USEFUL POINTS OF FEDERAL LAW, VOL II.

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HABEAS CORPUS

Certificate of Appealability

Expansion

Habeas Corpus: COA – Expansion (May Be Expanded on Exceptional Occasions)
Mays v. U.S. Case No. 14-13477 (11th Cir. 3/29/16)
Habeas Corpus: COA – Expansion – Reasonable Jurists
The court will expand the issues addressed in the certificate of appealability when reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.
Dell v. U.S., Case No. 11-12904 (11th Cir. 2/27/13)
Habeas Corpus: COA - Expansion
The only way a habeas petitioner may raise on appeal issues outside those specified by the district court in the certificate is by having the court of appeals expand the certificate to include those issues.
Tompkins v. Moore, 193 F.3d 1327 (11th Cir. 1999)

Miscellaneous

Habeas Corpus: COA – Miscellaneous – 2255 (Attacks Sentences, Not Convictions)

Section 2255 is a vehicle for attacking sentences, not convictions.

Rudolph v. U.S. No. 21-1282 & 22-10135 (11th Cir. 2/12/24)

Habeas Corpus: COA - Miscellaneous (Rule 60(b) or 59(e))

A defendant must obtain a certificate of appealability for an appeal of a denial of a Rule 60(b) or Rule 59(e) motion.

Hamilton v. Secretary, Florida Dept. of Corrections, Case No. 14-13535 (11th Cir. 7/15/15)

Habeas Corpus: COA – Miscellaneous (Requirement Not Jurisdictional)

The requirement that the district court issue a certificate of appealability is not a jurisdictional requirement. Accordingly, a judge's failure to indicate the requisite constitutional issue in a COA does not deprive a court of appeals of subject-matter jurisdiction to adjudicate the habeas petitioner's appeal.

Gonzalez v. Thaler, case No. 10-895 (S. Ct. 1/10/12)

Habeas Corpus: COA – Miscellaneous (Motion Panel's Denial Doesn't Bar Review)

The motion panel's denial of an expansion of the COA didn't bind the panel hearing the case on the merits.

Jones v. U.S., 224 F.3D 1251 (11th Cir. 2000)

Habeas Corpus: COA – Miscellaneous (When the District Court Denies the Request of a COA)

For a general description of what occurs and needs to be done see:

Jones v. U.S., 224 F.3d 1251 (11th Cir. 2000)

Habeas Corpus: COA – Miscellaneous (Motion to Review Action of a Single Judge)

If upon requesting a certificate of appealability from the circuit court, and it is rejected, there is a procedure whereby you can ask for further review.

U.S. v. Nyhuis, 211 F.3d 1340 (11th Cir. 2000); Franklin v. Pryor, 215 F.3d 1196 (11th Cir. 2000)

Particular Circumstances

Habeas Corpus: COA – Particular Circumstances (Armed Career Criminal Conviction Based on Carrying a Concealed Weapon)

Although recognizing that Begay provides good reason to conclude that Hunter was erroneously sentences as an armed career criminal, the Court of Appeals denied the defendant a certificate of appealability because, in the view of the Court, he did not make a substantial showing of a denial of a constitutional right.

Hunter v. U.S., Case No. 07-13701 (11th Cir. 2/24/09)

Requirements

Habeas Corpus: COA – Requirements (Only Question is Whether It Is Debatable)

To secure habeas relief under 18 USC § 2254, the petitioner must show the state court's finding was incorrect by clear and convincing evidence, and that the corresponding factual determination was objectively unreasonable. That, however, has nothing to do with the COA inquiry, which asks only whether the District Court's decision was debatable.

Miller-El v. Cockrell, Case No. 01-7662 (S. Ct. 2/25/05); Buck v. Davis, Case No. 15-8049 (S. Ct. 10/5/16)

Habeas Corpus: COA – Requirements (Standard for Obtaining When Claim Rejected on Merits)

Where a district court has rejected the constitutional claims on the merits the petitioner seeking a COA must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.
Eagle v. Linahan, 279 F.3d 926 (11th Cir. 2001); Banks v. Dretke, Case No. 02-8286 (S. Ct. 2/24/04)

Habeas Corpus: COA – Requirements (Must Specify Issues)

One of the differences between the old certificate of probable cause to appeal and the new certificate of appealability in the AEDPA is that the new provision requires specification of issues.
Tompkins v. Moore, 193 F.3d 1327 (11th Cir. 1999)

Habeas Corpus: COA – Requirements (Debatable)

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.
Slack v. McDaniel, 529 U.S. 473 (2000) (4/26/00); Eagle v. Linahan, 279 F.3d 926 (11th Cir. 2001); Miller-El v. Cockrell, Case No. 01-7662 (S. Ct. 2/25/03)

Concurrent Sentence Doctrine

Habeas Corpus: Johnson - Concurrent Sentence Doctrine

In a claim filed pursuant to Johnson v. United States, 576 U.S. 591 (2016), where defendant received a 327-month sentence for his ACCA conviction and a career offender 327-month concurrent sentence for a drug conspiracy case, the court distinguished the decision of In Re: Williams and held that the concurrent sentence doctrine did not apply. Court noted the contrast between the mandatory life sentence on the concurrent sentence in Williams. Noted, too, that in the instant case there was a single Sentencing Guidelines range for the ACCA violation combined with the conspiracy crime. Court concluded that the judge's sentencing decision was . . . no doubt informed by Davis's ACCA designation, which means Davis may have suffered adverse collateral consequences if his ACCA sentence turns out to be unlawful.
In re: Antrone Davis, Case No. 16-13779 (11th Cir. 7/21/16)

Habeas Corpus: Concurrent Sentence Doctrine – Valid Sentence on One Count

If a defendant is given concurrent sentences on several counts and the conviction on one count is found to be valid an appellate court need not consider the validity of the conviction on other counts.
In re: Williams, 826 F.3d 1351 (11th Cir. 2016)

Default

Cause

Habeas Corpus: Default – Cause (Lawyers Failure to Correctly Calculate Deadline)

Run-of-the-mill claims of excusable neglect by an attorney such as a simple miscalculation that leads a lawyer to miss a filing deadline do not constitute the kind of extraordinary circumstance that is necessary to merit equitable tolling.
Camren v. Attorney General, Case No. 13-15017 (11th Cir. 1/21/15)

Habeas Corpus: Default – Cause (Abandonment by Lawyer)

In this capital post-conviction case, where the lawyers left their law firm and, essentially, no one was representing the defendant, which resulted in the defendant missing the deadline for filing

his state habeas petition, those circumstances provided the requisite cause for the procedural default.
Maples v. Thomas, Case No. 10-63 (S. Ct. 1/18/12)
Habeas Corpus: Default – Cause (Actual Innocence: Predicate Offense for Career Offender Classification)
While the actual innocence exception has been applied to the crime of conviction and capital sentencing, the 11th Circuit has not determined whether it can be applied in noncapital sentencing. In this case, where the defendant argued that the Supreme Court decision in Salinas v. U.S., 547 U.S. 188 (2006) had made it clear that his possession of cannabis case could not be a predicate offense for career offender classification, the court construed it as a claim of legal, not factual, innocence and concluded that the actual innocence exception was inapplicable.
Stevens v. U.S., Case No. 11-0486 (11th Cir. 3/26/12)
Habeas Corpus: Default – Cause (Attorney Errors in Initial-Review Collateral Proceedings)
Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance of counsel if (1) the claim of ineffective assistance of trial counsel was a substantial claim; (2) the cause consisted of there being no counsel or only ineffective counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the initial review proceeding in respect to the ineffective-assistance-of-trial-counsel claim; and (4) state law requires that an ineffective assistance of trial counsel claim be raised in an initial-review collateral proceeding.
Martinez v. Ryan, 566 U.S. 1 (S. Ct. 2012)
Habeas Corpus: Default – Cause (Actual Innocence)
In the claim filed pursuant to 21 USC § 2255, where the defendant, who had entered a guilty plea, was seeking to overcome his failure to file the motion within the requisite one year by showing actual innocence, the court concluded that trading guns for drugs doesn't constitute the requisite use of a firearm under 18 U.S.C. § 924(c). The court remanded the case to the trial court noting that drug charge had been dismissed as part of the plea agreement, the case was remanded noting that the defendant would, in the district court, be required to show his actual innocence of any more serious charges the government had dismissed and that the government would be permitted to introduce any additional evidence of the defendant's guilt. (Defendant pled to one drug charge along with the gun charge. Does this ruling mean that if he was guilty of the other drug offenses that he can't prevail on the gun charge?)
U.S. v. Montano, Case No. 03-11950 (11th Cir. 2/4/05)
Habeas Corpus: Default – Cause (Actual Innocence)
In 1997, Michael Haley was sentenced to serve 16 years and 6 months in prison for violating the Texas habitual offender law. Texas officials concede Haley did not violate this law. They agree that Haley is guilty only of theft, a crime with a 2-year maximum sentence. Yet, despite the fact that Haley served more than two years in prison for his crime, Texas officials came before our Court opposing Haley's petition for relief. they wish to send Haley back to prison for a crime they agree he did not commit.
Dretke v. Haley, Case No. 02-1824 (S. Ct. 5/3/04) (Kennedy, J. dissenting opinion) (Court had declined to reach the issue of whether actual innocence exception applies to non-capital sentencing error)
Habeas Corpus: Default – Cause (Prejudice - Brady Claim)

Petitioner succeeded in showing cause for failing to pursue his Brady claim in state court, but failed to establish the requisite prejudice.
Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)

Habeas Corpus: Default – Cause (Avoiding Procedural Default)

If a petitioner has procedurally defaulted a federal habeas claim, he may be nevertheless heard on that claim if he can show cause for the procedural default and prejudice attributable thereto. To show cause, a petitioner must prove that some objective factor external to the defense impeded counsel's efforts to raise the claim previously. Once cause is proved, a petitioner must also prove prejudice. He must show not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. If a petitioner cannot show cause, he may still survive a procedural bar by proving that the failure to hear the merits of his claim would endorse a fundamental miscarriage of justice. To meet this standard, a petitioner must show that it is more likely than not that no reasonable juror would have convicted him of the underlying offense.
Johnson v. Alabama, 256 F.3d 1156 (11th Cir. 2001); Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)

Habeas Corpus: Default - Cause (Failure to Present Evidence in State Court)

Must show cause and prejudice for failing to present evidence in state court.
Keeney v. Tomayo-Reyes, 112 S. Ct. 1715 (1992)

Habeas Corpus: Default – Cause (Prejudice)

Assuming the cause prong of the Sykes test is met the defendant must also show prejudice, i.e., whether there is a reasonable probability that the result of the trial would have been different had the error not occurred.
Mincey v. Head, 206 F.3d 1106 (11th Cir. 2000)

Habeas Corpus: Default - Cause (Ineffective Assistance)

Although we have not identified with precision exactly what constitutes cause to excuse a procedural default, we have acknowledged that in certain circumstances counsel's ineffectiveness in failing properly to preserve the claim for review in state court will suffice. Not just any deficiency in counsel's performance will do, however; the assistance must have been so ineffective as to violate the Federal Constitution. In other words, ineffective assistance adequate to establish cause for the procedural default of some other constitutional claim is itself an independent constitutional claim.
Warden v. Carpenter, 529 U.S. 446 (2000); see also: U.S. v. Nyhuis, 211 F.3d 1340 (11th Cir. 2000)

Habeas Corpus: Default – Cause (Actual Innocence in Sentencing Context)

With the decision in U.S. v. Archer, 531 F.3d 1347 (11th Cir. 2008), the defendant sought relief from his career offender sentence where one of the predicate offenses had been carrying a concealed firearm. The court of appeals, however, ruled that he had procedurally defaulted the issue by not raising the issue on his direct appeal**.** Furthermore, because the defendant's claim was that of legal, rather than factual, innocence, and it did not, therefore, fall within the actual innocence exception. In reaching its decision, the court of appeals did not enter the debate regarding whether the actual innocence exception extends to the noncapital sentencing context, and left for another day the question of whether this type of claim is cognizable under § 2255 in the first instance.
McKay v. U.S., 657 F.3d 1190 (2011)

Exhaustion

Habeas Corpus: Default – Exhaustion (State's Failure to Raise Exhaustion)
State's failure to raise exhaustion does not constitute a waiver under AEDPA, which requires express waiver of exhaustion requirement by state.
McNair v. Campbell, Case No. 04-11400 (11th Cir. 7/13/05)
Habeas Corpus: Default – Exhaustion (Boerckel)
At least in those cases where the Florida Supreme Court reviews the case as a matter of great public importance, the other issues considered by the district court, but not by the Supreme Court, are not defaulted per Boerckel. Opinion specifically says it is not considering those cases that involve the Florida Supreme Court's conflict jurisdiction.
Tucker v. Dept. of Corrections, 301 F.3d 1281 (2002); but are in Georgia: Nelson v. Schofeld, Case No. 03-11496 (11th Cir. 5/25/04) (Georgia has since changed their rules: See Hills v. Washington, Case No. 04-14292 (11th Cir. 3/13/06)
Habeas Corpus: Default – Exhaustion (Boerckel)
The holding in Boerckel is that in order to exhaust state remedies as to a federal constitutional issue, a prisoner is required to file a petition for discretionary review in the state's highest court raising that issue, if discretionary review is part of the appellate procedure in the state. In Boerckel there was no circuit precedent one way or the other. In this case, which is from Alabama, there was 11th Circuit precedent that did not require the petitioner to seek the discretionary review. Nevertheless, the petitioner's reliance in this case upon that precedent was of no value. That was true even though this petitioner's time period for seeking discretionary review passed prior to the Boerckel decision. The court declined to say whether this ruling would apply to Florida cases.
Smith v. Jones, No. 00-12314 (11th Cir. 7/10/01)
Habeas Corpus: Default – Exhaustion (Must Seek Even Discretionary Review in State Court)
Although state prisoners are not required to pursue discretionary review if it would be considered to be extraordinary, court concluded that, at least in Georgia, state prisoners must seek a certificate of probable cause to appeal the decision to the Georgia Supreme Court to comply with the exhaustion requirement.
Pope v. Rich, Case No. 03-13218 (11th Cir. 1/30/04)
Martinez
Habeas Corpus: Default – Martinez (Claim Limited to State-Court Record)
Under § 22543(e)2, a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record based on the ineffective assistance of state postconviction counsel.
Shinn v. Ramirez, No. 20-1009 (S. Ct. May 23, 2022)
Habeas Corpus: Default - Martinez (Inapplicable to Errors of Appellate Counsel)
The decisions in Martinez v. Ryan, 566 U.S. 1 (2012) and Trevino v. Thaler, 569 U.S. 413 (2013) apply, in some instances, to the ineffective assistance of post-conviction counsel, but not to the ineffective assistance of the lawyer handling the direct appeal.
Davila v. Davis, Case No. 16-6219 (S. Ct. 4/24/17)
Habeas Corpus: Default - Martinez (Inapplicable Where Counsel Failed to Timely File a 2254 Petition)
The Martinez court expressly limited its holding to attorney errors in initial review collateral proceedings, stating, [T]he holding in this case does not concern attorney errors in other kinds of proceedings, including appeals from initial-review collateral proceedings, second or successive

petitions, and petitions for discretionary review in a State's appellate courts. Accordingly, the Martinez decision did not provide the defendant relief where the error was counsel's failure to file a timely 2254 motion.
Arthur v. Thomas, 739 F.3d 611 (11th Cir. 2014)
Habeas Corpus: Default - Martinez (Applies Only to Ineffective Assistance of Trial Counsel That Post-Conviction Counsel Failed to Raise)
Martinez is limited to claims of ineffective assistance of trial counsel that are otherwise barred due to the ineffective assistance of post-conviction counsel.
Gore v. Crews, Case No. 13-12834 (11th Cir. 6/27/13)
Habeas Corpus: Default - Martinez (Extended Where It Was Virtually Impossible to Raise the Ineffective-Assistance-of-Trial Counsel Claim During the Direct Appeal)
Trevino v. Thaler, Case No. 11-10189 (S. Ct. 2/25/13)
Habeas Corpus: Default – Martinez v. Ryan
Absent a right to counsel in a collateral proceeding, an attorney's errors in the proceeding do not establish cause for a procedural default.
Martinez v. Ryan, Case No. 10-1001 (S. Ct. 3/20/12)
Habeas Corpus: Default – Martinez (Rule 60(b)(6))
The change in the decisional law affected by Martinez is not an extraordinary circumstance sufficient to invoke Rule 60(b)(6).
Hamilton v. Secretary, Fla. Dept. of Corrections, Case No. 14-13535 (July 15, 2015)
State Procedural Bar
Habeas Corpus: Default – State Procedural Bar (Court Rejects 9th Circuit Interpretation)
Concluding that the 9th Circuit profoundly misapprehends what makes a state procedural bar adequate, the Supreme Court summarily reversed the 9th Circuit's finding that California's so-called *Dixon* bar was not an adequate impediment to federal collateral review.
Johnson v. Lee, Case No. 15-789 (S. Ct. 5/31/16)
Habeas Corpus: Default - State Procedural Bar (Last State Court)
Federal review of a petitioner's claim is barred by the procedural default doctrine if the last state court to review the claim states clearly and expressly that its judgment rests on a procedure bar, and that bar provides an adequate and independent state ground for denying relief.
Johnson v. Alabama, 256 F.3d 1156 (11th Cir. 2001); Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02); Parker v. Secretary for the Dept. of Corrections, Case No. 02-13292 (11th Cir. 5/20/03), Martinez v. Ryan, Case No. 10-1001 (S. Ct. 3/20/12)
Habeas Corpus: Default - State Procedural Bar (District Court May Sua Sponte Raise Procedural Default)
Magouirk v. Phillips, 144 F.3d 348 (5th Cir. 1998); Esslinger v. Davis, 44 F.3d 1515, 1523-29 (11th Cir. 1995)
Habeas Corpus: Default – State Procedural Bar (Grounds That Allow for Federal Review)
There are three situations in which an otherwise valid state ground will not bar federal claims: (1) where failure to consider a prisoner's claims will result in a fundamental miscarriage of justice, (2) where the state procedural rule was not firmly established and regularly followed, and (3) where the prisoner had good cause for not following the state procedural rule and was prejudiced by not having done so.
Cade v. Haley, No. 99-6052 (11th Cir. 8/17/00)
Habeas Corpus: Default – State Procedural Bar (Substantial Compliance with State Rules)

In this case, Missouri rules requiring written motion for a continuance and a showing of the expected testimony did not constitute a state ground adequate to bar a federal habeas review. The defendant's witnesses had been present, but left in the courthouse prior to being called. Upon discovering they were not in the courthouse, the defense asked for a continuance. The court remanded the case to the district court for consideration on the merits because (1) there was no evidence to support the trial judge's claim that the witnesses had intentionally abandoned the case; (2) there was no published Missouri decision directing flawless compliance with the Missouri rules in the unique circumstance of an unanticipated and unexplained disappearance of critical subpoenaed witnesses on the last day of trial; and (3) given the realities of trial the defendant substantially complied with the rules.
Lee v. Kemna, 534 U.S. 362 (2002)

Habeas Corpus: Default – State Procedural Bar (State Rules Must be Firmly Established and Regularly Followed)

Only rules that are firmly established and regularly followed qualify for adequate state grounds for precluding substantive review of federal claims.
Moore v. Campbell, Case No. 02-11302 (11th Cir. 9/15/03)

Habeas Corpus: Default – State Procedural Bar (Adequacy is a Federal Question)

Federal Habeas review is not barred every time a state court invokes a procedural rule to limit its review of a state prisoner's claim. The adequacy of state procedural bars to the assertion of federal questions is not within the State's prerogative finally to decide; rather, adequacy is itself a federal question.
Cone v. Bell, Case No. 07-1114 (S. Ct. 12/9/08)

Evidentiary Hearing

Habeas Corpus: Evidentiary Hearing - Dueling Affidavits

The state court denied the defendant's post-conviction claim on the basis of conflicting affidavits. The district court affirmed the decision without granting an evidentiary hearing, and the court of appeals upheld the decision. Given the particular circumstances of the case, the court of appeals concluded that it could not say that the state court's credibility determination on the basis of the affidavits was objectively unreasonable.
Landers v. Attorney General, Case No. 13-11898 (11th Cir. 1/23/15); Rosin v. U.S. Case No. 14-10175 (11th Cir. 5/14/15)

Habeas Corpus: Evidentiary Hearing - Percentage of Cases in Which an Evidentiary Hearing is Granted

Even prior to the passage of AEDPA district courts held evidentiary hearings in only 1.17% of all federal habeas cases.
Schiriro v. Landrigan, Case No. 05-1575 (S. Ct. 5/14/07)

Habeas Corpus: Evidentiary Hearing - Failure to Develop Facts in State Court Proceeding

Defendants are entitled to an evidentiary hearing if they can show cause for failure to develop the facts in state-court proceedings an actual prejudice from that failure. In this instance the state's failure to disclose Brady material was sufficient cause. The defendant's reliance on the prosecution's full disclosure representation and assumption that the state would not stoop to improper litigation conduct to advance prospects for gaining a conviction, did not alter this finding.
Banks v. Dretke, Case No. 02-8286 (S. Ct. 2/24/04)

Habeas Corpus: Evidentiary Hearing - Failure to Develop

Petitioner cannot be said to have failed to develop relevant facts if he diligently sought, but was denied, the opportunity to present evidence at each stage of his state proceedings.
Breedlove v. Moore, 279 F.3d 952 (11th Cir. 2002)

Habeas Corpus: Evidentiary Hearing - Appointment of Counsel

The requirement under Rule 8 of the rules governing 2255 proceedings requires the judge to appoint counsel for purposes of an evidentiary hearing. That rule is not subject to harmless error analysis.
Shepherd v. U.S., 253 F.3d 585 (11th Cir. 2001)

Habeas Corpus: Evidentiary Hearing – AEDPA – 2254 (Right to Hearing)

Under the opening clause of § 2254(e)(2), a failure to develop the factual basis of a claim is not established unless there is a lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel. If there is a lack of diligence, the only way to a federal evidentiary hearing is a showing that efforts to discover the facts would have been in vain, and there is a convincing claim of innocence. Absent this lack of diligence, these showings are unnecessary.
Williams v. Taylor, 529 U.S. 362 (2000)

Habeas Corpus: Evidentiary Hearing - 2254 (Criteria for Determining When Needed)

For a discussion of the criteria for when a federal evidentiary hearing is necessary even if there has already been a state hearing see:
Cade v. Haley, No. 99-6052 (11th Cir. 8/17/00); Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R)

Habeas Corpus: Evidentiary Hearing – State's Failure to Grant Evidentiary Hearing on Post-Conviction Claim

A state court's failure to conduct an evidentiary hearing on a post-conviction motion does not constitute a cognizable claim for habeas relief.
Carroll v. Secretary, DOC, No. 08-14317 (11th Cir. 7/17/09)

Miscellaneous

Habeas Corpus: Miscellaneous – 2241 if 2255 is Unavailable?

Section 2255(e)'s savings clause does not permit a prisoner asserting an intervening change in statutory interpretation to avoid AEDPA's restrictions on second or successive § 2255 motions by filing a § 2241 petition. The ruling meant that the petitioner could not raise his *Rehaif* claim that was barred by the rule against successive petitions.
Jones v. Hendrix, No. 21-857 (S. Ct. 6/22/23)

Habeas Corpus: Miscellaneous – Court Must Review All Issues Raised

If a district court fails to address all the issues raised, the court of appeals will remand the case with directions to do so.
Senter v. U.S., Case No. 18-11627 (11th Cir. Nov. 13, 2020)

Habeas Corpus - Miscellaneous - Johnson (Career Offenders)

Claims that predicate offenses are no longer valid for purposes of career offender sentencing are not cognizable in a § 2255 motion.
U.S. v. Matchett, 802 F.3d 1185 (11th Cir. 2015)

Habeas Corpus: Miscellaneous - Sentencing Errors

Section 2255 does not provide a remedy for all sentencing errors. The error may be remedied only if it constitutes a fundamental defect which inherently results in a complete miscarriage of justice. If a federal prisoner sentenced below the statutory maximum does not prove actual innocence of his crime or the vacatur of a prior conviction, the prisoner cannot satisfy the standard. Here, the court of appeals rejected a challenge to the defendant's sentence as a career

offender based on the recognition that the defendant's conviction for third-degree felony child abuse was not a crime of violence given the holding in Begay.
Spencer v. U.S.,773 F.3d 1132 (11th Cir. 2014) (En Banc)
Habeas Corpus: Miscellaneous - District Court Must Resolve All Claims for Relief
Rhode v. U.S., Case No. 08-15004 (S. Ct. 9/29/09)
Habeas Corpus: Miscellaneous - District Judge Has Discretion to Consider Arguments Not Presented to Magistrate Judge
When arguments are presented in the objections to the magistrate judge's report and recommendation, the district judge has broad discretion in determining whether to consider them.
Stephens v. Tolbert, Case No. 06-12831 (11th Cir. 12/5/06)
Habeas Corpus: Miscellaneous - Common Law Remedies
Federal courts may properly fill the interstices of the federal postconviction remedial framework through remedies available at common law.
U.S. v. Holt, No. 04-15848 (11th Cir. 7/19/05)
Habeas Corpus: Miscellaneous - Recharacterization of Motion as a 2255 Motion
A court may not recharacterize a motion as a 2255 motion unless the court informs the litigant of its intent to do so, and warns the litigant that the recharacterization will subject 2255 motions to the law's second or successive restrictions, and provides the litigant with an opportunity to withdraw or amend the filing.
Castro v. United States, Case No. 02-6683 (S. Ct. 12/15/03)
Habeas Corpus: Miscellaneous -Right to Discovery
Only upon a showing of good cause.
Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02); Evans v. U.S., Case No. 2:10cv45-FTM-29DNF (M.D. Fla. 10/4/12); Bowers v. U.S. Parole Commission, Case No. 12-16560 (11th Cir. 3/14/14)
Habeas Corpus: Miscellaneous - Summary Denial Inappropriate in Some Cases
Where there may be some merit to allegations of the motion, if supported by the record, and the record consists of voluminous files and transcripts, an adequate appellate review of the basis for the district court's decision requires something more than mere summary denial.
Broadwater v. U.S., 292 F.3d 1302 (11th Cir. 6/3/02)
Habeas Corpus: Miscellaneous - During Pendency of Direct Appeal
A trial court lacks jurisdiction to consider a 2255 claim while a direct appeal is pending.
U.S. v. Dunham, 240 F.3d 1328 (2001)
Habeas Corpus: Miscellaneous - Not for Challenging Fines or Restitution
Blaik v. U.S., 161 F.3d 1341 (11th Cir. 1998)
Habeas Corpus: Miscellaneous - Effective Date of Anti-Terrorism Act
April 24, 1996.
Mills v. Singletary, 161 F.3d 1273 (11th Cir. 1998)
Habeas Corpus: Miscellaneous - General Description of the Writ
Williams v. Taylor, 529 U.S. 362 (2000)
Habeas Corpus: Miscellaneous - No Right to Counsel in Collateral Challenges
Defendants have no constitutional right to counsel when collaterally attacking their convictions; this is true even in capital cases.
High v. Head, 209 F.3d 1257 (11th Cir. 2000)
Habeas Corpus: Miscellaneous - Fourth Amendment Claims

Federal courts are precluded from conducting post-conviction review of Fourth Amendment claims where state courts have provided an opportunity for full and fair litigation of those claims.
Bradley v. Nagle, 212 F.3d 559 (11th Cir. 2000)

Habeas Corpus: Miscellaneous - Direct Appeal Issues Can't Be Relitigated in 2255 Claim

Once a matter has been decided adversely to a defendant on direct appeal it cannot be re-litigated in a collateral attack under section 2255.
U.S. v. Nyhuis, 211 F.3d 1340 (11th Cir. 2000)

Habeas Corpus: Miscellaneous - Failure to Object to Magistrate's Conclusions

Although accompanied by a recommendation that the rule be changed, the Court reaffirmed that the current rule is that despite a party's failure to object to a magistrate judge's conclusions on legal issues, or failure to address a legal issue, the rule established in Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992) (en banc), does not foreclose a party's ability to seek de novo review on appeal.
Dupree v. Warden of the State of Alabama, Case No. 11-12888 (May 7, 2013)

Habeas Corpus: Miscellaneous - Prima Facie Showing (Johnson: Judge Martin's Criticism)

