/211525_DC05_03252022_084326_i.pdf

EXPERT: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call a firearm expert to testify about the wound and

the trajectory of the bullet. Haskell v. State, 5D21-1815 (3/25/22)

https://www.5dca.org/content/download/833318/opinion/211815_DC08_03252022_084747_i.pdf

DEATH PENALTY: The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), requires the State to allow the Defendant's pastor to pray audibly and lay hands on him during his execution. Ramirez v. Collier, No. 21-5592 (U.S.S.Ct. 3/24/22)

https://www.supremecourt.gov/opinions/21pdf/21-5592_feah.pdf

DEPORTATION-MARIJUANA: Defendant convicted of possession of marijuana is eligible for cancellation of removal. A petitioner is eligible for discretionary cancellation of removal if he has resided continuously in the United States for at least seven years after having been admitted for permanent residence for at least five years and has not been convicted of an aggravated felony. Possession of marijuana under Florida law is not an aggravated felony because it is broader than the federal statute; §893.02(3) which includes all parts of the marijuana plant) but the federal definition of marijuana does not include the mature stalks of the marijuana plant or fiber produced from them. This is a significant divergence, and on its own, is sufficient to establish a realistic probability of broader prosecution under Florida law. Said v. U.S. Attorney General, No. 21-12917 (11th Cir. 3/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202112917.pdf

RULES-AMENDMENT-SCORESHEET: Scoresheet is modified to provide that the maximum sentence for each individual felony offense is up to the statutory maximum for the primary and any additional offenses as provided unless the lowest permissible sentence under the Code listed above exceeds the statutory maximum for that offense. If the lowest permissible sentence exceeds the statutory maximum for an individual felony offense, the lowest permissible sentence replaces the statutory maximum and must be imposed for that offense. Such sentences for multiple felony offenses

may be imposed concurrently or consecutively. In Re: Amendments to Florida Rule of Criminal Procedure 3.992 No. SC21-891 (3/24/22)

https://www.floridasupremecourt.org/content/download/833234/opinion/sc21-891.pdf

INCONSISTENT VERDICT: Defendant may be found guilty of aggravated assault and second-degree murder for his role in a robbery homicide where jury found that the Defendant did not possess a firearm. Factually inconsistent verdicts are permissible so long as acquittal on one count acquittal on one count would not negate a necessary element for conviction of another count. Defendant need not possess the firearm (which was pointed at the head of the surviving victim) to be guilty of aggravated assault as a principal. Hollings v. State, 1D20-128 (3/23/22)

https://www.1dca.org/content/download/833089/opinion/200128_DC05_03232022_122815_i.pdf

COSTS: $2 cost may not be imposed under §318.18(11) where he did not commit a driving offense. Hooks v. State, 1D20-3771 (3/23/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202012152.pdf

COSTS: Court may not impose $151 costs under §938.10 where he was not convicted of violating the registration or reporting requirements of §943.0435. Violating §847.0135(4) (computer pornography/traveling) does not constitute a violation of §943.0435. Hooks v. State, 1D20-3771 (3/23/22)

https://www.1dca.org/content/download/833090/opinion/203771_DC08_03232022_123306_i.pdf

DISCOVERY VIOLATION: Statement in discovery exhibit that "[t]here is no material or information which has been provided by a confidential informant" is not a discovery violation where the state failed to disclose that

the victim herself was a confidential informant. Juste v. State, 3D21-258 (3/23/22)

https://www.3dca.flcourts.org/content/download/833044/opinion/210258_DC05_03232022_100234_i.pdf

POST CONVICTION RELIEF: Where an evidentiary hearing is held to resolve a timely, facially sufficient R. 3.850 postconviction motion, the trial court must determine the issues, and make findings of fact and conclusions of law with respect thereto. LaFlippe v. State, 3D21-1434 (3/23/22)

https://www.3dca.flcourts.org/content/download/833051/opinion/211434_DC13_03232022_102029_i.pdf

PLEA AGREEMENT: Plea agreement which requires Defendant to serve 18 months in prison after probation, which is later terminated, is enforceable. The fact that the trial court entered an order terminating probation does not eliminate the trial court's jurisdiction to enforce the remaining portions of the plea agreement. Cebez v. Junior, 3D22-393 (3/23/22)

https://www.3dca.flcourts.org/content/download/833055/opinion/220393_DC02_03232022_102532_i.pdf

ILLEGAL SENTENCE: Defendant may not challenge on a successive motion to correct illegal sentence where there is no manifest injustice. There is no manifest injustice for sentencing Defendant to in excess of one year after he completed Boot Camp (the version of the statute limited incarceration for a violation to one year for one who had completed Boot Camp) where he is sentenced with similar terms in a related case. Daniel v. State, 4D21-1968 (3/23/22)

https://www.4dca.org/content/download/833066/opinion/211968_DC05_03232022_101500_i.pdf

INCOMPETENCY: The court may not move forward with trial when there are legitimate doubts regarding Defendant's competency. Rivera v. State, 4D21-2176 (3/23/22)

https://www.4dca.org/content/download/833067/opinion/212176_DC13_03232022_101636_i.pdf

DOUBLE JEOPARDY: Double jeopardy does not bar prosecution for attempting to induce, entice and coerce a person believed to be a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct after Defendant's conviction after trial for solicitation and advertisement for child pornography was dismissed. Blockburger. The Blockburger test applies to charges brought under different sections of the same statute. USA v. Lee, No. 20-13505 (3/21/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013505.pdf

SOLICITATION FOR CHILD PORN: A private person-to-person text message does not constitute notice made within the meaning of 18 U.S.C. §2251(d)(1). USA v. Lee, No. 20-13505 (3/21/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202013505.pdf

ZOOM-TRIAL-CONFRONTATION: Court violated Child's right to confront witnesses by holding his adjudicatory hearing by Zoom without allowing the child a hearing on his objection and without making a case-specific finding of necessity to limit confrontation rights. T.H. v. State, 2D20-3217 (3/18/22)
https://www.2dca.org/content/download/832687/opinion/203217_DC13_03182022_082201_i.pdf

ZOOM: Juvenile adjudicatory hearings are not criminal proceedings. Due Process requires that the procedural safeguards found in criminal proceedings, including the right to confront witnesses, be afforded in a juvenile proceeding. T.H. v. State, 2D20-3217 (3/18/22)

https://www.2dca.org/content/download/832687/opinion/203217_DC13_03182022_082201_i.pdf

ZOOM: "Virtual confrontation might be sufficient to protect virtual constitutional rights; I doubt whether it is sufficient to protect real ones." (*quoting* J Scalia). T.H. v. State, 2D20-3217 (3/18/22)
https://www.2dca.org/content/download/832687/opinion/203217_DC13_03182022_082201_i.pdf

DUE PROCESS (DISSENT): "[J]uveniles' rights can be limited or abrogated categorically as long as the proceeding is fundamentally fair and there is a sufficient necessity to justify the limitation. T.H. v. State, 2D20-3217 (3/18/22)
https://www.2dca.org/content/download/832687/opinion/203217_DC13_03182022_082201_i.pdf

PLEA WITHDRAWAL: Defendant is entitled to withdraw her plea due to manifest injustice where court failed to advise her of her right to appointed counsel before she pled at a virtual mass arraignment. A waiver of one's right to counsel must be a knowing, intelligent, and voluntary relinquishment of a known right. Court's admonishment to the group at the mass arraignment that they would have the ability to "speak with an attorney" if they pled not guilty could have incorrectly led Defendant to believe she was only entitled to counsel if she entered a not guilty plea. Robles v. State, 2D21-714 (3/18/22)
https://www.2dca.org/content/download/832692/opinion/210714_DC13_03182022_082430_i.pdf

MANIFEST INJUSTICE: Requiring Defendant to admit or deny the pending charges without first appointing counsel or securing an informed waiver of her right to counsel it is fundamental error and manifest injustice. If the waiver of counsel is invalid as a matter of law, it follows that the guilty plea entered without advice of counsel should also be deemed involuntary as a

matter of law. Robles v. State, 2D21-714 (3/18/22)
https://www.2dca.org/content/download/832692/opinion/210714_DC13_03182022_082430_i.pdf

CONFLICT OF INTEREST: Court erred in denying public defender's motion to withdraw based on a conflict of interest where Defendant had joined a lawsuit in federal court (later dismissed) against the Public Defender for allowing sensitive personal information and compromised confidential case files to be breached via computer hack. An actual conflict of interest existed between the public defender's office and Defendant because they had become adversaries in the federal lawsuit. "A federal lawsuit pitting the defendant against his attorney certainly suggests divided loyalties." Gordineer v. State, 2D21-2844 (3/18/22)
https://www.2dca.org/content/download/832712/opinion/212844_DC03_03182022_082931_i.pdf

SENTENCING-SPLIT SENTENCE-VOP: By imposing a true split sentence, the original sentencing judge predetermined the sanction that Defendant would incur upon violation of her community control. Where Defendant is given a true split sentence (5 years in prison suspended upon completion of 2 years of community control), violates, is committed to DOC for 5 years but under the Youthful Offender basic training program then released on probation, which she violates, the Court may not thereupon sentence her to 11 years in prison Dalton v. State, 5D21-542 (3/18/22)
https://www.5dca.org/content/download/832679/opinion/210542_DC08_03182022_081128_i.pdf

POST-CONVICTION RELIEF: Defendant is entitled to a hearing on a claim that counsel's ineffective for allowing his recorded interview to law enforcement to be played without including the exculpatory portions of it. Howard v. State, 5D21-2118 (3/18/22)
https://www.5dca.org/content/download/832680/opinion/212118_DC08_03182022_081327_i.pdf

BELATED APPEAL: Trial judge is appointed as commissioner of the Court to conduct an evidentiary hearing as to whether Defendant requested an appeal. Fact-finding is necessary where there is a good faith dispute as to whether Defendant requested her attorney to file an appeal. "This Court has not yet determined whether an assertion that counsel cannot recall a client requesting an appeal, without more, is sufficient to create a disputed issue of fact." Hastings v. State, 5D22-76 (3/18/22) https://www.5dca.org/content/download/832683/opinion/220076_NOND_03182022_083551_i.pdf

BELATED APPEAL (DISSENT): "In my view, counsel's response that he did not recall Hastings' request that he file an appeal is insufficient to specifically dispute her sworn affidavit to the contrary and, as such, the State has not met its burden." Hastings v. State, 5D22-76 (3/18/22) https://www.5dca.org/content/download/832683/opinion/220076_NOND_03182022_083551_i.pdf

DEPORTATION: Burglary of an unoccupied dwelling is not a CIMT (Crime involving moral turpitude). In determining whether a conviction is a CIMT, we Court must employ the categorical approach (if the statute of conviction is not divisible and sets out alternative means of committing a single offense) or the modified categorical approach (if the statute of conviction is divisible and creates separate offenses). The facts underlying the conviction are not considered. Florida's burglary statute is divisible because the different subsections of the statute carry different penalties. In determining whether an actual, historical offense is a CIMT, the BIA and IJ may consider the record of conviction—i.e., the charging document, plea, verdict, and sentence—but nothing more. Lauture v. U.S. Attorney General, No 19-13165 (11th Cir. 3/17/22) https://media.ca11.uscourts.gov/opinions/pub/files/201913165.pdf

BOND: Article I, §14 of the Florida Constitution does not prohibit the trial

court the discretion at first appearance, upon a finding of probable cause that the defendant committed a crime punishable by capital punishment or life imprisonment, to defer ruling on bail and to detain the defendant for a reasonable time to conduct a full Arthur bond hearing Requiring a proof evident or presumption great finding at first appearance is likely to thwart judicial economy. Any language in Arthur to the contrary is dicta, not a holding. Thourtman v. Junior, SC19-1182 (3/17/22)
https://www.floridasupremecourt.org/content/download/832595/opinion/sc19-1182.pdf

BAIL-PRESUMPTION OF INNOCENCE (CONCURRENCE): "The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials. . . . But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun. Thourtman v. Junior, SC19-1182 (3/17/22)
https://www.floridasupremecourt.org/content/download/832595/opinion/sc19-1182.pdf

LOSA WITH INJURIES-UNIT OF PROSECUTION: The charge of Leaving Scene of an Accident involving injuries (§316.062(1)) permits multiple counts and convictions where there is a single crash involving multiple victims. The stature contemplates prosecution on a per-crash-victim basis, rather than on a per-crash basis. State v. Johnson, SC21-20 (3/17/22)
https://www.floridasupremecourt.org/content/download/832597/opinion/sc21-20.pdf

APPEAL-VOLUNTARINESS OF PLEA: Defendant may not challenge the voluntariness of his plea on appeal without having first moved to withdraw his plea in the trial court. Fletcher v. State, 1D20-3031 (3/16/22)
https://www.1dca.org/content/download/832491/opinion/203031_DC05_03162022_140824_i.pdf

VOP-HEARSAY-CHANGING RESIDENCE: Officer testimony about Defendant not being home coupled with hearsay that he no longer lived there is insufficient to prove a violation for changing residence without permission. Southerland v. State, 1D21-1791 (3/16/22) https://www.1dca.org/content/download/832500/opinion/211791_DC05_03162022_142521_i.pdf

STAND YOUR GROUND: Counsel was not ineffective for failing to file a SYG motion where Defendant was found by jury beyond a reasonable doubt to not having acted in self-defense. When a jury rejects a claim of self-defense at trial beyond a reasonable doubt, there is no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof. Simmons v. State, 1D21-2359 (3/16/22) https://www.1dca.org/content/download/832504/opinion/212359_DC05_03162022_143052_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: An affidavit by the victim naming another person as the perpetrator does not constitute newly discovered evidence entitling Defendant to postconviction relief. Recanted testimony is inherently unreliable, particularly where, as here, the Defendant's act of cutting the Victim's throat in prisom was caught on tape. Buck v. State, 1D21-2897 (3/16/22) https://www.1dca.org/content/download/832507/opinion/212897_DC05_03162022_140622_i.pdf

JUVENILE OFFENDER: Juvenile offenders convicted of first-degree premeditated murder and attempted murder are subject to an enhanced penalty if they were found to have actually killed, intended to kill, or attempted to kill the victim. Alleyne requires that a defendant is entitled to have a jury determine whether he/she actually killed, intended to kill, or attempted to kill the victim, but a verdict finding that the juvenile offender, charged as a principal, guilty "as charged" is an inherent finding of intent to

kill. Singletary v. State, 3D20-951 (20-951 (3/16/22)
https://www.3dca.flcourts.org/content/download/832430/opinion/200951_DC05_03162022_095820_i.pdf

BOND-PRETRIAL DETENTION: Defendant may be held without bond where he is charged as a principal to murder in which a bystander was shot by a codefendant. Roberson v. Daniel, 3D22-235 (3/16/22)

https://www.3dca.flcourts.org/content/download/832462/opinion/220235_DC02_03162022_104617_i.pdf

BATTERY-DOMESTIC VIOLENCE: Where the caption in the information says "domestic violence," but the jury was charged only on misdemeanor battery and was not asked to make findings regarding bodily harm or injury of the victim or the victim's status as a "family or household member," the Defendant is not subject to the domestic violence offender designation nor is he subject to the enhanced penalties. State may request the empaneling of a second jury to determine whether the offense is a crime of domestic violence. Narvaez v. State, 4D20-245 (3/16/22)
https://www.4dca.org/content/download/832453/opinion/200245_DC08_03162022_100504_i.pdf

CONTEMPT-DIRECT: Defendant cannot be found in direct criminal contempt based of failure to complete BIP course. For direct contempt, the contemptuous act must occur in the presence of the judge. A criminal contempt may be punished summarily only if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. Indirect civil contempt proceedings have procedural requirements. Perez v State, 5D22-414 (3/14/22)
https://www.5dca.org/content/download/832292/opinion/220414_DC03_03142022_171235_i.pdf

HABEAS CORPUS: To establish a Brady violation, the defendant has the

burden to show (1) that favorable evidence—either exculpatory or impeaching, (2) was willfully or inadvertently suppressed by the State, and (3) because the evidence was material, the defendant was prejudiced. To meet the materiality prong, the defendant must demonstrate a reasonable probability that had the suppressed evidence been disclosed the jury would have reached a different verdict. Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: The AEDPA forbids a district court from entertaining a claim that is not the same claim the prisoner presented to and adjudicated by the state courts on the merits. District Court may not consider evidence that was not before the state court when it considered the prisoner's claim on the merits. Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: It is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

POST CONVICTION RELIEF-FEDERAL HABEAS CORPUS: Defendant is not entitled to habeas corpus relief on claim that counsel was ineffective for failing to excuse, in homicide case, juror whose niece had been murdered three years before. The post conviction trial court's presumption of correctness–that keeping the juror was strategic-precludes relief even where no evidence supports the belief that the retention of the juror was strategic. Implicit factual findings are entitled to deference. Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

POST CONVICTION RELIEF-HABEAS CORPUS-EXHAUSTION: A

prisoner has not exhausted claims in state court–a requirement for seeking federal habeas relief–where he only nominally asserted a federal claim to the Florida Supreme Court, and made no argument under any federal constitutional provision, statute, or case for why his conviction should be vacated. The mere mention of a constitutional claim cannot, standing alone, provide a state appellate court with a sufficient opportunity to pass upon and correct a federal constitutional violation. Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

VERBOSITY (J. JORDAN, dissenting in part): "The majority opinion, which is 158 pages long,. . .is too long and says too much about too many things unnecessarily. If '[b]revity is the soul of wit' [*citation omitted*], it should also be the aspirational goal of legal writing." Green v. Secretary, DOC, No. 18-13524 (11th Cir. 3/14/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201813524.pdf

CONTEMPT: Court may not find Defendant in direct criminal contempt for failing to complete a Batterer's Intervention Program because the violation of the court order did not occur in the judge's presence. A criminal contempt may be punished summarily only if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. Perez v. State, 5D22-414 (3/14/22)
https://www.5dca.org/content/download/832292/opinion/220414_DC03_03142022_171235_i.pdf

CONTEMPT: Court may not sentence the Defendant for contempt of court without allowing him a meaningful opportunity to offer mitigating testimony. Perez v. State, 5D22-414 (3/14/22)
https://www.5dca.org/content/download/832292/opinion/220414_DC03_03142022_171235_i.pdf

CONTEMPT: Court must recite the facts on which it based an adjudication

of guilt for contempt of court. Perez v. State, 5D22-414 (3/14/22) https://www.5dca.org/content/download/832292/opinion/220414_DC03_03142022_171235_i.pdf

SEARCH AND SEIZURE: Search of Defendant's home pursuant to a warrant issued after he brought a tracked package of narcotics to his home was unlawful. The warrant failed to specify a particular object of the search precisely because law enforcement lacked probable cause and did not have any particular object in mind. Opening the mailed package of narcotics may have suggested some link between the home and Defendant's alleged trafficking, but that event, standing alone, did not create a probability that further narcotics or similar evidence of trafficking would be present at that location. Smitherman v. State, 2D19-3104 (3/11/22)

https://www.2dca.org/content/download/832052/opinion/193104_DC08_03112022_082425_i.pdf

SEARCH AND SEIZURE-SEARCH WARRANT-GOOD FAITH: Where the supporting affidavit fails to establish probable cause to justify a search, the good faith exception.does not apply. A reasonably trained law enforcement officer would have known that the affidavit in this case failed to establish probable cause for the search. Smitherman v. State, 2D19-3104 (3/11/22)

https://www.2dca.org/content/download/832052/opinion/193104_DC08_03112022_082425_i.pdf

CHAIN OF CUSTODY: After evidence is admitted without objection, an alleged fault in the chain of custody does not affect the sufficiency of the evidence for the purposes of a motion for judgment of acquittal. Smitherman v. State, 2D19-3104 (3/11/22)

https://www.2dca.org/content/download/832052/opinion/193104_DC08_0

3112022_082425_i.pdf

VOP: Court improperly found Defendant in violation of probation where Defendant did not object to or dispute P.O.'s testimony that he was "non-reporting" and that "none of his conditions were completed" but there was no testimony whatsoever regarding how, when, where, or why he failed to report to probation or to perform community service. Error is fundamental. Weaver v. State, 2D21-61 (3/11/22)

https://www.2dca.org/content/download/832055/opinion/210061_DC13_03112022_083016_i.pdf

VOP-DUPLICATE JUDGMENT: Upon revocation of probation, Court may not enter a duplicate judgment when a judgment of guilt for the underlying offense of had previously been entered. Medina v. State, 2D21-1146 (3/11/22)

https://www.2dca.org/content/download/832061/opinion/211146_DC05_03112022_083250_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that Counsel was ineffective for failing to request that the jury be instructed on the justifiable use of deadly force, unless the trial court attaches records that conclusively refute this claim. Swift v. State, 5D21-1008 (3/11/22)

https://www.5dca.org/content/download/832043/opinion/211008_DC08_03112022_082521_i.pdf

COSTS: Court may not impose a $3.00 cost under §318.18 where Defendant was not charged with a traffic infraction. Acosta v. State, 5D21-

1673 (3/11/22)

https://www.5dca.org/content/download/832045/opinion/211673_DC05_03112022_083610_i.pdf

POST-CONVICTION RELIEF: Failure to retain an identification expert it is not necessarily deficient performance. Sheppard v. State, SC19-1512 (3/10/22)

https://www.floridasupremecourt.org/content/download/831947/opinion/sc19-1512.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failure to sufficiently challenge minor inconsistencies in the description of the Defendant and the vehicle. Decisions were tactical. Sheppard v. State, SC19-1512 (3/10/22)

https://www.floridasupremecourt.org/content/download/831947/opinion/sc19-1512.pdf

POST-CONVICTION RELIEF: Counsel for the defendant was not ineffective for failing to hire a crime scene reconstruction expert. Sheppard v. State, SC19-1512 (3/10/22)

https://www.floridasupremecourt.org/content/download/831947/opinion/sc19-1512.pdf

DOUBLE JEOPARDY-RETROACTIVE APPLICATION: Question certified whether the reviewing court should consider only the charging document in

considering whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy. Dettle v. State, 1D20-2651 (3/9/22)

https://www.1dca.org/content/download/831763/opinion/202651_NOND_03092022_102212_i.pdf

POST-CONVICTION RELIEF: Defendant may not challenge the procedure leading to her sentence and not the sentence itself under R 3.800(a). R 3.800(a) is not a vehicle designed to re-examine whether the procedure employed to impose the punishment comported with statutory law and due process. Smith v. State, 1D21-2982 (3/9/22)

https://www.1dca.org/content/download/831769/opinion/212982_DC05_03092022_103844_i.pdf

JUVENILE OFFENDER-REVIEW: Juvenile offender convicted of sexual battery is not entitled to a judicial review of his thirty-year sentence. A 35 year sentence is not a life sentence or its functional equivalent. Freeman v. State, 1D21-3274 (3/9/22)

https://www.1dca.org/content/download/831772/opinion/213274_DC05_03092022_104400_i.pdf

POST-CONVICTION RELIEF: An attorney's failure to inform a defendant of sentencing enhancements when discussing a plea offer constitutes deficient performance. But Defendant suffers no prejudice where he fails to expressly allege that he would have accepted the State's plea offer had he known he would be subject to these enhancements, that the State would not have withdrawn the offer, and that the trial court would have accepted

the offer. Statham v. State, 1D21-3305 (3/9/22)

https://www.1dca.org/content/download/831773/opinion/213305_DC08_03092022_104618_i.pdf

POST-CONVICTION RELIEF-CREDIT FOR TIME SERVED: Court errs in denying motion for Credit for Time Served without a hearing where it does not attach records showing no entitlement to relief. Morrow v. State, 2D21-3937 (3/9/22)

https://www.2dca.org/content/download/831704/opinion/213937_DC13_03092022_084900_i.pdf

POST-CONVICTION RELIEF: Court errs in denying Defendant's motion for postconviction relief based on newly discovered evidence (an affidavit by the victim) without attaching records conclusively establishing no entitlement to relief. Wimblery v. State, 3D20-01593 (3/9/22)

https://www.3dca.flcourts.org/content/download/831714/opinion/201593_DC08_03092022_101048_i.pdf

ATTORNEY-CLIENT PRIVILEGE: Client is the holder of the attorney-client privilege, not the attorney. Disclosure of privileged material by counsel is relevant to determining the existence of waiver. It is not, however, dispositive. State's proffer that Attorney had disclosed the privileged communication to the prosecutor (that the Victim was dead) does not constitute a waiver of the privilege; Attorney does not have to give the deposition about how he learned from his client that the Victim had died. Nelson v. State, 3D21-1655 (3/9/22)

https://www.3dca.flcourts.org/content/download/831724/opinion/211655_NOND_03092022_103550_i.pdf

5TH AMENDMENT: Question Certified weather at Defendant's 5th Amendment Miranda rights are automatically violated when an officer fails to re-lead a Miranda warning following a Defendant' voluntary re-initiation of contact. Penna v. State, 4D 20-345 (3/9/22)

https://www.4dca.org/content/download/831728/opinion/200345_NOND_03092022_095853_i.pdf

SENTENCING-ZOOM: Defendant's virtual presence at sentencing by Zoom, as opposed to personal appearance, is not fundamental error. Brown v. State, 4D20-1426 (3/9/22)

https://www.4dca.org/content/download/831729/opinion/201426_DC05_03092022_100235_i.pdf

PROBATION-CONDITION-SEARCH: A condition of probation requiring a probationer to consent at any time to a warrantless search by a law enforcement officer is a violation of article I, section 12, of the Florida Constitution, and the fourth amendment to the United States Constitution. The search of a probationer's person or residence by a probation supervisor without a warrant is lawful; granting such general authority to law enforcement officials is not. Bowman v. State, 4D20-2514 (3/9/22)

https://www.4dca.org/content/download/831732/opinion/202514_DC08_03092022_101039_i.pdf

COSTS: Cost of prosecution of $200, absent a motion and supporting evidence, it is unlawful. Bowman v. State, 4D20-2514 (3/9/22)

https://www.4dca.org/content/download/831732/opinion/202514_DC08_03092022_101039_i.pdf

COMPETENCY HEARING: Competency hearing must be held no later than 20 days after the date of the filing of the motion to determine competency. King v. State, 5D22-513 (3/8/22)

https://www.5dca.org/content/download/831652/opinion/220513_DC03_03082022_164310_i.pdf

ARMED CAREER CRIMINAL ACT: Ten convictions arising from a single criminal episode (burglaring ten storage units in a storage facility, one after the other) consititute a single offense for the purposes of ACCA sentencing enhancement. "Occasion" does not mean a discrete moment in time. Multiple crimes may occur on one occasion even if not at the same moment. Wooden v. United States, No. 20–5279 (U.S. S. Ct, 3/7/22)

https://www.supremecourt.gov/opinions/21pdf/20-5279_new_h315.pdf

OCCASION: "Consider first how an ordinary person (a reporter; a police officer; yes, even a lawyer) might describe Wooden's ten burglaries—and how she would not. The observer might say: 'On one occasion, Wooden burglarized ten units in a storage facility.' By contrast, she would never say: 'On ten occasions, Wooden burglarized a unit in the facility.' Nor would she say anything like: 'On one occasion, Wooden burglarized a storage unit; on a second occasion, he burglarized another unit; on a third occasion, he burglarized yet another; and so on.' She would, using language in its normal way, group his entries into the storage units, even though not simultaneous, all together—as happening on a single occasion." Wooden v. United States, No. 20–5279 (U.S. S. Ct, 3/7/22)

https://www.supremecourt.gov/opinions/21pdf/20-5279_new_h315.pdf

DEFINITION-"OCCASION": "Occasion" commonly refers to an event,

occurrence, happening, or episode. And such an event, occurrence, happening, or episode may itself encompass multiple, temporally distinct activities. "The occasion of a wedding, for example, often includes a ceremony, cocktail hour, dinner, and dancing. Those doings are proximate in time and place, and have a shared theme (celebrating the happy couple). . .But they do not occur at the same moment: The newlyweds would surely take offense if a guest organized a conga line in the middle of their vows. That is because an occasion may. . .encompass a number of non-simultaneous activities; . . The same is true (to shift gears from the felicitous to the felonious) when it comes to crime." Wooden v. United States, No. 20–5279 (U.S. S. Ct, 3/7/22)

https://www.supremecourt.gov/opinions/21pdf/20-5279_new_h315.pdf

RULE OF LENITY (CONCURRING J. KAVANAUGH): If a federal criminal statute is grievously ambiguous, then the statute should be interpreted in the criminal defendant's favor. The rule of lenity does not apply when a law merely contains some ambiguity or is difficult to decipher; it applies only when after seizing everything from which aid can be derived. Wooden v. United States, No. 20–5279 (U.S. S. Ct, 3/7/22)

https://www.supremecourt.gov/opinions/21pdf/20-5279_new_h315.pdf

QUOTE: "Of course, most ordinary people today don't spend their leisure time reading statutes—and they probably didn't in Justice Marshall's and Justice Story's time either." Wooden v. United States, No. 20–5279 (U.S. S. Ct, 3/7/22)

https1://www.supremecourt.gov/opinions/21pdf/20-5279_new_h315.pdf

QUOTE: "Like bears to honey, white collar criminals are drawn to billion-dollar government programs." USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

CONSPIRACY-CIRCUMSTANTIAL EVIDENCE: Conspiracy convictions require proof that the defendant knew the essential unlawful object of the conspiracy and agreed to it. But that proof may be circumstantial, and we have made clear that, because the crime of conspiracy is predominantly mental in composition, it is frequently necessary to resort to circumstantial evidence to prove its elements. USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

APPEAL: Arguments raised for the first time in a reply brief are not properly before a reviewing court. USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

SENTENCING: Although the sentencing guidelines are only advisory, a court must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. The Court abused its discretion by sentencing the Defendant (who scored 78 to 97 months) to probation where she engaged in a scheme of issuing improper prescriptions in return for kickbacks. Defendant "did not receive so much as a slap on the wrist — it was more like a soft pat." USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

SENTENCING-DETERRENCE: In imposing probation for a doctor who

received kickbacks for issuing improper prescriptions, the trial court is wrong in reasoning that general deterrence may be disregarded when the criminal is a doctor who will lose her license. "The court's reasoning would mean that not just doctors, but also pharmacists, and lawyers, and all other professionals who hold licenses, cannot be deterred by the threat of a prison sentence from committing a crime that will result in loss of their license anyway. . . .[I]t would mean . . .that . . .the need for general deterrence can be skipped where the defendant was a professional. . .[I]t would effectively blue pencil out of the United States Code for professionally licensed defendants an imperative that Congress wrote into it. . .That cannot be right, and it isn't right." USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

TEMPTATION: "Oscar Wilde advised that, 'The only way to get rid of a temptation is to yield to it.' [*citation omitted*]. That witticism may contain enough ironic truth to prompt a smile, but it is not a principle that has a home in the Sentencing Act or in binding precedent." USA v. Bramwell, No. 18-12395 (11th Cir. 3/7/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201811602.pdf

JURY SELECTION: Court is not required to give jurors a proposed questionnaire asking them to list all their knowledge of a case gained from media coverage (Boston Marathon bombing). USA v. Tsarnaev, No. 20-443 (U.S. S.Ct. 3/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-443_new_2d8f.pdf

DEATH PENALTY- MITIGATION-EVIDENCE: Court did not err in excluding hearsay evidence of separate murders committed by deceased co-

perpetrator, intended to show that Defendant acted under the domination of the former. USA v. Tsarnaev, No. 20-443 (U.S. S.Ct. 3/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-443_new_2d8f.pdf

HMM: "The prosecution similarly told the jury that 'the bulk of [Dzhokhar's] mitigation case comes down to a single proposition: 'His brother made him do it.''. . .The prosecution also told the jury that it should reject this proposition because Dzhokhar's mitigation evidence merely showed that Tamerlan was 'loud,' 'bossy,' and 'sometimes lost his temper.'. . .Would the prosecution have made the same argument had the evidence required it to add, 'and perhaps slit the throats of three people'?" USA v. Tsarnaev, No. 20-443 (U.S. S.Ct. 3/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-443_new_2d8f.pdf

STATE SECRETS PRIVILEGE-FISA: The Government has a privilege against court-ordered disclosure of state and military secrets. FISA does not affect the availability or scope of that long established privilege. When the state secrets privilege is asserted, the central question is not whether the evidence in question was lawfully obtained but whether its disclosure would harm national-security interests. FBI v. Fazaga, No. 20-828 (U.S. S.Ct. 3/4/22)

https://www.supremecourt.gov/opinions/21pdf/20-828_5ie6.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for conceding that a firearm was used based on video when no gun was recovered. Conceding that a defendant is guilty of a charged offense may constitute ineffective assistance of counsel when counsel did not obtain the defendant's consent to make the concession. Hipley v. State, 5D20-2303 (3/4/22)

https://www.5dca.org/content/download/831126/opinion/202303_DC08_0

3042022_083438_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to point out that the flipping co-Defendant had been facing life in prison but for her testimony. Counsel elicited from the witness only that she received a plea deal for probation, without providing the jury with any information with which to evaluate the deal. Hipley v. State, 5D20-2303 (3/4/22)

https://www.5dca.org/content/download/831126/opinion/202303_DC08_03042022_083438_i.pdf

YOUTHFUL OFFENDER: Defendant who is sentenced as a Youthful Offender, upon violation of supervision, may not be sentenced to a composite sentence of twenty-five years in DOC with a 25 year minimum mandatory while maintaining the youthful offender status. When a youthful offender commits a substantive violation of probation and the trial court elects to impose a sentence in excess of the six-year cap, the sentence necessarily becomes an adult CPC sentence such that the defendant does not retain his or her youthful offender status. Grillo v. State, 5D21-2145 (3/4/22)

https://www.5dca.org/content/download/831132/opinion/212145_DC13_03042022_085034_i.pdf

STATE SECRETS PRIVILEGE: State Secret's Privilege prevents disclosure for the use in civil litigation of the location of the site in (probably) Poland where Al Queda detainee was tortured during interrogation. The state secrets privilege permits the Government to prevent disclosure of information when that disclosure would harm national security interests. Sometimes information that has entered the public domain may nonetheless fall within the scope of the state secrets privilege. USA v. Zubaydah, No. 20-827 (3/3/22)

https://www.supremecourt.gov/opinions/21pdf/20-827_i426.pdf

QUOTATION (J. GORSUCH, DISSENTING: "This Court's duty is to the rule of law and the search for truth. We should not let shame obscure our vision." USA v. Zubaydah, No. 20-827 (3/3/22)

https://www.supremecourt.gov/opinions/21pdf/20-827_i426.pdf

SEXUAL PREDATOR: A circuit court has jurisdiction to impose a sexual predator designation on an offender who qualifies when the sentencing court did not impose the designation at sentencing. State v. Boyd, 5D20-2196 (3/3/22)

https://www.5dca.org/content/download/831125/opinion/202196_DC13_03042022_090329_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Cherry v. State, 1D21-2450 (3/2/22)

https://www.1dca.org/content/download/830907/opinion/212450_DA08_03022022_143850_i.pdf

STAND YOUR GROUND: The fact that the SYG motion to dismiss is not sworn to does not defeat such a motion. State v. Moore, 3D21-273 (3/2/22)

https://www.3dca.flcourts.org/content/download/830851/opinion/210273_DC13_03022022_101529_i.pdf

STAND YOUR GROUND: Defendant fails to allege a facially sufficient prima facie claim of justifiable self-defense where he has blood on his face and the victim, found shot to death, had a history of boorish and bullying behavior toward the Defendant, but the motion fails to allege that, or how, an

altercation had occurred; who initiated it; what threats were actually made; whether and how any conduct by Victim placed Defendant in fear of imminent death or great bodily harm; or what forcible felony or other actions or conduct of Victim led Defendant to reasonably believe he had to shoot him. State v. Moore, 3D21-273 (3/2/22)

https://www.3dca.flcourts.org/content/download/830851/opinion/210273_DC13_03022022_101529_i.pdf

SENTENCE-CONSECUTIVE: When a consecutive sentence is pronounced, the defendant is not entitled to credit for time served on an antecedent sentence. Spivey v. State, 3D21-1647 (3/2/22)

https://www.3dca.flcourts.org/content/download/830864/opinion/211647_NOND_03022022_103348_i.pdf

POST CONVICTION RELIEF: R. 3.800(a) has been amended to permit motions for rehearing. Court erred by relying on pre-amendment precedent. Pace v. State, 3D21-2148 (3/2/22)

https://www.3dca.flcourts.org/content/download/830869/opinion/212148_DC13_03022022_104028_i.pdf

SENTENCING-ADULT ON MINOR MULTIPLIER: The adult-on-minor multiplier limits sentences to the statutory maximum. The phrase "the statutory maximum sentence," as used in the limiting language is literally the maximum sentence which Defendant faced under the Florida Criminal Punishment Code, not the Chapter 775 maximum. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the LPS. The sentence on Count II also must be for the LPS. Millien v. State, 4D20-1940 (3/2/22)

https://www.4dca.org/content/download/830840/opinion/201940_DC05_03022022_093003_i.pdf

STATUTORY INTERPRETATION (CONCURRENCE): "It seems to me to be a distortion of the common understanding to construe 'statutory maximum sentence' as something other than what is set forth in a phrase immediately preceding it in the same sentence." Millien v. State, 4D20-1940 (3/2/22)

https://www.4dca.org/content/download/830840/opinion/201940_DC05_03022022_093003_i.pdf

DOUBLE JEOPARDY-CREDIT FOR TIME SERVED-CORRECTION: Where Court erroneously awarded duplicate credit for time served (an extra 300 days not actually served), Court may correct the error more than 60 days later. Miscalculation of jail credit can be a clerical error. Double jeopardy does not guarantee a defendant the benefit of a judge's good-faith mathematical or clerical errors. Blair v. State, 4D21-3214 (3/2/22)

https://www.4dca.org/content/download/830844/opinion/213214_DC05_03022022_094032_i.pdf

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POST CONVICTION RELIEF - DOUBLE JEOPARDY: Re-sentencing Defendant after he completed his original sentences for four counts of aggravated assault violates the prohibition against double jeopardy. F.R.Cr.P 3.800(a) does not allow the State to seek correction of an illegal sentence after it has been served in full. Smith v. State, 5D21-993 (2/25/22) https://www.5dca.org/content/download/830327/opinion/210993_DC08_02252022_091454_i.pdf

MOTION TO CORRECT: A Fla.R.Crim.P. 3.800(b) motion to correct may be filed by the State only if the correction of the sentencing error would benefit the defendant or to correct a scrivener's error. Smith v. State, 5D21-993 (2/25/22)

https://www.5dca.org/content/download/830327/opinion/210993_DC08_02252022_091454_i.pdf

COLLATERAL ESTOPPEL - ISSUE PRECLUSION: A defendant who raises an issue in a post conviction motion and is denied relief but fails to appeal, is collaterally estopped from raising the same issue in another R.3.800 motion, unless the manifest injustice exception applies. The manifest injustice exception applies here because violating a defendant's right against double jeopardy is a manifest injustice. Smith v. State, 5D21-993 (2/25/22)
https://www.5dca.org/content/download/830327/opinion/210993_DC08_02252022_091454_i.pdf

COSTS-HUH?: Court may not impose a $3.00 cost for a non-driving offense. Footnote 3: "We suspect that the imposition of this cost in non-traffic cases may indicate a processing issue that should be addressed by the Brevard County Clerk of the Court's Office if it has not already been remedied." But see concurring opinion : "I agree with the majority's disposition in all respects. However, I do not join footnote 3 of the majority opinion." Simpson v. State, 5D21-2122 (9/25/22)
https://www.5dca.org/content/download/830329/opinion/212122_DC05_02252022_092522_i.pdf

POST CONVICTION RELIEF-MAILBOX RULE: Where the prison date stamp reflects that the motion was placed in the hands of prison officials for mailing within the two-year time limitation of R. 3.850(b), it is timely regardless of when the Clerk of Court received it. Scott v. State, 5D21-2706 (2/25/22)
https://www.5dca.org/content/download/830332/opinion/212706_DC13_02252022_161702_i.pdf

APPEAL-INMATE FILING RULE: A Notice of Appeal is timely delivered to prison officials within 30 days. The Inmate Filing Rule provides that a

document placed in the hands of an official is deemed filed on that date. Prison mail logs are sufficient to establish timeliness. A prison date stamp is not required. Wade v. State, SC21-1094 (2/24/22) https://www.floridasupremecourt.org/content/download/830112/opinion/sc21-1094.pdf

SENTENCING-HABITUAL VIOLENT FELONY: Armed kidnapping is reclassified to a life felony where Defendant used a weapon or firearm. Defendant is improperly sentenced as a Habitual Violent Felony Period where the amendment to the statute allowing HVFO had been ruled unconstitutional (for being promulgated in violation of the single subject) and Defendant's crime occurred during the window period in which the statute was unconstitutional (October 1, 1995, through May 24, 1997). Faulk v. State, 1D21-1468 (2/23/22) https://www.1dca.org/content/download/830017/opinion/211468_DC05_02232022_134746_i.pdf

COST: Defendant covicted of sexual battery may not be assessed the $151 cost for the "CAC/GAL Trust Fund (Crimes Against Minors)" where the the victim was not a minor. Bryant v. State, 2D20-3555 (2/23/22) https://www.2dca.org/content/download/829952/opinion/203555_DC05_02232022_082224_i.pdf

SECOND DEGREE MURDER: Defendant is properly convicted as a principal to second degree murder where Defendant abducted the victim, placed him in plastic handcuffs, and put him in the truck which took him to another site where he was beaten, stabbed and set on fire. Where the defendant was a willing participant in the underlying felony and the murder resulted from forces that they set in motion, the defendant is guilty as a principal for the acts physically committed by another. It does not matter if Defendant was the one who slit the victim's throat or whether he knew or intended for it to happen. Isaac v. State, 3D19-2495 (2/23/22) https://www.3dca.flcourts.org/content/download/829971/opinion/192495_

DC05_02232022_100950_i.pdf

ARREST OF JUDGMENT: A motion for arrest of judgment is a postverdict motion made to prevent an entry of judgment in a criminal case after a verdict of guilty has been rendered. A motion for arrest of judgment requires that the indictment or information be so defective that it will not support a judgment of conviction An information is fundamentally defective only where it totally omits an essential element of the crime or is so vague, indistinct or indefinite that the defendant is misled or exposed to double jeopardy. Isaac v. State, 3D19-2495 (2/23/22)
https://www.3dca.flcourts.org/content/download/829971/opinion/192495_DC05_02232022_100950_i.pdf

INFORMATION-ALTERNATIVE ALLEGATIONS: For an offense that may be committed by one or more of several acts, or by one or more of several means, or with one or more of several intents or results, it is permissible to allege in the disjunctive or alternative such acts, means, intents, or results. Isaac v. State, 3D19-2495 (2/23/22)
https://www.3dca.flcourts.org/content/download/829971/opinion/192495_DC05_02232022_100950_i.pdf

COMPETENCY: Defendant who had been adjudicated incompetent due to intellectual disability and had been released with conditions may not have his bond revoked upon commission of a new offense unless he qualifies for involuntary commitment. Court can only modify conditions of release. Pagan v. State, 5D22-258 (2/21/22)
https://www.5dca.org/content/download/829712/opinion/220258_DC03_02212022_110258_i.pdf

DEPORTATION-MORAL TURPITUDE: Under federal law, a conviction for a crime involving moral turpitude renders a person ineligible for the discretionary relief of cancellation of removal. Fraud is always moral turpitude. But falsely representing a social security number is not a CIMT.

Making a false statement or engaging in general deception is not necessarily the same thing as fraud. If the intent to deceive is not for the purpose of obtaining a benefit or causing a detriment, moral turpitude is not automatically involved. Zarate v. US Attorney General, No. 20-11654 (2/18/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011654.pdf

DEPORTATION-MORAL TURPITUDE: Moral turpitude involves an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. A crime involving moral turpitude must involve conduct that not only violates a statute but also independently violates a moral norm. Fraud may be a sui generis category necessarily involving moral turpitude; non-fraud offenses must also satisfy the inherently base, vile, or depraved requirement to constitute CIMTs. Zarate v. US Attorney General, No. 20-11654 (2/18/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011654.pdf

DEFINITION-"GENERALLY": "Generally" does not mean "always" but rather "as a rule" or "usually." Zarate v. US Attorney General, No. 20-11654 (2/18/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011654.pdf

CATEGORICAL APPROACH (CONCURRING, J. TJOFLAT): "The case law in this Circuit and the Supreme Court's jurisprudence on how to analyze statutes under the categorical approach have left me scratching my head at times. To help future litigants avoid that fate, I provide a brief analysis of the categorical approach." Zarate v. US Attorney General, No. 20-11654 (2/18/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011654.pdf

BOND-NO CONTACT: Court may not enter a sweeping no-contact order prohibiting codefendant spouses from contact with each other. Such a

sweeping restriction infringes fundamental marital rights. Cossio v. Marceno, Sheriff, 2D21-2749 (2/18/22)
https://www.2dca.org/content/download/829369/opinion/212749_DC03_02182022_082209_i.pdf

SUBPOENA-MEDICAL RECORDS: A trial court departs from the essential requirements of law when it allows disclosure of medical records absent a showing of the requisite nexus. A general request for the issuance of a subpoena for medical records in a DUI investigation is insufficient. State must present evidence making it reasonable to believe that defendant's toxicology records would turn up evidence that he was under the influence of drugs or alcohol. McKnight v. State, 21-1280 (2/18/22)
https://www.5dca.org/content/download/829379/opinion/211280_DC03_02182022_084011_i.pdf

SENTENCING-CONSIDERATION-ALLOCUTION: When a defendant voluntarily chooses to allocute at a sentencing hearing, the sentencing court is permitted to consider the defendant's freely offered statements, including those indicating a failure to accept responsibility. State v. Deforest Kelly, 5D21-3019 (2/18/22)
https://www.5dca.org/content/download/829382/opinion/213019_DC05_02182022_085159_i.pdf

ATTORNEY-DISCIPLINE: Attorney who used altered photo line up exhibits in a deposition. Lawyer's intent to create what were deceptive exhibits in themselves leads to the inescapable conclusion that he violated Bar Rule 4-8.4(c) ("A lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ."). Three year suspension is imposed. The requirement to provide zealous representation does not excuse engaging in misconduct, irrespective of one's intent to benefit the client. "[Schwartz] has been an overzealous advocate incapable of seeing the forest for the trees." The Florida Bar v. Schwartz, SC1701391 (2/17/22)
https://www.floridasupremecourt.org/content/download/829241/opinion/S

C17-1391.pdf

SEARCH AND SEIZURE: A rapidly blinking turn signal creates a reasonable suspicion that a traffic violation has occurred, notwithstanding that the statute does not prescribe the rate of blinkage. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SEARCH AND SEIZURE-PROLONGED STOP: Even if the police have reasonable suspicion to make a traffic stop, they do not have unfettered authority to detain a person indefinitely. An officer questioning a detainee about matters unrelated to the purpose of the traffic stop, i.e., about counterfeit merchandise, drugs, and dead bodies, consuming twenty-five seconds, unconstitutionally prolongs the traffic stop. The mission of a traffic stop is to address the traffic violation that warranted the stop and attend to related safety concerns, and may last no longer than is necessary to complete its mission. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SEARCH AND SEIZURE-PROLONGED STOP-PERMISSIBLE QUESTIONS: If an officer unlawfully prolongs a stop, any evidence uncovered as a result may be suppressed. Officer may not prolong traffic stop to pursue unrelated tasks. Officer asking about one's gang affiliation and calling in a dog to search for contraband is not related to the purpose of a traffic stop. Related tasks are the ordinary inquiries incident to a traffic stop, while unrelated tasks are other measures aimed at detecting criminal activity more generally. Unrelated inquiries are permitted only so long as they do not add any time to the stop. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SEARCH AND SEIZURE-PROLONGED STOP: The appropriate standard to decide prolongation cases is not whether the length of the stop as a whole

was reasonable (the overall reasonableness standard); "The proper standard for addressing an unlawfully prolonged stop. . . is this: a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop's purpose and adds time to the stop in order to investigate other crimes. A stop is unlawfully prolonged even if done expeditiously, (here, 25 seconds). Any case law to the contrary was improperly decided. USA v. Campbell, No. 16-10128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SEARCH AND SEIZURE-PROLONGED STOP: Examples of permissible/impermissible questions on a traffic stop. The following are impermissible: "Any counterfeit or bootleg CDs or DVDs or anything like that? Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy? Nothing like that? You don't have any dead bodies in your car?" USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

DEFINITION-"VACATE": To vacate means "to nullify or cancel; make void; or invalidate." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

EXCLUSIONARY RULE-GOOD FAITH EXCEPTION: The exclusionary rule does not apply when the police act in good-faith reliance on binding appellate precedent. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

EXCLUSIONARY RULE-GOOD FAITH EXCEPTION: Although "good faith" is most often framed as an exception to the exclusionary rule, it is probably more accurately described as a reason for declining to invoke the exclusionary rule in the first place. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

APPEAL-PARTY PRESENTATION PRINCIPLE: Typically, issues not raised in the initial brief on appeal are deemed abandoned. Under the party presentation principle, appellate courts rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. However, the party presentation principle is supple, not ironclad, and does not necessarily apply when an issue is forfeited, rather than waived. Forfeiture is the failure to make the timely assertion of a right; waiver is the intentional relinquishment or abandonment of a known right. Courts have the ability to resurrect forfeited issues sua sponte in extraordinary circumstances. "The degree to which we adhere to the prudential practice of forfeiture and the conditions under which we will excuse it are up to us as an appellate court." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

APPEAL-PARTY PRESENTATION PRINCIPLE: The mere failure to raise an issue in an initial brief on direct appeal should be treated as a forfeiture of the issue, and therefore the issue may be raised by the court sua sponte in extraordinary circumstances after finding that one of the forfeiture exceptions applies. "We believe treating the mere failure to brief an issue as forfeiture strikes the appropriate balance between respecting the party presentation principle and retaining the discretion to address important issues in extraordinary circumstances." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

APPEAL-PARTY PRESENTATION PRINCIPLE: Appellate court may exercise its discretion to consider a forfeited issue in five situations: (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the issue presents significant questions of general impact or of great public concern.

USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

APPEAL-EXCLUSIONARY RULE-GOOD FAITH EXCEPTION: The Government's failure to invoke the good-faith exception in its brief to the appellate court does not preclude the Court from considering the exception on appeal. Appellate Court has discretion to consider the good-faith exception despite the Government's failure to brief it. Appellate Court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law. Here, had the District Court considered the Good Faith exception to the search, it would have denied the Motion to Suppress, so the evidence derived from the unduly prolonged stop is admissible. USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

APPEAL-ADVOCACY TACTICS-FORFEITED ISSUE: Although appellate lawyers are advised to focus their briefing on their strongest, most pertinent arguments, even if they have many colorable claims, lawyers cannot always know which issues or arguments an appellate court will find persuasive ahead of time. So an abandoned issue may still be considered by the appellate court in exceptional cases. USA v. Campbell, No. 16-10128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

EXCLUSIONARY RULE: Because the exclusionary rule is prudential rather than constitutionally mandated, it is applicable only where its deterrence benefits outweigh its substantial social costs. These costs—which include the require ent that courts ignore reliable, trustworthy evidence bearing on guilt or innocence—exact a "heavy toll on both the judicial system and society at large. An officer who relies on binding appellate precedent has no culpability whatsoever. Excluding evidence in these circumstances would only serve "to discourage the officer from doing

his duty. Suppression of evidence is our last resort, not our first impulse." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

PRINCIPLE OF PRINCIPLES (DISSENT): 'We begin, as we feel we must, with first principles—indeed, with the first principle of first principles: In this country, we have an adversarial justice system." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SCORPIONS IN A BOTTLE: "The dissent's antics would radically transform the nature of oral arguments in this Court, an ironic position for an opinion ostensibly aimed at limiting judicial Power.". . . "Of course, were this Court a trial court, we could choose to credit some portions of the Government's testimony and discredit others—but we are not a trial court. The dissent seems to have forgotten this simple fact." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SCORPIONS IN A BOTTLE (DISSENT): "Tellingly, the majority never really explains why it thinks the government's non-argument of the good-faith issue resulted from a 'mere failure.' It just repeatedly asserts that proposition as fact, as if hoping to speak it into existence. . . [E]ven if the majority's premise were correct. . .its conclusion that sua sponte consideration of the good-faith issue is proper would be wrong. . .In fact, though, its premise is wrong—dead wrong." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SCORPIONS IN A BOTTLE (DISSENT): "First, aren't we slicing the bologna a little thin?. . .The logic of the majority. . .—which seems to rest on some sort of magic-words formalism—escapes us. . . Second, and to be absolutely clear, it wasn't just 'the dissenting judges' who joined in the so-called 'antics.' The oral-argument questioning was no sinister plot—no cabal-

led gotcha game. . . With all its talk of 'antics,' 'inquisitions,' and faux 'evidentiary hearings,' the majority seems to want to complicate—and obscure—a very straightforward event, which surely resembles similar events that occur in courtrooms around this country every day." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

SCORPIONS IN A BOTTLE: "The majority has offered no persuasive justification for insinuating itself into a criminal prosecution to save the United States—the quintessential sophisticated, repeat-player litigant—from what are, at best, its litigation failures." USA v. Campbell, No. 16-1-128 (11th Cir. 2/16/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201610128.enb.pdf

VOP-NOTICE: Notice that Defendant violated probation by by committing felony obstruction is sufficient to support revocation of probation where evidence showed only misdemeanor obstruction. The specific identification of lesser included offenses in charging instruments is not required if the greater offense is adequately identified and explained. USA v. Dennis, No. 21-10316 (11th Cir. 2/16/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202110316.pdf

FIRST STEP: Defendant convicted of distribution of crack cocaine within 1,000 of a school is ineligible for a First Step sentence reduction. Although district courts lack the inherent authority to modify a term of imprisonment, the First Step Act expressly permits them to reduce a previously imposed term of imprisonment. §841(b)(1)(C) offenses are not “covered offenses” under the First Step Act. USA v. Williams, No. 20-14187 (11th Cir. 2/15/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202014187.pdf

HMM: "Things seemed to settle down once the victim was on the ground with Appellant standing over him with an AK-47." Berrane v. State, 1D18-

4981 (2/16/22)
https://www.1dca.org/content/download/829110/opinion/184981_DC05_02162022_141407_i.pdf

JURY INSTRUCTION-FORCIBLE FELONY: A forcible-felony instruction is erroneous where a defendant is not charged with a forcible felony separate from the felony he committed. Although it is error to give a forcible-felony instruction when a defendant is not charged with a forcible felony separate from actions taken in self-defense, any error here is not fundamental because the primary defense was not self-defense, and the self-defense claim was weak. Here, the self-defense theory is extremely weak and the primary defense was that the shooting was accidental. Berrane v. State, 1D18-4981 (2/16/22)
https://www.1dca.org/content/download/829110/opinion/184981_DC05_02162022_141407_i.pdf

EVIDENCE-REPUTATION: Court did not err in excluding evidence about the Victim's reputation for robbing people where Defendant ambushed, caught, and shot Victim in response to learning about the Victim's plan to rob him. Berrane v. State, 1D18-4981 (2/16/22)
https://www.1dca.org/content/download/829110/opinion/184981_DC05_02162022_141407_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court errs in imposing a downward departure sentence (ten months in jail and probation), rather than a 55 month sentence for stealing a pair of sunglasses based on COVID-19 and the *de minimis* nature of the theft. A generalized concern about COVID-19 is not a valid, non-statutory mitigating circumstance for departure. State v. Kahl, 1D21-490 (2/16/22)
https://www.1dca.org/content/download/829117/opinion/210490_DC13_02162022_143441_i.pdf

SENTENCING-DOWNWARD DEPARTURE: A trial court's opinions that the

lowest permissible sentence is too harsh, or that the severity of the sentence is not commensurate with the seriousness of the crime, are prohibited grounds upon which to depart. State v. Kahl, 1D21-490 (2/16/22) https://www.1dca.org/content/download/829117/opinion/210490_DC13_02162022_143441_i.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Race Is not a relevant factor in determining whether a reasonable person would have felt free to leave or terminate the encounter. State v. K.F., 1D21-1108 (2/16/22) https://www.1dca.org/content/download/829119/opinion/211108_DC13_02162022_143849_i.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Officer walking looking into car with a flashlight and asking the subject to roll down the window is a consensual encounter, not an investigatory stop. Motion to suppress should have been denied. State v. K.F., 1D21-1108 (2/16/22) https://www.1dca.org/content/download/829119/opinion/211108_DC13_02162022_143849_i.pdf

RESISTING WITHOUT VIOLENCE: Defendant does not obstruct officer for refusing to come out of house for officers investigating him from exposing his sexual organs to a neighbor from his doorway. Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. Defendant's failure to cooperate cannot itself be criminal. Even if officers had probable cause to arrest Defendant prior to removing him from the apartment, that would still not be enough to justify entering his home to conduct a warrantless arrest. Seiracki v. State, 2D21-63 (2/16/22) https://www.2dca.org/content/download/828983/opinion/210063_DC08_02162022_082629_i.pdf

EVIDENCE: Defendant, a police officer who shot at a mentally ill man who he wrongfully believed armed with a gun, is entitled to present evidence of his SWAT training to justify the shooting. The training undertaken by the

professional is relevant for the jury to consider in determining how and why the professional assessed and responded to the situation, and whether, under the circumstances surrounding the particular case, such assessment and response was objectively reasonable. State v. Aledda, 3D19-1690 (2/16/22)
https://www.3dca.flcourts.org/content/download/829002/opinion/191690_DC13_02162022_100041_i.pdf

CULPABLE NEGLIGENCE: The degree of negligence required to sustain a conviction for the crime of culpable negligence is significantly higher than that necessary to sustain a recovery of compensatory damages in a tort case. To sustain a conviction for the crime of culpable negligence, the State must establish that the defendant acted with a gross and flagrant character, evincing reckless disregard for human life or an entire want of care which would raise the presumption of indifference to consequences; or such wantonness or recklessness or grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them. State v. Aledda, 3D19-1690 (2/16/22)
https://www.3dca.flcourts.org/content/download/829002/opinion/191690_DC13_02162022_100041_i.pdf

VOP-VFOSC: Defendant with a withhold of adjudication may still qualify as a violent felony offender of special concern. State v. Gutierrez, 3D21-989 (2/16/22)
https://www.3dca.flcourts.org/content/download/829019/opinion/210989_DC13_02162022_102247_i.pdf

VOP-VFOSC: On a VOP, a violent felony offender of special concern must remain in custody pending the resolution of the probation violation, and the Court may not dismiss the affidavit of probation violation without holding a recorded violation-of-probation hearing at which both the state and the offender are represented. State v. Gutierrez, 3D21-989 (2/16/22)

https://www.3dca.flcourts.org/content/download/829019/opinion/210989_DC13_02162022_102247_i.pdf

VOP-VFOSC: Except in cases of failure to pay costs, fines, or restitution, the court must make written findings as to whether or not the violent felony offender of special concern poses a danger to the community, and if so, must sentence the offender to the the statutory maximum, or longer if permitted by law. State v. Gutierrez, 3D21-989 (2/16/22)
https://www.3dca.flcourts.org/content/download/829019/opinion/210989_DC13_02162022_102247_i.pdf

VOP-VFOSC: In the absence of an agreement by the parties, a waiver by the State, or a legally sufficient motion, Court does not have the authority to sua sponte dismiss the affidavit of violation of probation without first conducting a probation violation hearing. State v. Gutierrez, 3D21-989 (2/16/22)
https://www.3dca.flcourts.org/content/download/829019/opinion/210989_DC13_02162022_102247_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claims that counsel was ineffective for failing to call a witness who would have undermined the credibility of a critical prosecutorial witness and for failing to order a competency evaluation; and that State withheld Brady evidence. Curry v. State, 3D21-1888 (2/16/22)
https://www.3dca.flcourts.org/content/download/829027/opinion/211888_DC08_02162022_103440_i.pdf

BAIL: Court must consider Defendant's financial resources in setting bail. Where Defendant asserts that he can pay no amount of bail, and Court finds that bail is appropriate, it does not matter how high or low the bail is set. "[W]e reject the proposition that where a defendant lacks sufficient financial resources to satisfy cash bail, a trial court is required to impose nonmonetary

release conditions." Arslanian v. Junior, 3D22-249 (2/16/22) https://www.3dca.flcourts.org/content/download/829032/opinion/220249_DC02_02162022_103836_i.pdf

EVIDENCE-REFUSAL TO COOPERATE: In traveling to meet a minor case, evidence of Defendant's refusal to provide his cellphone PIN and his refusal to allow law enforcement to conduct a warrantless search of his entire cellphone is inadmissible. A defendant has a constitutional right to refuse a request for a warrantless search. New trial required. Comment on a defendant's denial of permission to search constitutes constitutional error of the same magnitude as as comment on a defendant's right to remain silent. McRoberts v. State, 4D19-2060 (2/16/22) https://www.4dca.org/content/download/829051/opinion/192060_DC13_02162022_100529_i.pdf

SENTENCING-GUIDELINES-LPS: Under the sentencing guidelines, the lowest permissible sentence (LPS0) is an individual minimum sentence where there are multiple convictions subject to sentencing on a single scoresheet. Swift v. State, 4D20-654 (2/16/22) https://www.4dca.org/content/download/829054/opinion/200654_DC05_02162022_100630_i.pdf

FINE: Court may not impose a $500 discretionary fine for battery without stating the statutory authority for the fine. Authority for discretionary fines authorized by section 775.083 must be orally pronounced at sentencing.

COSTS-SUPERVISION: Court may not impose a monthly supervision charge in excess of $40.00 for misdemeanor probation without any accompanying oral pronouncement. See §948.09(1)(b). Paris v. State, 4D21-51 (2/16/22) https://www.4dca.org/content/download/829057/opinion/210051_DC08_02162022_101803_i.pdf

POST CONVICTION RELIEF: Defendant's motion for post conviction relief claiming that counsel was ineffective for failing to advise him that he was eligible for youthful offender sentencing is legally insufficient un the absence of an allegation that but for his attorney's misadvice, Appellant would not have pled guilty and would have insisted on going to trial. Briggs v. State, 4D21-585 (2/16/22)
https://www.4dca.org/content/download/829066/opinion/211585_DC05_02162022_103553_i.pdf

APPEAL-PRESERVATION: Court order improperly suppressing evidence of Field Sobriety Exercises is nonetheless upheld because State neither objected after the ruling nor filed a motion for rehearing. State v. Fox, 4D21-2181 (2/16/22)
https://www.4dca.org/content/download/829067/opinion/212181_DC05_02162022_103940_i.pdf

APPEAL-JURISDICTION: Trial court retains jurisdiction to issue written orders conforming to oral pronouncements once the notice of appeal is filed if the written order is entered before the record on appeal is transmitted, but not after. Sandoval v. State, 4D21-2193 (2/16/22)
https://www.4dca.org/content/download/829068/opinion/212193_DC08_02162022_104035_i.pdf

COSTS-SUPERVISION: Any person placed on misdemeanor probation by a county court must contribute not less than $40 per month. Any greater costs of supervision must be orally pronounced with their statutory basis. Sandoval v. State, 4D21-2193 (2/16/22)
https://www.4dca.org/content/download/829068/opinion/212193_DC08_02162022_104035_i.pdf

VOP: Court may not revoke probation based on Defendant's loss of GPS device absent proof that loss was unintentional (Defendant's theorized that

the GPS unit may have fallen off him or that someone may have taken it off him during a dispute and thrown it into the woods). Douglas v. State, 2D20-3196 (2/11/22)

https://www.2dca.org/content/download/828399/opinion/203196_DC13_02112022_082646_i.pdf

POST CONVICTION RELIEF: Where Defendant pled to a specific sentences with an improper scoresheet, he is entitled to a hearing on his motion for re-sentencing unless attached records show that he would have agreed to the length of the sentence regardless. Hartshorn v. State, 2D21-333 (2/11/22)
https://www.2dca.org/content/download/828402/opinion/210333_DC13_02112022_082809_i.pdf

POST CONVICTION RELIEF-SCORESHEET: Defendant is entitled to a hearing on motion for re-sentencing where the scoresheet was improperly calculated, notwithstanding that the sentence (64 months) was higher than the lowest permissible sentence under the incorrectly calculated scoresheet (63.9 months). Hartshorn v. State, 2D21-333 (2/11/22)
https://www.2dca.org/content/download/828402/opinion/210333_DC13_02112022_082809_i.pdf

STAND YOUR GROUND: SYG motion to dismiss must be sworn to. Faulstick v. State, 5D21-600 (2/11/22)
https://www.5dca.org/content/download/828437/opinion/210600_DC08_02112022_083944_i.pdf

VOP: Court may not find Defendant in violation of probation for missing a required BIP evaluation when his unrebutted testimony showed that he was in a hospital emergency room with a work-related injury on the date he was to attend the program evaluation, and he was later told not to come because of Covid. In the absence of evidence that Faulstick's failure to attend was

willful, the trial court erred in finding the Defendant in violation. Faulstick v. State, 5D21-600 (2/11/22) https://www.5dca.org/content/download/828437/opinion/210600_DC08_02112022_083944_i.pdf

SEARCH AND SEIZURE-INEVITABLE DISCOVERY-IMPOUNDMENT: The arrest of a defendant, standing alone, does not justify the impoundment of his or her legally parked car. Purse found in a legally parked vehicle after the arrest of the owner is unlawful absent evidence of guidelines for impoundment. Wall v. State, 5D21-984 (2/11/22) https://www.5dca.org/content/download/828440/opinion/210984_DC13_02112022_091413_i.pdf

DISCOVERY VIOLATION: In murder case, Defendant is not entitled to a new trial based on the disclosure of a firearm expert the day before trial absent a finding that defense strategy would change. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

EVIDENCE-IMPEACHMENT: A party may impeach a witness by introducing statements of the witness which are inconsistent with the witness's present testimony, provided that the prior statement is both (1) inconsistent with the witness's in-court testimony, and (2) the statement of the witness. A statement is inconsistent only it directly contradicts or is materially different from testimony during trial. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

EVIDENCE-IMPEACHMENT-PREDICATE: Prior to questioning a witness about the contents of a previous inconsistent statement, counsel must call to the witness's attention the time, place, and person to whom the statement

was allegedly made. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

EVIDENCE-IMPEACHMENT: Out-of-court identifications are not hearsay and are admissible as statements of identifications pursuant to §90.801(2)(c), provided the declarant testifies at the trial or hearing and is subject to cross-examination. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

IMPEACHMENT: One may impeach one's witness without the necessity of showing that the witness has become adverse. §90.608 now permits a party to impeach its own witness by introducing prior inconsistent statements without regard to whether the witness's testimony is prejudicial. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

EVIDENCE: Testimony that Defendant yelled at victim a few days before the homicide is admissible to show motive. Joseph v. State, SC20-1741 (2/10/22) https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

DEATH PENALTY-HAC: The HAC aggravator applies to murders that are both conscienceless or pitiless and unnecessarily torturous. Gunshot murders can qualify as HAC if the events preceding the death cause the victim fear, emotional strain, and terror, even if the victim's perception of imminent death need lasts only seconds. Where victim was heard begging for help, murder can be deemed heinous, atrocious, and cruel. A finding of HAC does not require the victim to undergo physical torture; mental torture is sufficient. Joseph v. State, SC20-1741 (2/10/22)

https://www.floridasupremecourt.org/content/download/828287/opinion/sc20-1741.pdf

DEATH PENALTY: Jury need not specify the facts upon which it finds aggravating factors. The required jury finding for death eligibility is the unanimous finding of the existence of one or more aggravating factors proven beyond a reasonable doubt, not the individual facts on which the jury relied to find each aggravating factor. McKenzie v. State, SC20-243 (2/9/22)
https://www.floridasupremecourt.org/content/download/828286/opinion/sc20-243.pdf

DEATH PENALTY-VICTIM IMPACT: Court is neither required to exclude victim impact evidence nor to receive it outside of the jury's presence. McKenzie v. State, SC20-243 (2/9/22)
https://www.floridasupremecourt.org/content/download/828286/opinion/sc20-243.pdf

DEATH PENALTY: Jury need not find beyond a reasonable doubt that the aggravating factors were sufficient to impose the death penalty and that the aggravating factors outweighed the mitigating circumstances. These jury determinations are not subject to the beyond a reasonable doubt standard of proof. Only the existence of a statutory aggravating factor must be found beyond a reasonable doubt. McKenzie v. State, SC20-243 (2/9/22)
https://www.floridasupremecourt.org/content/download/828286/opinion/sc20-243.pdf

DOUBLE JEOPARDY: Convictions for both grand theft and organized scheme to defraud violate double jeopardy when based on the same conduct. Grand theft is a lesser-included offense of organized scheme to defraud. Double-jeopardy analysis looks solely to the charging document, and cannot be based on evidence adduced at trial. If it is impossible to tell from the charging document whether the jury could have convicted the

defendant of two crimes based on the same conduct, the judgments violate double jeopardy. Amison v. State, 1D18-1312 (2/9/22) https://www.1dca.org/content/download/828200/opinion/181312_DC08_02092022_141532_i.pdf

STAND YOUR GROUND: Officer charged with battery based on him hitting a prone juvenile's face into the pavement is not entitled to SYG immunity on the basis of another officer having been found to qualify for said immunity. Pushing child to the ground is different from smashing the child's face into the pavement. Krickovich v. State, 4D21-842 (2/9/22) https://www.4dca.org/content/download/828116/opinion/210842_DC02_02092022_100930_i.pdf

STAND YOUR GROUND: §870.05 (an anti-rioting statute protecting officer's use of force) is not an immunity statute; rather, the statute creates a defense available at trial. Krickovich v. State, 4D21-842 (2/9/22) https://www.4dca.org/content/download/828116/opinion/210842_DC02_02092022_100930_i.pdf

DOUBLE JEOPARDY: Convictions for both grand theft and organized scheme to defraud violate double jeopardy when based on the same conduct. Grand theft is a lesser-included offense of organized scheme to defraud. Double-jeopardy analysis looks solely to the charging document, and cannot be based on evidence adduced at trial. If it is impossible to tell from the charging document whether the jury could have convicted the defendant of two crimes based on the same conduct, the judgments violate double jeopardy. Amison v. State, 1D18-1312 (2/9/22) https://www.1dca.org/content/download/828200/opinion/181312_DC08_02092022_141532_i.pdf

RESTITUTION-FRAUD: The amount of restitution in charitable contribution fraud case should not include money actually received by the intended beneficiaries. "Ideally, the punitive aspect of restitution would also fall fully

on the defendant, but the primary goal of restitution is to make the victim whole. . . .Giving back money previously stolen or withheld unlawfully is still giving back." Amison v. State, 1D18-1312 (2/9/22) https://www.1dca.org/content/download/828200/opinion/181312_DC08_02092022_141532_i.pdf

RICO: Two predicate incidents which violate Chapters 812 or 817 are required to establish a pattern of racketeering activity. Failure to apply charitable contributions under §496.415(16) is not a predicate offense. Amison v. State, 1D18-1312 (2/9/22) https://www.1dca.org/content/download/828200/opinion/181312_DC08_02092022_141532_i.pdf

SENTENCING-DOWNWARD DEPARTURE-NEED FOR RESTITUTION: The test for a downward departure is the victim's need, not the victim's desire or preference. Where no evidence was presented regarding the victim's need for restitution, a downward departure is unlawful. Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE-MINOR PARTICIPANT: Defendant may not be given a downward departure as a relatively minor participant where he in fact was a major, long-term participant without whom the scheme could not have been carried out. Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE-NON-STATUTORY GROUNDS: Relative culpability is a valid non-statutory basis to impose a downward departure in order to provide parity with the sentence of a co-defendant who was at least, if not more, culpable than the defendant, but

only to the extent of departing downward to meet a codefendant's sentence. Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE-CONTRITION: Where Defendant's criminal activity was a complex financial scheme that took place over the span of nearly five years, he is not eligible for a downward departure under the isolated unsophisticated incident. "The legislature's requirements would be left hollow if a sentencing court could cherry-pick one part of a statutory mitigator and re-define it as non-statutory. A statutory ground's requirements cannot be avoided simply by renaming the basis a non-statutory ground." Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE: The consideration of past restitution under §921.185 cannot, by itself, serve as a legal basis for a downward departure sentence. Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may not downward depart on the ground that Defendant is an asset to the community based on charitable works, support of needy family members, or his business. The sentencing court "must be blind as to the color of a defendant's collar." Kunkemoeller v. State, 1D20-2209 (2/9/22) https://www.1dca.org/content/download/828203/opinion/202209_DC13_02092022_142725_i.pdf

SENTENCING-DOWNWARD DEPARTURE: That the Covid virus is so rampant in the county jail and in the prison cannot serve as a valid basis for departure, at least in the absence of competent substantial evidence that the

defendant has an underlying medical or health condition which places him at increased risk of contracting it if incarcerated in a county jail or state prison. State v. Jones, 3D20-1220 (2/9/22)
https://www.3dca.flcourts.org/content/download/828097/opinion/201220_DC13_02092022_100138_i.pdf

CREDIT FOR TIME SERVED: Defendant is not entitled to credit against the incarcerative portion of his sentence for the time he spent on pretrial house arrest. State v. Jones, 3D20-1220 (2/9/22)
https://www.3dca.flcourts.org/content/download/828097/opinion/201220_DC13_02092022_100138_i.pdf

COSTS: Court may not impose a $3 cost under §318.18(11)(b) on Defendant not being charged with a traffic infraction. Maleckar v. State, 5D21-1532 (2/4/22)
https://www.5dca.org/content/download/826630/opinion/211532_DC05_02042022_082135_i.pdf

VOP-SPLIT SENTENCE: Defendant who was sentenced to five years DOC as a condition of probation and later violated the probation has a true split sentence. The sanction for violation of supervision is limited to five years. Any subsequent modifications did not cause the Defendant to lose her right to receive the incarcerated portion of the true split sentence. Dalton v. State, 21-542 (2/4/22)
https://www.5dca.org/content/download/826628/opinion/210542_DC08_02042022_081713_i.pdf

COSTS: Court may not impose a $3 cost under §318.18(11)(b) on Defendant not being charged with a traffic infraction. Maleckar v. State, 5D21-1532 (2/4/22)
https://www.5dca.org/content/download/826630/opinion/211532_DC05_02042022_082135_i.pdf

VOP-SPLIT SENTENCE: Defendant who was sentenced to five years DOC as a condition of probation and later violated the probation has a true split sentence. The sanction for violation of supervision is limited to five years. Any subsequent modifications did not cause the Defendant to lose her right to receive the incarcerated portion of the true split sentence. Dalton v. State, 21-542 (2/4/22)
https://www.5dca.org/content/download/826628/opinion/210542_DC08_02042022_081713_i.pdf

DEATH PENALTY-MITIGATION: Court does not err in imposing death sentence despite Defendant's mitigating evidence ("I've never been a good person, but I've always been an honest person"). Bell v. State, SC20-472 (2/3/22)
https://www.floridasupremecourt.org/content/download/826481/opinion/sc20-472.pdf

DEATH PENALTY-MITIGATION: Court does not err in imposing the death penalty where Defendant participated in stabbing a fellow inmate in both eyes and drowning him in his own blood, all as part of a practice run to attempt to murder a Correctional Officer. The fact that aside from Officer Newman, he had not assaulted any other officers is insufficient mitigation. Court did not consider in mitigation the fact that Defendant's 12-step murder plan included becoming Vegan (Step 1) and improving his spelling (Step 12). Bell v. State, SC20-472 (2/3/22)
https://www.floridasupremecourt.org/content/download/826481/opinion/sc20-472.pdf

SEX OFFENDER REGISTRATION: Defendant's argument that he would not be required to register as a sex offender until completing probation for the underlying sex crime is wrong. Manetta v. State, 3D21-1769 (2/2/22)
https://www.3dca.flcourts.org/content/download/826310/opinion/211769_DC05_02022022_101646_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failure to advise client of pretrial plea offer. Bilus v. State, 1D21-132 (2/2/22)
https://www.1dca.org/content/download/826384/opinion/210132_DC08_02022022_141233_i.pdf

STAND YOUR GROUND: Defendant's motion to dismiss under Florida's Stand Your Ground law can establish a prima facie claim of self-defense immunity from criminal prosecution even though the motion to dismiss is not sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss. Penalver v. State, 3D21-1879 (2/2/22)
https://www.3dca.flcourts.org/content/download/826311/opinion/211879_DC03_02022022_101916_i.pdf

JUDGE-DISQUALIFICATION: Adverse rulings, without more, do not constitute the requisite bias or prejudice necessary to support disqualification. Song v. State, 3D22-79 (2/2/22)
https://www.3dca.flcourts.org/content/download/826318/opinion/220079_DC02_02022022_102606_i.pdf

RESTITUTION-HEARSAY: Victim is not entitled to restitution for attorney's fees for fraudulent real estate purchase (Defendant grabbed the warranty deed at closing but did not deliver the purchase money, and victim had to hire an attorney to quiet the title) where there was testimony that victim paid the attorney $300.00 per hour, but State failed to introduce any evidence relating to how many hours the attorney expended on matters for which restitution was proper. The owner's testimony, without further documentation or other evidence, was not enough to prove that the requested amount of $7,905.89 for attorney's fees was an accurate figure. Love v. State, 4D20-129 (2/2/22)
https://www.4dca.org/content/download/826326/opinion/200129_DC13_02022022_094936_i.pdf

SCORESHEET: Where Defendant challenges various prior convictions listed on his scoresheet, State is required to introduce competent evidence in support of its scoring of his prior record. A claim that a defendant's scoresheet erroneously includes as scored prior convictions crimes for which he or she had never been convicted requires an evidentiary hearing. Sanders v. State, 4D20-1913 (2/2/22)
https://www.4dca.org/content/download/826327/opinion/201913_DC08_02022022_095229_i.pdf

PRINCIPAL-CIRCUMSTANTIAL EVIDENCE: The getaway driver who has prior knowledge of the criminal plan and is waiting to help the robbers escape is a principal. Where the defendant watched his companion commit a crime, waited for him to return to the vehicle, and then drove the companion and the stolen property away), he may be convicted as principal. Smith v. State, 5D21-988 (2/1/22)
https://www.5dca.org/content/download/825525/opinion/210988_DC05_02012022_082242_i.pdf

EX POST FACTO: The Ex Post Facto Clause prohibits the use of guidelines issued after the offense that create a higher applicable sentencing range. The two level substantial financial hardship enhancement added in 2015 resulted in a miscalculation of the Guidelines range, requiring resentencing. The application of an incorrect Guidelines range is almost always enough to show a reasonable probability of a different outcome absent the error. USA v. Maurya, No. 19-10746 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

RESTITUTION: To enable meaningful appellate review, a district court's calculation of restitution must be supported by specific factual findings. Remand required. USA v. Maurya, No. 19-10746 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

BILL OF PARTICULARS: The purpose of a bill of particulars is threefold:

to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense. But a bill of particulars cannot be used as a weapon to force the government into divulging its prosecution strategy, i.e., to compel the government to give a detailed exposition of its evidence or to explain the legal theories upon which it intends to rely at trial. USA v. Hardwick, No. 19-12140 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

EVIDENCE: The failure of the district court to supply an explanation for an evidentiary exclusion is not grounds for reversal. USA v. Hardwick, No. 19-12140 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

EVIDENCE-SUMMARY CHARTS: Summary charts are permitted, but only when any assumptions they make are supported by evidence in the record. USA v. Hardwick, No. 19-12140 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

JURY INSTRUCTION-DELIBERATE IGNORANCE: Although District courts should not instruct the jury on deliberate ignorance when the relevant evidence points only to actual knowledge, instructing the jury on deliberate ignorance is harmless error where the jury was also instructed and could have convicted on an alternative, sufficiently supported theory of actual knowledge. USA v. Hardwick, No. 19-12140 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: 180-month sentence, 45 months over the recommended range but far below the statutory maximum of 470, is not substantively unreasonable for embezzling lawyer. USA v. Maurya, No. 19-10746 (11th Cir. 2/1/22)
https://media.ca11.uscourts.gov/opinions/pub/files/201910746.pdf

JANUARY 2022

DWLS: By legislative modification of §322.34(2), an individual who never had a driver's license but whose right to drive has been suspended, canceled, or revoked may be convicted of DWLS. Hodo v. State, 2D20-495 (1/28/22)

https://www.2dca.org/content/download/825061/opinion/200495_DC08_01282022_080536_i.pdf

PRISON RELEASEE REOFFENDER: The factual finding that Defendant's crimes were committed within three years after release from prison need not be submitted to the jury. The exception under Apprendi that the fact of a prior conviction need not be determined by a jury applies. Establishing the date of release from prison is simply a ministerial act. Simmons v. State, 5D21-2917 (1/28/22)

https://www.5dca.org/content/download/825084/opinion/212917_DC05_01282022_090011_i.pdf

DEATH PENALTY-METHOD OF EXECUTION: Intellectually impaired inmate who failed to request execution by nitrogen hypoxia because he reads on a 1st grade level and could not comprehend the written request materials (which required an 11th grade reading level to be understood) is entitled to belatedly request nitrogen hypoxia execution. Reeves v. Commisioner, Alabama DOC, No. 22-10064 (1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202210064.pdf

THE WORLD WE LIVE IN: "Captain Emberton. . .distributed over one

hundred copies of the [execution by nitrogen hypoxia] election form with over one hundred envelopes, giving one to each death row inmate." Reeves v. Commisioner, Alabama DOC, No. 22-10064 (1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202210064.pdf

DEPORTATION: Foreign national convicted of an offense relating to a controlled substance is ineligible for cancellation of removal. Florida possession of cocaine renders one ineligible for cancellation of removal. The arguments that Florida's definition of cocaine extends to substances not prohibited under federal law, and that Florida's possession law does not require knowledge that the substance is illegal are nonavailing. Chamu v. US Attorney General, No. 19013908 (11th Cir. 1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201913908.pdf

COCAINE-STATE/FEDERAL DISTINCTION: "Positing the hypothetical existence of a form of cocaine that has slipped through the cracks of federal legislation is no more than 'legal imagination' conjuring up a 'theoretical possibility'—a practice forbidden by the Supreme Court. Chamu v. US Attorney General, No. 19013908 (11th Cir. 1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201913908.pdf

COCAINE-DEFINITION: Isomers are chemical compounds with the same formula but a different arrangement of atoms in the molecule and different properties. "Stereoisomers, for what it is worth, are usually divided into two categories: optical isomers (also called enantiomers) and diastereomers." Florida's cocaine definition includes any of cocaine's stereoisomers. The federal definition of cocaine describes cocaine's optical and geometric isomers. Chamu v. US Attorney General, No. 19013908 (11th Cir. 1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201913908.pdf

DEPORTATION-NARCOTICS: No illicit-nature mens rea is necessary to trigger removal consequences for drug offenses. Chamu v. US Attorney General, No. 19013908 (11th Cir. 1/26/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201913908.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Jackson v. DOC, 1D20 1473 (1/26/22)

https://www.1dca.org/content/download/824813/opinion/201473_DC02_01262022_111325_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Avery v. State, 1D20-2729 (1/26/22)

https://www.1dca.org/content/download/824814/opinion/202729_DC02_01262022_111532_i.pdf

SUBJECT-MATTER JURISDICTION-RELATED OFFENSE: Circuit court lacks jurisdiction over a misdemeanor DUI discovered when the Defendant was arrested for violating a domestic violence injunction where the DUI was not related to the underlying felony domestic battery charge. Defendant's

acquiescence to the circuit court's jurisdiction over the misdemeanor DUI charge did not provide the court with subject-matter jurisdiction. Subject matter cannot be created by waiver, acquiescence or agreement of the parties, by error in inadvertence of the parties or their counsel, or by the exercise of the power of the court. This outcome does not change where the misdemeanor charge was used to support Appellant's violation of probation because violations of probation are considered separate and distinct from the conviction of a new charge. Lack v. State, 1D20-3536 (1/26/22)

https://www.1dca.org/content/download/824815/opinion/203536_DC13_01262022_111752_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Jones v. Fla. Comm'n on Offender Review, 1D21-816 (1/26/22)

https://www.1dca.org/content/download/824817/opinion/210816_DC02_01262022_113110_i.pdf

LIMITATION OF ACTIONS-DILIGENT SEARCH: Where drug sale offenses occurred in June 2012 and informations were filed one year later, but the capiases were not served until July 2020, the Defendant is entitled to discharge. Where a person has not previously been arrested or served with a summons, prosecution commences when an indictment or information is filed provided that the capias is executed without unreasonable delay. NCIC database notation that Defendant had been arrested out of state during the relevant time period is inadmissible hearsay, and does not establish continuance absence anyways. Proof of two days out of Florida does not equal proof of a continuous absence to toll the statute of limitations. Mackey v. State, 1D21-1326 (1/26/22)

https://www.1dca.org/content/download/824820/opinion/211326_DC03_01262022_114435_i.pdf

POST CONVICTION RELIEF-JUDGMENT: There is no merit to a claim for relief based on judge's failure to affix the defendant's fingerprints to the judgment of guilt. Wilson v. State, 1D21-2334 (1/26/22)

https://www.1dca.org/content/download/824821/opinion/212334_DC05_01262022_114648_i.pdf

POST CONVICTION RELIEF: Court may not summarily grant a Defendant's motion for postconviction relief without a hearing. Court may summarily deny a motion under R. 3.850, but lacks the authorities to summarily grant such a motion. State v. Avila, 3D21-565 (1/26/22)

https://www.3dca.flcourts.org/content/download/824810/opinion/210565_DC13_01262022_110718_i.pdf

POST CONVICTION RELIEF: A sentence is illegal only if it imposes a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances. Perez v State, 3D21-874 (1/26/22)

https://www.3dca.flcourts.org/content/download/824791/opinion/210874_DC05_01262022_102611_i.pdf

WILLFULNESS: Willful conduct in the context of the Foreign Bank and Financial Accounts (FBAR) law, which requires reporting to IRS more than $10,000 held in foreign accounts, includes knowing and reckless conduct. Reckless conduct is action that objectively entails a high risk of harm. USA

v. Schwarzbaum, No. 20-12061 (1/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012061.pdf

BLUNDERING CONSTABLE: "The main question in this criminal appeal is, as it often is, whether a criminal should 'go free because the constable has blundered.' . . .[T]he answer to the question on appeal is that the constable's blunders do not warrant reversing Nicholson's conviction as a matter of law." USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

TRANSPORTING MINOR: Defendant may be convicted of knowing transportation of a minor in interstate commerce with the intent that the minor engage in sexual activity notithstanding that he did not have sex with the child on that trip. The government need not prove actual sexual activity to convict under Section 2423. Evidence of actual sex acts is not the only way to prove the criminal intent to commit those acts. USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

VENUE: Venue need only be proved by a preponderance of the evidence as opposed to beyond a reasonable doubt and may be proven by preponderance of the evidence. Court may presume that a text was sent from the district in with the victim lived at the time. USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

SEARCH AND SEIZURE-WARRANT: Where search of digital media takes

place outside the 60 day limit required by the warrant, the search is not suppressible where, as here, Defendant is neither prejudiced nor was the delay delierate. "Although the government did not comply with the temporal limitation in the magistrate judge's order, we cannot say that this failure rises to a Fourth Amendment violation." USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE: Suppression is not a necessary consequence of a Fourth Amendment violation. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. Merely negligent law enforcement conduct does not justify exclusion. USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

MISTRIAL: When a defendant's motion arises out of the admission and later exclusion of evidence, an instruction to disregard the evidence is sufficient grounds for an appellate court to uphold a trial court's denial of a motion for mistrial unless the evidence is so highly prejudicial as to be incurable by the trial court's admonition. Evidence of six images discovered in the unallocated space of the camera recovered, showing the relationship of the Defendant with the victim, initially admitted then excluded, do not warrant a mistrial. USA v. Nicholson, No. 19-11669 (11th Cir. 1/24/22)

https://media.ca11.uscourts.gov/opinions/pub/files/201911669.pdf

POST CONVICTION RELIEF: Court must either attach records refuting the

allegation that counsel was ineffective for failing to request the appropriate self-defense jury instruction or hold a hearing. Hill v. State, 5D21-2288 (1/21/22)

https://www.5dca.org/content/download/824012/opinion/212288_DC08_01212022_085218_i.pdf

CONFRONTATION-HEARSAY-OPENING THE DOOR: In murder prosecution where a different suspect was originally charged but during his trial was allowed to plea to illegal possession of a firearm not used in the murder, the Defendant's presentation of evidence that the original suspect had ammunition of the caliber used to kill the victim on his nightstand does not open the door to admission of the original suspect's plea colluquy in which he denied possession of the murder weapon. Such evidence violates the Confrontation Clause. Hemphill v. New York, SC20-637 (1/20/22)

https://www.supremecourt.gov/opinions/21pdf/20-637_10n2.pdf

CONFRONTATION CLAUSE: "If Crawford stands for anything, it is that the history, text, and purpose of the Confrontation Clause bar judges from substituting their own determinations of reliability for the method the Constitution guarantees. The Clause 'commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.'" Hemphill v. New York, SC20-637 (1/20/22)

https://www.supremecourt.gov/opinions/21pdf/20-637_10n2.pdf

POST CONVICTION RELIEF: Where Defendant's sentence became final before Ring, he is not entitled to retroactive application of State v. Poole,

which requires a unanimous jury finding of the existence of a statutory aggravating factor. Jackson v. State, SC21-754 (1/20/22)

https://www.floridasupremecourt.org/content/download/823847/opinion/sc21-754.pdf

SEX OFFENDERS: Sheriff's placement of signs in the front yards of sex offenders ("STOP" and "NO TRICK-OR-TREAT AT THIS ADDRESS" is compelled government speech, and their placement violates a homeowner's First Amendment rights. McClendon v. Long, No. 21-10092 (1/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202110092.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which will later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Hayes v. Dixon, 1D20-9 (1/19/22)

https://www.1dca.org/content/download/823543/opinion/200009_DC02_01192022_140828_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a hearing on claim that counsel was ineffective for failing to retain an additional accident reconstruction record. "Strickland does not enact Newton's third law for the presentation of evidence, requiring for every rosecution expert an equal and opposite expert from the defense." Brown v. State, 1D20-2213 (1/19/22)

https://www.1dca.org/content/download/823545/opinion/202213_DC05_01192022_141305_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which will later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Perez v. Florida DOC, 1D20-3266 (1/19/22)

https://www.1dca.org/content/download/823547/opinion/203266_DC02_01192022_143725_i.pdf

LIFE SENTENCE-JUVENILE OFFENDER: A life sentence for a juvenile offender with the possibility of parole after 25 years does not violate Graham. Defendant is not entitled to resentencing. Woods v. State, 1D21-649 (1/19/22)

https://www.1dca.org/content/download/823549/opinion/210649_DC02_01192022_143956_i.pdf

CONTINUANCE (CONCURRENCE): In complex capital murder case involving over 60 witnesses and COVID problems, "the adage 'haste makes waste' comes to mind: the judicial desire that a case be tried in a timely way is praiseworthy, but only if the level of due process required is met." Boatman v. State, 1D21-2565 (1/19/22)

https://www.1dca.org/content/download/823552/opinion/212565_DC02_01192022_144335_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which will later bar the litigant from presenting the issue

under the doctrines of res judicata or collateral estoppel. Hudson v. State, 1D21-3034 (1/19/21)

https://www.1dca.org/content/download/823553/opinion/213034_DC02_01192022_144433_i.pdf

APPEAL-MANDATE: The finality of judgment principle that trial courts do not have authority to disregard an appellate court's mandate requiring resentencing notwithstanding a subsequent intervening change in the law. Blount v. State, 2D20-1159 (1/21/22)
https://www.2dca.org/content/download/824003/opinion/201159_DC13_01212022_083232_i.pdf

DISQUALIFICATION-STATE ATTORNEY: Court must conduct a hearing on motion for imputed disqualification of SAO where an Assistant State Attorney had left the Public Defender's Office to work for the State Attorney's Office and had been privy to confidential and privileged information related to the legal representation of Defendant. Where the rule prohibiting the disqualified attorney from personally assisting in any capacity, in the prosecution of the charge is violated, disqualification of the entire state attorney's office is appropriate. Minner v. State, 3D21-1774 (11/19/22)
https://www.3dca.flcourts.org/content/download/823482/opinion/211774_DC03_01192022_105122_i.pdf

APPEAL-CERTIORARI: When an appellate court reviews a lower court order, there is a procedural distinction between review by certiorari and review by appeal. On appeal, an appellate court has authority to reverse an order or judgment and remand with directions or instructions for the trial court to follow. However, after review by certiorari, an appellate court can only quash the lower court order; it has no authority to direct the lower court to enter contrary orders. Minner v. State, 3D21-1774 (11/19/22)

https://www.3dca.flcourts.org/content/download/823482/opinion/211774_

DC03_01192022_105122_i.pdf

DISQUALIFICATION-STATE ATTORNEY: Court must conduct a hearing on motion for imputed disqualification of SAO where an Assistant State Attorney had left the Public Defender's Office to work for the State Attorney's Office and had been privy to confidential and privileged information related to the legal representation of Defendant. Where the rule prohibiting the disqualified attorney from personally assisting in any capacity, in the prosecution of the charge is violated, disqualification of the entire state attorney's office is appropriate. McMahon v. State, 3D21-1775 (1/19/21) https://www.3dca.flcourts.org/content/download/823483/opinion/211775_DC03_01192022_105101_i.pdf

APPEAL-CERTIORARI: When an appellate court reviews a lower court order, there is a procedural distinction between review by certiorari and review by appeal. On appeal, an appellate court has authority to reverse an order or judgment and remand with directions or instructions for the trial court to follow. However, after review by certiorari, an appellate court can only quash the lower court order; it has no authority to direct the lower court to enter contrary orders. McMahon v. State, 3D21-1775 (1/19/21) https://www.3dca.flcourts.org/content/download/823483/opinion/211775_DC03_01192022_105101_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a second, successive SYG hearing based on the statutory change in the burden of proof. Statutory revisions impacting the quantum and burden of proof are procedural. Defendants in nonfinal cases are not entitled to new immunity hearings based upon the intervening statutory change. Bailey v. State, 3D21-2107 (1/19/21) https://www.3dca.flcourts.org/content/download/823500/opinion/212107_DC02_01192022_105420_i.pdf

CERTIORARI: A departure from the essential requirements of the law that

will justify issuance of the extraordinary writ of certiorari requires significantly more than a demonstration of legal error. A district court should exercise its discretion to grant certiorari review only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. Bailey v. State, 3D21-2107 (1/19/21)
https://www.3dca.flcourts.org/content/download/823500/opinion/212107_DC02_01192022_105420_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his motion for post-conviction relief where Court applied the wrong standard--whether there was a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different--instead of the correct standard: Whether there was a reasonable probability that, but for his counsel's misadvice and omissions, Defendant would have insisted on going forward with the revocation hearing. West v. State, 2D20-1818 (1/14/22)
https://www.2dca.org/content/download/822154/opinion/201818_DC13_01142022_082619_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to State's multiple references to the age difference between the Defendant and victim in sex battery case. The trial court's determination that the claim fails to present a valid basis for relief is incorrect. Macias v. State, 2D21-2534 (1/14/22)
https://www.2dca.org/content/download/822168/opinion/212534_DC08_01142022_082951_i.pdf

POST CONVICTION RELIEF-WILLIAMS RULE: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to Williams rule evidence. The Williams rule evidence notice which had been given was for acts which were different from the collateral crimes acts actually submitted in evidence. Macias v. State, 2D21-2534 (1/14/22)
https://www.2dca.org/content/download/822168/opinion/212534_DC08_0

1142022_082951_i.pdf

VOP: A revocation sentence can be used to extend a prisoner's total imprisonment beyond his combined statutory maximums. Defendant is lawfully sentenced to ten years in prison (the statutory maximum) followed by three years of supervised release, and a further three and a years upon violation of that supervised release. USA v. Moore, No. 20-11215 (11th Cir. 1/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

VOP: Where Defendant had been sentenced to a total of 42 months' imprisonment for his prior revocations, in excess of the statutory maximum for supervised relase, Court may not impose any additional supervised release. The maximum allowable supervised release following multiple revocations must be reduced by the aggregate length of any terms of imprisonment that have already been imposed upon revocation. USA v. Moore, No. 20-11215 (11th Cir. 1/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

VOP: When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.
USA v. Moore, No. 20-11215 (11th Cir. 1/13/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

VOP: The court may revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision.

§3583(e) permits the total time a defendant serves for his original conviction and revocations of supervised release to exceed the combined statutory maximum terms of imprisonment and supervised release for the original offense of conviction. Apprendi and Alleyne do not deal with revocation proceedings. USA v. Moore, No. 20-11215 (11th Cir. 1/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: Court abuses its discretion when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors. Four month upward variance is not substantively unreasonable for repeat violations of supervision. USA v. Moore, No. 20-11215 (11th Cir. 1/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

CONTEMPT-ALLOCUTION: A court may hold a defendant in summary contempt without notice or a prior opportunity to be heard. Notice and at least a brief opportunity to be heard should be afforded as a matter of course in criminal contempt proceedings, but case law so holding speaks of norms, not absolute rules. USA v. Moore, No. 20-11215 (11th Cir. 1/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

CONTEMPT: Six month sentence for direct contempt by Defendant who in open court said "He's full of shit. . . I didn't do nothing to nobody." Defendant's disruptions were not a "single isolated use of street vernacular." USA v. Moore, No. 20-11215 (11th Cir. 1/13/22) https://media.ca11.uscourts.gov/opinions/pub/files/202011215.pdf

DISCOVERY-VIOLATION: Defendant is entitled to a new trial for ax murder where State failed to disclose that the Victim's son had been a confidential informant against another suspect (Both the son and the other suspect were possible perpetrators under the Defendant's theory of the

case) Brady requires the State to disclose material information within its possession or control that is favorable to the defense. To establish a Brady violation, a defendant must demonstrate that (1) the evidence was either exculpatory or impeaching; (2) the evidence was willfully or inadvertently suppressed by the State; and (3) because the evidence was material, the defendant was prejudiced. Simpson v. State, SC18-1238 (1/13/22) https://www.floridasupremecourt.org/content/download/822033/opinion/sc18-1238.pdf

CONFRONTATION-PERPETUATED TESTIMONY: Perpetuated testimony recorded by Zoom in a way in which the witness was not able to see Defendant during the examination is unlawful. Avsenew v. State, SC18-1629 (1/13/22)
https://www.floridasupremecourt.org/content/download/823845/opinion/sc18-1629_CORRECTED.pdf

CONFRONTATION CLAUSE: The Confrontation Clause requires that the reliability and veracity of the evidence against a criminal defendant be tested by cross-examination, not determined by a trial court. Avsenew v. State, SC18-1629 (1/13/22)
https://www.floridasupremecourt.org/content/download/823845/opinion/sc18-1629_CORRECTED.pdf

DISCOVERY-BRADY: Disclosure of a witness' informant status is required even where there is no evidence that the witness was given favorable treatment in exchange for the information. Simpson v. State, SC18-1238 (1/13/22)
https://www.floridasupremecourt.org/content/download/822033/opinion/sc18-1238.pdf

VENUE: Defendant may not be tried in a venue where he did not commit any of the conduct elements of the charged crimes. Defendant who lives in Alabama and illegally accessed the Victim's servers in Orlando (Middle District of Florida), may not be prosecuted in Pensacola (Northern District of

Florida) for theft of trade secrets. The essential conduct element of the crime is that the defendant must steal, take without authorization, or obtain by fraud or deception trade-secret information. The effects of a crime are a not permissible basis for venue. USA v. Smith, No. 20-12667 (11th Cir. 1/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202012667.pdf

VENUE: The Double Jeopardy clause is not implicated by a retrial in a proper venue after a conviction for improper venue is vacated. USA v. Smith, No. 20-12667 (11th Cir. 1/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202012667.pdf

VENUE-COUNTS: Defendant's conviction for extortion in court where venue is proper is affirmed notwithstanding that the conviction for a separate count of theft of trade secrets is vacated for improper venue. Vacatur of a conviction on one count due to improper venue and affirmance of a conviction on another count is proper. USA v. Smith, No. 20-12667 (11th Cir. 1/12/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202012667.pdf

JURISDICTION: Defendant, who was traveling from Indiana to Florida, is properly convicted of murder in Florida when his emaciated three month old child is found dead of starvation when the family stops at a restaurant in Lakeland. Territorial jurisdiction is a jury question once the State proves that the victim died in Florida If the body of a homicide victim is found within the state, the death is presumed to have occurred within the state. If Defendant provides an unrefuted explanation that the offense occurred outside Florida, JOA is required; if the explanation is not conclusive it is not. Stephens v. State, 1D19-3429 (1/12/22)
https://www.1dca.org/content/download/821277/opinion/193427_DC05_01122022_133410_i.pdf

HEARSAY-STATEMENTS AGAINST PENAL INTEREST: Defendant's

Wife's (a co-defendant) jailhouse letter taking blame for the starvation death of her three week old daughter and exonerating Defendant is not admissible as a statements against penal interest nor under Chambers v. Mississippi where court finds the letter not trustworthy enough to warrant admission. Stephens v. State, 1D19-3429 (1/12/22) https://www.1dca.org/content/download/821277/opinion/193427_DC05_01122022_133410_i.pdf

DOUBLE JEOPARDY-SINGLE HOMICIDE RULE: Convictions for both first-degree murder and aggravated manslaughter of a child do not violate the state and federal constitutional proscriptions against double jeopardy. The single homicide rule no longer exists. Under Blockburger, dual convictions are permitted. The offenses are not different degrees of the same offense, and thus do not fall under the degree-variant exception. Stephens v. State, 1D19-3429 (1/12/22) https://www.1dca.org/content/download/821277/opinion/193427_DC05_01122022_133410_i.pdf

DICTA: A purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle, or application of law not necessarily involved in the case or essential to its determination is obiter dictum, pure and simple. Stephens v. State, 1D19-3429 (1/12/22) https://www.1dca.org/content/download/821277/opinion/193427_DC05_01122022_133410_i.pdf

DOUBLE JEOPARDY-DEGREE VARIANT EXCEPTION: Question Certified: Are first-degree murder and aggravated manslaughter of a child degrees of the same offense as contemplated by §775.021(4)(b)(2). Stephens v. State, 1D19-3429 (1/12/22) https://www.1dca.org/content/download/821277/opinion/193427_DC05_01122022_133410_i.pdf

APPEAL-PRESERVATION-CONTEMPORANEOUS OBJECTION RULE:

Under the contemporaneous objection rule, parties must object when an error occurs during trial to allow appellate review. The party must then make the same specific contention on appeal. Where Counsel had waited until the jury had retired to deliberate ("I don't believe in, in interrupting counsel in closing arguments."), the objection is not preserved. Smith v. State, 1D20-106 (1/12/22)
https://www.1dca.org/content/download/821278/opinion/200106_DC05_01122022_133555_i.pdf

ARGUMENT: Prosecutor's statements to jury that if they believe the accusers the burden of proof shifts to the Defendant or improper but the Defendant has no right to relief because he invited the error because he refused a curative instruction. Smith v. State, 1D20-106 (1/12/22)
https://www.1dca.org/content/download/821278/opinion/200106_DC05_01122022_133555_i.pdf

CHILD HEARSAY: Late notice of intent to admit child hearsay is not reversible error where the Defendant did not show prejudice and invited the error in order to bolster a possible appeal. Defendant cannot create an error by failing to try to set a hearing and then benefit from the error on appeal. Smith v. State, 1D20-106 (1/12/22)
https://www.1dca.org/content/download/821278/opinion/200106_DC05_01122022_133555_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Carter v. DOC, 1D20-1309 (1/12/22)
https://www.1dca.org/content/download/821279/opinion/201309_DC02_01122022_133720_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that

clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Murray v Fla. Comm'n on Offender Review, 1D20-2232 (1/12/22)
https://www.1dca.org/content/download/821281/opinion/202232_DC02_01122022_134342_i.pdf

EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Lucas v. Fla. Comm'n on Offender Review, 1D20-2463 (1/12/22)
https://www.1dca.org/content/download/821282/opinion/202463_DC02_01122022_134608_i.pdf

SEARCH AND SEIZURE-DOG SNIFF: A well-trained dog's alert establishes a fair probability—all that is required for probable cause—that either drugs or evidence of a drug crime will be found. Regardless of whether the smell of marijuana is indistinguishable from that of hemp, the smell from a vehicle continues to provide probable cause for a warrantless search of the vehicle. The possibility that a driver might be a medical-marijuana user would not automatically defeat probable cause. Collie v. State, 1D21-103 (1/12/22)
https://www.1dca.org/content/download/821283/opinion/210103_DC05_01122022_135206_i.pdf

SLEEPING JUROR: Counsel was not deficient in failing to remove a sleeping juror because the testimony was the juror slept through was inculpatory. "If anything, Footman may have benefitted from the juror missing part of the testimony of the prosecution's witnesses." Footman v. State, 1D21-2873 (1/12/22)
https://www.1dca.org/content/download/821286/opinion/212873_DC05_01122022_140222_i.pdf

GAIN TIME: Defendant is prohibited from incentive gain time for lewd and lascivious molestation by a person over 18 on a person less than 12. Guerra v. State, 4D21-1692 (1/12/22)
https://www.4dca.org/content/download/821226/opinion/211692_DA08_01122022_100201_i.pdf

POST CONVICTION RELIEF-MISADVISE: Defendant is entitled to withdraw his plea based on counsel's misdvice that he would be eligible for gain time for the offense of lewd or lascivious molestation by a person over 18 on a person less than 12. Guerra v. State, 4D21-1692 (1/12/22)
https://www.4dca.org/content/download/821226/opinion/211692_DA08_01122022_100201_i.pdf

COSTS: Court may not impose $9 in costs pursuant to section 318.18(11)(b) where the Defendant is not charged with traffic infractions. Redmon v. State, 5D21-383 (1/7/22)
https://www.5dca.org/content/download/820225/opinion/210383_DC05_01072022_083628_i.pdf

SEARCH AND SEIZURE-BAKER ACT: Warrantless search of wallet of Defendant who is being Baker Acted is unlawful. Deputy may not open her wallet and search its contents without a warrant. "Local law enforcement agency policies may be indicative of whether a search occasioned by a noncriminal seizure is reasonable, but they do not dictate ipso facto the parameters of the Fourth Amendment." S.P. v. State, 2D21-631 (1/7/22)
https://www.2dca.org/content/download/820214/opinion/210631_DC13_01072022_081912_i.pdf

SEARCH AND SEIZURE: In motion to suppress, Court must determine whether officers had sufficient basis to place Defendant under Baker Act custody; Court may not merely defer to the officer's judgment. "It appears the circuit court determined (at least implicitly) that the sheriff's deputies appropriately took S.P. into protective custody because the court felt it could

not review a law enforcement officer's decision to do so under the Baker Act. We must correct that misconception at the outset." S.P. v. State, 2D21-631 (1/7/22)
https://www.2dca.org/content/download/820214/opinion/210631_DC13_01072022_081912_i.pdf

SEARCH AND SEIZURE-BAKER ACT: Defendant--perhaps--is unlawfully taken into custody under Baker Act on a report that she was drunk, armed, and suicidal where she was not crying, was uninjured, and was able to communicate appropriately (issue is considered but not decided). S.P. v. State, 2D21-631 (1/7/22)
https://www.2dca.org/content/download/820214/opinion/210631_DC13_01072022_081912_i.pdf

SEARCH AND SEIZURE-BAKER ACT: Absent a recognized exception, a law enforcement officer must ordinarily obtain a warrant before searching the personal effects of a person. A Baker Act seizure is not a recognized exception. S.P. v. State, 2D21-631 (1/7/22)
https://www.2dca.org/content/download/820214/opinion/210631_DC13_01072022_081912_i.pdf

SEARCH AND SEIZURE-BAKER ACT-OFFICER SAFETY: The necessity of ensuring safety when subject is Baker Acted does not create an inchoate warrant to bypass every protection of the Fourth Amendment. Police policy of searching people before transporting them in the cruiser is insufficient justification for the search of one's wallet. "The deputy went a step too far under the Fourth Amendment when he opened the wallet and searched its contents." "[S]earching the wallet of a person who was already handcuffed and in custody for a mental health assessment was unnecessary to ensure anyone's safety." S.P. v. State, 2D21-631 (1/7/22)
https://www.2dca.org/content/download/820214/opinion/210631_DC13_01072022_081912_i.pdf

AMENDMENT-RULES-VICTIM RIGHTS: The record on appeal includes any filing by a victim or other authorized filer on the victim's behalf made part of the court file. In Re: Amendments to Florida Rule of Appellate Procedure 9.143, No. SC20-1129 (1/6/22)
https://www.floridasupremecourt.org/content/download/818817/opinion/sc20-1129.pdf

AMENDMENT-RULES-VICTIM RIGHTS: A victim seeking to invoke a right under article I, section 16, of the Florida Constitution may file a motion in the court in which the matter is pending. In Re: Amendments to Florida Rule of Appellate Procedure 9.143, SC20-1129 (1/6/22)
https://www.floridasupremecourt.org/content/download/818817/opinion/sc20-1129.pdf

APPEAL-JURISDICTION: Supreme Court lacks jurisdiction to entertain an appeal based on conflict within the same district on the same legal issue. Discretionary jurisdiction under this clause only exists when a decision from one district court conflicts with a decision of another district court of appeal. The Supreme Court's jurisdiction does not extend to intra-district conflict. Walker v. State, SC21-1327 (1/6/22)
https://www.floridasupremecourt.org/content/download/818819/opinion/sc21-1327.pdf

APPEAL: Appeal is premature where there is no written order disposing of the Child's motion for rehearing. An appeal will be held in abeyance until a written order on the motion for rehearing is rendered or the motion is withdrawn. J.R.P.W. v. State, 1D21-1834 (1/5/22)
https://www.1dca.org/content/download/818731/opinion/211834_DA08_01052022_141105_i.pdf

COMPETENCY-: Court is not required to sua sponte order a new competency evaluation upon a violation of probation for a Defendant who had previously been diagnosed as having been restored to competency.

Allen v. State, 3D19-2369 (1/5/22)

https://www.3dca.flcourts.org/content/download/818651/opinion/192369_DC05_01052022_100939_i.pdf

POST CONVICTION RELIEF: A 15 year sentence imposed nunc pro tunc after probation was revoked is not illegal because it is within the statutory maximum. To be illegal within the meaning of rule 3.800(a) the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances. If it is possible under all the sentencing statutes-given a specific set of facts-to impose a particular sentence, then the sentence will not be illegal within rule 3.800(a) even though the judge erred in imposing it. Copeland v. State, 3D21-1913 (1/5/22)
https://www.3dca.flcourts.org/content/download/818659/opinion/211913_DC05_01052022_102337_i.pdf

DEFINITION-NUNC PRO TUNC: Nunc pro tunc means 'now for then' and when applied to the entry of a legal order or judgment it normally does not refer to a new or fresh (de novo) decision, as when a decision is made after the death of a party, but relates to a ruling or action actually previously made or done but concerning which for some reason the record thereof is defective or omitted. The later record making does not itself have a retroactive effect but it constitutes the later evidence of a prior effectual act. Copeland v. State, 3D21-1913 (1/5/22)
https://www.3dca.flcourts.org/content/download/818659/opinion/211913_DC05_01052022_102337_i.pdf

APPEAL-RECONSTRUCTED RECORD: Where it was discovered that a portion of Defendant's direct testimony was not transcribed due to the notes having been stolen from the court reporter's car, the State may prepare a partial reconstruction of the record which may be deemed sufficient for appellate review for the Defendant provided no independent recollection in

his objections were heard considered and rejected by the trial court. Carbaugh v. State, 4D18-3591 (1/5/22)
https://www.4dca.org/content/download/818684/opinion/183591_DC05_01052022_094928_i.pdf

SENTENCING-ORAL PRONOUNCEMENT: Where the Court orally sentences the Defendant to 10 years, but the written judgment reflected a sentence of 15 years, the orally pronounced sentence stands. A court's oral pronouncement of sentence controls over the written document. Carey v. State, 4D19-3753 (1/5/22)
https://www.4dca.org/content/download/818686/opinion/193753_DC08_01052022_095429_i.pdf

DOMESTIC BATTERY: For a battery to be considered under the domestic violence statute, it must result in the physical injury or death of one family or household member by another family or household member. Where the jury instruction failed to mention domestic violence in any way, Defendant may not be sentenced using that designation. Under Alleyne, the judge is precluded from making the domestic violence finding on her own, regardless whether the despite domestic battery the charge was submitted to the jury. Narvaez v. State, 4D20-245 (1/5/22)
https://www.4dca.org/content/download/818688/opinion/200245_DC08_01052022_095648_i.pdf

RESTITUTION: Restitution must bear a significant relationship between the crime and the loss claimed by the victim. State v. P.C.L., 4D20-2002 (1/5/22)
https://www.4dca.org/content/download/818692/opinion/202002_DC08_01052022_100711_i.pdf

RESTITUTION-JUVENILE: Unlike in adult criminal cases, restitution awards involving juvenile defendants are discretionary. State v. P.C.L., 4D20-2002 (1/5/22)

https://www.4dca.org/content/download/818692/opinion/202002_DC08_01052022_100711_i.pdf

RESTITUTION: An award of restitution may not be based on speculation, but documentary evidence is not always a prerequisite to establishing an amount for an award of restitution.Victim's testimony about out-of-pocket losses actually paid, as opposed to estimates of loss, is sufficient to establish proof of the amount for restitution purposes. State v. P.C.L., 4D20-2002 (1/5/22)
https://www.4dca.org/content/download/818692/opinion/202002_DC08_01052022_100711_i.pdf

RESTITUTION: Court may order restitution for loss of use of damaged vehicle where amount of loss is not speculative and no evidence is adduced suggesting that the loss could have been mitigated. State v. P.C.L., 4D20-2002 (1/5/22)
https://www.4dca.org/content/download/818692/opinion/202002_DC08_01052022_100711_i.pdf

RESTITUTION-ABILITY TO PAY: While a court may order a delinquent child pay restitution without a showing of present ability to pay, it nevertheless must determine what that child might reasonably be expected to earn upon finding suitable employment and base the amount of restitution on those anticipated earnings. State v. P.C.L., 4D20-2002 (1/5/22)
https://www.4dca.org/content/download/818692/opinion/202002_DC08_01052022_100711_i.pdf

SCORESHEET-SIMILAR OUT OF STATE CONVICTIONS: Georgia burglary convictions should have been scored as 3rd degree felonies because the Georgia statute did not distinguish between burglary of a structure and burglary of a dwelling. Sanchez v. State, 4D20-2476 (1/5/22)
https://www.4dca.org/content/download/818694/opinion/202476_DC08_01052022_101013_i.pdf

COSTS: Court erred in assessing $1,875 public defender fee, rather than the $100 statutory minimum amount. Sanchez v. State, 4D20-2476 (1/5/22) https://www.4dca.org/content/download/818694/opinion/202476_DC08_01052022_101013_i.pdf

COSTS-PER COUNT: Where county adopted by ordinance an additional court cost, not to exceed $65, the imposition of the $65 additional court cost is per count, not per case. Sanchez v. State, 4D20-2476 (1/5/22) https://www.4dca.org/content/download/818694/opinion/202476_DC08_01052022_101013_i.pdf

SCORESHEET: Where there are errors in the scoresheet, they are harmless if the record conclusively shows that the trial court would have imposed the same sentence using a correct scoresheet. Any error here is deemed harmless in this case. Jenkins v. State, 4D 20-2701 (1/5/22) https://www.4dca.org/content/download/818696/opinion/202701_DC08_01052022_101133_i.pdf

COSTS OF PROSECUTUION: Court may not impose $200 costs of prosecution upon State's request absent evidence to support these higher costs. State does not get a second bite of the apple. Jenkins v. State, 4D 20-2701 (1/5/22) https://www.4dca.org/content/download/818696/opinion/202701_DC08_01052022_101133_i.pdf

COSTS OF INVESTIGATION: Court may not impose $50 cost of investigation upon request of agency absent evidence presented to support the amount. Jenkins v. State, 4D 20-2701 (1/5/22) https://www.4dca.org/content/download/818696/opinion/202701_DC08_01052022_101133_i.pdf

PROBATION-CONDITION-DRIVER'S LICENSE SUSPENSION: “I am obligated to order his driver’s license be suspended for six months upon

conviction of that offense," does not make the suspension a condition of probation. Jenkins v. State, 4D 20-2701 (1/5/22)
https://www.4dca.org/content/download/818696/opinion/202701_DC08_01052022_101133_i.pdf

APPEAL-PRESERVATION-DRUG COURT: Trial court's denial of the motion to participate in drug court is not a legally dispositive order to the extent necessary to confer jurisdiction. Review would have to be by petition for certiorari.Graves v. State, 4D20-2728 (1/5/22)
https://www.4dca.org/content/download/818697/opinion/202728_DA08_01052022_101303_i.pdf

SCORESHEET: Out of state prior convictions for a sex offense are improperly scored as a second degree felony where the elements are different than Florida's L & L statute. Any uncertainty in the scoring of the offender's prior record must be resolved in favor of the offender and disagreement as to the propriety of scoring specific entries in the prior record must be resolved by the sentencing judge. Perdue v State, 4D21-1055 (1/5/22)
https://www.4dca.org/content/download/818701/opinion/211055_DC08_01052022_105354_i.pdf

COSTS OF INVESTIGATION: Court may not impose investigative costs where state did not request them. Perdue v State, 4D21-1055 (1/5/22)
https://www.4dca.org/content/download/818701/opinion/211055_DC08_01052022_105354_i.pdf

UNANIMOUS VERDICT: Defendant convicted of violating injunction after jury was instructed that Defendant could be found guilty if he violated the injunction in any of the five alternate ways, including by "telephoning, contacting, or otherwise communicating with [the Petitioner], the family of [the Petitioner], or household guests of [the Petitioner] was deprived of his right to a unanimous jury. Court did not clarify that the jury was required to

unanimously agree on at least one of the five specific acts. Where a single count embraces two or more separate offenses, albeit in violation of the same statute, the jury cannot convict unless its verdict is unanimous as to at least one specific act. By allowing the State to tell the jury it could convict Defendant based on any of the five distinct acts without clarifying that the jury was required to unanimously agree on at least one specific act, the trial court compromised the unanimity of the jury's verdict. Shahgodary v. State, 4D21-1252 (1/5/22)
https://www.4dca.org/content/download/818702/opinion/211252_DC13_01052022_105226_i.pdf

VIOLATION OF INJUNCTION: Defendant cannot be found in criminal violation of injunction for contacting Victim's family. Shahgodary v. State, 4D21-1252 (1/5/22)
https://www.4dca.org/content/download/818702/opinion/211252_DC13_01052022_105226_i.pdf

BAKER ACT: Subject who was bipolar and experiencing a manic episode is improperly committed under the Baker Act absent any recent incidents of violence. Conclusory testimony, unsubstantiated by facts in evidence, is insufficient to satisfy the statutory criteria by the clear and convincing evidence standard. The need for treatment and medication and the refusal to take psychotropic medication despite a deteriorating mental condition, standing alone, do not justify involuntary commitment. Bess v. State, 4D21-1387 (1/5/22)
https://www.4dca.org/content/download/818704/opinion/211387_DC13_01052022_102734_i.pdf

SEXUAL PREDATOR: Court has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, even when the sentencing court did not impose the designation at sentencing and the offender's sentence has been completed. Evans v. State, 4D21-1492 (1/5/22)

https://www.4dca.org/content/download/818705/opinion/211492_DC05_01052022_102942_i.pdf

APPEAL-POST CONVICTION RELIEF-COUNSEL-FEDERAL APPOINTMENT: State lacks jurisdiction to appeal appointment of federal counsel (Capital Habeas Unit) for death row inmate in state postconviction proceedings. The State cannot establish standing based on a hypothetical conflict of interest that is not actual or imminent. Booker v. Secretary, DOC, No. 20-14539 (11th Cir. 1/3/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202014539.pdf

STANDING: There are three elements of Article III standing, each of which the State bears the burden of establishing. First, the State must show that it has suffered an injury in fact. Second, there must be a causal connection between the injury and the conduct complained of. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Booker v. Secretary, DOC, No. 20-14539 (11th Cir. 1/3/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202014539.pdf

APPEAL-POST CONVICTION RELIEF-COUNSEL-FEDERAL APPOINTMENT: [T]he State's asserted basis for standing is not the appointment of counsel nor the provision of federal funds to counsel. Indeed, the State concedes that it has no interest in how federal funds are spent. Rather, the alleged injury, as the State explains in its brief, is the appearance of CHU counsel in state court. What we have, then, is a mismatch between the effect of the order the State is challenging and the injury it claims to be asserting. The district court's order simply does not control which lawyers appear in state proceedings; such determinations remain the prerogative of state courts. And because state courts are empowered to reject appearances by CHU counsel, the district court's order appointing federal counsel cannot have inflicted an injury on Florida's sovereignty. Booker v. Secretary, DOC, No. 20-14539 (11th Cir. 1/3/22)

https://media.ca11.uscourts.gov/opinions/pub/files/202014539.pdf

DEFINITION-ADEQUATE: "Adequate" means "sufficient for a specific need or requirement;" "fully satisfying what is required; quite sufficient, suitable, or acceptable in quality or quantity"; "satisfactory", or "just good enough." Booker v. Secretary, DOC, No. 20-14539 (11th Cir. 1/3/22)
https://media.ca11.uscourts.gov/opinions/pub/files/202014539.pdf

DECEMBER 2021

SENTENCING-DANGEROUSNESS-UPWARD DEPARTURE: Court improperly instructed the jury to determine whether Defendant himself could present a danger to the public, as opposed whether a nonstate prison sentence could present a danger to the public. Pine v. State, 5D20-2460 (12/30/21)

https://www.5dca.org/content/download/817850/opinion/202460_DC08_12302021_082507_i.pdf

STATUTORY INTERPRETATION: Florida courts follow the supremacy-of-text principle—namely, the principle that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means. While the difference between the dangerousness of the Defendant and the dangerousness of a non-state prison sentence may seem negligible at first glance, there exist sentencing options other than state prison which could limit the danger a defendant might pose to the public. Pine v. State, 5D20-2460 (13/30/21)

https://www.5dca.org/content/download/817850/opinion/202460_DC08_12302021_082507_i.pdf

PRR: The Prison Releasee Reoffender Act is not unconstitutional for

allowing the judge, rather than the jury, to determine whether a defendant qualifies as a prison releasee reoffender for sentencing purposes. Williams v. State, 5D21-736 (12/30/21)

https://www.5dca.org/content/download/817853/opinion/210736_DC05_12302021_083325_i.pdf

COSTS: Court may not impose a $50 investigative cost that was not requested by the State or agency and was not orally pronounced. Figueroa v. State, 5D21-1989 (12/30/21)

https://www.5dca.org/content/download/817855/opinion/211989_DC05_12302021_083718_i.pdf

10/20/LIFE-CONSECUTIVE PROBATION: Florida's 10-20-Life statute does not separately create a new statutory maximum penalty of life imprisonment for crimes in which 10-20-Life sentencing applies. Defendant convicted of a second degree felony of aggravated battery with a firearm may be sentenced to years under the 10-20-life enhancement, but may not be given consecutive probation. Any portion of the defendant's sentence for the second-degree felony that exceeds the mandatory minimum sentence and the statutory maximum is illegal. Ray v. State, 5D21-2235 (12/30/21)

https://www.5dca.org/content/download/817856/opinion/212235_DC08_12302021_083913_i.pdf

JUDGE-DISQUALIFICATION: Where the presiding judge commented that he believed the Defendant had traveled to Volusia County to "molest that little girl" before the State had offered evidence in the case, disqualification is appropriate. While a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudge the case.

Dumas v. State, 5D21-2748 (12/30/21)

https://www.5dca.org/content/download/817858/opinion/212748_DC03_12302021_084258_i.pdf

POST CONVICTION RELIEF-WRIT OF CERTIORARI: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of rews judicata or collateral estoppel. Strange v. State, 1D20-1273 (12/29/21)

https://www.1dca.org/content/download/817741/opinion/201273_DC02_12292021_140503_i.pdf

POST CONVICTION RELIEF: Motion for post-conviction relief based on a claim of error in the jury instruction, filed nineteen years after the conviction became final, is untimely. Hayes v. State, 1D20-2524 (12/29/21)

https://www.1dca.org/content/download/817743/opinion/202524_DC05_12292021_140839_i.pdf

LIFE SENTENCE-MINOR-RESENTENCING: Court order for a status conference on minor's motion for re-sentencing is not a dispositive order on the motion. Defendant is not entitled to resentencing based on Michel, which receded from Atwell. Jackson v. State, 1D20-2528 (12/29/21)

https://www.1dca.org/content/download/817744/opinion/202528_DC05_12292021_141313_i.pdf

APPELLATE REMAND: When a mandate or holding from an appellate

court has been later overruled, before a trial court's judicial labor is complete, the trial court has the authority to disregard that order and change its ruling to comply with the new legal standards. A trial court can disregard a mandate from an appellate court when it is undoubtedly certain that the basis for that mandate has been subsequently overruled before the trial court can comply with the mandate. Jackson v. State, 1D20-2528 (12/29/21)

https://www.1dca.org/content/download/817744/opinion/202528_DC05_12292021_141313_i.pdf

POST CONVICTION RELIEF-EXTRAORDINARY WRIT: A decision on an extraordinary writ petition that clearly shows that the issue wasconsidered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Allison v. State, 1D21-2255 (12/29/21)

https://www.1dca.org/content/download/817747/opinion/212255_DC02_12292021_142003_i.pdf

APPEAL-ORAL ARGUMENT: Oral argument may not be requested in the initial brief, but rather must be requested in a separate document. If requested in the brief, the request will be denied. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

JUDGMENT OF ACQUITTAL: Defendant is not entitled to JOA for homicide where he shot unarmed man for parking in a disabled parking space, and where motion was "purely boilerplate." In moving for a judgment

of acquittal, a defendant must identify the element, orelements, of a crime for which he or she contends the evidence is lacking. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

EVIDENCE-WILLIAMS RULE: In case of homicide provoked by Victim parking in a disabled parking space, Court does not err in allowing evidence of another incident where Defendant confronted and threatened someone for parking in a disabled parking space. Collateral crime evidence need not be absolutely identical to the crime charged. Similar fact evidence used to prove facts other than identity need not meet the rigid similarity requirement. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

EVIDENCE-SURVEILLANCE VIDEO: Admission of the slowed-down surveillance video is proper. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

EXPERT TESTIMONY: Expert may testify about law enforcement/military terms used by Defendant to justify his shooting of a parking space violator in order to rebut any false air of necessity, legitimacy, lawfulness, and/or implied training that the Defendant raised in his self-defense argument. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

JURY VIEW: Court's denial of Defendant's request for a jury view is within its discretion. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

JUROR-REMOVAL: Court did not err in failing to remove a juror who had hugged a spectator, an acquaintance, who was related to the NAACP where the juror did not know that the individual that approached him was observing the trial in an overflow courtroom and the two did not discuss the case at all. Drejka v. State, 2D19-4385 (12/29/21)

https://www.2dca.org/content/download/817694/opinion/194385_DC05_12292021_091158_i.pdf

JUVENILE OFFENDER-RESENTENCING-ESTOPPEL: Once State admitted that Juvenile Offender is entitled to resentencing, it is estopped from arguing to the contrary. A party may not ordinarily take one position in proceedings at the trial level and then take an inconsistent position on appeal. Scott v. State, 20-998 (12/29/21)

https://www.2dca.org/content/download/817696/opinion/200998_DC08_12292021_091627_i.pdf

PLEA OFFER: State may revoke a plea offer between the time it is extended and the Court decides whether the proposed sentence is lawful. State has wide discretion inextending and withdrawing plea offers; no plea offer or negotiation is binding until it is accepted bythe trial judge formally after making all the inquiries, advisements, and determinations required. Scott v. State, 20-998 (12/29/21)

https://www.2dca.org/content/download/817696/opinion/200998_DC08_1

2292021_091627_i.pdf

PLEA WITHDRAWAL: Where a resentencing hearing is ordered, the Defendant may withdraw his plea. Rule 3.170 allows a plea to be withdrawn in two circumstances: 1) Court may allow it, and must allow it for good cause, at any time before a sentence is imposed, and 2) within thirty days after rendition of the sentence on certain enumerated grounds. A resentencing hearing is by definition before sentencing, so Defendant may move to withdraw his plea. If the imposition of a new sentence following resentencing affords a defendant the same plea-withdrawal rights that he possessed following the rendition of his original sentence, the revocation of a defendant's original sentence should likewise grant the defendant the same presentencing plea-withdrawal rights he enjoyed before. Scott v. State, 20-998 (12/29/21)

https://www.2dca.org/content/download/817696/opinion/200998_DC08_12292021_091627_i.pdf

CREDIT FOR TIME SERVED-DOWNWARD DEPARTURE: Where Defendant spent different amounts of time on three different cases and the Court awarded the highest number of days on each case to run concurrently, and if fewer days had been awarded on some of the cases on those counts the sentence would have been below the Lowest Permissible Sentence, the sentences are not a downward departure. Court may not rescind credit for time served inappropriately awarded, even if clearly erroneous. "[H]owever, we caution the trial court that the imposition of jail credit should be limited to that due based on time spent in jail for each offense." A defendant who is arrested for different offenses on different dates is not entitled to have jail credit applied equally to all prison sentences even though the sentences are run concurrently. State v. Smith, 2D20-3184 (12/29/21)

https://www.2dca.org/content/download/817699/opinion/203184_DC05_1

2292021_092320_i.pdf

SENTENCING-HABITUAL VIOLENT FELONY OFFENDER: Defendant does not qualify as a HVFO notwithstanding that thirty days had not passed since his predicate robbery conviction, which accordingly was not yet final. Defendant is entitled to a de novo sentencing hearing. Harris v. State, 2D20-3545 (12/29/2021)

https://www.2dca.org/content/download/817707/opinion/203645_DC08_12292021_093621_i.pdf

ARMED CAREER CRIMINAL ACT-SENTENCING: Georgia's terroristic threats statute is divisible, and a threat to commit any crime of violence qualifies as a predicate offense under the ACCA. Under the ACCA, a "violent felony" is defined as any crime punishable by a term of imprisonment exceeding one year that has as an element the use, attempted use, or threatened use of physical force against the person of another. A threat to commit any crime of violence qualifies as a violent felony under the ACCA's elements clause. USA v. Sharp, No. 20-12574 (11th Cir. 12/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012574.pdf

SENTENCING-ACCA-CATEGORICAL APPROACH: To determine whether a prior conviction qualifies as a violent felony under the elements clause, when the statute in question is "indivisible," the "categorical approach," is applied, by which only the elements of the statute of conviction, not the specific conduct of a particular offender, are examined. When the statute is "divisible," i.e., it lists multiple, alternative elements which effectively creates several different crimes, the modified categorical approach is applied. Under the modified categorical approach, a limited class of documents, including the indictment, jury instructions, or plea

agreements and colloquy are considered to determine which of the multiple crimes listed in the alternatively phrased statute the defendant was convicted of committing. Because the modified categorical approach plays no role when a statute of conviction is indivisible, a court must first determine whether a statute is divisible before proceeding with an analysis under either approach. USA v. Sharp, No. 20-12574 (11th Cir. 12/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012574.pdf

APPEAL-PRESERVATION-CHANGE OF LAW: Where an intervening change in the law occurs within the period of time allotted for filing a notice of appeal, issue need not be preserve by objection at the time of sentencing. The government need not anticipate all potential changes in the law, or argue before the district court that it does not agree with binding precedent. USA v. Sharp, No. 20-12574 (11th Cir. 12/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012574.pdf

JUDGES-DCAs: A sixth appellate jurisdiction with redrawn lines and seven additional appellate judges (three in the Second District and four in the Fifth District) are recommended. In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges, No. SC21-1543 (12/22/21)

https://www.floridasupremecourt.org/content/download/816724/opinion/sc21-1543.pdf

JUDGES-DCAs (J. Polston, dissenting): "[N]o additional district court of appeal judges are needed. None. Not six. Not seven. This revised certification. . .is based on where current judges live, not any objective basis of a need for more judges to do the work." In Re: Redefinition of Appellate

Districts and Certification of Need for Additional Appellate Judges, No. SC21-1543 (12/22/21)

https://www.floridasupremecourt.org/content/download/816724/opinion/sc21-1543.pdf

APPEAL-PRESERVATION: Defendant's hearsay claim is not preserved for appeal because Castro-Mendez failed to make a contemporaneous objection to the lack of notice or factual findings on the reliability of the child hearsay statement. An objection to the legal sufficiency of the trial court's findings on the reliability of a child hearsay statement is necessary to preserve the issue for review A general hearsay objection is not sufficient to preserve the issue for appellate review. Castro-Mendez v. State, 1D19-3854 (12/22/21)

https://www.1dca.org/content/download/816820/opinion/193854_DC05_12222021_140655_i.pdf

CREDIT FOR TIME SERVED; DOC is responsible for granting jail time credit when there is a delay between sentencing and transport from jail to prison. The trial court is not required to grant him forty additional days of credit in addition to the time he spent in jail awaiting resentencing on the theory that because the original forty days he spent in jail awaiting transport are now, in effect, presentence jail time as a result of his de novo resentencing. The nature of the credit for time spent in jail awaiting transport to the DOC after initial sentencing does not change its character upon subsequent resentencing. Rogers v. State, 2D19-2714 (12/22/21)

https://www.2dca.org/content/download/816692/opinion/192714_DC05_12222021_081646_i.pdf

POST CONVICTION RELIEF-SCORESHEET-VICTIM INJURY: Vctim injury points are only proper when the underlying offense caused the victim injury; Scoresheet improperly includes 120 victim injury points when there was no evidence that the victim died because Defendant fled the scene of the accident. Defendant is entitled to hearing on claim counsel provided ineffective assistance by failing to note that victim injury points had been assessed. Costello v. State, 2D21-1384 (12/22/21)

https://www.2dca.org/content/download/816713/opinion/211384_DC13_12222021_082943_i.pdf

POST CONVICTION RELIEF: Claim that counsel was ineffective for misadvice about scoring victim injury points is facially insufficient where it does not include a request to withdraw the plea. A request that the postconviction court vacate his sentence and resentence him using a corrected scoresheet is impermissible. Costello v. State, 2D21-1384 (12/22/21)

https://www.2dca.org/content/download/816713/opinion/211384_DC13_12222021_082943_i.pdf

JOA: The fact that the evidence is contradictory does not warrant a judgment of acquittal because the weight of the evidence and the witnesses' credibility are questions solely for the jury. In moving for a judgment of acquittal, a defendant admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

SEXUAL BATTERY-INCAPACITATION: Intoxicated Uber passenger is incapacitated for purposes of sexual battery statute. Victim's helplessness was sufficient for the jury to infer that she was unable to communicate an unwillingness to have sexual relations. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

JURY INSTRUCTION-GOOD FAITH: Defendant is not entitled to a special "good faith" jury instruction in sexual battery case where the standard jury instruction adequately addresses the relevant legal standard. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

EVIDENCE-CIVIL SETTLEMENT: In sexual battery case, Court did not abuse its discretion in denying motion to compel production of the confidential UBER settlement agreement. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

CROSS-EXAMINATION: Court's limitations on cross-examination about Victim's settlement of lawsuit against UBER in sex battery case, which prohibited inquiry into what Victim told UBER about the events, particulary given Victim's inability to recollect the night's events, but error is harmless. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_

NOND_12222021_101448_i.pdf

EVIDENCE-EXPERT: Expert from laboratory which tested Victim's blood and urine is permitted to give her opinion as to whether Victim had been drugged and the potential impact on her of combining three alcoholic drinks with a central nervous system depressant. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

EVIDENCE-VIDEO SURVEILLANCE-AUTHENTICATION: There are two methods to authenticate evidence such as an apartment building's surveillance video: the pictorial method and the silent witness method. The pictorial method depends upon testimony of a witness, based on personalknowledge, that the video or photo is a fair and accurate portrayal. The silent witness method depends upon proof that the process that produced the video or photo was reliable. Abdallah v. State, 3D19-1581 (12/22/21)

https://www.3dca.flcourts.org/content/download/816727/opinion/191581_NOND_12222021_101448_i.pdf

STATEMENT OF DEFENDANT-MIRANDA: Defendant's statements must be suppressed where he requested an attorney, then (four weeks later) initiated a conversation with a deputy (asking why he was at the hospital), and deputy asked questions which were reasonably likely to elicit, and did elicit, incriminating responses. "Despite the horrible facts underlying these convictions, we are compelled to reverse these convictions and remand for a new trial due to a violation of the defendant's Miranda rights." Thorough discussion. Penna v. State, 4D20-345 (12/22/21)

https://www.4dca.org/content/download/816746/opinion/200345_DC13_12222021_094758_i.pdf

STATEMENT OF DEFENDANT: Defendant's spontaneous (i.e., unelicited) statements are admissible, but those statements which the deputy procured by expanding the conversation by asking questions designed to elicit incriminating responses without re-Mirandizing the defendant are not. Error not harmless, Penna v. State, 4D20-345 (12/22/21)

https://www.4dca.org/content/download/816746/opinion/200345_DC13_12222021_094758_i.pdf

STATEMENT OF DEFENDANT-MIRANDA: Police must remind the accused of their Miranda rights before interrogation is reinitiated. The initiation of a conversation by an accused after having invoked the right to counsel does not amount to a waiver of the right to counsel. Penna v. State, 4D20-345 (12/22/21)

https://www.4dca.org/content/download/816746/opinion/200345_DC13_12222021_094758_i.pdf

HARMLESS ERROR: Overwhelming evidence of guilt does not negate the fact that an error that constituted a substantial part of the prosecution's case may have played a substantial part in the jury's deliberation and thus contributed to the actual verdict reached. The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test...The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by

definition harmful. Penna v. State, 4D20-345 (12/22/21)

https://www.4dca.org/content/download/816746/opinion/200345_DC13_12222021_094758_i.pdf

VAMPIRISM: "The defendant then asked the deputy if drinking the victims' blood was a serious crime." "Once I stabbed the guys at the house and drank the blood, I knew I just gotta keep going." Penna v. State, 4D20-345 (12/22/21)

https://www.4dca.org/content/download/816746/opinion/200345_DC13_12222021_094758_i.pdf

POST CONVICTION RELIEF-SCORESHEET: Sentencing scoresheet errors, including mistakes in offense-level scoring, are cognizable in a rule 3.800(a) motion. Zeno v. State, 2D20-2266 (12/17/21)

https://www.2dca.org/content/download/815897/opinion/202266_DC13_12172021_080649_i.pdf

SCORESHEET-LPS: Where Defendant's lowest permissible sentence should have been 25.0625 years under a correctly calculated scoresheet, Court improperly imposed a 30 year sentence on one of the counts (a second-degree felony). Where the lowest permissible sentence exceeds the statutory maximum, the court must impose the lowest permissible sentence but may not exceed it. Zeno v. State, 2D20-2266 (12/17/21)

https://www.2dca.org/content/download/815897/opinion/202266_DC13_12172021_080649_i.pdf

VOP-JURISDICTION-MOOTNESS: Once a defendant has served an invalid or illegal sentence to completion, the trial court cannot set it aside because the issue has become moot. Lucas v. State, 5D21-2403 (12/17/21)

https://www.5dca.org/content/download/815878/opinion/212403_DC05_12172021_081242_i.pdf

POST CONVICTION RELIEF-SEXUAL PREDATOR: Although a sexual predator designation is considered a status, and not a punishment or sentence, a defendant is neverthelesspermitted to seek correction of an allegedly erroneous sexual predator pursuant to R. 3.800(a), but only if it is apparent from the face of the record that the defendant does not meet the criteria. Lucas v. State, 5D21-2403 (12/17/21)

https://www.5dca.org/content/download/815878/opinion/212403_DC05_12172021_081242_i.pdf

SEXUAL PREDATOR: Trial court has jurisdiction to designate a defendant as a sexual predator after a defendant has completed serving his sentence. Lucas v. State, 5D21-2403 (12/17/21)

https://www.5dca.org/content/download/815878/opinion/212403_DC05_12172021_081242_i.pdf

CYBERSTALKING: Defendant who sent taunting, threatening messages to families of Marjorie Stoneman Douglas massacre victims is properly convicted of cyberstalking. True threats are entitled to no First Amendment protection. True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker does not have to actually intend to carry out the threat for the statement to constitute a true threat. USA v. Fleury, No. 20[11307 (11th Cir. 12/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011037.pdf

OVERBREADTH: Cyberstalking requires proof that (1) the defendant had the requisite intent; (2) the defendant engaged in a course of conduct; (3) the defendant used a facility of interstate commerce; and (4) the defendant's course of conduct caused, attempted to cause, or would be reasonably expected to cause substantial emotional distress. USA v. Fleury, No. 20[11307 (11th Cir. 12/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011037.pdf

OVERBREADTH: A statute is impermissibly overbroad under the First Amendment—and facially unconstitutional—if it prohibits a substantial amount of protected speech. The mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge. USA v. Fleury, No. 20[11307 (11th Cir. 12/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011037.pdf

EXPERT TESTIMONY: Testimony from Government's expert equating Defendant with Jeffrey Dahmer and Ted Kaczynski was not plain error. USA v. Fleury, No. 20[11307 (11th Cir. 12/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011037.pdf

CYBERSTALKING: The scienter that required for cyberstalking is intent to harass and intent to intimidate. The government need not prove Defendant's subjective intent to communicate a true threat to convict him of cyberstalking. Because the plain language of §2261A(2) establishes a mens rea requirement sufficient to separate wrongful conduct from otherwise innocent conduct, Court need not impose an additional, subjective-intent requirement. When a statute contains an express mental state requirement, the district court should not read an additional mens rea requirement into the text; such a position make sense. USA v. Fleury, No. 20[11307 (11th Cir. 12/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011037.pdf

RULES-AMENDMENT: Rule 3.030 requiring the physical filing of a sworn document immediately upon e-filing of it is amended to exclude sworn documents under certain rules if filed by an attorney (Exclusions: Arrest warrant, Notices to Appear, Information, Arraignment documents, pretrial motions, motion for change of venue, petition to seal or expunge, motion for stay of execution (death penalty), motions pertaining to indirect contempt, application for criminal indigent status, motion for new trial, motion for correction of jail credit, motion to vacate or correct sentence, motion for post conviction DNA testing.) In Re: Amendments to Florida Rule of Criminal Procedure 3.030, No. SC21-591 (12/16/21)

https://www.floridasupremecourt.org/content/download/815713/opinion/sc21-591.pdf

AMENDMENT-RULE-JUVENILE PROCEDURE: Juvenile rules amended for incompetent/insane juveniles. In Re: Amendments to Florida Rule of Juvenile Procedure 8.095, No. SC21-626 (12/16/21)

https://www.floridasupremecourt.org/content/download/815714/opinion/sc21-626.pdf

AMENDMENT-RULE-LIFE SENTENCE-JUVENILE: Rules for re-sentencing/review for juvenile offenders revised and clarified. The term "juvenile offender" to be used instead of "defendant."

In Re: Amendments to Florida Rules of Criminal Procedure, No. Sc21-637 (12/16/21)

https://www.floridasupremecourt.org/content/download/815730/opinion/sc21-637.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Defendant convicted of lewd or lascivious assault upon a child pursuant to section 800.04 is not a qualifying offenses for designation as a VFOSC. Among the qualifying offenses are lewd or lascivious battery, molestation, conduct, or exhibition, but not lewd or lascivious assault. Byers v. State, 1D21-33 (12/15/21)

https://www.1dca.org/content/download/815606/opinion/210033_DC13_12152021_133503_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: The qualification for designation as a VFOSC is based on the offense for which Defendant is convicted, not the underlying conduct. Byers v. State, 1D21-33 (12/15/21)

https://www.1dca.org/content/download/815606/opinion/210033_DC13_12152021_133503_i.pdf

POST CONVICTION RELIEF: Claims of vindictive sentencing and bias are not errors in the sentence itself, but errors in the sentencing process, and thus cannot be raised under R. 3.800. Dallas v. State, 1D21-680 (12/15/21)

https://www.1dca.org/content/download/815609/opinion/210680_DC05_12152021_133742_i.pdf

POST CONVICTION RELIEF: "We write only to emphasize the two-year limitation under Florida Rule of Criminal Procedure 3.850(b) and the point raised previously by this Court and echoed by the trial court: 'The mere incantation of the words ‘manifest injustice’ does not make it so.'" Johnson v. State, 3D21-1818 (12/15/21)

https://www.3dca.flcourts.org/content/download/815560/opinion/211818_DC05_12152021_102104_i.pdf

INFORMATION-AMENDMENT: State may amend the information (changing the mode of sexual battery) during jury selection. The state may substantively amend an information during trial, even over the objection of the defendant unless there is a showing of prejudice to the substantial rights of the defendant. Defendant waived any error by rejecting the trial court's contemporaneous offer to immediately continue the trial to another date. Bankston v. State, 4D20-231 (12/15/21)

https://www.4dca.org/content/download/815573/opinion/200231_DC08_12152021_095811_i.pdf

EVIDENCE-VICTIM'S CHARACTER: Court properly excluded evidence suggesting that victim had exploited an older man for money, in order to show that her accusation against Defendant was extortionary. The victim's prior relationship was too dissimilar to the facts at issue here and not probative of her alleged bias or improper motive for testifying against the defendan, but rather was improper character evidence. Bankston v. State, 4D20-231 (12/15/21)

https://www.4dca.org/content/download/815573/opinion/200231_DC08_12152021_095811_i.pdf

COSTS: Court improperly imposed "Crimes Against a Minor" costs where the victim was not a minor. Bankston v. State, 4D20-231 (12/15/21)

https://www.4dca.org/content/download/815573/opinion/200231_DC08_12152021_095811_i.pdf

VOP: Court may not revoke probation for failure to pay costs without inquiring whether Defendant had the ability to pay those costs. Shea v. State, 20-1511 (12/15/21)

https://www.4dca.org/content/download/815575/opinion/201511_DC08_12152021_100150_i.pdf

POST CONVICTION RELIEF-PSI: Appellate counsel is ineffective for not filing a rule 3.800(b)(2) motion to preserve a trial court's error in failing to consider a mandatory PSI. Lacue v. State, 4D21-1892 (12/15/21)

https://www.4dca.org/content/download/815579/opinion/211892_DA16_12152021_100705_i.pdf

LIMITATION OF ACTIONS-DILIGENT SEARCH: Defendant is entitled to discharge when information, timely filed, was not served within the period of limitations (here, two years. Written comment on return of service summons that officer had spoken with the new resident at the address, who had lived there for two months, did not know Defendant. Checking "DAVID" database is not a diligent search. To satisfy its obligation to conduct a diligent search, "the State must check obvious sources of information and follow up on any leads. Matos v. State, 4D21-2485 (12/15/21)

https://www.4dca.org/content/download/815580/opinion/212485_DC03_12152021_100842_i.pdf

LIMITATION OF ACTIONS-SPEEDY TRIAL: COVID tolling of speedy trial does not toll the statute of limitations. Matos v. State, 4D21-2485 (12/15/21)

https://www.4dca.org/content/download/815580/opinion/212485_DC03_12152021_100842_i.pdf

JUDICIAL REVIEW (J. Gorsuch): The chilling effect associated with a potentially unconstitutional law being on the books is insufficient to justify federal intervention in a pre-enforcement suit. "[O]ne thing this Court may never do is disregard the traditional limits on the jurisdiction of federal courts just to see a favored result win the day." Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

JUDICIAL REVIEW-(J. Thomas, concurring/dissenting): A federal court's jurisdiction in equity extends no further than the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act. Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

SAY WHAT?--(J. Thomas, concurring/dissenting): Texas's anti-abortion law (S. B. 8) does not unduly burden abortion providers or patients. " Simply put, S. B. 8's supporters are under greater threat of litigation than its detractors." Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

ABORTION (C.J. ROBERTS, concurring/dissenting): Texas las banning abortion after six weeks of pregnancy is contrary to this Court's decisions in Roe v. Wade and Casey and "has had the effect of denying the exercise of what we have held is a right protected under the Federal Constitution.' Indeed, '[i]f the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired

under those judgments, the constitution itself becomes a solemn mockery.'. . .The nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake." Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

CONSTITUTION (J. SOTOMAYOR, dissenting): By foreclosing suit against state-court officials and the state attorney general, the Court effectively invites other States to refine S. B. 8's model for nullifying federal rights. The Court thus betrays not only the citizens of Texas, but also our constitutional system of government. Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

CONSTITUTION (J. SOTOMAYOR, DISSENTING): "My disagreement with the Court runs far deeper than a quibble over how many defendants these petitioners may sue. The dispute is over whether States may nullify federal constitutional rights by employing schemes like the one at hand. The Court indicates that they can, so long as they write their laws to more thoroughly disclaim all enforcement by state officials, including licensing officials. This choice to shrink from Texas' challenge to federal supremacy will have far-reaching repercussions. I doubt the Court, let alone the country, is prepared for them. . .[T]he Court clears the way for States to reprise and perfect Texas' scheme in the future to target the exercise of any right recognized by this Court with which they disagree." Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

CONSTITUTION (J. SOTOMAYOR, DISSENTING): "[T]he point of a constitutional right is that its protection does not turn on the whims of a political majority or supermajority. . . .[T]he Court leaves all manner of constitutional rights more vulnerable than ever before, to the great detriment of our Constitution and our Republic." Whole Woman's Health v. Jackson, No. 21–463 (U.S. S. Ct. 2/10/2021)

https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf

POST CONVICTION RELIEF: A sentence reduction under section 404(b) of the First Step Act of 2018 does not qualify as a "new judgment" for purposes of the bar on second or successive §2255 motions under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), so that any subsequent habeas petition will be deemed "second or successive," and the defendant must first obtain authorization from the Court of Appeals before filing a second §2255 habeas petition. Without such authorization, a district court lacks jurisdiction and must dismiss the motion. Telcy v. USA, No. 19-13029 (11th Cir. 12/10/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913029.pdf

POST CONVICTION RELIEF: Where Defendant files a timely motion for voluntary dismissal of a rule 3.850 motion, and the state suffers no prejudice, such a motion should be granted without prejudice to the appellant's right to file a subsequent motion, notwithstanding that the court put forth a substantial amount of work clarifying the procedural history of the cases for Defendant and the potential consequences of withdrawing his negotiated pleas. Larson v. State, 2D21-2247 (12/10/21)

https://www.2dca.org/content/download/813524/opinion/212247_DC13_12102021_082324_i.pdf

COSTS: Discretionary costs not orally prononced must be stricken. Schrager v. State, 5D21-15 (12/10/21)

https://www.5dca.org/content/download/813473/opinion/210015_DC13_12102021_081441_i.pdf

COSTS OF PROSECUTION: Court may not impose $100 costs of prosecution per case when not requested. Statuory cost is $50. Schrager v. State, 5D21-15 (12/10/21)

https://www.5dca.org/content/download/813473/opinion/210015_DC13_12102021_081441_i.pdf

COSTS: $3 cost pursuant to 318.18 is wrongly imposed fo a non-traffic offense. Innocenti v. State, 5D21-915 (12/10/21)

https://www.5dca.org/content/download/813476/opinion/210915_DC05_12102021_082451_i.pdf

RESENTENCING-MINOR: Order pointing counsel to a postconviction movant for a postconviction claim that resentencing is not final order on the postconviction motion granting resentencing or the functional equivalent of an order granting resentencing. A resentencing hearing is not required. Hall v. State, 1D20-1089 (12/8/21)

https://www.1dca.org/content/download/813169/opinion/201089_DC05_12082021_102853_i.pdf

STAND YOUR GROUND: A defendant's motion to dismiss under Florida's SYG law can establish a prima facie claim of self-defense immunity from

criminal prosecution even though the motion to dismiss is not sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss. Johnson v. State, 3D21-2096 (12/8/21)

https://www.3dca.flcourts.org/content/download/813166/opinion/212096_DC03_12082021_102604_i.pdf

RESENTENCING-MINOR: A trial court's order appointing counsel to a postconviction movant for a postconviction claim that resentencing is required is not a final order on the postconviction motion granting resentencing or the functional equivalent of an order granting resentencing. Minor is not entitled to a resentencing hearing. Hall v. State, 1D20-1089 (12/8/21)

https://www.1dca.org/content/download/813169/opinion/201089_DC05_12082021_102853_i.pdf

POST CONVICTION RELIEF: Deadline for filing a R. 3.850 motion is tolled where Defendant was in federal custody and did not have access to Florida legal materials similar to the access in a state correctional facility. An uncounseled prisoner held in an out-of-state jurisdiction who is not represented by counsel and who does not have access to Florida statutes, rules, and forms has been deprived of meaningful access to the Florida courts. Swain v. State, 2D19-4529 (12/8/21)

https://www.2dca.org/content/download/813131/opinion/194529_DC13_12082021_083536_i.pdf

JOA: Defendant may be convicted of murder for killing his girlfriend with a brick in a fit of jealous rage where the evidence was circumstantial, but the

State put the evidence together like pieces of a puzzle, not by a stacking of inferences. Scott v. State, 4D19-3749 (12/8/21)

https://www.4dca.org/content/download/813178/opinion/193749_DC08_12082021_095327_i.pdf

HEARSAY: The statements of the victim's mother and aunt that her former boyfriend had threatened to kill her and "leave her dead body at the doorstep," implying a different perpertrator. is inadmissible as hearsay. "In fact, it was double hearsay." The statement is not admissible to show to show the declarant's state of mind (which is not relevant) nor to show that the police did a poor investigation, which was otherwise fully presented. Scott v. State, 4D19-3749 (12/8/21)

https://www.4dca.org/content/download/813178/opinion/193749_DC08_12082021_095327_i.pdf

COSTS OF INCARCERATION: If a defendant is convicted of a capital or life felony, a liquidated cost of incarceration of $250,000 applies. If the defendant is convicted of any other degree of crime, the applicable amount is $50 per day for each day of his incarcerative sentence. It is improper to impose costs of incarceration in both amounts. Slanker v. State, 5D20-2373 (12/3/21)
https://www.5dca.org/content/download/812425/opinion/202373_DC13_12032021_081758_i.pdf

PLEA WITHDRAWAL: Defendant is entitled to withdraw his plea before sentencing where he did not understand that entering the plea would result in the revocation of his driver's license. Ferreira v. State, 5D21-306 (12/3/21)

https://www.5dca.org/content/download/812427/opinion/210306_DC13_12032021_082354_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Recantation of a co-defendant's trial testimony does not warrant a new trial where, according to the codefendant's sworn affidavit, he only testified against Defendant because law enforcement coerced him to do so, but the trial court disbelieves him. The standard for reviewing recantation of testimony as grounds for a new trial is to deny relief unless the trial court is satisfied the recantation testimony is true. Borders v. State, 5D21-921 (12/3/21)

https://www.5dca.org/content/download/812428/opinion/210921_DC05_12032021_082545_i.pdf

RESTITUTION: Court erred in ordering Defendant to pay $68,043.38, representing the $41,043.38 for a new GPS and an additional $25,000, for the unpaid portion of the missing GPS. While intended to make the victim whole, restitution is not intended to provide a victim with a windfall. While it may seem unfair that Victim owes money on a GPS unit that he no longer possesses, the balance is a product of his financial decision. Prior to his truck being stolen, Victim owed $25,000 and had a used GPS unit. As it stands, he now has his $25,000 loan paid off and a new GPS unit, thus resulting in an improper windfall. The proper restitution amount is reflected by the GPS unit's fair market value. Haynes v. State, 5D21-1010 (12/3/21)

https://www.5dca.org/content/download/812429/opinion/211010_DC13_12032021_082727_i.pdf

RESTITUTION-HEARSAY: Guesstimates and speculative testimony are inappropriate evidence on which to base an award of restitution. Further, hearsay sales quotes are inadmissible evidence to establish restitution amount. Haynes v. State, 5D21-1010 (12/3/21)

https://www.5dca.org/content/download/812429/opinion/211010_DC13_12032021_082727_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE: A trial court, when imposing a sentence on a defendant who has voluntarily chosen to allocute and maintain his innocence at the sentencing hearing, does not violate the defendant's due process rights by considering the defendant's failure to take responsibility for his actions. Lack of remorse and refusal to accept responsibility can be valid sentencing considerations when sentencing within the statutory range. Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-716.pdf

STARE DECISIS: Precedent that Court may not use Defendant's claim of innocence against a defendant at sentencing is a violation of due process "constitutes dicta that we expressly disapprove." Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-716.pdf

SENTENCING-CONSIDERATIONS: "The trial judge had numerous valid reasons for imposing the maximum sentence here, but. . .he did not need to articulate any reason. The judge was statutorily authorized to impose a sentence up to fifteen years based solely on the fact of the conviction, regardless of any sentencing considerations and whether or not Davis took responsibility for his actions. . .Whether a defendant says nothing at sentencing or takes full responsibility and is able to show that he is a pillar of the community, a judge retains the discretion to impose the maximum sentence." Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-

716.pdf

SENTENCING-CONSIDERATIONS: "We hold that when a defendant voluntarily chooses to allocute at a sentencing hearing, the sentencing court is permitted to consider the defendant's freely offered statements, including those indicating a failure to accept responsibility." Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-716.pdf

SENTENCING-CONSIDERATIONS (J. POLSTON, DISSENTING): "I dissent from the majority's decision holding that a trial court can punish a defendant for his lack of remorse during a sentencing proceeding. This result is inconsistent with our precedent interpreting article I, section 9 of the Florida Constitution, the consensus among the district courts of appeal, and has no basis in our statutory sentencing scheme. Showing remorse is admitting you did something wrong—an admission of guilt. And increasing a defendant's sentence based on the failure to show remorse is punishing a defendant for failing to admit guilt. Punishing someone unless they confess guilt of a crime is a violation of due process and the right against self-incrimination." Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-716.pdf

SENTENCING-CONSIDERATIONS (J. POLSTON, DISSENTING: "A trial court violates due process by using a protestation of innocence against a defendant." Davis v. State, SC19-716 (12/2/21)

https://www.floridasupremecourt.org/content/download/812295/opinion/sc19-716.pdf

FIREARM PURCHASE: FDLE has an affirmative obligation to identify and get copies of the underlying records supporting the disqualification when a potential firearm buyer appeals a nonapproval based on those records. NICS results alone cannot take away a person's constitutional right to possess orpurchase a firearm. FDLE cannot make the determination that a person's constitutional right to purchase a firearm has been stripped away based solely on a hearsay document such as an NICS printout. Lynch v. FDLE, 1D19-4217 (12/1/21)

https://www.1dca.org/content/download/812188/opinion/194217_DC13_12012021_140930_i.pdf

TOO MANY ACRONYMS: When some guy attempts to purchase a firearm from an FFL, which under federal law is required to contact NICS unless the FFL is located in a state that has a POC, which in Florida is FDLE, whereupon the POC takes care of contacting the NICS and conducting a check of the information contained in the FCIC and NCIC, and then informing the FFL whether the records indicate the person is prohibited from receiving a firearm, and if so, providing the FFL with a nonapproval number, or, if the person is not prohibited, then the POC/FDLE is required to give the FFL a unique approval number. If the records in question are held by the NYDCJS, the POC, not the guy, must obtain the potentially disqualifying document. Lynch v. FDLE, 1D19-4217 (12/1/21)

https://www.1dca.org/content/download/812188/opinion/194217_DC13_12012021_140930_i.pdf

COSTS-VOP: The assessment of the minimum amounts for prosecution costs and legal assistance fees in each violation proceeding resulting in a determination of violation of probation or community control is required notwithstanding that they were previously imposed when Defendant was first adjudicated guilty and placed on probation. Stancil v. State, 1D20-2564 (12/1/21)

https://www.1dca.org/content/download/812190/opinion/202564_DC13_12012021_141734_i.pdf

WRIT OF CERTIORARI: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Coleman v. Inch, 1D20-3087 (12/1/21)

https://www.1dca.org/content/download/812191/opinion/203087_DC02_12012021_142038_i.pdf

POST CONVICTION RELIEF-JURY: A defendant who personally affirms his acceptance of the jury panel will not be heard to complain in a postconviction motion that his counsel was ineffective for allowing a biased juror to serve on his jury. Kitt v. State, 1D21-868 (12/1/21)

https://www.1dca.org/content/download/812193/opinion/210868_DC05_12012021_142406_i.pdf

GOLDEN RULE: While golden rule arguments are prohibited, a prosecutor may argue a common-sense inference as to the victim's mental state so long as he or she does not cross the line into asking the jury to imagine the victim's final pain, terror and defenselessness. "You can imagine how the children were reacting" during home invasion robbery and "as you can imagine [the victim's fiancée] and the children are terrified" do not invite the jurors to place themselves in the position of the victim, the victim's fiancée, or the children and thus are not improper. Kitt v. State, 1D21-868 (12/1/21)

https://www.1dca.org/content/download/812193/opinion/210868_DC05_12012021_142406_i.pdf

INDEPENDENT ACT: Defendant is not entitled to an independent act instruction where the Victim's death was a foreseeable consequence when codefendant shot him after all codefendants participated in abducting him after a home invasion robbery. It is unquestionably foreseeable that someone could be shot or killed during the events set in motion by Defendant. Kitt v. State, 1D21-868 (12/1/21)

https://www.1dca.org/content/download/812193/opinion/210868_DC05_12012021_142406_i.pdf

WRIT OF PROHIBITION: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Davis v. State, 1D21-2578 (12/01/21)

https://www.1dca.org/content/download/812195/opinion/212578_DC02_12012021_142531_i.pdf

INDEPENDENT ACT: An independent act of a codefendant occurs when a person other than the defendant commits a crime (1) which the defendant did not intend to occur, (2) in which the defendant did not participate, and (3) which was outside of, and not a reasonably foreseeable consequence of, the common design or unlawful act contemplated by the defendant. Homicide is a foreseeable outcome of an armed robbery. Counsel was not ineffective for advising Defendant against this defense. Bullard v. State, 1D21 2769 (12/1/21)

https://www.1dca.org/content/download/812197/opinion/212769_DC05_12012021_142802_i.pdf

PRINCIPAL: Whether a defendant knows of a criminal act ahead of time or physically participates in the crime, participation with another in a common criminal scheme renders the defendant guilty of all crimes committed in furtherance of that scheme. Bullard v. State, 1D21 2769 (12/1/21)

https://www.1dca.org/content/download/812197/opinion/212769_DC05_12012021_142802_i.pdf

COSTS: When imposing the statutory minimum public defender's fee,, the trial court need not announce the imposition of the public defender's fee or inform the defendant of a right to contest it. Vandawalker v. State, 2D18-4977 (12/1/21)

https://www.2dca.org/content/download/812093/opinion/184977_DC08_12012021_083958_i.pdf

COSTS: Prosecution costs may not be imposed unless requested. Vandawalker v. State, 2D18-4977 (12/1/21)

https://www.2dca.org/content/download/812093/opinion/184977_DC08_12012021_083958_i.pdf

JUROR-CHALLENGE FOR CAUSE: Juror who said that a completely innocent person cannot be wrongfully accused of of a crime should be excused for cause. "We clarify today that courts and counsel are correct to engage prospective jurors in a dialogue addressing their partialities, biases, prejudices, and misconceptions when they are rooted in a lack of familiarity with the judicial system as part of an effort to rehabilitate in contrast to those immutable opinions and attitudes that arise from personal life experiences and firmly held beliefs. Florida law allows the rehabilitation of jurors whose responses in voir dire raise concerns about their impartiality."

But where a juror's response is not clarified or changed the juror must be stricken for cause. Wright v. State, 3D18-2430 (12/1/21)

https://www.3dca.flcourts.org/content/download/812143/opinion/182430_DC13_12012021_104620_i.pdf

JUROR-CHALLENGE FOR CAUSE-PRESERVATION: To preserve challenges for cause to prospective jurors, the defendant must object to the jurors, show that he or she has exhausted all peremptory challenges and requested more that were denied, and identify a specific juror that he or she would have excused if possible. Wright v. State, 3D18-2430 (12/1/21)

https://www.3dca.flcourts.org/content/download/812143/opinion/182430_DC13_12012021_104620_i.pdf

AND/OR: "Wright also challenges the trial court's use of the 'and/or' conjunction in the jury instructions. . . We note. . . the Supreme Court has repeatedly condemned its use." Wright v. State, 3D18-2430 (12/1/21)

https://www.3dca.flcourts.org/content/download/812143/opinion/182430_DC13_12012021_104620_i.pdf

PRETRIAL RELEASE: Court may not deny both bond on a human trafficking charge where there are no conditions that would assuage the court's concerns regarding protecting the community, and particularly the victim, from possible communication or contact with Defendant. Various concerns that may be difficult to prevent contact between Defendant and the victim are legally insufficient to deny bond. "The problem with this concern is that, without more, it could apply to prevent bail in any case." Hernandez v. Junior, 3D21-738 (12/1/21)

https://www.3dca.flcourts.org/content/download/812169/opinion/211738_

NOND_12012021_112342_i.pdf

POST CONVICTION RELIEF: When a defendant's initial rule 3.850 motion for post conviction relief is determined to be legally insufficient for failure to meet either the rule's or other pleading requirements, the trial court abuses its discretion when it fails to allow the defendant at least one opportunity to amend the motion. Gonzalez v. State, 3D21-753 (12/1/21)

https://www.3dca.flcourts.org/content/download/812170/opinion/211753_DC13_12012021_112803_i.pdf

SCORESHEET: Where the Defendant contest the priors on his sentencing scoresheet, the State is required to provide competent evidence that the defendant had committed those crimes. A claim that a defendant's scoresheet erroneously included as scored prior convictions crimes for which he or she had never been convicted requires an evidentiary hearing. Sanders v. State, 4D20-1913 (12/1/21)

https://www.4dca.org/content/download/812112/opinion/201913_DC08_12012021_095540_i.pdf

NOVEMBER 2021

EVIDENCE-SIMILAR BAD ACTS: Obscene videos and images provided to the Child by Defendant are admissible in case of providing obscene material to Child as relevant evidence to corroborate the child's testimony. Such evidence need not be admitted as similar fact evidence under §90.404(2). "While the introduction of the child pornography evidence was certainly harmful to Henson's case, little is more probative to the charge of providing obscene material to a minor than the obscene material itself." Henson v. State, 1D20-2043 (11/24/21)

https://www.1dca.org/content/download/811165/opinion/202043_DC05_11242021_140716_i.pdf

STAND YOUR GROUND: Where a trial court applies an incorrect standard of proof at a pre-trial SYG immunity hearing, such error is cured when the State overcomes defendant's self-defense claim at trial under the heavier burden of proof beyond a reasonable doubt. Dicks v. State, 1D20-2402 (11/24/21)

https://www.1dca.org/content/download/811166/opinion/202402_DC05_11242021_140848_i.pdf

COSTS: Where the trial court orally pronounced additional costs of prosecution (here, witness travel expenses), to which Defendant failed to object in spite of an explicit request from the judge, error, if any, cannot be corrected under R. 3.800(b). Laster v. State, 1D20-2548 (11/24/21)

https://www.1dca.org/content/download/811169/opinion/202548_DC05_11242021_141457_i.pdf

SEARCH AND SEIZURE-MARCHMAN ACT: Where Defendant was highly intoxicated, belligerant, and non-compliant, he was properly seized within his house and searched under the Marchman Act. The deputy's failure to seek Appellant's consent to obtaining assistance is not a basis for suppressing the evidence found on his person as a result of the detention. Jones v. State, 1D20-3098 (11/24/21)

https://www.1dca.org/content/download/811173/opinion/203098_DC05_11242021_142354_i.pdf

EXCLUSIONARY RULE: The exclusionary rule is not a remedy for a violation of §394.453 unless a constitutional violation has also occurred. The deputy's failure to seek Appellant's consent to obtaining assistance is not a basis for suppressing the evidence found on his person as a result of the detention. Whether the deputy violated Defendant's constitutional rights is a separate question. Jones v. State, 1D20-3098 (11/24/21)

https://www.1dca.org/content/download/811173/opinion/203098_DC05_11242021_142354_i.pdf

SEARCH AND SEIZURE-BAKER ACT: Where officers decided to take Defendant into custody under the Baker Act, and policy requires them to conduct a search before transporting a person to a mental health receiving and treatment facility, the search is lawful. Jones v. State, 1D20-3098 (11/24/21)

https://www.1dca.org/content/download/811173/opinion/203098_DC05_11242021_142354_i.pdf

CERTIORARI: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Hirshkorn v. State, 1D21-593 (11/24/21)

https://www.1dca.org/content/download/811176/opinion/210593_DC02_11242021_143127_i.pdf

FIREARM-MANDATORY MINIMUM: Attempted first-degree murder is a first-degree felon, which is reclassified to a life felony based on the use of a firearm. Both the 45 year sentence for the life felony in the 20 year minimum term based on the Defendant's discharge of the firearm during the offense is lawful. Beasley v. State, 1D21-2317 (11/24/21)

https://www.1dca.org/content/download/811181/opinion/212317_DC05_11242021_143747_i.pdf

POST CONVICTION RELIEF: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Richardson v. State, 1D 21-2496 (11/24/21)

https://www.1dca.org/content/download/811182/opinion/212496_DC02_11242021_143926_i.pdf

APPEAL: An affirmance under Anders only extends to review of the limited class of claims that were apparent on the face of the record and thereby necessarily considered by the court in its Anders review. Moorer v. State, 1D21-2617 (11/24/21)

https://www.1dca.org/content/download/811183/opinion/212617_DC02_11242021_144045_i.pdf

POST CONVICTION RELIEF: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits" is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Johnson v. State, 1D21-2773 (11/24/21)

https://www.1dca.org/content/download/811184/opinion/212773_DC02_11242021_144139_i.pdf

POST CONVICTION RELIEF: In contracting without a license case, counsel was ineffective for failing to call an available expert witness about the procedures for licensing contract orders (individuals, not businesses, can

qualify for licenses). Although opinion testimony as to the legal interpretation of Florida law is not a proper subject of expert testimony, the witness should have been called to explain the licensing procedure. Jones v. State, 2D19-4437 (11/24/21)

https://www.2dca.org/content/download/811116/opinion/194437_DC08_11242021_091649_i.pdf

MANDATORY MINIMUM-FIREARM-CONSECUTIVE SENTENCES: Comprehensive discussion of when the mandatory minimum for use of firearm must or may be run consecutively. Pinkston v. State, 2D20-611 (11/24/21)

https://www.2dca.org/content/download/811117/opinion/200611_DC08_11242021_091938_i.pdf

MANDATORY MINIMUM-FIREARM-CONSECUTIVE SENTENCES: §775.087(2)(a) requires the imposition of a minimum mandatory period of imprisonment for certain enumerated offenses when the defendant possessed a firearm during the commission of the offense, which must run consecutively to any other term of imprisonment imposed for any other felony offense for a non-qualifying felony, but not to another qualifying felony sentence. In other words, the statute only mandates consecutive sentences if one of the offenses is a qualifying offense and the other offense is not. This is the only scenario under which consecutive sentences are required. If both offenses are qualifying offenses the statute does not require consecutive sentences. Pinkston v. State, 2D20-611 (11/24/21)

https://www.2dca.org/content/download/811117/opinion/200611_DC08_11242021_091938_i.pdf

MANDATORY MINIMUM-FIREARM-CONSECUTIVE SENTENCES: Consecutive sentences for use of a firearm is not required where the offenses occurred during separate criminal episodes. Generally, consecutive sentencing of mandatory minimum imprisonment and migration terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was merely possessed but not discharged. It follows, therefore, that a trial court must impose the mandatory minimum sentences concurrently under such circumstances. Pinkston v. State, 2D20-611 (11/24/21)

https://www.2dca.org/content/download/811117/opinion/200611_DC08_11242021_091938_i.pdf

MANDATORY MINIMUM-FIREARM-CONSECUTIVE SENTENCES: If multiple firearm offenses are committed contemporaneously, during which time multiple victims are shot at, then consecutive sentencing is permissible but not mandatory. In other words, a trial judge has discretion to order the mandatory minimum sentences to run consecutively, but may impose the sentences concurrently. Pinkston v. State, 2D20-611 (11/24/21)

https://www.2dca.org/content/download/811117/opinion/200611_DC08_11242021_091938_i.pdf

DUI MANSLAUGHTER-MAXIMUM SENTENCE: Defendant may not be sentenced to 15 years in prison for DUI manslaughter because a term of probation sufficiently long to allow the Defendant to complete a substance abuse course is required, and the total period of probation and incarceration cannot exceed 15 years. Archer v. State, 2D20-1025 (11/24/21).

https://www.2dca.org/content/download/811120/opinion/201025_DC13_11242021_092540_i.pdf

JUDGMENT: Snap out form for misdemeanor convictions is legally insufficient. Rule 3.986(a) requires a trial court to use a judgment and sentence form which should include an indication of whether the defendant was tried and found guilty by a jury or court, entered a plea of guilty, or entered a plea of no contest; and which should include details regarding the counts, crimes, statute numbers, and degree of the crimes, whether the defendant is adjudicated guilty or whether adjudication of guilt is being; and should be signed by the judge. The form for sentencing should include, at a minimum, the term of the sentence, whether the defendant is to be committed to the custody of the Department of Corrections or the sheriff of the appropriate county, whether the defendant is to complete probation or community control, and whether a sentence is to run consecutively to or concurrently with other counts or convictions. Barnett v. State, 2D20-1226 (11/24/21)

https://www.2dca.org/content/download/811121/opinion/201226_DC05_11242021_092759_i.pdf

JUDICIAL RANT-SNAP OUT FORMS: "This court has consistently expressed concern over the Tenth Circuit's use of these forms since as far back as 1999. . .Still, despite more than two decades of opinions from this court decrying the practice and pointing out specific problems with the use of the snapouts, the Tenth Circuit has inexplicably continued to use these forms that do not comply with rule 3.986. If this court had the power to do so, it would order the Tenth Judicial Circuit to cease and desist in the use of this type of form final order." Barnett v. State, 2D20-1226 (11/24/21)

https://www.2dca.org/content/download/811121/opinion/201226_DC05_11242021_092759_i.pdf

ROMEO AND JULIET: Court may not deny the Defendant's motion to remove himself from the sexual registration requirements under the Romeo

and Juliet provision without explaining its reasoning. Hurtado v. State, 2D20-2478 (11/24/21)

https://www.2dca.org/content/download/811123/opinion/202478_DC13_11242021_092955_i.pdf

ROMEO AND JULIET: Successive motions to remove the sexual registration requirement pursuant to the Romeo and Juliet statute are not authorized. Hurtado v. State, 2D20-2478 (11/24/21)

https://www.2dca.org/content/download/811123/opinion/202478_DC13_11242021_092955_i.pdf

POST CONVICTION RELIEF-FAILURE TO INVESTIGATE: Defendant is entitled to a hearing on claim that counsel was ineffective for not investigating whether surveillance videos from three businesses captured the exchange of gunfire. Happel v. State, 2D20-2490 (11/24/21)

https://www.2dca.org/content/download/811124/opinion/202490_DC08_11242021_093229_i.pdf

LEAVING SCENE OF ACCIDENT: Defendant is entitled to a judgment of acquittal on charge of leaving the scene of an accident with property damage where he never left the scene, but rather was standing in front of a parked vehicle when the officers arrived. The statute does not criminalize an intent to leave the scene; a person must have actually failed to stop. Romo v. State, 2D 21-779 (11/24/21)

https://www.2dca.org/content/download/811133/opinion/210779_DC08_11242021_093637_i.pdf

CIRCUMSTANTIAL EVIDENCE: "[I]f we were reviewing the State's evidence pre-Bush, for us to affirm Rodriguez's conviction, the State's evidence would have to have been inconsistent with Rodriguez's reasonable hypothesis of innocence – i.e., his alibi defense." Rodriguez v. State, 3D19-2371 (11/24/21)

https://www.3dca.flcourts.org/content/download/811048/opinion/192371_DC13_11242021_100940_i.pdf

CIRCUMSTANTIAL EVIDENCE-SUFFICIENCY OF EVIDENCE: Evidence may still be legally insufficient to prove guilt independently of whether the State's evidence was sufficient to overcome Defendant's reasonable hypothesis of innocence. Defendant's transfer DNA detected on victim's fingernails and on a broken glass at the scene where he had been is legally insufficient to convict Defendant of murder. Question certified. Rodriguez v. State, 3D19-2371 (11/24/21)

https://www.3dca.flcourts.org/content/download/811048/opinion/192371_DC13_11242021_100940_i.pdf

HABEAS CORPUS: Habeas corpus may not be used as a substitute for an appropriate motion seeking postconviction relief, nor can habeas corpus be used as a means to seek a second appeal or to litigate issues that could have been or were raised in a motion under rule 3.850. Watts v. State, 3D21-886 (11/24/21)

https://www.3dca.flcourts.org/content/download/811055/opinion/210886_DC05_11242021_101803_i.pdf

COMPETENCY: Court errs in finding Defendant competent to proceed notwithstanding the uncontested expert testimony to the contrary. We agree

and reverse. Although not absolutely bound by expert opinion as to competence, courts should not ignore uncontested expert testimony. Gursky v. State, 4D20-532 (11/24/21)

https://www.4dca.org/content/download/811073/opinion/200532_DC13_11242021_094913_i.pdf

EVIDENCE: Pyschologist's testimony that Defendant is mildly intellectually deficient and had suffered a traumatic childhood is properly excluded in child pornography where she had lewdly posed and photographed her naked children "to please her pedophilic paramour" because the psychiatric evidence does not negate intent and merely presents a dangerously confusing theory of defense more akin to justification and excuse than a legally acceptable theory of lack of mens rea. Presentation of evidence of mental disease or defect, short of insanity, is inadmissible to excuse conduct. USA v. Litzky, No. 20-10709 (11/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010709.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: A 30-year sentence, 600 months below the Guidelines' recommendation, for lewdly posing and photographing her naked children "to please her pedophilic paramour ("Ordinarily, we would spare you the graphic details, but, as it turns out, they're relevant to the sentencing issue we have to decide"), is not substantively unreasonable." USA v. Litzky, No. 20-10709 (11/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010709.pdf

MENS REA-EXPERT-CONCURRENCE: The Insanity Defense Reform Act (IDRA), which prohibits the presentation of evidence of mental disease or defect, short of insanity, to excuse conduct, is in tension with precedents

holding that psychiatric evidence is still admissible where it negates the mens rea of a specific intent crime and Rule 704(b) which provides that in a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. "So, what seems like a prohibition on certain psychiatric evidence (the IDRA) has an exception of sorts (evidence that negates the mens rea of a specific intent crime), but that exception faces an evidentiary rule of exclusion (Rule 704(b)). I'm not sure we've ever really reconciled our rulings on the IDRA, on psychiatric evidence to negate specific intent, and on Rule 704(b). . .[T]he way in which we have applied these legal principles has resulted in a nearly unworkable standard." USA v. Litzky, No. 20-10709 (11/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010709.pdf

RELIGIOUS BELIEF DEFENSE: Anti-nuclear weapon vandals and trespassers at a nuclear naval facility are not entitled to a religious belief defense. To establish a prima facie RFRA claim, a defendant must first show (1) that he or she was exercising (or was seeking to exercise) his or her sincerely held religious belief, and (2) that the government substantially burdened the defendant's religious exercise. "Simply put, RFRA is not a 'get out of jail free card,' shielding from criminal liability individuals who break into secure naval installations and destroy government property, regardless of the sincerity of their religious beliefs. . .[N]othing in RFRA supports destructive, national-security-compromising conduct as a means of religious exercise." USA v. Grady, No. 20-14341 (11th Cir. 11/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014341.pdf

RESTITUTION: In assessing restitution, court need not make findings as to the damage caused by the Defendant's respective individual actions. If the court finds that more than one defendant has contributed to the loss of a

victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant. A district court does not exceed its authority by ordering a defendant to pay restitution for losses which result from acts done in furtherance of the conspiracy of which the defendant is convicted. USA v. Grady, No. 20-14341 (11th Cir. 11/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014341.pdf

SENTENCING-ACCEPTANCE OF RESPONSIBILITY: Defendant who went to trial while not denying the acts alleged but asserted an RFRA (religious) defense is not entitled to a reduction for acceptance of responsibility. and continues to deny the illegality of his actions. "Faced with the stark reality of injustice, men of sensitive conscience and great intellect have sometimes found only one morally justified path, and that path led them inevitably into conflict with established authority and its laws. . .However, . . .while in restricted circumstances a morally motivated act contrary to law may be ethically justified, the action must be non-violent and the actor must accept the penalty for his action." USA v. Grady, No. 20-14341 (11th Cir. 11/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014341.pdf

JURY INSTRUCTION-INDEPENDENT ACT: The Independent Act Doctrine applies

when, after participating in a common plan or design to commit a crime, one of the codefendants embarks on acts not contemplated by the other defendants or participants in the crime, and commits additional criminal acts beyond the scope of the original collaboration. Defendant is entitled to an independent act jury instruction where codefendant committed a robbery

during an underlying marijuana buy. Gary v. State, 2D20-740 (9/22/21)

https://www.2dca.org/content/download/811118/opinion/200740_DC13_11242021_092240_i.pdf

EVIDENCE-UNCHARGED ACTS: In sexual molestation case, evidence of uncharged inextricably intertwined acts is admissible to establish the context of the charged offenses. Prush v. State, 5D20-1530 (11/19/21)

https://www.5dca.org/content/download/808570/opinion/201530_DC05_11192021_082553_i.pdf

VOP: Defendant may not be found to have violated probation on a basis not alleged in the affidavit of violation. Bridger v. State, 5D20-23985 (11/19/21)

https://www.5dca.org/content/download/808571/opinion/202385_DC08_11192021_082735_i.pdf

JUDGE-DISQUALIFICATION: Judge must be disqualified from presiding over re-sentencing hearing for saying, before the hearing, that the Defendant is "an older, dedicated unrepentant rapist [who is] driven to sexually offend [and who] has a low possibility of rehabilitation," and that he "is and will remain as long as he lives, irredeemably incorrigible." Mediate v. State, 5D21-2277 (11/19/21)

https://www.5dca.org/content/download/808574/opinion/212277_DC03_11192021_083055_i.pdf

RULE: New rule 2.423 creates definitions for "confidential crime victim information," "crime," "criminal," and "victim," and prescribes procedures for identifying the documents and information subject to protection. The filer of

an initial charging document must prominently indicate the existence of confidential crime victim information in court records. Sample form that can be used to identify confidential information within an attached document or a document that has already been filed without such a form. In Re: Amendment to Florida Rule of Genersl Practice and Judicial Administration 2.423, No. SC20-1128 (11/18/21)

https://www.floridasupremecourt.org/content/download/806046/opinion/sc20-1128.pdf

ATTORNEY-DISCIPLINE: Attorney suspended for 90 days for coaching a witness during a Zoom deposition and lying about it (telling her what to say, how to answer, to avoid providing certain information). The Florida Bar v. James, No. SC20-128 (11/18/21)

https://www.floridasupremecourt.org/content/download/806044/opinion/sc20-128.pdf

DWLS: Proof that DHSMV provided a defendant with notice of an HTO driver license revocation is not an element of the crime of DWLR-HTO under section 322.34(5). The offense of DWLR-HTO consists of two elements: (1) the defendant drove a motor vehicle upon the highways of this State, and (2) at the time of the offense, the defendant had his driver license revoked as an HTO. Robinson v. State, No. SC20-408 (11/18/21)

https://www.floridasupremecourt.org/content/download/806045/opinion/sc20-408.pdf

DOUBLE JEOPARDY: Multiple convictions for leaving the scene of an accident involving death violate double jeopardy. Wallace v. State, 1D19-4655 (11/17/21)

https://www.1dca.org/content/download/805306/opinion/194655_DC08_1

1172021_141232_i.pdf

APPEAL-PRESERVATION: Defendant may not appeal on ground that State denigrated his defense by arguing that his options for presenting a defense were "severely limited" where that specific argument was not presented to the trial court. Wallace v. State, 1D19-4655 (11/17/21)

https://www.1dca.org/content/download/805306/opinion/194655_DC08_1
1172021_141232_i.pdf

CIRCUMSTANTIAL EVIDENCE: The reasonable hypothesis of innocence standard for circumstantial has been abolished. The general standard for review of motions for judgment of acquittal to circumstantial cases is now whether there is competent, substantial evidence to support the verdict. Evidence that Defendant rented the vehicle in question and was the only authorized driver of the vehicle, was seen getting out the driver's side of the vehicle on surveillance footage when he was buying window tint a short time before the accident is sufficient to prove his identity. Wallace v. State, 1D19-4655 (11/17/21)

https://www.1dca.org/content/download/805306/opinion/194655_DC08_1
1172021_141232_i.pdf

ARGUMENT: "Why. I was listening throughout the entirety of [defense]. . .for an explanation of why, and I never heard one. That's because there is no explanation other than he did it," in context, is not an improper comment of the exercise of the right not to testify. Wallace v. State, 1D19-4655 (11/17/21)

https://www.1dca.org/content/download/805306/opinion/194655_DC08_1
1172021_141232_i.pdf

COMPETENCY EVALUATION-COSTS: Court must appoint an expert to conduct a competency evaluation after finding reasonable grounds existed to question Defendant's competency. The court system Is required to pay for the expert, not the defense. "No authority supports the proposition that cost concerns can justify dispensing with Petitioner's due process right to examination by at least one-court-appointed expert." Section 916.115(2) requires the court to pay for a competency evaluation upon granting a court appointment, regardless of who requested it. Addison v. State. 1D21-1237 (11/17/21)

https://www.1dca.org/content/download/805315/opinion/211237_DC03_11172021_143328_i.pdf

APPEAL-SELF REPRESENTATION: A defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Walker v. State, 1D21-2240 (11/17/21)

https://www.1dca.org/content/download/805317/opinion/212240_DA08_11172021_143641_i.pdf

APPEAL-SELF REPRESENTATION: A criminal defendant has no right to represent himself in an original proceeding in the appellate court and, at the same time, be represented by counsel in the trial court. Bass v. State, 1d21-2903 (11/17/21)

https://www.1dca.org/content/download/805320/opinion/212903_DA08_11172021_144041_i.pdf

APPEAL-SELF REPRESENTATION: A criminal defendant cannot proceed pro se while represented by counsel. Counsel in lower court retains status as counsel for party in appellate court pursuant to Fla.R.App.P. 360(b)).

Manning v. State, 1D21-2991 (11/17/21)

https://www.1dca.org/content/download/805321/opinion/212991_DA08_11172021_144155_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Court may not deny evidentiary hearing on claim of newly discovered evidence by relying on trial testimony. Witness credibility cannot be weighed without witness testimony. Interesting discussion of history of R. 3.850. Guzman v. State, 2D20-694 (11/17/21)

https://www.2dca.org/content/download/804643/opinion/200694_DC08_11172021_085803_i.pdf

JIMMY RYCE: Court shall hold a nonjury trial for a person committed as a Sexually Violent predator if the committed person shows at a limited hearing that there is probable cause to believe that his condition has so changed that it is safe for him to be at large and that he will not engage in acts of sexual violence if discharged. Petitioner has only had to show that there is probable cause to believe that his condition has changed. Different expert opinions need to be resolved in the evidentiary hearing nonjury hearing. Any conflict with the experts was a conflict on the ultimate issue. Gordan v. State, 2D20-997 (11/17/21)

https://www.2dca.org/content/download/804644/opinion/200997_DC13_11172021_085929_i.pdf

DUI-BREATHALYZER: Court improperly excluded a breathalyzer reading showing the Defendant's breath alcohol level (.04) below the legal limit. Evidence should not have been excluded because there were not two separate results from the breath test. "While the rule requires a minimum of two samples based on the requisite breath volume to constitute an approved breath alcohol test, it explicitly indicates that failure to meet that criteria does not necessarily render a single result invalid for the purpose of establishing

an individual's breath alcohol level." Williams v. State, 2D21-59 (11/17/21)

https://www.2dca.org/content/download/804647/opinion/210059_DC13_11172021_090754_i.pdf

STAND YOUR GROUND: Once a defendant raises a prima facie claim of self-defense immunity under section 776.032(4), the State bears the burden at the pretrial immunity or Stand Your Ground hearing of proving, by clear and convincing evidence, why the defendant is not entitled to immunity from further prosecution. When a jury determines that the defendant is guilty beyond a reasonable doubt, notwithstanding a claim of self-defense, that determination cures the trial court's erroneous failure to hold a pretrial immunity hearing or a trial court's erroneous application of an incorrect burden and standard of proof at an immunity hearing. Toiran v. State, 3D19-911 (11/17/21)

https://www.3dca.flcourts.org/content/download/804660/opinion/190911_DC05_11172021_101011_i.pdf

SELF-DEFENSE-RETREAT: Even if the Victim were the initial aggressor when he pushed Defendant against the wall, Defendant is not entitled to a Judgment of Acquittal where the Victim was retreating when the Defendant shot him six times in the back. Toiran v. State, 3D19-911 (11/17/21)

https://www.3dca.flcourts.org/content/download/804660/opinion/190911_DC05_11172021_101011_i.pdf

CONSPIRACY: Testimony from a co-conspirator that Defendant was involved in recruiting participants for the conspiracy to kidnap victim, corrobortated by cell phone records and other evidence is sufficient. Perdomo v. State, 3D19-2475 (11/17/21)

https://www.3dca.flcourts.org/content/download/804662/opinion/192475_

DC05_11172021_101336_i.pdf

TRESPASS-SCHOOL: There is no requirement that the State must introduce the written notice of suspension or exclusionary letter to prove the suspension element of trespass on school. X.B., a Juvenile v. State, 3D20-1915 (11/17/21)

https://www.3dca.flcourts.org/content/download/804663/opinion/201915_DC05_11172021_101424_i.pdf

TRESPASS-WILLFULNESS: The fact that Child's mother dropped him off at the school is no defense to trespass. There is no requirement that the State prove that the student's trespass was intentional. X.B., a Juvenile v. State, 3D20-1915 (11/17/21)

https://www.3dca.flcourts.org/content/download/804663/opinion/201915_DC05_11172021_101424_i.pdf

MOTION TO MITIGATE: A motion to mitigate on its merits is not appealable. Stroud v. State, 3d21-1959 (11/17/21)

https://www.3dca.flcourts.org/content/download/804668/opinion/211959_DA08_11172021_103054_i.pdf

PEREMPTORY CHALLENGE: State's challenge of a prospective juror on the ground that she "seem[ed] exceptionally very smart in terms of technical stuff" and that as a result she would "get lured . . . into looking too far into things" is a race neutral reason. Appellate Court defers to trial court's finding of genuineness. Dabbs v. State, 4D20-607 (11/17/20)

https://www.4dca.org/content/download/804671/opinion/200607_DC05_11172021_094713_i.pdf

JURY SELECTION: "The judge. . .confirmed that it was a viable [State] strategy to strike 'super smart people" from jury panels. Dabbs v. State, 4D20-607 (11/17/20)

https://www.4dca.org/content/download/804671/opinion/200607_DC05_11172021_094713_i.pdf

JUDGE-BIAS: "We have previously recognized the distinction between personal bias and judicial bias when evaluating motions for disqualification that stem from a trial judge's in-court comments. . . Personal bias must come from an extrajudicial source, such as a bias directed at a defendant simply because of the category of their case. . .On the other hand, judicial bias is bias that is based upon the judge's feelings regarding a certain legal principle or a court opinion. . .Unlike personal bias, judicial bias is almost never legally sufficient for disqualification. Judge's criticism of a court opinion is judicial bias and legally insufficient to disqualify him. Judges have a duty to follow the law and must conform their court rulings—and any comments expressed in the discharge of their official duty—to the opinions of higher courts, whose decisions they are bound to follow." But disqualification here is not required. Dabbs v. State, 4D20-607 (11/17/20)

https://www.4dca.org/content/download/804671/opinion/200607_DC05_11172021_094713_i.pdf

RESENTENCING-HEGGS: Defendant is not entitled to resentencing pursuant to Heggs where he was sentenced above the sentencing guidelines to 40 years in prison because he was not adversely affected as an upward departure would have been imposed under either the 1994 or 1995 guidelines. Maldonado v. State, 4D21-1396 (11/17/21)

https://www.4dca.org/content/download/804687/opinion/211396_DC05_11172021_101545_i.pdf

POST-CONVICTION RELIEF: Court must make factual findings in its written order for post conviction relief entered without a hearing. The Court's statement that "[t]he Defendant did not receive a fair trial and is entitled to relief" is legally insufficient. The case is remanded for the lower court to make necessary findings and conclusions in accordance with the two-pronged analysis of whether counsel provided ineffective assistance under Strickland. State v. Downs, 2D21-1196 (11/12/21)

https://www.2dca.org/content/download/803217/opinion/211196_DC13_11122021_093008_i.pdf

CREDIT FOR TIME SERVED: Following denial of Defendant's motion for post conviction relief, which the Court deemed "completely unsupported" and "ridiculous," Court erred in directing that Defendant "not. . .receive credit for time out of facility awaiting this hearing." Only DOC is responsible for calculating and awarding credit for time served after imposition of a sentence, not a trial court. The post-conviction court lacked authority to direct DOC to discipline Defendant by forfeiting his gain time or denying him credit for time served in jail awaiting the hearing; this violated the doctrine of separation of powers. Dickerson v. State, 5D21-2062 (11/12/21)

https://www.5dca.org/content/download/803170/opinion/211062_DC05_11122021_084056_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Based on the plain text of section 924.051(3), absent a showing of fundamental error, an unpreserved claim of ineffective assistance of trial counsel may not be raised on direct appeal. Considering a claim of ineffective assistance of trial counsel on direct appeal—where trial counsel's deficient performance is obvious on its face, lacks a strategic explanation, and resulted in prejudice to the

defendant—may be a more efficient and judicious use of the limited resources in Florida's state courts, but "Section 924.051(3) does not contain a waste of-judicial-resources exception, and we cannot rewrite the statute." Steiger v. State, No. SC20-1404 (11/10/21)

https://www.floridasupremecourt.org/content/download/802914/opinion/sc20-1404.pdf

SELF REPRESENTATION: Defendant with a mental health history may nonetheless represent himself in a murder case after an appropriate Faretta inquiry. Noetzel v. State, No. SC20-466 (11/10/21)

https://www.floridasupremecourt.org/content/download/802871/opinion/sc20-466.pdf

SELF-REPRESENTATION: Absent a substantial change in circumstances that would cause the trial court to question its original ruling on the defendant's request for self-representation, there is no concomitant requirement to revisit Faretta every time the offer of counsel is subsequently renewed and rejected. Case law suggesting that failure to renew the offer of counsel at a critical stage and conduct a Faretta inquiry if the defendant rejects the renewed offer constitutes *per se* reversible error is disapproved. Noetzel v. State, No. SC20-466 (11/10/21)

https://www.floridasupremecourt.org/content/download/802871/opinion/sc20-466.pdf

GUILTY PLEA: A criminal defendant waives three constitutional rights when he pleads guilty: the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Noetzel v. State, No. SC20-466 (11/10/21)

https://www.floridasupremecourt.org/content/download/802871/opinion/sc20-

466.pdf

DOUBLE JEOPARDY-MISTRIAL: Where, for reasons deemed compelling by the trial judge, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment. Where a discovery violation by the State (late disclosure of a compelling rebuttal witness who would force a conflict) is found to be inadvertent, and excluding a witness or evidence is too severe, Court may order a mistrial over defense objection. Hicks v. State, 1D18-5325 (11/10/21)

https://www.1dca.org/content/download/802953/opinion/185325_DC08_11102021_140936_i.pdf

FINE: No fine may be imposed for a capital felony (capital sex battery). Hicks v. State, 1D18-5325 (11/10/21)

https://www.1dca.org/content/download/802953/opinion/185325_DC08_11102021_140936_i.pdf

VOP: Probation may not be revoked for failure to pay restitution and drug-testing fees without a determination that that person has, or has had, the ability to pay but has willfully refused to do so. Smith v. State, 1D20-2969 (11/10/21)

https://www.1dca.org/content/download/802958/opinion/202969_DC05_11102021_142538_i.pdf

SCORESHEET-PENETRATION: Where Defendant pleas to a charge that

alleges union and/or penetration, eighty injury points for penetration cannot be assessed absent a specific finding or stipulation of penetration. Harden v. State, 2D20-2936 (11/10/21)

https://www.2dca.org/content/download/802827/opinion/202936_DC05_11102021_085405_i.pdf

APPEAL-SELF-REPRESENTATION: A defendant does not have a constitutional right to hybrid representation. Defendant's pro se filing in appellate court on pretrial issues while he remains represented in the underlying criminal case must be dismissed. Lola v. State, 3D20-1812 (11/10/21)

https://www.3dca.flcourts.org/content/download/802867/opinion/201812_DA08_11102021_102517_i.pdf

APPEAL-NON-FINAL ORDER: There is no right to nonfinal review of a trial court's ruling on a request for self-representation. Lola v. State, 3D20-1812 (11/10/21)

https://www.3dca.flcourts.org/content/download/802867/opinion/201812_DA08_11102021_102517_i.pdf

CONCEALED FIREARM: In determining whether a weapon is concealed as a matter of law, courts may consider: (1) the location of the weapon within the vehicle; (2) whether, and to what extent, the weapon was covered by another object; and (3) testimony that the defendant utilized his body in such a way as to conceal a weapon that would have otherwise been detectable by ordinary observation. Whether a firearm wedged between the seat and the console and obscured from the officer's view by Defendant's right thigh

is concealed is a jury issue, notwithstanding that the Defendant immediately informed the officer about the presence of the weapon. Montoya-Martinez v. State, 3D21-415 (11/10/21)

https://www.3dca.flcourts.org/content/download/802872/opinion/210415_DC05_11102021_103329_i.pdf

LIFE SENTENCE-MINOR: Minor who was sentenced to life in prison with the possibility of parole, and who in fact obtained release on parole numerous times (with violations of and revocation of parole each time) received a meaningful opportunity to obtain release. Bruce v. State, 3D21-925 (11/10/21)

https://www.3dca.flcourts.org/content/download/802874/opinion/210925_DC05_11102021_103503_i.pdf

ATTORNEY CLIENT PRIVILEGE: Where Defendant's victim in a robbery case is later murdered, and the victim's death reported to the State by the Defendant's counsel, counsel may be compelled to produce certain audio and visual recordings, billing and payment records, and telephone numbers, but may not be required to submit to a deposition. Nelson v. State, 3D21-1655 (11/1021)

https://www.3dca.flcourts.org/content/download/802917/opinion/211655_DC03_11102021_105057_i.pdf

ATTORNEY CLIENT PRIVILEGE: The attorney client privilege is the oldest of the privileges for confidential communications known to the common law and was developed to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. Attorney-client privilege

belongs solely to the client, not the attorney. Nelson v. State, 3D21-1655 (11/1021)

https://www.3dca.flcourts.org/content/download/802917/opinion/211655_DC03_11102021_105057_i.pdf

DUI-PROBATION: Defendant convicted of DUI Manslaughter (a second degree felony) must be sentenced to a period of probation of sufficient length to enable him to complete a substance abuse course, and may not be sentenced to in excess of fifteen years of combined prison and probation, so the prison sentence of fifteen years must be reduced. Question certified: Does §316.193(5)'s requirements of monthly reporting probation and completion of a substance abuse course vitiate a trial court's discretion to impose the maximum prison sentence provided in §775.082? Bell v. State, 4D19-463 (11/10/21)

https://www.4dca.org/content/download/802881/opinion/193463_DC08_11102021_094746_i.pdf

JUVENILE DISPOSITION: Court may not place a juvenile in a high-risk secure residential program when his underlying crimes were misdemeanors and his probation violations were technical in nature. The maximum dispostion is a minimum-risk nonresidential. A juvenile's positive marijuana test and curfew violation were technical in nature and not new law violations. D.L. v. State, 4D20-1848 (11/10/21)

https://www.4dca.org/content/download/802884/opinion/201848_DC13_11102021_095619_i.pdf

VOP: A positive marijuana test is a technical violation, not a new law violation. D.L. v. State, 4D20-1848 (11/10/21)

https://www.4dca.org/content/download/802884/opinion/201848_DC13_11102021_095619_i.pdf

JUVENILE DISPOSITION: A disposition order shall specify the amount of time served in secure detention before disposition. D.L. v. State, 4D20-1848 (11/10/21)

https://www.4dca.org/content/download/802884/opinion/201848_DC13_11102021_095619_i.pdf

FRAUDULENT USE OF PIN-MANDATORY MINIMUMUM: Where the information charged and the jury, by special verdict, specifically found that Defendant used a personal identification number to commit fraud with a pecuniary benefit of $5,000 or more, Court must impose the the three-year mandatory minimum sentence required by §817.568(2)(b), Roodbergen v. State, 2D19-3250 (11/5/21)

https://www.2dca.org/content/download/802150/opinion/193250_DC08_11052021_084351_i.pdf

DUPLICITOUS INFORMATION: An information is duplicitous when it joins two or more separate offenses, or alternative means of committing the same offense, into a single count." Roodbergen v. State, 2D19-3250 (11/5/21)

https://www.2dca.org/content/download/802150/opinion/193250_DC08_11052021_084351_i.pdf

PRETRIAL RELEASE-REVOCATION: Court's practice of refusing to grant a five-day hearing for Defendant's accused of violating a pretrial release

condition contravenes controlling legal authority (a pretrial detention hearing shall be held within 5 days of the filing by the state attorney of a complaint to seek pretrial detention). Court lacks the inherent authority to deny a subsequent application for bond based solely on a defendant's violation of a bond condition. Roodbergen v. State, 2D19-3250 (11/5/21)

https://www.2dca.org/content/download/802150/opinion/193250_DC08_11052021_084351_i.pdf

PRETRIAL DETENTION: Appellate Court declines to resolve whether unsworn letter can support revocation of pretrial release based on mootness. Roodbergen v. State, 2D19-3250 (11/5/21)

https://www.2dca.org/content/download/802150/opinion/193250_DC08_11052021_084351_i.pdf

RIGHT TO COUNSEL-SUPPRESSION-DUI: Officers are not required stop DUI investigation, interrogation, sobriety exercises, nor to inform Defendant that this attorney is on the phone. Police need not inform a suspect of an attorney's efforts to reach him. "While such rule might add marginally to Miranda's goal of dispelling the compulsion inherent in custodial interrogation, overriding practical considerations counsel against its adoption." State v. Abache, 5D21-232 (11/5/21)

https://www.5dca.org/content/download/802143/opinion/210232_DC13_11052021_082548_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to s hering on his claim that two witnesses accepted bribes from the State in exchange for their trial testimony against him. Booth v. State, 5D21-479 (11/5/21)

https://www.5dca.org/content/download/802144/opinion/210479_DC08_1

1052021_083137_i.pdf

AMENDMENT-JUV.R.CR.P.-RIGHT TO COUNSEL: Age appropriate language explaining the right to counsel in delinquency proceedings is prescribed. A section titled "Statement of Attorney Assigned to Discuss the Waiver with the Child" is added to the end of the form that requires a lawyer to acknowledge that he or she has read the waiver to the juvenile, explained it fully, and is of the belief that the juvenile has knowingly, intelligently, and voluntarily waived the right to counsel. In re: Amendments to the Fla.R.Juv.P. Form 8.933, No. S21-585 (11/4/21)

https://www.floridasupremecourt.org/content/download/801401/opinion/sc21-585.pdf

QUOTATION-FAIR TRIAL: "Laws are designed to ensure fair trials, and allowing convictions based on unfair trials to stand harms this system." Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_11032021_140319_i.pdf

HEARSAY: Non-testifying victim's statement "I think that I was . . . raped last night" is inadmissible as an excited utterance. Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_11032021_140319_i.pdf

APPEAL-PRESERVATON: Defendant's hearsay objection sufficiently preserved for appeal the issue of the Victim's statement to police that she

thinks she was raped, notwithstanding that Defendant never argued that the statement did not constitute an excited utterance until replying to the State's claim that it was. A 'hearsay' objection need not specify the hearsay exception the objecting party will address on appeal. A general hearsay objection preserves the issue of whether a statement qualifies as a hearsay exception because when a party makes a hearsay objection, a trial court must consider all possible hearsay violations, exceptions, and exclusions." Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_11032021_140319_i.pdf

HEARSAY-PUBLIC-RECORD EXCEPTION: The public-record exception to the hearsay rule plainly does not apply where the records rely on information supplied by an outside source. Rather than offering this type of record, a witness must be called who has personal knowledge of the facts. "We are unaware of any case where a recording of a call to police was admitted under the public-record exception to the hearsay rule." Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_11032021_140319_i.pdf

HEARSAY-EXCITED UTTERANCE: An excited utterance for hearsay-exception purposes is not merely an utterance made while excited. If a statement is made well after the startling event, the proponent must offer some proof that the declarant did not engage in a reflective thought process. Victim's statement in the morning that she had been raped last night is not an excited utterance; the intervening time was clearly enough to distinguish between night and morning. Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_1

1032021_140319_i.pdf

HEARSAY-EXCITED UTTERANCE-DAY/NIGHT (DISSENT): "Not so fast. . .[T]he hazy divide between night and day—given the victim's then emerging consciousness—could easily explain why she said she was raped 'last night.' Schluck's crimes were entirely under cover of darkness, i.e., at night. As such, the victim's break-of-dawn statement can easily be understood to mean she had been raped during the darkness of the wee hours." Schluck v. State, No. 1D19-3724 (11/3/21)

https://www.1dca.org/content/download/801246/opinion/193724_DC13_11032021_140319_i.pdf

APPEAL: Appellate court man not engage in a weight-of-the-evidence review in the interest of justice. The interest of justice, standing alone, is not a viable and independent ground for appellate reversal in the absent of an initial legal entitlement to relief. "[Defendant's] real request is for us, as appellate judges, to substitute our verdict for the jury's. We cannot. Opposing theories must be weighed by the jury. We do not try the case again on appeal." Segura v. State, 1D19-4266 (11/3/21)

https://www.1dca.org/content/download/801247/opinion/194266_DC05_11032021_140442_i.pdf

CREDIT FOR TIME SERVED: Claims for out-of-state jail credit may be raised pursuant to R. 3.850. Defendant must be allowed a chance to amend the pleading to file a facially sufficient motion under rule 3.850. Moore v. State, 1D20-1414 (11/3/21)

https://www.1dca.org/content/download/801249/opinion/201414_DC08_11032021_141157_i.pdf

POST CONVICTION RELIEF-SCORESHEET: When a movant raises a claim of scoresheet error within two years of the judgment and sentence, a trial court is required to determine whether or not the same sentence would have been imposed with a corrected scoresheet. Moore v. State, 1D20-1414 (11/3/21)

https://www.1dca.org/content/download/801249/opinion/201414_DC08_11032021_141157_i.pdf

SENTENCING-DOWNWARD DEPARTURE: The two-part test for evaluating motions for a downward departure is whether a trial court can impose a downward departure sentence based on a valid legal ground proven by a preponderance of the evidence and whether it should impose a downward departure sentence based on the totality of the circumstances. State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_11032021_141945_i.pdf

SENTENCING-DOWNWARD DEPARTURE-NON-STATUTORY REASONS: "The legislature's requirements would be left hollow if a sentencing court could cherry-pick one part of a statutory mitigator and re-define it as non-statutory. A statutory ground's requirements cannot be avoided simply by renaming the basis a non-statutory ground." State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_11032021_141945_i.pdf

DOWNWARD DEPARTURE: When weighing the need for restitution against the need for incarceration, the trial court must consider the nature

of the victim's loss and the efficacy of restitution, and the consequences of imprisonment The test is the victim's need, not the victim's desire or preference. Court erred in imposing a downward departure where no evidence was presented regarding the victim's need for restitution. State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_11032021_141945_i.pdf

DOWNWARD DEPARTURE-NON-STATUTORY GROUNDS: Relative culpability is a valid non-statutory basis to impose a downward departure in order to provide parity with the sentence of a co-defendant who was at least, if not more, culpable than the defendant, but using relative culpability to achieve sentence parity is only an appropriate mitigating factor in departing downward to meet a codefendant's sentence. Downward departure creating an even greater disparity than the fifteen-year difference between codefendant's sentence (20 years and Defendant's (55.5 months) is not warranted. A trial court's perception of justice leading it to conclude that leniency is appropriate, and grounds do not exist for a departure sentence, the leniency must come from the exercise of the court's discretion to impose the minimum guidelines sentence. State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_11032021_141945_i.pdf

DOWNWARD DEPARTURE-NON-STATUTORY GROUNDS: The Defendant's contrition, character, and concrete remedial actions making him unlikely to commit another crime is legally insufficient to impose a downward departure sentence. State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_1

1032021_141945_i.pdf

DOWNWARD-DEPARTURE-NON-STATUTORY FACTOR: Defendant's status as an asset to his community based on employment of numerous people, distribution of COVID-19 PPE supplies, support for his elderly mother, medically challenged wife and brain-damaged daughter is legally insufficient for a downward departure. State v. Koenkemoeller, 1D20-2209 (11/3/21)

https://www.1dca.org/content/download/801254/opinion/202209_DC13_11032021_141945_i.pdf

TRANSCRIPTS-MANDAMUS: A public defender is a "public officer" who is required to provide transcripts or record documents that were prepared at public expense on behalf of an indigent defendant to the defendant for copying at no charge. Floyd v. Laramore, Public Defender, 1D20-3558 (11/3/21)

https://www.1dca.org/content/download/801255/opinion/203558_DC13_11032021_142154_i.pdf

DISPOSITION-JUVENILE: Court's rejection of DJJ's probation recommendation is not a determination of restrictiveness level and requires no special reasoning pursuant to E.A.R., but Court may not order commit without first requesting a multidisciplinary assessment and follow-up predisposition report. A.B., a Child v. State, 1D21-136 (11/3/21)

https://www.1dca.org/content/download/801257/opinion/210136_DC08_11032021_142536_i.pdf

EVIDENCE-IMPEACHMENT: A party may attack the credibility of any witness by evidence of prior conviction, and this inquiry is generally restricted to the existence of prior convictions and the number of convictions. However, when a defendant attempts to mislead or delude the jury about his prior convictions, the State is entitled to further question the defendant concerning the convictions in order to negate any false impression. Lucas v. State, 3D19-1941 (11/3/21)

https://www.3dca.flcourts.org/content/download/801165/opinion/191941_NOND_11032021_100959_i.pdf

EVIDENCE-OPINION: A lay witness's testimony about what he or she perceived may be in the form of inference and opinion when the witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and the opinions and inferences do not require a special knowledge, skill, experience, or training. Lucas v. State, 3D19-1941 (11/3/21)

https://www.3dca.flcourts.org/content/download/801165/opinion/191941_NOND_11032021_100959_i.pdf

SENTENCING HEARING: Court did not deny Defendant his fundamental right to a sentencing hearing where sentencing happened right after the verdict was returned at near midnight. But "we caution that best practices would generally militate against proceeding to a sentencing hearing at the midnight hour." Lucas v. State, 3D19-1941 (11/3/21)

https://www.3dca.flcourts.org/content/download/801165/opinion/191941_NOND_11032021_100959_i.pdf

BAIL: Court may not deny motion for bond without taking evidence and making findings on the statutory factors for setting conditions for pretrial release. Diaz v. Junior, 3D21-2088 (11/3/21)

https://www.3dca.flcourts.org/content/download/801170/opinion/212088_DC03_11032021_102146_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Rule 3.800(b)(2) is available to a defendant to seek correction of a sentence imposing costs. Appellate counsel can be ineffective for failing to file a rule 3.800(b)(2) motion to correct unlawful imposition of costs. Walding v. State, 21-820 (11/3/21)

https://www.4dca.org/content/download/801218/opinion/210820_DA16_11032021_100537_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failure to advise him about the availability of a prescription defense. Whether Defendant previously sold some pills from his prescription or intended to sell them does not overcome a prescription defense to trafficking. Weintraub v. State, 4D21-991 (11/3/21)

https://www.4dca.org/content/download/801219/opinion/210991_DC08_11032021_100654_i.pdf

SENTENCING-TERRORISM ENHANCEMENT: The terrorism enhancement applies if the defendant's offense is a felony that involved, or was intended to promote, a federal crime of terrorism. Sentencing court may not assume an offense listed in §2332b(g)(5)(B) is per se a "federal crime of terrorism" without a separate finding as to whether the Defendant's act was calculated to promote terrorism. Whether a defendant's offense is calculated (i.e.,

intended) to influence, affect, or retaliate against government conduct is a highly fact specific inquiry that requires examining the record as a whole. Given the terrorism enhancement's large impact on both the offense level and criminal history category, the district court should make an express fact finding as to the "calculated" requirement. USA v. Arcila Ramirez, No. 20-10564 (11/1/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010564.pdf

TERRORISM: The term "federal crime of terrorism" is an offense that: (1) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. USA v. Arcila Ramirez, No. 20-10564 (11/1/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010564.pdf

DEFINITION-"INVOLVED": The term "involved" means "to include." USA v. Arcila Ramirez, No. 20-10564 (11/1/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010564.pdf

DEFINITION-"CALCULATED": The ordinary and plain meaning of "calculated" is planned to accomplish a purpose or intended; to plan or devise with forethought; to think out; to frame. The phrase "calculated to" has been interpreted as creating something akin to, or closely resembling, a specific intent" requirement. USA v. Arcila Ramirez, No. 20-10564 (11/1/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010564.pdf

SENTENCING: The preponderance of the evidence standard is sufficient

to establish the predicate facts for a sentencing adjustment or enhancement. USA v. Arcila Ramirez, No. 20-10564 (11/1/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010564.pdf

OCTOBER 2021

EXPERT: A qualified biomechanical expert may offer an opinion about injury causation if the mechanism of injury falls within the field of biomechanics. Lepara v. State, 5D19-1965 (10/29/21)

https://www.5dca.org/content/download/799046/opinion/191965_DC08_10292021_150240_i.pdf

EVIDENCE-CUMULATIVE: There is a difference between cumulative testimony, which courts have discretion to exclude, and relevant confirmatory testimony, which they do not. Court erred in excluding an expert biomechanics expert as cumulative in BUI manslsughter case. Testimony that relies in part on different facts and evidence is not cumulative as a matter of law, even if the same conclusion is reached by both witnesses. Court improperly excluded Defendant's two experts who offered complementary conclusions but based their conclusions on different scientific methods recognized within their separate fields of expertise. Lepara v. State, 5D19-1965 (10/29/21)

https://www.5dca.org/content/download/799046/opinion/191965_DC08_10292021_150240_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Repressed and newly recovered memories of childhood sexual abuse are not newly discovered evidence warranting an evidentiary hearing on the claim. Rogers v. State, SC20-1863 (10/28/21)

https://www.floridasupremecourt.org/content/download/798876/opinion/sc20-1863.pdf

JUROR-CHALLENGE FOR CAUSE: Juror with serious self-disclosed memory problems may be challenged for cause. When a juror has a bodily defect that renders him or her incapable of performing the duties of a juror he or she may be removed for cause. Craven v. State, 1D 20-1184 (10/27/21)

https://www.1dca.org/content/download/798106/opinion/201184_DC05_10272021_111202_i.pdf

MANDAMUS: Mandamus relief is inappropriate where Court struck Defendant's motion for postconviction relief as facially insufficient. Because the circuit court complied with its ministerial duty to take action on the motion for postconviction relief, the circuit court's order is not a final, appealable order. Shakespeare v. State, 1D21-2682 (10/27/21)

https://www.1dca.org/content/download/798115/opinion/212682_DC02_10272021_113957_i.pdf

RE-SENTENCING: On appellate remand, once Court orders re-sentencing, the Court cannot rescind its order, notwithstanding intervening case law. Once a mandate ordering resentencing issues, the original sentence is now a nullity and cannot be recalled after 120 days have lapsed. But Defendant's victory may be pyrrhic because the decisional law effective at the time of the resentencing applies. Morris v. State, 2D20-2796 (10/27/21)

https://www.2dca.org/content/download/798031/opinion/202796_DC13_1

0272021_082823_i.pdf

APPEAL-TIMELINESS: An amendment or modification of an order or judgment in an immaterial, insubstantial way does not restart the clock to file an appeal. Jacobs v. State, 2D20-3619 (10/27/21)

https://www.2dca.org/content/download/798037/opinion/203619_DC13_10272021_083214_i.pdf

APPEAL: Any order entered after trial court lost jurisdiction is a nullity. Once a notice of appeal is filed, the trial court is divested of jurisdiction to amend the sentence. Appellate Court's order holding the appeal in abeyance does not to revest the postconviction court with jurisdiction that it no longer had, nor could court recapture jurisdiction simply by sua sponte rescinding an order. Jacobs v. State, 2D20-3619 (10/27/21)

https://www.2dca.org/content/download/798037/opinion/203619_DC13_10272021_083214_i.pdf

STAND YOUR GROUND-CERTIORARI: Where the Court erred in its construction of the Stand Your Ground statute review is by certiorari rather than by prohibition. Casanova v. State, 3D21-2019 (10/27/21)

https://www.3dca.flcourts.org/content/download/798065/opinion/212019_DC03_10272021_103309_i.pdf

STAND YOUR GROUND: A defendant's motion to dismiss under Florida's Stand Your Ground law can establish a prima facie claim of self-defense immunity from criminal prosecution even though the motion to dismiss is not

sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss. Casanova v. State, 3D21-2019 (10/27/21)

https://www.3dca.flcourts.org/content/download/798065/opinion/212019_DC03_10272021_103309_i.pdf

COSTS-TRANSCRIPTS: Defendant who wants the transcripts of his closed criminal case must file a civil mandamus proceeding against the court reporter rather than a Petition of Mandamus naming the Office of the State Attorney has respondent in the criminal case. Da Silva v. State, 4D20-927 (10/27/21)

https://www.4dca.org/content/download/798082/opinion/200927_DC05_10272021_094927_i.pdf

COSTS-TRANSCRIPTS: Court reporters, as officers of the court, must follow all rules of court, and are subject to mandamus to compel compliance. Da Silva v. State, 4D20-927 (10/27/21)

https://www.4dca.org/content/download/798082/opinion/200927_DC05_10272021_094927_i.pdf

SENTENCING-DOWNWARD DEPARTURE-REMORSE: Defendant who said at sentencing "I'm not willing to sacrifice my freedom of a great mind that will never get put to use,"For someone just to say and run to the police station and say that I hit her and pulled my firearm and risked my freedom, that's incredible," and "The most thing I regret is wasting our time," is not entitled to a downward departure based on remorse. State v. Guerra, 4D20-1932 (10/27/21)

https://www.4dca.org/content/download/798085/opinion/201932_DC13_1

0272021_095448_i.pdf

DEFINITION-"REMORSE": Remorse is defined as a strong feeling of sincere regret and sadness over one's having behaved badly or done harm; intense, anguished self reproach and compunction of conscience. State v. Guerra, 4D20-1932 (10/27/21)

https://www.4dca.org/content/download/798085/opinion/201932_DC13_10272021_095448_i.pdf

WITHHOLD OF ADJUDICATION: "A little bit of statutory construction and the rule of lenity are at issue." Section 948.20(1), which allows the court to withhold adjudication and place a defendant on drug offender probation if "the defendant is a chronic substance abuser whose criminal onduct is a violation of certain drug laws or another nonviolent felony trumps section 775.08435, which prohibits of withhold adjudication is the Defendant has two or more prior withholds not arising from the same transaction. Allowing a court to withhold and impose drug offender probation is consistent with strong policy considerations that treatment is the most effective way to rehabilitate a chronic substance abuser. State v. Dhaiti, 4D21-1538 (10/27/21)

https://www.4dca.org/content/download/798091/opinion/211538_DC05_10272021_100229_i.pdf

RULE OF LENITY: The rules of statutory construction require courts to strictly construe criminal statutes, and when the language is susceptible to differing constructions, the statute shall be construed most favorably to the accused. State v. Dhaiti, 4D21-1538 (10/27/21)

https://www.4dca.org/content/download/798091/opinion/211538_DC05_1

0272021_100229_i.pdf

RESENTENCING-JUDGE: Upon re-sentencing, Defendant is entitled to have the case heard by a judge other than the original one who previously had commented on Defendant's decision not to enter a plea in imposing the original life sentence. Washington v. State, 2D19-1671 (10/22/21)

https://www.2dca.org/content/download/797379/opinion/191671_DC13_10222021_083700_i.pdf

RE-SENTENCING: Upon re-sentencing, Court must conduct a de novo sentencing hearing rather than merely amending the sentence to reflect that the Defendant may seek a review of sentence after 15 years. A ministerial correction of the sentence fall short of the remedy of resentencing required. Washington v. State, 2D19-1671 (10/22/21)

https://www.2dca.org/content/download/797379/opinion/191671_DC13_10222021_083700_i.pdf

COSTS: Reversal of a cost of prosecution above the statutory minimum ($100) is warranted where the State never provided notice of intent to seek a higher amount, and no separate hearing was convened to provide the State with an opportunity to submit sufficient proof of higher costs. State is entitled to a "second bite at the apple," and to me present evidence of higher costs. Washington v. State, 2D19-1671 (10/22/21)

https://www.2dca.org/content/download/797379/opinion/191671_DC13_10222021_083700_i.pdf

DISCRETIONARY COSTS: Court must make an oral pronouncement of discretionary costs under statutory basis. If this does not occur, they are to be stricken, and cannot be re-imposed. Washington v. State, 2D19-1671 (10/22/21)

https://www.2dca.org/content/download/797379/opinion/191671_DC13_10222021_083700_i.pdf

INCOMPETENCE-DISMISSAL: Defendant is entitled to dismissal after two years where a 2017 order failed to incompetent due to intellectual disability in the later 2019 order found him incompetent due to mental illness. The 2019 order does not supersede 2017 order. Anthony v. State, 5D21-1536 (10/22/21)

https://www.5dca.org/content/download/797362/opinion/211536_DC03_10222021_083343_i.pdf

FRAUD: Deceiving does not always involve harming another person; defrauding does. Mere "puffing" or "seller's talk" is insufficient to establish fraud. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

FRAUD: To prove that a defendant had the intent to defraud, the Government has to prove not only that the defendant had the intent to deceive, but also that he intended to harm the victim, meaning that he intended to deceive the victim about something that affected the value of the bargain. Misleading investors to believe that he had made millions of dollars in profit and was closely associated with high profile companies and is sufficient evidence of intent to defraud to sustain a conviction. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

CONSPIRACY: To prove that a defendant was part of a conspiracy, there must be some evidence that the defendant knew the objective of the conspiracy charged in the indictment and decided to join it. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

AIDING AND ABETTING: Discouraging a victim from going to the authorities amounts to aiding and abetting the crime. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

PROSECUTORIAL MISCONDUCT: Prosecutorial misconduct by improper argument occurs where (1) the remarks are improper and (2) prejudicially affect the substantial rights of the defendant.The prosecutor did not make improper remarks by disparaging that portion of the jury instructions about the Defendant's theory of defense (a false statement is not fraud, per se) as not the law ("It's a theory of defense. Okay?. . .But ladies and gentlemen, this is not the law."). USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

IMPEACHMENT: Although a close question, Court did not abused its discretion in admitting extrinsic evidence that witness had engaged in a drug deal with Defendant. The Government cannot begin a line of questioning that is irrelevant, only to impeach the witness with a prior inconsistent statement, but here the district court, in its discretion, found that the prosecution's

inquiry was relevant to illustrate the witness's bias, rather than simply to portray Defendant as a drug dealer. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

SENTENCING-SOPHISTICATED MEANS: An offense is sophisticated if it involves especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense A sophisticated means enhancement can be applied when some—but not all—aspects of a scheme are sophisticated. Where Defendant in a fraud case paid her salespeople through a second business, the scheme may be considered to be sophisticated. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

SENTENCING-MANAGERIAL-ROLE: Even if a defendant could not force others to engage in criminal conduct, he can still be sentenced as a manager or supervisor if he hires and trains others to participate in the criminal operation. Defendant who led sales meetings and trained new salespeople in fraudulent investment scheme may be subject to a managerial role sentencing enhancement. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

LOSS: A defendant is liable for the total loss amount of the conspiracy when she is actively involved in furthering the conspiracy's overall objective. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

PROSECUTORIAL MISCONDUCT (CONCURRING): The prosecutor should have known better than to argue that an instruction from the court was "not the law." More broadly, the prosecution's conduct and the tactics it employed throughout the fell short of the high level of professionalism that we expect prosecutors to embody, even if their actions did not rise to the level of misconduct. "I expect far better from prosecutors in future cases." USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

LOSS: A defendant is liable for the total loss amount of the conspiracy when she is actively involved in furthering the conspiracy's overall objective. USA v. Wheeler, No. 17-15003 (10/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715003.pdf

POST CONVICTION RELIEF: The introduction of those portions of the Defendant's videotaped statement in which the detectives' talk about the Defendant's lack of remorse is not prejudicial where his defense was that he did not commit the murder and was not present when it occurred. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

HEARSAY-PRIOR CONSISTENT STATEMENT: Prior consistent statements, or bolstering testimony, is generally inadmissible absent impeachment based on an attempt to show a recent fabrication or other reason for the witness's lack of credibility. But counsel was not ineffective impeaching witness's credibility for bias based on the witness's plea

agreement knowing the prior implication of the Defendant would be admitted. Strategic decisions are not ineffectiveness. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

HEARSAY-PRIOR CONSISTENT STATEMENT: A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

EXPERT: Counsel was not ineffective for not retaining firearms expert where Defendant confessed to shooting all three victims with a ten-millimeter handgun. Counsel cannot be faulted for failing to investigate a theory that he had no reason to suspect would be valid and supported by the evidence. The duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up; reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

POST CONVICTION RELIEF: There is no merit to a claim of ineffective assistance of counsel if the defendant consents to counsel's strategy.

Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

HEARSAY: A testifying medical expert may offer an opinion based on an autopsy performed by a non testifying expert without violating the Confrontation Clause. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-RECANTING WITNESS: Recantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

OBJECTION-PRESERVED ERROR: To be preserved for appeal, the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal. Defendant's objection to the question whether the witness believed the Defendant was speculation, rather than improper opinion testimony. "The question to Haney was whether he believed Johnson; the answer to that question did not require Haney to speculate. . .Smith argues.. .that Haney's response was an improper opinion, but that is a different legal ground for an objection. Thus, an objection to improper opinion was not properly preserved." Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-

1763.pdf

EVIDENCE: Witness may testify that he had seen the Defendant with a 10 m.m. pistol on earlier occasions before the murders at issue. The prerequisite to the admissibility of evidence is relevancy. The concept of 'relevancy' has historically referred to whether the evidence has any logical tendency to prove or disprove a fact. If the evidence is logically probative, it is relevant and admissible unless there is a reason for not allowing the jury to consider it. All evidence tending to prove or disprove a material fact is admissible, unless precluded by law. Smith v. State, SC19-680 (10/21/21)

https://www.floridasupremecourt.org/content/download/797190/opinion/sc18-1763.pdf

HABEAS CORPUS: A habeas petition shall be dismissed if it raises claims that could have been raised at trial or, if properly preserved, on direct appeal of the judgment and sentence Kirksey v. State, 1D21-1193 (10/20/21)

https://www.1dca.org/content/download/796997/opinion/211193_DA08_10202021_114147_i.pdf

APPEAL-PRO SE: A criminal defendant has no right to simultaneously represent himself in the appellate court and be represented by counsel in the pending trial case. Morgan v. State, 1D21-2539 (10/20/21)

https://www.1dca.org/content/download/797000/opinion/212539_DA08_10202021_114659_i.pdf

PROHIBITION ON FILING: Court may not enter an order imposing sanctions

and prohibiting Defendant from filing any further pro se motions without affording Defendant an opportunity to file a response. Procedural due process requires that litigants be given proper notice and a full and fair opportunity to be heard. Walker v. State, 3D21-1592 (10/20/21)

https://www.3dca.flcourts.org/content/download/796964/opinion/211592_DC08_10202021_101840_i.pdf

JUDGMENT OF ACQUITTAL-CONSTRUCTIVE POSSESSION: Where contraband is discovered in jointly occupied premises, the State cannot infer such knowledge and control through the defendant's control over the premises, but it must introduce independent proof that the defendant had knowledge of and ability to control the contraband to support the inference of a conscious and substantial possession by the accused, as distinguished from a mere involuntary or superficial possession. Defendant's fingerprints on various items throughout the house (including a box of paraphernalia, a grinder used to grind cannabis into smaller pieces, five separate THC vape cartridges, and a trash bag containing vacuum sealed baggies of cannabis residue) an his possession of the key to the residence is sufficient to establish Defendant's constructive possession of narcotics in the house. Bartolone v. State, 4D19-3920 (10/20/21)

https://www.4dca.org/content/download/796975/opinion/193920_DC08_10202021_095025_i.pdf

COSTS: A claim that the trial court improperly assessed costs in a sentencing order is an error that may be preserved in a R. 3.800(b) motion. A contemporaneous objection is not required. Bartolone v. State, 4D19-3920 (10/20/21)

https://www.4dca.org/content/download/796975/opinion/193920_DC08_1

0202021_095025_i.pdf

INVESTIGATIVE COSTS: Investigative costs costs which were not requested by the State must be stricken and cannot be imposed on remand. Bartolone v. State, 4D19-3920 (10/20/21)

https://www.4dca.org/content/download/796975/opinion/193920_DC08_10202021_095025_i.pdf

COSTS-QUESTION CERTIFIED: Question certified whether the State entitled to a second opportunity to establish discretionary prosecution and public defender fees and costs that were imposed by the trial court upon a defendant without having been requested or properly supported at sentencing, and whether the State is entitled to a second opportunity to establish discretionary Drug Trust Fund fees and costs that were imposed by the trial court without having been requested or properly supported at sentencing. Bartolone v. State, 4D19-3920 (10/20/21)

https://www.4dca.org/content/download/796975/opinion/193920_DC08_10202021_095025_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to convey a plea offer of 20 years in prison where he alleged that he would have accepted the plea offer but for the inadequate communication and the acceptance of the plea offer would have resulted in a lesser sentence. Robinson v. State, 4D21-838 (10/20/21)

https://www.4dca.org/content/download/796982/opinion/210838_DC08_10202021_100849_i.pdf

VOTING-EQUAL PROTECTION: Plaintiff's cannot challenge under the Equal Protection clause or the 19th Amendment Florida's "pay to vote" restriction on felons' right to vote absent proof of racially discriminatory intent. Jones v. Governor of Florida, No. 20-12304 (10/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012304.pdf

DEFINITION-"ON ACCOUNT OF": The phrase “on account of” has been understood to mean “because of” since the late 1700s. Its first recorded use was in 1792. Jones v. Governor of Florida, No. 20-12304 (10/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012304.pdf

COSTS: Court may not impose a $400 public defender fee without giving Defendant notice and an opportunity to challenge it. If the court exercises its discretion under the statute to impose a fee amount higher than the $100 statutory minimum for felonies, there must be sufficient proof of higher fees or costs incurred and it must notify the defendant of the fee as well as the right to contest it. Denman v. State, 2D19-1687 (10/15/21)

https://www.2dca.org/content/download/795484/opinion/191687_DC08_10152021_082838_i.pdf

RACKETEERING-PREDICATE-THEFT-ALIGATOR EGGS: "Pickle argued that the illegal taking of alligator eggs could not constitute theft as a predicate act for racketeering, because 'the only entity that owns wildlife is a higher power . . . not the State of Florida.' While remaining duly agnostic on counsel's theological premise, this court finds the gist of the argument persuasive and dispositive". Pickle v. State, 2D19-4237 (10/15/21)

https://www.2dca.org/content/download/795488/opinion/194237_DC08_10152021_083100_i.pdf

THEFT: Unlawful taking of alligator eggs ordinarily is not theft because they are not the property another. With respect to wild game, a landowner only owns the right to pursue the game on his or her own lands, but he does not own the game. The State's authority to regulate something does not necessarily confer ownership of that thing on the State. Pickle v. State, 2D19-4237 (10/15/21)

https://www.2dca.org/content/download/795488/opinion/194237_DC08_10152021_083100_i.pdf

JURY INSTRUCTION-LESSER INCLUDED: Taking an alligator egg without a permit is not a necessarily included offense of Attempting to Possess an Alligator Egg. Pickle v. State, 2D19-4237 (10/15/21)

https://www.2dca.org/content/download/795488/opinion/194237_DC08_10152021_083100_i.pdf

LESSER INCLUDED: A crime is a necessarily lesser included offense if, based on the statutes themselves, a defendant cannot possibly avoid committing the offense when the other crime in question is perpetrated. Pickle v. State, 2D19-4237 (10/15/21)

https://www.2dca.org/content/download/795488/opinion/194237_DC08_10152021_083100_i.pdf

UNANIMOUS VERDICT: Standard Jury instruction 3.12 does not invite a non-unanimous verdict by allowing the Defendant to be convicted of first-degree murder without unanimous agreement as to whether he committed premeditated or felony first degree murder. A jury need not come to a unanimous decision on the theory of first-degree murder and separate verdict forms for felony and premeditated murder are not required. Ramos

clarified or distinguished. There is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict. Dillard v. State, 20-2274 (10/15/21)

https://www.2dca.org/content/download/795492/opinion/202274_DC05_10152021_083839_i.pdf

FOOTNOTES: "Edwards' only reference to Schad comes by way of footnote 4, which, in a string citation, mentions a parenthetical reference of footnote 5 in Schad, which was part of Schad's plurality opinion. We have no cause to question that the gist of the Schad plurality's footnote 5 (concerning the Sixth Amendment and the right to a unanimous jury verdict) is now no longer the law. But that does not mean Schad's holding was abrogated--unless a footnote in one opinion somehow 'recognizes' an implicit abrogation of a parenthetical in a footnote of a prior plurality opinion." Dillard v. State, 20-2274 (10/15/21)

https://www.2dca.org/content/download/795492/opinion/202274_DC05_10152021_083839_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him not to testify at his trial in which he presented a self-defense case. The impact of a defendant's own testimony is qualitatively different from the testimony of any other witness. The fact that Defendant's claim of self-defense was introduced to the jury through his statement to police does not conclusively refute his claim that he was prejudiced by counsel's advice not to testify. Defuria v. State, 2D21-492 (10/15/21)

https://www.2dca.org/content/download/795501/opinion/210492_DC08_10152021_084058_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel was ineffective for failing to move for a competency hearing due to his various mental illnesses, including bipolar disorder, multiple personality disorder, schizophrenia, and various delusions and hallucinations. Mays v. State, 2D21-801 (10/15/21)

https://www.2dca.org/content/download/795505/opinion/210801_DC08_10152021_084213_i.pdf

VOP-HEARSAY: Defendant may not be found in violation of probation based on testimony from an unidentified individual that Defendant had been in Daytona for the past several weeks. Toomey v. State, 5D21-994 (10/15/21)

https://www.5dca.org/content/download/795476/opinion/210994_DC13_10152021_085440_i.pdf

FORFEITURE: Foreign nationals have no constitutional right to enter the United States to attend a civil forfeiture trial involving forfeiture of their property. USA v. Approximately $299,873.70, No. 20-11107 (11th Cir. 10/14/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011107.pdf

COMPASSIONATE RELEASE: A district court may grant a prisoner's motion for compassionate release after determining that (1) extraordinary and compelling reasons warrant such a reduction, (2) such a reduction is consistent with applicable policy statements issued by the Sentencing Commission, and (3) §3553(a) sentencing factors weigh in favor of a reduction. Court must also determine that the defendant is not a danger to the safety of any other person or to the community before granting

compassionate release. USA v. Mondrago Giron, No. 20-14018 (11th Cir. 10/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014018.pdf

COMPASSIONATE RELEASE: The only circumstances that can rise to the level of extraordinary and compelling reasons for compassionate release are limited to those named in §1B1.13 (terminal illness or substantial diminution of the ability to provide self-care within prison). The confluence of prisoner's medical conditions (high cholesterol, high blood pressure, and coronary artery disease) and COVID-19 does not create an extraordinary and compelling reason warranting compassionate release. Court does not err by relying upon U.S.S.G. §1B1.13, the Sentencing Commission's policy statement, in denying Prisoner's request for compassionate release. USA v. Mondrago Giron, No. 20-14018 (11th Cir. 10/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014018.pdf

UNAUTHORIZED PRACTICE OF LAW: A service which solicits clients for traffic ticket defenses, screens the cases, and contracts with private attorneys to represent the clients unlawfully practices law. An inherent conflict and corresponding risk to the public arises whenever a nonlawyer controls and derives its income from the provision of legal services. The inherent conflict that arises when a nonlawyer either derives income from or exercises a degree of control over the provision of legal services presents a substantial risk that the public will be exposed to and harmed by incompetent, unethical, or irresponsible representation. The Florida Bar v. TIKD Services, No. SC18-149 (10/14/21)

https://www.floridasupremecourt.org/content/download/795189/opinion/sc18-149.pdf

DEFINITION-"ADVICE": "Advice" is guidance offered by one person, especially a lawyer, to another; professional counsel; guidance or recommendations concerning prudent future action, typically given by someone regarded as knowledgeable or authoritative. The Florida Bar v. TIKD Services, No. SC18-149 (10/14/21)

https://www.floridasupremecourt.org/content/download/795189/opinion/sc18-149.pdf

RULES-AMENDMENTS: Several changes to rules of juvenile procedure, primarily changing several "shalls" to "musts" In re: Amendments to the Florida Rules of Juvenile Procedure, SC21-627 (10/14/21)

https://www.floridasupremecourt.org/content/download/795192/opinion/sc21-627.pdf

BONDSMAN: Bondsman is not precluded from seeking remission of forfeited bond where Defendant is recaptured more than two years after the FTA and forfeiture of the bond. A-AAA Harrison Bail Bonds v. Leon County Clerk, 1D19-1381 (10/13/21)

https://www.1dca.org/content/download/795026/opinion/191381_DC13_10132021_140404_i.pdf

UNDER THE INFLUENCE: Evidence that Defendant had slurred speech, reeked of alcohol, was unable to walk or stand in a normal manner, and was found in a home strewn with empty and open liquor bottles—strongly suggests that he was under the influence just a few hours earlier when he shot at his neighbor across the open field. "[T]he shooting spree was not [that] of a clear-minded and sober 66-year-old, but of a violent and aggressive drunkard on a bender." Conviction for use of firearm while

under the influence upheld. Brinegar v. State, 1D20-703 (10/13/21)

https://www.1dca.org/content/download/795028/opinion/200703_DC05_10132021_140909_i.pdf

COMMITMENT-NGI: Defendant found Not Guilty by Reason of Insanity is properly committed to Florida State Hospital where physician testified that Defendant is mentally ill, that the treatment is essential to her care, and that the treatment is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Felton v. State, 1D20-3417 (10/13/21)

https://www.1dca.org/content/download/795034/opinion/203417_DC05_10132021_142503_i.pdf

INEFFECTIVE ASSISTANCE: In child molestation case, Counsel was ineffective for failing to move for a mistrial or a curative instruction upon admission of evidence of uncharged acts of molestion. Ineffectiveness is apparent on the face of the record with no conceivable strategic justification, and thus can be raised on direct appeal. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

INEFFECTIVE ASSISTANCE: In child molestation case, Counsel was ineffective for failing to move for a mistrial or a curative instruction upon officer alluding to Defendant's invocation of right to counsel/exercise of silence ("I attempted to interview the suspect in the case, but he had already obtained an attorney who did not want him to give a statement."). Ineffectiveness is apparent on the face of the record with no conceivable

strategic justification, and thus can be raised on direct appeal. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

PRIVILEGE AGAINST SELF-INCRIMINATION: The privilege against self-incrimination guaranteed by article I, section 9 of the Florida Constitution offers more protection than the right provided in the Fifth Amendment to the United States Constitution. Evidence of a defendant's prearrest, pre-Miranda silence is inadmissible as substantive evidence of guilt or when the Defendant fails to testify. Anything that is fairly susceptible of being interpreted by the jury as a comment on Defendant's failure to testify constitutes a serious error. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

INEFFECTIVE ASSISTANCE: In child molestation case, Counsel was ineffective for failing to move for a mistrial upon admission of Child Hearsay which had not been ruled admissible at the pretrial hearing. The corroborative impact of otherwise inadmissible cumulative child hearsay cannot be said to be harmless. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

HARMLESS ERROR: If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by

definition harmful. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

CROSS-EXAMINATION: Where Child, in her CPT interview said that no one else had molested her, the door is open to cross-examine her about other statements that on a different occasion someone else had molested her. Defendant was entitled to use those statements to test the Child's credibility. It is axiomatic and fundamental to our system of justice that a party may impeach a witness by introducing statements of the witness which are inconsistent with the witness's present testimony. Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

JURY INSTRUCTION: Where the information did not allege that Defendant touched the Child's breasts, Court improperly instructed the jury that the L & L included ". . .[Defendant] in a lewd or lascivious manner, intentionally touched the breasts or genitals or genital area or buttocks or the clothing covering the breast. . ." Rodriguez-Olivera v. State, 2D18-706 (10/13/21)

https://www.2dca.org/content/download/794928/opinion/180706_DC13_10132021_084221_i.pdf

MINOR-JUDICIAL REVIEW: Defendant, who was a minor at the time of his burglary with an assault, is entitled to a judicial review of his sentences under sections 775.082 and 921.1402. Burglary with an assault or battery is a Felony PBL, a qualifying offense for judicial review after twenty years. Agenor v. State, 2D20-3052 (10/13/21)

https://www.2dca.org/content/download/794944/opinion/203052_DC08_10132021_085408_i.pdf

DRUG COURT: Court errs in denying Defendant's participation in Drug Court base on Victim's objection. A defendant is eligible for voluntary admission if he or she is identified as having a substance abuse problem and is amenable to treatment, is charged with a nonviolent felony, has never been charged with a crime involving violence. If Defendant meets the eligibility requirements of section 948.08(6)(b), the trial court must admit him into the program, regardless of the inclinations of either the purported victim or the trial court. Andrade v. State, 4D21-1472 (10/13/21)

https://www.4dca.org/content/download/794973/opinion/211472_DC03_10132021_095705_i.pdf

JURISDICTION: Florida has jurisdiction over Defendant who was in the Dominican Republic or Africa at the time he sent text messages to an undercover officer posing as a 13 year old girl in Florida. Florida's criminal jurisdiction extends to acts committed by a person in another country when part of the offense is also committed in Florida. Rodriguez v. State, 4D21-2411 (10/13/21)

https://www.4dca.org/content/download/794976/opinion/212411_DC02_10132021_100051_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failing to: available expert witness to challenge that State's otherwise unrefuted medical testimony concerning the victim's injuries, failing to object to improper bolstering of the states medical expert (that her abuse report have been peer reviewed). New trial required. Wilson v. State, 5D20-1653 (10/8/21)

https://www.5dca.org/content/download/794228/opinion/201653_DC13_10082021_085839_i.pdf

BOLSTERING: Testimony that an expert witness's abuse report had been peer reviewed constitutes improper bolstering. Wilson v. State, 5D20-1653 (10/8/21)

https://www.5dca.org/content/download/794228/opinion/201653_DC13_10082021_085839_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to advise him that the State had extracted information from his cell phone that would severely contradict his alibi defense, and that had counsel provided this information, he would have accepted the State's pretrial plea offer. Trial counsel is responsible for reviewing all discovery provided, including the extraction report of Defendant's cell phone. Sullins v. State, 5D20-2112 (10/8/21)

https://www.5dca.org/content/download/794229/opinion/202112_DC13_10082021_090411_i.pdf

STAND YOUR GROUND: A defendant convicted by jury verdict after raising a self-defense claim is not entitled to a new immunity hearing if the trial court applied the incorrect burden of proof standard at the immunity hearing under the Stand Your Ground law. When a jury determines that the defendant is guilty beyond a reasonable doubt, notwithstanding a claim of self-defense, that determination cures the trial court's erroneous failure to hold a pretrial immunity hearing. Defendant who voluntarily chooses to have his motion to dismiss her during the trial itself waive his right to a pretrial

immunity hearing. Boston v. State, No. SC20-1164 (10/7/21)

https://www.floridasupremecourt.org/content/download/794028/opinion/sc20-1164.pdf

COMPETENCY: The legal status of a defendant cannot be adjudicated from incompetent to competent without the benefit of a hearing. Stone v. State, 5D21-2418 (10/7/21)

https://www.5dca.org/content/download/793993/opinion/212418_DC03_10072021_090142_i.pdf

10-20-LIFE-ATTEMPTED ARMED ROBBERY: Court may not impose a life sentence with a 25-year minimum mandatory sentence for attempted armed robbery. Once a trial court orders a minimum mandatory sentence under the 10-20-life statute, it exhausts its discretion and must have additional authority to impose any additional sentence. The life sentence was not minimum mandatory and no additional statutory authority existed to go beyond the 25-year minimum mandatory, so the sentence is unlawful. Harris v. State, 1D19-1771 (10/6/21)

https://www.1dca.org/content/download/793870/opinion/191771_DC08_10062021_140616_i.pdf

RESTITUTION: The victim's civil settlement should have been set off against the amount of restitution. Restitution does not prevent any later civil recovery, but the amount of such restitution shall be set off against any subsequent or prior independent civil recovery. The statute governing restitution requires a set off to prevent a double recovery when the two amounts overlap. Wilson v. State, 1D19-2387 (10/6/21)

https://www.1dca.org/content/download/793871/opinion/192387_DC13_1

0062021_140840_i.pdf

APPEAL-COMPETENCY-PRESERVATION: Defendant appealing a conviction based on his alleged incompetency at the time of his guilty plea must first move to withdraw his plea in the trial court. There is no fundamental-error exception to the preservation requirement under the rules of appellate procedure. Bowie v. State, 1D19-2562 (10/6/21)

https://www.1dca.org/content/download/793872/opinion/192562_DC05_10062021_141012_i.pdf

APPEAL-COMPETENCY-PRESERVATION (CONCURRENCE): "Dortch reflects the type of judicial policy choice that our supreme court makes whenever it adopts, revises, or (as here) interprets its own rules. . . As a judicial policy matter, by close vote, the majority placed primacy in [the rule governing appellate procedure over]. . .the due process and fair trial rights of a defendant to not be subject to criminal sanction while legally incompetent." Potentially valid but unpreserved claims of incompetency that previously were resolved in direct appeals will not be considered on appeal and, instead, are shifted to post-conviction/collateral proceedings, if they are considered at all. Time will tell whether Florida's judicial procedures are adequate to protect these constitutional rights. Bowie v. State, 1D19-2562 (10/6/21)

https://www.1dca.org/content/download/793872/opinion/192562_DC05_10062021_141012_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to file a Motion to Suppress Defendant's statement based on the allegedly coercive nature of the discussion that her son (codefendant in a convenience store murder) was subject to the death penalty. The possible death penalty was

simply part of the conversation and a real possibility.penalty. Further, the possibility of the death penalty for her son did not lead to the Defendant's confession that she had planned the crime. "Instead, the record shows that, when faced with the DNA evidence tying herself to the crime. . .instead of being overwhelmed by motherly love, Thornton [initially] blamed her son, admitted only to helping cover up his crime, and asked for the State Attorney to work out an immunity deal for her. Thornton v. State, 1D20-1355 (10/6/21)

https://www.1dca.org/content/download/793875/opinion/201355_DC05_10062021_141621_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to R. 3.850. Jackson v. State, 1D21-2098 (10/6/21)

https://www.1dca.org/content/download/793880/opinion/212098_DA08_10062021_142406_i.pdf

IMPEACHMENT: A party may attack the credibility of any witness by evidence of prior conviction, generally restricted to the existence of prior convictions and the number of convictions, but when a defendant attempts to mislead the jury about his prior convictions, the State is entitled to further question the defendant concerning the convictions in order to negate any false impression. Lucas v. State, 3D19-1941 (10/6/21)

https://www.3dca.flcourts.org/content/download/793800/opinion/191941_DC08_10062021_101059_i.pdf

EVIDENCE-OPINION: A lay witness may testify about what he or she

perceived in the form of inference and opinion when: (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and (2) The opinions and inferences do not require a special knowledge, skill, experience, or training. Lay witness opinion is admissible if it is within the ken of an intelligent person with a degree of experience. Lucas v. State, 3D19-1941 (10/6/21)

https://www.3dca.flcourts.org/content/download/793800/opinion/191941_DC08_10062021_101059_i.pdf

DOUBLE JEOPARDY: Defendant may not be convicted of, and sentenced for, two counts of aggravated assault for single act committed against a single victim in the course of a single criminal episode. Lucas v. State, 3D19-1941 (10/6/21)

https://www.3dca.flcourts.org/content/download/793800/opinion/191941_DC08_10062021_101059_i.pdf

SENTENCING HEARING: Under the circumstances, Court did not err in sentencing Defendant immediately after the trial close to midnight. "We caution that best practices would generally militate against proceeding to a sentencing hearing at the midnight hour. . . .[C]ourts must. . .bear in mind that embarking upon a critical stage at such a late hour imposes a hardship not only upon those actively participating in the sentencing proceeding (the judge, defendant, defense counsel and prosecutor) but upon many others who must be present or who are otherwise involved in the process (the victim and next of kin, family members of the defendant, court reporter, bailiff, courtroom deputy, courtroom clerk, corrections officer (for an in-custody defendant), courthouse security and other personnel)." Lucas v.

State, 3D19-1941 (10/6/21)

https://www.3dca.flcourts.org/content/download/793800/opinion/191941_DC08_10062021_101059_i.pdf

FORFEITURE: Where Claimant told officers he did not own the $133,888.00 in currency in a duffle bag which he was instructed by a friend named "Diego," who lives in Colombia, to deliver to a person named "Angelica," and where the duffel bag smell like drugs to the canine, there is probable cause for forfeiture. In Re: Forfeiture of $133,888.00 in U.S. Currency, 3D20-1809 (10/6/21)

https://www.3dca.flcourts.org/content/download/793809/opinion/201809_DC13_10062021_102908_i.pdf

BEST EVIDENCE RULE-SNAPPERS: The best evidence rule, which requires that when the contents of a writing, recording or photograph are being proved, the original must be offered unless a statutory excuse for the lack of an original exists, does not require the introduction of written or physical evidence whenever it is available in preference to oral testimony. The Best Evidence Rule only applies to writings, recordings and photographs. Although the spirit of the Best Evidence Role requires that when a defendant is charged with possession of a controlled substance that substance, if available, must be introduced in evidence, the rule has not been extended beyond controlled substances and does not apply to fish him (snappers). Hernandez v. State, 3D21-3821 (10/6/21)

https://www.3dca.flcourts.org/content/download/793821/opinion/210381_DC05_10062021_103848_i.pdf

BEST EVIDENCE RULE: Testimony about illegally possessed fish is

sufficient to sustain a conviction; the Best Evidence Rule does not require admission into evidence of the actual fish, nor photographs of the fish, in order to sustain a conviction. Hernandez v. State, 3D21-3821 (10/6/21)

https://www.3dca.flcourts.org/content/download/793821/opinion/210381_DC05_10062021_103848_i.pdf

VOP-CREDIT FOR TIME SERVED: When probation is revoked, the sentencing court shall order credit for time served in state prison or county jail, upon recommitment to the Department of Corrections, and shall direct the Department of Corrections to compute and apply credit for prior prison credit.. Lindsey v. State, 3D21-836 (10/6/21)

https://www.3dca.flcourts.org/content/download/793824/opinion/2021-836_Disposition_114503_DC05.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call his brother as an alibi witness, and less the postconviction court attaches documents conclusively refuting this claim. Grant v. State, 5D20-1700 (10/1/21)

https://www.5dca.org/content/download/791198/opinion/201700_DC08_10012021_083646_i.pdf

JURY INSTRUCTION-SELF-DEFENSE: The Forcible Felony juryinstruction precludes an assertion of self-defense where defendant is attempting to commit, committing, or escaping after the commission of a forcible felony.

Court should only give the instruction when the State charges an independent forcible felony other than the one which the defendant claims to have committed in self-defense. Counsel was ineffective for consenting to the forcible felony jury instruction because it legally negated his client's

sole defense. McCullough v. State, 5D20-2650 (10/1/21)

https://www.5dca.org/content/download/791201/opinion/202650_DC13_10012021_085707_i.pdf

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EVIDENCE-CODE WORDS: Expert testimony by law enforcement officers interpreting drug codes and jargon is admissible, even if most of the code words were learned from the current investigation. Deciphering of coded language is helpful to the jury and therefore permissible. The government and the court must take some special precautions to make clear for the jury when the witness is relying on his expertise and when he is relying only on his personal knowledge of the case. Although the witness crossed the line at times, the error was harmless. USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

APPEAL-PRESERVATION-HARMLESS ERROR: "Perry easily could have avoided his current predicament by making specific objections to put the trial court on notice of any problematic testimony. . .and thereby afford the court an opportunity to correct any error in a timely fashion. Instead, we find ourselves in a situation where there was more than enough evidence to convict the defendant. . .yet the defendant asks us now -- at the tail end of a long day -- to overturn his verdict by challenging some of the very evidence that he passively listened to. . .We underscore. . .that it remains the duty of litigators to object contemporaneously when offending testimony is offered so that the trial court will have the opportunity to exercise its critical gatekeeping function when it matters most." USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

EXPERT: Foundation for expert testimony is whether (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue. USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

HEARSAY: The hearsay rule does not operate to exclude, wholesale, remarks made by another participant to the conversation, merely because those remarks occurred outside the courtroom. If it did, it would mean that the voice of any other participant to the taped conversation would have to be removed and the jury would hear only a soliloquy by the defendant, with no context. Without both sides of the conversation, Defendant's statements would have been rendered meaningless. USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

EVIDENCE-OTHER BAD ACTS: A not guilty plea in a drug conspiracy case makes intent a material issue and opens the door to admission of prior drug related offenses as highly probative, and not overly prejudicial, evidence of a defendant's intent. USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

DOWNWARD DEPARTURE-MINOR PARTICIPANT: Where Court determines the sentence by zeroing in on the Defendant's actual conduct alone, the fact that there is a broader criminal scheme does not justify a downward adjustment as a minor role participant. Being at courier of drugs and money does not necessarily qualify one as a minor participant. USA v. Perry, No. 16-11358 (11th Cir. 9/29/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201611358.pdf

DISCOVERY VIOLATION: A discovery violation is waived if not timely raised. . Garcia v. State, 1D19-4005 (9/29/21)

https://www.1dca.org/content/download/790921/opinion/194005_DC05_09292021_142122_i.pdf

ISSUE PRESERVATION: Where Defendant did not object to Court's response to a jury question, Defendant failed to preserve any issue regarding it. Garcia v. State, 1D19-4005 (9/29/21)

https://www.1dca.org/content/download/790921/opinion/194005_DC05_09292021_142122_i.pdf

EVIDENCE: A hearsay statement of intent or plan is admissible under when offered to prove or explain acts of subsequent conduct of the declarant. Lauwereins v. State, 1D20-239 (9/29/21)

https://www.1dca.org/content/download/790923/opinion/200239_DC05_09292021_142604_i.pdf

HEARSAY: A statement offered to show the effect on the listener rather than the truth of the statement, is not hearsay. Lauwereins v. State, 1D20-239 (9/29/21)

https://www.1dca.org/content/download/790923/opinion/200239_DC05_09292021_142604_i.pdf

HEARSAY: Court did not abuse of discretion in prohibiting the Defendant from eliciting on cross-examination that the victim (Defendant's father) had taught his family to never call the police, particularly where the Defendant testified to that fact during his case in chief. Lauwereins v. State, 1D20-239 (9/29/21)

https://www.1dca.org/content/download/790923/opinion/200239_DC05_09292021_142604_i.pdf

SENTENCING- SEXUAL BATTERY 12 OR OLDER: The statute in effect at the time of commission of the crime control as to the permissible punishment. Defendant is improperly sentenced as though the offense were a first-degree felony when at the time it was a second-degree felony. Washington v. State, 1D20-762 (9/29/21)

https://www.1dca.org/content/download/790924/opinion/200762_DC08_09292021_142908_i.pdf

LESSER INCLUDED-CAPITAL SEXUAL BATTERY: Court erred in instructing the jury that Sexual Battery upon the victim 12 years of age or older is a lesser included offense of Capital Sexual Battery, but the error is not fundamental and is therefore is not preserved absent an objection. A defendant has no constitutional due process right to the correction It is not fundamental error to convict a defendant under an erroneous lesser included

charge when he had an opportunity to object to the charge and failed to do so. Washington v. State, 1D20-762 (9/29/21)

https://www.1dca.org/content/download/790924/opinion/200762_DC08_09292021_142908_i.pdf

WRIT OF CERTIORARI: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. Mulford v. Inch, 1D20-943 (9/29/21)

https://www.1dca.org/content/download/790925/opinion/200943_DC02_09292021_143029_i.pdf

HABEAS CORPUS: A trial court may dismiss, rather than transfer, a habeas petition when the petitioner seeks relief that (1) would be untimely if considered as a motion for postconviction relief under rule 3.850, (2) raise claims that could have been raised at trial or, if properly preserved, on direct appeal of the judgment and sentence, or (3) would be considered a second or successive motion under rule 3.850 that either fails to allege new or different grounds for relief that were known or should have been known at the time the first motion was filed. Farrior v. Florida DOC, 1D20-2195 (9/29/21)

https://www.1dca.org/content/download/790927/opinion/202195_DC05_09292021_143721_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to R. 3.850. Griner v. Inch, 1D20-

2432 (9/29/21)

https://www.1dca.org/content/download/790928/opinion/202432_DC05_09292021_143905_i.pdf

SENTENCING-LIFE-MINOR: Juvenile offenders with sentences of life with the possibility of parole after twenty-five years have no right to resentencing. Such a sentence does not violate Miller or Graham. Hanks v. State, 1D20-2527 (9/29/21)

https://www.1dca.org/content/download/790929/opinion/202527_DC05_09292021_144230_i.pdf

RESENTENCING: Court may reconsider its Order setting case for resentencing on Defendant's R.3.800 where resentencing had yet to occur. Defendant is not entitled to resentencing because his life sentence with the possibility of parole after twenty-five years is not an illegal sentence. Hanks v. State, 1D20-2527 (9/29/21)

https://www.1dca.org/content/download/790929/opinion/202527_DC05_09292021_144230_i.pdf

LAW OF THE CASE: The Law of the Case Doctrine, that the questions of law decided on appeal to a court of ultimate resort must govern the case in the same court and the trial court, through all subsequent stages of the proceedings is prudential and it has exceptions. One such exception is where there has been a change in the fundamental controlling legal principles. Hanks v. State, 1D20-2527 (9/29/21)

https://www.1dca.org/content/download/790929/opinion/202527_DC05_09292021_144230_i.pdf

VOP-HEARSAY-CHANGED RESIDENCE: PO's testimony that he went to Defendant's residence and was told by his father that Defendant had moved is hearsay, insufficient to sustain revocation on probation. Berg v. State, 1D20-2965 (9/29/21)

https://www.1dca.org/content/download/790931/opinion/202965_DC05_09292021_144730_i.pdf

VOP-HOMELESSNESS: Defendant cannot be found in violation of probation due to forced homelessness. Berg v. State, 1D20-2965 (9/29/21)

https://www.1dca.org/content/download/790931/opinion/202965_DC05_09292021_144730_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a new trial based on tactical decisions and failure to present expert phone analyisis to rebut claim testimony that Defendant had recorded his molestation of his children. Tuten v. State, 1D20-3671 (9/29/21)

https://www.1dca.org/content/download/790932/opinion/203671_DC05_09292021_144909_i.pdf

D'UH: Defendant's confession to his mother, overheard by corrections officers, is not suppressible on grounds that the officers did not read him his Miranda rights. Liffick v. State, 1D20-3791 (9/29/21)

https://www.1dca.org/content/download/790933/opinion/203791_DC05_09292021_145053_i.pdf

STATEMENTS OF DEFENDANT: There is no expectation of privacy in jail

where there are several signs warning that the jail is always under audio and video surveillance. Liffick v. State, 1D20-3791 (9/29/21)

https://www.1dca.org/content/download/790933/opinion/203791_DC05_09292021_145053_i.pdf

HABEAS CORPUS: Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in R. 3.850 proceedings. Wims v. State, 1D21-760 (9/29/21)

https://www.1dca.org/content/download/790935/opinion/210760_DA08_09292021_145518_i.pdf

EVIDENCE-OTHER BAD ACTS: Where State never filed a Williams Rule Notice, Defendant is entitled to a new trial for sex acts on his daughter when a different daughter testified that she had walked in on the the Defendant engaged in a sex act on an occasion outside the time window alleged in the information. "This case presents an unfortunate and entirely avoidable error. Armed with Williams rule evidence that the defendant had committed a similar act of child molestation against the same victim years prior, the State chose to admit and then emphasize that evidence. . .without following the settled procedure for doing so. . .Due to the State's failure to follow the Williams rule procedure, we are compelled to reverse and remand for yet another trial." Fesh v. State, 2D19-4087 (9/29/21)

https://www.2dca.org/content/download/790832/opinion/194087_DC13_09292021_084723_i.pdf

EYE ROLL: "At oral argument, the State asserted that M.B.'s testimony of

witnessing her father sexually assault her minor stepsister as she begged for help was 'not that prejudicial.'" Fesh v. State, 2D19-4087 (9/29/21)

https://www.2dca.org/content/download/790832/opinion/194087_DC13_09292021_084723_i.pdf

POST CONVICTION RELIEF-INEFECTIVE ASSISTANCE OF COUNSEL: A defendant has no constitutional right to effective collateral counsel, but the general prohibition on claims of ineffective assistance of postconviction counsel is not applicable to resentencing following a successful postconviction motion. Court erred in dismissing claim that counsel at resentencing hearing was ineffective without a hearing. Hanna v. State, 2D20-2945 (9/29/21)

https://www.2dca.org/content/download/790838/opinion/202945_DC13_09292021_085142_i.pdf

POST CONVICTION RELIEF-TIMELINESS: Defendant has two years from the date of resentencing to raise the issue of ineffectiveness of counse at that hearing, not two years from to date of the original sentence. The calculation of time for the 3.850 motion should begin with the resentencing hearing—the source of the allegedly ineffective assistance. Hanna v. State, 2D20-2945 (9/29/21)

https://www.2dca.org/content/download/790838/opinion/202945_DC13_09292021_085142_i.pdf

CONTEMPT: Court erred in holding in contempt Defendant who called him an array of colorful names amid a series of threats ("I hope you die b*tch," "you're a f*cking dead man," and "I hope you break hell wide open mother

f*cker.") without issuing a judgment and without providing the Defendant with a meaningful opportunity to present mitigating evidence. Court asking if Defendant had anything he wished to say in mitigation is insufficient, mere "lip service to rule 3.830." Hall v. State, 2D21-262 (9/29/21)

https://www.2dca.org/content/download/790843/opinion/210262_DC13_09292021_085359_i.pdf

PRETRIAL DETENTION-BAIL: When the State files a motion for pretrial detention after the trial court has set bond, the motion must present evidence of a change in circumstances or information not made known to the first appearance judge. Evidence that was available to the state at the time of the first appearance hearing does not qualify as new information and therefore does not justify a subsequent denial of bail or increase in the amount of bail. Transfer of other juvenile charges to adult court does constitute a change in circumstances that would provide good cause to revoke bond and warrant a pretrial detention order. Question Certified: When the state direct files charges against a juvenile under §985.557(1), and bond is set on the charges, does the state's Subsequent transfer under §985.557(2) of additional allegations against the juvenile filed in a separate juvenile case, potentially exposing the juvenile to adult sanctions in that case constitute a change in circumstances sufficient to establish good cause for modification of bond or the conditions of release? Sims v. Wells, 2D21-675 (9/29/21)

https://www.2dca.org/content/download/790852/opinion/211675_DC03_09292021_085825_i.pdf

DOUBLE JEOPARDY: Dual convictions for home-invasion robbery will carrying a firearm and aggravated assault with a firearm are not barred by Double Jeopardy. Jackson v. State, 3D20-938 (9/29/21)

https://www.3dca.flcourts.org/content/download/790858/opinion/200938_

DC02_09292021_101847_i.pdf

HABEAS CORPUS: The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the claims raised in the petition concern issues regarding his incarceration. Irizarry v. State, 3D21-1191 (9/29/21)

https://www.3dca.flcourts.org/content/download/790879/opinion/211191_DC05_09292021_105221_i.pdf

DISQUALIFICATION: The laws governing judicial disqualification were never intended 'to enable a discontented litigant to oust a judge because of adverse rulings made, but instead serve to prevent his or her future action in the pending case. Hodges v. State, 3D21-1725 (9/29/21)

https://www.3dca.flcourts.org/content/download/790880/opinion/211725_DC02_09292021_105344_i.pdf

PRETRIAL DETENTION: Defendant may be held without bond on BUI Manslaughter charge where he had been previously convicted of DUI in another state and committed several offenses while out on felony bond, one of which resulted in a death (notwithstanding that he was acquitted). BUI manslaughter falls under the broad umbrella of "manslaughter," a dangerous crime. Hodges v. State, 3D21-1725 (9/29/21)

https://www.3dca.flcourts.org/content/download/790880/opinion/211725_DC02_09292021_105344_i.pdf

ARMED CAREER CRIMINAL ACT-ELEMENTS CLAUSE-AGGRAVATED ASSAULT: The ACCA's elements clause applies only to specific-intent

crimes. The elements clause requires both the general intent to volitionally take the action of using, attempting to use, or threating to use force and something more: that the defendant direct the action at a target, namely another person. Specific intent to direct action at another satisfies this latter requirement, as does knowing conduct. It is unclear whether Florida's aggravated assault is a specific-intent crime. Question certified to the Florida Supreme Court. Somers v. USA, No. 19-11484 (9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911484.cert.pdf

DEFINITION-SPECIFIC INTENT: Specific intent is most commonly understood as designating a special mental element which is required above and beyond any mental state required with respect to the actus reus of the crime. Somers v. USA, No. 19-11484 (9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911484.cert.pdf

COMPASSIONATE RELEASE: Court need not rule on whether medical conditions which may increase Defendant's risk of developing severe illness from Covid-19, are extraordinary circumstances rendering one eligible for compassionate relief. A district court doesn't procedurally err when it denies a request for compassionate release based on the §3553(a) sentencing factors without first explicitly determining whether the defendant could present "extraordinary and compelling reasons. Skipping over a necessary condition isn't per se reversible. USA v. Tinker, No. 20-14474 (11th Cir. 9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014474.pdf

COMPASSIONATE RELEASE: A district court may reduce a term of imprisonment if (1) the §3553(a) sentencing factors favor doing so, (2) there

are extraordinary and compelling reasons for doing so, and (3) doing so wouldn't endanger any person or the community. A court is not required to conduct the compassionate-release analysis in any particular order. USA v. Tinker, No. 20-14474 (11th Cir. 9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014474.pdf

COOKIES: Rose can give Joe a cookie after he walks the dog if he does the dishes and takes out the trash. USA v. Tinker, No. 20-14474 (11th Cir. 9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014474.pdf

COMPASSIONATE RELEASE: In situations where consideration of the §3553(a) factors is mandatory, the Court need not address each the factors or all of the mitigating evidence if it acknowledges that it considered them. USA v. Tinker, No. 20-14474 (11th Cir. 9/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014474.pdf

SEXUAL PREDATOR: Court has jurisdiction to impose a sexual predator designation on an offender who qualifies under the Florida Sexual Predators Act when the sentencing court did not impose the designation at sentencing and the offender's sentence has been completed. "The statutory scheme provides no basis for concluding that a fumble by the sentencing court should immunize a sexual predator from the legally required designation and registration." State v. McKenzie, SC19-912 (9/23/21)
https://www.floridasupremecourt.org/content/download/789413/opinion/sc19-912.pdf

STATUTORY INTERPRETATION: In interpreting statutes, the Court applies the supremacy-of-text principle, that —the words of a governing text

are of paramount concern, and what they convey, in their context, is what the text means. State v. McKenzie, SC19-912 (9/23/21) https://www.floridasupremecourt.org/content/download/789413/opinion/sc19-912.pdf

FALSE TESTIMONY-GIGLIO: A Giglio violation is demonstrated when (1) the prosecutor presented or failed to correct false testimony; (2) the prosecutor knew the testimony was false; and (3) the false evidence was material. Witness's testimony that the charges against him were "not murder, not rape, no physical violence in my life," omitting his arrest on charge (later dropped) for L & L is not material under Giglio because there is no reasonable possibility that information regarding the witness's L & L case would have affected the jury's verdict. Dailey v. State, SC20-934 (9/23/21) https://www.floridasupremecourt.org/content/download/789414/opinion/sc20-934.pdf

NEWLY DISCOVERED EVIDENCE: Written statement by co-Defendant exonerating Defendant ("James Dailey was not present when Shelly Boggio was killed. I alone am responsible for Shelly Boggio's death.") is not not newly discovered evidence warranting a new trial where witness refused to testify at the evidentiary hearing and later had testified that the statement was false. Dailey v. State, SC20-934 (9/23/21) https://www.floridasupremecourt.org/content/download/789414/opinion/sc20-934.pdf

DEATH PENALTY-(J. LABARGA, DISSENT): "While finality in judicial proceedings is important to the function of the judicial branch, that interest can never overwhelm the imperative that the death penalty not be wrongly imposed." Dailey v. State, SC20-934 (9/23/21) https://www.floridasupremecourt.org/content/download/789414/opinion/sc20-934.pdf

CONSTRUCTIVE POSSESSION: Joint occupancy, with or without ownership of the premises, where contraband is discovered in plain view in the presence of the owner or occupant is sufficient to support a conviction for constructive possession. A mere temporary visitor to a space occupied by others cannot be deemed in constructive possession of firearms or contraband in such a space, but where the contraband items were in plain view within the bedroom that Defendant and his friend exclusively occupied for the night is sufficient for conviction. The possibility that others occupied the room on other nights is irrelevant. Robinson v. State, 1D20-17 (9/22/21) https://www.1dca.org/content/download/789263/opinion/200017_DC05_09222021_141215_i.pdf

PLEA WITHDRAWAL: Court is required to grant the motion to withdraw a plea before sentencing only where there is good cause. Defendant may not withdraw plea on the basis of evidence of which the Defendant was aware before pleading. Harris v. State, 1D20-589 (9/22/21) https://www.1dca.org/content/download/789264/opinion/200589_DC05_09222021_141345_i.pdf

SENTENCING-EVIDENCE: Court must hear evidence relevant to the issues at sentencing, but does not abuse its discretion by declining to hear evidence that the Defendant had not fired the fatal shot where the Court had no discretion to vary from the agreed disposition, and the plea to 3rd° murder avoided a felony murder charge. Harris v. State, 1D20-589 (9/22/21) https://www.1dca.org/content/download/789264/opinion/200589_DC05_09222021_141345_i.pdf

CERTIORARI: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel. McIntosh v. Inch, 1D20-599 (9/22/21) https://www.1dca.org/content/download/789265/opinion/200599_DC02_0

9222021_141456_i.pdf

COURT RECORDS: Defendant is entitled to electronic records of his plea hearing upon payment of the appropriate costs to produce them. The fact that he has transcripts does not limit his right to the actual electronic recordings. Wright v. State, 1D20-2455 (9/2 2/21)
https://www.1dca.org/content/download/789270/opinion/202455_DC13_09222021_142422_i.pdf

POST CONVICTION RELIEF: Rule 3.800(a) motion to correct illegal sentence. A claim that the Court deprived him of due process by considering an improper factor at sentencing (a separate pending sex offense) does not make the sentence illegal under R. 3.800(a); the claim should have been raised under R. 3.850 but is now time barred. Kramer v. State, 1D20-3457 (9/22/21)
https://www.1dca.org/content/download/789273/opinion/203457_DC05_09222021_143406_i.pdf

CRUEL AND UNUSUAL PUNISHMENT: A 70-year sentence for possession of child pornography does not constitute cruel and unusual punishment. Kramer v. State, 1D20-3457 (9/22/21)
https://www.1dca.org/content/download/789273/opinion/203457_DC05_09222021_143406_i.pdf

POST CONVICTION RELIEF: A R. 3.800(a) motion to correct an illegal sentence is not the proper vehicle for challenging a sentence on the basis that it violates the constitutional prohibition against cruel and unusual punishment. Kramer v. State, 1D20-3457 (9/22/21)
https://www.1dca.org/content/download/789273/opinion/203457_DC05_09222021_143406_i.pdf

POST CONVICTION RELIEF-VINDICTIVE SENTENCE: A vindictive sentencing claim is not cognizable under R.3.800(a). Kimble v. State, 1D20-

3690 (9/22/21)
https://www.1dca.org/content/download/789275/opinion/203690_DC05_09222021_143718_i.pdf

MAILBOX RULE: Inmate's complaint challenging administrative loss or forfeiture gain time is untimely where the institutional stamp, with initials and date shows that it was untimely filed and contradicts the certified date on the complaint itself. Hagins v. Inch, 1D21-578 (9/22/21)
https://www.1dca.org/content/download/789279/opinion/210135_DC05_09222021_144427_i.pdf

CREDIT FOR TIME SERVED: Motion for correction of credit for time served is untimely if filed more than one year after the sentence become final. Rich v. State, 1D21-578 (9/22/21)
https://www.1dca.org/content/download/789280/opinion/210578_DC05_09222021_144551_i.pdf

WRIT OF PROHIBITION: Prohibition is preventive and not corrective; its purpose is to prevent the doing of something, not to compel the undoing of something already done. Prohibition cannot be utilized to revoke an order already entered. McNeil v. State, 1D21-2283 (9/22/21)
https://www.1dca.org/content/download/789290/opinion/212283_DA08_09222021_150128_i.pdf

APPEAL: Judgment which erroneously failed to indicate that he was found guilty by a jury may not be corrected on appeal where the error was not preserved by objection or motion to correct in the trial court, notwithstanding some cases where that might have been done. Carrion v. State, 2D18-4289 (9/22/21)
https://www.2dca.org/content/download/789192/opinion/184289_DC05_09222021_083205_i.pdf

SCRIVENER'S ERRORS. A scrivener's error is a mistake in the written

sentence that is at variance with the oral pronouncement of sentence or the record but not those errors that are the result of a judicial determination or error. Carrion v. State, 2D18-4289 (9/22/21)
https://www.2dca.org/content/download/789192/opinion/184289_DC05_09222021_083205_i.pdf

SENTENCING-SCORESHEET: Scoresheet improperly assesses 24 community sanction violation points for a new felony when a new felony was not the basis for the violation. Arce v. State, 3D20-511 (9/22/21)

https://www.3dca.flcourts.org/content/download/789200/opinion/200511_DC13_09222021_101531_i.pdf

STATUTORY INTERPRETATION: In construing the meaning of a statute, Court first looks at its plain language. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction. State v. Delprete, 4D20-1680 (9/22/21)
https://www.4dca.org/content/download/789211/opinion/201680_DC13_09222021_100617_i.pdf

INSURANCE FRAUD: The crime of insurance fraud requires that a person make a material false statement, not that it be relied upon. Justifiable reliance is not an element of a section 817.234 violation. The fact that the insurance company never paid any money on the claim-- Defendant initially falsely claimed the car had been stolen – the Defendant is properly convicted of making a false and fraudulent insurance claim. State v. Delprete, 4D20-1680 (9/22/21)
https://www.4dca.org/content/download/789211/opinion/201680_DC13_09222021_100617_i.pdf

INSURANCE FRAUD: Attempted making of a false and fraudulent insurance claim is a nonexistent crime in Florida since the attempt is

encompassed in the substantive offense itself. State v. Delprete, 4D20-1680 (9/22/21)
https://www.4dca.org/content/download/789211/opinion/201680_DC13_09222021_100617_i.pdf

QUALIFIED IMMUNITY-FALSE ARREST: Officers have qualified immunity for repeatedly arresting the Defendant on a warrant for a different person with the same name. The fact that Defendant weighed differently, had a different date of birth, and was tattoo-less are immaterial. Qualified immunity shields from liability all but the plainly incompetent or one who is knowingly violating the federal law. Sosa v. Martin County, No. 20-12781 (11th Cir 9/20/21)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.pdf

QUALIFIED IMMUNITY-OVER DETENTION: Officers do not have qualified immunity for repeatedly arresting the Defendant on a warrant for a different person with the same name. Overdetention means continued detention after entitlement to release, even though probable cause supported the charge underlying the original detention. Proving a violation requires a plaintiff to establish that the defendant was deliberately indifferent to his due-process rights, that is (1) the defendant had subjective knowledge of a risk of serious harm in the form of continued detention even after the plaintiff had a right to be released; (2) disregarded that risk; and (3) disregarded by conduct that is more than mere negligence.ave compiled lists of such technology. Sosa v. Martin County, No. 20-12781 (11th Cir 9/20/21)
https://media.ca11.uscourts.gov/opinions/pub/files/202012781.pdf

SEARCH WARRANT-PROBABLE CAUSE: The fact that the informant stated that she had bought narcotics from Defendant does not establish that she had personal knowledge that there were narcotics in the Defendant's residence. Search warrant was not supported by probable cause. Corroboration is required. Chery v. State, 2D 19-2444 (9/17/21)
https://www.2dca.org/content/download/788403/opinion/192444_DC13_0

9172021_084206_i.pdf

SEARCH WARRANT-GOOD FAITH RELIANCE: A search pursuant to a search warrant not supported by probable cause is unlawful. Where the affidavit in support of the search warrant failed to establish that the affiant had personal knowledge of the informant's reliability and veracity and because the affidavit lacked any corroboration of the informant's claims, the search warrant was issued in error. Good faith reliance is not objectionable he reasonable, so the good faith exception does not apply. The good faith exception is inapplicable where an objectively reasonable officer would have known that the affidavit was insufficient to establish probable cause for the search. Chery v. State, 2D 19-2444 (9/17/21)
https://www.2dca.org/content/download/788403/opinion/192444_DC13_09172021_084206_i.pdf

COMPETENCY: The failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. Once the court has reasonable grounds to question the defendant's competency, the court has no choice but to conduct a hearing to resolve the question. Nelson v. State, 2D19-3593 (9/17/21)

https://www.2dca.org/content/download/788406/opinion/193593_NOND_09172021_084622_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for erroneously advising him to reject a plea offer based on the erroneous representation that the laptop containing the Defendant's child pornography had been lost in the evidence that had been on it would be inadmissible. Bickel v. State, 2D20-1394 (9/17/21)
https://www.2dca.org/content/download/788411/opinion/201394_DC08_09172021_085738_i.pdf

NELSON HEARING: Defendant is entitled to a Nelson hearing based on allegations that Counsel had failed to provide him with discovery, had failed to secure a computer expert in a child pornography case, and there relationship was "beyond repairs." Hyacinthe v. State, 5D21-312 (9/17/21) https://www.5dca.org/content/download/788397/opinion/210312_DC13_09172021_085648_i.pdf

POST CONVICTION RELIEF: In no case shall a petition alleging ineffective assistance of appellate counsel on direct review be filed more than 4 years after the judgment and sentence become final on direct review. Claridy v. State, 5D21-1091 (9/17/21) https://www.5dca.org/content/download/788398/opinion/211091_DA08_09172021_090554_i.pdf

QUOTATION: "[T]he law seldom, if ever, requires certainty." USA v. Watkins, No. 18-14336 (11th Cir. 9/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.op2.pdf

MAGISTRATE JUDGE: A district judge abuses its discretion when it squarely rejects the magistrate judge's findings of fact and credibility determinations and substitutes its own. A district court may not reject a magistrate judge's factual and credibility findings that were based on testimony the magistrate judge heard. USA v. Watkins, No. 18-14336 (11th Cir. 9/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.op2.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE-INEVITABLE DISCOVERY: The standard of predictive proof the government must satisfy in order to establish the proper application of the inevitable discovery exception to the exclusionary rule is preponderance of the evidence.

Illegally obtained evidence is admissible under the ultimate discovery exception if the government can make two showings: 1) a showing by a preponderance of the evidence that if there had been no constitutional violation, the evidence in question would have been discovered by lawful means and 2) that the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct. USA v. Watkins, No. 18-14336 (11th Cir. 9/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.op2.pdf

SEARCH AND SEIZURE: LEOs may go to home of residence of Post Office supervisor where the tracking device on a package of mailed drugs was disabled and the supervisor was the only suspect. A knock and talk, leading to a search, would have inevitably occurred even if the package was unlawfully traced to the home. USA v. Watkins, No. 18-14336 (11th Cir. 9/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.op2.pdf

SEARCH AND SEIZURE-INEVITABLE DISCOVERY: The requirement that the alternative means of discovery be actively underway before the constitutional violation occurs only applies to search warrant cases. USA v. Watkins, No. 18-14336 (11th Cir. 9/16/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.op2.pdf

COMPETENCY: Court must make an independent finding of competency once the issue has been raised. Ellis v. State, 1D17-961 (9/15/21)

https://www.1dca.org/content/download/788102/opinion/170961_DC08_09152021_140905_i.pdf

STAND YOUR GROUND: Standard-of-proof defects in a Stand-Your Ground immunity hearing are cured when the defendant goes to trial, raises a self-defense claim, and is convicted under the heavier proof beyond all reasonable doubt standard. Whitfield v. State, 1D20-3736 (9/15/21)

https://www.1dca.org/content/download/788109/opinion/203736_DC02_09152021_143716_i.pdf

CERTIORARI: Defendant may not challenge a trial court's order compelling him to provide the passcode to his cell phone by Petition of Writ of Certiorari. Compelling petitioner to provide a passcode is not a final order nor a non-final order subject to interlaboratory review. Certiorari jurisdiction thus requires a petitioner to demonstrate(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 post judgment appeal. Foster v. State, 1D21-664 (9/15/21)

https://www.1dca.org/content/download/788112/opinion/210664_DA08_09152021_144600_i.pdf

SELF-INCRIMINATION (CONCURRING): "The majority asserts in dicta that the privilege against selfincrimination is only available at trial in a criminal case, but I respectfully disagree. No matter if certain federal cases interpreting the Fifth Amendment to the United States Constitution can be read so narrowly, the Florida Supreme Court has interpreted the Fifth Amendment and article I, section 9 of the Florida Constitution to apply in all proceedings which are penal in nature." Foster v. State, 1D21-664 (9/15/21)

https://www.1dca.org/content/download/788112/opinion/210664_DA08_09152021_144600_i.pdf

POST CONVICTION RELIEF-12-PERSON JURY: Failure to seat at 12-person jury in a murder case does not render the sentence illegal. Any challenge must be made pursuant to R 3.850 within two years, not pursuant to R 3.800. Jones v. State, 1D21-802 (9/15/21)

https://www.1dca.org/content/download/788113/opinion/210802_DC05_09152021_144800_i.pdf

BOND: Defendant is entitled to a bond for the charge of human trafficking. State must present evidence of dangerousness in order to preclude pretrial release. State's argument that Defendant had a prior friendship with the victim, thus presenting a special risk of contacting her is conclusory. "While human trafficking is a serious charge, the statute covers a wide range of activities, such that an understanding of the specific facts of the case is necessary to appreciate the dangerousness to the community and the reasonableness of any findings pertaining thereto." Hernandez v. Junior, 3D 21-1738 (9/15/21)

https://www.3dca.flcourts.org/content/download/788098/opinion/211738_807_09152021_153246_i.pdf

APPEAL-JURISDICTION: Court loses jurisdiction to grant R. 3.800(b)(2) motion if not ruled upon within sixty-day period provided in rule. Judon v. State, 4D20-2469 (9/15/21)

https://www.4dca.org/content/download/788037/opinion/202469_DC13_09152021_095323_i.pdf

DWLS: By statute, Defendant must be sentenced to at least 10 days in jail for third or subsequent conviction for DWLS. S. 322.34(2)(b)2. State v. Lebrun, 4D21-330 (9/15/20)

https://www.4dca.org/content/download/788038/opinion/210330_DC13_09152021_104038_i.pdf

EX POST FACTO-DWLS: Amendment to the DWLS statute requiring a minimum of 10 days in jail for recidivist drivers with a suspended license is not an improper ex post facto law. Enhanced sentencing for recidivism does not violate ex post facto principles despite the fact that the prior offenses forming a basis for enhancement occurred prior to enactment of the enhancement provision. Moss v. State, 4D21-347 (9/15/21)

https://www.4dca.org/content/download/788039/opinion/210347_DC13_09152021_104238_i.pdf

INFORMATION-DWLS: A listing of the prior convictions necessary to enhance a charge of DWLS is not necessary Priors are not an essential element of the crime because they affect only the penalty and not the degree or level of the crime. The prior conviction(s) relate only to sentencing, not to the crime itself. Moss v. State, 4D21-347 (9/15/21)

https://www.4dca.org/content/download/788039/opinion/210347_DC13_09152021_104238_i.pdf

DWLS-MANDATORY MINIMUM: Court must impose the mandatory ten-day jail sentence required under section 322.34(2)(b)2. as the statute is clear and unambiguous. State v. Williams, 4D21-302 (9/15/21)

https://www.4dca.org/content/download/788041/opinion/210372_DC13_09152021_104422_i.pdf

DWLS-MANDATORY MINIMUM: Court must impose the mandatory ten-

day jail sentence required under section 322.34(2)(b)2. as the statute is clear and unambiguous. State v. Miranda, 4D21-394 (9/15/21)

https://www.4dca.org/content/download/788042/opinion/210394_DC13_09152021_104545_i.pdf

COSTS: Imposition of $20,000 in costs for FDLE investigative costs in child pornography case, based on State's assertion alone, is improper, but a contemporaneous objection is required. Imposition of such a cost is not a "sentencing error" pursuant to rule 3.800(b). Simpson v. State, 5D20-119 (9/10/21)

https://www.5dca.org/content/download/783097/opinion/200119_DC05_09102021_082417_i.pdf

POST CONVICTION RELIEF: The appellate court shall reverse summary denial of relief on a postconviction motion, including those filed pursuant to Rule 3.802, unless the record shows conclusively that the appellant is entitled to no relief and the cause will be "remanded for an evidentiary hearing or other appropriate relief. Court must attach records conclusively showing proof that Defendant is not entitled to relief or hold a judicial review hearing. Katwaroo v. State, 5D21-1034 (9/10/21)

https://www.5dca.org/content/download/783101/opinion/211034_DC13_09102021_083801_i.pdf

DEPORTATION: Any alien who is convicted of an aggravated felony at any time after admission can be removed and any alien who has been convicted

of an aggravated felony is ineligible for cancellation of removal. Georgia misdemeanor battery convictions are aggravated felonies under INA, rendering alien ineligible for cancellation of removal because each was a crime of violence. Georgia's battery is an aggravated felony because it involves "physical force," which means "violent force — that is, force capable of causing physical pain or injury to another person." Talamantes-Enriquez v. U.S. Attorney General, No. 19-15080 (11th Cir. 9/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201915080.pdf

CATEGORICAL APPROACH: Under the categorical approach, Court does not consider the underlying facts of the particular crime, but only considers whether the state statute defining the crime of conviction categorically fits within the generic federal definition of a corresponding aggravated felony. The required approach is an elements-to-elements comparison, not a facts-to-elements comparison. Talamantes-Enriquez v. U.S. Attorney General, No. 19-15080 (11th Cir. 9/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201915080.pdf

DEPORTATION: A sentence of one year incarceration, even if not served pending completion of probation, is a term of imprisonment even if the court itself follows state-law usage and describes the excuse with a word other than "suspend." Defendant was sentenced to a term of imprisonment for at least one year for purposes of INA, even if he was permitted to serve part or all of that sentence on probation. Alien is ineligible for cancellation of removal. "No escape. . .is possible." Talamantes-Enriquez v. U.S. Attorney General, No. 19-15080 (11th Cir. 9/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201915080.pdf

METAPHOR OF THE DAY: "There is no reason we should follow an agency decision that says it is interpreting and applying our precedent, instead of just interpreting and applying our own precedent our own selves. That is, after all, what we do day in and day out. And even if we were inclined to have the BIA pinch hit for us, invoking its decision in Estrada is a swing and a miss for Talamantes." Talamantes-Enriquez v. U.S. Attorney General, No. 19-15080 (11th Cir. 9/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201915080.pdf

ARGUMENT-FACTS NOT IN EVIDENCE: Characterization of what was said in a conversation, even though there was no testimony about the exact words exchanged, is a fair comment on the evidence. Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

ARGUMENT-BOLSTERING: Prosecutor did not improperly bolster witness by saying the witness feared for his life, nor that the witness "worked hard not to pick the wrong people" and "does not want the wrong people convicted." Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

ARGUMENT-EXPRESSIONS OF PERSONAL BELIEF: Prosecutor's arguments sprinkled with "I think" ("I think Johnathan Alcegaire was there because, again, I believe him to be a soldier for his brother," etc.) is a fair comment on the evidence, not an improper expression of personal belief. Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

ARGUMENT: When the State instead uses closing argument to appeal to the jury's sense of outrage at what happened to the victim and asks the jurors to return a verdict that brings "justice" to the victim, the State perverts the purpose of closing argument. Prosecutor's argument that "These victims deserve justice. That's why you're here," is improper but not reversible because the comments did not become the theme of, nor pervade the closing argument. Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

ARGUMENT: When the State appeals to the jury's sense of outrage at what happened to the victim and asks the jurors to return a verdict that brings "justice" to the victim, the State perverts the purpose of closing argument. Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

DEMONSTRATIVE AID: A map not admitted in evidence may be used as a demonstrative aid during closing argument. Alcegaire v. State, SC19-428 (9/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

VICTIM IMPACT EVIDENCE: Letters about the victims from acquaintances

are proper victim impact evidence in murder penalty phase. Alcegaire v. State, SC19-428 (2/9/21)

https://www.floridasupremecourt.org/content/download/782616/opinion/sc19-428.pdf

ENTRAPMENT: The defense of subjective entrapment requires a defendant prove by a preponderance of the evidence that his or her criminal conduct occurred as a result of an entrapment. Unlike objective entrapment and its focus on law enforcement's conduct, subjective entrapment focuses on inducement of the accused based on an apparent lack of predisposition to commit the offense. Objective entrapment requires, first, that an agent of the government induced the defendant to commit the offense charged; second, that the defendant was not predisposed to commit the offense; and third, that the prosecution rebut this evidence beyond a reasonable doubt. Hall v. State, 1D19-1920 (9/9/21)

https://www.1dca.org/content/download/782694/opinion/191920_DC05_09092021_135249_i.pdf

ENTRAPMENT-JOA: Where reasonable persons could draw different conclusions as to whether the government subjectively entrapped Defendant, the issue must be resolved by the jury. Hall v. State, 1D19-1920 (9/9/21)

https://www.1dca.org/content/download/782694/opinion/191920_DC05_09092021_135249_i.pdf

APPEAL-PRESERVATION: When a defendant does not raise in the trial court the same grounds for granting the motion argued on appeal, the claim is not preserved for appeal. Hall v. State, 1D19-1920 (9/9/21)

https://www.1dca.org/content/download/782694/opinion/191920_DC05_09092021_135249_i.pdf

POST CONVICTION RELIEF: Inconclusive evidence about a thermometer and the temperature in the house does not establish ineffective assistance of counsel in murder case. There is no reasonable probability of a different outcome if trial counsel had more successfully highlighted evidence about the thermostat and temperature in the home where the murder occurred. State v. King, 1D19-4166 (9/9/21)

https://www.1dca.org/content/download/782695/opinion/194166_DC13_09092021_140501_i.pdf

DEPORTATION: Alien convicted of any drug offense other than possession of 30 grams or less of marijuana for personal use is subject to removal. Possession of oxycodone hydrochloride is a deportable offense. Farah v. U.S. Attorney General, No. 19-12462 (11th Cir. 9/8/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912462.pdf

DEPORTATION: An "aggravated felony," which includes a a crime of violence for which the term of imprisonment is at least one year, is a deportable offense. A "crime of violence" is any offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. Assault is a crime of violence. Farah v. U.S. Attorney General, No. 19-12462 (11th Cir. 9/8/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912462.pdf

HABEAS CORPUS: Petitioner cannot seek relief on an issue previously

adjudicated on appeal by recasting what would be a successive (or otherwise improper) postconviction collateral appeal as a habeas corpus petition. Mitchell v. State, 3D21-1722 (9/8/21)

https://www.3dca.flcourts.org/content/download/782433/opinion/211722_DA08_09082021_103820_i.pdf

KIDNAPPING: The confinement necessary to support a kidnapping alleged to have facilitated the commission of another felony (a) Must not be slight, inconsequential and merely incidental to the other crime [prong 1]; (b) must not be of the kind inherent in the nature of the other crime [prong 2]; and (c) must have some significance independent of the other crime in that it makes the other crime substantially easier of commission or substantially lessens the risk of detection [prong 3]. Forcing the victim into the backroom, and then into the bathroom, was not inherent in the nature of the completed robbery. Barricading the victim in the room, even for a brief time, was intended to, and did, facilitate the defendant's escape and lessen the risk of his detection. Defendant is properly convicted of kidnapping. Parrish v . State, 4D19-1991 (9/8/21)

https://www.4dca.org/content/download/782442/opinion/191991_DC08_09082021_102415_i.pdf

KIDNAPPING: Defendant cannot be convicted of kidnapping of store manager who was never made to crawl at gunpointto the back of the store, and who was also moved from the back of the store to the front of the store to empty the cash register. Parrish v . State, 4D19-1991 (9/8/21)

https://www.4dca.org/content/download/782442/opinion/191991_DC08_09082021_102415_i.pdf

KIDNAPPING-CERTIFIED QUESTION: Have Faison v. State and its progeny (limiting dual convictions for robbery and kidnapping) been superseded by section 775.021(4). Parrish v . State, 4D19-1991 (9/8/21)

https://www.4dca.org/content/download/782442/opinion/191991_DC08_09082021_102415_i.pdf

HUH WHAT HUH?: The January 1, 2015 amendment to Fl.R.App.P. does not have retroactive effect so as to undo the abandonment of a motion for new trial which resulted under the prior version of the rule when the notice of appeal was filed before the filing of a signed, written order disposing of the motion for new trial filed by the appealing party. Penaloza v. State, 5D21-1434 (9/8/21)

https://www.5dca.org/content/download/782406/opinion/211434_DC05_09082021_083718_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to post conviction relief based on speculation that a juror had fallen asleep, but he should be allowed to amend the claim if he can be more specific. Friend v. State, 2D20-2018 (9/3/21)

https://www.2dca.org/content/download/781518/opinion/202018_DC08_09032021_080542_i.pdf

CERTIORARI-PSYCH EVAL-MALINGERING: A petition for writ of certiorari requires a finding of irreparable harm. No irreparable harm is shown when court orders a state-chosed expert to evaluate whether the Defendant is malingering by feigning incompetency. Barton v. State, 5D21-183 (9/3/21)

https://www.5dca.org/content/download/781548/opinion/210183_DA08_0

9032021_084811_i.pdf

COSTS: Court may not impose a $6.00 cost pursuant to §318.18(11)(b) for a non-driving offense. Poole v. State, 5D21-189 (9/3/21)

https://www.5dca.org/content/download/781549/opinion/210189_DC05_09032021_084951_i.pdf

LESSER INCLUDED-SEXUAL BATTERY: A lesser included offense is one whose elements are entirely contained within the elements of another, greater, offense. Sexual battery is not a necessarily lesser included offense of capital sexual battery, because the elements of sexual battery are in fact never subsumed within the elements of capital sexual battery. Allen v. State, SC20-1053 (9/2/21)

https://www.floridasupremecourt.org/content/download/781340/opinion/sc20-1053.pdf

LESSER INCLUDED-CAPITAL SEXUAL BATTERY: Sexual battery does not qualify as a permissive lesser included offense because a victim cannot be simultaneously over and under the age of twelve, as required by the different statutes. Either a victim is under twelve, or he or she is not. Allen v. State, SC20-1053 (9/2/21)

https://www.floridasupremecourt.org/content/download/781340/opinion/sc20-1053.pdf

QUOTATION: "Age is a one-way street." Allen v. State, SC20-1053 (9/2/21)

https://www.floridasupremecourt.org/content/download/781340/opinion/sc20-

1053.pdf

APPEAL-PRESERVATION: Defendant may not raise on appeal tha argument that State denigrated his defense in opening argument where that specific argument was not raised before the the trial court. To preserve an issue for appellate review, the specific legal argument must be presented to the trial court. Wallace v. State, 1D19-4655 (9/2/21)

https://www.1dca.org/content/download/781386/opinion/194655_DC08_09022021_142019_i.pdf

CIRCUMSTANTIAL EVIDENCE: The special standard for circumstantial evidence in reviewing motions for judgment of acquittal has been abandoned. The standard is whether there is competent, substantial evidence to support the verdict. Defendant having rented the vehicle and being seen in it shortly before the fatal accident supports the convictions for vehicular homicide and LOSA. Wallace v. State, 1D19-4655 (9/2/21)

https://www.1dca.org/content/download/781386/opinion/194655_DC08_09022021_142019_i.pdf

MISTRIAL: Improper statements to judge during bench conference do not warrant a mistrial. Wallace v. State, 1D19-4655 (9/2/21)

https://www.1dca.org/content/download/781386/opinion/194655_DC08_09022021_142019_i.pdf

COMMENT ON SILENCE: “Why? I was listening throughout the entirety of [defense]. . .. . .for an explanation of why, and I never heard one. That’s because there is no explanation other than he did it," not an improper

comment on Defendant's failure to testify" Wallace v. State, 1D19-4655 (9/2/21)

https://www.1dca.org/content/download/781386/opinion/194655_DC08_09022021_142019_i.pdf

DOUBLE JEOPARDY-LOSA: Dual convictions for Leaving Scene of Accident with two deaths violated Double Jeopardy. Wallace v. State, 1D19-4655 (9/2/21)

https://www.1dca.org/content/download/781386/opinion/194655_DC08_09022021_142019_i.pdf

HABEAS CORPUS: Habeas corpus is not a means to litigate issues that could have or should have been raised on direct appeal or in a timely postconviction motion. Robinson v. State, 1D20-2415 (9/2/21)

https://www.1dca.org/content/download/781392/opinion/202415_DC05_09022021_142532_i.pdf

PLEA-DEPORTATION: An equivocal warning about deportation consequences is not on its own sufficient to refute a claim that counsel was ineffective in failing to advise a defendant about truly clear deportation consequences. The warning in R. 3.172(c)(8)(A) is equivocal. Defendant is entitled to relief when he can establish (1) that the movant was present in the country lawfully at the time of the plea; (2) that the plea at issue is the sole basis for the movant's deportation; (3) that the law, as it existed at the time of the plea, subjected the movant to virtually automatic deportation; (4) that the presumptively mandatory consequence of deportation is clear from the face of the immigration statute; (5) that counsel failed to accurately advise the movant about the deportation consequences of the plea; and (6)

that, if the movant had been accurately advised, he or she would not have entered the plea. Nunez v. State, 2D20-2680 (9/1/21)

https://www.2dca.org/content/download/781102/opinion/202680_DC13_09012021_080155_i.pdf

IDENTIFICATION-SHOW UP: An out-of-court identification may be admitted if, first, police used an unnecessarily suggestive procedure to obtain an out-ofcourt identification, and, second, if so, considering all the circumstances, if the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification. Show-ups are not unnecessarily suggestive unless the police aggravate the suggestiveness of the confrontation. Alahad v. State, 4D19-3438 (9/1/21)

https://www.4dca.org/content/download/781142/opinion/193438_DC05_09012021_094944_i.pdf

IDENTIFICATION-SHOW UP: Show up where (1) the defendant was in handcuffs and flanked by two officers, (2) the police told the eyewitness that he matched her description and that he was found in the area to which she saw him flee, and (3) although one other person found matched the description the eyewitness provided, the eyewitness was shown a single person, although "likely a close call," is not unduly suggestive. Alahad v. State, 4D19-3438 (9/1/21)

https://www.4dca.org/content/download/781142/opinion/193438_DC05_09012021_094944_i.pdf

NOLLE PROSEQUI-IMPROPER RE-FILING: State may enter a nolle prosequi due to the absence of an indispensable witness, and refile the charges seven days later after Court denies a continuance. "[N]othing

indicates that the state had an improper purpose in entering the nolle pros, and the trial court erred by granting the motion to dismiss." State v. Piering, 4D21-350 (9/1/21)

https://www.4dca.org/content/download/781146/opinion/210350_DC13_09012021_101204_i.pdf

SENTENCING-YOUNG OFFENDER: Graham and Miller do not apply to offenders eighteen years of age or older at the time of the offense. Shaw v. State, 4D21-1859 (9/1/21)

https://www.4dca.org/content/download/781149/opinion/211859_DC05_09012021_101647_i.pdf

AUGUST 2021

SEARCH AND SEIZURE-OBSCURED TAG: Bicycles on back of vehicle partially obscuring the view of the numbers on the license plate justifies the traffic stop. Even if the officer's interpretation of the law is incorrect, his erroneous but objectively reasonable interpretation of it justifies the stop. USA v. Braddy, No. 19-12823 (11th Cir. 8/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912823.pdf

SEARCH AND SEIZURE-AUTOMOBILE-PROLONGED STOP: Extreme nervousness is reasonable suspicion to prolong stop. Officer's probative questioning about Defendant's travel plans and itinerary, his residency, and the ownership of his vehicle were related to the purpose of the traffic stop and did not unlawfully prolong it. USA v. Braddy, No. 19-12823 (11th Cir. 8/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912823.pdf

SEARCH AND SEIZURE-DOG SNIFF: A drug detection dog's alert can provide probable cause to conduct a search even where, as here, the dog only gives a partial alert. (the dog changed its breathing, changed its body posture, closed its mouth, and stiffened its tail). USA v. Braddy, No. 19-12823 (11th Cir. 8/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912823.pdf

SEARCH AND SEIZURE-DOG ALERT-DISSENT: "The government urges us to accept the officers' observations since they are trained to spot these subtle and imperceptible changes in behavior. But an officer's subjective interpretations about the evidence have no place in our analysis. . .And placing our blind faith in the officers' subjective interpretations of common dog behavior—especially when the same behavior occurs routinely in dogs who are not drug-sniffing canines—would effectively insulate law enforcement from judicial scrutiny." USA v. Braddy, No. 19-12823 (11th Cir. 8/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912823.pdf

DOG ALERT-PUN OF THE DAY (DISSENT): "The government's position would render judicial review of searches and seizures all bark and no bite." USA v. Braddy, No. 19-12823 (11th Cir. 8/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912823.pdf

CONSECUTIVE SENTENCES: §775.087(2)(d) permits consecutive sentences at judicial discretion for specified crimes committed in a single criminal episode with either multiple victims or injuries. Levine v. State, 1D19-3157 (8/31/21)

https://www.1dca.org/content/download/780956/opinion/193157_DC05_0

8312021_150344_i.pdf

SENTENCING-(CONCURRING): No federal constitutional requirement exists for trial judges (or appellate judges) to explain the manner in which they exercised their sentencing discretion (or applied the abuse of discretion standard on appeal). Judges need not make a factual finding or an on the record explanation that a murderer under the age of 18 is permanently incorrigible before a sentencing of life without parole may be imposed. Washington v. State, 1D19-4487 (8/31/21)

https://www.1dca.org/content/download/780957/opinion/194487_NOND_08312021_150640_i.pdf

SENTENCING-HOMICIDE-MINOR (CONCURRING): States may categorically prohibit life without parole for all offenders under 18, require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole, or may direct sentencers to formally explain on the record why a lifewithout-parole sentence is appropriate notwithstanding the defendant's youth. "Clarification about the process and standards for discretionary juvenile sentencing decisions must come from developments in state procedures and legislation. Washington v. State, 1D19-4487 (8/31/21)

https://www.1dca.org/content/download/780957/opinion/194487_NOND_08312021_150640_i.pdf

COMPETENCY: Counsel was not ineffective for not seeking a competency evaluation. Not every manifestation of mental illness demonstrates incompetence to stand trial. Owens v. State, 1D20-1467 (8/31/21)

https://www.1dca.org/content/download/780962/opinion/201467_DC05_0

8312021_151152_i.pdf

SEARCH AND SEIZURE-GOVERNMENT FILTER TEAM: A search warrant authorizing a government filter team to weed out attorney/client documents does not violate Fourth Amendment. USA v. Korf, No. 20-14233 (11th Cir. 8/30/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202014223.pdf

HEARSAY-AGE: Officer may not testify about non-testifying child's age based on his review of probation records and interview of the Child. The hearsay exception for statements of personal or family history only applies when the declarant is unavailable. Miles v. State, 1D20-1467 (8/30/21)

https://www.1dca.org/content/download/780771/opinion/200989_DC13_08302021_140949_i.pdf

HEARSAY-UNAVAILABLE WITNESS: An uncooperative witness is not *per se* unavailable. Miles v. State, 1D20-1467 (8/30/21)

https://www.1dca.org/content/download/780771/opinion/200989_DC13_08302021_140949_i.pdf

RESTITUTION: Court may not order Child or parent to make restitution without making a finding of ability to pay. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. A.C. v. State, 2D18-1643 (8/27/21)

https://www.2dca.org/content/download/780266/opinion/181643_DC0

8_08272021_080612_i.pdf

COSTS: When imposing the statutory minimum, the trial court need not announce the imposition of the public defender's fee or inform the defendant of a right to contest it. A.C. v. State, 2D18-1643 (8/27/21)

https://www.2dca.org/content/download/780266/opinion/181643_DC08_08272021_080612_i.pdf

CREDIT FOR TIME SERVED: Upon sentencing Defendant for VOP, Court must give credit for time spent in another jail (Sumter County) before being transferred to the county of disposition (Citrus County) once the charges in the first county have been resolved. If Defendant's Sumter County charges were resolved before her transfer to Citrus County, and her Citrus County detainer was the only reason Sumter County held her, she is entitled to credit for time served. Schiedenhelm v. State, 5D21-1565 8/27/21)

https://www.5dca.org/content/download/780263/opinion/211565_DC08_08272021_085515_i.pdf

CREDIT FOR TIME SERVED-DISCLOSURE OF CHARGES: Fla.R.Cr.P. 3.801(c)(4) requires movants to disclose the existence of other criminal charges pending during their incarceration and the resolution of those charges. Schiedenhelm v. State, 5D21-1565 8/27/21)

https://www.5dca.org/content/download/780263/opinion/211565_DC08_08272021_085515_i.pdf

SEARCH AND SEIZURE-AUTOMOBILE: Officers may stop car were sticker date on tag was present but not visible to officers. Bradley v.

Benton, No. 20-11509 (11th Cir. 8/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011509.pdf

SEARCH AND SEIZURE: Officers may pursue and tase passenger who flees (and when tased falls off wall, breaks neck, and dies), notwithstanding that he had been non-threatening and had not engaged in evident criminal conduct before fleeing. Headlong flight—wherever it occurs—is the consummate act of evasion and though it is not necessarily indicative of wrongdoing, it is certainly suggestive of such. Bradley v. Benton, No. 20-11509 (11th Cir. 8/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011509.pdf

SEARCH AND SEIZURE-DEADLY FORCE: Officer tasing an unarmed suspect atop an eight foot high wall, causing him to fall and break his neck, is unlawful deadly force. Bradley v. Benton, No. 20-11509 (11th Cir. 8/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011509.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: Trial counsel was ineffective for abandoning the Defendant's only viable defense (insanity) on the eve of trial, particularly where he had neglected to obtain any mental health evaluation. Nonetheless, Defendant is not entitled to relief because he could not show prejudice. The test for prejudice is whether there was a reasonable probability of success on the insanity defense. Evidence that Defendant engaged in disturbed behavior such as putting holes in walls, speaking with himself, using a baseball bat to destroy a TV, hearing voices so much that he had to cover his ears to refrain from hearing them, wearing headphones while sleeping to drown out those voices, digging holes in the

ground for no reason, cutting holes in a wire fence, wanting to see a dead person, sitting in the dark and isolating himself, and crying spontaneously is insufficient. Hayes v. Secretary, Florida DOC, No. 19-10856 (11th Cir. 8/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910856.pdf

INSANITY: To prevail on an insanity defense in Florida, Defendant must show a reasonable probability of insanity by clear and convincing evidence. Hayes v. Secretary, Florida DOC, No. 19-10856 (11th Cir. 8/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910856.pdf

CLEAR AND CONVINCING EVIDENCE: Clear and Convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue. Hayes v. Secretary, Florida DOC, No. 19-10856 (11th Cir. 8/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910856.pdf

POST CONVICTION RELIEF: In death penalty case, Defendant is not entitled to relief on claim of ineffective assistance of counsel where the evidence of aggravation is overwhelming and there is not a reasonable probability that on presented additional evidence of mitigation would have resulted in a life sentence recommendation. Hilton v. State, SC19-373 (8/26/21)

https://www.floridasupremecourt.org/content/download/780098/opinion/sc19-373.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Hurst's

requirement of a unanimous jury finding in death penalty cases only requires that the jury unanimously agree to the existence of at least one statutory aggravating circumstance, not a unanimous concurrence that death is warranted. Hilton v. State, SC19-373 (8/26/21)

https://www.floridasupremecourt.org/content/download/780098/opinion/sc19-373.pdf

DEATH PENALTY: Mentally ill inmates can be executed. Hilton v. State, SC19-373 (8/26/21)

https://www.floridasupremecourt.org/content/download/780098/opinion/sc19-373.pdf

JUROR-CHALLENGE FOR CAUSE-PRESERVATION: The preservation of the challenge to a potential juror requires two objections: (1) a contemporaneous objection that puts the trial court on notice; and (2) a second objection before the jury is sworn. Failure to lodge the second objection indicates abandonment of the initial objection. "I will have the prior objections put on the record, Judge," does not preserve the issue. Hilton v. State, SC19-373 (8/26/21)

https://www.floridasupremecourt.org/content/download/780098/opinion/sc19-373.pdf

EVIDENCE: In murder case, charred human bones found at the Defendant's campsite are admissible because a reasonable juror could fairly infer from them that Defendant murdered the victim, notwithstanding that the State did not establish that the bones came from the victim's body. (*See* Malory, Thomas, Le Morte D'arthur, Book V, Chapter 5). Hilton v. State, SC19-373 (8/26/21)

https://www.floridasupremecourt.org/content/download/780098/opinion/sc19-373.pdf

INVITED ERROR: An improper coercive jury charge (a second, modified Allen charge), requested by defense counsel is not reviewable for fundamental error. Baptiste v. State, No. SC20-1083 (8/26/21)

https://www.floridasupremecourt.org/content/download/780100/opinion/sc20-1083.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Hall, governing considerations of intellectual disability for purposes of the death penalty, does not apply retroactively. Nixon v. State, No. 20-48 (8/26/21)

https://www.floridasupremecourt.org/content/download/780099/opinion/sc20-48.pdf

DEATH PENALTY: Hurst relief is unavailable to defendants whose death sentences were final before the Ring v. Arizona. Nixon v. State, No. 20-48 (8/26/21)

https://www.floridasupremecourt.org/content/download/780099/opinion/sc20-48.pdf

RULES-AMENDMENT-INCOMPETENCE: Rule 3.212(d) is amended to specify that a criminal defendant who is not competent to proceed and who cannot be restored to competency within the reasonably foreseeable future must be released from custody or the State must initiate civil commitment proceedings, effective October 1, 2021. In Re: Amendments to Florida Rule of Criminal Procedure 3.212. (8/26/21)

https://www.floridasupremecourt.org/content/download/780101/opinion/sc21-7.pdf

EXPERT: Court properly excluded Defendant's accounting expert because his testimony failed to satisfy Daubert because it may not have rested on sufficient facts, the expert did not use a reliable method, and the expert did not apply the method reliably to the facts.Expert testimony is allowed if it will help the factfinder understand evidence or determine a fact in issue, but only if (1) The testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case. A one hour time limit for the proffer of an accounting expert's testimony is not abuse of discretion. May v. State, 1D 18-5153 (8/26/21)

https://www.1dca.org/content/download/780125/opinion/185153_DC05_08262021_140840_i.pdf

EXPERT-PROFFER: A one hour time limit for the proffer of an accounting expert's testimony is not abuse of discretion. May v. State, 1D 18-5153 (8/26/21)

https://www.1dca.org/content/download/780125/opinion/185153_DC05_08262021_140840_i.pdf

SPEEDY TRIAL-COVID: The COVID suspension of speedy trial applies to the filing of the information. During the COVID speedy trial suspension, the Court is not required to file an information within 175 days of arrest. State v. Johnson, 1D20-2649 (8/26/21)

https://www.1dca.org/content/download/780129/opinion/202649_DC13_08262021_141252_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: One may file a belated motion for post conviction relief where counsel was retained for that purpose but never filed the motion, but one must do so within two years of the original deadline. Seme v. State, 3D21-870 (8/25/21)

https://www.3dca.flcourts.org/content/download/779797/opinion/210870_DC05_08252021_104341_i.pdf

POST CONVICTION RELIEF: Court may not deny a motion for post-conviction relief as legally insufficient without permitting amendment. If the motion is insufficient on its face, and the motion is timely filed under this rule, the court shall enter a nonfinal, nonappealable order allowing the defendant sixty days to amend the motion. Ramirez v. State, 3D 21-957 (8/25/21)

https://www.3dca.flcourts.org/content/download/779798/opinion/210957_DC13_08252021_104440_i.pdf

POST CONVICTION RELIEF: The adjudication of a defendant as a habitual offender when the requisite sequential felonies do not exist may be corrected as an illegal sentence pursuant to rule 3.800(a) so long as the error is apparent from the face of the record. McGee v. State, 3D21-1213 (8/25/21)

https://www.3dca.flcourts.org/content/download/779799/opinion/211213_DC05_08252021_104524_i.pdf

POST CONVICTION RELIEF-COLLATERAL ESTOPPEL: Collateral estoppel may operate as a bar to a successive motion to correct an illegal sentence. The law of the case doctrine prevents a litigant from relitigating the same issues previously considered and rejected on the merits and reviewed on appeal. McGee v. State, 3D21-1213 (8/25/21)

https://www.3dca.flcourts.org/content/download/779799/opinion/211213_

DC05_08252021_104524_i.pdf

EXCLUSIONARY RULE-INEVITABLE DISCOVERY: The standard of proof for the inevitable discovery exception to the exclusionary rule is preponderance of evidence, not a reasonable probability, of ultimate discovery. "[W]e hold that the standard of predictive proof the government must satisfy in order to establish the proper application of the ultimate discovery exception is preponderance of the evidence, not reasonable probability. All of our decisions holding to the contrary are overruled." USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

REASONABLE PROBABILITY: "The primary problem. . .is that no one knows exactly what reasonable probability means. . .The words are plain enough separately, but their combined meaning is anything but plain. The term 'reasonable probability' implies there must be an unreasonable probability, just as darkness must exist for light to have meaning. Otherwise, why put the limiting adjective 'reasonable' in front of the noun 'probability' — what work does 'reasonable' do? But how can a probability be unreasonable? How does a reasonable probability differ from an unreasonable one?" USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

DEFINITION-"REASONABLE PROBABILITY": "Probably. . .no one knows exactly what it means." USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

EXCLUSIONARY RULE: The purpose of the Fourth Amendment and the exclusionary rule is not to increase the reliability of criminal proceedings or bolster our confidence in their outcome. Nor is that their effect. Just the opposite. The primary effect of using the exclusionary rule to enforce the Fourth Amendment is to exclude from the trier of fact some relevant and probative evidence, which could decrease the reliability of the outcome of a criminal proceeding. USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

DEFINITION-PREPONDERANCE OF EVIDENCE: "Preponderance of the evidence's" meaning is "simple, straightforward, and clear." A preponderance of the evidence is evidence which is more convincing than the evidence offered in opposition to it and simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. "Or phrased in a slightly different fashion, it is proof that persuades the trier of fact that a proposition 'is more likely true than not true.'" USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

DEFINITION-"MUST": "Must" is a term of requirement. "Must," like "shall," is a mandatory term that connotes a requirement. USA v. Watkins, No. 18-14336 (11th Cir. 8/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.enb.pdf

COMPETENCY: Where the parties and the judge agree, the trial court may decide the issue of competency on the basis of the written reports alone. Chirinos-Calix v. State, 1D20-952 (8/20/21)

https://www.1dca.org/content/download/778947/opinion/200952_DC05_08202021_134401_i.pdf

COMPETENCY: The failure to enter a written competency order is not fundamental error) Chirinos-Calix v. State, 1D20-952 (8/20/21)

https://www.1dca.org/content/download/778947/opinion/200952_DC05_08202021_134401_i.pdf

DOUBLE JEOPARDY-RETROACTIVITY: The holding in Lee (that to determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court may consider only the charging document) does not apply retroactively to cases which were already final when Lee v. State was decided. Dettle v. State, 1D20-2651 (8/20/21)

https://www.1dca.org/content/download/778949/opinion/202651_DC05_08202021_135202_i.pdf

VOP-CURFEW: Probation properly revoked where Defendant is found with friends on the beach after curfew. "[Defendant]'s lack of effort to ever discern the time suggests willful ignorance rather than negligent forgetfulness. While [he] had every right to be away from his residence until 10PM, his actions before and during his violation of curfew do not portray some inept attempt to comply." Williams v. State, 1D20-3112 (8/20/21)

https://www.1dca.org/content/download/778953/opinion/203112_DC05_08202021_135415_i.pdf

DISCOVERY-CONFIDENTIAL INFORMANT: The disclosure of a CI's identity when he will not be called as a witness is required only if the failure to do so infringes on Defendant's constitutional rights. A defendant's knowledge of an informant's name does not necessarily extinguish the need for maintaining an informant's confidentiality. An *in camera* hearing is required to determine whether, among other factors, the CI would be relevant and helpful to show entrapment. State v. Sullivan, 5D20-1482 (8/20/21)

https://www.5dca.org/content/download/778847/opinion/201482_DC03_08202021_082043_i.pdf

SEARCH AND SEIZURE-WIRETAP: Acting, as opposed to the Elected, State Attorney has authority to apply for a wiretap. The actions of an acting state attorney shall be in all respects as valid as a regularly appointed state attorney. State v. Wright, 5D20-1807 (8/20/21)

https://www.5dca.org/content/download/778848/opinion/201807_DC13_08202021_082503_i.pdf

CREDIT FOR TIME SERVED: Defendant may not seek to have Circuit Court order DOC to calculate his gain time before exhausting his administrative remedies. Webb v. State, 5D21-686 (8/20/21)

https://www.5dca.org/content/download/778850/opinion/210686_DC05_08202021_082943_i.pdf

FIRST STEP: Because a period of supervised release is simply a part of the sentence for the underlying conviction, a sentence imposed upon the revocation of supervised release qualifies for a reduction under §404(b) of the First Step Act when the underlying crime is a covered offense under the

Act. Post-revocation penalties relate to the original offense. Court does not abuse its discretion in denying sentence reduction. USA v. Gonzalez, No. 19-14381 (8/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914381.pdf

ABUSE OF DISCRETION: A district court abuses its discretion when it applies an incorrect legal standard or makes a clear error of judgment. USA v. Gonzalez, No. 19-14381 (8/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914381.pdf

DEPORTATION-AGGRAVATED FELONY: Any alien who is convicted of an aggravated felony at any time after admission is deportable. Further, that alien is ineligible for cancellation of removal. An "aggravated felony" includes an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months. The parenthetical "(relating to document fraud)" in 8 U.S.C. § 1101(a)(43)(P) is descriptive, not limiting. Germaine v. U.S. Attorney General, No. 20-11419 (8/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202011419.pdf

DOUBLE JEOPARDY: Convictions for both grand theft and organized scheme to defraud based on the same conduct violate double jeopardy. Grand theft is a lesser-included offense of organized scheme to defraud. Where there are two separate thefts charged, both of which could be subsumed in the fraud count, Double Jeopardy disallows dual convictions. Amison v. State, 1D18-1312 (8/18/21)

https://www.1dca.org/content/download/778526/opinion/181312_DC08_0

8182021_132325_i.pdf

RESTITUTION: Where some of the money raised in a charity scam was ultimately distributed to the intended recipient, that amount should not be assessed in restitution. "Giving back money previously stolen or withheld unlawfully is still giving back." Amison v. State, 1D18-1312 (8/18/21)

https://www.1dca.org/content/download/778526/opinion/181312_DC08_08182021_132325_i.pdf

POST CONVICTION RELIEF-VOIR DIRE: A claim of ineffective assistance of counsel based upon counsel's failure to object to the State's use of peremptory challenges is not cognizable in a postconviction motion. Reed v. State, 1D21-335 (8/18/21)

https://www.1dca.org/content/download/778529/opinion/210335_DC05_08182021_132911_i.pdf

INFORMATION: Where a defendant waits until after the State rests its case to challenge the propriety of an indictment or information, the defendant is required to show not only that the indictment is technically defective but that it is so fundamentally defective that it cannot support a judgment of conviction. Reed v. State, 1D21-335 (8/18/21)

https://www.1dca.org/content/download/778529/opinion/210335_DC05_08182021_132911_i.pdf

WRIT: A decision on an extraordinary writ petition that clearly shows that the issue was considered by the court on the merits is deemed a decision which would later bar the litigant from presenting the issue under the

doctrines of res judicata or collateral estoppel. Holland v. State, 1D21-11563 (8/18.21)

https://www.1dca.org/content/download/778531/opinion/211563_DC02_08182021_133240_i.pdf

RE-SENTENCING-LIFE SENTENCE-MINOR-HOMICIDE: Once a trial court has rendered an order granting relief under rule 3.850, it may not revisit its ruling absent a motion for rehearing or appeal, but an order appointing counsel is not an order requiring a resentencing order. Court properly denies a hearing for resentencing based where Defendant's two consecutive life sentences allowed for parole review. Malone v. State, 1D20-2482 (8/17/21)

https://www.1dca.org/content/download/778287/opinion/202482_DC05_08172021_130527_i.pdf

COSTS: When imposing the statutory minimum, the trial court need not announce the imposition of the public defender's fee or inform the defendant of a right to contest the fee. D.L.J. v. State, 2D19-4526 (8/18/20)

https://www.2dca.org/content/download/778421/opinion/194526_DC08_08182021_080731_i.pdf

COSTS: State Attorney's Office must make an express request for costs. D.L.J. v. State,

https://www.2dca.org/content/download/778421/opinion/194526_DC08_08182021_080731_i.pdf

COSTS: $115 Crimes Compensation Trust Fund (CCTF) fee exceeds the

statutory maximum. §938.03(1) sets the cost at $50. D.L.J. v. State,

https://www.2dca.org/content/download/778421/opinion/194526_DC08_08182021_080731_i.pdf

POST CONVICTION RELIEF-TWO YEAR TIME LIMIT: The two year time limit for filing a motion for post-conviction relief under R. 3.850 is really two years and thirty days from the entry of the Final Judgment because the judgment and sentence do not become final until the expiration of the thirty days allowed for filing a notice of appeal therefrom. Barco v. State, 2D20-2289 (8/18/21)

https://www.2dca.org/content/download/778427/opinion/202289_DC13_08182021_081829_i.pdf

POST CONVICTION RELIEF-TWO YEAR TIME LIMIT: Defendant has two years and thirty days from last amendment to the Final Judgment to file a motion for post-conviction relief under Fla. R. 3.850. Barco v. State, 2D20-2289 (8/18/21)

https://www.2dca.org/content/download/778427/opinion/202289_DC13_08182021_081829_i.pdf

JUDGE-DISQUALIFICATION: Defendant is entitled to hearing on claim that counsel was ineffective for failing to move to disqualify judge. Court departed from its role of impartiality by excusing the jury and asking the State whether it intended to present evidence of other sexual molestations after Defendant testified that he was "not that type of person." Disqualification is required where judge suggests to counsel alternatives on how to proceed strategically. Capriano v. State, 4D19-3608 (8/18/21)

https://www.4dca.org/content/download/778471/opinion/193608_DC08_0

8182021_100213_i.pdf

ZOOM: Do witnesses appearing in a juvenile adjudicatory hearing by Zoom during a global pandemic constitute a per se violation of the defendant's due process rights? Question certified. E.A.C. v. State, 4D20-2079 (8/18/21)

https://www.4dca.org/content/download/778479/opinion/202079_NOND_08182021_101044_i.pdf

PROBATION-CONDITION: Condition of probation order requiring ankle monitor must be stricken where Defendant Petitioner was never alleged in the information to have had any sexual activity with any person fifteen (15) years or younger, nor was there any judicial finding that so found. Marks v. State, 4D21-1063 (8/18/21)

https://www.4dca.org/content/download/778489/opinion/211063_DC03_08182021_102818_i.pdf

HEARSAY-AUTHENTICATION-FACEBOOK SCREENSHOTS: Communications generally can be authenticated by appearance, contents, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. Screenshots of Facebook messages can be authenticated by the recipient. Gilbert v. State, 2D19-1622 (8/13/21)

https://www.2dca.org/content/download/777579/opinion/191622_DC05_08132021_081410_i.pdf

HEARSAY-DIARY: Victim's journal is improperly admitted over hearsay objection. It does not qualify as a a prior consistent statement because it did not predate victim's motive to fabricate. But error here is harmless. Gilbert

v. State, 2D19-1622 (8/13/21)

https://www.2dca.org/content/download/777579/opinion/191622_DC05_08132021_081410_i.pdf

ARGUMENT: State's argument regarding the Victim's troubled past was not improper where Defendant argued that she had a pattern of breaking the rules, lying, and acting out. State's argument, turning an allegedly vindictive past into a vulnerable childhood, is well within bounds. Gilbert v. State, 2D19-1622 (8/13/21)

https://www.2dca.org/content/download/777579/opinion/191622_DC05_08132021_081410_i.pdf

STATUTE OF LIMITATIONS: Defendant's prosecution for a second degree felony (attempted robbery with a firearm, with a 10-20-life enhancement, is time barred. The three-year statute of limitations, tolled for an additional three years during the Defendant's absence from the state, renders untimely an amended information filed ten years after the crime. Counsel was ineffective for not raising the issue. The State may only amend a charging document outside of the limitations period when necessary to correct a clerical error. The filing of an amended information purporting to be a complete restatement of the charges supersedes and vitiates an earlier information. Marcario v. State, 2D19-4743 (8/13/21)

https://www.2dca.org/content/download/777585/opinion/194743_DC13_08132021_081833_i.pdf

REMOTE HEARING-NOTICE-RISK PROTECTION: Risk protection order is vacated where Respondent was not given proper notice that the hearing would be conducted virtually, and he showed up in person but was denied

entrance. Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. E.P. v. Lakeland Police, 2D20-2121 (8/13/21)

https://www.2dca.org/content/download/777597/opinion/202121_DC13_08132021_082509_i.pdf

COMPETENCY: Even if the evaluations unanimously agree that the defendant is competent, the court still must conduct a hearing. Knight v. State, 5D20-2435 (8/13/21)

https://www.5dca.org/content/download/777617/opinion/202435_DC05_08132021_085943_i.pdf

CHILD HEARSAY: Although Court should generally exclude multiple child hearsay witnesses as unduly prejudicial and/or needlessly cumulative ("[W]e can envision the prosecution parading an endless stream of hearsay witnesses before the jury, smothering the defendant in an avalanche of consistent statements."), but Defendant here failed to preserve his cumulative evidence argument for appellate review, as he did not raise it at the child hearsay hearing nor object on that basis at trial. Knight v. State, 5D20-2435 (8/13/21)

https://www.5dca.org/content/download/777617/opinion/202435_DC05_08132021_085943_i.pdf

POSSESSION OF FIREARM BY FELON-KNOWLEDGE: When a defendant is charged with being a felon in possession of a firearm under §922(g)(1), the knowledge-of-status element requires proof that at the time he possessed the firearm he was aware he had a prior conviction for a crime punishable by imprisonment for a term exceeding one year. Defendant's

plea was involuntary because Defendant was not advised of knowledge element (Rehaif had not yet been decided). A Rehaif error affecting the knowing and voluntary nature of a guilty plea is not structural, so that plea need only be vacated if Defendant showed prejudice, i.e., that he would not have pled or did not know his status. USA v. Coats, No. 18-13113 (8/12/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813113.pdf

ACCA-BURGLARY: Georgia's burglary statute is a valid predicate offense for the Armed Career Criminal Act, and encompasses Defendant's conviction as an aider and abettor. An ostensible predicate crime is not deprived of that status merely because the conviction may have been based on conduct that aided and abetted the crime. USA v. Coats, No. 18-13113 (8/12/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813113.pdf

SENTENCING-ACCEPTANCE OF RESPONSIBILITY: Defendant can be denied an adjustment for acceptance of responsibility where he punched out the CI in jail prior to his indictment. Obstruction of justice precludes a reduction for acceptance of responsibility absent extraordinary circumstances. USA v. Coats, No. 18-13113 (8/12/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813113.pdf

PRINCIPAL: Mother is properly convicted as a principal to attempted murder for inducing her daughter, by threatening to ground her, to attack the mother's ex-boy friend's girl friend with a machete. To "counsel" or "procure" the commission of a crime makes one a principal. One need not be present at the commission of the crime. Walker v. State, 1D20-608 (8/12/21)

https://www.1dca.org/content/download/777415/opinion/200608_DC05_08122021_133732_i.pdf

DEFINITION-"PROCURE": "Procure" means to cause a thing to be done; to instigate; to contrive, bring about, effect or cause. Walker v. State, 1D20-608 (8/12/21)

https://www.1dca.org/content/download/777415/opinion/200608_DC05_08122021_133732_i.pdf

POST CONVICTION RELIEF-TIME LIMIT: Two-year time limit for filing R.3.850 motion may be not tolled while he is incarcerated out of state, if he lacked access to Florida legal materials.Court must make a factual determination whether he could have accessed the necessary materials, in light of improved internet access to those materials. Hightower v. State, 1D20-1569 (8/12/21)

https://www.1dca.org/content/download/777416/opinion/201569_DC13_08122021_134101_i.pdf

DUI REVIEW: Defendant is not entitled to invalidation of her DL suspension based on breath technicians failure to appear at administrative hearing where Defendant had refused the breth test. "Muchhala makes several reasonable arguments [why]. . .the department is required to invalidate the license suspension if a subpoenaed breath technician fails to appear, even if the driver had refused the test. But our task is not to determine de novo what the statute requires; it is to determine whether the circuit court afforded procedural due process, whether it applied the correct law, and whether there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. Muchhala has failed to demonstrate that his interpretation of the statute was '"clearly established,' or that the circuit court

violated any other 'clearly established' principle of law. Muchhala v. Florida DHSMV, 1D20-2365 (8/12/21)

https://www.1dca.org/content/download/777420/opinion/202365_DC02_08122021_135222_i.pdf

UNLAWFUL PRESCRIPTION: Government need not prove by expert testimony that the patients did not need the pills unlawfully prescribed in pill mill prosecution. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

CONSPIRACY-PILL MILL: Testimony that Defendant (Nurse Practitoner and Doctor worked together to distribute controlled substances and that they directed patients to return monthly to keep up billing is sufficient to establish conspiracy. A defendant can be convicted of conspiracy even if his or her participation in the scheme is slight by comparison to the actions of other co-conspirators. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

HEALTH CARE FRAUD: A person is guilty of committing health care fraud if, in connection with the delivery of or payment for health care benefits, items, or services, she knowingly and willfully executes a scheme (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program. Billing a health care benefit program for office visits where controlled substances were illegally prescribed is health care fraud. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

JURY INSTRUCTION: Court errs in instructing the jury that the parties stipulated to something that they did not stipulate to but the error is not revrble where Defendant was able to present her defense. There was no substantial and ineradicable doubt as to whether the jury was properly guided in its deliberation. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

EVIDENCE: Court properly exercised its discretion in excluding a line of questioning where counsel's only proffered showing of relevance was "I have to be perfectly frank with the Court. I do not know. [Ms. Akwuba] asked me to ask these questions. She gave me a list of questions she wanted me to ask her this morning, and this is one of these questions. I don't know where it's going." USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

EXPERT: Expert may give testimony about the applicable standard of professional conduct. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

CUMULATIVE ERROR: Defendant is not entitled to a new trial based on cumulative error where there are no errors to accumulate. USA v. Akwuba, No. 19-12230 (11th Cir. 8/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912230.pdf

PANHANDLING: Panhandling ordinance prohibiting begging in public violates the First Amendment. Wattrous v. State, 2D21-1065 (8/11/21)

https://www.2dca.org/content/download/777153/opinion/211065_DC13_08112021_082227_i.pdf

TRESPASSING-JOA: Defendant is entitled to a Judgment of Acquittal for trespass on legally posted horticultural property where State failed to present sufficient evidence that the horticultural property was "legally posted. A picture of a "No Trespassing" sign, in absence of evidence of where signes were posted, their spacing, and their size, is insufficient. Couch v. State, 3D20-732 (8/11/21)

https://www.3dca.flcourts.org/content/download/777157/opinion/200732_DC08_08112021_101715_i.pdf

MINOR-LENGTHY SENTENCE: Jury must find that the Defendant actually killed, intended to kill, or attempted to kill the victims. Defendant is entitled to a *de novo* resentencing, notwithstanding that that Court indicated it would impose the same sentence regardless. Puzio v. State, 4D17-3034 (8/11/21)

https://www.4dca.org/content/download/777168/opinion/173034_DC08_08112021_100203_i.pdf

JOA-SALE WITH 1000 FEET: Defendant cannot be convicted of sale of narcotics within 1,000 feet of a child care facility which did not have a statutorily-required sign identifying it as a "licensed" child care facility, or words to that effect. Signs saying "PRESCHOOL" are legally insufficient. Brevil v. State, 4D19-3010 (8/11/21)

https://www.4dca.org/content/download/777169/opinion/193010_DC08_08112021_100358_i.pdf

STATUTORY CONSTRUCTION: An elementary principle of statutory construction is that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage. Brevil v. State, 4D19-3010 (8/11/21)

https://www.4dca.org/content/download/777169/opinion/193010_DC08_08112021_100358_i.pdf

VOP: Defendant is not entitled to reinstatement pursuant §948.06(2)(f)1 for a low-risk violation, where he had two violations, i.e that he possessed and he smoked methamphetamine. (In 2021, the legislature corrected this anomaly in the wording of the statute). Five years of prison are lawful. Kaiser v. State, 4D20-2265 (8/11/21)

https://www.4dca.org/content/download/777173/opinion/202265_DC05_08112021_100817_i.pdf

VOP (DISSENT): "To reach its conclusion, the majority has ignored the plain language of a statute and violated basic rules of statutory construction. As a result, the legislative intent—to conserve tax dollars by requiring non-incarcerative sentencing options—has been frustrated." Under the harmonious-reading canon, there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously. Kaiser v. State, 4D20-2265 (8/11/21)

https://www.4dca.org/content/download/777173/opinion/202265_DC05_08112021_100817_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him that his DNA was found on

several items of evidence when no written report supported that advice, notwithstanding that there were such reports but they were furnished after Defendant filed his motion. Cabrera v. State, 4D21-81 (8/11/21)

https://www.4dca.org/content/download/777174/opinion/210081_DC13_08112021_100953_i.pdf

DISTRIBUTION OF CONTROLLED SUBSTANCE: Corrupt cops who provided protection to purporteed drug dealers in a sting operation are properly convicted of possession with intent to distribute a controlled substance and conspiracy. USA v. Harris, No. 19-13692 (11th Cir. 8/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913692.pdf

POSSESSION OF FIREARM IN FURTHERANCE OF DRUG TRAFFICKING: Defendant's claim that the firearm played no role in protecting the drugs or the drug dealer because he did not display it falls flat. The very purpose of possessing a weapon was to protect the drug couriers. USA v. Harris, No. 19-13692 (8/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913692.pdf

ENTRAPMENT: There is no entrapment when a defendant is willing to break the law and Government merely provides what appears to be a favorable opportunity for the defendant to commit a crime. Predisposition focuses upon whether the defendant was an unwary innocent or, instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime. Predisposition may be demonstrated simply by a defendant's ready commission of the charged crime. USA v. Harris, No. 19-13692 (8/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913692.pdf

DURESS: A general concern that a coconspirator might retaliate does not establish the duress defense, particularly where the Defendant had opportunities to withdraw. USA v. Harris, No. 19-13692 (8/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913692.pdf

PEREMPTORY CHALLENGE-RACE: To determine whether a prosecutor has discriminated on the basis of race in exercising a peremptory challenge, first, the district court must determine whether the party challenging the strike has established a prima facie case by showing facts sufficient to support an inference of discriminatory motive. If a prima facie showing is made, the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). The reason given for the peremptory strike need not be a good reason. In the third and final stage, the district court must evaluate the persuasiveness of the proffered reason and determine whether, considering all relevant circumstances, the objector has carried the burden of proving discrimination. A "gut feeling" about the juror and avoidance of eye contact during voir dire may be sufficient. USA v. Harris, No. 19-13692 (8/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913692.pdf

COUNSEL: Court is not required to renew offer of counsel at a Williams-rule hearing. Richardson v. State, 1D19-4526 (8/9/21)

https://www.1dca.org/content/download/766929/opinion/194526_DC05_08092021_132120_i.pdf

IMPEACHMENT: A written transcript is not required to impeach a witness by a prior inconsistent statement, but an inconsistency must be shown. Richardson v. State, 1D19-4526 (8/9/21)

https://www.1dca.org/content/download/766929/opinion/194526_DC05_08092021_132120_i.pdf

JUDGMENT OF ACQUITTAL: A bare bones motion for a new trial Is insufficient to preserve any specific argument for appellate review. Richardson v. State, 1D19-4526 (8/9/21)

https://www.1dca.org/content/download/766929/opinion/194526_DC05_08092021_132120_i.pdf

KIDNAPPING: Defendant is properly convicted of kidnapping for picking up a child in a van then taking her to a house to sexually molest her. Kidnapping occurs when the movement or confinement employed by the defendant is 1) not slight, inconsequential, or merely incidental to the other crime; 2) not inherent in the nature of the other crime; and 3) has some significance independent of the other crime charged so as to lessen the risk of detection or make the other crime easier to commit. Richardson v. State, 1D19-4526 (8/9/21)

https://www.1dca.org/content/download/766929/opinion/194526_DC05_08092021_132120_i.pdf

SENTENCING-GUIDELINES: Defendant is not entitled to re-sentencing where there is a scoresheet error but the record shows that the Court would otherwise have imposed the same sentence. Upton v. State, 1D20-1092 (8/9/21)

https://www.1dca.org/content/download/766957/opinion/201092_DC05_08092021_132241_i.pdf

POST CONVICTION RELIEF: Court erred by summarily denying motion for post conviction relief without attaching records on the grounds that claim of ineffective assistance should have been rqised on direct appeal. Claims of ineffective assistance of counsel generally must be considered in postconviction proceedings rather than on direct appeal. Dukes v. State, 1D20-2702 (8/9/21)

https://www.1dca.org/content/download/766998/opinion/202707_DC13_08092021_133459_i.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: Counsel is not ineffective for failure to hire a DNA expert where cross-examination fully established the possibility of transfer DNA, and where the DNA was not conclusively established to be his. State v. Miller, 5D20-1183 (8/6/21)

https://www.5dca.org/content/download/763391/opinion/201183_DC13_08062021_082915_i.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: Counsel could not be found to be ineffective for failure to hire GPS expert where the R. 3.850 hearing included no evidence that the cellphones were capable of showing Defendant's vehicle's minute by minute location. State v. Miller, 5D20-1183 (8/6/21)

https://www.5dca.org/content/download/763391/opinion/201183_DC13_08062021_082915_i.pdf

DEPORTATION: Possession of a firearm by a felon does not constitutes a "firearm offense" within the meaning of the INA, which would render him removable. Simpson v. U.S. Attorney General, No.19-11156 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911156.pdf

STATUTORY INTERPRETATION: "Categorical" and "Modified Categorical" interpretations of statutes explained. Simpson v. U.S. Attorney General, No.19-11156 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911156.pdf

CARRYING CONCEALED FIREARM BY FELON: §790.23(1)(a) is categorically overbroad because the statute prohibits a felon's possession of ammunition, and ammunition does not constitute a firearm under §921(a)(3) because ammunition is not a weapon which can expel a projectile. Nor does ammunition fit within the other definitions of a firearm in §921(a)(3). Stated differently, the least culpable conduct for the possession offense is the possession by a felon of ammunition, and the least culpable conduct for the concealed carrying offense is the concealed carrying of a dirk or billie, and both of these scenarios are broader than the firearm offense described by §1227(a)(2)(C) of the INA through its cross-reference to the definition of a firearm in § 921(a)(3). "So both of the Florida offenses in §790.23(1)(a) are broader than what the applicable federal law provides. And that, for purposes of the categorical approach, is the end of the matter." Simpson v. U.S. Attorney General, No.19-11156 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911156.pdf

HUH?: If the two offenses prescribed by §790.23(1)(a) are themselves divisible, then the statute sets out seven or more separate possession crimes (one crime for possession of each of the five definitions of a firearm, plus one crime for possession of ammunition, plus one crime for possession of an electric weapon or device). And if the offenses are divisible, §790.23(1)(a) would also set out six or more separate concealed carrying crimes (one crime for carrying in a concealed manner each of the four definitions of a concealed weapon, plus one crime for carrying in a concealed manner a tear gas gun, plus one crime for carrying in a concealed manner a chemical weapon or device). Simpson v. U.S. Attorney General,

No.19-11156 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911156.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of multiple counts of possession of firearm/ammunition by a felon where he possessed multiple firearms and ammo. Simpson v. U.S. Attorney General, No.19-11156 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911156.pdf

PROBATION-CONDITIONS: Court may order Defendant convicted of possession of child pornography to reveal his probationary status and offense of convictions to work clients. USA v. Cordero, No. 18-10837 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201810837.pdf

SEX OFFENDER-INTERNET ACCESS: Packingham, recognizing a First Amendment right to internet access, does not apply to sex offenders on probation. Nothing in Packingham undermines the settled principle that a district court may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens during supervised release." USA v. Cordero, No. 18-10837 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201810837.pdf

COMPUTER FRAUD: Computer fraud statute does not extend to people who have improper motives for obtaining information that is otherwise available to them (Remand from US Supreme Court). USA v. Van Buren, No. 18-12024 (11th Cir. 8/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201812024.rem.pdf

ARMED CAREER CRIMINAL: Georgia's version of aggravated assault, which may include a recklessness component, is not a predicate offense for the ACCA. ACCA's elements clause does not include offenses that criminalize reckless conduct; it covers only offenses that require a mens rea of knowledge or intent. USA v. Carter, No. 17-15495 (11th Cir. 8/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715495.pdf

SENTENCING: Defendant is not entitled to be sentenced separately from her homicide co-defendants where she received an individualized sentencing determination. Shulte v. State, 1D20-1518 (8/4/21)

https://www.1dca.org/content/download/763110/opinion/201518_DC05_08042021_131630_i.pdf

STAND YOUR GROUND: "[Y]ou can't just attack somebody as they walk into their front door and slash their throat with a knife because two days prior they sent you a threatening text message." Morris v. State, 1D20-1794 (8/4/21)

https://www.1dca.org/content/download/763111/opinion/201794_DC02_08042021_132030_i.pdf

COSTS: Court errs in imposing $318 in costs for a misdemeanor where statute puts the costs at only $258. Dibelka v. State, 2D19-4085 (8/4/21)

https://www.2dca.org/content/download/763037/opinion/194085_DC08_08042021_084945_i.pdf

VOP-JURISDICTION: Court lacks jurisdiction to revoke probation on third degree felonies where jail, prison, and probation had exceeded five years.

