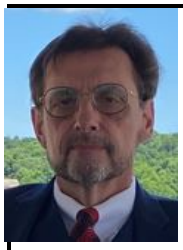

CASE LAW SUMMARY

MAY 2025

CONDITIONAL RELEASE-CONSECUTIVE SENTENCE: A defendant who violates conditional release is not resentenced. Rather the Parole Commission makes an administrative determination regarding conditional release, which leaves the original sentence undisturbed. When the defendant is sentenced for a new crime while on conditional release for an earlier offense, the trial court must exercise its discretion to decide whether the new sentence is to run concurrently or consecutively to his sentence on a controlled release violation; it may not defer the structure of the sentence to the Department of Corrections. The sentence is illegal, and correctable under R. 3.800. Walden v. State, 2D2024-0155 (5/2/25)

https://2dca.flcourts.gov/content/download/2451349/opinion/Opinion_2024-0155.pdf

POSTCONVICTION RELIEF: R. 3.800(a) provides for the correction of an illegal sentence, an incorrect calculation made in a sentencing scoresheet, or an erroneous sexual predator designation. Manifestly, all such errors can be raised on direct appeal. Walden v. State, 2D2024-0155 (5/2/25)

https://2dca.flcourts.gov/content/download/2451349/opinion/Opinion_2024-0155.pdf

VOP: In revoking probation Court must enter a written order identifying the specific conditions violated. Robbins v. State, 5D2024-0768 (5/2/25)

https://5dca.flcourts.gov/content/download/2451362/opinion/Opinion_2024-0768.pdf

STAND YOUR GROUND: Defendant was entitled to SYG immunity for shooting an intoxicated woman who had attacked him with a chair, pointed a gun at him, and rummaged in the back of a pickup where a machete was stored. Moore v. State, 6D2024-2740 (5/2/25)

https://6dca.flcourts.gov/content/download/2451424/opinion/Opinion_2024-2740.pdf

STAND YOUR GROUND: If a defendant raises a prima facie claim of self-defense immunity, then the State bears the burden to overcome that claim by clear and convincing evidence. Moore v. State, 6D2024-2740 (5/2/25)

https://6dca.flcourts.gov/content/download/2451424/opinion/Opinion_2024-2740.pdf

STAND YOUR GROUND-HEARING: Court may not rely on Defendant's silence in not testifying or presenting evidence at the SYG hearing in determining he was not entitled to immunity. "The statute is clear: Moore's burden was only to raise a prima facie claim of self-defense... At that point, the burden shifted to the State to prove by clear and convincing evidence that Moore did not act in self-defense. Accordingly, Moore was not required to submit any evidence, and the trial court erred in considering the lack of evidence presented by Moore and then using that lack of evidence to fill in the gaps in the State's evidence." Moore v. State, 6D2024-2740 (5/2/25)

https://6dca.flcourts.gov/content/download/2451424/opinion/Opinion_2024-2740.pdf

BEST EVIDENCE RULE: Officer's testimony that a video showed Defendant with a firearm is not admissible under the Best Evidence Rule when the video is not admitted in evidence. Facts based only on inadmissible evidence are facts without a competent, substantial evidentiary backing. Moore v. State, 6D2024-2740 (5/2/25)

https://6dca.flcourts.gov/content/download/2451424/opinion/Opinion_2024-2740.pdf

APRIL 2025

SENTENCING-GUIDELINES-FIREARM ENHANCEMENT: Where firearm is found in a bag with narcotics, Defendant is subject to the guidelines enhancement for possessing a firearm in connection with another felony offense. USA v. James, No 23-11872 (4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311972.pdf

SENTENCING-GUIDELINES-FIREARM ENHANCEMENT: Four-level enhancement under §2K2.1(b)(6)(B) of the sentencing guidelines applies when a firearm is found in close proximity to drugs if the defendant used or possessed any firearm or ammunition in connection with another felony offense. "In connection with" means the firearm possession is contextually, causally, or logically related to that offense. At minimum, the firearm must have some purpose or effect with respect to the crime and it must facilitate or have the potential of facilitating the offense. USA v. James, No 23-11872 (4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311972.pdf

EVIDENCE-OTHER BAD ACTS: Evidence of prior drug dealing is highly

probative of intent to distribute a controlled substance and that such evidence is not overly prejudicial. Evidence that Defendant had been convicted based on Alford pleas to prior drug sales is admissible in possession with intent to sell case. Under R.404(b), evidence of other crimes, wrongs, or acts are admissible if: (1) the evidence is relevant to an issue other than the defendant's character; (2) there is sufficient proof to allow a jury to find by a preponderance of the evidence that the defendant committed the prior act; and (3) the probative value of the evidence is not substantially outweighed by the risk of unfair prejudice. USA v. Booker, No. 23-14041 (11th Cir. 4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202314041.pdf

JURY INSTRUCTION-ALFORD PLEA: An Alford plea is a best interest guilty plea while maintaining innocence. Where evidence of Defendant's Alford plea is admitted under R. 404(b), the Court is not required to give a jury instruction on what an Alford plea is. USA v. Booker, No. 23-14041 (11th Cir. 4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202314041.pdf

VOIR DIRE-JUROR: Juror's statement after jury selection to courtroom deputy that Defendant's bracelet might ""have to do with voodoo"–prosector suggested it was associated with a Western African religion called Ifá–does not require that the juror be removed or further questioned. USA v. Booker, No. 23-14041 (11th Cir. 4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202314041.pdf

EVIDENCE-CODE NAMES/WORDS: Law enforcement officers with sufficient experience may offer lay opinion testimony about code words and

nicknames used by criminals. USA v. Booker, No. 23-14041 (11th Cir. 4/30/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202314041.pdf

CHALLENGE FOR CAUSE: A juror who expressed his belief that a child "would speak more credibly and honestly than an adult" should be removed for cause. Salomon v. State, 4D2024-0579 (4/30/25)

https://4dca.flcourts.gov/content/download/2451239/opinion/Opinion_2024-0579.pdf

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. The defendant must also renew the objection prior to the jury being sworn. Salomon v. State, 4D2024-0579 (4/30/25)

https://4dca.flcourts.gov/content/download/2451239/opinion/Opinion_2024-0579.pdf

CHALLENGE FOR CAUSE: Close cases should be resolved in favor of excusing the juror. A prospective juror's reasonable doubt as to whether he could render a fair and impartial verdict should be resolved in favor of granting the challenge for cause. A juror is not impartial when one side must overcome a preconceived opinion in order to prevail. Salomon v. State, 4D2024-0579 (4/30/25)

https://4dca.flcourts.gov/content/download/2451239/opinion/Opinion_2024-

0579.pdf

CHALLENGE FOR CAUSE: The failure to strike a juror for cause in criminal cases is per se reversible error. "To this day, the supreme court has not permitted a harmless error standard to apply to the failure to strike a juror in the criminal context." The dissent maintains that 'harmless error is the appropriate standard. "This sentiment may be in line with Blackstone's eighteenth-century commentaries, but it is inapposite to recent Florida supreme court rulings clearly to the contrary. We are bound to apply the express holdings of the supreme court, not Blackstone." Salomon v. State, 4D2024-0579 (4/30/25)

https://4dca.flcourts.gov/content/download/2451239/opinion/Opinion_2024-0579.pdf

TRUE THREAT-RETROACTIVITY: The holding in *Counterman v. Colorado* that the First Amendment requires proof of *mens rea* for a criminal defendant to be constitutionally convicted for committing a true-threat crime has not been held to apply retroactively. Certified as a question of great public importance. Hillstrom v. State, 4D2024-1989 (4/30/25)

https://4dca.flcourts.gov/content/download/2451249/opinion/Opinion_2024-1989.pdf

RETROACTIVITY-IMMUTABLE LAW (J. ARTAU, CONCURRING): Supreme Court should revisit *Witt* and *Barnum*, which held that only major constitutional changes of law, as opposed to evolutionary refinements in the criminal law, would "be cognizable" as a foundational change in the law entitling a defendant to relief under R. 3.850. The concept of a "change" to our Constitution without a ratified amendment, or "evolutionary

refinements" to our law without a statutory or rule enactment, misconstrues the nature of law and the proper role of the judiciary. "As Blackstone explained, 'law is 'mmutable.'" "Simply put, the law does not evolve without a statutory or rule change, and courts are not at liberty to make 'evolutionary refinements' to the law." Hillstrom v. State, 4D2024-1989 (4/30/25)

https://4dca.flcourts.gov/content/download/2451249/opinion/Opinion_2024-1989.pdf

STAND YOUR GROUND: Defendant who tried to make a citizen's arrest on victim who had committed a battery on the victim's wife is not entitled to SYG immunity where Victim was driving away when Defendant shot him. Raulerson v. State, 1D2022-2798 (4/30/25)

https://1dca.flcourts.gov/content/download/2451186/opinion/Opinion_2022-2798.pdf

STAND YOUR GROUND: To raise a prima facie claim of SYG immunity Defendant must show that the elements of justifiable force are met. Raulerson v. State, 1D2022-2798 (4/30/25)

https://1dca.flcourts.gov/content/download/2451186/opinion/Opinion_2022-2798.pdf

STAND YOUR GROUND (J. TANENBAUM, CONCURRING): Florida Constitution does not provide for interlocutory appeals from denials of SYG motions, and the supreme court has expressly foreclosed such use of the writ of prohibition for over 120 years. "We should hew to the supreme court's consistent directive over the years that the writ's scope remain

narrow—reserved for emergencies when a trial court proposes to act beyond its jurisdiction; never to be used for direct appellate review. Raulerson v. State, 1D2022-2798 (4/30/25)

https://1dca.flcourts.gov/content/download/2451186/opinion/Opinion_2022-2798.pdf

WRIT OF PROHIBITION: Prohibition is an extraordinary writ, extremely narrow in scope and operation, by which a superior court, having appellate and supervisory jurisdiction over an inferior court or tribunal possessing judicial or quasi-judicial power, may prevent such inferior court or tribunal from exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction. Raulerson v. State, 1D2022-2798 (4/30/25)

https://1dca.flcourts.gov/content/download/2451186/opinion/Opinion_2022-2798.pdf

JUDGMENT OF ACQUITTAL-SECOND DEGREE MURDER: Evidence that Defendant three times shot the driver of the car whom he was trying to rob shows a depraved mind sufficient to support a conviction for second-degree murder. Winchester v. State, 1D2023-2355 (4/30/25)

https://1dca.flcourts.gov/content/download/2451192/opinion/Opinion_2023-2355.pdf

SEARCH WARRANT: A warrant authorizing the search of a premises need not also identify, by name or by personal description, the person or persons expected to be found therein and to be searched as an incident to the search of the premises. Palmore v. State, 1D2023-2815 (4/30/25)

https://1dca.flcourts.gov/content/download/2451191/opinion/Opinion_2023-

2815.pdf

FIRST-DEGREE MURDER-PREMEDITATION: Killing with premeditation is killing after consciously deciding to do so. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing, only that it be long enough to allow reflection by the defendant. Murder by strangulation may be premeditated, particularly where there was evidence of pre-assault conflict between Defendant in the victim. Yinger v. State, 1D2023-3241 (4/30/25)

https://1dca.flcourts.gov/content/download/2451196/opinion/Opinion_2023-3241.pdf

SEARCH AND SEIZURE: Once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver and passengers to get out of the vehicle. Montgomery v. State, 3D23-1112 (4/30/25)

https://3dca.flcourts.gov/content/download/2451238/opinion/Opinion_2023-1112.pdf

APPEAL-JURISDICTION: Upon the dismissal of the appeal, jurisdiction of the trial court is reactivated to consider and rule upon any and all motions and pleadings pending in the cause. Garcia v. State, 3D24-1490 (4/30/25)

https://3dca.flcourts.gov/content/download/2451250/opinion/Opinion_2024-1490.pdf

VOP-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, 3D25-0313 (4/30/25)

https://3dca.flcourts.gov/content/download/2451256/opinion/Opinion_2025-0313.pdf

ARREST-MISDEMEANOR-FELLOW OFFICER RULE: A law enforcement officer can arrest a person for misdemeanor DUI without a 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 for the arrest. Castillo v. State, 3D23-1693 (4/30/25)

https://3dca.flcourts.gov/content/download/2451261/opinion/Opinion_2023-1693.pdf

ARREST-FELLOW OFFICER RULE: An admission to one officer can act as that officer's "observation" for purposes of the fellow officer rule. An element of a misdemeanor driving offense can occur in the constructive presence of an arresting officer by virtue of the defendant's admission. Castillo v. State, 3D23-1693 (4/30/25)

https://3dca.flcourts.gov/content/download/2451261/opinion/Opinion_2023-1693.pdf

PLEA WITHDRAWAL: When a represented defendant files a pro se rule 3.170(l) motion to withdraw plea based on allegations purporting to give rise to an adversarial relationship (e.g., counsel's misadvice, misrepresentation, or coercion), the trial court should not strike the pleading as a nullity even though the defendant did not also specifically include the phrase, "I request to discharge my counsel." Rather, the trial court should hold a limited hearing at which the defendant, defense counsel, and the State are present. If it appears to the trial court that an adversarial relationship between counsel and the defendant has arisen and the defendant's allegations are not conclusively refuted by the record, the court should either permit counsel to withdraw or discharge counsel and appoint conflict-free counsel to represent the defendant. Toomer v. State, 3D24-0735 (4/30/25)

https://3dca.flcourts.gov/content/download/2451266/opinion/Opinion_2024-0735.pdf

PLEA WITHDRAWAL: Although rule 3.170(l) does not expressly require a trial court to hold an evidentiary hearing, due process requires a hearing unless the record conclusively shows the defendant is entitled to no relief. Toomer v. State, 3D24-0735 (4/30/25)

https://3dca.flcourts.gov/content/download/2451266/opinion/Opinion_2024-0735.pdf

STATEMENT OF DEFENDANT-MIRANDA: The proper test for determining whether Miranda rights have been validly waived after a suspect has invoked them is a two-part test that requires courts to examine the totality of the circumstances, including the necessary fact that the

accused, not the police, reopened dialogue with the authorities. A defendant's Miranda rights are not automatically violated when an officer fails to re-read Miranda warnings following the defendant's voluntary re-initiation of contact. Florida Supreme Court has receded from precedent to the contrary. There is no longer a remind-or-readvise requirement. Penna v. State, 4D2020-0345 (4/30/25)

https://4dca.flcourts.gov/content/download/2451227/opinion/Opinion_2020-0345.pdf

STATEMENT OF DEFENDANT-VOLUNTARINESS: The Florida standard for determining the voluntariness of an incriminating statement –that is, whether the incriminating statements were the product of free will and rational choice—is the same as that which 'applies to federal prosecutions under the Fifth Amendment privilege against self-incrimination. Penna v. State, 4D2020-0345 (4/30/25)

https://4dca.flcourts.gov/content/download/2451227/opinion/Opinion_2020-0345.pdf

ORAL PRONOUNCEMENT: Where a trial court's written sentencing order conflicts with the oral pronouncement, the oral pronouncement controls. Wilson v. State, 4D2024-0417 (4/30/25)

https://4dca.flcourts.gov/content/download/2451234/opinion/Opinion_2024-0417.pdf

SEARCH-KNOCK AND TALK-NO TRESPASSING: No trespassing signs do not constitute express orders revoking the implied license to enter to conduct a knock-and-talk where the officer did not see the signs. USA v. Rivers, No 22-14159 (11th Cir. 4/25/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202214159.pdf

SEARCH WARRANT: Where officers found Defendant, a felon, with a firearm just outside his house, they have probable cause to obtian a search warrant to look for firearm accoutrements in the residence because the firearm would be of little use without ammunition. USA v. Rivers, No 22-14159 (11th Cir. 4/25/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202214159.pdf

ARMED CAREER CRIMINAL ACT-ERLINGER: Under *Erlinger*, judicial factfinding by a preponderance of the evidence that a defendant has three ACCA predicate convictions committed on different occasions violates the Fifth Amendment's guarantee of due process of law and the Sixth Amendment's guarantee to a jury trial. Either a jury must make the finding beyond a reasonable doubt or Defendant must freely so admit in a guilty plea. *Erlinger* errors are subject to harmless error review. USA v. Rivers, No 22-14159 (11th Cir. 4/25/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202214159.pdf

ARMED CAREER CRIMINAL ACT-ERLINGER: "Occasion" ordinarily means "an event or episode—which may, in common usage, include temporally discrete offenses." Whether all four of Defendant's prior drug offenses committed within a relatively short span of eight days constitute different occasions must be determined by a jury beyond a reasonable doubt for ACCA enhancement. *Erlinger* errors are subject to harmless error review, but error here was not harmless. USA v. Rivers, No 22-14159 (11th Cir. 4/25/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202214159.pdf

DEATH WARRANT: Governor has discretion to decide the date for imposition of the death penalty. Hutchinson v. Secretary. D.O.C., SC2025-0518 (4/25/25)
https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

DEATH PENALTY: Eighth Amendment does not provide an absolute right to present mitigating evidence at any time, regardless of its availability, regardless of the defendant's diligence in locating and presenting it, and regardless of its strength or force. Hutchinson v. Secretary. D.O.C., SC2025-0518 (4/25/25)
https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

DEATH PENALTY: Neither the length nor conditions of his confinement render Defendant's execution cruel and unusual punishment. Hutchinson v. Secretary. D.O.C., SC2025-0518 (4/25/25)
https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

DEATH PENALTY: The Florida Constitution's access-to-court provision does not entitle prisoner to the presence of two legal witnesses and related accomodations at his execution. Hutchinson v. Secretary. D.O.C., SC2025-0518, (4/25/25)
https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

DEATH PENALTY: Prisoner with certain neurocognitive disorders is not exempt from the death penalty. *Atkins* does not extend beyond the intellectual-disability context. Hutchinson v. Secretary. D.O.C., SC2025-0518, (4/25/25)
https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

POSTCONVICTION RELIEF-DEATH PENALTY: Ineffective assistance of state postconviction counsel does not provide cause to forgive a procedural default for claims of ineffective assistance of trial counsel where the state requires such claims to be raised in the initial-postconviction-review proceeding. There is no right to the effective assistance of postconviction

counsel. Hutchinson v. Secretary. D.O.C., SC2025-0518, (4/25/25) https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

DEATH WARRANT: The short period between the signing of the death warrant and the date of execution does not violate Due Process. Hutchinson v. Secretary. D.O.C., SC2025-0518, (4/25/25) https://supremecourt.flcourts.gov/content/download/2451000/opinion/Opinion_SC2025-0517%20&%20SC2025-0518.pdf

COST OF PROSECUTION: Court may not impose $5,132.43 costs of prosecution and an additional statutory prosecution cost of $100. Gadson v. State, 5D2023-3666 (4/25/25) https://5dca.flcourts.gov/content/download/2450977/opinion/Opinion_2023-3666.pdf

CIVIL RESTITUTION LIEN: DOC may directly move for imposition of a civil restitution case in the underlying criminal case rather than by filing a separate civil action. DOC is an executive agency of the state, and when it takes any action, it does so on behalf of the state. The State Attorney's Office need not file for the civil restitution lien. Florida D.O,C. v Jones, 6D2023-2947 (4/25/25) https://6dca.flcourts.gov/content/download/2450998/opinion/Opinion_2023-2947.pdf

SEX OFFENDERS-CONTACT WITH OWN CHILD: Statute which prohibits adult sex offenders who have been convicted of a sex offense involving a child from residing or conducting an overnight visit with a minor, including their own child, without exceptions, violates Due Process and the First Amendment. Parents must have a meaningful chance to show that they are fit despite their conviction. Henry v. Sheriff of Tuscaloosa County, Alabama, No. 24-10139 (11th Cir. 4/23/25) https://media.ca11.uscourts.gov/opinions/pub/files/202410139.pdf

CHILD PORNOGRAPHY: In fiscal year 2019, non-production child-pornography offenders possessed a median of 4,265 illegal images, according to the U.S. Sentencing Commission. Henry v. Sheriff of Tuscaloosa County, Alabama, No. 24-10139 (11th Cir. 4/23/25) https://media.ca11.uscourts.gov/opinions/pub/files/202410139.pdf

FIRST/FOURTEENTH AMENDMENT-SEX OFFENDER-PARENT: The Constitution guarantees parents the right to live with their children. Defendant does not necessarily forfeit that right when he commits a sexual offense. The right of a parent to live with their child is both deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty. Henry v. Sheriff of Tuscaloosa County, Alabama, No. 24-10139 (1th Cir. 4/23/25) https://media.ca11.uscourts.gov/opinions/pub/files/202410139.pdf

FIRST/FOURTEENTH AMENDMENT: "Whether a right exists is a different question from whether the state may constitutionally restrict the exercise of that right." Henry v. Sheriff of Tuscaloosa County, Alabama, No. 24-10139 (11th Cir. 4/23/25) https://media.ca11.uscourts.gov/opinions/pub/files/202410139.pdf

SEX OFFENDER-CHILDREN: Sex offender has a fundamental right to live with his family, including his child. Restrictions on that right are subject to strict scrutiny; they must be narrowly tailored to further the compelling interest of protecting its children from sexual abuse. The State has no compelling interest in removing children from parents who are in fact competent to love and care for them. A conviction for possession of child pornography does not alone predict with substantial precision an offender's likelihood of harming their own child. Henry v. Sheriff of Tuscaloosa County, Alabama, No. 24-10139 (11th Cir. 4/23/25) https://media.ca11.uscourts.gov/opinions/pub/files/202410139.pdf