Criticism of Matchett and argument that the Eleventh Circuit has uniquely limited Johnson's reach.
In re: Clayton, Case No.16-14556 (11th Cir. 7/18/16) (Martin, J. concurring)

Rule 60(b)

Habeas Corpus: Rule 60(b) - Extraordinary Circumstance

Defense counsel's decision to introduce testimony from a psychologist in a death penalty that the defendant, who was black, was statistically more likely to act violently. The extraordinary circumstances provision of Rule 60(b) includes the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process. The court held defense counsel's action justified relief pursuant to the rule.
Buck v. Davis, Case No. 15-8049 (S. Ct. 10/5/16)

Habeas Corpus: Rule 60 (b) – Inadequate Showing

Petitioner's Rule 60(b) motion which challenged only the district court's previous ruling on the AEDPA statute of limitations was not the equivalent of a successive habeas petition because it didn't claim error in petitioner's state conviction. However, the motion failed to set forth extraordinary circumstances justifying relief as the only ground for reopening the judgment was that the Supreme Court decision issued when petitioner's case was no longer pending showed error of the district court's statute of limitations ruling.
Gonzalez v. Crosby, Case No. 04-6432 (S. Ct. 6/23/05); Zakrzewski v. McDonough, Case No. 06-12804 (11th Cir. 7/3/07)

Habeas Corpus: Rule 60(b) – Compared to 2255 Motion

A 2255 motion asserts that the conviction was imposed in violation of the Constitution, that the court lacked jurisdiction to impose such a sentence, that the sentence exceeded the maximum, or is otherwise subject to collateral attack. A motion filed pursuant to Fed.R.Civ.P. 60(b) seeks to vacate a federal judgment based on matters that affected the integrity of the proceeding. It would contain argument that the court should relieve a party from final judgement due to those reasons listed in the rule (mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud . . .). In this case, the Court points out that if the motion had been a proper 60(b) motion it would have been an attack on the order denying the defendant's 2255 motion rather than an attack on the sentence itself.
Lazo v. United States, Case No. 02-12483 (11th Cir. 12/16/02)

Savings Clause

Habeas Corpus: Savings Clause - Concurrent Sentence Defeated 2241 Motion
In order to meet the fourth prong of Bryant v. Warden, FCC, Coleman - Medium, 738 F.3d 1253 (11th Cir. 2013), the petitioner serving multiple concurrent sentences must demonstrate that his overall sentence exceeds the allowable statutory maximum for each of the counts of conviction.
Brown v. Warden, FCC, Coleman - Medium, Case No. 15-1135 (11th Cir. 4/1/16)

Habeas Corpus: Savings Clause – Inapplicable to Guideline-Error Sentencing Claims
Brown v. Warden, FCC, Coleman - Medium, Case No. 15-1135 (11th Cir. 4/1/16)

Habeas Corpus: Savings Clause - Can't Be Used to Circumvent Limitations on Successive Petitions for Challenges to the Length of the Sentence
The savings clause of 28 U.S.C. § 2255(e), which allows for a 28 U.S.C. § 2241 petition to be entertained if it appears the remedy [afforded by 18 U.S.C. § 2255 is inadequate or ineffective to test the legality of [the defendant's] detention, does not authorize a federal prisoner to bring a § 2241 petition claim, which would otherwise be barred by the limitations on successive petitions that the sentencing guidelines were misapplied in a way that resulted in a longer sentence not exceeding the maximum. In this case, the court of appeals held the defendant could not challenge his career offender sentence that relied on the crime of carrying a concealed firearm, an offense the court of appeals had subsequently decided was not a crime of violence.
Gilbert v. U.S., 640 F.3d 1293 (11th Cir. 2011)

Habeas Corpus: Savings Clause – Change in State Law
The revised New York law reduced one of the defendant's ACCA predicate offenses from a felony to a misdemeanor. The court held that the circumstances failed the Savings Clause test set out in Bryant v. Warden, FCC Coleman-Medium, 738 F.3d 1253 (11th Cir. 2013) and upheld the district court's decision denying relief.
Cortes-Morales, Case No. 13-13569 (11th Cir. 6/27/16)

Habeas Corpus: Savings Clause - Five-Part Test for Savings Clause in 924(e) case
The Bryant test requires a showing that (1) binding precedent had specifically addressed the distinct prior state conviction that triggered the 924(e)issue and had squarely foreclosed the claim; (2) subsequently the Supreme Court overturned the Circuit precedent; (3) the new rule announced in the Supreme Court decision applies retroactively to collateral review; (4) as a result of the Supreme Court precedent the current sentence exceeds the statutory 10 year maximum; and (5) the savings clause in 2255(e) reaches the pure 924(e) error.
McCarthan v. Warden FCC Coleman, Case No. 12-14989 (11th Cir. 1/20/16)

Habeas Corpus: Savings Clause - Armed Career Criminal Where Predicate Offense Was Possession of a Concealed Firearm
In light of the savings clause in 28 U.S.C. § 2255(e), which permits a prisoner to file a petition pursuant to 28 U.S.C. § 2241 when a 2255 motion is inadequate or ineffective, the court held that the defendant could challenge his armed career criminal sentence of 235 months imprisonment where one of the predicate offenses was that of carrying a concealed firearm. Note that defendant had a burglary case that presumably would have counted, but the court ruled that the government had waived the argument by not making that claim at the sentencing hearing. Opinion includes Judge Martin's argument criticizing the court's pinched view of the relief available in which she contends relief should be extended to those whose sentences do not exceed the statutory maximum.

Bryant v. Warden, FCC Coleman, 738 F.3d 1253 (11th Cir. 2013); Mackey v. Warden, FCC Coleman, 738 F.3d 1253 (11thCir. 2013); Cortes-Morales v. Hastings, Case No. 13-13659 (11th Cir. 6/27/16)

Standard of Review

Habeas Corpus: Standard of Review - Non-Structural Constitutional Error

In Brecht v. Abrahamson, 507 U.S. 619 (1993) the Supreme Court concluded the appropriate standard for reviewing the harmlessness of a non-structural constitutional error on collateral review of a state court judgment is the standard enunciated in Kotteakos v. U.S., 328 U.S. 750 (1946). Under that standard, a defendant is entitled to habeas relief when an error results in actual prejudice because it had substantial and injurious effect or influence in determining the jury's verdict. In this case, however, the petitioner argued that, because it was a federal case and not a state case that the standard in Chapman v. California, 386 U.S. 18 (1967) should apply. Court held that the Kotteakos standard was the correct one.

Ross v. U.S., No. 01-12338; Mansfield v. Sec. Dept of Corrections, Case No. 09-12312 (11th Cir. 5/9/12)

Habeas Corpus: Standard of Review - Harmless Error

A prisoner who seeks federal habeas corpus relief must satisfy the Brecht test, and if the state court adjudicated his claim on the merits, the Brecht test subsumes the limitations imposed by AEDPA.

Davis v. Ayala, Case No. 13-1428 (11th Cir. 6/18/15)

Habeas Corpus: Standard of Reviews: Constitutional Error

In 28 USC § 2254 proceedings, a federal court must assess the prejudicial impact of constitutional error in a state-court criminal trial under Brecht's substantial and injurious effect standard, whether or not the state appellate court recognized the error and reviewed it for harmlessness under the harmless beyond a reasonable doubt standard set forth in Chapman v. California.

Fry v. Pliler, Case No. 06-5247 (S. Ct. 6/11/07)

Habeas Corpus: Standard of Review - Giglio

While the Eleventh Circuit has held on several occasions that Giglio's any reasonable likelihood standard is the equivalent to the harmless error inquiry of Chapman v. California, 386 US. 18 (1967), it is not clearly established federal law as determined by the Supreme Court, since no majority has ever held that the Giglio standard is the equivalent of the Chapman standard.

Ventura v. Attorney General, Case No. 04-14564 (11th Cir. 8/9/05)

Habeas Corpus: Standard of Review – Factual Findings

As to the district court's findings of fact, they are reviewed under the clearly erroneous standard. Mixed questions of law and fact are revied de novo, as are questions of law.

Parker v. Head, 244 F.3d 831 (11th Cir. 2001)

Habeas Corpus: Standard of Review - Independent Determination of Law and Application of Law to Facts

A federal court reviewing a state prisoner's petition for habeas relief must make an independent federal determination in deciding questions involving constitutional law and the application of constitutional law to the facts under the totality of the circumstances of a particular case. Therefore, a trial court's determination as to whether a petitioner has been denied his Sixth Amendment right to effective counsel is not entitled to the presumption; we must make that determination anew.

Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)

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Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)

State Cases

Contrary To . . .

Habeas Corpus: State Cases - Contrary To . . . (Defined)
A state court acts contrary to clearly established federal law if it applies a legal rule that contradicts our prior holdings or if it reaches a different result from one of our cases despite confronting indistinguishable facts. The statue also authorizes federal habeas corpus relief if, under clearly established federal law, a state court has been unreasonable in applying the governing legal principle to the facts of the case. A state determination may be set aside under this standard if, under clearly established federal law, the state court was unreasonable in refusing to extend the governing legal principle to a context in which the principle should have controlled.
Ramdass v. Angelone, 530 U.S. 156 (2000); Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R); Maharaj v. Secretary for the Dept. of Corrections, Case No. 04-14669 (11th Cir. 12/15/05); Gore v. Secretary for the Dept. of Corrections, Case No. 06-11522 (11th Cir. 7/20/07); Everett v. Secretary, Fla. Dept. of Corr., case No. 14-11857 (11th Cir. 2/27/15)
Habeas Corpus: State Cases – Contrary To . . . (Facts Materially Indistinguishable)
First, a state-court decision is contrary to this Court's precedent if the state court arrives at a conclusion opposite to that reached by this Court on a question of law. Second, a state-court decision is also contrary to this Court's precedent if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to ours.
Williams v. Taylor, 529 U.S. 362 (2000)
Habeas Corpus: State Cases – Contrary To . . . (Narrow Interpretation of Clearly Established Federal Law)
Federal courts are to treat federal law as clearly established only if there is Supreme Court caselaw involving facts at least closely related or similar to the case under consideration.
House v. Hatch, Case No. 05-2129 (10th Cir. 5/6/08), Thaler v. Haynes, Case No. 09-273 (S. Ct. 2/22/10)
Habeas Corpus: State Decisions – Contrary To . . . (Can't Canvas Circuit Decisions)
Although an appellate panel may, in accordance with its usual law-of-the-circuit procedures, look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent, it may not canvass circuit decisions to determine whether a particular rule of law is so widely accepted among the Federal Circuits it would, if presented to this Court, be accepted as correct.
Marshall v. Rodgers, Case No. 12-382 (S. Ct. 4/1/13)

Deference To

Habeas Corpus: State Cases – Deference To (Summary Opinion)

The summary nature of a state court's decision does not lessen the deference that it is due.
Hall v. Head, Case No. 01-15313 (11th Cir. 10/25/02); Peoples v. Campbell, Case No. 96-6882 (11th Cir. 7/21/04)

Habeas Corpus: State Cases – Deference To (Summary Rejection)

A state's summary, *i.e.*, unexplained, rejection of a federal constitutional issue qualifies as an adjudication under § 2254(d) so that it is entitled to deference.
Wright v. Secretary for the Dept. of Corrections, No. 00-11105 (11th Cir. 1/10/02)

Habeas Corpus: State Cases – Deference To (Erroneous Instruction on Aggravating Circumstance)

If there is to be federal review of an erroneous instruction on an aggravating circumstance in a state capital case, it isn't enough to show that the instruction was vague or erroneous. If the state can show that the state court reviewing the sentence had adopted a narrowing construction and applied it, the federal court, with the deference due state decisions, will not review the claim.
Bell v. Cone, Case No. 04-394 (S. Ct. 1/24/05)

Miscellaneous

Habeas Corpus: State Cases – Miscellaneous – Fla. Sex Offender Registration Requirement Does Not Amount to "Custody"

In Florida, those convicted of qualifying sex offenses are subject to registration and reporting requirements for life. The court concluded those requirements fell short of the "in custody" requirement for habeas corpus purposes.
Clements v. Florida, No. 21-12540 (11th Cir. 2/9/23)

Habeas Corpus: State Cases – Miscellaneous (AEDPA Discourages Submission of New Evidence)

Although state prisoners may sometimes submit new evidence in federal court, AEDPA'S statutory scheme is designed to strongly discourage them from doing so.
Cullen v. Pinholster, Case No. 09-1088 (S. Ct. 4/4/11); French v. Warden Wilcox, Case No. 12-15385 (11th Cir. 6/23/2015)

Obligation to Develop Claim

Habeas Corpus: State Cases – Obligation to Develop Claim (Factual Basis)

Subject to the very narrow exceptions set forth in 2254(e)(e)(2), a petitioner who fails to develop the factual basis for a claim while in state court as a result of the petitioner's lack of diligence is barred from doing so in federal court.
Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)

Habeas Corpus: State Cases - Obligation to Develop Claim (Federal Law Challenge)

Under 28 USC § 1257(a) and its predecessors, the Court has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court that rendered the decision.
Howell v. Mississippi, Case No. 03-9560 (S. Ct. 1/24/05); Preston v. Secretary, Florida Dept. of Corrections, Case No. 12-14706 911th Cir. 4/29/15)

Presumption of Adjudication on the Merits

Habeas Corpus: State Cases – Presumption of Adjudication on Merits (Rejection of Federal Claim Without Addressing It)

When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits – but that presumption can in some limited circumstances be rebutted.
Bester v. Warden, State of Alabama, No. 13-15779 (11th Cir. 9/2/16)

Habeas Corpus: State Cases – Presumption of Adjudication on the Merits
When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law principles to the contrary.
Warden v. Richter, Case No. 09-587 (S. Ct. 1/19/11)
Habeas Corpus: State Cases – Presumption of Adjudication on the Merits (Need Not Be a Written Opinion)
Herrington v. Richter, Case No. 09-587 (S. Ct. 1/19/2011)
Presumption of Correctness
Habeas Corpus: State Cases – Presumption of Correctness (Applies Only to Findings of Fact)
The statutory presumption of correctness applies only to findings of fact made by the state court, not to mixed determinations of law and fact.
Parker v. Head, 244 F.3d 831 (11th Cir. 2001)
Habeas Corpus: State Cases – Presumption of Correctness (Petitioner's Burden to Rebut)
A state court's determinations of fact shall be presumed to be correct and the habeas petitioner shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
Parker v. Head, 244 F.3d 831 (11th Cir. 2001)
Habeas Corpus: State Cases – Presumption of Correctness (Must be a Fair Proceeding)
State-court factual findings are not entitled to a presumption of correctness where the petitioner did not receive a full, fair, and adequate hearing in the state court proceeding.
Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)
Habeas Corpus: State Cases - Presumption of Correctness (Not Insurmountable)
[O]ur court has recognized that the presumption of correctness generally applicable to federal habeas review of state court factual findings is not insurmountable or irrebuttable. Historical facts found by state courts in evaluating ineffectiveness claims are not presumed correct if they are clearly erroneous.
Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)
Habeas Corpus: State Cases - Presumption of Correctness (Generally)
For the general statement about the presumption of correctness, the burden of rebutting it, and the basis for relief, see:
Carr v. Schofield, Case No. 02-11488 (11th Cir. 3/31/04)
Habeas Corpus: State Cases – Presumption of Correctness (Federal Court Not Always Bound by State Court Findings)
District court was not duty-bound to accept state-court findings fairly supported by the record where the state court's procedures may not have provided the petitioner with a full, fair, and adequate hearing.
Jefferson v. Upton, Case No. 09-8852 (S. Ct. 5/24/10)
Habeas Corpus: State Cases – Presumption of Correctness (Not for Mixed Determinations of Law and Fact
Guzman v. Secretary, Dept. of Corrections, Case No. 10-11442 (11th Cir. 10/27/11)
Unreasonable Application
Habeas Corpus: State Cases – Unreasonable Application (Differs from Incorrect Application)

When a state court decision unreasonably applies the law of this Court to the facts of a prisoner's case, a federal court applying § 2254(d)(1) may conclude that the state-court decision falls within that provision's unreasonable application clause.... an unreasonable application of federal law is different from an incorrect application of federal law.
Williams v. Taylor, 529 U.S. 362 (2000); Parker v. Head, 244 F.3d 831 (11th Cir. 2001); Bell v. Cone, 122 S. Ct. 1843 (2002); Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R); Schiriro v. Landrigan, Case No. 05-1575 (S. Ct. 5/14/07); Warden v. Richter, Case No. 09-587 (S. Ct. 1/19/11); Herrington v. Richter, Case No. 09-587 (S. Ct. 1/19/2011); Premo v. Moore, Case No. 09-658 (S. Ct. 1/19/11); Renico v. Lett, Case No. 09-338 (S. Ct. 5/3/10)

Habeas Corpus: State Cases - Unreasonable Application (Factual Determinations)

Factual determinations by state courts re presumed to be correct, and petitioner can rebut this presumption only by clear and convincing evidence. This presumption, however, only applies to findings of fact, not to mixed determinations of law and fact. The presumption of correctness applies to trial and appellate state courts.
Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R)

Habeas Corpus: State Cases - Unreasonable Application (New Context)

While the Supreme Court in Williams considered whether an unreasonable application might include a situation where a state court unreasonably refuses to extend a legal principle to a new context, the Court declined to rule on the issue and the issue remains unsettled.
Hawkins v. Alabama, Case No. 01-16904 (11th Cir. 1/27/03)

Habeas Corpus: State Cases - Unreasonable Application (Judge's Comments)

State court's conclusion that judge's comments were not sufficiently final to terminate jeopardy and preclude continued prosecution for first-degree murder was not objectively unreasonable application of clearly established Supreme Court law.
Price v. Vincent, Case No. 02-524 (S. Ct. 5/19/03); Guzman v. Secretary, Dept. Of Corrections, Case No. 10-11442 (11th Cir. 10/27/11)

Habeas Corpus: State Cases – Unreasonable Application (Fact Pattern Need Not be Identical)

The AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied. Nor does AEDPA prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts different from those of the case in which the principle was announced.
Meltonv. Secretary, Fla. Dept. of Corrections, Case No. 13-12967 (11th Cir. 3/3/15) (Martin, J. Dissenting, quoting from Panetti v. Quarterman, 551 U.S. 930 (2007))

Habeas Corpus: State Cases – Unreasonable Application (State's Failure to Provide an Evidentiary Hearing)

Where the state court failed to provide the defendant a post-conviction hearing or the funds to develop his claim and the evidence from the trial was that the defendant had an IQ of 75 and may have scored higher on another test, the state court decision was based on an unreasonable determination of the facts in light of the evidence presented. Accordingly, the defendant was entitled to have his Adkins claim considered on the merits in federal court.
Brumfield v. Cain, Case No. 13-1433 (S. Ct. 3/30/15)

Habeas Corpus: State Cases - Unreasonable Application (No Unreasonable Refusal to Extend)

Though § 2254(d)(1) does not require an identical factual pattern before the reviewing court determines that a state unreasonably applied the governing legal rule unreasonably to the facts of

a particular prisoner's case, the Supreme Court has never adopted an unreasonable-refusal-to-extend rule and does not require state courts to extend existing precedent or license federal courts to treat the failure to do so as error.
White v. Woodall, Case No. 12-794 (S. Ct. 4/23/14)

Successive Petitions

Graham & Miller

Habeas Corpus: Successive Petitions - Graham & Miller
Court held that defendant could raise in a successive petition the categorical prohibition of life without parole for juveniles who did not commit a homicide that was established in Graham v. Florida.
In re: Moss, Case No. 12-16244-A (11th Cir. 1/2/13)
Habeas Corpus: Successive Petitions – Graham & Miller
Court concluded defendant could not raise the holding in Miller v. Alabama regarding life sentences for juveniles convicted of murder in a successive petition.
In re: Morgan, Case No. 13-11175 (11th Cir. 4/12/13)

Intellectual Disability

Habeas Corpus: Successive Petitions – Intellectual Disability (Death Penalty)
Court determined a successive petition raising mental retardation claim was barred because, though there was additional evidence supporting his claim, the same claim had been presented and rejected in the initial 2254 petition. Even if the claim could be considered based on the discovery of new evidence, it would still be barred because the new evidence went only to the issue of the sentence, falling short of the requirement in 28 U.S.C. § 2244(b)(2) that the new evidence was of such character that no fact finder would have found the defendant guilty of the offense.
In re: Hill, Case No. 13-10702 (11th Cir. 4/22/13)
Habeas Corpus: Successive Petitions – Intellectual Disability (Reasonable Likelihood of Success)
Where as in this case, there was a new constitutional rule (the prohibition against executing the mentally retarded established in Atkins v. Virginia), the petitioner is still obligated to show that there is a reasonable likelihood of success. The standard has been explained that there must be a sufficient showing of possible merit to warrant a fuller exploration by the district court. In this case there was conflicting testimony about whether the defendant was mentally retarded and the court granted the defendant's last-minute request for a stay of execution.
In re: Holladay, Case No. 03-12676 (11th Cir. 5/26/03)

Miscellaneous

Habeas Corpus: Successive Petitions – Miscellaneous (Conspiracy to Commit a Hobbs Act Robbery)
Because it is possible a conspiracy to commit a Hobbs Act robbery is not a crime of violence, the court granted the defendant authorization to file a successive 2255 motion.
In re: Gomez, Case No. 16-14104 (11th Cir. 7/25/16)
Habeas Corpus: Successive Petitions – Miscellaneous (No Appeal from Denial)
In re: Clayton, 829 F.3d 1254 (11th Cir. 2016) (J., Martin Dissenting)
Habeas Corpus: Successive Petitions – Miscellaneous (Sentencing Guidelines)
Court, citing the Matchett decision, denied request to file a successive petition because claim was based on guidelines.

In re: Clayton, 829 F.3d 1254 (11th Cir. 2016); In re: Burgest, Case No. 16-14597 (11th Cir. 7/21/16)

Required Showing

Habeas Corpus: Successive Petitions – Required Showing

There are only two possibilities for obtain certification by the Court of Appeals for the filing of a second or successive habeas petition: (1) if the petitioner makes a showing of newly discovered evidence that establishes his or her innocence or (2) points to a new rule of constitutional law, recognized by the Supreme Court and made retroactively applicable to cases on collateral review.

U.S. v. Diaz-Clark, 292 F.3d 1310 (11th Cir. 2002)

Habeas Corpus: Successive Petitions – Required Showing

To obtain relief in a second of successive petition the rule on which a claim relies must be a new rule of constitutional law; the rule must have been made retroactive to cases on collateral review by the Supreme Court; and the claim must have been Apreviously unavailable.

Tyler v. Cain, 533 U.S. 656; In re: Everett, Case No. 15-133371 (11th Cir. 8/13/15)

Same Claim

Habeas Corpus - Successive Petitions: Same Claim (Can't be Relitigated)

A later request of a prisoner who previously filed a request for authorization to file a second or successive petition base on the same claim must be dismissed.

In re Baptiste, No. 16-13959, 2016 WL 3752118 (11th Cir. July 13, 2016); In re Parker, No. 16-13814, 2016 WL 4206373 (11th Cir. Aug. 8, 2016)

Habeas Corpus: Successive Petitions – Same Claim (First One Erroneously Decided)

The Eleventh Circuit has erroneously held that a prisoner is prohibited from filing a second request to file a successive petition based on the same grounds even if the first was erroneously decided.

Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)

Habeas Corpus: Successive Petitions – Earlier Denial of Same Claim

28 U.S.C. § 2244(b)(1) and existing caselaw require the court to dismiss a second request for authorization to file a second or successive petition when the court has earlier denied a request from the defendant based on the same grounds.

In re: Baptiste, Case No. 16-13959 (11th Cir. 7/13/16); In re: Bradford, Case No. 16-14512 (11th Cir. 7/27/16); but see Judge Rosenbaum's dissent in In Re: Parker, Case No 16-13814 (11th Cir. 8/10/16), and Judge Martin's concurring opinion in In Re: James R. Young, Case No. 16-17499 (11th Cir. 1/11/17) (saved at P\Murrell\Johnson\General Research)

Successive?

Habeas Corpus: Successive Petitions – Successive? (Not if it Challenges a New Judgment

A habeas petition which challenges a new judgement cannot be considered a successive petition. Accordingly, the defendant's failure to raise a fair-warning claim in his initial petition did not prevent him from raising it in his petition challenging the judgement that issued after he prevailed on his first habeas petition.

Magwood v. Patterson, Case No. 09-158 (S. Ct. 6/24/10)

Habeas Corpus: Successive Petitions – Successive? (Not if Issue Didn't Exist Earlier

In a case involving the reinstatement of a sentence from which the North Carolina Parole Commission had granted an unconditional discharge, the Court held that the defendant's challenge to that reinstatement was not a successive petition for the purposes of the AEDPA. So

long as a subsequent petition raises an issue or issues that factually could not have been raised when the earlier petition was filed, it is not a successive petition.
In re Cabey, Case No. 04-277 (4th Cir. 11/15/05); Boyd v. U.S., Case No. 11-15643 (11th Cir. 6/8/14)

Habeas Corpus: Successive Petitions – Successive? (Successful Claim That Lawyer Failed to Appeal)

A successful motion to file an out-of-time notice of appeal is not to counted as a first petition for purposes of subsequent collateral proceedings.
McIver v. United States, Case No. 01-10507 (11th Cir. 9/30/02)

Habeas Corpus: Successive Petitions – Successive? (Dismissal of Initial Petition as Premature)

Where the initial petition is dismissed as premature or for non-exhaustion the subsequent petition is treated as an initial petition.
Duncan v. Walker, 533 U.S. 167 (2001)

Vacated Convictions

Habeas Corpus: Success Petitions – Vacated Convictions (ACCA)

Where the defendant's predicate offenses no longer qualified, court still lacked jurisdiction to consider defendant's 2241 petition. Opinion includes a dissent from Judge Martin.
Williams v. Warden, Case No. 11-13306 (11th Cir. 4/11/13)

Habeas Corpus: Successive Petitions - Vacated Convictions

Where essential predicate conviction for a career offender was vacated by the state court after the prisoner had litigated an initial 2255 petition, the prisoner's second petition raising the claim that he was no longer a career offender was not, for purposes of 2255, a successive petition.
Stewart v. U.S., Case No. 09-15821 (11th Cir. 7/14/11)

Habeas Corpus: Successive Petitions - Vacated Convictions

Where defendant went back and, in state court, successfully overturned two prior uncounseled convictions that had been used to calculate his guideline score, he still could not raise the issue in a successive petition.
In Re: Dean, Case No. 03-13457 (11th Cir. 8/13/03)

Time Limits

Appeal

Habeas Corpus: Time Limits - No Equitable Tolling of 14-Day Extension

Rule 4 of the Appellate Rules applicable to civil appeals allows the court to reopen the time for filing an appeal under some circumstances. The rule provides for a 14-day extension of time. Here, the district court judge reopened the time for filing an appeal of the denial of the defendant's habeas petition, but erroneously told the defendant he had 17 days to file his notice. When the defendant filed his notice after the 14-day period, but within the 17 days, the court lacked jurisdiction to consider the appeal and the appeal was dismissed. In dissent, Justice Souter wrote: "It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch."
Bowles. V. Russell, Case No. 06-5306 (S. Ct. 6/14/07)

Habeas Corpus: Time Limits – Appeal (Mail Box Rule)

Even though more than a year had passed since the deadline, Court could not automatically reject the defendant's habeas appeal when he claimed he had delivered the notice of appeal to the prison authorities within the one-year time limit. To do so, the district court would need to make a finding of fact as to whether the notice was delivered to the prison authorities.

Allen v. Culliver, Case No. 05-1432 (11th Cir. 12/6/06)

Habeas Corpus: Time Limits – Appeal (60 Days)

Appeals in 2255 proceedings are treated as civil in nature and are governed by Fed. R. App. P. 4(a)(1)(B), which allows 60 days for filing the notice of appeal where the government is a party.

Butcher v. U.S., Case No. 02-17033 (11th Cir. 5/5/04)

Calculation

Habeas Corpus: Time Limits – Calculation (Judgment Becomes Final When Time for Seeking Review Expires)

For a state prisoner who does not seek review in a State's highest court, the judgement becomes final on the date that the time for seeking such review expires.