When a trial court imposes a sentence of incarceration followed by probation, the combined term cannot exceed the statutory maximum for the offense. If the combination of probation and prison term exceeds the statutory maximum and the maximum has been expended, the balance of the probation being invalid cannot be revoked and the defendant resentenced. Aristidou v. State, 2D19-4882 (8/4/21)

https://www.2dca.org/content/download/763038/opinion/194882_DC08_08042021_085123_i.pdf

MOTION TO WITHDRAW PLEA: Defendant may move to withdraw plea only within 30 of sentence, and only upon narrow grounds. Cole v. State, 3D21-599 (8/4/21)

https://www.3dca.flcourts.org/content/download/763078/opinion/210599_DC05_08042021_104420_i.pdf

INTERCEPTING ORAL COMMUNICATIONS-RESISTING: LEO lacks probable cause to arrest mother who video-recorded the arrest of her son outside a movie theatre. Ford v. City of Boynton Beach, 4D19-3664 (8/4/21)

https://www.4dca.org/content/download/763064/opinion/193664_DC13_08042021_103149_i.pdf

OBSTRUCTION: Asking officer why he had arrested her son and why he slammed him on a car is not obstruction. Ford v. City of Boynton Beach, 4D19-3664 (8/4/21)

https://www.4dca.org/content/download/763064/opinion/193664_DC13_08042021_103149_i.pdf

RECORDING POLICE ACTION (CONCURRING): "Because recording police communications is an essential tool in gathering information about

police conduct, the police can hardly have an expectation that their communications during the performance of their duties can be subject to their personal expectation of privacy." Ford v. City of Boynton Beach, 4D19-3664 (8/4/21)

https://www.4dca.org/content/download/763064/opinion/193664_DC13_08042021_103149_i.pdf

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POST CONVICTION RELIEF-COUNSEL: Court erred in denying appointment of counsel before post conviction motion hearing where Defendant reads at a fourth grade level. Counsel must be appointed where Defendant is unable to go forward because of his lack of sophistication or education, even where the issues are not complex, novel or meritorious. Although there is no absolute right to counsel in post-conviction relief proceedings, the court must determine the need for counsel and resolve any doubts in favor of the appointment of counsel for the defendant. The question is whether the assistance of counsel is essential to accomplish a fair and thorough presentation of the petitioner's claims, considering the adversary nature of the proceeding, its complexity, the need for an evidentiary hearing, or the need for substantial legal research. Jones v. State, 5D20-1459 (7/30/21)

https://www.5dca.org/content/download/761194/opinion/201459_DC13_07302021_080810_i.pdf

COSTS: Court may not impose a $10.00 cost pursuant to a Judicial Circuit Administrative Order. A fee imposed pursuant to an administrative order, which is not specifically authorized by statute is not allowed. Johnson v. State, 5D21-55 (7/30/21)

https://www.5dca.org/content/download/761198/opinion/210055_DC08_07

302021_081702_i.pdf

SEXUAL PREDATOR: Defendant is improperly designated a Sexual Offender for second degree felonies without a prior predicate offense, but the Sexual Offender designation survives on the basis of his contemporaneous conviction for a first degree felony sex offense (Kidnapping with the Intent to Commit a Felony). Tipsy coachman. Conley v State, 5D2-389 (7/30/21)

https://www.5dca.org/content/download/761199/opinion/210389_DC05_07

302021_081934_i.pdf

COSTS: Court may impose a statutorily required $100 public defender fee without Defendant with notice and an opportunity to be heard. State v. Anderson, 2D19-1545 (7/30/21)

https://www.2dca.org/content/download/761233/opinion/191545_DC08_07

302021_075821_i.pdf

DWLS: A certified computerized copy of Defendant's driver's record is legally insufficient to prove the historical fact of his two prior convictions to show enhancement of DLWS. Prior DUI convictons are treated differently. The rebuttable presumption that the knowledge requirement is satisfied if a judgmentor order appears in the Department's records is restricted to the element that the defendant had knowledge of the suspension or revocation, not to the prior convictions element. Anderson v. State, 2D19-1545 (7/30/21)

https://www.2dca.org/content/download/761233/opinion/191545_DC08_07

302021_075821_i.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: Trial counsel was ineffective

on the face of the record by agreeing to a jury instruction on the justifiable use of deadly force, but not on nondeadly force, where Defendant joined a screwdriver/broomstick fight which ended with broomstick guy being stabbed. Claudio-Martinez v. State, 2D19-3639 (7/30/21)

https://www.2dca.org/content/download/761235/opinion/193639_DC13_07302021_080627_i.pdf

SELF DEFENSE/DEFENSE OF OTHERS: The use of a deadly weapon in self defense does not summarily equate to the use of deadly force. The only act that has been deemed deadly as a matter of law is that of firing a firearm. Where the evidence at trial does not establish that the force used by the defendant was deadly or nondeadly as a matter of law, the question is a factual one to be decided by the jury, and the defendant is entitled to jury instructions on the justifiable use of both types of force. Claudio-Martinez v. State, 2D19-3639 (7/30/21)

https://www.2dca.org/content/download/761235/opinion/193639_DC13_07302021_080627_i.pdf

SELF DEFENSE: Stabbing the victim in the back near the shoulder blade does not, as a matter of law, constitute deadly force, and the question of whether the force used was deadly or nondeadly is a question for the jury. Claudio-Martinez v. State, 2D19-3639 (7/30/21)

https://www.2dca.org/content/download/761235/opinion/193639_DC13_07302021_080627_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel is ineffective in sex battery case to call expert to counter nurse's testimony regarding the conclusions to be drawn from the lack of physical evidence of intercourse. Defendant is not required to name a specific expert for this type of failure to call a witness claim in order for the claim to be deemed sufficient. Miller v. State, 2D20-3204 (7/30/21)

https://www.2dca.org/content/download/761241/opinion/203204_DC08_07302021_080854_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel is ineffective for waiving the right to an offered mistrial. Miller v. State, 2D20-3204 (7/30/21)

https://www.2dca.org/content/download/761241/opinion/203204_DC08_07302021_080854_i.pdf

VOP: §948.06(2)(f)1 does not apply to defendants with more than one technical violation of probation. Adams v. State, 1D20-1677 (7/28/21)

https://www.1dca.org/content/download/760769/opinion/201677_DC05_07282021_103102_i.pdf

POST CONVICTION RELIEF: Imposition of $220 of unidentified mysterious "court costs" in the sentencing order may be challenged as an illegal sentence. The statutory authority for all costs imposed, whether they are mandatory or discretionary, must be cited in the written order. Pirtle v. State, 2D19-672 (7/28/21)

https://www.2dca.org/content/download/760720/opinion/190672_DC08_07282021_083837_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that his attorney unreasonably claimed that he had case law that would defeat the State's case and would result in a judgment of acquittal, but which did not. Williams v. State, 2D20-2411 (7/28/21)

https://www.2dca.org/content/download/760724/opinion/202411_DC13_07

282021_084134_i.pdf

APPEAL: Where Defendant seeks review of the denial of his motion to correct illegal sentence by petition for writ of certiori, appellate court will treat the petition as an appeal. Tipsy coachman. Appeal is denied on its merits. Cazarez v. State, 4D21-981 (7/28/21)

https://www.3dca.flcourts.org/content/download/760766/opinion/210981_

DC05_07282021_104314_i.pdf

PROHIBITION: Fla.Stat. §26.012, which removed a circuit court's jurisdiction to hear most appeals from the county courts, also removed circuit courts jurisdiction to issue extraordinary writs. The circuit court does not have jurisdiction to issue an extraordinary writ if it does not have direct appellate jurisdiction over the subject matter. Hitchman v. State, 3D21-1154 (7/28/21)

https://www.3dca.flcourts.org/content/download/760739/opinion/211154_

DC02_07282021_102558_i.pdf

PROHIBITION: The common law writ of prohibition traces its origins to the Courts of the King's Bench, Chancery, Common Pleas, and Exchequer, all of which issued writs of prohibition to restrict the powers of ecclesiastical courts over temporal matters. Prohibition was a device for locating and fixing the boundaries between spiritual and temporal jurisdictions. Today, Prohibition lies to prevent an inferior tribunal from acting in excess of jurisdiction but not to prevent an erroneous exercise of jurisdiction. Hitchman v. State, 3D21-1154 (7/28/21)

https://www.3dca.flcourts.org/content/download/760739/opinion/211154_

DC02_07282021_102558_i.pdf

PROBATION-CONDITIONS: Court may order Defendant fingerprinted as a

condition of probation. Hitchman v. State, 3D21-1154 (7/28/21)

https://www.3dca.flcourts.org/content/download/760739/opinion/211154_DC02_07282021_102558_i.pdf

POST CONVICTION RELIEF-DRUG COURT-DEPORTATION: Court lacks jurisdiction to vacate the proceedings by whick Defendant entered and completed Drug Court, resulting in dismissal of charges, on the the grounds that counsel failed to advise him that the participation in drug court would still result in his deportation. R.3.850 provides for relief from a judgment which requires an adjudication by the court. Vacation of a plea cannot meet the definition of a judgment for purposes of relief pursuant to the rule. Casco Reyes v. State, 4D20-1169 (7/28.21)

https://www.4dca.org/content/download/760745/opinion/201169_DC05_07282021_094838_i.pdf

HABEAS CORPUS: Defendant is entitled to federal habeas relief from a state court denial of post-conviction relief only where the state court's ruling resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. "As difficult as it is to prevail on an ineffective assistance prejudice issue in the first court to decide it, the Antiterrorism and Effective Death Penalty Act of 1996 makes it even harder to succeed on that issue in a federal habeas proceeding after a state court has ruled that the petitioner failed to show prejudice. Tarleton v. Secretary, Florida DOC, No. 18-10621 (11th Cir. 7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201810621.pdf

HABEAS CORPUS: Defendant is not entitled to habeas corpus relief from his state bank robbery conviction notwithstanding that no physical evidence tied him to the scene, family members gave ambivalent testimony that the Defendant looked like the perpetrator, and the teller said she could not be

positive about her identification and there were differences, but "her confidence about the eyes came through in the testimony." Tarleton v. Secretary, Florida DOC, No. 18-10621 (11th Cir. 7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201810621.pdf

INJUSTICE (DISSENT): "Marvin Tarleton is spending 30 years in prison after a jury found he stole $3,429 from a Bank of America branch. But the admissible evidence against him was so underwhelming that the State apparently felt it had to rely on inadmissible hearsay evidence from three witnesses it could have chosen to subpoena (but didn't) to convict him. And Tarleton's lawyer did not object to a lick of it." Tarleton v. Secretary, Florida DOC, No. 18-10621 (11th Cir. 7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201810621.pdf

EVIDENCE: Graphic photos/videos of Defendant forcing victims to engage in sexual acts/poses are admissible in sex trafficking case. Probative value outweighs prejudice. USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

SEX TRAFFICKING: A defendant can now be convicted of sex trafficking a minor if he knows or recklessly disregards the fact that the victim is not yet 18 years old. USA v. Williams, No. 19-11972 97/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

CONSENT: Consent has never been accepted as a valid defense to sex trafficking. USA v. Williams, No. 19-11972 97/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

SENTENCING: Five consecutive terms of life imprisonment for a brutal sex

trafficker of a minor is lawful and reasonable. USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

RESTITUTION: Amount of restitution assessed (multiplying each victim's estimated average daily earnings by the number of days she prostituted) is proper when the government estimated the restitution award, rather than producing precise records to establish the exact amount. Estimates are permitted, so long as the basis for reasonable approximation is at hand. "Poor recordkeeping cannot foreclose restitution." USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

RESTITUTION: Defendant who coerced children into sex and for years confiscated his victims' prostitution earnings is not entitled to offset food, housing, and clothing for the victims from the restitution award. Defendant's argument that to allow them to recoup the full amount of their prostitution earnings without deducting their living expenses results in a windfalL is rejected. USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

RESTITUTION: A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments. USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: Defendant's objection to five consecutive life sentences as substantively unreasonable "does not come close. Though he was convicted of sex trafficking three

young women—after years of brutally torturing, beating, and threatening them into submission—he now tries to minimize his crimes, saying that the 15-year mandatory minimum should have been more than enough because he 'did not murder anyone.'" Whether or not [Defendant's] contention [that the sex trafficking guidelines are structurally flawed] is true, this is far from the right case to prove the point." USA v. Williams, No. 19-11972 (7/23/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911972.pdf

ARMED CAREER CRIMINAL ACT: Government can establish that the Defendant's prior qualifying offenses for ACCA enhancement occurred on different dates by considering the relevant state court change of plea transcript, notwithstanding that the Defendant never clearing agreed to the date of the offense on the record. Shepard does not limit allowable records to support the ACCA enhancement to the charging instruments, terms of a plea agreement, or transcript of a plea colloquy. USA v. Dudley, No. 18-10621 (7/23/21)

IMPEACHMENT: To be used as impeachment, a pretrial statement must either directly contradict or be materially different from the testimony offered by the victim at trial. The victim not knowing how Defendant acquired the hammer does not directly contradict her trial testimony that he used the hammer on her head.

BURGLARY: Permission to remain in a dwelling can be deemed to be revoked if the invitee commits a subsequent criminal act against the owner (here, hitting her on the head with a hammer). Turner v. State, 5D21-758 (7/23/21)

https://www.5dca.org/content/download/759673/opinion/210758_DC05_07232021_081902_i.pdf

APPEAL-PERMISSIBLE RECORD: Court may not deny without a hearing a motion to correct credit for time served on the ground that the motion was

successive without attaching the earlier motion and denial of it. State may not supplement the appeal record with the court's earlier order because it is not authorized as the allowable record contents. Although it may be a waste of judicial resources to reverse and remand for the trial court to enter a new order with the earlier order actually attached to it when the contents of the earlier order and its legal effect are undisputed, the rules must be strictly construed and followed. "[T]hat's what's required. . . ; a remand is not wholly wasteful if it serves as a reminder to trial judges to include attachments in the record on appeal in the first instance. Harley v. State, 1D20-1082 (7/21/21)

https://www.1dca.org/content/download/759348/opinion/201082_DC13_07212021_131635_i.pdf

RESENTENCING: Court erred by resentencing Defendant without conducting a sentencing hearing. A prisoner is entitled to be present at the time a corrected sentence is imposed to the same degree they were entitled to be present when initially sentenced and he may submit evidence relevant to the sentence. Butler v. State, 1D20-1803 (7/21/21)

https://www.1dca.org/content/download/759349/opinion/201803_DC13_07212021_131937_i.pdf

MISTRIAL-OTHER BAD ACTS: Defendant is not entitled to a new trial following his murder conviction where witness testified regarding Defendant bringing an AK-47 assault rifle to the witness's house sometime prior to the shooting incident. Johnson v. State, 3D20-257 (7/21/21)

https://www.3dca.flcourts.org/content/download/759290/opinion/200257_DC05_07212021_101335_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a new trial based on newly discovered evidence where the Court's denial of the motion is supported by competent, substantial evidence. Delhall v. State, 3D21-335 (7/21/21)

https://www.3dca.flcourts.org/content/download/759298/opinion/210335_DC05_07212021_102551_i.pdf

APPEAL: There is no fundamental error exception to the preservation requirement of Fl.R.Cr. Procedure 9.140(b)(2)(A)(ii)(c). Simmons v. State, 4D18-2101 (7/21/21)

https://www.4dca.org/content/download/759304/opinion/182101_DC05_07212021_095227_i.pdf

STATEMENT OF DEFENDANT: Defendant's recorded exit interview from his job as a prison correctional officer is admissible, notwithstanding that he was unaware that it was being recorded. Defendant had no expectation of privacy the parties did not demonstrate externally any sort of expectation that the meeting was private or confidential, and all attendees at the exit interview were MCI employees, on MCI property, acting in furtherance of their public duties. State v. Foster, 4D21-135 (7/21/21)

https://www.4dca.org/content/download/759308/opinion/210135_DC13_07212021_100608_i.pdf

INCOMPETENCE-DISCHARGE: Defendant is not entitled to discharge based on his remaining incompetent for one year (a misdemeanor) where he never submitted to the psychological re-evaluation after the initial finding on incompetency. Nerette v. State, 4D21-630 (7/21/21)

https://www.4dca.org/content/download/759316/opinion/210630_DC02_07212021_102359_i.pdf

SENTENCING-LOWEST PERMISSIBLE SENTENCE: Where Defendant's LPS is 19.8 years, he may not be sentenced to ten and eleven years consecutively on 2nd degree felonies. The lowest permissible sentence applies to each count under when the lowest permissible sentence exceeds

the statutory maximum for each individual count. The lowest permissible sentence is an individual minimum sentence which applies to each felony at sentencing for which the LPS exceeds that felony's statutory maximum sentence, regardless of whether the felony is the primary or an additional offense. Court must impose 19.8 years for both counts of vehicular homicide where the scoresheet prescribed a lowest permissible sentence of 19.8 years. Pierce v. State, 1D19-2829 (7/20/21)

https://www.1dca.org/content/download/759128/opinion/192829_DC13_07202021_125852_i.pdf

FINE: No fine may be imposed for a conviction of a capital felony, including capital sexual battery. Hicks v. State, 1D18-5325 (7/19/21)

https://www.1dca.org/content/download/758962/opinion/185325_DC08_07192021_131501_i.pdf

COLLATERAL CRIMES: Evidence that Defendant had engaged in sexual activity with a mentally challenged adult is admissible in trial for Lewd and Lascivious Molestation of a ten year old. In a criminal case in which the defendant is charged with a sexual offense, collateral-crime evidence may be introduced to corroborate the victim's testimony by showing that the defendant has a propensity for committing sexual offenses. Burgess v. State, 1D20-170 (7/16/21)

https://www.1dca.org/content/download/758349/opinion/200170_DC05_07162021_131855_i.pdf

DOUBLE JEOPARDY: Double jeopardy affords three basic protections: against a second prosecution for the same offense following an acquittal, against a second prosecution for the same offense after a conviction, and against multiple punishments for the same offense. Rodriguez v. State, 2D19-1106 (7/16/21)

https://www.2dca.org/content/download/758271/opinion/191106_DC13_07162021_075602_i.pdf

DOUBLE JEOPARDY: Dual convictions for second-degree murder and third-degree murder violate double jeopardy because they are degree variants of each other as they are in the same statute and are degree variants of the same offense, murder. Rodriguez v. State, 2D19-1106 (7/16/21)

https://www.2dca.org/content/download/758271/opinion/191106_DC13_07162021_075602_i.pdf

DOUBLE JEOPARDY: Double jeopardy protections do not extend to the information or jury selection phase. Despite the clear rule saying that a defendant cannot be convicted of both, there is no such rule saying that he cannot be charged with both crimes. Double jeopardy concerns arise once the jury returned guilty verdicts on the dual murder offenses. To cure the double jeopardy violation, the trial court must vacate the conviction that placed Defendant in double jeopardy, not to enter an adjudication of not guilty. Rodriguez v. State, 2D19-1106 (7/16/21)

https://www.2dca.org/content/download/758271/opinion/191106_DC13_07162021_075602_i.pdf

SEARCH AND SEIZURE-WELFARE CHECK: Officer exceeded permissible scope of a welfare check by hauling sleeping man with a knife on his lap from a parked car. A warrantless intrusion into Defendant's vehicle as he was sleeping is unreasonable under the Fourth Amendment as part of a permissible welfare check. Searches and seizures conducted in connection with welfare checks are solely for safety reasons. and is limited to prevent the exception from becoming an investigative tool that circumvents the Fourth Amendment. Even if Defendant's wellbeing were objectively in doubt, the officer never sought to inquire into his wellbeing before pulling him out of his vehicle. Taylor v. State, 1D19-3522 (7/15/21)

https://www.1dca.org/content/download/758136/opinion/193522_DC13_07152021_131049_i.pdf

SEARCH AND SEIZURE-DOG ALERT: Where Defendant is initially illegally detained before the canine alert, the alert does not render the search lawful. Taylor v. State, 1D19-3522 (7/15/21)

https://www.1dca.org/content/download/758136/opinion/193522_DC13_07152021_131049_i.pdf

SEARCH AND SEIZURE-STANDING: As a basic principle of Fourth Amendment law, an unconstitutional seizure or arrest which prompts a disclaimer of property vitiates the disclaimer. Where Defendant disclaims the illegal items as a result of the unconstitutional search and seizure, he retains standing to challenge the search and seizure. Taylor v. State, 1D19-3522 (7/15/21)

https://www.1dca.org/content/download/758136/opinion/193522_DC13_07152021_131049_i.pdf

POST CONVICTION RELIEF-IAC-ALIBI: Counsel was ineffective for failing to investigate alibi defense (that Defendant had been working and was dropped off in the area after the robbery). Duty v. State, 1D20-1353 (7/15/21)

https://www.1dca.org/content/download/758142/opinion/201353_DC13_07152021_132851_i.pdf

POST CONVICTION RELIEF-IAC-FAILURE TO IMPEACH: Counsel was ineffective for failing to impeach detective who testified at trial that Defendant never provided any specific witnesses by name, address, or phone number, when in fact during the videotaped interrogation, Defendant repeatedly asked him to contact his employer and gave him the employer's business card. Counsel's explanation that he did not impeach the Detective because of Defendant's repeated use of profanity was not reasonable under the norms of professional conduct. Duty v. State, 1D20-1353 (7/15/21)

https://www.1dca.org/content/download/758142/opinion/201353_DC13_07152021_132851_i.pdf

POST CONVICTION RELIEF-IAC-IDENTIFICATION: Counsel was ineffective for failing to move to suppress the show-up identification where officers had Defendant change his clothes to match the initial description, surrounded him with officers, and then brought the Victim to see him (she said he was "pretty close" to the person who robbed her, but that she couldn't be sure until after the officer instructed her that she needed to be sure). Duty v. State, 1D20-1353 (7/15/21)

https://www.1dca.org/content/download/758142/opinion/201353_DC13_07152021_132851_i.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL: "At the evidentiary hearing, the victim testified that at her deposition before trial, trial counsel stated, 'let's go ahead and have a seat and get this over with. We all know this is open and shut . . .'" Duty v. State, 1D20-1353 (7/15/21)

https://www.1dca.org/content/download/758142/opinion/201353_DC13_07152021_132851_i.pdf

COSTS: Court erred in imposing a $700 fine and a $35 surcharge on that fine pursuant to sections 775.083(1) and 938.04 when neither the fine nor the surcharge was specifically pronounced during Appellant's sentencing hearing. Due process requires that a trial court individually pronounce discretionary fees, costs, and fines during a sentencing hearing. Ramirez v. State, 1D20-1848 (7/15/21)

https://www.1dca.org/content/download/758143/opinion/201848_DC08_07152021_133044_i.pdf

SPEEDY TRIAL: AOSC20-13, suspended all time periods involving the speedy trial procedure, includes those related to the filing of informations. State v. Dutton, 1D20-2912 (7/15/21)

https://www.1dca.org/content/download/758144/opinion/202912_DC13_07152021_133301_i.pdf

SPEEDY TRIAL: AOSC20-13, suspended all time periods involving the speedy trial procedure, includes those related to the filing of informations. State v. Bryant, 1D20-2913 (7/15/21)

https://www.1dca.org/content/download/758145/opinion/202913_DC13_07152021_133416_i.pdf

STAND YOUR GROUND: Acts of force used or threatened against a law enforcement officer who was acting in the performance of his or her official duties where the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement office are excluded from stand your-ground immunity. Corrales v. State, 1D21-1909 (7/15/21)

https://www.1dca.org/content/download/758150/opinion/211909_DC02_07152021_134353_i.pdf

SENTENCING GUIDELINES-WEAPON ENHANCEMENT: §2D1.1(b)(1) enhancement for a firearm applies if the weapon was present, unless it is clearly improbable that it was connected with the offense. The government benefits from a rebuttable presumption that a firearm, if present—just present, not present in proximity to drugs—is connected with the offense. USA v. Sanchez Cara.squillo, No. 19-14143 (11th Cir. 7/14/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914143.pdf

SAFETY VALVE-FIREARM: Although the §2D1.1(b)(1) firearm enhancement does not preclude satisfaction of §5C1.2(a)(2)safety valve in rare cases, a factual finding that there is a connection between the firearm and the offense means that the defendant cannot satisfy the safety valve requirements. USA v. Sanchez Carasquillo, No. 19-14143 (11th Cir. 7/14/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914143.pdf

SENTENCING: A court must give the parties an opportunity to object to the court's ultimate findings of fact, conclusions of law, and the manner in which the sentence is pronounced. Court must elicit objections following its imposition of sentence. USA v. Sanchez Carasquillo, No. 19-14143 (11th Cir. 7/14/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914143.pdf

POST CONVICTION RELIEF-CREDIT FOR TIME SERVED: Defendant's motion for credit for time served for time spent in another state awaiting extradition is subject to the two-year time limit of R. 3.850, not the one year time limit of R. 3.801, which governs motions for jail credit but only applies to in-state jail credit. Haro v. State, 3D 21-1197 (7/14/21)

https://www.3dca.flcourts.org/content/download/756757/opinion/211197_DC13_07142021_104451_i.pdf

HABITUAL OFFENDER: Where State failed to file its notice of intent to seek enhanced penalties within a sufficient time before sentencing, Defendant is entitled to resentencing on the felon-in-possession count. Thomas v. State, 4D19-2547 (7/14/21)

https://www.4dca.org/content/download/756794/opinion/192547_DC08_07142021_095422_i.pdf

DRIVER'S LICENSE SUSPENSION: The erroneous imposition of a drivers license revocation is not a "sentence" subject to correction through a R. 3.800 motion. Rodriguez v. State, 4D21-133 (see 7/14/21)

https://www.4dca.org/content/download/756799/opinion/210113_DC05_07142021_101045_i.pdf

DOUBLE JEOPARDY: Possession of child pornography is a lesser-included offense of receiving child pornography; Defendant cannot be

convicted of both. USA v. Phillips, No. 18-11737 (11th Cir. 7/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201811737.pdf

INDICTMENT: Where the indictment charges the Defendant with "knowingly and intentionally" causing a minor to engage in sexually explicit conduct for the purpose of producing a video, , but the statute does not require that the Defendant know the victim's age, Court need not instruct the jury that the Defendant's knowledge of the age of the victim is required. Language in an indictment that goes beyond what the statute requires ordinarily does not become part of the charged crime. An extra mens rea term in an indictment ordinarily does not become part of the charged crime, and can be ignored without error. USA v. Phillips, No. 18-11737 (11th Cir. 7/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201811737.pdf

ACCA: Possession of cocaine with intent to distribute and manufacture, sale, distribution, or possession with intent to distribute cocaine and heroin qualify as serious drug offenses under the Armed Career Criminal Act, even if the distribution was merely giving away the drugs rather than selling them. Defendant is subject to a minimum sentence of 15 years. A conviction for narcotics for other than personal use qualifies as a serious drug offense under ACCA. Possession for "social sharing" is possession "for other than personal use." USA v. Stancil, No. 19-12001 (11th Cir. 7/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201912001.pdf

POSSESSION-KNOWLEDGE: Knowledge of the specific substance in a package is not required in order for one to be convicted of possession of cocaine. When the government charges violations of §841(a)(1) and §846, and mentions the specific drug involved to seek enhanced penalties under §841(b)(1), it needs to prove the defendant's mens rea only for the substantive violation, not for the specific drug charged. USA v. Colston,

No. 19-13518 (11th Cir 7/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913518.pdf

METAPHOR: In Narog, we reasoned that [when] the government. . .included the identity of the controlled substance in the indictment [it]. . .needed to prove that the defendants knew the specific drug involved. . .Defendants have since relied on it to argue that if an indictment is worded just so, we must read it to charge a mens rea for the specific type of drug. Though Narog rarely got defendants where they wanted to go. . .the twists and turns it required were a detour in the analysis, and misled defendants about what might be required. That road has come to a dead end." USA v. Colston, No. 19-13518 (11th Cir 7/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913518.pdf

EVIDENCE: Court acted within its discretion when it admitted evidence of Defendant's prior drug deals to show that her involvement in a different drug-related crime was not a mistake. Evidence of prior drug dealings is highly probative of intent to distribute a controlled substance, as well as involvement in a conspiracy. Any prior drug offense as probative of the intent to engage in a drug conspiracy—even if the prior crime involves a different type and amount of drug. USA v. Colston, No. 19-13518 (11th Cir 7/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913518.pdf

POST CONVICTION RELIEF: Evidence that a jailhouse snitch who testified against the defendant had gone through Defendant's legal papers in their shared jail cell is newly discovered evidence, but is not sufficiently probative to raise reasonable doubt of his guilt. Mitchell v. State, 1D21-1081 (7/13/21)

https://www.1dca.org/content/download/756391/opinion/210181_DC05_07132021_132918_i.pdf

COSTS: Court may not assess §318.18(11)(b) costs for a non-traffic crime. Watkins v. State, 5D21-46 (7/9/21)

210046_DC05_07092021_090056_i.pdf (5dca.org)

LIFE SENTENCE: A life sentence is not unconstitutional as a violation of Article I, §17 of the Florida Constitution, which forbids an indefinite term of imprisonment. Haar v. State, 5D21-1213 (7/9/21)

211213_DC05_07092021_090759_i.pdf (5dca.org)

POSSESSION OF FIREARM BY FELON: Indictment is not fatally defective for failure to allege that Defendant must know that he is a felon in order to be convicted as a felon in possession of a firearm. Indictment omissions do not deprive a court of jurisdiction. USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

QUOTATION: "The criminal justice system is run by human beings. Though we all owe our best efforts, perfect proceedings are not required—or even possible." USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

SEARCH AND SEIZURE: A defendant is only entitled to challenge the veracity of a search warrant affidavit at a hearing if he makes a substantial preliminary showing that (1) the author of the affidavit made false statements or omissions either intentionally or with reckless disregard for the truth, and (2) the allegedly false statement or omission was necessary to the finding of probable cause. USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

ARGUMENT: Government's statement that "this was a case about protecting our communities from guns and from drugs," objected to and for

which the court immediately gave a curative instruction, does not warrant a mistrial. USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

DOUBLE JEOPARDY: Double Jeopardy does not preclude both the state and federal governments pursuing charges against the Defendant. USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

ACCA: Under the Armed Career Criminal Act, a felon in possession of a firearm is subject to a mandatory minimum sentence of 15 years' imprisonment if he has three prior convictions for serious drug offenses committed on occasions different from one another, regardless of him being sentenced for all three on the same day. It is the crimes that must be temporally distinct, not the convictions for those crimes. Even small distinctions in time and place are usually enough. USA v. Leonard, No. 19-14142 (11th Cir. 7/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914142.pdf

DEATH PENALTY: Findings of aggravating circumstances for imposition of the death penalty need not be found beyond a reasonable doubt. The jury need not determine beyond a reasonable doubt whether the aggravating factors were sufficient to justify the death penalty and whether those factors outweighed the mitigating circumstances. Davidson v. State, SC19-1851 (7/8/21)
https://www.floridasupremecourt.org/content/download/755575/opinion/sc19-1851.pdf

POST CONVICTION RELIEF: Defendant who voluntarily dismisses postconviction proceedings in death penalty case may not re-initiate his claims seventeen years later. James v. State, SC20-1036 (7/8/21)
https://www.floridasupremecourt.org/content/download/755576/opinion/sc20-1036.pdf

ACCA: Johnson, Supreme Court case holding that ACCA's residual clause is unconstitutionally vague, applies retroactively, including on collateral review. Pitts v. USA, No. 18-12096 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201812096.pdf

APPEAL-CERTIFICATE OF APPEALABILITY: Appellate court may amend, revise, or expand the COA to fit the dispositive issue in this case. Pitts v. USA, No. 18-12096 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201812096.pdf

ACCA: Florida drug convictions are serious drug offenses for purposes of ACCA enhancement (15 years for posession of firearm by a felon. Pitts v. USA, No. 18-12096 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201812096.pdf

BINDING PRECEDENTS: Federal Circuit Court appellate decisions aren't binding on any courts in this or any other circuit outside of that one. Pitts v. USA, No. 18-12096 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201812096.pdf

SENTENCING-GUIDELINES: A firearm capable of accepting a large capacity magazine because, even if not loaded with a magazine, qualifies for a guidelines sentencing enhancement under U.S.S.G. §2K2.1(a)(3). The phrase "capable of accepting a large capacity magazine" are words of possibility, not actuality. A firearm and magazine can be in "close proximity" even if they are stored separately. Pitts v. USA, No. 18-12096 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201812096.pdf

ACCA: A felony battery conviction categorically qualifies as a crime of violence. USA v. Matthews, No. 2020-10554 (11th Cir. 7/6/21)
https://media.ca11.uscourts.gov/opinions/pub/files/202010554.pdf

GRAND JURY TESTIMONY: There is no pretrial right to inspect grand jury testimony as an aid in preparing one's defense. Inconsistencies in various statements of state witnesses is insufficient to require disclosure of the witnesses' grand jury testimony where the defense is able during cross-examination to direct the jury's attention to any purported inconsistencies. Bing v. State, 1D20-381 (7/6/21)
https://www.1dca.org/content/download/755097/opinion/200381_DC05_07062021_132247_i.pdf

HABEAS CORPUS: Petitioner in prison in Wyoming may not file a petition for habeas corpus in Florida claiming illegal detention. Florida court's lack the constitutional power to issue a writ directed to a person outside its territorial jurisdiction. Wooten v. Inch, 1D21-1738 (7/6/21)
https://www.1dca.org/content/download/755104/opinion/211738_DA08_07062021_134114_i.pdf

PRISON RELEASEE RE0FFENDER: Court may not sentence Defendant as a PRR absent a stipulation or evidence that he meets the statutory requirements. Haney v. State, 2D19-3764 (8/7/2)
https://www.2dca.org/content/download/755274/opinion/193764_DC13_07072021_080702_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may not sentence 70-year-old defendant who scores prison to a below the guidelines sentence in the absence of a stipulation of the parties or a valid written reason. Defendant must present evidence, not merely argument in support of a downward departure. State v. Saunders, 2D20-1532 (7/7/21)
https://www.2dca.org/content/download/755289/opinion/201532_DC13_07072021_080815_i.pdf

DOUBLE JEOPARDY: Dual convictions for second-degree murder with a firearm and use of a firearm during the course of that offense violates double jeopardy. Where the use of a weapon is the basis for enhancing the charge of second-degree murder to a life felony, double jeopardy bars a separate

conviction and sentence for misuse of the same firearm. Lee v. State, 3D20-256 (7/7/21)

https://www.3dca.flcourts.org/content/download/755324/opinion/200256_DC08_07072021_101257_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court need not explain its basis for denying a motion for downward departure. Blair v. State, 4D20-1916 (7/7/21)
https://www.4dca.org/content/download/755380/opinion/201916_DC05_07072021_102128_i.pdf

POST CONVICTION RELIEF-EXPERT: Strategic decisions—including whether to hire an expert—are entitled to a strong presumption of reasonableness. Defendant's failure to call his attorneys to testify is not fatal to his ineffective assistance of counsel claim (but here, trial court did not apply such a rule). Dunn v. Reeves, 20-1084 (U.S. S.Ct. 7/2/21)
https://www.supremecourt.gov/opinions/20pdf/20-1084_19m1.pdf

APPEALS-DISSENT (J. SOTOMAYOR): "State courts cannot insulate their decisions from scrutiny by quoting the proper standard and then ignoring it. " "If the state court had meant to weigh the evidence in the record, it would have. It did not. This Court is putting words in the state court's mouth that the state court never uttered, and which are flatly inconsistent with what the state court did say." Dunn v. Reeves, 20-1084 (U.S. S.Ct. 7/2/21)
https://www.supremecourt.gov/opinions/20pdf/20-1084_19m1.pdf

DEATH PENALTY-DISSENT (J. SOTOMAYOR): "Today's decision continues a troubling trend in which this Court strains to reverse summarily any grants of relief to those facing execution. . .In essence, the Court turns 'deference' . . . into a rule that federal habeas relief is never available to those facing execution." Dunn v. Reeves, 20-1084 (U.S. S.Ct. 7/2/21)

https://www.supremecourt.gov/opinions/20pdf/20-1084_19m1.pdf

POST CONVICTION RELIEF: Defendant who had filed various postconviction motions over the years, should not be barred from filing further motions on the basis of his good faith motion that the victim injury and death points were improperly scored. Actual successiveness within the confines of rule 3.800(a) motions requires not just the filing of a successive number of rule 3.800(a) motions but also that the issues raised within them be the same as well. Ward v. State, 2D20-2127 (7/2/21)
https://www.2dca.org/content/download/754145/opinion/202127_DC08_07022021_081619_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that his attorney was ineffective for failing to object to a standard jury instruction (that Defendant had a duty to retreat) based on his misunderstanding of the Stand Your Ground statute. Robinson v. State, 2D20-3239 (7/2/21)
https://www.2dca.org/content/download/754149/opinion/203239_DC08_07022021_082011_i.pdf

VOP-HABITUAL OFFENDER: On revocation of probation after the Defendant had originally been sentenced as a Habitual Felony Offender, court does not have to follow all the procedural requirements for HFO resentencing. There is no requirement for a de novo HFO analysis to be conducted at each revocation, only that the court clearly communicate an intent to reimpose that HFO status. Vaughn v. State, 5D21-543 (7/2/21)
https://www.5dca.org/content/download/754178/opinion/210543_DC05_07022021_084521_i.pdf

POST CONVICTION RELIEF-PRISON RELEASEE REOFFENDER: Defendant is entitled to a hearing on his claim that the State used, and the trial court relied upon, an out-of-state, nonqualifying predicate offense to designate him as a PRR (a nonqualifying Kansas conviction for attempted tampering with an electronic monitoring device, a first-degree misdemeanor in Florida). Miller v. State, 5D21-676 (7/2/21)

https://www.5dca.org/content/download/754179/opinion/210676_DC08_07022021_084745_i.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Defendant spying around the corner and acting nervous when approached, the high crime area at night, the smell of cannabis, and running from the officers after another person with Defendant is searched is reasonable suspicion. Unprovoked flight upon and nervous, evasive behavior are pertinent factors in determining reasonable suspicion. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

EVIDENCE: Defendant's statements "why don't you just kill me now," and "I'm as good as dead" when he is arrested in an unrelated incident may be admissible to show consciousness of guilt for murder. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

JUROR QUESTIONS: Court did not err in telling jury during voir dire, in response to a question, that it would generally not allow jurors to question witnesses. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

ARGUMENT: Prosecutor's use of the phrase "particularly upsetting" when characterizing the murder, calling the Defendant's actions "unspeakable acts" and "violent and senseless," calling the Defendant "brutal" were fairly connected to the evidence. Error, if any, was not fundamental. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

FIRST DEGREE MURDER: First degree murder conviction is sustained

where evidence did not support the special verdict that Defendant actually possessed the firearm where the entire episode was a joint operation by Defendant and his accomplice. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

ARGUMENT-PENALTY PHASE: State's penalty phase arguments that "this is not something that we take lightly" and “This. . [is] the kind of crime that frightens you to your core. It’s the reason that children fear the darkness" do not amount to fundamental error. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

DEATH PENALTY-JURY INSTRUCTION: Failure to instruct jury that the death penalty may be proportional punishment if the evidence shows both that the defendant was a major participant in the crime, and that the defendant’s state of mind amounted to reckless indifference to human life is not fundamental error. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

DEATH PENALTY-CONSIDERATIONS: Court may not sentence Defendant to death based in part on facts that were admitted in the Co-Defendant's trial but not the Defendant's. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

DEATH PENALTY: Defendant's argument that Florida’s capital sentencing scheme is unconstitutional because there are so many aggravators that almost every murder is death eligible is rejected. Cruz v. State, S20-60 (7/1/21) https://www.floridasupremecourt.org/content/download/753955/opinion/sc20-60.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of two counts of robbery for one taking (a single wad of money from a desk in the back of the office) from two people. "The robbery episode involved a singular taking, so there was but one legislatively defined offense." Error is fundamental. Baker v. State, 1D19-947 (7/1/21)
https://www.1dca.org/content/download/754028/opinion/190947_DC13_07012021_130550_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Nuckles v. State, 1D20-3326 (7/1/21)
https://www.1dca.org/content/download/754033/opinion/203326_DA08_07012021_132329_i.pdf

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INEFFECTIVE ASSISTANT-APPELLATE COUNSEL: To establish ineffective assistance of appellate counsel, a defendant must show that counsel's alleged error or omission was of such magnitude that it can be said that they deviated from the norm or fell outside the range of professionally acceptable performance and the deficiency caused prejudicial impact on the appellant by compromising the appellate process so as undermine confidence in the fairness and correctness of the outcome. Rush v. State, 1D21-11261 (6/30/21)

https://www.1dca.org/content/download/753803/opinion/211261_DC02_06302021_140809_i.pdf

COSTS-PUBLIC DEFENDER FEE: Court may impose the statutorily required minimum public defender fee of $100 for felony cases without notifying Child of his right to contest the fee. Cost is mandatory. L.E.S. v.

State, 2D19-4363 (6/30/21)

https://www.2dca.org/content/download/753729/opinion/194363_DC05_06302021_092614_i.pdf

POST CONVICTION RELIEF: Defendant should be give an opportunity amend motion where he failed to adequately allege prejudice. Myers v. State, 2D20-3075 (6/30/21)

https://www.2dca.org/content/download/753736/opinion/203075_DC08_06302021_093115_i.pdf

CONFRONTATION-ZOOM HEARING: Juvenile trial by Zoom does not violate Confrontation Clause. E.A.C. v. State, 4D20-2079 (6/30/21)

https://www.4dca.org/content/download/753756/opinion/202079_DC05_06302021_101433_i.pdf

COVID: 'The court system cannot be a legal ostrich and stick its head in the sand to avoid the obvious—the COVID pandemic." E.A.C. v. State, 4D20-2079 (6/30/21)

https://www.4dca.org/content/download/753756/opinion/202079_DC05_06302021_101433_i.pdf

POST CONVICTION RELIEF: Plea is not rendered involuntary becasue Courtr failed to enter a written order of incompetency. Cato v. State, 1D19-3789 (6/29/21)

https://www.1dca.org/content/download/752816/opinion/193789_DC05_06292021_152726_i.pdf

FRIVOLOUS POST CONVICTION MOTIONS-SANCTIONS: "[C]ourts do not exist simply to give prisoners something to do while they serve their sentences, and there comes a point in every criminal case that the defendant needs to accept the finality of his judgment and sentence and just do his time." Parker v. State, 1D20-2830 (6/29/21)

https://www.1dca.org/content/download/752819/opinion/202830_DC05_06292021_151102_i.pdf

POST CONVICTION RELIEF: Claim that Court failed to orally pronounce statutory authority for costs may not be raised under R. 3.800(a) as an illegal sentence. "[W]e write to make clear that alleged errors in the assessment of fines or costs in sentencing, even if not orally pronounced at sentencing, are not subject to correction under rule 3.800(a). Instead, a defendant should raise such claims of error under rule 3.800(b)." Branch v. State, 1D21-706 (6/29/21)

https://www.1dca.org/content/download/752822/opinion/210706_DC05_06292021_151745_i.pdf

ATTORNEY/CLIENT PRIVILEGE-CRIME FRAUD EXCEPTION: Crime fraud exception to attorney/client privilege requires attorney to politician's campaign to testify before a grand jury about campaigh expenditures which included lingerie, jewelry and a Caribbean vacation. In Re: Grand Jury Subpoena, No. 21-11596 (11th Cir. 6/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202111596.pdf

WIRE FRAUD: Solicitation by electronic means of campaign funds followed by the misappropriation for personal use of the donations can

constitute a scheme to defraud. In Re: Grand Jury Subpoena, No. 21-11596 (11th Cir. 6/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202111596.pdf

MINOR-LIFE SENTENCE-HOMICIDE: Where Defendant is convicted of 1st degree murder and jury does not specify whether the murder was premeditated or felony murder, i.e., with or without the intent to kill, there is an Alleyne error, with different dates for review. Proper remedy is a de novo sentencing hearing with the full panoply of due process rights. Puzio v. State, SC19-1511 (6/24/21)

https://www.floridasupremecourt.org/content/download/751126/opinion/sc19-1511.pdf

DEATH PENALTY: Hurst v. Florida does not require the State to give notice of intent to seek the death penalty within forty-five days of arraignment. Bargo v. State, SC19-1744 (6/24/21)

https://www.floridasupremecourt.org/content/download/751127/opinion/sc19-1744.pdf

DEATH PENALTY-HAC: Gruesome disposal of victim's body is not admissible for Heinous, Atrocious, and Cruel Aggravator, but was properly admitted for the Cold, Calculated, and Cruel Aggravator because it was planned in advance. Bargo v. State, SC19-1744 (6/24/21)

https://www.floridasupremecourt.org/content/download/751127/opinion/sc19-1744.pdf

JUVENILE-COMMITMENT: Court may not order juvenile committed to a medium security level placement. There is no such thing. C.H. v. State, 1D 20-2686 (6/24/21)

https://www.1dca.org/content/download/751359/opinion/202686_DC13_0

6242021_141007_i.pdf

QUOTATION: "Sometimes. . .the common law. . .is hard to figure out." Lange v. California, No. 20-18 (U.S. S.Ct. 6/23/21)

https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf

SEARCH AND SEIZURE-HOME: The pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance authorizing a warrantless home entry. An officer may make a warrantless entry into a home when pursuing a fleeing misdemeanant only if an exigent circumstance is also present—for example, when there is a risk of escape, destruction of evidence, or harm to others. The fact of flight from an officer is itself not enough to justify a warrantless entry into a home. "[W]e are not eager. . .to print a new permission slip for entering the home without a warrant." Lange v. California, No. 20-18 (U.S. S.Ct. 6/23/21)

https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf

EXCLUSIONARY RULE (J. THOMAS, CONCURRING): The federal exclusionary rule does not apply to evidence discovered in the course of pursuing a fleeing suspect. Lange v. California, No. 20-18 (U.S. S.Ct. 6/23/21)

https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf

SEARCH AND SEIZURE-(C.J. ROBERTS, CONCURRING): "I would not override decades of guidance to law enforcement in favor of a new rule that provides no guidance at all." Lange v. California, No. 20-18 (U.S. S.Ct. 6/23/21)

https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf

SEARCH AND SEIZURE-PROBABLE CAUSE: Lady seeing kids on bikes outside her house after a window screen alarm went off does not provide reasonable suspicion of illegal activity to detain a nearby child with a bike. Lady neither observed criminal behavior nor was her description of the kids on bikes detailed. Kids on bikes is entirely innocent behavior and is not criminal. K.W. v. State, 2D19-3927 (6/23/21)

https://www.2dca.org/content/download/750895/opinion/193927_DC13_06232021_084809_i.pdf

FALSE NAME-PROBABLE CAUSE: Child cannot be arrested for giving a false name unless he has already been lawfully detained. K.W. v. State, 2D19-3927 (6/23/21)

https://www.2dca.org/content/download/750895/opinion/193927_DC13_06232021_084809_i.pdf

DISCOVERY: There is no discovery violation where the State disclosed a "Crime Laboratory Analysis Report" notwithstanding that the report failed to talk about all test results. Field notes of crime laboratory analyst are exempt from disclosure. Teets v. State, 4D 19-2253 (6/23/21)

https://www.4dca.org/content/download/750948/opinion/192253_DC05_06232021_100224_i.pdf

ARGUMENT-BOLSTERING: "An eight-year-old is not going to be able to lay out two years of constant normalizing of sexual behavior. . .This is not from the imagination of an eight-year-old," is improper bolstering. State may not argue that the victim did not have the ability to fabricate her allegations of sexual abuse due to her age, where no evidence supported the argument. Almarales v. State, 4D20-1611 (6/23/21)

https://www.4dca.org/content/download/750952/opinion/201611_DC13_06232021_101143_i.pdf

BOLSTERING: Improper bolstering occurs when the State places the

prestige of the government behind the witness or indicates that information not presented to the jury supports the witness's testimony. Almarales v. State, 4D20-1611 (6/23/21)

https://www.4dca.org/content/download/750952/opinion/201611_DC13_06232021_101143_i.pdf

ARGUMENT-GROOMING: "Although there is no Florida authority on point, at least one other court has recognized that 'grooming evidence typically requires expert testimony.'" Almarales v. State, 4D20-1611 (6/23/21)

https://www.4dca.org/content/download/750952/opinion/201611_DC13_06232021_101143_i.pdf

PLEA-WITHDRAWAL-DEPORTATION: Defendant may not withdraw or vacate plea more than two years after the plea became final based on Court's failure to advise him of the immigration consequences . State v. Stephenson, 4D21-332 (6/23/21)

https://www.4dca.org/content/download/750955/opinion/210332_DC13_06232021_102357_i.pdf

MOTION TO VACATE PLEA: A motion to vacate plea must be filed within two years of the judgment since becoming final unless (1) the facts on which the claim is predicated were unknown could not have been ascertained by the exercise of due diligence, (2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, or (3) the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion. State v. Stephenson, 4D21-332 (6/23/21)

https://www.4dca.org/content/download/750955/opinion/210332_DC13_06232021_102357_i.pdf

SPEEDY TRIAL-COVID: COVID suspension of speedy trial rights includes suspension of time requirements for filing an information. State is permitted to file charges past the normal 90-day speedy trial deadline during COVID suspension of speedy trial rights. AOSC 20-23 explicitly states that it applies to all time periods involving the speedy trial procedure. State v. Emmanuel, 4D21-348 (6/23/21)

https://www.4dca.org/content/download/750956/opinion/210348_DC13_06232021_102546_i.pdf

CONTEMPT-JURISDICTION (DISSENT): The chief justice of the supreme court, not the chief judge of the Circuit Court, must appoint a different judge to try an indirect contempt case involving disrespect or criticism of the judge. Jenkins v. State, 4D20-1171 (6/23/21)

https://www.4dca.org/content/download/750950/opinion/201171_DC05_06232021_100742_i.pdf

INDIRECT CONTEMPT (DISSENT): Defendant cannot be found in indirect contempt for a profanity laced letter criticizing the judge after the case was already dismissed. The letter "could and should have been disposed of by relegation to the trash bin." Jenkins v. State, 4D20-1171 (6/23/21)

https://www.4dca.org/content/download/750950/opinion/201171_DC05_06232021_100742_i.pdf

EVIDENCE-VERACITY OF WITNESS: It is improper to ask a witness if another witness is lying. Prosecutor may not ask Defendant whether the State's witnesses were being untruthful and whether they had lied to the jury. Harmless error. Giddens v. State, 1D18-4591 (6/22/21)

https://www.1dca.org/content/download/750781/opinion/184591_DC05_06222021_140804_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Habeas corpus is not to be used for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in prior postconviction filings. Genovese v. State, 1D21-268 (6/22/21)

https://www.1dca.org/content/download/750783/opinion/210268_DA08_06222021_141255_i.pdf

SENTENCING-GUIDELINES-UNDISCHARGED SENTENCE: §5G1.1(a) instructs that if the defendant is still serving time in state prison for conduct that was also part of the federal offense, the time already served on that state charge should be credited against the federal sentence. Under Booker, this provision is not binding on the court. "It does not matter whether § 5G1.3(b) affects the kind of sentence or the guideline range; Booker told us that all guidelines are advisory." USA v. Henry, No. 18-14252 (11th Cir. 6/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201815251.op2.pdf

STARE DECISIS (DISSENT): "We have already rejected the majority's position. . . The majority. . . reasons that our pronouncement in Knight was not a holding because the government conceded that the district court should have applied the guideline. . .Id. But its suggestion that there exists a 'government concession' exception to our prior-panel-precedent rule is incorrect. USA v. Henry, No. 18-14252 (11th Cir. 6/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201815251.op2.pdf

SENTENCING GUIDELINES (DISSENT): "Booker neither requires nor countenances district courts treating every 'shall' in the Guidelines as a 'may.'" USA v. Henry, No. 18-14252 (11th Cir. 6/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201815251.op2.pdf

AMENDMENTS-RULES REGULATING THE FLORIDA BAR: Rules for distribution of IOTA funds are modified. In Re: Amendments to Rule Regulating the Florida Bar 5-1.1(g), No. SC20-1543 (6/18/21) https://www.floridasupremecourt.org/content/download/750057/opinion/sc20-1543.pdf

SENTENCING-MINOR-LENGTHY SENTENCE: A 50 year sentence for a seventeen-year-old convicted of robbery is not a life sentence or the functional equivalent of a life sentence. Grace v. State, 1D19-133 (6/18/21)

https://www.1dca.org/content/download/750068/opinion/190133_DC05_06182021_132017_i.pdf

POST CONVICTION RELIEF: Court may not deny a motion for credit time served on the grounds that the motion is excessive without attaching the previous motions. Copeland v. State, 1D20-1482 (6/18/21)

https://www.1dca.org/content/download/750069/opinion/201482_DC13_06182021_132316_i.pdf

SPEEDY TRIAL: Suspension of all time periods involving the speedy trial procedure due to COVID-19 apply to deadlines for filing charging documents. Davis v. State, 1D21-84 (6/18/21) https://www.1dca.org/content/download/750071/opinion/210084_DC02_06182021_132838_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850 . Drake v. State, 1D21-238 (6/18/21)

https://www.1dca.org/content/download/750073/opinion/210238_DA08_06182021_133348_i.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH-IMPOUNDMENT: Inventory search is invalid where the Stapler for no evidence of any standard or criteria for when to impound a vehicle parked in a public parking lot. An impoundment and inventory search must be conducted according to standardized criteria. Determining when the State may lawfully impound private property is every bit as important as determining how it may do so. Ross v. State, 2D19-2061 (6/18/21)
https://www.2dca.org/content/download/749988/opinion/192061_DC13_06182021_085609_i.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH-IMPOUNDMENT: Towing and attendant inventory search of the vehicle stuck in the mud is lawful notwithstanding that the original justification for the search wasn't (invalid search incident to arrest). Officers need not provide an alternative to impoundment if they act in good faith. State v. Koontz, 5D20-2203 (6/18/21)
https://www.5dca.org/content/download/749979/opinion/202203_DC13_06182021_083427_i.pdf

COSTS: Court may not impose a $3 traffic cost pursuant to section 318.18 for aggravated assault. Perry v. State, 5D20-2651 (6/18/21)
https://www.5dca.org/content/download/749981/opinion/202651_DC05_06182021_083844_i.pdf

JURISDICTION-DRUG TRAFFICKING-MARITIME: A vessel is subject to the jurisdiction of the United States if it is in the customs waters of the United States or the territorial waters of a foreign nation that consents to the enforcement of United States law or if it is a vessel without nationality. A vessel carrying no documents, flying no flag, bearing no name or identifying numbers that would permit entry into a national registry, nor having anyone

on board claiming a nationality for the vessel is a vessel without nationality and thereby subject to the jurisdiction of the United States. An evidentiary hearing on jurisdiction is not required. USA v. Cedado Nunez, No. 19-14181 (11th Cir. 6/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914181.pdf

NARCOTICS-KNOWLEDGE OF SUBSTANCE-MENS REA: Government is not required to prove mens rea with respect to the specific controlled substance at issue. A Defendant's mens rea with respect to the identity of the substance. USA v. Cedado Nunez, No. 19-14181 (11th Cir. 6/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914181.pdf

DEFENDANT TESTIFYING: Court did not err in asking Defendant to confirm that he understood his right to testify into indicate whether or not he was to do so. USA v. Cedado Nunez, No. 19-14181 (11th Cir. 6/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914181.pdf

COURT QUESTIONING DEFENDANT: Dictum expressing disapproval of excessive court involvement in the decision whether to testify says nothing about the propriety of a court engaging in a limited, neutral colloquy intended to make a record of the defendant's personal choice. USA v. Cedado Nunez, No. 19-14181 (11th Cir. 6/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914181.pdf

JURY INSTRUCTION-CORRECTION: Where the agreed upon jury instruction omitted that mail fraud could be committed when items were set by a private carrier, and defense counsel pointed out that the items in question were sent by UPS, Court did not err by amending the instruction to include the possibility that the fraud can be committed by sending something through a private carrier. Jury instruction may be changed to counter defense counsel's misleading statement of law ("there can't be any mail fraud here because you see right here, this was sent by UPS."). USA v. Anderson, No. 18-13947 (11th Cir. 6/15/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813947.pdf

ALLEN CHARGE: Court's instruction to jury that in the event of a mistrial the case would need to be retried is not unduly coercive. USA v. Anderson, No. 18-13947 (11th Cir. 6/15/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813947.pdf

INTELLECTUAL DISABILITY: Defendant is eligible for death penalty where Court finds that he is not intellectually disabled, and finding is based on evidence. After remand from U.S. Supreme Court and new hearing. Haliburton v. State, SC19-1858 (6/17/21)
https://www.floridasupremecourt.org/content/download/749814/opinion/sc19-1858.pdf

DRIVER'S LICENSE SUSPENSION: Defendant is not entitled to keep his driver's license where breath technician failed to appear for the drivers license review, but the suspension was based on his refusal, not the results of the breath test Because Defendant refused to take the breath test there was no one who administered or analyzed a breath or blood test." Therefore, section 322.2615(11) does not apply to the subpoena of the operator. Muchhala v. DHSMV, 1D20-2365 (6/16/21)
https://www.1dca.org/content/download/749663/opinion/202365_DC02_06162021_152759_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: In no case shall a petition alleging ineffective assistance of appellate counsel on direct review be filed more than 4 years after the judgment and sentence become final on direct review. Burney v. State, 2D19-646 (6/16/21)
https://www.2dca.org/content/download/749527/opinion/190646_DC05_06162021_085836_i.pdf

VOP-HEARSAY: Child's probation may not be revoked based on PO's testimony that computer-generated GPS records maintained by an outside

company showed the defendant left his home. State's argument that the records are not hearsay because of the statement was made by a machine and was automatically generated without manual input from any person is not availing because the argument is essentially a raw guess as to what extent the information was automatically generated. Consideration of whether and when out-of-court "statements by machines" are not hearsay must await a case with a record supporting that argument. R.L.G. v. State, 3D21-675 (6/16/21)
https://www.3dca.flcourts.org/content/download/749573/opinion/210675_DC08_06162021_104153_i.pdf

EVIDENCE-STANDARD OF REVIEW: "While it is often said that a trial court's decision whetherto admit evidence is reviewed for an abuse of discretion, this is true only when the decision actually involves an exercise of discretion; a trial court's decision whether to admit evidence based upon a purely legal ruling is reviewed de novo." R.L.G. v. State, 3D21-675 (6/16/21)
https://www.3dca.flcourts.org/content/download/749573/opinion/210675_DC08_06162021_104153_i.pdf

EVIDENCE-MACHINES: "[I]n the brave new world of artificial intelligence, the finger of accusation is often pointed, not by a human being, but by an algorithm." R.L.G. v. State, 3D21-675 (6/16/21)
https://www.3dca.flcourts.org/content/download/749573/opinion/210675_DC08_06162021_104153_i.pdf

FIREARM-MENS REA: In felon-in possession cases, the Government must prove not only that the defendant knew he possessed a firearm, but also that he knew he was a felon when he possessed It. Defendants who pled or were convicted pre-Rehaif are not entitled to plain-error relief for their unpreserved Rehaif claims that they/jury were not told that the Government must prove that the defendant(s) knew they were felons. If a person is a felon, he ordinarily knows he is a felon. Felony status is simply not the kind

of thing that one forgets. Greer v. United States, No. 19-8709 (U.S. S.Ct. 6/14/20)
https://www.supremecourt.gov/opinions/20pdf/19-8709_n7io.pdf

APPEAL-PLAIN ERROR RELIEF: To establish eligibility for plain-error relief, a defendant must satisfy three threshold requirements. First, there must be an error. Second, the error must be plain. Third, the error must affect substantial rights" which generally means that there must be a reasonable probability that, but for the error, the outcome of the proceeding would have been different. Greer v. United States, No. 19-8709 (U.S. S.Ct. 6/14/20)
https://www.supremecourt.gov/opinions/20pdf/19-8709_n7io.pdf

FIRST STEP ACT: §2(a) of the Fair Sentencing Act modified the statutory penalties only for §841(b)(1)(A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties. An offender is eligible for a sentence reduction under the First Step Act only if he previously received a sentence for a covered offense. §841(b)(1)(C), possession with intent to distribute an unspecified amount of a schedule I or II drug (which does not treat crack and powder offenses differently) is not a covered offense. Terry v. United States, No. 20-5904 (U.S. S.Ct 6/14/20)
https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf

FIRST STEP ACT (SOTOMAYOR, CONCURRING): Defendant, who possessed just 3.9 grams of crack (the equivalent weight of four paper clips), and who had two prior drug convictions committed when he was a teenager for which he spent a total of only 120 days in jail, suffered a guidelines enhancement as a career criminal that caused the range (three to four years) to "skyrocket to about 15 to 20 years." "[B]ecause Terry was both convicted under subparagraph (C) and sentenced as a career offender, he has never had a chance to ask for a sentence that reflects today's understanding of the lesser severity of his crime." Terry v. United States, No. 20-5904 (U.S. S.Ct 6/14/20)

https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf

DEFINITION-"MODIFY": To "modify" means "to change moderately." Terry v. United States, No. 20-5904 (U.S. S.Ct 6/14/20)
https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdf

FIREARMS ENHANCEMENT: 2 level firearm enhancement is appropriate where a rifle was in the trailer from which Defendant sold narcotics, notwithstanding that Government argued against the enhancement. Firearm enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. USA v. Montenegro, No. 19-13542 (11th Cir. 6/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913542.pdf

SAFETY VALVE: Firearms enhancement does not necessarily mean that safety-valve relief is unavailable. To justify a firearms enhancement, the government must establish by a preponderance of the evidence either (1) that a firearm was present at the site of the charged conduct, or (2) that the defendant possessed a firearm during conduct associated with the offense of conviction. The government is not required to prove that the firearm was used to facilitate the distribution of drugs for the firearms enhancement to apply. USA v. Montenegro, No. 19-13542 (11th Cir. 6/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913542.pdf

APPEAL: Appellant who simply states that an issue exists, without further argument or discussion, abandons that issue and precludes the appellate court from considering the issue on appeal. Appellant waives any argument where he fails to plainly and prominently raise an issue by "devoting a discrete section of his argument to the claim. USA v. Montenegro, No. 19-13542 (11th Cir. 6/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913542.pdf

SENTENCING: District court may reach a different conclusion from the

parties when it applies the guidelines, including finding the firearm enhancement over Government's disagreement. USA v. Montenegro, No. 19-13542 (11th Cir. 6/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913542.pdf

PRIVACY-MASK MANDATE: COVID Mask mandate ("the yoke of a mask mandate" imposed by "fiats" and "diktats," enforced by "whispering informants") may violate Florida's right to privacy. Green v. Alachua County, 1D20-1661 (6/11/21)
https://www.1dca.org/content/download/748047/opinion/201661_DC13_06112021_130157_i.pdf

MASK MANDATE (DISSENT): "The majority's conclusion that 'a person reasonably can expect not to be forced by the government to put something on his own face against his will' completely fails to consider the circumstances in which the right is asserted, i.e., that the mask mandate was Alachua County's response to 'a clear and present threat to the lives, health, welfare, and safety' of its people posed by a contagious, airborne virus during a global pandemic. The majority's decision to ignore the circumstances in which Appellant asserts the right of privacy renders its analysis fatally flawed." Green v. Alachua County, 1D20-1661 (6/11/21)
https://www.1dca.org/content/download/748047/opinion/201661_DC13_06112021_130157_i.pdf

EVIDENCE-AUTHENTICATION: Screenshots of Facebook messages are admissible. Authentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic. Communications can be authenticated by appearance, contents, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. Gilbert v. State, 2D19-1622 (6/11/21)
https://www.2dca.org/content/download/747961/opinion/191622_DC05_0

6112021_081053_i.pdf

PRESERVED ISSUE: Failure to obtain a ruling on a motion or objection fails to preserve an issue for appeal. Where Court never rules on the hearsay objection, the issue is not preserved. Gilbert v. State, 2D19-1622 (6/11/21)
https://www.2dca.org/content/download/747961/opinion/191622_DC05_06112021_081053_i.pdf

HEARSAY-OBJECTION-PRESERVATION: A general hearsay objection is sufficient to preserve the issue. The proponent of the evidence must assert an applicable exception to the hearsy rule and the Court must consider the possible exceptions. Gilbert v. State, 2D19-1622 (6/11/21)
https://www.2dca.org/content/download/747961/opinion/191622_DC05_06112021_081053_i.pdf

HEARSAY: Journal in which victim writes about abuse, composed after her motivation to fabricate first existed (she wanted to move out of the Defendant's home), is not admissible as a prior consistent statement to rebut an inference of recent fabrication. A prior consistent statement is admissible only if the statement is made before the recent fabrication by the declarant or before the improper influence or motive arose. But error is harmless. Gilbert v. State, 2D19-1622 (6/11/21)
https://www.2dca.org/content/download/747961/opinion/191622_DC05_06112021_081053_i.pdf

ARGUMENT: State's argument emphasizing victim's vulnerability to exploitation, supported by the evidence, is proper. Because an attorney is allowed to assist the jury in analyzing, evaluating, and applying the evidence and may even suggest what conclusions can be drawn from the evidence, the comments are well within bounds. Gilbert v. State, 2D19-1622 (6/11/21)

https://www.2dca.org/content/download/747961/opinion/191622_DC05_0

6112021_081053_i.pdf

ARGUMENT: Closing argument that the victim was "victimized again by having to testify" and telling the jury "that they were the only ones that could give the victim back his dignity" is improper. Gilbert v. State, 2D19-1622 (6/11/21)

https://www.2dca.org/content/download/747961/opinion/191622_DC05_06112021_081053_i.pdf

ARGUMENT-BOLSTERING: Prosecutor improperly vouched for the victim's credibility by telling the jury that "[s]he's credible" and "she's telling you what happened to her," but error is not fundamental. Gilbert v. State, 2D19-1622 (6/11/21)

https://www.2dca.org/content/download/747961/opinion/191622_DC05_06112021_081053_i.pdf

TRESPASS-LESSER INCLUDED-JOA: Where juvenile was charged with burglary after being found inside a fenced area and having admitted that he intended to steal a beach cruiser, the Court improperly finds him guilty of the lesser trespass in absence of any evidence that the fence was at least three feet tall. A conviction for a permissive lesser included offense is only appropriate where the elements are included in the accusatory pleading and sustained by the evidence. S.S. v. State, 2D19-2464 (6/11/21)

https://www.2dca.org/content/download/747965/opinion/192464_DC13_06112021_081444_i.pdf

HOPPING-INFERENCE: It is an "unsubstantiated premise. . .that no ordinary individual would use the term 'hop' or 'jump' to describe the process of traversing a barrier less than three feet tall." S.S. v. State, 2D19-2464 (6/11/21)

https://www.2dca.org/content/download/747965/opinion/192464_DC13_06112021_081444_i.pdf

COMPETENCY: Where a court has orally found a defendant competent but erroneously failed to enter the required written order, on remand the Court may enter the order nunc pro tunc. Nasrallah v. State, 2D19-2941 (6/11/21)

https://www.2dca.org/content/download/747966/opinion/192941_DC05_06112021_081801_i.pdf

VOP: Defendant does not violate probation condition that "[y]ou will remain confined to your approved residence except for one half hour before and after . . .any other special activities approved by your officer" by being away from her approved NA meeting, where she was not required to attend NA meetings. Gomez v. State, 2D20-1846 (6/11/21)

https://www.2dca.org/content/download/747969/opinion/194239_DC13_06112021_081909_i.pdf

CREDIT FOR TIME SERVED: Although a person is generally not in custody
under a detainer for purposes of presentence jail credit, if the person would be subject to release but for the detainer, he or she may be entitled to credit for presentence jail time served. Blattner v. State, 2D20-1846 (6/11/21)

https://www.2dca.org/content/download/747988/opinion/201846_DC13_06112021_083414_i.pdf

PLEA WITHDRAWAL: A defendant is entitled to be present at a hearing on a motion to withdraw plea because it is a critical stage in the proceedings. Woods v. State, 5D20-2034 (6/11/21)

https://www.5dca.org/content/download/747952/opinion/202034_DC13_06112021_083719_i.pdf

Borden v. United State, No. 19–5410 (US S.Ct. 6/10/21)

ARMED CAREER CRIMINAL ACT: Offenses with a mens rea of recklessness do not qualify as violent felonies under the ACCA violent felony enhancement. An offense qualifies as a violent felony under the elements clause only if it has as an element the use, attempted use, or threatened use of physical force against the person of another. If any—even the least culpable—of the acts criminalized do not entail that kind of force, the statute of conviction does not categorically match the federal standard, and so cannot serve as an ACCA predicate. Tennessee's reckless aggravated assault is not a predicate offense. Borden v. United State, No. 19–5410 (US S.Ct. 6/10/21)

https://www.supremecourt.gov/opinions/20pdf/19-5410_8nj9.pdf

MENS REA: The four mens rea states of mind under criminal law, in descending order of culpability, are: purpose, knowledge, recklessness, and negligence. A person acts purpose fully when he consciously desires a particular result. He acts knowingly when he is aware that a result is practically certain to follow from his conduct, whatever his affirmative desire. A person acts recklessly, in the most common formulation, when he

consciously disregards a substantial and unjustifiable risk attached to his conduct, in gross deviation from accepted standards. A person acts negligently if he is not but should be aware of such a substantial and unjustifiable risk, again in gross deviation from the norm. Borden v. United State, No. 19–5410 (US S.Ct. 6/10/21)

https://www.supremecourt.gov/opinions/20pdf/19-5410_8nj9.pdf

RULES-AMENDMENT: State must provide a physical or email address designated by a law enforcement agency or department for service of a notice of deposition with discovery, in order to provide defense attorneys with the most accurate information to effectuate service on law enforcement officers for depositions. In Re: Amendments to the Florida Rule of Criminal Procedure, No. SC20-1564 (6/10/21)

https://www.floridasupremecourt.org/content/download/747789/opinion/SC20-1564.pdf

SEARCH AND SEIZURE (CONCURRING DUBITANTE): The legality of stopping a vehicle for having an unassigned dealer tag is dubious since by definition dealer's tags are used on unassigned vehicles. Lucas v. State, 1D19-3882 (6/10/21)

https://www.1dca.org/content/download/747817/opinion/193882_DC05_06102021_131948_i.pdf

DEFINITION-"DUBITANTE": "Dubitante" is a notation expressing serious doubt about the case, used when precedent compels affirmance but the author is inclined to think it is not correct and explains why. Lucas v. State,

1D19-3882 (6/10/21)

https://www.1dca.org/content/download/747817/opinion/193882_DC05_06102021_131948_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing that counsel was ineffective for failing to preserve for appeal the admission of child hearsay, provided he amends motion to allege prejudice. Cowan v. State, 1D20-1764 (6/10/21)

https://www.1dca.org/content/download/747819/opinion/201764_DC08_06102021_133118_i.pdf

HABEAS CORPUS: Habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Anderson v. State, 1D20-3110 (6/10/21)

https://www.1dca.org/content/download/747821/opinion/203110_DA08_06102021_133754_i.pdf

HABEAS CORPUS: Habeas corpus may not to be used for claims that could have been raised to the trial court, should have been raised on appeal (if preserved), and/or could have been raised in a postconviction relief motion. Richardson v. State, 1D20-3363 (6/10/21)

https://www.1dca.org/content/download/747822/opinion/203363_DC05_06102021_133941_i.pdf

HABEAS CORPUS: Habeas corpus is not available in Florida to obtain the

kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Frederick v. State, 1D20-5756 (6/10/21)

https://www.1dca.org/content/download/747823/opinion/203756_DA08_06102021_134113_i.pdf

HABEAS CORPUS: Habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Gutierrez v. State, 1D21-187 (6/10/21)

https://www.1dca.org/content/download/747825/opinion/210187_DA08_06102021_134430_i.pdf

COSTS: Court may not impose public defender fees over the statutory minimum. Defendant's statement, "Uh, I – I could try to pay it, as much as I can I guess. Man, I don't know. . .I get social security, so I don't know how I'm gonna pay that. Man, I ain't got . . . nothing to pay with it, sir. I mean, once I get out, I guess I can pay," does not show ability to pay, and amounts must be supported by evidence, anyway. Icon v. State, 4D20-246 (6/9/21)

https://www.4dca.org/content/download/747536/opinion/200246_DC08_06092021_095625_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Minor who intended to scare victim, not kill him, but where co-defendant did kill the victim, is properly sentenced to a life sentence with a later judicial review. Sentencing is discretionary and Court does not abuse its discretion where reasonable judges could differ. Washington v. State, 1D19-4487 (6/8/21)

https://www.1dca.org/content/download/747337/opinion/194487_DC05_0

6082021_141532_i.pdf

SENTENCING-DISPARITY-DISCRETION (CONCURRENCE): The "abuse of discretion" standard on appeal creates the potential for, and allows in actual operation, sentencing disparities between similarly situated criminal defendants. Washington v. State, 1D19-4487 (6/8/21)

https://www.1dca.org/content/download/747337/opinion/194487_DC05_06082021_141532_i.pdf

JIMMY RYCE: Where the State proves a predicate conviction for An enumerated sexually violent offense, the requirements of the statutory reasonable doubt standard does not apply. The clear and convincing evidence standard applies. Shaw v. State, 1D20-433 (6/8/21)

https://www.1dca.org/content/download/747338/opinion/200443_DC05_06082021_141731_i.pdf

COVID: The judicial branch can now transition to operations where in-person contact is more broadly authorized, effective June 21, 2021, and must be implemented by all courts by August 2, 2021. Fully vaccinated people can resume activities without wearing a mask or physically distancing. Prevention measures are still recommended for unvaccinated people. Participants and observers may wear face masks. Persons qualified to administer an oath in the State of Florida may swear a witness remotely by audio-video communication technology from a location within the State of Florida. In Re: Covid-19 Health and Safety Protocols, No. AOSC21-17 (FLA 6/4/21)

https://www.floridasupremecourt.org/content/download/746675/file/AOSC21-

17.pdf

COVID-SPEEDY TRIAL: All time periods involving the speedy trial procedure in criminal court proceedings remain suspended until the close of business on October 4, 2021, for persons who were taken into custody before March 14, 2020 and January 3, 2022 for persons who were taken into custody on or after March 14, 2020. When the time periods involving the speedy trial procedure resume, the 10-day time period in R. 3.191(p)(3) is increased to 30 days. In Re: Covid-19 Health and Safety Protocols, No. AOSC21-17 (FLA 6/4/21)

https://www.floridasupremecourt.org/content/download/746675/file/AOSC21-17.pdf

APPELLATE COUNSEL-INEFFECTIVENESS: Appellate counsel is not ineffective for failing to add federal citations to his sufficiency of his arguments. The gloss of adding federal citations to the arguments would not have improved them, affected the outcome of his direct appeal, or advanced his case. Earven v. State, 1D19-3927 (6/4/21)

https://www.1dca.org/content/download/746679/opinion/193927_DC02_06042021_133248_i.pdf

INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was not ineffective for failing to argue fundamental error related to how the aggravated assault jury instruction, which included an objective standard instruction, addressed the victim's fear. Although the appropriateness of

instructing the jury on an objective standard in circumstances where the victim of aggravated assault testifies of having not been afraid doesn't appear to have been directly litigated before in Florida, failing to raise a novel fundamental error argument on appeal is not ineffectiveness. Earven v. State, 1D19-3927 (6/4/21)
https://www.1dca.org/content/download/746679/opinion/193927_DC02_06042021_133248_i.pdf

ASSAULT-FEAR-OBJECTIVE STANDARD (CONCURRENCE): Allowing proof of only objective fear appears to be contrary to the statutory definition of assault which requires both that the fear be objectively reasonable and the act of the defendant creates a well-founded fear in such other person. If the victim does not testify, circumstantial evidence can prove the subjective fear. But if the victim testifies that he or she was not afraid, and there is no evidence to the contrary, there is a good argument that the assault charge should not go to the jury. Earven v. State, 1D19-3927 (6/4/21)

https://www.1dca.org/content/download/746679/opinion/193927_DC02_06042021_133248_i.pdf

VOP-JURISDICTION-TOLLING: When a term of supervision expires before an affidavit of violation is filed, the trial court lacks jurisdiction to revoke supervision. The tolling periods that occur between the filing of earlier affidavits and the court's rulings on them do not automatically operate to extend probation term past the original term. Where Court did not extend the end date of supervision when reinstating probation, tolling does not come into play. Vop dismissed. Medina v. State, 2D18-4719 (6/4/21)

https://www.2dca.org/content/download/746624/opinion/184719_DC13_06042021_081707_i.pdf

ANDERS BRIEF: The standard for a no-merits Anders brief is not the

inability to find a meritorious argument that the trial court committed significant reversible error. Appellate counsel must master the trial record, thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal, and then may file an Anders Brief only after such an evaluation has led counsel to the conclusion that the appeal is wholly frivolous. "This is not the first time I have seen this misstatement of the Anders standard. . . Hopefully, it will be the last. If it isn't, perhaps the next time a lawyer repeats this erroneous notion in a representation to our court, our court should request that lawyer's appearance—in court—to explain why that misapprehension persists." Earven v. State, 1D19-3927 (6/4/21)

https://www.1dca.org/content/download/746679/opinion/193927_DC02_06042021_133248_i.pdf

ANDERS BRIEF: "I would also respectfully suggest that when, as here, it takes a lawyer forty-nine pages to explain why there are no issues of arguable merit in his or her case, the case is probably not 'wholly frivolous.'" Mateo v. State, 19-3768 (6/4/21)

https://www.2dca.org/content/download/746625/opinion/193768_DC05_06042021_082003_i.pdf

RESTITUTION-JUVENILE: Court may retain jurisdiction beyond a Child's 19th birthday to enforce restitution, but the amount of jurisdiction must be established before the 19th birthday. Reserving jurisdiction without setting the amount is insufficient. E.H.W. v. State, 2D20-386 (6/4/21)

https://www.2dca.org/content/download/746626/opinion/200386_DC13_06042021_082230_i.pdf

RESTITUTION: Absent waiver, expressed or implied, Defendant has the right to notice and to be present at a restitution hearing. Unsworn

statements from a clerk and a DJJ representative together with the unsworn statements and legal arguments of the prosecutor do not constitute competent, substantial evidence to support a finding of a voluntary waiver of presence. E.H.W. v. State, 2D20-386 (6/4/21)

https://www.2dca.org/content/download/746626/opinion/200386_DC13_06042021_082230_i.pdf

FIREARMS-TEMPORARY INJUNCTION FOR STALKING: A court has no authority to prohibit a person from possessing firearms or ammunition upon the issuance of a temporary injunction for protection against stalking. Unstable obsessed stalker of a TV news reporter gets his guns back. Dean v. Bevis, 2D20-2348 (6/4/21)

https://www.2dca.org/content/download/746627/opinion/202348_DC08_06042021_082342_i.pdf

VOP: Due process is violated in VOP hearing where Defendant is not put on notice that he should prepare for both sentencing and to contest the alleged violations of probation on their merits at the hearing, and Court made it clear that any evidence or argument intended to contest the violations would not be entertained because the hearing was "just for sentencing." Connell v. State, 5D19-3700 (6/4/20)

https://www.5dca.org/content/download/746643/opinion/193700_DC13_06042021_081816_i.pdf

APPEAL: Resentencing court may not conduct a harmless error analysis to excuse its own Alleyne violation. An Alleyne violation may constitute harmless error, but only when the harmless error review is conduct by the appellate court, not the sentencing court. Harmless error reviews are only conducted by appellate courts. Manago v. State, 5D20-632 (6/4/21)

https://www.5dca.org/content/download/746644/opinion/200632_NOND_06042021_084130_i.pdf

COSTS: Court may not impose $12 costs assessed pursuant to section 318.18(11)(b) on Defendant not charged with a traffic infraction. Boyd v. State, 5D20-2302 (6/4/21)
https://www.5dca.org/content/download/746646/opinion/202302_DC05_06042021_085247_i.pdf

COMPUTER FRAUD: Former police sergeant who ran a license-plate search in a law enforcement computer database in exchange for money did not violated the Computer Fraud and Abuse Act of 1986 (CFAA). Statute only criminalizes accessing particular areas in the computer—such as files, folders, or databases—to which the users' access does not extend, not to users who have improper motives for obtaining information that is otherwise available to them. Van Buren v. United States, No. 19–783 (U.S. S.Ct. 6/3/21)

https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf

DEFINITION-"SO": "So" is a term of reference that recalls the same manner as has been stated or the way or manner described. "So" is not a free-floating term that provides a hook for any limitation stated anywhere. It refers to a stated, identifiable proposition from the preceding text. Van Buren v. United States, No. 19–783 (U.S. S.Ct. 6/3/21)

https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf

COSTS: Where the trial court imposes the minimum public defender fee required, the court is not required to announce the imposition of the fee at sentencing or notify the defendant of the right to a hearing to contest the fee. State v. J.A.R., SC20-1604 (6/3/21)

https://www.floridasupremecourt.org/content/download/746158/opinion/sc20-1604.pdf

DEATH PENALTY: Defendant who made himself a cup of coffee, ate half of a honey bun and finished the cup of coffee before calmly reporting to a correctional officer that he had murdered his cellmate properly sentenced to death. Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

OFFER OF COUNSEL: Court erred in failing to renew offer of counsel to pro se murder Defendant between the guilt and penalty phases began, but the error was cured when, immediately after the penalty-phase jury returned its recommendation, the Defendant said he would not have accepted the offer of counsel had it been made. Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

JURY INSTRUCTION: Jury instruction that it is "the judge's job to determine a proper sentence" if the jury finds Defendant guilty of first-degree premeditated murder is error but is cured by other instructions. Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

APPEAL-PRESERVATION: Acquiescing to an incorrect instruction constitutes a failure of preservation that does not preclude fundamental-error review. Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

FIFTH AMENDMENT: Any Fifth Amendment violation from compelling a psychological examination and using Defendant's statements from the evaluation during the penalty phase of the death penalty trial is forfeited when the Defendant makes selective use of the report. "We hold that by making the mental health mitigation presented by amicus counsel his own, [Defendant] has forfeited his claim." Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

QUOTATION: "The Fifth Amendment is a shield, not a sword or a scalpel." Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

DEATH PENALTY: Aggravating factors need not be shown beyond a reasonable doubt. Allen v. State, SC19-1313 (6/3/21)

https://www.floridasupremecourt.org/content/download/746157/opinion/sc19-1313.pdf

MINOR-HOMICIDE-RESENTENCING: Upon re-sentencing of minor convicted of murder as a principal, 45 year sentence is lawful. Judge is not bound by predecessor's comment that "[I]f I had my druthers. . ., it'd probably be in the neighborhood of - - of twenty years." Andrews v. State, 1D19-4322 (6/3/21)

https://www.1dca.org/content/download/746189/opinion/194322_DC05_0

6032021_140821_i.pdf

PRISON RELEASEE REOFFENDER: PRR sentences apply to Defendants who commit their offenses while still in prison. Drayton v. State, 1D19-2069 (6/3/21)

https://www.1dca.org/content/download/746187/opinion/192069_DC05_06032021_135742_i.pdf

NOLLE PROSEQUI-REINSTATED CHARGE: Court lacks jurisdiction to reinstate inadvertently nolle prossed charge. Spicer v. State, 2D19-368 (6/2/21)

https://www.2dca.org/content/download/745920/opinion/190368_DA08_06022021_083219_i.pdf

NOLLE PROSEQUI: State has no authority to enter a nolle prosequi in a case after the Court has accepted a plea. Spicer v. State, 2D19-368 (6/2/21)

https://www.2dca.org/content/download/745920/opinion/190368_DA08_06022021_083219_i.pdf

MURDER-PREMEDITATION: Defendant who walked over to the kitchen sink, grabbed the knife from the sink, and held it to his side to hide it from the victim, pushed her into the hallway to avoid detection, and then held her until she fell to the floor before stabbing her repeatedly had sufficient premeditation to support a first degree murder conviction. Holmes v. State, 3D19-875 (6/2/21)

https://www.3dca.flcourts.org/content/download/745946/opinion/190875_

DC05_06022021_100847_i.pdf

STATEMENT OF DEFENDANT: "I've given you enough already" is not an unequivocal or unambiguous request to terminate an interrogation. Holmes v. State, 3D19-875 (6/2/21)

https://www.3dca.flcourts.org/content/download/745946/opinion/190875_DC05_06022021_100847_i.pdf

DOUBLE JEOPARDY-MISTRIAL: Where Defendant asks for a continuance after the jury is thrown based on a discovery violation (newly disclosed 911 calls) and court dismisses the jury, a new trial violates double jeopardy. Absent the defendant's motion for a mistrial or express consent, the court may only declare a mistrial on its own or a prosecution motion if, after an assiduous inquiry, there is a manifest necessity to do so. Defendant's failure to object to the mistrial is not an implicit waiver of the defendant's constitutional rights. "Defense counsel's duty. . .is to represent the interests of his client within the bounds of the law—not to safeguard the State's right of prosecution." State v. Jones, 3D19-1939 (6/2/21)

https://www.3dca.flcourts.org/content/download/745948/opinion/191939_DC05_06022021_101240_i.pdf

DOUBLE JEOPARDY: The policy importance of double jeopardy protection includes considerations that "[e]ven if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. . .Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial." State v. Jones, 3D19-

1939 (6/2/21)

https://www.3dca.flcourts.org/content/download/745948/opinion/191939_DC05_06022021_101240_i.pdf

SELF-REPRESENTATION: Request to discharge court appointed counsel is not a request to proceed pro se. Defendant's request for self representation must be unequivocal. Deshazior v. State, 3D20-325 (6/2/21)

https://www.3dca.flcourts.org/content/download/745951/opinion/200325_DC05_06022021_101745_i.pdf

COSTS-INVESTIGATIVE FEE: Court may not impose a $50 investigative fee absent a request and documentation. Franklin v. State, 4D19-2229 (6/2/21)

https://www.4dca.org/content/download/745956/opinion/192229_DC08_06022021_095302_i.pdf

LIFE FELONY-LEWD AND LASCIVIOUS: The possible sentences for a Lewd and Lascivious Life Felony are either a life sentence or a split sentence involving at least twenty-five years imprisonment followed by the remainder of the defendant's life on probation. The twenty-five year mandatory minimum only applies where a split sentence is imposed. Prentice v. State, 4D19-3498 (6/2/21)

https://www.4dca.org/content/download/745960/opinion/193498_DC05_06022021_095959_i.pdf

COSTS: Court may not impose a public defender fee in excess of the amount agreed absent a hearing, nor may it impose a public defender fee for transcription costs without giving Defendant notice of the right to object and without proof supporting the amount. Prentice v. State, 4D19-3498

(6/2/21)

https://www.4dca.org/content/download/745960/opinion/193498_DC05_06022021_095959_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to convey a plea offer. Defendant's expressions of hiss desire to proceed to trial do not render his claims inherently incredible. Lewis v. State, 4D20-2093 (6/2/21)

https://www.4dca.org/content/download/745966/opinion/202093_DC08_06022021_101021_i.pdf

INVESTIGATIVE SUBPOENA-MEDICAL RECORDS: State is entitled to an investigative subpoena for medical records of (1) any toxicology reports; (2) any records containing Defendant's admissions to consumption; and (3) any records containing descriptions of his physical appearance and/or impaired physical and mental state in DUI accident case where legal blood draw showed indications of unlawful substances. State v. Shaul, 4D21-82 (6/2/21)

https://www.4dca.org/content/download/745967/opinion/210082_DC03_06022021_101130_i.pdf

DOMESTIC BATTERY: Defendant's conviction on charge of battery (domestic) must not be converted from simple battery where the jury instruction did not include an instruction regarding whether the victim was a "family or household member" of Appellant. Alleyne precludes the judge from making the domestic violence finding on her own. Bethea v. State, 4D21-98 (6/2/21)

https://www.4dca.org/content/download/745968/opinion/210098_DC08_06022021_101245_i.pdf

STAND YOUR GROUND: Court's erroneous ruling that Defendant must present evidence at SYG hearing is cured by the jury verdict. There is no evidentiary burden upon the person seeking Stand Your Ground immunity. Instead, a defendant must 'simply allege a facially sufficient prima facie claim of justifiable use of force under chapter 776 in a motion to dismiss filed under rule 3.190(b) and present argument in support of that motion at a pretrial immunity hearing. Bethea v. State, 4D21-98 (6/2/21)

https://www.4dca.org/content/download/745968/opinion/210098_DC08_06022021_101245_i.pdf

IMMIGRATION-ASYLUM: Relief from removal based on political asylum is unavailable to aliens convicted of a particularly serious crime. Garland v. Ming Dai, No. 19–1155 (U.S. S.Ct. 6/1/21)

https://www.supremecourt.gov/opinions/20pdf/19-1155_new_197d.pdf

IMMIGRATION-HEARING-CREDIBILITY: A reviewing court need not treat a petitioning alien's testimony as credible and true in the absence of an explicit adverse credibility determination by an immigration judge or the Board of Immigration Appeals. It does not matter whether the agency accepts all, none, or some of the alien's testimony, its reasonable findings may not be disturbed. The statutory rebuttable presumption of credibility on appeal does not apply to appeals to Article III courts, only to appeals from the Immigration Judge to the Bureau of Immigration Appeals. A presumption of credibility may arise in some appeals before the BIA, but no such presumption applies in antecedent proceedings. Garland v. Ming Dai, No. 19–1155 (U.S. S.Ct. 6/1/21)

https://www.supremecourt.gov/opinions/20pdf/19-1155_new_197d.pdf

SEARCH AND SEIZURE-NATIVE AMERICAN: Tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law. A tribe retains inherent sovereign authority to address conduct that threatens or has some direct effect on the health or welfare of the tribe, notwithstanding that Indians generally lack inherent sovereign power to exercise criminal jurisdiction over non-Indians. United States v. Cooley, No. 19-1414 (US S.Ct. 6/1/21)

https://www.supremecourt.gov/opinions/20pdf/19-1414_8m58.pdf

VOP: §948.06(2)(f)1 does not include defendants with more than one technical violation of probation. Phillips v. State, 1D19-4279 (6/1/21)

https://www.1dca.org/content/download/745804/opinion/194279_DC05_06012021_143308_i.pdf

COSTS: Court may not impose discretionary costs without providing the statutory authority and providing an explanation as to what the costs represent. Court may impose the costs upon remand. Ivey v. State, 1D20-96 (6/1/21)

https://www.1dca.org/content/download/745805/opinion/200096_DC08_06012021_143847_i.pdf

MAY 2021

APPEAL: A certificate of appealability is required when a federal prisoner obtains relief through a postconviction motion and appeals the decision to correct only the illegal sentence instead of performing a full resentencing. The sentencing-package doctrine does not require resentencing on all

counts when only the Armed Career criminal enhancement is vacated. Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from the final order in a proceeding under 28 U.S.C. §2253. USA v. Cody, No. 19-11915 (11th Cir. 5/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911915.pdf

POST CONVICTION RELIEF: Court must allow a defendant one opportunity to amend a facially insufficient motion or claim within sixty days. By ordering the State to respond at the same time as it granted Defendant an opportunity to amend, and not advising him of the insufficiencies of the original motion, the Court failed to give Defendant the required opportunity to amend. Howard v. State, 2D20-2179 (5/28/21)

https://www.2dca.org/content/download/745134/opinion/202179_DC08_05282021_083318_i.pdf

10-20-LIFE STATUTE: 10-20-Life statute (§775.087(2)(d)) permits, but does not require consecutive sentences to multiple applicable counts. Resentencing is required where Court wrongly thought that consecutive sentences are required. Marquez-Gonzalez v. State, 5D19-3427 (5/28/21)

https://www.5dca.org/content/download/745096/opinion/193427_DC08_05282021_081759_i.pdf

BRIBERY: Bribery under 18 U.S.C. §666 does not have an "official act" element, unlike bribery under 18 U.S.C. §201. Lobbyists who hire a state congressman to use his position to influence other lawakers to thwart an EPA clean up project commit the crime of bribery. The nature and timing of the payments, the secret recording of meetings, the routing of these

payments through a charitable foundation, the nondisclosure of the payments, and the failure of the parties to inform the EPA or other agencies of their financial relationship support the inference that the payments were made with a corrupt state of mind. USA v. Roberson, No 18-14654 (11th Cir. 5/27/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814654.pdf

BRIBERY: Bribery under 18 U.S.C. §666 does not have an "official act" element, unlike .bribery under 18 U.S.C. §201. Lobbyists who hire a state congressman to use his position to influence other lawakers to thwart an EPA clean up project commit the crime of bribery. The nature and timing of the payments, the secret recording of meetings, the routing of these payments through a charitable foundation, the nondisclosure of the payments, and the failure of the parties to inform the EPA or other agencies of their financial relationship support the inference that the payments were made with a corrupt state of mind. USA v. Roberson, No 18-14654 (11th Cir. 5/27/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814654.pdf

BRIBERY: The "retainer," "as opportunities arise," or "stream of benefits" theory of bribery, occurs when a person bribes an individual or entity in exchange for a continuing course of conduct. USA v. Roberson, No 18-14654 (11th Cir. 5/27/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814654.pdf

BRIBERY: There is not be an express quid pro quo requirement to all convictions under §666. Although the question or matter to be influenced must be identified, the retainer theory of liability is still a valid basis of

conviction. USA v. Roberson, No 18-14654 (11th Cir. 5/27/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814654.pdf

COMPASSIONATE RELEASE: Court abused its discretion in denying Defendant's motion for compassionate release based on this prisoners' high risk for COVID-19; his obesity, high blood pressure, and latent tuberculosis which put him at a high risk of death from COVID; and intervening court decisions which would have exempted him from career offender enhancement. Court abuses its discretion if it fails to consider §3553(a) factors on a motion for compassionate release. "If we cannot tell whether a district court weighed the relevant factors, then we cannot tell whether it abused its discretion." USA v. Cook, No. 20-13293 (11th Cir. 5/27/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202013293.pdf

ATTORNEY DISCIPLINE: Attorney disciplined for misleading election campaign criticisms of opponent. "[W]e write to place future candidates for judicial office on notice that this Court takes misrepresentations that cast a sitting judge in a false light seriously because of their potential to undermine confidence in the rule of law." The Florida Bar v. Aven, SC19-1879 (5/27/21)

https://www.floridasupremecourt.org/content/download/744948/opinion/sc19-1879.pdf

POST CONVICTION RELIEF: Challenge to hair analysis evidence, previously raised and rejected, cannot be re-litigated on the basis of a new FBI memo which adds to but does not change doubts on reliability of such evidence. Claim is procedurally barred. Bogle v. State, SC20-1054 (5/26/21)

https://www.floridasupremecourt.org/content/download/744949/opinion/sc20-1054.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Simpkins v. State, 20-3213 (5/27/21)

https://www.1dca.org/content/download/744974/opinion/203213_DA08_05272021_132914_i.pdf

RE-SENTENCING-MANDATE: Defendant is entitled to a resentencing upon issuance of a mandate from the appellate court, notwithstanding that the case law requiring resentencing has been changed subsequent to the order to re-sentence. The order reversing Defendant's sentence and directing resentencing is final, and the post conviction court lacks jurisdiction to rescind it. Howard v. State, 2D19-3299 (5/26/21)

https://www.2dca.org/content/download/744624/opinion/193299_DC13_05262021_090602_i.pdf

HEARSAY-EXCITED UTTERANCE: In the context of domestic violence, a declarant's initial false statement do not automatically remove subsequent statements from the scope of the excited utterance exception. Where victim had time to engage in reflective thought, but did not do so, statements may be admissible. Victim's statements to friends at a bar while the victim was in her pajamas, crying hysterically, made within 30 to 40 minutes after the police originally arrived at her home to investigate the domestic disturbance, are admissible. Jones v. State, 4D19-3691 (5/26/21)

https://www.4dca.org/content/download/744663/opinion/193691_DC05_05262021_095116_i.pdf

WILLIAMS RULE: Evidence of a volatile relationship between the

defendant and the victim—including evidence of prior incidents of domestic violence—is relevant to the issues of motive, intent, and premeditation. Jones v. State, 4D19-3691 (5/26/21)

https://www.4dca.org/content/download/744663/opinion/193691_DC05_05262021_095116_i.pdf

MURDER-PREMEDITATION: Evidence demonstrating a murder by strangulation with signs of a struggle, coupled with a prior domestic violence incident in which appellant threatened to kill the victim supports a finding of premeditation. Jones v. State, 4D19-3691 (5/26/21)

https://www.4dca.org/content/download/744663/opinion/193691_DC05_05262021_095116_i.pdf

CONSTRUCTIVE POSSESSION: Defendant is properly convicted of possession of THC where he did not have sole possession of the house, but left fingerprints on various items, including a box of paraphernalia, a grinder, various THC vape cartridges, and a trash bag containing vacuum sealed baggies of cannabis residue. Bartolone v. State, 4D19-3920 (5/26/21)

https://www.4dca.org/content/download/744664/opinion/193920_DC08_05262021_095304_i.pdf

COSTS: Defendant preserved improper assessment of costs by filing motion to correct under R. 3.800(b)(2). Bartolone v. State, 4D19-3920 (5/26/21)

https://www.4dca.org/content/download/744664/opinion/193920_DC08_05262021_095304_i.pdf

INVESTIGATIVE COSTS: Courts cannot impose investigative costs where State did not request reimbursement for these costs. If these costs are not requested by the State, they must be stricken and cannot be imposed on remand. Bartolone v. State, 4D19-3920 (5/26/21)

https://www.4dca.org/content/download/744664/opinion/193920_DC08_05262021_095304_i.pdf

COSTS OF PROSECUTION: Upon remand, State may not request another opportunity to present proof of the higher prosecution costs than the statutory amount. A party does not get the proverbial second bite at the apple when it fails to satisfy a legal obligation the first time around. Bartolone v. State, 4D19-3920 (5/26/21)

https://www.4dca.org/content/download/744664/opinion/193920_DC08_05262021_095304_i.pdf

INVESTIGATORY SUBPOENA-MEDICAL RECORDS: State is entitled to medical/toxicology records by subpoena where Defendant crashed into a car and admitted to drinking, demonstrated signs of intoxication, and required assistance to walk to the ambulance. HIPAA does not prevent the State from subpoenaing relevant medical records in a criminal proceeding. State v. Tavenese, 4D21-57 (5/26/21)

https://www.4dca.org/content/download/744672/opinion/210057_DC03_05262021_100905_i.pdf

EVIDENCE-CIRCUMSTANTIAL: The evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or among the reasonable conclusions to be drawn from the

evidence presented at trial. The government may introduce circumstantial evidence, but reasonable inferences, not mere speculation, must support the conviction. USA v. Estapa, No. 19-12272 (5/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912272.pdf

FRAUD: Contractor doing business for the federal government who promises to pay its employees the prevailing local wage and not to use subcontractors, but breaks both promises, commits fraud. USA v. Estapa, No. 19-12272 (5/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912272.pdf

FRAUD: Fraud does not require financial loss. USA v. Estapa, No. 19-12272 (5/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912272.pdf

MENS REA: Defendants who engaged in a pervasive pattern of deceit possess the requisite mens rea for wire fraud and conspiracy to commit wire fraud. USA v. Estapa, No. 19-12272 (5/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912272.pdf

UNLAWFUL REENTRY: Defendant is properly convicted of unlawful reentry notwithstanding that he had been deported based on a felony DUI conviction which was erroneously considered to be an aggravated felony. An alien may not challenge the validity of the deportation order unless the alien demonstrates that (1) he exhausted any administrative remedies, (2) the

deportation proceedings has improperly deprived the alien of the opportunity for judicial review; and (3) the entry of the order was fundamentally unfair.to Mexico the next day. Defendants charged with unlawful reentry may not challenge their underlying removal orders unless they demonstrate that all three conditions are met. United States v. Palomar-Santiago, No. 20-437 (U.S. S.Ct. 4/24/21)

https://www.supremecourt.gov/opinions/20pdf/20-437_bqmc.pdf

DEFINITION-"CHALLENGE": Challenge" means "to object or except to" or "to put into dispute." United States v. Palomar-Santiago, No. 20-437 (U.S. S.Ct. 4/24/21)

https://www.supremecourt.gov/opinions/20pdf/20-437_bqmc.pdf

SENTENCING-DOWNWARD DEPARTURE: A defendant may not appeal from an order denying a downward departure motion unless the defendant alleges that the trial court misunderstood its discretion or that the court had a blanket policy to refuse to exercise that discretion. Holton v. State, 1D19-2809 (5/24/21)

https://www.1dca.org/content/download/744315/opinion/192808_DC05_05242021_144203_i.p

APPEAL-PRESERVATION: Defendant may not appeal a sentencing error (here, failure to make written finding to explain why he posed a danger to the community under the violent felony offender of special concern statute) absent a contemporary objection or motion to correct. Holton v. State, 1D19-2809 (5/24/21)

https://www.1dca.org/content/download/744315/opinion/192808_DC05_05242021_144203_i.pdf

PROBATION-CONDITIONS: Electronic search conditions may be imposed on those non-sex offenders, such as those who frequently recidivate, or habitually violate their conditions of supervised release, in a manner that poses a danger to others, regardless whether it relates directly to the offense of conviction (here, possession of firearm by a felon). USA v. Taylor, No. 20-10742 (11th Cir. 5/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010742.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: A district court imposes a substantively unreasonable sentence only when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors. Although there is no proportionality principle in sentencing, a major variance from the advisory guideline range requires a more significant justification than a minor one, and the justification must be sufficiently compelling to support the degree of the variance. A three month upward variance for Defendant with six prior illegal possession of firearm offenses is not substantively unreasonable. USA v. Taylor, No. 20-10742 (11th Cir. 5/21/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010742.pdf

APPEAL-DOWNWARD DEPARTURE: Appellate court may not review Court's denial of a request for downward departure where the Court engaged

in an appropriate analysis of the factors involved in exercising its discretion. Conflict Certified. Forsythe v. State, 1D20-781 (5/21/21)

https://www.1dca.org/content/download/743829/opinion/200781_DA08_05212021_125528_i.pdf

PRETRIAL RELEASE-GPS MONITOR: Court properly exercised its discretion in denying Defendant's Motion to delete the GPS condition of pretrial release based on its excessive costs. Frederick v. State, 2D20-2768 (5/21/21)

https://www.2dca.org/content/download/743792/opinion/202768_DC02_05212021_083359_i.pdf

SENTENCING-GUIDELINES: The lowest-permissible sentence is an individual minimum sentence where there are multiple convictions subject to sentencing on a single scoresheet. Gabriel v. State, 5D18-264 (5/21/21)

https://www.5dca.org/content/download/743745/opinion/183264_DC05_05212021_081741_i.pdf

PLEA-DEPORTATION CONSEQUENCES: The equivocal immigration

warning given to Defendant by the trial court at the change of plea hearing that Defendant (a DACA resident) "could" be deported or denied citizenship if he was not a United States citizen, when coupled with Defendant's acknowledgement of the potential adverse immigration consequences from his plea, was sufficient, under the circumstances of the case, to refute his claim of prejudice because any adverse immigration or deportation consequences to Defendant resulting from his plea were not truly clear at the time of the plea. It is unclear that tampering with a witness is a crime of moral turpitude requiring mandatory deportation. Ramirez v. State, 5D20-1824 (5/21/21)

https://www.5dca.org/content/download/743749/opinion/201824_DC05_05212021_083043_i.pdf

PLEA-DEPORTATION CONSEQUENCES-COUNSEL: Defense counsel has a duty to inquire of Defendant's immigration or citizenship status prior to tendering a plea. Counsel who testified that, as a common practice, he no longer asks his clients about their citizenship because of a 'bad experience" he had years earlier provides ineffective assistance of counsel. A criminal defense attorney representing a client charged with a felony should make a reasonable inquiry as to the immigration or citizenship status of his or her client. Otherwise, counsel will not be in an adequate position to provide effective guidance or advice to the client regarding the potential immigration consequences of his or her guilty or no contest plea. But, on the facts, no prejudice shown here. Ramirez v. State, 5D20-1824 (5/21/21)

https://www.5dca.org/content/download/743749/opinion/201824_DC05_05212021_083043_i.pdf

PLEA-DEPORTATION CONSEQUENCES: When the law is not succinct and straightforward, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry adverse

immigration consequences. But when the deportation consequence is truly clear, the duty to give correct advice is equally clear. Ramirez v. State, 5D20-1824 (5/21/21)

https://www.5dca.org/content/download/743749/opinion/201824_DC05_05212021_083043_i.pdf

PLEA WITHDRAWAL: There exists no fundamental error exception to the requirement that Defendant to file a motion to withdraw the plea in the trial court before appealing an involuntary plea. Defendant cannot appeal the voluntariness of his plea based on the Court having failed to hold competency hearing without first moving to withdraw the plea. State v. Dortch, SC18-681 (5/20/21)

https://www.floridasupremecourt.org/content/download/743444/opinion/sc18-681.pdf

COMPETENCY: While defense counsel's views about a defendant's competence are important, courts need not accept without question a lawyer's representation concerning the competence of his client. Mere assertions of defense counsel, without more, do not trigger a defendant's constitutional right to competency proceedings. Counsel's unelaborated representation that Defendant may be incompetent, undercut by other facts, A trial court's decision to order a psychological evaluation may not create a constitutional entitlement to a competency hearing. State v. Dortch, SC18-681 (5/20/21)

https://www.floridasupremecourt.org/content/download/743444/opinion/sc18-681.pdf

FIRST STEP ACT: A motion for sentence reduction brought under the First Step Act need not be paired with a request for relief under §3582(c)(1)(B) because the First Step Act is self-contained and self-executing. A district court may, but is not required to, consider the §3553(a) factors in deciding whether to exercise its discretion and reduce a sentence under the First Step Act. Court is not required to reduce probationary term provided it gives some basis, even if cursory for its decision. USA v. Potts, No. 19-12061 (5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912061.pdf

FIRST STEP-SENTENCE REDUCTION: The First Step Act does not require that the district court consider the §3553(a) sentencing factors when exercising its discretion to reduce a sentence under section 404(b) of the First Step Act, but the district court's decision, however must allow for meaningful by providing a sufficient explanation for its ruling denying a reduction. A bare bones order that solely denies or grants a sentence reduction without more is insufficient to allow for meaningful appellate review. Here, explanation was inadequate. Remanded.

USA v. Stevens, No. 19-12858 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912858.pdf

FIRST STEP ACT: Eligibility for a sentence reduction under the First Step Act is based on the statute of conviction, not on the defendant's actual

conduct. The district court should consider only whether the quantity of crack cocaine satisfied the specific drug quantity elements in §841. Any actual amount of drugs involved in the defendant's offense beyond the amount related to his statutory penalty is not relevant to his eligibility. USA v. Stevens, No. 19-12858 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912858.pdf

SASQUATCH DEFENSE: The theory behind the outrageous government conduct defense is that if a defendant can show that the law enforcement techniques used violate fundamental fairness shocking to the universal sense of justice, prosecution should be barred. Outrageous conduct is only a potential defense because neither the Supreme Court nor this Court has ever found it to actually apply. "Like the fabled creature Sasquatch, this defense has entered the common consciousness and is mentioned from time to time. Some claim to have caught fleeting glimpses of it in the remote backwoods of the law, but its actual existence has never been confirmed." USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

OUTRAGEOUS GOVERNMENT CONDUCT: In solicitation of sex with minor sting, in response to the Defendant's request for a picture of the fictional child, undercover cop's referral to an email account which he hacked to find child porn is not the sort of outrageous government conduct warranting dismissal. Law enforcement's generic sting operation of posting

a Craigslist ad and communicating with Defendant about his desire to abuse a child are commonplace, common sense tactics. "The hunt for Sasquatch will have to continue in another case." USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

SEARCH AND SEIZURE: Evidence of child pornography on Defendant's computer, found by third parties who turned computers over to the FBI, is not suppressible. The Fourth Amendment is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official. Law enforcement agents may use in an application for a search warrant information that is given to them by a private party even if that private party unlawfully obtained the information. USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

EVIDENCE: Defendant charged with attempted enticement of a minor to engage in unlawful sexual activity who testified at trial that he just role playing an online fantasy and that, once he came to believe that there was a real child in danger, his intent in traveling cross country was to rescue the child, may not invoke the Fifth Amendment when asked about the child porn on his computer. A defendant who takes the stand in his own behalf cannot then claim the privilege against cross-examination on matters reasonably

related to the subject matter of his direct examination. USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

EVIDENCE-EXPERT: Court properly excluded as irrelevant a defense expert prepared to testify that statements made over the internet cannot be reliably taken at face value. USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

SENTENCE-SUBSTANTIVE UNREASONABLENESS: 35 year sentence is not substantively unreasonable for Defendant who had claimed experience in incest, pedophilia and grooming, starting with a four year old child, "[A]lthough we do not automatically presume that a sentence within the guidelines range is reasonable, we ordinarily expect it to be." The fact that the average person would likely say a reasonable sentence for Defendant would be torture, disembowelment, then hanging and that life behind bars would be a living hell does not render the sentence substantively unreasonable. "The low esteem in which pedophiles are held inside and outside prison walls results from their having sexually abused children. There is no requirement that a sex predator be given dispensation in sentencing because of what he brings on himself by choosing to prey on children." USA v. Castaneda, No. 19-12623 (11th Cir. 5/19/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912623.pdf

FIREARM ENHANCEMENT: Defendant is subject to the four-level enhancement for using or possessing a firearm or ammunition in connection with another felony

for agreeing to sell heroin and a firearm to a CI, but not actually delivering the firearm until a later date. USA v. Jackson, No. 19-14883 (11th Cir. 5/18/21)

SENTENCING-PROCEDURAL UNREASONABLENESS: Miscalculating the guidelines range is procedural unreasonableness. USA v. Jackson, No. 19-14883 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914883.pdf

DEFINITION-"AND": "[T]he word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." USA v. Garcon, No. 19-14650 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.pdf

SAFETY VALVE: The "and" in the Safety Valve provision is disjunctive, not conjunctive. A Defendant is disqualified from safety valve relief if he meets any one of the three subsections of §3553(f)(1) or, in other words, if he had any of (1) more than four criminal history points, excluding any points resulting from one-point offenses; (2) a prior three-point offense; and (3) a prior two-point violent offense. Defendant is disqualified from safety valve relief because he had a prior three-point offense. USA v. Garcon, No. 19-14650 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.pdf

CANON AGAINST SURPLUSAGE: A statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. USA v. Garcon, No. 19-14650 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.pdf

APPELLATE COUNSEL-CRITICISM: Appellate counsel criticized. "Importantly, however, Garcon does not address the canon against surplusage, which carries the day in our analysis." USA v. Garcon, No. 19-14650 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.pdf

CONJUNCTIVE NEGATIVE PROOF CANON: With the conjunctive negative proof, you must prove that you did not do all of the listed things. "The fact that the conjunctive negative proof canon has only been

considered by courts twice does not invalidate it, but it does mean that we must ensure that our application of the canon is consistent with common English usage." USA v. Garcon, No. 19-14650 (11th Cir. 5/18/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914650.pdf

RETROACTIVITY: The Ramos jury-unanimity rule does not apply retroactively on federal collateral review. A decision announcing a new rule of criminal procedure does not apply retroactively on federal collateral review. The exception to this non-retroactive principle--that the new rule be a watershed change of law–no longer exists. "In practice, the exception has been theoretical, not real." "[H]ow can any additional new rules of criminal procedure apply retroactively on federal collateral review? At this point. . .we think the only candid answer is that none can—that is, no new rules of criminal procedure can satisfy the watershed exception. . .Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. . .The watershed exception is moribund." Edwards v. Vannoy, No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

QUOTATION (J. Gorsuch): "Sometimes this Court leaves a door ajar and holds out the possibility that someone, someday might walk through it—though no one ever has or, in truth, ever will. . .Today, the Court candidly admits what has been long apparent: Teague held out a 'false hope' and the time has come to close its door." Edwards v. Vannoy, No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

HABEAS CORPUS-HISTORY: "Though we often refer to the writ of habeas corpus, the common law knew several. . .Among them all, however, only one came to be known as 'the Great Writ.' The writ of habeas corpus ad subjiciendum was a mechanism for asking 'why the liberty of [a] subject[] is restrained.'" Discussion of writ of habeas corpus. Edwards v. Vannoy, No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

STARE DECISIS-WATERSHED (J. KAGAN, DISSENTING): "Now that Ramos is the law, stare decisis is on its side. I take the decision on its own terms, and give it all the consequence it deserves. Put all that together, and it is easy to see why the opinions in Ramos read as historic. Rarely does this Court make such a fundamental change in the rules thought necessary to ensure fair criminal process. If you were scanning a thesaurus for a single word to describe the decision, you would stop when you came to 'watershed.'" Edwards v. Vannoy, No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

STATE DECISIS-WATERSHED (J. KAGAN, DISSENTING): "Search high and low the settled law of retroactivity, and the majority still has no reason to deny Ramos watershed status. So everything rests on the majority's last move—the overturning of Teague's watershed exception. If there can never be any watershed rules—as the majority here asserts out of the blue—then, yes, jury unanimity cannot be one. The result follows trippingly from the premise. But adopting the premise requires departing from judicial practice and principle. In overruling a critical aspect of Teague, the majority follows none of the usual rules of stare decisis.". . .It prevents any procedural rule ever—no matter how integral to adjudicative fairness—from benefiting a defendant on habeas review. Thus does a settled principle of retroactivity law die, in an effort to support an insupportable ruling." Edwards v. Vannoy,

No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

STARE DECISIS-(J. KAGAN, DISSENTING): "[T]he majority breaks a core judicial rule: respect for precedent. Stare decisis is a foundation stone of the rule of law. . .To reverse course, we insist on compelling reasons, thorough explanation, and careful attention to competing interests. But not here. The majority crawls under, rather than leaps over, the stare decisis bar. . . Seldom has this Court so casually, so off-handedly, tossed aside precedent. Edwards v. Vannoy, No. 19-5807 (US S.Ct. 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

SEARCH AND SEIZURE: Officer's "caretaking" duties do not create a standalone doctrine that justifies warrantless searches and seizures of a home. Officers unlawfully entered the home of the subject who had been taken from his porch to go to the hospital for a psychiatric evaluation after threatening suicide and violence. Caniglia v. Strom, No. 20-157 (U.S. S.Ct, 5/17/21)

https://www.supremecourt.gov/opinions/20pdf/20-157_8mjp.pdf

CHILD HEARSAY: Child hearsay, where the Child did not testify at trial nor recant her statement, is sufficient to sustain the Defendant's conviction for child molestation. Godbold v. State, 1D20-1127 (5/18/21)

https://www.1dca.org/content/download/742830/opinion/201127_DC05_05182021_145455_i.pdf

PRETRIAL DETENTION: Defendant may not be held without bond for making a written threat to kill or cause bodily harm on the ground that law enforcement officers (against whom the threat was made) can qualify as a "judicial officer" for the purpose of the pretrial detention statute (§907.041(4)(c)2). "Judicial officer" does not include a law enforcement officers acting outside of the confines of a courthouse and direction of a judge. Daniel v. State, 5D21-237 (5/19/21)

https://www.5dca.org/content/download/743314/opinion/210237_DC03_05192021_162619_i.pdf

CONSTRUCTIVE POSSESSION: A pillowcase filled with synthetic marijuana on the passenger seat is not within Defendant's ready reach where Defendant is outside the car leaning in under the hood with the car radio playing and thus was not in actual or constructive possession of it. Defendant did not have exclusive possession of the car. "Someone who owned the car may have given Melton the key so he could open the car and work on it. Even if Melton had been in possession of the key, with the key in the ignition and the door open, anyone on the premises could have had access to the car." Melton v. State, 2D20-734 (5/14/21)
https://www.2dca.org/content/download/741970/opinion/200734_DC08_05142021_082454_i.pdf

SENTENCING-CLARIFICATION: Where County has program allowing jail to place inmates on electronic monitoring in lieu of keeping them in jail, provided court does not prohibit it, and the jail so places the Defendant, Court may not clarify the earlier sentence by remanding the Defendant to the jail. Operation of the county jail is within the province of the executive and legislative branches of government, not the judicial branch. Sentencing courts wholly lack authority to direct the treatment and placement of prisoners serving sentences. The trial court. . . simply was not empowered to interfere with or countermand [Defendant]'s assignment to the electronic monitoring program." Alqawasmeh v. State, 2D20-1979 (5/14/21) https://www.2dca.org/content/download/741977/opinion/201979_DC13_05142021_083534_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW: Blood draw in DUI manslaughter case is illegally obtained where Defendant refused voluntary blood draw and Officers did not try to obtain a warrant. Drunk driving investigations are not *per se* exigencies excusing the warrant requirement because the body's natural metabolization of alcohol results in the loss of critical evidence simply with the passage of time. No good faith exception to the warrant requirement exists. Dusan v. State, 5D19-2987 (5/14/21) https://www.5dca.org/content/download/741930/opinion/192987_DC13_05142021_080423_i.pdf

GUIDELINES-"SEXUAL ACTIVITY": Sexual activity for the purposes of guideline enhancement does not require actual or attempted physical contact between two persons. Neither does"sexual abuse or exploitation" under §2G2.2(b)(5) of the Sentencing Guidelines. Five-level enhancement under U.S.S.G. §§2252(a)(2) & 2252(a)(4)(B) for distribution and possession of child pornography is lawful if the activity would support a criminal charge. USA v. Dominguez, No. 19-11378 (5/13/21) https://media.ca11.uscourts.gov/opinions/pub/files/201911378.pdf

GUIDELINES-"SEXUAL ACTIVITY"-ENHANCEMENT: Sending a nine-

year-old girl a photo of one's penis and asking her for naked pictures subject one to the §2422(b) five-level enhancement only if the acts constitute"sexual activity for which any person can be charged with a criminal offense." Because Court did not make a finding that the act of asking a minor to send him naked pictures would subject him to criminal prosecution, the case is remanded for the Court to make the required finding. USA v. Dominguez, No. 19-11378 (5/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911378.pdf

DEFINITION-"SEXUAL ACTIVITY": Thorough discussion on the meaning of "sexual activity," including citations to Black's Law Dictionary, Webster's Third New International Dictionary, Shorter Oxford English Dictionary, The American Heritage Steadman's Medical Dictionary, The New Encyclopedia Britannica, II Bouvier Law Dictionary, The American Heritage Dictionary of the English Language, Garner's Modern American Usage, and Webster's New World College Dictionary. Includes a suggestion that the term implies brisk or vigorous action. Concern that a broad definition would criminalize pole dancing is discounted. USA v. Dominguez, No. 19-11378 (5/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911378.pdf

DEFINITION-"INCLUDING": The term "including" introduces a participial phrase of inclusion, not one of exclusion. USA v. Dominguez, No. 19-11378 (5/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911378.pdf

FIRST STEP ACT: The First Step Act is self-contained and self-executing, such that a defendant can proceed under it directly rather than pursuant to §3582(c)(1)(B). USA v. Edwards, No. 19-13366 (11th Cir. 5/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201913366.pdf

FIRST STEP ACT: A district court has the authority under the First Step Act to impose a new term of supervised release on a First Step Act movant,

provided that it reduces the movant's overall sentence. Defendant whose life sentence is reduced under the First Step Act to 262 months may have imposed upon him eight years of supervised release not previously ordered. USA v. Edwards, No. 19-13366 (11th Cir. 5/13/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913366.pdf

POST CONVICTION RELIEF: Counsel presented testimony from forty four witnesses at the penalty phase hearing, leading to a finding of nearly two dozen mitigating circumstances was not unprepared for sentencing. Sanchez-Torres v. State, SC19-211 (5/13/21)
https://www.floridasupremecourt.org/content/download/741758/opinion/sc19-211_CORRECTED%20OPINION.pdf

DEATH PENALTY: A charging instrument need not list aggravators that render eligibility for death. Sanchez-Torres v. State, SC19-211 (5/13/21)
https://www.floridasupremecourt.org/content/download/741758/opinion/sc19-211_CORRECTED%20OPINION.pdf

JUROR NONDISCLOSURE: To prevail on a standalone postconviction claim
of juror misconduct for failing to provide information during voir dire, the defendant must establish two prongs: first, that the juror failed"to answer honestly a material question on voir dire, and second, that the juror was actually
biased against the defendant. A mistaken but honest answer to a question—either because the juror mistakenly believed his answer was correct or because the question was unclear—will not warrant postconviction relief. Juror's familial connection to Defendant-brought to her attention by family members during break in voir dire–do not show dishonesty. Boyd v. State, SC20-108 (5/13/21)
https://www.floridasupremecourt.org/content/download/741760/opinion/sc20-108.pdf

JUROR-BIAS: A preconceived notion does not necessarily remove a juror's ability to be impartial, particularly where the juror declares that she can lay aside her impression or opinion and render a verdict based on the evidence. Boyd v. State, SC20-108 (5/13/21)
https://www.floridasupremecourt.org/content/download/741760/opinion/sc20-108.pdf

WRIT OF PROHIBITION: Only actions which are judicial or quasi judicial in nature, not legislative, executive or administerial actions, may be restrained by writ of prohibition. Burns v. State, 1D20-3531 (5/13/21)
https://www.1dca.org/content/download/741794/opinion/203531_DC02_05132021_140831_i.pdf

DOUBLE JEOPARDY: Convictions for capital sexual battery by a person in familial or custodial authority and lewd or lascivious molestation, based on a single act, do not violate double jeopardy. Warren v. State, 1D19-2706 (5/12/21)
https://www.1dca.org/content/download/741589/opinion/192706_DC08_05122021_135033_i.pdf

PRIOR CONSISTENT STATEMENT: Witness's earlier statement to a friend that Defendant admitted having just killed someone in a robbery is admissible where the defense's questions suggested that law enforcement improperly influenced the witness's testimony through implied threats and improper coaching. Prior consistent statements are admissible as non-hearsay when the person who made the statement testifies at trial, is subject to cross-examination, and the statement is offered to rebut an express or implied charge of improper influence, motive, or recent fabrication, and was made before the existence of a fact said to indicate bias, interest, corruption, or other motive to falsify. Bagley v. State, 1D19-2706 (5/12/21)
https://www.1dca.org/content/download/741589/opinion/192706_DC08_05122021_135033_i.pdf

EVIDENCE: Evidence that a law enforcement officer had contact with Defendant during a traffic stop before the burglary is admissible where the video of the burglary showed a red Dodge Charger and an officer had stopped Defendant driving that red Dodge Charger a few weeks earlier. Relevant evidence will not be excluded merely because it relates to similar facts which point to the commission of a separate crime. The balancing of probative value and prejudice is generally struck in favor of admissibility. Pendergrass v. State, 1D20-645 (5/12/21)
https://www.1dca.org/content/download/741591/opinion/200645_DC05_05122021_135421_i.pdf

PRETRIAL RELEASE-FILED CHARGE: If between the filing of the motion for release and the hearing the state files an information or an indictment, the Defendant is not entitled to release on recognizance. Jones v. Harrison, Sheriff, 1D21-485 (5/12/21)
https://www.1dca.org/content/download/741593/opinion/210485_DC02_05122021_140417_i.pdf

RECKLESS DRIVING: Driving 94 MPH on a 40 MPH road (four lanes, divided median) is not reckless driving. Reckless driving occurs when a person drives any vehicle in willful or wanton disregard for the safety of persons or property. When the State proves only that a defendant drove carelessly, it is insufficient to prove reckless driving under the statute. To be considered reckless driving, the defendant must have engaged in intentional conduct demonstrating a conscious disregard of a likelihood of death or injury. Speeding by itself is insufficient to prove recklessness. Harris v. State, 2D19-4266 (5/12/21)
https://www.2dca.org/content/download/741470/opinion/194266_DC13_05122021_084320_i.pdf

JUROR-PEREMPTORY CHALLENGE: Court improperly disallowed Defendant's peremptory strike on the basis of the explanation that the juror's payment of a traffic ticket suggested that he wanted to curry favor with the

police. While the stated rationale may have been feeble, it was facially race-neutral. The court must focus not on the reasonableness of the explanation but rather its genuineness. New trial required where the record does not support the trial court's determination that the proffered reason for exercising its peremptory strike was not genuine. Steps for asserting and justifying a potentially race-based peremptory challenge laid out. Brannon v. State, 3D20-175 (5/12/21)
https://www.3dca.flcourts.org/content/download/741534/opinion/200175_DC13_05122021_104930_i.pdf

SPEEDY TRIAL: COVID suspension of speedy trial rights extends to the filing of formal charges. Suspending all speedy trial procedures, including investigatory time periods, advances the specified goal of ensuring compliance with mitigation measures. Francois v. State, 3D21-649 (5/12/21)
https://www.3dca.flcourts.org/content/download/741539/opinion/210649_DC02_05122021_110040_i.pdf

DEFINITION-"ALL": "It is axiomatic that all means all, every single one." Francois v. State, 3D21-649 (5/12/21)
https://www.3dca.flcourts.org/content/download/741539/opinion/210649_DC02_05122021_110040_i.pdf

JUVENILE-DISPOSITION ORDER: Disposition orders must note the time Child spent in secure detention before disposition and list the statutory maximum for each offense. Disposition Order saying that Child would be committed for an indeterminate period no longer than his twenty-first birthday or the maximum term of imprisonment is legally insufficient. N.J.P. v. State, 4D20-1645 (5/12/21)
https://www.4dca.org/content/download/741509/opinion/201645_DC08_05122021_095621_i.pdf

COSTS: Court may not impose heightened prosecution costs and public

defender fees without making factual findings to justify those costs. Juveniles are assessed prosecution costs under the same statute as adult defendants. N.J.P. v. State, 4D20-1645 (5/12/21)
https://www.4dca.org/content/download/741509/opinion/201645_DC08_05122021_095621_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that Counsel was ineffective for misadvising him that if he rejected the offer, he would get a better one later (he did not). Maldonado v. State, 20-1893 (5/12/21)

https://www.4dca.org/content/download/741510/opinion/201893_DC08_05122021_095731_i.pdf

PUBLIC DEFENDER-WITHDRAWAL: Court departed from the essential requirements of law in denying the Public Defender's motion to withdraw. Defendant's potential incompetency to proceed in this criminal case does not equated to a lack of capacity to consent to the substitution of counsel. "[W]e are not aware of any authority holding that private counsel may not be substituted for the Public Defender on behalf of a potentially incompetent, yet not indigent, defendant. Thus, the only issue for the circuit court to decide is whether the defendant is competent to proceed with counsel, whomever that counsel may be." Law Office of the Public Defender v. State, 4D21-1233 (5/22/21)
https://www.4dca.org/content/download/741527/opinion/211233_DC03_05122021_101516_i.pdf

DISCOVERY: State commits a discovery violation by announcing mid-trial that it was redesignating the defendant's wife from a Category "C" witness to a Category "A" witness, but any error in failing to conduct a Richardson hearing is harmless where the witness was not called. State claimed that the re-designation was not a ploy to force her removal from the courtroom. Moon v. State, 4D19-3002 (5/12/21)

https://www.4dca.org/content/download/741502/opinion/193002_DC05_05122021_094735_i.pdf

BOND: A defendant may not be held without bond following a violation of house arrest absent a written motion for pretrial detention and compliance with §907.041. Joseph v. Junior, 3D21-1025 (5/11/21)
https://www.3dca.flcourts.org/content/download/737235/opinion/211025_DC03_05112021_112734_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to investigate an alibi different than the alibi presented at trial. Broadnax v. Commissioner, Alabama DOC, No. 20-12600 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012600.pdf

POST CONVICTION RELIEF-HEARSAY: Defendant is not deprived of Due Process by application of state hearsay rules in post-conviction hearings where he could have called the witnesses to testify directly. Broadnax v. Commissioner, Alabama DOC, No. 20-12600 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012600.pdf

SENTENCE REDUCTION: Defendant may request a sentence reduction only for "extraordinary and compelling reasons," as defined by the Sentencing Guideline policies of 1B1.13. The Sentencing Commission's definition of "extraordinary and compelling reasons" binds district courts. To apply 1B1.13, a court simply considers a defendant's specific circumstances, decides if he is dangerous, and determines if his circumstances meet any of the four reasons that could make him eligible for a reduction. USA v. Bryant, No. 19-14267 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914267.pdf

SENTENCE REDUCTION: "In other words, determining whether something is an 'applicable guideline' under the Sentencing Guidelines is resolved based on the statutory provision at issue and nothing else." The phrase "[u]pon motion of the Director of the Bureau of Prisons" is prefatory, not operative. Defendant may apply for a sentence reduction himself, but only for reasons listed in 1B1.13. USA v. Bryant, No. 19-14267 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914267.pdf

DEFINITION-"APPLICABLE": "Applicable means "capable of being applied" or "relating to." USA v. Bryant, No. 19-14267 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914267.pdf

SENTENCE REDUCTION: The unfairness of one's sentence is not an extraordinary and compelling reason warranting a reduction. USA v. Bryant, No. 19-14267 (11th Cir. 5/7/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914267.pdf

CRIMINAL MISCHIEF: Child's fingerprints on a damaged door is insufficient evidence of criminal mischief to survive a motion for judgment of dismissal. Where fingerprints are found on an item or property that is available to the public and the defendant presents a reasonable hypothesis of innocence, fingerprint evidence alone is insufficient to sustain a conviction. A fingerprint left in a location accessible by the public, without more, is insufficient to establish the identity of the culprit. S.S. v. State, 219-2572 (5/7/21)

https://www.2dca.org/content/download/736102/opinion/192572_DC13_05072021_081616_i.pdf

JURY INSTRUCTION-JUSTIFIABLE USE OF DEADLY FORCE: Court committed fundamental error by instructing jury that Defendant is not entitled to use deadly force after attempting to purchase cocaine, or unlawfully carrying a concealed weapon. Only forcible felonies–which these are not–precludes Defendant from assertng justifiable use of deadly force. Peruchi v. State, 2D19-3535 (5/7/21)

https://www.2dca.org/content/download/736103/opinion/193535_DC13_05072021_081754_i.pdf

SEARCH AND SEIZURE: A police officer may arrest and then search a person violating a criminal municipal ordinance in front of him, but not for a non-criminal violation of ordinance. The offense is criminal if jail is a possible sentence. State v. Coleman, 2D19-4481 (5/7/21)

https://www.2dca.org/content/download/736105/opinion/194481_DC13_05072021_082043_i.pdf

APPELLATE COUNSEL-INEFFECTIVENESS: Appellate counsel was ineffective for not preserving the issue that Defendant (with 18 points on his scoresheet) was illegally sentenced to prison because Court made no dangerousness findings. Appellate counsel should have filed a R.3.800(b)(2) motion to correct sentence that under R.9.141(d). Lamberson v. State, 2D20-2085 (5/7/21)

https://www.2dca.org/content/download/736128/opinion/202805_DC03_05072021_082308_i.pdf

BOND: Where Defendant violated conditions of pretrial release (leaving home twice while on electronically monitored house arrest), defendant forfeits his right to continued release under the original bond, but does not forfeit altogether his constitutional right to pretrial release. A trial court's

authority to hold the defendant without any bond is circumscribed by the provisions of section §907.041, which includes the right to a written motion for detention, a hearing and findings of fact and conclusions of law. Orfelia v. Junior, 3D21-1052 (5/7/21)

https://www.3dca.flcourts.org/content/download/736652/opinion/211052_DC03_05072021_143155_i.pdf

HABITUAL OFFENDER: To qualify as a habitual offender, one must have two sequential convictions. Defendant has three, one of which Defendant was sentenced on earlier and separately and two others for which he was sentenced simultaneously. Defendant's belief that neither of the two simultaneous convictions can serve as predicates for his habitualization is wrong. Of the two simultaneous convictions, one of them counts and the other does not. Jerry v. State, 5D20-1447 (5/7/21)

https://www.5dca.org/content/download/736095/opinion/201447_DC05_05072021_084309_i.pdf

JUROR-REMOVAL: Judge abused discretion by removing a juror who expressed, after the start of deliberations, that the Holy Spirit told him that Defendant was not guilty but who repeatedly assured the judge that he was following the jury instructions and basing his decision on the evidence admitted at trial. Juror's statements about receiving divine guidance are not categorically disqualifying. A juror may be excused only when the Court determines to the utmost certainty that a juror has refused to base his verdict on the law as instructed and the evidence admitted at trial. USA v. Brown, No. 17-15470 (5/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715470.enb.pdf

REASONABLE DOUBT: "Reasonable doubt" is equated with "utmost

certainty." USA v. Brown, No. 17-15470 (5/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715470.enb.pdf

QUOTATION (DISSENT): "Today's decision is in fact a skulking serpent." USA v. Brown, No. 17-15470 (5/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715470.enb.pdf

JUROR-CHALLENGE-CAUSE: Juror who initially expressed a disposition to automatically impose the death penalty where the first-degree murder was premeditated, but later said he could follow the law need not necessarily be removed for cause. Deviney v. State, SC17-2231 (5/6/21)

https://www.floridasupremecourt.org/content/download/735962/opinion/sc17-2231.pdf

DEATH PENALTY: 18 year old is subject to the death penalty. Deviney v. State, SC17-2231 (5/6/21)

https://www.floridasupremecourt.org/content/download/735962/opinion/sc17-2231.pdf

CHALLENGE FOR CAUSE: Trotter should be receded from and the harmless error standard used henceforth when considering an erroneously denied cause challenge. It should not be presumed that the error injuriously affected the substantial rights of the Defendant. The loss of a peremptory challenge because of an erroneously denied cause challenge to a prospective juror is not per se reversible error. Deviney v. State, SC17-2231 (5/6/21)

https://www.floridasupremecourt.org/content/download/735962/opinion/sc17-

2231.pdf

STARE DECISIS: "When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield." Deviney v. State, SC17-2231 (5/6/21)

https://www.floridasupremecourt.org/content/download/735962/opinion/sc17-2231.pdf

JUROR-MISCONDUCT-NON-DISCLOSURE: The fact that Juror failed to disclose in voir dire that the he had a juvenile delinquency adjudication for sexual battery and that his grandmother and uncle had murdered his grandfather does not entitle Defendant to a new trial. To establish the requisite prejudice in the postconviction context for juror's non-disclosure, the challenger must establish that the juror's misconduct resulted in the defendant being denied his constitutional right to an impartial jury by proving actual juror bias against the defendant. Martin v. State, No. SC18-896 (5/6/21)

https://www.floridasupremecourt.org/content/download/735963/opinion/sc18-896.pdf

JUROR-MISCONDUCT-NON-DISCLOSURE: In postconviction cases raising stand alone juror misconduct claims, an evidentiary hearing will sometimes be needed to determine whether a juror was intentionally dishonest and, if so, whether the defendant can prove actual bias. Martin v. State, No. SC18-896 (5/6/21)

https://www.floridasupremecourt.org/content/download/735963/opinion/sc18-896.pdf

JURY SELECTION: Proposal for a standard instruction during voir dire about the importance of accurate answers, including "Remaining silent when you have information you should disclose is a violation of that oath. . .[I]t is very important that you be as honest and complete with your answers as you possibly can." Martin v. State, No. SC18-896 (5/6/21)

https://www.floridasupremecourt.org/content/download/735963/opinion/sc18-896.pdf

VALUE: Owner's testimony of what he paid to purchase the items, along with photographs of the property is insufficient to prove that the market value of the property was $300 or more at the time and place of the offense. Devinish v. State, 1D19-1407 (5/6/21)

https://www.1dca.org/content/download/735975/opinion/191407_DC08_05062021_130112_i.pdf

ACA: Error is harmless when an invalid predicate offence for the Armed Career Criminal enhancement is included in the jury instructions and/or indictment-a Hobbs Act conspiracy--where it is undeniable that Defendant's valid drug trafficking predicates are inextricably intertwined with the invalid Hobbs Act conspiracy predicate. Foster v. USA, No. 19-14771 (11th Cir. 5/4/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914771.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to consolidate three fraud cases where each would have been admitted as Wlliams Rule evidence in the others regardless. Rizkkhalil v. State, 1D20-2161 (6/20/21)

https://www.1dca.org/content/download/735976/opinion/202161_DC05_05062021_130252_i.pdf

APPEAL: A Defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Butler v. State, 1D20-2700 (5/6/21)

https://www.1dca.org/content/download/735978/opinion/202700_DA08_05062021_130940_i.pdf

APPEAL: A Defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Lynn v. Franklin County Jail, 1D21-439 (5/6/21)

https://www.1dca.org/content/download/735980/opinion/210439_DA08_05062021_131408_i.pdf

APPEAL: A Defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Carroll v. Franklin County Jail, 1D21-818 (5/6/21)

https://www.1dca.org/content/download/735981/opinion/210818_DA08_05062021_131556_i.pdf

COST: Court may not waive $100 costs of prosecution. Cost must be imposed. State v. Hayes, 2D20-678 (5/5/21)

https://www.2dca.org/content/download/735761/opinion/200678_DC08_05052021_084656_i.pdf

CONFRONTATION: Defendant is not deprived of his right to confront the victim by exclusion of evidence of an earlier purportedly false report of sexual assault by the victim, allegedly invented to deflect from the crime at issue, where it is not clear that the earlier false report was indeed false and there were marked dissimilarities and lack of logical connection Evidence properly excluded when the only value in admitting the proffered evidence would have been to establish that because the victim lied previously, she was more likely to have lied in the instant case. Defendant was not precluded from developing his theory that the victim inculpated him in a sexual crime in order to conceal a consensual act of intimacy from her boyfriend. Murphy v. State, 3D20-477 (5/5/21)

https://www.3dca.flcourts.org/content/download/735798/opinion/2020-477_Disposition_113460_DC05.pdf

JAIL CLOTHES: Defendant is not entitled to a mistrial based on the jury seeing him in jail clothes during the witness's in-court identification of him where uncooperative Defendant declined to wear civilian clothes or accept alternatives. Greene v. State, 4D19-2856 (5/5/21)

https://www.4dca.org/content/download/735805/opinion/192856_DC05_05052021_095759_i.pdf

COMPETENCY: Court's order finding the Defendant competent to proceed, entered before the expert's evaluation was filed, is improper because the Order could not have been based on the report itself but rather must have been based on counsel's representation about it. A requirement of a proper competency hearing is that the trial court actually review the expert's report. McNeill v. State, 5D19-1528 (5/6/21)

https://www.5dca.org/content/download/735991/opinion/191528_DC13_05062021_140042_i.pdf

COMPETENCY: Court may not sentence Defendant after ordering a post-verdict, pre-sentencing competency evaluation without holding the competency hearing. Once the trial court enters an order appointing experts upon a reasonable belief that the defendant may be incompetent, a competency hearing must be held. McNeill v. State, 5D19-1528 (5/6/21)

https://www.5dca.org/content/download/735991/opinion/191528_DC13_05062021_140042_i.pdf

OBSTRUCTION: Mother is properly arrested for obstruction for video recording the arrest of her son outside a movie theatre and for speaking confrontationally to the police. Physical obstruction is not required to violate the statute. Ford v. City of Boynton Beach, 4D19-3664 (5/5/21)

https://www.4dca.org/content/download/735806/opinion/193664_DC05_05052021_095920_i.pdf

VIDEO-RECORDING POLICE: Court declines to address whether Mother's video recording the arrest of her son outside a movie theatre constitutes a violation of the wiretap statute. Ford v. City of Boynton Beach, 4D19-3664 (5/5/21)

https://www.4dca.org/content/download/735806/opinion/193664_DC05_05052021_095920_i.pdf

APRIL 2021

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officers had reasonable suspicion to stop Defendant's car and conduct an investigatory

Terry stop where they knew that a social security number associated with a different fugitive had been used to connect a utility service at the house Defendant had just left. Given that the stop was in the pre-dawn hours, the officers possessed an objective, reasonable suspicion that any man leaving the house was either the fugitive, or as a resident of the house, may have known the fugitive and his whereabouts. An investigatory stop of a vehicle does not require a traffic violation. USA v. Gonzalez-Zea, No. 19-11131 (11th Cir. 4/30/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911131.pdf

SEARCH AND SEIZURE-PROLONGED STOP: ICE officers may continue to detain person leaving a house associated with an alien fugitive after ascertaining that the detainee is not the guy they were looking for, but after learning facts suggesting that the detainee was an undocumented alien. USA v. Gonzalez-Zea, No. 19-11131 (11th Cir. 4/30/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911131.pdf

SEARCH AND SEIZURE-CONSENT: There is no requirement of proof of knowledge of a right to refuse as the sine qua non of an effective consent to search. USA v. Gonzalez-Zea, No. 19-11131 (11th Cir. 4/30/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911131.pdf

HEARSAY-STATEMENT OF IDENTIFICATION: Child's statement that he saw his father hurt or harm his mother (who disappeared and whose body was found by the now-grown child buried in the back yard two decades later) is not hearsay if the declarant testifies at trial and is subject to cross-examination and is admissible as an identification of person made after perceiving the person. Argument that the statement was not admissible as a statement of identification because it was an accusatory narrative was not

challenged on this ground in the trial court and therefore was not preserved. Haim v. State, 1D19-2094 (4/30/21)

https://www.1dca.org/content/download/735164/opinion/192094_DC05_04302021_141452_i.pdf

EVIDENCE: Shell casing found near the Victim's body (found buried in the back yard 21 years later) is admissible notwithstanding that the medical examiner could not determine the cause of death. Haim v. State, 1D19-2094 (4/30/21)

https://www.1dca.org/content/download/735164/opinion/192094_DC05_04302021_141452_i.pdf

LESSER INCLUDED-FIREARM: The use of a firearm is an element of burglary of a dwelling armed with a dangerous weapon, and is not simply added to enhance the available sentence. An offense without an element of a greater offense, but containing elements that are all subsumed by the greater offense, is a necessarily lesser included offense. Under this definition, "armed with a dangerous weapon" is an element of burglary of a dwelling armed with a dangerous weapon, and burglary of a dwelling is a lesser included offense. Louis v. State, 1D19-3958 (4/30/21)

https://www.1dca.org/content/download/735165/opinion/193958_DC05_04302021_142153_i.pdf

RECLASSIFICATION: It is not clear that reclassification under §775.087(1) is permitted for burglary of a dwelling armed with a dangerous weapon/armed robbery because the reclassification statute may not be applied to an offense in which the use of a weapon or firearm is an essential element. As such, use of firearm does not enhance the offense. Louis v. State, 1D19-3958 (4/30/21)

https://www.1dca.org/content/download/735165/opinion/193958_DC05_04302021_142153_i.pdf

KIDNAPPING: Unlike burglary of a dwelling armed with a dangerous weapon, kidnapping to facilitate commission of a felony does not contain an element regarding the use of a firearm or other weapon. Accordingly, the only reason the jury may be instructed to find whether Defendant "actually possessed" a firearm during the kidnapping, or whether he "carried, displayed, used, threatened to use, or attempted to use" a firearm during the kidnapping, was to permit enhanced sentencing under sections §§775.087(1) and (2)(a)1. Louis v. State, 1D19-3958 (4/30/21)

https://www.1dca.org/content/download/735165/opinion/193958_DC05_04302021_142153_i.pdf

RETURN OF PROPERTY: Defendant must request return of property within 60 days of the "conclusion of the proceeding," defined as the date the judgment and sentence became final without regard to subsequent postconviction proceedings. Bracht v. State, 1D20-147 (4/30/21)

https://www.1dca.org/content/download/735167/opinion/200147_DC05_04302021_142729_i.pdf

POST CONVICTION RELIEF: Counsel's decision not to seek a mistrial

after jury saw Defendant's shackles was a strategic decision. Simply because Defendant's appearance before the jury in shackles was inherently prejudicial does not mean that his counsel's decision not to seek a mistrial was deficient performance per se. Ferguson v. State, 1D20-1726 (4/30/21)

https://www.1dca.org/content/download/735168/opinion/201726_DC05_04302021_142943_i.pdf

POST CONVICTION RELIEF: Even if a witness was available to testify and counsel was deficient in not presenting his or her testimony during trial, counsel is not ineffective if that testimony would have been cumulative to other evidence presented, because such cumulative evidence removes a defendant's ability to establish prejudice. Abney v. State, 1D20-2837 (4/30/21)

https://www.1dca.org/content/download/735169/opinion/202837_DC05_04302021_143112_i.pdf

DOWNWARD DEPARTURE: Court erred in sentencing the Defendant to a below guidelines sentence for failure to register on the ground that "essentially, I'm saying this case isn't worth eight years." The trial court may consider nonstatutory mitigating factors only when the reason for such departure is consistent with the legislative sentencing policy. Carnes v. State, 2D20-201 (4/30/21)

https://www.2dca.org/content/download/735077/opinion/200201_DC08_04302021_082215_i.pdf

CREDIT FOR TIME SERVED: Claims for out-of-state jail credit are not cognizable under rule 3.801; rather, they must be raised in a timely motion for postconviction relief under rule 3.850. Terrell v. State, 2D20-1407 (4/30/21)

https://www.2dca.org/content/download/735085/opinion/201407_DC13_04302021_085059_i.pdf

CREDIT FOR TIME SERVED: The term "county jail" applies only to Florida jails, not to various places of incarceration in other jurisdictions. When a prisoner is incarcerated in another state on charges unrelated to a Florida charge, that prisoner is not entitled to credit for time served in the other state. While R. 3.801 can be used only to seek jail credit for time spent in Florida jails before sentencing, a claim of entitlement to jail credit for time spent incarcerated in another state is cognizable in a rule 3.850 motion. Hastings v. State, 2D20-2996 (4/30/21)

https://www.2dca.org/content/download/735110/opinion/202996_DC13_04302021_085502_i.pdf

IMMIGRATION-STOP-TIME RULE: The notice to appear under the immigration stop-time rule–any period of continuous presence in the United States shall be deemed to end when the alien is served a notice to appear–refers to a single document containing all the required information, not a mishmash of pieces with some assembly required. The government must issue a single statutorily compliant document to trigger the stop-time rule. Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct,

4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

DEFINITION- "A": Normally, indefinite articles (like "a" or "an") precede countable nouns. By contrast, noncountable nouns—including abstractions like "cowardice" or "fun"—almost never take indefinite articles. "After all, few would speak of 'a cowardice' or 'three funs.'" Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct, 4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

QUOTE (J. GORSUCH): "[A] lot here turns on a small word." Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct, 4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

QUOTE (J. GORSUCH): "At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power. . .If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct, 4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

STATUTORY INTERPRETATION: "Sometimes Congress's statutes stray a good way from ordinary English. Sometimes, too, Congress chooses to endow seemingly familiar words with specialized definitions. But until and unless someone points to evidence suggesting otherwise, affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning." Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct, 4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

STATUTORY INTERPRETATION (DISSENT): "Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning. . . As a matter of ordinary parlance. . ., the word 'a' is not a one-size-fits-all word." Niz-Chavez v. Garland, Attorney General, No. 19–863 (U.S. S. Ct, 4/29/21)

https://www.supremecourt.gov/opinions/20pdf/19-863_6jgm.pdf

PRR-L&L: §800.04(5)(b) (Lewd or Lascivious Molestation) no longer permits sentencing under any of the provisions in §775.082, except under subparagraph (3)(a)4., including the PRR subsection. Davenport v. State,

1D19-3100 (4/29/21)

https://www.1dca.org/content/download/734945/opinion/193100_DC08_04292021_134415_i.pdf

DOUBLE JEOPARDY-ANIMAL CRUELTY: Dual convictions for animal cruelty and aggravated animal cruelty are barred by Double Jeopardy because they are degree variants of the same crime. The offenses are not based on entirely different conduct, both subsections criminalize the same underlying conduct of animal cruelty, and subsection (2) increases the sanction as the harm to the animal intensifies. Houk v. State, 1D20-1816 (4/29/21)

https://www.1dca.org/content/download/734949/opinion/201816_DC08_04292021_135635_i.pdf

CONFLICT-ATTORNEY'S FEES: Where six co-defendants retain one law firm, but Court disqualified the law firm from representing any of them because of conflicts, the Court may require the law firm to deposit the unearned fees into the CJA repository pursuant to the CJA. USA v. Pacheco-Romero, No. 19-14446 (11th Cir. 4/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914446.pdf

SENTENCING-UPWARD VARIANCE-SUBSTANTIVE

UNREASONABLENESS: 70 month sentence for Defendant with who scores 12-18 months is not substantively unreasonable. That an upward variance sentence is well below the statutory maximum indicates that it is reasonable. How bad a repeat offender a defendant is matters greatly for purposes of sentencing. "Violent crime may not be his vocation, but it is at least his avocation." USA v. Riley, No. 19-14013 (11th Cir. 4/28/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914013.pdf

IMPEACHMENT-SUBSTANTIVE EVIDENCE: Defendant is entitled to JOA where Count IV of the information alleged that Defendant's penis penetrated or had union with[the victim's mouth, but the victim at trial testified unequivocally that his penis never penetrated her mouth. Defendant's contradictory statement to detective as impeachment was not substantive evidence and her concession that his penis "was around my face, like around my mouth around stuff like that" is not union." Victim's use of the word "union," without describing contact, is not union. Even where a prior inconsistent statement is admissible, a prior inconsistent statement standing alone is insufficient to prove guilt beyond a reasonable doubt. Fountain v. State, 2D20-289 (4/28/21)

https://www.2dca.org/content/download/734692/opinion/200289_DC08_04282021_085304_i.pdf

JOA: Renewing a motion for judgment of acquittal at the close of all the evidence is no longer necessary to preserve a sufficiency of the evidence claim for appellate review.Once the JOA motion has been made at the close

of the State's case and brought to the trial court's attention, the trial court has been given an opportunity to rule on the precise issue. The issue should then be considered preserved for appellate review." A perfunctory objection-for-objection's sake does not serve the purposes underlying the contemporaneous objection rule. Fountain v. State, 2D20-289 (4/28/21)

https://www.2dca.org/content/download/734692/opinion/200289_DC08_04282021_085304_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Appellate court lacks the authority to consider the trial court's failure to downward depart. Supreme Court has recently accepted conflict jurisdiction to resolve a dispute between the district courts on this point. Rubio v. State, 3D20-534 (4/28/21)

https://www.3dca.flcourts.org/content/download/734726/opinion/200534_DC05_04282021_102728_i.pdf

PLEA-WITHDRAWAL: Motions to withdraw appeal should be liberally construed in favor of a defendant. Failure to advise Defendant regarding the collateral consequences of a plea (designation as a sex offender) to a sex offense entitles Defendant to withdraw his plea prior to sentencing. Failure to inform a defendant of collateral consequences meets the "good cause" test for pre-sentence withdrawal. Stewart v. State, 4D18-3526 (4/28/21)

https://www.4dca.org/content/download/734708/opinion/183526_DC13_04282021_094952_i.pd

DOUBLE JEOPARDY: Dual convictions for manslaughter and attempted 1st degree murder of the same victim, "[p]ut simply,. . .[does] not violate the double jeopardy clause. Raja v. State, 4D19-1210 (4/28/21)

https://www.4dca.org/content/download/734709/opinion/191210_DC05_04282021_095153_i.pdf

MERGER DOCTRINE: The merger doctrine is a principle of statutory construction designed to generally prevent the government from charging felony murder when the underlying felony was assault. The merger doctrine only applies to felony murder, not to manslaughter and attempted murder. Raja v. State, 4D19-1210 (4/28/21)

https://www.4dca.org/content/download/734709/opinion/191210_DC05_04282021_095153_i.pdf

SINGLE HOMICIDE RULE: The single homicide rule is no longer applicable in Florida due to the legislative amendment of §775.021. Raja v. State, 4D19-1210 (4/28/21)

https://www.4dca.org/content/download/734709/opinion/191210_DC05_04282021_095153_i.pdf

SENTENCING-SCORESHEET ERROR: Defendant is entitled to be resentencing where the scoresheet was inaccurately calculated and Defendant was sentenced to the minimum under the wrong scoresheet. MoncadaGonzalez v. State, 4D19-2031 (4/28/21)

https://www.4dca.org/content/download/734710/opinion/192031_DC08_04282021_095300_i.pdf

RESTITUTION: Court may order restitution in excess of the maximum dollar value defining Appellant's third-degree grand theft conviction. Restitution may be ordered in an amount greater than the maximum dollar value defining the offense for which a defendant is adjudicated guilty. Martinez v. State, 4D19-2538 (4/28/21)

https://www.4dca.org/content/download/734711/opinion/192538_DC05_04282021_095423_i.pdf

COSTS: Costs of prosecution of $200.00 may not be appealed where at the sentencing hearing that Defendant said he had no objection to their imposition. State v. Cremers, 4D19-3723 (4/28/21)

https://www.4dca.org/content/download/734713/opinion/193723_DC13_04282021_095719_i.pdf

ADVERSARY PRELIMINARY HEARING: If the State fails to file charges

within 21 days from an arrest, a defendant is entitled to an adversary preliminary hearing even after being released on a charge. Right to an adversary preliminary hearing applies to any charges arising from the episode, including later added charges (here, a previously undisclosed Lewd and Lascivious count), not merely those included in the original arrest affidavit. Coffield v. State, 20-2250 (4/28/21)

https://www.4dca.org/content/download/734721/opinion/202250_DC03_04282021_101232_i.pdf

JOA-RESISTING WITHOUT VIOLENCE: Defendant cannot be convicted of resisting without violence by obstructing her detention for trespassing at Mar-A-Lago when the alleged trespass was reported to, but not observed by, law enforcement officer. Misdemeanor offenses, with exceptions, must be observed by officers to justify an arrest. A person retains a right at common law to resist an unlawful arrest without force. After-the-fact observations of video are not sufficient to satisfy the statute's requirement that an arresting officer be present to observe the commission of a misdemeanor as it happens. Jing v. State, 4D21-147 (4/28/21)

https://www.4dca.org/content/download/734722/opinion/210147_DC13_04282021_101402_i.pdf

HABEAS CORPUS: A federal court may entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court, but a habeas petitioner does not remain "in custody" under a conviction after the sentence imposed for it has fully expired, merely

because of the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent crimes of which he is convicted.

Defendant's state court conviction for a sex offense does not mean he is in custody for it when that offense is the predicate for a subsequent federal failure to register case. Alaska v. Wright, No. 20–940 (US S.Ct. 4/26/21)

https://www.supremecourt.gov/opinions/20pdf/20-940_c0ne.pdf

POST CONVICTION RELIEF: Under AEDPA, appellate court must extend deference both to the trial counsel's choices and to the state court's assessment of their reasonableness. The pivotal question is whether the state court's application of the Strickland standard was unreasonable, which is different from asking whether defense counsel's performance fell below Strickland's standard. Defendant is not entitled to relief from death penalty where counsel investigated Defendant's past and mental health. Raheem v. GDCP Warden, No. 16-12866 (11th Cir 4/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201612866.pdf

STUN BELT: Requiring a particularly violent Defendant to wear an invisible stun belt at trial is lawful; Defendant is not entitled to relief if it becomes perceptible because of Defendant's action. Raheem v. GDCP Warden, No. 16-12866 (11th Cir. 4/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201612866.pdf

ARGUMENT: State's argument, "This man is just mean, ladies and gentlemen, in just plain, old country English, he's mean. He's cold-hearted. He's cold-blooded. And let me tell you something, he'll kill you. And I'm not having to guess," applying the double deference mandated by AEDPA, , although clearly improper, is not prejudicial given the overwhelming evidence of guilt. Raheem v. GDCP Warden, No. 16-12866 (11th Cir. 4/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201612866.pdf

MINOR-LENGTHY SENTENCE: 40 years' incarceration for a 16-year old Defendant is not the functional equivalent of a life sentence. Defendant is not entitled to be resentenced. Brown v. State, 1D18-4888 (4/5/21)

https://www.1dca.org/content/download/733572/opinion/184888_DC05_04232021_134052_i.pdf

CONFRONTATION: Admission of Child Protection Interview where the Defendant was never given the opportunity to confront the Declarant/Child violates the confrontation clause. Not all hearsay implicates the concerns of the Confrontation Clause, but where a piece of hearsay evidence bears a testimonial character, it is covered by the Confrontation Clause. Statements are testimonial when the circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. Child Protection Interview is testimonial. New trial required. Phillips v. State, 1D19-470 (4/23/21)

https://www.1dca.org/content/download/733573/opinion/190470_DC08_04232021_134630_i.pdf

12 PERSON JURY: Even though sexual battery of a child under twelve is labelled a "capital felony," it is not a "capital case" under §913.10 because it cannot result in the death penalty, so a six-person jury is required. Phillips v. State, 1D19-470 (4/23/21)

https://www.1dca.org/content/download/733573/opinion/190470_DC08_04232021_134630_i.pdf

12-PERSON JURY-(MAKAR, concurring): "[T]he issue of jury size under the Sixth Amendment may be ripe for re-evaluation." Phillips v. State, 1D19-470 (4/23/21)

https://www.1dca.org/content/download/733573/opinion/190470_DC08_04232021_134630_i.pdf

FIREARMS: Because §790.33 preempts the field of firearm regulation and authorizes individuals adversely affected by a local policy to bring a civil action, a high school teacher may sue to be allowed to bring his gun to school as far as the parking lot. Forrester v. School Board of Sumter County, 5D20-43 (4/23/21)

https://www.5dca.org/content/download/733493/opinion/200043_DC13_04232021_081344_i.pdf

DEGREE OF OFFENSE: Where at the time Defendant was originally sentenced for trafficking, the amount of oxycodone made the crime a first-degree felony. Later amendment of the statute, which would have made the crime a 3rd degree felony, does not reduce the offense, so that a sentence in excess of fie years upon violating probation is lawful. Robinson v. State, 5D20-2337 (4/23/21)

https://www.5dca.org/content/download/733495/opinion/202337_DC05_04232021_083946_i.pdf

POST CONVICTION RELIEF: The determination of whether Defendant's prior out-of-state convictions of taking indecent liberties with a child were improperly scored as analogous to Florida's lewd or lascivious battery requires an evidentiary hearing, and thus cannot be raised under R. 3.800(a) at any time, but only under R. 3.850, within two years. Thrasher v. State, 5D21-279 (4/23/21)

https://www.5dca.org/content/download/733497/opinion/210279_DC05_04232021_084140_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Court may sentence a person who committed murder as a minor to life without parole, provided that the sentence is not mandatory and the sentencer has discretion to impose a lesser punishment. A separate factual finding of permanent incorrigibility is not required before a sentencer imposes a life-without-parole sentence on a murderer under 18. Jones v. Mississippi, No. 18-1259 (US S.Ct. 4/22/21)

https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf

LIFE SENTENCE-MINOR-HOMICIDE-(SOTOMAYOR, DISSENT): "Today, the Court guts Miller v. Alabama. . and Montgomery." Jones v. Mississippi, No. 18-1259 (US S.Ct. 4/22/21)

https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf

STARE DECISIS-(SOTOMAYOR, DISSENT): "Today. . . the Court reduces Miller to a decision requiring 'just a discretionary sentencing procedure

where youth [is] considered.'. . .Such an abrupt break from precedent demands 'special justification.'. . .The Court offers none. Instead, the Court attempts to circumvent stare decisis principles by claiming that '[t]he Court's decision today carefully follows both Miller and Montgomery.'. . .The Court is fooling no one. Jones v. Mississippi, No. 18-1259 (US S.Ct. 4/22/21)

https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf

STARE DECISIS (SOTOMAYOR-DISSENT): "How low this Court's respect for stare decisis has sunk." Jones v. Mississippi, No. 18-1259 (US S.Ct. 4/22/21)

https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf

JUROR: Probation officer is not disqualified from jury service as a law enforcement officer. USA v. Pendergrass, No. 19-13681 (11th Cir. 4/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.op2.pdf

HEARSAY: Statements by out-of-court witnesses to law enforcement may be admitted as non-hearsay if they help explain the course of a complex investigation, and the danger of unfair prejudice caused by the use of the statements does not substantially outweigh the probative value of the evidence. USA v. Pendergrass, No. 19-13681 (11th Cir. 4/22/21),

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.op2.pdf

APPEAL-PRESERVATION-CHANGE OF VENUE: Issue of whether venue should be changed is not preserved where the trial court never ruled upon Defendant's motion for change of venue and Defendant did not renew his

objection. Smith v. State, No. SC18-822 (FLA 4/22/21)

https://www.floridasupremecourt.org/content/download/733358/opinion/sc18-822.pdf

MISTRIAL: Defendant is not entitled to a mistrial when medical examiner almost broke down and needed an emotional break. Smith v. State, No. SC18-822 (FLA 4/22/21)

https://www.floridasupremecourt.org/content/download/733358/opinion/sc18-822.pdf

ARGUMENT: Prosecutor's description of Defendant as "every mother's darkest nightmare" and claim that juvenile victim was crying out to the jury from the grave that the Defendant had raped her is not error in the first case ("dramatic, but not untrue") and in the latter "did more purposefully to elicit an emotional reaction than is advisable, but they were moving in substantial measure because of how they characterized the disturbing facts in evidence." No fundamental error. Smith v. State, No. SC18-822 (FLA 4/22/21)

https://www.floridasupremecourt.org/content/download/733358/opinion/sc18-822.pdf

POST CONVICTION RELIEF: A trial court order that does not address all of the claims for post-conviction relief will be remanded for entry of an order that does. Duquesne v. State, 3D20-1395 (4/21/21)

https://www.3dca.flcourts.org/content/download/733175/opinion/201395_DC05_04212021_103645_i.pdf

HABEAS CORPUS: Where Petitioner requests writ of habeas corpus in the wrong county, the appropriate remedy is dismissal, not denial of the petition. Penoyer v. State, 3D21-243 (4/21/21)

https://www.3dca.flcourts.org/content/download/733179/opinion/210243_DC13_04212021_104512_i.pdf

HABEAS CORPUS: Habeas corpus may not be used as a substitute for an appropriate motion seeking postconviction relief, nor can habeas corpus be used as a means to seek a second appeal or to litigate issues that could have been or were raised in a motion under rule 3.850. The mere incantation of the words "manifest injustice" does not make it so. Roberts v. Inch, 3D21-867 (4/20/21)

https://www.3dca.flcourts.org/content/download/733182/opinion/210867_DA08_04212021_104629_i.pdf

SENTENCING-GUIDELINES: Where certain offenses on scoresheet are erroneously listed as "additional offenses" instead of prior record, Defendant is entitled to resentencing unless the record conclusively shows that the trial court would have imposed the same sentence. Perry v. State, 4D20-278 (2/12/21)

https://www.4dca.org/content/download/733157/opinion/200278_DC08_04212021_100028_i.pdf

EVIDENCE-MOTIVE TO FABRICATE: Court erred in disallowing testimony about the Victim's divorce being related to her drug use, which was behind her purported false testimony, i.e. that the Victim claimed to be a victim of unauthorized credit card charges when in fact she authorized them to cover up drug purchases. "[T]he State first argued to the trial court that Appellant's testimony that drug use caused the divorce should be excluded because it was not

relevant, and then during closing it argued to the jury that this defense theory was not relevant because it was excluded." Allen v. State, 4D20-1553 (4/21/21)

https://www.4dca.org/content/download/733161/opinion/201553_DC13_04212021_100528_i.pdf

ARGUMENT: ""Comments such as: '[w]ell, that's a hot one, right?,' and 'I think this case is obvious, I hope you think it is, too,' are inappropriate and do not assist the jury in analyzing, evaluating, or applying the evidence to the

facts of the case. . . Rather, the first comment injected unnecessary sarcasm into the argument and the latter comment improperly apprised the jury of the prosecutor's personal opinion." Allen v. State, 4D20-1553 (4/21/21)

https://www.4dca.org/content/download/733161/opinion/201553_DC13_04212021_100528_i.pdf

DUPLICATIVE JUDGMENT: Court may not enter a duplicative judgment for the same offense after revoking probation. Scofield v. State, 20-1678 (4/21/21)

https://www.4dca.org/content/download/733162/opinion/201678_DC08_04212021_100637_i.pdf

COSTS: Court improperly imposed a $200 fee for the cost of prosecution when the evidence only supported a $100 fee. By law,]osts for the state attorney must be set in all cases at . . . no less than $100 per case when a felony offense is charged. To set a higher amount, the state attorney must demonstrate the amount spent on prosecuting the defendant and the trial court must consider the defendant's financial resources. Scofield v. State, 20-1678 (4/21/21)

https://www.4dca.org/content/download/733162/opinion/201678_DC08_04212021_100637_i.pdf

QUALIFIED IMMUNITY: Plaintiff witnessed a fatal car accident and stood in the median of I-95 photographing the scene. Officer approached him, seized his phone, arrested him, and locked him in the back of a hot patrol car without AC for almost a half hour. Officer is entitled to qualified immunity from suit for 1st, 4th and 14th Amendment violations. An officer is entitled to qualified immunity unless he violates a clearly established constitutional rights, defined as a right which exists only if a decision of the United States Supreme Court, the 11th Circuit Court, or the highest court in a state has said it exists. The First Amendment right to record a crime scene from a distance is not clearly established. The Fourth Amendment claim fails because Plaintiff broke the law by stopping his car (and the Good Samaritan exception to the no-stopping statute doesn't apply to people who step back when police arrive). Plaintiff's 14th Amendment claim about being locked in a hot car with no A/C fails because "exposure to uncomfortable heat is part and parcel of life in the South." There is no generic right to be free from excessive force. Crocker v. Beatty, No. 18-14682 (11th Cir. 4/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814682.pdf

IRONY-GEORGE FLOYD VERDICT DAY: "In Garrett v. Athens-Clarke County, we analyzed a Fourth Amendment excessive-force claim and explained Cottrell as having 'conclude[d] officers did not use excessive force, although [the] arrestee died of positional asphyxia, where officers placed [the] arrestee in handcuffs and leg restraints after a 20-minute struggle and put him in a prone position in the back of a police car.'" Crocker v. Beatty, No. 18-14682 (11th Cir. 4/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814682.pdf

SENTENCING-GUIDELINES-ILLEGAL REENTRY: The Sentencing Guidelines' enhancements under subsections 2L1.2(b)(2) and (3), for criminal convictions received before and after the defendant's previous deportation or removal, do not violate the Constitution's guarantee of equal protection. Nor do they cause unlawful double-counting in violation of due process or otherwise. USA v. Osorio, No. 19-11408 (11th Cir. 4/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911408.pdf

CONSTITUTION: "Unlike the Fourteenth Amendment, the Fifth Amendment contains no express equal protection clause. But the Fifth Amendment's guarantee of due process embodies within it the concept of equal justice under the law." USA v. Osorio, No. 19-11408 (11th Cir. 4/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911408.pdf

SENTENCING-DOUBLE COUNTING: Impermissible double counting occurs only when one part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that has already been fully accounted for by application of another part of the Guidelines. Double counting is allowable if the Sentencing Commission intended the result, and each section applied concerns conceptually separate notions relating to

sentencing., i.e., deterrence and recidivism. A harsher sentence for an alien who reenters with after earlier convictions for serious crimes is appropriately enhanced both in his offense conduct and in his criminal history. USA v. Osorio, No. 19-11408 (11th Cir. 4/20/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911408.pdf

FIRST-DEGREE MURDER-PREMEDITATION: A snap decision may still constitute premeditation, which may be inferred based on the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties between the parties, the manner in which the homicide was committed and the nature and manner of the wounds inflicted. Where Defendant shot victim one, she said, "just kill me," and he shot her several more times, premeditation is shown. Taylor v. State, 1D18-5294 (4/20/21)

https://www.1dca.org/content/download/732998/opinion/185294_DC05_04202021_135600_i.pdf

JURY INSTRUCTION-HEAT OF PASSION: The "heat of passion" defense is (1) a complete defense if the killing occurs by accident and misfortune in the heat of passion, upon any sudden sufficient provocation; or (2) a partial defense, to negate the element of premeditation in first-degree murder or the element of depravity

in second-degree murder. For that passion to constitute mitigation of the crime, it must arise from legal provocation. Defendant is not entitled to a heat of passion instruction when he testified that the shooting was accidental

and done in self-defense. Taylor v. State, 1D18-5294 (4/20/21)

https://www.1dca.org/content/download/732998/opinion/185294_DC05_04202021_135600_i.pdf

STATEMENTS OF DEFENDANT: Defendant is not entitled to suppression of statement. Generally, intoxicants such as narcotics and alcohol affect the credibility of the confession, not the voluntariness. Intoxication at the time of confessing will not bar admitting a confession into evidence unless the defendant is intoxicated to the degree that he is unaware or unable to comprehend what he is doing and to communicate with coherence and rationality. Taylor v. State, 1D18-5294 (4/20/21)

https://www.1dca.org/content/download/732998/opinion/185294_DC05_04202021_135600_i.pdf

MINOR-SENTENCE REVIEW: Defendant, a minor at the time who was sentenced to life (murder) and 30 years (kidnapping), to be served consecutively, who at resentencing on Count I was given the right to a sentence review puruant to §921.1401 is also entitled to a sentence review for the same count pursuant to §921.1402 sentence review at a later date. Court improperly conflated the §921.1401 and §921.1402 reviews because the Defendant had not initiated the review via an application to the court of original jurisdiction. Defendant has a right to an independent sentence review under §921.1402; Court deprived her of such by deeming the section §921.1401 resentencing hearing sufficient. Maestas v. State, 1D19-1767 (4/20/21)

https://www.1dca.org/content/download/732999/opinion/191767_DC08_04202021_135824_i.pdf

HABEAS CORPUS: Generally, a defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. McCray v. State, 1D19-4679 (2/20/21)

https://www.1dca.org/content/download/733000/opinion/194679_DA08_04202021_140038_i.pdf

EVIDENCE-LIMITED ADMISSIBILITY: When evidence that is admissible for one purpose, but inadmissible as for another purpose, is admitted, the court, upon request, shall restrict such evidence to its proper scope. Medical/disability records admitted as impeachment may not be used as substantive evidence of party's mental health. Brooks v. Brooks, 1D20-2346 (4/20/21)

https://www.1dca.org/content/download/733004/opinion/202346_DC08_04202021_140755_i.pdf

MISTRIAL: Defendant, charged with murder, is not entitled to a mistrial because a photo of her crouching in hunting gear and pointing a shotgun (not the murder weapon) accidentally flashed on the screen during trial and was before the jury for a second or two. McArthur v. State, 1D19-3491

(4/16/21)

https://www.1dca.org/content/download/732295/opinion/193491_DC05_04162021_132455_i.pdf

STATEMENTS OF DEFENDANT: A conversation between Defendant and two investigators which progressed from casual talk into an interrogation need not be suppressed where she was read her Miranda rights and waived them in writing before the conversation shifted to potentially incriminating questions. McArthur v. State, 1D19-3491 (4/16/21)

https://www.1dca.org/content/download/732295/opinion/193491_DC05_04162021_132455_i.pdf

CELL PHONE RECORDS: An application and affidavit for an order for disclosure of cell phone records under §934.23 which listed only a cell phone number without detailing that the number was Defendant's number, but which when read as whole clearly refers to Defendant is legally sufficient. McArthur v. State, 1D19-3491 (4/16/21)

https://www.1dca.org/content/download/732295/opinion/193491_DC05_04162021_132455_i.pdf

HEARSAY: Victim's text messages were not offered to prove the truth of the matters asserted but rather were relevant to establishing a timeline, motive, and intent. McArthur v. State, 1D19-3491 (4/16/21)

https://www.1dca.org/content/download/732295/opinion/193491_DC05_04162021_132455_i.pdf

VOP: §948.06(2)(f)1.c applies only to a probationer with a single technical probation. Fowler v. State, 1D19-4239 (4/16/21)

https://www.1dca.org/content/download/732296/opinion/194239_DC05_04162021_132659_i.pdf

HEARSAY: PRIOR CONSISTENT STATEMENT: A prior consistent statement offered to rebut a charge of recent fabrication, where the declarant is subject to cross-examination regarding the statement at trial, is not hearsay. Victim's statement accusing Defendant is admissible where Defendant claimed the Victim fabricated the allegation for revenge from another incident, but that incident happened after the alleged accusatory hearsay statement. A prior consistent statement offered to rebut a charge of recent fabrication is admissible if it was made prior to the existence of the improper motive. "This was a classic prior consistent statement. It was not hearsay. And the trial court did not err in admitting it." Gibson v. State, 1D19-4294 (4/16/21)

https://www.1dca.org/content/download/732297/opinion/194294_DC05_04162021_132833_i.pdf

LIFE SENTENCE-MINOR-PAROLE: Minor sentenced to life with the possibility of parole is not entitled to a sentence review. State v. Michaud, 2D20-1287 (4/16/21)

https://www.2dca.org/content/download/732224/opinion/201287_DC03_04162021_085427_i.pdf

VICTIM'S RIGHTS: Crime Victims' Rights Act does not authorize a victim to seek judicial enforcement of her CVRA rights in a freestanding civil action. Absent a clear expression of congressional intent to authorize a would-be plaintiff to sue, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how

compatible with the statute. In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/15/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913843.enb.pdf

DEFINITION-"MOTION": The term "motion" is commonly understood to denote a request filed within the context of a preexisting judicial proceeding. In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/15/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913843.enb.pdf

FIRST STEP ACT: Where the District Court has authority to reduce Defendant's sentence under the First Step Act, declines to do so, and it is unclear that the court recognized that it had the authority to reduce the sentence, the order denying motion to reduce must be vacated and the case remanded for further proceedings. USA v. Russell, No. 19-12717 (11th Cir. 4/15/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912717.pdf

COMPETENCY: A competency hearing is not necessarily required where Defendant is admittedly bipolar but nothing about his behavior in court indicated a present inability to understand the proceedings or an inability to consult with counsel. Woodbury v. State, SC19-3 (4/15/21)

https://www.floridasupremecourt.org/content/download/732070/opinion/sc19-8.pdf

SELF REPRESENTATION: Side effects of psychotropic medication (sleepiness, nervousness, blurry vision, and trouble urinating) do not render

one incapable of self-representation. "Given that certain people with bipolar disorder function well and act rationally, we see no logic in creating a per se rule or presumption that all individuals with bipolar disorder suffer so severely from mental illness that they are unable to carry out basic trial tasks without assistance." Woodbury v. State, SC19-3 (4/15/21)

https://www.floridasupremecourt.org/content/download/732070/opinion/sc19-8.pdf

FARETTA: Court is not required to renew offer of counsel at the transition from the State's case-in-chief to the defense's case-in-chief. Woodbury v. State, SC19-3 (4/15/21)

https://www.floridasupremecourt.org/content/download/732070/opinion/sc19-8.pdf

APPEAL-PRESERVED ISSUE: Defendant may not raise on appeal claim that Court failed to make sufficiently detailed and specific factual findings to support the admission of child-hearsay statements where Defendant objected to the reliability of the evidence but not the insufficiency of the factual findings. Thorough discussion. Coleman v. State, 1D17-3977 (4/14/21)

https://www.1dca.org/content/download/731926/opinion/173977_DC05_04142021_125218_i.pdf

QUOTE: "If anything, McCloud is an outlier in this District, if not an outlaw." Coleman v. State, 1D17-3977 (4/14/21)

https://www.1dca.org/content/download/731926/opinion/173977_DC05_04142021_125218_i.pdf

POST CONVICTION RELIEF: Counsel was not deficient for not arguing in his motion for judgment of acquittal that the State failed to prove an essential element of robbery when he did so argue. Williams v. State, 1D20-1655 (4/14/21)

https://www.1dca.org/content/download/731929/opinion/201655_DC05_04142021_125924_i.pdf

PUBLIC RECORDS REQUEST: Chapter 119 required a hearing before entering a final order on a request for public records. Cook v. Florida DOC, 1D20-2962 (4/14/21)

https://www.1dca.org/content/download/731931/opinion/202692_DC13_04142021_130632_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: "As Florida Rule of Appellate Procedure 9.141(d) does not provide a vehicle to challenge postconviction appellate counsel's effectiveness, the petition is dismissed." Gilbert v. State, 1D20-3606 (4/14/21)

https://www.1dca.org/content/download/731932/opinion/203606_DA08_04142021_130922_i.pdf

STAND YOUR GROUND: After losing a self-defense immunity hearing, a defendant may vindicate his right to self-defense in two ways, i.e., by filing a petition for writ of prohibition or present his self-defense immunity claim to the jury. Because at trial, the state is required to overcome the defendant's claim of self-defense by meeting the burden of proof beyond a reasonable doubt, which is a higher burden than the clear and convincing evidence

standard the state was required to satisfy at the pretrial hearing, the trial court's error with regard to the burden of proof at the SYG hearing is cured by a subsequent guilty verdict. Valdez v. State, 3D19-570 (4/14/21)

https://www.3dca.flcourts.org/content/download/731875/opinion/190570_NOND_04142021_101627_i.pdf

APPEAL-PRESERVED ISSUE-EXPERT-SEXUAL HOMICIDE: Where Defendant filed a pretrial motion to exclude State's sexual homicide expert as not being based on recognized literature, nver obtained a ruling, and at trial objected on different grounds (speculation and hearsay), the issue is not preserved for appeal. Herman v. State, 4D19-1636 (4/14/21)

https://www.4dca.org/content/download/731881/opinion/191636_DC05_04142021_095555_i.pdf

SPECIAL JURY INSTRUCTION: Defendant is not entitled to a special jury instruction that out of court statements of the defendant are inadmissible unless the opposing party seeks to have them admitted. Herman v. State, 4D19-1636 (4/14/21)

https://www.4dca.org/content/download/731881/opinion/191636_DC05_04142021_095555_i.pdf

JURY INSTRUCTION-BURGLARY WITH BATTERY: In jury instruction for Burglary with Battery, Court must define "battery." Error is fundamental. Fundamental error is waived where defense counsel affirmatively agrees to an improper instruction, but a difference exists between affirmatively agreeing to an improper instruction and unknowingly acquiescing to an improper instruction. Cannon v. State, 4D19-2082 (4/14/21)

https://www.4dca.org/content/download/731882/opinion/192082_DC08_04142021_095758_i.pdf

COMMENT ON SILENCE: Defendant waived any violation of motion in limine about silence of Defendant by failing to object to testimony about Defendant leaving hospital to avoid interview. Defense counsel must renew the motion in limine or otherwise object to preserve the issue for appeal. Cannon v. State, 4D19-2082 (4/14/21)

https://www.4dca.org/content/download/731882/opinion/192082_DC08_04142021_095758_i.pdf

HEARSAY: Responding officer's testimony about the BOLO which he received from dispatch and the defendant's driving record which he obtained through the NCIC is inadmissible hearsay, but harmless error. The contents of a BOLO are generally inadmissible in that they contain incriminating hearsay details unnecessary to establish a logical sequence of events. Cannon v. State, 4D19-2082 (4/14/21)

https://www.4dca.org/content/download/731882/opinion/192082_DC08_04142021_095758_i.pdf

ARGUMENT: Argument implying that State witnesses were credible because defense counsel did not impeach them is proper and does not constitute burden shifting. Cannon v. State, 4D19-2082 (4/14/21)

https://www.4dca.org/content/download/731882/opinion/192082_DC08_04142021_095758_i.pdf

STATEMENT OF DEFENDANT: Where Defendant is improperly

interrogated, but initiates a second interrogation two months later, the second statement is admissible. Earlier failure to honor Defendant's invocation of his right to silence does not carry over to a later interrogation initiated by Defendant following a significant passage of time and a break in custody between the two statements. Where the suspect reinitiated the dialogue, the Court must consider whether the suspect's decision to change his or her mind and to waive his or her rights by speaking with the authorities was voluntary, knowing, and intelligent. Two months is enough time to shake off any residual coercive effects of the prior interrogation. Sinclair v. State, 4D19-2815 (4/14/21)

https://www.4dca.org/content/download/731883/opinion/192815_DC05_04142021_095910_i.pdf

SENTENCING-DUI MANSLAUGHTER: The total for DUI Manslaughter may not exceed fifteen years, and shall include a probationary period that, at a minimum, is of sufficient length to permit Appellant to complete a substance abuse course. Trial court may not sentencing a defendant to the maximum fifteen-year prison term because he must be placed on probation for a sufficient length of time to complete a substance abuse course at the end of the defendant's prison term. Question certified. Powers v. State, 4D19-2934 (4/14/21)

https://www.4dca.org/content/download/731884/opinion/192934_DC13_04142021_100216_i.pdf

COSTS: Investigative costs cannot be imposed where the State fails to request such costs prior to the judgment. Further, evidence must support the amount assessed. Colarte v. State, 4D20-111 (4/14/21)

https://www.4dca.org/content/download/731888/opinion/200111_DC08_04142021_100833_i.pdf

SENTENCING: When the trial court makes an oral pronouncement, and the written disposition order conflicts with the oral pronouncement, the matter is to be remanded for the trial court to correct the written disposition order. O.H. v. State, 4D20-1284 (4/14/21)

https://www.4dca.org/content/download/731889/opinion/201284_DC05_04142021_101119_i.pdf

VOP-HEARSAY: Child cannot be found guilty of violation of probation based on hearsay testimony of P.O. that she had not completed community service where P.O. had no personal knowledge of any events prior to when she took over the case and her testimony was based on her review of the Child's file. A.E. v. State, 4D20-1338 (4/14/21)

https://www.4dca.org/content/download/731901/opinion/201338_DC08_04142021_103500_i.pdf

CERTIORARI-DRIVER'S LICENSE SUSPENSION: Second tier certiorari review does not allow review just because the circuit court incorrectly applied the facts of the case to the law. DHSMV v. State, 4D20-2633 (4/14/21)

https://www.4dca.org/content/download/731890/opinion/202633_DC02_04142021_101428_i.pdf

LIFE SENTENCE-MINOR: Jury, not judge, must make the factual finding that the Defendant intended to kill or attempted to kill the victim, thus triggering the statutory 40-year mandatory minimum and 25-year period for sentence review. The verdict form did not provide interrogatories or specify whether the jury had found Romero guilty of premeditated or felony murder. Under Alleyne, a jury must make the factual finding as to whether a juvenile

offender actually killed, intended to kill, or attempted to kill the victim. Romero v. State, 1D19-624 (4/12/21)

https://www.1dca.org/content/download/731570/opinion/190624_DC08_04122021_135208_i.pdf

COMPETENCY: Once grounds to question a defendant's competency are raised, it must hold a hearing. Failure to hold a competency hearing and enter a written order is fundamental error and requires reversal. Ramsey v. State, 1D20-903 (4/12/21)

https://www.1dca.org/content/download/731573/opinion/200903_DC13_04122021_140545_i.pdf

COSTS: Court is tasked with individually pronouncing each discretionary fine to be imposed, regardless of any waiver to a reading of the statutory authority. Ramsey v. State, 1D20-903 (4/12/21)

https://www.1dca.org/content/download/731573/opinion/200903_DC13_04122021_140545_i.pdf

VOP: Court properly revoked probation which was due to begin after incarceration when he contacted the Victim (75 letters) while still in prison. A defendant's probation may be revoked prior to the commencement of probation if he commits an act of misconduct that demonstrates his unfitness for probation. Kirkland v. State, 1D20-1227 (4/12/21)

https://www.1dca.org/content/download/731574/opinion/201227_DC05_04122021_140757_i.pdf

APPEAL: Where it is unclear whether the trial court used the correct standard to deny a motion for new trial, the potential that the trial court erred does not reach the level of fundamental error. Blue v. State, 1D20-3226 (4/12/21)

https://www.1dca.org/content/download/731575/opinion/203226_DC02_04122021_141031_i.pdf

JURISDICTION: Circuit court lacks jurisdiction to accept pleas to misdemeanor counts in an information after dismissing the sole felony count. County court becomes the proper forum to resolve the remaining misdemeanors. Andujar-Ruiz v. State, 2D19-3655 (4/9/21)

https://www.2dca.org/content/download/729163/opinion/193655_DA08_04092021_082903_i.pdf

PRISONER LAWSUIT: Prisoner may sue for punitive damages against correctional officers for threats. Prison Litigation Reform Act does not bar punitive damages for a prisoner's civil action where no physical injury is shown. Hoever v. Marks, No. 17-10792 (11th Cir. 4/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201710792.enb.pdf

DEFINITION-"FOR": "For" indicates purpose or aim. "Our understanding of the word 'for,' of course, depends on its context. . .The subject before the word 'for' informs the preposition's meaning. . . And whatever object follows the word 'for. . .informs what the 'action' is brought to accomplish." Hoever

v. Marks, No. 17-10792 (11th Cir. 4/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201710792.enb.pdf

DEFINITION-"FOR" (DISSENT): "I'm not convinced that 'for' is best understood here, as the Court says, to 'indicate[] purpose or aim.' To be sure, the word 'for' certainly can connote purpose. But according to the OED—one of the dictionaries on which the Court relies—"for" can also mean any of (if I'm counting correctly) 76 other things. . .If ever there were 'a word of many, too many, meanings,' it is 'for.'" Hoever v. Marks, No. 17-10792 (11th Cir. 4/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201710792.enb.pdf

FIREARMS: Statute imposing penalties on local government entities passing firearms regulations and eliminating the defenses of good faith and advice of counsel in such cases is valid and enforceable. Local government officials have no legislative immunity. State of Florida v. City of Weston, 1D19-2819 (4/9/21)

https://www.1dca.org/content/download/729255/opinion/192819_DC13_04092021_143942_i.pdf

CROSS-EXAMINATION: "Wigmore (and Ehrhardt) both remind us, however, that crossexamination 'is beyond any doubt the greatest legal engine ever invented for the discovery of truth, and one of the greatest contributions of Anglo-American law to trial procedures." Owens v. Owens, 1D20-1647 (4/9/21)

https://www.1dca.org/content/download/729259/opinion/201647_DC13_0

4092021_145212_i.pdf

APPEAL-SELF REPRESENTATION: A defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Ward v. Franklin County Jail, 1D21-655 (4/9/21)

https://www.1dca.org/content/download/729269/opinion/210655_DA08_04092021_150749_i.pdf

HEARSAY: Out of court statement by a third party claiming possession of the gun is inadmissible hearsay. Defense's assertion that the statement was not offered for its truth, "[p]ut gently, . . this is a disingenuous post hoc explanation. Even the most charitable read of the trial transcript makes abundantly clear that defense counsel sought to use Deen's confession to show that Deen was guilty, and Elysee was innocent." The proffered justification–that it was offered to suggest that the officer's conduct in responding to the confession fell below the reasonable officer standard of performance—was not relevant." USA v. Elysee, Case No. 18-14214 (11th Cir. 4/8/2021)

https://media.ca11.uscourts.gov/opinions/pub/files/201814214.pdf

DEFENSE: "Because nothing in our caselaw indicates the existence of an affirmative defense based on the failure of police to conduct an investigation as reasonably diligent officers, we conclude that no such defense exists." Defendant's "distinct and novel principle of law that the defendant in a criminal case may use out-of-court statements to mount an attack on the quality of the investigation that led to his indictment" fails. USA v. Elysee,

Case No. 18-14214 (11th Cir. 4/8/2021)

https://media.ca11.uscourts.gov/opinions/pub/files/201814214.pdf

INDICTMENT-FIREARM-KNOWLEDGE: To be convicted of violating § 922(g), a
defendant must have known of his prohibited status—such as being a felon—at the time he possessed the firearm or ammunition at issue. Failure of indictment to plead knowledge is harmless absent a showing of a reasonable probability of a different outcome at trial but for the error in the indictment. USA v. Elysee, Case No. 18-14214 (11th Cir. 4/8/2021)

https://media.ca11.uscourts.gov/opinions/pub/files/201814214.pdf

EVIDENCE-PRIOR CONVICTION: Unredacted copy of conviction (armed robbery) is admissible to show Defendant's familiarity with firearms and how to acquire them. USA v. Elysee, Case No. 18-14214 (11th Cir. 4/8/2021)

https://media.ca11.uscourts.gov/opinions/pub/files/201814214.pdf

ARMED CAREER CRIMINAL ACT: Robbery convictions are "violent felonies" for the purposes of the Armed Career Criminal Act ("ACCA"). USA v. Elysee, Case No. 18-14214 (11th Cir. 4/8/2021)

https://media.ca11.uscourts.gov/opinions/pub/files/201814214.pdf

ILLEGAL SENTENCE: Defendant may not challenge the failure of the Court to include the ten-year minimum mandatory portion of his life sentence. Although the plain language of R. 3.800(a) does not expressly prohibit defendants from seeking to correct unlawfully lenient sentences,

defendants are not entitled to such relief absent a showing of prejudice. Earl v. State, SC19-1506 (4/8/21)

https://www.floridasupremecourt.org/content/download/728976/opinion/sc19-1506.pdf

LOWEST PERMISSIBLE SENTENCE: Where there are multiple convictions subject to sentencing on a single scoresheet, the lowest permissible sentence under §921.0024(2) is an individual minimum sentence and not a collective minimum sentence. Where Defendant's lowest permissible sentence (here, 107.25 months) exceeds the statutory maximum for some of the counts, Court must impose the LPS on each count. Court may impose sentences consecutively, even where the result (as here) is a sentence in excess of the statutory maximums. A total sentence of approximately 33 years where the statutory maximum is 25 years is lawful. State v. Gabriel, SC19-2155 (FLA 4/8/21)

https://www.floridasupremecourt.org/content/download/728977/opinion/sc19-2155.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to object to the presentation of two minutes of dashcam footage showingother officers
attempting to revive the victims nor the Defendant's use of the term "cracker" to describe the men he shot. Morris v. State, SC20-155 (FLA 4/8/21)

https://www.floridasupremecourt.org/content/download/728979/opinion/sc20-155.pdf

STATEMENTS OF DEFENDANT: Officers encouraging Defendant to provide his side of the story is not coercive. Sanders v. State, 1D19-4461 (4/8/21)

https://www.1dca.org/content/download/729056/opinion/194461_DC05_04082021_141156_i.pdf

PREMEDITATION: The time between Defendant realizing the victim was home and deciding to strangle her to death was sufficient time for him to form an intent to kill her. Sanders v. State, 1D19-4461 (4/8/21)

https://www.1dca.org/content/download/729056/opinion/194461_DC05_04082021_141156_i.pdf

SENTENCING-MINOR-HOMICIDE: Court did not err in sentencing juvenile convicted of rape/murder to life in prison where his family could not point to any positive accomplishments the Defendant achieved in the last several years, and instead they focused on hobbies that the Defendant gave up years before the murder. Defendant's argument that Court must explicitly make a finding of incorrigibility before imposing a sentence of life without parole was not preserved.
Sanders v. State, 1D19-4461 (4/8/21)

https://www.1dca.org/content/download/729056/opinion/194461_DC05_04082021_141156_i.pdf

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SENTENCING: Court did not err in allowing the victim's daughters to recommend an appropriate sentence. There is no prohibition on the trial court's receiving sentencing recommendations from the victim's family in the context of sentencing a juvenile. Sanders v. State, 1D19-4461 (4/8/21)

https://www.1dca.org/content/download/729056/opinion/194461_DC05_04082021_141156_i.pdf

COSTS: A defendant's waiver of a reading of the statutory authority for discretionary fines does not absolve a trial court of its responsibility to individually pronounce the fines. Johnson v. State, 1D20-361 (4/8/21)

https://www.1dca.org/content/download/729057/opinion/200361_DC08_04082021_141506_i.pdf

APPEAL-PRESERVATION-LESSER INCLUDED: Defendant convicted of Lewd and Lascivious Molestation as a lesser included of Capital Sexual Battery is not preserved where there was discussion of the issue ("I don't think that the lewd and lascivious molestation, victim under twelve, is a lesser included offense.") defense counsel agreed that the facts would constitute a Lewd and Lascivious Molestation, and no objection was made to the jury being instructed that it was a lesser. Counsel's general thoughts failed to clearly convey an objection to the inclusion of the Lewd and Lascivious Molestation charge in place of the Sexual Battery charge, and counsel's musings were immediately followed by his agreeing with the court that the evidence supported the charge. Johnson v. State, 1D20-361 (4/8/21)

https://www.1dca.org/content/download/729057/opinion/200361_DC08_04082021_141506_i.pdf

APPEAL-PRESERVATION-RULE OF COMPLETENESS: No error in Court not requiring the State to present the full video of the car chase pursuant to the rule of completeness, where Court made a tentative ruling on the admissibility of the omitted portion of the video but invited Defendant to

proffer it to establish admissibility, and Defendant did not do so. Where a judge has tentatively granted a motion in limine concerning an area of evidence, but has indicated a willingness to reconsider the ruling after hearing a proffer of the actual testimony, it is necessary to proffer the testimony sought to be introduced in order to preserve the issue for appeal. Mims v. State, 1D20-1673 (4/8/21)

https://www.1dca.org/content/download/729058/opinion/201673_DC05_04082021_141642_i.pdf

BOND: Court may deny motion to reinstate bond for Defendant who had failed to appear, been arrested on new out-of-state serious charges, and had fled the state. Summers v. Williams, Sheriff, 1D20-2583 (4/8/21)

https://www.1dca.org/content/download/729059/opinion/202583_DC02_04082021_141827_i.pdf

POST CONVICTION RELIEF: Defendant may not attack his convictions based on jury deliberations through R.3.800. Peterson v. State, 20-3458 (4/8/21)
https://www.1dca.org/content/download/729062/opinion/203458_DC05_04082021_142423_i.pdf

VOP: Probation cannot be revoked absent a specific finding of willfulness. An automatic revocation of probation without such a finding would be unconstitutional. The requirement that a willful and substantial violation of probation be found before probation can be revoked is rooted in the fundamental fairness notion required by due process. Rogers v. State, 3D20-1083 (4/7/21)

https://www.3dca.flcourts.org/content/download/728784/opinion/201083_DC13_04072021_102701_i.pdf

EVIDENCE: Testimony from the driver of the other car in a collision that he was impaired by alcohol, notwithstanding his lack of memory of the crash itself, is admissible. A criminal defendant has a constitutional right to present a defense. Exclusion of relevant evidence that another's negligence might have caused or contributed to an accident violates the defendant's Sixth Amendment right to present a defense. Because it is possible the jury could reasonably have concluded that the van driver's intoxicated driving was the sole proximate cause of the accident, the evidence should not have been excluded. Getts v. State, 2D19-1100 (4/7/21)

https://www.2dca.org/content/download/728719/opinion/191100_DC13_04072021_080429_i.pdf

CERTIORARI: A rule 3.800(a) order finding that a movant is entitled to be resentenced, without imposing a new sentence, is a nonfinal nonappealable order. State v. Crecy, 2D20-2580 (4/7/21)

https://www.2dca.org/content/download/728717/opinion/202580_DA08_04072021_081420_i.pdf

DEFINITION-"RECONSIDER": "Reconsider" means "to consider again especially with a view to changing or reversing." State v. Crecy, 2D20-2580 (4/7/21)

https://www.2dca.org/content/download/728717/opinion/202580_DA08_04072021_081420_i.pdf

SPOLIATION: Where lost or unpreserved evidence is material exculpatory evidence, the loss of such evidence is a violation of the defendant's due process rights and the good or bad faith of the State is irrelevant. But claim that police mishandled the gun is unsupported by the evidence and irrelevant even if true in case where wife died after Husband used the gun (missed), a knife (several stabs), and a hammer (several blows), and where Defendant admitted he had handled the gun. Lopez Barrios v. State, 4D19-2569 (4/7/21)

https://www.4dca.org/content/download/728787/opinion/192569_DC05_04072021_095421_i.pdf

IMMIGRATION: A Florida conviction for being a felon in possession of a firearm is categorically an aggravated felony under the INA. Any alien who is convicted of an aggravated felony at any time after admission is deportable. Aspilaire v. US Attorney General, No. 19-12605 (11th Cir. 4/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912605.pdf

ANTIQUE FIREARM: Florida and Federal definitions of an "antique firearm" compared, contrasted, and explained. Aspilaire v. US Attorney General, No. 19-12605 (11th Cir. 4/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912605.pdf

§924 FIREARM ENHANCEMENT: Conviction for §924 firearm enhancement is sustained where jury was instructed on the invalid

conspiracy predicate, but also two valid drug trafficking predicates related to the conspiracy predicate. Aspilaire v. US Attorney General, No. 19-12605 (11th Cir. 4/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201912605.pdf

APPEAL-PROCEDURAL DEFAULT: Defendant may not raise by collateral review an issue (here, an improper predicate for use of firearm conviction) which were not raised during his original appeal absent a showing of 1) cause to excuse the default and actual prejudice from the claimed error, or (2) actual innocence. Parker v. USA, No. 19-14943 (11th Cir. 4/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914943.pdf

DUI MANSLAUGHTER: DUI manslaughter requires proof that the appellant was operating a vehicle while legally impaired and that his operation of the vehicle caused or contributed to Victim's death. Defendant properly convicted of DUI manslaughter of his son when he had flipped onto the road the ATV he was driving and on which his son was riding, and a truck shortly thereafter hit it, killing the son. Clark v. State, 1D18-3341 (4/6/21)

https://www.1dca.org/content/download/728595/opinion/183341_DC08_04062021_132012_i.pdf

DUI: The defense of inoperability does not apply where a vehicle is reasonably capable of being rendered operable. Actual physical control only requires that the vehicle be reasonably capable of being rendered operable, not that the defendant have the immediate ability to operate the vehicle. Clark v. State, 1D18-3341 (4/6/21)

https://www.1dca.org/content/download/728595/opinion/183341_DC08_0

4062021_132012_i.pdf

SENTENCING-DOWNWARD DEPARTURE-ISOLATED INCIDENT: Court did not err in finding that DUI was not an isolated incident notwithstanding that the Defendant had no prior convictions. Absence of a criminal record does not mandate the trial court to find an incident isolated. Clark v. State, 1D18-3341 (4/6/21)

https://www.1dca.org/content/download/728595/opinion/183341_DC08_04062021_132012_i.pdf

HABEAS CORPUS: Dismissal of a habeas petition is proper when the petitioner is seeking the kind of collateral postconviction relief available through a motion filed in the sentencing court. Rodriguez v. Inch, 1D20-2462 (4/6/21)

https://www.1dca.org/content/download/728598/opinion/202462_DC05_04062021_133045_i.pdf

POST CONVICTION RELIEF: An evidentiary hearing is unnecessary where the plea colloquy and conclusively refutes the broad allegation that Defendant into entering the plea. Bonamy v. State, 5D20-149 (4/6/21)

https://www.5dca.org/content/download/729178/opinion/200149_DC05_04062021_080238_i.pdf

AMENDMENT-RULES-DEATH PENALTY COUNSEL: The chief judge for each circuit shall maintain a list of counsel who are disqualified to provide

capital case representation pursuant to §27.7045 and such list shall be forwarded to the chief judge of every other circuit. In Re: Amendments to Florida Rule of Criminal Procedure 3.112, SC20-1563 (4/1/21)

https://www.floridasupremecourt.org/content/download/728031/opinion/sc20-1563.pdf

STATUTORY INTERPRETATION: When textualism is properly understood, it calls for an examination of the social context in which a statute was enacted. Williams v. State, 1D19-0498 (4/1/21)

https://www.1dca.org/content/download/727890/opinion/190498_DC08_03312021_133846_i.pdf

PRINCIPAL: A principal in the first degree historically was the absolute perpetrator of the crime, the one we typically would consider as having committed the crime. A principal in the second degree historically was at a remove from the absolute perpetrator, actually or constructively at the scene of the crime and aided or abetted in its commission. At common law, if a person was not at the scene, or at least nearby, then she could not be punished as a principal. Accessory before the fact was at yet another remove from the absolute perpetrator, i.e., someone who was absent at the time of the commission of a felony, but beforehand counseled, hired, or otherwise procured the perpetrator to commit it. Williams v. State, 1D19-0498 (4/1/21)

https://www.1dca.org/content/download/727890/opinion/190498_DC08_03312021_133846_i.pdf

PRINCIPAL: A defendant may be found guilty as a principal based solely on communications, but considering 17 ways to kill one's husband, developing an alibi, and agreeing to encourage him to go hunting with one's boyfriend so that the latter could drown him does not constitute commanding or impelling the boyfriend to commit the murder or the assisting or

encouraging of it. Proof of the conspiracy alone is not enough to make one a principal. Williams v. State, 1D19-0498 (4/1/21)

https://www.1dca.org/content/download/727890/opinion/190498_DC08_03312021_133846_i.pdf

CONSPIRACY: No overt act is required for a conspiracy under Florida law. Williams v. State, 1D19-0498 (4/1/21)

https://www.1dca.org/content/download/727890/opinion/190498_DC08_03312021_133846_i.pdf

ELECTION OF CHARGES: The rule that the State may be compelled to elect between charges repugnant or inconsistent with each other, applicable in cases involving theft-related crimes, does not exist in cases involving murder and accessory after the fact or, for that matter, to any non-theft-related crimes. The failure to make the State pick a theory is not a structural defect that will always be presumed to be harmful. Williams v. State, 1D19-0498 (4/1/21)

https://www.1dca.org/content/download/727890/opinion/190498_DC08_03312021_133846_i.pdf

SEARCH AND SEIZURE: Florida law authorizes custodial arrests and attendant searches for violations of local ordinances (here, an open container ordinance) that carry criminal penalties.
Hull v. State, 5D20-701 (4/1/21)

https://www.5dca.org/content/download/727973/opinion/200701_DC05_04012021_081838_i.pdf

POST CONVICTION RELIEF: Denial of 3.859 motion for failure to include a proper oath is upheld where Defendant failed to avail himself of the

opportunity to correct the omission. Hand v. State, 5D20-1312 (4/1/21)

https://www.5dca.org/content/download/727975/opinion/201312_DC05_04012021_082651_i.pdf

MARCH 2021

DEPORTATION: Subject who had robbed a bank six days before his naturalization ceremony, but who was not arrested or convicted until later, is not removable. A denaturalized alien is not removable as an aggravated felon based on convictions entered while he was an American citizen. Immigration statute providing that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable" does not apply to aliens who were citizens at the time of their predicate convictions. "[W]e are concerned with the alien's citizenship status at the time of conviction, not the time of the crime." Denaturalization is not treated as retroactive for removal purposes. "We may not pretend that Hylton was an alien all along." Hylton v. U.S. Attorney General, No. 19-14825 (11th Cir. 3/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914825.pdf

STATUTORY INTERPRETATION: "It would be odd if, in two consecutive subsections of the Code, which use materially identical language, the same words were read to mean one thing in the first subsection but another in the second. All else being equal, we prefer a reading of the second that coheres with binding precedent as to the first." Hylton v. U.S. Attorney General, No. 19-14825 (11th Cir. 3/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914825.pdf

HABEAS CORPUS-EQUITABLE TOLLING: AEDPA's statutory limitations period may be tolled for equitable reasons in rare and exceptional circumstances, i.e., only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing. Defendant is entitled to equitable tolling of the deadline for filing a petition for habeas corpus where his counsel deliberately

missed the deadline in order to create a test case to challenge the constitutionality of AEDPA's one year statute of limitations. Counsel abdicated her duty of loyalty to her client to promote her own interests, effectively abandoning him. Thomas v. Attorney General, State of Florida, No. 13-14635 (11th Cir. 3/31/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201314635_2.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Neither recantation by the Defendant's mother claiming that it was actually her other (now deceased) son who committed the crimes nor the Defendant's claim that he committed only some of them, but he could not remember which, entitle Defendant to vacate his plea and convictions years later. Lowery v. State, 1D19-174 (3/31/21)

https://www.1dca.org/content/download/727892/opinion/194174_DC05_03312021_134632_i.pdf

CIRCUMSTANTIAL EVIDENCE: The reasonable hypothesis of innocence standard for a judgment of acquittal has been discontinued. The reviewing standard in all cases, whether they are based on circumstantial evidence or not, is now whether a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt. Dorsey v. State, 1D20-378 (3/31/21)

https://www.1dca.org/content/download/727894/opinion/200378_DC05_03312021_135127_i.pdf

IMPEACHMENT: Court properly excluded Defendant's mother from testifying that the victim had told her that the state attorney's office threatened to have the victim's children taken away if the victim did not testify against Appellant, which was inconsistent with the victim's cross-examination testimony that she had not been threatened and never had any conversation with Defendant's mother. To be inconsistent, a prior statement must either directly contradict or be materially different from the expected

testimony at trial. Garmon v. State, 1D20-1048 (3/31/21)

https://www.1dca.org/content/download/727895/opinion/201048_DC05_03312021_135313_i.pdf

HABEAS CORPUS: Dismissal of habeas corpus petitions, rather than transfer, is appropriate where the petitioner is seeking relief that (1) would be untimely if considered as a motion for postconviction relief under rule 3.850, (2) raise claims that could have been raised at trial or, if properly preserved, on direct appeal of the judgment and sentence, or (3) would be considered a second or successive motion under rule 3.850 that either fails to allege new or different grounds for relief that were known or should have been known at the time the first motion was filed. Smith v. Fla. DOC, 1D20-1290 (3/31/21)

https://www.1dca.org/content/download/727897/opinion/201290_DC05_03312021_135954_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: The standard of review applicable to claims of ineffective assistance of appellate counsel mirrors the Strickland standard. Appellate counsel was not ineffective for failing to argue that the issues raised in his direct appeal under state law also violated federal law (which would have preserved the possibility for federal habeas corpus review). Anderson v. State, 1D20-2055 (3/31/21)

https://www.1dca.org/content/download/727902/opinion/202055_DC02_03312021_141822_i.pdf

VFOSC: Violent Felony Offender of Special Concern findings that Defendant posed a threat to the community must be rendered in writing. Johnson v. State, 2D19-1186 (3/31/21)

https://www.2dca.org/content/download/727754/opinion/191186_DC05_03312021_090621_i.pdf

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SEARCH AND SEIZURE-MARIJUANA: An officer smelling the odor of marijuana has probable cause to believe that the odor indicates the illegal use of marijuana. Even if marijuana was legalized for recreational use, such use while driving would still support the offense of driving while intoxicated; thus, regardless of whether marijuana becomes decriminalized for recreational use, the smell of the burning substance will continue to provide probable cause for a search of a vehicle. "[W]e can think of no circumstance where an affirmative defense might lie where the impetus for the search arose from the smell of burnt marijuana in a vehicle." Owens v. State, 2D20-537 (3/31/21)

https://www.2dca.org/content/download/727772/opinion/200537_DC05_03312021_090839_i.pdf

PROBABLE CAUSE: The probable cause standard is a practical and common sensical standard. It is enough if there is the the kind of fair probability on which reasonable and prudent people, not legal technicians, act. Owens v. State, 2D20-537 (3/31/21)

https://www.2dca.org/content/download/727772/opinion/200537_DC05_03312021_090839_i.pdf

MINOR-LENGTHY SENTENCE: A fifty-year sentence is not the functional equivalent of life. Hall v. State, 3D17-2058 (3/31/21)

https://www.3dca.flcourts.org/content/download/727787/opinion/172058_DC05_03312021_102358_i.pdf

MINOR-LENGTHY SENTENCE: Minimum mandatory term of forty years reviewable after twenty-five years for juveniles convicted of murder is constitutional under Miller and Graham. Minor's fifty year sentence with review for murder is lawful. Thorough discussion. Hall v. State, 3D17-2058 (3/31/21)

https://www.3dca.flcourts.org/content/download/727787/opinion/172058_DC05_03312021_102358_i.pdf

CONSTITUTIONALITY: An as-applied challenge is an argument that a law which is constitutional on its face is nonetheless unconstitutional as applied to a particular case or party, because of its discriminatory effects; a facial challenge asserts that a statute always operates unconstitutionally. The forty-year term mandatory minimum term for murder by a juvenile is constitutional as is and facially. Hall v. State, 3D17-2058 (3/31/21)

https://www.3dca.flcourts.org/content/download/727787/opinion/172058_DC05_03312021_102358_i.pdf

FARETTA: Defendant (college graduate who completed a year and a half of law school) and in the end represented himself at trial is not entitled to a new trial when Court failed to re-advise him on the dangers of self-representation when he had earlier been so advised in the same case and counsel had been appointed then discharged. Maps v. State, 3D18-1979 (3/31/21)

https://www.3dca.flcourts.org/content/download/727790/opinion/181079_DC05_03312021_102627_i.pdf

HABEAS CORPUS: Habeas corpus may not be used as a substitute for an appropriate motion seeking postconviction relief, nor can habeas corpus be used as a means to seek a second appeal or to litigate issues that could have been or were raised in a motion under rule 3.850. Evans v. State, 3D20-1820 (3/31/21)

https://www.3dca.flcourts.org/content/download/727823/opinion/201820_DC05_03312021_104529_i.pdf

EVIDENCE-VIDEO-AUTHENTICATION: Authentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic. Evidence may be authenticated based on circumstantial evidence, extrinsic evidence, or by showing that it meets the requirements for self-authentication. Testimony

of store manager that the surveillance video was a fair and accurate representation of what happened that day is sufficient. Willingham v. State, 4D19-1883 (3/31/21)

https://www.4dca.org/content/download/727804/opinion/191883_DC05_03312021_095239_i.pdf

PRR-PREDICATE OFFENSE: Mandatory life sentence for armed robbery under the Prison Releasee Reoffender statute is constitutional, including where the predicate offense was committed when the Defendant was a minor. "[P]erhaps the Florida Legislature will in the future consider exclusion of sentences served for underage crimes from qualifying under recidivist statutes, or at least grant sentencing judges the discretion to decline to apply such statutes where a predicate offense was committed by a juvenile. . .Until then, there is no judicial discretion to impose a different sentence." Willingham v. State, 4D19-1883 (3/31/21)

https://www.4dca.org/content/download/727804/opinion/191883_DC05_03312021_095239_i.pdf

JURY QUESTION: Court has discretion in answering a jury question, and it may answer a question directly or refer jurors to standard instructions. Hernandez-Perez v. State, 4D19-3309 (3/31/21)

https://www.4dca.org/content/download/727806/opinion/193309_DC05_03312021_095458_i.pdf

MARSY'S LAW-NEXT OF KIN'S PRESENCE: Court did not err in barring the Defendant's father (who was a witness for the Defendant and also the victim's uncle) from sitting in the courtroom at the Defendant's request. Defendant suffered no prejudice. Butler v. State, 4D19-3394 (3/31/21)

https://www.4dca.org/content/download/727807/opinion/193394_DC05_03312021_095645_i.pdf

INFORMATION-DEFECT: A fundamental defect in an information must be timely raised. A challenge to an information on the ground that it was not supported by probable cause or sworn testimony from a material witness does not raise a fundamental defect. The prosecutor who signs a charging document need not personally take an oath or take testimony from a material witness before filing the charging document. Johnson v. State, 1D19-4535 (3/30/21)

https://www.1dca.org/content/download/727648/opinion/194535_DC05_03302021_135350_i.pdf

HABEAS CORPUS: Dismissal of a habeas petition is proper when the petitioner is seeking the kind of collateral postconviction relief available through a motion filed in the sentencing court. McPherson v. Florida DOC, 1D20-1904 (3/30/21)

https://www.1dca.org/content/download/727650/opinion/201904_DC05_03302021_134857_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for acquiescing to exclusion of evidence under the rape shield law that Victim/girlfriend was pregnant by a different man and had an STD at the time of the crimes. No prejudice is shown since it was undisputed the two had engaged in consensual sex days before. Givens v. State, 1D20-3041 (3/30/21)

https://www.1dca.org/content/download/727651/opinion/203041_DC05_03302021_135714_i.pdf

POST CONVICTION RELIEF-FEDERAL REVIEW: Federal court may not grant a writ of habeas corpus unless the earlier decision upholding the murder conviction took an unreasonable view of the facts or law. "Unreasonable" refers only to extreme malfunctions in the state criminal justice system. A federal court may not overturn a state court finding that Defendant is not entitled to a new trial where trial counsel did not try to implicate the person who discovered the body at the hotel, where that

person's squirrely-ness was due to his covering up of his ongoing illicit liaisons at the hotel, not covering up the murder of the hotel maid whose body he found, particularly where there is strong evidence of the Defendant's guilt. Mays v. Hines, No. 20-507 (U.S. S. Ct. 3/29/21)

https://www.supremecourt.gov/opinions/20pdf/20-507_h315.pdf

JOA: The standard for a JOA–that there be proof of each and every necessary element of the offense charged beyond a reasonable doubt before an offense can be submitted to a jury--is not the current standard. Perry v. State, 1D20-891 (3/26/21)

https://www.1dca.org/content/download/727122/opinion/200891_DC08_03262021_132549_i.pdf

PRR: A 30 year sentence as a PRR is mandatory for an Aggravated Battery of a deadly weapon with a deadly weapon. The jury's finding that Perry used a deadly
weapon was in addition to, not an essential element of, the aggravated battery. Reclassification to a first-degree felony is required. Perry v. State, 1D20-891 (3/26/21)

https://www.1dca.org/content/download/727122/opinion/200891_DC08_03262021_132549_i.pdf

INCARCERATION-PROBATION: A court cannot sentence a defendant to serve probation while that defendant would still be serving a separate sentence in prison. The incarcerative portions of all counts must be completed before the probationary portion of any count begins. Marron v. State, 2D19-1335 (2/26/21)

https://www.2dca.org/content/download/727064/opinion/191335_DC13_03262021_094016_i.pdf

POST CONVICTION RELIEF: An evidentiary hearing is typically warranted

when a defendant brings an ineffective assistance claim arguing that trial counsel should have called a witness or alibi witness for trial. Washington v. State, 5D20-725 (3/26/21)

https://www.5dca.org/content/download/727043/opinion/200725_DC08_03262021_082054_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Significant injuries to the frontal and temporal lobes of his brain adversely affecting Defendant's language skills and his ability to plan, reason, inhibit impulses, and make rational decisions do not require the Court to impose a downward departure. Broy v. State, 5D20-943 (3/26/21)

https://www.5dca.org/content/download/727044/opinion/200943_DC05_03262021_082841_i.pdf

APPEAL-ANDERS BRIEF: "An Anders brief is unnecessary in postconviction appeals, and neither we nor appellate counsel need to follow Anders' procedures or requirements. . .Indeed, there is no right to counsel in postconviction proceedings. . .We will. . .strike postconviction Anders briefs going forward." Hunter v. State, 5D20-1609 (3/26/21)

https://www.5dca.org/content/download/727047/opinion/201609_DC05_03262021_083413_i.pdf

ARREST: The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person. A seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting. A suspect's continued flight after being shot by police does not negate a Fourth Amendment excessive-force claim. Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

MERE TOUCH RULE: "[T]he court explained that the bailiff would have made an arrest if he 'had but touched the defendant even with the end of his finger.'. . . The touching of the person—frequently called a laying of hands—was enough." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

COUNTESS OF RUTLAND: "[In the] Countess of Rutland's Case,. . . serjeants-at-mace tracked down Isabel Holcroft, Countess of Rutland, to execute a writ for a judgment of debt. They 'shewed her their mace, and touching her body with it, said to her, we arrest you, madam.'" Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

COUNTESS OF RUTLAND (GORSUCH, DISSENT): "Ultimately, the majority asks us to dwell at length on the Countess of Rutland's case. In at least that lone instance, the majority promises, we will find bailiffs who arrested a debtor by touching her with an object (a mace) rather than a laying on of hands. . . But it turns out the dispute concerned whether a countess could be civilly arrested at all, not when or how the arrest was completed. . .Not even minor royalty can rescue the majority." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

DISTINCTION WITHOUT A DIFFERENCE: "The dissent. . .argues that the common law limited arrests by force to the literal placement of hands on the suspect, because no court published an opinion discussing a suspect who continued to flee after being hit with a bullet. . .This objection calls to mind the unavailing defense of the person who 'persistently denied that he had laid hands upon a priest, for he had only cudgelled and kicked him.'" Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

QUOTATION: "There is nothing subtle about a bullet." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

ARREST-FUGITIVITY: "The rule we announce today is narrow. In addition to the requirement of intent to restrain, a seizure by force—absent submission—lasts only as long as the application of force. That is to say that the Fourth Amendment does not recognize any 'continuing arrest during the period of fugitivity.'" Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

SEIZURE OF PERSON: "All we decide today is that the officers seized Torres by shooting her." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

SEIZURE OF PERSON (GORSUCH, DISSENT): "The majority holds that a criminal suspect can be simultaneously seized and roaming at large. . . It's a seizure even if the suspect refuses to stop, evades capture, and rides off into the sunset never to be seen again. That view is as mistaken as it is novel." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

DICTA (GORSUCH, DISSENT): [W]hatever utility it may have, dicta cannot bind future courts. . . If the respect we afford past holdings under the doctrine of stare decisis may be justified in part as an act of judicial humility,

respecting that doctrine's limits must be too. Fewer things could be less humble than insisting our every passing surmise constitutes a rule forever binding a Nation of over 300 million people." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

QUOTATION (GORSUCH, DISSENT): "The common law offers a vast legal library. Like any other, it must be used thoughtfully. We have no business wandering about and randomly grabbing volumes off the shelf, plucking out passages we like, scratching out bits we don't, all before pasting our own new pastiche into the U. S. Reports. That does not respect legal history; it rewrites it." Torres v. Madrid, No. 19–292 (US S.Ct. 3/25/21)

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

POST CONVICTION RELIEF-FEDERAL REVIEW: Under the AEDPA, even a summary opinion by the state appellate court overturning Defendant's granted motion for post relief must be sustained as not unreasonable. McKiver v. Secretary, DOC, No. 18-14857 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814857.pdf

POST CONVICTION RELIEF-DISSENT: "This appeal arises from [Defendant]'s attempt to get a new trial on the ground that [his attorney] gave ineffective assistance of counsel to him on this important issue of the weight of the drugs he consumed. The state postconviction court that heard [Defendant]'s claims in this regard agreed with him. Nevertheless, and in a one sentence order, containing no analysis or any reference to the facts, the Florida appellate court vacated the state postconviction court's decision. Upon review here, the majority opinion says this one sentence order from the Florida appellate court is a reasonable application of Strickland v. Washington, [*cite omitted*]. I say it is not." McKiver v. Secretary, DOC, No.

18-14857 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814857.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to impeach Victim by 26 year old convictions which, under Florida law, would have been inadmissible because of remoteness. McKiver v. Secretary, DOC, No. 18-14857 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814857.pdf

TRAFFICKING: In Florida, a person does not actually have to traffic drugs in order to be guilty of trafficking. A person's guilt or innocence of Florida's drug trafficking crime is determined strictly by the weight of the drug attributed to them. McKiver v. Secretary, DOC, No. 18-14857 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814857.pdf

POST CONVICTION RELIEF-AEDPA-TIME LIMIT: The federal habeas statute establishes a 1–year period of limitation for an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The time during which a properly filed application for State post-conviction review shall not be counted toward any period of limitation. Defendant's amended R. 3.850 motion relates back to his initial motion, tolling the AEDPA limitations period for the time in between. The current 60 day default deadline for amending a motion for post conviction relief did not exist at the time in this case. Morris v. Secretary, DOC, No. 18-14802 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201814802.pdf

POST CONVICTION RELIEF-AEDPA-TIME LIMIT: Federal habeas petition

for post conviction relief filed 13 years after case became final in state court is beyond the one year time limitation. Defendant "does not contest the correctness of the dates that he provided or the dates that the court relied on. What he does contest is the district court's authority to corroborate the dates he provided by reviewing online state court dockets. . .We decline to find error because the district court double-checked the dates that Turner had already offered. Turner v. Secretary, DOC, No. 18-12891 (11th Cir. 3/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201812891.pdf

CONTINUANCE: Defendant is not entitled to continuance on ground that he personally was not able to review all his discovery, so he did not fully realize the evidence against him where he had roughly two years to prepare for his trial and did not point to any evidence that would have been presented if the continuance had been granted. USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

JURORS: By statute, members of the fire or police departments are barred from jury service on the ground that they are exempt. To be excluded from jury service under §1863, a person must in function be a police officer, not a member of any organization that could fall under the broad umbrella of law enforcement, i.e., a probation officer. USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

EVIDENCE-MODUS OPERANDI: When modus operandi evidence supports an inference that the same person committed multiple crimes, a jury can consider identity evidence from other robberies. USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

HEARSAY: Statements by out-of-court witnesses to law enforcement may be admitted as non-hearsay if they help explain the later investigative actions, and the danger of unfair prejudice caused by the impermissible hearsay use of the statement does not substantially outweigh the probative value of the evidence. USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

CONFRONTATION CLAUSE: Confrontation Clause prohibits only statements that constitute impermissible hearsay. The Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

EVIDENCE: Testimony which "involves the synthesis of a large volume of already-admitted evidence" is not improper interpretation of evidence that impeded or invaded the function of the jury." USA v. Pendergrass, No. 19-13681 (3/24/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201913681.pdf

SENTENCING-GUIDELINES-CONCURRENT SENTENCES: The lowest permissible sentence is an individual minimum sentence that applies to each felony at sentencing for which the lowest permissible sentence exceeds that felony's statutory maximum sentence, regardless of whether the felony is the primary or an additional offense. Where the minimum guidelines is 19.8 years and the statutory maximum is 15 years, the trial court should have imposed concurrent
sentences of 19.8 years for both counts. Conflict Certified. Pierce v. State, 1D19-2829 (3/24/21)

https://www.1dca.org/content/download/726812/opinion/192829_DC13_0

3242021_132347_i.pdf

SEARCH AND SEIZURE-PROLONGED STOP: Stop is not unlawfully prolonged where officers had reasonable suspicion of criminal activity. Lack of luggage, lack of car rental papers, and waffling on who Defendant was going to see adds up to reasonable suspicion of drug trafficking. Carter v. State, 1D20-74 (3/24/21)

https://www.1dca.org/content/download/726813/opinion/200074_DC05_03242021_132716_i.pdf

DRUG OFFENDER PROBATION: Defendant convicted of felony battery is eligible for drug offender probation. Battery is not a forcible felony because it can be committed by simple nonviolent touching. Marshall v. State, 2D19-3692 (3/24/21)

https://www.2dca.org/content/download/726707/opinion/193692_DC05_03242021_085711_i.pdf

APPEAL-PRESERVATION: Defendant may not raise on appeal issue that he is ineligible for drug offender probation (consecutive to prison) where he scores above sixty points when he failed to preserve the issue at sentencing or by motion to correct. Marshall v. State, 2D19-3692 (3/24/21)

https://www.2dca.org/content/download/726707/opinion/193692_DC05_03242021_085711_i.pdf

PYRRHIC VICTORY: "Christopher Ray Queen appeals his convictions and sentences for three hundred counts of possession of child pornography. Queen argues the trial court erred by overruling his hearsay objection to a digital forensic technician's testimony regarding the hash values associated with the images found on his devices. We agree as to one of those images and reverse Queen's conviction for count 47." Queen v. State, 2D19-3890 (3/24/21)

https://www.2dca.org/content/download/726708/opinion/193890_DC08_03242021_085828_i.pdf

HEARSAY: "[S]omeone, somewhere had to have made a determination that the image of which Exhibit 47 is an identical copy was an image depicting a child. . .However, that individual did not testify in Queen's trial. It is that statement, the initial determination that the original image depicted a child, that was made out of court and was admitted for the truth of the matter asserted. . .Contrary to the State's assertions, a hearsay statement is not admissible simply because it is "extremely accurate" and comes from a "trustworthy source." Queen v. State, 2D19-3890 (3/24/21)

https://www.2dca.org/content/download/726708/opinion/193890_DC08_03242021_085828_i.pdf

EVIDENCE-MOTION TO DISMISS: Testimony/Admissions by Defendant in SYG Motion to dismiss may be used by State in the case in chief as substantive evidence. State v. Hester, 3D19-1642 (3/24/21)

https://www.3dca.flcourts.org/content/download/726727/opinion/191642_DC13_03242021_100909_i.pdf

SPEEDY TRIAL-HURRICANE: Administrative Order suspending the right to a speedy Trial due to a hurricane tolls the time for filing an indictment. State v. Lowery, 3D19-2409 (3/24/21)

https://www.3dca.flcourts.org/content/download/726728/opinion/192409_DC08_03242021_101148_i.pdf

VINDICTIVE SENTENCE: Where judge extended an in a neutral, non-advocating manner, merely advising the defendant this would be the last plea offer extended to him and that if he rejected it, the case would proceed to trial, and the ultimate sentence is much harsher, sentence is not necessarily vindictive. "[W]e are concerned by the in-chambers, off-the record plea discussions engaged in by the predecessor judge, and take

this opportunity to caution trial judges. . .a 'record must be made of all plea discussions involving the court.'" Alvarez-Hernandez v. State, 3D20-302 (3/24/21)

https://www.3dca.flcourts.org/content/download/726731/opinion/200302_DC05_03242021_101655_i.pdf

PRR: Grand theft of a firearm and possession of burglary tools are not qualifying offenses for prison releasee reoffender. Symonette v. State, 4D19-1007 (3/23/21)

https://www.4dca.org/content/download/726744/opinion/191007_DC13_03242021_095421_i.pdf

SENTENCING-ABSENT DEFENDANT: R. 3.180(c)(2), allowing the court to sentence a defendant in absentia, does not apply when the absence is involuntary, such as when, as here, the Defendant was in the hospital. Reynolds v. State, 4D19-3207 (3/24/21)

https://www.4dca.org/content/download/726746/opinion/193207_DC13_03242021_095624_i.pdf

LIFE SENTENCE: A mandatory life sentence on a twenty-year old adult does not violate Eighth Amendment. Dorsey v. State, 4D19-3368 (3/24/21)

https://www.4dca.org/content/download/726747/opinion/193368_DC08_03242021_095818_i.pdf

EXPERT-DISCOVERY-RICHARDSON: Defendant is entitled to a Richardson hearing when detective, not disclosed as an expert, is allowed to testify about what the term "peter roll" meant. Police officers who testify regarding street language and explaining to the jury their interpretation of the words used do so as experts. Roberts v. State, 4D20-608 (3/24/21)

https://www.4dca.org/content/download/726753/opinion/200608_DC13_0

3242021_101600_i.pdf

SENTENCING: Consecutive sentences can be imposed under §784.07 because it is a reclassification statute rather than an enhancement statute. Garrick v. State, 4D20-2307 (3/24/21)

https://www.4dca.org/content/download/726758/opinion/202307_DC05_03242021_102450_i.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Appellate counsel was ineffective for failing to argue that the trial court erred in failing to make an independent determination of his competency and enter a written order finding him competent to proceed after appointment of expert to evaluate him for
competency. Zelaya v. State, 4D20-2545 (3/24/21)

https://www.4dca.org/content/download/726762/opinion/202545_DC03_03242021_102027_i.pdf

POST CONVICTION RELIEF-APPELLATE COUNSEL: Appellate counsel is not ineffective for failing to argue on appeal that Court should have stricken two jurors *sua sponte* where Defendant has not shown that the jurors were biased. Ellingburg v. State, 1D20-2392 (3/19/21)
https://www.1dca.org/content/download/726154/opinion/202392_DC02_03192021_143450_i.pdf

APPEAL: A motion for rehearing of an interlocutory order does not toll the time for filing an appeal from that order. A notice of appeal regarding a nonfinal order must be filed within thirty days of rendition of the order on review. Kelly v. State, 1D20-3106 (3/19/210
https://www.1dca.org/content/download/726155/opinion/203106_DA08_03192021_150908_i.pdf

ERROR CORAM NOBIS: Since 2001, the writ of error coram nobis has ceased to exist in Florida. Hogan v. State, 1D20-3245 (3/19/21)
https://www.1dca.org/content/download/726157/opinion/203245_DC05_0

3192021_144038_i.pdf

COMPETENCY: Where Court ordered competency evaluation between trial and sentencing, Court may not sentence the Defendant until a competency hearing is held and an order entered. Tapp v. State, 5D20-630 (3/19/21) https://www.5dca.org/content/download/726099/opinion/200630_DC05_03192021_085734_i.pdf

MOTION TO MITIGATE: A rule 3.800(c) motion is directed to a circuit court's
absolute discretion, and the court's ruling cannot be appealed. Austin v. State, 1D21-6 (3/18/21) https://www.1dca.org/content/download/725930/opinion/210006_DA08_03182021_134318_i.pdf

JURY INSTRUCTION-STANDARD OF REVIEW: The proper standard of review for failure to give an entrapment instruction is *de novo*. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21) https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

ENTRAPMENT: Entrapment is an affirmative defense that consists of two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct. If the defendant meets his initial burden (to come forward with some evidence, more than a scintilla, that government agents induced him to commit the offense), he is entitled to have his defensive theory of the case put before the jury, with the burden of proof shifting to the government to prove the defendant's predisposition to commit the crime beyond a reasonable doubt. If there is any evidence in the record that, if believed by the jury, would show that the government's conduct created a substantial risk that the offense would be committed by a person other than one ready to commit it, the jury must be permitted to resolve the matter. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21) https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

ENTRAPMENT: CI'S relentless pursuit of Defendant (a Correctional Officer) to smuggle contraband into prison Fluellen's participation and manipulation of his hesitation are sufficient to raise the question of whether

he pressured Defendant to participate, which is sufficient to meet his light burden of production as to government inducement. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

ENTRAPMENT: Sales pitch ("no gun play… no meeting in dark alleys," just "picking up, drive it, drop it off. That's it.") to convince Correctional Officers to join prison smuggling conspiracy is sufficient evidence of inducement to warrant an entrapment jury instruction. Offering a job, explaining how easy the job is, and attempting to persuade the listeners that a federal crime is the same as simply riding along in a car goes beyond not merely providing an opportunity. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

ENTRAPMENT: Defendant who is afforded that opportunity to join smuggling conspiracy but who was not pressured or manipulated ([i]n other words, [where] there was simply no 'plus' that the government presented to [Defendant] beyond the 'opportunity' to commit a crime") is not entitled to an entrapment instruction. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

ENTRAPMENT-DERIVATIVE ENTRAPMENT: Derivative entrapment, which is where the the initiator of his criminal activity is not acting as an agent of the Government, is not a recognized defense, but it is not derivative entrapment where co-defendants brought defendants into the government agent's scheme, and the government agent was aware of the participation of each defendant, had direct contact and communication with all of the defendants, presented the criminal opportunity to them directly, and was directly involved with each defendants' fake drug transports. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

EXTORTION-MCDONNELL INSTRUCTION: The term "extortion" includes obtaining the property from another, with his consent, under color of official right. "Under color of official right" means performance of an official act.

USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

JURY INSTRUCTION-OFFICIAL ACT: In entrapment case, Court must define "official act," although the pattern jury instruction of official act (designed with government policy makers in mind) is misleading on the facts of this case. Simply wearing a Department of Corrections uniform is not an official act *per se*. USA v. Mayweather, No 17-13547 (11th Cir. 3/17/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201713547.pdf

MINOR-LENGTHY SENTENCE: A juvenile offender's sentence does not implicate Graham or Miller unless it meets the threshold requirement of being a life sentence or its functional equivalent of a life sentence. A forty-year sentence is not a life sentence or its functional equivalent. Kirkland v. State, 1D18-4684 (3/17/21)
https://www.1dca.org/content/download/725743/opinion/184684_DC05_03172021_133748_i.pdf

VOP: §948.06(2) applies only to a defendant who meets all four conditions of the statute. Cobb v. State, 1D19-4324 (3/17/21)

https://www.1dca.org/content/download/725744/opinion/194324_DC08_03172021_134110_i.pdf

VOP-UPWARD DEPARTURE-DANGEROUSNESS: Defendant with fewer than 22 points on his scoresheet may not be sentenced to prison without a jury finding of dangerousness. Cobb v. State, 1D19-4324 (3/17/21)

https://www.1dca.org/content/download/725744/opinion/194324_DC08_03172021_134110_i.pdf

SPEEDY TRIAL: Formal arrest and booking is not required for Speedy Trial rights to vest. Where Defendant is placed in custody on an out-of-county warrant (although never booked on the warrant) but arrested for drugs found in his car, and an information is not filed within 175 days, he is entitled to discharge without the recapture. A formal arrest, complete with fingerprinting and formal charges, is not always necessary to start the running of the speedy trial time. In fact, only four elements are necessary

for a custodial detention to constitute an arrest and trigger the speedy trial rule: (1) A purpose or intention to effect an arrest under a real or pretended authority; (2) An actual or constructive seizure or detention of the person to be arrested by a person having present power to control the person arrested; (3) A communication by the arresting officer to the person whose arrest is sought, of an intention or purpose then and there to effect an arrest; and (4) An understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him. Gilliam v. State, 1D20-926 (3/17/21)
https://www.1dca.org/content/download/725745/opinion/200926_DC13_03172021_134411_i.pdf

SPEEDY TRIAL-RECAPTURE: Defendant is not required to file notice of expiration of speedy trial (triggering the recapture window) when an information is not filed within 175 days. Gilliam v. State, 1D20-926 (3/17/21)
https://www.1dca.org/content/download/725745/opinion/200926_DC13_03172021_134411_i.pdf

EVIDENCE-OTHER BAD ACTS-LOGICAL SEQUENCE OF EVENTS: If the purpose of admitting testimony regarding uncharged collateral crimes is to show a logical sequence of events leading up to an arrest, the need for the evidence is slight, and the likelihood of misuse is great. The reason the police stopped Defendant (firing shots from his car) is irrelevant to the charge of fleeing or attempting to elude. "[T]he context and sequence of events were not material issues at trial because [Defendant] was not being tried for the shooting or any firearm offense. . .a limited statement that the officers were investigating a recent incident and [Defendant] was a person of interest would have provided sufficient context for the charged crimes." New trial required. Edwards v. State, 2D18-4590 (3/17/21)
https://www.2dca.org/content/download/725603/opinion/184590_DC13_03172021_080041_i.pdf

RESISTING WITH VIOLENCE-BATTERY ON LEO: Officers were not in lawful performance of a legal duty, and thus convictions on plea were invalid for lack of a legally sufficient factual basis, where the proffered basis for the Defendant's detention was evaluation for a Baker Act, but the Probable Cause affidavit did not lay out a sufficient basis for such an involuntary

evaluation. Effectuating a Baker Act hold cannot serve as the officer's legal duty if the concern for J.W.'s well-being did not arise until after J.W. resisted the officer's attempts to physically restrain him. Error is fundamental. J.W. v. State, 2D19-262 (3/17/21)
https://www.2dca.org/content/download/725604/opinion/191262_DC08_03172021_080154_i.pdf

FACTUAL BASIS: Defense counsel's stipulation to the PC Affidavit as a sufficient factual basis does not make it so. A stipulation with no factual basis in the record is insufficient. "[W]e would caution that stipulating to and relying solely on a police report affidavit to provide a factual basis for a plea may not be the best practice for either the trial court, the State, or the defendant." J.W. v. State, 2D19-262 (3/17/21)
https://www.2dca.org/content/download/725604/opinion/191262_DC08_03172021_080154_i.pdf

HABEAS CORPUS: While a defendant is required to file a petition for writ of habeas corpus in the circuit where the defendant is incarcerated when the petition involves an issue regarding the prisoner's incarceration, the converse is true when the petition is based upon the legality of the conviction imposed in another circuit." Lucas v. State, 3D20-1638 (3/17/21)
https://www.3dca.flcourts.org/content/download/725668/opinion/201638_DC05_03172021_104526_i.pdf

BREACH OF PLEA AGREEMENT: Where Defendant's plea agreement required truthful testimony and he later claimed a foggy memory, Court lawfully found him in breach of the agreement, vacated the 25 year sentence, and sentenced him to life in prison. Parks v. State, 3D20-1418 (3/17/21)
https://www.3dca.flcourts.org/content/download/725665/opinion/2020-1418_Disposition_113094_DC02.pdf

COMPETENCY: Once Court appoints an expert to evaluate competency, a hearing must be held and an order entered. Zurz v. State, 4D18-3269 (3/17/21)
https://www.4dca.org/content/download/725638/opinion/183269_DC05_03172021_100122_i.pd

THANKSGIVING: "Alto Daniels Jr. appeals his convictions and sentences for attempted second-degree murder, attempted first-degree murder, . . .and Shooting or throwing deadly missiles. . .A week before Thanksgiving, Daniels went shopping to buy a turkey. When he returned home, Daniels and his wife, L.D., argued over the best way to cook the turkey. Daniels wanted to fry the turkey, but L.D. wanted to roast it." Daniels v. State, 1D20-715 (3/16/21)
https://www.1dca.org/content/download/725492/opinion/200715_DC05_03162021_141601_i.pdf

INVOLUNTARY INTOXICATION: Evidence of a defendant's involuntary intoxication is admissible to show that he could not form the specific intent to commit a crime. The defendant must show that he unexpectedly became intoxicated by prescribed medication that was taken in a lawful manner. Evidence of involuntary intoxication is admissible only to negate the intent required for specific intent crimes. Attempted second-degree murder and attempted manslaughter by act are not specific intent crimes. Daniels v. State, 1D20-715 (3/16/21)
https://www.1dca.org/content/download/725492/opinion/200715_DC05_03162021_141601_i.pdf

APPEAL: A pro se motion for a new trial that is stricken because the movant is represented by counsel tolls the time for filing a notice of appeal of the judgment under F.A.P. 4(a)(4)(A). Ruiz v. Wing, No. 18-10912 (11th Cir. 3/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201810912.op2.pdf

STATUTORY INTERPRETATION: The ordinary-meaning rule is the most fundamental semantic rule of interpretation. While most words carry more than one dictionary definition, one should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise. Ruiz v. Wing, No. 18-10912 (11th Cir. 3/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201810912.op2.pdf

DEFINITION-"FILE": "File means "to deliver a legal document to the court clerk or record custodian for placement into the official record." Ruiz v. Wing, No. 18-10912 (11th Cir. 3/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201810912.op2.pdf

DEFINITION- "DISPOSE": "Dispose" means "to settle a matter finally or definitively or to treat or handle something with the result of finishing or finishing with," or "to get rid of; throw out." Ruiz v. Wing, No. 18-10912 (11th Cir. 3/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201810912.op2.pdf

EVIDENCE: A party introducing evidence generally cannot complain on appeal that the evidence was erroneously admitted, even when a party preemptively introduces evidence that the party sought to exclude in a motion in limine. It would be unfair to allow a party to preemptively introduce evidence to remove the sting while preserving an objection to its admissibility for appellate review. Ruiz v. Wing, No. 18-10912 (11th Cir. 3/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201810912.op2.pdf

DOUBLE JEOPARDY: Dual convictions for possession of cannabis over twenty grams and possession of cannabis with intent to sell encompassing the same quantum violates double jeopardy. Chumney v. State, 2D19-2603 (3/12/21)
https://www.2dca.org/content/download/724808/opinion/192603_DC08_03122021_084548_i.pdf

SENTENCING-GUIDELINES-DOWNWARD DEPARTURE: Reasons for downward departure must be articulated either orally or in writing, and they must be supported by competent, substantial evidence. While a trial court may depart for a reason other than those set forth in §921.0026(2), it may do so only if the articulated reason for departure is consistent with legislative sentencing policies and is not otherwise prohibited. State v. Cosby, 2D19-4125 (3/12/21)
https://www.2dca.org/content/download/724817/opinion/194125_DC13_03122021_084811_i.pdf

SENTENCING-GUIDELINES-DOWNWARD DEPARTURE: Court may not impose a downward departure based on the sentences imposed for defendants in other cases who faced similar charges and who scored similarly under the guidelines without knowledge of the particular facts of the cases involving other defendants. "[T]his court does not reach the issue of when, if ever, sentences received by similarly situated defendants other than

codefendants can form a proper basis for downward departure." State v. Cosby, 2D19-4125 (3/12/21)
https://www.2dca.org/content/download/724817/opinion/194125_DC13_03122021_084811_i.pdf

APPEAL-COSTS: Defendant may not appeal imposition of laboratory fee, where written judgment imposed a discretionary $200 county laboratory fee but the Court announced $100 for that fee, without having objected or moved to correct in the trial court. Leambruno v. State, 2D20-1009 (3/12/21)

https://www.2dca.org/content/download/724828/opinion/201009_DC05_03122021_085409_i.pdf

COSTS: $200 cost for the FDLE Operating Trust Fund pursuant to §938.055 must be orally pronounced. Jackson v. State, 5D20-62 (3/12/21)

https://www.5dca.org/content/download/724786/opinion/200062_DC08_03122021_084131_i.pdf

GOOD FAITH DEFENSE: Court erred in not giving good faith defense instruction to the jury. Lumsden v. State, 5D20-523 (3/12/21)

https://www.5dca.org/content/download/724788/opinion/200523_DC13_03122021_084842_i.pdf

VOP: Court erred in finding Defendant in violation of on allegations abandoned by State before the hearing. Smith v. State, 5D20-866 (3/12/21)

https://www.5dca.org/content/download/724789/opinion/200866_DC05_03122021_085104_i.pdf

GRAND THEFT: Increase in threshold amount for Grand Theft applies retroactively. Callahan v. State, 5D20-1241 (3/12/21)

https://www.5dca.org/content/download/724791/opinion/201241_DC13_0

3122021_085643_i.pdf

GUIDELINES-DOWNWARD DEPARTURE-WILLING PARTICIPANT: Trial judges are not prohibited as a matter of law from imposing a downward departure based on a finding that the victim was a willing participant in sex offense on minor. In determining the appropriateness of a downward departure, the trial court must determine whether there is a valid legal and factual basis for a downward departure, and second, whether the case is appropriate for a departure sentence. "For purposes of appellate review, it is helpful if trial courts make findings as to each of the two prongs. Reversal not required when the Court finds that Defendant's taking advantage of the victim's consent was not appropriate. "[E]ven if the court did not recognize its authority to depart, the court's remarks make it clear that it would have not exercised its discretion to depart under the facts of this case." Watson v. State, 5D20-1928 (3/12/21)

https://www.5dca.org/content/download/724793/opinion/201928_DC05_03122021_090216_i.pdf

APPEAL-JURISDICTION; State may not appeal order of the postconviction court vacating Defendant's second judgment and the resultant shortened prison sentence. The State's right to appeal in a criminal case must be expressly conferred by statute. State v. Kemp, 5D20-2017 (3/12/21)

https://www.5dca.org/content/download/724795/opinion/202017_DA08_03122021_091528_i.pdf

POST CONVICTION RELIEF-CONSPIRACY: Although conspiracy to commit Hobbs Act robbery is not a valid potential predicate for a conviction for conspiracy to commit a firearm in furtherance of a crime of violence or a federal drug trafficking crime, conviction is sustained where other predicates applied. It is not enough for Defendant to show that the jury may have relied on the Hobbs Act conspiracy conviction as the predicate for his conviction; he must show at least a substantial likelihood that they relied on that rather than on any of the other available predicates. Granda v. USA, No. 17-15194 (11th Cir. 3/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715194.pdf

POST CONVICTION RELIEF: Procedural default precludes a §2255 petitioner's claim that the jury relied upon a prior conspiracy to commit Hobbs Act robbery as a predicate offense where the tools for a legal argument were available, even if case law was not yet established, and where Defendant cannot show actual innocence. Granda v. USA, No. 17-15194 (11th Cir. 3/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715194.pdf

DEFINITION-"GRAVE DOUBT": "By 'grave doubt' we mean that, in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise." Granda v. USA, No. 17-15194 (11th Cir. 3/11/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201715194.pdf

CIRCUMSTANIAL EVIDENCE: Defendant is not entitled to a JOA for murder based on circumstantial evidence where his phone was in the same area as victim's phone on the last day she was seen alive, jail witnesses said he confessed to stabbing her, putting her in the trunk, burning her body in his back yard and dumping the remains in the swamp, and another witness testified that he contacted him to help dispose of her car. The circumstantial evidence standard of review is dead, and there is direct evidence, anyway. Armas v. State, 1D19-3265 (3/11/21)

https://www.1dca.org/content/download/724439/opinion/193265_DC05_03112021_132014_i.pdf

SELF-REPRESENTATION: Court did not err in denying the Defendant's request to represent hiself two-thirds through the trial. Court has discretion to determine whether to allow a defendant to proceed pro se mid-trial. Armas v. State, 1D19-3265 (3/11/21)

https://www.1dca.org/content/download/724439/opinion/193265_DC05_0

3112021_132014_i.pdf

DWLS-FARM TRACTOR: Farm tractors may temporarily enter highways without the driver being licensed, but may not be driven from driver's home to headquarters for refueling. "We note how easy it might be to read the exemption statute in isolation and believe that temporarily driving a farm tractor on a Florida roadway is lawful. . .[but [t]he statutory definition of 'farm tractor' is narrow and makes no accommodation for trips to refuel a farm owner's fleet, perhaps because gas stations or fuel oil facilities are generally few and far between in rural Florida." Chehardy v. Harrison, 1D19-4218 (3/11/21)

https://www.1dca.org/content/download/724440/opinion/194218_DC05_03112021_132300_i.pdf

RETURN OF PROPERTY: The Sheriff obtains title to seized property 60 days after conclusion of a legal proceeding, but only if the property was lawfully seized pursuant to a lawful investigation. Petition for return of Claimant's TV and PlayStation may be filed anytime within 4 years if Sheriff fails to meet its burden of showing lawful seizure. Shirah v. State, 1D20-529 (3/11/21)
https://www.1dca.org/content/download/724442/opinion/200529_DC13_03112021_132915_i.pdf

YOUTHFUL OFFENDER: Sentence of 200 months in prison, rather than a Youthful Offender sentence, is lawful for 15 year old girl who disguised herself and attacked her mother's ex-husband's girl friend with a machete, at her mother's request. Appellate Court may not review the trial court's discretionary decision not to downwardly depart or impose a Youthful Offender sentence. Fine v. State, 1D20-695 (3/11/21)
https://www.1dca.org/content/download/724443/opinion/200695_DC05_03112021_133212_i.pdf

PRR: Florida's Prison Releasee does not violate Alleyne or Apprendi. Wilson v. State, 1D20-1765 (3/11/21)
https://www.1dca.org/content/download/724444/opinion/201765_DC05_0

3112021_133357_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP-RACE: It is a consensual encounter, not an investigatory stop, when police pull up on you and tap on your window with a flashlight after you close the door, all because they thought you might be stealing the car or something in it since you had opened the car door, sat inside, and tried to start it (it's your wife's car). Defendant could have either driven away "with skilled driving" or walked away. Court may not take into account that black suspects might feel less free to ignore the officer. "[W]e may not consider race in deciding whether a seizure has occurred," "[E]ven if empirical research can provide evidence of how individuals of different demographics have interacted with or perceive the police, this research also reinforces that perceptions vary within groups. . . USA v. Knights, No. 19-10083 (11th Cir 3/10/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910083.reh.pdf

CONSENSUAL ENCOUNTER (CONCURRING): "Perhaps the most troubling aspect of this hybrid "free-to-leave"/affirmative acts-of-coercion standard is the Russian Roulette nature of it. The hybrid test foists on the citizen the complete responsibility for ascertaining whether the officer is detaining him. And the citizen must draw his conclusion based on only his best guess—a conjecture that can carry with it great risk to both the citizen and the officer.". . .A citizen should not have to bet his and the officer's well-being on guessing correctly that he is free to leave." USA v. Knights, No. 19-10083 (11th Cir 3/10/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910083.reh.pdf

QUOTATION-CONCURRING: "The outcome in Knights's case and others like it can be unsatisfying: when we hold that a defendant was not 'seized' for Fourth Amendment purposes, even though—if we are being realistic—we know that a reasonable person in his place likely would not have felt free to leave, the Fourth Amendment's protections do not feel entirely real." USA v. Knights, No. 19-10083 (11th Cir 3/10/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910083.reh.pdf

QUOTATION-CONCURRING: "But as a matter of the commonsense reality of police-citizen interactions, Black individuals from every background have long expressed that race can and does affect whether a citizen feels "free to

leave" a police encounter. Of course, we wish race were not relevant. But wishing does not make it so." USA v. Knights, No. 19-10083 (11th Cir 3/10/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910083.reh.pdf

QUOTATION-CONCURRING: "Our panel decision follows the law, but the law we applied is ripe for change." USA v. Knights, No. 19-10083 (11th Cir 3/10/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910083.reh.pdf

MINOR-LENGTHY SENTENCE: Forty-year sentence for a minor is not a life sentence or the functional equivalent of a life sentence. Jones v. State, 1D17-1715 (3/10/21)
https://www.1dca.org/content/download/724243/opinion/171715_DC05_03102021_131012_i.pdf

APPEAL: A defendant may appeal an issue following a no contest or guilty plea only when the issue is expressly reserved and legally dispositive. Defendant may not appeal after a guilty plea where he reserved no issue and did not file a motion to withdraw his plea. Kramer v. State, 1D20-255 (3/10/21)
https://www.1dca.org/content/download/724246/opinion/200255_DC05_03102021_131728_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available R. 3.850. Barner v. State, 1D20-359 (3/10/21)
https://www.1dca.org/content/download/724247/opinion/200359_DA08_03102021_131856_i.pdf

POST CONVICTION RELIEF: For a motion filed under R. 3.800(a) more than two years after the conviction became final, any scoresheet error is harmless if the trial court could have imposed the same sentence using a corrected scoresheet, even if an upward departure would have been necessary. Kelly v. State, 1D20-2551 (3/10/21)
https://www.1dca.org/content/download/724248/opinion/202551_DC05_03102021_132151_i.pdf

POSSESSION OF FIREARM BY FELON: Defendant may not be sentenced to a ten year minimum mandatory for a second possession of firearm by a felon where his prior (also possession of firearm by felon) is not a statutorily enumerated offense triggering the enhancement, but the issue was unpreserved. Defendant must seek correction of the error by post conviction motion to the trial court. Vidana v. State, 2D19-4504 (3/10/21) https://www.2dca.org/content/download/724115/opinion/194504_DC05_03102021_075648_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: An evidentiary hearing is generally required to evaluate the veracity of the recanting witness. Newly discovered impeachment evidence is sufficient to grant a new trial in certain limited circumstances. Court must hold hearing on claim that victim admitted that he had not been robbed, but rather had given up his jewelry as part of a drug deal. Trevelyn v. State, 2D20-1125 (3/10/21)

https://www.2dca.org/content/download/724116/opinion/201125_DC13_03102021_075805_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Claim that the testifying serologist exaggerated her educational qualifications, if true, could have been discovered long ago through a diligent request for available records from the relevant educational institution, and therefore must have been raised within two years. Even so, the discrepancies between the level of education, training, and experience Bunker she testified to and the asserted level of education, training, and experience she actually had were not so great as to make any difference in the outcome of the case. Ramirez v. State, 3D20-1136 (3/10/21) https://www.3dca.flcourts.org/content/download/724175/opinion/201136_DC05_03102021_102229_i.pdf

SUPERSEDEAS BOND: Post-trial release is a discretionary matter. Court may deny post conviction bail provided it considers the factors (that the appeal was taken in good faith, on grounds fairly debatable, and not frivolous) in non-boilerplate fashion. Mays v. State, 3D20-1527 (3/10/21) https://www.3dca.flcourts.org/content/download/724186/opinion/201527_NOND_03102021_102528_i.pdf

STAND YOUR GROUND: Mere filing of a SYG motion to dismiss makes a prima facie claim of self-defense immunity from criminal prosecution. There is no evidentiary burden upon the person seeking Stand Your Ground immunity. Instead, a defendant must simply allege a facially sufficient prima facie claim of justifiable use of force under chapter 776 in a motion to dismiss filed under rule 3.190(b) and present argument in support of that motion at a pretrial immunity hearing. Cassaday v. State, 4D20-816 (3/10/21)
https://www.4dca.org/content/download/724182/opinion/200816_DC05_03102021_100039_i.pdf

SENTENCING-SADO-MASOCHISM ENHANCEMENT: Because only one image that meets the requirements of sado-masochism enhancement is necessary to support the enhancement, the photograph showing Defendant's hand around the minor's throat is sufficient. USA v. Rogers, No. 18-13532 (3/9/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

SENTENCING HEARING: The Federal Rules of Evidence do not apply in sentencing proceedings. USA v. Rogers, No. 18-13532 (3/9/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

SENTENCING: The language of the Sentencing Guidelines must be given its plain and ordinary meaning, because we presume that the Sentencing Commission said what it meant and meant what it said. USA v. Rogers, No. 18-13532 (3/9/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

SENTENCING-DOUBLE COUNTING: Applicaton of §2G2.2(b)(5) (five-level increase for pattern of sexual abuse of minor) and §4B1.5 (pattern of activity involving prohibited sexual conduct) do not constitute impermissible double counting The Sentencing Commission intended for the enhancements provided for in Chapter 4 to apply cumulatively to any other enhancements from Chapters 2 and 3. USA v. Rogers, No. 18-13532 (3/9/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

SENTENCING-DOUBLE COUNTING: The application of §2G2.2(b)(6) for use of a computer is proper and is not double counting because the use of a computer is not required for the transmission or distribution of child pornography. USA v. Rogers, No. 18-13532 (3/9/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

SENTENCING HEARING: Court did not err in prohibiting the Defendant from cross-examining the officer on other pending cases of the minor engaging in sex with older males to rebut the implication that she was an innocent child. Even though some testimony may be received, the sentencing process is not a trial. Its purpose is to ensure that the district court is sufficiently informed to enable it to exercise its sentencing discretion in an enlightened manner. Having been presented with some contradictory facts, the district court may within its discretion, determine that it has adequate undisputed information to properly sentence the defendant. USA v. Rogers, No. 18-13532 (3/9/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813532.pdf

HEARSAY-CHILD HEARSAY: The standard of review applied to a trial court's finding that the hearsay statements of a child victim are reliable and come from a trustworthy source, making them admissible is abuse of discretion. Evidence that deals only with similar sex acts against the minor victim in the case being tried is far less subject to objection than evidence of similar acts against other victims. Saladeen v. State, 5D20-584 (3/9/21)
https://www.5dca.org/content/download/723954/opinion/200584_DC05_03092021_090840_i.pdf

EXPERT: Expert may not testify as to his interpretation of the events in a surveillance video where the video did not really show much of anything, was just "blobs, basically," and the expert's experience and knowledge is simply not helpful. A blurry video that does not depict much of anything cannot give rise to issues of fact about what did or did not happen on a particular occasion. Prosper v. Martin, Case: 19-12857 (11th Cir. 3/5/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201912857.pdf

IMMIGRATION-MORAL TURPITUDE: Alien cannot carry his burden to show that he is eligible for cancellation of removal on the ground that he has

not been convicted of a crime involving moral turpitude where the record does not clearly show whether he was convicted of the subsection of the state statute which involved fraud or that subsection which did not. Fraud is moral turpitude. "[Defendant] bore the burden of proving his eligibility for relief, so it was up to him to show that his crime of conviction did not involve moral turpitude." Pereida v. Wilkinson, No. 19-348 (U.S. S. Ct. 3/4/21) https://www.supremecourt.gov/opinions/20pdf/19-438_j4el.pdf

QUOTATION (J. Gorsuch): "No amount of staring at a State's criminal code will answer whether a particular person was convicted of any particular offense at any particular time." Pereida v. Wilkinson, No. 19-348 (U.S. S. Ct. 3/4/21)
https://www.supremecourt.gov/opinions/20pdf/19-438_j4el.pdf

QUOTATON (J. Gorsuch): "It is hardly this Court's place to pick and choose among competing policy arguments. . .along the way to selecting whatever outcome seems to us most congenial, efficient, or fair. Our license to interpret statutes does not include the power to engage in such freewheeling judicial policymaking." Pereida v. Wilkinson, No. 19-348 (U.S. S. Ct. 3/4/21)

https://www.supremecourt.gov/opinions/20pdf/19-438_j4el.pdf

CATEGORICAL APPROACH: Categorical approach explained. Pereida v. Wilkinson, No. 19-348 (U.S. S. Ct. 3/4/21)
https://www.supremecourt.gov/opinions/20pdf/19-438_j4el.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Habeas corpus is not to be used for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in prior postconviction filings. Williams v. State, 1D20-1984 (3/4/21)
https://www.1dca.org/content/download/723170/opinion/201984_DA08_03042021_133736_i.pdf

JIMMY RYCE: Regardless of whether he continues to be a sexual sadist, Prisoner detained under Jimmy Ryce who is now physically unable to commit acts of sexual violence and thus cannot be
deemed likely to engage in acts of sexual violence is entitled to a trial. Drake v. State, 2D19-2285 (3/3/21)

https://www.2dca.org/content/download/722021/opinion/192285_DC13_03032021_083808_i.pdf

EVIDENCE-COLLATERAL CRIMES: Evidence of other crimes where the same weapon was used according to ballistics tests is admissible in robbery case. When the same firearm is used in multiple robberies, the only inquiry for the trial court to make is whether such evidence of collateral crimes was relevant to the issue of the perpetrator's identity–not whether the evidence revealed uniquely similar factual situations. Wright v. State, 3D17-2529 (3/3/21)

https://www.3dca.flcourts.org/content/download/722049/opinion/172529_DC05_03032021_102459_i.pdf

IMPROPER ARGUMENT: "The trial that occurred in this case may not have been a perfect trial. It need not be, however, to withstand appellate review. While a defendant in a criminal trial is entitled to a fair trial, he or she is not entitled to a perfect trial. Wright v. State, 3D17-2529 (3/3/21)

https://www.3dca.flcourts.org/content/download/722049/opinion/172529_DC05_03032021_102459_i.pdf

COSTS: Defendant convicted of resisting a police officer without violence and petit theft may not be assessed costs of $10 under §318.18(19), $30 under §318.13(13)(a), or $65 under §318.18(2) as the offenses of conviction are not traffic offenses. Roebuck v. State, 4D19-3628 (3/3/21)

https://www.4dca.org/content/download/722054/opinion/193628_DC05_0

3032021_095930_i.pdf

PUBLIC DEFENDER'S FEE: Court may not assess a public defender's fee in excess of $100 for a felony offense without receiving evidence supporting the increased fee or nor having advised Defendant of his right to challenge the higher fee. Roebuck v. State, 4D19-3628 (3/3/21)

https://www.4dca.org/content/download/722054/opinion/193628_DC05_03032021_095930_i.pdf

COSTS: Defendant may not challenge the legality of the $200 costs of prosecution by 3.800(b)(2) where he did not object at the imposition of the cost at the sentencing hearing. An objection to the sufficiency of the proof of costs must be made contemporaneously with the assessment of costs. Because the proper documentation of the costs of prosecution is an evidentiary error in the sentencing process, it cannot be preserved through a rule 3.800(b)(2) motion. State v. Cremers, 4D19-3723 (4D3/3/21)

https://www.4dca.org/content/download/722055/opinion/193723_DC13_03032021_100032_i.pdf

CLOSED COURTROOM: Partial courtroom closure pursuant to §918.16(2) (testimony of victim of sex crime) complies with the Waller test (the right to an open trial may give way in certain cases to other rights or interests). Huff v. State, 4D19-3759 (3/3/21)

https://www.4dca.org/content/download/722056/opinion/193750_DC05_03032021_100140_i.pdf

EXHAUSTION OF REMEDIES-COMPASSIONATE RELEASE: The exhaustion requirement (that Defendant exhaust all administrative remedies before filing in District Court for compassionate relief) is not jurisdictional. It

is a claim processing rule. [Revised Opinion] USA v. Harris, No 20-12023 (11th Cir. 3/2/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012023.op2.pdf

COMPASSIONATE RELEASE: Court did not abuse its discretion in denying motion for compassionate release based on medical conditions (lupus, scleroderma, hypertension, glaucoma, and past cases of bronchitis and sinus infections) which might make one more susceptible to COVID-19. [Revised Opinion] USA v. Harris, No 20-12023 (11th Cir. 3/2/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012023.op2.pdf

FEBRUARY 2021

SOVEREIGN IMMUNITY: Federal Tort Claims Act does not authorize inmate of federal prison to sue corrections officers for restraining him, removing his clothes, and fondling his genitals; the acts do not constitute a "physical injury." Sexual assault and battery do not *ipso facto* qualify as "physical injury." Johnson v. White, No. 19-14436 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914436.pdf

COMPASSIONATE RELEASE-EXHAUSTION OF ADMINISTRATIVE REMEDIES: The requirement of exhaustion of administrative remedies before seeking judicial relief is not jurisdictional. The exhaustion requirement for compassionate relief is a claim processing rule. USA v. Harris, No. 20-12024 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012023.pdf

COMPASSIONATE RELEASE-COVID-19: Court did not abuse its discretion in deciding that lupus, scleroderma, hypertension, glaucoma, and past cases of bronchitis and sinus infections, rendering her more susceptible to COVID-19, were not extraordinary and compelling reasons to grant compassionate release. USA v. Harris, No. 20-12024 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202012023.pdf

WIRETAP-STALENESS: The Government can establish probable cause for a wiretap with facts showing that (1) a crime is being, has been, or is about to be committed and (2) communications about the crime will be intercepted by the requested wiretap. Defendant's implicit agreement as late as one month before the wiretap affidavit application that he was responsible for the illicit activity is fresh probable cause to believe that evidence of the earlier market manipulations would be obtained by wiretapping Defendant's phone despite the remoteness in time from the stock manipulations themselves. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

WIRETAP-NECESSITY: Necessity for a wiretap can be shown notwithstanding that other techniques had uncovered useful historical information, where a wiretap was needed to identify all the co-conspirators and reveal the full scope of the conspiracy. Government's showing of necessity was not defeated based on the mere possibility that the Government might have otherwise had enough evidence to sustain a conviction against Defendants. Argument that "the wiretap was unnecessary because the Government had already obtained enough information. . .is a somewhat odd position for Defendants to take, given that they aggressively challenged the sufficiency of the Government's evidence at trial." USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

WIRETAP-GOOD FAITH EXCEPTION: The good-faith exception applies when an officer has in good faith obtained a search warrant from a judge or magistrate and acted within its scope. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

WIRETAP-FRANKS HEARING: An evidentiary hearing is required when a defendant makes a substantial preliminary showing that statements or omissions made in an affidavit supporting a wiretap are deliberately false or made with reckless disregard for the truth. Neither negligent mistakes nor immaterial omissions implicate Franks. Defendants' decision to divest interest in the company's stocks six months does not negate the possibility that they were conspiring to manipulate the stock later, given that their modus operandi was to manipulate stocks held in others' names. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

INDICTMENT-MATERIAL VARIANCE: A fatal variance exists only where the evidence at trial proves facts different from those alleged in the indictment, as opposed to facts which, although not specifically mentioned in the indictment, are entirely consistent with its allegations. That the evidence at trial proves additional misrepresentations consistent with the categories of misrepresentations charged in the indictment does not cause a material variance. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

STATEMENT OF DEFENDANT: A statement to SEC agent, pursuant to a letter which calls the statement "nonpublic and confidential" and which

advises the subject of his basic rights and how his statements could be shared, may be used at trial against the Defendant. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

FORFEITURE: Forfeiture is limited to property the defendant himself actually acquired as a result of the crime. Defendant may not be jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire, but may be for the total amount of the fraud proceeds deposited into co-defendants' jointly controlled accounts. USA v. Goldstein, No. 18-13321 (11th Cir. 2/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201813321.pdf

POST CONVICTION RELIEF-PROCEDURAL DEFAULT: When a state prisoner fails to present a claim to the state court in a timely and proper manner, and the state court refuses to address the merits of that claim based on state law, that claim is procedurally defaulted. The claim that trial counsel was ineffective for not moving for a mistrial after jurors saw him shackled and that claim was abandoned at the evidentiary hearing is procedurally defaulted and did not otherwise present a substantial claim that counsel was ineffective. Clark v. Commissioner, Alabama DOC, No. 19-11443 (11th Cir. 2/25/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911443.pdf

COMPETENCY: Court may find competency based on the written reports of a mental health expert. Moore v. State, 1D19-2209 (2/26/21)

https://www.1dca.org/content/download/721357/opinion/192209_DC05_02262021_140805_i.pdf

RAPE SHIELD STATUTE: Court must weigh and balance the protection of the Rape Shield Statute with the defendant's constitutional right to be afforded with an adequate and fair opportunity to show bias and motive of the victim without delving into the sexual nature of her relationship with another. Where defendant was able to present other evidence suggesting that the Victim fabricated the allegations to cover up her relationship with another Court did not err in otherwise excluding evidence of Victim's sexual relationship with another. Moore v. State, 1D19-2209 (2/26/21)

https://www.1dca.org/content/download/721357/opinion/192209_DC05_02262021_140805_i.pdf

COLLATERAL BAD ACTS: Under the relaxed standard of admissibility in sex cases, relevance of Williams rule evidence will not primarily turn on an analysis of the similarity of the offenses, but may.assist in deciding the relevancy of the evidence and any analysis under section 90.403. Other sexual molestations by different children of the Defendant are admissible notwithstanding that those did not involve penile penetration. Moore v. State, 1D19-2209 (2/26/21)

https://www.1dca.org/content/download/721357/opinion/192209_DC05_02262021_140805_i.pdf

SENTENCING: When the trial judge's oral pronouncement of a sentence is ambiguous, but the judge's intention is discernible from the record, the proper sentence is what the judge intended the sentence to be. PRR sentence upheld. Mack v. State, 1D 20-2078 (2/26/21)

https://www.1dca.org/content/download/721358/opinion/202078_DC05_0

2262021_140956_i.pdf

HABEAS CORPUS: Habeas relief is not properly invoked to address issues that should be determined in direct appeal or postconviction proceedings, and such petitions should be dismissed as unauthorized. Moynihan v. State, 1D20-3455 (2/26/21)

https://www.1dca.org/content/download/721360/opinion/203445_DA08_02262021_141804_i.pdf

APPEAL-SELF-REPRESENTATION: Generally, a criminal defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal. Rotella v. State, 1D21-272 (2/26/21)

https://www.1dca.org/content/download/721364/opinion/210272_DA08_02262021_155602_i.pdf

INVESTIGATORY STOP: Passenger is seized when detective blocks the SUV from leaving. A significant identifying characteristic of a consensual encounter is that the officer cannot hinder or restrict the person's freedom to leave. A person is seized if, under the circumstances, a reasonable person would conclude that he or she is not free to end the encounter and depart. Vonlydick v. State, 2D18-4227 (2/26/21)

https://www.2dca.org/content/download/721242/opinion/184227_DC13_02262021_084239_i.pdf

INVESTIGATORY STOP: Officer, in an area known for "dumpster diving," who saw Defendant's associate outside an SUV looking at a piece of

apparently discarded furniture in the light of the headlights while Defendant sat inside the SUV had only a mere suspicion of criminal activity lacked a reasonable, articulable suspicion of loitering and prowling, or of any other criminal activity, so as to support the investigatory stop. Any statements that Defendant made during the course of that unlawful stop and ensuing unlawful arrest should have been suppressed, and his convictions for giving a false name and for resisting an officer must be reversed. Vonlydick v. State, 2D18-4227 (2/26/21)

https://www.2dca.org/content/download/721242/opinion/184227_DC13_02262021_084239_i.pdf

FALSE NAME: Lawful detention is a condition precedent to the crime of giving a false name to a police officer. Vonlydick v. State, 2D18-4227 (2/26/21)

https://www.2dca.org/content/download/721242/opinion/184227_DC13_02262021_084239_i.pdf

APPEAL-PRESERVATION-INVENTORY SEARCH: Whether an inventory search based on improper investigatory detention, where the detainees and no driver's license between them, was lawful cannot be raised on appeal but not challenges to below. Vonlydick v. State, 2D18-4227 (2/26/21)

https://www.2dca.org/content/download/721242/opinion/184227_DC13_02262021_084239_i.pdf

CONSTRUCTIVE POSSESSION: In a constructive possession case, the State must establish that the defendant knew of the presence of the contraband and had the ability to maintain dominion and control over it. If the place where contraband is located is jointly occupied, the State must establish the control element of possession through independent proof, such

as fingerprints, an admission, or evidence of other incriminating statements or circumstances; a defendant's mere proximity to the contraband is not sufficient. Defendant's flight and suspicious jail call may show knowledge, but not dominion and control of the cocaine. Roberts v. State, 1D194137 (2/25/21)

https://www.1dca.org/content/download/721086/opinion/194137_DC08_02252021_131258_i.pdf

VOP-SENTENCE (J. TANENBAUM, CONCURRING): 948.06(2)(f)1 limits a trial court to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant meets all four of the conditions listed in that subparagraph. "However, the authority of this court to read a statute that way (interpreting a statutory term to have an opposite meaning) is very narrow indeed. . .That authority should be exercised only when absolutely necessary, with reluctance and caution." Holland v. State, 1D19-4278 2/25/21)

https://www.1dca.org/content/download/721087/opinion/194278_DC05_02252021_131601_i.pdf

POST CONVICTION RELIEF: Motion for postconviction relief is untimely where Defendant waited over three years, beyond the two-year time limit. Dickerson v. State, 1D20-2171 (2/25/21)

https://www.1dca.org/content/download/721089/opinion/202171_DA08_02252021_132201_i.pdf

APPEAL-SELF-REPRESENTATION: A defendant has no right to represent himself in an extraordinary writ petition in the appellate court while he is represented by counsel in the criminal case pending in the lower tribunal.

Gates v. State, 1D20-3748 (2/25/21)

https://www.1dca.org/content/download/721092/opinion/203748_DA08_02252021_133007_i.pdf

SELF-REPRESENTATION: A criminal defendant cannot proceed pro se while represented by counsel. Young v. State, 1D21-76 (2/25/21)

https://www.1dca.org/content/download/721093/opinion/210076_DA08_02252021_133234_i.pdf

VOP: Defendant properly sentenced to 45 months in prison for having violated his probation by riding a bike in a group of more than two people, notwithstanding that the wrongly enumerated special condition of probation was charged. Aldamas-Gonzalez v. State, 2D20-294 (2/24/21)

https://www.2dca.org/content/download/720870/opinion/200294_DC05_02242021_081207_i.pdf

EVIDENCE-AUTHENTICATION: Court properly excluded pro se Defendant's proffered documents (a purported Texas driver's license, a W-2 form, bank statements, and home security system billing records) in support of his alibi (he was in Texas at the time of the crime) where Defendant had no witnesses and did not testify. Symonette v. State, 3D19-170 (2/24/21)

https://www.3dca.flcourts.org/content/download/720887/opinion/191170_DC05_02242021_103457_i.pdf

INAUDIBLE RECORDING: Court abused its discretion in excluding the recording in its entirety because it contains audible portions discussing the crimes charged. Partially inaudible recordingsare admissible unless the inaudible and unintelligible portions are so substantial as to deprive the

remainder of relevance. State v. Marin, 3D 19-2179 (2/24/21)

https://www.3dca.flcourts.org/content/download/720888/opinion/192179_NOND_02242021_103633_i.pdf

JURY INSTRUCTIONS: Failure to give the standard jury instruction on reasonable doubt is fundamental error. Appellate counsel was ineffective for failing to raise this issue. Phelps v. State, 3D20-557 (2/24/21)

https://www.3dca.flcourts.org/content/download/720902/opinion/200557_DC03_02242021_104341_i.pdf

EVIDENCE-DNA: Expert evidence about TrueAllele, a computer software designed to analyze complex data to determine the individual profiles of genetic material in DNA mixtures (a probabilistic genotyping system that relies on Bayesian probability modeling and "Markov Chain" and "Monte Carlo" statistical sampling is admissible. Failure to internally validate the TrueAllele software using a test sample of PBSO generated DNA data prior to using the program for case work does not render the TrueAllele analysis results unreliable under Daubert. Daniels v. State, 4D19-822 (2/24/21)

https://www.4dca.org/content/download/720890/opinion/190822_DC05_02242021_100624_i.pdf

KIDNAPPING: The confinement necessary to support a kidnapping to have facilitate the commission of another felony (a) must not be slight, inconsequential and merely incidental to the other crime, (b) must not be of the kind inherent in the nature of the other crime; and (c) must have some significance independent of the other crime in that it makes the other crime substantially easier of commission or substantially lessens the risk of detection. The duration of the confinement is not an integral part of the test even though it may bear on whether the confinement was slight or

inconsequential. Compelling the victims to crawl at gunpoint and under threat of being violently dragged to their captivity in the back room for the entirety of the ordeal is kidnapping. Confining and moving the manager to the back of the store to open the safe is not. Parrish v. State, 4D19-1991 (2/24/21)

https://www.4dca.org/content/download/720891/opinion/191991_DC08_02242021_100905_i.pdf

VOP: Probation is improperly revoked and Defendant sentenced to prison where Court improperly considers her failure to pay costs and restitution where the order of probation did not specify that either of these amounts were to be paid by a date certain, notwithstanding that the Order of Revocation did not find that she violated for those reasons. "Because the court considered impermissible factors in sentencing, which is a violation of due process, we reverse and remand for resentencing before a different judge." Lacey v. State, 4D20-202 (2/24/21)

https://www.4dca.org/content/download/720896/opinion/200202_DC13_02242021_101544_i.pdf

CONTEMPT: Court erred in taking defense counsel into custody prior to beginning the contempt proceeding based on comments and actions during a motion to suppress. Roque v. State, 4D21-354 (2/24/21)

https://www.4dca.org/content/download/720899/opinion/210354_DC13_02242021_102317_i.pdf

CIRCUMSTANTIAL EVIDENCE: Doctor properly convicted of healthcare fraud conspiracy where he agreed to submit false claims to an insurance plan. The government need not present direct evidence that doctor agreed to join the conspiracy; circumstantial evidence and inferences from the

defendant's conduct is sufficient. USA v. Abovyan, No. 19-10676 (11th Cir. 2/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910676.pdf

JURY INSTRUCTION: Court's failure to expressly instruct the jury as to the elements of a healthcare fraud offense does not bar Defendant's conviction for conspiracy where the jury had a redacted copy of the superseding indictment, which incorporated the statutory elements of healthcare fraud into the conspiracy charge. USA v. Abovyan, No. 19-10676 (11th Cir. 2/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910676.pdf

SENTENCING-GUIDELINES-LOSS: PSI properly uses intended loss, rather than actual loss, in calculating guideline. USA v. Abovyan, No. 19-10676 (11th Cir. 2/22/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201910676.pdf

LIFE SENTENCE-JUVENILE-HOMICIDE: Reimposition of life sentences is within the Court's discretion where the minor Defendant attacked the victim in his apartment, choked him to unconsciousness, bound him with rope, took him in the trunk of a car to a wooded area, joked that he was Babe Ruth as he struck the victim's head with a bat, chained him to a tree, doused him in lighter fluid, and set him on fire, and, the following morning, returned to the woods and, finding the victim still alive, tried to break his neck then drove to Target to buy a meat cleaver, which he used to cut the victim's throat twice before going back to Target to get a refund on the meat cleaver. Bell v. State, 1D19-1542 (2/22/21)

https://www.1dca.org/content/download/720602/opinion/191542_DC08_02222021_141320_i.pdf

SENTENCE REVIEW: The only method contemplated for a juvenile sentence review under section 921.1402 is by application from a defendant to the court of original jurisdiction, which did not occur here. Because the plain language of section 1402 requires a defendant-initiated proceeding, the sua sponte nature of the action here requires reversal. Bell v. State, 1D19-1542 (2/22/21)

https://www.1dca.org/content/download/720602/opinion/191542_DC08_02222021_141320_i.pdf

HABEAS CORPUS: A petition for a writ of habeas corpus should normally be filed in the county of the petitioner's detention, but if the petition attacks the validity of a judgment or sentence, the court that entered the judgment and imposed the sentence has jurisdiction. Dismissal, rather than transfer, of petitions is proper if they seek the kind of collateral postconviction relief available through a motion filed in the sentencing court. D'Amico v. Warden, 1D20-1253 (2/22/21)

https://www.1dca.org/content/download/720603/opinion/201253_DC05_02222021_141457_i.pdf

APPEAL: Until a final order on the original postconviction motion is entered, we do not have jurisdiction to review interim orders. Bradham v. State, 1D20-2064 (2/22/21)

https://www.1dca.org/content/download/720604/opinion/202064_DA08_02222021_141709_i.pdf

POST CONVICTION RELIEF-MISADVICE; Misadvice by counsel (that he was ineligible for Youthful Offender sentencing for a 1st PBL) can be corrected by the trial court giving the defendant correct advice. Because the trial court explained that Defendant had the possibility of youthful offender

sentencing, he should have spoken up to seek clarification regarding any confusion he may have had. Malone v. State, 1D20-3064 (2/22/21)

https://www.1dca.org/content/download/720606/opinion/203064_DC05_02222021_142023_i.pdf

JURY INSTRUCTIONS: Court's decision to include the Administrative Code provisions about harvesting alligators in the jury instructions but also to deny Defendant's request to include the "unless authorized" language from th Code resulted in the court providing an incomplete, misleading, and manifestly confusing explanation of the law to the jurors, making it appear that any killing, injuring, possessing, or capturing of an alligator was illegal regardless of a license holder's compliance with the Administrative Code provisions. Nichols v. State, 2D19-1721 (2/19/21)

www.2dca.org/content/download/719796/opinion/191721_DC08_02192021_080327_i.pdf

JURY INSTRUCTIONS: Allowing defense counsel to argue a theory of defense to the jury while also refusing to instruct the jury on that defense does not solve the problem of improper instructions. The burden is on the trial court—not defense counsel—to provide clear, correct, and complete instructions to the jury on what the law is and how it is to be applied. Nichols v. State, 2D19-1721 (2/19/21)

www.2dca.org/content/download/719796/opinion/191721_DC08_02192021_080327_i.pdf

COSTS: Court may not impose a public defender's fee without giving Child notice of his right to a hearing to contest it. Conflict certified. D.A.W. v.

State, 2D20-64 (2/19/21)

https://www.2dca.org/content/download/719808/opinion/200064_DC13_02192021_080611_i.pdf

PHONE PASSCODE (CONCURRING): Compelled oral disclosure from a defendant of his or her cellphone's passcode is a testimonial communication protected by the Fifth Amendment and the "foregone conclusion" exception to the Fifth Amendment does not apply to compelled oral testimony, but conviction affirmed where no significant evidence was derived from the search of the phone. Jackson v. State, 5D19-3411 (2/19/21)

https://www.5dca.org/content/download/719833/opinion/193411_DC05_02192021_090416_i.pdf

SENTENCING: Where the oral pronouncement is ambiguous but the record clearly shows the trial court's intent, the proper sentence is what the judge intended it to be. Ferguson v. Inch, 1D18-2524 (2/18/21)

https://www.1dca.org/content/download/719704/opinion/182524_DC05_02182021_134925_i.pdf

COLLATERAL ESTOPPEL: A defendant is barred by collateral estoppel from raising a claim in a subsequent 3.800 motion that has already been raised and decided on the merits, here, that Defendant does not qualify for drug offender probation (Defendant had agreed to probation to get a downward departure). It is not illegal to allow a defendant to agree to serve a special type of probation, even though the trial court could not have imposed such a condition on an unwilling defendant convicted at trial. Seale v. State, 1D20-1622 (2/18/21)

https://www.1dca.org/content/download/719707/opinion/201622_DC05_02182021_140815_i.pdf

COLLATERAL ESTOPPEL: While R.3.800(a) does not prohibit successive motions, a defendant is not entitled to successive review of a specific issue that has already been decided on the merits. Mims v. State, 1D20-2514 (2/18/21)

https://www.1dca.org/content/download/719708/opinion/202514_DC05_02182021_140939_i.pdf

ARMED ROBBERY: Constructive or vicarious possession of a firearm is sufficient to sustain a conviction for robbery with a firearm. Mims v. State, 1D20-2514 (2/18/21)

https://www.1dca.org/content/download/719708/opinion/202514_DC05_02182021_140939_i.pdf

POST CONVICTION RELIEF: When a criminal defendant seeks to withdraw a negotiated plea, or to attack it collaterally, if he is successful he loses the benefit of the bargain he has elected to attack. Lofton v. State, 1D20-1760 (2/17/21)

https://www.1dca.org/content/download/719436/opinion/201760_DC05_02172021_143429_i.pdf

POST CONVICTION RELIEF: Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in rule 3.850 proceedings. Flagg v. State,

1D20-3506 (2/17/21)

https://www.1dca.org/content/download/719438/opinion/203506_DA08_02172021_143927_i.pdf

JUDGMENT OF ACQUITTAL: Generally, a conviction that is supported by competent, substantial evidence will be affirmed. Where a rational trier of fact could lawfully find that the evidence proved the existence of all the elements of the crime of second-degree murder beyond a reasonable doubt, the appellate court should defer to the trial court's denial of a motion for judgment of acquittal. Baxter v. State, 3D18-1246 (2/17/21)

https://www.3dca.flcourts.org/content/download/719351/opinion/181246_NOND_02172021_102321_i.pdf

SECOND DEGREE MURDER: Where Defendant initially confronted and cornered Victim (who then picked something off the ground and stabbed Defendant) and then ran to his truck to retrieve a gun, loaded it with ammunition, chased Victim down and shot him multiple times in the back, evidence is sufficient for second degree murder. Baxter v. State, 3D18-1246 (2/17/21)

https://www.3dca.flcourts.org/content/download/719351/opinion/181246_NOND_02172021_102321_i.pdf

HABEAS CORPUS: The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the claims raised in the petition concern issues regarding incarceration, but not when the claims attack the validity of the judgment or sentence. Only the court in which the defendant was convicted and sentenced has jurisdiction to consider collateral attacks on a judgment or

sentence, and such an attack must be brought pursuant to Rule 3.800 or 3.850, not by petition for writ of habeas corpus. Thorson v. State, 3D20-1581 (2/17/21)

https://www.3dca.flcourts.org/content/download/719374/opinion/201581_DC05_02172021_104722_i.pdf

PRISON RELEASEE REOFFENDER: PRR sentence is mandatory once the State proves that the defendant qualifies. Diaz v. State, 3D20-1590 (2/17/21)

https://www.3dca.flcourts.org/content/download/719375/opinion/201590_DC05_02172021_104844_i.pdf

JUVENILE-COMMITMENT: Upon a violation of probation, Court may not order commitment on the basis of a prior predisposition report when that report recommended probation and did not identify an alternative recommendation as to the restrictiveness level if the trial court should decide to commit the Child in the future. A new PDR is required. If commitment is anticipated or recommended, a PDR is not optional. V.L.H. v. State, 3D20-1858 (2/17/21)

https://www.3dca.flcourts.org/content/download/719378/opinion/201858_DC08_02172021_105801_i.pdf

SYNTHETIC MARIJUANA: Defendant is improperly charged with felony possession of a synthetic cannibinoid but cannot determine whether the liquid (under 20 grams) in a vaping cartridge came from a plant or was created in a lab. State v. Ruiz, 4D19-3354 (2/17/21)

https://www.4dca.org/content/download/719357/opinion/193354_DC05_02172021_100436_i.pdf

SENTENCE-LEWD AND LASCIVIOUS: For a life felony of L & L, Defendant may be sentenced to (1) life in prison or (2) a 25 year mandatory minimum and probation for life, but may not be given a combination of both (life imprisonment with a 25 year mandatory minimum. The statute does not authorize both a life sentence and a twenty-five year mandatory minimum. Mandatory minimum stricken. Prentice v. State, 4D19-3498 (2/17/21)

https://www.4dca.org/content/download/719358/opinion/193498_DC05_02172021_100700_i.pdf

COSTS: Court erred in imposing a public defender fee for transcription costs without giving Defendant notice of the right to object. Prentice v. State, 4D19-3498 (2/17/21)

https://www.4dca.org/content/download/719358/opinion/193498_DC05_02172021_100700_i.pdf

NECESSITY: Court correctly denied Defendant's request for a jury instruction on the defense of necessity as it related to the charge of possession of a firearm by a felon where he failed to present evidence that he did not have any reasonable, legal alternative to possessing the firearm or that the firearm was made available to him without a preconceived design. Watson v. State,

https://www.5dca.org/content/download/719188/opinion/192939_DC05_02162021_082621_i.pdf

FRAUDULENT IMMIGRATION DOCUMENT: Defendant properly convicted of obtaining a fraudulent immigration document in order to get a driver's license. One of the documents Florida accepts as proof of lawful presence is an order of supervision from DHS and ICE. An order of supervision is a document prescribed by statute or regulation as evidence of authorized stay in the United States. USA v. Contreras v. Maradiaga, No. 19-11889 (11th Cir. 2/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911889.pdf

INDICTMENT-CONSTRUCTIVE AMENDMENT-INVITED ERROR: Defendant invites error, and thus is not entitled to a new trial, where indictment charged possessing a fruadulent immigration document to stay in the US, and jury instruction added "or employment," where Defendant proposed the "very instruction that he now challenges on appeal. This is a textbook case of invited error." When a party agrees with a court's proposed instructions, the doctrine of invited error applies" and review is waived even if plain error would result. USA v. Contreras v. Maradiaga, No. 19-11889 (11th Cir. 2/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911889.pdf

ARGUMENT: Government's argument suggesting that Defendant fabricated the existence of a lawyer who helped generate the fraudulent document ("That is a story that was made up. . . . Do we have anything from the mystery lawyer Val with no last name?. . .This is not a real lawyer. . . No evidence that that person even exists in this case.") was improper but not preserved nor prejudicial. "[W]e agree with the district court that the government's statements, while some may be characterized as misleading, as a whole did not rise to the level of prosecutorial misconduct." USA v. Contreras v. Maradiaga, No. 19-11889 (11th Cir. 2/12/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911889.pdf

CHILD PORN-TRANSMITTAL: Defendant is not entitled to JOA where

evidence showed that he had a peer-to-peer file sharing program on his computer which could move any files moved to the videos location on his computer, without the Defendant actively transmitting the files. The use of a file-sharing program, where the originator affirmatively grants the receiver access to the originator's child pornography files, constitutes the transmission of child pornography. Defendant should have known that this child porn files would be shared. Jeror v. State, 2D19-3308 (2/12/21) https://www.2dca.org/content/download/718471/opinion/193308_DC05_02122021_081502_i.pdf

POST CONVICTION RELIEF-(CONCURRING): Defendant's five year sentence where he only had eighteen scoresheet points (precluding prison absent a jury finding of dangerousness) upheld because the case law requiring a jury finding was made after the sentence became final. "[M]y review of our limited record leaves me unsettled. Mr. Lamberson may, indeed, be serving an illegal sentence, despite his unsuccessful attempt to convince the postconviction court or this court otherwise." Lamberson v. State, 2D20-293 (2/12/21) https://www.2dca.org/content/download/718483/opinion/200293_DC05_02122021_082100_i.pdf

SEARCH AND SEIZURE-PRETEXT: The constitutional reasonableness of a traffic stop is not dependent on the subjective motivations of the individual officers involved. A traffic stop is considered reasonable under the Fourth Amendment where the police have probable cause to believe that a traffic violation has occurred. When addressing the constitutional validity of a traffic stop, a trial court is tasked with applying a strict objective test which asks only whether any probable cause for the traffic stop existed. Parker v. State, 5D20-673 (2/12/21) https://www.5dca.org/content/download/718453/opinion/200673_DC13_02122021_090532_i.pdf

SEARCH AND SEIZURE-WINDOW TINT: A traffic stop based on an

officer's incorrect but reasonable assessment of the facts, i.e., that the window tint was illegal, does not violate the Fourth Amendment. Parker v. State, 5D20-673 (2/12/21)
https://www.5dca.org/content/download/718453/opinion/200673_DC13_02122021_090532_i.pdf

POST CONVICTION RELIEF-HABEAS CORPUS-DEATH PENALTY: Defendant is not entitled to federal habeas corpus relief from death penalty where State Court found that the failure to fully develop substantial mitigation did not establish prejudice. Federal courts may grant habeas corpus relief on a claim that was denied on the merits by a state court only where the state court's decision was contrary to, or involved an unreasonable application of, clearly established Federal law or was based on an unreasonable determination of the facts. State court's decision must be objectively unreasonable, not merely wrong. "Even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." Lee v. GDCP Warden, No. 19-11466 (11th Cir. 2/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201911466.pdf

IMMIGRATION: Court erred in dismissing charge of possession of forged document as evidence of authorized stay or employment in US. An order of supervision issued by ICE, authorizing an unlawful alien to be released from custody into the community and to remain living in the United States for an indefinite period of time (often many years) pending removal, constitutes a document showing authorized stay in the United States. USA v. Chinchilla, No. 19-10987 (11th Cir 2/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910987.pdf

IMMIGRATION-DRIVER'S LICENSE: An order of supervision issued by ICE enables applicants to show proof of legal presence in the United States to obtain a Florida driver's license. To obtain a Florida driver's license, an applicant must provide the Florida DHSMV documents meeting certain federally-mandated minimum issuance standards that verify his identity and

legal presence in the United States, including an order of supervision. USA v. Chinchilla, No. 19-10987 (11th Cir 2/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910987.pdf

STATUTORY INTERPRETATION: "[T]the use of similar—or even identical—phrases in different statutes does not mean that the phrases are synonymous." USA v. Chinchilla, No. 19-10987 (11th Cir 2/11/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910987.pdf

HEARSAY-PAST RECOLLECTION RECORDED: Nurse with no memory of her examination of a child victim of sexual abuse may testify from her report as a recorded recollection, if the report concerns a matter about which a witness once had knowledge, but now has insufficient recollection to enable the witness to testify fully and accurately, and if the witness made the report when the matter was fresh in the witness's memory. Whether the nurse read her report into evidence in narrative form, or instead testified from it in response to questions designed to extract the information contained in the report, the result would be the same: the evidence presented through the nurse's testimony is the admissible content of the report. McClusky v. State, 1D19-2263 (2/11/21)
https://www.1dca.org/content/download/718325/opinion/191768_DC05_02112021_132515_i.pdf

EXPERT OPINION: The question "So does the fact there's no vaginal injury mean a sexual assault did not occur?" does not elicit expert opinion testimony. "At best, the question seems to have elicited testimony from the nurse about a fact that she may or may not have had personal knowledge of based on her extensive experience conducting sexual assault examinations. That would be a different objection, though: one going to foundation." McClusky v. State, 1D19-2263 (2/11/21)
https://www.1dca.org/content/download/718325/opinion/191768_DC05_02112021_132515_i.pdf

SEARCH WARRANT-GOOD FAITH: Court errs in suppressing evidence seized pursuant to a warrant which the judge later finds was improvidently issued, based on the fact that it was based on the statements of a scorned ex-girlfriend charged with battering the Defendant. Search was lawful under the good-faith exception to the exclusionary rule because the search warrant affidavit was not so deficient that it does not support even a colorable argument that probable cause exists. State v. Smith, 1D19-2263 (2/11/21)

https://www.1dca.org/content/download/718326/opinion/192263_DC13_02112021_132855_i.pdf

POST CONVICTION RELIEF: Defendant may not relitigate procedurally barred claims by couching them in terms of ineffective assistance of counsel." Mattox v. State, 1D20-1863 (2/11/21)
https://www.1dca.org/content/download/718328/opinion/201863_DC05_02112021_133757_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Thomas v. State, 1D20-2799 (2/11/21)
https://www.1dca.org/content/download/718329/opinion/202799_DA08_02112021_134115_i.pdf

DOUBLE JEOPARDY: Double jeopardy does not bar two convictions for Battery on LEO for the separate acts of shoving an officer and then "siccing" his pit bull on the same officer. Trappman v. State, 1D19-1883 (2/10/21)
https://www.1dca.org/content/download/718168/opinion/191883_DC05_02102021_141848_i.pdf

PROBATION-CONDITIONS: Court may not impose special conditions that Defendant convicted of sexual battery not reside within 1,000 feet of any school, daycare center, park, playground, or other places where children

regularly congregate where the crime did not involve a minor child as the special condition was not reasonably related to rehabilitation. Rodriguez-Carmona v. State, 1D19-3670 (2/10/21)
https://www.1dca.org/content/download/718170/opinion/193670_DC13_02102021_142727_i.pdf

RECORDS-EXECUTIVE CLEMENCY: Where Applicant attests that he is applying for executive clemency, the Clerk has a duty to provide the requested records free of charge and without delay. Applicant does not have to furnish the Clerk with a completed, signed copy of the clemency form provided to him by the Office of Executive Clemency before that duty is triggered. Conflict certified. Mobley v. Fussell, 1D19-4286 (2/10/21)
https://www.1dca.org/content/download/718171/opinion/194286_DC13_02102021_143032_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Officers may not handcuff nervous driver after a traffic stop where he had photos of methamphetamine visible on his cell phone where there is no indication that the officers feared for their safety under the circumstances and the Defendant obeyed the officers' commands and did not indicate an intent to flee and had no weapons. But narcotics found after a canine alert would have been inevitably discovered, so the search is lawful. Key v. State, 1D20-152 (2/10/21)
https://www.1dca.org/content/download/718172/opinion/200152_DC05_02102021_162200_i.pdf

HABEAS CORPUS: Because Appellant would not be immediately released, he is not entitled to habeas corpus relief where his five-year sentence was meant to run concurrently with his hundred-year sentence, and the composite term of both these sentences were to run concurrently with his ninety-nine-year sentence previously. Appellant's only remedy at this time is to seek administrative relief from DOC. Canty v. State, 1D20-380 (2/10/21)

https://www.1dca.org/content/download/718173/opinion/200380_DC05_02102021_143251_i.pdf

VOP: Regardless of whether §948.06(2) applies to a defendant who committed an offense before the statute was amended, Court is limited under the statute to imposing a sentence of up to 90 days in county jail only when a defendant complies with all four conditions of the statute. Howard v. State, 1D20-992 (2/10/21)
https://www.1dca.org/content/download/718174/opinion/200992_DC05_02102021_143543_i.pdf

APPEAL-STAND YOUR GROUND-STANDARD OF REVIEW: Appellate court conducts de novo review of a trial court's ultimate conclusion that the defendant did not reasonably believe that the use of force was necessary to prevent imminent death or great bodily harm. Huckelby v. State, 2D20-766 (2/10/21)
https://www.2dca.org/content/download/718006/opinion/200766_DC03_02102021_081504_i.pdf

STAND YOUR GROUND-BURDEN OF PROOF: Defendant bears no burden of proof in SYG hearing. Once the defendant raises a prima facie claim of immunity, the defendant has no further evidentiary burden. Huckelby v. State, 2D20-766 (2/10/21)
https://www.2dca.org/content/download/718006/opinion/200766_DC03_02102021_081504_i.pdf

STAND YOUR GROUND-WEAPON: Court erred in finding that Defendant's us of nondeadly force was not justified because he did not see the victim with a weapon or anything that looked like a weapon. Defendant's right of non-deadly self-defense did not depend upon whether the victim was armed. Huckelby v. State, 2D20-766 (2/10/21)
https://www.2dca.org/content/download/718006/opinion/200766_DC03_02102021_081504_i.pdf

SINGLE HOMICIDE RULE: Defendant may be convicted of both vehicular homicide and fleeing or attempting to elude an officer causing serious bodily injury or death. Single homicide rule no longer exists. Lugard v. State, 4D19-992 (2/10/21)
https://www.4dca.org/content/download/718041/opinion/190992_DC08_02102021_095650_i.pdf

SENTENCING-UPWARD DEPARTURE-DANGEROUSNESS: Fifteen year sentence for defrauding home buyers is unlawful absent a jury finding of dangerousness for Defendant with 14.5 points on his scoresheet. Only jury may find dangerousness authorizing a sentence to prison for Defendant who scores under 22 points. Donald v. State, 4D19-3461 (2/10/21)
https://www.4dca.org/content/download/718046/opinion/193461_DC13_02102021_100254_i.pdf

SENTENCING-JUVENILE: Court may not commit a juvenile to a non-secure residential program without making written findings. Oral pronouncement is legally insufficient. A.B. v. State, 4D19-3873 (2/10/10)

https://www.4dca.org/content/download/718047/opinion/193873_DC08_02102021_100408_i.pdf

RESENTENCING: Where Defendant's case is remanded for resentencing due to improper imposition of a Violent Career designation, Court errs by reimposing a PRR sentence without requiring the State to present evidence proving Defendant was PRR, or entertaining arguments against his PRR status. Where a sentence has been reversed or vacated, the resentencings in all criminal proceedings are de novo in nature, i.e. must proceed as an entirely new proceeding and Defendant is entitled to the full array of due process rights. Defense counsel's stipulation that Defendant qualified as PRR did not alleviate the trial court of its obligation to conduct a de novo resentencing hearing. Bruce v. State, 4D19-3877 (2/10/21)
https://www.4dca.org/content/download/718048/opinion/193877_DC13_0

2102021_100544_i.pdf

PRISON RELEASEE REOFFENDER: PRR predicate need not be charged in the information, submitted to a jury, and proven beyond a reasonable doubt. Bruce v. State, 4D19-3877 (2/10/21)
https://www.4dca.org/content/download/718048/opinion/193877_DC13_02102021_100544_i.pdf

INJUNCTION: Court may not grant an injunction for protection based on incidents that occurred before separation. Petitioner's testimony about an isolated incident from before the parties separated, absent additional evidence, is insufficient to warrant a permanent domestic violence injunction. Chiscul v. Gomez Hernandez, 4D20-287 (2/10/21)
https://www.4dca.org/content/download/718049/opinion/200287_DC13_02102021_100659_i.pdf

SCORESHEET ERROR: Improper calculation on scoresheet is considered harmless if the record conclusively shows that the trial court would have imposed the same sentence using a correct scoresheet. Napper v. State, 4D20-846 (2/10/21)
https://www.4dca.org/content/download/718051/opinion/200846_DC05_02102021_100942_i.pdf

ILLEGAL SENTENCE: Defendant may not challenge by R.3.800 illegal sentence in his benefit (failure to impose three year mandatory minimum). Conflict certified. Durand v. State, 4D20-1948 (2/10/21)
https://www.4dca.org/content/download/718053/opinion/201948_DC05_02102021_101444_i.pdf

STATEMENT OF DEFENDANT-CUSTODIAL INTERROGATION: In determining whether a person is in custody, the Court must determine whether a reasonable person would have felt he was not at liberty to end the interrogation and leave. Relevant factors include the location of the questioning, statements made during the interview, the presence or absence

of physical restraints during the questioning, and the release of the interviewee at the end of the questioning. Interrogation was not custodial where the detective told Defendant, "you understand you are not under arrest, you can come and go as you want," and asked, "you're here under your own free will?" Thomas v. State, 1D20-87 (2/9/21) https://www.1dca.org/content/download/717731/opinion/200087_DC05_02092021_142324_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to call Defendant's mother as a witness during the suppression hearing. A request for one's mother to be present during questioning is not an invocation of counsel. Thomas v. State, 1D20-87 (2/9/21) https://www.1dca.org/content/download/717731/opinion/200087_DC05_02092021_142324_i.pdf

HABEAS CORPUS: "As we have stated numerous times, habeas corpus is not to be used for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in prior postconviction filings." Merritt v. State, 1D20-974 (2/9/21) https://www.1dca.org/content/download/717732/opinion/200974_DA08_02092021_142510_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral post conviction relief available by motion in the sentencing court pursuant to rule 3.850. Ford v. State, 1D20-2108 (2/9/21) https://www.1dca.org/content/download/717733/opinion/202108_DA08_02092021_142629_i.pdf

POST CONVICTION RELIEF: A sentence reduction under 18 U.S.C.

§3582(c) does not constitutes a new, intervening judgment for purposes of the bar on second or successive § 2255 motions under the Antiterrorism and Effective Death Penalty Act (AEDPA). A resentencing and a §3582(c)(2) sentence modification are different. Armstrong v. USA, No. 18-13041 (11th Cir. 2/5/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201813041.pdf

SEARCH AND SEIZURE-GOOD FAITH EXCEPTION: Searching officers relied in good faith on the search warrant notwithstanding that a trash-pull yielding small amounts of narcotics and no corroborating illegal activity may or may not constitute probable cause. The exclusionary rule is not a personal right but rather a prudential doctrine whose sole purpose is to deter future Fourth Amendment violations. Even if magistrate erred in finding probable cause, suppressing the evidence found during the search would do nothing to deter future police misconduct. USA v. Morales, No. 19-11934 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911934.pdf

POSSESSION OF FIREARM BY FELON-KNOWLEDGE: The omission of the knowledge-of-status element in the indictment for Possession of Firearm by a Felon does not invalidate the indictment. The omission of an element in an indictment does not deprive the district court of subject matter jurisdiction. A defective indictment only affects jurisdiction when it fails to allege an offense against the United States. USA v. Morales, No. 19-11934 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911934.pdf

ALLEGED: "Isaac's brief to this Court refers to D.J. as his 'alleged victim.' It is not merely an allegation. . .His sexual abuse of D.J. is not an allegation.

It is a fact." Isaac v. State, No. 19-11239 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911239.pdf

INVENTORY SEARCH: Police do not need a warrant to search an impounded car if they (1) had the authority to impound the car, and (2) followed department procedures governing inventory searches. Officer may impound a car if all reasonable efforts to provide the vehicle driver with alternatives to impoundment have been unsuccessful or impractical due to time or staffing constraint. Failure to advise the owner that he could have the vehicle towed does not invalidate the impound where it was blocking another vehicle and owner never asked about getting a tow truck. Isaac v. State, No. 19-11239 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911239.pdf

SENTENCE-UNREASONABLENESS: Enhancement when the victim was in the defendant's custody, care, or supervisory control applies where defendants are temporarily entrusted with the victim even if there is no long-term relationship. Victim was in the Defendant's care when he was alone with her and was providing for her and her mother's necessities. Isaac v. State, No. 19-11239 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911239.pdf

SENTENCING-GUIDELINES-ENHANCEMENT: Two separate occasions may constitute a pattern under the sentencing guidelines. Isaac v. State, No. 19-11239 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911239.pdf

SENTENCE-SUBSTANTIVE REASONABLENESS: 80-year sentence was substantively reasonable where Court rejected Defendant's characterization of his sex offenses on a minor as "just a bad judgment." "Given the calculated way in which Isaac gave a hope of security to a homeless family only to rip that hope away by sexually abusing a 13-year-old girl, we can't say the district court clearly erred in finding that it does not 'get[] much worse than this.'" Isaac v. State, No. 19-11239 (11th Cir. 2/5/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201911239.pdf

SELF-REPRESENTATION: The likelihood that a defendant would inadequately represent himself is not a valid reason to deny an unequivocal request for self-representation. The test for permitting a defendant to represent himself is not whether the defendant is competent to represent himself effectively but whether he is competent to make a knowing and intelligent wavier. New trial is required where Court's Faretta inquiry focused on the merit of Appellant's proposed trial strategy, rather than his competence to make a knowing and intelligent waiver of his right to counsel, and where Court explicitly stated that the reason for denying Appellant's request was its perception that Defendant's trial strategy would be fatal to his case. Bova v. State, 5D19-3199 (2/5/21)

https://www.5dca.org/content/download/717144/opinion/193199_DC13_02052021_083245_i.pdf

MINOR-LIFE SENTENCE-RESENTENCING: Minor convicted of murder, where verdict does not show whether he was the actual shooter, is entitled to resentencing under §775.082(1)(b)2 (review after 15 years) rather than §775.082(1)(b)1 (review after 25 years). The resentencing court violates Alleyne by conducting its own analysis to determine if it could make the

requisite finding of fact (intent to kill of actually killed) required under (b)1. Resentencing pursuant to §775.082(1)(b)2 is the sole remedy on remand. Question certified as to remedy. Manago v. State, 5D632 (2/5/21)

https://www.5dca.org/content/download/717146/opinion/200632_DC08_02052021_085120_i.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Jury sentencing determinations are not elements of a new offense of capital first-degree murder, and therefore the Defendant is not entitled to a new sentencing hearing because the jury never made findings on aggravating factors. Randolph v. State, No. 20-287 (2/5/21)
https://www.floridasupremecourt.org/content/download/717008/opinion/sc20-287.pdf

POST CONVICTION RELIEF: Defendant is entitled to postconviction relief on grounds that trial counsel conceded guilt to a lesser offense only if Defendant expressly objected. An allegation that trial counsel failed to consult with him in advance is insufficient to warrant relief. Harvey v. State, SC19-1275 (2/4/21)

https://www.floridasupremecourt.org/content/download/717007/opinion/sc19-1275.pdf

CONFRONTATION CLAUSE-HEARSAY: Wounded victim's statement "The guy said I told another lady that he was screwing a girl, her daughter. I didn't," and his description of the perpetrator, made to first responders, is inadmissible under the Confrontation Clause (Crawford) Evidence that constitutes a hearsay exception is still inadmissible (here, excited utterance) if it violates the Confrontation Clause. But error is harmless. Boldridge v. State, 1D19-3153 (2/4/21)

https://www.1dca.org/content/download/717038/opinion/193153_DC05_02042021_140046_i.pdf

POST CONVICTION RELIEF: Court properly denied motion for postconviction relief claiming that counsel never conveyed a plea offer, when State and Defense counsel testified the one had never been made. Hartfield v. State, 1D20-1240 (2/4/21)

https://www.1dca.org/content/download/717039/opinion/201240_DC05_02042021_140302_i.pdf

SELECTIVE PROSECUTION: Defendant is not entitled to records related to racial breakdown of stash house robbery stings in order to try to establish a claim of racially motivated selective prosecution. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

MULTIPLICITOUS INDICTMENT: A multiplicitous indictment, which charges a single offense in more than one count, violates double jeopardy principles because it gives the jury numerous opportunities to convict the defendant for the same offense. Separate counts of conspiracy to commit Hobbs Act robbery and conspiracy to possess with intent to distribute cocaine is not an multiplicitous indictment under Blockberger. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

OUTRAGEOUS CONDUCT: The creation of a stash house robbery scheme, suggested by the CI, did not constitute outrageous government conduct in violation of the Due Process Clause. Court declines to decide whether an outrageous conduct defense exists. Merely presenting defendants with a non-unique opportunity to commit a crime, of which they are more than willing to take advantage, does not amount to outrageous government conduct. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

ENTRAPMENT INSTRUCTION: Entrapment has two elements: (1) government
inducement of the crime and (2) the defendant's lack of predisposition to commit
the crime before the inducement. Defendant must show an element of persuasion or mild coercion, i.e. in other words, opportunity plus something like excessive pressure or manipulation. Court did not err in denying Defendant's request for an entrapment instruction where he agreed without hesitation to rob the stash house and declined multiple opportunities to withdraw. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

SENTENCING ENTRAPMENT: Sentencing entrapment is the claim that a defendant, although predisposed to commit a minor or lesser offense, is entrapped into committing a greater offense subject to greater punishment. Sentencing entrapment is not a valid defense. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

JUROR: Court did not err is dismissing a juror who was the hairdresser of a Defendant's wife due to their business relationship. Juror saying that the relationship would not impact her ability to perform her duties does not compel a different conclusion. Despite her statement of no actual bias, the court was still required to determine if there would be implied bias due to the relationship. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

COURT REPORTER ACT: Nothing in the Court Reporter Act requires that the audio or video recordings, which are not testimony but are themselves admitted into evidence as exhibits, be transcribed by the court reporter. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

FIREARM DURING FELONY: Court erred by submitting to the jury the charge of use of a firearm duing comission of a crime of violence where the predicate offence--conspiracy to commit robbery--is not a crime of violence, and further erred by not instructing the jury that it could convict on alternative predicates (the cocaine conspiracy predicate was valid). But error is harmless because the two conspiracies were intertwined and coextensive. USA v. Cannon, No. 16-16194 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201616194.pdf

HEARSAY: Witness's statement that drug dealer told Witness to stay away from Defendant because Defendant had stolen $40,000 from the drug dealer, admitted over objection as a statement in furtherance of a conspiracy, was not hearsay because not offered to for the truth of the

matter asserted but, rather, was offered to explain why witness never dealt with Defendant directly. Even if error, any error was harmless given the weight of the evidence (eight testifying co-defendants/coconspirators, abundant physical evidence, etc.). USA v. Hart, No. 20-11096 (11th Cir. 2/3/21)

https://media.ca11.uscourts.gov/opinions/unpub/files/202011096.sop.pdf

RESTITUTION-ATTORNEY'S FEES: Defendant, who at the closing on a house, as the notary's back was turned, abruptly grabbed the original deed and promissory note, sprinted out the front door, drove away, and later recorded the stolen deed is liable for restitution of $18,666.50 in restitution, representing the attorney's fees actually expended in clearing the title on the real property. Rowe, adopting the federal lodestar approach for computing reasonable attorney fees does not apply to a criminal restitution award. Livingston v. State, 2D20-65 (2/3/21)

https://www.2dca.org/content/download/716823/opinion/200065_DC05_02032021_080725_i.pdf

COERCION-DEFINITION: Florida case law reveals no definition for coercion. "While similar, the terms 'duress' and 'coercion' are certainly not synonymous in all respects. Otherwise, the use of both words by the Florida Supreme Court and the Florida Legislature would be redundant. While "duress" generally occurs by means of actual physical force or threatened physical force to one's person or by threats to one's property or reputation, "coercion" is "generally defined more broadly to include undue influence and other lesser forms of compulsion." Bates v. Bates, 3D19-1884 (2/3/21)
https://www.3dca.flcourts.org/content/download/716867/opinion/191884_DC05_02032021_103550_i.pdf

ANTI-SHOPLIFTING DEVICE: A metal hook, appended to a key ring, and a weighty magnetic device, apparently used to removeanti-theft security tag sensors, found in the possession of the shoplifter constitute a antishoplifting device countermeasure supporting a coviction for possession of an anti-shoplifting device. Martinez-Rivero v. State, 3D20-149 (2/3/21)

https://www.3dca.flcourts.org/content/download/716869/opinion/200149_DC05_02032021_104110_i.pdf

POST CONVICTION RELIEF: An illegal arrest or detention does not void a subsequent conviction. Brown v. State, 3D21-56 (2/3/21)

https://www.3dca.flcourts.org/content/download/716875/opinion/210056_DC05_02032021_105531_i.pdf

RESTITUTION: Restitution may not be awarded for towing and re-keying the car after Child's burglary of it. No causal connection exists. I.K.P. v State, 4D19-3581 (2/3/21)

https://www.4dca.org/content/download/716856/opinion/193581_DC08_02032021_100543_i.pdf

CONTEMPT: Court errs in finding in indirect criminal contempt attorney who ignored trial court orders, failed to attend a case management conference, conducted no discovery, and failed to comply with two mediation orders where order to show cause recited the titles of four violated court orders without setting forth any essential facts constituting the contempt. Levine v. State, 4D20-118 (2/3/21)

https://www.4dca.org/content/download/716861/opinion/200118_DC13_02032021_101136_i.pdf

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POST CONVICTION RELIEF: Appellate court's finding that the Defendant's Motion for Post Conviction Relief appeared to be facially valid does not preclude the trial court, upon remand, from finding that it wasn't. Himes v. State, 1D19-2432 (1/29/21)
https://www.1dca.org/content/download/716160/opinion/192432_DC08_01292021_142211_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED RELIEF: A newly discovered evidence claim must be supported by a properly sworn affidavit from the witness whose testimony provides the basis for the claim. Written statement by an original suspect that he, not the Defendant, was the getaway driver and the Defendant was not involved, is not admissible to support newly discovered evidence claim where the statement was notarized but not sworn, and the notary did not establish how she identified that declarant. Himes v. State, 1D19-2432 (1/29/21)
https://www.1dca.org/content/download/716160/opinion/192432_DC08_01292021_142211_i.pdf

POST CONVICTION RELIEF: R. 3.850(f)(2) allows a defendant a single chance to amend a facially insufficient motion, including an insufficient affidavit, if he or she can do so in good faith. Himes v. State, 1D19-2432 (1/29/21)
https://www.1dca.org/content/download/716160/opinion/192432_DC08_01292021_142211_i.pdf

CONSECUTIVE SENTENCE-VIOLATION: Where Defendant was sentenced to 30 years imprisonment with ten years suspended upon

completion of ten years' probation (true split sentence), the probation ran concurrently with conditional release, and where Defendant violated the probation and was sentenced to eight years' imprisonment, the sentence was not unlawful on the ground that the trial court did not designate whether those sentences would be served concurrently with or consecutively to any incarceration that would result if the DOC chose to forfeit the previously earned gain time. DOC lawfully determined that the forfeited gain time should be served consecutively. Peters v. State, 2D19-3550 (1/29/21)
https://www.2dca.org/content/download/716086/opinion/193550_DC05_01292021_083725_i.pdf

SEARCH AND SEIZURE: Reasonable suspicion for the stop alone does not justify an arrest or search. Where the State did not present any evidence regarding what happened during the stop, did not argue that there was probable cause to arrest and search, and did not otherwise address the search that resulted in the discovery of the drugs, it failed to demonstrate that the police had probable cause to arrest Defendant or any other basis to justify a search of Brown or his personal belongings. Brown v. State, 2D20-193 (1/29/21)
https://www.2dca.org/content/download/716102/opinion/200193_DC13_01292021_083836_i.pdf

VOP: Court erred by conducting an abbreviated hearing and terminating her from participation in drug court, rather than conducting a full violation of probation hearing. Boswell v. State, 5D19-2890 (1/29/21)
https://www.5dca.org/content/download/716136/opinion/192890_DC13_01292021_083135_i.pdf

P0ST CONVICTION RELIEF: Defendant's Motion for Post Conviction Relief moving to set aside her plea based on her lawyer's alleged misadvice about her eligibility for a sealing of her record is time barred where she no due diligence to research her ability to seal her criminal record during the two years after her judgment and sentence became final. State v. Decker,

5D20-831 (1/29/21)
https://www.5dca.org/content/download/716140/opinion/200831_DC13_01292021_084110_i.pdf

APPEAL-MOOTNESS-PRR: A defendant's potential designation as a prison releasee reoffender is not a sufficient collateral legal consequence to preclude dismissal of the appeal as moot. Casiano v. State, No. SC19-1622 (1/28/21)
https://www.floridasupremecourt.org/content/download/715883/opinion/sc19-1622.pdf

CIRCUMSTANTIAL EVIDENCE: "Appellant improperly analyzes the State's evidence in the light most favorable to himself and asks that we do the same. However, analyzing the evidence in the light most favorable to the State, as we must, leads us to conclude that the trial court was correct in denying Appellant's motion for judgment of acquittal." Hathaway v. State, 1D20-202 (1/28/21)

https://www.1dca.org/content/download/715920/opinion/200202_DC05_01282021_125948_i.pdf

JOA: Court properly denied JOA for murder where Defendant was on the victim's property near the time when the crime occurred, was later seen with the victim's equipment, and was found near the same brand of metal strapping used to bind the victim. Hathaway v. State, 1D20-202 (1/28/21)

https://www.1dca.org/content/download/715920/opinion/200202_DC05_01282021_125948_i.pdf

RULE OF LENITY (CONCURRENCE): The rule of lenity is a canon of last resort and only applies if the statute remains ambiguous after consulting traditional canons of statutory construction. Schmidt v. State, 1D20-882

(1/28/21)

https://www.1dca.org/content/download/715922/opinion/200882_NOND_01282021_130920_i.pdf

RULE OF LENITY (CONCURRENCE): The rule of lenity (§775.021(1)) does not apply to Chapter 948 (probation). Schmidt v. State, 1D20-882 (1/28/21)

https://www.1dca.org/content/download/715922/opinion/200882_NOND_01282021_130920_i.pdf

JOA-INTENT: Direct evidence of intent is rare, and intent is usually proven through inference. A trial court should rarely, if ever, grant a motion for judgment of acquittal on the issue of intent. Powell v. State, 1D20-820 (1/27/21)
https://www.1dca.org/content/download/715766/opinion/200820_DC05_01272021_131958_i.pdf

APPEAL: Where the postconviction court's factual findings and credibility determinations are supported by competent, substantial evidence, appellate court will defer to its findings because the postconviction court has a superior vantage point in assessing the credibility of witnesses and in making findings of fact. Johnson v. State, 1D20-1278 (1/27/21)

https://www.1dca.org/content/download/715767/opinion/201278_DC05_01272021_132225_i.pdf

HEARSAY-EXPERT: While an expert may undoubtedly rely on hearsay in rendering opinions, an expert's testimony may not merely be used as a conduit for the introduction of the otherwise inadmissible evidence. Dayes v. Werner Enterprise, 3D19-920 (1/27/20)

https://www.3dca.flcourts.org/content/download/715721/opinion/191920_DC13_01272021_103307_i.pdf

SENTENCING: Court may not rely upon its own opinion of Defendant's mental state and the likelihood of recidivism (that Defendant has an ingrained, immutable propensity to commit pedophiliac crimes) in the face of contradictory expert opinion evidence. Court can only reject undisputed testimony from an expert when it either concerns technical evidence and is so palpably incredible, illogical, and unreasonable as to be unworthy of belief or otherwise open to doubt or when it concerns non-expert matters and is disputed by lay testimony. Court's opinion that Defendant had an "immutable" sexual disorder, absent a diagnosis by any testifying expert, cannot stand. Tindall v. State, 19-2215 (1/27/21)

https://www.4dca.org/content/download/715712/opinion/192215_DC13_01272021_100333_i.pdf

APPEAL-JURISDICTION: Trial court lacks jurisdiction to enter a written order revoking probation, consistent with the oral pronouncement, after the record on appeal was transferred to the appellate court. Witham v. State, 4D20-765 (1/27/21)

https://www.4dca.org/content/download/715716/opinion/200765_DC05_01272021_101706_i.pdf

COVID-MASKS: Ordinance requiring Covid masks is lawful. Requiring the general population to use face coverings does not abridge the constitutional rightto refuse medical treatment. "Plaintiffs' minimal inconvenience caused by the Mask Ordinance must be balanced against the general public's right to not be further infected with a deadly virus. It is beyond dispute that the potential injury to the public that would result from enjoining the

government's ability to prevent the spread of a presently incurable, deadly, and highly communicable virus far outweighs any individual's right to simply do as they please." Machovec v. Palm Beach County, 4D20-1765 (1/27/21) https://www.4dca.org/content/download/715719/opinion/201765_DC05_01272021_102427_i.pdf

CERTIFICATE OF APPEALABILITY: Garcia v. United States, holding that Defendant may not obtain a COA where a constitutional challenge is not fairly debatable (i.e., is foreclosed by binding circuit precedent), is vacated pending a decision in two cases before the Supreme Court. Garcia v. USA, No. 19-14374 (1/26/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914374.ord.pdf

BAIL: Defendant may not be held without bond on a new offense committed while out on bond for an earlier offense. "We are confident that if the State, on remand, asks the trial court to consider Petitioner's prior criminal record or his track record for attending court in setting reasonable conditions for pretrial release, it will offer admissible evidence regarding same." Barton v. State, 5D21-168 (1/26/21) https://www.5dca.org/content/download/715900/opinion/210168_DC03_01262021_132704_i.pdf

POST CONVICTION RELIEF: Case remanded for hearing where Court failed to rule on whether counsel was ineffective for failing to object to testimony about general criminal behavior testimony based upon a law enforcement officer's observations and experience in the investigation of other cases. Thomas v. State, 2D19-3830 (1/22/21) https://www.2dca.org/content/download/714974/opinion/193830_DC08_01222021_081800_i.pdf

COSTS: Before the statutory minimum public defender fee of $100 for felony cases can be imposed, the defendant must be notified of his or her right to a hearing to contest the fee. Conflict certified. Wilson v. State, 2D19-4461 (1/22/21)

STAND YOUR GROUND-FORCIBLE FELONY: Because burglary of a residence is a forcible felony, Defendant is immune from prosecution for shooting the guest who refused to leave and physically fought with the Defendant's boy friend, notwithstanding that no one was threatened with imminent death or great bodily injury. Burglary includes remaining in. Victim who batters and continues to batter Defendant's boyfriend for some appreciable length of time after the invitation into the home was withdrawn was thus commits forcible felony for purposes of SYG immunity. "We would caution trial courts. . . to remain mindful that the legislature has placed a heightened burden of proof on the State, not the defendant, for Stand Your Ground proceedings." Cummings v. State, 2D20-2080 (1/22/21)

https://www.2dca.org/content/download/714978/opinion/202080_DC03_01222021_082049_i.pdf

JOA: To preserve an argument of the insufficiency of the evidence at trial the precise legal argument as to why the evidence is insufficient to sustain a conviction must be presented to the trial court. Harvey v. State, 5D20-166 (2/22/21)
https://www.5dca.org/content/download/714985/opinion/200166_DC05_01222021_084230_i.pdf

CONTINUANCE: Court need not grant motion for continuance requested during trial because defense counsel had not met with a person whose identity had just been disclosed to counsel by a member of Appellant's family as a possible witness. To prevail on a motion for continuance to permit presentation of an additional witness, a party is required to show 1) prior due diligence in securing the witness's presence, 2) substantially favorable

testimony would have been forthcoming, 3) the witness is available and willing to testify, and 4) the denial of the continuance caused material prejudice. Harvey v. State, 5D20-166 (2/22/21) https://www.5dca.org/content/download/714985/opinion/200166_DC05_01222021_084230_i.pdf

BELATED APPEAL: Defendant is entitled to a belated appeal where the order denying his motion for postconviction relief failed to include a statement that the defendant has the right to appeal within 30 days of the rendition of the order. Jackson v. State, 5D20-2487 (1/22/21)

https://www.5dca.org/content/download/714987/opinion/202487_DC03_01222021_084908_i.pdf

RULES-AMENDMENT-TITLE: Rules of Judicial Administration are renamed "Florida Rules of General Practice and Judicial Administration." ("Fla. R. Gen. Prac. & Jud.Admin," in order to clarify that this chapter of rules is relevant not only to judges. In Re: Amendments to the Florida Rules of Judicial Administration, No. SC20-165 (1/21/21)

https://www.floridasupremecourt.org/content/download/714813/opinion/sc20-165.pdf

RULES-AMENDMENT-DISQUALIFICATION: Motions to disqualify judge must identify the precise date when the facts constituting the grounds for the motion were discovered and must include all possible grounds. In Re: Amendments to the Florida Rules of Judicial Administration, No. SC20-165 (1/21/21)

https://www.floridasupremecourt.org/content/download/714813/opinion/sc20-165.pdf

RULES-AMENDMENT-DISQUALIFICATION: Time for filing motion to

disqualify is extended from 10 days to 20. In Re: Amendments to the Florida Rules of Judicial Administration, No. SC20-165 (1/21/21)

https://www.floridasupremecourt.org/content/download/714813/opinion/sc20-165.pdf

RULES-AMENDMENT-STAND-IN COUNSEL: An attorney may stand in for another attorney to cover a proceeding or hearing only if a notice of stand-in counsel is filed. In Re: Amendments to the Florida Rules of Judicial Administration, No. SC20-165 (1/21/21)

https://www.floridasupremecourt.org/content/download/714813/opinion/sc20-165.pdf

EVIDENCE-ABSENT WITNESS: State's questioning concerning the absence of certain potential alibi witnesses falls is not improper where it falls within the narrow "special relationship" exception. Wharton v. State, 1D19-2483 (1/21/21)

https://www.1dca.org/content/download/714865/opinion/192483_DC05_01212021_135450_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a hearing on his claim that his plea resulted from overweening and fraudulent religious influence of a roommate in the jail. Thornton v. State, 1D20-501 (1/21/21)

https://www.1dca.org/content/download/714866/opinion/200501_DC05_01212021_135958_i.pdf

HABEAS CORPUS: The remedy of habeas corpus is not available in

Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Habeas corpus is not to be used for obtaining additional appeals of issues which were raised, or should have been raised, on direct appeal or which were waived at trial or which could have, should have, or have been, raised in prior postconviction filings. Warren v. State, 1D20-3243 (1/21/20)

https://www.1dca.org/content/download/714867/opinion/203243_DA08_01212021_140145_i.pdf

SEARCH AND SEIZURE: The fact that a vehicle at a gas station around midnight has a dealer tag that was not assigned to that vehicle is reasonable suspicion warranting an investigatory stop to resolve officer's suspicion that the dealer license was being misused. Thomas v. State, 1D19-3881 (1/20/21)

https://www.1dca.org/content/download/714470/opinion/193881_DC05_01202021_130252_i.pdf

SECOND DEGREE MURDER: Defendant who had beaten up victim before and who, on the day of the homicide had acted threateningly toward the victim (who, cornered, stabbed Defendant with something) and then retrieved a gun and shot the victim ten times in the back, is properly convicted of second degree murder. Baxter v. State, 3D18-1246 (1/20/21)

https://www.3dca.flcourts.org/content/download/714423/opinion/181246_DC05_01202021_103217_i.pdf

VOP: Court may not revoke probation where there is nothing in the record to show either that a revocation hearing took place or that Defendant

admitted to the probation violations. Lawrence v. State, 3D19-762 (1/20/21)

https://www.3dca.flcourts.org/content/download/714424/opinion/190762_DC13_01202021_103356_i.pdf

THREATENING LEO: Symbolic gestures mimicking violence and suggestions of future violence toward officers supports conviction for threatening a law enforcement officer. Statute is not overbroad. Romero v. State, 3D20-32 (1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

OVERBREADTH-FIRST AMENDMENT: In order to succeed in an overbreadth challenge, the litigant must demonstrate from the text of the statute and from actual fact that a substantial number of instances exist in which the statute cannot be applied constitutionally. Romero v. State, 3D20-32 (1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

TRUE THREATS DOCTRINE: States are free to ban speech amounting to a true threat without running afoul of the First Amendment. A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual. Romero v. State, 3D20-32

(1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

SCIENTER: In the context of a statute proscribing threats, proof of scienter is necessary to guard against the impermissible regulation of the lawful exercise of constitutionally protected speech. Without such proof, remarks made in jest or mere puffery, political hyperbole, or involuntary communications could conceivably subject an accused to prosecution. Romero v. State, 3D20-32 (1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

SCIENTER: It is presumed that the legislature also intends to include a guilty knowledge element in its criminal statutes, absent an express statement to the contrary. Criminal statutes are construed to include broadly applicable scienter requirements, even where the statute does not contain them. Romero v. State, 3D20-32 (1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

DEFINITION-"THREATEN": "Although 'threaten' is arguably subject to a myriad of varied and nuanced definitions. . .woven through the fabric of all. . definitions is a common thread of some element of volition, namely a communicated intent to 'inflict harm,' consistent with the body of law governing true threats. Romero v. State, 3D20-32 (1/20/21)

https://www.3dca.flcourts.org/content/download/714429/opinion/200032_DC02_01202021_104806_i.pdf

ACTUAL POSSESSION-MANDATORY MINIMUM-VOP: The unadorned word "possession" in the charging document is sufficient to afford Defendant notice of the potential imposition of the minimum mandatory for actual possession of a firearm. The Defendant is subject to the mandatory minimum upon violating probation, notwithstanding that at the original sentencing hearing the State waived its imposition. The word "possession," when unaccompanied by any qualifying adjective, encompasses both actual and constructive possession. Because the defendant did not specifically and timely object to reclassification based on a defect in the information, and the defect was not the omission of an essential element, he has waived the defect. Woods v. State, 3D20-254 (1/20/20)

https://www.3dca.flcourts.org/content/download/714440/opinion/200254_DC05_01202021_105431_i.pdf

10-20-LIFE-MANDATORY LIFE SENTENCE: Second-degree murder, punishable by imprisonment not exceeding life, is enhanced to a life felony under 10-20-life statute if Defendant uses a firearm. The statute permits but does not mandate a life sentence. Sols v. State, 19-763 (1/20/21)

https://www.4dca.org/content/download/714414/opinion/190763_DC08_01202021_095530_i.pdf

NAME CHANGE: Court may not deny name change (to "Raoul Medina Sir Bey" on ground that he had multiple convictions for 1st degree felonies and it would be against public policy to permit the name change. Merely indicating that Applicant had a criminal history is not a proper basis for denying the petition. Medina v. State, 4D19-3891 (1/20/21)

https://www.4dca.org/content/download/714420/opinion/193891_DC13_01202021_100706_i.pdf

SCORESHEET ERROR: Defendant is entitled to a new sentencing hearing where scoresheet showed that he was charged with aggravated white-collar crime, an offense separate and distinct from that to which he pled, resulting in his primary offense at sentencing being scored incorrectly where the record does not conclusively show that the same sentence would have been imposed using a correctly computed scoresheet. Burkeen v. State, 4D20-1646 (1/20/21)

https://www.4dca.org/content/download/714421/opinion/201646_DC13_01202021_100858_i.pdf

APPEAL-PRESERVATION-COMPETENCY: Where Court made oral finding of competency based on two year old reports but entered no written order, and Defendant made no objection, any error is not preserved nor fundamental. Arguments challenging a trial court's failure to enter a written order of competency must be preserved or constitute fundamental error. Parker v. State, 1D19-4028 (1/15/21)

https://www.1dca.org/content/download/713801/opinion/194028_DC05_01152021_125129_i.pdf

JUVENILE SANCTION: Where the record is insufficient to support a finding that Defendant had a previous adjudication or withhold of adjudication of a forcible felony or offense involving a firearm, or had been previously placed in a residential program, Court does not violate §985.557(2) in imposing a juvenile sentence of Defendant charged as an adult. The burden is on the

State as appellant to produce a sufficient record to demonstrate reversible error. State v. B.T.G., 1D20-330 (1/15/21)

https://www.1dca.org/content/download/713803/opinion/200330_DC05_01152021_125555_i.pdf

CONTINUANCE: Defendant is entitled to a continuance when State amends the information to add a new charge (delivery of marijuana to a minor) which Defense was unprepared for on the day of jury selection, notwithstanding that the facts were known before. Defense counsel must be afforded an adequate opportunity to investigate and prepare any applicable defense. Davis v. State, 2D18-2613 91/15/21)

https://www.2dca.org/content/download/713766/opinion/182613_DC13_01152021_093038_i.pdf

ARGUMENT: Prosecutor's closing argument alluding to gestures Defendant made at witness during her testimony and Defendant snoozing during the trial was improper but harmless given that the Defendant had been admonished, and the juror was well aware of his behavior. Davis v. State, 2D18-2613 91/15/21)

https://www.2dca.org/content/download/713766/opinion/182613_DC13_01152021_093038_i.pdf

VOP-WILLFULNESS: Defendant did not willfully violate probation where he missed re-scheduled anger management class because he had no time to arrange child care, and where that attendance at that particular session was not required. Bell v. State, 2D19-1591 (1/15/21)

https://www.2dca.org/content/download/713767/opinion/191591_DC13_0

1152021_093250_i.pdf

PROBATION-MODIFICATION: Court's power to modify probation does not exted to enhancing punishment by adding more community service hours. Bell v. State, 2D19-1591 (1/15/21)

https://www.2dca.org/content/download/713767/opinion/191591_DC13_01152021_093250_i.pdf

JURY INSTRUCTION-KILLING ALLIGATORS: Jury instruction on killing alligators which failed to include the language"unless authorized by rules of the Fish and Wildlife Conservation" were incomplete, misleading, and confusing. Jury instructions which omit statutory phrase that was critical to the jury's understanding of the law applicable to the charges before it are improper. Allowing defense counsel to argue a theory of defense to the jury while also refusing to instruct the jury on that defense does not solve the problem of improper instructions. Court's decision to include the Administrative Code provisions in the jury instructions but also to deny Defendant's request to include the "unless authorized" language resulted in the court providing an incomplete, misleading, and manifestly confusing explanation of the law to the jurors. Nichols v. State, 2D19-1721 (1/15/20)

https://www.2dca.org/content/download/713769/opinion/191721_DC08_01152021_094427_i.pdf

COSTS: Court may not assess $3 cost pursuant to §318.18 where Defendant was not convicted of a traffic offense. Rouse-Ruzzo v. State, 5D19-3061 (1/15/21)

https://www.5dca.org/content/download/713744/opinion/193061_DC05_01152021_081755_i.pdf

APPEAL-COMPETENCY: Defendant must move to withdraw plea before appealing the Court's acceptance of counsel's stipulation of competency after an evaluation had been conducted without having made an independent determination that the Defendant was competent. Ball v. State, 5D19-3536 (1/15/21)

https://www.5dca.org/content/download/713747/opinion/193536_DC13_01152021_082426_i.pdf

VOP: Regardless of whether §948.06(2) applies to a defendant who committed an offense before the statute was amended, when imposing sentence for a violation of probation, a trial court is limited to modifying or continuing probation or imposing a sentence of up to ninety days in county jail only when a defendant complies with all four conditions. Massey v. State, 1D19-4281 (1/14/21)
https://www.1dca.org/content/download/700810/opinion/194281_DC05_01142021_131507_i.pdf

TEXTUALISM: "[T]here can be no doubt that 'any' was a scrivener's error and should have been "all," so we as a court have the very narrow authority to apply the statute with this correction in order to fully effectuate all of its terms." Massey v. State, 1D19-4281 (1/14/21)
https://www.1dca.org/content/download/700810/opinion/194281_DC05_01142021_131507_i.pdf

ACCA-RESIDUAL CLAUSE: Defendant bears the burden that sentencing court relied on the residual clause in interpreting his kidnapping conviction as a violent felony and thus the basis for ACCA enhancement. The fact that kidnapping by inveiglement may not be violent does not remove it from the elements clause of the ACCA. Even if the residual clause were the most obvious clause under which the convictions qualified, it does not necessarily mean even by implication that the elements clause could not also have been

relied on. Williams v. USA, No. 19-10308 (11th Cir. 1/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910308.pdf

APPEAL-STANDARD OF REVIEW: Mixed questions of law and fact are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated. Review of a mixed question of law and fact depends on whether answering it entails primarily legal or factual work. Review is de novo.
Williams v. USA, No. 19-10308 (11th Cir. 1/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910308.pdf

ACCA: ACCA defines the kind of crimes that count as a "violent felony" in three ways. First, a felony may qualify as violent under the elements clause of the ACCA because it has as an element the use, attempted use, or threatened use of physical force against the person of another. Second, a felony may qualify as violent under the enumerated-offenses clause of the ACCA because it is for burglary, arson, or extortion, or involves use of explosives. Third, a felony may qualify as violent under the residual clause of the ACCA because it otherwise involves conduct that presents a serious potential risk of physical injury to another, but the residual clause is unconstitutionally vague. Williams v. USA, No. 19-10308 (11th Cir. 1/13/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201910308.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that he declined 36 month plea offer because counsel failed to advise him that he could be convicted on the basis of the ammunition alone. Mills v. State, 1D20-798 (1/13/21)

https://www.1dca.org/content/download/700608/opinion/200798_DC08_01132021_125304_i.pdf

JUROR-PEREMPTORY CHALLENGE-DISCRIMINATION: Jurors statement that she could understand why a defendant might not want to testify is not a race neutral reason to strike her. Alleged disinterest in voir dire, based on nonverbal conduct cannot justify a strike when it is disputed and the Court did not observe the behavior. A strike founded on nonverbal behavior cannot rest solely on a party's assertion of a good-faith basis. Rather, it must be supported by the record in a manner that allows for meaningful appellate review. Gibson v. State, 2D18-4349 (1/13/20)

https://www.2dca.org/content/download/700507/opinion/184349_DC08_01132021_080539_i.pdf

JUROR-PEREMPTORY CHALLENGE-DISCRIMINATION: Lack of rapport between prosecutor and juror is not a valid race-neutral reason to strike her. Gibson v. State, 2D18-4349 (1/13/20)

https://www.2dca.org/content/download/700507/opinion/184349_DC08_01132021_080539_i.pdf

COSTS: Court may not impose $50 fee for the Legal Assistance Lien for payment of attorney's fees or costs without giving notice of Defendant's right to contest the
fee. Conflict certified. D.S. v. State, 2D19-800 (1/13/20)

https://www.2dca.org/content/download/700510/opinion/190800_DC08_01132021_080715_i.pdf

VOP-REVOCATION: Court improperly found Defendant in violation of probation when PO testified that Defendant failed to answer door or phone at his townhouse around 5:30 a.m. in violation of probation, but Defendant's wife testified that he was walking her to the car so that she could go to work,

which he always deos because of snakes. Evidence that gives rise to multiple reasonable inferences, only one of which establishes a violation, does not support a violation. Kegler v. State, 2D19-3479 (1/13/21)

https://www.2dca.org/content/download/700514/opinion/193479_DC13_01132021_080852_i.pdf

APPEAL-JURISDICTION: State may not appeal Court's decision to vacate a sentence and order a new sentencing hearing based on a prior mandate, which has since been clearly overruled by intervening authority. "We decline the State's invitation to assert our appellate jurisdiction when none exists. The Florida Legislature has expressly and clearly delineated the parameters of this Court's jurisdiction to hear appeals brought by the State; we have jurisdiction to review only those orders enumerated in section 924.07(1) and rule 9.140(c)(1)." State v. Yero, 3D19-192 (1/13/21)

https://www.3dca.flcourts.org/content/download/700556/opinion/190192_NOND_01132021_104111_i.pdf

REVERSE WILLIAMS RULE: Defendant as the right to offer similar-crime evidence to show his innocence by proof of the guilt of another ("reverse Williams rule"). Court erred in barring evidence that another person had a motive to commit the murder (drug dealers vying for customers on the same turf). Posey v. State, 3D18-1432 (1/13/21)

https://www.3dca.flcourts.org/content/download/700555/opinion/181432_DC13_01132021_103445_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffectve for failing to call DNA expert who would have confirmed that the DNA was the Defendant's.