HABEAS CORPUS: Prisoner is not entitled to a writ of habeas corpus to require prison to take his to a vascular surgeon. Court has no authority to issue a writ of mandamus compelling particular medical treatment or to direct the treatment and placement of prisoners serving sentences in the custody of the Florida Department of Corrections. Adams v. Dixon, 1D2024-1746 (4/23/25)
https://1dca.flcourts.gov/content/download/2450849/opinion/Opinion_2024-1746.pdf

QUARTERMAN AGREEMENTS (J. LUCAS, CONCURRING): "[T]here's a difference in kind between conditions such as the one the trial court imposed in Mr. Bolden's case (don't get arrested before your sentencing), which are categorically distinct from what the Florida Supreme Court authorized in *Quarterman* (show up on time for your sentencing). ...*Quarterman*, properly construed, is more limited than how it's come to be applied in practice. *Quarterman* only spoke to presentencing release conditions that (1) were an integral part of a negotiated plea agreement and (2) concerned the defendant's timely appearance at a subsequent sentencing hearing. While I can certainly understand the motivation to impose 'extra' *Quarterman* conditions outside of that context, trial courts should perhaps be hesitant to do so." Bolden v. State, 2D2023-2262 (4/23/25)
https://2dca.flcourts.gov/content/download/2450823/opinion/Opinion_2023-2262.pdf

APPEAL-PRESERVED ISSUE: 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. Lingo v. State, 3D24-0640 (4/23/25)
https://3dca.flcourts.gov/content/download/2450802/opinion/Opinion_2024-0640.pdf

DISCOVERY: Disclosure requirements for the prosecution principally

concern those matters not accessible to the defense in the course of reasonably diligent preparation. Lingo v. State, 3D24-0640 (4/23/25) https://3dca.flcourts.gov/content/download/2450802/opinion/Opinion_2024-0640.pdf

JURY INSTRUCTION: Judge's comments during jury instructions that "jury instructions are written by committees of lawyers and judges and are therefore pretty much unintelligible," and that it might be better to "skip all these instructions" and just review the verdict form demean the authority of the law and denied Defendant due process by encouraging the jury to depart from its instructions but is not fundamental error. For a judge's offhand comments during jury instructions to rise to fundamental error, they must be more than an ill-advised expression of personal views; rather, the comments 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. Nelson v. State, 3D2024-0994 (4/23/25) https://3dca.flcourts.gov/content/download/2450844/opinion/Opinion_2024-0994.pdf

SENTENCING GUIDELINES: The sentencing guidelines do not apply to life felonies committed prior to October 1, 1983. Shaw v. State, 3D25-0324 (4/23/25) https://3dca.flcourts.gov/content/download/2450819/opinion/Opinion_2025-0324.pdf

LIFE SENENCE: A life sentence is not impermissible "indefinite imprisonment" under the Florida Constitution. An individual's life expectancy should not be used to mark the longest term which a particular defendant should serve. Any sentence, no matter how short, may eventually extend beyond the life of a prisoner. Padgett v. State, 3D25-0349 (4/23/25) https://3dca.flcourts.gov/content/download/2450828/opinion/Opinion_2025-0349.pdf

POSTCONVICTION DNA TESTING: R. 3.853 is not intended to be a fishing expedition. Defendant has the burden to explain, with reference to specific facts about the crime and the items he wishes to have tested, how the DNA testing requested will exonerate the movant or mitigate the sentence. Rodriguez v. State, 3D25-0436 (4/23/25)
https://3dca.flcourts.gov/content/download/2450824/opinion/Opinion_2025-0436.pdf

COSTS OF INVESTIGATION: Court may not impose $50 in investigative costs which were neither requested by the state, agreed to, nor supported by evidence. Elliot v. State, 4D2024-0583 (4/23/25)
https://4dca.flcourts.gov/content/download/2450807/opinion/Opinion_2024-0583.pdf

SECOND AMENDMENT-CONCEALED WEAPON: Second Amendment does not give felons the right to possess a firearm. *But see Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) Fleming v. State, 4D2024-0623 (4/23/25)
https://4dca.flcourts.gov/content/download/2450809/opinion/Opinion_2024-0623.pdf

POSTCONVICTION RELIEF: Court has the discretion under R. 3.850(f)(2) to allow Defendant to file a second amended motion roughly three years after his his facially insufficient motion and first amended motion. If the amended motion is still insufficient or if the defendant fails to file an amended motion within the time allowed for such amendment, the court, in its discretion, may permit the defendant an additional opportunity to amend the motion or may enter a final, appealable order summarily denying the motion with prejudice. JeanCharles v. State, 4D2024-1717 (4/23/25)
https://4dca.flcourts.gov/content/download/2450831/opinion/Opinion_2024-1717.pdf

POSTCONVICTION RELIEF-10-20-LIFE: Defendant may not challenge

as illegal his sentence of 35 years with a 25 year minimum mandatory for using a firearm during an Attempted Robbery and causing great bodily harm by discharging it, which was punishable at the time by a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison. An "illegal sentence" is one that no judge under the entire body of sentencing laws could possibly impose. Defendant may not challenge in a R. 3.800(a) proceeding a sentence that is more lenient than the trial court was authorized to impose. A defendant is not precluded on direct appeal from challenging such a sentence, but he is under R. 3.800(a). This distinction is significant. Conflict certified. Lewis v. State, 4D2024-2433 (4/23/25) https://4dca.flcourts.gov/content/download/2450830/opinion/Opinion_2024-2433.pdf

POSTCONVICTION RELIEF-10-20-LIFE (J. WARNER, DISSENTING): A thirty-five-year sentence for attempted robbery with a deadly weapon is illegal. "The proposition that Lewis 'could have' been sentenced to a longer prison term pursuant to the 10-20-Life mandatories also does not apply to this case, as what sentence the trial court could have imposed does not make the actual sentence imposed legal or the error harmless." Lewis v. State, 4D2024-2433 (4/23/25) https://4dca.flcourts.gov/content/download/2450830/opinion/Opinion_2024-2433.pdf

DEADLINES-VOLUNTARY DEPARTURE: Under 8 U. S. C. §1229c(b)(2), the deadline for a removable alien to voluntarily depart the United States extends to the next business day if it would otherwise fall on a weekend or public holiday. Monsolvo Velázquez v. Bondi, No. 23–929 (U.S. S.Ct. 4/22/25) https://www.supremecourt.gov/opinions/24pdf/23-929_h3ci.pdf

DEFINITION-"DAY" (J. ALITO, DISSENTING): A "day" is a a division of time equal to 24 hours and representing the average length of the period during which the earth makes one rotation on its axis. Monsolvo

Velázquez v. Bondi, No. 23–929 (U.S. S.Ct. 4/22/25)
https://www.supremecourt.gov/opinions/24pdf/23-929_h3ci.pdf
RULES-AMENDMENT-TRAFFIC: "[W]e amend rule 6.445 to clarify that citations must identify the specific type of speed measuring device used to measure the driver's speed. However, we decline to further amend the rule to establish a separate set of requirements to be followed when the speed measuring device used is a stopwatch." In Re: Amendments to Florida Rule of Traffic Court 6.445, Case No. SC2024-1293 (4/17/25)
https://supremecourt.flcourts.gov/content/download/2450661/opinion/Opinion_SC2024-1293.pdf
VVC-TTVFO: Defendant cannot be sentenced as both a Violent Career Criminal (VCC) and a Three-Time Violent Felony Offender (TTVFO). Ballester v. State, 6D2023-0447 (4/17/25)

https://6dca.flcourts.gov/content/download/2450660/opinion/Opinion_2023-0447.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Where postconviction court finds that recanted testimony is not credible. Defendant is not entitled to postconviction relief on the grounds of newly discovered evidence. McKinney v. State, 1D2023-2052 (4/16/25)

https://1dca.flcourts.gov/content/download/2450527/opinion/Opinion_2023-2052.pdf

JOA-MURDER-PREMEDITATION: Defendant's soured friendship with victim over their drug dealing relationship, his text to his girlfriend that he was "about to do some hot shit," him being seen removing Victim's belongings from the apartment, and Victim being found with two bullets in his head is sufficient evidence of premeditation for a conviction for first-degree murder. McInnis v. State, 1D2023-2714 (4/16/25)

https://1dca.flcourts.gov/content/download/2450528/opinion/Opinion_2023-2714.pdf

JOA-ROBBERY: The testimony of the four eyewitnesses and two deputy sheriffs, along with evidence that the Defendant fled from law enforcement wearing the same-colored shirt, pants, and shoes as the perpetrator, being arrested with a handgun, cash, and marked paper bands that were stolen during the robbery, is sufficient competent, substantial evidence to support his conviction. James v. State, 1D2024-0920 (4/16/25)

https://1dca.flcourts.gov/content/download/2450529/opinion/Opinion_2024-0920.pdf

CONTINUANCE: Court abused its discretion in denying a continuance when Defendant's expert, a board-certified radiologist who would have testified that the child's injuries resulted from an undiagnosed metabolic bone disease, at the last minute said he would not be flying in from California for the trial as scheduled. Surratt v. State, 2D2023-1077 (4/16/25)

https://2dca.flcourts.gov/content/download/2450537/opinion/Opinion_2023-1077.pdf

EVIDENCE: Court does not abuse its discretion in admitting, as relevant to establishing the context of the charged offense, a gun found with the defendant at the time of arrest, even though it was not the gun used in the offense. Ross v. State, 3D23-0704 (4/16/25)

https://3dca.flcourts.gov/content/download/2450600/opinion/Opinion_2023-0754.pdf

PRO SE DEFENDANT: A notice of appeal filed by a criminal defendant represented by counsel is unauthorized by law and is treated as a nullity. Valdez v. State, 3D24-1241 (4/16/25)

https://3dca.flcourts.gov/content/download/2450550/opinion/Opinion_2024-1241.pdf

PLEA WITHDRAWAL: Where a motion to withdraw a plea occurs after sentencing, the Defendant has the burden of proving that a manifest injustice has occurred. Cordero v, State, 3D24-1795 (4/16/25)

https://3dca.flcourts.gov/content/download/2450603/opinion/Opinion_2024-1795.pdf

PLEA: 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—regardless of whether adjudication has been withheld—makes no sense because, at that point, the defendant's guilt as to the criminal charges in the case had already been formally determined. Cordero v, State, 3D24-1795 (4/16/25)

https://3dca.flcourts.gov/content/download/2450603/opinion/Opinion_2024-1795.pdf

SPOUSAL PRIVILEGE: Wife giving law enforcement the Ring video which captured her husband repeatedly putting his two-year-old niece's hand inside his pants does not violate spousal privilege where he had told her that the Ring camera was glitchy, which is why she had looked at the video. Spousal privilege imposes limitations on one spouse's ability to

testify against the other spouse regarding marital communications and does not extend so far as to require exclusion of evidence stemming from such communications. The privilege is narrowly construed and does not cover one spouse's observations of the other spouse's criminal actions. Schwarz v. State, 4D2024-0594 (4/16/25)

https://4dca.flcourts.gov/content/download/2450575/opinion/Opinion_2024-0594.pdf

EVIDENCE: References to the victim has Defendant's niece is relevant as backdrop for the babysitting context in which the incident occurred. 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 necessary to complete the story of the crime for the jury. Schwarz v. State, 4D2024-0594 (4/16/25)

https://4dca.flcourts.gov/content/download/2450575/opinion/Opinion_2024-0594.pdf

LEWD OR LASCIVIOUS MOLESTATION: Defendant repeatedly placing the Victim's right hand down the front of his pants supports a conviction for lewd or lascivious molestation notwithstanding the Defendant claimed that her hand only "came close" to his genital area. Schwarz v. State, 4D2024-0594 (4/16/25)

https://4dca.flcourts.gov/content/download/2450575/opinion/Opinion_2024-0594.pdf

SENTENCING DEPARTURE-DOUBLE COUNTING: A concern about "double-counting" is implicated when a "double counted" factor is used to

justify a departure sentence, but is not a concern where the sentence of life imprisonment is lawful. Florida law gives a sentencing judge unlimited discretion to sentence a defendant up to the maximum term set by the legislature for a particular crime. Schwarz v. State, 4D2024-0594 (4/16/25)

https://4dca.flcourts.gov/content/download/2450575/opinion/Opinion_2024-0594.pdf

TRAFFICKING IN SUBSTITUTE CATHINONE: Dimethylpentylone is a substituted cathinone, a chemical that is similar to MDMA or Ecstasy, although it isn't in and of itself written in the statute. §893.03(1)(c)191 provides an extensive, non-exhaustive list of different types of chemicals and molecular structures prohibited under the statute, "including, but not limited to" forty-five substances. Words such as "including" are words of expansion, not limitation. The fact that Dimethylpentylone is not enumerated is not dispositive. That section 893.03(1)(c)191 criminalizes substances based on their molecular structures, of which a common person in possession of these substances would be unaware, does not make it unconstitutional. Jackson v. State, 4D2024-0819 (4/16/25)

https://4dca.flcourts.gov/content/download/2450576/opinion/Opinion_2024-0819.pdf

HABITUAL FELONY OFFENDER: *Erlinger v. United States* reiterated the principle that a jury, rather than a judge, must find beyond a reasonable doubt nearly all facts that lead to a sentencing enhancement. But while the trial court, post-Erlinger, should have convened a jury to designate appellant as an HFO based on the date of his conviction or release, this was harmless error as the evidence conclusively established that Defendant qualified as an HFO. The record demonstrates beyond a reasonable doubt that a rational jury would have found that appellant qualified as an HFO. Jackson v. State, 4D2024-0819 (4/16/25)

https://4dca.flcourts.gov/content/download/2450576/opinion/Opinion_2024-0819.pdf

STATUTE OF LIMITATIONS: Where Defendant's DNA was linked to the specimen from a rape kit collected seventeen years earlier, he is entitled to discharge. Although §775.15(14) and (15) include two exceptions to the four year statute of limitations for rape-(1) the crime was reported within 72 hours, and (2) the prosecution commenced within one year after the defendant had been identified through DNA– Court may not take judicial notice of the probable cause affidavit and the court file because it constitutes hearsay. The exceptions to the status of limitations must be established by admissible evidence. Reaves v. State, 4D2024-1306 (4/16/25)

https://4dca.flcourts.gov/content/download/2450583/opinion/Opinion_2024-1306.pdf

HEARSAY-JUDICIAL NOTICE: Information contained in police reports is ordinarily considered hearsay and inadmissible in an adversary criminal proceeding and the information in the report does not fall under any recognized exception to the hearsay rule. The mere fact that a trial court takes judicial notice of a court file does not defeat a hearsay objection to its contents. Documents contained in a court file, even if that entire court file is judicially noticed, are still subject to the same rules of evidence to which all evidence must adhere. Reaves v. State, 4D2024-1306 (4/16/25)

https://4dca.flcourts.gov/content/download/2450583/opinion/Opinion_2024-1306.pdf

LIFE SENTENCE-MINOR OFFENDER: Where Defendant, a minor at the

time of the offenses, received consecutive sentences of life imprisonment with parole eligibility after twenty-five years for 1st degree murder, and 25 years, and 15 years or non-homicide crimes, resulting in forty cumulative years of consecutive sentences before eligibility for parole parole on the first-degree murder life imprisonment sentence, the Eighth Amendment is not violated. Consecutive prison terms for unrelated homicide and non-homicide offenses is not an aggregate sentence implicating the Eighth Amendment. Conflict certified. Rogers v. State, 4D2024-2704 (4/16/25)

https://4dca.flcourts.gov/content/download/2450588/opinion/Opinion_2024-2704.pdf

PAROLE-LIFE SENTENCE-MINOR OFFENDERS-EIGHTH AMENDMENT: Florida's parole system holds up under Eighth Amendment scrutiny. For homicide offenders, it's not a sham and for non-homicide offenders, it offers a meaningful opportunity for release. "The Commission might be a little stingy in granting inmates release from prison, but its system does not run afoul of the Eighth Amendment." Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

PAROLE-LIFE SENTENCE-MINOR OFFENDERS-14th AMENDMENT: Florida's parole system does not—on a class wide basis—violate the 14th Amendment. "[J]uvenile lifers haven't identified any liberty interest that is cognizable for due-process purposes." Florida has not created a liberty interest in the outcome of its parole decisions. The decision to parole an inmate from the incarceration portion of the inmate's sentence is an act of grace of the state, not a right. Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

PAROLE: Florida's parole system explained. Four stages: First, near the end of the mandatory minimum portion of an inmate's sentence, the Florida Commission on Offender Review schedules an Initial Interview and then sets a presumptive parole release date. Second, at intervals of one to seven years the Commission conducts Subsequent Interviews to consider any new information. Third, the Commission holds an Effective Interview just before the presumptive parole release date. Fourth, if the Commission doesn't authorize release at the Effective Interview, it may hold an Extraordinary Review to explain its reasoning or set a new presumptive parole release date. Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

LIFE SENTENCE-JUVENILE OFFENDERS-HISTORY: The Supreme Court's quartet of juvenile-offender sentencing decisions embody four key teachings: First, homicide offenders may be sentenced to life without the possibility of parole, provided that the sentence isn't mandatory and the sentencer has the discretion to impose a different punishment than life without parole after considering an offender's youth and attendant characteristics. Second, homicide offenders may be sentenced to less than life without parole, so long as the parole or other release system isn't a sham. Third, non-homicide offenders may never be sentenced to life without parole. Finally, non-homicide offenders may be sentenced to less than life without parole, so long as the state provides some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

LIFE SENTENCE-MINOR HOMICIDE OFFENDER: *Graham*'s holding that states must provide juvenile nonhomicide offenders "some meaningful

opportunity to obtain release based on demonstrated maturity and rehabilitation" does not apply to homicide offenders. Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

MEANINGFUL OPPORTUNITY FOR RELEASE: "The Supreme Court has never been entirely clear about what counts as a constitutionally valid 'meaningful opportunity' [for release]...But we can infer some basic characteristics. First, the decisionmakers in the state's release system must have the ability to incorporate 'demonstrated maturity and rehabilitation' into their assessment of whether to release a juvenile non-homicide offender...Second, the decisionmakers must actually exercise that authority...And third, a juvenile non-homicide offender must have some mechanism for making his views known—for pointing out...to the decisionmakers his maturity and rehabilitation. Beyond this, we hesitate to say more...[W]e turn to Florida's parole system, and we conclude that it checks all the boxes." Howard v. Coonrod, No. 23-10858 (4/15/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310858.pdf

POSTCONVICTION RELIEF-HABEAS CORPUS: Petitioner is not entitled to federal habeas corpus relief based on trial counsel's failure to properly preserve the religion-based Batson challenge because at the time it had not been established that a religion-based peremptory challenge was improperly discriminatory. Where the law was unsettled at the time of counsel's challenged action, the appellate court generally does not find that counsel rendered constitutionally ineffective assistance. Bilotti v. Florida D.O,C., No. 23-11759 (11th Cir. 4/11/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311759.pdf

POSTCONVICTION RELIEF: Trial counsel's failure to object to standard jury instructions that have not been invalidated by the state Supreme Court does not render counsel's performance deficient. Reviewing court looks to the standard jury instructions at the time of the trial, rather than in hindsight. Bilotti v. Florida D.O,C., No. 23-11759 (11th Cir. 4/11/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311759.pdf

AEDPA: AEDPA provides that federal courts may grant habeas relief only if the claim either 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 (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. Bilotti v. Florida D.O,C., No. 23-11759 (11th Cir. 4/11/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311759.pdf

CERTIFICATE OF APPEALABILITY: Although an appellate court generally reviews only the issues that the certificate of appealability specifies, it construes the COA to encompass any issue that must be resolved before reaching the merits of a claim identified in it. COAs don't somehow alter the normal rule that the appellate court may affirm on any ground the record supports. The COA limits only what a movant may appeal, not what the court may consider. Bilotti v. Florida D.O,C., No. 23-11759 (11th Cir. 4/11/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202311759.pdf

POST CONVICTION RELIEF: Defendant is entitled to a hearing on his claim that counsel was ineffective for failing to object to Prosecutor's suggestion during voir dire that an explanation for a defendant choosing not to testify could be upon "advice of counsel." Owens v. State, 5D2023-3213 (4/11/25)

https://5dca.flcourts.gov/content/download/2450327/opinion/Opinion_2023-3213.pdf

VOIR DIRE-COMMENT ON SILENCE: "[T]wenty-five years ago, the Florida Supreme Court issued a caveat that 'strongly caution[ed] prosecutors against making comments that may be interpreted as comments on the defendant's failure to testify or that impermissibly suggest a burden on the defendant to prove his or her innocence...[B]ecause of the common belief among prospective jurors that the innocent have nothing to hide, it is important for a court to remain vigilant in protecting the right of the defendant to remain silent 'against devaluation by innuendo or faint praise.'...[D]uring voir dire, 'it is a defendant's prerogative—not the prosecutor's—to first broach with potential jurors the sensitive area of not taking the witness stand,'...Our opinion today, with the detailed discussion of the Florida Supreme Court decision in Marston, hopefully serves as a cautionary reminder to prosecutors regarding commenting during voir dire on a defendant's right to remain silent or burden to prove innocence." Owens v. State, 5D2023-3213 (4/11/25)

https://5dca.flcourts.gov/content/download/2450327/opinion/Opinion_2023-3213.pdf

VOP: Where the record is clear that the Court revoked his probation based on Defendant's admitted violations, and a written order reflected revocation based on unadmitted allegations as well, the error is considered

to be a correctable scrivener's error. Gonzalez v. State, 5D2024-2204 (4/11/25)

https://5dca.flcourts.gov/content/download/2450329/opinion/Opinion_2024-2204.pdf

RULES-AMENDMENT-DISCOVERY: If a law enforcement agency agrees to electronic service of deposition notices, the agency must designate the e-mail address for the agency liaison that will accept such service. In Re: Amendments to Florida Rules of Criminal Procedure 3.220, 3.851, and 3.853, SC2024-1471 (4/10/25)

https://supremecourt.flcourts.gov/content/download/2450309/opinion/Opinion_SC2024-1471.pdf