Gonzalez v. Thaler, Case No. 10-895 (S. Ct. 1/10/12)

Habeas Corpus: Time Limits – Calculation (Rule 35 Did Not Reset the Clock)

The reduction of the defendant's sentence for substantial assistance pursuant to a Rule 35 motion did not rest the time clock for purposes of the 2255 time clock.

Murphy v. U.S., Case No. 07-14823 (11th Cir. 3/8/11)

Habeas Corpus: Time Limits – Calculation (Resentencing)

Where petitioner was resentenced after conviction was affirmed on direct appeal, one-year limitations period was measured from date resentencing judgment, not original conviction, became final.

Robbins v. Sec. for Dept. of Corrections, Case No. 05-14992 (11th Cir. 4/3/07)

Habeas Corpus: Time Limits – Calculation (Resentencing: Time Runs from Original Judgment)

When a petitioner who has been resentenced brings an application challenging only his original judgment of conviction, the one-year statute of limitations under AEPDA runs from the date the original judgment of conviction became final and not the date the resentencing judgment became final.

Rainey v. Secretary for the Dept. of Corrections, Case No. 04-13282 (11th Cir. 3/29/06)

Habeas Corpus: Time Limits – Calculation (One Year Time Limit Runs from Date Right Recognized)

The one-year time limit of 18 USC 2255 based on a newly recognized right commences on the date on which the U.S. Supreme Court initially recognized the right asserted in the motion, not the date on which the right was made retroactive.

Dodd v. U.S., Case No. 04-5286 (S. Ct. 3/22/05)

Habeas Corpus: Time Limits – Calculation (Relation Back)

Amended petition does not relate back, and thereby escape AEDPA's one-year time limit, when it asserts a new ground for relief supported by facts that differ both in time and type from those alleged in the original petition.

Mayle v. Felix, Case No. 04-563 (11th Cir. 6/23/05)

Habeas Corpus: Time Limits – Calculation (Vacation of Predicate Offense)

In those cases where a prisoner attacks his enhanced federal sentence because he has successfully vacated the offense that served as the predicate, the one-year time limit in 28 USC§ 2255, begins to run when a petitioner receives notice that the order vacating the prior conviction. There remains a requirement that defendant promptly challenge his state conviction (within 1 year of the federal judgment).

Johnson v. U.S., Case No. 03-9685 (U.S. 1/18/05); Rivers v. U.S. Case No. 03-11734 (11th Cir. 7/14/05)

Habeas Corpus: Time Limits – Calculation (Recognition of New Right)
Time begins to run, not on the date the court finds the decision to be retroactive, but on the date the Supreme Court finds the right to exist. There is a split among the circuits.
Dodd v. U.S., Case No. 02-16134 (11th Cir. 4/16/04)
Habeas Corpus: Time Limits- Calculation (Resentencing Date Irrelevant)
The trial court properly found that the date of the petitioner's resentencing was irrelevant for purposes of determining when the AEDPA's one-year limitations period for federal writs of habeas corpus had commenced because petitioner was challenging only the validity of his underlying conviction.
Boone v. Secretary, Dept of Corrections, Case No. 03-16381 (11th Cir. 6/4/2004)
Habeas Corpus: Time Limits – Calculation (Clock Starts Running When Cert Time Expires)
For purposes of starting the clock on 2255's one-year time limit when there is an unsuccessful direct appeal but no cert petition filed, the judgement becomes final when the time expires for filing a petition for cert.
Clay v. United States, 537 U.S. 522 (S. Ct. 2003)
Habeas Corpus: Time Limits – Calculation (Ninety Day Cert)
The one-year time period under the AEDPA does not begin to run until the 90-day period to seek certiorari has expired.
Kaufman v. U.S., No. 00-15458 (11th 2/21/02); Bond v. Moore, Case No. 00-16544 (11th Cir. 10/10/02)
Habeas Corpus: Time Limits – Calculation (Cert Petition)
The time period for filing a 2255 motion begins to run when the Supreme Court either denies certiorari or issues a decision on the merits.
Washington v. U.S., 243 F.3d 1299 (11th Cir 2001)
Habeas Corpus: Time Limits – Calculation (Effective Date of AEDPA)
The one-year time period of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) could not be applied retroactively, so Section 2254 petition for writ of habeas corpus that was filed two months after effective date, 4/24/96, of the Act was timely filed for because it was filed within a reasonable time, within one year from the Act's effective date.
Wilcox v. Florida Dept. of Corrections, 158 F.3d 1209 (11th Cir. 1998)
Habeas Corpus: Time Limits – Calculation (Amendment of Petition)
Even though the initial timely filed petition alleged ineffective assistance of counsel, additional claims regarding ineffective assistance of counsel were, not for purposes of the one-year deadline considered amendments to the initial petition. They were, therefore, untimely because they were filed after the passage of a year, and the court refused to consider them.
Davenport v. U.S., 217 F.3d 1341 (11th 2000)
Habeas Corpus: Time Limits – Calculation (Omitted Signature)
Where initial petition was timely but was dismissed because it lacked a signature, the refiling of the same petition, with a signature, should have been treated as an amendment to the original petition, and was, thus, timely.
Mederos v. U.S., No. 99-11024 (11th Cir. 7/17/00)
Habeas Corpus: Time Limits – Calculation (Relation Back to Previously Dismissed 2254 Petition)
A 2254 petition cannot, for purposes of avoiding the one-year time limit, relate back to the filing date of a previously filed petition that was dismissed without prejudice.

Nyland v. Moore, 216 F.3d 1264 (11th Cir. 2000)

Habeas Corpus: Time Limits – Calculation (Time for Filing Cert Petition Not Excluded)

The clock starts ticking when the state court issues the mandate and does not include the 90 days in which the petitioner can seek certiorari in the U.S. Supreme Court.

Coates v. Byrd, 211 F.3d 1225 (11th Cir. 2000); Steed v. Head, No. 99-13903 (7/26/00)

Court

Habeas Corpus: Time Limits – Court (Courts of Appeal May Raise Forfeited Timeliness Defense)

Courts of appeals, like district courts, have the authority - though not the obligation - to raise a forfeited timeliness defense on their own initiative.

Wood v. Milyard, Case No. 10-9995 (S. Ct. 4/24/12)

Habeas Corpus: Time Limits – Court (Court May Sua Sponte Raise the Issue of Timeliness)

Even though the statute of limitations is an affirmative defense, the district court may review sua sponte the timeliness of the 2254 petition.

Jackson v. Moore, Case No. 0114933 (11th Cir. 6/7/02)

Habeas Corpus: Time Limits – Court (Government's Erroneous Concession of Timeliness)

Although the Sixth Circuit has held to the contrary, the court held that a concession of timeliness by the state that is patently erroneous does not compromise the authority of the district court to dismiss sua sponte a habeas petition that is untimely under the AEDPA.

Day v. Crosby, Case No. 04-10778 (11th Cir. 11/29/05)

Equitable Tolling

Habeas Corpus: Time Limits - Equitable Tolling (Diligence)

Although the failure to timely file the 2254 petition was due to the miscalculation of the defendant's lawyer, the court declined to apply equitable tolling in a case where the petition was filed almost 4 years too late. His lawyer had failed to begin state post-conviction remedies before the one-year 2254 limit and was actively litigating the case in state court during the four years. In the view of the court of appeals, the defendant was not entitled to equitable relief because he had not, on his own, diligently pursued the federal claim. Judge Barkett, citing Justice Cantero's comments about the poor performance of lawyers, dissented and questioned whether a death row inmate must bear the consequences of his lawyer's negligence.

Hutchinson v. Florida, Case No. 10-14978 (11th Cir. 4/19/12); Cadet v. Florida Dept. of Corrections, Case No. 12-14518 (11th Cir. 1/31/14); Cadet v. Florida Dept. of Corrections, Case No. 12-14518 (11th Cir. 2/24/17)

Habeas Corpus: Time Limits - Equitable Tolling (Gross Incompetence)

AEDPA's one-year time limit is subject to equitable tolling. In this instance, the delay was caused by the defendant's grossly incompetent conduct of his lawyer and the time period was extended. Garden-variety negligence would not have given rise to equitable tolling.

Holland v. Florida, Case No. 09-5327 (S. Ct. 6/14/10)

Habeas Corpus: Time Limits – Equitable Tolling (Extraordinary Circumstances)

Section 28 USC § 2244 is a statute of limitations, not a jurisdictional bar. Therefore, it permits equitable tolling when a movant untimely files because of extraordinary circumstances that are beyond his control and unavoidable even with diligence.

Steed v. Head, No. 99-13903 (7/26/00); Knight v. Schofield, No. 00-12542 (11th Cir. 5/31/02); Drew v. Dept. of Corrections, No. 99-4176 (11th Cir. 7/18/02) (Barkett, J. dissenting opinion.

Habeas Corpus: Time Limits - Equitable Tolling (Negligence)

Although the court has the authority to toll the time limits for filing for equitable reasons, the fact that it took longer than a week for the U.S. mail to deliver the motion to Miami from Atlanta, didn't justify an equitable tolling of the time limits. Counsel could have avoided by mailing the motion earlier or by using a private delivery service or even a private courier.
Sandvik v. U.S., No. 97-5891 (11th Cir. 6/15/99)

Tolling

Habeas Corpus: Time Limits – Tolling (Florida 3.800(c) Motion Tolls Time)
A motion to reduce or modify sentence, filed pursuant to Rule 3.800 of the Florida Rules of Criminal Procedure, tolls the running of the one-year time period which a defendant has to file his 2254 motion.
Rogers v. Secretary, Dept. of Corrections, Case No. 15-2880 (11th Cir. 5/2/17)

Habeas Corpus: Time Limits – Tolling (Not Tolled by Cert Petition)
The one-year limitations period is not tolled during the time a petition for a writ of certiorari to review the state court's denial of collateral relief is pending in the United States Supreme Court, or during the ninety-day period in which it could have been filed.
Coates v. Byrd, 211 F.3d 1225, 1227 (11th Cir. 2000)

Habeas Corpus: Time Limits – Tolling (Untimely State Post-Conviction Motion Didn't Toll Time)
Federal period was not tolled for second post-conviction filed in state court because the motion was denied as untimely and, therefore, was not properly filed.
Sweet v. Secretary Department of Corrections, Case No. 05-15199 (11th Cir. 10/23/06)

Habeas Corpus: Time Limits – Tolling (Untimely State Petition Does Not Toll Time Limits)
Because prisoner's petition for state post-conviction relief was rejected as untimely by the Alabama courts, it was not properly filed under § 2244(d)(2) and the prisoner was not entitled to tolling of the Anti-Terrorism and Effective Death Penalty Act's one-year statute of limitations.
Allen v. Siebert, Case No. 06-1680 (S. Ct. 11/5/07)

Habeas Corpus: Time Limits – Tolling (Cert Petition to U.S. Supreme Court Re: State Post-Conviction)
A defendant's cert petition to the United States Supreme Court following the state courts denial of post-conviction relief does not toll the running of the 1-year limitation period of 18 USC § 2244(d).
Lawrence v. Florida, Case No. 05-8820 (S. Ct. Feb. 20, 2007)

Habeas Corpus: Time Limits – Tolling (Time to Appeal 3.800 Motion Tolled Limitation Period)
Time during which petitioner could have sought an appeal of the denial of his Fla. R. Crim. P. 3.800 motion for correction of sentence tolled limitations period.
Cramer v. Secretary, Dept. of Corrections, Case No. 05-15948 (11th Cir. 8/28/06)

Habeas Corpus: Time Limits – Tolling (Rule 33 Motion for New Trial Doesn't Toll Time Limits)
A Rule 33 motion for new trial based on newly discovered evidence is neither a continuation or extension of a direct appeal and does not serve to toll AEDPA's one-year time limitation period for filing a § 2255 motion.
Barnes v. United States, Case No. 05-10856 (11th Cir. 1/24/06)

Habeas Corpus: Time Limits – Tolling (Untimely State Petition Doesn't Toll AEDPA's Time Limit)

A state post-conviction pleading rejected by the state court as untimely is not properly filed application for state post-conviction or other collateral review that tolls AEDPA's limitations period under 28 USC 2244(d)(2).
Pace v. DiGuglielmo, No. 03-9627 (S. Ct. 4/27/05)
Habeas Corpus: Time Limits – Tolling (3.800 Motion Tolled Time Limit)
See: Ford v. Moore, Case No. O1-10317 (11th Cir. 7/2/02)
Habeas Corpus: Time Limits – Tolling (Federal Petition Does Not Toll Time Limits)
In 2254 cases where the petition is dismissed for a failure to exhaust state remedies, the time in which the 2254 claim has been pending does not toll the running of the one-year time limit. Given the time in which it may take the district court to dismiss the initial 2254 petition and the time to exhaust the state remedies, many a petitioner is going to be out of luck. In Judge Souter's concurring opinion, he suggests the district court may retain jurisdiction over the case while the petitioner returns to state court to exhaust his remedies and suggests that such a situation might justify reliance upon equitable tolling.
Duncan v. Walker, 533 U.S. 167 (2001)
Habeas Corpus: Time Limits - Tolling (Properly Filed State Motion)
Following the denial of the defendant's first 3.850 he filed successive motions which were rejected by the Fla. Courts because they were prohibited by the rule. The filing of those successive motions did not toll the running of the AEDPA one year period as they were not properly filed.
Weekly v. Moore, No. 98-4218 (11th Cir. 2/24/00); Nyland v. Moore, 216 F.3d 1264 (11th Cir. 6/30/00)
Habeas Corpus: Time Limits – Tolling (Filing State Post-Conviction Claim Tolls AEDPA)
The state petition must meet state filing deadlines to toll the AEDPA statute of limitation. The federal court must defer to the state court's determination as to whether the petitioner met the state filing deadlines.
Webster v Moore, 199 F.3d 1256 (11th Cir. 2000)
Habeas Corpus: Time Limits – Tolling (Properly Filed)
An application is properly filed under § 2244(d)(2) when it is delivered to and accepted by the appropriate court officer for placement into the official record. The term properly filed thus refers to application's compliance with the applicable laws and rules governing filings. For example, the filing requirements typically include the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee.
Thomson v. Secretary Department of Corrections, Case No. 08-10540 (11th Cir. 1/27/10)
Habeas Corpus: Time Limits – Tolling (Properly Filed State Claim)
The district court erred in finding that the defendant's 2254 claim was not properly filed where it relied on finding that petitioner's claim was procedurally barred as proof that application was improperly filed rather than considering where the Rule 3.850 motion met Florida's law and rules governing filings.
Hardy v. Secretary for the Department of Corrections, No. 99-13936 (11th Cir. 4/4/01); Delancy v. Florida Department of Corrections, 246 F.3d 1328 (11th Cir. 2001)

Vacation of Prior Conviction

Habeas Corpus: Vacation of Prior Conviction - Limited to Denial of Right to Counsel
A defendant may challenge his prior sentence on the basis of unlawful convictions if those convictions are, in their own right, no longer open to collateral challenge only if the conviction is

invalid because they were obtained in violation of Gideon v. Wainwright or in rare cases in which no channel of review was actually available to the defendant.
McCarthy v. U.S. Case No. 01-17021 (11th Cir. 2/6/03)
Habeas Corpus: Vacation of Prior Conviction – Armed Career Criminal Sentence
The court continues to leave the door (but with no promises) to a motion to revise an armed career criminal sentence if the defendant has first obtained an order vacating the predicate conviction through a state collateral proceeding or federal habeas review of the state judgment under 28 USC 2254.
Daniels v. U.S., 532 U.S. 374 (2001) (Souter, J. dissenting opinion) Same is true of a 2254 motion: Lackawanna County District Attorney v. Coss, 532 U.S. 394 (2001)
Habeas Corpus: Vacation of Prior Conviction – Limited to Denial of Right to Counsel
The court held that with the exception of a Gideon violation, a 2255 motion could not be used to challenge the validity of a prior conviction that qualified the defendant for sentencing under the armed career criminal act. In reaching this holding the court stated that we recognize that there may be rare cases in which no channel of review was actually available to a defendant with respect to a prior conviction, due to no fault of his own.
Daniels v. U.S., 532 U.S. 374 (2001)
Habeas Corpus: Vacation of Prior Conviction - ACCA
Where subsequent to the defendant's sentence as an armed career offender one of his state convictions that had been used as a predicate offense had been vacated, the defendant was able to attack his sentence via a habeas corpus petition.
United States v. Walker, 198 F.3d 811 (11th Cir. 1999); Stewart v. U.S., 646 F.3d 856 (11th Cir. 2011)
Habeas Corpus: Vacation of Prior Conviction – In Custody Requirement
In order to meet the in-custody requirement, the petitioner is deemed to be challenging the current sentence that has been enhanced by an expired conviction, rather than directly challenging the expired conviction.
Means v. Alabama, No. 98-6626 (11th Cir. 4/18/00); Unger v. Moore, No. 99-13776 (11th Cir. 7/26/01)

HOBBS ACT

Hobbs Act - Bribery of Court Clerk in State DUI Cases Justified Hobbs Act Prosecution
Incredibly thin justification.
U.S. v. Castleberry, 116 F.3d 1384 (11th Cir. 1997)
Hobbs Act: Covers Transfer of Proceeds Across State Lines
U.S. v. Kaplan, 171 F.3d 1351 (11th Cir. 1999)
Hobbs Act: Covers Inchoate Offenses
U.S. v. Kaplan, 171 F.3d 1351 (11th Cir. 1999)

[See also cases under ROBBERY]

HYDE AMENDMENT

Hyde Amendment: North Florida Example
District Court abused discretion in denying Hyde Amendment applications for reasonable attorney's fees and other litigation expenses incurred in criminal trial. Prosecuting defendants in defiance of controlling authority constitutes vexatious, frivolous and bad faith prosecutions.

U.S. vs. Adkinson, No. 00-14100 (11th Cir. 4/19/01)

IDENTITY THEFT

Identity Theft: Jury Instructions – Pattern Instruction Needs to be Changes
The 11th Circuit's current identity theft instruction is erroneous because it suggests mere facilitation is sufficient.
U.S. v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

Identity Theft: Must Be at the Crux of What Makes Underlying Offense Criminal
In limiting the reach of 18 U.S.C. § 1028A, the court held the offense is committed only when the defendant's misuse of another person's means of identification is at the crux of what makes the underlying offense criminal. In the case, which involved billing for psychological services, the fraudulent claim amounted to how or when the service was performed and not to who received it, so the conduct fell outside the reach of the statute.
Dubin v. U.S., 143 S. Ct. 1557 (2023); U.S. v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

Identity Theft: Guidelines - Increase for Means of Identification Inapplicable to Device-Making Equipment)
The commentary at USSG §2B1.6 that eliminates the two-level increase for possession or use of means of identification in theft cases where there is also a charge of aggravated identity theft is inapplicable to the same increase based on the possession of device-making equipment.
U.S. v. Cruz, Case No. 11-12568 (11th Cir. 3/26/13)

Identity Theft: Can't Reduce Sentence for the Predicate Offense Because of Consecutive Mandatory Sentence
United States v. Lara, 733 Fed. Appx. 433 (10th Cir. 2018)

Identity Theft: Production Enhancement When Defendant Charged with Trafficking in Unauthorized Access Devices and Aggravated Identity Theft
The section of the Guidelines applicable to aggravated identity theft (18 U.S.C. § 1028A), §2B1.6, does not prohibit the two-level enhancement for production, pursuant to §2B1.1(b)(11)(B)(I), as §2B1.6 addresses only transfer, possession, or use of a means of identification (18 U.S.C. § 1029(a).
U.S. v. Taylor, Case No. 14-13288 (11th Cir. 3/28/16)

Identity Theft: Tax Refunds -Enough to Show Identity Belonged to a Real Person
A jury reasonably could conclude that the appellants knew that the cards were issued to real people, because the federal government is unlikely to issue tax returns unless it has verified that the person requesting the return is a real person.
U.S. v. Pierre, Cas No. 14-10589 (11th Cir. 6/14/16)

Identity Theft: Increase Pursuant to USSG §2B1.1 for Use of Unauthorized Access Device
Note 2 in the Commentary to USSG §2B1.6 (Aggravated Identity Theft) says there should not be a two-level increase under USSG §2B1.1(b)(11)(B) for production or trafficking an unauthorized access device.
U.S. v. Charles, Case No. 13-11863 (11th Cir. 7/7/14)

Identity Theft: Use of Name
Though there is a conflict with the Fourth Circuit, the court held that the use of a name, including a signature, supports a conviction for aggravated identity theft.
U.S. v. Wilson, Case No. 13-14846 (11th Cir. 6/5/15)

Identity Theft: What if Other Person Consents?

In U.S. v. Spears, 729 F.3d 753 (7th Cir. 2013), the court held that the crime of aggravated identity theft requires the government to show the person whose name is used did not consent.
but see: U.S. v. Otuya, 720 F.3d 183 (4th Cir. 2013)

Identity Theft: Need Not Be a Living Person

The aggravated identity theft statute, 18 U.S.C. § 1028A applies to the theft of the identity of any actual person, regardless of whether that person is still alive.
U.S. v. Auniga-Arteaga, Case No. 11-11673 (11th Cir. 5/21/12)

Identity Theft - Forging a Check Amounted to Aggravated Identity Theft

U.S. v. Lewis, 443 Fed. Appx. 493 (11th Cir. 2011)

Identity Theft: Circumstances Surrounding Application for Passport Was Sufficient to Show Defendant Knew Identity Belonged to a Real Person

The Defendant's dogged willingness to rely upon a birth certificate and driver's license in attempting to get a passport were sufficient to establish that he knew the identity he was using belonged to a real person.
U.S. v. Doe, Case No. 09-15869 (11th Cir. 10/26/11)

Identity Theft: Circumstances Were Sufficient to Show Defendant Knew Identity Belonged to a Real Person

The defendant's willingness to rely on the social security card in obtaining a passport, driver's licenses, and efforts at obtaining credit was sufficient to show she knew the social security number belonged to an actual person.
U.S. v. Holmes, Case No. 09-14035 (11th Cir. 2/4/10); U.S. v. Gomez-Castro, Case No. 09-12557 (11th Cir. 5/13/10); U.S. v. Baldwin, Case No. 13-12973 (11th Cir. 12/17/14)

Identity Theft: Government Must Prove Defendant Knew Identity Belonged to a Real Person

See: U.S. v. Gomez, Case No. 09-11031 (11th Cir. 8/23/09); Flores-Figueroa v. U.S., 566 U.S. 646 1886 (2009)

Identity Theft: False Identification Documents – 18 USC § 1028(a)(3) (Elements)

To convict a defendant for possession with intent to use five or more false identification documents, in violation of 18 USC § 1028(a)(3), the government must prove: (1) the defendant knowingly possessed five or more false identification documents; (2) the defendant had the willful intent to transfer the false identification documents unlawfully, and (3) the defendant's possession of the false identification documents was in or affecting interstate commerce.
U.S. v. Klopf, Case No. 04-10663 (11th Cir. 9/7/05)

IMMIGRATION AND ALIENS

Aggravated Felony

Immigration: Aggravated Felony - Bond Hearing

Though there is a circuit split, the court held that those immigrants facing removal for an aggravated felony must receive a bond hearing within a reasonable time.
Sopo v. Att'y Gen., Case No. 14-11421 (11th Cir. 6/5/16)

Immigration: Aggravated Felony - Extortionate Extension of Credit

Extortionate extension of credit (18 U.S.C. § 892(a)) is a violent felony.
Accardo v. U.S. Attorney General, Case No. 09-15446 (11th Cir. 3/10/11)

Immigration: Aggravated Felony - Fact Specific Not Categorical

The determination of whether the prior offense was one involving an offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds $10,000 (8 U.S.C. § 1101(a)(43)(M)(i)) is dependent upon the facts of the prior offense.
Nijhawan v. Holder, Case No. 08-495 (S. Ct. 4/27/09)

Immigration: Aggravated Felony - Misdemeanor Under Controlled Substances Act

Conduct made a felony under state law but a misdemeanor under the Controlled Substances Act is not an aggravated felony for purposes of the Immigration and Nationality Act.
Lopez v. Gonzalez, 594 U.S. 47 (2006)

Immigration: Aggravated Felony - Crime of Violence (Reckless?)

The definition of crime of violence in 18 USC 16 does not cover offenses with a recklessness mental state unless they recklessly risk the use of intentional force.
Tran v. Gonzalez, Case No. 02-3879 (3d Cir. 7/12/05), Bejarano-Urrutia v. Gonzalez, Case No. 04-2270 (4th Cir. 7/5/05)

Immigration: Aggravated Felony - Conviction Prevents Discretionary Relief

The Immigration and Nationality Act, 8 U.S. C. §1101, *et seq.* provides that a noncitizen who has been convicted of an aggravated felony may be removed. The INA also prohibits the Attorney General from granting discretionary relief to an aggravated felon, no matter how compelling his case.
Moncreiffe v. Holder, Case No. 11-702 (S. Ct. 4/23/13)

Harboring or Transporting Aliens

Immigration: Harboring or Transporting Aliens - Sufficiency of Evidence

In the factually unique circumstance of a baseball agent assisting Cuban baseball players to sign with major league baseball teams, the Court of Appeals found the evidence insufficient to support a conviction for harboring or transporting aliens.
U.S. v. Dominguez, Case No. 07-13405 (11th Cir. 10/31/11)

Immigration: Harboring or Transporting Aliens - Encouraging Aliens to Enter U.S. (Encourage Means Helping)

With a strong dissent by Judge Barkett, the court of appeals held that to encourage or induce aliens to enter the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) includes helping them enter. In this case, transporting the aliens from the Bahamas in a boat amounted to a violation of the statute even though the defendant had nothing to do with making the arrangements for the aliens to come to the United States.
U.S. v. Lopez, Case No. 08-13605 (11th Cir. 12/22/09)

Immigration: Harboring or Transporting Aliens - Brings To Ends When the Initial Transporter Ends His Work

For purposes of such statutes as 18 USC 1324(a)(B)(ii) (Bringing an undocumented alien to the U.S. for financial gain) or 18 USC 1324(a)(1)(A)(ii) (transporting an undocumented alien within the United States) the phrase "brings to" describes the conduct of only the individual or individuals who transported the defendant into the United States. It doesn't apply to someone who transports an alien only within the United States.
U.S. v. Lopez, Case No. 05-50415 (9th Cir. 5/7/07)

Immigration: Harboring or Transporting Aliens - Sufficiency (Encouraging and Inducing Alien to Live in the United States)

Where the defendant assisted an illegal alien in obtaining a fraudulent social security number, the court concluded that act was sufficient to support a conviction for encouraging and inducing an alien to reside in the United States (8 U.S.C. § 1324(a)(1)(A)(iv)).

U.S. v. Ndiaye, Case No. 04-11283 (11th Cir. 1/6/06)

Immigration: Harboring or Transporting Aliens - Transporting Illegal Aliens (Reckless Disregard)

8 U.S.C. 1324 makes it a crime to transport an alien within the United States if the defendant knows the individual is an alien or does so in reckless disregard of the fact the alien is in the United States illegally. Case includes a definition of the phrase reckless disregard.

U.S. v. Zlatogur, 271 F.3d 1025 (11th Cir. 2001)

Miscellaneous Offenses: Harboring or Transporting Aliens - for Commercial Advantage

Knowing employment of illegal aliens coupled with low wages, failing to withhold federal taxes and social security payments, and failing to pay unemployment taxes sufficed to prove the crime.

U.S. v. Zheng, Case No. 01-15551 (11th Cir. 9/17/02)

Illegal Reentry

Immigration: Illegal Reentry - Guilty Plea to Having Been Convicted of an Aggravated Felony Waived Right to Challenge Classification of the Aggravated Felony at Sentencing

Where defendant entered a guilty plea to having unlawfully reentering the U.S. following a conviction of an aggravated felony, 8 U.S.C. § 1326(b)(1), but objected to the classification of his prior conviction as an aggravated felony, the court of appeals held the entry of the guilty plea amounted to a waiver of any right to challenge the aggravated-felony classification.

U.S. v. Garcia-Sandobal, Case No. 11-12196 (11th Cir. 1/3/13)

Immigration: Illegal Reentry - Statute of Limitations

Statute of limitations does not begin to run until the alien is found in the United States. The question is not whether it was possible for the authorities to determine the alien was in the country illegally.