McFarlane v. State, 3D19-1855 (1/13/21)

https://www.3dca.flcourts.org/content/download/700558/opinion/191855_DC05_01132021_104808_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failure to procure a jury of Defendant's"contemporaries," i.e."an eclectic group of males ages 40 to 65 years old and democrats (liberals)." Defendants are not entitled to a particular jury composition. McFarlane v. State, 3D19-1855 (1/13/21)

https://www.3dca.flcourts.org/content/download/700558/opinion/191855_DC05_01132021_104808_i.pdf

APPEAL-PRESERVATION: Defendant may not raise on appeal claim that prosecutor's mischaracterization of DNA evidence as "ten plus non-motile sperm cells" constituted a "misguided, Machiavellian attempt [of] misdirection" where the alleged misconduct was not raised in the 3.850 motion. McFarlane v. State, 3D19-1855 (1/13/21)

https://www.3dca.flcourts.org/content/download/700558/opinion/191855_DC05_01132021_104808_i.pdf

EXPERT: Defendant was not entitled to receive funds from the Justice Administrative Commission to retain an expert to testify regarding the DNA evidence where Defendant asserted that the denial "was predicated on prosecutor's disingenuous allegation of 10 plus fabrication sperm cells" but Court found that the defendant's position would not be supported by any expert anywhere. McFarlane v. State, 3D19-1855 (1/13/21)

https://www.3dca.flcourts.org/content/download/700558/opinion/191855_DC05_01132021_104808_i.pdf

VOP-VIDEO HEARINGS: Motion to certify the question whether the United States and Florida constitutions permit trial courts to conduct probation violation hearings over Zoom where Defendant and his attorney are separated, all because of COVID, is denied. Clarington v. State, 3D20-1461 (1/13/21)

https://www.3dca.flcourts.org/content/download/700589/opinion/201461_NOND_01132021_113812_i.pdf

DRUG TESTING-PAYMENT: Requirement that Defendant pay for drug testing is not a general condition of probation. If imposed it must be orally pronounced and if not, may not be included in the written order of probation. Metellus v. State, 4D19-1107 (1/13/21)

https://www.4dca.org/content/download/700546/opinion/191107_DC08_01132021_100749_i.pdf

JUVENILE-SENTENCING: If DJJ recommends probation with an alternative recommendation for commitment to a non-secure residential program, Court is not required to make E.A.R. findings. O.L. v. State, 4D19-3411 (1/13/21)

https://www.4dca.org/content/download/700548/opinion/193411_DC05_01132021_101003_i.pdf

MANDAMUS-GAIN TIME: A mandamus petition filed more than 30 days after the final disposition of a disciplinary proceeding must be dismissed. Milne v. Inch, 1D20-1201 (1/12/21)

https://www.1dca.org/content/download/700382/opinion/201201_DC08_01122021_132737_i.pdf

APPEAL-FALSE REPRESENTATIONS: Sanctions may be imposed when Defendant files a petition for belated appeal including falsehoods to avoid procedural bar. That a jailhouse lawyer prepared the pleadings is an unacceptable excuse. "Petitioners should not be allowed to cavalierly lie to this court." Baca v. State, 1D19-3429 (1/11/21)

https://www.1dca.org/content/download/700124/opinion/193429_NOND_01112021_124930_i.pdf

JURY INSTRUCTION-FORCIBLE FELONY: Counsel was not ineffective for failing request a jury instruction that if the jury acquits on the underlying forcible felonies, the forcible felony exception to self-defense law does not apply. Because there is no authority requiring the giving of the proposed special instruction and no evidence that the jury was confused by the standard instruction, counse;s performance was neither deficient performance or was the Defendant prejudiced.
Akel v. State, 1D20-647 (1/11/21)

https://www.1dca.org/content/download/700127/opinion/200647_DC05_01112021_130044_i.pdf

HABEAS CORPUS: Before a petition for writ of habeas corpus may be granted, the petitioner must show by affidavit or evidence probable cause to believe
that he or she is detained without lawful authority. When the petitioner

provides no record or affidavits to support his allegations, he fails to set out a prima facie basis for relief. Morales v. Inch, 1D20-760 (1/11/21)

https://www.1dca.org/content/download/700128/opinion/200760_DC05_01112021_130449_i.pdf

CERTIFICATE OF APPEALABILITY: To obtain a COA, Defendant must make a substantial showing of the denial of a constitutional right. Where a district court has rejected the constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. A claim that is foreclosed by binding circuit precedent is not debatable. Garcia v. USA, No. 19-14374 (11th Cir. 1/8/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201914374.op2.pdf

ACCA: Conspiring to possess with intent to distribute five kilograms or more of cocaine and attempting to possess with intent to distribute that amount of cocaine are unquestionably drug trafficking crimes because they are felonies punishable under the Controlled Substances Act. Garcia v. USA, No. 19-14374 (11th Cir. 1/8/21)

https://media.ca11.uscourts.gov/opinions/pub/files/201914374.op2.pdf

STATEMENTS OF DEFENDANT: Defendant's statement during post-Miranda interrogation, "I don't got nothing to say to y'all. I don't--I don't know what's going on. I'm fucking freezing," requires interrogation to end. Defendant articulated his desire to terminate the questioning with sufficient clarity that a reasonable police officer would understand his statements to be an assertion of the right to remain silent. The fact that Tanner indicated six times that he did not want to talk is sufficient to end interrogation.

Tanner v. State, 2D18-3053 (1/8/21)

https://www.2dca.org/content/download/699620/opinion/183053_DC13_01082021_083554_i.pdf

EVIDENCE: Court erred in allowing the State to call Detective for the sole purpose of creating an inference that Defendant had hidden incriminating evidence from law enforcement by failing to give them the correct code to unlock his phone where State failed to show it was the Defendant's phone. Tanner v. State, 2D18-3053 (1/8/21)

https://www.2dca.org/content/download/699620/opinion/183053_DC13_01082021_083554_i.pdf

HEARSAY: Detective's testimony that he viewed threatening text messages on the victim's phone which the victim had told him appeared to come from the Defendant. Tanner v. State, 2D18-3053 (1/8/21)

https://www.2dca.org/content/download/699620/opinion/183053_DC13_01082021_083554_i.pdf

DOUBLE JEOPARDY: Dual convictions for use of a computer to seduce/solicit/entice a child to commit a sex act and unlawful use of a two-way communications device violate double jeopardy where it is not clear from the information that different conduct underlay each charge. Schwoerer v. State, 2D19-2010 (1/8/21)

https://www.2dca.org/content/download/699624/opinion/192010_DC08_01082021_083946_i.pdf

VOP-HEARSAY: Court improperly invoked based on testimony that PO had called Defendant's job and ascertained he had not worked there for three weeks. Holder v. State, 2D19-2071 (1/8/21)

https://www.2dca.org/content/download/699625/opinion/192071_DC05_01082021_084119_i.pdf

LIFE SENTENCE-JUVENILE: Resentencing court properly imposed a life sentece with review after 25 years for minor convicted in murder/robbery case. Court need not determine, as a condition of a constitutional life sentence, whether a juvenile's crime reflects irreparable corruption. Calabrese v. State, 5D19-2858 (1/8/21)

https://www.5dca.org/content/download/699612/opinion/192858_DC05_01082021_090516_i.pdf

POST CONVICTION RELIEF: New grounds for postconviction relief may not be asserted for the first time on appeal. Tolliver v. State, 5D20-438 (1/8/21)

https://www.5dca.org/content/download/699614/opinion/200438_DC05_01082021_091710_i.pdf

DEATH PENALTY: Hurst did not establish a new offense—capital first-degree murder—whereby the jury sentencing determinations would become elements of that new offense. Wright v. State, SC19-2123 (1/7/21)

https://www.floridasupremecourt.org/content/download/699454/opinion/sc19-

2123.pdf

AMENDMENT TO RULES: Contempt rules modified and clarified, including allowing for Defendant to be removed from the courtroom if warranted. In Re: Amendments to Florida Rule of Criminal Procedure 3.830, No. SC20-1102 (FLA 1/7/21)

https://www.floridasupremecourt.org/content/download/699458/opinion/sc20-1102.pdf

PRETRIAL RELEASE: Defendant is properly detained pending trial for the murder of FSU law school professor. Proof of guilt may be evident and the presumption great notwithstanding that the first trial resulted in a hung jury. Magbanua v. McNeil, 1D20-3259 (1/7/21)

https://www.1dca.org/content/download/699467/opinion/203259_DC02_01072021_120102_i.pdf

PRETRIAL RELEASE: Court is not required to grant pretrial release based on COVID considerations. Magbanua v. McNeil, 1D20-3259 (1/7/21)

https://www.1dca.org/content/download/699467/opinion/203259_DC02_01072021_120102_i.pdf

SENTENCING-CHILD PORN-ENHANCEMENT: Florida's child porn statute is a predicate offense for enhancement of federal child porn. To determine

whether a defendant's prior conviction qualifies as a predicate offense for a sentencing enhancement, federal courts generally apply the "categorical approach," meaning it looks only to the elements of the statute under which the defendant was convicted and not at the facts. Court presumes that the prior conviction rested upon nothing more than the least of the acts criminalized under Florida law. USA v. Kushmaul, No. 20-10924 (11th Cir. 1/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010924.pdf

DEFINITION-"SEXUAL": "Sexual" means "of or relating to the sphere of behavior associated with libidinal gratification." USA v. Kushmaul, No. 20-10924 (11th Cir. 1/6/21)

https://media.ca11.uscourts.gov/opinions/pub/files/202010924.pdf

SELF-REPRESENTATION: Defendant abandoned his request to represent himself when he expressly agreed to allow his court appointed counsel to continue to represent him,"even after he
made unequivocal request to represent himself, or if his subsequent conduct indicated he vacillated on the issue or had abandoned his request altogether. Cooper v. State, 1D18-2090 (1/6/21)

https://www.1dca.org/content/download/699300/opinion/182090_DC05_01062021_125158_i.pdf

COMPETENCY: Court errs in allowing case to proceed to trial after Defendant's return from Florida State Hospital for treatment after he had been found incompetent, without conducting a competency hearing but

rather relying on stipulation of the parties. Maxwell v. State, 1D19-3314 (1/6/21)

https://www.1dca.org/content/download/699301/opinion/193314_DC08_01062021_125829_i.pdf

HABITUAL OFFENDER-PRR: A trial court may impose a single sentence pursuant to both the PRR and habitual felony offender (HFO) statutes but the HFO portion of the sentence must be
longer than the PRR portion of the sentence. Court may not impose a five-year PRR sentence consecutive to a seven year HFO sentence for a third degree felony, resulting in a term of twelve years for one count. The cumulative total may not exceed ten years. Flint v. State, 2D18-2742 (1/6/21)

https://www.2dca.org/content/download/699137/opinion/182742_DC08_01062021_080429_i.pdf

RESENTENCING-MINOR-LIFE SENTENCE: Because there was no ruling or written order on Defendant's motion to correct illegal sentence prior to the Florida Supreme Court's decisions holding that a juvenile' life sentence with the possibility of parole sentence is not illegal, Defendant is not entitled to a hearing. Williams v. State, 2D19-1144 (1/6/21)

https://www.2dca.org/content/download/699145/opinion/191144_DC05_01062021_081129_i.pdf

APPEAL-SEARCH WARRANT-STANDING: State is permitted to raise a lack of standing, in the Fourth Amendment context, for the first time on

appeal. State v. Fernandez, 2D19-1184 (1/6/21)

https://www.2dca.org/content/download/699146/opinion/191184_DC13_01062021_081338_i.pdf

VOP: When a defendant's probation is revoked based on an affidavit which alleges a violation with less-than-exacting precision but which nonetheless puts the defendant on notice of the misconduct of which he is accused, the deficiency is considered harmless so long as the State offers sufficient evidence that the defendant is guilty of the conduct (although not necessarily the condition) actually alleged in the affidavit. Algiere v. State, 2D19-3576 (1/6/21)

https://www.2dca.org/content/download/699160/opinion/193576_DC05_01062021_081618_i.pdf

VOP-APPEAL: Argument that revocation of probation was based solely on hearsay evidence is not appealable where the issue was not preserved by argument or objection during trial. Pagan v. State, 2D20-113 (1/6/21)

https://www.2dca.org/content/download/699185/opinion/200113_DC05_01062021_081731_i.pdf

MINOR-LENGTHY SENTENCE: Concurrent thirty-year prison sentences for non-homicide offenses are not the functional equivalent of a life sentence, and Graham is not implicated. Lawson v. State, 4D17-3671 (1/6/21)

https://www.4dca.org/content/download/699230/opinion/173671_DC05_01062021_094929_i.pdf

MINOR-LENGTHY SENTENCE: Concurrent thirty-year prison sentences for non-homicide offenses are not the functional equivalent of a life sentence, and Graham is not implicated.
Corbett v. State, 4D18-1654 (1/6/21)

https://www.4dca.org/content/download/699231/opinion/181654_DC05_01062021_095117_i.pdf

MINOR-LENGTHY SENTENCE: Concurrent twenty-five-year prison sentences for non-homicide offenses are not the functional equivalent of a life sentence, and Graham is not implicated. Seays v. State, 4D18-1827 (1/6/21)

https://www.4dca.org/content/download/699232/opinion/181827_DC05_01062021_095239_i.pdf

APPEAL: Although Florida appellate courts have the authority to allow an amended initial brief to raise a preserved but un-briefed issue (denial of motions to continue and for mistrial), the interests of judicial administration counsel against allowing amended briefs after an initial written decision on the merits has issued. Davis v. State, 1D18-5253 (1/4/21)

https://www.1dca.org/content/download/698839/opinion/185253_NOND_01042021_132548_i.pdf

QUOTATION: "Justice doesn't spontaneously happen." Davis v. State, 1D18-5253 (1/4/21)

https://www.1dca.org/content/download/698839/opinion/185253_NOND_01042021_132548_i.pdf

LIEN: Court errs in imposing lien on incarcerated inmate for unsuccessful motion for additional credit for time served. Claims brought by an inmate that, if successful, will directly affect 'the length of time the inmate will actually spend in prison are collateral criminal proceedings which are not subject to the lien provisions in §57.085. Milne v. Inch, 1D20-1201 (1/4/21)

https://www.1dca.org/content/download/698841/opinion/201201_DC08_01042021_133637_i.pdf

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LIFE SENTENCE-MINOR: 50 year sentence for a minor is not a life sentence or the functional equivalent of a life sentence. Hart v. State, 1D13-1754 (12/31/20)
https://www.1dca.org/content/download/698410/opinion/131754_DC05_12312020_130253_i.pdf

APPEAL-PRESERVATION-COMPETENCY: An unpreserved claim that a trial judge failed to enter a written order of competency is subject to fundamental error analysis, which requires a showing of a due process violation and prejudice. Court's verbal findings as to Defendant's competency to defeat claim of due process violation or prejudice. Pearce v. State, 1D19-1106 (12/31/20)
https://www.1dca.org/content/download/698413/opinion/191106_DC05_12312020_131244_i.pdf

JUDGE-DISQUALIFICATION: Disqualification of judge is not required where Judge had emailed the State Attorney's Office to say that he interpreted the statute to require probation on any DUI with BAL pled down to reckless driving reckless. Mills v. State, 1D20-18 (12/31/20)
https://www.1dca.org/content/download/698416/opinion/200018_DC02_1

2312020_132932_i.pdf

APPEAL-CERTIORARI: Certiorari review from county court cases denying motion to disqualify judge is permitted when the circuit court violated some clearly established principle of law when it denied the petitioners a writ of prohibition to the county court; and if so, whether that violation was so serious as to constitute a miscarriage of justice. The merits of the denial, when not meeting the requirements for cert, is not subject to second tier review. Certiorari is not to operate as a second appeal. Mills v. State, 1D20-18 (12/31/20)

https://www.1dca.org/content/download/698416/opinion/200018_DC02_12312020_132932_i.pdf

HUH? WHAT? HUH?: "In any event, we should avoid referring to these opinions as 'case law,' because under our constitution, Florida's judiciary is not the State's authorized law-giver." Mills v. State, 1D20-18 (12/31/20)
https://www.1dca.org/content/download/698416/opinion/200018_DC02_12312020_132932_i.pdf

INEFFECTIVE ASSISTANCE-OPENING THE DOOR: By introducing the 911 call in which Defendant claimed that the homicide victim had stabbed her, counsel opened the door to Defendant's otherwise suppressed admission that she had self-inflicted the knife wounds to claim self-defense. Ineffective assistance of counsel shown. New trial required. Smithey v. State, 5D19-880 (12/31/20)
https://www.5dca.org/content/download/698342/opinion/190880_DC13_12312020_090016_i.pdf

CHILD PORN-JOA: Defendant is entitled to Judgment of Acquittal where State failed to present any evidence proving that Defendant had viewed child porn found on CDs which he claimed to have inherited from his father and to have never viewed. Elias v. State, 5D19-2370 (12/31/20)

https://www.5dca.org/content/download/698345/opinion/192370_DC08_12312020_091032_i.pdf

HEARSAY: Testimony that the sheriff's office had received a cybertip from the National Center for Missing and Exploited Children stating that an individual with Defendant's phone number and e-mail had uploaded several images of suspected child porn is inadmissible hearsay. Where the implication from in-court testimony is that a non-testifying witness has made an out-of-court statement indicating a defendant's guilt offered to prove the defendant's guilt, the testimony is not admissible. Elias v. State, 5D19-2370 (12/31/20)
https://www.5dca.org/content/download/698345/opinion/192370_DC08_12312020_091032_i.pdf

DISCOVERY-BRADY: State commits discovery violation for failing to disclose detective's additional investigation subsequent to, and as a result of, questions asked at deposition. "In our case, Detective Earney was transformed from a know-nothing into a knowit-all with regard to Flickr, and the transformation was specifically undertaken to enhance his testimony at trial, without disclosure to the Appellant." Elias v. State, 5D19-2370 (12/31/20)
https://www.5dca.org/content/download/698345/opinion/192370_DC08_12312020_091032_i.pdf

STIPULATION: State is not required to stipulate to the age of the children in a child porn case and may re-publish the images during its doctor/expert's testimony. Elias v. State, 5D19-2370 (12/31/20)
https://www.5dca.org/content/download/698345/opinion/192370_DC08_12312020_091032_i.pdf

ARGUMENT: Prosecutor's closing argument suggesting that the jury should consider whether the victim "deserved to die" or "needed to die" was improper but insufficient to warrant a new trial. Jones v. State, 5D19-2771

(1 2 / 3 1 / 2 0)
https://www.5dca.org/content/download/698346/opinion/192771_DC05_12312020_091445_i.pdf

VOP: Defendant is entitled to a new hearing where Court proceeded on an amended affidavit which included an absconding allegation which removed Defendant from the 90 day sentencing cap for low-risk offenders. Failure to advise a probationer of their charges is a due process violation entitling the probationer to a new revocation hearing. Barron v. State, 5D20-332 (12/31/20)

https://www.5dca.org/content/download/698347/opinion/200332_DC13_12312020_091754_i.pdf

POST CONVICTION RELIEF-RECANTED TESTIMONY: Defendant is entitled to a hearing on claim that co-defendant who testified against him had recanted and claimed that his earlier testimony was coerced. Court's conclusion that, with the exercise of due diligence, Defendant could have learned at an earlier date of the witness's intent to recant his trial testimony ois unsupported by evidence. Borders v. State, 5D20-1331 (12/31/20)

https://www.5dca.org/content/download/698351/opinion/201331_1260_12312020_120951_i.pdf

COSTS: Court may not impose $12 costs pursuant to §318.18(11)(b) where Defendant was not charged with a traffic infraction. Robinson v. State, 5D20-1602 (12/31/20)

https://www.5dca.org/content/download/698352/opinion/201602_DC05_12312020_095009_i.pdf

DEPORTATION: Money laundering and workers' compensation fraud are aggravated felonies because each conviction involves fraud or deceit in which the amount of loss to the victim exceeded $10,000. The INA defines a "conviction" to include a withhold of adjudication. Garcia -Simisterra v. U.S. Attorney General, No. 19-13848 (11th Cir. 12/30/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201913848.pdf

ACCA-COLLATERAL CLAIM DOCTRINE: Defendant's argument, that because attempted robbery is not a crime under Alabama law and thus has no elements, and that, without any elements, his attempted robbery conviction did not meet either of the definitions of a violent felony (which requires the element of the use, attempted use, or threatened use of physical force against a person), is nonavailing because Defendant may not collaterally attack a state conviction in federal court. The collateral attack doctrine bars claims that imply the invalidity of a state conviction. Senter v. USA, No. 18-11627 (11th Cir. 12/30/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811627.op2.pdf

FARETTA: Defendant is not entitled to a new sentencing hearing on claim that Court should have conducted a new Faretta hearing where several Faretta hearings had been conducted already. "Appellant has not argued, and the record does not demonstrate, that Appellant was confused about or had forgotten his rights in the span of three short hearings in three days." Richardson v. State, 1D18-4775 (12/30/20)

https://www.1dca.org/content/download/698227/opinion/184775_DC05_12302020_125651_i.pdf

COUNSEL: Defendant is not entitled to a new sentencing hearing on ground that standby counsel was not present at the three-minute hearing,

when the court clarified that he would not be eligible for gain time during the 40-year sentence for attempted second-degree murder. Richardson v. State, 1D18-4775 (12/30/20)

https://www.1dca.org/content/download/698227/opinion/184775_DC05_12302020_125651_i.pdf

SEARCH AND SEIZURE: Stop was justified where multiple seemingly innocent factors provided the deputies with reasonable suspicion, i.e. a convenience store clerk called 911 to report what he believed was a drug deal taking place behind his building at 5:30 in the morning, it was an area known for criminal activity, an SUV was parked by the car wash but no one was washing it and the ground was dry, and the Defendant, with a bulge in his pocket, appeared nervous and seemed to be looking for a way out. Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

SEARCH AND SEIZURE-INVESTIGATIVE STOP: For reasonable suspicion, the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. The whole is often greater than the sum of its parts—especially when the parts are viewed in isolation and the totality-of-the-circumstances test precludes this sort of divide-and-conquer analysis. Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

CONSENSUAL ENCOUNTER: Defendant was seized, and the events were

not a consensual encounter as a matter of Fourth Amendment law at the moment the uniformed deputies confronted him in the car wash stall, with one deputy to Defendant's right, one deputy walking around behind him then standing to his left, a wall behind him , an SUV in front of him, and the deputies immediately asking what was going on and if he had any weapons. No reasonable person would feel free to ignore the deputies' questions or leave. Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

SEARCH AND SEIZURE-DISSENT: "At some point, the investigatory detention exception to the Fourth Amendment becomes no exception at all; that point has arrived in this case." Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

SEARCH AND SEIZURE-DISSENT: No generalized "bulge" exception exists in Fourth Amendment jurisprudence. "As one court has noted, 'most men do not carry purses, they, of necessity, carry innocent personal objects in their pants pockets—wallets, money clips, keys, change, credit cards, cell phones, cigarettes, and the like—objects that, given the immutable law of physics that matter occupies space, will create some sort of bulge.'" Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

QUOTATION-DISSENT: "Gertrude Stein's characterization of the rose does not fit: . . .[W]e reject the notion that a bulge is a bulge is a bulge is a bulge." Calhoun v. State, 1D19-524 (12/30/20)

https://www.1dca.org/content/download/698228/opinion/190524_DC05_12302020_125948_i.pdf

VOP: §948.06(2)(f), limiting punishment for violation of probation, excludes from its applications probationers who have more than one low-risk technical violation (here, failing to report, changing his residence without consent, and failing to successfully complete a rehabilitation program). §948.06(2)(f)1.c. applies only to probationers with a single violation of probation. "The use of the noun 'violation' along with the indefinite article 'a' before the second mention of the word 'violation' requires a reading of 'violation' as a singular noun." Schmidt v. State, 1D20-882 (12/30/20)

https://www.1dca.org/content/download/698232/opinion/200882_DC05_12302020_131218_i.pdf

SPEEDY TRIAL-COVID: COVID-19 suspension of speedy trial applies to the time within which State must file an amended charge, not merely the time to bring a case to trial. Argument that the pandemic affects only the State's ability to hold trial, not its ability to bring charges, is rejected. Smith v. State, 1D20-3181 (12/30/20)

https://www.1dca.org/content/download/698233/opinion/203181_DC02_12302020_131614_i.pdf

SEXUAL BATTERY-CONSENT: The crime of sexual battery does not include a mens rea requirement that the Defendant did not know or should not have known that the victim did not consent to sexual intercourse. Statler v. State, 1D19-264 (12/28/20)

https://www.1dca.org/content/download/697205/opinion/190264_DC05_12282020_133510_i.pdf

GRAND THEFT-VALUE: A receipt showing that a stolen TVs had been purchased for $532.86 and $699.99 the year before Defendant stole them, absent testimony regarding the condition of the items at the time they were stolen, or how much they may have depreciated in value since they were purchased, is insufficient to show that they are worth more than $300. Gallion v. State, 1D19-2717 (12/28/20)

https://www.1dca.org/content/download/697206/opinion/192717_DC08_12282020_133716_i.pdf

DOUBLE JEOPARDY: Mistakingly pleading twice to different terms pursuant to different plea offers does not violate double jeopardy because Defendant was not subject to multiple prosecutions, convictions, or sentences for the same offense. Kelley v. State, 2D18-525 (12/30/20)

https://www.2dca.org/content/download/698204/opinion/180525_DC05_12302020_084653_i.pdf

VOP: Probation is improperly revoked where uncontradicted showed that Defendant was discharged from the drug treatment program was due to an absence caused by his hospitalization following an epileptic seizure. Henry v. State, 2D18-3462 (12/30/20)

https://www.2dca.org/content/download/698205/opinion/183462_DC05_12302020_084911_i.pdf

VOP: Where Court revokes probation on two grounds, one improperly, resentencing is not required when it is obvious that the proper ground for revocation is the reason for the sentence. Henry v. State, 2D18-3462 (12/30/20)

https://www.2dca.org/content/download/698205/opinion/183462_DC05_12302020_084911_i.pdf

RESTITUTION: Court errs by ordering restitution in an amount less than requested by the State while refusing to conduct a restitution hearing. State v. Dixon, 2D20-490 (12/30/20)

https://www.2dca.org/content/download/698210/opinion/200490_DC13_12302020_091641_i.pdf

APPEAL-CERTIORARI-LIFE SENTENCE-MINOR: State may not Court's erroneous granting of sentence review for a minor sentenced to life for murder who is eligible for parole, but may seek review by certiorari. A party seeking review through a petition for writ of certiorari must demonstrate: (1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law.' State v. Michaud, 2D20-1287 (12/30/20)

https://www.2dca.org/content/download/698211/opinion/201287_DC03_12302020_092014_i.pdf

VOP: §948.06(2)(f)1., limiting maximum sentence to 90 days in county jail only when a defendant meets all four conditions of the statute. Rushin v. State, 1D20-268 (12/28/20)

https://www.1dca.org/content/download/697207/opinion/200268_DC05_12282020_133832_i.pdf

LIFE SENTENCE-HOMICIDE-MINOR-JURY FINDINGS: A jury must make the factual finding that he actually killed or intended to kill the victim. Automatically sentencing a juvenile offender to life for a homicide offense is unconstitutional. Error is not harmless where evidence is not conclusive as to whether the Defendant was a mere principal. Green v. State, 3D18-2429 (12/23/20)

https://www.3dca.flcourts.org/content/download/696608/opinion/182429_DC13_12232020_104726_i.pdf

TRESPASS IN CONVEYANCE: Child's statement that he had gotten into a stolen truck driven by another suspect is insufficient to establish that the Child knew the truck was stolen. Where there was no evidence presented as to when the Child entered the vehicle or that he had knowledge that the vehicle was stolen, evidence is legally insufficient. A.O.H. v. State, 3D20-854 (12/23/20)
https://www.3dca.flcourts.org/content/download/696617/opinion/200854_DC13_12232020_110300_i.pdf

VOP: In appeal from order revoking probation, appellate court may not review the validity of a condition originally imposed (banishment from the county of his offense). Appellate review is limited to proceedings occurring after the entry of the probation order. For a defendant to obtain appellate review of the validity of a special condition of probation, the defendant must appeal the probation order that contains it. Wuerzel v. State, 3D20-1348 (12/23/20)
https://www.3dca.flcourts.org/content/download/696621/opinion/2020-1348_Disposition_112598_DA08.pdf

MANDATORY MINIMUM: Court has no authority to hold in abeyance the mandatory minimum for fraudulent use of personal identification information. State v. Barnhart, 1D19-3620 (12/21/20)

https://www.1dca.org/content/download/696311/opinion/193620_DC08_12212020_142602_i.pdf

ACCA-QUALIFYING OFFENSES-SALE OF COCAINE: Pursuant to the ACCA, a defendant convicted under 18 U.S.C. § 922(g) is subject to a mandatory minimum 15-year prison term if he has three prior convictions for a "violent felony" or a "serious drug offense." Three sale of cocaine

convictions qualify as "controlled substance offense[s]" under U.S.S.G. § 4B1.2(b) A prior conviction for sale of cocaine under Fla. Stat. § 893.13 qualifies as a serious drug offense under § 924(e)(2)(A)(ii) of the ACCA. USA v. Smith, No. 19-12686 (11th Cir. 12/21/21)
https://media.ca11.uscourts.gov/opinions/pub/files/201912686.pdf

DEPORTATION-VEHICULAR HOMICIDE: Vehicular homicide in Florida is a crime of moral turpitude, requiring removal for lawful permanent resident alien (Jamaican) who had had another crime of moral turpitude before. Moral turpitude may inhere in criminally reckless conduct which includes when a defendant consciously disregards a substantial risk of serious harm or death to another. The mens rea required to sustain a conviction for vehicular homicide-- recklessness--amounts to more than simple negligence, but less than culpable negligence, which is required to sustain a conviction for manslaughter. Smith v. U.S. Attorney General, No. 19-12622 (11th Cir. 12/18/20
https://media.ca11.uscourts.gov/opinions/pub/files/201912622.pdf

MORAL TURPITUDE: "Moral turpitude" involves an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Smith v. U.S. Attorney General, No. 19-12622 (11th Cir. 12/18/20

https://media.ca11.uscourts.gov/opinions/pub/files/201912622.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not calling an alibi witness. Defendant's response during trial to Judge's question that he agreed with his attorney that he would call no witness does not defeat the claim. Even if his claim of failure to call the alibi witness at trial was refuted by the colloquy on the record, his claim of failure to investigate is not. Morales v. State, 1D19-4016 (12/18/20)

https://www.1dca.org/content/download/695704/opinion/194016_DC08_12182020_133322_i.pdf

POST CONVICTION RELIEF: A court hearing a post conviction motion is not required to accept a movant's self-serving testimony about a matter simply because trial counsel cannot specifically recall the transaction and testifies about a standard practice. Court may disbelieve the defendant's testimony and may consider a trial attorney's general practice as evidence when making a factual finding about specific conversations between the attorney and client. Morales v. State, 1D19-4016 (12/18/20)
https://www.1dca.org/content/download/695704/opinion/194016_DC08_12182020_133322_i.pdf

VOP: When imposing sentence for a violation of probation, a trial court is limited under §948.06(2)(f)1. to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant meets all four conditions of the statute. McClain v. State, 1D19-4590 (12/18/20)

https://www.1dca.org/content/download/695705/opinion/194590_DC05_12182020_133519_i.pdf

VOP: When imposing sentence for a violation of probation, a trial court is limited under §948.06(2)(f)1. to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant meets all four conditions of the statute. Simmons v. State, 1D20-544 (12/18/20)

https://www.1dca.org/content/download/695706/opinion/200544_DC05_12182020_133726_i.pdf

PLEA AGREEMENT-SPECIFIC PERFORMANCE: Where Defendant pled

guilty in Pasco County on condition that his sentence run concurrently with any future sentence in Pinellas County, and he later pled to the pending charge in Pinellas County, Defendant is entitled to a hearing for enforcement of the agreement. A plea bargain is essentially a contract. Defendant is not limited to seeking relief through DOC proceedings. Bailey v. State, 2D20-171 (12/18/20)

https://www.2dca.org/content/download/695643/opinion/200171_DC13_12182020_080458_i.pdf

PROBATION-CONDITIONS: Condition of probation prohibiting alcohol, based on PSI showing that Defendant drank three to six beers at least once a week, notwithstanding that his the information charging him with beating his dog to death did not charge alcohol use, is lawful. Archer v. State, 5D19-3627 (12/18/20)

https://www.5dca.org/content/download/695654/opinion/193627_DC08_12182020_085809_i.pdf

CONDITION OF PROBATION: Defendant convicted of beating his dog to death may be prohibited from living with cats. Archer v. State, 5D19-3627 (12/18/20)

https://www.5dca.org/content/download/695654/opinion/193627_DC08_12182020_085809_i.pdf

PROBATION-CONDITION: A lifetime ban on ownership is unlawful; Court is liited to the length of Defendant's probation. Archer v. State, 5D19-3627 (12/18/20)

https://www.5dca.org/content/download/695654/opinion/193627_DC08_1

2182020_085809_i.pdf

APPEAL-JURISDICTION: Appellate Court lacks jurisdiction to appeal the voluntariness of his plea where Defendant failed to file a motion to withdraw his plea in the trial court. Sanchez v. State, 5D19-3774 (12/18/20)

https://www.5dca.org/content/download/695655/opinion/193774_DA08_12182020_090150_i.pdf

COSTS: Court may not assess costs pursuant to §318.18(11)(b) where Defendant was not charged with a traffic infraction. Vancise v. State, 5D20-86 (12/18/20)

https://www.5dca.org/content/download/695656/opinion/200086_DC05_12182020_090847_i.pdf

SCORESHEET-COULD HAVE/WOULD HAVE BEEN TEST: Where Defendant's case was remanded for resentencing based on the vacation of the convictions in one of the Defendant's cases, with a resulting lower scoresheet, the Defendant is not entitled to re-sentencing based on scoresheet error. In general, when the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to be resentenced using a corrected scoresheet and applied the would-have-been-imposed standard, but the could-have-been imposed standard applies when vacated convictions were in a separate case. "The critical distinction in this case. . . is that [Defendant's] vacated convictions occurred in a separate case and did not become part of the same postconviction record. Thus, there is no error on the face of the record demonstrating an entitlement to resentencing. See Fla. R. Crim. P. 3.800(a)(1)." Joseph v. State, 5D20-1627 (12/18/20)

https://www.5dca.org/content/download/695663/opinion/201627_DC05_12182020_093748_i.pdf

MANSLAUGHTER BY CULPABLE NEGLIGENCE-EVIDENCE: Medical expert may testify that "blows" caused the death of a 19-month old child who suffered blunt head trauma during a 40 minute ride in a car driven by the Defendant, notwithstanding that Defendant was not charged with murder. The standard to be used in all cases where the sufficiency of the evidence is analyzed is whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and the judgment. Mutch III v. State, 1D19-4392 (12/16/20)

https://www.1dca.org/content/download/695331/opinion/194392_DC05_12162020_132100_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a new immunity hearing where his immunity hearing took place before the effective date of the amendment to section 776.032. Drossos v. State, 2D17-280 (12/16/20)

https://www.2dca.org/content/download/695226/opinion/170280_DC05_12162020_080924_i.pdf

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication where Defendant had a prior withholding of adjudication for a felony offense, but not where the Defendant had prior convictions. The question of whether the court is prohibited from withholding adjudication hinges on the number of the defendant's prior withholdings of adjudication, not the defendant's prior charges or convictions. Justice v. State, 2D19-4874 (12/16/20)

https://www.2dca.org/content/download/695242/opinion/194874_DC13_12162020_081622_i.pdf

MOTION TO MITIGATE: Motion to mitigate is untimely if filed more than sixty days after the sentencing but fewer than sixty days from the mandate from his unsuccessful motion for post-conviction release, rather than from a direct appeal following entry of his plea. Walker v. State, 3D20-1562 (12/16/20)

https://www.3dca.flcourts.org/content/download/695296/opinion/201562_DC02_12162020_110644_i.pdf

APPEAL: "We again remind the trial courts, 'that the routine language in its order[s] that the defendant has the right to appeal th[e] denial of a rule 3.800(c) motion is incorrect and should be eliminated. There is no right of appeal of those orders.'" Walker v. State, 3D20-1562 (12/16/20)

https://www.3dca.flcourts.org/content/download/695296/opinion/201562_DC02_12162020_110644_i.pdf

NELSON HEARING: A Nelson hearing is not required at a sentencing hearing where a defendant's complaints about his attorney occurred before sentencing and related to past ineffectiveness. Because Nelson was designed as a prophylactic measure and because the alleged ineffectiveness did not arise from defense counsel's current representation, Defendant's statements at sentencing were untimely and warranted neither a Nelson inquiry nor a full hearing. Holland v. State, 4D19-1365 (12/16/20)

https://www.4dca.org/content/download/695261/opinion/191365_DC05_12162020_095603_i.pdf

BENCH CONFERENCE: Defendant is not entitled to be present at a bench conference dealing with purely legal matters, including whether defense counsel should be allowed to allow the Defendant to testify by pure narrative rather than by specific questions. Sanders v. State, 4D19-1974 (12/16/20)

https://www.4dca.org/content/download/695262/opinion/191974_DC05_12162020_095817_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a new SYG hearing because his renewed motion to dismiss was pending after the effective date of the statutory burden of proof. Hart v. State, 4D19-2483 (12/16/20)

https://www.4dca.org/content/download/695263/opinion/192483_DC05_12162020_100033_i.pdf

STAND YOUR GROUND: Although the trial court erroneously placed the burden on the defendant in the SYG hearing, the fact that the jury found the Defendant guilty beyond all reasonable doubt, conclusively defeats any self-defense claim. Conflict certified. Hart v. State, 4D19-2483 (12/16/20)

https://www.4dca.org/content/download/695263/opinion/192483_DC05_12162020_100033_i.pdf

SPOLIATION OF EVIDENCE: Officer did not cause spoliation of evidence depriving Defendant of a fair trial by mishandled the gun by using the same pair of gloves to handle both the exterior of the gun and the magazine and bullets, allowing the State to claim that this transferred the victim's DNA from the outside of the gun to the inside, providing an explanation for the presence of the victim's DNA on the magazine and bullet, which would

somehow be exculpatory (Defendant's argument was that he killed his wife with a sledgehammer after she first attacked him with the gun and then a kitchen knife. Lopez Barrios v. State, 4D19-2569 (12/16/20)

https://www.4dca.org/content/download/695264/opinion/192569_DC05_12162020_100211_i.pdf

WITHHOLD OF ADJUDICATION: No adjudication of guilt shall be withheld for a third degree felony offense if the defendant two or more prior withholdings of adjudication for a felony that did not arise from the same transaction as the current felony offense. If Defendant had two withholds from one previous case, he is not eligible for a third. In sum, the statute prescribes a limit of two withholds in the aggregate unless those withholds are a part of the first and only transaction. State v. Charlton, 4D20-276 (12/16/20)

https://www.4dca.org/content/download/695269/opinion/200276_DC13_12162020_101638_i.pdf

TEXTUALISM: "Though we might loathe a formulation which limits our ability to judge and reward the desire for rehabilitation in those who have regrettably committed crimes, our lodestar is the text enacted by the Florida Legislature, and our true task is to interpret such text, not to find it wanting, but to make it clear." State v. Charlton, 4D20-276 (12/16/20)

https://www.4dca.org/content/download/695269/opinion/200276_DC13_12162020_101638_i.pdf

HABEAS CORPUS-AEDPA: The Antiterrorism and Effective Death Penalty Act (AEDPA) restricts the power of federal courts to grant writs of habeas corpus based on claims that were adjudicated on the merits by a

state court. A prisoner must show far more than that the state court's decision was merely wrong or even clear error. The prisoner must show that the state court's decision is so obviously wrong that its error lies beyond any possibility for fairminded disagreement. Where Defendant claimed that trial counsel was ineffective for failing to investigate mitigating circumstances for death penalty phase (Defendant had been highly uncooperative) and trial counsel after a post-conviction hearing found that counsel was neither ineffective nor would additional mitigating evidence have influenced the sentencing decision, the Court's decision was not contrary to, nor involved an unreasonable application of, clearly established Federal law. Shinn v. Kayer, No. 19–1302 (U.S. S.Ct. 12/14/20)

https://www.supremecourt.gov/opinions/20pdf/19-1302_8nj9.pdf

RESTITUTION-JUVENILE: Court may not order restitution on juvenile without making findings concerning what Child or her parent or guardian could reasonably be expected to pay. A.C. v. State, 2D18-1643 (12/11/20) https://www.2dca.org/content/download/694163/opinion/181643_DC13_12112020_090210_i.pdf

COSTS: Court may not impose defender fee on juvenile without giving her notice of her right to contest this fee when imposing it at the disposition hearing. Conflict certified. A.C. v. State, 2D18-1643 (12/11/20)

https://www.2dca.org/content/download/694163/opinion/181643_DC13_12112020_090210_i.pdf

VOP-NO CONTACT: Flying a drone and using it to take pictures of Victims's home violates no contact condition of probation. Parker v. State, 2D19-2013 (12/11/20)

https://www.2dca.org/content/download/694175/opinion/192013_DC05_12112020_091159_i.pdf

VOP-SEARCH AND SEIZURE: Probation officer's warrantless search of cell phone is lawful. A probationer has a diminished privacy interest. Parker v. State, 2D19-2013 (12/11/20)

https://www.2dca.org/content/download/694175/opinion/192013_DC05_12112020_091159_i.pdf

VOP: Stopping for three-and-a-half minutes in the parking lot of a strip mall near a small private elementary school does not constitute a violation of probation condition that Defendant not visit a school. Further, "Condition 32 does not prohibit a probationer from knowingly being in the vicinity of a school or even being in a location from which the probationer can see children while they are attending school (or are in a park or a playground). . .there was no outside area (such as a playground) adjacent to the school where children might go. There was simply nothing to look at there." Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

DEFINITION-"VISITING": "Visiting" is commonly defined as "to go to see or spend time with (someone); call on socially." Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

HEARSAY: GPS tracking data and the probation officer's testimony about it is inadmissible hearsay, but the argument was not preserved. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

VOP: Probation may not be revoked based on a violation of a condition that is ambiguous or vague. Any ambiguity in a condition imposed at sentencing will affect the state's ability at a later date to establish a willful violation of that condition. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

PROBATION-CONDITION-DRIVING LOG: Defendant with diminished cognitive capacity is not in violation for failing to completely fill out driving log. It is not necessary to have Defendant declared mentally incompetent to proceed in order to support defense of lack of willfulness due to cognitive deficits. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

RETURN OF PROPERTY-JURISDICTION: Once petition for injunction has been dismissed, Court has no lawful authority to decide any further substantive matters. Court had no authority to order person who sought return of guns seized ex parte pursuant to a petition for protection against stalking, later dismissed, to appear for a hearing on his motion. "All of which

leads us to the inescapable deduction that the court was ordering this evidentiary hearing not to facilitate the return of Mr. Wolfe's seized firearms, but to decide whether there was some independent reason Mr. Wolfe's firearms ought not to be returned to him. That was not a decision the circuit court could make." Wolfe v. Newton, 2D20-1994 (12/11/20)

https://www.2dca.org/content/download/694207/opinion/201994_DC03_12112020_092315_i.pdf

INJUNCTION-STALKING: Court lacks legal authority to require Respondent to a petition for injunction against stalking to surrender firearms on an ex parte basis, but only upon a final stalking injunction. Wolfe v. Newton, 2D20-1994 (12/11/20)

https://www.2dca.org/content/download/694207/opinion/201994_DC03_12112020_092315_i.pdf

JURY INSTRUCTION-EXCUSABLE/JUSTIFIABLE HOMICIDE: Excusable/justifiable homicide instruction does not describe and element of the offense, but is instead in the nature of a defense for purposes of an attempted second degree murder charge. Failure to give the instruction is not fundamental error, notwithstanding that the Defendant's defense–shooting was accidental–fits the omitted instruction. Mohammed v. State, 5D19-1341 (12/11/20)

https://www.5dca.org/content/download/694131/opinion/191341_DC05_12112020_083645_i.pdf

LIFE FELONY: Fifty-year prison sentence for attempted first-degree murder with a firearm is illegal, even if Defendant agreed to it as part of her plea

because it exceeds the statutory maximum for a life felony. Due to a statutory anomaly, a person convicted of a life felony on or after October 1, 1983, but before July 1, 1995, was punishable "by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years," even though a defendant convicted of a first-degree felony punishable by life could receive a sentence exceeding forty years. Grosvenor v. State, 5D20-1913 (12/11/20)

https://www.5dca.org/content/download/694134/opinion/201013_DC13_12112020_085932_i.pdf

LIMITATION OF ACTIONS: A prosecution for a rape (US Code of Military Justice), as a crime punishable by death, may be commenced at any time, notwithstanding that the death penalty for rape is unconstitutional. "Punishable by death" is a term of art. USA v. Briggs, No. 19–108 (11th Cir. 12/10/20)

https://www.supremecourt.gov/opinions/20pdf/19-108_8njq.pdf

ARMED CAREER CRIMINAL ACT: In order to mount a successful collateral attack on his sentence, Defendant must prove (1) that the sentencing court relied solely on the ACCA's residual clause to apply the ACCA enhancement to his sentence, and (2) that absent the residual clause, his sentence cannot stand. It is not enough to establish that the district court could have relied on either the residual clause or another clause; rather, the movant must show that the district court relied only on the residual clause. Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

ACCA-BATTERY: Simple battery in Florida does not categorically qualify under the elements clause of ACCA as a "crime of violence" because it can be accomplished by mere touching. Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

BATTERY: Court declines to decide whether battery in Florida is divisible two ways (touch or strike/cause bodily harm) or three ways (touch/strike/cause bodily harm). Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

DOUBLE JEOPARDY: Because the same-elements test controls whether dual convictions violate the prohibition against double jeopardy, dual convictions for driving under the influence causing serious bodily injury and driving with license suspended causing serious bodily injury are not prohibited. Dual convictions for DUI with serious injury and DWLS with serious injury are not prohibited under the Blockburger same-elements test or any statutory exceptions. Dual convictions for these offenses do not violate the constitutional prohibition against double jeopardy. State v. Marsh, SC18-1108 (12/10/20)

https://www.floridasupremecourt.org/content/download/693891/opinion/sc18-1108.pdf

SINGLE HOMICIDE RULE: The single homicide rule is no longer applicable under Florida law. The Single Homicide Rule does not preclude separate convictions of vehicular homicide and fleeing and eluding causing serious

injury or death that involve the same victim. State v. Maisonet-Maldonado, SC19-1947 (12/10/20)

https://www.floridasupremecourt.org/content/download/693892/opinion/sc19-1947.pdf

STARE DECISIS: "We conclude that section 775.021 supersedes our decisions establishing the single homicide rule and that our decision holding otherwise. . .was wrongly decided." State v. Maisonet-Maldonado, SC19-1947 (12/10/20)

https://www.floridasupremecourt.org/content/download/693892/opinion/sc19-1947.pdf

EVIDENCE-STATE OF MIND: Witness who overheard Defendant and victim of sexual discussing "having intercourse and oral" in a phone conversation is not admissible to the victim's state of mind at the time of the relevant sexual encounter. Holloway v. State, 1D19-2865 (12/10/20)

https://www.1dca.org/content/download/693967/opinion/192865_DC05_12102020_140317_i.pdf

SOVEREIGN CITIZEN: Defendant's sovereign citizen argument, that he had trademarked and incorporated his name, thereby separating himself from the "the living breathing human being" being prosecuted and thus depriving the court of personal jurisdiction over him, has no basis in the law, and parties that make it are in danger of court sanctions. Barber v. Bay County Sheriff, 1D19-3952 (12/10/20)

https://www.1dca.org/content/download/693968/opinion/193952_DC05_12102020_140903_i.pdf

FIRST STEP ACT: A federal drug crime involving both crack cocaine and another controlled substance (here, powder cocaine) can be a "covered offense" as that term is defined in the First Step Act, authorizing a sentence reduction. Where Defendant, convicted of offenses involving more than 1.5 kilograms of crack cocaine or 150 kilograms of powder cocaine, is properly sentenced to 30 years imprisonment. Trafficking in crack is a covered offense and trafficking in powder cocaine is not, but the First Step Act's definition of a "covered offense covers a multidrug conspiracy offense that includes both a crack-cocaine element and another drug-quantity element. USA v. Taylor, No. 19-12872 (11th Cir 12/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201912872.pdf

FIRST STEP ACT-HEARING: The First Step Act does not authorize the district court to conduct a plenary or de novo resentencing, or even require the district court to hold a hearing at all before deciding whether and to what extent to reduce Defendant's sentence. USA v. Taylor, No. 19-12872 (11th Cir 12/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201912872.pdf

DOUBLE JEOPARDY: Question Certified: Given the requirements of §316.062(1), florida statutes, does conviction on multiple counts under §316.027(2) stemming from a single crash involving multiple victims, expose a defendant to multiple punishments for one offense in violation of the Double-Jeopardy protections of the U.S. constitution? Johnson v. State, 1D19-1374 (12/9/20)
https://www.1dca.org/content/download/693791/opinion/191474_NOND_12092020_135802_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a new immunity

hearing on the ground that the Court applied the wrong burden of proof because his immunity hearing occurred before the amended statute's effective date. Martin v. State, 2D16-4468 (12/9/20) https://www.2dca.org/content/download/693709/opinion/164468_DC05_12092020_090623_i.pdf

JURY INSTRUCTION-POSSESSION-FIREARM: Defendant is entitled to a special jury instruction defining the terms actual and constructive possession where the jury was required to find that actual possession of the firearm in order for the mandatory minimum to apply. Christian v. State, 2D19-1227 (12/9/20)

https://www.2dca.org/content/download/693713/opinion/191227_DC08_12092020_090858_i.pdf

EVIDENCE-INAUDIBLE RECORDING: Court may not exclude entire controlled call with the victim on the ground that parts of it are inaudible. Partial inaudibility or unintelligibility is not a ground for excluding a recording if the audible parts are relevant, authenticated, and otherwise properly admissible. State v. Marin, 3D19-2179 (12/9/20) https://www.3dca.flcourts.org/content/download/693729/opinion/192179_DC13_12092020_101803_i.pdf

CREDIT FOR TIME SERVED-VOP: A defendant who, pursuant to a probationary split sentence, serves time in state prison, is released on probation, violates that probation, and is thereafter resentenced to prison, is entitled to credit for the time he previously served in state prison. Court must determine 1) whether defendant is entitled to credit for time previously served in State prison; 2) if so, the number of days defendant served in State prison as part of the incarcerative portion of his probationary split sentence prior to being placed on probation; 3) whether the trial court, at the time of his sentencing following his probation violation hearing, properly directed the Department of Corrections to calculate and credit defendant for time

previously served in State prison; and 4) whether defendant waived his right to any or all of the credit for time previously served in State prison. Brady v. State, 3D20-1431 (12/9/20)
https://www.3dca.flcourts.org/content/download/693755/opinion/201431_DC13_12092020_102610_i.pdf

MINOR-LIFE SENTENCE-RESENTENCING: Court may resentence minor to life in prison with review under §921.1401 for a crime committed in 1977 because Defendant affirmatively requested sentencing under the new review statute. Morgan v. State, 4D18-1866 (12/9/20)

https://www.4dca.org/content/download/693734/opinion/181866_DC05_12092020_095405_i.pdf

ARGUMENT: Prosecutor's immoderate criticism of various appellate rulings is improper but not reversible. Judges are well able to disregard such remarks and adhere to the requirements of law. Morgan v. State, 4D18-1866 (12/9/20)
https://www.4dca.org/content/download/693734/opinion/181866_DC05_12092020_095405_i.pdf

JURY-PEREMPTORY CHALLENGE-PRESERVATION: Conviction affirmed where record leaves the reviewing court unable to conclusively identify the racial make-up of the venire, prior strikes exercised against the racial group of the challenged juror, or whether the reason proffered for the strike—the juror's purported belief that marijuana should be legalized—was equally applicable to unchallenged jurors. The record is inscrutable in part because the two-member defense team talked over one another and the failed to identify how many and which venirepersons shared or opposed the challenged juror's belief in legalization. "In the end, this case serves as a good reminder that the. . .attorneys must always keep a keen eye on and an appreciation for the record that is being made in real time. . .[T]he preparation of a 'clean' and understandable record is essential as it is the

backbone of the appellate process." El v State, 4D19-938 (12/9/20) https://www.4dca.org/content/download/693738/opinion/190938_DC05_12092020_100025_i.pdf

MINOR-HOMICIDE-RESENTENCING: Minor sentenced to three consecutive sentences for murder (Wendy's restaurant robbery and murders) is entitled to a judicial review after 25 years not after 75 years. Hegwood v. State, 4D19-2182 (12/9/20) https://www.4dca.org/content/download/693739/opinion/192182_DC08_12092020_100237_i.pdf

SCORESHEET-PRIOR RECORD: Where Defendant is sentenced under the the habitual felony offender statute, and not the Criminal Punishment Code, any errors in the prior record section of the scoresheet are legally irrelevant and harmless as a matter of law. Garcia v. State, 4D19-2208 (12/9/20) https://www.4dca.org/content/download/693740/opinion/192208_DC05_12092020_100339_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: In Graham/Miller resentencing, Court must consider scoresheet in deciding sentence. Regardless of whether the sentence is being imposed following a trial, entry of a plea, or pursuant to a resentencing proceeding, an accurate scoresheet must be prepared to inform and guide the court in making its sentencing decision. Sentencing a defendant without the consideration of a scoresheet is fundamental error.

SENTENCE REVIEW-MINOR: A juvenile who commits a nonhomicide offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment (here, masked armed robbery with a firearm) is entitled to review after 20 years, not after 25 years. Fain v. State, 4D19-3138 (12/9/20)

https://www.4dca.org/content/download/693744/opinion/193138_DC13_12092020_100934_i.pdf

EXPERT OPINION: Detective satisfied the rigors of Daubert in testifying as to the cell site mapping in this case even without having knowledge of the underlying algorithms, or how the system works in every technical detail. Testimony based on cell phone data mapping programs is admissible. Walker v. State, 4D19-3289 (12/9/20)

https://www.4dca.org/content/download/693745/opinion/193289_DC05_12092020_101032_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Defendant sentenced to life who failed to timely raise jury instruction issues which resulted in the vacation of his co-Defendant's charges fails to show a manifest injustice and is time-barred from relief where Defendant could have raised the issue much earlier. Hollis v. State, 4D20-1864 (12/9/20)

https://www.4dca.org/content/download/693751/opinion/201864_DC02_12092020_101753_i.pdf

RESTITUTION-JUVENILE: Court may not order restitution on juvenile without making findings concerning what Child or her parent or guardian could reasonably be expected to pay. A.C. v. State, 2D18-1643 (12/11/20)

COSTS: Court may not impose defender fee on juvenile without giving her notice of her right to contest this fee when imposing it at the disposition hearing. Conflict certified. A.C. v. State, 2D18-1643 (12/11/20)

https://www.2dca.org/content/download/694163/opinion/181643_DC13_1

2112020_090210_i.pdf

VOP-NO CONTACT: Flying a drone and using it to take pictures of Victims's home violates no contact condition of probation. Parker v. State, 2D19-2013 (12/11/20)

https://www.2dca.org/content/download/694175/opinion/192013_DC05_12112020_091159_i.pdf

VOP-SEARCH AND SEIZURE: Probation officer's warrantless search of cell phone is lawful. A probationer has a diminished privacy interest. Parker v. State, 2D19-2013 (12/11/20)

https://www.2dca.org/content/download/694175/opinion/192013_DC05_12112020_091159_i.pdf

VOP: Stopping for three-and-a-half minutes in the parking lot of a strip mall near a small private elementary school does not constitute a violation of probation condition that Defendant not visit a school. Further, "Condition 32 does not prohibit a probationer from knowingly being in the vicinity of a school or even being in a location from which the probationer can see children while they are attending school (or are in a park or a playground). . .there was no outside area (such as a playground) adjacent to the school where children might go. There was simply nothing to look at there." Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

DEFINITION-"VISITING": "Visiting" is commonly defined as "to go to see or spend time with (someone); call on socially." Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_1

2112020_091342_i.pdf

HEARSAY: GPS tracking data and the probation officer's testimony about it is inadmissible hearsay, but the argument was not preserved. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

VOP: Probation may not be revoked based on a violation of a condition that is ambiguous or vague. Any ambiguity in a condition imposed at sentencing will affect the state's ability at a later date to establish a willful violation of that condition. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

PROBATION-CONDITION-DRIVING LOG: Defendant with diminished cognitive capacity
is not in violation for failing to completely fill out driving log. It is not necessary to have Garcia
declared mentally incompetent to proceed in order to support defense of lack of willfulness due to cognitive deficits. Garcia-Rodriguez v. State, 2D19-2962 (12/11/20)

https://www.2dca.org/content/download/694180/opinion/192969_DC13_12112020_091342_i.pdf

INJUNCTION-DOMESTIC VIOLENCE: Incident of domestic violence over one year ago and ongoing paternity litigation do not warrant an injunction for protection. Merely being involved in court proceedings, even if contentious, is not sufficient to establish a reasonable fear of imminent harm. Incidents remote in time by as little as a year are insufficient to support entry of a new injunction, absent allegations of current violence or imminent danger. Magloire v. Obrenovic, 2D20-145 (12/11/20)

https://www.2dca.org/content/download/694189/opinion/200145_DC13_12112020_091928_i.pdf

INJUNCTION-DOMESTIC VIOLENCE: Paramours who never resided together do not qualify for a domestic violence injunction under §741.28(3). Magloire v. Obrenovic, 2D20-145 (12/11/20)

https://www.2dca.org/content/download/694189/opinion/200145_DC13_12112020_091928_i.pdf

RETURN OF PROPERTY-JURISDICTION: Once petition for injunction has been dismissed, Court has no lawful authority to decide any further substantive matters. Court had no authority to order person who sought return of guns seized ex parte pursuant to a petition for protection against stalking, later dismissed, to appear for a hearing on his motion. "All of which leads us to the inescapable deduction that the court was ordering this evidentiary hearing not to facilitate the return of Mr. Wolfe's seized firearms, but to decide whether there was some independent reason Mr. Wolfe's firearms ought not to be returned to him. That was not a decision the circuit court could make."

INJUNCTION-STALKING: Court lacks legal authority to require Respondent to a petition for injunction against stalking to surrender firearms on an ex parte basis, but only upon a final stalking injunction. Wolfe v. Newton, 2D20-1994 (12/11/20)
https://www.2dca.org/content/download/694207/opinion/201994_DC03_12112020_092315_i.pdf

JURY INSTRUCTION-EXCUSABLE/JUSTIFIABLE HOMICIDE: Excusable/justifiable homicide instruction does not describe and element of the offense, but is instead in the nature of a defense for purposes of an attempted second degree murder charge. Failure to give the instruction is

not fundamental error, notwithstanding that the Defendant's defense–shooting was accidental–fits the omitted instruction. Mohammed v. State, 5D19-1341 (12/11/20)

https://www.5dca.org/content/download/694131/opinion/191341_DC05_12112020_083645_i.pdf

LIFE FELONY: Fifty-year prison sentence for attempted first-degree murder with a firearm is
illegal, even if Defendant agreed to it as part of her plea because it exceeds the statutory maximum for a life felony. Due to a statutory anomaly, a person convicted of a life felony on or after October
1, 1983, but before July 1, 1995, was punishable "by a term of imprisonment for life or by
a term of imprisonment not exceeding 40 years," even though a defendant convicted of a
first-degree felony punishable by life could receive a sentence exceeding forty years. Grosvenor v. State, 5D20-1913 (12/11/20)

https://www.5dca.org/content/download/694134/opinion/201013_DC13_12112020_085932_i.pdf

LIMITATION OF ACTIONS: A prosecution for a rape (US Code of Military Justice), as a crime punishable by death, may be commenced at any time, notwithstanding that the death penalty for rape is unconstitutional. "Punishable by death" is a term of art. USA v. Briggs, No. 19–108 (11th Cir. 12/10/20)

https://www.supremecourt.gov/opinions/20pdf/19-108_8njq.pdf

ARMED CAREER CRIMINAL ACT: In order to mount a successful collateral attack on his sentence, Defendant must prove (1) that the sentencing court relied solely on the ACCA's residual clause to apply the ACCA enhancement to his sentence, and (2) that absent the residual clause, his sentence cannot stand. It is not enough to establish that the district

court could have relied on either the residual clause or another clause; rather, the movant must show that the district court relied only on the residual clause. Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

ACCA-BATTERY: Simple battery in Florida does not categorically qualify under the elements clause of ACCA as a "crime of violence" because it can be accomplished by mere touching. Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

BATTERY: Court declines to decide whether battery in Florida is divisible two ways (touch or strike/cause bodily harm) or three ways (touch/strike/cause bodily harm). Santos v. USA, No. 17-14291 (11th Cir 12/10/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714291.pdf

DOUBLE JEOPARDY: Because the same-elements test controls whether dual convictions violate the prohibition against double jeopardy, dual convictions for driving under the influence causing serious bodily injury and driving with license suspended causing serious bodily injury are not prohibited. Dual convictions for DUI with serious injury and DWLS with serious injury are not prohibited under the Blockburger same-elements test or any statutory exceptions. Dual convictions for these offenses do not violate the constitutional prohibition against double jeopardy. State v. Marsh, SC18-1108 (12/10/20)

https://www.floridasupremecourt.org/content/download/693891/opinion/sc18-1108.pdf

SINGLE HOMICIDE RULE: The single homicide rule is no longer applicable

under Florida law. The Single Homicide Rule does not preclude separate convictions of vehicular homicide and fleeing and eluding causing serious injury or death that involve the same victim.

STARE DECISIS: "We conclude that section 775.021 supersedes our decisions establishing the single homicide rule and that our decision holding otherwise. . .was wrongly decided." State v. Maisonet-Maldonado, SC19-1947 (12/10/20)

https://www.floridasupremecourt.org/content/download/693892/opinion/sc19-1947.pdf

EVIDENCE-STATE OF MIND: Witness who overheard Defendant and victim of sexual discussing "having intercourse and oral" in a phone conversation is not admissible to the victim's state of mind at the time of the relevant sexual encounter. Holloway v. State, 1D19-2865 (12/10/20)

https://www.1dca.org/content/download/693967/opinion/192865_DC05_12102020_140317_i.pdf

SOVEREIGN CITIZEN: Defendant's sovereign citizen argument, that he had trademarked and incorporated his name, thereby separating himself from the "the living breathing human being" being prosecuted and thus depriving the court of personal jurisdiction over him, has no basis in the law, and parties that make it are in danger of court sanctions. Barber v. Bay County Sheriff, 1D19-3952 (12/10/20)

https://www.1dca.org/content/download/693968/opinion/193952_DC05_12102020_140903_i.pdf

TIMESHARING: Court may not give the mother 60% of timesharing, to automatically change to 50/50 when the child enters kindergarten two years later. Courts may not engage in a prospective based analysis' when modifying a time-sharing schedule that attempts to anticipate what the future

best interests of a child will be.

CHILD SUPPORT: A court calculating child support can first deduct from the parent's gross income the amount of court-ordered support actually spent on other children, but may not reduce the father's gross income for hypothetical child support of other children living with him. However, Court had discretion to make any other adjustment that is needed to achieve an equitable result.
Robbins v. Kern, 1D20-1310 (12/10/20)

https://www.1dca.org/content/download/693970/opinion/201310_DC08_12102020_141621_i.pdf

FIRST STEP ACT: A federal drug crime involving both crack cocaine and another controlled substance (here, powder cocaine) can be a "covered offense" as that term is defined in the First Step Act, authorizing a sentence reduction. Where Defendant, convicted of offenses involving more than 1.5 kilograms of crack cocaine or 150 kilograms of powder cocaine, is properly sentenced to 30 years imprisonment. Trafficking in crack is a covered offense and trafficking in powder cocaine is not, but the First Step Act's definition of a "covered offense covers a multidrug conspiracy offense that includes both a crack-cocaine element and another drug-quantity element.
USA v. Taylor, No. 19-12872 (11th Cir 12/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201912872.pdf

FIRST STEP ACT-HEARING: The First Step Act does not authorize the district court to conduct a plenary or de novo resentencing, or even require the district court to hold a hearing at all before deciding whether and to what extent to reduce Defednant's sentence. USA v. Taylor, No. 19-12872 (11th Cir 12/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201912872.pdf

DOUBLE JEOPARDY: Question Certified: Given the requirements of §316.062(1),
florida statutes, does conviction on multiple counts under §316.027(2) stemming from a single crash involving multiple victims, expose a defendant to multiple punishments for one offense in violation of the Double-Jeopardy protections of the U.S. constitution? Johnson v. State, 1D19-1374 (12/9/20)

https://www.1dca.org/content/download/693791/opinion/191474_NOND_12092020_135802_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a new immunity hearing on the ground that the Court applied the wrong burden of proof because his immunity hearing occurred before the amended statute's effective date. Martin v. State, 2D16-4468 (12/9/20)

https://www.2dca.org/content/download/693709/opinion/164468_DC05_12092020_090623_i.pdf

JURY INSTRUCTION-POSSESSION-FIREARM: Defendant is entitled to a special jury instruction defining the terms actual and constructive possession where the jury was required to find that actual possession of the firearm in order for the mandatory minimum to apply. Christian v. State, 2D19-1227 (12/9/20)

https://www.2dca.org/content/download/693713/opinion/191227_DC08_12092020_090858_i.pdf

EVIDENCE-INAUDIBLE RECORDING: Court may not exclude entire controlled call with the victim on the ground that parts of it are inaudible. Partial inaudibility or unintelligibility is
not a ground for excluding a recording if the audible parts are relevant, authenticated, and otherwise properly admissible. State v. Marin, 3D19-2179 (12/9/20)

https://www.3dca.flcourts.org/content/download/693729/opinion/192179_

DC13_12092020_101803_i.pdf

CREDIT FOR TIME SERVED-VOP: A defendant who, pursuant to a probationary split sentence, serves time in state prison, is released on probation, violates that probation, and is thereafter resentenced to prison, is entitled to credit for the time he previously served in state prison. Court must determine 1) whether defendant is entitled to credit for time previously served in State prison; 2) if so, the number of days defendant served in State prison as part of the incarcerative portion of his probationary split sentence prior to being placed on probation; 3) whether the trial court, at the time of his sentencing following his probation violation hearing, properly directed the Department of Corrections to calculate and credit defendant for time previously served in State prison; and 4) whether defendant waived his right to any or all of the credit for time previously served in State prison. Brady v. State, 3D20-1431 (12/9/20)

https://www.3dca.flcourts.org/content/download/693755/opinion/201431_DC13_12092020_102610_i.pdf

MINOR-LIFE SENTENCE-RESENTENCING: Court may resentence minor to life in prison with review under §921.1401 for a crime committed in 1977 because Defendant affirmatively requested sentencing under the new review statute. Morgan v. State, 4D18-1866 (12/9/20)

https://www.4dca.org/content/download/693734/opinion/181866_DC05_12092020_095405_i.pdf

ARGUMENT: Prosecutor's immoderate criticism of various appellate rulings is improper but not reversible. Judges are well able to disregard such remarks and adhere to the requirements of law. Morgan v. State, 4D18-1866 (12/9/20)

https://www.4dca.org/content/download/693734/opinion/181866_DC05_12092020_095405_i.pdf

JURISDICTION: Husband waives any issue of personal jurisdiction by

submitting a MSA for enforcement. Singer v. Singer, 4D19-901 (12/9/20)

https://www.4dca.org/content/download/693737/opinion/190901_DC13_12092020_095931_i.pdf

JURY-PEREMPTORY CHALLENGE-PRESERVATION: Conviction affirmed where record leaves the reviewing court unable to conclusively identify the racial make-up of the venire, prior strikes exercised against the racial group of the challenged juror, or whether the reason proffered for the strike—the juror's purported belief that marijuana should be legalized—was equally applicable to unchallenged jurors. The record is inscrutable in part because the two-member defense team talked over one another and the failed to identify how many and which venirepersons shared or opposed the challenged juror's belief in legalization. "In the end, this case serves as a good reminder that the. . .attorneys must always keep a keen eye on and an appreciation for the record that is being made in real time. . .[T]he preparation of a 'clean' and understandable record is essential as it is the backbone of the appellate process." El v State, 4D19-938 (12/9/20)

https://www.4dca.org/content/download/693738/opinion/190938_DC05_12092020_100025_i.pdf

MINOR-HOMICIDE-RESENTENCING: Minor sentenced to three consecutive sentences for murder (Wendy's restaurant robbery and murders) is entitled to a judicial review after 25 years not after 75 years. Hegwood v. State, 4D19-2182 (12/9/20)

https://www.4dca.org/content/download/693739/opinion/192182_DC08_12092020_100237_i.pdf

SCORESHEET-PRIOR RECORD: Where Defendant is sentenced under the the habitual felony offender statute, and not the Criminal Punishment Code, any errors in the prior record section of the scoresheet are legally irrelevant and harmless as a matter of law. Garcia v. State, 4D19-2208 (12/9/20)

https://www.4dca.org/content/download/693740/opinion/192208_DC05_12092020_100339_i.pdf

EQUITABLE DISTRIBUTION-RE-FINANCING: Court has the authority to order a party to refinance a home and remove the other party from the mortgage, but the final judgment must direct a result if that party is unable, or simply fails, to refinance the home. Failure to include such a directive is reversible error.

PARENTING COORDINATOR: Court may not refer the parties to a parenting coordinator, without the consent of both parties, if there has been a history of domestic violence. Former Husband had history of domestic violence. Court was required to obtain the Former Wife's consent before granting Former Husband's request for a parenting coordinator. Karkhoff v. Robilotta, 4D19-2947 (12/9/20)

https://www.4dca.org/content/download/693743/opinion/192947_DC08_12092020_100822_i.pdf

LIFE INSURANCE: Court may order life insurance to protect an award of alimony, but must make specific evidentiary findings regarding the availability and cost of insurance, the obligor's ability to pay, and the special circumstances that so warrant. Karkhoff v. Robilotta, 4D19-2947 (12/9/20)

https://www.4dca.org/content/download/693743/opinion/192947_DC08_12092020_100822_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: In Graham/Miller resentencing, Court must consider scoresheet in deciding sentence. Regardless of whether the sentence is being imposed following a trial, entry of a plea, or pursuant to a resentencing proceeding, an accurate scoresheet must be prepared to inform and guide the court in making its sentencing decision. Sentencing a defendant without the consideration of a scoresheet is fundamental error. Fain v. State, 4D19-3138 (12/9/20)

https://www.4dca.org/content/download/693744/opinion/193138_DC13_12092020_100934_i.pdf

SENTENCE REVIEW-MINOR: A juvenile who commits a nonhomicide offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment (here, masked armed robbery with a firearm) is entitled to review after 20 years, not after 25 years. Fain v. State, 4D19-3138 (12/9/20)

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EXPERT OPINION: Detective satisfied the rigors of Daubert in testifying as to the cell site mapping in this case even without having knowledge of the underlying algorithms, or how the system works in every technical detail. Testimony based on cell phone data mapping programs is admissible. Walker v. State, 4D19-3289 (12/9/20)

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APPEAL-INEFFECTIVE ASSISTANCE: Defendant sentenced to life who failed to timely raise jury instruction issues which resulted in the vacation of his co-Defendant's charges fails to show a manifest injustice and is time-barred from relief where Defendant could have raised the issue much earlier. Hollis v. State, 4D20-1864 (12/9/20)

https://www.4dca.org/content/download/693751/opinion/201864_DC02_12092020_101753_i.pdf

CORRUPTLY ENDEAVORING TO OBSTRUCT: The IRS's collection activity qualifies as a "particular administrative proceeding" such that Defendant is properly convicted of corruptly endeavoring to obstruct the

administration of the internal revenue laws upon using a fraudulent international bill of exchange to pay off his back taxes. USA v. Graham, 18-15299 (11th Cir. 12/4/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815299.pdf

HEARSAY-PRESERVATION: Any objection to Court's ruling that a witness who had helped Defendant obtain fake international bills of exchange believed that the international bills of exchange were valid forms of payment is inadmissible is not properly preserved. What witness knew and thought had no bearing on Defendant's own intent, particularly given that no evidence was ever offered to show that the witness expressed these thoughts to Defendant. "Had Graham drawn any connection between how Walker's subjective belief impacted him, the result may have been different. But absent that, we cannot say that the district court erred here." USA v. Graham, 18-15299 (11th Cir. 12/4/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815299.pdf

JUDGE: Court's inappropriate comments, demeanor, and conduct, which separately resulted in a public reprimand, were not fundamental error. Francis v. State, 5D18-3587 (12/4/20)

https://www.5dca.org/content/download/692829/opinion/183587_DC05_12042020_081415_i.pdf

APPEAL-SECOND: Following re-sentencing on one count following two other counts being vacated, based on the combined application of the doctrines of law of the case, res judicata, and collateral estoppel bar, Defendant may not re-appeal the underlying conviction, only sentencing errors, if any. Howitt v. State, 5D19-2604 (12/4/20)

https://www.5dca.org/content/download/692830/opinion/192604_DC05_12042020_081644_i.pdf

POST CONVICTION RELIEF-OTHER BAD ACTS: Defendant is entitled to a new trial based on ineffective assistance of counsel for Lewd and Lascivious molestation where the information charged fondling and the State, without objection, admitted a video-recording of the Victim talking about an act of oral sex as well. Botto v. State, 5D19-2790 (12/4/20)

JUDGMENT OF ACQUITTAL-APPEAL: In order to be preserved for further review by a higher court, the grounds for JOA must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation if it is to be considered preserved. Hughley v. State, 5D19-3330 (12/4/20)

CONSTRUCTIVE POSSESSION: Defendant properly found to be in constructive possession of methamphetamine found directly beneath his wallet in a dresser drawer at his girl friend's home where he had been staying, when in a jail call he said he he had thrown out or buried some of her meth in the backyard. An inference of knowledge and dominion and control may arise where the contraband located in jointly occupied premises is found in or about other personal property which is shown to be owned or controlled by the defendant. Shawl v. State, 5D20-619 (12/4/20)

SPEEDY TRIAL: The issue of whether the Court may require Defendant to withdraw his Speedy Trial Demand or having a late-disclosed witness excluded is not preserved without appropriate objection or proffered testimony of the witness. Shawl v. State, 5D20-619 (12/4/20)

PLEA AGREEMENT: Defendant is entitled to an evidentiary hearing on claim that his plea agreement was violated where Defendant admitted

violating his probation in exchange for a ten-year prison sentence with any prior credit accrued, and DOC later forfeited his accrued gain time. Kemp v. State, 5D20-930 (12/4/20)

QUOTATION: "Any writing's persuasive value is inversely proportional to its use of hyperbole and invective." Keohane v. Florida Dep't of Corrections Secretary, No. 18-14096 (12/3/20)

SCORPIONS IN A BOTTLE: While the dissental's spicy rhetoric doesn't enhance its argument—but rather pretty severely diminishes it, to my mind—it does, I fear, corrode the collegiality that has historically characterized this great Court. Here's hoping for better—and more charitable—days ahead." Keohane v. Florida Dep't of Corrections Secretary, No. 18-14096 (12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814096.1.pdf

SCORPIONS IN A BOTTLE: "I am truly sorry that Chief Judge Pryor and Judge Newsom seem to have taken my concerns personally. I do not believe this dissent to be personal. I have great respect for all my colleagues, and I value this Court's collegiality. But I also have great respect for the rule of law and the need for our Court to maintain its legitimacy." Keohane v. Florida Dep't of Corrections Secretary, No. 18-14096 (12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814096.1.pdf

DICTIONARY-DISSENTAL: "For the most part, I'll use the term "dissental" to refer to Judge Rosenbaum's dissent from the denial of rehearing en banc, thereby distinguishing it from Judge Wilson's panel-stage dissent." Keohane v. Florida Dep't of Corrections Secretary, No. 18-14096 (12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814096.1.pdf

GREAT INTRO: "The Postal Service is as old as the United States, and during the past two and-a-half centuries more than a million Americans have honorably served this country through it. Among the more notable ones are Benjamin Franklin who was the first Postmaster General, and Abraham Lincoln who as a young man was postmaster in the village of New Salem, Illinois. Franklin and Lincoln did not betray the trust placed in them. The same cannot be said of Latecia Watkins." USA v. Watkins, No. 18-14336 (11th Cir. 12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.pdf

SEARCH AND SEIZURE--INEVITABLE DISCOVERY: Where officers would have conducted a knock and talk ending in consent, regardless of whether tracking package in the Defendant's home was lawful, entry into the home was lawful. When there is a reasonable probability that the evidence discovered by a violation of the Fourth Amendment would have turned up anyway, the violation is harmless and in that circumstance the public interest in having juries receive all probative evidence of a crime outweighs the need to discourage police misconduct. USA v. Watkins, No. 18-14336 (11th Cir. 12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.pdf

MAGISTRATE: District Judge must accept magistrate's findings of fact in ruling on motion to suppress. District court is no position to substitute its own credibility determinations and findings of fact for those of the magistrate judge. USA v. Watkins, No. 18-14336 (11th Cir. 12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.pdf

QUOTATION: "Certainty is illusory in human affairs. . .Which probably is why the law seldom, if ever, requires certainty." USA v. Watkins, No. 18-14336 (11th Cir. 12/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814336.pdf

VOIR DIRE-HYPOTHETICAL QUESTION: Trial court did not err in barring defense counsel from posing hypothetical question whether the death penalty is always appropriate for premeditated murder abuse of discretion where counsel was afforded other ways to get to the point. Hojan v. State, SC18-2149 (12/3/20)

https://www.floridasupremecourt.org/content/download/692674/opinion/sc18-2149.pdf

APPELLATE RULES-AMENDMENT: In Re: Amendments to Florida Rules of Appellate Procedure 9.120 and 9.210, No. SC19-884 (12-3-20) A notice of cross-review must be served within five days of the service of a timely filed notice to invoke the Court's discretionary jurisdiction and must identify the issue(s) the respondent intends to raise on cross-review. In Re: Amendments to Florida Rules of Appellate Procedure 9.120 and 9.210, SC19-884 (12/3/20)

https://www.floridasupremecourt.org/content/download/692677/opinion/sc19-884.pdf

APPELLATE RULES-AMENDMENT: The type of fonts permitted in documents filed with an appellate court is changed ito either Arial or Bookman Old Style, 14-point font, and space limits are changed from pages to word count. In Re: Amendments to Florida Rules of Appellate Procedure 9.120 and 9.210, SC20-597 (12/3/20)

https://www.floridasupremecourt.org/content/download/692679/opinion/sc20-597.pdf

DEATH PENALTY-EXECUTION: Challenge to the mode of imposition of the death penalty (Petitioner wants a firing squad) may not be raised under 42 U.S.C. §1983. Because Defendant's requested relief would prevent the State from executing him, implying the invalidity of his death sentence, it is not cognizable under §1983 and must be brought in a habeas petition. Nance v. Commissioner, Georgia Department of Corrections, No. 20-11393 (11th Cir. 12/2/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202011393.pdf

SEARCH AND SEIZURE-PROLONGED STOP: Campbell, holding that officer may not prolong traffic stop by asking if Defendant has anything illegal in the car, vacated pending *en banc* review. USA v. Campbell, No. 16-10128 (11th Cir. 12/2/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201610128.1.pdf

POSSESSION OF FIREARM-DOMESTIC VIOLENCE: A Defendant who does not know he is a domestic-violence misdemeanant cannot be guilty of unlawful possession of a firearm for that cause. A person knows he is a domestic-violence misdemeanant, for Rehaif purposes, if he knows: (1) that he was convicted of a misdemeanor crime, (2) that to be convicted of that crime, he must have engaged in at least the slightest offensive touching, and (3) that the victim was a former spouse, parent, or guardian of the victim. USA v. Johnson, No. 19-10915 (11th Cir. 12/2/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201910915.pdf

INDICTMENT: Indictments must contain all the elements of the offense charged. Indictment which failed to allege that he knew he was a domestic-violence misdemeanant when he possessed the firearm is fatally defective and plain error, notithstanding that it tracked the statutory language and did include an allegation that he had been convicted of domestic violence. But no plain error, so conviction stands. USA v. Johnson, No. 19-10915 (11th Cir. 12/2/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201910915.pdf

POSSESSION OF FIREARM-DOMESTIC VIOLENCE MISDEMEANANT: Commerce Clause allows Congress to criminalize the intrastate possession of a firearm because it once traveled in interstate commerce. USA v. Johnson, No. 19-10915 (11th Cir. 12/2/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201910915.pdf

EVIDENCE-BIAS: In sexual battery case, Court improperly excluded the testimony of the Victim's sister/Defendant's girl friend that the victim's false accusation against the Defendant was revenge for the witness having caused the victim's former husband to be deported. Defendant is entitled to introduce evidence intended to prove the victim had a reason to be biased against her sister and, by proxy, against him—in other words, the admission of otherwise extraneous facts suggesting a motive to testify falsely as opposed to the admission of specific acts committed by the witness suggesting that she lacks credibility. "The State's contention that the testimony of the victim's sister would have been too speculative to be admissible is not persuasive. Objective certitude cannot logically be required for a jury to perceive an accuser's potential bias as cause for reasonable doubt." Alvarado v. Contreras, 2D18-2283 (12/2/20)

https://www.2dca.org/content/download/692422/opinion/183383_DC13_12022020_080006_i.pdf

RE-SENTENCING: On appellate remand, the resentencing court may not relying on evidence admitted at the original sentencing hearing to support its finding that Defendant qualifies as an HFO. Once a defendant successfully challenges his sentence on appeal and the cause is remanded for resentencing, the resentencing is a de novo proceeding, at which either side may present evidence anew. Another de novo resentencing hearing is required. Forman v. State, 2D18-4740 (12/2/20)

https://www.2dca.org/content/download/692424/opinion/184740_DC13_12022020_080206_i.pdf

EVIDENCE-AUTHENTICATION: An uncertified Crime and Time Report is not admissible at Habitual Offender sentencing hearing where not authenticated as a business record. Forman v. State, 2D18-4740 (12/2/20)

https://www.2dca.org/content/download/692424/opinion/184740_DC13_12022020_080206_i.pdf

VOP: Probation properly revoked on basis on Defendant returning home 26 minutes after curfew, possibly due to heavy Orlando traffic. Contrary caselaw distinguished. Timke v. State, 2D19-1584 (12/2/20)

https://www.2dca.org/content/download/692425/opinion/191584_DC05_12022020_080504_i.pdf

SENTENCING HEARING: After trial, Court may not sentence the

Defendant without holding a sentencing hearing and considering evidence or argument, but resentencing is not required because the sentence has already been completed, and the issue is moot. York v. State, 2D19-4057 (12/2/20)

https://www.2dca.org/content/download/692421/opinion/194057_DC05_12022020_080926_i.pdf

COSTS: Court may not impose a $100 Public Defender fee absent notification of the right to a hearing to contest that fee, but issue is not preserved unless a motion to correct is filed. Crowder v. State, 2D19-4217 (12/2/20)

https://www.2dca.org/content/download/692427/opinion/194217_DC05_12022020_081144_i.pdf

POST CONVICTION RELIEF-JOA: Counsel was not ineffective for failing to move for Judgment of Acquittal where some evidence supported the charge. Aquino v. State, 3D20-145 (12/2/20)

https://www.3dca.flcourts.org/content/download/692461/opinion/200145_DC05_12022020_104835_i.pdf

POST CONVICTION RELIEF: Summary denial of relief, without granting leave to amend, constitutes an abuse of discretion. Evans v. State, 3D20-1261 (12/2/20)

https://www.3dca.flcourts.org/content/download/692465/opinion/201261_DC13_12022020_105723_i.pdf

PROHIBITION-MOTION TO DISMISS: Non-final orders denying pretrial motions to dismiss on the grounds that the undisputed facts did not establish

a prima facie case of guilt are reviewed, not by way of prohibition, but on direct appeal once the defendant has a final, appealable order. Owens v. State, 3D20-1394 (12/2/20)

https://www.3dca.flcourts.org/content/download/692468/opinion/201394_DA08_12022020_110255_i.pdf

VOP-REMOTE HEARING: In light of the COVID-19 pandemic, the remote conduct of a probation violation hearing by use of audio-video technology does not violate the defendant's rights under the Florida and United States Constitutions. Probation violation hearings are not included within the scope of rule 3.180, which requires physical presence for prosecutions for crime, and the rule is suspended anyways. Clarington v. State, 3D20-1461 (12/2/20)

https://www.3dca.flcourts.org/content/download/692469/opinion/201461_DC02_12022020_110512_i.pdf

HABEAS CORPUS: The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the claims raised in the petition concern issues regarding incarceration, but not when the claims attack the validity of the judgment or sentence. Only the court in which the defendant was convicted and sentenced has jurisdiction to consider collateral attacks on a judgment or sentence, and such an attack must be brought pursuant to Rule 3.800 or 3.850, not by petition for writ of habeas corpus. Britt v. Inch, 3D20-1540 (12/2/20)

https://www.3dca.flcourts.org/content/download/692470/opinion/201540_DC04_12022020_110746_i.pdf

SENTENCING-MINOR: Minor sentenced to a term of 20 years or more for a nonhomicide first-degree felony PBL is entitled to review of the sentence after 20 years. Defendant/Minor is entitled to a judicial review of the 25-year sentences imposed for burglary of a dwelling with assault or battery while armed and masked and robbery with a deadly weapon while masked (first degree PBLs), but not for aggravated battery with a deadly weapon while masked (a first-degree felony punishable by up to thirty years in prison), notwithstanding the anomaly that he gets review on more severe charges. Shivers v. State, 4D19-835 (12/2/20)

https://www.4dca.org/content/download/692441/opinion/190835_DC05_12022020_095222_i.pdf

COSTS: Court may impose a $1,250.00 conflict counsel fee. Escobar v. State, 4D19-1972 (12/2/20)

https://www.4dca.org/content/download/692442/opinion/191972_DC13_12022020_095422_i.pdf

CANNABIS: Defendant may be charged with a felony only if the State can make a prima facie showing that the source of the THC substance in vaping cartridges possessed by the defendant was either artificially produced, cannabis resin, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.
Felony charge properly dismissed. State v. Stevenson, 4D19-3590 (12/2/20)

https://www.4dca.org/content/download/692444/opinion/193590_NOND_12022020_100040_i.pdf

CONTINUANCE-VOP: Court did abuse discretion in denying motion to continue VOP hearing due to desire to hire new counsel where Court found

that the motion was in bad faith or for the purposes of delay, as five continuances has been requested for various reasons and current counsel was prepared. McKenzie v. State, 4D20-453 (12/2/20)

https://www.4dca.org/content/download/692447/opinion/200453_DC05_12022020_100532_i.pdf

POST CONVICTION RELIEF-FAILURE TO SEVER: Counsel was not ineffective for failing to sever multiple counts of selling narcotics on several consecutive days.
Williams v. State, 4D20-578 (12/2/20)

https://www.4dca.org/content/download/692448/opinion/200578_DC05_12022020_100818_i.pdf

DNA: Combined Probability of Inclusion (CPI) to calculate statistical probabilities in complex mixture DNA cases is improper. Where CPI was not used in Defendant's case (DNA paternity test showed he was the father of a child born to an underage mother), he is not entitled to relief from the judgment. Cabellero v. State, 4D20-1954 (12/2/20)

https://www.4dca.org/content/download/692449/opinion/201954_DC02_12022020_102513_i.pdf

MEDICAL RECORDS-SUBPOENA: State may not subpoena medical records after a high speed fatal crash where police reports show no alcohol or drug impairment. Not every reckless driving incident creates a compelling state interest to obtain toxicology records. There must be some reasonable founded suspicion that alcohol or drugs were involved, such as someone smelling alcohol, drug or alcohol containers in the vehicle, or statements or evidence which might suggest drug use or alcohol intoxication. Rodriguez

v. State, 4D20-2010 (12/2/20)

https://www.4dca.org/content/download/692450/opinion/202010_DC03_12022020_101525_i.pdf

COMPUTER ACCESS-CONDITION OF SUPERVISION: Defendant convicted of attempting to persuade a minor to engage in sexual activity may be prohibited from using a computer except for work and with the permission of the district court. Court may impose a computer restriction as a special condition of supervised release, even if the term of supervised release is life. Packingham is distinguishable because it restricted sex offenders even after they had completed their sentences; applied to all registered sex offenders, not only those who had used a computer or some other means of electronic communication to commit their offenses; and is not a complete bar to the exercise of his First Amendment rights because it allows Defendant to obtain court permission to use a computer in connection with employment. USA v. Bobal, No. 19-10678 (11th Cir. 11/30/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201910678.pdf

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JUDGMENT OF ACQUITTAL: Defendant may not argue circumstantial evidence/reasonable hypothesis of innocence argument for JOA on appeal where his argument below was that evidence did not show his active participation in drive by shooting. Also, circumstantial evidence/reasonable hypothesis of innocence line of cases is dead. Ford v. State, 1D18-4628 (11/30/20)

https://www.1dca.org/content/download/691967/opinion/184628_DC05_11302020_140630_i.pdf

FACTUALLY INCONSISTENT VERDICT: Two Defendants can be convicted for the same murder in a drive-by shooting. Factually inconsistent are permitted in Florida. Also, Defendant can be convicted as principal, even though not so charged in the information. A defendant need not be

charged as a principal to support a conviction as a principal. Ford v. State, 1D18-4628 (11/30/20)
https://www.1dca.org/content/download/691967/opinion/184628_DC05_11302020_140630_i.pdf

AND/OR: Although the use of "and/or" between codefendants' names in jury
instructions is error, error is not fundamental and thus not reversible absent objection. Ford v. State, 1D18-4628 (11/30/20)
https://www.1dca.org/content/download/691967/opinion/184628_DC05_11302020_140630_i.pdf

USE IMMUNITY: Defendant's compelled (subpoenaed) testimony entitled him only to use and derivative use immunity, not absolute or equitable immunity from prosecution. State's promise that he would not get in trouble as long as he told the truth did not confer equitable, absolute, or transactional immunity from prosecution. State may proceed with murder prosecution because it showed that it had evidence independently procured implicating Defendant. Palazzi v. State, 1D20-1164 (11/30/20)
https://www.1dca.org/content/download/691972/opinion/201164_DA08_11302020_142149_i.pdf

IMMUNITY: A witness granted transactional immunity may have absolute immunity from prosecution for the matter about which the testimony was elicited, but use immunity is more limited and prevents only the compelled testimony from the witness from being used against the witness in a criminal prosecution. Palazzi v. State, 1D20-1164 (11/30/20)
https://www.1dca.org/content/download/691972/opinion/201164_DA08_11302020_142149_i.pdf

EQUITABLE IMMUNITY: The concept of equitable immunity does not exist in Florida. Palazzi v. State, 1D20-1164 (11/30/20)
https://www.1dca.org/content/download/691972/opinion/201164_DA08_1

1302020_142149_i.pdf

10-20-LIFE-CONSECUTIVE SENTENCES: The 10-20-Life statute permits consecutive sentences at judicial discretion for specified crimes committed in a single criminal episode with either multiple victims or injuries. Defendant may be sentenced consecutively for shooting the victim twice, once in the head and once in the spine. Jordan v. State, 1D20-1895 (11/30/20)
https://www.1dca.org/content/download/691975/opinion/201895_DC05_11302020_143234_i.pdf

ELECTION: "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here." Donald J. Trump for President, Inc. v. Roberts, No. 20-3371 (3rd Cir. 11/27/20)
203371np.pdf (uscourts.gov)

COVID-RELIGION: State executive order which limits church services to 10/25 people in COVID red zones is enjoined pending full appellate review, as it infringes on the free exercise of religion and arbitrarily distinguishes between religious organizations and certain businesses considered essential, such as acupuncturists, liquor stores, bicycle repair shops, and lawyers. Roman Catholic Diocese v. Cuomo, No. 20A87 (U.S. S.Ct. 11/25/20)
https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf

QUOTATION (Gorsuch, concurring): "Government is not free to disregard the First Amendment in times of crisis." Roman Catholic Diocese v. Cuomo, No. 20A87 (U.S. S.Ct. 11/25/20)
https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf

QUOTATION (Gorsuch, concurring): "In far too many places, for far too long, our first freedom has fallen on deaf ears." Roman Catholic Diocese

v. Cuomo, No. 20A87 (U.S. S.Ct. 11/25/20)
https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf

QUOTATION (Gorsuch, concurring); "Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical." Roman Catholic Diocese v. Cuomo, No. 20A87 (U.S. S.Ct. 11/25/20)
https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf

RICO CONSPIRACY: RICO conspiracy does not qualify as a crime of violence under §924(c) (enhancement for use of firearm dui]ring a crime of violence). "So as with a conspiracy to commit Hobbs Act robbery, the elements of a RICO conspiracy focus on the agreement to commit a crime, which does not 'necessitate[] the existence of a threat or attempt to use force.'" USA v. Green, No. 17-10346 (11th Cir. 11/25/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201710346.op2.pdf

SENTENCE-SUBSTANTIVELY UNREASONABLE: 120-year sentence is substantively unreasonable where the top of the recommended guidelines range was 262 months and was based on the Court's erroneous inference, contradicted by cell phone pinging evidence, that the Defendant had participated in a homicide in the course of his RICO crime. USA v. Green, No. 17-10346 (11th Cir. 11/25/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201710346.op2.pdf

SENTENCE-PROCEDURALLY UNREASONABLE: A sentence can be procedurally unreasonable if the district court improperly calculated the guideline range, failed to consider the 18 U.S.C. §3553(a) factors, failed to adequately explain the sentence, or selected a sentence based on clearly erroneous facts. USA v. Green, No. 17-10346 (11th Cir. 11/25/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201710346.op2.pdf

SEARCH AND SEIZURE-ABANDONED PROPERTY: Cell phone seized in an unrelated traffic stop and held for four years is abandoned because Defendant never tried to get the phone returned to him. Because Defendant

abandoned his interest in the phone, there was no Fourth Amendment violation. Acquisition of historical cell-site records is a search under the Fourth Amendment, but evidence obtained in violation of the Fourth Amendment is not always subject to exclusion. The good-faith exception to the exclusionary rule applies. USA v. Green, No. 17-10346 (11th Cir. 11/25/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201710346.op2.pdf

JURORS-PEREMPTORY CHALLENGE: Court properly denied Defendant's attempt to peremptorily strike a juror after the jury was empaneled following the defendants' agreement for one of the attorneys to jointly exercise the challenges for all of them and that attorney had accepted the panel. USA v. Green, No. 17-10346 (11th Cir. 11/25/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201710346.op2.pdf

SEARCH AND SEIZURE-WARRANT-BUSINESS RECORDS: A person lacks a reasonable expectation of privacy in information he has voluntarily disclosed to a third party (the third party doctrine). The third-party doctrine applies, so the government does not need a warrant to obtain a third party's business records (identity, internet protocol address, and E-mail address of child porn distributor who used Kik and Comcast). USA v. Trader, No. 17-15611 (11th Cir. 11/25/20)

SENTENCING-SUBSTANTIVE REASONABLENESS: Life sentence for enticing a minor to engage in sexual activity, along with concurrent sentences of 240 and 360 months producing and distributing child porn (numerous images of Defendant sexually abusing his preteen/toddler daughters and over 100 other victims), where recommended guidelines sentence is life imprisonment, is substantively reasonable. Defendant's family ties and unspecified contributions to the community do not render the sentence unreasonable. Defendant's argument that the child pornography guidelines are excessive compared to those for first-degree murder is an "apples-to-oranges comparison [that] makes no sense." USA v. Trader, No.

17-15611 (11th Cir. 11/25/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715611.pdf

DEATH PENALTY: Defendant who murdered his wife and her friend two hours after his violation of a domestic violence injunction hearing is subject to the death penalty. Colley v. State, SC18-2014 (11/25/20)

https://www.floridasupremecourt.org/content/download/691116/opinion/sc18-2014.pdf

DEATH PENALTY-CCP: Murders of estranged wife and her friend was cold, calculated, and premeditated without any pretense of moral or legal justification applies even if committed under mental and emotional distress arising from a domestic relationship. Colley v. State, SC18-2014 (11/25/20)

https://www.floridasupremecourt.org/content/download/691116/opinion/sc18-2014.pdf

DEATH PENALTY-HAC: Gunshot murders can qualify as heinous, atrocious and cruel where the victim was conscious and aware of impending death. Colley v. State, SC18-2014 (11/25/20)

https://www.floridasupremecourt.org/content/download/691116/opinion/sc18-2014.pdf

DEATH PENALTY: Legislative expansion of grounds for imposition of the death penalty does not render it unconstitutional. Florida's capital felony sentencing statute is not unconstitutional merely because every person who is convicted of first-degree felony murder automatically qualifies for the aggravating circumstance of commission during the course of an enumerated felony. Colley v. State, SC18-2014 (11/25/20)

https://www.floridasupremecourt.org/content/download/691116/opinion/sc18-

2014.pdf

APPEAL-ALL WRITS: A death sentence that was vacated by the postconviction court cannot be retroactively reinstated if the State never appealed the final order granting relief, the resentencing has not yet taken place, and this Court has since receded from the decisional law on which the sentence was vacated (Hurst). State may not prevail on an "all writs" petition when an appeal was not filed. "[T]he State erroneously assumes that a postconviction proceeding is a step in the criminal prosecution and that a resentencing proceeding is a continuation of a postconviction proceeding. Our caselaw says otherwise." Jackson v. State, SC20-257 (11/25/20) https://www.floridasupremecourt.org/content/download/691145/opinion/sc20-257.pdf

ALL WRITS: Art. V, § 3(b)(7) of the Florida Constitution, providing that the Supreme Court may issue all writs necessary to the complete exercise of its jurisdiction, is not a separate source of original or appellate jurisdiction. Jackson v. State, SC20-257 (11/25/20) https://www.floridasupremecourt.org/content/download/691145/opinion/sc20-257.pdf

CHANGE IN LAW: Intervening decisional law cannot be used to reinstate a vacated sentence, even when the change in decisional law invalidates the very ground on which the sentence was vacated. Jackson v. State, SC20-257 (11/25/20) https://www.floridasupremecourt.org/content/download/691145/opinion/sc20-257.pdf

DEATH PENALTY-CHANGE IN LAW: Vacated death sentence may not be reinstated on ground that subsequent case law (Poole) took away the legal basis for the vacatur of that sentence and because the sentence would have been constitutional under the correct rule later announced. "What matters is the finality of our judgment vacating Okafor's death sentence. . .[T]hat judgment became final when our mandate issued, and we have no authority

to revisit that judgment now." State v. Okafor, SC20-323 (11/25/20)

https://www.floridasupremecourt.org/content/download/691159/opinion/sc20-323.pdf

PRINCIPAL: Defendant cannot be found guilty as a principal to the murder of her husband when she conspired with her boyfriend to drown him in a lake while fishing but was not present when the botched drowning that turned into a shooting took place. Conspiracy conviction, unlike her husband, survived. The key components of a second-degree principal are presence and contemporaneity. Accessory and principal distinguished. Consideration of ways to kill Victim, development of an alibi, and agreeing to encourage Victim to go hunting with the killer do not constitute commanding or impelling the killer to commit the murder or assisting at the time the killing happened. Williams v. State, 1D19-498 (11/25/20)

https://www.1dca.org/content/download/691238/opinion/190498_DC08_11252020_133102_i.pdf

ELECTION BETWEEN CHARGES: State is not required to choose between mutually exclusive counts of the indictment (principal to first-degree murder or accessory after the fact to first-degree murder) It is error to deny a timely motion to require the State to elect between two counts generally, but "we have found no cases applying this rule to cases involving murder and accessory after the fact or, for that matter, to any non-theft-related crimes." Error, if any, would be harmless where Defendant was only convicted of the former. Williams v. State, 1D19-498 (11/25/20)
https://www.1dca.org/content/download/691238/opinion/190498_DC08_11252020_133102_i.pdf

HABEAS PETITION-REPRESENTED APPELLANT: A habeas petition will be dismissed as unauthorized when it is clear that the petitioner is represented by counsel in the proceeding below and is not seeking to discharge counsel in that proceeding. Wainwright v. State, 1D20-1119

(11/25/20)
https://www.1dca.org/content/download/691241/opinion/201119_DA08_11252020_133922_i.pdf

JUROR: Court erred in failing to remove a juror during the trial, after that juror belatedly disclosed his relationship with one of the victims (a "good friend," "[w]e talk, like when I see him we talk a lot. We joke around. We're more than just a little bit of friends but we're not like real close friends." New trial required."Defendant's failure to move for a mistrial does not preclude him from seeking review of the trial court's refusal to remove the alternate juror. Feagin v. State, 2D18-3002 (11/25/20)

https://www.2dca.org/content/download/691108/opinion/183002_DC08_11252020_083837_i.pdf

WITNESS-INVOKING FIFTH AMENDMENT: It is improper for the State to call a witness who is closely identified with the defendant (here, his mother), to testify before the jury when the State knows that the witness will invoke her Fifth Amendment right against self-incrimination and refuse to testify. State's argument that witness had no legitimate right to invoke the Fifth Amendment because she had no reasonable apprehension that she would incriminate herself misses the mark. Whether or not the witness properly invoked her Fifth Amendment right does not control whether the trial court errs in requiring the witness to invoke that right in front of the jury. "State had to know that forcing the mother to invoke her Fifth Amendment right in front of the jury would lead the jury to the inescapable conclusion that she had evidence that incriminated her son. . .Thus, the State was able to 'incriminate' the defendant. . .not with evidence, but with inferences drawn from a refusal to provide evidence." Ashley v. State, 3D19-628 (11/25/20)
https://www.3dca.flcourts.org/content/download/691103/opinion/190628_DC13_11252020_103545_i.pdf

CONTEMPT: Court erred in holding witness who refused to testify in direct criminal contempt; the proper procedure is one for direct civil contempt.

Ashley v. State, 3D19-628 (11/25/20)
https://www.3dca.flcourts.org/content/download/691103/opinion/190628_DC13_11252020_103545_i.pdf

JUDGE-DISQUALIFICATION: Judge's questioning of mental health experts during competency hearing does not constitute a departure from its neutral position. Trial judges are permitted to question expert witnesses in competency proceedings. Bodden v. State, 3D20-1139 (11/25/20)
https://www.3dca.flcourts.org/content/download/691162/opinion/201139_DC02_11252020_105238_i.pdf

MOTION TO MITIGATE: Motion to mitigate must be filed within 60 days. Time limit is jurisdictional. Kirkconnell v. State, 3D20-1356 (11/25/20)
https://www.3dca.flcourts.org/content/download/691168/opinion/201356_DC02_11252020_105900_i.pdf

JURY INSTRUCTION: Failure to give a heat of passion jury instruction in attempted second degree murder case is not fundamental error. Jackson v. State, 4D19-3241 (11/25/20)

https://www.4dca.org/content/download/691183/opinion/193241_NOND_11252020_094524_i.pdf

JURY INSTRUCTION-HEALTH CARE FRAUD: Statute prohibiting kickbacks for pushing prescriptions does not require proof of the defendant's motivation for accepting the payment. Neither the instruction given (that Defendant/Doctor violated the statute prohibiting kickbacks for pushing expensive and unnecessary compound prescriptions if *one* reason he accepted the kickbacks was in return for writing the prescriptions, nor Defendant's proposed instruction (the government was required to prove that his *main or only reason* for accepting the payment was in return for writing prescriptions) is correct. Error is harmless. USA v. Shah, No. 19-12319 (11th Cir. 11/24/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201912319.pdf

GRAMMAR: The words "in return for" are an adjectival prepositional phrase. USA v. Shah, No. 19-12319 (11th Cir. 11/24/20) https://media.ca11.uscourts.gov/opinions/pub/files/201912319.pdf

SEARCH AND SEIZURE: Intercepted drug shipments mailed to Defendant's home establish probable cause for warrant to look for records of drug dealing. USA v. Delgado, No. 19-11997 (11th Cir. 11/23/20) https://media.ca11.uscourts.gov/opinions/pub/files/201911997.pdf

SENTENCING-RELEVANT CONDUCT: Defendant who received two drug packages, one of which was charged in the indictment, is responsible for the combined weight in both packages as relevant conduct in calculating the guidelines. Since the district court did not convict Defendant of importing the analogue substance in the first package but only considered the package's contents during sentencing, the Government need not prove that Defendant knew that the substance was illegal. USA v. Delgado, No. 19-11997 (11th Cir. 11/23/20) https://media.ca11.uscourts.gov/opinions/pub/files/201911997.pdf

FIREARM ENHANCEMENT: Where Defendant imported narcotics, and firearms and silencers are recovered from his home, the §2D1.1(b)(1) enhancement applies, notwithstanding Defendant's argument that he is a gun collector. Defendant is subject to enhancement and ineligible for safety valve. USA v. Delgado, No. 19-11997 (11th Cir. 11/23/20) https://media.ca11.uscourts.gov/opinions/pub/files/201911997.pdf

REMOVAL: Defendant convicted of attempted alien smuggling (a misdemeanor) is subject to removal because the offense is an aggravated felony, notwithstanding that is it a misdemeanor. As of January 12, 2017, Cuban nationals are subject to removal. Gonzalez v. USA, No. 19-11182 (11th Cir. 11/20/20) https://media.ca11.uscourts.gov/opinions/pub/files/201911182.pdf

REMOVAL: Defendant who claims that counsel was ineffective for

misadvising him that he was not subject to deportation must raise the claim promptly after the possibility of immigration consequences became imminent, or at least when he learns he had been misadvised, not when removal proceedings begin. A defendant seeking to avoid the collateral consequences of a conviction cannot postpone seeking relief until it appears that a collateral consequence is imminent. The fact that the policy change to remove Cubans did not take place until January 2017 does not justify the delay. Gonzalez v. USA, No. 19-11182 (11th Cir. 11/20/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201911182.pdf

WRIT OF ERROR CORAM NOBIS: The writ of error coram nobis is an extraordinary remedy of last resort available only in compelling circumstances where necessary to achieve justice. The writ makes relief available to a petitioner who has served his sentence and is no longer in custody. To obtain coram nobis relief, a petitioner must present sound reasons for failing to seek relief earlier. A coram nobis petitioner need not challenge his conviction at the earliest opportunity, but he must have sound reasons for not doing so. Gonzalez v. USA, No. 19-11182 (11th Cir. 11/20/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201911182.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may use its discretion to deny a downward departure from the sentencing guideline due to the need for under §21.0026(2)(d) (specialized treatment for a mental disorder and/or unsophisticated manner/isolated incident/remorse). A Defendant may appeal an order denying a motion for a downward departure sentence, including sentences that are unlawful but not completely illegal. Wilson v. State, 1D19-2363 (11/20/20)
https://www.1dca.org/content/download/690275/opinion/192363_DA08_11202020_142958_i.pdf

DOWNWARD DEPARTURE: First, the trial court must determine whether there is a valid, statutory, legal ground to depart, and whether the defendant has proven that ground by a preponderance of the evidence. If so, the court

must then make a discretionary decision under the totality of circumstances on whether it should depart. Wilson v. State, 1D19-2363 (11/20/20) https://www.1dca.org/content/download/690275/opinion/192363_DA08_11202020_142958_i.pdf

APPEAL: Appellate review for orders denying downward departure sentences is not available where Court understood it had discretion. Conflict certified with Second, Fourth, and Fifth District Courts. Wilson v. State, 1D19-2363 (11/20/20) https://www.1dca.org/content/download/690275/opinion/192363_DA08_11202020_142958_i.pdf

SENTENCE REDUCTION: Court erred reducing the sentence imposed on Defendant after viciously attacking the victim in his home after the victim had misled the Defendant on Tinder that he was a woman and the Court concluded that the Victim thereby provoked the attack. The grounds were neither legally valid nor supported by competent substantial evidence. The victim was entirely peaceful and engaged in no aggressive or willful acts whatsoever. Rush v. State, 1D19-3577 (11/20/20) https://www.1dca.org/content/download/690278/opinion/193577_DC13_11202020_143700_i.pdf

SEARCH WARRANT: Where it is a magistrate who is first presented with an affidavit requesting the issuance of a search warrant, the magistrate's duty is to examine solely the "four corners" of the affidavit—and, from there, simply to make a practical, common sense decision whether, given all the circumstances before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Affidavits for search warrants are not to be scrutinized for technical niceties. Once a magistrate specifically finds probable cause and thereafter issues a search warrant, that finding is accorded a presumption of correctness and is not to be disturbed by the later-reviewing trial court absent a clear determination that the issuing magistrate abused his or her discretion. The trial court does not conduct a

de novo review. Court misapplied the law by not giving the requisite great deference to each magistrate's original finding of probable cause. State v. Hart, 5D19-3390 (11/20/20)
https://www.5dca.org/content/download/690102/opinion/193390_DC13_11202020_080714_i.pdf

APPEAL-HABEAS CORPUS: Defendant is not entitled to appeal by habeas corpus where he was convicted by a plea to sexual battery involving a defendant over the age of eighteen, although he was clearly under the age of eighteen at the time of the offense. Defendant must raise the issue under R. 3.850. Collito v. State, 5D20-1766 (11/20/20)
https://www.5dca.org/content/download/690104/opinion/201766_DC02_11202020_081054_i.pdf

PSR-DRUG QUANTITY: Defendant may be held responsibility for quantities of drugs based on hearsay by a co-defendant which the court deems reliable. Hearsay evidence can support a sentencing decision provided that the information has sufficient indicia of reliability to support its probable accuracy. USA v. Johnson, No. 17-15259 (11th Cir. 11/19/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715259.pdf

OBSTRUCTION: Defendant who said, "When I get discovery and find out who snitched on me, I'm going to bash their heads in," transmitted discovery in violation of the court's order and threatened a co-defendant supports a finding of obstruction. The fact that his threat was not communicated directly to its target is not dispositive. USA v. Johnson, No. 17-15259 (11th Cir. 11/19/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715259.pdf

ACCEPTANCE OF RESPONSIBILITY: Defendant who gets a two-level enhancement for obstruction of justice may be denied a third level reduction for acceptance of responsibility despite having pled guilty, or at least failure to award it is not plain error. History of acceptance of responsibility sentence reduction discussed. The Government may decline to make a §3E1.1(b) motion based on any interest identified in §3E1.1, regardless of whether that interest is identified. USA v. Johnson, No. 17-15259 (11th Cir. 11/19/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715259.pdf

SUBSTANTIVELY UNREASONABLE SENTENCE: Sentence of 51-months is not substantively unreasonable when near the bottom of the recommended range, notwithstanding being harsher than those of co-defendants with dissimilar circumstances. USA v. Johnson, No. 17-15259 (11th Cir. 11/19/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715259.pdf

DEATH PENALTY-PROPORTIONALITY REVIEW: Comparative proportionality of death sentences no longer exists because it is contrary to the conformity clause of the Florida Constitution. Craft v. State, No. SC19-953 (FLA 11/19/20)

https://www.floridasupremecourt.org/content/download/689525/opinion/sc19-953.pdf

DEATH PENALTY-MITIGATION: The fact that the Court failed to consider in mitigation that the Defendant had saved a fellow inmate's life does not create a reasonable possibility that sentence would not still be imposed.

Craft v. State, No. SC19-953 (FLA 11/19/20)

https://www.floridasupremecourt.org/content/download/689525/opinion/sc19-953.pdf

HEARSAY: Court properly excluded the third-party confession to the murder by a now deceased suspect under the statement against penal interest exception to the hearsay rule because there was no evidence to corroborated it nor its trustworthiness. Nor does Chambers v. Mississippi warrants its admission because the supposed confession was made in private and more than a month after the murder. Smith v. State, 1D 19-2817 (11/18/20)

https://www.1dca.org/content/download/689347/opinion/192817_DC05_11182020_135841_i.pdf

LIFE SENTENCE-HOMICIDE-JUVENILE: Where Court stated on the record that it reviewed and considered §921.1401(2)'s factors, the appellate court will take the court at its word on this point, notwithstanding that it failed to articulate all the factors. Smith v. State, 1D 19-2817 (11/18/20)

https://www.1dca.org/content/download/689347/opinion/192817_DC05_11182020_135841_i.pdf

ARGUMENT: "Well, the defendant cannot run today, and he cannot hide today from what he did. . . That cloak of innocence that he came in here wearing piece by piece, rip by rip has been ripped away from him," is not improper where, at least as here, where the prosecutor linked the comment

to specific evidence. Smith v. State, 1D 19-2817 (11/18/20)

https://www.1dca.org/content/download/689347/opinion/192817_DC05_11182020_135841_i.pdf

BAIL: Court properly denied bail to a Defendant charged with second-degree murder with a weapon upon finding that the proof of guilt is evident or the presumption is great, i.e. the evidence is manifest, plain, clear, obvious, and conclusive, based on the arrest report affidavit in the recording of the killing. Williamson v. State, 1D20-2849 (11/18/20)

https://www.1dca.org/content/download/689352/opinion/202849_NOND_11182020_142115_i.pdf

SPEEDY TRIAL: Where Defendant is arrested on an out of county warrant, held there until his local VOP was resolved, then brought to the county of the substantive offence, all without an information having been filed, Defendant is entitled to discharge without the necessity of filing a Notice of Expiration. State is not entitled to recapture period. The speedy trial time begins to run when an accused is taken into custody and continues to run even if the State does not act until after the expiration of that speedy trial period. The State may not file charges based on the same conduct after the speedy trial period has expired. and is not entitled to any recapture period. Ortiz-Lopez v. State, 2D18-4910 (11/18/20)

https://www.2dca.org/content/download/689282/opinion/184910_DC13_11182020_084512_i.pdf

SPECIAL CONDITION OF PROBATION-ORAL PRONOUNCEMENT: Court erred in imposing a special condition of probation requiring him to pay for urinalysis testing with the condition was not orally pronounced. Imposed

a special probation condition requiring him to pay for urinalysis testing. Metellus v. State, 4D19-1107 (11/18/20)

https://www.4dca.org/content/download/689259/opinion/191107_DC08_11182020_101325_i.pdf

VOP: Court improperly found Defendant to have violated probation for committing criminal mischief where Victim did not discover that her vase had been broken until after the Defendant chased her into the house and beat her with a door stopper. Malice cnnot be inferred. The doctrine of transferred intent cannot support a conviction for criminal mischief. Maximum sentence based on the other offenses is lawful. Quinn v. State, 4D19-2006 (11/18/20)

https://www.4dca.org/content/download/689260/opinion/192006_DC08_11182020_101503_i.pdf

PRISON RELEASEE REOFFENDER: PRR sentences may be run consecutively or concurrently. Moore v. State, 4D19-2941 (11/18/20)

https://www.4dca.org/content/download/689265/opinion/192941_DC05_11182020_102047_i.pdf

ARGUMENT: "[Defense counsel] told [you] that the State had to prove that the defendant intentionally committed this act. I would say to you that that is a deliberate misstatement of the law. . .Intent is not an element of this crime." Although sexual battery is not a specific intent crime, it is a general intent crime. Thus, the state's rebuttal argument that "[i]ntent is not an element of this crime" was a misstatement of the law. Defendant is entitled to a hearing on claim that defense counsel was ineffective for failing to object. Olenchak v. State, 4D19-3007 (11/18/20)

https://www.4dca.org/content/download/689268/opinion/193007_DC08_11182020_102150_i.pdf

CELL PHONE TRACKING-RETROACTIVITY: Carpenter (warrant required for cell phone tracking data) does not apply retroactively in postconviction relief proceedings. Johnson v. State, 4D20-792 (11/18/20)

https://www.4dca.org/content/download/689270/opinion/200792_DC05_11182020_102423_i.pdf

SEARCH WARRANT-GPS DATA: Individuals lack a reasonable expectation of privacy in the records of their movements recorded by their vehicle's GPS system. Defendant has no expectation of privacy on a GPS device that on a car which was owned by a finance company, and therefore law enforcement was not required to obtain a search warrant or subpoena for the GPS/tracking tower information. Bailey v. State, 1D18-4514 (11/16/20)

https://www.1dca.org/content/download/688859/opinion/184514_DC08_11162020_135224_i.pdf

EVIDENCE-COLLATERAL CRIMES: When a child victim cannot specify the dates on which the abuse occurred, it is permissible for the State to charge in a single count that a specific type of sexual abuse occurred on multiple occasions during a range of dates. State did not violate order in limine excluding uncharged crimes against the victim where the sexual abuse of the child occurred over a specified period of time, was committed in different ways and when the victim was of different ages particularly where the Defendant did not challenge the information via a proper motion, as contemplated by Dell'Orfano. Evidence was inextricably intertwined with the crime charged, so it was not Williams rule evidence. McMillian v. State, 1D 19-291 (11/16/20)

https://www.1dca.org/content/download/688860/opinion/190291_DC05_11162020_135421_i.pdf

WITNESS NOT TESTIFYING: References made during opening statements to Williams Rule witness who subsequently does not appear at trial constitutes harmless error where there was no indication that the prosecutor acted in bad faith and the witness's statements were introduced through other witnesses and were tangential or irrelevant. Riley v. State, 1D19-804 (11/16/20)

https://www.1dca.org/content/download/688861/opinion/190804_DC05_11162020_135854_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to resentencing after it is discovered that an inaccurate scoresheet (stale convictions included his prior offenses from more than 10 years before) was used initially. The would-havebeen-imposed standard, which requires an examination of the record for conclusive proof that the scoresheet error did not affect or contribute to the sentencing decision, applies. Blackwell v. State, 1D19-3575 (11/16/20)

https://www.1dca.org/content/download/688863/opinion/193575_DC13_11162020_140344_i.pdf

WITHDRAWAL OF PLEA: Defendant is not entitled to withdraw his plea on the ground that he did not realize that he could fire his attorney. Nelson does not apply to privately retain counsel. Studemire v. State, 1D20-947 (11/16/20)

https://www.1dca.org/content/download/688869/opinion/200947_DC05_11162020_143341_i.pdf

POST CONVICTION RELIEF-FARETTA: While a pretrial hearing is preferred, it is merely a means to the end, and the failure to hold a Faretta hearing is not error as a matter of law. If the trial record shows that a defendant knowingly and voluntarily elected to represent himself, the Faretta standard will be satisfied. Tuomi v. State, No. 17-14373 (11th Cir. 11/13/20) https://media.ca11.uscourts.gov/opinions/pub/files/201714373.pdf

HABEAS CORPUS-ACCA: Court erred in failing to address Defendant's argument that his attempted robbery conviction does not count as a violent felony for Armed Career Criminal Act enhancement because attempted robbery is not a crime under Alabama law and thus has no elements, and misconstruing his argument as an attack on the underlying conviction. When a habeas petitioner presents a claim in clear and simple language such that the district court may not misunderstand it, it must address and resolve the claim. Remanded for reconsideration.
Senter v. USA, No. 18-11627 (11th Cir. 11/13/20)
https://media.ca11.uscourts.gov/opinions/pub/files/201811627.pdf

JOA-VENUE-TWO WAY COMMUNICATIONS DEVICE: Venue is improper for use of a two-way communications device where Defendant made a call from parts unknown to an insurance company claiming injuries from an accident in DeSoto County. Venue need not be raised pretrial. The fact that the car accident occurred in DeSoto County and that he sought medical care at a hospital in DeSoto County in no way proves by a preponderance of the evidence that he used a cell phone while in DeSoto County to facilitate insurance fraud. Berry v. State, 2D19-2340 (11/13/20) https://www.2dca.org/content/download/688208/opinion/192340_DC08_11132020_075127_i.pdf

STAND YOUR GROUND: Because Defendant's pretrial Stand Your Ground hearing took place on March 1, 2016, prior to the 2017 effective date of the modified Stand Your Ground statute, he is not entitled to another such hearing. Fuller v. State, 5D16-2646 (11/13/20)
https://www.5dca.org/content/download/688248/opinion/162646_DC13_1

1132020_083006_i.pdf

COSTS: Court may not impose a $100 investigative cost that was neither requested by the State or agency nor orally pronounced. Lewis v. State, 5D19-3079 (11/13/20)
https://www.5dca.org/content/download/688252/opinion/193079_DC05_11132020_085642_i.pdf

POST CONVICTION RELIEF: Court erred in entering an order denying the Defendant's motion for post conviction relief attaching various records, but none which refute the Defendant's allegations, i.e., the transcript of Defendant's plea hearing.

POST CONVICTION RELIEF: In order to allege a facially sufficient claim of ineffective assistance of counsel for failing to depose witnesses, a defendant must state with particularity the identity of the witnesses, the substance of the expected testimony, and explain how the omission of this evidence prejudiced the outcome of the case. Thomas v. State, 5D20-209 (11/13/20)
https://www.5dca.org/content/download/688253/opinion/200209_DC13_11132020_090113_i.pdf

PHOTO LINE UP: An out-of-court identification violates due process if the police employed an unnecessarily suggestive procedure in obtaining an out-ofcourt identification and if the totality of the circumstances show that the suggestive procedure gives rise to a substantial likelihood of irreparable misidentification. Defendant's suggestion that the test should be modified to account for the array of factors outside the criminal justice system's control that studies have shown contribute to misidentifications. The photo line up was not unduly suggestive because of the solid black bar over his and one other photo. A lineup of clones is not required. Valentine v. State, 4D19-1448 (11/12/20)

https://www.4dca.org/content/download/687936/opinion/191448_DC05_11122020_094649_i.pdf

PHOTO LINE UP: Florida law does not require double-blind administration of lineups, but only that there be an independent administrator, i.e. a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect. Valentine v. State, 4D19-1448 (11/12/20)
https://www.4dca.org/content/download/687936/opinion/191448_DC05_11122020_094649_i.pdf

EVIDENCE-PRIOR CONSISTENT STATEMENT: Where defense counsel cross-examined witness on his failure to include the defendant's facial tattoos in his description to law enforcement, then asked whether he had seen anything about the case in the news since then, the questions imply recent fabrication, opening the door to rehabilitative testimony about his deposition testimony. Valentine v. State, 4D19-1448 (11/12/20)

https://www.4dca.org/content/download/687936/opinion/191448_DC05_11122020_094649_i.pdf

EVIDENCE-HEARSAY-FRIEND'S IDENTIFICATION: Testimony from a childhood friend that she had identified Defendant from a picture from the surveillance video is inadmissible hearsay, but harmless error. Valentine v. State, 4D19-1448 (11/12/20)

https://www.4dca.org/content/download/687936/opinion/191448_DC05_11122020_094649_i.pdf

ESCAPE: A juvenile, who after being ordered into secure detention during a court hearing, and while waiting to be removed from the courtroom while other cases proceed, says "F*** this s***" and absconds from the courtroom, can be found guilty of escape from a juvenile facility. V.R.J. v. State, 4D29-414 (11/12/20)
https://www.4dca.org/content/download/687956/opinion/200414_DC05_11122020_100645_i.pdf

SEARCH AND SEIZURE-DOG SNIFF: Using a drug dog to sniff the passenger of a vehicle during a traffic stop based on a reasonable and articulable suspicion the passenger possesses drugs, where the sniff itself is not based on a warrant or probable cause is lawful. Defendant's argument fails that after the search of the car revealed no contraband, probable cause to search further was dispelled. "The mere chance that the substance might no longer be at the location does not matter; a well-trained dog's alert establishes a fair probability—all that is required for probable cause—that either drugs or evidence of a drug crime. . .will be found." Tedford v. State, 4D19-2184 (11/12/20)
https://www.4dca.org/content/download/687940/opinion/192184_DC05_11122020_095146_i.pdf

SEARCH AND SEIZURE: A single touch of a dog's nose on Defendant's pocket does not unlawfully infringe his Fourth Amendment interests (freedom not to be touched) and is reasonable and not intrusive. Tedford v. State, 4D19-2184 (11/12/20)
https://www.4dca.org/content/download/687940/opinion/192184_DC05_11122020_095146_i.pdf

JUROR: Court properly dismissed juror who adamantly and repeatedly insisted that the entire system was flawed and prejudiced against all people of any color ("But for the last three years, I feel that this country discriminate [sic] a lot against Hispanics, Blacks, anybody who's brown. I don't feel good about the law in this country, not right now. . . That with the American in the White House, we feel very –. . .I used to be very proud to be here, but not anymore."), notwithstanding that she never directly said she could not be fair and impartial, and without permitting counsel to inquire. Sears v. State, 4D19-1977 (11/12/20)

https://www.4dca.org/content/download/687939/opinion/191977_DC05_11122020_095009_i.pdf

COMMENT ON SILENCE: State did not improperly comment on the Defendant's right to remain silent where upon arrest he said he had been home all day and at trial, testified that the sexual battery was consensual, because he gave a statement after his arrest. "While the State cannot use a defendant's post-arrest silence, the defendant did not exercise that right." Walding v. State, 4D19-1900 (11/12/20)

https://www.4dca.org/content/download/687938/opinion/191900_DC05_11122020_094835_i.pdf

EVIDENCE: Evidence that the Defendant had a gun and suicide note at his home is admissible as conscientiousness of guilt, notwithstanding that questioning about firearms during voir dire was omitted based on the assumption and discussion that guns were irrelevant. Walding v. State, 4D19-1900 (11/12/20)

https://www.4dca.org/content/download/687938/opinion/191900_DC05_11122020_094835_i.pdf

DOUBLE JEOPARDY: Where Minor/Defendant is re-sentenced on multiple counts pursuant to Graham, Court violates Double Jeopardy by re-sentencing him on those counts for which he had already fully served the sentences originally imposed. Where a sentence has already been served, even if it is an illegal sentence, the court lacks jurisdiction violates the Double Jeopardy Clause by resentencing the defendant to an increased sentence. Taylor v. State, 4D19-950 (11/12/20)
https://www.4dca.org/content/download/687935/opinion/190950_DC08_11122020_094401_i.pdf

COMPETENCY: Upon a violation of probation, Defendant cannot assert that the original sentence was improper because Defendant said that he had a history of mental illness but said that, and the Court found, he was competent as the time of the plea. Bailey v. State, 4D18-1668 (11/12/20)
https://www.4dca.org/content/download/687934/opinion/181668_DC05_1

1122020_094239_i.pdf

RESTITUTION: Court may not order restitution in an amount that exceeds what the child and the parent or guardian can reasonably be expected to pay. Although a child need not have a present ability to pay restitution, the court must make a finding as to the juvenile's expected earning capacityprior to setting an amount for restitution. B.W. v. State, 19-1524 (11/12/20) https://www.4dca.org/content/download/687937/opinion/191524_DC13_11122020_094735_i.pdf

COSTS OF PROSECUTION: Court may not impose $200 costs of prosecution. B.W. v. State, 19-1524 (11/12/20) https://www.4dca.org/content/download/687937/opinion/191524_DC13_11122020_094735_i.pdf

STAND YOUR GROUND: Court's error in applying the correct burden at the immunity hearing can be cured if the State establishes the defendant's guilt at trial by proof beyond a reasonable doubt. Scheel v. State, 1D19-4131 (11/6/20)

https://www.1dca.org/content/download/687067/opinion/194131_DC05_11062020_141119_i.pdf

RESISTING WITHOUT VIOLENCE-INVITED ERROR: Flight is not a crime, so a defendant's flight in itself is insufficient to support a charge of resisting without violence. Because counsel for Defendant conceded Defendant's guilt as to the resisting charge in closing argument and did not move for a JOA, he invited error and is not entitled to vacate the resisting charge on appeal. Lachman v. State, 2D19-685 (11/6/20)

https://www.2dca.org/content/download/686987/opinion/190685_DC05_11062020_082743_i.pdf

TERMINATION/MODIFICATION OF PROBATION: §948.03 permits a trial court to rescind or modify at any time the terms and conditions of probation. Fla.R.Cr.P. 3.800 does not limit the time period for modification. Ballow v. State, 5D20-267 (11/6/20)

https://www.5dca.org/content/download/686963/opinion/200267_DC03_11062020_090828_i.pdf

MANIFEST INJUSTICE: Where Defendant was sentenced as a PRR without ever having been physically sent to prison, and whose request for conflict with Lewars was denied, it is a manifest injustice for PRR sentence to be imposed once Supreme Court ruled that such a sentence was unlawful. "Because Petitioner asked for certification of conflict with Lewars, it would be manifestly unjust under the circumstances to deny Petitioner the same relief as was afforded the defendant in Lewars." Williams v. State, 1D19-783 (11/4/20)

https://www.1dca.org/content/download/686654/opinion/190783_DC03_11042020_142833_i.pdf

REPUTATION FOR DISHONESTY: Defendant is not entitled to impeach witness on her reputation for dishonesty based only on her deposition testimony without any other predicate, including testimony that the reputation represented a sufficiently broad segment of the community. Louviere v. State, 1D19-1481 (11/4/20)

https://www.1dca.org/content/download/686655/opinion/191481_DC05_11042020_143110_i.pdf

PRESERVATION-EVIDENCE-PRIOR CONVICTIONS: A defendant may engage in anticipatory rehabilitation of his character and present impeaching

evidence on direct examination. Whether the Defendant is permitted to bring out the nature of his prior convictions was not preserved because he did not obtain a clear ruling on his objection to the exclusion of testimony about the prior convictions, nor did he proffer evidence. Louviere v. State, 1D19-1481 (11/4/20)

https://www.1dca.org/content/download/686655/opinion/191481_DC05_11042020_143110_i.pdf

PROBATION-EARLY TERMINATION: Court may not prohibit early termination of probation. Kelsey v. State, 1D19-2665 (11/4/20)

https://www.1dca.org/content/download/686656/opinion/192665_DC05_11042020_143228_i.pdf

VERDICT-UNANIMITY: Verdict is unanimous notwithstanding that State argued that any of three acts constituted a battery where the prosecutor in this case did not affirmatively tell the jury that it may convict Defendant of any of three separate acts of battery and explained the event as one continuous episode where three acts of touching occurred. Charles v. State, 2D18-517 (11/4/20)

https://www.2dca.org/content/download/686540/opinion/180517_DC05_11042020_081252_i.pdf

SINGLE HOMICIDE RULE: Defendant may not be convicted of both first degree murder and vehicular homicide for killing victim in a car crash while fleeing from police after committing a crime. Dual convictions for a single death violate the constitutional guarantee against double jeopardy. Robinson v. State, 3D18-31 (11/4/20)

https://www.3dca.flcourts.org/content/download/686537/opinion/2018-31_Disposition_112295_DC08.pdf

WRITTEN THREAT; Statute criminalizing written threat (§836.10(1)) does not violate First Amendment. Juvenile properly adjudicated delinquent for note saying, "My f**kin life is f**kin ruined yal wanna lock me [up for] no reason so Ima give you crackas a reason to f**kin lock me up! Ima blow da PD up f**k all yal bitches." N.D. v. State, 3D19-835 (11/4/20)

https://www.3dca.flcourts.org/content/download/686584/opinion/190835_DC05_11042020_102233_i.pdf

VALUE-HEARSAY: Victim's may not testify about the value of a watch based upon an appraisal which was hearsay; Error harmless. Macedo v. State, 4D19-2484 (11/4/20)

https://www.4dca.org/content/download/686568/opinion/192484_DC05_11042020_100137_i.pdf

INCONSISTENT VERDICT: True inconsistent verdicts are those in which an acquittal on one count negates a necessary element for conviction on another count. Where jury found the Defendant guilty of aggravated battery and made the factual finding that appellant did not have possession of a firearm or discharge a firearm, and the State's case, the charging document, the trial testimony, and the jury instructions proceeded only on the theory that appellant injured the victim using a firearm, verdict is truly inconsistent. Charge reduced to simple battery. Bott v. State, 4D19-2803 (11/4/20)

https://www.4dca.org/content/download/686569/opinion/192803_DC08_11042020_100252_i.pdf

VOP: Defendant with a 10:00 p.m. curfew who is out at 1:40 properly found in violation of probation. Clark v. State, 4D19-3974 (11/4/20)

https://www.4dca.org/content/download/686575/opinion/193974_DC05_11042020_101313_i.pdf

DEFINITION-MATERIAL: A statement that the violation is "material" is the equivalent to stating that it is "substantial." Material means"having real importance or great consequence." "Substantial" is defined as "real, true" and "important, essential." Clark v. State, 4D19-3974 (11/4/20)

https://www.4dca.org/content/download/686575/opinion/193974_DC05_11042020_101313_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on claim of newly discovered evidence (testimony of co-Defendant who was unavailable at the time of trial because of his pending charges. Joe v. State, 4D20-1285 (11/4/20)

https://www.4dca.org/content/download/686578/opinion/201285_DC13_11042020_101636_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to new trial on basis of juror who raised hand when asked if he might not be fair, with no follow up questioning. Teasley v. Warden, Macon State Prison, No. 19-12224 (11th Cir. 11/3/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201912224.pdf

QUALIFIED IMMUNITY: Officers who require prisoner to sleep in a feces-covered cell for days and hoping that he would "f***ing freeze" are not entitled to qualified immunity. Taylor v. Riojas, No. 19–1261 (U.S. S.Ct. 11/2/20)

https://www.supremecourt.gov/opinions/20pdf/19-1261_bq7c.pdf

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POST CONVICTION RELIEF-COMMON LAW DEFENSE: Counsel was not ineffective for failing to request a common law defense instruction (that a defendant who admits being engaged in unlawful activity may nonetheless act in self-defense without retreating) because the facts do not establish self-defense during the living room drug deal shooting. Woods v. State, 1D19-3787 (10/30/20)

https://www.1dca.org/content/download/685425/opinion/193787_DC05_10302020_133416_i.pdf

SENTENCING-VINDICTIVENESS: Where there is a reasonable likelihood that the harsher sentence resulted from the sentencing judge's actual vindictiveness, a presumption that the sentence is vindictive arises. The trial court must not initiate a plea dialogue. Court's comments that if Defendant "play[ed] with" him, he would get a harsher sentence establishes vindictiveness. Ryan v. State, 2D18-1338 (10/30/20)

https://www.2dca.org/content/download/685359/opinion/181338_DC13_10302020_090840_i.pdf

PRESCRIPTION DEFENSE: Counsel was ineffective for failing to request a jury instruction on the prescription defense where Defendant told the officer that the pills belonged to her grandmother. Holding a controlled

substance as an agent for a person who had a prescription is an affirmative defense to the possession charges. A prescription defense instruction is necessary where there is evidence that the defendant was holding a controlled substance as the]agent of another individual to whom it was prescribed. Maksymowska v. State, 2D18-4697 (10/30/20)

https://www.2dca.org/content/download/685362/opinion/184697_DC08_10302020_091301_i.pdf

SEARCH AND SEIZURE: Search warrant including"[y]our Affiant viewed the photo and it was determined that it did in fact depict child pornography" failed to establish probable cause. First, it contained nothing to support the detective's conclusory assertion that the photo at issue qualified as child pornography. Second, it did not establish that the Detective had any training or expertise in identifying child pornography. Goesel v. State, 2D19-2730 (10/23/20)

https://www.2dca.org/content/download/685367/opinion/192730_DC13_10302020_092210_i.pdf

POST CONVICTION RELIEF: Failure to attach a copy of the transcript from the plea colloquy is insufficient to establish voluntariness of plea. Henry v. State, 5D20-794 (10/30/20)

https://www.5dca.org/content/download/685346/opinion/200794_DC08_10302020_084318_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failing to object to court instructing the jury on attempted felony murder and not attempted first-degree murder, notwithstanding that he the State proceeded to trial on the latter theory of attempted felony murder. Because Counsel did not object to the State's change in theory or the jury instructions, appellate

counsel could be deemed ineffective for failing to challenge these issues in the direct appeal only if they constituted fundamental error. When the jury is instructed on an alternate theory of the charged crime, but that alternate theory was not charged in the information, it is fundamental error if it is clear that the jury returned a verdict on that uncharged theory. Davis v. State, 5D20-810 (10/30/20)

https://www.5dca.org/content/download/685347/opinion/200810_DC03_10302020_084703_i.pdf

JUDGE-DISQUALIFICATION: While a motion to disqualify is pending, the trial court is not authorized to rule on other pending motions; all such motions upon which the trial court rules must be vacated. Wilson v. State, 5D20-1343 (10/30/20)

https://www.5dca.org/content/download/685348/opinion/201343_DC13_10302020_084957_i.pdf

DEATH PENALTY-PROPORTIONALITY REVIEW: The conformity clause of article I, section 17 of the Florida Constitution forbids analyzing death sentences for comparative proportionality in the absence of a statute establishing that review. Florida's Due Process Clause does not require comparative proportionality review. The conformity clause expressly limits the authority of the Florida Supreme Court to apply principles of due process. Lawrence v. State, No. SC18-2061 (10/29/20)

https://www.floridasupremecourt.org/content/download/685153/opinion/sc18-2061.pdf

STARE DECISIS-CROCODILE TEARS: "When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, the precedent normally must yield. . . [O]nce we have chosen to reassess a

precedent and have come to the conclusion that it is clearly erroneous, the proper question becomes whether there is a valid reason why not to recede from that precedent." Lawrence v. State, No. SC18-2061 (10/29/20)

https://www.floridasupremecourt.org/content/download/685153/opinion/sc18-2061.pdf

DEATH PENALTY-DISSENT: "Today, the majority takes the most consequential step yet in dismantling the reasonable safeguards contained within Florida's death penalty jurisprudence." Lawrence v. State, No. SC18-2061 (10/29/20)

https://www.floridasupremecourt.org/content/download/685153/opinion/sc18-2061.pdf

DEATH PENALTY-DISSENT: "I cannot overstate how quickly and consequentially the majority's decisions have impacted death penalty law in Florida. . . In each of these cases, I dissented, and I lamented the erosion of our death penalty jurisprudence. Now today, the majority jettisons a nearly fifty-year-old pillar of our mandatory review in direct appeal cases. . . I could not dissent more strongly to this decision, one that severely undermines the reliability of this Court's decisions on direct appeal, and more broadly, Florida's death penalty jurisprudence." Lawrence v. State, No. SC18-2061 (10/29/20)

https://www.floridasupremecourt.org/content/download/685153/opinion/sc18-2061.pdf

COSTS: $100 public defender fee is improperly imposed when the Court did not give Defendant notice of his right to a hearing to contest this fee. Conflict certified. Aponte-Velez v. State, 2D18-4499 (10/28/20)

https://www.2dca.org/content/download/684719/opinion/184499_DC05_1

0282020_081445_i.pdf

COSTS: Court may not impose a $100 public defender fee without providing Defendant notice of his right to contest it. Morales v. State, 2D19-862 (10/28/20)

https://www.2dca.org/content/download/684723/opinion/190862_DC08_10282020_081947_i.pdf

VOP: When a trial court revokes a juvenile's probation, it must render a written order setting forth the conditions of probation that were violated. J.E. v. State, 2D19-3273 (10/28/20)

https://www.2dca.org/content/download/684726/opinion/193273_DC05_10282020_082100_i.pdf

CREDIT FOR TIME SERVED: A sentencing court has discretion to grant jail credit on each individual consecutive sentence. DOC may not sua sponte reduce the cridit based on its own calculation. Doland v. State, 2D19-3310 (10/28/20)

https://www.2dca.org/content/download/684727/opinion/193310_DC13_10282020_082201_i.pdf

CHILD HEARSAY: Child hearsay of incompetent four year old victim is admissible where mother had just seen some of the sexual abuse. St. Lot v. State, 4D19-3022 (10/28/20)

https://www.4dca.org/content/download/684804/opinion/193022_DC05_10282020_100437_i.pdf

HEARSAY: Out of Court statement by a non-witness who did not testify named Muff giving the Defendant's name based on knowing him is not hearsay because it was not offered to prove that Muff identified appellant by name, but rather was offered to show how the victim learned the name of the person he had seen with Muff the previous day at the market and how the police came to learn Defendant's name. Thurston v. State, 4D19-1191 (10/28/20)

https://www.4dca.org/content/download/684799/opinion/191191_DC05_10282020_095714_i.pdf

ARGUMENT: Out of court comment by prosecutor that "the defense needs to go back to law school" is unprofessional but not cause for a mistrial because not made in front of the jury. "[C]omments that disparage the integrity of counsel are improper and highly inappropriate. We remind and caution all attorneys that they are held to a standard of conduct and have an obligation to uphold the integrity of the justice system." Thurston v. State, 4D19-1191 (10/28/20)

https://www.4dca.org/content/download/684799/opinion/191191_DC05_10282020_095714_i.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Defendant is not seized when officer shines flashlingt in his lawfully parked car and then smelled marijuana when window was rolled down. Approach of the parked vehicle does not amount to an investigatory stop. R.F. v. State, 4D20-390 (10/28/20)

https://www.4dca.org/content/download/684807/opinion/200390_DC05_10282020_100816_i.pdf

ADMIRALTY CLAUSE: The Admiralty Clause of Article III of the U.S.

Constitution does not preclude prosecution for possession of an unregistered firearm on dry land; the statute is not limited to offences only when performed on the high seas or any other navigable waterways. §5861(d) makes no mention of maritime or admiralty jurisdiction, the high seas, or navigable waterways. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

SECOND AMENDMENT: The National Firearms Act does not violates the Tenth and Second Amendments' protection of citizens' and states' rights and Florida's privilege to control its citizens' possession of weapons. The Tenth Amendment objection that the National Firearms Act usurps police power reserved to the States is plainly untenable. The Second Amendment does not guarantee the right to keep and bear an unregistered sawed-off shotgun having a barrel of less than eighteen inches in length. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

FIREARM-KNOWLEDGE: Although the requisite mens rea to prove a violation of §5861(d) is "knowledge," that mens rea does not attach to each element of that offense. The government need not prove that the defendant knew the weapon was unregistered. The government also need not prove that the defendant knew his possession of the weapon was unlawful or that he knew what features define a firearm. Rather, the knowledge requirement for a §5861(d) offense comes into play only as to the second element—the government must prove that the defendant was aware that his weapon possessed any of the features detailed in §5845(a), i.e. that the shotgun was less than 26 inches in overall length or had a barrel of less than 18 inches in length. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

SELF-REPRESENTATION: Defendant's argument that self-representation was effectively involuntary because the Criminal Justice Act Plan's attorneys are so under-resourced that the Plan inherently violates the Sixth Amendment's right to effective counsel lacks merit. The "advocate witness" rule—Defendant may not be forced to appear as both an advocate and a witness— is inapplicable to him as a non-lawyer criminal defendant who decided to represent himself. The "advocate-witness" rule is an ethical prohibition against lawyers acting as both advocate and witness. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

JAIL CLOTHES-SHACKLES: A defendant may not create his own problem by wearing jail clothes for strategic advantage and then seek reversal because he chose to wear those clothes. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

SENTENCING-PROHIBITED PERSON: A "prohibited person" includes any person who is an unlawful user of or addicted to any controlled substance, like marijuana. A defendant is an "unlawful user" of a controlled substance so long as his use is ongoing and need not show that Defendant was under the influence of an illegal drug at the exact same time he possessed the firearm or at the time of his arrest. USA v. Wilson, No. 17-12379 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201712379.pdf

MISTRIAL: Defendant is not entitled to mistrial based on evidence that Defendant used a false name in renting the apartment in which drugs were

found. Evidence was inextricably intertwined with the narcotics offenses and was not inadmissible under Rule 404(b). The use of a false identity was also (1) relevant as a step Defendant took to conceal the criminal activity, and (2) necessary to complete the story of how officers discovered Joseph was renting the apartment and garage. USA v. Joseph, No. 19-11198 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911198.pdf

MISTRIAL-EFFECT OF DRUGS: Defedendant is not entitled to a mistrial based on Detective's testimony about the high mortality rate for fentanyl. USA v. Joseph, No. 19-11198 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911198.pdf

MISTRIAL-BROTHER'S OUTBURST: Defendant is not entitled to a mistrial based on Defendant's brother's outburst which made five jurors"nervous" or "a little shook up." USA v. Joseph, No. 19-11198 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911198.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: Defendant's 262-month sentences (top of the recommended range but below the statutory maximum) are substantively reasonable under the factors of 18 U.S.C. § 3553(a). USA v. Joseph, No. 19-11198 (11th Cir. 10/27/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911198.pdf

FALSE STATEMENTS ACT: Motive is not an element of a False Statements Act crime. Defendants are guilty of violating the False Statements Act act by disguising that they were improperly treating workers as independent contractors by designating worker as "W2.REAL" for each real employee or a "W2.F" for each fake employee. "Telling the IRS one thing and the CDC another is asking for trouble, and trouble is what they got." USA v. Bazantes, No. 17-15721 (11th Cir. 10/26/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715721.pdf

MATERIALITY: Indictment which alleged that Defendants willfully and knowingly make and use false writings and documents (certified payroll forms) to the CDC, that is, knowing the same to contain materially false, fictitious, and fraudulent statements and entries is legally sufficient. "That is enough." Argument that because the indictment does not allege that the forms containing the false payroll statements or records were directly addressed to the CDC, the false statements were, as a matter of law, not material is rejected. A false statement can be material regardless whether the defendant submits it directly to a federal agency. A statement can be material even if it is ignored or never read by the agency receiving the misstatement. USA v. Bazantes, No. 17-15721 (11th Cir. 10/26/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715721.pdf

SENTENCING-LOSS ENHANCEMENT: The amount of loss enhancement should not include the $550,000 in profits in government contracts in which Arbelaez and Bazantes had submitted falsified payroll records in all of the federal projects. "At sentencing and in its brief to this Court, the government focused on the loss to the CDC. Which is fine, except there is not a speck of evidence that the CDC suffered any 'pecuniary harm.'. . .Every serious crime compromises the integrity of something or someone, but not every

crime causes pecuniary loss." USA v. Bazantes, No. 17-15721 (11th Cir. 10/26/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201715721.pdf

ARGUMENT: Prosecutor's comments—that it was difficult for a twelve-year-old girl to keep this dark secret, that the victim remembered Appellant as the first person who kissed and touched her, and that Appellant was an authority figure who broke the victim and the victim's trust—evoked sympathy for the victim and encouraged hostile emotions toward Defendant were not improper appeals to the prejudice and passions of the jury. Lynch v. State, 1D18-5064 (10/23/20)

https://www.1dca.org/content/download/682888/opinion/185064_DC05_10232020_142309_i.pdf

POST CONVICTION RELIEF-STATEMENT OF PARTICULARS: Counsel was not ineffective for getting a ruling on motion for statement of particulars in sex case where neither party could specify the exact date on which the crimes occurred. Sutherland v. State, 1D19-3263 (10/23/20)

https://www.1dca.org/content/download/682890/opinion/193263_DC05_10232020_142820_i.pdf

POSTCONVICTION RELIEF-ALIBI: Counsel was not ineffective for failing to present an alibi defense when he resided in the home for four of the 12 months alleged in the information and where he could not have accounted for his whereabouts at all times during those four months. Sutherland v. State, 1D19-3263 (10/23/20)

https://www.1dca.org/content/download/682890/opinion/193263_DC05_10232020_142820_i.pdf

POST CONVICTION RELIEF-ARGUMENT-BOLSTERING: Prosecutor's argument that victim told the truth is not improper bolstering where statements were based on the testimony of the victim. Sutherland v. State, 1D19-3263 (10/23/20)

https://www.1dca.org/content/download/682890/opinion/193263_DC05_10232020_142820_i.pdf

YOUTHFUL OFFFENDER: Defendant charged with burglary enhanced to a life felony based on use of firearm to shoot victim in the face is ineligible for Youthful Offender. State v. Watlington, 2D19-3366 (10/23/20)

https://www.2dca.org/content/download/682841/opinion/193366_DC13_10232020_083553_i.pdf

DOUBLE JEOPARDY-COLLATERAL ESTOPPEL-POSSESSION OF FIREARM BY FELON: Defendant's consent to separate trials on possession of firearm by felon and a substantive offense obviated any double jeopardy or collateral estoppel concerns. State v. Brown, 5D19-792 (10/23/20)

https://www.5dca.org/content/download/682818/opinion/190792_DC13_10232020_082634_i.pdf

COSTS: Court may not impose a $100 investigative cost absent a request by the State or the agency. Turner v. State, 5D20-357 (10/23/20)

https://www.5dca.org/content/download/682823/opinion/200357_DC05_10232020_085127_i.pdf

RESENTENCING: When the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to be resentenced using a corrected scoresheet. Court's argument that resentencing is not required becase of the mandatory minimum sentence was imposed fails because the Defendant is entitled to Youthful Offender consideration. Burton v. State, 5D20-1500 (10/23/20)

https://www.5dca.org/content/download/682825/opinion/201500_DC13_10232020_085815_i.pdf

COUNSEL: Defendant is not deprived of his right to a fair trial when he was allowed to continue to represent himself, even after he vacillated about self representation. While a court may terminate a defendant's self-representation, that action is discretionary. "Put simply, the trial court's failure to override sua sponte the defendant's waiver of his right to counsel—where, as here, the waiver's validity was clear, uncontested on appeal, and repeatedly reaffirmed after signs of uncertainty—is due to be affirmed." USA v. Muho, No. 18-11248 (10/22/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811248.pdf

SENTENCING-ENHANCEMENT-GROSS RECEIPTS: To trigger the §2B1.1(b)(16)(A) enhancement, at least in a case involving property held by a financial institution for a depositor, the financial institution (1) must be the source of the property, which we interpret as having property rights in the property, and (2) must have been victimized by the offense conduct. USA v. Muho, No. 18-11248 (10/22/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811248.pdf

MIXED METAPHOR: "Muho used fraudulent documents to convince the bank that he had control over the account of another, thereby inducing the bank to wire the funds of another to Muho's account without even looking at the third base coach to see if it should swing or not. The bank swung away and made contact. Muho caught the funds and made out of the stadium gates like a bat out of Boston." ("7. We do not intend to implicate the Red Sox in this fraud.") USA v. Muho, No. 18-11248 (10/22/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811248.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS: Though the Guidelines are not themselves dispositive, sentences that fall within the Guidelines range or that are below the statutory maximum are generally reasonable. A small downward variance far below the applicable statutory maximum is substantively reasonable. USA v. Muho, No. 18-11248 (10/22/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811248.pdf

DEATH PENALTY: White supremacist serving a life sentence for murder is properly sentenced to death after stabbing his black cellmate thirty times to death after watching the movie "Selma" and moving his cards as not to get blood on them. Craven v. State, SC18-1643 (10/22/20)

https://www.floridasupremecourt.org/content/download/682756/opinion/sc18-1643.pdf

PEREMPTORY CHALLENGE: The following three-step test applies in determining whether a proposed peremptory challenge is race-neutral: A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the

court ask the striking party its reason for the strike. If these initial requirements are met (step 1), the court must ask the proponent of the strike to explain the reason for the strike. At this point, the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step 2). If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the strike, the explanation is not a pretext, the strike will be sustained (step 3). The court's focus in step 3 is not on the reasonableness of the explanation but rather its genuineness. Throughout this process, the burden of persuasion never leaves the opponent of the strike to prove purposeful racial discrimination. Here, the Court properly found that the Defendant's proffered reason (the juror was predisposed to the death penalty) was not genuine. Juror's belief that the death penalty is an appropriate punishment for first-degree premeditated murder is not tantamount to being predisposed to the death penalty. Craven v. State, SC18-1643 (10/22/20)

https://www.floridasupremecourt.org/content/download/682756/opinion/sc18-1643.pdf

DEATH PENALTY: In a capital sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate decision within the relevant sentencing range. Craven v. State, SC18-1643 (10/22/20)

https://www.floridasupremecourt.org/content/download/682756/opinion/sc18-1643.pdf

DEATH PENALTY: During penalty, prosecutor properly testified that, during Defendant's murder of his prior victim, the prior victim begged Craven to let him go, told Craven that he would leave, and asked Craven to remember that the victim had two children. It is appropriate in the penalty phase of a capital trial to introduce testimony concerning the details of any prior felony conviction involving the use or threat of violence to the person rather than

the bare admission of the conviction. Craven v. State, SC18-1643 (10/22/20)

https://www.floridasupremecourt.org/content/download/682756/opinion/sc18-1643.pdf

HEALTHCARE FRAUD: Defendant properly convicted of healthcare fraud for kickbacks on sales of unneeded medical creams and vitamins regardless whether the claims about the products were true or false. "It is no answer to say. . .that the creams and vitamins were 'provided pursuant to valid prescriptions issued by doctors who lawfully consulted with the patients telephonically.' A doctor's prescription is not a get-out-of-jail-free card." USA v. Grow, No. 18-11809 (11th Cir. 10/21/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811809.pdf

JURY DELIBERATIONS: Court's invitation to jury to reach partial verdicts before breaking for the day is not coercive where judge clarified that the jury was not required to do so. USA v. Grow, No. 18-11809 (11th Cir. 10/21/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811809.pdf

JURY INSTRUCTION-CONSPIRACY-WIRE FRAUD: Court's failure to instruct on wire fraud, one of the dual objects of a conspiracy count, is not cognizable on appeal because the error was invited. When a party agrees with a court's proposed instructions, review is waived even if plain error would result. USA v. Grow, No. 18-11809 (11th Cir. 10/21/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811809.pdf

SENTENCING: Where Defendant is convicted of the dual-object conspiracy to commit healthcare fraud and wire fraud, and the jury returned only a

general verdict, and the statutory maximum for the latter was ten years, Court erred in imposing a twenty years sentence. In the absence of a special verdict, a district court may not sentence a defendant beyond the maximum sentence for the least serious offense in a multi-object conspiracy. USA v. Grow, No. 18-11809 (11th Cir. 10/21/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811809.pdf

POST CONVICTION RELIEF: Where a challenged jury instruction involved an affirmative defense, fundamental error only occurs if the instruction is so flawed as to deprive the defendant of a fair trial. Ross v. State, 1D18-4092 (10/21/20)

https://www.1dca.org/content/download/682715/opinion/184092_DC02_10212020_124757_i.pdf

COMPETENCY: Court must conduct a competency hearing and enter written order after a mental health evaluation had been ordered. Felton v. State, 1D18-5001 (10/21/20)

https://www.1dca.org/content/download/682716/opinion/185001_DC08_10212020_125022_i.pdf

BRADY: State commits no Brady violation for failing to disclose DCF reports including investigators' conclusions that the victim had been incredible in other instances because the opinions would not have been admissible. Horn v. State, 1D19-4659 (10/21/20)

https://www.1dca.org/content/download/682718/opinion/194659_DC05_10212020_125528_i.pdf

RESENTENCING-MINOR: Court lacks jurisdiction to withdraw order setting a resentencing hearing for a minor, but may re-impose the previous

sentence. Garner v. State, 2D19-176 (10/21/20)

https://www.2dca.org/content/download/682652/opinion/190176_DC13_10212020_081131_i.pdf

RESENTENCING: Where case is remanded for resentencing upon vacation of some convictions requiring a new scoresheet, Court errs in re-imposing the same aggregate sentence without affording the defendant an opportunity to present evidence in mitigation, instead only allowing him to offer legal argument concerning mitigating factors. Gomez v. State, 3D18-1193 (10/21/20)

https://www.3dca.flcourts.org/content/download/682682/opinion/181193_DC13_10212020_103520_i.pdf

VENUE-TRANSFER: Court did not violate Due Process in failing to hold hearing on change of venue motion where there was no disputed issue of fact. Huber v. Huber, 3D220-1228 (10/21/20)

https://www.3dca.flcourts.org/content/download/682691/opinion/201228_DC13_10212020_105636_i.pdf

SEXUAL PREDATOR: Defendant is appropriately designated a sexual predator even though the Court entered the subject order after Defendant had served his sentence for the qualifying offense and was released from custody. Johnson v. State, 3D19-2357 (10/21/20)

https://www.3dca.flcourts.org/content/download/682688/opinion/192357_DC05_10212020_104920_i.pdf

CORRECTED SENTENCE: Court is not required to impose a harsher mandatory minimum sentence upon Defendant's motion where he had

already served more time than the mandatory minimum. Although a sentence is technically illegal when a court fails to impose the applicable mandatory minimum, the illegality is in the defendant's favor and may not be challenged on appeal because not adverse to the Defendant. A party to the cause may appeal only from a decision in some respect adverse to that party. Conflict certified. Mitchell v. State, 4D20-860 (10/21/20)

https://www.4dca.org/content/download/682642/opinion/200860_DC05_10212020_101521_i.pdf

SCORESHEET: Any offenses for which Defendant is not being sentenced are prior record, not additional offenses. Brown v. State, 4D20-1068 (10/21/20)

https://www.4dca.org/content/download/682643/opinion/201068_DC08_10212020_101617_i.pdf

JOA-CAR THEFT: Child cannot be convicted of car theft without evidence that the older model silver-gray Jeep Grand Cherokee was the victim's. J.A.R. v. State, 2D18-4975 (10/19/20)

https://www.2dca.org/content/download/682476/opinion/184975_DC08_10192020_113212_i.pdf

COSTS: Court may not impose a $100 fee for the services of the public defender without notifying him of his right to a hearing to contest it. Conflict certified. J.A.R. v. State, 2D18-4975 (10/19/20)

https://www.2dca.org/content/download/682476/opinion/184975_DC08_10192020_113212_i.pdf

EVIDENCE: Witness is permitted to explain the meanings behind text

message related to covering up the shooting. Burnham v. State, 1D19-1039 (10/19/20)

https://www.1dca.org/content/download/682482/opinion/191039_DC05_10192020_122810_i.pdf

HABITUAL OFFENDER: Habitual offender enhancement does not violate Apprendi because it does not require a court finding of dangerousness. Armstrong v. State, 1D20-498 (10/19/20)

https://www.1dca.org/content/download/682484/opinion/200498_DC05_10192020_123402_i.pdf

APPRENDI-ATTEMPTED MURDER OF LEO: Defendant is properly subject to the increased sentence in §782.065 for attempted murder of a law enforcement officer where information charges, and jury instructions make clear that the offense was committed with knowledge that the victim was a law enforcement officer. Rosado v. State, 5D18-1763 (10/16/20)

https://www.5dca.org/content/download/681822/opinion/181763_DC08_10162020_081845_i.pdf

DOUBLE JEOPARDY: Fondling victim's breasts and kissing her neck were a part of the same criminal episode, and therefore cannot support separate L & L convictions. McCray v. State, 5D20-566 (10/16/20)

https://www.5dca.org/content/download/681825/opinion/200566_DC08_10162020_082611_i.pdf

COSTS: Court may not impose costs pursuant to §318.18(11)(b) when

Defendant is not charged with a traffic infraction. Sparks v. State, 5D20-853 (10/16/20)

https://www.5dca.org/content/download/681827/opinion/200853_DC05_10162020_083620_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not advising him that inability to timely register is a defense to failure to register as a sex offender. Niemi v. State, 5D20-1220 (10/16/20)

POST CONVICTION RELIEF: Defendant should be given at least one opportunity to amend his motion for post conviction relief which had been dismissed for being unsworn. Dixon v. State, 5D20-1544 (10/16/20)

RESENTENCING-MINOR: Court lacks jurisdiction to rescind order setting Atwell resentencing hearing but is not required to change the sentence when the hearing occurs. Shortridge v. State, 2D19-1376 (10/16/20)

STAND YOUR GROUND: Defendant is not entitled to SYG immunity where he got a knife, pinned his girlfriend to the couch, and cut her throat after she "mushed" him in the face with her open hand, and where he said on 911 call that he "stuck a m**f**ing knife into some lady's throat," and "put a knife on her a**," and yelled "shut the f** up." Coleman v. State, 1D19-3598 (10/16/20)

https://www.1dca.org/content/download/682026/opinion/193598_DC02_10162020_132319_i.pdf

STALKING: Defendant commits stalking notwithstanding that the victim is

unaware of his actions. Stalking does not require any direct or indirect contact with victim, nor does the victim need to suffer contemporaneous substantial emotional distress. Substantial emotional distress is determined by a reasonable person standard, not a subjective standard. Libersat v. State, 1D19-4489 (10/16/20)

https://www.1dca.org/content/download/682027/opinion/194489_DC05_10162020_132448_i.pdf

MINOR-DE FACTO LIFE SENTENCE: A 30 year sentence is not the functional equivalent of a life sentence. The Eighth Amendment is implicated only when a juvenile nonhomicide offender's sentence approaches or envelops the entirety of a defendant's 'natural life and does not afford any meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. A juvenile offender's sentence does not implicate Graham unless it meets the threshold requirement of being a life sentence or the functional equivalent of a life sentence. Melvis v. State, 2D17-3466 (10/14/20)

https://www.2dca.org/content/download/681597/opinion/173446_DC05_10142020_080910_i.pdf

COSTS: Notice of the right to contest statutory minimum $100 public defender fee must be given at sentencing, not just before, and not just when court imposes a fee in excess of the minimum. Anders brief stricken. Stange v. State, 2D19-1613 (10/14/20)

https://www.2dca.org/content/download/681691/opinion/191613_NOND_10142020_151838_i.pdf

COSTS: Court may not impose a public defender fee of $100 where Defendant is not afforded notice and an opportunity to be heard. Geary v.

State, 2D19-2805 (10/14/20)

https://www.2dca.org/content/download/681600/opinion/192805_DC08_10142020_081439_i.pdf

DL REINSTATEMENT: A person whose driving privilege has been permanently revoked because he or she has been convicted of DUI manslaughter in violation of s. 316.193 and has no prior convictions for DUI-related offenses may, upon the expiration of 5 years after the termination of any term of incarceration under petition DHSMV for reinstatement of his or her driving privilege he remains drug-free. A person who accidentally grabbed a beer from the fridge may be denied license reinstatement. DHSMV v. Chakrin, 2D20-192 (10/14/20)

https://www.2dca.org/content/download/681607/opinion/200192_DC03_10142020_081814_i.pdf

CERTIORARI: Court departed from the essential requirements of law in its failure to correctly follow precedent as to the meaning of "drug-free." DHSMV v. Chakrin, 2D20-192 (10/14/20)

https://www.2dca.org/content/download/681607/opinion/200192_DC03_10142020_081814_i.pdf

DEFINITION-"DRUG-FREE": Alcohol is a drug; to remain drug-free one must abstain from alcohol. "[T]he mere expansiveness of a dictionary definition of the word 'drug' does not. . . make that definition too broad to ignore the plain meaning of the statutory language." DHSMV v. Chakrin, 2D20-192 (10/14/20)

https://www.2dca.org/content/download/681607/opinion/200192_DC03_10142020_081814_i.pdf

DEFINITION-"DRUG-FREE": "First, it is imperative to recognize that the statutory term 'drug-free' is a compound word, with a definition that is different than mere reliance on the definition of one of its component words. DHSMV v. Chakrin, 2D20-192 (10/14/20)

https://www.2dca.org/content/download/681607/opinion/200192_DC03_10142020_081814_i.pdf

COSTS: Court may order $200 for costs of prosecution if the plea agreement so provides. Ingalls v. State, 4D19-448 (10/14/20)

https://www.4dca.org/content/download/681632/opinion/190448_DC08_10142020_095042_i.pdf

COSTS: Court may not imposed costs for the county drug abuse program without making a finding that the Defendant had the ability to pay the cost and the plea agreement did not provide for it. Ingalls v. State, 4D19-448 (10/14/20)

https://www.4dca.org/content/download/681632/opinion/190448_DC08_10142020_095042_i.pdf

COSTS: Court may not impose a domestic violence surcharge for an offense not recited in §938.08. Ingalls v. State, 4D19-448 (10/14/20)

https://www.4dca.org/content/download/681632/opinion/190448_DC08_10142020_095042_i.pdf

COSTS-INVESTIGATIVE: Court may not impose $50 for investigative costs absent any request by law enforcement agencies or by the state on

their behalf. Dixon v. State, 4D19-2832 (10/14/20)

https://www.4dca.org/content/download/681635/opinion/192832_DC08_10142020_100055_i.pdf

COSTS-SURCHARGE: Court may not impose both a $2 surcharge and a 4% surcharge under §948.09(1)(a)2.; only the former is permitted. Dixon v. State, 4D19-2832 (10/14/20)

https://www.4dca.org/content/download/681635/opinion/192832_DC08_10142020_100055_i.pdf

COSTS-SURCHARGE: Court may not impose a separate 4% surcharge associated with an administrative processing fee for restitution payments pursuant to §945.31. Dixon v. State, 4D19-2832 (10/14/20)

https://www.4dca.org/content/download/681635/opinion/192832_DC08_10142020_100055_i.pdf

TERMINATION OF PARENTAL RIGHTS: If Court fails to enter a written order of disposition within 30 days after conclusion of the TPR hearing, a new hearing is required. B.A. v. DCF, 4D20-1335 (10/14/20)

https://www.4dca.org/content/download/681638/opinion/201335_DC13_10142020_105939_i.pdf

VOP: §948.06(2) applies only to a defendant who meets all four conditions of the statute. Hewett v. State, 1D20-267 (10/14/20)

https://www.1dca.org/content/download/681663/opinion/200267_DC05_10142020_132750_i.pdf

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APPEAL-FUNDAMENTAL ERROR (CONCURRENCE): The mere fact that an error is characterized as fundamental does not mean that it may always be raised on direct appeal, regardless of applicable procedural rules. A defendant wishing to assert a fundamental sentencing error has other procedural means to raise this issue without asserting it for the first time in a direct appeal, by filing a Rule 3.800(b) motion. Roulhac-Lawrence v. State, 1D19-2313 (10/13/20)

https://www.1dca.org/content/download/680562/opinion/192313_DC13_10132020_122556_i.pdf

VOP: Defendant must comply with all four conditions set forth in § 948.06(2)(f)1. in order to receive the benefit of the statute. Bradley v. State, 1D20-846 (10/13/20)

https://www.1dca.org/content/download/680574/opinion/200846_DC05_10132020_123712_i.pdf

BRIEFS: To enhance the clarity of the brief, the court strongly urges parties to limit the use of acronyms. While acronyms may be used for entities and statutes with widely recognized initials, such as FERC and FOIA, parties should avoid using acronyms that are not widely known. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

NEWFANGLED ACRONYMS: Legal writers should shun "newfangled acronyms." but [w]e use AMARC and MCP in this opinion because doing so nets out on the side of clarity and helps keep the opinion flowing. Besides, the acronym AMARC 'does have a nice ring to it.'" USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

APPELLATE ADVOCACY: "We will not discuss why those scattershot contentions lack merit. . .But we remind counsel that raising a plethora of issues is not good advocacy." USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

EVIDENCE-HANDWRITING-OPINION: Under F.R.E. 901(b)(2), a nonexpert can testify that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation." An investigator who becomes familiar with a defendant's handwriting in the course of investigating a crime may testify that at document is in the Defendant's handwriting. An investigator who becomes familiar with the defendant's handwriting for the purpose of solving a crime is different from a lay witness who makes a handwriting comparison so he can testify about it at trial. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

JOA-CIRCUMSTANTIAL EVIDENCE: A guilty verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt. Because a jury is free to choose among the reasonable constructions of the evidence, it is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

UNLAWFUL DISTRIBUTION OF CONTROLLED SUBSTANCE-PHARMACIST: To convict a pharmacist under section 841(a)(1), the government must prove that the pharmacist filled a prescription knowing that a physician issued the prescription without a legitimate medical purpose or outside the usual course of professional practice. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

CONSPIRACY-CIRCUMSTANTIAL EVIDENCE: The government can prove a §846 conspiracy with circumstantial evidence, and when it comes to knowledge of a conspiracy the government does enough when it shows that the circumstances surrounding a person's presence at the scene of conspiratorial activity are so obvious that knowledge of its character can fairly be attributed to him. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

MONEY LAUNDERING: Promotional money laundering is the use of illegally-obtained money to fund more illegal activity. Financial transaction money laundering is the use of a financial institution to conduct a monetary transaction involving more than $10,000 of illegally obtained funds. Concealment money laundering is any transaction designed to conceal or disguise the true nature or location of illegally obtained funds. Structuring money laundering is the use of illegally obtained funds to carry out a financial transaction that is designed to avoid a state or federal reporting requirement. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

MONEY LAUNDERING-CONSPIRACY: To convict for conspiracy to commit money laundering, the government must prove (1) an agreement between two or more persons to commit a money-laundering offense; and (2) knowing and voluntary participation in that agreement by the defendant. The government can do that by using circumstantial evidence, including inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme. When the indictment lists more than one object of the conspiracy, the evidence need only be sufficient for any one of the charged objects. So long as the jury could reasonably have concluded that participants made an agreement to commit promotional money laundering, concealment money laundering, financial transaction money laundering, or structuring money laundering, the evidence was sufficient to convict. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

JURY INSTRUCTION-PRESERVATION: In order to preserve an issue of the Court's failure to give a proposed jury instruction, the request is not enough; Defendant must object to its exclusion, unless it is plain error. Defendant is not entitled to a new trial considering the totality of the jury instructions. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

PLAIN ERROR REVIEW: To prevail under plain error review, Defendant must show that the district court made an error, that the error was plain, and that it affected his substantial rights. If he carries that burden, appellate court has discretion to reverse only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. The substantial rights analysis is like harmless error review but with a twist: the defendant, not the government, bears the burden of persuasion with respect to prejudice. USA v. Iriele, No. 17-13455 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713455.pdf

DISMISSAL-PRE-INDICTMENT DELAY: Pill mill Doctor is not entitled to dismissal for pre-indictment delay based on deaths of potential witnesses where he fails to show a deliberate intent by the government to obtain an advantage by the delay. To establish a violation of a defendant's Fifth Amendment rights by pre-indictment delay, the defendant must show that pre-indictment delay caused him actual substantial prejudice and that the delay was the product of a deliberate act by the government designed to gain a tactical advantage. USA v. Gayden, No. 18-14182 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814182.pdf

SEARCH AND SEIZURE-THIRD PARTY DOCTRINE: Search warrant based on information derived from Florida's Prescription Drug Monitoring database is lawful. Under the third-party doctrine, an individual lacks a reasonable expectation of privacy in information revealed to a third party and conveyed by that third party to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and that confidence placed in the third party will not be betrayed. Because doctor did not have a reasonable expectation of privacy in the prescriptions he wrote for his patients, and because he voluntarily disclosed those prescription records to others through his participation in the computerized tracking system, he fails to establish protected privacy. USA v. Gayden, No. 18-14182 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814182.pdf

DAUBERT-EXPERT: Denial of a Daubert motion is reviewed for an abuse of discretion, which places a thumb and a finger or two on the district court's side of the scale. The potential for confirmation bias does not establish that the district court abused its discretion in allowing government witness to testify. USA v. Gayden, No. 18-14182 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814182.pdf

SENTENCING GUIDELINES-CALCULATION-OBSTRUCTION: Court properly applied an obstruction of justice enhancement to the guidelines based on Defendant's alteration to patient records after the state search warrant for some of his files was executed, but before the federal search warrant for all of his remaining files was served. USA v. Gayden, No. 18-14182 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814182.pdf

MISTRIAL: Defendant is not entitled to a mistrial based on agent's false rebuttal testimony that the photos of the CS's car on Gallardo's cellphone were taken by Gallardo's phone or had been manipulated where Court specified that the jury could not use the agent's testimony on that point. USA v. Gallardo, No. 18-11812 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811812.pdf

JOA-WEIGHT OF DRUG: Defendant properly convicted of conspiracy to traffic in five kilos or more, notwithstanding that only one kilo was delivered, where conversations showed that more was anticipated. USA v. Gallardo,

No. 18-11812 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811812.pdf

BRADY: Defendant is not entitled to a new trial for a Brady violation where Government failed to disclose until the third day of trial that the CS was deactivated upon admitting to self-dealing during the same time period as the instant cocaine deal. USA v. Gallardo, No. 18-11812 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811812.pdf

SENTENCING ENTRAPMENT: Sentencing entrapment–claim that Defendant was predisposed to commit a lesser offense (1 kilo), but the government entrapped him into committing a greater offense (5 kilos) subject to greater punishment—is not recognized as a viable defense. Relief is warranted only when the defendant proves that the government engaged in extraordinary misconduct that was sufficiently reprehensible. USA v. Gallardo, No. 18-11812 (11th Cir. 10/9/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811812.pdf

JOA: Defendant properly convicted of attempted murder of three officers after firing seven shots at them. Where competent substantial evidence of premeditation was presented from which a reasonable factfinder could find guilt beyond all reasonable doubt as to each element, the motion for judgment of acquittal must be denied. The defunct circumstantial evidence standard of review does not apply. Carter v. State, 1D19-1856 (10/9/20)

https://www.1dca.org/content/download/676912/opinion/191856_DC05_10092020_123822_i.pdf

TASER DEFENSE: Firing at three officers seven times was not the result of involuntary muscle contraction from being tased. Carter v. State, 1D19-1856 (10/9/20)

https://www.1dca.org/content/download/676912/opinion/191856_DC05_10092020_123822_i.pdf

RETURN OF PROPERTY: A facially sufficient motion for return of property must allege: (1) that the property is the movant's personal property; (2) that the property was not the fruit of criminal activity; (3) that the property was not being held as evidence; and (4) specifically identify the property. Where the motion is legally insufficient, Court must give Movant an opportunity to amend the motion, rather than dismissing it as untimely. Bowers v. State, 2D19-3482 (10/9/20)

https://www.2dca.org/content/download/676884/opinion/193482_DC13_10092020_080113_i.pdf

COSTS: Prosecution costs cannot be assessed unless requested. A public defender fee may not be imposed before first giving a defendant notice of his right to a hearing. Vandawalker v. State, 2D18-4977 (10/9/20)

https://www.2dca.org/content/download/676879/opinion/184977_DC08_10092020_080710_i.pdf

DOUBLE JEOPARDY: Under Fla.Stat. §812.025, Defendant may not be convicted of theft and dealing in stolen property. Wright v. State, 5D19-1327 (10/9/20)

https://www.5dca.org/content/download/676862/opinion/191327_DC08_10092020_080503_i.pdf

STAND YOUR GROUND: Defendant establishes prima facie case of SYG immunity where witnesses testify that the victim was the aggressor, grabbed Defendant's girl friend by the arm from behind as she walked with him, then punched him two or three times before Defendant hit victim in the eye. A defendant's sole burden at the pretrial immunity hearing is simply to raise a prima facie claim of self-defense immunity and that he is not required to prove his immunity claim at the Stand Your Ground hearing. Jefferson cited

approvingly. Rogers v. State, 5D19-1792 (10/9/20)

https://www.5dca.org/content/download/676863/opinion/191792_DC13_10092020_081157_i.pdf

POST CONVICTION RELIEF: Court may not grant Defendant's Motion for Post-Conviction relief upon determining that counsel rendered ineffective assistance of counsel without conducting a prejudice analysis. State v. Finley, 5D19-2586 (10/9/20)

https://www.5dca.org/content/download/676865/opinion/192586_DC08_10092020_081740_i.pdf

COSTS: $200 cost of prosecution and $200 indigency defense cost assessments are reduced to the allowable amounts ($100, respectively). Chounard v. State, 5D20-174 (10/9/20)

https://www.5dca.org/content/download/676867/opinion/200174_DC05_10092020_082853_i.pdf

COSTS: Court may not impose $3.00 costs for non-traffic offense. Perry v. State, 5D20-211 (10/9/20)

https://www.5dca.org/content/download/676868/opinion/200211_DC08_10092020_083304_i.pdf

CONDITION OF PROBATION-NO CONTACT WITH CHILDREN: Probation

conditions forbidding any contact with minors are overly broad because they subject offenders to possible punishment for innocent or inadvertent conduct. Court may modify this condition of probation to prohibit only intentional contact with minors without court approval. Williams v. State, 5D20-229 (10/9/20)

https://www.5dca.org/content/download/676869/opinion/200229_DC13_10092020_083636_i.pdf

COSTS: Court may not impose costs pursuant to §318.18(11)(b) where Defendant was not charged with a traffic infraction. Petit-Homme v. State, 5D20-940 (10/9/20)

https://www.5dca.org/content/download/676870/opinion/200940_DC05_10092020_083904_i.pdf

INDICTMENT-POSSESSION OF FIREARM BY FELON: Although indictment is defective where it does not allege that Defendant knew he was a felon when he possessed the firearm or cite the statute for that element, Defendant is not entiled to relief under the plain-error test because the error did not affect his substantial rights; there is no reasonable probability that he would have obtained a different result but for the error because circumstantial evidence establishes that he knew of his felon status. Someone who has been convicted of felonies repeatedly is especially likely to know he is a felon. USA v. Innocent, No. 19-10112 (11th Cir. 10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815210.pdf

INDICTMENT: Indictment defects are not jurisdictional where they merely omitted an element rather than fail to charge a federal offense at all. USA v. Innocent, No. 19-10112 (11th Cir. 10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815210.pdf

APPEAL-PRESERVATION-ARMED CAREER CRIMINAL ACT: Florida aggravated assault is a crime of violence under ACCA. Even if it weren't, Defendant waived that argument by not raising it before the trial court. USA v. Innocent, No. 19-10112 (11th Cir. 10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815210.pdf

ACCA: A "violent felony" for the purpose of the Armed Career Criminal Act is "any crime punishable by imprisonment for a term exceeding one year . . . that[] has as an element the use, attempted use, or threatened use of physical force against the person of another." Whether a defendant's crime is a violent felony is determined by the categorical approach, which asks whether the least culpable conduct encompassed by a criminal statute necessarily involves the use, attempted use, or threatened use of physical force against a person. USA v. Innocent, No. 19-10112 (11th Cir. 10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201815210.pdf

JURY INSTRUCTION-WILLFULNESS: Willfulness is not an element of intent to distribute. The *mens rea* required for a conviction is knowledge, not willfulness. Failure to instruct on willfulness is not error. USA v. Amede, No. 18-11172 (10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/2

DURESS: Defendant is not entitled to a duress defense where he presented no evidence that he had no reasonable opportunity to inform the police that drug dealers were threatening him and his family and coercing

him to consummate the drug deal. USA v. Amede, No. 18-11172 (10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/2

COUNSEL: When the district court has appointed counsel for an indigent criminal defendant, the defendant does not have the right to demand different appointed counsel unless he can show good cause, such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict. Neither the Defendant's refusal to consult with counsel not counsel's failure to advance Defendant's frivolous or harmful arguments constitutes good cause. USA v. Amede, No. 18-11172 (10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/2

COUNSEL-DISCHARGE: Court did not err in allowing Defendant to discharge retained counsel at the sentencing hearing without appointing a new attorney. "[Defendant's] uncooperative conduct throughout the case and especially at sentencing evinced a knowing and voluntary waiver." USA v. Amede, No. 18-11172 (10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201811172.pdf

INVESTIGATORY STOP-REASONABLE SUSPICION: Police may stop Defendant on the basis of a 911 call after 3:00 a.m. that someone saw a disturbance in the front yard of a drug house, that one of the men involved had a gun, and that the police should use caution because there might be shooting any minute. An anonymous tip can demonstrate sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop, notwithstanding that the officers did not see the Defendant acting unlawfully. "Officers need not—and should not—turn a blind eye to commonsense concerns of danger when responding to an emergency 911 call." USA v.

Bruce, No. 18-10969 (11th Cir. 10/8/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201810969.pdf

COSTS: Court may not impose a $50.00 cost for "Investigative Fees-County" under §938.27(8) without a request from the investigating agency. Even if this fee had been requested by the investigating agency, the authority for such fee is §938.27(1), not (8). Warren v. State, 1D19-2694 (10/7/20)

https://www.1dca.org/content/download/676067/opinion/192694_DC08_10072020_133226_i.pdf

MAILBOX RULE: The important date for purposes of the mailbox rule is the date when the inmate hands over his or her documents to prison officials for mailing. This time limit is jurisdictional, and the inmate filed too late. Jackson v. DOC, 1D19-4342 (10/7/20)

https://www.1dca.org/content/download/676069/opinion/194342_DC05_10072020_133741_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective in failing to introduce evidence of the victim's reputation for violence and specific prior acts of violence other than domestic violence. This type of evidence is generally admissible to support a self-defense claim. Balfour v. State, 4D19-1888 (10/7/20)

https://www.4dca.org/content/download/675961/opinion/191888_DC08_1

0072020_084816_i.pdf

DUE PROCESS: Juvenile was improperly convicted of making a false report concerning the use of firearms in a violent manner based on him saying "F--- you. . . I'll shoot you and shoot up your house." (Juvenile later apologized and did not shoot him or his house). Saying "I'll shoot you and shoot up your house," and not doing so, is not a "false report." "In our constitutional system, it is difficult to conceive of a more egregious violation of due process than convicting a defendant for conduct that does not constitute the charged crime." J.B. v. State, 4D19-2634 (10/7/20)

https://www.4dca.org/content/download/675963/opinion/192634_DC13_10072020_085054_i.pdf

DICTIONARY-GRAMMAR-"REPORT": "Although section 790.163(1) uses the word "report" as a noun within its internal phrase 'make a false report,' that phrase can be understood as meaning 'falsely report,' in other words, using 'report" as a transitive verb. J.B. v. State, 4D19-2634 (10/7/20)

https://www.4dca.org/content/download/675963/opinion/192634_DC13_10072020_085054_i.pdf

APPEAL-FUNDAMENTAL ERROR: An appellate court may address a fundamental error, even though the issue is not raised in the initial brief. Florida's appellate courts have long recognized judicial authority—and a "unrenunciable" duty—to correct fundamental errors, meaning those of such gravity that ignoring and not correcting them would diminish public respect for the judicial process, even if those errors were not preserved at trial, not raised on appeal in the briefing process, or raised by the appellate court on its own. "Where fundamental error is at issue, it defies all notion of fairness to elevate procedure over justice and send this juvenile, without an attorney, to pursue the remedy of ineffective assistance of appellate counsel. .

.Turning a blind eye to this fundamental error would undermine the public's confidence in our system of justice." J.B. v. State, 4D19-2634 (10/7/20)

https://www.4dca.org/content/download/675963/opinion/192634_DC13_10072020_085054_i.pdf

EVIDENCE-TEXT MESSAGES-AUTHENTICATION: Screenshots of text messages received by a sexual assault victim based on are sufficiently authenticated where the sender's profile picture did not show the Defendant, but the witness testified she could tell that the Defendant was the sender because of the messages' content (screen name, allusions to information known only to the victim and the Defendant, etc.). An e-mail or text may be circumstantially authenticated by its contents. The requirements of authentication are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Authentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic. State v. Torres, 4D20-225 (10/7/20)

https://www.4dca.org/content/download/675964/opinion/200225_DC13_10072020_085612_i.pdf

DOUBLE JEOPARDY: Double Jeopardy bars a retrial on the attempted first-degree murder charge where the jury convicted Defendant of the lesser-included offense of attempted second-degree murder, which was later, on appeal, remanded for a new trial on the lesser offense. The original jury's verdict on the lesser included offense of attempted second-degree murder was an acquittal on the charge of attempted first-degree murder. Coleman v. State, 2D18-2143 (10/2/20)

https://www.2dca.org/content/download/672623/opinion/182143_DC08_10022020_080923_i.pdf

RESTITUTION: Defendant may be required to pay restitution for an item alleged to have been stolen and alluded to in the police report (here, a tennis bracelet) notwithstanding that they are not mentioned in the information. "[W]e are unconvinced that the State's decision not to charge Ferri with the theft of the tennis bracelet precludes restitution for that item when the arrest affidavit clearly noted Ferri's admission to stealing and then selling that item." Ferri v. State, 2D19-1887 (10/2/20)

https://www.2dca.org/content/download/672624/opinion/191887_DC05_10022020_081149_i.pdf

COMPETENCY: Court may not rule the Defendant competent when a psychologist unsuccessfully attempted to evaluate the uncooperative defendant and could not opine as to Appellant's competency, and where no expert witnesses were called to testify nor expert reports admitted, Hicks v. State, 5D19-722 (10/2/20)

https://www.5dca.org/content/download/672609/opinion/190722_DC13_10022020_083727_i.pdf

RESTITUTION-JURISDICTION: Trial court lacks authority to set a restitution schedule after it terminated Defendant's probation. Campbell v. State, 5D19-3688 (10/2/20)

https://www.5dca.org/content/download/672612/opinion/193688_DC08_10022020_084646_i.pdf

CERTIFICATE OF INNOCENCE: A person who obtains a certificate of innocence can seek damages up to $50,000 for every 12 months of incarceration. A JOA (ordered on appeal) does not by itself establish innocence under §2315. A reversal of a conviction due to insufficient evidence does not automatically entitle a petitioner to a certificate of innocence. "The absence of evidence of a criminal defendant's guilt does not equate to the presence of evidence of that same defendant's innocence.

The latter simply doesn't follow from the former—it just doesn't." USA v. Abreu, No. 18-13965 (11th Cir. 10/1/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201813965.pdf

CERTIFICATE OF INNOCENCE: The preponderance of the evidence standard governs in §2513 proceedings. USA v. Abreu, No. 18-13965 (11th Cir. 10/1/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201813965.pdf

REASONABLE DOUBT: "Strange as it may sound, the reasonable doubt formula was originally concerned with protecting the souls of the jurors against damnation." *Quoting* James Q. Whitman. USA v. Abreu, No. 18-13965 (11th Cir. 10/1/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201813965.pdf

DEFINITION-RIGOROUS BURDEN: "The Fourth Circuit. . .has said that a §2513 petitioner has a 'rigorous burden.'. . .In evidentiary terms, we do not know what a 'rigorous burden' is supposed to entail, so we adopt the familiar preponderance of the evidence standard." USA v. Abreu, No. 18-13965 (11th Cir. 10/1/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201813965.pdf

QUOTATION: "'[I]nnocence' is a term of art." USA v. Abreu, No. 18-13965 (11th Cir. 10/1/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201813965.pdf

SEPTEMBER 2020

ACCA-TRAFFICKING-PURCHASE: A §893.135(1) conviction can qualify as a serious drug offense under the ACCA only if each one of the six alternatives for trafficking (selling, purchasing, manufacturing, delivering, bringing into the state, or knowingly possessing cocaine in an amount of 28 grams or more of cocaine. If "purchasing" of a trafficking quantity of a controlled substance does not involve possession with intent to distribute that substance, then no Florida drug trafficking conviction under § 893.135(1) can ever qualify as an ACCA predicate offense. Certified Question to Florida Supreme Court: How does Florida law define the term "purchase" for purposes of Florida Statutes §893.135(1)? More specifically, does a completed purchase for purposes of conviction under § 893.135(1) require some form of possession—either actual or constructive—of the drug being purchased? USA v. Conage, No. 17-13975 (11th Cir. 9/30/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713975.cert.pdf

DEFINITION-PURCHASE: The dictionary definition of "purchase" means "to obtain by paying money or its equivalent," but the dictionary definition of "purchase" is not necessarily synonymous with the meaning that Florida law ascribes to the term. All of which means that, absent some definitive guidance from Florida case law, the meaning of the term "purchase" in the Florida trafficking statute remains unclear. USA v. Conage, No. 17-13975 (11th Cir. 9/30/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201713975.cert.pdf

MANDAMUS: Inmate who fails to plead and prove that he had exhausted administrative remedies may not seek mandamus relief. Beebe v. Florida

Dept. of Corrections, 1D19-2447 (9/30/20)

https://www.1dca.org/content/download/672332/opinion/192447_DC05_09302020_134024_i.pdf

CREDIT FOR TIME SERVED: Where the record does not show that Appellant agreed to a specific number of days, Defendant is entitled to a hearing to determine credit for time served. Johnson v. State, 1D19-2876 (9/30/20)

https://www.1dca.org/content/download/672333/opinion/192876_DC13_09302020_134454_i.pdf

LESSER INCLUDED: Aggravated assault is not a category-one necessarily lesser included offense of armed robbery. Garrison v. State, 1D19-4089 (9/30/20)

https://www.1dca.org/content/download/672335/opinion/194089_DC02_09302020_134655_i.pdf

DOUBLE JEOPARDY: Separate convictions for robbery with a firearm and aggravated assault with a firearm do not violate double jeopardy. Garrison v. State, 1D19-4089 (9/30/20)

https://www.1dca.org/content/download/672335/opinion/194089_DC02_09302020_134655_i.pdf

POST CONVICTION RELIEF: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Martin v. State, 1D20-890 (9/30/20)

https://www.1dca.org/content/download/672336/opinion/200890_DA08_09302020_134856_i.pdf

COMPETENCY: Court must enter a written order on its oral ruling that Defendant is competent to proceed with sentencing. Duberry v. State, 2D19-2095 (9/30/20)

https://www.2dca.org/content/download/672236/opinion/192095_DC05_09302020_081634_i.pdf

POST CONVICTION RELIEF: General allegations or mere conclusions are insufficient to demonstrate entitlement to relief. Where Defendant's Motion for Post Conviction Relief alleges that his attorney did not use witnesses who could have provided an alibi, was totally unprepared, was disloyal, had a total lack of communication, and that he was tried in a kangaroo court, it is legally insufficient. Moore v. State, 3D20-1094 (9/30/20)

https://www.3dca.flcourts.org/content/download/672291/opinion/201094_DC05_09302020_103949_i.pdf

VOP-APPEAL-PRESERVATION: Defendant cannot appeal issue that the written order of probation revocation did not conform to the court's oral pronouncement of the grounds for revocation where he did not preserve this argument with either a contemporaneous objection or a 3.800 motion. Chirino v. State, 3D20-283 (9/30/20)

https://www.3dca.flcourts.org/content/download/672288/opinion/200283_DC05_09302020_103638_i.pdf

EYE WITNESS IDENTIFICATION: An out-of-court identification violates due process if the police employ an unnecessarily suggestive procedure in obtaining an out-ofcourt identification and under the totality of the circumstances, the suggestive procedure gives rise to a substantial likelihood of irreparable misidentification. Defendant's argument that Florida's law on eyewitness identification should be updated based on recent research is declined. "This sea change must come from our supreme court." Valentine v. State, 4D19-1448 (9/30/20)

https://www.4dca.org/content/download/672278/opinion/191448_DC05_09302020_085600_i.pdf

PHOTO LINE UP: A black bar across the top of Defendant's photo in lineup does not render it unduly suggestive. Valentine v. State, 4D19-1448 (9/30/20)

https://www.4dca.org/content/download/672278/opinion/191448_DC05_09302020_085600_i.pdf

PHOTO LINE UP: The administration of the photo lineup was not unnecessarily suggestive because where the photographs were administered simultaneously, rather than sequentially; the lineup was not double blind; and the detective told the witness "very good" after he selected the defendant. Double-blind administration of lineups is not required by §92.70. Valentine v. State, 4D19-1448 (9/30/20)

https://www.4dca.org/content/download/672278/opinion/191448_DC05_09302020_085600_i.pdf

EVIDENCE-PRIOR CONSISTENT STATEMENT: Witness's statement in deposition that Defendant had tattoos on his face, elicited on redirect, is admissible to rebut an implication of recent fabrication (witness had not told the police about the tattoos but had seen them on the news). Valentine v. State, 4D19-1448 (9/30/20)

https://www.4dca.org/content/download/672278/opinion/191448_DC05_09302020_085600_i.pdf

EVIDENCE-INDENTIFICATION-SURVEILLANCE VIDEO: A childhood friend's identification of Defendant from surveillance video is inadmissible hearsay, but error is harmless. Valentine v. State, 4D19-1448 (9/30/20)

https://www.4dca.org/content/download/672278/opinion/191448_DC05_09302020_085600_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Court improperly considered that Defendant had "not accepted any responsibility" or shown "any type of remorse." Conflict certified. Sibrun v. State, 4D19-1629 (9/30/20)

https://www.4dca.org/content/download/672279/opinion/191629_DC13_09302020_085813_i.pdf

FIREARMS REGULATION-CONSTITUTIONALITY: The National Firearms Act is constitutional under Congress' power to tax. Congress under the taxing power may reasonably impose a penalty on possession of unregistered weapons. USA v. Bolatete, No. 18-14184 (11th Cir. 9/29/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814184.pdf

APPEAL-PRESERVATION-SECOND AMENDMENT: Defendant's argument on appeal that the Fee Jurisprudence doctrine (which holds that the government may not impose a charge for the enjoyment of a right granted by the federal constitution) applies to the Second Amendment is not preserved when not raised before the trial court. USA v. Bolatete, No. 18-14184 (11th Cir. 9/29/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814184.pdf

SECOND AMENDMENT-SILENCER: The National Firearms Act's application to silencers does not violate the Second Amendment. The Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes. USA v. Bolatete, No. 18-14184 (11th Cir. 9/29/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201814184.pdf

FIREARMS REGULATION-CONSTITUTIONALITY: The National Firearms Act is constitutional under Congress' power to tax. Congress under the taxing power may reasonably impose a penalty on possession of unregistered weapons. USA v. Bolatete, No. 18-14184 (11th Cir. 9/29/20)

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https://media.ca11.uscourts.gov/opinions/pub/files/201814184.pdf

PRETRIAL RELEASE-INCOMPETENT DEFENDANT: Where a defendant has been found incompetent to proceed and is then released upon conditions and commits a new offense, Court has only two options: modify the conditions of release or involuntarily commit the defendant to DCFS for treatment. When the evidence is insufficient to commit a defendant involuntarily, the trial court's only option is to release the defendant with the necessary conditions. Dodd v. State, 5D20-1922 (9/29/20)

https://www.5dca.org/content/download/672165/opinion/201922_DC03_09292020_153429_i.pdf

DUE PROCESS-PRIVATE PROBATION OFFICE: Due Process is violated when a private probation office has authority to increase fines or extend the period of probation. The Due Process Clause prohibits a financial interest in the outcome of any decisions—personal or otherwise—by a private probation company, regardless whether it had judicial pre-authorization. "Taken to its logical conclusion, PPS's theory implies that when a court delegates (abdicates?) its judicial function to an entity with a personal financial stake in how that function is performed, neither actor violates the Due Process Clause—the court skates because it's not partial, and the delegate gets off because it's not judicial. That can't be the law." Harper v. Professional Probation Services, Inc. No. 19-13368 (11th Cir. 9/25/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201913368.pdf

POST CONVICTION RELIEF: A double jeopardy claim cannot be raised in a Rule 3.800 motion, but rather in a Rule 3.850 motion. Motion should be treated as a Rule 3.850 motion. Shuler v. State, 2D20-610 (9/25/20)

https://www.2dca.org/content/download/671734/opinion/200610_DC13_09252020_083317_i.pdf

JUVENILE-POST CONVICTION RELIEF: Juveniles motion for post conviction relief (release from commitment) under Rule 8.140 filed more than one year late is untimely. State v. J.J.R., 5D19-3768 (9/25/20)

https://www.5dca.org/content/download/671687/opinion/193768_DC13_09252020_085918_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call a toxicologist. Ruh v. State, 20-375 (9/25/20)

https://www.5dca.org/content/download/671689/opinion/200375_DC08_09252020_090713_i.pdf

UNSEALING SEARCH WARRANT AFFIDAVIT: State need not disclose the affidavit for the search warrant when it could reveal the identity of the confidential informant where Defendant's proffered reason for disclosure was to show that the warrant was stale, when that reason was not articulated in the motion to compel disclosure, and where Defendant never asked the trial court to review the sealed affidavit in camera nor did he take any steps to make a record. Hill v. State, 1D18-3273 (9/24/20)

https://www.1dca.org/content/download/671584/opinion/183273_DC05_09242020_133445_i.pdf

FINE-COST: Court may not impose a discretionary fine under §775.083 and surcharge under §938.04 without giving him adequate notice and an opportunity to be heard. Dooly v. State, 1D19-0263 (9/23/20)

https://www.1dca.org/content/download/671585/opinion/190263_DC08_09242020_133752_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective to failing to investigate the hours of operation of a liquor store to challenge the time line. "Whether the victim was robbed at the Travel Inn or after he left a liquor store near the Travel Inn does not have anything to do with whether he was robbed by Appellant." The benchmark for judging an ineffective assistance of counsel claim is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as producing a just result. Black v. State, 1D19-590 (9/24/20)

https://www.1dca.org/content/download/671586/opinion/190590_DC05_09242020_134259_i.pdf

DEADLY WEAPON: A BB gun is considered an "other deadly weapon" when it is used in such a manner that it could have caused great bodily harm or death, such as holding it to the victim's head. Black v. State, 1D19-590 (9/24/20)

https://www.1dca.org/content/download/671586/opinion/190590_DC05_09242020_134259_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: A signed written statement from the victim recanting his trial testimony, which the Court hed to be untrue (base on the witness's testimony that he was threatened), does not entitle Defendant to a new trial. Recanted testimony is exceedingly unreliable. Black v. State, 1D19-590 (9/24/20)

https://www.1dca.org/content/download/671586/opinion/190590_DC05_09242020_134259_i.pdf

COMPETENCY: Once the court has reasonable grounds to question the defendant's competency, the court has no choice but to conduct a hearing to resolve the question. Failure to hold a competency hearing and enter a written order is fundamental error and requires reversal. Anderson v. State, 1D19-677 (9/24/20)

https://www.1dca.org/content/download/671587/opinion/190677_DC13_09242020_134632_i.pdf

INFORMATION-AMENDMENT DURING TRIAL: Amendment during trial of four counts from sexual battery to lewd or lascivious molestation did not prejudice Appellant's substantial rights where the manner of the acts were such that the amended lewd or lascivious molestation charges could not help but have been proven if the greater offense allegations were proven. State may substantively amend an information during trial, even over the objection of the defendant, unless there is a showing of prejudice to the substantial rights of the defendant. Thach v. State, 19-3660 (9/24/20)

https://www.1dca.org/content/download/671588/opinion/193660_DC05_09242020_134831_i.pdf

RECLASSIFICATION: Second-degree murder with a weapon is reclassified as a first-degree felony punishable by life imprisonment, not a life felony. Williams v. State, 2D20-95 (9/23/20)

https://www.2dca.org/content/download/671392/opinion/200095_DC05_09232020_082102_i.pdf

EVIDENCE-MOTION IN LIMINE: Evidence of uncharged crimes is inadmissible to prove an accused's bad character or criminal propensity. Defendant is entitled to a new trial where, in violation of motion in limine, State elicited from victim that someone matching the Defendant's description had committed previous burglaries of his car, and implied on closing that Defendant had been the burglar from earlier incidents. "[T]he State's argument conflates two very distinct propositions: that there had been prior burglaries to Garcia's car; and that Hudson was the person who committed those prior burglaries to Garcia's car. The first proposition was not disputed. . .[but] any evidence or argument that Hudson was the person who committed the prior burglaries of Garcia's car was not an issue raised or invited by the defense, was not material, and was not inextricably intertwined." Hudson v. State, 3D19-664 (9/23/20)

https://www.3dca.flcourts.org/content/download/671378/opinion/190664_DC13_09232020_103006_i.pdf

CONTEMPT: Court properly held Defendant in contempt for saying "So fuck me basically," then attempted to leave the courtroom without permission. A defendant's use of profanity in open court may constitute a

valid ground for direct criminal contempt when the profanity is uttered in the presence of the trial judge and the utterance disrupts the trial court's business. Jones v. State, 3D20-287 (9/23/20)

https://www.3dca.flcourts.org/content/download/671415/opinion/200287_DC05_09232020_105042_i.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officers had reasonable suspicion to stop bicyclist who they believed matched the BOLO for a burglary suspect (he wore a sweatshirt) and who had no headlight on his bike. State v. Daley, 4D19-3590 (9/23/20)

https://www.4dca.org/content/download/671435/opinion/193590_DC13_09232020_123120_i.pdf

DISSENT-SCOPE OF REVIEW: "[T]he majority correctly states the law that an appellate court is required to accept the trial court's determination of historical facts and the inferences drawn therefrom, but it reviews de novo the application of the law to those facts. Then the majority ignores that law. . .Contrary to the law, the majority has reweighed the evidence. State v. Daley, 4D19-3590 (9/23/20)

https://www.4dca.org/content/download/671435/opinion/193590_DC13_09232020_123120_i.pdf

QUOTATION: "Some changes in the law are momentous. . . Others, as in this case, come into the law like Carl Sandburg's fog, 'on little cat feet.'" State v. Daley, 4D19-3590 (9/23/20)

https://www.4dca.org/content/download/671435/opinion/193590_DC13_09232020_123120_i.pdf

MOTION TO WITHDRAW PLEA: Where Defendant moved to withdraw his plea, then moved to withdraw his motion to withdraw his plea, Defendant is not entitled to withdraw his plea more than 30 days later on the basis that the Court had never entered any written orders. There is no requirement that the court enter a written order on the motion to withdraw the motion to withdraw plea. Johnson v. State, 1D18-4640 (9/21/20)

https://www.1dca.org/content/download/670757/opinion/184640_DC05_09212020_131727_i.pdf

MINOR-LENGTHY SENTENCE: Defendant who received a 35-year incarcerative sentence for felonies committed when he was 13 is not entitled to resentencing and retroactive application of the sentence review procedures under §921.1402. Johnson v. State, 1D18-4640 (9/21/20)

https://www.1dca.org/content/download/670757/opinion/184640_DC05_09212020_131727_i.pdf

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Appellate counsel is not ineffective for failing to argue that Court improperly considered his lack of remorse and protestation of innocence where Defendant's claim is refuted by the record. Wright v. State, 1D19-304 (9/21/20)

https://www.1dca.org/content/download/670758/opinion/190304_DC02_09212020_132327_i.pdf

EVIDENCE: A photograph maintains relevance where it is probative of facts beyond what was stipulated to. Watson v. State, 1D19-2368 (9/21/20)

https://www.1dca.org/content/download/670759/opinion/192368_DC05_09212020_132755_i.pdf

COUNSEL/PRO SE DEFENDANT: Defendant may not file a pro se Petition for Writ of Prohibition under SYG when his counsel already had done so. Generally, a criminal defendant has no right to partially represent himself and, at the same time, be partially represented by counsel. Stucks v. State, 1D20-752 (9/21/20)

https://www.1dca.org/content/download/670764/opinion/200752_DA08_09212020_134739_i.pdf

CERTIORARI: District courts must exercise caution not to expand certiorari jurisdiction to review the correctness of the circuit court's decision; second-

tier certiorari should not be used simply to grant a second appeal and should be reserved for those situations when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.

Cooper v. State, 1D20-1536 (9/21/20)

https://www.1dca.org/content/download/670765/opinion/201536_DC02_09212020_135035_i.pdf

VOP-SENTENCING: All the conditions of §948.06(2)(f) must be met for the Court to be limited to 90 days in jail for a violation of probation. The doctrines of *in pari materia* and the absurdity doctrine trump the plain language of the statute. Lawson v. State, 5D19-3386 (9/18/20)

https://www.5dca.org/content/download/670418/opinion/193386_DC05_09182020_084257_i.pdf

STATUTORY CONSTRUCTION-IN PARI MATERIA: The doctrine of *in pari materia* provides that we should view statutes in a manner that would harmonize the applicable law. Lawson v. State, 5D19-3386 (9/18/20)

https://www.5dca.org/content/download/670418/opinion/193386_DC05_09182020_084257_i.pdf

STATUTORY CONSTRUCTION-ABSURDITY DOCTRINE: The absurdity doctrine provides that a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion. Lawson v. State, 5D19-3386 (9/18/20)

https://www.5dca.org/content/download/670418/opinion/193386_DC05_09182020_084257_i.pdf

"ANY": "Any" is not ambiguous, but it is absurd. "Where we diverge from the court in Owens is in its finding that 'the use of 'any' rather than 'all'. . . creates an ambiguity . . . It appears that finding is used to justify the application of the absurdity doctrine. While in complete agreement with Owens that the use of any" creates an absurd result, there is nothing ambiguous about it." Lawson v. State, 5D19-3386 (9/18/20)

https://www.5dca.org/content/download/670418/opinion/193386_DC05_09182020_084257_i.pdf

QUARTERMAN RELEASE: Defendant who fails to appear for sentencing after agreeing that FTA would void limits on possible length of sentence, and thereafter fails to challenge the trial court's failure to make a willfulness finding, cannot appeal the sentence imposed. Cruz v. State, 5D20-228 (9/18/20)

https://www.5dca.org/content/download/670419/opinion/200228_DC05_09182020_084526_i.pdf

JURY SIZE: Defendant may not have a 12-person jury for capital sex battery, For purposes of determining jury size, a "capital case" specifically and only means that the defendant possibly faces capital punishment, i.e., the death penalty. Where Defendant cannot be sentenced to death for any of the crimes for which he is being tried, a six-person jury is mandatory. State v. Dagostino, 5D20-658 (9/18/20)

https://www.5dca.org/content/download/670420/opinion/200658_DC03_09182020_085104_i.pdf

POST CONVICTION RELIEF-INCOMPETENCE: Defendant's general assertion of incompetence claiming that he was intellectually disabled is insufficient standing alone to warrant an evidentiary hearing. Williams v. State, 5D20-817 (9/18/20)

https://www.5dca.org/content/download/670421/opinion/200817_DC08_09182020_085504_i.pdf

DEATH PENALTY: Where a unanimous jury finding establishes the existence of at least one statutory aggravating circumstance beyond a reasonable doubt there is no Hurst error. Lott v. State, SC19-1356 (9/17/20)

https://www.floridasupremecourt.org/content/download/670254/opinion/sc19-1356.pdf

DEATH PENALTY: Indictment does not need to identify aggravators. Lott v. State, SC19-1356 (9/17/20)

https://www.floridasupremecourt.org/content/download/670254/opinion/sc19-

1356.pdf

COVID-19-DEATH PENALTY: Defendant is not entitled to postponement of execution because his attorneys cannot meet with him due to Covid-19. Courts do not have a "free-floating, standardless reservoir of authority to postpone an already-scheduled execution, free and clear of the traditional stay standard. If they did, no death-sentenced inmate would ever again go to the trouble of trying to satisfy the stay factors. That cannot be the law." Lecroy v. USA, No. 20-13353 (11th Cir. 9/16/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202013353.pdf

INEFFECTIVE ASSISTANCE-APPELLATE COUNSEL: Appellate counsel is not ineffective for failing to raise on appeal trial counsel's death penalty mitigation strategy when trial counsel was not ineffective. It is not constitutionally deficient for counsel to rely on residual doubt at sentencing, despite the overwhelming evidence of guilt. Franks v. GDCP Warden, No. 16-17478 (11th Cir. 9/16/2020)

https://media.ca11.uscourts.gov/opinions/pub/files/201617478.pdf

APPEAL WAIVER: Where Defendant's plea agreement waives the right to appeal unless the Court imposes a sentence that exceeds the advisory guideline range. Only the district court determines the guideline range. The guideline range does not exist until it is calculated by the district court during the sentencing proceedings. The phrase “the advisory guideline range” unambiguously refers to the guideline range as determined by the district court. USA v. Boyd, No. 18-11063 (11th Cir. 9/16/2020)

https://media.ca11.uscourts.gov/opinions/pub/files/201811063.pdf

POST CONVICTION RELIEF: A federal court may not grant a habeas corpus application with respect to any claim that was adjudicated on the merits in state court proceedings unless the state court's decision was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court. Defendant is not entitled to a new penalty phase where evidence does not support conclusion that Defendant suffered from Fetal Alcohol Syndrome Disorder, and even if it had, no prejudice is shown. Presnell v. Warden, No. 17-14322 (11th Cir. 9/16/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201714322.pdf

SELF-DEFENSE-JURY INSTRUCTION: Defendant is entitled to the nondeadly force instruction where he testified that he retrieved a gun from the back of his truck because he thought the victim was armed, but did not threaten the victim with it. Lopez v. State, 3D18-2217 (9/16/20)

https://www.3dca.flcourts.org/content/download/669875/opinion/182217_DC13_09162020_104806_i.pdf

EVIDENCE-PRICE TAG: No foundation must be laid before a witness is permitted to testify to his or her contemporaneous observation of the contents of the price tag affixed to the stolen item of retail merchandise. Washington v. State, 3D19-1857 (9/16/20)

https://www.3dca.flcourts.org/content/download/669877/opinion/191857_DC05_09162020_105223_i.pdf

VOIR DIRE-REASONABLE DOUBT: No fundamental error in Court giving "prosecution-friendly" hypotheticals about reasonable doubt during voir dire (involving a cat eating a mouse in a box, a Star Trek transporter, and a Harry Potter spell). "We hasten to add, however, that. . .the trial judge should rely upon, and seldom stray from, Florida's Standard Jury Instructions." Warren v. State, 3D19-2075 (9/16/20)

https://www.3dca.flcourts.org/content/download/669878/opinion/192075_DC05_09162020_105453_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel misadvised him that the State could not convict him on all five counts of attempted murder, thereby precipitating his rejection of a favorable plea offer; and informing him that, in the event he testified, the State would be entitled to explore the nature and circumstances of his prior convictions. Cobb v. State, 3D19-2423 (9/16/20)

https://www.3dca.flcourts.org/content/download/669881/opinion/192423_DC08_09162020_110008_i.pdf

SENTENCING-MINORS: Graham and Miller do not apply to young adults. Carrero v. State, 3D20-1030 (9/16/20)

https://www.3dca.flcourts.org/content/download/669884/opinion/201030_DC05_09162020_110121_i.pdf

STATEMENT OF DEFENDANT: Without a custodial interrogation, Defendant is not entitled to Miranda warnings or an attorney. Interrogation

of suspect about her boy friend's murder was non-custodial; officer's statements about a lawyer ("why would you need an attorney? Don't you need to explain what happened?. . This is your opportunity cause you're not gonna get another opportunity most likely . . . you know what an attorney would tell you to do.") do not warrant suppression. During a non-custodial interrogation, the officer is not required to provide a lawyer on the individual's request nor to stop questioning. Eam v. State, 4D19-1035 (9/16/20)

https://www.4dca.org/content/download/669806/opinion/191035_DC05_09162020_083013_i.pdf

MALICIOUS PROSECUTION: The standard for malicious prosecution has two elements: the plaintiff must prove (1) that the defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process and (2) that the criminal proceedings against him terminated in his favor. Dismissal of a charge of murder against the Plaintiff after he provides testimony against co-defendants constitutes the termination of criminal proceedings in his favor. Suit for malicious prosecution may proceed. Luke v. Gulley, No. 20-11076 (11th Cir. 9/15/20).

https://media.ca11.uscourts.gov/opinions/pub/files/202011076.pdf

JUROR MISCONDUCT: Defendant is not entitled to a new trial where juror's online postings showed he would only consider recommending the death penalty, notwithstanding his statements during voir dire. "The posts clearly showed that Ridarick had expressed the belief that only the death penalty was appropriate for Ledford, but they did not make clear when he came to that conclusion." Ledford v. Warden, No. 19-11090 (9/15/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911090.pdf

JURORS-PEREMPTORY CHALLENGE-WOMEN: Defendant fails to make out a prima facie case of discrimination in jury selection based solely on statistical disparities. The Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an individual will be biased in a particular case for no reason other than the fact that the person happens to be a woman or happens to be a man." First, the defendant must make out a prima facie case by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose. Second, once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the exclusion by offering permissible gender-neutral justifications for the strikes. Third, if a gender-neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful discrimination. Ledford v. Warden, No. 19-11090 (9/15/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911090.pdf

POST CONVICTION RELIEF: Lawyer's presentation of evidence of Defendant's antisocial personality disorder for purposes of mitigation is not per se ineffective assistance. Ledford v. Warden, No. 19-11090 (9/15/20)

https://media.ca11.uscourts.gov/opinions/pub/files/201911090.pdf

SENTENCING-SUCCESSOR JUDGE: The rule that a judge other than the original presiding trial judge should not pronounce a sentence absent necessity applies only in the context of a trial judge exercising discretion to determine and impose an appropriate sentence. Where there is no discretionary resentencing, the rule does not impact a trial court's resolution of post-conviction matters just because they address or relate to underlying sentencing issues. Kartsonis v. State, 1D19-1172 (9/14/20)

https://www.1dca.org/content/download/669543/opinion/191172_DC05_09142020_130622_i.pdf

DOUBLE JEOPARDY-LEAVING SCENE OF ACCIDENT: One cannot be convicted of multiple counts of leaving the scene of a crash stemming from a single crash. Johnson v. State, 1D19-1474 (9/14/20)

https://www.1dca.org/content/download/669544/opinion/191474_DC06_09142020_131447_i.pdf

COLLATERAL ESTOPPEL: Collateral estoppel prevents identical parties from relitigating the same issues that have already been decided. Collateral estoppel applies in postconviction proceedings and precludes a party from rearguing the same issue argued in a prior motion unless a manifest injustice would occur. Johnson v. State, 1D19-1973 (9/14/20)

https://www.1dca.org/content/download/669545/opinion/191973_DC05_09142020_131612_i.pdf

VOP-SENTENCING: When imposing sentence for a violation of probation, a trial court is limited under subsection 948.06(2)(f)1 to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant meets all four conditions of subsection 948.06(2)(f)1. Bell v. State, 1D19-4270 (9/14/20)

https://www.1dca.org/content/download/669547/opinion/194270_DC05_09142020_132013_i.pdf

CONFLICT OF INTEREST-JOINT REPRESENTATION: Where co-

defendants are jointly represented by the same attorney, for a new trial, Defendant must show not only that a conflict existed, but that the conflict adversely affected his counsel's performance. Holcombe v. State, 5D18-3338 (9/14/20)

https://www.5dca.org/content/download/669623/opinion/183338_DC05_09142020_141342_i.pdf

CONSPIRACY: Agreement with an unknown caller and the Defendant to buy MDMA along with other drugs is not sufficient to prove a conspiracy. There was no evidence in the record of the two parties agreeing to perform the same crime, i.e., either the purchase or the sale of MDMA; and thus, no conspiracy was proven. Hall v. State, 5D18-3505 (9/14/20)

https://www.5dca.org/content/download/669624/opinion/183505_DC08_09142020_141517_i.pdf

COSTS: Court may not impose a $3 cost pursuant to §318.18 where Defendant is not convicted of a driving offense. Waters v. State, 5D19-3060 (9/14/20)

https://www.5dca.org/content/download/669629/opinion/193060_DC05_09142020_141838_i.pdf

COSTS: Defendant convicted of robbery cannot be assessed the $15 cost pursuant to s.318.18(11)(b) because he is convicted of a traffic infraction or an applicable criminal offense listed in s.318.17. Bradley v. State, 5D20-18 (9/14/20)

https://www.5dca.org/content/download/669631/opinion/200018_DC05_0

9142020_142030_i.pdf

MANDAMUS-WAIVER OF APPEARANCE: Defendant is not entitled to a writ of mandamus to force the Court to accept his written waiver of appearance for a case management conference where its issuance would provide no relief. A writ of mandamus will not be issued to direct an officer to perform a futile act. Silverain v. State, 5D20-11347 (9/14/20)

https://www.5dca.org/content/download/669632/opinion/201347_DA08_09142020_142134_i.pdf

VOTING RIGHTS: Amendment 4, re-enfranchising felons who have completed their sentences, does not extend to felons who cannot prove they have no unpaid fines, fees, costs, or restitution. Neither Equal Protection nor Due Process protect felon's voting rights under Amendment 4. Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

RIGHT TO VOTE-EQUAL PROTECTION: "Florida withholds the franchise from any felon, regardless of wealth, who has failed to complete any term of his criminal sentence—financial or otherwise. It does not single out the failure to complete financial terms for special treatment. And in any event, wealth is not a suspect classification." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

QUOTATION: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges." Anatole France

QUOTATION-DISSENT (J. JORDAN): "Incredibly, and sadly, the majority says that Florida has complied with the Constitution. So much is profoundly wrong with the majority opinion that it is difficult to know where to begin. But one must start somewhere, so I will first turn to the facts, those 'stubborn things,'. . .which though proven at trial and unchallenged on appeal, are generally relegated to the dustbin in the majority opinion." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. JORDAN): "[S]ince the passage of Amendment 4 Florida has demonstrated a 'staggering inability to administer' its LFO [Legal Financial Obligation] requirement. . .Florida cannot tell felons—the great majority of whom are indigent—how much they owe, has not completed screening a single felon registrant for unpaid LFOs, has processed 0 out of 85,000 pending registrations of felons (that's not a misprint—it really is 0), and has come up with conflicting (and uncodified) methods for determining how LFO payments by felons should be credited. . .So felons who want to satisfy the LFO requirement are unable to do so, and will be prevented from voting in the 2020 elections and far beyond. Had Florida wanted to create a system to obstruct, impede, and impair the ability of felons to vote under Amendment 4, it could not have come up with a better one." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. MARTIN): "I cannot. . .condone a system that is projected to take upwards of six years simply to tell citizens whether they are eligible to vote; that demands of those citizens information based

on a legal fiction (of its own making) known as the "every-dollar" method; and which ultimately throws up its hands and denies citizens their ability to vote because the State can't figure out the outstanding balances it is requiring those citizens to pay. This system does not comport with due process of law." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. MARTIN): "[B]ecause no formal policy, rule, or statute in Florida provides for the tracking of 'every dollar' paid, for many, this 'fact' the State demands to know is simply unknowable. This result cannot comport with due process. . . This process has all the certainty of counting jellybeans in a jar." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. MARTIN): "Sixty-five percent of Florida voters conferred the right to reenfranchisement upon returning citizens once they completed all terms of their sentence. With its Constitution amended in this way, Florida gained an obligation to establish procedures sufficient to determine the eligibility of returning citizens to vote, and to notify them of their eligibility in a prompt and reliable manner. The majority's decision. . .relieves the State of Florida of this obligation expected of it by its people." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. JORDAN): "Failure to pay court fines and fees should never result in the deprivation of fundamental rights, including the right to vote." (Quoting American Bar Association Resolution). Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. JORDAN): "Critically, the fact that Florida had restored voting rights to 0 felons as of the time of trial indicates that this scheme does not 'rationally' further the goal of reenfranchising felons. Instead, it shows that Florida's organs of government are doing their best to slowly but surely suffocate Amendment 4." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. JORDAN): "Florida's lack of good faith in the 18 months since the passage of Amendment 4 is undeniable and palpable. What Florida is really unhappy about is that the district court's advisory opinion process will actually require it to work, to do its job, within a specified time-frame. . .How can Florida make eligibility determinations without figuring out the amount of LFOs that a felon has outstanding? Florida cannot choose to condition the right to vote on payment of LFOs and then throw up its hands and refuse to tell potential voters how to fulfill that condition." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

QUOTATION-VOTING RIGHTS-DISSENT (J. JORDAN): "I doubt that today's decision—which blesses Florida's neutering of Amendment 4—will be viewed. . .kindly by history." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

VOTING RIGHTS-DISSENT (J. PRYOR): "Nearly a century has passed since Langston Hughes pined for an America where 'opportunity is real' and '[e]quality is in the air we breathe.' In Florida, people convicted of felonies who have paid all the societal debts they can possibly pay were on the threshold of that America, welcomed home by Florida's electorate. Florida's voters had decided on their own initiative that the franchise should be restored to their fellow citizens. But Florida's legislature slammed the door shut, barring perhaps a million would-be voters from any real and equal opportunity to rejoin their fellow Floridians and denying the electorate their choice to grant that opportunity. . . I write separately only to add context and echo the outrage of my fellow dissenting colleagues. Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

TEXTUALISM: "A straightforward textual analysis shows that 'by reason of' has the same meaning as 'on account of.' . . .But rather than confront the inevitable conclusion—that the two phrases are synonymous—our colleagues instead say that this means the dictionary definitions 'are of limited value.'. . .What they are saying, I think, is that they do not like the result of a simple textual analysis, and therefore feel free to go beyond the text's common understanding because that understanding is not helpful to their position. If that is textualism, textualism is a mirage." Jones v. Governor of Florida, No. 20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

DEFINITIONS: "Modern dictionaries likewise reflect that 'on account of' and 'by reason of' both mean 'because of.'" Jones v. Governor of Florida, No.

20-12003 (11th Cir. 9/11/20)

https://media.ca11.uscourts.gov/opinions/pub/files/202012003.enb.pdf

POST CONVICTION RELIEF-SUCCESSIVE: Defendant's motion for post conviction relief, based on allegation that counsel was ineffective for not investigating whether Defendant was incompetent based on amnesia causedby a jailhouse beating is dismissed as successive. Defendant's claim that his amnesia made him forget his earlier motion for post conviction relief is rejected. Further, the trial record, including the Defendant's thorough and highly detailed testimony, showed that the Defendant was not amnesiac. Roberts v. State, 1D19-4086 (9/11/20)

https://www.1dca.org/content/download/669246/opinion/194086_DC05_09112020_130707_i.pdf

STUN BELT/RESTRAINTS: Defendant is entitled to a new trial where Court ordered him to wear a stun belt or to listen to the trial while outside the courtroom. A defendant has the right to be free of physical restraints, such as shackles and so forth, when in the presence of the jury, absent findings so justifying. Shaw v. State, 2D17-4664 (9/11/20)

https://www.2dca.org/content/download/669217/opinion/174664_DC13_09112020_084741_i.pdf

POST CONVICTION RELIEF: In death penalty case, Court may not consider a motion for new trial prior to sentencing Defendant. Court erred in granting a new death penalty phase based on argument that lead counsel was not qualified to handle death penalty cases without making a finding that Defendant did not receive a fair trial as a result. State v. Rosario, D19-1592 (9/11/20)

https://www.5dca.org/content/download/669255/opinion/191592_DC13_09112020_135421_i.pdf

POST CONVICTION RELIEF: Court may not find ineffective assistance of counsel in the absence of an evidentiary hearing. State v. Rosario, D19-1592 (9/11/20)

https://www.5dca.org/content/download/669255/opinion/191592_DC13_09112020_135421_i.pdf

EVIDENCE: Unscientific experiment conducted by a police detective (shooting into a t-shirt from various distances) that was intended to prove that the victim was shot at close range was improperly admitted because it was not shown to be substantially similar to the actual event. Caro v. State, 5D19-1818 (11/20/20)

https://www.5dca.org/content/download/669206/opinion/191818_DC13_09112020_081808_i.pdf

EXPERT: "The State asserted that it was not offering Detective Hurst as any kind of expert, yet the State asked him to offer his opinion of which of the test-fired bullet holes in the test t-shirt most closely resembled the hole in Rhem's t-shirt. This was an end-run at offering the detective's opinion of the distance from which Rhem was shot." Witnesses may testify to their own observations of an event or an experiment, but they usually may not make comparisons between demonstrative aids and actual evidence. New trial required. Caro v. State, 5D19-1818 (11/20/20)

https://www.5dca.org/content/download/669206/opinion/191818_DC13_09112020_081808_i.pdf

POST CONVICTION RELIEF: Defendant's sentence of life with a twenty-five-year mandatory minimum sentence as to Count III could have been imposed even in the absence of the scoresheet errors. Motion to Vacate an unlawful sentence filed outside the two-year time limit of R. 3.850, must be analyzed under R. 3.800(a). No relief may me granted under the"could-have-been-imposed" test. Adorno-Ocasio v. State, 5D20-1916 (9/11/20)

https://www.5dca.org/content/download/669210/opinion/201016_DC05_09112020_083659_i.pdf

FINE: $1000 discretionary fine may not be imposed without notice and an opportunity to be heard. Dunlap v. State, 1D18-5177 (9/10/20)

https://www.1dca.org/content/download/669107/opinion/185177_DC08_09102020_130120_i.pdf

SENTENCING-REMORSE: In non-capital sentencing proceedings, a trial court may consider a defendant's lack of remorse or failure to take responsibility when imposing sentence. Bartley v. State, 1D18-5299 (9/10/20)

https://www.1dca.org/content/download/669108/opinion/185299_DC05_09102020_130341_i.pdf

CRUEL AND UNUSUAL PUNISHMENT: 15-year sentence for stealing and selling 12 fence posts is not cruel and unusual punishment. Gregory v. State, 1D19-418 (9/10/20)

https://www.1dca.org/content/download/669110/opinion/190418_DC05_09102020_130659_i.pdf

MISTRIAL: When a witness gives improper testimony (here, hearsay that

a radiologist found that the victim's x-ray revealed no bone abnormalities), the proper procedure is for the defendant to request the court to instruct the jury to disregard such objectionable remarks, and not that a mistrial be entered by the court, unless the remarks are such that instructing the jury to disregard them would not cure the error. Barnes v. State, 1D19-889 (9/10/10)

https://www.1dca.org/content/download/669111/opinion/190889_DC05_09102020_130921_i.pdf

OPENING THE DOOR: Cross--examination of State's expert challenging his failure to measure bone density of victim at the point of the spinal injury opens the door to the expert's reliance on the radiologist's report. Barnes v. State, 1D19-889 (9/10/10)

https://www.1dca.org/content/download/669111/opinion/190889_DC05_09102020_130921_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant should be allowed to amend motion to demonstrate that the evidence was not known to him or his counsel and could not have been discovered with due diligence by the time of trial, such as how and when he became aware of the affiant who claimed another had confessed to the robbery. Morgan v. State, 1D19-1095 (9/10/20)

https://www.1dca.org/content/download/669112/opinion/191095_DC13_09102020_131259_i.pdf

VOP: §948.06(2)(f)1 limits court to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant meets all four conditions of the statute. Brown v. State, 1D20-266 (9/10/20)

https://www.1dca.org/content/download/669116/opinion/200266_DC05_09102020_132230_i.pdf

APPEALS: Review of the transfer of a habeas corpus petition to another county should be treated as an appeal rather than a petition for certiorari. Reviewing such rulings as nonfinal, appealable venue orders is preferable to "navigating the jurisprudential shoals that extraordinary writs sometimes hold." Myrick v. Inch, 2D20-1772 (9/9/20)

https://www.2dca.org/content/download/668942/opinion/201772_DC05_09092020_084013_i.pdf

EVIDENCE-TEXT MESSAGES-AUTHENTICATION: Text messages from a phone not identified as the appellant's and with inconclusive contextual clues are not properly authenticated. There is no specific list of requirements for authentication. Evidence may be authenticated by appearance, content, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. Testimony that a person received a text or email from another is not sufficient, by itself, to authenticate the identity of the sender, but other factors can circumstantially authenticate the text. Walker v. Harley-Anderson, 4D19-2216 (9/9/20)

https://www.4dca.org/content/download/668904/opinion/192216_DC13_09092020_091553_i.pdf

COSTS-JUVENILE: Court may not impose $1 fee under §939.185(1)(a) where adjudication of delinquency is not imposed. E.C.T. v. State, 2D18-4332 (9/4/20)

https://www.2dca.org/content/download/643966/7313833/file/184332_DC08_09042020_080929_i.pdf

COSTS: Court may not impose a $100 P.D. fee without providing juvenile with notice of his right to contest the fee and an opportunity to be heard. E.C.T. v. State, 2D18-4332 (9/4/20)

https://www.2dca.org/content/download/643966/7313833/file/184332_DC08_09042020_080929_i.pdf

SENTENCING: When a conflict exists between the trial court's oral pronouncement of sentence and the written sentencing documents, the oral pronouncement controls. Waters v. State, 2D19-33 (9/4/20)

https://www.2dca.org/content/download/643967/7313845/file/190033_DC05_09042020_081056_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for misadvising him to enter a plea to the DWLS charge when he had never possessed a valid driver license. Woodbury v. State, 2D19-2930 (9/4/20)

https://www.2dca.org/content/download/643980/7314001/file/192930_DC13_09042020_081714_i.pdf

DWLS: The State could not revoke a license that never existed. Consequently, a person could not violate §322.34(5) without ever having obtained a driver license. (Statute has since been amended). Woodbury v. State, 2D19-2930 (9/4/20)

https://www.2dca.org/content/download/643980/7314001/file/192930_DC13_09042020_081714_i.pdf

SENTENCING: When a conflict exists between the trial court's oral pronouncement of sentence and the written sentencing documents, the oral pronouncement controls. Waters v. State, 2D19-4431 (9/4/20)

https://www.2dca.org/content/download/643984/7314049/file/194431_DC05_09042020_081852_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Evidence that Defendant's girl friend (mother of the victim in L & L case) threatened to put him away like she did her husband and that she would have her children lie about being sexually abused to ensure Defendant went to prison for the rest of his life is newly discovered evidence. Defendant is entitled to a hearing. Lamore v. State, 2D20-37 (9/4/20)

https://www.2dca.org/content/download/643988/7314097/file/200037_DC13_09042020_082001_i.pdf

HEARSAY: Testimony that mother of alleged child sex abuse victim that she (the mother) threatened to put him away like she did her husband and that she would have her children lie about being sexually abused to ensure Defendant went to prison for the rest of his life is not hearsay. The statement is admissible impeachment (motive or bias) evidence. Lamore v. State, 2D20-37 (9/4/20)

https://www.2dca.org/content/download/643988/7314097/file/200037_DC13_09042020_082001_i.pdf

INVESTIGATIVE COSTS: Court may not impose investigatory costs of $1,490 without holding a hearing on the specific amount. D.I.K. v. State, 5D19-1802 (9/4/20)

https://www.5dca.org/content/download/643953/7313656/file/191802_DC13_09042020_090118_i.pdf

RETROACTIVITY: Amendment to s. 812.014 (changing threshold amounts for theft) applies retroactively. Theft of just over $400, committed before the threshold for grand theft changed from $300 to $750, must be charged as a misdemeanor. Dean v. State, 5D20-1097 (9/4/20)

https://www.5dca.org/content/download/643959/7313728/file/201097_DC03_09042020_092249_i.pdf

RETROACTIVITY-SAVINGS CLAUSE: Savings Clause of the Florida Constitution provides that repeal of a criminal statute shall not affect prosecution for any crime committed before such repeal and means that there is no longer any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. Although criminal statutes generally apply prospectively, amendments to sentencing laws apply retroactively to cases in which the defendant has not yet been sentenced. Dean v. State, 5D20-1097 (9/4/20)

https://www.5dca.org/content/download/643959/7313728/file/201097_DC03_09042020_092249_i.pdf

CREDIT FOR TIME SERVED: Where Court orally agreed to give Defendant 30 months credit on all parties' estimate of time served, but

written order only gave him credit for 387 days, the oral pronouncement controls. Webb v. State, 5D20-1151 (9/4/20)

https://www.5dca.org/content/download/643960/7313740/file/201151_DC13_09042020_092508_i.pdf

POST CONVICTION RELIEF-DEATH PENALTY: New diagnosis of ND-PAE and the qEEG and other neurocognitive test results is not newly discovered evidence when the possibility of their existence (based on knowledge that Defendant had brain damage related to fetal alcohol exposure) could have been discovered with due diligence. Dillbeck v. State, SC20-178 (9/3/20)

https://www.floridasupremecourt.org/scontent/download/643924/7313306/file/sc20-178.pdf

CELL PHONE PASS CODE: Disclosure of cell phone passcode is a testimonial act implicating Fifth Amendment protections. What legal standards apply to compulsory disclosure of a cell phone passcode, and whether or when does the foregone conclusion exception apply? Question Certified, conflict. Varn v. State, 1D19-1967 (9/3/20)

https://www.1dca.org/content/download/643929/7313367/file/191967_DA08_09032020_130853_i.pdf

CERTIORARI: Defendant is not entitled to certiorari review of Court order compelling disclosure of his cell phone passcode because he suffers no irreparable harm. Varn v. State, 1D19-1967 (9/3/20)

https://www.1dca.org/content/download/643929/7313367/file/191967_DA08_09032020_130853_i.pdf

SEARCH-CELL PHONE-FOREGONE CONCLUSION EXCEPTION: In determining whether the foregone conclusion exception to the search of a passcode protected cell phone applies, where police have obtained a search warrant for the cellphone, Court looks to whether the State has identified with reasonable particularity the evidence it seeks within the passcode protected cell phone. Varn v. State, 1D19-1967 (9/3/20)

https://www.1dca.org/content/download/643929/7313367/file/191967_DA08_09032020_130853_i.pdf

BELATED APPEAL-PROCRASTINATION: In no case shall a petition for belated appeal be filed more than 4 years after the expiration of time for filing the notice of appeal. Prince v. State, 1D20-673 (9/3/20)

https://www.1dca.org/content/download/643931/7313391/file/200673_DC02_09032020_133003_i.pdf

RULE OF SEQUESTRATION: The rule of sequestration does not apply to opening statements. Tumblin v. State, 4D18-3507 (9/2/20)

https://www.4dca.org/content/download/643826/7312115/file/183507_DC05_09022020_090628_i.pdf

RULE OF SEQUESTRATION: Court is not required to exclude victim from courtroom during opening statement and the rest of the trial. Tumblin v. State, 4D18-3507 (9/2/20)

https://www.4dca.org/content/download/643826/7312115/file/183507_DC05_09022020_090628_i.pdf

COSTS: $102.80 of the public defender's fee are improperly imposed. To set a public defender's fee higher than the minimum amount, the Court must have sufficient proof of higher fees or costs incurred. Brinson v. State, 4D19-2792 (9/2/20)

https://www.4dca.org/content/download/643827/7312127/file/192792_DC08_09022020_090802_i.pdf

COST: Court may not impose $150.00 county drug abuse trust fund fee without first finding the defendant has the ability to pay it. Brinson v. State, 4D19-2792 (9/2/20)

https://www.4dca.org/content/download/643827/7312127/file/192792_DC08_09022020_090802_i.pdf

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MEDICAL TREATMENT: The Eighth Amendment does not requires Florida prison officials to treat all inmates with chronic Hepatitis C—including those who have only mild (or no) liver fibrosis—with expensive, state-of-the-art direct acting antiviral (DAA) drugs. Medical treatment violates the Eighth Amendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness. Hoffer v. Secretary, Florida DOC, No. 19-11921 (11th Cir. 8/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911921.pdf

DWLS-JOA: Defendant is entitled to Judgment of Acquittal where the only evidence presented by the State in its case-inchief to prove the knowledge element of the crime was video of the arrest and testimony from the arresting officers of their knowledge of the license suspension. Causey v. State, 1D19-3726 (8/31/20)

https://www.1dca.org/content/download/643748/7311168/file/193472_DC08_08312020_145143_i.pdf

JOA: Even if a missing element is supplied during the defendant's presentation of evidence, including his testimony, the conviction will still be reversed where the state failed to make a prima facie case at the close of the State's evidence. Causey v. State, 1D19-3726 (8/31/20)

https://www.1dca.org/content/download/643748/7311168/file/193472_DC08_08312020_145143_i.pdf

VOP-PERMISSIBLE SENTENCE: Fla. Stat. 948.06(2), limiting Court to imposing a sentence only up to 90 days, applies only when a defendant

meets all four conditions of subsection 948.06(2)(f)1. Harden v. State, 2D20-269 (8/31/20)

https://www.1dca.org/content/download/643750/7311192/file/200269_DC05_08312020_145559_i.pdf

VOP-SENTENCING: Fla.Stat. 948.06(2) applies only to a defendant who meets all four conditions of subsection 948.06(2)(f)1. Price v. State, 1D20-537 (8/31/20)

https://www.1dca.org/content/download/643751/7311204/file/200537_DC05_08312020_145710_i.pdf

VOP-SENTENCING-RETROACTIVITY: Fla.Stat. 948.06(2) applies retroactively (dicta). Price v. State, 1D20-537 (8/31/20)

https://www.1dca.org/content/download/643751/7311204/file/200537_DC05_08312020_145710_i.pdf

VOP-SENTENCING: Fla.Stat. 948.06(2) applies only to a defendant who meets all four conditions of subsection 948.06(2)(f)1. Watford v. State, 1D20-5454 (8/31/20)

https://www.1dca.org/content/download/643752/7311216/file/200545_DC05_08312020_145814_i.pdf

PRR-VOP: When the State seeks to impose the PRR sentence and proves the PRR designation by a preponderance of the evidence before resentencing an offender that was originally facing a PRR sentence, the

Court is required to impose the minimum mandatory sentence. State's initial waiver of the PRR sentence, pursuant to a negotiated plea, does not statutorily preclude the imposition of the PRR sentence upon violation of probation. There is no basis in Florida law for a permanent PRR waiver, and Defendant's violation of probation would have nullified the State's waiver under traditional contract principles. Foulks v. State, 3D18-2529 8/31/20)

https://www.3dca.flcourts.org/content/download/643745/7311125/file/182529_DC05_08312020_114103_i.pdf

DEFINITION-"MIGHT': "Might" is the past tense of "may," and is used to express permission, liberty, probability, or possibility in the past; say that something is possible; or express a present condition contrary to fact. Foulks v. State, 3D18-2529 8/31/20)

https://www.3dca.flcourts.org/content/download/643745/7311125/file/182529_DC05_08312020_114103_i.pdf

PROSECUTORIAL IMMUNITY: Prosecutor is immune from suit for malicious prosecution and false arrest based on prosecutor's application for a material witness warrant. Absolute prosecutorial immunity extends to both individual prosecutors assigned to the State Attorney's Office, as well as the State Attorney's Office itself. As quasi-judicial officers, prosecutors enjoy absolute immunity from lawsuits for damages resulting from the performance of their quasi-judicial functions of initiating or maintaining a prosecution. This is true regardless of whether the prosecutor acted maliciously or corruptly. Qadri v. Rivera-Mercado, 5D20-427 (8/31/20)

https://www.5dca.org/content/download/643763/7311350/file/200427_DC03_08312020_161417_i.pdf

VOP-COLLUQUY: Rule 3.172 does not apply in probation revocation proceedings, but the minimum colloquy in VOP proceedings must inform the defendant of the allegations against him, his right to counsel, and the consequences of an admission or the right to a hearing and it shall afford him an opportunity to be heard. Colley v. State, 1D19-2831 (8/28/20)

https://www.1dca.org/content/download/643713/7310810/file/192831_DC13_08282020_140534_i.pdf

HABEAS CORPUS: Defendant may not use the Petition for Habeas Corpus to seek postconviction relief based on a claim that could have been or was raised at trial or on direct appeal or that would be untimely or successive asserted under Rule 3.850. Bland v. State, 1D19-3459 (8/28/20)

https://www.1dca.org/content/download/643714/7310822/file/193459_DA08_08282020_140806_i.pdf

APPEAL-MOOTNESS: Appeal of the sentencing issue is moot upon the Defendant's release from prison. Brady v. State, 1D19-4269 (8/28/20)

https://www.1dca.org/content/download/643715/7310834/file/194269_DA08_08282020_141023_i.pdf

INVERSE FALLACY: "In logic, the mere negation of an antecedent, by itself, is not a valid form of proof, because while the inverse of a true proposition might also be true, it does not have to be, and so it proves nothing on its own. . .[I]t is a well known principle of logic that a statement need not be true merely because its inverse is true." Webb v. Webb, 2D19-3089 (8/28/20)

https://www.2dca.org/content/download/643659/7310188/file/193089_DC05_08282020_083709_i.pdf

RESENTENCING-MINOR-HOMICIDE: Resentencing is not required for juvenile offenders unless they are serving a life sentence or its functional equivalent. A 35-year sentence is not the functional equivalent of a life sentence. Santiago v. State, 5D17-3394 (8/28/20)

https://www.5dca.org/content/download/643678/7310419/file/173394_DC05_08282020_081302_i.pdf

CELL PHONE-PASSCODE-FIFTH AMENDMENT: The Fifth Amendment protects a person from the compelled disclosure of a passcode to a passcode-protected smartphone. Compelling a defendant to provide orally the passcode to his smartphone is a testimonial communication protected under the Fifth Amendment and the foregone conclusion exception or doctrine does not apply to compelled oral testimony. The Fifth Amendment's protection also encompasses compelled statements that lead to the discovery of incriminating evidence. "Distilled to its essence, the revealing of the pass code is a verbal communication of the contents of one's mind." Conflict and question of great public importance certified. Garcia v. State, 5D19-590 (8/28/20)

https://www.5dca.org/content/download/643679/7310431/file/190590_DC03_08282020_081944_i.pdf

FOREGONE CONCLUSION DOCTRINE: The "foregone conclusion" exception to the Fifth Amendment provides that an act of production does not violate the Fifth Amendment—even if it conveys a fact—if the State can demonstrate with reasonable particularity that, at the time it sought to compel the act of production, it already knew of the material sought, thereby

making any testimonial aspect of the production a foregone conclusion. The foregone conclusion exception to the Fifth Amendment does not apply to compelled revelation of one's cell phone passcode. To apply the foregone conclusion rationale in these circumstances would allow the exception to swallow the constitutional privilege. Garcia v. State, 5D19-590 (8/28/20)

https://www.5dca.org/content/download/643679/7310431/file/190590_DC03_08282020_081944_i.pdf

CELL PHONE-PASSCODE-FIFTH AMENDMENT: Defendant may not be compelled to disclose the orally memorized passcode to this or her smart phone over the invocation of privilege under the Fifth Amendment. Question certified. Hager v. State, 5D20-1426 (8/28/20)

https://www.5dca.org/content/download/643690/7310563/file/201426_DC03_08282020_084605_i.pdf

VOP: Defendant's conviction for murder is upheld but his VOP is vacated because no can find the violation of probation affidavit. Singleton v. State, 5D19-2001 (8/28/20)

https://www.5dca.org/content/download/643681/7310455/file/192001_DC08_08282020_082711_i.pdf

COSTS: Court errs in imposing $200 for the cost of prosecution and a separate $200 charge for "Indigency Defense Cost," rather than the statutory $100 assessment. Court must give notice of its intent to impose more than the statutory minimum amounts. Dennis v. State, 5D19-3499 (8/28/20)

https://www.5dca.org/content/download/643683/7310479/file/193499_DC05_08282020_083252_i.pdf

VOP: 15 year sentence for VOP based on allegations that the Defendant failed to complete sex offender treatment and pay court costs is vacated. Findings in VOP hearing cannot be based solely on hearsay (including the amounts of unpaid court costs) that could not be admitted as substantive evidence in other proceedings. Defendant restored to probation. Mangini v. State, 5D19-3643 (8/28/20)

https://www.5dca.org/content/download/643684/7310491/file/193643_DC13_08282020_113021_i.pdf

EXPUNCTION-JUVENILE: Discretion to deny expunction is not unfettered. Expunction may not be arbitrarily denied. Remanded for reconsideration of Denial of Expunction in juvenile case. J.F.T. v. State, 5D20-907 (8/28/20)

https://www.5dca.org/content/download/643688/7310539/file/200907_1260_08282020_115611_i.pdf

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: In second-degree murder prosecution, where either the Defendant or his twin brother shot the victim, appellate counsel was ineffective for failing to argue that the Defendant's crime was improperly elevated from a first-degree to a life felony based on the Defendant's possession of a gun where the Jury made no finding that he had personal possession of the gun. When a defendant is charged with a felony involving the use of a weapon, his or her sentence cannot be enhanced under section 775.087(1) without evidence establishing that the defendant had personal possession of the weapon during the commission of the felony. The reclassification provision cannot be applied using the principal theory. Julian v. State, 5D20-1022 (8/28/20)

https://www.5dca.org/content/download/643689/7310551/file/201022_DC03_08282020_084348_i.pdf

POST CONVICTION RELIEF: Where evidence that Defendant had raped and killed two year old victim is strong, any Giglio or Brady claim regarding whether neighbor had heard sounds consistent with the crime, if valid, is harmless. Davis v. State, SC19-1207 (8/27/20)

https://www.floridasupremecourt.org/content/download/643602/7309458/file/sc19-1207.pdf

POST CONVICTION RELIEF: Counsel was deficient in not calling witnesses who would have shifted primary blame for a gruesome murder to a co-defendant, but there was no prejudice given the overwhelming evidence. Brown v. State, SC19-704 (8/27/20)

https://www.floridasupremecourt.org/content/download/643601/7309446/file/sc19-704.pdf

NEWLY DISCOVERED EVIDENCE: Inconsistent statements discovered after the trial showing a witness's relationship with the victim and her role in the events is material, but given that the victim was dragged her out of the house, repeatedly tased, beaten in the head with a crowbar, and then set her on fire but are not of such a nature that they would probably produce an acquittal on retrial. "[W]e believe the additional impeachment of Lee might result in a lesser sentence at a retrial. However, it cannot be said that it would probably result in a lesser sentence. . .The subjective assessment of the jurors, and perhaps the trial court, as to whether Brown should receive a death sentence might change, but the possibility that it would change does not meet the standard required for a new trial, which is a showing that it would probably change." Brown v. State, SC19-704 (8/27/20)

https://www.floridasupremecourt.org/content/download/643601/7309446/file/sc19-704.pdf

INEFFECTIVE APPELLATE COUNSEL: Claims of ineffective assistance of appellate counsel are properly presented in a petition for writ of habeas corpus. Brown v. State, SC19-704 (8/27/20)

https://www.floridasupremecourt.org/content/download/643601/7309446/file/sc19-704.pdf

QUO WARRANTO-SUPREME COURT: Governor exceeded his authority in appointing Renatha Francis as Supreme Court Justice because she was constitutionally ineligIble since she had not been a member of the Bar for ten years at the time of the appointment, but because the proposed remedy--that the nominating commission submit to the Governor a new list--is not a permissible remedy, and because the Court will not require a remedy not requested, there is no remedy. "We cannot make this case into something it is not by providing a remedy not requested." Thompson v. Desantis, SC20-985 (8/27/20)

https://www.floridasupremecourt.org/content/download/643604/7309482/file/sc20-985.pdf

STATUTORY INTERPRETATION: The canon of construction which holds that a material variation in terms suggests a variation in meaning is so often disregarded that it is particularly defeasible by context. Thompson v. Desantis, SC20-985 (8/27/20)

https://www.floridasupremecourt.org/content/download/643604/7309482/file/sc20-985.pdf

DEPORTATION-STOP-TIME RULE: Applying the stop-time rule to a conviction from before the rule was enacted is impermissibly retroactive. Defendant is not subject to removal based on a crime (Resisting LEO with

Violence) which occurred before Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") took effect (April 1, 1997). Under the "stop-time rule," people convicted of certain crimes are no longer eligible for a discretionary cancellation of removal. Resisting a police officer with violence is a crime involving moral turpitude ("CIMT"). Rendon v. U.S. Attorney General, No. 19-10197 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910197.op2.pdf

JURISDICTION-MARITIME DRUG LAW ENFORCEMENT ACT: Congress lacks the authority constitutional authority under the Define and Punish Clause of the Constitution to criminalize acts committed in the territorial waters of foreign nations. Defendants cannot be prosecuted for marijuana seized from a boat in Jamaica's territorial waters, notwithstanding Jamaica's consent. A drug boat in Jamaican waters does not affect interstate commerce. "Congress's power to regulate commerce 'among the states,'. . . undoubtedly presents a different question than Congress's power to regulate commerce 'with foreign nations.' . . .[T]he question in this case. . .is whether there is a rational basis for concluding that the drug-trafficking conduct here in the territorial waters of a foreign nation, by foreign nationals using a foreign-registered vessel, of drugs not bound for the United States, substantially affects United States commerce with foreign nations. The record contains no evidence to support this conclusion." The MDLEA is unconstitutional and exceeded Congress's authority under the Foreign Commerce Clause. USA v. Davila-Mendoza, No. 17-12038 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712038.pdf

SEARCH AND SEIZURE: An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. An

officer's mistaken belief that a suspect was there at a particular time does not necessarily render a search unreasonable or prevent the admission of evidence obtained while attempting to arrest the suspect at that location so long as the officer's belief was reasonable in the first place. USA v. Mastin, No. 18-14241 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814241.pdf

SEARCH AND SEIZURE: Police can detain the occupants of a dwelling, including bystanders, while they execute a search or arrest warrant. The permissible detention includes ordering occupants to crawl out of a hotel room. USA v. Mastin, No. 18-14241 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814241.pdf

CROSS-EXAMINATION-SCOPE: Defendant was not deprived of his 6th Amendment Right of Confrontation by Order in Limine limiting questions about how the arrest warrants were obtained and served. Questions such as whether the officers had a search warrant would have had little bearing on the main testifying officer's credibility or supposed biases, prejudices or ulterior motives. USA v. Mastin, No. 18-14241 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814241.pdf

APPEAL-PRESERVATION-INEFFECTIVE ASSISTANCE: Defendant may not raise on direct appeal ineffective assistance of counsel for failure to adequately cross-examine witnesses without claiming fundamental error. An appellate court should not allow an appellant to avoid application of the fundamental error standard by asserting that his trial counsel's failure to raise issues constitutes ineffective assistance. USA v. Mastin, No. 18-14241 (11th Cir. 8/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814241.pdf

SENTENCING-DOWNWARD DEPARTURE: Defendant is not entitled to a downward departure absent evidence that he is amenable to treatment and that there exists an acceptable treatment program to which he is accepted. Warianek v. State, 2D19-539 (8/26/20)

https://www.2dca.org/content/download/643513/7308413/file/190539_DC05_08262020_084253_i.pdf

POSSESSION OF FIREARM BY FELON: Court may not enter a judgment of conviction on the bifurcated count of possession of a firearm by a felon without a separate jury trial and verdict where Defendant had stipulated that he was a felon and he had been found guilty of armed kidnapping on the bifurcated count. The jury must reconvene for the second phase of the trial on the charge of possession of a firearm by a felon. Error is fundamental (State objected; Defense did not). Gonzalez v. State, 3D18-980 (8/26/20)

https://www.3dca.flcourts.org/content/download/643532/7308648/file/180980_DC13_08262020_104942_i.pdf

SENTENCING-REMORSE: At sentencing hearing, State may not argue Defendant's lack of remorse except in response to defense arguments based on remorse. Lack of remorse, the failure to accept responsibility, or the exercise of one's right to remain silent at sentencing may not be considered by the trial court in fashioning the appropriate sentence. New trial is required with a different judge. Gonzalez v. State, 3D18-980 (8/26/20)

https://www.3dca.flcourts.org/content/download/643532/7308648/file/180980_DC13_08262020_104942_i.pdf

EVIDENCE: Gloves found in a van are inadmissible absent a showing that they were used in the crime (State: "This glove just makes it more likely that these people were up to no good."). Evidence requiring an extended chain of inferences to be relevant or that suggests an improper basis for the jury's verdict should be excluded. The probative value, if any, of such evidence was far outweighed by its prejudicial effect. Gonzalez v. State, 3D18-980 (8/26/20)

https://www.3dca.flcourts.org/content/download/643532/7308648/file/180980_DC13_08262020_104942_i.pdf

BAIL: In setting bond, Court must take evidence and make findings on the statutory factors. A non-evidentiary hearing is insufficient. Remanded for hearing. Whether bond of $1,010,000 for racketeering/RICO, conspiracy to traffic in Oxycodone and conspiracy to traffic illegal drugs, where Defendant has approximately forty-six prior criminal and two of the underlying charges occurred while Defendant was on probation, depends on facts adduced at an evidentiary hearing. Yearby v. State, 3D20-1051 (8/26/20)

https://www.3dca.flcourts.org/content/download/643534/7308672/file/201051_DC03_08262020_104650_i.pdf

VOP-VFOSC: Court must make written findings that Defendant poses a danger to the community. The written findings requirement of section 948.06(8)(e) is mandatory, not discretionary. Smith v. State, 3D19-1029 (8/26/20)

https://www.3dca.flcourts.org/content/download/643544/7308781/file/191029_DC05_08262020_111322_i.pdf

VOP-APPEAL-PRESERVATION: Courts failure to make written findings as to which conditions of probation have been violated is not cognizable on appeal unless Defendant objected or moved to correct. Smith v. State, 3D19-1029 (8/26/20)

https://www.3dca.flcourts.org/content/download/643544/7308781/file/191029_DC05_08262020_111322_i.pdf

SENTENCING-SCORESHEET: Federal offense of distribution of a kilogram of cocaine (21 U.S.C. 841(a)(1) and 841(b)(1)(B)(ii)) is analogous or parallel to Fla.Stat. 893.135(1)(b)1.c. and are properly scored as priors. Smith v. State, 3D19-1004 (8/26/20)

https://www.3dca.flcourts.org/content/download/643543/7308769/file/191004_DC05_08262020_110928_i.pdf

MISTRIAL: The victim's singular comment describing Defendant's co-defendant as "the one in jail" was unsolicited; brief, isolated and inadvertent; not referenced during the remainder of the trial; and followed by the trial court's curative instruction does not warrant a mistrial. Cherisme v. State, 3D19-1551 (8/26/20)

https://www.3dca.flcourts.org/content/download/643549/7308841/file/191551_DC05_08262020_112630_i.pdf

EVIDENCE-COLLATERAL CRIME: In sexual assault case (unwanted fondling and penetration of a house guest) Court erred in admitting evidence of a separate incident of unwanted fondling of and sexual assertiveness on a different woman. For collateral sex crimes not involving minors to be admissible, significant similarity between the collateral evidence and the charged crime, evidence so similar and specific that it resembles a clear

pattern of conduct, is required. The attack on the Williams rule witness on a bench in a public place is only minimally probative of the charged crime—repeated sexual batteries against a passed-out woman on a couch in a residential living room. Reyna v. State, 4D19-2306 (8/26/20)

https://www.4dca.org/content/download/643505/7308303/file/192306_DC13_08262020_085035_i.pdf

EVIDENCE-AUTOPSY/BODY PHOTOS: Photos of victim's decomposed body are relevant to show why medical examiner had difficulty determining the cause of death. Steiger v. State, 1D19-3217 (8/25/20)

https://www.1dca.org/content/download/643459/7307838/file/193217_DC05_08252020_133315_i.pdf

VOP-PRISON SENTENCE: For Defendant to benefit from Section 948.06(2)(f)1. (limiting the sentence for VOP), he must meet all four conditions in the subsection (that the term of supervision is probation, the probationer does not qualify as a violent felony offender of special concern, the violation is a low-risk technical violation, and the Defendant has not previously been found in violation during the current term of supervision), notwithstanding the use of "any" rather than "all" before the list of the four conditions. Owens v. State, 1D20-540 (8/25/20)

https://www.1dca.org/content/download/643460/7307850/file/200540_DC05_08252020_133644_i.pdf

ABSURDITY DOCTRINE: A literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion. The absurdity doctrine, in context, precludes

interpreting the term “any” as anything other than “all” as used in s. 948.06(2)(f)1.a. Owens v. State, 1D20-540 (8/25/20)

https://www.1dca.org/content/download/643460/7307850/file/200540_DC05_08252020_133644_i.pdf

DEFINITION-CRITERIA: The word "criteria is the plural of "criterion." Owens v. State, 1D20-540 (8/25/20)

https://www.1dca.org/content/download/643460/7307850/file/200540_DC05_08252020_133644_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: An evidentiary hearing is required for the trial court to properly determine whether newly discovered evidence (a confession by a third party) is of such nature that it would probably produce an acquittal on retrial. DeJesus v. State, 2D19-1747 (8/24/20)

https://www.2dca.org/content/download/643519/7308485/file/191747_DC13_08262020_084439_i.pdf

STAND YOUR GROUND: Defendant is not entitled to a new immunity hearing where his hearing had occurred before the amended statute's effective date. Feaster v. State, 2D17-3612 (8/21/20)

https://www.2dca.org/content/download/643306/7306154/file/173612_DC05_08212020_084346_i.pdf

CREDIT FOR TIME SERVED: Defendant is entitled to credit for the time he spent in prison from the date of the original sentencing to the date of resentencing. Chipman v. State, 2D18-1067 (8/21/20)

https://www.2dca.org/content/download/643307/7306166/file/181067_DC08_08212020_085336_i.pdf

POST CONVICTION RELIEF-LIFE SENTENCE-MINOR-JURISDICTION: Court lacks jurisdiction to rescind its order granting resentencing for minor who had been sentenced to life in prison for murder with the possibilty of parole after 25 years because the motion for resentencing had been filed under R. 3.850 rather than 3.800. Resentencing hearing required but the same sentence may be imposed. Witteman v. State, 2D19-292 (8/21/20)

https://www.2dca.org/content/download/643311/7306221/file/190292_DC13_08212020_085802_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court errs in imposing a downward departure on ground that Defendant was too young to appreciate the consequences of the offense where the Defendant was 22 years old. Court's reliance on its familiarity "with all of the scientific research that says that males, in particular, don't have their brains fully developed until they're aged 25," does not constitute competent, substantial evidence where there was no actual evidence presented by either party as to this "scientific research." Hunt v. State, 2D19-1583 (8/21/20)

https://www.2dca.org/content/download/643317/7306293/file/191581_DC13_08212020_085957_i.pdf

POST CONVICTION RELIEF-INEFFECTIVENESS-REMEDY: Where Defendant is entitled to relief where Defendant lost at trial after counsel

failed to advise him of maximum sentence and mandatory minimum, the remedy is to order the State to reoffer the previously rejected offer. The remedy of only allowing a new trial would not only needlessly squander resources, but would also place Defedant in a worse position without neutralizing the taint of the constitutional violation. Elma v. State, 5D19-2409 (8/21/20)

https://www.5dca.org/content/download/643294/7306003/file/192409_DC08_08212020_082909_i.pdf

APPEAL: Defendant may not appeal the voluntariness of a plea without first moving to withdraw it. Nieves v. State, 5D20-78 (8/21/20)

https://www.5dca.org/content/download/643296/7306027/file/200078_DA08_08212020_083656_i.pdf

COMPETENCY: Once Defendant's comptence is raised, Court may not resolve the case without making a competency determination. Appellate counsel was ineffective for failing to raise the issue. Schultz v. State, 5D20-1052 (8/21/20)

https://www.5dca.org/content/download/643300/7306075/file/201052_DC03_08212020_090030_i.pdf

BAIL: Court may not give bond to a registered sexual offender arrested for violation of probation without first holding a hearing and determining that the Defendant would not pose a danger to the community. Certiorari relief is appropriate when a trial court grants a defendant post-arrest release from custody in violation of the plain language contained in a statute. State v. Patterson, 5D20-1082 (8/21/20)

https://www.5dca.org/content/download/643301/7306087/file/201082_DC03_08212020_090351_i.pdf

IMMIGRATION-JUDICIAL REVIEW: Appellate court may not review misrepresented that he was a citizen. Appellate court is precluded from reviewing any adjustment regarding the granting of relief from deportation except to the extent that such review involves constitutional claims or questions of law. Patel v. United States Attorney General, No. 17-10636 (11th Cir. 8/19/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710636.enb.pdf

DEFINITION-"JUDGMENT": "Judgment" is a broad term, encompassing both the process of forming an opinion as well the pronouncement. "Judgment" encompasses all decisions made by the BIA. (86 page debate on the meaning of the term "judgment." Patel v. United States Attorney General, No. 17-10636 (11th Cir. 8/19/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710636.enb.pdf

DEFINITION-"ANY"-"REGARDING": The word "any" has an expansive effect on the word that it modifies; "regarding" and "respecting" have a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject. Patel v. United States Attorney General, No. 17-10636 (11th Cir. 8/19/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710636.enb.pdf

EVIDENCE: Unobjected testimony by witness that she believed the Victim's statement that she had been sexually assaulted is objectionable and

erroneous but not fundamental error. Jackson v. State, 1D19-83 (8/19/20)

https://www.1dca.org/content/download/643223/7305166/file/190083_DC05_08192020_141547_i.pdf

ARGUMENT: Prosecutor's closing argument denigrating defense as "smoke and mirrors" may have been objectionable but is not fundamental error. Jackson v. State, 1D19-83 (8/19/20)

https://www.1dca.org/content/download/643223/7305166/file/190083_DC05_08192020_141547_i.pdf

ARGUMENT: Prosecutor's closing argument that "[W]e know that pedophiles exist. . .[T]ake a good look because one sits right there." is objectionable and improper but not fundamental error. Jackson v. State, 1D19-83 (8/19/20)

https://www.1dca.org/content/download/643223/7305166/file/190083_DC05_08192020_141547_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Life sentence after review is lawfully imposed on Defendant who committed a brutal murder as a minor and showed no indications of remorse or rehabilitation while in prison. Romero v. State, 1D19-2060 (8/19/20)

https://www.1dca.org/content/download/643225/7305190/file/192060_DC05_08192020_142044_i.pdf

CREDIT FOR TIME SERVED: Defendant is entitled to credit for time spent in jail awaiting placement into a drug treatment facility imposed as a condition of probation. MacNeill v. State, 1D19-4318 (8/19/20)

https://www.1dca.org/content/download/643230/7305250/file/194318_DC13_08192020_143342_i.pdf

CONSTRUCTIVE POSSESSION: Defendant cannot be found guilty of possession of a controlled substance in a jointly occupied area absent additional evidence of knowledge/dominion and control (facts not included in the opinion). Lovelace v. State, 1D 19-243 (8/17/20)

https://www.1dca.org/content/download/642933/7301717/file/190243_DC08_08172020_141846_i.pdf

RESENTENCING-MANDATE: Trial court may disregard a mandate when it is undoubtedly certain that the basis for that mandate has been subsequently overruled before compliance. Woods v. State, 1D19-453 (8/17/20)

https://www.1dca.org/content/download/642936/7301753/file/190453_DC05_08172020_143634_i.pdf

DEADLY WEAPON: A BB gun may be considered a deadly weapon. Bryant v. State, 1D19-915 (8/17/20)

https://www.1dca.org/content/download/642938/7301777/file/190915_DC08_08172020_144902_i.pdf

ARGUMENT: State may argue that a BB gun is a deadly weapon based on the scene in "A Christmas Story" where a character says that a BB gun could “shoot your eye out.” Bryant v. State, 1D19-915 (8/17/20)

https://www.1dca.org/content/download/642938/7301777/file/190915_DC08_08172020_144902_i.pdf

STATEMENT OF DEFENDANT: Where Defendant was lured to a meeting under false pretenses with three law enforcement officers in a small room, questioned aggressively, and required to remove his shirt, he reasonably believed he was in custody and was thus entitled to Miranda warnings. Defendant was entitled to a hearing on whether Counsel was ineffective for failing to file a motion to suppress. Maristee v. State, 1D19-1769 (8/17/20)

https://www.1dca.org/content/download/642942/7301825/file/191769_DC08_08172020_150126_i.pdf

APPEAL-SENTENCING ERROR-PRESERVATION: Defendant may not raise a claim of sentencing error on appeal which she had not preserve by either a contemporaneous objection or a motion to correct. Everett v. State, 1D19-1786 (8/17/20)

https://www.1dca.org/content/download/642943/7301837/file/191786_DC05_08172020_150312_i.pdf

SENTENCING-MINOR-LENGTHY SENTENCE: Defendant is not entitled to a resentencing hearing when he is sentenced to 50 years in prison for a homicide committed while a minor.. Resentencing is not required where homicide defendant's sentence is not a life sentence, a mandatory life sentence or a de facto life sentence. A 50 year sentence is not a de facto life sentence. Levesque v. State, 1D19-4506 (8/17/20)

https://www.1dca.org/content/download/642949/7301909/file/194506_DC05_08172020_151026_i.pdf

MANDAMUS: Defendant does not have a clear legal right to a ruling on a habeas corpus petition within 30 days of it being filed. Simpkins v. State, 1D20-2103 (8/17/20)

VOP: Court must reduce to writing its oral pronouncement of the violations and revocation of probation. West v. State, 3D19-2008 (8/19/20)

https://www.3dca.flcourts.org/content/download/643211/7305032/file/192008_DC13_08192020_105924_i.pdf

STAND YOUR GROUND: Where Court applied the wrong BOP at SYG hearing, at trial State overcame Defendant's self-defense claim by meeting the heavier trial burden of proof beyond a reasonable doubt, the Court's failure to require the State to overcome Defendant's immunity claim with clear and convincing evidence was cured. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

STAND YOUR GROUND: Attempted car burglary (jiggling a car door handle) is not a forcible felony justifying SYG immunity for Defendant who detained suspect at gunpoint. Display of a deadly weapon, without more, is not deadly force. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

STATUTORY INTERPRETATION: The "Presumption of Consistent Usage" holds that a word or phrase is presumed to bear the same meaning throughout a text. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

STAND YOUR GROUND: Where the defendant did not discharge his loaded firearm but pointed it at another individual while vocally ordering that person to do something (get down on the ground), he threatened to use force, and ordinarily would not be entitled to SYG immunity. When a person points a loaded firearm at another person and issues a command to do something, this is generally an implied declaration that the failure to abide by the command will result in the discharge of the firearm, i.e., deadly force. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

JURY INSTRUCTION-NON-DEADLY FORCE: Failure to give a non-deadly force instruction where Defendant pulled a gun on person jiggling the door handle of a parked car is not fundamental error. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

DEADLY FORCE: Pointing a firearm at another individual without discharging it is not use of deadly force, but is "threatened use of" deadly force, not permitted under SYG law. Little v. State, 4D18-3128 (8/19/20)

https://www.4dca.org/content/download/643057/7303207/file/183128_DC05_08192020_085305_i.pdf

SENTENCING: Where a trial court's written sentencing order conflicts with the oral pronouncement, the oral pronouncement controls." Defendant's designation as a violent career criminal, because not orally pronounced, is vacated. Smith v. State, 4D19-1036 (8/19/20)

https://www.4dca.org/content/download/643059/7303231/file/191036_DC05_08192020_085705_i.pdf

SEARCH AND SEIZURE-PRIVACY-MASSAGE PARLOR-STANDING: Defendant has a legitimate expectation of privacy in massage rooms where female employees offer a sexual act involving manual manipulation of the male genitals for money, and thus has standing to challenge the surveillance warrant. The spa-client defendants in all of these cases had a subjective and objectively reasonable expectation of privacy in the massage parlor rooms where clients are expected to partially or fully disrobe. "As soon as the door to the massage room was closed, they had a reasonable expectation of privacy." "[T]he state's circular argument that the defendants lacked a privacy interest because they were engaging in criminal behavior is uncompelling." State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

SEARCH AND SEIZURE-PRIVACY-MASSAGE PARLOR-MINIMIZATION: Video surveillance requires minimization. The warrants, which did not set forth any specific written parameters to minimize the recording of innocent massage seekers, failed to contain sufficient minimization guidelines and

the police did not sufficiently minimize the video recording of innocent spa goers receiving lawful massages. State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

SEARCH AND SEIZURE-PRIVACY-MASSAGE PARLOR-MINIMIZATION: An order permitting video surveillance shall not be issued unless: (1) there has been a showing that probable cause exists that a particular person is committing, has committed, or is about to commit a crime; (2) the order particularly describes the place to be searched and the things to be seized; (3) the order is sufficiently precise so as to minimize the recording of activities not related to the crimes under investigation; (4) the judge issuing the order finds that normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or appear to be too dangerous; and (5) the order does not allow the period of interception to be longer than necessary to achieve the objective of the authorization, or in any event no longer than thirty days. State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

SEARCH AND SEIZURE-MINIMIZATION: "Should there be any doubt, as the state respectfully urges, that minimization procedures 'are not constitutionally required by the Fourth Amendment' . . ., we hereby find they are and caution that to hold otherwise would be directly counter to the Constitution, civil liberties, and the rule of law." State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

EXCLUSIONARY RULE: Exclusionary rule applies to improperly minimized massage room surveillance. "We cannot conclude here that the law enforcement agencies acted in good faith with respect to minimization due to the lack of Florida law on point." State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

EXCLUSIONARY RULE: Argument that exclusionary rule should not apply because the the victims could civilly sue is non-availing. "A costly, time-consuming civil remedy by unlawfully recorded persons is impractical and would not serve to meaningfully deter future violations. Were we to accept this argument, police in future cases could blatantly violate the privacy rights and Fourth Amendment protections of citizens and the only consequence would be the risk of future civil lawsuits that most citizens would not have the wherewithal to pursue." State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

SEARCH AND SEIZURE: "[T]he strict Fourth Amendment safeguards developed over the past few decades must be observed. . . .To permit otherwise would yield unbridled discretion to agents of law enforcement and the government, the antithesis of the constitutional liberty of people to be secure against unreasonable searches and seizures." State v. Kraft, 4D19-1499 (8/19/20)

https://www.4dca.org/content/download/643061/7303255/file/191499_DC05_08192020_100354_i.pdf

SEARCH AND SEIZURE-TRAFFIC STOP: Search is unlawful where officer unlawfully prolonged car stop by asking Defendant questions unrelated to the purpose of the stop (when his last traffic ticket was, if he had ever been arrested, how old his car was, whether he had drugs or a dead body in the car). An officer may conduct certain unrelated checks during an otherwise lawful traffic stop, but he may not do so in a way that prolongs the stop. A stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop's purpose and adds time to the stop in order to investigate other crimes. But here the Good Faith exception applies because the officer relied on then binding but now overturned case law. USA v. Campbell, No. 16-10128 (8/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201610128.op2.pdf

APPEALS: Government is not authorized to raise the Good Faith exception to an appeal of a search if not raised below, but appellate court may do so *sua sponte.* "Without announcing a bright-line rule, we hold that we can review the applicability of the waived good-faith issue here because of the narrow posture of this case and because the waived issue is resolved, as a matter of law, by our analysis of the constitutionality of [officer]'s search in this case. . .[W]e remain passive and neutral, without becoming a self-directed board of legal inquiry, even though we dispose of the case on an issue that was technically waived on appeal."

http://media.ca11.uscourts.gov/opinions/pub/files/201610128.op2.pdf

JIMMY RYCE: The report of Doctor who had evaluated the Detainee nine times which said that he was not a danger establishes probable cause that

Detainee will not reoffend entitling him to a review trial. Higdon v. Secretary, DCF, 2D18-2620 (8/14/20)

https://www.2dca.org/content/download/642680/7299680/file/182620_DC13_08142020_093013_i.pdf

DOUBLE JEOPARDY: Double jeopardy bars convictions for both home invasion robbery with a weapon (1st degree felony) and burglary of a dwelling with an assault with a weapon (1st PBL). The lesser crime should be (that which is the offense that has elements wholly subsumed by the other) should be vacated, even though, as here, the lesser offence (armed burglary) carries a more severe sanction. Rodriguez v. State, 5D19-2346 (8/14/20)

https://www.5dca.org/content/download/642672/7299570/file/192346_DC08_08142020_081218_i.pdf

BASEBALL PLAYER SMUGGLING: CUBAN ADJUSTMENT ACT (CAA) and the Wet-Foot/Dry-Foor policy does not constitute "prior official authorization" to enter the United States, such that Defendants could not be convicted of smuggling baseball players from Cuba into the United Sttes to play baseball. USA v. Estrada, No. 17-15405 (11th Cir. 8/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715405.pdf

EVIDENCE-LAY OPINION: Office of Foreign Assets Control (OFAC) employee may testify about policy on unlocking immigration visa applications. A lay witness may base his opinion testimony on his examination of documents even when the witness was not involved in the activity because of the particularized knowledge that the witness has by

virtue of his or her position in the business. USA v. Estrada, No. 17-15405 (11th Cir. 8/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715405.pdf

EVIDENCE-COLLATERAL CRIMES: Evidence of violence and extortion third parties committed toward non-players or their families is admissible in case of smuggling baseball players from Cuba to USA as intrinsic evidence necessary to complete the story of the crimes and integral to the charged conspiracy. USA v. Estrada, No. 17-15405 (11th Cir. 8/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715405.pdf

DEATH PENALTY: Hurst does not apply retroactively. Freeman v. State, SC19-1532 (8/13/20)

https://www.floridasupremecourt.org/content/download/642579/7298592/file/sc19-1532.pdf

POST CONVICTION RELIEF-CONCEDING GUILT: There is no blanket rule demanding the Defendant's explicit consent to a trial strategy of conceding guilt to a lesser offense. Only if the Defendant expressed to counsel that his objective was to maintain his innocence or that he expressly objected to any admission of guilt is his attorney necessarily ineffective in conceding guilt. Atwater v. State, SC19-1709 (8/13/20)

https://www.floridasupremecourt.org/content/download/642580/7298604/file/sc19-1709.pdf

SCYLLA AND CHARYBDIS: "Darned if you do and darned if you don't. That dilemma is nothing new. Indeed, around 800 B.C.E., Homer wrote of

the problem in his epic poem The Odyssey. There, the conundrum appeared when Odysseus found himself 'caught between the Scylla and Charybdis,' a phrase we continue to use today to refer to the darned-if-you-and-darned-if-you-don't scenario." *See* footnote citing to "Wrapped Around Your Finger" by The Police. McKathan v. USA, No. 17-13358 (1th Cir. 8/12/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713358.pdf

STATEMENTS OF DEFENDANT-PROBATION: Statements made by Defendant (yes, I looked at child porn), because of condition of probation that Defendant must answer truthfully all inquiries by the probation officer, is compelled under the Fifth Amendment and neither the statement nor evidence derived from it may be used in a subsequent criminal prosecution "What is not permissible is giving a probationer a reasonable belief that if he refuses to answer his probation officer's incriminating questions, his probation will be revoked and then using statements derived as a result of that 'classic penalty situation' in a criminal prosecution." McKathan v. USA, No. 17-13358 (1th Cir. 8/12/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713358.pdf

SENTENCING-ENHANCEMENT FOR PRIORS: Court may consider the "factual basis for the plea" to a prior offense only when it was confirmed by the Defendant, but inferences from the records support the conclusion that the Defendant had pled to two separate offenses, subjecting him to the ACCA enhancement. USA v. Carter, No. 18-148806 (11th Cir. 8/12/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814806.pdf

HEARSAY-SELF-AUTHENTICATING DOCUMENTS: Only documents bearing a seal, not supporting documents accompanying the document with

a seal, are admissible as a self-authenticating document under §90.902, but the custodian's business record certification nonetheless makes the letter admissible. PRR sentence is upheld. Locklear v. State, 1D19-1236 (8/12/20)

https://www.1dca.org/content/download/642535/7298103/file/191236_DC05_08122020_132338_i.pdf

STAND YOUR GROUND: SYG immunity applies only to those whose immunity hearings took place on or after the statute's effective date. Fudge v. State, 1D19-1334 (8/12/20)

https://www.1dca.org/content/download/642536/7298115/file/191443_DC05_08122020_132536_i.pdf

EXCESSIVE FORCE-QUALIFIED IMMUNITY: Leaving a detainee in a hot, unventilated, un-air-conditioned van for transport between jails can be understood as excessive force. "[T]he need for detention in relatively harsh conditions depends both on the threat that the Detainee poses and on the feasibility of alternative means of holding him. Again, a sliding scale: Detention in harsher conditions may be justified where alternative modes of detention are not readily available, especially if the detainee poses a heightened risk of danger to police or the public; by contrast, where the detainee poses no particular risk or where an alternative is at hand, the "need" for harsher modes of detention dissipates." Officer is entitled to qualified immunity on excessive-force claim, but not on the deliberate-indifference claim. Patel v. Smith, No. 19-11253 (11th Cir. 8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911253.pdf

CRIME OF VIOLENCE-RICO CONSPIRACY: RICO conspiracy does not qualify as a crime of violence under §924(c). USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

EXCESSIVE SENTENCE: 120-year sentence (five-fold upward variance) is procedurally unreasonable in RICO drug conspiracy involving murder (for which the Defendant was acquitted) where the Court failed to adequately explain Defendant's sentence and relied on a clearly erroneous fact. USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

SEARCH AND SEIZURE-ABANDONMENT: Fourth Amendment protection does not extend to abandoned property. Defendant abandoned his cell phone which had been seized incident to an arrest forDWLS four years before where he never sought to recover the phone. USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

JURORS-PEREMPTORY CHALLENGE: Court did not abuse its discretion in denying Defendant's requested strike made in contravention to the agreed voir dire procedure and after his counsel had accepted the panel on the defendants' behalf. USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

HEARSAY-CO-CONSPIRATOR STATEMENT: Testimony concerning street rumors that witness had heard that Defendant's murdered a named

person is not admissible under co-conspirator exception to the hearsay rule where witness repeatedly clarified that she never overheard any of the co-conspirators say so. Error is harmless. USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

INCONSISTENT VERDICTS: Inconsistent jury verdicts are generally insulated from review because a jury may reach conflicting verdicts through mistake, compromise, or lenity. USA v. Green, No. 17-10346 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201710346.pdf

FORFEITURE: Forfeiture is mandatory even where Defendant is convicted of a money laundering scheme that caused no financial harm to an innocently involved bank. Laundered money that winds up back with a victim of the scheme is still property "involved in" the offense for forfeiture purposes. USA v. Hatum, No. 18-11951 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201811951.pdf

EIGHTH AMENDMENT-EXCESSIVE FINE: Forfeiture order of $20,852,0006 is not excessively punitive, notwithstanding that money had already been returned to the bank with interest. Any forfeiture amount below the maximum fine will be presumptively constitutional. USA v. Hatum, No. 18-11951 (8/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201811951.pdf

SEARCH AND SEIZURE-PARKED CAR: Defendant who parked his car with its driver's-side tires resting along the fog line at the edge of a two-lane

road was unlawfully stopped. "[N]o one in this case—not the deputy, the prosecutor, the circuit court, or the State in this appeal—has ever identified a provision of law that forbids parking a vehicle in the manner that the deputy found objectionable." Bent v. State, 2D19-1920 (8/12/20)

https://www.2dca.org/content/download/642484/7297473/file/191920_DC13_08122020_085646_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to reject a plea offer because she wrongly believed that he could only be convicted of the lesser offense of burglary of a structure because the building he entered was uninhabitable. Rubino v. State, 2D19-2514 (8/12/20)

https://www.2dca.org/content/download/642485/7297485/file/192514_DC08_08122020_085816_i.pdf

EVIDENCE-RELEVANCE-PREJUDICE: "The Punisher" logo on the grip of Defender's gun is admissible to show the distinctiveness of the firearm. Even if it should have been excluded, any error is harmless where Defendant killed two people (one run over, one run over and shot) and hit, shot or crashed his car into three more. Wong v. State, 3D19-1291 (8/12/20)

https://www.3dca.flcourts.org/content/download/642506/7297744/file/191291_DC05_08122020_110120_i.pdf

ATTEMPTED SECOND DEGREE MURDER: Attempted Second Degree Murder with a Firearm is a first degree felony, not a life felony. Lagandeur v. State, 3D19-1157 (8/12/20)

https://www.3dca.flcourts.org/content/download/642505/7297732/file/191157_DC08_08122020_105858_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: In order to obtain a new trial based on newly discovered evidence, a defendant must show that the evidence must not have been known by the trial court, the party, or counsel at unknown and unknowable with due diligence and must be of such nature that it would probably produce an acquittal on retrial. A recantation will not be considered newly discovered evidence where the recantation offers nothing new or where the recantation is offered by an untrustworthy individual who gave inconsistent statements all along. Lightner v. State, 3D19-1681 (8/12/20)

https://www.3dca.flcourts.org/content/download/642508/7297768/file/191681_DC05_08122020_110709_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW-SEARCH WARRANT: Search is lawful where the search warrant specified that two samples must be seized but only one was. While an officer does not have the power to seize anything not specified in the warrant, he can exercise discretion to leave items that may arguably come within the literal terms of the search warrant. State v. Aaron, 3D19-8 (8/12/20)

https://www.3dca.flcourts.org/content/download/642476/7297363/file/190008_DC13_08122020_104126_i.pdf

COSTS: $200 cost of prosecution exceeds the statutorily authorized minimum of $100. Maragh v. State, 4D19-788 (8/12/20)

https://www.4dca.org/content/download/642462/7297202/file/190788_DC08_08122020_092323_i.pdf

JUVENILE-JURISDICTION: Court lacks jurisdiction beyond the age of 19 over a Child in cases for which he is not a sex offender, notwithstanding that in a different case he is on supervision as a juvenile sex offender. K.D. v. State, 4D19-2196 (8/12/20)

https://www.4dca.org/content/download/642464/7297226/file/192196_DC08_08122020_093225_i.pdf

RESTITUTION: In car burglary case, victim's $412 payment to tow lot and for re-keying is not compensable restitution. E.J.A. v. State, 4D19-3520 (8/12/20)

https://www.4dca.org/content/download/642469/7297286/file/193520_DC08_08122020_094138_i.pdf

SENTENCING-CTS-STATE CHARGE: Where Defendant is sentenced to twenty years on a state charge of burglary and is later prosecuted on a federal charge of possession of firearm by a felon based on the same acts, the Court must adjust its guideline sentence to account for the time already served on the state case. 5G1.3(b)(1) of the Sentencing Guidelines requires that a district court shall adjust a defendant's sentence for time served on a related sentence if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons. Adjustment is mandatory. USA v. Henry, No. 18-15251 (11th Cir. 8/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201815251.pdf

STATUTORY INTERPRETATION-GUIDELINES: Absent a conflict with a higher source of federal law, sentencing courts must follow mandatory

instructions in the Guidelines. USA v. Henry, No. 18-15251 (11th Cir. 8/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201815251.pdf

EVIDENCE-INTERROGATION-REDACTION: Court did not err in allowing various statements by officers during the interrogation where Defendant's story evolved from from complete denial to consensual intercourse and striking the homicide victim in the head. A jury may hear an interrogating detective's statements about a crime when the statements provoke a relevant response from the defendant being questioned. Whitfield v. State, 1D18-4280 (8/7/20)

https://www.1dca.org/content/download/642300/7295471/file/184280_DC05_08072020_131146_i.pdf

ARGUMENT: State may argue its interpretation of a partially inaudible recording which has been admitted in evidence. Wilson v. State, 1D19-3764 (8/7/20)

https://www.1dca.org/content/download/642304/7295519/file/193764_DC05_08072020_132315_i.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: Habeas corpus is not available to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850. Habeas corpus may not be used for obtaining additional appeals of issues which were or should have been raised, on direct appeal or prior postconviction filings. Ferguson v. Inch, 1D20-1642 (8/7/20)

https://www.1dca.org/content/download/642305/7295531/file/201642_DA08_08072020_132840_i.pdf

CONTINUANCE: Court abused its discretion in denying continuance when State materially amended its information and added, on the eve of trial, three additional law enforcement witnesses. Turner v. State, 2D18-4281 (8/7/20)

https://www.2dca.org/content/download/642261/7295031/file/184281_DC13_08072020_083635_i.pdf

HABEAS CORPUS-SUCCESSIVE PETITION: Where Court amended its original judgment nunc pro tunc, the amended sentence is not a new judgment, so a §2244(b) habeas corpus action would be an unauthorized second or successive petition, beyond the Court's jurisdiction. Osborne v. Secretary, DOC, No. 18-11004 (11th Cir. 8/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201811004.pdf

HABEAS CORPUS: Before a petitioner may file a second or successive §2254 habeas petition, the petitioner first must obtain an order from this Court authorizing the district court to consider the petition. Without it, the district court lacks jurisdiction to consider a second or successive habeas petition. Osborne v. Secretary, DOC, No. 18-11004 (11th Cir. 8/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201811004.pdf

POST CONVICTION RELIEF-DEFECTIVE INFORMATION: Counsel is not ineffective for failing to dismiss an information with does not cite an applicable subsection of the armed robbery statute. An information is fundamentally defective only where it totally omits an essential element of the crime or is so vague, indistinct or indefinite that the defendant is misled or exposed to double jeopardy. Boone v. State, 1D19-3282 (8/6/20)

https://www.1dca.org/content/download/642221/7294564/file/193282_DC05_08062020_141900_i.pdf

DOUBLE JEOPARDY: Defendant can be found guilty of both Aggravated Battery with a Firearm and Robbery with a firearm. Each requires proof of a fact that the other does not. Robbery requires proof of a taking or depriving of property, an element that battery does not require. Battery requires an actual and intentional touching of the victim, which is not necessarily an element of robbery. Boone v. State, 1D19-3282 (8/6/20)

https://www.1dca.org/content/download/642221/7294564/file/193282_DC05_08062020_141900_i.pdf

INCONSISTENT VERDICTS: Factually inconsistent verdicts that do not negate a necessary element for another count are lawul. Defendant may be found guilty of armed robbery with a firearm and aggravated battery despite the jury finding that he did not actually possess the firearm. Boone v. State, 1D19-3282 (8/6/20)

https://www.1dca.org/content/download/642221/7294564/file/193282_DC05_08062020_141900_i.pdf

JURY INSTRUCTION-INDEPENDENT ACT: Defendant was not entitled to an independent act instruction in robbery case where evidence showed that the Defendant actively participated in the robbery (hitting victim in the head and either struggling with or shooting the victim). Boone v. State, 1D19-3282 (8/6/20)

https://www.1dca.org/content/download/642221/7294564/file/193282_DC05_08062020_141900_i.pdf

HEARSAY: Rebuttal witness is allowed to testify that an officer told him that Defendant's clothes were not found at the burglarized home (contradicting Defendant's defense that he went in the home by invitation to retrieve his clothes). The statement of the non-testifying witness was not

used in the State's case-in-chief to establish Defendant's guilt; rather, it was introduced in rebuttal solely to impeach his testimony that he had been invited to Victim's home to retrieve clothing. The testimony was hearsay, but was nevertheless admissible to impeach Defendant's narrative. Butler v. State, 3D19-1172 (8/5/20)

https://www.3dca.flcourts.org/content/download/642140/7293583/file/191172_DC05_08052020_104353_i.pdf

NON-UNANIMOUS VERDICT: Multiple acts of penetration involving the same victim occurring over the course of a few hours as part of an ongoing criminal episode can support one conviction without violating the rule prohibiting the possibility of a non-unanimous verdict. Pestano v. State, 3D19-180 (8/5/20)

https://www.3dca.flcourts.org/content/download/642133/7293493/file/190180_DC05_08052020_103501_i.pdf

APPEALS-MULTIPLE CASES: Appellant may not file a separate *pro se* habeas corpus action while represented by counsel in a separate appeal on the same underlying case. Lightner v. State, 3D20-880 (8/5/20)

https://www.3dca.flcourts.org/content/download/642147/7293681/file/200880_DA08_08052020_105432_i.pdf

MANIFEST INJUSTICE: Appellate courts have the authority to correct a manifest injustice by way of habeas corpus, but the mere incantation of the words "manifest injustice" does not make it so. Missing charge conference transcript does not thwart meaningful appellate review rising to manifest injustice. Lightner v. State, 3D20-880 (8/5/20)

https://www.3dca.flcourts.org/content/download/642147/7293681/file/200880_DA08_08052020_105432_i.pdf

COLLATERAL CRIME EVIDENCE-SEX CASES: Collateral crime evidence of Defendant fondling a previous girl friend's prepubesent daughter is admissible in lewd and lascivious molestation of a new girl friend's daugher. Collateral crime evidence in sex case is admissible to corroborate a victim's testimony regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity, but the probative value of relevant evidence be weighed against its potential for unfair prejudice. The similarity of the collateral act and charged offense is a critical consideration. Good discussion. Pridemore v. State, 4D19-1555 (8/5/20)

https://www.4dca.org/content/download/642119/7293316/file/191555_DC05_08052020_090418_i.pdf

HEARSAY-SUICIDE NOTE: Child victim's suicide note, in which she wrote about being molested, is admissible. Pridemore v. State, 4D19-1555 (8/5/20)

https://www.4dca.org/content/download/642119/7293316/file/191555_DC05_08052020_090418_i.pdf

POST CONVICTION RELIEF: Court must address only those claims of ineffective assistance of counsel which are clearly articulated in a motion for post conviction relief. A vague coercion claim need not be specifically addressed by the Court when it was subsumed in other claims. Barritt v. Secretary, DOC, No. 16-17789 (11th Cir. 8/4/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201617789.pdf

VINDICTIVENESS: Filing of additional charges in the context of plea negotiations is not necessarily retaliatory. Barritt v. Secretary, DOC, No. 16-17789 (11th Cir. 8/4/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201617789.pdf

DOUBLE JEOPARDY-CHILD PORN: One videotape containing four separate incidents of Defendant molesting his stepdaughter can constitute four separate offenses of possession of child pornography. "[Defendant's] argument would effectively mean that the defendant's chosen manner of storage dictates how many offenses he has committed—rather than the number of offending representations he actually created or possessed. His argument is especially unpersuasive considering that, for example, both the films Casablanca and Godzilla could be stored on the same videotape yet obviously would not constitute a single 'motion picture.'" Barritt v. Secretary, DOC, No. 16-17789 (11th Cir. 8/4/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201617789.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Officers may approach a car parked in grassy area between fence around home and the street, tap on the window with flashlight and question the occupants. USA v. Knights, No. 19-10083 (11th Cir. 8/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910083.pdf

COMPETENCY: Court is not required to conduct a competency hearing where Defendant demonstrated a continued understanding of the proceedings, ability to consult with his counsel, and ability to assist with his defense, notwithstanding Defendant's description of himself as "discombobulated." USA v. Cometa, No. 19-11282 (11th Cir. 8/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911282.pdf

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EVIDENCE-SUMMARY CHARTS: Where the underlying evidence is made up of voluminous Medicare claims, summary charts are permitted under F.E.R. 1006. The essential requirement is not that the charts be free from reliance on any assumptions, but rather that these assumptions be supported by evidence in the record. A sufficiently qualified expert is not required as a basis for entering the comparison charts. USA v. Melgen, No. 18-10991 (11th Cir. 7/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810991.pdf

NEW EVIDENCE: Defendant is not entitled to a new trial under R. 33 for evidence which is merely impeaching. USA v. Melgen, No. 18-10991 (11th Cir. 7/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810991.pdf

SENTENCING-REASONABLENESS: In reviewing a sentence for reasonableness, the appellate court must first consider whether the district court committed any significant procedural error, and next whether the sentence was substantively reasonable. 204 months for extensive Mericare fraud by opthalmologist is not unreasonable. USA v. Melgen, No. 18-10991 (11th Cir. 7/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810991.pdf

STAND YOUR GROUND: Defendant is not entitled to a new SYG hearing where the immunity hearing was held before the effective date of the 2017

amendment, which shifted the burden of proof to the State. Whitham v. State, 2D16-3388 (7/31/20)

https://www.2dca.org/content/download/641922/7291036/file/163388_DC05_07312020_083834_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE-EVIL TWIN DEFENSE: Defendant who was convicted at trial after a failed identity defense is entitled to a hearing on claim that his brother was the real perpetrator who confessed after the trial. Evidence can be treated as newly discovered where it is based on newly available testimony of defendants who were previously unwilling to testify. Baker v. State, 2D19-2944 (7/31/20)

https://www.2dca.org/content/download/641928/7291115/file/192944_DC08_07312020_084150_i.pdf

POST CONVICTION RELIEF: Case remanded a second time for Court to determine whether counsel was ineffective for failing to object to trial court's comments at sentencing. Court may not base its ruling on trial counsel's subjective perception that the court's comments were not a basis for Johns's sentence. Trial counsel's performance is measured by an objective standard. New judge required. Johns v. State, 5D19-2883 (7/31/20)

https://www.5dca.org/content/download/641915/7290945/file/192883_DC13_07312020_083117_i.pdf

POST CONVICTION RELIEF: Defendant's claim that he was overdosed on psycotropic medication the extent that he was hallucinating at the time of his plea, rendering it involuntary, is refuted by the record. Being prescribed psychotropic medications while incarcerated does not equate to involuntary intoxication. Annicchiarico v. State, 5D19-3033 (7/31/20)

https://www.5dca.org/content/download/641916/7290957/file/193033_DC05_07312020_095532_i.pdf

POST CONVICTION RELIEF: Defendant's assertion that he was not afforded the benefit of the negotiated range of sentences for leading the police to the location of the victim's body, which he did, although they did not find it until years later exactly where he had indicated, while concerning, does not warrant relief on appeal because it was not raised at the evidentiary hearing. Annicchiarico v. State, 5D19-3033 (7/31/20)

https://www.5dca.org/content/download/641916/7290957/file/193033_DC05_07312020_095532_i.pdf

COSTS: Court may not impose $100 cost of investigation for the Sheriff's Office because the State did not request it. Quinby v. State, 5D20-928 (7/31/20)

https://www.5dca.org/content/download/641918/7290981/file/200928_DC05_07312020_083841_i.pdf

CRIME OF VIOLENCE: Hobbs Act robbery and carjacking are crimes of violence. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

PHOTO LINEUP: Photo line-up in which Defendant is the only one with two-toned dreadlocks is not unduly suggestive. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

EVIDENCE: In armed robbery case, music video which shows the Defendant acting out a robbery, comparing himself to El Chapo, and promoting himself as a gangster ("If I pull up on you, you'll get buried") is admissible to show identity and to corroborate victim's testimony that the Defendant was a rapper and videographer who had shown her that video. The video's potential for unfair prejudice did not substantially outweigh its probative value. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

HOBBS ACT-INTERSTATE COMMERCE: Robbery of victim by taking video editing software (Pro Tools software) used by the victim's business satisfies the affecting-interstate-commerce element. The effect on interstate commerce may be minimal. There is no requirement that the criminal and victim have a commercial relationship. The element of effect on interstate commerce can apply to the robbery of an individual when (1) the crime depletes the assets of an individual who is directly engaged in interstate commerce; (2) the crime causes the individual to deplete the assets of an entity engaged in interstate commerce; or (3) the number of individuals victimized or the sums involved are so large that there will be a cumulative impact on interstate commerce. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

FIRST STEP ACT: Under the First Step Act, the 25-year mandatory minimum consecutive sentence required by that statute does not apply to multiple §924(c) convictions resulting from a single prosecution. Instead, the mandatory minimum consecutive sentences for second or subsequent §924(c) convictions apply only where the later conviction is for a §924(c) violation that occurs after a previous one has become final. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

RETROACTIVITY-FIRST STEP ACT: First Step amendment to §924(c) limiting its consecutive application does not apply retroactively to before the sentences are imposed. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

RETROACTIVITY: The general rule is that when an amendment clarifies prior law rather than changing it, no concerns about retroactive application arise and the amendment is applied to the present proceeding as an accurate restatement of prior law. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

STATUTORY INTERPRETATION: The title of a statute and the heading of a section cannot limit the plain meaning of the text. The heading or title of a statute cannot trump the plain meaning of the text. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

EIGHTH AMENDMENT: 1,105-month sentence for three Hobbs Act robberies does not violate the Eighth Amendment as disproportionate. USA v. Smith, No. 18-13969 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813969.pdf

EQUITABLE TOLLING: Attorney negligence (failure to pay filing fee or apply for indigency waiver), even gross or egregious negligence, does not

qualify as an extraordinary circumstance for purposes of equitable tolling. Clemons v. Commissioner, No. 16-13020 (11th Cir. 7/30/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201613020.pdf

SEARCH AND SEIZURE: Probable cause to search a lawfully stopped vehicle justifies the search of every part of the vehicle and its contents that may conceal the object of the search. Charley v. State, 1D19-732 (7/27/20)

https://www.1dca.org/content/download/641582/7287312/file/190732_DC05_07272020_140611_i.pdf

SEARCH AND SEIZURE-MARIJUANA: The odor of burnt cannabis emanating from a vehicle constitutes probable cause to search all occupants of that vehicle. Charley v. State, 1D19-732 (7/27/20)

https://www.1dca.org/content/download/641582/7287312/file/190732_DC05_07272020_140611_i.pdf

CRUEL OR UNUSUAL PUNISHMENT: Rule 3.800(a) cannot be used as a vehicle for challenging the constitutionality of a sentencing statute. Wilson v. State, 1D19-4585 (7/27/29)

https://www.1dca.org/content/download/641588/7287384/file/194585_DC05_07272020_141733_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to advise him of a possible coerced consent defense to the search of his cell phone. Patterson v. State, 2D19-2495 (7/29/20)

https://www.2dca.org/content/download/641707/7288824/file/192495_DC08_07292020_083703_i.pdf

APPEAL-JURISDICTION: Defendant cannot appeal an order granting his Rule 3.800(a) motion. Cason v. State, 3D20-280 (7/29/20)

https://www.3dca.flcourts.org/content/download/641718/7288963/file/200280_DA08_07292020_104756_i.pdf

VOP: Court must reduce its oral pronouncements to a written order during Defendant's probation revocation hearing. Ward v. State, 3D18-2530 (7/29/20)

https://www.3dca.flcourts.org/content/download/641698/7288702/file/182530_DC05_07292020_103636_i.pdf

MISTRIAL: Defendant is not entitled to a mistrial when witness referred to the gun used in the shooting as an AK-47 ("KKK47") in violation of the Order in Limine. An isolated inadvertent remark which does not become the focus of the trial does not warrant a mistrial. Ward v. State, 3D18-2534 (7/29/20)

https://www.3dca.flcourts.org/content/download/641696/7288676/file/182534_DC05_07292020_103614_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is not entitled to a new probation hearing based on recanted testimony (child of victim later said victim shot herself in the leg) where Court is not satisfied that the recantation is true and the witness' testimony will not change to such an extent as to render probable a different verdict. Recanting testimony is exceedingly unreliable. Ferguson v. State, 3D19-2286 (7/29/20)

https://www.3dca.flcourts.org/content/download/641713/7288896/file/192286_DC05_07292020_104450_i.pdf

SEARCH AND SEIZURE: Where Child is found seated with two others next to a stove being used to cook crack cocaine in the small kitchen of a private house, officers have probable cause of joint, constructive possession, justifying the arrest and search of the Child. A suspect's location in a private residence with others where drugs are openly being processed establishes joint constructive possession sufficient to search. J.J. v. State, 3D18-398 (7/29/20)

https://www.3dca.flcourts.org/content/download/641733/7289145/file/180398_NOND_07292020_111744_i.pdf

CONSTRUCTIVE POSSESSION: Proximity alone is not enough to establish constructive possession, but proximity plus evidence of drug dealing may show joint constructive possession sufficient to search, although perhaps not sufficient to convict. J.J. v. State, 3D18-398 (7/29/20)

https://www.3dca.flcourts.org/content/download/641733/7289145/file/180398_NOND_07292020_111744_i.pdf

PROBABLE CAUSE: Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. It is not a high bar. The probable cause standard merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that evidence of a crime may be found. It does not demand any showing that such a belief be correct or more likely true than false. Probable cause is more than bare suspicion but is less than beyond a reasonable doubt and, indeed, is less than a preponderance of the evidence.