RULES-AMENDMENT-MOTIONS: In Rules 3.851(f)(2) and 3.853(c), the reference to delivering motions to the judge is replaced with a requirement that the clerk notify the judge of the motion having been filed. In Re: Amendments to Florida Rules of Criminal Procedure 3.220, 3.851, and 3.853, SC2024-1471 (4/10/25)

https://supremecourt.flcourts.gov/content/download/2450309/opinion/Opinion_SC2024-1471.pdf

VOP: Where Defendant is sentenced in one hearing for both the new substantive offense and a violation of probation, and on new substantive offense sentenced as a Habitual Offender, the new offense should not be included on the scoresheet for the VOP case. A sentence imposed under the HFO statute is not subject to the Criminal Punishment Code. Because the erroneous scoresheet pushed the Least Permissible Sentence (LPS) above the statutory sixty-month maximum, Defendant's 64.95-month

sentences on the VOP were unlawful. Brantley v. State, 1D2023-1695 (4/9/25)

https://1dca.flcourts.gov/content/download/2450191/opinion/Opinion_2023-1695.pdf

PRO SE DEFENDANT: Court may deny Defendant's request to proceed *pro se* and require that counsel represent uncooperative defendant who had history of disrupting the proceedings. Dillard v. State, 1D2023-2443 (4/9/25)

https://1dca.flcourts.gov/content/download/2450197/opinion/Opinion_2023-2443.pdf

JURY TRIAL-WAIVER: There is no fundamental error where Defendant's counsel, rather than the trial court, conducted her on-the-record inquiry for waiver of a jury trial in favor of a bench trial. Saini v. State, 1D2023-2507 (4/9/25)

https://1dca.flcourts.gov/content/download/2450203/opinion/Opinion_2023-2507.pdf

SEARCH WARRANT-STALENESS: Search warrant for phones, tablet, and a laptop to find child pornography is stale when executed more than a month after its issuance. §933.05 mandates that a search warrant shall be returned within 10 days after issuance thereof. A warrant that is not executed within the statutory period is stale, and any search conducted pursuant to it is invalid. "We will not second-guess lawmakers' plain language by appending a prejudice requirement to the firmly established statutory time limit." Moschella v. State, 2D2023-0044 (4/9/25)

https://2dca.flcourts.gov/content/download/2450172/opinion/Opinion_2023-0044.pdf

COMPETENCY: Where Court made an oral finding of competency after the parties stipulated to the mental health expert's report but the record does not demonstrate that the trial court reviewed the contents of the report, nor did the trial court enter a written order finding Defendant competent to proceed, a *nunc pro tunc* determination of competency must be made, or if it cannot be, a new trial is required. Durham v. State, 2D2023-1548 (4/9/25)

https://2dca.flcourts.gov/content/download/2450174/opinion/Opinion_2023-1548.pdf

RESTITUTION: In a criminal case, ability to pay is considered in enforcement proceedings after the court orders restitution, but in a juvenile case, the court must determine before ordering restitution what the delinquent child or his or her parent(s) or guardian(s) can be reasonably expected to both pay and make. A juvenile court may order restitution even if the child does not have an immediate ability to pay, but in that case, the juvenile court must make findings on the record about the juvenile's expected earning capacity. A.L.W. v. State, 2D2023-2710 (4/9/25)

https://2dca.flcourts.gov/content/download/2450175/opinion/Opinion_2023-2710.pdf

POSTCONVICTION RELIEF-JIMMY RYCE: Defendant is not entitled to withdraw a plea where neither the Court nor counsel advised him of the consequences of the Jimmy Ryce Act. Any such consequences are collateral, and Defendant cannot show prejudice. Rodriguez v. State,

3D23-1339 (4/9/25)

https://3dca.flcourts.gov/content/download/2450220/opinion/Opinion_2023-1339.pdf

CULPABLE NEGLIGENCE: Juvenile is not entitled to judgment of dismissal where he smeared deodorant gel on his teacher's desk, chair, the nearby floor and several areas of the classroom, causing the teacher to slip and fall. Culpable negligence only requires proof of creating an exposure to personal injury, not proof of a likelihood of death or great bodily harm. A.C., a juvenile v. State, 3D23-1490 (4/9/25)

https://3dca.flcourts.gov/content/download/2450221/opinion/Opinion_2023-1490.pdf

CULPABLE NEGLIGENCE: Smearing deodorant gel on the floor may constitute was a course of conduct showing a reckless disregard for the safety of others. There is no uniform schedule of specific acts that constitute culpable negligence. The conduct is not viewed in a vacuum, but rather, through the prism of the circumstances. A.C., a juvenile v. State, 3D23-1490 (4/9/25)

https://3dca.flcourts.gov/content/download/2450221/opinion/Opinion_2023-1490.pdf

VOP-HEARSAY-BUSINESS RECORDS: Revocation of probation may be supported by hearsay such as business records hearsay is generally admissible as an exception to the hearsay rule. The question in such proceedings is not whether all of the evidence offered in support of revocation was hearsay, but rather whether there is evidence to support

revocation that would have been admissible at a criminal trial. Quigley v. State, 3D23-1682 (4/9/25)

https://3dca.flcourts.gov/content/download/2450250/opinion/Opinion_2023-1682.pdf

POSTCONVICTION RELIEF: In an appellate court's review of the denial of a claim of ineffective assistance of trial counsel after an evidentiary hearing, the trial court's factual findings are entitled to deference if supported by competent, substantial evidence. Pestano v. State, 3D23-2075 (4/9/25)

https://3dca.flcourts.gov/content/download/2450227/opinion/Opinion_2023-2075.pdf

MOTION FOR JOA-PRESERVED ISSUE: A motion for judgment of acquittal can be made at the close of the State's evidence, and in order to preserve the issue for appeal, the defendant is not required to renew the motion after the defendant has presented evidence. Bridon v. State, 3D24-0390 (4/9/25)

https://3dca.flcourts.gov/content/download/2450252/opinion/Opinion_2024-0390.pdf

FORFEITURE: Where Appellant, a day laborer, discovered 103 one-ounce gold Krugerrand coins secreted inside a wall when he was working on demolishing a condominium, which were later seized by the Sheriff's Office for safekeeping for the unknown and never identified rightful owner, or he is entitled to individual notice of any forfeiture proceeding. A person entitled to notice need not demonstrate a proprietary interest in the property at issue but only that he or she possessed the property when it

was seized. Warren v. Tony, 4D2024-0560 (4/9/25)

https://4dca.flcourts.gov/content/download/2450207/opinion/Opinion_2024-0560.pdf

DUPLICITOUS COUNTS: A count in an indictment is duplicitous if it charges two or more separate and distinct offenses. The risk of a duplicitous count is that (1) a jury may convict a defendant without unanimously agreeing on the same offense; (2) a defendant may be prejudiced in a subsequent double jeopardy defense; and (3) a court may have difficulty determining the admissibility of evidence. USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

DUPLICITOUS COUNT-UNANIMOUS VERDICT: A charge of enticing a minor to engage in sexual activity (18 U.S.C. §2422(b)) is duplicitous where it fails to list multiple enticement offenses to cover each criminal act. One enticement count to cover a 10-month period with numerous conversations about sex and sexual encounters is duplicitous because it allows for the possibility that the jurors didn't unanimously agree on the same act of enticement. USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

TRAVELING WITH INTENT-FOREIGN COMMERCE CLAUSE: The power over channels of commerce under the Foreign Interstate Commerce Clause permits Congress to keep the channels of interstate commerce free from immoral and injurious uses, regardless of the non-commercial intent to have sex with underage Croatian girls. §2423(b) is directed at people

who, for example, buy plane tickets to commit illicit activity in foreign countries. The travel-with-intent count is constitutional. USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

TRAVELING WITH INTENT-FOREIGN COMMERCE CLAUSE: §2423(b), prohibiting traveling in foreign commerce with the purpose of committing an illegal sex act with a minor, does not impermissibly burden one's rights of travel and free thought under the First and Fifth Amendments. Defendant "did far more than think immoral thoughts or travel with amorphous intentions—he bought a plane ticket, traveled to Croatia, and had sex with a 15-year-old girl." USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

SEARCH AND SEIZURE-BORDER SEARCH: Fourth Amendment does not require any level of suspicion for forensic searches of electronic devices at the border. Border searches never require a warrant—or even probable cause—to be reasonable. Reasonable suspicion at the border is only required for highly intrusive searches of a person's body, such as a strip search or an x-ray examination. USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

CONSPIRACY-ENTICEMENT OF MINOR: Evidence is sufficient to support a conviction for conspiracy to entice a minor where Defendant coached codefendant had to convince the minor to have sex with him; (2) knew about the sexual activity between the two; (3) spoke with a minor regarding her sexual experiences; (4) pretended to be a doctor and

instructed her how she could avoid pregnancy; (5) hid the codefendant's relationship with the minor from her family; (6) paid for I.G.'s plane ticket to the United States; (7) helped ensure that she didn't return to Croatia with her family; and (8) obstructed her efforts to return to Croatia. "That is more than enough." USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

MISTRIAL: The improper and troubling testimony about Defendant's immigration status is insufficient to warrant a mistrial. "[W]e...decline...to adopt a *per se* rule that every mention of a defendant's illegal immigration status is incurably prejudicial." USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

SENTENCING GUIDELINES-UNDULY INFLUENCING MINOR: There is a rebuttable presumption of undue influence if the defendant is at least 10 years older than his minor victim for purposes of the §2G1.3(b)(2)(B) two level enhancement. USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

SENTENCING GUIDELINES-CUSTODY, CARE, OR SUPERVISORY CONTROL: Where minor was entrusted to Defendant's care and he was responsible for all conduct in furtherance of the conspiracy for minor to have sex with codefendant, he is subject to the guidelines enhancement for custody, care, or supervisory control (§2G1.3). USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

DUPLICITY (J. ROSENBAUM, CONCURRING): Forcing the government to charge by the enticement, rather than the victim, multiplies the statutory minimum; it eliminates the application of our usual sentencing practices that secure uniform and proportionate punishments; and, in some cases, it may even impose an effectively automatic life sentence. "This is all to say the Majority Opinion arrives at the correct disposition under our precedent, but I have deep concerns about the correctness of our precedent." USA v. Pulido, No 22-10709 (11th Cir. 4/8/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202210709.pdf

HABEAS CORPUS-DEPORTATION: Detainees held for deportation as suspected alien enemies, i.e., lawful permanent residents from Venezuela, must seek relief only by petition for writ of habeas corpus in the district of confinement. Trump v. J. G. G., *et al.*, No. 24A931 (S.Ct., 4/7/25)

https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf

HABEAS CORPUS-DEPORTATION: Detainees held for deportation as suspected alien enemies, i.e., lawful permanent residents from Venezuela, are entitled to due process of law, including notice and opportunity to be heard. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs. Trump v. J. G. G., *et al.*, No. 24A931 (S.Ct., 4/7/25)

https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf

J. SOTOMAYOR, DISSENTING: Scores of Venezuelan immigrants have been sent to foreign prison in El Salvador without any due process of law, under the auspices of the 1798 Alien Enemies Act designed for times of war, part of the Aliens and Sedition Acts, which Madison called "a monster that must for ever disgrace its parents," not withstanding that there is no ongoing war between the United States and Venezuela. Nor is Tren de Aragua itself a "foreign nation," in what can be understood only as covert preparation to skirt both the requirements of the Act and the Constitution's guarantee of due process, all without any opportunity to contact their lawyers, much less notice or opportunity to be heard. "The Government's plan, it appeared, was to rush plaintiffs out of the country before a court could decide whether the President's invocation of the Alien Enemies Act was lawful or whether these individuals were, in fact, members of Tren de Aragua." Trump v. J. G. G., *et al.*, No. 24A931 (S.Ct., 4/7/25)

https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf

J. SOTOMAYOR, DISSENTING: "The Government's conduct in this litigation poses an extraordinary threat to the rule of law. That a majority of this Court now rewards the Government for its behavior with discretionary equitable relief is indefensible. We, as a Nation and a court of law, should be better than this." Trump v. J. G. G., *et al.*, No. 24A931 (S.Ct., 4/7/25)

https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf

J. SOTOMAYOR, DISSENTING: "The President of the United States has invoked a centuries-old wartime statute to whisk people away to a notoriously brutal, foreign-run prison. For lovers of liberty, this should be quite concerning...With more and more of our most significant rulings taking place in the shadows of our emergency docket, today's Court leaves less and less of a trace. But make no mistake: We are just as wrong now as we have been in the past, with similarly devastating consequences. It

just seems we are now less willing to face it." Trump v. J. G. G., *et al.*, No. 24A931 (S.Ct., 4/7/25)

https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf

GOOD GRIEF!: "O'Steen represented Tong and his associates under a Retainer Agreement. The Agreement provided for a non-refundable retainer of $15,000 and any additional fees needed to enable O'Steen to do the work....[State Attorney] Siegmeister communicated a plea offer to O'Steen: Tong could plead guilty to a felony and be sentenced to five years' probation..., and the case against his two associates would be dismissed. Tong rejected the offer. He told O'Steen that under no circumstances would he plead guilty to a felony...O'Steen discussed...with Tong...the possibility [of PTI] if Tong paid him an additional attorney's fee of $50,000...To avoid paying the additional fee, Tong turned to the FBI." USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

PLEA BARGAINING: State Attorney "Siegmeister...and O'Steen met...at a Walmart and discussed placing Tong in the PTI program. Afterwards, they drove to Siegmeister's farm. En route, Siegmeister asked O'Steen how much he was charging Tong. When O'Steen said it was $60,000, Siegmeister told him he could afford to buy one of his Braford bulls." Which he did. For $4,000. More than fair market value. He turned around and sold it for less than that. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

DUPLICITOUS CHARGES: Duplicity is the joining in a single count of two or more distinct and separate offenses. This should be distinguished from multiplicity, the charging of a single offense in several counts, and from misjoinder, the inclusion in separate counts of an indictment of offenses or defendants not permitted by Rule 8. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

DUPLICITY: An indictment is irreconcilably inconsistent and duplicitous where it charges in a single count Hobbs Act by Extortion under Color of Official Right as a principal and Hobbs Act by Extortion under Color of Official Right as an accomplice. Defendant was an attorney who charged his client an extra and exorbitant fee to bribe the State Attorney. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

EXTORTION UNDER COLOR OF OFFICIAL RIGHT: A private citizen cannot be convicted as a principal to extortion under color of official right. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

EXTORTION UNDER COLOR OF OFFICIAL ACT/HOBBS ACT: Hobbs Act by Extortion requires obstructing, delaying, or affecting commerce. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

EXTORTION UNDER COLOR OF OFFICIAL ACT/HOBBS ACT: Under Hobbs Act Extortion, the extorted property must be actual property of the victim, rather than sting money the government provided. Although the use of government funds as bribe money depletes the funds available to the government, it does not deplete the assets of an individual who is directly engaged in interstate commerce. USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

EXTORTION UNDER COLOR OF OFFICIAL ACT/HOBBS ACT: An accused cannot be convicted as an accomplice of aiding and abetting the commission of a crime by a principal unless the prosecution first proves beyond a reasonable doubt that the principal committed the crime. Defendant/Attorney cannot be convicted of Extortion under Color of Official Act as an accomplice for obtaining bribe money from his client to pay the State Attorney where that particular money was not forwarded to the State Attorney (he got paid off differently). USA v. O'Steen, No. 22-13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

FAILING TO DISCLOSE $10,000 FEE: 31 U.S.C. §5 six 311 criminalizes willfully failing to file a report with Treasury within fifteen days of receipt of a legal fee in excess of $10,000. But the attorney's knowledge of the regulation is required for conviction. "We do not dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge. In particular contexts, however, Congress may decree otherwise. That, we hold, is what Congress has done with respect to 31 U.S.C. § 5322(a)." The circumstantial evidence here is insufficient to show that Defendant knew of the reporting requirement. USA v. O'Steen, No. 22-

13569 (11th Cir. 4/4/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213569.pdf

HABITUAL OFFENDER: Before the trial court may impose a habitual felony offender sentence, it must find that the defendant has been previously convicted 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 his release from, prison or supervision. Cleveland v. State, 2D2023-2373 (4/4/25)

https://2dca.flcourts.gov/content/download/2450025/opinion/Opinion_2023-2373.pdf

HABITUAL OFFENDER: Defendant's stipulation that he had twelve prior felony convictions is insufficient to impose a habitual offender sentence absent record evidence of the timing of the convictions or his release from prison or probation. Cleveland v. State, 2D2023-2373 (4/4/25)

https://2dca.flcourts.gov/content/download/2450025/opinion/Opinion_2023-2373.pdf

HABITUAL OFFENDER: Where Defendant fails to object to a habitual felony offender sentence at the time of sentencing and State did not provide requisite evidence, the case should be remanded for a new sentencing hearing at which the State may again attempt to prove that the defendant qualifies as a habitual felony offender. Cleveland v. State, 2D2023-2373 (4/4/25)

https://2dca.flcourts.gov/content/download/2450025/opinion/Opinion_2023-2373.pdf

PRISON RELEASEE REOFFENDER: Proof to the jury of a defendant's release which subjects a defendant to as a PRR is not required. Kinard v. State, 2D2024 (4/4/25)

https://2dca.flcourts.gov/content/download/2450028/opinion/Opinion_2024-2347.pdf

PLEA-WITHDRAWAL: A represented juvenile defendant sentenced as an adult may not appeal from a nolo contendere plea, based on it being involuntary, without first moving to withdraw the plea. There is no fundamental-error exception to the preservation requirement. The narrowly drawn and extremely limited exception when juveniles enter uncounseled pleas found by the Supreme Court in T.G. v. State does not apply when Defendant is represented by counsel. "[O]n an even more basic level, without receding from T.G., we reject its approach to creating ad hoc exceptions to rule 9.140(b)(2)(A)(ii)(c)...[N]o matter how emphatically a court stresses that its reasoning is good-for-one-case-only, every exception begets demands for more. We think it best to follow the text of rule 9.140(b)(2)(A)(ii)(c). Sauls v. State, 5D2023-2688 (4/4/25)

https://5dca.flcourts.gov/content/download/2450013/opinion/Opinion_2023-2688.pdf

APPEAL-COUNSEL'S DUTY (J. EISNAUGLE, CONCURRING): "I conclude that the other issues are not sufficiently argued in the initial brief. Therefore, I do not reach them...It is elementary that when a decree of the trial court is brought here on appeal the duty rests upon the appealing party

to make error clearly appear." Sauls v. State, 5D2023-2688 (4/4/25)

https://5dca.flcourts.gov/content/download/2450013/opinion/Opinion_2023-2688.pdf

POSTCONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for not calling an alibi witness regardless whether there was some evidence undermining the alibi. Goodwin v. State, 5D2024-1276 (4/4/25)

https://5dca.flcourts.gov/content/download/2450015/opinion/Opinion_2024-1276.pdf

POSTCONVICTION RELIEF: Defendant is entitled to an evidentiary hearing on claim that counsel was ineffective for not calling mitigation witnesses for sentencing. Goodwin v. State, 5D2024-1276 (4/4/25)

https://5dca.flcourts.gov/content/download/2450015/opinion/Opinion_2024-1276.pdf

JOA-LEWD AND LASCIVIOUS MOLESTATION: Defendant is entitled to judgment of acquittal for lewd and lascivious molestation where he called a juvenile victim to the bathroom, closed and locked the door, turned off the light, told her to go on knees, and took off his pants and boxers. An actual touching under the statute is required. Sylvaince v. State, 6D2023-3362 (4/4/25)

https://6dca.flcourts.gov/content/download/2450041/opinion/Opinion_2023-3362.pdf

RULES-AMENDMENT-PRETRIAL DETENTION: Rules amended to substantially revamp procedures for pretrial detention, effective May 1, 2025. In Re: Amendments to Florida Rules of Criminal Procedure 3.116 and 3.132, SC2024-0883 (4/3/25)

https://supremecourt.flcourts.gov/content/download/2449948/opinion/Opinion_SC2024-0883.pdf