U.S. v. Garcia, Case No. 09-10534 (11th Cir. 5/21/10)

Immigration: Illegal Reentry - Indictment (Sufficiency)

The indictment alleging attempted reentry under 8 U.S.C. 1326(a) need not specifically allege a particular overt act or any other component of the offense. It is enough for the indictment to point to the relevant criminal statue and allege that the alien intentionally attempted reentry, coupled with the specific time and place of the reentry.

U.S. v. Resendiz-Ponce, Case No. 05-998 (S. Ct. 1/9/07)

Immigration: Illegal Reentry - Found By Immigration Authorities

An alien is found in the United States when the government either knows of or, with the exercise of diligence typical of law enforcement authorities could have discovered the illegality of the defendant's presence. Here, the defendant confessed he was in the country illegally, but the authorities didn't get around to arresting him until 4 months later, after which time he had been convicted of a new offense, which increased his criminal history score. The Court held that the defendant was found once he confessed and that, therefore, the criminal history score should have been reduced.

U.S. v. Scott, Case 447 F.3d 1365 (11th Cir. 2006)

Immigration: Illegal Reentry - 18 USC § 1326 Doesn't Violate Due Process

Deported alien's conviction for attempting to reenter United States without express consent to reapply for admission did not violate due process because the statute under which defendant was convicted, 8 USC § 1326, plainly required defendant, who had been deported, to obtain Attorney General's express consent to reapply for admission prior to his reembarkation in the Dominican Republic to come to United States and no provision of 8 CFR § 212.2 authorized defendant's conduct of coming to port of entry and attempting to enter United States without requesting

permission to reapply for admission to United States, nor is the regulation unconstitutionally vague.
U.S. v. Marte, Case No. 02-16722 (11th Cir. 1/13/2004)
Immigration: Illegal Reentry - Found In United States & Statute of Limitations
For the statute of limitation to begin running in an unlawful entry case (18 USC § 1326), the defendant must be found in the United States by Federal immigration and not state authorities.
State v. Clarke, Case No. 02-13405 (11th Cir. 11/22/02)

Miscellaneous

Immigration: Miscellaneous – 8 U.S.C. § 1324(a)(1)(A)(iv) Limited to Purposeful Solicitation and Facilitation
The statute, which forbids "encourage[ing] or induc[ing] an alien to enter or reside in the U.S., knowing or in reckless disregard of the fact that such [activity] will be in violation of the law is limited to purposeful solicitation or facilitation of specific acts known to violate federal law.
U.S. v. Hansen, No. 22-179 (S. Ct. 6/23/23)
Immigration: Miscellaneous - 18 U.S.C. § 1425(a) - Fraudulently Procuring Citizenship
To prove a violation of 18 U.S.C. § 1425(a), falsely securing the naturalization of any person, the Government must establish that an illegal act by the defendant played some role in her acquisition of citizenship. When the illegal act is a false statement, that means demonstrating that the defendant lied about facts that would have mattered to an immigration official, because they would have justified denying naturalization or would predictably have led to other facts warranting that result.
Maslenjak v. U.S., Case No. 16-309 (S. Ct. 6/22/17)
Immigration: Miscellaneous - Possession of a Fraudulent Immigration Document
The defendant applied for a visa and falsely denied he had been convicted of a crime. Had he been truthful, he could have been denied a visa, though it would be a matter of discretion. The court rejected his argument that to violate 18 U.S.C. § 1436(a), the exclusion would have been statutorily ineligible for a visa.
U.S. v. Pirela, Case No. 14-13767 (11th Cir. 12/22/15)
Immigration: Miscellaneous - Collateral Estoppel
Where defendant was acquitted necessarily on basis of whether he was an illegal alien, Government was collaterally estopped in a subsequent case from convicting the defendant on charge of illegal reentry.
U.S. v. Valdiviez-Garcia, Case No. 11-10105 (11th Cir. 2/6/12)
Immigration: Miscellaneous - Cuban Wet Foot/Dry Foot Policy in Setting of Alien Smuggling
See U.S. v. Dominguez, case No. 07-13405 (11th Cir. 10/31/11)
Immigration: Miscellaneous - No Jury Required to Determine Whether Offense Meets Guideline Requirements for Enhancement
Defendant, who was charged with an immigration offense, argued that the determination of whether his prior offense was, as defined by the Guidelines, Aan alien smuggling offense that qualified him for the 16-level enhancement under 2L1.2(b)(1)(A)(vii), must be made by a jury. The court rejected the argument.
U.S. v. Gallegos-Aguero, Case No. 04-14242 (11th Cir. 5/18/05)
Immigration: Miscellaneous - Detention When Home Country Won't Accept Alien
Where two Cuban nationals who were inadmissible aliens were detained well beyond six months after their removal orders became final, government brought forth nothing to indicate that

substantial likelihood of removal, and district court in each alien's case determined that removal to Cuba was not reasonably foreseeable, habeas petitions challenging continued detention beyond 90-day removal period should have been granted.
Clark v. Martinez, Case No. 03-878 (U.S. 1/12/05)

Immigration: Miscellaneous - Child Citizenship Act of 2000

Under the Act, effective 2/27/01, an immigrant child, who is a lawful permanent resident, is automatically naturalized when either of his parents becomes a citizen as long as the child is in the legal custody of the parent. 8 USC 1431.
U.S. v. Arbelo, 288 F.3d 1262 (11th Cir. 4/15/02)

Removal

Immigration: Removal - Collateral Challenge to Deportation Order

A defendant charged with illegally reentering the country can collaterally challenge the validity of the removal order. To succeed, however, the defendant must show that: (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order; (2) the removal proceeding at which the order was issued improperly deprived the alien of an opportunity for judicial review; and (3) the entry of the order was fundamentally unfair.
U.S. v. Zelaya, Case No. 01-13015 (11th Cir. 6/11/02)

Immigration: Removal - Speedy Trial Act Not Ordinarily Applicable

Because INS detentions preceding removal are civil in nature, they do not trigger the Speedy Trial Act. It is conceivable, however, that if the detention is used by the government, not to effectuate removal, but as a mere ruse to detain a defendant for later criminal prosecution that same protection might be derived from the speedy trial act.
U.S. v. Noel, No. 00-10259 (11th Cir. 10/25/00); U.S. v. Drummond, No. 00-10768 (11th Cir. 2/8/01)

Immigration: Removal - Delays

Although there is a 90-day period in which removal is to take place, the Supreme Court has held that 6 months is a presumptively reasonable period for the government to act. Even then, the individual must show that there is no significant likelihood of removal in the reasonably foreseeable future before the courts will grant relief.
Akinwale v. Ashcroft, 287 F.3d 1050 (11th Cir. 4/4/02)

Immigration: Removal - District Court Can't Order as a Condition of Release

U.S. v. Romeo, 122 F.3d 941, 943-944 (11th Cir. 1997)

Immigration: Removal - Cubans

Changing course after a remand from the Supreme Court, the Court held that the government could not detain the petitioner, an inadmissible alien who was a native and citizen of Cuba, more than six months beyond the 90-day removal period where removal of petitioner to Cuba was not reasonably foreseeable. The earlier decision, made a distinction between resident aliens and inadmissible aliens, and had held that the petitioner could be detained indefinitely by INS upon the completion of his prison sentence.
Benitez v. Wallis, Case No. 02-14324 (11th Cir. 3/11/05)

Immigration: Removal - Time from Arrest to Removal

Excluding the time from the detention to the receipt of the charging documents, which in this case lasted five weeks, removal proceedings are completed in an average time of 47 days and a median of 30.
Moore v. Kim, Case No. 01-1491 (S. Ct. 4/29/03)

IMMUNITY

Immunity: For Defense Witness?

In exceptional cases, the fact-finding process may be so distorted through the prosecution's decisions to grant immunity to its own witness while denying immunity to a witness with directly contradictory testimony that the defendant's due process right to a fair trial is violated.
U.S. v. Merrill, Case No. 11-11432 (11th Cir. 6/27/12)

Immunity: Derivative

Grants of immunity pursuant to 18 U.S.C. § 6002 and 6003 include derivative use immunity. Accordingly, the court erred in limiting the defendant's immunity to the act of production while allowing the government the derivative use of the items that would have been discovered.
In re: Grand Jury Subpoena Duces Tecum, Case Nos. 11-112268 & 11-15421 (11th Cir. 2/23/12)

Immunity: Kastigar

When presented with a Kasitgar challenge, a court's task is to determine whether any of the evidence used against the defendant was in any way derived from his compelled immunized testimony. The Government has the burden of proving that all of the evidence it obtained and used against the defendant, including the testimony of other witnesses was untainted at every step of the investigation by immunized testimony.
U.S. v. Alcindor, Case No. 07-14602 (11th Cir. 6/14/11)

INDICTMENT

Aliases

Indictment: Aliases – Only if Necessary

If the government intends to introduce evidence of an alias and the use of that alias is necessary to identify the defendant in connection with the acts charged in the indictment, the inclusion of the alias in the indictment is both relevant and permissible. Here it wasn't and the aliases should have been struck from the indictment.
U.S. v. Harriston, Case No. 01-12416 (11th Cir. 4/28/03)

Indictment: Aliases - Motion to Strike

Government failed to show that alleged aliases were relevant, and thus defendant was entitled to have the three aliases stricken from the caption and body of the indictment. Courts generally disapprove of including aliases in the indictment as an ordinary course and believe their use should be curbed. The rule most often followed is that aliases may be used when the Government intends to introduce evidence of an alias and the use of that alias is necessary to identify the defendant in connection with the acts charged in the indictment.
U. S. v. Ramos, 839 F. Supp 781 (D. Kansas 1993)

Bill of Particulars

Indictment: Bill of Particulars Can't Save a Defective Indictment

A bill of particulars cannot save an otherwise defective indictment. It is furnished by the Government, not by a grand jury**.**
U.S. v. McQueen, Case No. 11-20393 (11th Cir. 9/16/11)

Constructive Amendment

Indictment: Constructive Amendment - Can Be Harmless Error

A conviction based on a constructive amendment of the indictment is subject to harmless error analysis.
U.S. v. Madden, Case No. 11-14302 (11th Cir. 8/16/13)

Indictment: Constructive Amendment
A constructive amendment to the indictment occurs where the jury instructions so modify the elements of the offense charged that the defendant may have been convicted on a ground not alleged by the grand jury's indictment.
U.S. v. Sanders, Case No. 10-13667 (11th Cir. 2/2/12)

Dismissal

Indictment: Rule 48 Explained
When the government moves to dismiss an indictment or information, the district court must presume the government moved to dismiss in good faith. Even if the court finds the good-faith presumption has been overcome, the district court must grant the motion do not go to the merits an do not demonstrate a purpose to harass. Any dismissal before trial must be without prejudice.
No. 21-10165 (11th Cir. 11/22/22)

Double Jeopardy

Indictment: Double Jeopardy (Possession Crimes: Possession of Same Firearm on Different Occasions)
Double jeopardy principles have a particular application for crimes of possession. Generally, possession is a course of conduct; by prohibiting possession Congress intended to punish as one offense all of the acts of dominion which demonstrate a continuing possessory interest in a firearm.
U.S. v. Jones, 601 F.3d 1247 (11th Cir. 2010)

Indictment: Double Jeopardy - Multiple Charges That Fail to Differentiate One Charge from Another
A prosecution on an indictment that charges multiple counts of child sex abuse that are carbon copies of each other and that are not differentiated by a bill of particulars or the evidence presented at trial violates the Fourteenth Amendment's protection of Due Process.
Valentine v. Konteh, Case No. 03-4027 (6th Cir. 1/24/05)

Indictment: Double Jeopardy - Poss. by a Convicted Felon - Bullet in Pocket and Hidden Firearm Justified Two Separate Charges
Where officers found a firearm hidden in a trash can by the defendant and upon taking him to jail later found a bullet in his pocket, the government correctly charged the defendant with two separate offenses. Court based its decision on the fact that the bullet and the guns were found at separate times and in what amounted to separate locations.
U.S. v. Goodine, Case No. 04-4320 (4th Cir. 3/15/05)

Indictment: Double Jeopardy - Multiplicity
Multiplicity is the charging of a single offense in more than one count. When the government charges a defendant in multiplicitous counts, two vices arise. First, the defendant may receive multiple sentences for the same offense. Second, a multiplicitous indictment may improperly prejudice a jury by suggesting that a defendant has committed several crimes - not one.
U.S. v. Smith, 231 F.3d 800 (11th Cir. 2000); U.S. v. Williams, Case No. 06-15318 (11th Cir. 5/16/08); U.S. v. Jones, Case No. 08-16999 (11th Cir. 4/2/10). U.S. v. Woods, 684 F.3d 1045 (11th Cir. 2012); U.S. v. Davis, Case No. 15-13241 (11th Cir. 4/20/17)

Miscellaneous

Indictment: Miscellaneous - Armed Career Criminal
Example of case where the government charged the offense as a 922(g) offense, but the defendant, after declining offer to withdraw plea, was sentenced as an armed career criminal. Notes that Almandarez-Torres is still the law.

U.S. v. Gandy, Case No. 11-5407 (11th Cir. 2/27/13)

Indictment: Miscellaneous - Indictment that Alleges Multiple Theories of Prosecution in the Conjunctive

The Government, in its indictment, charged that the defendant possessed a firearm during and in relation to and in furtherance of a drug trafficking crime. After the trial court denied the motion for a judgment of acquittal based on the claim that the Government had failed to prove both allegations, the Court struck the former theory and chose not to instruct the jury on the theory. The court of appeals held that the Government, at trial, was not required to prove both allegations.

U.S. v. Haile, Case No. 10-15965 (11th Cir. 6/29/12); United States v. Gutierrez, 745 F.3d 463 (11th Cir. 2014)

Indictment: Miscellaneous - Superseding Indictments and Vindictiveness

A prosecutor may seek a superseding indictment at any time prior to trial on the merits, so long as the purpose is not to harass the defendant. As a general rule, as long as the prosecutor has probable cause to believe the accused has committed a crime, the courts have no authority to interfere with a prosecutor's decision to prosecute. However, a superseding indictment adding new charges that increase the potential penalty would violate due process if the prosecutor obtained the new charged out of vindictiveness. Vindictiveness in this context means the desire to punish a person for exercising his rights.

U.S. v. Barner, Case No. 04-13384 (11th Cir. 3/10/06); U.S. v. Jones, Case No. 08-16999 (11th Cir. 4/2/10)

Indictment: Miscellaneous - Government Not Held to Specific Allegation

The defendant was charged, under 924(c), with using a firearm in connection with a robbery. Instead of simply alleging a firearm, the Government, in the indictment, alleged a handgun. Although government failed to prove the defendant carried a handgun during the robbery, the court found the handgun allegation to be surplusage and upheld the conviction on the basis of the rifle carried by the codefendant.

U.S. v. Williams, Case No. 02-11783 (11th Cir. 6/24/03)

Indictment: Miscellaneous - Multiple Drugs Listed in Single Conspiracy Count

Where the indictment alleged a conspiracy to distribute both marijuana and cocaine and the court did not instruct the jury they had to find that the defendant distributed both cocaine and marijuana, the sentence should not have exceeded the maximum sentence for the less serious of the two offenses - 20 years for the marijuana. The error is not subject to harmless error review. Upon remand the government has a choice of consenting to the 20-year sentence or retrying the defendant.

U.S. v. Allen, 302 F.3d 1260 (11th Cir. 2002); but see U.S. v. Mackins, 315 F.3d 399 (4th Cir. 2003)

Indictment: Miscellaneous - Grand Jury Requirement

The very purpose of the requirement that a man be indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge.

United States v. Cecil, 608 F.2d 1294 (9th Cir. 1979), U.S. v. McQueen, Case No. 20393 (11th Cir. 9/16/11)

Indictment: Miscellaneous - Conspiracy to Distribute Different Drugs

See: Black v. U.S., Case No. 03-113388 (11th Cir. 6/16/04); Edward v. U.S. 523 U.S. 511 (1998); United States v. Riley, 142 F.3d 1254 (11th Cir. 1998)

Omission of Element

Indictment: Omission of Element - Not a Jurisdictional Defect

An indictment's omission of an element of the crime does not create a jurisdictional defect.
U.S. v. Brown, Case No. 13-10023 (11th Cir. 5/28/14)

Sufficiency

Indictment: Sufficiency - Must Include Facts Informing Defendant of the Specific Offense

Even when an indictment tracks the language of the statute, it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. In this case, the indictment was defective in that, in charging obstruction of justice under 18 U.S.C. §1512(c), the Government failed to allege which official proceeding was obstructed and failed to otherwise provide sufficient notice to the defendant of the factual predicate for the charge.
U.S. v. McGarity, 669 F.3d 1218 (11th Cir. 2012)

Indictment: Sufficiency – Sufficiency - Absence of Factual Allegations

Where the indictment in a federal funds fraud case merely tracked the wording of the statute, but failed to inform the defendant as to the facts and circumstances of the specific charges, the indictment was insufficient as a matter of law.
U.S. v. Schmitz, Case No. 09-14452 (11th Cir. 3/4/11)

Indictment: Sufficiency - Parroting Language of the Statute Sufficient?

While an indictment parroting the language of a federal criminal statute is often sufficient, there are crimes that must be charged with greater specificity.
U.S. v. Resendiz-Ponce, Case No. 05-998 (S. Ct. 1/9/07); U.S. v. Walker, Case No. 05-16756 (11th Cir. 7/6/07); U.S. v. Jordan, Case No. 06-12583 (11th Cir. 9/11/09)

Indictment: Sufficiency - Reference to Statute Cures Defects in Language of the Indictment

Reference to the statute on which the charge was based cures any defect in the language of the indictment.
U.S. v. Ndiaye, Case No. 04-11283 (11th Cir. 1/6/06); U.S. v. Wayerski, 624 F.3d 1342 (11th Cir. 2010)

Indictment: Sufficiency - Open Ended

Because the indictment alleged only that the conspiracy began on or before a certain date, and continued on or after a certain date, and then merely tracked the statute, providing no other specifics than the conspiracy was conducted within the District of Arizona and elsewhere, the indictment should have been dismissed.
United States v. Cecil, 608 F.2d 1294 (9th Cir. 1979), but see: U.S. v. Ramos, 666 F.2d 469, 474 (11th Cir. 1982)

Indictment: Sufficiency – Failure to Allege "Knowingly"

Although indictment charging a robbery under the Hobbs Act failed to allege the crime was committed knowingly, the allegation that the crime was committed unlawfully by threatening to use force, violence, etc. was good enough to withstand a motion to dismiss. There's a ninth circuit case that seems to hold to the contrary.
U.S. v. Woodruff, Case No. 01-16067 (11th Cir. 7/3/02)

Indictment: Sufficiency – In General

An indictment is sufficient if it (1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enable the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense.

U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99); U.S. v. Ndiaye, Case No. 04-11283 (11th Cir. 1/6/06)

Indictment: Sufficiency - Details of Offense

If a general description of the offense is given then it is also necessary to allege facts and circumstances which will inform the defendant of the specific offense with which he is being charged.

U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99); U.S. v. Bobo, Case No. 02-11-11 (11th Cir. 8/26/03)

Variance

Indictment: Variance - Standard

The standard for determining whether a variance is material is (1) did a variance occur and (2) did the defendant suffer prejudice.

U.S. v. Roberts, Case No. 02-10018 (11th Cir. 10/4/02); U.S. v. Landers, Case No. 10-10852 (11th Cir. 2/2/12)

Waiver of Defects

Indictment: Waiver of Defects

A defense based on defects in the indictment that was clear from the fact of the indictment and that does not satisfy any of the exceptions set forth in the Rule are waived by failing to raise the issue in a pretrial motion.

U.S. v. Castro, Case No. 02-10731 (11th Cir. 3/18/03)

Indictment: Waiver of Defects - Failure to Charge an Offense

A claim that an indictment failed to charge an offense is a jurisdictional defect that is not waived by a guilty plea.

U.S. v. Peter, Case No. 01-16982 (11th Cir. 10/28/02)

Indictment: Time

Four-month time period wasn't so broad as to expose the defendant to double jeopardy concerns.

U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99)

INEFFECTIVE ASSISTANCE OF COUNSEL

Appeal

Ineffective Assistance: Appeal - Obligation to File an Appeal

Attorney has an obligation to consult with the client regarding the advantages and disadvantages of appealing and to make a reasonable effort to determine whether the client wishes to appeal.

Gomez-Diaz v. United States, Case No. 04-11105 (11th Cir. 12/20/05)

Ineffective Assistance: Appeal - Claim Need Not Be Raised on Direct Appeal

The failure to raise an ineffective assistance claim on direct appeal does not bar the claim from being brought as a 2255 claim.

Massaro v. U.S., Case No. 01-1559 (S. Ct. 4/23/03)

Ineffective Assistance: Appeal - Failure to File a Notice of Appeal

To show prejudice when the claim is that the lawyer failed to file a notice of appeal, a defendant must demonstrate that there is a reasonable probability that but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed.

Roe v. Flores-Ortega, 528 U.S. 470 (2000)

Conflict of Interest

Ineffective Assistance: Conflict of Interest

In order to demonstrate a Sixth Amendment violation where a trial court fails to inquire into a potential conflict of interest about which it knew or reasonably should have known, a defendant must establish that a conflict of interest adversely affected his counsel's performance.
Mickens v. Taylor, 535 U.S. 162 (2002)

Ineffective Assistance: Conflict of Interest- Required Showing

To make a showing of ineffective assistance of counsel on the basis of a conflict the defendant must show that his lawyer had an actual conflict and that the conflict adversely effected the attorney's performance. To prove the later, the defendant must show that (a) the defense could have pursued a plausible alternative strategy, (b) that this alternative strategy was reasonable, and (c) that the alternative strategy was not followed because it conflicted with the attorney's external loyalties.
Reynolds v. Chapman, No. 00-12207 (11th Cir. 6/15/01)

Concession of Guilt

Ineffective Assistance – Concession of Guilt – Concession that Evidence Supports Conviction of Some Counts

Defense counsel, without consulting client in advance, conceded the client's guilt on one robbery charge, but argued the evidence was insufficient to support a conviction on the second robbery charge. Court of appeals, with much discussion about defense counsel's need to maintain credibility with the jury, rejected claim that the defense lawyer had provided ineffective assistance.
U.S. v. Darden, Case No. 10-15640 (11th Cir. 2/12/13)

Ineffective Assistance: Concession of Guilt – Client's Consent to Admission of Guilt

At least in capital cases, counsel's failure to obtain the defendant's express consent to strategy of conceding guilt does not automatically rank as prejudicial ineffective assistance of counsel.
Florida v. Nixon, 543 U.S. 175 (2004)

Ineffective Assistance: Concession of Guilty – Failure to Show Prejudice

While assuming that concession of guilt without consultation or consent from the defendant is constitutionally deficient performance, the court went on to reject the defendant's post-conviction petition, finding that there was no showing of prejudice.
U.S. v. Thomas, Case No. 03-56750 (8th Cir. 8/3/05)

Duty to Investigate

Ineffective Assistance of Counsel: Duty to Investigate – Reasonable

No absolute duty exists to investigate particular facts or a certain line of defense. In reviewing a decision not to investigate, a court must determine whether the decision was reasonable.
Everett v. Secretary, Fla. Dept. of Corr. Case No. 14-11857 (11th Cir. 2/27/15)

Ineffective Assistance: Duty to Investigate - Failure to Investigate Prior Record

Where defendant's lawyer had estimated that the sentence would be somewhere between 5 and 10 years, but because of prior convictions unknown to the lawyer the defendant was sentenced as a career offender to thirty years, the court found the defendant did not receive ineffective assistance of counsel. The court did say the limited scope of this investigation is certainly not laudatory.
U.S. v. Pease, 240 F.3d 938 (11th Cir. 2001)

Entry of Plea

Ineffective Assistance: Entry of Plea: Plea Negotiations

Defendants are entitled to effective assistance in making decisions regarding plea negotiations. Where defense counsel provides misleading or inadequate advice regarding the decision as to whether to accept a plea offer, the court may remedy the error.
Lafler v. Cooper, Case No. 10-209 (S. Ct. 3/21/12)

Ineffective Assistance: Entry of Plea – Failure to Convey Plea Offer

As a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. To show prejudice, the defendant must demonstrate a reasonable probability he would have accepted the plea and that the plea would have been entered without the prosecution cancelling it or the trial court refusing to accept it.
Missouri v. Frye, Case No. 10-444 (S. Ct. 3/21/12)

Ineffective Assistance: Entry of Plea – Immigration Advice

Counsel has an obligation to provide the client with accurate information about the immigration consequences of a guilty plea.
Padilla v. Kentucky, Case No. 08-651 (S. Ct. 10/13/09); Lee v. U.S., Case No. 16-327 (S. Ct. 6/23/17)

Ineffective Assistance: Entry of Plea: Affirmative Incorrect Advice About Jimmy Ryce Commitment

Defendant's lawyer, in a state court proceeding where the defendant entered a plea to aggravated stalking of a minor, told the defendant that the plea would not subject him to commitment under the Jimmy Ryce Act. The advice, though, was incorrect and the defendant was subsequently civilly committed under the Act. Court held the advice amounted to ineffective assistance and vacated the defendant's conviction.
Bauder v. Dept. of Corrections, No. 10-10657 (11th Cir. 9/13/10)

Miscellaneous

Ineffective Assistance of Counsel: Miscellaneous – Failure to Ask for a Below-Guidelines Sentence

See Dell v. U.S., Case No. 11-12904 (11th Cir. 2/27/13)

Ineffective Assistance: Miscellaneous – Failure to Pursue Motion to Suppress

Defense counsel's decision to recommend an early plea to the charges instead of pursuing a motion to suppress that defense counsel thought was futile, did not amount to ineffective assistance of counsel.
Premo v. Moore, Case No. 09-658 (S. Ct. 1/19/11)

Ineffective Assistance: Miscellaneous – Failure to Advise Client of Risks of Proffer

The defense lawyer failed to provide the level of assistance demanded by the Sixth Amendment when he neglected to warn a youthful first-time offender that incriminating statements he made during a proffer session with law enforcement officials could be used against him if he pulled out of a plea bargain.
Davis v. Greiner, Case No. 04-4087 (2d Cir. 10/11/05)

Ineffective Assistance: Miscellaneous – Strickland Summary

For a Supreme Court summary of Strickland see Bell v. Cone, 535 U.S. 685 (2002); Stewart v. Secretary, Dept. of Corrections, Case No. 06-11684 (11th Cir. 1/31/07)

Ineffective Assistance: Miscellaneous – Defendant Waives Privilege in Making Claim of Ineffective Assistance of Counsel

When a defendant has challenged his conviction by asserting an issue that makes privileged communications relevant, he waives the privilege and respect to those communications.

Johnson v. Alabama, 256 F.3d 1156, 1178 (11th Cir. 2001); but see ABA Formal Ethics Opinion 10-456

Ineffective Assistance of Counsel: Miscellaneous - In General

See: Mincey v. Head, 206 F.3d 1106 (11th Cir. 3/16/00); Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R)

Sufficiency of Claim

Ineffective Assistance: Sufficiency of Claim – Need Show Only a Probability Sufficient to Undermine Confidence in the Outcome

Petitioner claiming ineffective assistance of counsel is not required to show that counsel's deficient conduct more likely than not altered the outcome of the penalty proceeding, but only a probability sufficient to undermine the confidence in the outcome.

Porter v. McCullom, Case No. 10537 (S. Ct. 11/30/09)

Ineffective Assistance: Sufficiency of Claim – Trial Counsel's Reliance Upon Usual Course of Conduct

In considering the testimony of trial counsel even when counsel cannot remember what he or she had done or had not done in the case, the district court may rely upon counsel's testimony about the manner in which he or she routinely handle matters that recur in their work.

Dasher v. Attorney General, Case No. 08-10363 (11th Cir. 7/13/09); U.S. v. Moran, Case No. 08-16987 (11th Cir. 7/1/09)

Ineffective Assistance: Sufficiency of Claim – Lawyer's Admission of Ineffectiveness

Because the standard is an objective one, trial counsel's admission to deficient performance matters little.

Jennings v. McDonough, Case No. 05-16363 (11th Cir. 7/3/07)

Ineffective Assistance: Sufficiency of Claim – Court Assumes Lawyers Efforts Reasonable

Where the record is incomplete or unclear about counsel's actions, the court will presume that the lawyer did what he or she should have done and will assume the lawyer exercised reasonable judgment.