Probable cause doesn't require proof that something is more likely true than false. J.J. v. State, 3D18-398 (7/29/20)

https://www.3dca.flcourts.org/content/download/641733/7289145/file/180398_NOND_07292020_111744_i.pdf

VOP: Arrest report and Defendant's testimony that she was arrested is insufficient to establish a violation of probation. Brown v. State, 3D19-542 (7/29/20)

https://www.3dca.flcourts.org/content/download/641734/7289157/file/190542_DC08_07292020_112430_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: VFOSC applies only to individuals who were on adult felony probation or community control before a violation of supervision occurred, and it does not apply to juveniles sentenced in adult court to juvenile sanctions. Evans v. State, 4D18-3111 (7/29/20)

https://www.4dca.org/content/download/641674/7288405/file/183111_DC08_07292020_085205_i.pdf

JUVENILE SANCTION REVOCATION: Revoking Defendant's juvenile sanctions on the basis of prior adjudications and supervision history violates Due Process. Court violates Due Process when it was equally, if not more, concerned about Appellant's escalating criminal record and use of weapons during the prior offenses rather than the new offense. Evans v. State, 4D18-3111 (7/29/20)

https://www.4dca.org/content/download/641674/7288405/file/183111_DC08_07292020_085205_i.pdf

JUVENILE SANCTION REVOCATION: Defendant charged as an adult but sentenced to juvenile sanctions who violated conditional relief with a new crime. Court may not revoke juvenile sanctions for reasons not listed in the DJJ's affidavit of unsuitability, i.e. prior supervision hearing. Evans v. State, 4D18-3111 (7/29/20)

https://www.4dca.org/content/download/641674/7288405/file/183111_DC08_07292020_085205_i.pdf

JUVENILE SANCTION REVOCATION: Revocation of juvenile sanctions is a sequential three step process, where the trial court has to decide: (1) did Appellant willfully commit a substantive violation of supervision conditions; (2) if so, should probation supervision be revoked; and (3) if probation supervision is revoked, what is the appropriate sentence. Where Court blurs the process by mixing evidence for the different determinations, the trial court's analysis becomes flawed. Evans v. State, 4D18-3111 (7/29/20)

https://www.4dca.org/content/download/641674/7288405/file/183111_DC08_07292020_085205_i.pdf

APPEAL-COMPETENCY: An order determining competency is not independently reviewable. Defendant may not appeal nunc pro tunc determination of competency until final judgment is entered. Pittman v. State, 4D19-995 (7/29/20)

https://www.4dca.org/content/download/641679/7288465/file/190995_DA08_07292020_085736_i.pdf

VOP: Court must make written findings specifying which condition(s) of probation Defendant was found to have violated. Randolph v. State, 4D19-3185 (7/29/20)

https://www.4dca.org/content/download/641690/7288597/file/193185_DC08_07292020_094425_i.pdf

JUVENILE-SECURE DETENTION-FTA: A juvenile who FTA's and has previously willfully FTA'ed may not be placed in detention for more than 72 hours when the child scores a zero on his risk assessment instrument. N.W. v. State, 1D20-2058 (7/24/20)

https://www.1dca.org/content/download/641222/7284774/file/202058_DC03_07242020_160019_i.pdf

VOP: Court must specify in writing the conditions of probation that have been violated). Rivera Cabezudo v. State, 2D19-2226 (7/24/20)

https://www.2dca.org/content/download/641191/7284397/file/192226_DC05_07242020_081434_i.pdf

SENTENCING-MINOR-LENGTHY SENTENCE: Minor who receives a lengthy sentence short of life is not entitled to a resentencing hearing. Gilchrist v. State, 5D18-3545 (7/24/20)

https://www.5dca.org/content/download/641178/7284234/file/183545_DC05_07242020_083022_i.pdf

SENTENCING: In sentencing Defendant for his role in selling marijuana, Court did not err in considering that Defendant had shot (in self defense) the

buyer, who tried to violently rob his group. ("I cannot. . lose sight of the fact that somebody's dead. . .as a result of a drug deal that you participated in. Wasn't your weed, you weren't going to get the money, but you knew a drug deal was going to happen. . . you took a gun there. . .there's somebody dead.") In sentencing, Court may consider conduct that was uncharged but substantiated. Constantin v. State, 5D19-328 (7/24/20)

https://www.5dca.org/content/download/641179/7284246/file/190328_DC05_07242020_083803_i.pdf

VOP: Homeless Defendant is properly convicted on violation of probation for trespassing notwithstanding that evidence was unclear as to whether he knew where the property lines were. Romero v. State, 5D19-2570 (7/24/20)

https://www.5dca.org/content/download/641183/7284294/file/192570_DC05_07242020_090547_i.pdf

TOO MANY COOKS: Defendant's 12 attorneys' performances were deficient due to their failure to communicate to Defendant his potential total sentence and the application of the sentencing guidelines; to seek a negotiated plea and to relay to him the plea offers, but Defendant (sentenced to forty years after trial) suffered no prejudice because it is not clear that he would have provided substantial assistance. Carmichael v. USA, No. 17-13822 (11th Cir. (7/22/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713822.pdf

PLEA BARGAINING: "Carmichael's position that he would not proffer unless and until he was promised a guaranteed sentence simply ignores the realisms of how pleas and cooperation work in the real world. . .[A]

defendant cannot just volunteer to cooperate. . .He must first (among other things) disclose to the prosecution what information he actually has. That disclosure is typically done in a proffer session. . .The point is as tautological as it is true: before a defendant proffers, the government cannot possibly determine whether it will offer a plea deal, much less what sentence it will recommend to the sentencing court based upon his cooperation. . .To be clear, the proffer session is a gateway into (not the capstone of) the parties' cooperation discussions." Carmichael v. USA, No. 17-13822 (11th Cir. (7/22/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713822.pdf

SAD LOVE STORY: "The defendant bought a one-way airline ticket to Miami from Oklahoma to 'surprise' her, originally with the intent to win back her affection. But, when the defendant went to a Miami-area Walmart to buy her flowers, the defendant ended up buying a set of knives. . .When he arrived at the wife's apartment, the defendant told his wife that they 'needed some time apart' and then 'he stabbed her.'" Sosataquechel v. State, 3D19-1095 (7/22/20)

https://www.3dca.flcourts.org/content/download/641045/7282805/file/191095_DC05_07222020_112516_i.pdf

INTERPRETER: A non-English speaking defendant has the right to an interpreter, a right grounded on due process and confrontation considerations of the Constitution. But court does not err in not requiring an interpreter when Defendant had appeared before this same trial court judge on many prior occasions, and had engaged the court in English without any difficulty and without asking for an interpreter. Calana-Reinoso v. State, 3D18-2114 (7/22/20)

https://www.3dca.flcourts.org/content/download/641038/7282721/file/182114_DC05_07222020_111138_i.pdf

HFO-PRR: An Indiana DUI conviction (a felony because a second offense) is not a similar offense to a Florida felony DUI (a felony because a third offense). The statutes must be substantially similar, and the out-of-state statute cannot be broader than Florida's statute. The non-similar out-of-state conviction cannot support an HFO or PRR enhancement. Long v. State, 4D17-3261 (7/22/20)

https://www.4dca.org/content/download/640982/7282055/file/173261_DC05_07222020_090448_i.pdf

IMPEACHMENT-NEGATIVE IMPEACHMENT: Omission of significant facts by child to the first person to whom she reported molestation is admissible as negative impeachment. The theory of admissibility is not that the prior statement is true and the in-court testimony is false, but that because the witness has not told the truth in one of the statements, the jury should disbelieve both statements. Hawn v. State, 4D19-647 (7/22/20)

https://www.4dca.org/content/download/640985/7282091/file/190647_DC13_07222020_091508_i.pdf

IMPEACHMENT-PRIOR INCONSISTENT STATEMENT: A foundation must be laid before impeaching with an inconsistent statement by calling to the witness's attention the time, place, and person to whom the statement was allegedly made. If the witness denies making or does not distinctly admit making the prior inconsistent statement, extrinsic evidence of such statement is admissible. If the witness cannot recall making the prior

inconsistent statement, the fact that the statement was made may be proved by another witness. Hawn v. State, 4D19-647 (7/22/20)

https://www.4dca.org/content/download/640985/7282091/file/190647_DC13_07222020_091508_i.pdf

IMPEACHMENT-NEGATIVE IMPEACHMENT: An omission in a previous out-of-court statement about which the witness testifies at trial can be considered an inconsistent statement for impeachment purposes, if the omission is a material, significant fact rather than mere details and would naturally have been mentioned. Such an omission is referred to as "negative impeachment." Hawn v. State, 4D19-647 (7/22/20)

https://www.4dca.org/content/download/640985/7282091/file/190647_DC13_07222020_091508_i.pdf

HEARSAY-STATEMENT AGAINST INTEREST: Defendant's testimony that his brother had confessed to the murder to him is hearsay, not admissible as a statement against interest because the brother was not unavailable as a witness. Chambers v. Mississippi argument is not preserved because not raised at trial. Gentry v. State, 4D19-787 (7/22/20)

https://www.4dca.org/content/download/640987/7282115/file/190787_DC05_07222020_091803_i.pdf

WAIVER OF APPEARANCE: Court must accept Defendant's written waiver of appearance at a sounding scheduled by the court, absent good cause. Scott v. State, 3D20-417 (7/22/20)

https://www.3dca.flcourts.org/content/download/641024/7282580/file/200417_DC03_07222020_104340_i.pdf

POST CONVICTION RELIEF-SELF-DEFENSE: Counsel is not ineffective for failing to discuss a self-defense claim before entering a plea of guilty where the facts, according to the Defendant's version, do not support self-defense. Sosataquechel v. State, 3D19-1095 (7/22/20)

https://www.3dca.flcourts.org/content/download/641045/7282805/file/191095_DC05_07222020_112516_i.pdf

SENTENCING-DEPARTURE-VARIANCE: 480-month sentence where guidelines recommend 18 months is a valid variance for possession of child pornography committed by a serial child molester. USA v. Hall, No. 18-14145 (7/21/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814145.pdf

SENTENCING-DEPARTURE-VARIANCE: "Departures don't have dibs over variances." USA v. Hall, No. 18-14145 (7/21/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814145.pdf

SENTENCING-DEPARTURE-VARIANCE: A variance is a sentence imposed outside the guidelines range when the court determines that a guidelines sentence will not adequately further the purposes of §3553(a). A departure refers only to non-Guidelines sentences imposed under the

framework set out in the Guidelines. A court must give the parties advance notice if it is considering departing from the guidelines range calculated in the PSR, but it need not give advance notice if it is considering varying from that range. USA v. Hall, No. 18-14145 (11th Cir. 7/21/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814145.pdf

SENTENCING-DEPARTURE-VARIANCE: Whether a sentence is a departure or variance depends on the Court cited a specific guidelines departure provision or whether its rationale was based on the §3553(a) factors and a determination that the guidelines range was inadequate. USA v. Hall, No. 18-14145 (7/21/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814145.pdf

SENTENCING-HEARSAY: Court may rely on hearsay in PSR in imposing a significant upward variance where Defendant has an opportunity to refute it and it bears a minimal indicia of reliability. USA v. Hall, No. 18-14145 (7/21/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814145.pdf

POST CONVICTION RELIEF: Reasonable decisions regarding trial strategy, made after deliberation by attorney in which available alternatives have been considered and rejected, do not constitute deficient performance. Thorpe v. State, 1D18-5212 (7/21/20)

https://www.1dca.org/content/download/640959/7281842/file/185212_DC05_07212020_133950_i.pdf

SENTENCE REVIEW-MINOR: 25-year judicial review is available only for offenses committed on or after July 1, 2014. Hawkins v. State, 1D19-4443 (7/21/20)

https://www.1dca.org/content/download/640960/7281854/file/194443_DC05_07212020_134156_i.pdf

RULE OF SEQUESTRATION: Prosecutor does not violate the rule of sequestration when he met with a detective during a break and discussed his potential testimony on recall, while the detective was still under oath. Gorman v. State, 1D19-4470 (7/21/20)

https://www.1dca.org/content/download/640961/7281866/file/194470_DC05_07212020_134312_i.pdf

ILLEGAL SENTENCE-MANDATORY MINIMUM: Defendant may not move to correct an illegal sentence for failure to impose a mandatory minimum because the sentence was not adverse to him. Joiner v. State, 1D19-4542 (7/21/20)

https://www.1dca.org/content/download/640962/7281878/file/194542_DA08_07212020_134544_i.pdf

APPEAL-JURISDICTION: A trial court is without jurisdiction to consider the merits of a successive motion while a related appeal is pending but may determine that the motion is procedurally barred and may dismiss the motion as successive or untimely. Sapeg v. State, 20-1104 (7/21/20)

https://www.5dca.org/content/download/640955/7281792/file/201104_DC05_07212020_082312_i.pdf

SENTENCING-MANDATORY MINIMUM: Consecutive mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was merely possessed but not discharged. Powell v. State, 1D19-1819 (7/20/20)

https://www.1dca.org/content/download/640600/7279162/file/191819_DC08_07202020_140523_i.pdf

MOTION TO MITIGATE: Motion for modification or reduction of sentence is untimely when filed more than sixty days after the defendant's sentence became final. Whiting v. State, 1D19-4373 (7/20/20)

https://www.1dca.org/content/download/640603/7279198/file/194373_DC05_07202020_141308_i.pdf

OLD BALD MAN: "On February 1, he sent her three links to sexually explicit videos. The first video depicted 'an older bald gentleman' and a female engaging in various sexual acts including sexual intercourse. The second video depicted a female engaging in various sex acts with 'an older,

bald, white male.' While it is debatable that Deason's 39 years made him 'old' or 'older, there is no debate that he was a 'bald white male.' The third video Deason sent a link to was an instructional video about masturbation for women. It, at least, did not feature an old bald man." USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

SEX CASE-PLEASE RESTATE THAT: ". . .they flesh out an issue in a way the parties' briefs may not." USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

STATEMENTS OF DEFENDANT-MIRANDA-CUSTODIAL INTERROGATION: Defendant's confession to soliciting a minor on his front porch is not a custodial interrogation and thus does not require Miranda warnings. "The only question is whether he was 'in custody' at some point during the interview, which would have required a Miranda warning. [citation omitted] The only correct answer is 'no.'" A defendant is in custody for the purposes of Miranda when there has been a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The test is objective: the actual, subjective beliefs of the defendant and the interviewing officer on whether the defendant was free to leave are irrelevant. USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

CHILD PORN-SUFFICIENCY: Government need not submit the entire child porn videos. Parts of the videos, screenshots and testimony about the contents of the video are sufficient to prove that the videos were obscene. USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

EVIDENCE-SPECIFICITY: Defendant is properly convicted of attempting to transfer obscene matter to a minor notwithstanding that indictment and verdict did not specify which of the 67 images and which of the three videos that he sent were alleged to be obscene where issue was not preserved and at least two videos are clearly pornographic. "[I]f there were any problems with the specificity of the superseding indictment, Deason waived or invited the error, or he at least consented to it." USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

EVIDENCE-SCREENSHOTS: Screenshots and testimony about child porn videos is admissible and sufficient. "Even if [Defendant] is correct that admitting the screenshots and allowing [Detective] to testify about the content of the videos was error under the best evidence rule, or was error under Rule 1006, or was improper lay opinion testimony, he still cannot establish the third element of plain error review: that the error affected his substantial rights." USA v. Deason, No. 17-12218 (11th Cir. 7/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712218.pdf

BURGLARY: An indictment or information charging burglary is not required to specify the offense which the accused is alleged to have intended to commit. Grant v. State, 2D18-2874 (7/17/20)

JURY INSTRUCTION-BURGLARY: In burglary case, where crime to be committed is not specified, jury instruction must explain that at the time of entering the structure, Defendant had the intent to commit an offense other than burglary or trespass in that structure. Court "specifically refused to instruct the jury using the standard instruction because the court did not understand the instruction and was not interested in giving it 'just for grins.' This was error." Grant v. State, 2D18-2874 (7/17/20)

https://www.2dca.org/content/download/640443/7277739/file/182874_DC13_07172020_075708_i.pdf

MINOR-LIFE SENTENCE-8TH AMENDMENT: Consecutive life sentences with possibility of release after 25 and 20 years respectively (45 years) for a minor is cruel and unusual punishment. The mandated opportunity for release would be wholly illusory. When continued incarceration advances no penological purpose, the punishment runs afoul of the Eighth Amendment's prohibition of cruel and unusual punishment. Sentences must be concurrent. Mack v. State, 2D18-3113 (7/17/20)

https://www.2dca.org/content/download/640444/7277751/file/183113_DC13_07172020_075818_i.pdf

SENTENCING-CHILD PORNOGRAPHY: 636.45 months in prison on each count (bottom to the guidelines for multiple counts of possesson of pornography) is lawful, notwithstanding that the term exceeds the statutory maximum. Emke v. State, 2D18-3943 (7/17/20)

https://www.2dca.org/content/download/640445/7277763/file/183943_DC05_07172020_075915_i.pdf

VOP: Court must enter a revocation order that details the conditions which Defendant willfully and substantially violated and may not find that a probationer violated a condition not charged in the affidavit of probation violation. Blair v. State, 2D18-45 (7/17/20)

https://www.2dca.org/content/download/640446/7277775/file/184526_DC13_07172020_080018_i.pdf

JOA-ROBBERY BY SUDDEN SNATCHING: Defendant who attacked Victim in her apartment, beat her up, threatened to kill her, and stole approximately $800 from her cannot be found guilty of robbery by sudden snatching where victim testified that he took her money but never clarified where the money was located when he stole it. For the crime of robbery by sudden snatching the property must be on the person of the victim. Rettley v. State, 5D18-4002 (7/17/20)

https://www.5dca.org/content/download/640470/7278077/file/184002_DC13_07172020_081011_i.pdf

POST CONVICTION RELIEF-RESTITUTION: A claim that counsel was ineffective for failing to challenge the amount of restitution can be raised in a postconviction motion. Weiker v. State, 5D19-2478 (7/17/20)

https://www.5dca.org/content/download/640472/7278101/file/192478_DC08_07172020_081933_i.pdf

VOP: Defendant cannot be found to have violated probation when affidavit only charged Condition 30 (that she return for her next appearance in drug court) but the evidence related to Condition 29 (that she successfully complete drug court). Defendant admitted to testing positive, but not to being discharged from drug court, nor did she admit to failing to appear at drug court. Brockhaus v. State, 5D19-2918 (7/17/20)

https://www.5dca.org/content/download/640473/7278113/file/192918_DC13_07172020_082324_i.pdf

INVESTIGATIVE COSTS: Court may not impose $100 investigative cost which was not requested. Hilbert v. State, 5D19-3111 (7/17/20)

https://www.5dca.org/content/download/640475/7278137/file/193111_DC05_07172020_082545_i.pdf

JIMMY RYCE: Court must release Defendant when the only witness at the Jimmy Ryce review hearing testified that his mental condition had so changed that it was safe to release him and that he was not likely to engage in acts of sexual violence. A trial court cannot arbitrarily reject unrebutted expert testimony. Court can only reject undisputed testimony from an expert when it either concerns technical evidence and is so palpably incredible, illogical, and unreasonable as to be unworthy of belief or

otherwise open to doubt or when it concerns non-expert matters and is disputed by lay testimony. Freeman v. State, 5D19-3407 (7/17/20)

https://www.5dca.org/content/download/640476/7278149/file/193407_DC13_07172020_082842_i.pdf

JUROR-CHALLENGE-PEREMPTORY-RACE NEUTRAL REASON: The party opposing a peremptory strike must make a specific objection to the proponent's proffered race-neutral reason for the strike, if contested, to preserve the claim that the trial court erred in concluding that the proffered reason was genuine. Johnson v. State, 4D15-4452 (7/16/20)

https://www.4dca.org/content/download/640293/7275987/file/154452_DC05_07152020_085524_i.pdf

JURY INSTRUCTION-"FORCIBLY": In case where Defendant's vehicle hit officers while he was driving away from an attempt to arrest him, Court did not err in declining to give Defendant's proposed definition of "forcibly" because its subject matter was substantially covered by other instructions and the language has a generally understood meaning. USA v. Gumbs, No. 18-13182 (11th Cir. 7/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813182.pdf

GRAMMAR: "The district court did not need to tell the jury that 'forcibly' modified 'assaulted, resisted, opposed, impeded or interfered.' As a matter of grade-school grammar, the adverb 'forcibly' necessarily modifies each of the listed verbs that follows it. . .Assuming that jurors understand the rules of grammar is not an abuse of discretion." USA v. Gumbs, No. 18-13182 (11th Cir. 7/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813182.pdf

JURY INSTRUCTION-USE OF A DEADLY WEAPON: In case where Defendant's vehicle hit officers while he was driving away from an attempt to arrest him, Court did not err in declining to give Defendant's proposed definition of “use of a deadly weapon” ("[f]or a car to qualify as a deadly or dangerous weapon, the defendant must use it as a deadly or dangerous weapon and not simply as a mode of transportation.”) because its subject matter was substantially covered by other instructions and the language has a generally understood meaning. USA v. Gumbs, No. 18-13182 (11th Cir. 7/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813182.pdf

ASSAULT WITH A DEADLY WEAPON: Where Defendant strikes officers with a car, Government need not prove that the Defendant intended to use the car as a weapon. "To the extent that Gumbs believes . . .that the jury could not convict unless he intended to use the car as a weapon, that would be a misstatement of the law. . .[Defendant] needed only to intend to use the car. . . He did not need to intend to use the car as a weapon." USA v. Gumbs, No. 18-13182 (11th Cir. 7/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813182.pdf

LESSER INCLUDED: Where Defendant strikes officers with a car, need not give a lesser included instruction of simple assault. "[I]f the jury were to find the elements of simple assault, then it would also have to find the elements of forcible assault with a deadly weapon. There is no way a rational jury could find [Defendant] guilty of simple assault but not forcible assault with a deadly weapon, because the only action that could form the basis of an assault was [Defendant]’s gunning his car. The jury could not give [Defendant] half a loaf under these facts; either he was guilty of the charged offense or not guilty at all." USA v. Gumbs, No. 18-13182 (11th Cir. 7/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813182.pdf

MINOR-RESENTENCING: Where Court enters an oral, but not a written, order requiring a resentencing hearing for a minor sentenced to life with possibility of parole after 25 years, but fails to set resentencing hearing, and law pertaining to life sentences for juveniles had been changed, Court may rescind the order. A trial court's verbal grant of a motion for resentencing, if not reduced to writing, is not the functional equivalent of a final order. An order is rendered when a signed, written order is filed with the clerk of the lower tribunal. Cotton v. State, 1D19-153 (7/15/20)

https://www.1dca.org/content/download/640357/7276767/file/190153_DC05_07152020_143415_i.pdf

RESISTING WITHOUT VIOLENCE: Child/passenger is properly adjudicated delinquent of resisting without violence when he bailed out of and ran from a stolen vehicle after a car chase. Officer was engaged in the lawful execution of a legal duty when he commanded Child to stop. B.B. v. State, 3D20-93 (7/15/20)

https://www.3dca.flcourts.org/content/download/640329/7276433/file/200093_DC05_07152020_104408_i.pdf

STAND YOUR GROUND: Section 776.032(4) applies to hearings on a defendant's motion for stand your ground immunity, which are held subsequent to the effective date of the statute, notwithstanding the date of the alleged crime. Lopez v. State, 3D17-2362 (7/15/20)

https://www.3dca.flcourts.org/content/download/640307/7276162/file/172362_NOND_07152020_103741_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to resentencing for a thirty-five year sentence for second-degree murder, even if not a de facto life sentence, which was imposed without consideration of his diminished culpability as a juvenile (17 yoa). 35 year sentence is not a de facto life sentence. Ferguson v. State, 3D18-758 (7/15/20)

https://www.3dca.flcourts.org/content/download/640308/7276174/file/180758_DC08_07152020_104033_i.pdf

DEMONSTRATIVE AID: During closing argument, prosecutor may not put on sunglasses and a sweatshirt which are dissimilar from those of the convenience store shooter to bolster the reliability of the victim's identification. It is essential, in every case where demonstrative evidence is offered, that the object or thing offered for the jury to see be first shown to be the object in issue and that it is in substantially the same condition as at the pertinent time, or that it is such a reasonably exact reproduction or replica of the object involved that when viewed by the jury it causes them to see substantially the same object as the original. Williams v. State, 4D19-1504 (7/15/20)

https://www.4dca.org/content/download/640297/7276035/file/191504_DC13_07152020_085909_i.pdf

OPINION-EXPERT-PHOTOGRAMMETRY: Detective may not testify to his estimate of the Defendant's height based on photo of Defendant leaving the convenience store after shooting the clerk. The process of discerning the size of the objects in the photograph and/or surveillance video is a science called "photogrammetry,"which requires expertise and precise methodology to be reliable. (See "Fear Itself," Buffy the Vampire Slayer, Season 4, Episode 4 or--spoiler alert--see link: https://www.youtube.com/watch?v=Gtl1X-CDBzI). Williams v. State, 4D19-1504 (7/15/20)

https://www.4dca.org/content/download/640297/7276035/file/191504_DC13_07152020_085909_i.pdf

OPINION-EXPERT-PHOTOGRAMMETRY: "[O]fficer's] opinions of his perceptions that the shooter was five feet ten inches tall and that the photos show that the defendant and the shooter were the same height were not based on being an eyewitness, having prior knowledge of the defendant, or using some knowledge or skill developed from on the job training. Without

being an eyewitness, having prior knowledge of the defendant, or having some practical on the job experience that a juror may not be familiar with, the detective was in no better position to estimate or compare heights from the photographs than the jury. Putting the arrows on the still photos did not cloak the opinions with admissibility." Williams v. State, 4D19-1504 (7/15/20)

https://www.4dca.org/content/download/640297/7276035/file/191504_DC13_07152020_085909_i.pdf

POST CONVICTION RELIEF: Although trial counsel's performance, by allowing evidence of Defendant's request for counsel to be admitted at trial, may have been unreasonable there was no prejudice where evidence was strong (Defendant had purchased a sledgehammer in advance, had attempted to attack the victim a week before, and sent texts explaining why he had hit his girlfriend over the head repeatedly). State v. Bishop, 4D19-4443 (7/15/20)

https://www.4dca.org/content/download/640300/7276071/file/193443_DC13_07152020_090221_i.pdf

POST CONVICTION RELIEF: Motion to correct an illegal sentence which has been served is moot. Mitchell v. State, 4D20-860 (7/15/20)

https://www.4dca.org/content/download/640304/7276119/file/200860_DC05_07152020_091133_i.pdf

DEATH PENALTY: Defendant subject to federal death penalty is not entitled to a stay of execution on claim that pentobarbital causes prisoners to experience "flash pulmonary edema," a form of respiratory distress that temporarily produces the sensation of drowning or asphyxiation. Barr v. Lee, No. 20A8 (US S.Ct. 7/14/20)

https://www.supremecourt.gov/opinions/19pdf/20a8_970e.pdf

DEPORTATION-STOP-TIME RULE-RETROACTIVITY: Resisting an officer with violence qualifies as a crime involving moral turpitude ("CIMT"), rendering him deportable under the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which created the "stop-time rule," which rendered him ineligible for discretionary cancellation of removal. The stop-time rule enacted after the Defendant's conviction does not apply retroactively to crimes committed before April 1, 1997. Rendon v. United States Attorney General, 19-10197 (11th Cir. 7/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910197.pdf

HABEAS CORPUS-TIME LIMIT: Antiterrorism and Effective Death Penalty Act of 1996 permits a state prisoner to petition for a writ of habeas corpus once he exhausts all state court remedies. One-year limitations period which begins to run from the date on which the judgment became final by the conclusion of direct review, not including the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. The one-year limitations period tolled the day a petitioner filed a procedurally noncompliant Rule 3.850 motion if he was permitted to and did later file a compliant motion. A compliant Rule 3.850 motion relates back to the date of filing of a noncompliant motion. Dismissal of petition reversed. Bates v. Secretary, Department of Corrections, No. 8:17-cv-01695-VMC-AEP (11th Cir. 7/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714960.pdf

FIREARM-GUIDELINES-ENHANCEMENT: Guidelines enhancement for a firearm applies if the government proves by a preponderance of the evidence that the defendant knew, intended, or had reason to believe (rather than hoped, wished, or dreamed) the gun was going to be used to buy drugs, and the sale would have (rather than may or might have) happened but for the defendant's arrest or something else getting in the way. Enhancement applies to Defendant who admitted to offier that he was going to sell the gun for drugs and thereafter sell the drugs. USA v. Martinez, 18-12950 (7/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812950.pdf

FIREARM-GUIDELINES-ENHANCEMENT: Sale of a firearm in exchange for drugs facilitates a drug offense. USA v. Martinez, 18-12950 (7/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812950.pdf

FIREARM-GUIDELINES-ENHANCEMENT: A disassembled shotgun is just as much of a firearm as an assembled one under the sentencing guidelines. USA v. Martinez, 18-12950 (7/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812950.pdf

QUALIFIED IMMUNITY: Officer who shot Petitioner and falsely claimed he had pointed a a gun at is not entitled to qualified immunity. Officers that act within their discretionary authority are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Williams v. Aguirre, 19-11941 (7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911941.pdf

QUALIFIED IMMUNITY-ANY-CRIME RULE: "The "any-crime rule" insulates officers from false arrest claims so long as probable cause existed to arrest the suspect for some crime, even if it was not the crime the officer thought or said had occurred. The Any-Crime Rule does not apply to malicious prosecution. Williams v. Aguirre, 19-11941 (7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911941.pdf

PRECEDENTS-CONFLICT: "This Circuit has a well-established approach to resolving conflicts in our precedent." Appellate court is obligated, if at all

possible, to distill from apparently conflicting prior panel decisions a basis of reconciliation and to apply that reconciled rule. Only the holdings of prior decisions are binding. If Court cannot reconcile caselaw, it must follow the earliest precedent that reached a binding decision on the issue, and not later decisions that conflict with them. Williams v. Aguirre, 19-11941 (7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911941.pdf

STATE AGENT IMMUNITY: State-agent immunity shields government officials acting within their discretionary authority from liability unless federal or state laws enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise or the officer acted willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law. Officers are not entitled to summary judgment based on state-agent immunity where a genuine dispute of fact exists about whether the officers acted maliciously. Williams v. Aguirre, 19-11941 (7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911941.pdf

ATTORNEY-CONFLICT: Counsel for Defendant did not have a disqualifying conflict of interest in representing murder Defendant while serving as deputy attorney general representing the Alabama Department of Mental Health and Mental Retardation in an unrelated civil case. In the absence of the joint representation of co-defendants, counsel is disqualified only where an actual conflict of interest adversely affected defense counsel's performance. Dallas v. Warden, No. 17-14570 (11th Cir. 7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714570.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Defendant suffers no prejudice justifying a new sentencing hearing on claim that attorney failed to

adequately present mitigating evidence when the additional evidence would not have supporting additional grounds of mitigation. Prejudice is shown when the disparity between what was presented at trial and what was offered collaterally was vast, so as to profoundly alter each of the defendants' sentencing profiles. Dallas v. Warden, No. 17-14570 (11th Cir. 7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714570.pdf

RESTITUTION: Restitution in stock manipulation fraud may be based on specific circumstantial evidence from which the district court may reasonably conclude that all of the investors relied on the defendant's fraudulent information. USA v. Stein, No. 18-13762 (11th Cir. 7/13/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813762.pdf

CONSPIRACY: Once the government establishes that the defendant is a knowing member of a conspiracy, Defendant may be liable for substantive offenses committed by fellow conspirators even if he lacked knowledge thereof. USA v. Chalker, No. 18-15102 (11th Cir. 7/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201815102.pdf

INDICTMENT: Indictment which tracks the language of the statute is legally sufficient. It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. USA v. Chalker, No. 18-15102 (11th Cir. 7/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201815102.pdf

EVIDENCE-EXPERT: Government witness/forensic accountant who testified to a summary of the Defendant's bank and wage records never

opined as an expert, and was therefore allowed to testify as a lay witness. USA v. Chalker, No. 18-15102 (11th Cir. 7/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201815102.pdf

SENTENCING: General sentence (20 years as habitual felony for a second-degree felony and a third-degree felony is unlawful. Bradford v. State, 1D19-230 (7/13/20)

https://www.1dca.org/content/download/640173/7274607/file/190230_DC03_07132020_140444_i.pdf

SEVERANCE-CONFRONTATION: Defendant is not entitled to severance based on co-Defendant's statement during the rape of one of the victims ("No, man, don't do it to her, man, don't do it to her."). Confrontation Clause only applies to testimonial statements (statements made with the expectation of being used in an investigation or prosecution), which this is not. Goss v. State, 1D19-2210 (7/13/20)

https://www.1dca.org/content/download/640176/7274643/file/192210_DC05_07132020_142342_i.pdf

REMAND-MANDATE-MINOR-RESENTENCING: Court is not required to obey mandate to resentence minor who was was sentenced to life with the possibility of parole after 25 years, without being afforded an individualized sentencing hearing where the mandate was superseded by an intervening decision by a higher court contrary to the decision reached on the former appeal. Rembert v. State, 1D19-2499 (7/13/20)

https://www.1dca.org/content/download/640177/7274655/file/192499_DC05_07132020_142534_i.pdf

EVIDENCE-COLLATERAL CRIMES: Evidence that Defendant had crawled into bed and molested one daughter is admissible in a similar

molestation of her younger sister where he was the adoptive father of both girls and they considered him their dad; he molested both girls at night, while other family members were sleeping in close proximity; he touched the girls' vaginas with his fingers; and the molestation of each girl was repeated over the course of a few days and then never again. In child molestation case, a relaxed standard of admissibility applies when the charged and collateral offenses occurred in a familial context, but there must be some similarity other than the fact that both offenses occurred in the family. Newman v. State, 1D19-2855 (7/13/20)

https://www.1dca.org/content/download/640178/7274667/file/192855_DC05_07132020_142659_i.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: The remedy of habeas corpus is not available in Florida to obtain the kind of collateral post conviction relief available by R.3.850. Williams v. Hicks, 1D19-3237 (7/13/20)

https://www.1dca.org/content/download/640180/7274691/file/193237_DC05_07132020_143138_i.pdf

POST CONVICTION RELIEF: Where Defendant was resentenced a decade after his motion to correct illegal sentence under R.3.800 is granted, Defendant may not thereafter file a R.3.850 motion. That he was resentenced after obtaining collateral relief did not restart the clock for him to raise a postconviction challenge to his underlying convictions. Hampton v. State, 1D19-4022 (7/13/20)

https://www.1dca.org/content/download/640181/7274703/file/194022_DC05_07132020_143401_i.pd

NELSON HEARING: Strategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and

rejected and counsel's decision was reasonable under the norms of professional conduct. Johnson v. State, 1D18-4914 (7/13/20)

https://www.1dca.org/content/download/640172/7274595/file/184914_DC05_07132020_140201_i.pdf

SENTENCING CONSIDERATIONS: The simple fact that a sentencing court is presented with impermissible information is alone insufficient to merit reversal of a sentence. The convergence of improper arguments during sentencing and imposition of the maximum possible sentence does not establish that the Court considered improper factors in imposint sentence. Johnson v. State, 1D18-4914 (7/13/20)

https://www.1dca.org/content/download/640172/7274595/file/184914_DC05_07132020_140201_i.pdf

MONEY LAUNDERING: Buying a Lamborghini with profits from a pill mill can be money laundering, notwithstanding that there was no intent to conceal the money. Money laundering statute prohibits a wider range of activity than is traditionally understood. All that is required is to prove two elements: (1) Defendant knowingly engaged in a financial transaction greater than $10,000 and (2) at least $10,000 of that money came from a specified unlawful activity. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

HEARSAY: State run database of prescriptions is admissible as a business record of the reporting pharmacies. Business record includes a "data compilation," even though the term "data compilation" was removed during a recent stylistic update to the Rules of Evidence. Compilation is not

testimonial, and therefore does not violate the Confrontation Clause (Crawford). USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

ARGUMENT: Government improperly argued that they called 14 patients and the defense only a few, when it knew that the defense had been prohibited from calling more, but error is harmless. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

JURY INSTRUCTION: Good Faith instruction for improper medical prescription is improper where it fails to include the objective standard by which to judge the physician's conduct, but rather says that the doctor's subjective belief that the treatment was appropriate is sufficient. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

GUIDELINES CALCULATIONS-DRUG QUANTITY: When the drug amount that is seized does not reflect the scale of the offense, the district court must approximate the drug quantity. In estimating the drug quantity attributable to the defendant, the court may rely on evidence demonstrating the average frequency and amount of a defendant's drug sales over a given period. Court did not clearly err in concluding that at least 10.6% of the prescriptions were illegal. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

SENTENCING-OBSTRUCTION OF JUSTICE ENHANCEMENT: Falsely testifying supports and obstruction of justice enhancement. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

RESTITUTION: As the determination of the restitution amount is an inexact science, the government need not calculate the victim's actual loss with laser-like precision, but may instead provide a reasonable estimate of that amount. USA v. Ruan, No. 17-12653 (11th Cir. 7/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712653.pdf

POST CONVICTION RELIEF: Counsel was ineffective for eliciting the specific nature of Defendant's prior felony and for misadvising him that the State would not be able to impeach him with his prior conviction for armed sexual battery of the State's witness because the conviction was the subject of a pending appeal. Floyd v. State, 2D19-1234 (7/10/20)

https://www.2dca.org/content/download/639548/7270167/file/191234_DC13_07102020_085241_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failure to call available experts to rebut State's argument that the child victim's fatal cerebral edema was not caused by soft impact trauma, particularly since there were no external signs of trauma or injuries to victim's neck, spine, or ribs. Counsel performed deficiently in failing to present potentially exculpatory testimony at trial. Spurgeon v. State, 2D19-1278 (7/10/20)

https://www.2dca.org/content/download/639550/7270191/file/191278_DC08_07102020_090531_i.pdf

COMPETENCY: Court must hold a competency hearing and make an independent determination of the defendant's competency after appointing an expert to determine a defendant's competency to proceed. Court may not proceed on stipulation of competency by counsel. Cookston v. State, 5D19-2523 (7/10/20)

https://www.5dca.org/content/download/639538/7270033/file/192523_DC13_07102020_084347_i.pdf

QUOTATION: "[T]he magnitude of a legal wrong is no reason to perpetuate it." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

QUOTATION: "[W]ishes don't make for laws." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

INDIANS-STATE JURISDICTION: "On the far end of the Trail of Tears was a promise." State courts generally have no jurisdiction to try Indians for crimes committed in Indian Country. The reservation system in Oklahoma has not been disestablished by occupation by non-Indians or the establishment of the city of Tulsa on the land. McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

INDIANS-RESERVATION: "Congress sometimes might wish an inconvenient reservation would simply disappear. . . But wishes don't make for laws, and saving the political branches the embarrassment of disestablishing a reservation is not one of our constitutionally assigned prerogatives. . .So it's no matter how many other promises to a tribe the federal government has already broken. If Congress wishes to break the promise of a reservation, it must say so." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

TEXTUALISM: "There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help 'clear up . . . not create' ambiguity about a statute's original meaning. . . And, as we have said time and again, once a reservation is established, it retains that status 'until Congress explicitly indicates otherwise.'" McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

QUOTATION: "[T]he persistent if unspoken message here seems to be that we should be taken by the 'practical advantages' of ignoring the written law. . . .A State exercises jurisdiction over Native Americans with such persistence that the practice seems normal. . . All this continues for long enough that a reservation that was once beyond doubt becomes questionable, and then even farfetched. Sprinkle in a few predictions here, some contestable commentary there, and the job is done, a reservation is disestablished. None of these moves would be permitted in any other area of statutory interpretation, and there is no reason why they should be permitted here. That would be the rule of the strong, not the rule of law." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

YIKES!: "Oklahoma replies that . . the affected population here is large and many of its residents will be surprised to find out they have been living in Indian country this whole time. But we imagine some members of the 1832 Creek Tribe would be just as surprised to find them there." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

QUOTATION: "[M]any of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that

thinking. . .Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." McGirt v. Oklahoma, No. 18–9526 (US S.Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf

SUBPOENA-PRESIDENT: The Supremacy Clause does not give a sitting President absolute immunity from state criminal subpoenas. "Two hundred years ago, a great jurist of our Court established that no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding. We reaffirm that principle today and hold that the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need. Neither concerns about distraction, stigmatization, nor harassment justify ignoring state prosecutorial subpoenas." Trump v. Vance, No. 19–635 (US S. Ct. 7/9/20)

https://www.supremecourt.gov/opinions/19pdf/19-635_o7jq.pdf

HUH?-POST CONVICTION RELIEF: Defendant is not entitled to relief on grounds that counsel's assertion of voluntary intoxication abandoned his claim of actual innocence where trial counsel "never admitted Merck's guilt in advancing the intoxication theory." Merck v. State, SC19-1864 (7/9/20)

https://www.floridasupremecourt.org/content/download/639461/7269307/file/sc19-1864.pdf

STAND YOUR GROUND: Defendant is not entitled to a new immunity hearing because his immunity hearing occurred before the amended statute's effective date. Horton v. State, 2D17-2852 (7/8/20)

https://www.2dca.org/content/download/639356/7268050/file/172852_DC05_07082020_080843_i.pdf

EVIDENCE-OTHER BAD ACTS: In lewd and lascivious case involving a school janitor, evidence that the Defendant had been warned about not touching children is inadmissible. Evidence is not relevant and material to Defendant's intent, state of mind, nor to rebut his theory of defense that the touching of the victim was innocent or accidental. The State's sole purpose was to improperly influence the jury by painting Defendant as a repeat offender. Baez v. State, 2D19-379 (7/8/20)

https://www.2dca.org/content/download/639364/7268153/file/190379_DC13_07082020_081152_i.pdf

LOWEST PERMISSIBLE SENTENCE: Question certified whether the Lowest Permissible Sentence (LPS) is an individual minimum sentence, required to be imposed on each offense at sentencing for which it exceeds that offense's statutory maximum, or a collective minimum sentence. Parravani v. State, 2D19-569 (7/8/20)

https://www.2dca.org/content/download/639366/7268177/file/190569_DC05_07082020_081711_i.pdf

MINOR-RE-SENTENCING: Court may rescind its order granting resentencing where case law so requiring had been receded from. Conflict certified. Strong v. State, 2D19-768 (7/8/20)

https://www.2dca.org/content/download/639368/7268201/file/190768_DC05_07082020_082026_i.pdf

STAND YOUR GROUND: Defendant is entitled to a new SYG hearing where the original hearing was held after the change in the burden of proof but applied the old standard. Sexton v. State, 3D18-1500 (7/8/20)

https://www.3dca.flcourts.org/content/download/639345/7267911/file/181500_NOND_07082020_101838_i.pdf

INTERPRETER: Defendant is not entitled to a new trial because he did not have an interpreter, where he indicated throughout that he did not need one. Court is not required to inquire of every defendant whether they need an interpreter. Santisteban v. State, 3D19-845 (7/8/20)

https://www.3dca.flcourts.org/content/download/639347/7267935/file/190845_DC05_07082020_102707_i.pdf

MAGISTRATE: Court must accept the magistrate's findings of fact if they are supported by competent, substantial evidence. Coriat v. Coriat, 3D19-904 (7/8/20)

https://www.3dca.flcourts.org/content/download/639348/7267947/file/190904_DC08_07082020_102846_i.pdf

EVIDENCE: Letters Defendant wrote to judge asking for mercy are inadmissisble under §90.420, but error is not fundamental. Ryerson v. State, 3D19-1673 (7/8/20)

https://www.3dca.flcourts.org/content/download/639350/7267971/file/191673_DC05_07082020_103615_i.pdf

RESENTENCING-SCORESHEET: Where a defendant was originally sentenced for multiple crimes, a de novo resentencing on one of the crimes necessarily involves sentencing under the same conditions that existed at the original sentencing. Thus, for a de novo resentencing, the offenses that were pending before the court at the original sentencing proceeding. Reaves v. State, 4D19-1796 (7/8/20)

https://www.4dca.org/content/download/639340/7267844/file/191796_DC05_07082020_085808_i.pdf

SEARCH AND SEIZURE-STANDING--ABANDONMENT: Government may not argue for the first time in appeal that Defendant abandoned his hotel room and any privacy therein when he fled on foot. The government waived its abandonment argument by failing to raise it before the district court. A suspect's alleged abandonment of his privacy or possessory interest in the object of a search or seizure implicates only the merits of his Fourth Amendment challenge—not his Article III standing—and, accordingly, if the government fails to argue abandonment, it waives the issue. USA v. Ross, No. 18-11679 (11th Cir. 7/7/9)

SEARCH AND SEIZURE-HOTEL ROOM: Defendant who flees from a hotel room loses any reasonable expectation of privacy in the room at checkout time (11:00 AM). A short-term hotel guest has no reasonable expectation of privacy in his room after checkout time. USA v. Ross, No. 18-11679 (11th Cir. 7/7/9)

http://media.ca11.uscourts.gov/opinions/pub/files/201811679.op2.pdf

POST CONVICTION RELIEF-SUCCESSIVE: Where Defendant is convicted of possession of the firearm in furtherance of a crime of violence, bank robbery and conspiracy to commit bank robbery, and conspiracy was subsequently found not to be a crime of violence, Defendant is not entitled to relief because the Court specifically told the jury he could not be found guilty of the possession firearm in furtherance of the crime of violence only if it found him guilty of the corresponding bank robbery charge. In Re: Michael Price, No. 20-12133-C (11th Cir 7/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/202012133.ord.pdf

POSSESSION OF A FIREARM-REHAIF: Rehaif did not announce a new rule of constitutional law and, even if it did, it has not been made retroactive to cases on collateral review. In Re: Michael Price, No. 20-12133-C (11th Cir 7/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/202012133.ord.pdf

SECOND DEGREE MURDER: Becoming angry and shooting the victim in the back after losing money and a gun to him during a dice game establishes ill will, hatred, spite or an evil intent, and it is of such nature that it indicates an indifference to human life, warranting a conviction for second degree murder. Finch v. State, 1D18-3993 (7/6/20)

EVIDENCE: Court did not err in excluding Victim's certified judgment for murder to support Defendant's claim of self-defense to corroborate his fear of victim. Defendant was permitted to testify about his knowledge that the Victim had been convicted of murder. Brown v. State, 1D18-5205 (7/6/20)

JURY INSTRUCTION-DEADLY WEAPON: A flare gun is not a deadly weapon *per se* because it is designed as an instrument of safety. Court erred by substituting "firearm" for "deadly weapon" and omitting the definition of "deadly weapon" altogether. Error is fundamental. Humphreys v. State, 5D18-2523 (7/2/20)

https://www.5dca.org/content/download/639018/7264201/file/182535_DC13_07022020_075230_i.pdf

APPEAL-TRANSCRIPT: Defendant is not entitled to a new trial based on two missing transcripts of bench conferences where he can point to no specific error related to either ruling after the bench conferences or otherwise demonstrate prejudice. Walker v. State, 5D19-1732 (7/2/20)

https://www.5dca.org/content/download/639020/7264225/file/191732_DC05_07022020_080049_i.pdf

SEVERANCE: Criminal defendant who chooses severance of charges cannot successfully argue that prosecution on second charge offends Double Jeopardy. Burnette v. State, 5D19-1874 (7/2/20)

https://www.5dca.org/content/download/639021/7264237/file/191874_DC05_07022020_080450_i.pdf

PLEA AGREEMENT-SPECIFIC ENFORCEMENT: The co-Defendant's plea agreement and re-sentencing is not newly discovered evidence warranting a reduction in Defendant's sentence for murder. The fact that co-Defendant's agreement made him the designated loser (his sentence would exceed that of Defendant) did not entitle Defendant to relief when Co-Defendant's sentence was later reduced pursuant to Graham. "There was no contract that provided for Midkiff to serve less time than Swett. Swett's designated loser status did not alter Midkiff's sentence. Thus, the postconviction court specifically enforced a non-existent contract when it granted Midkiff's motion. . .[C]learly, the court had no authority to do that. State v. Midkiff, 5D19-2135 (7/2/20)

https://www.5dca.org/content/download/639023/7264261/file/192135_DC13_07022020_081040_i.pdfhttps://www.5dca.org/content/download/639023/7264261/file/192135_DC13_07022020_081040_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a new trial bases on newly discovered evidence that victim recanted, provided an affidavit from the victim is attached. Foley v. State, 5D19-3600 (7/2/20)
https://www.5dca.org/content/download/639026/7264297/file/193600_DC08_07022020_081831_i.pdf

COVID-19: Phases defined. Operational plans required. No. AOSC20-32, Amendment 2-1, (FLA 7/2/20)

https://www.floridasupremecourt.org/ezs3download/download/639136/7265632

COVID-19: Jury trials suspended through July 26, 2020. Speedy Trial rights suspended. Chief judges remain authorized to direct judges conducting pretrial release and first appearance hearings to address detention and monetary bond or other conditions of pretrial release in the county of arrest, regardless of whether the case is transferred, rather than requiring transport of the defendant to the county where any warrant or capias originated. No. AOSC20-23, Amendment 5-1, (FLA 7/2/20)
https://www.floridasupremecourt.org/ezs3download/download/639134/7265622

DEATH PENALTY-MENTAL DISABILITY: Hall does not apply retroactively. State v. Pooler, SC18-2024 (7/2/20)
https://www.floridasupremecourt.org/content/download/639064/7264767/file/sc18-2024.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Under a correct understanding of Hurst v. Florida, a unanimous recommendation for death is not required; jury must only unanimously find a statutory aggravating circumstance beyond a reasonable doubt. State v. Pooler, SC18-2024 (7/2/20)
https://www.floridasupremecourt.org/content/download/639064/7264767/file/sc18-2024.pdf

POST CONVICTION RELIEF: A defendant who has not yet filed a §2255 motion to vacate a conviction or sentence is not entitled to discovery. Filing of a motion pursuant to §2255 is akin to initiating an independent civil suit. USA v. Rodriguez Cuya, No. 18-14380 (11th Cir. 7/1/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814380.pdf

JOA-BATTERY ON LEO/RESISTING WITH VIOLENCE: Officers were not acting in the lawful execution of their legal duty when they attempted to handcuff an aggravated Defendant who was pointed out as having caused a disturbance. JOA or lesser of simple battery required. Brown v. State, 2D18-2743 (7/1/20)
https://www.2dca.org/content/download/638915/7262953/file/182743_DC13_07012020_082535_i.pdf

PRESERVATION-RECROSS: Issue of whether court improperly denied re-cross of witness is not preserved unless a proffer is made at the time of denial of re-cross. The failure to proffer the proposed question or testimony to be elicited at the time of the trial court's denial means that the defense failed to properly preserve the issue for this Court's review. Palos v. State, 3D19-1150 (7/1/20)
https://www.3dca.flcourts.org/content/download/638909/7262867/file/191150_DC05_07012020_103030_i.pdf

SENTENCING: Court may not impose a general sentence of 24 years on two counts, one of which carries a maximum of fifteen years. Jordan v. State, 3D20-151 (7/1/220)
https://www.3dca.flcourts.org/content/download/638956/7263459/file/200151_DC13_07012020_104503_i.pdf

AMENDED INFORMATION: State may substantively amend an information during trial, even over the objection of the defendant, unless there is a showing of prejudice to the substantial rights of the defendant. State was permitted to amend the information on the day of trial to add an alternative means by which the victim was violated. Gerome v. State, 3D20-770 (7/1/20)

https://www.3dca.flcourts.org/content/download/638962/7263533/file/200770_DC02_07012020_110122_i.pdf

SENTENCING-MIRANDA: A court may consider at sentencing a statement obtained in violation of Miranda if the record shows that the statement was voluntary and reliable. Woodson v. State, 4D19-3035 (7/1/20)

https://www.4dca.org/content/download/638980/7263777/file/193035_DC05_07012020_091911_i.pdf

STATEMENT OF DEFENDANT-REQUEST FOR ATTORNEY: "[I]t's over, it's done," and "I want a lawyer right now because you guys are confusing me. . . . I said that how many times?" "I have the right to have representation," are unequivocal invocations of the right to an attorney. New trial required. Langel v. State, 4D19-2198 (7/1/20)
https://www.4dca.org/content/download/638978/7263753/file/192198_DC13_07012020_090826_i.pdf

ARGUMENT-SHIFTING BURDEN OF PROOF: State's rebuttal argument ("So this is not an independent act, it doesn't apply in this case. . .it requires all three elements to be proven and they just weren't," could have been misinterpreted as shifting the burden of proof on the independent act instruction's elements but curative instruction was sufficient. Cosme-Sella v. State, 4D18-3425 (7/1/20)
https://www.4dca.org/content/download/638973/7263693/file/183425_DC08_07012020_085815_i.pdf

JURY SELECTION: Defendant is not entitled to a mistrial based on prospective juror recognizing his counsel as a Public Defender. The issue was not preserved because not renewed prior to jury being sworn and lacks merit regardless. Cruz v. State, 4D19-1955 (7/1/20)
https://www.4dca.org/content/download/638977/7263741/file/191955_DC05_07012020_090610_i.pdf

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POST CONVICTION RELIEF: The State's court's application of clearly established federal law must be objectively unreasonable, not merely wrong. Jenkins v. Commissioner, Alabama DOC, No. 17-12524 (11th Cir. 6/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712524.opn2.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY: Defendant failed to establish that the penalty phase counsel who failed to investigate mentally challenged defendant's abused childhood was ineffective because he did not present the testimony or affidavit of the attorney. "Because we simply do not know why Downey chose not to investigate Jenkins's childhood more thoroughly, Downey is entitled to the presumption that this strategic decision was reasonable." Jenkins v. Commissioner, Alabama DOC, No. 17-12524 (11th Cir. 6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201712524.opn2.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY (DISSENT): "The majority suggests (if not holds) that the absence of testimony from an allegedly deficient attorney per se means that the attorney's actions were reasonable." Jenkins v. Commissioner, Alabama DOC, No. 17-12524 (11th Cir. 6/29/20) http://media.ca11.uscourts.gov/opinions/pub/files/201712524.opn2.pdf

INEFFECTIVE ASSISTANCE-DEATH PENALTY (DISSENT): "In short, Jenkins presented an abundance of compelling mitigating evidence. But the jury never heard any of that evidence. Downey failed to introduce it at the penalty phase. In fact, Downey failed to investigate any mitigating evidence whatsoever. Downey's failures cannot be attributed to strategic decisions. Nor can they be called reasonable. His performance can only be described as deficient. And that deficient performance was surely prejudicial—there is more than a reasonable probability that the horrifying and detailed Rule 32 testimony would have persuaded one juror to vote against sentencing Jenkins to death." Jenkins v. Commissioner, Alabama DOC, No. 17-12524 (11th Cir. 6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201712524.opn2.pdf

DAUBERT: Court did not abuse it's discretion in excluding Defendant/Ophthalmologist's expert testimony about "subthreshold micropulse laser photostimulation" in trial where Defendant was charged with administering low dose laser surgery which would have been ineffectual if his patients needed it, which they did not, all to bill Medicare. USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

DAUBERT: A reliability determination involves four main inquiries about the expert's theory or technique: "(1) whether it can be (and has been) tested; (2) whether it has been subjected to peer review and publication; (3) what its known or potential rate of error is, and whether standards controlling its operation exist; and (4) whether it is generally accepted in the field." Also, Court must consider whether there is an analytical gap between the data and

the opinion proffered. If the analytical distance between the data and the opinion proffered is simply too great, a court may conclude that the opinion is unreliable. USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

GRAMMAR: "Ipse dixit" used as a verb. "Instead of properly bridging that gap, Dorin tried to ipse dixit over it; but a bald assertion cannot carry the Daubert burden." USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

EVIDENCE-REBUTTAL: Government may present, in rebuttal of patient who testified that Defendant/Ophthalmologist was a good guy and a good doctor, evidence that Defendant had submitted fraudulent Medicare claims on this patient, too. "Pon presented J.L.'s testimony as an example of how he had treated a patient out of the goodness of his heart and not for a profit motive. In light of that, the district court did not abuse its discretion in admitting billings Pon had generated for services he [falsely] claimed to have rendered on that patient's blind eye." USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

APPEAL-EVIDENCE-SURREBUTTAL: Defendant may not raise on appeal that Court violated the Sixth Amendment for failing to allow him surrebuttal of testimony that he had fraudulently billed for his patient/character witness when he agued for surrebuttal without mentioning the Sixth Amendment. Error, if any, was harmless. "[W]e have no doubt, much less a reasonable doubt, that if the district court had not partially limited Pon's surrebuttal evidence about J.L., the jury would still have found Pon guilty as charged." USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

HARMLESS ERROR: "We are not saying, of course, that courts shouldn't be careful with the harmless error rule. Courts should be careful in the application of all rules. Carelessness is not desirable in any field. But it is not careless to rely on overwhelming evidence of guilt to find an error harmless." USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

SENTENCING: Court erred in imposing concurrent 121-month terms of imprisonment on twenty counts when the statutory maximum penalty for each count is only 120 months. On remand, court may either reduce sentences to 120 months or impose one or more counts consecutively without exceeding 121 months total. USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

SENTENCING-GUIDELINES-LOSS: The determination of loss for guidelines calculation is based on the preponderance of the evidence standard, not on the beyond a reasonable doubt standard. USA v. Pon, 17-11455 (6/29/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201711455.pdf

DNA-DATABASE: DNA obtained and entered into FDLE database pursuant to the Defendant's conviction for a crime, later vacated and expunged, can be used to match DNA found at a new crime scene (rape and murder) with Defendant. "Regardless of whether FDLE was obliged to remove his DNA record upon receipt of the. . .order to expunge,. . .any error by FDLE's CODIS unit did not result in a search or seizure violative of the Fourth Amendment. . . Indeed, neither the procurement of the DNA sample from the crime scene nor the collection of Porter's DNA during his prior incarceration was a search or seizure at all." Porter v. State, 1D18-5024 (6/29/20)
https://www.1dca.org/content/download/638727/7260889/file/185024_DC05_06292020_143910_i.pdf

EXCLUSIONARY RULE: "The exclusionary rule is intended to deter police misconduct, not to remedy prior wrongs." Porter v. State, 1D18-5024 (6/29/20)
https://www.1dca.org/content/download/638727/7260889/file/185024_DC05_06292020_143910_i.pdf

SENTENCING-CONSIDERATIONS: A sentencing judge may not consider or rely on acquitted conduct when imposing a sentence. State has the burden to demonstrate that those considerations played no part in the sentence imposed. Davis v. State, 1D18-5253 (6/29/20)
https://www.1dca.org/content/download/638728/7260901/file/185253_DC05_06292020_140050_i.pdf

SUCCESSOR JUDGE: Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification. Davis v. State, 1D18-5253 (6/29/20)
https://www.1dca.org/content/download/638728/7260901/file/185253_DC05_06292020_140050_i.pdf

DEADLY WEAPON-RECLASSIFICATION: Court erred in reclassifying aggravated battery conviction (pistol-whipping the victim) to a first-degree felony. Where the use of a weapon or firearm is an essential element of the offense, it is improper for the trial court to reclassify the second degree felony to a first-degree felony. When a defendant is convicted of aggravated battery based on the use of a deadly weapon, this crime cannot be enhanced based on this same use of a weapon. Dyett v. State, 1D19-256 (6/29/20)
https://www.1dca.org/content/download/638729/7260913/file/190256_DC13_06292020_140410_i.pdf

ALLEN CHARGE: Where one juror, during deliberations, sent a note asking to be replaced by the alternate because she could not decide, Court did not err in giving Allen charge instead. Blanding v. State, 1D19-665 (6/29/20)
https://www.1dca.org/content/download/638730/7260925/file/190665_DC05_06292020_140623_i.pdf

LESSER INCLUDED-JURY INSTRUCTION: Defendant is not entitled to an instruction of sexual battery as a lesser of capital sexual battery where it is undisputed that the victim was under 12 yoa. Sexual battery cannot constitute a necessarily lesser included offense of capital sexual battery. Sexual battery requires the victim be between twelve and eighteen years of age whereas capital sexual battery requires the victim be less than twelve years of age. Question certified. Allen v. State, 1D19-1315 (6/29/20)
https://www.1dca.org/content/download/638732/7260949/file/191315_DC05_06292020_141110_i.pdf

ATTEMPTED SMUGGLING-SCIENTER: When it comes to statutes that criminalize violations that regulate what can otherwise be innocent conduct, it is not enough that the defendant engaged in actions that the law prohibits. Rather, a defendant must possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct. Government may prove knowledge of illegality by circumstantial evidence. Defendant properly convicted of attempted smugglng of devices used for computer encryption on the basis of hidden NanoStations in a hidden compartment under the bed on his boat. USA v. Singer, No. 18-14294 (11th Cir. 6/26/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814294.pdf

ATTEMPTED SMUGGLING: For a criminal attempt, Defendant must take a substantial step, i.e. engage in objectively culpable and unequivocal acts toward accomplishing the crime beyond simply preparing. Hiding items to be smuggled to Cuba is a substantial step, notwithstanding that Defendant never left the dock until after the contraband NanoStations were seized. USA v. Singer, No. 18-14294 (6/26/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814294.pdf

JURY INSTRUCTION-IGNORANCE OF LAW: Court did not err in declining to give an ignorance-of-law instruction when it instructed jury that Defendant to be proven to know that his actions violated federal law or regulations. USA v. Singer, No. 18-14294 (6/26/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814294.pdf

SENTENCING-ENHANCEMENT-OBSTRUCTION OF JUSTICE: Court may apply the two-level obstruction enhancement applied based on it finding that Defendant committed perjury during trial. USA v. Singer, No. 18-14294 (6/26/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814294.pdf

FIRST STEP-SAFETY VALVE: Section 402(b) of the First Step Act, which made maritime drug traffickers eligible for safety valve, does not apply to Defendant whose pleas were accepted before the effective date of the Act (December 21, 2018). The date "conviction entered" is the date the plea is entered, not the date the date the judgment is entered. "Conviction" is not "Judgment of Conviction." USA v. Yoza Tigua, No. 19-10177 (6/26/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201910177.scr.pdf

CONSTRUCTIVE POSSESSION: Defendant properly convicted of possession of narcotics found in a locked safe in the back seat of a jointly occupied car, owned and driven by Defendant, where some of Defendant's papers were found insides. An inference of knowledge and control may arise where the contraband in a jointly occupied area is found in or about

other personal property that is shown to be owned or controlled by the defendant. Bradwell v. State, 1D18-5083 (6/26/20) https://www.1dca.org/content/download/638530/7259373/file/185083_DC05_06262020_141005_i.pdf

JOA-ROBBERY BY SUDDEN SNATCHING: Defendant who grabs cell phones off the dashboard in the presence of the victim is not guilty of robbery by sudden snatching. Robbery by sudden snatching statute does not applies to property taken from a victim's person, but not when taken from the victim's reach, proximity, or control. Making physical contact with the victim while lunging for the phones does not convert the act into robbery by sudden snatching. Brown v. State, 1D19-2602 (6/26/20)

THEFT-VALUE: Defendant cannot be found guilty of grand theft for stealing two cell phones which Victim had offered to sell to Defendant for $1600 (before backing out because he thought the money counterfeit) where made no specific finding as to the value of the two phones. Conviction reduced to petit theft. Brown v. State, 1D19-2602 (6/26/20)

INCOMPETENT DEFENDANT-INVOLUNTARY MEDICATION: Court may order involuntary medication of incompetent Defendant where refusal to take medication put his own health gravely at risk. Burke v. State, 1D19-3322 (6/26/20)

WITHDRAWAL OF PLEA-COUNSEL: Court must appoint conflict-free counsel on motion to withdraw plea when Defendant alleges erroneous advice or misconduct on the part of his current lawyer. Thelus v. State, 2D18-4357 (6/26/20)

https://www.2dca.org/content/download/638490/7258899/file/184357_DC13_06262020_091317_i.pdf

VOP-CONSTRUCTIVE POSSESSION: Court errs in finding Defendant in constructive possession of fierarms carried by other men in the vehicle he was driving. Proximity alone does not establish the control element of constructive possession. Cusamano v. State, 2D18-5113 (6/26/20)

https://www.2dca.org/content/download/638491/7258911/file/185113_DC13_06262020_091433_i.pdf

HABEAS CORPUS-IMMIGRATION-ASYLUM: Undocumented alien facing expedited removal may not seek habeas corpus relief from adverse ruling on asylum claim. Neither the Suspension Clause ("the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion") nor Due Process Clause protect the alien. Petitioner has not "shown that the writ of habeas corpus was understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result." DHS v. Thuraissigiam, No. 19–161 (US S.Ct. 6/25/20) https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf

SNARKINESS: "While respondent does not claim an entitlement to release, the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka." DHS v. Thuraissigiam, No. 19–161 (US S.Ct. 6/25/20) https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf

DEATH PENALTY: Death penalty upheld for Defendant with an IQ of 74 who had been repeatedly abused as a child, including sexual abuse, and who murdered his pedophile cellmate. Court's finding as a mitigating circumstance (given little weight) that Defendant was sexually abused as a

child does not render his death sentence disproportionate. Santiago-Gonzalez v. State, No. SC18-806 (6/25/20) https://www.floridasupremecourt.org/content/download/638442/7258413/file/sc18-806.pdf

COMPETENCY: Failure to enter a written order finding the Defendant competent is remediable on appeal only if the failure constitutes fundamental error. No fundamental error when court made an oral competency finding. Santiago-Gonzalez v. State, No. SC18-806 (6/25/20) https://www.floridasupremecourt.org/content/download/638442/7258413/file/sc18-806.pdf

DEATH PENALTY: Aggravating circumstances are not elements which must be proven beyond a reasonable doubt. Santiago-Gonzalez v. State, No. SC18-806 (6/25/20) https://www.floridasupremecourt.org/content/download/638442/7258413/file/sc18-806.pdf

DEATH PENALTY: To impose the death penalty, the jury need not unanimously find that all the aggravating factors that were proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, that the aggravating factors outweigh the mitigating factors, nor unanimously recommend a sentence of death. Rather, the jury need only unamnimously find the existence of a some statutory aggravating circumstance beyond a reasonable doubt. Death sentence of rapist/murderer of babysitter upheld. Owen v. State, SC18-810 (6/25/20) https://www.floridasupremecourt.org/content/download/638443/7258425/file/sc18-810.pdf

DEPORTATION: Possession with Intent to Distribute Ecstasy is an aggravated felony requiring removal, not eligible for cancellation of removal. Gordon v. United States Attorney General, No. 18-14513 (11th Cir. 6/24/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814513.pdf

MODIFIED CATEGORICAL APPROACH: If the state statute does not fit entirely within the generic federal definition of a corresponding aggravated felony, a court may look to whether the state statute is "divisible." A statute is divisible if it lists a number of alternative elements that effectively create several different crimes. A divisible statute permits the use of the modified categorical approach to uncover whether a person's convictions relate to a federally controlled substance. Under the modified categorical approach, a court may look to the charging document, jury instructions, or a comparable judicial record to determine the elements of the defendant's offense of conviction. Gordon v. United States Attorney General, No. 18-14513 (11th Cir. 6/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814513.pdf

SHOW UP IDENTIFICATION: Show up identification 30 minutes after the robbery was not unduly suggestive where bank teller had close visual contact with the robber, who was only two feet away and separated by only the counter. USA v. Caldwell, No. 18-13426 (11th Cir. 6/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814513.pdf

JOA-BANK ROBBERY: Federal jurisdiction in bank robbery case is established by evidence thqt the bank was insured by the FDIC at the time of the robbery. Sparse evidence can be enough. FDIC certificate issued 17 years before is sufficient. USA v. Caldwell, No. 18-13426 (11th Cir. 6/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201814513.pdf

COUNSEL-ATTORNEYS FEES: Court may order Defendant to reimburse Treasury for reimbursement of fees and expenses of appointed counsel. USA v. Owen, No. 15-12744 (11th Cir. 6/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201512744.pdf

FIRST STEP-RESENTENCING: The First Step Act does not require district courts to hold a hearing with the defendant present before ruling on a defendant's motion for a reduced sentence under the Act. USA v. Denson, No. 19-11696 (11th 6/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201911696.pdf

APPEAL-ISSUE NOT RAISED BY GOVERNMENT: If the government fails to argue abandonment in the suppression hearing, it waives the issue of abandonment on appeal. USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

QUOTATION: "Sometimes courts make simple mistakes. And simple mistakes call for simple fixes." USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

STANDING: A suspect's alleged abandonment runs only to the merits of his constitutional claim, and not his Article III standing to challenge the search. USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

STANDING: "[T]he Supreme Court has clearly and consistently distinguished between Fourth Amendment 'standing' (scare quotes intended) and Article III standing." USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

STANDING: "Our Sparks decision, we now recognize, inadvertently 'confused' so-called Fourth Amendment 'standing' and true-blue Article III standing." USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

HUH?: "In any event, applying different standing rules depending on how and when a suspect lost his reasonable expectation of privacy—Fourth Amendment 'standing' if he never had it, Article III standing if he had but then lost it—makes little sense. . . This case is a good (which is to say bad) example." USA v. Ross, No. 18-11679 (11th Cir. 06/24/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201811679.enb.pdf

JUDGMENT: Upon revocation of probation, Court may not enter a second written Judgment of Conviction. Calhoun v. State, 2D19-1251 (6/24/20)
https://www.2dca.org/content/download/638336/7257173/file/191251_DC08_06242020_081948_i.pdf

MAILBOX RULE: Under the mailbox rule, a notice is deemed filed when it is delivered to prison authorities for mailing. Court improperly dismissed motion for post conviction relief when a response due within 30 days was placed in the hands of the correctional facility employee for mailing on Day 19. White v. State, 2D19-2009 (6/24/20)
https://www.2dca.org/content/download/638342/7257245/file/192009_DC13_06242020_082337_i.pdf

SELF DEFENSE-ARGUMENT: State's argument that Defendant was the initial aggressor does not improperly shift burden of proof. Tillman v. State, 3D19-794 (6/24/20)
https://www.3dca.flcourts.org/content/download/638296/7256687/file/190794_DC05_06242020_100958_i.pdf

JURY DEADLOCK: After an earlier Allen charge, Court erred by instructing the jury that "If you have a unanimous verdict, please fill out the verdict accordingly. If you do not have a unanimous verdict, please knock on the door . . . and we'll bring you back out here." But, because Defendant failed to move for mistrial or object to the subsequent, modified Allen charge, he waived the error in the court's instruction. Fundamental error is waived

where defense counsel affirmatively agrees to an improper instruction. Baptiste v. State, 3D18-2403 (6/24/20)
https://www.3dca.flcourts.org/content/download/638359/7257456/file/182403_DC05_06242020_105427_i.pdf

YOUTHFUL OFFENDER: Court has discretion to decline to impose Youthful Offender status to a qualifying Defendant. Court need not explain its reasoning. Ceus v. State, 3D18-1918 (6/24/20)
https://www.3dca.flcourts.org/content/download/638293/7256651/file/181918_DC05_06242020_100522_i.pdf

NOTICE-TREATMENT OF INCOMPETENT: Court may not order DCF to provide mental health treatment in jail to an inmate adjudicated incompetent to proceed without notice and hearing. Due process protections prevent a trial court from deciding matters not noticed for hearing and not the subject of appropriate pleadings. DCF v. State and A.L., 3D20-745 (6/24/20)
https://www.3dca.flcourts.org/content/download/638313/7256898/file/200745_DC03_06242020_101952_i.pdf

TRAFFIC LIGHT CAMERAS: A citation does not violate the traffic laws merely because some cities allocate more resources to red light traffic enforcement and catch more violators than others. City of Aventura v. Stein, 3D19-523 (6/24/20)
https://www.3dca.flcourts.org/content/download/638364/7257516/file/190523_DC13_06242020_111107_i.pdf

VOP: Order revoking probation must identify which conditions of probation are violated. Spivey v. State, 3D19-1111 (6/24/20)

https://www.3dca.flcourts.org/content/download/638366/7257540/file/191111_DC05_06242020_111404_i.pdf

INJUNCTION-CYBERSTALKING: Court may not enter injunction prohibiting Respondent from posting derogatory social media posts or videos about her husband for a year. Holton v. Holton, 1D18-2849 (6/25/20)

https://www.1dca.org/content/download/638448/7258477/file/192849_DC13_06252020_132408_i.pdf

EVIDENCE-RULE OF COMPLETENESS (DISSENT): Court erred in admitting redacted letter which gave the false impression of a threat. Preval v. State, 4D18-2475 (6/24/20)
https://www.4dca.org/content/download/638300/7256742/file/182475_DC05_06242020_085642_i.pdf

SILENCE OF DEFENDANT: That portion of Defendant's statement in which she she refused to say what items she took and requested a lawyer were improperly admitted as a comment on her right to remain silent. New trial required. Kalivretenos v. State, 4D18-2920 (6/24/20)

PETITION FOR REMOVAL OF REGISTRATION: Defendant convicted of traveling to meet a minor and unlawful use of a computer service is ineligible for removal of requirement to register. "Although Appellant attempts to liken his offenses to those provided for in the statute, we are not at liberty to add words to statutes that were not placed there by the Legislature." Chavez v, State, 1D19-128 (6/22/20)

https://www.1dca.org/content/download/638159/7255092/file/190128_DC05_06222020_131232_i.pdf

STAND YOUR GROUND: Change in SYG burden of proof does not entitle Defendant to a new immunity hearing where the original hearing occurred

before the amended statute's effective date. Catalano v. State, 2D16-3307 (6/19/20)

https://www.2dca.org/content/download/638064/7254081/file/163307_DC05_06192020_084148_i.pdf

DOWNWARD DEPARTURE: 52 year old uncle's long term seduction of his 17 year old niece, evolving into progressively more aggressive and violent acts and sexual abuse does not warrant a downward departure on ground that the victim was a willing participant. The fact that a young victim does not resist is not the same as willing participation. Any consent given by the victim was coerced. Grooming is inconsistent with the victim being a willing participant. Florida v. Brown, 5D19-153 (6/19/20)
https://www.5dca.org/content/download/638104/7254566/file/190153_DC13_06192020_082959_i.pdf

DISCHARGING A FIREARM ON PUBLIC ROAD: Juvenile cannot be convicted of discharging firearm on public road when there was no evidence that the road was accessible to the public. L.A.T. v. State, 5D19-1357 (6/19/20)
https://www.5dca.org/content/download/638105/7254578/file/191357_DC08_06192020_083211_i.pdf

COSTS: Court may not assess a $3 cost pursuant to section 318.18(11)(b) when not charged with a traffic infraction. Chappell v. State, 5D19-1701 (6/19/20)
https://www.5dca.org/content/download/638106/7254590/file/191701_DC05_06192020_092958_i.pdf

CONTINUANCE: Court did not abuse its discretion in denying motion for a continuance without a hearing because it was putting its “need to move a

court docket" before his genuine need to prepare for trial where it had already granted five continuances. Carlson v. State, 5D19-2625 (6/19/20) https://www.5dca.org/content/download/638108/7254614/file/192625_DC05_06192020_093557_i.pdf

COSTS: Court may not impose $6 in costs pursuant to section 318.18(11)(b) where Defendant was not charged with a traffic infraction. Miller v. State, 5D20-432 (6/19/20) https://www.5dca.org/content/download/638111/7254650/file/200432_DC05_06192020_094623_i.pdf

DACA: DHS violated the Administrative Procedure Act by ending the DACA program for aliens brought to the USA as minors failing to engage in reasoned decisionmaking. "The agency failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients. That dual failure raises doubts about whether the agency appreciated the scope of its discretion or exercised that discretion in a reasonable manner." Department of Homeland Security v. Regents, No. 18–587 (US S.Ct. 6/18/20) https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf

DEATH PENALTY-POST CONVICTION RELIEF: Trial counsel's minimal presentation of mitigating evidence in penalty phase, although abundant evidence of Defendant's traumatic upbringing existed, is ineffective assistance of counsel. Defendant's counsel performed almost no mitigation investigation, overlooked vast tranches of mitigating evidence, failed to adequately investigate the State's aggravating evidence, effecting an unconstitutional abnegation of prevailing professional norms. Andrus v. Texas, No. 18–9674 (US S.Ct. 6/18/20) https://www.supremecourt.gov/opinions/19pdf/18-9674_2dp3.pdf

GRUMPY ALITO: "The Court clears this case off the docket, but it does so on a ground that is hard to take seriously. . .Today's "tutelary remand" is a

misuse of our supervisory authority and a waste of our . . . time." Andrus v. Texas, No. 18–9674 (US S.Ct. 6/18/20)
https://www.supremecourt.gov/opinions/19pdf/18-9674_2dp3.pdf

ACCA: Making terroristic threats is a predicate violent felony under the elements clause of the Armed Career Criminal Act. Georgia's terroristic-threats statute is divisible, and the threat requires the threatened use of violent force. USA v. Oliver, No. 17-15565 (11th Cir. 6/18/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201715565.op2.pdf

COSTS: Court may not impose a $100 Public defender fee without giving notice to the Defendant to contest it. Gaudet v. State, 2D18-2765 (6/17/20)
https://www.2dca.org/content/download/637846/7251886/file/182765_DC08_06172020_081435_i.pdf

POST CONVICTION RELIEF: A claim that habitual offender sentences were improperly imposed consecutively may be raised under R. r3.800 at any time. A claim that a trial court imposed consecutive habitual offender sentences in violation of Hale is a cognizable Rule 3.800(a) claim if the determination of whether the offenses were part of the same criminal episode can be made without resorting to extra-record facts, but him Defendant must allege that the claim may be determined from the face of the record and must identify with particularity the record documents upon which he relies in seeking a determination of the claim. A postconviction court may not rely upon hearsay, such as a police report contained within the court file or the recitation of the factual basis at the time of the plea, to evaluate a rule 3.800(a) Hale claim. Downs v. State, 2D19-2323 (6/17/20)
https://www.2dca.org/content/download/637855/7252001/file/192323_DC05_06172020_081817_i.pdf

COLLATERAL CRIME: Evidence that the Defendant had burglarized the same scrapyard in a similar way two years before is admissible. Mitchell v. State, 3D19-695 (6/17/20)

https://www.3dca.flcourts.org/content/download/637826/7251632/file/190695_DC05_06172020_101949_i.pdf

APPEAL-PRESERVATION: Where the trial court issues a definitive ruling admitting the Williams evidence prior to trial, Defendant is not required to lodge a contemporaneous objection in order to preserve the issue. Mitchell v. State, 3D19-695 (6/17/20)
https://www.3dca.flcourts.org/content/download/637826/7251632/file/190695_DC05_06172020_101949_i.pdf

JUDGE-DISQUALIFICATION: The fact that the judge, during a competency hearing, asked whether a waiting witness would be second chair for the upcoming trial, is not evidence that Judge had prejudged the question of Defendant's competency. A movant cannot simply pluck one word from a full sentence made by the trial judge to make a motion to disqualify legally sufficient. Barber v. State, 3D19-1081 (6/17/20)
https://www.3dca.flcourts.org/content/download/637838/7251783/file/191081_DC05_06172020_102358_i.pdf

JUVENILE-SENTENCING: Court did not abuse discretion in ordering electronic monitoring for 30 days. A.H. v. State, 3D19-2193 (6/17/20_
https://www.3dca.flcourts.org/content/download/637842/7251831/file/192139_DC05_06172020_103311_i.pdf
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SENTENCING-FINE: $500,000 fine with a $25,000 surcharge for trafficking in cocaine is illegal. Morales v. State, 4D18-2003 (6/17/20)
https://www.4dca.org/content/download/637830/7251687/file/182003_DC13_06172020_093220_i.pdf

VOP-STALKING: "Determining whether an individual's behavior is merely boorish or juvenile as opposed to illegal stalking. . .require the drawing of fine lines." Defendant violates probation by removing tree limbs, which gave him a direct view of his neighbors' backyard; placing weeds, rocks,

chunks of concrete and tree limbs onto the neighbors' driveway; placing empty paper bags on the fence posts, some of which would blow onto the neighbors' property; painting the fence that faced the neighbors' property with obscenities and a picture of a clown and signs saying "stupid people beyond this point"; bathing himself outside wearing "whitey tighties" whenever the neighbors grade school daughter was around; and similar behavior is stalking justifying revocation of probation. Johnstone v. State, 4D19-212 (6/17/20)

https://www.4dca.org/content/download/637831/7251699/file/190212_DC05_06172020_093342_i.pdf

MINOR-LENGTHY SENTENCE-JURY FINDING: Court errs in resentencing juvenile convicted of first degree murder for the robbery/shooting committed by two people, one of whom shot the victim, to 40 years in prison as a mandatory minimum absent a jury finding that he killed, attempted to kill, or intended to kill the victim. Alleyne requires a jury to make the factual finding that a defendant "actually killed, intended to kill, or attempted to kill the victim" under section 775.082(1). O'Neal v. State, 4D19-472 (6/17/20)
https://www.4dca.org/content/download/637832/7251711/file/190472_DC13_06172020_093517_i.pdf

COVID-19: New rules pertaining to court operations during pandemic. Phases 2, 3, and 4 defined. Criminal jury trials shall remain suspended until 30 days after the chief judge of a judicial circuit has determined that the circuit or a county has transitioned to Phase 2. Non-jury trials shall be conducted remotely if the parties agree to such conduct or, if not, shall be conducted in person. Juvenile delinquency cases shall be conducted remotely if ordered by the judge or, if not, shall be conducted in person. Rules for hearings on out-of-county arrests. In Re: Comprehensive Covid-19 Emergency Measures, No. AOSC20-23, Amendment 4 (6/16/20)

https://www.floridasupremecourt.org/ezs3download/download/637809/7251452

FIRST STEP ACT-SENTENCE REDUCTION: History of First Step Act discussed. Defendant's sentence may not be reduced under the First Step Act if he received the lowest statutory penalty available. In considering a reduction of sentence, the district court is bound by any previous finding of drug quantity. USA v. Allen, No. 19-11505 (11th Cir. 6/16/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910758.pdf

STATUTORY INTERPRETATION-NEAREST-REASONABLE REFERENT CANON: A modifier normally applies only to the nearest reasonable referent, but Court declines to apply the nearest-reasonable reference canon to its interpretation of the First Step Act. USA v. Allen, No. 19-11505 (11th Cir. 6/16/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910758.pdf

STATUTORY INTERPRETATION-RULE OF THE LAST ANTECEDENT: The rule of the last antecedent does not apply when the modifier directly follows a concise and integrated clause. USA v. Allen, No. 19-11505 (11th Cir. 6/16/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910758.pdf

GAY RIGHTS: An employer cannot fire someone simply for being homosexual or transgender. An employer who intentionally penalizes an employee for being homosexual or transgender violates Title VII of the Civil

Rights Act of 1964." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION: "Sometimes small gestures can have unexpected consequences." "Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. . .But the limits of the drafters' imagination supply no reason to ignore the law's demands." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION: "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION: "The statute's message for our cases is equally simple and momentous: An individual's homosexuality or transgender status is not relevant to employment decisions." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION (J. Alito, dissenting): "Nor is there any such thing as a 'canon of donut holes.'" Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION (J. Alito, dissenting): "We can't deny that today's holding—that employers are prohibited from firing employees on the basis of homosexuality or transgender status—is an elephant. But where's the mousehole?. . .This elephant has never hidden in a mousehole; it has been standing before us all along." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION (J. Alito, dissenting): "With that, the employers are left to abandon their concern for expected applications and fall back to the last line of defense for all failing statutory Interpretation arguments: naked policy appeals. . .Gone here is any pretense of statutory interpretation; all that's left is a suggestion we should proceed without the law's guidance to do as we think best. But that's an invitation no court should ever take up." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

QUOTATION (J. Alito, dissenting): "[N]o one should be fooled. The Court's opinion is like a pirate ship. It sails under a textualist flag, but what it actually represents is a theory of statutory interpretation that Justice Scalia excoriated—the theory that courts should 'update' old statutes so that they

better reflect the current values of society. Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

SEX (Alito, dissenting): "Sex is manifested in the conjugating cells by the larger size, abundant food material, and immobility of the female gamete (egg, egg cell, or ovum), and the small size and the locomotive power of the male gamete (spermatozoon or spermatozoid), and in the adult organisms often by many structural, physiological, and (in higher forms) psychological characters, aside from the necessary modification of the reproductive apparatus." Bostick v. Clayton County, No. 17–1618 (US S.Ct. 6/15/20)

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

COVID-19-PRISONERS: Court may not enter a Temporary Restraining Order (TRO) requiring certain measures to deal with the COVID-19 epidemic in the jail because it erred in finding that the Sheriff was deliberately indifferent. The increase in the rate of infections and the inability to impose social distancing at Metro West does not support a finding of deliberate indifference. "[D]eliberate indifference is not a constitutionalized version of common-law negligence." Swain v. Junior, (11th Cir. 6/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/202011622.op.pdf

QUOTATION (MARTIN, DISSENT): "I do not understand the Fourteenth Amendment to permit the knowing and willful detention of human beings in circumstances that place them at great risk of death or grave illness." Swain v. Junior, (11th Cir. 6/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/202011622.op.pdf

COSTS: Court may not impose a $250 Public Defender fee absent evidence to support the cost. Bielec v. State, 1D18-2763 (6/12/20)

https://www.1dca.org/content/download/637609/7249387/file/182763_DC08_06122020_133227_i.pdf

DOUBLE JEOPARDY: Double Jeopardy precludes the Defendant from being convicted of both traveling to meet a minor and unlawfully using a two ways communication device. The reviewing court must consider only the charging document, and not the entire evidentiary record, in determining whether multiple convictions are based on the same conduct for purposes of double jeopardy. Where the information does not make clear that the state relied on separate conduct, double jeopardy applies. Hooks v. State, 1D19-1338 (6/12/20)

https://www.1dca.org/content/download/637610/7249399/file/191338_DC08_06122020_133432_i.pdf

COSTS: Court may not impose a $100 costs of investigation in favor of the police department absent evidence supporting it, nor may it seek this cost upon remand. Kemp v. State, 5D18-3673 (6/12/20)

https://www.5dca.org/content/download/637543/7248585/file/183673_DC05_06122020_082427_i.pdf

COMPETENCY: Defendant may not raise on appeal the issue of the Court failing to hold a competency hearing after he entered a plea of guilty unless

he first files a motion to withdraw his plea. Isom v. State, 5D19-1465 (6/12/20)

https://www.5dca.org/content/download/637547/7248633/file/191465_DA08_06122020_084335_i.pdf

CHILD CUSTODY: Children born before the same sex marriage and never adopted are the children of both and subject to the jurisdiction of the divorce court pursuant to §742.091 (providing that if "mother of any child born out of wedlock and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held to be the child of the husband and wife, as though born within wedlock").

§742.091 does not require that the individual be the biological father, only that the person held out as the reputed father willingly assumed the responsibilities of parenthood McGovern v. Clark, 5D19-1525 (6/12/20)

POSSESSION OF FIREARM BY FELON-MANDATORY MINIMUM: Court must impose the three year minimum mandatory for possession of a firearm by a felon notwithstanding the Drug Offender Probation statute which would otherwise allow probation. State v. Ingram, 5D19-1804 (6/12/20)

https://www.5dca.org/content/download/637550/7248669/file/191804_DC13_06122020_085039_i.pdf

CONSTRUCTIVE POSSESSION: Court may not grant a (c)(4) motion to dismiss in a constructive possession case (drugs found in the backpack in a jointly occupied car). Because knowledge in a possession case is a question of fact, that element is generally not a proper consideration on a motion to dismiss. State v. Paul, 5D19-2382 (6/12/20)

https://www.5dca.org/content/download/637551/7248681/file/192382_DC13_06122020_085233_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Any error in ruling that the Defendant's homicide was not an isolated incident for which the Defendant showed remorse is harmless where the Court found that a different basis for a downward departure existed (victim aggressor) but declined to depart from the guidelines. Rodriguez v. State, 5D19-2860 (6/12/20)

https://www.5dca.org/content/download/637553/7248705/file/192860_DC05_06122020_085957_i.pdf

COSTS: Court may not impose costs pursuant to §318.18(11)(b) where Defendant was not charged with a traffic infraction. Blevins v. State, 5D19-3734 (6/12/20)

https://www.5dca.org/content/download/637555/7248729/file/193734_DC05_06122020_090436_i.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Hall v. Florida, 572 U.S. 701 (2014) does not apply retroactively. Cave v. State, SC18-1750 (6/11/20)

https://www.floridasupremecourt.org/content/download/637488/7241930/file/sc18-1750.pdf

APPEAL: Supreme Court lacks jurisdiction to hear an appeal where the DCA enters an unelaborated order or opinion which does not expressly address a question of law. The Supreme Court lacks jurisdiction where the

decision of a district court does not expressly address a question of law within the four corners of the opinion itself. The Office of the Clerk is authorized to administratively dismiss petitions such cases. Wheeler v. State, SC19-1916 (6/11/20)

https://www.floridasupremecourt.org/content/download/637489/7241942/file/sc19-1916.pdf

SEARCH AND SEIZURE-PROTECTIVE SWEEP: Officers who had executed valid arrest warrants on Defendant in his yard and his girlfriend in his house may re-enter the house for a protective sweep where the house was was a source of possible drug activity, there were other people around, and the girlfriend had tried to hide in a bathroom, all giving rise to a belief that there might be armed individuals inside. USA v. Yarbrough (11th Cir 6/11/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810624.pdf

LEAVING SCENE OF ACCIDENT: Defendant who continued to drive into a condominium carport, hit the carport several times, backed up, drove back into the road, crossed the median of a four-lane highway, and did not stop until the car was stuck in a ditch after hitting a motorcyclist is guilty of LOSA. "[T]he statutory offense is not based on a driver's leaving the scene. Rather, the offense is based on a driver's willful failure to immediately stop." Butler v. State, 1D18-2848 (6/11/20)

https://www.1dca.org/content/download/637506/7242062/file/182848_DC05_06112020_133030_i.pdf

DEFINITION-"SCENE": "Scene" is commonly defined as "the place of an occurrence or action. Butler v. State, 1D18-2848 (6/11/20)

https://www.1dca.org/content/download/637506/7242062/file/182848_DC05_06112020_133030_i.pdf

SCORESHEET-INJURY: Court declines to rule on whether assessing injury as "severe" on scoresheet without a jury finding (Alleyne) because error, if any, is harmless. A rational jury would have found that the serious bodily injury suffered by the victim in this case (a broken neck) was "severe." Butler v. State, 1D18-2848 (6/11/20)

https://www.1dca.org/content/download/637506/7242062/file/182848_DC05_06112020_133030_i.pdf

DEFINITION-"SEVERE": "Severe" is commonly defined as "serious" or "of a great degree." Butler v. State, 1D18-2848 (6/11/20)

https://www.1dca.org/content/download/637506/7242062/file/182848_DC05_06112020_133030_i.pdf

INCONSISTENT VERDICTS: Inconsistent verdicts (Not Guilty by Reason of Insanity on one count, guilty on the other counts, all based on one unprovoked attack on a lady walking her dog) are legally permissible. Jury pardon includes the ability to dispense partial mercy or lenity. Qosaj v. State, 18-4109 (6/11/20)

https://www.2dca.org/content/download/637493/7241969/file/184109_DC05_06112020_125114_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: An investigatory stop may be conducted at gunpoint, particularly where citizen informant said Defendant was selling guns and the car matched that which was linked to the recent theft of guns from a gun store. Knox v. State, 1D19-499 (6/10/20)

https://www.1dca.org/content/download/637422/7241168/file/190499_DC05_06102020_141731_i.pdf

SEARCH AND SEIZURE-CITIZEN INFORMANT: Anonymous tip by a citizen informant that a suspect is selling guns, and officer sees suspicious activity and a vehicle linked to theft of guns from a gun store justifies an investigatory stop. Conduct does not need to be illegal to be suspicious. Knox v. State, 1D19-499 (6/10/20)

https://www.1dca.org/content/download/637422/7241168/file/190499_DC05_06102020_141731_i.pdf

POST CONVICTION RELIEF: Appelllate counsel was not ineffective for failing to argue that conviction of simple robbery as a lesser of home invasion robbery was improper. Robbery is a necessarily lesser included offense of home invasion robbery. The elements of simple robbery are always subsumed within the offense of home invasion robbery. State v. Sampaio, 1D19-1508 (6/10/20)

https://www.1dca.org/content/download/637424/7241192/file/191508_DC02_06102020_142047_i.pdf

SENTENCING-UPWARD DEPARTURE: Defendant who scores 20.6 points may not be sentenced to prison absent a jury finding of dangerousness. Bowling v. State, 1D 19-2331 (6/10/20)

https://www.1dca.org/content/download/637425/7241204/file/192331_DC13_06102020_142252_i.pdf

JUDGE-DISQUALIFICATION: Defendant may not appeal the denial of his motion to disqualify the judge where he entered a plea and did not preserve the issue. Blalock v. State, 1D19-3398 (6/10/20)

https://www.1dca.org/content/download/637426/7241216/file/193398okay_DC08_06102020_142531_i.pdf

PLEA: Defendant may not be sentenced on his substantive case when he did not enter a plea and Was not informed of the consequences of entering a plea. Blalock v. State, 1D19-3398 (6/10/20)

https://www.1dca.org/content/download/637426/7241216/file/193398_DC08_06102020_142531_i.pdf

WRIT OF PROHIBITION-STAND YOUR GROUND: Appellate court may not entertain grant a petition for writ of prohibition on SYG immunity where the hearing was limited to the question of whether the Defendant was engaged in a criminal act (selling drugs) at the time of the alleged shooting and did not go into the question of whether the shooting itself was lawful self-defense. Parties may not use a Petition for Writ of Prohibition to request an advisory opinion on a preliminary (but certainly important) legal question about the interpretation of the SYG law. Rich v. State, 2D19-4196 (6/10/20)

https://www.2dca.org/content/download/637394/7240836/file/194196_DC02_06102020_081735_i.pdf

JURY INSTRUCTION-SELF DEFENSE-TRANSFERRED INTENT: If the killing of the party intended to be killed would, under all the circumstances, have been excusable or justifiable homicide upon the theory of self-defense, then the unintended killing of a bystander, by a random shot fired in the

proper and prudent exercise of such self-defense, is also excusable or justifiable. The inadvertent failure to so instruct the jury is fundamental error. "As the effect of the erroneous instruction was to inform the jury that transferred justification only applied to self-defense, not defense of others, it divested the jury of the ability to find that, if [Defendant] was lawfully protecting his wife, the shooting of any unintended victims was insulated. David v. State, 3D18-1143 (6/10/20)

https://www.3dca.flcourts.org/content/download/637399/7240896/file/181143_DC13_06102020_104914_i.pdf

ARGUMENT: State improperly highlighted the enduring psychological impact of the crimes on the unintended victims (tourists caught in the crossfire), equating their bullet wounds as souvenirs given by the Defendant, and improperly made repeated calls for justice for the victims. David v. State, 3D18-1143 (6/10/20)

https://www.3dca.flcourts.org/content/download/637399/7240896/file/181143_DC13_06102020_104914_i.pdf

APPEAL-TOO COMPLICATED: "These five consolidated cases. . .present intricate procedural and jurisdictional questions that will interest a narrow group of practitioners. . .Readers unfamiliar with, or uninterested in, the interrelationships among the Florida Rules of Civil Procedure, Judicial Administration, Criminal Procedure, and Appellate Procedure may read on at their peril." Garcia v. State, 3D19-1510 (6/10/20)

https://www.3dca.flcourts.org/content/download/637375/7240601/file/191510_DC02_06102020_103641_i.pdf

APPEAL-TOO COMPLICATED: What happens when Defendant filed a writ of prohibition for failure to grant a speedy trial discharge in misdemeanor cases, which was denied, and where Defendant, alleging he did not receive the denial of the writ, filed a motion to vacate the denial more than 60 days later, which was also denied? "[C]onfronted with a record which demonstrates that the wrong remedy was pursued in the wrong court by the appellants, what is the proper course for disposition of the five cases ultimately filed as appeals here?" The Circuit Court appellate division should have transferred the case to the DCA for treatment as a petition for belated (further, second-tier) discretionary review. Garcia v. State, 3D19-1510 (6/10/20)

https://www.3dca.flcourts.org/content/download/637375/7240601/file/191510_DC02_06102020_103641_i.pdf

COMPETENCY: Defendant, sentenced to prison upon his third violation of probation, waived any failure of the Court to conduct a competency evaluation before his first plea of guilty for the underlying offense. "Apellant accepted the benefits of the plea bargain and had his probation reinstated twice after he admitted to probation violations. It was not until he violated probation a third time, and the trial court revoked his probation and sentenced him to prison, that appellant first sought to raise a Dortch issue, approximately threeand-a-half years after originally entering the plea. Bain v. State, 4D19-1247 (6/10/20)

https://www.4dca.org/content/download/637366/7240493/file/191247_DC05_06102020_090415_i.pdf

IN FORMA PAUPERIS: Prisoner may not bring a civil action *in forma pauperis* if he is had three or more prior actions (three strikes) dismissed as non-meritorious. A suit dismissed for failure to state a claim counts as a

strike when the dismissal was with or without prejudice. Lomax v. Ortiz-Marquez, No. 18-8369 (US S.Ct. 6/8/20)

https://www.supremecourt.gov/opinions/19pdf/18-8369_3dq3.pdf

CIRCUMSTANTIAL EVIDENCE-DUI MANSLAUGHTER-JOA: Defendant is not entitled to Judgment of Acquittal in DUI manslaughter based on his assertion that the intoxicated passenger grabbed the steering wheel because the circumstantial evidence/reasonable hypothesis of innocence standard of review no longer exists, and because the driver's conduct need not be the sole cause of the victim's death. The State need only present evidence to show that the driver was legally impaired, the driver was operating the vehicle, and that the conduct of the driver contributed to the victim's death. Jones v. State, 1D18-4885 (6/8/29)

https://www.1dca.org/content/download/637259/7239283/file/184885_DC05_06082020_123856_i.pdf

CHILD ABUSE-JOA: Teacher who on three separate occasions kneed a three-year-old autistic child in the torso, intentionally tripped the child, and pushed the child to the ground is properly convicted of child abuse, notwithstanding that the child suffered no significant injury. Actual injury is not required. Stillions v. State, 1D18-5308 (6/8/20)

https://www.1dca.org/content/download/637262/7239319/file/185308_DC05_06082020_124514_i.pdf

IMPEACHMENT-CONVICTIONS: Defendant may not impeach the non-testifying (and deceased) CI by prior convictions when the only statements by the CI were those made during the wired-up successful attempt to elicit a confession to the homicide. The recorded statements of the CI were not

hearsay because the State did not offer them for their veracity or truth, but only to provide context for Defendant's responses. Because there were no hearsay statements that would allow an attack on CI's credibility, the Court did not err in prohibiting evidence of his prior convictions. Woods v. State, 1D18-5319 (6/8/20)

https://www.1dca.org/content/download/637263/7239331/file/185319_DC05_06082020_124629_i.pdf

AGGRAVATED ASSAULT-FEAR: Defendant may be found guilty of aggravated assault notwithstanding that the Victim (girlfriend) denied remembering seeing the gun and testified that she was never in fear. Whether the victim actually testifies that she was in fear is not conclusive of the fear element, as long as a reasonable person would experience a well-founded fear of imminent harm. Daniels v. State, 1D17-3675 (6/8/20)

https://www.1dca.org/content/download/637258/7239271/file/173675_DC05_06082020_123728_i.pdf

COSTS: Court may not impose $100 public defender fee without first giving the Defendant notice and an opportunity to be heard Jenkins v. State, 2D17-2951 (6/5/20)

https://www.2dca.org/content/download/637095/7237579/file/172951_DC08_06052020_080011_i.pdf

JIMMY RYCE: A committed sixty-seven-year-old with COPD who asserts that he will be physically incapable of committing improper sexual acts, regardless whether he remains a sexual sadist, has shown probable cause that he will not reoffend, entitling him to a Jimmy Ryce trial. In order to

continue to detain patient, the State must demonstrate not only that his mental condition remains unchanged, but also that if released he is likely to engage in acts of sexual violence. In re Commitment of Raymond Drake, 2D17-5083 (6/5/20)

https://www.2dca.org/content/download/637096/7237591/file/175083_DC13_06052020_080220_i.pdf

RISK PROTECTION ORDER: Risk Protection Order statute (§790.401), which authorizes seizure of firearms from dangerous individuals, is not void for vagueness nor does it unlawfully designate legislative authority and/or prosecutorial authority to law enforcement agencies. D.T.M. v. Judd, 2D18-4631 (6/5/20)

https://www.2dca.org/content/download/637104/7237694/file/184631_DC05_06052020_080620_i.pdf

DEFINITION-"SIGNIFICANT": "Significant" means "noteworthy, worthy of attention and consequential." D.T.M. v. Judd, 2D18-4631 (6/5/20)

https://www.2dca.org/content/download/637104/7237694/file/184631_DC05_06052020_080620_i.pdf

VOP: Upon revocation of probation, the Court must specify the conditions of probation violated. Lobatto v. State, 2D19-809 (6/5/20)

https://www.2dca.org/content/download/637115/7237826/file/190809_DC05_06052020_081127_i.pdf

MANDAMUS-VENUE: Defendant's mandamus petition arguing that second-degree murder is not a capital or life felony, and thus that he is eligible for parole, must be filed in Leon County, where the Florida Commission on Offender Review has its principal headquarters. Orcutt v. State, 2D19-952 (6/5/20)

https://www.2dca.org/content/download/637116/7237838/file/190952_DC13_06052020_081458_i.pdf

POST CONVICTION RELIEF: Due process does not require the postconviction court to give Defendant notice of its intention to treat his habeas petition (filed as a civil case) as a motion for postconviction relief and to afford him an opportunity to amend or withdraw his petition. Casaigne v. State, 2D19-1928 (6/5/20)

https://www.2dca.org/content/download/637121/7237898/file/191928_DC05_06052020_081554_i.pdf

VOP: Defendant's failure to come to the open door at 5:30 a.m. does not establish that he was away from the house at that time. Failure to answer the door at a time when the average person is typically sleeping does not establish the person's absence. "[T]he approach of simply knocking on the door and then declaring a violation when no one answers provides strong potential defenses to the person being supervised. If the supervising officer

truly believes that a person under supervision is not home, it would behoove that officer to acquire evidence that corroborates the alleged absence from the residence." Edwards v. State, 2D19-2734 (6/5/20)

https://www.2dca.org/content/download/637125/7237946/file/192734_DC13_06052020_082506_i.pdf

JUDGMENT-CORRECTION: Where the judgment incorrectly recited that the Defendant was convicted of "1st Degree Premediated Murder" but the jury had been instructed that the State could prove first-degree murder by either a theory of premeditated murder or a theory of felony murder and returned a general verdict of "murder in the 1st degree," the Court must correct the judgment. A judgment should conform to the verdict of the jury. Court may, even after expiration of term, correct clerical errors in its judgments. Palmer v. State, 5D 19-3030 (6/5/20)

https://www.5dca.org/content/download/637086/7237463/file/193030_DC13_06052020_083318_i.pdf

COSTS: Court may not impose a $100 cost of investigation where the State never made an oral or written request for it. Wooley v. State, 5D19-3788 (6/5/20)

https://www.5dca.org/content/download/637090/7237511/file/193788_DC05_06052020_084911_i.pdf

DEATH PENALTY: The Hurst decisions do not apply to defendants who waived a penalty phase jury. Valentine v. State, SC18-1102 (6/4/20)

https://www.floridasupremecourt.org/content/download/637048/7237042/file/sc18-1102.pdf

CONSTITUTIONAL AMENDMENT-ASSAULT WEAPONS: Proposed initiative, entitled "Prohibits possession of defined assault weapons" should not be placed on the ballot. The ballot summary misleads voters by providing that the Initiative exempts and requires registration of assault weapons lawfully possessed prior to this provision's effective date, when in fact the text exempts only current owner's possession of that assault weapon. The Initiative does not categorically exempt the assault weapon, only the current owner's possession of that assault weapon. Advisory Opinion to the Attorney General re: Prohibits Possession of Defined Assault Weapons, SC19-1266 (6/4/20)

https://www.floridasupremecourt.org/content/download/637052/7237090/file/sc19-1266.pdf

POST CONVICTION RELIEF: Counsel is not ineffective for failing to strike a juror who believed that a homosexual "is morally depraved enough that he might lie, might steal, might kill" and he would have a bias that might affect his deliberations if he knew the perpetrator was homosexual where counsel

believed the juror would be favorable during the penalty phase. Trial counsel's testimony that he did not have a specific recollection of the juror or his own thought process does not preclude a finding that the decision to keep the juror was strategic. Counsel's testimony that he did not remember is competent, substantial evidence to support a finding that his choices were strategic. Patrick v. State, SC19-140 (6/4/20)

https://www.floridasupremecourt.org/content/download/637049/7237054/file/sc19-140.pdf

POST CONVICTION RELIEF: 2014 letter issued by the United States Department of Justice that criticized portions of the testimony provided by a FBI forensic hair analyst during Defendant's is not newly discovered evidence warranting a new trial where other evidence supports the conviction. McDonald v. State, SC19-635 (6/4/20)

https://www.floridasupremecourt.org/content/download/637051/7237078/file/sc19-635.pdf

EVIDENCE-FIREARM: Evidence about a firearm is admissible where Defendant is charged with fraud based in part on PII (Personal Identification Information) documents, because the firearm was found in a small closet with a sheet of paper containing PII, and because the firearm belonged to Defendant, as shown through the Snapchat photographs, it was far more likely that the PII too belonged to Defendant. Prejudice does not outweigh probative value. The possession of a firearm today is not so inherently

prejudicial as to necessarily outweigh its probative value. USA v. McGregor, No. 19-10163 (11th Cir. 6/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910163.pdf

MOTION TO SUPPRESS-TIMELINESS: A tactical decision is not good cause for knowingly defying a scheduling order requiring the filing of any Motion to Suppress by a certain date. No good cause exists if 'the defendant had all the information necessary to bring a Rule 12(b) motion before the date set for pretrial motions, but failed to file it by that date. Neither a strategic decision nor inadvertence constitutes good cause. USA v. Andres, No. 19-10163 (11th Cir. 6/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910823.pdf

SEARCH AND SEIZURE-PRETEXT STOP: A law enforcement officer's subjective motive in making a stop does not invalidate objectively justifiable grounds for making the stop. Officer was justified in stopping the Defendant's Cadillac for an alleged traffic violation (following too closely) and based on law enforcement officials' collective knowledge that the Defendant was going to a drug deal. USA v. Andres, No. 19-10163 (11th Cir. 6/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910823.pdf

SENTENCING-ACCEPTANCE OF RESPONSIBILITY: Defendant who went to trial because he faced a mandatory life sentence under the law and wanted to preserve a constitutional challenge to such a sentence is not entitled to an acceptance of responsibility adjustment with the record does not reflect Defendant's asserted motive. A defendant's decision to stand trial does not automatically preclude a defendant from consideration for such a reduction. USA v. Andres, No. 19-10163 (11th Cir. 6/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910823.pdf

RESENTENCING-MINOR-LIFE SENTENCE: Order appointing counsel on Defendant's motion for resentencing is not an order allowing resentencing for minor sentenced to life with a twenty-five year minimum mandatory. Smith v. State, 1D19-1908 (6/3/20)

https://www.1dca.org/content/download/636976/7236278/file/191908_DC05_06032020_133437_i.pdf

RESENTENCING-MINOR-LENGTHY TERM OF YEARS: Consecutive 25 and 40 year sentences for a minor is not a de facto life sentence. Court may rescing resentencing order. Conflict certified. Baldwin v. State, 1D19-1953 (6/3/20)

https://www.1dca.org/content/download/636978/7236302/file/191953_DC05_06032020_134438_i.pdf

JUDGE-DISQUALIFICATION: Where Defendant raises on direct appeal the erroneous denial of a legally sufficient motion to disqualify a trial judge when he did not file a petition for a writ of prohibition, review is for harmless error, with the question being whether there is a reasonable possibility that the error denied the defendant a fair trial before a neutral judge. Error here was harmless. Question certified as a matter of great public importance. Davis v. State, 2D17-517 (6/3/20)

https://www.2dca.org/content/download/636884/7235132/file/170517_DC05_06032020_083902_i.pdf

CONSTRUCTIVE POSSESSION: Defendant cannot be found to be in constructive possession of drugs found in the safe in a jointly possessed home. Where possession is constructive, State must prove that Defendant (1) had knowledge that the contraband was within his presence and (2) had the ability to exercise dominion and control over the contraband. If the premises where the officers found the contraband were in joint, rather than exclusive, possession, one cannot infer either the knowledge or ability to maintain dominion and control element from mere ownership of the residence or proximity to the contraband. Wiley v. State, 2D18-878 (6/3/20)

https://www.2dca.org/content/download/636886/7235156/file/180878_DC08_06032020_084243_i.pdf

POSSESSION: A fingerprint on an item containing contraband does not in itself prove the defendant's knowledge of the container's contents, because the fingerprint just as likely could have predated the introduction of the contraband into the container. Wiley v. State, 2D18-878 (6/3/20)

https://www.2dca.org/content/download/636886/7235156/file/180878_DC08_06032020_084243_i.pdf

POSSESSION OF RECENTLY STOLEN PROPERTY: Instruction that possession of recently stolen property gives rise to an inference that the Defendant knew was stolen applies only when the property is undisputedly stolen and the question is who stole it. The Court erred by giving the instruction where it was disputed whether the car was stolen or given to the Defendant because it allowed the jury to presume Defendant was guilty because he was in possession of it. Moore v. State, 2D18-1842 (6/3/20)

https://www.2dca.org/content/download/636890/7235218/file/181842_DC08_06032020_084737_i.pdf

PARAPHERNALIA: Evidence is sufficient to convict for possession of a crack pipe (glass pipe)notwithstanding that there was no residue on it nor drugs at the scene. State does not need to prove that the Defendant had an intent to use the item to ingest drugs at the time of possession. When an object is shown to have an exclusive or predominant use, that purpose is

highly probative evidence that the item is intended to be used for that purpose. Moore v. State, 2D18-1842 (6/3/20)

https://www.2dca.org/content/download/636890/7235218/file/181842_DC08_06032020_084737_i.pdf

EVIDENCE-EXCULPATORY EVIDENCE-THIRD PARTY CONFESSION: Court erred by excluding the previously sworn testimony of a witness who refused to appear at the trial that the twin brother of the Defendant's alleged accomplice (who testified against him at trial) confessed to being the actual murderer. If a confession by a third party is critical evidence that should have been admitted in evidence to protect the constitutional rights of the accused, the particular reason for excluding it under state law will make little difference. Deendant's right to present proof of third party guilt to the trier of fact implicates federal constitutional rights to a fair trial, which may require admissibility, though contrary to a state procedural predicate. "We are constrained, under Chambers, the due process clause, and Macauley's right to a fair trial, to reverse his convictions and vacate his sentences, and to remand the case for a new trial." Macauley v. State, 3D18-13 (6/3/20)

https://www.3dca.flcourts.org/content/download/636879/7235072/file/180013_DC13_06032020_102514_i.pdf

PROFFER: Defendant's failure to make a proffer of the precise testimony excluded as hearsay evidence did not preclude appellate review, where the

substance of the excluded evidence was made known. Macauley v. State, 3D18-13 (6/3/20)

https://www.3dca.flcourts.org/content/download/636879/7235072/file/180013_DC13_06032020_102514_i.pdf

POST CONVICTION RELIEF-SPOUSAL PRIVILEGE: Spousal privilege can be invoked to prevent the testimony of a spouse during a motion for postconviction relief. Gonzalez v. State, 3D18-1067 (6/3/20)

https://www.3dca.flcourts.org/content/download/636881/7235096/file/181067_DC05_06032020_102700_i.pdf

VOP-SENTENCING CONSIDERATIONS: The Court improperly reviewed Defendant's prior probation record and significantly relied on what the court apparently believed were prior violations of curfew offenses to determine that the present violation of curfew was willful and substantial. "The defense had no opportunity to defend against these charges. In fact, the trial court's factual recitations appear to be completely unsubstantiated or wrong." Whether to revoke probation involves a two-step process. First, the trial court must find by a preponderance of the evidence that the probationer willfully and substantially violated probation. Second, the court must then determine whether to revoke probation. Milanes v. State, 4D19-2435 (6/3/20)

https://www.4dca.org/content/download/636946/7235918/file/192435_DC13_06032020_090929_i.pdf

VOP: It violates due process for a trial court to rely on unsubstantiated charges in finding a violation of probation to be willful and substantial. Milanes v. State, 4D19-2435 (6/3/20)

https://www.4dca.org/content/download/636946/7235918/file/192435_DC13_06032020_090929_i.pdf

VOP: Upon finding a violation of probation, Court may not immediately proceed to impose the sentence without affording Defendant a hearing focusing on the sentence to be imposed. Milanes v. State, 4D19-2435 (6/3/20)

https://www.4dca.org/content/download/636946/7235918/file/192435_DC13_06032020_090929_i.pdf

COMPETENCY: Incompetence is presumed to continue until the court adjudicates Defendant competent. Information properly dismissed where Defendant remained incompetent for five continuous years. Time was not tolled during Defendant's unapproved and unsupervised absence from the state for over two years. "We cannot overlook the rulings of the supreme

court and are required by the rule of law to abide by its holdings. Nor do we believe that we have the authority to create a tolling provision in the statute where the Legislature failed to do so." State v. Morris, 4D19-1729 (6/3/20)

https://www.4dca.org/content/download/636945/7235906/file/191729_DC05_06032020_090758_i.pdf

DEFINITION-"UNINTERRUPTED": "Uninterrupted" means "not interrupted; continuous." State v. Morris, 4D19-1729 (6/3/20)

https://www.4dca.org/content/download/636945/7235906/file/191729_DC05_06032020_090758_i.pdf

DEFINITION-"INTERRUPTED": "Interrupted" means "broken in upon." State v. Morris, 4D19-1729 (6/3/20)

https://www.4dca.org/content/download/636945/7235906/file/191729_DC05_06032020_090758_i.pdf

SCORESHEET-LEVEL: Possession of heroin is a level 3 offense rather than a level 1 offense, notwithstanding that possession of a controlled substance is listed under both level 1 and 3 in the Criminal Punishment

Code offense severity ranking chart. The Criminal Punishment Code description section explains that the level 1 ranking is limited to possession of cannabis, while the level 3 ranking is intended for all other possession offenses, including possession of heroin. Morgan v. State, 4D20-720 (6/3/20)

https://www.4dca.org/content/download/636951/7235978/file/200720_DC05_06032020_091621_i.pdf

STATUTORY INTERPRETATION-HARMONIOUS READING CANON: "[T]here can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously." Morgan v. State, 4D20-720 (6/3/20)

https://www.4dca.org/content/download/636951/7235978/file/200720_DC05_06032020_091621_i.pdf

POST CONVICTION RELIEF: A motion brought under Federal Rule of Civil Procedure 59(e) to alter or amend a habeas court's judgment does not qualify as a successive petition, but rather as part and parcel of the first habeas proceeding. Bannister v. Davis, (US S.Ct. 6/1/20)

https://www.supremecourt.gov/opinions/19pdf/18-6943_k5fm.pdf

MAY 2020

STAND YOUR GROUND: A defendant convicted at trial by proof beyond a reasonable doubt is not entitled to a new immunity hearing if the trial court applied the wrong standard at a SYG hearing The presentation of the self-defense claim at trial moots and subsumes any previous error that occurred at the immunity hearing. Conflict certified. Boston v. State, 1D17-5190 (5/29/20)

https://www.1dca.org/content/download/636686/7232987/file/175190_DC05_05292020_140316_i.pdf

SEARCH AND SEIZURE-FIREARM: Defendant cannot be stopped and searched based on the officer's observation of the concealed weapon absent evidence apparent at the moment that the Defendant did not have the concealed weapons permit. "Bearing arms is not only legal; it also is a specifically enumerated right in both the federal and Florida constitutions." legally carrying a weapon is not justification for a Terry stop. A law enforcement officer may not use the presence of a concealed weapon as the sole basis for seizing an individual. Kilburn v. State, 1D18-4899 (5/29/20)

https://www.1dca.org/content/download/636689/7233023/file/184899_DC13_05292020_141720_i.pdf

LIFE SENTENCE-MINOR: An order granting a rule 3.800(a) motion for resentencing is not final or appealable, and thus a postconviction court has inherent authority to reconsider its ruling before resentencing is complete. Defendant is not entitled to a resentencing hearing based on the change

in the law governing life sentences for minors. Melton v. State, 1D19-1286 (5/29/20)

https://www.1dca.org/content/download/636690/7233035/file/191286_DC05_05292020_142018_i.pdf

VOP: Revocation of probation is vacated when an affidavit of violation of probation does not appear in the court file. McElwain v. State, 1D I1901593 (5/29/20)

https://www.1dca.org/content/download/636691/7233047/file/191593_DC13_05292020_142356_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court must make a written findings that a violent felony offender of special concern poses a danger to the community. Mobley v. State, 1D19-1594 (5/29/20)

https://www.1dca.org/content/download/636692/7233059/file/191594_DC05_05292020_142543_i.pdf

ENHANCEMENT-FORCIBLE ASSAULT: Assaulting a federal officer with a dangerous weapon qualifies as a crime of violence for purposes of § 924(c) under the elements clause. The threat of force in "forcible assault" is sufficient violence to trigger the enhancement statute. The use of a deadly weapon under § 111(b) transforms a § 111(a) act into a crime of violence. USA v. Bates, No. 18-12533 (11th Cir. 5/28/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812533.pdf

PSYCHIATRIC EVIDENCE: In rare circumstances, where the government will be required to prove a heightened mens rea element to secure a

conviction, the mens rea element of a general-intent crime may be negated by psychiatric evidence. Psychiatric evidence to excuse or otherwise justify conduct is admissible where it negates the mens rea of a specific intent crime. USA v. Bates, No. 18-12533 (11th Cir. 5/28/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812533.pdf

SEARCH AND SEIZURE-SEALED RECORD-DNA: Neither the procurement of the DNA sample from the crime scene nor the collection of Porter's DNA during his prior incarceration was a search or seizure. Whether the DNA sample from an arrest and conviction, later vacated and sealed, should have been sealed does not matter. Absent evidence of an illegal search or seizure, the exclusionary rule does not apply. The retention of a lawfully obtained DNA record on CODIS for future use does not constitute a separate search or implicate the Fourth Amendment. Porter v. State, 1D18-5024 (5/26/20)

https://www.1dca.org/content/download/636301/7229100/file/185024_DC05_05262020_140517_i.pdf

MISTRIAL-INATTENTIVE JUROR: Defendant is not entitled to a mistrial when two jurors said they could not hear 1/5 of witness's testimony but were later given a read back. Williams v. State, 1D19-58 (5/26/20)

https://www.1dca.org/content/download/636303/7229124/file/190058_DC05_05262020_140910_i.pdf

HEARING-NOTICE: Court violates Due Process by conducting a final hearing at what was noticed as a Case Management Conference. Paylin, M.D. v. Office of the State Atorney, 2D19-783 (5/20/20)

https://www.2dca.org/content/download/636666/7232805/file/190783_DC13_05292020_081116_i.pdf

RECENTLY POSSESSED STOLEN PROPERTY: Court erred in giving the standard instruction that proof of the unexplained possession of recently stolen property gives rise to an inference that the person in possession knew or should have known that the property had been stolen where the issue was whether the car was stolen or left with the Defendant designated driver Defendant by the victim. The standard instruction of presumption applies only where the property is undisputedly stolen and the question is who stole it. "The only possible effect of the instruction here was to allow the jury to presume Jones was guilty because he was in possession of the car." Error is fundamental. Moore v. State, 2D18-1842 (5/27/20)

https://www.2dca.org/content/download/636465/7230393/file/181842_DC08_05272020_075417_i.pdf

PARAPHERNALIA: Where there is no indication that the glass pipe had any use other than smoking crack cocaine, Defendant is properly convicted of possession of paraphernalia. Other common items require residue or proximity to drugs to support an inference that they are paraphernalia, but not glass pipes. Moore v. State, 2D18-1842 (5/27/20)

https://www.2dca.org/content/download/636465/7230393/file/181842_DC08_05272020_075417_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Evidence that another person's fingerprints were found in the murder victim's abandoned car, where the judge believed the person's testimony that he often entered abandoned cars to steal stereos, and disbelieved his admission that he committed the murder, is sufficient to deny the Defendant

's motion to vacate his conviction for murdering his wife, notwithstanding that the thief's testimony "was, to put it mildly, bizarre." "Mr. Scott did ultimately confess to the murder of Ms. Schofield. But then he also confessed to murdering every other person who was murdered in Polk County between 1987 and 1988." Schofield v. State, 2D18-2175 (5/28/20)

https://www.2dca.org/content/download/636582/7231813/file/182175_DC05_05282020_083848_i.pdf

MINOR-RESENTENCING-JUVENILE: 30 year sentence is not a de facto life sentence. Defendant is not entitled to resentencing based on Supreme Court's change in the law. State v. Morales, 2D18-3428 (5/27/20)

https://www.2dca.org/content/download/636469/7230448/file/183428_DC13_05272020_075737_i.pdf

UPWARD DEPARTURE-VOP: Upon violation of probation, where Defendant scores under 22 points, Court may not sentence the Defendant to prison absent a jury finding of dangerousness. Shields v. State, 2D19-493 (5/27/20)

https://www.2dca.org/content/download/636473/7230496/file/190493_DC13_05272020_080058_i.pdf

JURY INSTRUCTIONS: Court erred by denying Defendant's request for the standard jury instruction on the presumption of reasonable fear. A trial court's failure to give a requested instruction constitutes reversible error if: (1) the requested instruction accurately states the law; (2) the facts of the case support the instruction; and (3) the instruction is necessary to allow the jury to properly resolve all issues in the case. Elder v. State, 4D18-2891 (5/27/20)

https://www.4dca.org/content/download/636523/7231103/file/182891_DC08_05272020_090717_i.pdf

STAND YOUR GROUND: Where the trial court has ruled that the defendant was not entitled to immunity regardless of which party had the burden of proof, the defendant is not entitled to a new Stand Your Ground hearing. Elder v. State, 4D18-2891 (5/27/20)

https://www.4dca.org/content/download/636523/7231103/file/182891_DC08_05272020_090717_i.pdf

JURY INSTRUCTIONS-LOST EVIDENCE: Defendant is not entitled to a jury instruction on lost evidence where there was a glitch when switching from one body cam to another whereby the body cam footage was not preserved. For such an instruction, the evidence must be both material and exculpatory. Ward v. State, 4D18-3620 (5/27/20)

https://www.4dca.org/content/download/636525/7231127/file/183620_DC05_05272020_090903_i.pdf

PROBATION-TOLLING-PRISON: Where the defendant was sentenced to serve three years prison followed by two years probation (case #2) while serving an eight year prison sentence on a different case (case #1), the two year probation term on case # is tolled until the Defendant is released from prison. State v. Fiddemon, 4D19-438 (5/27/20)

https://www.4dca.org/content/download/636527/7231151/file/190438_DC13_05272020_091443_i.pdf

EVIDENCE-COLLATERAL CRIME: Court properly admitted evidence of a separate burglary because that is where he got the gun used in the burglary/shooting for which he went to trial. Jones v. State, 4D19-1189 (5/27/20)

https://www.4dca.org/content/download/636528/7231163/file/191189_DC05_05272020_091611_i.pdf

JURY INSTRUCTION-EXCUSABLE HOMICIDE-JURY PARDON: The former rule that the failure to instruct on justifiable or excusable homicide as part of the jury instruction on manslaughter constitutes fundamental error where the conviction is for manslaughter or a greater offense not more than one step removed no longer applies because Florida no longer recognizes the jury pardon doctrine. Melendez v. State, 5D19-1624 (5/29/20)

https://www.5dca.org/content/download/636651/7232621/file/191624_DC05_05292020_085616_i.pdf

COSTS: Court may not impose $100 cost of investigation for the Sheriff's Office because the State did not request it or offer evidence to support the amount. Riggs v. State, 5D19-1907 (5/29/20)

https://www.5dca.org/content/download/636652/7232633/file/191907_DC05_05292020_085840_i.pdf

MINOR-LIFE SENTENCE-REVIEW: Court's failure to make written findings supporting life sentences without parole reuires re-sentencing by a different judge. Weiand v. State, 5D19-2993 (5/29/20)

https://www.5dca.org/content/download/636656/7232681/file/192993_DC13_05292020_092408_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to hearing on motion for post conviction relief on claim that new impeachment evidence had been found. Hartman v. State, 5D19-3031 (5/29/20)

https://www.5dca.org/content/download/636657/7232693/file/193031_DC13_05292020_092605_i.pdf

STAND YOUR GROUND-RETROACTIVITY: Change in burden of proof in SYG hearing applies retroactively to all SYG immunity hearings conducted on or after the statute's effective date, but not before. Sullivan v. State, 5D16-5065 (5/22/20)
https://www.2dca.org/content/download/636125/7227169/file/165065_DC05_05222020_081000_i.pdf

VOP: Court is required to enter a formal order of violation of probation that lists the specific conditions which the court determines that the Defendant violated. Pinello v. State, 2D19-1918 (5/22/20)
https://www.2dca.org/content/download/636156/7227548/file/191918_DC05_05222020_081519_i.pdf

COSTS: $12 assessment under s. 318.18 is improperly assessed when Defendant is not convicted of a traffic offense. Turpenning v. State, 5D19-2094 (5/22/20)

https://www.5dca.org/content/download/636114/7227030/file/192094_DC05_05222020_085558_i.pdf

HEARSAY: Text message that Defendant killed the victim is inadmissible hearsay, and not relevant to prove the recipients' of the message later actions. "There is a plethora of case law discouraging such 'set the scene' testimony." Error is harmless given the overwhelming evidence. Willoughby v. State, 5D19-2152 (5/22/20)

https://www.5dca.org/content/download/636115/7227042/file/192152_DC05_05222020_085848_i.pdf

PRINCIPAL: Court erred on giving a principal instruction at State's request based on speculation that if the Defendant did not commit the murder, an associate did. Error here is harmless. Willoughby v. State, 5D19-2152 (5/22/20)

https://www.5dca.org/content/download/636115/7227042/file/192152_DC05_05222020_085848_i.pdf

COSTS: Court may not impose $9 cost assessed pursuant to section 318.18(11)(b) where Defendant was not charged with a traffic infraction. Taylor v. State, 5D19-3009 (5/22/20)

https://www.5dca.org/content/download/636116/7227054/file/193009_DC05_05222020_090100_i.pdf

COSTS: Court may not impose $100 cost of investigation for the police department where it was not requested, and the State offered no evidence to support the amount. Milton v. State, 5D19-3087 (5/22/20)

https://www.5dca.org/content/download/636117/7227066/file/193087_DC05_05222020_090319_i.pdf

DEATH PENALTY-INTELLECTUAL DISABILTY: To establish intellectual disability as a bar to execution, a defendant must demonstrate (1) significantly subaverage general intellectual functioning (an IQ under 70); (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen. Hall, requiring courts to consider the standard error of measurement of IQ tests (five points) in deciding whether Defendant may present additional evidence of intellectual disability, does not apply retroactively. Previous case law receded from. "Upon further consideration, we have determined that this Court clearly erred. . .and we now recede from our decision in Walls." Phillips v. State, SC18-1149 (5/21/20)

https://www.floridasupremecourt.org/content/download/636054/7226438/file/sc18-1149.pdf

RETROACTIVITY: Evolutionary refinements to law do not apply retroactively. Changing the standard for executing intellectually disabled is not of sufficient magnitude to warrant retroactive application to cases on collateral review. "Although the federal standard for determining retroactivity [requires] that courts must give retroactive effect to (1) new substantive rules of federal constitutional law and (2) new watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding,. . .only . . .substantive rules of federal constitutional law must be applied retroactively by state courts." Phillips v. State, SC18-1149 (5/21/20)

https://www.floridasupremecourt.org/content/download/636054/7226438/file/sc18-1149.pdf

STARE DECISIS-CROCODILE TEARS: "A conclusion that the earlier Court erred must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion." Stare decisis does not apply to case law about determining intellectual disability in death penalty cases. Phillips v. State, SC18-1149 (5/21/20)

https://www.floridasupremecourt.org/content/download/636054/7226438/file/sc18-1149.pdf

STARE DECISIS (LABARGA, DISSENT): "Yet again, this Court has removed an important safeguard in maintaining the integrity of Florida's death penalty jurisprudence. . .I write to underscore the unraveling of sound legal holdings in this most consequential area of the law. . .I reject the majority's conclusion that Hall was a mere procedural evolution in the law. When the law develops in such a manner as to clarify the criteria for intellectual disability—a status which poses an absolute bar to execution—this cannot simply be deemed 'an evolutionary refinement.'" Phillips v. State, SC18-1149 (5/21/20)

https://www.floridasupremecourt.org/content/download/636054/7226438/file/sc18-1149.pdf

LAWYERS-MILITARY SPOUSE: Under new subdivision, the spouse of a service member who has applied for certification to engage in the practice of law in Florida may be certified by the Court to act as a certified legal intern while his or her application is pending. In Re: Amendments to Rule Regulating the Florida Bar, SC19-1861 (5/21/20)

https://www.floridasupremecourt.org/content/download/636056/7226462/file/sc19-1861.pdf

PEREMPTORY CHALLENGE-RACIAL DISCRIMINATION-PRESERVED ISSUE: The party opposing a peremptory strike must make a specific objection to the proponent's proffered race-neutral reason for the strike, if contested, to preserve the claim that the trial court erred in concluding that the proffered reason was genuine. Where Defendant's counsel renewed his objection to the State's peremptory strike but never argued that the State's proffered explanation lacked record support noradvanced any argument as to why that explanation was not genuine failed to preserve the issue. State v. Johnson, SC19-96 (5/21/20)

https://www.floridasupremecourt.org/content/download/636055/7226450/file/sc19-96.pdf

STARE DECISIS-DICTA: Supreme Court says it does not violate principles of stare decisis here: "[L]anguage in this Court's decision in Hayes. . .which a plurality of this Court relied upon in its nonprecedential opinion. . .wrongly suggests that the trial court is required to create a record for appellate review of otherwise unpreserved error by 'undertak[ing] an on-the-record genuineness inquiry' every time a party opposes a peremptory strike. . .This language is dicta, however, because Hayes was not a preservation case." State v. Johnson, SC19-96 (5/21/20)

https://www.floridasupremecourt.org/content/download/636055/7226450/file/sc19-96.pdf

VOIR DIRE: Juror's comment during voir dire that the Defendant looked familiar and she may have seen him during her work in jails and prisons does not warrant the entire jury panel being stricken. Prospective juror never definitively said that she knew Defendant. Joseph v. State, 1D19-1705 (5/20/20)

https://www.1dca.org/content/download/636011/7225942/file/191705_DC05_05202020_140459_i.pdf

STAND YOUR GROUND: Once a defendant makes a prima facie claim of immunity, the State must prove by clear and convincing evidence that the defendant is not entitled to immunity, but this change in law only applies retroactively to immunity hearings conducted on or after the statute's effective date. Washington v. State, 1D17-1978 (5/20/20)

https://www.1dca.org/content/download/635866/7224196/file/171978_DC05_05192020_134043_i.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of both traveling after solicitation for sex with a minor and unlawful use of a two-way communications device. Court reviews only the charging document. Walker v. State, 1D19-483 (5/18/20)

https://www.1dca.org/content/download/635774/7223120/file/190483_DC08_05182020_131836_i.pdf

PROBATION-CONDITIONS: Testing for Sexually Transmitted diseases cannot be ordered as a special condition of probation for drug offenses or DWLS. To be valid, a condition must be reasonably related to the crime of which the offender was convicted. Gokay v. State, 2D18-4530 (5/20/20)

https://www.2dca.org/content/download/635946/7225148/file/184530_DC08_05202020_085442_i.pdf

JURY INSTRUCTION-SELF-DEFENSE: Defendant is not entitled to a special jury instruction that she may use deadly force where resisting a felony in her conveyance; The standard jury instruction adequately covers the defense that the Defendant was defending herself from the victim who jumped halfway in the car to avoid being run over. Mordica v. State, 3D19-51 (5/20/20)

https://www.3dca.flcourts.org/content/download/635913/7224740/file/190051_DC05_05202020_100530_i.pdf

SELF DEFENSE: Court did not err in not instructed jury that victim, who had been tussling with the Defendant and tried to jump in the car to avoid being run over, was committing a felony. There was no testimony to support a finding that victim committed the specific felony of burglary of an occupied conveyance. Mordica v. State, 3D19-51 (5/20/20)

https://www.3dca.flcourts.org/content/download/635913/7224740/file/190051_DC05_05202020_100530_i.pdf

OPENING THE DOOR-CROSS EXAMINATION: When Defendant is allowed to present evidence about a specific text threat made by the Victim, the State is allowed to present evidence about a specific text threat made by the Defendant. The concept f opening the door applies when one party's

evidence presents an incomplete picture and fairness demands the opposing party be allowed to complete it. Mordica v. State, 3D19-51 (5/20/20)

https://www.3dca.flcourts.org/content/download/635913/7224740/file/190051_DC05_05202020_100530_i.pdf

SHOW UP: Florida courts apply a two-step test to determine the admissibility of an out-of-court identification: (1) did the police employ any unnecessarily suggestive procedure and (2) if so, did the suggestive procedure give rise to a substantial likelihood of irreparable isidentification. Showing the victim a single suspect matching the physical description of the perpetrator three days after the attack was inherently suggestive, but did not violate due process because use of the procedure was imperative and did not create a substantial likelihood of misidentification. McWilliams v. State, 3D19-293 (5/20/20)

https://www.3dca.flcourts.org/content/download/635936/7225014/file/190293_DC05_05202020_104342_i.pdf

DOWNWARD DEPARTURE: Court properly entered a downward departure on the basis that the victim of the felony battery was an initiator, willing participant, aggressor, or provoker of the incident. State v. Quero, 3D18-1820 (5/20/20)

https://www.3dca.flcourts.org/content/download/635930/7224946/file/181820_DC05_05202020_103032_i.pdf

MITIGATION: Court has no authority to grant the motion to mitigate filed more than 60 days after imposition. The failure of the State apprise the ourt of the untimeliness of the mitigation motion does not confer jurisdiction on the trial court by waiver, acquiescence, estoppel, or consent. State v. Garcia, 3D18-1984 (5/20/20)

https://www.3dca.flcourts.org/content/download/635931/7224958/file/181984_DC03_05202020_103405_i.pdf

HABEAS CORPUS: Defendant is not entitled to a Writ of Habeas Corpus where he claims that eight years previously he was deceived into waiving his appeal because of ongoing plea negotiations. Hechevarria-Figuerro v. State,

https://www.3dca.flcourts.org/content/download/635986/7225628/file/200495_DC02_05202020_110150_i.pdf

DOUBLE JEOPARDY: Conviction on mltiple counts of driving with a suspended license causing death or serious injuries violates the Double Jeopardy. There can only be one penalty for driving with a suspended license regardless of the number of injuries or death. Coto v. State, 4D18-2602 (5/20/20)

https://www.4dca.org/content/download/635917/7224790/file/182602_DC08_05202020_092323_i.pdf

GUIDELINES-VICTIM INJURY: Where Defendant is convicted of the single count of driving while license suspended with injury, multiple victim injury points are assessed for each person hurt. Coto v. State, 4D18-2602 (5/20/20)
https://www.4dca.org/content/download/635917/7224790/file/182602_DC08_05202020_092323_i.pdf

ASSAULT: Intent to do violence to the victim is not an element of assault. Burglar who throws a bottle at an 80-year-old woman which shatters against the wall behind her is guilty of burglary with an assault. Whether he threw the bottle with the intent to distract her is irrelevant. Thomas v. State, 4D19-935 (5/20/20)

https://www.4dca.org/content/download/635920/7224826/file/190935_DC05_05202020_092624_i.pdf

JURY VIEW: Court may not grant jury's request to look at the Defendant's half-covered face (right profile) during deliberations. To do so constitutes presenting new evidence, which is prohibited during deliberations. Lockett v. State, 4D19-1908 (5/20/20)

https://www.4dca.org/content/download/635925/7224886/file/191908_DC13_05202020_093021_i.pdf

QUOTATION: "Due process is a flexible concept." Gaither v. State, 5D19-534 (5/15/20)
https://www.5dca.org/content/download/635553/7221180/file/190534_DC13_05152020_082649_i.pdf

DRUG COURT-VIOLATION: Defendant in drug court is entitled to the same due process requirements afforded defendants in probation revocation proceedings before being terminated from the program and sentenced to prison. The drug court coordinator's letter and its attachments, considered without establishing foundation or reliability and containing statements made without personal knowledge, are insufficient to sustain the State's burden of proof. Gaither v. State, 5D19-534 (5/15/20)
https://www.5dca.org/content/download/635553/7221180/file/190534_DC13_05152020_082649_i.pdf

CERTIORARI: State is not entitled to Writ of Certiorai to quash a non-final order compelling it to produce certain limited discovery prior to an evidentiary hearing on Defendant 's motion for postconviction relief where it would not suffer irreparable harm in complying with the court order. Remedy is dismissal, not denial, of a petition for writ of certiorari when there has been an insufficient showing of irreparable harm. State v. Glenn, 5D19-1774 (5/15/2O)

https://www.5dca.org/content/download/635556/7221216/file/191774_DA08_05152020_083448_i.pdf

COSTS: Court may not impose $100 cost of investigation where agency made no request. "The Legislature did not intend for the imposition of an arbitrary amount of costs." Ours v. State, 5D19-2904 (5/15/20) https://www.5dca.org/content/download/635560/7221264/file/192904_DC05_05152020_090224_i.pdf

COSTS: Court may not impose a $3 cost assessed pursuant to section 318.18 where Defendant was not charged with a traffic infraction. Thomas v. State, 5D19-3395 (5/15/20) https://www.5dca.org/content/download/635561/7221276/file/193395_DC05_05152020_090439_i.pdf

RESENTENCING-ACCA: Upon resentencing, because one of the predicate offenses for the Defendant's ACCA sentence was invalid because it fell under the invalid residual clause, Court may again impose the ACCA mandatory minimum on the basis of another qualifying offense not previously relied upon. Tribue v. USA, No. 18-10579 (11th Cir. 5/14/20) http://media.ca11.uscourts.gov/opinions/pub/files/201810579.1.pdf

CIRCUMSTANTIAL EVIDENCE: Special standard for evaluating circumstantial evidence abandoned. "Because this special standard [previously applied to wholly circumstantial cases] is unwarranted, confusing, and out of sync with both the jury instructions currently used in this state and the approach to appellate review used by the vast majority of the courts in this country, we discontinue its use." The standard of review applied to a determination of the legal sufficiency of evidence to support a criminal conviction is simply whether the State presented competent, substantial evidence to support the verdict. To apply this standard to a criminal case, an appellate court must view the evidence in the light most favorable to the State and ask whether a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt. Bush v. State, SC18-227 (S. Ct. 6/14/20) https://www.floridasupremecourt.org/content/download/635474/7220382/file/sc18-227.pdf

HEARSAY-DYING DECLARATION: Dying declarations not relating to the cause of death are not admissible under the dying declaration exception to the hearsay rule. Victim's declaration the the children were with their father (the Defendant), implying he was not the killer, is not admissible. Bush v. State, SC18-227 (6/14/20)
https://www.floridasupremecourt.org/content/download/635474/7220382/file/sc18-227.pdf

INTERROGATION: False statements by officer to Defendant, referencing non-existant evidence, during interrogation to prompt a response need not be excluded. Bush v. State, SC18-227 (S. Ct. 6/14/20)
https://www.floridasupremecourt.org/content/download/635474/7220382/file/sc18-227.pdf

DEATH PENALTY-JURY INSTRUCTION: Jury instructions given in capital cases that refer to the jury's advisory role and to their sentencing verdict as a recommendation are lawful. Bush v. State, SC18-227 (S. Ct. 6/14/20)
https://www.floridasupremecourt.org/content/download/635474/7220382/file/sc18-227.pdf

DISCOVERY VIOLATION: Disclosure of a Facebook photo a few days before trial which showed differences physical differences between Defendant and his accomplice is not a discovery violation. Smiley v. State, SC18-385 (5/14/20)
https://www.floridasupremecourt.org/content/download/635475/7220394/file/sc18-385.pdf

AUTHENTICATION-FACEBOOK PHOTO: Any witness with knowledge that it is a fair and accurate representation may testify to the foundational facts; the photographer need not testify. Authentication for the purpose of admission is a relatively low threshold that requires evidence sufficient to support a finding that the photograph in question is what the proponent claims. Officer may authenticate a Facebook photo without testifying about the date of the photograph, the identity of the photographer, or the circumstances under which the photo was taken. Smiley v. State, SC18-385 (5/14/20)
https://www.floridasupremecourt.org/content/download/635475/7220394/file/sc18-385.pdf

MISTRIAL: Accomplice's testimony that the wear gloves "when we normally operate like that" lacked any detail about other crimes and does not come close to meeting the high standard that justifies a mistrial. Smiley v. State, SC18-385 (5/14/20)
https://www.floridasupremecourt.org/content/download/635475/7220394/file/sc18-385.pdf

CIRCUMSTANTIAL EVIDENCE-JOA: Video of robbery showing a red pants man committing a robbery and matching Defendant's movements leaving and returning home is sufficient circumstantial evidence to sustain a conviction. Jackson v. State, 1D17-5087 (5/13/20)
https://www.1dca.org/content/download/635416/7219697/file/175087_DC05_05132020_131649_i.pdf

CIRCUMSTANTIAL EVIDENCE-PRESERVATION OF ISSUE: Counsel's failure to argue for a Judgment of Acquittal based on the special standard for circumstantial applied fails to preserve the issue. In moving for a judgment of acquittal, defendant must argue that it was a wholly, outline a theory of defense, and explain why it was not inconsistent with the circumstantial evidence. Jackson v. State, 1D17-5087 (5/13/20)
https://www.1dca.org/content/download/635416/7219697/file/175087_DC05_05132020_131649_i.pdf

COSTS-PRESENCE OF DEFENDANT: Any error related to the acceptance of counsel's waiver of Appellant's presence at the hearing for correction of sentence where the court orally pronounced the discretionary fine is harmless. Jackson v. State, 1D17-5087 (5/13/20)
https://www.1dca.org/content/download/635416/7219697/file/175087_DC05_05132020_131649_i.pdf

SENTENCE-MINOR: Lengthy sentence for a minor (50 years) does not violate Graham because it affords him a meaningful opportunity for release during his natural life. Foster v. State, 1D19-2453 (5/13/20)

https://www.1dca.org/content/download/635417/7219709/file/192453_DC05_05132020_131908_i.pdf

STATEMENTS OF DEFENDANT-CUSTODY: Under facts, Defendant was not unlawfully interrogated in his home about sex crimes. The Ramirez factors to determine whether an interrogation is custodial do not allow for consideration of the particularities of the individual defendant, but rather use "an objective, reasonable person" standard. Defendant's limitations and mental health issues are immaterial. Vazquez v. State, 2D18-5028 (5/13/20)
https://www.2dca.org/content/download/635377/7219237/file/185028_DC13_05132020_095503_i.pdf

JUDGE-DISQUALIFICATION-POST CONVICTION RELIEF: Defendant is not entitled to a hearing on his motion for postconviction relief claiming ineffective assistance of counsel where counsel did not move to disqualify the judge who asked "Do you want a denial now?" before the suppression hearing began in the Defendant arrived because the motion did not explain why the motion to suppress should have been granted and where a different judge presided over the trial. Williams v. State, 5D19-128 (5/13/20)
https://www.2dca.org/content/download/635378/7219249/file/190128_DC08_05132020_083222_i.pdf

MINOR-LENGTHY SENTENCE: Minor sentenced to 40 years in prison is not subject to a cruel and unusual sentence because a 40 year sentence is not a de facto life sentence. Moss v. State,
https://www.3dca.flcourts.org/content/download/635364/7219071/file/180169_DC05_05132020_103046_i.pdf

JURY INSTRUCTIONS: Defendant is not entitled to a new trial when the definition of "weapon" was omitted from the written jury instructions but was orally given to the jury. A defective instruction in a criminal case can only constitute fundamental error if the error pertains to a material element that is disputed at trial. Duckworth v. State, 3D20-272 (5/13/20)
https://www.3dca.flcourts.org/content/download/635397/7219469/file/200272_DC02_05132020_110214_i.pdf

SPEEDY TRIAL: Defendant is not entitled to Speedy Trial discharge where he is arrested, State files a No Info, then refiles the case and sends notice to Defendant and counsel, the case is set for trial outside the 175 day Speedy Trial time period and the Defendant failed to file a Notice of

Expiration. When the State terminates a prosecution during the speedy trial period, the State may re-file the same charge prior to the expiration of the speedy trial period and proceed to trial on the reinstated charge, so long as the defendant has notice of the reinstated charge within the speedy trial period. Tamayo v. State, 3D20-490 (5/13/20) https://www.3dca.flcourts.org/content/download/635398/7219481/file/200490_DC02_05132020_110420_i.pdf

SEARCH AND SEIZURE-OBSCURED TAG: The county name on a license tag need not be plainly visible because it is not an essential identification mark "We question whether. . .the county name [on any] tags. . .is visible and legible to a person with normal vision at 100 feet. . .By suggesting that common words that everyone knows exist on the top and bottom of a license provide a basis for a traffic stop when the frame covers part of their lettering leads to an absurd result." Williams v. State, 4D19-1578 (5/13/20) https://www.4dca.org/content/download/635360/7219016/file/191578_DC05_05132020_094628_i.pdf

GAIN TIME: "The award of gain time is solely a function of the Department of Corrections. Gibson v. State, 4D20-728 (5/13/20) https://www.4dca.org/content/download/635366/7219095/file/200728_DC05_05132020_102406_i.pdf

CONTROLLED SUBSTANCE ANALOGUE: Defendant/doctor is properly convicted of distribution of furanyl fentanyl causing death where furanyl fentanyl was a controlled substance analogue, not a controlled substance per se, at the time of the offense. By statute, controlled substance analogues are treated as Schedule I controlled substances. The death enhancement is but-for causation. USA v. Benjamin, No. 18-13091 (11th Cir. 5/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813091.pdf

SCIENTER: Jury need not be instructed that Defendant knew furanyl fentanyl was a controlled substance analogue. The government can prove scienter with evidence that the defendant knew the specific controlled

substance analogue he was dealing with, even if he did not know its legal status as an analogue. USA v. Benjamin, No. 18-13091 (11th Cir. 5/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813091.pdf

SEARCH AND SEIZURE-CONSENT: Consensual search of Defendant's bag after landing at airport is not rendered unlawful by the misrepresentation of law enforcement (that TSA may have found ammunition in the luggage) as to why they wanted to conduct the search. The Fourth Amendment allows some police deception so long as the suspect's will is not overborne. USA v. Benjamin, No. 18-13091 (11th Cir. 5/8/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201813091.pdf

JURY DELIBERATIONS: A list of "30 Do's and Dont's of Jury Deliberations" found in the jury room after the verdict does not render the verdict tainted. USA v. Benjamin, No. 18-13091 (11th Cir. 5/8/20)
http://media.ca11.uscourts.gov/opinions/pub/files/201813091.pdf

POSSESSION WITH INTENT TO SELL-JOA: Defendant may not be convicted of possession with intent to sell based on him being in the rear of the vehicle in close proximity to, or an actual possession of, 3.8 grams of cannabis, 2.7 grams of powder cocaine in a plastic baggie, crack cocaine in several different pieces in a small plastic container, a cigarillo and a razor blade, notwithstanding officer's testimony thatsomeone having multiple drugs is generally indicative of sale and is not typically seen on the user. Barr v. State, 1D19-147 (5/8/20)

https://www.1dca.org/content/download/635227/7217522/file/190147_DC13_05082020_132054_i.pdf

SEARCH AND SEIZURE: Vice principal may not search Child's backpack absent reasonable suspicion. State v. J.T.T., 2D19-2008 (5/8/20)

https://www.2dca.org/content/download/635206/7217268/file/192008_DC05_05082020_082643_i.pdf

SEARCH AND SEIZURE: Warrantless extraction from an Event Data Recorder (EDR) located inside the defendant's vehicle remains unlawful absent evidence to overturn precedent. State v. Pierre, 5D18-3852 (5/8/20) https://www.5dca.org/content/download/635167/7216785/file/183852_DC05_05082020_085225_i.pdf

COSTS: $3 cost assessed pursuant to section 318.18(11) stricken where Defendant was not charged with a traffic infraction. Sharp v. State, 5D19-1632 (5/8/20) https://www.5dca.org/content/download/635168/7216797/file/191632_DC05_05082020_091122_i.pdf

ARGUMENT: "Talking about illusions, smoke screens, distractions, things that aren't relevant, because throughout opening statement and the questions of witnesses there were a number of illusions made by the defense," is improper argument. Comments suggesting that opposing counsel is blowing smoke or using smoke and mirrors in an effort to distract improperly denigrate counsel and the theory of defense. Here, error is harmless. Bugg v. State, 5D19-2108 (5/8/20)

https://www.5dca.org/content/download/635169/7216809/file/192108_DC05_05082020_091328_i.pdf

HEARSAY: Officer's testimony relating description of the suspect by a witness is hearsay and not subject to the witness identification exception to the hearsay rule (90.801(2)(c)). A description is not an identification. Here, error is harmless. Bugg v. State, 5D19-2108 (5/8/20)

https://www.5dca.org/content/download/635169/7216809/file/192108_DC05_05082020_091328_i.pdf

IMPEACHMENT-INCONSISTENT STATEMENT: Court erred in prohibiting defense counsel from confronting witness with his written prior inconsistent statement. In order for one to impeach a witness with a prior inconsistent statement, a predicate must first be established by calling the attention of the witness to be impeached to the allegedly contradictory statements and to the

occasion when it is alleged said statements were made. "Improper impeachment" objection improperly sustained. Bugg v. State, 5D19-2108 (5/8/20)

https://www.5dca.org/content/download/635169/7216809/file/192108_DC05_05082020_091328_i.pdf

APPEAL-PRESERVATION: Where court improperly sustains State's "improper impeachment" objection, Defense must proffer the testimony which he sought to elicit in order to adequately preserve this issue for appellate review. Bugg v. State, 5D19-2108 (5/8/20)

https://www.5dca.org/content/download/635169/7216809/file/192108_DC05_05082020_091328_i.pdf

ILLEGAL SENTENCE-ATTEMPTED SEXUAL BATTERY ON MINOR: Attempted Sexual Battery on a Person Less than Twelve is neither a life felony, as judge believed, nor a second degree felony, as Defendant believed. It is a first-degree felony with a 30 year maximum, unless the sexual organs of the victim are injured. Twenty years' imprisonment followed by life probation exceeds the thirty-year statutory maximum. Echevarria v. State, 5D19-3074 (5/8/20)

https://www.5dca.org/content/download/635170/7216821/file/193074_DC13_05082020_091535_i.pdf

ILLEGAL SENTENCE-ATTEMPTED LEWD OR LASCIVIOUS MOLESTATION ON MINOR: Attempted Lewd or Lascivious Molestation on a Person Less than Twelve is a second degree felony. Twenty years' imprisonment followed by life probation exceeds the thirty-year statutory maximum. Echevarria v. State, 5D19-3074 (5/8/20)

https://www.5dca.org/content/download/635170/7216821/file/193074_DC13_05082020_091535_i.pdf

FRAUD: Government Officials who close lanes to George Washington Bridge as political retribution against a mayor cannot be conficted of property fraud because the actions were a corrupt abuse of power, but not taken for financial gain. Officials violate federal fraud laws only if an object of their dishonesty is to obtain money or property. Federal fraud laws do not proscribe schemes to defraud citizens of their intangible rights to honest and impartial government. "Save for bribes or kickbacks. . ., a state or local official's fraudulent schemes violate that law only when. . .they are 'for obtaining money or property.'" Kelly v. USA, No. 18–1059 (US S. Ct. 5/7/20)

https://www.supremecourt.gov/opinions/19pdf/18-1059_e2p3.pdf

ACCA: Florida robbery convictions are "violent felonies," subjecting Defendant to ACCA mandatory minimum under both the elements and residual clauses. The degree of force required to commit robbery is not too slight to constitute a violent felony under the ACCA. Sudden snatching robbery is a crime of violence. Welch v. USA, No. 14-15733 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201415733.pdf

ACCA: Florida felony battery categorically qualifies as a "crime of violence." Welch v. USA, No. 14-15733 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201415733.pdf

DICTA: "Dicta is not binding on anyone for any purpose." Welch v. USA, No. 14-15733 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201415733.pdf

ACCA: "Serious drug offense" includes an offense involving distribution, which need not involve an exchange for value. For a state drug offense to qualify as a predicate offense under the career-offender guideline, the language of the statute need not match the Guidelines definition exactly. Serious drug offenses include state offenses that use possession of a specified amount of a drug to infer intent. Hollis v. USA, No. 19-11323 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201911323.pdf

POSSESSION OF FIREARM BY FELON: The connection between drug-dealing and firearm possession is an appropriate one to be drawn during a felon-in-possession case. USA v. McLellan, No. 18-13289 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813289.pdf

POSSESSION OF FIREARM BY FELON: Failure of the jury instructions to include the knowledge-of-status element did not affect Defendant's substantial rights or the fairness of the judicial proceedings where it is inconceivable that he did not know that he was a felon, having served approximately ten years in prison, on and off. USA v. McLellan, No. 18-13289 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813289.pdf

EXPERT: Officers testimony that it is "very common" for individuals involved in narcotic activity "to possess handguns, a lot of times for protection" because of the threat of "robbery of their narcotics" is not improper expert opinion. Such testimony does not require any scientific, technical, or specialized knowledge, but rather is rationally based on witness's perception of the relationship between guns and drug activity that he acquired during his time as a police officer in the narcotics division. A witness is permitted to deliver a lay opinion testimony based on his professional experiences. USA v. McLellan, No. 18-13289 (5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813289.pdf

SEARCH AND SEIZURE-EMERGENCY AID EXCEPTION: Police may enter a home under the Emergency Aid Exception where they hear a dog whimpering and mistaken for a person in distress. USA v. Evans, No. 17-15323 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715323.pdf

SPECIOUS ARGUMENT: Defendant fails in his argument that because the magazine found near his gun was unloaded, the gun itself was not—at that time—capable of accepting a large magazine. "We reject his invitation to grammatical innovation." USA v. Evans, No. 17-15323 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715323.pdf

DEFINITION-"CAPABLE": "Capable" means “having the ability, fitness, or quality necessary to do or achieve a specified thing.” USA v. Evans, No. 17-15323 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715323.pdf

GRAMMAR: "First, it is commonly understood that '[m]odifiers should come, if possible, next to the words they modify.'" *citing* William Strunk Jr. & E.B. White, The Elements of Style. USA v. Evans, No. 17-15323 (11th Cir. 5/6/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715323.pdf

COVID-19: Inmates who seek protection from Covid-19 are not entitled to a Temporary Restraining Order putting in place safeguards. Increase in COVID-19 infections is not proof that Sheriff deliberately disregarded an intolerable risk. Swain v. Junior, No. 20-11622-C (11th Cir. 5/5/20)

http://media.ca11.uscourts.gov/opinions/pub/files/202011622.pdf

SENTENCING-UPWARD DEPARTURE: The remedy when court, not the jury, found dangerousness under section 775.082(10) is to remand for resentencing with instructions to either impose a nonstate sanction of up to one year in county jail or empanel a jury to make the determination of dangerousness, if requested by the State. Wiley v. State, 1D18-4988 (5/6/20)

https://www.1dca.org/content/download/635047/7215436/file/184988_DC13_05062020_130733_i.pdf

POST CONVICTION RELIEF-HEARING: Postconviction court's termination of counsel's examination of defense counsel after repeated instructions to inquire only on relevant matters, and exclusion of the mother's testimony as irrelevant, were within the court's sound discretion. Saldana v. State, 1D19-2093 (5/6/20)

https://www.1dca.org/content/download/635049/7215460/file/192093_DC05_05062020_131831_i.pdf

APPEAL-PRESERVATION-KIDNAPPING: Defendant/Exploitative Caretaker for elderly victim cannot be found guilty of kidnapping based on his sending an email which led to the Victim's improper Baker Act confinement. "[B]ecause M.S. was never kidnapped, Bybee cannot be guilty of having kidnapped her." Bybee v. State, 2D17-4515 (5/6/20)

https://www.2dca.org/content/download/635004/7214904/file/174515_DC08_05062020_082718_i.pdf

JOA: Counsel was ineffective for making no more than a boilerplate motion for judgment of acquittal (defense counsel said he was not going to "insult anybody" or "waste any time" by making it anything more than pro forma). Counsel's ineffectiveness may be resolved on direct appeal without wasting

judicial resources by requiring a motion for postconviction relief. Bybee v. State, 2D17-4515 (5/6/20)

https://www.2dca.org/content/download/635004/7214904/file/174515_DC08_05062020_082718_i.pdf

COSTS: $100 for the services of the public defender stricken because the trial court failed to give Defendant notice of his right to a hearing to contest the fee. J.W. v. State, 2D18-2897 (5/6/20)

https://www.2dca.org/content/download/635005/7214916/file/182897_DC08_05062020_082859_i.pdf

EVIDENCE-ALCOHOL: Evidence that victim of homicide had been drinking (.07 BAC) is relevant to show self-defense. Swilley, III v. State, 2D19-65 (5/6/20)

https://www.2dca.org/content/download/635009/7214971/file/190065_DC13_05062020_083059_i.pdf

EVIDENCE-SELF-DEFENCE: Evidence that Defendant knew that Victim carried a knife is admissible to show reasonable fear in homicide case; the fact that a knife was found in the Victim's pocket is admissible as corroboration. Evidence was improperly excluded. New trial required. Swilley, III v. State, 2D19-65 (5/6/20)

https://www.2dca.org/content/download/635009/7214971/file/190065_DC13_05062020_083059_i.pdf

CRUEL OR UNUSUAL PUNISHMENT: Cumulative 150 year sentence (after Defendant declined probation) for possession of child porn is not cruel or unusual. "Although defendant and his attorneys may find the sentencing range to be overly broad, it is completely within the discretion of the trial court and 100 percent legal." For a prison sentence to constitute cruel and

unusual punishment solely because of its length, at a minimum the sentence be must be grossly disproportionate to the crime. Stephens v. State, 3D18-247 (5/6/20)

https://www.3dca.flcourts.org/content/download/635028/7215213/file/180247_DC05_05062020_105732_i.pdf

RECALLING WITNESS: Court did not err in not permitting Defense to recall a State expert witness because he "forgot to cover something," particularly where the testimony was not proffered. Stephens v. State, 3D18-247 (5/6/20)

https://www.3dca.flcourts.org/content/download/635028/7215213/file/180247_DC05_05062020_105732_i.pdf

COMPETENCY: Defense counsel's post-trial characterization Defendant's "bizarre" behavior exhibiting a "lack of emotional maturity and lack of ordinary intelligence" did not put Defendant's competency in question. Neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial. Stephens v. State, 3D18-247 (5/6/20)

https://www.3dca.flcourts.org/content/download/635028/7215213/file/180247_DC05_05062020_105732_i.pdf

BURGLARY: Intent to steal can be inferred from Defendant's presence in a looted store during a hurricane emergency. Williams v. State, 3D19-793 (5/6/20)

https://www.3dca.flcourts.org/content/download/635031/7215249/file/190793_DC05_05062020_110804_i.pdf

STEALTHY ENTRY: "Stealth" normally implies activity that is surreptitious, furtive, or sly, but can include entering a closed and shuttered store in the early evening, during a county-wide emergency brought on by a Category 4 hurricane, when few people were out on the street, curfew orders had been issued, and electrical power was out. Williams v. State, 3D19-793 (5/6/20)

https://www.3dca.flcourts.org/content/download/635031/7215249/file/190793_DC05_05062020_110804_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim counsel was ineffective for not interviewing or calling cellmates of the sole witness against him who had admitted to them that he had told that that Defendant was innocent and he did not know about the planned robbery beforehand. Casanas v. State, 4D19-1895 (5/6/20)

https://www.4dca.org/content/download/634979/7214588/file/191895_DC13_05062020_091316_i.pdf

APPEAL-PRINCIPLE OF PARTY PRESENTATION: Defendant may not argue on appeal that the statute under which she was convicted for collected more than $3.3 million from Phillipine clients to process immigration applications for which she knew they were ineligible was overbroad when she raised different factual and First Amendment issues below. The Principle of Party Presentation prohibits an appellate court from pursuing a legal theory not presented below. "Understandably, she rode with an argument suggested by the panel. In the panel's adjudication, her own arguments, differently directed, fell by the wayside, for they did not mesh with the panel's overbreadth theory of the case." USA v. Sineneng-Smith, No. 19–67 (US S.Ct. 5/6/20)

https://www.supremecourt.gov/opinions/19pdf/19-67_n6io.pdf

OVERBREADTH (J. Thomas, concurring): "It appears that the overbreadth doctrine lacks any basis in the Constitution's text, violates the usual standard for facial challenges, and contravenes traditional standing

principles. I would therefore consider revisiting this doctrine in an appropriate case." USA v. Sineneng-Smith, No. 19–67 (US S.Ct. 5/6/20)

https://www.supremecourt.gov/opinions/19pdf/19-67_n6io.pdf

DEFINITIONS-NOW: "Now" means "at the present time or moment." Andrews v. Warden, No. 19-12443 (5/5/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201912443.pdf

POSSESSING FIREARM AS ILLEGAL ALIEN: The crime of possessing a firearm as an illegal alien includes the elements that the Defendant knew that his status as an illegal alien barred him from possessing a firearm and that he knew he was an illegal alien. USA v. Russell, No. 18-11202 (11th Cir. 5/5/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201811202.pdf

POST CONVICTION RELIEF: Defendant fails to show prejudice in the sentencing phase of Defendant's death penalty case where the new evidence presented in the post conviction hearing merely strengthens, corroborates, and confirms the mitigating circumstances presented at sentencing and establishes no new mitigating factors. Knight v. Florida Dept of Corrections, No.18-12488 (11th Cir. 5/1/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812488.pdf

MINOR-DE FACTO LIFE SENTENCE: Orders granting new sentencing hearings for lengthy sentences imposed on juveniles under rule 3.800(a) are not final or appealable, and so the trial court retains its inherent authority to reconsider such orders in light of Poole. Prior to final judgment, the trial court can and should correct its own previous incorrect appealable rulings which a party has not appealed. Simmons and progeny receded from. Conflict certified. Rogers v. State, 1D19-878 (5/1/20)

https://www.1dca.org/content/download/634828/7212834/file/190878_DC05_05012020_123343_i.pdf

STAND YOUR GROUND-HEARING: Defendant is not entitled to a new SYG hearing because his immunity hearing occurred before the amended statute's effective date and thus it was not error to have conducted it under the earlier standard. Rivera v. State, 2D17-496 (5/1/20)

https://www.2dca.org/content/download/634762/7212011/file/170496_DC05_05012020_080636_i.pdf

HEARSAY: Court improperly admitted child sex abuse victim's prior consistent statements to nurse practitioner to corroborate her in-court testimony. Prior consistent statements are usually inadmissible hearsay and cannot be used for this purpose unless offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication, then only when the prior consistent statement is made after the existence of a reason to falsify arises. But here error is harmless. Bullington v. State, 2D18-2197 (5/1/20)

https://www.2dca.org/content/download/634764/7212035/file/182197_DC05_05012020_081453_i.pdf

EVIDENCE-CROSS-EXAMINATION: A defendant should be afforded wide latitude in demonstrating bias. It was improper for the trial court to exclude evidence that Victim continued to live with Defendant for months after he broke her arm by running over it with car, only cooperating with prosecutors after he evicted her. Peret v. State, 2D19-215 (5/1/20)

https://www.2dca.org/content/download/634780/7212241/file/190215_DC13_05012020_082054_i.pdf

VOP: Court may not revoke supervision solely on proof that the person has been arrested. Gorman v. State, 2D19-1076 (5/1/20)

https://www.2dca.org/content/download/634785/7212301/file/191076_DC05_05012020_082320_i.pdf

VOP-ABSENCE FROM RESIDENCE: PO's testimony that all the lights were off and the blinds were drawn at the residence and that Gorman did not appear to be home is insufficient to establish violation. The fact that the lights were off and the blinds drawn does not negate the possibility that he was asleep. Gorman v. State, 2D19-1076 (5/1/20)

https://www.2dca.org/content/download/634785/7212301/file/191076_DC05_05012020_082320_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to hearing on Defendant's claim of ineffective assistance of counsel for failing to file a motion to suppress. To prevail, Defendant must prove that Fourth Amendment claim was meritorious. Schwebel v. State, 2D19-1092 (5/1/20)

https://www.2dca.org/content/download/634787/7212325/file/191092_DC13_05012020_082441_i.pdf

JUDGMENT OF ACQUITTAL: "[I]t is impossible to conjure up what more counsel could have legitimately argued to the trial court in support of a motion for judgment of acquittal. However, Appellant's counsel for this appeal. . .has chosen to ignore the legal standard which governs whether or not a judgment of acquittal should be granted, and instead has treated the Court to what amounts to a jury trial closing argument." Wilkins v. State, 5D19-970 (5/1/20)

https://www.5dca.org/content/download/634744/7211809/file/190970_DC05_05012020_085037_i.pdf

MISTRIAL: Defendant is not entitled a mistrial where witness was allowed to testify that he was threatened when he was identified as a jailhouse snitch where the isolated comment did not deny the Defendant with a fair trial. Wilkins v. State, 5D19-970 (5/1/20)

https://www.5dca.org/content/download/634744/7211809/file/190970_DC05_05012020_085037_i.pdf

DEFINITION-"DOUBTFUL": "Doubtful" is defined as "lacking a definite opinion, conviction, or determination" or "uncertain in outcome." DCF v. Campbell, 5D19-3309 (5/1/20)

https://www.5dca.org/content/download/634749/7211869/file/193309_DC03_05012020_090715_i.pdf

COMMITMENT-INCOMPETENCY: Defendant with cognitive decline caused by Korsakoff's Syndrome should not be committed for restoration of competency where psychologist opined that it was doubtful she would be restored to competency in the foreseeable future. Commitment is allowed only where there is a substantial probability that competency will be restored in the reasonably foreseeable future. DCF v. Campbell, 5D19-3309 (5/1/20)

https://www.5dca.org/content/download/634749/7211869/file/193309_DC03_05012020_090715_i.pdf

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POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for misadvising him that he would likely receive a withhold the adjudication, which was important to him, when he was prohibited from a withhold based on having had a prior withhold of adjudication. Harris v. State, 1D19-135 (4/29/20)

https://www.1dca.org/content/download/634593/7210418/file/190135_DC13_04292020_130335_i.pdf

HABITUAL OFFENDER: One cannot be designated a habitual felony offender for driving while license suspended. Swander v. State, 1D19-1799 (4/29/20)

https://www.1dca.org/content/download/634595/7210442/file/191799_DC08_04292020_130852_i.pdf

APPEAL: Defendant may raise on direct appeal trial counsel's ineffectiveness in failing to file motion to suppress where the ineffectiveness is obvious on the face of the appellate record, the prejudice caused by the conduct is indisputable, and a tactical explanation for the conduct is inconceivable. An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland. Booker v. State, 2D18-3063 (4/29/20)

https://www.2dca.org/content/download/634499/7209287/file/183063_DC13_04292020_081719_i.pdf

ATTEMPTED MURDER OF LEO-JURY INSTRUCTION: Court erred by not reading jury instruction that the Defendant knew the victims were law enforcement officers. State is required to prove, and the jury must find, beyond a reasonable doubt, that the defendant knew that the victim was a law enforcement officer. Schminky v. State, 3D18-959 (4/29/20)

APPEAL: Ineffective assistance of counsel cannot be raised on direct appeal without being being first raised in the trial court. Jackson v. State, 3D19-1000 (4/29/20)

https://www.3dca.flcourts.org/content/download/634552/7209925/file/191000_DC05_04292020_110029_i.pdf

STATE ATTORNEY-DISQUALIFICATION: Office of the State Attorney is not disqualified where the elected State Attorney had consulted with the Defendant about his case while in private practice before taking office and observed the trial after taking office. Imputed disqualification of the entire state attorney's office is unnecessary when the record establishes that the disqualified attorney has neither (1) the business insider six years and years later confirmed by the story from a neighbor provided prejudicial information relating to the pending criminal charge nor (2) has personally assisted, in any capacity, in the prosecution of the charge." There is no per se rule requiring the disqualification of the entire State Attorney's Office based solely on the fact that the attorney later became the elected State Attorney. Knespler v. State, 3D18-1592 (4/29/20)

https://www.3dca.flcourts.org/content/download/634547/7209865/file/181592_DC08_04292020_104536_i.pdf

VALUE: Value of the stolen property is the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense. Court erred in allowing an expert to testify as to the insurance replacement cost values. Knespler v. State, 3D18-1592 (4/29/20)

https://www.3dca.flcourts.org/content/download/634547/7209865/file/181592_DC08_04292020_104536_i.pdf

SENTENCING: 30 year prison sentence for sale of heroin as a habitual offender is neither a cruel and unusual punishment nor violation of principles of ex post facto. Only in rare circumstances does the length of a criminal sentence constitute a cruel and unusual punishment. Small v. State, 3D19-1667 (4/29/20)

https://www.3dca.flcourts.org/content/download/634555/7209961/file/191667_DC02_04292020_110647_i.pdf

RISK PROTECTION ORDER: The RPO statute allows law enforcement to petition for an RPO to temporarily remove firearms from a person who poses a significant danger to themselves or others. Entry of an RPO does not require a showing of imminent fear or immediate and present danger. The RPO statute does not limit the evidence to events that occurred within the past 12 months of the filing of the RPO petition. Blinston v. Palm Beach County Sheriff's Office, 4D 19-768 (4/29/20)

https://www.4dca.org/content/download/634489/7209153/file/190768_DC05_04292020_094102_i.pdf

JUVENILE-COMMITMENT: Court may not commit a child to a restrictiveness level different from that recommended by DJJ unless it states for the record the reasons that establish by a preponderance of the evidence why the court is disregarding the recommendation. Simply listing reasons that are totally unconnected to this analysis does not explain why one restrictiveness level is better suited for providing the juvenile offender with the most appropriate dispositional services in the least restrictive available setting. "We remind delinquency court judges that deviating from a DJJ's recommendation is a difficult matter. . .In order to deviate lawfully, a trial court must do more than place generalized reasons on the record; it must engage in a well-reasoned and complete analysis of the PDR and the type of facility to which the trial court intends to send the child. This is no easy task and will take time and consideration." R.B. v. State, 4D19-817 (4/29/20)

https://www.4dca.org/content/download/634490/7209165/file/190817_DC08_04292020_094407_i.pdf

UPWARD DEPARTURE-STATUTORY REVIVAL: Defendant who scores under 22 points may not be sentenced to prison unless the jury makes findings of danger to the public. Court may not use the principle of statutory revival to avoid the requirement of the jury finding. Buchman v. State, 4D19-2904 (4/29/20)

https://www.4dca.org/content/download/634491/7209177/file/192904_DC13_04292020_094458_i.pdf

POST CONVICTION RELIEF: Federal habeas corpus relief for ineffective assistance of counsel in state court is only cognizable when the relevant state court decision was contrary to, or involved an unreasonable application of, clearly established federal law or was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. James v. Warden, Holman Correctional, No. 17-11855 (11th Cir. 4/28/90)

http://media.ca11.uscourts.gov/opinions/pub/files/201711855.pdf

POST CONVICTION RELIEF: Defendant is not entitled to habeas corpus relief based on counsel's failure to investigate and present mitigating evidence in the penalty phase of capital murder where prejudice cannot be shown, particularly where the Defendant did not cooperate in developing mitigation evidence and preferred being on death row-where he has his own television-than being in general population. Proof of prejudice requires some evidence that if counsel had discovered the evidence Defendant would have permitted them to present it during the penalty phase proceedings. James v. Warden, Holman Correctional, No. 17-11855 (11th Cir. 4/28/90)

http://media.ca11.uscourts.gov/opinions/pub/files/201711855.pdf

JURY INSTRUCTIONS: Failure to give standard jury instruction on reasonable doubt is fundamental error. Williams v. State, 1D19-2099 (4/27/20)
https://www.1dca.org/content/download/634365/7207880/file/192099_DC13_04272020_130718_i.pdf
SEARCH AND SEIZURE-AUTOMOBILE-TAIL LIGHT: One broken tail light does not justify a stop where there are two other fully operational tail lights. Green v. State, 2D18-3587 (4/24/20)
https://www.2dca.org/content/download/634287/7206983/file/183587_DC13_04242020_081000_i.pdf

SEARCH AND SEIZURE-AUTOMOBILE: Driving an unregistered vehicle is a criminal offense justifying the stop of Defendant's car. The existence of a tag on a vehicle may indicate that the vehicle was registered at some point, but it is not, in and of itself, proof that the vehicle has been registered. The expired temporary tag did not constitute proof that the car was actually registered since there was no evidence to show that the expired temporary tag actually belonged to that car. Brooks v. State, 2D18-4300 (4/24/20) **https://www.2dca.org/content/download/634288/7206995/file/184300_DC13_04242020_081119_i.pdf**

READ-BACK: Court erred by responding to jury's request for transcript by not informing it that a read-back is possible, but error is not fundamental. Tate v. State, 2D19-2248 (4/24/20) **https://www.2dca.org/content/download/634292/7207050/file/192248_DC08_04242020_081348_i.pdf**

POST CONVICTION RELIEF: Counsel's failure to object to Court's failure to offer jury a read-back of testimony when it requested a transcript fails because prejudice is not shown. Argument that the prejudice was the failure to preserve the issue for appeal fails because "the question of prejudice in the postconviction setting turns on whether the defendant was prejudiced at trial—not on appeal." Tate v. State, 2D19-2248 (4/24/20) **https://www.2dca.org/content/download/634292/7207050/file/192248_DC08_04242020_081348_i.pdf**

COMPETENCY HEARING: Due process requires Defendant to be present at his competency hearing, but error here is harmless. Smith v. State, 5D19-389 (4/24/20) https://www.5dca.org/content/download/634319/7207388/file/190389_DC05_04242020_093516_i.pdf

PLEA NEGOTIATIONS: In a pretrial setting, Due Process does not prohibit a prosecutor from carrying out a threat, made during plea negotiations, to bring additional, more serious charges against an accused who refused to plead guilty to the originally-charged offense when it is undisputed that the additional charge is justified by the evidence, the prosecutor was in possession of this evidence when the original charge was filed, and the

additional charge was filed solely because of the accused's failure to plead to the original charge. Senko v. State, 5D19-2328 (4/24/20) https://www.5dca.org/content/download/634323/7207436/file/192328_DC05_04242020_100251_i.pdf

DOUBLE JEOPARDY: Claim of Double Jeopardy violation cannot be raised under R.3.800(a). A double jeopardy argument is a challenge to the judgment, not the sentence, and raises factual issues underlying the judgment which cannot be determined on the face of the judgment. Rodriguez v. State, 5D20-185 (4/24/20) https://www.5dca.org/content/download/634326/7207472/file/200185_DC08_04242020_101151_i.pdf

MANDATORY MINIMUM: Aggravated assault with a deadly weapon (other than a firearm) does not carry a minimum mandatory sentence. Rodriguez v. State, 5D20-185 (4/24/20) https://www.5dca.org/content/download/634326/7207472/file/200185_DC08_04242020_101151_i.pdf

DEPORTATION: Lawful permanent resident who commits aggravated assault duing his initial seven years of residence is ineligible for cancellation of removal. The offense that precludes cancellation of removal need not also be one of the offenses of removal. Barton v. Barr, No. 18-725 (U.S. S.Ct. 4/23/20) https://www.supremecourt.gov/opinions/19pdf/18-725_f2bh.pdf

DEATH PENALTY: Defendant is eligible for death if jury unanimously finds the existence of a statutory aggravating circumstance beyond a reasonable doubt, as here where that jury found the Defendant guilty of a contemporaneous armed robbery. Archer v. State, SC19-841 (4/23/20) https://www.floridasupremecourt.org/content/download/634241/7206547/file/sc19-841.pdf

PAROLE: Commission on Offender Review may modify the authorized presumptive parole release date for good cause in exceptional circumstances, such as a change in prisoner's behavior. Currie v. State, 1D18-2349 (4/23/20)

https://www.1dca.org/content/download/634259/7206711/file/182349_DC02_04232020_125430_i.pdf

POST CONVICTION RELIEF: Victim's wish for Defendant to be released from prison (DUI manslaughter) is not newly discoveryed evidence. Griego v. State, 1D19-1752 (4/23/20)
https://www.1dca.org/content/download/634261/7206735/file/191752_DC05_04232020_130255_i.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity where competent, substantial evidence establishes clear and convincing evidence that a reasonable person would not have used the same force as Defendant. Gainey v. State, 1D19-4587 (4/23/20)

https://www.1dca.org/content/download/634263/7206759/file/194587_DC02_04232020_131158_i.pdf

VOP: Court must specify the condition of probation violated by written order. Brown v. State, 2D19-1356 (4/22/20)

https://www.2dca.org/content/download/634112/7205060/file/191356_DC08_04222020_081916_i.pdf

APPEAL: Where appellee was given an opportunity to file an answer brief but did not do so he is precluded from oral argument. Jenkins v. Jenkins, 3D19-1912 (4/22/20)

https://www.3dca.flcourts.org/content/download/634169/7205767/file/191912_DC05_04222020_115732_i.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity for fatally punching the Victim where the Court appropriately ruled that clear and convincing evidence supported the legal conclusion that pre-trial immunity was inapplicable to the facts. Lyle v. State, 3D19-2010 (4/22/20)

https://www.3dca.flcourts.org/content/download/634171/7205790/file/192010_DC02_04222020_120031_i.pdf

DOUBLE JEOPARDY: Convictions for both assault and attempted robbery violate the double jeopardy clauses of the United States and Florida Constitutions. To determine whether two crimes are based upon the same conduct for purposes of double jeopardy, the reviewing court may consider only the charging document. Williams v. State, 4D18-1129 (4/22/20)

https://www.4dca.org/content/download/634124/7205218/file/181128_DC08_04222020_090134_i.pdf

EVIDENCE-CADAVER DOG: Cadaver dog evidence is admissible if (1) the handler was qualified to use the dog; (2) the dog was trained and accurate in identifying human remains; (3) circumstantial evidence corroborates the dog's identification; and (4) the evidence was not so stale or contaminated as to make it beyond the dog's competency to identify it. Evidence that dog alerted to the scent of human remains in a car trunk (notwithstanding that a body was not found) is admissible. Torrez v. State, 4D18-1277 (4/22/20)
https://www.4dca.org/content/download/634126/7205242/file/181277_DC05_04222020_103113_i.pdf

CADAVER DOG EVIDENCE: To be admissible, the scientific basis for dog scent evidence need not be explained before it can be admitted; rather, it must be shown to be reliable from experience. Torrez v. State, 4D18-1277 (4/22/20)

https://www.4dca.org/content/download/634126/7205242/file/181277_DC05_04222020_103113_i.pdf

CADAVER DOG EVIDENCE: For cadaver dog evidence to be admissible, each dog's ability and reliability should be shown on a case-by-case basis. Courts should not merely assume that any well-trained dog can detect specific odors, but instead should understand that a dog's abilities, whether innate or acquired, is a fact which may be proven by evidence like any other fact. Torrez v. State, 4D18-1277 (4/22/20)

https://www.4dca.org/content/download/634126/7205242/file/181277_DC05_04222020_103113_i.pdf

QUOTATION: "The evidence of the reliability of a dog's alert is 'readily understood by a jury.' Or as Bob Dylan once said, 'you don't need a weatherman to know which way the wind blows.'" Torrez v. State, 4D18-1277 (4/22/20)

https://www.4dca.org/content/download/634126/7205242/file/181277_DC05_04222020_103113_i.pdf

COMPETENCY: Defendant who, at sentencing, requested to speak to President Trump and stated: "Commander-in-chief, the witch hunt ends here, " and also wanted to speak to "the First Lady," and "a monster" called "the Madi Arella," is competent. Torrez v. State, 4D18-1277 (4/22/20)
https://www.4dca.org/content/download/634126/7205242/file/181277_DC05_04222020_103113_i.pdf

EVIDENCE-RELEVANCE: Photographs of Defendant in Honduras months before the murder are properly excluded as not being corraborative of this alibi. At best, the photographs' limited probative value was to corroborate minor, tangential details of the alibi witnesses' testimony. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

ARGUMENT-CREDIBILITY OF ALIBI WITNESSES: Prosecutor's argument that Defendant's cousin had an interest in how the case was decided because he was family is proper where he did not state that the story was concocted or suborned. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

OPINION: Officer's testimony that Defendant can "still be a principal to murder by what he did," is improper but not fundamental error. Officer may

not opine that Defendant is guilty under the principal theory. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

OPINION-PLANTED PREMISE: "Because the prosecutor's question presupposed that appellant actually committed the acts he confessed to, the officer's affirmative answer essentially told the jury that he believed appellant's actions made him a principal to murder." Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

FUNDAMENTAL ERROR: The doctrine of fundamental error should be applied only in rare cases. To constitute fundamental error, the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

COMPETENCY: Court may not find Defendant competent upon stipulation ("All right. Based upon the stipulation to the evaluation I do find the defendant to be competent at this time.") A defendant cannot stipulate to the ultimate issue of competency. Remanded for a nunc pro tunc evaluation of competency if possible. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

ARMED KIDNAPPING-WEAPON: A defendant may properly be convicted as a principal to the crime of armed kidnapping, even if he did not personally possess a weapon during the commission of the crime, but the charge is not reclassified to a life felony absent a jury finding that he personally carried a weapon. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

LIFE SENTENCING-MINOR-HOMICIDE: Life sentence minor convicted of homicide is lawful where Court made specific findings as to most, but not all, of section 921.1401(2)'s statutory factors where it is reasonably inferred that the Court made the appropriate analysis. Dubon v. State, 4D18-1867 (4/22/20)

https://www.4dca.org/content/download/634127/7205254/file/181867_DC05_04222020_090722_i.pdf

HVOSV: New sentencing hearing is required where Court failed to make any findings of dangerousness. A judicial finding of dangerousness does not violate Apprendi. Borrero v. State, 4D18-2118 (4/22/20)

https://www.4dca.org/content/download/634128/7205266/file/182118_DC13_04222020_091057_i.pdf

VOP: Defendant may not be found in violation of probation on the basis of grounds not alleged. Court improperly found Defendant guilty of possessing a home used for trafficking or sale of controlled substances where affidavit charged him with "owning, leasing, or renting" the home, which is a different criminal offense. Jenkins v. State, 4D19-392 (4/22/20)

https://www.4dca.org/content/download/634131/7205302/file/190392_DC05_04222020_091357_i.pdf

PUBLIC ASSISTANCE FRAUD: Public Assistance Fraud only requires the state to prove that the public assistance wrongfully received be of an aggregate value of $200 or more during a twelve consecutive month period, but not necessarily committed in each of twelve consecutive months. State v. Lauriston, 4D19-1573 (4/22/20)

https://www.4dca.org/content/download/634133/7205326/file/191573_DC13_04222020_092111_i.pdf

STATUTORY INTERPRETATION: Under the nearest-reasonable-referent doctrine, whether coming before or after what is modified, modifiers (adjectives, adverbs, prepositional phrases, restrictive clauses) should be read as modifying the nearest noun, verb, or other sentence element to which they can reasonably be said to pertain. State v. Lauriston, 4D19-1573 (4/22/20)

https://www.4dca.org/content/download/634133/7205326/file/191573_DC13_04222020_092111_i.pdf

POST CONVICTION RELIEF: A court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Giniebra v. State, 4D19-3501 (4/22/20)

https://www.4dca.org/content/download/634137/7205374/file/193501_DC05_04222020_093247_i.pdf

HEARSAY: In a homicide case alleging the Victim's overdose death was caused by heroin sold by Defendant, text message saying: "Damn, my boy got some fire, boy," which the Defendant tried to admit to show that Victim had used heroin earlier, is inadmissible hearsay. Jackson v. State, 1D18-1603 (4/21/20)

https://www.1dca.org/content/download/634075/7204617/file/181603_DC05_04212020_124035_i.pdf

EVIDENCE: Officer's testimony about his work aprehending violent offenders ("Most of them are - - if not all them are violent felons") is not impermissible evidence of Defendant's bad character. Cruz-Cedeno v. State, 1D19-2170 (4/21/20)

https://www.1dca.org/content/download/634076/7204629/file/192170_DC05_04212020_124311_i.pdf

SENTENCE-ORAL PRONOUNCEMENT: Defendant's claim that he is not subject to fifteen year mandatory minimum because it was not pronounced fails. Where the oral pronouncement is ambiguous but the record clearly shows the trial court's intent, the proper sentence is what the judge intended it to be. Johnson v. State, 1D19-2792 (4/21/20)

https://www.1dca.org/content/download/634077/7204641/file/192792_DC05_04212020_124800_i.pdf

UNANIMOUS VERDICT: Sixth Amendment's right to a jury trial requires a unanimous verdict. The Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally. "Wherever we might look to determine what the term 'trial by an impartial jury trial' meant at the time of the Sixth Amendment's adoption—whether it's the common law, state practices in the founding era, or opinions and treatises written soon afterward—the answer is unmistakable. A jury must reach a unanimous verdict in order to convict." Ramos v. Louisiana, No. 18–5924 (4/20/20)

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

QUOTATION: "[I]t's notable that neither Louisiana nor Oregon claims anything like the prospective economic, regulatory, or social disruption litigants seeking to preserve precedent usually invoke. No one, it seems,

has signed a contract, entered a marriage, purchased a home, or opened a business based on the expectation that, should a crime occur, at least the accused may be sent away by a 10-to-2 verdict."

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

QUOTATION: "[T]he dissent would have us discard a Sixth Amendment right in perpetuity rather than ask two States to retry a slice of their prior criminal cases. Whether that slice turns out to be large or small, it cannot outweigh the interest we all share in the preservation of our constitutionally promised liberties. Indeed, the dissent can cite no case in which the one-time need to retry defendants has ever been sufficient to inter a constitutional right forever." Ramos v. Louisiana, No. 18–5924 (4/20/20)

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

QUOTATION: "In the final accounting, the dissent's stare decisis arguments round to zero. We have an admittedly mistaken decision, on a constitutional issue, an outlier on the day it was decided, one that's become lonelier with time. In arguing otherwise, the dissent must elide the reliance the American people place in their constitutionally protected liberties, overplay the competing interests of two States, count some of those interests twice, and make no small amount of new precedent all its own." Ramos v. Louisiana, No. 18–5924 (4/20/20)
https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

QUOTATION: "On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. No one before us suggests that the error was harmless. . . In the end, the best anyone can seem to muster against Mr. Ramos is that, if we dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But

where is the justice in that? Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right." Ramos v. Louisiana, No. 18–5924 (4/20/20)

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

QUOTATION (SOTOMAYOR, CONCURRING): "The Constitution demands more than the continued use of flawed criminal procedures—all because the Court fears the consequences of changing course." Ramos v. Louisiana, No. 18–5924 (4/20/20)

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

STARE DECISIS-(SOTOMAYOR, CONCURRING): "While overruling precedent must be rare, this Court should not shy away from correcting its errors where the right to avoid imprisonment pursuant to unconstitutional procedures hangs in the balance." Ramos v. Louisiana, No. 18–5924 (4/20/20)

https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

STARE DECISIS: "The legal doctrine of stare decisis derives from the Latin maxim 'stare decisis et non quieta movere,' which means to stand by the thing decided and not disturb the calm. Ramos v. Louisiana, No. 18–5924 (4/20/20)
https://www.supremecourt.gov/opinions/19pdf/18-5924_n6io.pdf

MARSY'S LAW: Establishing a victim's legally cognizable interest in a criminal proceeding does not entitle a victim to party of record status. Court properly struck the Victim's counsel's Notice of Appearance, by which she sought full access to the Child's juvenile court file, in contravention of statute. "This opinion should not be misconstrued as declaring that Marsy's Law

does not support a victim's filing of some form of notice of election to exercise rights or of legal representation in a criminal proceeding. . ." L. T. v. State, 1D19-3032 (4/17/20)

https://www.1dca.org/content/download/633978/7203602/file/193032_DC02_04172020_132335_i.pdf

MARSY'S LAW: "To accept L.T.'s arguments requires this Court to interpret Marsy's Law as fundamentally altering the criminal proceedings by implication. Such an application is a vast departure from the traditional common law approach to criminal justice and without explicit text directing such a departure, we decline to do so." L. T. v. State, 1D19-3032 (4/17/20)

https://www.1dca.org/content/download/633978/7203602/file/193032_DC02_04172020_132335_i.pdf

WRIT OF PROHIBITION: Prohibition is not a corrective writ and cannot be used to reverse an order already entered. Prohibition may be invoked only in emergency cases to forestall an impending present injury where person seeking writ has no other appropriate and adequate legal remedy. L. T. v. State, 1D19-3032 (4/17/20)

https://www.1dca.org/content/download/633978/7203602/file/193032_DC02_04172020_132335_i.pdf

CERTIORARI: For a petition for writ of certiorari to be granted, Petitioner must show: 1) the trial court departed from the essential requirements of law; 2) resulting in a material injury that will affect the remainder of the proceeding; 3) which cannot be corrected by any other means. L. T. v. State, 1D19-3032 (4/17/20)

https://www.1dca.org/content/download/633978/7203602/file/193032_DC02_04172020_132335_i.pdf

MANDATORY MINIMUM-TRAFFICKING: Defendant is subject to fifteen year mandatory minimum for trafficking in cocaine even though the information does not allege any amount of cocaine qualifying him for a mandatory minimum sentence. The amount of trafficked cocaine is an element. The omission of the amount of drugs from an information charging an offense under section 893.135(1)(b)(1), (5) still leaves a defendant on notice that he faces some mandatory minimum penalty, so Defendant suffers no prejudice. Valera-Rodriguez v. State, 2D18-1794 (4/17/20)

AND: "And" is a "copulative conjunction." Valera-Rodriguez v. State, 2D18-1794 (4/17/20)

https://www.2dca.org/content/download/633918/7202881/file/181794_DC08_04172020_081945_i.pdf

VEHICULAR HOMICIDE-RECKLESS DRIVING: Testimony that Defendant's red mustang was "flying," "zooming," driving "like the Indiana Speedway," "driving in and out of traffic," and driving "too recklessly" while using turn lanes and bicycle lanes to pass traffic and side swiping a car before contributing to a fatal crash is reckless driving supporting a vehicular homicide conviction. State v. Desange, 2D18-5026 (4/17/20)

https://www.2dca.org/content/download/633921/7202917/file/185026_DC13_04172020_082415_i.pdf

MARCHMAN ACT: Court may not proceed with Marchman Act hearing in absence of the Petitioner, who failed to appear. J.C. v. State, 5D19-739 (4/17/20)

https://www.5dca.org/content/download/633947/7203243/file/190739_DC13_04172020_081340_i.pdf

HUH?: "[I]f the trial court intended to err, it failed to accomplish the error, and reached the correct result in spite of its errant intent. I would not require correction of a scrivener's error when doing so would result in substantive error." Haar v. State, 5D19-942 (4/17/20)

https://www.5dca.org/content/download/633948/7203255/file/190942_DC05_04172020_082643_i.pdf

CREDIT TIME SERVED-DOUBLE JEOPARDY: A trial court, on its own motion, may, at any time after a judgment and sentence becomes final, correct a ministerial error in sentencing documents that overreport the amount of jail credit and prison credit awarded to a defendant. Double Jeopardy principles do not bar a trial court from sua sponte correcting a defendant's jail credit to accurately reflect the amount of time previously served on a charge. Conflict Certified. Question Certified. Spear v. State, 5D19-1747 (4/17/20)

https://www.5dca.org/content/download/633950/7203279/file/191747_DC05_04172020_083552_i.pdf

STARE DECISIS: "We believe that the proper approach to stare decisis is. . .straightforward. In a case where we are bound by a higher legal authority -- whether it be a constitutional provision, a statute, or a decision of the Supreme Court -- our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield." Spear v. State, 5D19-1747 (4/17/20)

https://www.5dca.org/content/download/633950/7203279/file/191747_DC05_04172020_083552_i.pdf

COSTS: $3 cost assessed pursuant to s.318.18 must be stricken where Defendant was not convicted of any traffic violation. Rojas v. State, 5D19-1785 (4/17/20)

https://www.5dca.org/content/download/633951/7203291/file/191785_DC05_04172020_083809_i.pdf

COSTS: Court may not impose $100 cost of investigation for the Police Department where it was not requested, and the State offered no evidence to support the amount. Silsby v. State, 5D19-2088 (4/17/20)

https://www.5dca.org/content/download/633952/7203303/file/192088_DC08_04172020_084123_i.pdf

VOP-RESIDENCE: Defendant's father's statement to PO that the Defendant did not live in the house and that he had not seen him for 3 weeks does not establish that the Defendant had moved without permission (in fact, Defendant lived in a trailer on the property). Stratton v. State, 5D19-127 (4/17/20)

https://www.5dca.org/content/download/633953/7203315/file/192127_DC13_04172020_084344_i.pdf

COSTS: Court may not impose $3 cost assessed pursuant to section 318.18(11)(b) where Defendant was not charged with a traffic infraction. Mansell v. State, 5D19-2816 (4/17/20)

https://www.5dca.org/content/download/633956/7203351/file/192816_DC05_04172020_085007_i.pdf

COSTS: Court may not assess investigative in the absence of a request from the State, nor may it do so upon remand. Chivese v. State, 5D19-3107 (4/17/20)

https://www.5dca.org/content/download/633957/7203363/file/193107_DC05_04172020_085309_i.pdf

COSTS: Court may not assess $200 cost of prosecution nor a separate $200 charge for "Indigency Defense Cost" absent evidence that the costs exceeded $100. Chivese v. State, 5D19-3107 (4/17/20)

https://www.5dca.org/content/download/633957/7203363/file/193107_DC05_04172020_085309_i.pdf

COSTS: Court may not impose as a "standard" cost $100 investigative cost for the Police Department when such is not requested by the State or agency involved. Henry v. State, 5D19-3667 (4/17/20)

https://www.5dca.org/content/download/633960/7203406/file/193667_DC05_04172020_085534_i.pdf

POST CONVICTION RELIEF-JURISDICTION: THere is no concurrent jurisdiction for the lower court to rule on a motion for post conviction relief if the claims in a pending appeal and in a motion before the postconviction court are clearly related, such as here, where both motions allege that the victim of the crimes had either recanted or expressed serious misgivings about identifying Defendant as the perpetrator. Murphy v. State, 5D20-124 (4/17/20)

https://www.5dca.org/content/download/633961/7203418/file/200124_DC13_04172020_085743_i.pdf

DEATH PENALTY: Hurst v. Florida, which held that a jury must find the aggravating circumstance that makes the defendant death eligible, does not apply retroactively on collateral review. Ponticelli v. State, SC19-607 (4/16/20)

https://www.floridasupremecourt.org/content/download/633878/7202482/file/sc19-607.pdf

DUI-UNLAWFUL DETENTION: Plaintiff who blew a .000 with no indication of being impaired by drugs but who is not released from jail because of the Sheriff's eight hour hold policy has a §1983 civil rights claim for unlawful imprisonment and violation of Fourth Amendment. The continuation of even a lawful arrest violates the Fourth Amendment when the police discover additional facts dissipating their earlier probable cause. The fact that §316.193 permits holding a DUI arrestee for up to eight hours does not immunize the Sheriff's hold policy from constitutional scrutiny. Barnett v. MacArthur, No. 18-12238 (11th Cir. 4/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812238.pdf

DOUBLE JEOPARDY-PLEA AGREEMENT: Double Jeopardy does not preclude dual convictions for solicitation and traveling after solicitation not based on separate and distinct counts of solicitation when Defendant had entered a plea agreement when the charging document could have been drafted more broadly to include two or more solicitation counts. Newcombe v. State, 1D16-4769 (4/15/20)

https://www.1dca.org/content/download/633830/7201880/file/164769_DC05_04152020_133928_i.pdf

EVIDENCE-COLLATERAL CRIME: Evidence is admissible that a few months before the murder the Defendant had put a gun to the Victim's head. Hetherington v. State, 1D18-3747 (4/15/20)

https://www.1dca.org/content/download/633837/7201964/file/183747_DC05_04152020_135958_i.pdf

ATTORNEY-WITHDRAWAL: Defense counsel is not inevitably ineffective when a rift forms in the attorney-client relationship, particularly when the rift is caused by the defendant's own behavior. Court acted within its broad discretion in denying counsel's motion to withdraw after Defendant grieved

and threatened him. A finding that a defendant's behavior was knowingly obstructive should weigh heavily against any claim that the attorney-client relationship has diminished to such an extent that counsel is no longer effective. Beall v. State, 1D19-57 (4/15/20)

https://www.1dca.org/content/download/633838/7201976/file/190057_DC05_04152020_140348_i.pdf

CREDIT FOR TIME SERVED-FOREIGN JAIL: The trial court has discretion to award, and should consider awarding credit to defendants for time served in foreign jails while awaiting transfer to Florida, including foreign countries (here, Argentina). Chimale v. State, 1D19-1205 (4/15/20)

https://www.1dca.org/content/download/633840/7202000/file/191205_DC13_04152020_141102_i.pdf

NECESSITY DEFENSE-POSSESSION OF FIREARM BY FELON: Defendant is not entitled to JOA for Possession of Firearm by Felon where evidence is disputed as to whether the person upon whom the Defendant pulled a gun was coming toward him or walking away. An affirmative defense should not be resolved by a judgment of acquittal where the facts are disputed. Oliver v. State, 1D19-1206 (4/15/20)

https://www.1dca.org/content/download/633841/7202012/file/191206_DC05_04152020_141313_i.pdf

SEXUAL OFFENDERS-FAILURE TO REGISTER: Defendant does not qualify as a "sexual offender" under section 943.0435 where he has not yet been released from the sanction imposed in his underlying case, and therefore is not required to report and register. Defendant was not been released from the sanction because he had not yet paid the fine. Absurdity Doctrine does not apply. "We are mindful of the State's legislative complaint, arguing a defendant could take advantage of this provision by simply failing to ever pay a fine in order to delay having to comply with the

reporting requirements, but this is an issue for the legislature to address, and not the courts." State v. James, 2D18-2552 (4/15/20)

https://www.2dca.org/content/download/633764/7201065/file/182552_DC05_04152020_082802_i.pdf

DELINQUENCY-MOTION: Court lacks jurisdiction to amend assessment of costs when motion was not filed within 30 days. T.C. v. State, 2D19-965 (4/15/20)

https://www.2dca.org/content/download/633769/7201132/file/190965_DC08_04152020_084142_i.pdf

INEFFECTIVE ASSISTANCE-NELSON HEARING: Defendant is entitled to a Nelson hearing on claim that attorney for Defendant who had been committed under Jimmy Ryce Act had not contacted him for two years nor done anything on his case. Yzaquirre v. State, 2D19-1180 (4/15/20)

https://www.2dca.org/content/download/633770/7201144/file/191180_DC03_04152020_084526_i.pdf

MAILBOX RULE: Under the Mailbox Rule, a document filed by a pro se inmate is deemed filed at the moment in time when the inmate loses control over the document by entrusting its further delivery or processing to agents of the state. Court improperly dismissed Defendant's Motion for Post-Conviction relief as untimely where time stamp showed that Defendant's additional grounds for relief were mailed before the Court ruled on his original motion. Jefferson v. State, 2D19-3012 (4/15/20)

https://www.2dca.org/content/download/633782/7201288/file/193012_DC13_04152020_084843_i.pdf

DISCOVERY VIOLATION: Five day continuance of VOP hearing due to State's late disclosure of a witness cures any discovery violation, particularly

when counsel for Defendant failed to object and had an opportunity to interview the witness. D.G. v. State, 3D19-441 (4/15/20)

https://www.3dca.flcourts.org/content/download/633809/7201619/file/190441_DC05_04152020_104043_i.pdf

VOP: Court may not revoke probation for failure to pay without making a finding of ability to pay. Sherrod v. State, 4D18-2955 (4/15/20)

https://www.4dca.org/content/download/633742/7200794/file/182955_DC08_04152020_085333_i.pdf

HEARSAY: Detective's testimony reciting non-testifying physical description of the person whom she saw running from the alley and whom she believed to be the shooter was hearsay. Brown v. State, 4D18-3031 (4/15/20)

https://www.4dca.org/content/download/633743/7200806/file/183031_DC13_04152020_085521_i.pdf

OPENING THE DOOR: Defendant's cross-examination of witness as to whether he knew he had been identified as running from the crime scene does not open the door to hearsay that a different witness had identified the Defendant. The mere fact that testimony may be characterized as incomplete or misleading does not automatically trigger the admission of otherwise inadmissible evidence under the opening the door principle. Rather, the State must show a legitimate need to correct a false impression before resorting to inadmissible evidence, otherwise the principle becomes a mere pretext for the illegitimate use of inadmissible evidence. Brown v. State, 4D18-3031 (4/15/20)

https://www.4dca.org/content/download/633743/7200806/file/183031_DC13_04152020_085521_i.pdf

CHILD HEARSAY: Child touching himself while watching television is not corroborating evidence of sexual abuse. Child's pantomime of the alleged abuse in response to the mother's direction to show her what happened is hearsay and not corroboration. The interviewer's testimony that she found the child reliable and trustworthy is not corroborating evidence. Perrault v. Engle, 4D18-3458 (4/15/20)

https://www.4dca.org/content/download/633745/7200830/file/183458_DC13_04152020_085909_i.pdf

HEARSAY: Nonverbal conduct of a person if it is intended by the person as an assertion is hearsay. "[T]here is no mime exception to the hearsay rule." Perrault v. Engle, 4D18-3458 (4/15/20)

https://www.4dca.org/content/download/633745/7200830/file/183458_DC13_04152020_085909_i.pdf

VOIR DIRE-COURT'S COMMENT: During voir dire, Judge may not comment that the rules "will only allow the most reliable type of evidence to be considered by jurors." "[A]lthough this trial court remarked that it has made the objected-to statement within this introductory explanation for many years, that does not necessarily mean the statement was proper. Once a good faith objection has been raised, it is time to reconsider the statement from the objector's perspective to avoid the possibility of error." Jennings v. State, 4D18-3695 (4/15/20)

https://www.4dca.org/content/download/633747/7200854/file/183695_DC13_04152020_091832_i.pdf

BOLSTERING: Officer's testimony that he found the informant credible in the past is improper bolstering requiring a new trial. Jennings v. State, 4D18-3695 (4/15/20)

https://www.4dca.org/content/download/633747/7200854/file/183695_DC13_04152020_091832_i.pdf

EYE-ROLL: Informant: "I'm a brave soldier. According to the Geneva Convention I am an American fighter man. I protect my country from all enemies, foreign and domestic. Drug dealers are domestic enemies." Jennings v. State, 4D18-3695 (4/15/20)

https://www.4dca.org/content/download/633747/7200854/file/183695_DC13_04152020_091832_i.pdf

SPEEDY TRIAL: When a defendant files a motion for discharge, the Rule requires a court to conduct an inquiry under subsection 3.191(j), even if the 15-day recapture period has expired. Defendant is not entitled to discharge if he was unavailable for trial. "This interpretation of the rule prevents a defendant from having the benefit of a non-merits termination of the case where the defendant is a significant part of the reason that a case has not advanced to trial."No presumption of nonavailability attaches, but if the state objects to discharge and presents any evidence tending to show nonavailability, the accused must establish, by competent proof, availability during the term. Rivera Almodavar v. State, 4D19-620 (4/15/20)

https://www.4dca.org/content/download/633750/7200890/file/190620_DC13_04152020_092455_i.pdf

THREAT COMMUNICATION: Social media post of Defendant's picture with the caption "On my way! School shooter." is sufficient evidence of electronic threat to survive motion to dismiss. Threat need not be aimed at any particular person. Whether a written communication constitutes a threat depends on whether the message was sufficient to cause alarm in reasonable persons. Puy v. State, 4D19-724 (4/15/20)

https://www.4dca.org/content/download/633751/7200902/file/190724_DC05_04152020_092639_i.pdf

DOUBLE JEOPARDY-FLEEING AND ELUDING-VEHICULAR HOMICIDE: Dual convictions for vehicular homicide and fleeing to elude an officer

causing death violates the single homicide rule. Issue is currently pending before Florida Supreme Court. Eugene v. State, 4D19-992 (4/15/20)

https://www.4dca.org/content/download/633752/7200914/file/190992_DC05_04152020_092849_i.pdf

SPEEDY TRIAL: Defendant detained and taken to police department for interrogation for sexual battery was not arrested for speedy trial purposes, and thus was not entitled to speedy trial discharge six months later. The four factors for an arrest for speedy trial purposes are 1) whether the purpose or intent of the authority is to effect an arrest; 2) seizure of the person; 3) a communication by the arresting officer of an intention to effect an arrest; and 4) whether the person believes the arresting officer is there to arrest and detain him. The subjective intent of the officers, not the perception of the detainee controls. Actual communication of the intent to arrest is necessary. State v. Cheeks, 4D19-1408 (4/15/20)

https://www.4dca.org/content/download/633754/7200938/file/191408_DC13_04152020_093100_i.pdf

VICTIM'S RIGHTS: Victim has no rights under the CVRA (Crime Victim's Rights Act) where charges are not filed against suspect under a non-prosecution agreement (here, Jeffrey Epstein). Rights under the Act do not attach until criminal proceedings have been initiated against a defendant, either by complaint, information, or indictment. "It's not a result we like, but it's the result we think the law requires." In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201913843.pdf

STATUTORY INTERPRETATION: "If any section [of a law] be intricate, obscure or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections, and finding out the sense of one clause

by the words or obvious intent of the other." In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201913843.pdf

JUDICIAL SQUABBLING: "[W]ith respect to the dissent's charge. . . that we have 'dresse[d] up' what it calls a 'flawed statutory analysis' with 'rhetorical flourish'—well, readers can judge for themselves whose rhetoric is in fact more florid." In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201913843.pdf

DISSENT-J. Hull: "The Majority. . .eviscerates crime victims' CVRA rights and makes the Epstein case a poster-child for an entirely different justice system for crime victims of wealthy defendants." In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201913843.pdf

DEFINITIONS: The words "case," "underway," and "motion" debated and defined. In Re: Courtney Wild, No. 19-13843 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201913843.pdf

APPEAL-SENTENCING CONSIDERATIONS: The standard of review for determining the substantive reasonableness of a sentence is abuse of discretion. Consecutive sentences of 21 months (VOP) and 46 months (Illegal Reentry), consecutive to 8 year sentence for sexual battery (state case) are substantively reasonable. USA v. Gomez, No. 19-10609 (11th Cir. 4/14/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910609.pdf

NOTICE TO RECEIVE CHILD PORNOGRAPHY: Defendant's private, person-to-person text messages asking an individual he thought was a minor to send him sexually explicit pictures of herself cannot support a conviction for "mak[ing]" a "notice" to receive child pornography in violation of 18 U.S.C. § 2251(d)(1). USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

DEFINITION-"NOTICE": "Notice," as used in § 2251(d)(1) refers only to public communications, not to private, person-to-person text messages between two individuals, based on the doctrine of *noscitur a sociis* (words grouped in a list should be given related meanings.). USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

DEFINITION-"MAKE": "Make" means causing something to exist. When "make" is paired with a noun expressing the action of a verb, the resulting phrase is 'approximately equivalent in sense to that verb. USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

DEFINITION-"ANY": "Any" means "all." USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

CATCHY PHRASE: "Having said that, noscitur a sociis is no trump here." USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

CATCHY METAPHORS: "As our back-and-forth, tennis-match-ish analysis indicates, neither dictionary definitions nor the traditional canons of statutory interpretation neatly resolve the question we face here. . .To resolve this seemingly intractable ambiguity, therefore, we turn to a traditional interpretive tiebreaker: the rule of lenity." USA v. Caniff, No. 17-12410 (11th Cir. (4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

RULE OF LENITY: "The rule of lenity holds that if at the end of the interpretive road—having exhausted the applicable semantic and contextual canons of interpretation, and thus 'seiz[ed] everything from which aid can be derived,' [citation omitted] meaningful doubt remains about the application of a criminal statute to a defendant's conduct, then the doubt should be resolved in the defendant's favor. USA v. Caniff, No. 17-12410 (11th Cir. 4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

RULE OF LENITY: The rule of lenity is born of the principle that the law "must speak in language that is clear and definite if it is to render something a crime." USA v. Caniff, No. 17-12410 (11th Cir. 4/9/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712410.op2.pdf

HARASSING A VICTIM: The crime of harassing a victim does not require a finding of substantial emotional distress. The definition of "harass" in the crime of harassing a victim of a crime is different from the definition of "harass" in the stalking statute. Numerous calls to the victim to get her to change her story and to have the charges dropped is harassment. Risech v. State, 1D18-2415 (4/9/20)

https://www.1dca.org/content/download/633623/7199494/file/182415_DC05_04092020_140501_i.pdf

HARASS-DEFINITION: In the absence of an internal definition in a statute, a court may consider the dictionary definition of a word to ascertain its meaning in everyday usage. The dictionary meaning of the term "harass" is to "exhaust, fatigue," "to annoy persistently," or "to create an unpleasant or hostile situation by uninvited and unwelcome verbal or physical conduct." Risech v. State, 1D18-2415 (4/9/20)

https://www.1dca.org/content/download/633623/7199494/file/182415_DC05_04092020_140501_i.pdf

PEREMPTORY CHALLENGE-JUROR: Where counsel announces that "this is an acceptable jury to the defense," he waives any objection to the seating of the juror he had unsuccessfully sought to strike. Risech v. State, 1D18-2415 (4/9/20)

https://www.1dca.org/content/download/633623/7199494/file/182415_DC05_04092020_140501_i.pdf

PEREMPTORY CHALLENGE-JUROR-RACE: A white male is a member of the distinct racial group for purposes of a Melbourne inquiry. Defense counsel's explanation for striking a juror that he "simply did not like him from the responses that he provided" is not a race-neutral reason for a peremptory strike. Risech v. State, 1D18-2415 (4/9/20)

https://www.1dca.org/content/download/633623/7199494/file/182415_DC05_04092020_140501_i.pdf

FIRST DEGREE MURDER: Premeditation is a fully formed conscious purpose to kill that may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act he is

about to commit and the probable result of that act. Hudson v. State, 1D18-2604 (4/9/20)

https://www.1dca.org/content/download/633624/7199506/file/182604_DC05_04092020_140645_i.pdf

VEHICULAR HOMICIDE: Vehicular homicide requires a willful and wanton disregard for the safety of persons or property. The repeated instances of illegal as well as reckless driving maneuvers within a short distance from and short time before the crash is sufficient evidence to sustain the conviction for vehicular homicide. Thrift v. State, 1D19-998 (4/9/20)

https://www.1dca.org/content/download/633626/7199530/file/190998_DC05_04092020_141141_i.pdf

DOUBLE JEOPARDY: A habitual felony offender sentence is not a new substantive offense, and therefore does not violate double jeopardy and does not require a jury determination. Lyons v. State, 1D19-2136 (4/9/20)

https://www.1dca.org/content/download/633627/7199542/file/192136_DC05_04092020_141329_i.pdf

CRIMINAL PUNISHMENT CODE-LOWEST PERMISSIBLE SENTENCE: The lowest permissible sentence (LPS) should be imposed on each count only if it exceeds collective statutory maximum, not each individual statutory maximum. Question Certified; Is the lowest permissible sentence an individual minimum sentence and not a collective minimum sentence when there are multiple convictions of sentencing on a single scoresheet. Fruehwirth v. State, 5D19-297 (4/9/20)

https://www.5dca.org/content/download/633586/7199020/file/190297_DC08_04092020_083053_i.pdf

COSTS: Court lacks the authority to impose costs and fines in criminal cases unless such imposition is specifically authorized by statute and the statutory authority is cited in the defendant's written disposition order. Costs may be imposed on remand. Charles v. State, 5D19-530 (4/9/20)

https://www.5dca.org/content/download/633587/7199032/file/190530_DC05_04092020_083439_i.pdf

COSTS: Court may not impose investigative costs in the absence of request from the State. Conley v. State, 5D19-1794 (4/9/20)

https://www.5dca.org/content/download/633588/7199044/file/191794_DC05_04092020_083755_i.pdf

POST CONVICTION RELIEF: Absent Absent attachment of records showing the Defendant is not entitled to relief, he is entitled to an evidentiary hearing on claimant counsel was ineffective for failing to investigate an entrapment defense. Prosecutor's summary of the controlled buys on recordings is not record evidence. Comments made by attorneys are not evidence. Dunnell v. State, 5D19-2195 (4/9/20)

https://www.5dca.org/content/download/633590/7199068/file/192195_DC08_04092020_084241_i.pdf

STATUTE OF LIMITATIONS-CONSPIRACY: Where there is a conviction for a multi-object conspiracy, the evidence needs only to be sufficient to sustain a conviction for any one of the charged objectives. USA v. Maher, No. 19-10074 (4/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910074.pdf

STATUTE OF LIMITATIONS-CONTINUING OFFENSE: The five year statute of limitations does not bar prosecution for unlawfully receiving and retaining government property because the offence--retaining--is continuing.

The date of receipt of the fraudulently TARP grant money more than five years before prosecution does not bar prosecution for the continuing offense. The statute of limitations commenced running on the date that the Defendant last retained the grant money. USA v. Maher, No. 19-10074 (11th Cir. 4/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910074.pdf

ARMED CAREER CRIMINAL ACT: Under the elements clause of the ACCA a "violent felony" has as an element the use, attempted use, or threatened use of physical force against the person of another. "Use" requires active employment of violent physical force. Making terroristic threats is not a violent felony for purposes of the ACCA enhancement because not all acts constituting the crime involve use of physical force against another. USA v. Oliver, No. 17-15565 (11th Cir. 4/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715565.reh.pdf

CATEGORICAL APPROACH: "Categorical approach" and "Modified categorical approach" explained. "Means" and "alternative elements" distinguished. USA v. Oliver, No. 17-15565 (11th Cir. 4/8/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715565.reh.pdf

VOP-POSSESSION OF PORNOGRAPHY: Probation may not be revoked for the underlying offense of possession of child pornography based on the Defendant's possession of a Penthouse magazine, absent evidence that Penthouse is relevant to the defendant's deviant behavior pattern, and the affidavit only charged a violation of Condition 21, rather than a violation of Condition 33 (which prohibits possession of any pornography regardless of whether it is relevant to the Defendant's deviant behavior). Bryan v. State, 2D19-2331 (4/8/20)

https://www.2dca.org/content/download/633482/7197820/file/192331_DC13_04082020_085444_i.pdf

STATEMENTS OF DEFENDANT: After Miranda warnings, when Defendant, asked if she wished to make a statement says "No," "No," and "Definitely not," and investigator persisted in asking "clarifying questions" until Defendant gave in, the resulting statements should have been suppressed. Court's conclusion that the investigator was "understandably confused" was erroneous. Kramer v. State, 4D18-88 (4/8/20)

https://www.4dca.org/content/download/633439/7197296/file/180088_DC13_04082020_084832_i.pdf

DOCTOR-PATIENT PRIVILEGE: Defendant did not waive her doctor-patient privilege by saying that her doctor had upped her prescription level. Doctor-Patient privilege applies to prescriptions, regardless whether the Defendant's blood sample contained the prescribed medications and that the privileged evidence was admitted in rebuttal. There is no rebuttal/impeachment exception to the Doctor-Patient privilege. Kramer v. State, 4D18-88 (4/8/20)

https://www.4dca.org/content/download/633439/7197296/file/180088_DC13_04082020_084832_i.pdf

DOUBLE JEOPARDY: One cannot be found guilty of both DUI manslaughter and vehicular homicide for a single death. Kramer v. State, 4D18-88 (4/8/20)

https://www.4dca.org/content/download/633439/7197296/file/180088_DC13_04082020_084832_i.pdf

SENTENCING-DUI- DEFERRED SENTENCE: Unclear whether Court is required to immediately sentence the Defendant upon a conviction for DUI

manslaughter/vehicular homicide based on s. 948.01, which prohibits deferring sentence. "It appears that the trial court believed that 'defer' equated to the grant of a continuance for sentencing. . .We are aware that the trial court's interpretation is widespread in the county and circuit courts. . .But courts and practitioners have expressed frustration with the application of that interpretation. . .The issue is an interesting one [which might need to be certified] to the Florida Supreme Court under different circumstances." Kramer v. State, 4D18-88 (4/8/20)

https://www.4dca.org/content/download/633439/7197296/file/180088_DC13_04082020_084832_i.pdf

RESENTENCING: Resentencing entitles the defendant to a de novo sentencing hearing with the full array of due process rights. Resentencing proceedings must be a clean slate. Defendant is entitled to another resentencing hearing where statements made by the trial court and the prosecutor at the hearing patently evidence their belief that the only purpose of remand was to introduce evidence that Dean qualified as a Prison Releasee Reoffender. Dean v. State, 4D18-2406 (4/8/20)

https://www.4dca.org/content/download/633440/7197308/file/182406_DC13_04082020_085047_i.pdf

COMPETENCY: Court must make a written order finding the Defendant competent; clerk's notes are not sufficient. Drennan v. State, 4D19-857 (4/8/20)

https://www.4dca.org/content/download/633443/7197344/file/190857_DC08_04082020_085621_i.pdf

COMPETENCY: Court must make an independent determination of competency before the trial court could proceed to a violation of probation hearing. Court may not rely upon the stipulation of the parties. Bruni v. State, 4D19-885 (4/8/20)

https://www.4dca.org/content/download/633444/7197356/file/190885_DC05_04082020_085834_i.pdf

SEARCH AND SEIZURE-DOG SNIFF: Officers may conduct a dog sniff of a stopped car after the Defendant is removed and arrested for driving with a suspended license, and if the dog alerts, may search the car. Gant does not preclude the search because the dog sniff was not a search. State v. Fredericks, 4D19-2407 (4/8/20)

https://www.4dca.org/content/download/633447/7197392/file/192407_DC13_04082020_093816_i.pdf

JURISDICTION-RESENTENCING ORDER-MINOR: Court lacks jurisdiction to rescind its order granting Defendant a resentencing hearing based on the Supreme Court's change in the law. Washington v. State, 4D19-2537 (4/8/20)

https://www.4dca.org/content/download/633448/7197404/file/192537_DC13_04082020_094035_i.pdf

POST CONVICTION RELIEF-MAILBOX RULE: Where Defendant provided unrebutted proof that his motion for postconviction relief was timely filed, we find that the postconviction court erred. A pro se inmate's filing is presumed to be filed on the date the inmate lost control over the document by entrusting it to prison officials. Simmons v. State, 1D18-4441 (4/7/20)

https://www.1dca.org/content/download/633369/7196657/file/184441_DC13_04072020_132319_i.pdf

ATTEMPTED SEXUAL BATTERY: Defendant properly convicted of attempted sexual battery where he put the victim in a tight bear hug while grabbing her breasts and buttocks while trying to throw her on the bed after

she had unambiguously refused his sexual advances by slapping his hand away and telling him no. Hernandez-Paz v. State, 1D19-1362 (4/7/20)

https://www.1dca.org/content/download/633372/7196693/file/191362_DC05_04072020_133019_i.pdf

JUVENILE-COMMITMENT: Court erred in committing the Child to a non-secure residential program without first requesting a commitment level recommendation from DJJ. O.G. v. State, 1D19-2683 (4/7/20)

https://www.1dca.org/content/download/633373/7196705/file/192683_DC08_04072020_133402_i.pdf

INEFFECTIVE APPELLATE COUNSEL-PIPELINE: Appellate counsel was not ineffective for for failing to raise an issue which had not yet been decided and which would not apply retroactively. Even if the case on which Defendant relied (Montgomery) had applied retroactively, error, if any, would have been harmless since Supreme Court receded from Montgomery. Toliver v. State, 1D19-3842 (4/7/20)

https://www.1dca.org/content/download/633375/7196729/file/193842_DA08_04072020_133955_i.pdf

SEARCH AND SEIZURE-AUTOMOBILE STOP: When an officer lacks information negating an inference that the owner is the driver of the vehicle, and the registered owner has a suspended licence, the stop is reasonable. The fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of the officer's inference that the owner is the driver. Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

COMMON SENSE: "Such a standard defies the 'common sense' understanding of common sense." Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

REASONABLE SUSPICION: "[R]easonable suspicion is an 'abstract' concept that cannot be reduced to 'a neat set of legal rules,'". . . and we have repeatedly rejected courts' efforts to impose a rigid structure on the concept of reasonableness." Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

DWLS (J. Kagan, concurring): "Several studies have found that most license suspensions do not relate to driving at all; what they most relate to is being poor." Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

QUOTATION (J. Sotomayor, dissenting): "For starters, the majority flips the burden of proof. It permits Kansas police officers to effectuate roadside stops whenever they lack 'information negating an inference' that a vehicle's unlicensed owner is its driver. . .This has it backwards: The State shoulders the burden to supply the key inference that tethers observation to suspicion." Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

QUOTATION (J. Sotomayor, dissenting): "The majority today has paved the road to finding reasonable suspicion based on nothing more than a demographic profile. . .That has never been the law, and it never should be. The majority's justifications for this new approach have no foundation in fact or logic." Kansas v. Glover, No. 18–556 (4/6/20)

https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

CHILD HEARSAY: Written order on child hearsay is not required; oral findings are sufficient. Young v. State, 1D18-4483 (4/3/20)

https://www.1dca.org/content/download/633246/7195189/file/184483_DC05_04032020_141929_i.pdf

CREDIT FOR TIME SERVED: The proper remedy for a prisoner to pursue in challenging a sentence-reducing credit determination by the Department, where the prisoner has exhausted administrative remedies and is not alleging entitlement to immediate release, is a mandamus petition filed in circuit court. Key v. State, 1D19-2267 (4/3/20)

https://www.1dca.org/content/download/633252/7195261/file/192267_DC05_04032020_142926_i.pdf

COMPETENCY: Where, upon remand,the trial court cannot determine whether Mr. Sutton was competent at the time he entered his plea, Defendant must be allowed to withdraw his plea, if he is competent and so chooses. "We caution Mr. Sutton that, should he withdraw his plea, the State can proceed against him on the original charges." Sutton v. State, 2D17-4073 (4/3/20)

https://www.2dca.org/content/download/633195/7194589/file/174073_DC13_04032020_081148_i.pdf

COSTS: Court may not impose costs rendered without specifying the authorizing ordinance. Schwanger v. State, 2D18-4892 (4/3/20)

https://www.2dca.org/content/download/633196/7194601/file/184892_DC05_04032020_081546_i.pdf

RESENTENCING-MINOR-LIFE SENTENCE: Court may rescind its order for resentencing of a minor sentenced to life with possibility of parole, who was granted an order for resentencing under R.3.800, but for whom the hearing never occurred. Because R. 3.800 was a nonfinal order, court

retains inherent authority to reconsider and rescind it. Because minors sentenced to life with possibility of parole are no longer subject to Graham, Court may deny the Defendant a resentencing hearing. Rules 3.800 and 3.850 distinguished. Conflict certified. Morgan v. State, 2D18-4940 (4/3/20)

https://www.2dca.org/content/download/633197/7194613/file/184940_DC05_04032020_081759_i.pdf

DOUBLE JEOPARDY: Double Jeopardy precludes multiple convictions for Resisting several officers without violence where the efforts to resist her arrest were part of a continuous episode. Struggling from the hotel to the patrol car is a single episode. Bruzzese v. State, 5D18-3945 (4/3/20)

https://www.5dca.org/content/download/633215/7194867/file/183945_DC13_04032020_081942_i.pdf

DEATH PENALTY: Whether the sufficiency and weight of the aggravating factors outweigh the mitigating circumstances are not determinations subject to the beyond a reasonable doubt standard of proof. Bright v. State, SC17-2244 (4/2/20)

https://www.floridasupremecourt.org/content/download/633094/7193451/file/sc17-2244.pdf

ARGUMENT-DEATH PENALTY: "Your decision should not be influenced by feelings of prejudice or by racial or ethnic bias or sympathy. That's not a basis for your decision, that he was abused, et cetera. No. You cannot have sympathy for that," is not an invitation to ignore mitigation but rather an explanation "that the evidence of abuse is properly considered as mitigation, and that their decisions may not be based upon sympathy." Bright v. State, SC17-2244 (4/2/20)

https://www.floridasupremecourt.org/content/download/633094/7193451/file/sc17-2244.pdf

ARGUMENT-DEATH PENALTY: "And by the way,. . ., you're never compelled to actually vote for death. But. . .this is the case that you should in terms of following the law," is not an assertion that it is a juror's duty under the law to vote for a sentence of death. . .because the prosecutor "did not not imply that they were required by law to do so." Bright v. State, SC17-2244 (4/2/20)

https://www.floridasupremecourt.org/content/download/633094/7193451/file/sc17-2244.pdf

ARGUMENT-DEATH PENALTY: Prosecutor's comment that the mitigation must be proven to a reasonable certainty was a misstatement of law but not fundamental error. Absent a contemporaneous objection, the error cannot result in a new sentencing hearing. Bright v. State, SC17-2244 (4/2/20)

https://www.floridasupremecourt.org/content/download/633094/7193451/file/sc17-2244.pdf

DEATH PENALTY-HAC: A murder may be characterized as Heinous, Atrocious, and Cruel where the Victim perceived imminent death, if only for a few seconds. Bright v. State, SC17-2244 (4/2/20)

https://www.floridasupremecourt.org/content/download/633094/7193451/file/sc17-2244.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity where trial court's finding that clear and convincing evidence overcame the Defendant's self-defense claim is supported by competent substantial evidence. So long as there is competent substantial evidence to support the trial court's findings, the reviewing court must yield. Wilson v. State, 1D19-2996 (4/2/20)

https://www.1dca.org/content/download/633176/7194321/file/192996_DC02_04022020_134858_i.pdf

DISCOVERY VIOLATION: Trial testimony about additional circumstances after the alleged crime which are not a material change from her deposition testimony is not a discovery violation. Earnest v. State, 1D18-5244 (4/1/20)

https://www.1dca.org/content/download/633068/7193177/file/185244_DC05_04012020_140829_i.pdf

JURY INSTRUCTION-LESSER INCLUDED: Court did not err in not instructing the jury on battery as a permissive lesser included offense of false imprisonment where the information did not allege all the statutory elements of the permissive lesser included offense (battery) nor was there evidence adduced at trial to establish all of the elements. Earnest v. State, 1D18-5244 (4/1/20)

https://www.1dca.org/content/download/633068/7193177/file/185244_DC05_04012020_140829_i.pdf

MOTION FOR NEW TRIAL-PRESERVATION: Defendant is not entitled to a new trial on claim that Court applied the wrong standard in denying his Motion for New Trial where he argued that the Court erred in sustaining the State's objection to Asked and Answered and erred in not granting Defendant's Motion for Judgment of Acquittal. Defendant did not preserve the issue of whether the Court failed to apply the correct standard of whether the verdict is contrary to the weight of the evidence when Defendant neither objected nor sought clarification. Barr v. State, 1D19-398 (4/1/20)

https://www.1dca.org/content/download/633069/7193189/file/190398_DC05_04012020_141013_i.pdf

APPEALS: Appellate court must summarily affirm, rather than dismiss, frivolous appeals taken after entry of plea. Cannon v. State, 1D19-1776 (4/1/20)

https://www.1dca.org/content/download/633071/7193213/file/191776_DC

05_04012020_141342_i.pdf

SEARCH AND SEIZURE-PRETEXT: Court may not suppress evidence based on its conclusion that the stop was pretextual. State v. D.M.M., 1D19-2293 (4/1/20)

APPEAL-JURISDICTION-VENUE: Where case is transferred to a different venue in a different district(here, from Polk County, Second District to Alachau County, First District), any appeal mst be filed in the venue to which venue had been transferred. Stephens v. State, 2D18-810 (4/1/20)

PLEA WITHDRAWAL: Once it becomes clear that a defendant and his counsel are in an adversarial relationship with respect to the defendant's entry of his plea, the defendant is entitled to the appointment of conflict-free counsel to represent him and to assist him on the motion to withdraw plea. Defendant's counsel's assertion that he could not present any legal argument in support of the motion to withdraw plea, left Defendant "in the untenable position of having to orally try and articulate a facially sufficient motion to withdraw his plea at his sentencing hearing without the assistance of counsel . . .[and] evinced a sufficiently adversarial relationship such that the trial court should have appointed. . . conflict-free counsel." Franks v. State, 2D19-811 (4/1/20)

JURY DELIBERATIONS: During deliberations, jury may view videos admitted into evidence outside the presence of the the judge and attorneys. No error in allowing jury to view in private the video which was admitted with muted sound (because of inadmissible comments by the officer) where there is no showing that the juror(s) unmuted the sound. Wright v. State, 3D18-1633 (4/1/20)

CARRYING CONCEALED FIREARM: State must present evidence of Defendant's licensure or lack of a license to carry a concealed firearm. Harmon v. State, 3D18-2410 (4/1/20)

https://www.3dca.flcourts.org/content/download/632977/7192040/file/182410_DC08_04012020_100824_i.pdf

JUDGE-DISQUALIFICATION: Judge who is caught watching videos on website of Defendant's expert witness immediately before a sentencing hearins and allowed Defendant only one day to file a motion to disqualify is disqualified. "Here, in addition to the extra-record research conducted by the trial court, the unexplained and contradictory imposition of a same-day, less than twelve-hour deadline for filing a written motion to disqualify would cause any reasonably prudent person to fear that he would not receive a fair and impartial resentencing." Sawyer v. State, 3D20-356 (4/1/20)

https://www.3dca.flcourts.org/content/download/632986/7192148/file/200356_DC03_04012020_103206_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW: A warrantless blood draw of an unconscious person, incapable of giving actual consent, is lawful based on the presumption that an unconscious defendant has consented, but Defendant must be given an opportunity to demonstrate that his blood would not have been drawn if police had not been seeking BAC information and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. Good summary of contradictory holdings and analyses. McGraw v. State, 4D17-232 (4/1/20)

https://www.4dca.org/content/download/633048/7192943/file/170232_DC13_04012020_093001_i.pdf

JURY INSTRUCTION-LESSER INCLUDED: Failure to give an instruction on a lesser included offense is not fundamental error. Where Defendant, charged with Attempted First Degree Murder, was convicted of the lesser included offence of Attempted Second Degree Murder, and where the Court erroneously failed to instruct on Attempted Manslaughter by Act, error is not fundamental, so Defendant (who had not objected) is not entitled to relief. The fundamental error test for jury instructions cannot be met where there was no error in the jury instruction for the offense of conviction and there is

no claim that the evidence at trial was insufficient to support that conviction. Roberts v. State, 4D17-3877 (4/1/20)

https://www.4dca.org/content/download/633049/7192955/file/173877_DC05_04012020_093212_i.pdf

JURY PARDON: There is no fundamental right to jury instructions that facilitate partial jury nullification. Roberts v. State, 4D17-3877 (4/1/20)

https://www.4dca.org/content/download/633049/7192955/file/173877_DC05_04012020_093212_i.pdf

STAND YOUR GROUND: Retroactive application of the Stand Your Ground statutory amendment does not apply to any hearing completed before the effective date of the statutory amendment. Sparks v. State, 4D18-307 (4/1/20)

https://www.4dca.org/content/download/633061/7193099/file/180307_DC05_04012020_093621_i.pdf

EVIDENCE-RELEVANCE-GUN: Where the evidence at trial does not link a seized gun to the crime charged, the gun is inadmissible in evidence. Where Co-Defendant shot Victim and the Defendant was charged as an accessory, evidence that the Defendant later had a gun in his possession whch was not used in the shooting. Jeanbart v. State, 4D18-2726 (4/1/20)

https://www.4dca.org/content/download/633051/7192979/file/182726_DC13_04012020_094550_i.pdf

PRO SE ARGUMENT: Court improperly sustained State's "facts not in evidence" objections to Defendant's pro se arguments that he lacked knowldedge that co-Defendant would shoot victim where the matters were either in evidence or supported by reasonable inferences from the record.

Jeanbart v. State, 4D18-2726 (4/1/20)

https://www.4dca.org/content/download/633051/7192979/file/182726_DC13_04012020_094550_i.pdf

VOP-DANGEROUSNESS-JURY FINDING: In VOP, the Sixth Amendment does not require a jury to make a finding of dangerousness when that finding does not change the range of punishment authorized by the original jury verdict or plea of guilty. Section 948.06(8)(e) does not change the range of punishments but merely prevents the judge from deviating from again imposing probation. Hollingsworth v. State, 4D18-3705 (4/1/20)

https://www.4dca.org/content/download/633052/7192991/file/183705_DC05_04012020_094738_i.pdf

ATTORNEY: "[T]he trial court was highly critical of appellant's attorney for filing the motion [arguing Apprendi/Alleyne in a VOP sentencing case]. . .[A]ppellant's attorney acknowledged that he was arguing a position contrary to Souza. . .but was advocating in good faith a change in the law. The attorney was acting in full compliance with his professional responsibility. . .Appellate counsel acted in good faith and did not deserve the court's criticism. Hollingsworth v. State, 4D18-3705 (4/1/20)

https://www.4dca.org/content/download/633052/7192991/file/183705_DC05_04012020_094738_i.pdf

CONDITIONAL RELEASE: Conditional release statute does not violate the double jeopardy, due process, or ex post facto clauses. There is no entitlement to credit for time spent on conditional release. Napier v. Florida Parole Commission, 4/1/20)

https://www.4dca.org/content/download/633060/7193087/file/200065_DC05_04012020_095944_i.pdf

MARCH 2020

POST CONVICTION RELIEF-DEATH PENALTY-INEFFECTIVE ASSISTANCE: Defendant suffered no prejudice from counsel's failure to present penalty phase mitigation beyond showing a photograph of a baseball field and arguing that Jesus, Socrates, Alfred Dreyfus, Jeffrey Dahmer, the Scottsboro Boys, and Charles Manson were victims of arbitrarily imposed death penalties. Sealey v. Warden, Georgia Diagnostic Prison, No. 18-10565 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810565_.pdf

POST CONVICTION RELIEF-DEATH PENALTY-INEFFECTIVE ASSISTANCE: Defendant suffered no prejudice from counsel's failure to adequately investigate and present evidence of his low IQ and mental illness where there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances. Sealey v. Warden, Georgia Diagnostic Prison, No. 18-10565 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810565_.pdf

POST CONVICTION RELIEF-DEATH PENALTY-INEFFECTIVE ASSISTANCE: Defendant suffered no prejudice from counsel's failure to present mitigating evidence from Defender's childhood-- the only evidence presented was a picture of a baseball field-- where the evidence which could have been presented was contradictory and, if presented would not have raised a reasonable probability sufficient to undermine confidence in the outcome. Sealey v. Warden, Georgia Diagnostic Prison, No. 18-10565 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810565_.pdf

POST CONVICTION RELIEF-DEATH PENALTY-INEFFECTIVE ASSISTANCE:

Defendant suffered no prejudice justifying a new sentencing hearing where Court denied a motion to continue for one day in order to present a mitigation witness when the evidence is insufficient to show that the witness's testimony would have changed the result. Sealey v. Warden, Georgia Diagnostic Prison, No. 18-10565 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810565 .pdf

SHACKLES: Defendant is not entitled to a new trial where he was shackled, but no objection is lodged nor is there a showing of prejudice. "We admonish district courts, though, that in the typical case, the record should reflect why restraints are necessary. These security measures should not be the norm, and it is not overly burdensome to articulate why they are needed." USA v. Moore, No. 17-14370 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714370.pdf

JURORS: Defendant is not entitled to a new trial where two jurors during deliberations asked to speak to Judge and expressed concern for their personal safety in the event of acquittal where no evidence showed that the jurors' personal safety concerns affected their impartiality and the jury ultimately reached a split verdict. Proper procedure prescribed for similar situations. USA v. Moore, No. 17-14370 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714370.pdf

INDICTMENT-POSSESSION OF FIREARM BY FELON: Indictment does not have to allege that the Defendant know he was a felon. "Reading this knowledge requirement into the statute while also holding that indictments tracking the statute's text are insufficient would be incongruous. Although the government may be well advised to include such *mens rea* allegations in future indictments, that language is not required to establish jurisdiction. . . "The absence of an element of an offense in an indictment is not

tantamount to failing to charge a criminal offense against the United States." USA v. Moore, No. 17-14370 (11th Cir. 3/31/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714370.pdf

DEPORTATION: Defendant's conviction for aggravated battery constitutes an aggravated felony that made him ineligible for asylum, cancellation of removal, and withholding of removal. Aggravated battery involves physical force under the elements clause definition of an aggravated felony. Lukaj v. U.S. Attorney General, No. 19-13073 (11th Cir. 3/30/20)

CORPUS DELICTI: Corpus delicti prohibits the use of Child's confession that he had possessed the firearm and ammunition found in the bushes in which he had hidden himself. A person's confession to a crime is not sufficient evidence of a criminal act where no independent direct or circumstantial evidence exists to substantiate the occurrence of a crime. The corpus delicti of possession of a firearm by a minor requires evidence that a minor had possessed the firearm. T.C.C. v. State, 2D18-4664 (3/27/20)

https://www.2dca.org/content/download/632651/7188716/file/184664_DC13_03272020_083814_i.pdf

DOUBLE JEOPARDY-UNIT OF PROSECUTION: Defendant can be convicted of only one count of unlawfully intercepting a wire communication regardless of the number of individuals in the illegally recorded phone conversation The allowable unit of prosecution is not determined by the number of individuals whose voices were unlawfully recorded on a single telephone call. Weeks v. State, 5D18-3612 (3/27/20)

https://www.5dca.org/content/download/632689/7189199/file/183612_DC08_03272020_081843_i.pdf

SELF-INCRIMINATION-PASSWORD: Error, if any in requiring the Defendant to disclose the password to his cell phone, is not reversible error when no evidence from the search of the phone was used at trial or in the investigation leading to trial. Love v. State, 5D19-413 (3/27/20)

https://www.5dca.org/content/download/632691/7189223/file/190413_DC05_03272020_082251_i.pdf

SENTENCING-CONSIDERATIONS-LACK OF REMORSE: Court erred in considering Defendant's actions in preparing a defense, such as filing a motion to suppress, as evidence of lack of remorse in imposing sentence. Defendant is entitled to a new sentencing hearing with a different judge. Court impermissibly equated her exercise of her constitutional rights as a lack of remorse. A trial court may not base sentencing decisions on the fact that a defendant exercised his or her right to plead not guilty and proceed to trial. Bici v. State, 5D19-798 (3/27/20)

https://www.5dca.org/content/download/632694/7189259/file/190798_DC08_03272020_082753_i.pdf

COSTS: Court may not impose $100 cost for the FDLE Operating Trust Fund without orally pronouncing it, but may reimpose it on remand. Rolfe v. State, 5D19-1151 (3/27/220)

https://www.5dca.org/content/download/632695/7189271/file/191151_DC08_03272020_083028_i.pdf

SELF DEFENSE-NON-DEADLY FORCE: Court erred by refusing to give a jury instruction on use of nondeadly force in a case of aggravated battery from a knife wound during an argument about how to disassemble a bedframe. Use of a knife does not summarily equate to the use of deadly force as a matter of law. Croft v. State, 5D19-2266 (3/27/20)

https://www.5dca.org/content/download/632699/7189319/file/192266_DC13_03272020_084952_i.pdf

SELF DEFENSE-UNINTENDED VICTIM: Where self-defense is a viable defense to the charge of battery on an intended victim, the defense also operates to excuse the battery on the unintended victim. Croft v. State, 5D19-2266 (3/27/20)

https://www.5dca.org/content/download/632699/7189319/file/192266_DC13_03272020_084952_i.pdf

COSTS: Court may not impose investigatory costs unless requested by the State or agency involved. O'Neal v. State, 5D19-3048 (3/27/29)

https://www.5dca.org/content/download/632701/7189343/file/193048_DC05_03272020_085359_i.pdf

POST CONVICTION RELIEF-WRONG CASE NUMBER: Where defendant twice erroneously filed a motion for postconviction relief under the wrong case number (the case had been Nolle processed and filed under a co-defendant's case number), Court must give the Defendant another opportunity to amend. Woods v. State, 5D19-3216 (3/27/20)

https://www.5dca.org/content/download/632702/7189355/file/193216_DC13_03272020_085555_i.pdf

POST CONVICTION RELIEF: Court may not dismiss Motion for Post Conviction Relief as successive without attaching portions of the court record supporting its ruling. Bradley v. State, 5D20-391 (3/27/20)

https://www.5dca.org/content/download/632703/7189367/file/200391_DC13_03272020_085754_i.pdf

DEPORTATION-MODIFIED CATEGORICAL APPROACH: Conviction for sexual intercourse with a female without her consent does not qualify as an aggravated felony when the record does not clearly establish whether the offense was forcible rape or statutory rape. The Court may not rely on a criminal complaint that contained a sworn statement from the accuser to conclude that Defendant pleaded guilty to forcible rape. George v. U.S. Attorney General, No. 18-14000 (11th Cir 3/26/20)

MODIFIED CATEGORIGORICAL APPROACH: The modified categorical approach is only a tool that helps implement the categorical approach when a defendant was convicted of violating a divisible statute. It retains the categorical approach's central feature: a focus on the elements, rather than the facts, of a crime. George v. U.S. Attorney General, No. 18-14000 (11th Cir 3/26/20)

DISORDERLY CONDUCT: Words alone--including profanity regarding police officers--cannot support probable cause for disorderly conduct. Alston v. Swarbrick, No. 18-10791 (11th Cir. 3/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810791.pdf

RESISTING WITHOUT VIOLENCE: Declining to cooperate or provide useful information in the investigation of another, is not probable cause for obstruction. "His failure to answer Officer Swarbrick's questions—and even

his profanity-laced response—were not even arguably sufficient to support probable cause under § 843.02. . . See id. Because Officer Swarbrick lacked arguable probable cause to arrest Alston under this (or any other) statute, Alston's false arrest claim must proceed." Alston v. Swarbrick, No. 18-10791 (11th Cir. 3/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810791.pdf

EXCESSIVE FORCE: A three-to-five minute period during which officer continuously used pepper spray on Plaintiff's face while he lay on the ground helplessly is a cognizable claim of excessive force. Alston v. Swarbrick, No. 18-10791 (11th Cir. 3/26/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201810791.pdf

APPEALS-VOP: Revocation of probation reversed where the affidavit of violation of probation is not included in the record on appeal, unless upon remand the Court finds the missing affidavit. Jones v. State, 1D18-4362 (3/26/20)

https://www.1dca.org/content/download/632636/7188526/file/184362_DC13_03262020_135913_i.pdf

JURY INSTRUCTION-LESSER INCLUDED: Defendant who was charged with aggravated animal cruelty for stomping on puppies is not entitled to an instruction on the permissive lesser-included offense of simple animal cruelty where the information did not allege all the elements of the lesser offense. Johnson v. State, 1D18-4528 (3/26/20)

https://www.1dca.org/content/download/632638/7188550/file/184528_DC08_03262020_140529_i.pdf

LIFE SENTENCE: Graham does not apply to offenders eighteen years of age or older. Tedder v. State, 1D18-5292 (3/26/20)

https://www.1dca.org/content/download/632640/7188574/file/185292_DC05_03262020_140941_i.pdf

DNA TESTING: Defendant is not entitled to postconviction DNA testing after he was convicted on the basis of DNA removed from the victim's teeth when she bit his hand during his sexual assault of her. Holmes v. State, 1D19-969 (3/26/20)

https://www.1dca.org/content/download/632641/7188586/file/190969_DC05_03262020_141217_i.pdf

COMPETENCY: Case remanded for a retroactive determination of competency where Court had ordered counsel to schedule a competency hearing based on conflict and competency reports but no hearing was ever held. Kellond v. State, 1D19-1288 (3/26/20)

https://www.1dca.org/content/download/632643/7188610/file/191288_DC13_03262020_142136_i.pdf

SEARCH AND SEIZURE: Officer may not detain a suspect who was identified by a citizen informant as the person who tried to turn the knob of the home known not to be his and who declined to talk to the officer. Racial incongruity or a person being allegedly out of place in a particular area, cannot constitute a finding of reasonable suspicion of criminal behavior. Fields v. State, 2D18-5067 (3/25/20)

https://www.2dca.org/content/download/632479/7186750/file/185067_DC13_03252020_082540_i.pdf

LOITERING AND PROWLING: Trying to turn a door handle of a house is not loitering and prowling. A vaguely suspicious presence is insufficient to establish the first element of the crime. Fields v. State, 2D18-5067 (3/25/20)

https://www.2dca.org/content/download/632479/7186750/file/185067_DC13_03252020_082540_i.pdf

POST CONVICTION RELIEF: Court lacks jurisdiction to rescind its order for a postconviction Graham resentencing based on Michel because the Defendant's motion had been filed under R 3.850 and the State had not appealed, rather than under R 3.800, which would've been a nonfinal nonappealable order. Croft v. State, 2D18-5109 (3/25/20)

https://www.2dca.org/content/download/632480/7186762/file/185109_DC13_03252020_082737_i.pdf

PLEA AGREEMENT-ENFORCEMENT: Because there is no procedure for a motion to enforce a plea agreement, such a claim must be filed pursuant to rule 3.850. Bennett v. State, 2D19-79 (3/25/20)

https://www.2dca.org/content/download/632481/7186774/file/190079_DC05_03252020_082848_i.pdf

SEARCH AND SEIZURE-PAT DOWN: Officer may not pat down Defendant who was in the house of a robbery suspect absent any evidence that the Defendant have been involved in the robbery or any other criminal activity. General concerns of officer safety do not justify a pat-down. Pat-down searches performed routinely or for safety purposes only are constitutionally impermissible. Townsend v. State, 2D19-2235 (3/25/20)

https://www.2dca.org/content/download/632498/7186978/file/192235_DC13_03252020_084224_i.pdf

DISSOLUTION OF MARRIAGE-JURISDICTION: Court properly dismissed petition for dissolution of marriage where both parties primarily resided in Denmark. Robinson v. Christiansen, 3D19-1709 (3/25/20)

https://www.3dca.flcourts.org/content/download/632466/7186580/file/191709_DC05_03252020_102440_i.pdf

SENTENCING-CONSIDERATIONS: Court improperly considered charges for which the Defendant had been acquitted in imposing sentence ("You were charged and went to trial, although you were acquitted at trial of another incident with two counts of resisting an officer. . .and you knew that. I didn't know that until today." Kimbrough v. State, 3D19-1173 (3/25/20)

https://www.3dca.flcourts.org/content/download/632463/7186544/file/191173_DC13_03252020_101233_i.pdf

PLEA-SENTENCING: "[Defendant] argues that the trial court erred in entering a conviction and sentence on count 43, as her plea did not encompass that count." Because the count was included on the scoresheet, resentencing is required. Green v. State, 4D18-2853 (3/25/20)

https://www.4dca.org/content/download/632449/7186373/file/182853_DC08_03252020_090407_i.pdf

GUIDELINES-SCORESHEET-DISPUTE: Merely objecting to the sufficiency of proof of a prior offense on a scoresheet, rather than disputing its accuracy or truth, does not obligate the State to introduce corroborating evidence of the conviction. Woods v. State, 4D18-3778 (3/25/20)

https://www.4dca.org/content/download/632451/7186397/file/183778_DC05_03252020_090601_i.pdf

COMMITMENT-JUVENILE: Court may only depart from the DJJ's recommendation if it (1) articulates an understanding of the respective characteristics of the opposing restrictiveness levels, and (2) explains why one level is better suited. Where PDR did not provide an alternate commitment recommendation, a second PDR would have been required to determine the appropriate level of commitment. F.L.P. v. State, 4D19-362 (3/25/20)

https://www.4dca.org/content/download/632453/7186421/file/190362_DC13_03252020_095920_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for misadvising him to reject plea offer in attempted murder case because he could only be convicted of battery for trying to drown his girlfriend. Mook v. State, 4D19-1422 (3/25/20)

https://www.4dca.org/content/download/632457/7186469/file/191422_DC08_03252020_093337_i.pdf

POST CONVICTION RELIEF: Court improperly dismissed Defendant's Amended Motion for Post Conviction reilef as untimely without having ruled on his motion for extensin of time. Miller v. State, 4D19-2347 (3/25/20)

https://www.4dca.org/content/download/632459/7186493/file/192347_DC13_03252020_093551_i.pdf

RESTITUTION: Where the loss is of a unique artifact for which market value cannot fully compensate, courts must use replacement cost in determining restitution. "[E]vidence must show that the restitution will make the victim whole—nothing more and nothing less." Where a precise valuation of a stolen item might not be possible, a court does not abuse its discretion in making a reasonable estimate of the loss, but the Court may not

accept the victim's valuation without adequate support for its assessment. Case remanded for a new restitution hearing. USA v. Goldman, No. 18-13282 (11th Cir. 3/25/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813282.pdf

SENTENCE-SUBSTANTIVE REASONABLENESS: Although the district court must take into account each of the § 3553(a) factors, it need not discuss them specifically; rather, the court's acknowledgement that it has considered the §3553(a) factors will suffice. USA v. Goldman, No. 18-13282 (11th Cir. 3/25/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813282.pdf

PUN-ISHMENT: "Enter Defendant-Appellant Jarred Alexander Goldman (sometimes truth can be stranger than fiction). . .[who] stole Gold Bar 27 from the Museum. This appeal requires us to consider the proper standard—we might call it the gold standard—for determining, for purposes of ordering restitution. . ." "Today we take this golden opportunity to reaffirm that. . ." "Silence in this situation is not golden." USA v. Goldman, No. 18-13282 (11th Cir. 3/25/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201813282.pdf

HOBBS ACT ROBBBERY-CRIME OF VIOLENCE: Hobbs Act robbery does not qualify as a "crime of violence" under the Sentencing Guidelines, but a Florida robbery conviction does. Hobbs Act robbery does not satisfy §4B1.2(a)'s elements clause. Under the categorical approach, the Hobbs Act robbery statute–which can be violated with threats of force to person or property--is broader than the Guidelines' elements clause definition. USA v. Eason, No. 16-17796 (11th Cir. 3/24/20)

DANGEROUS SEXUAL FELONY OFFENDER-NOTICE: Information does not need to allege that the Defendant qualifies as a Dangerous Sexual Felony Offender (50 year mandatory minimum) where he had been advised before trial that he so qualified and the jury made the factual finding which met the statutory requirements. Goldson v. State, 1D18-3080 (3/24/20)

https://www.1dca.org/content/download/632410/7186020/file/183080_DC02_03242020_140234_i.pdf

MEDICAID FRAUD: Court erred in finding Fla. Stat. 409.920(2)(a)2., which criminalizes knowingly making unauthorized Medicaid claims unconstitutional as an invalid delegation of legislative authority and a violation of due process for vagueness. State v. Scharlepp, 1D18-4833 (3/24/20)

https://www.1dca.org/content/download/632411/7186032/file/184833_DC13_03242020_140623_i.pdf

APPEAL-PLAIN ERROR: Appellate Court erred by refusing to review the Defendant's unpreserved argument that Federal Court improperly imposed a consecutive sentence to a pending state court case on the ground that unpreserved factual errors by the District Court are not subject to review. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention. "Put simply, there is no legal basis for the Fifth Circuit's practice of declining to review certain unpreserved factual arguments for plain error." Davis v. United States, No. 19–5421 (US S. Ct., 3/23/20)

INSANITY DEFENSE: Process Clause does not require States to provide an insanity defense that acquits a defendant who could not "distinguish right from wrong" when committing his crime—or, otherwise put, does not requires States to adopt the moral-incapacity test from M'Naghten. Thorough history

of theories of insanity defense. Kahler v. Kansas, No. 18–6135 (US Sct. 3/23/20).

https://www.supremecourt.gov/opinions/19pdf/18-6135_j4ek.pdf

INSANITY DEFENSE: "Defining the precise relationship between criminal culpability and mental illness involves examining the workings of the brain, the purposes of the criminal law, the ideas of free will and responsibility. It is a project demanding hard choices among values, in a context replete with uncertainty, even at a single moment in time. And it is a project, if any is, that should be open to revision over time, as new medical knowledge emerges and as legal and moral norms evolve. Which is all to say that it is a project for state governance, not constitutional law." Kahler v. Kansas, No. 18–6135 (US Sct. 3/23/20).

https://www.supremecourt.gov/opinions/19pdf/18-6135_j4ek.pdf

QUOTATION: "No insanity rule in this country's heritage or history was ever so settled as to tie a State's hands centuries later." Kahler v. Kansas, No. 18–6135 (US Sct. 3/23/20).

https://www.supremecourt.gov/opinions/19pdf/18-6135_j4ek.pdf

QUOTATION (BREYER, DISSENTING): "The criminal law does not adopt, nor does it perfectly track, moral law. . . But the criminal law nonetheless tries in various ways to prevent the distance between criminal law and morality from becoming too great." Kahler v. Kansas, No. 18–6135 (US Sct. 3/23/20).

https://www.supremecourt.gov/opinions/19pdf/18-6135_j4ek.pdf

SEARCH AND SEIZURE: Search is lawful where officer unlawfully entered the curtilage of a home, then, to find a convenient place to urinate, wandered into the open field by an abandoned hog barn (outside the curtilage) and saw inside the murdered victim's purse. Because officer entered area by the hog pen to pee rather than to investigate, search is legal. State v. Ware, 1D18-1443 (3/20/20)

https://www.1dca.org/content/download/632290/7184719/file/181443_DC13_03202020_153828_i.pdf

RESENTENCING-PRESENCE OF DEFENDANT: Defendant's presence is not required for the Court to strike conviction which had previously been vacated, and a handwritten correction is a purely ministerial act for which the Defendant's presence is not required. Copeland v. State, 1D19-645 (3/20/20)

https://www.1dca.org/content/download/632292/7184743/file/190645_DC05_03202020_154314_i.pdf

LIFE SENTENCE-HOMICIDE-MINOR: Court abused its discretion in sentencing to life in prison, with review after 25 years, a 17 year old girl who shot and killed a 77 year old man who had sexually abused her for five years. Court failed to meaningfully assess Defendant's background and remarkable rehabilitation. Court improperly considered Defendant's years of sexual molestation as evidence of "a loving family, with open physical affection, walks, and trips to the park." J.M.H. v. State, 2D17-3721 (3/20/20)

https://www.2dca.org/content/download/632207/7183727/file/173721_DC13_03202020_082507_i.pdf

TIMELINESS-MAILED SERVICE: Defendant's Motion for rehearing is timely when filed seventeen days after the date of service of the order denying his 3.850 motion. Time limit for a motion for rehearing is 15 days, but by rule Defendant is allowed an additional three days if the order is served by mail or e-mail (this rule has since been rescinded). Cox v. State, 2D17-3822 (3/20/20)

https://www.2dca.org/content/download/632208/7183739/file/173822_DC13_03202020_083005_i.pdf

SENTENCING-MINOR-HOMICIDE: Forty-year mandatory minimum sentence with review after twenty-five years for a minor convicted of murder is not unconstitutional under the Eighth Amendment. Court improperly sentenced Defendant to a sentence lower than forty year mandatory minimum. State v. Moran, 2D18-942 (3/20/20)

https://www.2dca.org/content/download/632209/7183751/file/180942_DC08_03202020_083157_i.pdf

SNAP OUT MEMORANDUM: A "snap out" memorandum of sentence form does not qualify as a rendered sentence that can be attached to a commitment. "Simply put, the Department of Corrections has no obligation to regard a local snap-out form as a proper sentencing document in lieu of the standard, statewide judgment and sentence form." Pittman v. State, 2D18-4199 (3/20/20)

https://www.2dca.org/content/download/632211/7183775/file/184199_DC05_03202020_083444_i.pdf

CONTEMPT-DIRECT: Defendant cannot be found in direct criminal contempt when he refuses in court to enter passcode to his phone, claiming

he forgot it, and Court heard testimony from officer that he had previously refused to enter the code without claiming forgetfulness. Whenever a judge must rely on additional evidence not directly observed by the trial judge, the proceeding is no longer direct criminal contempt but becomes indirect criminal contempt. State v. Ware, 2D18-4318 (3/20/20)

https://www.2dca.org/content/download/632212/7183787/file/184318_DC13_03202020_083611_i.pdf

VOP-SEX OFFENDER: Defendant cannot be found to have violated sex offender probation where the porn on his found was not related to the deviant behavior of his conviction. The statutory definition of lewd and lascivious molestation is insufficient to establish the Defendant's deviant behavior. Alvarez v. State, 2D19-565 (3/20/20)

https://www.2dca.org/content/download/632213/7183799/file/190565_DC13_03202020_083959_i.pdf

APPEAL-DEFERENCE TO TRIAL COURT: "Because the pictures are in the record and we can view them for ourselves, we are not bound by any trial court findings with respect to them." Alvarez v. State, 2D19-565 (3/20/20)

https://www.2dca.org/content/download/632213/7183799/file/190565_DC13_03202020_083959_i.pdf

WILLIAMS RULE: In case of sexual molestation by fondling the Child under her underwear, the State is entitled to present Williams Rule evidence of Defendant fondling a child under her bathing suit three years before. The similarity test has been abrogated in child molestation cases, and there is no heightened similarity requirement where the molestations occur outside of the familial context. State v. Hall, 2D19-2092 (3/20/20)

https://www.2dca.org/content/download/632215/7183823/file/192092_DC03_03202020_083842_i.pdf

DOWNWARD DEPARTURE: Court may not enter a downward departure sentence based on his conclusion that the Victim and her family law attorney were using the criminal proceeding to gain leverage in Family Court. State v. Griffith, 5D19-1405 (3/20/20)

https://www.5dca.org/content/download/632240/7184144/file/191405_DC13_03202020_080740_i.pdf

DISCOVERY VIOLATION: State's failure to disclose four witnesses' statements, a statement from the victim, the identities of four Marion Youth Academy staff members who are present immediately after the battery and six eyewitnesses constituted a discovery violation. Court's failed to determine whether the violation was (1) inadvertent or willful, (2) trivial or substantial, and (3) whether it procedurally prejudiced the opposing party's ability to prepare for trial. Defense counsel's inability to depose or interview all witnesses is cognizable prejudice. Frazier v. State, 5D19-1671 (3/20/20)

https://www.5dca.org/content/download/632241/7184156/file/191671_DC13_03202020_080833_i.pdf

SPEEDY TRIAL: Because State's discovery violation prevented the Defendant from being adequately prepared for trial before expiration of the speedy trial., The Defendant must be discharged. Discharge is required when State's discovery violations prejudiced defendant and are uncorrectable within speedy trial period. Frazier v. State, 5D19-1671 (3/20/20)

https://www.5dca.org/content/download/632241/7184156/file/191671_DC13_03202020_080833_i.pdf

DEATH PENALTY: Death penalty is lawful where jury unanimously found the existence of at least one statutory aggravating circumstance beyond a reasonable doubt. Hurst has been receded from (Poole). Jury's verdict that the Defendant was guilty of armed kidnapping and sexual battery is sufficient legal basis for the trial court to find that the Defendant murdered the victim while committing or attempting to commit kidnapping and sexual battery. Boyd v. State, SC18-1589 (3/19/20)

https://www.floridasupremecourt.org/content/download/632116/7182780/file/sc18-1589.pdf

DEATH PENALTY: Pursuant to Poole, there is no Hurst v. Florida or Hurst v. State error when a unanimous jury finding establishes the existence of at least one statutory aggravating circumstance beyond a reasonable doubt. A jury must find the aggravating circumstance that makes the defendant death eligible, but the jury is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision. Defendant's contemporaneous convictions for sexual battery and robbery establish the aggravators of sexual battery and that the killing was for pecuniary gain. Reed v. State, SC19-714 (3/19/20)

https://www.floridasupremecourt.org/content/download/632117/7182792/file/sc19-714.pdf

EVIDENCE-COLLATERAL CRIMES: Controlled phone call between the Defendant in the victim alluding to sexual acts occurring after the victim had turned 16 (not acts charged in the information) is unduly prejudicial and not

inextricably intertwined. "Not only do we conclude that the discussion of sex after the victim had turned sixteen was unfairly prejudicial, but we also conclude that the discussion was not inextricably intertwined with the charged crimes." An erroneous admission of irrelevant collateral crime evidence is presumed harmful. New trial required. Woolman v. State, 2D17-4459 (3/18/20)

https://www.2dca.org/content/download/632027/7181804/file/174459_DC13_03182020_082629_i.pdf

SEX OFFENSE-FAMILIAL OR CUSTODIAL AUTHORITY-JURY INSTRUCTION: Teachers are not, by reason of their chosen profession, custodians of their students at all times, particularly when school is recessed for the summer. "Custodial authority" requires both custody and control, and it does not allow for an alternative of a duty or obligation to care for another. Jury instruction that the defendant could be found guilty if he had "custody or control" is a fundamentally erroneous misstatement of law. Woolman v. State, 2D17-4459 (3/18/20)

https://www.2dca.org/content/download/632027/7181804/file/174459_DC13_03182020_082629_i.pdf

STAND YOUR GROUND: Amendment to SYG changing the burden of proof is a procedural change in the law and applies to all Stand Your Ground immunity hearings conducted on or after the statute's effective date (June 9, 2017). "Because Nelson's immunity hearing was held on June 9, 2017, the same day the amendment became effective, he is entitled to a new immunity hearing conducted under the amended statute." Nelson v. State, 2D18-39 (3/18/20)

https://www.2dca.org/content/download/632029/7181828/file/180039_DC13_03182020_083914_i.pdf

VOP: In revoking probation, Court must enter a written order listing the specific conditions the defendant violated. Ford v. State, 2D18-4106 (3/18/20)

https://www.2dca.org/content/download/632032/7181864/file/184106_DC05_03182020_085811_i.pdf

VOP-HEARSAY: Probation may not be revoked based on allegation that the Defendant moved without permission based on the hearsay statements of the Defendant's neighbor and girlfriend that he had moved. The fact that the probation officer was unable to make contact with Defendant at his home does not prove that he had moved. Bailey v. State, 2D19-1395 (3/18/20)

https://www.2dca.org/content/download/632035/7181900/file/191395_DC13_03182020_090450_i.pdf

SEARCH AND SEIZURE-CONSTRUCTIVE POSSESSION: Child is not in constructive possession of narcotics in the kitchen just because he is closest to it. Mere proximity to contraband does not provide probable cause to arrest the person closest to that contraband. Because the Defendant was unlawfully arrested for possessing the cocaine on the stove, the marijuana found in his pocket incident to the unlawful arrest must be suppressed. J.J. v. State, 3D18-398 (3/18/20)

https://www.3dca.flcourts.org/content/download/632006/7181545/file/180398_DC13_03182020_100329_i.pdf

FACTUAL FINDINGS-DEFERENCE: Appellate court need not defer to the trial court's factual findings when it has the benefit of seeing the video recording itself. "Our deference to the trial court's superior vantage point

regarding credibility findings and the live testimony of witnesses is not fully applicable to our consideration of the video." J.J. v. State, 3D18-398 (3/18/20)

https://www.3dca.flcourts.org/content/download/632006/7181545/file/180398_DC13_03182020_100329_i.pdf

CONSTRUCTIVE POSSESSION: Cocaine in open view on the kitchen stove is not in the constructive possession of the closest person to it. Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of additional evidence. J.J. v. State, 3D18-398 (3/18/20)

https://www.3dca.flcourts.org/content/download/632006/7181545/file/180398_DC13_03182020_100329_i.pdf

VALID PRESCRIPTION DEFENSE-JURY INSTRUCTIONS: Any error in failing to give the valid prescription jury instruction is harmless where the Defendant is convicted of the lesser included offense of purchasing oxycodone for which the defense is not available. Further, any failure to give the valid prescription defense is harmless error where the evidence supporting the defense "was not merely weak but flimsy." Potter v. State, 3D18-324 (3/18/20)

https://www.3dca.flcourts.org/content/download/632005/7181533/file/180324_DC05_03182020_100113_i.pdf

WITHHOLD OF ADJUDICATION-APPEAL: Although the Court may not withhold adjudication on a first-degree felony, the error in withholding adjudication is not fundamental, and so the State may not appeal unless it had made a contemporaneous objection. "The State's failure to

contemporaneously object at sentencing, and its near acquiescence to [Defendant's request that the judge withhold adjudication, require us to affirm the court's ruling." State v. Ervin, 4D19-626 (3/18/20)

https://www.4dca.org/content/download/632020/7181720/file/190626_DC05_03182020_093230_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for leading him to believe that hearsay was inadmissible in VOP hearings. Mathieu v. State, 4D19-1029 (3/18/20)

https://www.4dca.org/content/download/632021/7181732/file/191029_DC08_03182020_093416_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for misadvising him that the Court cannot impose consecutive sentences following the VOP because the original sentences were concurrent. Mathieu v. State, 4D19-1029 (3/18/20)

https://www.4dca.org/content/download/632021/7181732/file/191029_DC08_03182020_093416_i.pdf

PLEA-WITHDRAWAL: When a defendant files a pro se motion to withdraw plea alleging that his attorney misadvised him, misrepresented the terms of the plea, or coerced him into entering a plea, an adversarial relationship exists and the trial court should not strike the pleading as a nullity. Court should either permit counsel to withdraw or discharge counsel and appoint conflict-free counsel to represent the defendant. Graves v. State, 4D19-1040 (3/18/20)

https://www.4dca.org/content/download/632084/7182502/file/191040_DC05_03182020_115447_i.pdf

RESTITUTION: Defendants' (husband and wife) argument that they should be assessed restitution in some "minimal amount," rather than $740,000, and then be allowed to "live their lives" as "a happily married couple" is rejected. USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

RESTITUTION-JOINT AND SEVERAL LIABILITY: Principles of joint and several liability may not apply where only one partner profited from the scheme, but here, where the husband and wife team were both actively involved in the scheme, joint and several liability applies. USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

FRAUD-IMMIGRATION APPLICATIONS: Where Defendants operated a scheme of preparing fraudulent immigration applications without their clients' knowledge of the false statements therein, to the detriment of their clients, the sentencing guideline for fraud (§2B1.1) should be applied, not the guideline for falsifying immigration forms (§2L2.1). USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

SPLITTING HAIRS: "Although the Cingaris zoom in on the phrase 'specifically covered' and contrast it with the commentary's use of 'more aptly covered,' these phrases are connected to distinct nouns: another offense established must be 'specifically covered' elsewhere, and the conduct

'involv[ed]' with that offense must be 'more aptly covered.'" USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

STATUTORY INTERPRETATION-RULE OF LENITY: Whether the rule of lenity can be applied to the non-statutory advisory Sentencing Guidelines is an open question. "The rule of lenity applies only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what Congress intended." USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

QUOTATION: "Ordinarily, criminals are not so lucky as to receive a reduced sentence for piling on more criminal activity." USA v. Pazos Cingari, No. 17-12262 (11th Cir 3/17/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712262.pdf

CONSPIRACY TO COMMIT HOBBS ACT ROBBERY: Conspiracy to commit Hobbs Act Robbery is not a crime of violence. Conspiracy to commit Hobbs Act Robbery cannot serve as the sole predicate offense for a conviction for using a firearm during a crime of violence under 18 USC § 924(c). Hossain v. USA, No. 17-13135 (11th Cir. 3/13/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201713135.pdf

EMERGENCY COURT CANCELLATION: All grand jury proceedings, jury selection proceedings, and criminal and civil jury trials are suspended during the period beginning Monday, March 16, 2020, through Friday, March 27,

2020, or as provided by subsequent order. In Re: Covid-19 Emergency Procedures in the Florida State Courts, AOSC20-13 (3/13/20)

https://www.floridasupremecourt.org/content/download/631744/7178881/AOSC20-13.pdf

AMENDMENTS TO RULES-EMERGENCY: Chief Justice given authority to take the actions necessary to respond to a public health emergency affecting the courts. In Re: Amendments to Fla.R.Jud.Admin. 2.205, SC20-346 (3/13/20)

https://www.floridasupremecourt.org/content/download/631740/7178825/file/sc20-346.pdf

EIGHT AMENDMENT-MINOR-LIFE SENTENCE: A juvenile offender's sentence does not implicate Graham, and therefore Miller, unless it meets the threshold requirement of being a life sentence or the functional equivalent of a life sentence. Forty year sentence committed by a minor is not a de facto life sentence. Prior precedent receded from or distinguished as dicta. Previous holdings that resentencing is required for all juvenile offenders serving a sentence longer than twenty years without the opportunity for early release based on demonstrated maturity and rehabilitation are receded from. Pedroza v. State, SC18-964 (3/13/20)

https://www.floridasupremecourt.org/content/download/631586/7177049/file/sc18-964.pdf

STARE DECISIS: "Any statement of law in a judicial opinion that is not a holding is dictum." Pedroza v. State, SC18-964 (3/13/20)

https://www.floridasupremecourt.org/content/download/631586/7177049/file/sc18-964.pdf

ARGUMENT-LACK OF KNOWLEDGE: New trial is required where prosecutor misstated the law by saying that "Nowhere does it say that there is a fourth element in there that. . . says that [Defendant] knowingly possessed hydromorphone." Knowledge of the illicit nature of the controlled substance requires knowledge of the specific substance that was charged. Lack of knowledge of the illicit nature may be asserted as an affirmative defense. If the defendant asserts this defense then the defendant does not have to prove a lack of knowledge of the illicit nature of the controlled substance. Instead, the State has the burden to prove beyond a reasonable doubt that the defendant knew the illicit nature of the substance. Acevedo v. State, 2D18-844 (3/13/20)

https://www.2dca.org/content/download/631675/7178021/file/180844_DC13_03132020_081910_i.pdf

LIFE SENTENCE-MINOR-JURY: Defendant who is a minor at the time of his crime is not entitled to a jury determination as to whether a life sentence for a term of years is appropriate. Grimshaw v. State, 2D18-1609 (3/13/20)

https://www.2dca.org/content/download/631676/7178033/file/181609_DC05_03132020_082008_i.pdf

CHILD NEGLECT: Defendant does not commit second-degree child neglect by hesitating to call an ambulance to see if the child gets better when child is found unresponsive. There was no evidence that Defendant's

conduct after the incident caused great bodily harm, permanent disability, or permanent disfigurement. Jones v. State, 2D18-2306 (3/13/20)

https://www.2dca.org/content/download/631678/7178057/file/182306_DC08_03132020_083426_i.pdf

VOP: Defendant cannot be found to have violated probation "for the criminal offense of Violation of Probation" "Given the circularity of the allegation. . .[w]e are. . compelled to reverse the trial court's orders of revocation as to that condition." Dileonardo v. State, 2D18-3169 (3/13/20)

https://www.2dca.org/content/download/631674/7178009/file/183169_DC13_03132020_081658_i.pdf

VOP: Defendant cannot be found to have violated probation based on ammunition found in his apartment which had belonged to his recently deceased uncle, with whom he had been living. Dileonardo v. State, 2D18-3169 (3/13/20)

https://www.2dca.org/content/download/631674/7178009/file/183169_DC13_03132020_081658_i.pdf

BOND-RETURN OF BOND: Court has no legal authority to hold the Defendant's passport after the discharge of the appearance bond. Beato v. State, 5D19-1399 (3/13/20)

https://www.5dca.org/content/download/631729/7178683/file/191399_DC13_03132020_091059_i.pdf

APPEAL-VOLUNTARINESS OF PLEA: Defendant cannot raise on appeal his lack of competency to enter a plea without first attempting to withdraw the plea. Campbell v. State, 5D19-2054 (3/13/20)

https://www.5dca.org/content/download/631732/7178719/file/192054_DA08_03132020_092119_i.pdf

POST CONVICTION RELIEF-DEATH PENALTY: On facts, counsel was not ineffective for advising the Defendant to plead guilty and waive a penalty phase jury. Sanchez-Torres v. State, SC19-211 (3/12/20)

https://www.floridasupremecourt.org/content/download/631587/7177061/file/sc19-211.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to file a motion to suppress confession based on detectives' implied threat to arrest the Defendant's mother for tampering with evidence. "[I]nforming Ms. Torres she could be arrested for tampering with evidence was not a coercive means of extracting Sanchez-Torres's confession because the detectives did in fact have probable cause to arrest Ms. Torres." Sanchez-Torres v. State, SC19-211 (3/12/20)

https://www.floridasupremecourt.org/content/download/631587/7177061/file/sc19-211.pdf

CREATIVE PLEADING: "Despite the myriad assertions and arguments Sanchez-Torres raises regarding the purpose and authority of a grand jury, with cited authority ranging from Mendeleev's work on the Periodic Table to Elizabeth Seager's conviction for witchcraft in 1662. . ." Sanchez-Torres v. State, SC19-211 (3/12/20)

https://www.floridasupremecourt.org/content/download/631587/7177061/file/sc19-211.pdf

DEATH PENALTY-JURY INSTRUCTION: A jury instruction that a sentence of life imprisonment is presumed in a first-degree murder case is not warranted. Sanchez-Torres v. State, SC19-211 (3/12/20)
https://www.floridasupremecourt.org/content/download/631587/7177061/file/sc19-211.pdf

SECOND DEGREE MURDER-DEPRAVED MIND: Numerous wounds to the victim constitutes evidence of the depraved mind sufficient to warrant a conviction for second-degree murder rather than manslaughter. Johnson v. State, 1D18-4509 (3/12/20)

https://www.1dca.org/content/download/631663/7177894/file/184509_DC05_03122020_152343_i.pdf

SECOND DEGREE MURDER-SPECIAL JURY INSTRUCTION: Defendant is not entitled to an "impulsive overreaction" jury instruction. Johnson v. State, 1D18-4509 (3/12/20)

https://www.1dca.org/content/download/631663/7177894/file/184509_DC05_03122020_152343_i.pdf

ARGUMENT: State's argument that the homicide victim “was not here to tell us what happened” is not an improper appeal to the jury's sympathy." Johnson v. State, 1D18-4509 (3/12/20)

https://www.1dca.org/content/download/631663/7177894/file/184509_DC05_03122020_152343_i.pdf

UPWARD DEPARTURE: A jury must be empaneled upon remand if the State still seeks a finding of dangerousness under section 775.082(10). Casper v. State, 18-420 (3/11/20)

https://www.1dca.org/content/download/631219/7174027/file/180420_DC13_03112020_103423_i.pdf

POST CONVICTION RELIEF: A discrepancy between the oral pronouncement of a sentence and the written portion of said sentence is cognizable in a rule 3.800 motion. Morris v. State, 1D18-3200 (3/11/20)

https://www.1dca.org/content/download/631235/7174226/file/183200_DC08_03112020_103716_i.pdf

MANDATORY MINIMUM-SECOND DEGREE MURDER-FIREARM-SAY WHAT ?!!: A mandatory minimum life sentence for attempted second degree murder with a firearm is lawful, but a sentence of life imprisonment with a mandatory minimum of twenty-five years is not, at least when the trial court chooses to impose a sentence beyond the selected mandatory minimum sentence pursuant to the 10-20-Life statute. Sanchez v. State, 2D17-1271 (3/11/20)

https://www.2dca.org/content/download/631237/7174250/file/171271_DC05_03112020_083652_i.pdf

LIFE SENTENCE-MINOR-JURY: Judge, not a jury, determines whether a life sentence is appropriate under the statutory factors in section 921.1401. Davis v. State, 2D18-90 (3/11/20)

https://www.2dca.org/content/download/631239/7174274/file/180090_DC05_03112020_084709_i.pdf

BAIL-EXCESSIVE: Aggregate Bond of $360,000 ($1000 or $500 per count) for multiple counts of child pornography is excessive. In setting bond, the court must impose the first, least restrictive, listed condition that would reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, and assure the integrity of the judicial process. There is a statutory presumption favoring his release on nonmonetary conditions. Sewall v. Blackman, 2D20-84 (3/11/20)

https://www.2dca.org/content/download/631287/7174857/file/200084_DC03_03112020_090049_i.pdf

APPEALS: State may not appeal order upon appellate remand vacating sentence and directing resentencing later. "We decline the State's invitation to assert our appellate jurisdiction when none exists." State v. Yero, 3D19-192 (3/11/20)

https://www.3dca.flcourts.org/content/download/631214/7173960/file/190192_DA08_03112020_102525_i.pdf

THEFT-VALUE: Apple iPhone 7 Plus purchased one month prior to the theft for $700.00 is worth more than $300.00. C.S. v. State, 3D18-2491 (3/11/20)

https://www.3dca.flcourts.org/content/download/631296/7174942/file/182491_NOND_03112020_145657_i.pdf

STAND YOUR GROUND: Amendment to SYG law changing burden of proof is procedural, rather than substantive, and thus applies to all Stand Your Ground hearings conducted on or after its effective date. Because Defendant's SYG hearing occurred before the amended statute's effective

date, he is not entitled to a new hearing. Rivera v. State, 4D16-4328 (3/11/20)

https://www.4dca.org/content/download/631221/7174058/file/164328_DC05_03112020_090021_i.pdf

POST CONVICTION RELIEF: Court may not grant motion for post conviction relief on the basis that counsel was ineffective for failing to require a competency hearing or submit comptency reports which had been ordered where these grounds were not alleged in the Defendant's motion. State v. Dixon, 4D18-3694 (3/11/20)

https://www.4dca.org/content/download/631226/7174118/file/183694_DC13_03112020_091432_i.pdf

SENTENCING-GUIDELINES-LOWEST PERMISSIBLE SENTENCE: When the Lowest Permissible Sentence (LPS) exceeds the felony's statutory maximum sentence, the mandatory minimum sentence for both primary and additional offenses must be imposed on each count. Question certified whether the lowest permissible sentence is an individual minimum or a collective minimum. Treadway v. State, 2D18-850 (3/6/20)

https://www.2dca.org/content/download/630324/7164074/file/180850_DC05_03062020_084734_i.pdf

YOUTHFUL OFFENDER: Youthful offender sentencing is available, on a one-time basis and subject to a number of conditions, to juveniles whose

cases are transferred to adult court and to offenders whose crimes were committed when they were over the age of 18 but before they turned 21 years of age. Bryant v. State, 2D18-4980 (3/6/20)

https://www.2dca.org/content/download/630328/7164122/file/184980_DC05_03062020_085138_i.pdf

MOTION-NOTARIZATION: Motion to Correct Credit for Time Served must be sworn to, but does not need to be notarized. Court erred by dismissing the case for lack of notarization. Donofrio v. State, 2D 19-1323 (3/6/20)

https://www.2dca.org/content/download/630330/7164146/file/191323_DC13_03062020_085333_i.pdf

COSTS: Court may not impose investigative costs in the absence of a request and evidence from the investigating agency, nor may it impose such costs on remand. "[T]he State's opportunity to request these investigative costs has now passed." Richards v. State, 5D17-2704 (3/6/20)

https://www.5dca.org/content/download/630367/7164621/file/172704_DC13_03062020_083713_i.pdf

STATEMENTS OF DEFENDANT-REDACTION: Statements of the investigator during the Defendant's interrogation in a sex case which bolstered the Victim's credibility or expressed the investigator's opinion ("Once again, a [ ] doesn't make this stuff up," "I can tell you once again from experience it's in her brain because it happened,." etc.) must be redacted. New trial required. Smith v. State, 5D18-2444 (3/6/20)

https://www.5dca.org/content/download/630368/7164633/file/182444_DC13_03062020_084119_i.pdf

EVIDENCE-REDACTION-INVESTIGATIVE TECHNIQUE: "We begin our analysis by observing a basic principle: it is error to permit a witness to comment on the credibility of another witness because the jury alone determines the credibility of witnesses." The State's argument that the detectives were simply engaging in appropriate investigative technique, while true, does not mean that the jury is permitted to hear the detectives' statements in order to provide context. Smith v. State, 5D18-2444 (3/6/20)

https://www.5dca.org/content/download/630368/7164633/file/182444_DC13_03062020_084119_i.pdf

10-20-LIFE: Court erred in imposing a 25 year minimum mandatory on the defendant for firing the weapon which cause the death of the victim where the evidence did not establish that the Defendant was the shooter, notwithstanding the jury's verdict. Shoulders v. State, 5D19-2916 (3/6/20)

https://www.5dca.org/content/download/630374/7164705/file/192916_DC13_03062020_090836_i.pdf

JURY INSTRUCTIONS-PROMULGATION: New Rule of Judicial Administration 2.270 changes procedure for creating or modifying standard jury instructions. "This Court has determined that the current process for developing and authorizing standard jury instructions is more cumbersome than necessary, and that. . . some wrongly believe that by authorizing for

publication and use standard instructions prepared by the committees, the Court has ruled on the legal correctness of those instructions. . .Therefore,. . .the Court has determined that it should no longer be involved in the development and authorization for use of Florida's standard jury instructions. Rather, the three committees the Court has created to prepare standard jury instructions should be authorized to develop and approve, by two-thirds vote, new and amended standard jury instructions." Procedure established for trial court to modify standard instructions. In Re: Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Civil Procedure, and the Florida Rules of Criminal Procedure—Standard Jury Instructions, No. SC20-145 (3/5/20)

https://www.floridasupremecourt.org/content/download/630267/7163468/file/sc20-145.pdf

LESSER INCLUDED-AGGRAVATED ASSAULT-RECKLESS DRIVING: Reckless driving is not a permissive lesser included offense for aggravated assaults when the weapon is an automobile. An instruction on a permissive lesser included offense may be given only when both the accusatory pleading and the evidence supports the commission of the lesser. The elements of the offense cannot be established by mere inference. "[T]he notion that the charging information should be viewed in light of the evidence presented at trial inappropriately conflates the two independent considerations set forth by this Court for decades as the test for determining what constitutes a permissive lesser-included offense. . ., essentially eliminating the first requirement that all elements of a lesser offense 'must' be factually alleged in the charging document in order for the offense to qualify as a permissive lesser-included offense." Anderson v. State, SC18-1059 (3/5/20)

https://www.floridasupremecourt.org/content/download/630266/7163456/file/sc18-1059.pdf

HUH?: "As a factual matter, alleging use of an automobile [to commit aggravated assault] is not the same as alleging driving because an automobile could be used to commit the greater offense without driving," such as by . . "dropping a car from a crane onto a victim." Anderson v. State, SC18-1059 (3/5/20)

https://www.floridasupremecourt.org/content/download/630266/7163456/file/sc18-1059.pdf

POST CONVICTION RELIEF: Failure of counsel to move to suppress a stolen medical encyclopedia, even if meritorious, is not prejudicial when other evidence, including unique items lawfully seized (a Minnie Mouse keychain, and other things) establish that the Defendant was the robber and murderer. Smith v. State, SC18-42 (3/5/20)

https://www.floridasupremecourt.org/content/download/630265/7163444/file/sc18-42.pdf

POST CONVICTION RELIEF: Counsel was not ineffective of failing to move to suppress cell phone data location information seized without a warrant when under then-existing case law a warrant was not required. Smith v. State, SC18-42 (3/5/20)

https://www.floridasupremecourt.org/content/download/630265/7163444/file/sc18-42.pdf

POST CONVICTION RELIEF: Defendant is procedurally barred from arguing a motion for post conviction relief that law enforcement unlawfully serves to self and without a warrant where he did not raise the issue on direct appeal. Claims that should have been raised on direct appeal are procedurally barred from being raised in collateral proceedings. Smith v. State, SC18-42 (3/5/20)

https://www.floridasupremecourt.org/content/download/630265/7163444/file/sc18-42.pdf

DEATH PENALTY-UNANIMOUS RECOMMENDATION: Hurst has been receded from except to the extent that it requires a unanimous finding that the statutory aggravating circumstance exists beyond a reasonable doubt. Smith v. State, SC18-42 (3/5/20)

https://www.floridasupremecourt.org/content/download/630265/7163444/file/sc18-42.pdf

PREEMPTION: Identity theft/false employment documents used by undocumented aliens are not preempted federal immigration law, and thus are subject to state prosecution. Provision of INA that information in I-9 can only be used for limited purposes does not preclude state prosecution for use of fraudulent employment documents by undocumented aliens. Kansas v. Garcia, No. 17–834 (U.S. S.CT. 3/4/20)

https://www.supremecourt.gov/opinions/19pdf/17-834_k53l.pdf

PREEMPTION: "From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that

remains true today. . . Our federal system would be turned upside down if we were to hold that federal criminal law preempts state law whenever they overlap, and there is no basis for inferring that federal criminal statutes preempt state laws whenever they overlap." Kansas v. Garcia, No. 17–834 (U.S. S.CT. 3/4/20)

https://www.supremecourt.gov/opinions/19pdf/17-834_k53l.pdf

CONTAINER FOR THE THING CONTAINED: "A tangible object can be 'contained in' only one place at any point in time, but an item of information is different. It may be 'contained in' many different places, and it is not customary to say that a person uses information that is contained in a particular source unless the person makes use of that source." Kansas v. Garcia, No. 17–834 (U.S. S.CT. 3/4/20)

https://www.supremecourt.gov/opinions/19pdf/17-834_k53l.pdf

THING CONTAINED FOR THE CONTAINER: "I would find myself lying awake at night saying over and over, 'The thinger for the thing contained.' . . .I would stare at the ceiling and try to think of an example of the Thing Contained for the Container. . .I finally hit on one. . .If a woman were to grab up a bottle of Grade A and say to her husband, 'Get away from me or I'll hit you with the milk,' that would be a Thing Contained for the Container. The next day in class I raised my hand and brought my curious discovery straight out.. . [I]t never occurred to me that the other children would laugh. They laughed loudly and long. When Miss Groby had quieted them she said to me rather coldly, 'That was not really amusing, James.'" Thurber, James. "Here lies Miss Groby," The Thurber Carnival.

SENTENCE REDUCTION-YOUTHFUL OFFENDER: Court may not retroactively reclassify a Defendant as a youthful offender after already imposing a mandatory minimum prison sentence without the youthful offender designation after the Defendant had turned 21. State v. Johns, 2D18-1844 (3/4/20)

https://www.2dca.org/content/download/630178/7162472/file/181844_DC13_03042020_083052_i.pdf

SEARCH AND SEIZURE: Directing a juvenile probationer to "stand up" during a curfew check is "a minor inconvenience," not an unlawful detention. Where marijuana was near the Child, the encounter was a legitimate investigatory stop. Child'smother's claim that the contraband belonged to an unseen cousin fell short of dispelling suspicion. State v. J.C., 2D19-712 (3/4/20)

https://www.2dca.org/content/download/630190/7162616/file/190712_DC13_03042020_083200_i.pdf

SEARCH AND SEIZURE: Officer's question “You got anything else on you I need to know about?” is not a search; Child voluntarily pulled the bags of marijuana from his pocket. State v. J.C., 2D19-712 (3/4/20)

https://www.2dca.org/content/download/630190/7162616/file/190712_DC13_03042020_083200_i.pdf

POST CONVICTION RELIEF: Defendant may not pursue by writ of habeas corpus relief from his conviction from several years earlier based on a dubious and possibly fraudulent claim of juror tampering which had been the

subject of a previously withdrawn 3.850 motion. Concepcion v. State, 3D19-1478 (3/4/20)

https://www.3dca.flcourts.org/content/download/630126/7161795/file/191478_DC02_03042020_095809_i.pdf

APPEAL-CERTIORARI: Certiorari may not be used to redress mere legal error, and may only be used to repair a material injury that cannot be corrected on appeal. Temporary placement of child in foster care cannot be challenged by petition for writ of certiorari. J.G. v. DCF, 319-2206 (3/4/20)

COMPETENCY-RETROACTIVE DETERMINATION: Court errors in making a *nunc pro tunc* competency determination as of the time of trial based on an expert's report completed two years before the trial. A new competency evaluation is required. Ramsay v. State, 4D19-951 (3/4/20)

https://www.4dca.org/content/download/630143/7162015/file/190951_DC13_03042020_092157_i.pdf

SCORESHEET: Juvenile convictions more than five years old must not be included on scoresheet. Mondesir v. State, 4D12-1131 (3/4/20)

https://www.4dca.org/content/download/630144/7162027/file/191131_DC05_03042020_092638_i.pdf

SENTENCING-SCORESHEET: Offenses for which the Defendant had completed his probation before violating should not be included on scoresheet as additional offenses because they were not before the court for sentencing. An offense should not be scored as an additional offense

following the revocation of a defendant's probation if the defendant completed his sentence as to that offense before the VOP occurred. Delorme v. State, 4D 19-1510 (3/4/20)

https://www.4dca.org/content/download/630146/7162051/file/191510_DC13_03042020_092911_i.pdf

DOUBLE JEOPARDY-INCREASE OF SENTENCE: Court violated double jeopardy by increasing, six days later, the Defendant's initial and lawful sentence of life in prison with a 25 years mandatory minimum to life in prison with a minimum mandatory sentence of life for second-degree murder. The maximum sentence is thirty years in prison with a mandatory minimum sentence of twenty-five years in prison. Hill v. State, 1D18-1358 (3/3/20)

https://www.1dca.org/content/download/621436/7056569/file/181358_DC08_03032020_135930_i.pdf

FRIVOLOUS APPEAL: Appellate court must summarily affirm, rather than dismiss, frivolous appeals taken after entry of plea. Fuciarelli v. State, 1D19-2780 (3/3/20)

https://www.1dca.org/content/download/621472/7057001/file/192780_DC05_03032020_140402_i.pdf

POST CONVICTION RELIEF-COMPETENCY: When a postconviction claim for ineffective assistance of counsel is based on counsel's alleged failure to properly challenge the defendant's competency, Defendant must set forth clear and convincing circumstances that create a real, substantial and legitimate doubt as to the movant's competency. Lowry v. State, 1D17-1176 (3/2/20)

https://www.1dca.org/content/download/617663/7011279/file/171176_DC05_03022020_145529_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to interview witnesses who were never disclosed to him by the defendant. Santiago v. State, 1D18-4298 (3/2/20)

https://www.1dca.org/content/download/617664/7011291/file/184298_DC05_03022020_145641_i.pdf

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SEARCH AND SEIZURE: The odor of burnt marijuana emanating from a vehicle provides probable cause to search each of the vehicle's occupants. State v. Brookins, 2D18-1973 (2/28/20)

https://www.2dca.org/content/download/607682/6891529/file/181973_DC13_02282020_084401_i.pdf

STATEMENT OF DEFENDANT: "I don't know what all these legal questions mean, so I want to, like have somebody with me," is invoking right to an attorney. "I'm not trying to be difficult or anything. Like, I just don't know, because you guys word stuff funny sometimes," indicates that any waiver is not knowing and voluntary. N.J.O. v. State, 2D18-2444 (2/28/20)

https://www.2dca.org/content/download/607685/6891572/file/182444_DC08_02282020_084654_i.pdf

STATEMENT OF DEFENDANT: The heavy burden to show voluntary waiver of Miranda rights is even more onerous when the suspect is a juvenile. In the case of a juvenile, the issue of voluntariness requires consideration of (1) the manner in which the Miranda rights were administered, including any cajoling or trickery; (2) the suspect's age, experience, background and intelligence; (3) the fact that the suspect's parents were not contacted and the juvenile was not given an opportunity to consult with his parents before questioning; (4) the fact that the questioning took place in the station house; and (5) the fact that the interrogators did not secure a written waiver of the Miranda rights at the outset. N.J.O. v. State, 2D18-2444 (2/28/20)

https://www.2dca.org/content/download/607685/6891572/file/182444_DC08_02282020_084654_i.pdf

APPEAL-REVIEW-DEFERENCE: When a trial court's ruling on a Miranda issue is based on an audio or videotape, the trial court is in no better position to evaluate the evidence than the appellate court, which need not defer to the trial court's conclusions concerning whether N.J.O. invoked his rights and whether the subsequent waiver was knowing and voluntary. N.J.O. v. State, 2D18-2444 (2/28/20)

https://www.2dca.org/content/download/607685/6891572/file/182444_DC08_02282020_084654_i.pdf

POST CONVICTION RELIEF: Defendant's motion for Post Conviction Relief under R 3.800 is not successive where it raises a different issue than that which had been raised in his previous motion for post conviction relief. Lineberger v. State, 2D 18-3503 (2/28/20)

https://www.2dca.org/content/download/607687/6891596/file/183503_DC13_02282020_084916_i.pdf

SEARCH AND SEIZURE-RESIDENCE-WARRANT: The affidavit in the warrant application must satisfy two elements: first, that a particular person has committed a crime -- the commission element, and, second, that evidence relevant to the probable criminality is likely located at the place to be searched -- the nexus element. Conclusory affidavit about a single drug transaction with few details is legally insufficient. Case remanded to determine whether the search is valid under the Leon good faith exception. Hicks v. State, 2D18-4520 (2/28/20)

https://www.2dca.org/content/download/607688/6891608/file/184520_DC13_02282020_085041_i.pdf

LIFE SENTENCE-HOMICIDE-MINOR-JURY FINDING: Alleyne requires that a jury must make the factual finding under the statute as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim. An Alleyne violation can be considered harmless if a rational jury would have found beyond a reasonable doubt that the juvenile offender actually killed, intended to kill, or attempted to kill the victim. Because the Defendant "had purposely set his alarm clock to arise that morning to shoot [Victim] prior to her waking, any Alleyne error is harmless. Colon v. State, 4D18-1080 (2/28/20)

https://www.4dca.org/content/download/608430/6900471/file/181080_NOND_02282020_124625_i.pdf

APPEAL-PRESERVATION: Defendant may not appeal denial of his motion to suppress when he did not reserve the right to appeal nor was the issue dispositive absent a motion to withdraw his plea, notwithstanding that the Court misadvised him that he could appeal. Jamerson v. State, 5D19-348 (2/28/20)

https://www.5dca.org/content/download/607747/6892280/file/190348_DC05_02282020_090234_i.pdf

COSTS: Court may not impose $100 investigative cost which is neither orally pronounced nor requested. Smith v. State, 5D19-2250 (2/28/20)

https://www.5dca.org/content/download/607749/6892304/file/192250_DC08_02282020_093126_i.pdf

RECORDS: An indigent defendant in a criminal case is entitled to copies of depositions and transcripts, or any other materials in his former attorney's possession that were prepared at public expense. Case remanded to trial court to determine who is responsible for the costs of printing. Attride v. State, 5D 19-2614 (2/28/20)

https://www.5dca.org/content/download/607750/6892316/file/192614_1254_02282020_095358_i.pdf

CREDIT FOR TIME SERVED-CORRECTION: Defendant is not required to attach records showing his entitlement to relief and motion to correct credit for time served. Crawford v. State, 5D19-3058

https://www.5dca.org/content/download/607753/6892352/file/193058_DC13_02282020_095158_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for failing to argue that his 90 minute late arrival for sentencing (which allowed the Court to exceed the otherwise agreed sentence) was not willful. Court's dismissal of motion for post-

conviction relief based on its statement that it had found the late arrival willful is not supported by attached records. Ingram v. State, 5D20-102 (2/28/20)

https://www.5dca.org/content/download/608489/6901156/file/200102_DC13_02282020_160447_i.pdf

APPEAL-PRESERVATION-SENTENCING: Defendant who argued that a prison sentence was not warranted under the statutory sentencing considerations properly preserved for appeal the issue of whether the sentence was unreasonably long. Defendant advocating for a shorter sentence is ordinarily understood to be making an argument that the sentence is longer than greater than necessary to achieve the purposes of sentencing . Nothing more is needed to preserve the claim that a longer sentence is unreasonable. Holguin-Hernandez v. USA, No. 18–7739 (U.S. S.Ct. 2/26/20)

https://www.supremecourt.gov/opinions/19pdf/18-7739_9q7h.pdf

SENTENCING-ACCA: A "serious drug offense" under the Armed Career Criminal Act (ACCA) requires only that the state offense involve the conduct specified in the federal statute; it does not require that the state offense match certain generic offenses. To determine whether an offender's prior convictions qualify for ACCA enhancement, Court must use the "categorical approach," not the label the State assigns to the crimes. Shular v. USA, No. 18–6662 (U.S. S.Ct. 2/26/20)

https://www.supremecourt.gov/opinions/19pdf/18-6662_c0ne.pdf

DEFINITIONS-"INVOLVE": "Involve" means "necessarily require." "Involve" distinguished from "is." Shular v. USA, No. 18–6662 (U.S. S.Ct. 2/26/20) Shular v. USA, No. 18–6662 (U.S. S.Ct. 2/26/20)

https://www.supremecourt.gov/opinions/19pdf/18-6662_c0ne.pdf

STATUTORY CONSTRUCTION (KAVANAUGH, CONCURRING): A court must find not just ambiguity but "grievous ambiguity" before resorting to the rule of lenity. Shular v. USA, No. 18–6662 (U.S. S.Ct. 2/26/20)

https://www.supremecourt.gov/opinions/19pdf/18-6662_c0ne.pdf

DEATH PENALTY-AGGRAVATORS-JURY FINDING: Where the imposition of the death penalty is vacated because the Court failed to properly consider the Defendant's PTSD, the state Supreme Court may reweigh the aggravating and mitigating circumstances, rather than re-submitting the case to a jury. "Ring and Hurst did not require jury weighing of aggravating and mitigating circumstances, and Ring and Hurst did not . . .prohibit appellate reweighing of aggravating and mitigating circumstances." Ring and Hurst would not apply here because this case preceded Ring and came before the appellate court on collateral review rather than on a direct appeal. McKinney v. Arizona, No. 18–1109 (U.S. S.Ct 2/25/20)

https://www.supremecourt.gov/opinions/19pdf/18-1109_5i36.pdf

JURY INSTRUCTION-AMENDMENT: Instruction 3.12 is amended to remove the reference to "information" and "indictment" while retaining language that the jury may find the defendant guilty as charged or of a lesser-included crime. In Re: Standard Jury Instructions in Criminal Cases—report 2019-11, No. SC19-1806 (2/27/20)

https://www.floridasupremecourt.org/content/download/602579/6830334/file/sc19-1806.pdf

JURY INSTRUCTION-SEXUAL CYBERHARASSMENT: New standard jury instruction for sexual cyberharassment. IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES— REPORT 2019-11, No. SC19-1806 (2/27/20)

https://www.floridasupremecourt.org/content/download/602579/6830334/file/sc19-1806.pdf

JURY INSTRUCTIONS-CRIMES AGAINST POLICE DOGS: New special jury instruction for crimes against police dogs. IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES—REPORT 2019-12, No. SC19-1856 (2/27/20)

https://www.floridasupremecourt.org/content/download/602580/6830346/file/sc19-1856.pdf

POST CONVICTION RELIEF: Where Defendant's motion for post conviction relief, based on later discovered eye witness testimony that the Defendant did not commit the murder, was denied after State presented evidence that the eye witness was not present at the time of the crime because he was in jail, Defendant is not permitted to present evidence found even later that the witness was not in custody where the trial court found the witness not credible regardless whether he was there. "[A]ny discrepancy in Wilridge's jail records is simply too little and too weak to be material under Brady standards." Sweet v. State, SC19-1856 (2/27/20)

https://www.floridasupremecourt.org/content/download/602580/6830346/file/sc19-1856.pdf

POST CONVICTION RELIEF: Florida does not recognize an independent claim of actual innocence in postconviction proceedings. Sweet v. State, SC19-1856 (2/27/20)

https://www.floridasupremecourt.org/content/download/602580/6830346/file/sc19-1856.pdf

POST CONVICTION RELIEF-RECORDS: Defendant is not entitled to office files kept in the garage of a prosecutor who was not involved in the prosecution of the Defendant). "A request for a garage full of notes in hopes of finding any mention of a witness fabricating testimony is a textbook example of a fishing expedition. Sweet v. State, SC19-1856 (2/27/20)

https://www.floridasupremecourt.org/content/download/602580/6830346/file/sc19-1856.pdf

STAND YOUR GROUND: A person does not get to claim that he was acting in self-defense if he is defending himself from violence that he provoked in the first instance, but he may claim SYG immunity for use of deadly force when he had provoked a threat to a third-person (here, his brother). "[I]f the legislature had thought it desirable to have the initial-provocation exception apply when a defendant provokes the use of force against a third person, it would not have required editorial heavy lifting to make that happen. . .If the legislature really wanted [that result]. . ., all it needed to do was copy the words 'or another' from section 776.012(2) and paste them in the parallel location in section 776.041(2). "It is one thing to say a defendant cannot claim justification when he provokes violence against himself. It is quite another to say the defendant cannot claim justification when he provokes an altercation that risks violence against a third person." Bouie v. State, 2D18-2705 (2/26/20)

https://www.2dca.org/content/download/602395/6828211/file/182705_DC03_02262020_085625_i.pdf

STAND YOUR GROUND-STANDARD OF REVIEW: Application of the law to the facts in SYG cases is de novo. Defendant is immune from prosecution when he repeatedly shot a person who engaged in a fight with the Defendant's brother after following in a car and approaching him with something in a hand with something reasonably believed to be a weapon, notwithstanding that the Defendant continuing firing shots while the victim was retreating. Bouie v. State, 2D18-2705 (2/26/20)

https://www.2dca.org/content/download/602395/6828211/file/182705_DC03_02262020_085625_i.pdf

APPEAL-NONFINAL ORDER: Order finding that the defendant was entitled to be resentenced but not imposing a new sentence is a nonfinal, nonappealable order. Conflict certified. State v. Spears, 2D 19-3209 (2/26/20)

https://www.2dca.org/content/download/602412/6828415/file/193209_DA08_02262020_090628_i.pdf

APPEAL-NONFINAL ORDER: Order finding that the defendant was entitled to be resentenced but not imposing a new sentence is a nonfinal, nonappealable order. Simpson v. State, 2D 19-3475 (2/26/20)

https://www.2dca.org/content/download/602415/6828451/file/193475_DA08_02262020_090755_i.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity when he denies committing the acts charged (pouring gasoline on the victim's occupied car and threatening to set it on fire). State v. Marrero, 3D18-1819 (2/26/20)

https://www.3dca.flcourts.org/content/download/602365/6827830/file/181819_DC13_02262020_095705_i.pdf

JUDGE-DISQUALIFICATION: Judge must disqualify himself upon an allegation that the relationship between him and Defendant's former attorney and the judge had deteriorated to such an extent that the trial judge entered an order disqualifying himself from all of that lawyer's cases. Fernandez v. State, 3D 20-177 (2/26/20)

https://www.3dca.flcourts.org/content/download/602379/6827998/file/200177_DC03_02262020_101937_i.pdf

POST CONVICTION RELIEF: Defendant does not establish that counsel was ineffective for failing to file a motion for SYG immunity after he was convicted of second-degree murder. Bradshaw v. State, 3D 19-2079 (2/26/20)

https://www.3dca.flcourts.org/content/download/602377/6827974/file/192079_DC08_02262020_101520_i.pdf

VOP-SENTENCING CONSIDERATIONS: Court may consider that the violations of probation occurred so quickly after the imposition of probation in imposing sentence. . . Bevans v. State, 4D 18-3008 (2/26/20)

https://www.4dca.org/content/download/602381/6828029/file/183008_DC08_02262020_084810_i.pdf

COSTS: Court may not impose $200 cost of prosecution is appropriate findings. Bevans v. State, 4D 18-3008 (2/26/20)

https://www.4dca.org/content/download/602381/6828029/file/183008_DC08_02262020_084810_i.pdf

COSTS: Court may not impose prosecution costs that were $100 above the statutory minimum without a request from the state or evidentiary support. Cost of $200 may be imposed upon remand if properly requested and proven. Guadagno v. State, 4D 19-1318 (2/26/20)

https://www.4dca.org/content/download/602387/6828101/file/191318_DC08_02262020_090928_i.pdf

SENTENCE-MINOR-NONHOMICIDE: 50 year sentence for sexual battery committed by a 15-year-old without possibility of review is unconstitutional. All juvenile nonhomicide offenders sentenced to more than twenty years' imprisonment must be resentenced and afforded the judicial review mechanism. Conflict certified. Gage v. State, 2D18-4580 (2/21/20)

https://www.2dca.org/content/download/597896/6774409/file/184580_DC13_02212020_081427_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to advise him that he was subject to sentencing as a habitual offender. Rish v. State, D519-3103 (2/21/20)

https://www.5dca.org/content/download/597937/6774879/file/193103_1260_02212020_08202199_i.pdf

EQUAL PROTECTION-FELONS-VOTING RIGHT: Felons right to vote under Florida's Constitutional Amendment 4 cannot be limited by legislation requiring payment of all LFO's ("legal financial obligations"). Because the LFO requirement punishes those who cannot pay more harshly than those who can, it violates the Equal Protection clause. Jones v. Governor, No. 19-14551 (11th Cir. 2/19/20)

https://www.uscourts.gov/courts/ca11/201914551.pdf

VOTING RIGHT: "The continued disenfranchisement of felons who are genuinely unable to pay LFOs and who have made a good faith effort to do so, does not further any legitimate state interest that we can discern." Jones v. Governor, No. 19-14551 (11th Cir. 2/19/20)

https://www.uscourts.gov/courts/ca11/201914551.pdf

VOTING RIGHT: "The long and short of it is that once a state provides an avenue to ending the punishment of disenfranchisement. . .it must do so consonant with the principles of equal protection and it may not erect a wealth barrier." Jones v. Governor, No. 19-14551 (11th Cir. 2/19/20)

https://www.uscourts.gov/courts/ca11/201914551.pdf

SEXUAL OFFENDER DESIGNATION: Defendant may be designated a sexual offender for the offense of false imprisonment if the crime contained a sexual component. The probable cause affidavit may establish the sexual component, notwithstanding that the only factual basis articulated at the

sentencing hearing related to a sexual component was that the Defendant withheld the Victim's clothing to prevent her from fleeing the house. Brinson v. State, 1D 18-659 (2/19/20)

https://www.1dca.org/content/download/597548/6770254/file/180659_DC05_02192020_100052_i.pdf

SEXUAL OFFENDER DESIGNATION: Court need not designate the Defendant a Sexual Offender on the record. Qualification as a Sexual Offender is automatic. Failure to provide a hearing on whether the Defendant qualifies as a Sexual Offender does not violate due process. Brinson v. State, 1D 18-659 (2/19/20)

https://www.1dca.org/content/download/597548/6770254/file/180659_DC05_02192020_100052_i.pdf

SEARCH AND SEIZURE-DOG SNIFF: Search was not unduly prolonged when conducted 12 minutes after the stop when the officer did not receive the Defendant's criminal history until the same time the dog arrived. Flowers v. State, 1D19-3215 (2/19/20)

https://www.1dca.org/content/download/597550/6770278/file/193215_DC05_02192020_101120_i.pdf

BURGLARY TOOLS-JOA: Defendant is entitled to a judgment of acquittal for possession of blue latex gloves found in his pocket and in the stolen car to which he provided the keys. T.R.C. v. State, 2D18-4295 (2/19/20)

https://www.2dca.org/content/download/597571/6770551/file/184295_DC13_02192020_084807_i.pdf

POINT: "[L[atex gloves are. . .indeed a household item." T.R.C. v. State, 2D18-4295 (2/19/20)

https://www.2dca.org/content/download/597571/6770551/file/184295_DC13_02192020_084807_i.pdf

COUNTER-POINT: "I am skeptical of the majority's assertion that blue surgical gloves 'are indeed a household item.' . . .I am certain. . .that this teenager, who was found standing by a recently reported stolen car in a neighborhood known for drug activity, with the key to the car inexplicably available to him. . ., and with blue surgical gloves stuffed in his jeans pockets, was not carrying those gloves as a 'household item.'" T.R.C. v. State, 2D18-4295 (2/19/20)

https://www.2dca.org/content/download/597571/6770551/file/184295_DC13_02192020_084807_i.pdf

PRISON RELEASEE REOFFENDER: Battery on a law enforcement officer is not a forcible felony that qualifies for PRR sentencing. Taylor v. State, 2D19-19 (2/19/20)

https://www.2dca.org/content/download/597576/6770611/file/190019_DC05_02192020_085014_i.pdf

DOUBLE JEOPARDY: Double jeopardy does not bar dual convictions/sentences for DUI serious bodily injury and DUI property damage. "The mere happenstance that property ownership was vested in the same critically wounded individual cannot be logically construed to insulate the accused from the prosecution of a separate, legislatively-

proscribed crime." Thorough discussion. Velazco v. State, 3D18-165 (2/19/20)

https://www.3dca.flcourts.org/content/download/597607/6770990/file/180165_DC05_02192020_092619_i.pdf

VOCABULARY-"IMBRICATE": "Implicit, at a minimum, in each of these decisions is a rejection of the notion that separate, non-imbricating harms emanating from a single act constitute degree-variants." (First use of the word, or a derivative of the word, "imbricate" in Florida jurisprudence.) Velazco v. State, 3D18-165 (2/19/20)

https://www.3dca.flcourts.org/content/download/597607/6770990/file/180165_DC05_02192020_092619_i.pdf

RESISTING WITHOUT VIOLENCE: Officers may not detain Defendant because he previously had lied about his identity during a consensual encounter. Conviction for resistance without violence based on flight from officers vacated. It is not unlawful to give a false name during a consensual field interview. N.C. v. State, 3D19-613 (2/19/20)

https://www.3dca.flcourts.org/content/download/597620/6771153/file/190613_DC13_02192020_100508_i.pdf

DEPORTATION: Defendant facing deportation is not entitled to withdraw his plea where he entered his plea with eyes wide open and aware of the risk of deportation and now faces the very consequences that he fully acknowledged understanding when he accepted the plea. Vaz v. State, 3D19-613 (2/19/20)

https://www.3dca.flcourts.org/content/download/597620/6771153/file/190613_DC13_02192020_100508_i.pdf

ADVERSARY PRELIMINARY HEARING-HEARSAY: Hearsay is inadmissible in an adversary preliminary hearing under Fla. R. Crim. P. 3.133(b)(1). Court erred in finding probable cause with no evidence, other than hearsay from the arresting cause, that the Defendant's license was suspended as a habitual traffic offender. Rule 3.133(b) does not permit the state to rely wholly on a complaint (even if sworn), on another affidavit or on any other evidence inadmissible at trial. Davis v. Junior, 3D19-613 (2/19/20)

https://www.3dca.flcourts.org/content/download/597620/6771153/file/190613_DC13_02192020_100508_i.pdf

INEFFECTIVE APPELLATE COUNSEL: A petition alleging ineffective assistance of appellate counsel on direct review may not be filed more than two years after the judgment and sentence become final on direct review. Diaz v. State, 20-246 (2/19/20)

https://www.3dca.flcourts.org/content/download/597637/6771357/file/200246_DA08_02192020_102347_i.pdf

STATEMENT OF DEFENDANT: After an accused has invoked the right to silence or right to counsel but later initiates further conversation, police must again re-read the Miranda rights before commencing further conversation. Merely asking the Defendant if he remembered and understood his Miranda rights is insufficient. Quarles v. State, 4D18-1502 (2/19/20)

https://www.4dca.org/content/download/597552/6770309/file/181502_DC13_02192020_085553_i.pdf

LIMITATION OF ACTION: Where the defendant unsuccessfully asserted the statute of limitations to present prosecution on some charged crimes, he may nonetheless then waive the statute of limitations in order to secure the possibility of a conviction on a lesser included offense. Maclean v. State, 4D 18-2467 (2/19/20)

https://www.4dca.org/content/download/597554/6770333/file/182467_DC13_02192020_091241_i.pdf

FAILURE TO REDELIVER VEHICLE: Court errors by conflating §817.52(3) (failure to redeliver vehicle) with §812.155(3), (fail to return leased personal property or equipment); the former does not require a notice warning of the possibility of criminal prosecution. Sampaio v. State, 4D18-3416 (2/19/20)

https://www.4dca.org/content/download/597555/6770345/file/183416_DC13_02192020_091547_i.pdf

COSTS-DISCHARGED DEFENDANT: Fla.Stat. s.939.06 provides for reimbursement of costs when charges are dismissed. Starkes v. State, 1D 18-4432 (2/18/20)

https://www.1dca.org/content/download/597467/6769301/file/184432_DC13_02182020_144610_i.pdf

DEFINITION-"DISCHARGED": "'[D]ischarged' appears to have a fluid meaning." "A Discharge. . . plainly refers to circumstances where a defendant was charged in a criminal case and later 'un-charged' without a final verdict being reached." Starkes v. State, 1D 18-4432 (2/18/20)

https://www.1dca.org/content/download/597467/6769301/file/184432_DC13_02182020_144610_i.pdf

POST CONVICTION RELIEF-APPEAL PENDING: Where a defendant files a postconviction motion while another postconviction appeal is still pending, the trial court still has jurisdiction to consider the motion "so long as the issues raised in the two cases are unrelated. Nilio v. State, 1D18-5093 (2/18/20)

https://www.1dca.org/content/download/597469/6769325/file/185093_DC13_02182020_145030_i.pdf

APPEALS: Appellate court must summarily affirm, rather than dismiss frivolous appeals. Hanford v. State, 1D 19-1237 (2/18/20)

https://www.1dca.org/content/download/597470/6769337/file/191237_DC05_02182020_145207_i.pdf

APPEALS: Appellate court must summarily affirm, rather than dismiss frivolous appeals. Sheats v. State, 1D19-2059 (2/18/20)

https://www.1dca.org/content/download/597471/6769349/file/192059_DC05_02182020_145351_i.pdf

POST CONVICTION RELIEF: Counsel's failure to object to prejudicial evidence regarding Defendant's prior career as a pharmaceutical salesman was not prejudicial where the jury verdict implicitly rejected the State's contention that the Defendant had drugged and sexually abused the victim. State v. Bush, 5D18-3987 (2/14/20)

https://www.5dca.org/content/download/588735/6664891/file/183987_1259_02142020_08224201_i.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to cross-examine the minor victims in a sex abuse case on their failure to remember some matters where counsel made the tactical decision that asking about this would establish that the children did not want to remember the events. Counsel's strategy was not unreasonable. State v. Bush, 5D18-3987 (2/14/20)

https://www.5dca.org/content/download/588735/6664891/file/183987_1259_02142020_08224201_i.pdf

DISMISSAL-THREAT TO KILL: Court erred in dismissing the charge of threatening to kill where a former student sent a Snapchat photo to a current student showing in AR 15 rifle and the caption, "Show and Tell @NM on Monday." State v. Cowart, 5D19-681 (2/14/20)

https://www.5dca.org/content/download/588739/6664939/file/190681_1260_02142020_08252650_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call a witness who was

identified, the substance of whose testimony was adequately explained. Elmore v. State, 5D 19-1509 (2/14/20)

https://www.5dca.org/content/download/588743/6664987/file/191509_1259_02142020_08301039_i.pdf

PLEA-WITHDRAWAL: When a plea agreement calls for a specified sentence and the trial court determines to impose a greater sentence, the defendant has the right to withdraw the plea. Hodges v. State, 5D 19-2089 (2/14/20)

https://www.5dca.org/content/download/588761/6665184/file/192089_1260_02142020_08382570_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failing to request a limiting instruction upon the admission of the Victim/girlfriend's written statement which contradicted her trial testimony. The consequence of counsel's failure to request a limiting instruction as to the use of the girlfriend's prior inconsistent statement was that this statement was placed before the jury by the State as substantive evidence. A hearing is required to show whether the Defendant was prejudiced by counsel's omission. McGhee v. State, 5D 19-2265 (2/14/20)

https://www.5dca.org/content/download/588762/6665196/file/192265_1259_02142020_08410173_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failing to request jury instruction that he was licensed to enter the apartment if he still lived there. McGhee v. State, 5D 19-2265 (2/14/20)

https://www.5dca.org/content/download/588762/6665196/file/192265_1259_02142020_08410173_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Motion for New Trial based on affidavit from officer (a close friend of the Defendant) that his trial testimony about finding cartridges in the Defendant's car was not true is time barred 20 years after the trial. Mungin v. State, SC18-635 (2/13/20)

https://www.floridasupremecourt.org/content/download/584011/6608291/file/sc18-635.pdf

DEATH PENALTY: Whether the aggravating factors are sufficient to warrant a death sentence and that they outweigh the mitigating factors are not subject to the standard of proof beyond a reasonable doubt. Doty v. State, SC18-973 (2/13/20)

https://www.floridasupremecourt.org/content/download/584012/6608303/file/sc18-973.pdf

EVIDENCE: Officer's testimony identifying Defendant as the person in a video ("That's Marvin Cannon. I recognize him. He has been personally familiar to me for a number of years.") does not improperly imply that the Defendant had a prior criminal record. Cannon v. State, SC19-84 (2/13/20)

https://www.floridasupremecourt.org/content/download/585314/6623888/file/sc19-84.pdf

ARGUMENT-BURDEN SHIFTING: Testimony that officers observed no deer corn on property and argument that Defendant's father never testified that he stored deer corn there (Defendant had lured his murder victim to a field on the pretense of selling him deer corn) does not improperly shift burden of proof. Cannon v. State, SC19-84 (2/13/20)

https://www.floridasupremecourt.org/content/download/585314/6623888/file/sc19-84.pdf

ARGUMENT-RELIGIOUS THEMES: Discussion during voir dire of the concept of "an eye for an eye" and State's brief religious reference during closing ("he reaps what he sowed.") are not improper injections of religion into the trial. Not every statement referencing God or the Bible is prejudicial. Cannon v. State, SC19-84 (2/13/20)

https://www.floridasupremecourt.org/content/download/585314/6623888/file/sc19-84.pdf

PEREMPTORY CHALLENGE-PRESERVATION: More than one objection is required to preserve a claim that a peremptory challenge is racially motivated. After the initial objection, the issue is not preserved for appellate review if the party objecting to the challenge fails to renew the objection before the jury is sworn. Cannon v. State, SC19-84 (2/13/20)

https://www.floridasupremecourt.org/content/download/585314/6623888/file/sc19-84.pdf

RESENTENCING: Court lacks authority to rescind an order granting resentencing once the order became final when neither party moved for rehearing or appealed. Rogers v. State, 1D19-878 (2/13/20)

https://www.1dca.org/content/download/585635/6627725/file/190878_DC13_02132020_114003_i.pdf

RESENTENCING: Court lacks authority to rescind an order granting resentencing once the order became final when neither party moved for rehearing or appealed. Melton v. State, 1D19-1286 (2/13/20)

https://www.1dca.org/content/download/585644/6627833/file/191286_DC13_02132020_114339_i.pdf

JUDGMENT OF ACQUITTAL-ROBBERY: Defendant who, when confronted for leaving the store without paying, looks down at his hip and says either "all right, young man, don't get shot," or "don't walk up on me," is properly convicted of robbery, notwithstanding that victim saw no gun. Defendant's statement to the victim along with his gesture to his hip, are circumstances that would induce fear in the mind of a reasonable person. Cameron v. State, 1D18-1368 (2/12/20)

https://www.1dca.org/content/download/585593/6627221/file/181368_DC05_02122020_130457_i.pdf

POST CONVICTION RELIEF-EXPERT: Counsel was not ineffective for failing to call a firearm expert to challenge theory of the location of the shooter, which would tend to show that the Defendant was not the shooter, since he was charged as a principal. Williams v. State, 1D19-1334 (2/12/20)

https://www.1dca.org/content/download/585645/6627845/file/191334_DC05_02122020_131418_i.pdf

GIGLIO: Differences in the testimony a witness gave at the Defendant's trial and that of his co-defendant is a Giglio violation where nothing in the record suggests that the testimony given was false nor that the prosecutor was aware of any false testimony by the witness. Williams v. State, 1D19-1334 (2/12/20)

https://www.1dca.org/content/download/585645/6627845/file/191334_DC05_02122020_131418_i.pdf

POST CONVICTION RELIEF: Defendant may not use R.3.800 to contest impostion of a three year mandatory minimum for possession of a firearm by a felon on the ground that his possession was constructive rather than actual. Bracht v. State, 1D19-2464 (2/12/20)

https://www.1dca.org/content/download/585689/6628373/file/192464_DC05_02122020_131809_i.pdf

CERTIORARI-DISCOVERY: Court properly denied State's motion to compel the Defendant's counsel to disclose the identity of his DNA expert and the DNA swabs he took from the presumed weapon (a fire extinguisher). State v. Jackson, 1D19-2570 (2/12/20)

https://www.1dca.org/content/download/585693/6628421/file/192570_DC02_02122020_132013_i.pdf

STAND YOUR GROUND: Defendant is entitled to a new SYG hearing where Court failed to apply the 2017 amendment to the statute which shifted the burden of proof from the defendant to the State. Way v. State, 2D17-34369 (2/12/20)

https://www.2dca.org/content/download/585443/6625421/file/174369_DC13_02122020_085323_i.pdf

SELF-DEFENSE-PRINCIPAL INSTRUCTION: Court improperly gives a principal instruction for the stabbing of the victim in the back by a third party who intervened to stop the victim from continuing to beat the Defendant on the ground (Victim had angrily charged and attacked the Defendant after realizing that the Defendant had cut him during their first fight moments before). "[T]here is no evidence indicating that Montgomery's actions while the victim was on top of him, beating him about the face and upper body, were intended to reduce the victim's ability to defend himself from the stabbing." Montgomery v. State, 2D18-1119 (2/12/20)

https://www.2dca.org/content/download/585446/6625457/file/181119_DC08_02122020_085852_i.pdf

SELF DEFENSE-FORCIBLE FELONY INSTRUCTION: Instruction on the Forcible Felony Exception to the Defendant's entitlement to self defense should not be given in the absence of a forcible felony. Armed Trespass is not a forcible felony. "[T]he statute requires more than just a felony -- it requires an independent forcible felony. Trespass is not a felony; and armed trespass is not a forcible felony." Montgomery v. State, 2D18-1119 (2/12/20)

https://www.2dca.org/content/download/585446/6625457/file/181119_DC08_02122020_085852_i.pdf

FLIGHT-CONSCIOUSNESS OF GUILT: The fact that the Defendant moved to Pennsylvania at some time within two months of the crime is

inadmissible as consciousness of guilt. New trial required. Alford v. State, 2D18-1324 (2/12/20)

https://www.2dca.org/content/download/585447/6625469/file/181324_DC13_02122020_090109_i.pdf

PUBLIC TRIAL-EXCLUDED CO-DEFENDANT: Court lawfully excluded Defendant's husband from her trial when she testified where the Husband was scheduled to go on trial separately for the same incident (a fight at a school). Moore v. State, 3D19-1466 (2/12/20)

https://www.3dca.flcourts.org/content/download/585417/6625109/file/191466_DC02_02122020_102122_i.pdf

VOP-POSSESSION: Defendant can be found in violation of probation when cannabis and weapons are found in a room for which he wore the key around his neck and in which his shirt and wallet were found. Testimony that the room was jointly occupied was not credible. Martin v. State, 3D18-2282 (2/12/20)

https://www.3dca.flcourts.org/content/download/585401/6624917/file/182282_DC02_02122020_100308_i.pdf

DOUBLE JEOPARDY: Clarification of clerical errors is the the imposition of a harsher sentence violating double jeopardy preferences. Martin v. State, 3D18-2282 (2/12/20)

https://www.3dca.flcourts.org/content/download/585401/6624917/file/182282_DC02_02122020_100308_i.pdf

CIRCUMSTANTIAL EVIDENCE: Evidence that Defendant set up the drug deal and entered the home with a co-defendant where the victim was beaten, stabbed and robbed is sufficient evidence of complicity in the murder to sustain the murder conviction. Evidence is more than circumstantial. Pena v. State, 3D18-1504 (2/12/20)

https://www.3dca.flcourts.org/content/download/585394/6624833/file/181504_DC05_02122020_101226_i.pdf

RELEVANCE: Texts about buying a taser in advance of the robbery/murder is relevant to show intent to rob, notwithstanding that no taser was used. Pena v. State, 3D18-1504 (2/12/20)

https://www.3dca.flcourts.org/content/download/585394/6624833/file/181504_DC05_02122020_101226_i.pdf

APPEAL-PRESERVATION: In case of Resisting Without Violence, failure of counsel to contest the legality of the arrest for a misdemeanor (activating a fire alarm) not committed in the presence of the officer is not properly preserved and cannot be rescued by the fundamental error exception to the rule of preservation. Issue may be raised by motion for post conviction relief. H.R. v. State, 3D18-2248 (2/12/20)

https://www.3dca.flcourts.org/content/download/585400/6624905/file/182248_DC05_02122020_101321_i.pdf

JOA: Boilerplate motion for Judgment of Acquittal in Resisting Without Violence case does not adequately articulate and preserve the issue that the officer was not acting in performance of legal duty when he arrested the child for a misdemeanor not committed in his presence. 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. H.R. v. State, 3D18-2248 (2/12/20)

https://www.3dca.flcourts.org/content/download/585400/6624905/file/182248_DC05_02122020_101321_i.pdf

FUNDAMENTAL ERROR-JOA: The fundamental error exception does not permit appellate review of unpreserved error in the State's evidentiary failure to prove the crime unless the evidence failed to establish the commission of any crime whatsoever. H.R. v. State, 3D18-2248 (2/12/20)

https://www.3dca.flcourts.org/content/download/585400/6624905/file/182248_DC05_02122020_101321_i.pdf

HEARSAY-PRIOR CONSISTENT STATEMENT: Where State implied in cross-examination that Defendant had recently fabricated his testimony ("You've had the opportunity to sit in the courtroom the whole time. . .[and] [l]isten to. . .[e]very single witness?"), Defendant may enter into evidence his entire recorded interrogation as a prior consistent statement offered to rebut an express or implied charge of recent fabrication. "Once the State implied that Kitchings' trial testimony was fabricated, the defense should have been permitted to show that Kitchings had provided an earlier, consistent statement to the police. Given the prosecutor's often misleading cross-examination about inconsistencies and omissions, introduction of the entire statement would have placed these matters in a broader context so the jury could have fully evaluated the veracity of the trial testimony." Kitchings v. State, 4D18-1929 (2/12/20)

https://www.4dca.org/content/download/585723/6628781/file/181929_DC13_02122020_104621_i.pdf

RULE OF COMPLETENESS: Rule of completeness does not allow the entire recorded statement the Defendant made to police denying the offense, nothwithstanding that the State used misleading techniques to mislead the jury, where the statement was not actually admitted into evidence by the State. Statement admitted on other grounds. Kitchings v. State, 4D18-1929 (2/12/20)

https://www.4dca.org/content/download/585723/6628781/file/181929_DC13_02122020_104621_i.pdf

REVERSE WILLIAMS RULE: Dubious prior claim of sexual battery by a different perpetrator in New York is properly excluded where the New York defendant was not available to testify and there are significant factual differences. Kitchings v. State, 4D18-1929 (2/12/20)

https://www.4dca.org/content/download/585723/6628781/file/181929_DC13_02122020_104621_i.pdf

EVIDENCE-VICTIM'S RECORDED STATEMENT: In sexual battery case, Court improperly allows the Victim's entire recorded statement into evidence to rehabilitate her trial testimony. Kitchings v. State, 4D18-1929 (2/12/20)

https://www.4dca.org/content/download/585723/6628781/file/181929_DC13_02122020_104621_i.pdf

ARGUMENT-PRESERVATION: "Kitchings also complains about certain misrepresentations made by the prosecutor in closing argument. . .The most egregious argument was that Kitchings was taking Cialis-type medication to address an erection problem, for which there was no support in the record. A conviction should be based on the evidence, not on innuendo. . . However, there was no objection, so there was no preservation." Kitchings v. State, 4D18-1929 (2/12/20)

https://www.4dca.org/content/download/585723/6628781/file/181929_DC13_02122020_104621_i.pdf

SELF-DEFENSE-INSTRUCTION: Defendant is entitled to a self defense instruction where he testified that he punched the Victim when he (the Defendant) was cornered and Victim had an aggressive demeanor and stance. Court's conclusion that the Defendant's evidence merely supported his subjective state of mind and did not support a conclusion that a reasonably, cautious, and prudent person would feel threatened is inappropriate. The trial court should not weigh the evidence for the purpose of determining whether the instruction is appropriate. Radler v. State, 4D18-1737 (2/12/20)

https://www.4dca.org/content/download/585722/6628769/file/181737_DC13_02122020_104806_i.pdf

SELF-DEFENSE: Silent aggressive behavior can be threatening. Radler v. State, 4D18-1737 (2/12/20)

https://www.4dca.org/content/download/585722/6628769/file/181737_DC13_02122020_104806_i.pdf

PROFFER: Court improperly denied the Defendant the right to proffer evidence of the events leading up to the fight which is the gravamen of the offense. Court improperly assumed evidence of what Defendant saw and heard as he was leaving his girlfriend's room was irrelevant. Radler v. State, 4D18-1737 (2/12/20)

https://www.4dca.org/content/download/585722/6628769/file/181737_DC13_02122020_104806_i.pdf

RELEVANCE: Observation includes what Defendant hears as well as what he sees. "We disagree with the State's argument that the question of what Defendant 'observed' as he was leaving the room was limited to visual, as opposed to auditory, observation." Radler v. State, 4D18-1737 (2/12/20)

https://www.4dca.org/content/download/585722/6628769/file/181737_DC13_02122020_104806_i.pdf

SENTENCING-UPWARD DEPARTURE-RULE OF LENITY: Provision of pre-Punishment Code guidelines s. 921.0016(3)(r,) which permits an upward departure from the sentencing guidelines when the primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher, applies only to the case where a prior offense was a level 8 or higher. The rule of lenity is not unlike the old baseball axiom that “the tie goes to the runner.” Court erred in imposing an upward departure. Key v. State, 4D19-1233 (2/12/20)

https://www.4dca.org/content/download/585771/6629357/file/191233_DC13_02122020_102354_i.pdf

POST CONVICTION RELIEF-PERFORMANCE OF PLEA AGREEMENT: Where a condition of a guilty plea is that the defendant will serve the agreed-upon state sentence in federal prison concurrently with a longer federal sentence, and the Defendant is not sent to federal prison, Defendant is entitled to suspension of the sentence, or being resentenced to credit for time served or being allowed to withdraw his plea. Saye v. State, 4D19-2932 (2/12/20)

https://www.4dca.org/content/download/585804/6629753/file/192932_DC13_02122020_102015_i.pdf

APPEAL-PRESERVATION-IMPROPER ARGUMENT: Defendant does not preserve for appellate review unobjected to, improper comments that were made during closing statements when he fails to make a contemporaneous objection but raised the issue in a motion for new trial. Berouty v. State, 2D18-2251 (2/7/20)

https://www.2dca.org/content/download/576259/6515901/file/182251_DC05_02072020_085555_i.pdf

APPELLATE COUNSEL-INEFFECTIVENESS: Appellate counsel was ineffective for failing to argue Faretta where Defendant had asked for re-appointment of counsel on his motion to withdraw plea but court did not inquire about him proceeding *pro se* nor did it conduct a Faretta inquiry. A motion to withdraw plea is a critical stage of the proceedings at which a defendant is entitled to be present and to have counsel represent him. Larocca v. State, 2D19-3028 (2/7/20)

https://www.2dca.org/content/download/576262/6515937/file/193028_DC03_02072020_090254_i.pdf

COSTS: Court may not impose $100 investigative cost for the Sheriff's Office when the cost is not requested nor mentioned at the change of plea hearing. Costs may not be imposed on remand. An apparent agreement between the State Attorney and the Public Defender for imposition of investigative costs in all cases in order to avoid cluttering the docket is unlawful. "If the Legislature desires to amend the statute to provide that a minimum $100 cost of investigation must be summarily assessed against a defendant in each case, it is certainly capable of doing so. . .Unless and until it does, trial judges are not authorized to summarily impose a blanket $100 investigative costs assessment per case." Delafield v. State, 5D18-3140 (2/7/20)

https://www.5dca.org/content/download/576246/6515745/file/183140_1259_02072020_08091713_i.pdf

RESTITUTION: Court erred in requiring Defendant to pay restitution for the victim's nearly twenty-year-old cargo trailer, which was used as a tool shed and which he was not charged with having stolen and which was not mentioned in discovery. Young v. State, 5D19-1879 (2/7/20)

https://www.5dca.org/content/download/576255/6515853/file/191879_1260_02072020_08354992_i.pdf

HOBBS ACT: Conspiracy to commit Hobbs Act robbery does not qualify as a crime of violence under § 924(c)(3)'s elements clause because conspiracy does not require an overt act toward the commission of substantive Hobbs Act robbery. USA v. Duhart, No. 17-11476 (11th Cir. 2/7/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201711476.rem.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: In reviewing the reasonableness of a sentence, the appellate court conducts a two-step inquiry, first reviewing for significant procedural error and second evaluating the substantive reasonableness under the totality of the circumstances, considering whether the sentence is sufficient, but not greater than necessary, to comply with the purposes listed in § 3553. A 168-month total sentence for carjacking is not substantively unreasonable. USA v. King, No. 19-10251 (2/7/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910251.pdf

SEARCH AND SEIZURE: Passenger in a borrowed car has no standing to contest the search of it. USA v. Black, No. 19-10793 (11th Cir. 2/7/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910793.pdf

SENTENCING-SUBSTANTIVE UNREASONABLENESS: Sentencing the Defendant to 24 months imprisonment (statutory maximum), above the six months guidelines recommended sentence, is not substantively unreasonable. USA v. Hernandez-Urieta, No. 19-12541 (11th Cir. 2/6/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201912541.pdf

AMENDMENT-JURY INSTRUCTIONS: Standard jury instructions for owning or leasing a place for sale of controlled substance is amended. A special instruction may be required to address the nexus between the "conveyance," "place," "trailer," or "structure," and the drug activity. In RE: Standard Jury Instructions, SC19-470 (2/6/20)

https://www.floridasupremecourt.org/content/download/576166/6514771/file/sc19-470.pdf

CONSECUTIVE SENTENCES-BOMB: It is improper to impose consecutive mandatory minimum sentences arising from the single criminal act of placing a bomb which killed or injured three people. Jarvis v. State, 1D17-4186 (2/6/20)

https://www.1dca.org/content/download/576215/6515343/file/174186_DC08_02062020_122944_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Defendant may not argue on direct appeal that trial counsel was ineffective for failing to raise or preserve issues. Marshall v. State, 1D18-1276 (2/6/20)

https://www.1dca.org/content/download/576216/6515355/file/181276_DC05_02062020_123644_i.pdf

SEARCH WARRANT-GOOD FAITH EXCEPTION: Officers may search home in good faith reliance on a search warrant issued without probable cause. The exclusionary rule only applies when there is 1) misconduct by police or their adjuncts; 2) a conclusion that applying the exclusionary rule will appreciably deter the misconduct; and 3) a conclusion that the benefit of applying the rule does not outweigh its costs. The mere lack of probable cause supporting a warrant is not a reason to suppress evidence. Wingate v. State, 1D18-4157 (2/6/20)

https://www.1dca.org/content/download/576217/6515367/file/184157_DC05_02062020_123849_i.pdf

FIRST STEP-SENTENCE REDUCTION: Court must consider whether to reduce Defendant's life sentence. Under First Step Act, a district court may reduce a defendant's term of imprisonment if the defendant's sentence was based upon a guidelines range that was later lowered by the Sentencing Commission. Court must engage in a two-part analysis. First, the district court determines the sentence the court would have imposed had the amended guidelines been in effect when the defendant was sentenced. Second, the Court must then decide whether it will exercise its discretion to impose the newly calculated sentence or if it will retain the original sentence. USA v. Valme, No. 19-12025 (11th Cir. 2/5/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201912025.pdf

DOUBLE JEOPARDY: Double Jeopardy violations are fundamental error which may be raised for the first time on appeal. In determining whether multiple convictions based on the same conduct constitute a violation of double jeopardy, an appellate court may consider only the charging document, not the entire record. Double Jeopardy prohibits multiple punishments for exploitation of the elderly (obtaining property) and exploitation of the elderly under section (breaching a fiduciary duty) for counts involving the same time period and concern the same bank accounts. Powers v. State, 2D17-4237 (2/5/20)

https://www.2dca.org/content/download/576076/6513759/file/174237_DC08_02052020_100340_i.pdf

VOP: Defendant cannot be found to have violated probation by committing the new law offense of assault where the affidavit of probation did not so allege. A trial court is not permitted to revoke probation on conduct not charged in the affidavit of revocation. Jackson v. State, 2D17-4283 (2/5/20)

https://www.2dca.org/content/download/576077/6513771/file/174283_DC05_02052020_100617_i.pdf

VOP: Probation cannot be revoked for failure of follow PO's instruction that he not have contact with two specific people. While a probation officer may give a probationer routine supervisory directions that are necessary to carry out the conditions imposed by the trial court, he may not essentially impose a new condition of probation. Jackson v. State, 2D17-4283 (2/5/20)

https://www.2dca.org/content/download/576077/6513771/file/174283_DC05_02052020_100617_i.pdf

SEARCH AND SEIZURE-ANONYMOUS TIP: An anonymous tip that a woman in a dark SUV in a McDonald's parking lot had yelled for someone to call the police is insufficient to justify the stop of a blue PT Cruiser leaving the McDonald's three minutes later. For an anonymous tip to provide a reasonable basis for a Terry stop, the tip must contain specific details which are then corroborated by independent police investigation. Bauman v. State, 2D18-1594 (2/5/20)

https://www.2dca.org/content/download/576079/6513795/file/181594_DC13_02052020_100816_i.pdf

RESTITUTION: Court erred in ordering zero restitution when jury found the Defendant guilty of embezzling more than $20,000, but did not make a factual finding as to the exact amount taken. Court can order restitution greater than a maximum dollar value defining an offense for which a defendant is adjudicated guilty. Eylward v. State, 2D18-2169 (2/5/20)

https://www.2dca.org/content/download/576081/6513819/file/182169_DC13_02052020_101021_i.pdf

JOA-INTENT: Defendant is entitled to Judgment of Acquittal in theft case where State did not prove intent to steal. Williams v. State, 18-2813 (2/5/20)

https://www.2dca.org/content/download/576083/6513843/file/182813_DC13_02052020_101441_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for misinforming him that the 40 year plea offer was a mandatory minimum when in fact only the first 15 years was the mandatory minimum. The fact that the State later said that it would have withdrawn the plea right before trial does not render irrelevant the fact that Defendant rejected the offer at pretrial based on the misadvice. Baptiste v. State, 2D18-3750 (2/5/20)

https://www.2dca.org/content/download/576085/6513867/file/183750_DC08_02052020_101657_i.pdf

DOWNWARD DEPARTURE-COOPERATION: Defendant's prompt acknowledgment of guilt does not constitute cooperation justifying a downward departure. A downward departure is not justified merely because the defendant cooperated after his offense was discovered. State v. Diaz, 2D19-359 (2/5/20)

https://www.2dca.org/content/download/576125/6514347/file/190359_DC13_02052020_102113_i.pdf

DOUBLE JEOPARDY: Double Jeopardy prohibits an increase in Defendant's sentence from 364 days in jail (with county boot camp program) three years in prison after Defendant failed to complete the boot camp program due to an injury. Once a sentence has been imposed and the person begins to serve the sentence, the later imposition of more onerous terms violates the double jeopardy clause. . . . when it disrupts the defendant's legitimate expectations of finality. Good discussion. Martinez v. State, 3D18-1863 (2/5/20)

https://www.3dca.flcourts.org/content/download/576030/6513151/file/181863_DC13_02052020_094408_i.pdf

CONFESSION-VOLUNTARINESS: Multiple vague offers to help appellant ("Help me help you, dude"), implications that it would benefit him to "come clean" or that it would be worse for him if he denied culpability. Confession was involuntary and must be suppressed. Moore v. State, 4D18-1083 (2/5/20)

https://www.4dca.org/content/download/576059/6513527/file/181083_1709_02052020_08500388_i.pdf

QUID PRO QUO: The absence of an express "quid pro quo" bargain does not preclude a finding of coercion. Moore v. State, 4D18-1083 (2/5/20)

https://www.4dca.org/content/download/576059/6513527/file/181083_1709_02052020_08500388_i.pdf

SPEEDY TRIAL-RECAPTURE: Where Defendant filed a notice of expiration of speedy one year after his arrest, court failed to set a hearing on

the motion, and one month later the Defendant filed a notice of expiration, the Defendant is entitled to discharge. After the 10/5 day recapture window expires, court may not make a finding that the Defendant was unavailable for trial. Defendant is not required to serve a copy of the notice of expiration upon the court. Rivera Almodovar v. State, 4D19-620 (2/5/20)

https://www.4dca.org/content/download/576061/6513551/file/190620_1709_02052020_08544595_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claimant counsel was ineffective for misadvising him that hearsay was not admissible, that the victim would not show up at the hearing, and that he could not get consecutive sentences on the counts for which he was on probation because they were originally imposed concurrently. Mathieu v. State, 4D19-1029 (2/5/20)

https://www.4dca.org/content/download/576062/6513563/file/191029_1708_02052020_08575778_i.pdf

IMMIGRATION: Access device fraud and aggravated identity theft are not conclusively aggravated felonies, so that deportation is not presumptively mandatory. When the law is not succinct and straightforward, a criminal defense attorney need do no more than advise a noncitizen that pending criminal charges may carry a risk of adverse immigration consequences. Defendant cannot withdraw plea on basis of claim that counsel should have told him he would be deported. Martin v. USA, No. 18-12643 (11th Cir. 2/4/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201812643.pdf

POST CONVICTION RELIEF: Counsel is not ineffective for failing to call Defendant's girl friend as a character witness in the penalty phase of a murder trial where she was highly impeachable and door would be opened to evidence of Defendant's very bad character. "[P]utting [the witness] on the stand at the sentence stage would have. . .opened more doors leading to a death sentence. Johnston v. Secretary, Florida Department of Corrections, No. 14-14054 (11th Cir. 2/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201414054.pdf

WIRE FRAUD-JUDGMENT OF ACQUITTAL: Defendant properly convicted of wire fraud for applyng for and diverting research grants. USA v. Fard, No. 18-13621 (11th Cir. 2/4/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813621.pdf

HOBBS ACT: Conspiracy to commit Hobbs Act robbery is not a crime of violence. USA v. Jenkins, No. 17-13353 (11th Cir. 2/4/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201713353.pdf

AUDITA QUERELA: A writ of audita querela ("an ancient writ used to attack the enforcement of a judgment after it was rendered") is not available as an alternative to §2255. United States v. Juravel, No. 19-10217 (2/4/20).

http://media.ca11.uscourts.gov/opinions/unpub/files/201910217.pdf

SENTENCING HEARING: Under Rule 32(i)(3)(B), at the sentencing hearing the Court must rule on disputed statements in the PSI or determine that they would not change the analysis. Defendant must assert challenges to factual statements from the PSI with specificity and clarity to trigger this provision. USA v. Dobbs, No. 19-11796 (2/3/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911796.pdf

JURY-12 PERSON: Defendant is entitled to a 12 person jury for a capital offense, notwithstanding that the death penalty is not an option Neither the prosecutor nor the court, by electing not to seek the death penalty, could change the classification of an offense from capital to noncapital and unilaterally determine whether a defendant is entitled to trial by a twelve-person jury. Johnson v. State, 1D19-161 (2/3/20)

https://www.1dca.org/content/download/575946/6512124/file/190161_DC13_02032020_133609_i.pdf

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EVIDENCE-OPINION: DEA agent may give expert opinion that unwitting drug smugglers who do not know they are transporting drugs are extremely rare. An expert witness may not state an opinion about whether the defendant had a particular intent, but this rule does not require the exclusion of expert testimony that supports an obvious inference with respect to the defendant's state of mind so long as the witness does not expressly state this inference. USA v. Russell, No. 19-10560 (11th Cir. 1/31/20).

http://media.ca11.uscourts.gov/opinions/unpub/files/201910560.pdf

SENTENCE REDUCTION-RULE 35: Jailhouse snitch/Defendant may not compel the US Attorney's office to file a Rule 35 motion for reduction of sentence based on his testimony in the three murder cases of two fellow prisoners. The decision whether to file a substantial-assistance motion is a matter of prosecutorial discretion, and the mere fact that a defendant has provided substantial assistance does not mean that the government is obligated to seek a sentence reduction. USA v. Tokars, No. 19-11155 (1/31/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911155.pdf

NEW TRIAL: Judge's statement tha just t "I think there was sufficient evidence on all three counts to support the verdict of guilty and actual possession," does not establish that the Court applied the wrong standard in denying Defendant's Motion for New Trial. If it is unclear whether the trial court used the wrong standard, the potential that the trial court may have erred does not constitute fundamental error. Because Defendant did not object or seek clarification on whether the trial court applied the correct standard, he did not preserve the issue for appeal. Knighton v. State, 1D 18-2133 (1/31/20)

https://www.1dca.org/content/download/573033/6477481/file/182133_DC05_01312020_103834_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for allowing videotaped interview, which had been admitted in evidence, back into the jury room. but that Defendant suffered no prejudice. Martin-Godinez v. State, 1D 18-4531 (1/31/20)

https://www.1dca.org/content/download/573035/6477505/file/184531_DC08_01312020_104122_i.pdf

POST CONVICTION RELIEF: Defendant, who suffers from PTSD from his service in the Marines, is entitled to a hearing on claim that counsel was ineffective for failing to advise him that insanity was a defense. King v. State, 1D 19-130 (1/31/20)

https://www.1dca.org/content/download/573037/6477529/file/190130_DC13_01312020_105238_i.pdf

CONTEMPT: Court may not hold the Defendant in contempt for calling a potential juror racist during jury selection when the Judge did not fully hear what the Defendant said but rather relied on what a bailiff told him. But under the Tipsy Coachman doctrine, the finding of contempt stands because the Judge heard the Defendant say something, and he had previously been admonished to keep silent. Riley v. State, 2D 17-2534 (1/31/20)

https://www.2dca.org/content/download/573004/6477206/file/172534_DC05_01312020_093920_i.pdf

JOA-RESISTING WITHOUT VIOLENCE: Defendant who apparently was impaired by drugs but had not lost the power of self-control when she was found sleeping in the grass was not eligible for Marchman Act detention. Officer who detained her was not in the lawful execution of a legal duty. Defendant is entitled to Judgment of Acquittal. Lobb v. State, 2D 18-4137 (1/31/20)

https://www.2dca.org/content/download/573010/6477278/file/184137_DC13_01312020_094907_i.pdf

INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was ineffective for failing to raise the issue of the improper jury instruction which wrongly allocated the burden of proof in a self defense case. "By instructing the jury that [Defendant's]actions were not justified unless the State proved the very facts it disputed, the instruction prevented the jury from finding that [Defendant's] use of deadly force was justified. This instruction amounted to

a directed verdict on [Defendant's] sole defense and thereby deprived him of a fair trial." Routenberg v. State, 2D19-1632 (1/31/20)

https://www.2dca.org/content/download/573012/6477302/file/191632_DC03_01312020_095317_i.pdf

POST CONVICTION RELIEF (CONCURRING OPINION): Counsel was ineffective for inattentively allowing jurors who had not been stricken two nonetheless be excused and for otherwise acting unprofessionally (wearing bedroom slippers, eating cookies or crackers during the trial, describing her client is a jerk and threatening to leave in the middle of the trial). "Rude behavior and unprofessional conduct have no place in a court of law." But no prejudice because the evidence was overwhelming. Willis v. State, 5D18-3081 (1/31/20)

https://www.5dca.org/content/download/572979/6476899/file/183081_1257_01312020_08131560_i.pdf

POST CONVICTION RELIEF: Court erred in granting Defendant's motion for a new trial based on the conclusion that counsel was ineffective for failing to conduct independent DNA testing, hire a DNA expert or understand aspects of the DNA evidence where the record as a whole showed that counsel did not entirely failed to function as an advocate or completely fail to subject the prosecution to meaningful adversarial testing, and where there is no showing of prejudice. State v. Miller, 5D19-433 (1/31/20)

https://www.5dca.org/content/download/572981/6476923/file/190433_1260_01312020_08220556_i.pdf

POST CONVICTION RELIEF: Counsel is ineffective for failing to call witnesses because he had a blanket strategy of refusing to present witnesses in order to retain the first and last closing argument, but Defendant failed to show prejudice when the witnesses at the time of the hearing on the motion for postconviction relief several years later had no meaningful memory of the events. Downs v. State, 5D19-947 (1/31/20)

https://www.5dca.org/content/download/572982/6476935/file/190947_1257_01312020_08235436_i.pdf

COSTS: Court may not impose investigatory costs which were not part of the plea agreement nor requested nor mentioned at the sentencing hearing. Upon remand, the costs may not be imposed. Chester v. State, 5D 19-2870 (1/31/20)

https://www.5dca.org/content/download/572986/6476983/file/192870_1257_01312020_08353412_i.pdf

AMENDMENT-APPELLATE RULES: Rule amended to enable attorneys and parties to obtain unredacted records on appeal without having to obtain a court order from the district courts in every case. In Re: Amendments to Rules of Appellate Procedure, SC18-2011 (1/30/20)

https://www.floridasupremecourt.org/content/download/572874/6475670/file/sc18-2011.pdf

JURISDICTION-HIGH SEAS: MDLEA allows United States to exercise jurisdiction over vessels without nationality from possessing narcotics with intent to distribute on the high seas in international waters, regardless of any nexus to USA. A vessel is without nationality when no one onboard claims nationality nor produces any nationality documents. A person violating the MDLEA "may be tried in any district if the offense was begun or committed upon the high seas. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

DELAY -FIRST APPEARANCE: 49-day delay between arrest (off coast of Honduras) and first appearance (in Key West) does not warrant dismissal when record does not show the reason for the delay. Also, the Fourth

Amendment does not apply to actions against foreign citizens on international waters. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

CONCURRENCE: "I am deeply troubled that the government took seven weeks between arresting the defendants and bringing them before a magistrate judge for a probable-cause determination. . .The government is fortunate that the defendants did not raise the Coast Guard's apparent seven-week odyssey in the district court.. . .[S]Even weeks! That's a long time. Christopher Columbus's first voyage across the entire Atlantic Ocean, from the Canary Islands to the Bahamas, took only roughly five weeks. . .In the absence of a very good reason, detaining a person on the high seas for seven weeks before formally charging him with a crime is just wrong." USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

SILENCE OF DEFENDANT: Fifth Amendment allows the use of a defendant's post-arrest, pre-Miranda silence to impeach the defendant or as direct evidence tending to prove the defendant's guilt. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

JUDGMENT OF ACQUITTAL: Large drug quantities on a small vessel is legally sufficient to show that everyone on the boat conspired to traffic in the narcotics. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

SENTENCING-GUIDELINES-LEADERSHIP: Captain of the drug boat is appropriately assessed a leadership role on scoresheet. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

SAFETY VALVE-FIFTH AMENDMENT: Issue of whether safety-valve's requirement of cooperation violates the Fith Amendment is not resolved. USA v. Cabezas-Montano, No. 17-14294 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201714294.pdf

HABEAS CORPUS-ACTUAL INNOCENCE-DEATH PENALTY: Defendant may not seek habeas corpus relief on a successive claim of actual innocence. "[N]ew evidence does not a new claim make." In Re: James Dailey, No. 19-15145 (11th Cir. 1/29/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201915145.ord.pdf

POSSESSION OF FIREARM BY FELON: Failure of the indictment to allege Defendant had knowledge of his status as a felon is plain error, but not reversible where there is no showing of a reasonable probability that the outcome of the trial or guilty plea would have been different had the knowledge requirement been included. USA v. Jones, No. 19-11754 (11th Cir. 1/28/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911754.pdf

SENTENCING: 105-month upward variance from the applicable guideline range is not procedurally unreasonable. A sentence is procedurally unreasonable when a district court commits an error such as improperly calculating the guideline range, failing to consider the 18 U.S.C. § 3553(a)

factors, sentencing based on erroneous facts, or failing to explain the sentence given. USA v. Ramirez-Flores, No. 19-11163 (1/27/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911163.pdf

HUH? WHAT? HUH?: Court lacks jurisdiction to grant Defendant's Motion to Correct Sentence more than sixty days after it is filed (Court had sentenced Defendant to prison for twelve years for violating probation on a count for which he was not on probation. Case remanded to vacate the sentence. Stevens v. State, 1D18-1413 (1/29/20)

https://www.1dca.org/content/download/572784/6474566/file/181483_DC13_01292020_091554_i.pdf

HEARSAY: Text message sent by the Victim ("Damn, my boy got some fire, boy."), offered by the Defendant to support the idea that the Victim died of a heroin overdose supplied by someone other than him, is inadmissible hearsay. Jackson v. State, 1D18-1603 (1/29/20)

https://www.1dca.org/content/download/572785/6474578/file/181603_DC05_01292020_091853_i.pdf

SEARCH AND SEIZURE: There is no Fourth Amendment violation during a routine traffic stop where officers had to address safety issues arising from a passenger's behavior. Bush v. State, 1D 18-5286 (1/29/20)

https://www.1dca.org/content/download/572787/6474602/file/185286_DC05_01292020_092402_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to relief on claim that counsel was ineffective for not taking depositions where the Court found

that the choice not to take depositions was a reasonable strategic decision. Rawls v. State, 3D 18-2505 (1/29/20)

https://www.3dca.flcourts.org/content/download/572798/6474748/file/182505_DC05_01292020_095517_i.pdf

APPEALS-MOTION TO MITIGATE: A motion to mitigate sentence is not an appealable order. Berki v. State, 3D 19-2151 (1/29/20)

https://www.3dca.flcourts.org/content/download/572806/6474844/file/192151_DA08_01292020_101604_i.pdf

THEFT-VALUE: Testimony that the Victim had purchased an Apple iPhone 7 Plus four $700 one month before is sufficient to establish that the value exceeded $300. C.S. v. State, 3D 18-2491 (1/29/20)

https://www.3dca.flcourts.org/content/download/572797/6474736/file/182491_DC05_01292020_095437_i.pdf

HISTORICAL TIDBIT: "Grades of larceny hold historical significance, as 'in ancient times, the higher grade of this offense was punishable capitally, and that grade was reached at what now would seem an extremely low figure as to value . . . [G]rand larceny . . . consist[ed] of feloniously stealing the personal property of another, 'above the value of 12 pence.' " C.S. v. State, 3D 18-2491 (1/29/20)

https://www.3dca.flcourts.org/content/download/572797/6474736/file/182491_DC05_01292020_095437_i.pdf

TRANSMISSION OF HARMFUL MATERIAL: Jury instruction is not deficient for failing to define the "prurient interest" prong of the definition of "harmful to minors" in a way related to community standards. The standards

for obscenity can be different for minors, as compared to adults. "[U]ntil a majority of the United States Supreme Court or the Florida Supreme Court holds otherwise, the jury does not need to be specifically instructed that it is to use a community standard, statewide or countywide in determining if material or conduct is prurient." Alexander v. State, 4D 19-529 (1/29/20)

https://www.4dca.org/content/download/572814/6474947/file/190529_1257_01292020_09303488_i.pdf

COMPETENCY: Court must make written findings that the defendant is competent. Here, Court made sufficient oral findings. Case is remanded for entry of a written order. Nelson v. State, 4D 19-1180 (1/29/20)

https://www.4dca.org/content/download/572816/6474971/file/191180_1257_01292020_09322222_i.pdf

PRO SE FILINGS: Court abuse discretion in prohibiting the Defendant from filing pro se motions where the four motions he filed appear to have been made in good faith. Bynes v. State, 1d 19-1961 (1/29/19)

https://www.4dca.org/content/download/572817/6474983/file/191961_1709_01292020_09342055_i.pdf

STAND YOUR GROUND: Defendant is not entitled to certiorari relief for being required to present prima facie evidence on self-defense where he agreed to the procedure. "Because Rogers did not object to, but agreed with, the trial court's suggestion at the immunity hearing that he needed to present evidence in support of his prima facie claim, he cannot now be heard to complain that the procedure employed by the trial court departed from the essential requirements of law." Rogers v. State, 1D18-5207 (1/27/20)

https://www.1dca.org/content/download/572661/6473307/file/185207_DC02_01272020_112209_i.pdf

POST CONVICTION RELIEF-TIMELINESS: Two year time limit on Defendant's motion for postconviction relief is tolled for the time when the case itself was under appeal. Court erred in denying the motion as time-barred. The time to seek postconviction relief did not begin to run until the earlier appeal concluded on June 29, 2018. Cave v. State, 1D19-103 (1/27/20)

https://www.1dca.org/content/download/572662/6473319/file/190103_DC13_01272020_112431_i.pdf

THREATS TO PUBLIC OFFICIALS-FREE SPEECH: Threatening senators (hunt them down, "bash in Senator Scott's brain," and "kill that mother fucker") is not First Amendment protected speech (Defendant also said that Dylann Roof "is the greatest American hero that ever lived.") USA v. Bell, (11th Cir. 1/24/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814313.pdf

SENTENCING-SUBSTANTIVE REASONABLENESS REVIEW: Substantive reasonableness review broadly looks to whether the district court abused its discretion in weighing permissible §3553(a) factors. Court may consider how many times the Defendant illegally re-entered the country, regardless of lack of prosecution, in imposing an upward variance in sentencing the Defendant in illegal reentry case. USA v. Velazquez-Calderon, (11th Cir. 1/24/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911419.pdf

COSTS: Court may not order Defendant to pay $100 for costs of investigation which are not requested by the prosecutor or agency. Rogers v. State, 5D19-1751 (1/24/20)

https://www.5dca.org/content/download/569119/6430764/file/191751_1257_01242020_08203799_i.pdf

INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was ineffective for failing to argue that the automobile exeption to the Fourth Amendment did not apply. "Had counsel raised this issue on appeal, this Court would have been constrained to reverse." Jones v. State, 5D19-2945 (1/24/20)

https://www.5dca.org/content/download/569129/6430884/file/192945_1255_01242020_08283733_i.pdf

DEATH PENALTY: Hurst v. State receded from to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt. "Neither Hurst v. Florida, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury. . . recommend a sentence of death." Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

DEATH PENALTY: "[L]est there be any doubt, we hold that our state constitution's prohibition on cruel and unusual punishment, article I, section 17,5 does not require a unanimous jury recommendation — or any jury recommendation — before a death sentence can be imposed." Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

STARE DECISIS: "[S]tare decisis does not command blind allegiance to precedent." Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

STARE DECISIS: The test for how to apply Stare Decisis is receded from. "In the years since our decision in North Florida Women's Health, we have not treated that case as having set forth a stare decisis test that we must follow in every case. . .[W]e are wary of any invocation of multi-factor stare decisis tests or frameworks. . .They are malleable. . .[a]nd they can lead us to decide cases on the basis of guesses about the consequences of our decisions, which in turn can make those decisions less principled. Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

CROCODILE TEARS: "It is no small matter for one Court to conclude that a predecessor Court has clearly erred. The later Court must approach precedent presuming that the earlier Court faithfully and competently carried out its duty. . .In this case we cannot escape the conclusion that, to the extent it went beyond what a correct interpretation of Hurst v. Florida required, our Court in Hurst v. State got it wrong." Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

QUOTATION (DISSENT): "Florida holds the shameful national title as the state with the most death row exonerations." Poole v. State, SC18-245 (1/23/20)

https://www.floridasupremecourt.org/content/download/569075/6430280/file/sc18-245.pdf

UPWARD DEPARTURE-JURY FINDING-DANGEROUSNESS: Upon remand from the improper imposition of an upward departure without a jury finding of dangerousness, the proper remedy is a new sentencing hearing with a newly empaneled jury. Gaymon v. State, SC19-712 (1/23/20)

https://www.floridasupremecourt.org/content/download/569077/6430304/file/sc19-712.pdf

POST CONVICTION RELIEF: Failure to impeach on inconsistent statements related to minor points and subject to easy explanation is not ineffective assistance warranting a new trial. Kocaker v. State, SC17-1975 (1/23/20)

https://www.floridasupremecourt.org/content/download/569074/6430268/file/sc17-1975.pdf

APPEAL-PRESERVATION-POST CONVICTION RELIEF: Where Defendant did not raise the issue of whether counsel had conceded guilt on some counts until the written closing argument on his motion for postconviction relief, and had not raise the issue in the motion itself, the issue is not preserved for appeal. Kocaker v. State, SC17-1975 (1/23/20)

https://www.floridasupremecourt.org/content/download/569074/6430268/file/sc17-1975.pdf

VOP-HEARSAY: In VOP hearing, Defendant is entitled to certain minimal due process requirements, including the right to confront and cross-examine adverse witnesses, unless the court determines that the interest of justice

does not require the witness to appear. Hearsay may be admissible if trustworthy and reliable. Hearsay evidence (PO talking to trooper in Orlando to establish that Defendant had left the Northern District and video clip of Defendant's daughter telling LEO that Defendant had hit her) is admissible in VOP hearing. USA v. Williams, (11th Cir. 1/23/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201913348.pdf

HABEAS CORPUS-CUSTODY-JURISDICTION: Defendant cannot seek habeas corpus relief unless in custody. Where Defendant is serving life imprisonment on one count (murder) and a consecutive term on other counts (the subject of the habeas corpus action), he is not in custody because relief will not shorten his overall term of incarceration. Boone v. Warden, (11th Cir. 1/23/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813097.pdf

CRIME OF VIOLENCE: Attempted bank robbery is a crime of violence under the elements clause of §924(c). USA v. Harvey, No. 18-13108 (11th Cir 1/23/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813108.pdf

FIRST STEP: The First Step Act authorizes, but does not require, a district court to impose a reduced sentence. Court did not err in denying, as a matter of discretion, the Defendant's sentence when his offense level (L. 37) is unaffected the First Step Act because of the Defendant's Career Offender status. USA v. Rivas, No. 19-11691 (11th Cir. 1/23/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911691.pdf

POST CONVICTION RELIEF: A Rule 60(b) motion (Motion for Relief from a Judgment or Order) will be treated as a successive §2255 motion if it attacks the federal court's previous resolution of a claim on the merits. Attacking a district court's application of a statute of limitations is a challenge on the merits. St. Preux v. USA, No. 17-14091 (11th Cir. 1/23/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201714091.pdf

LESSER INCLUDED: Where there is no error in the jury instruction on the offense of conviction, and the evidence supports that conviction, the defendant's judgment must be affirmed. Weaver v. State, 1D18-2199 (1/23/20)

https://www.1dca.org/content/download/569101/6430562/file/182199_DC05_01232020_143026_i.pdf

COSTS: Court may not impose $250 public defender fee, instead of $100, without making findings to support the higher-than-minimum amount permitted by the statute. Rohn v. State, 1D18-4368 (1/23/20)

https://www.1dca.org/content/download/569104/6430598/file/184368_DC08_01232020_144000_i.pdf

RETURN OF PROPERTY: A motion to return property must allege that the property is exclusively his own, that it was not the fruit of illegal activity, and that it is not being held for evidentiary purposes. The fact that property was previously entered into evidence at the trial level is insufficient to deny the motion without a hearing, and the assertion that there may be postconviction proceedings beyond the direct appeal does not establish the State's continued need to retain the property. Horn v. State, 1D18-4858 (1/23/20)

https://www.1dca.org/content/download/569105/6430610/file/184858_DC13_01232020_144201_i.pdf

FORFEITURE: When the government filed a motion for forfeiture before sentencing but the court was unable to calculate the amount of the forfeiture money judgment before sentencing, it was reasonable and entirely permissible under Rule 32.2 for it to enter a written judgment to generally order forfeiture, with the specific amount and subject substitute assets to be determined later. Establishing the amount of forfeiture as part of sentencing may occur in a post-sentencing hearing when Defendant affirmatively agrees to the issue being deferred. USA v. Mincey, No. 16-11049 (11th Cir. 1/22/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201611049.pdf

HOBBS ACT: Conspiracy to commit Hobbs Act robbery does not serve as a predicate crime of violence because conspiracy is not a crime of violence. The residual clause is unconstitutionally vague. Conviction vacated. Chance v. State, No. 17-15192 (11th Cir 1/22/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201715192.rem.pdf

POST CONVICTION RELIEF: 28 U.S.C. § 2255 is the exclusive mechanism for a federal prisoner to seek collateral relief unless he can satisfy the "saving clause,' which permits a prisoner to seek collateral review by filing a §2241 petition only if the remedy available through § 2255 is inadequate or ineffective to test the legality of his detention. §2255 remedy is adequate even if the claims brought in that motion would have been dismissed due to a procedural bar, time limit, or circuit precedent. Defendant may not raise a habeas corpus (§2241) challenge to the inapplicability of First Step to his previously imposed sentence. Orr v. USA, No. 19-11881 (11th Cir. 1/22/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911881.pdf

COMPETENCY: Court commits fundamental error by not holding a hearing and adjudicating Defendant's competency after finding reasonable grounds to believe that Defendant was incompetent and ordering a competency evaluation. The failure to hold a competency hearing prior to accepting a plea constitutes fundamental error that can be raised on direct appeal without the filing of a motion to withdraw plea. Hicks v. State, 1D 18-4130 (12/22/20)

https://www.1dca.org/content/download/569017/6429624/file/184130_DC13_01222020_140454_i.pdf

LIFE SENTENCE-MINOR: A life sentence with the possibility of parole for first-degree murder committed by a minor is constitutional. State v. Griner, 1D 18-4849 (12/22/20)

https://www.1dca.org/content/download/569022/6429675/file/184849_DC13_01222020_141008_i.pdf

JOA-CAPITAL SEXUAL BATTERY: Court erred in denying Motion for Judgment of Acquittal for capital sexual battery where the State failed to present evidence establishing union between the Defendant's penis and the Victim's anus. Dozier v. State, 1D 18-597 (1/22/20)

https://www.1dca.org/content/download/569016/6429612/file/180597_DC08_01222020_135925_i.pdf

AGGRAVATED CHILD ABUSE-WILLFUL INTENT: There is sufficient evidence of willful intent to commit aggravated child abuse when a 320 pound woman sat on 109 pound girl in order to restrain her, causing

compression of the chest and asphyxiation. Striking the child and sitting on her is not legally permissible corporal punishment. Posey v. State, 1D 19-1283 (1/22/20)

https://www.1dca.org/content/download/569024/6429695/file/191283_DC05_01222020_141244_i.pdf