ARGUMENT: State's unobjected to argument that no evidence was presented that victim was lying or was an attention seeker were an invited response. A prosecuting attorney may comment on the jury's duty to analyze and evaluate the evidence and state his or her contention relative to what conclusions may be drawn from the evidence. Kimble v. State, 1D2023-2497 (4/2/25)

https://1dca.flcourts.gov/content/download/2449841/opinion/Opinion_2023-2497.pdf

CONSTRUCTIVE POSSESSION: Jury may infer that he possessed the narcotics in the backpack where the passenger disclaimed ownership. Baker v. State, 1D2024-0407 (4/2/25)

https://1dca.flcourts.gov/content/download/2449843/opinion/Opinion_2024-0407.pdf

COST OF PROSECUTION: State need not request $100 cost of prosecution for it to be imposed. Baker v. State, 1D2024-0407 (4/2/25)

https://1dca.flcourts.gov/content/download/2449843/opinion/Opinion_2024-0407.pdf

CORPUS DELICTI (J. LABRIT, CONCURRING): §92.565 replaces the traditional corpus delicti rule with a trustworthiness test in sex abuse cases. Before admitting Defendant's inculpatory statements under this exception to the corpus delicti rule, Court must (1) determine whether the charged offense qualifies as a sexual abuse crime, (2) determine whether the State is unable as a result of some disability on the part of the victim to prove an element of the crime, (3) determine whether the State has proven that the defendant's confession is trustworthy, and (4) make specific findings of fact on the issue of trustworthiness. State v. Young, 2D2024-0963 (4/2/25)

https://2dca.flcourts.gov/content/download/2449846/opinion/Opinion_2024-0963.pdf

APPEAL-ISSUE PRESERVATION: A party may not argue on appeal an issue which it disavowed in the lower court. And the reviewing court may not consider an issue raised below but apparently abandoned on appeal. An issue not raised in an initual brief is abandoned. State v. Young, 2D2024-0963 (4/2/25)

https://2dca.flcourts.gov/content/download/2449846/opinion/Opinion_2024-0963.pdf

APPEAL-PRIOR PANEL PRECEDENT RULE: A three judge panel of a district court should not overrule or recede from a prior panel's ruling on an identical point of the law. State v. Young, 2D2024-0963 (4/2/25)

https://2dca.flcourts.gov/content/download/2449846/opinion/Opinion_2024-0963.pdf

CORPUS DELICTI-SEX CASES: The plain language of §92.565(3), which creates an exception to the corpus delicti rule for Defendant's corroborated and reliable sex cases permits a trial court to consider whether a defendant's statements are self-corroborating. There is no textual basis to exclude self-corroboration. But prior case law holds otherwise. "I encourage this court to reexamine and recede from *Tumlinson* at the first opportunity." State v. Young, 2D2024-0963 (4/2/25)

https://2dca.flcourts.gov/content/download/2449846/opinion/Opinion_2024-0963.pdf

SPECIAL INTERROGATORY: A special interrogatory used to determine the existence of additional circumstances relevant to mandatory minimum sentences or reclassifications have no legal bearing on the findings or evidence required to convict of an underlying crime and is thus analytically separate from verdicts for underlying crimes, and neither eliminates nor supplies an element of the underlying crimes. Reeves v. State, 3D22-2226 (4/2/25)

https://3dca.flcourts.gov/content/download/2449868/opinion/Opinion_2022-2226.pdf

RESTITUTION: The court shall retain continuing post-sentencing jurisdiction over the convicted offender for the sole purpose of entering civil restitution lien orders, unaffected by the statute of limitations for civil actions brought by the state. Grimace v. State, 3D23-1885 (4/2/25)

https://3dca.flcourts.gov/content/download/2449870/opinion/Opinion_2023-1885.pdf

APPEAL-ISSUE PRESERVATION: Court has discretion whether to sentence Defendant to life in prison as a violent career criminal. But Defendant may not raise on appeal the argument that the court did not realize that it had discretion without having raised the issue at sentencing or by a motion to correct. Ventura v. State, 3D223-2069 (4/2/25)

https://3dca.flcourts.gov/content/download/2449893/opinion/Opinion_2023-2069.pdf

SENTENCING ERROR (J. MILLER, CONCURRING/DISSENTING): Defendants failure to preserve a fundamental sentencing error by motion under R. 3.800(b) or by objection during the sentencing hearing forecloses them from raising the error on direct appeal. The rule extends only to "sentencing errors." "What falls within the definition of a 'sentencing error,' however, remains somewhat nebulous given the lack of consistency in the current jurisprudential landscape." Court's misapprehension of its discretion to impose less than a life sentence is a "sentencing error" which should be cognizable on direct appeal. Ventura v. State, 3D223-2069 (4/2/25)

https://3dca.flcourts.gov/content/download/2449893/opinion/Opinion_2023-2069.pdf

POST CONVICTION RELIEF: If the Court denies a motion for postconviction relief as insufficient on its face, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion. Talley v. State, 3D24-0981 (4/2/25)

https://3dca.flcourts.gov/content/download/2449888/opinion/Opinion_2024-0981.pdf

POST CONVICTION RELIEF: Court may not enter an order denying a motion for postconviction relief by citing to portions of the trial testimony without attaching those portions of the files and records that conclusively show no entitlement to relief. To avoid rendering two separate final orders, the trial court should not issue a final order on some of the claims until Defendant has had the opportunity to amend the others. Talley v. State, 3D24-0981 (4/2/25)

https://3dca.flcourts.gov/content/download/2449888/opinion/Opinion_2024-0981.pdf

COMPETENCY: Court must enter a written order of competency, not merely make oral findings. Fowler v. State, 4D2023-1739 (4/2/25)

https://4dca.flcourts.gov/content/download/2449878/opinion/Opinion_2023-1739.pdf

VOP: Court may not find that defendant violated his probation by not paying costs without determining that the defendant had the ability to pay. Fowler v. State, 4D2023-1739 (4/2/25)

https://4dca.flcourts.gov/content/download/2449878/opinion/Opinion_2023-1739.pdf

STAND YOUR GROUND: Whether the officers exceeded the scope of their legal duties by improperly detaining Defendant or failing to comply with criteria set forth in the Baker Act is irrelevant to whether Stand Your Ground immunity can be applied. SYG immunity does not exist for force against law enforcement officers acting in the performance of his or her official duties. A distinction exists between an officer's official duties and an

officer's legal duties. While Defendant may still assert a lack of probable cause, procedural noncompliance, or that the officers used excessive force as defenses to any prosecution, he is not entitled to assert Stand Your Ground immunity. State v. Argerich, 4D2023-2892 (4/2/25)

https://4dca.flcourts.gov/content/download/2449880/opinion/Opinion_2023-2892.pdf

COMPETENCY: A trial court is entitled to reject apparently unrebutted testimony of a defense mental health expert if the trial court finds that the facts do not support the testimony. Colston v. State, 4D2024-0397 (4/2/25)

https://4dca.flcourts.gov/content/download/2449885/opinion/Opinion_2024-0397.pdf

JOA: On a motion for judgment of acquittal, all conflicts in the evidence, and reasonable inferences to be drawn from the evidence, are resolved in the State's favor. Video showing Defendant palcing a gun near a propane tank and gesturing to co-defendant, briefly interacting with the victim, watching the co-defendant shoot the victim, quickly leaving the scene with him, and Defendant making a jail call suggestive of her consciousness of guilt is competent, substantial evidence that she intended the co-defends\ant to shoot the victim. Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

JURY INSTRUCTION-PRINCIPAL: Giving an outdated version of the jury instruction on principals which omitted language specifying that the principals elements must be proven beyond a reasonable doubt is not

fundamental error. "[A] proper approach to fundamental error considers the jury instructions as a whole...[and] does not nitpick at the instructions to manufacture a fundamental error that was overlooked by all the participants." Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

JURY INSTRUCTION: "We note that when standard criminal jury instructions are relied upon, it is important for an attorney to compare the proposed instructions to the most recent version of the standard instructions." Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

OPENING STATEMENT-STATE'S MISREPRESENTATION: Prosecutor's failure to present evidence of a fact mentioned in opening statement warrants a mistrial if the reference prejudices the defendant's right to a fair trial by suggesting additional evidence of the defendant's guilt that is never subjected to cross-examination and evaluation by the jury, even where a curative instruction is given. Defendant is entitled to a mistrial where State's opening statement revealed that Defendant said she had been arguing with the Victim–State had said they would not use the statement–and the statement never came into evidence. Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

PROSECUTORIAL MISCONDUCT: "[T]he prosecutor's reference in

opening statement to Farris's admission that she had an argument with the victim contributed to the denial of her right to a fair trial by suggesting additional evidence of her guilt—evidence of intent, ill will toward the victim, and a possible motive for the killing—that Farris never had the opportunity to contest...The prosecutor created the problem. The prosecutor did not have a good faith basis for making the comment in opening statement, especially after representing on the first day of trial that she was 'not using the statements' that Alford and Farris had given to police." Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

PROSECUTORIAL MISCONDUCT-MISSTATEMENT OF LAW: Defendant is entitled to a new trial where prosecutor misstated the law of principals by saying that the Defendant did not have to have the conscious intent that the co-defendant shoot the victim, or the same criminal intent that he had. The fair reply doctrine does not permit the State to mislead the jury on the law in rebuttal. Farris v. State, 4D2024-0617 (4/2/25)

https://4dca.flcourts.gov/content/download/2449890/opinion/Opinion_2024-0617.pdf

CONFRONTATION: Admission into evidence of co-defendant's jail call did not violate Defendant's confrontation rights because it did not directly implicate him nor was it testimonial because he did not make the call with an expectation that it would be used in the investigation or prosecution of a crime. The admission of a co-defendant's confession in a joint trial violates the defendant's right of cross-examination secured by the Confrontation, but the *Bruton* rule applies only to directly accusatory incriminating statements, as distinct from those that do not refer directly to the defendant and become incriminating only when linked with evidence introduced later at trial. Alford v. State, 4D2024-0669 (4/2/25)

https://4dca.flcourts.gov/content/download/2449889/opinion/Opinion_2024-0669.pdf

ISSUE PRESERVATION: To preserve a claim of insufficiency of the evidence, a defendant must raise a timely challenge in the trial court. The only two exceptions to this requirement are: (1) when the death penalty is imposed; and (2) when the evidence is insufficient to show that a crime was committed at all. A party must obtain a ruling from the trial court in order to preserve an issue for appellate review. Alford v. State, 4D2024-0669 (4/2/25)

https://4dca.flcourts.gov/content/download/2449889/opinion/Opinion_2024-0669.pdf

FIREARM-SUFFICIENCY: Where the video shows a man raising his right arm and pointing an object, which appears to be a firearm, at the victim, a muzzle flash is seen, the victim ran away and died, and the cause of death was a gunshot wound to the torso, the jury could reasonably infer that the object was a firearm and that the man with the firearm shot the victim. Alford v. State, 4D2024-0669 (4/2/25)

https://4dca.flcourts.gov/content/download/2449889/opinion/Opinion_2024-0669.pdf

APPEAL (J. WARNER, CONCURRING): “I write to address a practice by the State of expressly refusing to address the merits of summarily denied claims in its answer brief...[W]e are told that the claim will not be addressed unless we direct the State to respond. This practice does not comport with the Florida Rules of Appellate Procedure...[W]hen an evidentiary hearing is held as to at least one claim, appellee has the duty to address all issues

raised in the initial brief that appellee contests. Otherwise, the appellate court could view the failure to address an issue as a concession of error...I...would caution the State in future appeals that it may forfeit its right to respond to a summarily denied claim in a rule 9.141(b)(3) appeal, if the State does not address the claim in its answer brief." Smith v. State, 4D2024-1166 (4/2/25)

https://4dca.flcourts.gov/content/download/2449891/opinion/Opinion_2024-1166.pdf

STATUTE OF LIMITATIONS-DILIGENT SEARCH: A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the capias, summons, or other process is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search shall be considered. Going to find different addresses using only two sources of information (NCIC/FCIC and DAVID) is not a diligent search. Obvious sources of information include the telephone book,the city directory, driver's license records, vehicle license records, property tax records, voter's registration records, the probation office, local utility companies, law enforcement agencies, state attorney's office, schools, armed forces, the prison system, relatives of the defendant, and witnesses in the case. Persaud v. State, 4D2024-2664 (4/2/25)

https://4dca.flcourts.gov/content/download/2449898/opinion/Opinion_2024-2664.pdf

DEATH PENALTY: in death penalty cases for initial and successive postconviction motions, trial court must hold a hearing to determine whether an evidentiary hearing is required. Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

DEATH PENALTY-DEATH WARRANT: A compressed death warrant litigation schedule does not deprive a capital defendant of Due Process. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

DEATH PENALTY-RECORD REQUESTS: Defendant on death row is not entitled to public records pertaining to Florida's lethal injection procedures; such records are unlikely to lead to a colorable claim for relief. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

DEATH PENALTY: Florida's lethal injection protocol, including the etomidate protocol, is not cruel and unusual punishment. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

DEATH PENALTY: Governor's authority to determine the timing of a death warrant, and thus the length of warrant litigation, does not unconstitutionally empower him to control the availability and reliability of

judicial relief. Governor has authority and discretion when signing death warrants. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

DEATH PENALTY-UNANIMOUS VERDICT: Florida's death penalty sentencing scheme remains constitutional under the Sixth, Eighth, and Fourteenth Amendments notwithstanding *Erlinger v. United States.* When a jury unanimously finds all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendation, the death penalty may be imposed. A unanimous, non-advisory jury is not necessary to impose a death sentence. *Erlinger* involved an element of the offense, not the existence of aggravating circumstances. Tanzi v. State, SC2025-0371 (4/1/25)

https://supremecourt.flcourts.gov/content/download/2449824/opinion/Opinion_SC2025-0371%20&%20SC2025-0372,%20&%20SC2025-0424.pdf

MARCH 2025

SUPERVISED RELEASE: Supervised release is a form of post-confinement monitoring provided to facilitate a transition to community life. A term of supervised release ends on its date of expiration, but a district court may also terminate a term of supervised release early or extend a term of supervised release if less than the maximum authorized term was previously imposed. USA v. Murat, No. 24-11614 (11th Cir. 3/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411614.pdf

VIOLATION OF SUPERVISED RELEASE: A district court's power to revoke a term of supervised release extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued. When a defendant is reincarcerated for violating his supervised release, he is still serving that term of supervised release—albeit in prison—and the sentencing court still has jurisdiction over that term. It is not a term of imprisonment that is to be served, but all or part of the term of supervised release. USA v. Murat, No. 24-11614 (11th Cir. 3/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411614.pdf

VIOLATION OF SUPERVISED RELEASE: Court may rule on a limited number of counts in a petition to revoke supervised release, hold other counts in abeyance, and adjudicate those counts later. Court may enter two separate revocation orders on the original petition, one after a hearing on the technical violations and a later one after a hearing on the substantive violations. USA v. Murat, No. 24-11614 (11th Cir. 3/28/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411614.pdf

APPEAL-ISSUE PRESERVATION: 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. Sutter v. State, 1D2024-0337 (3/28/25)

https://1dca.flcourts.gov/content/download/2449649/opinion/Opinion_2024-0337.pdf

EVIDENCE: When the evidence is circumstantial, the proof of a motive for committing the crime is relevant. Defendant's hateful statements and threats to harm children are relevant to establish his motive for stealing the glucose monitors shipped to his neighbor for his child. Sutter v. State, 1D2024-0337 (3/28/25)

https://1dca.flcourts.gov/content/download/2449649/opinion/Opinion_2024-0337.pdf

POSTCONVICTION RELIEF: Defendant is not entitled to correction of his sentence because it failed to include statutorily required monthly reporting probation and a substance abuse course. Defendant is entitled to no relief where he suffers no prejudice from an unlawfully lenient sentence. To challenge a court order, a defendant must demonstrate prejudicial error. Brown v. State, 5D2024-1583 (3/28/25)

https://5dca.flcourts.gov/content/download/2449671/opinion/Opinion_2024-1583.pdf

FIREARMS: The Gun Control Act, which authorizes ATF to regulate any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, permits it to regulate the manufacture and sale of "weapon parts kits." Bondi v. Vanderstok, No. 23–852 (S.Ct. 3/26/25)

https://www.supremecourt.gov/opinions/24pdf/23-852_c07d.pdf

ARTIFACT NOUNS: Artifact nouns are typically characterized by an intended function, rather than by some ineffable natural essence. Reflecting as much, everyday speakers sometimes use artifact nouns to

refer to unfinished objects—at least when their intended function is clear. But "when used to capture unfinished products, artifact nouns generally reach only so far...Few would call a pile of unfinished logs a table." Bondi v. Vanderstok, No. 23–852 (S.Ct. 3/26/25)

https://www.supremecourt.gov/opinions/24pdf/23-852_c07d.pdf

ILLEGAL SENTENCE: Defendant may not challenge the legality of his sentence of probation for DUI for not including statutorily required monthly reporting probation and completion of a substance abuse program. R. 3.800(a) does not permit a defendant to challenge an unlawfully lenient sentence absent some showing of prejudice. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court. Campbell v. State, 2D2023-0651 (3/26/25)

https://2dca.flcourts.gov/content/download/2449483/opinion/Opinion_2023-0651.pdf

JUDGMENT OF ACQUITTAL-WEIGHT: Where the Defendant testified that he thought that the three bags were hemp, and only one of the bags was tested and determined to be cannabis weighing 24.47 pounds, Defendant cannot be convicted of trafficking in cannabis in an amount in excess of 25 pounds. Because there is an identifiable danger of misidentification between legal hemp and illegal cannabis, the State can no longer rely solely on appearance and odor to extend an inference of illegal cannabis to the remaining untested packets and must chemically test each packet to meet the threshold weight. "We note that our holding does not extend to cases where circumstantial evidence other than appearance and odor alone may be sufficient to prove that all packages contain illegal cannabis." Campbell v. State, 2D2023-0651 (3/26/25)

https://2dca.flcourts.gov/content/download/2449483/opinion/Opinion_2023-0651.pdf

CANNABIS-TESTING: Until recently, all forms of cannabis were illegal. Because the unique appearance, texture, and odor of cannabis was susceptible to being readily identifiable by experienced law enforcement officers, their testimony alone was sufficient to establish the identity of the substance without chemical analysis was sufficient. However, after the legalization of hemp at the federal and state levels, this is no longer the case. Campbell v. State, 2D2023-0651 (3/26/25)

https://2dca.flcourts.gov/content/download/2449483/opinion/Opinion_2023-0651.pdf

SEARCH AND SEIZURE-ISSUE PRESERVATION: Defendant is not entitled to suppression of the firearm found on his person when officers patted him down after removing him from the car which they decided to search based solely on the smell of marijuana. Because Defendant on appeal argued only that the search of the car was unlawful, not that the search of his person was unlawful, the issue of whether the guns should have been suppressed is not preserved. "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 (3/26/25)

https://2dca.flcourts.gov/content/download/2449484/opinion/Opinion_2023-0953.pdf

DICTA/HOLDING: If not a holding, a proposition stated in a case counts as dicta. 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. Simmons v. State, 2D2023-0953 (3/26/25)

https://2dca.flcourts.gov/content/download/2449484/opinion/Opinion_2023-

0953.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA-DICTA (J. SLEET, DISSENTING): "I agree with the majority that much of this court's opinion in Owens, 317 So. 3d 1218, is dicta...[T]his court's choice of wording in Owens—'we hold that an officer smelling the odor of marijuana has probable cause"...—has caused and will likely continue to cause confusion for trial courts making probable cause determinations." Simmons v. State, 2D2023-0953 (3/26/25)

https://2dca.flcourts.gov/content/download/2449484/opinion/Opinion_2023-0953.pdf

SEARCH AND SEIZURE-ODOR OF MARIJUANA (J. SLEET, DISSENTING): "I conclude that due to the legalization of medical marijuana, the odor of fresh marijuana alone does not establish a substantial chance that criminal activity is occurring." Simmons v. State, 2D2023-0953 (3/26/25)

https://2dca.flcourts.gov/content/download/2449484/opinion/Opinion_2023-0953.pdf

SEX OFFENDER REGISTRATION-REMOVAL: §943.0435(11), which tightens the requirements for removal of sex offender registration and lengthens the period of ineligibility is procedural rather than substantive. The current version of the statute governing removal of required sex offender registration controls. Korson v. State, 2D2024-0807 (3/26/25)

https://2dca.flcourts.gov/content/download/2449485/opinion/Opinion_2024-0807.pdf

CERTIORARI-STATE APPEAL: A district court lacks jurisdiction to grant the State's petition for writ of certiorari where the trial court's order is a final order and where the State had no statutory right to appeal the order. Appellate court cannot grant State's petition for writ of certiorari challenging an order granting removal from required sex offender registration. Korson v. State, 2D2024-0807 (3/26/25)

https://2dca.flcourts.gov/content/download/2449485/opinion/Opinion_2024-0807.pdf

SENTENCING-PURPOSE: The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment. Ducas v. State, 3D22-1395 (3/26/25)

https://3dca.flcourts.gov/content/download/2449530/opinion/Opinion_2022-1395.pdf

SENTENCING CONSIDERATIONS: Following an appeal, Court may consider a conviction for offenses committed after the primary offense when resentencing a defendant on that primary offense. A subsequent arrest without conviction distinguished from the subsequent arrest with conviction. Ducas v. State, 3D22-1395 (3/26/25)

https://3dca.flcourts.gov/content/download/2449530/opinion/Opinion_2022-1395.pdf

SENTENCING CONSIDERATIONS: "A conscientious judge trying to measure a defendant's potential for rehabilitation could not ignore the fact that the defendant was [later] convicted of trying to murder a witness to his crime." Ducas v. State, 3D22-1395 (3/26/25)

https://3dca.flcourts.gov/content/download/2449530/opinion/Opinion_2022-1395.pdf

HEARSAY-EXCITED UTTERANCE: In SYG hearing, Defendant's 911 call. in which he said that he shot the three victims after they rushed him, is admissible as an excited utterance or spontaneous statement.. Hoempler v. State, 3D24-1814 (3/26/25)

https://3dca.flcourts.gov/content/download/2449542/opinion/Opinion_2024-1811.pdf

EVIDENCE-INEXTRICABLY INTERTWINED: Evidence of the Defendant following and pestering a woman, which led to her friend accosting the defendant, which led to the defendant shooting him and his two sons, is admissible. Court does not abuse its discretion admitting evidence showing a chronological chain of events that led to the crime. Hoempler v. State, 3D24-1814 (3/26/25)