Jennings v. McDonough, Case No. 05-16363 (11th Cir. 7/3/07); Herrington v. Richter, Case No. 09-587 (S. Ct. 1/19/2011)

Ineffective Assistance: Sufficiency of Claim – Not What Is Possible or Prudent

The court's review of counsel's performance should focus on not what is possible or what is prudent or appropriate, but only on what is constitutionally compelled.

Osborne v. Terry, Case No. 04-16751 (11th Cir. 10/16/06)

Ineffective Assistance: Sufficiency of Claim – Failure to Preserve Issue for Appeal (Prejudice)

Where, as in this case the deficient performance amounted to failing to preserve for appeal a particular issue, which in this case was a Batson claim, the appropriate prejudice inquiry asks whether there is a reasonable likelihood of a more favorable outcome on appeal had the claim been preserved.

Davis v. Secretary for the Dept. of Corrections, Case No. 01-16602 (1th Cir. 8/15/03)

Ineffective Assistance: Sufficiency of Claim – Given Bad Set of Facts, Def. Unable to Show Prejudice

In this child-rape-murder case, the failure to investigate and present significant mitigation evidence, wasn't enough to show prejudice, i.e., facts were so bad the mitigation failed to undermine the confidence in the death sentence.

Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)

Ineffective Assistance: Sufficiency of Claim – State Habeas Analysis
Assuming the state court uses the principles of Strickland in the analysis, the standard used by the court is "not contrary to clearly established federal law as set out in the Supreme Court precedent." The petitioner is, then, left only with the claim that there has been an unreasonable application of clearly established federal law.
Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)
Ineffective Assistance: Sufficiency of Claim – Unreliable
As long as the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results, our confidence is undermined. Phrased another way, the result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.
Brownlee v. Haley, Case No. 00-15858 (11th Cir. 9/16/02)
Ineffective Assistance: Sufficiency of Claim – No Closing Argument
Where, in this case involving a bench trial, the court announced its verdict without allowing defense counsel to give a closing argument, or even announce a waiver or an objection, the court found the defendant had been denied effective assistance of counsel. Case was analyzed under Cronic.
Hunter v. Moore, Case no. 00-14576 (11th Cir. 9/4/02)
Ineffective Assistance: Sufficiency of Claim - Longer Prison Sentence Establishes Prejudice
An error on the part of the defendant's lawyer that resulted in a 6 to 21 month increase in additional time in prison was prejudicial for purposes of Strickland.
Glover v. U.S., 531 U.S. 198 (2001)
Ineffective Assistance: Sufficiency of Claim - Introduction of Records Without Testimony
In Turpin the Georgia Supreme Court found counsel to be ineffective in the penalty phase because they introduced 2,500 pages of records from the defendant's stays at various psychiatric institutions and children's homes, without any testimony commenting on the contents, and merely urged the jury to use the records in their deliberations.
Holladay v. Haley, 209 F.3d 1243 (11th Cir. 2000)
Ineffective Assistance: Sufficiency of Claim - Standard
Must show that counsel's performance was outside the wide range of professionally competent assistance, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is one sufficient to undermine confidence in the outcome.
Tompkins v. Moore 193 F.3d 1327 (11th Cir. 10/29/99)
Ineffective Assistance: Sufficiency of Claim - No Presumption of Ineffectiveness Based on Little Time to Prepare
In United States v. Cronic, 466 U.S. 648 (1984), defense counsel was given just twenty-five days to prepare for trial, his principal practice was real estate, the defendant was on trial for mail fraud, and it was the lawyer's first jury trial. Nonetheless, the limited time to prepare did not justify a presumption of ineffective assistance.
Conklin v. U.S., Case No. 02-15674 (11th Cir. 4/21/04)
Ineffective Assistance: Sufficiency of Claim - Tactical Decision Based on Misunderstanding of Law
A tactical or strategic decision is unreasonable if it is based on a failure to understand the law.
Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)

Ineffective Assistance: Sufficiency of Claim - Whether Trial Counsel's Decision Was Reasonable Is a Question of Law
Whether counsel's decision is tactical is a question of fact, but whether this tactic was reasonable is a question of law and the appellate court owe neither the district court nor the state court any deference on this point.
Hardwick v. Crosby, Case No. 97-2319 (11th Cir. 1/31/03)
Ineffective Assistance: Sufficiency of Claim - Objectively Unreasonable Manner
In addition to deference to counsel's performance mandated by Strickland, the AEDPA adds another layer of deference - this one to a state court's decision - when we are considering whether to grant federal habeas relief from a state court's decision. Rutherford must do more than satisfy the Strickland standard. He must also show that in rejecting his ineffective assistance of counsel claim the state court applied Strickland to the facts of his case in an objectively unreasonable manner.
Rutherford v. Crosby, Case No. 03-13188 (1th Cir. 9/21/04)
Ineffective Assistance: Sufficiency of Claim - AEDPA (Objectively Unreasonable Manner)
Under AEDPA, however, the question is not whether the defendant would have satisfied Strickland's test if his claim were being analyzed in the first instance. Rather the petitioner must show that the state court applied Strickland to the facts of his case in an objectively unreasonable manner or that the state court decided this case differently than the Supreme Court on materially indistinguishable facts and thus was contrary to the Strickland standard.
Jennings v. Crosby, Case No. 5:02cv174 (N.D. Fla. 9/29/05) (Hinkle, R)

INITIAL APPEARANCE

Initial Appearance: Pretrial Services Report
Information obtained in the course of performing pretrial services is for the limited purpose of the bail determination and is otherwise confidential. Some courts, however, have allowed the information to be admitted for purposes of impeachment. In this case, though, the district court erred in allowing the government to call the pretrial officer as a witness during the defendant's trial for the purpose of identifying the defendant's cell phone number and identifying the defendant's voice from a recording.
U.S. v. Perez, Case No. 05-12971 (11th Cir. 12/28/07)
Initial Appearance: Shackling
Without deciding the issue before the court, the 9th Circuit states that there must be some specific justification to justify a district-wide policy of shackling all pretrial detainees at their initial appearance.
U.S. v. Howard, 429 F.3d 843 (9th Cir. 2006)

JOHNSON V. UNITED STATES, 135 S. CT. 2551 (2015)

Johnson: Beeman (Legal Landscape Inadequate)
The existing caselaw wasn't enough to show court had relied on the residual clause rather than elements clause for a federal kidnapping offense.
Williams v. U.S., No. 19-10308 (11th Cir. Jan. 31, 2021)
Johnson: Reliance on Descamps to Determine Whether Prior Offense Conviction Qualifies as a Violent Felony
See Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)

Johnson: Florida Manslaughter
Eleventh Circuit as erroneously concluded that Florida's manslaughter statute qualifies as a violent felony.
Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)
Johnson: Mandatory Sentencing Guidelines
Eleventh Circuit has erroneously concluded that Johnson is inapplicable to the mandatory sentencing guidelines.
Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)
Johnson: Florida Robbery
Eleventh Circuit has erroneously concluded that Florida's robbery statute qualifies as a violent felony for purposes of the ACCA.
Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)
Johnson: Florida Aggravated Assault
Eleventh Circuit has erroneously concluded that Florida's aggravated assault statute qualifies as a violent felony for purposes of the ACCA.
Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting)
Johnson: Guidelines - Inapplicable to Mandatory guidelines
In re Griffin, 823 F.3d 1350 (11th Cir. 2016)
Johnson: Concurrent Sentence Doctrine
If a defendant had concurrent sentences on multiple counts of conviction and one count is found to be invalid, an appellate court need not consider the validity of the other counts unless the defendant would suffer adverse collateral consequences from the unreviewed conviction. Here, where the defendant was sentenced to a mandatory life sentence due to an 851 enhancement, the court declined to address his ACCA sentence.
In re Williams, 826 F.3d 1351 (11th Cir. 2016)
Johnson: Defendant's Burden to Show Reliance on Residual Clause
If defendant is to present a cognizable 2255 claim, he must affirmatively show the trial court relied upon the residual clause.
Beeman v. U.S., Case No. 16-16710 (11th Cir. 9/22/17); but see Orvalles v. U.S., Case No. 17-10172 (11th Cir. 10/4/18) (Martin, J. dissenting); Santos v. U.S., Case No. 17-14291 (11th Cir. Dec. 10, 2020)
Johnson: Florida's Felony Battery
Hearing the case en banc, the court concluded that Florida's felony battery statute, Fla. Stat. § 784.041, qualified as a crime of violence under the Sentencing Guidelines for purposes of USSG §2L1.2. Opinion includes a dissent from Judges Wilson, Martin, Jordan, Rosenbaum, and Jill Pryor.
U.S. v. Vail-Bailon, Case No. 15-10351 (11th Cir. 8/25/17)
Johnson - Fla. 1971 Conviction for Assault with Intent to Commit a Felony
No existing precedent regarding whether it qualifies under the ACCA's elements clause.
In re: Jackson, Case No. 16-13536 (11th Cir. 6/24/16)
Johnson - Equitable Tolling
See In re: Jackson, Case No. 16-13536 (11th Cir. 6/24/16)
Johnson - Defendant Must Show He Was Sentenced Under the Residual Clause
In re: Griffin, Case No. 16-12012-J (11th Cir. May 25, 2016); In re: Hines, Case No. 16-12454 (11th Cir. 6/8/16)
Johnson - Matchett - If Overturned

If the Supreme Court, in Beckles, overturns Matchett, those guideline cases based on the guideline's residual clause, will be able to file a 2255 claim.
In re: Anderson, Case No. 16-14125 (11th Cir. 7/22/16); In re: Bradford, Case No. 16-14512 (11th Cir. 7/27/16)

Johnson - Concurrent Sentence Doctrine

See In re: Clayton, Case No. 16-14556 (11th Cir. 7/18/16) (J., Martin Dissenting), n. 16 questioning application), In re Davis, Case No. 16-13779 (11th Cir. 7/21/16)

Johnson - Matchett - Only the 11th Circuit

Every other court of appeals has either held or assumed that Johnson makes the language in §4B1.2(a)(2) of the Sentencing Guidelines unconstitutional. Dissent includes reason why the 11th Cir. has it wrong, and questions the procedure where the court of appeals combs through the PSR in deciding whether to grant a request to file a successive petition.
In re: Clayton, Case No. 16-14566 (11th Cir. 7/18/16) (J., Martin Dissenting)

Johnson: Still Inapplicable to Guidelines

Panel of Jordan, Rosenbaum, and Jill Pryor sets outs in some detail why they disagree with 11th Cir. precedent, but denies request for a successive 2255.
In re: Leonard Sapp, Case No. 16-13338-J (11th Cir. July 7, 2016);

Johnson: Inapplicable to Career Offender

U.S. v. Matchett, Case No. 14-10396 (11th Cir. 9/13/16)

Johnson: Defendant Entitled to a New Sentencing Hearing

Mays v. U.S., Case No. 14-13477 (11th Cir. 3/29/16)

Johnson: Retroactive for Initial 2255

Mays v. U.S., Case No. 14-13477 (11th Cir. 3/29/16)

Johnson: Descamps Retroactive

Because Descamps did not announce a new rule, but merely clarified existing precedent, it applies retroactively.
Mays v. U.S., Case No. 14-13477 (11th Cir. 3/29/16)

Johnson: Successive 2255 Motions

Court denied Johnson relief to defendant who has previously filed a 2255 motion.
In re: Rivero, Case No. 15-13089 (11th Cir. 8/12/15); Mays v. U.S., Case No. 14-13477 (11th Cir. 3/29/16)

Johnson: Successive 2255 - Armed Career Criminals

The decision in Rivero, which held that successive 2255 motions in career offender statutes were barred by the limitations of second or successive 2255 motions applies to those who were sentenced as armed career criminals.
In re: Franks, Case No. 15-15456-G (11th Cir. 1/6/16)

JUDGES

Ex Parte Communications

Judges: Ex Parte Communications - Exception to Rule

Ex parte communications are justified in order to protect a continuing criminal investigation and the safety of persons placed at risk by those investigation.
US. v. Simms, Case No. 03-13233 (11th Cir. 9/27/04)

Judges: Ex Parte Communications – Govt. Must Show Defendant Not Prejudiced

The Government bears the burden of showing that the defendant was not prejudiced by an ex parte communication, and the burden is a heavy one.

U.S. v. Simms, Case No. 03-13233 (11th Cir. 9/27/04)

Magistrates

Judges: Magistrates - District Judge Not Free to Reject Magistrate's Credibility Findings

In a case involving a motion to suppress heard by the magistrate judge, the court of appeals held the district judge could not reject the magistrate judge's credibility determinations without rehearing the testimony.

U.S. v. Cofield, Case No. 14689 (11th Cir. 11/14/01)

Judges: Magistrates - No Need for Defendant to Personally Consent to Magistrate Conducting Voir Dire

Gonzalez v. U.S., Case No. 06-11612 (S. Ct. 5/12/08)

Judges: Magistrates - Limited Authority to Participate in Trial

A magistrate judge exceeds his or her jurisdiction by presiding at a felony trial during a critical stage of the proceeding without the defendant's consent. Here, where magistrate judge agreed to accept jury verdict, but ended up responding to a jury question, all without the defendant's consent, magistrate exceeded his authority, and a new trial was required.

U.S. v. Desir, 57 F3d 1233 (11th Cir. 2001); U.S. v. Rodriguez, 277 F.3d 1281 (11th Cir. 2002); See also: RPM brief in U.S. v. Lottie Tibbits

Miscellaneous

Judges: Miscellaneous – More Than a Referee

"A trial judge is more than a referee to an adversarial proceeding. Indeed, the judge may question witnesses, comment on the evidence, and interrupt the trial to correct an impropriety."

U.S. v. Harris, 720 F.2d 1259, 1261 (11th Cir. 1983); U.S. v. Morel, No. 20-14315 (11th Cir. 3/23/23)

Judges: Miscellaneous - Recess Appointments Valid

Evans v. Stephens, Case No. 02-16424 (11th Cir. 10/14/04)

Judges: Miscellaneous – Immunity from Damage Claims and Injunctions

Judges have absolute immunity from damage claims while they are acting in their judicial capacity, unless they acted int eh clear absence of all jurisdiction. While for state judges this immunity does not extend to injunctive relief, most courts, including, now, the Eleventh Circuit have held that federal judges are protected against claims seeking injunctive relief.

Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)

Plea Negotiations

Judges: Plea Negotiations

The trial judge's statement to the defendant about the consequences of rejecting a plea agreement violated Fed.R.Cr.P. 11(c)(1), but, without a showing that the defendant would have proceeded to trial absent the remarks, the defendant was not entitled to have his judgement vacated.

U.S. v. Castro, Case No. 12-12927 (11th Cir. 9/26/13); U.S. v. Davila, Case No. 10-15310

Judges: Plea Negotiations

Court's involvement in plea negotiations, resulted in convictions being vacated.

U.S. v. Tobin, Case No. 09-13944 (4/12/12)

Recusal

Judges: Recusal

Pennsylvania Supreme Court Judge violated defendant's right to due process when he participated in a decision denying the defendant's post-conviction claim when he had, some 30 years earlier, been the District Attorney of Philadelphia who authorized the State to seek the death penalty.

Williams v. Pennsylvania, Case No. 15-5040 (S. Ct. 6/9/16)
Judges: Recusal - Basis of Campaign Contributions
Given the extent of the campaign contribution and the circumstances of the case, due process required recusal.
Caperton v. A.T. Massey Coal, Co., Case No. 08-22 (S. Ct. 6/8/09)
Judges: Recusal - Preservation of Recusal Issue
Must enter a conditional plea to preserve the issue. Mandamus is an alternative.
U.S. v. Patti, Case No. 02-13871 (11th Cir. 7/18/03)
Judges: Recusal - Standard
Pursuant to 28 USC 455(a) a judge shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned. It is an objective test, and the bias must be of a personal as distinguished from judicial nature.
Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000); In re: Moody, Case No. 13-12657 (11th Cir. 3/12/14)
Judges: Recusal - No Other Judge Available
In a case where the defendant had named as the defendants almost all of the Eleventh Circuit judges, the court declined to recuse itself, citing the rule of necessity. The rule holds that a judge is not disqualified due to a personal interest if there is no other judge available to hear the case.
Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)

Trial

Judges: Trial - Presumed to Ignore Inadmissible Evidence
In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions.
Williams v. Illinois, Case No. 10-8505 (S. Ct. 6/18/12)
Judges: Trial -Impartiality in Conduct of Trial
See: U.S. v. Wright, Case No. 03-13359 (11thCir. 12/8/04)
Judges: Trial – Judge May Comment on the Evidence
The judge may comment on the evidence, may question witnesses an elicit facts not yet adduced or clarify those presented, and may maintain the pace of the trial by interrupting or cutting off counsel as a matter of discretion.
U.S. v. Thayer, 204 F.3d 1352 (11th Cir. 2000)

JUDGMENT OF ACQUITTAL

Judgment of Acquittal: Failure to Raise Specific Grounds – Appellate Review
Court recognized split in 11th Circuit decisions, with one holding the failure to raise the specific grounds when moving for a judgment of acquittal requires plain error review while others seem to require harmless error review only if the defendant failed to move for a judgment of acquittal on any basis.
U.S. v. Downs, 61 F.4th 1306, 1311 n. 1 (11th Cir. 2023)
Judgment of Acquittal: Midtrial Decision Can't be Changed
Judge cannot reverse midtrial judgment of acquittal after defense rested, but before closing arguments.
U.S. v. Alcindor, Case No. 07-14602 (6/14/11)
Judgment of Acquittal: Must Be Renewed at the Close of All the Evidence
U.S. v. Edwards, Case No. 06-11643 (11th Cir. 5/5/08)
Judgment of Acquittal: Defendant Entitled to Ruling at the Close of the Govt. Case

The defendant is entitled to have a ruling on his motion for a judgment of acquittal made at the close of the government's case.
U.S. v. Moore, Case No. 07-10237 (11th Cir. 10/26/07)
Judgment of Acquittal: Bench Trial
A motion for a judgment of acquittal in unnecessary in a bench trial to preserve a claim regarding the sufficiency of the evidence.
U.S. v. Hurn, Case No. 03-13366 (11th Cir. 5/7/04)
Judgment of Acquittal: Standard
In considering a JOA motion the standard is the same used in reviewing a conviction on appeal, whether a reasonable jury could have found the defendant guilty beyond a reasonable doubt.
U.S. v. Ward, 197 F.3d 1076 (11th Cir. 1999)

JURISDICTION

Jurisdiction: Determination is for the Jury if Entwined with a Substantive Element of Crime
U.S. v. McClean, Case No. 14-10061 (11th Cir. 9/24/15)
Jurisdiction: Parties Can't Stipulate to It
U. S. v. Gonzalez-Iguaran, Case No. 15-13659 (11th Cir. May 12, 2016)
Jurisdiction: Omission of an Element from Indictment
An indictment's omission of an element of the crime does not create a jurisdictional defect.
U.S. v. Brown, Case No. 13-10023 (11th Cir. 5/28/14)
Jurisdiction: Supreme Court - State Court's Interpretation of State Law
This court retains a role when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law.
Ohio v. Reiner, 532 U.S. 17 (2001)
Jurisdiction: Extraterritorial Prosecution
Depending on the nature of the crime, Congress may or may not have to provide, in the statute, for extraterritorial application of a criminal statute. In this instance, which involved the attempted smuggling of Cuban cigars into the U.S., and an arrest outside the territorial waters, the Court concluded that the absence of such intent in the statute did not prohibit prosecution.
U.S. v. Plummer, 221 F.3d 1298 (11th Cir. 2000)
Jurisdiction: Drug Smuggling
Where the defendant, a citizen of Canada, performed his involvement in the drug deal from Canada, and was arrested only after he drove into the United States, the court held that 21 USC § 963 may be applied extraterritorially and upheld the district court's denial of the defendant's motion to dismiss for lack of jurisdiction.
U.S. v. McAllister, 160 F.3d 1304 (11th Cir. 1998)
Jurisdiction: Use of the Term
Recognizing the less than meticulous use of the term jurisdictional in the past, the Supreme Court has endeavored in recent years to bring some discipline to the use of the term and has pressed for a distinction between truly jurisdictional rules which govern a court's adjudicatory authority and nonjurisdictional claim processing rules, which do not. Subject matter jurisdiction can never be waived or forfeited. Objections may be resurrected at any point in the litigation. A rule is jurisdictional if the legislature clearly states that a threshold limitation on the statute's scope shall count as jurisdictional. But if Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional.

Gonzalez. v. Thaler, Case No. 10-985 (S. Ct. 1/10/12); Hamer v. Neighborhood Services of Chicago, No. 16-658 (S. Ct. 10/10/17); Wilkins v. U.S., No. 21-1164 (S. Ct. 3/28/23)

JURY

Deliberations

Jury: Deliberations - Juror Testimony About Deliberations

Except for testimony concerning extraneous prejudicial information or improper outside influence, Rule 606(b)(1) prohibits a juror from providing testimony or other evidence about anything that happened or occurred during deliberations, including a juror's mental process or the reasons the jury reached a particular verdict.

U.S. v. Cavallo, Case No. 12-15660 (11th Cir. 6/22/15)

Jury: Deliberations - Can't Use Juror Testimony to Impeach a Verdict

U.S. v. Siegelman, Case No. 07-13163 (11th Cir. 5/11/11) (on remand from Supreme Court)

Jury: Deliberations - Nursing Student Who Explained Evidence

Affidavits that at least suggested one of the jurors, who was a nursing student, relied on her expertise to explain some of the evidence to her fellow jurors, was inadequate in this state habeas case to overturn conviction.

Crawford v. Head, Case No. 01-10215 (11th Cir. 11/12/02)

Miscellaneous

Jury: Miscellaneous – Inconsistent Verdict

The jury returned an inconsistent verdict on a single count, finding him guilty but failing, in the special verdict form, to find either of the two necessary conditions for liability. Without accepting the verdict, the judge told the jury the verdict was inconsistent and sent them back for further deliberations. The jury subsequently returned finding one of the necessary conditions. The court rejected the defense argument that the trial judge should have entered a judgment of acquittal. Outcome probably would have been different had the judge accepted the verdict.

U.S. v. Gatlin, No. 19-14969 (11th Cir. 1/5/24).

Jury: Miscellaneous - Innominate Jury

The district court has the discretion to empanel an innominate jury upon a showing of a combination of several factors, including (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that enhances the possibility that jurors' names may become public and expose them to intimidation or harassment.

U.S. v. Bowman, Case No. 01-14305 (11th Cir. 8/20/02); U.S. v. Ochoa-Vasquez, Case No. 03-14400 (11th Cir. 10/20/05); U.S. v. Lafond, Case No. 14-12574 (11th Cir. 4/20/15)

Jury: Miscellaneous - Questions by Jurors

Every circuit to consider the practice of allowing jurors to ask questions has permitted it. The decision to allow juror questioning rests within the discretion of the trial judge. Section 40.50(3) of the Florida Statutes permits it as well.

U.S. v. Richardson, 233 F.3d 1285 (11th Cir. 2000)

Jury: Miscellaneous - Existence of Prejudice That Can Sway Jurors

It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy.

Miller-El v. Dretke, Case No. 03-9659 (S. Ct. 6/13/05) quoting from Strauder v. West Virginia, 100 U.S. 303, 309 (1880)

Misconduct

Jury: Misconduct

One affidavit based on information obtained by an investigator from the ex-fiancé of one of the jurors (Hart) alleged, among other things, that**:** Hart had purchased one of the defendant's products that had been fraudulently sold and was the subject of the case heard by the jury. In a second affidavit. In the second affidavit in which it was alleged that the information came from the jury foreman during an interview of the foreman by the investigator, who was supposedly writing a book about the trial, it was claimed that the bailiff had told the jurors that they would have no trouble convicting the defendants if they knew what he knew. Because the court concluded the information was obtained in violation of a local rule prohibiting contact with jurors, the court upheld the district court's decision to exclude the claims from consideration.
U.S. v. Venske, Case No. 01-10345 (11th Cir. 7/12/02)

Jury: Misconduct

An affidavit based on information obtained by an investigator from the ex-fiancé of one of the jurors (Hart) alleged, among other things, that**:** (1) Hart knew from the first day of the trial that the defendants were guilty**;** (2) Hart and some of the other jurors passed notes during the trial making fun of some of the witnesses; (3) one of the jurors did not want to vote guilty, but Hart and some of the other jurors convinced her otherwise; (4) during the trial Hart spoke openly with non-jurors about the trial, expressing his belief that the defendants were guilty and his distaste for one of the defendant's lawyers. Court concluded all of these allegations were excluded from the court's consideration by Fed. R. Evid. 606(b) as they involved the jury's deliberative process and the mental impressions of juror Hart.
U.S. v. Venske, Case No. 01-10345 (11th Cir. 7/12/02)

Jury: Misconduct - False Answers

To obtain a new trial for juror misconduct during voir dire, a party must: 1) demonstrate that a juror failed to answer honestly a material question on voir dire, and ten 2) show that a direct response would have provided a valid basis for a challenge for cause.
U.S. v. Carpa, 27 F.3d 962 (2001)

Jury: Misconduct Court's Obligation When, During Trial, There Are Allegations of Misconduct

Bottom line: court has lots of discretion.
U.S. v. Dominguez, 226 F.3d 1235 (11th Cir. 2000)

Trial

Jury: Trial - Preferable That Jury Not Be Kept Late in the Evening

U.S. v. Bush, Case No. 12-12624 (11th Cir. 8/27/13)

Jury: Trial - Exposure to Extrinsic Evidence

The defendant has the burden to show that the jury has been exposed to extrinsic evidence or extrinsic contacts. One the defendant does so, prejudice is presumed and the burden shift to the government to rebut the presumption. A mistrial or new trial is required only if the extrinsic evidence known by the jury posed a reasonable possibility of prejudice to the defendant.
U.S. v. Ronda, Case No. 03-15640 (11th Cir. 7/13/06); U.S. v. Delancy, Case No. 06-13718 (11th Cir. 10/3/07); U.S. v. Siegelman, Case No. 07-13163 (11th Cir. 5/11/11) (on remand from Supreme Court)

Jury: Trial - Exposure to Extraneous Evidence is Presumptively Prejudicial

McNair v. Campbell, Case No. 04-11400 (11th Cir. 7/13/05); U.S. v. Tobin, Case No. 09-13944 (11th Cir. 4/12/12)

Jury: Trial - Excusal of a Juror During Deliberations

Under FRCP 23(b) a juror maybe dismissed during deliberations for a just cause. Just cause exists when a juror refuses to apply the law or follow the court's instruction. That, in turn, means that a juror should be dismissed only if the judge is convinced beyond a reasonable doubt that there is no substantial possibility that the juror is basing his or her decision on the sufficiency of the evidence.

U.S. v. Abbell, 71 F.3d 1286 (11th Cir. 2001); U.S. v. Polar, Case No. 03-11160 (11th Cir. 5/13/04)

Jury: Trial - Disqualification of Juror and Installation of Alternate During Deliberations

See: U.S. v. 182 F.3d 820 (11th Cir. 1999)

JURY INSTRUCTIONS

Allen Charge

Jury Instruction: Allen Charge - Successive Allen Charge

There is no *per se* rule against successive Allen charges. The court of appeals noted, though, that the risk of coercion increases as deliberations run longer.

U.S. v. Davis, Case No. 13-12436 (11th Cir. 3/5/15)

Jury Instructions: Allen Charge - No Requirement That Jury Announce It Is Deadlocked

U.S. v. Bush, Case No. 12-12624 (11th Cir. 8/27/13)

Jury Instructions: Allen Charge - Unduly Coercive

See: U.S. v. Rey, 811 F.2d 1453, 1458-61 (11th Cir. 1987)

Jury Instruction: Allen Charge

An instruction which appears to give a jury no choice but to return a verdict is impermissibly coercive.

U.S. v. Jones, Case No. 06-15203 (11th Cir. 10/22/07)

Jury Instructions: Allen Charge

See: Allen v. U.S., 164 U.S. 492 (1896)

Court's Responsibility

Jury Instructions: Court's Responsibility - Court Not Witness Should Instruct on the Law

The law (unless foreign) that a jury applies is the law given to it by the judge in his instructions, not the legal opinion offered by a witness, including an expert witness. District judges, rather than witnesses, must explain to juries the meaning of statutes and regulations.