DWLS: Notice is not an element of DWLS as a Habitual Traffic Offender. Previous precedents receded from. "The Rodgers court simply identified one part of one subsection of section 322.251 and, for whatever reason, declared that it was an element of section 322.34(5). . .This seemingly innocuous insertion, once planted in Florida's jurisprudence without the pruning influence of a ratio decidendi, soon began to spread." Robinson v. State, 2D17-3087 (1/22/20)

https://www.2dca.org/content/download/568966/6429013/file/173087_DC05_01222020_083233_i.pdf

APPEALS-JURISDICTION: Appellate court does not have jurisdiction to consider the denial of a motion to correct sentence under R. 3.800(b) outside of a direct appeal. Lesende v. State, 2D18-2252 (1/22/20)

https://www.2dca.org/content/download/568967/6429025/file/182252_DA08_01222020_084223_i.pdf

SEVERANCE: Court properly denied severance of one of four drug sales occurring within 10 days of each other where one led to the other, the same defense applied to all, and the Defendant only sought the sever the count with the recording. "In the instant case, the recorded transaction that was the basis of count two was intertwined with or connected in an episodic sense to that in count four, when Det. Love completed the purchase of the bundle

of heroin that he had ordered during the prior, recorded transaction." Vinas v. State, 3D18-1433 (1/22/20)

https://www.3dca.flcourts.org/content/download/568931/6428584/file/181433_DC05_01222020_095459_i.pdf

MURDER-PREMEDITATION: Premeditation is sufficiently established by evidence that the Defendant chased down the victim and killed him with the blow of an axe to the head while he was on the ground. Harris v. State, 4D18-1735 (1/22/20)

https://www.4dca.org/content/download/568937/6428663/file/181735_1257_01222020_08521951_i.pdf

EVIDENCE-RELEVANCE: Defendant's statement that he and his friends were "Guat hunting" (looking for Mexicans or Guatemalans to rob) and that they had earlier in the evening assaulted a Hispanic on a bike were relevant to motive in the racially motivated killing. Harris v. State, 4D18-1735 (1/22/20)

https://www.4dca.org/content/download/568937/6428663/file/181735_1257_01222020_08521951_i.pdf

CARRYING CONCEALED WEAPON: An element of the crime of carrying a concealed weapon is that the defendant was not licensed to carry a concealed weapon. Burden of proof on this element is on the State, rather than on the Defendant to assert as an affirmative defense. Fundamental error occurs when information fails to allege that the Defendant was not licenced and unobjected to jury instructions do not mention the element. Jackson v. State, 4D18-3021 (1/22/20)

https://www.4dca.org/content/download/568939/6428687/file/183021_1708_01222020_08574080_i.pdf

PRISION RELEASEE REOFFENDER-INJUSTICE: Defendant is lawfully sentenced to life in prison as a Prison Releasee Offender based on his prior conviction for carrying a concealed firearm and possessing a firearm as a delinquent at the age of sixteen and the new offense of stealing the Rolex of someone who was trying to sell it in a high crime neighborhood, perhaps for drugs. "Morris's case is demonstrative of the effect of undiscerning inclusion of youthful crimes in mandatory statutory sentencing schemes. . . .[C]rimes committed while an offender is underage should not be permitted to establish predicate offenses for sentencing under recidivism statutes." Morris v. State, 4D18-3035 (1/22/20)

https://www.4dca.org/content/download/568940/6428699/file/183035_1257_01222020_08595194_i.pdf

JUDGMENT OF ACQUITTAL-CIRCUMSTANTIAL EVIDENCE: The circumstantial evidence standard of review applies only where all of the evidence of a defendant's guilt is circumstantial, not where any particular element of a crime is demonstrated exclusively by circumstantial evidence. Evidence that the Defendant attempted to use a bogus receipt to take merchandise without paying is not circumstantial evidence. Court erred in entering JOA. State v. Timianski, 4D18-3409 (1/22/20)

https://www.4dca.org/content/download/568942/6428723/file/183409_1709_01222020_09040697_i.pdf

INFORMATION-SCORESHEET-CALCULATION: Where the body of the information alluded to burglary of a conveyance (a Level 4 on scoresheet) but the heading of the information, supported by the probable cause affidavit alluded to damage in excess of $1,000 (Level 8), Defendant is properly scored at Level 8. Funderburk distinguished. Brown v. State, 4D18-3592 (1/22/20)

https://www.4dca.org/content/download/568943/6428735/file/183592_1708_01222020_09075521_i.pdf

INFORMATION-SCORESHEET-CALCULATION: Absent an allegation in the information that the stolen property's value was $10,000 or more, the charge must be categorized as a Level 2 offense. Brown v. State, 4D18-3592 (1/22/20)

https://www.4dca.org/content/download/568943/6428735/file/183592_1708_01222020_09075521_i.pdf

SENTENCING: At the time of sentencing, the district court must state its reasons for imposing a particular sentence. Upon imposing a reduced sentence pursuant to the First Step Act, the Court's statement that the sentence imposed would be sufficient but not greater than necessary to comply with § 3553(a). USA v. Burgest, No. 19-11743 (11th Cir. 1/21/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911743.pdf

SENTENCING-ENHANCEMENT-FIREARM TRAFFICKING: 2K2.1(b)(5) enhancement for trafficking in firearms applies when Defendant transferred two or more firearms having reason to know that the recipient could not legally possess them or would use or dispose of them unlawfully. The fact that the recipient of the firearms was also buying meth does not mean that the guns were to possessed or used unlawfully. USA v. Criscoe, (11th Cir. 1/21/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911785.pdf

EVIDENCE: In a prosecution of sexual battery of a child, evidence of physical abuse against the child's mother is admissible to explain why the victim had not earlier reported the crime for fear of the defendant's retribution. Wendell v. State, 1D 18-4156 (1/21/20)

https://www.1dca.org/content/download/568870/6425828/file/184156_DC05_01212020_095142_i.pdf

VOP: Bare allegation that the Defendant was engaged in criminal activity in a particular residence insufficiently charges a violation of Condition Six. Hill v. State, 1D18-1355 (1/21/20)

https://www.1dca.org/content/download/568868/6425804/file/181355_DC08_01212020_094827_i.pdf

RE-SENTENCING-FIRST STEP ACT: Where Court had originally varied downward by 27% from the recommended guideline range, it is not required to apply a proportional reduction upon First Step resentencing. USA v. Baronville, No. 19-12107 (11th Cir. 1/20/20)

http://media.ca11.uscourts.gov/opinions/unpub/files/201912107.pdf

JOA-BURGLARY-MERE PRESENCE: Child walking down the street with two others, one on whom was straddling a bicycle just stolen from a carport, cannot be convicted of burglary or theft. There was evidence that Child's companion committed a burglary, but not that Child did anything to encourage or aid in the commission of the burglary or the theft of the bike. Mere presence is insufficient to establish guilt. S.L.W. v. State, 2D18-3546 (1/17/20)

https://www.2dca.org/content/download/567966/6415124/file/183546_DC08_01172020_085601_i.pdf

NEWLY DISCOVERED EVIDENCE–MANIFEST INJUSTICE: Advances in forensic medicine changing the consensus within the medical community from believing that "short distance" falls cannot cause death to believing that they can is newly discovered evidence which warrants a new trial where the State's expert had testified at trial that a fall down the stairs could not have caused the fatal injury in a child abuse case. Manifest injustice excuses the two year time limitation for relief. "Nothing could be more manifestly unjust than having a murder conviction rest largely on the testimony of. . . a medical examiner whose work has been called into doubt. . and when apparent advances in forensic science appear to substantially weaken the opinions reached." Vega v. State, 5D19-729 (1/17/20)

https://www.5dca.org/content/download/567959/6415037/file/190729_1259_01172020_08055428_i.pdf

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: If a legal issue would in all probability have been found to be without merit had counsel raised the issue on direct appeal (here, a suppression of confession issue),, the failure of appellate counsel to raise the meritless issue will not render appellate counsel's performance ineffective. Moran v. State, 5D19-1833 (1/17/20)

https://www.5dca.org/content/download/567961/6415061/file/191833_1254_01172020_08073696_i.pdf

FRAGMENTED SENTENCES: Defendant who is sentenced to serve concurrent sentences in prison in separate cases, each of which carry a mandatory minimum, and for whom the mandatory minimums portions of each sentence are to be served consecutively, does not receive an improperly fragmented sentence. Consecutive minimum mandatory sentences within otherwise concurrent sentences is lawful, so long as the

offenses arose from separate and distinct criminal episodes. Thomas v. State, 5D19-2637 (1/17/20)

https://www.5dca.org/content/download/567962/6415073/file/192637_1257_01172020_08122546_i.pdf

SEARCH AND SEIZURE: Defendant's van is properly searched when Defendant attempts to deliver narcotics to a dealer who had been arrested earlier in the day and who negotiated a drug deal with the Defendant immediately after the dealer's arrest. United States v. Mancilla-Ibarra, (11th Cir. 1/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713663.pdf

SAFETY VALVE: Defendant does not qualify for the two level safety valve reduction when he gives some information but holds back on other information, thus not satisfying the "tell-all" provision. The Defendant carries the burden of proving he qualifies for safety valve. "And it is blackletter law that where the trier of fact remains uncertain, the party with the burden of proof loses." United States v. Mancilla-Ibarra, (11th Cir. 1/15/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201713663.pdf

POST CONVICTION RELIEF: Brevity of consultation with client alone is not grounds for postconviction relief. Martin v. State, SC18-214 (1/16/20)

https://www.floridasupremecourt.org/content/download/567881/6414164/file/sc18-214.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to try to implicate a 6'3" tall individual with an alibi in South Florida at the time of

the murder in Jacksonville where the shooter is described as a "short fat dude" and the Defendant, whose nickname was "Shorty Fat", is 5'3″ with a waist circumference of 48 inches. Martin v. State, SC18-214 (1/16/20)

https://www.floridasupremecourt.org/content/download/567881/6414164/file/sc18-214.pdf

ARGUMENT-VISUAL AID: "The prosecutor's use of a visual aid which allegedly depicted a cartoon of a man with his head in the sand is clearly a questionable choice in the context of a capital murder trial. . .The State used the visual aid to argue the evidence. . [that] the jury should not 'bury their heads in the sand.'" But no fundamental error. Martin v. State, SC18-214 (1/16/20)

https://www.floridasupremecourt.org/content/download/567881/6414164/file/sc18-214.pdf

VOTING RIGHTS: Article VI, section 4 of the Florida Constitution restores voting rights to certain felons only upon completion of all terms of sentence, including payment in full of all fines, costs, and restitution. Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

STATUTORY INTERPRETATION: "[T]his Court has sometimes suggested that the first step in construing a constitutional provision may involve something other than determining the objective meaning of the text. . .('In construing the Constitution, we first seek to ascertain the intent of the framers and voters'. . .) We believe that such statements can be misleading because they may be understood to shift the focus of interpretation from the

text and its context to extraneous considerations. And such extraneous considerations can result in the judicial imposition of meaning that the text cannot bear. . . We therefore adhere to the 'supremacy-of-text principle.'" Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

DEFINITION-"TERM": "But the fact that the word 'terms' itself can carry different meanings does not render the phrase 'all terms of sentence,' as used in Amendment 4, susceptible to more than one natural reading. . .We conclude that 'all terms of sentence' plainly encompasses not only durational terms but also obligations and therefore includes all LFOs imposed in conjunction with an adjudication of guilt. Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

DEFINITION-"SENTENCE": "The word 'sentence" is not defined in the Florida Constitution or seemingly anywhere in the Florida Statutes. . .[T]he word "sentence" cannot be construed in an overly technical fashion here. . .Amendment 4. . .uses the word 'sentence' in its plain, common sense. . . [T]here is no basis to conclude that 'all terms of sentence' excludes any LFOs ordered by the sentencing judge. Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

DEFINITION-"LFO": "Legal Financial Obligations." Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

STATUTORY INTERPRETATION-(concurring, J. Labarga): Textualism "is a sound theory of interpretation which, in most instances, proves to be determinative. My concern is with its strict disapproval of consideration of extrinsic sources which, in some instances, such as in this case, prove to be not only helpful, but dispositive." Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

STATUTORY INTERPRETATION-(concurring, J. Labarga): "Textualist abhorrence of consideration of the intent of the framers of a constitutional or statutory provision has been persistently and stubbornly present throughout the theory's history. . .I agree with the majority that the lodestar of constitutional and statutory interpretation should be, in the first instance, the application of the words of the governing text read in context. However, the analysis should provide some allowance for consideration of the intent of the framers and voters in instances where it will assist in elucidating the meaning of the text in question." Re: Implementation of Amendment 4, the Voting Restoration Amendment, SC19-1341 (1/16/20)

https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

JURY INSTRUCTIONS-AMENDMENT: Definitions of "cyberstalk" and "maliciously" are revised. In Re: Standard Jury Instructions, SC19-1654 (1/16/20)

https://www.floridasupremecourt.org/content/download/567885/6414212/file/sc19-1654.pdf

JURY INSTRUCTIONS-AMENDMENT: Definitions for Lewd and Lascivious Conduct in Detention Facility revised. In Re: Standard Jury Instructions, SC19-1696 (1/16/20)

https://www.floridasupremecourt.org/content/download/567886/6414224/file/sc19-1696.pdf

JURY INSTRUCTIONS-AMENDMENT: The theft instruction is amended based upon the change to the grand theft statute as to amount. In Re: Standard Jury Instructions, SC19-1696 (1/16/20)

https://www.floridasupremecourt.org/content/download/567886/6414224/file/sc19-1696.pdf

JURY INSTRUCTION-AMENDMENT: In Fleeing and Eluding instruction, the definition for "operator" is eliminated and the statutory citations for "street or highway" and "vehicle" are updated. In Re: Standard Jury Instructions, SC19-1760 (1/16/20)

https://www.floridasupremecourt.org/content/download/567887/6414236/file/sc19-1760.pdf

APPEAL-COSTS: Where Court imposed investigative costs without them having been requested, and Defendant successfully appeals their imposition, Court may not impose the investigative costs upon remand. "A party does

not get the proverbial 'second bite at the apple' when it fails to satisfy a legal obligation the first time around. Richards v. State, SC19-24 (1/16/20)

https://www.floridasupremecourt.org/content/download/567882/6414176/file/sc19-24.pdf

SILENCE OF DEFENDANT: Testimony that Defendant, who when approached on his porch about the two people killed in front of his house, initially remained silent, detached, and emotionless, and that he did not claim self-defense, is an impermissible comment on his right to remain silent under Article 1, section 9's privilege against self-incrimination. Prearrest, pre-Miranda silence does not prove a consciousness of guilt and is therefore not relevant as substantive evidence. A defendant's postarrest, pre-Miranda silence may not be used either as substantive evidence or for impeachment purposes and that (2) a defendant's prearrest, pre-Miranda silence may not be used as substantive evidence but may be used for impeachment if the silence is inconsistent with the defendant's testimony at trial. Howard v. State, 2D17-4947 (1/15/20)

https://www.2dca.org/content/download/567790/6413137/file/174947_DC13_01152020_090134_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Counsel's failure to provide the court with the authorities on the use of Defendant's pre-arrest silence and to object to the State's introduction of evidence and comment upon his silence was ineffective assistance of counsel Because there could have been no tactical explanation for counsel's failure, issue can be raised on direct appeal. Conviction vacated and remanded. "[I]n view of the extent of the State's evidence and argument on Mr. Howard's prearrest, pre-Miranda silence and counsel's multiple missed opportunities to object, this is one of those rare cases where the deficiency is apparent on the face of the record." Howard v. State, 2D17-4947 (1/15/20)

https://www.2dca.org/content/download/567790/6413137/file/174947_DC13_01152020_090134_i.pdf

TOO WEIRD-MOTION-TIMELINESS: Where Court improperly imposed a $50,000 fine and Defendant moved to correct the order imposing it, which the Court granted but only on the 61st day, the order was untimely, a nullity and the motion deemed denied. Notwithstanding, the deemed denial of the motion is vacated and the case remanded for the proper granting of the motion. Hamiter v. State, 2D18-2104 (1/15/20)

https://www.2dca.org/content/download/567792/6413161/file/182104_DC08_01152020_091124_i.pdf

APPEAL-ANDERS BRIEF: Appointed counsel may challenge a trial court's denial of a rule 3.800(b) motion to correct a minor sentencing error in an Anders "no merit" brief. "[W]e question whether it is generally appropriate to correct a 'minor sentencing error' without subjecting the asserted error to adversarial testing. But our question here concerns the point at which a 'minor sentencing error' becomes a 'major sentencing error,' which can be a slippery inquiry. . .Although the error before us involves costs. . .and errors concerning costs may pale in significance to errors concerning, for example, length of incarceration, we are not so cavalier . . .as to lightly dismiss a $50,000-plus mistake as 'minor.'" Question certified. Hamiter v. State, 2D18-2104 (1/15/20)

https://www.2dca.org/content/download/567792/6413161/file/182104_DC08_01152020_091124_i.pdf

EVIDENCE-BATTERED CHILD SYNDROME: Battered child syndrome testimony is admissible to refute a claim of accidental death or to prove intent. Cardona v. State, 3D17-2767 (1/15/20)

https://www.3dca.flcourts.org/content/download/567864/6413945/file/172767_DC05_01152020_162302_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court must make written findings articulating whether or not a VFOSC poses a danger to the community. The transcript of the oral pronouncement is insufficient. Saladriga v. State, 3D19-473 (1/15/20)

https://www.3dca.flcourts.org/content/download/567869/6414005/file/190473_DC13_01152020_163201_i.pdf

PRESENCE OF CHILD-DISPOSITION: A juvenile defendant has a constitutional right to be present at his or her disposition hearing, notwithstanding the practical considerations of the Child having been transported to a commitment facility for other cases before. M.C. v. State, 3D19-470 (1/15/20)

https://www.3dca.flcourts.org/content/download/567868/6413993/file/190470_DC13_01152020_162933_i.pdf

SEARCH AND SEIZURE: Defendant, the subject of a "need to identify" flier based on his suspected involvement in robbery, is properly stopped after he failed to stop at a stop sign and properly searched after officer's smell marijuana and arrested after police confirm he had no license. Wright v. State, 3D17-941 (1/15/20)

https://www.3dca.flcourts.org/content/download/567865/6413957/file/170941_DC05_01152020_162222_i.pdf

COMMENT ON SILENCE-VOIR DIRE: During voir dire, State's comment, ". . . if the defendant were to testify — and if he does not, . . .," to which the

Defense objected and which the State did not pursue, is an isolated comment which did not vitiate the fairness of the trial. Wright v. State, 3D17-941 (1/15/20)

https://www.3dca.flcourts.org/content/download/567865/6413957/file/170941_DC05_01152020_162222_i.pdf

EXPERT TESTIMONTY-DAUBERT: Toxicologist's testimony that he could not determine what percentage of the alcohol in the victim's body was from body decomposition and what was from consumption by the victim was admissible under Daubert. Larocca v. State, 18-1824 (1/15/20)

https://www.4dca.org/content/download/567777/6412968/file/181824_1257_01152020_08472032_i.pdf

VOIR DIRE-TIME LIMITS: 75 minute time limit for voir dire was not an abuse of discretion in sex abuse of a helpless person case. "[T]here is no mathematical formula that determines how much time the trial court should allocate for voir dire and [we] reiterate that this determination is made on a case-by-case basis." Efforts to "pre-try" the case militates against allowing further time for voir dire. Cassaday v. State, 4D18-3066 (1/15/20)

https://www.4dca.org/content/download/567778/6412980/file/183066_1257_01152020_08485268_i.pdf

ATTORNEY-WITHDRAWAL: Court acted within its discretion in denying attorney's motion to withdraw based on irreconciliable difference on the eve of sentencing. Permitting withdrawal at such a late juncture would have hindered the functioning of the court as there would not have been time for appellant to procure new counsel. Schultz v. State, 4D18-3413 (1/15/20)

https://www.4dca.org/content/download/567780/6413004/file/183413_1257_01152020_08525878_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Upon remand, Court may consider a downward departure, but Court did not err in failing to consider a downward departure here because counsel did not file a motion so requesing, and court stated it would not have downwardly departed anyway. 157.5 year sentence stands. Schultz v. State, 4D18-3413 (1/15/20)

https://www.4dca.org/content/download/567780/6413004/file/183413_1257_01152020_08525878_i.pdf

DOUBLE JEOPARDY: Separate convictions for trafficking in heroin and possession of heroin with intent to sell for the same quantum of cocaine violate double jeopardy. Driver v. State, 4D18-3690 (1/15/20)

https://www.4dca.org/content/download/567781/6413016/file/183690_1708_01152020_08561851_i.pdf

POSSESSION OF FIREARM DURING OFFENSE: Firearms found with the drugs in appellant's bedroom were in his constructive possession supports his enhancement for possession a firearm during commission of a drug offense. Actual possession is not required. The possession of the narcotics is ongoing. Driver v. State, 4D18-3690 (1/15/20)

https://www.4dca.org/content/download/567781/6413016/file/183690_1708_01152020_08561851_i.pdf

JURORS-PEREMPTORYCHALLENGE-PRESERVATION-DISSENT:

"This case presents an important issue in Florida law as to whether religion can be considered as a basis for a peremptory strike. The majority wrongfully insulates it from review by using an overly formalistic interpretation of preservation. I dissent." State v. Pacchiani, SC18-655 (1/9/20)

https://www.floridasupremecourt.org/content/download/546562/6158866/file/sc18-655.pdf

DEATH PENALTY: Death Row inmates are not entitled to the identities of the manufacturers of the three drugs used to administer lethal injection as part of challenge as to whether the three drug procedure for administering death penalty provides sufficient anesthetization. Georgia's Lethal Injection Secrecy Act,which protects death penalty drug providers from disclosure of their identities, is lawful. Jordan v. Commissioner, Mississippi Department of Corrections, No. 17-12948 (11th Cir. 1/10/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201712948.reh.pdf

SENTENCING-DOWNWARD DEPARTURE: Because Defendant has one minor criminal offense (DWLS) within ten years of the instant offense, all priors must be scored and Court may not impose a downward departure sentence. A trial court's opinions that the lowest permissible sentence is too harsh, or that the severity of the sentence is not commensurate with the seriousness of the crime, are prohibited grounds upon which to depart. State v. Johnson, 2D18-4436 (1/10/20)

https://www.2dca.org/content/download/546635/6159594/file/184436_DC13_01102020_084024_i.pdf

RETURN OF PERSONAL PROPERTY: Court may not refuse return of Defendant's wallet and license after nolle prosequi without a hearing because State asserts that they might prefer to use them, rather than photos of them, in a separate criminal proceeding. Peterson v. State, 5D19-507 (1/10/20)

https://www.5dca.org/content/download/546628/6159496/file/190507_1259_01102020_08200252_i.pdf

RESTITUTION-JURISDICTION: Court lacks jurisdiction to enter an order for restitution while a direct appeal is pending. Thomas v. State, 5D19-804 (1/10/20)

https://www.5dca.org/content/download/546629/6159508/file/190804_1260_01102020_08233536_i.pdf

QUOTATION: "If the right to a jury trial means anything, it means a right to a verdict based on the evidence." United States v. Brown, No. 17-15470 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715470.pdf

JURORS-DIVINE REVELATION: Court properly dismissed juror during deliberations who told other jurors that "A Higher Being told me Corrine Brown was Not Guilty on all charges" and that he "trusted the Holy Ghost." "[R]egardless of whether it works in favor of or against the defendant, a rule that would allow a juror to base his verdict on something other than the evidence would be antithetical to the rule of law." United States v. Brown, No. 17-15470 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715470.pdf

JURY DELIBERATIONS: Court may interview juror during deliberations to investigate whether good cause existed to remove a juror when the Court was advised that the juror was improperly influenced by the Holy Spirit." United States v. Brown, No. 17-15470 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201715470.pdf

HEARSAY-ADOPTIVE ADMISSION: Annotations made by examiner to application form for Naturalization during interview on a form signed by the Defendant are adopted statements, nonhearsay under R. 801(d)(2)(b). United States v. Santos, No. 18-14529 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814529.pdf

HEARSAY: An annotated Form N-400 naturalization application falls within the public records exception to the hearsay rule, as does an alien's A-file. United States v. Santos, No. 18-14529 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814529.pdf

CONFRONTATION CLAUSE: Immigration Form N-400 Application, created during an interview, is a nontestimonial public record produced as a matter of administrative routine and for the primary purpose of determining eligibility for naturalization, and thus are not testimonial, not governed by Crawford, and its admission cannot violate the Confrontation Clause. United States v. Santos, No. 18-14529 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814529.pdf

RULE OF COMPLETENESS: The Rule 106 Rule of Completeness-if a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part that in fairness ought to be considered–applies to oral as well as written or recorded statements. But Defendant's statement as to why he had failed to mention his criminal history does not explain or modify his inculpatory statement that he had a criminal history, and thus is not admissible under the Rule of Completeness. United States v. Santos, No. 18-14529 (11th Cir. 01/09/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201814529.pdf

COSTS: Court may not impose the $65 discretionary cost without giving Defendant notice and an opportunity to be heard. Jackson v. State, 1D18-147 (1/8/20)

https://www.1dca.org/content/download/546470/6157761/file/180147_DC08_01082020_092324_i.pdf

COSTS-INVESTIGATIVE COST: Court may not impose $100 sheriff's investigative without a request from the agency. Cost may not be imposed on remand. Jackson v. State, 1D18-147 (1/8/20)

https://www.1dca.org/content/download/546470/6157761/file/180147_DC08_01082020_092324_i.pdf

EVIDENCE: In possession of firearm by felon case, Court properly admitted photograph of firearm on the car seat when it had actually been underneath the seat when found, where testimony clearly acknowledged that the firearms had been moved before being photographed. Photograph was not misleading nor confusing. Franklin v. State, 1D18-4276 (1/8/20)

https://www.1dca.org/content/download/546471/6157773/file/184276_DC05_01082020_092552_i.pdf

MOTION FOR NEW TRIAL: When a trial court evaluates a motion for new trial, it must consider the weight of the evidence rather than the sufficiency of the evidence. Judge's statement that "The Court will rely on the rulings previously made in this case, and I will deny the motion for new trial at this time," does not show that the judge applied the wrong legal standard. Franklin v. State, 1D18-4276 (1/8/20)

https://www.1dca.org/content/download/546471/6157773/file/184276_DC05_01082020_092552_i.pdf

APPEAL-RECORD-SUPPLEMENT: Documents not before the Court on the motion for post conviction relief may not be added as a supplement to the record on appeal. Levin v. State, 1D19-3578 (1/8/20)

https://www.1dca.org/content/download/546474/6157809/file/193578_NOND_01082020_093454_i.pdf

RESTITUTION: Defendant who engaged in a fraudulent scheme to pay off Victim's mortgage before foreclosure, and who instead diverted the funds, is not liable for restitution to the mortgage company for the full value of the home after it foreclosed on it. "[T]he State relies on various citations to the record in support of its assertion that the restitution imposed was supported by the evidence presented at trial. But not one of those citations demonstrates that Chicago Title paid a claim in the amount of $240,938. . . The prosecutor's assertions regarding the amount of restitution were not competent substantial evidence." Lewis v. State, 2D15-4203 (1/8/20)

https://www.2dca.org/content/download/546509/6158264/file/154203_DC08_01082020_084705_i.pdf

VOP-HEARSAY: Court may not revoke probation for changing residence without permission solely on the testimony of the probation officer that the Defendant failed to report for several months and his father said "he was not there and had not been there in a while." Failing to report does not corroborate hearsay that the Defendant had moved. Vann v. State, 2D18-4704 (1/8/20)

https://www.2dca.org/content/download/546510/6158276/file/184704_DC13_01082020_085000_i.pdf

VOP: Only allegations made in the Affidavit can support a violation. Defendant's probation cannot be revoked on the basis that he had failed to report for several months when the only allegation in the Affidavit of Violation of Probation was that he had moved without permission. Vann v. State, 2D18-4704 (1/8/20)

https://www.2dca.org/content/download/546510/6158276/file/184704_DC13_01082020_085000_i.pdf

MISTRIAL: A mistrial should be granted only when an error is so prejudicial as to vitiate the entire trial, such that a mistrial is necessary to ensure that the defendant receives a fair trial, and only in cases of absolute necessity. In case of Deputy charged with sexually assaulting a citizen, Court erred by denying Motion for Mistrial following the alleged victim violating the Order in Limine excluding evidence about inconclusive DNA evidence by saying, "You see the DNA results on me. And now you guys say the DNA's not on my butt, but it was on my butt." Nebergall v. State, 4D18-2327 (1/8/20)

https://www.4dca.org/content/download/546485/6157969/file/182327_1709_01082020_08435795_i.pdf

APPEAL-LOST TRANSCRIPT: New trial is required when a transcript is lost and the missing transcript would reflect matters which prejudice the defendant. Campbell v. State, 4D18-2456 (1/8/20)

https://www.4dca.org/content/download/546486/6157981/file/182456_1709_01082020_08472973_i.pdf

THEFT-VALUE-JOA: JOA for Grand Theft is required for theft of two iPads, an iPhone, an Alexa speaker, knick-knacks, a signed baseball, a camera, and jewelry (including an engagement ring which the wife estimated as being worth $3000). To prove value, the court must ascertain whether the person testifying is competent to testify to the value of property and if so, whether the evidence adduced at trial is sufficient to prove its fair market value beyond a reasonable doubt. Where the value of the property is estimated and no other proof is presented, the owner's evidence is insufficient to prove fair market value. Good discussion. Harris v. State, 4D19-913 (1/8/20)

https://www.4dca.org/content/download/546494/6158077/file/190913_1709_01082020_09012634_i.pdf

CREDIT FOR TIME SERVED: Defendants who violate a consecutive term of probation are not entitled to credit for prison time served on a separate offense. Interlandi v. State, 4D19-2470 (1/8/20)

https://www.4dca.org/content/download/546503/6158185/file/192470_1257_01082020_09181740_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel misadvised him that he could have his record expunged. Affirmative misadvice regarding a collateral consequence may render a plea involuntary. Jackson v. State, D19-2804 (1/8/20)

https://www.4dca.org/content/download/546504/6158197/file/192804_1709_01082020_09201975_i.pdf

POST CONVICTION RELIEF: Defendant's is not entitled to an evidentiary hearing on a bare and conclusory allegation of newly discovered evidence. If the defendant files a newly discovered evidence claim based on recanted

trial testimony or on a newly discovered witness, he must include an affidavit from that person as an attachment. Batista v. State, 4D19-3013 (1/8/20)

https://www.4dca.org/content/download/546506/6158221/file/193023_1709_01082020_09243468_i.pdf

EIGHTH AMENDMENT-EXCESSIVE FORCE: To establish an Eighth Amendment excessive force/sexual assault claim, the Plaintiff must establish 1) that the official acted with a sufficiently culpable state of mind i.e., sadistically and maliciously applied for the very purpose of causing harm, and 2) the conduct must have been objectively harmful enough to establish a constitutional violation. A guard who sadistically and maliciously forces his finger into an inmate's anus violates the Eighth Amendment. Courts cannot find excessive force claims not actionable because the prisoner did not suffer more than de minimis injury. "The lack of serious physical injury, considered in a vacuum, cannot snuff out Eighth Amendment sexual-assault claims." Prior precedent receded from. Sconiers v. Lockhart, No. 16-16954 (11th Cir. 1/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201616954.pdf

EIGHTH AMENDMENT: Defendant's plea to the offense of Resisting Without Violence does collaterally estop the Defendant from suing the officer for an Eighth Amendment claim based on the same incident. Sconiers v. Lockhart, No. 16-16954 (11th Cir. 1/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201616954.pdf

POST CONVICTION RELIEF-TIMELINESS: District Court may sua sponte dismiss a motion for Post Conviction Relief for being untimely. Paez v. Secretary, DOC, No. 16-15705 (1/7/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201615705.op2.pdf

ARMED CAREER CRIMINAL ACT: Prior conviction for making terroristic threats is not a predicate violent felony under the elements clause of the Armed Career Criminal Act. Georgia's terroristic-threats statute can be violated without the use, attempted use, or threatened use of physical force against the person of another. "Use" under the ACCA requires active employment of physical force. "Physical force" means violent force—that is, force capable of causing physical pain or injury to another person." United States v. Oliver, (11th Cir. 1/6/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201715565.pdf

SEARCH AND SEIZURE-EXCLUSIONARY RULE-SUPERVISED RELEASE: The exclusionary rule does not apply in supervised release proceedings. United States v. Hill, No. 19-10647 (11th Cir. 1/3/20)

http://media.ca11.uscourts.gov/opinions/pub/files/201910647.pdf

THEFT: Evidence that a person was a passenger in a stolen vehicle is insufficient to prove that the person stole the vehicle, even if the passenger knew the vehicle was stolen. W.J.M. v. State, 2D17-3530 (1/3/20)

https://www.2dca.org/content/download/546230/6155475/file/173530_DC08_01032020_082115_i.pdf

THEFT: Passenger in a stolen golf cart cannot be deemed guilty of stealing tools under the seat in the cart. W.J.M. v. State, 2D17-3530 (1/3/20)

https://www.2dca.org/content/download/546230/6155475/file/173530_DC08_01032020_082115_i.pdf

JUDGMENT OF ACQUITTAL-INEFFECTIVE ASSISTANCE: Counsel was ineffective for not arguing that Defendant found on porch of a damaged trailer cannot be found guilty of criminal mischief, absent evidence that he had committed the damage or, if he had, had done so maliciously. Issue of ineffective assistance apparent from the record may be raised on direct appeal. White v. State, 2D18-2732 (1/3/20)

https://www.2dca.org/content/download/546231/6155487/file/182732_DC13_01032020_082413_i.pdf

CRIMINAL MISCHIEF: Defendant found on porch of a damaged trailer cannot be found guilty of criminal mischief, absent evidence that he had committed the damage or, if he had, had done so maliciously. White v. State, 2D18-2732 (1/3/20)

https://www.2dca.org/content/download/546231/6155487/file/182732_DC13_01032020_082413_i.pdf

BURGLARY: Defendant found sitting on the porch of a trailer from which a TV had been stolen cannot be convicted of burglary. Sitting on the porch is not evidence of stealthy entry. White v. State, 2D18-2732 (1/3/20)

https://www.2dca.org/content/download/546231/6155487/file/182732_DC13_01032020_082413_i.pdf

DOUBLE JEOPARDY: Double Jeopardy bars dual convictions for both armed burglary and burglary with assault or battery. Bailey v. State, 5D 18-251 (1/3/20)

https://www.5dca.org/content/download/546268/6155791/file/180251_1259_01032020_03015382_i.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of theft and dealing in stolen property where he stole a television and sold it two hours later. These actions constituted one scheme or course of conduct for the purposes of §812.025. Ramirez v. State, 5D18-3458 (1/3/20)

https://www.5dca.org/content/download/546179/6154732/file/183458_1260_01032020_08132192_i.pdf

RETROACTIVITY-UPWARD DEPARTURE: Brown v. State, holding that the jury, and not the court, must make the factual determination of dangerousness to the public as the predicate for the imposition of a state prison sentence, does not apply retroactively. A change in the law is not deemed retroactive unless the change (a) emanates from the Florida or United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance. Brown does not constitute a development of fundamental significance. Adams v. State, 5D 19-2540 (1/3/20)

https://www.5dca.org/content/download/546185/6154804/file/192540_1257_01032020_08271883_i.pdf

MOTION TO DISMISS: "A motion to dismiss an information pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) is analogous to a motion for summary judgment in a civil case. . .. Both should be granted sparingly."If the state's evidence is all circumstantial, whether it excludes all reasonable hypotheses of innocence may only be decided at trial. State v. Petagine, 1D18-2086 (1/2/20)

https://www.1dca.org/content/download/546116/6153866/file/182086_DC08_01022020_103018_i.pdf

HAZING: Information charging felony hazing based on a claim that a fraternity encouraged, and the (absent) fraternity president allowed, excessive drinking resulting in death is sufficient to withstand a motion to dismiss. State v. Petagine, 1D18-2086 (1/2/20)

https://www.1dca.org/content/download/546116/6153866/file/182086_DC08_01022020_103018_i.pdf

SPEEDY TRIAL: Speedy Trial rule does not preclude the State from adding a misdemeanor count to a felony information more than 90 days after arrest. State v. Petagine, 1D18-2086 (1/2/20)

https://www.1dca.org/content/download/546116/6153866/file/182086_DC08_01022020_103018_i.pdf

DISSENT (J. BILBREY): "The question has been asked since primeval times, 'Am I my brother's keeper?' Andrew Coffey wanted to be a brother of the Pi Kappa Phi fraternity at Florida State University. He went to a party with brothers of the fraternity and fellow pledges, drank to excess, and tragically died. . . But the limited question we are presented with here is not whether any moral, civil, or societal obligation toward Mr. Coffey was violated by the fraternity brothers, but whether . . . the fraternity president. . . committed the crime of hazing." State v. Petagine, 1D18-2086 (1/2/20)

https://www.1dca.org/content/download/546116/6153866/file/182086_DC08_01022020_103018_i.pdf

JOA-CIRCUMSTANTIAL EVIDENCE: A defendant moving for a judgment of acquittal in a circumstantial evidence case must identify the element or elements of the crime for which he contends evidence is lacking and, if the evidence is purely circumstantial, must outline his theory of the case and

explain why it is not inconsistent with the circumstantial evidence. Allen v. State, 1D18-3073 (1/2/20)

https://www.1dca.org/content/download/546135/6154115/file/183073_DC05_01022020_103752_i.pdf

SEXUAL PERFORMANCE BY CHILD: Defendant can be convicted of Sexual Performance by a Child based on him molesting a sleeping child. Allen v. State, 1D18-3073 (1/2/20)

https://www.1dca.org/content/download/546135/6154115/file/183073_DC05_01022020_103752_i.pdf

VIDEO VOYEURISM: Defendant is properly convicted of video voyeurism for sliding his video camera into a dressing room where a girl was changing clothes, notwithstanding that the actual video was never recovered. Allen v. State, 1D18-3073 (1/2/20)

https://www.1dca.org/content/download/546135/6154115/file/183073_DC05_01022020_103752_i.pdf

CARRYING CONCEALED WEAPON-KNIFE: A knife with a 4 and a half inch blade, allegedly used for fishing and found in student's backpack, is not a weapon absent evidence that the Child used or threatened to use the knife to inflict harm. K.R. v. State, 3D18-2566 (1/2/20)

https://www.3dca.flcourts.org/content/download/546126/6154007/file/182566_811_01022020_10212813_i.pdf

DECEMBER 2019

EVIDENCE-COLLATERAL CRIME: Evidence the Defendant had sexually assaulted another woman in a similar manner – knocking on the door then assaulting the woman inside — is admissible and relevant to show that Defendant had a common scheme or plan. Jakubowski v. State, 1D18-1074 (12/31/19)

https://www.1dca.org/content/download/546063/6153170/file/181074_DC05_12312019_110857_i.pdf

HEARSAY: Victim's statements to a nurse describing the sexual assault were not admissible under the exception for medical diagnosis or treatment, but their admission is harmless where, as here, the victim testifies to the same information in the evidence is merely cumulative. Jakubowski v. State, 1D18-1074 (12/31/19)

https://www.1dca.org/content/download/546063/6153170/file/181074_DC05_12312019_110857_i.pdf

EVIDENCE-CONSCIOUSNESS OF GUILT: Evidence that Defendant attempted suicide shortly after being confronted by the victim about his sexual abuse of her as a child is admissible to show consciousness of guilt. Mathis v. State, 1D18-2183 (12/31/19)

https://www.1dca.org/content/download/546064/6153182/file/182183_DC05_12312019_112116_i.pdf

COSTS: Court may not impose discretionary cost without orally pronouncing them. Hicks v. State, 1D18-320 (12/31/19)

https://www.1dca.org/content/download/546061/6153146/file/180320_DC08_12312019_105420_i.pdf

MOTION FOR NEW TRIAL: On a Motion for New Trial, the Court must consider (1) a sufficiency of the evidence standard (i.e., was the jury's verdict supported by sufficient evidence) and (2) a weight of the evidence standard by which the trial judge acts as a seventh juror to independently assess whether the jury verdict was contrary to the weight of the evidence. A new hearing is required where the Court only considered the former (stating only that the evidence was "sufficient") but not whether the verdict is against the weight of the evidence. Smith v. State, 1D18-3208 (12/31/19)

https://www.1dca.org/content/download/546066/6153206/file/183208_DC08_12312019_112750_i.pdf

EVIDENCE-PSYCHOTHERAPIST-PATIENT PRIVILEGE: Defendant is entitled to use Victim's psychological assessment records (lawfully obtained when the Defendant was the Victim's guardian) establishing that the Victim suffered from Reactive Attachment Disorder (RAD). Although the assessments were covered by the psychotherapist-patient privilege, "strict adherence to procedural rules may give way to a defendant's right to present relevant evidence in his defense." Traffanstead v. State, 1D18-874 (12/31/19)

https://www.1dca.org/content/download/546062/6153158/file/180874_DC13_12312019_110424_i.pdf

APPEALS: Appellate court must summarily affirm, rather than dismiss, frivolous appeals taken after entry of plea. Frias v. State, 1D19-1753 (12/31/19)

https://www.1dca.org/content/download/546067/6153218/file/191753_DC05_12312019_113204_i.pdf

CERTIORARI: Where the threshold requirement of irreparable harm is not established, the petition for writ of certiorari must be dismissed. Before conducting certiorari review of a non-final order, the appellate court must focus on the jurisdictional question of whether there is irreparable harm. Ford v. State, 1D19-4365 (12/31/19)

https://www.1dca.org/content/download/546075/6153321/file/194365_DA08_12312019_115431_i.pdf

JUVENILE-SECURE DETENTION: Juvenile who does not score secure detention may not be remanded to secure detention based on an allegation that he had cut off his ankle monitor, absent a hearing to determine whether he was in contempt of court. S.B. v. El Fance, 3D 19-2508 (12/31/19)

https://www.3dca.flcourts.org/content/download/546069/6153249/file/192508_807_12312019_10310097_i.pdf

HOBBS ACT: To sustain a conviction for Hobbs Act robbery, the government need only show that the offense had at least a minimal effect on interstate commerce. Examples of a minimal effect sufficient to meet the jurisdictional requirement include that a robbery deprived a business of cash or a depletion of assets. United States v. Herrera, No. 17-13440 (11th Cir. 12/31/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201713440.pdf

CONSPIRACY: Where a single conspiracy is charged in the indictment while multiple conspiracies may have been revealed at trial, the conviction stands unless the variance is (1) material and (2) substantially prejudiced the defendant. The existence of different sub-groups does not undermine the jury's finding of a single conspiracy so long as each group acted in

furtherance of one overarching plan. United States v. Browdy, No. 17-15664 (12/30/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201715664.pdf

HEARSAY-STATEMENTS AGAINST PENAL INTEREST: Testimony regarding an out-of-court statement by a cooperating witness's wife that her husband wanted to frame the Defendant is properly excluded. The statement was not against the Wife's penal interest. United States v. Browdy, No. 17-15664 (12/30/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201715664.pdf

MISTRIAL: A brief, unelicited, and unresponsive mention that the Defendant had previously been incarcerated does not warrant a mistrial. United States v. Browdy, No. 17-15664 (12/30/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201715664.pdf

SCORESHEET-FIREARM ENHANCEMENT: Defendant is subject to a two level firearm enhancement based on a co-conspirator's act of threatening another by putting a gun in his mouth where the use of the firearm was reasonably foreseeable, occurred while the Defendant was apart of the conspiracy, and was in furtherance of it. United States v. Browdy, No. 17-15664 (12/30/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201715664.pdf

COMPETENCY: Court must delineate its findings regarding the competency of the defendant in a written order. White v. State, No. 1D18-3868 (12/27/19)

https://www.1dca.org/content/download/545985/6152280/file/183868_DC06_12272019_110402_i.pdf

POSSESSION OF FIREARM DURING A FELONY: Jury instruction and caption of the information referring to "Possession of a Firearm during Commission of a Felony" is not fundamental error, notwithstanding that the statute criminalizes carrying, not possessing, a firearm. Defendant properly convicted of carrying a firearm found under the seat he was driving. "Appellant's argument is semantic only, and he has failed to demonstrate fundamental error." Ruffins v. State, No. 1D18-706 (12/27/19)

https://www.1dca.org/content/download/545986/6152292/file/180706_DC05_12272019_110133_i.pdf

CREDIT FOR TIME SERVED-JURISDICTION: Court lacks jurisdiction to grant motion to correct credit for time served filed more than 1 year after the sentence becomes final. Berg v. State, No. 1D19-1031 (12/27/19)

https://www.1dca.org/content/download/545989/6152328/file/191031_DC05_12272019_112215_i.pdf

SEARCH AND SEIZURE-CONSENT: The act of Defendant pointing to the car thief sought by the police and sitting on the motel bed is nonverbal consent for police to enter the hotel room. Defendant can be detained and questioned about the narcotics seen in plain view in the room. Smith v. State, 2D18-2493 (12/27/19)

https://www.2dca.org/content/download/545912/6151392/file/182493_DC13_12272019_090833_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW: In DUI manslaughter case, blood draw procured in violation of the implied consent statute is nevertheless admissible based on inevitable discovery, notwithstanding that the process for obtaining a search warrant had not been initiated. "[W]e conclude that the inevitable discovery exception to the exclusionary rule applies in the instant case. Campbell's blood sample would have been obtained because there was probable cause for a blood draw, and a warrant would have been issued." Campbell v. State, 5D18-2091 (12/27/19)

https://www.5dca.org/content/download/545895/6151174/file/182091_1257_12272019_07412606_i.pdf

SEARCH AND SEIZURE-GOOD FAITH: The good faith exception cannot be applied where the police officer's acts occur subsequent to a binding appellate court decision (Birchfield) which determines that such acts are violative of the Fourth Amendment, even if the decision was released only the day before. Campbell v. State, 5D18-2091 (12/27/19)

https://www.5dca.org/content/download/545895/6151174/file/182091_1257_12272019_07412606_i.pdf

BINDING PRECEDENT: The effective date of an appellate decision is the date appearing on the face of the decision even though it may not become final until after the time has expired for filing a motion for rehearing. Campbell v. State, 5D18-2091 (12/27/19)

https://www.5dca.org/content/download/545895/6151174/file/182091_1257_12272019_07412606_i.pdf

DOUBLE JEOPARDY: Double Jeopardy prohibits dual convictions and sentences for Aggravated Battery and Battery committed against one victim

within the same criminal transaction or episode (here, stock car racers on the track). Rivera v. State, 5D18-3385 (12/27/19)

https://www.5dca.org/content/download/545896/6151186/file/183385_12612272019_07424305_i.pdf

SEARCH AND SEIZURE-CURTILAGE-AUTOMOBILE: Unpaved parking area shared by several dwellings is not within the curtilage of the Defendant's home. State v. Thornton, 5D18-3726 (12/27/19)

https://www.5dca.org/content/download/545897/6151198/file/183726_1260_12272019_07441122_i.pdf

SEARCH AND SEIZURE-PLAIN VIEW: Officer may shine a flashlight into a parked car and if he sees contraband, enter it. State v. Thornton, 5D18-3726 (12/27/19)

https://www.5dca.org/content/download/545897/6151198/file/183726_1260_12272019_07441122_i.pdf

STAND YOUR GROUND-RETROACTIVITY: Change in SYG statute applies retroactively, but given the Court's finding that under either standard SYG would not apply, conviction stands. Maddox v. State, 5D19-352 (12/27/19)

https://www.5dca.org/content/download/545900/6151234/file/190352_1257_12272019_07465718_i.pdf

RESENTENCING: Court may not rescind order granting resentencing when neither party moved for rehearing or appealed the order. Price v. State, 5D19-993 (12/27/19)

https://www.5dca.org/content/download/545901/6151246/file/190993_1260_12272019_07481212_i.pdf

JUDGE-DISQUALIFICATION: Judge's comments that indicated that he had predetermined that Defendant would receive lengthy prison sentences provides Defendant with a well-grounded fear that he would not receive a fair sentencing hearing before the judge. Judge's subsequent denial of motion to mitigate is vacated. Hauter v. State, 5D19-2921 (12/27/19)

https://www.5dca.org/content/download/545904/6151282/file/192921_1255_12272019_07583130_i.pdf

COMPETENCY: Once a trial court appoints doctors to undertake competency evaluations of a defendant, the trial court is obligated to make its own independent competency determination. Judge's statement that a defendant presents as "very lucid in court" is not a finding of competency. Where reports, prepared well before the inadequate hearing, indicate that the Defendant is bipolar with a likelihood of decomposition, the Court may not make a retroactive finding of competency. New trial required. Alexander v. State, 3D18-1747 (12/26/19)

https://www.3dca.flcourts.org/content/download/545848/6150594/file/181747_812_12262019_10131310_i.pdf

EVIDENCE-VOIR DIRE: Where Defendant successfully moved to exclude evidence of prior thefts known to have been committed by Defendant, he may not present evidence, nor discuss during voir dire, his homelessness in support of defense that he was seeking shelter in the car, not that he intended to steal from it. An order in limine should only be used as a shield and never to gag the truth or mislead the jury. "[I]n order for homelessness to be relevant, jurors would be forced to embrace the assumption that members of the homeless population are more likely to enter a vehicle in

search of refuge than for the purpose of committing a crime." Sims v. State, 3D18-1431 (12/26/19)

https://www.3dca.flcourts.org/content/download/545847/6150582/file/181431_809_12262019_03562927_i.pdf

ENHANCEMENT-BODY ARMOR: Selling body armor does not subject one to the two level enhancement for use of body armor during the offense. "[T]here are only two ways to "use" body armor under the guideline, and neither of them involves selling it." United States v. Bankston, No. 18-14812 (11th Cir. 12/23/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201814812.pdf

STATUTORY INTERPRETATION-PLAIN MEANING-LEGISLATIVE HISTORY: "[T]he government offers legislative history. That legislative history, we are told. . ., reveals the guideline's true purpose: 'to take body armor out of the hands of violent criminals. . .' No matter. . .' When the import of the words Congress has used is clear. . ., we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language.'" United States v. Bankston, No. 18-14812 (11th Cir. 12/23/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201814812.pdf

HEARSAY: Error, if any, in admitting statements, "Do it, Josh" (Defendant's girlfriend telling him to shoot at victim) and "I can't believe he done that." (Victim's boyfriend alluding to Defendant having shot her) is harmless. Wright v. State, 1D18-1609 (12/23/19)

https://www.1dca.org/content/download/545536/6146922/file/181609_DC05_12232019_100848_i.pdf

CELL PHONE PASS CODE: QUESTION CERTIFIED: What is the proper legal inquiry when the state seeks to compel a suspect to provide a password to the suspect's cell phone if the suspect has not previously given up his Fifth Amendment privilege in the password? What legal standard applies in determining whether the foregone conclusion applies to compelled production of passwords in these situations? Pollard v. State, 1D18-4572 (12/23/19)

https://www.1dca.org/content/download/545537/6146934/file/184572_NOND_12232019_101726_i.pdf

QUOTATION: "The expansion of governmental powers to compel disclosures of personally-held information to search person's homes and personal effects. . ., is the antipode of the original understanding of the Fifth Amendment, which protected individual freedom by prohibiting compelled disclosures used to incriminate an accused. . . At its core, the debate . . is about which vision of the right against compelled testimony prevails: those of the Founders who erred on the side of personal liberty or those who defend state powers to extract testimony and see no problem in 'merely compel[ling a defendant] to unlock [a] phone by entering the passcode himself." Pollard v. State, 1D18-4572 (12/23/19)

https://www.1dca.org/content/download/545537/6146934/file/184572_NOND_12232019_101726_i.pdf

SENTENCE-MINOR: Resentencing is not required where a minor homicide defendant's sentence (30 years) is not a life sentence, a mandatory life sentence or a de facto life sentence. Wagner v. State, 1D18-4783 (12/23/19)

https://www.1dca.org/content/download/545538/6146946/file/184783_DC05_12232019_102121_i.pdf

MOTION FOR POST CONVICTION RELIEF-BURGLARY: Defendant is not entitled to relief on claim that he could not be found guilty for remaining in a structure open to the public (a public parking garage) with the intent to commit a crime. A person who remains in premises with the intent to commit a forcible felony commits burglary. "It is true that this formulation is not always consistent with the historical understanding of the crime of burglary." Wilson v. State, 1D18-535 (12/23/19)

https://www.1dca.org/content/download/545535/6146910/file/180535_1284_12242019_094701_i.pdf

COMPETENCY: Court may order involuntary treatment of a forensic client committed to a state facility if necessary for his own or other's safety, regardless of Due Process analysis, which limits forced medication to restore competency. Hicks v. North Florida Evaluation and Treatment Center, 1D19-896 (12/23/19)

https://www.1dca.org/content/download/545542/6146994/file/190896_DC05_12232019_102804_i.pdf

FAILURE TO REGISTER: Sexual Offender Registration and Notification Act (SORNA) defines a "sex offense" to include a criminal offense with an element of sexual contact. The categorical approach applies to determine whether a state conviction qualifies under SORNA. The sentencing court must look only to the fact that the defendant has been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions. Defendant who was convicted of violating a Tennessee law prohibiting sexual contact to one of five body areas (the primary genital area, groin, inner thigh, buttock, or breast) is subject to SORNA. United States v. Vineyard, No. 18-11690 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811690.pdf

DEFINITION-CONTACT: "Contact" is the "union or junction of body surfaces: a touching or meeting." United States v. Vineyard, No. 18-11690 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811690.pdf

DEFINITION-SEXUAL: "Sexual" means "of or relating to the sphere of behavior associated with libidinal gratification." United States v. Vineyard, No. 18-11690 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811690.pdf

DEFINITION-PRIMARY GENITAL AREA: "The plain meaning of the term 'primary' suggests that the 'primary genital area' covers essentially the same area of the body as the genitals. United States v. Vineyard, No. 18-11690 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811690.pdf

FIREARM IN FURTHERANCE: Hobbs Act robbery is a crime of violence under the elements clause of §924(c), which requires a mandatory consecutive sentence for any defendant who uses or carries a firearm during a crime of violence or a drug-trafficking crime. Rodriguez v. United States, No. 18-11438 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201811438.pdf

SENTENCING-DRUG QUANTITY: Sentencing courts are permitted to make factual findings, including drug quantities, based on undisputed statements in the PSI. United States v. Thomas, No. 19-11388 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911388.pdf

SENTENCING-ENHANCEMENT-RISK OF DEATH/SERIOUS BODILY INJURY: Flight alone is insufficient to warrant an enhancement under for creating a serious risk of death or serious bodily injury, but high-speed flight in a residential area may warrant the enhancement, particularly where no objection is made to the PSR. United States v. Thomas, No. 19-11388 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911388.pdf

JUROR: A Court may replace a seated juror, prior to deliberations, when facts arise that cast doubt on the juror's ability to perform his dues. Court did not abuse its discretion in declining to remove the juror who expressed concerns for his safety because he worked at a jail but whose concerns were assuaged when he learned the Defendant would not go to his jail if convicted. United States v. Rothwell, No. 18-13284 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813284.pdf

CAREER OFFENDER-RELEVANT CONDUCT: A defendant is a career offender under the Sentencing Guidelines if he has at least two prior felony convictions for either a crime of violence or a controlled substance offense within ten years of the commencement of the instant offense, including any relevant conduct. Defendant who is convicted of a crime committed in 2017 but who has relevant conduct (drug dealing) beginning in 2014, is subject to Career Offender sentencing because on priors extending back to 2004 (ten years from the earliest relevant conduct. Defendant qualifies for Career Offender status. In evaluating relevant conduct, the Court considers the similarity, regularity, and temporal proximity between the instant offense and the uncharged conduct. United States v. Rothwell, No. 18-13284 (11th Cir. 12/20/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813284.pdf

SEARCH AND SEIZURE-WELFARE CHECK: Officers acted lawfully under the community caretaker exception to the Fourth Amendment by rousing the Defendant and his unconscious passenger from the running car. The community caretaker exception to the warrant requirement focuses on concern for the safety of the general public. Searches and seizures conducted under the community caretaker doctrine are solely for safety reasons and must be totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. State v. Brumelow, 1D18-3631 (12/20/19)

https://www.1dca.org/content/download/545476/6146261/file/183631_DC13_12202019_101805_i.pdf

HEARSAY: Statements by a non-testifying 911 caller repeated by the officer and inculpating the Defendant in the shooting are inadmissible hearsay. Officer's testimony, purporting to explain the police investigation but containing prejudicial third party statements of non-testifying witnesses, is improper hearsay even though the proponent of such evidence seeks to clothe such hearsay under a nonhearsay label. Error here is harmless. Knots v. State, 1D18-476 (12/20/19)

https://www.1dca.org/content/download/545475/6146249/file/180476_DC05_12202019_101449_i.pdf

APPEAL-POST CONVICTION RELIEF-SUPPLEMENTAL RECORDS: Appellant may not supplement the record on appeal with documents which were not provided to the trial court in his hearing on his Motion for Post Conviction Relief. Partlow v. State, 1D19-1272 (12/20/19)

https://www.1dca.org/content/download/545482/6146333/file/191272_NOND_12202019_104128_i.pdf

COMPETENCY: Court may require incompetent Defendant committed to a state facility to receive involuntary treatment, including forced psychotropic medication. When the State seeks to involuntarily medicate a forensic client solely for restoration of competency to stand trial, forced administration of psychotropic medication is permissible only when (1) an important governmental interest is at stake, (2) the administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial without causing side effects that would significantly interfere with the defendant's ability to help counsel prepare a defense, (3) less intrusive treatments are unlikely to achieve the same results, and (4) the administration of the medication is in the forensic client's best medical interest. However, Courts may order involuntary treatment when a defendant is dangerous to himself or others or to protect the defendant's own interests where the refusal to take medication puts the defendant's own health at risk. Miller v. State, 1D19-43 (12/20/19)

https://www.1dca.org/content/download/545477/6146273/file/190043_DC05_12202019_102120_i.pdf

SEARCH AND SEIZURE-GOOD FAITH EXCEPTION-COMPUTER ERROR: Officers mistakenly thought the Child (who had an identical twin brother with a similar name) had an arrest warrant. Where computer and/or human error lead an officer to erroneously believe that a warrant for the Defendant's arrest existed, any evidence found in the course of the arrest must be suppressed. The good faith exception does not apply to mistakes or errors caused by law enforcement personnel. If the error is attributable to law enforcement personnel, the seized evidence must be suppressed under the exclusionary rule. "No exceptions to that rule apply." State v. J.R.D., 2D18-2034 (12/20/19)

https://www.2dca.org/content/download/545434/6145749/file/182034_DC05_12202019_090534_i.pdf

DISCOVERY: State may not be compelled to disclose the operational plan for a controlled drug buy without a showing of materiality by the Defendant. State v. Stephens, 2D18-4657 (12/20/19)

https://www.2dca.org/content/download/545442/6145859/file/184647_DC03_12202019_090937_i.pdf

STAND YOUR GROUND: The change in the burden of proof in the Stand Your Ground statute applies retroactively. Roberts v. State, 5D17-3638 (12/20/19)

https://www.5dca.org/content/download/545493/6146458/file/173638_1260_12202019_09001870_i.pdf

MOTION TO DISMISS: Court may deny State's ore tenus motion for leave to file a traverse after it had filed a motion to strike but not a traverse before the hearing. Nonrtheless, the Motion should have been denied for being self contradictory on the issue of whether the Defendant ever had a driver's license in the first place. State v. Randolph, 5D18-2979 (12/20/19)

https://www.5dca.org/content/download/545495/6146482/file/182979_1260_12202019_09105970_i.pdf

MANDATORY MINIMUM-HABITUAL OFFENDER-CONSECUTIVE SENTENCE: Sentences for attempted murder and burglary must be imposed concurrently. Once a defendant's sentences for multiple crimes committed during a single criminal episode are enhanced through habitual felony offender statutes, the total penalty cannot be further increased by ordering that the sentences run consecutively. Shooting one victim both in the house and several blocks away after the victim fled is one criminal episode where the State did not charge separate attempted murders. Mason v. State, 5D18-3691 (12/20/19)

https://www.5dca.org/content/download/545497/6146506/file/183691_1257_12202019_09200893_i.pdf

PLEA-WITHDRAWAL: Court must hold hearing on motion to withdraw plea. Cash v. State, 5D19-788 (12/20/19)

https://www.5dca.org/content/download/545498/6146518/file/190788_1260_12202019_09214814_i.pdf

RESENTENCING: Defendant cannot be resentenced on offenses for which the defendant's prison term has expired. Andrews v. State, 5D19-1344 (12/29/19)

https://www.5dca.org/content/download/545500/6146542/file/191344_1259_12202019_09284839_i.pdf

RESENTENCING: Court cannot rescind its prior order for resentencing and must proceed with a resentencing hearing when neither party moved to vacate the order in question. The fact that the rescission of the order for resentencing was due to a change in the law does not matter. Magill v. State, 5D19-1478 (12/20/19)

https://www.5dca.org/content/download/545502/6146566/file/191478_1260_12202019_09582108_i.pdf

COLLATERAL ESTOPPEL: Defendant's argument that statute allowing sentence reviews for juveniles convicted of crimes punishable by up to life in prison but not for lower-level offenses violates Equal Protection is not barred by collateral estoppel when she had raised different arguments before. The doctrine of collateral estoppel only precludes a defendant from

relitigating the same issues between the same parties in connection with a different cause of action. Ortiz v. State, 5D19-1923 (12/20/19)

https://www.5dca.org/content/download/545506/6146614/file/191923_1260_12202019_10040026_i.pdf

COLLATERAL ESTOPPEL: For the doctrine of collateral estoppel to apply to bar relitigation of an issue, five elements must be present: (1) an identical issue must have been presented in the prior proceedings; (2) the issue must have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate that issue; (4) the parties in the two proceedings must be identical; and (5) the issues must have been actually litigated. Ortiz v. State, 5D19-1923 (12/20/19)

https://www.5dca.org/content/download/545506/6146614/file/191923_1260_12202019_10040026_i.pdf

POST CONVICTION RELIEF: Defendant may not raise a claim of entitlement to postconviction relief based on newly discovered evidence – FBI report on unreliability of hair analysis – which could have been raised in an earlier motion for postconviction relief. Bogle v. State, SC17-2151 (12/19/19)

https://www.floridasupremecourt.org/content/download/545393/6145252/file/sc17-2151.pdf

SELF-REPRESENTATION: A Faretta colloquy is not rendered inadequate by the trial court's failure to inquire as to the defendant's age, experience, and understanding of the rules of criminal procedure. Thorough discussion of right of self-representation. Hooks v. State, SC18-1106 (12/19/19)

https://www.floridasupremecourt.org/content/download/545414/6145499/file/sc18-1106.pdf

COMPETENCY: The fact that the Defendant had stopped taking his psychotropic medication does not establish that the Defendant was incompetent at the time of his trial. Sparre v. State, SC18-1192 (12/19/19)

https://www.floridasupremecourt.org/content/download/545400/6145336/file/sc18-1192.pdf

POST CONVICTION RELIEF-APPEAL: Where Defendant's motion for postconviction relief made a general claim that trial counsel was ineffective for failing to impeach a witness, but in the hearing he failed to specifically show what he ws referring to, on appeal he may not point to specific areas of the deposition testimony which he claims should have been used to impeach at trial. Sparre v. State, SC18-1192 (12/19/19)

https://www.floridasupremecourt.org/content/download/545400/6145336/file/sc18-1192.pdf

POST CONVICTION RELIEF-DEFENSE ARGUMENT: Counsel delivered a deficient closing argument by attacking the character of the victim of the homicide without tying any of his statements into a defense theory, but there was no prejudice given the overwhelming evidence of guilt. Sparre v. State, SC18-1192 (12/19/19)

https://www.floridasupremecourt.org/content/download/545400/6145336/file/sc18-1192.pdf

POST CONVICTION RELIEF-ARGUMENT: Counsel was ineffective for failing to object to State's penalty phase arguments mocking his defense that the killing was frenzied rather than premeditated (i.e, a "thrill kill and then he just kind of got a little carried away" and "the knife just kept slipping."), but there is no reasonable probability that the first-degree murder verdict or the sentence of death were affected. Sparre v. State, SC18-1192 (12/19/19)

https://www.floridasupremecourt.org/content/download/545400/6145336/file/sc18-1192.pdf

APPEAL-INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was deficient for failing to supplement the record on appeal with the defense sentencing memorandum, which trial counsel filed with the trial court but which (apparently) was not filed with the clerk of court and therefore not included in the record on appeal. This deficiency does not warrant relief because appellate court had the substance of what was missing. Sparre v. State, SC18-1192 (12/19/19)

https://www.floridasupremecourt.org/content/download/545400/6145336/file/sc18-1192.pdf

RULES-PARENTAL LEAVE: New rule 2.570 requires, with exceptions, a court must grant a timely motion for continuance based on the parental leave of the movant's lead attorney, due to the birth or adoption of a child for a presumptive three-month maximum length. In Re: Amendments to Rules-Parental Leave, SC18-1554 (12/19/19)

https://www.floridasupremecourt.org/content/download/545415/6145511/file/sc18-1554.pdf

SPEEDY TRIAL-ARREST: "Arrest" in the speedy trial context should mean formal arrest, which is the only type of detention by law enforcement that implicates the Sixth Amendment speedy trial right. Rules of Criminal Procedure should be amended consistently with this ruling. Investigative detention including handcuffing, transportation, and interrogation at the Sheriff's Department is not a formal arrest triggering speedy trial. Davis v. State, SC18-1627 (12/19/19)

https://www.floridasupremecourt.org/content/download/545416/6145523/file/sc18-1627.pdf

JURY PARDON: There is no fundamental right to instructions that facilitate partial jury nullification. "We hereby recede from this Court's precedent where a finding of fundamental error was predicated on Florida's jury pardon doctrine." "[W]e erred by transforming the unreviewable pardon power of the jury into a fundamental right of the defendant. And we further erred by treating the deprivation of the defendant's nonexistent right to the availability of a jury pardon as a structural defect that vitiates the fairness of the trial." Knight v. State, SC-309 (12/19/19)

https://www.floridasupremecourt.org/content/download/545395/6145276/file/sc18-309.pdf

JURY PARDON: "Contrary to the logic of the jury pardon doctrine, interference with an opportunity for the jury to carry out a partial jury nullification does not undermine the validity of the trial. No defendant has the right to a trial in which the judge facilitates the jury's acting in disregard of the law." Knight v. State, SC-309 (12/19/19)

https://www.floridasupremecourt.org/content/download/545395/6145276/file/sc18-309.pdf

JURY PARDON-STARE DECISIS: "[W]e recede from this Court's precedents relying on a right of access to a partial jury nullification as a basis for finding fundamental error in jury instructions. . . .We make this decision mindful of the importance of stare decisis in most cases. While the doctrine of stare decisis is 'strong,' it is 'not unwavering.'" Knight v. State, SC-309 (12/19/19)

https://www.floridasupremecourt.org/content/download/545395/6145276/file/sc18-309.pdf

STAND YOUR GROUND-RETROACTIVITY: Amendment to the SYG law (Fla.Stat. 776.032(4)) altering the burden of proof at pretrial immunity hearings applies to pending cases involving criminal conduct alleged to have been committed prior to the effective date of the statute. The change in law is procedural and applies retroactively. The date of effectiveness of the shift in the Burden of Proof is the date of the SYG hearing. Pre-effective-date immunity hearings are not undone. Love v. State, SC18-747 (12/19/19)

https://www.floridasupremecourt.org/content/download/545398/6145312/file/sc18-747.pdf

AMENDMENT-JURY INSTRUCTIONS-SELF-DEFENSE: Whether Castle Doctrine applies to a place of business is an issue which needs to be resolved through case law, not through proposed amendments to the jury instructions. "[A] standard jury instruction case is not the proper means in which to resolve a substantive issue of law. Rather, absent clarification by the legislature, that matter must await this Court's resolution in an actual case and controversy." In re: Standard Jury Instructions, SC19-419 (12/19/19)

https://www.floridasupremecourt.org/content/download/545402/6145360/file/sc19-419.pdf

AMENDMENT-JURY INSTRUCTIONS-LOTTERY: Jury instructions on lottery offenses modified. In Re: Standard Jury Instructions, SC19-1063 (12/19/19)

https://www.floridasupremecourt.org/content/download/545406/6145408/file/sc19-1063.pdf

AMENDMENT-JURY INSTRUCTIONS-FELONY MURDER: Felony murder instruction modified. In Re: Standard Jury Instructions, SC-424 (12/19/19)

https://www.floridasupremecourt.org/content/download/545403/6145372/file/sc19-424.pdf

AMENDMENT-JURY INSTRUCTIONS-SHOOTING OR THROWING: Jury instructions on shooting or throwing into places modified. In Re: Standard Jury Instructions, SC19-549 (12/19/19)

https://www.floridasupremecourt.org/content/download/545405/6145396/file/sc19-549.pdf

APPEAL-PRESERVATION-CIRCUMSTANTIAL EVIDENCE: There are two legally distinct issues that can be raised by a defendant in a motion for judgment of acquittal: (1) whether the State presented legally sufficient evidence to establish each element of the charged offense; and (2) whether in a case where the only proof of guilt is circumstantial, the State's evidence is inconsistent with any reasonable hypothesis of innocence, including the defendant's own version of the evidence. Because Defendant did not raise a circumstantial evidence/reasonable hypothesis argument in his motion for judgment of acquittal, issue is not preserved for appeal. Johnson v. State, 1D18-4554 (12/19/19)

https://www.1dca.org/content/download/545421/6145585/file/184554_DC08_12192019_124830_i.pdf

CONSTRUCTIVE POSSESSION-CIRCUMSTANTIAL EVIDENCE: Cathinones found in a bedroom and a photograph on the Defendant's phone showing cathinones is insufficient circumstantial evidence to establish that the Defendant had constructive possession of the narcotics. Johnson v. State, 1D18-4554 (12/19/19)

https://www.1dca.org/content/download/545421/6145585/file/184554_DC08_12192019_124830_i.pdf

CREDIT FOR TIME SERVED: When a trial court has awarded a defendant jail credit, the Department of Corrections has primary responsibility for calculating the credit. If the Department of Corrections fails in its responsibility, the prisoner must first seek relief from the Department. Baxter v. State, 1D18-4870 (12/19/19)

https://www.1dca.org/content/download/545422/6145597/file/184870_DC05_12192019_125040_i.pdf

EVIDENCE-IDENTIFICATION: When the evidence is such that the witness is in no better position than the jurors to make an identification, officer's opinion that the person in the video is the defendant is inadmissible because it invades the province of the jury. The fact that the officer had known the Defendant and had a special familiarity with him does not justify the officer giving his opinion as to identity. Bentley v. State, 2D18-2256 (12/18/19)

https://www.2dca.org/content/download/545239/6143487/file/182256_DC13_12182019_083806_i.pdf

EVIDENCE-PREJUDICE: Evidence that officer knew the Defendant previously is inadmissible and unduly prejudicial. Bentley v. State, 2D18-2256 (12/18/19)

https://www.2dca.org/content/download/545239/6143487/file/182256_DC13_12182019_083806_i.pdf

SEARCH AND SEIZURE-VEHICLE STOP: It is unlawful to turn left from a non-turn lane or a middle lane, regardless of whether other traffic is affected. State v. Amaya, 3D18-754 (12/18/19)

https://www.3dca.flcourts.org/content/download/545276/6143938/file/180754_812_12182019_09505992_i.pdf

THEFT-VALUE-JOA: Where the value of the property is based on mere speculation or guess, the owner's evidence is insufficient to prove fair market value. Freixa v. State, 3D18-1195 (12/18/19)

https://www.3dca.flcourts.org/content/download/545277/6143950/file/181195_812_12182019_09521056_i.pdf

COMPETENCY: Where a court grants a defendant's motion for appointment of an expert for a competency examination, but fails to hold a hearing or enter a written finding on the movant's competency to proceed, the case must be temporarily remanded to the circuit court with specific instructions to vacate the conviction or make a nunc pro tunc deterimination of competency, if possible. Hines v. State, 4D18-1522 (12/18/19)

https://www.4dca.org/content/download/545227/6143329/file/181522_1711_12182019_09073748_i.pdf

VOIR DIRE-TIME LIMIT: Defendant is not entitled to a new trial when Court limited voir dire to 90 minutes, with a 10 minute extension, and counsel for the the Defendant exhausted his time inefficiently. "Although the trial court's limiting the defense's questioning of prospective jurors during voir dire is cause for concern, we conclude that. . . there was no abuse of discretion." Guy v. State, 4D18-2054 (12/18/19)

https://www.4dca.org/content/download/545228/6143341/file/182054_1257_12182019_09094742_i.pdf

DISCOVERY VIOLATION: Last-minute disclosure of the jail call procured the night before in which the Defendant said fishy things about his anticipated testimony, including a suggestion that his counsel had told him what to say, is not a discovery violation. Guy v. State, 4D18-2054 (12/18/19)

https://www.4dca.org/content/download/545228/6143341/file/182054_1257_12182019_09094742_i.pdf

SENTENCING-LIFE-MINOR-HOMICIDE: Life sentence with a review after 25 years is lawful for a 14-year-old who brutally murdered his eight-year-old neighbor girl and hid her body under the waterbed. Phillips v. State, 1D17-5383 (1st DCA 12/17/19)

https://www.1dca.org/content/download/545188/6142814/file/175383_DC05_12172019_135542_i.pdf

WITNESS-EXCLUSION: Court did not abuse its discretion in excluding an alibi witness who was not disclosed in response to State's demand for notice of alibi. Porter v. State, 1D18-2360 (1st DCA 12/17/19)

https://www.1dca.org/content/download/545189/6142826/file/182360_DC06_12172019_135923_i.pdf

PRETRIAL DETENTION-FTA: Court improperly ordered the defendant be held without bond after failing to appear at arraignment where he made no finding that his nonappearance was willful and that no conditions of release could protect the community or assure his presence at trial. Smith v. Junior, 3D19-2443 (12/17/19)

https://www.3dca.flcourts.org/content/download/545209/6143095/file/192443_807_12182019_08385877_i.pdf

PRETRIAL DETENTION-FTA: Court improperly ordered the defendant be held without bond after failing to appear at arraignment where it made no finding that his nonappearance was willful and that no conditions of release could protect the community or assure his presence at trial. Chacon v. Junior, 3D19-2442 (12/17/19)

https://www.3dca.flcourts.org/content/download/545210/6143107/file/192442_807_12182019_08384555_i.pdf

SENTENCING-HEARSAY: Court may consider hearsay during a sentencing hearing so long as the evidence has sufficient indicia of reliability and the defendant is given the opportunity to rebut the evidence. Where PSR includes disputed allegations from the police report about the Defendant's previous sex offense but the record does not show that the Court relied on those disputed facts, the sentence stands. United States v. Morales Abad, 19-11299 (12/12/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911299.pdf

DEATH PENALTY-JURY INSTRUCTION: Aggravating factors need not be proven beyond a reasonable doubt. Newberry v. State, SC18-1133 (12/12/19)

https://www.floridasupremecourt.org/content/download/544957/6140543/file/sc18-1133.pdf

POST CONVICTION RELIEF: Eye witness's fingerprints on the murder victim's wallet is newly discovered evidence but would not likely result in acquittal on retrial where there is a plausible, innocent explanation for the fingerprints, so conviction stands. Matthews v. State, SC18-9 (12/12/19)

https://www.floridasupremecourt.org/content/download/544956/6140531/file/sc18-9.pdf

JUVENILE-HABEAS CORPUS: Child may not be held in "respite care" at the detention center when she does not score detention, notwithstanding that her mother will not take her home. J.N. v. State, 5D19-3578 (12/12/19)

https://www.5dca.org/content/download/544961/6140598/file/193578_1255_12122019_11070214_i.pdf

SEX TRAFFICKING-MENS REA: In sex trafficking of a minor case, the Government need only prove that the defendant had a reasonable opportunity to observe the victim, not that he either knew or recklessly disregarded the victim's age. United States v. Pemberton, No. 17-14466 (11th Cir. 12/11/2019)

http://media.ca11.uscourts.gov/opinions/unpub/files/201714466.pdf

PLEA-VOLUNTARINESS: In case where plea before magistrate was aborted then renewed before the district judge the next day, the district judge's failing to repeat the previously given Rule 11 advice to Defendant about his right to counsel, after Defendant agreed to skip the repeat admonitions, if error, is invited. United States v. Pemberton, No. 17-14466 (11th Cir. 12/11/2019)

http://media.ca11.uscourts.gov/opinions/unpub/files/201714466.pdf

FIREARM-MANDATORY MINIMUM: Hobbs Act robbery qualifies as a crime of violence under the elements clause of § 924(c)(3)(A) because it requires the use, attempted use, or threatened use of force against the person or property of another and is therefore a predicate offense for the 10-Year Mandatory Minimum. United States v. Smith, No. 18-15013 (11th Cir 12/11/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201815013.pdf

APPEAL WAIVER: When a defendant challenges his sentence on appeal by raising claims that the government argues are barred by an appeal waiver, the government may file a motion to dismiss those claims. United States v. Moore, No. 18-13057 (11th Cir. 12/11/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201813057.pdf

POST CONVICTION RELIEF-MISADVICE: Where counsel misadvised Defendant that he qualified as a Career Criminal and would therefore be sentenced to over twenty years on a plea, and so the Defendant went to trial and lost, in order to vacate the conviction he must establish a reasonable probability that he would have pled guilty, the district court would have accepted his guilty plea, and, in turn, that his sentence would have been less severe had he pled guilty than the sentence he actually received. United States v. Medina, No. 18-12270 (11th Cir. 12/11/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812270.pdf

SENTENCING-MINOR-LIFE SENTENCE: Where Defendant convicted of felony murder as an accomplice is remanded for resentencing and verdict does not clearly establish that she had the intent to kill, she is entitled to a full de novo sentencing hearing under § 921.1401. Toye v. State, 2D16-5423 (12/11/19)

https://www.2dca.org/content/download/544829/6139021/file/165423_DC13_12112019_082322_i.pdf

SENTENCING CONSIDERATIONS: When the comments of a sentencing court may reasonably be viewed as suggesting that the sentence was, at least in part, based on the defendant's decision to go to trial, resentencing before a different judge is appropriate. Toye v. State, 2D16-5423 (12/11/19)

https://www.2dca.org/content/download/544829/6139021/file/165423_DC13_12112019_082322_i.pdf

SENTENCING-CONSIDERATIONS: Court's comment ("Those bottom of the guidelines are pretty much reserved for people who accept responsibility. This is a matter where the jury went forward and convicted your client.") establishes that the Court improperly punished the Defendant for going to trial. Defendant is entitled to resentencing before a different judge. Moore v. State, 2D18-1488 (12/11/19)

https://www.2dca.org/content/download/544832/6139064/file/181488_DC08_12112019_082525_i.pdf

LESSER INCLUDED: Lewd or lascivious conduct is not a lesser included offense of Attempted Sexual Battery on a Child less than T where the allegations in the charging document fail to include elements of lewd or lascivious conduct. Lewd or lascivious conduct contains an element not included in the offense of sexual battery on a child, namely, touching in a lewd or lascivious conduct. Remedy for Court in bench trial having found an impermissible lesser included is remand for consideration on the lesser offense of battery, not discharge. J.F. v. State, 2D18-1619 (12/11/19)

https://www.2dca.org/content/download/544833/6139076/file/181619_DC13_12112019_082714_i.pdf

SENTENCING-MANDATORY MINIMUM-ORAL PRONOUNCEMENT: Where judgment reflects a three year minimum mandatory which the Court failed to orally pronounce, the Court must re-sentence the Defendant with the minimum mandatory after ensuring that the Defendant is present at the new hearing. Although the Defendant's presence might be "useless, or the benefit but a shadow. . .we are bound by the rule that a defendant's due process rights are violated when a minimum term of imprisonment is added to a sentence without the defendant's presence." Thomas v. State, 2D18-3420 (12/11/19)

https://www.2dca.org/content/download/544842/6139184/file/183420_DC08_12112019_082937_i.pdf

SECOND DEGREE MURDER-VOLUNTARY INTOXICATION: Voluntary intoxication is only available for crimes of specific intent, not second-degree murder, a general intent crime. Mentally ill Defendant who brutally beat the victim to death after becoming voluntarily intoxicated by flakka and sweet liquor is guilty of second degree murder. "No evidence in this case suggests that Morrison had a specific intent to fatally attack the elderly victim. However, the evidence does indicate that he 'voluntarily intoxicated' himself with a combination of illegal and dangerous drugs. . .The end result was the same as . . .if [he] had set out to deliberately murder a person." Morrison v. State, 4D17-2635 (12/11/19)

https://www.4dca.org/content/download/544799/6138640/file/172635_1257_12112019_09185208_i.pdf

ARGUMENT: "We're asking you to find him guilty of first-degree murder because it's premeditated murder, because that is what he did. Had that not been what he did, we wouldn't have charged him that way," is improper argument but not fundamental error. Prosecutor may not imply that it would not have brought charges if the defendant were innocent. Morrison v. State, 4D17-2635 (12/11/19)

https://www.4dca.org/content/download/544799/6138640/file/172635_1257_12112019_09185208_i.pdf

APPEAL-PRESERVATION-JURY INSTRUCTION: Defense counsel who makes a general request for a specific jury instruction but fails to raise any objection to the instructions subsequent to the denial of the request thereby fails to preserve the issue for appeal. For an issue to be preserved for appeal it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation. Reed v. State, 4D18-1533 (12/11/19)

https://www.4dca.org/content/download/544801/6138664/file/181533_1257_12112019_09233862_i.pdf

HEAT OF PASSION: Argument with a girl friend who is dumping one is insufficient provocation to warrant a heat of passion instruction in a homicide of one's girl friend and her sister. Reed v. State, 4D18-1533 (12/11/19)

https://www.4dca.org/content/download/544801/6138664/file/181533_1257_12112019_09233862_i.pdf

COSTS: Court may not impose a public defender fee of $300 without providing notice of the amount and of the right to contest the fee. Defendant may agree to a higher public defender fee as part of a plea agreement. Mack v. State, 4D18-2034 (12/11/19)

https://www.4dca.org/content/download/544803/6138688/file/182034_1708_12112019_09251329_i.pdf

SCORESHEET ERROR: Where error on the sentencing scoresheet erroneously increased the lowest permissible sentence from 20.315 months to 20.175 months and the sentence imposed was 72 months, the error is harmless. Desrosiers v. State, 4D18-2547 (12/11/19)

https://www.4dca.org/content/download/544806/6138724/file/182547_1257_12112019_09305050_i.pdf

COSTS: In a criminal case, a trial courts may not assess costs in excess of a $100.00 fee in prosecution costs and a $225.00 fee a where the defendant is convicted of a felony without making appropriate factual findings. Desrosiers v. State, 4D18-2547 (12/11/19)

https://www.4dca.org/content/download/544806/6138724/file/182547_1257_12112019_09305050_i.pdf

COSTS: In drug cases, the trial court may assess fees for the county drug abuse trust fund, but must consider the defendant's ability to pay. Desrosiers v. State, 4D18-2547 (12/11/19)

https://www.4dca.org/content/download/544806/6138724/file/182547_1257_12112019_09305050_i.pdf

COSTS: Court may impose investigatory costs, but only when requested by the State or agency involved. Desrosiers v. State, 4D18-2547 (12/11/19)

https://www.4dca.org/content/download/544806/6138724/file/182547_1257_12112019_09305050_i.pdf

COMPETENCY-HEARING: Court is not required to hold a competency hearing absent any evidence of Appellant's incompetency at the time of trial. Assertion and evaluations for psychological evaluations for insanity at the time of the offense do not trigger the need for competency evaluations. The fact that a defendant intends to rely on the insanity defense, standing alone, does not raise a presumption that the defendant is incompetent to stand trial. Gordon v. State, 4D18-2653 (12/11/19)

https://www.4dca.org/content/download/544807/6138736/file/182653_1257_12112019_09323793_i.pdf

PREMEDITATION: Premeditation can be shown by circumstantial evidence. The fact that the Defendant walked over to the victim, pulled a knife from his pocket, shouted an expletive at him, and then stabbed him more than eighteen times at close range, then turned to a second person and said “I'll do it to you, too. I'll kill you,” is sufficient evidence of premeditation. The deliberate use of a knife to stab a victim multiple times is evidence that can support a finding of premeditation. Gordon v. State, 4D18-2653 (12/11/19)

https://www.4dca.org/content/download/544807/6138736/file/182653_1257_12112019_09323793_i.pdf

CONSTRUCTIVE POSSESSION: Defendant is not in constructive possession of illegal substances on top of a dresser in a home with multiple occupants, notwithstanding his acknowledgment that he is a drug user. For a conviction under a theory of constructive possession, the State is required to prove that the defendant knew of the presence of the contraband and had the ability to maintain dominion and control over it. When the premises where the contraband is found are in joint possession, the elements of constructive possession may not be inferred and must be established by independent proof. While knowledge can be established by proof that the contraband was in plain view in the common areas, dominion and control must be established by independent proof beyond mere proximity where the premises were in joint possession or the defendant was a mere visitor. Sims v. State, 1D18-4916 (12/10/19)

https://www.1dca.org/content/download/544708/6137875/file/184916_DC13_12102019_105445_i.pdf

SEARCH AND SEIZURE-PATDOWN: During traffic stop, where Officer smells marijuana but can't find any on Defendant after shaking his underwear, officer acted reasonably in using a pocket knife to cut a hole in his underwear. "[G]iven that the officer could have. . .reached into Appellant's underwear and presumably touched Appellant's genitals, I cannot say under the totality of the circumstances here that the search was unreasonable." Hilliard v. State, 1D118-4998 (12/10/19)

https://www.1dca.org/content/download/544709/6137887/file/184998_DC05_12102019_105657_i.pdf

POST CONVICTION RELIEF: District court may not reject magistrate judge's credibility determinations without holding its own evidentiary hearing. United States v. Medina, No. 18-12270 (11th Cir. 12/9/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812270.pdf

PLEA WAIVER: Waiver of the right to appeal includes waiver of the right to appeal difficult or debatable legal issues or even blatant error. United States v. Patel, No. 19-11407 (11th Cir. 12/9/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911407.pdf

DOUBLE JEOPARDY: Dual convictions for solicitation and traveling after solicitation do not violate double jeopardy where the Defendant entered into a plea agreement. Unlike where there is a trial in which only charged conduct is allowable, plea negotiations are not so limited and can be based on relevant but uncharged information. In the context of plea negotiations, the charging document need not be as strictly constructed as to those counts that might form the basis for a double jeopardy violation. Newcombe v. State, 1D16-4769 (12/6/19)

https://www.1dca.org/content/download/544407/6134882/file/164769_DC05_12062019_094747_i.pdf

QUOTATION: "A district judge is bound to follow all supreme court precedent, of course, but may respectfully express a view that the supreme court decision is not correct under the law." Newcombe v. State, 1D16-4769 (12/6/19)

https://www.1dca.org/content/download/544407/6134882/file/164769_DC05_12062019_094747_i.pdf

PRISON RELEASEE REOFFENDER: The use of juvenile offenses as qualifying priors under the PRR statute does not violate Graham or Miller. "McDuffey's criminal history demonstrates persistent criminality rather than the incorrigibility inherent in youth." McDuffey v. State, 1D17-3250 (12/6/19)

https://www.1dca.org/content/download/544412/6134942/file/173250_DC05_12062019_095220_i.pdf

INJUSTICE: "McDuffey's criminal history is short-lived, consisting of the one-day theft spree as a sixteen-year-old and the joint kidnapping/robbery of a drug dealer at age twenty-one. His offenses require punishment and appropriate incarceration, but a mandatory sentence of life without parole. . .raises more than one judicial eyebrow." McDuffey v. State, 1D17-3250 (12/6/19)

https://www.1dca.org/content/download/544412/6134942/file/173250_DC05_12062019_095220_i.pdf

POST CONVICTION RELIEF-DNA TESTING: Defendant convicted of rape is not entitled to post-conviction testing of foreign DNA samples under the victim's fingernails on the theory that the sex had been consensual (Defendant's DNA was in her vagina) but the fight had been with someone else. "Appellant's assertions are unsupported by any facts, any evidence, common sense, or the law. And, because Appellant's assertions are 'patently unbelievable,' the courts are not required to order further investigation, designed only to humiliate and further traumatize a 14-year-old victim of a brutal rape." Mosley v. State, 1D-19-466 (12/6/19)

https://www.1dca.org/content/download/544417/6135002/file/190466_DC05_12062019_100010_i.pdf

SENTENCING-LOWEST PERMISSIBLE SENTENCE: Court errs in sentencing the Defendant to 107.25 months (LPS) on each count (one 2nd degree felony and two third degree felonies) consecutively (about 33 years total) where the LPS was 107.25 months and the cumulative statutory maximum would have been 25 years. "Because the LPS does not exceed twenty-five years, the trial court was not required to impose the LPS, and the sentences should have been capped by their individual statutory maximum sentences." Conflict certified. Gabriel v. State, 5D18-3264 (12/6/19)

https://www.5dca.org/content/download/544334/6133972/file/183264_1259_12062019_08215246_i.pdf

COMPETENCY: The State does not bear the burden to prove competency absent a prior adjudication of incompetency). State v. R.L.S., 5D18-3959 (12/6/19)

https://www.5dca.org/content/download/544335/6133984/file/183959_1260_12062019_08271823_i.pdf

POST CONVICTION RELIEF: When a defendant's initial rule 3.850 motion for postconviction relief is determined to be legally insufficient for failure to meet pleading requirements, the trial court must allow the defendant at least one opportunity to amend the motion. Austin v. State, 5D19-670 (12/6/19)

https://www.5dca.org/content/download/544336/6133996/file/190670_1259_12062019_08314459_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that his plea was involuntary because counsel misadvised him as to gain time. Kitchen v. State, 5D19-1054 (12/6/19)

https://www.5dca.org/content/download/544337/6134008/file/191054_1260_12062019_08360693_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on claim that the poor job performance and termination of the latent fingerprint examiner in his case is adequate newly discovered evidence to entitle him to a new trial. Franklin v. State, 5D19-1620 (12/6/19)

https://www.5dca.org/content/download/544340/6134044/file/191620_1260_12062019_08524710_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on claim that the poor job performance and termination of the latent fingerprint examiner in his case is adequate newly

discovered evidence to entitle him to a new trial. Franklin v. State, 5D19-1620 (12/6/19)

https://www.5dca.org/content/download/544340/6134044/file/191620_1260_12062019_08524710_i.pdf

JURORS-PEREMPTORY CHALLENGE-PRESERVATION: A request for a standing objection to nonspecific things previously objected to in preliminary proceedings does not renew a specific objection to a peremptory challenge when the Defense has, prior to that request, accepted the jury without reservation. Where defense had objected to the State's challenge to the jury's sole black juror and opposed the State's proffered race neutral explanation but later announced that he agreed to the jury as constituted, then the following day requested a continuing objection to "a few objection [sic] in preliminary proceedings," the issue of improper use of a peremptory challenge is not properly renewed and preserved. Ivey v. State, SC18-372 (12/5/19)

https://www.floridasupremecourt.org/content/download/544262/6133152/file/sc18-372.pdf

STANDING OBJECTION: A standing objection must clearly and specifically articulate the issue being objected to. Ivey v. State, SC18-372 (12/5/19)

https://www.floridasupremecourt.org/content/download/544262/6133152/file/sc18-372.pdf

ARGUMENT-GOLDEN RULE: Asking jurors to imagine the victim's loss of hope as he slowly died while hung and tied to the bed did not expressly ask the jurors to put themselves in the victim's position but "came close to crossing the line." "If you could do that in America, then we'd all be in trouble because the mortgage companies would have us tied to the bed," constituted an improper golden rule argument. Jordan v. State, SC18-899 (12/5/19)

https://www.floridasupremecourt.org/content/download/544263/6133164/file/sc18-899.pdf

ARGUMENT: "Don't let him get away with this" is improper argument but not fundamental error. An objection is required for preservation of the issue, and counsel's strategic decision to limit objections so as not to antagonize the jury is rational. Jordan v. State, SC18-899 (12/5/19)

https://www.floridasupremecourt.org/content/download/544263/6133164/file/sc18-899.pdf

ARGUMENT-LACK OF REMORSE: Although State generally may not argue lack of remorse, the door is opened to this type of argument when defense counsel's opening statement included condolences for the victim and his family. "By injecting remorse into his opening statement in a case where part of the defense was that Jordan did not know the victim was in danger and had not meant to kill the victim when he left him tied up, we find that trial counsel opened the door for the State to address the lack of any evidence of remorse in this case." Jordan v. State, SC18-899 (12/5/19)

https://www.floridasupremecourt.org/content/download/544263/6133164/file/sc18-899.pdf

POST CONVICTION RELIEF: Before a prisoner in custody pursuant to a state court judgment can file a second federal habeas petition under § 2254, he must move in the appropriate court of appeals for an order authorizing the district court to consider the application. Defendant may not file a successive habeas corpus petition for post conviction relief without prior authorization notwithstanding that his petition presents a claim that relies on a new rule of constitutional law that the Supreme Court has made retroactive. Banks v. United States, No. 19-11010 (11th Cir. 12/5/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911010.pdf

SENTENCING-ACCA-PRIORS: Where one of the predicates for ACCA sentencing was not legally sufficient because it fell under the residual clause (which was later determined to be unconstitutionally vague) but where another count (a drug offense), was oiginally mislabeled as a nonqualifying predicate offense in the PSI, the Defendant remained subject to ACCA sentencing, and is not entitled to a new sentencing hearing. Court is not required to articulate which priors it relied on in imposing an ACCA sentence. Gray v. United State, No. 18-12770 (11th Cir. 12/5/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812770.pdf

PLEA WITHDRAWAL: Defendant who did not object within 14 days to magistrate's recommendation that his plea be accepted cannot successfully move to withdraw the plea later. A district court may permit a defendant to withdraw his guilty plea. Defendant's failure to submit written objections to the magistrate's recommendation that the plea be accepted within 14 days waives his right to review, absent plain error. United States v. Cabeza, No. 18-10258 (11th Cir. 12/5/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201810258.pdf

SENTENCING-FIREARM ENHANCEMENT: Defendant who is sentenced for possession of a firearm by a felon is subject to a four level enhancement for use of the firearm in connection with another offense based on evidence that he had recently sold marijuana from the room where the gun was found, so that the gun had the potential to facilitate the offense of drug trafficking. A firearm found in close proximity to drug-related items has the potential to facilitate the drug offense, and is therefore possessed in connection with' that offense. United States v. Saez, No. 19-11364 (11th Cir. 12/5/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911364.pdf

POST CONVICTION RELIEF: Before a prisoner in custody pursuant to a state court judgment can file a second federal habeas petition under § 2254, he must move in the appropriate court of appeals for an order authorizing the

district court to consider the application. Defendant may not file a successive habeas corpus petition for post conviction relief without prior authorization notwithstanding that his petition presents a claim that relies on a new rule of constitutional law that the Supreme Court has made retroactive. Banks v. United States, No. 19-11010 (11th Cir. 12/5/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201911010.pdf

CONTEMPT: Irascible Defendant who calls his fourth Nelson hearing a Kangeroo Court is properly held in direct contempt. West v. State, 1D18-3918 (12/5/19)

https://www.1dca.org/content/download/544310/6133716/file/183918_DC05_12052019_124836_i.pdf

MINOR-SENTENCE: 50 year sentence for a 17 year old convicted of armed robberies is not subjected to Cruel and Unusual Punishment. Sentence is neither a life nor a de facto life sentence. Grace v. State, 1D19-133 (12/5/19)

https://www.1dca.org/content/download/544311/6133728/file/190133_DC05_12052019_125020_i.pdf

JOA: Child is entitled to Judgment of Dismissal on charge of grand theft of the vehicle in which he was a passenger and of the burglaries/thefts related to the stolen property in the stolen car. Evidence that a person was a passenger in a previously stolen vehicle is insufficient to prove the theft of the vehicle. J.K. v. State, 2D17-4190 (12/4/19)

https://www.2dca.org/content/download/544208/6132492/file/174190_39_12042019_08561997_i.pdf

PLEA-WITHDRAWAL: Court retains jurisdiction to rule on Defendant's Motion to withdraw plea filed before Notice of Appeal is found. The motion tolled rendition of his sentence and placed his appeal in abeyance until the

court disposed of the motion. Court has jurisdiction to rule on the defendant's motion to withdraw plea even though the defendant's appeal was pending because the motion to withdraw plea was filed before the notice of appeal. Chipman v. State, 2D18-2134 (12/4/19)

https://www.2dca.org/content/download/544209/6132504/file/182134_39_12042019_08575260_i.pdf

VOP: Court may not revoke probation solely on proof that the probationer has been arrested. His No Contest plea and resulting conviction establishes the violation for one case but not for the other Condition 5 violations which did not result in a conviction. Herrera v. State, 2D18-3709 (12/4/19)

https://www.2dca.org/content/download/544211/6132528/file/183709_65_12042019_09005545_i.pdf

VOP: Defendant may not be violated for failure to pay drug testing costs when that special condition was not imposed. Probation cannot be revoked for violating a special condition that was not imposed by the court, even where the probationer fails to object. Error is fundamental. Herrera v. State, 2D18-3709 (12/4/19)

https://www.2dca.org/content/download/544211/6132528/file/183709_65_12042019_09005545_i.pdf

VOP-FAILURE TO PAY: Court may not revoke probation based on failure to pay fines and costs where time remained on the probation to make such payments, and the court made no inquiry as to whether the Defendant had the ability to pay any of his monetary obligations. Court must make an inquiry and make explicit findings of willfulness before revoking probation for failing to pay costs. Error is fundamental. Herrera v. State, 2D18-3709 (12/4/19)

https://www.2dca.org/content/download/544211/6132528/file/183709_65_12042019_09005545_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel was ineffective by affirmatively misadvising him that if he were to testify, the State would be allowed to cross-examine him regarding the nature and details of his prior felony conviction. McDade v. State, 3D19-363 (12/4/19)

https://www.3dca.flcourts.org/content/download/544201/6132394/file/190363_811_12042019_10241493_i.pdf

PSI: The omission of the DJJ recommendation in a PSI is an error in the sentencing process, not an error in the order imposing the sentence. Defendant, who was a minor at the time of the commission of the offense, is not entitled to a resentencing where he failed to object to the omission at sentencing. Error is not correctable by motion. Jones v. State, 4D18-1945 (12/4/19)

https://www.4dca.org/content/download/544185/6132188/file/181945_1257_12042019_08533170_i.pdf

MINOR-RESENTENCING: Court lacks jurisdiction to rescind an order granting resentencing once it became a final, appealable order, and neither party timely moved for rehearing of the order. White v. State, 4D18-3560 (12/4/19)

https://www.4dca.org/content/download/544187/6132212/file/183560_1709_12042019_08581448_i.pdf

APPEAL-MOTION FOR EARLY TERMINATION OF PROBATION: An order denying early termination of probation is not an appealable order. Velazquez v. State, 4D19-245 (12/4/19)

https://www.4dca.org/content/download/544188/6132224/file/190245_1701_12042019_09011190_i.pdf

INJUSTICE: "I concur that an order denying an early termination of probation is not an appealable order. That is unfortunate. Were this case reviewable on appeal, appellant would be entitled to a reversal because the court abused its discretion by denying appellant's motion for termination without explanation." Velazquez v. State, 4D19-245 (12/4/19)

https://www.4dca.org/content/download/544188/6132224/file/190245_1701_12042019_09011190_i.pdf

QUOTATION: "Judicial discretion is a discretion guarded by the legal and moral conventions that mold the acceptable concept of right and justice. If this is not true, then judicial discretion, like equity, will depend on the length of the judge's foot, the state of his temper, the intensity of his prejudice, or perhaps his zeal to reward or punish." Velazquez v. State, 4D19-245 (12/4/19)

https://www.4dca.org/content/download/544188/6132224/file/190245_1701_12042019_09011190_i.pdf

MOTION TO MITIGATE-JURISDICTION: Court lacks jurisdiction to rule on (deny) a motion to mitigate filed after a notice of appeal was filed. Court should have dismissed the motion without prejudice. Barberian v. State, 4D19-1471 (12/4/19)

https://www.4dca.org/content/download/544189/6132236/file/191471_1257_12042019_09025318_i.pdf

JURY INSTRUCTIONS: Court correctly gave the jury instruction related to eyewitness identification which was consistent with the law at the time of the offense, rather than the jury instruction applicable after the laws on

eyewitness identification were changed. Williams v. State, 1D18-3426 (12/4/19)

https://www.1dca.org/content/download/544122/6131543/file/183426_DC08_12032019_124851_i.pdf

POST CONVICTION RELIEF: Court properly denied Defendant's claim that counsel was ineffective for failing to call an expert witness to testify about how crack cocaine may affect a user's perceptions. Where there is no testimony that the witness consumed crack, defendant never requested such an expert, and defendant had stated that his counsel had called all witnesses requested. Lynn v. State, 1D18-3816 (12/4/19)

https://www.1dca.org/content/download/544123/6131555/file/183816_DC05_12032019_125151_i.pdf

POSSESSION OF a FIREARM BY FELON: Guns found throughout the Defendant's home from which he trafficked in narcotics is sufficient circumstantial evidence to sustain a conviction for possession of a firearm by a felon. To support a conviction for possession of a firearm by a convicted felon, the government must prove that (1) the defendant "was a convicted felon, (2) he knowingly possessed a firearm, and (3) the firearm was in or affected interstate commerce. United States v. Hill, No. 19-10387 (11th Cir. 12/4/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910387.pdf

ACCA: Where Defendant challenges his ACCA enhancement alleging improper reliance on a residual clause predicate offense, he must show that—more likely than not—it was use of the residual clause that led to the sentencing court's enhancement of his sentence. If it is just as likely that the sentencing court relied on the elements or enumerated offenses clauses, solely or as an alternative basis for the enhancement, then the movant has failed to show that his enhancement was due to use of the residual clause. Robinson v. State, No. 17-13929 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201713929.pdf

FALSE STATEMENT: Notary who knowingly notarized fake passport applications is properly convicted of making false statements in a passport application. United States v. Ershova, No. 18-12338 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812338.pdf

MOTION TO DISMISS: Defendant may not move to dismiss an indictment on the ground that the undisputed facts would not establish the crime. The sufficiency of a criminal indictment is determined from its face, and an indictment is sufficient if it follows the language of the statute and sets forth the essential elements of the crime. United States v. Ershova, No. 18-12338 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812338.pdf

FALSE STATEMENT IN PASSPORT APPLICATION: A notary who makes false notarizations is guilty of making a false statement in a passport application (i.e., that she actually witnessed the signing of the application). A notarization is a statement. "[A]lthough notaries have not previously been prosecuted under § 1542, the statute, standing alone, was sufficiently clear to give Ershova fair warning that falsely certifying she had witnessed the fathers sign the forms was criminal." United States v. Ershova, No. 18-12338 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201812338.pdf

POSSESSION OF FIREARM BY A FELON: Prohibiting a felon from possessing a firearm is within the federal government's power under the Commerce Clause. United States v. Porter, No. 18-14551 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814551.pdf

VOP: Affidavit of Violation should not be dismissed because probation officer initially alleged that the Defendant possessed heroin when the white powder turned out to be N-Ethylpentylone and the petition was accordingly amended. "The probation officer's mistake, or at worst, his negligence, in alleging that Coleman possessed heroin was insufficient to warrant an evidentiary hearing on the veracity of his arrest warrant." United States v. Coleman, No. 19-10410 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910410.pdf

VOP: Defendant is properly found to be in violation of controlled release where video recording and testimony from two transportation security officers established that Defendant accompanied Chung through an airport in Detroit while they were carrying about $79,000 and that after officers discovered Chung in possession of heroin and Defendant's pants held a plastic bag of N-Ethylpentylone. (Defendant was also recorded on a cell phone snorting cocaine.) United States v. Coleman, No. 19-10410 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910410.pdf

SENTENCING: Defendant's argument that prison is "wholly unacceptable" fails. United States v. Coleman, No. 19-10410 (11th Cir. 12/3/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910410.pdf

PLEA WITHDRAWAL-COMPETENCY: Defendant's statement at his change-of-plea hearing that he had seen a psychologist in jail who had told him to get evaluated, and later information in the PSR showing that the Defendant had been diagnosed with schizoaffective disorder-bipolar is insufficient evidence of incompetency to require the Court to order a competency evaluation *sua sponte*. "True, the record shows that Ward had a history of mental illness, that he suffered auditory hallucinations and may have tried to commit suicide after pleading guilty, and that he was then diagnosed with schizoaffective disorder-bipolar type. But there are no prior

medical opinions regarding Ward's competence, and his demeanor at the change-of-plea hearing and sentencing indicates that he had a rational and factual understanding of the proceedings against him and was able to assist counsel." United States v. Ward, No. 19-10479 (11th Cir. 12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910470.pdf

POSSESSION OF FIREARM BY FELON: Government must prove that the Defendant knew his status as a convicted felon. United States v. Ward, No. 19-10479 (11th Cir. 12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910470.pdf

GUIDELINES-CONSECUTIVE SENTENCE: When being sentenced for possession of a firearm by a felon while there is a related state court charge of attempted murder for using that firearm, and where the acts underlying the attempted murder were calculated as relevant conduct, the Court errs by not considering a concurrent sentence under Section 5G1.3(c) of the Sentencing Guidelines, which advises courts that a federal sentence shall be imposed to run concurrently with an anticipated, but not yet imposed, state sentence resulting from an offense that is relevant conduct to the instant federal offense. There is no requirement that the anticipated state court sentence must be imminent. Resentencing required. United States v. Ward, No. 19-10479 (11th Cir. 12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910470.pdf

POSSESSION OF FIREARM BY FELON-KNOWLEDGE OF STATUS: By pleading guilty, Defendant waives any objection to the indictment for failing to allege that he knew he was a prohibited person. The fact that Defendant had received multiple sentences of more than one year of imprisonment for serious felonies—and in fact served nearly eight years in prison—indicates that he knew that his prior offenses were punishable by more than one year of imprisonment. United States v. Ward, No. 19-10479 (11th Cir. 12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910470.pdf

SEARCH AND SEIZURE-FOREIGN SEARCH: Evidence obtained from searches carried out by foreign officials in their own countries is admissible in United States courts, even if the search would not otherwise comply with United States law or the law of the foreign country, unless the conduct of the foreign officials during the search shocks the judicial conscience or if American law enforcement officials substantially participated in the search or if the foreign officials conducting the search were actually acting as agents for their American counterparts. The search of the Defendant's property in Malaysia does not shock the judicial conscience. "[W]hile the alleged beating may violate American norms of decency, Olaniyi did not show it violates international norms of decency." United States v. Olaniya, No. 18-14622 (12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814622.pdf

IDENTITY THEFT: Defendant's argument that he did not know that the person whose bank account he tapped into was a real person is nonavailing. United States v. Olaniya, No. 18-14622 (12/2/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814622.pdf

OTHER CRIMES: Evidence of thefts from other people's bank accounts is inextricably intertwined with the charged offense and is thus admissible. Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive, and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury. As the evidence was not extrinsic under Rule 404(b), the Government was not required to give pretrial notice of its intent to use the evidence at trial. United States v. Olaniya, No. 18-14622 (12/2/19)

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NOVEMBER 2019

EVIDENCE-SENTENCING HEARING: The standard for admissibility of evidence in a sentencing hearing is not the evidence code, but rather whether the evidence has sufficient indicia of reliability. United States v. Pitts, No. 18-14873 (11th Cir. 11/27/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814873.pdf

PLEA-WITHDRAWAL: A defendant who seeks to withdraw a guilty plea after the court has accepted the plea but before sentencing must demonstrate a

fair and just reason for doing so, considering the totality of the circumstances surrounding the plea. Trial court acted within its discretion in denying motion to withdraw plea by Defendant, an attorney who had pled guilty to mishandling escrow accounts, on the ground that new evidence (a poorly qualified expert hired to contest the amount of restitution) would establish lack of criminal intent. United States v. Pitts, No. 18-14873 (11th Cir. 11/27/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201814873.pdf

APPEAL: Defendant's pleading entitled "Objections to Government's Response to Defendant's Motion for Relief from Judgment. . .and/or Notice of Appeal" is not a legally sufficient notice of appeal because it does not designate the court to which the appeal is being taken, nor does it evince a clear intent to appeal, nor does it identify the order being appealed. United States v. Baxter, No. 19-10327 (11th Cir. 11/27/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910327.pdf

STAND YOUR GROUND-APPEAL: Prohibition is the appropriate remedy when the Court errs in denying SYG immunity on the merits. Certiorari is the appropriate remedy when the Stand Your Ground proceeding or the trial court's ruling is flawed by legal error. Garcia v. State, 2D18-4541 (11/27/19)

STAND YOUR GROUND-SELF-DEFENSE-TRESPASS: One is entitled to defend oneself and is protected by SYG when attacked for dithering about leaving the house party. A defendant is not foreclosed from defending himself simply because he is in a place where he does not have the right to be, but he must first attempt to retreat from the situation if he can do so safely. Court errs by ruling that as a matter of law any use of force by the party host is lawful. Garcia v. State, 2D18-4541 (11/27/19)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that Court improperly allowed expert testimony on DNA evidence in which "low count number" testing had been utilized, that possible contamination of the DNA samples had occurred, and that the population frequency statistics were unreliable. Miller v. State, 2D19-17 (11/27/19)

INFORMATION: Defendant is estopped from vacating conviction where State filed an amended information as part of a reduced charge plea negotiation, in which it wrote "possession with intent to sell cannabis" on the face of the information but neglected to state all the elements of the offense in the body. Even where the body of a charging instrument omits an essential element, such an error is a waivable technical defect, if the charging instrument references the correct statute, and the statute sets forth the required elements. de Quesada v. State, 3D19-2018 (11/27/19)

IMMIGRATION CONSEQUENCES: Defendant cannot raise claim that his plea was involuntary for failure to warn of likely immigration consequences more than two years after the plea, absent allegation that . As he filed his motion well beyond the two-year limitation, entirely failed to articulate any prejudice, and did not allege that he could not have ascertained the immigration consequences of his plea during two-year period after his judgment became final with the exercise of due diligence. de Quesada v. State, 3D19-2018 (11/27/19)

https://www.3dca.flcourts.org/content/download/543893/6128701/file/192018_809_11272019_09522561_i.pdf

EVIDENCE-OPINION ON CREDIBILITY: State may not ask whether Defendant believes police offer lied ("Therefore, you are saying that what the

officer said on the stand is not the truth, is that correct?"). A witness may not be asked to give an opinion about the credibility of another witness. Y.N. v. State, 3D18-45 (11/27/19)

https://www.3dca.flcourts.org/content/download/543883/6128581/file/180045_812_11272019_09350896_i.pdf

EVIDENCE-BENCH TRIAL: When improper evidence is admitted over objection in a bench trial, the court must make an express statement on the record that the erroneously admitted evidence did not contribute to the final determination or it will be regarded as having been considered. New trial required. Y.N. v. State, 3D18-45 (11/27/19)

https://www.3dca.flcourts.org/content/download/543883/6128581/file/180045_812_11272019_09350896_i.pdf

COMPETENCY: Upon remand, successor judge who acquainted himself with the record may make a nunc pro tunc finding of competency after hearing. Little v. State, 4D17-2611 (11/27/19)

https://www.4dca.org/content/download/543930/6129166/file/172611_1257_11272019_08510627_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may not sentence Defendant who has under 22 points on his scoresheet to prison for VOP. Upon remand, if it seeks an enhanced penalty, the State must convene a jury to consider danger to the public. Issue of whether chronic thievery constitutes "danger to the public" is not addressed. Lewis v. State, 4D18-2548 (11/27/19)

https://www.4dca.org/content/download/543933/6129202/file/182548_1709_11272019_08531060_i.pdf

SEARCH AND SEIZURE-STANDING: A defendant who is tracked using Cell-Site Location Information (CSLI) data has standing to challenge the search of his or her physical location, notwithstanding that the location in which he is found is in his murdered mother's car. State v. Martin, 4D18-3417 (11/27/19)

https://www.4dca.org/content/download/543936/6129238/file/183417_1257_11272019_08570593_i.pdf

SEARCH AND SEIZURE-GOOD FAITH: The good faith exception to the exclusionary rule for unlawful searches does not apply to areas of law that are undecided or unsettled. Officers acted in good faith reliance on then-existing practices and orders authorizing Cell-Site Location Information (CSLI) data, but not in using Cell-Site Simulator data to pinpoint the Defendant's location in his murdered mother's car. State v. Martin, 4D18-3417 (11/27/19)

https://www.4dca.org/content/download/543936/6129238/file/183417_1257_11272019_08570593_i.pdf

SEARCH AND SEIZURE-CELL PHONE-SITE LOCATION: A cell-site simulator is a device that transforms a cell phone into a real-time tracking device, tricking nearby cell phones into thinking the device is a cell tower. Police may not track Defendant's location with a cell-site without obtaining a warrant. Officers did not act in good faith reliance based on their claimed belief that a the court order authorizing the disclosure of "real-time/live cell site locations" and a "mobile tracking device" extends to a cell site simulator. "The Fourth Amendment violation here is precisely the kind of violation the exclusionary rule seeks to deter." Evidence properly suppressed. State v. Martin, 4D18-3417 (11/27/19)

https://www.4dca.org/content/download/543936/6129238/file/183417_1257_11272019_08570593_i.pdf

RETROACTIVITY-PRISON RELEASEE REOFFENDER: Lewars (Defendant who was committed to prison but released from jail with credit time served before getting there is not subject to PRR) does not apply retroactively. Life sentence as PRR affirmed. A change of law will not be applied retroactively unless the change: (a) emanates from the Supreme Court of Florida or the United States, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance. Lewars is an evolutionary refinement and not a development of fundamental significance, a major constitutional change, or jurisprudential upheaval that requires retroactive application. Sims v. State, 4D19-1506 (11/27/19)

QUOTATION 1: "Of course, there's no such thing as a good bank robbery. But. . .there are certainly less bad ones." United States v. Perez, No. 17-14136 (11th Cir. 11/26/19)

QUOTATION 2: "If this were an Encyclopedia Brown mystery, it might be called The Case of the Polite Bank Robber." United States v. Perez, No. 17-14136 (11th Cir. 11/26/19)

SENTENCING-GUIDELINES: Unarmed bank robber who said "please" and "thank you," bargained pleasantly with one teller ("Perez asked. . . if [$1000.00] was the most cash the teller could dispense."), and allowed another to report the robbery while it was ongoing is not subject to the Guidelines' threat-of-death offense level enhancement. "Put $5[,]000 in an envelope . . . and no one will get hurt." is a threat of harm, but not in itself

enough to justify the enhancement. United States v. Perez, No. 17-14136 (11th Cir. 11/26/19)

EVIDENCE-OTHER CRIMES, WRONGS OR MISDEEDS: In theft and burglary case, evidence of a stolen checkbook, unrelated to the case at issue, found in the stolen backpack is inadmissible. "Although. . . the prosecutor and State witness carefully avoided making the overt assertion that Appellant had stolen the checkbook, they might just as well have. . . When the jury was told that. . .the Appellant. . .was found to be in possession of a checkbook belonging to somebody else, the inescapable implication was that he stole it, and was a person prone to theft." Trahan v. State, 1D18-1174 (11/22/19)

https://www.1dca.org/content/download/543750/6126960/file/181174_DC13_11222019_105507_i.pdf

STAND YOUR GROUND: Defendant is not entitled to SYG immunity when he came up behind the victim, grabbed her, threw her to the ground, laid on top of her, hit her repeatedly in the face and said, "You f—ing b—-, you'll never hit my wife again," after his wife had started the fight by repeatedly stabbing the victim with a broken bottle. Craven v. State, 1D18-5270 (11/22/19)

https://www.1dca.org/content/download/543760/6127082/file/185270_DC02_11222019_114153_i.pdf

STAND YOUR GROUND: Defendant who shattered a beer bottle, grabbed the victim by the throat with her free hand, stabbed the victim with the bottle, and said, "You want some of this? You want to try me? You want some of

this b—-?" and who cut the victim's facial nerves and vocal cords is not entitled to SYG immunity. Craven v. State, 1D18-5272 (11/22/19)

https://www.1dca.org/content/download/543761/6127094/file/185272_DC02_11222019_114608_i.pdf

OPENING THE DOOR: Defendant charged with a violent crime with a firearm opens the door to evidence that he had been previously convicted of possession of a firearm by a felon when he said that he did not have a gun during the crime charged because he could not legally possess one. Dickerson v. State, 1D19-1320 (11/22/19)

https://www.1dca.org/content/download/543764/6127130/file/191320_DC05_11222019_120329_i.pdf

HEARSAY: Statements of the bleeding, upset victim at the scene of the crime while the fire department was still trying to put out the fire are admissible as excited utterances and statements of identification. Dickerson v. State, 1D19-1320 (11/22/19)

https://www.1dca.org/content/download/543764/6127130/file/191320_DC05_11222019_120329_i.pdf

POST CONVICTION RELIEF-SEVERANCE: Counsel is not ineffective for failing to sever Defendant's case from that of his co-Defendant where each testified only to their own innocence and neither of them attempted to implicate the other with their testimony. Dickerson v. State, 1D19-1320 (11/22/19)

https://www.1dca.org/content/download/543764/6127130/file/191320_DC05_11222019_120329_i.pdf

POST CONVICTION RELIEF-EDITED RECORDING: Claim that counsel was ineffective for allowing a too heavily redacted interview to be admitted where he fails to show that the redactions fundamentally changed the nature of the video. Dickerson v. State, 1D19-1320 (11/22/19)

https://www.1dca.org/content/download/543764/6127130/file/191320_DC05_11222019_120329_i.pdf

JURY INSTRUCTION-EXCUSABLE HOMICIDE: In case of Defendant shooting his wife through a door in what he claims was a botched suicide attempt, failure to give an excusable homicide instruction is reversible error. But where the trial court specifically directed the parties to the missing definitions of justifiable and excusable homicide and defense counsel acknowledged the omission, the Defendant affirmatively waived any claim to assert fundamental error. Question certified whether waiver further requires the record to reflect that counsel knew the omission itself was erroneous. Brady v. State, 2D18-117 (11/22/19)

https://www.2dca.org/content/download/543718/6126569/file/180117_65_11222019_08401793_i.pdf

RESENTENCING-CONSIDERATIONS: Defendant is entitled to a 3rd sentencing hearing before a 3rd judge when the first two judges, before and after the first appeal, considered the Defendant's use of a firearm during the robbery when the jury had found him guilty of the lesser included of robbery without a firearm. Love v. State, 2D18-4461 (11/22/19)

https://www.2dca.org/content/download/543730/6126713/file/184461_39_11222019_08434386_i.pdf

APPEAL-CERTIORARI-MODIFICATION OF PROBATION: Defendant may move to modify the conditions of probation at any time, including before it begins. Court's ruling that it is without jurisdiction to modify conditions of probation can be challenged by petition for writ of certiorari. Wilson v. State, 2D18-4662 (11/22/19)

https://www.2dca.org/content/download/543731/6126725/file/184662_167_11222019_08513434_i.pdf

CORPUS DELICTI: Cocaine found on the ground where the Defendant had run is sufficient evidence that someone had committed the crime of possession of cocaine, so that Defendant's admission that he had discarded the cocaine is admissible. "Whether a corpus delicti has been established is a different inquiry from whether the evidence adduced would legally withstand a motion for judgment of acquittal. The former is a rule of evidentiary admission; the latter is one of evidentiary consideration." With limited exceptions, to establish a corpus delicti the State need only show that a crime has been committed, not that the defendant committed that particular crime. K.T.B. v. State, 2D19-59 (11/22/19)

https://www.2dca.org/content/download/543736/6126785/file/190059_65_11222019_08542780_i.pdf

CONTINUANCE: Defendant is entitled to a continuance in murder case when, 12 days before trial, State discloses an FDLE report showing the

victim's blood on Defendant's headboard, undermining the Defendant's defense that the blood came from murdered kittens. Defense counsel must be afforded a reasonable opportunity to investigate and prepare any applicable defenses. Court must consider (1) the time actually available for preparation; (2) the likelihood of prejudice from the denial; (3) the defendant's role in shortening preparation time; (4) the complexity of the case; (5) the availability of discovery; (6) the adequacy of counsel actually provided; and (7) the skill and experience of chosen counsel. Singer v. State, 5D18-1783 (11/22/19)

https://www.5dca.org/content/download/543753/6127003/file/181783_1260_11222019_09315060_i.pdf

VEHICULAR HOMICIDE-JOA: Drag race ending in a fatal crash at 99 m.p.h. is sufficient to establish vehicular homicide. Ruiz v. State, 5D18-3402 (11/22/19)

https://www.5dca.org/content/download/543756/6127039/file/183402_1257_11222019_09440476_i.pdf

POST CONVICTION RELIEF-SCORESHEET ERROR: Defendant is entitled to a hearing on claim that there was an apparent scoresheet error, unless the Court attaches records showing that the same sentence would have been imposed regardless. The fact that the trial court did not impose the lowest permissible sentence does not compel the conclusion that the court would have imposed the same sentence even if the extra points had not been listed on the scoresheet. Sanders v. State, 5D19-1194 (11/22/19)

https://www.5dca.org/content/download/543757/6127051/file/191194_1259_11222019_11091768_i.pdf

PROBATION-TERM: For life felony, Defendant cannot be sentenced to 40 years in prison followed by 15 years of probation. The maximum sentence for a life felony is 40 years or life. Because the Defendant was sentenced to 40 years imprisonment, no probation could follow. VOP dismissed. Owens v. Flowers, 5D19-3366 (11/22/19)

https://www.5dca.org/content/download/543772/6127218/file/193366_1262_11222019_01563276_i.pdf

CONSPIRACY: Government is not required to prove that the Defendant conspired to distribute a specific controlled substance. Government is only required to prove that the Defendant conspired to distribute a generic controlled substance. Proof of the type of drug involved in the conspiracy is separate and distinct from proof of mens rea as to the type of drug. Because the type of drug is not an element of the statutory offense, a finding of mens rea with respect to the specific type of drug is ordinarily not required. But where the indictment charged a specific substance instead of the generic substance as an element, the government is required to prove mens rea as to the specific substance. United States v. Achey, (11th Cir 11/22/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811900.pdf

DEFINITION-"A": When used as an indefinite article, "a" means some undetermined or unspecified particular. United States v. Achey, (11th Cir 11/22/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811900.pdf

CONSPIRACY: A simple buyer-seller controlled substance transaction does not, by itself, form a conspiracy, but if the evidence allows an inference that

the buyer and seller knew the drugs were for distribution rather than to support the buyer's personal drug habit, the transaction may amount to a conspiracy. United States v. Achey, (11th Cir 11/22/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811900.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Newly discovered evidence of dubious admissibility and credibility, including that a third party had implied that he might be the killer and that that person had been seen running with a gas can and blood on his shirt, is not sufficient to warrant post conviction relief in an otherwise strong case of guilt. Calhoun v. State, SC18-340 (11/21/19)

https://www.floridasupremecourt.org/content/download/543646/6125944/file/sc18-340.pdf

NEWLY DISCOVERED EVIDENCE-GENDER DYSPHORIA: Defendant's symptoms of severe depression, self-mutilation, and suicidality, now attributed to gender dysphoria are not newly discovered evidence warranting the vacation of his guilty plea and previous waivers of post conviction relief. Rodgers v. State, SC19-241 (11/21/19)

https://www.floridasupremecourt.org/content/download/543647/6125956/file/sc19-241.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to call to alibi witnesses where their testimony would have been cumulative and their credibility suspect. Thomas v. State, 1D18-2024 (11/20/19)

https://www.1dca.org/content/download/543469/6123890/file/182024_DC05_11202019_093628_i.pdf

POST CONVICTION RELIEF-RULE OF SEQUESTRATION: Defendant is not entitled to a new trial on claim that counsel was ineffective for failing to invoke rule of sequestration where the active two witnesses talking to each other is not shown to be prejudicial. Faulk v. State, 1D18-2173 (11/20/19)

https://www.1dca.org/content/download/543471/6123909/file/182173_DC05_11202019_094024_i.pdf

POST CONVICTION RELIEF-PHOTO LINEUP: Defendant's speculation that the victims may have chosen him out of the lineup because they believe that all people of color look alike is not a basis for postconviction relief. Faulk v. State, 1D18-2173 (11/20/19)

https://www.1dca.org/content/download/543471/6123909/file/182173_DC05_11202019_094024_i.pdf

POST CONVICTION RELIEF-MENTAL HEALTH EVALUATION: Counsel was not ineffective for not seeking a mental health evaluation where the record reflects that the Defendant participated meaningfully throughout the trial in his claims of mental illness are otherwise undermined by the facts. Any mental health mitigation would have been meaningless because the Defendant was a Prison Releasee Re-offender who was required by law to serve the statutory maximum sentence. Faulk v. State, 1D18-2173 (11/20/19)

https://www.1dca.org/content/download/543471/6123909/file/182173_DC05_11202019_094024_i.pdf

JURY INSTRUCTION-SEXUAL BATTERY-PENETRATION: It is fundamental error in a sexual battery case for the state to argue, and for the court to instruct the jury on, union with the vagina when the information only alleges actual penetration. Goodman v. State, 1D18-2264 (11/20/19)

https://www.1dca.org/content/download/543472/6123921/file/182264_DC08_11202019_095259_i.pdf

EVIDENCE-VOUCHING: CPT officer's testimony that in her medical opinion there was sexual assault or abuse according to patient history and physical findings that were consistent with the history is improper vouching. Counsel provided deficient performance in failing to object to the CPT officer's testimony, but no prejudice was shown given the overwhelming evidence of guilt. ("Appellant could not recall if he had raped his daughter as he had seven drinks that night and did not know how much alcohol the victim drank."). Roderick v. State, 1D18-4020 (11/20/19)

https://www.1dca.org/content/download/543475/6123957/file/184020_DC05_11202019_100453_i.pdf

ARGUMENT: Prosecutor did not improperly evoke religion when telling the story about King Solomon's maternity case and suggesting that jurors should use their God-given common sense. Roderick v. State, 1D18-4020 (11/20/19)

https://www.1dca.org/content/download/543475/6123957/file/184020_DC05_11202019_100453_i.pdf

PLEA-WITHDRAWAL: Motion to withdraw plea filed by the Defendant who is represented by counsel is a nullity absent a claim in the motion that an adversarial relationship with his counsel existed. Trial counsel's obligation

of representation to his or her client does not end upon the rendition of a judgment of conviction and sentence, but continues thereafter until either a notice of appeal is filed and related tasks completed, the time for filing the notice has passed, or good cause is shown upon written motion. Rodriguez v. State, 3D19-1006 (11/20/19)

https://www.3dca.flcourts.org/content/download/543485/6124084/file/191006_812_11202019_10052911_i.pdf

CREDIT FOR TIME SERVED-SPLIT SENTENCE: A defendant who is sentenced to incarceration because he violated the probationary portion of a split sentence is entitled to receive credit for time served in prison before being placed on probation. The trial court shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitted. The failure to award a defendant proper credit for prior prison time served is cognizable on a motion to correct illegal sentence under Rule 3.800(a). Villalona v. State, 3D19-1080 (11/20/19)

https://www.3dca.flcourts.org/content/download/543487/6124108/file/191080_812_11202019_10105007_i.pdf

EVIDENCE-OPINION: Detective may not testify that, based on his training and experience, there was no self defense legitimately available for Defendant. Such an opinion improperly invades the exclusive province of the jury. Hunt v. State, 4D18-1577 (11/20/19)

https://www.4dca.org/content/download/543490/6124151/file/181577_1709_11202019_08473986_i.pdf

CONTEMPORANEOUS OBJECTION: A contemporaneous objection may be made a few questions after the objectionable comment. Hunt v. State, 4D18-1577 (11/20/19)

https://www.4dca.org/content/download/543490/6124151/file/181577_1709_11202019_08473986_i.pdf

SEARCH AND SEIZURE-FACTUAL FINDINGS: "While not an independent ground for reversal, unexplained rulings are generally anathema to a sound appellate opinion. While we decline to enunciate a ruling that would require factual findings following hearings on motions to suppress, we implore trial judges to consider such a routine procedure, whether they be written or orally pronounced." Case remanded for the court to make factual findings. Searcy v. State, 4D18-2201 (11/20/19)

https://www.4dca.org/content/download/543492/6124175/file/182201_1709_11202019_08520463_i.pdf

COMMENT ON SILENCE: State's question of Defendant during cross-examination "And today in 2018 is the first time we're hearing about this guy name[d] Rico?" is an improper comment on Defendant's right to remain silent. The State is not permitted to comment on a defendant's postarrest silence. This prohibition applies to all evidence and argument, including impeachment evidence and argument, that is fairly susceptible of being interpreted by the jury as a comment on silence. A defendant does not waive this prohibition by electing to take the stand and testify at trial. Hopkins v. State, 4D18-2204 (11/20/19)

https://www.4dca.org/content/download/543493/6124187/file/182204_1709_11202019_08542951_i.pdf

SHIFTING BURDEN OF PROOF: State may not imply that Defendant has the burden of offering an exculpatory statement prior to trial. Asking the Defendant "And today in 2018 is the first time we're hearing about this guy name[d] Rico?" improperly shifts the burden of proof. Hopkins v. State, 4D18-2204 (11/20/19)

https://www.4dca.org/content/download/543493/6124187/file/182204_1709_11202019_08542951_i.pdf

RESTITUTION: Court may not summarily order the defendant to pay $57,148.25 in restitution without first providing the defendant with notice and an opportunity to be heard at a restitution hearing. Whittaker v. State, 4D18-2336 (11/20/19)

https://www.4dca.org/content/download/543494/6124199/file/182336_1708_11202019_08564727_i.pdf

RESENTENCING-MINOR: After Court grants motion for resentencing under Graham and State does not seek rehearing or appeal of the order, and where the law is changed before resentencing occurred, the circuit court lacked jurisdiction to reconsider the earlier order granting resentencing. Scott v. State, 4D18-3682 (11/20/19)

https://www.4dca.org/content/download/543496/6124223/file/183682_1709_11202019_09103867_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Acquitted co-Defendant who submits an affidavit that he, without the Defendant's participation, committed the crime is newly discovered evidence. Post-trial confessions from codefendants can amount to newly discovered evidence

that provides an exception to the two-year time limitation of Rule 3.850(b). Franklin v. State, 4D19-390 (11/20/19)

https://www.4dca.org/content/download/543501/6124283/file/190390_1709_11202019_09483894_i.pdf

COMPETENCY: Court may order video-recording of competency evaluation. Video-recording the evaluation ensures a complete and accurate record of the evaluation is available. Sylvestre v. State, 4D19-2753 (11/20/19)

https://www.4dca.org/content/download/543504/6124319/file/192753_1703_11202019_09533027_i.pdf

CONFIDENTIAL INFORMANT-DISCLOSURE: In attempted murder case, the State may withhold the identities of confidential informants who it does not intend to call when Defendant fails to raise a legally cognizable defense or otherwise show that disclosure of the witnesses' identities is relevant or helpful to his defense or essential to a fair determination of the cause. State v. Henry, 5D19-2288 (11/18/19)

https://www.5dca.org/content/download/543366/6122803/file/192288_1255_11182019_09080854_i.pdf

APPEAL-SEARCH AND SEIZURE: As part of its discovery obligation, the State must disclose the application for the search warrant, but the Court's failure to order the disclosure of the underlying affidavit is not a dispositive issue, and thus not appealable after a plea. House v. State, 1D18-4138 (11/15/19)

https://www.1dca.org/content/download/543338/6122457/file/184138_

COSTS: $3 assessment for teen court imposed pursuant to §938.19(2) cannot be assessed when adjudication has been withheld. H.R. v. State, 2D18-4028 (11/15/19)

https://www.2dca.org/content/download/543346/6122560/file/184028_114_11152019_08243258_i.pdf

COSTS: $100 assessment for costs of representation cannot be assessed when Child did not receive notice of her right to contest these costs. H.R. v. State, 2D18-4028 (11/15/19)

https://www.2dca.org/content/download/543346/6122560/file/184028_114_11152019_08243258_i.pdf

DOUBLE JEOPARDY: Double Jeopardy bars dual convictions for battery and lewd and lascivious molestation of a child. Dosal v. State, 5D18-2245 (11/15/19)

https://www.5dca.org/content/download/543323/6122270/file/182245_1257_11152019_08213496_i.pdf

YOUTHFUL OFFENDER: Court may decline to impose a Youthful Offender where it is clear that he understood that he had the option to do so if he so chose. Reynosopena v. State, 5D18-3856 (11/15/19)

https://www.5dca.org/content/download/543328/6122330/file/183856_1257_11152019_09173835_i.pdf

POST CONVICTION RELIEF-JUROR MISCONDUCT: Defendant is entitled to a hearing 15 years after his conviction on claim that juror concealed the fact that she had been the victim of sexual crimes as a child. Smith v. State, 5D19-101 (11/15/19)

https://www.5dca.org/content/download/543329/6122342/file/190101_1260_11152019_09203467_i.pdf

VOP: Defendant cannot be found in violation of probation for failing to register when he was arrested 24 hours after moving and the statute allows 48 hours to register upon changing one's address. Niemi v. State, 5D19-325 (11/15/19)

https://www.5dca.org/content/download/543330/6122354/file/190325_1259_11152019_09222477_i.pdf

POST CONVICTION RELIEF: Arguing self-defense at trial but not requesting a self-defense instruction on the theory that self-defense was weak and a diminished capacity defense was preferable is not a reasonable defense strategy. " We can fathom no sensible, strategic reason for counsel to argue self-defense during Washer's closing argument but opt not to request a self-defense jury instruction. . .Counsel's assessment that the instruction is 'awful' is insufficient." Washer v. State, 5D19-663 (11/15/19)

https://www.5dca.org/content/download/543331/6122366/file/190663_1260_11152019_09242854_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for failing to investigate GPS data which would have undermined the credibility of State's

witnesses, despite being requested to do so. New trial is required. Washer v. State, 5D19-663 (11/15/19)

https://www.5dca.org/content/download/543331/6122366/file/190663_1260_11152019_09242854_i.pdf

JOA-MANSLAUGHTER: Defendant properly convicted of manslaughter based on marooning drunk victim in the swamp after their boat sank and she punched him in the nose and stabbed him in the forearm with a flounder gig (her co-defendant stabbed him, too) notwithstanding that the stabbings did not cause the death. King v. State, 1D18-1278 (11/13/19)

https://www.1dca.org/content/download/542126/6113511/file/181278_DC05_11132019_084518_i.pdf

DEADLY WEAPON: A three pronged flounder gig can be a deadly weapon. King v. State, 1D18-1278 (11/13/19)

https://www.1dca.org/content/download/542126/6113511/file/181278_DC05_11132019_084518_i.pdf

AGGRAVATED BATTERY: "A trial court should rarely, if ever, grant a motion for judgment of acquittal on the issue of intent." King v. State, 1D18-1278 (11/13/19)

https://www.1dca.org/content/download/542126/6113511/file/181278_DC05_11132019_084518_i.pdf

MANSLAUGHTER-JURY INSTRUCTION: Where Defendant is a principal to manslaughter, she is not entitled to an instruction that she was the cause

in fact of the death or the proximate cause. Such an instruction is confusing or misleading. King v. State, 1D18-1278 (11/13/19)

https://www.1dca.org/content/download/542126/6113511/file/181278_DC05_11132019_084518_i.pdf

ACCESSORY AFTER THE FACT: In prosecution for accessory after the fact to murder, circumstantial evidence may be used to prove the defendant's intent to aid another in avoiding punishment. Rice v. State, 1D18-4451 (11/13/19)

https://www.1dca.org/content/download/542132/6113579/file/184451_DC05_11132019_090756_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Officer may not stop vehicle for driving around at night for a long time in a neighborhood after receiving complaints about a loud muffler where State did not argue that the muffler violated the anti-loud muffler statute. Good string of cases on bad reasonable suspicion car cases. Allenbrand v. State, 2D17-4787 (11/13/19)

https://www.2dca.org/content/download/542171/6114070/file/174787_39_11132019_08272358_i.pdf

ARGUMENT: State's argument that defense counsel's arguments were spaghetti thrown against the wall, deflection tactics, and smoke and mirrors is improper, but not reversible in absence of a contemporary objection. Good string of cases on improper argument. Berouty v. State, 2D17-4787 (11/13/19)

https://www.2dca.org/content/download/542176/6114137/file/182251_65_11132019_08281259_i.pdf

JURY INSTRUCTIONS: Omission of reasonable doubt instruction is fundamental error. Usry v. State, 2D18-4435 (11/13/9)

https://www.2dca.org/content/download/542177/6114149/file/184435_39_11132019_08291951_i.pdf

SENTENCING-JUVENILE: When a defendant has reached the age of majority at the time he or she violates community control, the defendant is not entitled to be sentenced after the violation under the juvenile sentencing statutes. Cox v. State, 2D18-4718 (11/13/19)

https://www.2dca.org/content/download/542178/6114161/file/184718_65_11132019_08301498_i.pdf

INEFFECTIVE ASSISTANCE-APPEAL: Defendant may not raise by petition for habeas corpus more than two years after the conviction became final his claim that appellate counsel was ineffective. Jackon v. State, 3D19-2071 (11/13/19)

https://www.3dca.flcourts.org/content/download/542158/6113900/file/192071_804_11132019_10253554_i.pdf

APPEAL-INTERLOCUTORY-JURISDICTION: Defendant may not raise on interlocutory appeal issue of Court's denial of motion for disclosure of CI. Farr v. State, 3D19-282 (11/13/19)

https://www.3dca.flcourts.org/content/download/542155/6113864/file/190282_804_11132019_10194459_i.pdf

COMPETENCY: Court may not merely accept counsel's stipulation as to the admissibility of the doctors' reports and the competency conclusions contained therein and proceed to VOP hearing without making an independent finding of competency. A trial court must make its own determination as to competency; the doctor evaluations are advisory only. Aquino v. State, 3D18-751 (11/13/19)

https://www.3dca.flcourts.org/content/download/542148/6113780/file/180751_812_11132019_10061805_i.pdf

COMPETENCY-REMAND-REMEDY: "Depending on the circumstances of the case, a trial court may make a retroactive competency determination so long as the defendant is assured due process. . . [T]he decision as to whether the case's circumstances and due process considerations warrant a new trial or a nunc pro tunc competency determination is left to the trial court to make upon remand." Aquino v. State, 3D18-751 (11/13/19)

https://www.3dca.flcourts.org/content/download/542148/6113780/file/180751_812_11132019_10061805_i.pdf

EVIDENCE-OPINION: Officer may not give his opinion, based on his investigation, that the Defendant is the burglar, but the error is harmless. Pujol v. State, 3D18-1045 (11/13/19)

https://www.3dca.flcourts.org/content/download/542149/6113792/file/181045_809_11132019_10071286_i.pdf

RESTITUTION: Victim of burglary is entitled to replacement value and cost of installation of a new window, notwithstanding that the new window is more expensive than the original. Pujol v. State, 3D18-1045 (11/13/19)

https://www.3dca.flcourts.org/content/download/542149/6113792/file/181045_809_11132019_10071286_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call witnesses who could have been identified and located. "While it is generally true that the defendant must provide the names of uncalled fact witness, . . . where. . . the fact witnesses' names are not known . . .[but] defendant has provided sufficient information from which both the witnesses' names can be learned and the individuals located, the defendant has satisfied his burden." Ruiz v. State, 3D18-1627 (11/13/19)

https://www.3dca.flcourts.org/content/download/542151/6113816/file/181627_812_11132019_10111522_i.pdf

HABEAS CORPUS: Defendant may not raise an untimely and successive habeas corpus claim for relief for ineffective assistance of counsel under the "Manifest injustice" doctrine except in the "rarest and most exceptional of situations." "The mere incantation of the words 'manifest injustice.' does not make it so." Beiro v. State, 3D18-2479 (11/13/19)

https://www.3dca.flcourts.org/content/download/542153/6113840/file/182479_804_11132019_10152195_i.pdf

SENTENCING-SCORESHEET: Where sentencing scoresheet improperly lists three prior misdemeanor convictions when he really had two, the Defendant is not entitled to a new sentencing hearing where the trial court sentenced Defendant to almost two years more than the minimum sentence, and it is therefore obvious that the .2 error did not affect the sentence. Harmon v. State, 4D18-1295 (11/13/19)

https://www.4dca.org/content/download/542138/6113653/file/181295_1257_11132019_09160426_i.pdf

RESENTENCING: Resentencing is de novo. Upon resentencing, the Court must consider events occurring after the original sentence such as, as here, a psychosexual evaluation that found Defendant's risk of sexual recidivism to be low. Spires v. State, 4D18-2210 (11/13/19)

https://www.4dca.org/content/download/542139/6113665/file/182210_1709_11132019_09171470_i.pdf

RESENTENCING: Court lacks jurisdiction to vacate an order granting resentencing on the basis of subsequent case low holding that 30-year sentence for a juvenile does not violate Graham. German v. State, 4D18-3635 (11/13/19)

https://www.4dca.org/content/download/542142/6113701/file/183635_1709_11132019_09204682_i.pdf

CONSPIRACY-ELEMENTS CLAUSE: Conspiracy to commit Hobbs Act robbery does not qualify as a "crime of violence," as defined by § 924(c)(3)(A) (the elements clause). Conspiracy is not violent. Brown v. United States, No. 17-13993 (11/12/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201713993.pdf

ELEMENTS CLAUSE DEFINED: The elements clause (18 U.S.C. § 924(c)(3)) defines a "crime of violence" as an offense that is a felony and (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature,

involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. Brown v. United States, No. 17-13993 (11th Cir. 11/12/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201713993.pdf

RESIDUAL CLAUSE DEFINED: The residual clause is § 924(c)(3)(B), and is unconstitutional. Brown v. United States, No. 17-13993 (11/12/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201713993.pdf

DEATH PENALTY: Freestanding actual innocence claims are not cognizable under Florida law. Dailey v. State, SC19-1780 (11/12/19)

https://www.floridasupremecourt.org/content/download/542089/6113143/file/sc19-1780.pdf

SENTENCING-CONSIDERATIONS: New sentencing hearing is required when Court, in imposing sentence, considers factors laid out in the probable cause affidavit which were not proven at trial and which were more egregious than what was shown at trial. Where the record reflects that the trial judge may have relied upon impermissible considerations in imposing sentence, the State bears the burden to show that the judge did not rely on such considerations. Petit-Homme v. State, 5D19-108 (11/8/19)

https://www.5dca.org/content/download/541891/6111111/file/190108_1260_11082019_09050907_i.pdf

YOUTHFUL OFFENDER-VOP: When a youthful offender commits a substantive violation of probation and the trial court imposes a sentence in

excess of the six year cap, the Defendant cannot maintain his youthful offender status. Alexis v. State, 5D19-1032 (11/8/19)

https://www.5dca.org/content/download/541893/6111135/file/191032_1260_11082019_09091331_i.pdf

APPEAL-PRESERVED ISSUE: Defendant may not argue on appeal that his forty-year minimum mandatory sentence for armed robbery while possessing and discharging a firearm is unlawful where he did not raise the issue in the lower court at sentencing or in a motion to correct. A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal. Reager v. State, 1D18-1316 (11/8/19)

https://www.1dca.org/content/download/541957/6111824/file/181316_DC05_11082019_130646_i.pdf

PRINCIPAL-ACCESSORY AFTER THE FACT: A person convicted as a principal to a crime cannot also be convicted as an accessory after the fact to the same crime, since these two offenses are mutually exclusive. Vowell v. State, 1D18-2018 (11/8/19)

https://www.1dca.org/content/download/541958/6111836/file/182018_DC08_11082019_132947_i.pdf

POST CONVICTION RELIEF: When elderly Defendant rejected plea offer, counsel's representation was deficient when he failed to tell Defendant he faced a mandatory minimum life sentence if convicted of the armed burglary, but no prejudice is shown where Defendant rejected the fifteen year offer because he considered it a de facto life sentence. Mongo v. State, 1D18-2208 (11/8/19)

https://www.1dca.org/content/download/541959/6111848/file/182208_DC05_11082019_134136_i.pdf

JURY INSTRUCTION-HARMLESS ERROR: Harmless error applies to a claim that the trial court failed to instruct on attempted voluntary manslaughter as a necessary lesser included offense of attempted second degree murder. Smart v. State, 1D18-4119 (11/8/19)

https://www.1dca.org/content/download/541961/6111872/file/184119_DA08_11082019_134854_i.pdf

SENTENCING-CONSIDERATIONS: In sentencing Defendant for unlawful sexual activity with a minor and delivery of a controlled substance to a minor, based on him picking up and having sex with a drug addicted minor to whom he gave Dilaudid, who later overdosed that night, Court erred by considering that the Defendant blamed the victim for her own death and the possibility that the Defendant caused the death. ("[W]e'll never know really what caused her death other than it was tragic. And you are the primary cause of her death, period."). Consideration of subsequent misconduct or pending or dismissed charges is constitutionally impermissible and violates a defendant's due process rights. Nichols v. State, 2D18-1487 (11/8/19)

https://www.2dca.org/content/download/541911/6111363/file/181487_114_11082019_08201318_i.pdf

ATTORNEY DISCIPLINE: Attorney who altered a photo lineup by replacing his client's image in one exhibit with the image of an alternate suspect and using it in a deposition in a criminal case is subject to discipline for conduct involving dishonesty. The element of intent can be satisfied, merely by showing that the conduct was deliberate or knowing, regardless of the lawyer's motive. The Florida Bar v. Schwartz, SC17-1391 (11/7/19)

https://www.floridasupremecourt.org/content/download/541422/6107574/file/sc17-1391.pdf

DEATH PENALTY-WAIVER OF JURY: Defendant who waived jury for penalty phase is not entitled to new sentencing hearing based on change of law requiring a unanimous jury. Brant v. State, SC17-1391 (11/7/19)

https://www.floridasupremecourt.org/content/download/541422/6107574/file/sc17-1391.pdf

POST CONVICTION RELIEF-DEATH-CHANGE OF LAW: Opinion in Buck v.Davis that injection of racial bias into a criminal trial violates Due Processis not a new fundamental constitutional right. Defendant may not seek post conviction relief 20 years after his conviction became final. Bell v. State, SC18-1713 (11/7/19)

https://www.floridasupremecourt.org/content/download/541425/6107610/file/sc18-1713.pdf

COURT RECORDS-CONFIDENTIALITY: Rule is amended to provide that Baker Act records are confidential. In Re: Amendments to Rules of Judicial Administration 2.420, SC19-1049 (11/7/19)

https://www.floridasupremecourt.org/content/download/541427/6107634/file/sc19-1049.pdf

STAND YOUR GROUND: From his porch, Defendant was entitled to fire a warning shot and, in response to return fire, then actually fire upon three people who had dragged his niece from his home against her will,

notwithstanding that the three people turned out to be undercover cops. Derossett v. State, 5D19-802 (11/7/19)

https://www.5dca.org/content/download/541749/6110095/file/190802_1262_11072019_03402234_i.pdf

STAND YOUR GROUND-RETROACTIVITY: Burden of proof is upon the State in SYG hearing. Change to burden of proof applies retroactively. Derossett v. State, 5D19-802 (11/7/19)

https://www.5dca.org/content/download/541749/6110095/file/190802_1262_11072019_03402234_i.pdf

DEADLY FORCE: The firing of a warning shot into the air constitutes an act of deadly force. Derossett v. State, 5D19-802 (11/7/19)

https://www.5dca.org/content/download/541749/6110095/file/190802_1262_11072019_03402234_i.pdf

APRIL FOOLS: Court erred by adjudicating delinquent a 12 year old student on April 1st who said "I'm going to shoot up the classroom, April Fools." Threats of future action are not bomb threats. "[Child] does not argue, nor do we reach, the issue of under what circumstances a joke or other statement that is explicitly not intended to be taken seriously can violate § 790.163(1)." J.A.W. v. State, 1D19-1974 (11/6/19)

https://www.1dca.org/content/download/541191/6105413/file/191974_DC13_11062019_090446_i.pdf

DOUBLE JEOPARDY-MERGER DOCTRINE: Convictions for first-degree felony murder and aggravated battery on a law enforcement officer violate

double jeopardy under the merger doctrine. The principle of merger, prohibiting multiple punishments for a single killing, is an exception to the standard Blockburger double jeopardy analysis." [W]e have not found a single Florida case upholding a defendant's conviction for aggravated battery where the defendant was also convicted for a homicide offense resulting from the same criminal conduct." Barnett v. State, 2D17-379 (11/6/19)

https://www.2dca.org/content/download/541242/6106067/file/170379_114_11062019_08473095_i.pdf

LESSER INCLUDED: It is error to instruct the jury on a nonhomicide offense as a lesser offense to a homicide offense. Barnett v. State, 2D17-379 (11/6/19)

https://www.2dca.org/content/download/541242/6106067/file/170379_114_11062019_08473095_i.pdf

RECLASSIFICATION: Second-degree murder is a 1st PBL. Court improperly treated the offense as a life felony based on State's erroneous representation that it was a life felony. Error is fundamental. Williams v. State, 17-3959 (11/6/19)

https://www.2dca.org/content/download/541245/6106110/file/173959_39_11062019_08510562_i.pdf

ELEMENT-PRIOR CONVICTION: A certified copy of a judgment does not need further authentication to be admitted into evidence, but merely introducing a judgment, which shows identity between the name on the prior judgment and the name of the defendant, is insufficient. Defense counsel's stipulation to admission of the records does not waive the requirement of linking the judgment to the Defendant. B.M. v. State, 2D17-4306 (11/6/19)

https://www.2dca.org/content/download/541246/6106122/file/174306_39_11062019_08574463_i.pdf

EVIDENCE-AGE: Arresting officer's testimony merely that juvenile "was seventeen, I believe." is insufficient to establish that the juvenile was a juvenile. B.M. v. State, 2D17-4306 (11/6/19)

https://www.2dca.org/content/download/541246/6106122/file/174306_39_11062019_08574463_i.pdf

FALSE REPORT OF USE OF FIREARM: Middle school conversation in which Child says that he hates school and wanted to kill other students and "shoot the school, " and that he "was going to kill somebody" but did not say "he was going to kill somebody right at that moment," cannot be found delinquent for making a false report concerning the use of firearms in a violent manner. "A reasonable reader would understand making a report to mean providing information about something that is occurring or has already occurred, not expressing a desire or an intention to do something in the future. L.C. v. State, 2D18-1398 (11/6/19)

https://www.2dca.org/content/download/541250/6106170/file/181398_39_11062019_09013439_i.pdf

VIOLENT CAREER CRIMINAL: Defendant may qualify as a Violent Career Criminal on the basis of out of state convictions. Molina v. State, 2D18-4081 (11/6/19)

https://www.2dca.org/content/download/541264/6106338/file/184081_65_11062019_09023039_i.pdf

DISCOVERY VIOLATION: Court properly exercised discretion in allowing fingerprint expert, whose report had not been disclosed, to testify about fingerprints on a car (not the crime scene). Curry v. State, 3D18-141 (11/6/19)

https://www.3dca.flcourts.org/content/download/541210/6105669/file/180141_809_11062019_10103585_i.pdf

ARGUMENT-PRESERVATION: State's argument that jury should think of itself as baseball players and to keep their eyes on the ball and not be swayed by "sliders" or "outside fast balls" is proper. Woodard v. State, 3D18-141 (11/6/19)

https://www.3dca.flcourts.org/content/download/541210/6105669/file/180141_809_11062019_10103585_i.pdf

APPEAL-PRESERVED ISSUE: If a party makes a contemporaneous objection to an improper comment which is sustained by the trial judge, the party must move for mistrial if he or she wishes to preserve the issue for appellate review. Woodard v. State, 3D18-141 (11/6/19)

https://www.3dca.flcourts.org/content/download/541210/6105669/file/180141_809_11062019_10103585_i.pdf

HABEAS CORPUS: Habeas corpus action challenging Defendant's confinement in close supervision must be raised in the county where the Defendant is incarcerated. Owens v. Department of Corrections, 3D18-2264 (11/6/19)

https://www.3dca.flcourts.org/content/download/541215/6105729/file/182264_812_11062019_10161582_i.pdf

APPEALS: Unless a notice of appeal is filed within thirty days of the judgment's rendition, appellate court has no jurisdiction. A petition for writ of habeas corpus may not be employed as a substitute for an appeal. Darkins v. State, 3D19-1324 (11/6/19)

https://www.3dca.flcourts.org/content/download/541220/6105789/file/191324_804_11062019_10264974_i.pdf

TOO WEIRD: Victim with fairy wings is murdered by Defendant in a white and blue pinstriped zoot suit with a big wide hat. Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

FAIRY DUST: No error in admitting glitter from the victim's fairy wings in homicide case. Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

DISCOVERY-EXPERT: Error, if any, in not designating a witness as an expert is harmless where Defendant had an opportunity to depose the witness and the witness testified to the uncontested cause of death, not the identity of the killer, where the defense was that Some Other Dude Did It (SODDI). Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

EXPERT: Detective who had taken a crime scene reconstruction course with 20 or more hours devoted to blood pattern analysis, had training at the medical examiner's office with 12 hours devoted to blood pattern analysis, and had taken a DNA course with 20 hours of blood pattern analysis may give expert testimony as to blood splatter. Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

JURORS-CHALLENGE FOR CAUSE: Court properly denied challenge for cause to juror who said that trained police officers may observe some things that others would not, but that police officers do not always tell the truth and absent special training, their testimony is entitled to no greater weight than another witness. Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

JURORS-CHALLENGE FOR CAUSE-PRESERVATION OF ISSUE: In order to preserve appeal of Court's denial of Defendant's challenge for cause, Defendant must exhaust all challenges and identify who he would have stricken had he had more challenges. Where Defendant unsuccessfully challenged three jurors for cause and exercised his peremptory challenges on them, but only identified two additional jurors he would have excused if he could, the issue is not preserved. Hedvall v. State, 3D15-2368 (11/6/19)

https://www.3dca.flcourts.org/content/download/541208/6105645/file/152368_809_11062019_03431875_i.pdf

POST CONVICTION RELIEF-SPEEDY TRIAL: The State is not entitled to the recapture period when it leads a defendant to believe that no charges are pending against him/her, even though the State has pursued new charges based on the same conduct, whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi. Counsel is not ineffective for filing a notice of expiration of speedy trial instead of moving for a discharge because at the time the prevailing law in the state of Florida entitled the State to the recapture period. There can be no deficient performance if defense counsel follows then prevailing law. Arslam v. State, 4D16-4339 (11/6/19)

https://www.4dca.org/content/download/541195/6105475/file/164339_1257_11062019_08512428_i.pdf

INVESTIGATIVE COSTS: Investigative costs must be requested by the investigating agency and supported by evidence of the amount of the costs incurred. Kelly v. State, 4D18-1456 (11/6/19)

https://www.4dca.org/content/download/541196/6105487/file/181456_1708_11062019_08534907_i.pdf

DISCOVERY: Failure to disclose maps used as a demonstrative aid, if a discovery violation, is harmless error. Smith v. State, 4D18-3076 (11/6/19)

https://www.4dca.org/content/download/541200/6105535/file/183076_1257_11062019_10000905_i.pdf

KIDNAPPING-JURY INSTRUCTION: A jury instruction that erroneously includes an element that the State neither argued nor presented evidence to support is not fundamental error because it is not in dispute. No reversible error for defining “restraint” in a kidnapping case where restraint is not pled

in the information. Improperly including an additional element not initially charged is not fundamental error if the element of the offense is not in dispute at trial or material to the jury's consideration. Smith v. State, 4D18-3076 (11/6/19)

https://www.4dca.org/content/download/541200/6105535/file/183076_1257_11062019_10000905_i.pdf

POST CONVICTION RELIEF: Claim that counsel was ineffective in failing to object to the alleged error and that, but for the error, the State may have made a more favorable plea offer is speculative and states no basis for postconviction relief. Passino v. State, 4D19-2117 (11/6/19)

https://www.4dca.org/content/download/541204/6105583/file/192117_1257_11062019_09102371_i.pdf

POST CONVICTION RELIEF: A scoresheet error raised under rule 3.800(a) is harmless if the court could have imposed the same sentence using a corrected scoresheet. Fausten v. State, 4D19-2185 (11/6/19)

https://www.4dca.org/content/download/541205/6105595/file/192185_1708_11062019_09113034_i.pdf

BATTERED SPOUSE SYNDROME: Battered Spouse Syndrome is not available in the absence of a claim of self-defense. BSS cannot be asserted to support a disallowed diminished capacity defense. Morris v. State, 1D18-1638 (11/5/19)

https://www.1dca.org/content/download/541176/6105223/file/181638_DC05_11052019_152128_i.pdf

CIRCUMSTANTIAL EVIDENCE: Defendant is not entitled to judgment of acquittal when proof of premeditation is circumstantial but other elements are supported by direct evidence. The circumstantial evidence standard applies only when all evidence of the defendant's guilt is circumstantial, not when an element of the crime is shown entirely by circumstantial evidence. Morris v. State, 1D18-1638 (11/5/19)

https://www.1dca.org/content/download/541176/6105223/file/181638_DC05_11052019_152128_i.pdf

PLEA WITHDRAWAL: Court is not required to appoint counsel on Defendant's motion for rehearing of order denying motion to withdraw plea where plea, tendered during trial, was thoroughly qualified and at the hearing jail calls were admitted in which Defendant said his motion was an effort to game the system. Hamilton v. State, 1D18-1287 (11/1/19)

https://www.4dca.org/content/download/537076/6061857/file/190618_1257_09182019_09191636_i.pdf

POST CONVICTION RELIEF: Court properly dismissed without hearing Defendant's successive motions for post conviction relief which persistently violated length and format requirements. Ziegler v. State, 1D18-2314 (11/1/19)

https://www.1dca.org/content/download/540371/6099300/file/182314_1284_11012019_01132782_i.pdf

ACCIDENT REPORT PRIVILEGE: The compelled disclosure of a driver's identity at an accident scene does not violate the privilege against self-incrimination. Because the accident-report privilege only applies to self-incriminatory statements, the officer may compel the Defendant to give his

identity. The accident-report privilege is not a true privilege but rather a limitation on the admissibility of evidence. Jones v. State, 1D18-3535 (11/1/19)

https://www.2dca.org/content/download/540336/6098876/file/183535_167_11012019_08550163_i.pdf

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication for fleeing and eluding. State v. Rapson, 2D18-4206 (11/1/19)

https://www.2dca.org/content/download/540343/6098960/file/184206_114_11012019_08563675_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call private investigator who would have testified that the officer's testimony that he saw the Defendant driving was false and for failing to depose officer who claimed the Defendant had confessed. Osborn v. State, 5D18-3039 (11/1/19)

https://www.5dca.org/content/download/540307/6098506/file/183039_1259_11012019_08114220_i.pdf

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DOUBLE JEOPARDY-RICO: Defendant is properly convicted of two RICO counts where there was a seduced widow (principal victim) whose money was used to swindle others because the charges alleged different time-periods, different enterprise membership, different victims, and different unlawful conduct. Overlapping enterprises pursuing different patterns of racketeering can be prosecuted separately without violating double jeopardy protections. Ball v. State, 1D18-330 (10/30/19)

https://www.1dca.org/content/download/540368/6099264/file/180330_1284_11012019_01084967_i.pdf

VOP: Defendant may be found guilty of violating probation by committing a battery on his daughter where officers observed old injuries on her, she said that Defendant had hit her a week before, and she waffled as to whether he had hit her that day. Reynolds v. State, 17-3820 (10/30/19)

https://www.5dca.org/content/download/540224/6097648/file/173820_1257_10302019_04001534_i.pdf

VOP-HEARSAY (DISSENT): "The photograph of Jessica's injured mouth was no more proof that Appellant hit her than the photo of a dinner plate was proof that 'a ghost had been seen in the story of the man who said, 'My friend saw a ghost eating off a plate at his house last night, and if you don't believe it, here is the plate he says he saw the ghost eating from.'" Reynolds v. State, 17-3820 (10/30/19)

https://www.5dca.org/content/download/540224/6097648/file/173820_1257_10302019_04001534_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to vacation of conviction where Court finds that Defendant's claim, denied by trial counsel, that trial counsel advised him to reject plea offer based on erroneous evaluation of merits of the case. Jones v. State, 1D17-3833 (10/30/19)

https://www.1dca.org/content/download/540185/6097171/file/173833_1284_10302019_12451771_i.pdf

POST CONVICTION RELIEF: Court lacks jurisdiction to rescind an order granting resentencing once it became a final, appealable order, and neither party timely moved for rehearing. Henderson v. State, 1D18-3098 (10/30/19)

https://www.1dca.org/content/download/540186/6097183/file/183098_1287_10302019_12473135_i.pdf

VINDICTIVE SENTENCE: Defendant is not vindictively sentenced when his and the codefendant's sentences are disparate but when the two are not similarly situated, such as where, as here, the Defendant had a gun and was older than the seventeen year old co-defendant. Love v. State, 1D19-368 (10/30/19)

https://www.1dca.org/content/download/540194/6097279/file/190368_1284_10302019_12593289_i.pdf

APPEAL: Defendant cannot appeal the Court's failure to impose the firearm mandatory minimum because the error was not adverse to the Defendant. Johnson v. State, D19-1225 (10/30/19)

https://www.1dca.org/content/download/540195/6097291/file/191225_1279_10302019_01010483_i.pdf

RECLASSIFICATION-AGGRAVATED BATTERY: Aggravated battery is properly reclassified to a first-degree felony where it is clear that the aggravated battery was based on great bodily harm and that therefore the use of a deadly weapon was not an essential element of the offense. Evans v. State, D19-1341 (10/30/19)

https://www.1dca.org/content/download/540196/6097303/file/191341_1284_10302019_01020674_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to retain a video enhancement expert to improve the clarity of the perpetrator's face in the surveillance video. Romaine v. State, 2D17-4605 (10/30/19)

https://www.2dca.org/content/download/540139/6096615/file/174605_114_10302019_08385966_i.pdf

JURY INSTRUCTION-DELIVERY OF NARCOTIC-FUNDAMENTAL ERROR: Where defendant is charged with delivery of cannabis, but the jury was instructed that the Defendant could be found guilty if he "sold, delivered, or possessed with intent to sell or deliver" cannabis, the Defendant is entitled to a new trial. When the jury instruction erroneously includes an element of the offense, it will be held to be fundamental error if there is a dispute concerning that specific element at trial. Where an offense may be committed in various ways, the evidence must establish it to have been committed in the manner charged in the indictment. Reese v. State, 2D18-916 (10/30/19)

https://www.2dca.org/content/download/540142/6096658/file/180916_114_10302019_08410991_i.pdf

COMPETENCY: Court may not enter an order finding the Defendant incompetent based on the written reports of two experts "and others," without actually holding a competency hearing. Rogers v. State, 2D19-2193 (10/30/19)

https://www.2dca.org/content/download/540181/6097126/file/192193_167_10302019_08464172_i.pdf

UNSEALING RECORD: Defendants in a defamation lawsuit, based on the claim that they had disparaged the Plaintiff as a drug dealer, may not have the Plaintiff's sealed record unsealed to support their defense that their claim was true. Farach v. Rivero, 3D19-866 (10/30/19)

https://www.3dca.flcourts.org/content/download/540125/6096433/file/190866_804_10302019_10101528_i.pdf

EXPUNCTION: "[T]he expungement statute does not transmute a once-true fact into a falsehood. It does not require the excision of records from the historical archives of newspapers or bound volumes of reported decisions or a personal diary. It cannot banish memories. . .[I]t does not alter the metaphysical truth of his past, nor does it impose a regime of silence on those who know the truth." Farach v. Rivero, 3D19-866 (10/30/19)

https://www.3dca.flcourts.org/content/download/540125/6096433/file/190866_804_10302019_10101528_i.pdf

POST CONVICTION RELIEF-SEXUAL OFFENDER REGISTRATION: Defendant's asserted ignorance of sexual offender requirements is not newly discovered evidence allowing the Defendant to raise a motion for postconviction relief beyond the two-year limitation period. Tisdale v. State, 3D18-1717 (10/30/19)

https://www.3dca.flcourts.org/content/download/540122/6096397/file/181717_809_10302019_10052053_i.pdf

SCORESHEET ERROR: Upon resentencing on the remaining counts after the Defendant's vehicular homicide count was vacated, the Defendant is not entitled to another resentencing based on the use of an improper scoresheet where the Court sentenced the Defendant and statutory maximum without

regard to the scoresheet. The scoresheet is to be corrected, but the sentences stand. Oakley v. State, 4D18-1800 (10/30/19)

https://www.4dca.org/content/download/540113/6096282/file/181800_1257_10302019_09100133_i.pdf

JUDGMENT OF ACQUITTAL: State may appeal the erroneous entry of a Judgment of Acquittal after a jury verdict, regardless of whether the verdict is recorded. State may not appeal a Judgment of Acquittal entered before a jury verdict. State v. Pickersgill, 4D18/3115 (10/30/19)

https://www.4dca.org/content/download/540115/6096306/file/183115_1709_10302019_09140799_i.pdf

EVIDENCE-MARIJUANA: Officers may identify marijuana without chemical or scientific proof. State v. Pickersgill, 4D18/3115 (10/30/19)

https://www.4dca.org/content/download/540115/6096306/file/183115_1709_10302019_09140799_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant's claim that newly discovered evidence bearing on the motivation of the confidential informant who told police that the Defendant would receive a package of narcotics is properly denied without a hearing. Regardless of informant's motive, police had sufficient evidence for an anticipatory warrant. Joshua v. State, 4D18-3724 (10/30/19)

https://www.4dca.org/content/download/540116/6096318/file/183724_1257_10302019_09291947_i.pdf

ARMED CAREER CRIMINAL-VIOLENT FELONY: Attempted first-degree assault (Alabama offense) is a violent felony under the Armed Career Criminal Act. In deciding whether a defendant's prior state offense contains a use-of-force element, the Court employs a categorical approach, looking to the elements. But if the prior conviction was for violating a divisible statute (one that sets out one or more elements of the offense in the alternative) the Court applies a modified categorical approach, whereby if some forms of the offense require the use of violent force but others do not, a sentencing court may refer to a case documents to determine whether the defendant's prior conviction had, as an element, the use of violent force or not. United States v. Hunt, No. 17-12365 (11th Cir. 10/30/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201712365.op2.pdf

SEARCH AND SEIZURE: Defendant has standing to contest search of motel room from which he fled, but officers, who had an arrest warrant for Defendant, were justified in entering the room to see if he had returned. United States v. Ross, No. 18-11679 (11th Cir. 10/30/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811679.pdf

SEARCH AND SEIZURE: Defendant's right to privacy in a motel room ends at check out time at 11:00 a.m. United States v. Ross, No. 18-11679 (11th Cir. 10/30/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201811679.pdf

POSSESSION OF FIREARM BY FELON-KNOWLEDGE: An element of Possession of a Firearm by a Felon is that the Defendant knew he was a felon. Failure of indictment to so allege and for jury instructions to so instruct is harmless error. "Because the record establishes that Reed knew he was

a felon, he cannot prove that the errors affected his substantial rights or the fairness, integrity, or public reputation of his trial." United States v. Reed, No. 17-12699 (11th Cir. 10/30/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201712699.rem.pdf

EVIDENCE: Court acted within its discretion in excluding cross-examination that the investigating offevidence andfailingicer had been disciplined years before for misuse of police computer in a political campaign. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

STATEMENTS OF DEFENDANT: Public Safety exception to Miranda Rule renders admissible Defendant's statement about where a gun was in his house before it was searched. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

STATEMENTS OF DEFENDANT: Defendant did not successfully invoke his right to counsel or his right to remain silent when he said that he did not agree with the statement that he was willing to answer questions without a lawyer present. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

SPEEDY TRIAL: Defendant who did not object to Speedy Trial violation on severed Possession of Firearm count set for trial outside the time for speedy trial is not entitled to discharge. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

CRIME OF VIOLENCE: Florida robbery is a crime of violence. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

FIREARM-CLOSE PROXIMITY: Where firearm and magazine were discovered outside and inside the house, respectively, but testimony established that they had been in the same room earlier, they may be considered in close proximity for purposes of sentencing guidelines consideration. United States v. Ochoa, No. 16017609 (11th Cir. 10/25/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201617609.pdf

DOWNWARD DEPARTURE-NEED FOR RESTITUTION: Court may not enter a downward departure based on CFE Federal Credit Union's alleged need for restitution outweighing the need for incarceration where the only factual basis for the finding is defense counsel's unsworn assertion. State v. Melendez, 5D18-1420 (10/25/19)

https://www.5dca.org/content/download/539892/6093871/file/181420_1260_10252019_08064668_i.pdf

EXPERT: Expert opinion on human trafficking and the sex worker subculture is admissible to assist the trier of fact on subjects not within an ordinary juror's understanding or experience. While law enforcement officers cannot testify as to general criminal behavior as substantive proof of guilt, experts have traditionally been permitted to consider such behavior when rendering their opinions. Poole v. State, 5D18-1681 (10/25/19)

https://www.5dca.org/content/download/539893/6093883/file/181681_1257_10252019_08100969_i.pdf

MARITIME JURISDICTION: Information does not have to state the basis of a county's jurisdiction when the county in fact has jurisdiction under Fla. Stat. §910.006 (maritime jurisdiction). "The State is required to allege the essential elements of the crime charged, not the essential elements of jurisdiction." The fact that the information falsely alleged that the events occurred in Brevard County, rather than at sea, does not change the result. Although not required, a better practice when filing charges based on events occurring at sea during cruise ship voyages would be to allege the statutory basis for jurisdiction in the charging document. Batiz v. State, 5D18-1831 (10/25/19)

https://www.5dca.org/content/download/539894/6093895/file/181831_1257_10252019_08184832_i.pdf

JURISDICTION: Jurisdiction must be proven beyond all reasonable doubt. Here, the court had jurisdiction because the crime was one of violence. Batiz v. State, 5D18-1831 (10/25/19)

https://www.5dca.org/content/download/539894/6093895/file/181831_1257_10252019_08184832_i.pdf

YOUTHFUL OFFENDER: When the trial court retains an offender's youthful offender status following a violation of probation, the maximum permissible sentence is six years. Defendant can be sentenced to 9 years in prison while being stripped of his Youthful Offender status, or sentenced to no more than six years in prison as a Youthful Offender. Beiber v. State, 5D18-2833 (10/25/19)

https://www.5dca.org/content/download/539900/6093942/file/182833_1260_10252019_08220597_i.pdf

COSTS: Court may not impose a state attorney fee or public defender fee in excess of $100 without a request. Cottier v. State, 5D18-3213 (10/25/19)

https://www.5dca.org/content/download/539901/6093954/file/183213_1259_10252019_08250584_i.pdf

EXCESSIVE PUNISHMENT (CONCURRENCE): "[A] 45-year sentence for a non-violent monetary crime is extraordinarily harsh. . . To sentence him to what is essentially a life sentence is a manifest injustice. I would hope that if the defendant files a . . .motion for mitigation of his sentence, the trial judge would give it great consideration." Cottier v. State, 5D18-3213 (10/25/19)

https://www.5dca.org/content/download/539901/6093954/file/183213_1259_10252019_08250584_i.pdf

SAVINGS CLAUSE-RETROACTIVE: The Savings Clause amendment to the Florida Constitution ("[R]epeal of a criminal statute shall not affect prosecution for any crime committed before such repeal."), which became effective on Jan. 8, 2019 does not require trial courts to apply an amended criminal statute retroactively to cases on appeal. There is no longer any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences, but nothing in the Florida Constitution requires the Legislature to do so. Changes to §775.087 (firearm mandatory minimums) are not retroactive. Stapleton v. State, 5D18-3291 (10/25/19)

https://www.5dca.org/content/download/539902/6093966/file/183291_1257_10252019_08280242_i.pdf

JUVENILES-FIREARM-MAND MIN: Juvenile cannot get credit for pretrial detention served against his 15 day mandatory minimum for possession of a firearm. State v. S.A., 5D19-735 (10/25/19)

https://www.5dca.org/content/download/539903/6093978/file/190735_1260_10252019_08295660_i.pdf

BINDING PRECEDENT: Court may not disregard binding precedent from other jurisdictions. "After being reminded that his decision was contrary to J.Z. and the plain language of the statute, the judge stated, 'let's see what the Fifth [District] says about this.'. . . This was improper." In the absence of interdistrict conflict, district court decisions bind all Florida trial courts. State v. S.A., 5D19-735 (10/25/19)

https://www.5dca.org/content/download/539903/6093978/file/190735_1260_10252019_08295660_i.pdf

SEARCH AND SEIZURE-PRETEXT: Court may not invalidate stop based on its belief that the stop was pretextual, and even if it could, the evidence does not support such a finding. State v. Mellaci, 5D19-835 (10/25/19)

https://www.5dca.org/content/download/539904/6093990/file/190835_1260_10252019_08315896_i.pdf

CONCURRENT SENTENCE DOCTRINE: The concurrent sentences doctrine provides that, where a defendant is given concurrent sentences on several counts and the conviction on one count is found to be valid, an

appellate court need not consider the validity of the convictions on the other counts. The concurrent sentences doctrine applies to both convictions and sentencing errors. Defendant cannot raise in motion for post conviction relief the issue that the sentence on one count exceeded the statutory maximum where the Government had not filed a sentencing enhancement and where the sentence was concurrent with other counts for which the maximum was not exceeded. Padgett v. United State, No. 17-12645 (11th Cir. 10/24/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201712645.pdf

POST CONVICTION RELIEF: Court properly denies Certificate of Appealability (COA) where Defendant failed to allege specific facts showing he was entitled to relief. Claims that counsel had misled Defendant are refuted by plea colloquy. Reed v. United States, No. 19-10521 (11th Cir. 10/24/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910521.pdf

INVITED ERROR: The invited error doctrine stems from the common sense view that where a party invites the trial court to commit error, he cannot later cry foul on appeal." Defendant who requested through counsel a 70 month sentence for illegal reentry (""I would just respectfully ask the Court to impose a sentence of 70 months, at the low end of the Guidelines range.") may not later contest on appeal the legality of the sentence as unduly harsh. United States v. Noriega-Perez, No. 19-10232 (11th Cir. 10/24/19)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910232.pdf

SENTENCING-UPWARD VARIANCE: The Sentencing Reform Act precludes sentencing courts from imposing or lengthening a prison term to promote an offender's rehabilitation. Court illegally imposed a sentence

longer than necessary so that he would qualify for and complete the Bureau of Prison's Residential Drug Abuse Program. United States v. Jeczalik, No. 19-10995 (11th Cir. 10/23/9)

http://media.ca11.uscourts.gov/opinions/unpub/files/201910995.pdf

SENTENCING-COLLOQUY: Plea to VOP vacated where Court merely accepted defense counsel's representations that Appellant was admitting the violations and never asked the Defendant anything. Koon v. State, 1D18-2306 (10/23/19)

https://www.1dca.org/content/download/539666/6091333/file/182306_1287_10232019_10174376_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to review his scoresheet with him, and had he known his lowest permissible sentence, he would not have entered an open plea. Wilson v. State, 1D18-4414 (10/23/19)

https://www.1dca.org/content/download/539668/6091357/file/184413_1286_10232019_10214365_i.pdf

SELF-REPRESENTATION: Court errs by failing to conduct a Faretta hearing upon Defendant's request to represent himself. The fact that the Defendant does not simultaneously request the discharge of counsel does not take away from the Defendant's request for self-representation. Spera v. State, 2D18-1702 (10/23/19)

https://www.2dca.org/content/download/539715/6091936/file/181702_39_10232019_08053728_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: In order to sentence Defendant as a VFOSC, Court must make written findings as to whether the VFOSC poses a danger to the community. McCray v. State, 3D17-1300 (10/23/19)

https://www.3dca.flcourts.org/content/download/539677/6091472/file/171300_812_10232019_09540121_i.pdf

APPEAL-PRESERVATION-JUDGE-NEUTRALITY: Defendant may not raise on appeal the question of whether, during vop hearing, the Court's questioning of probation officer to establish willfulness of violation was an unlawful departure from neutrality in the absence of a contemporaneous objection. Edwards v. State, 3D18-992 (10/23/19)

https://www.3dca.flcourts.org/content/download/539683/6091544/file/180992_809_10232019_10021982_i.pdf

SELF-DEFENSE-FORCIBLE FELONY EXCEPTION: Court errs by giving forcible felony exception jury instruction in a self defense case (the use and/or threatened use of deadly force is not justified when Defendant was attempting to commit, committing, or escaping after the commission of a forcible felony) unless a separate charge of a forcible felony is actually filed. Error is fundamental. Lindo v. State, 3D18-1959 (10/23/19)

https://www.3dca.flcourts.org/content/download/539684/6091556/file/181959_812_10232019_10033912_i.pdf

PRETRIAL RELEASE-30 DAY RULE: Defendant is not entitled to lifting of condition of home confinement while on pretrial release where State does not file charges within 30 days. Pretrial release conditions do not constitute being "in custody" under R. 3.134. "The plain language of the statute

controls, limiting ROR to defendants in actual physical custody." Branch v. Junior, 3D18-2552 (10/23/19)

https://www.3dca.flcourts.org/content/download/539686/6091580/file/182552_806_10232019_10065414_i.pdf

FLEEING AND ELUDING: Police car with stripes, visible police light bar, and a push bar fits the statute prohibiting fleeing and eluding an officer in a patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle. Although Black's Law Dictionary does not define "prominent," Merriam-Webster Dictionary does, and these markings were prominent. G.C. v. State, 3D18-2563 (10/23/19)

https://www.3dca.flcourts.org/content/download/539687/6091592/file/182563_809_10232019_10082907_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to post conviction relief beyond the two year limitation upon his claim that he recently learned of a plea offer never conveyed to him where the record shows he had been advised of the offer. "[C]onsiderably more disconcerting, is what appears to be the demonstrably false and fraudulent nature of Delgado's allegations. . .[I]t certainly appears that Delgado has knowingly asserted a false claim of newly-discovered evidence. If true, such a brazen attempt to avoid a procedural bar by crafting false allegations can only be viewed as a contemptuous obstruction of the proper administration of justice and must be addressed as such." Delgado v. State, 3D19-1557 (10/23/9)

https://www.3dca.flcourts.org/content/download/539695/6091688/file/191557_809_10232019_10234769_i.pdf

DOUBLE JEOPARDY: Upon remand, imposition of a previously omitted minimum mandatory sentence does not violate double jeopardy. It does not offend double jeopardy principles to resentence a defendant to harsher terms when the original sentence was invalid, particularly when it is the defendant who brings his sentence into question." Burks v. State, 3D19-1618 (10/23/19)

https://www.3dca.flcourts.org/content/download/539696/6091700/file/191618_809_10232019_10245212_i.pdf

WHAT? HUH? WHAT?: Defendant who is serving two life sentences and who successfully appeals the Court's failure to impose the mandatory minimum on one of the life sentences may not thereafter claim a double jeopardy violation when the mandatory minimum is imposed on remand. Burks v. State, 3D19-1618 (10/23/19)

https://www.3dca.flcourts.org/content/download/539696/6091700/file/191618_809_10232019_10245212_i.pdf

http://tvshrine.com/buffy/b-huh2.wav

POST CONVICTION RELIEF-MANDAMUS: Defendant is not entitled to a writ of mandamus to compel Court to accept a motion for post conviction relief when he has been barred from filing any more such motions. Stallworth v. State, 3D19-1834 (10/23/19)

https://www.3dca.flcourts.org/content/download/539697/6091712/file/191834_806_10232019_10254531_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that the DNA evidence admitted at trial was based on the inappropriate use of the combined probability of inclusion (CPI) method in making a match. Alisme v. State, 4D19-429 (10/23/19)

https://www.4dca.org/content/download/539656/6091206/file/190429_1709_10232019_09103627_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to a hearing on motion for post conviction relief on grounds that his conviction for failing to register as a sex offender was invalid where the issue had been fully litigated and decided adversely. Kelly v. State, 1D18-1438 (10/21/19)

https://www.1dca.org/content/download/539443/6088617/file/181438_1284_10212019_10444688_i.pdf

CREDIT FOR TIME SERVED: A claim for jail credit beyond the amount agreed to in a plea bargain is not cognizable in a rule 3.801 proceeding. Ancrum v. State, 1D18-1639 (10/21/19)

https://www.1dca.org/content/download/539444/6088629/file/181639_1284_10212019_10472751_i.pdf

EVIDENCE-VICTIM'S KNOWLEDGE OF SEX: Court properly exercised discretion in excluding evidence that juvenile victim of sex abuse was familiar with sex acts years earlier on ground that the evidence was remote and not related to the criminal charge, and error, if any, was harmless. Washington v. State, 1D18-2216 (10/21/19)

https://www.1dca.org/content/download/539446/6088653/file/182216_1284_10212019_10511966_i.pdf

MANDATE-ENFORCEMENT: Trial Court need not enforce the appellate court's mandate to resentence Defendant who received a life sentence with the possibility of parole when the law changed (by Supreme Court's overruling of Atwill) between the mandate and resentencing. A trial court's role in carrying out an appellate court mandate is normally purely ministerial, but an exception to the general rule occurs when an intervening decision is issued by a higher court contrary to the decision reached on the former appeal. Marshall v. State, 2D16-1095 (10/18/19)

https://www.2dca.org/content/download/539377/6087918/file/161095_173_10182019_09123381_i.pdf

SINGLE HOMICIDE RULE: Single homicide rule prohibits dual convictions and sentences for vehicular homicide and fleeing and eluding causing serious injury or death that involve the same victim. Question certified. Maisonet-Maldonado v. State, 5D18-942 (10/18/19)

https://www.5dca.org/content/download/539368/6087803/file/180942_1259_10182019_09075531_i.pdf

POST CONVICTION RELIEF-GIGLIO: Defendant is entitled to a hearing on claim that State committed a Giglio violation by failing to disclose favorable promises made to a witness in exchange for her testimony. Ortiz v. State, 5D (10/18/19)

https://www.5dca.org/content/download/539370/6087827/file/190061_1259_10182019_09265878_i.pdf

POST CONVICTION RELIEF: Counsel must accurately advise Defendant as to amount of credit for time served on different counts and cases. Everett v. State, 5D19-1082 (10/18/19)

https://www.5dca.org/content/download/539373/6087863/file/191082_1257_10182019_09393983_i.pdf

JUDGES-DISQUALIFICATION: Judge should be disqualified for making comments indicating that he had prejudged the petitioner's guilt and doubted both his sincerity and truthfulness regarding a medical episode experienced during trial proceedings. Quick v. State, 5D19-2518 (10/18/19)

https://www.5dca.org/content/download/539375/6087887/file/192518_1255_10182019_09480654_i.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Counsel was ineffective for failure to conduct a neuropsychological evaluation of the Defendant to determine whether he suffered an organic brain damage caused by a childhood car accident and affecting his behavior. [A] jury should have had an opportunity to hear and consider [this]." "The long and short of it is that there is a reasonable probability that, had Jefferson's counsel conducted a proper investigation and presented to the jury the extensive evidence of organic brain damage that such an investigation would have uncovered, at least one juror who would have reached a different judgment." Defendant is entitled to a new death penalty sentencing hearing. Jefferson v. GCDP Warden, No. 17-12160, 11th Cir. (10/17/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201712160.pdf

HALF-HEARTED MITIGATION: In death penalty phase, trial counsel argued that "because of his difficult upbringing in a poor black family, Jefferson was not as responsible for his actions as most individuals." … "We could go down into Atlanta and pick out at random any black 17-year old we wanted to, and we'd get an arrest record very similar to Lawrence Jefferson's." New

sentencing hearing required. Jefferson v. GCDP Warden, No. 17-12160, 11th Cir. (10/17/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201712160.pdf

POST CONVICTION RELIEF: "Where a petitioner has established that his lawyer's actions fell below an objectively reasonable standard of performance and that such ineffectiveness rendered his trial fundamentally unfair, he is entitled to relief even in spite of the substantial deference that we show to the decisions of trial counsel." If the failure to engage in further investigation was the result of neglect or oversight, no presumption of reasonableness attaches. "[T]he sentencing profile actually presented at Jefferson's trial compared with what would have been presented if Jefferson's trial counsel had performed a proper investigation is striking." Jefferson v. GCDP Warden, No. 17-12160, 11th Cir. (10/17/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201712160.pdf

DOUBLE JEOPARDY: Double Jeopardy does not preclude an enhanced sentence of life imprisonment on the ground that the Defendant cannot be convicted of both burglary with a battery and sexual battery because the sexual battery was the same conduct used to enhance the burglary charge. Simmons v. State, 1D18-1657 (10/17/19)

https://www.1dca.org/content/download/539300/6087032/file/181657_1284_10172019_12420689_i.pdf

DOUBLE JEOPARDY: Defendant can be convicted of two counts of sexual battery based on the separate acts of touching the victim's vagina with his sexual organ and penetrating the victim's vagina with his finger. Simmons v. State, 1D18-1657 (10/17/19)

https://www.1dca.org/content/download/539300/6087032/file/181657_1284_10172019_12420689_i.pdf

DOUBLE JEOPARDY: Dual convictions for sexual battery and unlawful sexual activity with a minor violates double jeopardy because the latter count is subsumed in the former. Smith v. State, 1D18-2218 (10/17/19)

https://www.1dca.org/content/download/539301/6087044/file/182218_1287_10172019_12435439_i.pdf

POST CONVICTION RELIEF: Defendant is bound by his answers in plea colloquy when making a claim of ineffective assistance. "As defendants cannot go behind their colloquy statements, we cannot permit them to do so by asserting that they simply forgot about potential witnesses during trial and now, in post-conviction proceedings, remember them." Worrell v. State, 1D18-3531 (10/17/19)

https://www.1dca.org/content/download/539302/6087056/file/183531_1284_10172019_12461255_i.pdf

EXPERT: Expert cannot opine that the defendant does not fit the profile of a pedophile. Character evidence is inadmissible. Worrell v. State, 1D18-3531 (10/17/19)

https://www.1dca.org/content/download/539302/6087056/file/183531_1284_10172019_12461255_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to relief on claim that counsel failed to convey a plea offer where there was no offer because the

Defendant said he would not accept one. Gordon v. State, 1D18-4102 (10/17/19)

https://www.1dca.org/content/download/539304/6087080/file/184102_1284_10172019_12484988_i.pdf

USE OF FIREARM BY FELON: Rosemond Rule (that Defendant, to be convicted of aiding and abetting with use of firearm during a crime of violence, must have advance knowledge that his co-conspirators would use or carry a firearm during the underlying crime of violence) applies retroactively. Advance knowledge is not present when a defendant only learns of a gun's presence when he no longer has a realistic opportunity to quit the crime. Steiner v. United States, No. 17-15555 (11th Cir. 10/16/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201715555.pdf

CRIME OF VIOLENCE: Aiding and abetting a carjacking qualifies as a crime of violence under the elements clause of § 924(c)(3)(A). Steiner v. United States, No. 17-155555 (11th Cir. 10/16/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201715555.pdf

HABEAS CORPUS-STANDARD OF REVIEW: The relevant question when a state prisoner seeks federal habeas relief based on insufficient evidence is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Steiner v. United States, No. 17-155555 (11th Cir. 10/16/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201715555.pdf

ARREST: Officer crosses a firm and bright constitutional line by crossing the threshold of Defendant's home to make a warrantless arrest. The Fourth

Amendment prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to arrest him. Officers do not have a right to enter and arrest anyone standing in an open doorway without a warrant. A warrant (or exception) is always required for a home arrest even if the arrestee is standing in the doorway of his home when the officers conduct the arrest. Bailey v. Swindell, No. 18-13572 (11th Cir. 10/16/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201813572.pdf

SEARCH AND SEIZURE-PLAIN VIEW-MOTEL ROOM: Officers may seize and open an unopened briefcase when the Defendant was lawfully arrested on a warrant and disclaims ownership of it. State v. Miller, 2D17-4922 (10/16/19)

https://www.2dca.org/content/download/539180/6085725/file/174922_39_10162019_08412301_i.pdf

SEARCH AND SEIZURE-APPLICABLE LAW: "The question of which state's law to choose when evidence is obtained in a state other than the prosecuting forum is one that has generated a great deal of debate, with compelling arguments on both sides. . .We have found no hard-and-fast rule under Florida law. . .Regardless, we need not weigh in on that debate now because even under the Florida law that Miller advocated and the trial court applied, suppression was unwarranted." State v. Miller, 2D17-4922 (10/16/19)

https://www.2dca.org/content/download/564733/6377102/file/174922_39_10162019_08412301_i.pdf

POST CONVICTION RELIEF: Claim that restitution order was unlawfully entered because the Defendant was neither present nor noticed cannot be raised under R.3.800, only under R.3.850. Under R.3.850, where the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence the motion can be asserted after the two year limit. Heare v. State, 2D18-2630 (10/16/19)

https://www.2dca.org/content/download/539184/6085773/file/182630_114_10162019_08434322_i.pdf

GRAND THEFT-VALUATION: Court may not reduce the verdict from first degree grand theft to third degree grand theft based on valuation where the Defendant waived consideration of lesser included and invited error. Banks v. State, 2D17-3206 (10/16/19)

https://www.2dca.org/content/download/538762/6079392/file/173206_114_10112019_08262842_i.pdf

THREATS TO SCHOOL: Cyber-threat to shoot up a school is not 1st Amendment or Article 1, §4 protected speech. O.P.-G. v. State, 3D18-1304 (10/16/19)

https://www.3dca.flcourts.org/content/download/539150/6085353/file/181304_809_10162019_10064835_i.pdf

DISRUPTION OF SCHOOL: Off-campus conduct (cyber threats) falls within purview of statute punishing school disruption. Section 877.13(1) penalizes behavior, regardless of where initiated, that creates a foreseeable risk of substantial disruption within a school. O.P.-G. v. State, 3D18-1304 (10/16/19)

https://www.3dca.flcourts.org/content/download/539150/6085353/file/181304_809_10162019_10064835_i.pdf

DISCOVERY: An incomplete police report which omits additional inculpatory information does not warrant a new trial where the defense did not request a continuance or other relief, and the witness with the additional information did not testify. O.P.-G. v. State, 3D18-1304 (10/16/19)

https://www.3dca.flcourts.org/content/download/539150/6085353/file/181304_809_10162019_10064835_i.pdf

ARGUMENT-BOLSTERING: Argument that the phone record evidence would corroborate the victim's testimony is not bolstering. Improper bolstering is when the government vouches for the credibility of the witness. Molina v. State, 3D18-2502 (10/16/19)

https://www.3dca.flcourts.org/content/download/539155/6085413/file/182502_809_10162019_10140221_i.pdf

DOWNWARD DEPARTURE-MENTAL DISORDER: Mental health condition for which defendant requires treatment does not have to be connected to the criminal conduct to justify a downward departure. Geliga v. State, 4D18-1984 (10/16/19)

https://www.4dca.org/content/download/539138/6085202/file/181984_1709_10162019_09220965_i.pdf

BENCH CONFERENCE: Failure to allow the Defendant to be present at a bench conference is not fundamental error, and thus will not be entertained on appeal when no contemporaneous objection was lodged. Further, no

adverse ruling resulted from the bench conference. Rodriguez v. State, 4D18-2988 (10/16/19)

https://www.4dca.org/content/download/539141/6085238/file/182988_1257_10162019_09293111_i.pdf

POST CONVICTION RELIEF-EXTENSION: Defendant is entitled to an extension of time to file his first 3.850 motion when a hurricane caused flood destroyed his legal documents. "Like other biblical calamities, hurricanes and floods that impact a person's ability to timely file a post-conviction motion constitute good cause for an extension to file." Kovacs v. State, 4D19-1150 (10/16/19)

https://www.4dca.org/content/download/539146/6085298/file/191150_1709_10162019_09404113_i.pdf

POST CONVICTION RELIEF-EXPERT TESTIMONY-STANDARD OF REVIEW: When an indigent defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, and he is not given sufficient time for a psychiatrist to help the defense evaluate, prepare, and help present a defense, the Defendant is entitled to a new sentencing hearing. Structural errors in a trial, such as denial of the right to counsel or a mental health expert, are not subject to harmless error analysis, but rather are presumptively harmful. McWilliams v. Commissioner, No. 13013906 (11th Cir. 10/15/19)

http://media.ca11.uscourts.gov/opinions/pub/files/201313906.rem.pdf

POST CONVICTION RELIEF-FEDERAL-JURISDICTION: Defendant needs appellate court approval to file a successive motion for post-conviction relief in the District Court. District Court lacks jurisdiction to entertain an issue

beyond that for which the Court of Appeal allowed a successive motion for post-conviction relief. United States v. Pearson, No. 2017-14619 (11th Cir. 10/15/19).

http://media.ca11.uscourts.gov/opinions/pub/files/201714619.pdf

SENTENCING PACKAGE DOCTRINE: The "sentencing package doctrine" "is not so much a doctrine as it is a common judicial practice grounded in a basic notion of how sentencing decisions are made in cases involving multiple counts of conviction. . . which requires a court to craft an overall sentence-the 'sentence package'-that reflects the guidelines and the relevant [18 U.S.C.] § 3553(a) factors." If a sentence is vacated on one of the component counts, the district court should be free to reconstruct the sentencing package to ensure that the overall sentence remains consistent with the guidelines, the § 3553(a) factors, and the court's view concerning the proper sentence in light of all the circumstances. United States v. Pearson, No. 2017-14619 (11th Cir. 10/15/19).

http://media.ca11.uscourts.gov/opinions/pub/files/201714619.pdf

COMPETENCY: Once a court has reasonable grounds to question a defendant's competency, it must hold a competency hearing and make an independent determination on whether the defendant is competent to proceed. Defense counsel's representation that the Defendant had been found competent based on an expert's evaluation is insufficient. Williams v. State, 1D17-5399 (10/11/19)

https://www.1dca.org/content/download/538864/6080464/file/175399_1287_10112019_12352535_i.pdf

CREDIT FOR TIME SERVED: Defendant is entitled to credit for time served in a mental institution while incompetent to stand trial. Cuffy v. State, 1D18-1715 (10/11/19)

https://www.1dca.org/content/download/538868/6080512/file/181715_1286_10112019_12423666_i.pdf

LESSER INCLUDED-VALUATION: Court may not reduce the offense of conviction from first-degree grand theft to third-degree grand theft where the Defendant affirmatively waived consideration of any lesser included and the evidence supported a finding that the property stolen exceeded hundred thousand dollars in value. Banks v. State, 2D17-3206 (10/11/19)

https://www.2dca.org/content/download/538762/6079392/file/173206_114_10112019_08262842_i.pdf

SENTENCE-CONSECUTIVE: Court may not order that sentence for contempt of court be served consecutively to an anticipated sentence in the pending case. Hernandez v. State, 2D18-4310 (10/11/19)

https://www.2dca.org/content/download/538812/6079992/file/184310_114_10112019_08512750_i.pdf

SEARCH AND SEIZURE-RENTAL CAR: Defendant who is not on the rental car agreement nevertheless has a right of privacy in it. Defendant did not have standing to contest the placement of the GPS (which had been authorized by the confidential informant who rented the car), but he did have standing to challenge the tracking of his movements. An individual who borrows a vehicle with the owner's consent has a legitimate expectation of privacy in the vehicle and standing to challenge its search while it is in his possession. Nonetheless, the search is lawful based on a reliable tip that the Defendant was going to rob the McDonald's which was in fact robbed. Strong v. State, 5D18-1638 (10/11/19)

https://www.5dca.org/content/download/538728/6079001/file/181638_1257_10112019_08135854_i.pdf

POST CONVICTION RELIEF-SELF-DEFENSE: Counsel was not ineffective for failing to argue that Defendant had no duty to retreat where some evidence supported the jury's finding that the Defendant was the initial aggressor. Counsel was not ineffective for failing to file a Stand Your Ground motion or the trial court would have denied it, anyway. Fields v. State, 5D18-2786 (10/11/19)

https://www.5dca.org/content/download/538731/6079037/file/182786_1257_10112019_08200086_i.pdf

RESENTENCING-SCORESHEET ERROR: When one count is vacated on the Defendant's motion for post-conviction relief, Defendant must be resentenced under the new sentencing scoresheet, regardless whether the Court could have impose the same sentence. Pierce v. State, 5D19-1123 (10/11/19)

https://www.5dca.org/content/download/538736/6079097/file/191123_1260_10112019_08291520_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that trial counsel incorrectly told him that he would receive a sentence concurrent with a sentence imposed in another county. Rouse v. State, 5D19-2119 (10/11/19)

https://www.5dca.org/content/download/538737/6079109/file/192119_1260_10112019_08312453_i.pdf

JOA-FAILURE TO REGISTER: Defendant cannot be convicted of failure to register in absence of proof that he had ever established his residence in the

county of the prosecution. The general rule is where an offense may be committed in various ways, the evidence must establish it to have been committed in the manner charged in the indictment. Demus v. State, 4D17-3497 (10/10/19)

https://www.4dca.org/content/download/538609/6077810/file/173497_1709_10102019_09063611_i.pdf

APPEALS-JURISDICTION: Jurisdictional allegation that the case "may present federal issues," is legally insufficient to establish supreme court jurisdiction of discretionary review based on conflicts between circuits. Mallet v. State, SC19-1038 (10/10/19)

https://www.floridasupremecourt.org/content/download/538605/6077766/file/sc19-1038.pdf

EXPERT-RETROGRADE EXTRAPOLATION: State properly used retrograde extrapolation to deduce that the Defendant's .027 BAL was above .08 at the time of her boating accident. The lack of complete information upon which the retrograde extrapolation was made goes to the weight, not to the admissibility, of the opinion evidence. Vitiello v. State, 5D17-3834 (10/4/19)

https://www.5dca.org/content/download/538307/6074668/file/173834_1257_10042019_08302293_i.pdf

POST CONVICTION RELIEF: Appellate counsel for the Defendant was not ineffective for failing to argue that the amendment to the Stand Your Ground law applied retroactively. Appellate counsel is not required to anticipate changes in the law." The ineffectiveness of appellate counsel cannot be based upon the failure of counsel to assert a theory of law which was not at

the time of the appeal fully articulated or established in the law." Moradi v. State, 5D18-3723 (10/4/19)

https://www.5dca.org/content/download/538310/6074704/file/183713_1254_10042019_08395401_i.pdf

VOP: Evidence that PO knocked on the Defendant's door and called his phone is insufficient to sustain a finding that Defendant violated probation by being away from his home. "[T]he approach of simply knocking on the door and then declaring a violation when no one answers provides strong potential defenses to the person being supervised. If the supervising officer truly believes that a person under supervision is not home, it would behoove that officer to acquire evidence that corroborates the alleged absence from the residence." Brown v. State, 2D18-1892 (10/4/19)

https://www.2dca.org/content/download/538326/6074902/file/181892_3910042019_08163978_i.pdf

REMAND: Erroneous jury instruction on lesser included instruction for second degree murder did not warrant a new trial for the second count of attempted second degree murder. "We sympathize with the post conviction court's effort to interpret our admittedly ambiguous opinion in the prior appeal, but we agree with the State that we did not authorize a new trial on the attempt charge." State v. Pharisien, 2D18-4254 (10/4/19)

https://www.2dca.org/content/download/538327/6074914/file/184254_167_10042019_08175012_i.pdf

PHRASE OF THE DAY: "Jouncy odyssey" State v. Pharisien, 2D18-4254 (10/4/19)

https://www.2dca.org/content/download/538327/6074914/file/184254_167_10042019_08175012_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: In hearing on motion for post conviction relief, affidavit by co-defendant who had already been convicted of the murder, for which he took sole responsibility, but who refused to confirm the truthfulness of the affidavit at the hearing, is properly excluded. Dailey v. State, SC18-557 (10/3/19)

https://www.floridasupremecourt.org/content/download/538209/6073482/file/sc18-557.pdf

COMPETENCY: Court commits fundamental error by failing to conduct a competency hearing after his attorney requested a competency evaluation and the trial court appointed an expert, as well as failing to make an individualized finding as to his competency, before the trial court accepted Walker's plea. Walker v. State, 1D18-372 (10/3/19)

https://www.1dca.org/content/download/538263/6074099/file/180372_1287_10032019_02070975_i.pdf

COMPETENCY: Court commits fundamental error in finding that Appellant was competent to proceed based on defense counsel's stipulation where there is no indication that the trial court reviewed the expert's report, made an independent determination that Appellant's competency had been restored, or entered a written order to that effect. Peterson v. State, 1D18-1416 (10/3/19)

https://www.1dca.org/content/download/538264/6074111/file/181416_1287_10032019_02100067_i.pdf

CERTIFIED LEGAL INTERN: Finding that Child violated conditions of PTI is vacated where the Child was represented by a certified legal intern, but no executed written consent form accepting representation by a non-lawyer exists. C.C.J. v. State, 2D17-113 (10/2/19)

https://www.2dca.org/content/download/537978/6071549/file/175113_39_10022019_08255533_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: The VFOSC statute requires that the Court must make written findings as to whether the individual is a danger to the community, but because a defendant's designation as a VFOSC does not depend on a finding that the defendant poses a danger to the community, a trial court's failure to make written findings does not entitle the defendant to have the VFOSC designation stricken. Rather, the court's conclusion that a VFOSC poses a danger to the community is what compels revocation. McCray v. State, 2D18-1541 (10/2/19)

https://www.2dca.org/content/download/537985/6071633/file/181541_65_10022019_08294108_i.pdf

ILLEGAL SENTENCE: Upon motion to correct illegal sentence, Defendant's negotiated twenty-year sentence for robbery as a Prison Releasee Offender must be vacated because the maximum for that offense is 15 years. Morell v. State, 2D18-3683 (10/2/19)

https://www.2dca.org/content/download/537992/6071717/file/183683_39_10022019_08320099_i.pdf

MEDICAL RECORDS-INVESTIGATIVE SUBPOENAS: State is not entitled to the medical records of a highly intoxicated suspect at the hospital following a car crash who chanted "No blood for police, no blood for police." In order to procure an investigative subpoena for medical records in a

potential DUI case, the State must show a nexus between the medical records the State seeks and some material issue in the case by (1) identifying some theory that reasonably makes the records relevant and (2) producing some evidence that makes it reasonable to expect that the records will produce evidence that supports the theory. Leka v. State, 2D18-5095 (10/2/19)

https://www.2dca.org/content/download/538002/6071837/file/185095_167_10022019_08331003_i.pdf

SPEEDY TRIAL: Speedy trial period is lawfully extended based on the unavailability of a critical witness due to an unexpected and serious medical condition. Robinson v. State, 3D18-0916 (10/2/19)

https://www.3dca.flcourts.org/content/download/537958/6071291/file/180916_809_10022019_10124347_i.pdf

WILLIAMS RULE: Unless the Court has made a definitive ruling on the admissibility of Williams Rule evidence, a contemporaneous objection to the evidence must be made. Court's failure to give a limiting instruction upon admission of Williams Rule evidence is not reversible error where the Defendant did not request the limiting instruction. Lubin v. State, 3D18-1461 (10/2/19)

https://www.3dca.flcourts.org/content/download/537964/6071363/file/181461_809_10022019_10215437_i.pdf

APPEALS: Defendant may not appeal a nonfinal order granting leave to amend a facially insufficient post-conviction motion. However, the trial court should include in its order a statement that "the defendant has no right to

appeal the order until entry of the final order" in order to avoid needless unwarranted appeals. Moore v. State, 3D19-1610 (10/2/19)

https://www.3dca.flcourts.org/content/download/537970/6071435/file/191610_804_10022019_10370720_i.pdf

TESTIMONY PLAY BACK: All testimony read or played back during deliberations must be done in open court in the presence of all parties. Court may not remove the attorneys and defendant from the courtroom during the playback. Strachan v. State, 4D18-868 (10/2/19)

https://www.4dca.org/content/download/537947/6071145/file/180868_1709_10022019_10282054_i.pdf

VOIR DIRE LIMITATION: Court erred in limiting Defendant's voir dire to 55 minutes, when there remained other issues for the Defendant to cover, particularly where, as here, defense counsel used his time "very wisely," articulated the grounds he still wanted to cover, and based the amount of time for the defendant solely on the amount of time used by the state. "[I]nflexibility in the amount of time provided for voir dire is not a wise path upon which to continue to travel. . .Any extension of time would have been far less than the many hours which both sides' appellate counsel spent on this appeal, and many days less than the amount of time which will be necessary to try this case again." Strachan v. State, 4D18-868 (10/2/19)

https://www.4dca.org/content/download/537947/6071145/file/180868_1709_10022019_10282054_i.pdf

VOIR DIRE: "A trial judge cannot question prospective jurors on such crucial areas as the presumption of innocence, the State's burden of proof, and the defendant's right not to testify, and then prevent counsel from further

examination under the guise that it would be repetitive." Strachan v. State, 4D18-868 (10/2/19)

https://www.4dca.org/content/download/537947/6071145/file/180868_1709_10022019_10282054_i.pdf

HEARSAY-TEXT MESSAGE: Text message saying "b****** usually gut n***** with the deepest pockets, my stupid (unintelligible) tried to fall in love" is not hearsay because it is not offered for the truth of the matter asserted, but rather to show the effect on the Defendant, who felt threatened and thus justified in defending himself later. "Even if the trial court did not understand the third text to be a threat, that was a question for the jury, not the trial court, in determining the credibility of the defendant's self-defense claim." Strachan v. State, 4D18-868 (10/2/19)

https://www.4dca.org/content/download/537947/6071145/file/180868_1709_10022019_10282054_i.pdf

SELF DEFENSE-LESSER INCLUDED OFFENSES: Where applicable, Court's instructions to the jury should make clear that the self-defense instructions apply to lesser included offenses as well as the main offense. Strachan v. State, 4D18-868 (10/2/19)

https://www.4dca.org/content/download/537947/6071145/file/180868_1709_10022019_10282054_i.pdf

SENTENCING-SCORESHEET: If a defendant commits, but is not convicted of, a collateral crime before committing the instant crimes, the sentencing court still may consider the collateral crime in rendering sentence for the instant crimes, if the defendant has been convicted of the collateral crime

before sentencing for the instant crimes. The earlier offense should be scored as a prior record. Fox v. State, 4D18-1374 (10/2/19)

https://www.4dca.org/content/download/537949/6071169/file/181374_1257_10022019_09123259_i.pdf

GRAMMAR-LAST ANTECEDENT DOCTRINE: Relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote only where no contrary intention appears. Fox v. State, 4D18-1374 (10/2/19)

https://www.4dca.org/content/download/537949/6071169/file/181374_1257_10022019_09123259_i.pdf

WILLIAMS RULE: In Defendant's kidnapping case, Court properly admitted evidence of similar kidnappings committed by the Defendant a month before. Mann v. State, 4D18-1921 (10/2/19)

https://www.4dca.org/content/download/537950/6071181/file/181921_1257_10022019_09135144_i.pdf

JOA-LEAVING SCENE OF ACCIDENT INVOLVING DEATH: State need only show that Defendant knew or should have known that an a person was injured, not that he had died. Manhard v. State, 1D17-5010 (10/1/19)

https://www.1dca.org/content/download/537892/6070468/file/175010_1284_10012019_10414540_i.pdf

EVIDENCE-SILENCE OF DEFENDANT: No error in admitting video of Defendant which included an allusion to the Defendant's right to remain

silent. “[T]he comment regarding Appellant’s invocation of his right to remain silent was to inform the second officer that he could not ask Appellant any questions” and “did not create any error to the extent that a guilty verdict could not have been obtained without the assistance of the alleged error.” Manhard v. State, 1D17-5010 (10/1/19)

https://www.1dca.org/content/download/537892/6070468/file/175010_1284_10012019_10414540_i.pdf

EVIDENCE-PHOTO IDENTIFICATION: Use of a single photograph for identification is not unduly suggestive where the witness had an independent familiarity with the defendant such as here where the witness had bought drugs from the Defendant before. Lynn v. State, 1D18-3816 (10/1/19)

https://www.1dca.org/content/download/537895/6070504/file/183816_1284_10012019_10490490_i.pdf

LIFE SENTENCE: Life sentence for nineteen year old with parole eligibilty is not cruel or unusual punishment. Geoppo v. State, 1D18-4425 (10/1/19)

https://www.1dca.org/content/download/537896/6070516/file/184425_1284_10012019_10505355_i.pdf

SEPTEMBER 2019

SEARCH AND SEIZURE: Flight, standing alone, is insufficient to form the basis of a resisting without violence charge. Where there is a command to stop, there must be evidence that the individual actually heard it (or perceived it, if it was nonverbal) and that the individual understood that the

command was directed at him. Officers activation of lights and the yelp of a siren is insufficient to infer

that a bicyclist knew he was being ordered to stop. Goodman v. State, 2D181632 (9/27/19)

https://www.2dca.org/content/download/537785/6069215/file/181632_39092 72019_08221510_i.pdf

SEARCH AND SEIZURE-PAT DOWN: Pat down based on attempting to avoid the initial stop, appearing nervous, placing his bicycle between himself and the officer, sitting down on the curb and hunching over as if to conceal something is unlawful. Goodman v. State, 2D18-1632 (9/27/19)

https://www.2dca.org/content/download/537785/6069215/file/181632_39092 72019_08221510_i.pdf

POSSESSION OF CONVEYANCE FOR TRAFFICKING: Defendant is properly convicted of possession of a conveyance for trafficking in narcotics where he transported the drugs in his van, actually sold the drugs while in his vehicle, and delivered the drugs from within his vehicle to the C.I. Vehicle does not have to be modified like Walter White's meth lab RV in Breaking Bad. Norwood v. State, 5D18-3077 (9/27/19)

https://www.5dca.org/content/download/537746/6068821/file/183077_1257_0 9272019_08234900_i.pdf

COMPETENCY: "It is unclear how a trial court should make an independent determination of competency. Certainly, the first step should be reviewing

the expert's report. However, the record often does not provide a clear picture of whether the trial court has done so. Such is our predicament in this case." Remanded for a nunc pro tunc determination of competency. Yancy v. State, 5D18-3544 (9/27/19)

https://www.5dca.org/content/download/537748/6068845/file/183544_1260_0 9272019_08320847_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing beyond the two year limit based on newly discovered evidence that there existed a plea offer which was never communicated to him. Taylor v. State, 5D19-766 (9/27/19)

https://www.5dca.org/content/download/537750/6068869/file/190766_1260_0 9272019_08360029_i.pdf

APPEAL-JURISDICTION: Trial court lacks jurisdiction to strike discretionary costs and fine while a direct appeal is pending. Acevedo v. State, 5D19-996 (9/27/19)

https://www.5dca.org/content/download/537751/6068881/file/190996_1257_0 9272019_08394521_i.pdf

COMPETENCY-INVOLUNTARY COMMITMENT: Court may not involuntarily commit Defendant when experts noted that Defendant suffered from an intellectual disability and had a history of ADHD and bipolar disorder, but neither expert opined that he was incompetent due to mental illness nor

met the criteria for competency restoration. DCF v. Rodriguez Virella, 5D19-1026 (9/27/19)

https://www.5dca.org/content/download/537752/6068893/file/191026_1255_0 9272019_08415167_i.pdf

BRADY: Unsigned rambling letter read at Defendant's sentencing hearing blaming hm for the victim's death is not Brady evidence. Frasch v. State, 1D17-754 (9/25/19)

https://www.1dca.org/content/download/537540/6066587/file/170754_1284_0 9252019_09233229_i.pdf

HEARSAY: Heated conversation in which the victim is heard on speakerphone saying that "You are my husband" and another is heard saying "I will kill you," is admissible because the second speaker did not deny being the husband and thus is an adoptive admission of identity. Error, if any, is harmless. Frasch v. State, 1D17-754 (9/25/19)

https://www.1dca.org/content/download/537540/6066587/file/170754_1284_0 9252019_09233229_i.pdf

PEREMPTORY CHALLENGE: Court did not abuse discretion in denying the Defendant's request to withdraw a previous peremptory challenge. Frasch v. State, 1D17-754 (9/25/19)

https://www.1dca.org/content/download/537540/6066587/file/170754_1284_0 9252019_09233229_i.pdf

TAMPERING WITH A WITNESS IN A FIRST-DEGREE FELONY INVESTIGATION: Defendant is properly convicted of Tampering with a Witness as a First-Degree Felony where the (burglary with a battery) is a First-Degree Felony, notwithstanding that he is acquitted of the underlying charge. The Level of offense for Tampering with a Witness equates with the charge investigated, not with the charge of conviction. "The Legislature did not provide for any such adjustment to the offense level of witness tampering in light of the ultimate verdict." Williams v. State, 1D18-661 (9/25/19)

https://www.1dca.org/content/download/537541/6066599/file/180661_1286_0 9252019_09314721_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court cannot downward depart based on conflicts in the evidence and that the facts of this case do not support the ultimate sentence. "A trial court's personal view of the evidence and a defendant's guilt are not legally valid reasons for a downward departure." Williams v. State, 1D18-661 (9/25/19)

https://www.1dca.org/content/download/537541/6066599/file/180661_1286_0 9252019_09314721_i.pdf

CONTEMPT-DIRECT: Court improperly found Defendant in contempt of court for filing fraudulent liens on the property that was the subject of Appellant's claim and on the property named in the liens the court had found through its own research. Court may not find Defendant in direct criminal contempt based on filings that were not before the court and on conduct not committed in the Court's presence. Plummer v. State, 1D18-1309 (9/25/19)

https://www.1dca.org/content/download/537542/6066611/file/181309_1287_0 9252019_09335553_i.pdf

APPEAL-BELATED: It is generally insufficient for a special master to recommend a belated appeal based simply on its finding the State does not object to the petition, but State's lack of objection may be viewed as an admission of the allegations in the petition. Belated appeal granted. Pelham v. State, 1D19-1010 (9/25/19)

https://www.1dca.org/content/download/537550/6066702/file/191010_1282_0 9252019_09595975_i.pdf

RESENTENCING-PSI: Upon resentencing, the Court must conduct a full resentencing hearing, including considering the PSI, rather than merely relying on evidence from the earlier sentencing hearing. Heatley v. State, 2D-16-4562 (9/25/19)

https://www.2dca.org/content/download/537581/6067102/file/164562_39092 52019_08412104_i.pdf

APPEAL- CERTIORARI-OTHER CRIMES, WRONGS, OR ACTS: State is entitled to certiorari review of trial court's exclusion of collateral crime evidence insects case. Evidence of a collateral act of child molestation is relevant under the Williams rule to corroborate the victim's testimony in both familial and nonfamilial child molestation cases. State v. Lincoln, 2D19-508 (9/25/19)

https://www.2dca.org/content/download/537608/6067433/file/190508_167_09 252019_08525443_i.pdf

CREDIT FOR TIME SERVED: Defendant who specifically waived all credit for time served during the plea colloquy cannot thereafter make a claim for 1825 days of credit. Harlib v. State, 3D19-1543 (9/25/19)

https://www.3dca.flcourts.org/content/download/537579/6067071/file/191543_ 809_09252019_10294187_i.pdf

SEARCH AND SEIZURE: Stop of person apparently sleeping in a running car at the key code security gate of a complex who is disoriented when encountered is lawful. An investigatory stop must be based upon all the circumstances, including the officer's objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers, and must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. "The process does not deal with hard certainties, but with probabilities." State v. Welch, 2D17-4520 (9/20/19)

https://www.2dca.org/content/download/537342/6064664/file/174520_39_092 02019_08212523_i.pdf

RESTITUTION: Defendant must be present at restitution hearing, unless his absence is knowing, intelligent, and voluntary. Meuse v. State, 2D18-659 (9/20/19)

https://www.2dca.org/content/download/537348/6064736/file/180659_114_09 202019_08225104_i.pdf

PLEA WITHDRAWAL: Defendant is entitled to conflict-free counsel when moving to withdraw plea based on allegation that counsel performed deficiently in advising him. Angeles v. State, 2D18-1870 (9/20/19)

https://www.2dca.org/content/download/537357/6064844/file/181870_39_092 02019_08263986_i.pdf

SEARCH AND SEIZURE-FRESH PURSUIT-STOP BAR: Because stop bar was in city limits (though the intersection was not), Defendant's crossing over the stop bar to see if it was safe to make a right turn on red was in city limits, justifying Orlando Police officer in pursuing the Defendant into unincorporated county. Jones v. State, 5D18-3375 (9/20/19)

https://www.5dca.org/content/download/537304/6064265/file/183375_1257_0 9202019_08290436_i.pdf

SEARCH AND SEIZURE-AUTOMOBILE: Officers may not search Defendant's car incident to arrest for fleeing and eluding when he is apprehended outside his parked car. Nonetheless, conviction for possession or drugs found in the car is affirmed when appellate counsel failed to argue that the automobile exception did not apply. Defendant may re-raise the issue by motion for post-conviction relief. Jones v. State, 5D18-3375 (9/20/19)

https://www.5dca.org/content/download/537304/6064265/file/183375_1257_0 9202019_08290436_i.pdf

ARGUMENT: Court erred in prohibiting counsel for the Defendant from arguing that, had it been tested, the Defendant's fingerprints would not have been found on the baggie of meth. Turner v. State, 5D18-3772 (9/20/19)

https://www.5dca.org/content/download/537305/6064277/file/183772_1260_0 9202019_08351728_i.pdf

CREDIT FOR TIME SERVED: Upon resentencing, Court must give the same credit for time served as was previously awarded. Court may not sua sponte rescind jail credit previously awarded at any time even if the initial award was improper. Cummings v. State, 1D17-5191 (9/18/19)

https://www.1dca.org/content/download/537084/6061953/file/175191_1286_0 9182019_10380647_i.pdf

QUOTATION: "It cannot be ignored that Cummings is serving a mandatory life sentence plus thirty years imprisonment. It is, at best, unclear whether Cummings will see any benefit from an additional thirty-four days of jail credit on this life-plus-thirty sentence. . . Courts and litigants seeking real relief may be better off if these claims were limited to ones where the defendant could actually receive a real benefit." Cummings v. State, 1D17-5191 (9/18/19)

https://www.1dca.org/content/download/537084/6061953/file/175191_1286_0 9182019_10380647_i.pdf

JURY INSTRUCTION-FELONY MURDER: In homicide case where mother left her discarded newborn baby in a trash bag outside in cold weather and was convicted of first-degree murder under a general verdict, either premeditated murder or murder by child abuse, jury instruction which included instructing the jury on torture and caging the child as part of aggravated child abuse, is proper. An infant in a trash bag can be caging. Being left in the cold can be torture. Crowell v. State, 1D18-2039 (9/18/19)

https://www.1dca.org/content/download/537085/6061965/file/182039_1284_0 9182019_10393898_i.pdf

POST CONVICTION RELIEF: Plea colloquy in which the Defendant said that counsel had reviewed all possible defenses with his attorney is insufficient, standing alone, to refute his claim that counsel failed to advise him of the insanity defense. Bartletto v. State, 1D18-3306 (9/18/19)

https://www.1dca.org/content/download/537087/6061989/file/183306_1286_0 9182019_10430856_i.pdf

COMPETENCY: Once a court has reasonable grounds to question a defendant's competency, it must hold a competency hearing and make an independent determination on whether the defendant is competent to proceed. A.D.H., v.State, 18-4953 (9/18/19)

https://www.1dca.org/content/download/537126/6062471/file/184953_1287_0 9182019_10452323_i.pdf

SPEEDY TRIAL: Child's prior announcement of an intent to enter a plea of guilty or nolo contendere is a valid basis for the denial of his motion for discharge for speedy trial violation when he backed out of pleaing at the last minute. Continuance is properly charged to the Child. A.L. v. State, 3D18-1848 (9/18/19)

https://www.3dca.flcourts.org/content/download/537051/6061559/file/181848_ 809_09182019_10153218_i.pdf

EVIDENCE: Photos of the Defendant holding a similar gun on another occasion is inadmissible in armed robbery case absent evidence that the gun is the same one used in the robbery, or has any distinct features or meaningful details linking it to the crime. Beard v. State, 4D18-159 (9/18/19)

https://www.4dca.org/content/download/537063/6061701/file/180159_1257_0 9182019_08481197_i.pdf

APPEAL-MOOTNESS: Argument that Court improperly sentenced him to prison where he has fewer than 22 points on scoresheet and there is no jury finding of dangerousness is meritorious by moot when Defendant has already completed his sentence. Casiano v. State, 4D18-3255 (9/18/19)

https://www.4dca.org/content/download/537070/6061785/file/183255_1701_0 9182019_09022516_i.pdf

RESENTENCING: Court may not vacate its previous resentencing order which allowed judicial review, in accord with Atwell, based on Atwell being later receded from. The earlier order granting resentencing became final

when neither party moved for rehearing or appealed that order. The decisional law effective at the time of the resentencing applies. Jones v. State, 4D18-3589 (9/18/19)

https://www.4dca.org/content/download/537073/6061821/file/183589_1709_0 9182019_09080333_i.pdf

RESENTENCING: Court is not required to resentence Defendant where Atwell, on which the Defendant relied in seeking resentencing, had been receded from. This case is distinguished from Jones v. State, decided the same day. Davis v. State, 4D19-618 (9/18/19)

https://www.4dca.org/content/download/537076/6061857/file/190618_1257_0 9182019_09191636_i.pdf

EVIDENCE-EXPERT: State is entitled to present a doctor to testify as an expert that Defendant's actions in prescribing oxycontin was not in good faith in accord with proper professional practices. "The right to call witnesses is one of the most important due process rights of a party and accordingly, the exclusion of the testimony of expert witnesses must be carefully considered and sparingly done." State v. Sills, 4D19-1585 (9/18/19)

https://www.4dca.org/content/download/537083/6061941/file/191585_1704_0 9182019_09375802_i.pdf

SENTENCE-VINDICTIVENESS: 20 year sentence after trial, and after Court had proposed a cap of eight years for a plea before trial, is not vindictive. There is no presumption of vindictiveness in all cases in which a judge

participates in failed plea negotiations, and then sentences the defendant more severely than the sentence contemplated. Court's efforts to facilitate plea negotiations do not compel a conclusion of vindictive sentencing. Discussion of when a sentence is vindictive. Evans v. State, 2D18-515 (9/13/19)

https://www.2dca.org/content/download/536843/5961619/file/180515_65_091 32019_08303903_i.pdf

THEFT-VALUE: State fails to establish that the value of the stolen cell phone is in excess of $100 where it did not present direct testimony of value or, alternatively, evidence of: (1) original market cost; (2) manner in which property was used; (3) condition of property; and (4) percentage of depreciation of property since purchase). T.D. v. State, 5D18-773 (9/13/19)

https://www.5dca.org/content/download/536795/5961031/file/180773_1259_0 9132019_08063274_i.pdf

JOA: Where there is contradictory and conflicting testimony, weight of evidence and witness's credibility are questions solely for jury. Conflicting testimony should not be determined on motion for judgment of acquittal. Anglero v. State, 5D18-1289 (9/13/19)

https://www.5dca.org/content/download/536796/5961043/file/181289_1257_0 9132019_08120439_i.pdf

PRISON RELEASEE REOFFENDER: A certified document that demonstrates Appellant was released from a Connecticut correctional institution within three years of the instant offense does not establish that

Defendant was released from a prison sentence instead of from temporary detention. PRR sentence remanded for resentencing without prejudice. Alterisio v. State, 5D18-1821 (9/13/19)

https://www.5dca.org/content/download/536798/5961067/file/181821_1260_0 9132019_08171535_i.pdf

POST CONVICTION RELIEF: An attorney's failure to move to suppress damaging evidence due to a lack of factual investigation or legal research can constitute deficient performance. Defendant is entitled to having his plea vacated where counsel failed to advise him that he had a valid motion to suppress, and the evidence indicated that he would have prevailed on a motion to suppress based on improper Terry stop. Madison v. Florida, 5D18-3663 (9/13/19)

https://www.5dca.org/content/download/536803/5961127/file/183663_1260_0 9132019_08273028_i.pdf

EVIDENCE-CREDIBILITY: The finder of fact is not required to believe the testimony of any witness, even if unrebutted. Hernandez v. Cardenas, 5D19418 (9/13/19)

POST CONVICTION RELIEF: Where Defendant filed an unsworn motion for post-conviction relief, Court must give him an opportunity to correct the deficiency. Acevedo-Soto v. State, 5D19-555 (9/13/19)

SCORESHEET: Where a conviction is vacated due to a double jeopardy violation, the Defendant should be properly sentenced under a scoresheet

that does not include points for that vacated conviction. Termitus v. State, 19-583 (9/13/19)

https://www.5dca.org/content/download/536806/5961163/file/190583_1260_0 9132019_08312503_i.pdf

TRUANCY: By statute, the superintendent may sign a truancy petition herself without an attorney signing it. Jenkins v. M.F., 5D19-595 (9/13/19)

https://www.5dca.org/content/download/536809/5961199/file/190595_1260_0 9132019_08432918_i.pdf

SENTENCING-PLEA AGREEMENT: Court may sentence Defendant to consecutive probation where plea agreement is for a recommendation not to impose probation. The Court is not bound by the recommendation. Jennings v. State, 1D17-4006 (9/12/19)

https://www.1dca.org/content/download/536782/5960899/file/174006_1284_0 9122019_03313583_i.pdf

SENTENCE-CONCURRENT-FEDERAL AND STATE: Defendant may not withdraw his plea where his agreement was for him to serve twenty years in state custody concurrent with the ten years he was already serving in federal prison, but he was later transferred to state custody so that his total incarceration would be 30 years. An order providing that a state sentence is to be served concurrently with a federal sentence is really only a recommendation and the discretion to determine how and where the

sentence would be served belonged to the Department of Corrections. Johnson v. State, 1D17-5170 (9/12/19)

https://www.1dca.org/content/download/536783/5960911/file/175170_1284_0 9122019_03332474_i.pdf

EVIDENCE: Facebook photo of the Defendant holding a gun consistent with that used in the crime is admissible. Barnes v. State, 3D17-1979 (9/11/19)

https://www.3dca.flcourts.org/content/download/536623/5958933/file/171979_ 809_09112019_10013916_i.pdf

DOUBLE JEOPARDY: Where verdict form and charging document alleged only that the acts of solicitation of a minor via computer and traveling to meet a minor occurred only within a single broad time frame, leaving open the possibility that they only occurred once, double jeopardy precludes being convicted of both, notwithstanding that the evidence supported separate acts. Howard v. State,1D17-1520 (9/9/19)

https://www.1dca.org/content/download/536418/5956677/file/171520_1287_0 9092019_09055980_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to post conviction relief for failure of counsel to call three witnesses who were not clearly exculpatory but would have undermined the State's witnesses where the Defendant agreed at trial to the witnesses not being called. Burkhalter v. State, 1D17-2193 (9/9/19)

https://www.1dca.org/content/download/536419/5956689/file/172193_1284_0 9092019_09064643_i.pdf

CONSPIRACY: Defendant properly convicted of conspiracy to commit murder where he planned the murder of former prisoner who had bit a correctional officer and fellow Klansman by having a CI working undercover for the FBI inject the victim with a fatal dose of insulin, feign a fishing accident, chop up the body, and or/shoot him, and where the Defendant gloated over the fake picture of the dead body ("Ha-ha, oh, shit. Ha-ha, oh, shit. I love it . . . . good job."). Moran v. State, 1D17-4074 (9/9/19)

https://www.1dca.org/content/download/536420/5956701/file/174074_1284_0 9092019_09083671_i.pdf

CONSPIRACY: Defendant properly convicted of conspiracy to commit murder where he planned the murder of former prisoner who had bit a correctional officer and fellow Klansman by having a CI working undercover for the FBI inject the victim with a fatal dose of insulin, feign a fishing accident, chop up the body, and or/shoot him, and where the co-defendant gloated over the fake picture of the dead body ("Ha-ha, oh, shit. Ha-ha, oh, shit. I love it . . . . good job.") The Defendant's participation is sufficient to establish the he participated in the crime with the CI. Newcomb v. State, 1D17-4440 (9/9/19)

https://www.1dca.org/content/download/536421/5956713/file/174440_1284_0 9092019_09092167_i.pdf

RESENTENCING: Court may re-sentence the Defendant to the same sentence as before on remand from appeal where, as here, the defendant was afforded due process. Salowitz v. State, 1D17-4858 (9/9/19)

https://www.1dca.org/content/download/536422/5956725/file/174858_1284_0 9092019_09103256_i.pdf

POST CONVICTION RELIEF: Claims of trial error cannot be raised on a motion for post-conviction relief. Errors must be raised on direct appeal. Dunn v. State, 1D17-5278 (9/9/19)

https://www.1dca.org/content/download/536423/5956737/file/175278_1284_0 9092019_09132813_i.pdf

APPEAL-PRESERVATION: Defendant's objection to photo lineup as unduly suggestive is not preserved for appeal when the issue is not clearly raised before the trial court. Jones v. State, 1D18-1425 (9/9/19)

https://www.1dca.org/content/download/536424/5956749/file/181425_1284_0 9092019_09143542_i.pdf

PRISON RELEASEE REOFFENDER: Life sentence as PRR is not unconstitutional as cruel or unusual merely because the predicate offense was committed when the Defendant was fifteen years old. Singleton v. State, 1D18-2227 (9/9/19)

https://www.1dca.org/content/download/536425/5956761/file/182217_1284_0 9092019_09170647_i.pdf

COMPETENCY: Court may not merely rely on expert evaluations that the Defedant is competent before sentencing the Defendant. The Court must make an independent determination of competency. Bowden v. State, 1D18-2676 (9/9/19)

https://www.1dca.org/content/download/536426/5956773/file/182676_1287_0 9092019_09192145_i.pdf

MOTION TO DISMISS: Court cannot grant a 3.190(c)(4) motion to dismiss where the only evidence is Defendant's DNA from blood found on a shirt weeks after the burglary. A trial court cannot dismiss criminal charges because it concludes that the case will not survive a motion for judgment of acquittal. Even if the state's evidence is all circumstantial, whether it excludes all reasonable hypotheses of innocence may only be decided at trial; the issue cannot be resolved by a rule 3.190(c)(4) motion to dismiss. State v. Fay, 2D18-933 (9/6/19)

https://www.2dca.org/content/download/536364/5956269/file/180933_39_090 62019_07572834_i.pdf

DEATH PENALTY-INSTRUCTIONS: Jury must be instructed that the aggravating factors for the death penalty must be found beyond a reasonable doubt, but not that those factors outweigh the mitigating circumstances beyond a reasonable doubt. Rogers v. State, SC18-150 (9/5/19)

https://www.floridasupremecourt.org/content/download/536301/5955627/file/s c18-150.pdf

EVIDENCE: Letters which the Defendant wrote characterizing himself as a ruthless, cold-blooded, cutthroat gangster are admissible in guilt and penalty phases of death case. Rogers v. State, SC18-150 (9/5/19)

https://www.floridasupremecourt.org/content/download/536301/5955627/file/s c18-150.pdf

MITIGATING CIRCUMSTANCES: In imposing death penalty, Court need not expressly articulate why the evidence presented warranted the allocation of a certain weight to a mitigating circumstance. Rogers v. State, SC18-150 (9/5/19)

https://www.floridasupremecourt.org/content/download/536301/5955627/file/s c18-150.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to a jury instruction that the Defendant was not entitled to use deadly force in self-defense if he was engaged in unlawful activity (a misstatement of law at the time). Counsel's ignorance of the law is per se ineffective. However, "to the extent that Mr. Bolduc's claim is based solely on counsel's failure to object to the reading of a standard jury instruction, the claim may be dead on arrival under existing law concerning whether such a failure could ever constitute deficient performance." Bolduc v. State, 2D18-2734 (9/4/19)

https://www.2dca.org/content/download/536179/5954415/file/182734_114_09 042019_08241279_i.pdf

EVIDENCE-WILLIAMS RULE: In robbery/murder case, evidence of a separate robbery in close temporal proximity and at the same restaurant chain, conducted with a similar modus operandi is admissible. Silver v. State, 3D172320 (9/4/19)

https://www.3dca.flcourts.org/content/download/536239/5955184/file/172320_ 809_09042019_03061012_i.pdf

HEARSAY-INESCAPABLE INFERENCE: The rule of exclusion of evidence which gives rise to an inescapable inference that a non-testifying witness implicated the Defendant does not apply when the witness testifies. Silver v. State, 3D17-2320 (9/4/19)

https://www.3dca.flcourts.org/content/download/536239/5955184/file/172320_ 809_09042019_03061012_i.pdf

POST CONVICTION RELIEF: The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. When a defendant fails to make a showing as to one prong, it is not necessary to delve into whether he has made a showing as to the other prong. Williams v. State, 3D18-1547 (9/4/19)

https://www.3dca.flcourts.org/content/download/536209/5954776/file/181547_ 809_09042019_10425433_i.pdf

MANDATORY MINIMUM: Three year mandatory minimum for possession of a firearm does not apply absent a jury finding that the Defendant personally possessed the firearm. Allen v. State, 3D-18-2375 (9/4/19)

https://www.3dca.flcourts.org/content/download/536212/5954812/file/182375_ 811_09042019_10523833_i.pdf

MANDATORY MINIMUM-FIREARM-CONSECUTIVE SENTENCES: Consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was merely possessed but not discharged. If, however, multiple firearm offenses are committed contemporaneously, during which time multiple victims are shot at, then consecutive sentencing is permissible but not mandatory. Hernandez v. State, 3D19-0091 (9/4/19)

https://www.3dca.flcourts.org/content/download/536229/5955046/file/190091_ 807_09042019_04401290_i.pdf

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Because appellate counsel was ineffective for failure to argue improper imposition of consecutive mandatory minimum sentences, which would have placed the case in the pipeline for reversal, Defendant is entitled to resentencing. Hernandez v. State, 3D19-0091 (9/4/19)

https://www.3dca.flcourts.org/content/download/536229/5955046/file/190091_ 807_09042019_04401290_i.pdf

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COMPETENCY: Court must hold competency hearing once counsel has raised the issue of the Defendant's mental competency. Court may make a retrospective determination. Gresham v. State, 5D18-124 (8/30/19)

https://www.5dca.org/content/download/535876/5951495/file/180124_1259_0 8302019_08132206_i.pdf

VOP-HEARSAY: Defendant cannot be found to have violated probation based on his probation officer's testimony that the Defendant had been discharged from the treatment program for fighting, when the probation officer did not witness the fight. Evidence is hearsay. Cote v. State, 5D18-1562 (8/30/19)

https://www.5dca.org/content/download/535877/5951507/file/181562_1260_0 8302019_08174571_i.pdf

POST CONVICTION RELIEF: Court is not entitled to appointment of counsel where the record supported the summary denial of the Defendant's motion for post-conviction relief. McCloud v. State, 5D18-2476 (8/30/19)

https://www.5dca.org/content/download/535883/5951579/file/182476_1257_0 8302019_08443128_i.pdf

DOUBLE JEOPARDY-KIDNAPPING-MULTIPLE COUNTIES: Double jeopardy precludes multiple convictions for kidnapping when the victim is

transported over county lines. When there is no temporal break in the victim's confinement, there is only one single criminal episode of kidnapping. Pursuant to the distinct acts test, a single criminal impulse may be punished only once no matter how long the action may continue. Watkins v. State, 5D18-3302 (8/30/19)

https://www.5dca.org/content/download/535885/5951603/file/183302_1259_0 8302019_08504516_i.pdf

JUDGE-DISQUALIFICATION: Regardless of whether judge ruled correctly in denying as legally deficient the motion for disqualification, disqualification is required whenever the judge rules on the truth of the facts alleged. When a judge looks beyond the mere legal sufficiency of the motion and attempts to refute the charges of partiality, he has exceeded the proper scope of his inquiry and that basis alone establishes grounds for his disqualification. Novo v. State, 5D19-2290 (8/30/19)

https://www.5dca.org/content/download/535792/5950538/file/192290_1255_0 8282019_04020475_i.pdf

JUDGE-DISQUALIFICATION: Regardless of whether judge ruled correctly in denying as legally deficient the motion for disqualification, disqualification is required whenever the judge rules on the truth of the facts alleged. When a judge looks beyond the mere legal sufficiency of the motion and attempts to refute the charges of partiality, he has exceeded the proper scope of his inquiry and that basis alone establishes grounds for his disqualification. Robinson v. State, 5D19-2372 (8/29/19)

https://www.5dca.org/content/download/535793/5950550/file/192372_1255_0 8282019_04053960_i.pdf

MINOR-LIFE SENTENCE-FINDING BY JURY: Judge, not jury, may determine whether a life sentence is appropriate under the statutory factors in §921.1401. Serrano v. State, 1D17-3669 (8/30/19)

https://www.1dca.org/content/download/535896/5951741/file/173669_1284_0 8302019_09321054_i.pdf

SENTENCING-CONSIDERATIONS: Eighth Amendment does not prohibit courts from considering victim-impact evidence in sentencing proceeding for minor facing life imprisonment for homicide. A Miller-type juvenile sentencing hearing is not the functional equivalent of a capital sentencing proceeding so that the categorical exclusion of victim-impact evidence is not required. Serrano v. State, 1D17-3669 (8/30/19)

https://www.1dca.org/content/download/535896/5951741/file/173669_1284_0 8302019_09321054_i.pdf

POST CONVICTION RELIEF-TIMELINESS-MAILBOX RULE: Court may not rely upon the case docket in denying 3.850 motion as untimely. Under the mailbox rule, a petition by a pro se inmate is deemed filed at the moment in time when the inmate loses control over the document by entrusting its further delivery or processing to agents of the state. Court's suspicion of altered dates does not defeat consideration of the motion. Snodgrass III v. State, 1D184581 (8/30/19)

https://www.1dca.org/content/download/535900/5951789/file/184581_1287_0 8302019_09353407_i.pdf

PROBATION-JURISDICTION: Defendant who was lawfully sentenced on various counts stacked counts to three years of prison followed by twelve years of probation (originally ending in 2022), after various violations, cannot be sentenced to five years in prison and two years of probation concurrently on the remaining third degree felonies. Absent imposition of consecutive sentences, jurisdiction cannot extend beyond five years combined. McLendon v. State, 1D19-3017 (8/30/19)

https://www.1dca.org/content/download/535975/5952680/file/193017_1282_0 8302019_04300601_i.pdf

DNA TESTING: Defendant is not entitled to post conviction DNA testing without showing how DNA testing would create a reasonable probability of his acquittal. Hester v. State, 19-565 (8/29/19)

https://www.1dca.org/content/download/535809/5950743/file/190565_1284_0 8292019_09405773_i.pdf

SEXUAL OFFENDER-REGISTRATION-REMOVAL: Court may not remove sex offender from registration list based on him only recently being identified as a person subject to registration. State v. Brena, 3D19-976 (8/28/19), State v. Hernandez, 3D19-977 (8/28/19)

https://www.3dca.flcourts.org/content/download/535724/5949793/file/190976_ 807_08282019_10203038_i.pdf

THE LAW: "Equity follows the law." "[T]he maxim 'equitas sequitur legem' is strictly applicable." "The law is the law." State v. Brena, 3D19-976 (8/28/19), State v. Hernandez, 3D19-977 (8/28/19)

https://www.3dca.flcourts.org/content/download/535724/5949793/file/190976_ 807_08282019_10203038_i.pdf

https://www.3dca.flcourts.org/content/download/535725/5949805/file/190977_ 807_08282019_10211147_i.pdf

JOINDER-RELATED CASES: Tampering with a witness who knows about the Defendant's murder of her roommate and solicitation to murder that witness are properly joined to the original murder case. Luongo v. State, 4D17-3770 (8/28/19)

https://www.4dca.org/content/download/535706/5949571/file/173770_1257_0 8282019_08451190_i.pdf

JUDGE-DISQUALIFICATION: Where a judge has recused herself because of a personal relationship with an attorney, she must do so in all, not just some of that attorney's cases. Rosales v. Bradshaw, 4D19-1082 (8/28/19)

https://www.4dca.org/content/download/535712/5949643/file/191082_1704_0 8282019_09205522_i.pdf

JUVENILE-JURISDICTION: Court has no jurisdiction to re-sentence a juvenile who has turned 20 years of age after his sentence is overturned on

appeal for failure to consider a comprehensive evaluation. J.R. v. State, 4D19-1538 (8/28/19)

https://www.4dca.org/content/download/535713/5949655/file/191538_1704_0 8282019_09222175_i.pdf

SENTENCING-VINDICTIVENESS: 364 day jail sentence after trial, and after Defendant had rejected offer of pretrial diversion, is not vindictive. Carballo v. State, 3D18-1551 (8/28/19)

https://www.3dca.flcourts.org/content/download/535717/5949709/file/181551_ 809_08282019_10100056_i.pdf

NEOLOGISM OF THE DAY: "Because the panel majority has muddied the recently repristinated jurisdictional waters established by Churchill. . ." Hicks v. State, 1D17-1830 (8/23/19)

https://www.1dca.org/content/download/535533/5947612/file/171830_1289_0 8232019_09400309_i.pdf

APPEAL-DISPOSITIVENESS: The test for dispositiveness is whether the appellate decision in favor of either party would end the case. Hicks v. State, 1D17-1830 (8/23/19)

https://www.1dca.org/content/download/535533/5947612/file/171830_1289_0 8232019_09400309_i.pdf

PRR-MINOR: Eighth Amendment (Graham and Miller) does not preclude imposition of a prison releasee reoffender (PRR) sentence where the predicate offenses were committed when the Defendant was under the age of eighteen. Marshall v. State, 1D17-5248 (8/23/19)

<https://www.1dca.org/content/download/535581/5948188/file/175248_1284_ 08232019_01392070_i.pdf

SECOND DEGREE MURDER-JOA: Shooting girlfriend while driving and not immediately seeking medical care is sufficient evidence of malicious intent and ill will to sustain a conviction for second degree murder. Holmes v. State, 1D18-1700 (8/23/19)

https://www.1dca.org/content/download/535585/5948224/file/181700_1284_0 8232019_01415498_i.pdf

EVIDENCE: Evidence that the Defendant resisted arrest by holding off the SWAT team several days after the crime is admissible as evidence reflecting a consciousness of guilt. Holmes v. State, 1D18-1700 (8/23/19)

https://www.1dca.org/content/download/535585/5948224/file/181700_1284_0 8232019_01415498_i.pdf

IMPEACHMENT-PAST RECORDED RECOLLECTION: Witness's sworn statement in the state attorney's office is admissible as a past recorded recollection where the witness at trial claim she did not remember certain events. Roberts v. State, 1D18-1834 (8/23/19)

https://www.1dca.org/content/download/535586/5948236/file/181834_1284_0 8232019_01430446_i.pdf

JURY POLL: Verdict stands when, during the polling of the jury, one juror responded, when asked if this was her verdict, "Reluctantly." The answer merely expressed some sort of reservation about the decision, but it remained an affirmative answer. Moore v. State, 1D18-2224 (8/23/19)

https://www.1dca.org/content/download/535587/5948248/file/182224_1284_0 8232019_01442502_i.pdf

EVIDENCE-VIDEO: Detective may identify Defendant from a Wal-mart video when he spent time with the Defendant after the arrest and the Defendant's appearance had changed between arrest and trial. Even non-eyewitnesses may testify as to the identification of persons depicted or heard on a recording so long as it is clear the witness is in a better position than the jurors to make those determinations. Nolan v. State, 1D18-3026 (8/23/19)

https://www.1dca.org/content/download/535589/5948272/file/183026_1284_0 8232019_01465057_i.pdf

SEXUAL BATTERY-CIRCUMSTANTIAL EVIDENCE: The circumstantial evidence that the Defendant left the Victim's mostly nude dead body in the freezing cold with 36 stab wounds, along with his DNA (semen and blood) on and in her body, and had cut his hand on the day in question is sufficient to establish that the sex was not consensual. The general judgment of acquittal standard, not the special circumstantial evidence standard, applies

where there is evidence tending to show that the defendant committed or participated in the crime. Reversed en banc. Shrader v. State, 2D13-2712 (8/23/19)

https://www.2dca.org/content/download/535539/5947684/file/132712_65082 32019_08295919_i.pdf

EN BANC REVIEW: Misapplication of circumstantial evidence standard in sexual battery case with a murdered victim warrants en banc review. Conflict between concepts of circumstantial evidence standard and deferring to the jury. Shrader v. State, 2D13-2712 (8/23/19)

https://www.2dca.org/content/download/535539/5947684/file/132712_65082 32019_08295919_i.pdf

ENTRAPMENT: For subjective entrapment, the defendant has the burden of showing that a government agent induced him to commit the charged offense and that he was not predisposed to commit it. State may use evidence of incidents which had been nolle prossed to show predisposition. Harris v. State, 5D18-1242 (8/23/19)

https://www.5dca.org/content/download/535513/5947390/file/181242_1257_0 8232019_08050065_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may not impose a downward departure based of sentence manipulation absent evidence that State intentionally delayed arrest until Defendant's continuing drug sales scored him mandatory prison. The mere presence of continued transactions

cannot serve as competent, substantial evidence to support a finding of sentence manipulation. Washington v. State, 5D18-1698 (8/23/19)

https://www.5dca.org/content/download/535514/5947402/file/181698_1260_0 8232019_08085207_i.pdf

FORFEITURE OF BOND-REMISSION: Bondsman is entitled to remission of forfeiture of bond if the Defendant is timely apprehended or bondsman cooperates in finding the Defendant. #1 Anytime Bail 24/7 Inc. v. State of Florida and Clerk of Court, 5D18-2677 (8/23/19)

https://www.5dca.org/content/download/535517/5947438/file/182677_1260_0 8232019_08155239_i.pdf

INEFFECTIVE ASSISTANCE: On the face of the record, trial counsel was ineffective for not procuring a non-deadly force self-defense instruction when he displayed but did not fire a firearm during a road rage incident. Copeland v. State, 5D18-2869 (8/23/19)

https://www.5dca.org/content/download/535518/5947450/file/182869_1260_0 8232019_08253081_i.pdf

SENTENCE REVIEW-MINOR: Upon remand from the Supreme Court, no relief is warranted for the discrepancy of a minor who was prosecuted as an adult having a judicial review after 15 years for his first-degree murder conviction where there was no jury finding that he intended to kill the victim, and after 20 years for his kidnapping conviction. "[I]t is hardly this court's or the trial court's place to depart from the sentencing framework. . . explicitly

ordered by the Florida Supreme Court, or to declare its remand order unconstitutional. . .Accordingly, because we conclude that Williams is essentially requesting that our court determine the Florida Supreme Court's earlier remand order to be unconstitutional, which we have no authority to do, we affirm his present sentences." Williams v. State, 5D18-3984 (8/23/19)

https://www.5dca.org/content/download/535521/5947486/file/183984_1257_0 8232019_08564996_i.pdf

PLEA-VOLUNTARINESS: A plea is not rendered involuntary nor is ineffective assistance of counsel established when the defendant is not informed of every possible ramification or limitation concerning gain time or every possible reduction in time to be served. Sharma v. State, 5D19-146 (8/23/19)

https://www.5dca.org/content/download/535522/5947498/file/190146_1257_0 8232019_08585020_i.pdf

POST CONVICTION RELIEF: Trial court must vacate the Defendant's R.3.800(a) asserting that she does not qualify as a habitual violent felony offender or attached records establishing that the sentence is legal on the face of the record. Ford v. State, 5D19-990 (8/23/19)

https://www.5dca.org/content/download/535523/5947510/file/190990_1260_0 8232019_09035621_i.pdf

POST CONVICTION RELIEF: Court may not deny as successive a motion for post conviction relief based on newly discovered evidence where the

mother and brother of the victim claimed that someone else had confessed to and bragged about the murder. For determining post-conviction claims for newly discovered evidence relating to guilty pleas, the evidence must not have been known at the time of the plea, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence, and the defendant must demonstrate a reasonable probability that, but for the newly discovered evidence, he would not have pled guilty and would have insisted on going to trial. George v. State, 5D19-1047 (8/23/19)

EXCLUSIONARY RULE-MEDICAL RECORDS: The exclusionary rule does not require that the Defendant's medical records acquired by a lawful search warrant must be suppressed if the police previously violated his constitutional right of privacy by subpoenaing the same records without notice. Dinkins v. State, 5D17-1567 (8/23/19)

COLLATERAL CRIMES: In a murder prosecution, evidence of a separate shooting one month before to which the Defendant had pled guilty is admissible when the gun in both instances is shown to be the same. The fact that the Defendant had moved to withdraw his plea in the earlier shooting, specifically to thwart the Williams Rule evidence, does not bar the evidence from being used. Brown v. State, 1D17-3453 (8/22/19)

SCORESHEET-OUT OF STATE CONVICTIONS: For scoresheet purposes, Court cannot base its conclusion that the Defendant's out of state conviction was for Accessory after the Fact to Murder based on printouts from South Carolina Clerk showing that the original charge was for murder, corroborated by an article, where the Judgment itself said "Accessory After the Fact to Felony A, B." When the degree of felony or severity level is ambiguous, as here,the prior conviction must be scored at level one. Taulbee v. State, 1D18-2569 (8/21/19)

VOP: Defendant is properly convicted of violating probation where the wrong condition of probation was cited but the Defendant had notice of the wrongful conduct alleged. Moxey v. State, 3D16-2563 (8/21/19)

https://www.3dca.flcourts.org/content/download/535384/5945831/file/162563_ 809_08212019_10115266_i.pdf

APPEALS: In the absence of a transcript of proceedings, the Court's final judgment will be affirmed. The appellant has the burden of providing the record in dispute. Diogo v. Diogo, 3D18-1274 (8/21/19)

https://www.3dca.flcourts.org/content/download/535388/5945879/file/181274_ 809_08212019_10170777_i.pdf

POST CONVICTION RELIEF: When a defendant fails to make a showing that any ineffectiveness of counsel would have changed the result, the Court need not determine whether counsel was ineffective. McGee v. State, 3D18-1921 (8/21/19)

https://www.3dca.flcourts.org/content/download/535391/5945915/file/181921_ 809_08212019_10204292_i.pdf

RECKLESS DRIVING: Grossly excessive speed (85 in a 45 mph zone) resulting in a fatal accident may constitute reckless driving. Natal v. State, 4D17-1271 (8/21/19)

https://www.4dca.org/content/download/535376/5945729/file/171271_1257_0 8212019_08562095_i.pdf

FIREARM-MANDATORY MINIMUM: Defendant is subject to mandatory minimum for possession of a firearm during burglary, regardless of its operability. Brown v. State, 4D17-3492 (8/21/19)

https://www.4dca.org/content/download/535377/5945741/file/173492_1708_0 8212019_09015444_i.pdf

COLLATERAL CRIMES: Court improperly admitted evidence that the Defendant punched the victim's wife sometime later (an unredacted photo lineup in which the wife in writing identified the Defendant as the one who hit her). Hudson v. State, 4D18-1715 (8/21/19)

https://www.4dca.org/content/download/535398/5945999/file/181715_1709_0 8212019_09000909_i.pdf

JURY INSTRUCTION-SELF-DEFENSE-FORCIBLE FELONY EXCEPTION: Court should not give the forcible felony exception jury instruction where there is no evidence of an underlying felony. Where the Defendant is not committing a separate felony, the instruction invites confusing circular logic. Hudson v. State, 4D18-1715 (8/21/19)

https://www.4dca.org/content/download/535398/5945999/file/181715_1709_0 8212019_09000909_i.pdf

SEARCH AND SEIZURE-GOOD FAITH EXCEPTION-GPS MONITOR: Evidence found because of the GPS Monitor which was illegally placed upon the Defendant (a clerical error by a DOC employee) upon his release from prison is not suppressible. Good Faith Exception. Maldonado v. State, 4D181909 (8/21/19)

https://www.4dca.org/content/download/535378/5945753/file/181909_1257_0 8212019_09041780_i.pdf

RECORDING-PRIVACY: Victim's cell phone recording of argument in her house is admissible where Defendant knew he was being recorded. Defendant did not have a subjective expectation of privacy in his statements when he saw the cell phone in the victim's hand and knew that he was being recorded. Smiley v. State, 1D18-1792 (8/16/19)

https://www.1dca.org/content/download/535230/5944067/file/181792_1284_0 8162019_11302868_i.pd

RECORDING-PRIVACY: Defendant has no reasonable expectation of privacy in house where he frequently stayed when he had been told to leave. Accordingly, the Victim's cell phone recording of the events in the house is admissible. Defendant's statements during argument after he had been asked to leave do not qualify as "oral communications" protected under the wiretap law because any expectation of privacy under the circumstances is not one society recognizes as reasonable. "Although society generally recognizes as reasonable an expectation of privacy in conversations conducted in a private home. . ., the reasonableness of that expectation presupposes that the speaker has permission to be there in the first place." Smiley v. State, 1D18-1792 (8/16/19)

https://www.1dca.org/content/download/535230/5944067/file/181792_1284_0 8162019_11302868_i.pdf

EVIDENCE-STRIKING TESTIMONY: Court may order the Defendant's entire testimony stricken when he becomes argumentative, interrupting, and nonresponsive during cross-examination ("y'all are playing with my life. My life is no joke," "[t]hat's not burglary," etc.)" "Appellant effectively refused to answer the State's questions because his behavior precluded the State from proceeding with its cross-examination and posing further questions." Wright v. State, 1D18-1956 (8/16/19)

https://www.1dca.org/content/download/535231/5944079/file/181956_1284_0 8162019_11311369_i.pdf

COLLATERAL CRIMES: Victim's testimony about additional sexual battery and multiple uncharged batteries and aggravated assaults upon her were interwoven with the charged crimes and painted an accurate account of all events, and thus were inextricably intertwined and admissible. Ansley v. State, 1D18-2091 (8/16/19)

https://www.1dca.org/content/download/535232/5944091/file/182091_1284_0 8162019_11315962_i.pdf

STATEMENTS OF DEFENDANT-CUSTODY: Defendant was not in custody when he went to the police station and confessed to a murder of which the police were unaware. Barrientos v. State, 2D14-5870 (8/16/19)

https://www.2dca.org/content/download/535193/5943611/file/145870_65081 62019_08312917_i.pdf

STATEMENTS OF DEFENDANT-REQUEST FOR COUNSEL: "Um, when you're . . .appointed, uh, an attorney, like, isn't that when you be — being charged? When you appointed attorney?" is not a clear request for counsel in Detective's response did not constitute steamrolling. Confession is admissible. State v. Monroe, 2D18-1060 (8/16/19)

https://www.2dca.org/content/download/535217/5943905/file/181060_39_081 62019_08325177_i.pdf

JOA-TAMPERING-CIRCUMSTANTIAL EVIDENCE: Evidence that the Defendant in jailhouse calls asked gang members to handle a witness against him in a separate case, and the witness is later killed, is sufficient circumstantial evidence to justify the Defendant's conviction for tampering, at least if motion for judgment of acquittal is not fully articulated. Motion for Judgment of Acquittal must specifically argue that the circumstantial evidence was insufficient. Hudson v. State, 1D17-3593 (8/14/19)

https://www.1dca.org/content/download/534990/5941363/file/173593_1284_0 8142019_09415065_i.pdf

SECOND DEGREE MURDER: Evidence that the Defendant shot his girlfriend with his gun against her head, then drove around with her body in the trunk for days is sufficient evidence to establish second degree murder. Mackey v. State, 1D17-4086 (8/14/19)

https://www.1dca.org/content/download/534991/5941375/file/174086_1284_0 8142019_09572911_i.pdf

EVIDENCE: Evidence of the exhumation of the body of the victim who had been buried in a sleeping bag under a pile of decorative rocks is admissible to show the Defendant's state of mind, specifically, that his actions were not due to early-onset Alzheimer's. Mackey v. State, 1D17-4086 (8/14/19)

https://www.1dca.org/content/download/534991/5941375/file/174086_1284_0 8142019_09572911_i.pdf

MINOR-LIFE SENTENCE-NONHOMICIDE: The fact that a minor who does not commit a homicide can be sentenced to a life sentence with a sentence review after twenty years but a minor who commits a homicide can be sentenced to a life sentence with a review after only fifteen years does not render the review statuteS arbitrary or a violation of Equal Protection. Graham v. State, 1D182664 (8/14/19)

https://www.1dca.org/content/download/534993/5941399/file/182664_1284_0 8142019_09592242_i.pdf

DOUBLE JEOPARDY: Convictions for first-degree felony murder and aggravated battery on a law enforcement officer violate double jeopardy under the merger doctrine. The legislature did not intend dual convictions for the same lethal act. It is error to instruct the jury on a nonhomicide offense as a lesser offense to a homicide offense. Barnett v. State, 2D17-379 (8/14/19)

https://www.2dca.org/content/download/535055/5942167/file/170379_114_08 142019_08195204_i.pdf

APPEALS-INEFFECTIVE APPELLATE COUNSEL: Appellate counsel was not ineffective for failing to argue on appeal that dual convictions for solicitation and traveling after solicitation violate double jeopardy where the case so holding (Shelley) was not decided until four months after counsel filed his initial brief. Morejon-Medina v. State, 2D18-3539 (8/14/19)

https://www.2dca.org/content/download/535058/5942209/file/183539_405_08 142019_08231271_i.pdf

DOUBLE JEOPARDY: Dual convictions for solicitation and traveling after solicitation violate double jeopardy. In order to sustain dual convictions, the charging document itself must foreclose any possibility that the solicitation underlying the traveling charge was the same as that underlying the solicitation charge. Because double jeopardy is fundamental, one of the convictions must be vacated. Morejon-Medina v. State, 2D18-3539 (8/14/19)

https://www.2dca.org/content/download/535058/5942209/file/183539_405_08 142019_08231271_i.pdf

POST CONVICTION RELIEF: Court must give Defendant an evidentiary hearing, or attach portions of the record supporting denial, on claim that State improperly commented on his right to remain silent by arguing that the Defendant "doesn't give you a reason not to believe [the State's main witness;] he gives you a reason to believe everything [the State's main witness] says." Perez Perez v. State, 2D18-3561 (8/14/19)

https://www.2dca.org/content/download/535059/5942221/file/183561_114_08 142019_08244442_i.pdf

POST CONVICTION RELIEF: Court erred in dismissing Defendant's motion for post conviction relief on grounds that Defendant did not pay a "preparation fee" totaling $925.30 where the Defendant claims he never got the order in the record reflects that if he got it, he did not get it in a timely manner. Rogers v. State, 2D18-3799 (8/14/19)

https://www.2dca.org/content/download/535060/5942233/file/183799_167_08 142019_08271696_i.pdf

JURY INSTRUCTION-SELF-DEFENSE: Court does not err in failing to instruct on self-defense where there was no evidence that the defendant was protecting himself, or the only error suggesting self-defense was presented for impeachment purposes only. Hudson v. State, 3D18-500 (8/14/19)

https://www.3dca.flcourts.org/content/download/535071/5942371/file/180500_ 809_08142019_10331895_i.pdf

BATTERY BY STRANGULATION: The State need not prove great bodily harm to establish the crime of domestic battery by strangulation; instead, the State can prove this crime by establishing defendant's actions created a risk of great bodily harm. Lopez-Macaya v. State, 3D18545 (8/14/19)

https://www.3dca.flcourts.org/content/download/535021/5941753/file/180545_ 809_08142019_10124479_i.pdf

POST CONVICTION RELIEF: In order to establish grounds for relief based on ineffective assistance of counsel, the Defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the

result of the proceeding would have been different. hen a defendant fails to make a showing as to one prong of Strickland, it is not necessary to delve into whether he has made a showing as to the other prong. Ryland v. State, 3D18-1222 (8/14/19)

https://www.3dca.flcourts.org/content/download/535023/5941777/file/181222_ 809_08142019_10171624_i.pdf

POST CONVICTION RELIEF: Where the trial court denies a timely rule 3.850 motion as insufficient on its face, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion. Smith v. State, 3D18-2319 (8/14/19)

https://www.3dca.flcourts.org/content/download/535027/5941825/file/182319_ 812_08142019_10221325_i.pdf

POST CONVICTION RELIEF: While the Florida Supreme Court's decision to accept or deny a petition for discretionary review is pending, the two-year period for filing a post-conviction relief motion pursuant to Rule 3.850(b) is tolled. Court erred by dismissing the Defendant's motion for post conviction relief as untimely. Hanna v. State, 3D19-1239 (8/14/19)

https://www.3dca.flcourts.org/content/download/535032/5941885/file/191239_ 812_08142019_10315799_i.pdf

RECLASSIFICATION-FIREARM: Third-degree murder conviction cannot be reclassified from a second-degree felony to a first-degree felony where the conviction was predicated on the underlying felonies of aggravated assault

with a deadly weapon and aggravated battery with a deadly weapon, for which the use of a weapon was an essential element of the offenses. Wiley v. State, 4D19-587 (8/14/19)

https://www.4dca.org/content/download/535007/5941573/file/190587_1709_0 8142019_09183958_i.pdf

PUBLIC RECORDS-JAIL VISITATION LOGS: Defendant cannot keep the State from looking at the jail visitation logs in order to keep the State from knowing which experts have visited with him. Jail visitation logs of public records subject to no relevant exemptions. Cruz v. State, 4D19-1321 (8 / 1 4 / 1 9) https://www.4dca.org/content/download/535009/5941597/file/191321_1703_0 8142019_09261834_i.pdf

WAIVER OF APPEARANCE-CALENDAR CALL: Court must accept waivers of appearance at calendar calls and pretrial conferences absent the Court making a specific articulation of what would be achieved if the Defendant appeared. Lopez Hernandez v. State, 4D19-1413 (8/14/19)

https://www.4dca.org/content/download/535010/5941609/file/191413_1704_0 8142019_09293735_i.pdf

WAIVER OF APPEARANCE-CALENDAR CALL: Court must accept waivers of appearance at calendar calls and pretrial conferences absent the Court making a specific articulation of what would be achieved if the Defendant appeared. Banos v. State, 4D19-1413 (8/14/19)

https://www.4dca.org/content/download/535011/5941621/file/191413_1704_0 8142019_09293735_i.pdf

DEATH PENALTY: Defendant's motion for post conviction relief based on intellectual disability is procedurally barred for not having been timely raised. Bowles v. State, SC19-1184 (8/13/19)

https://www.floridasupremecourt.org/content/download/534829/5940094/file/s c19-1184__AUG13_EXPEDITED.pdf

DEATH PENALTY-PUBLIC RECORDS: Defendant's public records request made after his death warrant is signed may be denied when the Defendant cannot articulate how they would lead to the discovery of admissible evidence relevant to a colorable claim for relief. Bowles v. State, SC19-1184 (8 / 1 3 / 1 9) https://www.floridasupremecourt.org/content/download/534829/5940094/file/s c19-1184__AUG13_EXPEDITED.pdf

COMPETENCY: Court must conduct an adequate competency hearing prior to ruling on whether the Defendant has been restored to competency. Davis v. State, 1D17-4366 (8/13/19)

https://www.1dca.org/content/download/534824/5940034/file/174366_1286_0 8132019_09502911_i.pdf

SENTENCING-GUIDELINES: When the statutory maximum is exceeded by the lowest permissible sentence under the code, the lowest permissible

sentence under the code becomes the maximum sentence which the trial judge can impose. Abruscato v. State, 1D18-436 (8/13/19)

https://www.1dca.org/content/download/534828/5940082/file/184316_1284_0 8132019_10002620_i.pdf

BEST EVIDENCE RULE: Where video is not recoverable, the Best Evidence Rule does not bar testimony of witnesses about what was on the video. Savell v. State, 1D19-0136 (8/13/19)

https://www.1dca.org/content/download/534830/5940106/file/190136_1281_0 8132019_10062231_i.pdf

PRESERVATION OF ISSUE-PROFFER: Where Proponent of the testimony about what was seen on the irrecoverable video failed to proffer that testimony, the exclusion of that evidence under the Best Evidence Rule is not reviewable on appeal. Savell v. State, 1D19-0136 (8/13/19)

https://www.1dca.org/content/download/534830/5940106/file/190136_1281_0 8132019_10062231_i.pdf

SEX OFFENDERS-INTERNET: Sex offenders under supervision may be denied access to the internet. Packingham only applies to sex offenders who have finished serving their sentence. Burnsed v. Florida Commission on Offender Review, 1D17-1281 (8/9/19)

https://www.1dca.org/content/download/534695/5938540/file/175063_1281_0 8092019_10481568_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call the codefendant as a witness. Question certified: Does a defendant have to allege a basis for knowing that an uncalled witness would testify favorably in order to present a legally sufficient claim in a Rule 3.850 motion. "It is simply too easy for a convicted defendant to make vague and very possibly speculative allegations concerning how a codefendant would testify. Requiring a defendant to. . .specify how he knows the codefendant would have testified in a certain manner places very little additional burden on the defendant." Livingston v. State, 18-895 (8/9/19)

https://www.1dca.org/content/download/534710/5938732/file/180895_1287_0 8092019_10560027_i.pdf

PUBLIC RECORDS: Records related to the physical security of a State correctional facility are exempt from disclosure under Florida's public records laws. Florida DOC v. Miami Herald, 1D18-1324 (8/9/19)

https://www.1dca.org/content/download/534712/5938756/file/181324_1287_0 8092019_11010984_i.pdf

HABEAS CORPUS: A petition for habeas corpus is intended to address issues regarding a defendant's incarceration. It may not be used to collaterally attack a judgment and sentence. Maxwell v. Inch, 1D18-3695 (8/9/19)

https://www.1dca.org/content/download/534713/5938768/file/183695_1284_0 8092019_11045939_i.pdf

CREDIT FOR TIME SERVED-APPEAL-JURISDICTION: Court may rule on motion to correct credit for time served during the pendency of an appeal on an unrelated issue. An appeal of a post-conviction relief matter will not deprive trial courts of jurisdiction so long as the issues raised in the two cases are unrelated. Cannie v. State, 1D18-4239 (8/9/19)

https://www.1dca.org/content/download/534717/5938822/file/184239_1287_0 8092019_11082216_i.pdf

HEARSAY-EXCITED UTTERANCE: Voice mail from the Defendant's mother to the victim begging her not to go to the house where the Defendant would attempt to murder her is admissible as an excited utterance. Baity v. State, 1D18-4268 (8/9/19)

https://www.1dca.org/content/download/534719/5938852/file/184268_1284_0 8092019_11161002_i.pdf

COSTS: Court may not impose a $65 assessment pursuant to Fla.Stat. 939.185 ("The board of county commissioners may adopt by ordinance an additional court cost, not to exceed $65, to be imposed. . .when a person pleads. . .to, or is found guilty of. . . any felony, misdemeanor, delinquent act, or criminal traffic offense.") without indicating the applicable county ordinance. Summers v. State, 2D17-3134 (8/9/19)

https://www.2dca.org/content/download/534698/5938582/file/173134_65080 92019_08362499_i.pdf

POST CONVICTION RELIEF-EXPERT: Counsel was not ineffective for failing to "engage in a highly scientific, medico-legal, battle of the experts" unit child homicide case. "[T]he decision to go with a straightforward causation defense, as opposed to a scientific 'battle of the experts,' was a reasonable trial strategy." Ray v. State, 5D18-1277 (8/9/19)

https://www.5dca.org/content/download/534682/5938398/file/181277_1257_0 8092019_08274763_i.pdf

POST CONVICTION RELIEF: "If a defendant fails to establish one prong of the Strickland standard, there is no need for the court to examine whether she made a showing as to the other prong." Ray v. State, 5D18-1277 (8/9/19)

https://www.5dca.org/content/download/534682/5938398/file/181277_1257_0 8092019_08274763_i.pdf

STATEMENTS OF DEFENDANT-MIRANDA-CUSTODY: Defendant was in custody at the police station when she knew she was a runaway, that her house which was being searched contained evidence of crime, and her codefendants were being questioned about their role in the homicide, and when she was under video surveillance, required an escort,, and officers responded without urgency to her requests to leave the room. Rios v. State, 5D18-1817 (8/9/19)

https://www.5dca.org/content/download/534683/5938410/file/181737_1260_0 8092019_08323073_i.pdf

STATEMENTS OF DEFENDANT-MIRANDA-INTERROGATION: "[B]y the time Detective McElroy, for whatever purpose, asked Appellant, 'Okay did you fire the trigger? Or pull the trigger?' the encounter became a custodial interrogation requiring Miranda warnings. A reasonable person would conclude that Detective McElroy's yes or no question was intended to lead to an incriminating response about the specific crime." Rios v. State, 5D18-1817 (8/9/19)

https://www.5dca.org/content/download/534683/5938410/file/181737_1260_0 8092019_08323073_i.pdf

STATEMENTS OF DEFENDANT-MIRANDA: Post-Miranda statements in her third interrogation must be suppressed when police had improperly questioned her without Miranda twice before and the Detective downplayed the significance of Miranda ("a couple of formalities."). Rios v. State, 5D18-1817 (8/9/19)

https://www.5dca.org/content/download/534683/5938410/file/181737_1260_0 8092019_08323073_i.pdf

CROSS-EXAMINATION: Defendant is entitled to bring information about the deferred prosecution agreement between the State and the Victim before the jury to attack the victim's credibility by showing her potential bias in favor of the State. "Defendants may cross-examine a witness about the conditions of a plea bargain entered into between the state and the witness . . .[including] inquiry into the specific nature of the pending charges against a cooperating state witness, and how the pending criminal charges may have influenced the witness's cooperation with the state and the content of incourt statements. Monts v. State, 5D18-3763 (8/9/19)

https://www.5dca.org/content/download/534687/5938458/file/183763_1257_0 8092019_08471707_i.pdf

HABITUAL OFFENDER-EX POST FACTO-WITHHOLD OF ADJUDICATION: A withhold adjudication can be the basis for habitualization, notwithstanding that at the time the withhold adjudication was imposed the law did not so allow. Vilsaint v. State, 3D18-2570 (8/7/19)

https://www.3dca.flcourts.org/content/download/534485/5936363/file/182570_ 809_08072019_10110860_i.pdf

POST CONVICTION RELIEF: Defendant must be given leave to amend a facially legally insufficient motion for post conviction relief pursuant to R. 3.850. McCray v. State, 3D19-76 (8/7/19)

https://www.3dca.flcourts.org/content/download/534486/5936375/file/190076_ 812_08072019_10120713_i.pdf

MINOR-LIFE SENTENCE-HOMICIDE: Defendant who was a minor at the time of the homicide, convicted for his role in a carjacking homicide in which it is not clear that he was the one who pulled the trigger and in which the verdict did not specify that the first-degree murder verdict was based on the theory of felony murder or premeditation, the Court may not find that the Defendant actually intended to kill. Defendant is entitled to a sentence review after 15 years, and is not subject to the 40 year minimum mandatory. Puzio v. State, 4D17-3034 (8/7/19)

https://www.4dca.org/content/download/534503/5936603/file/173034_1708_0 8072019_08514260_i.pdf

SENTENCING-CONSIDERATIONS-UNCHARGED CRIMES: A trial court may not consider subsequent, uncharged misconduct (here, that he "wished to harm" a witness) when sentencing a defendant for the primary offense. "While the trial court made no comment indicating that it had considered appellant's subsequent misconduct in imposing sentence, the prosecutor's recommendation at the sentencing hearing relied heavily upon the evidence of appellant's post-arrest misconduct." Garcia v. State, 4D17-3751 (8/7/19)

https://www.4dca.org/content/download/534504/5936615/file/173751_1708_0 8072019_08550408_i.pdf

SEARCH AND SEIZURE-WARRANT-VEHICLE: Court does not need to determine whether a driveway as part of the curtilage of a house because a vehicle is a "conveyance," and the warrant authorized the search of any conveyance on the property. Price v. State, 4D18-1293 (8/7/19)

https://www.4dca.org/content/download/534505/5936627/file/181293_1708_0 8072019_08565275_i.pdf

SENTENCING-CONSIDERATIONS: In sentencing the Defendant for possession of marijuana, the Court improperly considered his arrest on a new misdemeanor marijuana charge a week before sentencing. Price v. State, 4D18-1293 (8/7/19)

https://www.4dca.org/content/download/534505/5936627/file/181293_1708_0 8072019_08565275_i.pdf

SPECIFIC INTENT-PATIENT BROKERING: Patient brokering is not a specific intent crime. The term "knowingly and willingly" does not equate to specific intent. State v. Kigar, 4D19-0600 (8/7/19)

https://www.4dca.org/content/download/534509/5936675/file/190600_1704_0 8072019_09060286_i.pdf

ADVICE OF COUNSEL DEFENSE: The "advice of counsel" defense only applies to crimes of specific intent. State v. Kigar, 4D19-0600 (8/7/19)

https://www.4dca.org/content/download/534509/5936675/file/190600_1704_0 8072019_09060286_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to investigate and failing to inform him that he could have filed a motion to suppress the warrantless entry into his home. Pembleton v. State, 1D18-3289 (8/5/19)

https://www.1dca.org/content/download/534329/5934877/file/183289_1286_0 8052019_09404180_i.pdf

POST CONVICTION RELIEF: Defendant cannot challenge PRR sentence based on Lewars (PRR does not apply to people released from jail, not

prison) pursuant to R.3.850 outside the two year time limit. Lewars does not apply retroactively. Defendant is not barred from attempting to assert his claim under R.3.800 if its applicability is apparent from the face of the record. Wilson v. State, 2D17-3161 (8/2/19)

https://www.2dca.org/content/download/534243/5934096/file/173161_65_080 22019_08405448_i.pdf

RESISTING WITHOUT VIOLENCE-ENTRY INTO MOTEL ROOM: Police may not make a warrantless entry into it a hotel room to arrest the Defendant for domestic violence. It is unlawful for the police to make a warrantless entry into a place protected by the Fourth Amendment for the purpose of arresting a suspect unless an exception to the warrant requirement applies. Nieves v. State, 2D18-613

(8/2/19)

https://www.2dca.org/content/download/534244/5934108/file/180613_39_080 22019_08460555_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call three witnesses to impeach the State's key witness. Foster v. State, 2D18-2136 (8/2/19)

https://www.2dca.org/content/download/534245/5934120/file/182136_114_08 022019_08491835_i.pdf

DOUBLE JEOPARDY-UNIT OF PROSECUTION: Under the Grappin "a/any" test, only one conviction is possible for having one's girlfriend hand

out flyers to three potential jurors intended to influence them on the day of jury selection. "When the article 'a' is used. . .in the text of the statute,. . .each discrete act constitutes an allowable unit of prosecution. . .On the other hand,. . .the adjective 'any' indicates an ambiguity that may require application of the rule of lenity." Gammage v. State, 2D18-2954 (8/2/19)

https://www.2dca.org/content/download/534249/5934180/file/182954_39_080 22019_09012427_i.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to a hearing on claim that a second eye witness did not see the gun or hear the Defendant demand the Victim's jewelry. Court's conclusion that the new evidence would not have changed the outcome is not supported by attached records. Johnson v. State, 2D18-3173 (8/2/19)

https://www.2dca.org/content/download/534250/5934192/file/183173_39_080 22019_09035098_i.pdf

POST CONVICTION RELIEF: Counsel was ineffective for not objecting to the state pointing out the Defendant's wife's off-the-stand reaction to his testimony. Romero v. State, 5D18-3004 (8/2/19)

https://www.5dca.org/content/download/534204/5933759/file/183004_1259_0 8022019_09492583_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim the counsel is ineffective for failing to subpoena a witness who testified at the first trial (a hung jury). Chester v. State, 5D18-3930 (8/2/19)

https://www.5dca.org/content/download/534205/5933771/file/183930_1259_0 8022019_09513946_i.pdf

POST CONVICTION RELIEF: Rule 3.800(a) does not prohibit a defendant from filing successive motions, but the doctrine of collateral estoppel precludes a defendant from raising in a successive rule 3.800(a) motion an issue argued and determined in a prior motion. Tipsy Coachman doctrine applies to a Rule 3.800(a) motion that had been incorrectly denied as successive. White v. State, 19-1637 (8/2/19)

https://www.5dca.org/content/download/534208/5933807/file/191637_1257_0 8022019_09562050_i.pdf

10-20-LIFE-STATUTORY MAXIMUM: Although aggravated battery with a firearm is a second-degree felony, punishable by up to fifteen years in prison, when the jury makes a specific factual finding that the Defendant discharged a firearm resulting in great bodily harm, the Defendant must be sentenced to a 25 year minimum mandatory, but cannot be sentenced to 30 years in prison by reclassification of the felony. Aggravated battery with a firearm is not subject to reclassification to a first-degree felony because the use of a firearm is an essential element of the crime. Wynn v. State, 5D19-2018 (8/2/19)

https://www.5dca.org/content/download/534210/5933831/file/192018_1260_0 8022019_10003658_i.pdf

APPEAL-MOTION FOR NEW TRIAL: Where it is unclear whether the trial court used the correct standard to deny a motion for new trial, the potential

that the trial court erred does not reach the level of fundamental error. Williams v. State, 1D17-4593 (8/1/19)

https://www.1dca.org/content/download/534127/5932799/file/174593_1284_0 8012019_08591939_i.pdf

STATEMENT OF DEFENDANT: Defendant who is represented by counsel may be interrogated by police if he reaches out to them without informing his attorney and affirmatively waives his attorney's presence. Eversole v. State, 1D18-3659 (8/1/19)

https://www.1dca.org/content/download/534130/5932835/file/183659_1284_0 8012019_09055164_i.pdf

PRISON RELEASEE REOFFENDER: Prison Releasee Reoffender statute does not violate Alleyne or Apprendi. Hill v. State, 1D19-1077 (8/1/19)

https://www.1dca.org/content/download/534132/5932859/file/191077_1284_0 8012019_09072584_i.pdf

JULY 2019

SEARCH AND SEIZURE: An unauthorized driver of a rental car has standing to challenge a search of that rental car. Jeansimon v. State, 2D17-4020 (7/31/19)

https://www.2dca.org/content/download/534100/5932456/file/174020_39073 12019_09051453_i.pdf

SHIFTING BURDEN OF PROOF: State improperly shifts burden of proof by asking Defendant why the people who he claimed owned the drugs would not "come in here and claim" them. Jeansimon v. State, 2D17-4020 (7/31/19)

https://www.2dca.org/content/download/534100/5932456/file/174020_39073 12019_09051453_i.pdf

ARGUMENT: Prosecutor may not ask why an officer would make up a lie and sacrifice his career by perjuring himself. Jeansimon v. State, 2D17-4020 (7/31/19)

https://www.2dca.org/content/download/534100/5932456/file/174020_39073 12019_09051453_i.pdf

SEARCH AND SEIZURE-STANDING-HOTEL ROOM: Occupant of a hotel room has standing to contest search regardless whether he himself paid for the room. "The State offers no case demonstrating that standing hinges on who paid for the room." State v. M.B.W., 2D17-4149 (7/31/19)

https://www.2dca.org/content/download/534101/5932468/file/174149_65073 12019_09065778_i.pdf

SEARCH AND SEIZURE-EXIGENT CIRCUMSTANCES: After lawfully arresting Defendant and removing him from the hotel room, officers lack exigent circumstances to re-enter the room to pursue another occupant who fled to a back room. "The exigent circumstances exception is not a shortcut by which police may circumvent the requirement of a search warrant." State v. M.B.W., 2D17-4149 (7/31/19)

https://www.2dca.org/content/download/534101/5932468/file/174149_65_073 12019_09065778_i.pdf

SEARCH AND SEIZURE-PROTECTIVE SWEEP: After lawfully arresting Defendant and removing him from the hotel room, officers may not perform a protective sweep after another occupant fled to a back room. State v. M.B.W., 2D17-4149 (7/31/19)

https://www.2dca.org/content/download/534101/5932468/file/174149_65_073 12019_09065778_i.pdf

DISCOVERY VIOLATION: State commits discovery violation when it discloses a witness but fails to disclose that the witness's testimony has changed or is substantially different than what the police report indicates. The State's discovery violation is not cured by the Defendant's failure to depose the witness. State commits a discovery violation when it provides the defendant with a witness's "statement" and thereafter fails to disclose that the witness intends to change that statement to such an extent that the witness is transformed from a witness who "didn't see anything" into an eyewitness who observed the material aspects of the crime charged. J.S. v. State, 2D18-1221 (7/31/19)

https://www.2dca.org/content/download/534102/5932480/file/181221_39_073 12019_09093401_i.pdf

DOUBLE JEOPARDY: An information is not fundamentally defective where it alleged two counts of violating the same statute, using identical language and relying upon the same two-year range of dates for the commission of both offenses. "Had [Defendant] believed that the time frames (or other allegations). . .were so vague and indefinite as to mislead or hamper him. . . or expose him to the possibility of multiple convictions and punishments for violating the same statute by a single act, he should have filed a motion to dismiss or for a statement of particulars." Pena-Vazquez v. State, 3D16-2358 (7/31/19)

https://www.3dca.flcourts.org/content/download/534069/5932072/file/162358_ 809_07312019_09540808_i.pdf

EVIDENCE-REDACTION OF INTERROGATION: False exculpatory statements of Defendant (I never knew the victim) are admissible to show consciousness of guilt. Redaction of video to delete references to other victims does not unfairly prejudice to Defendant who wishes to assert that he was mistaken as to which victim when making inculpatory statements. State v. Martin, 3D18-945 (7/31/19)

https://www.3dca.flcourts.org/content/download/534071/5932096/file/180945_ 812_07312019_09562916_i.pdf

EXPERT-DAUBERT: Under Daubert, judge must determine whether purported expert testimony is scientifically valid and properly applied. Court

must consider (1) whether the theory can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error of a particular scientific technique, as well as the existence of standards controlling the technique's operation; and (4) general acceptance in the scientific community. Trooper's testimony that the vehicle was dipping down due to braking fails Daubert. Kemp v. State, 4D15-3472 (7/31/19)

https://www.4dca.org/content/download/534112/5932612/file/153472_1709_0 7312019_09083631_i.pdf

VETERAN'S COURT: Is a defendant who satisfies the criteria for eligibility into veterans' court entitled to admission, or does a judge have discretion to deny admission of a case-by-case basis? Question certified. Simeone v. State, 4D18-3470 (7/31/19)

https://www.4dca.org/content/download/534121/5932720/file/183470_1711_0 7312019_09323203_i.pdf

SENTENCING: Argument of Defendant (who stole a newborn infant from a Jacksonville hospital and fled to South Carolina where she raised the child) that an eighteen year old sentence is unreasonable and/or cruel and unusual punishment lacks merit. Williams v. State, 1D18-2898 (7/29/19)

https://www.1dca.org/content/download/533996/5931237/file/182898_1284_0 7292019_08270880_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that State committed a Giglio violation by presenting false testimony. Although inconsistencies between witnesses is not a Giglio violation, in the absence of attachments to the record rebutting the Defendant's claims, a hearing is required. Helvey v. State, 5D18-1487 (7/26/19)

https://www.5dca.org/content/download/533934/5930453/file/181487_1259_0 7262019_08483241_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to object to a jury instruction on recently stolen property, and for misadvising him that, were he to testify, the jury would learn the nature of the Defendant's prior convictions. Helvey v. State, 5D18-1487 (7/26/19)

https://www.5dca.org/content/download/533934/5930453/file/181487_1259_0 7262019_08483241_i.pdf

SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Detention is illegal when officer orders group of youths to stop based on a (correct) hunch that they had violated court-imposed curfew. This was not a consensual encounter. Officer cannot detain a youth who said he didn't have to stop when the officer originally told him, without legal justification, to do so. N.J. v. State, 5D181949 (7/26/19)

https://www.5dca.org/content/download/533935/5930465/file/181949_1260_0 7262019_08503797_i.pdf

DWLS: One who has never had a driver's license cannot be found guilty of DWLS. Geiger v. State, 5D18-2146 (7/26/19)

https://www.5dca.org/content/download/533936/5930477/file/182146_1260_0 7262019_08531186_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failure to call a computer expert to testify about how malware could lead to inadvertent downloading of child pornography. Motion does not need to name a specific expert who should have been called. Davidson v. State, 5D18-2655 (7/26/19)

https://www.5dca.org/content/download/533940/5930531/file/182655_1259_0 7262019_09030140_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to reject the plea offer of 30 years in prison. Hickson v. State, 5D19-888 (7/26/19)

https://www.5dca.org/content/download/533943/5930567/file/190888_1260_0 7262019_09190552_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to advise them of the possibility of a youthful offender sentence. Redden v. State, 5D19-1369 (7/26/19)

https://www.5dca.org/content/download/533944/5930579/file/191369_1260_0 7262019_09212575_i.pdf

CIRCUMSTANTIAL EVIDENCE: Victim's car is broken in to while next to the Defendant's car when the victim dropped her dogs off at the kennel. The stolen property is found in the Defendant's room and the Victim's credit card in his car. JOA required. "Although the State's evidence was sufficient to establish that a vehicle rented to Joseph was involved in the burglary, and that his fingerprints were found on papers located in the vehicle and in Wilkerson's spare bedroom, the uncontroverted evidence was that Joseph was not the only individual who used the car during the rental term or used the spare bedroom." Joseph v. State, 5D17-3907 (7/25/19)

https://www.5dca.org/content/download/533925/5930352/file/173907_1260_0 7252019_03565766_i.pdf

POSSESSION OF RECENTLY STOLEN PROPERTY: State is not entitled to the inference of guilt arising from the Defendant's possession of recently stolen property where the possession is not exclusive. Joseph v. State, 5D17-3907 (7/25/19)

https://www.5dca.org/content/download/533925/5930352/file/173907_1260_0 7252019_03565766_i.pdf

COSTS: Court erred in imposing FDLE Operating Trust Fund cost without orally pronouncing it. Montanez v. State, 5D18-193 (7/25/19)

https://www.5dca.org/content/download/533880/5929872/file/180193_1259_0 7252019_08580982_i.pdf

MINOR-SENTENCE REVIEW: Juvenile Defendant who was originally sentenced in 1988 was entitled to a sentence review in 2019 notwithstanding that he had been resentenced in 2017, where it is not clear that in 2017 the Court actually conducted a proper sentence review. Weiand v. State, 5D19500 (7/25/19)

https://www.5dca.org/content/download/533918/5930267/file/190500_1260_0 7252019_02143067_i.pdf

SEX OFFENDERS-PROBATION CONDITIONS: Condition of probation or supervised release barring Defendant from accessing the internet is lawful. Packingham, recognizing a constitutional right to internet access for sex offenders, only applies to sex offenders not on probation. Alford v. State, 2D174982 (7/24/19)

CIRCUMSTANTIAL EVIDENCE: Evidence is insufficient to establish that the Defendant burglarized and stole property from a school where a cigarette butt with the Defendant's DNA was left at the scene and the Defendant and associate were found a few weeks later in a pickup truck owned by the Defendant with some of the stolen property. An accused's mere presence at the scene does not eliminate a reasonable hypothesis that someone other than the accused committed the crime. Joint possession of the stolen property is also legally insufficient to establish guilt. "Direct evidence is evidence which requires only the inference that what the witness said is true to prove a material fact. . .Circumstantial evidence is evidence which involves an additional inference to prove the material fact." Dobbins v. State, 2D18-401 (7/24/19)

CIRCUMSTANTIAL EVIDENCE DEFINED: "Direct evidence is evidence which requires only the inference that what the witness said is true to prove a material fact; e.g., 'I saw A shoot B' is direct evidence that A shot B. Circumstantial evidence is evidence which involves an additional inference to prove the material fact; e.g., 'I saw A flee the scene', is circumstantial evidence of A's guilt and direct evidence of flight." Dobbins v. State, 2D18-401 (7/24/19)

LIFE FELONY: Ninety-years concurrent sentences for three life sentences is unlawful. Unless sentenced to life, the maximum for a life felony is forty years. Upon re-sentencing, Defendant may be sentenced to consecutive sentences up to ninety years. Thornton v. State, 2D18-1524 (7/24/19)

https://www.2dca.org/content/download/533828/5929217/file/181524_39_072 42019_08310127_i.pdf

JURORS-PEREMPTORY CHALLENGE: White men fall under the protected class of gender. Court erred by not entertaining Defendant's objection to the State's peremptory challenge of a white man. Beal v. State, 3D17-1469 (7/24/19)

https://www.3dca.flcourts.org/content/download/533809/5928983/file/171469_ 812_07242019_09535965_i.pdf

POST CONVICTION RELIEF: Court may not summarily deny motion for post conviction relief on the basis of attached portions of the record without actually attaching the portions of the record. Bradshaw v. State, 3D18-1204 (7/24/19)

https://www.3dca.flcourts.org/content/download/533814/5929043/file/181204_ 812_07242019_10020529_i.pdf

PLEA-WITHDRAWAL: The pressure of having to choose between entering a plea or going to trial does not render a plea involuntary. Withdrawal of the plea of nolo contendere is not warranted. Milton v. State, 3D19-370 (7/24/19)

https://www.3dca.flcourts.org/content/download/533819/5929103/file/190370_ 809_07242019_10121648_i.pdf

POST CONVICTION RELIEF: Defendant cannot seek post conviction relief by petition for habeas corpus in appellate court, particularly, where as here, the Defendant seeks to evade the trial court's prohibition on Defendant's frivolous filings. Owens v. State, 3D19-1298 (7/24/19)

https://www.3dca.flcourts.org/content/download/533823/5929151/file/191298_ 804_07242019_10202708_i.pdf

HEARSAY-STATEMENT AGAINST PENAL INTEREST: Co-Defendant's recorded statement to an informant, later recanted, detailing how he murdered the Defendant's girlfriend at the Defendant's request is admissible under the Statement Against Penal Interest exception to the hearsay rule, but only to the

extent the statement is self-inculpating. That part of the statement that inculpates the defendant is inadmissible unless the statements are inextricably intertwined. "That part of a statement that inculpates another

must be redacted. The reasons are simple: inculpating another is not a statement against the declarant's penal interest, and . . .such statements rarely have 'particularized guarantees of trustworthiness.'" Adams v. State, 4D17-966 (7/24/19)

https://www.4dca.org/content/download/533802/5928893/file/170966_1709_0 7242019_09025518_i.pdf

CONFRONTATION CLAUSE: Co-Defendant's recorded statement to an informant, later recanted, detailing how he murdered the Defendant's girlfriend at the Defendant's request at the Defendant's request is not barred by the Confrontation Clause because not testimonial. Adams v. State, 4D17-966 (7/24/19)

https://www.4dca.org/content/download/533802/5928893/file/170966_1709_0 7242019_09025518_i.pdf

EVIDENCE: Threatening to commit a sexual act on the co-defendant's girlfriend is not, as asserted by Defendant, "evidence only of an innocent person trying to take reasonable steps to correct an injustice." Such evidence, along with the Defendant asking co-defendant to write a letter to the defendant's attorney admitting that neither of them were involved in the crime, to say that he was just trying to impress the informant, and was trying to be a character in the defendant's book, and further telling the co-defendant that his mother did not raise him to be a rat, is evidence of consciousness of guilt. Adams v. State, 4D17-966 (7/24/19)

https://www.4dca.org/content/download/533802/5928893/file/170966_1709_0 7242019_09025518_i.pdf

EVIDENCE: Recorded phone conversation between the Defendant and the Victim's Father, in which the Defendant denies being involved in the murder, and in which the Father calls the Defendant a liar five times, a punk twice, and a junkie once, and opines that the Defendant had shot his daughter, is inadmissible and warrants a new trial. Adams v. State, 4D17-966 (7/24/19)

https://www.4dca.org/content/download/533802/5928893/file/170966_1709_0 7242019_09025518_i.pdf

CONFRONTATION CLAUSE/HEARSAY (CONCURRING OPINION): "To decide admissibility under a hearsay exception, reference should be made to the language of the statutory exception and not to the more general, case-bycase approach that would admit testimony based upon 'particularized guarantees of trustworthiness.' Such an approach would allow hearsay exceptions to swallow the rule against hearsay." Adams v. State, 4D17-966 (7/24/19)

https://www.4dca.org/content/download/533802/5928893/file/170966_1709_0 7242019_09025518_i.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Officer who conducts a canine search based on smell of marijuana may require passenger to leave in the vehicle a pouch he is wearing which turns out to contain narcotics. State v. Tigner, 4D18-3106 (7/24/19)

https://www.4dca.org/content/download/533804/5928917/file/183106_1709_0 7242019_09120066_i.pdf

STAND YOUR GROUND: Defendant who was waving a gun around committed the offenses of opening carrying a firearm and improper display of a firearm, and therefore was not immune from prosecution under the Stand Your Ground law when he shot the gun. The fact that the Defendant was not charged with the above offenses is irrelevant. State v. Kirkland, 5D18-3795 (7/24/19)

https://www.5dca.org/content/download/533876/5929824/file/183795_1260_0 7242019_04153988_i.pdf

APPEALS-DISPOSITIVE ISSUE: When State refuses to stipulate, the Court must rule on whether an issue is dispositive. Cien Fuegos v. State, 5D18-3637 (7/23/19)

https://www.5dca.org/content/download/533788/5928713/file/183637_1252_0 7232019_02164897_i.pdf

DOUBLE JEOPARDY: Defendant can be prosecuted in state court for lewd and lascivious molestation despite having been convicted for the same acts in federal court. Under the "dual-sovereignty" doctrine, an act that constitutes a crime under both federal and state law can be separately prosecuted by both sovereigns without violating the prohibition against double jeopardy because the offenses are separate. Kasper v. State, 5D19-179 (7/23/19)

https://www.5dca.org/content/download/533790/5928737/file/190179_1257_0 7232019_02213235_i.pdf

SENTENCING: Defendant cannot be sentenced on four second degree felonies to concurrent sentences of twelve years in prison followed by ten years of probation (22 years of combined prison and probation). None of the counts can exceed a combined prison/probation maximum of 15 years. Jackson v. State, 5D19-305 (7/23/19)

https://www.5dca.org/content/download/533791/5928749/file/190305_1260_0 7232019_02231872_i.pdf

JURY INSTRUCTION-SELF-DEFENSE: Jury instruction providing that the defendant had no duty to retreat if he was not otherwise engaged in criminal activity–the standard instruction at the time–is not fundamental error. Absent objection, error, if any, is not preserved. Moorer v. State, 1D-1224 (7/23/19)

https://www.1dca.org/content/download/533718/5927861/file/181224_1284_0 7232019_08421362_i.pdf

PRO SE MOTION: Defendant's pro se motion to withdraw plea while represented by counsel, alleging that he did not qualify as a Habitual Violent Felony Offender, is a nullity in the absence of an adversarial relationship with counsel. Howard v. State, 1D 18-3824 (7/23/19)

https://www.1dca.org/content/download/533723/5927921/file/183824_1284_0 7232019_08481284_i.pdf(7/23/19)

POST CONVICTION RELIEF: Defendant's motion for post conviction relief is properly denied when everything he says is refuted by the record. Austin v. State, 1D18-3961 (7/23/19)

https://www.1dca.org/content/download/533785/5928671/file/183961_1284_0 7232019_02305154_i.pdf

VOP-HEARSAY: Where the state seeks to revoke probation based on the commission of a new offense, it is required to present direct, non-hearsay evidence linking the defendant to the commission of the offense. Hallman v. State, 1D18-4070 (7/23/19)

https://www.1dca.org/content/download/533725/5927945/file/184070_1287_0 7232019_08515402_i.pdf

LESSER INCLUDED: Juvenile charged with aggravated battery cannot be convicted of the lesser included offense of category two lesser-included offense of improper exhibition of a dangerous weapon because the petition did not include the element of exhibiting the weapon in a "rude, careless, angry, or threatening manner." R.C.O. v. State, 1D18-4515 (7/23/19)

https://www.1dca.org/content/download/533729/5927993/file/184515_1287_0 7232019_08565481_i.pdf

DISCLOSURE-THERAPIST NOTES: Defendant charged sex offense against his daughter and stepdaughter is not entitiled to the children's psychotherapist's notes. Absent a clear and unequivocal waiver of the psychotherapist-patient privilege, the compelled disclosure of the confidential therapy notes for the children is an unlawful fishing expedition. Hicks, LCSW v. State, 1D18-4527 (7/23/19)

https://www.1dca.org/content/download/533730/5928005/file/184527_1282_0 7232019_08575644_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to take a plea agreement without informing him of the weaknesses in the State's case. Johnson v. State, 1D190507 (7/23/19)

https://www.1dca.org/content/download/533734/5928053/file/190507_1286_0 7232019_09013082_i.pdf

NEWLY DISCOVERED EVIDENCE: Where police reports showed there was a recording of a jailhouse informant's interaction with the defendant, that recording is not newly discovered evidence. Defendant is time barred from seeking post-conviction relief more than two years after his conviction became final on the basis of that recording. Rupp v. State, 1D19-0574 (7/23/19)

https://www.1dca.org/content/download/533735/5928065/file/190574_1284_0 7232019_09042974_i.pdf

CORPUS DELICTI: Testimony that the Defendant was a hunter, a good shooter, coupled with the fact that he had recently killed dead squirrels in his refrigerator, is sufficient circumstantial evidence that he possessed a gun warranting admission of his confession of ownership of the gun over his corpus delicti objection. Porter v. State, 1D17-3577 (7/22/19)

https://www.1dca.org/content/download/533690/5926499/file/173577_1284_0 7222019_11443186_i.pdf

COMPETENCY: Court ordered to hold competency hearing after ignoring previous order from the appellate court to hold the hearing. "When this Court issues a mandate with specific instructions, the lower tribunal must follow those instructions, and has no discretion or authority to do otherwise." Alcazar v. State, 1D17-4462 (7/22/19)

https://www.1dca.org/content/download/533691/5926511/file/174462_1287_0 7222019_11464096_i.pdf

SENTENCING-CONSIDERATIONS: At sentencing, Court did not err in considering jail calls which the State used to suggest that the Defendant had gotten other charges dropped by discouraging witnesses from testifying. Paul v. State, 1D17-5162 (7/22/19)

https://www.1dca.org/content/download/533693/5926535/file/175162_1284_0 7222019_11482945_i.pdf

CRUEL OR UNUSUAL PUNISHMENT: Court is not required to consider the Defendant's mental age, rather than his chronological age. Paul v. State, 1D17-5162 (7/22/19)

https://www.1dca.org/content/download/533693/5926535/file/175162_1284_0 7222019_11482945_i.pdf

CONSECUTIVE SENTENCES-MANDATORY MINIMUM: For a Defendant who is sentenced to 25 years with a 10 year minimum mandatory for a qualifying firearm defense (which by statute must be run consecutively to any nonqualifying offense) and to 15 years for a violation of probation, only the 10 year minimum mandatory must be imposed consecutively; the rest of the sentences may be imposed concurrently. "[T]he plain language of subsection (2)(d) speaks to 'any term of imprisonment provided for in this subsection.' The only terms of imprisonment provided for in subsection (2) are minimum mandatory terms." "[N]othing in section 775.087(2)(d) expressly prohibits the non-minimum mandatory component of a sentence to run concurrently to a non-qualifying sentence." Mattox v. State, 1D18-663 (7/22/19)

https://www.1dca.org/content/download/533694/5926547/file/180663_1286_0 7222019_11493441_i.pdf

FLEEING AND ELUDING (DISSENT): For conviction for fleeing and eluding, what constitutes a marked patrol vehicle needs to be precisely explained and established. "No evidence establishes what the 'police logo' looked like, what it said, its size, where it was placed on the vehicle, whether it was prominently displayed, and whether it was a 'jurisdictional marking' or an 'agency insignia. Officer's testimony that the police vehicle had 'all the decals, lights and everything,' it is not enough. "And to say 'everything' is to say nothing.. . .[G]eneralized statement without details is 'like the proverbial Old Mother Hubbard' because it 'covers everything but touches nothing.'" Dupree v. State, 1D18-1084 (7/22/19)

https://www.1dca.org/content/download/533697/5926583/file/181084_1284_0 7222019_11525579_i.pdf

FACTUAL BASIS: The fact that the Defendant drowned a mother and her toddler in a community swimming pool is a factual basis for second degree

murder. The main purpose in ascertaining a factual basis for a plea is to prevent a defendant from mistakenly pleading to the wrong offense. Gomez v. State, 1D18-1853 (7/22/19)

https://www.1dca.org/content/download/533700/5926619/file/181853_1284_0 7222019_11583150_i.pdf

VOP: A general conclusion that the defendant was "non-compliant" is insufficient to support a finding of violation of probation. Davis v. State, 1D184786 (7/22/19)

https://www.1dca.org/content/download/533702/5926643/file/184786_1287_0 7222019_12012188_i.pdf

VOP: Defendant did not willfully violate probation by failing to update his address at the DHSMV where his failure to do so was because he did not have the required $31. Davis v. State, 1D18-4786 (7/22/19)

https://www.1dca.org/content/download/533702/5926643/file/184786_1287_0 7222019_12012188_i.pdf

MINOR-LIFE SENTENCE-POSSIBILITY OF PAROLE: A juvenile offender's life sentence with the possibility of parole after 25 years does not violate the Eighth Amendment because the juvenile has a meaningful opportunity to receive parole. Defendant is not entitled to resentencing. Florida v. Jackson, 1D18-5224 (7/22/19)

https://www.1dca.org/content/download/533704/5926667/file/185224_1279_0 7222019_12150693_i.pdf

MINOR-LIFE SENTENCE-POSSIBILITY OF PAROLE: A juvenile offender's life sentence with the possibility of parole after 25 years does not violate the Eighth Amendment because the juvenile has a meaningful opportunity to receive parole. Defendant is not entitled to resentencing. State v. Cogdell, 1D18-5246 (7/22/19)

https://www.1dca.org/content/download/533705/5926679/file/185246_1279_0 7222019_12162229_i.pdf

MINOR-LIFE SENTENCE-POSSIBILITY OF PAROLE: A juvenile offender's life sentence with the possibility of parole after 25 years does not violate the Eighth Amendment because the juvenile has a meaningful opportunity to receive parole. Defendant is not entitled to resentencing. State v. Grayer, 1D18-5247 (7/22/19)

https://www.1dca.org/content/download/533706/5926691/file/185247_1279_0 7222019_12171605_i.pdf

MINOR-LIFE SENTENCE-POSSIBILITY OF PAROLE: A juvenile offender's life sentence with the possibility of parole after 25 years does not violate the Eighth Amendment because the juvenile has a meaningful opportunity to receive parole. Defendant is not entitled to resentencing. State v. Lowe, 1D19011 1 (7/22/19) https://www.1dca.org/content/download/533707/5926703/file/190111_1279_0 7222019_12181964_i.pdf

MINOR-LIFE SENTENCE-POSSIBILITY OF PAROLE: A juvenile offender's life sentence with the possibility of parole after 25 years does not violate the Eighth Amendment because the juvenile has a meaningful opportunity to receive parole. Defendant is not entitled to resentencing. State v. Smith, 1D19124 (7/22/19)

https://www.1dca.org/content/download/533709/5926727/file/190124_1279_0 7222019_12194702_i.pdf

MINOR-LIFE SENTENCE-HOMICIDE: Life sentences with the possibility of parole are not unconstitutional under Miller and Graham. State v. Ratliff, 2D165322 (7/19/19)

https://www.2dca.org/content/download/532394/5911068/file/165322_39071 92019_08281807_i.pdf

POST CONVICTION RELIEF-MANDAMUS: To support claim of newly discovered evidence, Defendant may use petition for writ of mandamus to compel the Public Defender's Office to provide him with a copy of report questioning the validity of tests on his hair. A defendant, when represented by a public defender, is entitled to free copies of his or her own records, including copies of all trial and hearing transcripts, motions, State discovery presented to defense counsel, and any other documents that were otherwise prepared at public expense, but not free copies of documents in the possession of the public defender if the documents were not obtained at public expense. Petition for writ of mandamus does not require an affirmative acknowledgment of an obligation to pay for copying costs. Anthony v. State, 2D18-1987 (7/19/19)

https://www.2dca.org/content/download/532397/5911110/file/181987_39_071 92019_08300306_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to State's mischarecterization of evidence in closing argument. Raysor v. State, 2D18-2610 (7/19/19) https://www.2dca.org/content/download/532400/5911146/file/182610_114_07 192019_08334750_i.pdf

COSTS: Court may not impose $100 County Drug Abuse Trust Fund fee without making a finding of ability to pay. Reese v. State, 5D18-1102 (7/19/19)

https://www.5dca.org/content/download/532387/5910971/file/181102_1259_0 7192019_08192261_i.pdf

VOP: Defendant does not violate probation when he is forced to leave his approved residence with little notice through no fault of his own. Davis v. State, 2D17-4460 (7/17/19)

https://www.2dca.org/content/download/532229/5909115/file/174460_39_071 72019_08493989_i.pdf

ILLEGAL SENTENCE: Condition of sentence that for each $200,000 paid in restitution the prison sentence will be reduced by one year, in the absence of a sentencing transcript, cannot be deemed an illegal sentence. Westervelt v. State, 2D17-4639 (7/17/19)

https://www.2dca.org/content/download/532230/5909127/file/174639_65_071 72019_08560588_i.pdf

VOP: Trial court must enter a written order listing the grounds for the revocation of probation. Henly v. State, 3D17-1418 (7/17/19)

https://www.3dca.flcourts.org/content/download/532204/5908803/file/171418_ 812_07172019_10090006_i.pdf

JUDGMENT OF ACQUITTAL: Defendant played with the hem of an underage girl's skirt, tried to kiss her, and otherwise acted creepily. Counsel's failure to move for judgment of acquittal on the charge of lewd and lascivious conduct is not fundamental error, and thus cannot be raised on direct appeal. Defendant may raise the issue of ineffective assistance of counsel in a 3.850 motion. Aquino v. State, 3D17-1666 (7/17/19)

https://www.3dca.flcourts.org/content/download/532205/5908815/file/171666_ 809_07172019_10100759_i.pdf

DEALING IN STOLEN PROPERTY: Child is properly convicted of dealing in stolen property for selling to "fat tire" bicycles which had been stolen several days earlier where Child's explanations were not deemed believable. A.F. v. State, 3D18-1362 (7/17/19)

https://www.3dca.flcourts.org/content/download/532209/5908863/file/181362_ 809_07172019_10133067_i.pdf

JUDGE-DISQUALIFICATION: The fact that a judge has ruled adversely to the party in the past does not constitute a legally sufficient ground for a motion to disqualify. Pounds v. State, 3D19-1165 (7/17/19)

https://www.3dca.flcourts.org/content/download/532223/5909031/file/191165_ 806_07172019_10173173_i.pdf

UNANIMOUS VERDICT: Information which alleges attempted murder by the alternative means of ramming his truck into the wife's SUV and thereafter stabbing her with a knife does not unlawfully invite a nonunanimous verdict based on 2 separate theories where they were both part of the same criminal episode. Cherfrere v. State, 4D13-4071 (7/17/19)

https://www.4dca.org/content/download/532242/5909277/file/134071_1257_0 7172019_08554857_i.pdf

HEARSAY: Officer's testimony that a confidential informant told him that a sixfoot-tall, heavy-set black male known as Angel, who drove a two-door red Ford F-150 pickup truck, was interested in purchasing large quantities of prescription pills is inadmissible hearsay. "The State's contention that this testimony was not hearsay is simply wrong. Even if the informant's statements were not offered for their truth, they were irrelevant, because the police officer's reason for investigating appellant was immaterial." Conyers v. State, 4D17-3790 (7/17/19)

https://www.4dca.org/content/download/532243/5909289/file/173790_1709_0 7172019_08581214_i.pdf

10/20/LIFE: Defendant is not subject to 10-20-Life based on causing serious bodily injury where both he and his brother fired multiple shots at the Victim with only 1 of the bullets striking him. Counsel for the Defendant was ineffective on the face of the record for failing to move for a Judgment of Acquittal. Squire v. State, 4D18-290 (7/17/19)

https://www.4dca.org/content/download/532244/5909301/file/180290_1708_0 7172019_08595433_i.pdf

PROBATION-CONDITIONS: Written order of probation requiring that Defendant pay costs in equal monthly payments is unlawful when not orally pronounced nor found in any applicable statute or rule. Cordero-Callahan v. State, 4D18-2285 (7/17/19)

https://www.4dca.org/content/download/532247/5909337/file/182285_1709_0 7172019_09040622_i.pdf

PROHIBITION ON PRO SE FILINGS: Court improperly barred the Defendant from making any further pro se motions while denying his Rule 3.800 motion to correct an illegal sentence without giving him an opportunity to respond. Court may not impose the sanction of barring pro se filings without allowing the defendant to respond before considering sanctions. Carrasco v. State, 4D191025 (7/17/19)

https://www.4dca.org/content/download/532249/5909361/file/191025_1257_0 7172019_09083175_i.pdf

INCOMPETENT DEFENDANT-PRETRIAL DETENTION: Mentally incompetent homeless defendant who failed to comply with conditions of

release cannot be held in the county jail unless the criteria for pretrial detention is met and appropriate treatment for mental illness is available. "Every effort should be made to avoid an incompetent defendant languishing in jail without adequate treatment." "[T]reatment in a custodial facility should only be ordered as a last resort." Marino v. State, 4D19-1283 (7/17/19)

https://www.4dca.org/content/download/532250/5909373/file/191283_1704_0 7172019_09105728_i.pdf

SENTENCING-PREDETERMINATION: Defendant is entitled to a resentencing before a different judge or the original sentencing judge had stated before trial that he intended to sentence the defendant consecutively to his VOP case. Gunn v. State, 1D17-5062 (7/16/19)

https://www.1dca.org/content/download/532149/5908332/file/175062_1286_0 7162019_09544447_i.pdf

POST CONVICTION RELIEF: Defendant may not seek post-conviction relief by a habeas corpus petition where the claim would be otherwise time-barred by Rule 3.850. Green v. State, 1D18-1281 (7/16/19)

https://www.1dca.org/content/download/532151/5908356/file/181281_1284_0 7162019_09563878_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not seeking suppression of evidence and the State committed a Brady violation. Smith III v. State, 1D18-3907 (7/16/19)

https://www.1dca.org/content/download/532154/5908392/file/183907_1287_0 7162019_10030841_i.pdf

DISQUALIFICATION-JURISDICTION: Judge who had previously disqualified himself may not deny a motion for DNA testing. Ratley v. State, 1D18-4184 (7/16/19)

https://www.1dca.org/content/download/532155/5908404/file/184184_1287_0 7162019_10041556_i.pdf

STAND YOUR GROUND-RETROACTIVITY: Defendant is entitled to a new Stand Your Ground hearing when the burden of proof was altered while his appeal was pending. Stand Your Ground amendment applies retroactively to Defendant's whose convictions had not been made final. Conflict certified. Washington v. State, 17-1978 (7/15/19)

https://www.1dca.org/content/download/532095/5907744/file/171978_1287_0 7152019_09575958_i.pdf

TRESPASSING-POSTING-JOA: A photograph of a "no trespassing" sign on the ground next to the portable restroom is insufficient to show adequate posting to sustain trespass by Defendant who bogarted the construction site port-a-potty. JOA required. Borrico v. State, 5D17-4114 (7/12/19)

https://www.5dca.org/content/download/531690/5900975/file/174114_1259_0 7122019_08230763_i.pdf

RESENTENCING-ABSENCE OF DEFENDANT: Upon resentencing after appeal, Defendant has the right to present testimony and evidence. Court erred in refusing to allow the Defendant to present evidence because it had already conducted "an extensive sentencing hearing where evidence was presented." Wilson v. State, 5D18-26 (7/12/19)

https://www.5dca.org/content/download/531691/5900987/file/180026_1260_0 7122019_08264460_i.pdf

RECKLESS DRIVING: Grossly excessive speed (accelerating to 85 mph at time of collision) in a residential neighborhood is sufficient to justify a conviction for reckless driving. Grossly excessive speed alone can constitute reckless conduct. Natal v. State, 4D17-1271 (7/10/19)

https://www.4dca.org/content/download/531540/5899328/file/171271_1257_0 7102019_08153198_i.pdf

SCORESHEET-LEGAL STATUS: Legal status point should not be assessed unless the probationer is on probation when he commits an offense which is before the court for sentencing. Scoresheet which assesses points for a community sanction violation and 12 points as a VFOSC constitutes improper double counting. Reed v. State, 4D17-3778 (7/10/19)

https://www.4dca.org/content/download/531542/5899352/file/173778_1708_0 7102019_08260384_i.pdf

MINOR-LIFE IMPRISONMENT-HOMICIDE-JUDICIAL REVIEW: Life imprisonment with a sentence review after 25 years for a 14-year-old who

beat a younger child to death is lawful. “Although the sentence review will involve consideration of different factors, given that the judge who handled the resentencing has already taken a position as to whether Appellant is ‘fit to reenter society,’ it would be appropriate that the sentence review be assigned to a different judge.” Bellay v. State, 4D17-3866 (7/10/19)

https://www.4dca.org/content/download/531543/5899364/file/173866_1257_0 7102019_08291912_i.pdf

MINOR-LIFE IMPRISONMENT-HOMICIDE-JUDICIAL REVIEW: Defendant who committed his offense as a minor before 1983 is not entitled to resentencing under the 1983 guidelines. Bellay v. State, 4D17-3866 (7/10/19)

https://www.4dca.org/content/download/531543/5899364/file/173866_1257_0 7102019_08291912_i.pdf

EVIDENCE-COLLATERAL CRIMES: In trafficking in oxycodone case, the prosecutor and three of the State’s witnesses improperly referred to the fact that Defendant’s house was under surveillance, that a search warrant related to

narcotics had been issued, and that Defendant was the target. Evidence was not inextricably intertwined. New trial is required. Dawson v. State, 4D18-1586 (7/10/19)

https://www.4dca.org/content/download/531545/5899388/file/181586_1709_0 7102019_08382397_i.pdf

POST CONVICTION RELIEF-APPEAL PENDING: If the trial court does not rule on a motion to correct a sentencing error while an appeal is pending within 60 days the motion shall be deemed denied. Once the sixty days has passed, an order purporting to resentence a defendant is entered without jurisdiction and is a nullity. Staples v. State, 3D17-133 (7/10/19)

https://www.3dca.flcourts.org/content/download/531506/5898902/file/170133_ 809_07102019_09524287_i.pdf

YOUTHFUL OFFENDER: When a youthful offender commits a substantive violation of probation and the trial court elects to impose a sentence in excess of the six-year cap, the sentence necessarily loses his youthful offender status. Staples v. State, 3D17-133 (7/10/19)

https://www.3dca.flcourts.org/content/download/531506/5898902/file/170133_ 809_07102019_09524287_i.pdf

EVIDENCE-COLLATERAL CRIMES: Victim's statement that the Defendant, who was charged with severely beating and raping her, said that he had done this to 6 other women is relevant to show how the Defendant had coerced her. The statement was unobjected to and error, if any, was not fundamental. Hayes v. State, 3D18-409 (7/10/19)

https://www.3dca.flcourts.org/content/download/531512/5898980/file/180409_ 809_07102019_09584043_i.pdf

POST CONVICTION RELIEF-SENTENCE CORRECTION: Defendant's claim that he could not be found guilty of possessing a firearm because the

weapon was a pellet gun cannot be raised after his sentence has been served and after 2 years have elapsed. The sentence is not illegal. Lopez v. State, 3D18-464 (7/10/19)

https://www.3dca.flcourts.org/content/download/531513/5898992/file/180464_ 809_07102019_09592133_i.pdf

SEARCH AND SEIZURE-BLOOD DRAW: There is no requirement that the Defendant be at fault to justify a blood draw in a DUI manslaughter case. The blood draw statute does not require probable cause of driver fault. "By the plain statutory language, the motor vehicle, rather than 'the person driving or in actual physical control of the motor vehicle,' must have caused the death or serious bodily injury." State v. Quintanilla, 3D18-1483 (7/10/19)

https://www.3dca.flcourts.org/content/download/531515/5899016/file/181483_ 812_07102019_10001915_i.pdf

INFORMATION: A charging document that substantially but imperfectly charges a crime is not fundamentally deficient, and any objections must be made before or when he pleads at arraignment. Information which charges the Defendant with taking property when he in fact took money is not fatally defective. Wilson v. State, 3D19-456 (7/10/19)

https://www.3dca.flcourts.org/content/download/531522/5899100/file/190456_ 809_07102019_10062187_i.pdf

HABEAS CORPUS: Habeas Corpus action based on failure to properly calculate gain time must be filed where the Defendant is incarcerated, not the county of conviction. Guerra v. State, 3D19-760 (7/10/19)

https://www.3dca.flcourts.org/content/download/531526/5899148/file/190760_ 812_07102019_10073880_i.pdf

SENTENCING-MINOR-50-YEAR SENTENCE-REVIEW: Minor/Defendant convicted of murder is lawfully sentenced to serve 50 years in prison without review based on his prior felony record. Baker v. State, 2D17-2160 (7/10/19)

https://www.2dca.org/content/download/531557/5899526/file/172160_65_071 02019_08314133_i.pdf

RECENTLY STOLEN PROPERTY-JOA: When the State's case is based entirely upon the statutory inference, the trial court must direct a judgment of dismissal for the defendant where a reasonable explanation for possession of recently stolen property is totally unrefuted and there is no other evidence of guilt. Stolen property found in the Child's jointly occupied bedroom does not compel the conclusion that he was the thief. A.L. v. State, 2D17-4572 (7/10/19)

https://www.2dca.org/content/download/531560/5899562/file/174572_39_071 02019_08374695_i.pdf

SEARCH AND SEIZURE-DWLS: Police may stop Defendant on suspicion that he was DWLS based to on two previous DWLS arrests of the Defendant in the last year. Information is not stale. Valero v. State, 2D18-914 (7/10/19)

https://www.2dca.org/content/download/531561/5899574/file/180912_65_071 02019_08391097_i.pdf

POST CONVICTION RELIEF: Defendant can raise on 3.850 motion claim that counsel was ineffective. Hartley v. State, 1D17-5073 (7/10/19)

https://www.1dca.org/content/download/531530/5899202/file/175073_1286_0 7102019_09512361_i.pdf

POST CONVICTION RELIEF: Offhand comment making fun of counsel was in jest and not basis for disqualification. Discussion on why "judges should avoid attempts at humor while on the bench. . .[J]udicial humor is rarely as funny as the judge thinks it is, and judicial humor is never funny when it is at the expense of an attorney or a party." Cannon v. State, 1D18-1626 (7/9/19)

https://www.1dca.org/content/download/531427/5898052/file/181626_1284_0 7092019_11004672_i.pdf

QUOTATION: "It is an immutable and universal rule that judges are not as funny as they think they are." Cannon v. State, 1D18-1626 (7/9/19)

https://www.1dca.org/content/download/531427/5898052/file/181626_1284_0 7092019_11004672_i.pdf

CHILD HEARSAY: Court erred in excluding recanted child hearsay that nine year old's father had sexually abused her where DNA confirmed the original statement. Court's theories discounting the DNA evidence and that the child suffered from an Electra complex were speculative and unsupported by evidence. DNA evidence cannot be considered in determining the reliability of the statement. State v. Boatman, 1D18-2808 (7/9/19)

https://www.1dca.org/content/download/531435/5898151/file/182808_1282_0 7092019_11091295_i.pdf

ARGUMENT-OPINION AS TO GUILT: Argument that jury should "return a verdict that truth dictates and justice demands" is not an improper expression of the prosecutor's opinion. Fountain v. State, 1D18-2883 (7/9/19)

https://www.1dca.org/content/download/531438/5898187/file/182883_1284_0 7092019_11102501_i.pdf

DOUBLE JEOPARDY: After appeal, Double Jeopardy does not bar Defendant's sentences for armed robbery and attempted murder from 30 and 35 years consecutively to 65 years concurrently. The change did not modify the Court's original sentencing goal. Whitfield v. State, 1D18-3025 (7/9/19)

https://www.1dca.org/content/download/531439/5898199/file/183025_1284_0 7092019_11114881_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failure to file motion to suppress statement. Hicks v. State, 1D18-3097 (7/9/19)

www.1dca.org/content/download/531444/5898259/file/183097_1286_0709201 9_11172147_i.pdf

POST CONVICTION RELIEF: Defendant cannot challenge conviction based on erroneous instruction on the possible lesser included offense of manslaughter (which included an intent to kill provision) because his conviction became final before the instruction was determined to be a misstatement of law. McCrae v. State, 1D18-4115 (7/9/19)

https://www.1dca.org/content/download/531449/5898319/file/184115_1284_0 7092019_11363397_i.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA: Legalization of medical marijuana does not render unlawful a search of the vehicle based on the odor of marijuana. Johnson v. State, 1D18-4325 (7/9/19)

https://www.1dca.org/content/download/531451/5898343/file/184325_1284_0 7092019_11401115_i.pdf

MEDICAL MARIJUANA: Florida Department of Health cannot be compelled by injunction to authorize and register Medical Marijuana Treatment Centers to produce medical marijuana. Florida Department of Health v. Florigrown, L.L.C., 1D18-4471 (7/9/19)

https://www.1dca.org/content/download/531452/5898355/file/184471_1284_0 7102019_12032204_i.pdf

HABEAS CORPUS: Defendant may file habeas corpus petition raising different issues than those which were raised in a previous motion to correct illegal sentence. Court erred in ruling that the issues were the same. Barreiros v. State, 3D18-2584 (7/3/19)

https://www.3dca.flcourts.org/content/download/531218/5895574/file/182584_ 812_07032019_10155223_i.pdf

POST CONVICTION RELIEF: Defendant may use R. 3.800 to raise argument that he was improperly sentenced to stacked mandatory minimums. Depositions are not court records which can be considered to determine whether a sentence is illegal. Defendant's remedy lies with R. 3.850, requiring an evidentiary hearing and subject to a two-year time limit. Morgan v. State, 3D19-37 (7/3/19)

https://www.3dca.flcourts.org/content/download/531219/5895586/file/190037_ 809_07032019_10164757_i.pdf

POST CONVICTION RELIEF-HABEAS CORPUS: Defendant's request for habeas corpus alleging ineffective assistance of counsel must be filed within two years. Lucas v. State, 3D19-1183 (7/3/19)

https://www.3dca.flcourts.org/content/download/531223/5895634/file/191183_ 804_07032019_10205189_i.pdf

COUNSEL-WITHDRAWAL: Defendant's attorney, who believed that he had been paid with stolen money and who was under threat of suit by his client's former employer, the victim of the embezzlement at issue, must be allowed to withdraw mid-trial. Delacruz v. State, 4D17-2103 (7/3/19)

https://www.4dca.org/content/download/531182/5895118/file/172103_1709_0 7032019_08553021_i.pdf

POST CONVICTION RELIEF: Based on Weatherspoon, State must charge attempted felony murder in order to be entitled to a jury instruction on that crime as an alternative theory to simple attempted murder, but this change in the law does not apply retroactively. Issue certified. Johnson v. State, 4D18-3528 (7/3/19)

https://www.4dca.org/content/download/531200/5895346/file/183528_1257_0 7032019_09053973_i.pdf

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DRIVER LICENSE SUSPENSION: Court may not suspend driver's license for 5 years upon a conviction for a drug offense. Figuerdo v. State, 5D18-3120 (6/28/19)

https://www.5dca.org/content/download/528041/5866461/file/183120_1260_0 6282019_08554053_i.pdf

APPEAL-DOWNWARD DEPARTURE: State may not appeal a downward departure when it did not object at the time. A general objection is insufficient. Harvey v. State, No. 1D18-1606 (6/28/19)

https://www.1dca.org/content/download/528100/5867178/file/181606_1284_0 6282019_03364117_i.pdf

DOUBLE JEOPARDY: Convictions for Possession of meth and possession of the same meth with intent to sell within a thousand feet of a proscribed location does not violate double jeopardy. Cole v. State, 1D18-1689 (6/28/19)

https://www.1dca.org/content/download/528101/5867190/file/181689_1284_0 6282019_03382256_i.pdf

JURY INSTRUCTION-JUSTIFIABLE/EXCUSABLE HOMICIDE: Failure to instruct the jury on justifiable/excusable attempted homicide is not fundamental error where, as here, the Defendant affirmatively agreed to the instruction as read. Gomez v. State, 5D18-2903 (6/28/19)

https://www.5dca.org/content/download/528040/5866449/file/182903_1257_0 6282019_08531094_i.pdf

JUROR-CHALLENGE-CAUSE: Where counsel for the Defendant failed to object before the jury was sworn he cannot raise on appeal the State's strike of a juror for cause. Keith v. State, 1D18-1494 (6/28/19)

https://www.1dca.org/content/download/528099/5867166/file/181494_1284_0 6282019_03354197_i.pdf

JUVENILE-COMMITMENT: Juvenile may not be committed to a nonsecure residential placement unless the Court makes written findings so justifying. K.R. v. State, 5D18-3137 (6/28/19)

https://www.5dca.org/content/download/528042/5866473/file/183137_1259_0 6282019_09080976_i.pdf

RES JUDICATA: One cannot appeal the denial of a motion to suppress in a substantive case when same issue was adversely decided in the appeal of a related VOP case. Res Judicata. Latson v. State, 3D18-115 (6/28/19)

https://www.3dca.flcourts.org/content/download/527845/5864278/file/180115_ 809_06262019_10074459_i.pdf

POST CONVICTION RELIEF: Partial recantation by a witness, now claiming that she does not believe the accusations, is not newly discovered evidence warranting a new trial. Morris v. State, 1D18-478 (6/28/19)

https://www.1dca.org/content/download/528098/5867154/file/180478_1284_0 6282019_03332098_i.pdf

APPEAL: When the notice of appeal in the motion to withdraw plea is filed at precisely the same moment, the trial court has jurisdiction to rule on the motion to withdraw plea, and the appeal is held in abeyance. Register v. State, 5D183916 (6/28/19)

https://www.5dca.org/content/download/528044/5866497/file/183916_1260_0 6282019_09152089_i.pdf

SENTENCING-UPWARD DEPARTURE: Jury, not judge, must make the finding that the offender is a danger to the public warranting an upward departure from nonstate prison sanction. Further, in finding the offender to be a danger to the public, the court must do more than merely recite prior convictions. Riordan v. State, 5D17-2956 (6/28/19)

https://www.5dca.org/content/download/528034/5866377/file/172956_1260_0 6282019_08384244_i.pdf

APPEAL-FUNDAMENTAL ERROR-COMPETENCY: Where Appellant's initial brief raised only the question of whether a competency hearing was conducted, cannot raise in its answer brief the adequacy of the hearing. The issue of the adequacy of the competency hearing was waived. Rosier v. State, 1D16-2327 (6/28/19)

https://www.1dca.org/content/download/528094/5867112/file/162327_1286_0 6282019_03220879_i.pdf

UNRENUNCIABLE JUDICIAL DUTY: Thorough discussion of the phrase "unrenunciable judicial duty." Rosier v. State, 1D16-2327 (6/28/19)

https://www.1dca.org/content/download/528094/5867112/file/162327_1286_0 6282019_03220879_i.pdf

QUOTATION: "Florida's appellate judges. . .are not roving squadrons of unrestrained judicial activists looking to assist criminal defendants by overturning convictions." Rosier v. State, 1D16-2327 (6/28/19)

https://www.1dca.org/content/download/528094/5867112/file/162327_1286_0 6282019_03220879_i.pdf

POST CONVICTION RELIEF: Court properly denied Defendant's motion to withdraw plea based on counsel's alleged misadvise that he would receive a downward departure and his attorney's "bare-bones" argument for a downward departure. "Given that the brief filed on behalf of Santos cites only two cases and is six pages in total length, the irony of Attorney James W. Smith III describing anything as 'bare bones' is not lost on this Court." Santos v. State, 5D18-1318 (6/28/19)

https://www.5dca.org/content/download/528038/5866425/file/181318_1257_0 6282019_08491188_i.pdf

RULES-AMENDMENT: Confidentiality of filings rules tweaked. In Re: Amendments to Florida Rule of Judicial Administration 2.420, SC19-1049 (6/27/19)

https://www.floridasupremecourt.org/content/download/527990/5865903/file/s c19-1049.pdf

RULES-AMENDMENT: Requirement that a lawyer must be board certified to claim expertise or specialization in advertisements is removed. Clarification of when a lawyer may claim specialization or expertise. In Re: Amendments to Rule Regulating the Florida Bar 4-7.14, No. SC18-2019 (6/27/19)

https://www.floridasupremecourt.org/content/download/527990/5865903/file/s c19-1049.pdf

CONTEMPT: "We do not doubt for an instant that the trial judge heard what he maintains he heard. But we have read the official transcript and have repeatedly listened to the official recording of the shelter hearing, and competent substantial evidence does not support a finding that it was Taylor who said it." Taylor v. State, 2D18-1598 (6/28/19)

https://www.2dca.org/content/download/528059/5866683/file/181598_39_062 82019_08552247_i.pdf

INCONSISTENT VERDICTS: "Although logically under the facts presented to the jury there was no way Appellant could have committed the murder and attempted murder without possessing and discharging a firearm that does not make the verdict truly inconsistent." Inconsistent jury verdicts are permitted in Florida because "jury verdicts can be the result of lenity and therefore did not always speak to the guilt or innocence of the defendant." Conviction upheld. Only true inconsistent verdicts are disallowed. True inconsistent verdicts are those in which an acquittal on one count negates a necessary element for conviction on another count. Turner v. State, 1D17-3244 (6/28/19)

https://www.1dca.org/content/download/528095/5867124/file/173244_1284_0 6282019_03262117_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to jurors seeing him in handcuffs during the trial. Ward v. State, 5D18-3679 (6/28/19)

https://www.5dca.org/content/download/528043/5866485/file/183679_1259_0 6282019_09134163_i.pdf

IDENTIFICATION-SHOW UP: Showup identification shortly after the offense by a witness who had seen the Defendant through a peephole and then through a window while he was trying to break into her house is admissible. Alfonso v. State, 3D17-2617 (6/26/19)

https://www.3dca.flcourts.org/content/download/527843/5864254/file/172617_ 809_06262019_10041311_i.pdf

MINOR-LIFE SENTENCE-HOMICIDE-JURY FINDING: Forty-year mandatory minimum, with review after 25 years, for juveniles who intend to kill does not require a jury finding. Alfonso v. State, 3D17-2617 (6/26/19)

https://www.3dca.flcourts.org/content/download/527843/5864254/file/172617_ 809_06262019_10041311_i.pdf

DURESS-JURY INSTRUCTION: Although it is unclear whether the "choice of evils" concept (the harm that the defendant avoided must outweigh the harm caused by crime charged) that is now element 6 of the standard jury instruction on duress, waived any appeal by failing to object to it. Franklin v. State, 4D181410 (6/26/19)

https://www.4dca.org/content/download/527871/5864600/file/181410_1257_0 6262019_09142757_i.pdf

VIOLATION OF INJUNCTION: Defendant is properly convicted of violating an injunction when he is served with the temporary injunction which was extended and converted to a permanent injunction at the hearing at which she had not appeared. Garcia v. State, 3D18-14732 (6/26/19)

https://www.3dca.flcourts.org/content/download/527859/5864438/file/190060_ 809_06262019_10222937_i.pdf

JURY INSTRUCTION-SPECIAL INSTRUCTION: In reckless driving prosecution of police officer, State is entitled to a special jury instruction that law enforcement officers on duty are not relieved of the obligation to exercise due care. "A trial judge in a criminal case is not constrained to give only those instructions that are contained in the Florida Standard Jury Instructions. Hegele v. State, 4D18-835 (6/26/19)

https://www.4dca.org/content/download/527870/5864588/file/180835_1257_0 6262019_09112238_i.pdf

JOA-BURGLARY-THEFT-VEHICLE: Child who fled, along with others, from a stolen vehicle containing stolen property cannot be convicted of theft of the vehicle or the things found in it absent more evidence. J.A.H. v. State, 2D174027 (6/26/19)

https://www.2dca.org/content/download/527888/5864800/file/174027_39_062 62019_09034391_i.pdf

POST CONVICTION RELIEF: The law of the case doctrine does not bar litigation on the admission of hearsay which was not sufficiently reviewed based on the sufficiency of the evidence in earlier proceedings. If the facts upon which the supreme court's prior conclusions were made are no longer the facts of the case, then the doctrine does not apply. State v. Parker, 4D18-3112 (6/26/19)

https://www.4dca.org/content/download/527875/5864640/file/183112_1709_0 6262019_09261090_i.pdf

HABITUAL FELONY OFFENDER: A prior withhold of adjudication may be used as a qualifying offense for HFO sentencing, notwithstanding that the Defendant was not placed on probation (which is required for a withhold). Robinson v. State, 4D19-652 (6/26/19)

https://www.4dca.org/content/download/527878/5864676/file/190652_1257_0 6262019_09382430_i.pdf

DNA TESTING: Defendant is not entitled to post-conviction DNA testing where identity is not an issue. Rodriguez v. State, 3D19-817 (6/26/19)

https://www.3dca.flcourts.org/content/download/527864/5864498/file/190817_ 809_06262019_10324116_i.pdf

SEARCH AND SEIZURE: Defendant (police officer who created fake police reports to get her estranged husband fired from his job) has no legitimate expectation of privacy in her personal hard drive which was plugged in to her work computer at the police department. Saintemen v. State, 3D17-734 (6/26/19)

https://www.3dca.flcourts.org/content/download/527842/5864242/file/170734_ 809_06262019_10031813_i.pdf

QUOTATION: "I. . . write separately to emphasize how Fourth Amendment jurisprudence may sometimes upset common sense. . . .[T]his public sector worker has no reasonable expectation of privacy in the contents of a personally owned flash drive when the flash drive is confiscated while plugged into her work computer. This holding, while correct, may come as quite a surprise to anyone who has ever used a personally owned flash drive at work with nonnefarious intentions." Saintemen v. State, 3D17-734 (6/26/19)

https://www.3dca.flcourts.org/content/download/527842/5864242/file/170734_ 809_06262019_10031813_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that is ineffective for failing to raise a statute of limitations argument. Smith v. State, 3D19-678 (3/26/19)

https://www.3dca.flcourts.org/content/download/527863/5864486/file/190678_ 812_06262019_10315847_i.pdf

'NUFF SAID: "[T]he defendant asserts that he was 'wrongly convicted of a false charge of grand theft.' The defendant. . .fails to recognize that he pled guilty to the charge of third degree grand theft." Wilson v. State, 3D19-880 (6/26/19)

https://www.3dca.flcourts.org/content/download/527865/5864510/file/190880_ 809_06262019_10330997_i.pdf

PEREMPTORY CHALLENGE-DISCRIMINATION: Defendant is entitled to a seventh trial after prosecutors struck 41 of the 42 black prospective jurors in the previous six trials. "The jury in Flowers' third trial consisted of 11 white jurors and 1 black juror. The lone black juror who served on the jury was seated after the State ran out of peremptory strikes." Batson affirmed. Flowers v. Mississippi, No. 17-9572 (US S.Ct. 6/21/19)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

QUOTATION: (J. Kavanaugh): "The State appeared to proceed as if Batson had never been decided. The State's relentless, determined effort to rid the jury of black individuals strongly suggests that the State wanted to try Flowers before a jury with as few black jurors as possible, and ideally before an all-white jury. . .The State's actions in the first four trials necessarily inform our assessment of the State's intent going into Flowers' sixth trial. We cannot ignore that history. We cannot take that history out of the case." Flowers v. Mississippi, No. 17-9572 (US S.Ct. 6/21/19)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

QUOTATION (J. Kavanaugh): "One can slice and dice the statistics and come up with all sorts of ways to compare the State's questioning of

excluded black jurors with the State's questioning of the accepted white jurors. But any meaningful comparison yields the same basic assessment: The State spent far more time questioning the black prospective jurors than the accepted white jurors. . .[D]isparate questioning can be probative of discriminatory intent." Flowers v. Mississippi, No. 17-9572 (US S.Ct. 6/21/19)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

QUOTATION (J. Thomas, Dissent: "Much of the Court's opinion is a paean to Batson v.Kentucky, which requires that a duly convicted criminal go free." Flowers v. Mississippi, No. 17-9572 (US S.Ct. 6/21/19)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

BUT DIDN'T YOU JUST SAY. . .? (J. Thomas, Dissent): "If the Court's opinion today has a redeeming quality, it is this: The State is perfectly free to convict Curtis Flowers again." Flowers v. Mississippi, No. 17-9572 (US S.Ct. 6/21/19)

https://www.supremecourt.gov/opinions/18pdf/17-9572_k536.pdf

PRACTICING VETERINARY MEDICINE: Court properly dismissed the charge of practicing veterinary medicine without a license where Defendant home-treated his injured dog by trying to remove bone fragments from its rectum. Avella v. State, 5D18-1407 (6/21/19)

https://www.5dca.org/content/download/527654/5862037/file/181407_1259_0 6212019_08332851_i.pdf

CRUELTY TO ANIMAL: Whether the act of trying to remove bone fragments from his dog's rectum constitutes cruelty to animals is a jury question and cannot be resolved by a motion to dismiss. Avella v. State, 5D18-1407 (6/21/19)

https://www.5dca.org/content/download/527654/5862037/file/181407_1259_0 6212019_08332851_i.pdf

POST CONVICTION RELIEF: Defendant should be allowed to amend his claims for post-conviction relief where his attorney failed to file an amended motion nor informed Defendant of the need to do so. Babic v. State, 2D181681 (6/21/19)

https://www.2dca.org/content/download/527684/5862412/file/181681_39_062 12019_08224368_i.pdf

APPEALS: A criminal defendant's right to self-representation does not extend to appellate proceedings. In its discretion, appellate court may deny Appellant's request to represent himself. Garcia v. Schneider, 3D18-2484 (6/21/19)

https://www.3dca.flcourts.org/content/download/527749/5863116/file/182484_ 814_06212019_05511139_i.pdf

THEFT-VALUE-HEARSAY: Defendant cannot be found guilty of grand theft based upon the theft of less-than-a-year-old Louis Vuitton Neverfull purse and wallet, which the victim had bought for $1500 and $700 respectively. The victim's testimony, over objection, that the replacement value for the items on eBay were about $1000 and $400 is insufficient to establish the

value. Hearsay evidence from websites as to value is inadmissible hearsay. Gonzalez v. State, 3D19-479 (6/21/19)

https://www.3dca.flcourts.org/content/download/527664/5862160/file/190479_ 812_06212019_10205195_i.pdf

QUOTATION: "Courts. . . are presumed to be no more ignorant than the public generally." Gonzalez v. State, 3D19-479 (6/21/19)

https://www.3dca.flcourts.org/content/download/527664/5862160/file/190479_ 812_06212019_10205195_i.pdf

SENTENCING-CONSIDERATIONS: Consideration of a lack of remorse or failure to take responsibility is fundamental error. In animal abuse case, Court's consideration of the Defendant's failure to take responsibility for the injuries to his dog requires resentencing before a different judge. Piccinini v. State, 5D172919 (6/21/19)

https://www.5dca.org/content/download/527649/5861977/file/172919_1259_0 6212019_08200401_i.pdf

DOUBLE JEOPARDY: To determine whether multiple convictions of solicitation of a minor . . . and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court should consider only the charging document-not the entire evidentiary record. Richardson v. State, 2D17-3814 (6/21/19)

https://www.2dca.org/content/download/527676/5862316/file/173814_114_06 212019_08195870_i.pdf

CROSS-EXAMINATION: Court erred in limiting cross-examination of a flipping codefendant into the fact that the witness had been facing up to life in prison. Defendant's Sixth Amendment right to confront witnesses outweighs the policy of shielding the jury from learning the maximum penalty the Defendant faced (which was the same as that of the witness). Rivera v. State, 5D17-1397 (6/21/19)

https://www.5dca.org/content/download/527647/5861953/file/171397_1259_0 6212019_08105889_i.pdf

QUOTATION (Dissent): "Nobody needed to measure Pinocchio' nose to understand that he often lied." Rivera v. State, 5D17-1397 (6/21/19)

https://www.5dca.org/content/download/527647/5861953/file/171397_1259_0 6212019_08105889_i.pdf

STATEMENTS OF DEFENDANT-FIFTH AMENDMENT: "Don't know what to tell you. I need a lawyer, man," and statement that he could not tell detectives much because he had to speak to his lawyer first are unambiguous requests for counsel. Statements should have been suppressed. However, error is harmless here. Wilson v. State, 5D17-3568 (6/21/19)

https://www.5dca.org/content/download/527651/5862001/file/173568_1257_0 6212019_08253273_i.pdf

SEARCH AND SEIZURE: One has no reasonable expectation of privacy when uploading child pornography to an online chatroom. Morales v. State, 1D183996 (6/20/19)

https://www.1dca.org/content/download/527564/5860982/file/183996_1284_0 6202019_11350192_i.pdf

SEARCH AND SEIZURE: Fourth Amendment does not apply to a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official., here, the chatroom administrator. Morales v. State, 1D18-3996 (6/20/19)

https://www.1dca.org/content/download/527564/5860982/file/183996_1284_0 6202019_11350192_i.pdf

SELF-INCRIMINATION-PASSWORD: In determining whether the Fifth Amendment protects compelled disclosure of a password to a phone in the state's possession, the proper legal inquiry is whether the state is seeking to compel a suspect to provide a password that would allow access to information the state knows is on the suspect's cellphone and has described with reasonable particularity. Defendant cannot be compelled to disclose password to cell phone on the assumption that co-defendant had communicated with him before the crime. Where the state establishes factually that it knows that a password existed, that the suspect possesses or controls the password, and that the suspect's actions disclosed or authenticated the password sought it is a foregone conclusion to force its disclosure. Unless the state can describe with reasonable particularity the information it seeks to access on a specific cellphone, an attempt to seek all communications, data and images is an unlawful fishing expedition. Pollard v. State, 1D18-4572 (6/20/19)

https://www.1dca.org/content/download/527565/5860994/file/184572_1282_0 6202019_11363454_i.pdf

SIMILAR FACT EVIDENCE: In Shaken Baby case, prior instances of abuse committed by the Defendant against a particular child are admissible where the defendant is charged with abusing that child, especially where the Defendant suggested that the child's injuries may have been the result of an accident. There is no need for factual similarity. Lowery v. State, 1D17-3716 (6/20/19)

https://www.1dca.org/content/download/527560/5860934/file/173716_1284_0 6202019_11312670_i.pdf

JURY INSTRUCTION-UNCHARGED LESSER: Where an offense may be committed in various ways, the evidence must establish it to have been committed in the manner charged in the indictment. In child homicide, Court erred in instructing on malicious punishment as a mens of committing aggravated child abuse although not specifically alleged in the information, but error is harmless. Lowery v. State, 1D17-3716 (6/20/19)

https://www.1dca.org/content/download/527560/5860934/file/173716_1284_0 6202019_11312670_i.pdf

LESSER INCLUDED: Court did not err in instructing on the lesser of manslaughter by culpable negligence in the absence of evidence of negligence. Manslaughter by culpable negligence is a category 1, necessarily lesser included offense and must be given. Lowery v. State, 1D17-3716 (6/20/19)

https://www.1dca.org/content/download/527560/5860934/file/173716_1284_0 6202019_11312670_i.pdf

CLOSING ARGUMENT: One hour time limit for closing argument in homicide case is permissible. Lowery v. State, 1D17-3716 (6/20/19)

https://www.1dca.org/content/download/527560/5860934/file/173716_1284_0 6202019_11312670_i.pdf

SCORESHEET-PENETRATION: Penetration points are properly scored when supported by the factual basis and is not objected to, notwithstanding that penetration is not alleged in the information. Ayos v. State, 4D17-3840 and 4D17-3857 (6/19/19)

https://www.4dca.org/content/download/527449/5859629/file/173840_1708_0 6192019_08574995_i.pdf

COSTS: Costs may be assessed per case, not per count. Ayos v. State, 4D173840 and 4D17-3857 (6/19/19)

https://www.4dca.org/content/download/527449/5859629/file/173840_1708_0 6192019_08574995_i.pdf

JUVENILE-COMMITMENT-DEVIATION: To justify a commitment disposition that departs from the DJJ's recommendation, Court must articulate an understanding of the different restrictiveness levels and explain why one is

better than the other, and point out considerations that DJJ overlooked. Merely listing reasons without convincing analysis is insufficient. C.C. v. State, 4D173890 (6/19/19)

https://www.4dca.org/content/download/527450/5859641/file/173840_1708_0 6192019_08574995_i.pdf

VOP: A plea of no contest does not constitute competent substantial evidence that the Defendant committed a new law violation. "[E]vidence that a probationer entered a no contest plea to a new charge, without more, is. . . insufficient to sustain a revocation of probation." Contreras v. State, 2D174989 (6/19/19)

https://www.2dca.org/content/download/527477/5859983/file/174989_39061 92019_08432376_i.pdf

VOP: Before a probationer can be imprisoned for failure to pay a monetary obligation, the trial court must inquire into the probationer's ability to pay and make an explicit finding that he willfully failed to do so. Contreras v. State, 2D17-4989 (6/19/19)

https://www.2dca.org/content/download/527477/5859983/file/174989_39061 92019_08432376_i.pdf

HEARSAY: Out of court statement by cellmate that Defendant had confessed, later disclaimed, is inadmissible and not within the identification exception to the hearsay rule, nor is it admissible for impeachment of the cellmate where the purpose is to establish the truth of the statement. "It is.