https://3dca.flcourts.gov/content/download/2449542/opinion/Opinion_2024-1811.pdf

APPEAL-CREDIT FOR TIME SERVED-CORRECTION: A petition for writ of habeas corpus is not a proper method for seeking review of an order denying a motion to correct jail credit filed pursuant to R 3.801. Joseph v. State, 3D24-2226 (3/26/25)

https://3dca.flcourts.gov/content/download/2449558/opinion/Opinion_2024-2226.pdf

CREDIT FOR TIME SERVED-CORRECTION: A written notation in the plea

agreement as to the amount of credit a defendant will receive is not sufficient to demonstrate that a defendant knowingly and voluntarily waived jail credit to which he would otherwise be legally entitled. Joseph v. State, 3D24-2226 (3/26/25)

https://3dca.flcourts.gov/content/download/2449558/opinion/Opinion_2024-2226.pdf

SEVERANCE-COUNTS: Defendant is not entitled to severance of two murders occurring within thirty-six minutes and a few blocks of each other as part of the single crime spree. Offenses that occur during a crime spree are connected when they share a high degree of similarity or a causal link. Paul v. State, 4D23-2680 (3/26/25)

https://4dca.flcourts.gov/content/download/2449546/opinion/Opinion_2023-2680.pdf

JURY SELECTION-PROCEDURE: The selection procedure whereby twelve prospective jurors were seated and, if stricken, replaced by the next person in the randomly-generated sequence without the parties having a copy of the random list is permissible. A defendant has no constitutional, statutory, or rule-based right to know the identity of a replacement juror before exercising a peremptory challenge. Question certified. Paul v. State, 4D23-2680 (3/26/25)

https://4dca.flcourts.gov/content/download/2449546/opinion/Opinion_2023-2680.pdf

JURY SELECTION: Peremptory challenges are a right of rejection, not a right of selection. Paul v. State, 4D23-2680 (3/26/25)

https://4dca.flcourts.gov/content/download/2449546/opinion/Opinion_2023-2680.pdf

ARGUMENT: A prosecutor's comment that no one took the stand to contradict the state's case constitutes an improper comment, implicating the appellant's Fifth Amendment rights. But where defense counsel places an issue before the jury in closing argument, the prosecution is permitted to respond. Prosecutor's rebuttal comments that there were no conflicts in the evidence that Defendant was the person who shot victims as no one testified that it was not the Defendant were permissible as an invited response to defense counsel's arguments regarding conflicts in the evidence. Paul v. State, 4D23-2680 (3/26/25)

https://4dca.flcourts.gov/content/download/2449546/opinion/Opinion_2023-2680.pdf

ALLOCUTION: A defendant prior to sentencing has the opportunity to make an unsworn statement to the sentencing judge in allocution. "The key word here is "opportunity." The federal rule requires the trial court to address the defendant personally about allocution. Florida has no similar rule. Court's failure to make an unsolicited inquiry into whether Defendant wants to make a statement before sentencing is not fundamental error. Jones v. State, 4D2023-3066 (3/26/25)

https://4dca.flcourts.gov/content/download/2449548/opinion/Opinion_2023-3066.pdf

LOITERING AND PROWLING: Where officer received a report about, but did not actually see, Defendant looking in car windows and trying to open a car door. his nervous demeanor and giving a false name are insufficient to establish the crime of loitering and prowling periods All elements of loitering or prowling must be committed in a police officer's

presence because the offense is a misdemeanor. Behavior that does not occur in the officer's presence may not be considered. Saintil v. State, 4D2024-0624 (3/26/25)

https://4dca.flcourts.gov/content/download/2449545/opinion/Opinion_2024-0624.pdf

PRO SE DEFENDANT: Non-attorneys proceeding pro se are not entitled to an award of attorney's fees. Jadusingh v. State, 4D2024-2466 (5/26/25)

https://4dca.flcourts.gov/content/download/2449555/opinion/Opinion_2024-2466.pdf

POSTCONVICTION RELIEF-PREJUDICE: Petitioner is not entitled to habeas corpus relief from his state court conviction based on the rape kit and report being admitted in evidence without the testimony of the doctor who collected the evidence and prepared the report where Petitioner did not establish actual prejudice. State prisoners are not entitled to habeas relief based on trial error unless they can establish that it resulted in actual prejudice. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

POSTCONVICTION RELIEF-PREJUDICE: For habeas corpus relief, Court need not find whether error was committed if no actual prejudice is shown. The actual-prejudice inquiry turns on whether there is grave doubt whether the jury would have convicted without the asserted error. Court may skip directly to the actual-prejudice inquiry without considering whether error

occurred. Cases to the contrary are non-binding dicta. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

DICTA: Generally, a dictum is a statement in a judicial opinion that is unnecessary to the case's resolution. The prior-panel-precedent rule applies only to holdings, not dicta. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

CATEGORICAL APPROACH-USE OF FORCE: The "categoricalv approach" is used to determine whether an offense falls within the elements clause. Under that approach, we do not examine the defendant's actual conduct.was violent, but whether the offense in question always involves the use, attempted use, or threatened use of force. If the offense can be committed without the use, attempted use, or threatened use of force, it is not a crime of violence under the elements clause. But attempted murder is always a use or attempted use of force. Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

USE OF FIREARM/CRIME OF VIOLENCE: Any person who uses or carries a firearm during or in relation to a "crime of violence" is subject to a mandatory minimum sentence of five years, to be served consecutively with any other term of imprisonment. 18 U. S. C. §924(c) defines a "crime of violence" to include a felony that involves the "use of physical force" against another person. The knowing or intentional causation of bodily injury necessarily involves the use of physical force. The "use of physical

force" includes causing bodily injury by omission rather than action. Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

FIREARM/CRIME OF VIOLENCE: Mafia figure who recruited members of a street gang to commit a thwarted murder is guilty of using or carrying a firearm during or in relation to a "crime of violence" under 18 U.S.C. §924(c). Attempted murder is a crime of violence because an individual may knowingly or intentionally cause bodily injury or death by failing to take action. That constitutes using physical force within the meaning of the elements clause. Causing bodily harm by omission is the use of force. Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

FORCE: The concept of 'force'" includes causing bodily harm indirectly, such as by administering a poison or by infecting with a disease, or even by resort to some intangible substance, such as a laser beam. Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

CRIME OF VIOLENCE (J. GORSUCH, DISSENTING): "To commit a 'crime of violence," an individual must (1) actively (not just through inertia) employ (2) a violent or extreme physical act (not a mere touching or pre-existing natural forces) (3) knowingly or intentionally to harm another person or his property. An individual who, as the Court puts it, 'causes bodily injury by omission' does not begin to meet these criteria." Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

(J. GORSUCH, DISSENTING): "Expanding the elements clause to reach omission offenses, as the Court does today, goes a long way toward rendering the residual clause pointless. Perhaps the Court considers that outcome a virtue, given that we have held the residual clause unconstitutionally vague and thus unenforceable...But conscripting one subsection to do the work no longer performed by another makes a hash of the separate and discrete provisions that Congress enacted." Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

VIOLENT PHYSICAL FORCE (J. GORSUCH, DISSENTING): "The truth is that some acts involve the use of violent physical force and others do not, regardless whether those acts directly or indirectly cause bodily injury...[P]ulling the trigger of a gun involves the indirect application of violent physical force...But that hardly means pulling the trigger of a nerf gun...does too." Delligatti v. United States, No. 23–825 U.S. S.Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-825_q713.pdf

FALSE STATEMENTS: 18 U.S.C. §1014 does not criminalize statements that are misleading but not false. A misleading statement is not a false statement. Defendant's misleading statement to F.D.I.C.that he had borrowed $110,000 from the bank but omitted disclosing two other loans from the same bank for another $109,000. Thompson v. United States, No. 23–1095 (U.S. S. Ct. 3/21/25)

https://www.supremecourt.gov/opinions/24pdf/23-1095_8mjp.pdf

FINE-CAPITAL OFFENSE: Court may not impose a fine on a person who has been convicted of a capital felony. First-degree murder is a capital felony. Dawson v. State, 5D23-2831 (3/21/25)

https://5dca.flcourts.gov/content/download/2449355/opinion/Opinion_2023-2831.pdf

TIME: A motion to withdraw plea must be filed within 30 days after the rendition of a sentence. But the time does not begin on a legal holiday or weekend. Lagunas v. State, 5D2024-2283 (3/21/25)

https://5dca.flcourts.gov/content/download/2449360/opinion/Opinion_2024-2283.pdf

MOTION TO WITHDRAW PLEA-JURISDICTION: The filing of a notice of appeal does not divest the trial court of jurisdiction to rule on a pending motion to withdraw plea nor is it a nullity. Lagunas v. State, 5D2024-2283 (3/21/25)

https://5dca.flcourts.gov/content/download/2449360/opinion/Opinion_2024-2283.pdf

AGGRAVATED BATTERY WITH A FIREARM: Aggravated battery with a firearm is a second-degree felony punishable by up to fifteen years in prison. §775.087(2)(a) provides that the defendant "shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison." Court improperly sentenced Defendant to 35 years in prison subject to a minimum mandatory sentence of 25 years. The court could have sentenced him to a thirty-five year

mandatory minimum sentence, but, once the trial court issued the twenty-five year mandatory minimum prison sentence, it could not thereafter exceed the fifteen year maximum penalty for the second-degree felony, i.e., the thirty-five year prison sentence, without further statutory authority. Thus, the portion of the sentence that exceeds the required twenty-five year mandatory minimum is illegal. Perez v. State, 5D2024-2599 (3/21/25)

https://5dca.flcourts.gov/content/download/2449362/opinion/Opinion_2024-2599.pdf

MAILBOX RULE: A pro se inmate's motion 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. I.e., prison officials. Hernandez v. State, 4D23-3347 (3/21/25)

https://6dca.flcourts.gov/content/download/2449370/opinion/Opinion_2023-3347.pdf

SEARCH AND SEIZURE-FRUIT OF POISONOUS TREE: The exclusionary rule requires a causal connection between the unconstitutional act and the discovery of evidence. Although the evidence obtained by search warrant of Defendant's home was properly suppressed based on the misleading affidavit, the 8 kilos of narcotics found in his co-defendant's car after officers listened to Defendsat's suspicious jail calls were not suppressible. "In sum, the evidence suppressed in the dismissal order could not have been derivative of an illegality where an illegality had yet to take place." State v. Brinson, 6D2024-0122 (3/21/25)

https://6dca.flcourts.gov/content/download/2449372/opinion/Opinion_2024-0122.pdf

RULES-AMENDMENT-FILING: Rules for filing amended. A document in the official court file that purports to be signed by a judge or other court official is presumed to be authentic. The clerk shall place such a document in the official court file only after authenticating it. The "last day" no longer ends at midnight; it ends at 11:59:59 p.m., eastern time. The five days' mailing time applies only if service is made solely by mail. Documents that are served but not filed must be served by attaching the document in PDF format to an e-mail message sent to the recipient's e-mail address. Attorneys must file through the Portal. In Re: Amendments to Florida Rules of General Practice and Judicial Administration, No. SC2023-1401 (3/20/25)

https://supremecourt.flcourts.gov/content/download/2449279/opinion/Opinion_SC2023-1401.pdf

RULES-AMENDMENT-FILING: All documents served by e-mail must be sent by an e-mail message containing a subject line beginning with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number and case style of the proceeding in which the documents are being served. The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the name and telephone number of the person required to serve the document. In Re: Amendments to Florida Rules of General Practice and Judicial Administration, No. SC2023-1401 (3/20/25)

https://supremecourt.flcourts.gov/content/download/2449279/opinion/Opinion_SC2023-1401.pdf

RULES-AMENDMENT-FILING: Certificate of service should say ""I certify

that on ….(date)….this the foregoing document has been furnished to (here insert name(s) or names,and service address(es) used for service, and mailing addresses) by (here insert method of service such as portal, e-mail), (delivery), or (mail). (fax) on ..... (date) …..Attorney at Law." In Re: Amendments to Florida Rules of General Practice and Judicial Administration, No. SC2023-1401 (3/20/25)

https://supremecourt.flcourts.gov/content/download/2449279/opinion/Opinion_SC2023-1401.pdf

APPEAL-DOWNWARD DEPARTURE: A bald assertion that the trial court should have imposed a sentence different from the one it did is not a cognizable claim for appellate relief. A defendant's sufficiently demonstrating a basis for a downward departure does not entitle him to a departure sentence. But the proper disposition—as with any appeal in which there are only meritless claims for appellate relief—is not dismissal, but affirmance. Contrary precedents receded from. Gazoombi v. State, 1D2024-0171 (3/20/25)

https://1dca.flcourts.gov/content/download/2449275/opinion/Opinion_2024-0171.pdf

APPEAL-DOWNWARD DEPARTURE (J WINOKUR, J., CONCURRING): "I write only to emphasize what I believe is the critical conclusion here. First, a court determining that a defendant has shown that a departure from the lowest permissible sentence is warranted is not obligated to impose a departure sentence...Second, a sentence within statutory limits is generally not subject to appellate review." Gazoombi v. State, 1D2024-0171 (3/20/25)

https://1dca.flcourts.gov/content/download/2449275/opinion/Opinion_2024-

0171.pdf

POSTCONVICTION RELIEF-PREJUDICE: Petitioner is not entitled to habeas corpus relief from his state court conviction based on the rape kit and report being admitted in evidence without the testimony of the doctor who collected the evidence and prepared the report where Petitioner did not establish actual prejudice. State prisoners are not entitled to habeas relief based on trial error unless they can establish that it resulted in actual prejudice. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

POSTCONVICTION RELIEF-PREJUDICE: For habeas corpus relief, Court need not find whether error was committed if no actual prejudice is shown. The actual-prejudice inquiry turns on whether there is grave doubt whether the jury would have convicted without the asserted error. Court may skip directly to the actual-prejudice inquiry without considering whether error occurred. Cases to the contrary are non-binding dicta. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

DICTA: Generally, a dictum is a statement in a judicial opinion that is unnecessary to the case's resolution. The prior-panel-precedent rule applies only to holdings, not dicta. Johnson v. Secretary, Florida D.O.C., No. 23-10215 (11th Cir. 3/25/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202310215.pdf

UNANIMOUS VERDICT: Jury unanimity on the particular firearm possessed is not required where there is evidence that the defendant possessed more than one firearm. Jury does not need to agree unanimously on which firearm or ammunition a defendant possessed where there is evidence that he possessed more than one. A special interrogatory on the verdict form is not required. Unanimity is required as to each element, not as to the means. USA v. Morris, No. 22-13764 (11th Cir. 3/19/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202213764.pdf

SEARCH AND SEIZURE-K-9: 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. Mims v. State, 1D2023-3157 (3/19/25)

https://1dca.flcourts.gov/content/download/2449205/opinion/Opinion_2023-3157.pdf

CREDIT FOR TIME SERVED: R. 3.801 authorizes a motion to correct a sentence that fails to allow a defendant credit for all of the time spent in county jail before sentencing, and provides that such motion must be filed within one year after the sentence becomes final. For sentences imposed prior to July 1, 2013, the motion to corrct must be filed before July 1, 2014. Credit may not be corrected for sentence imposed in 1990. Davis v. State, 1D2024-0759 (3/19/25)

https://1dca.flcourts.gov/content/download/2449213/opinion/Opinion_2024-0759.pdf

ISSUE PRESERVATION-SENTENCING: Where Defendant did not object to the State's discussion of his misconduct while on bond, he failed to preserve the issue of whether Court improperly considered it at sentencing. Bamba v. State, 3D23-1743 (3/19/25)

https://3dca.flcourts.gov/content/download/2449193/opinion/Opinion_2023-1743.pdf

SEVERANCE-DEFENDANTS: Antagonistic defenses alone is insufficient basis for a severance. Simple hostility or a defendant attempting to shift the blame to another does not require a severance. The rule is designed to assure a fair determination of each defendant's guilt or innocence. Ingraham v. State, 4D2018-2307 (3/19/25)

https://4dca.flcourts.gov/content/download/2449216/opinion/Opinion_2018-2397.pdf

SEVERANCE-DEFENDANTS: Defendant is not entitled to a severance on grounds that he wanted to support his "mere presence" defense with evidence of prior murders by a codefendant where those murders were dissimilar and therefore inadmissible. Delancy v. State, 4D2018-2365 (3/19/25)

https://4dca.flcourts.gov/content/download/2449211/opinion/Opinion_2018-2365.pdf

SEVERANCE-DEFENDANTS: If a defendant moves for a severance of defendants on the ground that an oral or written statement of a codefendant makes reference to him or her but is not admissible against him or her. Where the State opts not to use the sttement and it is otherwis

inadmissiblem there us no need for a severance. Delancy v. State, 4D2018-2365 (3/19/25)

https://4dca.flcourts.gov/content/download/2449211/opinion/Opinion_2018-2365.pdf

SEVERANCE-DEFENDANTS: Defendant is not entitled to a severance where the opening statement of the codefendant placed him at the scene of the crime. Forbes v. State, 4D2018-2202 (3/19/25)

https://4dca.flcourts.gov/content/download/2449215/opinion/Opinion_2018-2202.pdf

FIREARMS: Statute which prohibits purchase of firearms by minors does not violate the Second and Fourteenth Amendments as applied to individuals between the ages of 18 and 21. National Rifle Association v. Bondi, No. 21-12314 (3/14/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.enb.op.pdf

SECOND AMENDMENT: The Florida law prohibiting firearms purchases for people under the age of twenty-one is consistent with our regulatory tradition in why and how it burdens the right of minors to keep and bear arms. The question is whether the modern law is analogous enough to the Founding-era legal regime and the Florida law is. National Rifle Association v. Bondi, No. 21-12314 (3/14/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.enb.op.pdf

BRAINS (J. ROSENBAUM, CONCURRING): "[W]e must know some basic information about how the brain functions. I begin with neurons. Neurons are nerve cells that make up the brain...They gather and transmit

electrochemical signals in the body and within the brain to tell the body and brain what to do." National Rifle Association v. Bondi, No. 21-12314 (3/14/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.enb.op.pdf

ORIGINAL INTENT (J. NEWSOM, CONCURRING): "I write separately to highlight an important methodological issue that, I'll confess, has become something of a hobby horse of mine: the uses and misuses of post-ratification history in originalist decisionmaking. I've been a vocal and persistent critic of courts' reliance on post-ratification history—sometimes euphemistically called 'tradition'—to interpret constitutional provisions...In short, I regard 'latter-day-but-still-kind-ofold-ish understandings' as having arisen too late in the day to inform a proper originalist analysis...It's an important question, though—one to which I hope scholars of all stripes will devote serious and sustained attention. I'll say that as a matter of existing doctrine, it seems to me clear enough that Founding-era (rather than Reconstruction-era) understandings must govern. National Rifle Association v. Bondi, No. 21-12314 (3/14/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.enb.op.pdf

SCHOOL SAFETY (J. WILSON, CONCURRING): "I write separately as a Florida judge who is puzzled by some of my dissenting colleagues' inconsistent treatment of school safety issues...[M]any of my colleagues who stressed the importance of protecting Florida schoolchildren when using school bathrooms looked the other way when Florida passed a law 'to comprehensively address the crisis of gun violence...on school campuses...I believe I am not alone when I say I am more concerned about high school seniors purchasing assault rifles than I am about which bathroom they use." National Rifle Association v. Bondi, No. 21-12314 (3/14/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112314.enb.op.pdf

CONTEMPT-INDIRECT CRIMINAL: For indirect criminal contempt, the Court may issue and sign an order to show cause based on an affidavit of any person having personal knowledge of the facts. The order must state the essential facts constituting the contempt charged and require the subject to appear before the court to show cause why the child should not be held in contempt of court. Court fundamentally errs by failing to strictly comply with the procedure set forth in R 8.150(c)(2). C.M.B. v. State, 2024-0091 (3/14/25)

https://2dca.flcourts.gov/content/download/2449003/opinion/Opinion_2024-0091.pdf

COST OF PROSECUTION: Court does not commit error in imposing a $100 prosecution cost without a request on the record from the state. Desue v. State, 5D24-0168 (3/14/25)

https://5dca.flcourts.gov/content/download/2449009/opinion/Opinion_2024-0168.pdf

MANDATORY FINE-ASSESSMENT: Where no fines were orally announced by the court and as part of the plea bargain, State had waived the assessment of mandatory fines, which it is permitted to do, the judgment showing the assessment of the fine plus a 5% surcharge must be amended. Ross v. State, 5D2024-2129 (3/14/25)

https://5dca.flcourts.gov/content/download/2449013/opinion/Opinion_2024-2129.pdf

DOMESTIC VIOLENCE INJUNCTION: Harassment—standing alone—is not domestic violence. Blake v. Fares, 5D2024-2810 (3/14/25)

https://5dca.flcourts.gov/content/download/2449018/opinion/Opinion_2024-2810.pdf

DEATH PENALTY-STAY OF EXECUTION: Newly offered medical evidence fails to show a causal connection between Petitioner's mental impairments and his ability to file a timely petition. Nothing about that evidence establishes that, at the time he waived his post-conviction proceedings, he could not understand the proceedings against him, the nature of his convictions and death sentence, and the nature of the consequences that would stem from his decision to withdraw his post-conviction motion. The Supreme Court's grant of certiorari in another case does not matter. Because grants of certiorari do not themselves change the law, they must not be used by courts of this circuit as a basis for granting a stay of execution that would otherwise be denied. James v. Secretary, D.O.C., No. 25-10683 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202510683.pdf