United States v. Chube II, 538 F.3d 693, 701 (7th Cir. 2008); Nationwide Transport Finance v. Cass Information Systems, Inc., 523 F.3d 1051, 1058 (9th Cir. Nos. 08-1839, 08-1860 9 2008); Bammerlin v. Navistar Int'l Transportation Corp., 30 F.3d 898, 901 (7th Cir. 1994).

Jury Instructions: Court's Responsibility – Instructing on Related Offense

In an obstruction of justice case where the defendants were arguing that the police shooting of an individual was lawful and therefore there had been no obstruction of justice when the officers planted a gun next to the body of the deceased individual (an argument rejected by the court), there was an issue as to whether the trial judge should instruct the jury on Florida's fleeing felon law. The court declined to review the issue of whether the trial court's decision to read the fleeing felon statute into evidence and to publish it was required or permissible.

U.S. v. Ronda, Case No. 03-15640 (11th Cir. 7/13/06)

Jury Instructions: Court's Responsibility - Obligation to Instruct Belongs to Court, Not the Lawyers
The trial judge, of course, should have advised the jury that it could consider Payton's evidence under factor (k), and allowed counsel simply to argue the evidence's persuasive force instead of the meaning of the instruction itself. The judge is, the one responsible for instructing the jury on the law, a responsibility that may not be abdicated to counsel.
Warden v. Payton, Case No. 03-1039 (S. Ct. 3/22/05)
Jury Instructions: Court's Responsibility - Court, not Witnesses, Should Explain the Law
Opinion testimony, be it from experts or lay witnesses, regarding the law is generally not admissible. The court, not trial witnesses, should be the one instructing the jury about the law.
Adalman v. Baker, Watts & Co., 807 F.2d 359, 366 (4th Cir. 1986), see also Chiate v. Morris, 1992 WL 197591 (9th Cir. 1992) (unpublished opinion) and memo in U.S. v. Jefferson, 4:01cr13-RH
Jury Instructions: Court's Responsibility - Jurors Must Be Accurately Instructed in the Law
U.S. v. Burgess, 175 F.3d 1261 (11th Cir. 1999)

Defense Instructions

Jury Instructions: Defense Instructions - Affirmative Defense
Eleventh Circuit may have established two different standards: (1) a defendant is entitled to an instruction on an affirmative defense when, taking the evidence in the light most favorable to him, there exists evidence sufficient for a reasonable jury to find in his favor and (2) if there is any foundation in the evidence for the defense.
U.S. v. Alvarado, Case No. 13-14843 (11th Cir. 12/11/15)
Jury Instructions: Defense Instructions - Theory of Defense
A defendant is entitled to have the court instruct the jury on the theory of the defense, as long as it has some basis in the evidence and has legal support.
U.S. v. Nolan, 223 F.3d 1311 (11th Cir. 2000); U.S. v. Orr, 825 F.2d 1537, 1542 (11th Cir. 1987); U.S. v. Dean, Case No. 06-13946 (11th Cir. 5/25/07)
Jury Instruction: Defense Instructions - Defendant's Failure to Testify
When the defendant does not testify the judge must give a no adverse inference jury instruction if the instruction is requested by the defendant.
U.S. v. Burgess, 175 F.3d 1261, n. 2 (1999)

Improper Instructions

Jury Instructions: Improper Instructions – One of Two Alternatives was an Incorrect Statement of the Law
Court, reviewing for plain error, concluded that, though the court correctly instructed on one of two alternate theories, the jury could have rested its decision solely on an impermissible theory of liability and vacated the conviction.
U.S. v. Duldulao, No. 20-13973 (11th Cir. 11/29/23)
Jury Instruction: Improper Instructions – Thumb on the Defendant's Side of the Scales
Case has an example of a requested jury instruction that the court concluded was a request for the district court to put its thumb on the defendant's side of the scales.
U.S. v. Davis, Case No. 13-12436 (11th Cir. 3/5/15)
Jury Instructions: Improper Instructions – Instructions Must Reflect Wording of the Indictment (Constructively Amending Indictment)

Where the trial judge, in a case involving a charge of lying to a government agent, instructed the jury that it can convict if it finds merely that the defendant knew his statement was false, when the indictment specified a particular reason why the defendant knew the statement was false, constructively amended the indictment. In doing so, the instruction violated the defendant's Fifth Amendment right to a grand jury indictment.
U.S. v. Hoover, Case No. 05-30564 (5th Cir. 10/10/06); U.S. v. Moore, Case No. 07-10326 (11th Cir. 4/22/08)

Jury Instructions: Improper Instructions - Permissible Inference Enhances Likelihood of Conviction

When the court instructed the jury, in a cross burning case, that the burning of a cross, by itself, is sufficient evidence from which you may infer intent, the court recognized that the instruction, although only an inference, was likely to skew jury deliberations toward conviction in close cases.
Virginia v. Black, Case No. 01-1107 (S. Ct. 4/7/03)

Jury Instructions: Improper Instructions - Broadening Basis for Conviction

When an erroneous jury instruction allows the jury to convict the defendant for something beyond what was charged in the indictment, the courts view it as a constructive amendment that violates the Fifth Amendment by exposing the defendant to criminal charges not made in the indictment against him. U.S. v. Keller, 916 F.2d 628, 633 (11th Cir. 1990); U.S. v. Edwards, Case No. 06-11643 (11th Cir. 5/5/08)

Jury Instruction: Improper Instructions – One Legitimate Path

Although the jury was instructed incorrectly in violation of the decision in Bailey v. U.S., 116 S. Ct. 501 (1995), leaving one legitimate path to a conviction and one based on the erroneous instruction, the court determined with absolute certainty that the jury based its verdict on the ground on which it was properly instructed.
U.S. v. Wilson, 183 F.3d 1291 (11th Cir. 1999)

Lesser Included Offenses

Jury Instructions: Lesser Included Offenses - Rational Possibility

If the offense is to be included as a lesser, the evidence at trial must be such that a jury could rationally find him guilty of the lesser, yet acquit him of the greater offense.
Carter v. U.S., 530 U.S. 255 (2000)

Jury Instructions: Lesser Included Offenses - Test

One offense is not necessarily included in another unless the elements of the lesser offense are a subset of the elements of the charged offense. The elements test requires a textual comparison of criminal statutes.
Carter v. U.S., 530 U.S. 255 (2000); see also: Schmuck v. U.S., 498 U.S. 705 (1989)

Jury Instructions: Lesser Included Offenses

The defendant is entitled to an instruction on a lesser included offense, if he can show that the charged offense encompasses all of the elements of the lesser offense, and that the evidence would permit the jury to rationally acquit the defendant of the greater offense and convict him of the lesser offense.
U.S. v. Williams, 1197 F.3d 1091 (11th Cir. 12/8/99)

Miscellaneous

Jury Instructions: Miscellaneous – Eye Witness Identification

In a robbery case, trial court modified 11th Circuit Pattern Instructions regarding eye witness identification to include consideration of a difference in race. In her concurring opinion, Judge

Jordan recommended that the 11th Circuit amend its instruction to include consideration of a difference in race.
U.S. v. Daniels, No. 22-10408 (11th Cir. 1/24/24)

Jury Instructions: Miscellaneous – Where Indictment Charged in the Conjunctive But Statute Listed Alternatives in Disjunctive
No error where the statute listed the terms persuade, induce, entice, and coerce in the disjunctive, the indictment listed the terms in the conjunctive, and the court instructed the jury in the disjunctive.
U.S. v. Kincherlow, No. 22-111980 (11th Cir. 12/13/23)
Jury Instructions: Miscellaneous – Flight
See: U.S. v. Ware, No. 21-10539 (11th Cir. 6/1/23)
Jury Instruction: Miscellaneous - Judges Comments That Diminished Government's Burden of Proof
Judge's comments about the kinds of evidence seen on TV shows and that jury shouldn't expect to see it was "unnecessary, unwise, and should have been avoided," but did not merit a new trial.
U.S. v. Grushko, No. 10438 (11th Cir.9/23/22)
Jury Instruction: Miscellaneous – No Need to Instruct Jury About Problems in Cross-Racial Identification
Though, not to say they are never warranted.
U.S. v. King, Case No. 12-16268 (11th Cir. 6/9/14)
Jury Instructions – Miscellaneous – Example of Claim That Instructions to the Grand Jury Violated 5th Amendment
See U.S. v. Knight, Case No. 05-145337 (11th Cir. 7/3/07)
Jury Instructions: Miscellaneous - Resistance to Arrest = Consciousness of Guilt
In some circumstances, the court may instruct that resistance to arrest may be evidence of consciousness of guilt.
U.S. v. Wright, Case No. 03-13359 (11thCir. 12/8/04)
Jury Instructions: Miscellaneous - Co-Defendant's Guilty Plea
For an argument that the standard instruction regarding a co-defendant's guilty plea tells the jury that the co-defendant's guilty plea could, to some degree, be used as evidence of the defendant's guilt.
U.S. v. Prieto, No. 98-5169 (11th Cir. 11/6/00)
Jury Instructions: Miscellaneous - Court Doesn't Have to Answer Jury Questions Directly
Even in this capital case, the trial court, rather than answering a jury's question directly, could refer the jury back to the initial instruction.
Weeks v. Angelone, 528 U.S. 225 (2000)
Jury Instructions: Miscellaneous - Standard for Reversal for Failing to Given an Instruction
The Court will only reverse a conviction because of the district court's failure to give an instruction when the rejected instruction was substantively correct, the actual charge to the jury did not substantially cover the proposed instruction, and the failure to give the request substantially impaired the defendant's ability to present an effective defense.
U.S. v. Martinez, 83 F.3d 371, 376 (11th Cir. 1996); U.S. v. Eaton, 179 F.3d 1328 (11th Cir. 1999); U.S. v. Chastain, 198 F.3d 1338 (11th Cir. 1999); U.S. v. Giradot, Case No. 05-13809 (11th Cir. 3/26/08)

Pattern Instructions

Jury Instructions: Pattern Instructions – Not Binding

Although generally considered a valuable resource, the Pattern Instructions are not binding; Eleventh Circuit case law takes precedence.

U.S. v. Dohan, 508 F.3d 989 (11th Cir. 2007); U.S. v. Gutierrez, Case No. 12-13809 (11th Cir. 1/16/14); U.S. v. Davis, Case No. 13-12436 (11th Cir. 3/5/15)

Jury Instructions: Pattern Instruction - Aren't Precedent

Pattern jury instructions are not precedent and cannot solely foreclose the construction of the necessary elements of a crime as stated in the statute.

U.S. v. Polar, Case No. 03-11160 (11th Cir. 5/13/04); U.S. v. Dean, Case No. 06-13946 (11th Cir. 5/25/07)

Specific Offenses

Jury Instructions: Specific Offenses (Money Laundering)

Before someone may be convicted of money laundering, the jury must find that the laundered funds were proceeds the specified unlawful activity alleged in the indictment. Despite a convincing dissent, the court held it was not error to fail to define for the jury the specified unlawful activity, mail fraud.

U.S. v. Martinelli, Case No. 04-13977 (11th Cir. 7/10/06)

Jury Instructions: Specific Offenses – Witness Tampering

18 USC § 1512(b), which is largely a witness tampering provision, requires corrupt persuasion. In this case involving the conviction of the Arthur Anderson corporation in connection with its dealings with Enron, the court found that the instruction, because it failed to require consciousness of wrongdoing, was invalid and vacated the conviction.

Arthur Anderson, LLP v. U.S., Case No. 04-368 (S. Ct. 5/31/05)

Jury Instructions: Specific Offenses – Death Penalty

Verdict form, which posed two questions: whether the killing was deliberate and whether the defendant posed a continuing threat to others, effectively prevented jurors from considering mitigating evidence, and the Court vacated the death sentence.

Smith v. Texas, Case No. 04-5323 (S. Ct. 11/15/2004).

Jury Instructions: Death Penalty - Conflicting Provisions

Conflicting instructions given in this death penalty case prevented the jury from being able to consider and give effect to evidence of the defendant's mental retardation. Consequently, the court ordered a new trial.

Penry v. Johnson, 121 S. Ct. 1910 (2001)

Willful Blindness

Jury Instructions: Willful Blindness

This Court has cautioned district courts against instruction juries on deliberate ignorance when the evidence only points to either actual knowledge or no knowledge on the part of the defendant. Such an instruction is appropriate only when there is evidence in the record showing the defendant purposely contrived to avoid learning the truth.

U.S. v. Ndiaye, Case No. 04-11283 (11th Cir. 1/6/06)

Jury Instructions: Willful Blindness

See: U.S. v. Ruhe 98-4731 (4th Cir. 8/31/99)

JURY SELECTION

Batson

Jury Selection: Batson - Denial of Peremptory Challenge Subject to Harmless Error Analysis

When a district court erroneously sustains a Batson challenge and seats a juror who should not have been seated, the error is subject to harmless error analysis.

U.S. v. Williams, Case No. 12-15313 (11th Cir. 10/2/13)

Jury Selection: Batson - Prosecutor's Notes

In a death penalty habeas case, which resulted in a new trial based upon a Batson violation, the court found the prosecutor's notes designating those jurors who were black, was strong evidence of discriminatory intent.

Adkins v. Holman, Case No. 11-12380 (11th Cir. 2/27/13)

Jury Selection: Batson - Additional Challenges When Opposing Party Prevails on Baston Challenge?

Court declined to create a bright-line rule about whether disqualified peremptory strikes should be replaced. It is a matter left to the district court's discretion.

U.S. v. Walker, Case No. 05-16756 (11th Cir. 7/6/07)

Jury Selection: Batson - Challenges to White Jurors??

Court upheld the government's Batson challenge when defense counsel used all 12 peremptory challenges against white males. The government used 6 peremptory challenges against minorities, but their challenges were upheld.

U.S. v. Walker, Case No. 05-16756 (11th Cir. 7/6/07)

Jury Selection: Batson - Challenge Must Be Made to Pretextual Reason

Once the prosecutor offers a nondiscriminatory reason for the peremptory challenge, the burden rests with the defense to demonstrate the reason given is a pretext.

U.S. v. Houston, Case No. 04-16524 (11th Cir. 7/19/06)

Jury Selection: Batson - Challenges on the Basis of Family Members Who Have Committed Crimes - Disparate Impact on Blacks

Defendant argued that excusing a juror solely on the basis of whether he or she had a family member who had been convicted of a crime had a disparate impact on blacks and unfairly allowed the government to excuse black jurors from the venire. Court rejected the challenge holding that disparate impact claims are not cognizable under either Equal Protection or Due Process.

U.S. v. Houston, Case No. 04-16524 (11th Cir. 7/19/06)

Jury Selection: Batson - Prima Facie Case

In determining whether the totality of the circumstances shows a pattern that creates an inference of discrimination, the court considers a number of factors: (1) whether the striker struck all of the relevant racial or ethnic group from the venire, or at least as many as the striker had strikes; (2) whether there is a substantial disparity between the percentage of jurors of a particular race or ethnicity struck and the percentage of their representation on the venire; and (3) whether there is a substantial disparity between the percentage of jurors of one race [or ethnicity] struck and the percentage of their representation on the jury.

U.S. v. Ochoa-Vasquez, Case No. 03-14400 (11th Cir. 10/20/05)

Jury Selection: Batson - Inconsistent Justification

If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third step.

Miller-El v. Dretke, Case No. 03-9659 (S. Ct. 6/13/05), U.S. v. Houston, Case No. 04-16524 (11th Cir. 7/19/06)

Jury Selection: Batson - Inference of Discrimination Establishes Prima Facie Showing

A defendant establishes a prima facie case of discrimination under Batson by producing evidence sufficient to permit trial judge to draw an inference that discrimination has occurred. The party raising the objection need not show it is more likely than not that discrimination has occurred.

Johnson v. California, Case No. 04-6964 (S. Ct. 6/13/05)

Jury Selection: Batson - Presence of A Black Juror Isn't Dispositive

That one black served on the jury, while a significant fact that may be considered as circumstantial evidence, does not itself bar a finding of racial discrimination.

Bui v. Haley, Case No. 00-15445 (11th Cir. 2/19/03)

Jury Selection: Batson - Prosecutor's Failure to Explain Every Challenge

On appeal, the failure of the prosecutor to explain every strike of black jurors will not necessarily prevent a prosecutor from successfully rebutting a prima facie case of race discrimination, where there is sufficient circumstantial evidence from which the court can deduce a race-neutral reason.

Bui v. Haley, Case No. 00-15445 (11th Cir. 2/19/03)

Jury Selection: Batson - Defendant Need Not Be of the Same Race of The Challenged Jurors

A criminal defendant can bring a challenge to the peremptory striking of jurors based on race whether or not he is of the same race as the jurors who are struck.

Bui v. Haley, Case No. 00-15445 (11th Cir. 2/19/03)

Jury Selection: Batson - Good Faith Assertions Aren't Enough

Prosecutor's assertions that his challenges were not racially motivated were not, by themselves, sufficient to rebut claim of racial motivation.

Bui v. Haley, Case No. 00-15445 (11th Cir. 2/19/03)

Jury Selection: Batson - Judge's Determination of Prosecutor's Credibility

[T]he critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike. At this stage, implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination. In that instance the issue comes down to whether the trial court finds the prosecutor's race neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor, by how reasonable, or how improbable the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.

Miller-El v. Cockrell, Case No. 01-7662 (S. Ct. 2/25/03)

Jury Selection: Batson - Prima Facie

The mere fact of striking a juror or a set of jurors of a particular race does not necessarily create an inference of racial discrimination. Instead, the number of persons struck takes meaning when only coupled with other information such as the racial composition of the venire, the race of others struck, or the voir dire of those who were struck compared to the answer of those who were not struck.

U.S. v. Novaton, 271 F.3d 968 (11th Cir. 2001)

Jury Selection: Batson - Prima Facie Showing

A pattern of strikes against black jurors might give rise to an inference of discrimination as could questions and statements during voir dire examination and in the exercise of challenges.

U.S. v. Allen-Brown, 243 F.3d 1293 (11th Cir. 2001)

Jury Selection: Batson - Inattentiveness is Valid Race Neutral Reason

A prospective juror's inattentiveness is a proper race-neutral reason for using a peremptory strike.
U.S. v. Cordoba-Mosquera, 212 F.3d 1194 (11th Cir. 2000)

Jury Selection: Batson - Exercise of Peremptory Challenges Based on Race

In determining whether peremptory strikes have been applied in a discriminatory manner, claimant must make prima facie showing that challenges have been exercised on basis of race. If that showing is made, burden shifts to party exercising the challenge to articulate a race neutral explanation. Finally, the court must determine whether claimant has carried his burden of proving purposeful discrimination. Unless discriminatory intent is inherent in party's explanation, reason offered should be deemed race-neutral. The explanation need not be persuasive or even plausible. It simply must be race-neutral and honest.
U. S. v. Webster, 162 F.3d 308 (5th Cir. 1998) (5th Cir. 1998); Dudley v. Wal-Mart, 166 F.3d 1317 (11th Cir. 1999); U.S. v. Allen-Brown, 243 F.3d 1293 (11th Cir. 2001); U.S. v. Novaton, 271 F.3d 968 (11th Cir. 2001); U.S. v. Brown, Case No. 01-10323 (11th Cir. 7/31/02); U.S. v. Houston, Case No. 04-16524 (11th Cir. 7/19/06)

Jury Selection: Batson - Even Inconsistency Passes the Test

Wal-Mart says that the trial court allowed a juror to be struck who shared a similar trait with another juror who was not struck by Plaintiffs. This circumstance does not automatically prove discrimination or trial court error particularly where, as here, Wal-Mart did not raise this objection at the time of the Batson challenge.
Dudley v. Wal-Mart, 166 F.3d 1317 (11th Cir. 1999)

Jury Selection: Batson - Discrimination Based on Gender

Prohibited, but has the same standard as does Batson.
J.E. B. v. Alabama, 114 S. Ct. 1419 (1994); U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99)

Jury Selection: Batson - Excuse Doesn't Need to Make Sense

Aa legitimate reason is not a reason that makes sense, but a reason that does not deny equal protection.
U.S. v. Tokars, 95 F.3d 1520 (11th Cir. 1990); U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99)

Challenge to Venire

Jury Selection: Challenge to Venire – Jury Selection and Service Act

Must be made pursuant to the Jury Selection and Service Act., 28 USC § 1867.
U.S. v. Dean, Case No. 06-13946 (11th Cir. 5/25/07)

Jury Selection: Challenge to Venire

With the defendant having failed to establish a 10% disparity between the percentage of blacks in population eligible for jury service and percentage in the pool, various failures of the clerk, including the granting of virtually all deferral requests, which created a disproportionally white deferred juror pool, did not amount to a violation of the fair cross-section requirement of the 6th Amendment.
U.S. v. Carmichael, Case No. 07-11400 (11th Cir. 3/5/09)

Fair Cross Section Requirement

Jury: Selection - Fair Cross Section Requirement

To establish a prima facie violation of the fair-cross-section requirement, the defendant must prove that (1) a group qualifying as distinctive (2) is not fairly and reasonably represented in jury venires, and (3) systematic exclusion in the jury-selection process accounts for the underrepresentation.
Berghuis v. Smith, Case No. 08-1402 (S. Ct. 1/20/10)

Miscellaneous

Jury Selection: Miscellaneous – No Error in Denying Request to Show Unconscious Bias Video

The trial court did not abuse its discretion in denying the defense request to play a video from the Western District of Washington about unconscious bias.

U.S. v. Caldwell, No. 19-15024 (11th Cir. 8/16/23)

Jury Selection: Miscellaneous – Vicinage Clause

The Vicinage Clause of the Constitution concerns jury composition, not the place where a trial may be held, and narrows the place where trial is permissible by specifying that a jury must be drawn from "the State and district wherein the crime shall have been committed."

Smith v. U.S., 143 S. Ct 1594 (2023)

Jury Selection: Miscellaneous - Exclusion of Police, Firemen, and Public Officers

The 1968 Jury Selection and Service Act, 28 USC 1863, requires the exclusion of members of the fire or police departments of any State as well as public officers in the executive, legislative, or judicial branches of any state or subdivision of a state.

U.S. v. Henderson, Case No. 04-11545 (11thCir. 5/23/05)

Jury Selection: Miscellaneous - Change of Venue Based on Pretrial Publicity

Prominence does not necessarily produce prejudice, and juror impartiality, we have reiterated, does not require ignorance.

Skilling v. United States, Case No. 08-1394 (S. Ct. 6/24/10)

Jury Selection: Miscellaneous - Despite Juror Bias No Need for Court to Excuse Juror for Cause

Despite the fact that the juror was related to a state witness, and that juror said she assumed her relative's testimony would be truthful because she knew her relative was honest, the Circuit Court held that because of the usual meaningless rehabilitation about being fair, the trial court did not abuse its discretion in denying the challenge for cause.

U.S. v. Rhodes, No. 97-6853 (11th Cir 6/4/99)

Voir Dire

Jury Selection: Voir Dire – No Error in Denying Request for Questions About Unconscious Bias

U.S. v. Caldwell, No. 19-15024 (11th Cir. 8/16/23)

Jury Selection: Voir Dire - Open Questions Produce More Meaningful Information

District court opted for open-ended questions because they would produce more meaningful information.

Skilling v. United States, Case No. 08-1394 (S. Ct. 6/24/10)

Jury Selection: Voir Dire - Compound Questions

A defendant's Sixth Amendment right to an impartial jury was violated when the trial judge insisted on using compound questions during voir dire that asked jurors not to reveal a possible source of bias unless they, themselves, concluded it would have an impact on their ability to fairly assess the evidence.

U.S. v. Littlejohn, Case No. 05-3081 (D.C. Cir. 6/19/07)

Jury Selection: Voir Dire - Prejudicial Revelations Made by Venire During Voir Dire

Where statements made by potential jurors at voir dire raise the specter of potential actual prejudice on the part of remaining panel members, specific and direct questioning is necessary to ferret out those jurors who would not be impartial.

U.S. v. Chastain, 198 F.3d 1338 (11th Cir. 1999)

Jury Selection: Voir Dire - Exclusion of Defendant From Voir Dire Conducted at Bench
Although the trial court likely did err in excluding the defendant from that portion of the questioning of the jurors that took place at the bench, the court found the error to be harmless.
U.S. v. Cuchet, No. 97-4794 (11th Cir. 12/14/99)
Jury Selection: Voir Dire - Absent Consent from the Defendant, Magistrate May Not Conduct
Although defense counsel stated he had no objection to the magistrate conducting voir dire, because there was no representation made by counsel that he had informed the defendant of his choice to have the district judge conduct voir dire, and no representation that the defendant personally did not object, the Court remanded the case for determination of whether the defendant had consented.
U.S. v. Maragh, No. 98-4562 (11th Cir. 9/21/99)

MENS REA

Mens Rea: Three Basic Choices
The law of mens rea offers three basic choices: purpose, which is the most culpable, knowledge, where the defendant is aware that a result is practically certain to follow, and recklessness where the defendant consciously disregards a substantial risk.
Counterman v. Colorado, No. 22-138 (S. Ct. 6/27/23)
Mens Rea: Requires Only Knowledge of the Facts
Mens rea requires only a knowledge of the facts that makes the defendant's conduct unlawful. It does not require that the defendant know his conduct to be unlawful.
U.S. v. Dominguez, Case No. 07-13405 (11th Cir. 10/31/11)
Mens Rea: Presumption
A presumption exists in favor of a mens rea requirement.
U.S. v. Dominguez, Case No. 07-13405 (11th Cir. 10/31/11)
Mens Rea: Presumption
The presumption of scienter requires a court to read into a statute only that mens rea which is necessary to separate wrongful conduct from otherwise innocent conduct.
Carter v. U.S., 530 U.S. 255 (2000)
Mens Rea – Omission from Statute
The fact that a statute does not specify any required mental state does not mean that none exists. Courts generally interpret criminal statutes to include broadly applicable scienter requirements even where the statute by its terms does not contain them.
Elonis v. U.S., Case No. 13-983 (S. Ct. 12/1/14)

MENTAL HEALTH

Competency

Mental Health: Competency – Statements Made During Court Ordered Mental Health Exam
Statements made during court-ordered mental health exam inadmissible at trial.
Estelle v. Smith, 451 U.S. 454 (1981)
Mental Health: Competency - Trial Court's Responsibility
The trial court must apply adequate procedures to ascertain whether the defendant is competent to proceed to trial or the entry of a guilty plea and must do se even in the absence of a demand by the defendant.

U.S. v. Wingo, Case No. 13-14435 (11th Cir. 6/16/15)

Mental Health: Competency - Commitment of Those on Pretrial Release for a Competency or Sanity Eval

Absent a showing of a compelling governmental interest, courts may not commit someone on pretrial release to the custody of the Attorney General for an evaluation for competency or sanity at the time of the offense.

U.S. v. Newchurch, 807 F.2d 404 (5th Cir. 1986); United States v. Deters, 143 F.3d 577 (10th Cir. 1998); U.S. v. Krauth, 2010 WL 428969 (N.D. Iowa 2010); U.S. v. Weed, 184 F.Supp.2d 1166 (N.D. Okl. 2002); U.S. v. Borges, 91 F.Supp.2d 477 (D. Puerto Rico 2000); see also RPM Motion to Reconsider and Vacate Order of Commitment for Psychiatric Evaluation filed in U.S. v. LaMarche, Case No. 4:11cr61.

Mental Health: Competency - Forced Medication to Restore Competency

See U.S. v. Diaz, Case No. 09-15421 (11th Cir. 1/12/11)

Mental Health: Competency - Generally

See Battle v. U.S., Case No. 03-14908 (11th Cir. 8/10/05)

Mental Health: Competency - Self Induced Incompetency

Court concluded that because the defendant brought about his incompetency by refusing to eat or drink, he forfeited his right to be tried while competent.

Moore v. Campbell, Case No. 02-11302 (11th Cir. 9/15/03)

Mental Health: Competency - Standard

The standard for mental competency to stand trial is whether a defendant has sufficient present ability to consult with his lawyer with a reasonable degree of understanding - and whether he has a rational as well as factual understanding of the proceedings against him. (Quoting Dusky v. U.S. 80 S. Ct. 788, 789 (1960))

Moore v. Campbell, Case No. 02-11302 (11th Cir. 9/15/03); U.S. v. Bradley, Case No. 06-14934 (11th Cir. 6/29/11); U.S. v. Wingo, Case No. 13-14435 (11th Cir. 6/16/15)

Mental Health: Competency - Commitment After Being Found Incompetent

Under 18 USC § 4241, once the Court finds the defendant incompetent to stand trial, the Court must commit the defendant to the custody of the Attorney General. Due process challenges were rejected, despite the fact that the issue was that of mental retardation.