. .obvious that the State's true aim was to circumvent the hearsay rules." Lawrence v. State, 2D17-4071 (6/19/19)

https://www.2dca.org/content/download/527475/5859959/file/174071_39_061 92019_08421424_i.pdf

AGGRAVATED ANIMAL CRUELTY: Slashing and stabbing sheep to death is aggravated animal cruelty. Reyes v. State, 3D18-0164 (6/19/19)

RESENTENCING-DOWNWARD DEPARTURE: A defendant is entitled to a de novo sentencing proceeding after an appellate court determines that the trial court's reason for downward departure are invalid. On remand for resentencing due to the substantive invalidity of a downward departure, the trial court is permitted to impose a downward departure as long as the departure comports with the principles and criteria of the Criminal Punishment Code. No. SC18-688 (6/13/19)

https://www.floridasupremecourt.org/content/download/527168/5856583/file/s c18-688.pdf

APPEAL-DISPOSITIVE ISSUE-STAND YOUR GROUND RETROACTIVITY: An issue is dispositive only when it is clear that there will be no trial, regardless of the appeal. Issue of whether the retroactive application of the statutory change to the burden of proof in stand your ground hearings in case in which the Defendant entered a negotiated plea after the hearing is not an appealable because it is not dispositive. Where, as here, the remedy on appeal is a new SYG hearing, the possibility of the trial remains, and so the issue is not dispositive. Discussion of the Gorilla Rule and precognition. Hicks v. State, No. 1D17-1830 (6/12/19)

https://www.1dca.org/content/download/527110/5856050/file/171830_1284_0 6122019_10414973_i.pdf

STAND YOUR GROUND: Court erred in finding that the Defendant was trespassing, and therefore was not entitled to shoot his sister's boyfriend, who was fighting with the Defendant's brother who had come to his sister's defense. The brother's trespass, if it existed, cannot be imputed to the Defendant. Fletcher v. State, No. 1D18-1867 (6/12/19)

https://www.1dca.org/content/download/527112/5856074/file/181867_1282_0 6122019_10435429_i.pdf

APPEAL-PRESERVATION-STAND YOUR GROUND RETROACTIVITY: Defendant cannot raise on appeal the issue of the retroactivity of the change in the burden of proof and stand your ground hearings where he did not raise the argument in the trial court. Good summary of SYG law. Mency v. State, No. 1D18-1993 (6/12/19)

https://www.1dca.org/content/download/527113/5856086/file/181993_1284_0 6122019_10443998_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Minor Defendant who raped and murdered a 17-year-old girl is lawfully sentenced to life in prison with the possibility of a sentence review after 25 years. Jackson v. State, No. 1D18-2541 (6/12/19)

https://www.1dca.org/content/download/527115/5856110/file/182541_1284_0 6122019_10464248_i.pdf

POST CONVICTION RELIEF: Counsel is not ineffective for not presenting mitigating evidence at sentencing where a life sentence is mandatory. Reese v. State, No. 1D18-3108 (6/12/19)

https://www.1dca.org/content/download/527118/5856146/file/183108_1284_0 6122019_10491520_i.pdf

POST FACTO-RE-SENTENCING: Defendant may be re-sentenced to life imprisonment, this time as a Habitual Felony Offender, after the life sentence as a Violent Career Criminal is vacated. Bell v. State, No. 1D18-3168 (6/12/19)

https://www.1dca.org/content/download/527119/5856158/file/183168_1284_0 6122019_10500032_i.pdf

VOP: Defendant cannot be violated for failing to report to probation by May 31 when he was arrested on other grounds on that same date. Remanded for resentencing. Ledsome v. State, No. 1D18-3859 (6/12/19)

https://www.1dca.org/content/download/527120/5856170/file/183859_1287_0 6122019_10510329_i.pdf

RESTITUTION: Restitution order must be entered at the time of sentencing; Restitution order entered before sentencing (here, a year before) must be stricken. Ward v. State, 2D17-3380 (6/12/19)

https://www.2dca.org/content/download/527099/5855906/file/173380_65_061 22019_08585525_i.pdf

JURY INSTRUCTIONS: Court's failure to instruct the jury on reasonable doubt and burden of proof is fundamental error. Williams v. State, No. 3D18-1188 (6/12/19)

https://www.3dca.flcourts.org/content/download/527067/5855519/file/181188_ 812_06122019_10083439_i.pdf

PRETRIAL DETENTION: Court may order a defendant detained without bond beyond first appearance for a reasonable time pending an Arthur bond hearing without making a preliminary finding of proof evident, presumption great. Thourtman v. Junior, No. 3D18-2433 (6/12/19)

https://www.3dca.flcourts.org/content/download/527069/5855543/file/182433_ 806_06122019_10133810_i.pdf

WHAT THEY TEACH AT JUDGE SCHOOL: "In doing so, the trial court followed the standard practice taught to trial judges in Florida. See, e.g., Fla. Court Educ.5 at 7 (2016) ('In cases in which death or life imprisonment is a possible penalty, the first appearance judge, upon finding of probable cause, will typically order that the defendant be held with no bond.'. . .)". Thourtman v. Junior, No. 3D18-2433 (6/12/19)

https://www.3dca.flcourts.org/content/download/527069/5855543/file/182433_ 806_06122019_10133810_i.pdf

QUOTATION (DISSENT): "[W]e are duty-bound to follow the Florida Supreme Court's decision in State v. Arthur. . ., which unambiguously held that 'before release on bail pending trial can ever be denied, the state must come forward with a showing that the proof of guilt is evident or the presumption is great.' . . .The majority opinion embraces a contrary view, creating a procedural mechanism possessed of both logic and practicality. And it may well be that my position possesses neither logic nor practicality, constrained as it is by a faithful adherence to Florida Supreme Court precedent. . . Because the majority opinion is not similarly constrained, I must respectfully dissent." Thourtman v. Junior, No. 3D18-2433 (6/12/19)

https://www.3dca.flcourts.org/content/download/527069/5855543/file/182433_ 806_06122019_10133810_i.pdf

QUOTATION (Dissent): "Arthur says what it means and means what it says." Thourtman v. Junior, No. 3D18-2433 (6/12/19)

https://www.3dca.flcourts.org/content/download/527069/5855543/file/182433_ 806_06122019_10133810_i.pdf

ADMINISTRATIVE PROBATION: Administrative probation is non-reporting probation which can only be imposed by the Department of Corrections, but Defendant who is sentenced by court to administrative probation is estopped from challenging its legality when he violates it because he reaped its benefit. Cadet v. State, No. 3D19-178 (6/12/19)

https://www.3dca.flcourts.org/content/download/527070/5855555/file/190178_ 809_06122019_10145027_i.pdf

VETERAN'S COURT: Court may exercise its discretion to deny a qualifying Defendant from entry into Veteran's Court. A judge's decision on whether to admit an eligible and willing defendant into veterans' court is a discretionary act. Simeone v. State, No. 4D18-3470 (6/12/19)

https://www.4dca.org/content/download/527059/5855417/file/183470_1703_0 6122019_09160624_i.pdf

APPEALS-PRESERVATION-DISPOSITIVE ISSUE: Defendant may not appeal denial of motion to suppress narcotics where Defendant pled as well to BLEO and Resisting with Violence. To plead and appeal, the issue might be dispostive of the entire case, not only some counts. An issue is dispositive only if, regardless of whether the appellate court affirms or reverses the lower court's decision, there will be no trial of the case. Milliron v. State, No. 1D16-3889 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526797/5852802/file/163889_1284_0 6072019_11133032_i.pdf

PTI: Under Fla.Stat. §397.334(2) a court may order an individual charged with a nonviolent felony to enter a pretrial treatment-based drug court program upon motion of a party or the court. The Court's power to order drug court treatment is discretionary, and a late application is sufficient basis for denial. Byrd v. State, No. 1D17-1529 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526798/5852814/file/171529_1286_0 6072019_11181025_i.pdf

SEARCH AND SEIZURE: Officers lawfully detained the Defendant on reasonable suspicion after an anonymous caller reported an unknown individual on a motorcycle walking around an abandoned home at night and Defendant on motorcycle tried to flee officers. Weakley v. State, No. 1D17-2727 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526799/5852826/file/172727_1284_0 6072019_11204563_i.pdf

QUOTATION: "Lowering the bar in this Fourth Amendment anonymous tip case is a limbo dance I cannot join." Weakley v. State, No. 1D17-2727 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526799/5852826/file/172727_1284_0 6072019_11204563_i.pdf

POST CONVICTION RELIEF-CONSECUTIVE SENTENCES: One cannot be sentenced to consecutive sentences for multiple homicides resulting from placing one bomb, but where the record is not clear that a single bomb was placed, the consecutive sentences cannot be challenged under Rule 3.800. Jarvis v. State, No. 1D17-4186 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526801/5852850/file/174186_1284_0 6072019_11274281_i.pdf

MOTION FOR NEW TRIAL: In ruling on a motion for new trial the correct standard is weight of the evidence, not sufficiency of the evidence. However, error here, if any, was not preserved by an articulated objection. Kline v. State, No. 1D18-1706 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526805/5852904/file/181706_1284_0 6072019_11345639_i.pdf

MANDATORY MINIMUM-ILLEGAL SENTENCE: Defendant may not move to correct an illegal sentence which failed to impose a ten-year mandatory minimum for possession of a firearm because Rule 3.800 only authorizes the defendant to move to correct an adverse ruling. Conflict certified. Earl v. State, No. 1D18-3828 (1st DCA 6/7/19)

https://www.1dca.org/content/download/526809/5852952/file/183828_1279_0 6072019_11432659_i.pdf

CONSTRUCTIVE POSSESSION: Defendant cannot be found guilty of possession of pills found in the center console under paperwork belonging to the defendant where the vehicle is jointly occupied. "[T]he presence of some of a defendant's personal items in the same area as contraband merely supports an inference that the defendant had knowledge of and dominion and control over the substance" but does not disprove the reasonable hypothesis of innocence that someone else placed the contraband in the glove compartment. Nugent v. State, No. 2D17-3169 (2nd DCA 6/7/19)

https://www.2dca.org/content/download/526781/5852604/file/173169_39060 72019_09023749_i.pdf

CONVICTION RELIEF: A claim that a sentence was illegally imposed because the information did not charge the defendant with an element required for his [or her] sentence is cognizable in a rule 3.800(a) motion. Reed v. State, No. 2D18-2005 (2nd DCA 6/7/19)

https://www.2dca.org/content/download/526788/5852688/file/182005_65060 72019_09092718_i.pdf

WITHDRAWAL OF PLEA: Counsel's failure to advise Defendant that entry of a plea would likely result in termination of parental rights is adequate grounds to withdraw the plea. "Failure to inform [a defendant] of [a] collateral consequence may not have rendered the plea involuntary, but . . . ignorance of it does meet the 'good cause' test for a pre-sentence plea withdrawal." Purcell v. State, 5D17-2901 (5th DCA 6/7/19)

https://www.5dca.org/content/download/526763/5852370/file/172901_1260_0 6072019_08183139_i.pdf

JURY INSTRUCTIONS-AMENDMENT: Jury instructions related to insanity, involuntary intoxication/specific intent, Entrapment, and jury findings for Alleyne enhancements. In re: Standard Jury Instructions, 44 Fla. L. Weekly S181a (FLA 65/6/19)

https://www.floridasupremecourt.org/content/download/526693/5851591/file/s c18-2029.pdf

APPEAL-PRESERVATION: Defendant who pleads guilty or nolo contendere forfeits the right to appeal the judgment unless he expressly reserves the

right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved. Osborne v. State, 44 Fla. L. Weekly D1442a (1st DCA 6/5/19)

https://www.1dca.org/content/download/526679/5851453/file/172765_1284_0 6052019_03000424_i.pdf

CERTIORARI: Appellate court lacks jurisdiction to entertain a petition for writ of certiorari absent a finding that the petitioner has suffered an irreparable harm that cannot be remedied on direct appeal. Martinez v. State, 44 Fla. L. Weekly D1440c (3rd DCA 6/5/19)

https://www.3dca.flcourts.org/content/download/526673/5851379/file/190876_ 804_06052019_10223349_i.pdf

OPENING THE DOOR: Defendant opened the door to statement by witness that she (the Defendant) had told the witness that she had previously tried to poison her husband by antifreeze when and direct the witness said that he did not believe that she had tried to kill her husband. Dippolito v. State, 44 Fla. L. Weekly D1429a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526587/5850315/file/172486_1257_0 6052019_09071289_i.pdf

ENTRAPMENT: Law enforcement's invited participation of the "Cops" TV program in the investigation of her solicitation to murder her husband is not objective entrapment. Objective entrapment is a question of law for the court

and thus there is no right to a jury determination of the issue. Dippolito v. State, 44 Fla. L. Weekly D1429a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526587/5850315/file/172486_1257_0 6052019_09071289_i.pdf

APPEAL-PRESERVATION-JUVENILE-SENTENCING-COMMITMENT LEVEL: Where Child does not object when Court exceeds DJJ's recommended commitment level, the issue is not preserved for appeal. D.L.T. v. State, 44 Fla. L. Weekly D1428a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526596/5850423/file/182528_1257_0 6052019_09295384_i.pdf

POST CONVICTION RELIEF: Defendant's motion for post-conviction relief is deficient where it alleges that counsel did not advise him that he was facing a mandatory life sentence as a PRR if he turned down the plea offer, but failed to allege that the State would not have withdrawn the plea offer and the court would have accepted it. Holmes v. State, 44 Fla. L. Weekly D1427b (4th DCA 6/5/19)

https://www.4dca.org/content/download/526595/5850411/file/182249_1708_0 6052019_09284106_i.pdf

SEXUAL BATTERY-JURY INSTRUCTIONS: Court erred in instructing jury on the elements of sexual battery by using the word "butt" rather than "anus," where the instructions include no definition for "butt." Error is fundamental. Ramirez Ramos v. State, 44 Fla. L. Weekly D1424b (4th DCA 6/5/19)

https://www.4dca.org/content/download/526590/5850351/file/181035_1709_0 6052019_09145801_i.pdf

SEARCH AND SEIZURE-INVESTIGATORY STOP: Police had reasonable suspicion to stop the defendant who matched the description of one of the people by a citizen informant who said that three men entered a house, a gunshot was heard, and 2 men came out. Joseph v. State, 44 Fla. L. Weekly D1424a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526589/5850339/file/180538_1257_0 6052019_09123224_i.pdf

PLEA-WITHDRAWAL: Court must appoint conflict-free counsel to represent Defendant on motion to withdraw plea. Cuciak v. State, 44 Fla. L. Weekly D1423a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526588/5850327/file/180437_1709_0 6052019_09104996_i.pdf

DOWNWARD DEPARTURE-ISOLATED INCIDENT: Multiple bank robberies over a six-month period were not isolated incidents, and thus did not merit a downward departure sentence. State v. Crossley-Robinson, 44 Fla. L. Weekly D1421a (4th DCA 6/5/19)

https://www.4dca.org/content/download/526591/5850363/file/181393_1709_0 6052019_09190805_i.pdf

MAY 2019

DEPOSITION-FIFTH AMENDMENT-CERTIORARI: Defendant may not challenge pretrial by petition for writ of certiorari the Court's ruling that the Defendant may not take the deposition of a key witness who intends to make a blanket 5th amendment refusal to testify. "Although Magbanua persuasively argues that the protective order preventing any pretrial questioning of Adelson significantly impairs her ability to prepare a defense, any material injury to Magbanua may be corrected on direct appeal." Interesting discussion. Magbanua v. State, No. 1D19-1875 (1st DCA 5/31/19)

https://www.1dca.org/content/download/526375/5848300/file/191875_1279_0 5312019_04002232_i.pdf

SCORESHEET: Court may not deny without a hearing Defendant's objection to points on the sentencing scoresheet for convictions which he claims do not exist. Murphy v. State, 44 Fla. L. Weekly D1415b (2nd DCA 5/31/19)

https://www.2dca.org/content/download/526330/5847847/file/170731_11405 312019_08475042_i.pdf

DOUBLE JEOPARDY: Dual convictions for unlawfully using a two-way communications device and transmitting material harmful to minors via electronic mail violates double jeopardy because the elements of the former are subsumed in the elements of the latter. Transmitting an image, information, or data via electronic mail necessarily involves the use of a "two-way communications device. Weitz v. State, 44 Fla. L. Weekly D1413a (2nd DCA 5/31/19)

https://www.2dca.org/content/download/526333/5847883/file/180072_39_053 12019_09061457_i.pdf

JUVENILE-SENTENCING: Court is not required to set forth findings justifying departure from DJJ recommendation in deciding whether to commit juvenile even when DJJ recommended probation; findings are required only when court departs from recommended restrictiveness level of commitment). C.T.A. v. State, 44 Fla. L. Weekly D1408a (5th DCA 5/31/19)

https://www.5dca.org/content/download/526323/5847763/file/183330_1257_0 5312019_08234830_i.pdf

DWLS-JOA: Defendant who never had a driver's license cannot be convicted of DWLS. Hayes v. State, 44 Fla. L. Weekly D1402a (5th DCA 5/31/19)

https://www.5dca.org/content/download/526314/5847655/file/181110_1260_0 5312019_08005125_i.pdf

SUSPENDED SENTENCE: Upon violation of community control, Court may impose the full suspended sentence if he understands that he has authority to impose less than the full suspended sentence. Jenkins v. State, 44 Fla. L. Weekly D1401a (5th DCA 5/31/19)

https://www.5dca.org/content/download/526320/5847727/file/182706_1257_0 5312019_08184608_i.pdf

CONTINUANCE: Court abused discretion in denying motion to continue VOP hearing when the original public defender became unavailable due to being called up for military service a week before the hearing and the substitute public defender announced herself unprepared to proceed. Criminal defendants are entitled to preparation sufficient to assure at least minimal quality of counsel. Boffo v. State, 44 Fla. L. Weekly D1399c (5th DCA 5/31/19)

https://www.5dca.org/content/download/526313/5847643/file/180015_1260_0 5312019_07571674_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to call exculpatory witnesses. Payne v. State, 44 Fla. L. Weekly D1398b (5th DCA 5/31/19)

https://www.5dca.org/content/download/526325/5847787/file/190036_1259_0 5312019_08292343_i.pdf

AMENDMENT-JURY INSTRUCTIONS: Standard Jury Instructions are modified to clarify possession instruction, lessers. ("Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of additional evidence." In re: Standard Jury Instructions, 44 Fla. L. Weekly S179a (FLA 5/30/19)

https://www.floridasupremecourt.org/content/download/526241/5847059/file/s c18-1860.pdf

ADVERSARY PRELIMINARY HEARING: Defendant who is out on bond but subject to restrictions and who remains uncharged for more than 21 day is

not entitled to a hearing to lift the conditions for failure of the State to file charges. Williams v. State, 44 Fla. L. Weekly D1396a (1st DCA 5/30/19)

https://www.1dca.org/content/download/526145/5845871/file/185337_1281_0 5302019_09385166_i.pdf

POST CONVICTION RELIEF: Defendant who had pled guilty to manslaughter is entitled to a hearing on claim that counsel was ineffective for failing to tell him that the pathologist report said that the Defendant's battery of the victim was not the cause of death. A generalized plea colloquy confirming satisfaction with counsel was insufficient to refute a claim based on counsel's failure to advise of a specific defense or facts supporting it. McBee v. State, 44 Fla. L. Weekly D1395a (1st DCA 5/30/19)

https://www.1dca.org/content/download/526139/5845799/file/173383_1286_0 5302019_09304161_i.pdf

GRAND THEFT: Defendant cannot be found guilty of grand theft of liquor where there was no evidence as to its value. Wade v. State, 44 Fla. L. Weekly D1388a (3rd DCA 5/29/19)

http://3dca.flcourts.org/Opinions/3D18-2078.pdf

LESSER INCLUDED-JURY INSTRUCTION-JURY PARDON: Failure to give a requested jury instruction on a necessarily lesser included offense one step removed from the charged offense is subject to a harmless error analysis and is no longer per se reversible error. Franklin v. State, 44 Fla. L. Weekly D1385a

(2nd DCA 5/29/19)

https://www.2dca.org/content/download/526044/5844671/file/172958_173_05 292019_08330922_i.pdf

SENTENCING-CONSIDERATIONS: In sentencing Defendant for L & L, Court improperly considered a videotape the Defendant roaming through the children section of a library on a separate date . Defendant must be re-sentenced by a different judge. Court may not consider uncharged conduct nor rely on speculation that the defendant has committed or may commit other crimes based on its view of the uncharged conduct. Tharp v. State, 44 Fla. L. Weekly D1384a (2nd DCA 5/29/19)

https://www.2dca.org/content/download/526048/5844719/file/174513_114_05 292019_08383999_i.pdf

REVERSE WILLIAMS RULE: Defendant is entitled to present evidence that another person had committed a burglary in the same area in a strikingly similar manner. The reverse Williams rule is simply the application of Williams rule principles to the circumstance in which a defendant (rather than the State) seeks to introduce evidence of similar crimes committed by another person (rather than the defendant) to show that the defendant did not commit the offense for which he or she is being tried. Newby v. State, 44 Fla. L. Weekly D1377a (2nd DCA 5/29/19)

https://www.2dca.org/content/download/526040/5844623/file/170228_39_052 92019_08305356_i.pdf

KINDA WEIRD: “Lieutenant William Byrd drove by Mr. Newby, who was jogging across one such road. He was wearing boxer shorts, a T-shirt, and

dress socks with no shoes. The temperature was in the forties — cold by Florida standards. That got the lieutenant's Spidey senses tingling. . . Mr. Newby said that he started to undress outside, but that he then saw a car drive past that belonged to people he knew lived nearby, and that he jogged over to meet them. When he got to the house where they lived, he decided to keep jogging." Newby v. State, 44 Fla. L. Weekly D1377a (2nd DCA 5/29/19)

https://www.2dca.org/content/download/526040/5844623/file/170228_39_052 92019_08305356_i.pdf

COUNSEL: Court must allow substitution of counsel on the eve of the trial and grant a two or three day continuance for the new attorney to prepare where, as here the request for substitution of counsel was not made in bad faith and Defendant and only very recently been made aware of the trial date. Jones v. State, 44 Fla. L. Weekly D1366a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526029/5844479/file/180656_1709_0 5292019_08443365_i.pdf

DISCOVERY-DISCLOSURE: Court did not err in excluding a Facebook video purporting to show the Defendant at a concert on the date and time of the armed burglary on the ground that it was not disclosed until the middle of the trial. Carn v. State, 44 Fla. L. Weekly D1364a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526028/5844467/file/171834_1257_0 5292019_08425916_i.pdf

EVIDENCE: Evidence that the Victim had a large sum of money in his house at the time of the home invasion robbery is admissible to show motive

notwithstanding the lack of evidence that the Defendant knew about the settlement. Carn v. State, 44 Fla. L. Weekly D1364a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526028/5844467/file/171834_1257_0 5292019_08425916_i.pdf

HEARSAY-OUT-OF-COURT IDENTIFICATION: Recorded statement of store employee who identified the Defendant from a video recording, but who is not present at the actual robbery, is inadmissible. Ellison v. State, 44 Fla. L. Weekly D1362a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526028/5844467/file/171834_1257_0 5292019_08425916_i.pdf

HEARSAY-OUT-OF-COURT IDENTIFICATION: Recorded statements of identification by eyewitnesses are admissible because such statements are not hearsay by statutory definition, but a description of the person so identified is inadmissible hearsay. Ellison v. State, 44 Fla. L. Weekly D1362a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526028/5844467/file/171834_1257_0 5292019_08425916_i.pdf

EVIDENCE-SILENCE: The fact that the Defendant hung up phone when officer told him he was investigating an armed robbery is not admissible. "Under federal law, a defendant's pre-arrest, pre-Miranda silence may be used as substantive evidence of a defendant's guilt where a defendant has not expressly invoked the privilege against self-incrimination. . . The Florida

Supreme Court, in contrast, has concluded that 'a defendant's privilege against self-incrimination guaranteed under article I, section 9 of the Florida Constitution is violated when his or her pre-arrest, pre-Miranda silence is used against the defendant at trial as substantive evidence of the defendant's consciousness of guilt.'" Ellison v. State, 44 Fla. L. Weekly D1362a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526028/5844467/file/171834_1257_0 5292019_08425916_i.pdf

SELF-DEFENSE-VICTIM'S PRIOR ACT OF VIOLENCE: Evidence of the Victim's prior violent act of meeting of the woman a few days before the alleged murder, known to the Defendant at the time, is admissible to show the Defendant's reasonable apprehension of violence by the Victim. All doubts as to the admission of self-defense evidence must be resolved in favor of the accused. Farrell v. State, 44 Fla. L. Weekly D1361a (4th DCA 5/29/19)

https://www.4dca.org/content/download/526030/5844491/file/180683_1709_0 5292019_08472892_i.pdf

APPEAL-TIMELINESS: When Order Denying a Motion to Correct Illegal sentence is rendered on March 5th and the appeal is not filed until April 5th, the appeal is untimely. April 5th would have been the 31st day. (Maxwell Smart: "Missed by that much!.) Wallace v. State, 44 Fla. L. Weekly D1359b (1st DCA 5/28/19)

https://www.1dca.org/content/download/525956/5843605/file/191359_1279_0 5282019_10391938_i.pdf

STATEMENT OF DEFENDANT: Appellate court need not decide whether in custody interview of the defendant by a Child Protective Investigator requires Miranda because error here, if any, is harmless. Cooley v. State, 44 Fla. L. Weekly D1357a (1st DCA 5/28/19)

https://www.1dca.org/content/download/525950/5843535/file/174001_1284_0 5282019_10240357_i.pdf

MITIGATION-JURISDICTION: Court may not deny motion to mitigate while the appeal is pending. Court should have denied the motion for lack of jurisdiction because of the pending appeal. Underwood v. State, 44 Fla. L. Weekly D1351c (2nd DCA 5/24/19)

https://www.2dca.org/content/download/525590/5839023/file/174525_65_05242019_08385728_i.pdf

INEFFECTIVENESS-APPELLATE COUNSEL: Appellate counsel was ineffective for failing to argue that the court impermissibly considered lack of remorse and truthfulness and sentencing. "And continuing to lie is not going to help. . . Your insistence on trying to diminish your culpability is not helping your situation. You would be much better off in my eyes and certainly everyone else's if you would just tell the truth." Error is fundamental. Beauchamp v. State, 44 Fla. L. Weekly D1351a (5th DCA 5/24/19)

https://www.5dca.org/content/download/525573/5838837/file/183381_1255_0 5242019_08201378_i.pdf

POST CONVICTION RELIEF: Court is not bound by State's concession that a hearing is required on claim made a motion for post-conviction relief, and

may properly deny the motion without hearing. Amaro v. State, 44 Fla. L. Weekly D1349a (5th DCA 5/24/19)

https://www.5dca.org/content/download/525571/5838813/file/172744_1257_0 5242019_08063766_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled relief on claim that counsel was ineffective for not requesting a Daubert hearing on expert testimony on tool marks, where his evidence that such testimony is scientifically unreliable was limited to articles found in a Google search without the underlying articles being admitted in evidence. Amaro v. State, 44 Fla. L. Weekly D1349a (5th DCA 5/24/19)

https://www.5dca.org/content/download/525571/5838813/file/172744_1257_0 5242019_08063766_i.pdf

POST CONVICTION RELIEF: Defendant failed to show prejudice in the Court's failure to give the jury the required cautionary instruction that if a question submitted by a juror is not allowed for any reason, the juror must not discuss it with the other jurors and must not hold it against either party. Prejudice is not presumed. Amaro v. State, 44 Fla. L. Weekly D1349a (5th DCA 5/24/19)

https://www.5dca.org/content/download/525571/5838813/file/172744_1257_0 5242019_08063766_i.pdf

EXPERT OPINION-EVIDENCE CODE: Frye is dead, Daubert is resurrected. Delisle receded from. In re: Amendments to the Florida Evidence Code, 44 Fla. L. Weekly S170a (FLA May 23, 2019)

https://www.floridasupremecourt.org/content/download/525509/5838164/file/s c19-107.pdf

QUOTATION: "Like the little-known codicil in the Faber College constitution, the concurring opinion cites section II.G.1. of our internal operating procedures. . .[N]o court, including ours, has ever cited this language or any part of section II. Ever." In re: Amendments to the Florida Evidence Code, 44 Fla. L. Weekly S170a (FLA May 23, 2019)

https://www.floridasupremecourt.org/content/download/525509/5838164/file/s c19-107.pdf

SENTENCING-CONSECUTIVE SENTENCES: Upon violation of probation, Court may impose sentences consecutively notwithstanding that the original sentences had been concurrent with each other. Forte v. State, 44 Fla. L. Weekly D1348a (3rd DCA 5/22/19)

http://www.3dca.flcourts.org/Opinions/3D19-0368.pdf RECLASSIFICATION: A first-degree felony shall be reclassified to a life felony if a weapon or firearm is used. Second degree murder is a felony of the first degree, and

when committed with a firearm, is reclassified as a life felony. Sheppard v. State, 44 Fla. L. Weekly D1344b (3rd DCA 5/22/19)

http://www.3dca.flcourts.org/Opinions/3D19-0638.pdf

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication on the charge of False Report of Bomb Threat. The statutory authority to suspend a sentence for the crime does not include the authority to withhold adjudication of guilt. State v. Hansen, 44 Fla. L. Weekly D1335a (4th DCA 5/22/19)

https://www.4dca.org/content/download/525423/5837115/file/180261_1709_0 5222019_09202950_i.pdf

JURY INSTRUCTION-LESSER INCLUDED-LEWD AND LASCIVIOUS: Court is not required to give a permissive lesser included simple battery instruction on the charges lewd or lascivious molestation. The lesser crime of battery includes the elements of lack of consent. Statute on lewd and lascivious battery eliminates the defense of consent, but the act can nevertheless be consensual. De Aragon v. State, 44 Fla. L. Weekly D1330b (4th DCA 5/22/19)

https://www.4dca.org/content/download/525422/5837103/file/172010_1257_0 5222019_09185183_i.pdf

STATEMENTS OF DEFENDANT-VOLUNTARINESS: Once a suspect has waived Miranda rights, police are not required to end an interrogation if the defendant makes an equivocal or ambigu him ous request for counsel. Only an unambiguous and unequivocal request for counsel requires that police

terminate an interrogation. A "Go ahead and f*****g sign off that I need a lawyer or whatever if I'm being arrested. If I'm not being arrested, then take me to a cell for my other warrants, so I can go ahead and get this s**t over with" is not an unequivocal and unambiguous invocation of his right to counsel. Gaskey v. State, 44 Fla. L. Weekly D1322a (1st DCA 5/21/19, corrected 5/24/19)

https://www.1dca.org/content/download/525278/5835462/file/172793_1284_0 5242019_09062638_i.pdf

PLEA-WITHDRAWAL: In order to show cause why the plea should be withdrawn, mere allegations are not enough; the defense must offer proof that the plea was not voluntarily and intelligently entered. Vito v. State, 44 Fla. L. Weekly D1326a (1st DCA 5/21/19)

https://edca.1dca.org/DCADocs/2017/3076/173076_1284_05212019_102838 83_i.pdf

PLEA-WITHDRAWAL: Defendant cannot withdraw a plea to 117 counts of possession of child porn and 2 counts of possession with intent to promote child porn based on the allegation that he would not have entered the plea if he had known that his counsel failed to reserve the right to appeal an order denying his motion to dismiss the last 2 counts where, as here, there was no prejudice since it is unlikely the Defendant would have proceeded to trial anyways, and the Motion to dismiss was meritless. Mallet v. State, 44 Fla. L. Weekly D1325a (1st DCA 5/21/19)

https://edca.1dca.org/DCADocs/2017/4627/174627_1284_05212019_102915 78_i.pdf

CORPUS DELICTI: Child cannot be convicted of possession of firearm by a delinquent or a minor after confessing to owning a gun found in a car occupied by the Child and 2 other people not all of whom were delinquents. "If all of the occupants of the car in which the gun was found had previously been found to have committed delinquent acts. . .this would be a no-brainer affirmance. . .[H]owever, . . .this is one of those uncommon cases where. . .proof of the identity of the person who committed the offense was necessary to prove that a crime was committed at all." N.G.S. v. State, 44 Fla. L. Weekly D1316a (2nd DCA 5/17/19)

https://www.2dca.org/content/download/525186/5834425/file/174650_39_051 72019_08343721_i.pdf

DOUBLE JEOPARDY-STALKING: Dual convictions for violation of injunction for stalking are not barred by double jeopardy where there are two distinct acts, here, first yelling at the Victim from across the street and then, after police arrived yelling "Bitch, I'm coming to get you" while pounding on his chest with both fists. Good discussion. Jacobs v. State, 44 Fla. L. Weekly D1313a (2nd DCA 5/17/19)

https://www.2dca.org/content/download/525176/5834305/file/172437_65_051 72019_08273424_i.pdf

SWELLING A STREAM: Sixth case in Florida, and the second one this spring, in which the phrase "swelling a common stream of action" was used. Jacobs v. State, 44 Fla. L. Weekly D1313a (2nd DCA 5/17/19)

https://www.2dca.org/content/download/525176/5834305/file/172437_65_051 72019_08273424_i.pdf

DOUBLE JEOPARDY: To determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court should consider only the charging document. Sherman v. State, 44 Fla. L. Weekly D1309a (1st DCA 5/16/19)

https://www.1dca.org/content/download/525078/5833295/file/134464_1286_0 5162019_10050739_i.pdf

APPEALS-INEFFECTIVE ASSISTANCE OF COUNSEL: Defendant cannot raise on direct appeal claim that counsel was ineffective for failing to move for a judgment of acquittal or failure to contest the value of the stolen property. If counsel had done so, the State could have reopened the case. Any relief must be sought under R 3.850. Stephens v. State, 44 Fla. L. Weekly D1308a (1st DCA 5/16/19)

https://www.1dca.org/content/download/525079/5833307/file/170850_1284_0 5162019_10084857_i.pdf

CIRCUMSTANTIAL EVIDENCE: Theory that evidence of the burglary is too circumstantial to sustain a conviction because someone else might have committed the burglary and put the stolen items in the car occupied by the defendant is too far-fetched to compel the court to grant a motion for judgment of acquittal. Stephens v. State, 44 Fla. L. Weekly D1308a (1st DCA 5/16/19)

https://www.1dca.org/content/download/525079/5833307/file/170850_1284_0 5162019_10084857_i.pdf

REVOCATION OF PROBATION-HEARSAY: Hearsay evidence is admissible in violation of probation hearings, but hearsay evidence that is not corroborated by non-hearsay evidence is insufficient to establish a violation of probation. Baldwin v. State, 44 Fla. L. Weekly D1306b (1st DCA 5/16/19)

https://www.1dca.org/content/download/525083/5833355/file/180465_1286_0 5162019_10215222_i.pdf

APPEAL-INEFFECTIVE ASSISTANCE: Claim that counsel was ineffective for failing to request the jury instruction on reckless driving as a lesser included offense cannot be raised on direct appeal. It is not inconceivable that there was a tactical explanation for counsel's decision not to request the lesser included instruction. Lee v. State, 44 Fla. L. Weekly D1304a (1st DCA 5/16/19)

https://www.1dca.org/content/download/525087/5833403/file/181842_1284_0 5162019_10325678_i.pdf

FINALITY OF ORDER: Where Defendant was initially sentenced to life in prison and later violated parole and was recommitted to serve a life sentence in thereafter was erroneously resentenced to life imprisonment with the possibility of review after 25 years, and neither party appeal that ruling, the trial court lacks jurisdiction to rescind the order and delete provision about sentence review. Because the order granting resentencing became final when neither party moved for rehearing or appealed the order, the trial court had no authority to enter a second order rescinding the original order. Simmons v. State, 44 Fla. L. Weekly D1301b (1st DCA 5/16/19)

https://www.1dca.org/content/download/525082/5833343/file/180191_1287_0 5162019_10192731_i.pdf

DOUBLE JEOPARDY-PROBATION: Where Court modified probation to require drug treatment upon the Defendant's testing positive for marijuana,

the defendant cannot be later accused of violating probation on the basis of that positive test. Since Defendant's probationary sentence had already been enhanced for the same violation of this condition, a second enhancement or punishment based upon the same violation would impose multiple punishments for the same offense. Mitchell v. State, 44 Fla. L. Weekly D1294a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525016/5832551/file/180855_1709_0 5152019_08443780_i.pdf

DOUBLE JEOPARDY-LEAVING SCENE OF ACCIDENT: Multiple convictions for leaving the scene of an accident in which 3 cars were hit does not violate double jeopardy since the crashes happen seconds apart and at different locations in the parking lot. Breland v. State, 44 Fla. L. Weekly D1291a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525015/5832539/file/180537_1257_0 5152019_08432363_i.pdf

HEARSAY-PRIOR INCONSISTENT STATEMENT: Officer's testimony that the phone number was the Defendant's, based on the Defendant's girlfriend's alleged statement (denied by the girlfriend) to the officer that it was, leading to the procurement of phone records was inadmissible hearsay. The records thereby linked to the defendant were consequently inadmissible. Helms v. State, 44 Fla. L. Weekly D1288a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525011/5832491/file/173811_1708_0 5152019_08392728_i.pdf

PRISON RELEASEE REOFFENDER: To qualify as a prison releasee reoffender the Defendant must have been incarcerated in and physically released from a prison, not a county jail. Helms v. State, 44 Fla. L. Weekly D1288a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525011/5832491/file/173811_1708_0 5152019_08392728_i.pdf

SEARCH AND SEIZURE-ANONYMOUS TIP: Officers lacked reasonable suspicion to detain the Defendant based on an anonymous call that a black male with dreads, wearing designer pants with glitter on the back side of the pants, standing by a convertible black Camaro parked in front of a liquor store was dealing drugs out of the vehicle. The anonymous tip's assertion of illegal conduct must be corroborated in some way to establish its reliability. The Defendant's quick return to the vehicle, bending down, and placing something inside the vehicle is insufficient corroboration of illegal activity to justify the stop. "Appellant's retreat to the vehicle did not evidence criminal activity. Indeed, if appellant could not retreat, then he was not free to leave, which circumstance constitutes a seizure for Fourth Amendment purposes." Dieujuste v. State, 44 Fla. L. Weekly D1285a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525014/5832527/file/173842_1709_0 5152019_08421874_i.pdf

GRAND THEFT-VALUE: Victim's testimony that her daughter told her that the stolen bracelet was worth close to $300 is insufficient to establish the felony value. The sheer volume of the items stolen cannot sustain an inference that the cumulative value is above $100. "[E]ven where stolen items would appear to have a minimum value based on the nature of the

item, a lack of evidence as to that value is typically fatal." Bruce v. State, 44 Fla. L. Weekly D1284a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525010/5832479/file/173740_1708_0 5152019_08363606_i.pdf

CAREER CRIMINAL: One cannot be designated a Violent Career Criminal based on a prior conviction for attempted burglary, which is not an enumerated felony. Bruce v. State, 44 Fla. L. Weekly D1284a (4th DCA 5/15/19)

https://www.4dca.org/content/download/525010/5832479/file/173740_1708_0 5152019_08363606_i.pdf

SEARCH AND SEIZURE: School resource officer may not search a juvenile based solely on a hunch that he might have a weapon. T.L.B. v. State, 44 Fla. L. Weekly D1283d (4th DCA 5/15/19)

https://www.4dca.org/content/download/525018/5832575/file/181907_1709_0 5152019_08475737_i.pdf

MANDAMUS: Defendant who had been barred by the trial court from filing further frivolous motions attacking his conviction may not apply for a writ of mandamus to require the trial court to rule on further motions. Byrd v. State, 44 Fla. L. Weekly D1281b (3rd DCA 5/15/19)

http://3dca.flcourts.org/Opinions/3D19-0672.pdf

8TH AMENDMENT: Sentence of life imprisonment with possibility of parole after 25 years for first-degree murder committed by a minor does not violate the 8th Amendment. State v. Calix, 44 Fla. L. Weekly D1281a (3rd DCA 5/15/19)

http://3dca.flcourts.org/Opinions/3D16-2784.pdf

POST CONVICTION RELIEF-FAILURE TO FILE PRETRIAL MOTION: Counsel for the defendant was ineffective for failing to file a pretrial motion to dismiss based on pre-arrest delay resulting in destruction of potentially exculpatory surveillance video recordings. State v. Ellis, 44 Fla. L. Weekly D1280a (3rd DCA 5/15/19)

http://3dca.flcourts.org/Opinions/3D17-2478.pdf

CONTINUANCE: Court did not abuse discretion in denying motion to continue to allow fingerprint testing of a watch found on the victim's body where counsel could have arranged for the testing earlier. Lindsay v. State, 44 Fla. L. Weekly D1276c (1st DCA 5/13/19)

https://www.1dca.org/content/download/524941/5831765/file/180122_1284_0 5132019_08590694_i.pdf

DOUBLE JEOPARDY: To determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court may consider only the charging document. Dygart v. State, 44 Fla. L. Weekly D1276a (1st DCA 5/13/19)

https://www.1dca.org/content/download/524937/5831717/file/134977_1286_0 5132019_08501398_i.pdf

HABEAS CORPUS-INEFFECTIVENESS: Defendant may not use habeas corpus, asserting manifest injustice, to claim that Counsel was ineffective for failing to advise him of an entrapment defense more than 2 years after the conviction is final. Watkins v. State, 44 Fla. L. Weekly D1275a (1st DCA 5/13/19)

https://www.1dca.org/content/download/524946/5831825/file/183649_1279_0 5132019_09052354_i.pdf

DOWNWARD DEPARTURE-CONSENT: Court did not abuse discretion in finding that the sex abuse of the minor was not consensual where the 15-year old victim admitted to a generally consensual relationship but testified that she felt uncomfortable with the sexual activity and "wanted out." Hayes v. State, 44 Fla. L. Weekly D1274b (1st DCA 5/13/19)

https://www.1dca.org/content/download/524939/5831741/file/173466_1286_0 5132019_08574033_i.pdf

SENTENCING MULTIPLIER: If the total resulting sentence with the multiplier applied exceeded the statutory maximum sentence for Appellant's primary offense, the multiplier could not be applied, and the statutory maximum had to be imposed on the primary offense. 90.59-year sentence is vacated for the Defendant to be sentenced to no more than 15 years for the primary offense but no less than bottom of the guidelines (44.45 years) as an aggregate sentence. Hayes v. State, 44 Fla. L. Weekly D1274b (1st DCA 5/13/19)

https://www.1dca.org/content/download/524939/5831741/file/173466_1286_0 5132019_08574033_i.pdf

ENHANCEMENT-FIREARM: Attempted first-degree murder offense is reclassified to a life felony where the Defendant fired a gun. The use of a firearm is not an essential element of attempted murder. Alleyne does not apply because the enhancement is not an element of the charged offense. Moss v. State, 44 Fla. L. Weekly D1271a (1st DCA 5/13/19)

https://www.1dca.org/content/download/524938/5831729/file/173328_1284_0 5132019_08564356_i.pdf

RAPE SHIELD STATUTE: The rape shield statute only bars evidence of actual sex acts by the Victim, not nonconsensual molestation of the juvenile victim by other men. The juvenile victim's statement that other men had molested her should have been admitted because it tended to prove that she had a motivation to fabricate her allegations. But here error is harmless based on the overwhelming evidence. Thorne v. State, 44 Fla. L. Weekly D1266a (1st DCA 5/13/19)

https://www.1dca.org/content/download/524940/5831753/file/174242_1284_0 5132019_08582326_i.pdf

CONSTRUCTIVE POSSESSION: Defendant is entitled to Judgment of Acquittal for possession of drugs found in a bedroom which was accessible by many people who lived there. The fact that some items in the room belong to someone other than the Defendant (women's shoes) along with items clearly owned by the Defendant overcomes any implication that the

Defendant had exclusive use of the room and the narcotics in it. Thomas v. State, 44 Fla. L. Weekly D1263a (2nd DCA 5/10/19)

https://www.2dca.org/content/download/524869/5830955/file/170417_39_051 02019_08410979_i.pdf

PAROLE REVOCATION: Defendant is improperly found to have violated parole where commission does not make a finding that the Defendant's use of cocaine was a violation. Lancaster v. Florida Commission on Offender Review, 44 Fla. L. Weekly D1259a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524853/5830769/file/182871_1255_0 5102019_08392118_i.pdf

POST CONVICTION RELIEF: Rule 3.800(a) is available to correct scoresheet errors apparent from the face of the record, and therefore may be filed after the two-year limit of Rule 3.850, but only allows resentencing if the sentence could not have been imposed under a correct scoresheet. Gil de Rubio v. State, 44 Fla. L. Weekly D1265a (2nd DCA 5/10/19)

https://www.2dca.org/content/download/524881/5831099/file/182253_114_05 102019_08452572_i.pdf

POST CONVICTION RELIEF: A motion for post-conviction relief under Rule 3.850 must be filed within 2 years of the judgment becoming final. In the case of a scoresheet error, resentencing is required unless the record conclusively shows the same sentence would have been imposed with a correct scoresheet. Where the scoresheet error was due to the scoring of the charge that was reversed and remanded on appeal and ultimately Nolle

Prossed, and where a written amended judgment was never entered on the remaining counts, the conviction never became final and the Defendant may seek relief under Rule 3.850. Gil de Rubio v. State, 44 Fla. L. Weekly D1265a (2nd DCA 5/10/19)

https://www.2dca.org/content/download/524881/5831099/file/182253_114_05 102019_08452572_i.pdf

RETURN OF PERSONAL PROPERTY: One has 4 years to seek to recover specific personal property under Fla.Stat. 95.11(3)(i), but only sixty days from the conclusion of the proceedings under Fla.Stat. 705.105. Court may not summarily deny as untimely a motion for return of property under s. 705.105 without attaching portions of the record supporting the ruling. Adams v. State, 44 Fla. L. Weekly D1254a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524852/5830757/file/182424_1260_0 5102019_08341098_i.pdf

SEXUAL PREDATOR-DESIGNATION-JURISDICTION: Court may not designate the Defendant a Sexual Predator after he has served his sentence in full. Mckenzie v. State, 44 Fla. L. Weekly D1252a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524851/5830745/file/182206_1260_0 5102019_08320344_i.pdf

MINOR-MANDATORY MINIMUM-SECOND DEGREE MURDER WITH A FIREARM: Juvenile is lawfully sentenced to a 25 year firearm mandatory minimum with review after 20 years. Dinnall v. State, 44 Fla. L. Weekly D1251a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524855/5830793/file/183497_1257_0 5102019_08533778_i.pdf

INVESTIGATIVE COSTS: Court improperly imposed $8752 and investigative costs without a sufficient evidentiary basis. Gissendanner v. State, 44 Fla. L. Weekly D1250d (5th DCA 5/10/19)

https://www.5dca.org/content/download/524845/5830673/file/180150_1259_0 5102019_08135719_i.pdf

POST CONVICTION RELIEF: Court may not deny motion for post-conviction relief without addressing all claims, either orally or in writing. Charles v. State, 44 Fla. L. Weekly D1250c (5th DCA 5/10/19)

https://www.5dca.org/content/download/524846/5830685/file/180392_1259_0 5102019_08170632_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to argue that the court improperly considered the defendant's "psychopathy" and that he might "be a budding psychopath" when there was no evidence to support these conclusions. Johns v. State, 44 Fla. L. Weekly D1250b (5th DCA 5/10/19)

https://www.5dca.org/content/download/524849/5830721/file/181877_1259_0 5102019_08254131_i.pdf

DOWNWARD DEPARTURE: Court's decision as to whether to impose a downward departure sentence is a judgment call within the sound discretion of the court. Kiley v. State, 44 Fla. L. Weekly D1250a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524849/5830721/file/181877_1259_0 5102019_08254131_i.pdf

PRECEDENT: A statement in a district court of appeal opinion that was not essential to the decision of the court is obiter dictum and without force as precedent. Kiley v. State, 44 Fla. L. Weekly D1250a (5th DCA 5/10/19)

https://www.5dca.org/content/download/524849/5830721/file/181877_1259_0 5102019_08254131_i.pdf

DEFINITION OF "A": "A" means "any." "The purpose of the indefinite article is to indicate a noun that is, in some way, variable, unidentified, or unspecified. . . Linguistically, 'a' refers to 'any or each' of a type when used with a subsequent restrictive modifier. . . The word 'a' is 'a function word before singular nouns when the referent is unspecified.'" Famiglio v State, 44 Fla. L. Weekly D1260d (2nd DCA 5/10/19)

https://www.2dca.org/content/download/524876/5831039/file/180467_114_05 102019_08440097_i.pdf

DEFINITION-WHEN SOMETHING OCCURS: "In common parlance, predicating a condition on 'when something occurs' or 'at the time something occurs,' is normally understood to mean the first time that the something occurs. This is so because conditional statements such as these are made

with a view towards the future, as a way of indicating that a consequent condition will arise from a future condition's occurrence. And since the future cannot be known (except in hindsight), we would ordinarily read a provision. . .to align with the way we experience the passing of temporal events; that is, we would consider the future condition's first occurrence to be the operative one, even if it is a condition that might be capable of repetition." Famiglio v State, 44 Fla. L. Weekly D1260d (2nd DCA 5/10/19)

https://www.2dca.org/content/download/524876/5831039/file/180467_114_05 102019_08440097_i.pdf

EXPERT: Testimony of trooper who testified as to braking effects in vehicular homicide case must be considered under the Frye test. Court must first determine whether the expert's method for determining braking is new or novel. If so, Court must determine admissibility of the expert opinion based on the general acceptance within the relevant scientific community. If method is not new or novel, the witness may offer pure opinion evidence based on his training and experience. '[A] trial court must have some role in ensuring the reliability of expert testimony, even if the testimony is not based on new or novel scientific methods." Kemp v. State, 44 Fla. L. Weekly D1246a (4th DCA 5/8/19)/

CREDIT FOR TIME SERVED: DOC, not the court, calculates the time served after sentencing, including time in the county jail after sentencing. Any relief sought for jail time spent after sentencing must be sought through DOC administrative proceedings. " Hardison v. State, 44 Fla. L. Weekly D1245a (4th DCA 5/8/19)

https://www.4dca.org/content/download/524713/5829370/file/181532_1257_0 5082019_08570503_i.pdf

SENTENCING-MINOR-HOMICIDE: A minor defendant convicted of first degree murder is entitled to a sentence review after 15 years, not 40 years, where jury did not find and was not asked whether he actually killed, intended to kill or attempted to kill the victims. Puzio v. State, 44 Fla. L. Weekly D1243a (4th DCA 5/8/19)

https://www.4dca.org/content/download/524705/5829274/file/173034_1708_0 5082019_08490991_i.pdf

PSI-ILLEGAL SENTENCE: Failure to order a PSI before sentencing a juvenile to life in prison for murder is an illegal sentence, cognizable under R. 3.800(b). White v. State, 44 Fla. L. Weekly D1240b (4th DCA 5/8/19)

https://www.4dca.org/content/download/524707/5829298/file/173500_1708_0 5082019_08521336_i.pdf

MINOR-LIFE SENTENCE-JURY FINDING: The juvenile sentencing procedure set forth in section 921.1401 does not violate the Sixth Amendment under Apprendi. Judge, not jury, may make the necessary factual findings. White v. State, 44 Fla. L. Weekly D1240b (4th DCA 5/8/19)

https://www.4dca.org/content/download/524707/5829298/file/173500_1708_0 5082019_08521336_i.pdf

APPEAL: Defendant is entitled to a new trial when the transcript for one day of the nine day trial is missing. Palomino v. State, 44 Fla. L. Weekly D1240a (4th DCA 5/8/19)

https://www.4dca.org/content/download/524709/5829322/file/180197_1709_0 5082019_08541899_i.pdf

COMPETENCY: Court may not accept plea and sentence the Defendant after competency evaluation was ordered but no hearing on competency was held nor was an order finding the defendant competent entered. Little v. State, 44 Fla. L. Weekly D1231b (4th DCA 5/8/19)

https://www.4dca.org/content/download/524703/5829250/file/172611_1257_0 5082019_09173825_i.pdf

CERTIORARI: The time, trouble, and expense of an unnecessary trial are not considered irreparable injury, which is required for the State to pursue a petition for writ of certiorari. State v. Gottfried, 44 Fla. L. Weekly D1228c (3rd DCA 5/8/19)

http://3dca.flcourts.org/Opinions/3D19-0699.pdf

REVOCATION OF PROBATION: Violation of probation is upheld where Court revoked the Defendant's probation on an uncharged violation of an uncharged violation, where the record shows that the Court would have revoked probation anyways on properly proven grounds. Clauson v. State, 44 Fla. L. Weekly D1228a (3rd DCA 5/8/19)

http://3dca.flcourts.org/Opinions/3D18-0425.pdf

CONTROLLING LAW: When a district court of appeal issues an opinion deciding a point of law that opinion is binding throughout the state where there is no other district court which is issued a contrary opinion, notwithstanding that the Supreme Court has accepted review of the opinion. Link v. State, 44 Fla. L. Weekly D1226b (3rd DCA 5/8/19)

http://3dca.flcourts.org/Opinions/3D19-0759.pdf

STAND YOUR GROUND: Defendant has an absolute right to a Stand Your Ground hearing. Link v. State, 44 Fla. L. Weekly D1226b (3rd DCA 5/8/19) http://3dca.flcourts.org/Opinions/3D19-0759.pdf

ARGUMENT-MISTRIAL: Prosecutor's passing reference to a jail call in closing argument does not warrant a mistrial. Odom v. State, 44 Fla. L. Weekly D1225a (3rd DCA 5/8/19)

http://3dca.flcourts.org/Opinions/3D17-1330.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that he did not receive the benefit of the bargain when the federal Bureau of

Prisons did not honor his state court agreement that his federal and state time would be served concurrently. Heath v. State, 44 Fla. L. Weekly D1223c (3rd DCA 5/8/19)

http://3dca.flcourts.org/Opinions/3D18-2117.pdf

POST CONVICTION RELIEF: Defendant is not entitled to post-conviction relief based on attorney's failure to communicate a probationary offer when record shows that no probationary offer ever existed. "[C]ounsel cannot be deficient for failing to communicate a nonexistent offer." Forbes v. State, 44 Fla. L. Weekly D1221b (2nd DCA 5/8/19)

https://www.2dca.org/content/download/524681/5828986/file/180952_65050 82019_08495365_i.pdf

TALKING LIKE A LAWYER: "The Alcorn elements are conjunctive. . . The Alcorn elements also unfold chronologically, meaning that the elements develop temporally with the requisite first development. . ." Forbes v. State, 44 Fla. L. Weekly D1221b (2nd DCA 5/8/19)

https://www.2dca.org/content/download/524681/5828986/file/180952_65050 82019_08495365_i.pdf

SENTENCING-DOWNWARD DEPARTURE: Court may not impose a downward departure sentence on the basis of physical disability where there was no testimony that the defendant had ever been diagnosed or treated for mental illness nor were medical records or testimony to substantiate the claims of physical disability submitted. State v. Bellamy, 44 Fla. L. Weekly D1214a (2nd DCA 5/8/19)

https://www.2dca.org/content/download/524670/5828848/file/170806_39050 82019_08431916_i.pdf

VOP-POSSESSION OF PORNOGRAPHY: Sex offender probation may be violated by mere possession of pornography notwithstanding that the pornography in question is not related to his deviant behavior. And having a "Barely Legal" magazine is never a good thing. Quijano v. State, 44 Fla. L. Weekly D1213a (2nd DCA 5/8/19)

https://www.2dca.org/content/download/524671/5828860/file/172541_65050 82019_08442820_i.pdf

CERTIORARI: Defendant cannot seek through petition for writ of certiorari to compel the trial court to allow evidence of a confession by another individual to the crime with which the Defendant is charged. Exclusion of the 3rd party confession may be raised only on appeal. There is no irreparable harm when the issue can be raised on appeal. Segura v. State, 44 Fla. L. Weekly D1210a (1st DCA 5/6/19)

https://www.1dca.org/content/download/524562/5827621/file/180520_1279_0 5062019_02461000_i.pdf

VOP-JURISDICTION: Court lacks jurisdiction where the Defendant had already served the statutory maximum time before the filing of the probation violation. Dooly v. State, 44 Fla. L. Weekly D1209a (1st DCA 5/6/19)

https://www.1dca.org/content/download/524566/5827669/file/182455_1287_0 5062019_02494319_i.pdf

KIDNAPPING: The act of pulling the victim from the hotel gym, down the hall, and to the pool deck in an attempted rape is sufficient to support a conviction for kidnapping. The asportation of the victim was neither inherent nor incidental to the attempted sexual battery. Gloston v. State, 44 Fla. L. Weekly D1208b (1st DCA 5/6/19)

https://www.1dca.org/content/download/524558/5827573/file/172756_1284_0 5062019_02302973_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for allowing the Defendant to plead to a

trafficking amounts of cocaine when the probable cause affidavit alleged a lesser amount, and for failing to file a motion to dismiss. The signed plea form does not bar the Defendant from raising Counsel's failure to conduct an adequate investigation. Brown v. State, 44 Fla. L. Weekly D1206a (1st DCA 5/6/19)

https://www.1dca.org/content/download/524567/5827681/file/183623_1286_0 5062019_02502814_i.pdf

DOUBLE JEOPARDY: Single homicide rule bars convictions for both vehicular homicide and fleeing and eluding with death. Daniel v. State, 44 Fla. L. Weekly D1201a (1st DCA 5/6/19)

https://www.1dca.org/content/download/524561/5827609/file/180516_1287_0 5062019_02361109_i.pdf

EVIDENCE-EXPERT-MENTAL HEALTH: A properly qualified witness may testify as an expert about them mental health of the defendant notwithstanding that he or she is not a licensed psychologist, psychiatrist, or physician. Wanless v. State, 44 Fla. L. Weekly D1197b (1st DCA 5/6/19)

https://www.1dca.org/content/download/524557/5827561/file/170448_1286_0 5062019_02290932_i.pdf

MANDATORY MINIMUM-10-20-LIFE-CONSECUTIVE SENTENCE: Consecutive sentences for one gunshot with the multiple assault victims and no physical injuries is not permitted. "As the Florida Supreme Court continues to develop rules in this area, it may well conclude that any gunshot

is enough. Or it may decide that a single act can be 'bifurcated' if it simultaneously harms multiple people. Or it may abandon its current rules altogether and decide to untether the legality of consecutive mandatory-minimum sentences from the number of victims or gunshots. But based on the Florida Supreme Court precedent as we now understand it, Wanless's consecutive mandatory minimum sentences cannot stand." Wanless v. State, 44 Fla. L. Weekly D1197b (1st DCA 5/6/19)

https://www.1dca.org/content/download/524557/5827561/file/170448_1286_0 5062019_02290932_i.pdf

QUOTATION-CONSECUTIVE SENTENCES: "For twenty years, the complexity and conundrums of Florida's sentencing law have created a degree of confusion as to when consecutive or concurrent sentences are permissible. . .[O]ur supreme court ought to bring greater clarity to this area of the law and, if possible, return to a textually-based jurisprudence." Wanless v. State, 44 Fla. L. Weekly D1197b (1st DCA 5/6/19)

https://www.1dca.org/content/download/524557/5827561/file/170448_1286_0 5062019_02290932_i.pdf

JOA-LEWD AND LASCIVIOUS EXHIBITION: "They saw Mr. Mesen's pants unzipped and the victim's arm extending into his pants, moving back and forth, but they could not see the victim's hand. His pants were not pulled down; they may have been unbuttoned but were definitely unzipped." One cannot be convicted of lewd or lascivious exhibition on elderly person by victim masturbating Defendant inside his pants without exposing his genitals. "Expose" means to make something visible." Mesen v. State, 44 Fla. L. Weekly D1194a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524437/5826287/file/164971_39_050 32019_09211986_i.pdf

TOO WEIRD: "The fact that the victim had her hand in the defendant's pants is merely incidental to what is proscribed by the statute, which criminalizes actions taken by the defendant, not the inducement of an action taken by the victim. The evidence supports only one action alleged to have been taken by the defendant: unzipping his fly within reach of a victim who is disabled or elderly, so as to place his genitals within reach of her touch without making them visible." Mesen v. State, 44 Fla. L. Weekly D1194a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524437/5826287/file/164971_39_050 32019_09211986_i.pdf

DEFINITION-EXPOSURE-LATIN: "The doctrine of noscitur a sociis (a 'word is known by the company it keeps') is relied upon 'to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words.'. . .A meaning of the word exposes' that includes merely exposure to a grasp through or under clothing cannot be employed to describe a term — 'exhibition'– that indicates the presentation of something to another's viewing. Mesen v. State, 44 Fla. L. Weekly D1194a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524437/5826287/file/164971_39_050 32019_09211986_i.pdf

UNLAWFUL USE OF TWO-WAY COMMUNICATIONS DEVICE: Mere possession of walkie-talkies in the trunk of a car occupied by defendant implicated in a string of attempted burglary's does not support a conviction

for unlawful use of two-way communications device. Sanchez v. State, 44 Fla. L. Weekly D1185a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524440/5826329/file/170258_114_05 032019_08401774_i.pdf

CRIMINAL MISCHIEF: Defendant cannot be convicted of first degree criminal mischief for damages to the door by which he did attempted to burglarize the store based on the store manager's guess about the costs of replacement. The jury's "life experience" concerning how much certain repairs might cost cannot substitute for actual evidence of the value of the damage. Sanchez v. State, 44 Fla. L. Weekly D1185a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524440/5826329/file/170258_114_05 032019_08401774_i.pdf

SENTENCING-CONSIDERATIONS: Due Process forbids the Court considering a Defendant's truthfulness at trial and continued assertions of innocence. Sanchez v. State, 44 Fla. L. Weekly D1185a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524440/5826329/file/170258_114_05 032019_08401774_i.pdf

CONFIDENTIAL INFORMANT-DISCLOSURE: Court must not order State to disclose the identity of a confidential informant without first holding an in camera hearing. State v. Jean, 44 Fla. L. Weekly D1184b (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524462/5826593/file/182281_167_05 032019_08593647_i.pdf

CREDIT FOR TIME SERVED-PRISON CREDIT: Defendant who is in prison is not entitled for credit time served under a detainer. Monroe v. State, 44 Fla. L. Weekly D1183a (2nd DCA 5/3/19)

https://www.2dca.org/content/download/524453/5826485/file/180795_114_05 032019_08474790_i.pdf

HEARSAY-CONFRONTATION CLAUSE: Statement made to CPT is improperly admitted pursuant to Fla.Stat. 90.803(24) because it violates the Confrontation Clause (Crawford) where the Victim was unavailable and the Defendant had no prior opportunity to depose her. Malave v. State, 44 Fla. L. Weekly D1182a (5th DCA 5/3/19)

https://www.5dca.org/content/download/524425/5826137/file/173225_1259_0 5032019_08373151_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that Counsel was ineffective for opening the door to harmful evidence. Vogds v. State, 44 Fla. L. Weekly D1181a (5th DCA 5/3/19)

https://www.5dca.org/content/download/524432/5826221/file/183192_1260_0 5032019_09081618_i.pdf

SUBSTITUTION OF COUNSEL: Court must allow substitution of counsel after jury selection but before presentation of evidence. A defendant always retains the right to discharge his or her court-appointed counsel and to be represented by private counsel. Wilcox v. State, 44 Fla. L. Weekly D1180a (5th DCA 5/3/19)

https://www.5dca.org/content/download/524426/5826149/file/181636_1260_0 5032019_08450075_i.pdf

POST CONVICTION RELIEF: Counsel may waive instruction on attempted manslaughter when the Defendant is charged with attempted first degree murder and convicted of attempted second degree murder. Decision may be tactical. Questions certified: May a defendant in a noncapital case waived category one lesser included offenses? If so must defense counsel announce express waiver on the record? Is failure to give the attempted manslaughter instruction fundamental error when counsel affirmatively declines to requested? Is the jury pardon doctrine abrogated? Lathan v. State, 44 Fla. L. Weekly D1177a (5th DCA 5/3/19)

https://www.5dca.org/content/download/524427/5826161/file/181979_1254_0 5032019_08542708_i.pdf

PROBATION-MODIFICATION: Court may deny motion to modify probation without a hearing where the motion only sought modification of existing probationary conditions. Osborne v. State, 44 Fla. L. Weekly D1174c (5th DCA 5/3/19)

https://www.5dca.org/content/download/524433/5826233/file/183997_1254_0 5032019_09100866_i.pdf

EVIDENCE CODE-AMENDMENT-JUDICIAL NOTICE: Supreme Court adopts the legislative amendment in family law cases allowing the court to take judicial notice of any record of any court when imminent danger is been alleged or is impractical to give prior notice to the parties. In Re: Amendments to the Florida Evidence Code, 44 Fla. L. Weekly S161a (FLA 5/2/19)

https://www.floridasupremecourt.org/content/download/524343/5825227/file/S C19-105.pdf

HEARSAY-CONSENT: The giving of consent is a verbal act, and therefore testimony that someone has given consent is not hearsay. Mendez-Carmona v. State, 44 Fla. L. Weekly D1174a (1st DCA 5/2/19)

https://www.1dca.org/content/download/524400/5825909/file/181252_1284_0 5022019_11050287_i.pdf

JURY INSTRUCTION-GOOD FAITH: Defendant is not entitled to a "good faith" instruction where her defense was that someone else put the stolen money in her bank account. Carr v. State, 44 Fla. L. Weekly D1173a (1st DCA 5/2/19)

https://www.1dca.org/content/download/524398/5825885/file/180401_1284_0 5022019_11033221_i.pdf

APPEAL-INEFFECTIVENESS: Defendant cannot raise on direct appeal that counsel was ineffective for not asking for instruction on the lesser offense of resisting without violence where prejudice is not indisputable and there may be some tactical explanation for the failure to request the instruction. Israel

v. State, 44 Fla. L. Weekly D1172a (1st DCA 5/2/19) https://www.1dca.org/content/download/524399/5825897/file/180596_1284_0 5022019_11041446_i.pdf

JURY INSTRUCTIONS-REREADING: Court did not err in rereading a portion of the jury instructions which answered a specific jury question. Jackson v. State, 44 Fla. L. Weekly D1169b (1st DCA 5/2/19)

https://www.1dca.org/content/download/524397/5825873/file/180373_1284_0 5022019_11020379_i.pdf

10-20-LIFE-CONSECUTIVE SENTENCES: Court may impose consecutive mandatory minimum sentences where there are multiple victims of the aggravated assault but only one victim who is actually shot, where multiple shots are fired. Jackson v. State, 44 Fla. L. Weekly D1169b (1st DCA 5/2/19)

https://www.1dca.org/content/download/524397/5825873/file/180373_1284_0 5022019_11020379_i.pdf

DOUBLE JEOPARDY: Separate convictions for use of computer services to solicit a minor to engage in sexual conduct, unlawful use of two-way communications device, and traveling to meet a minor violate double jeopardy where convictions are based on the same conduct. Court may only consider the charging document to determine whether multiple convictions for these offenses were based on the same conduct. Pasicolan v. State, 44 Fla. L. Weekly D1169a (1st DCA 5/2/19) https://www.1dca.org/content/download/524350/5825309/file/142634_1284_0 5022019_09144913_i.pdf

DOUBLE JEOPARDY: Dual convictions for use of a computer to facilitate a parent to consent to sexual conduct a child and traveling to meet minor violate double jeopardy when based on the same conduct. Courts may only consider the charging document. Coffey v. State, 44 Fla. L. Weekly D1168a (1st DCA 5/2/19)

https://www.1dca.org/content/download/524386/5825741/file/151299_1284_0 5022019_10314710_i.pdf

POST CONVICTION RELIEF-COUNSEL: Court's decision whether to appoint counsel on Defendant's motion for post-conviction relief is discretionary. Drakus v. State, 44 Fla. L. Weekly D1166a (1st DCA 5/2/19)

https://www.1dca.org/content/download/524392/5825813/file/174457_1286_0 5022019_10522382_i.pdf

POST CONVICTION RELIEF: Court must make factual findings on the record on Defendant's motion for post-conviction relief. Drakus v. State, 44 Fla. L. Weekly D1166a (1st DCA 5/2/19)

https://www.1dca.org/content/download/524392/5825813/file/174457_1286_0 5022019_10522382_i.pdf

CIRCUMSTANTIAL EVIDENCE-MURDER: Defendant cannot be convicted of murder based on his withdrawal of money from victim's ATM where her body was never recovered. Garcia v. State, 44 Fla. L. Weekly D1152a (3rd DCA 5/1/19) http://3dca.flcourts.org/Opinions/3D15-2815.pdf

VOP-VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court may not dismiss the violation of probation for a Violent Felony Offender of Special Concern without holding a VOP hearing and making a written findings as to whether the Offender poses a danger to the community. State v. Rincon, 44 Fla. L. Weekly D1150a (3rd DCA 5/1/19)

http://3dca.flcourts.org/Opinions/3D18-1282.pdf

COMPETENCY: Court does not have to order a competency evaluation where no bona fide question about competency was raised. Byron v. State, 44 Fla. L. Weekly D1143b (3rd DCA 5/1/19)

http://3dca.flcourts.org/Opinions/3D17-1267.pdf

POST CONVICTION RELIEF-JURISDICTION: Trial court has jurisdiction to consider motion for post-conviction relief while the appellate court considers a separate motion for habeas corpus based on ineffectiveness of appellate counsel. Gyden II v. State, 44 Fla. L. Weekly D1142e

(3rd DCA 5/1/19)

http://3dca.flcourts.org/Opinions/3D18-2230.pdf

BOND-REVOCATION: Trial court can revoke bond and/or modify pretrial release conditions notwithstanding that the 1st appearance Judge declined to do so. Johnson v. State, 44 Fla. L. Weekly D1139a (4th DCA 5/1/19)

https://www.4dca.org/content/download/524303/5824749/file/190826_1703_0 5012019_09253710_i.pdf

NELSON HEARING: Defendant waived his right to a Nelson inquiry where he took no steps to have the hearing held and ultimately expressed satisfaction with counsel that the change of plea hearing. Soltis v. State, 44 Fla. L. Weekly D1135b (4th DCA 5/1/19)

https://www.4dca.org/content/download/524295/5824653/file/180598_1257_0 5012019_09083298_i.pdf

COMPETENCY: Court did not commit fundamental error in accepting Defendant's plea without a competency hearing when he had been found to be incompetent his competency had been raised in a separate case with which the Court was unaware. Thomas v. State, 44 Fla. L. Weekly D1134a (4th DCA 5/1/19)

https://www.4dca.org/content/download/524294/5824641/file/180306_1257_0 5012019_09070785_i.pdf

COMPETENCY: Court must conduct a comps a hearing within twenty days of ordering a competency evaluation. Long v. State, 44 Fla. L. Weekly D1133a (4th DCA 5/1/19)

https://www.4dca.org/content/download/524292/5824617/file/173261_1711_0 5012019_09024531_i.pdf

DOWNWARD DEPARTURE: Defendant's felony battery is not an isolated incident when the Defendant cannot count how many times he'd been in fights before. ("How many [fights] have I been in? I can't even tell ya." Radice v. State, 44 Fla. L. Weekly D1131a (4th DCA 5/1/19)

https://www.4dca.org/content/download/524292/5824617/file/173261_1711_0 5012019_09024531_i.pdf

STAND YOUR GROUND: Amendment to Stand Your Ground law, changing burden of proof, applies retroactively to pending cases. Conflict certified. Manley v. State, 44 Fla. L. Weekly D1129b (2nd DCA 5/1/19)

https://www.2dca.org/content/download/524306/5824797/file/162272_39_050 12019_08494773_i.pdf

PRISON RELEASEE REOFFENDER: PRR does not apply to battery on a law enforcement officer. McAlkich v. State, 44 Fla. L. Weekly D1129a (2nd DCA 5/1/19)

https://www.2dca.org/content/download/524307/5824809/file/164675_114_05 012019_08513182_i.pdf

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PLEA-VOLUNTARINESS-DEPORTATION: Attorney's failure to advise defendant that his plea for possession of cocaine would result in mandatory deportation is ineffective assistance of counsel. The court's admonishment that the Defendant could be deported is not cure the deficiency. Alsubsie v. State, 44 Fla. L. Weekly D1122a (1st DCA 4/29/19)

https://www.1dca.org/content/download/524179/5823341/file/173517_1287_0 4292019_09260581_i.pdf

STATEMENTS OF DEFENDANT-CUSTODIAL INTERROGATION: Defendant was not in custody when interrogated at the sheriff's office about the death of his daughter notwithstanding that he requested an attorney and is requests to terminate the interview were not honored. A request for an attorney need not be honored when the Defendant had not been Mirandized. Thomason v. State, 44 Fla. L. Weekly D1119a (1st DCA 4/29/19)

https://www.1dca.org/content/download/524175/5823291/file/172828_1284_0 4292019_09221893_i.pdf

LIFE SENTENCE: A life sentence without the possibility of parole for participation in murder is lawful when the offense occurred after the Defendant had turned eighteen. The age of 18 is the bright line between being a juvenile and an adult. Farmer v. State, 44 Fla. L. Weekly D1116a (1st DCA 4/29/19)

https://www.1dca.org/content/download/524180/5823353/file/180331_1284_0 4292019_09270729_i.pdf

SCORESHEET: The "adult-on-minor sex offense" multiplier does not apply to unlawful sexual activity under §794.05. Ellison v. State, 44 Fla. L. Weekly D1115c (1st DCA 4/29/19)

https://www.1dca.org/content/download/524181/5823365/file/181629_1282_0 4292019_09280941_i.pdf

SPECIAL JURY INSTRUCTION: A special jury instruction which constitute a statement of stipulated fact (that law enforcement had failed to preserve

evidence), rather than a statement of what the law is, should not be given. Dawson v. State, 44 Fla. L. Weekly D1114a (1st DCA 4/29/19)

https://www.1dca.org/content/download/524176/5823303/file/172985_1284_0 4292019_09235214_i.pdf

APPEALS-ENFORCEMENT OF MANDATE: Where Court accepted the Defendant's plea without holding a competency hearing after competency had been raised previously, and whereupon remand the Court cannot make a retroactive determination of competency at the time the original plea the court may not thereafter revisit the issue and reinstate the previous sentence. Elder v. State, 44 Fla. L. Weekly D1105a (2nd DCA 4/26/19)

https://www.2dca.org/content/download/524122/5822774/file/133440_173_04 262019_10084147_i.pdf

STAND YOUR GROUND: Change to Stand Your Ground law applies retroactively in pending cases. Conflict certified. Feaster v. State, Fla. Weekly D1103a (2nd DCA 4/29/19)

https://www.2dca.org/content/download/524124/5822798/file/173612_39_042 62019_08290841_i.pdf

SENTENCING-CONSIDERATIONS: Court improperly infers, unsubstantiated by evidence, that the defendant was a drug dealer based on the quality of the meth. A trial judge violates a defendant's due process rights by basing his or her sentence, at least in part, on uncharged offenses.

Defendant is entitled to resentencing with a different judge. Shelko v. State, 44 Fla. L. Weekly D1098b (5th DCA 4/26/19)

https://www.5dca.org/content/download/524114/5822672/file/181162_1260_0 4262019_08191733_i.pdf

VOP: Court may find the defendant in violation of probation based on evidence adduced at a trial in which he was acquitted. Antinarelli v. State, 44 Fla. L. Weekly D1098a (5th DCA 4/26/19)

https://www.5dca.org/content/download/524117/5822708/file/183377_1257_0 4262019_08290796_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel did not tell him that he had a right to testify, but rather only advised him that it was in his best interest not to testify, where if he had testified he would have made a claim supporting an independent act defense. Williams v. State, 44 Fla. L. Weekly D1096b (5th DCA 4/26/19)

https://www.5dca.org/content/download/524113/5822660/file/180871_1259_0 4262019_08123935_i.pdf

SENTENCING-CONSIDERATIONS: Court may consider lack of remorse or refusal to accept responsibility when sentencing Defendant within the statutory range. “We can no longer embrace the blanket, judge-made rule that when it comes to sentencing.” Prior case law to the contrary is receded from. Question certified. Davis v. State, 44 Fla. L. Weekly D1079c (1st DCA 4/25/19)

https://www.1dca.org/content/download/524036/5821832/file/170165_1284_0 4252019_08591788_i.pdf

SENTENCING-CONSIDERATIONS-DISSENT: "Overturning thirty years of precedent and creating conflict with all other Florida appellate courts, a bare majority of this Court enfeebles what for decades has been an easily administered bright-line sentencing rule for Florida judges: do not punish — or appear to punish — a defendant who maintains his innocence for a perceived lack of remorse or the failure to take responsibility or accept guilt for the crime proven." Davis v. State, 44 Fla. L. Weekly D1079c (1st DCA 4/25/19)

https://www.1dca.org/content/download/524036/5821832/file/170165_1284_0 4252019_08591788_i.pdf

QUOTATION: "Paradoxically, the majority embraces a patchwork of primarily federal cases with a hodgepodge of state cases supporting its view as if Florida courts should reflexively deem them as superior in kind to what our legislature and state judiciary have thoughtfully developed and implemented over the past decades. But, what principle of state judicial power says, "Fed is Best — Chuck State Law," where the Supremacy Clause is not in play?" Davis v. State, 44 Fla. L. Weekly D1079c (1st DCA 4/25/19)

https://www.1dca.org/content/download/524036/5821832/file/170165_1284_0 4252019_08591788_i.pdf

PRETRIAL DETENTION: Although it was within trial court's discretion to revoke bond in earlier offense at defendant's initial appearance on new

charges, where state did not seek pretrial detention and the new charges did not allege a capital or life felony, it was error to order petitioner to be held without bond on new charges without determining issue of pretrial release or detention in accordance with procedural rules. Rodriguez v. State, 44 Fla. L. Weekly D1099a (5th DCA 4/24/19)

https://www.5dca.org/content/download/523903/5820321/file/191114_1255_0 4242019_10060967_i.pdf

SENTENCING-DEPARTURE: Defendant established a legal basis to downward departure based on the need for specialist fear for mental disorder where he had previously been diagnosed as bipolar and treated for that. Hiraldo v. State, 44 Fla. L. Weekly D1078c (2nd DCA 4/24/19)

https://www.2dca.org/content/download/523958/5820999/file/181678_39_042 42019_08395253_i.pdf

STAND YOUR GROUND: Amendment to Stand Your Ground law applies retroactively. The fact that the Defendant was convicted at trial should have no bearing on the Court's determination on the immunity issue. Horton v. State, 44 Fla. L. Weekly D1078b (2nd DCA 4/24/19)

https://www.2dca.org/content/download/523935/5820723/file/172852_39_042 42019_08450027_i.pdf

SENTENCING-EXCESS OF STATUTORY MAXIMUM: Under the Criminal Punishment Code, the Court may/must impose the lowest permissible sentence on additional offenses even if that exceeds the statutory maximum for that count, notwithstanding that the Defendant is sentenced to more than

that lowest permissible sentence on a separate count. Here, the defendant was lawfully sentenced to life in prison for the primary offense (armed robbery with a firearm) and twenty years for the additional offense which was a third-degree felony. "We conclude that the LPS [Lowest Permissible Sentence] is an individual minimum sentence which applies to each felony at sentencing for which the LPS exceeds that felony's statutory maximum sentence, regardless of whether the felony is the primary or an additional offense." Champagne v. State, 44 Fla. L. Weekly D1074a (2nd DCA 4/24/19)

https://www.2dca.org/content/download/523936/5820735/file/173072_65042 42019_08353616_i.pdf

VOP-CREDIT FOR TIME SERVED: Court must delineate the jail credit to which the Defendant is entitled distinguishing it from the prison credit which is to be calculated by the Department of Corrections. The trial court need not calculate prison credit so long as the trial court checks the standard box allowing all appropriate prior prison credit. Crandall v. State, 44 Fla. L. Weekly D1072a (2nd DCA 4/24/19)

https://www.2dca.org/content/download/523976/5821215/file/182721_65042 42019_08405909_i.pdf

SEARCH AND SEIZURE-OBSCURED TAG: License plate frame that obscured words "MyFlorida.com" and "Sunshine State" did not provide legal basis for traffic stop. State v. Morris, 44 Fla. L. Weekly D1062a (4th DCA 4/24/19)

https://www.4dca.org/content/download/523915/5820471/file/182470_1257_0 4242019_09144578_i.pdf

HABEAS CORPUS: Petition for habeas corpus alleging ineffective assistance of appellate counsel filed more than 8 years after the judgment in final is procedurally barred. Torres v. Inch, 44 Fla. L. Weekly D1034a (3rd DCA 4/24/19)

http://3dca.flcourts.org/Opinions/3D19-0402.pdf

HEARSAY: Court properly excluded the digital recording of a 911 call where the victim had not listened to the CD offered in evidence and therefore did not authenticate it. T.M. v. State, 44 Fla. L. Weekly D1032a (3rd DCA 4/24/19)

http://3dca.flcourts.org/Opinions/3D18-0894.pdf

DOUBLE JEOPARDY: Double jeopardy does not bar separate convictions for domestic battery by strangulation simple battery based on 2 separate, distinct acts of strangulation at 2 different times in 2 different locations. "If successive impulses are separately given, even though all unite in swelling a common stream of action, separate indictments lie." Martin v. State, 44 Fla. L. Weekly D1025a (3rd DCA 4/24/19)

http://3dca.flcourts.org/Opinions/3D19-0007.pdf

DEALING IN STOLEN PROPERTY: Pawning stolen property in questionable circumstances is evidence that the seller knew it was stolen. Quinones v. State, 44 Fla. L. Weekly D1023a (3rd DCA 4/24/19)

http://3dca.flcourts.org/Opinions/3D17-1769.pdf

SENTENCING: Defendant may be sentenced to forty years as a prison releasee re-offender for a first-degree felony (30 year maximum) where court could have sentenced him to life in prison as a habitual felony offender. Sapp v. State, 44 Fla. L. Weekly D1021a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523765/5818844/file/182399_1284_0 4222019_09425876_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to relief on claim that counsel was ineffective for not disputing his status as a prison releasee reoffender or it is undisputed that he had previously been released from county jail, not prison. Delon v. State, 44 Fla. L. Weekly D1020b (1st DCA 4/22/19)

https://www.1dca.org/content/download/523767/5818868/file/183648_1286_0 4222019_09453000_i.pdf

VOP: Defendant cannot be found in willful violation of condition that he maintain full-time employment when the condition does not provide for a good faith effort exception. Boyd v. State, 44 Fla. L. Weekly D1020a (1st DCA 4/22/19) https://www.1dca.org/content/download/523768/5818880/file/183773_1284_0 4222019_09465172_i.pdf

APPEALS-POST CONVICTION RELIEF: Order which denied 5 of 6 claims for post-conviction relief but did not address the 6th claim is not an appealable final order. Wells v. State, 44 Fla. L. Weekly D1017a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523759/5818772/file/174309_1279_0 4222019_09345592_i.pdf

VOP: Evidence that on one occasion, Defendant appellant moved away from the CPS device for approximately five minutes before returning to it is not competent, substantial evidence of a substantial and willful violation. King v. State, 44 Fla. L. Weekly D1016b (1st DCA 4/22/19)

https://www.1dca.org/content/download/523764/5818832/file/181227_1287_0 4222019_09420166_i.pdf

SEVERANCE: Defendant is not entitled to a severance based on the possibility that the defendant could, if tried separately, call the codefendant to testify that he had coerced the Defendant into committing the crime. The fact that the defendant might have a better chance of acquittal or a strategic advantage if tried separately does not establish the right to a severance. Fernandes v. State, 44 Fla. L. Weekly D1015a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523760/5818784/file/174459_1284_0 4222019_09354652_i.pdf

RESTITUTION: Court may not order restitution for the outstanding balance on the loan on the vehicle which the Defendant destroyed. Good discussion. Tolbert v. State, 44 Fla. L. Weekly D1009a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523757/5818748/file/173240_1287_0 4222019_09283968_i.pdf

COMPETENCY: Court may not accept Defendant's plea and impose sentence following competency evaluation without issuing a written order determining that he is in fact competent. Milton v. State, 44 Fla. L. Weekly D1008f (1st DCA 4/22/19)

https://www.1dca.org/content/download/523756/5818736/file/170900_1287_0 4222019_09263883_i.pdf

BAIL: After revoking Defendant's pretrial release court must grant Defendant a hearing on a motion to set bond. An application for modification of bail on any felony charge must be heard by a court in person, at a hearing with the defendant present, and with at least three hours' notice to the state attorney. Calzetta v. State, 44 Fla. L. Weekly D1008d (5th DCA 4/22/19)

https://www.5dca.org/content/download/523777/5818978/file/191065_1255_0 4222019_10052274_i.pdf

APPEALS-JURISDICTION: An order which reserved jurisdiction over child support and equitable distribution, but not over timesharing and parental responsibility, is nonappealable as a nonfinal order as to any of the issue. Browner v. Browner, 44 Fla. L. Weekly D1020c (1st DCA 4/22/19)

https://www.1dca.org/content/download/523770/5818904/file/190556_1279_0 4222019_09491881_i.pdf

SEVERANCE: Defendant is not entitled to a severance based on the possibility that the defendant could, if tried separately, call the codefendant to testify that he had coerced the Defendant into committing the crime. The fact that the defendant might have a better chance of acquittal or a strategic

advantage if tried separately does not establish the right to a severance. Fernanders v. State, 44 Fla. L. Weekly D1015a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523760/5818784/file/174459_1284_0 4222019_09354652_i.pdf

RESTITUTION: Court may not order restitution for the outstanding balance on the loan on the vehicle which the Defendant destroyed. Good discussion. 44 Fla. L. Weekly D1009a (1st DCA 4/22/19)

https://www.1dca.org/content/download/523757/5818748/file/173240_1287_0 4222019_09283968_i.pdf

COMPETENCY: Court may not accept Defendant must his plea and impose sentence following competency evaluation without issuing a written order determining that he is in fact competent. Milton v. State, 44 Fla. L. Weekly D1008f (1st DCA 4/22/19)

https://www.1dca.org/content/download/523756/5818736/file/170900_1287_0 4222019_09263883_i.pdf

BAIL: After revoking Defendant's pretrial release court must grant Defendant a hearing on a motion to set bond. An application for modification of bail on any felony charge must be heard by a court in person, at a hearing with the defendant present, and with at least three hours' notice to the state attorney. Calzetta v. State, 44 Fla. L. Weekly D1008d (5th DCA 4/22/19) https://www.5dca.org/content/download/523777/5818978/file/191065_1255_0 4222019_10052274_i.pdf

SEARCH AND SEIZURE-VEHICLE STOP: Failure to maintain a single lane alone cannot establish probable cause when the action is done safely, but justifies a stop when the vehicle is operated in an unusual manner such as when it almost collides with another vehicle. State v. Wilson, 44 Fla. L. Weekly D1007a (5th DCA 4/18/19)

https://edca.5dca.org/DCADocs/2018/2117/182117_1260_04182019_083342 86_i.pdf

MOTION TO DISMISS: Court properly denied motion to dismiss notwithstanding that the victim testified that the Defendant was unconscious and unaware at the time she engaged in sexual intercourse with him. Whether the defendant knowingly or willingly committed the sexual act is a question of general intent to be determined by the trier of fact and, thus, not an issue to be decided by the trial court on a Rule 3.190(c)(4) motion to dismiss. State v. Griffin, 44 Fla. L. Weekly D1006a (5th DCA 4/18/19)

https://edca.5dca.org/DCADocs/2018/1781/181781_1260_04182019_083142 93_i.pdf

INCONSISTENT VERDICTS: Conviction for robbery with a firearm or deadly weapon is not inconsistent with finding that the Defendant did not carry a firearm during the commission of the robbery. A firearm-looking weapon can be considered a deadly weapon. Mitchell v. State, 44 Fla. L. Weekly D1003a (5th DCA 4/18/19)

https://edca.5dca.org/DCADocs/2018/3811/183811_1254_04182019_084803 76_i.pdf

APPEALS: Appeal should be dismissed for lack of jurisdiction where there is a total disconnect between the Defendant's notice of appeal (order prohibiting pro se filings) and the subject matter of his initial brief (the merits of the Defendant's Motion for Post Conviction Relief. Jenkins v. State, 44 Fla. L. Weekly D1002a (5th DCA 4/18/19)

https://edca.5dca.org/DCADocs/2018/1490/181490_1252_04182019_082744 47_i.pdf

PRESENTENCE INVESTIGATION REPORT: Court must consider a new PSI for defendant who is sentenced after a retrial. Slinger v. State, 44 Fla. L. Weekly D1000e (5th DCA 4/18/19)

https://edca.5dca.org/DCADocs/2017/3829/173829_1260_04182019_082111 37_i.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of both felony murder and the underlying felony. Williams v. State, 44 Fla. L. Weekly D1000c (3rd DCA 4/17/19) http://3dca.flcourts.org/Opinions/3D19-0369.pdf

CONCEALED WEAPON: A firearm is not concealed when it is partially visible because the butt is sticking out of the console. State v. Hodges, 44 Fla. L. Weekly D1000b (3rd DCA 4/17/19)

http://3dca.flcourts.org/Opinions/3D18-0032.pdf

JUDGE-DISQUALIFICATION: The fact that an attorney made a campaign contribution to a judge or served on a judge's campaign committee does not,

without more, require disqualification. Benitez v. Benitez, 44 Fla. L. Weekly D999 (3rd DCA 4/17/19)

http://3dca.flcourts.org/Opinions/3D18-0905.pdf

EVIDENCE-WILLIAMS RULE: Testimony of two other young women regarding their molestations by defendant where there were significant points of similarity is admissible. Stubbs v. State, 44 Fla. L. Weekly D985a (4th DCA 4/17/19)

https://www.4dca.org/content/download/523623/5817132/file/173295_1257_0 4172019_09011309_i.pdf

DOUBLE JEOPARDY-COLLATERAL ESTOPPEL: Collateral estoppel does not bar state from introducing at retrial on murder and conspiracy charges an acquaintance's testimony that defendant had solicited him to commit murder, although this testimony was the factual basis for the solicitation charge for which defendant was acquitted at his first trial, when the verdicts are irreconcilably inconsistent and the convictions are later vacated for legal error unrelated to the inconsistency. Rutledge v. State, 44 Fla. L. Weekly D984b (4th DCA 4/17/19)

https://www.4dca.org/content/download/523625/5817156/file/173659_1257_0 4172019_09104681_i.pdf

MINOR-LIFE SENTENCE-HOMICIDE: When resentencing Defendant who was a juvenile the time of the murder Court must include language providing for sentence review after 25 years. Lacue v. State, 44 Fla. L. Weekly D984a (4th DCA 4/17/19)

https://www.4dca.org/content/download/523622/5817120/file/171300_1257_0 4172019_08585258_i.pdf

PRISON RELEASEE REOFFENDER: Defendant who was released from county jail is not eligible for sentencing as a prison releasee re-offender. Razz v. State, 44 Fla. L. Weekly D983b (4th DCA 4/17/19)

https://www.4dca.org/content/download/523621/5817108/file/162400_1709_0 4172019_08582113_i.pdf

CONFESSION-VOLUNTARINESS: When officer during interrogation implied that asserting self-defense would be the Defendant's "only out," the Defendant's confession is involuntary. An express quid pro quo is not required for a claim of undue influence or coercion. The test is whether the Defendant was unable to make a choice free from unrealistic open delusions. Police misrepresentations of law are much more likely to render a suspect's confession involuntary. Johnson v. State, 44 Fla. L. Weekly D980a (4th DCA 4/17/19)

https://www.4dca.org/content/download/523626/5817168/file/181084_1709_0 4172019_09121977_i.pdf

POST CONVICTION RELIEF: Forfeiture of game time is a collateral consequence of a plea and does not render the plea involuntary. Brown v. State, 44 Fla. L. Weekly D977c (4th DCA 4/17/19)

https://www.4dca.org/content/download/523633/5817252/file/183270_1709_0 4172019_09330250_i.pdf

STAND YOUR GROUND: Amendment shifting burden of proof to state applies to cases pending on appeal even when immunity hearing was held before effective date of statute. Conflict certified. Whitham v. State, 44 Fla. L. Weekly D975a (2nd DCA 4/17/19)

https://www.2dca.org/content/download/523640/5817340/file/163388_39041 72019_08313183_i.pdf

JUDGMENT-SNAPOUT: Court must prepare a proper sentencing document, rather than relying on a snapout form. "[T]he Tenth Circuit has persisted in using [snapout forms] despite a cavalcade of opinions from this court decrying this practice and pointing out specific problems with the circuit's widespread use of the forms." Dagan v. State, 44 Fla. L. Weekly D974a (2nd DCA 4/17/19)

https://www.2dca.org/content/download/523644/5817388/file/174828_173_04 172019_08354898_i.pdf

CHILD ABUSE-MALICIOUS PUNISHMENT: Aggravated child abuse by malicious punishment does not require a finding of physical injury. Making the child eat his own feces is malicious. Reinard v. State, 44 Fla. L. Weekly D993b (1st DCA 4/16/19)

https://www.1dca.org/content/download/523611/5817015/file/180006_1284_0 4162019_02470635_i.pdf

CONSECUTIVE SENTENCE-10-20-LIFE: Court may not impose consecutive minimum mandatory sentences for aggravated assault and possession of a firearm by felon were the offenses occurred during a single criminal episode involving one victim. Consecutive sentences are permissible for single-episode crimes only when there are either multiple victims or multiple injuries. Bradley v. State, 44 Fla. L. Weekly D989b (1st DCA 4/16/19)

https://www.1dca.org/content/download/523610/5817003/file/175463_1287_0 4162019_02453567_i.pdf

IMPEACHMENT-TEXT MESSAGES: Text messages excluded from case-in-chief due to a failure to timely file notices collateral crime evidence are properly admitted as impeachment where they contradict the Defendant's testimony that the Victim initiated contact. Russell v. State, 44 Fla. L. Weekly D989a (1st DCA 4/16/19)

https://www.1dca.org/content/download/523608/5816979/file/174925_1284_0 4162019_02412934_i.pdf

MANDATORY MINIMUM-CONSECUTIVE SENTENCES: Court may not impose consecutive mandatory minimum sentences for multiple firearm offenses where they were committed without discharging a firearm during a single criminal episode. Rogers v. State, 44 Fla. L. Weekly D987c (1st DCA 4/16/19)

https://www.1dca.org/content/download/523602/5816915/file/173522_1286_0 4162019_02304883_i.pdf

JUVENILE-SECURE DETENTION: Court has no authority to reimpose any portion of the juvenile's original sentence based on the juvenile's unsuccessful discharge from treatment. J.A. v. Housel, 44 Fla. L. Weekly D972a (3rd DCA 4/15/19)

http://3dca.flcourts.org/Opinions/3D19-0692.pdf

STAND YOUR GROUND-RETROACTIVITY: Amendment to Stand Your Ground law applies retroactively. Defendant's conviction does not foreclose a rehearing on the Defendant's Stand Your Ground motion, but if the motion is denied, the conviction is reinstated. Rivera v. State, 44 Fla. L. Weekly D970b (2nd DCA 4/12/19)

https://www.2dca.org/content/download/523450/5815381/file/170496_39_041 22019_08491965_i.pdf

DNA-EXPERT-STATISTICAL SIGNIFICANCE: An expert need not be a statistician to testify regarding the statistical significance of a DNA match, but must demonstrate a sufficient knowledge of the database grounded in the study of authoritative sources. On facts, this expert should have been allowed to testify to the statistical significance of a DNA match. State v. Bethley, 44 Fla. L. Weekly D971a (2nd DCA 4/12/19)

https://www.2dca.org/content/download/523455/5815441/file/184143_167_04 122019_08572264_i.pdf

VOP: Defendant does not violate the condition of probation that he not possess a weapon or firearm by the fact that he possessed ammunition. Livingstone v. State, 44 Fla. L. Weekly D970a (2nd DCA 4/12/19)

https://www.2dca.org/content/download/523451/5815393/file/171695_114_04 122019_08503804_i.pdf

JURY INSTRUCTION-ATTEMPTED MANSLAUGHTER: Court committed fundamental error because the jury instruction for attempted manslaughter did not exclude justifiable and excusable homicide from the definition of attempted manslaughter, and also omitted the introduction to the homicide instruction that defines justifiable and excusable homicide. Sams v. State, 44 Fla. L. Weekly D967c (2nd DCA 4/12/19)

https://www.2dca.org/content/download/523449/5815369/file/162117_39_041 22019_08473388_i.pdf

DOWNWARD DEPARTURE: Defendant is not entitled to a downward departure based on knee injury sustained while resisting arrest. "The defendant's medical records generated while at the jail show, at best, that he had some swelling in his left knee and was given over-the-counter acetaminophen, a knee brace, and access to a wheelchair. . . [H]e was told by the doctor who examined him that he would 'be all right.'." State v. Schuler, 44 Fla. L. Weekly D964a (5th DCA 4/12/19) https://edca.5dca.org/DCADocs/2018/3086/183086_1260_04122019_091340 66_i.pdf

SENTENCING-CHILD PORNOGRAPHY: 100 year sentence is not cruel and unusual for possession of 20 counts of child pornography. Berben v. State, 44 Fla. L. Weekly D962a (5th DCA 4/12/19)

https://edca.5dca.org/DCADocs/2017/1428/171428_1259_04122019_081527 94_i.pdf

SENTENCING-CHILD PORNOGRAPHY-CONSIDERATIONS: Court improperly considered the inference, unsupported by evidence, that the Defendant had or might distribute the child pornography images in imposing a 100 year sentence. "Just as we do not punish an individual who possesses illegal drugs the same as one who manufactures or sells drugs, so too do we distinguish punishment for one who possesses child pornography from one who sexually assaults children or manufactures or distributes child pornography. Berben was not convicted of distributing child pornography and should not have been sentenced as if he had." Berben v. State, 44 Fla. L. Weekly D962a (5th DCA 4/12/19)

https://edca.5dca.org/DCADocs/2017/1428/171428_1259_04122019_081527 94_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him to reject the plea offer. Rish v. State, 44 Fla. L. Weekly D960a (5th DCA 4/12/19)

https://edca.5dca.org/DCADocs/2018/3657/183657_1259_04122019_091750 20_i.pdf

LIMITATION OF ACTIONS: Defendant is not entitled to dismissal of information based on the twenty-six year delay between issuance of arrest capias and actual service where law enforcement made several diligent attempts to locate defendant and uncontradicted evidence that defendant fled from the state and attempted to avoid prosecution with the use of multiple aliases. State v. Grammig, 44 Fla. L. Weekly D959c (5th DCA 4/12/19)

https://edca.5dca.org/DCADocs/2017/3416/173416_1260_04122019_082040 34_i.pdf

CURLY APOSTROPHES: Apostrophes must be curly. In Re: Amendments to the Rules Regulating the Florida Bar, 44 Fla. L. Weekly S143a (FLA 4/11/19) https://www.floridasupremecourt.org/content/download/523359/5814265/file/sc18-1683_BIENNIAL%20PETITION_NOTICE%20OF%20CORRECTION.pdf

JUDGES-DISCIPLINE: Judge reprimanded for removing a second attorney from sidebar conference in full view jury. "[T]he two attorneys were speaking respectfully to the Court during the sidebar, and were merely taking turns addressing the court, not speaking over each other. It appears that the attorneys had not breached the order and decorum of the proceedings in any way, other than aggravating Judge Bailey by working together to articulate an argument during a sidebar." Inquiry Concerning Judge Dennis Bailey, 44 Fla. L. Weekly S141b (FLA 4/11/19)

https://www.floridasupremecourt.org/content/download/523386/5814595/file/SC18-2060.pdf

AMENDMENTS TO JURY INSTRUCTIONS: Minor amendments to instructions on possession of firearm, domestic battery by strangulation, neglect of a child, false information to LEO, and human trafficking. In Re: Standard Jury Instructions in Criminal Cases, 44 Fla. L. Weekly S141a (FLA 4/11/19)

https://www.floridasupremecourt.org/content/download/523385/5814583/file/S C18-2030.pdf

POST CONVICTION RELIEF: Counsel was not ineffective for failing to follow up on her question to the Defendant at trial about his whereabouts at the time of the crime, and even if there were error it was harmless. State v. Smith, 44 Fla. L. Weekly D958a (1st DCA 4/11/19)

https://www.1dca.org/content/download/523348/5814141/file/172911_1287_0 4112019_08552364_i.pdf

ALIBI: Court cannot exclude a defendant's own alibi testimony for failure to file and serve proper notice of an alibi defense. State v. Smith, 44 Fla. L. Weekly D958a (1st DCA 4/11/19)

https://www.1dca.org/content/download/523348/5814141/file/172911_1287_0 4112019_08552364_i.pdf

SENTENCING-UPWARD DEPARTURE-DANGER TO PUBLIC: Court improperly sentenced Defendant who scored under 22 points to prison upon violation of probation by relying on facts other than her prior record. Gaymon v. State, 44 Fla. L. Weekly D957c (1st DCA 4/11/19)

https://www.1dca.org/content/download/523349/5814153/file/173335_1287_0 4112019_08562039_i.pdf

SENTENCING-SCORESHEET: Prior convictions more than 15 years old may not be included on the scoresheet. Platt v. State, 44 Fla. L. Weekly D956a (4th DCA 4/10/19)

https://www.4dca.org/content/download/523200/5812899/file/182231_1257_0 4102019_09210329_i.pdf

PROBATION-EARLY TERMINATION: Plea agreement which includes a "no early termination" clause is enforceable. Sturgeon v. State, 44 Fla. L. Weekly D955c (4th DCA 4/10/19)

https://www.4dca.org/content/download/523203/5812935/file/183406_1703_0 4102019_09264861_i.pdf

COSTS-ACQUITTED DEFENDANT: Acquitted defendant is not entitled to reimbursement for costs of house arrest imposed as a condition of pretrial release. Whitley v. State, 44 Fla. L. Weekly D952a (4th DCA 4/10/19)

https://www.4dca.org/content/download/523202/5812923/file/182610_1257_0 4102019_09253291_i.pdf

APPEAL-COMPETENCY: In case which proceeded to disposition without a competency determination having been made, the appropriate remedy on repeal is not to vacate conviction, but rather to remand to determine if the court can make a nunc pro tunc finding of competency. Machin v. State, 44 Fla. L. Weekly D948a (4th DCA 4/10/19)

https://www.4dca.org/content/download/523193/5812815/file/172787_1711_0 4102019_08511512_i.pdf

SENTENCING-CONSIDERATIONS-DETERRENCE: General deterrence is a proper sentencing factor and does not violate due process rights. GOOD DISCUSSION. Gallo v. State, 44 Fla. L. Weekly D946a (4th DCA 10/10/19)

https://www.4dca.org/content/download/523196/5812851/file/181236_1257_0 4102019_09123844_i.pdf

YUCK: "[Defendant] was trying to drink the blood that was pooling from his own head on the floor" and "appeared [to be] having a conversation with Satan." Gallo v. State, 44 Fla. L. Weekly D946a (4th DCA 10/10/19)

https://www.4dca.org/content/download/523196/5812851/file/181236_1257_0 4102019_09123844_i.pdf

HEARSAY: Court properly excluded Defendant's statements made days after the shooting death of the Defendant' wife that the shooting an accident, offered to rebut the inference that is defense of accidental shooting was a recent fabrication, because said statements were too far removed in time from the shooting. Boggess v. State, 44 Fla. L. Weekly D944e (4th DCA 10/10/19)

https://www.4dca.org/content/download/523198/5812875/file/181943_1257_0 4102019_09181076_i.pdf

POST CONVICTION RELIEF-TIMELINESS: Defendant must raise claim that counsel was ineffective for not advising him of the immigration consequences within 2 years of when he could have ascertained the immigration consequences of the plea with due diligence. It is not enough to allege that the defendant learned of the possibility of deportation only upon the commencement of deportation proceedings after the two-year limitations period has expired. Lopez-Gonzales, 44 Fla. L. Weekly D944b (3rd DCA 4/10/19)

http://3dca.flcourts.org/Opinions/3D18-0993.pdf

DOUBLE JEOPARDY: Convictions for use of computer service to solicit parent and traveling to meet child violate double jeopardy where is not clear that the crimes are for distinct acts. To avoid double jeopardy, the information must clearly on its face show each count as a separate and distinct act. Baker v. State, 44 Fla. L. Weekly D942a (3rd DCA 4/10/19) http://3dca.flcourts.org/Opinions/3D17-1881.pdf

STATEMENTS OF DEFENDANT-COERCION: Statement made by interrogating officers to defendant himself a narcotics officer suspected of stealing money from a sting operation is coerced would obtain under threat of removal from office ("We have to make this look like an isolated incident if you want to try to maintain your position in narcotics"). State v. Socarras, 44 Fla. L. Weekly D935a (3rd DCA 4/10/19)

http://3dca.flcourts.org/Opinions/3D18-0783.pdf

LATIN PHRASES-5th AMENDMENT HISTORY: "Historically,'[t]he right against self-incrimination originated in the maxim nemo tenetur seipsum prodere ('no man shall be compelled to incriminate himself'.)'" State v.

Socarras, 44 Fla. L. Weekly D935a (3rd DCA 4/10/19) http://3dca.flcourts.org/Opinions/3D18-0783.pdf

CROSS-EXAMINATION: Court did not err in restricting cross-examination of eyewitness who was arrested for a crime which was later dropped. Mitchell v. State, 44 Fla. L. Weekly D933b (3rd DCA 4/10/19) http://3dca.flcourts.org/Opinions/3D17-2718.pdf

DUPLICATE JUDGMENT: Court may not enter a 2nd judgment of guilt upon finding that the defendant violated probation. Byra v. State, 44 Fla. L. Weekly D928a (2nd DCA 4/10/19)

https://www.2dca.org/content/download/523224/5813187/file/181297_65_041 02019_08545313_i.pdf

DOUBLE JEOPARDY: Double jeopardy bars convictions for both unlawful use of a two-way communications device and use of a computer to solicit child or acts arising out of a single criminal episode. Wright v. State, 44 Fla. L. Weekly D927a (2nd DCA 4/10/19)

https://www.2dca.org/content/download/523222/5813163/file/181164_114_04 102019_08534476_i.pdf

JUDGES: Judge's comments to excused jurors scolding them for their unwillingness to serve and made in the presence of the actual jury is not fundamental error. Weddington v. State, 44 Fla. L. Weekly D923a (1st DCA 4/9/19)

https://www.1dca.org/content/download/523121/5811941/file/180501_1284_0 4092019_08153983_i.pdf

STATEMENTS OF DEFENDANT: Defendant was not in custody for purposes of Miranda in order to the ground at pistol point and asked what happened. A traffic stop or investigatory stop is not transformed into a custodial interrogation or formal arrest when police ask the person if he or she has any weapons or drugs. Young v. State, 44 Fla. L. Weekly D921d (1st DCA 4/9/19)

https://www.1dca.org/content/download/523120/5811929/file/175245_1284_0 4092019_08145538_i.pdf

COSTS: Judgment may not include imposition of discretionary fines and surcharges when neither was orally pronounce. Cheeks v. State, 44 Fla. L. Weekly D921a (1st DCA 10/9/19)

https://www.1dca.org/content/download/523118/5811905/file/172994_1286_0 4092019_08133239_i.pdf

HEARSAY-STATEMENTS OF CO-DEFENDANT: Admissions of statements of co-defendant regarding events leading up to the charged incident is not

fundamental error when isolated, passing references, were not mentioned in Status as arguments, and did not become a feature the trial. Powell v. State, 44 Fla. L. Weekly D919a (1st DCA 10/9/19)

INSANITY: Court may not accept the voluntary stipulation between prosecutor and defense counsel that the Defendant is not billed reason of insanity. Lowry v. State, 44 Fla. L. Weekly D896a (1st DCA 4/5/19)

JAIL CALL: Defendant's statement in jail call "you gonna help me get the help that I need?" Is admissible as a statement by a party opponent. Smith v. State, 44 Fla. L. Weekly D894a (1st DCA 4/5/19)

VOP-CREDIT FOR TIME SERVED: After supervision is revoked and a prison sentence is imposed, a defendant is not entitled to credit against his prison sentence for the time previously spent on supervision. An exception exists when a new term of supervision is imposed after a violation. In that case, an award of credit is required when necessary to ensure that the total term of supervision does not exceed the statutory maximum. However, when a defendant's supervision is revoked, and he is sentenced to prison with no supervision to follow, this exception does not apply, even if the new prison term combined with the previous supervisory sentence results in a total that exceeds the statutory maximum. Gordon v. State, 44 Fla. L. Weekly D893a (1st DCA 4/5/19)

APPEALS-CERTIORARI-SECOND-TIER REVIEW: "As a case travels up the judicial ladder, review should consistently become narrower, not broader." Second-tier review is limited to whether lower court departed from the essential requirements of law, i.e. whether the ruling violated a clearly established principle of law resulting in a miscarriage of justice. Conviction for resisting without violence for fleeing a car dealership where he was not welcome is affirmed. Stamitoles v. State, 44 Fla. L. Weekly D891c (1st DCA 4/5/19)

APPEAL-INEFFECTIVE ASSISTANCE: Claim that counsel was ineffective for not pursuing a motion to suppress may only be raised when Defendant establishes indisputable prejudice. Bishop v. State, 44 Fla. L. Weekly D891b (1st DCA 4/5/19)

VIOLATION-SANCTION: Court may not exclude a defense witness who is on state's witness list and had been deposed as a sanction for Defendant not listing that witness. Ward v. State, 44 Fla. L. Weekly D888a (5th DCA 4/5/19)

JEOPARDY-POSSESSION OF CHILD PORNOGRAPHY: Convictions for one count of unlawful possession of sexual performance by a child (10 or more images) and separate convictions for possession of child pornography for those images in Count I is not barred by double jeopardy. Taylor v. State, 44 Fla. L. Weekly D884a (5th DCA 4/5/19)

POST CONVICTION RELIEF-MANDATORY MINIMUM-RETROACTIVITY: Supreme Court opinion holding that consecutive minimum mandatory sentences from a single episode in which the Defendant did not fire a gun does not apply retroactively. "When the Florida Supreme Court interprets a statute. . ., it explains not just what the statute means now, but also what the statute has always meant. However if the sentence was not illegal at the time it was imposed, the defendant is not entitled to relief under Rule 3.800(a) by virtue of a later-decided case. If he had appealed, he would have won, but he didn't, so he is screwed. Hester v. State, 44 Fla. L. Weekly D881b (1st DCA 4/3/19)

POSSESSION-KNOWLEDGE: Evidence that Defendant was aware of marijuana plants on the property, standing alone is insufficient to support

conviction for manufacturing cannabis. Terry v. State, 44 Fla. L. Weekly D879a (1st DCA 4/3/19)

SECOND DEGREE MURDER-CIRCUMSTANTIAL EVIDENCE-JOA: Evidence of an argument between the defendant and his girlfriend later found shot to death in her bathroom at their home is sufficient to prove that the Defendant shot her. Charlier v. State, 44 Fla. L. Weekly D877b (3rd DCA 4/3/19)

MEDICAL MARIJUANA: Florida Constitution does not allow qualified patients and caregivers to grow, cultivate, and/or process their own marijuana. Florida Department of Health v. Redner, 44 Fla. L. Weekly D873b (1st DCA 4/3/19)

MINOR-SENTENCING: 35 year concurrent sentences for homicide and nonhomicide committed by a juvenile is legal. A thirty-five year sentence is not a life, mandatory life, or a de facto life sentence. Burns v. State, 44 Fla. L. Weekly D873a (1st DCA 4/3/19)

ARGUMENT-SHIFTING BURDEN OF PROOF-DNA: State improperly shifted burden of proof by arguing that the Defendant in his interrogation did not deny paternity or save more to proclaim his innocence, but the error was harmless. "The comments and question cannot alter DNA evidence to a 99.9% certainty, bolstered by the other evidence." Grimsley v. State, 44 Fla. L. Weekly D872a (1st DCA 4/3/19)

https://www.1dca.org/content/download/522919/5809507/file/172803_1284_0 4032019_10302645_i.pdf

PROBATION REVOCATION-SENTENCING: A new sentencing hearing is required where defendant is found guilty of violating probation based on commission of a new offense (sexual battery) and technical violations, and the technical violations were not supported by evidence, and it is not clear that the Court would have imposed the same sentence without the technical violations. Kimmons v. State, 44 Fla. L. Weekly D871a (1st DCA 4/3/19)

https://www.1dca.org/content/download/522914/5809453/file/160204_1286_0 4032019_10272612_i.pdf

COMPETENCY: Court may find the defendant competent to stand trial based upon other evidence, notwithstanding Defendant's delusional explanation for the murder and his history of mental illness. Not every defendant whose mental health problems manifest in bizarre or irrational behavior is legally incompetent to stand trial. Rodgers v. State, 44 Fla. L. Weekly D870a (1st DCA 4/3/19)

https://www.1dca.org/content/download/522973/5810179/file/174325_1284_0 4032019_10521359_i.pdf

HEARSAY-EXCITED UTTERANCE: 911 call in which victim reported that defendant had been sending her death threats all day in text and voice mail messages is admissible under excited utterance exception, notwithstanding two hour gap between the threat and the victim's call to 911. Lee v. State, 44 Fla. L. Weekly D864f (1st DCA 4/3/19)

https://www.1dca.org/content/download/522915/5809465/file/171469_1284_0 4032019_10281318_i.pdf

EVIDENCE-JAIL CALLS: Statements made by victim in recorded jail calls are admissible hearsay for purpose of providing context for defendant's responses. Lee v. State, 44 Fla. L. Weekly D864f (4/3/19)

https://www.1dca.org/content/download/522915/5809465/file/171469_1284_0 4032019_10281318_i.pdf

POSSESSION OF CONTRABAND IN CUSTODY: Defendant is properly convicted of possession of contraband based on him being found in jail with the synthetic cannabinoid cigarette. Statute prohibits possession of any drugs, not only those listed in Fla.Stat. 893.02. Diaz v. State, 44 Fla. L. Weekly D859a (3rd DCA 4/3/19)

http://3dca.flcourts.org/Opinions/3D17-0464.pdf

SENTENCING: Sentence of fifty-eight months in prison followed by one year of probation for possession of cocaine was illegal as sentence exceeds the statutory maximum. Buggs v. State, 44 Fla. L. Weekly D857a (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522932/5809687/file/174040_114_04 032019_08465935_i.pdf

STAND YOUR GROUND-JURY INSTRUCTION: Confusing and contradictory jury instruction conflating different parts of the Stand Your Ground law require a new trial. Dooley v. State, 44 Fla. L. Weekly D854b (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522926/5809615/file/170368_114_04 032019_09144284_i.pdf

STAND YOUR GROUND-JURY INSTRUCTION: Section 776.013(3) gives immunity to one who reasonably believed the use of deadly force was "necessary . . . to prevent death or great bodily harm . . . or to prevent the commission of a forcible felony," and is not available to one involved in unlawful activity. 776.012(1) does allow one involved in unlawful activity to invoke Stand Your Ground immunity. Dooley v. State, 44 Fla. L. Weekly D854b (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522926/5809615/file/170368_114_04 032019_09144284_i.pdf

GRUMPY OLD MAN WITH A GUN: "Trevor Dooley and David James got into an argument over whether a teenager should be allowed to skateboard on a basketball court. By the end of the encounter, Mr. James had been shot dead by Mr. Dooley." Dooley v. State, 44 Fla. L. Weekly D854b (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522926/5809615/file/170368_114_04 032019_09144284_i.pdf

JURY INSTRUCTIONS-QUOTATION: "Pinning the precise degree of assumed correctness to approved standard jury instructions seems to be an exercise of elusive measurement. On the one hand, the Florida Supreme Court has held that standard jury instructions 'are published under this Court's authority and are presumed to be correct.' . . . On the other hand, that pronouncement has come to be tethered to so many qualifications it leaves one to wonder whether what remains could truly be said to be a presumption." Dooley v. State, 44 Fla. L. Weekly D854b (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522926/5809615/file/170368_114_04 032019_09144284_i.pdf

VOCABULARY: "In some respects, the confusion here resembles that sometimes seen with the use of asyndetons — the omission of conjunctive or disjunctive signals within a list — which 'can suggest the essential unity of the items . . . . [or] can also be used to evoke a sense of disorder.'" Dooley v. State, 44 Fla. L. Weekly D854b (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522926/5809615/file/170368_114_04 032019_09144284_i.pdf

COSTS: Court must orally pronouncing statutory authority before imposing a discretionary $500 fine and 5% surcharge. Davis v. State, 44 Fla. L. Weekly D854a (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522942/5809807/file/180892_65_040 32019_08504514_i.pdf

COMPETENCY: "If the Defendant is incompetent and unlikely to regain competency, the State must either institute the customary civil commitment proceeding or release him. If an incompetent defendant cannot be restored to competency in the reasonably foreseeable future, the State can either institute a civil commitment proceeding or it can release the defendant. It is an either-or proposition. There is no third alternative. . . [T]he Court's direction to release the defendant' does not brook anything besides an unconditional release." The Court may not order conditional release. Schofield v. Judd, 44 Fla. L. Weekly D850a (2nd DCA 4/3/19)

https://www.2dca.org/content/download/522970/5810143/file/184827_167_04 032019_08524701_i.pdf

PRO SE FILINGS: Court may not prohibit further pro se filings without warning the defendant of the consequences. Roland v. State, 44 Fla. L. Weekly D847a (4th DCA 4/3/19)

https://www.4dca.org/content/download/522910/5809399/file/183033_1709_0 4032019_09291654_i.pdf

JUVENILE-ADJUDICATORY HEARING-ABSENCE OF JUVENILE: Court properly proceeded with adjudicatory hearing in absence of the juvenile after finding that his absence was voluntary, but court may not proceed to disposition in the absence of the juvenile. J.R. v. State, 44 Fla. L. Weekly D846b (4th DCA 4/3/19) https://www.4dca.org/content/download/522905/5809339/file/181719_1708_0 4032019_09214882_i.pdf

RESTITUTION-VALUATION: Victim's guesstimate of value of a stolen necklace, based on the replacement value of similar necklaces is insufficient to establish the value of it. Using websites, catalogs, or contacts with non-witnesses to price the value of an item constitutes reliance on hearsay. Morrill v. State, 44 Fla. L. Weekly D843a (4th DCA 4/3/19)

https://www.4dca.org/content/download/522899/5809267/file/180781_1708_0 4032019_09041410_i.pdf

FORFEITURE-VEHICLE-FRAUD: Forfeiture of a Cadillac Escalade because it was purchased under a false name may be an excessive fine under the 8th Amendment of the Constitution. Tejada v. Forfeiture of 2015 Cadillac Escalade, 44 Fla. L. Weekly D841b (4th DCA 4/3/19)

https://www.4dca.org/content/download/522903/5809315/file/181474_1709_0 4032019_09164469_i.pdf

CAREER CRIMINAL: Defendant cannot be sentenced as a Violent Career Criminal based on his conviction for grand theft, not an enumerated felony. Hastie v. State, 44 Fla. L. Weekly D840b (4th DCA 4/3/19)

https://www.4dca.org/content/download/522987/5810329/file/183159_1709_0 4032019_03260464_i.pdf

INFORMATION-AMENDMENT: State may not amend the charge of capital sexual battery mid-trial to alter the item of penetration based on the trial testimony (Victim testified it was a gun, not a penis or finger as charged). Viladoine v. State, 44 Fla. L. Weekly D839a (4th DCA 4/3/19)

https://www.4dca.org/content/download/522897/5809243/file/160218_1709_0 4032019_08454690_i.pdf

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INCONSISTENT VERDICTS-LEAVING SCENE OF ACCIDENT: Convictions for leaving the scene of an accident with injury and with property damage

from the same accident is inconsistent. Leaving the scene of an accident with property damage requires that there be only property damage, no injury. Linen v. State, 44 Fla. L. Weekly D838a (2nd DCA 3/29/19)

https://www.2dca.org/content/download/521338/5790236/file/163691_114_03 292019_08360956_i.pdf

APPEAL-INEFFECTIVENESS: Appellate court will not entertain claims that trial counsel was ineffective for failing to move for judgment of acquittal based on the state billing to prove the value of the stolen property. Only when there is indisputable prejudice will the appellate court consider that trial counsel was ineffective. Because State might have reopened its case to prove value, the prejudice here was not indisputable. Gaskins v. State, 44 Fla. L. Weekly D834b (5th DCA 3/29/19)

https://edca.5dca.org/DCADocs/2018/1089/181089_1257_03292019_085205 16_i.pdf

VOP-YOUTHFUL OFFENDER: Defendant who was initially sentenced to probation as youthful offender and whose probation is revoked for substantive offense must be sentenced to serve the minimum mandatory for use of a firearm that would have applied to the original offense. Cooper v. State, 44 Fla. L. Weekly D830b (5th DCA 3/29/19)

https://edca.5dca.org/DCADocs/2017/2326/172326_1257_03292019_083853 06_i.pdf

PAROLE REVOCATION: Defendant's revocation of parole is vacated with the record is not clear that the examiner found that the Defendant's use of drugs was a willful and substantial violation of probation (Defendant used drugs to self medicatefor side effects of cancer). Lancaster v. State, 44 Fla. L. Weekly D830a (5th DCA 3/29/19)

https://edca.5dca.org/DCADocs/2018/2871/182871_1255_03292019_092708 80_i.pdf

SCORESHEET-JURY FINDING-PENETRATION: Failure of jury to find penetration, if required by Alleyne, is harmless if the record demonstrates that a rational jury would have found the fact of penetration. Vereen v. State, 44 Fla. L. Weekly D826a (1st DCA 3/28/19)

https://www.1dca.org/content/download/521299/5789872/file/165189_1286_0 3282019_10524051_i.pdf

CREDIT FOR TIME SERVED: Defendant is not entitled to credit for time served on all counts upon VOP because probation was concurrent and Defendnt is sentenced to consecutive sentences upon VOP. Triatik v. State, 44 Fla. L. Weekly D825a (1st DCA 3/28/19)

https://www.1dca.org/content/download/521303/5789920/file/181426_1286_0 3282019_10563351_i.pdf

CREDIT FOR TIME SERVED: When a trial court imposes probation, it must credit jail time against the probationary term if the combined time would

exceed the statutory maximum sentence. Triatik v. State, 44 Fla. L. Weekly D825a (1st DCA 3/28/19)

https://www.1dca.org/content/download/521303/5789920/file/181426_1286_0 3282019_10563351_i.pdf

LICENSING: Perfunctory revocation of nursing license without consideration of the underlying circumstances is unlawful. Brewer v. Florida Department of Health, Board of Nursing, 44 Fla. L. Weekly D821a (1st DCA 3/28/19)

https://www.1dca.org/content/download/521300/5789884/file/172179_1287_0 3282019_10534782_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for not pursuing a Stand Your Ground defense. "We cannot presume counsel acted in a strategic manner here given the rapidly evolving state of the law at the time of the appellant's trial." Waters v. State, 44 Fla. L. Weekly D820a (1st DCA 3/28/19)

https://www.1dca.org/content/download/521301/5789896/file/173653_1286_0 3282019_10543665_i.pdf

10/20/LIFE: Court may not impose ten-year mandatory minimum for possession of firearm where the grounds for enhancement were not alleged in the information. Agenor v. State, 44 Fla. L. Weekly D815e (2nd DCA 3/27/19)

https://www.2dca.org/content/download/521197/5788654/file/173759_114_03 272019_08571178_i.pdf

MINOR-SENTENCE REVIEW: Defendant who was sentenced to thirty years in prison for armed robberies committed when he was seventeen years old is not entitled to have sentence reviewed under new juvenile sentencing law. Graham does not apply to a thirty-year sentence. Francois v. State, 44 Fla. L. Weekly D813b (3rd DCA 3/27/19) http://3dca.flcourts.org/Opinions/3D18-0218.pdf

POST CONVICTION RELIEF: Defendant may voluntary dismiss motion for post-conviction relief prior to the court's entry of an order ruling on it. Thomas v. State, 44 Fla. L. Weekly D813a (3rd DCA 3/27/19)

http://3dca.flcourts.org/Opinions/3D18-2487.co.pdf

DRUG COURT: Administrative order barring more than one admission into the drug court program is unlawful. Gincley v. State, 44 Fla. L. Weekly D808a (4th DCA 3/27/19)

https://www.4dca.org/content/download/521193/5788600/file/183067_1704_0 3272019_09120493_i.pdf

APPEALS-INEFFECTIVENESS: Appellate counsel was ineffective for failing to argue that the court erred in not holding a competency hearing after having ordered a competency evaluation. Flaherty v. State, 44 Fla. L. Weekly D806a (4th DCA 3/27/19)

https://www.4dca.org/content/download/521192/5788588/file/182872_1704_0 3272019_09104067_i.pdf

JURY INSTRUCTIONS: Reading the instructions for the lesser included in an improper order does not warrant a new trial where the jury was unlikely to be confused. "While the erroneous instruction would naturally cause some confusion, this did not transform the error into one that reached down into the validity of the trial." Johnson v. State, 44 Fla. L. Weekly D801a (4th DCA 3/27/19)

https://www.4dca.org/content/download/521184/5788492/file/173776_1257_0 3272019_08595683_i.pdf

STAND YOUR GROUND-RETROACTIVE: Amendment to Stand Your Ground law which requires state to prove by clear and convincing evidence that immunity does not apply does not apply retroactively. Mandate affirmed pending Supreme Court resolution. Rivera v. State, 44 Fla. L. Weekly D800a (4th DCA 3/27/19)

https://www.4dca.org/content/download/521175/5788384/file/164328_1257_0 3272019_08544429_i.pdf

CONTEMPT-JUVENILE: Contempt finding is vacated were Court did not strictly comply with the statute related to juvenile contempt. E.M. v. State, 44 Fla. L. Weekly D799a (4th DCA 3/27/19)

https://www.4dca.org/content/download/521180/5788444/file/173557_1708_0 3272019_08581188_i.pdf

MINOR-SENTENCING: Fifty year sentence for first degree murder committed by a juvenile is lawful. The jury does not met need to make the factual finding that the defendant intended to be killed because that finding is inherent in the conviction for first-degree murder regardless whether the Defendant was the killer or a mere principal. Bailey v. State, 44 Fla. L. Weekly D789a (2nd DCA 3/22/19)

https://www.2dca.org/content/download/433183/4698946/file/170023_65032 22019_08304043_i.pdf

RETURN OF PROPERTY: Motion for return of property filed more than 60 days after appellate court issued mandate is untimely. Horvatt v. State, 44 Fla. L. Weekly D788c (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2018/1912/181912_1257_03222019_081814 09_i.pdf

VOP-JURISDICTION-TOLLING: Dismissal of an affidavit of violation of probation nullifies the tolling of probation that came with the filing of the affidavit. The offender shall receive credit for all tolled time against his term of probation if the Court dismisses the affidavit of violation. Keene v. State, 44 Fla. L. Weekly D787a (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2018/3353/183353_1260_03222019_082241 45_i.pdf

COLLATERAL ESTOPPEL-POSSESSION OF a FIREARM BY FELON: Collateral estoppel does not bar prosecution for possession of a firearm by a felon after that charge was severed when identity is not necessarily the basis for the jury's verdict. Jones v. State, 44 Fla. L. Weekly D786b (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2017/3924/173924_1257_03222019_080708 46_i.pdf

COSTS: Court may not order investigative costs based on an affidavit from the sheriff, admitted over a hearsay objection, that his detectives are paid $38 per hour when the only testimony from one of the detectives was that he made $28 per hour. Negron v. State, 44 Fla. L. Weekly D783a (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2018/1401/181401_1260_03222019_081605 45_i.pdf

JURISDICTION-PENDING APPEAL: Pro se notice of appeal by represented defendant divests the trial court of jurisdiction to rule on his motion to withdraw his plea. Carroll v. State, 44 Fla. L. Weekly D782a (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2018/0098/180098_1260_03222019_080956 11_i.pdf

SEARCH AND SEIZURE-PROBATIONARY SEARCH-CELL PHONE: Probation Officer may search a probationer's cell phone without reasonable suspicion Question certified as being a matter of great public importance. State v. Phillips, 44 Fla. L. Weekly D780a (5th DCA 3/22/19)

https://edca.5dca.org/DCADocs/2018/0098/180098_1260_03222019_080956 11_i.pdf

DEFINITION: "May do either" logically can be interpreted only as "may do either but not both." N.A. v. DCF, 44 Fla. L. Weekly D778a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431184/4682250/file/183374_1709_0 3202019_10081710_i.pdf

SILENCE OF DEFENDANT: Defendant's silence during a controlled call with a codefendant is admissible as an adoptive admission to what the codefendant said during that phone call. Brooks v. State, 44 Fla. L. Weekly D776a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431175/4682142/file/173448_1257_0 3202019_09280713_i.pdf

LEWD OR LASCIVIOUS EXHIBITION-AGE OF DEFENDANT: Testimony by percipient witness that the Defendant was an older man combined with the jury's opportunity to observe the defendant in court is sufficient to show that the Defendant was over the age of 18 at the time of the offense. Dedominicis v. State, 44 Fla. L. Weekly D771a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431179/4682190/file/180596_1257_0 3202019_09390175_i.pdf

SELF-DEFENSE-JURY INSTRUCTION: Court committed fundamental error when it erroneously instructed the jury that the danger facing defendant "need have been actual" instead of "need not have been actual. Appellate court cannot determine whether the Court actually omitted the word "not" or whether the error is in the transcription by the court reporter. "The situation here underlines the importance of including in the record the written collection of instructions on the law that the jury takes into deliberations." Saloman v. State, 44 Fla. L. Weekly D769a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431180/4682202/file/180679_1709_0 3202019_10270306_i.pdf

EXPERT-BOLSTERING: A law enforcement officer cannot testify under the guise of expertise as to whether the case is one of self-defence. An officer may not testify about the credibility or the plausibility of the versions of events given by the Defendant or other witnesses. Saloman v. State, 44 Fla. L. Weekly D769a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431180/4682202/file/180679_1709_0 3202019_10270306_i.pdf

SECOND DEGREE MURDER: Defendant is properly convicted of seconddegree murder when he shot the victim after having sufficient time to cool off before going to his car to get the gun with which he shot the victim several times. Saloman v. State, 44 Fla. L. Weekly D769a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431180/4682202/file/180679_1709_0 3202019_10270306_i.pdf

GUIDELINES-SCORESHEET-PRESERVATION OF ISSUE: Claim that scoresheet should not have included 160 sexual penetration points is not preserved for appeal when the defendant never raised the issue at sentencing. Ayos v. State, 44 Fla. L. Weekly D767a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431244/4682982/file/173857_1708_0 3202019_10510452_i.pdf

COSTS: Costs maybe assessed only per case, not per count. Ayos v. State, 44 Fla. L. Weekly D767a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431244/4682982/file/173857_1708_0 3202019_10510452_i.pdf

FALSE NAME: Defendant cannot be convicted of giving a false name for lying about his name when questioned on suspicion of trespassing. One can only be convicted if he gives a false name upon arrest or lawful detention; a consensual encounter is not a lawful detention. However, the defendant can be convicted of resisting without violence if he then runs away. K.O. v. State, 44 Fla. L. Weekly D762a (4th DCA 3/20/19)

https://www.4dca.org/content/download/431183/4682238/file/182546_1708_0 3202019_10013966_i.pdf

JUVENILES-COMMITMENT LEVEL: Court may not depart from commitment level recommended by DJJ without making adequate findings on the record. Parroting of information in the DJJ's comprehensive assessment and PDR is insufficient to establish acceptable reasons for varying from the recommended disposition. J.D.P. v. State, 44 Fla. L. Weekly D761c (2nd DCA 3/20/19)

https://www.2dca.org/content/download/431186/4682280/file/164072_39_032 02019_08250836_i.pdf

MEDICAL RECORDS-INVESTIGATIVE SUBPOENAS: State may not subpoena medical records in a leaving the scene of an accident case in order to see if the Defendant was under the influence of alcohol for the possible purpose of impeachment trial. Gomillion v. State, 44 Fla. L. Weekly D758a (2nd DCA 3/20/19)

https://www.2dca.org/content/download/431206/4682526/file/181640_167_03 202019_08330796_i.pdf

VOP: Separate charges and convictions are not required to support a substantive violation of probation based upon the commission of a new law violation. McClendon v. State, 44 Fla. L. Weekly D754c (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D19-0152.pdf

EVIDENCE: Asking whether another witness is wrong or mistaken is not improper. M.H. v. State, 44 Fla. L. Weekly D754a (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D18-0312.pdf

QUOTATION-ABRAHAM LINCOLN: "How many legs does a dog have if you call his tail a leg? Four. Saying that a tail is a leg doesn't make it a leg." State v. Herrera-Fernandez, 44 Fla. L. Weekly D749a (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D17-1481.pdf

PLEA OFFER: State's invitation for defense counteroffer including specific terms and waiving the minimum mandatory is an "offer" and empowers the Court to make its own proposal waiving the minimum mandatory." [T]he prosecutor 'invited' the defense to make a 'counteroffer' of 75 months. . .and agreed that the State would 'accept' such a 'counteroffer' if made by the defendant. This was, plainly and simply, a State offer, regardless of the prosecutor's characterization of it as an 'invited counteroffer.' It was no more a counteroffer than a dog's tail is a fifth leg. Because the trial court properly determined that the "invited counteroffer" was really a below-guidelines plea offer that also waived the mandatory minimum sentence, and because that plea offer was not withdrawn by the State, the trial court was within its authority to extend its own plea offer to the defendant." State v. Herrera-Fernandez, 44 Fla. L. Weekly D749a (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D17-1481.pdf

JUROR-CHALLENGE PEREMPTORY: Defendant's challenge to State's use of a peremptory challenge fails where defendant never specified juror's race; defense never contended that state's proffered reasons were pretextual; and there was no basis offered to suggest disparate or "non-race neutral" treatment of juror in context of other voir dire questioning. Helfrich v. State, 44 Fla. L. Weekly D748a (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D16-1941.pdf

VOIR DIRE-LIMITATIONS: Court's order directing defense counsel not to discuss excessive force through voir dire deprives Defendant of a fair trial. Where a juror's attitude about a particular legal doctrine is essential to a determination of whether challenges for cause or peremptory challenges are to be made, it is well settled that the scope of the voir dire properly includes questions about and references to that legal doctrine. It is improper to curtail questioning on the theory of defense, even where counsel is permitted to inquire generally. Ruiz v. State, 44 Fla. L. Weekly D743d (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D18-0193.pdf

THEFT-VALUE: School principal is competent to testify about the value of projectors when he is the guy who orders them. Howard v. State, 44 Fla. L. Weekly D743b (3rd DCA 3/20/19)

http://3dca.flcourts.org/Opinions/3D18-0155.pdf

SPEEDY TRIAL: Counsel is permitted to waive defendant speedy trial rights without consulting defendant. Steel v. State, 44 Fla. L. Weekly D737a (1st DCA 3/20/19)

https://www.1dca.org/content/download/431169/4682064/file/173978_1284_0 3202019_09332125_i.pdf

COSTS: Court can consider in-kind payments by his mother towards his rents and any disability payments in determining the payment plan or paying criminal costs. Flanagan v. State, 44 Fla. L. Weekly D730a (1st DCA 3/18/19)

https://www.1dca.org/content/download/431088/4681334/file/175290_1284_0 3182019_10055515_i.pdf

MINOR-LIFE SENTENCE: Minor who is paroled and violates can be sentenced to life in prison. Day v. State, 44 Fla. L. Weekly D729a (1st DCA 3/18/19)

https://www.1dca.org/content/download/431090/4681358/file/181063_1284_0 3182019_10121482_i.pdf

DOUBLE JEOPARDY: Dual convictions for selling a mixture of heroin and fentanyl do not violate double jeopardy. Each type of controlled substance constitutes an allowable unit of prosecution. Discussion of the "a/any test." Edwards v. State, 44 Fla. L. Weekly D726b (2nd DCA 3/15/19)

https://www.2dca.org/content/download/430941/4680028/file/180807_65_031 52019_08513163_i.pdf

POST CONVICTION RELIEF: "Waddell claimed that the trial court informed him. . .that if he proceeded to trial and lost, he would receive the maximum sentence. . . .[T]hose words proved prophetic. In denying the Motion, the trial court stated, '[a] review of the records shows no such statements made by the Court.' The trial court, however, declined to share those records with us. Accordingly. . .we reverse the summary denial." Waddell v. State, 44 Fla. L. Weekly D721c (5th DCA 3/15/19)

https://edca.5dca.org/DCADocs/2018/3373/183373_1260_03152019_100516 75_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to object to the Court's ruling that he had to choose between the defense of entrapment or that he lacked the intent to commit the crime. Asserting the entrapment defense is not necessarily inconsistent with denial of the crime even when it is admitted that the requisite acts occurred, for the defendant might nonetheless claim that he lacked the requisite bad state of mind. Knapp v. State, 44 Fla. L. Weekly D716g (5th DCA 3/15/19)

https://edca.5dca.org/DCADocs/2018/2596/182596_1259_03152019_094915 16_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to advise defendant that rejected plea offer represented the minimum sentence defendant could receive. Kitchen v. State, 44 Fla. L. Weekly D711b (1st DCA 3/13/19)

https://www.1dca.org/content/download/430841/4678799/file/173309_1286_0 3132019_10585124_i.pdf

CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to advise defendant that rejected plea offer represented the minimum sentence defendant could receive. Defense counsel is required to advise the defendant of all pertinent matters bearing on the decision to accept or reject a plea offer, including the possible range of sentencing. Kitchen v. State, 44 Fla. L. Weekly D711b (1st DCA 3/13/19)

https://www.1dca.org/content/download/430841/4678799/file/173309_1286_0 3132019_10585124_i.pdf

MINOR-LIFE SENTENCE-HOMICIDE: In imposing a life sentence on a minor who commits a homicide, the court is not required to make specific findings for the factors listed in 921.1401. Robinson v. State, 44 Fla. L. Weekly D711a (1st DCA 3/13/19)

https://www.1dca.org/content/download/430847/4678871/file/180933_1284_0 3132019_11054853_i.pdf

CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel failed to advise him that he was facing a mandatory life sentence is a prison releasee re-offender. Ogden v. State, 44 Fla. L. Weekly D708a (1st DCA 3/13/19)

https://www.1dca.org/content/download/430843/4678823/file/174040_1286_0 3132019_11004868_i.pdf

EVIDENCE-HOMICIDE: Timeline, motive, and opportunity is sufficient circumstantial evidence to sustain a conviction for murder. Ford v. State, 44 Fla. L. Weekly D706a (1st DCA 3/13/19)

https://www.1dca.org/content/download/430842/4678811/file/173359_1284_0 3132019_10594658_i.pdf

RESENTENCING: Defendant is entitled to resentencing where calculations of the total points on his scoresheet was incorrect and it cannot be said the same sentence would have been imposed regardless. Upon resentencing, the defendant may be sentenced as a Violent Felony Offender of Special Concern even though the Court had not previously considered whether the

Defendant was a danger to the community. A defendant's designation as a VFOSC does not depend on a finding that the defendant poses a danger to the community. Moore v. State, 44 Fla. L. Weekly D701e (4th DCA 3/13/19)

https://www.4dca.org/content/download/430863/4679043/file/173462_1708_0 3132019_01540229_i.pdf

APPEALS: Appellate court lacks jurisdiction to review order denying motion for post-conviction relief filed more than 30 days after rendition of the order. Duggans v. State, 44 Fla. L. Weekly D701d (3rd DCA 3/13/19)

http://3dca.flcourts.org/Opinions/3D18-2512.pdf

BATTERY-PRIORS: A battery may be enhanced to a felony based on a prior even if there was a withhold of adjudication on the prior battery. Garcia v. State, 44 Fla. L. Weekly D701b (3rd DCA 3/13/19)

http://3dca.flcourts.org/Opinions/3D18-0913.pdf

SPEEDY TRIAL-RECAPTURE: State is not entitled to the recapture period when the State terminates prosecution then files new charges based on the same conduct before speedy trial expires and failed to notify the Defendant of the new charges until after the speedy has expired. State v. Griffin, 44 Fla. L. Weekly D701a (3rd DCA 3/13/19)

http://3dca.flcourts.org/Opinions/3D14-2460.pdf

RESENTENCING-SUCCESSOR JUDGE: Upon resentencing-successor Judge must approach sentencing as a clean slate, rather than presuming the propriety of the original judge's sentence. Edward v. State, 44 Fla. L. Weekly D698a (3rd DCA 3/13/19)

3dca.flcourts.org/Opinions/3D17-1486.pdf

DOUBLE JEOPARDY: Convictions for use of computer service to solicit the parent of the child and traveling to meet the child violate double jeopardy where is not clear that the solicitation forming the basis of each charge was a separate and distinct act of solicitation. Baker v. State, 44 Fla. L. Weekly D697a (3rd DCA 3/13/19)

http://3dca.flcourts.org/Opinions/3D17-1881.pdf

APPEALS-JURISDICTION-MISTRIAL: Before granting mistrial based on a hung jury, at Court' request the jury indicated by a poll that they were unanimous to acquit on murder but were hung on the lesser charge of attempted manslaughter by act. Defendant's motion to dismiss the greater charges based on the jury being the equivalent of an acquittal was granted. Appellate court has no jurisdiction because State failed to appeal within 15 days. State v. Mackey, 44 Fla. L. Weekly D690a (3rd DCA 3/13/19)

http://3dca.flcourts.org/Opinions/3D18-0757.pdf

IMPEACHMENT-OPENING THE DOOR: By eliciting testimony that the witness did not believe the Defendant wanted to kill her husband, Defendant open the door to evidence that she had told that witness that she had tried to poison her husband by antifreeze before. Dippolito v. State, 44 Fla. L. Weekly D683a (4th DCA 3/13/19)

https://www.4dca.org/content/download/430808/4678393/file/172486_1257_0 3132019_08451680_i.pdf

ENTRAPMENT: Failure to supervise a CI does not amount to entrapment unless the lack of supervision results in unscrupulous conduct by the informant. Dippolito v. State, 44 Fla. L. Weekly D683a (4th DCA 3/13/19)

https://www.4dca.org/content/download/430808/4678393/file/172486_1257_0 3132019_08451680_i.pdf

ARGUMENT-SILENCE OF DEFENDANT: State's argument that the Defendant was presenting his story for the 1st time at trial is not an improper comment on silence because the Defense had elicited from the detectives that the defendant had been interviewed after his arrest. There is no improper comment on silence when the Defendant had not been silent. Gooden v. State, 44 Fla. L. Weekly D680a (4th DCA 3/13/19)

https://www.4dca.org/content/download/430814/4678465/file/180323_1709_0 3132019_08561551_i.pdf

ARGUMENT-SHIFTING BURDEN OF PROOF: State's argument that the Defense had failed to cross-examine police officers on certain issues improperly shifts the burden of proof. Gooden v. State, 44 Fla. L. Weekly D680a (4th DCA 3/13/19) https://www.4dca.org/content/download/430814/4678465/file/180323_1709_0 3132019_08561551_i.pdf

ARGUMENT-FACTS NOT IN EVIDENCE: State may not argue in closing, in response to Defense argument about lack of DNA, that the county faces budget restrictions and prioritizes the cases in which they do DNA testing where no such testimony was elicited. Gooden v. State, 44 Fla. L. Weekly D680a (4th DCA 3/13/19)

https://www.4dca.org/content/download/430814/4678465/file/180323_1709_0 3132019_08561551_i.pdf

STAND YOUR GROUND: Amendment to Stand Your Ground law, changing burden of proof, applies retroactively. Conflict certified. Tillman v. State, 44 Fla. L. Weekly D676a (2nd DCA 3/13/19)

https://www.2dca.org/content/download/430821/4678547/file/165566_39_031 32019_08224515_i.pdf

MARCHMAN ACT: "A written accusation by an itinerant houseguest friend followed by a judge's review of that piece of paper is all it would have taken under the Marchman Act to deprive a young woman of five or more days of her liberty. It is difficult for me to reconcile the constitutionality of such a drastic deprivation of freedom with the patina of procedure that precedes it. . . .According to the State, the Marchman Act did not violate T.L.'s due process rights as it 'is not a state law which seeks to unfairly imprison individuals, rather, it authorizes the courts to provide medical treatment to individuals in need of substance abuse treatment.' In other words, so long as her confinement would have been for her own good, we ought not to worry too much about due process for those in T.L.'s circumstances." T.L. v. F.M., 44 Fla. L. Weekly D669a (2nd DCA 3/13/19)

https://www.2dca.org/content/download/430828/4678637/file/181089_118_03 132019_08330119_i.pdf

QUOTATION: "[I]t falls to the court system to address, as best it can, the profound psychological and sociological problems of addiction. In meeting

this task, though, there is a point where courts cannot bend, or else they will cease to be courts. Seizing and confining people without due process takes us to that point." T.L. v. F.M., 44 Fla. L. Weekly D669a (2nd DCA 3/13/19)

https://www.2dca.org/content/download/430828/4678637/file/181089_118_03 132019_08330119_i.pdf

APPEALS-MAILBOX RULE: Notice of appeal by incarcerated appellant is deemed filed when he hands the same to prison officials for mailing. When there is no jail mailing stamp, the presumptive date is that shown in the certificate of service. Greene v. State, 44 Fla. L. Weekly D667b (5th DCA 3/8/19)

https://edca.5dca.org/DCADocs/2018/2484/182484_1260_03082019_090314 82_i.pdf

CONDITIONS OF PROBATION: Unless refuted by the record, trial court's imposition of special conditions of probation requiring evaluation and treatment for drug use and mental health are improper if not related to the underlying charge. Sparber v. State, 44 Fla. L. Weekly D667a (5th DCA 3/8/19)

https://edca.5dca.org/DCADocs/2018/3640/183640_1259_03082019_091631 63_i.pdf

EVIDENCE-CERTIORARI REVIEW: Order excluding evidence of prior acts of child molestation is not subject to certiorari review where State fails to show a violation of clearly established principles of law resulting in a

miscarriage of justice by the trial court's ruling. State v. Knowles, 44 Fla. L. Weekly D664a (5th DCA 3/8/19)

https://edca.5dca.org/DCADocs/2018/3024/183024_1254_03082019_091315 28_i.pdf

POST CONVICTION RELIEF-PLEA OFFER: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to convey plea offer. Batista-Irizarry v. State, 44 Fla. L. Weekly D661a (5th DCA 3/8/19)

https://edca.5dca.org/DCADocs/2018/2911/182911_1259_03082019_091950 39_i.pdf

POST CONVICTION RELIEF: A claim that misinformation supplied by counsel induced a defendant to reject a favorable plea offer can constitute an actionable ineffective assistance of counsel claim, but the movant must allege some specific deficiency on the part of counsel that demonstrates that his counsel's advice or assessment was unreasonable. Batista-Irizarry v. State, 44 Fla. L. Weekly D661a (5th DCA 3/8/19)

https://edca.5dca.org/DCADocs/2018/2911/182911_1259_03082019_091950 39_i.pdf

SENTENCING-MINOR-HOMICIDE: A jury is not required to make factual findings of the statutory factors justifying a life sentence for a homicide convicted by a murder. Judge may make the determination. Simmons v. State, 44 Fla. L. Weekly D659b (1st DCA 3/7/19)

https://www.1dca.org/content/download/430611/4676157/file/174095_1284_0 3072019_10042409_i.pdf

POST CONVICTION RELIEF: Defendant who declined offer of one year in jail, pled open, and was sentenced to 6 years in prison is not entitled to postconviction relief on claim that counsel told her that she would not get jail if she pled open, where Court found based on the evidence that her claim is false. "The record paints a picture of the defendant who rolled the dice and lost." McCray v. State, 44 Fla. L. Weekly D658a (1st DCA 3/7/19)

https://www.1dca.org/content/download/430613/4676181/file/181210_1284_0 3072019_10060030_i.pdf

SENTENCING-MINOR-HOMICIDE: Thirty-year sentence for a homicide committed by juvenile is not inconsistent with Graham or Miller. The Defendant is not entitled to resentencing under the new juvenile sentencing scheme. "Unless and until the Florida Supreme Court announces that every juvenile defendant is entitled to a sentence under the new laws — regardless of when the defendant was sentenced or whether the original sentence violated Graham or Miller — we will follow the rule that resentencing only applies when there was a Graham or Miller violation." McRae v. State, 44 Fla. L. Weekly D657a (1st DCA 3/7/19)

https://www.1dca.org/content/download/430613/4676181/file/181210_1284_0 3072019_10060030_i.pdf

PROBATION REVOCATION: Court may impose consecutive sentences following probation revocation even though probationary terms were concurrent. Jenkins v. State, 44 Fla. L. Weekly D656a (1st DCA 3/7/19)

https://www.1dca.org/content/download/430616/4676217/file/181843_1284_0 3072019_10100208_i.pdf

SEARCH AND SEIZURE-RESIDENCE-CURTILAGE: Police may not enter the defendant's fenced backyard. Fact that officers responding to a call about a suspicious chemical smell does not justify entering a backyard without a warrant. Bryant v. State, 44 Fla. L. Weekly D651e (1st DCA 3/7/19)

https://www.1dca.org/content/download/430612/4676169/file/174674_1284_0 3072019_10051044_i.pdf

SEARCH AND SEIZURE-CONSENT: Defendant validly consented to the search of his shed notwithstanding the illegal entry of the police into his backyard. Where there is illegal conduct on the part of the police, such as here, a consent to search can be found voluntary and valid if there is clear and convincing evidence the consent was not a product of the illegal police action. Bryant v. State, 44 Fla. L. Weekly D651e (1st DCA 3/7/19)

https://www.1dca.org/content/download/430612/4676169/file/174674_1284_0 3072019_10051044_i.pdf

CRUEL OR UNUSUAL PUNISHMENT-MINOR: Concurrent sentences of 35 years for second degree murder and robbery committed by a juvenile is not cruel or unusual punishment and does not violate Graham or Miller. Echevarria v. State, 44 Fla. L. Weekly D651a (3rd DCA 3/6/19)

http://3dca.flcourts.org/Opinions/3D18-0570.pdf

JUDGE-PARTIALITY: Not every act or comment that might be interpreted as demonstrating less than neutrality on the part of the judge will be deemed fundamental error. Jones v. State, 44 Fla. L. Weekly D650b (3rd DCA 3/6/19)

http://3dca.flcourts.org/Opinions/3D17-1941.pdf

MOTION BY REPRESENTED DEFENDANT: Defendant was represented by counsel may not file a pro se petition for habeas corpus while he is represented by counsel. Defendant has no constitutional right to hybrid representation. Loor v. State, 44 Fla. L. Weekly D649b (3rd DCA 3/6/19)

http://3dca.flcourts.org/Opinions/3D18-2636.pdf

SEARCH AND SEIZURE-EXPECTATION OF PRIVACY: Police may not enter the curtilage of a home to search a parked vehicle located therein. State v. Pettis, 44 Fla. L. Weekly D646a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430541/4675312/file/172973_39_030 62019_08424491_i.pdf

SEARCH AND SEIZURE-STANDING: Defendant whose car is within the curtilage of a home has standing to challenge the search of the car only if he has sufficient ties to the home itself. State v. Pettis, 44 Fla. L. Weekly D646a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430541/4675312/file/172973_39_030 62019_08424491_i.pdf

DOUBLE JEOPARDY-TRAVELING-ATTEMPTED LEWD BATTERY: Convictions for unlawful travel and for attempted lewd battery do not violate prohibition against double jeopardy under Blockburger. Byun v. State, 44 Fla. L. Weekly D644a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430545/4675360/file/173838_65_030 62019_08451075_i.pdf

ATTEMPT: Criminal attempt requires three elements: the intent to commit a crime, an overt act towards its commission, and failure to successfully complete the crime. Byun v. State, 44 Fla. L. Weekly D644a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430545/4675360/file/173838_65_030 62019_08451075_i.pdf

SEARCH AND SEIZURE-VEHICLE-STOP: Officers lacked probable cause to conduct traffic stop based on Defendant's failure to maintain a single lane where there is no evidence that his conduct created a reasonable safety concern. Peterson v. State, 44 Fla. L. Weekly D641a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430537/4675264/file/171324_39_030 62019_08410941_i.pdf

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officer lacks reasonable suspicion that a crime is about to occur based on the video jail clerk's overhearing fishy conversation between the defendant and an inmate suggesting a possible plan to introduce contraband. Peterson v. State, 44 Fla. L. Weekly D641a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430537/4675264/file/171324_39_030 62019_08410941_i.pdf

SEARCH AND SEIZURE: Cop: "We're always looking to get into vehicles, as I work in narcotics and drug and addiction. My main goal is to enter every vehicle I pull over to see what's inside that vehicle. So I was not singling her out by any means." Peterson v. State, 44 Fla. L. Weekly D641a (2nd DCA 3/6/19)

https://www.2dca.org/content/download/430537/4675264/file/171324_39_030 62019_08410941_i.pdf

HABEAS CORPUS: When a defendant mistakenly files a habeas corpus petition attempting to challenge a conviction or sentence, the filing should not be treated as a new, separate civil proceeding. Johnson v. State, 44 Fla. L. Weekly D629a (4th DCA 3/6/19)

https://www.4dca.org/content/download/430525/4675130/file/182744_1257_0 3062019_09153447_i.pdf

NEWLY DISCOVERED EVIDENCE: Generic Brady notice regarding miscalculations of DNA statistical probabilities is not newly discovered evidence warranting a new trial. Rosado v. State, 44 Fla. L. Weekly D627a

(4 t h D C A 3 / 6 / 1 9)
https://www.4dca.org/content/download/430527/4675154/file/182968_1708_0 3062019_09233498_i.pdf

SPEEDY TRIAL: Where Defendant filed her notice of expiration of speedy trial with the clerk, the Court cannot deny the motion to discharge based on the fact that judge himself did not get a copy of it. An Administrative Order cannot add requirements to the rules for speedy trial discharge beyond those in the rules of criminal procedure. Hawkins v. State, 44 Fla. L. Weekly D626a (4th DCA 3/6/19)

https://www.4dca.org/content/download/430529/4675178/file/190007_1704_0 3062019_09292752_i.pdf

AGGRAVATED BATTERY-RECLASSIFICATION: When the State charges a defendant with aggravated battery causing great bodily harm based on section 784.045(1)(a)1., Florida Statutes (2017), and not section 784.045(1)(a)2., a deadly weapon is not an essential element of the crime, and the crime can be reclassified upward to first degree felony based on the use of a firearm. Jackson v. State, 44 Fla. L. Weekly D625b (4th DCA 3/6/19)

https://www.4dca.org/content/download/430513/4674986/file/172220_1257_0 3062019_08545642_i.pdf

SENTENCING-GUIDELINES SCORESHEET: On violation, the misdemeanor for which the Defendant had already completed his sentence should not of been scored as an additional offense. Moreno v. State, 44 Fla. L. Weekly D624a (4th DCA 3/6/19)

https://www.4dca.org/content/download/430520/4675070/file/181100_1257_0 3062019_09082316_i.pdf

SELF-DEFENSE-JURY INSTRUCTION-FORCIBLE FELONY INSTRUCTION: It is fundamental error to give the forcible felony exception instruction when the Defendant's son, not the Defendant, who arguably committed a forcible felony when the Defendant intervene in the fight. The forcible felony instruction does not apply in a case of defense of others. Although there are no Florida cases analyzing the forcible-felony exception in the context of defense of another, cases analyzing the exception in the context of self-defense make clear that "the plain language of section 776.041 indicates that it is applicable only under circumstances where the person claiming selfdefense is engaged in another, independent 'forcible felony' at the time." Grant v. State, 44 Fla. L. Weekly D623a (4th DCA 3/6/19)

https://www.4dca.org/content/download/430512/4674974/file/172167_1709_0 3062019_08532280_i.pdf

ALTER EGO RULE: "The only way in which the instruction as given in this case could have been correct is if the common law alter ego rule applied. This is because under the alter ego rule, 'a defendant using deadly force to defend a person who was not entitled to use deadly force would be held criminally liable.'. . .Florida, however, like nearly all American jurisdictions, abandoned the common law alter ego rule long ago." Grant v. State, 44 Fla. L. Weekly D623a (4th DCA 3/6/19)

https://www.4dca.org/content/download/430512/4674974/file/172167_1709_0 3062019_08532280_i.pdf

CONTEMPT: Indirect contempt conviction is improper where the Court failed to inquire as to whether the defendant had any cause to show why he should not be held in contempt nor to allow him to present mitigation or an explanation. Petty v. State, 44 Fla. L. Weekly D621a (1st DCA 3/4/19)

https://www.1dca.org/content/download/430466/4674448/file/183686_1286_0 3042019_09052909_i.pdf

SEARCH AND SEIZURE-INCIDENT TO ARREST: Search incident to arrest is unlawful where the arrest was for the violation of a noncriminal municipal ordinance which did not authorize arrests. "[T]his court has previously admonished law enforcement officers for continuing to conduct full custodial arrests for bicycle infractions after such action was found unlawful. . .sixteen years prior." Nelson v. State, 44 Fla. L. Weekly D615a (2nd DCA 3/1/19)

https://www.2dca.org/content/download/430382/4673520/file/173650_114_03 012019_08214981_i.pdf

WAIVER OF COUNSEL: Court must renew offer of counsel prior to sentencing hearing. Sammons v. State, 44 Fla. L. Weekly D613b (2nd DCA 3/1/19)

https://www.2dca.org/content/download/430373/4673400/file/171953_65_030 12019_08170125_i.pdf

WAIVER OF COUNSEL: Court erred in failing to renew offer of counsel prior to sentencing. Murray v. State, 44 Fla. L. Weekly D613a (2nd DCA 3/1/19)

https://www.2dca.org/content/download/430385/4673556/file/174225_114_03 012019_08271624_i.pdf

COMPETENCY: Court may not accept Defendant's plea of guilty after it had previously ordered competency evaluation and without having issued a written competency order. Johnson v. State, 44 Fla. L. Weekly D612b (2nd DCA 3/1/19)

https://www.2dca.org/content/download/430383/4673532/file/173707_65_030 12019_08250470_i.pdf

SENTENCING-MINOR: Court errer by failing to modify juvenile defendant' ascends to allow for review hearing without also holding a resentencing hearing. Defendant who is a minor at the time of the offense is entitled to a full resentencing hearing. Gilchrest v. State, 44 Fla. L. Weekly D610c (5th DCA 3/1/19)

https://edca.5dca.org/DCADocs/2018/3545/183545_1259_03012019_092746 97_i.pdf

COMPETENCY: Court is required to make a written order that the Defendant is competent; an oral finding is insufficient. Q.A. v. State, 44 Fla. L. Weekly D610b (5th DCA 3/1/19)

https://edca.5dca.org/DCADocs/2018/1510/181510_1260_03012019_085749 86_i.pdf

JUVENILE-SEXUAL OFFENDER REGISTRATION: The juvenile under the age of 14 of the time of the offense is not subject to sexual offender registration and reporting requirements. Q.A. v. State, 44 Fla. L. Weekly D610b (5th DCA 3/1/19)

https://edca.5dca.org/DCADocs/2018/1510/181510_1260_03012019_085749 86_i.pdf

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DOWNWARD DEPARTURE: Court may not enter a downward departure sentence without providing written reason supported by the evidence. Upon agreement, court may impose a downward departure if evidence so supports. State v. Dougherty, 44 Fla. L. Weekly D607a (1st DCA 2/28/19)

https://www.1dca.org/content/download/430302/4672649/file/181235_1287_0 2282019_09532200_i.pdf

CONSOLIDATION: Court properly consolidated for trial 2 separate solicitation to commit murder cases where the object in each was to murder witnesses in the Defendant's upcoming lewd and lascivious trial. Barry v. State, 44 Fla. L. Weekly D603a (1st DCA 2/28/19)

https://www.1dca.org/content/download/430297/4672589/file/172276_1284_0 2282019_09484588_i.pdf

EVIDENCE-COLLATERAL CRIMES: Collateral crime evidence of the Defendant's sexual molestation of his girlfriend's daughter is admissible to

show the Defendant's motive in soliciting two fellow jail inmates two murder the witnesses. Barry v. State, 44 Fla. L. Weekly D603a (1st DCA 2/28/19)

https://www.1dca.org/content/download/430297/4672589/file/172276_1284_0 2282019_09484588_i.pdf

CHILD NEGLECT-CULPABLE NEGLIGENCE: Defendant is properly convicted of child neglect for failing to seek medical treatment for child with bruising, skull fractures, and brain bleeding. Finding of culpable negligence in child neglect cases not require proof that the Defendant knew the specific nature of the child's injury but rather that he knew or should have known the extent of the injuries. Lanier v. State, 44 Fla. L. Weekly D601a (1st DCA 2/28/19)

https://www.1dca.org/content/download/430299/4672613/file/174357_1284_0 2282019_09502135_i.pdf

JUVENILES-ATTENTION: "Do Not Run" (no running away) orders are lawful for children in nonsecure detention. A.A. v. State, 44 Fla. L. Weekly D592b (3rd DCA 2/27/19)

http://3dca.flcourts.org/Opinions/3D17-2075.pdf

CONTEMPT: Court erred by filing the Child in contempt for violating "Do Not Run" order where one witness testified by phone and another testified to inadmissible hearsay. A.A. v. State, 44 Fla. L. Weekly D592b (3rd DCA 2/27/19)

http://3dca.flcourts.org/Opinions/3D17-2075.pdf

EVIDENCE-DUI: Defendant's Trump rant ("Thank you, Trump, thank you, Trump"; "Hey, I love you, Trump"; . . . "F*** you, man, you is a b****, dog. You all are some b******, dog. You all (indiscernible) — hey, I love you Trump. Hey I love you, Trump. Yeah, . . ."Hey, you know how much of my Mexican people are making money because of this s*** right here?") is relevant in DUI case to show impairment. Martinez v. State, 44 Fla. L. Weekly D574a (4th DCA 2/27/19)

https://www.4dca.org/content/download/430161/4670915/file/180638_1257_0 2272019_09093178_i.pdf

SENTENCING-MINOR-NON-HOMICIDE-CONSECUTIVE: Defendant is not entitled to resentencing on 2 consecutive sentences with a combined term of 65 years for unrelated homicide and nonhomicide offenses. Consecutive prison terms for unrelated homicide and non-homicide offenses are not an "aggregate" sentence implicating the Eighth Amendment. Conflict certified. Warthen v. State, 44 Fla. L. Weekly (4th DCA 2/27/19)

https://www.4dca.org/content/download/430158/4670879/file/170961_1257_0 2272019_09032136_i.pdf

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Defendant who was on probation for child abuse is a habitual felony offender a special concern if he possesses child porn. However, Court is required to make written findings as to whether the defendant was a danger to the community. One's designation as a VFOSC is a matter of law and does not depend on a finding that he posed a danger to the community. Thompson v. State, 44 Fla. L. Weekly D569e (4th DCA 2/27/19)

https://www.4dca.org/content/download/430160/4670903/file/173871_1709_0 2272019_09080470_i.pdf

POST CONVICTION RELIEF: Information known to the Defendant and his counsel prior to trial is not newly discovered evidence. Martinez v. State, 44 Fla. L. Weekly D563a (1st DCA 2/27/19)

https://www.1dca.org/content/download/430173/4671063/file/181040_1284_0 2272019_10205950_i.pdf

POST CONVICTION RELIEF: Counsel is not ineffective for failing to call an expert on identification when the robbery is caught on video. Grandison v. State, 44 Fla. L. Weekly D562a (1st DCA 2/27/19)

https://www.1dca.org/content/download/430167/4670987/file/174266_1284_0 2272019_10180758_i.pdf

POST CONVICTION RELIEF: Counsel is not ineffective for failing to seek the phone records to establish communication between 2 witnesses. Elliott v. State, 44 Fla. L. Weekly D560a (1st DCA 2/27/19)

https://www.1dca.org/content/download/430174/4671075/file/181877_1284_0 2272019_10222543_i.pdf

VOP: Affidavit of Violation of Probation is thus fundamentally flawed by alleging that the defendant committed the offense of sexual assault, or sexual assault is not a crime by the specific terms, but the Defendant was

on notice of the criminal acts in question notwithstanding the nomenclature. Smith v. State, 44 Fla. L. Weekly D559a (1st DCA 2/27/19)

https://www.1dca.org/content/download/430166/4670975/file/172771_1286_0 2272019_10151889_i.pdf

SENTENCING-ARGUMENT: Defendant must be given an opportunity to be heard prior to imposition of sentence. Smith v. State, 44 Fla. L. Weekly D559a (1st DCA 2/27/19)

https://www.1dca.org/content/download/430166/4670975/file/172771_1286_0 2272019_10151889_i.pdf

STATEMENTS OF DEFENDANT: Security guards are required to cooperate with investigations conducted by the Department of Agriculture, which is the licensing board supervising security guards. Security guards are not required to cooperate in general, so that the Defendant's confession to police to murdering a tenant is voluntary. Duxbury v. State, 44 Fla. L. Weekly D555a (5th DCA 2/22/19)

https://edca.5dca.org/DCADocs/2017/3917/173917_1257_02222019_084559 69_i.pdf

ATTEMPTED SEXUAL BATTERY: Numerous abrasions on the body of the victim of a homicide is sufficient circumstantial evidence to uphold a conviction for attempted sexual battery. Duxbury v. State, 44 Fla. L. Weekly D555a (5th DCA 2/22/19)

https://edca.5dca.org/DCADocs/2017/3917/173917_1257_02222019_084559 69_i.pdf

DEPORTATION: A post-conviction claim based upon attorney's misadvice of deportation consequences must be brought within two years of conviction becoming final. Defendant needs to allege and prove that he could not have ascertained the immigration consequences of his plea during the two-year period after his judgment became final with the exercise of due diligence. Wallace v. State, 44 Fla. L. Weekly D552a (5th DCA 2/22/19)

https://edca.5dca.org/DCADocs/2017/4069/174069_1257_02222019_084840 00_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for not hiring a private investigator to demonstrate other peoples' ability to access the safe containing the contraband at issue. Rivera v. State, 44 Fla. L. Weekly D549a (5th DCA 2/22/19)

https://edca.5dca.org/DCADocs/2018/2814/182814_1259_02222019_092539 69_i.pdf

SELF-DEFENSE-JURY INSTRUCTION: Instruction that "the use or threatened use of deadly force is not justified if you find that Defendant was attempting to commit, committing, or escaping after the commission of an aggravated battery or an aggravated assault" may only be given when a forcible felony independent of the one for which the Defendant claims self-defense is committed. However, when the Defendant's counsel drafted the

instruction and did not object to it any error is invited. Phillips v. State, 44 Fla. L. Weekly D547a (2nd DCA 2/22/19)

https://www.2dca.org/content/download/429566/4663946/file/172544_65022 22019_08382466_i.pdf

RESISTING WITHOUT VIOLENCE-LEGAL DUTY: Officer who responded to a complaint about panhandling in trespass did not have a lawful basis for stopping juvenile who first walked and then ran away. The mere act of flight alone does not constitute a criminal offense and generally is insufficient to form the basis of a resisting without violence charge. K.H. v. State, 44 Fla. L. Weekly D546c (2nd DCA 2/22/19)

https://www.2dca.org/content/download/429571/4664006/file/174376_39022 22019_08393975_i.pdf

RESISTING WITHOUT VIOLENCE-FALSE IDENTITY: A person's failure to give a correct name to a law enforcement officer constitutes the crime of obstruction whether the person was lawfully detained or not. Good discussion in dissent. Bass v. State, 44 Fla. L. Weekly D546a (1st DCA 2/22/19)

https://www.1dca.org/content/download/429550/4663748/file/142449_1289_0 2222019_08330070_i.pdf

QUOTATION: "Confusion and conflict. . .[A] person's failure to give a correct name to a law enforcement officer constitutes the crime of obstruction. . . whether the person was lawfully detained or not. . . .Bass could have been a suspect in lawful custody, a potential witness, or a mere

passerby or onlooker at the time of his fib. Doesn't matter: he gave an incorrect name. . .But wait. M.M. says that. . . 'failing to give one's correct identity is not a crime unless the person is legally detained.' . . It's a head scratcher. . .Our supreme court ought to clear up this newly-created muddle." Bass v. State, 44 Fla. L. Weekly D546a (1st DCA 2/22/19)

https://www.1dca.org/content/download/429550/4663748/file/142449_1289_0 2222019_08330070_i.pdf

EVIDENCE-OTHER BAD ACTS: Prior incidents of domestic violence by the defendant to the victim is properly admitted to show motive, intent and premeditation and aggravated battery case. Gonzalez v. State, 44 Fla. L. Weekly D537a (3rd DCA 2/20/19)

http://3dca.flcourts.org/Opinions/3D18-0084.pdf

DOUBLE JEOPARDY: Dual convictions for attempted aggravated battery and battery does not violate double jeopardy where both require proof of different element and are based on separate acts. Gonzalez v. State, 44 Fla. L. Weekly D537a (3rd DCA 2/20/19)

http://3dca.flcourts.org/Opinions/3D18-0084.pdf

COMPETENCY: Defendant is entitled to a new trial where Court allowed the case to proceed to trial upon a stipulation of counsel that the defendant was competent without the Court without making an independent determination of competency after the Defendant had previously been held to be incompetent. Auerbach v. State, 44 Fla. L. Weekly D530b (3rd DCA 2/20/19)

http://3dca.flcourts.org/Opinions/3D16-2873.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL-APPEALS: Claim of ineffective assistance of counsel cannot be raised on direct appeal where the ineffectiveness is not apparent on the face of the record. Gomez v. State, 44 Fla. L. Weekly D529b (3rd DCA 2/20/19)

http://3dca.flcourts.org/Opinions/3D17-1147.pdf

POST CONVICTION RELIEF: Defendant raises a cognizable claim of ineffectiveness is of counsel or failure to present Defendant's mental health history in mitigation in VOP hearing. Simeon v. State, 44 Fla. L. Weekly D528a (3rd DCA 2/20/19)

http://3dca.flcourts.org/Opinions/3D17-1875.pdf

MINOR-JUDICIAL REVIEW: Defendant who is a minor at the time of the offense but an adult at the time of the violation of probation is not entitled to a judicial review. Dorsey v. State, 44 Fla. L. Weekly D527a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429394/4661904/file/173617_1257_0 2202019_09071036_i.pdf

COMPETENCY: Court commits fundamental error by failing to conduct a competency hearing before accepting the Defendant's plea after having appointed experts to determine his competency previously. Simmons v. State, 44 Fla. L. Weekly D526a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429403/4662012/file/182101_1709_0 2202019_09333011_i.pdf

DWLS: There is no fundamental error in finding the defendant guilty of driving with a suspended license when in fact his license was revoked. "Appellant cannot rely on verbal legerdemain to set aside his plea. The sloppy use of the term 'suspended' instead of 'revoked' at the plea conference does not rise to the level of fundamental error. Funderburk v. State, 44 Fla. L. Weekly D524a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429402/4662000/file/181667_1257_0 2202019_09294832_i.pdf

PRINCIPAL: Defendant who helped negotiate street-level sale of cocaine and perhaps retrieve the cocaine before the sale is guilty as a principal. State v. Thomas, 44 Fla. L. Weekly D522a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429401/4661988/file/181646_1709_0 2202019_09284468_i.pdf

RESTITUTION: Receipts and testimony about the original purchase price and guesstimates about replacement value are insufficient to establish fair market value of stolen items. Question Certified: Does Amendment 6 mean that the court is no longer bound by fair market value in determining restitution and allow it to use his discretion in determining restitution, including considerations of hearsay? Good discussion. Toole v. State, 44 Fla. L. Weekly D512a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429390/4661856/file/172115_1709_0 2202019_10091344_i.pdf

SENTENCING-CONSIDERATIONS-MITIGATION: Court must entertain submissions and evidence by the parties that are relevant to sentencing.

Failure to allow the Defendant to be heard on the question of whether she should get a withhold of adjudication requires reversal. Serna v. State, 44 Fla. L. Weekly D507a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429399/4661964/file/181619_1709_0 2202019_09244508_i.pdf

DOUBLE JEOPARDY: Convictions for both Grand Theft Auto and carjacking violate double jeopardy. James v. State, 44 Fla. L. Weekly D504a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429404/4662024/file/182152_1708_0 2202019_09345549_i.pdf

SENTENCING-YOUTHFUL OFFENDER: Court improperly denied motion for youthful offender sanctions in part because Defendant maintained his innocence. James v. State, 44 Fla. L. Weekly D504a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429404/4662024/file/182152_1708_0 2202019_09345549_i.pdf

QUOTE: "So if there's any bullshit in this courtroom [it] is the bullshit of putting a gun in a woman's face." James v. State, 44 Fla. L. Weekly D504a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429404/4662024/file/182152_1708_0 2202019_09345549_i.pdf

SENTENCING: Any error in the Court considering a letter from the victim is not fundamental nor preserved by objection. "The trial court must be permitted to consider, and afford the appropriate weight to, any constitutionally and statutorily permissible information that reasonably might bear on the proper sentence for a particular defendant." Taylor v. State, 44 Fla. L. Weekly D503a (4th DCA 2/20/19)

https://www.4dca.org/content/download/429405/4662036/file/182439_1257_0 2202019_09360610_i.pdf

JOA-ATTEMPTED FIRST DEGREE MURDER: Defendant who tried to shoot the club operator but that hit the bouncer cannot be convicted of attempted firstdegree murder on the bouncer. The doctrine of transferred intent does not apply to the crime of attempted murder of the unintended victim. Charge is reduced to attempted second degree murder. King v. State, 44 Fla. L. Weekly D502f (4th DCA 2/20/19)

https://www.4dca.org/content/download/429391/4661868/file/172770_1708_0 2202019_09014719_i.pdf

SEARCH AND SEIZURE-WARRANT-RESIDENCE: Police exceeded the scope of the search warrant by entering a recreational vehicle which was not identified in the warrant in which clearly was a separate residence. Officers are not authorized to search a separate dwelling unit that exists on the premises but is not separately identified in the warrant. Rodgers v. State, 44 Fla. L. Weekly D496a (2nd DCA 2/20/19)

https://www.2dca.org/content/download/429415/4662168/file/164366_39022 02019_08265936_i.pdf

DOUBLE JEOPARDY: Convictions for scheming to defraud a financial institution in grand theft based on the same underlying conduct violate double jeopardy. Lewis v. State, 44 Fla. L. Weekly D493b (2nd DCA 2/20/19)

https://www.2dca.org/content/download/429419/4662222/file/171247_114_02 202019_08303013_i.pdf

DOUBLE JEOPARDY: One who steals saw blade one day and sells them the next cannot be convicted of both dealing and stealing. A single day is not a sufficient break time to justify conviction for both offenses. Bradshaw v. State, 44 Fla. L. Weekly D488b (1st DCA 2/18/19)

https://www.1dca.org/content/download/429346/4661356/file/174992_1287_0 2182019_10572983_i.pdf

DOUBLE JEOPARDY: Double jeopardy is violated when the court the sentence on one count that adds one year of probation for the separate count for which the Defendant had already finished probation. Armstrong v. State, 44 Fla. L. Weekly D487b (1st DCA 2/18/19)

https://www.1dca.org/content/download/429343/4661326/file/174528_1287_0 2182019_10472121_i.pdf

POST CONVICTION RELIEF: A sudden event that would have suspended the exercise of judgment in an ordinary reasonable person, who would have lost normal self-control and would have been driven by a blind and unreasoning fury without a reasonable amount of time for a reasonable person to cool off may provide a basis for a heat-of-passion defense, but counsel here was not ineffective for not advising the Defendant of this

defense because the facts did not support it. Rodriguez-Lopez v. State, 44 Fla. L. Weekly D487a (1st DCA 2/15/19)

https://www.1dca.org/content/download/429297/4660812/file/173988_1284_02152019_10274132_i.pdf

SEXUAL PREDATOR-PROBATION: Plea agreement for incarceration followed by probation is not violated when the Defendant is involuntarily released after the prison sentence since the involuntary commitment is a civil commitment not a punishment. Brown v. State, 44 Fla. L. Weekly D486b (1st DCA 2/15/19)

https://www.1dca.org/content/download/429300/4660848/file/180518_1284_0 2152019_10353667_i.pdf

DOUBLE JEOPARDY-JIMMY RYCE: Jimmy Ryce does not violate double jeopardy. Because the civil commitment is not a sentence or incarceration, probation starts immediately upon the expiration of the incarcerative sentence and upon the Defendant's transfer to the civil commitment facility. Brown v. State, 44 Fla. L. Weekly D486b (1st DCA 2/15/19)

https://www.1dca.org/content/download/429300/4660848/file/180518_1284_0 2152019_10353667_i.pdf

DOUBLE JEOPARDY-RESISTING ARREST: Convictions for resisting arrest with violence and resisting arrest without violence violate double jeopardy where there was continuing resistance to an ongoing attempt to effect defendant's arrest. Byram v. State, 44 Fla. L. Weekly D486a (1st DCA 2/15/19)

https://www.1dca.org/content/download/429294/4660776/file/170026_1286_0 2152019_10251343_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that councils in effect for failing to object to the addition of probation to the term of incarceration which was specified in the plea agreement. When a plea agreement places a cap on the term of incarceration, the Court must apprise the defendant that the period of incarceration specified in the plea agreement will be followed by a period of probation, if such is the court's intent. Mickles v. State, 44 Fla. L. Weekly D485a (1st DCA 2/15/19)

https://www.1dca.org/content/download/429299/4660836/file/180423_1286_0 2152019_10305034_i.pdf

RESENTENCING-MINOR: Upon resentencing under Graham, the Court may increase a 40 year sentence to life in prison. Jeopardy only attaches to legal sentences not illegal sentences. Dortch v. State, 44 Fla. L. Weekly D483a (1st DCA 2/15/19)

https://www.1dca.org/content/download/429296/4660800/file/173363_1284_0 2152019_10264340_i.pdf

RESENTENCING-MINOR: Court is not required to make specific findings as to the relevant factors under Fla. Stat. §921.1401(2). Dortch v. State, 44 Fla. L. Weekly D483a (1st DCA 2/15/19)

https://www.1dca.org/content/download/429296/4660800/file/173363_1284_0 2152019_10264340_i.pdf

POST CONVICTION RELIEF-DNA TESTING: Court may not rule on Defendant's facially sufficient motion for DNA testing without ordering a response from the State. Robles v. State, 44 Fla. L. Weekly D472c (5th DCA 2/14/19)

https://edca.5dca.org/DCADocs/2018/2742/182742_1260_02152019_091502 17_i.pdf

POST CONVICTION RELIEF-DEPORTATION: Defendant may not move to withdraw a plea based on counsel's failure to have advised him of deportation consequences when more than 2 years have elapsed since the time of the plea. The fact that the Defendant is from Cuba, and he could have none of the deportation consequences with the exercise of due diligence. State v. Lorenzo, 44 Fla. L. Weekly D464a (3rd DCA 2/13/19)

http://3dca.flcourts.org/Opinions/3D18-0911.pdf

SENTENCING-DEPARTURE-UPWARD: Jury, not court, must make the factual finding that the Defendant engaged an escalating course of criminal conduct in order to justify an upward departure from the sentencing guidelines. The statutory maximum for Apprendi purposes is the maximum sentence the judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the Defendant. However, here the error is harmless because the jury would have found that he engaged in an escalating course of criminal conduct had it had an opportunity to do so. Simmons v. State, 44 Fla. L. Weekly D459a (3rd DCA 2/13/19)

http://3dca.flcourts.org/Opinions/3D17-0832.pdf

LEWD OR LASCIVIOUS MOLESTATION-JOA: Child victim's uncorroborated out-of-court-statements, inconsistent with her trial testimony,

is insufficient to sustain a conviction for lewd or lascivious molestation; Defendant's statement that he accidentally touched Victim while picking her up his insufficient corroboration of Victim's out-of-court statements. Mendez v. State, 44 Fla. L. Weekly D456a (3rd DCA 2/13/19)

http://3dca.flcourts.org/Opinions/3D16-0169.pdf

EVIDENCE-LEWD AND LASCIVIOUS MOLESTATION: Evidence of an uncharged incident where the Defendant offered the victim candy in an effort to "groom" her for molestation is not inextricably intertwined and not admissible without proper Williams rule notice. Mendez v. State, 44 Fla. L. Weekly D456a (3rd DCA 2/13/19)

http://3dca.flcourts.org/Opinions/3D16-0169.pdf

EVIDENCE-KNOWN CRIME AREA: Evidence that the place where the juvenile was arrested was known for narcotics sales is inadmissible. Evidence that a criminal defendant was arrested in a high crime area is generally inadmissible. J.R. v. State, 44 Fla. L. Weekly D451d (3rd DCA 2/13/19)

http://3dca.flcourts.org/Opinions/3D18-0494.pdf

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication for a third-degree felony where he had two previous withholds. State v. Ester, 44 Fla. L. Weekly D450b (4th DCA 2/13/19)

https://www.4dca.org/content/download/429165/4659389/file/182648_1709_0 2132019_09434368_i.pdf

DRIVER'S LICENSE-IMPLIED CONSENT-BLOOD: An officer is not required to advise a suspect of the consequences of refusal to a blood test when the Defendant is in the hospital. The implied consent law does not apply when a suspect voluntarily consents to a blood draw while in a hospital. DHSMV v. Davis, 44 Fla. L. Weekly D450a (4th DCA 2/13/19

LESSER INCLUDED-ROBBERY WITH A DEADLY WEAPON: Robbery with a deadly weapon is not a lesser included offense of robbery with a firearm. MacDonald v. State, 44 Fla. L. Weekly D444a (4th DCA 2/13/19)

MANSLAUGHTER-JUDGMENT OF ACQUITTAL-PRINCIPAL: Defendant, who punched the victim who swung at him while fighting with the pimp/drug dealer who ultimately stabbed the victim, cannot be convicted of manslaughter as a principal. The only evidence was that the Defendant accompanied a drug dealer to tell the victim not to rough up the prostitute and was attacked by the victim. Randall v. State, 44 Fla. L. Weekly D442b (4th DCA 2/13/19)

COSTS: Court may not impose attorney's fees and costs in excess of statutory minimum without considering evidence establishing a reasonable hour late for the amount of time spent by the public defender and without informing Defendant of his right to contest the amount of the lien. Pierre v. State, 44 Fla. L. Weekly D442a (4th DCA 2/13/19)

JURISDICTION: Court lacks jurisdiction to amend the judgment and sentence while an appeal is pending. Caruso v. State, 44 Fla. L. Weekly D441a (2nd DCA 2/13/19)

JUROR-CHALLENGE-PEREMPTORY: The preservation of a challenge to a potential juror requires more than one objection. When a trial court denies or grants a peremptory challenge, the objecting party must renew and reserve the objection before the jury is sworn. "Hernandez did not renew the objection before the jury was sworn in. . . Had the issue been preserved, however, we would have reversed and remanded for a new trial." Hernandez v. State, 44 Fla. L. Weekly D440a (2nd DCA 2/13/19)

NEW TRIAL: Court may grant a new trial upon weighing the evidence in considering witness credibility. State v. Bohler, 44 Fla. L. Weekly D424b (1st DCA 2/11/19)

https://www.1dca.org/content/download/429066/4658311/file/175343_1284_0 2112019_11551755_i.pdf

TRESPASS ON SCHOOL GROUNDS: Juvenile is not delinquent for trespassing on school grounds where there was no evidence showing that juvenile was on school grounds for an illegitimate purpose. E.W. v. State, 44 Fla. L. Weekly D424a (1st DCA 2/11/19)

https://www.1dca.org/content/download/429067/4658323/file/181476_1287_0 2112019_11563322_i.pdf

MANDATORY MINIMUM-FIREARM: Consecutive mandatory minimum sentences for attempted second degree murder and possession of a firearm by a convicted felon were illegal. Jackson v. State, 44 Fla. L. Weekly D420a (1st DCA 2/11/19)

https://www.1dca.org/content/download/429060/4658239/file/135687_1287_0 2112019_11410202_i.pdf

ATTORNEYS-CONFLICT OF INTEREST: Defendant's right to conflict-free counsel is not violated where Defendant did not object and made no showing that representation of the victim through separate counsel from the same office in an unrelated dependency case. Wade v. State, 44 Fla. L. Weekly D419c (1st DCA 2/11/19)

https://www.1dca.org/content/download/429061/4658251/file/171233_1284_0 2112019_11492916_i.pdf

EVIDENCE-WILLIAMS RULE: Testimony of two other women whom Defendant had sexually assaulted in a similar fashion is relevant to refute Defendant's argument that the instant case was consensual. Wade v. State, 44 Fla. L. Weekly D419c (1st DCA 2/11/19)

https://www.1dca.org/content/download/429061/4658251/file/171233_1284_0 2112019_11492916_i.pdf

MANDATORY MINIMUM-FIREARM: 25 year mandatory minimum for aggravated battery is illegal when the information did not allege that the Defendant discharged a firearm or caused great bodily harm with the firearm. An information's failure to precisely charge elements cannot be cured by the jury's factual findings. Espinoza v. State, 44 Fla. L. Weekly D412a (5th DCA 2/8/19)

https://edca.5dca.org/DCADocs/2018/1190/181190_1260_02082019_084208 23_i.pdf

PLEA-WITHDRAWAL: Ore tenus motion to withdraw his guilty plea prior to sentencing is legally sufficient; the motion does not have to be in writing. Gould v. State, 44 Fla. L. Weekly D408a (5th DCA 2/8/19)

https://edca.5dca.org/DCADocs/2017/2595/172595_1260_02082019_082325 02_i.pdf

DUI-BREATH TEST: Evidence of refusal to submit to a drug test is inadmissible if the Defendant is not informed about the Implied Consent law. The same principle applies to refusal to perform Field Sobriety exercises. "The unfairness, of course, is that a defendant who is told he may refuse and is told of no consequences which would attach to his refusal may quite plausibly refuse so as to disengage himself from further interaction with the police or simply decide not to volunteer to do anything he is not compelled to do." Howitt v. State, 44 Fla. L. Weekly D406b (5th DCA 2/8/19)

https://edca.5dca.org/DCADocs/2017/2695/172695_1259_02082019_082533 04_i.pdf

MANDATORY MINIMUM-FIREARM: In order to seek an enhanced mandatory sentence under the 10-20-Life statute, the state must allege the grounds for enhancement in the charging document. An information's failure to cite to the specific statutory subsection, while simultaneously failing to precisely charge the elements, cannot be cured by a jury's factual findings. Denegal v. State, 44 Fla. L. Weekly D406a (5th DCA 2/8/19)

VOP: Evidence of a positive drug test does not support finding that defendant violated condition of probation prohibiting defendant from associating with a person known to engage in criminal activity. Sanders v. State, 44 Fla. L. Weekly D405b (5th DCA 2/8/19)

CAPITAL OFFENSE-NUMBER OF JURORS: 12 person jury is required for capital first-degree murder's regardless whether the state seeks the death penalty. State v. Wong, 44 Fla. L. Weekly D404c (3rd DCA 2/7/19)

POST CONVICTION RELIEF: Counsel was ineffective for failing to call witnesses who directly contradicted claims that the defendant had salaciously kissed the sex abuse victim and for agreeing that one of the witnesses should be child for violating the rule of sequestration. Feliciano v. State, 44 Fla. L. Weekly D398a (4th DCA 2/6/19)

https://www.4dca.org/content/download/428834/4655681/file/173506_1709_0 2062019_09293473_i.pdf

FALSE VERIFICATION OF OWNERSHIP: Defendant cannot be found to have falsification of ownership and selling items to a pawnbroker there is no testimony that defendant claimed to be the owner of the property, did not testify, and the pawn receipts did not have an ownership verification provision. Rincon v. State, 44 Fla. L. Weekly D397b (4th DCA 2/6/19)

https://www.4dca.org/content/download/428835/4655693/file/173830_1708_0 2062019_09314694_i.pdf

JURISDICTION-SENTENCE CORRECTION: If a trial court does not rule on a motion to correct a sentencing error filed while an appeal is pending within sixty days, the Court lacks jurisdiction to correct the sentence. Sirmons v. State, 44 Fla. L. Weekly D397a (4th DCA 2/6/19)

https://www.4dca.org/content/download/428837/4655717/file/180668_1708_0 2062019_09360220_i.pdf

JUDGE-DISQUALIFICATION: Unfavorable legal rulings do not provide grounds for disqualification. Hill v. State, 44 Fla. L. Weekly D379h (1st DCA 2/5/19)

https://www.1dca.org/content/download/428765/4654955/file/174754_1281_0 2052019_08552302_i.pdf

EVIDENCE-CHARACTER: Court may properly exclude evidence of Victim's intoxication and reputation for being argumentative in homicide case where Defendant did not assert self-defense. Lantz v. State, 44 Fla. L. Weekly D373a (1st DCA 2/5/19)

https://www.1dca.org/content/download/428779/4655123/file/182029_1284_0 2052019_09061646_i.pdf

GOOFINESS: When a doctor asked Lantz why he was in the emergency room, Lantz responded that "he was dumping his mother's body after he murdered her and was chased by the police and slid down a bank and into some barnacles.". . .[T]hen, while his injuries were being photographed by a crime scene technician, Lantz asked the technician if she was single and

if she liked murderers." Lantz v. State, 44 Fla. L. Weekly D373a (1st DCA 2/5/19)

https://www.1dca.org/content/download/428779/4655123/file/182029_1284_0 2052019_09061646_i.pdf

SENTENCE CORRECTION: Previously awarded credit for time served may not be rescinded upon resentencing even if awarded in error. Barbesco v. State, 44 Fla. L. Weekly (1st DCA 2/5/19)

https://www.1dca.org/content/download/428772/4655039/file/180765_1286_0 2052019_08571771_i.pdf

EVIDENCE-COLLATERAL CRIMES: State's notice of its intent to introduce collateral crime evidence was not deficient for failing to list propensity as a basis for admitting the evidence where plain language of statute does not require the notice to list the specific purpose for which the evidence is to be admitted. Pitts v. State, 44 Fla. L. Weekly D369b (1st DCA 2/5/19)

https://www.1dca.org/content/download/428757/4654859/file/165547_1284_0 2052019_08481613_i.pdf

EVIDENCE-CHARACTER: Testimony that defendant had never been sexually aggressive toward his high school girlfriend was effectively specific-act character testimony and properly excluded where defendant's character trait for sexual non-violence was not an element of the charged offense. Proof of a person's character may not be made by specific instances of conduct unless character is an essential element of a charge, claim, or defense. Pitts v. State, 44 Fla. L. Weekly D369b (1st DCA 2/5/19)

https://www.1dca.org/content/download/428757/4654859/file/165547_1284_0 2052019_08481613_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not objecting to Defendant wearing shackles in front of jurors. Leonard v. State, 44 Fla. L. Weekly D368b (1st DCA 2/5/19)

https://www.1dca.org/content/download/428762/4654919/file/173861_1286_0 2052019_08535616_i.pdf

JIMMY RYCE: A sexually violent predator who is in prison on a new offense is not entitled to an annual evaluation. Walker v. State, 44 Fla. L. Weekly D368a (1st DCA 2/5/19)

https://www.1dca.org/content/download/428770/4655015/file/175172_1284_0 2052019_08573979_i.pdf

APPEALS: Court improperly appeal for failing to file initial brief for Had filed a timely motion for extension of time and gave a reasonable explanation as to why he cannot file brief within the deadline set. Forehand v. State, 44 Fla. L. Weekly D367a (1st DCA 2/5/19)

https://www.1dca.org/content/download/428775/4655075/file/181970_1282_0 2052019_09024622_i.pdf

PLEA-VOLUNTARINESS: Plea to sex offense is not rendered involuntary by the fact that the Defendant was not advised of mandatory electronic monitoring is condition of probation. Casseus v. State, 44 Fla. L. Weekly D362a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428741/4654674/file/171641_1284_0 2042019_03064828_i.pdf

PROBATION-REVOCATION: Court may not revoke Defendant's probation failing to pay court costs without making a determination of ability to pay. Banks v. State, 44 Fla. L. Weekly D357a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428746/4654732/file/174687_1287_0 2042019_03173837_i.pdf

QUOTATION: "The dissent agrees that "it is true that 'will' or 'shall' is generally mandatory and 'may' is generally permissive," but believes that we should look to the context and interpret "may" as "shall" with regard to the community service option. We agree that context matters, but the dissent makes too large a leap — interpreting a word that is "generally permissive" to mean the opposite." Banks v. State, 44 Fla. L. Weekly D357a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428746/4654732/file/174687_1287_0 2042019_03173837_i.pdf

QUOTATION II: "But there is no logical difference between saying on one hand, that someone "shall" do A but nonetheless "may" do B instead of A — and on the other hand saying someone "shall" do either A or B. Either way, the person does not have to do A; he may do B instead. It is not that A is

mandatory and B is optional." Banks v. State, 44 Fla. L. Weekly D357a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428746/4654732/file/174687_1287_0 2042019_03173837_i.pdf

THINGS NOT TO SAY TO JUDGE: "Banks testified that she worked forty hours a week at a sandwich shop and was too tired to do community service on top of that. She admitted she had done zero hours but insisted she just couldn't." Banks v. State, 44 Fla. L. Weekly D357a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428746/4654732/file/174687_1287_0 2042019_03173837_i.pdf

ROBBERY/BURGLARY: Defendant who gets into an unoccupied stranger's car, refuses to leave, orders Victim to drive to different places, and demands money commits robbery. "The element of a threat was supplied not only by Appellant's mere uninvited physical presence in the victim's car, but also by his physical characteristics making it likely that he could overpower the victim, by his sternly-worded demands, and by his prominent display of a backpack that could hold a weapon." Young v. State, 44 Fla. L. Weekly D355a (1st DCA 2/4/19)

https://www.1dca.org/content/download/428747/4654744/file/180704_1284_0 2042019_03240867_i.pdf

POST CONVICTION RELIEF: The Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to file a motion to suppress the search. The search of a probationer's person or residence by a probation

supervisor without a warrant is reasonable, but granting such general authority to law enforcement officials is not permissible. Hanna v. State, 44 Fla. L. Weekly D347b (2nd DCA 2/1/19)

https://www.2dca.org/content/download/428663/4653966/file/174044_114_02 012019_08482663_i.pdf

CORPUS DELICTI-VOP: A probationer's admissions against interest may be sufficient to revoke his probation even where there is no independent evidence of the corpus delicti of the crime. Hanna v. State, 44 Fla. L. Weekly D347b (2nd DCA 2/1/19)

https://www.2dca.org/content/download/428663/4653966/file/174044_114_02 012019_08482663_i.pdf

QUOTATION: "The searches turned up bubkes." Hanna v. State, 44 Fla. L. Weekly D347b (2nd DCA 2/1/19)

https://www.2dca.org/content/download/428663/4653966/file/174044_114_02 012019_08482663_i.pdf

COURT RECORDS-ACCESS: An indigent defendant is not entitled to free copies of documents and transcripts in the court file for purposes of filing a motion for post-conviction relief. Defendant may seek the transcripts from his former public defender. Patterson v. State, 44 Fla. L. Weekly D345a (2nd DCA 2/1/19)

https://www.2dca.org/content/download/428676/4654122/file/181824_65_020 12019_09005412_i.pdf

RE-SENTENCING: Court must conduct a resentencing hearing after vacating Defendant's designation as a habitual felony offender upon the Defendant's motion for post-conviction relief. Resentencing is not a purely ministerial act when the total points on the scoresheet are changed and the court has discretion as to the term of years and the new sentence. Andrews v. State, 44 Fla. L. Weekly D342a (5th DCA 2/1/19)

https://edca.5dca.org/DCADocs/2018/2759/182759_1260_02012019_092644 61_i.pdf

BELATED APPEAL: Defendant is entitled to a belated appeal where appellate counsel failed to follow through by having the record on appeal filed after having filed the initial notice of appeal, resulting in the appeal being dismissed. Mann v. State, 44 Fla. L. Weekly D341b (5th DCA 2/1/19)

https://edca.5dca.org/DCADocs/2018/3444/183444_1255_02012019_095450 04_i.pdf

SEARCH AND SEIZURE-INEVITABLE DISCOVERY: "Permitting warrantless searches without the prosecution demonstrating that the police were in pursuit of a warrant is not a proper application of the inevitable discovery rule. The rule cannot function to apply simply when police could have obtained a search warrant if they had taken the opportunity to pursue one, but can only apply if they actually were in pursuit of one." O'Hare v. State, 44 Fla. L. Weekly D335d (5th DCA 2/1/19)

https://edca.5dca.org/DCADocs/2018/0157/180157_1260_02012019_084217 09_i.pdf

SEARCH AND SEIZURE-INDEPENDENT SOURCE DOCTRINE: The independent source doctrine means that the exclusionary does not apply when the government can show it has learned of the challenged evidence from an independent source and the illegal search or seizure was not an actual cause of the discovery of the subject evidence. The independent source rule applies when evidence is discovered as a result of unlawful police activity but is also discovered independently through a lawful investigation that occurs either before or after the illegal activity, so long as the independent investigation itself is untainted by the initial activity. O'Hare v. State, 44 Fla. L. Weekly D335d (5th DCA 2/1/19)

https://edca.5dca.org/DCADocs/2018/0157/180157_1260_02012019_084217 09_i.pdf

JANUARY 2019

CITIZEN ARREST: Court did not err in finding that Defendant committed aggravated assault with a firearm after lawfully detaining two people whom he believed had committed a crime. "While we agree with Roberts that he initially had probable cause to effect a citizen's arrest, the State presented evidence at trial contradicting Roberts's affirmative defense by showing that he did not act in a reasonable manner when he attempted to detain the two individuals." Roberts v. State, 44 Fla. L. Weekly D335c (1st DCA 1/31/19)

https://www.1dca.org/content/download/428586/4653091/file/180332_1284_0 1312019_09270755_i.pdf

AFFIRMATIVE DEFENSE: "[A]n affirmative defense does not concern itself with the elements of the offense at all; it concedes them. In effect, an affirmative defense says, 'Yes, I did it, but I had a good reason.'" Roberts v. State, 44 Fla. L. Weekly D335c (1st DCA 1/31/19)

https://www.1dca.org/content/download/428586/4653091/file/180332_1284_0 1312019_09270755_i.pdf

PLEA WITHDRAWAL: Rule 3.172(c)(10) requires a trial court to inform a defendant about a mandatory license suspension to ensure that the plea is voluntarily entered. Defendant is entitled to withdraw plea when not so informed. Berrocales v. State, 44 Fla. L. Weekly D332a (4th DCA 1/30/19)

https://www.4dca.org/content/download/428470/4651881/file/180476_1709_0 1302019_09244038_i.pdf

PROBATION-MODIFICATION: Court lacks jurisdiction to modify defendant's probation to allow him to live with his family where motion to modify occurred more than sixty days after probationary sentence was imposed. State v. Walk, 44 Fla. L. Weekly D331a (4th 1/30/19)

https://www.4dca.org/content/download/428471/4651893/file/180921_1704_0 1302019_10082690_i.pdf

DRUG PARAPHERNALIA: Factors to be considered in determining whether an object is drug paraphernalia include the proximity of the object to controlled substances and "expert testimony concerning its use. Thomas v. State, 44 Fla. L. Weekly D328b (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D18-0611.pdf

UNLICENSED MONEY TRANSMITTER: By engaging in business of exchanging the virtual currency bitcoin for cash, defendant was acting as

both a money transmitter and a payment instrument seller, and was required to register with the state as a money services business. Extensive discussion of Bitcoins/virtual currency. State v. Espinoza, 44 Fla. L. Weekly D317a (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D16-1860.pdf

CONTEMPORANEOUS OBJECTION: Contemporaneous Objection Rule requires that the must be sufficiently specific to apprise the judge of the error and to preserve the issue for intelligent review on appeal. Failure to object to testimony about the contents of the photograph until much later violates the contemporaneous objection rule. S.H. v. State, 44 Fla. L. Weekly D315a (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D18-0365.pdf

CORPUS DELICTI-HISTORY: "Early versions of the [Corpus Delicti] rule developed in 17th-century England when a series of suspects confessed to murders, only to have their alleged victims turn up — alive and well — long after the suspects were imprisoned (or, worse, executed) for the fictitious crimes." S.H. v. State, 44 Fla. L. Weekly D315a (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D18-0365.pdf

CORPUS DELICTI-HISTORY: "In 1660, John Perry was subjected to continuous and repeated questioning as to the disappearance of his master, William Harrison. After initially denying all wrongdoing, Perry finally confessed that he, his mother, and his brother had together robbed and murdered Harrison. Although a body was never found, and Perry's mother and brother denied all wrongdoing, all three suspects were convicted and executed on the strength of Perry's confession. Several years later, however, Harrison returned home, claiming to have been kidnapped and sold into

slavery in Turkey. In short, Perry had admitted to a falsehood resulting in the execution of himself, his mother, and his brother." S.H. v. State, 44 Fla. L. Weekly D315a (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D18-0365.pdf

HEARSAY-BENCH TRIAL: Anonymous tip is inadmissible hearsay, but when an appellate court is reviewing a bench trial, it should presume that the trial court judge rested its judgment on admissible evidence and disregarded inadmissible evidence, unless the record demonstrates that the presumption is rebutted through a specific finding of admissibility or another statement that demonstrates the trial court relied on the inadmissible evidence. When improper evidence is admitted over objection in this context, the trial court must make an express statement on the record that the erroneously admitted evidence did not contribute to the final determination. Here, error is harmless. S.H. v. State, 44 Fla. L. Weekly D315a (3rd DCA 1/30/19)

http://3dca.flcourts.org/Opinions/3D18-0365.pdf

MANDAMUS: Inmate may use a petition for writ of mandamus to compel compensation or replacement of his missing legal documents which were impounded while he was in custody. Waters v. Inch, 44 Fla. L. Weekly D307a (1st DCA 1/25/19)

https://www.1dca.org/content/download/428265/4649712/file/180639_1287_0 1252019_01594386_i.pdf

POST CONVICTION RELIEF-SUCCESSIVE MOTION: Trial court has jurisdiction to rule on a subsequent motion which does not raise the same issues previously ruled upon. Rhow v. State, 44 Fla. L. Weekly D306a (1st DCA 1/25/19)

https://www.1dca.org/content/download/428263/4649692/file/180448_1287_0 1252019_01564866_i.pdf

APPEALS-PRESERVATION BY STATE: State may not raise on appeal the trial court's granting of the Defendant's motion to dismiss, alleging that the court improperly considered the element of knowledge and the issue of direct versus circumstantial evidence, where it failed to argue these (meritorious) issues before the trial court. State v. Searles, 44 Fla. L. Weekly D303a (1st DCA 1/25/19)

https://www.1dca.org/content/download/428266/4649724/file/181749_1284_0 1252019_02020390_i.pdf

POST CONVICTION RELIEF: Court must hold an evidentiary hearing on claim that counsel was ineffective for not obtaining a competency evaluation. AndujarSanchez v. State, 44 Fla. L. Weekly D302a (1st DCA 1/25/19)

https://www.1dca.org/content/download/428267/4649736/file/173393_1286_0 1252019_02171627_i.pdf

IMPEACHMENT-CROSS-EXAMINATION: Defendant is entitled to confront and cross-examine a 5-yearold alleged victim of sexual molestation with inconsistencies in her prior statements about details of the events. A criminal defendant should be afforded wide latitude to cross-examine the State's witnesses, especially when crossexamining a key prosecution witness. "Cross examination is not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify,

supplement, contradict, rebut, or make clearer the facts testified to in chief." Recco v. State, 44 Fla. L. Weekly D299a (5th DCA 1/25/19)

https://edca.5dca.org/DCADocs/2017/2648/172648_1260_01252019_081607 29_i.pdf

VOP-SUFFICIENCY OF EVIDENCE: Court erred in finding that the Defendant violated probation where the only evidence presented to prove that the defendant knowingly left the county was that he did not deny it when confronted with GPS tracking record. [Willard Pope, judge; Susan Bailey, attorney]. Archie v. State, 44 Fla. L. Weekly D295e (5th DCA 1/25/19)

https://edca.5dca.org/DCADocs/2018/0665/180665_1259_01252019_084528 62_i.pdf

PLEA-WITHDRAWAL: Motions to withdraw plea should be liberally construed because the law favors a trial upon the merits. Under the unique circumstances of this case the Court erred by denying the Defendant's motion to withdraw plea. Walker v. State, 44 Fla. L. Weekly D295b (5th DCA 1/25/19)

https://edca.5dca.org/DCADocs/2017/3456/173456_1260_01252019_082553 98_i.pdf

SANITY-JURY INSTRUCTION: When Defendant had previously been adjudicated insane and had not been judicially restored to legal sanity he is entitled to a jury instruction rebuttable he presuming him insane at the time of the offense. "We recognize that this caselaw is more than fifty years old . . Nevertheless, we find no indication that any of these cases have been modified, receded from, or overruled, and as such, they appear to still be good law." King v. State, 44 Fla. L. Weekly D288b (2nd DCA 1/25/19)

https://www.2dca.org/content/download/428236/4649386/file/163004_39_012 52019_08393804_i.pdf

CONTEMPT: Court may impose consecutive sentences totaling 100 days for indirect criminal contempt on juvenile who failed to remain at home for 10 successive days. By statute, a juvenile may be sentenced to 5 days incarceration for a 1st offense and 15 days for each subsequent offense. J.A. v. Housel, 44 Fla. L. Weekly D286d (3rd DCA 1/25/19)

http://3dca.flcourts.org/Opinions/3D19-0090.pdf

SENTENCE-CONCURRENT: Concurrent sentences do not necessarily begin at the same time, and unless they are ordered to be coterminous, they will expire on different dates. Eady v. State, 44 Fla. L. Weekly D285c (3rd DCA 1/23/19)

http://3dca.flcourts.org/Opinions/3D18-2013.pdf

RECLASSIFICATION: Use or possession of a firearm is not an essential element of second degree murder, but rather, it may serve to allow for a reclassification of the second degree murder from a first degree felony to a life felony or as an enhancement of the sentence imposed. Smith v. State, 44 Fla. L. Weekly D285b (3rd DCA 1/23/19)

http://3dca.flcourts.org/Opinions/3D18-1327.pdf

JURY INSTRUCTIONS-REASONABLE DOUBT: Court's failure to instruct jury on reasonable doubt is fundamental error. Smith v. State, 44 Fla. L. Weekly D278a (3rd DCA 1/23/19)

http://3dca.flcourts.org/Opinions/3D18-0991.pdf

ALLOCUTION: Court must allow defendant's right of allocution before sentencing. ("I've already made my decision on the sentencing. There's really nothing I wish to hear from this point forward.") Goudreau v. State, 44 Fla. L. Weekly D276a (2nd DCA 1/23/19)

https://www.2dca.org/content/download/426871/4633123/file/174024_114_01 232019_08293497_i.pdf

COMPETENCY: Court must conduct a competency hearing after experts have been appointed to evaluate the Defendant. Sutton v. State, 44 Fla. L. Weekly D275 (2nd DCA 1/23/19)

https://www.2dca.org/content/download/426872/4633135/file/174073_173_01 232019_08315829_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Sentence of life in prison with possibility of parole for a homicide committed by a minor is not unconstitutional. Atwell was wrongly decided. State v. Lawrence, 44 Fla. L. Weekly D274c (2nd DCA 1/23/19)

https://www.2dca.org/content/download/426877/4633195/file/180261_39_012 32019_08374443_i.pdf

LIFE SENTENCE-MINOR-HOMICIDE: Minor who was convicted of a homicide may lawfully be sentenced to life in prison with possibility of parole

and with a judicial review after 25 years. Nelms v. State, 44 Fla. L. Weekly D272a (4th DCA 1/23/19)

DOUBLE JEOPARDY: Double Jeopardy bars separate convictions for burglary of a dwelling and burglary with a battery where there was only one entry into the victim's home. Shade v. State, 44 Fla. L. Weekly D271b (4th DCA 1/23/19)

https://www.4dca.org/content/download/426857/4632947/file/180133_1708_0 1232019_09160945_i.pdf

POST CONVICTION RELIEF-NEW EVIDENCE-RECANTATION: Court is required to hold an evidentiary hearing on claim that the witness at trial recanted. Ramos v. State, 44 Fla. L. Weekly D271a (4th DCA 1/23/19)

COSTS OF INCARCERATION: When court did not rule on State's motion to correct sentence challenging the civil lien within 16 days, it lacked jurisdiction to grant the motion. Cammalleri v. State, 44 Fla. L. Weekly D270a (4th DCA 1/23/19)

GRAND THEFT-VALUE: Victim's estimate of what he paid for stolen property does not establish present value without testimony about the property's age, condition, quality, or percentage of depreciation since purchase. "The state argues that, in the aggregate, the value of the stolen items surpasses the $300 threshold. However, speculation cannot be so aggregated." Henry v. State, 44 Fla. L. Weekly D267a (4th DCA 1/23/19)

https://www.4dca.org/content/download/426851/4632875/file/172501_1708_0 1232019_08583496_i.pdf

HEARSAY: Photo of contact information screen from co-defendant's cell phone showing Defendant's name, phone number and email address is not hearsay when admitted for the limited purpose of linking the defendant and the codefendant. Henry v. State, 44 Fla. L. Weekly D267a (4th DCA 1/23/19)

https://www.4dca.org/content/download/426851/4632875/file/172501_1708_0 1232019_08583496_i.pdf

COSTS: Court may not impose public defender fee without giving defendant notice of his right to hearing and without making factual findings to support fees. Henry v. State, 44 Fla. L. Weekly D267a (4th DCA 1/23/19)

https://www.4dca.org/content/download/426851/4632875/file/172501_1708_0 1232019_08583496_i.pdf

CORPUS DELICTI-DUI: Court erred in granting the Defendant's motion to dismiss based on corpus delicti when the Court based its decision on the failure of the officer to identify the Defendant in court during the suppression hearing. State v. Fonseca, 44 Fla. L. Weekly D263b (4th DCA 1/23/19)

https://www.4dca.org/content/download/426856/4632935/file/173726_1709_0 1232019_09110887_i.pdf

COMPETENCY: Appellate counsel was ineffective for failing to address the Court's failure to hold a hearing or rule on competency after an evaluation had been ordered. Johnson v. State, 44 Fla. L. Weekly D261b (1st DCA 1/22/19)

https://www.1dca.org/content/download/426807/4632349/file/174805_1280_0 1222019_10024033_i.pdf

MOTION FOR NEW TRIAL: The standard for a new trial is whether a jury's verdict is contrary to the weight of the evidence. Court erred by denying the motion based on its assertion that "It was a good clean trial. I didn't see any error in the trial." Fales v. State, 44 Fla. L. Weekly D261a (1st DCA 1/22/19)

https://www.1dca.org/content/download/426808/4632361/file/174857_1287_0 1222019_10053135_i.pdf

EVIDENCE-HOMICIDE-INTERVENING CAUSE: Defendant is not entitled to cross-examine the medical examiner about other possible intervening cause of death where an intervening cause is not a legally recognized defense. When Defendant inflicts a life-threatening injury, a supervening lack of medical attention or medical malpractice is not an intervening cause of death. Gilliams v. State, 44 Fla. L. Weekly D256b (1st DCA 1/22/19)

https://www.1dca.org/content/download/426802/4632289/file/171594_1284_0 1222019_09524170_i.pdf

FELONY MURDER: Defendant who tried to shoot the victim with a malfunctioning gun during an attempted robbery can be convicted of attempted felony murder; the act of shooting the victim is not an essential element of the underlying attempted robbery. McCray v. State, 44 Fla. L. Weekly D254b (1st DCA 1/22/19)

https://www.1dca.org/content/download/426801/4632277/file/164651_1286_0 1222019_09494355_i.pdf

COSTS: Court costs for domestic violence, the rape crisis fund the crime stopper trust fund cannot be assessed for attempted felony murder. McCray v. State, 44 Fla. L. Weekly D254b (1st DCA 1/22/19)

https://www.1dca.org/content/download/426801/4632277/file/164651_1286_0 1222019_09494355_i.pdf

SEARCH AND SEIZURE: Deputy has probable cause to stop Defendant who drove on the wrong side of the road for about 100 feet before correcting course. State v. Boston, 44 Fla. L. Weekly D252a (2nd DCA 1/18/19)

https://www.2dca.org/content/download/426557/4629895/file/174814_39011 82019_08263469_i.pdf

COSTS: Court may not impose investigative costs and costs of prosecution when there is no competent evidence to support the amounts awarded. Speed v. State, 44 Fla. L. Weekly D250b (5th DCA 1/18/19)

https://edca.5dca.org/DCADocs/2018/0621/180621_1259_01182019_085333 42_i.pdf

VOP: The affidavit of violation and the court's finding of violation must mirror each other. McKinnon v. State, 44 Fla. L. Weekly D250a (5th DCA 1/18/19)

https://edca.5dca.org/DCADocs/2018/0011/180011_1259_01182019_085108 92_i.pdf

SEARCH AND SEIZURE-CELL PHONE TRACKING: Law enforcement may not track a cell phone without a warrant. Litz v. State, 44 Fla. L. Weekly D249e (5th DCA 1/18/19)

https://edca.5dca.org/DCADocs/2018/2913/182913_1259_01182019_090846 86_i.pdf

COSTS: The statutory authority for all costs imposed must be cited in the written order. Garrett v. State, 44 Fla. L. Weekly D249c (5th DCA 1/18/19)

https://edca.5dca.org/DCADocs/2018/0816/180816_1260_01182019_085657 12_i.pdf

APPEALS-UNAVAILABLE TRANSCRIPT: Defendant is not entitled to an appeal in the absence of a transcribed record where he did not seek to obtain a statement of the evidence and proceedings pursuant to Rule of Appellate Procedure 9.200(b)(4). Terry v. State, 44 Fla. L. Weekly D246a (4th DCA 1/16/19)

https://www.4dca.org/content/download/426385/4628035/file/163978_1257_0 1162019_08531821_i.pdf

SENTENCING-VINDICTIVENESS: There is no presumption of vindictiveness where the resentencing judge, who increased the sentence from 20 years to 30 years after an appeal, was not the judge who imposed the original sentence. Davis v. State, 44 Fla. L. Weekly D243a (4th DCA 1/16/19)

APPEALS-UNAVAILABLE TRANSCRIPT: Defendant is entitled to a new trial where no transcript of the jury trial exists due to malfunctioning memory devices and the Court is unable to reconstruct the record. Robinson v. State, 44 Fla. L. Weekly D242a (4th DCA 1/16/19)

https://www.4dca.org/content/download/426389/4628083/file/181657_1709_0 1162019_09004477_i.pdf

CONTEMPT-DIRECT CRIMINAL: Failure to attend the deposition cannot be punished as direct criminal contempt; it is in direct criminal contempt because it did not take place in the presence of the Court, and accordingly cannot be summarily punished. Vidana v. State, 44 Fla. L. Weekly D241a (2nd DCA 1/16/19)

https://www.2dca.org/content/download/426404/4628233/file/175061_39_011 62019_08373620_i.pdf

JOA-POSSESSION OF CONVEYANCE FOR TRAFFICKING: Defendant is entitled to a Judgment of Acquittal for possession of a conveyance for trafficking when he picked up a delivered package of cocaine, putting in his car and drove away. When the vehicle itself was not a necessary component of trafficking the offense of possession of conveyance for trafficking is not proven. Morris v. State, 44 Fla. L. Weekly D240d (2nd DCA 1/16/19)

https://www.2dca.org/content/download/426401/4628191/file/164084_114_01 162019_08345412_i.pdf

PRISON RELEASEE REOFFENDER: Burglary of a Dwelling with an Assault or Battery is a qualifying offense under the PRR statute. Fowler v. State, 44 Fla. L. Weekly D240c (3rd DCA 1/16/19)

http://3dca.flcourts.org/Opinions/3D18-1917.pdf

STALKING: The "substantial emotional distress" element of stalking requires application of an objective, reasonable-person standard. Fernandez v. State, 44 Fla. L. Weekly D240a (3rd DCA 1/16/19)

http://3dca.flcourts.org/Opinions/3D17-1965.pdf

DOUBLE JEOPARDY-RESISTING: Two convictions for resisting an officer without violence violates double jeopardy where both convictions are based on the same continuous criminal episode even if 2 officers are involved. Cason v. State, 44 Fla. L. Weekly D238a (1st DCA 1/14/19)

https://www.1dca.org/content/download/426141/4593291/file/174376_1287_0 1142019_09210193_i.pdf

NEWLY DISCOVERED EVIDENCE-RECANTATION: Court may properly find that the Victim's recantation is not credible based on the Victim's memory problems, inconsistent testimony, and the Court's assessment of credibility. A recantation will not be considered newly discovered evidence where the recantation offers nothing new or where the recantation is offered by an untrustworthy individual who gave inconsistent statements all along. Gormans v. State, 44 Fla. L. Weekly D235e (1st DCA 1/14/19)

https://www.1dca.org/content/download/426145/4593339/file/175266_1284_0 1142019_09214621_i.pdf

CONSECUTIVE SENTENCE: Consecutive sentence for possession or use of firearm under §775.087(2)(d) is not available for an act occurring during a single criminal episode with a single victim incurring a single injury. Fleming v. State, 44 Fla. L. Weekly D235d (1st DCA 1/14/18)

https://www.1dca.org/content/download/426140/4593279/file/173493_1287_0 1142019_09200524_i.pdf

DRIVER'S LICENSE SUSPENSION: Circuit court's decision holding on firsttier review that officers unlawfully detained Defendant when he was found sleeping in a parked car with the engine running, lights on and his pants down to his knees is upheld. Second -tier review by certiorari is only allowed where the circuit court decision did not result in a miscarriage of justice. DHSMV v. Morrical, 44 Fla. L. Weekly D233a (5th DCA 1/11/19)

https://edca.5dca.org/DCADocs/2018/2589/182589_1254_01112019_083104 88_i.pdf

DOUBLE JEOPARDY: Double jeopardy is not violated by convictions for burglary with assault and battery on same victim on the same date upon Defendant beating up Victim in his car outside a fried chicken restaurant. Double jeopardy does not bar dual convictions for burglary with assault and simple battery because the offenses include different elements. Barber v. State, 44 Fla. L. Weekly D232a (1st DCA 1/10/19)

https://www.1dca.org/content/download/425905/4590654/file/173782_1284_0 1102019_09161819_i.pdf

POST CONVICTION RELIEF: Defendant is not entitled to late filing of 3.850 motion when Defendant had alleged that he retained attorney to file the

motion, and attorney alleged that he had been retained to explore filing a motion, not to actually file it, and the Court accepted the attorney's view. Denson v. State, 44 Fla. L. Weekly D230b (1st DCA 1/10/19)

https://www.1dca.org/content/download/425906/4590666/file/174071_1284_0 1102019_09184063_i.pdf

JUDGMENT OF ACQUITTAL-CIRCUMSTANTIAL EVIDENCE: Defendant is not entitled to a JOA for felon in possession of firearm when officer chased the Defendant from a car, heard a metallic item hit the ground, and moments later saw a gun there. The Defendant's DNA was on the magazine. "We now expressly hold that the circumstantial evidence standard of review applies only where all of the evidence of a defendant's guilt. . .is circumstantial, not where any particular element of a crime is demonstrated exclusively by circumstantial evidence." "There is a difference between putting pieces of a puzzle together and stacking inferences and assumptions." Sneezing defense is nonavailing. State v. Sephes, 44 Fla. L. Weekly D225d (4th DCA 1/9/18)

https://www.4dca.org/content/download/425859/4590164/file/180981_1709_0 1092019_09342003_i.pdf

LIFE SENTENCE-MINOR: Life sentence with possibility of parole for a Defendant who was a minor at the time of the offense is not unconstitutional under Graham. State v. West, 44 Fla. L. Weekly D225c (4th DCA 1/9/18)

https://www.4dca.org/content/download/425840/4589936/file/164252_1709_0 1092019_08543174_i.pdf

LIFE SENTENCE-MINOR: Life sentence with possibility of parole for a Defendant who waw a minor at the time of the offense is not unconstitutional under Graham. State v. Wesby, 44 Fla. L. Weekly D225b (4th DCA 1/9/18)

https://www.4dca.org/content/download/425839/4589924/file/164246_1709_0 1092019_08525405_i.pdf

COMPETENCY: Court must hold a hearing to evaluate Defendant's competency after appointing a competency expert. Machin v. State, 44 Fla. L. Weekly D224e (4th DCA 1/9/19)

https://www.4dca.org/content/download/425849/4590044/file/172787_1709_0 1092019_09123320_i.pdf

CONDITIONAL RELEASE: Because conditional release does not impose an enhanced penalty, no actual notice of an offender's eligibility for conditional release is required. Jenkins v. State, 44 Fla. L. Weekly D224b (4th DCA 1/9/19)

VOP-VFOSC: Court must file written findings in order to designate an offender as a danger to the community and sentencing him as a violent offender of special concern court. A new sentencing hearing is not required. Stickney v. State, 44 Fla. L. Weekly D223b (4th DCA 1/9/19)

https://www.4dca.org/content/download/425842/4589960/file/171004_1708_0 1092019_08584344_i.pdf

MINOR-LIFE SENTENCE: Defendant whose original sentence violated Graham, but then was resentenced before July 1, 2014 to 65 years in prison, is entitled to be resentenced again under §§ 775.082 and 921.1402. Perry v. State, 44 Fla. L. Weekly D223a (4th DCA 1/9/19)

https://www.4dca.org/content/download/425857/4590140/file/180460_1709_0 1092019_09272157_i.pdf

SELF-REPRESENTATION: "Judge, I want to represent myself," is an unequivocal request for self representation, State's argument to the contrary notwithstanding. A Faretta hearing was required. McKinley v. State, 44 Fla. L. Weekly D221b (4th DCA 1/9/19)

https://www.4dca.org/content/download/425850/4590056/file/172822_1709_0 1092019_09145358_i.pdf

SCORESHEET-VICTIM INJURY: A jury determination is not necessary for determination of whether, and extent of, victim injury. Alleyne does not apply because there is no mandatory minimum. Bean v. State, 44 Fla. L. Weekly D219a (4th DCA 1/9/19)

https://www.4dca.org/content/download/425847/4590020/file/172419_1708_0 1092019_09050456_i.pdf

ARGUMENTS DOOMED TO FAIL: "Appellant forced six bank tellers into the bank's vault room at gunpoint, hit each of the tellers over the head with a gun, made them strip their clothes, and sexually assaulted one of the tellers. When appellant attempted to flee the scene, he shot at a law enforcement officer. . . Appellant moved for a downward departure sentence, arguing that

his offense was committed in an unsophisticated manner and was an isolated incident for which he had shown remorse." Sixty-nine year sentence upheld. Bean v. State, 44 Fla. L. Weekly D219a (4th DCA 1/9/19)

SCORESHEET-LEVEL OF OFFENSE: Armed kidnapping is improperly scored as a level X offense where there was no evidence that the Defendant had personal possession of the weapon. Johnson v. State, 44 Fla. L. Weekly D218a (4th DCA 1/9/19)

SCORESHEET-VICTIM INJURY: Court properly scored slight victim injury points when Victim testified that her hands were bound by a zip tie and she was pepper sprayed, even though she did not describe any physical injuries. Johnson v. State, 44 Fla. L. Weekly D218a (4th DCA 1/9/19)

DISCOVERY-NEW TRIAL: Defendant is not entitled to a new trial based on the State's failure to disclose that investigating officer was under investigation when that evidence was neither material nor was the officer called as a witness in the trial. State v. Serfrere, 44 Fla. L. Weekly D217a (4th DCA 1/9/19)

ALLOCUTION: Defendant cannot appeal any error in the State cross-examining the defendant during his allocution when no contemporaneous objection was made. Compere v. State, 44 Fla. L. Weekly D215b (4th DCA 1/9/19)

SENTENCING-CONSIDERATIONS: Court improperly considered Defendant's reflection in committing the murder when the jury had acquitted the Defendant of premeditated conduct by convicting him of second-degree murder rather than first-degree murder. Ortiz v. State, 44 Fla. L. Weekly D215a (4th DCA 1/9/19)

EVIDENCE-DEAD WITNESS: Court properly allowed into evidence a latent fingerprint card prepared decades earlier by an officer who had since died. Clark v. State, 44 Fla. L. Weekly D208a (4th DCA 1/9/19)

PREDISPOSITION REPORT: Court must consider the predisposition report prior to issuing a residential commitment order on a juvenile. Juvenile's acquiescence to placement is not a valid waiver of the PDR. E.G. v. State, 44 Fla. L. Weekly D206b (4th DCA 1/9/19)

WITHDRAWAL OF PLEA: Defendant who stated during his plea colloquy that he was not under the influence of medication to the extent that it affected his ability to understand the proceedings cannot go beyond those assertions to challenge the voluntariness of his plea. Thomas v. State, 44 Fla. L. Weekly D205c (3rd DCA 1/9/19)

SENTENCING-MINOR-LIFE SENTENCE: Juvenile who has a lengthy sentence with possibility of parole is not entitled to relief under Graham and Miller. Atwell is dead. Zamot v. State, 44 Fla. L. Weekly D205b (3rd DCA 1/9/19)

JUDGE-NEUTRALITY: Judge did not impermissibly depart from neutrality but telling prosecutor to lay a proper predicate to establish the value of stolen goods. M.W. v. State, 44 Fla. L. Weekly D204a (3rd DCA 1/9/19)

CREDIT FOR TIME SERVED: Court did not abuse discretion in denying motion for credit for time served in a jail in Argentina awaiting extradition to Florida. Calafell v. State, 44 Fla. L. Weekly D203b (3rd DCA 1/9/19)

MISTRIAL: Court did not abuse discretion by denying a motion for mistrial after members of the victim's family became emotional during the opening statement. Talley v. State, 44 Fla. L. Weekly D198a (3rd DCA 1/9/19)

JURY INSTRUCTION: Court did not abuse discretion by denying request for special jury instruction regarding the effect of drugs and alcohol on witnesses' ability to perceive and recall. Talley v. State, 44 Fla. L. Weekly D198a (3rd DCA 1/9/19)

ARGUMENT: Prosecutor's improper comment during closing argument stating that state witnesses come from a neighborhood where you don't snitch did not warrant reversal. Other improper comments were not preserved by contemporaneous objection. Talley v. State, 44 Fla. L. Weekly D198a (3rd DCA 1/9/19)

DOUBLE JEOPARDY: Separate convictions for scheme to defraud and grand theft based on the same conduct violates double jeopardy. Freeman v. State, 44 Fla. L. Weekly D197a (2nd DCA 1/9/19)

LIFE SENTENCE-MINOR-HOMICIDE: A minor who was sentenced to discretionary life in prison for homicide is entitled to a resentencing hearing in which the Court must consider the offender's youth and attendant characteristics. Foster v. State, 44 Fla. L. Weekly D228b (1st DCA 1/8/19)

HEARSAY: Officer's testimony recounting witness's statement at the scene of a car accident was unobjected hearsay, and is therefore on appealable, and in any event would have been admitted as an excited utterance. Wall v. State, 44 Fla. L. Weekly D228a (1st DCA 1/8/19)

DEATH PENALTY: The fact that pre-Hurst jury is advised that it's recommendation is advisory does not alone entitle the defendant from relief from the death penalty. Allen v. State, 44 Fla. L. Weekly S112a (FLA 1/7/19)

DEATH PENALTY: Hurst does not apply retroactively to death sentence that became final in 1993. Thompson v. State, 44 Fla. L. Weekly S111c (FLA 1/7/19)

SEARCH AND SEIZURE: Officers may detain a vehicle's passengers for the reasonable duration of a traffic stop without violating the Fourth Amendment. Ellsworth v. State, 44 Fla. L. Weekly D188d (1st DCA 1/7/19)

APPEALS: Court is not divested of jurisdiction to rule on motion to withdraw plea while on appeal is pending. The appeal will be held in abeyance until an order is entered by the trial court. Taylor v. State, 44 Fla. L. Weekly D188b (1st DCA 1/7/19)

SELF-DEFENSE-STAND YOUR GROUND: Amendment to statute which shifted burden of proof in pretrial immunity hearing from defendant to prosecution applies retroactively. Conflict certified. Aviles-Manfredy v. State, 44 Fla. L. Weekly D187a (1st DCA 1/7/19)

AMENDMENT-JURY INSTRUCTIONS: Aggravated Fleeing and Eluding instruction modified as it relates to causing injury or death. In Re: Standard Jury Instructions, 44 Fla. L. Weekly S108a (FLA 1/4/18)

DEATH PENALTY: Defendant is not entitled to relief under Hurst when sentence became final before Ring. Reese v. State, 44 Fla. L. Weekly S107a (FLA 1/4/19)

https://www.floridasupremecourt.org/content/download/425661/4588002/file/s c18-815.pdf

SELF DEFENSE-JOA: Defendant, who disarmed one assailant and shot the one he disarmed and another is entitled to a JOA for the murder of the first, but not for the attempted murder of the second. The fact that the jury found that Defendant guilty of theft, rather than robbery, means that the State's theory that Defendant committed a robbery and therefore was not entitled to self-defense, fails. Williams v. State, 44 Fla. L. Weekly S98a (FLA 1/4/19)

https://www.floridasupremecourt.org/content/download/425654/4587918/file/s c16-2170.pdf

DISCOVERY: Failure to disclose police and victim's family's payments to nontestifying witness is a discovery violation, but the Defendant is not entitled to a new trial when, as here, the Witness's credibility was adequately challenged and the witness's contribution to the case did not rest on his credibility. State v. Butler, 44 Fla. L. Weekly D186a (5th DCA 1/4/19)

https://edca.5dca.org/DCADocs/2017/1823/171823_1260_01042019_081839 06_i.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Defendant denied guilt and blamed his conviction on "corrupt judges, attorneys and policemen." Court may not consider Defendant's failure to show remorse in denying a downward departure from the sentencing guidelines where Defendant never

argued his remorse as a basis for mitigating the sentence. Defendant is entitled to resentencing with a different judge. Strong v. State, 44 Fla. L. Weekly D184b (5th DCA 1/4/19)

https://edca.5dca.org/DCADocs/2017/1509/171509_1257_01042019_080608 24_i.pdf

MINOR-LIFE SENTENCE: Defendant was sentenced to life in prison with a mandatory minimum first-degree murder committed while a juvenile is not entitled to resentencing where he is eligible for parole after 25 years. Honor v. State, 44 Fla. L. Weekly D184a (5th DCA 1/4/19)

https://edca.5dca.org/DCADocs/2018/3304/183304_1257_01042019_083340 87_i.pdf

APPEAL-MOOT: Appeal from revocation of probation is moot for the sentences which were complete before the appeal is finished. "Wilson also argues that if he is convicted of another offense in the future. . .this revocation of probation may expose him to a harsher penalty. . .We hope that Wilson's pessimistic speculation remains just that. But even if it is instead prescient, we are hardpressed to conclude that this revocation. . .over his approximately thirty-year criminal history. . .will be the straw that breaks the camel's back." Wilson v. State, 44 Fla. L. Weekly D177b (2nd DCA 1/4/19)

https://edca.2dca.org/DCADocs/2017/1590/171590_109_01042019_0818339 6_i.pdf

VOP-JUDGMENT: Court may not enter a second judgment upon revocation of probation. Hammond v. State, 44 Fla. L. Weekly D177a (2nd DCA 1/4/18)

https://edca.2dca.org/DCADocs/2017/3705/173705_65_01042019_08225748 _i.pdf

POST CONVICTION RELIEF: Defendant who filed falsified judgments as part of his appeal is referred for discipline by the Department of Corrections. Crum v. State, 44 Fla. L. Weekly D175a (2nd DCA 1/4/19)

https://edca.2dca.org/DCADocs/2017/1272/171272_65_01042019_08152905 _i.pdf

POST CONVICTION RELIEF-DEPORTATION: The two-year limitations period for filing a motion to withdraw plea for failure of the trial court to advise a defendant that the plea could result in deportation commences when the judgment and sentence become final unless the defendant could not, with the exercise of due diligence, have ascertained within the two-year period that he or she was subject to deportation. Rodnez v. State, 44 Fla. L. Weekly D173i (3rd DCA 1/2/19)

http://3dca.flcourts.org/Opinions/3D18-1948.cit.op2.pdf

CREDIT FOR TIME SERVED: Defendant is entitled to credit actually served in prison before beginning a probationary term on a split sentence. Thomas v. State, 44 Fla. L. Weekly D171a (3rd DCA 1/2/19)

http://3dca.flcourts.org/Opinions/3D18-2019.pdf

POST CONVICTION RELIEF-INEFFECTIVE ASSISTANCE OF COUNSEL: Defendant is entitled to hearing on claim that counsel was ineffective for failing to call a witness who fought with Defendant to explain why his blood was on the scene, and for failing to call Defendant's mother is an alibi witness. Kennon v. State, 44 Fla. L. Weekly D182a (2nd DCA 1/4/19)

https://edca.2dca.org/DCADocs/2018/0180/180180_114_01042019_0825259 6_i.pdf

STATEMENT OF DEFENDANT-VOLUNTARINESS: Investigator's offers to inform prosecutor that defendant cooperated and that things would go easier for defendant if he told the truth did not render confession involuntary. Good discussion. Teachman v. State, 44 Fla. L. Weekly D159b (1st DCA 1/2/19)

https://www.1dca.org/content/download/425530/4586285/file/170759_1284_0 1022019_09180035_i.pdf

STATEMENT OF DEFENDANT-VOLUNTARINESS: Investigator's implication that he would not charge the Defendant's wife if he confessed is insufficient to render his confession involuntary under the circumstances. Teachman v. State, 44 Fla. L. Weekly D159b (1st DCA 1/2/19)

https://www.1dca.org/content/download/425530/4586285/file/170759_1284_0 1022019_09180035_i.pdf

EVIDENCE: Lewd and lascivious victim's sexual relationship with her boyfriend is inadmissible. Teachman v. State, 44 Fla. L. Weekly D159b (1st DCA 1/2/19)

https://www.1dca.org/content/download/425530/4586285/file/170759_1284_0 1022019_09180035_i.pdf

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SENTENCING-CONSIDERATIONS: Upon resentencing, the court improperly considered a subsequent charge for which the defendant had been acquitted. Defendant is entitled to a new sentencing hearing before a different judge. Mullaly v. State, 44 Fla. L. Weekly D151a (1st DCA 12/31/18)

https://www.1dca.org/content/download/425515/4586091/file/174815_1287_1 2312018_09461972_i.pdf

SEARCH AND SEIZURE-PRESERVATION OF ISSUE: The appellate court lacks jurisdiction to review a dispositive motion to suppress when the Defendant failed to preserve the right to appeal. Lewis v. State, 44 Fla. L. Weekly D150b (1st DCA 12/31/18)

https://www.1dca.org/content/download/425516/4586103/file/174965_1279_1 2312018_09471276_i.pdf

LIFE SENTENCE: Graham does not extend to adult offenders. The argument that sentencing courts should focus on the offender's mental age on a case-bycase basis is rejected. Lockhart v. State, 44 Fla. L. Weekly D150a (1st DCA 12/31/18)

https://www.1dca.org/content/download/425513/4586067/file/172661_1284_1 2312018_09371202_i.pdf

SELF-REPRESENTATION: Court properly denied Defendant's request to represent himself when he was uncooperative, refused to acknowledge that he even had a lawyer, interrupted and argued with the court, and otherwise thwarted the Court's efforts to conduct the Faretta inquiry. Damas v. State, 44 Fla. L. Weekly S70a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425463/4585496/file/s c17-2062.pdf

DEATH PENALTY-AGGRAVATORS: Finding that victims were under the age of 12 and in the Defendant's familial/custodial authority is not improper doubling of aggravators. Damas v. State, 44 Fla. L. Weekly S70a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425463/4585496/file/s c17-2062.pdf

DEATH PENALTY: "[T]he moral consensus concerning the death penalty and its social utility as a sanction, require us to conclude . . .that the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe." Damas v. State, 44 Fla. L. Weekly S70a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425463/4585496/file/s c17-2062.pdf

DEATH PENALTY-PROPORTIONALITY: Death penalty is not disproportionate for slitting throats of mother and five children. Damas v. State, 44 Fla. L. Weekly S70a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425463/4585496/file/s c17-2062.pdf

DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant with an IQ score of 75 is entitled to a hearing to determine whether he is ineligible for the death penalty based on intellectual disability. Foster v. State, 44 Fla. L. Weekly S67a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425464/4585508/file/s c17-2198.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Witness's statement that he may have minimized the extent of the Defendant's intoxication in trial testimony is not newly discovered Brady evidence sufficient to warrant a new trial. Merck v. State, 44 Fla. L. Weekly S61a (FLA 12/28/18)

https://www.floridasupremecourt.org/content/download/425468/4585556/file/s c18-88.pdf

DEATH PENALTY-HURST: Defendant is not entitled to relief based on Hurst when the death penalty became final in 1990. Duckett v. State, 44 Fla. L. Weekly S56a (FLA 12/28/18)

POST CONVICTION RELIEF: Claims that State committed a Brady violation by not disclosing that it had dropped charges against testifying

witness are procedurally barred and without merit. Thomas v. State, 44 Fla. L. Weekly S54a (FLA 12/28/18)

SELF-REPRESENTATION: A literate 51-year-old with a GED is entitled to represent himself if he is dissatisfied with counsel. Clark v. State, 44 Fla. L. Weekly D146a (5th DCA 12/28/18)

JURORS-POST-VERDICT INTERVIEW: Court did not abuse discretion in denying motion to interview the jury foreperson based on her alleged failure to disclose her own personal experience with sexual assault where she was not asked about it during voir dire. Sonneman v. State, 44 Fla. L. Weekly D145a (5th DCA 12/28/18)

JURORS-POST-VERDICT INTERVIEW: Juror may not be interviewed after the verdict based on the inference that she considered the Defendant's failure to testify; any such considerations inhere in the verdict. Sonneman v. State, 44 Fla. L. Weekly D145a (5th DCA 12/28/18)

10-20-LIFE: Life sentence for aggravated battery with a firearm is illegal because it exceeds the statutory maximum for that offense. Reclassification is improper where state charges aggravated battery in such a way that use of firearm is essential element.

Smith v. State, 44 Fla. L. Weekly D118a (5th DCA 12/28/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for advising him not to testify, and have counsel told him the state would be able to impeach and by every detail his prior

convictions, counsel's performance was deficient. Penton v. State, 44 Fla. L. Weekly D143a (2nd DCA 12/28/18)

EXPERT-DNA: DNA expert who identifies a DNA may not testify about the frequency of the DNA among the population database without demonstrating a sufficient knowledge of the population database ground in this day of authoritative sources although he or she need not be a statistician or mathematician. The witness must identify the method used to calculate the frequency statistics so that the judge may determine whether the method used is generally accepted in the scientific community in accordance with Frye. Testimony that she is "familiar with the type of statistical analysis," that it was "something that is commonly done" in her profession, that she had been "performing statistical analysis . . . since 1996," is insufficient. Counsel was ineffective for failing to object. Cruz v. State, 44 Fla. L. Weekly D139a (2nd DCA 12/28/18)

SELF-DEFENSE-STAND YOUR GROUND: Burden of proof is upon the State. Defendant must only allege a facially sufficient prima facie case of justifiable use of force in his motion. The Defendant is not required to testify or present evidence. Jefferson v. State, 44 Fla. L. Weekly D135a (2nd DCA 12/28/18)

DICTIONARY WARS: "[T]o 'raise' something is '[t]o bring up for discussion or consideration; to introduce or put forward.' . . .That is, in ordinary conversation, it is not sensible to conclude that to 'raise" a prima facie claim, which is deemed true until it is disproved, means that the person raising the claim must also affirmatively prove the claim. The legislature did not say 'prove.' Utilization of 'raised,' coupled with the aforementioned ordinary meaning of 'prima facie claim,' yields clear textual support that the legislature did not intend the person asserting Stand Your Ground immunity to first

prove that prima facie claim of self-defense." Jefferson v. State, 44 Fla. L. Weekly D135a (2nd DCA 12/28/18)

COSTS: Court may not impose a $100 fee for court-appointed conflict counsel without giving Defendant notice of his right to a hearing to contest the fees. Conflict certified. Newton v. State, 44 Fla. L. Weekly D126c (2nd DCA 12/28/18)

CREDIT FOR TIME SERVED: On VOP, Defendant must be given credit from the date of the arrest on the new violation which was the basis for the revocation of probation. Colton v. State, 44 Fla. L. Weekly D113b (1st DCA 12/27/18)

https://www.1dca.org/content/download/425433/4585143/file/165654_1286_1 2272018_12100513_i.pdf

DOUBLE JEOPARDY: Double Jeopardy does not bar separate convictions for child neglect causing great bodily harm and leaving child unattended in motor vehicle. Hicks v. State, 44 Fla. L. Weekly D113a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425435/4585167/file/165876_1286_1 2272018_12115870_i.pdf

JOA-CHILD ENDANGERMENT: Defendant cannot be convicted of child endangerment based solely on the fact that the child' mother testified that the child was not injured when he left for the defendant, but there was no testimony is as to what happened during the hours in question. Hicks v. State, 44 Fla. L. Weekly D113a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425435/4585167/file/165876_1286_1 2272018_12115870_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to hire an expert in pharmacology to explain how his prescription medicine interacted with his medical conditions in abuse of drugs. Dupriest v. State, 44 Fla. L. Weekly D108b (1st DCA 12/27/18)

https://www.1dca.org/content/download/425434/4585155/file/165702_1287_1 2272018_12105684_i.pdf

MOTION FOR NEW TRIAL: Court erred by assessing the Defendant's motion for new trial on the same basis as the motion for Judgment of Acquittal. "Unlike a motion for judgment of acquittal, which tests the sufficiency of the evidence, a motion for new trial 'requires the trial court to weigh the evidence and determine credibility just as a juror would.'. . .In the latter role, the trial court acts as a 'safety valve' where the evidence of guilt is tenuous but technically sufficient to go to the jury. Baker v. State, 44 Fla. L. Weekly D108a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425438/4585203/file/171959_1286_1 2272018_12151395_i.pdf

COMPETENCY: Court erred by failing to hold competency hearing despite having reasonable grounds to believe the defendant was incompetent. Boren v. State, 44 Fla. L. Weekly D107a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425441/4585239/file/173361_1287_1 2272018_12190176_i.pdf

VOP-JURISDICTION: Probation is tolled when the defendant absconded. "Absconsion" used again. Hodges v. State, 44 Fla. L. Weekly D106a (1st DCA 12/27/18)

VOP: Evidence that Defendant's mother told the probation officer that the Appellant had moved is hearsay evidence insufficient to support a violation of probation. A probationer's absence from an approved residence for a brief time during which the probationer's location was unknown would not support a finding that the probationer violated a condition of probation by changing his residence without permission. Hodges v. State, 44 Fla. L. Weekly D106a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425442/4585251/file/174672_1286_1 2272018_12195274_i.pdf

SPEEDY TRIAL: The rule requiring a trial within 90 days of an appeal granting a new trial does not apply where the Defendant had previously waived speedy trial before his 1st trial. Noack v. State, 44 Fla. L. Weekly D101a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425431/4585119/file/155620_1286_1 2272018_11594519_i.pdf

HEARSAY: Officer's testimony that a third-party had told him that the Defendant had confessed is inadmissible hearsay within hearsay. Noack v. State, 44 Fla. L. Weekly D101a (1st DCA 12/27/18)

https://www.1dca.org/content/download/425431/4585119/file/155620_1286_1 2272018_11594519_i.pdf

JUDGE-IMPARTIALITY: Judge did not depart from its role of impartiality by preventing defense counsel from questioning witnesses about inadmissible evidence when state failed to object, nor by questioning state's witness who seemed confused by defense counsel's questions. "[A] trial judge need not be 'an iceberg only to be heard at calving.'" Lee v. State, 44 Fla. L. Weekly D98a (1st DCA 12/27/18)

JUDGE-IMPARTIALITY-QUOTATION (DISSENT): "During a timeout in the Big Game, a player coming off the field was berated for performing poorly, scolded for being 'a bump on a log.' Another timeout was called and the player was rebuked for 'sitting on your ass yet again.' The rant continued: 'I don't know what you guys are doing over there. I'm not sure you need to be here, just let [the other team] do whatever [it] wants.' A harangue like this from an irate coach is unremarkable; after all, his job is to win the game. What would be startling is if the haranguer was the game's referee, the person on the field whose job is to ensure a fair and impartial contest for the players and onlookers alike. Yet that is what happened in the trial of William Lee. . .[T]he trial judge unilaterally initiated a series of increasingly antagonistic sidebars, punctuated by the quotes above. . . In effect, the judge performed real-time CLE timeouts for the prosecution's benefit during a live criminal trial." Lee v. State, 44 Fla. L. Weekly D98a (1st DCA 12/27/18)

DISCOVERY-FACIAL RECOGNITION SOFTWARE: Defendant is not entitled to alter photographs generated by facial recognition software which were not identified as the defendant. Lynch v. State, 44 Fla. L. Weekly D96a (1st DCA 12/27/18)

COMPETENCY: Court cannot adjudicate defendant competent based solely on the parties' stipulation. Losada v. State, 44 Fla. L. Weekly D69b (3rd DCA 12/26/18)

http://3dca.flcourts.org/Opinions/3D16-1758.pdf

EVIDENCE: Exhibit with an expert's annotations superimposed is inadmissible. State Farm v. Wallace, 44 Fla. L. Weekly D67c (5th DCA 12/21/18)

https://edca.5dca.org/DCADocs/2017/0813/170813_1257_12212018_083532 61_i.pdf

NEWLY DISCOVERED EVIDENCE-RECANTATION: Defendant is entitled to a hearing on his motion for post conviction relief when one victim recanted his testimony and says the other admitted falsely identifying the defendant at trial. Smith v. State, 44 Fla. L. Weekly D66c (5th DCA 12/21/18)

https://edca.5dca.org/DCADocs/2018/3095/183095_1260_12212018_090545 20_i.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for failing to investigate allegations that had

been known to the attorney that alleged victims of sexual molestation had admitted they lied in retaliation for harsh discipline. Bozada v. State, 44 Fla. L. Weekly D65a (5th DCA 12/21/18)

DEATH PENALTY-POST CONVICTION RELIEF: Hurst does not invalidate death recommendation when jury was told that its recommendation was only advisory. Allen v. State, 44 Fla. L. Weekly S40a (12/20/18)

POST CONVICTION RELIEF: Failure to object to Detective's statements of belief in the Defendant's guilt during the course of the interrogation is not ineffective assistance of counsel warranting a new trial. King v. State, 44 Fla. L. Weekly S31a (FLA 12/20/18)

POST CONVICTION DNA TESTING: Court did not err in adopting State's memorandum in its order on post-conviction DNA testing where the memo was not facially deficient and its conclusions were supported by the evidence. Gosiminski v. State, 44 Fla. L. Weekly S27a (FLA 12/20/18)

DEATH PENALTY: Defendant who waived penalty-phase jury and his death penalty was final more than 2 years before Ring is not entitled to relief based on Hurst. Robinson v. State, 44 Fla. L. Weekly S25a (FLA 12/20/18)

POST CONVICTION RELIEF: In death penalty cases, Defendant is entitled to a Huff hearing (an opportunity for attorneys to argue for an evidentiary hearing) on an initial motions for post-conviction relief, not on subsequent motions. Taylor v. State, 44 Fla. L. Weekly S19a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425256/4583282/file/s c18-520.pdf

ATTORNEYS-DISCIPLINE: 3 year suspension is appropriate discipline for attorney who stole money from her employer (Kohl's Department Store). Dissent: "Kinsella's misconduct requires disbarment. . .There should be no place for thieves in The Florida Bar." "Attempts to distinguish thefts related or unrelated to the practice of law ignore the common denominator at issue — theft. A thief is a thief." The Florida Bar v. Kinsella, 44 Fla. L. Weekly S14a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425241/4583102/file/s c17-55.pdf

POST CONVICTION RELIEF-DEATH PENALTY-HURST: Neither failure to hold a case management hearing nor a page limit on successive motions for post-conviction relief is unconstitutional. Rivera v. State, 44 Fla. L. Weekly S10b (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425248/4583186/file/s c17-1991.pdf

POST CONVICTION RELIEF-DEATH PENALTY: Hurst does not apply retroactively to cases which became final before Ring. Rivera v. State, 44 Fla. L. Weekly S10b (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425248/4583186/file/s c17-1991.pdf

AMENDMENT-JURY INSTRUCTIONS: Battery instructions amended to clarify that the Defendant does not to touch the actual body of the victim for a battery to occur. In Re: Standard Jury Instructions, 44 Fla. L. Weekly S10a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425259/4583318/file/s c18-1295.pdf

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: DOJ report criticizing hair and fiber analysis is not newly discovered evidence sufficient to warrant a new trial. State v. Murray, 44 Fla. L. Weekly S3b (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425242/4583114/file/s c17-707.pdf

APPEAL-CONFLICT: There is no conflict when appellate counsel and trial counsel are the same; any claims of ineffective assistance of counsel at trial are not properly raised on direct appeal. State v. Murray, 44 Fla. L. Weekly S3b (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425242/4583114/file/s c17-707.pdf

AMENDMENT-JURY INSTRUCTIONS-ROBBERY: Great bodily harm does not include bruises. The alleged victim should be referred to by name, and not identified as "victim." In Re: Standard Jury Instructions, 44 Fla. L. Weekly S2a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425259/4583318/file/s c18-1295.pdf

AMENDMENT-JURY INSTRUCTIONS-DELIBERATIONS: "If a juror goes to the restroom, the deliberations should stop until the juror returns." In Re: Standard Jury Instructions, 44 Fla. L. Weekly S1b (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425261/4583342/file/s c18-1717.pdf

WITNESS TAMPERING: Witness tampering does not require the state to prove that the witness attempted to contact law enforcement either during or after the commission of the crime. McCloud v. State, 43 Fla. L. Weekly S658a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425250/4583210/file/s c17-2011.pdf

ATTORNEY'S FEES: Statutory qualifications in force at the time of appointment apply to designated attorneys assisting registry attorneys in capital collateral proceedings. Cartenuto v JAC, 43 Fla. L. Weekly S654a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425254/4583258/file/s c18-322.pdf

POST CONVICTION RELIEF: Failure to object to Detective's statements of belief in the Defendant's guilt during the course of the interrogation is not ineffective assistance of counsel warranting a new trial. King v. State, 44 Fla. L. Weekly S31a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425243/4583126/file/s c17-1486.pdf

POST CONVICTION DNA TESTING: Court did not err in adopting State's memorandum in its order on post-conviction DNA testing where the memo was not facially deficient and its conclusions were supported by the evidence. Gosiminski v. State, 44 Fla. L. Weekly S27a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425247/4583174/file/s c17-1928.pdf

DEATH PENALTY: Defendant who waived penalty-phase jury and his death penalty was final more than 2 years before Ring is not entitled to relief based on Hurst. Robinson v. State, 44 Fla. L. Weekly S25a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425252/4583234/file/s c18-16.pdf

POST CONVICTION RELIEF: In death penalty cases, Defendant is entitled to a Huff hearing (an opportunity for attorneys to argue for an evidentiary hearing) on an initial motions for post-conviction relief, not on subsequent motions. Taylor v. State, 44 Fla. L. Weekly S19a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425256/4583282/file/s c18-520.pdf

ATTORNEYS-DISCIPLINE: 3 year suspension is appropriate discipline for attorney who stole money from her employer (Kohl's Department Store). Dissent: "Kinsella's misconduct requires disbarment. . .There should be no place for thieves in The Florida Bar." Dissent: "Attempts to distinguish thefts related or unrelated to the practice of law ignore the common denominator at issue — theft. A thief is a thief." The Florida Bar v. Kinsella, 44 Fla. L. Weekly S14a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425241/4583102/file/s c17-55.pdf

AMENDMENT-JURY INSTRUCTIONS: Battery instructions amendment to clarify that the Defendant does not to touch the actual body of the victim for a battery to occur. In Re: Standard Jury Instructions, 44 Fla. L. Weekly S10a (FLA 12/20/18)

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POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: DOJ report criticizing hair and fiber analysis is not newly discovered evidence sufficient to warrant a new trial. State v. Murray, 44 Fla. L. Weekly S3b (FLA 12/20/18)

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AMENDMENT-JURY INSTRUCTIONS-ROBBERY: Great bodily harm does not include bruises. The alleged victim should be referred to by name, and not identified as "victim." In Re: Standard Jury Instructions, 44 Fla. L. Weekly S2a (FLA 12/20/18)

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AMENDMENT-JURY INSTRUCTIONS-DELIBERATIONS: "If a juror goes to the restroom, the deliberations should stop until the juror returns." In Re: Standard Jury Instructions, 44 Fla. L. Weekly S1b (FLA 12/20/18)

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ATTORNEY'S FEES: Statutory qualifications in force at the time of appointment apply to designated attorneys assisting registry attorneys in capital collateral proceedings. Cartenuto v JAC, 43 Fla. L. Weekly S654a (FLA 12/20/18)

https://www.floridasupremecourt.org/content/download/425254/4583258/file/s c18-322.pdf

WITNESS TAMPERING: Witness tampering statute does not require that the state demonstrate that a witness attempted to contact law enforcement either during or after the commission of a criminal offense. Statute focuses on actus rea and mens rea. Extensive discussion of statutory interpretation rules, specific intent. McCloud v. State, 43 Fla. L. Weekly S658a (FLA 12/20/18)

http://www.floridasupremecourt.org/decisions/2018/sc17-2011.pdf

ATTORNEY'S FEES-CAPITAL COLLATERAL PROCEEDINGS: Attorney who met the requirements as a designated conflict attorney as they existed at the time is entitled to payment from J.A.C. Cartenuto v. J.A.C., 43 Fla. L. Weekly S654a (FLA 12/20/18)

http://www.floridasupremecourt.org/decisions/2018/sc18-322.pdf

UPWARD DEPARTURE: Provision of sentencing statute which allows the court, rather than the jury, to make a finding of dangerous to the public and sentence a Defendant with fewer than 22 points to prison violates the Sixth Amendment. Brown v. State, 43 Fla. L. Weekly S653a (FLA 12/20/18)

http://www.floridasupremecourt.org/decisions/2018/sc18-323.pdf

ARGUMENT: Prosecutor's statement that the standard for whether someone is fleeing and eluding is what a reasonable person would do is a misstatement of law; a new trial is required. Owens v. State, 44 Fla. L. Weekly D55b (4th DCA 12/19/18)

MANDATORY MINIMUM-FIREARM: Mandatory minimum does not apply to conspiracy to commit armed burglary with a firearm. Rosario v. State, 44 Fla. L. Weekly D54b (4th DCA12/19/18)

APPEAL-STATE: Order granting motion to vacate plea is not appealable by the state. State v. Barnes, 44 Fla. L. Weekly D48a (4th DCA 12/19/18)

LIMITATION OF ACTIONS-SEXUAL BATTERY: The affidavit of the mentally retarded victim identifying the Defendant as the perpetrator of sexual battery upon her does not establish his identity for the purpose of beginning the fouryear statute of limitations; only the DNA evidence tested a decade later establishes his identity. The legislature can extend the limitations period without violating the constitutional prohibition against ex post facto laws if it (a) does so before prosecution is barred by the old statute, and (b) clearly indicates that the new statute is to apply to cases pending when it becomes effective. State v. Estime, 44 Fla. L. Weekly D46a (4th DCA 12/19/18)

DEFINITION-"ESTABLISH": "'Establish' means to 'to make firm or stable' and 'to put beyond doubt,' i.e. (from Black's Law Dictionary) 'to establish the president's guilt.'" State v. Estime, 44 Fla. L. Weekly D46a (4th DCA 12/19/18)

HEARSAY: Because records crafted by a separate business lack the hallmarks of reliability inherent in a business's self-generated records,

proponents must demonstrate not only that "the other requirements of the business records exception rule are met but also that the successor business relies upon those records and the circumstances indicate the records are trustworthy. Mere recitation of the four elements of the business records exception does not establish reliability. Sacks v. The Bank of New York Mellon, 44 Fla. L. Weekly D44a (4th DCA 12/19/18)

JURORS-PEREMPTORY CHALLENGE-RACIAL DISCRIMINATION: Court must always consider the genuineness of the reason given for a peremptory challenge which is objected to as being discriminatory. Johnson v. State, 44 Fla. L. Weekly D34a (4th DCA 12/19/18)

CORPUS DELICTI: The corpus delicti cannot rest upon the confession or admission alone. Therefore, the state must introduce substantial independent evidence of corpus delicti that tends to show that the charged crimes were committed. J.J. v. State, 44 Fla. L. Weekly D25a (3rd DCA 12/19/18)

http://3dca.flcourts.org/Opinions/3D17-2492.pdf

SENTENCING-CONSIDERATIONS-REMORSE: Defendant is entitled to resentencing before a different judge when the judge considered his lack of remorse ("And the one thing I haven't heard is any remorse, just excuses.") in imposing sentence. "Although a defendant's expression of remorse and acceptance of responsibility are appropriate factors for the court to consider in mitigation of a sentence, a lack of remorse, the failure to accept responsibility, or the exercise of one's right to remain silent at sentencing may not be considered by the trial court in fashioning the appropriate sentence." ChiongCortes v. State, 44 Fla. L. Weekly D23b (3rd DCA 12/19/18)

http://3dca.flcourts.org/Opinions/3D17-1794.pdf

CREDIT FOR TIME SERVED-SPLIT SENTENCE: Upon sentencing the Defendant upon a violation of a probationary split sentence, the Court is required to direct the Department of Corrections to give him credit for time already served in prison. Rey v. State, 44 Fla. L. Weekly D15b (3rd DCA 12/19/18)

http://3dca.flcourts.org/Opinions/3D18-1429.pdf

SENTENCING-CONSIDERATIONS-NEW ARREST: Court may consider the facts underlying the new law violations in assessing whether to revoke community control and to tailor an appropriate sentence upon revocation. Turner v. State, 44 Fla. L. Weekly D11d (2nd DCA 12/19/18)

https://edca.2dca.org/DCADocs/2016/3474/163474_65_12192018_08403831 _i.pdf

QUOTATION: "'The young man knows the rules, but the old man knows the exceptions.' Oliver Wendell Holmes, Sr. . . Dr. Holmes' wisdom underscores the fact that, sometimes, bright-line rules do not burn so brightly." Turner v. State, 44 Fla. L. Weekly D11d (2nd DCA 12/19/18)

https://edca.2dca.org/DCADocs/2016/3474/163474_65_12192018_08403831 _i.pdf

POSSESSION-KNOWLEDGE: The elimination of the requirement of knowledge of the illicit nature of a controlled substance is not under the

position statute unconstitutional. Manning v. State, 44 Fla. L. Weekly D11a (1st DCA 12/18/18)

https://www.1dca.org/content/download/425019/4580830/file/175141_1284_1 2182018_12170928_i.pdf

MANDATORY MINIMUM: Defendant may be sentenced to 30 years in prison with a 25 year minimum mandatory despite the fact that his second degree felony was not reclassified as a first-degree felony. Sentences in excess of the mandatory minimums under the 10-20-Life statute require any additional statutory authority, but the Supreme Court opinion which said this had not been decided at the time the Defendant here was sentenced, and he failed to raise the issue on appeal. A defendant whose sentence is final before an opinion interpreting a relevant sentencing statute is issued may not receive the benefit of that opinion unless it is proved that the opinion requires retroactive application. King v. State, 44 Fla. L. Weekly D9a (1st DCA 12/18/18)

https://www.1dca.org/content/download/425014/4580774/file/170929_1284_1 2182018_11403219_i.pdf

COLLATERAL CRIMES-SEXUAL BATTERY: Evidence of a separate sexual battery committed 24 hours earlier is admissible to show propensity. Although collateral-crime evidence of a sexual offense is admissible even if offered to show propensity, the State must still demonstrate that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Here, evidence was admissible. Whisby v. State, 44 Fla. L. Weekly D7a (1st DCA 12/18/18)

https://www.1dca.org/content/download/425012/4580750/file/163949_1284_1 2182018_11365927_i.pdf

DISCOVERY-EXPERT: Court erred in allowing undisclosed expert to testify when the Defendant knew of the expert, but was never put on notice that the expert had analyzed his cell phone data to determine defendant's location during the commission of the charged offense, or that the expert would offer testimony at trial refuting his alibi defense. Wilson v. State, 44 Fla. L. Weekly D3c (1st DCA 12/18/18)

https://www.1dca.org/content/download/425013/4580762/file/170809_1287_1 2182018_11384199_i.pdf

PAROLE: Commission is not permitted to aggravate the Defendant's release date for use of firearm where the use of firearm was already included in the definition of other convictions used as aggravating elements. Williams v. Florida Commission on Offender Review, 44 Fla. L. Weekly D2c (1st DCA 12/18/18)

https://www.1dca.org/content/download/425020/4580842/file/180179_1282_1 2182018_12181920_i.pdf

SELF-DEFENSE-STAND YOUR GROUND: Amendment to Stand Your Ground law shifting the burden of proof applies retroactively. Mayers v. State, 43 Fla. L. Weekly D2800a (1st DCA 12/17/18)

https://www.1dca.org/content/download/424983/4580446/file/182926_1282_1 2172018_02585118_i.pdf

CHILD ABUSE-PARENTAL DISCIPLINE: Court did not commit fundamental error by failing to instruct the jury on the affirmative defense of parental discipline where there is no evidence that the child committed any misbehavior justifying discipline. The Child's act of trying to prevent defendant from hitting the Child's mother does not justifying whipping the child with the belt. Hall v. State, 44 Fla. L. Weekly D1b (1st DCA 12/18/18)

https://www.1dca.org/content/download/425026/4580914/file/181446_1284_1 2182018_12264664_i.pdf

EVIDENCE-CHARACTER: Defendant (who showed the victim into a bonfire setting his head aflame) it to present evidence of his peaceful character that is not entitled to a special instruction on peaceful character. Bass v. State, 43 Fla. L. Weekly D2787a (1st DCA 12/14/18)

https://www.1dca.org/content/download/422253/4561942/file/142449_1284_1 2142018_10343571_i.pdf

JUROR INTERVIEW: Court did not abuse its discretion in denying defense counsel right to interview a juror, after the verdict upon receipt of a letter indicating that she felt pressure during deliberations. Bass v. State, 43 Fla. L. Weekly D2787a (1st DCA 12/14/18)

https://www.1dca.org/content/download/422253/4561942/file/142449_1284_1 2142018_10343571_i.pdf

EVIDENCE-PHOTO: Court did not abuse its discretion in admitting a gruesome picture of the injuries sustained by the victim whose head had caught on fire. Bass v. State, 43 Fla. L. Weekly D2787a (1st DCA 12/14/18)

https://www.1dca.org/content/download/422253/4561942/file/142449_1284_1 2142018_10343571_i.pdf

RESISTING WITHOUT VIOLENCE: Defendant is properly convicted of without violence by giving a false name. There is no requirement that the Defendant be legally detained when he gave the false name. Court declines to follow prior precedent (Sauz v. State). Bass v. State, 43 Fla. L. Weekly D2787a (1st DCA 12/14/18)

https://www.1dca.org/content/download/422253/4561942/file/142449_1284_1 2142018_10343571_i.pdf

GUIDELINES-SCORESHEET-PRIOR CONVICTIONS: Court may not consider underlying facts in determining the existence of an analogous Florida offense. Instead, only the elements of the out-of-state crime should be considered in determining whether a conviction is analogous to a Florida crime. Appellate court will not consider burglary is analogous to Florida's burglary or was not raised in the trial court. Scott v. State, 43 Fla. L. Weekly D2784c (1st DCA 12/14/18)

GAIN TIME: Statute for forfeiture of Basic Get Time does not Violate Ex Post Facto. Heard v. DOC, 43 Fla. L. Weekly D2783a (1st DCA 12/14/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call the co-defendant as a witness. Smith v. State, 43 Fla. L. Weekly D2782a (5th DCA 12/14/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on the claim that counsel was ineffective for discover scoresheet error prior to the entry of his plea. Edwards v. State, 43 Fla. L. Weekly D2781b (5th DCA 12/14/18)

SEARCH AND SEIZURE-EXIGENT CIRCUMSTANCES: Exigent circumstances exist intervene on behalf of which is yelping and sounds as though it is being beaten. The medical emergency exception applies to animals in distress. State v Archer, 43 Fla. L. Weekly D2777a (5th DCA 12/14/18)

EVIDENCE-RECORDED PHONE CALL: A secretly recorded telephone conversation between the Defendant and the Victim's mother is inadmissible. Smith v. State, 43 Fla. L. Weekly D2774a (5th DCA 12/14/18)

STAND YOUR GROUND: Amendment to Stand Your Ground law which shifts burden of proof to the state applies retroactively to cases where the change in the statute occurred while the Defendant's appeal was pending. Conflict certified. Drossos v. State, 43 Fla. L. Weekly D2764b (2nd DCA 12/14/18)

STATEMENT OF DEFENDANT: If an accused invokes his Miranda rights but later reinitiates communication, an accused must be reminded of his or her Miranda rights. Any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. "When, as in this case, a detective persists in attempting to coax a suspect to continue the interrogation after the suspect has unequivocally invoked his right to silence, the detective is not asking harmless clarifying questions; he is violating the suspect's Miranda rights." Shelly v. State, 43 Fla L. Weekly S625a (FLA 12/13/18)

HAZING: Felony hazing statute is not overly broad nor void for vagueness. Martin v. State, 43 Fla. L. Weekly S621b (FLA 12/13/18)

DEATH PENALTY: Defendant is not entitled to Hurst relief where his sentence of death became final in 1993. Jones v. State, 43 Fla. L. Weekly S621a (FLA 12/13/18)

DEATH PENALTY: Defendant is not entitled to Hurst relief when his sentence of death was unanimous. Rodriguez v. State, 43 Fla. L. Weekly S620a (FLA 12/13/18)

STAND YOUR GROUND: Law enforcement officer is are eligible to assert Stand Your Ground immunity. State v. Peraza, 43 Fla. L. Weekly S618a (FLA 12/13/18)

STATUTORY CONSTRUCTION: "Because even a clearly discernible Legislative intent cannot change the meaning of a plainly worded statute, it would only confuse matters to focus on what the Legislature might have intended rather than what the statute actually says." State v. Peraza, 43 Fla. L. Weekly S618a (FLA 12/13/18)

DOUBLE JEOPARDY: Multiple convictions of solicitation, unlawful use of a two-way communications device, and traveling after solicitation based upon the same conduct violate double jeopardy. Lee v. State, 43 Fla. L. Weekly S615a (FLA 12/13/18)

DOUBLE JEOPARDY: To determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct

for purposes of double jeopardy, the reviewing court should consider only the charging document, not the evidence presented. Lee v. State, 43 Fla. L. Weekly S615a (FLA 12/13/18)

PRISON RELEASEE REOFFENDER: A Defendant who was sentenced to prison but released from jail after accruing more than one year of credit time served is not eligible for PRR sentencing. State v. Lewars, 43 Fla. L. Weekly S612a (FLA 12/13/18)

STATUTORY CONSTRUCTION: "Even where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. State v. Lewars, 43 Fla. L. Weekly S612a (FLA 12/13/18)

BURGLARY-SENTENCE ENHANCEMENT: "Burglary" includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation for purposes of enhancement/mandatory minimum under the Armed Career Criminal Act. The word "burglary," like the word "crime" itself, is ambiguous. Generic burglaries support enhancement under the ACCA. Generic burglary is an unlawful or unprivileged entry into, or remaining in, a building or other structure with intent to commit a crime. A prior state conviction does not qualify as generic burglary under the Act where the elements of the relevant state statute are broader than those of generic burglary. Categorical interpretation is used. Car burglary is not generic burglary. United States v. Stitt, No. 17-765 (US S.Ct. 12/10/18)

EVIDENCE: Court did not abuse discretion in allowing officer to testify that the Defendant's roommate's car was under surveillance. Sims v. State, 43 Fla. L. Weekly D2727a (1st DCA 12/10/18)

DOUBLE JEOPARDY: Double Jeopardy does not preclude separate convictions for armed robbery and first degree misdemeanor petit theft. Blockburger. Petit theft requires an element – value – which robbery does not. Sims v. State, 43 Fla. L. Weekly D2727a (1st DCA 12/10/18)

SELF-REPRESENTATION: Court is not required to conduct a full Faretta hearing at the start the trial or he had engaged in a full Faretta inquiry 3 months before. Elswick v. State, 43 Fla. L. Weekly D2726a (1st DCA 12/10/18)

COMPETENCY: A 3 months old competency evaluation is not stale. Elswick v. State, 43 Fla. L. Weekly D2726a (1st DCA 12/10/18)

APPEAL: Defendant is entitled to belated appeal the inmate mail log since he never received legal mail from the court. Mathis v. State, 43 Fla. L. Weekly D2725b (1st DCA 12/10/18)

POST CONVICTION RELIEF: Guilty plea does not preclude the Defendant from asserting that his counsel was ineffective for failing to advise him that the evidence was legally insufficient to convict. Hill v. State, 43 Fla. L. Weekly D2725a (1st DCA 12/10/18)

UPWARD DEPARTURE: Defendant may not be deemed a danger to the community based on his failure to cooperate in the preparation of the PSI. Johnson v. State, 43 Fla. L. Weekly D2715a (1st DCA 12/10/18)

EVIDENCE-DOG TRACKING: Evidence of dog tracking is admissible. Gear v. State, 43 Fla. L. Weekly D2713c (1st DCA 12/10/18)

COSTS: Court may not impose costs of investigation absent a request from the State. Richards v. State, 43 Fla. L. Weekly D2709b (5th DCA 11/7/18)

AMENDMENT-RULES OF JUVENILE PROCEDURE: Various amendments to the rules, including new rules on restraints on juveniles. In Re: Rules of Juvenile Procedure, Fla. L. Weekly S606a (FLA 12/6/18)

PENALTY: Hurst penalty phase findings are not elements of capital murder, but are findings required of the jury before the court can impose a death penalty. Foster v. State, 43 Fla. L. Weekly S603a (FLA 12/6/18)

PENALTY: 18-year-old is subject to the death penalty. Foster v. State, 43 Fla. L. Weekly S603a (FLA 12/6/18)

EVIDENCE-OPINION: Officer may give his opinion that the substance in question is marijuana based on his experience, personal knowledge, sensory perceptions and everyday reasoning. M.G. v. State, 43 Fla. L. Weekly D2698c (3rd DCA 12/5/18)

APPEAL-BOLSTERING: Claim of improper bolstering is not preserved absent objection. Graham v. State, 43 Fla. L. Weekly D2690a (2nd DCA 12/5/18)

APPEAL-VOP-JURISDICTION-EXPIRATION: State may not argue on appeal that Court erred in dismissing VOP for lack of jurisdiction where the error was not preserved by specific objection. Argument that Court failed to

exercise jurisdiction it had is not a valid basis for an appeal. State v. Williams, 43 Fla. L. Weekly D2688d (1st DCA 12/5/18)

LIFE SENTENCE-MINOR: Atwell is no longer good law. Minor who is sentenced to a lengthy term of imprisonment with possibility of parole is not entitled to a sentence review after 25 years. Stafford v. State, 43 Fla. L. Weekly D2688a (4th DCA 12/5/18)

MINOR-25 YEAR MANDATORY MINIMUM: Minor who discharges a firearm is subject to a 25 year minimum mandatory, that is entitled to a sentence review after 20 years. State v. Wright, 43 Fla. L. Weekly D2685b (4th DCA 12/5/18)

LESSER INCLUDED: It is fundamental error to fail to instruct the jury on attempted manslaughter by act as a necessary lesser included offense of firstdegree murder with the defendant is convicted of attempted second-degree murder. Roberts v. State, 43 Fla. L. Weekly D2685a (4th DCA 12/5/18)

HEARSAY-EXCITED UTTERANCE: Defendant's statement "I've just been attacked, call the police," is admissible as an excited utterance through the Defendant and an independent witness. Mere fact that a statement is selfserving is not, in and of itself, sufficient basis for excluding such statements from evidence. "Spontaneous statement" and "excited utterance" distinguished. Hinck v. State, 43 Fla. L. Weekly D2681c (4th DCA 12/5/18)

HEARSAY: Hearsay statements to establish the state of mind of the nontestifying witness (a third-party who supposedly talked about getting someone to "put a cap" in one of the neighbor's backsides and that she was going to send someone to "whoop his a**" or "f*** him up.") is not admissible

to establish the state of mind of the Defendant. Rodriguez v. State, 43 Fla. L. Weekly D2697a (3rd DCA 12/4/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call witnesses. Brumfield v. State, 43 Fla. L. Weekly D2679d (5th DCA 11/30/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for advising him not to testify. The fact that the defendant had a prior conviction and that he freely and voluntarily decided not testify is not dispositive. Hodges v. State, 43 Fla. L. Weekly D2678a (5th DCA 11/30/18)

NEWLY DISCOVERED EVIDENCE: Court erred in finding that a witnesses affidavit containing exculpatory evidence recanted testimony is inherently not credible without taking evidence. Mitchell v. State, 43 Fla. L. Weekly D2674b (5th DCA 11/30/18)

PTI: Defendant is not entitled to drug PRI over State's objection when he is neither diagnosed with a drug problem nor entered into a program for at least one. State v. Frank, 43 Fla. L. Weekly D2673a (5th DCA 11/30/18)

SELF-DEFENSE-STAND YOUR GROUND: Change to Stand Your Ground law switching the burden of proof to the state to prove no entitlement to evidence applies retroactively. Boston v. State, 43 Fla. L. Weekly D2670b (1st DCA 11/30/18)

SENTENCING-MINOR: Life sentence for a minor convicted of attempted murder with a firearm is lawful, but Defendant is entitled to review hearing

after 20 years. Williams v. State, 43 Fla. L. Weekly D2670a (1st DCA 11/30/18)

SEARCH AND SEIZURE-REASONABLE SUSPICION: Flight may justify an investigatory stop based on reasonable suspicion of criminal activity when combined with some additional factors, such as presence in a high crime area. Channell v. State, 43 Fla. L. Weekly D2665a (1st DCA 11/30/18)

SEARCH AND SEIZURE-PROTECTIVE SWEEP: Protective sweep of the inside of a hotel room after the Defendant ran away is justified where the officers had previously received information that there were large quantities of drugs and firearms and people in the room, including one who had a warrant, and where the door was left open. Channell v. State, 43 Fla. L. Weekly D2665a (1st DCA 11/30/18)

SENTENCING-CONSECUTIVE: Once multiple sentences from a single criminal episode are enhanced through the habitual offender statute, the total penalty cannot be further increased by consecutive sentencing absent specific legislative authorization, but where sentences do not do not exceed the normal statutory maximum, they may be imposed consecutively. Bennett v. State, 43 Fla. L. Weekly D2661a (1st DCA 11/30/18)

INVITED ERROR: Court did not err in giving a standard principal instruction without limiting it to the crime charged where the defendant did not ask for limiting instruction and agreed to the instruction. Error, if any, is invited. Bennett v. State, 43 Fla. L. Weekly D2661a (1st DCA 11/30/18)

MOTION FOR NEW TRIAL: Motions for judgment of acquittal and motions for new trial are decided under different standards, the former test reviewing the sufficiency of the evidence and the latter requiring the court to weigh the

evidence and determine credibility just as a juror would. Jenkins v. State, 43 Fla. L. Weekly D2660b (1st DCA 11/30/18)

INDEPENDENT ACT: Defendant is not entitled to an instruction on independent act in murder case where the common plan was to rob and kidnap the victim for ransom and it was recently foreseeable that someone could be shot or killed during the events. Kitt v. State, 43 Fla. L. Weekly D2660a (1st DCA 11/30/18)

MANDATORY MINIMUM-CONSECUTIVE: Crimes stemming from a single criminal episode involving a single victim or a single injury may not be sentenced consecutively. Nieves v. State, 43 Fla. L. Weekly D2659b (1st DCA 11/30/18)

EVIDENCE-STATEMENT OF DEFENDANT-OPENING DOOR: Defendant opened the door to his refusal to submit to DNA sample at a prearrest interview when defense counsel asked investigator whether there was any evidence, including DNA, other than the victim's allegation, knowing that there had been in motion in limine about the DNA test. Madison v. State, 43 Fla. L. Weekly D2658a (1st DCA 11/30/18)

POST CONVICTION RELIEF: Trial counsel is not ineffective where a strategic decision is made to introduce a defendant's statements with the goal of negating or reducing the defendant's culpability. Campbell v. State, 43 Fla. L. Weekly S593a (FLA 11/29/18)

POST CONVICTION RELIEF: Public Defender does not have an obligation to contact defendant charged with murder to prevent him from making statements before he is appointed to the case. Campbell v. State, 43 Fla. L. Weekly S593a (FLA 11/29/18)

POST CONVICTION RELIEF: Defendant is not entitled to new trial where prosecutor whispered about the defendant, "What a manipulative ass," when there is no evidence that any juror heard the comment. "We remind all attorneys to be cognizant of any spoken comments and to always maintain decorum in the courtroom. The statement by the prosecutor here was completely inappropriate." Campbell v. State, 43 Fla. L. Weekly S593a (FLA 11/29/18)

SEARCH WARRANT: Due process requires that the Defendant be given an unredacted search warrant and the application for it. The press is also entitled to copies of the search warrant application. State v. Wooten, 43 Fla. L. Weekly D2648a (4th DCA 11/28/18)

DUI-BLOOD TEST: The provisions of the implied consent law do not apply to the Defendant voluntarily consents to blood test. State v. Meyers, 43 Fla. L. Weekly D2647b (4th DCA 11/28/18)

SENTENCING-SCORESHEET: Court erred in including on scoresheet offenses committed more than 10 years before the commission of the primary offense. Any uncertainty the scoring of an offender's prior record must be resolved in favor of the offender. Powers v. State, 43 Fla. L. Weekly D2641a (4th DCA 11/28/18)

VOCABULARY: The word "absconsion" is used in this opinion (second time this year). "Allowing the State another opportunity to determine whether any other unknown evidence of absconsion exists and to introduce it at another hearing would give it a second bite at the apple." Powers v. State, 43 Fla. L. Weekly D2641a (4th DCA 11/28/18)

FYI: “The amphibian Rana sevosa is popularly known as the ‘dusky gopher frog’-‘dusky’ because of its dark coloring and ‘gopher’ because it lives underground. The dusky gopher frog is about three inches long, with a large head, plump body, and short legs. Warts dot its back, and dark spots cover its entire body.” Weyerheauser v. US Fish and Wildlife, Case No. 17-71 (US S. Ct. 11/27/18)

GRAMMAR: “Adjectives modify nouns-they pick out a subset of a category that possesses a certain quality.” Weyerheauser v. US Fish and Wildlife, Case No. 17-71 (US S. Ct. 11/27/18)

CONDITIONAL RELEASE–INTERNET ACCESS: Parole Commission has authority to impose special conditions of conditional release not limited to those provided by statute. Burnsed v. Florida Commission of Offender Review, 43 Fla. L. Weekly D2601c (1st DCA 11/27/18)

AMENDMENT-JURY INSTRUCTIONS: New definition for curtilage. In Re: Standard Jury Instructions, 43 Fla. L. Weekly S581a (FLA 11/21/18)

AMENDMENT-JURY INSTRUCTIONS: New instruction that “great bodily harm” does not include mere bruises. In Re: Standard Jury Instructions, 43 Fla. L. Weekly S581a (FLA 11/21/18)

AMENDMENT-JURY INSTRUCTIONS-SELF-DEFENSE: Self-defense instruction is clarified. New instructions are added pertaining to prior acts of violence by victim known by the Defendant. In Re: Standard Jury Instructions, 43 Fla. L. Weekly S580a (FLA 11/21/18)

CREDIT FOR TIME SERVED: Absent execution of an arrest warrant, a defendant who is in jail in another county need not be given credit for time served and that county when the 2nd county has only lodged the detainer against him. Naeser v. State, 43 Fla. L. Weekly D2600e (4th DCA 11/21/18)

ADMINISTRATIVE PROBATION: Only the Department of Corrections can transfer a probationer to administrative probation and only upon the satisfactory completion of half the term of probation. Court cannot do so. State v. Thomas, 43 Fla. L. Weekly D2600b (4th DCA 11/21/18)

SEARCH AND SEIZURE-CELL PHONE: Accessing historical cell phone location information constitutes a search under the Fourth Amendment requiring a warrant and probable cause. Ferrari v. State, 43 Fla. L. Weekly D2593b (4th DCA 11/21/18)

DISCOVERY VIOLATION: Neglecting to disclose the substance of a codefendant's statements as well as the existence of exculpatory statements by another witness until mid trial constituted a discovery violation. The ability the Defendant to depose witnesses does not absolve the State of its obligation to disclose witness statements. Ferrari v. State, 43 Fla. L. Weekly D2593b (4th DCA 11/21/18)

APPEAL: Claim that counsel was ineffective for failure to call an expert witness about his susceptibility to police coercion resulting in his confession is not plain on the face of the record warranting relief on direct appeal. Telisme v. State, 43 Fla. L. Weekly D2593a (4th DCA 11/21/18)

EVIDENCE-COLLATERAL CRIMES: Court erred in allowing evidence of a prior burglary of the same residence allegedly committed by the child 2

weeks before. A new hearing is required. M.P. v. State, 43 Fla. L. Weekly D2574a (3rd DCA 11/21/18)

VOP: Court cannot find that the Defendant violated probation by being in constructive possession of marijuana and a firearm based on him being in the car with other people, but Court may find him in violation by associating with persons engaged in criminal activity. Towns v. State, 43 Fla. L. Weekly D2572a (3rd DCA 11/21/18)

COUNSEL-WAIVER: Where trial court went out of its way to make multiple inquiries into defendant's decision to proceed pro se and each time, defendant declined, the Defendant made a knowing and intelligent waiver of his Sixth Amendment right to counsel. Wilson v. State, 43 Fla. L. Weekly D2571a (3rd DCA 11/21/18)

SEXUAL BATTERY BY MULTIPLE PERPETRATORS-JURY INSTRUCTION: Defendant waived any claim that court erred by not giving a jury instruction on unnatural and lascivious act as permissive lesser included for the specific claim was not asserted until after the trial. Calhoun v. State, 43 Fla. L. Weekly D2569a (1st DCA 11/20/18)

INFORMATION-DEFECT: Information was erroneous where information charged defendant with killing an "unborn child" rather than "viable fetus," but any such technical deficiency is waived if not objected to before the State rested case. Huckaba v. State, 43 Fla. L. Weekly D2566a (1st DCA 11/20/18)

EVIDENCE: Court may allow the admission of the Defendant's Facebook post ("Tomorrow I will be taking a very long, forced hiatus. To be specific, very likely ten years.") but may exclude his explanation for the post on the

grounds that the explanation references plea negotiations. Cooper v. State, 43 Fla. L. Weekly D2565b (1st DCA 11/20/18)

DWLS: "Learner's permit" is a license for the purpose of DWLS as opposed to NVDL. Floyd V. State, 43 Fla. L. Weekly D2565a (1st DCA 11/20/18)

SENTENCING-MINOR: Minor Defendant serving a fifty-four year sentence for shooting LEO is entitled to resentencing under the juvenile sentencing provisions. Baker, IV v. State, 43 Fla. L. Weekly D2557b (5th DCA 11/16/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that the plea was involuntary due to counsel's failure to investigate a prescription defense. An attorney's failure to investigate a factual defense resulting in a plea is facially sufficient ground to vacate the plea. Minix v. State, 43 Fla. L. Weekly D2556b (5th DCA 11/16/18)

POST CONVICTION RELIEF: When defendant files a motion for relief from judgment under Rule 1.540, the court should treat the motion as if it were filed under Rule 3.850. Duncan v. State, 43 Fla. L. Weekly D2555a (5th DCA 11/16/18)

ATTEMPTED SEXUAL BATTERY-OVERT ACT: Defendant who travels to meet a juvenile with the intent of having sex with her commits an overt act sufficient to support the crime of attempted sexual battery. Prior precedent receded from. Berger v. State, 43 Fla. L. Weekly D2554b (5th DCA 11/16/18)

POST CONVICTION RELIEF-INTELLECTUAL DISABILITY: Claim of intellectual disability must be raised within 2 years of conviction becoming final. Harvey v. State, 43 Fla. L. Weekly S575a (FLA 11/15/18)

JUDGE-DISQUALIFICATION: Disqualification is required where judge was an assistant state attorney during the time of Defendant's prosecution and handled capital prosecutions for the State at the time. Reed v. State, 43 Fla. L. Weekly S574a (FLA 11/15/18)

AMENDMENT-JURY INSTRUCTIONS: Unnatural and Lascivious Act is added to the table of lesser-included offenses as a Category Two lesser offense if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact). In re: Standard Jury Instructions in Criminal Cases, 43 Fla. L. Weekly S573a (FLA 11/15/18)

DEATH PENALTY: Defendant is not entitled to relief from death penalty where sentence of death became final in 1997. Mungin v. State, 43 Fla. L. Weekly S572a (FLA 11/15/18)

JUDGE-DISCIPLINE: Judges discipline for submitting a character reference letter on official stationery for a defendant for use in a sentencing hearing in federal court. Inquiry Concerning a Judge (Deborah White-Labora), 43 Fla. L. Weekly S571a (FLA 11/15/18)

JUDGE DISQUALIFICATION: Facebook "friendship," standing alone, is insufficient to warrant disqualification. Law Offices of Herssein and Herssein v. United Services Automobile Association, 43 Fla. L. Weekly S565b (FLA 11/15/18)

QUOTATION: "Judges do not have the unfettered social freedom of teenagers." Law Offices of Herssein and Herssein v. United Services Automobile Association, 43 Fla. L. Weekly S565b (FLA 11/15/18)

DEFINITION-FRIEND: "Friend" defined and discussed. Law Offices of Herssein and Herssein v. United Services Automobile Association, 43 Fla. L. Weekly S565b (FLA 11/15/18)

SEARCH AND SEIZURE-RESIDENCE: Officers may conduct a protective sweep of a house after reports of the firing, the smell of gunpowder in the house, in fear that someone inside may be injured, but the further enter into the home to secure the crime scene is unlawful. Defendant consented to search of the home, but the consent was limited to certain rooms. Any further search was unlawful. Aguilar v. State, 43 Fla. L. Weekly D2545c (2nd DCA 11/14/18)

RESENTENCING: When defendant successfully challenged imposition of fine on the ground that it was not orally pronounced, Court may not reimpose the fine without the defendant being present. Darwin v. State, 43 Fla. L. Weekly D2542a (2nd DCA 11/14/18)

PLEA WITHDRAWAL-DEPORTATION: Two-year limitations period for filing a motion to withdraw plea for failure of the trial court to advise a defendant that the plea could result in deportation commences when the judgment and sentence become final unless the defendant could not, with the exercise of due diligence, have ascertained within the two-year period that he or she was subject to deportation. Rodnez v. State, 43 Fla. L. Weekly D2541a (3rd DCA 11/14/18)

SELF-DEFENSE-JURY INSTRUCTION: Erroneous instruction placed burden upon the defendant to prove self-defense is fundamental error and not waived by defense counsel's affirmative acceptance of the erroneous instruction. Silva v. State, 43 Fla. L. Weekly D2538a (3rd DCA 11/14/18)

HABEAS CORPUS-JURISDICTION: Petition for Habeas Corpus must be filed and the court where the sentencing error occurred, not in the place where the Defendant is imprisoned. Peoples v. State, 43 Fla. L. Weekly D2533b (3rd DCA 11/14/18)

COMPETENCY: Court must hold competency hearing where issue was raised previously. Ramsey v. State, 43 Fla. L. Weekly D2530a (4th DCA 11/14/18)

STATEMENTS OF DEFENDANT: Defendant does not invoke his right to attorney by thinking out loud about the possibility of retaining an attorney. Joseph v. State, 43 Fla. L. Weekly D2528a (4th DCA 11/14/18)

SENTENCING-CONSIDERATIONS: Re-sentencing required where the court considered the Defendant's lack of remorse in imposing sentence. ("I believe that this was a cold-blooded killing, resulted in the death of Berno Charlemond on Christmas Eve in the Boynton Beach Mall in 2006, a crime for which the jury found you guilty and of which you've shown no remorse for."). Pierre v. State, 43 Fla. L. Weekly D2526a (4th DCA 11/14/18)

TRESPASS IN CONVEYANCE: Child is guilty of trespassing in a conveyance based on him found hiding in a stolen vehicle only when he knew or should have known that the vehicle was stolen. "Of course, just as there are many reasons why a juvenile might flee from law enforcement, those reasons would apply to hiding as well. If fleeing is insufficient to

establish the knowledge element, then so too is hiding." T.A.K. v. State, 43 Fla. L. Weekly D2516a (2nd DCA 11/9/18)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Appellate counsel is ineffective for not arguing on appeal that the Court should have discharged trial counsel when he took a position adverse to the Defendant's desire to withdraw his plea. Hernandez v. State, 43 Fla. L. Weekly (2nd DCA 11/9/18)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Defendant cannot be sentenced as a VFOSC on the basis of a plea agreement where he is not on probation at the time of the offense and otherwise lacks a qualifying offense. Hernandez v. State, 43 Fla. L. Weekly (2nd DCA 11/9/18)

JUDGE-DISQUALIFICATION: Judge is disqualified from hearing traffic cases after instructing hearing officer to be less lenient and that he believed drivers in his county were aggressive, and after the Judge reassign several cases to his docket after the attorney in those cases had requested copy of the email communications between the hearing officer, Judge, and Deputy clerk. Pena v. State, 43 Fla. L. Weekly D2508a (2nd DCA 11/9/18)

DEATH PENALTY: Death penalty is unconstitutional where recommendation of death is not unanimous. Tisdale v. State, 43 Fla. L. Weekly S560a (FLA 11/8/18)

DOUBLE JEOPARDY-DEATH PENALTY: Double Jeopardy does not bar a new penalty phase trial upon a Hurst remand wearing nonunanimous recommendation of death was permitted at the time of the 1st trial. Tisdale v. State, 43 Fla. L. Weekly S560a (FLA 11/8/18)

DEATH PENALTY: Defendant's sentence became final prior to Ring is not entitled to Hurst relief. Spencer v. State, 43 Fla. L. Weekly S558a (FLA 11/8/18)

MINOR-SENTENCING: 1000 year sentence for a nonhomicide committed by a juvenile does not violate the 8th Amendment, which requires that the juvenile have some meaningful opportunity to obtain release during his natural life where the defendant is eligible for parole (Pariente, dissenting, "The earliest Franklin could be released from prison based on existing parole guidelines is 2352 — 369 years after his crimes."). Atwell was incorrectly reasoned. Franklin v. State, 43 Fla. L. Weekly S556b (FLA 11/8/18)

HARASSING A POLICE DOG: "Is the statute directed to a person who maliciously harasses or teases a police dog? Or is it directed to a person who maliciously harasses or maliciously teases a police dog?" Teasing a police dog is OK if you do not do it maliciously. "[W]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." The word "maliciously" modifies each of the words in the series that follows it.