JURY INSTRUCTION-CONSPIRACY: Court has no duty to affirmatively inform the jury that Defendant cannot be convicted of conspiring with a government agent where Defendant dealt with many people other than the agent. Both the Government and defense counsel made it crystal clear that the government agent could not be considered to be part of the conspiracy. USA v. Davis, No. 22-12971 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202212971.pdf

RIGHT TO SILENCE: Agent saying "We wanted to work and cooperate with the Defendant. The Defendant chose not to" and "I would love to sit down and proffer with the Defendant" are improper comments on the right to silence, but any prejudice is curable and error harmless. USA v. Davis, No. 22-12971 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202212971.pdf

SELF-REPRESENTATION-FARETTA: "[A]s we see it, if there is a right to counsel at sentencing -- which is undeniable -- then it follows that there is also a correlative right to proceed pro se at sentencing if a defendant has

clearly and unequivocally sought to do so, and if the court has made the appropriate determination after a searching Faretta inquiry." After a clear denial of the request, a defendant need not make fruitless motions or forego cooperation with defense counsel in order to preserve the issue on appeal. USA v. Davis, No. 22-12971 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202212971.pdf

SENTENCING: When resolving a dispute concerning a factor relevant to sentencing, the sentencing court may rely on any relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy. The sentencing court generally does not need to make distinct findings regarding the reliability of hearsay statements used at sentencing if the reliability of the statements is apparent from the record. USA v. Davis, No. 22-12971 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202212971.pdf

PASSPORT APPLICATION-FALSE STATEMENT: Using a fake passport to get a new passport constitutes making a false statement application for a passport. USA v. Schrek, No 24-11951 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411951.pdf

DEFINITION-"USE": "Use" means "to avail oneself of," "to employ," "to behave toward," and "to partake of." It covers a broad range of conduct, including where someone employs a passport to accomplish a purpose beyond merely traveling. USA v. Schrek, No 24-11951 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411951.pdf

DEFINITION-"FALSE": "False" means not only inauthentic. A fraudulently procured passport may be authentic but it is still a false

document. The term "false documents" covers both inauthentic and untrue documents. USA v. Schrek, No 24-11951 (11th Cir. 3/13/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202411951.pdf

RULES-AMENDMENT-SPEEDY TRIAL: Effective July 1, 2025, speedy trial rule is amended four ways. First, speedy trial now starts from the date that formal charges are filed rather than from the date of arrest. Second, the recapture period is mandatory in all situations (rule re-lettered). Third, the recapture period is increased from 10 days to 30 days. Fourth, dismissals under this rule will be without prejudice unless a defendant's constitutional right to speedy trial has been violated, which requires dismissal with prejudice. Juvenile speedy trial rule changes are in the works. In Re: Amendments to Florida Rule of Criminal Procedure 3.191, SC2022-1123 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448981/opinion/Opinion_SC2022-1123.pdf

RULES-AMENDMENT-FORMAL CHARGES: R 3.134 is amended to provide that charges must be brought within 60 days or on the 63rd day the defendant released from all requirements of bail and all conditions of pretrial release. In Re: Amendments to Florida Rule of Criminal Procedure 3.191, SC2022-1123 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448981/opinion/Opinion_SC2022-1123.pdf

DEATH PENALTY-EIGHTH AMENDMENT: Nearly thirty-year stay on death row does not constitute cruel and unusual punishment. James v. State, SC2025-0280 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448995/opinion/Opinion_SC2025-0280&%20SC2025-0281.pdf

DEATH PENALTY-EIGHTH AMENDMENT: The categorical bar to execution of the intellectually disabled does not apply to individuals with other forms of mental illness or brain damage. James v. State, SC2025-0280 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448995/opinion/Opinion_SC2025-0280&%20SC2025-0281.pdf

DEATH PENALTY: Eighth Amendment does not require a unanimous jury recommendation of death. James v. State, SC2025-0280 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448995/opinion/Opinion_SC2025-0280&%20SC2025-0281.pdf

POSTCONVICTION RELIEF-DEATH PENALTY: Amended R. 3.851, which no longer permits the waiver of postconviction counsel—does not apply retroactively. James v. State, SC2025-0280 (3/13/25)

https://supremecourt.flcourts.gov/content/download/2448995/opinion/Opinion_SC2025-0280&%20SC2025-0281.pdf

FUNDAMENTAL ERROR: Questioning Defendant about whether he believed he could get a fair trial, based on statements in his pretrial filings that he could not, is not fundamental error. To preserve an issue for appeal based on improper argument, counsel is required to object and request a mistrial. Belc v. State, 1D2023-0089 (3/12/25)

https://1dca.flcourts.gov/content/download/2448843/opinion/Opinion_2023-0089.pdf

MISTRIAL: Defendant is not entitled to a mistrial where Defendant testified about his pretrial wish to enter a guilty plea, just not to first-degree murder, and State asked follow-up questions. Although an offer to plead

guilty or nolo contendere is inadmissible, Defendant broached the plea subject first. "[E]ven if the State should have refrained from asking about Belc's attempt to plead guilty, there was no prejudice or chance that the outcome of the trial would have been different." Belc v. State, 1D2023-0089 (4/12/25)

https://1dca.flcourts.gov/content/download/2448843/opinion/Opinion_2023-0089.pdf

STATEMENT OF DEFENDANT-MIRANDA: Defendant is not entitled to suppression of his statement where, after being read his Miranda rights, he asked about an attorney, the officer responded that they couldn't immediately summon an attorney and would stop the interview if he wanted one present, and he then agreed that the interview could continue and that he would let
them know if he wished to stop. Belc v. State, 1D2023-0089 (4/12/25)

https://1dca.flcourts.gov/content/download/2448843/opinion/Opinion_2023-0089.pdf

DISCIPLINE: An inmate charged with a disciplinary infraction is entitled to an opportunity to call witnesses and present documentary evidence regarding the case. But inmate is not entitled to a writ of mandamus compelling a new disciplinary hearing because of prison's failure to provide him with the video of the incident, absent a finding of prejudice. The Department correctly pointed out that the court did not address whether Appellee, who was found guilty of "spoken threats" to a Department employee, was prejudiced by not being provided with video surveillance of the incident at issue when the cameras did not have audio. Florida D.O.C. v. Paulcin, 1D2024-0135 (3/12/25)

https://1dca.flcourts.gov/content/download/2448844/opinion/Opinion_2024-0135.pdf

APPEAL-TIMELINESS: An untimely motion for rehearing does not toll

rendition of the underlying order. Because the filed motion for rehearing was untimely, the time for filing the notice of appeal was not tolled. Ledent v. State, 1D2024-2476 (3/12/24)

https://1dca.flcourts.gov/content/download/2448866/opinion/Opinion_2024-2476.pdf

SENTENCE REVIEW-FINDINGS: Where Defendant was sentenced for premeditated first-degree murder, robbery with a firearm, and tampering with physical evidence, with a sentencing review after twenty-five years, Court's oral findings that Defendant is not entitled to a fifteen-year review is insufficient. §775.082(1)(b)3 requires written findings. Maceda v. State, 2D2023-2809 (3/12/25)

https://2dca.flcourts.gov/content/download/2448846/opinion/Opinion_2023-2809.pdf

EVIDENCE-PRIOR INCONSISTENT STATEMENT: To be inconsistent, a prior statement must either directly contradict or be materially different from the expected testimony at trial. The inconsistency must involve a material, significant fact rather than mere details. Barnett v. State, 3D22-1891 (3/12/25)

https://3dca.flcourts.gov/content/download/2448901/opinion/Opinion_2022-1891.pdf

SECOND-DEGREE MURDER: Defendant's admission of "animosity" and "rivalry" with victim could support a jury finding of depraved mind for second-degree murder. Barnett v. State, 3D22-1891 (3/12/25)

https://3dca.flcourts.gov/content/download/2448901/opinion/Opinion_2022-1891.pdf

APPEAL-STATE-JURISDICTION: State is not authorized by law to

appeal orders modifying probation. State may not appeal Court's failure to hold a hearing on whether Defendant poses a danger to the community or impose a mandatory minimum sentence the State had waived at the initial sentencing. The Florida Legislature has authorized the State to appeal orders in dismissing an affidavit charging a violation of probation or to appeal probation imposed at an initial sentencing him due to noncompliance with §948.06(8)). But '[this is not one of those circumstances because the trial court here modified McKinney's probation rather than revoking it or dismissing the affidavit of violation. Thus, its order functionally evades appellate review." State v. McKinney, 3D23-0909 (3/12/25)

https://3dca.flcourts.gov/content/download/2448887/opinion/Opinion_2023-0909.pdf

JUDGE-DISQUALIFICATION: When a judge has looked beyond the mere legal sufficiency of a suggestion of prejudice andattempted to refute the charges of partiality, he has then exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification. DeCastro v. State, 3D23-1523 (3/12/25)

https://3dca.flcourts.gov/content/download/2448893/opinion/Opinion_2023-1523.pdf

HARMLESS ERROR: The Florida Supreme Court has repeatedly declined to alter the DiGuilio standard to one more likely to uphold a conviction. DeCastro v. State, 3D23-1523 (3/12/25)

https://3dca.flcourts.gov/content/download/2448893/opinion/Opinion_2023-1523.pdf

PRISONER RELEASEE REOFFENDER: Burglary of a conveyance with an assault is a qualifying PRR offense. McCray v. State, 4D2024-0608 (3/12/25)

https://4dca.flcourts.gov/content/download/2448878/opinion/Opinion_2024-0608.pdf

PRISONER RELEASEE REOFFENDER (J. CIKLIN, DISSENTING): Because burglary with assault or battery can be committed without the threat or use of physical force or violence, the defendant's conviction did not qualify for enhanced PRR sentencing under the catch-all provision of the PRR statute. McCray v. State, 4D2024-0608 (3/12/25)

https://4dca.flcourts.gov/content/download/2448878/opinion/Opinion_2024-0608.pdf

PRO SE FILINGS: A prohibition on pro se filing is an extreme remedy that should be reserved for egregious abuse of judicial process. Defendant's four pro se filings post-conviction relief are nowhere close to the number of filings in other cases where litigants were abusing the judicial process by the sheer volume. "While the defendant's filings may have lacked merit or were untimely or unauthorized, these filings were not so numerous or lacking in merit to justify prohibiting the defendant's further pro se filing pursuant to rule 3.850(n) at this juncture." Asper v. State, 4D2024-1919 (3/12/25)

https://4dca.flcourts.gov/content/download/2448882/opinion/Opinion_2024-1919.pdf

RESTITUTION-CHILD PORNOGRAPHY: 18 U.S.C. §2259.mandates a minimum restitution award of $3,000 per victim of child pornography, so long as that amount does not cause a victim to recover more than the full amount of their demonstrated losses. An award of $30,000 restitution among seven victims of child pornography is warranted. USA v. Sotelo, No. 21-12710 (11th Cir. 3/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112710.pdf

RESTITUTION-CHILD PORNOGRAPHY: In determining restitution in child pornography case, a court must assess as best it can from available evidence the significance of the individual defendant's conduct in light of the broader causal process that produced the victim's losses. Factors include: (1) the number of past criminal defendants found to have contributed to the victim's general losses; (2) reasonable predictions of the number of future offenders likely to be caught and convicted for crimes contributing to the victim's general losses; (3) any available and reasonably reliable estimate of the broader number of offenders involved; (4) whether the defendant reproduced or distributed images of the victim; (5) whether the defendant had any connection to the initial production of the images; (6) how many images of the victim the defendant possessed; and (7) other facts relevant to the defendant's relative causal role. Awareness of one's images being circulated on the internet is not a prerequisite for restitution. Projected therapy and medical costs can be considered. USA v. Sotelo, No. 21-12710 (11th Cir. 3/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112710.pdf

RESTITUTION-CHILD PORNOGRAPHY: "Altogether, the victims' restitution claims paint a vivid, painful picture of the harms caused by child sexual abuse and the possession of images depicting that abuse. While lives can be improved, the ongoing harm, inflicted by the illegal possession of these images, is seemingly impossible to end." USA v. Sotelo, No. 21-12710 (11th Cir. 3/10/25)

https://media.ca11.uscourts.gov/opinions/pub/files/202112710.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: R. 3.850(b)(1) provides an exception to the two-year time limit when 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, and the claim is made within 2 years of the time the new facts were or could have been discovered. Seago v. State, 2D2024-1475 (3/7/25)

https://2dca.flcourts.gov/content/download/2448505/opinion/Opinion_2024-1475.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: For newly discovered evidence, 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. Seago v. State, 2D2024-1475 (3/7/25)
https://2dca.flcourts.gov/content/download/2448505/opinion/Opinion_2024-1475.pdf

POSTCONVICTION RELIEF-NEWLY DISCOVERED EVIDENCE: Where affiant claims that he, and not the Defendant, committed the crime, and where Defendant asserts that the affiant's confession would have been the deciding factor for him to again risk life sentences at retrial, he is entitled to a hearing on his newly discovered evidence claim. Seago v. State, 2D2024-1475 (3/7/25)
https://2dca.flcourts.gov/content/download/2448505/opinion/Opinion_2024-1475.pdf

DISORDERLY CONDUCT (J. EMAS, DISSENTING): An irate person who does not use "fighting words," or words which by their very utterance inflict injury or tend to incite an immediate breach of the peace does not commit disorderly conduct. Speech alone will not generally support a conviction for disorderly conduct. A crowd gathering to watch a defendant's behavior, without more, is insufficient to support a conviction of disorderly conduct. Thomas v. State, 3D25-0345 (3/7/25)
https://3dca.flcourts.gov/content/download/2448538/opinion/Opinion_2025-0345.pdf

BOND REVOCATION (J. EMAS, DISSENTING): A 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. Thomas v. State, 3D25-0345 (3/7/25)
https://3dca.flcourts.gov/content/download/2448538/opinion/Opinion_2025-0345.pdf

RESISTING WITHOUT VIOLENCE (J. EMAS, DISSENTING): Although the law in Florida previously permitted citizens forcibly to resist unlawful arrests, §776.051 (2025) now provides that a person is not justified in the use or threatened use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer. Thomas v. State, 3D25-0345 (3/7/25)
https://3dca.flcourts.gov/content/download/2448538/opinion/Opinion_2025-0345.pdf

PRISON RELEASEE REOFFENDER-JURY DETERMINATION: Defendant's PRR sentence is not unconstitutional because the trial judge-not a jury-decided whether he met the statutory requirements of a prison releasee reoffender. "While we do not reach the merits of his arguments as to Erlinger's impact, if any, upon existing Florida Statutes and caselaw, even if, *arguendo*, any error occurred here, such an error would be harmless. The Florida Supreme Court has accepted jurisdiction in Maye v. State, SC2023–1184, which presents substantially similar issue(s) resulting from Erlinger. Ashford v. State, 5D2024-0070 (3/7/25)
https://5dca.flcourts.gov/content/download/2448520/opinion/Opinion_2024-0070.pdf

COST OF PROSECUTION: $100 cost of prosecution is mandatory, which means it must be imposed; thus, there is no need for the State to request it. Conflicting decisions on this point exist. Gibson v. State, 5D2024-2157 (3/7/25)
https://5dca.flcourts.gov/content/download/2448525/opinion/Opinion_2024-2157.pdf

CROSS-EXAMINATION-BIAS: Defendant accused of robbery is entitled to cross-examine the Victim and present evidence that she had reported to the police that Victim had possessed child pornography in order to establish Victim's motivation for accusing her of robbery. "The trial court's conclusion that this testimony would have been more prejudicial than probative simply cannot be squared with Defendant's rights under the Sixth Amendment." Middlebrook v. State, 6D2023-2303 (3/7/25)
https://6dca.flcourts.gov/content/download/2448532/opinion/Opinion_2023-

2303.pdf

CROSS-EXAMINATION-BIAS Exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. It is not just the fact of bias itself or the general idea of bias that is relevant and a proper subject of cross-examination. Rather, a criminal defendant is entitled to cross-examine a State witness regarding the specific facts which might cause the witness to be biased against the defendant. This includes matters that are not otherwise related to the crime charged and that were not the subject of the State's direct examination of the witness. Middlebrook v. State, 6D2023-2303 (3/7/25) https://6dca.flcourts.gov/content/download/2448532/opinion/Opinion_2023-2303.pdf

GRAMMAR-SINGULAR POSSESSIVE: "A number of the judicial opinions quoted in this opinion use 'witness' as the singular possessive form of 'witness'. This opinion uses 'witness's' as the singular possessive form of 'witness'." Middlebrook v. State, 6D2023-2303 (3/7/25) https://6dca.flcourts.gov/content/download/2448532/opinion/Opinion_2023-2303.pdf

RULES-AMENDMENT-APPEALS: Rule added to allow civil defendants to appeal nonfinal orders that deny claims of Stand Your Ground immunity but proposed rule to allow interlocutory appeals of denial of criminal SYG motions. "[T]here are very few circumstances where interlocutory appeals are authorized in criminal proceedings...[T]he proposed amendments to rule 9.140 would create a first-of-its-kind rule for criminal defendants—a rule that would, at the very least, create internal tension with other procedures in the ruleset." Defendant's remedy is Writ of Prohibition. In Re: Amendments to Florida Rules of Appellate Procedure, No. SC2024-0317 (3/6/25) https://supremecourt.flcourts.gov/content/download/2448454/opinion/Opinion_SC2024-0317.pdf

MURDER-PREMEDITATION: Defendant's anger combined with an incriminating text showing that he harbored an intent to kill the victim is legally sufficient to show a premeditated intent to kill. Victim's body position undercuts Defendant's claim of self-defense. McInnis v. State,

1D2023-2714 (3/5/25)
https://1dca.flcourts.gov/content/download/2448331/opinion/Opinion_2023-2714.pdf

STATEMENT OF DEFENDANT: If, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer. To give an evasive answer, or to skip over the question, or to override or "steamroll" the suspect—is coercion. Any statement obtained in violation of this proscription violates the Florida Constitution. Smith v. State, 3D22-1611 (3/5/25)
https://3dca.flcourts.gov/content/download/2448348/opinion/Opinion_2022-1611.pdf

STATEMENT OF DEFENDANT: "I can contact my lawyer," although said with "a slight inflection in his voice at the end of the utterance," appears to be a restatement or verification of the right, not a request for a lawyer. Even if were, detective's response–"Whenever you want."--is the simple truth. It reiterated that Defendant could call his lawyer at any time. Smith v. State, 3D22-1611 (3/5/25)
https://3dca.flcourts.gov/content/download/2448348/opinion/Opinion_2022-1611.pdf

PSI: Court is not required to order a PSI upon a violation of probation where the original sentence was imposed pursuant to a negotiated plea in which he agreed to be sentenced as an HVFO without a PSI. Williams v. State, 3D23-1191 (3/5/25)
https://3dca.flcourts.gov/content/download/2448350/opinion/Opinion_2023-1191.pdf

VOP: In a probation revocation hearing, due process requires a written statement by the factfinder as to the evidence relied on and the reasons for revoking probation." Williams v. State, 3D23-1191 (3/5/25)
https://3dca.flcourts.gov/content/download/2448350/opinion/Opinion_2023-1191.pdf

SEARCH AND SEIZURE-ODOR-GOOD FAITH: Although the line of authority that the plain smell of burnt marijuana standing alone is sufficient

to establish probable cause to search a vehicle is being questioned, officer was entitled to rely in good faith upon the law as it existed at the time of the search. Wright-Johnson v. State, 3D23-1452 (3/5/25) https://3dca.flcourts.gov/content/download/2448353/opinion/Opinion_2023-1452.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. It 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 more likely true than false. It is less than a preponderance of the evidence. Wright-Johnson v. State, 3D23-1452 (3/5/25) https://3dca.flcourts.gov/content/download/2448353/opinion/Opinion_2023-1452.pdf

LESSER INCLUDED-DEADLY WEAPON: Where information charged attempted murder "by stabbing" but did not allege the use of a deadly weapon, but the jury was instructed on the lesser included of aggravated battery with a deadly weapon, Defendant's conviction of the lesser cannot stand. In order for the trial court to instruct the jury on a category two permissive lesser-included offense, the indictment or information must allege all the statutory elements of the subject lesser offense. Remanded for entry of a conviction for simple battery. Verela v. State, 3D24-0402 (3/5/25) https://3dca.flcourts.gov/content/download/2448355/opinion/Opinion_2024-0402.pdf

DEADLY WEAPON: Only a firearm has been held to be a deadly weapon as a matter of law. While a knife is a weapon, it is not necessarily a deadly weapon. Elements of an offense cannot be established by mere inference. Verela v. State, 3D24-0402 (3/5/25) https://3dca.flcourts.gov/content/download/2448355/opinion/Opinion_2024-0402.pdf

DISMISSAL: Court erred in *sua sponte* dismissing case prior to the start of the trial where the State informed the trial court it was ready for trial and that its witnesses would be present when needed to testify, although they

were not physically present in the courtroom at the moment. State v. Alahmari, 3D24-0435 (3/5/25)
https://3dca.flcourts.gov/content/download/2448362/opinion/Opinion_2024-0435.pdf

CREDIT FOR TIME SERVED: Defendant is entitled to credit for time served for the 416 days he spent in custody before bonding out and before being rearrested. Cuff v. State, 3D24-1304 (3/5/25)
https://3dca.flcourts.gov/content/download/2448336/opinion/Opinion_2024-1304.pdf