U.S. v. Shawar, 865 F.2d 856 (7th Cir. 1989)

Insanity

Mental Health: Insanity – "Severe" Mental Disease or Defect

Under the Insanity Defense Reform Act of 1984, the mental disease or defect must be "severe," meaning it must be capable of causing the requisite mental state, that the defendant was unable to appreciate the nature and quality of the wrongfulness of his acts. A mental condition that the defendant voluntarily induces does not qualify.

U.S. v. Turner, Case No. 20-12364 (11th Cir. 3/1/23)

Mental Health: Insanity - Defense Inapplicable if Mental State Caused in Part by Intoxication

Knott v. U.S., 894 F.2d 1119 (9th Cir. 1990)

Mental Health: Insanity - Arizona's Limited Test

Due process does not prohibit Arizona's use of insanity test stated solely in terms of capacity to tell whether an act charged as a crime was right or wrong. Such a test necessarily includes the second prong of the McNaughten test, that of understanding the nature of one's actions.

Clark v. Arizona, Case No. 05-5966 (S. Ct. 6/29/06)

Mental Health: Insanity - Convincing Clarity Required for Jury Instruction
The defendant is entitled to a jury instruction on insanity when the evidence would allow a reasonable jury to find that insanity has been shown with convincing clarity.
U.S. v. Dixon, No. 98-10371 (5th Cir. 8/16/99)
Mental Health: Insanity - Hospitalized NGBRI Individuals Entitled to Counsel
A person who has been hospitalized following his acquittal by reason of insanity has a right to counsel for the purpose of moving for a hearing to review his confinement.
U.S. v. Budell, No. 98-30012 (9th Cir. 8/17/99)
Mental Health: Insanity - Defense and Subsequent Detention (In General)
See: U.S. v. Wattleton, 269 F.3D 1184 (11th Cir. 2002)

Miscellaneous

Mental Health: Miscellaneous - Defendant May Be Competent to Proceed, But Not Well Enough to Represent Himself
Where a defendant is found competent to stand trial, but not well enough to represent himself, a court may require that the defendant be represented by counsel.
Indiana v. Edwards, Case No. 07-208 (S. Ct. 6/19/08)
Mental Health: Miscellaneous - Limiting Mental Health Testimony to Insanity Defense
Despite a convincing dissent by Justice Kennedy and a complicated parsing of the facts and law, the Court held that Arizona did not violate due process in restricting consideration of defense evidence of mental illness and incapacity to its bearing on a claim of insanity, thus eliminating its significance directly on the issue of the mens rea of the crime charged.
Clark v. Arizona, Case No. 05-5966 (S. Ct. 6/29/06)
Mental Health: Miscellaneous - Most Prisoners Are Sociopaths
U.S. v. Prevo, Case No. 04-15310 (11th Cir. 1/11/06)
Mental Health: Miscellaneous - Govt. Doctors More Credible Because of Longer Observation
The trial court found the diagnosis of the government doctors more credible because, in part, those doctors testified that it was more difficult to diagnose schizophrenia in an outpatient setting as the defense experts were required to do.
Battle v. U.S., Case No. 03-14908 (8/10/05)

MISCELLANEOUS

Miscellaneous – Expungement
Although recognizing there might be an exception for constitutional expungement in the case of a unlawful conviction or arrest, the court held that district courts lack jurisdiction over requests for expungement.
U.S. v. Batmasian, No. 21-12800 (11th Cir. 5/3/23)
Miscellaneous - Toll of Drunk Driving
In 2011 alcohol-impaired driving crashes killed 9,878 people, an average of one fatality every 53 minutes.
Missouri v. McNeely, Case No. 11-1425 (S. Ct. 2013)
Miscellaneous - Sovereign Citizen Claim
For an opinion that describes the conduct of those making the sovereign citizen claim and a listing of cases rejecting the claim see:
U.S. v. Benabe, 654 F.3d 753, 761-767 (7th Cir. 2011); U.S. v. Perkins, 2013 WL 3280716 (N.D. Ga. July 23, 2013)

Miscellaneous: Conviction Under an Invalid Law
An offense created by an unconstitutional law is not a crime. A conviction under such a law is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment. If a law is invalid as applied to the criminal defendant's conduct, the defendant is entitled to go free.
Bond v. U.S., Case No. 09-1227 (S. Ct. 6/16/11)
Miscellaneous: Cell Phone Tower Information to Show Someone's Whereabouts
See: U.S. v. Sanchez, Case No. 06-15143 (11th Cir. 10/30/09)
Miscellaneous: Post-Conviction Access to DNA Evidence
Conceivably, there is, pursuant to 42 U.S.C. § 1983, there is a post-conviction right of access to biological evidence for DNA testing. Not in this case, though.
Grayson v. King, Case No. 05-15725 (11th Cir. 8/18/06)
Miscellaneous: All Writs Act (29 USC § 1651)
General discussion.
U.S. v. Machado, Case No. 05-11420 (11th Cir. 10/2/06)
Miscellaneous: Corpus Delicti
It isn't entirely clear whether the corpus delecti rule exists in federal court.
See Fallada v. Dugger, 819 F.2d 1564, 1570 (11th Cir. 1987), Schwab v. Crosby, 451 F.3d 1308 (11th Cir. Case No. 05-14253 (6/15/06 11th Cir. 2006)
Miscellaneous: Definition of Inference
An inference is generally understood to be a conclusion reached by considering other facts and deducing a logical consequence from them.
Johnson v. California, Case No. 04-6964 (S. Ct. 6/13/05)
Miscellaneous: Federal Preemption
In a case involving the state prosecution of commercial airline pilots for operating an aircraft while intoxicated, the court discussed the principles applicable to a challenge to a state prosecution on the basis of federal preemption.
Hughes v. Attorney General of Florida, Case No. 03-14122 (11th Cir. 7/21/04)
Miscellaneous: Aliens Make Up 25% of the Federal Prison Population
Moore v. Kim, Case No. 01-1491 (S. Ct. 4/29/03)
Miscellaneous: Federal Prosecutions = .4% of Total
As represented in a 1998 report, federal prosecutions represented only about 0.4% of the total number of criminal prosecutions in federal and state courts.
Apprendi v. New Jersey, 120 S. Ct 2348, 2395 (2000) (O'Connor, dissenting)
Miscellaneous: Government Kidnapping
Nothing wrong with tricking defendant into crossing into Ecuador from Columbia, where he was arrested by DEA and Ecuadorian police and delivered to the United States for trial. Offense was that of kidnaping two DEA agents from a hotel room in Columbia.
U.S. v. Duarte-Acero, Case No. 01-13457 (11th Cir. 7/12/02)
Miscellaneous: Continuing Offense
A continuing offense is one that is not complete upon the first act, but instead continues to be perpetrated over time. In this instance, the court concluded the bank fraud was not a continuing offense.
U.S. v. De La Mata, 266 F.3d 1275 (11th Cir. 2001)

MISCELLANEOUS OFFENSES

Fraudulent Conduct

Miscellaneous Offenses: Fraudulent Conduct - Passing of a False or Fictitious Instrument
Passing entirely fake checks made using blank check stock and check-writing equipment amounts to a violation of 18 U.S.C. § 514**.**
U.S. v. Williams, Case No. 13-13042 (11th Cir. 6/22/15)
Miscellaneous Offenses: Fraudulent Conduct - Theft of Govt. Funds (18 U.S.C. §666) - Agent
An agent, for purposes of 18 U.S.C. § 666(a)(1)(B) need be only an employee of the government receiving the federal funds.
U.S. v. Keen, Case No. 09-16027 (11th Cir. 5/5/12)
Miscellaneous Offenses: Fraudulent Conduct - Obstructing Official Proceeding by Hiding Assets in a Forfeiture Proceeding
To prove the crime of obstructing an official proceeding by disposing of and hiding assets involved in a forfeiture proceeding (18 U.S.C. § 1512(C)(2), the Government must show the defendant knew of the forfeiture proceeding. In his dissent, Judge Luck disagreed.
U.S. v. Friske, Case No. 09-14915 (11th Cir. 5/18/11)

Miscellaneous

Miscellaneous Offenses: Miscellaneous – Witness Tampering
Court vacated the defendant's conviction of witness tampering under 18 U.S.C. § 1512(b)(3). Unaware his case was being investigated by federal authorities, the defendant made efforts to convince the victim to recant. While the defendant had the intent to mislead law enforcement, the government failed to show there was a reasonable likelihood the communication wou ld have made it to a federal officer.
U.S. v. Gatlin, No. 19-14969 (11th Cir. 1/5/24).
Miscellaneous Offenses: Miscellaneous – Impeding a Law Enforcement Officer During a Civil Disorder
Court upheld the validity of 18 U.S.C. § 231(a)(3) against a facial challenge alleging the statute (1) exceeded Congress's power to legislate under the Commerce Clause, (2) was substantially overbroad in its regulation of activities protected by the First Amendment, (3) was a content-based restriction of expressive activities in violation of the First Amendment, and (4) was vague in violation of the Fifth Amendment's Due Process Clause.
U.S. v. Pugh, No. 21-13136 (11th Cir. 1/18/24)
Miscellaneous Offenses: Miscellaneous – Commission of a Felony While on Pretrial Release
Though its decision conflicts with those in two other circuits, the court held a violation of 18 U.S.C. § 3147 for commission of a felony while on pretrial release, is a separate offense for which the court can impose a consecutive sentence of up to 10 years. Apprendi requires a jury verdict of the sentence exceeds the maximum penalty for the underlying offense.
U.S. v. Perez, No. 22-10267 (11th Cir. 11/14/23)
Miscellaneous Offenses: Miscellaneous – Filing False Liens
In a long en banc decision that includes the vigorous dissent of several of the judges, the court found the crime of filing a false lien against a government official, 18 U.S.C. § 1521, includes only current officials.
U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)
Miscellaneous Offenses: Miscellaneous - Misprision of a Felony
To prove the offense, the Government must show (1) the principal committed and completed the alleged felony, (2) the defendant had full knowledge of that fact, (3) the defendant failed to notify authorities, (4) and the defendant took steps to conceal the crime.

U.S. v. Brantley, Case No. 13-12776 (11th Cir. 10/9/15) (Martin, J. dissent)
Miscellaneous Offenses: Miscellaneous - Failure to Pay Child Support
Government must prove the defendant knew the child lived out of state.
U.S. v. Fields, Case No. 06-13784 (11th Cir. 9/21/07)
Miscellaneous Offenses: Miscellaneous - Lacey Act (Regulations Sufficient)
The court rejected the defense argument that the Lacey Act was intended to include only foreign statutes and held that the violation of any foreign regulation, whether or not enacted as a statute, will support a conviction under the Lacey Act.
U.S. v. McNab, Case No. 01-15148 (11th Cir. 5/29/03)
Miscellaneous Offenses: Miscellaneous - Travel Act, 18 USC § 1952 (Elements)
For the elements of the offense of interstate transportation in aid of racketeering see:
U.S. v. James, No. 97-9212 (11th Cir 4/27/00)
Miscellaneous: Miscellaneous - Foreign Sovereign Immunities Act (Application to Criminal Cases?)
While it is clear the Act applies to civil actions, there is a split among the jurisdictions as to whether the Act affects the jurisdiction of federal court in criminal actions.
U.S. v. Campa, Case No. 03-11087 (11th Cir. 6/4/08)

Murder for Hire

Miscellaneous Offenses: Murder for Hire - Using Interstate Commerce Facilities to Effect Murder-For-Hire - Abandonment Not a Defense
Abandonment is not a defense. The crime is completed once the telephone or other facility of interstate commerce is used in the scheme.
U.S. v. Preacher, Case No. 10-10492 (11th Cir. 1/28/11)
Miscellaneous Offense: Murder for Hire - Phone Call Made by Law Enforcement
Answering a telephone call made under the auspices of law enforcement suffices for purposes of establishing the use of an instrumentality of interstate commerce. The one exception would be if the law enforcement made the phone calls to contrive the interstate nexus.
U.S. v. Covington, Case No. 08-10513 (11th Cir. 4/22/09)
Miscellaneous Offenses: Murder for Hire -Use of A Facility in a *Manner* That Implicates Interstate Commerce
In a murder for hire case, decided under the former version of 18 USC § 1958(a), the court declined to decide whether the statute actually requires that the facility (cell phone in this case) be used in interstate commerce, since the defendant's call did travel out of state. The court concluded that the statue did not require the defendant placing the call know the call traveled out of state. (The current version of the statute makes it a crime to use any facility of interstate commerce, and, thus, the phone call doesn't even have to travel out of state.)
U.S. v. Drury, Case No. 02-12929 (11th Cir. 1/18/05)

Threats or Violent Conduct

Miscellaneous Offenses: Threats or Violent Conduct - Transmitting a Threatening Communication (General Intent Offense)
The crime of transmitting a threatening communication, 18 U.S.C. § 875(c) is a general intent offense that requires the Government to show (1) the defendant transmitted a communication in interstate of foreign commerce, (2) the defendant transmitted the communication knowingly, and (3) the communication would be construed by a reasonable person as a serious expression of an intent to inflict bodily harm or death.
U.S. v. Martinez, 736 F.3d 981 (11th Cir. 2013); 800 F.3d 1293 (11th Cir. 2015)

Miscellaneous Offenses: Threats or Violent Conduct - Assault of Govt. Employee (18 U.S. C. § 111) - Lesser Offense
Simple assault was not a lesser included offense because there was physical contact.
U.S. v. Gutierrez, Case No. 12-13809 (11th Cir. 1/16/14); U.S. v. Siler, Case No. 12-14211 (11th Cir. 11/13/13)
Miscellaneous Offenses: Threats or Violent Conduct - Killing with Intent to Prevent Communication to Federal Law Enforcement Officer
To prove the crime of killing another person to prevent that person from communicating information about a federal crime to a federal law enforcement officer (18 U.S.C. § 1512(a)(1)(C), the Government must show that there was a reasonable likelihood that a relevant communication would have been made to a federal officer.
Fowler v. U.S., Case No. 10-5443 (S. Ct. 3/29/11); U.S. v. Chafin, No. 14-10160 (11th Cir. 10/28/15)
Miscellaneous Offenses: Threats or Violent Conduct - Hoax Threat to Use Weapon of Mass Destruction
18 USC § 2332a(a)(3) inapplicable to hoax threats.
U.S. v. Evans, Case No. 05-14498 (11th Cir. 2/16/07)

MONEY LAUNDERING

§ 1956

Concealment

Money Laundering: § 1956 – Concealment (Evidence of Purposeful Concealment)
Structuring the transaction in a way to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; and a series of unusual financial moves culminating in the transaction have all sufficed to show the requisite purposeful concealment.
U.S. v. Naranjo, Case No. 08-13814 (11th Cir. 3/2/11)
Money Laundering: § 1956 – Concealment (Depositing Check with Fictitious Payee Didn't Prove Intent to Conceal)
A real estate swindler's disbursement of the proceeds of a fraudulently obtained settlement check into bank accounts held by himself and his accomplices in their own names did not amount to concealment of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(I). Although the check was made payable to a fictitious person, the court decided the traceability of the endorsement that the defendant used to deposit the check kept the government's evidence from satisfying the element of the money-laundering statute that requires a transaction be designed in whole or in part . . . to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.
U.S. v. Adefehinti, Case No. 04-3080 (D.C. Cir. 12/18/07)
Money Laundering: § 1956 – Concealment (More Than the Transfer from One Account to Another)
A money laundering concealment conviction pursuant to § 1956 requires evidence of something more than a simple transfer of funds between two accounts, each bearing the parties' correct name. There must be some evidence that the funds are more concealed after the transaction is completed than before.
U.S. v. Johnson, 440 F.3d 1286 (11th Cir. 2006)
Money Laundering: § 1956 - Concealment

Merely engaging in a transaction with money whose nature had been concealed through other means is not in itself a crime. If transactions are engaged in for present personal benefit, and not to create the appearance of legitimate wealth, they do not violate the money laundering statute.
U.S. v. Johnson, 440 F.3d 1286 (11th Cir. 2006)

Money Laundering: § 1956 - Concealment (Payments for Personal Benefit Out of Already Laundered Money)

Although, acknowledging that payments for personal benefit out of previously laundered proceeds do not themselves constitute money laundering unless they are designed to conceal the nature or source of the money, the Court held the defendant's use of drug money to pay his lawyer's fee amounted to money laundering.
U.S. v. Magluta, No. 03-10694 (11th Cir. 7/27/05)

Money Laundering: § 1956 – Concealment (Sufficiency)

Court found there was insufficient evidence to show the defendant knew his activities were designed for the requisite concealment purpose because he kept the money in accounts that had his name on it and because he could not reasonably have anticipated receiving any marginal increase in secrecy by moving the money from one account with his name on it to another account with his name on it in the same bank.
U.S. v. Blankenship, Case No. 01-17064 (11th Cir. 8/26/04)

Money Laundering: § 1956 – Concealment (Elements)

Government has to prove: (1) that the defendant conducted or attempted to conduct a financial transaction; (2) that the transaction involved the proceeds of a statutorily specified unlawful activity; (3) that the defendant knew the proceeds were from some form of illegal activity; and (4) that the defendant knew a purpose of the transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds.
U.S. v. Tarkoff, 242 F.3d 991 (11th Cir. 2001)

Conspiracy

Money Laundering: § 1956 – Conspiracy (Overt Act Not Required)

Where the defendant was charged with conspiracy to commit money laundering in violation of 18 USC § 1956(h), the court found that an overt act was not necessary for a conviction.
U.S. V. Hall, Case No. 01-14746 (11th Cir. 11/10/03); aff'd, Whitfield v. U.S., Case No. 03-1293 (U.S. 1/11/05)

Miscellaneous

Money Laundering: § 1956 – Miscellaneous (Not a Continuing Offense)

As money laundering is not a continuing offense, the government could charge the defendant with a count of money laundering, not just for the initial deposit of the illegal funds, but for each subsequent transaction involving the illegal funds.
U.S. v. Martin, Case No. 02-10676 (11th Cir. 2/6/03)

Money Laundering: § 1956 – Miscellaneous (Transactions Outside U.S.)

Even, though, the transactions occurred wholly outside of the U.S. the court affirmed the defendant's conviction for violating 18 USC § 1956(a)(1)(B)(i).
U.S. v. Tarkoff, 242 F.3d 991 (11th Cir. 2001)

Money Laundering: § 1956 – Miscellaneous (Not a Continuing Offense)

Can apparently charge each transaction.
U.S. v. Kramer, 73 F.3d 1067, 1072 (11th Cir. 1996)

Promotion

Money Laundering: § 1956 – Promotion (Proceeds)

The term proceeds as it is used in 18 U.S.C. § 1956(a)(1) means profits rather than receipts.
U.S. v. Santos, Case No. 06-1005 (6/2/08)

Money Laundering: § 1956 – Promotion (Elements)

Under 1956(a)(1)(A)(i) the government must prove, among other things, that the defendant conducted the financial transaction with the intent to promote the carrying on of the specified unlawful activity. In this home invasion robbery case, the act of selling the stolen jewelry qualified. In the words of the court, the sale was designed to promote the Hobbs Act conspiracy by turning jewelry into cash - the ultimate objective of the conspiracy. Thus, the financial transaction was an act in furtherance of the ongoing conspiracy offense. The court declined to decide whether a promotion includes both past and future unlawful conduct, or future unlawful conduct only.
U.S. v. Carcione, 272 F.3d 1297 (11th Cir. 2001)

Money Laundering: § 1956 – Promotion (Elements)

To convict a defendant on a substantive Section 1956(a)(1)(A)(i) promotion charge, the Government bears the burden of proving beyond a reasonable doubt that: (1) the defendant conducted or attempted to conduct a financial transaction; (2) the defendant knew the property involved in the transaction represented the proceeds of unlawful activity; (3) the property involved was in fact the proceeds of the specified unlawful activity; and (4) the defendant conducted the financial transaction with the intent to promote the carrying on of the specified unlawful activity.
U.S. v. Calderon, 169 F.3d 718 (11th Cir. 1999); U.S. v. Williamson, Case No. 02-12765 (11th Cir. 7/30/03)

Money Laundering: § 1956 – Promotion (Sufficiency of Evidence)

U.S. v. Calderon, 169 F.3d 718 (11th Cir. 1999)

Money Laundering: § 1956 - Promotion

A defendant may not be convicted of promotion money laundering where the proceeds of some relatively minor fraudulent transactions are used to pay the operating expenses of an otherwise legitimate business enterprise. On the other hand, when the business as a whole is illegitimate, even individual expenditures that are not intrinsically unlawful can support a promotion money laundering charge.
U.S. v. Martinelli, Case No. 04-13977 (11th Cir. 7/10/06)

Transportation

Money Laundering: § 1956 - Transportation

18 U.S.C. § 1956 prohibits the transportation of money designed to conceal and disguise the source of the funds. To prove its case the government must show more than the defendant merely hid the money during transport.
Cuellar v. U.S., Case No. 06-1456 (S. Ct. 6/2/08)

§1957

Money Laundering: Money Used to Secure Legal Representation

District court correctly dismissed money laundering charge against a Miami lawyer whose fees were allegedly paid with proceeds of criminally derived property. The plain language of 18 U.S.C. § 1957(f)(1) exempts criminally derived proceeds used to secure legal representation in criminal cases.
U.S. v. Velez, Case No. 09-10199 (11th Cir. 10/26/09)

NEW TRIAL

New Trial: Rule 33 Time Limit Isn't Jurisdictional
Rule 33 (Motion for New Trial) time limit of 7 days isn't jurisdictional. Accordingly, where the government failed to object in the trial court to a motion filed after 7 days, the government forfeited that defense.
Eberhart v. U.S., Case No. 04-9949 (S. Ct. 10/31/05)
New Trial: Court Should Conditionally Rule When Granting a JOA
Rule 29(a) of the Federal Rules of Criminal Procedure requires the trial court to conditionally rule on any motion for a new trial if it grants a motion for a judgment of acquittal.
U.S. v. Miranda, Case No. 04-15920 (11th Cir. 9/14/05)
New Trial: Weighing Evidence
In considering a motion for a new trial, the court may weigh the evidence and consider the credibility of witnesses. The Rule 29 and Rule 33 standards are not identical. In a proper case - a case in which the evidence of guilt although legally sufficient is thin and marked by uncertainties and discrepancies - there is room between the two standards for a district court to reweigh the evidence and re-evaluate the credibility of witnesses.
Butcher v. U.S., Case No. 02-17033 (11th Cir. 5/5/04); U.S. v. Moore, No. 21-12291 (11th Cir. 8/11/23)
New Trial: Newly Discovered Evidence
To qualify as newly discovered (1) the evidence must be discovered following the trial; (2) the movant must show due diligence to discover the evidence; (3) the evidence must not be merely cumulative; (4) the evidence must be material to issues before the court; and (5) the evidence must be of such a nature that a new trial would probably produce a new result.
U.S. v. Hall, 854 F.2d 1269, 1271 (11th Cir. 1988); U.S. v. Pope, 132 F.3d 684, 688 (11th Cir. 1998); U.S. v. Thompson, Case No. 04-12218 (11th Cir. 9/1/05)

OBSTRUCTION OF JUSTICE

Obstruction of Justice: False Testimony
False testimony can provide the basis for a conviction under 18 USC § 1503 so long as it had the natural and probable effect of interfering with the administration of justice, even, though, the defendant's conduct may not have actually obstructed justice.
U.S. v. Johnson, Case No. 06-13564 (11th Cir. 5/11/07)
Obstruction of Justice: Misleading Information *Likely* to Be Transferred to Federal Agent
Where the defense was that the police officers who were charged with planting evidence believed they were misleading a state investigation and were unaware the information would be handed over to federal agents, the court held that the evidence was sufficient to establish a federal nexus because the statute does not require a specific intent to mislead federal agents, instead requiring only that it be likely that the information will be transferred to a federal agent.
U.S. v. Ronda, Case No. 03-15640 (11th Cir. 7/13/06)
Obstruction of Justice: Existence of Judicial Proceeding
Although, here, the Eleventh Circuit rejects the Fifth Circuit's holding that there must be an ongoing judicial proceeding before someone can be convicted of obstructing justice, the government still must prove that the defendant's actions were intended to prevent or otherwise obstruct processes of a specific future judicial proceeding. Merely concealing the crime or lying, for example, to a law enforcement officer does not, in itself, amount to obstruction of justice.
U.S. v. Vaghela, 169 F.3d 729 (11th Cir. 1999)

PAROLE

Parole: Revocation of Street Time for Conviction Not Alleged in Warrant
The revocation of street time pursuant to 18 USC § 4210 for the conviction of a new offense applies only to convictions alleged in the parole warrant.
Toomey v. Young, 449 F. Supp. 336 (D. Conn. 1978)
Parole: Addition of New Allegations After Expiration of Parole
Can't be done.
Toomey v. Young, 449 F. Supp. 336 (D. Conn. 1978)
Parole: Special Parole
Hasn't been available as a sentencing option since the late eighties. It differs from regular parole in that it (1) follows the term of imprisonment, while regular parole entails release before the end of the term; (2) it was imposed, and its length selected by the district judge rather than by the Parole Commission; and (3) when special parole is revoked, its full length becomes a term of imprisonment, which means that street time does not count toward completion of special parole.
Manso v. Federal Detention Center, Miami, No. 97-5570 (11th Cir. 7/29/99)

PERJURY AND FALSE STATEMENT

Perjury and False Statement: Ambiguous Questions
If a question is so vague as to be fundamentally ambiguous, the answers associated with it are insufficient as a matter of law to support a perjury or false statement conviction.
U.S. v. Burnette, No. 21-13990 (11th Cir. 4/11/23)
Perjury and False Statement: Conviction Based on Defendant's Interpretation of the Law
Where the defendant was charged with violation 18 U.S.C. § 1035, false statements relating to health care, the court stated that the truth or falsity of a statement centers on an interpretative question of law, the government bears the burden of proving beyond a reasonable doubt that the defendant's statement is not true under a reasonable interpretation of the law.
U.S. v. Clay, Case No. 14-12373 (11th Cir. 8/11/16)
Perjury and False Statement: Contracts
18 USC § 1001 makes it a crime to make a false statement concerning any matter within the jurisdiction of the executive branch of the federal government. Court vacated the convictions in this case because (1) the alleged false statement was in a contract and a contract, like a check drawn on a bank, does not involve factual assertions and, therefore, cannot be true or false and (2) because, although, the private construction company to which the alleged false statement was made was under contract with a federal agency, the statements concerned the compliance of the defendant with the terms of a contract he had with the private company, a contract over which the government agency had no supervisory power.
U.S. v. Blankenship, Case No. 01-17064 (11th Cir. 8/26/04)
Perjury and False Statement: Lie to Probation Officer Preparing the PSI
A lie that the defendant tells the probation officer who is preparing the presentence report falls under the exemption from the federal false statements statute for statements submitted to a judge if the probation officer is required by law to include the statement in the presentence report.
U.S. v. Horvath, Case No. 06-30447 (9th Cir. 7/10/07), but see: U.S. v. Manning, Case No. 07-5035 (10th Cir. 5/16/08)
Perjury and False Statement: Two Witness Rule
See: U.S. v. Forrest, 623 F.2d 1107 (5th Cir. 1980)
Perjury and False Statement: Materiality

The test for materiality is whether the false statement was capable of influencing or misleading a tribunal on any proper matter of inquiry.
U.S. v. Roberts, Case No. 02-10018 (11th Cir. 10/4/02); U.S. v. Boffil-Rivera, Case No. 08-16098 (11th Cir. 5/27/10)

Perjury and False Statement: Literal Truth Defense

A perjury conviction under 18 USC 1621 cannot be based upon a statement, however misleading or incomplete, that is the literal truth.
U.S. v. Roberts, Case No. 02-10018 (11th Cir. 10/4/02)