R.N. v. State, 43 Fla. L. Weekly D2503a (4th DCA 11/8/18)

ADVERB-APPLICABILITY-MALICIOUSLY: "Maliciously" means "ill will, hatred, spite, [or] an evil intent." R.N. v. State, 43 Fla. L. Weekly D2503a (4th DCA 11/8/18)

STATUTORY INTERPRETATION: "If the law was defined by the intent of the legislature, the law may be known only in the mind of the legislators. Which, of course, leads to another question: which legislator's mind would we use

to determine the intent of the legislative body?" R.N. v. State, 43 Fla. L. Weekly D2503a (4th DCA 11/8/18)

COSTS-PUBLIC DEFENDER FEE: Court may not order public defender fee in excess of $100.00 absent evidence. Coffee v. State, 43 Fla. L. Weekly D2502c (4th DCA 11/7/18)

POST CONVICTION RELIEF: When Defendant files a motion for postconviction relief within 2 years, and court fails to take action on the motion, the Defendant is free to amend the motion where he does not allege claims. Depasquale v. State, 43 Fla. L. Weekly D2502b (4th DCA 11/7/18)

SENTENCING-SCORESHEET-PENETRATION: Scoresheet improperly includes victim injury points for sexual penetration for the offense to which the defendant pled did not require proof penetration as charged in defendant did not stipulate that penetration occurred. Alexis v. State, 43 Fla. L. Weekly D2501 (4th DCA 11/7/18)

MINOR-RESENTENCING: Sentencing order must include language that the Defendant is eligible for periodic review of his sentence for capital murder after 25 years. James v. State, 43 Fla. L. Weekly D2501 (4th DCA 11/11/18)

JUVENILE-FIREARM-MANDATORY MINIMUM 15 DAYS: Juvenile who was involved in a crime which involve the use of a weapon is subject to the 15 day minimum mandatory regardless of whether he handled the weapon, even if his involvement was only that of a lookout. Juvenile is also subject to a minimum of 100 hours of community service. State v. I.J., 43 Fla. L. Weekly D2495c (4th DCA 11/7/18)

LIFE SENTENCE: Defendant who was an adult at the time of the offense but who claims to have the mentality of the juvenile is not immune from a life sentence. Hegstrom v. State, 43 Fla. L. Weekly D2495b (3rd DCA 11/7/18)

ROBBERY: Robbery can be established by proof that force was used to retain the victim's property once it has been taken. Jimenez v. State, 43 Fla. L. Weekly D2495a (3rd DCA 11/7/18)

MISTRIAL-APPEAL: Defendant cannot raise on appeal the issue of improper questioning of the Defendant by the state ("And you're trying to hustle this jury. . . You're trying to hustle them. . .like you tried to hustle Martin Sprung.; isn't that right?. . .[B]ecause I'm not going to let you hustle this jury.") where he raised different grounds for his motion for mistrial. Charles v. State, 43 Fla. L. Weekly D2493a (3rd DCA 11/7/18)

APPEAL: Circuit Court acting appellate capacity should have included in its review viewing the videotape which the County Court used to base its factual finding that it contradicted the defendant's testimony. Circuit Court was incorrect in finding that it was legally barred tape. Fleming v. State, 43 Fla. L. Weekly D2492b (3rd DCA 11/7/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on the claim that counsel was ineffective for failing to relay the State's plea offer to him. Bush v. State, 43 Fla. L. Weekly D2490a (1st DCA 11/7/18)

INFORMATION-AMENDMENT: Defendant is not prejudiced by amendment to the information the day before trial upgrading the charge from attempted burglary to burglary with the body of the information didn't change the defendant was on notice that he was being tried for a completed burglary. Williams v. State, 43 Fla. L. Weekly D2489a (1st DCA 11/7/18)

DICTIONARY: "'[A]lso' is a term of enhancement; it means 'in addition; besides' and 'likewise; too.'" Mount Lemmon Fire District v. Guido, Case No 17-587 (US S. Ct. 11/6/18)

JURORS-PEREMPTORY CHALLENGE-RACE: The potential juror's criminal record and failure to answer certain questions is a valid race neutral reason to exercise a peremptory challenge. Williams v. State, 43 Fla. L. Weekly D2477a (1st DCA 11/6/18)

MINOR-LIFE SENTENCE: Defendant who is charged with attempted murder for crime committed as a juvenile and sentenced to life in prison with a 25 year minimum mandatory is entitled to a sentence review after serving 25 years. Hurst v. State, 43 Fla. L. Weekly D2476b (1st DCA 11/6/18)

SENTENCING-SEXUAL BATTERY ON CHILD: When Defendant's age is not in dispute there is no error in failing to instruct the jury on that element). Scott v. State, 43 Fla. L. Weekly D2475a (1st DCA 11/6/18)

NAME: Court must hold a hearing on Defendant's motion to correct record relating to his correct name (Orlando Rodriguez, not Roberto Rodriguez). Rodriguez v. State, 43 Fla. L. Weekly D2468a (3rd DCA 11/6/18

FAILURE TO APPEAR: Court must afford Defendant at hearing on his motion to set bond to determine whether his FTA was willful. Haggan v. State, 43 Fla. L. Weekly D2467d (5th DCA 11/5/18)

COMPETENCY: Court must conduct a hearing and enter a written order after ordering a competency evaluation. Parcilla v. State, 43 Fla. L. Weekly D2465a (5th DCA 11/2/18)

POST CONVICTION RELIEF: A restitution order is not a sentencing error cognizable in a rule 3.800(b) motion. Davis v. State, 43 Fla. L. Weekly D2464a (5th DCA 11/2/18)

CONFRONTATION: Statements made by victim during a 911 call do not violate Defendant's right of confrontation, as the statements are made during an ongoing emergency and are thus nontestimonial. Statements made by the victim to responding officers, when there was no ongoing emergency, which described past events and were part of an investigation into crime are testimonial and subject to the requirements of the Confrontation Clause. Raymond v. State, 43 Fla. L. Weekly D2460e (5th DCA 11/2/18)

HEARSAY : Statements made by victim to police officers upon the arrival of the scene are hearsay. Raymond v. State, 43 Fla. L. Weekly D2460e (5th DCA 11/2/18)

MINOR-LIFE SENTENCE : Life sentence with possibility of parole after 25 years does not violate Graham. State v. Michel, 43 Fla. L. Weekly S551b (FLA 11/12/18)

MANSLAUGHTER-RECLASSIFICATION: An automobile may be a weapon, manslaughter with an automobile may be reclassified to a first degree felony. Any object intended to inflict harm can be a weapon. Houck receded from. Shepard v. State, 43 Fla. L. Weekly S546a (FLA 11/1/18)

EVIDENCE-RULE OF COMPLETENESS: Statutory rule of completeness does not apply unless a written or recorded statement is introduced into evidence. Defendant cannot require the recording to be admitted at the time the officer testifies to the inculpatory part of the Defendant's statement

without introducing the recording. Nock v. State, 43 Fla. L. Weekly S540a (FLA 11/1/18)

IMPEACHMENT: Where defendant invoked statutory rule of completeness to introduce exculpatory portions of his out-of-court statement, he was subject to impeachment with his prior convictions pursuant to §90.806(1), which authorizes the impeachment of hearsay declarants. Fact that state "opened the door" to the introduction of exculpatory hearsay statements does not suspend operation of rule. Nock v. State, 43 Fla. L. Weekly S540a (FLA 11/1/18)

RULE OF COMPLETENESS-IMPEACHMENT (DISSENT, J. Pariente): "At the heart of this case is the concept of fairness, which is the basis for the principle of opening the door. Nock should not be forced to correct the State's misimpression of his interrogation at the cost of being impeached by highly prejudicial evidence of prior felony convictions." Nock v. State, 43 Fla. L. Weekly S540a (FLA 11/1/18)

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DISQUALIFICATION: Judge's attempt to refute charges of partiality in denying state's motion to disqualify created independent basis for disqualification. State v. Scharlepp, 43 Fla. L. Weekly D2459e (1st DCA 10/31/18)

FARETTA : Order revoking probation is reversed where trial court failed to hold Faretta inquiry after defendant requested to represent himself. Tucker v. State, 43 Fla. L. Weekly D2459a (1st DCA 10/31/18)

SENTENCING-DANGER TO COMMUNITY: Apprendi prohibits court from making the factual findings which increase possible sentence to prison where Defendant has fewer than 44 points. Coffell v. State, 43 Fla. L. Weekly D2458a (1st DCA 10/31/18)

SEARCH AND SEIZURE-TRAFFIC STOP-CURTILAGE OF RESIDENCE: Warrantless canine sniff search of a vehicle in parking lot in from of mobile home is lawful. Parking area was not curtilage of defendant's mobile home. Davis v. State, 43 Fla. L. Weekly D2457a (1st DCA 10/31/18)

POST CONVICTION RELIEF: A court cannot enforce a filing deadline which must be inferred by a party. Ford v. State, 43 Fla. L. Weekly D2456a (1st DCA 10/31/18)

BELATED APPEAL: Defendant is not entitled to belated appeal based on the Court having failed to orally announce his right to appeal where Defendant had absconded from sentencing hearing. Shaw v. State, 43 Fla. L. Weekly D2454a (1st DCA 10/31/18)

POST CONVICTION RELIEF: Claims that Court erred in failing to permit defendant to review deposition transcripts before representing himself at trial and ruling that defendant could not impeach his own witness are not cognizable pursuant to rule 3.850. Floyd v. State, 43 Fla. L. Weekly D2450a (1st DCA 10/31/18)

WITNESS-CONSULTATION WITH COUNSEL: A defendant has the right to consult with his attorney during a recess even if he is on the stand. Cadivid v. State, 43 Fla. L. Weekly D2445a (4th DCA 10/31/18)

SEARCH AND SEIZURE-INVESTIGATORY STOP: Officer lacked reasonable suspicion to stop juvenile after 911 caller from a restaurant reported that drug dealers were standing on corner near her restaurant, where citizen informant did not state how she knew they were drug dealers or that she saw them selling drugs and the only other activity that she witnessed were those individuals disappearing when a police vehicle passed. J.H. v. State, 43 Fla. L. Weekly D2441a (4th DCA 10/31/18)

COSTS: Court erred in imposing public defender fee in excess of $100 statutory minimum without making factual findings as to fee amount and providing defendant with notice or opportunity to contest amount. The imposition of a public defender fee that exceeds the statutory minimum can only occur upon a showing of sufficient proof of higher fees or costs incurred. Davis v. State, 43 Fla. L. Weekly D2440a (4th DCA 10/31/18)

MOTION TO VACATE PLEA: Rule 3.850 motion seeking to vacate a plea to felony driving while license revoked as habitual traffic offender that was filed after conviction had become final and sentence was completed was untimely. Curry v. State, 43 Fla. L. Weekly D2438a (4th DCA 10/31/18)

JOA-RESISTING WITHOUT VIOLENCE: Judgment of dismissal is required because officers were not in lawful performance of duty when they received dispatch directing them to take juvenile into custody for violation of probation but state adduced no proof that juvenile was on probation or, if he was, how he had violated any of its terms. I.K. v. State, 43 Fla. L. Weekly D2433b (2nd DCA 10/31/18)

COMPETENCY: Court may not involuntarily commit an incompetent defendant where there is no evidence that the mental illness caused Defendant to be a danger to himself. DCF v. Tanner, 43 Fla. L. Weekly D2407a (5th DCA 10/26/18)

SEARCH AND SEIZURE-INEVITABLE DISCOVERY-COMPUTER: Warrantless search of hard drive of defendant's computer was not justified under inevitable discovery when detective had probable cause but was not actively seeking a warrant. Detective calling the state attorney is not active pursuit of a warrant. "The Fourth Amendment's warrant requirement would be wholly undercut if a law enforcement officer can sidestep the requirement by making a single telephone call to a prosecutor to ask if he needs to start the process of obtaining a search warrant. The would-be audience of a search warrant affidavit is a neutral and detached magistrate, not a prosecutor." Perez v. State, 43 Fla. L. Weekly D2404f (2nd DCA 10/26/18)

SEARCH AND SEIZURE-CONSENT: Wife does not have authority to consent to the search of the Husband's computer. Perez v. State, 43 Fla. L. Weekly D2404f (2nd DCA 10/26/18)

VICTIM RIGHTS AMENDMENT: Victim Rights Amendment to the Florida Constitution may be placed on the ballot. Department of State v. Hollander, 43 Fla. L. Weekly S525a (FLA 10/25/18)

VICTIM RIGHTS AMENDMENT-(PARIENTE, J., dissenting.) : "[T]he ballot language for Amendment 6 fails to tell voters the full story. . .The ballot summary for Amendment 6 is misleading in numerous ways, the most concerning of which is that the proposal 'hide[s] the ball' as to its chief purposes. Amendment 6 seeks to underhandedly uproot the long-standing balance between the constitutional rights of the accused and victims. Department of State v. Hollander, 43Fla. L. Weekly S525a (FLA 10/25/18)

POST CONVICTION RELIEF-PARTIAL WAIVER: Defendant may make a partial waiver of post-conviction claims while retaining the rights to assert other post conviction claims. Davis v. State, 43 Fla. L. Weekly S521a (FLA 10/25/18)

AMENDMENTS-RULES OF PROCEDURE : 5 day mailing rule is abolished given the existence of electronic service. In Re: Amendments to the Florida Rules of Civil Procedure, 43 Fla. L. Weekly S515a (FLA 10/25/18)

AMENDMENT-JURY INSTRUCTIONS: Miscellaneous changes to standard jury instructions. In re-Standard Jury Instructions in Criminal Cases, 43 Fla. L. Weekly S514a (FLA 10/25/18)

AMENDMENT-RULES OF APPELLATE PROCEDURE: Uniform Citation Format system is substantially revised for all legal documents including court opinions. For recent opinions not yet published in the Southern Reporter you must cite to the Florida Law Weekly. Court and date must be cited as follows : ("Fla. 2d DCA 1988," or "Fla. Dec. 30, 2014."). In Re : Amendments to Florida Rule of Appellate Procedure 9.800, 43 Fla. L. Weekly S512a (FLA 10/25/18)

AMENDMENT-RULES OF APPELLATE PROCEDURE: Proposal that all appeals to Circuit Court must be decided by a panel of at least three judges is deferred. When an attorney is representing more than one party in an appeal, the attorney may only file one initial or answer brief and one reply brief, that includes arguments as to all of the parties the attorney represents. In Re : Amendments to Florida Rules of Appellate Procedure, 43 Fla. L. Weekly S508c (FLA 10/25/18)

CREDIT FOR TIME SERVED: Court erred in denying Defendant's claim that he was entitled to time spent in prison between his original sentencing date of the resentencing date because he had failed to exhaust administrative remedies. Defendant is not under any obligation to exhaust administrative remedies to get appropriate credit for time served. Rivera v. State, 43 Fla. L. Weekly D2402a (3rd DCA 10/24/18)

JUVENILE-SENTENCE AS ADULT: When juvenile, prosecuted as an adult, was sentenced under a plea agreement to a juvenile commitment program with the agreement that if you violated the conditions of commitment he could be sentenced to prison, and thereafter incurred more charges in and after the commitment program, the Court erred in considering any matters other than those alleged in the motion to impose adult sanctions. The "Face Sheet" is inadmissible hearsay. Brown v. State, 43 Fla. L. Weekly D2398a (3rd DCA 10/24/18)

EXPUNCTION-HUMAN TRAFFICKING: Defendant, who had been the victim of human trafficking and in the course thereof committed the offense of kidnapping, is statutorily precluded from getting an expunction of the kidnapping offense. M.G. v. State, 43 Fla. L. Weekly D2393c (3rd DCA 10/24/18)

APPEAL-MOTION TO MODIFY: An order denying a motion to modify probation is not appealable. Jackson v. State, 43 Fla. L. Weekly D2393b (2nd DCA 10/24/18)

GRAND THEFT-VALUE-JOA: Testimony of grounds superintendent about missing equipment from golf resort did not satisfy criteria for proving value where he did not provide testimony about purchase price, depreciation, or replacement costs for all the items. "The application of a 'life experience' exception to any criminal statute, including the criminal theft statute, is inconsistent with the uniform system of justice that both the Florida and Federal Constitutions require and should not be left to the whim of individual jury members." Teltschik v. State, 43 Fla. L. Weekly D2393a (2nd DCA 10/24/18)

VIOLENT CAREER CRIMINAL: Argument that 30-year sentence for grand theft is illegal because grand theft is not an offense eligible for Violent Career

Criminal sentencing is not preserved for review by objection or motion to correct in the trial court. Crews v. State, 43 Fla. L. Weekly D2392b (2nd DCA 10/24/18)

DOUBLE JEOPARDY: Double Jeopardy precludes convictions for theft of firearm and theft of other property any stolen vehicle because the theft of the vehicle in the contents is one act of taking. D.T. v. State, 43 Fla. L. Weekly D2392a (2nd DCA 10/24/18)

SEARCH AND SEIZURE-CELL PHONE PASSCODE: Compelled production of juvenile's cell phone passcodes is testimonial and prohibited by the Fifth Amendment where revealing the passcodes would require juvenile to engage in the testimonial act of utilizing the contents of his mind and demonstrating as a factual matter that he knows how to access the cell phone. G.A.Q.L. v. State, 43 Fla. L. Weekly D2389a (4th DCA 10/24/18)

APPEALS-SENTENCING-MINOR-CONSIDERATIONS: Argument that Court failed to consider §91.1402 factors in its sentence is not preserved for appeal where Defendant neither objected nor filed a motion for clarification. Dixon v. State, 43 Fla. L. Weekly D2381b (4th DCA 10/20/18)

YOUTHFUL OFFENDER: 25-year mandatory minimum sentence, rather than youthful offender sentence, is proper where record does not show that the rejection of a youthful offender sentence was not part of the Court's blanket refusal to consider youthful offender status. Wallacev. State, 43 Fla. L. Weekly D2378a (4th DCA 10/24/18)

JUVENILE-ADULT SANCTIONS: Court may impose adult sanctions on juvenile prosecuted as an adult notwithstanding that DJJ only found that

juvenile probation was not warranted. Dorcely v. Florida, 43 Fla. L. Weekly D2377a (4th DCA 10/24/18)

RESTITUTION: Receipts and testimony provided by victim regarding original purchase price of stolen items, unaccompanied by evidence, other than victim's replacement cost guesstimates, establishing items' fair market values, was sufficient to support amount of restitution. Where restitution is part of a plea bargain, it should be liberally construed in favor of making the victim whole. Toole v. State, 43 Fla. L. Weekly D2376a (4th DCA 10/24/18)

SEARCH AND SEIZURE: Officer may handcuff defendant on suspicion of shoplifting although shoplifting did not occur in officer's presence where officer had probable cause based on dispatch call and information provided by store employees. Bent v. State, 43 Fla. L. Weekly D2374a (4th DCA 10/24/18)

JUDGES-DISCIPLINE: Judge is removed from office for disparaging opposing candidate for election as someone who represents criminals (Gregg Lerman). Inquiry Concerning A Judge Re : Dana Santino, 43 Fla. L. Weekly S477a (FLA 10/19/18)

DEATH PENALTY: Any Hurst error is harmless when jury unanimously recommends death. Conahan v. State, 43 Fla. L. Weekly S476a (FLA 10/19/18)

ATTORNEY-DISCIPLINE: Lawyer suspended for one year for intemperate filings and other faults, e.g., "Patterson sent Judge Jose E. Martinez. . .a letter. . . comparing the alleged injustice suffered by Faddis to the biblical story of Susanna. . . .He likens 'the story' of the case he filed on behalf of Faddis to 'the story of Fidel Castro's suffocating grip of Cuba, the Holocaust,

Jim Crow laws, and Hillary Clinton.'" The Florida Bar v. Patterson, 43 Fla. L. Weekly S471a (FLA 10/19/18)

INFORMATION: Defective information is not per se reversible error where Defendant was not misled or embarrassed in preparation of his defense. Cowart v. State, 43 Fla. L. Weekly D2370a (2nd DCA 10/19/18)

QUOTATION: "Notwithstanding the State's indefensible linguistic buckshot, we affirm." Cowart v. State, 43 Fla. L. Weekly D2370a (2nd DCA 10/19/18)

SENTENCING-MANDATORY MINIMUM: Court may not require "day-for-day" minimum mandatory for sale of cocaine within 1000 feet of a Public Park. The minimum mandatory does not provide for no gain time. Mobley v. State, 43 Fla. L. Weekly D2366a (5th DCA 10/19/18)

VOP: Court must specify conditions violated. T.M.F. v. State, 43 Fla. L. Weekly D2365a (5th DCA 10/19/18)

INCONSISTENT VERDICTS: When jury acquitted defendant of possessing a firearm during the commission of his robbery (built the lesser of defense of robbery, it is legally inconsistent for the jury to fight him guilty of aggravated battery with a deadly weapon. Error is fundamental. Aggravated Battery conviction is reduced to simple battery. Zelaya v. State, 43 Fla. L. Weekly D2353a (4th DCA 10/17/18)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Counsel was ineffective for failing to seek discretionary review of consecutive mandatory minimum sentences which the trial court erroneously believed to be required. Lopez v. Junior, 43 Fla. L. Weekly D2347b (3rd DCA 10/17/18)

SENTENCING-ABSENCE OF DEFENDANT: Court erred in resentencing Defendant in absentia and without presence of counsel with the court had discretion in determining the new sentence. Lee v. State, 43 Fla. L. Weekly D2346c (3rd DCA 10/17/18)

COSTS: Court may not impose $100 in investigative costs of absence of request for such costs. Costs may not be reimposed on remand. Mercado v. State, 43 Fla. L. Weekly D2340a (2nd DCA 10/17/18)

SEARCH AND SEIZURE-EXIGENT CIRCUMSTANCES: Deputies were dispatched to investigate anonymous 911 call lacked reasonable belief that exigent circumstances existed to justify entry of a residence upon a uncivil possible domestic abuse. Minor injuries to the woman who answered the knock on the door, for which she had an explanation, is not sufficient to justify the entry. LaPace v. State, 43 Fla. L. Weekly D2338a (2nd DCA 10/17/18)

CLEAR AND CONVINCING EVIDENCE: Clear and convincing evidence is defined as an intermediate level of proof that entails both a qualitative and quantitative standard. The evidence must be credible; the memories of witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy. Edwards v. State, 43 Fla. L. Weekly D2345a (1st DCA 10/16/17)

CONSTRUCTIVE POSSESSION: Driver does not have constructive possession cocaine found in the center console a rental car when the passenger could have placed it there while the driver was being interrogated outside the court. Jones v. State, 43 Fla. L. Weekly D2343b (1st DCA 10/16/18)

DEATH PENALTY-NOTICE OF INTENT TO SEEK DEATH PENALTY: Statute requiring that state provide notice of aggravating factors within 45 days of arraignment, in addition to its notice of intent to seek death penalty, does not apply retroactively to an arraignment that occurred in 2007. Jackson v. State, 43 Fla. L. Weekly D2343a (1st DCA 10/16/18)

DEATH PENALTY: Hurst does not apply to pre-Ring cases. Jones v. State, 43 Fla. L. Weekly S466a (FLA 10/15/18)

EXPERT TESTIMONY-FRYE: Frye, not Daubert, is the appropriate test in Florida for determining reliability of expert testimony based upon new or novel scientific techniques. Statute providing for Daubert to be used infringes upon the Supreme Court's rulemaking powers. Delisle v. Crane Co, 43 Fla. L. Weekly S459a (FLA 10/15/18)

QUOTATION: "Frye relies on the scientific community to determine reliability whereas Daubert relies on the scientific savvy of trial judges." Delisle v. Crane Co., 43 Fla. L. Weekly S459a (FLA 10/15/18)

SPEEDY TRIAL-RECAPTURE: The State is not entitled to the recapture period where the State informed the defendant it had terminated its prosecutorial efforts (battery) but failed to notify the defendant of new and different charges (tampering with a witness and battery) based on the same conduct or criminal episode that were filed before the speedy trial period expired. Born-Suniaga v. State, 43 Fla. L. Weekly S451a (FLA 10/15/18)

APPEALS: Appeal must be dismissed if not filed within 30 days of rendition of the order on appeal. Mere mailing of notice is not enough- the notice of appeal must be received within the 30 day time limit. Murphy v. State, 43 Fla. L. Weekly D2335a (1st DCA 10//15/18)

DOUBLE JEOPARDY: Court violated double jeopardy when it modify the Defendant's sentence on a single count notwithstanding that the modification did not impact the Defendant's total sentence. Klinglery. State, 43 Fla. L. Weekly D2334b (1st DCA 10/15/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to present Defendant's mother is a witness to the fact that the police told the mother that her visit with the Defendant be private. Cuomo v. State, 43 Fla. L. Weekly D2333a (1st DCA 10/15/18)

APPEALS: State's refusal to file an answer brief unless directed to do so by appellate court constituted a forfeiture of state's right to respond to appellant's brief. Cuomo v. State, 43 Fla. L. Weekly D2333a (1st DCA 10/15/18)

PROBATION-EXPIRATION: State's argument that trial court erred in dismissing probation violation affidavit because probationary period was tolled under statute in effect at time of defendant's original probation violation was not preserved for appellate review by specific objection. It is not fundamental error for Court to decline to exercise jurisdiction it has. State v. Flem, 43 Fla. L. Weekly D2330a (1st DCA 10/15/18)

EVIDENCE-OPINION: It is impermissible for an investigator to testify that a case does not involve self-defense. Investigator's testimony that in his opinion the case was not self-defense is improper, but harmless in this case in which the altercation is captured on video. Thompson v. State, 43 Fla. L. Weekly D2328a (1st DCA 10/15/18)

GUMBO: "In the summer of 2015, tempers started to simmer when Caleb Halley, a long-time employee of Buddy's Seafood Market, learned that Orando Thompson, a newer employee, added hot sauce and other seasonings to the gumbo Halley prepared earlier that day. Halley confronted Thompson about adding seasoning to the gumbo, and the argument escalated to a physical altercation outside of the market. At one point, Thompson left the fight, reentered the market, retrieved a sword on display in a backroom of the market, and returned outside to stab Halley three times in the abdomen." Thompsonv. State, 43 Fla. L. Weekly D2328a (1st DCA 10/15/18)

SECOND DEGREE MURDER: Stabbing co-chef over gumbo evinces a depraved mind justifying second degree murder where Defendant retrieved the sword from a back room before stabbing the victim three time. Thompson v. State, 43 Fla. L. Weekly D2328a (1st DCA 10/15/18)

LESSER INCLUDED: Court properly denied giving a jury instruction on nondeadly force when Defendant stabbed the victim in the abdomen 3 times with the sword him. Use of a sword with a fifteen-inch blade was deadly force as a matter of law because death is a natural and foreseeable consequence of slashing and stabbing another person with a sword. Thompson v. State, 43 Fla. L. Weekly D2328a (1st DCA 10/15/18)

HEARSAY: In pretrial hearings, hearsay evidence is generally admissible. Simmons v. State, 43 Fla. L. Weekly D2325a (1st DCA 10/15/18)

EVIDENCE-WILLIAMS RULE HEARING: Court did not err in allowing state to use deposition testimony of collateral-crime witnesses at pre-trial similar

fact hearing. Simmons v. State, 43 Fla. L. Weekly D2325a (1st DCA 10/15/18)

WILLIAMS RULE: Evidence of a similar robbery admissible as Williams Rule where crimes happened the same street, outside chain restaurants, in the early morning hours, within 2 days of each other, against strangers and by a person dressed the same way, and by a perpetrator who started the robbery engaging in a friendly conversation. Simmons v. State, 43 Fla. L. Weekly D2325a (1st DCA 10/15/18)

SENTENCING: Court's failure to re-designate the Defendant as a Habitual Offender renders the sentence illegal, but upon re-sentencing, Court may designate the Defendant and re-sentence him to the original sentence. "The Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner." Stauderman v. State, 2D17-2982 (2nd DCA 10/12/18)

LEAVING SCENE OF ACCIDENT: Leaving Scene of Accident requires a collision with another vehicle, person, or object. Purdy v. State, 5D16-370 (5th DCA 10/12/18)

WILLIAMS RULE-CHILD SEX ABUSE: Evidence of similar molestation of a different step-child from a different relationship twenty years before is admissible in child sex battery case. In assessing whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice, the trial court should evaluate : (1) the similarity of the prior acts to the act charged regarding the location of where the acts occurred, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts; and (4) the presence or lack of intervening circumstances. Aguila v. State, 3D16-1975 (3rd DCA 10/10/18)

CALLING WITNESS TO IMPEACH HIM: A party may not call a witness primarily for the purpose of getting an inadmissible statement before the jury as impeachment, but where witness provides other admissible evidence, there is no error. Mathieu v. State, 3D17-423 (3rd DCA 10/10/18)

POST CONVICTION RELIEF: Counsel's failure to object to standard jury instructions that have not been invalidated by this Court does not render counsel's performance deficient. Cherry v. State, 3D17-894 (3rd DCA 10/10/18)

SEARCH-WARRANT: Search warrant is not necessary for officers' second entry into a property where exigent circumstances made the officers' first entry lawful and the second entry was clearly part of one continuous episode. ViartSotolongo v. State, 3D17-1411 (3rd DCA 10/10/18)

ROBBERY BY SNATCHING: Robbery by sudden snatching does not require that the offender use or threaten to use any force or violence. C.A. v. State, D18-0267.pdf (3rd DCA 10/10/18)

APPEALS-DL HEARING: When a circuit court applies an improper standard of review when it reweighs the evidence on first-tier certiorari review. DHSMV v. Sperberg, 3D18-0551 (3rd DCA 10/10/18)

CONTINUANCE-DEPOSITION: A trial court's denial of a party's right to depose a material witness is irreparable harm subject to certiorari review. Where counsel had a prepaid round-the-world vacation scheduled, Court cannot require him go to trial during his absence nor to take the necessary depositions before trial. "Although the trial court has not prohibited Nadezda from deposing these three alleged material witnesses, because her trial counsel has no ability to depose them prior to trial because he is out of the

country, the trial court has in effect precluded them." Solonina v. Artglass International, LLC, 3D18-1893 (3rd DCA 10/10/18)

CREDIT FOR TIME SERVED: Court may designate to DOC calculation of prison credit that is due but must specify the amount of jail credit to which a defendant is entitled. Black v. State, 2D15-4556 (2nd DCA 10/10/18)

HEARSAY-SENTENCING HEARING: Good discussion of admissibility of hearsay in non-capital sentencing hearings. Booking reports are admissible at sentencing hearing as part of the presentence investigation report. Gorzynski v. State, 2D16-4793 (2nd DCA 10/10/18)

SENTENCING LAW IS TOO DARN COMPLICATED: "The lowest permissible sentence calculated under the scoresheet in case number 15-16358 was both above the statutory maximum for the offense while potentially below the lowest permissible sentence as scored on the scoresheet used at the combined sentencing hearing and a different scoresheet used during the first plea hearing." Williams v. State, 2D17-601 (2nd DCA 10/10/18)

MINORS-LIFE SENTENCE: A sentence with a non-life minimum mandatory imposed against a juvenile offender facing a potential life sentence does not violate Graham or Miller so long as the juvenile is afforded an individualized sentencing hearing pursuant to §921.1401 and §921.1402. Martinez v. State, 4D17-2321 (4th DCA 10/10/18)

PRETRIAL DETENTION: First Appearance judge may not set no bond without making a finding that proof of guilt is evident or the presumption great. Gray v. State, 4D18-2374 (4th DCA 10/10/18)

POSSESSION OF CONVEYANCE-TRAFFICKING: Defendant placing the backpack containing a trafficking quantity of methamphetamine on the passenger seat in the car is not sufficient evidence to establish that he intended to use the car for trafficking the drugs. Focus must be on whether the car is used to facility the sale. Hunt v. State, 43 Fla. L. Weekly D2271a (2nd DCA 10/5/18)

ARGUMENT-BOLSTERING: State may not suggest victim's lack of a criminal record made the victim more credible than defendant. Lazzaro v. State, 43 Fla. L. Weekly D2265h (5th DCA 10/5/18)

RULES-AMENDMENTS: At First Appearance, judge must confirm with each defendant that they had seen and understood the rights explained in the video recording. In Re : Amendments to the Florida Rules of Criminal Procedure, 43 Fla. L. Weekly S430a (FLA 10/4/18)

RULES-AMENDMENTS: Summons must state the type of proceeding to defendant is summoned. In Re : Amendments to the Florida Rules of Criminal Procedure, 43 Fla. L. Weekly S430a (FLA 10/4/18)

RULES-AMENDMENTS: Rule 3.213 on competency is substantially revised to increase clarity. In Re : Amendments to the Florida Rules of Criminal Procedure, 43Fla. L. Weekly S430a (FLA 10/4/18)

POST CONVICTION RELIEF: Defendant is entitled to no relief on claims raised in successive motion for post conviction relief where court has previously addressed and rejected each of claims presented. Zack v. State, 43 Fla. L. Weekly S429a (FLA 10/4/18)

DEATH PENALTY: Any claim of error under Hurst is harmless where the jury unanimously recommended death. The fact that the jury is advised that its unanimous recommendation was advisory does not entitled the defendant to relief under Hurst. Anderson v. State, 43 Fla. L.Weekly S428b (FLA 10/4/18)

POST CONVICTION RELIEF: Reassignment of the case between the denial of the Defendant's motion for post-conviction relief in his motion for rehearing does not deprive the Defendant of due process. Jennings v. State, 43 Fla. L. Weekly S427a (FLA 10/4/18)

CONSECUTIVE SENTENCES: Crimes stemming from a single criminal episode involving a single victim or a single injury may not be sentenced consecutively. Consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode. Consecutive sentences are permissible when a single criminal episode involves either multiple victims or multiple injuries to one victim. Firearm statute neither mandates nor permits consecutive sentences for crimes committed in a single criminal episode with a single victim or injury in which a firearm is not discharged. Miller v. State, 43 Fla. L. Weekly S426a (FLA 10/4/18)

SPEEDY TRIAL: The period for speedy trial without demand runs from the date of arrest, and the period for speedy trial upon demand runs from the date of the indictment or information. Christy v. State, 43 Fla. L. Weekly D2265c (1st DCA 10/3/18)

COMPETENCY: Court must hold a competency hearing if there is a preliminary determination that reasonable grounds exist that the defendant was not competent. Oats v. State, 43 Fla. L. Weekly D2265a (1st DCA 10/3/18)

SEARCH AND SEIZURE-WARRANT-CHILD PORNOGRAPHY: Fellow Officer Rule allows a warrant where the detective did not personally view the alleged pornography, but rather got a description of it from the law enforcement database maintained by the National Center for Missing And Exploited Children. Mardosas v. State, 43 Fla. L. Weekly D2264b (1st DCA 10/3/18)

DRIVER'S LICENSE-SUSPENSION: Circuit court in a first-tier certiorari proceeding is not permitted to reweigh evidence presented to hearing officer. DHSMV v. Kamau, 43 Fla. L. Weekly D2264a (1st DCA 10/3/18)

SEARCH AND SEIZURE: Officer had reasonable suspicion to stop Child given the BOLO, the juveniles' geographic and temporal proximity to the armed robbery, the match between the Child's' reported description and his appearance, and his behavior when approached. W.T. v. State, 43 Fla. L. Weekly D2260c (3rd DCA 10/3/18)

COMPETENCY-JUVENILE JURISDICTION: Court lost jurisdiction over juvenile when two years had passed since you was found incompetent and there was no evidence that he would and 18 competency within the next year. K.N. v. State, 43 Fla. L. Weekly D2259b (3rd DCA 10/3/18)

YOUTHFUL OFFENDER: Upon revocation of a youthful offender's probation for a substantive violation, the trial court is authorized to either impose another youthful offender sentence, with no minimum mandatory, or to impose an adult Criminal Punishment Code sentence, which would require imposition of any minimum mandatory term of incarceration associated with the offense of conviction. Parks v. State, 43 Fla. L. Weekly D2257a (3rd DCA 10/3/18)

JUVENILE-CONTEMPT: Court may order juvenile in indirect contempt of court for repeated violations of home detention orders. U.T. v. State, 43 Fla. L. Weekly D2255a (3rd DCA 10/3/18)

JUVENILE-DETENTION : Court may order Child held in detention when the Child has been ordered committed to a facility but violated home detention pending placement. U.T.v. State, 43 Fla. L. Weekly D2255a (3rd DCA 10/3/18)

SENTENCING-DOWNWARD DEPARTURE-MENTAL ILLNESS: Court may enter a downward departure sentence based on the mental illness of the Defendant. Green v. State, 43 Fla. L. Weekly D2250a (4th DCA 10/3/18)

COMPETENCY: Court's findings that there was substantial probability that the Defendant, who had been declared incompetent based on intellectual developmental disorder, would regained competency must be vacated when not supported by competent, substantial evidence. Williams v. State, 43 Fla. L. Weekly D2247a (1st DCA 10/2/18)

ABATEMENT: Where defendant died prior to conviction, case was abated and trial court's jurisdiction was terminated, but Court may considering a petition filed by state attorney under section 914.24 to enter order protecting crime victim from harassment by the Defendant's mother. State v. Green, 43 Fla. L. Weekly D2246a (1st DCA 10/2/18)

SEVERANCE: Severance is not required where the co-Defendant's jailhouse confession to friends are admissible against the Defendant as statements against penal interest and do not violate the Confrontation Clause. Howard v. State, 43 Fla. L. Weekly D2245a (1st DCA 10/2/18)

HEARSAY: Testimony from third parties describing jailhouse statements made by non-testifying codefendant in private conversations with friends from his neighborhood who were also in jail was not prohibited by Sixth Amendment because the codefendant's statements were not testimonial in nature, and were admissible as statements against penal interest. Howard v. State, 43 Fla. L. Weekly D2245a (1st DCA 10/2/18)

SEPTEMBER 2018

STAND YOUR GROUND: Revision to Stand Your Ground law shifting burden of proof from defendant to state and increasing quantum or standard of proof from preponderance of evidence to proof by clear and convincing evidence was procedural in nature and applies retroactively to pending cases. Conflict certified. Fuller v. State, 43 Fla. L. Weekly D2237a (5th DCA 9/28/18)

EVIDENCE-UNDULY PREJUDICIAL: Evidence of the Defendant's digital penetration of the victim is admissible at a homicide case to explain why the Victim's DNA was found on the gun, but evidence that the sexual penetration was nonconsensual is unduly prejudicial. Fuller v. State, 43 Fla. L. Weekly D2237a (5th DCA 9/28/18)

EVIDENCE: Testimony about the Defendant's refusal to submit to a blood draw in a homicide case is not relevant and admissible to show consciousness of guilt where the Defendant is not advised of any possible adverse consequences flowing from the refusal and is given the impression that the test is optional. A defendant's behavior is circumstantial evidence probative of his consciousness of his guilt only when it can be said that the

behavior is susceptible of no prima facie explanation except consciousness of guilt. Fuller v. State, 43 Fla. L. Weekly D2237a (5th DCA 9/28/18)

EVIDENCE: Evidence of the Defendant's jail calls criticizing the prosecutor and characterizing his arguments as "a bunch of bullshit" is inadmissible. Fuller v. State, 43 Fla. L. Weekly D2235g (5th DCA 9/28/18)

COLLATERAL CRIMES-LEWD OR LASCIVIOUS MOLESTATION: Evidence that Defendant had previously committed sexual battery upon the Victim's 12year-old sister is inadmissible, as such evidence was more severe than a charged offense and was not sufficiently similar and was therefore unduly prejudicial. Taylor v. State, 43 Fla. L. Weekly D2231c (5th DCA 9/28/18)

CREDIT FOR TIME SERVED: Defendant who is arrested for different offenses on different dates is not entitled to have jail credit applied equally to all prison sentences even though the sentences are run concurrently. Del La Cruz v. State, 43 Fla. L. Weekly D2235a (5th DCA 9/28/18)

NEWLY DISCOVERED EVIDENCE: Court errs in determining that affidavit from victim recanting his trial testimony was not credible or material without conducting evidentiary hearing where the affidavit was not inherently incredible or obviously immaterial. Barros v. State, 43 Fla. L. Weekly D2233a (5th DCA 9/28/18)

COLLATERAL CRIMES-LEWD OR LASCIVIOUS MOLESTATION: Court erred by admitting evidence that defendant had previously committed sexual battery upon victim's twelve year old sister, as such evidence of an offense more severe than the charged offense was not sufficiently similar to the charged offense and was unduly prejudicial. The less similar the prior acts,

the more likely that the probative value of this evidence will be "substantially outweighed by the danger of unfair prejudice. The similarity of the collateral act of molestation and charged offense is a critical consideration for the trial court in conducting an appropriate weighing under section 90.403. Taylor v. State, 43 Fla. L. Weekly D2231c (5th DCA 9/28/18)

ATTORNEYS-DISCIPLINE: Attorney disbarred for continuing to practice law during suspension. The Florida Bar v. Bosecker, 43 Fla. L. Weekly S410a (FLA 9/27/18)

DEATH PENALTY-INTELLECTUAL DISABILITY: Standard of review of trial court's determination that the Defendant is not intellectually disable is whether the record contains competent, substantial evidence that supports the determination of the trial court. Wright v. State, 43 Fla. L. Weekly S404a (FLA 9/27/18)

APPEALS: A "GVR" (granted, vacated, and remanded) from the US Supreme Court is neither a merits determination nor precedential case law. It is neither an outright reversal nor an invitation to reverse; it is merely a device that allows a lower court that had rendered its decision without the benefit of an intervening clarification to have an opportunity to reconsider that decision and, if warranted, to revise or correct it. Wright v. State, 43 Fla. L. Weekly S404a (FLA 9/27/18)

AMENDMENT-JURY INSTRUCTIONS: Amendments to standard instructions on various fraud offenses. In Re : Standard Jury Instructions, 43 Fla. L. Weekly S401b (FLA 9/27/18)

AMENDMENT-JURY INSTRUCTIONS: Carrying a Concealed Weapon instruction is amended to include a third element that requires the State to

prove that the defendant did not have a license to carry. In re-Standard Jury Instructions, 43 Fla. L. Weekly S400a (FLA 9/27/18)

R.I.P.-SLUNGSHOT: The term "slungshot" is deleted from the definition of "concealed weapon." In re : Standard Jury Instructions, 43 Fla. L. Weekly S400a (FLA 9/27/18)

AMENDMENT-JURY INSTRUCTIONS: For improper exhibition of a weapon, "closed" is added to instruction on a pocketknife. In Standard Jury Instructions, 43 Fla. L. Weekly S400a (FLA 9/27/18)

ATTORNEYS-CONTEMPT: Attorney Bruce Jacobs is subject to contempt for failing to address binding precedent in his appellate brief, and for his "desultory diatribe" against the appellate court, i.e. "Any court that protects the monopoly over the rule of law is a traitor to the constitution and should be tried for treason." Aquasol v. HSBC Bank USC, 43 Fla. L. Weekly D2226a (3rd DCA 9/26/18)

SHIFTING BOP: State improperly shifted burden of proof by asking Defendant if he had other witnesses to corroborate his alibi. Error reversible notwithstanding that trial was without a jury. S.B. v. State, 43 Fla. L. Weekly D2224a (3rd DCA 9/26/18)

FINGERPRINT: When fingerprint evidence is the sole evidence relied upon to establish that the defendant was the perpetrator of the crime the circumstances must be such that the print could have been made only at the time the crime was committed. D.O. v. State, 43 Fla. L. Weekly D2214c (3rd DCA 9/26/18)

SEARCH AND SEIZURE-PASSENGER: A traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will. M.P. v. State, 43 Fla. L. Weekly D2214b (3rd DCA 9/26/18)J

JUDGE-DISQUALIFICATION: Allegation of ex parte communication forms a prima facie basis for disqualification. Haas v. Yousef, 43 Fla. L. Weekly D2214a (3rd DCA 9/26/18)

LIFE SENTENCE-MINOR: Alleyne requires that jury, rather than judge, must make factual findings as to whether juvenile actually killed, intended to kill attempted to kill the victim. Washington v. State, 43 Fla. L. Weekly D2213a (2nd DCA 9/26/18)

CONFESSION: Court erred in denying defendant's motion to suppress confession where defendant was not competent to knowingly and intelligently waive Miranda rights at the time, considering that he was 18 years old at time of interrogation, had no prior criminal experience, was crying and asking for his "mommy," was a special education student with low IQ that placed him in the "mild mental retardation" range, and read at a third or fourth-grade level at the time Miranda warnings were administered at a 7th-grade reading level in the police station. Waterman v. State, 43 Fla. L. Weekly D2211b (2nd DCA 9/26/18)

EVIDENCE: Court erred in giving standard instruction on abnormal mental condition where instruction was unsupported by evidence. Perry v. State, 43 Fla. L. Weekly D2203a (4th DCA 9/26/18)

SPEEDY TRIAL: Defendant not entitled to speedy trial discharge where he was unavailable for trial on the scheduled trial date because he did not

obtain properly fitting civilian clothes. Once the defendant has requested to appear in court in other than prison clothes, the state must make appropriate provisions to this end. Rodriguez v. State, 43 Fla. L. Weekly D2201d (4th DCA 9/26/18)

COMPETENCY: Court must conduct a competency hearing after appointing expert to evaluate for competency. B.E. v. State, 43 Fla. L. Weekly D2200a (1st DCA 9/25/18)

ARGUMENT: Court abused its discretion by allowing the prosecutor to repeatedly and improperly suggest to the jury that defense counsel had influenced the victim to change his story between the robbery and trial. Taylor v. State, 43 Fla. L. Weekly D2195a (2nd DCA 2018)

BUFFY: "At trial, Bader [the clerk] testified on direct examination that Taylor had pulled 'a — I don't want to say [a] knife, I would say it's a long spatula, as far as I know.'" See Buffy, the Vampire Slayer, "Homecoming," Season 3, Episode 5 ("Cordy, the gun!" Cordelia, the spatula!" Taylor v. State, 43 Fla. L. Weekly D2195a (2nd DCA 2018)

ARGUMENT: Argument is improper when the obvious implication of the State's argument t was that witness's prior inconsistent statements were the truth. Impeachment is not substantive evidence. Taylor v. State, 43 Fla. L. Weekly D2195a (2nd DCA 2018)

RESTITUTION: Court may not order restitution for items missing stolen car where evidence was insufficient to establish the fair market value of the items. M.P. v. State, 43 Fla. L. Weekly D2193a (2nd DCA 9/21/18)

RESTITUTION: Court may not order juvenile pay restitution without findings regarding how much the juvenile or his parents could reasonably be expected. M.P. v. State, 43 Fla. L. Weekly D2193a (2nd DCA 9/21/18)

POST CONVICTION RELIEF: Failing to raise a defendant's competency is cognizable in a rule 3.850 motion. Allegations that Defendant has a history of mental illness, that the jail prescribed medicine to treat his mental illness, and that the combination of the mental illness and medication affected his ability to assist in his defense and rendered him incompetent when he entered his pleas are sufficient to state a claim of ineffective assistance of counsel. "Yes" and "no" answers during a plea colloquy are insufficient to conclusively refute an appellant's claim that he did not understand the nature and consequences of a plea due to medication and mental illness. Perez v. State, 43 Fla. L. Weekly D2192a (2nd DCA 9/21/18)

DEATH PENALTY: When a defendant knowingly and voluntarily waives the right to a penalty phase jury, he is not later entitled to relief under Hurst. Lynch v. State, 43 Fla. L. Weekly S384a (FLA 9/20/18)

POST CONVICTION RELIEF: Hurst does not apply retroactively before Ring to preclude override of jury recommendation of life. Zakrewski, II v. State, 43 Fla. L. Weekly S374a (FLA 9/20/18)

TRESPASS ON SCHOOL GROUNDS: Juvenile is not entitled to a judgment of dismissal where he had been suspended and his administrative appeal on the suspension had not yet been resolved. L. M., v. State, 43 Fla. L. Weekly D2177a (3rd DCA 9/20/18)

SELF-DEFENSE-JURY INSTRUCTION: Final responsibility for correctly instructing the jury remains with the trial court. Giving of erroneous self-

defense instruction is reversible fundamental error. Conflict certified. Silva v. State, 43 Fla. L. Weekly D2173a (3rd DCA 9/20/18)

SELF-DEFENSE: Defendant is not entitled to self-defense for shooting someone who threw a microwave at him. Silva v. State, 43 Fla. L. Weekly D2173a (3rd DCA 9/20/18)

BRINGING A MICROWAVE TO A GUNFIGHT: "Silva claimed Daoud attempted to lunge and throw a microwave at him. Silva reacted to these actions by shooting Daoud." Silva v. State, 43 Fla. L. Weekly D2173a (3rd DCA 9/20/18) *See also* Grosse Pointe Blank (Ackroyd and Cusack final scene) .

https://www.youtube.com/watch?v=p9YjOweDcUw

SATELLITE TESTIMONY: Live streaming testimony from Australia does not deprive Defendant of right of confrontation. Factors support use of satellite livestreaming video testimony where witness lives beyond subpoena power of court and is unwilling to travel to testify, there is a state interest in prosecuting child sex offenders, and victim is essential to case. Remote testimony is permitted only when the following assurances of reliability exist : (1) that the witness will give the testimony under oath, impressing upon the witness the seriousness of the matter and protecting against a lie by the possibility of penalty of perjury, (2) that the witness will be subject to cross-examination, and (3) that the jury will have the chance to observe the demeanor of the witness. To ensure that the possibility of perjury is not an empty threat for those witnesses that testify via satellite from outside the United States, it must be established that there exists an extradition treaty between the witness's country and the United States, and that such a treaty permits extradition for the crime of perjury. Butler v. State, 43 Fla. L. Weekly D2169a (4th DCA 9/20/18)

SENTENCING CONSIDERATIONS: Statistical evidence showing a disparity between average sentences for white defendants and minority defendants with similar CPC scores does not show that racial bias motivated sentencing decision. A defendant cannot challenge his sentence based on statistical evidence of racial disparity in sentencing. Delancey v. State, 43 Fla. L. Weekly D2166a (4th DCA 9/20/18)

COLLATERAL CRIMES: No error in allowing jury to hear evidence that, within two hours after shooting death at grocery store, a shooting occurred at defendant's home because details of what happened at home were relevant to provide a logical sequence of events that led police to identify defendant as suspect in grocery store shooting, particularly where defense counsel opened the door for testimony by presenting a misleading and incomplete picture that portrayed police as not having conducted a thorough investigation and implying that police just showed up at defendant's home to disrupt a sleeping family. Sanders v. State, 43 Fla. L. Weekly D2165a (4th DCA 9/20/18)

COMPETENCY: Court may not make a finding that the defendant is competent based on Defendant's stipulation and the Court's review of expert's court where the parties did not agree to allow the judge to decide each of competency on that basis. Pittman v. State, 43 Fla. L. Weekly D2164a (4th DCA 9/20/18)

COMPETENCY: Court must hold a competency hearing after ordering a competency evaluation and must make an independent determination of competency prior to trial. Johnson v. State, 43 Fla. L. Weekly D2162a (4th DCA 9/20/18)

PRETRIAL RELEASE: Court may properly deny motion to set bond when Defendant was charged with capital offense and offenses punishable by life

imprisonment and state met its burden of showing that proof was evident or presumption great that defendant was guilty of charged offenses. Coconspirator's statement, which was internally consistent and uncontradicted, met required evidentiary standard of the proof of guilt is evident or the presumption is great. Williams v. State, 43 Fla. L. Weekly D2154a (1st DCA 9/20/18)

PLEA-SENTENCING: Court erred by adjudicating defendant guilty when defendant had not entered plea and without first conducting a full plea colloquy. Boyd v. State, 43 Fla. L. Weekly D2153c (1st DCA 9/20/18)

CREDIT FOR TIME SERVED: When defendant seeks credit for prison time he must proceed under 3.800, not 3.801. Johnson v. State, 43 Fla. L. Weekly D2153b (1st DCA 9/20/18)

SEARCH AND SEIZURE: There is no illegality where officer looked at the contents of a USB which was given to them by a man they were arresting and who claimed that he got it in exchange for drugs, and that it contained "some sick shit." The Fourth Amendment does not apply to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government. Where a warrantless search by law enforcement is prompted by a prior search by a private party, the warrantless search does not violate the Fourth Amendment so long as it does not exceed the scope of the private party's search. Even if the officers' initial viewing of the video was a Fourth Amendment search of the USB drive, it was lawful because the possessor had apparent authority to consent to the search. Duke v. State, 43 Fla. L. Weekly D2148d (1st DCA 2/14/18)

POST CONVICTION RELIEF: Defendant must raise issue of the defective information (unsigned information) before trial and cannot raise the issue

post trial as ineffective assistance of counsel. Bessellieu v. State, 43 Fla. L. Weekly D2146b (1st DCA 9/14/18)

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication on a felony offense where defendant had 2 previous withholds on 2 prior felonies, even though the priors arose from the same case. Braine v. State, 43 Fla. L. Weekly D2143a (2nd DCA 9/14/18)

CREDIT FOR TIME SERVED: Defendant's motion for credit for time served under Rule 3.801 is premature while a direct appeal is pending. Fernandez v. State, 43 Fla. L. Weekly D2138a (2nd DCA 9/14/18)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to object to State's paraphrase of Defendant's statement as he shot his victim at Wendy's. State paraphrased Defendant saying "I told you I'd kill you, I had it in my mind to kill you, I've wanted to kill you for several days. I wanted to kill someone to take out my frustration." In fact, Defendant said, "I told you I would kill you, you f*cking b*tch." Brown v. State, 43 Fla. L. Weekly S365a (FLA 9/13/18)

ARGUMENT: Improper comments/questions by the State–"Members of the jury, as Cesar [sic] laid dying, killed by people that he trusted, people that he thought were his friends, [he] cried out Et tu, Brute? Betrayal and greed, that's what killed Cesar [sic]. And it's the same betrayal and greed that you, Donovan Henry. . .had" and "Do you just have a complete indifference to human life?-are not fundamental error and must be objected to for the issue to be preserved. Henry v. State, 43 Fla. L. Weekly D2132a (4th DCA 9/12/18)

QUOTATION: "This is not necessarily a Shakespearian tragedy, as the State suggested in closing, but it certainly can be characterized as An American Tragedy." Henry v. State, 43 Fla. L. Weekly D2132a (4th DCA 9/12/18)

ADULT SANCTIONS-JUVENILE: Where a child has been charged as an adult and court imposed juvenile sanctions upon a violation of juvenile supervision the child may be then sentenced as an adult. Dorcely v. State, 43 Fla. L. Weekly D2131a (4th DCA 9/12/18)

DISCOVERY VIOLATION: State committed a discovery violation by failing to reveal fingerprint testing before trial and by doing further DNA testing during the trial, but the error was harmless where the Defendant was not prejudiced. Chamberlain v. State, 43 Fla. L. Weekly D2128a (4th DCA 9/12/18)

AMNESIA: "When confronted by his fiancée as to his involvement in the murder, he told her he did not remember whether he had killed someone." Chamberlain v. State, 43 Fla. L. Weekly D2128a (4th DCA 9/12/18)

FLEEING AND ELUDING-FINE: $1,000 fine is vacated where Court was under the false impression that the fine was mandatory rather than discretionary. Williams v. State, 43 Fla. L. Weekly D2127a (4th DCA 9/12/18)

APPEAL-INEFFECTIVE ASSISTANCE: Appellate counsel was ineffective for failing to argue limitations on Defendant' his closing argument and admission of DNA evidence on a gun which was not used in the charged crime. Jeanbart v. State, 43 Fla. L. Weekly D2120b (4th DCA9/12/18)

NEWLY DISCOVERED EVIDENCE: State's summary argument that the affidavit constituting newly discovered evidence was inherently incredible is not supported by any evidence nor asserted at the trial level. A hearing is required. Williams v. State, 43 Fla. L. Weekly D2110a (3rd DCA 9/12/18)

APPEALS-INEFFECTIVENESS OF APPELLATE COUNSEL: Appellate counsel was ineffective for failing to raise the issue of trial court's imposition of mandatory consecutive sentences after Florida Supreme Court had held the 10-20-Life statute does not require consecutive sentences for multiple firearm offenses arising from the same criminal episode. Rua-Torbizco v. State, 43 Fla. L. Weekly D2109d (3rd DCA 9/12/18)

APPEALS-JURISDICTION: Appellate court lacks jurisdiction to review portion of supplemental final judgment in which trial court reserves jurisdiction to determine the amount, retroactive period, and life insurance to secure support. Vartumyan v. Bean, 43 Fla. L. Weekly D2109b (3rd DCA 9/12/18)

EVIDENCE-COLLATERAL CRIME: Evidence of armed robbery of victim five hours prior to shooting which gave rise to charge of attempted second degree murder was properly admitted, as the evidence was relevant and necessary because it helped explain the entire context out of which the charged offenses occurred. Pickett v. State, 43 Fla. L. Weekly D2105a (3rd DCA 9/12/18)

FALSE EVIDENCE: Defendant is not entitled to a new trial based on false testimony presented that a cell phone found in the scene and dropped by the Defendant belonged to the victim where there was no showing that the false testimony was knowingly presented, and the testimony was minimally relevant. Pickett v. State, 43 Fla. L. Weekly D2105a (3rd DCA 9/12/18)

WITNESS TAMPERING: Evidence that defendant made numerous phone calls to victim in attempt to convince her to drop charges and that the calls caused victim to feel intimidated and scared was sufficient to support conviction for witness tampering. Pickett v. State, 43 Fla. L. Weekly D2105a (3rd DCA 9/12/18)

SENTENCING-CONSIDERATIONS: Re-sentencing is required where the State argued that the Defendant had "a predisposition for dealing drugs multiple times to multiple people, not just this one drug sale," and the Court may have considered the State's argument (Judge : "taking into account everything, including the evidence here, both aggravating and mitigating") in imposing sentence, re-sentencing is required. State's argument that it is "absolutely allowed to comment on uncharged criminal acts and the case law is clear on that." is absolutely wrong. Lundquist v. State, 43 Fla. L. Weekly D2096a (2nd DCA 9/7/18)

PROBATION-EXPIRATION OF TERM: Defendant's probationary sentence was tolled once Canchola absconded prior to the expiration of the probationary term, notwithstanding that the amended affidavit of violation of probation was filed after probation would have expired. A probationary term is automatically tolled when a probationer absconds from his supervision. Canchola v. State, 43 Fla. L. Weekly D2092b (2nd DCA 9/7/18)

NEOLOGISM-ABSCONSION: "But the absconsion tolling doesn't ride under section 948.06." Canchola v. State, 43 Fla. L. Weekly D2092b (2nd DCA 9/7/18)

COMPETENCY: After committing motion for competency evaluation in appointing expert to examine Defendant, Court may not proceed without holding a competency hearing and making a competency determination. If the court can make a nunc pro tunc finding as to appellant's competency

based upon the existence of evaluations performed contemporaneous with trial and without relying solely on a cold record, and can do so in a manner which abides by due process guarantees, then it should do so. Alexander v. State, 43 Fla. L. Weekly D2091a (5th DCA9/7/18)

DUE PROCESS: Court's error in reading the severed count of possession of firearm by a felon is harmless where the Defendant testified at trial, thus revealing that he was a felon. Watson v. State, 43 Fla. L. Weekly D2090b (5th DCA 9/7/18)

CONFRONTATION: Court's error in failing to make case specific findings for allowing child victim to testify through closed-circuit TV, nor in providing a means for the Defendant to communicate with his attorney during the child's testimony, is not fundamental error and was not preserved for appeal. Knight v. State, 43 Fla. L. Weekly D2086a (1st DCA 9/7/18)

JUDGE-DISCIPLINE: Judge is removed from office for false claims during campaign, searching a party during a hearing, stating that he will never hold a statute unconstitutional, and moving hearings to early times without SAO or PD present. "[W]e will not allow judges who have committed egregious misconduct during a judicial campaign in order to attain office to serve the term of their judgeship." In Re : Inquiry Concerning a Judge (Scott Dupont), 43 Fla. L. Weekly S337a (FLA 9/6/18)

EVIDENCE-LAY OPINION-VOICE IDENTIFICATION: Officer who acquires a special familiarity with the defendant's voice during the course the investigation may render his opinion as to whether a voice in a recording is that of the defendant. Prior case law receded from. Johnson v. State, 43 Fla. L. Weekly S331a (FLA 9/6/18)

HABITUAL VIOLENT FELONY OFFENDER: Defendant is entitled to resentencing where it is clear that the Court erroneously believed it was required to impose a life sentence under the HVFO statute. "Manifest injustice" defined and discussed. McMillan v. State, 43 Fla. L. Weekly D2084a (4th DCA 9/5/18) POST

CONVICTION RELIEF: A defendant is entitled to have the trial court instruct the jury that it could convict him of both petit theft and resisting a merchant, as lesser offenses of robbery. Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to request a jury instruction and verdict form that permitted the jury to render a dual verdict theft and resisting a merchant as lesser included for the underlying crime of robbery. The issue is not jury part, but rather the right to have lesser included considered. Conflict certified. Hargrett v. State, 43 Fla. L. Weekly D2083a (4th DCA 9/5/18)

CONSTRUCTIVE POSSESSION: Defendant cannot be found guilty of possession of heroin found in a public area through which the Defendant fled. McCray v. State, 43 Fla. L. Weekly D2082a (4th DCA 9/5/18)

STAND YOUR GROUND-SELF-DEFENSE: Defendant who tried to run down the victim with his car, then got out of the car and shot the victim who had thrown a metal bar at the Defendant's windshield, is properly convicted of murder. Selfdefense is properly rejected. Medina v. State, 43 Fla. L. Weekly D2080a (4th DCA 9/5/18)

STATEMENTS OF DEFENDANT: Defendant's different and inconsistent statements about events are properly admitted to show consciousness of guilt. Evidence of a defendant's acts or statements calculated to defeat or avoid his prosecution is admissible against him as showing consciousness of guilt. Medina v. State, 43 Fla. L. Weekly D2080a (4th DCA 9/5/18)

RACKETEERING: Two predicate acts committed on same day are not two separate incidents of racketeering conduct within a five-year period for purposes of sustaining a conviction of racketeering. JOA required. Castillo v. State, 43 Fla. L. Weekly D2079a (4th DCA 9/4/18)

COMPETENCY: A new trial is not necessarily required after the Court failed to conduct a competency hearing and enter an order before trial, where there is are some indications that a competency evaluation was performed and the Defendant was deemed competent to succeed, and when the court can enter a nunc pro tunc finding of competency. Pollard v. State, 43 Fla. L. Weekly D2074a (4th DCA 9/5/18)

APPEALS-INEFFECTIVENESS OF APPELLATE COUNSEL: Where life felonies were not subject to enhanced punishment as a habitual offender at the time of Defendant's offenses, appellate counsel was ineffective for failing to challenge habitual offender designation. Key v. State, 43 Fla. L. Weekly D2073a (4th DCA 9/5/18)

RETROACTIVITY: When the Defendant committed aggravated assault with a firearm when the offense carries a mandatory minimum, but was convicted after the statute was amended to eliminate the mandatory minimum, the defendant is subject to the mandatory minimum. The change in the statute does not apply retroactively. Retroactive application of the statute violates the "Savings Clause" of the Florida Constitution. State v. Reininger, 43 Fla. L. Weekly D2072a (4th DCA 9/5/18)

SEARCH AND SEIZURE-CELL PHONE-LOCATION INFORMATION: Accessing historical cell phone location information constitutes a search under the Fourth Amendment requiring a warrant and probable cause. The "good faith" exception does not apply where no case law existed saying that

cell phone location information from towers was not protected by the Fourth Amendment. Ferrari v. State, 43 Fla. L. Weekly D2066a (4th DCA 9/5/18)

DISCOVERY-RICHARDSON: A new trial is required where there is a discovery violation when State disclosed only in the middle of the trial the existence of several tapes (75-80) by testifying witnesses which constituted a "bombshell" and which could have resulted in a change of trial strategy if disclosed before trial. seventy-five to eighty tapes to court. "[I]t was not the defendant's obligation to depose Torrens to discover Fiorillo's confession to the murder. It is the State's affirmative obligation to inform the defense of the substance of those statements." Ferrari v. State, 43 Fla. L. Weekly D2066a (4th DCA 9/5/18)

SILENCE OF DEFENDANT: It is not an impermissible comment on the Defendant's right to remain silent to question him about his failure to report prearrest, pre-Miranda failure to report that other people whom he blamed for the murder confessed to him. Prearrest, pre-Miranda silence can be used to impeach a defendant. Ferrari v. State, 43 Fla. L. Weekly D2066a (4th DCA 9/5/18)

ENTRAPMENT: Objective entrapment exists law enforcement engages in "outrageous" conduct to offend "decency or a sense of justice." CI telling Defendant, a known criminal,, about hotel rooms where drug dealers have significant drugs and cash and taking the Defendant there is not objective entrapment. Discussion of objective and subjective entrapment. State v. Harper, 43 Fla. L. Weekly D2060a (4th DCA 9/5/18)

RETROACTIVITY-STAND YOUR GROUND: Because the 2017 amendment to the "Stand Your Ground" self-defense law is at least partially substantive, it cannot be applied retroactively. "[W]e are aware of no Florida Supreme Court case holding that a change to the legal standard applicable

to an affirmative defense in a criminal matter. . . is purely procedural." The Defendant whose offense occurred before either version of the Stand Your Ground Law is not entitled to its benefit. Langel v. State, 43 Fla. L. Weekly D2058a (4th DCA 9/5/18)

STAND YOUR GROUND-BURDEN OF PROOF: To raise a "prima facie claim of self-defense immunity from criminal prosecution" under §776.032(4), a defendant must show that the elements for the justifiable use of force are met. Ordinarily, this will require the defendant to testify or to otherwise present or point to evidence from which the elements for justifiable use of force can be inferred. Only then would the burden shift to the state to "overcome the immunity" by clear and convincing evidence. Langel v. State, 43 Fla. L. Weekly D2058a (4th DCA 9/5/18)

STAND YOUR GROUND: Defendant is not entitled to SYG immunity when he shot the Victim who left a closed pocketknife with a six inch blade next to his body. Langel v. State, 43 Fla. L. Weekly D2058a (4th DCA 9/5/18)

NEOLOGISM: "Just before leaving, the victim shook petitioner's hand and gave him a 'bro-hug.'" Langel v. State, 43 Fla. L. Weekly D2058a (4th DCA 9/5/18)

DEFINITION-PRIMA FACIE: "The term 'prima facie' is a Latin expression meaning 'at first face' or 'at first appearance.' The term 'prima facie case' has two distinct meanings in law : (1) 'The establishment of a legally required rebuttable presumption'; and (2) 'A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.'" Langel v. State, 43 Fla. L. Weekly D2058a (4th DCA 9/5/18)

SEARCH AND SEIZURE-CELL PHONE LOCATION: Absent a valid exception to the warrant requirement, the government must establish probable cause and receive court authorization before using a cell-site simulator. With a cell-site simulator, the government surreptitiously intercepts a signal that the user intended to send to a carrier's cell-site tower or independently pings a cell phone to determine its location. State can not use a cell-site simulator (Stingray) absent a warrant specifically so providing. State v. Sylvestre, 43 Fla. L. Weekly D2054b (4th DCA 9/5/18)

DOWNWARD DEPARTURE: Court properly imposed downward departure on the grounds that she acted under the domination of another person by allowing her boyfriend to burglarize the home which she had been hired to take care of. State v. Sisco, 43 Fla. L. Weekly D2047b (3rd DCA 9/5/18)

DOUBLE JEOPARDY: Separate convictions for attempted felony murder and armed robbery do not violate double jeopardy. Blockburger. No merit to argument that double jeopardy bars dual convictions because shooting the victim is the same intentional act where, as here, the State also relied on other acts to support the armed robbery count. Sullivan v. State, 43 Fla. L. Weekly D2045a (3rd DCA 9/5/18)

COMPETENCY: Hearing to determine restoration of competency is inadequate when it consists only of asking Defendant whether he felt well and whether he was taking psychotropic drugs. "The public defender. . . said the hearing would take only 'thirty seconds' and the trial judge thought even less ('How long is it going to take, two seconds?'). Parties cannot stipulate to competency. Rosier v. State, 43 Fla. L. Weekly D2042b (1st DCA 9/5/18)

UPWARD DEPARTURE: Statute permitting increase in punishment beyond statutory maximum of nonstate prison sanction based on findings by trial court, rather than by jury, that defendant could present danger to public is

unconstitutional. Jackson v. State, 43 Fla. L. Weekly D2039a (1st DCA 9/5/18)

NEW TRIAL: Summary denial of motion for new trial ("The Court will rely on the rulings previously made in this case, and I will deny the motion for new trial") does not mean that the court applied the wrong legal standard. Moreland v. State, 43 Fla. L. Weekly D2037b (1st DCA 9/5/18)

APPEAL-JURISDICTION: Where court fails to rule on all claims in a motion for post conviction relief, the appellate court has no jurisdiction. The lack of a ruling on a claim deprives the appellate court of jurisdiction. Bachman v. State, 43 Fla. L. Weekly D2037a (1st DCA 9/5/18)

VOP-HEARSAY: Witness who testified that Defendant did not always stay at his approved residence is sufficient to show absconding. Johnson v. State, 43 Fla. L. Weekly D2036a (1st DCA 9/5/18)

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SPEEDY TRIAL: Following a robbery, the Defendant's 6 hour detention and questioning is not an arrest for the purpose of beginning the speedy trial period. For the purposes speedy trial, an arrest involves the following elements : (1) A purpose or intention to effect an arrest under a real or pretended authority; (2) An actual or constructive seizure or detention of the person to be arrested by a person having present power to control the person arrested; (3) A communication by the arresting officer to the person whosearrest is sought, of an intention or purpose then and there to effect an arrest; and (4) An understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him. Davis v. State, 43 Fla. L. Weekly D2029b (5th DCA 8/31/18)

ARREST (Concurring Opinion): "The majority holds the Appellant was not under arrest. But if not under arrest, what was his status? Is there something between a Terry stop and an arrest? I think not. To effectuate a Terry stop, the detention must be temporary, based on reasonable suspicion, and at the location of the stop. . .To view the detention here as authorized creates a new level of citizen encounter not countenanced by Terry." Davis v. State, 43 Fla. L. Weekly D2029b (5th DCA 8/31/18) http://5dca.org/Opinions/Opin2018/082718/5D17-745.op.pdf

DUE PROCESS: It is "troubling" but not reversible that Court denied continuance to enable Defendant to get transcripts of depositions taken two days before and then disallowed impeachment because Defendant had no transcripts. Taylor v. State, 43 Fla. L. Weekly D2028a (5th DCA 8/31/18)

APPEAL-PRESERVATION: "The State's refusal to concede the obvious [that motion to suppress was dispositive] was disingenuous at best," but when Defendant pled nolo contendere to the new charges without reserving his right to appeal the denied motion to suppress, the appellate court does not have jurisdiction to review the issue. Taylor v. State, 43 Fla. L. Weekly D2028a (5th DCA 8/31/18)

10-20-LIFE: 25-year mandatory minimum provision in life sentence for robbery with firearm was illegal where indictment did not allege, and jury did not find, that defendant discharged a firearm. Statecannot rely on grounds alleged in a separate count to support enhanced mandatory sentence. Solomon v. State, 43Fla. L. Weekly D2024b (5th DCA 8/31/18)

COMPETENCY: Court erred in continuing trial without a competency hearing where there were reasonable grounds to believe that incompetent to proceed. Mann v. State, 43 Fla. L. Weekly D2021b (5th DCA 8/31/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for misadvising him that he could not be sentenced to a prison term longer than that received by codefendants. Santiago v. State, 43 Fla. L. Weekly D2020a (5th DCA 8/31/18)

INSANITY: Court erred when it denied Defendant's pro se motion to appoint an expert to evaluate insanity defense after he was prescribed medications at the hospital the night of the offense [Tony Tatti]. Beshears v. State, 43 Fla. L. Weekly D2019c (5th DCA 8/31/18)

MINOR-LENGTHY SENTENCE: Where court amends the sentencing documents to provide for judicial review hearing of a lengthy (35 year) sentence, it also must conduct a full resentencing hearing. Conflict certified. Santiago v. State, 43 Fla. L. Weekly D2019a (5th DCA 8/31/18)

VOP: Court failed to prove a willful violation of probation by driving with a suspended license where it failed to present evidence that the Defendant had knowledge that his license had been suspended. Stringfield v. State, 43 Fla. L. Weekly D2018c (5th DCA 8/31/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to object to jury instructions was permitted jury to convict him of felony battery by great bodily harm probation charged aggravated battery with a deadly weapon. Snead v. State, 43 Fla. L. Weekly D2017a (5th DCA 8/31/18)

MINOR-LIFE IMPRISONMENT: Where defendant establishes rehabilitation at sentence review hearing, trial court is not required to review aggregate

sentence defendant is serving. “The new juvenile sentencing provisions seem complex because the sentencing rules for life felonies and F1-PBLs are complex.” State v. Purdy, 43 Fla. L. Weekly S321b (FLA 8/30/18)

DEATH PENALTY-POST CONVICTION RELIEF: Prior denial of defendant’s appeal from circuit court’s denial of his successive motion for post conviction relief raising similar claims is procedural bar to claims at issue in instant appeal. Lightbourne v. State, 43 Fla. L. Weekly S321a (FLA 8/30/18)

DEATH PENALTY: Defendant who was sentenced to death following jury’s unanimous recommendation of death and whose death sentence became final in 2001 not entitled to Hurst relief. Kearse v. State, 43 Fla. L. Weekly S320b (FLA 8/30/18)

SEARCH AND SEIZURE-TRAFFIC STOP: Stop of defendant’s vehicle which matched description in BOLO was legal where stop occurred at 4 : 15 a.m. when no other vehicles were on the road and stop occurred near reported shooting. Coby v. State, 43 Fla. L. Weekly D2011b (1st DCA 8/30/18)

SEARCH AND SEIZURE: Second officer had probable cause to arrest and search defendant where off-duty officer smelled marijuana confined to defendant’s location and observed defendant smoking what appeared to be marijuana cigarette; and second officer noted the smell of burnt marijuana coming from area occupied by defendant and witnessed defendant smoking what appeared to be a marijuana blunt. Dawson v. State, 43 Fla. L. Weekly D2009b(1st DCA 8/30/18)

CREDIT FOR TIME SERVED: Defendant is not entitled to credit for time served in jail in another county were evidence does not support that he was

actually arrested on the date claimed. Campbell v. State, 43 Fla. L. Weekly D2009a (1st DCA 8/30/18)

EVIDENCE: Court properly admitted evidence of jailhouse phone call from Defendant to his girlfriend where he identified himself as the speaker. Veach v. State, 43 Fla. L. Weekly D2008a (1st DCA 8/30/18)

EVIDENCE: Court abused its discretion by redacting child's statement that defendant also sexually abused his own daughter and by excluding daughter's denial that such abuse occurred. Macomber v. State, 43 Fla. L. Weekly D2004b (1st DCA 8/30/18)

SEARCH AND SEIZURE: The plain touch exception to the Fourth Amendment does not permit an officer to seize objects felt during a weapons search, when the objects are not weapons and there is insufficient evidence of contraband. Defendant fiddling with his waist band does not justify officer patting down his scrotal area. T.T. v. State, 43 Fla. L. Weekly D2002a (4th DCA 8/29/18)

QUOTATION: "In making probable cause determinations, courts must conscientiously evaluate the sufficiency of evidence and decline to ratify naked conclusions or the use of 'buzz words' that imply certainty." T.T. v. State, 43 Fla. L. Weekly D2002a (4th DCA 8/29/18)

NEW EVIDENCE: To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered

evidence must be of such nature that it would probably produce an acquittal on retrial. Harvey v. State, 43 Fla. L. Weekly D2000b (3rd DCA 8/29/18)

POST CONVICTION RELIEF: Court may rely on the sworn testimony in the plea colloquy to conclusively refute an allegation made in a motion for post conviction relief. DeJesus v. State, 43 Fla. L. Weekly D2000a (3rd DCA 8/29/18)

STAND YOUR GROUND: Amendment shifting burden of proof from defendant to state in immunity hearing is apply retroactively. Sexton v. State, 43 Fla. L. Weekly D1999a (3rd DCA 8/29/18)

FUGITIVE WARRANT: Where 90 days have not passed from date case was filed on fugitive warrant, detention in county jail is legal pending resolution of fugitive warrant process. Vargas v. Junior, 43 Fla. L. Weekly D1995a (3rd DCA 8/29/18)

JUDGE-IMPARTIALITY: Court does not depart from impartiality by continuing sentencing hearing to hear from the victim. Baugh v. State, 43 Fla. L. Weekly D1985d (1st DCA 8/24/18)

SENTENCING: Court may not consider unsworn statement from victim in sentencing hearing, but error is not fundamental. Baugh v. State, 43 Fla. L. Weekly D1985d (1st DCA 8/24/18)

CONSTRUCTIVE POSSESSION: Video showing that the Defendant ran and drop something near the gas station pumps during a shootout is insufficient to establish possession of marijuana found in the area. When the contraband is found in a public place, more than mere proximity to the defendant must

be shown to sustain a conviction. McKire v. State, 43 Fla. L. Weekly D1984a (1st DCA 8/24/18)

FALSELY ACTING AS PUBLIC OFFICER: Grand jury foreman who created his own "People's Grand Jury Under Common Law in Dixie County, Florida" and approved to "True Bills" to arrest public officials is properly convicted of falsely acting as a public officer. Trussell v. State, 43 Fla. L. Weekly D1978a (1st DCA 8/24/18)

EXPERT: Police officer does not need to qualify as an expert to testify that dog can detect odors from someone in an anxious mental or physical state. Johnson v. State, 43 Fla. L. Weekly D1976a (1st DCA 8/24/18)

CIRCUMSTANTIAL EVIDENCE: Claim that evidence was wholly circumstantial is waived if not preserved at trial. Regardless, evidence that Defendant was 1 of 2 people who broke into her apartment and he was shot in the shoulder while fleeing is sufficient circumstantial evidence to sustain conviction. Charles v. State, 43 Fla. L. Weekly D1972a (1st DCA 8/24/18)

MINOR-LIFE SENTENCE: Apprendi does not require that jury rather than the judge must pass on the factors set forth in Fla.Stat. § 921.1401(2). Gonzalez v. State, 43 Fla. L. Weekly D1971a (1st DCA 8/24/18)

MODIFICATION-SENTENCE-JURISDICTION: Court lacks jurisdiction to rule on State's motion to clarify Defendant's sex offender probation 3 years after the original sentencing. Martinez v. State, 43 Fla. L. Weekly D1967b (2nd DCA 8/20/18)

INEFFECTIVENESS OF APPELLATE COUNSEL: Appellate counsel was ineffective for failing to argue the jury instruction for attempted manslaughter is a lesser included offense of attempted murder was fundamental error were the instruction included an element of intent to kill. Franklin v. State, 43 Fla. L. Weekly D1964a (2nd DCA 8/24/18)

APPEALS-JURISDICTION: Notice of appeal is untimely when sent by a prisoner to the State Attorney and/or Attorney General, but did not mail it to the Clerk of the lower court. Linville v. State, 43 Fla. L. Weekly D1962c (5th DCA 8/24/18)

POST CONVICTION RELIEF: Counsel was ineffective for failing to proffer the testimony of his probation officer that she received a call from the maternal grandmother days before the allegations of sexual abuse emerged wherein the maternal grandmother reported that Appellant had physically abused the victim's brother, to support claim that the victim's mother and grandmother tried to frame the Defendant. Roe v. State, 43 Fla. L. Weekly D1959a (5th DCA 8/24/18)

VOP: Finding that Defendant violated probation by failing to pay restitution and court costs stricken where record does not demonstrate that he had the ability to pay. Coleman v. State, 43 Fla. L. Weekly D1955b (4th DCA 8/22/18)

YOUTHFUL OFFENDER: Where Defendant, a youthful offender, violated probation and is sentenced to in excess of the 6-year youthful offender, the sentence becomes an adult sentence and the Court is not required to maintain his youthful offender status. Based on recent Florida Supreme Court Court opinion changing the law. Granger v. State, 43 Fla. L. Weekly D1954a (4th DCA 8/22/18)

MURDER-CAUSATION-INTERVENING CAUSE: Where elderly victim was beaten and later died at home after hospital mistakenly determined that brain hemorrhage had been resolved, Defendant is still properly convicted of murder. To constitute an intervening cause, the hospital process negligence must be the sole cause of death. Williams v. State, 43 Fla. L. Weekly D1950a (4th DCA 8/22/18)

JURORS-PEREMPTORY CHALLENGE-RACIAL DISCRIMINATION: Court is always required to follow three-step procedure set out in Melbourne when party objects to exercise of a peremptory challenge on the ground that it was made on a discriminatory basis. Melbourne imposes duty on trial courts at "genuineness" step to request a response to proffered explanation him from the opponent of the peremptory challenge , regardless whether counsel so requests. Johnson v. State, 43 Fla. L. Weekly D1942a (4th DCA 8/22/18)

EYE ROLLING MOMENT: State justified striking black jurors because "[T]he Defense has stricken two black females in their first round of strikes. They've also stricken black individuals for cause." Johnson v. State, 43 Fla. L. Weekly D1942a (4th DCA 8/22/18)

QUOTATION (DISSENT): "[T]he goal has become the process; the sideshow becoming part of the main event." Johnson v. State, 43 Fla. L. Weekly D1942a (4th DCA 8/22/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for misadvising that because State failed to file a PRR notice for his second trial, Court has discretion to impose a sentence less than life imprisonment. Stoddard v. State, 43 Fla. L. Weekly D1938d (2nd DCA 8/22/18)

HEARSAY-PRICE TAG: Price tag is not hearsay. A business records foundation need not be laid before a witness is permitted to testify to what the price tag said. L.A. v. State, 43 Fla. L. Weekly D1938b (3rd DCA 8/22/18)

VOP-JURISDICTION: Affidavit alleging only technical violations does not toll the probationary period. Bethel v. State, 43 Fla. L. Weekly D1918e (4th DCA 8/17/18)

MANDAMUS: Record documents that were prepared at public expense on behalf of an indigent defendant must be provided to him or her without charge for copying. Kimbrough v. State, 43 Fla. L. Weekly D1915a (5th DCA 8/17/18)

DOWNWARD DEPARTURE: Downward departure based on the incident being isolated in the unsophisticated is not warranted in which Defendant used her position as office manager to write checks to herself from her boss's business. A crime cannot be considered isolated where there were multiple incidents over several months. State v. Hollinger, 43 Fla. L. Weekly D1913c (5th DCA 8/17/18)

FTA: Court was not justified in issuing a capias for failing to appear at a rescheduled disposition hearing where defendant was not given adequate notice that he had to appear despite his waiver appearance. Cannon v. State, 43 Fla. L. Weekly D1912b (2nd DCA 8/17/18)

SENTENCING: Court erred in failing to impose a sentence on all counts. State v. Rogers, 43 Fla. L. Weekly D1912a (2nd DCA 8/17/18)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to hire an accident reconstruction expert to show that road conditions contributed to the crash where evidence of Defendant's intoxication was overwhelming and threshold for causation is low. Where a defendant's decision about going to trial turns on his prospects of success, and the attorney's alleged error affected those prospects of success, the defendant must also show that he would have been better off going to trial. "Even if inadequate signage and poor road conditions led Koroly the wrong way, had Koroly not been intoxicated he likely would have noticed the interstate median on his right and the headlights of any oncoming vehicles and corrected his actions before traveling the length of over five football fields and colliding head-on with Johnny Robinson." Koroly v. State, 43 Fla. L. Weekly D1908a (1st DCA 8/16/18)

ROBBERY WITH A FIREARM: Court did not fundamentally err by not instructing the jury that a BB gun is not a firearm, but rather referring the jury to the jury instructions, particularly whether there was some dispute as to whether the weapon which had not been recovered was a BB gun or a firearm. Miller v. State, 43 Fla. L. Weekly D1906a (1st DCA 8/16/18)

JURORS-CHALLENGE FOR CAUSE: Court did not abuse its discretion by refusing to excuse for cause a juror who worked as a prosecutor for state attorney's office 27 years earlier and whose husband was an investigator for that office where juror stated unequivocally that nothing about her experience as prosecutor or her husband's employment would affect her ability to be fair and impartial. Williams v. State, 43 Fla. L. Weekly D1904a (1st DCA 8/16/18)

FIREARM-POSSESSION: The crime of "possessing a concealed weapon by a felon" is a nonexistent offense. "Carrying a concealed weapon by a felon" is a crime. Mislabeling of the offense as "possession of a concealed

weapon by a convicted felon" is confusing and requires a new trial. Wiggins v. State, 43 Fla. L. Weekly D1903a (1st DCA 8/16/18)

JOA-PRINCIPAL: Defendant's post-arrest admission that he and others should not completed the drug transaction is insufficient to show that he actually did something to help commit the offense; JOA is required. Ammons v. State, 43 Fla. L. Weekly D1902a (1st DCA 8/16/18)

COMMENT ON SILENCE: Court's admonition on right to remain silent from standard jury instruction during voir dire and State's comment that the pro se Defendant would be held to the standards of a represented defendant is not an improper comment on the right to remain silent rising to the level of fundamental error. Kendle v. State, 43 Fla. L. Weekly D1885a (3rd DCA8/15/18)

SEALING CRIMINAL RECORD: Order compelling FDLE to issue a certificate of eligibility for sealing is a departure from the essential requirements of law because Defendant had previously secured expunction in a previous case in a different county. The fact that the previous sealing had been unsealed does not change the prohibition on a second sealing. FDLE v. Elmufdi, 43 Fla. L. Weekly D1876a (3rd DA 8/15/18)

CONTEMPT-INDIRECT: Attorneys cannot be held in indirect criminal contempt for violation of discovery order directed to their client where there was no evidence that attorneys advised client to violate discovery order. Hudson v. Marin, 43 Fla. L. Weekly D1870c (3rd DCA 8/15/18)

VOP: Where the record does not contain the affidavit upon which the revocation was based, but the possibility exists that an affidavit of violation of community control, charging defendant with substantive violations of the

conditions of supervision, was in fact filed, the case is remanded to the trial court for location and consideration of the relevant affidavit. Raimondi v. State, 43 Fla. L. Weekly D1868b (3rd DCA 8/15/18)

SENTENCING: Court is not required to articulate reasons for sentencing defendant to a specific sentence within legislative limits. Taylor v. State, 43 Fla. L. Weekly D1863a (4th DCA 8/15/18)

SEXUAL BATTERY-VICTIM'S MENTAL CAPACITY: State is not entitled to mental incapacity of victim instruction ("Evidence of (victim's) mental incapacity or defect, if any, may be considered in determining whether there was an intelligent, knowing, and voluntary consent.") when there is no evidence of involuntary intoxication. Here, the victim's intoxication was voluntary. Amelio v. State, 43 Fla. L. Weekly D1855a (4th DCA 8/15/18)

JURY INSTRUCTION-MANSLAUGHTER: It is manifestly unjust to deny relief on claim that trial court committed fundamental error in giving erroneous instruction on manslaughter when defendant was convicted of second-degree murder, a crime one step removed from manslaughter. Crenshaw v. State, 43 Fla. L. Weekly D1854b (2nd DCA 8/15/18)

MINOR-RESENTENCING: Manifest injustice warrants reconsideration of prior decision in which appellate court erroneously rejected defendant's claims that sentence (45 years) was illegal under Graham. Gorman v. State, 43 Fla. L. Weekly D1854a (2nd DCA 8/15/18)

POST CONVICTION RELIEF: Counsel was ineffective for not moving for a JOA where state presented no evidence that the defendant was in 1000 feet of a place of worship; nevertheless the issue is not cognizable on direct appeal. Sorey v. State, 43 Fla. L. Weekly D1847b (1st DCA 8/10/18)

SELF DEFENSE: Defendant is entitled to a jury instruction on self-defense where he claims he shot the victim to end the victim beating him up. Jackson v. State, 43 Fla. L. Weekly D1845a (1st DCA 8/10/18)

PROBATION-SUSPENDED SENTENCE: Court erred in finding a willful and substantial violation of probation based on condition that had not clearly been imposed (getting a job at Home Depot). Scott v. State, 43 Fla. L. Weekly D1840d (1st DCA 8/10/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to call an expert witness to challenge State's fingerprint expert. Cowan v. State, 43 Fla. L. Weekly D1839a (5th DCA 8/10/18)

POST CONVICTION RELIEF: Defendant is not entitled to relief from plea to sale of narcotics where he is told that there may be immigration consequences and he had talked to an immigration attorney about it. Pluck v. State, 43 Fla. L. Weekly D1838a (5th DCA 8/10/18)

GRAND THEFT-VALUE: Victim testifying that his mother checked online and the used value for the iPhone 6 was $340 is insufficient evidence of value. A witness's mere ownership of property unaccompanied by sufficient personal knowledge of its value is insufficient. D.D. v. State, 43 Fla. L. Weekly D1832a (2nd DCA 8/10/18)

WITHHOLD OF ADJUDICATION: Court may not withhold adjudication without imposing probation. State v. Jene-Charles, 43 Fla. L. Weekly D1820a (3rd DCA 8/8/18)

DOUBLE JEOPARDY: Separate convictions for Conspiracy to sell Narcotics and Constructive Possession of location with knowledge to be used for Sale of narcotics may violate Double Jeopardy if it is for a single conspiracy. State v. Jene-Charles, 43 Fla. L. Weekly D1820a (3rd DCA 8/8/18)

STAND YOUR GROUND: Change in the burden of proof is a substantive change to the law and therefore applies only prospectively. Conflict certified. Hight v. State, 43 Fla. L. Weekly D1800a (4th DCA/8/18)

PUBLIC RECORDS: CNN is not entitled to attorney's fees for suit to get school shooting video. State Attorney's Office v. CNN, 43 Fla. L. Weekly D1799a (4th DCA 8/8/18)

HABEAS CORPUS: Where petition challenging conviction was filed in wrong circuit, Court should have transferred petition to correct circuit rather than dismissing petition as unauthorized. Hutchinson v. State, 43 Fla. L. Weekly D1790b (1st DCA 8/7/18)

POST CONVICTION RELIEF: In sexual battery on child case, Counsel was ineffective for failing to investigate and introduce victim's school attendance records which would have discredited victim's trial testimony. McBride v. State, 43 Fla. L. Weekly D1789a (1st DCA 8/7/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the question of whether counsel was ineffective for failing to call witnesses to rebut Williams rule evidence. Tualla v. State, 43 Fla. L. Weekly D1788b (2nd DCA 8/3/18)

SENTENCING-FINANCIAL CONSIDERATIONS: Sentence is illegal where plea agreement called for the Defendant to spend 6 months in jail if she could come up with the restitution or if not be subject to up to 20 years in prison. "Simply put, Ms. Vasseur's sentences are illegal." To impose a longer sentence because a defendant cannot pay restitution violates an indigent defendant's due process rights. Vasseur v. State, 43 Fla. L. Weekly D1787a (2nd DCA 8/3/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not letting him testify and failing to investigate Williams rule witness's motive to fabricate allegations. Roberts v. State, 43 Fla. L. Weekly D1785a (2nd DCA 8/3/18)

CONSPIRACY: Defendant cannot be convicted of conspiracy to traffick cocaine based on her driver her boyfriend to a drug deal and serving as a lookout. Cites Gray v. State, my case from 1988. Gould v. State, 43 Fla. L. Weekly D1778a (5th DCA 8/3/18)

COMPETENCY: Court did not err by not ordering a competency hearing after Defendant refused to cooperate with mental health professionals. Mars v. State, 43 Fla. L. Weekly D1771c(1st DCA 8/3/18)

10/20/LIFE: Court may not impose 20-year mandatory minimum for aggravated assault or evidence does not support a finding that Defendant discharged a firearm during the offense of aggravated assault. The Defendant's discharge of a firearm was during the act of attempted murder, not during the aggravated assault. Jones v. State, 43 Fla. L. Weekly D1771a (1st DCA 8/3/18)

SENTENCING CONSIDERATIONS: Court may not consider uncharged criminal activity in imposing sentence. Court may not rely in part on charge for which he was acquitted of that charge. Randall v. State, 43 Fla. L. Weekly D1770b (1st DCA 8/3/18)

EVIDENCE-AUTHENTICATION: Blood-stained wallet and shoes obtained from defendant when he was booked into county jail were sufficiently authenticated through testimony of sheriff's office evidence custodian and testimony indicating that shoes removed from defendant could not have been mixed up with those removed from codefendant because codefendant's shoes had laces and defendant's did not. Thompson v. State, 43Fla. L. Weekly D1768a (1st DCA 8/3/18)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to present evidence that the Defendant was a good poker player to rebut the motive of financial gain for murdering someone to steal his magic : the Gathering cards and burying the body in his backyard. Cormier v. State, 43 Fla. L. Weekly D1765a (1st DCA 8/3/18)

BOLSTERING: "[Y]ou might see that cops and the government and the State Attorneys we really don't lie," is improper bolstering, but in context does not warrant a new trial. Lai v. State, 43Fla. L. Weekly D1760a (1st DCA 8/1/18)

SEARCH AND SEIZURE-RESIDENCE-INEVITABLE DISCOVERY: Inevitable discovery doctrine does notpermit admission of illegally-seized evidence just because o fficers were conducting an "active investigation" at the time of the illegality, even when police have already developed probable cause for asearch warrant at the time of the improper conduct, but had not started to obtain a search warrant. Clayton v. State, 43 Fla. L. Weekly D1756a (1st DCA 8/1/18)

STATEMENTS OF DEFENDANT: Neither "Do I need that?", "Do I need him?", "Do I need to call my lawyer?", nor "Can I call my lawyer?" was an unequivocal request for counsel, but rather a prefatory question about his rights. Washington v. State, 43 Fla. L. Weekly D1753b (1st DCA 8/1/18)

POST CONVICTION RELIEF: Impact of plea on future employment is a collateral consequence and therefore not a grounds for post-conviction relief based on misadvice. Ayesh v. State, 43 Fla. L. Weekly D1749a(3rd DCA 8/1/18)

READ-BACK: Court did not abuse discretion in reading back to jury a specific portion of victim's testimony in response to a question as to how the victim responded when asked to had stabbed her. Procedures for read-back explained. "Simply put, a jury cannot properly fulfill its constitutionally mandated role if it cannot recall or is confused about the testimony presented in a case. Thus. . .trial courts should apply a liberal construction to a jury's request for transcripts." Mendez v. State, 43 Fla. L. Weekly D1738a (3rd DCA 8/1/18)

POSSESSION OF FIREARM-DOUBLE JEOPARDY-COLLATERAL ESTOPPEL: Collateral estoppel/Double Jeopardy does not bar a second trial on a severed count of possession of a firearm by a felon based on you United States Supreme Court opinion of Currier v. Virginia, 138 S. Ct. 2144 (2018). Morris v. State, 43 Fla. L. Weekly D1727a (3rd DCA 8/1/18)

BATTERY-EMERGENCY CARE PROVIDER: LPN is neither a "registered nurse" nor a "person authorized by emergency medical service," and therefore is not an "emergency medical care provider." Failure to move for a judgment of acquittal is ineffective assistance of counsel on the face of the record. Conviction vacated. Twigg v. State, 43 Fla. L. Weekly D1721a (4th DCA 8/1/18)

INCONSISTENT DEFENSES: Defendant is entitled to assert self-defense as an alternate theory of defense regardless of whether the defenses may have been inconsistent. Twigg v. State, 43 Fla. L. Weekly D1721a (4th DCA 8/1/18)

SENTENCING-CONSIDERATIONS: Court erred in considering Defendant's jailhouse behavior at sentencing. Walker v. State, 43 Fla. L. Weekly D1718a (4th DCA 8/1/18)

SEARCH AND SEIZURE-REASONABLE SUSPICION-PLAIN VIEW: Defendant's act of hiding apparent cocaine in his grits does not justify the search of the grits. Peynado v. State, 43 Fla. L. Weekly D1715b (4th DCA 8/1/18)

OPENING THE DOOR: Opening-the-door doctrine does not apply to testimony elicited by co-defendants. "The prosecution may not gain, through the device of a joint trial, admission against one defendant of otherwise inadmissible evidence on the happenstance that the door to admitting the evidence has been opened by a co-defendant." Jackson v. State, 43 Fla. L. Weekly D1715a (4th DCA/1/18)

STAND YOUR GROUND: 2017 amendment to statute was procedural in nature and should be applied retroactively. Conflict certified. Sullivan v. State, 43 Fla. L. Weekly D1712b (2nd DCA 8/1/18)

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SEARCH AND SEIZURE-WARRANT: Search of vehicles in parking space within three feet of motel room subject to a search warrant is unlawful;

parking spaces are not curtilage. Curtilage defined. Shannon v. State, 43 Fla. L. Weekly D1704a (2nd DCA 7/27/18)

EVIDENCE: Detective's testimony that after working for 12 or 13 years in area where defendant resided and was arrested on various drug charges, he was familiar with the area and knew defendant and "a lot of residents" in that area is not an improper, or if error, was harmless. Spike v. State, 43 Fla. L. Weekly D1699a (2nd DCA 7/27/18)

COSTS: Court may not impose a $65 assessment without indicating the county ordinance authorizing it. McCann v. State, 43 Fla. L. Weekly D1698b (2nd DCA 7/27/18)

DWLS-HABITUAL TRAFFIC OFFENDER: Public Defender may not intervene in earlier civil traffic infraction cases to remove a predicate conviction. Public Defender may represent someone only in circumstances entailing prosecution threatening a indigent person's liberty interest. State v. Grate and Morton, 43 Fla. L. Weekly D1696a (5th DCA 7/27/18)

SENTENCING-CONSECUTIVE MANDATORY MINIMUM: Resentencing is not required where the court imposed consecutive mandatory minimum sentences, realizing that doing so was in his discretion, rather than as a mistaken belief that it was required. Edwards v. State, 43 Fla. L. Weekly D1695a (5th DCA 7/27/18)

APPEAL: Court lacks jurisdiction to rule on motion to correct sentence while an appeal is pending. Wallace v. State, 43 Fla. L. Weekly D1693b (5th DCA 7/27/18)

SENTENCING-MINOR: Concurrent 22 year sentences for minor is lawful, but Defendant is entitled to judicial review after 20 years. Robinson v. State, 43 Fla. L. Weekly D1693a (5th DCA 7/27/18)

PRETRIAL DETENTION-HABEAS CORPUS: Court may impose a pretrial release condition requiring Defendant to show the source of funds used to post bond (Nebbia hold). Conflict certified. Fleury v. State, 43 Fla. L. Weekly D1689a (4th DCA 7/25/18)

COUNSEL-DISCHARGE: Court may deny Defendant's request to discharge appointed counsel and retain private counsel just before jury selection. Bentz v. State, 43 Fla. L. Weekly D1683b (4th DCA 7/25/18)

PUBLIC RECORDS: Court did not err in ordering disclosure to the press of footage of the Marjorie Stoneman Douglas school shooting. Such video footage is not "criminal investigative information." State Attorney's Office v. CNN, 43 Fla. L. Weekly D1685a (4th DCA 7/25/18)

VOP-HEARSAY: VOP cannot be based on the hearsay testimony from the probation officer that she spoke to a person who said Defendant no longer lived in the apartment. Delopa v. State, 43 Fla. L. Weekly D1680a (4th DCA 7/25/18)

SEARCH AND SEIZURE: Officer's personal observations of defendant holding what appeared to be spice joints and extensive experience and training with narcotics, coupled with defendant's evasive behavior in a high-crime area, created a reasonable suspicion justifying an investigatory stop. State v. Zachery, 43 Fla. L. Weekly D1666a (2nd DCA 7/25/18)

SEARCH AND SEIZURE-CONSENT-VOLUNTARINESS: Stop made on the basis of anonymous tip that a black male and a red, yellow and black jacket was carrying a gun and standing outside a convenience store was unlawful. Acquiescence to a search based on that initial unlawful stop is not voluntary consent. Consent obtained after illegal police activity is presumptively involuntary absent clear and convincing proof of an unequivocal break in the chain of illegality. Moody v. State, 43 Fla. L. Weekly D1665a (2nd DCA 7/25/18)

RESISTING WITHOUT VIOLENCE: Where officer told Juvenile that she could go to a particular shelter or go to the Juvenile Assessment Center, and juvenile said she'd rather go to the JAC, the Juvenile has not resisted. S.G. v. State, 43 Fla. L. Weekly D1656c (1st DCA 7/25/18)

SENTENCING: Where Defendant failed to appear for sentencing, and Court had warned him that he would not abide by the plea agreement if he FTAed, Court may sentence defendant in excess of the plea agreement. Cooper v. State, 43 Fla. L. Weekly D1656a (1st DCA 7/25/18)

DOUBLE JEOPARDY: Where case is remanded for re-sentencing based on trial court's mistaken belief that mandatory minimum score required, Court may restructure the sentences to match his original intent. Gartman v. State, 43 Fla. L. Weekly D1653a (1st DCA 7/25/180)

EVIDENCE: Court properly excluded evidence of mother's prior acts of abuse toward the victim and others (violent spanking) where the abuse was not similar to the acts the cause the victim's death (violent blows to the head). When a defendant seeks to introduce another person's prior bad acts to shift suspicion from himself to another person, evidence of past criminal conduct of that other person should be of such nature that it would be admissible if

that person were on trial for the present offense. Rivet v. State, 43 Fla. L. Weekly D1651c (1st DCA 7/25/18)

JIMMY RYCE: Court has authority to enter a directed verdict in favor of the State. Civil rules of procedure apply to Jimmy Ryce proceedings. Gering v. State, 43 Fla. L. Weekly D1642a (3rd DCA 7/25/18)

POST CONVICTION RELIEF-MANDAMUS: Defendant cannot file a petition for writ of mandamus seeking to compel the trial court to conduct an evidentiary hearing on a post-conviction motion under 3.850. Watts v. State, 43 Fla. L. Weekly D1641a (3rd DCA 7/25/18)

SUPPRESSION: Court may not suppress recordings made by an animal rights group showing pigs being slaughtered in an animal cruelty case by making factual findings without taking evidence at a hearing. State v. Garcia, 43 Fla. L. Weekly D1639a (3rd DCA 7/25/18)

LIFE SENTENCE-MINOR: Minor who was sentenced to life in prison, paroled, and committed new offense, is not entitled to a further sentence review. Jay v. State, 43 Fla. L. Weekly D1638a (3rd DCA 7/25/18)

VOP-JUDGMENT: Court must not enter a duplicate to judgment of guilt when sentencing Defendant for VOP. Fountain v. State, 43 Fla. L. Weekly D1635b (2nd DCA 7/20/18)

COSTS OF PROSECUTION: Costs of prosecution (witness travel fees) should be included in final judgment not as a separate order restitution. Robinson v. State, 43 Fla. L. Weekly D1633b (5th DCA 7/20/18)

COSTS: Court may not impose Public Defender fees and $50 application fee in greater amounts than statutorily required absent documentation supporting the greater amount. Robinson v. State, 43 Fla. L. Weekly D1633b (5th DCA 7/20/18)

SEARCH AND SEIZURE-PAT DOWN-INEVITABLE DISCOVERY: Where police see drugs on the car seat in a jointly occupied vehicle, they have probable cause to arrest the defendant for constructive possession; the evidence would have been inevitably discovered, so that reaching into the Defendant's pocket and finding more drugs is not an unlawful search. State v. Upshaw, 43 Fla. L. Weekly D1633a (5th DCA 7/20/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to depose the victim and other witnesses. Alvarez v. State, 43 Fla. L. Weekly D1632c (5th DCA 7/20/18)

CREDIT FOR TIME SERVED: Court must not deny motion to correct credit for time served without attaching portions of the record supporting the denial. Devane v. State, 43 Fla. L. Weekly D1632b (5th DCA 7/20/18)

SENTENCING-MINOR-HOMICIDE: Resentencing is required for seconddegree murder where jury did not make a finding that the Defendant "actually killed, intended to kill, or attempted to kill" victim, and the verdict is consistent with the codefendant having actually killed the victim. Defendant must be resentenced as though there had been a jury finding that he did not kill or intend to kill the Victim. Wall v. State, 43 Fla. L. Weekly D1629a (5th DCA 7/20/18)

VOP: Evidence was insufficient to prove that defendant violated condition prohibiting defendant from changing her residence without consent of PO

where she told PO that she lacked the finances to continue staying there and PO told her simply that she needed to apprise him of her new residence. Hernandez v. State, 43 Fla. L. Weekly D1628b (5th DCA 7/20/18)

AMENDMENT-RULES RELATING ADMISSION TO THE BAR: The Supreme Court of Florida may certify a lawyer who is the spouse of a full-time active duty member of the United States armed forces to engage in the practice of law in Florida while the lawyer's spouse is stationed within this jurisdiction, due to the unique mobility requirements of military families who support the defense of the United States. A lawyer certified under this chapter is considered a member of the Florida Bar during the period of certification. In Re : Amendments, 43 Fla. L. Weekly S312a (FLA 7/19/18)

POST CONVICTION RELIEF-DEATH PENALTY-INTELLECTUAL DISABILITY: Claim that Defendant is not eligible for death penalty based on intellectual disability is time barred. Blanco v. State, 43 Fla. L. Weekly S310a (FLA 7/19/18)

POST CONVICTION RELIEF-SELF-REPRESENTATION: Defendant can waive assistance of counsel in motion for post-conviction relief in death penalty cases. Rose v. State, 43 Fla. L. Weekly S307a (FLA 7/19/18)

AMENDMENT-RULES-CRIMINAL PROCEDURE: Several minor changes to criminal rules of procedure. In Re : Amendments to Criminal Rules, 43 Fla. L. Weekly S305c (FLA 7/19/18)

APPEALS: Guilt phase issues which were not briefed are waived. Phillips v. State, 43 Fla. L. Weekly S305b (FLA 7/19/18)

DEATH PENALTY: Hurst does not apply retroactively to defendant's sentence of death, which became final in 1986. Peede v. State, 43 Fla. L. Weekly S305a (FLA 7/19/18)

STAND YOUR GROUND: Statutory amendment changing burden of proof in "Stand Your Ground" hearing applies retroactively to cases that were pending when amendment was enacted. Conflict certified. Catalano v. State, 43 Fla. L. Weekly D1622d (2nd DCA 7/18/18)

VOIR DIRE-LIMITATION: Time limits in jury selection were not unreasonable here, particularly were counsel spent much of his time trying to pre-try the case. "[N]o mathematical formula exists, nor should a mathematical formula exist, for the amount of time provided for voir dire." Flexibility is encouraged. "A brief extension of time would have been far less than the many hours which both sides' appellate counsel spent on this appeal, and many days less than the amount of time which would have been necessary to try this case again if we decided to reverse." Thomany v. State, 43 Fla. L. Weekly D1619a (4th DCA 7/18/18)

VOIR DIRE-PURPOSE: Appellate court disagrees with trial court's conclusion that Defendant's attorney conducted his voir dire in a manner to attempt to preserve the issue of insufficient time for voir dire, but criticized counsel's attempt to "pre-try" the case. "Pre-trying" of the case is not a proper purpose of voir dire. Thomany v. State, 43 Fla. L. Weekly D1619a (4th DCA 7/18/18)

NEW EVIDENCE: Court properly summarily denied Defendant's motion to withdraw his plea based on alleged new evidence that cast doubt on the validity that pubic hair found on the scene was his. Tibbetts v. State, 43 Fla. L. Weekly D1617b (4th DCA 7/18/18)

EN BANC REVIEW: "Due to a large caseload, our fifteen-member appellate court. . .assigns each case randomly to a three-judge panel for disposition, raising the trivia question : How many different three-judge panels are possible? If you said 455, you're correct. Most people guess a far smaller number. What isn't trivial is the jurisprudential impact that so many different panels have on similar or related cases, making the need for intra-court decisional uniformity important. Without en banc review for uniformity, we'd not be one court attempting to dispense uniform justice, but an assemblage of 455 randomly assigned and autonomous three-judge panels each doing as it sees fit." Mitchell v. Brogdon, 43 Fla. L. Weekly D1613a (1st DCA 7/16/18)

DOUBLE JEOPARDY: Special conditions of sex offender probation imposed for an offense which does not require sex offender probation need not be orally pronounced, but where the plea agreement provided that sex offender probation did not apply, the later addition of sex offender conditions violates double jeopardy. Jones v. State, 43 Fla. L. Weekly D1611a (2nd DCA 7/13/18)

BURGLARY-JOA: JOA is required where girl and her friends entered a vacant house and State failed to present any evidence as to what the Child's intent was in entering it. Charge is reduced to trespassing. E.M. v. State, 43 Fla. L. Weekly D1610a (2nd DCA 7/13/18)

NELSON HEARING: Court may not remove the possibility of discharging courtappointed counsel for incompetence without giving the defendant a chance to be heard on the issue. Daniels v. State, 43 Fla. L. Weekly D1609a (2nd DCA 7/13/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to inform him in advance about probationary

terms and mandatory minimum sentences of plea agreement. Cendejas v. State, 43 Fla. L. Weekly D1608b (2nd DCA 7/13/18)

DOUBLE JEOPARDY: Defendant cannot be convicted of both DWLS causing death in failing to remain at scene of crash involving death based on a single death. Florida has a "single homicide rule." Martinez v. State, 43 Fla. L. Weekly D1608a (2nd DCA 7/13/18)

CREDIT FOR TIME SERVED: A defendant is entitled to receive jail credit for an offense after a warrant has been executed while he is being held in jail in another county; he is not entitled to jail credit on the basis of a detainer unless he is subject to release and is being held solely on the detainer. Bolduc v. State, 43 Fla. L. Weekly D1598b (2nd DCA 7/13/18)

STAND YOUR GROUND: Rules should be created establishing a time period in which a petition for writ of prohibition should be filed following the denial of a motion to dismiss under the Stand Your Ground law. Lewis v. State, 43 Fla. L. Weekly D1597a (2nd DCA 7/13/18)

SENTENCING-MINOR-HOMICIDE: Jury, not the trial court, must make factual finding as to whether juvenile offender actually killed, intended to kill, or attempted to kill victim. Where jury was instructed on both premeditated and felony murder, it was error to fail to require jury to specify under which theory it found defendant guilty. Leppert v. State, 43 Fla. L. Weekly D1589b (5th DCA 7/13/18)

SENTENCING-MINOR-HOMICIDE: Sentence of life imprisonment with possibility of parole after 25 years for offense committed by juvenile does not violate Eighth Amendment. Atwell receded from. State v. Michel, 43 Fla. L. Weekly S298a (FLA 7/12/18)

DOUBLE JEOPARDY: Separate convictions for Aggravated Assault, Attempted Sexual Battery, and Burglary with an Assault or Battery do not violate prohibition against double jeopardy. Neither Aggravated Assault nor Attempted Sexual Battery is subsumed within the offense of Burglary with an Assault. Tambriz-Ramirez v. State, 43 Fla. L. Weekly S294a (FLA 7/12/18)

YOUTHFUL OFFENDER: Upon revocation of probation for a substantive offense, Court has discretion to continue the Youthful Offender sentence without the minimum mandatory, or impose an adult Criminal Punishment Code sentence with the minimum mandatory and without continued Youthful Offender status. Eustache v. State, 43 Fla. L. Weekly S291a (FLA 7/12/18)

JURY INSTRUCTIONS-FAILURE TO REGISTER: Jury instructions modified. In Re : Standard Jury Instructions, 43 Fla. Weekly S290a (FLA 7/12/18)

HARMLESS ERROR-TEST: The test for harmless error "is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. . .The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful." Rodriguez v. State, 43 Fla. L. Weekly S289b (FLA 7/12/18)

PRETRIAL DETENTION-HABEAS CORPUS: Defendant who FTA'ed and committed new offenses may be held without bond. Sardinas v. Junior, 43 Fla. L. Weekly D1612d (3rd DCA 7/12/18)

ARGUMENT-GOLDEN RULE: "Think about the state of mind she's in at that point in time that all these questions were asked to her. What happened? What happened?" Is not an improper Golden rule argument. The mere fact that the State asked the jury to consider the victim's mental and physical condition shortly after the crime was committed did not transform this argument into a golden rule violation. Jackson v. State, 43 Fla. L. Weekly D1584a (3rd DCA 7/11/18)

ARGUMENT: The prosecutor's comparison of Defendant's conduct to lions' predatory attack on its prey at night is not fundamental error. Slaughter v. State, 43 Fla. L. Weekly D1581a (4th DCA 7/11/18)

VOP-LOITERING AND PROWLING: Child who fled from police cannot be found to have violated probation by committing the crime of Loitering and Prowling because the actions do not amount to that crime. D.M.B. v. State, 43 Fla. L. Weekly D1579b (4th DCA 7/11/18)

LEAVING SCENE OF ACCIDENT: Child cannot be found guilty of LSA involving damage to unattended property where that property was an undamaged tree. C.T.T. v. State, 43 Fla. L. Weekly D1564a (1st DCA 7/9/18)

COMPETENCY: Court is not required to conduct additional competency proceedings where Defendant has a history malingering, evidence suggests he was current on his medications, and counsel represented that he was competent. Peoples v. State, 43 Fla. L. Weekly D1557c (1st DCA 7/9/18)

STAND YOUR GROUND: Change in the burden of proof in Stand Your Ground cases is retroactive. Commander v. State, 43 Fla. L. Weekly D1554a (1st DCA 7/9/18)

USE OF FIREARM IN COMMISSION OF FELONY: Court is required to dismiss charge of Use of Firearm In Commission of Felony where the defendant was acquitted of the related robbery charge. Brown v. State, 43 Fla. L. Weekly D1553a (1st DCA 7/9/18)

WITNESS TAMPERING-EVIDENCE: Court did not abuse discretion in allowing evidence of jailhouse phone calls in which the Defendant identified himself and asked someone to get in touch with the victim for him. Veach v. State, 43 Fla. L. Weekly D1549b (1st DCA 7/9/18)

AMENDMENT-EXPRESSION OF POLICY POSITION: No judge or supreme court created body, or any conference of judges may recommend to any legislative or executive branch entity any policy inconsistent with a policy position adopted by the Supreme Court. No resources of any judicial branch entity may be used to facilitate or support the expression of a judge's personal views. In Re : Amendments, Rules of Judicial Admin., Fla. L. Weekly S289a (FLA 7/6/1 8)

MINOR-SENTENCE REVIEW: Court erred in ruling that Minor-Defendant who had served 15 years of a 25-year-sentence was not entitled to a sentence review on the ground that his crime had taken place before the statute providing for such review had been promulgated. Elkin v. State, 43 Fla. L. Weekly D1545a (2nd DCA 7/6/18)

POST CONVICTION RELIEF: Court erred by summarily denying the claim that counsel was ineffective in advising Defendant to withdraw motion to sever murder from possession of firearm charges on the grounds that this was obvious trial strategy. A hearing is required. Thomas v. State, 43 Fla. L. Weekly D1538a (5th DCA 7/6/18)

APPEAL-STATE: State may not appeal court's ruling withholding adjudication of guilt where State did not preserve the issue by raising a contemporaneous objection. State v. Rivera, 43 Fla. L. Weekly D1537c (5th DCA 7/6/18)

DEATH PENALTY: Defendant who was sentenced to death following a unanimous recommendation of death and which became final in 2001 is not entitled to relief under Hurst. Mansfield v. State, 43 Fla. L. Weekly S278a (FLA 7/5/18)

PRETRIAL DETENTION-NEBBIA HOLD: Florida courts lack authority to detain accused for the purpose of inquiring into the source of funds used to post bail, but they may set a bond conditioned upon an inquiry into the source of the funds to be used to post bond. The burden of establishing the noninvolvement in or nonderivation from criminal or other illicit activity of such proffered funds, real property, property, or any proposed collateral or bond premium falls upon the defendant. Snell v. Junior, 43 Fla. L. Weekly D1539g (3rd DCA 7/5/18)

VOIR DIRE: It is improper for prosecutor to ask jurors on voir dire if they could come back with a conviction although state had not recovered the firearm used by defendant. The State is prohibited from questioning prospective jurors as to the kind of verdict they would render under any given state of facts or circumstances. George v. State, 43 Fla. L. Weekly D1526b (3rd DCA 7/5/18)

EVIDENCE: Court erred by precluding defense from cross-examining lead Detective about pending criminal charges against him. George v. State, 43 Fla. L. Weekly D1526b (3rd DCA 7/5/18)

SILENCE OF DEFENDANT: Prosecutor's comments on Defendant's failure to explain his presence in the parking lot at night was an improper comment on his right to remain silent. Manor v. State, 43 Fla. L. Weekly D1522a (4th DCA 7/5/18)

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CORPUS DELICTI: Firearm on the floorboard of passenger side of vehicle which juvenile was driving with 2 passengers was insufficient to prove that the juvenile was in constructive possession of the firearm. To prove corpus delicti, the state must prove that the Defendant committed the crime charged, not that some person in the car committed the crime. Because corpus delicti was not proven, the Juvenile's confession was inadmissible. A.P. v. State, 43 Fla. L. Weekly D1508a (2nd DCA 6/29/18)

CREDIT FOR TIME SERVED-CORRECTION: Defendant is not required to wait until his sentence becomes final to move for correction of credit for time served under Rule 3.801. Brady v. State, 43 Fla. L. Weekly D1507a (2nd DCA 6/29/18)

PLEA AGREEMENT-ENFORCEMENT: Court may not disregard deferred sentencing agreement on the basis that the Defendant failed to timely appear for sentencing after a furlough where his violation was not willful (Defendant could not get a ride). Howell v. State, 43 Fla. L. Weekly D1506d (2nd DCA 6/29/18)

SENTENCING-DOWNWARD DEPARTURE-ISOLATED INCIDENT: Court erred in imposing a downward departure on the basis that the crime was an isolated incident for which she showed remorse, where there was no showing that the offense was committed in an unsophisticated manner. State v. Rogers, 43 Fla. L. Weekly D1502a (5th DCA 6/29/18)

SENTENCING-DOWNWARD DEPARTURE-NEED FOR RESTITUTION: Court may not impose a downward departure from the basis that the need for restitution outweighed for a prison sentence where the defendant presented no evidence of the victim's need. State v. Rogers, 43 Fla. L. Weekly D1502a (5th DCA 6/29/18)

SENTENCING-DOWNWARD DEPARTURE-NON-STATUTORY FACTORS: To be permissible, the non-statutory mitigator justifying a downward departure must be consistent with legislative sentencing policies, the primary one of which is punishment, not rehabilitation. State v. Rogers, 43 Fla. L. Weekly D1502a (5th DCA 6/29/18)

DOUBLE JEOPARDY: Dual convictions for possession of cannabis with intent to sell and manufacturing cannabis for the same marijuana does not violate Double Jeopardy. Armas v. State, 43 Fla. L. Weekly D1499 (5th DCA 6/29/18)

DEATH PENALTY: Hurst does not apply retroactively to a sentence which became final in 1998, nor in a case where there was a unanimous recommendation for death. Jimenez v. State, 43 Fla. L. Weekly S276a (FLA 6/28/18)

LIFE SENTENCE-MINOR: Jury is not required to make the factual findings for the sentencing factors set out in § 921.1401. Roberson v. State, 43 Fla. L. Weekly D1497a (1st DCA 6/28/18)

COMPETENCY: Successor judge did not commit fundamental error by beginning trial without determining Defendant's competency where he promptly determined that the Defendant was competent once he realized that

the previous judge never made a finding. Thurston v. State, Fla. L. Weekly D1495b (1st DCA 6/28/18)

AGGRAVATED BATTERY: A shard of broken mirror glass may qualify as a deadly weapon. S.G. v. State, 43 Fla. L. Weekly D1495a (1st DCA 6/28/18)

DOUBLE JEOPARDY: Separate convictions for use of computer online service to solicit person believed to be a child to engage in a loss as conduct and traveling violate Double Jeopardy. Hernandez v. State, 43 Fla. L. Weekly D1492a (1st DCA 6/28/18)

SENTENCING-CONSIDERATIONS-LACK OF REMORSE: Court did not impermissibly base Defendant's sentence on lack of remorse where Defendant injected the issue of remorse into the proceedings by seeking to mitigate his sentence. Court may not rely on Defendant process lack of remorse in fashioning a sentence but may rely on it in the context of mitigation of the sentence. Catledge v. State, 43 Fla. L. Weekly D1490a (1st DCA 6/28/18)

COMPETENCY: Court erred by failing to hold competency hearing or entering a written order of competency wants and had reasonable grounds to believe the defendant was incompetent. Pearce v. State, 43 Fla. L. Weekly D1489a (1st DCA 6/28/18)

SCHEME TO DEFRAUD-JOA: Defendant cannot be convicted of scheming to defraud for a series of shoplifting incidents. Cooks v. State, 43 Fla. L. Weekly D1488a (1st DCA 6/28/18)

COMPETENCY: Court must memorialize in writing its determination that Defendant was competent to proceed. Robinson v. State, 43 Fla. L. Weekly D1485b (1st DCA 6/28/18)

POST CONVICTION RELIEF: Counsel was ineffective for allowing Defendant to proceed despite fact that a court ordered competency evaluation had not been completed. Counsel process personal interactions with Defendant are not substitutes for a court ordered competency report. Brown v. State, 43 Fla. L. Weekly D1485a (1st DCA 6/28/18)

TAMPERING WITH VICTIM: Telling the child victim of a sexual offense not to tell anybody and that he would come back is sufficient evidence of tampering with the victim. Frazier v. State, 43 Fla. L. Weekly D1480b (1st DCA 6/28/18)

PRETRIAL RELIEF-EXCESSIVE BAIL: $700,000 bond for the crime of sending a threatening letter violates his right to pretrial release on reasonable conditions as guaranteed under Article I, section 14 of the Florida Constitution. Aglio v. State, 43 Fla. L. Weekly D1488b (3rd DCA 6/27/18)

ARGUMENT: Court erred in denying defense counsel's request for special instruction on "mere presence" after prosecutor, who argued that the legal principle (that mere presence at the crime scene is not enough) was not included in the jury instructions, but that a principal could be convicted even if he was not present, thus improperly maligning defense counsel's argument and misleading the jury on the law. Gabriel v. State, 43 Fla. L. Weekly D1477a (4th DCA 6/27/18)

ARGUMENT: Prosecutor must confine his closing argument to record evidence and must not make comments which could not be reasonably

inferred from the evidence. Prosecutor improperly argued that the co-defendant's testimony was consistent with earlier statements to police where no such evidence was adduced. Gabriel v. State, 43 Fla. L. Weekly D1477a (4th DCA 6/27/18)012)

ARGUMENT: Prosecutor commits improper argument where he suggests that Defendant refused to take responsibility for his actions. "Such comments denigrate the fundamental principles of the right to jury trial and presumption of innocence." Gabriel v. State, 43 Fla. L. Weekly D1477a (4th DCA 6/27/18)

STAND YOUR GROUND: Stand Your Ground immunity from prosecution is properly denied for Defendant who shot the victim in the back of the head, put the body in a rental car, drove it to a rural area, and set the car on fire. Morales v. State, 43 Fla. L. Weekly D1474a (4th DCA 6/27/18)

STATEMENTS OF DEFENDANT: Where police conducted three interviews with defendant, only the last of which was a custodial interrogation, trial court's failure to suppress third interview, during which police were informed that attorney was attempting to invoke defendant's right to remain silent, was harmless beyond reasonable doubt, in light of second confession. Santos v. State, 43 Fla. L. Weekly D1472a (4th DCA 6/27/18)

SENTENCING-10/20/LIFE-CONSECUTIVE: Where appellate court reversed consecutive mandatory minimum sentences under 10/20/Life and remanded for imposition of concurrent mandatory minimum sentences, Court properly resentenced defendant to concurrent mandatory minimum terms, but was not required to run non-mandatory minimum portions of the sentences concurrently as well. Billups v. State, 43 Fla. L. Weekly D1467a (4th DCA 6/27/18)

QUOTATION: "This case is the story of what can happen when words in a case become detached from a legal principle, to float freely in the ether of Westlaw or Lexis like free radicals ready to trigger mutations in the law." Billups v. State, 43 Fla. L. Weekly D1467a (4th DCA 6/27/18)

QUOTATION (DISSENT): "[T]he majority is solving an alleged impropriety (detaching words from the moorings of a legal principle) with another impropriety (stretching words beyond their meaning to embrace a new legal rule)." Billups v. State, 43 Fla. L. Weekly D1467a (4th DCA 6/27/18)

SEARCH AND SEIZURE-ABANDONMENT: Contraband abandoned by juvenile is he ran from police may be lawfully seized, regardless whether the police had reasonable suspicion to chase the juvenile or command him to stop. State v. T.M., 43 Fla. L. Weekly D1464b (4th DCA6/27/18)

PUBLIC DEFENDER FEE: Court erred in imposing Public Defender's fees amount greater than statutory minimum without evidence of higher fees and without notifying Defendant of right to contest the fees. Baker v. State, 43 Fla. L. Weekly D1464a (4th DCA 6/27/18)

HEARSAY-FORFEITURE BY WRONGDOING: Court erred by allowing recorded statement of victim on ground that the victim's unavailability was a result of wrongdoing by the Defendant. For the forfeiture by wrongdoing exception to the hearsay rule to apply, the Defendant must have engaged in conduct designed to prevent the witness from testifying. Joseph v. State, 43 Fla. L. Weekly D1457a (4th DCA 6/27/18)

STATEMENTS OF DEFENDANT: A Defendant is entitled to a hearing on the voluntariness of the confession outside the presence of the jury even if he failed to raise the issue of pretrial, but any error in refusing to allow such a

hearing is not reversible where the evidence is duplicative of the evidence already presented without objection. Abel v. State, 43 Fla. L. Weekly D1455d (4th DCA 6/27/18)

COUNSEL-WAIVER : Court erred by failing to offer counsel to Defendant in failing to conduct a Faretta inquiry before permitting Defendant to represent himself during plea negotiations. Johnson v. State, 43 Fla. L. Weekly D1446a (2nd DCA 6/27/18)

DEATH PENALTY: Hurst does not apply retroactively to sentence of death which became final in 1985. Doyle v. State, 43 Fla. L. Weekly S272b (FLA 6/26/18)

DEATH PENALTY: Hurst does not apply retroactively to sentence of death which became final in 1985. Dailey v. State, 43 Fla. L. Weekly S272a (FLA 6/26/18)

DEATH PENALTY: Hurst does not apply retroactively to sentence of death which became final in 1985. Owen v. State, 43 Fla. L. Weekly S271b (FLA 6/26/18)

PLEA WITHDRAWAL: Defendant is not entitled to evidentiary hearing on motion to withdraw plea where record conclusively refutes his claim that he was misadvised about the sentence. Smith v. State, 43 Fla. L. Weekly D1439g (1st DCA 6/22/18)

POST CONVICTION RELIEF: Court properly found that counsel was not ineffective for failing to move to suppress evidence of search warrant, failing

to have DNA evidence retested, and failing to show that Defendant's girlfriend could have been the source of the DNA on his underwear. Where evidence of guilt is overwhelming and where there is no reasonable probability that absent any deficient performance by defense counsel a defendant would have been acquitted, a claim of ineffective assistance of counsel must be denied. Gonzalez v. State, 43 L. Weekly D1432a (1st DCA 6/22/18)

RETURN OF PROPERTY: Motion identifying cash, wallet and driver's license as his property and alleging they were not the product of criminal activity is legally sufficient to compel the property returned to the Claimant. Peterson v. State, 43 Fla. L. Weekly D1420c (5th DCA 6/22/18)

BURGLARY TOOLS: Defendant cannot be convicted of possession of burglary tools State failed to prove that the Defendant intended to commit a burglary or did some overt act towards the commission of a burglary. Sloan v. State, 43 Fla. L. Weekly D1420a (5th DCA 6/22/18)

COLLATERAL ESTOPPEL: Defendant is not entitled to a rehearing on question of whether his designation as a habitual offender is illegal. The mere existence of an illegal sentence is not equivalent to a manifest injustice. Whether his HVFO sentence does or does not include a ten-year minimum mandatory provision has no effect on Defendant's longer PRR sentence or the amount of time Defendant will serve in prison. Turner v. State, 43 Fla. L. Weekly D1419a (5th DCA 6/22/18)

SENTENCING-MINOR-JUDICIAL REVIEW: Where Defendant who committed this offense was a minor, Court is required to conduct a resentencing hearing. Court cannot modify the sentence without holding a resentencing hearing. Ostane v. State, 43 Fla. L. Weekly D1418a (5th DCA 6/22/18)

SENTENCING-CONSIDERATIONS: Court may not rely on Defendant's lack of remorse in imposing sentence. Stone v. State, 43 Fla. L. Weekly D1413a (3rd DCA 6/20/18)

SENTENCING-MINOR-NONHOMICIDE: Defendant is not entitled to relief from sentence of life imprisonment where he had been released on parole. Bruce v. State, 43 Fla. L. Weekly D1412a (3rd DCA 6/20/18)

POST CONVICTION RELIEF-VACATING PLEA: Defendant counsel failed to tell them that he would be waiving right to seek post-conviction DNA testing of the blood used to test for level of alcohol in DUI manslaughter case absent reasonable possibility that, but for the claimed error, he would not have pled guilty. Bertonatti v. State, 43 Fla. L. Weekly D1410a (3rd DCA 6/20/18)

COMPETENCY: Court may not find Defendant competent based on stipulation of parties without making an independent assessment. Hernandez v. State, 43 Fla. L. Weekly D1408a (3rd DCA 6/20/18)

SENTENCING-CONSIDERATIONS: Court may not consider unproven criminal activity in imposing sentence. A new sentencing hearing is required. Strong v. State, 43 Fla. L. Weekly D1393a (4th DCA 6/20/18)

SEARCH AND SEIZURE: Officers may use a Yagi intended to locate and identify signals coming from the Defendant's computer in his home, where Defendant was stealing the neighbors Wi-Fi signal to download child porn. Defendant cannot assert a subjective expectation of privacy when he uses antenna similar to that used by law enforcement to capture his neighbor's WiFi. McClelland v. State, 43 Fla. L. Weekly D1391c (2nd DCA 6/20/18)

PROBATION REVOCATION-JUDGMENT: Court may not enter a 2nd written judgment adjudicating Defendant guilty upon the defendant's probation being revoked. Duplicative adjudications of guilt after revocation of probation or community control are superfluous, are unauthorized, and can cause undue confusion in future proceedings. Schaulfler v. State, 43 Fla. L. Weekly D1391a (2nd DCA 6/20/18)

CERTIORARI: Office of the Public Defender cannot be removed as penalty phase counsel where defendant is represented by a private attorney in the guilt phase by petition for writ of certiorari without making a sufficient finding of entitlement to relief. "Having determined what order is properly before us, we must next determine what arguments are properly before us. And the answer to that is none of them." Holt v. Keetly, 43 Fla. L. Weekly D1389a (2nd DCA 6/20/18)

PERJURY: Perjury in an official proceeding related to prosecution of the capital felony refers to any offense designated as a "capital felony," regardless whether the death penalty may be imposed. State v.Kwitowski, 43 Fla. L. Weekly D1385g (2nd DCA 6/20/18)

COSTS: Court may not award domestic violence-related surcharge amount not prescribed by statute. West v. State, 43 Fla. L. Weekly D1383a (1st DCA 6/20/18)

FINE: Before imposing a fine under §775.0835(1), a court must find that the defendant has the present ability to pay the fine and finds that the impact of the fine will not cause the defendant's dependents to be dependent on public welfare. West v. State, 43 Fla. L. Weekly D1383a (1st DCA 6/20/18)

OPINION TESTIMONY: Officer may testify that a tracking dog is able to detect odors from someone in an anxious mental state. Johnson v. State, 43 Fla. L. Weekly D1374a (1st DCA 6/18/18)

EVIDENCE: Testimony that the Defendant later drove by the victim's condo is admissible in trial for lewd or lascivious exhibition (exposing himself from his condo to a child on the beach). Hogle v. State, 43 Fla. L. Weekly D1372a (1st DCA 6/18/18)

COSTS: Court may not impose costs of prosecution in excess of $100 without a showing of sufficient proof of higher costs incurred. Hogle v. State, 43 Fla. L. Weekly D1372a (1st DCA 6/18/18)

DOWNWARD DEPARTURE-UNSOPHISTICATED: Defendant who had her boss sign several checks to petty cash, and then deposited the money into her own account does not commit the crime in an unsophisticated manner justifying a downward departure from the sentencing guidelines. The crime is not "unsophisticated" where it requires several distinctive and deliberate steps to accomplish. Hollinger v. State, 43 Fla. L. Weekly D1367a (5th DCA 6/15/18)

DOWNWARD DEPARTURE-ISOLATED INCIDENT-UNSOPHISTICATED: The Defendant's crime is not an isolated incident where she had her boss sign several checks to petty cash, and then deposited the money into her own account. An offense is not isolated where it involves multiple incidents with one victim over several months. Hollinger v. State, 43 Fla. L. Weekly D1367a (5th DCA 6/15/18)

HEARSAY-CHILD VICTIM-RELIGIOUS CONFESSION: A priest cannot be compelled to testify about allegations of sexual abuse made by the victim

during confession, based on Florida's Religious Freedom Restoration Act. It is a substantial burden on the size religion to compel a religious adherent to engage in conduct that his religion forbids, in this case revealing statements made during confession. Ronchi v. State, 43 Fla. L. Weekly D1364d (5th DCA 6/15/18)

JUROR-CHALLENGE FOR CAUSE: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to challenge juror who expressed bias against homosexuality. Patrick v. State, 43 Fla. L. Weekly S263a (FLA 6/14/18)

EXPERT: Pharmacology expert (Dr. Goldberger) may testify about the effects of amphetamines and methamphetamine on the human body notwithstanding no actual experimentation. Hawthorne v. State, 43 Fla. L. Weekly D1362c (1st DCA 6/13/18)

EVIDENCE: Evidence of Defendant's release from jail twelve hours before the accident was relevant to prove a material fact — that he recently ingested methamphetamine when he ran into the victim's car. Hawthorne v. State, 43 Fla. L. Weekly D1362c (1st DCA 6/13/18)

EVIDENCE-DRIVING RECORD: A driving record showing a license suspension is sufficient to prove that a defendant had notice that his or her license was suspended. Hawthorne v. State, 43 Fla. L. Weekly D1362c (1st DCA 6/13/18)

SEARCH AND SEIZURE: Any error in allowing into evidence photos found on an iPod was harmless because the result would have been the same with or without the photos. Brutus v. State, 43 Fla. L. Weekly D1362b (1st DCA 6/13/18)

SEARCH AND SEIZURE-ARREST WARRANT: Officers who reasonably believed that subjects of arrest warrants were present in Defendant's residence were allowed to enter the residence. Foster v. State, 43 Fla. L. Weekly D1362a (1st DCA 6/13/18)

COMPETENCY: Where defendant had been found incompetent to proceed court must hold a hearing and make an independent finding that the defendant had been restored to competency. Graham v. State, 43 Fla. L. Weekly D1361a (1st DCA 6/13/18)

https://edca.1dca.org/DCADocs/2017/0938/170938_1287_06132018_10175711_i.pdf GOLDEN RULE: "Think about the state of mind she's in at that point in time that all these questions were asked to her. What happened? What happened?" is not an improper Golden Rule argument. The State did not ask or invite the jurors to place themselves in the shoes of the victim to imagine her pain and suffering. "The mere fact that a prosecutor in closing argument addresses a victim's mental state, physical state, or injuries suffered does not, standing alone, render the argument a golden rule violation. Such an ipso facto analysis ignores the need to consider the surrounding circumstances of the comment." Jackson v. State, 43 Fla. L. Weekly D1349a (3rd DCA 6/13/18)

YOUTHFUL OFFENDER: Court may not revoke youthful offender designation upon revocation of probation. Error is not preserved for appeal, be raised motion for post-conviction relief. Thomas v. State, 43 Fla. L. Weekly D1343a (4th DCA 6/13/18)

YOUTHFUL OFFENDER: Court may not revoke youthful offender designation upon revocation of probation. Exantus v. State,43 Fla. L. Weekly D1342b (4th DCA 6/13/18)

DOUBLE JEOPARDY: Argument that circuit court violated defendant's double jeopardy rights by entering second order increasing sentence imposed in first order was not preserved for appeal by objection or motion to correct sentence. Carter v. State, 43 Fla. L. Weekly D1338b (4th DCA 6/13/18)

DOUBLE JEOPARDY: Separate convictions for grand theft auto and armed carjacking with firearm violate Double Jeopardy. The fact that the police and the defendant with vehicle 2 days after the carjacking does not change the result. Palmer v. State, 43 Fla. L. Weekly D1338a (4th DCA 6/13/18) COMPETENCY: Once court orders mental health evaluations, the Court must hold a competency hearing. Augustin v. State, 43 Fla. L. Weekly D1337a (4th DCA 6/13/18) WRONGFUL INCARCERATION COMPENSATION: Victim of wrongful incarceration must move for compensation within 90 days of dismissal of the conviction. Brewster v. State, 43 Fla. L. Weekly D1336a (4th DCA 6/13/18) EVIDENCE-OPINION-BODY LANGUAGE: Detective may not testify about Defendant's body language and mannerisms, suggesting that they were indicative of deception. Edwards v. State, 43 Fla. L. Weekly D1334a (4th DCA 6/13/18)

ATTEMPTED SECOND DEGREE MURDER: Where Defendant shot the Victim over a disagreement on the price of the gun which the Victim had bought for the defendant, the evidence is sufficient to prove second-degree murder. Second degree murder is normally committed by a person who knows the victim and has had time to develop a level of enmity toward the victim. Williams v. State, 43 Fla. L. Weekly D1327a (1st DCA 6/8/18)

POSSESSION OF DRUGS-IMMUNITY-GOOD SAMARITAN: Defendant who called 911 to obtain medical assistance for person who was experiencing drug overdose in defendant's home was entitled to immunity from prosecution for drugs found in his home. The fact that the Defendant tried to hide the evidence and could have done more to help the person who had overdosed does not remove Defendant from the protection of the Good Samaritan law. "Regardless of whether Pope should have behaved better, his purpose in

contacting 911 was to save his friend. That was a good-faith purpose." Pope v. State, 43 Fla. L. Weekly D1326a (1st DCA 6/8/18)

VOP: Court may find the defendant violated probation where the affidavit charged him with violating by committing attempted murder and facts only supported attempted manslaughter; attempted manslaughter is a lesser included of attempted murder. Revocation based on a necessarily lesserincluded offense of the one alleged in the violation of probation affidavit does not violate a probationer's due process rights. McCloud v. State, 43 Fla. L. Weekly D1325a (1st DCA 6/8/18)

DOUBLE JEOPARDY: Double jeopardy prevents the court from increasing sentences from 10 years to 15 years where the plea agreement called for the sentences to be run concurrently with each other after Defendant moved to withdraw his plea on the ground that one of the counts was for 5 years consecutive to the 10 years. A defendant has a reasonable expectation of finality in a sentence unless there is the Defendant withheld information from the trial court. Mock v. State, 43 Fla. L. Weekly D1324a (1st DCA 6/8/18)

SECOND DEGREE MURDER: There is sufficient evidence of ill will, hatred, spite, or evil intent to sustain a conviction for second-degree murder where defendant shot victim with a sawed-off shotgun which the victim would not accept in payment for marijuana. Jacobson v. State, 43 Fla. L. Weekly D1323a (1st DCA 6/8/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to advise him of the elements and defenses for the crime of tampering with a witness. Stewart v. State, 43 Fla. L. Weekly D1322a (2nd DCA 6/8/18)

POST CONVICTION RELIEF-PLEA VOLUNTARINESS: Defendant is entitled to a hearing on the claim that counsel failed to advise him of the terms of the plea including the possibility of being sentenced to 105 years in prison if the counts were ordered to be served consecutively. Filipkowski v. State, 43 Fla. L. Weekly D1319a (2nd DCA 6/8/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim of ineffective assistance of counsel that counsel failed to advise him on the evidence against him, the maximum penalty, and where he alleged that he would have accepted a favorable plea offer if he had been so advised. Rollins v. State, 43 Fla. L. Weekly D1318a (2nd DCA 6/8/18)

POST CONVICTION RELIEF: Counsel was ineffective for failing to call witnesses that other people had been in the vehicle on the day of his arrest where he had been convicted of possession of drugs found in the vehicle. Campbell v. State, 43 Fla. L. Weekly D1315b (2nd DCA 6/8/18)

CREDIBILITY OF DEFENDANT: In post-conviction relief hearing, if a defendant's testimony is unrefuted and the post-conviction court has not articulated a reason to disbelieve the defendant, the court cannot choose to disregard the defendant's testimony. Campbell v. State, 43 Fla. L. Weekly D1315b (2nd DCA 6/8/18)

POST CONVICTION RELIEF: To adequately plead ineffective assistance of counsel for failing to convey a favorable plea offer, a defendant must allege "that (1) he or she would have accepted the offer had counsel advised the defendant correctly, (2) the prosecutor would not have withdrawn the offer, (3) the court would have accepted the offer, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Taylor v. State, 43 Fla. L. Weekly D1310b (5th DCA 6/8/18)

SENTENCING-VIOLENT CAREER CRIMINAL: Court is required to sentence defendant is a violent career criminal only if such sentence is necessary for the protection of the public; the existence of the requisite qualifying convictions is not dispositive. Williams v. State, 43 Fla. L. Weekly D1309a (5th DCA 6/8/18)

SEX OFFENDER PROBATION-CONDITIONS: Court is not required to orally pronounce each condition of sex offender probation contained in section 948.30. Levandoski v. State, 43 Fla. L. Weekly S258b (FLA 6/7/18)

HABITUAL FELONY OFFENDER-ATTEMPTED 2ND DEGREE MURDER OF LEO: Life imprisonment for Attempted second-degree murder of a law enforcement officer is not lawful. §775.0823(5) does not authorize the trial court to "reclassify" the crime of attempted second-degree murder from a seconddegree felony to a first-degree felony punishable by life by treating attempted second-degree murder as if it was a completed crime of second-degree murder. "In this particular case, we harmonize, to the extent we can, the apparent inconsistency between sections 775.0823(5) and 777.04(4)(c)." Graves v. State, 43 Fla. L. Weekly D1273a (3rd DCA 6/6/18)

WITHDRAWAL OF PLEA-COMPETENCY: Court erred by denying motion to withdraw plea where there had been a request for competency evaluation before the plea but no competency order entered. Rose v. State, 43 Fla. L. Weekly D1266b (4th DCA 5/6/18)

DEATH PENALTY-NOTICE: Court may prohibit the State from seeking the death penalty where it fails to file notice of intent to seek death penalty within 45 days after the arraignment. State v. Chantiloupe, 43 Fla. L. Weekly D1262a (4th DCA 6/6/18)

HEARSAY: It is improper to admit statement of witness, now deceased, from a bond hearing that someone had confessed to being the shooter in the murder and that he "got the work from [the Defendant]." Where the State is seeking to admit the out of court statements of will co-defendants or accomplices under 90.804(2)(c), and some of the statements also implicate the defendant, they should not be admitted where they sensibly and fairly can be redacted to include only those statements which are solely self-inculpatory. Moscatiello v. State, 43 Fla. L. Weekly D1257a (4th DCA 6/6/18)

SCORESHEET-ERROR: Addition error on scoresheet was not harmless because record does not conclusively show that judge would have imposed same sentence, having said that he was not inclined to "go against" scoresheet. Ward v. State, 43 Fla. L. Weekly D1256b (4th DCA 6/6/18)

DOUBLE JEOPARDY: Convictions of both organized scheme to defraud and grand theft based on same conduct violates double jeopardy. Santeramo v. State, 43 Fla. L. Weekly D1256a (4th DCA 6/6/18)

POST CONVICTION RELIEF-PLEA-VOLUNTARINESS: Defendant is entitled to a hearing on claim that counsel was ineffective for affirmatively misadvised him that he would not be deported for pleading no contest to the offense of trafficking in hydrocodone. Equivocal warnings (his plea "could" result in deportation) is insufficient in cases like this where deportation is mandatory. Saavedra v. State, 43 Fla. L. Weekly D1254a (4th DCA 6/6/18)

HEARSAY-EXCITED UTTERANCE-911 CALL: Under the facts of this case, the victim's statement in her 911 call made 20 minutes after the rape are admissible as an excited utterance. Evans v. State, 43 Fla. L. Weekly D1252a (4th DCA 6/6/18)

MISTRIAL: The 77 year old rape victim's emotional expression of indignation at being accused of lying ("Oh no. I swear on my son's soul that everything you are saying is a lie. . . . Unbelievable. Oh, my God," does not warrant a mistrial. "While the defense should be entitled to question the victim's credibility, it is not surprising that she reacted with an emotional outburst." Evans v. State, 43 Fla. L. Weekly D1252a (4th DCA 6/6/18)

POST CONVICTION RELIEF: Counsel was ineffective for wrongly advising defendant that the only lesser included charges carjacking is grand theft; robbery is also a lesser included for carjacking. Louima v. State, 43 Fla. L. Weekly D1247a (4th DCA 6/6/18)

POSSESSION OF FIREARM BY FELON: Court did not abuse discretion allowing state introduced multiple certified judgments of prior felony convictions where defendant did not stipulate that he was a felon. Grimes v. State, 43 Fla. L. Weekly D1246a (4th DCA 6/6/18)

LIFE SENTENCE-MINOR: Court may not impose a sentence of life in prison with 25 years as a minimum mandatory for a defendant who was 17 years old at the time of the offense without providing for sentence review after 25 years. White v. State, 43 Fla. L. Weekly D1245a (4th DCA 6/6/18)

SENTENCING-MINOR: Criminal Punishment Code is not unconstitutional as it relates to juveniles who commit felonies and are sentenced as adults. Hall v. State, 43 Fla. L. Weekly D1239a (1st DCA 6/4/18)

APPEALS-TIMELINESS: 30 day time to file appeal is not extended by Defendant's motion for reduction of sentence. Jackson v. State, 43 Fla. L. Weekly D1238a (1st DCA 4/4/18)

LIFE SENTENCES-MINOR: 50 year sentence with judicial review for nonhomicide committed by a juvenile is lawful. Only those juveniles who were sentenced to life and then had the sentence vacated under Graham are entitled to judicial review, not juveniles like that Defendant here who were originally sentenced to a lengthy term of imprisonment. Hart v. State, 43 Fla. L. Weekly D1232a (1st DCA 6/4/18)

JIMMY RYCE: State is not required to prove the value of mental health treatment in the recidivism equation. Campbell v. State, 43 Fla. L. Weekly D1228a (1st DCA 6/6/18)

REVOCATION-CONDITION RELEASE: There is no requirement that failure to contact revocation hearing within 45 days must result in defendant being released from prison. In granting writs of certiorari, the DCAs should not be as concerned with the existence of legal error as with the seriousness of the error. Smith v. DOC, 43 Fla. L. Weekly D1225a (2nd DCA 6/1/18)

DOWNWARD DEPARTURE: Court may not impose a downward departure sentence on the ground the need for payment of restitution outweighs the need for a prison sentence where there is no evidence of any pressing need for restitution. A downward departure is only justified if the harm suffered by the victim as a result of the theft was greater than normally expected, and restitution could mitigate that increased harm. State v. Lackey, 43 Fla. L. Weekly D1224f (2nd DCA 6/1/18)

POST CONVICTION RELIEF: Defendant who is been found not guilty was insanity has no claim for relief under Rule 3.850. Dorton v. State, 43 Fla. L. Weekly D1223c (5th DCA 6/1/18)

FTA-WILLFULNESS: Defendant who was given a prison sentence for failing to comply with agreement to appear (Quarterman agreement) is entitled to an

evidentiary hearing as to his willfulness in failing to appear. Spear v. State, 43 Fla. L. Weekly D1223b (5th DCA 6/1/18)

MINOR-RESENTENCING: It is error to modify a minor's sentence to allow for a review hearing that also holding a resentencing hearing. Jackson v. State, 43 Fla. L. Weekly D1222a (5th DCA 6/1/18)

ATTEMPTED MURDER LEO-JURY INSTRUCTION: The court must instruct on the essential element that the Defendant knew that the victim was a law enforcement officer. Error is fundamental where there was a dispute at trial as to whether Defendant knew the victim was a law enforcement officer. By asserting the mistaken identity defense and denying any knowledge about the shooting, Defendant did not waive the defense that he did not know that the victim was a law enforcement officer. Gabriel v. State, 43 Fla. L. Weekly D1219a (5th DCA 6/1/18)

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AMENDMENTS-INTERPRETERS: Rules for interpreters extended to victims and parents of juveniles. When an attorney or self-represented litigant retains an interpreter, whenever possible, the attorney or litigant must retain a certified, language skilled, or provisionally approved interpreter. In re-Amendments to Rules of Judicial Administration, 43 Fla. L. Weekly S253b (FLA 5/31/18)

COMPETENCY: Defendant who may be incompetent cannot waive the right to a competency hearing. "The nature of competency goes to the heart of whether a defendant has the capacity to make a cogent, legally binding decision. To find, as the trial court did here, there were reasonable grounds to believe Appellant may be incompetent, and then allow that same potentially incompetent individual to waive his right to determine competency, does not comport with due process." Francis v. State, 43 Fla. L. Weekly D1217a (1st DCA 5/31/18)

BLOOD TEST: Blood test is admissible where police substantially complied with administrative regulations. Strict compliance with rules is not required. Failure to invert blood sample to ensure mixing of blood with preservatives and anti-coagulents is still substantial compliance. Bedell v. State, 43 Fla. L. Weekly D1216a (1st DCA 5/31/18)

CRIMINAL MISCHIEF: Victim's testimony as to the cost of repair is competent evidence of the value. FMV of the windshield or truck is inapplicable. The rule in theft cases that the damages cannot exceed the value of the property does not apply to the crime of criminal mischief. J.A. v. State, 43 Fla. L. Weekly D1210b (3rd DCA 5/30/18)

DOWNWARD DEPARTURE: Court may enter a downward departure sentence based on the fact that the Defendant acted under the domination of another person when she helped commit the burglary. State v. Sisco, 43 Fla. L. Weekly D1208a (3rd DCA 5/30/18)

HEARSAY-911 CALL: 911 call was admissible as spontaneous statement where call was placed immediately after robbery and describes or explains the event and circumstances do not indicate a lack of trustworthiness. Thompson v. State, 43 Fla. L. Weekly D1206a (3rd DCA 5/30/18)

RESTITUTION: Court may not order restitution without holding a hearing. Sainvil v. State, 43 Fla. L. Weekly D1203a (4th DCA 5/30/18)

POST CONVICTION RELIEF: On the face of the record, counsel was not ineffective for not filing a motion to vacate plea where the plea agreement

called for a 4 years and the ultimate sentence was 3 years plus probation. Quinlin v. State, 43 Fla. L. Weekly D1202b (4th DCA 5/30/18)

MINOR-SENTENCE: 31-year sentence for offense committed by a juvenile is not unconstitutional. Conflict certified. Tillman v. State, 43 Fla. L. Weekly D1201c (4th DCA 5/30/18)

MINOR-SENTENCE: 40-year sentence for second-degree murder committed by a juvenile does not violate the 8th amendment. Conflict certified. Pedroza v. State, 43 Fla. L. Weekly D1201b (4th DCA 5/30/18)

POST CONVICTION RELIEF: Court properly denied claims that were untimely, that remained facially insufficient after opportunity to amend, or that were not raised in amended motion within prescribed time period. Watson v. State, 43 Fla. L. Weekly D1199b (1st DCA 5/25/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on the claim that counsel was ineffective for failing call expert to testify that defendant did not write incriminating notes to lewd and lascivious battery victim. Privett v. State, 43 Fla. L. Weekly D1199a (1st DCA 5/25/18)

POST CONVICTION RELIEF: Court properly denied claim that counsel was ineffective for failure depose state's witnesses to prepare for cross-examination where there was no demonstration of prejudice. Johnson v. State, 43 Fla. L. Weekly D1196a (1st DCA 5/25/18)

SEARCH AND SEIZURE-BLOOD DRAW: Defendant's consent to blood draw after officer had explained that his refusal to consent would require them to drive to a judge during the night to get a warrant signed was voluntary. Miller v. State, 43 Fla. L. Weekly D1195a (1st DCA 5/25/18)

EVIDENCE: Court properly precluded defendant from presenting evidence that victim was driving a motorcycle without an endorsement when he was hit from behind by defendant where there was no reasonable basis to conclude that victim's conduct was sole proximate cause of accident. Miller v. State, 43 Fla. L. Weekly D1195a (1st DCA 5/25/18)

10-20-LIFE: To invoke 10-20-Life, information must say that the Defendant "actually possessed a 'firearm' or 'destructive device.'" Birch v. State, 43 Fla. L. Weekly D1191a (1st DCA 5/25/18)

INFORMATION-DEFECT: Information is not fatally defective for failing to use the term "constructive possession." It is advisable to present special interrogatories separately from verdicts for underlying crimes. Birch v. State, 43 Fla. L. Weekly D1191a (1st DCA 5/25/18)

LESSER INCLUDED: Court is not required to give a lesser included instruction on Reckless Driving for the underlying offense of Aggravated Assault with a Deadly Weapon. Requirement that elements of lesser offense be "specifically alleged in the information" means it is not enough that element of driving could be inferred from charging document because driving might be the most common manner in which an assault with a motor vehicle occurs. Conflict certified. Anderson v. State, 43 Fla. L. Weekly D1188c (1st DCA 5/15/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to investigate sanity and competency where his attorney had serious concerns yet failed to follow through with mental health evaluation authorized by court. Akins v. State, 43 Fla. L. Weekly D1187b (1st DCA 5/25/18

CIRCUMSTANTIAL EVIDENCE: The special standard of review for circumstantial evidence continues to apply, notwithstanding that Florida is only one of three states to take the "somewhat discordant" view that a special appellate standard of review applies to circumstantial criminal convictions, but a jury cannot be instructed to apply a different evaluation of circumstantial evidence. Meeks v. State, 43 Fla. L. Weekly D1185a (1st DCA 5/25/18)

FIREARMS: FSU may prohibit firearms on campus. Florida Carry, Inc. v. Thrasher, 43 Fla. L. Weekly D1180b (1st DCA 5/25/18)

POST CONVICTION RELIEF: Court acted within his discretion by denying motion to amend motion for post conviction relief (Defendant did not understand Miranda because he was intoxicated), which would be otherwise time barred, where the amended motion raises new claims that do not relate back to the original timely filed motion (Defendant was never read Miranda) and are otherwise time-barred. Johnson v. State, 43 Fla. L. Weekly D1180a (1st DCA 5/25/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to investigate and call exculpatory witnesses at trial, and failing to advise defendant that court could run his sentences in one case consecutively to sentences in another. Leclaire v. State, 43 Fla. L. Weekly D1175d (2nd DCA 5/25/18)

COUNSEL: Fact that Defendant's attorney was suspended from practice at time of trial for failure to comply with CLE requirements where counsel had no knowledge of licensing deficiencies at time of trial does not deprive Defendant of effective assistance of counsel. Johnson v. State, 43 Fla. L. Weekly D1172b (5th DCA 5/25/18)

IMPEACHMENT-PRIORS: It is improper to ask Defendant if he had been convicted of felonies (two) and separately if he had been convicted of crimes of dishonesty (the same two offenses) because it gives the false impression of four, rather than two, convictions. Error is not fundamental. Johnson v. State, 43 Fla. L. Weekly D1172b (5th DCA 5/25/18)

DISMISSAL: Court may not dismiss information charging defendant with DWLS on basis that defendant had his license back and no longer deserved to be prosecuted. State v. Snook, 43 Fla. L. Weekly D1170b (5th DCA 5/25/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that that counsel was ineffective for failure to investigate and call exculpatory witnesses at trial. Tolliver v. State, 43 Fla. L. Weekly D1170a (5th DCA 5/25/18)

DEATH PENALTY: Defendant is not entitled to Hurst relief where jury unanimously recommended death. Everett v. State, 43 Fla. L. Weekly S250a (FLA 5/24/18)

ATTORNEY-DISCIPLINE: Attorney disbarred for having sex with two inmates, one for money and the other for a reduced legal fee. The Florida Bar v. Blackburn, 43 Fla. L. Weekly S248a (FLA 5/24/18)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Recantation of testimony is insufficient to warrant a new trial where the witness is deemed incredible. Sweet v. State, 43 Fla. L. Weekly S243a (FLA 5/24/18)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements : First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Sweet v. State, 43 Fla. L. Weekly S243a (FLA 5/24/18)

AMENDMENT-JURY INSTRUCTIONS-PREMEDITATED AND FELONY MURDER: "If you return a verdict of guilty to the charge of First Degree Murder, it is not necessary that all of you agree the State proved First Degree Premeditated Murder and it is not necessary that all of you agree the State proved First Degree Felony Murder. Instead, what is required is that all of you agree the State proved either First Degree Premeditated Murder or First Degree Felony Murder." In re-Standard Jury Instructions, 43 Fla. L. Weekly S242a (FLA 5/24/18)

PRO SE FILINGS-PROHIBITION: Court may not prohibit pro se filings without notice and opportunity to respond. Massaro v. State, 43 Fla. L. Weekly D1169a (4th DCA 5/23/18)

VIOLENT OFFENDER OF SPECIAL CONCERN: Upon revocation of probation, there is no requirement that court hold separate evidentiary hearing before finding that defendant posed a danger to community and was a VFOSC. Smith v. State, 43 Fla. L. Weekly D1168a (4th DCA 5/23/18)

RECONSIDERATION OF MOTION TO SUPPRESS: The standard for reconsidering a motion to suppress based on new evidence is a balancing test, not the standard for newly discovered evidence for post conviction relief (whether evidence was ascertainable before). The rights of a defendant to

due process and effective assistance of counsel should outweigh any need for finality with respect to an interlocutory suppression ruling. Cledenord v. State, 43 Fla. L. Weekly D1163a (4th DCA 5/23/18)

JUDGE-NEUTRALITY: A court commits fundamental error by abandoning its neutral role and assuming the role of the prosecutor in a VOP hearing. A judge may ask questions designed to make previously received ambiguous testimony clear, but the capacity to clear up ambiguous or confusing testimony is not an invitation to trial judges to supply essential elements in the state's case. Parr v. State, 43 Fla. L. Weekly D1161a (4th DCA 5/23/18)

QUOTATION: "This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice." Parr v. State, 43 Fla. L. Weekly D1161a (4th DCA 5/23/18)

SEARCH WARRANT: Detective has authority to be affiant on search warrants and their accompanying affidavits in counties outside his jurisdiction where detective was investigating a case that originated in his own jurisdiction. State v. Stouffer, 43 Fla. L. Weekly D1157b (4th DCA 5/23/18)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for failure to raise double jeopardy claims upon determining that such claim failed as matter of law because defendant entered into negotiated plea. Graham v. State, 43 Fla. L. Weekly D1157a (4th DCA 5/23/18)

VAGUENESS: Court erred in dismissing charge of operating an unlicensed pain management clinic on grounds of vagueness because the terms "primarily" and "pain" are undefined. The Court improperly conflated the as-applied and facial vagueness challenges, addressing them as one and the same. An "as applied" challenge requires an evidentiary hearing and findings of fact. State v. Crumbley, 43 Fla. L. Weekly D1155c (2nd DCA 5/23/18)

STAND YOUR GROUND: Amendment of SYG statute which shifted burden of proof from defendant to state does not apply retroactively. Bailey v. State, 43 Fla. L. Weekly D1153b (3rd DCA 5/23/18)

NEWLY DISCOVERED EVIDENCE: Court properly denied relief based on newly discovered evidence where the evidence was discoverable at time of VOP hearing. Kellum v. State, 43 Fla. L. Weekly D1146a (1st DCA 5/18/18)

DOUBLE JEOPARDY: Dual convictions for solicitation and traveling to meet minor does not violate Double Jeopardy where based on multiple discrete solicitations, including by using separate email accounts. Sherman v. State, 43 Fla. L. Weekly D1145a (1st DCA 5/18/18)

DOUBLE JEOPARDY: Dual convictions for using a computer to solicit child for sex and traveling for sex with a child after solicitation does not violate double jeopardy where record demonstrates that defendant made two or more solicitations. Dygart v. State, 43 Fla. L. Weekly D1143a (1st DCA 5/18/18)

DRIVER'S LICENSE REVOCATION: Where licensee was arrested on two separate occasions within a short period of time for driving under the influence, and was later convicted of both offenses on the same day, his license was properly revoked for a period of 5 years pursuant to statute

providing for 5-year suspension upon a second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction. Section 322.28(2)(e) creates the legal fiction that the earlier offense is a "prior conviction." Boulineau v. DHSMV, 43 Fla. L. Weekly D1141a (1st DCA 5/18/18)

DICTIONARY WARS: To "deem" is "to treat (something) as if it were really something else." Boulineau v. DHSMV, 43 Fla. L. Weekly D1141a (1st DCA 5/18/18)

COMPETENCY: Conviction reversed where defendant was found incompetent a year and a half before trial, and record does not contain a subsequent order finding him competent. Jones v. State, 43 Fla. L. Weekly D1140e (1st DCA 5/18/18)

COMPETENCY: Court erred by finding defendant competent to proceed based upon parties' stipulation rather than making independent determination. Burney v. State, 43 Fla. L. Weekly D1139b (5th DCA 5/18/18) http://5dca.org/Opinions/Opin2018/051418/5D17-1619.op.pdf

DOUBLE JEOPARDY: Defendant cannot be convicted of both dealing in stolen property and petit theft. Blocker v. State, 43 Fla. L. Weekly D1139a (5th DCA 5/18/18)

NEWLY DISCOVERED EVIDENCE: Changes in the law–Hurst-is not new evidence, and so a new trial is not warranted. Walton v. State, 43 Fla. L. Weekly S237a (FLA 5/17/18)

DEATH PENALTY-DISPROPORTIONATE: Death penalty is not disproportionate where the co-defendant's life sentence was the result of a plea agreement or for purely legal reasons. Walton v. State, 43 Fla. L. Weekly S237a (FLA 5/17/18)

COSTS-INDIGENT DEFENDANT: Indigent defendants represented by private counsel pro bono are entitled to file motions pertaining to appointment and costs of experts, mitigation specialists, and investigators ex parte and under seal, with service to Justice Administrative Commission and notice to State Attorney's Office, and to have any hearing on such motion ex parte, with only the defendant and the Commission present. Andrews v. State, 43 Fla. L. Weekly S228b (FLA 5/17/18)

POST CONVICTION RELIEF-APPEAL: Court has no jurisdiction to rule on motion for post conviction relief where an appeal of an earlier motion raising substantially similar claims is pending. Hill v. Jones, 43 Fla. L. Weekly D1136b (1st DCA 5/17/18)

DOUBLE JEOPARDY: Separate convictions on two counts of resisting office without violence violate double jeopardy where there is a single criminal episode and a single criminal act, here, running away and struggling on the ground when caught. A continuous resistance to an ongoing attempt to effectuate a person's arrest or detainment constitutes only one single instance of resisting an officer. Johnson v. State, 43 Fla. L. Weekly D1136a (1st DCA 5/17/18)

DOUBLE JEOPARDY: Separate convictions on counts of sale of meth and count of meth do not violate double jeopardy where offenses are based on different contraband found at different locations through different searches. Robinson v. State, 43 Fla. L. Weekly D1135b (1st DCA 5/17/18)

JOA-GRAND THEFT: Defendant who never deposited restaurant money she was to take to the bank may be convicted of grand theft. Crenshaw v. State, 43 Fla. L. Weekly D1135a (1st DCA 5/17/18)

PROBATION REVOCATION: Defendant may be found to have violated probation for failure to seek employment. Thompson v. State, 43 Fla. L. Weekly D1130a (1st DCA 5/17/18)

VOP-(DISSENT): "Simple economic realities suggest that a household overseen by an impoverished twenty-something single mom with three young children subsisting on government programs in a challenging job market is not a great candidate for significant discretionary cash flow. . .Simply because a financially indigent mom receives a smidgen of cash from a part-time seasonal janitorial job doesn't mean she can spare a dime in the face of pressing family financial duties or debts." Thompson v. State, 43 Fla. L. Weekly D1130a (1st DCA 5/17/18)

GRAND THEFT-VALUE: Evidence was insufficient to establish that the value of a stolen used I-phone 6 was in excess of $300 based on unobjected testimony that the Victim and his mother "checked online how much a used phone with . .

. no damage . . . would be worth" and said $340.00. D.D. v. State, 43 Fla. L. Weekly D1126c (2nd DCA 5/16/18)

POST CONVICTION RELIEF: Counsel was ineffective for failing to move to dismiss information charging defendant with DWLS when he never possessed a Florida driver's license, notwithstanding that he pled to the charge. Myers v. State, 43 Fla. L. Weekly D1126b (2nd DCA 5/16/18)

JOA-PARAPHERNALIA: Juvenile entitled to judgment of dismissal on two counts of possession of drug paraphernalia where evidence failed to establish that residue on alleged paraphernalia was a controlled substance. R.C. v. State, 43 Fla. L. Weekly D1126a (2nd DCA 5/16/18)

10-20-LIFE-CONSECUTIVE: Consecutive mandatory minimum sentences are unlawful when weapon was not discharged. Jennings v. State, 43 Fla. L. Weekly D1125a (2nd DCA 5/16/18)

IMPEACHMENT-HOSTILE WITNESS: Court erred by not allowing Defendant to call two witnesses-one of whom denied being offered offered money by the victim's family to implicate the Defendant, and the second that the first excluded witness had told him he had been offered money. Due process allows calling a hostile witness in order to impeach him by prior inconsistent statements. Brooks v. State, 43 Fla. L. Weekly D1123e (2nd DCA 5/16/18)

SEARCH AND SEIZURE-BLOOD DRAW: Fourth Amendment does not prohibit a warrantless blood draw of an unconscious person, incapable of giving actual consent, be pursuant to §316.1932(1)(c). Question certified. McGraw v. State, 43 Fla. L. Weekly D1122b (4th DCA 5/16/18) Speedy Trial: Provision of speedy trial rule providing for 90-day speedy trial extension in cases where a trial has been delayed by an "appeal" by the state applies whenever a trial has been delayed by an appeal, including petitions for extraordinary writs. Buhler v. State, 43 Fla. L. Weekly D1119b (4th DCA 5/16/18)

PRR: It is unnecessary for jury to make requisite findings for PRR sentence. Chavis v. State, 43 Fla. L. Weekly D1114b (4th DCA 5/16/18)

COSTS: There is no need to cite the ordinance for which court costs are imposed. Recognizes but does not certify conflict. Chavis v. State, 43 Fla. L. Weekly D1114b (4th DCA 5/16/18)

COMPETENCY: Court erred in accepting defendant's plea agreement without making inquiries into his competency evaluation after an expert was appointed to determine competency of defendant and without entering written order on the issue. Charles v. State, 43 Fla. L. Weekly D1114a (4th DCA 5/16/18)

COMPETENCY: Court erred by failing to either conduct a competency hearing or enter an order as to the defendant's competency before accepting his plea. Hernandez v. Hernandez, 43 Fla. L. Weekly D1112b (4th DCA 5/16/18)

DISCOVERY-MEDICAL EXAM OF VICTIM: Court cannot compel victim to submit to a neurological examination to determine whether he can be present at the trial. The exam infringes upon the victim's right to remain inviolate from an invasive examination not authorized or required by law. State v. Kersting, 43 Fla. L. Weekly D1112a (4th DCA 5/16/18)

POST CONVICTION RELIEF-TIMELINESS: Supplemental motion was both authorized and timely where motion was considered filed on date of stamp from the prison mail system and defendant submitted his supplemental motion days before court ordered state to respond to his original post conviction motion. Haspel v. State, 43 Fla. L. Weekly D1111a (4th DCA 5/16/18)

APPEAL-PRESERVATION: Any error in admitting a multi-colored ski mask that was not used in the crime and by permitting an expert witness to testify

to an area outside of his expertise is waived. “Because most of the issues were not properly preserved for review, we affirm and we write to once more impress upon counsel the duty to be mindful of preserving the right to appeal, particularly within the rigors of an ongoing jury trial.” Pierre v. State, 43 Fla. L. Weekly D1110b (4th DCA 5/16/18)

SCORESHEET: Any error in scoresheet is irrelevant because record shows that trial judge would have imposed same sentence regardless. Henion v. State, 43 Fla. L. Weekly D1110a (4th DCA 5/6/18)

POST CONVICTION RELIEF: Claim that counsel was ineffective for failing to call alibi witness was facially sufficient where defendant identified witness, specified content of witness’s testimony, alleged that witness was available to testify at trial, and sufficiently alleged that failure to call witness resulted in prejudice. McCullough v. State, 43 Fla. L. Weekly D1109a (4th DCA 5/16/18)

JURY INSTRUCTION-ALTERNATE THEORY: Court did not err in giving instruction on the dual theories of premeditation and felony murder where state presented two legally adequate grounds for first-degree murder, premeditation and felony murder. Vassor v. State, 43 Fla. L. Weekly D1107a (4th DCA 5/16/18)

SEARCH AND SEIZURE-PRECAUTIONARY SWEEP: Bedroom which was directly adjacent to bathroom where defendant was apprehended and was between four and ten feet from area of arrest was “immediately adjoining” place of arrest, and officers did not need articulable suspicion to conduct precautionary sweep of bedroom. Copeland v. State, 43 Fla. L. Weekly D1101a (1st DCA 5/16/18)

LESSER INCLUDED: Court did not err by denying request for instruction on permissive lesser-included offense of battery where charging document did not allege that defendant's touching of stepdaughter's breasts was against stepdaughter's will. Stoffel v. State, 43 Fla. L. Weekly D1099f (1st DCA 5/16/18)

POST CONVICTION RELIEF-FINGERPRINTS: Defendant is entitled to a hearing on his claim that counsel was ineffective for ailing to properly challenge sufficiency of fingerprint evidence. Where fingerprint evidence is relied upon to establish that the defendant committed the crime, the circumstances must be such that the print could have been made only at the time the crime was committed. O'Steen v. State, 43 Fla. L. Weekly D1099e (1st DCA 5/16/18)

10-20-LIFE-CONSECUTIVE: Where jury found defendant possessed firearm but did not find he discharged it, it was error to sentence defendant to consecutive mandatory minimum sentences for multiple offenses committed during the same criminal episode. Durant v. State, 43 Fla. L. Weekly D1098a (3rd DCA 5/16/18)

CHILD HEARSAY: Court's conclusory ruling that child hearsay is admissible is inartful but adequate. Roberts v. State, 43 Fla. L. Weekly D1094a (3rd DCA 5/16/18)

COURT RECORDS-CONFIDENTIALITY: Online blog post, including mug shot from a prior criminal proceeding, since sealed, was not a court record connected with the official business of a judicial branch entity. Rivero v. Farach, 43 Fla. L. Weekly D1091a (3rd DCA 5/16/18)

INTERFERING WITH CUSTODY: Defendant who attempted to get minor into his car by offering him money was properly convicted of interfering with custody of a minor . It is not required that minor be physically taken from his parents' custody. Lindemuth v. State, 43 Fla. L. Weekly D1081a (3rd DCA 5/16/18)

LIFE SENTENCE-MINOR: The finding of facts on aggravating circumstances and mitigating factors was for purposes of determining whether to impose a life sentence for a minor does not need to be found by a jury. Apprendi inapplicable. Hernandez v. State, 43 Fla. L. Weekly D1079a (3rd DCA 5/16/18)

EVIDENCE: First Amendment does not prohibit admission of Defendant's preference for "death/metal music," including songs with lyrics detailing slashing of victims' throats where his continued interest in violent music and lyrics replicating the horrific murder and attempted murder he committed were directly relevant to his lack of remorse, his indifference to the suffering of the victims and their families, and Hernandez's prospects for rehabilitation. Hernandez v. State, 43 Fla. L. Weekly D1079a (3rd DCA 5/16/18)

WITNESS TAMPERING: State is not required to prove that victim was attempting to contact law enforcement at the time defendant attempted to intimidate, use physical force, or threaten the victim. Conflict certified. Williams v. State, 43 Fla. L. Weekly D1073a (2nd DCA 5/11/18)

QUOTATION: "I. . .note that as a visiting judge, I necessarily wear the home team's jersey and thereby agree with my Second District colleagues to certify conflict in this case with McCray v. State,. . ., a decision of my native court. . .In short, . . . a. . .reasonable person. . .must follow the maxim, 'When in Rome, do as the Romans do,' which is "classically stated, 'Si fueris Romae, Romano vivito more; si fueras alibi, vivito sicut ibi.' St. Ambrose (c. 340-397).

. .Stated differently, “should you be in the Second District, live in the Second District’s manner; should you be elsewhere, live as they do there.” Williams v. State, 43 Fla. L. Weekly D1073a (2nd DCA 5/11/18)

POST CONVICTION RELIEF: Failure to object to omission of justifiable and excusable homicide instructions in a manslaughter case is remediable under rule 3.850 based on ineffective assistance of counsel where evidence at trial could have supported defense of justifiable or excusable homicide and defendant was actually convicted of manslaughter. Arteaga v. State, 43 Fla. L. Weekly D1066a (2nd DCA 5/11/18)

STAND YOUR GROUND: Statutory amendment which changes burden of proof from defendant to state at Stand Your Ground immunity hearing is not unconstitutional as a violation of separation of powers, but the amendment does not apply retroactively to a crime committed prior to the enactment of the amendment. Conflict certified. Love v. State, 43 Fla. L. Weekly D1065b (3rd DCA 5/11/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to request an independent act instruction. Maxwell v. State, 43 Fla. L. Weekly D1064d (5th DCA 5/11/18)

COMPETENCY: Where trial court had previously found defendant incompetent to proceed and committed defendant to DCF, and mental health professionals filed report representing that defendant’s competency had been restored, trial court committed fundamental error when it found defendant competent to proceed based upon stipulation of parties and expert’s report which court had not reviewed, rather than making its own independent determination regarding defendant’s competency. The court must always make an independent determination as to a defendant’s competency to

proceed. Accepting a stipulation of the parties as to competency is not permitted. Bynum v. State, 43 Fla. L. Weekly D1063a (5th DCA 5/11/18)

NELSON HEARING: Court erred by failing to conduct adequate Nelson inquiry before discharging defendant's fourth court-appointed counsel and instead proceeding directly to Faretta hearing. Webb v. State, 43 Fla. L. Weekly D1062a (5th DCA 5/11/18)

SENTENCE REVIEW-MINOR: Defendant who was sentenced to thirty years' imprisonment for attempted felony murder and a concurrent fifteen-year sentence for attempted armed robbery committed when he was a juvenile is entitled to resentencing where he was sentenced after the sentence review stature for crimes committed before and the sentences provided for no judicial review to allow early release. Morris v. State, 43 Fla. L. Weekly S223a (FLA 5/10/18)

RULES-AMENDMENT-RECIPROCAL DISCOVERY: Only reports or statements of experts that the defendant intends to use at a hearing or at trial must be disclosed to the prosecutor. In Re : Amendments to R. 3.220, 43 Fla. L. Weekly S222b (FLA 5/10/18)

JURY INSTRUCTIONS: Human Trafficking instruction amended. 43 Fla. L. Weekly S222a (FLA 5/10/18)

PRISON RELEASEE REOFFENDER: Burglary with Assault of Battery is not a qualifying offense for PRR. The use or threat of physical force or violence must be a necessary element of the crime, and if the crime may be committed without the "use or threat of physical force or violence," then that crime does not qualify. Crosley v. State, 43 Fla. L. Weekly D1055a (1st DCA 5/10/18)

COMPETENCY: A defendant's placement in a secure facility may not exceed the maximum sentence for the crime for which the defendant was charged. Court is not required to terminate jurisdiction for involuntarily committed incompetent defendant where counts, if structured consecutively, would not exceed the statutory maximum. Rule of lenity does not apply to commitments under section 916.303, since statute does not reflect intent to punish. Vansmith v. State, 43 Fla. L. Weekly D1053a (1st DCA 5/10/18)

MOTION FOR NEW TRIAL: JOA is required when the court is of the opinion that the evidence is insufficient to warrant a conviction; a motion for new trial should be granted when the verdict is contrary to law or the weight of the evidence. Bell v. State, 43 Fla. L. Weekly D1052c (1st DCA 5/10/18)

SEARCH AND SEIZURE-RESIDENCE-CONSENT: Previous encounters between narcotics agents and former owner of property in which former owner gave agents authority to enter property and proceed to side door of main house and then to barn if no one responded to knock on side door not basis for denying motion to suppress where consent was given approximately 3 years prior to date of search. Osorio v. State, 43 Fla. L. Weekly D1043a (4th DCA 5/9/18)

SEARCH AND SEIZURE-RESIDENCE-REASONABLE EXPECTATION OF PRIVACY: Defendant has a reasonable expectation of privacy as to side door of main house or barn where property was posted with "No Trespassing" signs and there was an aggressive pitbull roaming the property. Officers are not permitted to exit the front door area and physically enter or look into other portions of the home or its curtilage pursuant to a "knock and talk." Osorio v. State, 43 Fla. L. Weekly D1043a (4th DCA 5/9/18)

STATEMENTS OF DEFENDANT-PRE-MIRANDA STATEMENTS: Court erred in permitting officer to relate that defendant responded to question as

to why he was running by stating, "I was shot at by a black male and am scared for my life." When an officer's questions or actions extend beyond requests for basic biographical information and could reasonably be viewed as designed to secure potential incriminating evidence, the questions or actions constitute an interrogation. Good discussion. Senser v. State, 43 Fla. L. Weekly D1040a (4th DCA 5/4/18)

SENTENCING-CONSIDERATIONS: Prosecutor's argument at sentencing that Defendant "has been afforded and given every valuable opportunity in this world. He comes from a very nice family, a very hardworking family, we're venturing to say a wealthy family, a very good-looking family, a white family, an affluent family, a wealthy family, a loving family most importantly," is improper but not reversible absent evidence that the Court was influenced thereby. Senser v. State, 43 Fla. L. Weekly D1040a (4th DCA 5/4/18)

JURORS-CHALLENGE-CAUSE-FIREARM BY FELON: Court erred in denying defendant's motion to strike prospective jurors whose responses indicated that defendant's prior felony conviction would influence their ability to render fair and impartial verdict. Burgess v. State, 43 Fla. L. Weekly D1039a (4th DCA 5/9/18)

PROVIDING FALSE INFORMATION: No nexus is required between giving false information and any harm (in this case, the death of a missing child earlier). Melvin v. State, 43 Fla. L. Weekly D1037c (4th DCA 5/9/18)

UPWARD DEPARTURE: Defendant was convicted of lying about the whereabouts of his missing stepdaughter, whose skeleton was found the next day buried in his back yard. Court erred in finding the Defendant a danger to the community and sentencing the Defendant to an upward departure sentence in prison. Melvin v. State, 43 Fla. L. Weekly D1037c (4th DCA 5/9/18)

COMPETENCY: Court erred by failing to conduct competency hearing before accepting nolo contendere plea of Defendant for whom he had previously ordered a psychological evaluation of competency. Pollock v. State, 43 Fla. L. Weekly D1037a (4th DCA 5/9/18)

ARGUMENT: Prosecutor's argument that defense counsel's attack on the voluntariness of defendant's confession was a lawyering tactic was improper but harmless. Lammons v. State, 43 Fla. L. Weekly D1032a (3rd DCA 5/9/18)

SEARCH AND SEIZURE-OBSCURED TAG: Vehicle was lawfully stopped where the word "Florida" is partially obscured (statute has since been changed effective Jan. 1, 2016). State v. Pena, 43 Fla. L. Weekly D1030a (3rd DCA 5/9/18)

SEARCH AND SEIZURE-PAT DOWN: Officers who arrived at the restaurant where a large fight had been reported, and were told by a waiter that a group of people, including defendant, had been involved in the fight, had probable cause to pat down defendant based on the continued movements of his hands to the outside of the pocket of his heavy jacket. State v. Maxwell, 43 Fla. L. Weekly D1028a (3rd DCA 5/9/18)

STAND YOUR GROUND: Amendment to Stand Your Ground law is procedural and applies retroactively. Statutory changes to the burden of proof are invariably deemed procedural in nature for purposes of retroactive application. Question Certified. Because change in law occurred while his appeal was under appeal and was therefore pending, the change applies to Defendant. Defendant is entitled to a new SYG hearing. Martin v. State, 43 Fla. L. Weekly D1016c (2nd DCA 5/4/18)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Court erred in finding that newly discovered evidence in form of the sworn statement confessing to having committed the crimes himself was not credible without leaving an evidentiary hearing. Grays v. State, 43 Fla. L. Weekly D1015b (5th DCA 5/4/18)

MINOR-REVIEW HEARING: Where minor had originally been sentenced to a 40-year sentence followed by lifetime sex offender probation, court erred in modifying the sentence to allow for review hearing without also holding a resentencing hearing. Ruiz v. State, 43 Fla. L. Weekly D1015a (5th DCA 5/4/18)

SEARCH AND SEIZURE-STOP AND FRISK: Possession of a concealed firearm, without more does not justify a Terry stop. Neither a tip from a restaurant employee that customer appeared to have a gun nor officer's observation of a bulge in his clothing is reasonable suspicion of criminal activity. Burnett v. State, 43 Fla. L. Weekly D1014a (5th DCA 5/4/18)

NEWLY DISCOVERED EVIDENCE: Affidavit of associate medical examiner relating to the slim possibility that victim's internal genital injuries could have been caused by a kick was not newly discovered evidence that would support theory that defendant was innocent of sexual battery. Taylor v. State, 43 Fla. L. Weekly S212a (FLA 5/3/18)

DEATH PENALTY: Hurst does not apply to defendants whose convictions became final before Ring v. Arizona. Taylor v. State, 43 Fla. L. Weekly S212a (FLA 5/3/18)

BAD DATE: "Taylor testified that when he and Birch reached the dugout they attempted to have vaginal intercourse for less than a minute. She ended the

attempt at intercourse and began performing oral sex on him. According to Taylor, he complained that her teeth were irritating him and attempted to pull away. She bit down on his penis. He choked her in an attempt to get her to release him. After he succeeded in getting her to release her bite, he struck and kicked her several times in anger." She died. Taylor v. State, 43 Fla. L. Weekly S212a (FLA 5/3/18)

RETROACTIVITY (DISSENT): Hurst should apply retroactively. Good discussion of retroactivity. "[T]hat is how the majority of this Court draws its determinative, albeit arbitrary, line. As a result, Florida will treat similarly situated defendants differently — here, the difference between life and death — for potentially the simple reason of one defendant's docket delay. Vindication of these constitutional rights cannot be reduced to either fatal or fortuitous accidents of timing." Taylor v. State, 43 Fla. L. Weekly S212a (FLA 5/3/18)

RED LIGHT CAMERAS: Local government has authority under section 316.0083(1)(a), Florida Statutes (2014), to contract with a private third-party vendor to review and sort information from red light cameras. Jimenez v. State, 43 Fla. L. Weekly S199c (FLA 5/3/18)

DEATH PENALTY: Hurst does not apply retroactively to death penalty which became final after Ring. Jones v. State, 43 Fla. L. Weekly S199b (FLA 5/2/18)

DEATH PENALTY: Hurst does not apply retroactively to death penalty which became final after Ring. Reaves v. State, 43 Fla. L. Weekly S199a (FLA 5/2/18)

CTS-DETAINER: Absent the execution of an arrest warrant, a defendant who is in jail in a specific county pursuant to an arrest on one or more charges need not be given credit for time served in that county on charges in another county when the second county has only lodged a detainer against the defendant. Wood v. State, 43 Fla. L. Weekly D996a (3rd DCA 5/2/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel failed to advise him that self-defense was available in murder case when victim/wife stabbed him three times, injured his chin, and broke his tooth. Sosataquechel v. State, 43 Fla. L. Weekly D992c (3rd DCA 5/2/18)

RE-SENTENCING: Court erred in failing to have defendant present for resentencing after court had vacated two of five counts upon which defendant had previously been sentenced. Poma v. State, 43 Fla. L. Weekly D992b (3rd DCA 5/2/18)

POST CONVICTION RELIEF-ERROR CORAM NOBIS: Court properly treated defendant's petition for writ of error coram nobis as a motion for post conviction relief and denied it as untimely. A petition for writ of error coram nobis must satisfy the two-year limitation of rule 3.850. Kemp v. State, 43 Fla. L. Weekly D992a (3rd DCA 5/2/18)

CONSTRUCTIVE POSSESSION-FIREARM: Evidence that juvenile was sole occupant of the back seat of a vehicle occupied by two other persons and that a firearm was on the back seat in the vicinity of juvenile was insufficient to prove that juvenile was in actual or constructive possession of firearm where there was no evidence that juvenile had dominion and control over firearm. Conflict certified. D.V. v. State, 43 Fla. L. Weekly D988a (3rd DCA 5/2/18)

MINOR SENTENCED AS ADULT: Where defendant was sentenced under statute which required sentencing court to make "suitability determination" regarding imposition of adult sanctions, but did not require consideration of individualized factors required by Miller v. Alabama, defendant entitled to new sentencing hearing on remand. Johnson v. State, 43 Fla. L. Weekly D985b (2nd DCA 5/2/18)

COSTS: Costs stricken for failure to cite statutory authority in written cost order. Greene v. State, 43 Fla. L. Weekly D985a (2nd DCA 5/2/18)

DISCOVERY: Burglary conviction reversed where State falsely and repeatedly told defense counsel that it had no DNA report and that no DNA testing had occurred. DNA report showed another person's DNA was found at the crime scene. Denton v. State, 43 Fla. L. Weekly D983a (4th DCA 5/4/18)

DISORDERLY CONDUCT-JOA: JOA for disorderly conduct is required where Defendant became loud and boisterous and cussed out cops when store refused to sell him a lizard. Mere boisterous behavior, even if it disrupts the operations of a business and draws onlookers' attention, is not by itself enough to sustain a disorderly conduct conviction. Defendant's act of punching cop upon arrest cannot be considered in determining whether his previous behavior amounted to disorderly conduct. St. Fleury v. State, 43 Fla. L. Weekly D979a (4th DCA 5/2/18)

JIMMY RYCE: 19-month-old evaluation is not too stale to preclude the defendant being involuntarily committed as a sexually violent predator. Stengel v. State, 43 Fla. L. Weekly D978a (4th DCA 5/2/18)

EVIDENCE-FACEBOOK: Facebook video showing the Defendant sitting in the stolen car and wearing the victim's stolen watch is admissible in carjacking case. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

EVIDENCE-AUTHENTICATION-FACEBOOK: Social media videos are admissible in criminal cases based on sufficient evidence that the video depicts what the government claims, even though government did not call creator of videos, search the device which was used to create the videos, or obtain information directly from social media website. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

BEST EVIDENCE RULE: Best Evidence Rule does not preclude witness from identifying Defendant from a Facebook video where the original evidence was available and presented. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

EXPERT: The fact that the digital forensic examiner, while describing his actions, also explained for the jury how Facebook videos are broadcast and then saved to a Facebook profile timeline, did not convert his factual testimony into expert testimony. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18) FACEBOOK

VIDEO-AUTHENTICATION: Authentication of a video is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The mere fact that an item appears online does not make it self-authenticating, but authentication is a low threshold and can be satisfied by testimony that a witness downloaded a Facebook video. Proponent of Facebook video does not require testimony from someone who recorded the video or who appeared in the video. If the video's distinctive characteristics and content, in conjunction with circumstantial evidence, are sufficient to

authenticate the video, then the government has met its authentication burden. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

IDENTIFICATION: Non-eyewitnesses may testify as to the identification of persons depicted or heard on a recording so long as it is clear the witness is in a better position than the jurors to make those determinations. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

DARWIN AWARD WINNER: The defendant appeared in the Facebook video just a few hours after the first carjacking, and less than an hour after the second carjacking, driving the first victim's car, wearing the first victim's watch, and stating "we live" when the video was recording, while a codefendant counted the first victim's money. Lamb v. State, 43 Fla. L. Weekly D973a (4th DCA 5/2/18)

MINOR-LENGTHY SENTENCE: 30-year prison sentence for nonhomicide if committed by a minor does not violate the 8th amendment or Graham. Defendant is not entitled to sentence review. Florida Supreme Court has not plainly required that all term-of-years-juvenile offender sentences provide an mechanism for early release. "While the Court does not believe that the Supreme Court has yet to mandate resentencing of all juveniles sentenced to a term of years without a review mechanism, this issue is ripe for appellate guidance. Certainly there is considerable confusion surrounding the status of juvenile offenders whose original sentences did not violate Graham." Conflict certified. Hart v. State, 43 Fla. L. Weekly D970a (4th DCA 5/2/18)

PROBATION-REVOCATION-JURISDICTION: Court lacks jurisdiction to revoke probation where time spent on probation and time of incarceration exceeded the statutory maximum for the offense. Credit must be given for time previously served on probation. Coppinger v. State, 43 Fla. L. Weekly D969b (4th DCA 5/2/18)

POST CONVICTION RELIEF: Claim that counsel was ineffective for advising defendant to reject plea offer because he was confident he would win at trial is legally insufficient where Defendant failed to allege that State would not have withdrawn the offer and that Court would have accepted it. Brown v. State, 43 Fla. L. Weekly D969a (4th DCA 5/2/18)

POST CONVICTION RELIEF-RULE 3.800(a): Rule 3.800(a) motion is not correct vehicle for challenging underlying escape conviction. De Juan v. State, 43 Fla. L. Weekly D955a (1st DCA 4/30/18)

HABITUAL VIOLENT FELONY OFFENDER-PREDICATE CONVICTIONS: South Carolina crime of aggravated assault with intent to kill does not require a deadly weapon, is therefore broader than Florida's crime of aggravated assault, and accordingly cannot be used as a predicate conviction for purpose of the Habitual Violent Felony Offender designation. Underlying factor not determinative of whether it qualifies as a predicate offense. Crimes are not substantially similar. Howard v. State, 43 Fla. L. Weekly D954a (1st DCA 4/30/18)

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TRANSFERRED INTENT-BATTERY SCHOOL EMPLOYEE: Evidence was sufficient that the juvenile intended the teacher, not just the other student with whom he was fighting, so that transferred intent does not apply, and the Child is appropriately convicted of the felony offense. If the doctrine of transferred intent applied, the child could only be convicted of a misdemeanor battery. T.K. v. State, 43 Fla. L. Weekly D951b (1st DCA 4/30/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on the claim that counsel was ineffective for failing to object to verdict form. Thomas v. State, 43 Fla. L. Weekly D948a (5th DCA 4/27/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call witness to testify that Defendant did not possess firearm, notwithstanding that the witness had made an inconsistent but explainable prior inconsistent statement. McIntosh v. State,43 Fla. L. Weekly D947c (5th DCA 4/27/18)

MINOR-JUDICIAL REVIEW: Defendant receives a lengthy sentence for the offense committed by juveniles entitled to a full sentencing review hearing. Maxwell v. State, 43 Fla. L. Weekly D947b (5th DCA 4/27/18)

DEATH PENALTY: Defendant's waiver of post-conviction proceedings precludes him from claiming relief under Hurst. Trease v. State, 43 Fla. L. Weekly S192a (FLA 4/26/18)

DEATH PENALTY: Hurst does not apply retroactively to a sentence final prior to Ring v. Arizona. Evans v. State, 43 Fla. L. Weekly S186b (FLA 4/26/18)

APPEALS: Court lacks jurisdiction to review order deciding that defendant was not entitled to post conviction discovery. Robinson v. State, 43 Fla. L. Weekly D944c (1st DCA 4/25/18)

APPEALS: Appellate Court lacks jurisdiction to consider defendant's argument that trial court erred by imposing restitution after he had filed notice of appeal of convictions and sentences where order in question was filed after the Defendant filed his notice of appeal and the Defendant failed to file a separate notice of appeal of the challenging the restitution order. Okashah v. State, 43 Fla. L. Weekly D944a (1st DCA 4/25/18)

JUDGMENT OF ACQUITTAL-BURGLARY: Evidence was sufficient to disprove affirmative defense that defendant had consent to enter unoccupied home because he knew homeowner and had dated homeowner's sister. Dubois v. State, 43 Fla. L. Weekly D943b (1st DCA 4/25/18)

POST CONVICTION RELIEF-RULE 3.800: Defendant cannot challenge habitual offender sentence under 3.800 by attacking the conviction used to habitualizing him. Smith v. State, 43 Fla. L. Weekly D939a (1st DCA 4/25/18)

ALLOCUTION: Court erred in failing to provide defendant opportunity to make an allocution following violation of probation hearing and prior to sentencing. A criminal defendant prior to sentencing has the opportunity to make an unsworn statement to the sentencing judge in allocution. Hill v. State, 43 Fla. L. Weekly D925a (4th DCA 4/25/18)

COMPETENCY: Court did not err by relying on police reports where Defendant did not object, and in fact offered his own stale reports in evidence. Bittle v. State, 43 Fla. L. Weekly D924a (4th DCA 4/25/18)

HEARSAY-FORFEITURE BY WRONGDOING: Suspicious jail phone calls is insufficient to establish that Defendant calls the witness to be absent for the trial; Court's ruling that Victim's sworn statements were admissible on that basis was erroneous. Joseph v. State, (4th DCA 4/25/18)

EVIDENCE-RAPE SHIELD LAW: Court did not abuse discretion in refusing to allow defendant to cross-exam victim on her prior allegations of rape against Defendant and her employer, even though rape shield law was inapplicable; allegations were irrelevant. Rape Shield Law only applies to consensual sexual activity with someone other than the Defendant. Gomez v. State, 43 Fla. L. Weekly D919a (4th DCA 4/25/18)

HEARSAY-SEXUALLY VIOLENT PREDATORS: Jimmy Ryce commitment reversed where court allowed hearsay testimony on the alleged facts underlying three prior arrests for sex offenses, two of which were No Info'ed and one which resulted in a conviction for simple battery. Williams v. State, 43 Fla. L. Weekly D918a (4th DCA 4/25/18)

ARGUMENT: Prosecutor's comments on the Defendant's failure to respond to accusations in a phone call with his wife was an improper comment on silence and an improper shifting of the burden of proof. An argument emphasizing a defendant's failure to proclaim his innocence is the equivalent of a burdenshifting argument. Good discussion. Lenz v. State, Fla. L. Weekly D915b (4th DCA 4/25/18)

PEREMPTORY CHALLENGE: Defense counsel's strike of a female flag football coach was not pretextual. Court's failure to engage in a meaningful genuineness analysis is reversible error. Lenz v. State, Fla. L. Weekly D915b (4th DCA 4/25/18)

MOTION FOR NEW TRIAL: Court's failure to articulate the standard applied ruling on motion for new trial is not preserved for review by objection nor did it rise to fundamental error. "Here, the trial court did not make any eyebrow-raising comment." Court's failure to articulate the standard it applied when ruling on motion was not preserved for review by objection and did not rise to level of fundamental error. Mitchell v. State, 43 Fla. L. Weekly D914a (4th DCA 4/25/18)

POST CONVICTION RELIEF: The claim that Defendant would not have pled guilty and wouldn't have proceeded to trial if he know that DNA evidence was inaccurate sufficient to warrant an evidentiary hearing. Theodore v. State, 43 Fla. L. Weekly D912a (4th DCA 4/25/18)

HARMLESS ERROR: Failure to suppress the Defendant's 3rd interview with police, conducted after an attorney was trying to invoke his right to remain silent, was harmless since it already confessed in the 2nd interview. Santos v. State, 43 Fla. L. Weekly D910b (4th DCA 4/25/18)

COMPETENCY OF DEFENDANT: Court exceeded its jurisdiction by requiring DCF to involuntarily commit Defendant, an octogenarian with dementia and eight undersized lobsters, to a mental hospital, where there is no evidence as to potential probability that he would regain competency in the reasonably foreseeable future. DCF v. Garcia, 43 Fla. L. Weekly D882a (3rd DCA 4/24/18)

ILLEGAL SENTENCE: Alleged defect in information which did not give notice of potential enhanced sentence does not make sentence illegal. Cannot be corrected under 3.800. Sharpe v. State, 43 Fla. L. Weekly D880d (1st DCA 4/20/18)

SENTENCING: Oral pronouncement of credit time served controls over written order. Carter v. State, 43 Fla. L. Weekly D880a (1st DCA 4/20/18)

POST CONVICTION RELIEF: HVFO must be orally pronounced. Motion to correct based on alleged failure to orally pronounce HFVO designation cannot be denied without attachment of transcript refuting claim. Jones v. State,43 Fla. L. Weekly D878b (1st DCA 4/20/18)

JUDGMENT NON OBSTANTE VEREDICTO: Court erred by deferring to jury verdict ("the jury did not agree. . ., so I will deny the motion" in considering

whether the verdict I contrary to the manifest weight of the evidence. Jordan v. State, 43 Fla. L. Weekly D877b (1st DCA 4/20/18)

SEXUAL PREDATOR: An adjudication of delinquency counts as a prior (though not a substantive offense) for purposes of sexual predator designation. Frandi v. State, 43 Fla. L. Weekly D876a (1st DCA 4/20/18)

POST CONVICTION RELIEF: Court may not deny 3.800 as successive where specific issue had not been raised previously. Williams v. State, 43 Fla. L. Weekly D872a (2nd DCA 4/20/18)

PLEA-VOLUNTARINESS: Court erred in denying claim that plea was involuntary because defendant was not advised that unless sentences were ordered to be served concurrently with sentences in prior cases which defendant was serving on conditional release, the sentences would be served consecutively to the prior sentences. The imposition of consecutive sentences for offenses not charged in the same information is a direct consequence of the plea. Larson v. State, 43 Fla. L. Weekly D865f (2nd DCA 4/20/18)

POST CONVICTION RELIEF: Claim that counsel was ineffective for failure to investigate and call material witness was sufficient to require attachment of portions of record. Anderson v. State, 43 Fla. L. Weekly D864b (5th DCA 4/20/18)

POST CONVICTION RELIEF: Defendant is entitled to hearing or attachment of records on allegation that counsel misadvised that Defendant would not be sentenced to more than his codefendants. Byron v. State, 43 Fla. L. Weekly D864a (5th DCA 4/20/18)

VIOLENT FELONY OFFENDER: Aggravated assault with a deadly weapon is a qualifying offense for Violent Felony Offender; Aggravated assault with the intent to commit a felony is not. McNair v. State, 43 Fla. L. Weekly D863a (5th DCA 4/20/18)

SELF-DEFENSE: JOA is properly denied where evidence of self-defense is equivocal. Williams v. State, 43 Fla. L. Weekly S183a (FLA 4/19/18)

SENTENCING-MINOR: Defendant who was sentenced to thirty-five years' imprisonment for murder committed when defendant was a juvenile and twentyfive years with a twenty-five mandatory minimum for nonhomicide committed when defendant was juvenile is entitled to resentencing pursuant to chapter 2014-220. Williams v. State, 43 Fla. L. Weekly S183a (FLA 4/19/18

PRISON RELEASE REOFFENDER: Defendant may be sentenced as PRR for new offense where had been sentenced to prison but released on credit time served before being transferred to DOC. efendant was constructively released from DOC. Conflict certified. Gray v. State, 43 Fla. L. Weekly D853a (4th DCA 4/18/18)

SENTENCING: Court erred in considering juvenile's subsequent arrests without adjudication included in the PDR. C.J. v. State, 43 Fla. L. Weekly D849a (4th DCA 4/18/18)

COMPETENCY: Court may not sentence Defendant without holding a competency hearing after appointing expert for that purpose. Saunders v. State, 43 Fla. L. Weekly D848a (4th DCA 4/18/18)

COMPETENCY: Competency evaluation is not required on the sole basis that the Defendant takes psychotropic medication. Castillo v. State, 43 Fla. L. Weekly D845b (4th DCA 1/18/18)

SENTENCING: Where information charged defendant with simple third-degree felony sale or delivery of MDMA in one count, but designation "(F2)" was added at end of count, leading to a plea of no contest to that incorrectly classified charge, proper remedy is to reverse sentence on that count. Davis v. State, 43 Fla. L. Weekly D842a (4th DCA 4/18/18)

RESTITUTION: Court abused its discretion by requiring defendant to pay restitution in amount of estimated cost to repair damage to vehicle rather than on fair market value at time of loss where no repairs were made or intended to be made. Davis v. State, 43 Fla. L. Weekly D841a (4th DCA 4/18/18)

BURGLARY IN EXCESS OF $1000: Defendant cannot be sentenced to the enhancement of burglary for damage of more than $1000 defendant was convicted one burglary, the repairs exceeded $2000, but was not apportioned between the burglary he was convicted for and that for which he was noticed. Elliot v. State, 43 Fla. L. Weekly D839a (4th DCA 4/18/18)

COSTS: Court erred in imposing Public defender fees above the statutory minimum without notice and an opportunity to be heard. Fournier v. State, 43 Fla. L. Weekly D836a (4th DCA 4/18/18)

RESTITUTION: Court erred in entering a written order determining the amount of restitution without a hearing. Fournier v. State, 43 Fla. L. Weekly D836a (4th DCA 4/18/18)

SEARCH AND SEIZURE: Handcuffing juvenile during the stop did not impermissibly convert the stop into an arrest. Juvenile defendant properly detained and handcuffed for walking in parking lot pulling on car door handles. I.G. v. State, 43 Fla. L. Weekly D832a (3rd DCA 4/18/18)

POST CONVICTION RELIEF: Heggs error must be raised within two years. Distinguishes between a "could-have-been-imposed" standard and a "would have-been-imposed" standard. Masis v. State, 43 Fla. L. Weekly D830a (3rd DCA 4/18/18)

WITHDRAW PLEA: Where defendant pled to one count in return for the state's nolle pross of another count and later withdrew her plea, the State may proceed on the original information without having to file a new information. When a plea of guilty or nolo contendere is withdrawn and accepted by the court, it is as if the plea had never been entered *ab initio*. Small v. State, 43 Fla. L. Weekly D819a (2nd DCA 4/18/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for not objecting to State's missed representations of evidence. Weitz v. State, 43 Fla. L. Weekly D818a (2nd DCA 4/18/18)

COMPETENCY: Court must enter written, not just in oral, determination of competency. Sallee v. State, 43 Fla. L. Weekly D817a (2nd DCA 4/18/18)

DWLS: Defendant cannot be convicted of DWLS as a habitual traffic offender when he had never had a Florida driver's license. Williams v. State, 43 Fla. L. Weekly D802a (1st DCA 4/18/18)

UPWARD DEPARTURE: §775.082, which authorizes trial judge rather than jury to make finding that defendant poses a danger to public and to impose a state prison where scoresheet points are 22 or fewer, is unconstitutional under Sixth Amendment. What's relevant for Sixth Amendment purposes is not the maximum sentence a statute may authorize with additional fact-finding; it is what may be imposed without the judge making her own findings. "The central point of Apprendi and Blakely is that any fact in a judicial proceeding — excepting the fact of a prior conviction — that is used to increase a penalty for a crime beyond the relevant statutory maximum is unconstitutional because a jury, and not a judge, is entrusted with that responsibility under the Sixth Amendment." Conflict certified. Booker v. State, 43 Fla. L. Weekly D795a (1st DCA 4/18/18)

APPEAL-MOOTNESS: Appeal of sentence is moot where defendant has already served the sentence. Jones v. State, 43 Fla. L. Weekly D794b (1st DCA 4/17/18)

10-20-LIFE-AGGRAVATED ASSAULT: Under statute in effect at time defendant committed offenses, aggravated assault was included in list of enumerated felonies for which mandatory minimum sentences were required, and subsequent amendment of statute removing aggravated assault from that list did not apply to resentencing. Sheaffers v. State, 43 Fla. L. Weekly D794a (1st DCA 4/17/18)

RESISTING WITH VIOLENCE: Officers were in the lawful performance of legal duty when they accompanied DCF on a welfare check and entered the backyard after the Defendant had previously threatened to "dismember DCF employees and to throw their body parts into a neighbor's yard if DCF entered his home." Exigent circumstances existed. Sosnowski v. State, 43 Fla. L. Weekly D789a (1st DCA 4/17/18)

JOA: JOA is properly denied where witnesses saw Defendant firing gun and throwing bricks thru the window the trailer; conflicting testimony is not the basis for judgment of acquittal. Brown v. State, 43 Fla. L. Weekly D788e (1st DCA 4/17/18)

LEAVING SCENE OF CRASH: Defendant cannot be convicted of leaving the scene of a crash causing damage where there is no damage to the building with which the defendant of his vehicle collided. Dortch v. State, 43 Fla. L. Weekly D786a (2nd DCA 4/13/18)

SEARCH AND SEIZURE-INVESTIGATORY STOP: One may not be detained on the basis of reasonable suspicion of one's companion, who wore a "potsmoking sailor hair design," whatever that is. Johns v. State, 43 Fla. L. Weekly D784a (2nd DCA 4/13/18)

CHILD PORN: State is not required to use an expert to establish the age of the actors in alleged child porn; jury may make that determination. Krise v. State, 43 Fla. L. Weekly D782e (5th DCA 4/13/18)

COMPETENCY OF DEFENDANT: Court must enter a written order reflecting finding of competency. Pavilus v. State, 43 Fla. L. Weekly D782b (5th DCA 4/13/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call witness to establish that he did not shoot the victim. Harris v. State, 43 Fla. L. Weekly D781d (5th DCA 4/13/18)

VOP-HEARSAY: Victim's testimony that she was in an altercation with the Defendant is insufficient to establish the commission of a battery, the basis for the VOP. Crawford v. State, 43 Fla. L. Weekly D780a (5th DCA 4/13/18)\

DEFINITIONS: "Altercation" is a "vehement dispute; a noisy argument." An altercation does not equate to the commission of the battery. Crawford v. State, 43 Fla. L. Weekly D780a (5th DCA 4/13/18)

DEATH PENALTY: Death penalty is affirmed where some aggravating factors are stricken but others support the sentence. Hall v. State, Fla. L. Weekly S178a (FLA 4/12/18)

LIMITATION OF ACTIONS: Claim that offense as charged in information is barred by statute of limitations must raise issue in trial court in order to preserve issue for appeal. State v. Smith, 43 Fla. L. Weekly S177a (FLA 4/12/18)

DEATH PENALTY-INTELLECTUAL DISABILITY: Court need not apply the Flynn effect to reduce IQ scores. Quince v. State, 43 Fla. L. Weekly S175a (FLA 4/12/18)

YOUTHFUL OFFENDER: Youthful Offender can be sentenced to more than 6 years in prison for a violation of probation for the commission of the new criminal act, even if the criminal charge is Nolle Prossed. Ramirez v. State, 43 Fla. L. Weekly D779b (3rd DCA 4/11/18)

RE-CROSS: Court does not abuse discretion in denying request to re-cross a witness where he had an opportunity to cover the material on his initial

cross-examination. Tennyson v. State, 43 Fla. L. Weekly D775b (3rd DCA 4/11/18)

TRESPASS: Juvenile does not commit trespass when the building entered, which was under construction, did not have a roof on it yet. E.C. v. State, 43 Fla. L. Weekly D775a (3rd DCA 4/11/18)

MISTRIAL: Court did not abuse discretion by denying motion for mistrial based on officer briefly commenting on victim's believability where a curative instruction was promptly given and there was other substantial evidence corroborating the victim's story. Blackwood v. State, 43 Fla. L. Weekly D771c (4th DCA 4/11/18)

YOUTHFUL OFFENDER: Youthful Offender statute is not unconstitutional for AIDS limitations only applying at the time of sentencing, rather than at the time of the offense. Defendant who was 21 at the time of sentencing is not entitled to Youthful Offender Sentencing. Blackwood v. State, 43 Fla. L. Weekly D771c (4th DCA 4/11/18)

SENTENCING-FRAGMENTED SENTENCE: Court imposed an illegal fragmented sentence where it ordered sentences for 2 convictions to run concurrently in part and consecutively in part. Defendant has a right to pay his debt to society in one stretch, not in bits and pieces. Smith v. State, 43 Fla. L. Weekly D771a (4th DCA 4/11/18)

DOUBLE JEOPARDY-DUI-RECKLESS DRIVING: Separate charges for DUI and reckless driving do not violate Double Jeopardy. Anguille v. State, 43 Fla. L. Weekly D768a (4th DCA 10/11/18)

DOUBLE JEOPARDY: Convictions for both the serious bodily injury and the property damage of the victim violate Double Jeopardy. Anguille v. State, 43 Fla. L. Weekly D768a (4th DCA 10/11/18)

DOUBLE JEOPARDY: Separate convictions for unlawful use of two-way communications device and traveling to meet minor during same time period violate double jeopardy. Kania v. State, 43 Fla. L. Weekly D767a (2nd DCA 4/11/18)

POST CONVICTION RELIEF: Counsel is not ineffective for failing to call DNA expert to show that he was excluded as contributor to amylase in the underwear of one of 3 victims where he could not show there is a reasonable likelihood that the outcome of the trial would been different had expert been called. Renfro v. State, 43 Fla. L. Weekly D764a (1st DCA 4/10/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for not objecting when State had the court reporter read portions of the motion to suppress of Defendant's testimony from the suppression hearing during the trial. A defendant's testimony during a hearing on a motion to suppress may not be entered into evidence against him in a subsequent trial. Andrews v. State, 43 Fla. L. Weekly D763a (1st DCA 4/10/18)

QUOTATION: "A full reading of the transcript reflects that Appellant did not appear to be admitting guilt, but was instead confirming that the cocaine had been removed from his boxer shorts by the deputy." Andrews v. State, 43 Fla. L. Weekly D763a (1st DCA 4/10/18)

PRR-HO: Court may not impose ten-year sentence under PRR statute for third degree felony of resisting arrest with violence, but may impose a ten-

year sentence as a Habitual Offender. In doing so, the court must specify that the first five years are as a PRR. Atmore v. State, 43 Fla. L. Weekly D753a (2nd DCA 4/6/18)

DOUBLE JEOPARDY-DUI-DWLS: Separate convictions for DUI with serious bodily injury and DWLS violate double jeopardy. Double jeopardy challenge is not waived by entering a general plea. The "single homicide rule" that the legislature did not intend to punish a single homicide under two different statutes applies even in circumstances where the double jeopardy analysis set forth in Blockburger may not grant relief. The "single homicide rule" applies to serious bodily injury as well as homicide. Marsh v. State, 43 Fla. L. Weekly D751b (2nd DCA 4/6/18)

WEIGHING THE EVIDENCE: When sitting as trier of fact, court is free to disbelieve state's witness even if that witness's testimony is unrefuted. The mere fact that the testimony appears uncontradicted does not necessarily make it believable. Z.E. v. State, 43 Fla. L. Weekly D751a (2nd DCA 4/6/18)

HEARSAY: Detective's testimony regarding his review of D.A.V.I.D. which led to his investigation of defendant's wife's van is inadmissible hearsay offered to buttress state's identification of defendant as robber who had driven vehicle to scene of robbery. State's argument that the information was not being offered for its truth, but rather to explain the progression of the robbery's investigation, and that the information in DAVID was simply "data" (which, presumably, made it admissible, according to the State), is unavailing. Khan v. State, 43 Fla. L. Weekly D747a (2nd DCA 4/6/18)

SILENCE OF DEFENDANT: State's question to defendant on cross-examination as to why he never relayed to detective any details about people defendant claimed would have seen him on night of robbery is an improper

comment on Defendant's silence. Conviction reversed. Khan v. State, 43 Fla. L. Weekly D747a (2nd DCA 4/6/18)

APPELLATE COUNSEL-INEFFECTIVENESS: Appellate counsel was ineffective for failing to argue that court's error in excluding impeachment testimony was harmful as to the battery charge as well as the kidnapping charge. Musson v. State, 43 Fla. L. Weekly D745b (2nd DCA 4/6/13)

HEARSAY-IMPEACHMENT: Testimony that victim said he was going to blame the defendant because she wasn't easy target is admissible impeachment testimony, not hearsay. Musson v. State, 43 Fla. L. Weekly D745b (2nd DCA 4/6/13)

PRR-APPRENDI: Prison Releasee Re-offender Act does not require jury, rather than judge, to determine Defendant's status as PRR. Tobler v. State, 43 Fla. L. Weekly D744b (5th DCA 4/6/18)

FARETTA: Faretta inquiry conducted after defendant invoked right to self-representation was inadequate where trial court merely asked defendant's age, education, and reason defendant believed he could represent himself at change of plea hearing. Court must advise Defendant of any of the disadvantages and dangers of self-representation, or of the possible consequences of the criminal charges against him. (Tony Tatti). Scott v. State, 43 Fla. L. Weekly D744a (5th DCA 4/6/18)

POST CONVICTION RELIEF: Court erred in summarily denying motion alleging that DOC's calculation of gain time resulted in defendant having to serve in excess of the 18 months agreed. Court must resentence defendant in accordance with plea agreement or allow defendant to withdraw plea. Vega v. State, 43 Fla. L. Weekly D743b (5th DCA 4/6/18)

DNA TESTING: Court erred in denying legally sufficient motion for post conviction testing of bicycle which defendant alleged was used by someone else to murder victim. “There is nothing before us refuting Lane’s claims that someone else murdered the victim using the bicycle long after Lane left the victim alive and that there is a reasonable probability that DNA evidence will be found on the bicycle providing the true identity of the killer.” [Colonel Mustard in the garage with the bicycle.] Lane v. State, 43 Fla. L. Weekly D743a (5th DCA 4/6/18)

SELF-REPRESENTATION: Court improperly focused on defendant’s ability to represent himself rather than his competence to make that decision, but the issue is moot where Defendant ultimately says he is satisfied with counsel. Bland v. State, 43 Fla. L. Weekly D742a (5th DCA 4/618)

SEARCH AND SEIZURE-CONSENT: Defendant’s friend who answered detectives’ knock on front door of defendant’s residence and invited detectives to come inside (“I’ll go get him, come in.”) did not have apparent authority to consent to detectives’ entry. The mere fact that an unknown person opens the door when a police officer knocks cannot, standing alone, support a reasonable belief that the person possesses authority to consent to the officer’s entry. Walker v. State, 43 Fla. L. Weekly D754a (2nd DCA 4/6/18)

DEATH PENALTY: Any Hurst error was harmless beyond reasonable doubt where defendant received unanimous jury recommendation of death. The lack of a mercy instruction does not change the result. Tanzi v. State, 43 Fla. L. Weekly S173a (FLA 4/5/18)

DEATH PENALTY: Defendant is entitled to a new penalty phase where death penalty was not based on a unanimous recommendation of death. State v. Smith, 43 Fla. L. Weekly S172a (FLA 4/5/18)

DEATH PENALTY: Defendant is not entitled to a new penalty hearing where the jury's recommendation of death was unanimous. The fact that the jury was told that its recommendation was merely advisory does not change the outcome. Taylor v. State, 43 Fla. L. Weekly S171a (FLA 4/5/18)

DEATH PENALTY: A new penalty hearing is required with the jury recommendation of death was not unanimous. The refusal to present mitigation does not warrant a later Hurst claim. Reynolds v. State, 43 Fla. L. Weekly S163a (FLA 4/5/18)

DEATH PENALTY: Jury instruction that the recommendation of death is only advisory cannot be the basis for a Hurst challenge. Reynolds v. State, 43 Fla. L. Weekly S163a (FLA 4/5/18)

DEATH PENALTY: Any Hurst error was harmless beyond reasonable doubt where defendant received unanimous jury recommendation of death. Johnston v. State, 43 Fla. L. Weekly S162a (FLA 4/5/18)

DEATH PENALTY: Any Hurst error was harmless beyond reasonable doubt where defendant received unanimous jury recommendation of death. Crain v. State, 43 Fla. L. Weekly S161b (FLA 4/5/18)

DOUBLE JEOPARDY: One is not entitled to dismissal of charges based on Double Jeopardy before trial. Boatright v. State, 43 Fla. L. Weekly D741c (1st DCA 4/5/18)

MANDATORY MINIMUM-CONSECUTIVE: Consecutive mandatory minimum sentences for multiple firearm offenses arising from same criminal episode

were impermissible where firearm was not discharged. Pointing firearm multiple times at six different victims at a single location within a short very short period of time occurred within single criminal episode. Bonner v. State, 43 Fla. L. Weekly D739a (1st DCA 4/5/18)

APPEAL: Argument that court erred by excluding evidence of third-party DNA in victim's underwear sexual assault case cannot be raised for first time on appeal. Robinson v. State, 43 Fla. L. Weekly D738b (1st DCA 4/5/18)

EVIDENCE: Court did not abuse discretion by permitting nurse to testify that the injuries were "what you might see after forced sexual intercourse." Robinson v. State, 43 Fla. L. Weekly D738b (1st DCA 4/5/18)

POST CONVICTION RELIEF: Court did not err in denying claim that counsel was ineffective for failing to ensure that FDLE employee who discussed analysis of DNA was qualified to present this evidence where Defendant did not know whether witness was qualified or not. Redmond v. State, 43 Fla. L. Weekly D738a (1st DCA 4/5/18)

IDENTIFICATION-SHOWUP-SEARCH AND SEIZURE: Showup identification process was unnecessarily suggestive where officer made comment to witness suggesting that defendant was involved in the crime (Cop : "I think this is going to be unusual. There are two people involved and this was the getaway driver, I think."). Evidence seized based on arrest which was based on an unduly suggestive show-up should be suppressed. Suppression is required when an initial arrest sets in motion an unbroken chain of events, which includes the discovery of additional evidence. Willis v. State, 43 Fla. L. Weekly D736b (1st DCA 4/5/18)

HEARSAY-CHILD VICTIM: Court is not required to continue properly scheduled child-hearsay hearing to enable defendant to produce impeachment witnesses. Jenkins v. State, 43 Fla. L. Weekly D736a (1st DCA 4/5/18)

HEARSAY: No abuse of discretion in allowing unobjected-to detective's statements regarding a 911 caller's statements where the out-of-court statements did not provide any evidence of the defendant's guilt and the detective's testimony was merely duplicative of other evidence admitted. Jefferson v. State, 43 Fla. L. Weekly D729a (3rd DCA 4/4/18)

POST CONVICTION RELIEF: Claim that scoresheet is inaccurate must be raised under 3.850, not under 3.800. Gandy v. State, 43 Fla. L. Weekly D724c (2nd DCA 4/4/18)

SEXUAL PREDATOR: Sexual predator designation is error where the offense occurred prior to October 1, 1993. Roberts v. State, 43 Fla. L. Weekly D724b (2nd DCA 4/4/18)

APPEAL-INEFFECTIVE ASSISTANCE: Failure to object to absence of jury instruction on justifiable use of nondeadly force constituted ineffective assistance of counsel which was apparent on face of record. Dupin v. State, 43 Fla. L. Weekly D724a (2nd DCA 4/4/18)

COMPETENCY OF DEFENDANT: Court may, but is not required, to impose conditions for release for defendant who is incompetent but does not meet the criteria for commitment. State v. Spuhler, 43 Fla. L. Weekly D723a (4/4/18)

STATEMENTS OF DEFENDANT: Interrogation at Police Department was custodial where defendant was told he was free to leave and shown where the exits were, but the clear purpose of the interview was to obtain incriminating evidence from defendant and reasonable person in defendant's situation would not have felt free to leave. Suggestions that interrogating officers could effect leniency, coupled with the representation that officer's opinion was superior to that of defendant's own counsel, amounted to outrageous police conduct, and there was a clear nexus between this outrageous conduct and defendant's confession. Wilson v. State, 43 Fla. L. Weekly D715a (2nd DCA 4/4/18)

SENTENCING-CONSIDERATIONS: Court improperly considered Defendant's later arrest for cocaine in imposing sentence. Bradshaw v. State, 43 Fla. L. Weekly D711a (4th DCA 4/4/18)

SENTENCING-DOWNWARD DEPARTURE: Court properly denied downward departure based on his funding that the incident was not isolated. Fuss v. State, 43 Fla. L. Weekly D710b (4th DCA 4/4/18)

VIOLENT OFFENDER OF SPECIAL CONCERN: Court may find that Defendant is a danger to the community based on him "clocking somebody in the mouth." Smith v. State, 43 Fla. L. Weekly D710a (4th DCA 4/4/18)

EVIDENCE-JAIL CALLS-AUTHENTICATION: Audio recording of jail call was properly authenticated by testimony of records custodian explaining the three tiered verification process used to identify defendant as inmate who made the call that was ultimately admitted into evidence and played for jury. Ascencio v. State, 43 Fla. L. Weekly D708a (4th DCA 4/4/18)

JURORS-ALTERNATE: Error, if any, in allowing alternate juror in jury room after submission of the case for limited purpose of retrieving belongings and exchanging contact info from fellow jurors is not presumed absent an objection. Courts do not assume prejudice to the defendant whenever an alternate juror briefly enters the jury room at the conclusion of trial. Ascencio v. State, 43 Fla. L. Weekly D708a (4th DCA 4/4/18)

JUVENILE-SENTENCING: Court erred in committing juvenile to non-secure residential program, rather than following DJJ recommendation for probation, without making written findings to support its decision. R.LC. v. State, 43 Fla. L. Weekly D705b (4th DCA 4/4/18)

JUVENILE-ADULT COURT: Fourteen year old who has been transferred for adult prosecution in one circuit must be transferred for adult prosecution for any felonies in any other circuit. Sargeant v. State, 43 Fla. L. Weekly D703a (4th DCA 4/4/18)

TORT-FALSE IMPRISONMENT: Plaintiff who was arrested and held for DUI with a .00 BAL and who loses false arrest claim but wins false imprisonment claim cannot be forced to pay costs to the City. City of Boca Raton v. Basso, 43 Fla. L. Weekly D702a (4th DCA 4/4/18)

MANDATORY MINIMUM: For burglary of a conveyance, the minimum mandatory sentence under 10-20-Life is three years, not ten years. Wallach v. State, 43 Fla. L. Weekly D697a (4th DCA 4/4/18)

AGGRAVATED ASSAULT WITH A FIREARM: Under the 10-20-Life statute aggravated assault is reclassified to a felony of the second degree with a maximum sentence of fifteen years. Wallach v. State, 43 Fla. L. Weekly D697a (4th DCA 4/4/18)

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DEATH PENALTY: Defendant who received a unanimous recommendation of death is not entitled to relief under Hurst as any error is harmless, not withstanding that the Defendant was borderline mentally ill and failed to present mitigating evidence. Grim v. State, 43 Fla. L. Weekly S155a (FLA 3/29/18)

HABITUAL OFFENDER-CONSECUTIVE: Court may not impose consecutive habitual violent felony offender sentences for crimes committed in the same episode. Gardiner v. State, 43 Fla. L. Weekly D694b (1st DCA 3/29/18)

APPEALS: Appellate counsel is ineffective for failing to contest consecutive man min as HVFO for crimes committed in same episode. Marshall v. State, 43 Fla. L. Weekly D693b (1st DCA 3/29/18)

STATEMENTS OF DEFENDANT: Defendant's question whether he could have a lawyer ("Look, can I have a lawyer, man, 'cause y'all is tryin' to confuse me") during post-Miranda interview with law enforcement personnel was an unequivocal request for counsel. Even if inquiry were an equivocal question about a lawyer, officer was required to cease questioning and give simple and straightforward answer. A prefatory statement is subject to the following threestep analysis :(1) was the defendant referring to a constitutionally guaranteed right; (2) was the utterance a clear, bona fide question calling for an answer, not a rumination or a rhetorical question; and (3) did the officer make a goodfaith effort to give a simple and straightforward answer. Daniel v. State, 43 Fla. L. Weekly D682a (5th DCA 3/29/18)

COMPETENCY-INVOLUNTARY COMMITMENT: Court may not order involuntary commitment of an incompetent defendant absent clear and

convincing evidence of prospective neglect of self or threat of harm to others. Sanders v. State, 43 Fla. L. Weekly D678g (5th DCA 3/28/18)

APPEALS-BELATED: Petition for belated appeal is denied where commissioner appointed by the appellate court finds that Defendant did not request his attorney to file a direct appeal and his claim to the contrary is not credible. Alvarez v. State, 43 Fla. L. Weekly D676c (3rd DCA 3/28/18)

PROBATION REVOCATION-JUVENILE: Court must enter a written order as to which conditions were violated. M.C. v. State, 43 Fla. L. Weekly D676a (3rd DCA 3/28/18)

COMPETENCY: Court must enter written order of competency. D.Y. v. State, 43 Fla. L. Weekly D675a (3rd DCA 3/28/18)

PROBATION REVOCATION: Court may not enter a new judgment after revocation of probation. Witt v. State, 43 Fla. L. Weekly D668b (2nd DCA 3/28/18)

SILENCE OF DEFENDANT-PRE-ARREST SILENCE: Deputy's testimony during state's case-in-chief that defendant was arrested after he failed to offer any explanation about what had happened amounted to impermissible comment on defendant's right to remain silent. The privilege against self-incrimination provided in the Florida Constitution offers more protection than the right provided in the Fifth Amendment to the United States Constitution. Urbaniak v. State, 43 Fla. L. Weekly D667a (2nd DCA 3/28/18)

POST CONVICTION RELIEF: Upon violation of community control imposed upon release from prison, Court erred by not considering Defendant's claim that earlier counsel was ineffective for not arguing that he had never been on house arrest because of expiration of time due to gain time and failure to award credit for time served. Pressley v. State, 43 Fla. L. Weekly D666c (2nd DCA 3/28/18)

STATEMENTS OF DEFENDANT: When defendant agreed to talk with police "about certain things," he agreed to selectively waive his right to remain silent, so statements are admissible. "Appellant admitted to swinging a machete, but claimed he had not meant to swing it at the victim. Appellant explained that he was angry because he did not want the victim to go to the prosecutor's office and testify against him in a different case. The medical examiner testified that a cut to the victim's neck severed her jugular vein and was the cause of her death." Madeus v. State, 43 Fla. L. Weekly D665a (4th DCA 3/28/18)

JURORS-CHALLENGE-CAUSE: Court erred by denying challenge for cause of social worker who twice stated her belief that kids don't lie in instances of child abuse and child sexual abuse. A juror is not impartial when one side must overcome a preconceived opinion in order to prevail. Juror is not rehabilitated by saying she could follow the law. Where a defendant seeks reversal based on a claim that he was wrongfully forced to exhaust his peremptory challenges, he initially must identify a specific juror whom he otherwise would have struck peremptorily. This juror must be an individual who actually sat on the jury and whom the defendant either challenged for cause or attempted to challenge peremptorily or otherwise objected to after his peremptory challenges had been exhausted. Campbell v. State, 43 Fla. L. Weekly D661a (4th DCA 3/28/18)

VOP-JUVENILE-TOLLING: There is no tolling provision applicable to juvenile probation violation proceedings by filing an affidavit or issuing a warrant.

Juvenile VOP must be by petition and sworn affidavit. An unsworn petition is insufficient. State v. T.A.K., 43 Fla. L. Weekly D658a (2nd DCA 3/23/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for arguing or getting jury instruction on constructive possession. Haney v. State, 43 Fla. L. Weekly D656a (2nd DCA 3/23/18)

HEARSAY: Third party's statement to witness during conversation at bar that he had committed the murder at issue and persuaded defendant to confess to it had sufficient indications of reliability and should have been admitted at trial under Chambers v. Mississippi. Although third-party confession did not qualify as declaration against penal interest for purposes of Florida hearsay exception because declarant was available to testify at trial, defendant was denied right to a fair trial by exclusion of evidence. Larry v. State, 43 Fla. L. Weekly D655a (2nd DCA 3/23/18)

ARGUMENT: New trial required where prosecutor misrepresented the law on burglary (Defendant is guilty of burglary by fleeing from police into a house) and improperly shifted burden of proof to defendant ("Think about [Defendant's] demeanor on this witness stand. He's being accused of armed burglary of a dwelling. He should be yelling, screaming 'I didn't do this.' He should be yelling and screaming. Yet, he was stuttering over his words. He couldn't even get his story out."). Roberts v. State, 43 Fla. L. Weekly D651a (5th DCA 3/23/18)

QUOTATION: "A defendant's fundamental right to present a defense 'stand[s] for naught if the prosecutor can ridicule a defense so presented, denigrate the accused for his temerity in raising the issue, and misstate the law in contradiction of the judge's instructions, as the prosecutor in this case did.'" Roberts v. State, 43 Fla. L. Weekly D651a (5th DCA 3/23/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to request an alibi defense. Harris v. State, 43 Fla. L. Weekly D650a(5th DCA 3/23/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to call Defendant's wife as an alibi witness. Castro v. State, 43 Fla. L. Weekly D649b (5th DCA 3/23/18)

POST CONVICTION RELIEF: Court erred in denying claim of ineffective assistance where counsel failed to call witnesses that victim's mother induced the victim to implicate the Defendant so that she could have an affair with Defendant's friend on ground that they would not have been allowed to testify because of motion in limine, counsel inexplicably failed to oppose motion in limine, and their testimony would likely have resulted in acquittal. "Counsel herself inexplicably failed to oppose the motion in limine, stating at the hearing on the motion, 'Your Honor, I can't think of a legal basis for which to allow that in.' Of course, the legal basis would have been that the testimony was relevant, going to the issues of bias and motive of the victim's mother and the victim herself." Fletcher v. State, 43 Fla. L. Weekly D649a (5th DCA 3/23/18)

POST CONVICTION RELIEF: Defendant was entitled to a hearing on claim that counsel was ineffective for failing to call material witnesses. The fact that the Court asked if there were any witnesses he wanted counsel to have called and he said no is insufficient to deny a hearing. "We have previously disapproved of relying on such statements, as they may indicate the defendant's belief that it was too late to call further witnesses." Brown v. State, 43 Fla. L. Weekly D648b (5th DCA 3/23/18)

RE-CROSS EXAMINATION: Court did not abuse its discretion by refusing to allow defendant to re-cross examine victim where state did not elicit any

new matter on re-direct examination, but only a detail which had been addressed in defendant's cross-examination of witness. Castanos v. State, 43 Fla. L. Weekly D648a (5th DCA 3/23/18)

MANDATORY MINIMUM-CONSECUTIVE: Court erred in imposing consecutive mandatory minimum sentences for multiple firearm offenses which arose from same criminal episode where firearm was merely possessed but not discharged. Potchen v. State, 43 Fla. L. Weekly D646c (5th DCA 3/23/18)

ATTORNEY DISCIPLINE: Attorney disbarred for failure to adequately supervise a non-lawyer assistant with a known history of fraud and embezzlement. "This case gives new meaning to the phrase 'turning a blind eye.'" Attorney was "curiously uncurious." The Florida Bar v. Gilbert, 43 Fla. L. Weekly S148c (FLA 3/22/18)

DISQUALIFICATION: Judge who announced after trial, but prior to sentencing, that he would recuse himself from further proceedings did not commit reversible error by failing to articulate specific reasons for his recusal. Williams v. State, 43 Fla. L. Weekly D646a (1st DCA 3/22/18)

SEARCH AND SEIZURE-DOG SNIFF: Officers who stopped vehicle in apartment complex parking lot after observing defendant driving without a seatbelt and who placed defendant under arrest for driving without a license within two minutes of initial stop did not violate Fourth Amendment by initiating dog sniff of vehicle 20 minutes later. Jefferson v. State, 43 Fla. L. Weekly D645a (1st DCA 3/22/18)

JOA-AGGRAVATED ASSAULT: Victim's testimony that Defendant (his father) lunged at him with the cane during a verbal altercation and that both

men then stepped backward did not establish that defendant used cane in manner likely to produce death or great bodily harm. ("I open the door, tell him to leave, start cussing each other, and then he gets mad and lunges at me with his cane. I step back to nail him, and he stepped back himself, and then we cussed each other some more.") Wallace v. State, 43 Fla. L. Weekly D642a (1st DCA 3/22/18)

JOA-POSSESSION WITH INTENT TO SELL: $42 and a small box in his pocket holding methamphetamine and eight cocaine rocks of different sizes not individually packaged is insufficient to prove intent to sell. McFarlane v. State, 43 Fla. L. Weekly D640b (2nd DCA 3/21/18)

HABITUAL OFFENDER: One cannot be habitualized for simple possession of cocaine. Hubbard v. State, 43 Fla. L. Weekly D640a (2nd DCA 3/21/18)

COSTS: ourt erred by imposing court costs for possession offense after imposing costs under the same statutory provision for companion felony charge. Anguille v. State, 43 Fla. L. Weekly D630b (4th DCA 3/21/18)

MANDATORY MINIMUM-CONSECUTIVE: Resentencing required where trial court was under mistaken belief that it was required by 10-20-Life statute to impose mandatory minimum sentences consecutively. Consecutive minimum terms of imprisonment for multiple offenses are not required by the 10-20-Life statute, but are permissible, when the offenses arise from a single criminal episode. Villanueva v. State, 43 Fla. L. Weekly D630a (4th DCA 3/21/18)

SEARCH AND SEIZURE-BLOOD DRAW: Warrantless blood draw of unconscious person, incapable of giving actual consent, may be made pursuant to §316.1932(1)(c), which provides that person incapable of refusal by reason of unconsciousness is deemed not to have withdrawn consent to

blood draw and testing. Implied consent law which does not impose a criminal penalty for refusing a blood draw is not an unlawful search. Good discussion. McGraw v. State, 43 Fla. L. Weekly D618a (4th DCA 3/21/18)

SENTENCING-YOUTHFUL OFFENDER: Resentencing required before a different judge where trial court refused to consider request for youthful offender sentence made by defendant who was 17 years old at time of offense based upon trial court's stated policy of not allowing youthful offender sentences in cases involving death. Desantis v. State, 43 Fla. L. Weekly D613a (4th DCA 3/21/18)

SEARCH AND SEIZURE-JURISDICTION: An officer designated as a special deputy assigned to a Multi-Agency Gang Task Force may not make traffic stops outside his jurisdiction unrelated to his special designation. Biondi v. State, 43 Fla. L. Weekly D612a (4th DCA 3/21/18)

PROBATION-CONDITIONS: Court's failure to orally pronounce certain special conditions need not be stricken where Defendant filed a motion to correct the error, even though court did not correct it. Thompson v. State, 43 Fla. L. Weekly D608b (2nd DCA 3/16/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on the claim that counsel was ineffective for failing to object to comments by state in cross-examination and closing argument attempting to shift burden of proof, expressing prosecutor's personal opinions, and misstating the law. Connelly v. State, 43 Fla. L. Weekly D601a (5th DCA 3/16/18)

AGREEMENT: Agreement between defendant and state attorney for one judicial circuit where some of acts occurred for state not to seek the death penalty in exchange for defendant's cooperation in finding body of murder

victim was binding on state attorney for a different judicial circuit. Johnson v. State, 43 Fla. L. Weekly S135a (FLA 3/15/18)

JURORS-PEREMPTORY CHALLENGE: Where Defendant challenges State's race neutral reason for striking a black juror (prior experience with cops) on the ground that other jurors are similarly situated, Defendant must identify the similarly situated jurors or fail in his challenge. Johnson v. State, 43 Fla. L. Weekly S135a (FLA 3/15/18)

DEATH PENALTY: Defendant who waived jury for penalty is not entitled to relief under Hurst. Hutchinson v. State, 43 Fla. L. Weekly S133b (FLA 3/15/18)

JUDGE-DISQUALIFICATION: Judge's comment that Wife would "just do what she wants," non-verbal expressions and adverse rulings are insufficient to require disqualification. Erlinger v. Federico, 43 Fla. L. Weekly D606a (1st DCA 3/15/18)

DOUBLE JEOPARDY: Defendant who enters negotiated plea to two counts (Possession of Firearm by Felon and Grand Theft of the Firearm) waives double jeopardy claim. Piazza v. State, 43 Fla. L. Weekly D605a (1st DCA 3/15/18)

VOP-JURISDICTION: Probation is tolled when Defendant absconds. State v. Beery, 43 Fla. L. Weekly D597a (2nd DCA 3/14/18)

DOUBLE JEOPARDY: Traveling to meet a minor and unlawful use of two-way communications device barred by double jeopardy where one of the two offenses was entirely proven by the other and they were committed during the

same criminal episode. Watkins v. State, 43 Fla. L. Weekly D595a (2nd DCA 3/14/18)

SEARCH AND SEIZURE: Informant's tip that Defendant had a concealed firearm does not justify stop; carrying a concealed firearm with a permit is legal, and tip did not allege that Defendant had no permit. Slydell v. State, 43 Fla. L. Weekly D594a (2nd DCA 3/14/18)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for advising him that State would withdraw plea offer he tried to suppress the evidence. Huntoon v. State, 43 Fla. L. Weekly D593a (2nd DCA 3/14/18)

GRAND THEFT: Child cannot be convicted of grand theft where only evidence of value was objected-to hearsay (owner went online to "eBay or something" to ascertain value). D.J.S. v. State, 43 Fla. L. Weekly D592b (2nd DCA 3/14/18)

SELF-REPRESENTATION: Court cannot disallow self-representation on the basis of a mental health expert who says Defendant has no major mental illness but is incompetent to represent himself based on lack of legal education or rational understanding of the law. Loor v. State, 43 Fla. L. Weekly D590b (3rd DCA 3/14/18)

YOUTHFUL OFFENDER: Court must keep Youthful Offender designation upon multiple violations of probation. Peatenlane v. State, 43 Fla. L. Weekly D581a (4th DCA 3/14/18)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court may find the Defendant to be a violent felony offender of special concern (danger to the community) upon repeated violations of probation by considering his original offense and marijuana use. Peatenlane v. State, 43 Fla. L. Weekly D581a (4th DCA 3/14/18)

QUOTATION (DISSENT): "Under section 948.06(8), a 'danger to the community' is not a freewheeling concept unhinged from the statute. Rock and roll music was once considered dangerous to the morals of teenagers, but that type of soft danger is outside the purview of the statute. . .It is inconceivable that Floridians can be placed in 'danger' by appellant's marijuana consumption." Peatenlane v. State, 43 Fla. L. Weekly D581a (4th DCA 3/14/18)

LIFE SENTENCE-MINOR-NONHOMICIDE: Minor Defendant who was sentenced to life and violated parole twice is not entitled to sentence review. Stern v. State, 43 Fla. L. Weekly D566a(2nd DCA 3/9/18) https://edca.2dca.org/DCADocs/2017/2718/172718_65_03092018_08472033_i.pdf

LIFE SENTENCE-MINOR-NONHOMICIDE: Minor Defendant sentenced to 26 years is entitled to judicial review. All juvenile offenders for nonhomicide offenses whose sentences exceed twenty years are entitled to judicial review. Cuevas v. State, 43 Fla. L. Weekly D563a (2nd DCA 3/9/18)

MENS REA: Statute barring altering animal health document is not overly vague. Mens rea is unstated but implicit. Innocent alterations such as changing the font or adding a logo would not be criminalized; only alterations that made the certificate false or deceptive would constitute a crime. Offenses with no mens rea are disfavored, and a scienter element is often necessary

to comply with due process requirements." State v. Carrier, 43 Fla. L. Weekly D559h (2nd DCA 3/9/18)

DICTIONARY WARS: "Alter" means "to change or modify" and to make 'different in some particular characteristic without changing it into something else." "Simulate" means "to give or assume the appearance or effect of often with the intent to deceive." State v. Carrier, 43 Fla. L. Weekly D559h (22nd DCA 3/9/18)

VAGUENESS: A defendant may not make a facial vagueness challenge if the defendant's conduct is clearly proscribed by the plain and ordinary meaning of the statute. State v. Carrier, 43 Fla. L. Weekly D559h (22nd DCA 3/9/18)

DOUBLE JEOPARDY: Separate convictions for sexual battery on a person twelve years of age or older but less than eighteen years of age and lewd or lascivious battery on a child twelve years of age or older but less than sixteen years of age violated double jeopardy. Connolly v. State, 43 Fla. L. Weekly D558a (5th DCA 3/9/18)

COMPETENCY-COMMITMENT: Court may not commit Defendant where there was no evidence that the mental illness causing defendant's incompetence would respond to treatment and that defendant would regain competency to proceed in the reasonably foreseeable future. DCF v. Kamaluddin, 43 Fla. L. Weekly D557a (5th DCA 3/9/18)

VOP-HEARSAY: Court may not rely solely on hearsay evidence to find a violation of probation based on false imprisonment and battery arising out of a domestic violence incident. Crawford v. State, 43 Fla. L. Weekly D556b (5th DCA 3/9/18)

DICTIONARY WARS: An altercation is a vehement dispute; a noisy argument. Crawford v. State, 43 Fla. L. Weekly D556b (5th DCA 3/9/18)

JURY INSTRUCTIONS-POSSESSION: Definition of possession is clarified. "Mere proximity to an item does not establish that the person intentionally exercised control over the item in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the item or the present ability to direct its control by another." In Re : Standard Jury Instructions, 43 Fla. L. Weekly S124b (FLA 3/8/18)

JURY INSTRUCTIONS-AMENDMENT: New impeachment instruction. "The evidence that a witness may have made a prior statement that is inconsistent with [his] [her] testimony in court should be considered only for the purpose of weighing the credibility of the witness's testimony and should not be considered as evidence or proof of the truth of the prior statement or for any other purpose." In re-Standard Jury Instructions, 43 Fla. L. Weekly S124a (FLA 3/8/18)

DOUBLE JEOPARDY: Double jeopardy does not bar a new penalty phase in which defendant will again be eligible for the death penalty. New capital sentencing scheme is not an ex post facto law. Victorino v. State, 43 Fla. L. Weekly S123a (FLA 3/8/18)

STATEMENT OF DEFENDANT-REDACTION: Admission of unredacted interview which includes Officer saying Defendant is untruthful is not fundamental error where Detective's statements were not firm statements of assertions of guilt nor a firm personal opinion. Kines v. State, 43 Fla. L. Weekly D554a (1st DCA 3/8/18)

PRETRIAL DETENTION: Court erred in ordering that defendant be detained pending a hearing regarding the source of his bond money. Sparrow v. State, 43 Fla. L. Weekly D557b (5th DCA 3/7/18)

RESISTING WITHOUT VIOLENCE: Officer was in lawful performance of duty when he detained Child for acting as a lookout. I.B. v. State, 43 Fla. L. Weekly D543a (3rd DCA 3/7/18)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: The standard for withdrawing a plea based on newly discovered evidence is not whether it is necessary to correct a manifest injustice, but rather whether the new evidence establishes a reasonable probability that, but for the newly discovered evidence, the defendant would not have pleaded guilty and would have insisted on going to trial. Perez v. State, 43 Fla. L. Weekly D540b (3rd DCA 3/7/18)

EXPLOITATION OF ELDERLY: Fundamental error for jury instruction to the element that the defendant obtained the property when he knew or should have known the victim lacked the capacity to consent. Parrondo v. State, 43 Fla. L. Weekly D538a (3rd DCA 3/7/18)

SENTENCING CONSIDERATIONS: Court erred by implicitly relying on defendant's lack of remorse when imposing sentence. Symanski v. State, 43 Fla. L. Weekly D535a (2nd DCA 3/7/18)

POST CONVICTION RELIEF: Motion is timely when filed within two years of issuance of mandate eversing defendant's conviction of second-degree murder and remanding for a new trial on that count only. Gland v. State, 43 Fla. L. Weekly D533a (2nd DCA 3/7/18)

STATEMENTS OF DEFENDANT-COUNSEL: Admission of statements defendant made to police after he was confined in psychiatric wing of a hospital violates due process clause of Florida Constitution where police did not tell defendant that his family had retained a lawyer to represent him and instead interviewed him in absence of counsel. When an individual is being questioned in a non-public area, and an attorney retained on his or her behalf arrives at the location, the Due Process Clause of the Florida Constitution requires that the police notify the individual of the attorney's presence and purpose, regardless of whether the defendant is in custody. Baskin v. State, 43 Fla. L. Weekly D530b (2nd DCA 3/7/18)

STATEMENTS OF DEFENDANT: Admission of defendant's videoed statements to confidential informant in absence of counsel did not violate defendant Sixth Amendment right to counsel where defendant was not in custody and had never been arrested for the charges when he confessed. London v. State, 43 Fla. L. Weekly D528a (4th DCA 3/7/18)

SENTENCING-CONSIDERATIONS: Court erred when it considered a fact at sentencing that specifically conflicted with factual finding by jury (that Defendant had a gun). Theophile v. State, 43 Fla. L. Weekly D522b (4th DCA 3/7/18)

JOA-FRAUDULENT USE OF CREDIT CARD: JOA properly denied where state charged defendant alternatively with using a credit card or fraudulently representing he was the holder of the card, and evidence undisputedly showed that defendant used a credit card unlawfully. Jones v. State, 43 Fla. L. Weekly D520a (4th DCA 3/7/18)

JUDGE-DISQUALIFICATION: Disqualification not warranted, and otherwise time barred, on the basis that the judge's wife is a friend of a detective in the case. Defendant's speculative and unfounded allegations of official

misconduct are legally insufficient. Joshua v. State, 43 Fla. L. Weekly D519a (4th DCA 3/7/18)

SENTENCING: Court is not authorized to prohibit Department of Corrections from recommending early termination. Lizano v. State, 43 Fla. L. Weekly D518a (4th DCA 3/7/18)

PROBATION-CONDITIONS: No alcohol special conditions which were not related to offense of conviction or offender were invalid. Lizano v. State, 43 Fla. L. Weekly D518a (4th DCA 3/7/18)

SEARCH AND SEIZURE-PHONE: The good-faith exception to the exclusionary rule does not apply to cell phone searches. Burton v. State, 43 Fla. L. Weekly D507b (5th DCA 3/2/18)

VOP: Court must articulate the counts which the Defendant is found to have violated. Hanks v. State, 43 Fla. L. Weekly D507a (5th DCA 3/2/18)

COMPETENCY: Court must enter a written order of competency; court minutes are not sufficient. Davis v. State, 43 Fla. L. Weekly D506b (5th DCA 3/2/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for advising Defendant to plead guilty to a count which was deleted from the amended information. Foster v. State, 43 Fla. L. Weekly D506a (5th DCA 3/2/18)

DOUBLE JEOPARDY: Separate convictions for DUI manslaughter and vehicular homicide based upon a single death violate double jeopardy. Granger v. State, 43 Fla. L. Weekly D505a (5th DCA 3/2/18)

APPEAL-COSTS: Court lacks jurisdiction to enter order for investigative costs while appeal was pending. Murray v. State, 43 Fla. L. Weekly D504a (5th DC 3/2/18)

NEWLY DISCOVERED EVIDENCE: A confession by defendant's brother that he was "more responsible than anyone else" for the murder of the victim is not newly discovered evidence and would be inadmissible as hearsay. Sochor v. State, 43 Fla. L. Weekly S118a (FLA 3/1/18)

LESSER INCLUDED: Failure to give jury instruction on attempted manslaughter as necessarily lesser included offense of attempted second degree murder constituted fundamental error. Roberts v. State, 43 Fla. L. Weekly S117a (FLA 3/1/18)

JUROR-CHALLENGE FOR CAUSE: Court may deny challenge for cause of potential juror who claimed he might fall asleep but who seemed to be cheerful and lively. Guzman v. State, 43 Fla. L. Weekly S104a (FLA 3/1/18)

JUROR-PEREMPTORY CHALLENGE: State may strike jurors who watch CNN; reason is race neutral. Guzman v. State, 43 Fla. L. Weekly S104a (FLA 3/1/18)

FEBRUARY 2018

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Martin v. State, 43 Fla. L. Weekly S115b (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Byrd v. State, 43 Fla. L. Weekly S115a (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Gaskin v. State, 43 Fla. L. Weekly S114c (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Raleigh v. State, 43 Fla. L. Weekly S114a (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Geralds v. State, 43 Fla. L. Weekly S113c (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Barwick v. State, 43 Fla. L. Weekly S113b (FLA 2/28/18)

2018 DEATH PENALTY-HURST-RETROACTIVITY: Hurst does not apply retroactively to offenses which became final before Ring. Brown v. State, 43 Fla. L. Weekly S113a (FLA 2/28/18)

10-20-LIFE: Where mandatory minimum of 25 to life is required by 10-20-Life law, additional statutory authority is required to go above the statutory maximum of 30 years for attempted second degree murder. Byrd v. State, 43 Fla. L. Weekly D499a (1st DCA 2/28/18)

ARGUMENT: Comments by prosecutor in closing argument addressing the conclusiveness of DNA evidence presented at trial and noting that there was no evidence that defendant had any male relatives who could have left matching DNA at the crime scene did not improperly shift burden of proof to defendant. Statham v. State, 43 Fla. L. Weekly D498c (1st DCA 2/28/18)

AGGRAVATED ASSAULT-JOA: Defendant who tried to kill one victim with an AK-47 and then told another to "shut the hell up," can be convicted of aggravated assault of both. Williams v. State, 43 Fla. L. Weekly D496a (1st DCA 2/28/18)

WAIVER OF COUNSEL: A defendant who is plainly competent cannot show prejudice from the court's failure to ask questions to confirm that he is competent. Hooks v. State, 43 Fla. L. Weekly D495 (1st DCA 2/28/18)

POST CONVICTION RELIEF: Court may deny motion for extension of time in which to file amended rule 3.850 motion based upon delayed access to one of correctional institution's certified law clerks. Pinestraw v. State, 43 Fla. L. Weekly D493a (1st DCA 2/28/18)

SENTENCING-SCORESHEET: Resentencing required where scoresheet included juvenile adjudications which occurred more than five years before. Philmore v. State, 43 Fla. L. Weekly D490b (4th DCA 2/28/18)

DISQUALIFICATION: No merit to claim that orders entered after defendant filed motion to disqualify judge were void where defendant failed to serve motion on judge. Forney v. State, 43 Fla. L. Weekly D490a (4th DCA 2/28/18)

SENTENCING-VINDICTIVENESS: Imposition of consecutive life sentence on resentencing after court had initially imposed concurrent life sentence constituted a vindictive sentence where resentencing occurred after defendant had successfully challenged initial sentence, and reasons for more severe sentence were not based on defendant's conduct occurring after original sentencing proceeding. Austin v. State, 43 Fla. L. Weekly D489a (4th DCA 2/28/18)

POST CONVICTION RELIEF: A claim that counsel was ineffective for advising the defendant to reject a plea offer because counsel was confident that she could win at trial and that such advice was unreasonable warrants a hearing. Brown v. State, 43 Fla. L. Weekly D488a (4th DCA 2/28/18)

CONTEMPT-DIRECT: Failure to appear in court is indirect, not direct, contempt. Sandelier v. State, 43 Fla. L. Weekly D484a (4th DCA 2/28/18)

MINOR-SENTENCE REVIEW: Defendant who had served 15 years of a 25year sentence imposed for second-degree murder committed when he was a juvenile was not entitled to review under juvenile offender sentencing statute. Elkin v. State, 43 Fla. L. Weekly D476e (2nd DCA 2/28/18)

MINOR-SENTENCE REVIEW: Minor sentenced to concurrent 40-year sentences for nonhomicides is entitle to resentencing under new juvenile sentencing guidelines. Blount v. State, 43 Fla. L. Weekly D476d (2nd DCA 2/28/18)

LESSER INCLUDED: Giving of erroneous standard instruction on manslaughter by act, which included element of intent to kill, as lesser included offense of second degree murder constituted fundamental error even though jury was instructed on manslaughter by culpable negligence where there was no evidence from which jury could have concluded that victim was killed due to culpable negligence. Marshall v. State, 43 Fla. L. Weekly D466a (3rd DCA 2/28/18)

JUVENILES-PROBATION: Because adjudication was withheld, the trial court could impose probation for an indefinite period not to exceed T.A.'s nineteenth birthday, but Judge must say so if that is the intent. T.A. v. State, 43 Fla. L. Weekly D462a (2nd DCA 2/23/18)

SCORESHEET-VICTIM INJURY POINTS: Victim injury points were improperly assessed where victim injury was not an element of offense. Weeks v. State, 43 Fla. L. Weekly D461a (2DCA 2/23/18)

VOP: Court lacked jurisdiction to impose new sentence on count for which defendant had completed his period of community control. Stump v. State, 43 Fla. L. Weekly D460b (2nd DCA 2/23/18)

PUBLIC RECORDS-MANDAMUS: Court erred in summarily denying petition for writ of mandamus seeking to compel state attorney to produce CDs which state claimed are exempt from disclosure without conducting in camera inspection of the CDs to determine whether contents are exempt from disclosure. Gonzalez v. State, 43 Fla. L. Weekly D460a (2nd DCA 2/23/18)

STATEMENTS OF DEFENDANT: Court erred in suppressing certain portions of statements made by defendant after he invoked his right to counsel where the statements at issue were not made in response to questions or actions

on part of law enforcement that were reasonably likely to elicit incriminating statements. Waiting with intoxicated Defendant for evidence tech for two hours is not interrogation. State v. Lantz, 43 Fla. L. Weekly D449b (1st DCA 2/23/18)

A BAD DAY: After being arrested late one night under a bridge, and in close proximity to his dead mother's floating body, Defendant said, "I didn't — I didn't kill the b****, but somebody paid me to f***ing help him. That was a good way to make money. . . . Somebody else killed her. I didn't kill her. The body was there. He told me to come get her. 10 grand (unintelligible) pay me. Never going to see that money. And now he got away with murder, and I get the f***ing rap." State v. Lantz

MANDATORY MINIMUM: Amendment reducing mandatory minimum sentence for trafficking in hydrocodone does not apply to Defendant who was sentenced under the earlier version of statute. Bigham v. State, 43 Fla. L. Weekly D449a (1st DCA 2/23/18)

DOUBLE JEOPARDY: Separate convictions for introducing contraband into county detention center and possession of methamphetamine based on a single act of possession violated double jeopardy. Palmer v. State, 43 Fla. L. Weekly D447a (5th DCA 2/23/18)

DOUBLE JEOPARDY-HEARSAY: Court may not rely on hearsay (probable cause affidavit) to find that two convictions were based on separate quantities of meth in denying motion for post conviction relief raising double jeopardy issue. Palmer v. State, 43 Fla. L. Weekly D447a (5th DCA 2/23/18)

SENTENCING: In sentencing defendant to a prison term upon revocation of community control, trial court improperly considered allegations in arrest

affidavit regarding original charges which were nolle prossed by state to find that defendant presented a danger to the public. Taylor v. State, 43 Fla. L. Weekly D444a (5th DCA 2/23/18)

DOUBLE JEOPARDY: Separate convictions for extortion and written threats to kill or do bodily injury arising of same criminal transaction violate double jeopardy. Doyle v. State, 43 Fla. L. Weekly D441a (5th DCA 2/23/18)

ATTORNEY-DISCIPLINE: Suspension cannot exceed three years; disbarment is appropriate. Attorney disbarred for muttering, "Lie, Lie, Lie" and repeatedly kicking the leg of counsel's table during a hearing. "One can be professional and aggressive without being obnoxious. . .We do not tolerate unprofessional and discourteous behavior." The Florida Bar v. Ratiner, 43 Fla. L. Weekly S108a (FLA 2/22/18)

JUROR-CHALLENGE FOR CAUSE: Challenge for cause is permissible for jurors who indicated that he was easily bored and might fall asleep and juror who said she would be tired. Guzman v. State, 43 Fla. L. Weekly S104a (FLA 2/22/18)

JUROR-CHALLENGE FOR CAUSE: Court did not reversibly err in allowing state to strike African-American venirewoman without providing genuine race neutral explanation after state explained that they challenged juror because she was CNN viewer and State preferred jurors who watched Fox News. Guzman v. State, 43 Fla. L. Weekly S104a (FLA 2/22/18)

SENTENCING-MINOR-INTENT TO KILL: Decision of U.S. Supreme Court in Alleyne requires the jury and not the trial court to make the factual finding under §775.082(1)(b) as to whether juvenile offender actually killed, intended

to kill, or attempted to kill victim. Williams v. State, 43 Fla. L. Weekly S91a (FLA 2/22/18)

PRR: Defendant does not qualify for PRR where he had never been physically transferred to DOC under his

UNION-CONTACT: In sex case, jury is properly instructed that union means contact. Phillips v. State, 43 Fla. L. Weekly D439c (4th DCA 2/21/18)

COMPETENCY: Trial counsel's apparent stipulation to defendant's competency based on court-ordered evaluation did not absolve trial court from making independent determination regarding defendant's competency. Panaro v. State, 43 Fla. L. Weekly D438a (4th DCA 2/21/18)

VOP: After a hearing on whether he violated probation, the Defendant is entitled to a separate hearing on disposition. Harrington v. State, 43 Fla. L. Weekly D434a (4th DCA 2/21/18)

RESENTENCING: When resentencing defendant following appellate remand, trial court erred by imposing sentence at hearing that was noticed as a status check, not a sentencing hearing. Noel v. State, 43 Fla. L. Weekly D432a (4th DCA 2/21/18)

CONFESSION: Detectives violated defendant's Miranda rights when they continued to engage defendant after he had invoked his right to counsel ("They're talking. First one talks, deals. . .Good luck to you man. These guys already talk. All right. So don't say I didn't give you a chance. . .No more breaks after this. The gloves come off."). Scotsman v. State, 43 Fla. L.

Weekly D431a (4th DCA 2/21/18) BURGLARY: Child cannot be convicted of burglary of a structure where building under construction had no roof. I.L. v. State, 43 Fla. L. Weekly D428a (3rd DCA 2/21/18)

SEARCH AND SEIZURE: Vehicle passenger can be detained on traffic stop. Cummings v. State, 43 Fla. L. Weekly D417c (1st DCA 2/20/18)

PUBLIC RECORDS: Two-week period it took letter to be delivered from state attorney in response to request for public records did not breach requirement to respond promptly. State attorney did not violate public records law by making requested records available for inspection and copying at main office of state attorney instead of at an office closer to the requester's home. Siegmeister v. Johnson, 43 Fla. L. Weekly D415a (1st DCA 2/20/18)

SENTENCING CONSIDERATIONS: In sentencing for possession of child porn, Court may consider evidence that Defendant expressed interest in having sex with a child. Barlow v. State, 43 Fla. L. Weekly D414a (1st DCA 2/20/18)

JURORS-PEREMPTORY CHALLENGE-PRESERVATION: Has a defendant who accepts a jury, but renewed a previously-raised objection to a state peremptory challenge after the challenged juror has been excused but before the jury is sworn, waived that objection? Question certified. Ivey v. State, 43 Fla. L. Weekly D413d (1st DCA 2/20/18)

HABEAS CORPUS: Defendant cannot raise by habeas corpus claims which would have been time barred under 3.850. Welch v. State, 43 Fla. L. Weekly D413c (1st DCA 2/20/18)

POST CONVICTION RELIEF: Court may not summarily deny motion without attaching records showing no entitlement to relief. Laidler v. State, 43 Fla. L. Weekly D413a (1st DCA 2/20/18)

DICTIONARY: "[T]he Supreme Court Committee on Standard Jury Instructions in Criminal Cases might want to consider amending the standard jury instruction . . .to define the terms 'prurient interest' and 'morbid interest.'" Brown v. State, 43 Fla. L. Weekly D412a (1st DCA 2/19/18)

JURY PARDON-LESSER INCLUDED: Because jury pardon doctrine has been abrogated by Florida Supreme Court, giving of jury instruction on attempted voluntary manslaughter that incorrectly included an element of intent to kill did not constitute fundamental error, and error was harmless. Conflict certified. Knight v. State, 43 Fla. L. Weekly D404a (1st DCA 2/19/18)

FUNDAMENTAL ERROR: Fundamental error in a jury instruction can be waived. Knight v. State, 43 Fla. L. Weekly D404a (1st DCA 2/19/18)

QUOTATION: "Criminal defense lawyers take heed: you may have thought that a waiver of your client's known rights required that you voluntarily and intentionally relinquish them . . . because, after all, that has been the well-worn, long-accepted legal standard. No longer. Now your mere participation in the jury instructions process is sufficient to imply. . .[the transformation of] what had been known as 'unknowing acquiescence'. . .into a voluntary and intentional abandonment of your client's rights." Knight v. State, 43 Fla. L. Weekly D404a (1st DCA 2/19/18)

RESENTENCING: Where court failed to re-designate the Defendant a Habitual Offender upon a second violation of probation, and sentence otherwise exceeds the statutory maximum, Defendant must be re-sentenced

to a legal non-HFO sentence. Bishop v. State, 43 Fla. L. Weekly D402c (5th DCA 2/16/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to file motion to suppress statements. Davis v. State, 43 Fla. L. Weekly D402a (5th DCA 2/16/18)

POST CONVICTION RELIEF: Where defendant was previously deemed entitled to appointment of counsel for post conviction motion, it was an abuse of discretion to allow defendant to discharge counsel without an adequate hearing within the rubric of Faretta. Toro v. State, 43 Fla. L. Weekly D400a (2nd DCA 2/16/18)

DEATH PENALTY: Death penalty is not barred for a 21 year old on the theory that a 21 year old's brain is not fully developed. Branch v. State, 43 Fla. L. Weekly S87a (FLA 2/15/18)

DEATH PENALTY: Telling the jury that its recommendation would only be advisory does not violate Hurst. Franklin v. State, 43 Fla. L. Weekly S86a (FLA 2/15/18)

SEX OFFENDER RECOMMENDATION: Court may deny petition for removal from sex offender registry based on his otherwise violent criminal history. The decision whether to grant a petition for removal from the sex offender registry filed by an offender who meets the criteria under the statute is discretionary. Wromas v. State, 43 Fla. L. Weekly D392a (3rd DCA 2/14/18)

WAIVER OF JURY TRIAL: Notwithstanding Rule 3.260, oral waiver of the right to a jury trial is permissible. Westberry v. State, 43 Fla. L. Weekly D389b (3rd DCA 2/14/18)

SELF DEFENSE: It is error for a trial court to modify the standard jury instructions and instruct the jury on the victim's right to use force. An instruction on the victim's right to use self-defense is misleading and confusing since it tended to shift the focus away from the issue of whether the defendant was justified in the use of force, and to place emphasis on whether the victim was justified in defending him/herself. Stickney v. State, 43 Fla. L. Weekly D388a (4th DCA 2/14/18)

CONTEMPT: Defendant properly found in contempt from repeatedly butting in, heckling one of the attorneys, saying she "could have been to Disney World four times with my ninety-year-old dad," and "I have bigger fish to fry." Woodward v. State, 43 Fla. L. Weekly D387a (4th DCA 2/14/18)

CONTEMPT: A transcript of a direct criminal contempt hearing is not necessary to uphold the conviction. Woodward v. State, 43 Fla. L. Weekly D387a (4th DCA 2/14/18)

CIRCUMSTANTIAL EVIDENCE: Defendant properly convicted of murder based on suspicious text messages about disposing of gun and evidence he had purchased the gun shortly before the murder. Alvarez v. State, 43 Fla. L. Weekly D385a (4th DCA 2/14/18)

FLEEING AND ELUDING: Where there was no dispute that defendant was not operating at a high rate of speed nor with wanton disregard, conviction is reduced to fleeing to elude law enforcement officer with sirens and lights

activated. Claim that defendant "weaved" in traffic, without more, is insufficient. Canidate v. State, 43 Fla. L. Weekly D382c (4th DCA 2/14/18)

MINOR-SENTENCE REVIEW: "Though the defendant was not sentenced to life or a de facto life sentence, the trend of current case law appears to afford her a review of her 30-year sentence and a meaningful opportunity for release based on demonstrated maturity and rehabilitation." Bilotti v. State, 43 Fla. L. Weekly D379a (4th DCA 2/14/18)

DEPARTURE-DOWNWARD: "A jury found Schultz guilty of 55 counts of drug trafficking. Given the number of charges, the defendant scored 2549 sentencing points. The lowest permissible sentence under the criminal punishment code was 1890.75 months in prison, approximately 157.5 years." Downward departure reversed where Defendant did not file a motion for downward departure nor did Court make written findings. State v. Schultz, 43 Fla. L. Weekly D377b (4th DCA 2/14/18)

JURORS-PEREMPTORY CHALLENGE-RACE: Court erred in finding that juror's religious affiliation alone was genuine and race-neutral basis for challenge where state did not question juror regarding her religion before exercising the strike and, even after questioning, nothing in the record showed juror's religion (Jehovah Witness) would prevent her from being fair and impartial juror. Striking potential juror based entirely on particular religious affiliation, without any evidence that religion would prevent her from being fair and impartial, is impermissible "religious test" in violation of state and federal constitutions. Pacchiana v. State, 43 Fla. L. Weekly D367a (4th DCA 2/14/18)

FORFEITURE: Court erred by failing to conduct evidentiary hearing to establish whether claimant had bona fide claim to money found by law enforcement officers in his vehicle, along with evidence of sale of controlled

substances and identity fraud, after claimant provided affidavit in which his mother stated that she had given claimant a specified amount of cash as a birthday gift. Hudson v. State, 43 Fla. L. Weekly D364a (4th DCA 2/14/18)

MAIL BOX RULE: Motion for post conviction relief was timely filed where stamp on motion reflected that it was placed in the hands of institutional official for mailing less than 30 days after judgment and sentence became final. Mondeja v. State, 43 Fla. L. Weekly D359a (2nd DCA 2/14/18)

NEBBIA HOLD: Courts lack authority to detain accused for the purpose of inquiring into source of funds used to post bail. Casiano v. State, 43 Fla. L. Weekly D358a (2nd DCA 2/14/18)

RETURN OF PROPERTY: Court cannot deny return of money on sole basis that $3480 was found in a desk at Claimant's brother's residence and "money" is listed as a potential trial exhibit. Clayton v. State, 43 Fla. L. Weekly D357c (2nd DCA 2/14/18)

MOTION TO DISMISS: Any motion to dismiss must be in writing. Court cannot dismiss charge over State's objection based on court's perspective of the most suitable way to address juvenile's circumstances. State v. A.J., 43 Fla. L. Weekly D352a (2nd DCA 2/14/18)

SEX OFFENDER PROBATION-MODIFICATION: Court lacked jurisdiction to impose conditions of sexual offender probation that it previously had affirmatively declined to impose. Solimon v. State, 43 Fla. L. Weekly D350a (2nd DCA 2/14/18)

SUPERSEDEAS BOND: Court improperly denied supersedeas bond on ground that jury found defendant guilty and that court sentenced defendant below the statutory maximum. Ruiz v. State, 43 Fla. L. Weekly D396a (3rd DCA 2/13/18)

COMPETENCY: Court erred in failing to hold competency hearing after counsel had filed suggestion of incompetence and court had ordered expert examination of defendant. Berry v. State, 43 Fla. L. Weekly D342a (1st DCA 2/9/18)

LIFE SENTENCE-MINOR-HOMICIDE: Defendant is not entitled to jury findings on the statutory sentencing factors justifying a life sentence for a minor. Copeland v. State, 43 Fla. L. Weekly D341a (1st DCA 2/9/18)

LIFE SENTENCE-MINOR-HOMICIDE: A minor convicted of homicide and sentenced to life is not entitled to a 25 year sentence review if he has previously been convicted of certain offenses, included armed robbery. "If Mr. Copeland had a constitutional problem with being resentenced under this framework with its sentence-review prohibition, he should have argued that point to the Florida Supreme Court before it remanded his case." Copeland v. State, 43 Fla. L. Weekly D341a (1st DCA 2/9/18)

CHILD HEARSAY-UNDUE PREJUDICE: Court ruling that child hearsay is admissible implicitly meant that the Court ruled the evidence's danger of prejudice did not outweigh its probative value. Thompson v. State, 43 Fla. L. Weekly D340a (1st DCA 2/9/18)

ARGUMENT: Prosecutor's reference to defendant as "boogeyman" in opening statement is not a basis for reversal where trial court sustained

objection, and defendant did not seek curative instruction or move for mistrial. Thompson v. State, 43 Fla. L. Weekly D340a (1st DCA 2/9/18)

LESSER INCLUDED: Court is required to give a lesser-included instruction of the permissive lesser of unnatural and lascivious act only if requested. A court's failure to give an instruction on a permissive lesser-included does not constitute fundamental error. Thompson v. State, 43 Fla. L. Weekly D340a (1st DCA 2/9/18) https://edca.1dca.org/DCADocs/2016/1990/161990_1284_02092018_11563859_i.pdf

COMPETENCY: Court abused its discretion by failing to hold competency hearing, adjudicate defendant's competency, and enter an order memorializing that adjudication before proceeding to trial where there were reasonable grounds to suggest that defendant was not mentally competent to proceed. Not even the defendant's stipulation to competency relieves the trial court of the obligation to hold a competency hearing if there are reasonable grounds to question competency. Walker v. State, 43 Fla. L. Weekly D339a (1st DCA 2/9/18)

CONSTRUCTIVE POSSESSION: Where Defendant is the sole resident of a garage apartment set up as a meth lab, he is not entitled to a JOA when arrested when another person comes to buy meth from him. Possession here is exclusive, and even if it were joint, evidence is sufficient to establish Defendant's possession. Nolley v. State, 43 Fla. L. Weekly D337a (1st DCA 2/9/18)

OPINION: Detective's testimony that he tries to go after the meth cook (the Defendant), not the person buying the Sudafed, is not improper opinion evidence when offered on redirect to explain why the other guy was not arrested that day. Further testimony that he determined it was the Defendant

who was cooking meth was improper, but not fundamental error. Nolley v. State, 43 Fla. L. Weekly D337a (1st DCA 2/9/18)

DOUBLE JEOPARDY: Separate convictions for possession of cocaine with intent to sell and simple possession based on single quantum of cocaine, a portion of which defendant sold to informant and a portion of which he retained, violated double jeopardy. There is no "legal distinction between the produce leaving the peddler's hand or in his pocket and that still on the push cart." Issue is fundamental. St. Louis v. State, 43 Fla. L. Weekly D332a (2nd DCA 2/9/18)

ROBBERY WITH A WEAPON: Defendant is entitled to JOA on robbery with a weapon where the weapon is a disassembled shotgun barrel and there was no evidence it was used as in a way likely to cause death or serious bodily injury. "Oddly, the definition of weapon itself includes a 'deadly weapon,' but the statute does not define a 'deadly weapon.'" Browne v. State, 43 Fla. L. Weekly D323a (5th DCA 2/9/18)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for failing to call a key witness on ground that claim was successive where trial court had originally summarily denied the claim but appellate court reversed and required a hearing. Mackey v. State, 43 Fla. L. Weekly D317a (5th DCA 2/9/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim of ineffective assistance for failure to investigate alibi witnesses and that time card and video surveillance would have shown that he was at work at the time of the crime. Mitchell v. State, 43 Fla. L. Weekly D316c (5th DCA 2/9/18)

DEATH PENALTY-HURST: Defendant is not entitled to relief under Hurst where defendant's conviction and sentence became final prior to Ring. Hamilton v. State, 43 Fla. L. Weekly S82a (FLA 2/8/18)

JURY INSTRUCTION-MURDER-LEO: Amendments to include that Defendant knew the victim was a LEO, other changes. In Re : Standard Jury Instructions, 43 Fla. L. Weekly S79a (FLA 2/8/18)

AMENDMENT-JURY INSTRUCTION-LEAVING SCENE OF CRASH: Accident changed to crash. In Re : Standard Jury Instructions, 43 Fla. L. Weekly S78c (FLA 2/8/18)

APPEALS: Defendant is not entitled to new trial because of the absence of the jury charge conference from the trial transcript in the absence of a showing of prejudice. Murray v. State, 43 Fla. L. Weekly D313a (1st DCA 2/8/18)

STAND YOUR GROUND: Defendant cannot prohibit trial court from proceeding on Stand Your Ground on the basis of its pre-hearing ruling that the standard of proof is preponderance of the evidence. The issue of retroactivity of the burden of proof, and whether the shifting of the burden is procedural or substantive, is not ripe. Rodriguez v. State, 43 Fla. L. Weekly D304b (3rd DCA 2/7/18)

HABITUAL VIOLENT FELONY OFFENDER: HVFO is constitutional. Heggs is inapplicable to a defendant who was sentenced as a habitual violent felony offender. Defendant is not subject to sentencing guidelines. Gutierrez v. State, 43 Fla. L. Weekly D304a (3rd DCA 2/7/18)

QUOTATION: Second motion for rehearing is denied. "MOTHAF–K y'all and all those that's down with y'all corrupted behavior! You MOTHAF–KS are not GOD and you damn sure not right. From this day forward all HELL will come down on y'all until I'm FREE." Wright v. State, 43 Fla. L. Weekly D301b (3rd DCA 2/7/18)

JURORS-PEREMPTORY CHALLENGE: Peremptory challenges are presumed to be exercised in a nondiscriminatory manner, and the focus of the inquiry is not upon the reasonableness of the asserted nonracial motive but rather the genuineness of the motive. Martin v. State, 43 Fla. L. Weekly D300a (3rd DCA 2/7/18)

TRIAL TRANSCRIPT: Court's response to jury request for trial transcript was not improper where trial court informed jury that transcript was not available at the time, that jury should rely upon its recollection, but that read back of certain portion may be available if necessary. Douglas v. State, 43 Fla. L. Weekly D298d (3rd DCA 2/7/18)

APPEAL-IAC: Appellate counsel was ineffective for failing to raise improper shifting of burden of proof, the same issue on which co-defendant won a new trial. To treat the two differently is a manifest injustice. Pierre v. State, 43 Fla. L. Weekly D298a (4th DCA 2/7/18)

DOUBLE JEOPARDY: Defendant could not be convicted of two counts of first degree felony murder and two counts of vehicular homicide/failure to render aid where defendant's actions resulted in death of only two victims. Oakley v. State, 43 Fla. L. Weekly D295a (4th DCA 2/7/18)

SELF-REPRESENTATION: Defendant abandoned his request to represent himself after a psychological evaluation finding him sane at th time of the

offense and him agreeing to be represented. Cheney v. Cheney, 43 Fla. L. Weekly D289a (1st DCA 2/5/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Morton v. State, 43 Fla. L. Weekly S78b (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Overton v. State, 43 Fla. L. Weekly S78a (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Melton v. State, 43 Fla. L. Weekly S77c (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring.

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Hodges v. State, 43 Fla. L. Weekly S77b (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Griffin v. State, 43 Fla. L. Weekly S77a (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Pietri v. State, 43 Fla. L. Weekly S76c (FLA 1/2/1)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Damren v. State, 43 Fla. L. Weekly S76b (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Lawrence v. State, 43 Fla. L. Weekly S76a (FLA 2/2/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring. Derrick v. State, 43 Fla. L. Weekly S75c (FLA 2/2/18) Johnson v. State, 43 Fla. L. Weekly S75b (FLA 2/2/18)

MANDAMUS: Judge can be compelled to rule on motion by writ of mandamus where ruling is unduly delayed. "While we are sympathetic to the large caseloads assigned to Florida's circuit judges, we are concerned that the present failure to rule on Horner's motion is unduly impairing his right of access to the courts." Horner v. State, 43 Fla. L. Weekly D274a (5th DCA 2/2/18)

RESENTENCING-MINOR: Rule 3.802 motion challenging 30-year sentence for offense committed when defendant was juvenile applies only after juvenile has been resentenced and time for review hearing has arrived. Katwaroo v. State, 43 Fla. L. Weekly D273a (5th DCA 2/2/18)

LEWD OR LASCIVIOUS EXHIBITION: Lewd pictures transmitted during a live conversation on phone is insufficient to support conviction for lewd or lascivious molestation. Where the pictures are not live, JOA is required.

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst where sentence became final prior to Ring, 43 Fla. L. Weekly D270 (2nd DCA 2/2/18)

DEATH PENALTY: Defendant who waived any post-conviction proceedings including by acknowledging that he "was losing permanently his right to take advantage of any changes that may occur in the law," cannot claim the benefit of Hurst. Death sentence reinstated. State v. Silvia, 43 Fla. L. Weekly S70a (FLA 2/1/18)

QUOTATION (LEWIS, J., dissenting): "Today this Court advances for the first time a new excuse, not a valid reason, to push Florida's death penalty jurisprudence into an unconstitutional abyss. . .The Court simply turns its eyes from the violation of the Sixth, Eighth, and Fourteenth Amendments." State v. Silvia, 43 Fla. L. Weekly S70a (FLA 2/1/18)

QUOTATION (LEWIS, J., dissenting): "For the first time, the majority decision eschews recent precedent and denies Hurst relief to a post-Ring, nonunanimous defendant. . .[T]he basis for this decision is simple, albeit misguided. . .[B]y skirting the underlying law, the majority disregards the real substance of the question presented and develops a holding absent any precedential support." State v. Silvia, 43 Fla. L. Weekly S70a (FLA 2/1/18)

DEATH PENALTY: Defendant entitled to new penalty phase where jury's recommendation of death was not unanimous and sentence became final

after U.S. Supreme Court's decision in Ring v. Arizona. Pagan v. State, 43 Fla. L. Weekly S69a (FLA 2/1/18)

LEWD OR LASCIVIOUS BATTERY-LESSER INCLUDED: Unnatural and lascivious act is not a lesser included of lewd or lascivious battery where the act in question is "traditional penile-vaginal intercourse. Act is not rendered unnatural based solely on the age of the victim. To hold otherwise renders the crimes as identical crimes with differing penalties. Knighton v. State, 43 Fla. L. Weekly S68a (FLA 2/1/18)

AMENDMENT-FORMS: Requirement for notarization in simplified dissolution of marriage is deleted. In re : Amendments to the Florida Family Law Rules of Procedure--Form 12.901(a), 43 Fla. L. Weekly S58b (FLA 2/1/18)

JANUARY 2018

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Stein v. State, 43 Fla. L. Weekly S56a (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Nelson v. State, 43 Fla. L. Weekly S55c (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Consalvo v. State, 43 Fla. L. Weekly S55b (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Whitton v. State, 43 Fla. L. Weekly S55a (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Gordon v. State, 43 Fla. L. Weekly S54c (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Sireci v. State, 43 Fla. L. Weekly S54b (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Krawczuk v. State, 43 Fla. L. Weekly S54a (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Sliney v. State, 43 Fla. L. Weekly S53c (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Rodriguez v. State, 43 Fla. L. Weekly S53b (FLA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Miller v. Jones, 43 Fla. L. Weekly S53a (FLA 1/31/18)

CREDIT FOR TIME SERVED: Claim for correction of credit for time served must be raised within one year. Bryant v. State, 43 Fla. L. Weekly D270a (3rd DCA 1/31/18)

CREDIT FOR TIME SERVED: Once the sentencing judge has awarded a defendant prior prison credit, the Department of Corrections has primary responsibility for calculating the credit. Bryant v. State, 43 Fla. L. Weekly D270a (3rd DCA 1/31/18)

POST CONVICTION RELIEF: Counsel was not ineffective for advising defendant not to testify where that was a reasonable strategic decision. Johnson v. State, 43 Fla. L. Weekly D267a (3rd DCA 1/31/18)

HEARSAY-BUSINESS RECORDS: Testimony of witness employed in executive capacity by company that prepared and maintained records at issue provided proper foundation for admission of business records into evidence. Jackson v. Household Finance, 43 Fla. L. Weekly D261b (2nd DCA 1/31/18)

CONTEMPT: Direct contempt conviction is vacated where court failed to inform defendant of his right to present excusing or mitigating circumstances or to show cause why he should not be held in contempt. Phelps v. State, 43 Fla. L. Weekly D261a (2nd DCA 1/31/18)

BEST EVIDENCE RULE: Where document at issue is a negotiable instrument, the original, not a copy must be submitted at trial. Morales v. Fifth Third Mortgage Company, 43 Fla. L. Weekly D257b (4th DCA 1/31/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Booker v. State, 43 Fla. L. Weekly S52c (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. LaMarca v. State, 43 Fla. L. Weekly S52b (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Davis v. State, 43 Fla. L. Weekly S52a (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Sochor v. State, 43 Fla. L. Weekly S51c (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Whitfield v. State, 43 Fla. L. Weekly S51b (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Rogers v. State, 43 Fla. L. Weekly S51a (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Mendoza v. State, 43 Fla. L. Weekly S50c (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Pace v. State, 43 Fla. L. Weekly S50b (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Occhione v. State, 43 Fla. L. Weekly S50a (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Gudinas v. State, 43 Fla. L. Weekly S49c (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Gamble v. State, 43 Fla. L. Weekly S49b (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Foster v. State, 43 Fla. L. Weekly S49a (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Brown v. State, 43 Fla. L. Weekly S48c (FLA 1/30/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Davis v. State, 43 Fla. L. Weekly S48b (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Bowles v. State, 43 Fla. L. Weekly S48a (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Bell v. State, 43 Fla. L. Weekly S47c (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Fotopoulos v. State, 43 Fla. L. Weekly S47b (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Foster v. State, 43 Fla. L. Weekly S47a (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Long v. State, 43 Fla. L. Weekly S46c (FLA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under Hurst v. Florida where sentence became final prior to Ring v. Arizona. Jennings v. State, 43 Fla. L. Weekly S46b (FLA 1/29/18)

HEARSAY-STATEMENT AGAINST PENAL INTEREST: Court did not abuse its discretion by refusing to admit witness's testimony regarding third party's confession where third party's statement to witness did not carry requisite indicia of trustworthiness, particularly because statement was made on a

fishing trip. Discussion of factors to be considered in ruling on admissibility of statement against interest and four-factor test for admission of third-party confession set out by U.S. Supreme Court in Chambers v. Mississippi. Payton v. State, 43 Fla. L. Weekly D250a (1st DCA 1/29/18)

DEATH PENALTY: Defendant who was sentenced to death is not entitled to relief under U.S. Supreme Court decision in Hurst v. Florida where sentence became final prior to U.S. Supreme Court decision in Ring v. Arizona. (Same holding in 38 cases this week). Jeffries v. State, 43 Fla. L. Weekly S46a (FLA 1/26/18)

COMPETENCY: Court must conduct a competency hearing after psychiatrist conducted a court-ordered evaluation and prepared a written report. Perez v. State, 43 Fla. L. Weekly D248a (1st DCA 1/26/18)

INJUNCTION: Court is not required to stay the hearing on a permanent injunction on the basis that going forward would jeopardize 5th Amendment right against self-incrimination in a pending criminal case. Speegle v. Rhoden, 43 Fla. L. Weekly D245a (1st DCA 1/26/18)

DOUBLE JEOPARDY-DEALING IN STOLEN PROPERTY/THEFT: Separate convictions for dealing in stolen property and theft based on same conduct violated double jeopardy. A court is precluded from allowing a defendant to plead guilty to both offenses if they are based on a single course of conduct. Thomas v. State, 43 Fla. L. Weekly D243b (1st DCA 1/26/18)

COSTS: Court may not impose sheriff's office investigative cost in absence of request on the record for imposition of this cost; inclusion of actual cost in arrest report is not sufficient. Thomas v. State, 43 Fla. L. Weekly D243b (1st DCA 1/26/18)

DOUBLE JEOPARDY: Separate convictions for traveling to meet a minor and use of two-way communications device to facilitate the commission of a felony violate prohibition against double jeopardy. Bermudez v. State, 43 Fla. L. Weekly D242c (2nd DCA 1/26/18)

MINOR-LIFE IMPRISONMENT: Court may not sentence a minor to life imprisonment for robbery with a firearm without providing a meaningful opportunity for release. Wirth v. State, 43 Fla. L. Weekly D242b (2nd DCA 1/26/18)

INFORMATION-DEFECTIVE: Defendant cannot be convicted for violation of a subsection of sexual predator statute where the information failed to cite that subsection and omitted essential elements of the offense. Richards v. State, 43 Fla. L. Weekly D239c (2nd DCA 1/26/18)

INFORMATION-ALTERNATE THEORY: Where the jury is instructed on an alternate theory of the charged crime but that alternate theory was not charged in the information, it is fundamental error when it is clear that the jury returned a verdict on that uncharged theory. Richards v. State, 43 Fla. L. Weekly D239c (2nd DCA 1/26/18)

VIOLENT FELONY OFFENDER: Court must enter a written order showing reasons for its finding that the defendant, as a violent felony offender of special concern, poses a danger to the community. Wells v. State, 43 Fla. L. Weekly D239a (5th DCA 1/26/18)

PLEA-WITHDRAWAL: Court must strike defendant's pro se motion to withdraw plea where defendant was represented by counsel and motion did

not allege an adversarial relationship with counsel. Sargent v. State, 43 Fla. L. Weekly D238b (5th DCA 1/26/18)

JURORS-PEREMPTORY CHALLENGE: Melbourne re-affirmed. A party objecting to the other side's use of a peremptory challenge on racial grounds must : a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. If these initial requirements are met (step 1), the court must ask the proponent of the strike to explain the reason for the strike. At this point, the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step 2). If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the strike, the explanation is not a pretext, the strike will be sustained (step 3). The court must specifically consider and rule on whether the race-neutral reason is pretextual, without requiring a second objection from the opponent of the challenge. The court's focus in step 3 is not on the reasonableness of the explanation but rather its genuineness. The relevant circumstances that the court is to consider in determining whether the explanation is pretextual include such factors as the racial makeup of the venire; prior strikes exercised against the same racial group; a strike based on a reason equally applicable to an unchallenged venireperson; or singling out the venireperson for special treatment. Where the record is completely devoid of any indication that the trial court considered circumstances relevant to whether a strike was exercised for a discriminatory purpose, the reviewing court cannot assume that a genuineness inquiry was actually conducted. Court must not conflate Steps 2 and 3. Spencer v. State, 43 Fla. L. Weekly S34a (FLA 1/25/18)

JURORS: "Jurors are not fungible." Spencer v. State, 43 Fla. L. Weekly S34a (FLA 1/25/18)

DEATH PENALTY-JURY FINDINGS OF AGGRAVATION: Where jury recommendation of death was unanimous, and based on defendant's confession and the aggravation in the case, post conviction court properly held that any error under Hurst is harmless. Philmore v. State, 43 Fla. L. Weekly S33a (FLA 1/25/8)

LIFE SENTENCE-MINOR: Defendant who was sentenced to 40 years' imprisonment without the opportunity to obtain early release based on demonstration of maturity and rehabilitation for attempted murder committed while he was a juvenile is entitled to be resentenced. Lee v. State, 43 Fla. L. Weekly S32a (FLA 1/25/18)

POST CONVICTION RELIEF: Petition for post-conviction relief filed within 2 years after the appellate court's mandate is not time barred. McDade v. State, 43 Fla. L. Weekly D231a (3rd DCA 1/24/18

JOA-THEFT: JOA is required where there is no evidence of felonious intent when Defendant cashed a check given to him as a deposit for remodeling work he never performed within the time promised. "We are dismayed by the State's choice to pursue this criminal prosecution all the way through an appeal in the face of such weak or non-existent facts and evidence." Leggett v. State, 43 Fla. L. Weekly D230a (3rd DCA 1/24/18)

HEARSAY: Victim's statement that bank told her that the check had been deposited immediately is inadmissible hearsay. Hearsay rule does not authorize hearsay testimony about the contents of business records that have not been admitted as evidence. Leggett v. State, 43 Fla. L. Weekly D230a (3rd DCA 1/24/18)

CREDIT FOR TIME SERVED: Absent the execution of an arrest warrant, a defendant who is in jail in a specific county pursuant to an arrest on one or more charges need not be given credit for time served in that county on charges in another county when the second county has only lodged a detainer against the defendant. Cadet v. State, 43 Fla. L. Weekly D225a (3rd DCA 1/24/18)

DOWNWARD DEPARTURE: On VOP, statement that defendant has been granted a previous downward departure based on a valid uncoerced plea agreement, and that it would be inappropriate, too harsh and contrary to the principles of graduated sanctions to impose lowest permissible sentence, absent a downward departure, was not a valid basis for imposition of downward departure sentence. State v. Shine, 43 Fla. L. Weekly D224b (3rd DCA 1/24/18)

BELATED APPEAL: Belated appeal from order denying second motion for post conviction relief granted where defendant alleged that he did not receive copy of order denying motion until after time for taking appeal had expired and filed prison mailroom log which supported that allegation. McKenzie v. State, 43 Fla. L. Weekly D224a (3rd DCA 1/24/18)

EVIDENCE-JAIL CLOTHES: Video recording of defendant's confession where he was wearing jail clothes and handcuffs was not so prejudicial as to substantially outweigh the probative value of the video confession. Burton v. State, 43 Fla. L. Weekly D222b (3rd DCA 1/24/18)

EVIDENCE-BOOKING PHOTO: Court did not err in admitting defendant's booking photograph as evidence where defense raised questions about deputy's ability to identify defendant. Newton v. State, 43 Fla. L. Weekly D216a (4th DCA 1/24/18)

APPEAL-INEFFECTIVE ASSISTANCE: Claim that counsel was ineffective for failing to file motion to suppress evidence discovered in warrantless search of abandoned cell phone not cognizable on direct appeal where ineffectiveness was not apparent from face of record, which indicated that motion would likely have been fruitless due to exigencies of the situation. Barton v. State, 43 Fla. L. Weekly D215a (4th DCA 1/24/18)

MASK: Pulling t-shirt over one's face constitutes wearing a mask. Clark v. State, 43 Fla. L. Weekly D214a (4th DCA 1/24/18)

JURORS-PEREMPTORY-CHALLENGE-GENDER: Neither having a "bad feeling" about juror nor fact that defendant "doesn't want" a prospective juror is race- or gender-neutral reason for peremptory challenge. Defendant's challenges of all four male jurors was discriminatory. Johnson v. State, 43 Fla. L. Weekly D205d (1st DCA 1/22/18)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Affidavits by two witnesses that the Defendant's brother was the shooter is sufficient newly discovered evidence to warrant a hearing. Utile v. State, 43 Fla. L. Weekly D203a (5th DCA 1/19/18)

POST CONVICTION RELIEF-JURY INSTRUCTION: Defendant is not entitled to a new trial where his conviction was final before the given manslaughter by act jury instruction had been held to be fundamentally flawed. Utile v. State, 43 Fla. L. Weekly D203a (5th DCA 1/19/18)

COSTS-APPEAL: Defendant is entitled to be awarded appellate costs where his conviction was reversed on appeal and state subsequently entered nolle prosequi. Mathis v. State, 43 Fla. L. Weekly D202b (5th DCA 1/19/18)

APPEAL-VOP: Defendant cannot appeal court's failure to enter written order showing which conditions are violated where he fails to preserve error. The court minutes from trial, listing the conditions of probation orally found by the court to have been violated by a defendant is not a substitute for a proper revocation order because court minutes and the minute book entries are specifically excluded from the definition of a court order. Mendenhall v. State, 43 Fla. L. Weekly D202a (1/19/18)

COMPETENCY: Court cannot accept plea without making independent finding of competency or issuing written order on competency following brief competency hearing conducted after experts appointed to evaluate defendant's competency filed reports opining that defendant was competent to proceed. Carrion v. State, 43 Fla. L. Weekly D196a (2nd DCA 1/19/18)

CHILD HEARSAY: Court erred in admitting child hearsay without conducting factual analysis before ruling that out-of-court statements made by victim were admissible at trial and addressing why time, content, and circumstances of each statement provided sufficient safeguards of reliability. Hyre v. State, 43 Fla. L. Weekly D192a (2nd DCA 1/19/18)

DEATH PENALTY: In determining whether one suffers from an intellectual disability precluding the death penalty, the Court must take into account the standard error of measurement (SEM) of IQ tests and when a defendant's IQ test score falls within the margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Court declines to rule whether the requirement that the Defendant show intellectual disability by clear and convincing evidence is unconstitutional. Quince v. State, 43 Fla. L. Weekly S18a (FLA 1/18/18) http://www.floridasupremecourt.org/decisions/2018/sc17-127.pdf

FLYNN EFFECT: "The Flynn effect refers to a theory in which the intelligence of a population increases over time, thereby potentially inflating performance on IQ examinations. The accepted increase in scoring is approximately three points per decade or 0.33 points per year." Quince v. State, 43 Fla. L. Weekly S18a (FLA 1/18/18)

DEATH PENALTY: Defendant is not entitled to relief from imposition of death penalty under decision of U.S. Supreme Court in Hurst v. Florida where defendant waived his right to a penalty phase jury. Quince v. State, 43 Fla. L. Weekly S15a (FLA 1/18/18)

ATTORNEY-DISCIPLINE: Attorney disbarred for issuing meaningless "Official Legal Certifications" to sell marijuana. Disbarment is appropriate where the most prominent features of attorney's misconduct are incompetence and extremely serious harm to clients. The Florida Bar v. Christensen,43 Fla. L. Weekly S17a (FLA 1/18/18)

SEARCH AND SEIZURE-INCIDENT TO ARREST: Warrantless search of backpack was not valid as search incident to arrest where backpack was not in area within defendant's immediate control at time of search, but was instead in officers' exclusive control with no possibility of defendant accessing the backpack. Harris v. State, 43 Fla. L. Weekly D187b (3rd DCA 1/17/18)

VOP: Court must enter a written revocation order. Mitchell v. State, 43 Fla. L. Weekly D187a (3rd DCA 1/17/18)

DUI-BLOOD TEST: Blood draw does not require a warrant where officer testifies it would take four hours to get a warrant. Missouri v. McNeely distinguished. Aguilar v. State, 43 Fla. L. Weekly D179a (3rd DCA 1/17/18)

DOUBLE JEOPARDY: Where defendant was convicted of DUI manslaughter, DUI causing serious bodily injury, and DUI causing damage to property or person, two additional convictions for DUI violate double jeopardy and are to be vacated. Aguilar v. State, 43 Fla. L. Weekly D179a (3rd DCA 1/17/18)

PROBATION REVOCATION: Evidence that probation officer did not find the Defendant at his home is not enough to show that the Defendant had moved without permission. Bryant v. State, 236 So.3d 492 (2nd DCA 1/17/21)

HABITUAL OFFENDER: Habitual offender designation for possession of cocaine was improper. Hubbard v. State, 43 Fla. L. Weekly D163b (2nd DCA 1/17/18)

FIRST AMENDMENT: "There is a First Amendment right to videotape police officers while they are conducting their official duties in public. . .Simply put, the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public." Pickett v. State, 43 Fla. L. Weekly D159b (1st DCA 1/17/18)

SENTENCING HEARING: Court denied defendant due process when it interrupted him at sentencing hearing and refused to listen to defendant's statements prior to sentencing. Chesser v. State, 43 Fla. L. Weekly D157b (2nd DCA 1/12/18)

VOP: Court must enter written revocation order specifying conditions violated. R.H. v. State, 43 Fla. L. Weekly D157a (2nd DCA 1/12/18)

PROBATION-CONDITIONS: Sex offender can be prohibited from possessing a smart phone. The prohibition on possessing an internet accessible cell phone is reasonably related to the trial court's instruction barring him from accessing the internet without a treatment safety plan. Pinnock v. State, 43 Fla. L. Weekly D156a (2nd DCA 1/12/18)

PROBATION-CONDITIONS: Probation officer cannot prescribe new conditions of probation (here, that he not possess a smart phone), but any such argument was not preserved at VOP hearing. Pinnock v. State, 43 Fla. L. Weekly D156a (2nd DCA 1/12/18)

SENTENCING-FACTORS: Resentencing required where at sentencing State presented extensive evidence of incidents of defendant's misconduct at jail, which Court apparently considered. Love v. State, 43 Fla. L. Weekly D155a (2nd DCA 1/12/18)

JUVENILE-SENTENCING: Court is not required to explain reasons for its decision to commit Child, only for departure from DJJ recommendation. K.M.W. v. State, 43 Fla. L. Weekly D154b (5th DCA 1/12/18)

YOUTHFUL OFFENDER: Court is permitted to sentence youthful offender who substantively violates probation to a prison sentence in excess of 6 years, but may not impose a minimum mandatory term. Conflict certified. Cooper v. State, 43 Fla. L. Weekly D153c (5th DCA 1/12/18)

CREDIT FOR TIME SERVED: Court may not rely on written plea form to deny motion for additional jail credit in absence of any evidence that defendant specifically waived jail credit. Fulgham v. State, 43 Fla. L. Weekly D153b (5th DCA 1/12/18)

PROBATION-EARLY TERMINATION: Court may not announce that there will be no consideration of early termination of probation. O.P. v. State, 43 Fla. L. Weekly D150a (5th DCA 1/12/18)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for failing to conduct investigation which would have revealed information that could have been used to effectively impeach key prosecution witness, failing to impeach state witnesses with prior inconsistent statements, and failing to call any defense witnesses. Klaus v. State, 43 Fla. L. Weekly D148a (5th DCA 1/12/18)

POST CONVICTION RELIEF: A statement of satisfaction with counsel alone is generally insufficient to conclusively refute a claim that counsel was ineffective. Klaus v. State, 43 Fla. L. Weekly D148a (5th DCA 1/12/18)

CHANGE OF VENUE: Court did not err in denying change of venue where Defendant was the subject of extensive publicity for having killed four people, including officers, in a separate murder case. The test for determining a change of venue is whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely upon the evidence presented in the courtroom. Absent an extreme or unusual situation, the need to change venue should not be determined until an attempt is made to select a jury. Morris v. State, 43 Fla. L. Weekly S7a (FLA 1/11/18)

EVIDENCE: Defendant's statement in jail that "I repent for killing" is properly admitted in murder trial. Morris v. State, 43 Fla. L. Weekly S7a (FLA 1/11/18)

EVIDENCE: Evidence of Defendant's involvement in a prior murder is admissible when relevant to developing the circumstances leading up to the murder. Kirkman v. State, 43 Fla. L. Weekly S1a (FLA 1/11/18)

POST CONVICTION RELIEF: Where defendant filed timely rule 3.850 motion and trial court ordered state to respond, defendant could not thereafter file amended motions adding additional claims without seeking leave to amend. Wrencher v. State, 43 Fla. L. Weekly D146a (4th DCA 1/10/18)

COLLATERAL CRIMES: Testimony that Defendant broke everything in the room after committing charged battery by strangulation is admissible to contextualize the charged offense. Cartagena v. State, 43 Fla. L. Weekly D142a (4th DCA 1/10/18)

SENTENCING-MULTIPLIER: Court may not apply 1.5 multiplier Trial court erred in applying 1.5 multiplier for "domestic violence in the presence of a related child" where jury was never presented with an interrogatory regarding child's presence, and jury made no such finding. Cartagena v. State, 43 Fla. L. Weekly D142a (4th DCA 1/10/18)

VOIR DIRE: Court did not err in granting new trial based on court's failure to allow defendants to question several members of jury venire before they were excused for bias. Irimi v. R.J. Reynolds, 43 Fla. L. Weekly D138a (4th DCA 1/10/18)

SENTENCING-CONSIDERATIONS: Court impermissibly considered pending and unresolved charge of failure to appear in making its sentencing determination. New judge required for resentencing. Baehren v. State, 43 Fla. L. Weekly D136a (4th DCA 1/10/18)

ALLOCUTION: A criminal defendant prior to sentencing has the opportunity to make an unsworn statement to the sentencing judge. Baehren v. State, 43 Fla. L. Weekly D136a (4th DCA 1/10/18)

RECLASSIFICATION-10-20-LIFE: Aggravated Assault with a firearm may not be reclassified as a second degree felony based on use of a firearm, but client is nonetheless subject to a twenty-year mandatory minimum. Davis v. State, 43 Fla. L. Weekly D135b (4th DCA 1/10/18)

JURORS-CHALLENGE FOR CAUSE: Potential jurors who express significant reservations about their ability to be impartial should be excused for cause where their responses to attempts at rehabilitation are conditional or equivocal. Jurors who are reluctant to accept that false confessions happen ("It's possible. But a crime of this nature I mean who would be crazy enough to admit guilt?") should be stricken for cause. Rentas v. State, 43 Fla. L. Weekly D129b (4th DCA 1/10/18)

JURORS-CHALLENGE FOR CAUSE-REHABILITATION: "Few jurors would resolutely continue to admit that they have a bias after having a prosecutor and a trial judge cloak them in a duty to be fair. Some answers by prospective jurors should simply be deemed alone disqualifying, no matter how earnestly counsel and the trial judge seek to save them." Rentas v. State, 43 Fla. L. Weekly D129b (4th DCA 1/10/18)

READ-BACK: Where testimony is read-back, the applicable cross-examination testimony must be read back as well. Rentas v. State, 43 Fla. L. Weekly D129b (4th DCA 1/10/18)

HEARSAY-STATEMENT AGAINST INTEREST: Court erred by excluding that portion of statement by co-defendant to jailhouse informant that the police had

the wrong guy. Exception to hearsay rule for statements against interest includes statements which do not need to amount to a full confession by the declarant, but which, taken in context, are be against the declarant's interest and tend to exculpate the defendant. Baez v. State, 43 Fla. L. Weekly D116a (2nd DCA 1/5/18)

JOA-CULPABLE NEGLIGENCE: Throwing a smoke bomb at a house is not culpable negligence (exposing another to personal injury). Culpable negligence requires conduct of a type likely to cause death or great bodily harm. J.C. v. State, 43 Fla. L. Weekly D108a (2nd DCA 1/5/18)

QUOTATION: "So I think we should reevaluate Azima in an appropriate case. I do hope, however, that the appropriate case involves facts a little more deserving of prosecution than what appears from our record to be little (if anything) more than a preteen boy's careless exuberance with a smoke bomb around the Fourth of July." J.C. v. State, 43 Fla. L. Weekly D108a (2nd DCA 1/5/18)

POST CONVICTION RELIEF: There is no requirement that same judge preside over both trial and post conviction proceedings. Jacobson v. State, 43 Fla. L. Weekly D106a (2nd DCA 1/5/18)

APPEALS: Appellate court lacks jurisdiction of appeal contesting voluntariness of his appeal absent a motion to withdraw plea in trial court. Rhines v. State, 43 Fla. L. Weekly D91b (3rd DCA 1/3/18)

SPEEDY TRIAL: Defendant who is serving sentence in foreign state is not entitled to benefit of Florida speedy trial rule until he is returned to jurisdiction of Florida. Klein v. State, 43 Fla. L. Weekly D91a (3rd DCA 1/3/18)

COMPETENCY: Court did not reversibly err by failing to hold competency hearing after appointing confidential expert to evaluate defendant for purpose of aiding defense counsel in determining defendant's competency to proceed where request for confidential expert evaluation was made as precautionary measure and was insufficient to trigger mandatory competency hearing. Atwater v. State, 43 Fla. L. Weekly D94a (1st DCA 1/2/18)

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POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to object to coercive Allen charge (jurors had to stay as long as it took to reach a verdict and could not go home until they did so). Prejudice need not be alleged. Holder v. State, 43 Fla. L. Weekly D84a (2nd DCA 12/29/17)

AMENDMENT-RULES OF APPELLATE PROCEDURE: Proposal that all appeals to Circuit Court must be decided by a panel of at least three judges is deferred. When an attorney is representing more than one party in an appeal, the attorney may only file one initial or answer brief and one reply brief, that includes arguments as to all of the parties the attorney represents. In Re: Amendments to Florida Rules of Appellate Procedure, 43 Fla. L. Weekly S508c (FLA 10/25/18)

CREDIT FOR TIME SERVED: Court erred in denying Defendant's claim that he was entitled to time spent in prison between his original sentencing date of the resentencing date because he had failed to exhaust administrative remedies. Defendant is not under any obligation to exhaust administrative remedies to get appropriate credit for time served. Rivera v. State, 43 Fla. L. Weekly D2402a (3rd DCA 10/24/18)

JUVENILE-SENTENCE AS ADULT: When juvenile, prosecuted as an adult, was sentenced under a plea agreement to a juvenile commitment program with the agreement that if you violated the conditions of commitment he could be sentenced to prison, and thereafter incurred more charges in and after the commitment program, the Court erred in considering any matters other than those alleged in the motion to impose adult sanctions. The "Face Sheet" is inadmissible hearsay. Brown v. State, 43 Fla. L. Weekly D2398a (3rd DCA 10/24/18)

EXPUNCTION-HUMAN TRAFFICKING: Defendant, who had been the victim of human trafficking and in the course thereof committed the offense of kidnapping, is statutorily precluded from getting and expunction of the kidnapping offense. M.G. v. State, 43 Fla. L. Weekly D2393c (3rd DCA 10/24/18)

APPEAL-MOTION TO MODIFY: An order denying a motion to modify probation is not appealable. Jackson v. State, 43 Fla. L. Weekly D2393b (2nd DCA 10/24/18)

GRAND THEFT-VALUE-JOA: Testimony of grounds superintendent about missing equipment from golf resort did not satisfy criteria for proving value where he did not provide testimony about purchase price, depreciation, or replacement costs for all the items. "The application of a 'life experience' exception to any criminal statute, including the criminal theft statute, is inconsistent with the uniform system of justice that both the Florida and Federal Constitutions require and should not be left to the whim of individual jury members." Teltschik v. State, 43 Fla. L. Weekly D2393a (2nd DCA 10/24/18)

VIOLENT CAREER CRIMINAL: Argument that 30-year sentence for grand theft is illegal because grand theft is not an offense eligible for Violent Career

Criminal sentencing is not preserved for review by objection or motion to correct in the trial court. Crews v. State, 43 Fla. L. Weekly D2392b (2nd DCA 10/24/18)

DOUBLE JEOPARDY: Double Jeopardy precludes convictions for theft of firearm and theft of other property any stolen vehicle because the theft of the vehicle in the contents is one act of taking. D.T. v. State, 43 Fla. L. Weekly D2392a (2nd DCA 10/24/18)

SEARCH AND SEIZURE-DOG SNIFF: Officers who stopped vehicle in apartment complex parking lot after observing defendant driving without a seatbelt and who placed defendant under arrest for driving without a license within two minutes of initial stop did not violate Fourth Amendment by initiating dog sniff of vehicle 20 minutes later. Jefferson v. State, 43 Fla. L. Weekly D645a (1st DCA 3/22/18)

JOA-AGGRAVATED ASSAULT: Victim's testimony that Defendant (his father) lunged at him with the cane during a verbal altercation and that both men then stepped backward did not establish that defendant used cane in manner likely to produce death or great bodily harm. ("I open the door, tell him to leave, start cussing each other, and then he gets mad and lunges at me with his cane. I step back to nail him, and he stepped back himself, and then we cussed each other some more.") Wallace v. State, 43 Fla. L. Weekly D642a (1st DCA 3/22/18)

APPEALS-MOOTNESS: Appeal of temporary injunction must be dismissed for mootness where permanent injunction is ultimately dismissed (jail inmate sought injunction against C.O for harassing him). Trowell v. Crawford, 43 Fla. L. Weekly D83c (2nd DCA 12/29/17)

DOUBLE JEOPARDY: Separate convictions for using a computer to solicit a person believed to be a parent of a child and traveling to meet minor did not violate double jeopardy where defendant was charged with two separate acts of solicitation, and the agreement to travel was reached only after the second solicitation. Kuckuck v. State, 43 Fla. L. Weekly D80b (5th DCA 12/29/17)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to advise him about habitualization. Short v. State, 43 Fla. L. Weekly D79d (5th DCA 12/29/17)

MANDATORY MINIMUM: Court erred in imposing mandatory minimum where information did not sufficiently allege that defendant possessed firearm. Robinson v State, 43 Fla. L. Weekly D79c (5th DCA 12/29/17)

COMPETENCY: Court erred by denying, as legally insufficient, counsel's final motion to determine competency. Claim that rejection of plea offer was based on misadvice by counsel regarding maximum penalty for crime, including 25year mandatory minimum, was facially sufficient, notwithstanding that Defendant did not receive minimum mandatory sentence because of an error in the verdict form. E.C. v. State, 43 Fla. L. Weekly D79b (5th DCA 12/29/17)

SENTENCING: Court fundamentally erred in entering a sentencing order without conducting a sentencing hearing and without orally pronouncing the sentence in court. Hutto v. State, 43 Fla. L. Weekly D78e (1st DCA 12/29/17)

PRETRIAL DETENTION: Court may not deny bond on attempted second degree murder where no written motion for pretrial detention was filed. State's oral motion made at first appearance is not sufficient. Rhagnan v. State, 43 Fla. L. Weekly D80a (5th DCA 12/27/17)

POST CONVICTION RELIEF: Court may not summarily deny claim as facially insufficient without giving defendant opportunity to amend. Cameron-Osorio v. State, 43 Fla. L. Weekly D77a (2nd DCA 12/27/17)

SENTENCING-CONSIDERATIONS: Child is entitled to resentencing before a different judge where court considered offenses for which juvenile had not yet been charged or convicted. N.D.W. v. State, 43 Fla. L. Weekly D76b (2nd DCA 12/27/17)

CONFLICT: Court erred in summarily denying motion alleging trial counsel labored under conflict of interest because he also represented, in a separate case, a man who allegedly had confessed to defendant that he had committed the crimes at issue in that case. Mendez-Domingo v. State, 43 Fla. L. Weekly D75a (2nd DCA 12/27/17)

APPEALS: Appeal of denial to suppress statement is not cognizable where not dispositive. Daniel v. State, 43 Fla. L. Weekly D74a (2nd DCA 12/27/17)

RESTITUTION: Court erred in ordering defendant to reimburse burglarized church for the church's purchase of Lifelock, Inc., memberships for thirteen church employees whose personal identification information was on thumb drive that was stolen from church. A.J.S. v. State, 43 Fla. L. Weekly D72a (2nd DCA 12/27/17)

SEPARATION OF POWERS: Sheriff failed to show that circuit court's chief judge exceeded his authority by issuing an administrative order requiring sheriff, as an officer of the court, to provide security for certain court facilities where no sessions of court are held. Knight v. Twelfth Judicial Circuit, 43 Fla. L. Weekly D70b (2nd DCA 12/27/17)

SENTENCING-NONHOMICIDE-JUVENILE: Thirty year sentence for juvenile for nonhomicide offense for without meaningful opportunity for early release is unconstitutional. Kelsey (Graham) applies to all juveniles who have been sentenced to term-of-year sentences of more than twenty years in prison but who would not have the opportunity for judicial review. Alfaro v. State, 43 Fla. L. Weekly D69a (2nd DCA 12/27/17)

CORPUS DELICTI: Conviction of possession of firearm by minor cannot stand where corpus delicti of charge consisted solely of inadmissible hearsay. J.J.J. v. State, 43 Fla. L. Weekly D68a (2nd DCA 12/27/17)

HEARSAY: When the only possible relevance of an out-of-court statement is directed to the truth of the matters stated by a declarant, the subject matter is classic hearsay even though the proponent of such evidence seeks to clothe such hearsay under a nonhearsay label. When the only relevance of an out-ofcourt statement is to prove the truth of the matter asserted, the statement is hearsay and is not rendered admissible when the nonhearsay purpose for which it was admitted is not relevant to the issues in dispute. Argument that Court did not admit what the father said but merely that the policeman's conclusion that Child was the person he needed to talk to is meritless. J.J.J. v. State, 43 Fla. L. Weekly D68a (2nd DCA 12/27/17)

TRIAL PRACTICE: In L & L case, Court may allow victim to testify in a chair in front of the jury box, with the prosecutor sitting beside him, where no objection is made. Stevenson v. State, 43 Fla. L. Weekly D67e (1st DCA 12/27/17)

STAND YOUR GROUND: In Stand Your Ground hearing, evidence need not be considered undisputed where victim (deceased) did not testify. Brown v. State, 43 Fla. L. Weekly D67d(1st DCA 12/27/17)

FELONY BATTERY-JOA: Knocking out a baby tooth is not great bodily harm, permanent disfigurement, or permanent disability. D.M. v. State, 43 Fla. L. Weekly D64a (3rd DCA 12/27/17)

HVFO : Defendant cannot be designated a Habitual Violent Felony Offender on the basis of him being on probation for a prior offense, but may be on the basis of him having a prior qualifying offense within five years of conviction. Garcia v. State, 43 Fla. L. Weekly D59b (3rd DCA 12/27/17)

DOUBLE JEOPARDY: Separate convictions for resisting officer with violence (punching officer) and without violence (running away) violated double jeopardy principles where the two acts were part of a single criminal episode. Johnson v. State, 43 Fla. L. Weekly D36c (2nd DCA 12/22/17)

REVOCATION OF PROBATION: Court may not enter new judgments following revocation of probation. West v. State, 43 Fla. L. Weekly D36b (2nd DCA 12/22/17)

APPELLATE COUNSEL-INEFFECTIVE: Appellate counsel is ineffective for limiting appeal, based on improper exclusion of impeachment evidence, to challenge of the kidnapping conviction where the impeachment evidence would have applied to another count as well. Musson v. State, 43 Fla. L. Weekly D34f (2nd DCA 12/22/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to call victim to testify for mitigation purposes at VOP hearing. Addison v. State, 43 Fla. L. Weekly D34b (5th DCA 12/22/17)

SEARCH AND SEIZURE: Officer who sees Defendant lean into a bait vehicle may not stop him when he drives away in a different vehicle shortly thereafter. A.M. v. State, 43 Fla. L. Weekly D32b (5th DCA 12/22/17)

POST CONVICTION RELIEF: Court erred in denying as untimely Defendant's motion for post-conviction relief under rule 3.840 where the motions were filed within 2 years of the date of the appellate mandate. Starkes v. State, 43 Fla. L. Weekly D27a (1st DCA 12/21/17)

POST CONVICTION RELIEF: Claim of ineffective assistance of counsel is legally sufficient where Defendant claimed that he rejected a 3-year plea offer because counsel told him 3 years was the maximum he could receive. Montgomery v. State, 43 Fla. L. Weekly D25b (1st DCA 12/21/17)

POST CONVICTION RELIEF: Where Defendant did not ask that sentences be restructured, and all of the sentences exceeded the statutory limit (probation and incarceration exceeded 5 years for third degree felonies), Court did not err in denying motion to correct sentence where the sentences could have been restructured to impose sentences which complied with statutory limits and the plea agreement. Butler v. State, 43 Fla. L. Weekly D25a (1st DCA 12/21/17)

ARGUMENT: Prosecutor's remark in closing argument that state had proved defendant's knowledge that substance he possessed was in fact cocaine and that jury had not heard any contradictory testimony or evidence to rebut that fact did not amount to comment on defendant's right to remain silent or improperly shift burden of proof to defendant. Payne v. State, 43 Fla. L. Weekly D24a (1st DCA 12/21/17)

ARGUMENT: Argument suggesting that officers should be believed because he is a "sworn law enforcement officer, tasked with upholding justice" is improper, but does not warrant a mistrial where a curative instruction is given. Payne v. State, 43 Fla. L. Weekly D24a (1st DCA 12/21/17)

SELF-DEFENSE: Court erred in excluding defendant's testimony describing a prior instance when the victim threatened him with a machete. Specific acts of violence committed by a victim against a defendant during a prior confrontation. Jones v. State, 43 Fla. L. Weekly D23a (1st DCA 12/21/17)

STATEMENTS OF DEFENDANT: Statements of Defendant are admissible where Defendant made voluntary pre-Miranda statements and post-Miranda statements, and the officers did not engage in a deliberate two-step interrogation strategy. "I hope you know what kind of trouble you are in," is not deliberate pre-Miranda interrogation. Lebron v. State, 42 Fla. L. Weekly S986a (FLA 12/21/17)

DANGEROUS SEXUAL OFFENDER ACT: DSOA authorizes trial court to impose a mandatory minimum sentence anywhere in the range of twenty-five years to life, even if that sentence exceeds the statutory maximum for the crime. Williams v. State, 42 Fla. L. Weekly S982a (FLA 12/21/17)

QUOTATION: "The result of the majority's continued acceptance of the legal fiction created in Mendenhall is a legal system where a defendant who is twice convicted of a second-degree felony, as in this case, is authorized to receive a harsher sentence than one who is repeatedly convicted of attempted murder. . .. Surely this draconian and absurd outcome was not intended by the Legislature when it enacted the DFSO Act." (J. Quince, dissenting). Williams v. State, 42 Fla. L. Weekly S982a (FLA 12/21/17)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to move for change of venue where motion would likely have been denied. Ellerbee v. State, 42 Fla. L. Weekly S973a (FLA 12/21/17)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to move for mistrial based on various comments about religion during jury selection and arguments, given the context. Ellerbee v. State, 42 Fla. L. Weekly S973a (FLA 12/21/17)

POST CONVICTION RELIEF: Counsel was ineffective for failing to uncover significant child abuse for penalty phase in murder case. Ellerbee v. State, 42 Fla. L. Weekly S973a (FLA 12/21/17)

HABEAS CORPUS: Inmate may challenge close management confinement based on his limited liberty interest in being housed with the general population. Banks v. State, 42 Fla. L. Weekly S969b (FLA 12/21/17)

JOA: Where evidence did not establish that the incident occurred at the time alleged, JOA is required. Cardona v. State, 43 Fla. L. Weekly D20a (4th DCA 12/20/17)

RESENTENCING: Court erred in holding that a de novo resentencing hearing after order granting post conviction relief was unnecessary on grounds that court would not consider a youthful offender sentence. Betty v. State, 43 Fla. L. Weekly D18b (4th DCA 12/20/17)

DISCOVERY-EXPERT: Court must allow a continuance where state committed a discovery violation by a late disclosure of an expert witness. McDuffie v. State, 43 Fla. L. Weekly D14a (2nd DCA 12/20/17)

SEARCH AND SEIZURE: Officer lacked probable cause to arrest for attaching an unassigned tag because the officer did not observe her attach the license plate. Defendant's statement to officer that license plate had been attached to vehicle by a friend was not sufficient to validate arrest. Weaver v. State, 43 Fla. L. Weekly D13a (2nd DCA 12/20/17)

ATTEMPTED MURDER OF LEO: New trial required where trial court failed to give requested jury instruction that Defendant must know that victim was a law enforcement officer. Rivera v. State, 43 Fla. L. Weekly D12a (2nd DCA 12/20/17)

BRIBERY: JOA properly denied on bribery charge where mayor became a private consultant to hurry up construction of a pump station. Bateman v. State, 43 Fla. L. Weekly D9a (3rd DCA 12/20/17)

MANDATORY MINIMUM-FIREARM-STACKING: Mandatory minimums for use of firearm may be stacked when Defendant separately brandished gun toward different officers, minutes separating each act. Jordan v. State, 43 Fla. L. Weekly D7a (3rd DCA 12/20/17)

UNAUTHORIZED ACCESS OF COMPUTER NETWORK: Hacking into another's Facebook account constitutes the crime of unauthorized access of computer network. Umhoefer v. State, 43 Fla. L. Weekly D11a (2nd DCA 12/20/17)

ATTEMPTED FELONY MURDER: Double jeopardy does not preclude convictions for attempted felony murder and armed robbery where there were multiple acts of force to take property before Defendant shot the victim. Newbhard v. State, 43 Fla. L. Weekly D2d (3rd DCA 12/20/17)

UPWARD DEPARTURE-APPRENDI: Court may sentence Defendant who scores under 22 points to prison without a jury finding that she is a danger to the public. Statute is a mitigation law, not an upward departure law. Brown v. State, 42 Fla. L. Weekly D2657b (5th DCA 2017)

RECORDS: Because a public defender or court-appointed lawyer is an "official," mandamus is an appropriate remedy to compel such an official to provide a defendant with copies of legal documents prepared at public expense. Norris v. State, 42 Fla. L. Weekly D2656b (5th DCA 12/15/17

SEXUAL PREDATOR: Defendant cannot be designated a sexual predator for a second degree felony in absence of evidence of a previous sex offense conviction. Wright v. State, 42 Fla. L. Weekly D2656a (5th DCA 12/15/17)

JIMMY RYCE: Court improperly shifted burden of proof by finding that reports recommending release submitted by State were stale and denying release with no contrary evidence. Golden v. State, 42 Fla. L. Weekly D2655b (5th DCA 12/15/17)

SEARCH AND SEIZURE-INVESTIGATORY STOP: Officer who observed defendant urinating in restaurant parking lot at 4:45 p.m. had reasonable suspicion to believe defendant had committed a crime by violating county's public nudity ordinance. State v. Harris, 42 Fla. L. Weekly D2654a (5th DCA 12/15/17)

EXPERT: Where parties argued Daubert without objection, the Daubert standard applies. Kemp v. State, 42 Fla. L. Weekly D2648a (4th DCA 12/13/17)

EXPERT: Officer's testimony that the Defendant braked based on marks on car (showing he did not lose consciousness, as claimed), is admissible under Daubert. But see dissent. ("Corporal Dooley's . . .testimony amounted to little more than a subjective and unverifiable opinion and represents precisely the sort of junk science that should never be countenanced in a court of law. . . Dooley's repeated invocation of the magic words 'training and experience' was insufficient. Kemp v. State, 42 Fla. L. Weekly D2648a (4th DCA 12/13/17)

STATEMENTS OF DEFENDANT: Investigating officer may not translate her own videotaped interview with the defendant while testifying on the stand. When the State seeks to admit into evidence a recording in Spanish, generally "a sworn interpreter must be provided to translate such conversations. Mendez Martinez v. State, 42 Fla. L. Weekly D2647a (4th DCA 12/13/17)

JURIES: Six-person juries in all non-death penalty cases is lawful. Lessard v. State, 42 Fla. L. Weekly D2637a (1st DCA 12/13/17)

QUOTATION (CONCURRING OPINION): "Williams, which dismissed the centuries-old common law practice of twelve-member juries as a mere 'historical accident' . . . was based on dubious anecdotal assertions and demonstrably incorrect statistical and sociological principles that have plagued this body of jurisprudence ever since. . . [I]ts reasoning foundered on glaring misinterpretations of social science research and inept methodologies, so much so that one prominent commentator said that the 'quality of social science scholarship displayed . . . would not win a passing grade in a high school psychology class.'" Lessard v. State, 42 Fla. L. Weekly D2637a (1st DCA 12/13/17)

APPEAL: A delayed restitution hearing does not toll or postpone the time to appeal from a criminal sentence. Silky v. State, 42 Fla. L. Weekly D2635b (4th DCA 12/13/17)

POST CONVICTION RELIEF: Defendant is entitled to an appeal on claim that counsel failed to convey a plea offer to him. Cosme v. State, 42 Fla. L. Weekly D2635a (4th DCA 12/13/17)

SENTENCING: Court may not consider a subsequent arrest without conviction in imposing sentence. Contemporaneous objection is not required. Hillary v. State, 42 Fla. L. Weekly D2634a (4th DCA 12/13/17)

HABITUAL OFFENDER: Defendant may not be sentenced as a Habitual Offender when not given notice before entering his plea. Hillary v. State, 42 Fla. L. Weekly D2634a (4th DCA 12/13/17)

PSI: Court must order PSI before sentencing a first-time offender. Householder v. State, 42 Fla. L. Weekly D2626b (4th DCA 12/13/17)

SENTENCING-JUVENILE: 55 year sentence for juvenile violates 8th Amendment where it contains no provision for early release. Burger v. State, 42 Fla. L. Weekly D2626a (4th DCA 12/13/17)

SENTENCING-CONSIDERATIONS: Court may not consider subsequent crime for which Defendant has not been convicted. Smith v. State, 42 Fla. L. Weekly D2625a (4th DCA 12/13/17)

WITNESS TAMPERING: One can be convicted of witness tampering by threatening to kill witness if he reports the crime, regardless whether the victim is attempting to contact police at the time. Conflict certified. Taffe v. State, 42 Fla. L. Weekly D2619a (4th DCA 12/13 /17) concurring opinion by only three justices. Caruthers v. State, 42 Fla. L. Weekly D2616g (4th DCA 12/13/17)

EVIDENCE: Court did not abuse discretion by admitting a video recording of defendant's confession where he was wearing jail clothes and handcuffs upon finding that unfair prejudice of jury seeing defendant in jail clothes and handcuffs did not substantially outweigh the probative value of the video confession. Burton v. State, 42 Fla. L. Weekly D2614a (3rd DCA 12/13/17)

SENTENCING-PRR: Court must impose a mandatory minimum sentence under 10/20/Life notwithstanding that the sentence of life is imposed anyways. Burks v. State, 42 Fla. L. Weekly D2611a (3rd DCA 12/13/17

DOUBLE JEOPARDY: Convictions for second degree murder and unlawful possession of a firearm while engaged in a criminal offense violate double jeopardy. The State cannot convict and sentence a defendant with two substantive offenses for the single act of possession of one weapon. Debose v. State, 42 Fla. L. Weekly D2610b (3rd DCA 12/13/17)

APPEAL-POST CONVICTION RELIEF: Once a notice of appeal of an order denying a first motion for post-conviction relief has been filed, the trial court is without jurisdiction to consider the second motion for post-conviction relief while that appeal remains pending. Rua-Torbizco v. State, 42 Fla. L. Weekly D2609a (3rd DCA 12/13/17)

VOP: Court may not revoke probation for use of drugs where defendant never received written notice of that he could not use drugs. Oral pronouncement, alone, of a condition of probation is not enough. Chaney v. State, 42 Fla. L. Weekly D2608a (3rd DCA 12/13/17)

APPEAL-JOA: Court lacks jurisdiction of state's appeal of order granting defendant's motion for judgment of acquittal following jury deadlock and declaration of mistrial. State may appeal a judgment of acquittal only after a jury verdict. State v. Lundy, 42 Fla. L. Weekly D2607a (3rd DCA 12/13/17)

EVIDENCE: In Lewd and Lascivious case, court properly excluded evidence of thirteen-year-old victim's unrelated acts of prostitution and prohibited defense from introducing evidence that victim was the initiator of sexual contact, as consent is not a defense to the crime charged. Bentley v. State, 42 Fla. L. Weekly D2605a (3rd DCA 12/13/17)

ENTRAPMENT: Defendant is not required to give presuit notice of intent to assert entrapment. Defendant's not guilty plea was sufficient to notify state of possibility that he could raise entrapment defense. Ayala v. State, 42 Fla. L. Weekly D2589c (2nd DCA 12/13/17)

BAIL: Defendant who failed to appear at competency hearing is entitled to bond hearing, notwithstanding suggestion of incompetency. Eckford v. State, 42 Fla. L. Weekly D2588a (5th DCA 12/11/17)

FARETTA: No "magic words" or specific questions are necessary to ensure an adequate Faretta inquiry. Inquiry is not rendered inadequate because of court's failure to ask defendant specific questions. Question certified whether a Faretta inquiry is invalid if the court does not explicitly inquire as to the defendant's age, experience, and understanding of the Rules of Criminal Procedure? Hooks v. State, 42 Fla. L. Weekly D2578a (1st DCA 12/6/17)

RETURN OF PROPERTY: Defendant is entitled to an evidentiary hearing for return of property, other than for non-specific "miscellaneous items." Johnson v. State, 42 Fla. L. Weekly D2571a (4th DCA 12/6/17)

HEARSAY: Testimony of the asset protection detective as to the contents of the price tags indicating value of stolen merchandise did not constitute hearsay. K.M. v. State, 42 Fla. L. Weekly D2568a (3rd DCA 12/6/17)

DEALING IN STOLEN PROPERTY: JOA is required for dealing in stolen property when Defendant made a controlled buy of stolen herbicide with intent to use it on his own farm. Rodriguez v. State, 42 Fla. L. Weekly D2555a (2nd DCA 12/6/17)

TRESPASS IN UNOCCUPIED CONVEYANCE: Defendant is not guilty of trespass in unoccupied conveyance where evidence failed to establish that he knew or should have known that car from which he was seen fleeing was stolen. T.K.O. v. State, 42 Fla. L. Weekly D2554a (2nd DCA 12/6/17)

APPEALS: Court's ruling that collateral crimes would be admissible in L & L case is not appealable following a plea where issue is neither stipulated to be, nor held to be, dispositive. Foster v. State, 42 Fla. L. Weekly D2553a (4th DCA 12/6/17)

PRISON RELEASEE REOFFENDER: Defendant who was sentenced to DOC but released from jail with credit for time served before being sent to prison does not qualify as PRR for the subsequent offense. Taylor v. State, 42 Fla. L. Weekly D2551a (2nd DCA 12/6/17)

GUIDELINES: Defendant is not subject to Criminal Punishment code for offenses committed prior to May 24, 1997. Miller v. State, 42 Fla. L. Weekly D2550a (2nd DCA 12/6/17)

SCORESHEET: Juvenile dispositions are included on scoresheet. Fact that jury did not make finding in juvenile case is irrelevant. Johnson v. State, 42 Fla. L. Weekly D2546e (5th DCA 12/1/17)

POST CONVICTION RELIEF: Defendant who files a legally insufficient Motion for Post Conviction Relief is entitled to an opportunity to amend. Williams v. State, 42 Fla. L. Weekly D2546b (5th DCA 12/1/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to advise him properly on his right to testify. Feliciano v. State, 42 Fla. L. Weekly D2541b (5th DCA 12/1/17)

SPLIT SENTENCE: A true split sentence consists of a total period of confinement with all or part of that confinement suspended. For a true split sentence, upon VOP the Defendant cannot be sentenced to more than the suspended period. Where, as here, the Defendant received a probationary split sentence, Defendant can be sentenced to the statutory maximum. Peterson v. State, 42 Fla. L. Weekly D2540c (5th DCA 12/1/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on the claim counsel misadvised Defendant that the State could inquire into specific nature of prior convictions if defendant testified. Ward v. State, 42 Fla. L. Weekly D2540b (5th DCA 12/1/17)

EVIDENCE-COLLATERAL CRIMES: Introduction of collateral crime evidence is not reversible error where not objected to and injected by

Defendant to establish alibi that he was smoking a blunt with his lady. Kerry v. State, 42 Fla. L. Weekly D2540a (5th DCA 12/1/17)

REDACTION: Failure to redact defendant's use of racial epithets in recorded interview that was played for jury was not preserved for review by objection and did not, under circumstances of instant case, amount to fundamental error. "Unless such language is relevant, it should be excluded. We caution the State that in our view, under most circumstances, the use of racial epithets should be redacted. Kerry v. State, 42 Fla. L. Weekly D2540a (5th DCA 12/1/17)

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DOUBLE JEOPARDY: Separate convictions for dealing in stolen property and grand theft violated double jeopardy where offenses were committed in connection with one scheme or course of conduct. Bennett v. State, 42 Fla. L. Weekly D2538a (1st DCA 11/30/17)

VOP: Defendant violated probation by going to the wrong office for the first meeting, then failing to go to the correct address after being told where it was. Junk v. State, 42 Fla. L. Weekly D2537a (1st DCA 11/30/17)

POST CONVICTION RELIEF: Defendant who alleges that counsel was ineffective for failing to impeach witness with the fact that the witness admitted to being high on cocaine at the time of the crime is entitled to an evidentiary hearing. Atwater v. State, 42 Fla. L. Weekly D2535a (1st DCA 11/30/17)

GRAND THEFT-JOA: Defendant is entitled to JOA where value of the property stolen (42-inch flat screen television, 32-inch flat screen television, computer tablet, laptop computer, desktop computer, Xbox 360, surround

sound system, and some pictures) was not proven to be over $300. The victim's estimate that the property was worth $4000 is insufficient. A mere guess at, or uninformed estimate of the value of stolen property is insufficient, absent other proof, to establish value beyond a reasonable doubt. Carter v. State, 42 Fla. L. Weekly D2534a (1st DCA 11/30/17)

PLEA WITHDRAWAL: Court erred in denying pre-sentencing motion to withdraw plea without hearing, particularly where counsel's remark that defendant had "buyer's remorse" indicated a possible conflict of interest between counsel (who thus undermined Defendant's argument) and defendant asserted that he did not have his discovery. Benjamin v. State, 42 Fla. L. Weekly D2519c (2nd DCA 11/29/17)

JOA-GRAND THEFT OF VEHICLE: Child is entitled to judgment of dismissal where state failed to prove that juvenile knew car he was driving when stopped by police was stolen. State could not rely on statutory inference that person in possession of recently stolen property knew or should have known that property was stolen where juvenile presented reasonable explanation for his possession of vehicle (he got the keys from a friend and they went to meet some girls.). C.T. v. State, 42 Fla. L. Weekly D2510a (3rd DCA 11/29/17)

POST CONVICTION RELIEF-IMMIGRATION: Claim that trial court's failure to advise defendant of possible immigration consequences rendered his plea involuntary is time-barred where motion was not filed within two-year time limitation, and defendant failed to establish that in the exercise of due diligence he could not have ascertained the possible immigration consequences of his plea within the two-year period. Jules v. State, 42 Fla. L. Weekly D2508b (3rd DCA 11/29/17)

HABITUAL OFFENDER: Because adjudication on predicate offense had been withheld rather than defendant having been convicted, HFO designation is

only permissible if defendant was still on probation when he committed subsequent offenses in the instant case. Gilman v. State, 42 Fla. L. Weekly D2483b (3rd DCA 11/22/17)

BELATED APPEAL: Because adjudication on predicate offense had been withheld rather than defendant having been convicted, HFO designation is only permissible if defendant was still on probation when he committed subsequent offenses in the instant case. Alvarez v State, 42 Fla. L. Weekly D2482b (3rd DCA 11/22/17)

ARGUMENT: In misstatement/slip of the tongue in which State referred to defendant as "not on the stand because he paid for a hotel room," promptly amended to "not on trial," state did not improperly comment on defendant's failure to testify. Pierre-Louise v. State, 42 Fla. L. Weekly D2482a (3rd DCA 11/22/17)

JURISDICTION: Florida court has subject matter jurisdiction of criminal case (attempted sexual battery) where more than half of ship's passengers embarked from and disembarked in Florida, and defendant's conduct had an effect on Florida. The fact that both the Defendant and victim were crew members not from Florida does not detract from the effect on Florida. Paul v. State, 42 Fla. L. Weekly D2478d (3rd DCA 11/22/17)

COSTS: Defendant cannot be required to pay the State's costs of bringing two witnesses from foreign state to testify at defendant's sentencing where their testimony was inadmissible. Mook v. State, 42 Fla. L. Weekly D2477a (4th DCA 11/22/17)

SENTENCING: Motion asserting that consecutive habitual offender and nonhabitual offender sentences for offenses that were committed during single

criminal episode were illegal was facially insufficient where defendant failed to allege how court records demonstrated that crimes were committed during same criminal episode. Hollins v. State, 42 Fla. L. Weekly D2474a (4th DCA 11/22/17)

COMPETENCY: Where court orders a competency evaluation, it must conduct a hearing. Jones v. State, 42 Fla. L. Weekly D2472a (4th DCA 11/22/17)

NELSON/FARETTA: New trial required where Court failed to conduct an adequate Nelson or Faretta hearing. Davis v. State, 42 Fla.L. Weekly D2467c (2nd DCA 11/22/17)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to demand that court give defendant more time to consult with counsel before deciding not to testify after court permitted state to introduce as rebuttal a recorded interview of defendant that contradicted his defense at trial. But see dissent. Giles v. State, 42 Fla. L. Weekly D2464c (1st DCA 11/20/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary area hearing on claim that his attorney threatened to withdraw if Defendant did not accept the plea. Abbas v. State, 42 Fla. L. Weekly D2464a (5th DCA 11/17/17)

DISCOVERY VIOLATION: State is not required to disclose an oral, unrecorded witness statement. State did not committed discovery violation by failing to disclose fingerprint experts oral statement that the other person's fingerprints did not matched the latent prints on items obtained from the crime scene. Scott v. State, 42 Fla. L. Weekly D2461a (5th DCA 11/17/17)

JOA-THEFT: Child is entitled to judgment of dismissal where state's case rested on the inference arising from his possession of recent stolen property, but the juvenile satisfactorily explained that possession. K.P. v. State, 42 Fla. L. Weekly D2455a (2nd DCA 11/17/17)

SEARCH AND SEIZURE: Defendant who was passenger in the vehicle may be lawfully detained for the duration of the stop. Deno v. State, 42 Fla. L. Weekly D2454a (2nd DCA 11/17/17)

FALSE INFORMATION: Defendant who was the passenger in a car may be arrested for providing false information to law enforcement officer after the officer learned that she had given a false name response to his request for identification. Deno v. State, 42 Fla. L. Weekly D2454a (2nd DCA 11/17/17)

POST CONVICTION RELIEF: In murder case, counsel was ineffective for failing to adequately investigate and prepare for the penalty phase and to challenge the voluntariness of his confession. State v. Morrison, 42 Fla. L. Weekly S926c (FLA 11/16/17)

DEATH PENALTY: Defendant who waived penalty phase jury is not entitled to relief under Hurst. Dessaure v. State, 42 Fla. L. Weekly S926a (FLA 11/16/17)

DEATH PENALTY: Defendant who waived penalty phase jury is not entitled to relief under Hurst. Allred v. State, 42 Fla. L. Weekly S925a (FLA 11/16/17)

KIDNAPPING: Defendant's acts of directing two victims to disrobe completely before ordering them to move behind a tree, which he was

attempting to hide behind while committing sexual battery on one victim, is sufficient to warrant a conviction for kidnapping. Glover v. State, 42 Fla. L. Weekly D2447a (4th DCA 11/15/17)

CONSTRUCTIVE POSSESSION: Defendant is not entitled to judgment of acquittal where he was the only person in the car when the drugs were found. The fact that another person had briefly been in the car, without more, does not negate the inference of constructive possession. State v. Lee, 42 Fla. L. Weekly D2446b (4th DCA 11/15/17)

JOA: The state is permitted to appeal a judgment of acquittal entered after a jury verdict. State v. Lee, 42 Fla. L. Weekly D2446b (4th DCA 11/15/17)

STAND YOUR GROUND: Court may not enter an order granting Defendant immunity from prosecution without determining whether Defendant was involved in criminal activity just prior to shooting the victim. For stand your ground immunity, the court must find that, at the time defendant used deadly force, he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself or to prevent imminent commission of a forcible felony, was not engaged in criminal activity, and was in a place he had a right to be. Appellate court does not address the question of whether caring a concealed firearm is criminal activity for the purpose of the Stand Your Ground law. State v. Chavers, 42 Fla. L. Weekly D2443a (4th DCA 11/15/17)

VOIR DIRE-JUDGE'S PARTICIPATION: Judge commits fundamental error during voir dire by previewing hypothetical facts that matched the evidence, asking jurors to assess hypotheticals as though they were the victims, and telling the jurors that the defendant in the hypotheticals should not go free. Grigg v. State, 42 Fla. L. Weekly D2440a (1st DCA 11/15/17)

COMPETENCY OF DEFENDANT: Court must conduct a competency hearing when there are reasonable grounds to believe defendant is not competent to proceed. English v. State, 42 Fla. L. Weekly D2439a (1st DCA 11/15/17)

STATEMENTS OF DEFENDANT: Defendant's statements made to police after he said he did not understand his Miranda warnings should have been suppressed. Defendant's statement that "I can't afford a lawyer anyhow," indicates that he did not understand his Miranda rights. Noh v. State, 42 Fla. L. Weekly D2437a (2nd DCA 11/15/17)

COMPETENCY OF DEFENDANT: Where defendant had been adjudicated incompetent to proceed, court was required to make independent determination that defendant had been restored to competency before accepting plea to reduced charge. Moulton v. State, 42 Fla. L. Weekly D2434a (2nd DCA 11/15/17)

POST CONVICTION RELIEF: Defendant may not raise the inadequacy of the jury instructions on manslaughter by act that attempted manslaughter by act on a motion for post-conviction relief; the issue should have been raised on direct appeal. Pinson v. State, 42 Fla. L. Weekly D2425c (3rd DCA 11/15/17)

NEWLY DISCOVERED EVIDENCE: Defendant is not entitled to new trial on the basis of newly discovered evidence that the victim's daughter in a homicide case was abused by the victim's husband, suggesting a possible motive for the husband murdering the victim, because in a new trial that evidence would be inadmissible as irrelevant and more prejudicial than probative. Suggs v . State, 42 Fla. L. Weekly S900a (FLA 11/9/17)

SENTENCING-NONHOMICIDE-JUVENILE: Defendant who was sentenced to a sentence longer than twenty years for nonhomicide offense committed while he was a juvenile is entitled to resentencing under juvenile sentencing statutes and judicial review of sentence after twenty years. All juvenile offenders with sentences longer than twenty years are entitled to judicial review. Montgomery v. State, 42 Fla. L. Weekly D2414d (5th DCA 11/9/17)

MANDATORY MINIMUM: Defendant who was sentenced to mandatory minimum sentence of twenty-five years under 10-20-Life statute for nonhomicide offense committed while he was a juvenile is entitled to judicial review and possibility of early release after twenty years. Montgomery v. State, 42 Fla. L. Weekly D2414d (5th DCA 11/9/17)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel was ineffective for failing to object to prosecutor's misstatements of facts in closing argument. Pamphile v. State, 42 Fla. L. Weekly D2412a (5th DCA 11/9/17)

OPENING THE DOOR: Defendant did not open door to the nature of his prior drug convictions by testifying that he had four prior felonies or crimes of dishonesty in 2010, although convictions actually occurred in a different year. "Opening the door is not an all-or-nothing concept. Rather, a court must consider 'how wide' the defendant opens the door." Farr v. State, 42 Fla. L. Weekly D2410a (4th DCA 11/8/17)

WITHDRAW PLEA: Defendant is entitled to a hearing on his motion to withdraw plea where he alleged that he entered the plea expecting that he would serve the sentence in federal prison. Williams v. State, 42 Fla. L. Weekly D2409a (4th DCA 11/8/17)

STAND YOUR GROUND: Stand Your Ground law does not repeal and replace the law on self-defense. "We hold that the two statutes are not irreconcilable and, indeed, compliment each other." Pileggi v. State, 42 Fla. L. Weekly D2407b (4th DCA 11/8/17)

APPEAL-INEFFECTIVE ASSISTANCE: Where charge is amended to second-degree fleeing and eluding (with the added element of wanton disregard for safety) and counsel failed to realize that the new element is amended, his ineffectiveness cannot be remedied on direct appeal. Cohen v. State, 42 Fla. L. Weekly D2407a (4th DCA 11/8/17)

SENTENCING: Four-year sentence for possession of 20 grams or less of cannabis, a first-degree misdemeanor, exceeded statutory maximum. Williams v. State, 42 Fla. L. Weekly D2406b (4th DCA 11/8/17)

PLEA-WITHDRAWAL: Court must appoint conflict-free counsel to represent defendant at evidentiary hearing on motion to withdraw plea based on misadvice of counsel. Jones v. State, 42 Fla. L. Weekly D2406a (4th DCA 11/8/17)

DOUBLE JEOPARDY: Fact that defendant was disciplined at correctional facility for violating inmate code of conduct by attacking a corrections officer did not bar state from prosecuting defendant for battery on law enforcement officer. State v. Jones, 42 Fla. L. Weekly D2403a (4th DCA 11/8/17)

PLEA-WITHDRAWAL: Defendant was entitled to hearing on motion to withdraw plea alleging plea was involuntary because of trial court's unrecorded side-bar statements indicating defendant would receive a more severe sentence if he did not take a negotiated plea. Tubbs v. State, 42 Fla. L. Weekly D2397a (1st DCA 11/8/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claims that counsel was ineffective in lewd and lascivious case for not challenging admission of witnesses to whom Victim allegedly made disclosures, and evidence of other uncharged acts of sexual abuse, animal abuse, and battery on his daughter. Curran v. State, 42 Fla. L. Weekly D2393c (1st DCA 11/8/17)

COUNSEL: Court must renew offer of counsel prior to sentencing. Richardson v. State, 42 Fla. L. Weekly D2393b (1st DCA 11/8/17)

DOUBLE JEOPARDY-SINGLE HOMICIDE RULE: Separate convictions and sentences for fleeing or eluding causing serious bodily injury or death and vehicular homicide violated defendant's double jeopardy protections where offenses related to single homicide. Vehicular homicide and leaving the scene of an accident with death does not violate the single homicide rule. Discussion. Conflict certified. McCullough v. State, 42 Fla. L. Weekly D2389a (2nd DCA 11/8/17)

SENTENCING-HOMICIDE BY JUVENILE: Court conducted appropriate sentencing hearing in accordance with §921.1401 before imposing 40year sentence but erred in failing to make necessary written findings regarding defendant's entitlement to sentencing review. Defendant is eligible for sentence review where he was convicted of offense that he committed before he was age 18 and that was reclassified as life felony. Brown v. State, 42 Fla. L. Weekly D2388e (2nd DCA 11/8/17)

SENTENCING: Due Process violated when Court interrupted Defendant at sentencing hearing and refused to listen to his statements before imposing sentence. Chesser v. State, 42 Fla. L. Weekly D2388d (2nd DCA 11/8/17)

DEADLY WEAPON: A BB or pellet gun can be a deadly weapon for the purposes of the crime of robbery; deadliness is a jury question. Bellegarde v. State, 42 Fla. L. Weekly D2388a (3rd DCA 11/8/17)

JURORS-PEREMPTORY-DISCRIMINATION: State's reason for peremptory challenge of twenty-four-year-old, unmarried, African-American juror, that she was too young and inexperienced to serve on jury, was a genuine, race-neutral reason for striking the juror. Phelps v. State, 42 Fla. L. Weekly D2384a (3rd DCA 11/8/17)

EVIDENCE: Testimony that witness had seen Defendant with a gun of the type used in the murder a month prior to the crime is admissible. Phelps v. State, 42 Fla. L. Weekly D2384a (3rd DCA 11/8/17)

SECOND DEGREE MURDER-UNBORN CHILD : Defendant was properly found guilty of second degree murder of an unborn quick child who was killed when defendant shot the child's mother. The common law born alive rule, which requires the fetus to be born alive in order to be considered a human being entitled to protection of homicide statute, has been abrogated by statute. Conflict certified. Wyche v. State, 42 Fla. L. Weekly D2367g (1st DCA 11/6/17)

RETURN OF PROPERTY: Court erred in summarily denying motion for return of property based on state's dispute that movant owned property where records did not conclusively demonstrate defendant had no ownership or possessory interest in property. Riley v. State, 42 Fla. L. Weekly D2367a (5th DCA 11/3/17)

JOA-GRAND THEFT: Court erred in denying motion for judgment of acquittal on grand theft charge where state failed to prove value of stolen items was over $300. Martin v. State, 42 Fla. L. Weekly D2366b (5th DCA 11/3/17)

POST CONVICTION RELIEF: Claim that counsel was ineffective for failing to object to or move for mistrial based on prosecutorial misconduct must be raised in rule 3.850 motion. King v. State, 42 Fla. L. Weekly D2365a (5th DCA 11/3/17)

LIFE IMPRISONMENT-HOMICIDE-JUVENILE: Juveniles serving life sentences with parole eligibility are entitled to relief under Miller and Graham even if their presumptive parole release dates may not be a de facto life sentence. Conflict certified. State v. Ratliff, 42 Fla. L. Weekly D2361b (2nd DCA 11/3/17)

EVIDENCE-WILLIAMS RULE: In case charging murder of a 13-month old baby, Court may admit evidence of Defendant beating a different child three weeks before. Kirkland-Williams v. State, 42 Fla. L. Weekly D2358c (2nd DCA 11/3/17)

DEATH PENALTY: New penalty phase proceeding is required for the death sentences was based upon a nonunanimous jury recommendation and the sentence became final after Ring v. Arizona. Belcher v. State, 42 Fla. L. Weekly S888a (FLA (11/2/17)

DEATH PENALTY: Hurst does not apply to defendant who waived penalty phase jury. Twilegar v. State, 42 Fla. L. Weekly S887a (FLA 11/2/17)

JUDGES-DISCIPLINE: Judge violated the duty of impartiality and to disqualify himself from cases involving an attorney who he twice held in contempt, sued civilly, ran for election against, and, after the attorney made a sexual innuendo about his wife, responded with heated and profane words. 30 day suspension. Inquiry Concerning a Judge re : Yacucci, 42 Fla. L. Weekly S885a (FLA 11/2/17)

DEATH PENALTY: Three drug death penalty protocol is lawful. Hannon v. State, 42 Fla. L. Weekly S879b (FLA 11/1/17)

DEATH PENALTY: Defendant is not entitled to a new penalty phase proceeding notwithstanding that his trial attorney failed to investigating any mitigating circumstances and said "Well, we had nothing to mitigate. He was not guilty. He didn't do it. That was it." In fact, Defendant began using drugs and alcohol at age eleven and had a history of using LSD on a regular basis at the age of fifteen, as well as crystal methamphetamine, hallucinogenic mushrooms, and crack cocaine; suffered parental neglect, and neurological impairments; had suffered various head injuries, including losing consciousness at football practice in the ninth grade, getting kicked in the head by a bull, being hit by scaffolding at work, and being involved in several car accidents. Hannon v. State, 42 Fla. L. Weekly S879b (FLA 11/1/17)

HABEAS CORPUS: Habeas corpus may not be used to file successive rule 3.850 motions or to raise issues which would be untimely if considered as a motion for post conviction relief under rule 3.850. Scott v. State, 42 Fla. L. Weekly D2350c (3rd DCA 11/1/17)

BELATED APPEAL: Where defendant contends he requested trial counsel to file an appeal of sentence and trial counsel agreed but failed to do so, and state's response raises a good faith basis to dispute this assertion, a judge is

appointed as a commissioner to hold an evidentiary hearing and determine the issue. Santiago v. State, 42 Fla. L. Weekly D2350b (3rd DCA 11/1/17)

ENFORCEMENT OF MANDATE: Where appellate court reversed downward departure sentence and mandated imposition of guidelines sentence, Court may not vacate guilty plea altogether. State v. Perez-Diaz, 42 Fla. L. Weekly D2349b (3rd DCA 11/1/17)

APPEALS-JURISDICTION: Defendant cannot appeal voluntariness of his plea agreement where he did not file a motion to withdraw the plea and the trial court. Hanes v. State, 42 Fla. L. Weekly D2349a (3rd DCA 11/1/17)

POST CONVICTION RELIEF: Court erred in dismissing a filing styled as "Lawsuit for False Imprisonment" as a motion for post-conviction relief where is plain that the Plaintiff intended to file a civil complaint. Lucas v. State, 42 Fla. L. Weekly D2337b (2nd DCA 11/1/17)

SEXUAL BATTERY: Defendant can be convicted of sexual battery where he forces people at gunpoint to perform sexual acts. Defendant can be convicted of 2 counts of sexual battery for each act when he forces to people to perform sexual acts on each other. Henry v. State, 42 Fla. L. Weekly D2335a (4th DCA 11/1/17)

CIRCUMSTANTIAL EVIDENCE: Evidence is sufficient to convict Defendant where victim's decapitated body was found inside a barrel, Defendant was the last person to be with the victim before she went missing, people testified that they saw a barrel by his SUV and in his apartment, Defendant spoke to victim's brother and started crying and said "it wasn't supposed to be like this," he had cuts on his arm and forearm, gave conflicting stories, and his and the victim's cell phones pinged off the same tower. Edwards v. State, (4th DCA 11/1/17)

JURY INSTRUCTION: Court must give requested jury instruction on improper exhibition of a firearm, a permissive lesser included offense for attempted firstdegree murder. Error is not harmless where the defendant was convicted of aggravated assault, an offense one step removed from improper exhibition of a firearm. Caruthers v. State, 42 Fla. L. Weekly D2332a (4th DCA 11/1/17)

EVIDENCE: Video of an altercation in a convenience store between Defendant and one of the victims is inextricably intertwined with the subsequent shooting incident and relevant to show Defendant's state of mind. Caruthers v. State, 42 Fla. L. Weekly D2332a (4th DCA 11/1/17)

HEARSAY: Officer may not testify about the victim's description of the gun which the defendant rested on the sill of his car window during the robbery. The error is not harmless where the officer's hearsay testimony was the only evidence corroborating the victim's previous description of the gun. Anderson v. State, 42 Fla. L. Weekly D2329a (4th DCA 11/1/17)

HEARSAY: Court erred by admitting detective's testimony that he spoke to the victim's homeless shelter case manager who verified that the victim was employed and regularly drug tested. Dunbar v. State, 42 Fla. L. Weekly D2324b (4th DCA 11/1/17)

DISQUALIFICATION FROM WORK IN POSITION OF TRUST: Appellant is exempt from disqualification from work in a position of trust based on his conviction for indecent exposure where ALJ found that he was rehabilitated and presented no danger to children. A.P. v. DCF, 42 Fla. L. Weekly D2317a (4th DCA 11/1/17)

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SELF-REPRESENTATION: Court must allow Defendant to represent himself notwithstanding Defendant's statement that he was "illiterate as to the law" and had previously been held to be mentally ill. Holmes v. State, 42 Fla. L. Weekly D2309c (1st DCA 10/31/17)

AGGRAVATED ASSAULT WITH FIREARM: Twenty-year sentence for aggravated assault was legal because of minimum-mandatory sentence provision of section 775.087(2)(a)2. Walters v. State, 42 Fla. L. Weekly D2309a (1st DCA 10/31/17)

AGGRAVATED ASSAULT WITH FIREARM: Aggravated assault is not subject to reclassification based on use of firearm where firearm was essential element of offense. Walters v. State, 42 Fla. L. Weekly D2309a (1st DCA 10/31/17)

PRETRIAL DETENTION: Court may not order pretrial detention without specifying reasons. Resentencing should be before a different judge. Shalem v. Junior, 42 Fla. L. Weekly D2357a (3rd DCA 10/31/17)

JUVENILE-HOMICIDE-SENTENCING: All juveniles who are serving lengthy sentences are entitled to periodic judicial review to determine whether they can demonstrate maturation and rehabilitation. Ejak v. State, 42 Fla. L. Weekly D2306a (2nd DCA 10/27/17)

JURY INSTRUCTION: Failure to use the word "knowingly" in jury instruction on charge of possession of conveyance used for trafficking was not fundamental where defendant's knowledge of his possession of the car was never disputed. Thames v. State, 42 Fla. L. Weekly D2303a (2nd DCA 10/27/17)

DOUBLE JEOPARDY: Separate convictions for unlawful use of two-way communications device to facilitate or further commission of felony and traveling to meet minor during the same time period were improper. Rubio v. State, 42 Fla. L. Weekly D2302a (2nd DCA 10/27/17)

SEARCH AND SEIZURE-KNOCK AND ANNOUNCE: Officers violated knock and announce statute when they breached front door of residence 15 to 20 seconds after they began knock and announce procedure when officers had no reason to believe there were weapons in residence, warrant was executed early in the morning, and officers had no reason to believe defendant knew they were coming, that anyone inside residence was at risk of harm, or that defendant or his family might try to escape or destroy evidence. Falcon v State, 42 Fla. L. Weekly D2301a (2nd DCA 10/27/17)

QUOTATION: "We urge law enforcement agencies to use SWAT tactics to execute search warrants sparingly and to take special care that their use does not simply become par for the course." Falcon v State, 42 Fla. L. Weekly D2301a (2nd DCA 10/27/17)

QUOTATION: "The SWAT unit leader testified that the unit had executed the warrant at that time for the safety of the unit. When asked what had prevented the unit from waiting until, for example, noon, the unit leader replied, "daylight." Falcon v State, 42 Fla. L. Weekly D2301a (2nd DCA 10/27/17)

COMPETENCY OF DEFENDANT: Dismissal of information based upon ostensible permanent incompetency of defendant was premature when record does not support assertion that defendant met statutory definition of intellectual disability. State v. Noel, 42 Fla. L. Weekly D2295b (5th DCA 10/27/17)

WEAPON: An automobile can be considered a weapon for purposes of reclassification of degree of offense. Conflict certified. Hurd v. State, 42 Fla. L. Weekly D2293b (5th DCA 10/27/17)

POST CONVICTION RELIEF: Court may not deny facially insufficient claims without affording defendant opportunity to amend. Mozie v. State, 42 Fla. L. Weekly D2293a (5th DCA 10/17/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that was ineffective for failure to adequately advise defendant as to the details and strength of the state's case, and that had he been properly advised defendant would have accepted state's plea offer instead of going to trial. Brown v. State, 42 Fla. L. Weekly D2292b (5th DCA 10/27/17)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for failure to call as a witness co-defendant who would have testified that defendant was not present at crime scene. Court erred in speculating that co-Defendant would have asserted Fifth Amendment if called to testify. Black v. State, 42 Fla. L. Weekly D2291a (5th DCA 10/27/17)

AMENDMENT-JURY INSTRUCTIONS: Prostitution instructions modified; definition of structure broadened. In Re: Standard Jury Instructions, 42 Fla. L. Weekly S869a (FLA 10/26/17)

COMPETENCY: Court must enter a written finding of competency following oral pronouncement. Rodriguez v. State, Fla. L. Weekly D2286f (3rd DCA 10/25/17)

LOST EVIDENCE: Destruction of the Defendant's Bentley in DUI Manslaughter case was not exculpatory where it was fully examined and photographed before the first trial. Goodman v. State, 42 Fla. L. Weekly D2285b (4th DCA 10/25/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that Defendant rejected a favorable offer because counsel failed to warn him that he qualified as a habitual offender. McGriff v. State, 42 Fla. L. Weekly D2285a (4th DCA 10/27/17)

NEUTRALITY OF JUDGE-VOP: Where judge conducted independent investigation by looking up probable cause affidavit from a previous case, the judge departed from a position of neutrality and failed to afford defendant due process. Lang v. State, 42 Fla. L. Weekly D2284a (4th DCA 10/25/17

BURGLARY-CONSENT: Court erred in failing to instruct jury on affirmative defense of consent to enter dwelling — Error was fundamental where failure to instruct jury on affirmative defense deprived defendant of his sole theory of defense. Harrison v. State, 42 Fla. L. Weekly D2279a (4th DCA 10/25/17)

SEARCH AND SEIZURE-PRETEXTUAL STOP: Officers who observed defendant's vehicle parked on the wrong side of the road had probable cause to stop vehicle and issue citation. A pretextual stop (such as the one that may very well have occurred here) can still serve as a valid basis to stop and detain an individual so long as there is an objective basis for the law enforcement officer's intervention. State v. Battle, 42 Fla. L. Weekly D2271a (2nd DCA 10/25/17)

INEFFECTIVE ASSISTANCE-APPEAL: Appellate counsel rendered ineffective assistance by failing to argue that dual convictions for transmitting

material harmful to minors under §847.0138 and unlawfully using two way communications device under section §934.215 violated double jeopardy. Weitz v. State, 42 Fla. L. Weekly D2263a (2nd DC 10/25/17)

SEALING: Where Defendant pled to child abuse, FDLE may not deny application for certificate of eligibility to seal record because Defendant pled guilty to a charge related to an act of domestic violence. Court must make the finding as to whether the offense related to an act of domestic violence, precluding the record from being sealed. Failure to issue certificate should be raised by petition for mandamus. Lazard v. State, 42 Fla. L. Weekly D2253b (5th DCA 10/20/17)

POST CONVICTION RELIEF: Motion challenging prison releasee reoffender designation was not improperly successive where prior motion raising same issue was dismissed as facially insufficient. Williams v. State, 42 Fla. L. Weekly D2248a (5th DCA 10/20/17)

SEARCH AND SEIZURE-VEHICLE-SCOPE: Officer who lawfully stopped vehicle for traffic infraction could properly order defendant to exit vehicle, even if officer did not have particularized basis for believing that defendant was threat to officer's safety. State v. Benjamin, 42 Fla. L. Weekly D2247b (5th DCA 10/20/17)

REJECTING PLEA OFFER: "Defense counsel should have warned Appellant, in the firmest manner possible, that by rejecting the State's plea offer, Appellant was very likely to receive a harsher sentence. To advise a criminal defendant that a trial court would ordinarily give a defendant the same or similar sentence which the defendant had just rejected in a plea offered by the State is simply not accurate legal advice." Tigner v. State, 42 Fla. L. Weekly D2242a (1st DCA 10/20/17)

APPEAL: Denial of motion to suppress is not appealable where court implicitly found the Defendant's testimony not credible. Absent objection, Court does not have to make a specific finding as to credibility. Mack v. State, 42 Fla. L. Weekly D2241a (1st DCA 10/20/17)

STAND YOUR GROUND: Court erred in instructing jury that defendant had a duty to retreat if he was engaged in unlawful activity while defending himself where conviction occurred in 2012. The self-defense statute in effect in 2012 contained no provision that defendant has a duty to retreat if he was engaged in unlawful conduct. Eady v. State, 42 Fla. L. Weekly D2237a (2nd DC 10/20/17)

SENTENCING-VINDICTIVENESS: Where trial judge had off the record discussions about pleading to a reduced charge and asked if State would accept 6.3 years but after trial imposed 25 years, the sentence is presumptively vindictive. Forman v. State, 42 Fla. L. Weekly D2234a (2nd DCA 10/20/17)

RULES REGULATING BAR-AMENDMENTS: New rules for short-tem limited legal services program. In re: Amendments, 42 Fla. L. Weekly S849a (FLA 10/9/17)

PROBATION-JUVENILE: Court may not bar juvenile from participating in sports until he makes honor role. J.R.M. v. State, 42 Fla. L. Weekly D2229a (4th DCA 10/18/17)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court is authorized to make a finding of dangerousness for purposes of VFOSC; jury is not required for that finding. Souza v. State, 42 Fla. L. Weekly D2228a (4th DCA 10/18/17)

COUNSEL: Order accepting no contest plea and imposing sentence is reversed because trial court improperly sentenced defendant without renewing offer of counsel before sentencing. Williams v. State, 42 Fla. L. Weekly D2225a (4th DCA 10/18/17)

APPEAL-PRESERVATION-CHILD HEARSAY: Claim that trial court erred by allowing state to introduce child hearsay because the prejudicial impact outweighed any probative value of the evidence was not preserved where defendant never objected on that ground. Anderson v. State, 42 Fla. L. Weekly D2224a (4th DCA 10/18/17)

UPWARD DEPARTURE: Court may not impose upward departure on resentencing without articulating grounds. Calixte v. State, 42 Fla. L. Weekly D2221b (4th DCA 10/18/17)

POST CONVICTION RELIEF: When a defendant rejects a plea offer based on the alleged misadvice of counsel, the trial court cannot cure the deficiency by later informing the defendant of the actual sentence faced. Defendant would not have been able to go back and accept the offer that he previously rejected and that was no longer available; the damage has been done. Evidentiary hearing is required. Phillips v. State, 42 Fla. L. Weekly D2220a (2nd DCA 10/18/17)

APPEALS-PRESERVED: Claim that trial court improperly increased negotiated sentence after defendant failed to appear for sentencing hearing was not preserved for review where defendant did not seek to withdraw plea. Simmons v. State, 42 Fla. L. Weekly D2219a (2nd DCA 10/18/17)

POST CONVICTION RELIEF: Appellate counsel was ineffective for failing to argue that conviction for lewd or lascivious sexual battery was barred by

statute of limitations. Brown v. State, 42 Fla. L. Weekly D2204c (3rd DCA 10/18/17)

RETURN OF PROPERTY: Court erred in denying motion for return of property as insufficient without identifying why the motion was insufficient and granting leave to amend within a reasonable time. Motion must allege(1) that it is exclusively the movant's own property; (2) that it was not the fruit of illegal activity; and (3) that it is not being held for evidentiary purposes. Watkins v. State, 42 Fla. L. Weekly D2202a (3rd DCA 10/18/17)

RESTITUTION-APPEAL-JURISDICTION: Court lacked jurisdiction to enter restitution order after notice of appeal had been filed. Thompson v. State, 42 Fla. L. Weekly D2187b (1st DCA 10/16/17)

COMPETENCY: After trial court had determined that there were reasonable grounds to question defendant's competency, it was error to fail to conduct hearing, independently adjudicate issue of defendant's competency, and enter written order on competency. Sheheane v. State, 42 Fla. L. Weekly D2186a (1st DCA 10/16/17)

SENTENCING-LIFE-JUVENILE: Concurrent sentences of thirty years' imprisonment followed by ten years' sexual offender probation without judicial review for nonhomicide offenses committed when defendant was a juvenile are unconstitutional. Mosier v. State, 42 Fla. L. Weekly D2181b (2nd DCA 10/13/17)

DOUBLE JEOPARDY: Separate convictions for use of computer services to solicit the consent of a parent to engage in unlawful sexual contact with the child and traveling to meet minor violate double jeopardy where charges are

based on the same conduct. Good discussion in concurring opinion by J. Lambert. Straitiff v. State, 42 Fla. L. Weekly D2175e (5th DCA 10/13/17)

DEATH PENALTY: Death sentence violates Hurst where jury's recommendation of death was not unanimous. Taylor v. Jones, 42 Fla. L. Weekly S848a (FLA 10/12/17)

JURY INSTRUCTIONS-AMENDMENT: Soliciting sex with minor and traveling to meet minor instructions are changed. In Re : Standard Jury Instructions, 42 Fla. L. Weekly S846a(FLA 10/12/17)

POST CONVICTION RELIEF: Testimony by lab analyst, later discredited, which overstated the extent to which pubic hair could be identify its source is not newly discovered evidence sufficient to warrant a new trial where not all of the analyst's testimony was false. "Although some of his testimony overstated the degree of accuracy of his analysis, other statements were well within the bounds of the field." Duckett v. State, 42 Fla. L. Weekly S844a (FLA 10/12/17)

COSTS: $65 additional court cost may not be imposed in juvenile cases where adjudication is withheld. C.M. v. State, 42 Fla. L. Weekly D2173a (3rd DCA 10/11/17)

LIFE SENTENCE-JUVENILE: Juvenile defendant who was sentenced to life with parole was released on parole violated and was returned to prison, is not entitled to resentencing. Because defendant had already been provided with a meaningful opportunity to release, was released, and violated, his sentence of life imprisonment is legal. Through discussion of history of case law on life sentences for juveniles. Vennissee v. State, 42 Fla. L. Weekly D2170b (3rd DCA 10/11/17)

READ BACK OF TESTIMONY: Court properly denied jury's request for copies of transcripts of testimony and properly informed the jury that are read back in testimony was possible if they can identify those portions of testimony it wish to have read back. Castellon-Lopez v. State, 42 Fla. L. Weekly D2170a (3rd DCA 10/11/17)

SENTENCING-JUVENILE-JUDICIAL REVIEW: Court set a specified in sentencing documents that the defendant is entitled to judicial review sentence after 20 years under the circumstances of this case, which involved offenses committed prior to July 1, 2014. Matias v. State, 42 Fla. L. Weekly D2167b (2nd DCA 10/11/17)

SENTENCING: Life sentence for second degree murder, a first PBL, is not illegal merely because he would've been such as the 2nd penalty had he committed a life felony. Young v. State, 42 Fla. L. Weekly D2162a (4th DCA 10/11/17)

VOIR DIRE: "The right to ask potential jurors questions during voir dire about bias remains one of the most important, and often overlooked, protections against jury discrimination." Court erred in dismissing thirty-one jurors for bias without allowing defense counsel to examine them. Irimi v. R.J. Reynolds, 42 Fla. L. Weekly D2156b (4th DCA 10/11/17)

COSTS: Discretionary fines and surcharges must be orally pronounced. Murphy v. State, 42 Fla. L. Weekly D2147c (1st DCA 10/11/17)

PROBATION REVOCATION: Court had jurisdiction to revoke defendant's probation where violation of probation affidavit was filed prior to expiration of five-year period of probation. Where there was conflict between oral pronouncement and written sentence on issue of whether jail credit operated

to shorten defendant's probation, the oral pronouncement is controlling. Spatcher v. State, 42 Fla. L. Weekly D2141b (1st DCA 10/6/17)

APPEALS: Where there was conflict between oral pronouncement and written sentence on issue of whether jail credit operated to shorten defendant's probation, the oral pronouncement is controlling. Frost v. Frost, 42 Fla. L. Weekly D2141a (1st DCA 10/6/17)

COMPETENCY OF DEFENDANT: So long as Court holds a competency hearing and makes an independent determination of competency, the lack of proper foundation for considering the evaluator's reports is not fundamental error. Hendrix v. State, 42 Fla. L. Weekly D2140a (1st DCA 10/6/17)

GRAND THEFT-JOA: Defendant is entitled to Judgment of Acquittal for theft where he repossessed vehicles as collateral for unpaid loan, and thus lacked felonious intent. Where the taker honestly believes that he or she has a right to property, the taker cannot be convicted of theft, even though the taker may have been mistaken. Johnson v. State

JUVENILES-SENTENCING: Court may not deviate from DJJ'S recommendation without stating reasons. T.S. v. State, 42 Fla. L. Weekly D2138b (1st DCA 10/6/17)

AGGRAVATED BATTERY-RECLASSIFICATION: Court may not reclassify offense from second-degree felony to a first-degree felony based on the use of a weapon where it cannot be determined that the conviction was not based on the use of a deadly weapon. Helton v. State, 42 Fla. L. Weekly D2137b (1st DCA 10/6/17)

SENTENCING-SEXUAL PREDATOR: Kidnapping conviction does not qualify Defendant as a sexual predator with the victim was not a minor. Sexual battery without force is not a basis for a sexual predator designation where the offenses are second-degree felonies. Flint v. State, 42 Fla. L. Weekly D2137a (1st DCA 10/6/17)

POST CONVICTION RELIEF: Counsel provided ineffective assistance by failing to investigate whether the alleged BB gun was actually an air pistol capable of firing lightweight plastic projectiles. Plummer v. State, 42 Fla. L. Weekly D2133a (1st DCA 10/6/17)

BATTERY-JOA: Teacher's age cannot be convicted of battery of prekindergarten students for non-abusive touching of a student where jury acquitted her of child abuse. Teaching personnel are permitted to administer non-abuse of corporal discipline and to touch them non-abusively against their will. Morris v. State, 42 Fla. L. Weekly D2129c (1st DCA 10/6/17)

SELF-REPRESENTATION: Court erred by allowing Defendant to represent himself at pre-trial Williams rule hearing without conducting a Faretta inquiry. Dickerson v. State, 42 Fla. L. Weekly D2128a (5th DCA 10/6/17)

APPEALS: Denial of motion to suppress is not preserved for appeal where Defendant will pled no contest without either a stipulation or determination that the denial of motion to suppress was dispositive. Where Defendant apparently believed that he could appeal, he may be allowed to timely move to withdraw his plea. Russ v. State, 42 Fla. L. Weekly D2125a (2nd DCA 10/6/17)

AIDING AND ABETTING: Defendant who distracted the victim in order to set up his codefendant's robbery of him may properly be convicted of

aggravated battery as an aider and abettor. Delgado v. State, 42 Fla. L. Weekly D2123d (2nd DCA 10/6/17)

JOA: Defendant cannot be convicted of attempted sale of cannabis when he only pretended to sell the cannabis so that he could rob the victim. Delgado v. State, 42 Fla. L. Weekly D2123d (2nd DCA 10/6/17)

DISCOVERY-BRADY: Brady violation has three components : the evidence must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. Cumulative discovery violations, including discredited firearm identification evidence, is insufficient to warrant a new trial. Vigorous dissent. Smith v. State, 42 Fla. L. Weekly S835a (FLA 10/5/17)

SENTENCING: Court did not violate due process by announcing rule that it would not "go backwards" by imposing a lighter sentence for instant offense than defendant earned for his earlier convictions where the sentence was not product of some arbitrary rule but was product of court's studied consideration. Good discussion of sentencing theory. Tyson v. State, 42 Fla. L. Weekly D2121a (1st DCA 10/5/17)

MANSLAUGHTER: An automobile can be considered a weapon for purpose of reclassification of the degree of the felony. Discussion of Houck (whether a pavement can be a weapon). Conflict certified. Shepard v. State, 42 Fla. L. Weekly D2118b (1st DCA 10/5/17)

SENTENCING: Court erred in considering defendant's lack of remorse in imposing sentence. Shepard v. State, 42 Fla. L. Weekly D2118b (1st DCA 10/5/17)

JOA: JOA is required where the State cannot establish that the car the Child was seen stealing or burglarizing was the car alleged in the petition. A.P. v. State, 42 Fla. L. Weekly D2117a (3rd DCA 10/4/17)

APPEAL: Trial court is without jurisdiction to extend the time for taking an appeal. Hernandez v. State, 42 Fla. L. Weekly D2115b (3rd DCA 10/4/17)

COSTS: Section 939.185(1)(a) does not authorize a Florida county to adopt an ordinance imposing an additional $65 court cost where a juvenile is found delinquent but adjudication is withheld. H.S. v. State, 42 Fla. L. Weekly D2114a (3rd DCA 10/4/17)

COMPETENCY: Where defendant was previously found incompetent, Court erred in finding defendant competent to proceed based on parties' stipulation to defendant's competency. Hanna v. State, 42 Fla. L. Weekly D2111a (4th DCA 10/4/17)