DOUBLE JEOPARDY: Although at the time (1978) Double Jeopardy precluded dual convictions for first-degree murder and the underlying attempted robbery–the law changed in 1983–where an independent basis exists to uphold the conviction and sentence, they stand. Defendant is not entitled to relief where the murder conviction could be sustained either upon the theory of premeditated design or on the theory of felony murder. Randolph v. State, 4D2024-1529 (3/5/25)
https://4dca.flcourts.gov/content/download/2448298/opinion/Opinion_2024-1529.pdf

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PUBLIC DEFENDER APPLICATION FEE: The public defender application fee is $50, not $100. Fucci v. State, 5D2023-1420 (2/28/25)
https://5dca.flcourts.gov/content/download/2448082/opinion/Opinion_2023-1420.pdf

PLEA WITHDRAWAL: Where the record reflects that confusion existed as to whether Defendant's sentences would be concurrent (and thereby within the ten-year cap) or consecutive (and thereby beyond the cap), she is entitled to withdraw her plea. Black v. State, 5D2023-3147 (2/28/25)
https://5dca.flcourts.gov/content/download/2448083/opinion/Opinion_2023-3147.pdf

COMPETENCY: A criminal prosecution may not move forward at any material stage of a criminal proceeding against a defendant who is incompetent to proceed. 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. The right to an independent competency determination is unwaivable. Carnley v. State, 5D2024-0147 (2/28/25)
https://5dca.flcourts.gov/content/download/2448088/opinion/Opinion_2024-0147.pdf

COST OF PROSECUTION: Imposition of a $100 cost of prosecution does not require a request from the State. Carnley v. State, 5D2024-0147 (2/28/25)

https://5dca.flcourts.gov/content/download/2448088/opinion/Opinion_2024-0147.pdf

VOP: For a violation of probation, the judgment and sentence must identify the conditions violated. Canada v. State, 5D2024-0689 (2/28/25)
https://5dca.flcourts.gov/content/download/2448086/opinion/Opinion_2024-0689.pdf

SUPERVISED RELEASE: A defendant, who asked for longer supervision and shorter incarceration, may not waive a statutory maximum term of supervised release (here, five years) over the government's objection. A statutory maximum is one of the fundamental and immutable legal landmarks within which the district court must operate. This limit on judicial authority is absolute. USA v. Charles, No. 23-11700 (11th Cir. 2/28/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202311700.pdf

INVITED ERROR: The invited error doctrine stems from the commonsense view that where a party invites the trial court to commit error, he cannot later cry foul on appeal. USA v. Charles, No. 23-11700 (11th Cir. 2/28/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202311700.pdf

SELF-REPRESENTATION: The Sixth Amendment includes a right to self representation. An indigent criminal defendant is not a ward of the State. A proper Faretta inquiry must balance the right to court-appointed counsel with the right to self-representation. Ash v. State, 1D2022–1163 (2/26/25)

https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF-REPRESENTATION: Defendant's technical legal knowledge is not relevant to an assessment of his knowing exercise of the right to defend himself. To the extent that R. 3.111 requires a thorough inquiry into both the accused's comprehension of the offer of counsel and his capacity to make a knowing and intelligent waiver, a simple colloquy is sufficient. Ash v. State, 1D2022–1163 (2/26/25)
https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF-REPRESENTATION: Where Defendant endured at least fourteen Faretta inquiries, thirteen of those were unnecessary. There is no concomitant requirement to revisit Faretta every time the offer of counsel is subsequently renewed and rejected. "Under the unique facts of this case, we find that the third Faretta inquiry conducted on March 22, 2022[1], is the straw that broke the camel's back." Ash v. State, 1D2022–1163 (2/26/25)
https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF-REPRESENTATION: Numerous Faretta inquiries, repeated irrelevant and improper questions regarding his technical competence to represent himself, and suggestions that he lacked competence to represent himself constitute undue pressure on Defendant to elect court-appointed counsel. Courts must respect a litigant's demand for self-determination and must not depict self-representation in such unremittingly scary terms that any reasonable person would refuse. Ash v. State, 1D2022–1163 (2/26/25)
https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF REPRESENTATION (J. LONG, DISSENTING): "[T]he majority has discovered a new constitutional principle hidden in the text of the 233-year-old Sixth Amendment. It then imposes this new principle without any

[1]The thirteenth day of Faretta inquiries.

discussion of the constitutional text, its original meaning, or its application in history and tradition." Ash v. State, 1D2022–1163 (2/26/25) https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF REPRESENTATION (J. LONG, DISSENTING): "Today's decision extends Faretta to create a new amorphous legal principle that a court can 'coerce' a defendant into waiving his right to self-representation, even while allowing him to self-represent. We have never said that, and that is not what Faretta says. The majority provides no guidance for where this new coercion principle will start and stop." Ash v. State, 1D2022–1163 (2/26/25) https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF REPRESENTATION (J. LONG, DISSENTING): "Today's decision effectively extends the Faretta doctrine into uncharted territory—not only must a court permit self representation, the court also must not discourage it. But the trial court cannot do both." Ash v. State, 1D2022–1163 (2/26/25) https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

SELF REPRESENTATION (J. LONG, DISSENTING): "Today, we muddy the water further with more textless ambiguity. In the majority's zeal to push back on one overreach, it goes too far and, I fear, makes a new and even messier mistake." Ash v. State, 1D2022–1163 (2/26/25) https://1dca.flcourts.gov/content/download/2447864/opinion/Opinion_2022-1163.pdf

CONTEMPT: Determining whether the contempt proceedings are civil, or criminal is critical. Criminal contempt sanctions require that a contemnor be afforded the same constitutional due process protections afforded to criminal defendants. Contempt orders that do not contain a purge provision must be characterized as criminal contempt. Portee-Jones v. Portee, 1D2023-0049 (2/26/25) https://1dca.flcourts.gov/content/download/2447867/opinion/Opinion_2023-0049.pdf

CONTEMPT-CRIMINAL: For criminal contempt, defendant must be afforded notice, arraignment, opportunity to be heard, the judgment, and oral pronouncement of sentence. Arraignment, notice, opportunities to be heard in defense and mitigation. Merely announcing a hearing time and place with a motion attached is insufficient. Portee-Jones v. Portee, 1D2023-0049 (2/26/25)
https://1dca.flcourts.gov/content/download/2447867/opinion/Opinion_2023-0049.pdf

RESTITUTION: Restitution may not be established by a department store asset protection employee's testimony about an internal case report that the store generated, unsupported by evidence as to how the report was prepared, who prepared it, or why it was reliable. Tanksley v. State, 1D2023-1156 (2/26/25)
https://1dca.flcourts.gov/content/download/2447874/opinion/Opinion_2023-1156.pdf

RESTITUTION: Restitution must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. Tanksley v. State, 1D2023-1156 (2/26/25)
https://1dca.flcourts.gov/content/download/2447874/opinion/Opinion_2023-1156.pdf

VOP-PRISON RELEASEE REOFFENDER: State may not seek a PRR sentence upon revocation of probation after it declined to seek a PRR sentence at the original sentencing. The availability of a PRR sentence expired once the trial court proceeded to sentence him under the general sentencing statute providing for scoresheet calculations and lowest-permissible sentences. Court has discretion to sentence Defendant to life in prison but is not required to do so. Hill v. State, 1D2023-2147 (2/26/25)
https://1dca.flcourts.gov/content/download/2447879/opinion/Opinion_2023-2147.pdf

VOP-PRISON RELEASEE RE OFFENDER (J. TANENBAUM): "[I]mposition of a PRR sentence, originally or after revocation—without a jury determination of the qualifying facts beyond a reasonable

doubt—might also now be constitutionally dubious." Hill v. State, 1D2023-2147 (2/26/25)
https://1dca.flcourts.gov/content/download/2447879/opinion/Opinion_2023-2147.pdf

VOP: The proper standard for finding a new law violation is whether a preponderance of the evidence establishes that the probationer committed the charged offense or offenses. Torres v. State, 3D23-1474 (2/26/25)
https://3dca.flcourts.gov/content/download/2447891/opinion/Opinion_2023-1474.pdf

POSTCONVICTION RELIEF: R. 3.800(a) is not the proper means to challenge a court's failure to order a presentence investigation. R. 3.800(a) is intended to provide relief for a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law. It is not a vehicle designed to re-examine whether the procedure employed to impose the punishment comported with statutory law and due process. Bois v. State, 3D24-1592 (2/26/25)
https://3dca.flcourts.gov/content/download/2447900/opinion/Opinion_2024-1592.pdf

PSI: Where Defendant waived his right to a PSI in the original negotiated plea resulting in probation, is not entitled to a PSI upon sentencing for violation of probation. Failure to obtain an on-the-record personal waiver of the right to a PSI is not required. Hatcher v. State, 3D23-1252 (2/26/25)
https://3dca.flcourts.gov/content/download/2447921/opinion/Opinion_2023-1252.pdf

MODIFICATION OF SENTENCE: Court lacks jurisdiction to convert an adjudication of guilt into a withhold of adjudication after probation has expired. 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. Piedrahita v. State, 3D24-0043 (2/26/25)
https://3dca.flcourts.gov/content/download/2447926/opinion/Opinion_2024-0043.pdf

PROBABLE CAUSE: Statements of unnamed witnesses and other circumstantial evidence can provide police with probable cause to arrest for DUI. Earlier precedent distinguished. State v. Contreras Saravia, 4D2024-071 (4/26/25)
https://4dca.flcourts.gov/content/download/2447929/opinion/Opinion_2024-0371.pdf

ACCIDENT REPORT PRIVILEGE: Accident report privilege provides that each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a required crash report may not be used as evidence, but witness statements are not thereby excludable. State v. Contreras Saravia, 4D2024-071 (4/26/25)
https://4dca.flcourts.gov/content/download/2447929/opinion/Opinion_2024-0371.pdf

DNA-BAYES' THEOREM: Bayes' Theorem is a mathematical formula commonly used in paternity testing that assumes a 50% prior probability of paternity. The use of Bayes' Theorem does not violate the presumption of innocence. The probability of paternity is merely a way of expressing and interpreting the actual DNA test results and does nothing to shift the burden of going ahead to the defendant. Thomas v. State, 2D2024-0718 (2/26/25)
https://4dca.flcourts.gov/content/download/2447935/opinion/Opinion_2024-0718.pdf

PRESUMPTION OF INNOCENCE: The presumption of innocence does not require a jury to assume it was impossible for a defendant to commit the crime charged. Rather, it requires the jury to assume as a starting proposition that the defendant did not commit the crime, until proven otherwise. Thomas v. State, 2D2024-0718 (2/26/25)
https://4dca.flcourts.gov/content/download/2447935/opinion/Opinion_2024-0718.pdf

ATTEMPTED SECOND-DEGREE MURDER: The crime of attempted second-degree murder does exist in Florida. Leffler v. State, 4D2024-1336 (2/26/25)
https://4dca.flcourts.gov/content/download/2447939/opinion/Opinion_2024-1336.pdf

DUE PROCESS-FALSE TESTIMONY: Prosecutors have a constitutional obligation to correct false testimony. Where State knowingly allowed bipolar witness to falsely testify that he had never seen a psychiatrist ("I asked for some Sudafed...., but...they ended up giving me Lithium for some reason, I don't know why. I never seen no psychiatrist.") entitles Defendant to a new trial. Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

DUE PROCESS-FALSE TESTIMONY: A conviction knowingly obtained through use of false evidence violates the Fourteenth Amendment's Due Process Clause. To establish a Napue violation, a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it to go uncorrected when it appeared if it in any reasonable likelihood could have affected the judgment of the jury. Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

DUE PROCESS-FALSE TESTIMONY-MATERIALITY: Evidence can be material even if it goes only to the credibility of the witness. The Due Process Clause imposes the responsibility and duty to correct false testimony on representatives of the State. Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

FALSE TESTIMONY: "A lie is a lie." Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

FALSE TESTIMONY-YEAH, RIGHT: After witness denied at trial seeing a psychiatrist--the jail psychiatrist who had prescribed him lithium was named Trompka--and the prosecutor was asked about her later discovered notes ("on Lithium?" and "Dr. Trumpet?"), she asked why the investigator thought the note referred to Dr. Trombka and not Dr. Trumpet, the jazz musician. Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

HUH?!-MISREMEMBERED?! (J. THOMAS, DISSENTING): "[I]rrespective of whether Sneed lied, prosecutorial correction of his testimony would not have led the jury to infer that he had consciously committed perjury. The far more plausible inference would have been that Sneed simply misremembered." Glossip v. Oklahoma, No. 22–7466 (U.S. S.Ct. 2/25/25) https://www.supremecourt.gov/opinions/24pdf/22-7466new_6479.pdf

CONSPIRACY-FRAUD: A single conspiracy may be found where there is a 'key man' who directs the illegal activities, while various combinations of other people exert individual efforts towards the common goal. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

FRAUD: Misrepresenting essential qualities of company marketing penny stocks--including its assets, cash flow, and what would be done with the proceeds of the share purchases–constitutes a misrepresentation of the essential characteristics of the stock and thus constitutes fraud. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

STATUTE OF LIMITATIONS: The statute of limitations is an affirmative defense, which a defendant must assert at trial. Raising a statute of limitations issue for the first time after the close of evidence during closing argument is insufficient to raise it as an affirmative defense because the prosecution is entitled to an opportunity to introduce evidence showing that the defendant fell within the statute. Failure to raise the defense before the close of evidence waives it. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

STATUTE OF LIMITATIONS-CONSPIRACY: Where the conspiracy extended into the time period of allowable prosecution under the statute of limitations, Defendant may be prosecuted for his participation from before then and less he had affirmatively withdrawn from the conspiracy before it ended. Passively ceasing to participate in a conspiracy does not amount to withdrawal. A conspirator's participation in a criminal conspiracy is presumed to continue until all the objects of the conspiracy have been accomplished or until the last overt act is committed by any of the

conspirators. A mere cessation of activity in the conspiracy is not sufficient to establish withdrawal. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

FIFTH AMENDMENT: FBI Agent's statement, "I attempted at that point [to] establish an in-person interview and we at tempted to coordinate to do so," taken in context, does not violate the Fifth Amendment. It was made in a pre-arrest context and does not say that Defendant refused to answer any more questions. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

EXPERT: A witness testifying based on particularized knowledge gained from personal experiences or professional background, or presenting hard facts does not generally rise to the level of expert opinion. Witness who testifies that the defendant had passed his examinations to be a licensed stockbroker and the definitions of securities, private placements, penny stocks, and the disclosure and ethical obligations of securities brokers did not testify as an expert where he offers no opinions on facts or issues at trial. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

SENTENCING-GUIDELINES-LEADER: Defendant need not have been at the very top of the food chain in a conspiracy for the four-level leader or organizer enhancement to apply. Factors include (1) the exercise of decision making authority, (2) the nature of participation in the commission of the offense, (3) the recruitment of accomplices, (4) the claimed right to a larger share of the fruits of the crime, (5) the degree of participation in planning or organizing the offense, (6) the nature and scope of the illegal activity, and (7) the degree of control and authority exercised over others. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

SENTENCING GUIDELINES-LOSS: As of November 1, 2024, the guidelines specifically define "loss" as "the greater of actual loss or intended loss." But even before then, "loss" included "intended loss." USA v. Horn, No. 22-13327 (11th Cir. 2/24/25) https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

ISSUE PRESERVATION: Although Defendant's objection to the loss assessment did not include a Dupree argument, and at the time of the offense the guidelines commentary, but not the text itself, did not define "loss" as "intended loss," the issue is preserved. Alternative arguments on an issue to discover nuances or hidden meanings are not necessarily waived. Issue is preserved, but Defendant still loses. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

LOSS: The definition of loss to includes "intended loss." Although the phrase appeared in the Applications notes but not the text itself, there is no ambiguity. "In other words, we see no need to turn to the Application Notes in the Commentary to the Guidelines to know that a court should apply the greater of actual loss or intended loss." USA v. Horn, No. 22-13327 (11th Cir. 2/24/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

SENTENCING GUIDELINES-AMENDMENT: When an amendment takes effect during the pendency of a direct appeal, it applies if it is a "clarifying" amendment rather than a "substantive" amendment. To determine whether an amendment to the Guidelines is substantive or clarifying, considering the following factors: 1) whether the amendment alters the text of the Guideline or only the commentary, 2) whether the Commission has described an amendment as clarifying or substantive, 3) whether the Commission has included the amendment in the list of retroactive amendments and 4) whether it overturns circuit precedent. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

LOSS: Where a defendant was actively involved in contacting and recruiting clients and investors into a fraudulent scheme, he is accountable for the entire loss, even if he did not necessarily design the scheme himself. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

APPEAL-PRESERVED ISSUE: An appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory

manner without supporting arguments and authority. USA v. Horn, No. 22-13327 (11th Cir. 2/24/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202213327.pdf

PUBLIC DEFENDER APPLICATION FEE: The public defender application fee is $50, not $100. Mneimne v. State, 5D2023-2376 (2/21/25)
https://5dca.flcourts.gov/content/download/2447696/opinion/Opinion_2023-2376.pdf

COST OF PROSECUTION: Imposition of a $100 prosecution cost does not require a request on the record from the State. Polanco v. State, 5D2023-3061 (2/21/25)
https://5dca.flcourts.gov/content/download/2447697/opinion/Opinion_2023-3061.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH-PRESERVED ISSUE: Where Defendant argued at the suppression hearing only that the inventory search was a pretext to search for drugs, he may not argue on appeal that the search deviated from agency policy. Holifield v. State, 5D2023-3551 (2/21/25)
https://5dca.flcourts.gov/content/download/2447698/opinion/Opinion_2023-3551.pdf

SEARCH AND SEIZURE-INVENTORY SEARCH-PRESERVED ISSUE: An inventory search must be free of any taint of a desire to search for illegal items. It cannot be used as a pretext to look for incriminating evidence. Holifield v. State, 5D2023-3551 (2/21/25)
https://5dca.flcourts.gov/content/download/2447698/opinion/Opinion_2023-3551.pdf

VOTING-STATEWIDE PROSECUTOR: The Office of Prosecution (OSP) lacks jurisdiction to prosecute a person for unlawful voting where he voted in the county in which he resides. The fact that his vote is transmitted

across county lines to Tallahassee does not matter[2]. Conflict certified. State v. Washington, 6D23-2104 (2/21/25) https://6dca.flcourts.gov/content/download/2447718/opinion/Opinion_2023-2104.pdf

RULES-AMENDMENT-3.802: Rules for sentence review for juvenile offenders amended. Provisions and time limits added for rehearing. "Upon" becomes "on," "shall" becomes "must," and "pursuant to" becomes "under." In Re: Amendments to Florida Rule of Criminal Procedure 3.802, SC2024-1171 (2/20/25) https://supremecourt.flcourts.gov/content/download/2447679/opinion/Opinion_SC2024-1171.pdf

RULES-AMENDMENT-JUVENILE PROCEDURE-FORMS: Because two years ago the phrase "personally appear" in juvenile Notices to Appear was changed to merely "appear," the approved Creole word for "personally" is excised from the Creole translation of the form[3]. In Re: Amendments to Florida Rules of Juvenile Procedure, SC2024-1717 (2/20/25) https://supremecourt.flcourts.gov/content/download/2447680/opinion/Opinion_SC2024-1717.pdf

DOUBLE JEOPARDY: Double jeopardy precludes convictions for both burglary of a dwelling while armed with a firearm and burglary of a dwelling with assault or based on a single uninvited entry. McDonald v. State, 1D2022-1005 (2/19/25) https://1dca.flcourts.gov/content/download/2447547/opinion/Opinion_2022-1005.pdf

FUNDAMENTAL ERROR: Where Defendant failed to object that State had impermissibly bolstered witnesses, badgered a defense witness, and made improper statements during closing arguments, issues are not preserved and are not fundamental error. Cooper v. State, 1D2022-2439 (2/19/25)

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[2]The law has since been amended to increase OSP jurisdiction over voting cases.