POST CONVICTION RELIEF: Counsel's admission at trial that he failed to provide effective assistance cannot form basis of an ineffective assistance of counsel claim. Douse v. State, 42 Fla. L. Weekly D2107a (4th DCA 10/4/17)

HEARSAY-EXCITED UTTERANCE: 911 call made about two minutes after Defendant threw a pipe at his car may be admissible as an excited utterance, notwithstanding that the Declarant looked for the pipe and seemed calm on the recording. Roop v. State, 42 Fla. L. Weekly D2097a (2nd DCA 10/4/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on motion for post-conviction relief where he alleges that he would not have tendered the plea had he known that he would be deported. Huerta v. State, 42 Fla. L. Weekly D2096b (2nd DCA 10/4/17)

BAIL: Bail is not per se excessive or unreasonable simply because the Defendant is unable to pay it. Knight v. State, 42 Fla. L. Weekly D2091c (1st DCA 10/2/17)

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DEATH PENALTY: Defendant is not entitled to relief from death penalty based on a nonunanimous death recommendation where his sentence became final prior to Ring. Lambrix v. State, 42 Fla. L. Weekly S833a (FLA 9/29/17)

DOUBLE JEOPARDY: Separate convictions for attempted sexual battery and battery were precluded by double jeopardy where battery was part and parcel of attempted sexual battery. Morrison v. State, 42 Fla. L. Weekly D2091a (5th DCA 9/29/17)

VOLUNTARY INTOXICATION: Defendant is entitled to a hearing on claim that counsel failed to pursue a voluntary intoxication defense on the mistaken belief that it was unavailable to him. Reynolds v. State, 42 Fla. L. Weekly D2090b (5th DCA 9/29/17)

SEARCH AND SEIZURE-RESIDENCE: "No Soliciting" sign posted on front door of home did not prohibit law enforcement officers from knocking and talking to home's occupant. State v. Crowley, 42 Fla. L. Weekly D2089a (1st DCA 9/29/17)

DWLS: Defendants who have never possessed a driver license may not be charged under section 322.34(5), as having a driver license that has been revoked under the habitual traffic offender statute is a necessary element of the offense. "Driving privilege" refers to all the individuals who may lawfully operate vehicles on Florida's roads, not to people who have no license at all. State v. Miller, 42 Fla. L. Weekly S831a (FLA 9/28/17)

DEATH PENALTY: Defendant is not ineligible for relief from the death penalty based on intellectual deficit is not warranted where any deficit is attributed to him being shot in the head in the aftermath or after the underlying murder. Jones v. State, 42 Fla. L. Weekly S830a (FLA 9/28/17)

STAND YOUR GROUND: Stand Your Ground Law does not confer civil liability immunity to a criminal defendant based upon an immunity determination in the criminal case. Kumar v. Patel, 42 Fla. L. Weekly S828a (FLA 9/28/17)

STATEMENT OF DEFENDANT: If a reasonable person in the suspect's position would understand that the police have probable cause to arrest the suspect for a serious crime, that circumstance militates strongly toward the conclusion that the suspect is in custody. Once Defendant admitted that he touched victim's butt and detective urged him to tell the truth, the interrogation at the police station became custodial, notwithstanding that he had been told before that he was free to leave. Cushman v. State, 42 Fla. L. Weekly D2076a (2nd DCA 9/27/17)

DOUBLE JEOPARDY: Separate convictions for sexual battery and lewd or lascivious battery violated double jeopardy where convictions were based on same specific sexual conduct with single victim. Fleming v. State, 42 Fla. L. Weekly D2073d (2nd DCA 9/27/17)

SEVERANCE OF CHARGES: Court did not abuse discretion by failing to sever charge of battery from charge of second degree murder where the two offenses were connected by temporal proximity, physical proximity, and a common motive. The battery was motivated by the Defendant not being given money for drugs and the murder was motivated by the Victim's son not sharing a bottle of Xanax. Hammond v. State, 42 Fla. L. Weekly D2073a (1st DCA 9/27/17)

CORPUS DELICTI: In concealed firearm case, Corpus Delicti does not preclude evidence of the Defendant's admission that he had a gun in his waistband. Hathaway v. State, 42 Fla. L. Weekly D2072c (1st DCA 9/27/17)

APPEALS: Order denying defendant's motion to dismiss for fraud upon court is not an appealable order. Baker v. State, 42 Fla. L. Weekly D2070c (1st DCA 9/27/17)

EVIDENCE-VIDEOTAPE-AUTHENTICATION: Videotape from a shop near a store which was robbed is authenticated under the "silent witness" theory. Richardson v. State, 42 Fla. L. Weekly D2058a (4th DCA 9/27/17)

WITHHOLD OF ADJUDICATION: Court cannot withhold adjudication of guilt on first degree felonies. State v. Dahl, 42 Fla. L. Weekly D2053a (4th DCA 9/27/17)

SELF-DEFENSE: Defendant was entitled to assert self-defense in a burglary case when Defendant argued that he committed battery in self-defense and was then required, in self-defense, to continue the battery inside victim's apartment. Defendant is entitled to a special jury instruction, where it is a

correct statement of the law and not misleading or confusing. St. Pierre v. State, 42 Fla. L. Weekly D2050a (4th DCA 9/29/17)

ARGUMENT: Argument that since this is not a death penalty case State will not have to show aggravated circumstances or heightened planning is not improper. Weingrad v. State, 42 Fla. L. Weekly D2046a (4th DCA 9/27/17)

STATEMENT OF DEFENDANT: Fact that Miranda warnings did not specifically say that right to an attorney continues throughout the questioning is insufficient to render the confession suppressible. Weingrad v. State, 42 Fla. L. Weekly D2046a (4th DCA 9/27/17)

YIKES: "[W]itness testimony was admitted at trial from Weingrad's codefendant that he woke her, with a sledgehammer in his hands, and told her "I did it. I did it," and that she then discovered the victim dead laying on her bed with her head misshapen and blood and tissue everywhere. There was also ample testimony. . . from multiple witnesses testifying . . .that he was trying to find a way to kill the victim and make it look like an accident." Weingrad v. State, 42 Fla. L. Weekly D2046a (4th DCA 9/27/17)

HABEAS CORPUS: Defendant is not entitled to relief on his claim that he is entitled to a cumulative review of all evidence supporting his claim of actual innocence. Lambrix v. Jones, 42 Fla. L. Weekly S825a (FLA 9/26/17)

HABEAS CORPUS: Defendant is not entitled to relief on claim that he was denied the right to DNA testing, as he has not explained how DNA testing would lead to his exoneration. Lambrix v. Jones, 42 Fla. L. Weekly S825a (FLA 9/26/17)

PRETRIAL RELEASE: Hurricane Irma and supreme court administrative order closing courts tolls the requirement of filing an information within 40 days. Nelson v. Junior, 42 Fla. L. Weekly D2041b (3rd DCA 9/20/17)

DEATH PENALTY: New sentencing hearing is required where death recommendation in not unanimous. Doorbal v. Jones, 42 Fla. L. Weekly S822a (FLA 9/20/17)

SEARCH AND SEIZURE-PASSENGER: Law enforcement officers may, as a matter of course, detain passengers of a vehicle for the reasonable duration of a traffic stop without violating the Fourth Amendment. Presley v. State, 42 Fla. L. Weekly S817a (FLA 9/20/17)

QUOTATION: "[P]assengers need be wary of the risk of detention when choosing whether to ride in a car with a faulty taillight." Presley v. State, 42 Fla. L. Weekly S817a (FLA 9/20/17

LIFE SENTENCE-JUVENILE: Defendant who was 16 years old at the time of murder and was sentenced to life with the possibility of parole is entitled to resentencing under chapter 2014-220. Parole does not provide for the individualized consideration of the Defendant's juvenile status. Albritton v. State, 42 Fla. L. Weekly D2035c (1st DCA 9/20/17)

10-20-LIFE-CONSECUTIVE MANDATORY MINIMUM: Holding that consecutive mandatory minimum terms are permissible but not mandatory where multiple firearm offenses are committed contemporaneously and multiple victims are shot at does not apply retroactively. Osei v. State, 42 Fla. L. Weekly D2034b (1st DCA 9/20/17)

RETROACTIVITY: A change in the law does not apply retroactively unless the change : (a) emanates from the Florida or the United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance. A decision must satisfy all three of these prongs before it can be applied retroactively to a case that was already final. Osei v. State, 42 Fla. L. Weekly D2034b (1st DCA 9/20/17)

SEARCH AND SEIZURE-VEHICLE: Officer who observed that defendant was extremely intoxicated approximately one hour before he stopped vehicle defendant was driving, had founded suspicion that defendant was driving under the influence, despite that Defendant was not driving erratically. Jacobson v. State, 42 Fla. L. Weekly D2033a (1st DCA 9/20/17)

DOUBLE JEOPARDY: Double Jeopardy does not preclude habitualization of a Defendant convicted of an enhanced felony (manslaughter with a firearm). McKinney v. State, 42 Fla. L. Weekly D2032b (3rd DCA 9/20/17)

DIRECT CRIMINAL CONTEMPT: Court erred in holding defendant in direct criminal contempt for being intoxicated in court where Court did not observe Defendant drink alcohol or behave inappropriately, but instead relied on probation officers testimony about his breathalyzer test. If court needs to rely on testimony from others is not direct criminal contempt. Brown v. State, 42 Fla. L. Weekly D2014b (2nd DCA 9/15/17)

JUDGMENT OF ACQUITTAL: JOA is required where the evidence fails to establish that the car the Defendant was seen rummaging through was the same car which the victim said he owned and which had been burglarized. B.R.W. v. State, 42 Fla. L. Weekly D2013a (2nd DCA 9/15/17)

COMPETENCY OF DEFENDANT: Court erred in revoking drug offender probation based on a new law violation without conducting a competency hearing following receipt of reports on his competency. Mansfield v. State, 42 Fla. L. Weekly D2009c (2nd DCA 9/15/17)

NELSON HEARING: Court erred by declining to hold Nelson hearing and assuming that the Defendant's complaints about counsel were not warranted. Mansfield v. State, 42 Fla. L. Weekly D2009c (2nd DCA 9/15/17)

SENTENCING-VINDICTIVENESS: Defendant is entitled to a new judge upon re-sentencing where the original trial judge expressed over-familiarity and condescension with the Defendant (" Now I've known you all your life."and "I remember when you was charged with cattle rustling. . .of Bill DeShawn's. . .cow out on Highway 70. . .Well, I just remember all those things, Henry."). Mansfield v. State, 42 Fla. L. Weekly D2009c (2nd DCA 9/15/17)

RETURN OF PROPERTY: Court erred in denying motion for return of property as untimely without attaching portions of record conclusively show refuting claim. Simmons v. State, 42 Fla. L. Weekly D2009b (2nd DCA 9/15/17)

POST CONVICTION RELIEF: Court erred by summarily denying the claim that counsel was provided ineffective assistance of counsel by failing to move for a Franks hearing to challenge the validity of the affidavit used to obtain the arrest warrant. Conley v. State, 42 Fla. L. Weekly D2008a (2nd DCA 9/15/17)

CIRCUMSTANTIAL EVIDENCE: Evidence that someone vaguely matching the defendant's description, that the defendant reported the body of the

deceased, and the victim's blood on his shoes is sufficient circumstantial evidence to sustain his conviction for murder. Glover v. State, 42 Fla. L. Weekly S810a (FLA 9/14/17)

EVIDENCE: Court properly excluded evidence of the Victim's drug use based on lab reports for the Defendant presented no evidence suggesting that drugs played a role in the homicide. Glover v. State, 42 Fla. L. Weekly S810a (FLA 9/14/17)

NELSON HEARING: A generalized complaint about counsel does not trigger a required Nelson hearing. Glover v. State, 42 Fla. L. Weekly S810a (FLA 9/14/17)

DEATH PENALTY: New sentencing hearing is required where jury made a non-unanimous recommendation of death (10-2). Glover v. State, 42 Fla. L. Weekly S810a (FLA 9/14/17)

LESSER INCLUDED: Court is not required to give a lesser included jury instruction for second-degree arson, a permissive lesser included offense, where the evidence is undisputed that the structure was a dwelling. Stevens v. State, 42 Fla. L. Weekly S807a (FLA 9/14/17)

PEREMPTORY CHALLENGE-DISCRIMINATION: African-American juror giving prosecutor a dirty look was not a valid race-neutral reason for peremptory challenge of juror where the dirty look occurred outside the presence of the trial court and defense counsel. Ivey v. State, 42 Fla. L. Weekly D2004a (1st DCA 9/13/17)

SUSPENDED SENTENCE-WITHHOLD OF ADJUDICATION: Court has discretion to withhold adjudication while imposing a suspended prison sentence with probation. Fowler v. State, 42 Fla. L. Weekly D2003a (1st DCA 9/13/17)

DISCOVERY: State committed discovery violation when it fails to inform Defendant that a witness's trial testimony would be different from sworn statement to the police. Parker v. State, 42 Fla. L. Weekly D2002a (1st DCA 9/13/17)

RULES OF APPELLATE PROCEDURE-AMENDMENTS: Separate PDFs are required for the record, divided by the transcript, documents in evidence, and index, which must be searchable. In re : AMENDMENTS, 42 Fla. L. Weekly S794a (FLA 9/7/17)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Defendant is entitled to an evidentiary hearing when a third party submits an affidavit claiming sole responsibility for the crime. Mills v. State, 42 Fla. L. Weekly D2000a (5th DCA 9/7/17)

EVIDENCE: Detective should not be asked or permitted to state opinion when the circumstances amounted to consensual sex or some form of attempted sexual battery. State v. Ryan, 42 Fla. L. Weekly D1999b (5th DCA 9/7/17)

MISTRIAL: Court properly denied motion for mistrial after Defendant's status as a probationer was committed to evidence where Defendant opened the door by eliciting that information from the victim on cross-examination. Rose v. State, 42 Fla. L. Weekly D1999a (5th DCA 9/7/17)

RESENTENCING-JUVENILE: Court properly considered defendant's subsequent convictions at individualized sentencing hearing under juvenile sentencing statutes. Barnes v. State, 42 Fla. L. Weekly D1998a (5th DCA 9/7/17)

DISCOVERY-RICHARDSON: Court erred in failing to hold Richardson hearing after state introduced Defendant's statement made to State's forensic psychologist which constituted an admission and which was not disclosed to the defense during discovery. Jackson v. State, 42 Fla. L. Weekly D1997a (5th DCA 9/7/17) http://www.5dca.org/Opinions/Opin2017/090417/5D16-619.op.pdf DISCOVERY : Court is not required to order the state to disclose to defense which, out of a number of recorded jail calls, it intends to introduce at trial. State v. Cummins, 42 Fla. L. Weekly D1996a (5th DCA 9/7/17)

POST CONVICTION DNA TESTING: Court erred in denying facially sufficient motion seeking additional DNA testing by an outside agency without ordering state to respond or holding an evidentiary hearing. Poole v. State, 42 Fla. L. Weekly D1995b (5th DCA 9/7/17)

DRUG OFFENDER PROBATION: Where defendant was not convicted of one of the specific crimes for which drug offender probation was authorized, he could only be placed on drug offender probation following open plea if he committed nonviolent felony as defined in statute and total points were sixty points or fewer. Taylor v. State, 42 Fla. L. Weekly D1995a (5th DCA 9/7/17)

CIVIL THEFT: Claim of civil theft of money embezzled from the corporation previously owned by the husband and wife is not barred by the divorce since the assets were not marital property. A corporation is not the personal feedback for any one shareholder. Dr. Rooter Supply v. McVay, 42 Fla. L. Weekly D1992a (5th DCA 9/7/1 7)

EVIDENCE: Defendant's enemies list, and testimony by the people on it, is admissible in murder trial when the Victim is on the list. Beckman v. State, 42 Fla. L. Weekly D1975a (3rd DCA 9/6/17)

EVIDENCE: Evidence is admissible to show consciousness of guilt that Defendant created a second list of people he wanted to kill to prevent their testifying in his murder case. Beckman v. State, 42 Fla. L. Weekly D1975a (3rd DCA 9/6/17) http://www.3dca.flcourts.org/Opinions/3D15-0304.pdf

EVIDENCE: Court can exclude medical evidence that the Defendant had Asperger's syndrome where defense was allowed to introduce evidence that defendant generally acted differently from most people. Beckman v. State, 42 Fla. L. Weekly D1975a (3rd DCA 9/6/17)

HEARSAY-EXCITED UTTERANCE: Evidence of statements made by defendant in 911 call shortly after the killing ("Oh my God, call 911. . .Please, come quickly, I accidentally shot my father.") were not admissible under excited utterance exception to hearsay rule where there was no showing that defendant was under any stress or excitement at the time of the call. "[S]ince spontaneity is the principal, and often the only, guarantee of trustworthiness for the exceptions . . ., its absence should result in exclusion of the statement." Beckman v. State, 42 Fla. L. Weekly D1975a (3rd DCA 9/6/17)

SENTENCING-JUVENILE-APPRENDI: Court, not jury, may make the factual findings justifying a lengthy prison sentence up to and including life imprisonment or a juvenile. Apprendi does not require the jury to make the Miller factual findings. Beckman v. State, 42 Fla. L. Weekly D1975a (3rd DCA 9/6/17)

FELONY LITTERING: Dumping litter on one's own private property can, in certain circumstances, constitute a violation of the Florida Litter Law. Cosio v. State, 42 Fla. L. Weekly D1959d (2nd DCA 9/6/17)

FELONY LITTERING: Plants, living or dead, are not litter. Cosio v. State, 42 Fla. L. Weekly D1959d (2nd DCA 9/6/17)

QUOTATION One man's trash is another man's treasure. But sometimes it's just another man's nuisance." Cosio v. State, 42 Fla. L. Weekly D1959d (2nd DCA 9/6/17)

QUOTATION: "[U]nder the doctrine of noscitur a sociis (a word is known by the company it keeps), one examines the other words used within a string of concepts to derive the legislature's overall intent. . .With that principle in mind, it defies any reasonable understanding of what could plausibly be characterized as "litter," or "garbage," or "trash," or "rubbish" to maintain, as the State does here, that live, verdant plant life and forestry falls within the ambit of any of those words. A living tree is not trash, at least under the Florida Litter Law. To broaden the meaning of litter to include growing things that are rooted in the earth would imbue more than an "unintended breadth" of definition into the statute's language. . .– it would foist an outright distortion on the common meaning of "garbage," "rubbish," "trash," or "refuse. Nor under these circumstances does the felled state of the trees and brush on Mr. Cosio's yard transubstantiate their material into litter for purposes of the statute." Cosio v. State, 42 Fla. L. Weekly D1959d (2nd DCA 9/6/17)

QUOTATION: "Although the State's pursuit of a felony case through a jury trial against an elderly gentleman who hoarded junk on his overgrown yard strikes us as a rather questionable expenditure of criminal justice resources, that is not a basis upon which we can disturb the trial court's ruling, and so

we affirm the judgment below." Cosio v. State, 42 Fla. L. Weekly D1959d (2nd DCA 9/6/17)

LIMITATION OF ACTIONS: Charge of lewd and lascivious molestation must be dismissed if not prosecuted within 3 years of the date the incident was first reported to DCF. Curry v. State, 42 Fla. L. Weekly D1957a (4th DCA 9/6/17)

RESENTENCING-SUCCESSOR JUDGE: Where defendant is resentenced by a new judge following a successful appeal , and the successor judge indicates that he is not inclined to revisit the sentence previously imposed, notwithstanding that he reviewed all the mitigating material submitted, the Defendant is entitled to another resentencing hearing by another judge. Davis v. State, 42 Fla. L. Weekly D1952a (4th DCA 9/6/17)

QUOTATION: "The majority has scoured the trial judge's words, like a medieval monk pouring over sacred text, looking for nuances that would support reversal. Here, the legal basis for reversal is that the judge violated the constitution by failing to exercise 'independent judgment.' A failure to exercise independent judgment is a flimsy notion upon which to erect a reversal. If law involves the drawing of lines, who can say when independent judgment begins and ends?" Davis v. State, 42 Fla. L. Weekly D1952a (4th DCA 9/6/17)

QUOTATION: "The sad irony of the law is that a judge can shred the Constitution in sentencing so long as he does not utter words that give him away." Davis v. State, 42 Fla. L. Weekly D1952a (4th DCA 9/6/17)

MANDATORY MINIMUM: 10-year mandatory minimum sentence cannot be imposed where the jury did not expressly find actual possession of the

firearm. Hicks v. State, 42 Fla. L. Weekly D1949b (4th DCA 9/6/17) APPEALS : Appellate court lacks jurisdiction to entertain appeal taken by defendant from an order granting relief under rule 3.800. Brown v. State, 42 Fla. L. Weekly D1969a (3rd DCA 9/6/17)

SENTENCING-10-20-LIFE-CONSECUTIVE: Court has discretion to impose concurrent or consecutive mandatory minimum sentences where offenses occurred in same criminal episode and involved multiple victims. Resentencing is required where Court thought otherwise under then-existing case law. Goodson v. State, 42 Fla. L. Weekly D1938a (1st DCA 9/5/17)

DOUBLE JEOPARDY: Dual convictions for use of computer to facilitate or solicit parent to consent to sexual conduct of child and traveling to meet minor to engage in sexual conduct with consent of parent did not constitute a double jeopardy violation where the two convictions were not based on same conduct. Coffey v. State, 42 Fla. L. Weekly D1936a (1st DCA 9/5/17)

DOUBLE JEOPARDY: Dual convictions for traveling and unlawful use of twoway communications device constituted double jeopardy. Coffey v. State, 42 Fla. L. Weekly D1936a (1st DCA 9/5/17)

ENTRAPMENT: Argument that defendant was induced to solicit because ad was posted in adult dating section of Craigslist and because undercover agent brought up the suggestion that her daughter needed to lose her virginity for religious reasons lacks merit. Coffey v. State, 42 Fla. L. Weekly D1936a (1st DCA 9/5/17)

EVIDENCE-RELEVANCE : Evidence that Defendant suffered sexual abuse as a child was within Court's discretion to exclude as needlessly cumulative and likely to inflame emotions of jurors and possibly distract them from

relevant legal issues. Coffey v. State, 42 Fla. L. Weekly D1936a (1st DCA 9/5/17)

SENTENCING: Defendant is not entitled to relief on claim that written sentence conflicts with oral pronouncement where trial court determined after hearing that transcript was in error and that written sentence complies with oral pronouncement. Santiago v. State, 42 Fla. L. Weekly D1935a (5th DCA 9/1/17)

MARCHMAN ACT-VENUE: Marchman Act petition must be filed in the county were the treatment is located, but improper venue is waived if not asserted. J.P. v. J.N., 42 Fla. L. Weekly D1933b (5th DCA 9/1/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the question of whether counsel was ineffective for failing to object to jury instruction on third-degree murder as a lesser included offense of first-degree murder without attaching records refuting his claim that there is no evidence that the death occurred in connection with the purchase of marijuana. White v. State, 42 Fla. L. Weekly D1933a (5th DCA 9/1/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the question of whether counsel was ineffective for failing to properly prepare defendant to testify at trial, and that if counsel had properly advised him, incriminating text messages would have been kept out of evidence. White v. State, 42 Fla. L. Weekly D1933a (5th DCA 9/1/17)

VOP: Court can proceed on violation despite the fact that the State dropped the charge of domestic violence which was the basis of the violation. State v. Mitchum, 42 Fla. L. Weekly D1930a (5th DCA 9/1/17)

POST CONVICTION RELIEF: Court erred by summarily denying the claim that counsel was ineffective for failing to interview or investigate state witnesses in failing to present a defense theory in order to preserve the opportunity to present first and last closing arguments. Defendant's acquiescence in the strategy does not insulate his performance from judicial review. Downs v. State, 42 Fla. L. Weekly D1929a (5th DCA 9/1/17)

POST CONVICTION RELIEF-APPEAL: The appeal from the denial of the second motion for post-conviction relief is dismissed where an order had not been rendered dispensing with a motion for rehearing of the order denying the 1st motion for post-conviction relief. Minix v. State, 42 Fla. L. Weekly D1928b (5th DCA 9/1/17)

JOA-FAILURE TO REGISTER: JOA for failure to comply with sex offender registration requirements must be granted where State failed to demonstrate that Defendant qualified as a sex offender. State cannot rely on the inference that because he was given a 10-year sentence in 1995 he must've been released from incarceration after October 1, 1997. Clay v. State, 42 Fla. L. Weekly D1928a (5th DCA 9/1/17)

JOA: A defendant does not waive the arguments made in a motion for judgment of acquittal at the close of the State's case by subsequently introducing evidence. Clay v. State, 42 Fla. L. Weekly D1928a (5th DCA 9/1/17)

POST CONVICTION RELIEF: Court erred in summarily denying the claim that counsel was ineffective for failing to advise defendant of a meritorious motion to suppress and that if he had properly advised him he would not have entered the plea. Guevara v. State, 42 Fla. L. Weekly D1927c (5th DCA 9/1/17)

POST CONVICTION RELIEF: Court erred by summarily denying claims that counsel was ineffective for failing to object to improper closing argument in failing to adequately cross-examine expert witness. Burt v. State, 42 Fla. L. Weekly D1927b (5th DCA 9/1/17)

AUGUST 2017

DEATH PENALTY Aggravator for a particularly vulnerable victim applies where the Defendant is in a de facto role of stepparent. Covington v. State, v. 42 Fla. L. Weekly S787a (FLA 8/31/17)

DEATH PENALTY: Aggravator of heinous, atrocious, and cruel applies where the victim has multiple broken bones and the Defendant sawed through the child victim's neck with a bread knife while she cried. Covington v. State, v. 42 Fla. L. Weekly S787a (FLA 8/31/17)

DEATH PENALTY: Court must consider parole ineligibility as a mitigating factor, that failure to do so here is harmless error. Covington v. State, v. 42 Fla. L. Weekly S787a (FLA 8/31/17)

PENALTY: defendant who has waived the right to a penalty phase jury is not entitled to relief under Hurst. Covington v. State, v. 42 Fla. L. Weekly S787a (FLA 8/31/17)

POST CONVICTION RELIEF: Counsel is not ineffective for not arguing that the transcript of the Defendant's conversation should have said "f***er" instead of "f**ing." Gregory v. State, 42 Fla. L. Weekly S779a (FLA 8/31/17)

LESSER INCLUDED-MANSLAUGHTER: Manslaughter is a necessarily lesser included offense of second-degree felony murder because both offenses require some action by the defendant that ultimately causes the victim's death. However, where the evidence supports the charged offense as well as the requested instruction on a necessarily lesser included offense, any error in failing to give the requested instruction is harmless because the defendant is not entitled to an opportunity for a jury pardon. Dean v. State, 42 Fla. L. Weekly S769a (FLA 8/31/17)

LESSER INCLUDED (concurring) "My colleague argues that there is no inherent error in failure to instruct on an immediate lesser-included offense because there is no right for the jury to exercise its pardon power. . . This Court has recognized the opposite for as long as there has been a Florida Supreme Court. . . .To hold otherwise, as the majority currently does, is to recede from centuries of caselaw without an explanation." Dean v. State, 42 Fla. L. Weekly S769a (FLA 8/31/17)

QUOTATION: "So, Dean wins a pyrrhic victory. He receives a favorable answer on manslaughter being a lesser included offense of second-degree felony murder, but he does not receive a new trial with a proper jury instruction on the lesser included offense of manslaughter. In my view, there would be a real possibility that the jury would have found him guilty of the lesser included offense, not as a result of the jurors disregarding their oath, but because the facts of this case could fit into manslaughter. Accordingly, I dissent." Dean v. State, 42 Fla. L. Weekly S769a (FLA 8/31/17)

STATE ATTORNEY: Gov. has authority to reassign prosecution of death penalty eligible cases when State Attorney announces her intention to implement a blanket policy of not seeking the death penalty. Ayala v. Scott, 42 Fla. L. Weekly S766b (FLA 8/31/17)

STAND YOUR GROUND: Court properly determined law enforcement officer who shot a man who had failed to obey commands to drop a weapon and pointed the weapon at officers was entitled to immunity under Florida's Stand Your Ground law. Law enforcement officers are entitled to seek immunity under the Stand Your Ground law. Question Certified. State v. Peraza, 42 Fla. L. Weekly D1917a (4th DCA 8/30/17)

DEATH PENALTY: Court's order precluding death as a possible punishment on grounds that no constitutional penalty phase procedure was in place is quashed. Aggravating factors need not be alleged in the indictment. State v. Chapman, 42 Fla. L. Weekly D1915a (4th DCA 8/30/17)

RETURN OF PROPERTY: Motion for return of property including "all other miscellaneous items" is legally sufficient for a hearing. Defendant need not establish proof of ownership in order to allege a facially sufficient claim for the return of property. Johnson v. State, 42 Fla. L. Weekly D1910a (4th DCA 8/30/17)

COMPETENCY OF DEFENDANT: After defense counsel moved to have defendant evaluated for competency, trial court improperly allowed defendant to waive his right to the required competency hearing and proceed to trial without determining his competency. Hearing cannot be waived. Raithel v. State, 42 Fla. L. Weekly D1906a (4th DCA 8/30/17)

RETURN OF PROPERTY: Court erred in finding the motion for return of property was untimely when the petition for discretionary review was still pending when the motion was filed. Eugene v. State, 42 Fla. L. Weekly D1905a (4th DCA 8/30/17)

CREDIT FOR TIME SERVED: An inmate in the custody of DOC must exhaust administrative remedies for gain time or credit owed within DOC before he is entitled to judicial remedies. Dunbar v. State, 42 Fla. L. Weekly D1890a (3rd DCA 8/30/17

DOUBLE JEOPARDY: Defendant waives double jeopardy claims when entering a negotiated plea agreement. Higginbotham v. State, 42 Fla. L. Weekly D1886d (1st DCA 8/30/17)

ENFORCEMENT OF APPELLATE MANDATE: Where appellate court ordered trial court to vacate the grand theft conviction and sentence for organized fraud, State cannot thwart the order by Nolle processing the organized fraud count. When an appellate court issues a mandate, compliance with the mandate by the circuit court is purely a ministerial act. The circuit court does not have the authority to modify, nullify or evade that mandate. Manata v. State, 42 Fla. L. Weekly D1886b (1st DCA 8/30/17)

DISCOVERY VIOLATION: State committed discovery violation by not disclosing alleged statements by the defendant to the Victim admitting the theft on the theory that the disclosure was not required because the defendant could have deposed the victim. Court erred in not considering the harm in preparation created by the non-disclosure. Z.L. v. State, 42 Fla. L. Weekly D1885b (2nd DCA 8/30/17)

VOP-YOUTHFUL OFFENDER: Court erred in sentencing Defendant upon violation of probation without continuing youthful offender status. Jaques v. State, 42 Fla. L. Weekly D1885a (2nd DCA 8/30/17)

VOP: Defendant is improperly convicted of violating community control where his car broke down at the gas station and he could not come home for 50 minutes. Rousey v. State, 42 Fla. L. Weekly D1882a (2nd DCA/30/17)

HABITUAL OFFENDER-ATTEMPTED SECOND DEGREE MURDER: Defendant was properly sentenced to life in prison for first-degree felony (attempted second degree murder with a weapon) where he qualified as habitual felony offender. Clark v. State, 42 Fla. L. Weekly D1881a (2nd DCA 8/30/17)

JOA-NEGLECT OF CHILD CAUSING GREAT BODILY HARM: Defendant's conduct in allowing 4-year-old child to descend, unassisted, a flight of stairs that the child had regularly traversed previously without significant incident did not rise to level of culpable negligence or willful failure to care for child's well-being. Medina v. State, 42 Fla. L. Weekly D1878a (2nd DCA 8/30/17)

EVIDENCE: Evidence that Defendant was under the influence of marijuana at the time of the incident is not a basis for criminal liability for neglect of a child absent proof that the ability to supervise or care for the child was impaired. Medina v. State, 42 Fla. L. Weekly D1878a (2nd DCA 8/30/17)

COSTS: Court may not impose discretionary costs without providing Defendant notice and opportunity to object. Cooler v. State, 42 Fla. L. Weekly D1873b (1st DCA 8/28/17)

SENTENCING-10-20-LIFE-CONSECUTIVE: Where Defendant was convicted of one qualifying felony into non-qualifying felonies, court may impose mandatory minimum sentences to run consecutively. Armstead v. State, 42 Fla. L. Weekly D1872b (1st DCA 8/28/17)

DRIVING RECORD: Department's records are prima facie evidence that the driver committed the offenses identified in its records, and that the burden then shifts to the driver to dispute the evidence. Carpenter v. DHSMV, 42 Fla. L. Weekly D1875a (1st DCA 8/28/17)

JUVENILES-SENTENCING: Upon deviating from DJJ's recommendation of probation, Court erred in committing juvenile to nonsecure residential program without first securing a commitment level recommendation from DJJ. K.L.L. v. State, 42 Fla. L. Weekly D1871b (1st DCA 8/28/17)

APPEALS: Judgment which reserves jurisdiction to determine disposition of marital home should refinance not be possible is a nonappealable nonfinal order. Fischer v. Fischer, 42 Fla. L. Weekly D1871a (1st DCA 8/28/17)

SENTENCING: 25-year minimum mandatory sentence for trafficking between 28 grams and 30 grams of hydrocodone was not illegal where offense was committed before statutory amendment which reduced minimum mandatory sentence for trafficking in that amount of hydrocodone. Anderson v. State, 42 Fla. L. Weekly D1870a (1st DCA 8/28/17)

POST CONVICTION RELIEF: Notwithstanding that he pled to armed robbery with a firearm, Defendant may claim ineffective assistance of counsel for failure to move to suppress evidence where he alleges he would have proceeded to trial, but the claim may be summarily denied where there it is not objectively reasonable that he would have proceeded to trial. Guzman-Aviles, 42 Fla. L. Weekly D1864b (5th DCA 8/25/17)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court may not sentence defendant as a violent felony offender of special concern without making a written finding as to why he poses a danger to the community. Brown v. State, (5th DCA 8/25/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failure to obtain

photographs of his hands, which would have shown a cut made by the victim's knife, in a case in which self-defense was asserted. Trawick v. State, 42 Fla. L. Weekly D1863a (5th DCA 8/25/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failing to call assisted attorney at suppression hearing who would've testified that police at arrested his mother resulting in his cooperating in exchange for the possibility of his mother's immunity. Jones v. State, 42 Fla. L. Weekly D1862c (5th DCA 8/25/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for failure to request an independent act jury instruction for offense of burglary with a firearm where defendant alleged that no guns were taken to the burglarized home, he did not enter the home, it had been agreed beforehand that no guns would be used or taken, and that codefendant acquired the guns from inside the home. Jones v. State, 42 Fla. L. Weekly D1862c (5th DCA 8/25/17)

EVIDENCE-OPINION: Lay witness testimony regarding speed of a vehicle may be admissible. Lay witness may testify the motorcycles going at a high rate of speed based on the sound of the motorcycle. Perception is not limited to visual perception. Sajiun v. Santiago, 42 Fla. L. Weekly D1857a (4th DCA 8/23/17)

COMPETENCY: Court must conduct a hearing and issue a written order determining competency after it previously found reasonable grounds to question Defendant's competence. Hawks v. State, 42 Fla. L. Weekly D1851a (4th DCA 8/23/17)

INFORMATION-AMENDMENT: State may not amend the information after the victim's testimony to reflect digital rather than oral penetration. The argument that the change did not implicate a different statute fails. Simbert v State, 42 Fla. L. Weekly D1849a (4th DCA 8/23/17)

ARGUMENT: State improperly asked jury to determine whether the victim was lying as the test determining Defendant's guilt, but the issue is not preserved if not objected to. Simbert v State, 42 Fla. L. Weekly D1849a (4th DCA 8/23/17)

POST CONVICTION RELIEF-MANIFEST INJUSTICE: Where similarly situated co-defendant had his conviction reversed based on Court's failure to suppress improper traffic stop, appellate counsel was ineffective for failure to argue similarly. Conviction reversed. Johnson v. State, 42 Fla. L. Weekly D1848a (4th DCA 8/23/17)

SEQUESTRATION OF WITNESS: Court may exclude the mother of the Defendant from the courtroom during evidentiary hearings and trial based on the State saying they may call her as a rebuttal witness. Tillman v. State, 42 Fla. L. Weekly D1844a (4th DCA 8/23/17)

STATEMENT OF DEFENDANT–MIRANDA: Defendant was not in custody during his second interrogation where he had already confessed earlier after Miranda, the door of the interrogation room was not locked, and he had been told he was free to leave. Tillman v. State, 42 Fla. L. Weekly D1844a (4th DCA 8/23/17)

SENTENCING-JUVENILE: Juvenile sentenced to 31 years followed by 15 years of probation for crimes committed prior to new juvenile sentencing statute is not entitled to a sentence review. The sentence is neither a life

sentence nor does the law apply retroactively. Question certified. Tillman v. State, 42 Fla. L. Weekly D1844a (4th DCA 8/23/17)

THEFT-VALUE: First degree petit theft conviction is vacated with the evidence did not establish the fair market value of an iPad stolen from the school at the time of the offense nor the cost of replacement within a reasonable time thereafter. Electrical components are subject to accelerated obsolescence; purchase price alone is generally insufficient to establish the value of such property him. Y.R. v. State, 42 Fla. L. Weekly D1837a (3rd DCA 8/23/17)

DOWNWARD DEPARTURE: Statement that Defendant had been given a downward departure based on a plea agreement before violating probation is not a valid basis for imposition of a downward departure on the VOP. State v. Shine, 42 Fla. L. Weekly D1832c (3rd DCA 8/23/17)

JUDGE-DISQUALIFICATION: Fact that trial judge is a Facebook "friend" with lawyer representing a potential witness and potential party in pending litigation is not valid basis for disqualification of judge. Conflict certified. Law Offices of Herssein and Heirsein v. United Services Automobile Association, 42 Fla. L. Weekly D1830a (3rd DCA 8/23/17)

RESENTENCING: Where Court agreed that separate convictions for traveling and unlawful use of computer service violated double jeopardy, court must consider a revised scoresheet before resentencing Defendant. Jarrell v. State, 42 Fla. L. Weekly D1828a (1st DCA 8/21/17)

DOUBLE JEOPARDY: Separate convictions for grand theft and dealing in stolen property violated double jeopardy where offenses were committed

during single, ongoing scheme. Adoye v. State, 42 Fla. L. Weekly D1824c (1st DCA 8/21/17)

ARGUMENT-PRESERVATION: Improper comments by prosecutor during voir dire cross-examination closing argument are not preserved for review if not objected to. Breeden v. State, 42 Fla. L. Weekly D1824b (1st DCA 8/21/17)

DOWNWARD DEPARTURE: Downward departure is not warranted by officer recommending that Defendant not go to prison. Hawkins v. State, 42 Fla. L. Weekly D1822a (5th DCA 8/18/17)

DOWNWARD DEPARTURE: The fact that the defendant never left the store with the property he was stealing does not warrant a downward departure. Hawkins v. State, 42 Fla. L. Weekly D1822a (5th DCA 8/18/17)

DOWNWARD DEPARTURE: Court may not impose a downward departure on the basis that the officers were not injured where that factor is already considered in the sentencing guidelines. Hawkins v. State, 42 Fla. L. Weekly D1822a (5th DCA 8/18/17)

POST CONVICTION RELIEF: Claim that counsel failed to advise him that he qualified as a habitual felony offender, and if he had been so advised he would have accepted the plea, is sufficient to warrant an evidentiary hearing. Parenti v. State, 42 Fla. L. Weekly D1819c (5th DCA 8/18/17)

SENTENCING: Court may not order Defendant to make donation to ASPCA as part of sentence for fighting and baiting animals. Cumberland v. State, 42 Fla. L. Weekly D1818d (5th DCA 8/18/17)

SENTENCING: Court may not consider subsequent arrest without conviction during sentencing for the primary offense. Brown v. State, 42 Fla. L. Weekly D1817c (5th DCA 8/18/17)

POST CONVICTION RELIEF: A sentence which exceeds the statutory maximum may be corrected by 3.800 notwithstanding that the plea was negotiated. Defendant to be sentenced to maximum or, if State objects, be allowed to withdraw his plea. Sedell v. State, Fla. L. Weekly D1816a (2nd DCA 8/18/17)

COMPETENCY: Court must allow Defendant to withdraw his plea where he had been adjudicated incompetent and no order had been entered finding him competent. Stipulation of counsel and written reports are insufficient. Golloman v. State, 42 Fla. L. Weekly D1815d (2nd DCA 8/18/17)

POST CONVICTION RELIEF: Neither failure to advise Defendant about gain time forfeiture or conditional release, nor failure to present mitigating evidence on a negotiated plea is ineffective assistance. Ortiz v. State, 42 Fla. L. Weekly D1809a (3rd DCA 8/16/17)

POST CONVICTION RELIEF: Plea is not rendered involuntary where Defendant was advised that it was only recommended that his federal time be served concurrently. Johnson v. State, 42 Fla. L. Weekly D1807b (3rd DCA 8/16/17)

ARGUMENT: Where defendant presents and argues for its theory of the case, the state is permitted to respond, if true, that defendant's theory was not supported by the evidence at trial, and this does not constitute improper shifting or misstating of the burden of proof. Noriega v. State, 42 Fla. L. Weekly D1801a (3r DCA 8/16/17)

SPEEDY TRIAL: Defendant's motion for continuance on misdemeanor charge, made after expiration of speedy trial period on the misdemeanor charge, waived defendant's right to speedy trial on felony charge which was filed outside the 175-day speedy trial period but arose from the same criminal episode. Waiver is construed as an ongoing waiver of speedy trial rights as to all charges arising out of the incident. State v. Telucian, 42 Fla. L. Weekly D1795a (4th DCA 8/16/17)

JOA-CIRCUMSTANTIAL EVIDENCE: GPS showing Defendant a few miles from burglary, surveillance video showing his associate carrying a bag five days later which turned out to have victim's property in it, and Defendant making a jail call about getting a haircut is insufficient to support conviction. DeJesus v. State, 42 Fla. L. Weekly D1793b (4th DCA 8/16/17)

SENTENCING: Fundamental error for court to imply he would not, as general policy, consider defendant's mental health needs as basis for downward departure. Concha v. State, 42 Fla. L. Weekly D1793a (4th DCA 8/16/17)

PEREMPTORY CHALLENGE: Trial court reversibly erred when it allowed state to use peremptory strike on African American juror where the only raceneutral explanation offered by state applied equally to three non-African American jurors whom state ultimately did not challenge. Hunter v. State, 42 Fla. L. Weekly D1792a (4th DCA 8/16/17)

JUVENILE-LIFE SENTENCE-RE-SENTENCING: Court erred in imposing concurrent 35-year prison sentences followed by 10 years' probation without affording meaningful opportunity for early release based on demonstration of maturity and rehabilitation. Term of years without possibility of review is unlawful. Thorough discussion and summary of law. Andrevil v. State, 42 Fla. L. Weekly D1790a (4th DCA 8/16/17)

SENTENCING: Life sentence for burglary is unlawful. Intent to commit rape is not an enhancement. Rawls v. State, 42 Fla. L. Weekly D1788a (4th DCA 8/16/17)

RETURN OF PROPERTY: Motion seeking return of itemized list of property defendant wanted the state to return, with reference to receipts given to defendant by sheriff's office and police department, and alleging that property was not fruit of criminal activity or being held as evidence was facially sufficient. Smith v. State, 42 Fla. L. Weekly D1785a (2nd DCA 8/16/17)

SENTENCE MANIPULATION: Court may impose downward departure sentence based on finding that law enforcement officers engaged in sentence manipulation by making multiple purchases over course of sting operation for sole purpose of increasing potential sentence, but cannot go below the lowest permissible sentence which would have applied in absence of sentence manipulation. State v. Johnson, 42 Fla. L. Weekly D1782b (2nd DCA 8/16/17)

APPEAL-PRESERVED ISSUE: Challenge to trial court's denial of pretrial motions to suppress recording of victim's cell phone conversation with defendant was not preserved for appellate review where defense counsel stated "no objection" when state moved to introduce the recording at trial. Henry v. State, 42 Fla. L. Weekly D1777b (1st DCA 8/15/17)

STATEMENTS OF DEFENDANT: No error in admitting statements of Defendant whose primary language is Mayan but who had the benefit of a Spanish speaking translator. Martin-Godinez, 42 Fla. L. Weekly D1776c (1st DCA 8/15/17)

DEATH PENALTY: Defendant not entitled to relief based on Hurst error, despite nonunanimous jury recommendation of death, where death sentence was final when U.S. Supreme Court decided Ring v. Arizona. Asay v. State, 42 Fla. L. Weekly S755a (FLA 8/14/17)

10-20-LIFE: Court has discretion to impose mandatory minimum sentences consecutively or concurrently. Conflict certified. Jackson v. State, 42 Fla. L. Weekly D1775c (1st DCA 8/14/7)

10-20-LIFE: Court has discretion to impose mandatory minimum sentences consecutively or concurrently. Conflict certified. Miller v. State, 42 Fla. L. Weekly D1775b (1st DCA 8/14/17)

RESENTENCING: After granting defendant's motion to correct illegal sentence, trial court erred by simply modifying the illegal sentence rather than granting a new sentencing hearing. Marana v. State, 42 Fla. L. Weekly D1774a (1st DCA 8/14/17)

COUNSEL: Where trial court conducted full Faretta inquiry at pretrial hearing on two cases before authorizing defendant to represent himself, the two cases were subsequently tried in separate trials on the same day, and the court conducted another full inquiry before the trial of the first case, the court was not required to renew the offer of counsel before the start of the second trial. Scott v. State, 42 Fla. L. Weekly D1771a (1st DCA 8/14/17)

DOUBLE JEOPARDY: Separate convictions for use of computer services to solicit a child to engage in sexual conduct, unlawful use of two-way communications device, and traveling to meet a minor did not violate double jeopardy where the offenses were not based on the same conduct. Pasicolan v. State, 42 Fla. L. Weekly D1770b (1st DCA 8/14/17)

NON-EXISTENT OFFENSE: New trial required where the jury is instructed on the non-existent crime of attempt to commit attempted sexual battery. Error is fundamental. Heathcock v. State, 42 Fla. L. Weekly D1765a (5th DCA 8/11/17)

APPEAL-PRESERVATION: Any error in allowing CPT interview to be admitted into evidence is not fundamental error and thus must be preserved by objection. Bubb v. State, 42 Fla. L. Weekly D1764a (5th DCA 8/11/17)

WITNESS TAMPERING: Witness tampering statute does not require state to prove that a witness was attempting to contact law enforcement during the possible commission of criminal offense. Conflict certified. McCloud v. State, 42 Fla. L. Weekly D1759a (2nd DCA 8/11/17)

SENTENCING-SCORESHEET: 1.5 domestic violence multiplier does not apply where witness tampering is the primary offense. McCloud v. State, 42 Fla. L. Weekly D1759a (2nd DCA 8/11/17)

RETROACTIVITY: Hurst does not apply retroactively to cases which became final before Ring v. Arizona. Thorough discussion in dissenting/concurring opinions. Hitchcock v. State, 42 Fla. L. Weekly S753a (FLA 8/10/17)

RETROACTIVITY: "This Court need not tumble down the dizzying rabbit hole of untenable line drawing; instead, the Court could simply entertain Hurst claims for those defendants who properly presented and preserved the substance of the issue, even before Ring arrived. . .In James v. State. . .we. . .concluded that — despite his case becoming final before the principle of law had a case name — it would be unjust to deprive James of the benefit of the Supreme Court's holding in Espinosa after he had properly presented and preserved such a claim.. . . Similarly, I believe that defendants who properly preserved the substance of a Ring challenge at trial and on direct appeal prior to that decision should also be entitled to have their constitutional challenges heard.. . [T]he fact that some defendants specifically cited the name Ring while others did not is not dispositive." Hitchcock v. State, 42 Fla. L. Weekly S753a (FLA 8/10/17)

QUOTATION: "Reliability is the linchpin of Eighth Amendment jurisprudence, and a death sentence imposed without a unanimous jury verdict for death is inherently unreliable." Hitchcock v. State, 42 Fla. L. Weekly S753a (FLA 8/10/17) (Pariente dissenting)

JOA: Defendant is entitled to JOA on charge of alteration of firearm serial number where no evidence establishes where (venue) or when (statute of limitations) the number was scratched out. Swain v. State, 42 Fla. L. Weekly D1755a (1st DCA 8/10/17)

FIREARM-ACTUAL POSSESSION: Evidence does not establish actual possession (triggering a mandatory minimum sentence) where gun is in a bag fifty feet from the Defendant after his girlfriend dumped him and his possessions at the corner and reported him to the police. Swain v. State, 42 Fla. L. Weekly D1755a (1st DCA 8/10/17)

SEVERANCE: Court did not abuse its discretion by denying motion to sever counts charging defendant with felony driving with license suspended and leaving scene of crash involving death. Evidence of defendant's suspended license was relevant to charge of fleeing scene of crash because it showed an additional motive to flee. Pitts v. State, 42 Fla. L. Weekly D1752b (1st DCA 8/10/17)

HEARSAY: Testimony by Defendant's girl friend woke her and Defendant up, screamed that something had happened to truck and that defendant responded with shock, placing hands on his head and saying it was not he who drove the truck. Son's out-of-court statement was not hearsay where statement was offered to show effect on the listener rather than truth of the statement. Pitts v. State, 42 Fla. L. Weekly D1752b (1st DCA 8/10/17)

CIRCUMSTANTIAL EVIDENCE-JOA: JOA properly denied where the evidence singularly pointed to Appellant as the only possible suspect in th murder of his wife. Kline v. State, 42 Fla. L. Weekly D1750a (1st DCA 8/10/17)

THEFT-JOA: JOA for theft is required where defendant repossessed the vehicle in broad daylight after contacting police to report the intended repossession as result of non-payment of a loan. Johnson v. State, 42 Fla. L. Weekly D1749a (1st DCA 8/10/17)

DOUBLE JEOPARDY: Dual convictions for grand theft auto and theft of property within the vehicle at the time of the taking violate double jeopardy. Failure to return property from within a repossessed vehicle cannot be theft. Johnson v. State, 42 Fla. L. Weekly D1749a (1st DCA 8/10/17)

DOUBLE JEOPARDY: Separate convictions for traveling to meet minor to engage in sexual conduct and solicitation of child for unlawful sexual

conduct after using computer services were not impermissible where convictions did not arise from same criminal episode. Assanti v. State, 42 Fla. L. Weekly D1747b (1st DCA 8/10/17)

LIFE SENTENCE-JUVENILE-ROBBERY: Defendant who incorrectly moved for relief under Miller v. Alabama, which applies to homicides, should be allowed to amend his motion under Graham, which would require him to allege that he has no meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Wright v. State, 42 Fla. L. Weekly D1747a (1st DCA 8/10/19)

FELONY BATTERY: It is fundamental error to find defendant guilty of felony battery as lesser included offense of aggravated battery with deadly weapon where information did not allege great bodily harm. Kirkland v. State, 42 Fla. L. Weekly D1746a (1st DCA 8/10/17)

COMPETENCY: Unsigned "memo of sentence/order of court" filed with clerk following competency hearing did not satisfy requirement of written competency order. Hendrix v. State, 42 Fla. L. Weekly D1744b (2nd DCA 8/9/17)

VOP: Court erred in dismissing probation violations for lack of jurisdiction after finding that defendant was not arrested on the violations until after probationary period expired and probationary period was not tolled where one of the noncriminal violations was absconding from supervision. State v. Snuffer, 42 Fla. L. Weekly D1740a (4th DCA 8/9/17)

HABEAS CORPUS: Petition for writ of habeas corpus alleging ineffective assistance of appellate counsel is untimely where filed more than four years after judgment and sentence became final on direct review. Mendoza v. State, 42 Fla. L. Weekly D1732a (3rd DCA 8/9/17)

APPEAL-COUNSEL: Because record does not indicate that counsel appointed to represent defendant in violation of probation hearing was also appointed for purpose of appeal, case is remanded to trial court for determination of defendant's eligibility to have counsel appointed for purpose of appeal. Henley v. State, 42 Fla. L. Weekly D1726a (3rd DCA 8/9/17)

ARGUMENT: "The defendant savagely, maliciously, and intentionally beat [Emmanuel] causing great bodily injury." is a reasonable inference from the evidence, and a fair reply to Defendant's argument. Beating a woman until she's bleeding, her lip is busted, her eye cannot open, she has to go to the hospital, breaking her eye socket, and spitting on her, all because she disrespected Defendant, was savage and malicious. Williams v. State, 42 Fla. L. Weekly D1722a (3rd DCA 8/9/17)

SENTENCING-VINDICTIVENESS: Courts should colloquy a defendant before trial about knowingly, voluntarily, and intelligently rejecting a plea offer. Doing so is not initiating plea discussions, and is not vindictive. Williams v. State, 42 Fla. L. Weekly D1722a (3rd DCA 8/9/17)

IMPEACHMENT: Court did not abuse discretion by allowing state to impeach defense witness with seventeen-year-old felony convictions. Nehring v. State, 42 Fla. L. Weekly D1717a (1st DCA 8/7/17)

PLEA WITHDRAWAL: Court erred by summarily denying motion to withdraw the plea to VOP where Defendant alleged the plea was involuntary because counsel failed to tell him he had an available defense that the violation was not willful and substantial (Tatti). Lane v. State, 42 Fla. L. Weekly D1715b (5th DCA 8/4/17)

POST CONVICTION RELIEF: Where defendant claimed to sentence did not conform to the plea agreement Court can properly amend the sentence to conform to the plea agreement rather than allowing the Defendant to withdraw the plea. Wilson v. State, 42 Fla. L. Weekly D1714a (5th DCA 8/4/17)

ESCAPE: Defendant does not commit the crime of escape by failing to return from a one-day pretrial furlough to attend his daughter's funeral. Statute extending limits of confinement does not apply to pretrial detainee had not been sentenced. Rodriguez v. State, 42 Fla. L. Weekly D1704a (5th DCA 8/4/17)

SEARCH AND SEIZURE-PAT DOWN: Officers may not conduct a patdown because of a trespassing complaint with the defendant was leaving the property at the time of the stop. Hearing someone tell the defendant to leave the property is not reasonable suspicion that the defendant is trespass. Brown v. State, 42 Fla. L. Weekly D1702b (2nd DCA 8/4/17)

SEARCH AND SEIZURE-PAT DOWN: A valid stop does not necessarily mean that there can be a valid frisk. Officer cannot conduct a patdown on the basis of his sixth sense. Brown v. State, 42 Fla. L. Weekly D1702b (2nd DCA 8/4/17)

COUNSEL: Court must renew offer assistance of counseling prior to sentencing. Alexander v. State, 42 Fla. L. Weekly D1702a (2nd DCA 8/4/17)

COMPETENCY OF DEFENDANT: Where Defendant had been adjudicated incompetent to proceed, and on appeal defendant is deemed ineligible for placement on conditional release under § 916.17. Court may impose

appropriate release conditions following remand. McCray v. State, 42 Fla. L. Weekly D1700a (2nd DCA 8/4/17)

POST CONVICTION RELIEF: Counsel was ineffective for failing to move for a mistrial or accept the Court's offer mistrial based on a witnesses vouching for the credibility of victims. Declining a new trial in favor pursuing an appeal which would've resulted in a new trial is not a reasonable trial strategy. Sierra v. State, 42 Fla. L. Weekly D1698d (2nd DCA 8/4/17)

APPEAL-JURISDICTION: Court lacked jurisdiction to deny motion to correct illegal sentence while direct appeal was pending. Baldino v. State, 42 Fla. L. Weekly D1696a (4th DCA 8/2/17)

POST CONVICTION RELIEF: Claim that enhancement of mandatory minimum sentence resulted in illegal sentence could not be denied as untimely because court may correct illegal sentence at any time. Reynolds v. State, 42 Fla. L. Weekly D1692a (2nd DCA 8/2/17)

RESISTING WITHOUT VIOLENCE: Unidentified 911 caller's vague description of light-skinned black male wearing shorts and a shirt looking through windows was not sufficient to give rise to reasonable suspicion justifying stop of juvenile, who was spotted about a quarter of a mile away from the neighborhood. T.P. v. State, 42 Fla. L. Weekly D1690a (2nd DCA 8/2/17)

SEARCH AND SEIZURE: Juvenile's flight in response to officer's attempted consensual encounter was not sufficient to provide officer with reasonable suspicion. T.P. v. State, 42 Fla. L. Weekly D1690a (2nd DCA 8/2/17)

JOA-THEFT-BURGLARY: JOA is required where a 2016 silver Dodge Dart was reported stolen and the Child fled from a similar-looking vehicle. V.G. v. State, 42 Fla. L. Weekly D1689b (2nd DCA 8/2/17)

PSI: Failure to obtain an on-the-record personal waiver of the right to a PSI is not required. Williams v. State, 42 Fla. L. Weekly D1689a (3rd DCA 8/2/17)

CREDIT FOR TIME SERVED: Court erred by summarily denying motion for credit for time served in Texas and South Carolina while on hold for transfer to Florida on a fugitive warrant without attachment of record excerpts conclusively showing no entitlement to relief. Ridgeway v. State, 42 Fla. L. Weekly D1688c (3rd DCA 8/2/17)

MANDATORY MINIMUM: Defendant fired a warning shot to chase off the Victim who had barged into his apartment. Court has no discretion to avoid imposing 20-year mandatory minimum sentence for aggravated assault with a firearm committed prior to July 1, 2014. "This case. . . is a classic example of how inflexible mandatory minimum sentences may result in injustices within the legal system that should not be tolerated." Wright v. State, 42 Fla. L. Weekly D1680b (1st DCA 8/1/17)

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JURY INSTRUCTION: Jury must be instructed it must find beyond a reasonable that the Defendant discharged the fireman in its special finding. Spellers v. State, 42 Fla. L. Weekly D1679a (5th DCA 7/28/17)

TRANSCRIPT: In the absence of a transcript, the court erred by denying the claim that the oral pronouncement conflicts with the written sentence. Court cannot relied on the written minutes. Nelson v. State, 42 Fla. L. Weekly D1678a (5th DCA 7/28/17)

LOST OR UNPRESERVED EVIDENCE: Court did not violate due process by releasing Defendant's vehicle after 1st trial for DUI manslaughter. Goodman v. State, 42 Fla. L. Weekly D1669a (4th DCA 7/26/17)

VEHICULAR HOMICIDE: Under DUI manslaughter and vehicular homicide statutes, enhancements for failure to render aid and provide information require only that defendant knew or should have known of the crash or accident, but do not require state to prove defendant knew or should have known of injury or death of victim. Goodman v. State, 42 Fla. L. Weekly D1669a (4th DCA 7/26/17)

SEARCH AND SEIZURE-BLOOD DRAW: Under the circumstances, destruction of evidence by dissipation of alcohol was an exigent circumstance that justifies a warrantless blood draw. Defendant had left the scene and four hours had passed from the time of the accident. Goodman v. State, 42 Fla. L. Weekly D1669a (4th DCA 7/26/17)

DOUBLE JEOPARDY: Double jeopardy precludes convictions for both DUI manslaughter with failure to render aid and vehicular homicide with failure to

render aid where there was a single victim. Goodman v. State, 42 Fla. L. Weekly D1669a (4th DCA 7/26/17)

ACCIDENT REPORT PRIVILEGE: Accident report privilege does not apply to statements made by a witness to an officer where the witness himself was involved in a fender bender under investigation. Stewart v. Draleaus, 42 Fla. L. Weekly D1666a (4th DCA 7/26/17)

POST CONVICTION RELIEF: Counsel's failure to object to sentence on ground that it exceeded the plea bargain is not ineffective assistance apparent on the face of the record, because counsel may have had a strategic reason for not objecting or moving to withdraw the plea. Phillips v. State, 42 Fla. L. Weekly D1664a (4th DCA 7/26/17)

CONTINUANCE-PROBATION VIOLATION: Court erred in denying state's request for continuance when it sole witness failed to appear despite due diligence in trying to get the witnesses attendance. State v. Dixon, 42 Fla. L. Weekly D1662a (4th DCA 7/26/17)

AGGRAVATED BATTERY: A punch to the head coupled with the statement that he meant to kill the victim is sufficient to sustain a conviction for aggravated battery. "Having told the manager he was going to kill him, and almost doing so, we conclude there was competent substantial evidence supporting the jury's verdict that Montero intended to cause great bodily harm." Montero v. State, 42 Fla. L. Weekly D1655b (3rd DCA 7/26/17)

SEARCH AND SEIZURE-PASSENGER: Officer conducting a traffic stop may not only order passenger to exit vehicle during stop in order to protect officer safety, but may also order the passenger to remain. Conflict certified. Lopez v. State, 42 Fla. L. Weekly D1653b (3rd DCA 7/26/17)

SENTENCING-UPWARD DEPARTURE: Ongoing theft and identity theft acts by the Defendant justify an upward departure from the sentencing guidelines. Secong v. State, 42 Fla. L. Weekly D1652a (3rd DCA 7/26/17)

SENTENCING-JUVENILE: Where there is a discrepancy about the Defendant's date of birth, Court must hold an evidentiary hearing to determine the correct date of birth to determine whether he was a juvenile at the time of the offenses or not. Rahmings v. State, 42 Fla. L. Weekly D1651b (3rd DCA 7/26/17)

POST CONVICTION RELIEF: By accepting a negotiated plea, defendant effectively waives non-jurisdictional issues. Soto v. State, 42 Fla. L. Weekly D1648c (3rd DCA 7/26/17)

DISCOVERY VIOLATION-EXPERT: Court erred in allowing the member of the child protection team testifying expert where he had not been disclosed as such. Millette v State, 42 Fla. L. Weekly D1646a (1st DCA 7/26/17)

DEFINITIONS: "Reasonable probability" and "Reasonable possibility" compared and contrasted. Millette v State, 42 Fla. L. Weekly D1646a (1st DCA 7/26/17)

INDIGENT FOR COSTS: Question certified whether an indigent defendant who is represented by private counsel pro bono is entitled to file motions pertaining to the appointment and costs of experts, mitigation specialists, and investigators ex parte and under seal. Monroe v. State, 42 Fla. L. Weekly D1636a (1st DCA 7/24/17)

APPEALS-POST CONVICTION RELIEF: Order disposing of some, but not all, claims in motion for post conviction relief is not appealable final order. Hanner v. State, 42 Fla. L. Weekly D1635b (1st DCA 7/24/17)

SENTENCING-MAXIMUM: Sentence of 35 years in prison followed by 15 years' probation, with a 25-year minimum mandatory sentence exceeded statutory maximum for attempted second degree murder with firearm, a first degree felony (30 years). Collins v. State, 42 Fla. L. Weekly D1634b (1st DCA 7/24/17)

RESTITUTION: Court erred by entering a restitution order without a hearing or waiver of hearing. Barone v. State, 42 Fla. L. Weekly D1629c (5th DCA 7/27/17)

HABEAS CORPUS: Petition for writ of habeas corpus collaterally attacking validity of conviction or sentence should be filed in court that imposed sentence and rendered judgment of conviction. Johnson v. DOC, 42 Fla. L. Weekly D1629a (5th DCA 7/21/17)

POST CONVICTION RELIEF-HABEAS CORPUS: Defendant cannot raise claim under habeas corpus that could have been raised by 3.850 motion. Johnson v. DOC, 42 Fla. L. Weekly D1629a (5th DCA 7/21/17)

DEATH PENALTY: New trial is required where the death penalty recommendation was by a vote of 8 to 4. Bevel v. State, 42 Fla. L. Weekly S661a (FLA 7/20/17)

POST CONVICTION RELIEF: Counsel was ineffective for failing to conduct adequate mitigation investigation in death penalty case. 15 hours of

investigation into mitigation in a death penalty case is inadequate. Bevel v. State, 42 Fla. L. Weekly S661a (FLA 7/20/17)

CREDIT FOR TIME SERVED: Defendant can seek credit for time served via Fla. R.Cr.P. 3.800(b)(2) during the pendency of a direct appeal. He is not limited to R. 3.801. Ross v. State, 42 Fla. L. Weekly D1626c (1st DCA 7/20/17)

EVIDENCE-COLLATERAL CRIMES: Court erred by admitting evidence of other burglaries where that evidence became a feature of the trial. Also, facts of collateral crimes are not admissible where there are not sufficient points of similarity pointing to the defendant. Kroll v. State, 42 Fla. L. Weekly D1626a (1st DCA 7/20/17)

SENTENCING: Sentence of 30 years of imprisonment followed by 15 years of probation is unlawful for first-degree felonies because it exceeds the statutory maximum. Cannon v. State, 42 Fla. L. Weekly D1625a (1st DCA 7/20/17)

DOUBLE JEOPARDY-MOTION TO SUPPRESS: When a trial court grants a motion to suppress evidence during trial, jeopardy has already attached and double jeopardy forbids a new trial after an appeal by the State. The appeal must be dismissed. State v. M.C., 42 Fla. L. Weekly D1621c (2nd DCA 7/19/17)

APPEALS: The claim that the written sentence conflicts with the oral pronouncement cannot be raised on appeal where the claim was not made before the trial court. Brown v. State, 42 Fla. L. Weekly D1620b (3rd DCA 7/19/17)

LIFE SENTENCE-JUVENILE-NONHOMICIDE: Defendant who was sentenced to concurrent life terms for second-degree murder and armed robbery committed when he was a juvenile is entitled to resentencing under the new juvenile sentencing legislation. Pizarro Ortiz v. State, 42 Fla. L. Weekly D1620a (3rd DCA 7/19/17)

PRO SE FILINGS: Court may not prohibit defendant from pro se filings without 1st issuing an order to show cause. Chambers v. State, 42 Fla. L. Weekly D1619a (3rd DCA 7/19/17)

SEARCH AND SEIZURE-WARRANT: Search warrant is not invalid if the affidavit includes omissions or inaccuracies where they are not material, intentional or deceptive. Baldino v. State, 42 Fla. L. Weekly D1609a (4th DCA 7/19/17)

EVIDENCE-OTHER, CRIMES ACTS OR WRONGS: In child pornography case, evidence of an additional 124 uncharged images of child pornography found on the computer is NOT admissible. Baldino v. State, 42 Fla. L. Weekly D1609a (4th DCA 7/19/17)

DISRUPTING EDUCATIONAL INSTITUTION: Judgment of dismissal is required for disrupting an educational institution based on a fight where the state did not present evidence of specific intent to disrupt school activities nor of any material disruption to the school. This is a crime of specific intent. H.N.B. v. State, 42 Fla. L. Weekly D1603b (4th DCA 7/19/17)

HABITUAL OFFENDER: Defendant cannot be sentenced as a habitual offender for capital felonies. Jones v. State, 42 Fla. L. Weekly D1602b (4th DCA 7/19/17)

LIFE SENTENCE-JUVENILE-RESENTENCING: On resentencing, the trial court must include in the new judgment or sentence written findings that the defendant is entitled to meaningful review of his sentence. Cook v. State, 42 Fla. L. Weekly D1602a (4th DCA 7/19/17)

ACCESS TO JUDICIAL RECORDS: Digital recording of trial is a public record subject to disclosure. Morency v. State, 42 Fla. L. Weekly D1593c (5th DCA 7/14/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on whether counsel was ineffective for failing to object to portions of self-defense instruction that improperly shifted the burden of proof to the defendant. Williams v. State, 42 Fla. L. Weekly D1592c (5th DCA 7/14/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that counsel was ineffective for not obtaining videotapes from traffic cameras which established that he did not commit the crimes. Ellis v. State, (5th DCA 7/14/17)

SEARCH AND SEIZURE-RESIDENCE WARRANT: Vague anonymous tip regarding presence of methamphetamine at residence and meth sales by defendant was insufficient to support warrant where there was no information as to reliability of the tipster and no corroborating evidence. Where law enforcement did not observe source at the residence, evidence is insufficient for a warrant. Castro v. State, 42 Fla. L. Weekly D1588a (2nd DCA 7/14/17)

OPENING THE DOOR: Defense attorney suggesting that detective had made an assumption, followed by the detective responding, "not necessarily" "assuredly did not provide a doorway to introduce an unlawfully

obtained statement from the defendant." Defendant's inculpatory (suppressed) statements about his control over the bedroom should not have been admitted in a trial in which he never took the stand and none of his witnesses, it appears, had ever testified in a misleading or untruthful manner. Gutierrez-Hernandez v. State, 42 Fla. L. Weekly D1580a (2nd DCA 7/14/17)

OPENING THE DOOR: "A precise formulary for how hard a particular question or response must push against a particular threshold of fairness or truthfulness in order to open the door for otherwise inadmissible evidence has remained elusive, a reflection perhaps of the highly contextual nature of the inquiry. We are satisfied that in this case the door should have remained shut." Gutierrez Hernandez v. State, 42 Fla. L. Weekly D1580a (2nd DCA 7/14/17)

JUDGMENT OF ACQUITTAL: Trial court should have granted motion for judgment of dismissal where state relied on palm print on rearview mirror of vehicle and fact that vehicle was parked outside a building where juvenile was known to have lived to prove grand theft of vehicle. A.D.P. v. State, 42 Fla. L. Weekly D1579c (2nd DCA 7/14/17)

DOUBLE JEOPARDY: Dual convictions for burglary of conveyance and carjacking do not violate double jeopardy because the offenses do not share identical elements and neither is subsumed in the other. Atkins v. State, 42 Fla. L. Weekly D1578a (1st DCA 7/14/17)

DEATH PENALTY: Defendant entitled to new penalty phase where jury's recommendation of death was not unanimous. Jeffries v. State, 42 Fla. L. Weekly S732a (FLA 7/13/17)

DEATH PENALTY: The Court does not entertain claims of disparate sentencing when the codefendant's sentence is the result of a plea. Jeffries v. State, 42 Fla. L. Weekly S732a (FLA 7/13/17)

LIFE IMPRISONMENT-JUVENILE: Because defendant was sentenced in 1972 to life with parole eligibility, was paroled from prison after serving eight and a half years, and thereafter violated his parole by committing a new crime as an adult, leading to his re-incarceration, neither Graham/Miller nor Henry/Atwell is implicated, sentence is not illegal, and defendant is not entitled to resentencing under Florida's newly-enacted juvenile sentencing scheme. Rooks v. State, 42 Fla. L. Weekly D1573a (3rd DCA 7/12/17)

VOP: Alleged errors in sentencing procedure are not fundamental and are not preserved absent objection. Green v. State, 42 Fla. L. Weekly D1572a (3rd DCA 7/12/17)

INTERROGATORY VERDICT: Interrogatories for the jury to make findings regarding which incidents of racketeering conduct were proven to establish the requisite pattern of racketeering activity in support of the two racketeering offenses are not required. Vass v. State, 42 Fla. L. Weekly D1568b (3rd DCA 7/12/17)

RACKETEERING: It is unnecessary for a defendant, at the close of all the evidence, to renew a previous motion for judgment of acquittal to preserve the issue for appellate review. Vass v. State, 42 Fla. L. Weekly D1568b (3rd DCA 7/12/17)

PLEA-VOLUNTARINESS: Where state requested in plea agreement that court recommend that defendant's sentence be served concurrently with federal sentence, with defendant's understanding that recommendation is

not binding on federal government or Florida Department of Corrections, trial court's failure to advise defendant that he would be required to serve his state and federal sentences consecutively if Florida Department of Corrections and Federal Bureau of Prisons did not accept court's recommendation did not render plea involuntary. Johnson v. State, 42 Fla. L. Weekly D1567b (3rd DCA 7/12/17)

THEFT: Juvenile is guilty of theft of driver's licenses found in his possession and which he said that he took from a friend without permission. "S.C.'s actions fit snugly within the definition of possessing "stolen" driver's licenses." "Stolen" defined. S.C. v. State, 42 Fla. L. Weekly D1557a (3rd DCA 7/12/17)

DICTIONARY: "We use older dictionaries from the 1960s because that is when section 322.212 became law. . .and the terms of a statute should be given their plain and ordinary meaning as they were understood at the time of enactment." S.C. v. State, 42 Fla. L. Weekly D1557a (3rd DCA 7/12/17)

INEFFECTIVENESS OF COUNSEL: Failure to request the self-defense jury instruction is ineffective assistance of counsel were the only defense presented was self-defense. The issue may be raised on direct appeal where, as here the error is apparent on the record. Kruse v. State, 42 Fla. L. Weekly D1554a (4th DCA 7/12/17)

THEFT-VALUE: First degree petit theft conviction to be reduced to second degree petit theft where state failed to adequately prove the stolen property was valued at $100 or more. Rosario-Santos v. State, 42 Fla. L. Weekly D1550a (4th DCA 7/12/17)

RESENTENCING: Defendant is entitled to be present and presented with a corrected scoresheet when resentenced. Baker v. State, 42 Fla. L. Weekly D1549b (4th DCA 7/12/17)

POST CONVICTION RELIEF-PLEA: Court did not err in summarily denying the claim that the Defendant was unable to comprehend plea because on medication where he alleged in his motion that his attorney told him not to mention to the judge that he was taking psychotropic medication. Stilley v. State, 42 Fla. L. Weekly D1549a (4th DCA 7/12/17)

POST CONVICTION RELIEF: "A post-conviction court is not required to hold hearings on absurd claims or accept as true allegations that defy logic and which are inherently incredible." Here, it is objectively unreasonable to believe that the Defendant facing mandatory life in prison as a PRR would have declined the offer of probation had he not receive bad advice from counsel. Stilley v. State, 42 Fla. L. Weekly D1549a (4th DCA 7/12/17)

CONTEMPT-DIRECT: Defendant properly held in direct criminal contempt based on vulgar and disrespectful tirade during calendar call. Only one contempt conviction is appropriate where all obscenities part of the same continuous outburst. Williams v. State, 42 Fla. L. Weekly D1548a (4th DCA 7/12/17)

SEARCH AND SEIZURE-VEHICLE: Officers had reasonable suspicion to stop defendant's van pursuant to BOLO based on physical description from 911 call given by citizen witness who had no interest in the situation and was fully cooperative with law enforcement, fact that there were virtually no other cars on road at time BOLO went out, fact that witness told law enforcement that there were at least three people in vehicle and was able to identify vehicle's direction of travel, and fact that law enforcement stopped vehicle within 10 minutes of BOLO and less than 5 miles away from

where van was initially spotted. Sammiel v. State, 42 Fla. L. Weekly D1541a (4th DCA 7/12/17)

SEVERANCE OF COUNTS: Court did not abuse discretion by denying motion to sever counts arising out of separate incidents where the crimes were part of a crime spree, were extremely close in geographic and temporal proximity, and were similar in the manner in which they were committed. Charles v. State, 42 Fla. L. Weekly D1537a (4th DCA 7/12/17)

EVIDENCE: Court did not abuse discretion in admitting evidence related to an offense that was severed where that offense was inextricably intertwined with the charged crimes and was relevant evidence of flight and concealment. Charles v. State, 42 Fla. L. Weekly D1537a (4th DCA 7/12/17)

PSYCHOLOGICAL EVALUATION: Court is not required to appoint a minimum of two experts. Charles v. State, 42 Fla. L. Weekly D1537a (4th DCA 7/12/17)

VOIR DIRE: Court abused its discretion limiting voir dire to 3-hour time limit and refusing to grant a few additional minutes to reach jurors it could not reach. As a matter of law, a one-to-three minute limit for voir dire examination of each potential juror is unreasonable and an abuse of discretion. Hopkins v. State, 42 Fla. L. Weekly D1536a (4th DCA 7/12/17)

CHALLENGE FOR CAUSE: Court erred in denying challenges for cause where jurors admitted they might not be able to render impartial decisions if the defendant did not take the stand. Jurors who say "That possibility exists" [that it might negatively influence him] and "I believe I can, yes,

[follow the law] him I'm not certain that I can." should be stricken for cause. Hopkins v. State, 42 Fla. L. Weekly D1536a (4th DCA 7/12/17)

RESTITUTION: Court abused its discretion in imposing restitution for 2 piece of jewelry which defendant never admitted that she pawned. James v. State, 42 Fla. L. Weekly D1535a (4th DCA 7/12/17)

SEX CRIME-AGE OF DEFENDANT-BIRTH CERTIFICATE: Birth certificate is a self-authenticating public record and it along with jury's ability to observe the defendant (58-year-old) is sufficient to find that he was 24 years of age or older. Terry v. State, 42 Fla. L. Weekly D1533b (4th DCA 7/12/17)

MANDATORY MINIMUM-10-20-LIFE: Consecutive mandatory minimum sentences are permissible but not mandatory where Defendant discharged a firearm in multiple offenses that occurred in the same criminal episode and involved multiple victims. Abrams v. State, 42 Fla. L. Weekly D1531b (1st DCA 7/11/17)

MANDATORY MINIMUM-10-20-LIFE: Consecutive mandatory minimum sentences are permissible but not mandatory where Defendant discharged a firearm in multiple offenses that occurred in the same criminal episode but only shot one victim. Conflict Certified. Bradley v. State, 42 Fla. L. Weekly D1531a (1st DCA 7/11/17)

MANDATORY MINIMUM-10-20-LIFE: Consecutive mandatory minimum sentences are permissible but not mandatory where Defendant discharged a firearm in multiple offenses that occurred in the same criminal episode and firearm was discharged at multiple victims. Dukes v. State, 42 Fla. L. Weekly D1530b (1st DCA 7/11/17)

COSTS: Court erred by imposing all fines, fees, costs, and surcharges as a lump sum. Clark v. State, 42 Fla. L. Weekly D1527c (1st DCA 7/11/17)

POSSESSION OF FIREARM BE FELON-COLLATERAL ESTOPPEL: Where defendant was charged with possession of a firearm by felon and trafficking in cocaine while armed with a firearm, the charges were severed, and jury found defendant guilty of armed trafficking and determined that he "individually carried" a weapon, but did not actually possess a firearm during commission of trafficking offense, state was not collaterally estopped from prosecuting defendant for possession of a firearm by a felon. Because "possession" is defined differently in the jury instructions for violations of §§775.087 and 790.23, the jury did not necessarily determine the issue of possession under §790.23 in Defendant's favor. State v. Joy, 42 Fla. L. Weekly D1525a (5th DCA 7/7/17)

DRUG OFFENDER PROBATION: Imposition of drug offender probation for conviction of battery on law enforcement officer is lawful where defendant is a chronic substance abuser under the influence of a controlled substance on night of incident. Powell v. State, 42 Fla. L. Weekly D1521b (5th DCA 7/7/17)

SENTENCING: Court erred when it modified sentence to correct an illegal sentence without holding resentencing hearing. Davis v. State, 42 Fla. L. Weekly D1521a (5th DCA 7/7/17)

COSTS OF INVESTIGATION: Court erred in imposing costs of investigation where state did not expressly request these costs. Foulkes v. State, 42 Fla. L. Weekly D1520c (5th DCA 7/7/17)

HABEAS CORPUS: Petition for writ of habeas corpus which attacks validity of conviction is properly brought in circuit court in county that rendered judgment of conviction. Milord v. State, 42 Fla. L. Weekly D1520b (5th DCA 7/7/17)

HABEAS CORPUS: Defendant may not collaterally attack a conviction through the process of habeas proceedings where such claims are cognizable under the rule 3.850. Milord v. State, 42 Fla. L. Weekly D1520b (5th DCA 7/7/17)

DISQUALIFICATION: Judge's comments regarding the efficacy of mitigation coordinators in other cases is legally insufficient to justify disqualification. Peterson v. State, 42 Fla. L. Weekly S720a (FLA 7/6/17)

DEATH PENALTY: New sentencing hearing is required where death recommendation was not unanimous. Peterson v. State, 42 Fla. L. Weekly S720a (FLA 7/6/17)

DEATH PENALTY: New sentencing hearing is required where death recommendation was not unanimous. Bailey v. Jones, 42 Fla. L. Weekly S719a (FLA 7/6/17)

10-20-LIFE-CONSECUTIVE SENTENCES: Imposition of consecutive mandatory minimum sentences under 10-20-Life statute for multiple offenses arising out of single criminal episode was discretionary, not mandatory, where defendant only shot at one victim. Thornes v. State, 42 Fla. L. Weekly D1509b (1st DCA 7/6/17)

10-20-LIFE-CONSECUTIVE SENTENCES: Imposition of consecutive mandatory minimum sentences under 10-20-Life statute for multiple firearm

offenses committed in single criminal episode is permissible but not mandatory Charlemagne v. State, 42 Fla. L. Weekly D1504a (3rd DCA 7/5/17)

JUVENILE-LIFE SENTENCE: Juvenile's life sentence for homicide with review after 40 years and consecutive 24 year sentence for burglary is lawful. Cutts v. State, 42 Fla. L. Weekly D1498a (4th DCA 7/5/17)

10-20-LIFE-CONSECUTIVE SENTENCES: Court erred in imposing consecutive mandatory minimum sentences for multiple firearm offenses arising out of single criminal episode where firearm was merely possessed but not discharged. Davis v. State, 42 Fla. L. Weekly D1497b (4th DCA 7/5/17)

APPEAL-ARGUMENT-UNANIMOUS VERDICT: Claim that State relied on different factual theories to prove one of the sexual battery counts at issue, raising the possibility of a nonunanimous verdict, is not fundamental error. Objection must be made at trial or the argument is waived. Defendant may prefer lumping of acts in one count in order to lower possible exposure. Stalker v. State, 42 Fla. L. Weekly D1497a (4th DCA 7/5/17)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Where Court failed to make written findings that the Defendant posed a danger to the community under VFOSC, the proper remedy is a new sentencing hearing. Whittaker v. State, 42 Fla. L. Weekly D1495a (4th DCA 7/5/17)

PARAPHERNALIA: Where delinquency petition charged Child with possession of paraphernalia under §(b) ("to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance") and evidence established that the paraphernalia would have been under §(a)

(packaging for narcotics), JOA is required. J.V. v. State, 42 Fla. L. Weekly D1494b (4th DCA 7/5/17)

LIFE SENTENCE-JUVENILE: Defendant who received parole-eligible life sentence for nonhomicide committed when he was a juvenile is not entitled to resentencing under Graham v. Florida where he had actually been released from prison twice on parole. Rogers v. State, 42 Fla. L. Weekly D1493a (4th DCA 7/5/17)

ARGUMENT: Prosecutor's statements during closing arguments which directed jury to consider prior inconsistent statements as substantive evidence rather than just as impeachment evidence were not proper comments on the evidence. Prior inconsistent statements are admissible for impeachment purposes so long as the goal is to have the jury disbelieve both statements rather than to convince the jury that the prior statement is true and the in-court testimony is false. Abdulla v. State, 42 Fla. L. Weekly D1490b (4th DCA 7/5/17)

ARGUMENT: Prosecutor's suggestion that witness committed perjury as part of a strategy devised with defense counsel and defendant himself was completely improper. Abdulla v. State, 42 Fla. L. Weekly D1490b (4th DCA 7/5/17)

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LIFE SENTENCE-JUVENILE-VOP: Where defendant was sentenced to community control as a youthful offender when he was seventeen years old, upon revocation of community control for new offenses committed when defendant was eighteen years old, defendant was not entitled to be sentenced pursuant to juvenile offender sentencing law under which he would have to be provided a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Davis v. State, 42 Fla. L. Weekly D1481a (5th DCA 6/30/17)

YOUTHFUL OFFENDER: Where defendant was initially sentenced as youthful offender, Court must maintain his youthful offender status when sentencing him for community control violation. Davis v. State, 42 Fla. L. Weekly D1481a (5th DCA 6/30/17)

POSSESSION OF FIREARM BY FELON: Felon pawning firearms previously owned by her deceased husband is prima facie evidence of possession of firearm by a felon. Henderson distinguished. Argument that Defendant possessed for purpose of lawful disposal was not raised in trial court. State v. Trappen, 42 Fla. L. Weekly D1475b (2nd DCA 6/30/17)

EVIDENCE: Court may prohibit cross-examination on prior instances of contamination in analyses analyst had conducted in other cases where there was no evidence that DNA samples in defendant's case were contaminated. Evidence of particular acts of misconduct cannot be introduced to impeach the credibility of a witness. Sexton v. State, 42 Fla. L. Weekly S713a (FLA 6/29/17)

EVIDENCE: Court did not err in admitting detective's testimony recounting that defendant's wife stated, in response to defendant's claim that he had arrived home at 10 : 30 p.m. the night before the murder, "He's not telling the truth. He got home at 2:00 a.m." Sexton v. State, 42 Fla. L. Weekly S713a (FLA 6/29/17)

EVIDENCE: Photographs and testimony relating to injuries inflicted on victim's body after her death may be admitted. Sexton v. State, 42 Fla. L. Weekly S713a (FLA 6/29/17)

DEATH PENALTY: Defendant entitled to new sentencing proceeding where Hurst error occurred and jury's recommendation of death was not unanimous. Sexton v. State, 42 Fla. L. Weekly S713a (FLA 6/29/17)

DEATH PENALTY: Imposition of death penalty was unconstitutional under decision of U.S. Supreme Court in Hurst v. Florida where jury recommendation of death was not unanimous. Cole v. State, 42 Fla. L. Weekly S701a (FLA 6/29/17

DEATH PENALTY: Imposition of death penalty was unconstitutional under decision of U.S. Supreme Court in Hurst v. Florida where jury recommendation of death was not unanimous. Bargo v. State, 42 Fla. L. Weekly S698a (FLA 6/29/17)

SEARCH AND SEIZURE: In conducting warrantless search of cell phone, officers could not rely in good faith on district court of appeal decision which was not final, well-settled, unequivocal, or clearly established and which was certified for review by the Florida Supreme Court. Carpenter v. State, 42 Fla. L. Weekly S694a (FLA 6/29/17)

QUOTATION: "While an opinion from a district court of appeal may be binding on lower trial courts in Florida . . ., this fact does not necessarily justify law enforcement's reliance on that decision as "binding" law. . . Indeed, this issue can be likened to that of Schrödinger's Cat, where a decision of a district court of appeal may be both binding and not binding." Carpenter v. State, 42 Fla. L. Weekly S694a (FLA 6/29/17)

SEARCH AND SEIZURE: Defendant does not have standing to object to search of home where he claims no interest in the part of the home which

is searched. Gonzalez v. State, 42 Fla. L. Weekly D1464a (4th DCA 6/28/17)

EVIDENCE-WEIGHT: Random testing of one out of 1,000 similar tablets was sufficient to admit evidence of weight. Gonzalez v. State, 42 Fla. L. Weekly D1464a (4th DCA 6/28/17)

SEALING: Court may not deny petition to seal criminal record based solely upon its consideration of facts as outlined in probable cause affidavit. Where petitioner met requirements of statute and complied with pertinent statutory procedure, he was presumptively entitled to order to seal or expunge court records, and the only issue before trial court was whether factual basis existed to deny petition. Gotowala v. State, 42 Fla. L. Weekly D1463b (4th DCA 6/28/17)

AGGRAVATED ASSAULT: Judgment of Acquittal for aggravated assault is required where the victim is a one-and-a-half year old child, and there is no evidence that the child experienced fear. Davis v. State, 42 Fla. L. Weekly D1463a (4th DCA 6/28/17)

BOND-MINOR: Juvenile (14 yoa) charged as an adult may be held without bond because life is now a possible punishment for juveniles charged as adults with offenses punishable by life where proof of guilt is evident or presumption is great. Reeters v. Israel, 42 Fla. L. Weekly D1460a (4th DCA 6/28/17)

SENTENCING-CONSIDERATIONS: Court's comments during sentencing that defendant's testimony at trial was "untruthful and not believable" and warranted maximum sentence constituted fundamental error. Session v. State, 42 Fla. L. Weekly D1459b (4th DCA 6/28/17)

SEARCH AND SEIZURE-PLAIN VIEW: Residents of rooming houses are entitled to the same Fourth Amendment protections as residents of single-family houses, so long as rooming house itself is not open to public. Cocaine in pill bottle stashed in concrete latticework attached to foundation of rooming house where defendant was staying was unlawfully seized and should be suppressed. The common internal hallway area of a rooming house is a private, as opposed to a public, place. Open view doctrine does not allow police to seize bottle which they see put in the crawlspace with only a hunch that it is contraband. Full discussion of plain view/open view doctrines. Davis v. State, 42 Fla. L. Weekly D1456a (2nd DCA 6/28/17)

SPEEDY TRIAL: 60 day time limit for bringing Defendant to trial begins from the date of the demand, regardless of whether Defendant had been arrested. Cornelius v. State, 42 Fla. L. Weekly D1453b (5th DCA 6/27/17)

WITNESS-EXPERT: Court's declaration that State witness is an expert in front of jury is not fundamental error where it did not contribute to the verdict. Norfleet v. State, 42 Fla. L. Weekly D1448a (1st DCA 6/27/17)

POST CONVICTION RELIEF: Claim that Counsel misadvised him that claim of right was a valid defense to carjacking and that he would have pled open upon accurate advise is not cognizable where there was no plea offer. Carter v. State, 42 Fla. L. Weekly D1442a (1st DCA 6/27/17)

SENTENCING-CONSECUTIVE: Resentencing is required where the Court erroneously believed it was required to impose consecutive mandatory minimums for attempted murder and possession of a firearm by a felon when there was only one victim. Fleming v. State, 42 Fla. L. Weekly D1441c (1st DCA 6/27/17)

HABEAS CORPUS: Claims of ineffective assistance of appellate counsel in state court are not subject to federal review where issue is defaulted (i.e., not raised in state court). Attorney error is an objective external factor excusing a procedural default only if the error deprives one of a constitutional right. Since one has no right to counsel for habeas review, attorney error in that review cannot excuse a default. Davila v. Davis, No. 16-6219 (US 6/26/17)

PRETRIAL DETENTION: Under Rule 3.132, a motion for pre-trial detention must be held within 5 days, and the State bears the burden of proving the need for pretrial detention. Watson v. State, 42 Fla. L. Weekly D1452a (5th DCA 6/26/17)

DEPORTATION: When a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Court may not consider whether the result of the trial would have been different. Lee v. United States, No. 16-327 (US S.Ct. 6/23/17)

https://www.supremecourt.gov/opinions/16pdf/16-327_3eb4.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for not moving to suppress a photo lineup where the Defendant was the only one in the line up with facial scarring. Walker v. State, 42 Fla. L. Weekly D1433d (5th DCA 6/23/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for incorrectly advising defendant that he should not testify because if he took the stand, state would be able to present to jury the details of his extensive criminal record. Walker v. State, 42 Fla. L. Weekly D1433d (5th DCA 6/23/17

NEWLY DISCOVERED EVIDENCE: Court may grant new trial based on newly discovered evidence that victim of lewd and lascivious assault tweeted two years later that she has sleep paralysis, which is characterized by sensory hallucinations. Boughs v. State, 42 Fla. L. Weekly D1433c (5th DCA 6/23/17)

SEARCH AND SEIZURE: Running background checks on the vehicle, the driver, and the passengers are normal parts of a traffic stop and do not unreasonably prolong the stop. Vangansbeke v. State, 42 Fla. L. Weekly D1429b (5th DCA 6/23/17)

UNLAWFULLY PROCURING CITIZENSHIP BY FALSE STATEMENT: Jury must be instructed that the false statement (here, that her husband did not fight with the Bosnians nor participate in a massacre) must have contributed to citizenship being granted. The illegal act must have somehow contributed to the obtaining of citizenship. To decide whether a defendant acquired citizenship by means of a lie, a jury must evaluate how knowledge of the real facts would have affected a reasonable government official properly applying naturalization law. Maslenjak v. United States, 16-309 (US S.CT 6/22/17)

DEFINITIONS: "[T]o procure" something is "to get possession of " it. Webster's Third New International Dictionary 1809 (2002); accord, Black's Law Dictionary 1401 (10th ed.2014) (defining "procure" as "[t]o obtain (something), esp.by special effort or means"). Maslenjak v. United States, 16-309 (US S.CT. 6/22/17)

DISCOVERY-BRADY: Failure to disclose certain interviews weakening the Government's case is a violation of Brady, but not material where there is not reasonable probability of changing the outcome. A new trial is not required where the evidence "is too little, too weak, or too distant from the

main evidentiary points to meet Brady's standards." Turner v. United States, 15-1503 (U.S. S.Ct. 6/22/17)

https://www.supremecourt.gov/opinions/16pdf/15-1503_4357.pdf

PUBLIC TRIAL: Structural errors should not be deemed harmless beyond a reasonable doubt. A structural error is one which affect the framework within which the trial proceeds, rather than being "simply an error in the trial process itself. An error can count as structural even if the error does not lead to fundamental unfairness in every case. A violation of the right to a public trialincluding excluding the public from jury selection because of limited space–is a structural error. However, counsel was not ineffective for failure to object to exclusion of the jury because there is no showing of fundamental unfairness. Weaver v. Massachusetts, No. 16-240 (U.S. S.Ct. 6/22/17)

https://www.supremecourt.gov/opinions/16pdf/16-240_g3bi.pdf

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on the claims that counsel was ineffective for failing to object to late disclosure of a witness who rebutted Defendant's opening statement. Cruz v. State, 42 Fla. L. Weekly D1415d (4th DCA 6/21/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on the claims that counsel was ineffective for failing to file notice of alibi and call alibi witness. Cruz v. State, 42 Fla. L. Weekly D1415d (4th DCA 6/21/17)

FIREARM-CONSECUTIVE SENTENCE: Court erred by imposing consecutive mandatory minimum sentences under 10-20-Life statute where offenses arose from same criminal episode and did not involve discharge of firearm. Billups v. State, 42 Fla. L. Weekly D1415c (4th DCA 6/21/17)

ARGUMENT-SHIFTING BURDEN OF PROOF: Prosecutor improperly shifted burden of proof to defendant during closing argument by inviting jury to return guilty verdict based upon defendant's failure to call certain witness equally available to the State and with no special relationship to the Defendant. State cannot comment on a defendant's failure to produce evidence to refute an element of the crime, because doing so could erroneously lead the jury to believe that the defendant carried the burden of introducing evidence. Reid v. State, 42 Fla. L. Weekly D1413a (4th DCA 6/21/17)

EVIDENCE: Court improperly permitted state to question attempted murder victim regarding his four earlier in-court identifications of the defendant as the shooter in earlier trials. Improper bolstering. Hearsay exception applicable when declarant testifies at trial and is subject to cross-examination concerning the statement, and the statement is one of identification made after perceiving the person, applies to out-of-court identifications made close to time the declarant perceived the identified person and not to prior in-court identifications. Reid v. State, 42 Fla. L. Weekly D1413a (4th DCA 6/21/17)

CONTEMPT-DIRECT: Judge committed fundamental error in failing to disqualify himself from presiding at contempt hearing where the contempt charged involved disrespect to or criticism of judge. Rosenwater v. Deutsche Bank, 42 Fla. L. Weekly D1406a (4th DCA 6/21/17)

CONSECUTIVE MANDATORY MINIMUM-FIREARM: Consecutive mandatory minimum sentences for qualifying felonies committed in a single criminal episode where gun is fired are permissible, not mandatory under 1020-Life. McCormack v. State, 42 Fla. L. Weekly D1401b (4th DCA 6/21/17)

COMPETENCY: Where trial court found reasonable grounds to believe juvenile was not mentally competent to proceed and appointed experts to evaluate juvenile, trial court erred in failing to make findings regarding juvenile's competency after evaluations were presented. D.B. v. State, 42 Fla. L. Weekly D1401a (4th DCA 6/21/17)

THEFT/DEALING: Separate convictions for petit theft and dealing in stolen property are impermissible. Roundtree v. State, 42 Fla. L. Weekly D1398b (4th DCA 6/21/17)

TRESPASS WITH A DANGEROUS WEAPON: Rock which Defendant threatened to throw is a dangerous weapon. Discussion of when threatened use of a weapon makes it dangerous or deadly. Saint-Fort v. State, 42 Fla. L. Weekly D1394b (4th DCA 6/21/17)

10-20-LIFE: Court may not impose consecutive sentences under 10-20-Life statute for offenses which arose from single criminal episode and involved same victim. Jackson v. State, 42 Fla. L. Weekly D1394a (4th DCA 6/21/17)

RULE OF COMPLETENESS: Post-arrest exculpatory statement by defendant was properly excluded because it did not explain or shed light on defendant's statements, already admitted, from a controlled phone call with the minor victim. Rule of Completeness only applies when the statement is necessary to give a complete understanding of the total tenor and effect of the already-introduced statement. Good discussion. Carter v. State, 42 Fla. L. Weekly D1392a (4th DCA 6/21/17)

ATTORNEYS-DISQUALIFICATION: Court improperly disqualified attorney based on claim that plaintiff's attorney had represented defendant thru its agent with confidential information exchanged, where information

exchanged had not been confidential. A discussion in front of a third-party is not entitled to confidentiality. Oil, L.L.C. v. Stamax Corp., 42 Fla. L. Weekly D1391a (4th DCA 6/21/17)

WEAPON-POCKETKNIFE: Where witness saw the point of a knife in Child's hand, but no knife was recovered, Child is entitled to JOA because state failed to prove it was not a common pocketknife. State must establish that the knife is not a "common pocketknife." G.R.N. v. State, 42 Fla. L. Weekly D1390a (4th DCA 6/21/17)

SEVERANCE: No error in denying severance of charges where burglary occurred three days after the murder and bloody clothes and stolen property link the two offenses. Lindsey v. State, 42 Fla. L. Weekly D1384a (1st DCA 6/19/17)

JURY INSTRUCTION: In burglary case, Court erred in failing to instruct on the affirmative defense of Defendant's consent to enter victim's vehicle. Error is fundamental where Defendant's sole defense was consent to enter the car. Faulk v. State, 42 Fla. L. Weekly D1383a (1st DCA 6/21/17)

HABEAS CORPUS: A court may review a procedurally defaulted claim if, but for a constitutional error, no reasonable jury would have found the petitioner eligible for the death penalty, not whether a jury might have not have found the petitioner eligible for the death penalty. Jenkins v. Hutton, No. 16-1116 (US S.Ct. 6/19/17)

MENTAL HEALTH EXPERT: When certain threshold criteria are met, an indigent defendant whose mental health will be a significant factor at trial is entitled to the assistance of a psychiatric expert who is a member of the defense team instead of a neutral expert who is available to assist both the

prosecution and the defense. Examination by a Lunacy Commission appointed by the Court fails to meet the requirement of an independent mental health expert for the Defendant. McWilliams v. Dunn, No. 16-5294 (US S.Ct. 6/19/17)

https://www.supremecourt.gov/opinions/16pdf/16-5294_h3dj.pdf

SEX OFFENDERS-SOCIAL MEDIA: Statute barring sex offenders from using social media impermissibly infringes upon the legitimate exercise of First Amendment rights. Packingham v. North Carolina, No. 15-1194 (US S.Ct. 6/19/17)

https://www.supremecourt.gov/opinions/16pdf/15-1194_08l1.pdf

DOUBLE JEOPARDY: Although double jeopardy principles prohibit separate convictions for solicitation and traveling when the offenses are based on the same conduct, separate convictions are not prohibited where the offenses are not based on the same conduct. Because defendant pled to solicitations involving two different victims and modes of communication, text messages with officer posing as 14-year-old girl and email with officer posing as girl's uncle, only one of solicitation convictions was necessarily subsumed in the traveling offense. One solicitation should be vacated. Littleman v. State, 42 Fla. L. Weekly D1382a (1st DCA 6/19/17)

ATTORNEYS-DISCIPLINE: Attorney Mark Ciaravella referred for discipline for failure to follow appellate court's order to pay filing fee or secure a finding of indigency. Odhiambo v. State, 42 Fla. L. Weekly D1379a (2nd DCA 6/16/17)

POST CONVICTION RELIEF: Sentence that exceeds statutory maximum many not be imposed, even pursuant to a negotiated plea agreement, and may be challenged at any time under rule 3.800(a). Parks v. State, 42 Fla. L. Weekly D1378a (2nd DCA 6/16/17)

COMPETENCY: Once court ordered that defendant be reevaluated prior to sentencing, it was error to continue to sentencing until the evaluation was done. Lewinson v. State, 42 Fla. L. Weekly D1373a (5th DCA 6/16/17)

CONFLICT: Court may deny motion to withdraw for conflict where it determines no conflict exists. Court has responsibility to determine whether an actual conflict exists. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that an actual conflict of interest exists. Even if a defendant successfully demonstrates the existence of an actual conflict, the defendant must also show that this conflict had an adverse effect upon his lawyer's representation. Defendant's appointed attorney on motion for post conviction relief is not disqualified because as a supervising prosecutor he had approved a plea offer in the underlying case. Braddy v. State, 42 Fla. L. Weekly S671a (FLA 6/15/17)

PUBLIC RECORDS: Handwritten attorney notes, draft documents, and annotated copies of decisional law are not public records. Braddy v. State, 42 Fla. L. Weekly S671a (FLA 6/15/17)

DEATH PENALTY: Resentencing required where jury voted 11-1 for death. Braddy v. State, 42 Fla. L. Weekly S671a (FLA 6/15/17)

DEATH PENALTY: Defendant is not entitled to Hurst relief for death sentence imposed for second murder for which penalty phase jury unanimously recommended death. Bevel v. State, 42 Fla. L. Weekly S661a (FLA 6/15/17)

DEATH PENALTY-INEFFECTIVE ASSISTANCE: Counsel who spent only 16 hours preparing for the penalty phase and failed to find existing mitigating evidence provided ineffective assistance of counsel. Bevel v. State, 42 Fla. L. Weekly S661a (FLA 6/15/17)

DEATH PENALTY: Hurst does not apply to death sentences imposed before Ring v. Arizona. Zack v. State, 42 Fla. L. Weekly S656a (FLA 6/15/17)

DEATH PENALTY-INTELLECTUAL DISABILITY: IQ above 75, outside the range of error, renders one presumptively competent for death penalty. Zack v. State, 42 Fla. L. Weekly S656a (FLA 6/15/17)

POST CONVICTION RELIEF: Counsel's failure to object to witness statement that Defendant and his friends "do this kind of stuff" (armed robbery/murder) was a strategic decision to not call attention to the comment. Meaning of the phrase was not harmful since the witness "spoke in a colloquial dialect[,] her testimony did not have verb-tense agreement, [and] she tended to mix up verbs and words." Hall v. State, 42 Fla. L. Weekly S654a (FLA 6/15/17)

IMPEACHMENT: Court erred in allowing state to introduce excerpt from codefendant's recorded statement to impeach defendant's alibi witness. Byrd v. State, 42 Fla. L. Weekly D1365d (4th DCA 6/14/17)

PROBATION-JURISDICTION: Error to dismiss affidavit of violation. When a probationer absconds from supervision, the probationary period is tolled until the probationer is once more placed under probationary supervision. State v. Casas, 42 Fla. L. Weekly D1364b (4th DCA 6/14/17)

COMPETENCY: Court erred in holding community control violation proceeding where defendant had previously been found incompetent. Williams v. State, 42 Fla. L. Weekly D1364a(4th DCA 6/14/17)

PRETRIAL DETENTION: First appearance judge erred when it ruled that it did not have to make any finding whether probable cause affidavit established that proof of guilt was evident or presumption was great before allowing state to hold defendant without bond pending Arthur hearing with judge to whom case would be assigned. Finding that proof of guilt is evident and presumption great can be made on the basis of the Probable Cause Affidavit. Error harmless. Ysaza v. State, 42 Fla. L. Weekly D1362a (4th DCA 6/14/17)

SENTENCING-MODIFICATION: Court properly denied motion for modification of sentence as untimely where motion was not filed within 60 days of imposition of the sentence. Montesino v. State, 42 Fla. L. Weekly D1359b (3rd DCA 6/14/17)

EVIDENCE-POSSESSION OF COCAINE: Court erred in allowing state to introduce evidence concerning cash found in defendant's bedroom. Slocum v. State, 42 Fla. L. Weekly D1354b (1st DCA 6/14/17)

LIFE SENTENCE-JUVENILE: Virginia court's finding (that the geriatric release program allowing eligibility for release at the age of 65 satisfies Graham's requirement that juveniles convicted of a non-homicide crime have a meaningful opportunity to receive parole) is not objectively unreasonable. Habeas Corpus review is accordingly inappropriate. Court expresses no opinion on whether the Eighth Amendment is actually violated under these circumstances. Virginia v. LeBlanc, No. 16-1177 (U.S. S.Ct. 6/12/17)

https://www.supremecourt.gov/opinions/16pdf/16-1177_m648.pdf

HEARSAY: In dealing in stolen property case, Defendant's testimony that he had been given permission in an email to take scrap metal is not

hearsay, because it is relevant to the Defendant's state of mind, not to prove the truth of the matter asserted. North v. State, 42 Fla. L. Weekly D1342a (2nd DCA 6/9/17)

COSTS: Court may not require juvenile to pay transcription costs as a condition of probation. J.J.P. v. State, 42 Fla. L. Weekly D1340a (2nd DCA 6/9/17)

COMPETENCY: Where Defendant proceeded to trial after having been found incompetent to stand trial, and the court never entered an order finding him competent, the Court is authorized to enter a nunc pro tunc order finding him competent. However, testimony of psychologists who had not examined him near the time of trial is legally insufficient to support a finding that he was competent at the time of the trial. Frye v. State, 42 Fla. L. Weekly D1339a (2nd DCA 6/9/17)

COMPETENCY: Defendant who was adjudicated incompetent to proceed and subsequently found to be a danger to himself and others and subject to involuntary commitment in secure residential facility could not be detained in jail for more than 15 days while awaiting admission to residential facility. Hughes v. State, 42 Fla. L. Weekly D1336d (5th DCA 6/9/17)

POST CONVICTION RELIEF: Court must allow Defendant 60 days to amend a facially insufficient motion for post-conviction relief rather than dismissing the petition. Mackey v. State, 42 Fla. L. Weekly D1336c (5th DCA 6/9/17)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on motion for post-conviction relief based on claim that counsel failed to file a motion in limine to exclude improper comments on

Defendant's exercise of right to remain silent. Williams v. State, 42 Fla. L. Weekly D1336b (5th DCA 6/9/17)

DOUBLE JEOPARDY: Double jeopardy bars separate convictions for fraudulent use of credit card and petit theft. Hogan v. State, 42 Fla. L. Weekly D1336a (5th DCA 6/9/17)

NEW EVIDENCE: Recanted codefendant testimony is newly discovered evidence. Court may not summarily deny the motion based on finding that the recantation is not credible without an evidentiary hearing. McKinnon v. State, 42 Fla. L. Weekly D1335f (5th DCA 6/9/17)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court is required to make written order finding that the defendant posed a danger to the community. Glenn v. State, 42 Fla. L. Weekly D1334a (1st DCA 6/9/17)

CHALLENGE FOR CAUSE: Court did not err in striking for cause a juror who gave equivocal responses as to whether he would impose death penalty. Okafor v. State, 42 Fla. L. Weekly S639a (FLA 6/8/17)

EVIDENCE: Evidence of high capacity magazines at residence of co-perpetrator's house in murder case is error, but harmless. Okafor v. State, 42 Fla. L. Weekly S639a (FLA 6/8/17)

SPEEDY TRIAL: Prisoner in state custody may demand a speedy trial, even though the prisoner is not in the jurisdiction of the court where the charge is pending. Demand for speedy trial was not rendered invalid by virtue of fact that defendant did not affirmatively represent that he was ready

for trial and because defendant had conducted no discovery or provided state with a list of witnesses. Deriso v. State, 42 Fla. L. Weekly D1330a (5th DCA 6/7/17)

VENUE: Failure to allege venue in an indictment or information is an error of form, not of substance and such a defect will not render the charging instrument void absent a showing of prejudice to the defendant. Carnet v. State, 42 Fla. L. Weekly D1329b (3rd DCA 6/7/17)

DNA TESTING: Motion for DNA testing is appropriate denied where the defendant argued at trial that the shooting was accidental not identity, and other evidence removed any doubt as to the Defendant being the shooter. Ordonez Medina v. State, 42 Fla. L. Weekly D1322a (3rd DCA 6/7/17)

RESENTENCING: Defendant has a right to be present any time there is a resentencing upon remand from appeal. Error may be harmless, but is always error. "To be fair, this court (including, regrettably, this author) has made the very same mistake of conflating the analysis and stating, as a principle of law, that a defendant does not have the right to be present at a resentencing which merely involves a ministerial task." Gonzalez v. State, 42 Fla. L. Weekly D1317c (3rd DCA 5/7/17)

DISCOVERY VIOLATION: State committed discovery violation when it disclosed, after Defendant's opening statement that the murder weapon was the victim's own weapon, new evidence establishing the location of all of the Victim's weapons. New discovery which requires a defendant to "back step" statements already made is prejudicial. Dabbs v. State, 42 Fla. L. Weekly D1310a (4th DCA 6/7/17)

DOUBLE JEOPARDY: Double jeopardy does not preclude multiple convictions where the Defendant committed battery on the victim (lesser included of sexual battery) on different days. Evans v. State, 42 Fla. L. Weekly D1308a (4th DCA 6/7/17)

RESTITUTION: Court erred in ordering $30,000 restitution without an evidentiary basis, and further erred by coursing defendant to agree to restitution as a way of showing remorse. Paragua v. State, 42 Fla. L. Weekly D1302a (4th DCA 6/7/17)

PLEA COLLOQUY: In accepting a guilty plea to a probation violation, the trial court must advise the probationer of the violation charges and, among other things, should tell the probationer of the potential consequences of a guilty plea. At a minimum, the colloquy must inform the defendant of the allegations against him, his right to counsel, and the consequences of an admission or the right to a hearing and it shall afford him an opportunity to be heard. Donaldson v. State, 42 Fla. L. Weekly D1299c (1st DCA 6/6/17)

STATEMENT OF DEFENDANT-MIRANDA: Court erred in denying defendant's motion to suppress statements made during custodial interrogation where detective misadvised defendant that speaking to police without an attorney present would benefit him. "Ok so it can't hurt you to talk with me but it's up to you." A waiver is not voluntarily and knowingly made if police have affected the ability of the suspect to understand the nature of the rights he is waiving. Pierce v. State, 42 Fla. L. Weekly D1295a (1st DCA 6/6/17)

FORFEITURE: A defendant may not be held jointly and severally liable under forfeiture statute for property that his co-conspirator acquired from the crime but that the defendant himself did not acquire. Forfeiture pursuant to §853(a)(1) is limited to property the defendant himself actually acquired as

the result of the crime. Honeycutt v. United States, No. 16-142 (US S.Ct 6/5/17)

https://www.supremecourt.gov/opinions/16pdf/16-1177_m648.pdf

MANDATORY MINIMUM: Court is required to impose seven-year mandatory minimum where Defendant is found guilty as charged, and the charge alleges more than 200 grams of cocaine. Better practice would have been for the verdict to include a finding of quantity, but in the absence of that, the mandatory minimum stands. Pineiro Caban v. State, 42 Fla. L. Weekly D1290b (5th DCA 6/2/17)

DISQUALIFICATION: Judge who had previously disqualified himself in underlying case may not rule on motion for post conviction relief. Adderly v. State, 42 Fla. L. Weekly D1290a (5th DCA 6/2/17)

MITIGATION SPECIALIST: Denial of a mitigation specialist in a death penalty case is within the discretion of the court. Middleton v. State, 42 Fla. L. Weekly S637a (FLA 6/1/17)

DOUBLE JEOPARDY: Separate convictions for traveling to meet minor to engage in sexual conduct, unlawful use of two-way communications device to facilitate commission of felony, and use of computer to facilitate or solicit sexual conduct of child did not violate double jeopardy where multiple convictions were not based on same conduct but, instead, arose from separate criminal episodes and involved distinct acts of solicitation. Extensive discussion. Lee v. State, 42 Fla. L. Weekly D1273a (1st DCA 6/1/17)

DOWNWARD DEPARTURE: Downward departure based on lack of record and familial support is legally insufficient. Lee v. State, 42 Fla. L. Weekly D1273a (1st DCA 6/1/17)

QUOTATION: "[T]he decisional law in the area is a veritable Sargasso Sea which could not fail to challenge the most intrepid judicial navigator."). Bounded by four different ocean currents that form a massive clockwise-circulating sea vortex, the Sargasso Sea is a unique region in the North Atlantic Ocean known for its seaweed and clear blue water, depicted "in literature and media as an area of mystery," most notably in Jules Verne's 20,000 Leagues Under the Sea. Lee v. State, 42 Fla. L. Weekly D1273a (1st DCA 6/1/17)

PROBATION REVOCATION: Evidence was sufficient to support finding that defendant committed a new law violation by failure to register as a sex offender by failing to register a cell phone number. Brown v. State, 42 Fla. L. Weekly D1269b (1st DCA 6/1/17)

CONSECUTIVE SENTENCES: Resentencing required where trial court believed, based on then-existing precedent, that it was required to impose consecutive mandatory minimum sentences under 10-20-Life statute. Chambers v. State, 42 Fla. L. Weekly D1269a (1st DCA 6/1/17)

LIFE SENTENCE-JUVENILE-NON-HOMICIDE: Sentence of life imprisonment for nonhomicide offense committed by juvenile was unconstitutional, even when juvenile committed homicide in the same criminal episode, where sentence did not clearly provide meaningful opportunity for early release. Hawkins v. State, 42 Fla. L. Weekly D1268a (1st DCA 6/1/17)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for advising defendant to reject a plea offer because counsel was certain that a better plea offer would be made, and that defendant would have accepted the plea offer but for counsel's advice. Drakus v. State, 42 Fla. L. Weekly D1267b (1st DCA 6/1/17)

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DEATH PENALTY: Court may not prohibit death as a penalty. The indictment does not have to list potential aggravating factors as elements. State v. Lopez, 42 Fla. L. Weekly D1267a (4th DCA 5/31/17)

POST CONVICTION RELIEF: By neglecting to request a self-defense instruction that was clearly applicable to the facts and circumstances of the case, trial counsel was constitutionally ineffective. Ineffectiveness is apparent on the face of the record and thus can be corrected on direct appeal. Kruse v. State, 42 Fla. L. Weekly D1265a (4th DCA 5/31/17)

DOWNWARD DEPARTURE-MENTAL ILLNESS: Avoidant Personality Disorder is a mental disorder qualifying the Defendant for a departure. It is not the burden of the Defendant to demonstrate that his necessary treatment was so specialized that it could not be provided in the Department of Corrections. Kovalsky v. State, 42 Fla. L. Weekly D1264a (4th DCA 5/31/17)

DOUBLE JEOPARDY: Separate convictions for possession of firearm by convicted felon and possession of ammunition by convicted felon based on defendant's simultaneous possession of firearm and ammunition violated prohibition against double jeopardy. Issue is not waived where Defendant entered an open plea. Brown v. State, 42 Fla. L. Weekly D1261a (4th DCA 5/31/17)

SEARCH AND SEIZURE: Officer had probable cause to arrest juvenile where officer was aware at time he placed juvenile under arrest that juvenile was on probation, out three hours past his curfew, and did not appear to be within any possible exception to curfew requirement. Officer is not required to investigate and eliminate every possibility that Defendant's violation of curfew was authorized. State v. C.J., 42 Fla. L. Weekly D1259a (4th DCA 5/31/17)

COMPETENCY OF DEFENDANT: Where Court entered order requiring examination of defendant's competency and appointed doctor to examine defendant, Court reversibly erred by proceeding to trial without conducting a competency hearing. Baker v. State, 42 Fla. L. Weekly D1257a (4th DCA 5/31/17)

EVIDENCE: Character evidence for peacefulness may be excluded if witness's testimony is not sufficiently broadly based. Romans v. State, 42 Fla. L. Weekly D1255a (4th DCA 5/31/17)

DOWNWARD DEPARTURE: Court erred by finding that the offense was not unsophisticated based on the severity of the injuries. Romans v. State, 42 Fla. L. Weekly D1255a (4th DCA 5/31/17)

ARGUMENT: Prosecutor's comments that Defendant was a three-time convicted felon and to acquit jury would have to believe the officer and witnesses were all wrong were ill-advised but not reversible error. Thompson v. State, 42 Fla. L. Weekly D1253a (4th DCA 5/31/17)

COMPETENCY OF DEFENDANT Where defendant had documented disability and trial court found information provided by defense counsel reasonable grounds for ordering a competency evaluation, it was error to proceed to trial where no evaluation report was filed, no hearing was

conducted, and no order was entered. Zieler v. State, 42 Fla. L. Weekly D1242b (4th DCA 5/31/17)

PUBLIC RECORDS: Upon making a public records request related to chain of custody of evidence, Defendant is entitled to more than just an evidence card, or proof that there is no more documentation. Tracy v. State, 42 Fla. L. Weekly D1239b (1st DCA 5/31/17)

POST CONVICTION RELIEF: Claim that defendant would not have rejected plea offers if counsel had informed him that he qualified for mandatory prison releasee reoffender was not conclusively refuted by record. Defendant is entitled to an evidentiary hearing. Smith v. State, 42 Fla. L. Weekly D1238d (1st DCA 5/31/17)

POST CONVICTION RELIEF: Claim that defendant involuntarily entered plea out of well-founded fear that counsel would be unprepared for trial was sufficient to require evidentiary hearing or attachment of portions of record conclusively refuting claim. Hinson v. State, 42 Fla. L. Weekly D1238c (1st DCA 5/31/17)

LIFE SENTENCE-JUVENILE: Defendant who received life sentence with possibility of parole for offenses committed when he was a juvenile is not entitled to resentencing where defendant was afforded meaningful opportunity to obtain release and, in fact, was released on parole, violated parole and was reincarcerated, and has been assigned a presumptive parole release date so that he continues to be considered for release on parole. Currie v. State, 42 Fla. L. Weekly D1238a (1st DCA 5/31/17)

TRESPASS: Evidence that a non-student wearing a school uniform and in a non-public area of the school is sufficient to establish trespass. J.H. v. State, 42 Fla. L. Weekly D1221a (3rd DCA 5/31/17)

LIFE SENTENCE-JUVENILE: Defendant does not waive Miller and Atwell by having entered into a negotiated plea. Reid v. State, 42 Fla. L. Weekly D1216a (3rd DCA 5/31/17)

DEPORTATION: In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of "sexual abuse of a minor" requires the age of the victim to be less than 16. A conviction under a state statute criminalizing consensual sexual intercourse between a 21-year-old and a 17-year-old does not qualify as sexual abuse of a minor under the INA. To determine whether an alien's conviction qualifies as an aggravated felony, the Court employs a categorical approach by looking to the statute of conviction, rather than to the specific facts underlying the crime. Esquivel-Quintana v. Sessions, No. 16-54 (US 5/30/17) https://www.supremecourt.gov/opinions/16pdf/16-54_5i26.pdf

GAG ORDER: Court may prohibit all attorneys from making extrajudicial comments until after jury is sworn in a high publicity trial where said statements pose an imminent and substantial threat to a fair trial. Dippolito v. State, 42 Fla. L. Weekly D1203a (4th DCA 5/26/17)

INFORMATION-DEFECT: Court may allow State to amend the name of the victim in a BLEO case where there is no prejudice nor confusion as to the identity of the victim. Taylor v. State, 42 Fla. L. Weekly D1202b (2nd DCA 5/26/17)

VICTIM'S PRIOR ACTS OF VIOLENCE AND REPUTATION: Court erred in excluding defendant's proffered testimony concerning his knowledge of specific acts of violence by the victim and his knowledge of victim's reputation in the community for violence. In cases where a claim of self-defense is raised, evidence of the victim's reputation is admissible to disclose his or her propensity for violence and the likelihood that the victim was the aggressor, while evidence of prior specific acts of violence by the victim is admissible to reveal the reasonableness of the defendant's apprehension at the time of the incident. Brown v. State, 42 Fla. L. Weekly D1200a (2nd DCA 5/26/17)

POST CONVICTION RELIEF: Allegation that trial counsel failed to advise him of elements of the offense and possible defenses is not refuted by the factual basis being recited at the plea hearing. Parhm v. State, 42 Fla. L. Weekly D1199b (2nd DCA 5/26/17)

PLEA WITHDRAWAL: Court lacks jurisdiction to deny motion to withdraw plea after the notice of appeal is filed. Court should have dismissed the motion for lack of jurisdiction. Hawthorne v. State, 42 Fla. L. Weekly D1199a (2nd DCA 5/26/17)

RESTITUTION: When no evidence of what the child could reasonably be expected to earn is presented at the restitution hearing, the trial court cannot make a finding on this issue. M.O. v. State, 42 Fla. L. Weekly D1198b (2nd DCA 5/26/17

JUROR INTERVIEWS: Juror interviews are not permissible unless the moving party has made sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings. Comments about the judicial system being unfair to defendants did not amount to discussions about the

facts of the case, nor did the comments demonstrate any possible prejudice to Defendant. Dowd v. State, 42 Fla. L. Weekly D1192a (2nd DCA 5/26/17)

NEW TRIAL: The standard for a motion for a new trial is whether the verdict is against the weight of the evidence, not whether the evidence is sufficient a motion for judgment of acquittal. Paul v. State, 42 Fla. L. Weekly D1190d (5th DCA 5/26/17)

POST CONVICTION RELIEF: Remanded for attachment of record refuting claim. Guies Johnson v. State, 42 Fla. L. Weekly D1190a (5th DCA 5/26/17)

SENTENCING-VACATED COUNT-CONCURRENT: When a defendant challenges one count in a post-conviction motion and that count is vacated, the trial court is without authority to modify a sentence on an unchallenged count by changing concurrent to consecutive. Johnson v. State, 42 Fla. L. Weekly D1188b (5th DCA 5/26/17)

RECLASSIFICATION: Reclassification of aggravated battery conviction from second-degree felony to first-degree felony was improper where jury was instructed on both use-of-deadly-weapon and great-bodily-harm forms of aggravated battery, but returned a general verdict. Lathan v. State, 42 Fla. L. Weekly D1188a (5th DCA 5/26/17)

JURORS-PEREMPTORY CHALLENGE: A party does not have a right to "unstrike" a peremptory challenge, but may do so under appropriate circumstances. Withdrawal of peremptory challenge after a party has exhausted its peremptory challenges could be warranted by unusual or extenuating circumstances. McCray v. State, 42 Fla. L. Weekly S618a (FLA 5/25/17)

DEATH PENALTY-NONUNANIMOUS RECOMMENDATION: Hurst does not apply retroactively to a case which became final in 1985. Oats v. Jones, 42 Fla. L. Weekly S616a (FLA 5/25/17)

DEATH PENALTY-INTELLECTUAL DISABILITY: Judge, not jury, can make determination as to whether Defendant is intellectually disabled for purposes of the Death Penalty. Florida's procedure for determining intellectual disability is constitutional. Oats v. Jones, 42 Fla. L. Weekly S616a (FLA 5/25/17)

DEATH PENALTY: Hurst does not apply to death sentences which became final before Ring v. Arizona. Zakrewski v. Jones, 42 Fla. L. Weekly S615a (FLA 5/25/17)

SEARCH AND SEIZURE-OPEN VIEW: Officer seizing Defendant's clothes from the hospital emergency room bay after the Defendant walked into the emergency room is lawful. Under open view doctrine, seizure of bag of defendant's clothing was justified because there was probable cause to associate the bloody clothes with criminal activity where defendant was a selfdescribed victim of a crime. Under the open view doctrine, objects such as weapons or contraband found in a public place can be seized without a warrant. Purifoy v. State, 42 Fla. L. Weekly D1185a (1st DCA 5/25/17)

DOUBLE JEOPARDY: Separate convictions for both traveling to meet minor after solicitation and for use of two-way communications device in commission of felony violate double jeopardy. Dettle v. State, 42 Fla. L. Weekly D1182c (1st DCA 5/25/17)

POST CONVICTION RELIEF: Court may not deny Motion for Post Conviction relief without attaching record showing no entitlement to relief. Bolton v. State, 42 Fla. L. Weekly D1182b (1st DCA 5/25/17)

COMPETENCY: Court may not proceed to trial after having appointed an expert to evaluate defendant for competency to proceed without holding competency hearing or entering written order of competency. Williams v. State, 42 Fla. L. Weekly D1182a (1st DCA 5/25/17)

SENTENCING-HABITUAL OFFENDER: Incorrect calculation in sentencing guidelines scoresheet is irrelevant when defendant was sentenced as a habitual offender. Pitts v. State, 42 Fla. L. Weekly D1175c (3rd DCA 5/24/17)

EVIDENCE-WILLIAMS RULE: Evidence of prior incidents of Defendant pushing and confronting victim are admissible to show Defendant's motive and intent. Gilchrease v. State, 42 Fla. L. Weekly D1174a (3rd DCA 5/24/17)

DNA TESTING: Defendant's motion for post-conviction DNA testing was legally insufficient because he failed to show a reasonable probability existed that the test results would exonerate him. Cain v. State, 42 Fla. L. Weekly D1169c (4th DCA 5/24/17)

STATEMENTS OF DEFENDANT: Motion to suppress should have been granted after Defendant made an unequivocal request for an attorney ("I need to see a lawyer). Once the right to counsel is invoked, police questioning is required to cease. Rhodes v. State, 42 Fla. L. Weekly D1151a (1st DCA 5/19/17)

JUVENILE-SENTENCING: Where PDR says that a non-residential commitment is OK if court finds protection of the public best served thereby, commitment is not a deviation from the recommendation. State v. I.D., 42 Fla. L. Weekly D1148a (1st DCA 5/19/17)

DWLS: Defendant who is a habitual traffic offender cannot be prosecuted under §322.34(2)(c) for DWLS because habitual traffic violators are excluded by the plain language of the statute. Also, people who have never had a license cannot be convicted of DLWS. Finney v. State, 42 Fla. L. Weekly D1147b (1st DCA 5/19/17)

POST CONVICTION RELIEF: A claim that counsel failed to investigate a defendant's mental health and failed to seek a competency determination is cognizable in a rule 3.850 motion. Turem v. State, 42 Fla. L. Weekly D1137a (5th DCA 5/19/17)

JURORS-CHALLENGE FOR CAUSE: Court properly denied challenge for cause when juror ultimately indicated she could be fair and impartial. Caylor v. State, 42 Fla. L. Weekly S608a (FLA 5/18/17)

DEATH PENALTY: Defendant who receives non-unanimous recommendation of death is entitled to re-sentencing pursuant to Hurst. Caylor v. State, 42 Fla. L. Weekly S608a (FLA 5/18/17)

AMENDMENTS TO RULES: Clarification of rules for gifts to Judges. In Re : Amendments to the Code of Judicial Conduct, 42 Fla. L. Weekly S605b (FLA 5/18/17)

POST CONVICTION DNA TESTING: Defendant is not entitled to post conviction DNA testing when the results would not overcome the overwhelming evidence of guilt. Bates v. State, 42 Fla. L. Weekly S604a (FLA 5/18/17)

DANGEROUS SEXUAL FELONY OFFENDER: Defendant qualifies as a Dangerous Sexual Felony Offender (with a 25 year minimum mandatory) if he has a prior conviction under a similar statute. The prior record need not be for an offense with identical elements. Acevedo v. State, 42 Fla. L. Weekly S601a (FLA 5/18/17)

DEATH PENALTY: Defendant is entitled to a new sentencing hearing where the death recommendation is 10-2). Hertz v. State, 42 Fla. L. Weekly S599a (FLA 5/18/17)

CREDIT FOR TIME SERVED: Credit may be waived when waiver is specific, voluntary, and clear from face of record. Wolter v. State, 42 Fla. L. Weekly D1135a (4th DCA 5/17/17)

DOWNWARD DEPARTURE: Downward departure sentence on basis that the victim of grand theft, who had dementia, was a willing participant in the theft of his own money. "There is no amount of willing participation which is legally insignificant for purposes of a theft offense, yet sufficient enough for downward departure." State v. Imber, 42 Fla. L. Weekly D1131b (2nd DCA 5/17/17)

MANDATORY MINIMUM-CONSECUTIVE: Defendant entitled to resentencing where trial court ordered consecutive mandatory minimum sentences believing it had no discretion under 10-20-life to do otherwise. Martins v. State, 42 Fla. L. Weekly D1127a (2nd DCA 5/17/17)

CONTEMPT: Defendant's failure to obey court order to submit to a drug test and then return to courtroom should have been for indirect criminal contempt, rather than direct criminal contempt. White v. Junior, 42 Fla. L. Weekly D1123a (3rd DCA 5/17/17)

DOUBLE JEOPARDY-CHILD ABUSE: A continuous series of acts constituting malicious punishment with no temporal or spatial break can be only one crime of child abuse. Weaver v. State, 42 Fla. L. Weekly D1121c (3rd DCA 5/17/17)

GRAND THEFT-JUDGMENT OF ACQUITTAL: Where the only evidence of grand theft is the victim saying he estimated the value as "like 300", Defendant is entitled to JOA and for the charge to be lessened to petit theft. Sirmons v. State, 42 Fla. L. Weekly D1120a (4th DCA 5/17/17)

DOUBLE JEOPARDY: Double jeopardy does not bar separate convictions for aggravated battery and manslaughter of the same victim, where one of the counts was codefendant punching the victim (Defendant guilty under a principal theory) and the other was the Defendant kicking the victim to death. Mercer v. State 42 Fla. L. Weekly D1112a (1st DCA 5/16/17)

CONTEMPT: A stream of profanity is sufficient to sustain a finding of contempt. Swain v. State, 42 Fla. L. Weekly D1118a (4th DCA 5/17/17)

CONTEMPT: A mocking comment to the judge asking if he "felt better" after sentencing the Defendant for contempt should not be considered a separate act of contempt, but part of the first. Swain v. State, 42 Fla. L. Weekly D1118a (4th DCA 5/17/17)

CONTEMPT: Court failed to allow the Defendant an opportunity to present evidence in his defense by only asking, "why shouldn't I hold you in direct contempt right now?" Swain v. State, 42 Fla. L. Weekly D1118a (4th DCA 5/17/17)

RESTITUTION-JURISDICTION: Court lacks jurisdiction to hold restitution hearing after a notice of appeal has been filed. Kahkonen v. State, 42 Fla. L. Weekly D1109d (1st DCA 5/16/17)

HEGGS-HABITUAL VIOLENT FELONY OFFENDER: Defendant cannot be sentenced as a Habitual Violent Felony Offender for an offense committed during the Heggs window (October 1, 1995, through May 24, 1997). Bell v. State, 42 Fla. L. Weekly D1109c (1st DCA 5/16/17)

MURDER-PREMEDITATION: Shooting victim four times quickly is insufficient evidence of premeditation to support first degree murder conviction. Ineffective assistance in failing to raise lack of premeditation in motion for JOA is apparent from the face of the record. Barnes v. State, 42 Fla. L. Weekly D1106a (5th DCA 5/12/17)

POSSESSION OF FIREARM BY FELON-COLLATERAL ESTOPPEL: State is not prohibited from proceeding on a severed possession of firearm by felon count where jury found that Defendant did not carry a firearm but did not necessarily find that he did not possess one. State v. Joy, 42 Fla. L. Weekly D1105b (5th DCA 5/12/17)

POST CONVICTION RELIEF: Order required the requiring the Defendant to write a legible motion is not the same as an order striking the motion for postconviction relief. Dunbar v. State, 42 Fla. L. Weekly D1105a (5th DCA 5/12/17)

POST CONVICTION RELIEF: Failure to request a second competency hearing after the defendant relapsed into incompetency is ineffective assistance of counsel. Ramon v. State, 42 Fla. L. Weekly D1104a (5th DCA 5/12/17)

SENTENCING-JUVENILE: Ten-year minimum mandatory for juvenile convicted of robbery with a firearm is lawful and not a violation of Cruel and Unusual Punishment. Young v. State, 42 Fla. L. Weekly D1103d (5th DCA 5/12/17)

SEARCH AND SEIZURE: Shining a flashlight in a car is not an unconstitutional search and seizure. State v. Holt, 42 Fla. L. Weekly D1103b (5th DCA 5/12/17)

ESCAPE: Failure to return to a Work Release Program is escape. State v. Vance, 42 Fla. L. Weekly D1102c (5th DCA 5/12/17)

ATTORNEY-WITHDRAWAL OF PLEA: Defendant is entitled to a conflict-free attorney on motion to withdraw plea. Fisher v. State, 42 Fla. L. Weekly D1102a (5th DCA 5/12/17)

PRISON RELEASEE REOFFENDER: Defendant who was sentenced to prison but released from jail with credit for time served is not eligible for PRR. Conflict certified. Lewars v. State, 42 Fla. L. Weekly D1098b (2nd DCA 5/12/17)

STATUTORY CONSTRUCTION-PLAIN MEANING: "We decline to adopt the reasoning of . . .Louzon because. . .they seem to have skipped the

"plain language" step of the statutory construction analysis. . . .[T]he other district courts impermissibly expanded the plain meaning of the words in the statute. . .by impermissibly injecting words. . .that simply are not there." Lewars v. State, 42 Fla. L. Weekly D1098b (2nd DCA 5/12/17)

EXPRESSIO UNIUS: Under the expressio unius canon and the interchangeable inclusio unius canon,when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded. Lewars v. State, 42 Fla. L. Weekly D1098b (2nd DCA 5/12/17)

DOUBLE JEOPARDY: Separate convictions for felony battery and battery on licensed security officer violated prohibition against double jeopardy. Marsh v. State, 42 Fla. L. Weekly D1096c (2nd DCA 5/12/17)

BATTERY OF LICENSE SECURITY OFFICER: Defendant may not be convicted of battery on a license security officer who was not wearing a uniform. Marsh v. State, 42 Fla. L. Weekly D1096c (2nd DCA 5/12/17)

CIRCUMSTANTIAL EVIDENCE-MURDER: Defendant is convicted of killing mother and child, where he was involved in a contested paternity case. Motive and opportunity is insufficient to sustain murder conviction. Circumstantial evidence which leaves uncertain several hypotheses, any one of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt. Wright v. State, 42 Fla. L. Weekly S587a (FLA 5/11/17)

JURORS-CHALLENGE FOR CAUSE: In order to preserve and objection to Court's failure to grant a challenge for cause, one must object and re-

object before accepting the panel. "[I]t is the objection/re-objection process . . . that is the decisive element in a juror-objection-preservation analysis," Cozzie v. State, 42 Fla. L. Weekly S579a (FLA 5/11/17)

COLLATERAL CRIME EVIDENCE: Evidence that Defendant attacked another girl at the same location a week before he murdered the Victim is admissible Williams Rule evidence. Cozzie v. State, 42 Fla. L. Weekly S579a (FLA 5/11/17)

SEARCH AND SEIZURE: Anonymous tip of a suspicious person in a vehicle who had run out of the woods covered in blood, holding a knife, changing his clothes and throwing something in the woods justifies a stop. Pasha v. State, 42 Fla. L. Weekly S569a (5/11/17)

HEARSAY-EXCITED UTTERANCE: 911 call that caller saw Defendant running around with a knife while covered in blood is admissible as an excited utterance, notwithstanding that the declarant testified she was not excited at the time. Pasha v. State, 42 Fla. L. Weekly S569a (5/11/17)

IMPEACHMENT: Impeachment by prior testimony is improper where the witness's attention is not drawn to any prior inconsistent statement. Pasha v. State, 42 Fla. L. Weekly S569a (5/11/17)

EVIDENCE: Evidence of Defendant's prior possession of a firearm is permissible to explain why witness thought he had a gun even though murder was committed without a firearm. Davis v. State, 42 Fla. L. Weekly S558a (FLA 5/11/17)

ARGUMENT: No error in allowing the State to show a powerpoint slide including a witness crying on the stand during the trial. Davis v. State, 42 Fla. L. Weekly S558a (FLA 5/11/17)

BAKER ACT: Judge may not preside over Baker Act hearing by video. John Doe v. State, 42 Fla. L. Weekly S553b (FLA 5/11/17)

POST CONVICTION RELIEF: Failure to disclose letter accompanying extradition request to Ecuador that the Defendant would not be executed is not exculpatory evidence. Serrano v. State, 42 Fla. L. Weekly S545a (FLA 5/11/17)

ARGUMENT: Counsel was not ineffective for failing to object to State calling the Defendant "diabolical" and a "liar." Serrano v. State, 42 Fla. L. Weekly S545a (FLA 5/11/17)

POLYGRAPH: Polygraph evidence is inadmissible. Serrano v. State, 42 Fla. L. Weekly S545a (FLA 5/11/17)

DEATH PENALTY: Defendant is entitled to resentencing under Hurst where the death recommendation was 9-3. Serrano v. State, 42 Fla. L. Weekly S545a (FLA 5/11/17)

RETURN OF PROPERTY: Motion for return of property filed more than 60 days after appellate mandate is untimely. Montesime v. State, 42 Fla. L. Weekly D1094d (3rd DCA 5/10/17)

PRO SE FILING: Court may not bar Defendant from pro se filings in all cases, just in those in which he has abused process. Quintero v. State, 42 Fla. L. Weekly D1094c (3rd DCA 5/10/17)

INDEPENDENT ACT: Defendant properly convicted of felony murder, attempted second degree murder, aggravated battery with deadly weapon, and burglary when he knowingly accompanied two others to victim's home to fight them, resulting in one victim killed by bat and Defendant beating another unconscious. Padron v. State, 42 Fla. L. Weekly D1090a (3rd DCA 5/10/17)

LESSER-COMPOUND OFFENSE: If the evidence conclusively establishes that the use of force was contemporaneous with the theft, and that use of force and the act of taking constitute a continuous series of acts or events, a defendant is not entitled to the compound offense instruction, and the jury is not permitted to consider returning verdicts of guilty for the two component offenses of theft and assault. Conflict certified. Gordon v. State, 42 Fla. L. Weekly D1087a (3rd DCA 5/10/17)

APPEAL-PRESERVATION: Defendant's objection to testimony that rape victim sought and got psychological treatment afterwards was based on relevance, not prejudice, and so was not preserved for appeal. Knight v. State, 42 Fla. L. Weekly D1085a (3rd DCA 5/10/17)

DOUBLE JEOPARDY: Convictions for grand theft and organized fraud violate the prohibition against double jeopardy. Double jeopardy may be waived if there is a plea agreement. Gomez v. State, 42 Fla. L. Weekly D1083a (3rd DCA 5/10/17)

RECKLESS DRIVING: Driving onto the sidewalk and hitting a pedestrian is not reckless driving. Smith v. State, 42 Fla. L. Weekly D1067a (2nd DCA 5/10/17)

JUROR-CHALLENGE FOR CAUSE: Challenge for cause of jurors who said they would give greater credence to law enforcement officers should be granted. Harmless error analysis does not apply to challenges for cause. Rodriguez v. State, 42 Fla. L. Weekly D1065a (2nd DCA 5/10/17)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Any error in trial court's conducting a "danger hearing" at which she found defendant to be "a violent offender of special concern," although defendant did not meet statutory criteria that trigger necessity for such a hearing, was not preserved for appeal where counsel did not object. Simmons v. State, 42 Fla. L. Weekly D1063a (4th DCA 5/10/17)

CONFLICT OF INTEREST: Fact that defense counsel was originally prosecutor on the same case (filed information, made a plea offer, appeared at two hearings) does not require reversal, per se. Counsel's acts may have violated Florida Bar Rule 4-1.11, which prohibits switching hats without consent, but rule seems to be designed to protect government, not the client. Flaherty v. State, 42 Fla. L. Weekly D1059a (4th DCA 5/10/17)

SPEEDY TRIAL: Defendant's motion for continuance on misdemeanor charge, which was filed after expiration of both misdemeanor and felony speedy trial periods, did not waive right to speedy trial on felony charge which was based on same conduct for which defendant was initially arrested and which state filed after it had nolle prossed the misdemeanor charge and after felony speedy trial period had expired. State is not entitled to recapture. State v. Telucian, 42 Fla. L. Weekly D1058a (4th DCA 5/10/17)

PRETRIAL DETENTION: Although it was error for first appearance judge not to determine whether defendant was entitled to bond, error was harmless where defendant was charged with offense punishable by life and

proof of guilt was evident and presumption great. Ysaza v. State, 42 Fla. L. Weekly D1057a (4th DCA 5/10/17)

RESTITUTION-JURISDICTION: Court lacks jurisdiction to enter order for restitution after notice of appeal had been filed. Hime v. State, 42 Fla. L. Weekly D1047b (1st DCA 5/5/17)

MURDER-PREMEDITATION: Defendant following this ex-wife through a restaurant after she insulted him, shooting her once, pausing, then shooting her five more times, is sufficient premeditation to support a finding of first degree murder. "Premeditation does not take much time at all." Veney v. State, 42 Fla. L. Weekly D1047a (1st DCA 5/5/17)

UPWARD DEPARTURE: Court cannot base upward departure on Defendant under 22 points for fleeing and eluding on basis of charge for which the Defendant was acquitted (aggravated battery on LEO). There must be a nexus showing how a non-state prison sanction, such as jail, could present a danger to the community. Johnson v. State, 42 Fla. L. Weekly D1046a (1st DCA 5/5/17)

UNLAWFUL SENTENCE: Life sentence for attempted sexual battery exceeds the statutory maximum. Gay v. State, 42 Fla. L. Weekly D1044e (1st DCA 5/5/17)

PROBATION-TOLLING: Absconding from supervision is an independent basis for tolling probation. Tucker v. State, 42 Fla. L. Weekly D1044d (1st DCA 5/5/17)

CONSOLIDATION: Court erred by denying State's motion to consolidate felony murder and child abuse with aggravated manslaughter of a child where the same child's death is at issue, and the State would be unable to offer alternative theories (culpable negligence vs. child abuse). State v. Milbry, 42 Fla. L. Weekly D1040b (5th DCA 5/5/17)

SELF-REPRESENTATION: Faretta inquiry is inadequate where Court did not make Defendant aware of the disadvantages of self-representation or possible penalties. Slinger v. State, 42 Fla. L. Weekly D1037a (5th DCA 5/5/17)

SEX OFFENDER PROBATION: Court may not order sex offender probation without clearly delineating the conditions that were applicable to defendant. Nero v. State, 42 Fla. L. Weekly D1036c (5th DCA 5/5/17)

POST CONVICTION RELIEF-JURISDICTION: Where appellate court reversed trial court's initial denial of rule 3.850 motion because court did not rule on a second claim, trial court was without jurisdiction to enter order denying the second claim prior to appellate court's issuance of mandate. Dingey v. State, 42 Fla. L. Weekly D1036b (5th DCA 5/5/17)

POST CONVICTION RELIEF-APPEAL: Appeal of order denying second motion to correct illegal sentence was timely because rendition of that order was tolled by motion for rehearing, but not timely for the first motion for which he did not move for rehearing. Coleman v. State, 42 Fla. L. Weekly D1036a (2nd DCA 5/5/17)

POST CONVICTION RELIEF: Counsel was not ineffective for stipulating to expert's finding that Defendant was competent to stand trial. Hampton v. State, 42 Fla. L. Weekly S536a (FLA 5/4/17)

POST CONVICTION RELIEF: Counsel was ineffective for failing to redact reference to an outstanding warrant from the recording of his interrogation, but no showing of prejudice. Hampton v. State, 42 Fla. L. Weekly S536a (FLA 5/4/17)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to redact numerous statements by interrogating officer, since the statements were needed to explain to the jury why Hampton confessed and why his statements to the police were wildly inconsistent. Hampton v. State, 42 Fla. L. Weekly S536a (FLA 5/4/17)

DEATH PENALTY: Where the jury did not make the requisite factual findings, nor unanimously vote to impose a sentence of death (9-3), Hurst requires resentencing. Hampton v. State, 42 Fla. L. Weekly S536a (FLA 5/4/17)

DEATH PENALTY: Petitioner whose sentence became final before Ring v. Arizona was decided is not entitled relief on claim that death penalty based on judicial override was unconstitutional. Marshall v. State, 42 Fla. L. Weekly S533a (FLA 5/4/17)

SUBSTITUTION OF COUNSEL: Court erred in striking defendant's motion to substitute counsel for Capital Collateral Regional Counsel on basis that CCRC has not filed a motion to withdraw. Rules of Judicial Administration authorize the termination of an attorney's appearance through substitution of counsel. Merck v. State, 42 Fla. L. Weekly S528a (FLA 5/4/17)

DEATH PENALTY: State cannot establish that Hurst error in defendant's case was harmless beyond reasonable doubt where jury did not make requisite factual findings and did not unanimously recommend sentence of death. Card v. State, 42 Fla. L. Weekly S527b (FLA 5/4/17)

AFTERTHOUGHT DEFENSE: Court erred by denying request for a special jury instruction on the afterthought defense to robbery. Calafell v. State, 42 Fla. L. Weekly D1032a (3rd DCA 5/3/17)

FELONY MURDER: Murder conviction is upheld where conviction for the underlying felony of robbery is reversed, but jury entered a general verdict and evidence supported premeditated murder. Calafell v. State, 42 Fla. L. Weekly D1032a (3rd DCA 5/3/17)

JUVENILES-PLEA: Court commits fundamental error by not making proper inquiry into juvenile's waiver of counsel. T.R. v. State, 42 Fla. L. Weekly D1026a (2nd DCA 5/3/17)

POST CONVICTION RELIEF: Claim of ineffective assistance of counsel that counsel should have challenged the convictions of armed burglary and aggravated assault as fatally inconsistent where jury found that the defendant did not possess a firearm. Smith v. State, 42 Fla. L. Weekly D1025a (2nd DCA 5/3/17)

SPEEDY TRIAL: Where state charged defendant within rule 3.191 speedy trial time period but failed to notify him of charges until after its expiration, State is nonetheless entitled to recapture period. Prior precedents receded from. State v. Born-Suniaga, 42 Fla. L. Weekly D1016a (4th DCA 5/3/17)

JUDGE-DISQUALIFICATION: Declining to continue case to accommodate defense counsels vacation is insufficient basis for disqualification. "Allowing the witnesses to testify the following week, as opposed to delaying the trial for weeks or months into the future, might be inconvenient to defense counsel, but is not inconsiderate to the defendant whose liberty is at stake." Fetzner v. State, 42 Fla. L. Weekly D1012a (4th DCA 5/3/17)

JUDGE-DISQUALIFICATION: Allegations that judge scolded counsel, without context, is insufficient to warrant disqualification. Judge's expression of dissatisfaction with counsel or a client's behavior alone does not give rise to a reasonable belief that the trial judge is biased. Fetzner v. State, 42 Fla. L. Weekly D1012a (4th DCA 5/3/17)

MISTRIAL: Mistrial is not warranted where officer improperly said that a nontestifying witness gave a description of the Defendant, but the description was not inculpatory. Fetzner v. State, 42 Fla. L. Weekly D1012a (4th DCA 5/3/17)

CONCEALMENT OF CHILD: Statute prohibiting concealment of child applies to concealing the child from the person entitled to custody as well as from the court. Flynn v. State, 42 Fla. L. Weekly D1010a (4th DCA 5/3/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on the claim that his attorney was ineffective for failing to move to disqualify judge for communicating with the victim's family and other grounds. Bishop v. State, 42 Fla. L. Weekly D1009b (4th DCA 5/3/17)

DEALING IN STOLEN PROPERTY: Court erred by instructing that possession of stolen gives rise to an inference that Defendant knew it was

stolen when it is undisputed that the property had been lent to the Defendant. Horvath v. State, 42 Fla. L. Weekly D1007a (4th DCA 5/3/17)

PLEA WITHDRAWAL: Defendant must be allowed to withdraw his plea to possession of firearm by a felon where the predicate felony was reversed five days after the plea was entered. Also must be allowed to withdraw his plea to other counts since it was all part of the same plea agreement. Tyler v. State, 42 Fla. L. Weekly D1006b (4th DCA 5/3/17)

STATEMENTS OF DEFENDANT: State may impeach Defendant by inconsistent post-arrest, pre-Miranda voluntary statement. Roundtree v. State, 42 Fla. L. Weekly D1005a (4th DCA 5/23/17)

PROBATION-REVOCATION: Probation was not tolled when Defendant is charged with absconding. Court erred by dismissing the affidavit. State v. Capeletti, 42 Fla. L. Weekly D1003a (4th DCA 5/3/17)

SEXUAL BATTERY: "Union" in the sexual battery statute means "contact." Tirado v. State, 42 Fla. L. Weekly D1002a (4th DCA 5/3/17)

HEARSAY-BUSINESS RECORDS: List of items stolen made by store manager in preparation for trial is not admissible as a business record. Coates v. State, 42 Fla. L. Weekly D1001a (4th DCA 5/3/17)

HEARSAY: Portion of police-recorded conversations between victim and defendant during which the victim asked defendant why he continued forcing himself on her when his friend told defendant "not to do it" is

admissible where statement of friend relayed by victim was not introduced for truth of the matter but for the reaction of defendant/listener. Hwang v. State, 42 Fla. L. Weekly D1000a (4th DCA 5/3/17)

COMPETENCY OF DEFENDANT: Court may not proceed to change of plea and sentencing where motion for competency evaluation remains unresolved. Pamphile v. State, 42 Fla. L. Weekly D993c (1st DCA 5/1/17)

CONSECUTIVE SENTENCES-10/20/LIFE: Resentencing is required when Court mistakenly believed it was required to impose consecutive sentences for first degree murder, armed robbery, and possession of a firearm by a felon. Conflict certified. Wilson v. State, 42 Fla. L. Weekly D993b (1st DCA 5/2/17)

INDIGENT DEFENDANT: Indigent defendant represented by private counsel pro bono is not entitled to file motions for costs for expert, mitigation specialists, and investigators ex parte and under seal, with service to the Justice Administrative Commission and notice to the state attorney's office, and to have any hearing on such motions ex parte, with only the defendant and the Commission present. Question certified. Andrews v. State, 42 Fla. L. Weekly D990f (1st DCA 5/2/17)

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APPEALS-MANDATE: When an appellate court issues a mandate, compliance with the mandate by the circuit court is purely a ministerial act. The circuit court does not have the authority to modify, nullify or evade that mandate The trial court does not have authority to pick for itself which count to dismiss. Manata v. State, 42 Fla. L. Weekly D989c (1st DCA 4/28/17)

PROBATION-SPECIAL CONDITION: Special condition of sex offender probation which is not orally pronounced must be stricken. Fosmire v. State, 42 Fla. L. Weekly D989b (1st DCA 4/28/17)

JUVENILE-LIFE: Court may impose life imprisonment for first-degree murder on a juvenile where Court conducted an individualized sentencing considered the statutory factors and provided for review hearing after 25 years. Hawkins v. State, 42 Fla. L. Weekly D989a (1st DCA 4/28/17)

JUVENILE-LIFE: Life sentence for juvenile for nonhomicide (armed robbery) is unconstitutional notwithstanding that there was a contemporaneous firstdegree murder conviction. Hawkins v. State, 42 Fla. L. Weekly D989a (1st DCA 4/28/17)

CONVICTION RELIEF : Defendant should be for afforded a hearing on her claim that counsel was ineffective for failing to investigate and challenge evidence and failing to inform her of potential defenses prior to her guilty plea. Fry v. State, 42 Fla. L. Weekly D987b (1st DCA 4/28/17) CONVICTION RELIEF : Defendant is entitled to hearing on his claim that his no contest plea was not a knowing and voluntary waiver of his rights. Moorer v. State, 43 D987a (1st DCA 4/28/17)

MANDATORY MINIMUM-CONSECUTIVE: Resentencing is required where the Court wrongly believed that it had no discretion to impose concurrent mandatory minimum sentences for offenses involving a firearm. Butner v. State, 42 Fla. L. Weekly D979b (2nd DCA 4/28/17)

DEPORTATION: Defendant is allowed to withdraw guilty plea where attorney failed to advise him of automatic deportation (aggravated assault with deadly weapon), and court did not warn him. Even when defendants

have received the warning required by rule 3.172(c)(8) from the court during their plea colloquy, they may still show prejudice if they were subject to automatic deportation under the federal immigration statutes. Blackwood v. State, 42 Fla. L. Weekly D977a (2nd DCA 4/28/17)

SENTENCING-JUVENILE: Under the sentence review statute, is the Court required to review the aggregate sentence that the juvenile is serving from the same sentencing hearing in determining whether to modify the sentence? Question Certified. Purdy v. State, 42 Fla. L. Weekly D967a (5th DCA 4/28/17)

SENTENCING-GUIDELINES DOWNWARD DEPARTURE: Evidence does not support a finding that the defendant's conduct was an isolated incident for which he showed remorse nor that he acted in unsophisticated manner nor that he was a minor participant. Driving the getaway car does not make you a minor participant. State v. Milaci, 42 Fla. L. Weekly D965a (5th DCA 4/28/17)

YEP: "Let me tell you something, what I'm doing is probably going to be appealed and probably reversed." State v. Milaci, 42 Fla. L. Weekly D965a (5th DCA 4/28/17)

HABEAS CORPUS: Defendant may not raise by habeas corpus what was previously denied on direct appeal and under Rule 3.850. Howarth v. DOC, 42 Fla. L. Weekly D964c (5th DCA 4/28/17)

POST CONVICTION RELIEF-JURISDICTION: Trial court has no jurisdiction to consider motion for post-conviction relief which had been remanded where there was a separate appeal concerning the same issue. Black v. State, 42 Fla. L. Weekly D964b (5th DCA 4/28/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that the plea was involuntary because he was not informed about of the possible maximum sentence as a habitual offender in the absence of records attached conclusively refuting the claim. Vaughan v. State, 42 Fla. L. Weekly D964a (5th DCA 4/28/17)

POST CONVICTION RELIEF: Defendant made a sufficient claim for relief by alleging that his attorney was ineffective for failing to object imposition of costs of incarceration for which the Court failed to cite statutory authority. Hornstra v. State, 42 Fla. L. Weekly D963b (5th DCA 4/28/17)

HABEAS CORPUS-JURISDICTION: Jurisdiction for habeas corpus petition challenging the validity of the conviction or sentence lies with the courts that imposed the judgment and sentence. Baker v. DOC, 42 Fla. L. Weekly D962b (5th DCA 4/28/17)

TRIAL: Court erred by denying Defendant's request for a brief recess to secure a key witness. Cheremont v. State, 42 Fla. L. Weekly D961a (5th DCA 4/28/17)

HEARSAY: Court may allow a detective to testify as to a statement by the Defendant's son that he and the Defendant were responsible for the murder where the statement was consistent with the son's trial testimony and admitted to rebut the implication that he had an improper motive – the plea agreement – to fabricate. Tundidor v. State, 42 Fla. L. Weekly S507a (FLA 4/28/17)

ATTORNEY/CLIENT PRIVILEGE: The attorney client privilege is lost when the communication is made in the presence of a third party. Communications between codefendants and their counsel regarding issues

of their joint defense are still protected by privilege. Tundidor v. State, 42 Fla. L. Weekly S507a (FLA 4/28/17)

DEATH PENALTY: Any Hurst error in not correctly advising the jury is harmless given that the recommendation of death was unanimous. Tundidor v. State, 42 Fla. L. Weekly S507a (FLA 4/28/17)

JUROR: A comment by a single juror which does not reveal that the juror had knowledge of other homicides committed by the Defendant does not require that the entire jury panel be stricken. Morris v. State, 42 Fla. L. Weekly S502a (FLA 4/27/17)

DEATH PENALTY: Any Hurst error in not correctly advising the jury is harmless given that the recommendation of death was unanimous. Morris v. State, 42 Fla. L. Weekly S502a (FLA 4/27/17)

AMENDMENT-JURY INSTRUCTION: Amendment to jury instruction on false report to LEO, Unlawful use of communication device. In re : Jury Instructions, 42 Fla. L. Weekly S501a (FLA 4/27/17)

AMENDMENT-JURY INSTRUCTION: Amendment to jury instruction on drug cases. In re : Jury Instructions, 42 Fla. L. Weekly S500a (FLA 4/27/17)

JURY INSTRUCTION-MANSLAUGHTER: The failure to instruct the jury on justifiable or excusable homicide for manslaughter is fundamental error unless the Defendant expressly concedes that the homicides were not justified or excusable. State v. Spencer, 42 Fla. L. Weekly S494a (FLA 4/27/17)

JURY PARDON: "Once again, the jury pardon doctrine rears its ugly head. I would recede from State v. Lucas,. . .– a flawed opinion rooted in the inherent lawlessness of the jury pardon doctrine. State v. Spencer, 42 Fla. L. Weekly S494a (FLA 4/27/17)

DEATH PENALTY: Hurst violation where death recommendation is 9-3. Altersberger v. State, 42 Fla. L. Weekly S490b (FLA 4/27/17)

JUVENILES-VIOLATION OF CURFEW: Court may not order juvenile detained for five days for violating curfew. Court must follow indirect contempt procedures. A.P. v. State, 42 Fla. L. Weekly D963a (5th DCA 4/27/17)

SECOND DEGREE MURDER-RECLASSIFICATION: Second degree murder cannot be reclassified to a life felony based on possession of a deadly weapon where evidence did not support the finding that he possessed a deadly weapon, notwithstanding jury finding. The statement by one witness to police that the Defendant carried a stick was impeachment, not substantive evidence. Castillo v. State, 42 Fla. L. Weekly D954a (3rd DCA 4/26/17)

APPEALS-JURISDICTION: Defendant's untimely motion for rehearing does not toll the time to file appeal. Watkins v. State, 42 Fla. L. Weekly D953a (3rd DCA 4/26/17)

PUBLIC RECORDS: Court may deny media access to pretrial discovery and may close hearings in high-profile case. Miami Herald Media, 42 Fla. L. Weekly D950a (3rd DCA 4/26/17)

DISQUALIFICATION: Judge's stated policy of sua sponte releasing a defendant on recognizance or de minimus bond if state does not file an information by the twenty-first day after the arrest of defendant is valid basis for disqualification of judge. Motion to disqualify judge may rely on judge's announcement of his policy in other cases in order to establish a well-founded fear that the judge will not be impartial. State v. Dixon, 42 Fla. L. Weekly D945a(3rd DCA 4/26/17)

POST CONVICTION RELIEF: Claim that plea was based upon misadvice regarding deportation consequences given by person posing as immigration attorney is facially sufficient. Rila v. State, 42 Fla. L. Weekly D940a (4th DCA 4/26/17)

DISCHARGE OF COUNSEL: Court did not abuse its discretion by denying defendant a more extensive Nelson inquiry where defendant's complaints were raised after trial and consisted of generalized dissatisfaction with strategy. Morris v. State, 42 Fla. L. Weekly D937a (4th DCA 4/26/17)

RULE OF COMPLETENESS: Rule of completeness did not compel admission of defendant's exculpatory post-arrest station house statement after state introduced tape of a controlled phone call between minor victim of sexual offense and defendant that was made earlier the same day. Carter v. State, 42 Fla. L. Weekly D935b (4th DCA 4/26/17)

DIRECT FILE-JUVENILE: Statute authorizing adult sanctions for juveniles charged as adults, listing factors to be considered by trial courts, is presumed appropriate. Court is not required to set forth specific findings or enumerate criteria on which decision is based. Mendoza-Magadan v. State, 42 Fla. L. Weekly D935a (4th DCA 4/26/17)

COSTS: Court cannot assess $15,000 public defender fee without informing Defendant of right to object. Carillo v. State, 42 Fla. L. Weekly D933b (2nd DCA 4/26/17)

JUVENILE-SENTENCING: Court may not commit juvenile to maximum-risk program where he does not meet criterion. T.B. v. State, 42 Fla. L. Weekly D931a (1st DCA 424/17)

UPWARD DEPARTURE: Judge, not jury, may decide whether Defendant is a danger to the public, warranting an upward departure for a homeless woman stealing food for her four children. Extensive discussion, en banc. Woods v. State, 42 Fla. L. Weekly D921a (1st DCA 3/24/17)

PROBATION REVOCATION-SPLIT SENTENCE: Where Defendant received a true split sentence Court must sentence him to no more than the term of incarceration suspended from the original split sentence upon revocation of probation. Harris v. State, 42 Fla. L. Weekly D916c (5th DCA 4/21/17)

APPELLATE COUNSEL-INEFFECTIVE: Appellate counsel was ineffective for not arguing that the illegal general sentence exceeded the statutory maximum. Munoz v. State, 42 Fla. L. Weekly D915a (5th DCA 4/21/17)

POST CONVICTION RELIEF: Court erred by summarily denying claim of newly discovered evidence (new science article that the injury is consistent with medical causes unrelated to abuse) as untimely where record does not show that was untimely; further Court improperly relied upon evidence outside the record. An evidentiary hearing is required. Duncan v. State, 42 Fla. L. Weekly D914a (2nd DCA 4/21/17)

POST CONVICTION RELIEF-DEPORTATION: Court erred by summarily denying the claim that counsel was ineffective for misadvising Defendant about deportation consequences of guilty plea. Advising the Defendant that "if you are not a U.S. citizen you are subject to deportation," does not cure any prejudice from counsel's misadvice. Goddard v. State, 42 Fla. L. Weekly D912a (2nd DCA 4/21/17)

DEATH PENALTY: Because Defendant's death sentence was final on appeal before Ring v. Arizona, defendant is not entitled to relief under Hurst. Rodriguez v. State, 42 Fla. L. Weekly S483a (FLA 4/20/17)

POST CONVICTION RELIEF-DEATH PENALTY: "Counsel cannot be considered deficient for failing to do what he actually did." and "Trial counsel cannot be deemed ineffective for failing to raise a meritless objection." Banks v. State, 42 Fla. L. Weekly S479a (FLA 4/20/17)

DEATH PENALTY: New sentencing hearing is required where the recommendation of death was not unanimous (10-2 vote). Banks v. State, 42 Fla. L. Weekly S479a (FLA 4/20/17)

DEATH PENALTY: New sentencing hearing is required where the recommendation of death was not unanimous (10-2 vote). Brookins v. State, 42 Fla. L. Weekly S475a (FLA 4/20/17)

OPENING THE DOOR: Defendant who stabbed a fellow inmate to death on the bus opened the door to previous incident when he hid a shank in his clothing by denying that he knew how to hide the shank. Brookins v. State, 42 Fla. L. Weekly S475a (FLA 4/20/17)

COMMENT ON SILENCE: It is not an improper comment on the Defendant's exercise of the right to remain silent by asking why he did not tell his original story to the police, when on direct he had talked about why he kept silent so that he would not be considered a snitch. A defendant cannot testify to a motive for keeping the alleged actual killer's identity a secret and then use his right to silence to shield that motive from attack on cross-examination. Brookins v. State, 42 Fla. L. Weekly S475a (FLA 4/20/17)

LIFE SENTENCE-JUVENILE-NON-HOMICIDE: Juvenile nonhomicide offenders are entitled to sentences that provide a meaningful opportunity for early release based on demonstrated maturity and rehabilitation during their natural lifetimes and that gain time fails to meet those requirements. 100-year sentence, even with gain time exceeds defendant's life expectancy, and so the sentence is unconstitutional as applied to the juvenile defendant convicted of a nonhomicide offense. Johnson v. State, 42 Fla. L. Weekly S470a (FLA 4/20/17)

CONSTITUTION-AMENDMENT-VOTING RESTORATION: nProposed amendment relating to restoration of voting rights to convicted felons qualifies for ballot. Proposed amendment allows felons to vote after sentence, including probation is completed. Murderers and sex offenders are excluded. Advisory Opinion re-Voting Restoration Amendment, 42 Fla. L. Weekly S464a (FLA 4/20/17)

REIMBURSEMENT OF FINES AND RESTITUTION: When a criminal conviction is invalidated by a reviewing court and no retrial will occur, the State is obliged to refund fees, court costs, and restitution exacted from the defendant

upon, and as a consequence of, the conviction. Nelson v. Colorado, No. 151256 (U.S. S.Ct. 4/19/17)

https://www.supremecourt.gov/opinions/16pdf/15-1256_5i36.pdf

SENTENCING-DETERRENCE: Court may consider general deterrence as a sentencing factor. Chambers v. State, 42 Fla. L. Weekly D911a (4th DCA 4/19/17)

SENTENCING-SCORESHEET ERROR: Defendant is entitled to resentencing where there is a scoresheet error notwithstanding that the sentence imposed was well above the sentence the minimum sentence with or without the error. Chambers v. State, 42 Fla. L. Weekly D911a (4th DCA 4/19/17)

SEX OFFENDER PROBATION: Court may impose sex offender probation as a special condition of probation without stating the particular terms. Conflict certified. Levandoski v. State, 42 Fla. L. Weekly D910a (4th DCA 4/19/17)

PREDICATE ACTS: JOA is required when State fails to prove the Defendant directly participated in 2 or more predicate incidents. Rimless hub-and-spoke conspiracy. Defendant is not vicariously liable for predicate acts committed by others. Godinez v. State, 42 Fla. L. Weekly D907a (4th DCA 4/19/17)

GOOD FAITH INSTRUCTION: Counsel was ineffective for failing to request a good faith instruction after arguing a good faith defense. Ineffectiveness is cognizable on direct appeal because it is apparent from the face of the record. Hardman v. State, 42 Fla. L. Weekly D906b (4th DCA 4/19/17)

RESTITUTION: State's motion to order restitution filed 5 days after sentencing should have been granted. State v. Sandomeno, 42 Fla. L. Weekly D906a (4th DCA 4/19/17)

JUVENILES: A court cannot assess the teen court cost upon a juvenile unless the court has adjudicated the juvenile as delinquent. A county ordinance allowing for a court cost on a withheld adjudication of delinquency is invalid because an ordinance penalty may not exceed the penalty imposed by the state. F.F. v. State, 42 Fla. L. Weekly D905b (4th DCA 4/19/17)

APPEAL-DOWNWARD DEPARTURE: State may not appeal a downward departure where the only issue raised before the trial court was whether the court should depart from the guidelines not whether there was a valid basis for the departure. State v. Richardville, 42 Fla. L. Weekly D905a (4th DCA 4/19/17)

REPUTATION FOR VIOLENCE: Court properly excluded evidence of the victim's reputation for violence where Defendant did not assert self-defense. Styles v. State, 42 Fla. L. Weekly D904a (4th DCA 4/19/17)

TEXT MESSAGES: Text messages sent by defendant to victim, found in data extraction from victim's phone, were hearsay but, by introducing victim testimony that defendant had sent the message, the state established the statutory exception allowing admission of "party's own statement" for use against that party. Gayle v. State, 42 Fla. L. Weekly D902a (4th DCA 4/19/17)

HEARSAY: An Extraction Report is not hearsay because it is created by a machine and is not a "statement" made by a "declarant." Gayle v. State, 42 Fla. L. Weekly D902a (4th DCA 4/19/17)

SPEEDY TRIAL: Waiver of speedy trial is a waiver for all charges arising from that arrest including newly filed felony charges. McClover v. State, 42 Fla. L. Weekly D898d (4th DCA 4/19/17)

VINDICTIVENESS: Vindictiveness is presumed when State adds a new count (theft at a different Wal-Mart) after the defendant prevails on appeal. McClover v. State, 42 Fla. L. Weekly D898d (4th DCA 4/19/17)

ABANDONMENT: Retail theft includes the attempt to commit retail theft, and so abandonment is a defense. When an attempt is subsumed in the substantive crime, the defense of abandonment applies. Defendant who abandons her attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of her criminal purpose does not commit petit theft. . McClover v. State, 42 Fla. L. Weekly D898d (4th DCA 4/19/17)

CONTEMPT: Order finding direct contempt of court must include detailed factual findings. Y.C. v. State, 42 Fla. L. Weekly D892a (3rd DCA 4/19/17)

APPEALS-MITIGATION: Order denying Motion to mitigate is not reviewable by appeal. Lavers v. State, 42 Fla. L. Weekly D886a (2nd DCA 4/19/17)

CREDIT FOR TIME SERVED: Warrantless arrest for violation of probation may entitle defendant to jail credit even if defendant was arrested in a different county on a new law offense and held in that county's jail. Cox v. State, 42 Fla. L. Weekly D877c (1st DCA 4/18/17)

DEATH PENALTY: Death sentence violates Hurst where the jury recommendation of death was not unanimous. McMillian v. State, 42 Fla. L. Weekly S459a (FLA 4/13/17)

STATEMENT OF DEFENDANT: Where defendant has been arrested for attempted murder of law enforcement, and an attorney has been appointed for that case, Law enforcement investigators are not barred from interrogating the Defendant about the murder that the law enforcement officers were investigating when they were shot at. There is no ineffective assistance of counsel for not moving to file a motion to suppress since it was without merit. McMillian v. State, 42 Fla. L. Weekly S459a (FLA 4/13/17)

REDACTION: Counsel was not ineffective for failing to move to redact the Defendant's statements where, when placed in context, the interrogating officers' statements would correctly be interpreted as techniques of interrogation. McMillian v. State, 42 Fla. L. Weekly S459a (FLA 4/13/17)

IDENTIFICATION: As a general rule, members of the victim's family should not identify a murder victim at trial where nonrelated, credible witnesses are available to make the identification. McMillian v. State, 42 Fla. L. Weekly S459a (FLA 4/13/17)

TELEPHONE RECORDS: Non-experts may testify about phone records, cell site maps, and cell phone records. McMillian v. State, 42 Fla. L. Weekly S459a (FLA 4/13/17)

COSTS: Special statutory court costs for battery, sex offenses, and domestic violence (are assessed per count not per case (§§938.085, 938.08, AND 938.10). McNeil v. State, 42 Fla. L. Weekly S453a (FLA 4/13/17)

APPEALS-DISPOSITIVENESS: Stipulations of dispositiveness are binding on the appellate court. Churchill v. State, 42 Fla. L. Weekly S451b (FLA 4/13/17)

AMENDMENTS-JURY INSTRUCTIONS-BRIBERY: In re – Standard Jury Instructions, 42 Fla. L. Weekly S450a (FLA 4/13/17)

AMENDMENTS-JURY INSTRUCTIONS-CAPITAL CASES: New jury instructions in light of Hurst requiring a unanimous recommendation of death, and specific findings as to aggravating circumstances. In re : Standard Jury Instructions, 42 Fla. L. Weekly S449a (FLA 4/13/17)

AMENDMENTS-RULES REGULATING THE FLORIDA BAR: Certified Legal Interns must pass a Level II background investigation. In re-Amendments, 42 Fla. L. Weekly S442a (FLA 4/13/17)

POST CONVICTION RELIEF: Failure to obtain surveillance video which would have shown that the defendant was not the shooter is sufficient to require an evidentiary area hearing or attachment of record showing no entitlement to relief. Long v. State, 42 Fla. L. Weekly D869b (1st DCA 4/13/17)

SENTENCE-JUVENILE: 35 years imprisonment for offenses committed by juvenile does not violate Graham or Miller, and Defendant is not entitled to resentencing under new juvenile sentencing framework. Davis v. State, 42 Fla. L. Weekly D869a (1st DCA 4/13/17)

SENTENCING: Court may structure sentences for multiple counts so that the aggregate sentence of one year in jail would be completed before probation begins. Bell v. State, 42 Fla. L. Weekly D864a (5th DCA 4/13/17)

SENTENCING: Court may not order Defendant convicted of dogfighting to make a contribution to the American Society for Prevention of Cruelty to Animals. Bell v. State, 42 Fla. L. Weekly D864a (5th DCA 4/13/17)

POST CONVICTION RELIEF: Defendant is entitled to a hearing on claim that counsel was ineffective for failing to will challenge wiretap will based on an insufficient probable cause affidavit, and that if the motion had been granted he would not have pled guilty. Hampton v. State, 42 Fla. L. Weekly D861b (5th DCA 4/13/17

POST CONVICTION RELIEF: Claim that counsel was ineffective for failing to prepare a defense expert witness is sufficient to require an evidentiary hearing unless records are attached conclusively refuting the claim. Newton v. State, 42 Fla. L. Weekly D861a (5th DCA 4/13/17)

COMPETENCY: Where defendant had been adjudicated incompetent, Court may not accept guilty plea without reading expert reports or making written order finding defendant competent. The defendant and the other parties may not stipulate to competency. Rumph v. State, 42 Fla. L. Weekly D860a (5th DCA 4/13/17)

APPEALS: Court lacks jurisdiction to deny motion to amend where the amendment related to an original motion for post-conviction relief which was being reviewed on appeal at the time. Black v. State, 42 Fla. L. Weekly D858a (5th DCA 4/13/17)

PROBATION REVOCATION-JURISDICTION: Court erred by dismissing warrant for violation of probation on grounds of lack of jurisdiction without addressing whether Defendant had absconded, which would toll the probationary period. State v. Hicks, 42 Fla. L. Weekly D856b (4th DCA 4/12/17)

BAKER ACT: Petitioner is entitled to immediate release where the record did not contain clear and convincing evidence that he was a danger to himself or others. C.W. v. State, 42 Fla. L. Weekly D851a (5th DCA 4/12/17)

JUVENILES-COMMITMENT LEVEL: Court may not commit juvenile to a high risk program over DJJ'S less harsh recommendation without justifying the deviation. A.V. v. State, 42 Fla. L. Weekly D840e (2nd DCA 4/12/17)

SEXUALLY VIOLENT PREDATORS: Court is authorized deny petition for release from civil commitment based on conflict thing testimony at a limited hearing as to whether conditions had changed. Barron v. State, 42 Fla. L. Weekly D838a (3rd DCA 4/12/17)

JURY INSTRUCTIONS-LESSER INCLUDED-MANSLAUGHTER: Giving of erroneous jury instruction on manslaughter by act as lesser included offense of second degree murder did not constitute fundamental error where jury was also instructed on manslaughter by culpable negligence. Walters v. State, 42 Fla. L. Weekly D832a (3rd DCA 4/12/17)

INDEPENDENT ACT: Court is not required to give instruction on the independentc act doctrine with there is no evidence to support the theory that the Defendant was part of a plan to scare the victim or that codefendant deviated from the plan by shooting him. Simon v. State, 42 Fla. L. Weekly D823a (4th DCA 4/12/17)

STATEMENTS OF DEFENDANT: Defendant's statement is not suppressible where Defendant invoked right to remain silent but later reinitiated communication with the detective. Simon v. State, 42 Fla. L. Weekly D823a (4th DCA 4/12/17)

STATEMENTS OF DEFENDANT: Where officers give Miranda warnings at police station before the Defendant is in custody and the interrogation then becomes confrontational to the point of being custodial, officers are not required to re-administer Miranda. Day v. State, 42 Fla. L. Weekly D819a (4th DCA 4/12/17)

RESTITUTION: Court may not base amount of restitution solely on objected to hearsay testimony. Williams v. State, 42 Fla. L. Weekly D810b (1st DCA 4/11/17)

VOIR DIRE: Court erred by barring defense counsel from questioning prospective jurors on their attitudes on interracial crime in the case of a black defendant charged with murdering a white victim. Jones v. State, 42 Fla. L. Weekly D813b (4th DCA 4/12/17)

RESTITUTION-HEARSAY: Repair estimate is inadmissible hearsay for purpose of showing the cost of repairing the victim's car bumper. A.J.A. v. State, 42 Fla. L. Weekly D802a (5th DCA 4/7/17)

EVIDENCE-VOICE IDENTIFICATION: Opinion testimony identifying the Defendant's voice on recordings by officers who had only one short in person conversation with him is admissible. Johnson v. State, 42 Fla. L. Weekly D797b (5th DCA 4/7/17)

APPELLATE COUNSEL: Appellate counsel was ineffective for failing to raise issue that trial court improperly denied defendant's rule 3.850 motions for post conviction relief while motion to withdraw plea was pending. Williams v. State, 42 Fla. L. Weekly D797a (5th DCA 4/7/17)

POST CONVICTION RELIEF: Defendant is entitled to hearing on claim that counsel misadvised him that the court had agreed to reinstate his probation if he entered an open plea. Lamkin v. State, 42 Fla. L. Weekly D796c (5th DCA 4/7/17)

LESSER INCLUDED: State is not entitled to a jury instruction on attempted felony murder when only attempted murder is charged in the information does not allege the elements of attempted felony murder. Weatherspoon v. State, 42 Fla. L. Weekly S405a (FLA 4/6/17)

HABITUAL VIOLENT FELONY OFFENDER: Enhanced and mandatory minimum penalties for life felonies were not permitted at the time the Defendant was convicted of attempted first-degree murder. Flanders v. State, 42 Fla. L. Weekly D792d (3rd DCA 4/6/17)

HEARSAY: No judgment shall be set aside or reversed on the ground of the improper admission or rejection of evidence unless the error complained of has resulted in a miscarriage of justice. Rodriguez v. State, 42 Fla. L. Weekly D789a (3rd DCA 4/5/17)

FORFEITURE-ADVERSARIAL PROBABLE CAUSE HEARING: Court erred in finding probable cause linking funds recovered in home to criminal activity without definitively ruling on the criminal defendant's father's standing to challenge forfeiture of portion of currency he claimed belonged to him and without addressing father's motions to disclose confidential informant and to suppress evidence found in home and statements made by the defendant. Toussaint v. City of Fort Lauderdale, 42 Fla. L. Weekly D786a (4th DCA 4/5/17)

COSTS: Error to impose crime lab costs and public defender costs in excess of statute without informing Defendant of right to contest the amounts. Taylor v. State, 42 Fla. L. Weekly D781a (4th DCA 4/5/17)

GUIDELINES-DEPARTURE: Court erred in sentencing Defendant to prison on VOP where Defendant violated with technical violations and 4 counts of sexual battery, no evidence was submitted at the hearing of the sexual batteries, and the scoresheet called for nonstate prison sanction. The Court did not make finding sufficientlyee establishing a nexus between the Defendant and danger to the public. McCarthy v. State, 42 Fla. L. Weekly D775b (2nd DCA 4/5/17)

CONTEMPT: Juvenile charged with contempt may be placed in secure detention for no more than 5 days for her 1st offense and no more than 15 days for subsequent offenses. C.R.T. v. State, 42 Fla. L. Weekly D793a (5th DCA 4/4/17)

10-20-LIFE-APPRENDI: Technical defects in an information are no longer structural constituting per se reversible error under Apprendi. Discrepancy between "injury" and "serious injury" in information and statute do not make any Apprendi error an illegal sentence. Robinson v. State, 42 Fla. L. Weekly D758b (1st DCA 4/4/17)

CONVICTION RELIEF: Error to summarily deny claim that counsel was ineffective for misrepresenting that all discovery responses had been received and were not beneficial to defense, and that such misrepresentation induced defendant to enter plea. Farley v. State, 42 Fla. L. Weekly D757c (1st DCA 4/4/17)

SENTENCING: A court imposing a sentence on one count of conviction may consider sentences imposed on other counts. Whether the sentence for the predicate offense is one day or one decade, a district court does not violate the terms of §924(c) so long as it imposes the mandatory minimum "in addition to" the sentence for the violent or drug trafficking crime. Dean v. United States, No. 15-9260 (US S. Ct. 4/3/17)

https://www.supremecourt.gov/opinions/16pdf/15-9260_8nj9.pdf

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SEARCH AND SEIZURE-CONSENSUAL ENCOUNTER: Where officers knocked on Defendant's door, Defendant slammed the door, officers followed Defendant because they smelled marijuana in his apartment, and confronted him in a fast food drive-through, the encounter is not a consensual encounter. A reasonable person would not feel free to leave. Evidence properly suppressed. State v. Beans, 42 Fla. L. Weekly D750a (5th DCA 3/31/17)

SENTENCING: Where the time of the offense spans 2 different sets of guidelines, the Defendant is entitled to be sentence under that which provides the lightest sentence. Defendant sentenced for capital sexual battery is entitled to parole after 25 years because the date of this offense spans a period with and without possibility of parole. Seeley v. State, 42 Fla. L. Weekly D748d (5th DCA 3/31/17)

RESTITUTION-VALUE OF STOLEN PROPERTY: A mere guesstimate of value does not support a restitution order. Victim's testimony at restitution hearing provided sufficient evidentiary basis for value on foreign currency ranging from a minimum of $2000 to a maximum of $3600, but did not support trial court's finding that juvenile stole $5000 in foreign currency. J.J. v. State, 42 Fla. L. Weekly D748c (5th DCA 3/31/17)

COMPETENCY: Court must enter a written order finding the juvenile competent to proceed if the child has previously been found incompetent. Oral finding is insufficient. T. M. v. State, 42 Fla. L. Weekly D748b (5th DCA 3/31/17)

RECLASSIFICATION: Court may not reclassify conviction for aggravated battery with a deadly weapon to a first-degree felony where it is not clear whether conviction was based on the weapon being deadly or the degree of harm. Aggravated battery using a deadly weapon is not enhanceable because use of a deadly weapon is an essential element of the crime. Perez-Flores v. State, 42 Fla. L. Weekly D748a (5th DCA 3/31/17)

POST CONVICTION RELIEF: Court erred in vacating convictions where counsel's ineffectiveness did not concern those convictions. State v. Anderson, 42 Fla. L. Weekly D746b (5th DCA 3/31/17)

SEARCH AND SEIZURE-WARRANT-RESIDENCE: There is probable cause sufficient for a search warrant the apartment when the Defendant drove from his apartment to meet undercover officers to deliver cocaine at a nearby IHOP. State v. Hayward, 42 Fla. L. Weekly D744a (5th DCA 3/31/17)

DISQUALIFICATION-TIMELINESS: Motion to disqualify judge is timely when not made within 10 days of the statements made by the judge, but was filed within 10 days after the judge was reassigned the case. State v. Gresham, 42 Fla. L. Weekly D743c (5th DCA 3/31/17)

RULE OF SEQUESTRATION: Court did not abuse its discretion by denying motion for mistrial where victim interacted with family members during break in victim's testimony. Defendant failed to show that the change in testimony was the result of what was said during that interaction. Heady v. State, 42 Fla. L. Weekly D740c (1st DCA 3/31/17)

DOUBLE JEOPARDY: Separate convictions and sentences for use of computer service to solicit person believed to be parent of child to engage in unlawful sexual conduct with person believed to be a child and for traveling for purpose of engaging in unlawful sexual conduct with person believed to be child were barred by double jeopardy principles. State v. Murphy, 42 Fla. L. Weekly D739c (1st DCA 3/31/17)

LIFE SENTENCE-JUVENILE-NONHOMICIDE: A juvenile's sentence to a term of years with parole eligibility can violate the Eighth Amendment. 99-year prison terms with parole eligibility for crimes committed by juvenile were unconstitutional. Marshall v. State, 42 Fla. L. Weekly D738a (2nd DCA 3/31/17)

LIFE SENTENCE-JUVENILE-NONHOMICIDE: Defendant who was sentenced to concurrent terms of life imprisonment with eligibility for parole for offenses committed when he was a juvenile is entitled to resentencing in conformance with recently enacted sentencing review statutes. Davis v. State, 42 Fla. L. Weekly D737b (2nd DCA 3/31/17)

PROBATION REVOCATION: Because probation was tolled while he absconded, Defendant in not entitled to credit for time served on probation previously. Jacoby v. State, 42 Fla. L. Weekly D736a (2nd DCA 3/31/17)

CREDIT FOR TIME SERVED: Where defendant is sentenced to prison followed by probation, earns gain time for early release, and subsequently violated probation, he is entitled to credit for time served only for the time served in prison, not the sentence originally imposed. Jacoby v. State, 42 Fla. L. Weekly D736a (2nd DCA 3/31/17)

HEARSAY-EXCEPTIONS: Deputy's testimony regarding victim's description of defendant is not admissible as an excited utterance. Second deputy's testimony regarding description of defendant he received in a BOLO was double hearsay and was erroneously admitted. Livingston v. State, 42 Fla. L. Weekly D731a (2nd DCA 3/31/17)

CIRCUMSTANTIAL EVIDENCE: Circumstantial evidence that an angry lover killed the victim is sufficiently rebutted by evidence that the Defendant stole a victim's phone, his and her phones were found at the crime scene, his palm print was found in her blood at the crime scene and he had washed in bleach. White v. State, 42 Fla. L. Weekly S400a (FLA 3/30/17)

DEATH PENALTY: Death penalty is reversed where the recommendation of death was by a vote of 8-4 and the jury made no factual findings. White v. State, 42 Fla. L. Weekly S400a (FLA 3/30/17)

DEATH PENALTY: Defendant is entitled to a new sentencing proceeding pursuant to Hurst where the jury recommendation of death was not unanimous. Orme v. State, 42 Fla. L. Weekly S394a (FLA 3/30/17)

VOIR DIRE-INDIVIDUAL: Any error in not permitting defense to ask individual jurors whether they could be open to mitigation was harmless. Bradley v. State, 42 Fla. L. Weekly S391a (FLA 3/30/17)

EVIDENCE: One-time reference to officers job specialty as a "high risk specialty officer" was not so prejudicial as to vitiate the entire trial. Bradley v. State, 42 Fla. L. Weekly S391a (FLA 3/30/17)

IMPEACHMENT: Any error in allowing state to impeach its own witness was harmless where the witness gave testimony favorable to the state and was not called merely to impeach him and where events in question were preserved on dashcam. Bradley v. State, 42 Fla. L. Weekly S391a (FLA 3/30/17)

OBJECTIONS: An objection is properly preserved if made shortly after the comment even though not exactly contemporaneously. An objection need not always be made at the moment an examination enters impermissible areas inquiry. Bradley v. State, 42 Fla. L. Weekly S391a (FLA 3/30/17)

DEATH PENALTY: Defendant is entitled to a new sentencing proceeding pursuant to Hurst where the jury recommendation of death was not unanimous. Bradley v. State, 42 Fla. L. Weekly S391a (FLA 3/30/17)

MURDER-MANSLAUGHTER-JURY INSTRUCTION: Erroneous manslaughter by act instruction is not fundamental error in all cases. Where the defendant was charged with first-degree murder, convicted of second-degree murder, and jury was correctly instructed on manslaughter by culpable negligence as an alternative to second-degree murder, the erroneous manslaughter by act instruction was cured. Extensive discussion. State v. Dominique, 42 Fla. L. Weekly S386b (FLA 3/30/17)

COSTS: Due Process requires that the Court individually pronounce discretionary fees, costs and fines. Osterhoudt v. State, 42 Fla. L. Weekly S386a (FLA 3/30/17)

ATTEMPTED SECOND DEGREE MURDER OF LEO: Enhancement of attempted second-degree murder of a law enforcement officer is a reclassification statute that creates a substantive criminal offense and therefore knowledge of the victim was a law enforcement officer is an essential element. Because 782.065 creates a separate substantive offense the case is remanded for a new trial rather than re-sentencing on a lesser offense. The Standard Jury Instructions should be amended to treat the crime of Murder or Attempted Murder of a Law Enforcement Officer in a manner similar to Assault or Battery on a Law Enforcement Officer. Ramroop v. State, 42 Fla. L. Weekly S381a (FLA 3/30/17)

LIFE IMPRISONMENT-JUVENILE: 155 years in prison with parole for a juvenile is the equivalent of a life sentence and must be vacated. Yero v. State, 42 Fla. L. Weekly D730b (3rd DCA 3/29/17)

APPEALS: Court lacks jurisdiction to enter a new sentencing order to conform to the released opinion but before the appellate mandate has been issued. Jimenez v. State, 42 Fla. L. Weekly D721a (3rd DCA 3/29/17)

SEARCH AND SEIZURE: Defendant has a reasonable expectation of privacy in information retained by an event data recorder ("black box") located in his impounded vehicle. State v. Worsham, 42 Fla. L. Weekly D711c (4th DCA 3/29/17)

QUOTATION: "'A yaw rotation is a movement around the yaw axis of a rigid body that changes the direction it is pointing, to the left or right of its

direction of motion. The yaw rate or yaw velocity of a car, aircraft, projectile or other rigid body is the angular velocity of this rotation.' . . .Yes, I also didn't know what this was." State v. Worsham, 42 Fla. L. Weekly D711c (4th DCA 3/29/17)

SENTENCING: Sentence of ten years in prison followed by ten years of probation exceeded 15-year statutory maximum for sexual battery. Jones v. State, 42 Fla. L. Weekly D711b (4th DCA 3/29/17)

RULE OF COMPLETENESS: Court did not abuse discretion in allowing the jury to hear the 911 recording in which the defendant accuses the victim of attacking him and refers to the victim's prior criminal history but which omitted references to the victim's prior bad acts, because the redaction did not create a misleading impression. Schwartzberg v. State, 42 Fla. L. Weekly D708b (4th DCA 3/29/17)

DOUBLE JEOPARDY: There is no double jeopardy violation for 2 battery convictions from the same episode where the convictions were based on distinct acts. Schwartzberg v. State, 42 Fla. L. Weekly D708b (4th DCA 3/29/17)

SENTENCING-CONSIDERATION: Court erred in considering uncharged misconduct that occurred after the charged crime in sentencing the defendant. Resentencing will occur with a different judge. Schwartzberg v. State, 42 Fla. L. Weekly D708b (4th DCA 3/29/17)

PROBATION-TOLLING: Where the VOP affidavit and warrant both charged defendant with absconding, and at the relevant hearing the state highlighted the absconding charge, these actions were sufficient to bring the issue to the court's attention, and the probationary period was tolled until defendant

was returned to supervision. State v. Capeletti, 42 Fla. L. Weekly D708a (4th DCA 3/29/17)

DEATH PENALTY-INTELLECTUAL DISABILITY: Eighth Amendment bars courts from disregarding current medical standards in order to ignore Defendant's intellectual disability in imposing the death penalty. Moore v. Texas, No. 15-797 (US S.Ct.3/28/17)

https://www.supremecourt.gov/opinions/16pdf/15-797_n7io.pdf

SENTENCING-HOMICIDE-JUVENILE: Court is not required to have jury determine whether defendant killed, intended to kill, or attempted to kill victim. Question certified as to whether Alleyne applies. Leppert v. State, 42 Fla. L. Weekly D702c (5th DCA 3/27/16)

COSTS: Error to impose "Sheriff's Office Investigative Cost" fee where state did not request this fee on the record, nor when discretionary fines and surcharges were not orally pronounced. Moinette v. State, 42 Fla. L. Weekly D702a (1st DCA 3/27/17)

ARGUMENT-PRESERVATION: Claim that defendant was deprived of fair trial as result of argument comparing defendant and codefendants to "a pack of wolves" was not preserved for appeal by objection, and isolated comment did not rise to level of fundamental error. Williams v. State, 42 Fla. L. Weekly D701a (1st DCA 3/27/17)

PROBATION REVOCATION: Fundamental error to revoke probation for failure to complete community service hours where order had set future date to complete hours. Gozia v. State, 42 Fla. L. Weekly D698e (1st DCA 3/24/17)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Failure to raise claim that trial court erred by not renewing offer of counsel at probation revocation sentencing. Defendant waived counsel the beginning of the hearing but Court failed to renew offer before sentencing. Williams v. State, 42 Fla. L. Weekly D696b (5th DCA 3/24/17)

POST CONVICTION RELIEF: Indigent defendant is entitled to court-appointed counsel to assist in preparation of motion to withdraw plea. Hart v. State, 42 Fla. L. Weekly D696a (5th DCA 3/24/17)

POST CONVICTION RELIEF: Defendant should have been given opportunity to amend his claim that counsel was ineffective for not filing a motion to disqualify judge where he alleged deficient performance but failed to allege prejudice. Wheeler v. State, 42 Fla. L. Weekly D695a (5th DCA 3/24/17)

DEATH PENALTY: Imposition of death penalty on basis on non-unanimous recommendation is unlawful. Baker v. State, 42 Fla. L. Weekly S375a (FLA 2/24/17)

JURORS: Defendant is not entitled to 6 peremptory charges for each count in the indictment. Jackson v. State, 42 Fla. L. Weekly S361a (FLA 3/23/17)

CHALLENGE FOR CAUSE: Court did not err by denying challenge for cause in a murder case of a juror who had a family member murdered but who unequivocally and repeatedly indicated that she would endeavor to be a fair and impartial juror. Jackson v. State, 42 Fla. L. Weekly S361a (FLA 3/23/17)

MISTRIAL: No error to deny motion for mistrial where witness made a passing allusion to the Defendant being released in violation of order in limine about no mention of Defendant's past record. Jackson v. State, 42 Fla. L. Weekly S361a (FLA 3/23/17)

DEATH PENALTY: Florida's sentencing scheme, which requires the judge alone to find the existence of an aggravating circumstance, is unconstitutional. Jackson v. State, 42 Fla. L. Weekly S361a (FLA 3/23/17)

DEATH PENALTY: Imposition of death penalty violates decision of U.S. Supreme Court in Hurst v. Florida where jury's recommendation of sentence of death was nonunanimous. Deviney v. State, 42 Fla. L. Weekly S355a (FLA 3/23/17)

DOWNWARD DEPARTURE: Downward departure based on defendant's need for specialized treatment for mental disorder was valid reason for departure. State v. Wiley, 42 Fla. L. Weekly D690c (1st DCA 3/23/17)

CONSECUTIVE SENTENCES: Consecutive sentences are permissible but not required for possession of firearm by a felon and attempted second-degree murder. Burns v. State, 42 Fla. L. Weekly D690b (1st DCA 3/23/17)

SCORESHEET: Court must not include on scoresheet offenses any offenses for which the defendant sentenced as a prison releasee were offender. It is error to include multiplier for law enforcement protection to scoresheet for possession of cocaine, since the multiplier is only for an offense which should not be on the scoresheet. Sheffield v. State, 42 Fla. L. Weekly D689d (1st DCA 3/23/17)

SECOND DEGREE MURDER-LESSER: Appellate counsel was ineffective for failing to keep Appellant's conviction from becoming final by asking this court to amend its per curiam decision by including a citation to relevant cases and filing for discretionary review in the Supreme Court, which would have made this a pipeline case. Kerney v. State, 42 Fla. L. Weekly D687a (3rd DCA 3/22/17)

DOUBLE JEOPARDY: Court erred by dismissing counts based on double jeopardy where evidence established temporal and spatial distinctions among the criminal acts of lewd and lascivious conduct. Brugal v. State, 42 Fla. L. Weekly D685b (3rd DCA 3/22/17)

EVIDENCE: Court did not abuse discretion in allowing testimony that the defendant had a gun on the bed posed during the lewd and lascivious acts because it established the subjective fear of the Victim and her delay in reporting the offense. Brugal v. State, 42 Fla. L. Weekly D685b (3rd DCA 3/22/17)

WITHDRAWAL OF PLEA: Court is not required to hold an evidentiary hearing where the record conclusively shows that the defendant is not entitled to relief. Williams v. State, 42 Fla. L. Weekly D685a (3rd DCA 3/22/17) http://www.3dca.flcourts.org/Opinions/3D15-2618.pdf

POST CONVICTION RELIEF: Defendant who was convicted of second degree murder after jury was given erroneous instruction on manslaughter as a lesser included offense is entitled to a new trial. State v. Guerra, 42 Fla. L. Weekly D684a (3rd DCA 3/22/17)

JUVENILES-SENTENCING: Court may not depart from DJJ's recommendation of supervised probation for solicitation to commit murder

without detailed reasons why recommendation is inappropriate. D.V. v. State, 42 Fla. L. Weekly D669c (4th DCA 3/22/17)

APPELLATE COURT TICKED OFF: "In the end, the trial judge imposed a sentence contrary to the notion of juvenile justice set forth in the Florida Statutes and described by the United States and Florida Supreme Courts. . .For the act of writing the note signed by the child's friend, the trial court sentenced the child, who had no previous delinquency incidents, to a maximum risk residential program. . . . Here, the trial judge focused excessively on the characterization of the crime, which sounds worse than the details of its execution. . . Our reversal is not a green light to impose some other level of commitment; by serving the sentence imposed, the child has overpaid his debt to Florida. The case is remanded to the circuit court for the imposition of a sentence of time served." D.V. v. State, 42 Fla. L. Weekly D669c (4th DCA 3/22/17)

DOUBLE JEOPARDY: Where defendant enters into a plea agreement to charges which would otherwise be barred by double Jeopardy, he is not entitled to reversal of the lesser offense. Kidder v. State, 42 Fla. L. Weekly D669a (2nd DCA 3/22/17)

SECOND DEGREE MURDER: Evidence is sufficient to establish depraved mind and imminently dangerous conduct supporting a conviction for second degree murder for punching an unconscious victim. Starks v. State, 42 Fla. L. Weekly D665a (2nd DCA 3/22/17)

APPEALS: Appellate court cannot address issues raised on appeal that had not been raised in the Rule 3.800(a) motion. Aponte v. State, 42 Fla. L. Weekly D652a (2nd DCA 3/17/17)

COMPETENCY: Court must enter written order of competency, rather than relying on the parties' stipulation alone. Arnold v. State, 42 Fla. L. Weekly D647a (2nd DCA 3/17/17)

POST CONVICTION RELIEF: A claim of ineffective assistance of counsel for failing to object to a sleeping juror ordinarily requires an evidentiary area hearing. Rosado v. State, 42 Fla. L. Weekly D645a (5th DCA 3/17/17)

APPEAL-SCIENTIFIC EVIDENCE: Adoption of the Daubert standard does not change the rule that certiorari review is not available to challenge pretrial exclusion of expert witness. Rhoades v. Rodriguez, 42 Fla. L. Weekly D644c (5th DCA 3/17/17)

POST CONVICTION RELIEF: Defendant may not raise under Rule 3.800 claim that aggravated assault was not a qualifying offense for purpose of sentencing defendant as 3-time violent felony offender. McNair v. State, 42 Fla. L. Weekly D644b (5th DCA 3/17/17)

POST CONVICTION RELIEF: Error to summarily deny claim that sentence for attempted armed robbery exceeded statutory maximum because trial court misclassified conviction as a first-degree felony. White v. State, 42 Fla. L. Weekly D644a (5th DCA 3/17/17)

RESTITUTION: Court may not include in restitution items that were not listed in the petition, plea agreement predisposition report or discovery. J.D. v. State, 42 Fla. L. Weekly D643a (5th DCA 3/17/17)

POST CONVICTION RELIEF: Court erred by summarily denying the claim that defendant's decision not to testify was due to misadvice by counsel that he could be impeached with the specific nature of his prior convictions. Joseph v. State, 42 Fla. L. Weekly D642b (5th DC 3/17/17)

DOUBLE JEOPARDY: Separate convictions for simple battery and aggravated battery arising from single criminal episode violated prohibition against double jeopardy. Munoz v. State, 42 Fla. L. Weekly D642a (5th DCA 3/17/17)

HIV-SEXUAL INTERCOURSE: "Sexual intercourse" as used in §384.24(2) includes oral and anal intercourse between two men. Debaun v. State, 42 Fla. L. Weekly S322a (FLA 3/16/17)

ARGUMENT: Golden Rule violation to argue, in describing strangulation death, "Everybody on this jury has been swimming before, I presume, or has been underwater before where you get to that point where you're losing breath and you need to get to the surface. And you get that heavy feeling in your chest. And it feels so good when you get up to the surface and finally get a breath of fresh air." Improper argument was not fundamental; contemporaneous objection was required. "[Ou]r affirmance of the convictions in no way validates such misconduct nor somehow renders it merely 'awful but lawful.'" Sampson v. State, 42 Fla. L. Weekly D638a (3rd DCA 3/15/17)

ARGUMENT: It is improper to invoke a "miscarriage of justice" argument as a strawman to evoke sympathy for the victim. Sampson v. State, 42 Fla. L. Weekly D638a (3rd DCA 3/15/17)

ARGUMENT: "The concerns we express here are not new. Sadly, our appellate courts have for decades expressed consternation over the recurring misconduct of attorneys during closing arguments. . .That such misconduct persists, despite these clarion calls, deepens our disquiet." Sampson v. State, 42 Fla. L. Weekly D638a (3rd DCA 3/15/17)

ARGUMENT: Prosecutor's closing argument that attacked and denigrated defense counsel, suggesting that defense counsel was not acting in good faith or lied to jury, was improper. Comments cannot be considered invited if State failed to object to the comments which they claim as their license to make improper arguments. Compendium of improper arguments. Scala v. State, 42 Fla. L. Weekly D636a (3rd DCA 3/15/17)

APPEALS: Where transcripts contain errors, omissions, inconsistencies, and inaccuracies which preclude the appellate court from adequately reviewing the proceedings below, a new trial is required. Scala v. State, 42 Fla. L. Weekly D636a (3rd DCA 3/15/17)

QUOTATION-CARL SANDBURG: "If the law is against you, talk about the evidence. . .If the evidence is against you, talk about the law, and, since you ask me, if the law and the evidence are both against you, then pound on the table and yell like hell." Scala v. State, 42 Fla. L. Weekly D636a (3rd DCA 3/15/17)

POST CONVICTION RELIEF: Failure to object to erroneous omission of justifiable or excusable homicide instruction is harmless where the defense is identity. Byrd v. State, 42 Fla. L. Weekly D635e (3rd DCA 3/15/17)

POST CONVICTION RELIEF: Court need not, and should not, inform the jury of its right to a read-back of testimony in response to a question about

the facts of the case. Byrd v. State, 42 Fla. L. Weekly D635e (3rd DCA 3/15/17)

LIFE SENTENCE-JUVENILE-LIFE SENTENCE: 152 year sentence on juvenile for nonhomicide with parole but without judicial review is unconstitutional. Carter v. State, 42 Fla. L. Weekly D633a (3rd DCA 3/15/17)

SPEEDY TRIAL: Continuances sought in misdemeanor case is not a waiver of speedy trial right to the felony case where the felony charge (possession of narcotics found in the Defendant's wrecked car) did not arise from the same conduct or episode as the misdemeanor DUI case. Crimes can constitute separate criminal episodes for speedy trial purposes even though they happen at the same time. State v. Fair, 42 Fla. L. Weekly D626a (4th DCA 3/15/17)

EVIDENCE-REFRESHING RECOLLECTION: Court erred by not allowing Defendant to refresh an officer's recollection with an audio recorded (not transcribed) deposition. In a nonjury case, the judge does not have to leave the bench when the officer's recollection is refreshed. J.G. v. State, 42 Fla. L. Weekly D623b (4th DCA 3/15/17)

HEARSAY: Hearsay is admissible in non-capital sentencing hearings, absent a request for sentence enhancement. Case of first impression. McInerney v. State, 42 Fla. L. Weekly D622a (4th DCA 3/15/17)

RESTITUTION-JURISDICTION: Court has no jurisdiction to determine amount of restitution after defendant has filed a notice of appeal notwithstanding that of reserve jurisdiction to determine the amount of the restitution. McInerney v. State, 42 Fla. L. Weekly D622a (4th DCA 3/15/17)

DEFINITION-ONLY: "[A]s a matter of statutory construction, the term "only," although capable of varying meanings depending on the context of its use as an adverb or an adjective, ordinarily imposes some limiting function over the term or phrase it modifies." Cohen v. Shushan, 42 Fla. L. Weekly D601a (2nd DCA 3/15/17)

EVIDENCE-UNCHARGED CRIMES: Court erred in admitting evidence of uncharged collateral crime involving the defendant's punching the victim's wife where that altercation was not inextricably intertwined with the earlier stabbing of the Victim. Hudson v. State, 42 Fla. L. Weekly D621a (4th DCA 3/15/17)

APPEAL-HABEAS CORPUS: Appellate counsel was ineffective for failing to argue that the two predicate incidences to establish a pattern of racketeering did not occur within 5 years of each other. New appeal limited to this issue is warranted. Castillo v. State, 42 Fla. L. Weekly D616a (4th DCA 3/15/17)

POST CONVICTION RELIEF: Claims that defense counsel failed to convey plea offer, gave wrong advice about maximum and minimum sentences and misadvised defendant that she could be sentenced as youthful offender are sufficient to warrant a hearing where not conclusively refuted by the record. Bynes v. State, 42 Fla. L. Weekly D615a (4th DCA 3/15/17)

CREDIT FOR TIME SERVED: Motion to correct credit for time served filed within one year of appellate mandate is timely. Castillo v. State, 42 Fla. L. Weekly D614b (4th DCA 3/15/17)

ALLOCUTION: Court erred in subjecting Defendant to cross-examination during allocution. Guerra v. State, 42 Fla. L. Weekly D614a (4th DCA 3/15/17)

RESTITUTION: Evidence is insufficient to support the amount the Court ordered to pay restitution where the only evidence supported that amount was the owner's testimony which was based on what a jeweler said the replacement value of the property was. O.W. v. State, 42 Fla. L. Weekly D613a(1st DCA 3/15/17)

COMMENT ON SILENCE OF DEFENDANT: It is an improper reference to the Defendant's right to remain silent to ask if he had ever told his version of events to the police. Court did not abuse its discretion in denying motion for mistrial based on State's isolated question highlighting Defendant's refusal to talk to police officer where objection to the testimony was sustained in a curative instruction given. Chester v. State, 42 Fla. L. Weekly D611b (1st DCA 3/15/17)

DOUBLE JEOPARDY-CREDIT OR TIME SERVED: Court violates double jeopardy by rescinding jail credit on its own motion after it was awarded. Ray v. S42 Fla L. Weekly D608a (2nd DCA 3/15/17)

COSTS: Court may not impose a "jury fee" for exercising right to jury trial. Howard v. State, 42 Fla. L. Weekly D595a (1st DCA 3/10/17)

COSTS: Court may not impose a public defender's fee in excess of the statutory minimum "without advising defendant of right to challenge the discretionary portion of the fee. Howard v. State, 42 Fla. L. Weekly D595a (1st DCA 3/10/17)

SHACKLING OF DEFENDANT: Where Defendant insists on wearing jail jumpsuit to trial, it is error to also require him to wear shackles, but the error is harmless. Henderson v. State, 42 Fla. L. Weekly D594d (1st DCA 3/10/17)

PLEA COLLOQUY: Court must conduct plea colloquy before accepting plea to violation of probation. Anderson v. State, 42 Fla. L. Weekly D594c (1st DCA 3/10/17)

POST CONVICTION RELIEF: Court must address claims of ineffective assistance of counsel where Defendant made it clear that he was raising separate claims for relief in a section entitled "Supporting Facts." Kelly v. State, 42 Fla. L. Weekly D594b (1st DCA 3/10/17)

JUVENILES-COMMITMENT LEVEL: Court may not deviate from DJJ recommendation of minimum-risk commitment without requisite findings. It is insufficient that the court have a legally sufficient basis to deviate from the recommendation the Court must also articulate its understanding of the restrictiveness levels and why a minimum-risk commitment was not better suited to the juvenile's needs. The court's using "magic buzzwords" does not meet the strict requirements under E.A.R. M.J. v. State, 42 Fla. L. Weekly D592a (1st DCA 3/10/17)

POST CONVICTION RELIEF: Counsel was not ineffective for failing to object to comments linking gun to marijuana in closing argument where those comments were fair response to arguments presented by the defense. State v. Ling, 42 Fla. L. Weekly D591a (1st DCA 3/10/17)

JUROR CONDUCT: No fundamental error occurred when primary juror carried to the jury room the alternate juror's notepad just moments before

the bailiff retrieved it at the trial court's request. Morgan v. State, 42 Fla. L. Weekly D590a (1st DCA 3/10/17)

INFORMATION-SWORN TESTIMONY: Court is not required to dismiss information charging leaving the scene of an accident when it is based on the officer's sworn testimony not on the testimony of an eyewitness. A "material witness" under rule 3.140 is one whose testimony is both legally relevant and substantial. The threshold is whether the sworn testimony is sufficient to establish in the mind of a reasonable prosecutor that there exists probable cause to believe that the defendant committed the crime. The prosecutor is not necessarily limited to reliance on legally admissible evidence. State v. Gonzalez, 42 Fla. L. Weekly D585b (5th DCA 3/10/17)

MANDATORY MINIMUM: It is error to impose consecutive mandatory minimum sentences for aggravated assault and possession of firearm by a convicted felon where the charges stemmed from same criminal episode. Simmons v. State, 42 Fla. L. Weekly D585a (5th DCA 3/10/17)

DOUBLE JEOPARDY: Separate convictions for first-degree felony murder with a weapon, fleeing and eluding causing injury or death, and driving without a license causing bodily injury or death violated double jeopardy where the convictions arose out of a single course of conduct causing a single death. A single course of conduct causing a single death cannot support convictions for both a homicide offense and an offense enhanced by the same death. Conflict certified. Linton v. State, 42 Fla. L. Weekly D584a (5th DCA 3/10/17)

POST CONVICTION RELIEF: Motion for post-conviction relief is untimely when filed more than 2 years after the conviction is final and the evidence was not actually newly discovered. Lamb v. State, 42 Fla. L. Weekly D582c (5th DCA 3/10/17)

RESISTING WITHOUT VIOLENCE: Juvenile may not be found guilty of resisting without violence for flight from Terry stop where there was insufficient evidence that officer had a well-founded in reasonable suspicion to conduct a stop. Juvenile's proximity to a robbery suspects known direction of travel and unprovoked flight is insufficient to allow officer to form reasonable suspicion of criminal activity. Flight, standing alone, is insufficient to form the basis of a resisting without violence charge. B.M. v. State, 42 Fla. L. Weekly D581a (2nd DCA 3/10/17)

LIFE SENTENCE-JUVENILE: Prohibition on life sentences for juveniles without possibility of release is a constitutional right which is to be applied retroactively. Defendant is entitled to resentencing review hearing. Braxton v. State, 42 Fla. L. Weekly D580a (2nd DCA 3/10/17)

HABEAS CORPUS: Petitioner is entitled to a new trial on second-degree murder where the jury instruction on manslaughter by act was fundamentally erroneous, and prior petition raising claims of ineffective assistance of counsel was denied without explanation. New trial is necessary to avoid manifest injustice. Wardlow v. State, 42 Fla. L. Weekly D579a (2nd DCA 3/10/17)

AGGRAVATED CHILD NEGLECT-JOA: Defendant who apparently drops child while swinging him by the ankles may be found guilty of felony battery but cannot be found guilty of aggravated child neglect for delaying adequate treatment. Poczatek v. State, 42 Fla. L. Weekly D575a (2nd DCA 3/10/17)

POST CONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: The 2009 NAS report does not constitute newly discovered evidence. Anderson v. State, 42 Fla. L. Weekly S286c (FLA 3/9/17)

DEATH PENALTY: Hurst v. Florida, requiring unanimous jury recommendation to impose to sentence, applies retroactively. Anderson v. State, 42 Fla. L. Weekly S286c (FLA 3/9/17

EXPERT: "Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense." Anderson v. State, 42 Fla. L. Weekly S286c (FLA 3/9/17)

FAILURE TO PRESERVE EVIDENCE: The State's constitutional duty to preserve evidence is limited to evidence that is exculpatory in which the Defendant would be unable to obtain comparable evidence by other reasonably available means. When the State failed to preserve potentially useful evidence due process violated only if the Defendant can show bad faith. The allegation that the evidence was allowed to deteriorate is insufficient. Anderson v. State, 42 Fla. L. Weekly S286c (FLA 3/9/17)

SCIENTIFIC EVIDENCE: The legislative adoption of the Daubert standard in 2013 does not apply retroactively. Counsel for the Defendant was not ineffective or challenging the scientific evidence under Frye because fiber analysis was not novel scientific evidence. The Daubert standard is more lenient in terms of admitting novel scientific evidence than Frye. Anderson v. State, 42 Fla. L. Weekly S286c (FLA 3/9/17)

JURY INSTRUCTIONS-AMENDMENTS: Conspiracy instruction has the following language added: "Renunciation remains a defense to conspiracy to commit a crime where some harm was done." In re-Standard Jury Instructions in Criminal Cases, 42 Fla. L. Weekly S286b (FLA 3/9/17)

DEATH PENALTY-HURST: Defendant is entitled to new sentencing hearing where jury made a non-unanimous recommendation of death and failed to make any factual findings as to aggravating and mitigating factors. Ault v. State, 42 Fla. L. Weekly S282 (3/9/17)

COMPETENCY: Court is required to hold a hearing on juvenile's mental condition after attorney's statements gave ground to believe he was incompetent. A.L.Y. v. State, 42 Fla. L. Weekly D568a (4th DCA 3/8/17)

10-20-LIFE: Defendant is not subject to mandatory minimum of 25 years imprisonment where the indictment did not allege that discharged the firearm causing death or great bodily harm. Error was not cured by the jury finding that the Defendant discharged a firearm causing death or great bodily harm. Bienaime v. State, 42 Fla. L. Weekly D567a (4th DCA 3/8/17)

JOA-POSSESSION WITH INTENT TO SELL: 3.31 grams of crack cocaine and $1086 on his person is insufficient to establish that the Defendant possessed the cocaine with intent to sell. Thomas v. State, 42 Fla. L. Weekly D563b (4th DCA 3/8/17)

STATEMENTS OF DEFENDANT: Question regarding defendant's employment during booking process fell within "routine booking question" exception to Miranda. Tobiassen v. State, 42 Fla. L. Weekly D560a (4th DCA 3/8/17)

STATEMENTS OF DEFENDANT-INTERROGATION: Confining suspect to holding cell for 4 hours does not subject a suspect to functional equivalent of interrogation. Statements he made thereafter are admissible. Gordon v. State, 42 Fla. L. Weekly D559a (4th DCA 3/8/17)

STATEMENTS OF DEFENDANT-INTERROGATION: Statements made by detective to defendant generally expressing sympathy were not reasonably likely to elicit an incriminating response, and detective's response to defendant's question regarding likely charges did not initiate conversation, assume wrongdoing on defendant's part, or call for defendant to respond. Gordon v. State, 42 Fla. L. Weekly D559a (4th DCA 3/8/17)

JURY INSTRUCTION-KNOWLEDGE: Jury instruction which omitted defendant's knowledge of presence of substance is error regardless of Defendant's misidentification defense. Error not harmless. Terrell v. State, 42 Fla. L. Weekly D558a (4th DCA 3/8/17)

JUVENILES-SENTENCING: Court erred by departing from DJJ's recommended disposition without requesting restrictiveness level recommendation from DJJ. D.A.H. v. State, 42 Fla. L. Weekly D556a (4th DCA 3/8/17)

LIFE SENTENCE-JUVENILE-HOMICIDE: Defendant who was sentenced to life imprisonment for second-degree murder committed when he was a juvenile is entitled to be resentenced under the new sentence review statute. Brown v. State, 42 Fla. L. Weekly D555a (3rd DCA 3/8/17)

SENTENCING-CHILD PORNOGRAPHY: Court may consider reused unsworn victim impact statements maintained by the FBI when fashioning sentences for multiple counts of possession of child pornography. Conflict certified. Dickie v. State, 42 Fla. L. Weekly D547b (2nd DCA 3/8/17)

SENTENCING-CONSIDERATIONS: Court commits fundamental error by suggesting that the sentence might've been different if the defendant had

cooperated and admitted guilt. McDowell v. State, 42 Fla. L. Weekly D545a (1st DCA 3/7/17

JURY QUESTION: Court violated rule 3.410 by failing to consult with counsel before responding to question submitted by jury during deliberations. MacDonald v. State, 42 Fla. L. Weekly D544a (1st DCA 3/7/17)

DOUBLE JEOPARDY: Double Jeopardy prohibits separate convictions for use of the computer service to solicit consent of parents to engage in unlawful sexual conduct with child and traveling to meet minor to engage in unlawful sexual conduct after using computer services where both charges were based on the same conduct of asking fictitious mother for sex with her fictitious child. Santiago-Morales v. State, 42 Fla. L. Weekly D543b (1st DCA 3/7/17)

DISQUALIFICATION: Due Process requires disqualification of judge from presiding over a criminal case where the judge is under investigation for corruption by the prosecuting office. Rippo v. Baker, No. 16-6316 (US 3/6/17)

GUIDELINES: The Federal Sentencing Guidelines, including §4B1.2(a)'s residual clause ("a crime of violence"), are not subject to vagueness challenges under the Due Process Clause. Because they merely guide the district courts' discretion,the Guidelines are not amenable to a vagueness challenge. Beckles v. United States, No. 15-8544 (US 3/6/17)

JURORS-RACIAL BIAS: Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule

give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. Pena-Rodriguez v. Colorado, No. 15-606 (US S.Ct. 3/6/17)

https://www.supremecourt.gov/opinions/16pdf/15-606_886b.pdf

JURY DELIBERATIONS: Where a juror makes a clear statement during deliberations that indicates he relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that Court consider evidence of the juror's statement. There must be a showing that a juror made statements that tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Exception to the rule that jury deliberations may not be intruded upon. Pena-Rodriguez v. Colorado, (US S.Ct. 3/6/17) https://www.supremecourt.gov/opinions/16pdf/15-606_886b.pdf

QUOTATION: "It is the mark of a maturing legal system that it seeks to understand and to implement the lessons of history." Pena-Rodriguez v. Colorado, (US S.Ct. 3/6/17)

POST CONVICTION RELIEF: Post conviction court properly denied claim that counsel was ineffective for failure to advise defendant to accept plea offer and about all of pertinent matters relevant to his case. It was not ineffective assistance of counsel to say that Defendant had a possibility of being acquitted. Wait v. State, 42 Fla. L. Weekly D529c (1st DCA 3/3/17)

QUOTATION (DISSENT): "A criminal trial is not the occasion for hoping for a miracle at a client's expense." Wait v. State, 42 Fla. L. Weekly D529c (1st DCA 3/3/17)

GAIN TIME: Department has discretion to award 60 days of gain-time to inmates whose crimes were committed on or after October 1, 1995, and

who have completed GED certificate, and Department should have, at minimum, considered prisoner's request. Newell v. State, 42 Fla. L. Weekly D538a (1st DCA 3/3/17)

EVIDENCE-PHOTOGRAPHS: Photograph showing victim's injuries is relevant to show that the knife was used in a deadly manner and the relevance was not substance that weighed by the danger of undue prejudice. Jackson v. State, 42 Fla. L. Weekly D537a (1st DCA 3/3/17)

SELF-DEFENSE-STAND YOUR GROUND: SYG immunity and self-defense claim can be overcome where Defendant gave inconsistent versions of events and admitted he lied to law enforcement. Defendant's version of events need not be accepted merely because he is the only surviving witness to the fight. Early v. State, 42 Fla. L. Weekly D535b (1st DCA 3/3/17)

GAIN TIME: Department of Corrections is not required to apply gain time to multiple life sentences for offenses occurring prior to June 15, 1983. Diaz v. Jones, 42 Fla. L. Weekly D533a (1st DCA 3/3/17) https://edca.1dca.org/DCADocs/2016/3037/163037_DC02_03032017_090553_i.pdf

ABSURDITY ESCHEWED: "Compelling the Department of Corrections to deduct gain-time from a life sentence would clearly result in the sort of absurdity the court is constrained to eschew." Diaz v. Jones, 42 Fla. L. Weekly D533a (1st DCA 3/3/17)

IMPEACHMENT: Where defendant truthfully responded to prosecutor's questions whether he had ever been convicted of felony and the number of those prior convictions, trial court erred in allowing prosecutor to ask how

many of defendant's prior felonies were crimes of dishonesty. Spradling v. State, 42 Fla. L. Weekly D529b (1st DCA 3/3/17)

POST CONVICTION RELIEF: Court must not summarily deny facially insufficient claims for ineffective assistance of counsel without affording defendant an opportunity to amend. Washington v. State, 42 Fla. L. Weekly D528c (5th DCA 3/3/17)

SENTENCING-JUVENILE-NONHOMICIDE: Juvenile who was sentenced to 25-years will be entitled to judicial review. Any sentence for a juvenile for a nonhomicide offense in excess of 20 years is entitled to judicial review. Burrows v. State, 42 Fla. L. Weekly D528b (5th DCA 3/3/17)

POST CONVICTION RELIEF: Claim the plea was invalid because probation was not part of the plea agreement warrants an evidentiary hearing unless conclusively refuted by the record. Childs v. State, 42 Fla. L. Weekly D528a (5th DCA 3/3/17)

MANDATORY MINIMUM-JURY FINDING: Where jury finds the defendant guilty of aggravated battery with a firearm as charged in the information, the court is required to impose the mandatory minimum under 10-20-life. Florida law does not require an express indication that special findings are made beyond a reasonable doubt when such indication may be inferred from the record. State v. Woodall, 42 Fla. L. Weekly D525a (5th DCA 3/3/17)

APPEAL-PRESERVATION-LESSER INCLUDED: A request for a lesser included offense jury instruction is preserved for appellate review where trial counsel makes a specific request, trial counsel sets forth required grounds for the request, and judge understands the request and denies it. Wong v. State, 42 Fla. L. Weekly S250a (FLA 3/2/17)

LESSER INCLUDED: Defendant, who was charged with both lewd or lascivious battery and lewd or lascivious molestation, was entitled to requested instruction on permissive lesser included offense of committing an unnatural and lascivious act where information alleged all of elements of unnatural and lascivious act and there was some evidence to support those allegations. Wong v. State, 42 Fla. L. Weekly S250a (FLA 3/2/17)

FIREARM-OPEN CARRY LAW: Law prohibiting openly carrying firearms does not infringe on Second Amendment. Norman v. State, 42 Fla. L. Weekly S239 (FLA 3/2/17)

LIFE SENTENCE-JUVENILE: Court erred by summarily denying claim that mandatory sentence of life imprisonment with possibility of parole after twentyfive years was erroneously imposed for homicide defendant committed when he was a juvenile. New sentencing scheme applies retroactively. Wilkinson v. State, 42 Fla. L. Weekly D515e (3rd DCA 3/1/17)

SENTENCING-JUVENILE: Due process violated by conducting part of sentencing hearing (testimony of Child's parent and DJJ representative) in absence of Child. C.D.C. v. State, 42 Fla. L. Weekly D511a (4th DCA 3/1/17)

DOUBLE JEOPARDY: Separate convictions for burglary of dwelling with assault or battery while armed and masked, aggravated assault with deadly weapon while masked, and attempted sexual battery using great force or deadly weapon committed during same criminal episode do not violate double jeopardy. Courts should not look beyond the statutory elements when conducting a double jeopardy analysis. Conflict certified. Tambriz-Ramirez v. State, 42 Fla. L. Weekly D508b (4th DCA 3/1/17)

DOUBLE JEOPARDY: Aggravated battery must be consecutive to shooting into an occupied vehicle by statute. When an unlawful sentence is corrected on motion for post conviction relief, the sentence must be restructured to run consecutively. Marshall v. State, 42 Fla. L. Weekly D507a (1st DCA 3/1/17)

BURGLARY-JURY INSTRUCTIONS: No fundamental error where Court instructed in part that burglary requires intent to commit burglary where other parts of the instruction are not circular reasoning. Padilla v. State, 42 Fla. L. Weekly D503b (2nd DCA 3/1/17)

COMPETENCY: Court erred in failing to conduct proper competency hearing after court-appointed experts submitted written reports indicating defendant was competent and defense counsel stipulated. Cramer v. State, 42 Fla. L. Weekly D503a (2nd DCA 3/1/17)

SENTENCING: Court may not rely on Defendant's subsequent arrest in imposing sentence. Consideration of subsequent charges with which the defendant has not been convicted violates due process. New judge must resentence Defendant. Discussion. Fernandez v. State, 42 Fla. L. Weekly D502a (2nd DCA 3/1/17)

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SECOND-DEGREE MURDER: A defendant may not be convicted of seconddegree felony murder when the predicate offense is conspiracy to commit armed robbery. Smith v. State, 42 Fla. L. Weekly D488a (1st DCA 2/24/17)

SENTENCING-WITHHOLD OF ADJUDICATION: Court may not withhold adjudication on felony drug case without placing Defendant on probation. Godil v. State, 42 Fla. L. Weekly D487a (5th DCA 2/24/17)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL: Counsel was ineffective for not raising on direct appeal Court's failure to conduct Faretta hearing. Error is not harmless. Balzourt v. State, 42 Fla. L. Weekly D486b (5th DCA 2/24/17)

SENTENCING: Resentencing before a different judge is required where immediately prior to sentencing trial court speculated about defendant's past behavior, for which there was no record basis and the subject matter of which was not relevant to sentence. Larry v. State, 42 Fla. L. Weekly D485a (5th DCA 2/24/17)

SENTENCING-HOMICIDE-JUVENILE: Sentence of 50 years with a review after 25 years is lawful. Question certified whether Alleyne requires a jury to make factual findings as to whether the juvenile offender actually killed, intended to kill or attempted to kill the victim. Colon v. State, 42 Fla. L. Weekly D484c (5th DCA 2/24/17) http://5dca.org/Opinions/Opin2017/022017/5D16-1789.op.pdf

NEW TRIAL: The standard for motion for new trial is the weight to the evidence, not the sufficiency of the evidence. Loudermilk v. State, 42 Fla. L. Weekly D484a (5th DCA 2/24/17)

SEARCH AND SEIZURE-INVESTIGATIVE STOP-FLIGHT: Officer has reasonable suspicion of criminal activity where he observes the defendant roaming in and out of the wood line at 3 AM near home that was burglarized 30 minutes earlier and he ran into the woods when officers identified themselves. Flight alone is insufficient to raise reasonable suspicion but it may be considered among other factors. Grayson v. State, 42 Fla. L. Weekly D480b (5th DCA 2/24/17)

JURORS PEREMPTORY CHALLENGE: Age (youth) is not a protected cognizable class for an objection to a peremptory challenge claiming discrimination. Truehill v. State, 42 Fla. L. Weekly S223a (FLA 2/23/17)

EVIDENCE-OTHER CRIMES: Evidence of the defendant's escape from prison in a series of robberies and crimes between Louisiana in Florida is relevant and admissible dissimilar fact evidence. Truehill v. State, 42 Fla. L. Weekly S223a (FLA 2/23/17)

PROSECUTORIAL MISCONDUCT-ARGUMENT: Justice for the victim and message to the Defendant arguments ("let this defendant know you can't kidnap people") are improper, but here the error is harmless. Truehill v. State, 42 Fla. L. Weekly S223a (FLA 2/23/17)

PROSECUTORIAL MISCONDUCT: Slide show saying "The dead cannot cry out for justice. It is the duty of the living to do so for them." is an improper appeal to juror emotions to the jury's emotions and the "prosecutor's insistence that this was permissible is of great concern. . . [and] perverts the purpose of closing argument." But error is harmless. Truehill v. State, 42 Fla. L. Weekly S223a (FLA 2/23/17)

DEATH PENALTY: Where the recommendation for death is unanimous, Hurst does not preclude imposition of the death penalty on the grounds that the jury

was advised that its recommendation was only advisory. Truehill v. State, 42 Fla. L. Weekly S223a (FLA 2/23/17)

STATEMENTS OF DEFENDANT-CUSTODIAL INTERROGATION: When interrogation is predominately accusatorial and confrontational in nature,

taking place in police interrogation room, notwithstanding that police advised defendant, before she agreed to be questioned, that she was free to leave, as every other aspect of the two interrogations would have led reasonable persons to believe otherwise. Myers v. State, 42 Fla. L. Weekly S214a (FLA 2/23/17)

JURY INSTRUCTION AMENDMENTS: Minor Amendments, no change to possession instruction. DUI instruction clarified. In re : Standard Jury Instructions, 42 Fla. L. Weekly S213a (FLA 2/23/17)

SEARCH AND SEIZURE-FELLOW OFFICER RULE: Fellow officer rule does not allow blood draw at accident scene when the officer ordering the blood draw had not been told other officer's concern that defendant might be intoxicated. The fellow officer rule does not allow an officer to assume probable cause for an arrest or a search and seizure from uncommunicated information known solely by other officers. Montes-Valeton v. State, 42 Fla. L. Weekly S210a(2/23/17)

BLOOD DRAW-CONSENT: Consent is involuntary where officer, without probable cause, read the defendant the implied consent warnings that came with the blood draw kit and , threatening that a refusal would result in driver license suspension. Montes-Valeton v. State, 42 Fla. L. Weekly S210a (FLA 2/23/17)

POST CONVICTION RELIEF: Claim that defendant received a mandatory minimum sentence based on jury finding that he possessed a firearm although information only charged carrying a firearm is not an illegal sentence, and cannot be corrected under R. 3.800. Martinez v. State, 42 Fla. L. Weekly S209a (FLA 2/23/17)

INEFFECTIVE ASSISTANCE: Counsel provided ineffective assistance of counsel under the Sixth Amendment by presenting a psychologist's testimony in penalty phase of murder trial that the Defendant's race (Black), is a factor "know[n]to predict future dangerousness." Buck v. Davis, No. 15-8049 (US S. Ct. 2/22/17)

https://www.supremecourt.gov/opinions/16pdf/15-8049_f2ah.pdf

DISCOVERY-ATTORNEY-CLIENT PRIVILEGE: Trial court erred in denying public defender's motion for protective order from third-party subpoena duces tecum for deposition where information sought was communicated during attorney-client relationship and with the expectation that the information would remain confidential. Office of the Public Defender v. Lakicevic, 42 Fla. L. Weekly D476a (3rd DCA 2/22/17)

RAPE SHIELD LAW: Defendant cannot invoke Rape Shield Law to limit victim's testimony. Portillo v. State, 42 Fla. L. Weekly D473a (3rd DCA 2/22/17)

BOLSTERING: Unobjected-to testimony of lead investigator and unobjected to comments during closing argument did not improperly bolster victim's credibility, and were invited by defense counsel. Pineda v. State, 42 Fla. L. Weekly D471a (3rd DCA 2/22/17)

LIFE SENTENCE-MINOR: Defendant who was sentenced to life with possibility of parole for offense committed when he was a juvenile in 1972 is entitled to resentencing in conformance with recently enacted legislation under Atwell. Edwards v. State, 42 Fla. L. Weekly D464b (2nd DCA 2/22/17)

LIFE SENTENCE-JUVENILE: Defendant who was sentenced to life with possibility of parole for offense committed when he was a juvenile is entitled to resentencing in conformance with recently enacted legislation under Atwell. Burney v. State, 42 Fla. L. Weekly D464a (2nd DCA 2/22/17)

PROHIBITION: Prohibition is available only to prevent a lower tribunal's unauthorized exercise of jurisdiction. R. 3.151, which provides for dismissal of related offenses not consolidated for trial, does not implicate county court's jurisdiction to entertain prosecution on refusal charge. State v. Hamilton, 42 Fla. L. Weekly D459b (2nd DCA 2/22/17)

MASK: One is subject to the enhancement for wearing a mask even though one does not remain with the face covered during the entire criminal episode. L.D.H. v. State, 42 Fla. L. Weekly D450a (4th DCA 2/22/17)

COMPETENCY: A retrospective evaluation after trial that the defendant is incompetent is unauthorized. Laster v. State, 42 Fla. L. Weekly D449a (4th DCA 2/22/17)

POST CONVICTION RELIEF: Claim that counsel was ineffective for failing to request competency evaluation is sufficient for an evidentiary hearing. Dinnall v. State, 42 Fla. L. Weekly D448b (4th DCA 2/22/17)

MANDATORY MINIMUM-CONSECUTIVE: Consecutive mandatory minimum sentences for offenses arising from same criminal episode and involving one victim and not involving discharge of firearm were improper. Lopez v. State, 42 Fla. L. Weekly D442a (1st DCA 2/21/17)

BAIL-EXCESSIVENESS: Since petitioner asserts that she can post no bond over $10,000, and has not established that a bond over $10,000 is excessive, it would be an idle gesture for this court to find that $250,000 bond is excessive. Knight v. State, 42 Fla. L. Weekly D441a (1st DCA 2/21/17)

DEATH PENALTY: Newly enacted death penalty sentencing statute which was found to be unconstitutional because it does not require a unanimous jury recommendation of sentence of death can constitutionally be applied to pending prosecutions if the jury unanimously recommends a sentence of death. Trial courts in pending prosecutions may properly proceed with death qualifying juries. Evans v. State, 42 Fla. L. Weekly S200a (FLA 2/20/17)

DUI: Second refusal to submit to breath alcohol test can properly be punished as a criminal offense. Williams v. State, 42 Fla. L. Weekly D438a (5th DCA 2/17/17)

DUI: Breath alcohol tests are permissible under the search incident to arrest exception to the Fourth Amendment's warrant requirement. Williams v. State, 42 Fla. L. Weekly D438a (5th DCA 2/17/17)

DOUBLE JEOPARDY: Dual Convictions for DUI manslaughter and Leaving Scene of Accident are not barred by Double Jeopardy. Prestano v. State, 42 Fla. L. Weekly D436b (5th DCA 2/17/17)

HABEAS CORPUS: Defendant cannot assert double jeopardy claim by habeas corpus where the issue could have been raised on direct appeal or by 3.850, but is now untimely. Double jeopardy cannot be raised under 3.800. Banks v. State, 42 Fla. L. Weekly D436a (5th DCA 2/17/17)

POST CONVICTION RELIEF: Claim that counsel was ineffective for failing to object to improper argument (theory of defense is despicable, desperate, and a re-victimization of the victim) is sufficient to warrant a hearing. Neeley v. State, 42 Fla. L. Weekly D434a (2nd DCA 2/17/17)

ATTORNEY-MISAPPROPRIATION OF CLIENT FUNDS: Attorney who had used money intended for depositions and placed in operating account rather than the trust fund is suspended from the practice of law for one year. The Florida Bar v. Wynn, 42 Fla. L. Weekly S199a (FLA 2/16/17)

SCIENTIFIC EVIDENCE: Court declines to adopt legislative changes to §§90.702 and 90.704, to the extent they are procedural, changing the test for admissibility of scientific evidence from Frye to Daubert. Daubert may unconstitutionally infringe upon the right to trial by jury and access to the court. Court will wait until there is a case and controversy to determine the extent to which these rule changes are procedural or substantive or unconstitutional. In Re Amendments to the Florida Evidence Code, 42 Fla. L. Weekly S179a (FLA 2/16/17)

HEARSAY-ELDERLY ABUSE: Court declines to adopt legislative changes to §§90.803(24) allowing hearsay in cases of elderly abuse where witness is unavailable to the extent that the changes are procedural rather than substantive. Change may violate Crawford's right of confrontation. Court will wait until there is a case and controversy to determine the extent to which these rule changes are procedural or substantive or unconstitutional. In Re Amendments to the Florida Evidence Code, 42 Fla. L. Weekly S179a (FLA 2/16/17)

OTHER CRIMES, WRONGS OR ACTS: In case of a defendant accused of using the identity of a woman in Ohio to get telephones and open accounts in her name, it was error to admit evidence that the defendant had

personal information of another woman in a different state. Evidence only showed defendant's propensity to commit bad acts. Defendant did not open the door in opening statements by submitting that someone else had committed the offenses. Goggins v. State, 42 Fla. L. Weekly D429a (1st DCA 2/16/17)

COSTS: Court has no statutory authority to impose a venire fee. Brown v. State, 42 Fla. L. Weekly D427b (1st DCA 2/16/17)

NEWLY DISCOVERED EVIDENCE: Standard for review of newly discovered evidence is whether defendant has established that the evidence was not known or knowable at time of the plea, and that there is a reasonable probability that, with such knowledge, defendant would not have pleaded guilty and would have gone to trial. Court erred by following the then-existing standard of manifest injustice and clear evidence. Perez v. State, 42 Fla. L. Weekly D413a (3rd DCA 2/15/17)

ARGUMENT: Prosecutor referring to trial as a circus, accusing defense counsel of fabricating facts, and calling self-defense just a theory is improper. Error is harmless where no one but Defendant said self-defense occurred and victim was shot seven times with two guns. Mora v. State, 42 Fla. L. Weekly D412a (3rd DCA 2/15/17)

ARGUMENT: "One imagines that improper argument of this kind might diminish if the prosecutor who created the issue at trial was required to research and write the appellee's brief, and then argue the appeal here." Mora v. State, 42 Fla. L. Weekly D412a (3rd DCA 2/15/17)

IMPEACHMENT-RULE OF COMPLETENESS: Where defense counsel brought out exculpatory portions of defendant's statement during cross-examination of the detective under rule of completeness, State was entitled

to bring out evidence of defendant's nine prior felonies and crimes of dishonesty. Conflict certified. Nock v. State, 42 Fla. L. Weekly D395a (4th DCA 2/15/17)

RULE OF COMPLETENESS: Court properly found that state was not required to introduce entire video recording of defendant's conversation with detective under rule of completeness where state did not offer video into evidence. Rule of completeness only applies when the written or recorded statement is admitted, not when only testimony about the statement is admitted. Nock v. State, 42 Fla. L. Weekly D395a (4th DCA 2/15/17)

SENTENCING: In sentencing defendant for sexual battery on person 12 years of age or older without physical force, trial court could properly consider similar fact evidence admitted at trial. Cabriano v. State, 42 Fla. L. Weekly D392a (4th DCA 2/15/17)

POST CONVICTION RELIEF: Defendant waived right to supplement post conviction motion by failing to raise it at initial post conviction proceedings or appeal. Johnson v. State, 42 Fla. L. Weekly D391b (4th DCA 2/15/17)

POSSESSION-KNOWLEDGE: Evidence that brass fitting found in defendant's pocket had been altered with copper mesh in order to smoke cocaine, and burnt cocaine was visible in fitting, was sufficient to support finding that defendant knew of the presence of cocaine. Although the ordinary presumption that one has knowledge of drugs found in his possession may not apply when there are only trace amounts of drug 'lint' or 'dust,' the presumption does apply when the substance is found on an implement which is usable only for the obviously knowing use of the drug. Holloman v. State, 42 Fla. L. Weekly D391a (4th DCA 2/15/17)

ANDERS BRIEF: Counsel writing Anders brief must master the trial record, thoroughly research the law, and identify any arguments that may be advanced on appeal. Redmon v. State, 42 Fla. L. Weekly D389b (1st DCA 2/14/17)

COSTS: Error to impose appointed attorney lien payment assessment in excess of statutory minimum without notice and opportunity to be heard. Trusty v. State, 42 Fla. L. Weekly D388a (1st DCA 2/14/17)

COSTS: Error to impose cost for Gulf Coast College Community Justice Assessment Center where offense did not involve a motor vehicle. Trusty v. State, 42 Fla. L. Weekly D388a (1st DCA 2/14/17)

COSTS: Error to impose fine for Drug Abuse Trust Fund where offense did not involve alcohol or drugs. Trusty v. State, 42 Fla. L. Weekly D388a (1st DCA 2/14/17)

STATEMENTS OF DEFENDANT: Child is not in custody when questioned while sitting in the driveway with her friend when the officer walked up and started conversation about the purse with the marijuana in it. A reasonable child would believe she was free to leave, notwithstanding that the officer believed she was not free to leave. State v. M.C., 42 Fla. L. Weekly D383a (2nd DCA 2/10/17)

RESISTING WITHOUT VIOLENCE: "Simply put, the odor of marijuana emanating from a group cannot, by itself, form the basis of a lawful detention of any particular member of that group. Nor can the fact that each member of the group engulfed in "billowing smoke," as the officer testified, smelled equally of marijuana." Officer was not engaged in lawful execution of legal duty, so juvenile's refusal to be searched could not support charge

of obstructing an officer without violence. B.G. v. State, 42 Fla. L. Weekly D382a (2nd DCA 2/10/17)

POST CONVICTION RELIEF: Expression of satisfaction with counsel during plea colloquy is not a valid basis for denying relief. Failing to investigate alerting K-9's records is facially sufficient claim of ineffective assistance of counsel. Sanchez v. State, 42 Fla. L. Weekly D380b (2nd DCA 2/10/17)

PROSECUTORIAL MISCONDUCT: Prosecutor's inappropriate remarks during closing argument, including repeatedly referring to defendant as a pedophile, making an inappropriate justice-for-the- victim argument, and falsely stating that defendant had admitted to inappropriate sexually-related activities with victim, constituted fundamental error. Florida Bar is notified for purposes of discipline. Rodriguez v. State, 42 Fla. L. Weekly D369d (5th DCA 2/10/17)

POST CONVICTION RELIEF: Court erred in failing to consider claim that counsel was ineffective for failing to move to suppress defendant's confession on basis that she was too intoxicated to waive her constitutional rights. Dingey v. State, 42 Fla. L. Weekly D369c (5th DCA 2/10/17)

BURGLARY-AFFIRMATIVE DEFENSE: Court must give jury instruction on the affirmative defense that Defendant was licensed to enter the dwelling where there is some evidence to support that affirmative defense. Pilafjian v. State, 42 Fla. L. Weekly D366a (5th DCA 2/10/17)

SENTENCING-MURDER BY JUVENILE: Where Defendant did not actually possess or discharged a firearm during the crime, Court did not err in denying defendant's motion to impanel jury to make the factual finding as

to whether the defendant actually killed, intended to kill or attempted to kill the victim. Question Certified : Does Alleyne allow the trial court to make the factual finding as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim? Williams v. State, 42 Fla. L. Weekly D363b (5th DCA 2/10/17)

PLEA WITHDRAWAL: Court abused discretion in summarily denying motion to withdraw plea which alleged the state withheld exculpatory information until after sentencing. Moody v. State, 42 Fla. L. Weekly D363a (5th DCA 2/10/17)

SEARCH AND SEIZURE-INCIDENT TO ARREST: District school board officer had no probable cause to arrest defendant who was walking on track on school property at nighttime for trespass on school property where the school kept the track open at night and posted signs inviting the public to access the track after school hours. State v. Rand, 42 Fla. L. Weekly D352e (1st DCA 2/10/17)

SEARCH AND SEIZURE-INCIDENT TO ARREST: "The bottom line here is that the officer disregarded the school's open-track policy. He said he 'didn't take the time to look at the sign right in front of the gate' and he didn't investigate Mr. Rand's reasons for being at the track. Under these circumstances, we find no error in the trial court's decision not to give the officer's sloppy work a Fourth Amendment pass." State v. Rand, 42 Fla. L. Weekly D352e (1st DCA 2/10/17)

PROBATION-CONDITIONS: Court erred in imposing a condition of probation requiring Defendant to obtain a GED or high school diploma. Silas v. State, 42 Fla. L. Weekly D352a (1st DCA 2/10/17)

JURY INSTRUCTIONS-WELFARE FRAUD: Standard jury instruction for welfare fraud modified to include EBT card. In re : Standard Jury Instructions, 42 Fla. L. Weekly S150a (FLA 2/9/17)

APPEALS-PRESERVATION OF ISSUE: State is not required to object to a downward departure sentence in order to preserve the issue for appellate review where state argued against the downward departure. State v. Wiley, 42 Fla. L. Weekly S149a (FLA 2/9/17)

JUROR MISCONDUCT: New trial is not required where juror claimed that jurors conducted internet research into meaning of Defendant's facial tattoo, but Court deemed the claim not credible. Dubose v. State, 42 Fla. L. Weekly S143a (FLA 2/9/17)

CURTILAGE: Gap in fence to allow for driveway does not prevent the area being considered the curtilage of a house. Dubose v. State, 42 Fla. L. Weekly S143a (FLA 2/9/17)

CHANGE OF VENUE: Court did not err in denying motion for change of venue on ground that it was impracticable to obtain qualified jury in county where action was pending due to pretrial publicity. Knowledge of the incident because of its notoriety is not, in and of itself, grounds for a change of venue. Dubose v. State, 42 Fla. L. Weekly S143a (FLA 2/9/17)

DEATH PENALTY: Hurst violation occurred where jury did not find the existence of aggravators was proven beyond reasonable doubt, that the aggravators were sufficient to impose death, and that the aggravators outweighed mitigators. Dubose v. State, 42 Fla. L. Weekly S143a (FLA 2/9/17)

JURY INSTRUCTIONS: Knowledge element added to standard jury instructions on assaults on state attorneys, judges. In Re : Standard Jury Instructions, 42 Fla. L. Weekly S142a (FLA 2/9/17)

LIFE IMPRISONMENT-JUVENILE-NON-HOMICIDE: Defendant who was initially sentenced to life imprisonment for nonhomicide offenses committed while he was a juvenile is entitled to resentencing under new juvenile sentencing legislation. A defendant whose original sentence violated Graham v. Florida, and who was thereafter resentenced, is entitled to resentencing under 77.082(3)(c) and 921.1402. Grantley v. State, 42 Fla. L. Weekly D349g (3rd DCA 2/8/17)

STATEMENTS OF DEFENDANT: Court did not err in failing to suppress statement based on law enforcement's failure to explicitly advise defendant of his right to stop interrogation at any time where warning implicitly included the right to stop questioning.. Prior precedents receded from. Morris v. State, 42 Fla. L. Weekly D346c (4th DCA 2/8/17)

COMPETENCY: Court erred by proceeding with change of plea hearing without determining defendant's competency where trial court had earlier ordered a competency evaluation. Bain v. State, 42 Fla. L. Weekly D346b (4th DCA 2/8/17)

CHILD PORNOGRAPHY: Video evidence showing young girls undressing and using bathroom in defendant's home and several of which showed the defendant entering bathroom and activating recording device is probative of identity of owner of the child porn. Scott v. State, 42 Fla. L. Weekly D346a (4th DCA 2/8/17)

ALLOCUTION: Court erred in forcing defendant to be sworn in before his allocution at sentencing hearing and in subjecting defendant to cross examination. A criminal defendant prior to sentencing has the opportunity to make an unsworn statement to the sentencing judge in allocution, not subject to cross-examination. Guerra v. State, 42 Fla. L. Weekly D345b (4th DCA 2/8/17)

APPEALS-PRESERVATION-SELF-DEFENSE: No fundamental error in failing to give unrequested deadly force self-defense instruction in robbery/battery case. Non-deadly force instruction was given. Objection was required to preserve issue. Gregory v. State, 42 Fla. L. Weekly D345a (4th DCA 2/8/17)

LIFE SENTENCE-JUVENILE-HOMICIDE, NON-HOMICIDE: Defendant who received life sentence for murder committed as juvenile and sentence of 45 years' imprisonment for robbery committed as juvenile is entitled to new sentencing hearing. A defendant whose original sentence violated Graham v. Florida and who was subsequently resentenced prior to July 1, 2014, is entitled to be resentenced with possibility of sentence review. O'Neal v. State, 42 Fla. L. Weekly D343a (4th DCA 2/8/17)

BURGLARY OF DWELLING: Defendant who entered an attached porch with intent to commit a crime is guilty of burglary of a dwelling. Morlas v. State, 42 Fla. L. Weekly D341a (4th DCA 2/8/17)

EVIDENCE: Evidence of a high speed car chase in which defendant was a passenger is inextricably intertwined with burglary and relevant to establish consciousness of guilt. Morlas v. State, 42 Fla. L. Weekly D341a (4th DCA 2/8/17)

PORCH, PORN AND MR. ED: "[T]he area at issue constitutes an "attached porch" and, as such, a "dwelling." United States Supreme Court Justice Potter Stewart famously said of pornography, "I know it when I see it.". . .To rephrase a popular 1960s television show theme, "a porch is a porch of course, of course," and the reasonable person (and perhaps a Supreme Court Justice as well), when viewing this area, would conclude, as do we, that it is an "attached porch." Morlas v. State, 42 Fla. L. Weekly D341a (4th DCA 2/8/17)

DEPORTATION: Court erred by denying defendant's motion for postconviction relief seeking to vacate conviction on grounds that it would subject him to mandatory deportation. State v. Pierre-John Lundy, 42 Fla. L. Weekly D338a (4th DCA 2/8/17)

COMPETENCY: Where Child had been referred for competency evaluation and been found competent to proceed by two doctors, court may not proceed to bench trial without conducting competency hearing and entering and appropriate written order. Court may not rely on stipulations of counsel about the results of the evaluation reports. B.R.C. v. State, 42 Fla. L. Weekly D337a (2nd DCA 2/8/17)

CONSTRUCTIVE POSSESSION: JOA is required where only evidence of possession of bag of methamphetamine in a jointly occupied vehicle was the defendant's proximity to the bag and his unusual behavior (not making eye contact). Sanders v. State, 42 Fla. L. Weekly D336a (2nd DCA 2/8/17)

JURY PARDON–LESSER INCLUDED: Failure to instruct jury on simple battery, the next immediate necessarily lesser-included offense of battery within detention facility, was per se reversible error, even though no reasonable jury could have determined that the battery in this case did not

take place in a detention facility. Discussion. Question certified. Lewis v. State, 42 Fla. L. Weekly D328b (1st DCA 2/7/17)

JURY PARDON: 'There can be no reconciliation among the jury pardon doctrine, present-day standard jury instructions, and the required oath of jurors. . . [I]n navigating their duty to follow the law and to properly consider the evidence, while retaining the option of jury nullification, present day jurors in Florida shoulder an immediate ethical burden and confront obvious conflicts of interest. . . This deontic debate over the jury pardon stems from the preservation of an archaic doctrine (once purposeful and necessary) in a modern legal forum, the result of which is jury conflict of interest, jury instructions laced with mutually exclusive theory, and subsequent and inevitable judicial inefficiency." Lewis v. State, 42 Fla. L. Weekly D328b (1st DCA 2/7/17

MANDATORY MINIMUM-CONSECUTIVE: Consecutive mandatory minimum sentences for multiple firearm offenses were impermissible where offenses arose from same criminal episode and jury specifically found that defendant but did not discharge firearm. Clark v. State, 42 Fla. L. Weekly D326a (1st DCA 2/7/17)

MANDATORY MINIMUM-CONSECUTIVE: Consecutive mandatory minimum terms under 10-20-Life statute are permissible, but not mandatory, where defendant shot at multiple victims. Lumpkin v. State, 42 Fla. L. Weekly D325a (1st DCA 2/7/17)

DOUBLE JEOPARDY: Double jeopardy is not violated where court changes "will" to "may" it was clear from the record that early termination of probation and the use of the term "will" was a scrivener's error. Nilio v. State, 42 Fla. L. Weekly D317f (1st DCA 2/3/17)

UPWARD DEPARTURE: Upon violation of probation, where the Defendant scored 22 points or less for a non-forcible third-degree felony the court must impose nonstate prison sanctions in the absence of written findings that such a sentence would present a danger to the public. Terry v. State, 42 Fla. L. Weekly D317e (1st DCA 2/3/17)

FELONY BATTERY: "Counterintuitive though it may be, felony battery is not a forcible felony since a battery can be committed by touching another against the person's will." Terry v. State, 42 Fla. L. Weekly D317e (1st DCA 2/3/17

POST CONVICTION RELIEF: Claim that Defendant rejected the plea offer based on counsel's misadvice that his recorded statement cannot be admitted in evidence is sufficient to warrant an evidentiary hearing. Gray v. State, 42 Fla. L. Weekly D314b (5th DCA 2/3/17)

FORFEITURE-PROBABLE CAUSE: Methamphetamine residue on a glass pipe in a vehicle is sufficient to warrant forfeiture of the vehicle. Brevard County Sheriff's Office v. Brown, 42 Fla. L. Weekly D312a (5th DCA 2/3/7)

MURDER-PREMEDITATION: Evidence that victim was shot four times in rapid succession is insufficient to support a finding of premeditation. Offense is reduced to second degree murder. Barnes v. State, 42 Fla. L. Weekly D310a (5th DCA 2/3/17)

APPEALS-JURISDICTION: Court may not deny motion to withdraw plea after notice of appeal has been filed because it is divested of jurisdiction. State v. Gipson, 42 Fla. L. Weekly D305a (2nd DCA 2/3/17)

CONSPIRACY: Multiple convictions arising from a single conspiracy, even if the conspiracy has multiple objectives, violate double jeopardy. Conspiring to kill two people for different reasons is one conspiracy. Batson v. State, 42 Fla. L. Weekly D301a (4th DCA 2/1/17)

ARGUMENT-BURDEN SHIFTING: State did not improperly shift the burden of proof by suggesting that the Defendant's girlfriend and employee would have been cooperative with police if his self-defense claim were true. Pacetti v. State, 42 Fla. L. Weekly D293b (4th DCA 2/1/17)

MANDATORY MINIMUM: Court may not impose consecutive mandatory minimum sentences for multiple convictions where the gun was not fired and the offenses arose out of the same criminal episode. Tolbert v. State, 42 Fla. L. Weekly D290a (4th DCA 2/1/17)

SPEEDY TRIAL-RECAPTURE: Immediate discharge is appropriate where the information, which was sealed, was inaccessible to defendant during speedy trial, who was not notified of the charges until after speedy trial had expired, and thus could not have known the need to file a notice of expiration. State is not entitled to recapture. Irrelevant whether state or clerk intended to conceal the information from the defendant. State v. Drake, 42 Fla. L. Weekly D287a (2nd DCA 2/1/17)

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SEARCH AND SEIZURE-RESIDENCE-HOT PURSUIT: Warrantless home entry is not justified by hot pursuit when underlying conduct is a nonviolent misdemeanor and evidence related thereto is outside the home. State v. Markus, 42 Fla. L. Weekly S98a (FLA 1/31/17)

APPEALS-DRIVER'S LICENSE-ADMINISTRATIVE REVIEW: A circuit court must review and consider video evidence of the events which are of record as part of its competent, substantial evidence analysis in first tier administrative review. Evidence which is totally contradicted and totally negated and refuted by video evidence of record, is not competent, substantial evidence. Wiggins v. FDHSMV, 42 Fla. L. Weekly S85a (FLA 1/31/17)

SEARCH AND SEIZURE-PLAIN VIEW: Seizure is lawful under plain view where officer entered car to retrieve defendant's cash for safekeeping, not to search for evidence. State v. Johnson, 42 Fla. L. Weekly D281b (1st DCA 1/31/17)

CONSPIRACY: Defendant cannot be convicted of conspiracy where there is no evidence of an agreement between defendant and another person to sell cocaine. Defendant saying he is going to get cocaine to sell to informant, going to two houses, then coming back with crack is insufficient to show conspiracy. Error is fundamental. George v. State, 42 Fla. L. Weekly D274b (5th DCA 1/27/17)

LIFE SENTENCE-JUVENILE: On sentence review, where defendant was sentenced to both terms of years on some counts in life imprisonment on another, the Court is required to consider the aggregate prison sentence. Purdy v. State, 42 Fla. L. Weekly D272a (5th DCA 1/27/17)

MANDATORY MINIMUM: Three-year minimum mandatory for armed robbery and armed carjacking are required to run concurrently, not consecutively. Purdy v. State, 42 Fla. L. Weekly D272a (5th DCA 1/27/17)

POST CONVICTION RELIEF-DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant who was earlier afforded an evidentiary hearing on intellectual disability and denied relief is entitled to a new hearing so that his claim can be reviewed within the new parameters of Hall v. State which requires all prongs of the intellectual disability test to be considered together holistically. Hall v. State applies retroactively. Franqui v. State, 42 Fla. L. Weekly S29a (FLA 1/26/17)

SEQUESTRATION: Florida Evidence Code is not applicable to administrative proceedings; sequestration of witnesses is not required. Florida Industrial Power Users Group v. Graham, 42 Fla. L. Weekly S42a (1st DCA 1/26/17)

SEQUESTRATION: Daughter of murder victim as next of kin is entitled to remain in courtroom in spite of rule of sequestration. Daughtry v. State, 42 Fla. L. Weekly D262a (4th DCA 1/25/17)

APPEAL-PRESERVATION OF ISSUE: Claim that Court erred by allowing testimony about typical beliefs of drug dealers is not properly preserved where the objection was only based on speculation. Orton v. State, 42 Fla. L. Weekly D256a (4th DCA 1/25/17)

CARRYING CONCEALED FIREARM-JOA: Defendant cannot be convicted of carrying a concealed firearm found under the front seat of the vehicle when the Defendant was already at his vehicle when officer approached. Brunson v. State, 42 Fla. L. Weekly D254a (4th DCA 1/25/17)

EVIDENCE-OPINION: Lay witness opinion is admissible if it is within the ken of an intelligent person with a degree of experience. Everett v. State, 42 Fla. L. Weekly D242a (3rd DCA 1/25/17)

JUDGMENT OF ACQUITTAL: "A defendant, in moving for a judgment of acquittal, admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence. The courts should not grant a motion for judgment of acquittal unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law." Chavis v. State, 42 Fla. L. Weekly D241d (3rd DCA 1/25/17)

POST CONVICTION RELIEF: Appellate counsel was not ineffective for failing to argue that police officers were acting outside their jurisdiction when they were acting under a mutual aid agreement. Aldin v. State, 42 Fla. L. Weekly D236a (3rd DCA 1/25/17)

LIFE SENTENCE-HOMICIDE-JUVENILE: Defendant who was sentenced in 1973 to life in prison without parole for first-degree murder committed while he was a juvenile is entitled to judicial review of sentence. Miller v. State, 42 Fla. L. Weekly D229a (3rd DCA 1/25/17)

MOTION FOR NEW TRIAL-JURORS: Court did not abuse discretion in denying motion for new trial based on juror's post-trial interview indicating he did not believe the State had proven the charge, despite acknowledging that they had reached an anonymous verdict. Woodruff v. State, 42 Fla. L. Weekly D226b (3rd DCA 1/25/17)

EVIDENCE: Evidence that the victim had falsely claimed to be pregnant from a different person is irrelevant and inadmissible in lewd and lascivious case. Woodruff v. State, 42 Fla. L. Weekly D226b (3rd DCA 1/25/17)

DEATH PENALTY-NOTICE: Rather than striking death penalty notice, court should sever those portions of the notice which do not require unanimity of a death recommendation. Question certified. State v. Quinones, 42 Fla. L. Weekly D263b (5th DCA 1/24/17)

HABEAS CORPUS: Jurisdiction for petition of habeas corpus is in the county where the defendant was convicted, not where he is incarcerated. Torres v. State, 42 Fla. L. Weekly D222a (1st DCA 1/23/17)

POST CONVICTION RELIEF: Defendant is not entitled to relief on claimthat appellate counsel was ineffective for not arguing that mandatory minimum sentences do not have to be consecutive where the Supreme Court decision so holding was not released until after the opinion and mandate in his case. Watts v. State, 42 Fla. L. Weekly D221a (1st DCA 1/23/16)

SEXUAL PREDATOR: Court may not use as the predicate for a sexual predator designation where the conviction on the predicate conviction was entered after the offense for which defendant is now being designated a sexual predator occurred. Hardy v. State, 42 Fla. L. Weekly D214d (5th DCA 1/20/16)

POST CONVICTION RELIEF: Claim that counsel was ineffective for advising defendant to reject plea offer is not conclusively refuted by record. Webb v. State, 42 Fla. L. Weekly D214a (5th DCA 1/20/17)

POST CONVICTION RELIEF: Defendant who was sentenced to life in prison with possibility of parole is entitled to resentencing in conformance with recent legislation because the existing parole system does not comply with Miller. Frazier v. State, 42 Fla. L. Weekly D211b (2nd DCA 1/20/17)

POST CONVICTION RELIEF: Defendant who was sentenced to life in prison with possibility of parole is entitled to resentencing in conformance with recent legislation because the existing parole system does not comply with Miller. Wells v. State, 42 Fla. L. Weekly D211a (2nd DCA 1/20/17)

DISCOVERY: The fact that the state is unaware of an incident report does not relieve it of its duty to disclose it. The state, not the defense has the burden to show that the defense was not prejudiced. Wagner v. State, 42 Fla. L. Weekly D204a (3rd DCA 1/18/17)

RESENTENCING: Court does not have jurisdiction to resentence defendant 3 years after the original sentence based on defendant's violation of sentencing agreement which provided for the defendant to be resentenced to 35 years in prison if he engaged in certain behavior (filing complaints or motions for postconviction relief). Jurisdiction cannot be created by agreement of the parties. Watson v. State, 42 Fla. L. Weekly D188a (2nd DCA 1/18/17)

SEARCH AND SEIZURE-PROTECTIVE SWEEP: Mere suspicion that there may have been other people on premises is not sufficient to justify intrusion into the curtilage. Daniels v. State, 42 Fla. L. Weekly D184a (2nd DCA 1/18/17)

SEARCH AND SEIZURE-WARRANT: Observations made by officer from the curtilage of the home cannot be used to support probable cause; warrant is otherwise insufficient without those observations. Daniels v. State, 42 Fla. L. Weekly D184a (2nd DCA 1/18/17)

SEARCH AND SEIZURE: Mere fact that readily ascertainable details such as defendant's location were verified does not show that tipster had

knowledge of concealed criminal activity. Daniels v. State, 42 Fla. L. Weekly D184a (2nd DCA 1/18/17)

APPEALS: Court has no jurisdiction to rule on Defendant's motion to withdraw plea where notice of appeal had been filed. Flores v. State, 42 Fla. L. Weekly D181b (4th DCA 1/18/17)

CREDIT FOR TIME SERVED: Court may not give credit to time spent on community control towards the pre-year mandatory minimum sentence when the defendant is resentenced after appeal. State v. Bray, 42 Fla. L. Weekly D180b (4th DCA 1/18/17)

COSTS: Court may not impose public defender fee in excess of statutory minimum without requiring proof of amount of fees imposed. Alexis v. State, 42 Fla. L. Weekly D185a (4th DCA 1/18/17)

CONTEMPT: Juvenile may not be arrested for failing to appear at contempt proceedings where record does not show that he was properly served. Appearing at hearing to contest jurisdiction and lack of service does not waive the requirement of service of process. J.L. v. State, 42 Fla. L. Weekly D174a (1st DCA 1/17/17)

HABITUAL OFFENDER-PREDICATE CONVICTIONS: Court may not rely upon a prior felony conviction and a violation of probation in the same case as the 2 qualifying convictions to sentence the defendant as a habitual offender. Dallas v. State, 42 Fla. L. Weekly D173c (1st DCA 1/17/17)

RESTITUTION: Court may not enter restitution order without first holding a hearing to determine the amount, absent agreement or stipulation between the parties. Johnson v. State, 42 Fla. L. Weekly D173b (1st DCA 1/17/17)

APPEALS: Ruling suppressing evidence sustained where State failed to present evidence of exigent circumstances, notwithstanding that they had the opportunity to do so. State v. Guevara, 42 Fla. L. Weekly D168c (5th DCA 1/13/17)

WITHHOLD OF ADJUDICATION: Court may not withhold the adjudication for third-degree felonies where the Defendant had 2 or more prior felonies that did not arise from the same transaction. State v. Ly, 42 Fla. L. Weekly D168b (5th DCA 1/13/16)

DISCOVERY: Court erred in failing to conduct Richardson hearing when State sought to admit expert testimony of assault nurse examiner who had not been listed as an expert witness and who testified that the lack of vaginal injury is not unusual in rape cases. Bess v. State, 42 Fla. L. Weekly D167b (5th DCA 1/13/17)

DOUBLE JEOPARDY: Where double jeopardy violation is raised for first time on appeal, the burden is on the Defendant to demonstrate that the violation is apparent on the face of the record. Griffith v. State, 42 Fla. L. Weekly D163a (5th DCA 1/13/17)

PRISON RELEASEE REOFFENDER ACT: Vehicular homicide is a qualifying offense for PRR sentencing; it involves the use or threat of physical force or violence against an individual. Ball v. State, 42 Fla. L. Weekly D161b (5th DCA 1/13/17)

COMPETENCY: Court may not dismiss charges on incompetent Defendant on basis of physical condition and dementia until five years have elapsed. State v. Carey, 42 Fla. L. Weekly D153c (3rd DCA 1/11/17)

STATEMENTS OF DEFENDANT: The Sixth Amendment prohibits law enforcement officers from deliberately eliciting statements from a defendant after the right to counsel has attached. Saunders v. State, 42 Fla. L. Weekly D151a (4th DCA 1/11/17)

STATEMENTS OF DEFENDANT: Recordings of statements made to cellmate/jailhouse informant, in which defendant discussed hiring a hitman to kill witness were not admissible, notwithstanding fact that informant initially gathered statements on his own initiative without law enforcement, where law enforcement had outfitted informant with a wire, arranged for him to receive a reduced sentence, and had come up with plan wherein law enforcement was involved undercover. Saunders v. State, 42 Fla. L. Weekly D151a (4th DCA 1/11/17)

APPEALS: State may not supplement the record with evidence not submitted to the trial court. Crockett v. State, 42 Fla. L. Weekly D150a (1st DCA 1/10/17)

APPEALS: Question certified whether an appellate court may independently determine whether an issue is dispositive rather than accepting the parties stipulation that it is. Grimes v. State, 42 Fla. L. Weekly D149a (1st DCA 1/10/17)

DEATH PENALTY: Discussion of recent history of death penalty. A trial court has no authority to determine the applicability of the death penalty before a defendant has been tried and convicted of a capital offense.

(Concurring opinion). State v. Gonzalez, 42 Fla. L. Weekly D146d (2nd DCA 1/6/17)

PLEA AGREEMENT: It is fundamental error to sentence the Defendant for criminal mischief where that count was not included on the plea form nor discussed during the plea colloquy. McCraney v. State, 42 Fla. L. Weekly D146a (5th DCA 1/6/17)

JOA-INTENT TO SELL: Possession of a large amount of cash in pocket ($1086) combined with a small amount of crack cocaine is insufficient circumstantial evidence to support possession with intent to sell charge. Thomas v. State, 42 Fla. L. Weekly D142b (4th DCA 1/4/17)

CONCEALED WEAPON: Statute prohibiting the unlicensed carrying of a concealed firearm does not violate the Second Amendment. Cox v. State, 42 Fla. L. Weekly D141b (4th DCA 1/4/17)

ARGUMENT-FUNDAMENTAL ERROR: Prosecutor's unobjected-to arguments were improper for appealing to the jury's emotions; for asking the jurors to convict in order to help the victim "move on" and "repair the rest of her life," implying information not presented to the jury; and expressing the prosecutor's personal opinion, but the error was not fundamental given the overwhelming evidence of guilt. Robinson v. State, 42 Fla. L. Weekly D140a (4th DCA 1/4/17)

ENTRAPMENT: Defendant's post-inducement use of drug-trade jargon during a drug transaction is admissible to show that defendant was predisposed to commit the crime before the government induced him. Blanco v. State, 42 Fla. L. Weekly D136a (3rd DCA 1/4/17)

QUOTATION (dissent): "It is one of the functions of this Court to undo injustice when the law has been improperly applied." Blanco v. State, 42 Fla. L. Weekly D136a (3rd DCA 1/4/17

ATTEMPTED SECOND DEGREE MURDER-JOA: Court should have granted motion for judgment of acquittal where evidence did not establish ill will, hatred, spite or evil intent when Defendant accelerated his car while the officer was struggling to handcuff and uncooperative passenger, dragging the officer 15 to 20 feet down the road. Clark v. State, 42 Fla. L. Weekly D135a (4th DCA 1/4/17)

RESISTING WITH VIOLENCE: A dog is not a person. Trying to push the dog's head away while it is biting the Defendant's leg is not resisting with violence. Allen v. State, 42 Fla. L. Weekly D134a (4th DCA 1/4/17)

VOP: Evidence that probation officer did not find the Defendant at home twice and there was a realtor's lock on the door is insufficient evidence that the Defendant had moved without permission. Allen v. State, 42 Fla. L. Weekly D134a (4th DCA 1/4/17)

JUVENILE SENTENCING: Court may lawfully sentence child to commitment followed by probation. Davis v. State, 42 Fla. L. Weekly D129a (4th DCA 1/4/17)

SENTENCING-CONSIDERATIONS: Court may not impose a harsher sentence because Defendant refuses to admit his guilt. Allen v. State, 42 Fla. L. Weekly D125a (4th DCA 1/4/17)

SENTENCING-CONSIDERATIONS: "A defendant's rights are infringed when he or she is forced to make a choice to either remain silent at a sentencing hearing and risk that the court regard this silence as a failure to accept responsibility, or to make an incriminating statement upon the trial court's prodding, or to falsely admit wrongdoing and risk a perjury conviction in hopes of securing a measure of leniency. Any defendant in such a situation is in a vulnerable position and faced with a Hobson's choice." Allen v. State, 42 Fla. L. Weekly D125a (4th DCA 1/4/17)

DECLARATORY JUDGMENT-REMOVAL OF PUBLIC RECORDS: Court abused its discretion by not addressing claim that certain DUI convictions did not exist in complaint to remove erroneous public records. Mulvey v. Forman, 42 Fla. L. Weekly D122a (4th DCA 1/4/17)

JOA-BURGLARY WITH ASSAULT: Defendant/Burglar is held at gun point by victim, who sees him reach toward his waist and is alarmed. A pellet gun is later found hidden in his waistband. Defendant cannot be found guilty of assault regardless of the victim's well-founded in fear where no actual threat is made. "[W]hile the appellant might have been threatening to the victim (that is, actually caused him fear), he did not intentionally threaten him (that is, intended to cause him fear)." J.S. v. State, 42 Fla. L. Weekly D121a (4th DCA 1/4/17)

APPEALS-PRESERVATION OF ISSUE: Court must make a definitive ruling on admission or exclusion of evidence for the issue to be preserved. If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. § 90.104(1)(b). Issue of exclusion of evidence about Defendant's probationary status is not preserved where defendant files motion in limine, State agrees, and Judge says "She agrees. Collins v. State, 42 Fla. L. Weekly D119b (4th DCA 1/4/17)

SENTENCING-CONSIDERATIONS-OUT OF COUNTY DEFENDANT: Court improperly considered that the defendant came from a different county to commit crimes in his county. Andrews v. State, 42 Fla. L. Weekly D118a (4th DCA 1/4/17)

PROBATION REVOCATION: Where case is remanded for resentencing after finding that probation had been revoked on basis of both valid and invalid violations, Court erred in resentencing defendant in his absence, especially where the court's relied upon a transcript from a hearing at which neither the defendant nor his attorney were present. Thompson State, v. 42 Fla. L. Weekly D93c (3rd DCA 1/4/17)

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NOT ALL BAD: "David Allen Hall appeals his convictions and 825-year total sentence on 10 counts of promoting child pornography and 45 counts of possessing child pornography. [T]he trial court erred by imposing a $150 investigative fee. . .[W]e remand with directions that the $150 fee be stricken." Hall v. State, 42 Fla. L. Weekly D85a (5th DCA 12/30/16)

INVESTIGATIVE COSTS: Court erred by imposing investigatory costs and absence of request for the fee from the police department. Hall v. State, 42 Fla. L. Weekly D85a (5th DCA 12/30/16)

APPEALS: Appeal from order denying motion for post-conviction discovery is premature where court has not entered a final order disposing of the motion for post-conviction relief. Bond v. State, 42 Fla. L. Weekly D88b v. State, (1st DCA 12/30/16)

SENTENCING-RECLASSIFICATION: Court may not reclassify conviction for aggravated battery with a firearm from a second-degree felony to a first degree felony based on use the firearm where the use of the firearm was an

essential element of the offense. Kearney v. State, 42 Fla. L. Weekly D86b (5th DCA 12/30/16)

MANDATORY MINIMUM: Twenty-five-year mandatory minimum sentence must be imposed where defendant discharged firearm resulting in great bodily harm. Where mandatory minimum exceeds the maximum sentence for a second-degree felony the mandatory minimum of 25 years must be applied. Kearney v. State, 42 Fla. L. Weekly D86b (5th DCA 12/30/16)

POST CONVICTION RELIEF: Failure to advise that double jeopardy prohibits being convicted of both manufacturing and trafficking in methamphetamine is ineffective assistance of counsel. Smith v. State, 42 Fla. L. Weekly D85c (5th DCA 12/30/16)

POST CONVICTION RELIEF: Advising that defendant would necessarily receive the maximum sentence if she proceeded to trial is ineffective assistance of counsel. Smith v. State, 42 Fla. L. Weekly D85c (5th DCA 12/30/16)

POST CONVICTION RELIEF: Court erred by summarily denying claim that counsel was ineffective for failing to object to detective's testimony identifying the defendant from the surveillance video. Smith v. State, 42 Fla. L. Weekly D85b (5th DCA 12/30/16)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court erred by sentencing defendant as a violent felony offender special concern upon revocation of probation without making a written finding the defendant is a danger to the community. Proper remedy is to remand for written findings. Barber v. State, 42 Fla. L. Weekly D82b (5th DCA 12/30/16)

POST CONVICTION RELIEF: Court erred by summarily denying the claim that counsel was ineffective for not moving to suppress defendant's statements and not objecting to a defective self-defense jury instruction. Rodriguez v. State, 42 Fla. L. Weekly D80a (3rd DCA 12/28/16)

SEARCH AND SEIZURE-EXIGENT CIRCUMSTANCES: Warrantless entry into the home is justified by exigent circumstances where police had received a 911 call that a kidnapping victim was inside and the officer heard screaming. Collado v. State, 42 Fla. L. Weekly D76a (3rd DCA 12/28/16)

STATEMENTS OF DEFENDANT: Court properly denied motion to suppress post-Miranda statements elicited 10-hours after an initial short pre-Miranda exculpatory response to questioning at scene of arrest; the post-Miranda statement was sufficiently attenuated from the prior statement. Collado v. State, 42 Fla. L. Weekly D76a (3rd DCA 12/28/16)

LIFE SENTENCE-JUVENILE-HOMICIDE: Defendant who was sentenced to life imprisonment for first-degree murder with the possibility of parole is entitled to resentencing in conformance with the recent legislation. McDonald v. State, 42 Fla. L. Weekly D72c (2nd DCA 12/28/16)

DOUBLE JEOPARDY: Where defendant was separately charged with and pled to solicitations to fictitious juvenile and to her fictitious uncle (both one undercover cop), only one of the resulting solicitation convictions was necessarily subsumed in the traveling offense. Littleman v. State, 42 Fla. L. Weekly D66f (1st DCA 12/27/16)

DEATH PENALTY-RETROACTIVITY: Hurst (jury must unamimously recommend death) does not apply retroactively to cases in which death

penalty became final before U.S. Supreme Court's issuance of Ring v. Arizona. Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16)

QUOTATION (J. LEWIS, CONCURRING): "This Court need not tumble down the dizzying rabbit hole of untenable line drawing." Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16)

QUOTATION (J. PARIENTE, DISSENTING}: "Ultimately, when applying the retroactivity equation of balancing 'the justice system's goals of fairness and finality' in this circumstance, fairness must prevail over finality."

DEATH PENALTY-RACE (J. PERRY, DISSENTING): "Asay will be the first white person executed for the murder of a black person in this State." Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16)

DEATH PENALTY-QUOTATION (J. PERRY, DISSENTING): "Indeed, as my retirement approaches, I feel compelled to follow other justices who, in the twilight of their judicial careers, determined to no longer 'tinker with the machinery of death.'. . . The majority's decision today leads me to declare that I no longer believe that there is a method of which the State can avail itself to impose the death penalty in a constitutional manner." Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16)

RETROACTIVITY-DEATH PENALTY-QUOTATION (J. PERRY, DISSENTING): "I can find no support in the jurisprudence of this Court where we have previously determined that a case is only retroactive to a date certain in time. Indeed, retroactivity is a binary — either something is retroactive, has effect on the past, or it is not. . .In the present case, the majority . . .decides that in capital cases where the Sixth Amendment rights of hundreds of persons were violated, it is appropriate to arbitrarily draw a

line between June 23 and June 24, 2002 — the day before and the day after Ring was decided." Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16)

QUOTATION: "The majority's application of Hurst v. Florida makes constitutional protection depend on little more than a roll of the dice. This cannot be tolerated." Asay v. State, 41 Fla. L. Weekly S646a (FLA 12/22/16) (PERRY, J., dissenting)

DEATH PENALTY-RETROACTIVITY: Fundamental fairness requires that Hurst apply retroactively to post-conviction defendants who raised a Ring claim at first opportunity and were then rejected at every turn. Mosley v. State, 41 Fla. L. Weekly S629a (FLA 12/22/16)

POST CONVICTION RELIEF: Defendant who murdered one of his girl friends and a baby is not entitled to a new trial based on the prosecutor giving a witness Chinese food. Mosley v. State, 41 Fla. L. Weekly S629a (FLA 12/22/16)

DEATH PENALTY-UNANIMITY: Defendant, whose death penalty was imposed after a resentencing proceeding, is entitled to resentencing where, although jury was provided an interrogatory verdict form, the jury did not unanimously conclude that the aggravating factors were sufficient to warrant imposing death, or that the aggravating factors outweighed mitigating circumstances. Simmons v. State, 41 Fla. L. Weekly S622a (FLA 12/22/16)

POST CONVICTION RELIEF: Claim that counsel was ineffective in advising Defendant to reject plea offer because she thought they could win is facially insufficient without a showing that advice was unreasonable or that she was unfamiliar with the case. Hauter v. State, 42 Fla. L. Weekly D65a (5 th DCA 12/22/16)

EXPERT: Court does not commit fundamental error by having witness declared an expert. "Tender and accept" is not an improper comment on the witness's testimony. "We disagree with Osorio that a trial court's declaration that a witness is an expert is error." Mitchell v. State, 42 Fla. L. Weekly D62a (5th DCA 12/22/16)

LEAVING SCENE OF CRASH INVOLVING DEATH: Judgment of Acquittal is required where there is no crash. Falling out of an open window is not a crash. Collision with pavement does not constitute a crash under the statute. Daugherty v. State, 42 Fla. L. Weekly D61c (5 th DCA 12/22/16)

POST CONVICTION RELIEF: Claims that counsel was ineffective for failing to object when detective vouched for child victim's credibility in his testimony, failed to impeach victim with previous inconsistent statements, and failed to object when detective commented on defendant's invocation of right to remain silent were not conclusively refuted by record. Grant v. State, 42 Fla. L. Weekly D61a (5th DCA 12/22/16)

PROBATION REVOCATION: Error to revoke probation based on defendant's failure to complete mandatory DUI course where defendant had paid enrollment fee, had attended two of three required classes, and had 27 days remaining to complete the course before deadline. Kennedy v. State, 42 Fla. L. Weekly D59a (5 th DCA 12/22/16)

SENTENCING: Court erred by finding that sentence was lawful because it found that Defendant was a danger to public without considering Defendant's claim that the finding must be made by the jury. Court misconstrued the law. Adams v. State, Fla. L. Weekly D58a (5 th DCA 12/22/16)

LIFE SENTENCE-JUVENILE-HOMICIDE: Defendant who was sentenced in 1973 to life in prison without parole for first-degree murder committed while he was a juvenile is entitled to judicial review of sentence. Miller v. State, 42 Fla. L. Weekly D51b (3 rd DCA 12/21/16)

LIMITATION OF ACTIONS: Defendant who claims that offense is barred by the statute of limitations may raise the issue for the first time on appeal. Question Certified: Must a defendant, who claims that the offense as charged in the information is barred by the statute of limitations, raise the issue in the trial court in order to preserve the issue for direct appeal? Guzman v. State, 42 Fla. L. Weekly D49b (3 rd DCA 12/21/16)

LIMITATION OF ACTIONS: Charges in an amended information that do not constitute a continuation of charges in the initial information are time-barred if filed after expiration of the statute of limitations. Guzman v. State, 42 Fla. L. Weekly D49b (3 rd DCA 12/21/16)

LIFE SENTENCE-JUVENILE-HOMICIDE: Defendant is entitled to judicial review of sentence for first-degree murder committed while he was a juvenile. Defendant who was sentenced in 1973 to life in prison without parole for first degree murder committed while he was a juvenile is entitled to judicial review of sentence. Striping v. State, 42 Fla. L. Weekly D49a (3rd DCA 12/21/16)

SENTENCING-YOUTHFUL OFFENDER: Adjudication of guilt may be withheld for first-degree felony of robbery with a weapon where the Defendant is designated a youthful offender. Pacheco-Velasquez v. State, 42 Fla. L. Weekly D26b (3 rd DCA 12/21/16)

CREDIT FOR TIME SERVED: Court properly denied motion for credit for time served after sentencing but before Defendant was transported to state prison. Valdespino v. State, 42 Fla. L. Weekly D20 (3 rd DCA 12/21/16)

JUDGMENT OF ACQUITTAL-MURDER: Counsel is not ineffective for failing to make a motion for judgment of acquittal which lacks merit. Counsel is not required to make futile motions or objections. Hartley v. State, 42 Fla. L. Weekly D14a (1 st DCA 12/21/16)

COMPETENCY OF DEFENDANT: Defendant may not be involuntarily admitted to residential services due to incompetence due to an intellectual disability absence the examination and report of an examining committee. Tillman v. State, 42 Fla. L. Weekly D9a (4 th DCA 12/21/16)

PRISON RELEASEE REOFFENDER-CONCURRENT SENTENCE: Court has discretion to impose a concurrent PRR sentence with an offense for which he was incarcerated at the time of the new offense. PRR does not infringe upon a court's discretion to impose sentences consecutively or concurrently. Patterson v. State, 42 Fla. L. Weekly D2a (4 th DCA 12/21/16)

SEARCH AND SEIZURE-SCHOOL: School officer may not conduct a second search of a student looking for a Taser when an earlier search after a tip found none. G.C. v. State, 42 Fla. L. Weekly D1b (4th DCA 12/21/16)

LIMITATION OF ACTIONS: Defendant may raise for first time on appeal a claim of the crime is barred by statute of limitations. Court recedes from prior decisions. Extensive discussion. Question certified. Smith v. State, 42 Fla. L. Weekly D27c (3 rd DCA 12/21/16)

DOUBLE JEOPARDY: Double jeopardy principles did not prohibit separate convictions for multiple sexual offenses committed in one course of conduct where it was not shown that convictions were based on single act. Sprouse v. State, 41 Fla. L. Weekly D2790c (1st DCA 12/16/16)

JUDGMENT OF ACQUITTAL: Boilerplate motion for judgment of acquittal is not sufficient to preserve the issue for appeal. Sprouse v. State, 41 Fla. L. Weekly D2790c (1st DCA 12/16/16)

HEARSAY: A declarant who testifies on the same subject as her hearsay statement is not unavailable due to her disability for the purpose of the elderly victim exception to the hearsay rule. Sprouse v. State, 41 Fla. L. Weekly D2790c (1st DCA 12/16/16)

APPEAL-PRESERVATION: Defendant who objects to reliability of hearsay statements but not to the unavailability of the declarant, who actually testified at trial, failed to preserve the issue. Sprouse v. State, 41 Fla. L. Weekly D2790c (1st DCA 12/16/16)

POST CONVICTION RELIEF: Court erred by failing to address the claim that counsel was ineffective for failing to call witnesses and was the reason Defendant lost at trial. Watson v. State, 41 Fla. L. Weekly D2790b (1st DCA 12/16/16)

POST CONVICTION RELIEF: Counsel was ineffective in advising defendant to reject the plea offer of 25 years imprisonment and to plead open where the offense carries a mandatory minimum of 25 years imprisonment. Gardner v. State, 41 Fla. L. Weekly D2790a (1st DCA 12/16/16)

POST CONVICTION RELIEF-SUCCESSIVE MOTIONS: Where defendant discovered facts undermining post conviction judge's impartiality only after judge denied post conviction motion, he may file a successive rule 3.850 motion. Cannon v. State, 41 Fla. L. Weekly D2788b (1st DCA 12/16/16)

DOUBLE JEOPARDY: Separate convictions for kidnapping, aggravated battery with a deadly weapon, and aggravated assault did not violate the prohibition against double jeopardy. Solomon v. State, 41 Fla. L. Weekly D2785a (2nd DCA 12/16/16)

SENTENCING-VINDICTIVENESS: When a criminal defendant has a re-trial and receives a higher sentence than after the first trial, the defendant has the burden of showing vindictiveness when the second sentence is imposed by a different judge. Kenner v. State, 41 Fla. L. Weekly D2782a (5th DCA 12/16/16)

SENTENCING-VINDICTIVENESS: A sentence cannot stand if it is or appears to be based in part on a defendant's decision to maintain his innocence even after being found guilty. Kenner v. State, 41 Fla. L. Weekly D2782a (5th DCA 12/16/16)

IMPEACHMENT: Court properly excluded certified copies of prior convictions to impeach the dying declaration of the victim where the parties stipulated that the declarant had 3 prior convictions. Kenner v. State, 41 Fla. L. Weekly D2782a (5th DCA 12/16/16)

SENTENCING: When it is established that defendant committed new criminal offense after entering plea, and defendant's incarceration on the new charge causes failure to appear, defendant's failure to appear can be considered a willful and material breach of an agreement to appear because it was caused

by his willful act of committing the crime. Richards v. State, 41 Fla. L. Weekly D2781a (5th DCA 12/16/16)

SEARCH AND SEIZURE-KNOCK AND TALK: Detectives who went to defendant's apartment to investigate an alleged battery exceeded scope of their implied license by lingering at the apartment when defendant did not answer his door and stepping off front porch to shine flashlights through window and bang on window adjacent to door. Friedson v. State, 41 Fla. L. Weekly D2779e (5th DCA 12/16/16)

SEARCH AND SEIZURE-RESIDENCE-CURTILAGE: Area adjacent to front step, which as described was akin to a private front yard, was curtilage, and not common area shared by residents in defendant's apartment complex. Because detective noticed smell of marijuana only after he moved off front porch to curtilage and peered through defendant's window above airconditioning unit, odor of marijuana could not serve as basis for search warrant. Friedson v. State, 41 Fla. L. Weekly D2779e (5th DCA 12/16/16)

APPEALS-JURISDICTION: Appellate court has no jurisdiction to recall mandate where State moved to recall it to more than hundred 20 days from its issuance. McPhee v. State, 41 Fla. L. Weekly D2776a (3rd DCA 12/14/16)

MANSLAUGHTER BY ACT-JURY INSTRUCTIONS-LESSER: Error in giving of erroneous standard jury instruction on manslaughter by act was not cured by fact that jury was also instructed on manslaughter by culpable negligence which was supported by evidence. Defendant preserved issue by objecting to the erroneous instruction. Lumsdon v. State, 41 Fla. L. Weekly D2769a (3rd DCA 12/14/16)

DISCOVERY-ATTORNEY-CLIENT PRIVILEGE: Defendant's handwritten notes prepared for his personal use are not subject to attorney-client privilege and, upon proper motion must be disclosed to codefendants' counsel. Lee v. Condell, 41 Fla. L. Weekly D2762d (3rd DCA 12/14/16)

VOIR DIRE: Court erred in refusing to allow defense counsel to ask prospective jurors beyond the first eight, if they would believe the defendant was innocent absent any evidence, but limitation was not so extreme as to require mistrial. Good discussion of extent to which judge can interfere with counsel at trial. Willoughby v. State, 41 Fla. L. Weekly D2759b (4th DCA 12/14/16)

MANDATORY MINIMUM-CONSECUTIVE: Resentencing is required when Court mistakenly believed it had to sentence defendant to consecutive mandatory minimum terms for 2 counts of aggravated assault with discharged firearm. Penn v. State, 41 Fla. L. Weekly D2759a (4th DCA 12/14/16)

CREDIT FOR TIME SERVED: Defendant is entitled to oral pronouncement of the number of days of credit credits for the time served on his first life sentence. Calvo v. State, 41 Fla. L. Weekly D2757a (2nd DCA 12/14/16)

GRAND THEFT: Testimony that victim got the replacement value for the stolen ring by looking at an identical ring online is insufficient to establish value of the stolen property. Council v. State, 41 Fla. L. Weekly D2750b (1st DCA 12/12/16)

JUVENILES-SECURE DETENTION: Child may not be held in secure detention the on the 21-day where there has been a motion for continuance or extension of period. Time starts upon entry of the court order of detention,

not upon the Child's arrest. M.D.E. v. State, 41 Fla. L. Weekly D2741d (5th DCA 12/12/16)

POST CONVICTION RELIEF: Court erred by summarily denying claim that counsel was ineffective for failing to file motion for new trial or requesting a limiting jury instruction that the principal instruction does not apply to conspiracy. Legrande v. State, 41 Fla. L. Weekly D2740a (5th DCA 12/9/16)

NEWLY DISCOVERED EVIDENCE: The victim's affidavit stating that she fabricated all allegations is sufficient for a hearing for post-conviction relief based on newly discovered evidence. Vaughan v. State, 41 Fla. L. Weekly D2739a (5th DCA 12/9/16)

DANGEROUS SEXUAL FELONY OFFENDER: Sentence of 30 years' imprisonment with a thirty-year mandatory minimum as a dangerous sexual felony offender is a legal sentence. Any term of years between 25 and life imprisonment is lawful. Conflict certified. Baxter v. State, 41 Fla. L. Weekly D2732a (2nd DCA 12/9/16)

OBSTRUCTION WITHOUT VIOLENCE: Officer who attempted to take juvenile he was absent from school into custody was not engaged in the lawful execution of a legal duty. A.J.R. . State, Fla. L. Weekly D2730a (2nd DCA 12/9/16)

SEARCH AND SEIZURE: Officer may search vehicle when he observed cocaine in plain view inside the vehicle after the defendant's arrest. State v. Ross, 41 Fla. L. Weekly D2729a (2nd DCA 12/9/16)

LIFE SENTENCE-JUVENILE-NONHOMICIDE: Defendant whose original sentence violated Graham, and who was later resentenced to 45 years prior to the new sentence review statute taking effect is entitled to be resentenced pursuant to the provisions of that statute. When resentenced again, State may again seek life imprisonment with judicial review. Kelsey v. State, 41 Fla. L. Weekly S600b (FLA 12/8/16)

JURY INSTRUCTIONS-AMENDMENT: Miscellaneous standard jury instructions revised. In Re: Standard Jury Instructions, 41 Fla. L. Weekly S600a (FLA 12/8/16)

AMENDMENT-INTERPRETERS: Rules for interpreters are tweaked. In re: Amendments to Rules of Judicial Administration, 4l Fla. L. Weekly S598a (FLA 12/8/16)

INSANITY-INVOLUNTARY COMMITMENT: Commitment order must contain specific findings that the defendant was mentally ill and dangerous to himself or others. Kellond v. State, 41 Fla. L. Weekly D2726a (1st DCA 12/8/16)

SEARCH AND SEIZURE-CELL PHONE-ABANDONMENT: Accessing contents of password-protected cell phone without a warrant violates the 4th Amendment even though the phone was left the stolen vehicle and was unclaimed. The abandonment exception does not apply to password protected cell phones. State v. K.C., 41 Fla. L. Weekly D2716a (4th DCA 12/7/16

SEARCH AND SEIZURE-CELL PHONE-QUOTATION: "In 1926, Learned Hand observed . . . that it is 'a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him.' . . .If his pockets contain a cell phone,

however, that is no longer true. Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form — unless the phone is." State v. K.C., 41 Fla. L. Weekly D2716a (4th DCA 12/7/16)

SEARCH AND SEIZURE-CELL PHONE-QUOTATION: "It would be patently absurd to suggest that abandonment of a traditional key means that warrantless access is allowed to the house it locks; the same must be true of digital keys to electronic information." State v. K.C., 41 Fla. L. Weekly D2716a (4th DCA 12/7/16)

DRUG OFFENDER PROBATION: Drug offender probation was unlawfully imposed for offense of resisting an officer with violence. Orr v. State, 41 Fla. L. Weekly D2711a (2nd DCA 12/7/16)

EVIDENCE-REBUTTAL-IMPEACHMENT: Court erred by allowing the state to rebut Defendant's not hearsay statements (deputies are "green aliens" and "green parasites" with evidence of his prior convictions. The statement that deputies are green aliens is not hearsay because not admitted for the truth of the matter asserted, and therefore is not subject to impeachment. Gumestad v. State, 41 Fla. L. Weekly D2710a (2nd DCA 12/7/16)

HEARSAY: Defendant's statement that deputies are green aliens is not hearsay because it is not offered for the truth of the matter asserted. Gumestad v. State, 41 Fla. L. Weekly D2710a (2nd DCA 12/7/16)

COMPETENCY-QUOTATION: "We are skeptical that a defendant who. . .honestly believes that he is being tried by extraterrestrials can be said to have

a rational and factual understanding of the proceedings. Gumestad v. State, 41 Fla. L. Weekly D2710a (2nd DCA 12/7/16)

SEARCH AND SEIZURE: Where warrant had been issued for search of his cell phone of a defendant charged with video voyeurism, it was a departure from essential requirements of law to deny State's motion to compel production of the passcode to unlock the phone. Privilege against self incrimination does not preclude defendant from being compelled to produce the passcode. State v. Stahl, 41 Fla. L. Weekly D2706a (2nd DCA 12/7/16)

PLEA: Court erred in accepting a guilty plea without holding a plea colloquy. S.A.W. v. State, 41 Fla. L. Weekly D2705c (2nd DCA 12/7/16)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for failing to object to the flawed jury instruction on self-defense on the ground that the error could have been raised on direct appeal. Lahens v. State, 41 Fla. L. Weekly D2697a (5th DCA 12/2/16)

POST CONVICTION RELIEF: Court erred in summarily denying claim that counsel was ineffective for failing to seek to admit his testimony submitted in the pretrial Stand Your Ground hearing in the trial. Former testimony is admissible regardless of availability of the declarant. Lahens v. State, 41 Fla. L. Weekly D2697a (5th DCA 12/2/16)

HABEAS CORPUS: Court has jurisdiction to review habeas petition, but the petition was nonetheless properly denied where issues should have been raised in previous post-conviction motion. Gray v. DOC, 41 Fla. L. Weekly D2693d (5th DCA 12/2/16)

POST CONVICTION RELIEF: Court erred by summarily denying claim that counsel was ineffective for failing to convey plea offer to Defendant where the State said that the plea offer was never made but did not cite to the record to support its response. Harris v. State, 41 Fla. L. Weekly D2693a (5th DCA 12/2/16)

POST CONVICTION RELIEF: Defendant is entitled to an evidentiary hearing to determine whether counsel failed to convey to state that the defendant's accepted the plea offer. Fournier v. State, 41 Fla. L. Weekly D2691e (5th DCA 12/2/16)

INVESTIGATIVE COSTS: Defendant's waiver of right to court-appointed counsel does not necessarily included waiver of expenses for private investigative funds. Indigent pro se litigant is eligible to process services of investigative funds. Patten v. State, 41 Fla. L. Weekly D2692a (12/2/16)

SEARCH AND SEIZURE: Officer may stop a vehicle for speeding based on her visual observations without verification from radar or clocking. Gallardo v. State, 41 Fla. L. Weekly D2691d (5th DCA 12/2/16)

MANDATORY MINIMUM-FIREARM-CONSECUTIVE: Consecutive mandatory minimum sentences for multiple firearm offenses from same episode are impermissible if firearm is possessed but not discharged. Walton v. State, 41 Fla. L. Weekly S587a (FLA 12/1/16)

JURY INSTRUCTIONS-LESSER INCLUDED: Conviction reversed where court failed to give instruction on the lesser included offense of attempted manslaughter when instructing on attempted second-degree murder. Error is fundamental. Walton v. State, 41 Fla. L. Weekly S587a (FLA 12/1/16)

PHOTO LINEUP: Detective calling witness's attention to the defendant's photograph gives rise to a substantial likelihood of irreparable misidentification. Discussion of the 5 factors for evaluating impermissible suggestiveness. Walton v. State, 41 Fla. L. Weekly S587a (FLA 12/1/16)

JUDGE: Judge reprimanded for sending ex parte email to public defender office and belittling prosecutor. Inquiry Concerning John Contini, 41 Fla. L. Weekly S586a (FLA 12/1/16)

DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant is entitled to a new evidentiary hearing to establish whether he has an intellectual disability based on United States cream court opinion requiring the court to take into account the standard error of measurement of IQ tests and refrain from using a bright line IQ rule of 70 or below. Cherry v. Jones, 41 Fla. L. Weekly S584a (FLA 12/1/16

INTELLECTUAL DISABILITY (J. PARIENTE): "In 2007, this Court unanimously denied Roger Lee Cherry relief on his claim of intellectual disability because Cherry had a full scale IQ score of 72. . . The Court was wrong. . . and the error is of such constitutional magnitude that the Eighth Amendment demands that the error be corrected. I was part of the Court in Cherry that made a legal error — one that could literally mean the difference between life and death." Cherry v. Jones, 41 Fla. L. Weekly S584a (FLA 12/1/16) http://www.floridasupremecourt.org/decisions/2016/sc15-957.pdf

INTELLECTUAL DISABILITY (J. PARIENTE): "Intellectual disability is a condition, not a number." Cherry v. Jones, 41 Fla. L. Weekly S584a (FLA 12/1/16)

DEATH PENALTY: New penalty phase hearing is required where the jury did not find the facts necessary to sentence the defendant to death. Contemporaneous convictions for other violent felonies do not insulate the death sentences from the holdings in Ring and Hurst. Johnson v. State, 41 Fla. L. Weekly S579f (FLA 12/1/16)

SENTENCING-DOWNWARD DEPARTURE: Neither mental health treatment for undiagnosed battered woman's syndrome nor familial obligations are valid grounds for a downward departure. State v. Sawyer, 41 Fla. L. Weekly D2690a (1st DCA 12/1/16)

SELF-DEFENSE-PRIOR ACTS OF VIOLENCE: Defendant may testify about prior specific acts of violence committed by the Victim to prove the reasonableness of the defendant's apprehension. Angelo v. State, 41 Fla. L. Weekly D2689c (1st DCA 12/1/16)

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POST CONVICTION RELIEF: Rather than denying a facially insufficient rule 3.850 motion, the court should have entered an order allowing the defendant an opportunity to amend it. Perez Nunez v. State, 41 Fla. L. Weekly D2678c (3rd DCA 11/30/16)

DOUBLE JEOPARDY: Separate convictions for battery and battery by strangulation violate the prohibition against double jeopardy. Taylor v. State, 41 Fla. L. Weekly D2677b (4th DCA 11/30/16)

CONFIDENTIAL INFORMANT: Defendant is entitled to a new trial where the Court denied the motion to compel disclosure of confidential informant in an in camera hearing where the informant did not testify. Where a nontestifying confidential informant gave detailed information about the delivery of a package, his identity is relevant as to the question whether he himself sent the package to set up the defendant. Joshua v. State, 41 Fla. L. Weekly D2674a (4th DCA 11/30/16)

DISQUALIFICATION-FACEBOOK: A motion to disqualify is legally insufficient based on the fact that the lead detective is Facebook friends with the judge's wife. Joshua v. State, 41 Fla. L. Weekly D2674a (4th DCA 11/30/16)

TEMPORARY POSSESSION: Bare temporary possession alone may be insufficient to convict where evidence supports that the Defendant possessed the contraband for the purpose of lawful disposal. "Under the State's argument, a Good Samaritan who discovers a controlled substance in a public park where children are playing, picks it up and takes it to the police station a block away, would have no defense to the charge of possession of that controlled substance. However, that is not the state of the law." Joshua v. State, 41 Fla. L. Weekly D2674a (4th DCA 11/30/16)

CREDIT FOR TIME SERVED: State is not permitted to file a rule 3.800(b) motion seeking a reduction in the amount of jail credit where that would not benefit the defendant or correct a scrivener's error. Jones v. State, 41 Fla. L. Weekly D2673a (4th DCA 11/30/16)

FAILURE TO REGISTER AS SEX OFFENDER: Defendant may not be convicted for failing to register as a sex offender where the certification from New York did not contain the whole record of his conviction. Certification

without fingerprints is incomplete. Gosling v. State, 41 Fla. L. Weekly D2666a (4th DCA 11/30/16)

JUVENILE-LIFE IMPRISONMENT: Defendant's non-homicide and firstdegree murder sentences are reversed because a life sentence for juvenile offenders is impermissible without a meaningful opportunity for release. Neely v. State, 41 Fla. L. Weekly D2663b (3rd DCA 11/30/16)

EVIDENCE-SKYPE: Father waives right to object to Skype testimony where he initially approved it than 3 days before trial revoked his consent to Skype testimony. S.D. v. DCF, 41 Fla. L. Weekly D2663a (3rd DCA 11/30/16) http://www.3dca.flcourts.org/Opinions/3D16-1306.pdf

SENTENCING-CONSIDERATIONS-LACK OF REMORSE: Where the record contains no evidence defendant filed a motion for downward departure based on rehabilitation, or otherwise injected remorse into his argument for mitigation, it was fundamental error for the trial court to consider lack of remorse in sentencing. Lawton v. State, 41 Fla. L. Weekly D2662a (3rd DCA 11/30/16)

COUNSEL-MOTION TO WITHDRAW: Court applied wrong standard in denying public defender motion to withdraw based on victim having promised to support public defender's campaign for reelection. Leake v. State, 41 Fla. L. Weekly D2657b (2nd DCA 11/30/16)

DOUBLE JEOPARDY: Separate convictions for traveling to meet minor and use of computer to seduce minor violates double jeopardy. Lee v. State, 41 Fla. L. Weekly D2650a (1st DCA 11/28/16)

RED COW-PRECEDENT: Appellate court is ticked off at lower court for not following precedent from a different DCA. It is a miscarriage of justice to not follow precedent, enabling certiorari review. DHSMV v. Walsh, 41 Fla. L. Weekly D2648b (1st DCA 11/28/16)

DRIVER' S LICENSE REINSTATEMENT: One is not drug-free if one drinks alcohol, and therefore is ineligible for reinstatement of driver's license. DHSMV v. Walsh, 41 Fla. L. Weekly D2648b (1st DCA 11/28/16)

JUVENILES-COMMITMENT LEVEL: Department waived its right to object to commitment level imposed by trial court where department recommended probation, which was not a proper commitment-level recommendation. C.C. v. State, 41 Fla. L. Weekly D2647a (1st DCA 11/28/16)

DEATH PENALTY-NON-UNANIMUS VERDICT: Defendant who was sentenced to death on a non-unanimous recommendation is entitled to a new sentencing hearing under Ring and Hurst. Franklin v. State, 41 Fla. L. Weekly S573a (FLA 11/23/16)

DEATH PENALTY-INTELLECTUAL DISABILITY: Defendant is not entitled to relief based on Hurst where the defendant validly waived a penalty-phase jury. Wright v. State, 41 Fla. L. Weekly S561b (FLA 11/23/16)

MOTION FOR JAIL CREDIT: Jail credit matters can be litigated in either a motion filed under rule 3.800(b) while a defendant's direct appeal is pending, or in a motion filed under rule 3.801 after a defendant's sentence has become final. In re: Amendment to Rules of Criminal Procedure, 41 Fla. L. Weekly S561a (FLA 11/23/16)

QUOTATION: "Truth serves as an indispensable component of justice." Williams v. State, 41 Fla. L. Weekly D2641a (3rd DCA 11/23/16)

DEATH PENALTY-CONSTITUTIONALITY: Florida's death penalty statute is unconstitutional for not requiring a unanimous recommendation of death. State v. Gaiter, 41 Fla. L. Weekly D2639c (3rd DCA 11/23/16)

APPEALS: Court lacks jurisdiction to review order denying motion to suppress blood alcohol test results where record does not reflect written order finding suppression ruling would be dispositive or stipulation that ruling would be dispositive. Aybar v. State, 41 Fla. L. Weekly D2638a (3rd DCA 11/23/16)

MANDATORY MINIMUM-CONSECUTIVE: Imposition of consecutive mandatory minimum sentences for possession and use of firearm during commission of crimes is permissible, but not required, where sentences arise from single criminal episode. Martinez-Casteneda v. State, 41 Fla. L. Weekly D2636e (3rd DCA 11/23/16)

MANDATORY MINIMUM-CONSECUTIVE: Court is not required to impose consecutive mandatory minimum sentences for shooting at multiple victims during a single criminal episode. John v. State, 41 Fla. L. Weekly D2635b (4th DCA 11/23/16)

PROBATION REVOCATION: Defendant is entitled to a new hearing where he claimed he never admitted he violated his probation in the first place and the record does not contradict him. Gomez v. State, 41 Fla. L. Weekly D2634b (4th DCA 11/23/16)

GRAND THEFT-KNOWLEDGE: Court erred in instructing jury that purchase of stolen property at price substantially below fair market value gives rise to inference that person buying property knew or should have known that the property had been stolen where the state presented evidence as to the amount the victim paid for the shotgun but did not prove the fair market value of the stolen firearm. Jeudy v. State, 41 Fla. L. Weekly D2630c (4th DCA 11/23/16)

DEADLY WEAPON: BB gun found in student's book bag was not a deadly weapon if not loaded nor used in a dangerous or threatening manner. C.W. v. State, 41 Fla. L. Weekly D2628b (2nd DCA 11/23/16)

RECORDS: Court must hold an evidentiary hearing on a petition for mandamus to determine whether the will court appointed attorney has deliver the appellate record to the defendant. Degregorio v. State, 41 Fla. L. Weekly D2628a (2nd DCA 11/23/16)

MANSLAUGHTER-HAZING: Hazing statute is not unconstitutionally overbroad or vague. Defendant who oversaw ritual slapping, kicking and punching a member of the band on the bus is properly convicted of hazing and manslaughter when the victim died. Martin v. State, 41 Fla. L. Weekly D2615a (5th DCA 11/18/16)

EVIDENCE: Court may allow photographic evidence of the condition of the victim's body after a bone harvest was completed where defendant failed to demonstrate probable tampering with the victim's body during the procedure. Martin v. State, 41 Fla. L. Weekly D2615a (5th DCA 11/18/16)

MISTRIAL: Mistrial is not required where the prosecutor gave an improper send-a-message comment in closing argument where curative instruction is given. Martin v. State, 41 Fla. L. Weekly D2615a (5th DCA 11/18/16

UTTERING FORGED CREDIT CARD: Defendant who alters gift cards to purchase items cannot be convicted of uttering a forged credit card. Casais v. State, 41 Fla. L. Weekly D2612a (5th DCA 11/18/16)

NEWLY DISCOVERED EVIDENCE: Evidentiary hearing required on claim of newly discovered evidence consisting of affidavit of witness who claims that persons other than defendant committed robbery. Smith v. State, 41 Fla. L. Weekly D2610a (5th DCA 11/18/16)

SENTENCING: Court improperly introduced its own evidence and called its own witness before finding the defendant to be a danger to the public and sentencing him to 5 years imprisonment. Error was fundamental. Court may not assume the role of prosecutor. Smith v. State, 41 Fla. L. Weekly D2602a (2nd DCA 11/18/16)

LIFE SENTENCE-JUVENILES: 40 year sentence is not a de facto life sentence. Defendant is not entitled to review of his sentence after 25 years. Waiters v. State, 41 Fla. L. Weekly D2597b (2nd DCA 11/18/16)

SENTENCING-DRUG TESTING: Random drug testing is not a special condition of probation that must be orally pronounced. Romano v. State, 41 Fla. L. Weekly D2597a (2nd DCA 11/18/16)

RESISTING WITHOUT VIOLENCE-JOA: State failed to prove the arresting officer was in the lawful execution of a legal duty when he attempted to take juvenile into custody without any proof that a valid order of probation existed at the time of the arrest attempt. J.C. v. State, 41 F la. L. Weekly D2594b (2nd DCA 11/18/16)

POST CONVICTION RELIEF-SENTENCING-LIFE-JUVENILE: Defendant sentenced to life imprisonment with the possibility of parole for 25 years for murder committed when he was a juvenile is entitled to a new sentencing hearing under the new statutory scheme based on the Florida Supreme Court's holding that the sentence is tantamount to life imprisonment. Hixon v. State, 41 Fla. L. Weekly D2594a (2nd DCA 11/18/16)

SEARCH AND SEIZURE: Search of 12-year-olds playing in their front yard is unlawful. Consent is not voluntary where child believes he has no right to withhold consent. When the searches of juveniles, lack of consent is more likely. Burden of showing consent is on the State. F.C. v. State, 41 Fla. L. Weekly D2593a (2nd DCA 11/18/16)

CORPUS DELICTI: Defendant's admissions to lewd or lascivious molestation are inadmissible under the corpus delicti doctrine when not shown to be trustworthy or corroborated. Defendant's diary cannot be considered proof of trustworthiness or corroboration. A confession cannot corroborate itself. State v. Tumlinson, 41 Fla. L. Weekly D2589b (2nd DCA 11/18/16). 1st DCA 2005)

STATEMENTS OF DEFENDANT: Where a defendant has waived his Miranda rights, he must make an unequivocal or unambiguous request to terminate an interrogation in order to reassert those rights. Statements showing only declining to answer questions about a specific aspect of all of

the crimes is not an unambiguous request to terminate interrogation. McCloud v. State, 41 Fla. L. Weekly S548a (FLA 11/17/16)

EXPERT-FALSE CONFESSIONS: Court erred by excluding Expert testimony about false confessions, but error was harmless. "Expert testimony concerning false confessions is particularly important because we know that false confessions are one of the leading causes of subsequent findings of innocence." McCloud v. State, 41 Fla. L. Weekly S548a (FLA 11/17/16)

DOUBLE JEOPARDY-ROBBERY/BURGLARY: Separate conviction for armed robbery and armed burglary of an occupied dwelling with assault or battery did not violate double jeopardy. McCloud v. State, 41 Fla. L. Weekly S548a (FLA 11/17/16)

DEATH PENALTY: Death sentence is disproportionate in light of term-ofyears sentences imposed against codefendants and defendant's lesser role in the crimes. McCloud v. State, 41 Fla. L. Weekly S548a (FLA 11/17/16)

DEATH PENALTY-PROPORTIONALITY: Death sentence is disproportionate defendant was 18 years old, had a borderline IQ,, learning disability and suffered childhood neglect. Phillips v, State, 41 Fla. L. Weekly S543a (FLA 10/17/16)

LIMITATION OF ACTIONS: Where defendant is continuously absent from state, State's failure to conduct a diligent search does not toll the running of the statute of limitations. State does not have to prove that the Defendant's absence hindered. Robinson v. State, 41 Fla. L. Weekly S541a (FLA 11/17/16)

SELF-DEFENSE-JOA: Defendant is not entitled to JOA after firing 10 shots into a closed car whose occupants were playing the music too loud. Dunn v. State, 41 Fla. L. Weekly D2586c (1st DCA 11/17/16)

PLEA-VOLUNTARINESS: Defendant is entitled to an hearing on his motion to withdraw plea evidentiary to determine if his attorney misadvised him about a material collateral consequence, i.e. whether he could reside with his daughter. Hernandez v. State, 41 Fla. L. Weekly D2575a (4th DCA 11/16/16)

VIOLENT FELONY OFFENDER OF SPECIAL CONCERN: Court must provide written reasons for its finding that defendant, as a violent felony offender special concern posed a danger to the community. Arnone v. State, 41 Fla. L. Weekly D2574b (4th DCA 11/16/16)

DOUBLE JEOPARDY-TRAVELING/USING A COMPUTER: Convictions of traveling to solicit a child to commit a sexual act and using a computer to solicit a person to commit a sexual act on a child encompass the same criminal conduct and violate constitutional prohibition against double jeopardy. Thomas v. State, 41 Fla. L. Weekly D2563a (2nd DCA 11/16/16)

SELF-DEFENSE-STAND YOUR GROUND: Court committed fundamental error by instructing the jury that defendant, a felon in possession of a firearm had a duty to retreat if he was engaged in unlawful activity. A felon in possession of the firearm is not prohibited from asserting the stand your ground defense. Andujar-Ruiz v. State, 41 Fla. L. Weekly D2559b (2nd DCA 11/16/16)

SEXUAL OFFENDER-RESTRICTIONS RESIDENCE: "Recognizing that most sexual predators and offenders are not sympathetic characters, I nevertheless believe that statutes and ordinances that relegate sexual

predators to camping by a phosphate mine . . . are more draconian than necessary. . .A better option than camping by a phosphate mine should be available. . . Absent some type of creative solution, the burden on society to house prisoners will only continue to spiral upward." Alvarado v. State, 41 Fla. L. Weekly D2559a (2nd DCA 11/16/16)

LIFE SENTENCE-JUVENILE HOMICIDE: Defendant who was sentenced to life imprisonment with parole eligibility after twenty-five years for homicide committed when he was juvenile is entitled to resentencing in conformance with chapter 2014-220. Landy v. State, 41 Fla. L. Weekly D2555b (2nd DCA 11/16/16)

APPEALS-INEFFECTIVE ASSISTANCE OF COUNSEL: Ineffective assistance of counsel cannot be raised on direct appeal with there is reasonable explanation for counsel's conduct. Where defendant was charged with capital sexual battery of child under twelve, unlawful sexual activity with child between twelve and sixteen, and unlawful sexual activity with child aged sixteen or seventeen, and it was undisputed that defendant impregnated the victim, it is conceivable that a reasonable attorney might have abandoned any statute of limitations defense as to the lesser counts in order to avoid giving the jury only the choices of convicting defendant of capital sexual battery or acquittal. Mathis v. State, 41 Fla. L. Weekly D2551a (1st DCA 11/14/16)

RESTITUTION: Evidence is insufficient to support award of restitution for stolen television where there is no evidence as to original cost of television or amount of depreciation. Holt v. State, 41 Fla. L. Weekly D2550a (1st DCA 11/14/16)

HABEAS CORPUS: Habeas corpus is not available to challenge inmate's assignment to close management. Coleman v. State, 41 Fla. L. Weekly D2549a (1st DCA 11/14/16)

DOCUMENTS: Court-appointed attorney cannot be required to provide all documents produced on defendant's behalf at public expense – request is too broad. Bernal v. Weinstock, 41 Fla. L. Weekly D2548c (1st DCA 11/14/16)

DEATH PENALTY-INTELLECTUAL DISABILITY: Supreme Court's 2014 decision disapproving of a bright-line cutoff of 70 for IQ scores, and requiring courts to consider multiple prongs interdependently in determining intellectual disability for purposes of eligibility to be executed, applies retroactively. Thompson v. State, 41 Fla. L. Weekly S510a (FLA 11/10/16)

JUDGES-DISCIPLINE: Public reprimand ordered for judge who sent ex parte proposed form order to public defender and later ranted against prosecutors who sought his recusal from all cases. Inquiry Concerning a Judge, 41 Fla. L. Weekly S505a (FLA 11/10/16)

APPEALS: Claim of ineffective assistance of counsel may be addressed on appeal only where ineffectiveness is apparent on the face of the record and it would be a waste of judicial resources to require the trial court to address the issue. Greene v. State, 41 Fla. L. Weekly D2548a (5th DCA 11/10/16)

POST CONVICTION RELIEF: A claim that a plea is involuntary due to the influence of psychotropic medications is interpreted as a claim that counsel was ineffective for ensuring that the plea was knowingly and voluntarily made. McCrae v. State, 41 Fla. L. Weekly D2547b (5th DCA 11/10/16)

SENTENCING-CONSIDERATIONS: The rule that prohibits consideration of the defendant's lack of responsibility or remorse applies in cases where the defendant entered a plea of not guilty, proceeded to trial, and continued to maintain his innocence at sentencing. The rule does not apply when the

defendant waived his rights, entered a plea, and admitted his guilt. Corbitt v. State, 41 Fla. L. Weekly D2544a (5th DCA 11/10/16)

POST CONVICTION RELIEF: Although counsel was ineffective for misunderstanding the law on insanity, raising defense of insanity which negated claim of self-defense, and failing to preserve defendant's attorneyclient privilege, trial court erred in granting motion for post conviction relief, as defendant failed to demonstrate prejudice. State v. Jackson, 41 Fla. L. Weekly D2542a (5th DCA 11/10/16)

JOA-ROBBERY BY SUDDEN SNATCHING: Evidence iss insufficient to establish robbery by sudden snatching under a principal theory where there is no evidence that defendant assisted in carrying out crime by saying or doing something that caused, encouraged, incited, or otherwise assisted the perpetrator in committing the crime; and state established only defendant's presence, questionable behavior, and his comments which did not amount to an admission. Dorsainville v. State, 41 Fla. L. Weekly D2531a (4th DCA 11/9/16)

AGGRAVATED CHILD ABUSE: Drunk guy who picks a fight and beats up a 16 year old at a house party, then posts it on Facebook cannot be convicted of aggravated child abuse. Wheeler v. State, 41 Fla. L. Weekly D2530b (4th DCA 11/9/16)

POST CONNECTION RELIEF: Double jeopardy claim attacking convictions cannot be raised in rule 3.800(a) motion. German v. State, 41 Fla. L. Weekly D2528a (4th DCA 11/9/16)

LIFE SENTENCE-HOMICIDE-JUVENILE: Florida's existing parole system does not provide the individualized sentencing consideration required by

Miller v. Alabama. Michel v. State, 41 Fla. L. Weekly D2525a (4th DCA 11/9/16)

CONSTRUCTIVE POSSESSION: JOA required where paraphernalia is found on the driver's side rear floorboard near the center console of the vehicle jointly occupied by Defendant and a passenger. Defendant admitting that she used cocaine the date does not establish her dominion control over the paraphernalia in the car. Luu v. State, 41 Fla. L. Weekly D2524a (4th DCA 11/9/16)

CONVICTION RELIEF: Signed plea form, standing alone, was not sufficient to conclusively refute claim that counsel misadvised defendant regarding sentence he would receive. Beene v. State, 41 Fla. L. Weekly D2522d (4th DCA 11/9/16)

REMOVAL OF SEXUAL OFFENDER DESIGNATION: Summary denial of prior request for removal of designation does not preclude considering more recent request. Trial court may, within its discretion, deny a petition for removal of a sexual offender designation because of defendant's criminal record, but must show that it exercised its discretion in so ruling. Wromas v. State, 41 Fla. L. Weekly D2521b (3rd DCA 11/9/16)

SEXUAL OFFENDER REGISTRATION: Court may summarily deny as untimely a motion seeking relief from sex offender registration where the motion was filed 14 years after the Defendant became subject to registration. Vega v. State, 41 Fla. L. Weekly D2513b (3rd DCA 11/9/16)

POST CONVICTION RELIEF-AUTOPSY PHOTOGRAPHS: Court should compel production of autopsy photographs relied upon at trial although never admitted into evidence. Statute limiting disclosure of autopsy photographs

does not apply to criminal proceedings. Perreault v. State, 41 Fla. L. Weekly D2502a (2nd DCA 11/9/60)

POST CONVICTION RELIEF-DOUBLE JEOPARDY: Counsel was ineffective for failing to move for a judgment of acquittal on one of two robbery charges since the taking was from a single register. Austin v. State, 41 Fla. L. Weekly D2501a (2nd DCA 11/9/16)

ATTORNEY-MISCONDUCT: Court properly granted a new trial based on attorney's misconduct during the trial (presenting evidence which had been ruled inadmissible). Robinson v. Ward, 41 Fla. L. Weekly D2497a (2nd DCA 11/9/16)

LIFE SENTENCE-MINOR HOMICIDE: 35 years imprisonment for murder committed when defendant was a juvenile is not unconstitutional. Williams v. State, 41 Fla. L. Weekly D2495b (2nd DCA 11/9/16)

LIFE SENTENCE-JUVENILE-NONHOMICIDE: Fifty-five-ye ar aggregate sentence for nonhomicide committed by defendant when he was a juvenile is not a de facto life sentence. Conflict certified. Roman v. State, 41 Fla. L. Weekly D2495a (2nd DCA 11/9/16)

SEARCH AND SEIZURE-PASSENGER: Officer may detain a passenger during a valid vehicle stop. Conflict certified. Presley v. State, (1st DCA 11/9/16)

HEARSAY-CHILD VICTIM: Court properly admits child hearsay. Court is not required to make findings balancing indicia of reliability with indicia of unreliability. Cabrera v. State, 41 Fla. L. Weekly D2481b (1st DCA 11/9/16)

APPEALS: Rule adding five days to periods of time that commence upon service if service is made by mail does not apply to 30-day period within which notice of appeal must be filed because that period commences upon rendition of challenged order. Johnston v. State, 41 Fla. L. Weekly D2478b (1st DCA 11/9/16)

MOTION TO TERMINATE PROBATION: Court has unbridled discretion to decide whether or not to terminate probation early. Johnston v. State, 41 Fla. L. Weekly D2478b (1st DCA 11/9/16)

APPEAL: Notice of appeal must be filed within 30 days. Mailing the notice is not sufficient. Fehling v.Fehling, 41 Fla. L. Weekly D2474a (1st DCA 11/4/16)

RECLASSIFICATION: Convictions for armed burglary and aggravated battery were improperly reclassified under firearm statute where defendant did not use or possess a firearm during the offenses, and only defendant's codefendant used a weapon during the offenses. Postaski v. State, 41 Fla. L. Weekly D2472a (2nd DCA 11/4/16)

RECLASSIFICATION: Armed burglary conviction could not be reclassified under firearm statute because use of a weapon or firearm was an essential element of armed burglary. Postaski v. State, 41 Fla. L. Weekly D2472a (2nd DCA 11/4/16)

SENTENCING-CONSIDERATIONS: Defendant is entitled to be resentenced by a different judge because trial court improperly considered lack of remorse when sentencing her. Postaski v. State, 41 Fla. L. Weekly D2472a (2nd DCA 11/4/16)

PROBATION-CONDITIONS: Special condition of probation requiring defendant to maintain a daily activity log was not statutorily authorized and thus was required to be orally pronounced at sentencing. Lavender State, v. 41 Fla. L. Weekly D2471a (2nd DCA 11/4/16)

PROBATION-CONDITIONS: Requiring defendant to submit to electronic monitoring does not need to be orally pronounced, but requiring Defendant to pay for that must be orally pronounced. Lavender State, v. 41 Fla. L. Weekly D2471a (2nd DCA 11/4/16)

PROBATION-SPECIAL CONDITIONS: Striking of special conditions on appeal is not required because defendant was afforded procedural due process through Rule 3.800(b) procedure where he made only procedural objections, without any substantive objections to the conditions. Lavender State, v. 41 Fla. L. Weekly D2471a (2nd DCA 11/4/16)

SEARCH AND SEIZURE-BICYCLE: Court properly suppressed evidence based on stop of Defendant who was riding his bicycle at night without proper lighting but where officer observed no criminal behavior, saw no bulges on his person and did not smell marijuana until after seizing his bookbag. State v. Jones, 41 Fla. L. Weekly D2470a (2nd DCA 11/4/16)

SEARCH AND SEIZURE-REASONABLE SUSPICION: Officer had no basis to handcuff defendant and search his bookbag without reasonable suspicion that defendant was armed. Officer unlawfully escalated lawful traffic stop for

no lights on bicycle by seizing Defendant's book bag and handcuffing him. Reaching into bookbag for identification and turning away from officer does not justify seizing the bookbag and handcuffing the Defendant. State v. Jones, 41 Fla. L. Weekly D2470a (2nd DCA 11/4/16)

ADJUDICATION WITHHELD: Court may not withhold of adjudication for a second degree offense in absence of request in writing from state to withhold of adjudication and without competent, substantial evidence to support its decision. In order to withhold adjudication on a second-degree felony where state has not requested a withhold in writing, trial court must make written findings that withholding of adjudication is reasonably justified based on statutory circumstances or factors. Platt v. State, 41 Fla. L. Weekly D2467b (5th DCA 11/4/16)

ADJUDICATION WITHHELD: By statute, withhold of adjudication is not available for bomb threat. Platt v. State, 41 Fla. L. Weekly D2467b (5th DCA 11/4/16)

SENTENCING-SOPHISTICATION: A crime lacks sophistication if the acts constituting the crime are "artless, simple and not refined." A crime is not unsophisticated where it involves several distinctive and deliberate steps. Planned bank robbery by bomb threat is not unsophisticated. Platt v. State, 41 Fla. L. Weekly D2467b (5th DCA 11/4/16)

APPEAL: Court has no jurisdiction to rule on Defendant's motion to correct jail credit where he has already filed a Notice of Appeal. Williams v. State, 41 Fla. L. Weekly D2467a (5th DCA 11/4/16)

COMPETENCY OF JUVENILE: Court may not place juvenile and residential mental health treatment without competent substantial evidence to support so placing him. C.O. v. State, 41 Fla. L. Weekly D2464b (5th DCA 11/4/16)

POST CONVICTION RELIEF: Court may not summarily deny claim that counsel was ineffective for incorrectly advising him that he is not subject to sex offender registration requirements/Jimmy Ryce Civil Commitment. Civil commitment is not a collateral consequence of entering a plea. Faiella v. State, 41 Fla. L. Weekly D2464a (5th DCA 11/4/15)

CREDIT FOR TIME SERVED: Court erred in awarding jail credit for time served on sentence that is run concurrently with another sentence. Bowman v. State, 41 Fla. L. Weekly D2473a (2nd DCA 11/4/16)

SENTENCING-10-20-LIFE: Court is not required to impose mandatory minimum terms under 10-20-Life statute consecutively. Court is required to impose sentences for 10-20-Life offenses consecutive to non-10-20-Life offenses. Thomas v. State, 41 Fla. L. Weekly D2462a (1st DCA 11/2/16)

LAW OF THE CASE: After Order Denying Motion to Suppress is reversed, Court may again suppress the evidence based on issue not previously raised (reasonable mistake of law by officers). Only questions of law actually considered and decided during a previous proceeding become law of the case. State v. Thomas, 41 Fla. L. Weekly D2460a (1st DCA 11/2/16)

APPEAL-NEW TRIAL: Order entitled "Order Declaring Mistrial" is actually an order granting a new trial and therefore appealable. Court has wide discretion in granting or denying motion for new trial. State v. Smith, 41 Fla. L. Weekly D2456c (3rd DCA 11/2/16)

VERDICT FORM: Courts should provide an interrogatory separate from the verdict form for the core or substantive offenses for the jury to determine the existence of circumstances that can result in mandatory minimum sentences, sentence enhancements, or offense reclassifications. State v. Smith, 41 Fla. L. Weekly D2456c (3rd DCA 11/2/16)

PRISON RELEASEE RE-OFFENDER: Court may impose a prison releasee re-offender sentence without jury findings that Defendant qualified. Alleyne does not apply. State v. Wilson, 41 Fla. L. Weekly D2451b (4th DCA 11/2/16)

PROBATION REVOCATION: Defendant did not violate her probation by failing to successfully complete rehabilitation treatment program where the uncontroverted evidence established that defendant attempted to attend her scheduled sessions but was turned away and discharged from her treatment program due to her childcare issues. Charles v. State, 41 Fla. L. Weekly D2447a (4th DCA 11/2/16)

PROBATION REVOCATION: Defendant did not violate probation for changing her residence when she was abruptly evicted for nonpayment of rent. Charles v. State, 41 Fla. L. Weekly D2447a (4th DCA 11/2/16)

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RED LIGHT CAMERAS: Municipalities may contract with third-party vendors to electronically generate and mail notice of violation picked up by red light cameras. Conflict certified. City of Oldsmar v. Trinh, 41 Fla. L. Weekly D2435a (2nd DCA 10/28/16)

STATEMENTS OF DEFENDANT-CUSTODIAL INTERROGATION: Manner in which defendant was summoned for questioning; purpose, place, and manner of interrogation; extent to which detectives confronted defendant with evidence of his guilt; failure to inform defendant that he was free to leave at beginning of second interview; and stated reasons for failing to Mirandize defendant lead to conclusion that second interview was custodial in nature for purposes of Miranda. The extent to which the detectives confronted Defendant with evidence of his guilt established that the Defendant was subjected to custodial interrogation. Bell v. State, 41 Fla. L. Weekly D2426c (2nd DCA 10/28/16)

IMPEACHMENT-STATEMENTS OF DEFENDANT: Before a suppressed statement can be used for impeachment purposes, the statement must be shown to have been made voluntarily. Bell v. State, 41 Fla. L. Weekly D2426c (2nd DCA 10/28/16)

STATEMENTS OF DEFENDANT-MIRANDA-QUOTATION: "The excuse offered for failure to Mirandize Mr. Bell by Detective Schnable and Detective McConchie that they lacked enough evidence to arrest Mr. Bell is unavailing for multiple reasons. First, this claim is false in fact." Bell v. State, 41 Fla. L. Weekly D2426c (2nd DCA 10/28/16)

INTERROGATION-QUOTATION: "The idea that an average person who is being interviewed by the police at a station house can feel 'free' to terminate the interview and leave at any time has been aptly described as a 'new legal fiction.'" Bell v. State, 41 Fla. L. Weekly D2426c (2nd DCA 10/28/16)

10-20-LIFE: Error to impose life sentence with twenty-five year minimum term for charge reclassified to first-degree felony without any additional statutory authority for the life sentence. Pugh v. State, 41 Fla. L. Weekly D2426a (1st DCA 10/28/16)

SENTENCING-CONSIDERATIONS: Court may not consider the truthfulness of the defendant's testimony when imposing sentence. Court should not call the Defendant's version of events "pile of dung." Chatman v. State, 41 Fla. L. Weekly D2424e (1st DCA 10/28/16)

JUDGMENT OF ACQUITTAL-SEXUAL BATTERY: Court must grant Judgment of Acquittal for lewd and lascivious conduct over 12 but under 16 where evidence is clear that the Defendant did not touch the victim's breasts after she turned 12. Figueroa v. State, 41 Fla. L. Weekly D2423a (5th DCA 10/28/16)

SECOND DEGREE MURDER: Where defendant argued at trial that he acted in self-defense and that his use of deadly force was necessary to prevent his own imminent death or great bodily harm, use, without objection, of flawed manslaughter by intentional act jury instruction did not constitute fundamental error. Dickerson v. State, 41 Fla. L. Weekly D2422c (5th DCA 10/28/16)

CONSISTENCY: "Inconsistent decisions in separate, unrelated cases do not automatically constitute disparate treatment." Dickerson v. State, 41 Fla. L. Weekly D2422c (5th DCA 10/28/16)

DOUBLE JEOPARDY: Separate convictions for second-degree murder and attempted felony murder violates double jeopardy. Brown v. State, 41 Fla. L. Weekly D2421b (5th DCA 10/ 28/16)

JURORS-PEREMPTORY CHALLENGES: Defendant failed to preserve the issue of whether the Court erred in failing to make separate finding us when the state provided genuine race-neutral reasons work of its exercise of

peremptory challenges. Brown v. State, 41 Fla. L. Weekly D2421b (5th DCA 10/28/16) http://5dca.org/Opinions/Opin2016/102416/5D15-3472.op.pdf

HEARSAY: Screenshot of the loan transfer history is not admissible as a business record or the witness demonstrated a lack of knowledge about the creation, accuracy and trustworthy of the document. Miller v. Bank of America, 41 Fla. L. Weekly D2421a (5th DCA 10/28/16)

DOUBLE JEOPARDY: Domestic battery by strangulation and battery on a person 55 years of age or older violates the prohibition against double jeopardy. Whitfield v. State, 41 Fla. L. Weekly D2419c (5th DCA 10/28/16)

DOWNWARD DEPARTURE: Court may not impose a downward departure based on a plea offer that had been revoked. State v. Bowser, 41 Fla. L. Weekly D2419a (5th DCA 10/28/16)

POST CONVICTION RELIEF: Failure to call co-defendant as a witness may be ineffective assistance of counsel. Black v. State, 41 Fla. L. Weekly D2418b (5th DCA 10/28/16)

POST CONVICTION RELIEF: Court must not summarily deny claim that counsel was ineffective for misadvising defendant that designation as a sexual offender, rather than as a sexual predator, would preclude defendant's photograph from being posted on the Florida Department of Law Enforcement's website, and that defendant would not have entered plea of no contest had he been properly advised. Peng v. State, 41 Fla. L. Weekly D2418a (5th DCA 10/28/16)

NEWLY DISCOVERED EVIDENCE: The confession of the daughter/granddaughter of the murder victims and her DNA is newly discovered evidence requiring a new trial. Aguirre-Jarquin v. State, 41 Fla. L. Weekly S481a (FLA 10/27/16)

QUOTATION: "[A]dding the newly discovered evidence to the picture changes the focus entirely: No longer is Aguirre the creepy figure who appears over Samantha's bed in the middle of the night; he is now the scapegoat for her crimes." Aguirre-Jarquin v. State, 41 Fla. L. Weekly S481a (FLA 10/27/16)

JURY INSTRUCTIONS: Standard jury instructions tweaked. In Re: Standard Jury Instructions, 41 Fla. L. Weekly S480a (FLA 10/27/16)

MANDAMUS: Indigent prisoner's petition for writ of mandamus seeking to compel Department of Corrections to recommend commutation of his life sentence to a term of years was not a collateral criminal proceeding, and was therefore subject to a lien on prisoner's inmate account for costs and fees. Ruggirello v. Jones, 41 Fla. L. Weekly D2417a (1st DCA 10/26/16)

SENTENCING: Although court designated defendant as habitual felony offender, habitual violent felony offender, and violent career criminal, court did not exercise option of imposing mandatory minimum term under either HVFO or VCC designation; thus, the sentence is lawful because only one of the recidivists statutes was applied. Durkee v. State, 41 Fla. L. Weekly D2404a (4th DCA 10/26/16)

JUDGMENT OF ACQUITTAL-LSOA: Defendant is entitled to judgment of acquittal on charge of leading scene of crash where State failed to prove that

the vehicle damaged in the crash was attended at the time of the accident. Trainer v. State, 41 Fla. L. Weekly D2403a (4th DCA 10/26/16)

APPEAL-JURISDICTION: Notice of appeal divested the trial court of jurisdiction to rule on Defendant's pro se motion to withdraw plea filed after the appeal. Walker v. State, 41 Fla. L. Weekly D2402a (4th DCA 10/26/16)

SENTENCING: Court's decision to impose the maximum sentence not shown to be influenced by the State's request that the sentence send a message. It is not impermissible for a sentence to be used as a means of general deterrence. Good discussion of sentencing theory. See dissent. Charles v State, 41 Fla. L. Weekly D2397b (4th DCA 10/26/16)

METAPHOR-QUOTATION (DISSENT): "Sentencing law has recently undergone a sea change and many sentencing shibboleths have run aground on the shoals of the Constitution." Charles v State, 41 Fla. L. Weekly D2397b (4th DCA 10/26/16)

QUOTATION (DISSENT): "The question 'Why?' states a primitive and insistent human need. The small child, punished or deprived, demands an explanation. The existence of a rationale may not make the hurt pleasant, or even just. But the absence, or refusal, of reasons is a hallmark of injustice. . . . The despot is not bound by rules. He need not account for what he does. Criminal sentences, as our judges commonly pronounce them, are in these vital aspects tyrannical." Charles v State, 41 Fla. L. Weekly D2397b (4th DCA 10/26/16), quoting Marvin E. Frankel, Criminal Sentences: Law Without Order 39 (1973)

SENTENCING-YOUTHFUL OFFENDER: Court has discretion to impose youthful offender sentence for first degree felonies. Stewart v. State, 41 Fla. L. Weekly D2396b (1st DCA 10/26/16)

DOUBLE JEOPARDY: Separate convictions for use a computer to solicit child to engage in unlawful sexual conduct and traveling to meet a person believed to be a child violate double jeopardy where the offenses are based on the same conduct. Elsberry v. State, 41 Fla. L. Weekly D2396a (1st DCA 10/26/16)

PLEA-WITHDRAWAL: Where Defendant mistakenly believes that the sentences in two cases would run concurrently, and Court remedied the error by dismissing one case and vacating that sentence, and the resulting sentence was in compliance with the plea agreement, there is no abuse of discretion in denying motion to withdraw plea. Robinson v. State, 41 Fla. L. Weekly D2395c (1st DCA 10/26/16)

MANDATORY MINIMUM: Court may not impose a mandatory minimum sentence for possession of a firearm if the firearm is not actually held by the Defendant. Boyce v. State, 41 Fla. L. Weekly D2395a (1st DCA 10/26/16)

JOA-NEGLECT OF CHILD: Court must grant judgment of acquittal where Defendant left a sick child with a friend with directions to call 911 if the condition worsened. No evidence existed that the parents knew how serious the child's medical condition was. Ristau v. State, 41 Fla. L. Weekly D2391a (2nd DCA 10/26/16)

PLEA-WAIVER: Trial court's failure to comply with requirements of rule 8.165(b)(2) before accepting juvenile's uncounseled pleas in separate cases constituted fundamental error — Trial court erred in accepting uncounseled

plea in third case immediately after juvenile asserted his right to counsel, and further erred by denying juvenile's motion to withdraw plea in that case. D.A.C. v. State, 41 Fla. L. Weekly D2389a (2nd DCA 10/26/16)

SENTENCING-FIREARM-CONCURRENT: Court has discretion to impose 10-20-life sentences concurrently or consecutively. Elsperman v. State, 41 Fla. L. Weekly D2387b (1st DCA 10/25/16)

DOUBLE JEOPARDY: Separate convictions for use a computer to solicit a child and traveling to meet child violates double jeopardy. 17 hour gap between the communication and the meeting does not render the charges separate and distinct acts. Hughes v. State, 41 Fla. L. Weekly D2385a (5th DCA 10/21/16)

SEARCH AND SEIZURE-KNOCK AND ANNOUNCE: Justified belief that people are attempting to destroy evidence in a house excuses failure to comply with the knock and announce statute. State v. Taylor, 41 Fla. L. Weekly D2382b (5th DCA 10/21/16)