[3]I don't know what the Creole word was. And I'll probably never know now. It's gone. https://www.youtube.com/watch?v=3Cos7id7HtE

https://1dca.flcourts.gov/content/download/2447549/opinion/Opinion_2022-2439.pdf

RESTITUTION: An award of $60,613 in restitution for misdemeanor contracting without a license is lawful. A county court may order restitution in a misdemeanor case in an amount that exceeds the matter in controversy limits under §34.01(1)(c). The monetary limits of §34.01(1)(a) simply do not apply. Knowles v. State, 2D2024-1253 (2/19/25)
https://2dca.flcourts.gov/content/download/2447557/opinion/Opinion_2024-1253.pdf

HARMLESS ERROR: Applying the harmless error test requires an examination of the entire record by the appellate court, including a close examination of the permissible evidence on which the jury could have legitimately relied, and an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict. A reviewing court applying the harmless error test can consider the overwhelming nature of the State's evidence. Alfaro v. State, 3D23-16 (2/19/25)
https://3dca.flcourts.gov/content/download/2447627/opinion/Opinion_2023-0016.pdf

CONTINUANCE: Defendant is not entitled to continuance where request for new private counsel was made on the heels of denial of request for continuance made only for purpose of delaying trial. There is no palpable abuse of judicial discretion shown where defense had three prior continuances and court was not alerted that defendant wished to substitute his counsel until morning of trial. Thomas v. State, 3D23-295 (2/19/25)
https://3dca.flcourts.gov/content/download/2447625/opinion/Opinion_2023-0295.pdf

VOP: For a trial court to revoke probation based on a violation of a condition of probation, the State must prove by a preponderance of the evidence that the defendant willfully and substantially violated that condition. Clark v. State, 3D23-1964 (2/19/25)
https://3dca.flcourts.gov/content/download/2447624/opinion/Opinion_2023-1964.pdf

UNANIMOUS VERDICT: Unanimity is not required on a specific act supporting conviction where an offense may be committed by alternative acts. Castro v. State, 3D23-2110 (2/19/25)
https://3dca.flcourts.gov/content/download/2447629/opinion/Opinion_2023-2110.pdf

RESISTING WITHOUT VIOLENCE: Defendant's resistance to two officers attempting to arrest him is a single instance of obstruction. Castro v. State, 3D23-2110 (2/19/25)
https://3dca.flcourts.gov/content/download/2447629/opinion/Opinion_2023-2110.pdf

POSTCONVICTION RELIEF: Although res judicata does not prevent defendant from filing successive 3.800 motions raising new issues, collateral estoppel prevents defendant from relitigating issues previously presented and decided. Thomas v. State, 3D24-0673 (2/19/25)
https://3dca.flcourts.gov/content/download/2447628/opinion/Opinion_2024-0674.pdf

POSTCONVICTION RELIEF: If a motion for postconviction relief is insufficient on its face, and the motion is timely filed, the court shall enter a nonfinal, nonappealable order allowing the defendant 60 days to amend the motion. If the amended motion is still insufficient, the court may permit the defendant an additional opportunity to amend the motion or may enter a final, appealable order summarily denying the motion with prejudice, attaching that portion of the files and records in the case that conclusively shows that the defendant is not entitled to relief. Abdallah v. State, 3D24-0911 (2/19/25)
https://3dca.flcourts.gov/content/download/2447614/opinion/Opinion_2024-0911.pdf

ARGUMENT: The control of comments during closing argument is within the trial court's discretion and an appellate court will not interfere unless an abuse of discretion is shown. Austin v. State, 4D2023-1424 (2/19/25)
https://4dca.flcourts.gov/content/download/2447574/opinion/Opinion_2023-1424.pdf

BURGLARY: Defendant who rented out a room (an enclosed screen porch) in her house to the victim, is properly convicted of burglary for entering the room to take the victim's marijuana because she "felt like getting stoned." Sublett v. State, 4D2024-1925 (2/19/25)
https://4dca.flcourts.gov/content/download/2447591/opinion/Opinion_2024-1925.pdf

MDLEA (MARITIME DRUG LAW ENFORCEMENT ACT): MDLEA does not violate principles of due process because it allows the United States to assert jurisdiction over foreign nationals for conduct that bears no nexus with the United States. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

MDLEA: The Felonies Clause of the Constitution grants Congress constitutional authority to "define and punish . . . Felonies committed on the high Seas." The inclusion of a nation's Exclusive Economic Zone (EEZ) within the "high seas" plays no role in limiting the reach of the US Government under the Felonies Clause. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

MDLEA-EEZ: The Exclusive Economic Zone, which lies beyond a nation's territorial waters but within 200 miles of the coastal baseline, is a term of relatively modern vintage. The EEZ is part of the "high seas" for purposes of the Felonies Clause in Article I of the Constitution. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

MDLEA-STANDING: A person charged with a violation of the MDLEA does not have standing to raise a claim of failure to comply with international law as a basis for a defense. Such a claim may be made only by a foreign nation. Any battle over the United States's compliance with international law in obtaining MDLEA jurisdiction should be resolved nation-to-nation in the international arena, not between criminal defendants and the United States. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

FELONIES CLAUSE: The Define and Punish Clause of Article I empowers Congress to define and punish Piracies and Felonies committed on the high Seas, and to extend jurisdiction of this country to any stateless vessel in international waters engaged in the distribution of controlled substances. The Felonies Clause is not limited by customary international law. While the Offenses Clause explicitly incorporates "the Law of Nations" as a boundary on Congress's authority, the Felonies Clause includes no such limiting language. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

MDLEA-VESSEL WITHOUT NATIONALITY: A vessel without nationality is subject to the jurisdiction of the United States. A vessel without nationality includes a vessel aboard which the individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively confirm. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

PRIOR PANEL PRECEDENT RULE: A prior panel precedent cannot be circumvented or ignored on the basis of arguments not made to or considered by the prior panel. An overlooked reason or argument exception to the prior-panel precedent rule does not exist. USA v. Canario-Vilamar, No. 22-12077 (11th Cir. 2/18/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212077.pdf

VOP: Probation cannot be revoked based on Defendant stealing a car before he was placed on probation, notwithstanding that he continued to drive the stolen car after probation began. If an affidavit alleges that a violation occurred on a particular date, the probationer may not be found to have violated probation unless shown to have committed the violation on that date. Garcia v. State, 2D2024-0208 (2/14/25)
https://2dca.flcourts.gov/content/download/2447351/opinion/Opinion_2024-0208.pdf

SEARCH AND SEIZURE-POLE CAMERAS: Use of pole cameras to continuously record front and back yard areas visible to the public does not

violate the Fourth Amendment. Security cameras are not searches just because they record large amounts of data. The Constitution does not prevent the government from using technology to conduct lawful investigations more efficiently. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

SEARCH WARRANT-STALENESS: A warrant seeking nonperishable items typically held for long periods of time (stored money, personalized expensive jewelry) is not stale or is subject to the good faith exception. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

CONSPIRACY: To sustain a conspiracy conviction, the government must prove that (1) an illegal agreement existed to possess with the intent to distribute a controlled substance; (2) each defendant knew of the agreement; and (3) each defendant knowingly and voluntarily joined the agreement, but does not have to prove that each defendant knew every detail or participated in every stage of the conspiracy—only that they knew its essential nature. Evidence of a conspiracy, as opposed to a buyer-seller relationship, may include transactions involving large quantities of drugs and prolonged cooperation between the parties). USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

FIREARM-DRUG TRAFFICKING: Defendant may be convicted for possession of a firearm in relation to drug trafficking where he had two firearms, marijuana, $14,000 in cash, and additional magazines when arrested. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

FIREARM-DRUG TRAFFICKING: Defendant may be convicted for possession of a firearm in relation to drug trafficking offense where he had in his apartment several firearms, a substantial amount of marijuana, 135 grams of fentanyl and heroin mixed, $95,000 in cash, and 1,400 rounds of ammunition. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

ENGAGING IN A CONTINUING CRIMINAL ENTERPRISE: To sustain a conviction for Engaging in a Continuing Criminal Enterprise, Government must prove (1) a felony violation of the federal narcotics laws (2) as part of a continuing series of violations (3) in concert with five or more persons (4) for whom Defendant was an organizer or supervisor (5) from which he derives substantial income or resources. A jury need not unanimously agree as to the identities of the five co-conspirators, only that there were five of them. "While the jury must reach a consensus on the fact that there were five or more underlings...there is no logical reason why there must be unanimity on the identities of these underlings." USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

DOUBLE JEOPARDY-CONTINUING CRIMINAL ENTERPRISE: Conspiracy is a lesser included offense of Continuing Criminal Enterprise. One cannot be convicted of both. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

EVIDENCE-EXPERT TESTIMONY: Error, if any, in permitting agent to testify that "a cup of ice" meant "one ounce or one half ounce quantities of methamphetamine," was harmless. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

JURY INSTRUCTION-CONTINUING CRIMINAL ENTERPRISE: Jury need not be instructed that a mere buyer-seller relationship will not satisfy the requirements of the continuing criminal enterprise charge. Being "an organizer, supervisor, or manager" excludes—by its plain text—a mere buyer-seller relationship. The district court did not abuse its discretion in concluding that the pattern jury instruction encompassed this issue. USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

SEARCH AND SEIZURE-POLE CAMERA (J. JORDAN, CONCURRING): A pole camera placed on the corner of a public commercial intersection in a large city may not trigger Fourth Amendment protections. But the Fourth Amendment might be implicated if such a camera records what goes on

around a home for a long period of time. "I would urge caution before assuming that the Fourth Amendment's public view doctrine...constitutionally immunizes pole cameras regardless of the length of time they record nearby human activities...We simply do not know, and cannot accurately predict, how the Supreme Court will deal with the use of long-term pole cameras (or other similar means of video surveillance) and their impact on privacy, particularly in light of the current debate about the so-called 'mosaic' theory of the Fourth Amendment...Maybe the Supreme Court will conclude...that current Fourth Amendment doctrine is simply not equipped to deal with the challenges of long-term surveillance in the digital age and will announce a new paradigm...Time will tell." USA v. Williamson, No. 2022-12800 (11th Cir. 2/13/25)
https://media.ca11.uscourts.gov/opinions/pub/files/202212800.pdf

AMENDMENT-RULES-JUVENILE PROCEDURE: Rules amended on procedure for filing a motion to release a juvenile for whom probable cause was found for certain enumerated, for notice on motion to extend detention, and enhanced commitment programs. In Re: Amendments to Florida Rules of Juvenile Procedure – 2024 Legislation, SC2025-0016 (2/13/25)
https://supremecourt.flcourts.gov/content/download/2447322/opinion/Opinion_SC2025-0016.pdf

ATTEMPTED SECOND-DEGREE MURDER: Where the self-described "baddest motherfucker...in Dixie County" shoots at his girlfriend in their small trailer because she got "slick at the mouth," and "that slick mouth pissed [him] off" is sufficient evidence of ill will, spite, hatred, or evil intent to support a conviction for second-degree murder. Mooney v. State, 1D2022-4160 (2/12/25)
https://1dca.flcourts.gov/content/download/2447215/opinion/Opinion_2022-4160.pdf

LESSER INCLUDED-AGGRAVATED ASSAULT: Where the baddest motherfucker in Dixie County shot his girlfriend through an opaque curtain, and the information does not allege that she had a well-founded fear of violence, nor is there evidence that she knew he was about to shoot her, Defendant is not entitled to a jury instruction on the lesser included offense of aggravated assault. Mooney v. State, 1D2022-4160 (2/12/25)

https://1dca.flcourts.gov/content/download/2447215/opinion/Opinion_2022-4160.pdf

COST OF PROSECUTION: $100 cost of prosecution is required even though there is no request from the State for it. Mooney v. State, 1D2022-4160 (2/12/25)
https://1dca.flcourts.gov/content/download/2447215/opinion/Opinion_2022-4160.pdf

PRINCIPAL-MURDER: First-degree felony murder and first-degree premeditated murder under a theory of principal in the first-degree both require a shared intent, the former to commit the underlying felony, the latter to kill. Regardless who shot the victim, where Defendant and his accomplice acted in concert to rob drug dealer, he may be convicted of first-degree felony murder. Because they left and returned to finish him off, he may be convicted of first-degree premeditated murder. Clark v. State, 1D2023-1681 (2/12/25)
https://1dca.flcourts.gov/content/download/2447265/opinion/Opinion_2023-1681.pdf

APPEAL-WRIT OF MANDAMUS: An appeal from the denial of a petition for writ of mandamus is civil in nature and therefore not subject to a petition for belated appeal brought under R. 9.141(c) Stenstrom v. Dixon, 1D2024-2773 (2/12/25)
https://1dca.flcourts.gov/content/download/2447281/opinion/Opinion_2024-2773.pdfA

DOUBLE JEOPARDY: Where Defendant punched, choked, kicked, and stabbed his girlfriend, separate convictions for aggravated battery with a deadly weapon and felony battery resulting in great bodily harm do not violate double jeopardy principles because he was charged under separate statutes and because the charging document differentiates between his physical attack on the victim and his stabbing her. Joseph v. State, 2D2023-0897 (2/12/25)
https://2dca.flcourts.gov/content/download/2447202/opinion/Opinion_2023-0897.pdf

DOUBLE JEOPARDY: A double jeopardy violation is a fundamental error which can be raised for the first time on appeal. Joseph v. State, 2D2023-0897 (2/12/25)
https://2dca.flcourts.gov/content/download/2447202/opinion/Opinion_2023-0897.pdf

HEARSAY-BUSINESS RECORDS: A Walmart Asset Protection Investigator may not testify that based on his review of computer printouts, which were not admitted into evidence, he discovered that Child's registers had been more than $13,000 short. Testimony about a business record's contents may not be introduced when that record has not been admitted into evidence. T.V.U. v State, 2D2023-2804 (2/12/25)
https://2dca.flcourts.gov/content/download/2447209/opinion/Opinion_2023-2804.pdf

DOUBLE JEOPARDY: Double Jeopardy allows a retrial, rather than dismissal, when a reviewing court determines that a defendant's conviction must be reversed because evidence was erroneously admitted against him, and also determines that without the inadmissible evidence there was insufficient evidence to support a conviction. T.V.U. v State, 2D2023-2804 (2/12/25)
https://2dca.flcourts.gov/content/download/2447209/opinion/Opinion_2023-2804.pdf

HELL HATH NO FURY: When Defendant's boyfriend broke up with her, she stabbed him multiple times, chased him to a neighbor's house, and, still armed with the knife, attempted to kick in a door. Dang! Jaeger v. State, 2D2024-1342 (2/12/25)
https://2dca.flcourts.gov/content/download/2447210/opinion/Opinion_2024-1342.pdf

SUBPOENA-MEDICAL RECORDS: Florida's constitutional right to privacy extends to medical records. To overcome a patient's privacy right in his or her medical records, the State must prove that it has a compelling interest in having the records disclosed. State must (1) identify some theory that reasonably makes the records relevant and (2) produce some evidence that makes it reasonable to expect that the records will produce evidence that supports the theory. Where Defendant had stabbed her boyfriend,

State may not subpoena her hospital medical records from that night to look for speculated evidence of injuries to her or statements by her to medical personnel. Jaeger v. State, 2D2024-1342 (2/12/25) https://2dca.flcourts.gov/content/download/2447210/opinion/Opinion_2024-1342.pdf

SUBPOENA-MEDICAL RECORDS-REASONS: State may not subpoena medical records based on speculation or anticipation of defenses such as self-defense. "Even if we were to accept the dubious proposition that the State has a compelling interest in obtaining medical records to enhance its storyline at trial (i.e., by bolstering the victim's claim that he ended his relationship with Jaeger because she chronically abused alcohol), that rationale still would not justify a subpoena to the paramedics and would at best support only a more narrowly tailored subpoena to the hospital." Jaeger v. State, 2D2024-1342 (2/12/25) https://2dca.flcourts.gov/content/download/2447210/opinion/Opinion_2024-1342.pdf

PRINCIPAL-MERE PRESENCE-PRESERVED ISSUE: Where robbery victim lost $2300 in lottery winnings and Defendant and three associates were found with a total of $2366 in cash, almost evenly divided between them, and one of them had the Victim's wallet, Defendant's failure to argue for a JOA on the basis of mere presence precludes judicial review. "Failure to properly preserve the 'mere presence' claim is fatal to the argument. Even if we were to reach the merits of Turner's claim, however, his argument would prove unavailing." Turner v. State, 3D22-0706 (2/12/25) https://3dca.flcourts.gov/content/download/2447237/opinion/Opinion_2022-0706.pdf

INEFFECTIVE ASSISTANCE OF COUNSEL-DIRECT APPEAL: Ineffective assistance of counsel claims may only be raised on direct appeal in the context of a fundamental error argument. Turner v. State, 3D22-0706 (2/12/25) https://3dca.flcourts.gov/content/download/2447237/opinion/Opinion_2022-0706.pdf

JURY-DELIBERATIONS-VIEWING VIDEO: Allowing the jury during deliberations to view the video in the courtroom with only a bailiff present is

fundamental error. Judge must be present. Where defense counsel approved of the procedure, the Defendant may consent, provided his consent was knowing, *i.e.*, that he knew he had a right to have the judge present during the video viewing. Because the question of whether Defendant was aware of his right to have the judge present is ultimately a question of fact and the appellate judges are not factfinders, the factfinding should be resolved in a proceeding under R. 3.850. Salgado-Mantilla v. State, 3D22-2151 (2/12/25)
https://3dca.flcourts.gov/content/download/2447260/opinion/Opinion_2022-2151.pdf

JURY-DELIBERATIONS-VIEWING VIDEO: "Undoubtedly, the judicial best practice would have been for the trial judge to remain in the courtroom during the playing of the interview...The next best judicial practice would have been for the trial judge to expressly inform Salgado-Mantilla of the right to have the judge and the parties present during an in-court replay of the interview, and seek his acknowledgement of understanding such right, and ask him to explicitly waive such right on the record. Salgado-Mantilla v. State, 3D22-2151 (2/12/25)
https://3dca.flcourts.gov/content/download/2447260/opinion/Opinion_2022-2151.pdf

RETURN OF PROPERTY: Although petitioner sought judicial relief for return of seized property outside the four-year statute of limitations, Court erred by *sua sponte* summarily denying the petition on the basis of statute of limitations. Gaitor v. State, 3D24-0957 (2/12/25)
https://3dca.flcourts.gov/content/download/2447255/opinion/Opinion_2024-0957.pdf

RESTITUTION: Where plea agreement called for restitution capped at $3,278, Defendant cannot challenge an award restitution lower than that amount. Verdejo v. State, 3D24-1523 (2/12/25)
https://3dca.flcourts.gov/content/download/2447257/opinion/Opinion_2024-1523.pdf

RESTITUTION (J. MILLER, DISSENTING): Where Defendant pled to grand theft of an automobile and agreed to restitution capped at $3,270.00, he is not precluded from challenging a request for restitution for myriad of

personal items that the victim discovered missing from inside the vehicle. Verdejo v. State, 3D24-1523 (2/12/25)
https://3dca.flcourts.gov/content/download/2447257/opinion/Opinion_2024-1523.pdf

CREDIT FOR TIME SERVED: A motion for correction of jail credit which fails to include all the required allegations of R. 3.801 is legally insufficient. Cooper v. State, 3D24-1524 (2/12/25)
https://3dca.flcourts.gov/content/download/2447256/opinion/Opinion_2024-1524.pdf

VIOLENT CAREER CRIMINAL: The requisite predicate convictions necessary to impose a violent career criminal sentence need not be submitted to a jury, but "we acknowledge that appellant has argued the Court's decision in Erlinger v. United States, 602 U.S. 821 (2024) may be dispositive in the instant case." Bynes v. State, 4D2024-2711 (2/12/25)
https://4dca.flcourts.gov/content/download/2447252/opinion/Opinion_2024-2711.pdf

COSTS: $151 costs pursuant to §section 938.10(1) may not be imposed where the victim was not a minor. Talbert v. State, 5D2024-1958 (2/14/25)
https://5dca.flcourts.gov/content/download/2447402/opinion/Opinion_2024-1958.pdf

RETURN OF PROPERTY: Trial courts possess the inherent authority to rule on motions seeking the return of property seized by law enforcement in connection with a criminal investigation once the trial court takes jurisdiction over the criminal proceedings arising from the investigation. First, the defendant must file a facially sufficient motion for the return of property, alleging that the property at issue was defendant's personal property, was not the fruit of criminal activity, and was not being held as evidence. Scheurman v. State, 5D2023-2294 (2/11/25)
https://5dca.flcourts.gov/content/download/2447199/opinion/Opinion_2023-2294.pdf

RETURN OF PROPERTY: Where defendant admitted violating probation by possessing weapons, but refused to admit that his possession of the

muzzleloader violated his probation, he is entitled to have it returned. Scheurman v. State, 5D2023-2294 (2/11/25) https://5dca.flcourts.gov/content/download/2447199/opinion/Opinion_2023-2294.pdf

FIREARM-ANTIQUE FIREARM: The term "firearm" does not include an antique firearm. A black powder muzzleloader rifle qualifies as an "antique firearm" because it employs an "early type of ignition system" similar to a "matchlock, flintlock, [or] percussion cap." Scheurman v. State, 5D2023-2294 (2/11/25) https://5dca.flcourts.gov/content/download/2447199/opinion/Opinion_2023-2294.pdf

DEADLY WEAPON: A black powder muzzleloader rifle does not constitute a "deadly weapon" unless it is "used or threatened to be used in a way likely to produce death or great bodily harm." Keeping a muzzleloader in one's home does not violate the condition of probation relating to firearms and weapons. Scheurman v. State, 5D2023-2294 (2/11/25) https://5dca.flcourts.gov/content/download/2447199/opinion/Opinion_2023-2294.pdf

PROBATION CONDITIONS: 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. Condition of probation that probationer comply with all instructions that his probation officer gives to him does not permit the probation officer to redefine the term "weapon." Scheurman v. State, 5D2023-2294 (2/11/25) https://5dca.flcourts.gov/content/download/2447199/opinion/Opinion_2023-2294.pdf

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

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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[4]. 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)

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

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 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

F**INES/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. 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

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 (A[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): AThe 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=Cin a death penalty case, no lessCwere 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. AGiven 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 A[n]ear [her] vagina@ and A[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 Agenital area@ or Agenitals.@ 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. AIt 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. A[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 misperceptionsChis misunderstanding of reality as altered by a disorder such as PTSDCare 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/2435754/opinion/Opinion_2022-0574.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[5]-SCORESHEET ERRORS: The parties thought there 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

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[5] *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?"*

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

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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 raceneutral 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, 5D2022-1817 (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)

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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 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/Opini

on_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/Opini

on_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/Opinion_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/Opini

on_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 quasimandatory. . . 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[6]. Anderson v. State, 5D22-943 (1/12/24)

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[6]The image brings to mind this excerpt from Very Good, Jeeves by P.G. Wodehouse:

"Remember what the poet Shakespeare said, Jeeves."

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)

"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."

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 MaisonetMaldonado, 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/Opinion_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/Opinio

n_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_2022-2

360.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

SEPTEMBER 2023

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%3FdocumentVersionID=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%3Fd

ocumentVersionID=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/sc202

3-0033.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