Perjury and False Statement - Materiality

A false statement is material if it has a natural tendency to influence, or is capable of influencing the decision of the decision-making body to which it was addressed. Because the issue is whether a statement has a tendency to influence of is capable of influencing a decision, and not whether the statement exerted actual influence. A false statement can be material even if the decision maker did not actually rely on the statement.
U.S. v. Neder, No. 92-2929 (11th Cir. 12/10/99), *on remand from S. Ct.*

PRETRIAL MOTIONS

Pretrial Motions: Right of Press to Access to Judicial Proceedings Includes Material Filed in Connection with Pretrial Motions

See Romero v. Drummond, Case No. 06-13058 (11th Cir. 3/14/07)

Pretrial Motions: Example of Motion to Dismiss Based on Facts

Despite the absence of a rule authorizing a motion to dismiss based upon the facts, this case is an example where the parties stipulated to the facts and then the defense moved to dismiss the indictment.
U.S. v. Evans, Case No. 06-10907 (11th Cir. 1/30/07)

Pretrial Motions: Continuance

For mention of those rare cases where the Court of Appeals concluded it was error to deny a motion to continue see:
U.S. v. Baker, Case No. 00-13083 (11th Cir. 12/13/06); but see U.S. v. Graham, Case No. 08-14736 (11th Cir. 6/14/11)

Pretrial Motions: Motion to Dismiss - Look Only to See if Elements Alleged

In reviewing a motion to dismiss an indictment we look only at whether the Government has alleged each of the elements of the statute.
U.S. v. Plummer, 221 F.3d 1298 (11th Cir. 8/11/00)

Pretrial Motions: Motion to Suppress - Sufficiency of Allegations

Where, in a case involving a motel room, the motion to suppress failed to allege that the unregistered occupant was a guest of the registered occupant, and the defense then failed to amend the motion even after the issue of expectation of privacy had been raised in the Government's response, the district court, because of the inadequacy of the factual allegations in the motion, properly denied the motion without an evidentiary hearing.
U.S. v. Cooper, No. 98-2123 (11th Cir. 2/14/00)

Pretrial Motions: Challenge to Sufficiency of the Evidence

Can't challenge sufficiency of the evidence in a pretrial motion.
U.S. v. Ayarza-Garcia, 819 F.2d 1043, 1048 (11th Cir. 1987); U.S. v. Jensen, 93 F.3d 667, 669 (9th Cir. 1996); U.S. v. Kaley, Case No. 10-15048 (11th Cir. 4/26/12)

Pretrial Motions: Continuance (Denial Can Undermine Right to Counsel)

U.S. v. Valladares, Case No. 07-14592 (11th Cir. 10/9/08)
Pretrial Motions: Continuance (Proper Remedy for Surprise)
The remedy for coping with surprise is a request for a continuance.
U.S. v. Battle, No. 97-9027 (11th Cir. 4/28/99)
Pretrial Motions: Continuance (Importance of Giving Defendant Fair Opportunity to Prepare)
Though denying the defendant's motion, the decision includes language that stresses the importance of giving the defendant a fair opportunity to prepare.
U.S. v. Jeri, Case No. 16-11418 (11th Cir. 9/5/17)
Pretrial Motions: No Motion for Summary Judgment
A motion for acquittal under Rule 29 is the proper avenue for contesting the sufficiency of the evidence in criminal cases because there is no explicit authority to grant pre-trial judgment as a matter of law on the merits under the Federal Rules of Criminal Procedure. (Note that the 6th Circuit seems to think otherwise). The court noted, though, that in a bench trial may accept proffers of evidence and may enter a judgment of acquittal based on the proffers.
U.S. v. Salman, Case No. 03-23382 (11th Cir. 7/29/04)
Pretrial Motions: Continuance
For mention of those rare cases where the Court of Appeals concluded it was error to deny a motion to continue see:
U.S. v. Baker, Case No. 00-13083 (11th Cir. 12/13/06)

PRETRIAL RELEASE

Pretrial Release - Search and Drug Testing as a Condition of Pretrial Release
The Fourth Amendment does not permit warrantless drug testing or home searches as a condition of pretrial release.
U.S. v. Scott, Case No. 04-10090 (9th Cir. 9/9/05)
Pretrial Release – Conditions (Constitutional Limitation)
The only arguable substantive limitation on conditions in the Constitution's bail clause is that the government's proposed conditions must not be excessive in light of the perceived evil.
United States v. Salerno, 41 U.S. 739, 753 (1987)
Pretrial Release – Ban on Internet Access
In child pornography case, the court concluded provision that prohibited the defendant's access to the internet without approval of his probation officer inflicted "a greater than necessary deprivation on [the defendant's] liberty."
U.S. v. Sofsky, 287 F.3d 122 (3d DCA 2002)
Pretrial Release – Detention Limited to Most Serious of Crimes
The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes.
United States v. Salerno, 41 U.S. 739, 487 (1987)
Pretrial Release – Presumption (Defendant's Burden is that of Production)
In those cases where there is a presumption for detention, the defendant's burden in overcoming the presumption is only that of production.
U.S. v. Hurtado, 779 F.3d 1467 (11th Cir. 1985); United Stats v. Stricklin, 932 F.2d 1353 (10th Cir. 1991); Quartermaine, 913 F.2d 910 (11th Cir. 1990); U.S. v. King, 849 F.2d 485 (11th Cir. 1988)

PRISONERS' RIGHTS

Prisoner's Rights: Three Strikes Rule

The Prison Litigation Reform Act, 28 U.S.C. § 1915, with one exception, limits the ability of prisoners to proceed informa pauperis if he has on three or more occasions, while incarcerated in any facility, brought an action or appeal in a court of the United States that was dismissed on grounds that were frivolous, malicious, or failed to state a claim upon which relief may be granted. Court held, here, that a dismissal for failure to exhaust ca amount to a dismissal for failure to state a claim but only if the failure to exhaust appears on the face of the prisoner's complaint.

Wells v. Warden, No. 10550 (11th Cir. 1/23/23)

Prisoners' Rights: § 1983 Claim Time Limit Doesn't Run Until Relevant Facts Known

The § 1983 statute of limitations doesn't begin to run until all the facts which support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.

Nance v. Commissioner, Ga. Dept. of Corrections, No. 20-11393 (11th Cir. 1/30/23)

Prisoners' Rights: § 1983 Claims Subject to State Statute of Limitations

A claim brought under section 1983 is subject to the state statute of limitations governing personal injury actions.

Nance v. Commissioner, Ga. Dept. of Corrections, No. 20-11393 (11th Cir. 1/30/23)

Prisoners' Rights: Prison Disciplinary Hearings – Minimum Due Process Requirements

Mitchell v. Warden Constance Reese, Case No. 13-14111 (11th Cir. 9/13/16); Dean-Mitchell v. Warden, Case No. 13-14111 (11th Cir. 9/13/16)

Prisoners' Rights: Shackling of Pretrial Detainees

Pretrial defendants not entitled to an individualized shackling determination.

U.S. v. Lafond, 783 F.3d 1216 (11th Cir. 2015); but see: U.S. v. Sanchez-Gomez, Case No. 13-50561 (9th Cir. 5/31/17)

Prisoners' Rights: Prison Officials Can't Read Letter Intended for Lawyer

Nordstrom v. Ryann, Case No. 16-15277 (9th Cir. 5/18/17)

Prisoners' Rights: Obligation of Courts to Enforce Constitutional Rights

Courts nevertheless must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners. Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.

Brown v. Plate, Case No. 09-123 (S. Ct. 5/23/11)

Prisoners' Rights: Human Dignity

A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.

Brown v. Plata, Case No. 09-1233 (S. Ct. 5/23/11)

Prisoners' Rights: Exhaustion of Remedies

Prisoner challenging prison conditions in federal court cannot satisfy PLRA's exhaustion requirement by filing an untimely or otherwise procedurally defective administrative grievance or appeal.

Woodford v. Ngo, Case No. 05-416 (S. Ct. 6/22/06)

Prisoners' Rights: Most Prisoners Are Sociopaths

U.S. v. Prevo, Case No. 04-15310 (11th Cir. 1/11/06)

Prisoners' Rights: Access to Law Library

The Sixth Amendment does not provide a pro se defendant who is incarcerated with a right to have access to a law library.
Kane v. Espitia, Case No. 04-1538 (S. Ct. 10/31/05)

Prisoners' Rights: Use of 42 USC § 1983 to Challenge Parole Procedures

While a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement, 1983 is available to state prisoners who wish to make procedural challenges that would not necessarily mean immediate or speedier release. In this case, involving two defendants, one was seeking a new eligibility review regarding his parole and the other was seeking a new parole hearing. The Court held that both could proceed with their 1983 claims.
Wilkinson v. Dotson, Case No. 03-287 (U.S. 3/7/05)

Prisoners' Rights: Right to Vote

Florida is one of only seven states that permanently disenfranchise first-time convicted felons unless they receive clemency. Approximately 10.5% of voting-age African Americans in Florida are now disenfranchised as ex-felons, compared with 4.4% of the non-African American population.
Johnson v. Governor of the State of Florida, Case No. 02-14469 (11th Cir. 12/19/03)

Prisoners' Rights: Prison Conditions and Eighth Amendment

If prison conditions are merely restrictive and even harsh, they are part of the penalty criminal offenders pay for their offenses against society. Generally speaking, prison conditions rise to the level of an Eighth Amendment violation only when they involve the wanton and unnecessary infliction of pain.
Chandler v. Crosby, Case No. 03-12017 (11th Cir. 8/6/04)

Prisoners' Rights: Conviction May Bar Civil Action

A state prisoner may not bring a claim for damages under 42 USC § 1983 if a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction. As an illegal arrest may still be followed by a valid conviction, though, this general rule doesn't always bar an action for an illegal arrest.
Hughes v. Lott, Case No. 02-11508 (11th Cir. 11/14/03)

Prisoners' Rights: Limitations on Visitation

Although not holding that the right to association is altogether terminated by incarceration, the court upheld limitations on contact visits for certain prisoners because those regulations bore a rational relation to legitimate penological interests.
Overton v. Bazzetta, Case No. 02-94 (S. Ct. 6/16/030

Prisoners' Rights: § 922(g) Conviction Disqualifies Prisoner from Sentence Reduction

If the defendant is convicted of possession of a firearm by a convicted felon, 18 USC § 922(g), he is disqualified from receiving the one year off for drug treatment as provided in 18 USC § 3621(e)(2)(B).
Gunderson v. Hood, 268 F.3d 1149 (9th Cir. 2001). See also BOP PS5162.04

Prisoners' Rights: Mailbox Rule

Under the mailbox rule, burden is on prison authorities to prove date prisoner delivered his documents to be mailed and, absent evidence to the contrary in the form of prison logs or other records, the court will assume that the defendant's motion was delivered to prison authorities on the day he signed the motion.
Washington v. U.S., 243 F.3d 1299 (11th Cir. 2001)

Prisoners' Rights: Administrative Rules- No Early Release for Drug Treatment

The Bureau of Prisons, in interpreting 18 USC § 3621(e)(2)(B), which allows the reduction of a sentence by a year if the prisoner completes a drug treatment program, established a regulation that prohibited the early release of anyone whose current offense was a felony that involved the carrying, possession, or use of a firearm. The Court, giving the requisite deference to the BOP, concluded the regulations was a permissible exercise of the BOP's discretion.
Lopez v. Davis, 531 U.S. 230 (2001)

Prisoners' Rights: Limitations on Personal Injury Claims of Prisoners

While still in custody, prisoners can bring a federal personal injury claim against the prison or detention center only if there is a showing of physical injury.
Harris v. Garner, 216 F.3d 9970 (11th Cir. 2000)

Prisoner's Rights: Right of Access to a Law Library

Prisons are not required to provide access to the law libraries. Law libraries are simply one way of assuring the constitutional right of access to the courts.
Akins v. U.S. 204 F.3d 1086 (11th Cir. 2000); Bounds v. Smith, 430 U.S. 817, 825 (1977)

PROBATION & SUPERVISED RELEASE

Conditions

Probation & Supervised Release: Conditions – Must Be Pronounced at Sentencing

A district court must pronounce at the defendant's sentencing hearing any discretionary conditions of supervised release—that is, any condition of supervised release other than those mandatory conditions set out in 18 U.S.C. § 3583(d). A court may satisfy this requirement by referencing a written list of conditions.
U.S. v. Rodriguez, No. 20-13534 (11th Cir. 8/1/23)

Probation & Supervised Release: Conditions – Computer Restrictions in Child Solicitation Case

Court rejected the narrower approach set out in U.S. v. Holena, 906 F.3d 288 (2d Cir. 2018), and upheld requirement that defendant not have access to a computer without obtaining approval form probation officer.
U.S. v. Bobal, No. 19-10678 (11th Cir. 11/30/20)

Probation & Supervised Release: Conditions - Delegation of Judicial Responsibility to Probation Officer

Court found condition that defendant undergo mental health counseling as deemed necessary by the probation officer to be an improper delegation of judicial authority, but upheld conditions requiring defendant to obtain permission from probation officer before opening a checking account and to, as directed by probation officer, notify third parties of risks occasioned by the defendant's criminal history or personal history.
U.S. v. Nash, 438 F.3d 1302 (11th Cir. 2006)

Probation & Supervised Release: Conditions - Notice of Intent to Impose Unusual Conditions of Supervised Release

As Rule 32(c) affords requires the defendant to be given notice of all important options to be considered at sentencing, the court must give defendants notice, prior to sentencing, of any unusual conditions of supervised release. In this instance, the court should have given the defendant notice that it intended to limit his access to any internet services without prior approval of his probation officer.
U.S. v. Scott, 316 F.3d 733 (7th Cir. 2003)

Probation & Supervised Release: Conditions - Polygraph

The sentencing court ordered the defendant who had been convicted of a sex offense to submit to polygraph testing as a condition of his sex offender treatment program. As the defendant had not yet been asked any potentially incriminating questions, the court held that the defendant's objections were premature.
U.S. v. Taylor, Case No. 02-16210 (11th Cir. 7/25/03)

Probation & Supervised Release: Conditions - Special Conditions

A district court has discretion to order special conditions of supervised release so long as they are reasonably related to the broad purposes set forth in 18 USC § 3553(a)(1) and (a)(2)(B)-(D). In this instance it was OK to order anger management counseling for someone involved in credit card fraud case.
U.S. v. Bull, No. 98-3835 (11th Cir. 6/12/00)

Probation & Supervised Release: Conditions - Excessively Vague Condition of Supervised Release

Condition of supervised release requiring defendant to refrain from conduct or activities that would give reasonable cause to believe he had violated any criminal law was excessively vague.
U.S. v. Ridgeway, 319 F3d 1313 (11th Cir. 2003)

Probation & Supervised Release: Conditions - Mandatory Condition of Supervised Release

A district court may impose conditions of supervised release in accordance with the four classes of conditions found in USSG §5D1.3. The first class of conditions is the list of mandatory conditions in USSG in USSG §D1.3(a).
U.S. v. Ridgeway, 319 F3d 1313 (11th Cir. 2003)

Probation & Supervised Release: Conditions - Deportation

Although there is a split of authority, the Court held that deportation could be made a condition of supervised release.
U.S. v. Alvarez, No. 95-3269 (11th Cir. 6/20/97)

Probation & Supervised Release: Conditions - Probation Officer Can't Impose Occupational Restrictions

U.S. v. Dempsey, No. 98-5450 (11th Cir. 7/14/99)

Probation & Supervised Release: Conditions - Conditions Unrelated to Offense

Although, the defendant was being sentenced for possession of a firearm by a convicted felon, district court had authority to impose conditions intended to address defendant's past sexual misconduct, including the requirement that he register as a sex offender.
U.S. v. Moran, Case No. 08-16987 (11th Cir. 7/1/09)

Probation & Supervised Release: Conditions - Unexpected Conditions of Supervised Release

Defendant who was being sentenced for a firearm offense had no basis to complain about lack of notice when court imposed special conditions meant to address the past sexual misconduct outlined in the PSR.
U.S. v. Moran, Case No. 08-16987 (11th Cir. 7/1/09)

Probation & Supervised Release: Conditions - Leaving Decision of Mental Health Counseling to Probation Officer

It was error for the court to delegate to the probation officer the authority to decide whether defendant would participate in mental health treatment.
U.S. v. Heath, Case No. 05-10175 (11th Cir. 8/12/05)

Probation & Supervised Release: Conditions - Leaving Question of Drug Testing to Probation Officer

Court rejected an order that left to the probation officer the decision as to the number of urinalysis tests was invalid as an improper delegation of the court's sentencing authority.
U. S. v. Tulloch, Case No. 02-1749 (1st Cir. 8/12/04)

Probation & Supervised Release: Conditions - Ban on Internet Access

Where the defendant had violated his supervised release in a failure to register case, the district court's condition barring the defendant's access to the internet without the approval of the probation officer was "not reasonably related to the sentencing factors and imposed a greater restriction than reasonably necessary to achieve the goals of sentencing.
U.S. v. Eaglin, 913 F.3d 88, 91 (2d Cir. 2019); see also: U.S. v. LaCoste, 821 F.3d 1187, 1192 (9th Cir. 2016); U.S. v. Wiedower, 634 F.3d 490, 495 (8th Cir. 2011); U.S. v. Perazza-Mercado, 553 F.3d 65, 72-74 (1st Cir. 2009); U.S. v. Holm, 326 F.3d 872, 877 (7th Cir. 2003); U.S. v. Halverson, 897 F.3d 645 (5th Cir. 2018); but see U.S. v. Carpenter, 803 F.3d 1224, 1239 (11th Cir. 2015); U.S. v. Aldrich, 785 F.App'x 688 (11th Cir. 2019)

Probation & Supervised Release: Conditions – Notice for Unexpected Conditions of Supervised Release

Defendant who was being sentenced for a firearm offense had no basis to complain about lack of notice when court imposed special conditions meant to address the past sexual misconduct outlined in the PSR.
U.S. v. Moran, Case No. 08-16987 (11th Cir. 7/1/09)

Probation & Supervised Release: Conditions - No Internet

Although recognizing that two circuits had held to the contrary, the court upheld a condition of supervised release that allowed the defendant, who had been convicted of a child pornography offense, to use the Internet only if he obtained his probation officer's prior approval.
U.S. v. Zinn, 321 F.3d 1084 (11th Cir. 2003), U.S. v. Rearden Case No. 02-50311 (9th Cir. 11/6/2003), but see: U.S. v. Mark, Case No. 04-3737 (8th Cir. 10/4/05)

Probation & Supervised Release: Sex Offenses -Polygraph

Court upheld requirement that defendant convicted of child pornography offense submit to polygraph tests as a condition of probation. Court recognized that if questions were capable of eliciting incriminating information that defendant would have a valid issue, but held the issue could not be raised until such questions were asked.
U.S. v. Zinn, 321 F.3d 1084 (11th Cir. 2003)

Hearing

Probation and Supervised Release: Hearing – Nolo Plea to Underlying Offense

Not entirely clear whether a nolo plea to a new offense will support a revocation.
U.S. v. Green, 873 F.3d 846 (11th Cir. 2017)

Probation & Supervised Release: Hearing - Application of Exclusionary Rule

Exclusionary rule does not apply to revocations of probation or supervised release.
U.S. v. Herbert, 201 F.3d 1103, 1104 (9th Cir. 2000); U.S. v Armstrong, 187 F.3d 392, 393-95 (4th Cir. 1999), although some courts have held it could apply in cases of police harassment. U.S. v. Montez, 952 F.2d 854, 858 (5th Cir. 1992); U.S. v. Charles, 531 F.3d 637, 640 (8th Cir. 2008)

Probation & Supervised Release: Hearing - Requirement That Court Elicit Objections Following Sentencing

After imposing sentence, the district court should elicit fully-articulated objections to the court's findings of fact, conclusions of law, and the manner in which the sentence was imposed.
U.S. v. Campbell, Case No. 06-12578 (11th Cir. 1/3/07)

Probation & Supervised Release: Hearing - Hearsay Admissible to Prove New Offense?

Although adequate to prove urinalysis results, U.S. v. Penn, 721 F.2d 762 (11th Cir. 1983), the introduction of hearsay regarding something like a new offense requires the court to balance the defendant's right of confrontation against whatever grounds the government might have for denying confrontation. Absent unusual circumstances, the hearsay should be inadmissible.
U.S. v. Frazier, 26 F.3d 110 (11th Cir. 1994); U.S. v. Bell, 785 F.2d 640 (8th Cir. 1986); U.S. v. Reynolds, 49 F.3d 423 (8th Cir. 1995)

Probation: Hearing - No Right to Allocution in VOSR Hearing

Although the better practice is to allow allocution, Federal Rule of Criminal Procedure 32.1 does not provide for the right of allocution in a sentencing for violation of supervised release.
U.S. v. Frazier, 283 F.3d 1242 (11th Cir. 2002)

Probation & Supervised Release: Hearing - Rules of Evidence Inapplicable

U.S. v. Frazier, 26 F.3d 110 (11th Cir. 1994)

Probation & Supervised Release: Hearing -Hearsay

In determining whether to admit hearsay the court must balance the defendant's right to confront adverse witnesses with the government's reasoning for denying it.
U.S. v. Martin, 984 F.2d 308, 310 (9th Cir. 1993); U.S. v. O'Meara, 33 F.3d 20, 20-21 (8th Cir. 1994); U. S. v. Zentgraf, 20 F.3d 906, 909 (8th Cir. 1994); U.S. v. Reynolds, 49 F.3d 423, 426 (8th Cir. 1995); U.S. v. Frazier, 26 F.3d 110, 114 (11th Cir. 1994)

Probation & Supervised Release: Hearing - Right to Remain Silent

The accused has the right to invoke the fifth amendment.
Minnesota v. Murphy, 465 U.S. 420, 440 (1964), but invocation may result in revocation.
U.S. v. Ross, 9 F.3d 1182 (7th Cir. 1993); *vacated on other grounds* 511 U.S. 1124 (1994).

Probation & Supervised Release: Hearing - Burden of Proof

To revoke probation the court must be reasonably satisfied that a probationer has violated his or her probation.
U.S. v. Goad, 44 F.3d 580, 585 (7th Cir. 1994).

Probation & Supervised Release: Hearing - Lengthy Colloquy Unnecessary for Admission

U.S. v. Pelensky, 129 F.3d 63 (2nd Cir. 1997)

Miscellaneous

Probation & Supervised Release: Miscellaneous – Supervised Release Begins When Defendant is Released from Prison

Probation & Supervised Release: Violation – Supervised Release is Not Tolled for Deportation.

U.S. v. Talley, No. 22-13921 (11th Cir. 9/7/23)

Probation & Supervised Release: Miscellaneous - Early Termination

Court recognized the right to ask the court to terminate supervised release early and to appeal a denial of the request.
U.S. v. Trailer, Case No. 15-14583 (11th Cir. 6/30/16)

Probation & Supervised Release: Miscellaneous - Modification

Because 18 U.S.C. § 3563(c) allows a court to modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, the court of appeals upheld the modification of his probation to include a year of home confinement. The court modified the probation a few weeks after imposition of the original sentence, following the publication of newspaper article in which the defendant made light of the incident that led to his conviction. In reaching the conclusion, the court stated that it did not think a formal revocation of probation was necessary to modify the conditions.

U.S. v. Serrapio, Case No. 12-14897 (11th Cir. 6/18/14)

Probation & Supervised Release: Miscellaneous - Pretrial Detention Tolls Running of Supervised Release

Pretrial detention lasting 30 days or more tolls the period of supervised release, provided that a conviction ultimately results from the charges for which the individual is being held. In this case, where the defendant was turned over to state authorities after he served his prison sentence, it meant that the defendant's supervised release had not expired by the time of his revocation so that district court had jurisdiction over the violation of supervised release.

U.S. v. Johnson, Case No. 09-10351 (11th Cir. 9/2/09)

Probation & Supervised Release: Miscellaneous - Jurisdiction (Dependent Upon Issuance of a Warrant Based on Sworn Facts)

At least according to the 9th Circuit, if the district court's jurisdiction is dependent upon a warrant issued prior to the expiration of the period of supervision, the warrant issued by the court must be based on sworn testimony. In this case, because the warrant issued on the basis of an unsworn report filed by the probation officer, the Court held that the district court lacked jurisdiction to violate the defendant's supervised release.

U.S. v. Vargas-Amaya, 389 F.3d 901 (9th Cir. 2004)

Probation & Supervised Release: Miscellaneous - Supervised Release Begins Only Upon Release

Despite the obvious equity in construing the beginning of supervised release to have coincided with the expiration of the defendant's legal sentence, the Court held that even though the defendant had served, on top of the legal sentence, several years on some counts that had been vacated on appeal, the Court held that supervised release did not begin until the defendant was actually released from prison.

U.S. v. Johnson, 529 U.S. 53 (2000)

Probation & Supervised Release: Miscellaneous - Continues to Run After Deportation

See: U.S. v. Okoko, 03-12952 (11th Cir. 4/6/04); U.S. v. Osssa-Gallegos, Case No. 05-5824 (6th Cir. 6/21/07) (en banc)

Probation & Supervised Release: Miscellaneous - Extension (Hearing Required?)

Despite that fact that FRCrP 32.1(b) seems to say a hearing and appointment of counsel is required before the extension of probation, the limited authority holds to the contrary.

U.S. v. Tackett, 1992 U.S. App. LEXIS 5803 (7th Cir. 3/31/92); U.S. v. Dyer, 620 F.Supp. 51 (E.D. Wisc. 1985)

Probation & Supervised Release: Miscellaneous - Failure to Pay & Probation Extension

Nothing wrong with extending probation for failure to pay restitution, even if the probationer has made a good faith effort to pay.

U.S. v. Ortiz, 733 F.2d 1416 (10th Cir. 1984)

Probation & Supervised Release: Miscellaneous - Running is Tolled While Serving a Sentence Greater Than 30 Days

A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.

18 USC § 3624(e)

Probation & Supervised Release: Miscellaneous - Limited to One Year for a Misdemeanor

United States v. Rhodes, No. 97-6853 (11th Cir. 6/4/99)

Sentencing

Probation & Supervised Release: Sentencing – Violation of Probation
In a violation of probation case, the court is not restricted to the guideline range applicable at the time of the initial sentencing. The Sentencing Commission has promulgated policy statements that include a table with terms of imprisonment for defendants whose probation has been revoked. See USSG § 7B1.4.
U.S. v. Steiger, No. 22-10742 (11th Cir. 10/3/23), opinion vacated. Ct granted request for en banc hearing (11/27/23)
Probation & Supervised Release: Sentencing - When Initial Sentence Was Maximum
If the court imposes the statutory maximum penalty followed by supervised release, the court, upon a violation, may sentence the defendant to additional time.
U.S. v. Proctor, 127 F.3d 1311 (11th Cir. 1997)
Probation & Supervised Release: Sentencing - Longer Sentence for Treatment Purposes
Court may not impose a longer sentence upon a revocation of supervised release for purposes of treatment.
U.S. v. Vandergrift, Case No. 12-13154 (11th Cir. 6/18/14)
Probation & Supervised Release: Sentencing - Consecutive Sentences for Same Violation
Where the defendant faced a VOSR in two separate cases based upon a single act, there was nothing unreasonable about the trial court's decision to impose consecutive sentences.
U.S. v. Sweeting, Case No. 05-11062 (11th Cir. 1/26/06)
Sentencing & Supervised Release: Sentencing - Allocution
Right to allocution extends to sentencings for violation of supervised release.
U.S. v. Carruth, Case No. 07-12060 (11th Cir. 5/22/08)
Probation & Supervised Release: Sentencing - S.R. Only for Those That Need It
Supervised release departed from the parole system it replaced by giving district courts the freedom to provide post-release supervision for those, and only those, who needed it.
Johnson v. United States, 529 U.S. 694 (2000)
Probation & Supervised Release: Sentencing - Longer Supervised Release for Drug Offenses?
There is a split among the jurisdictions as to whether 21 USC § 841 authorizes longer periods of supervised release for drug offenses beyond that authorized by 18 USC § 3583.
Longer: U.S. v. Garcia, 112 F3d 395, 398 (9th Cir 1997); U.S. v. Orozco-Rodriguez, 60 F.3d 705, 707-708 (10th Cir. 1995); U.S. v. Mora, 22 F.3d 409, 412 (2d Cir. 1994); U.S. v. LeMay, 952 F.2d 995, 998 (8th Cir. 1991). Limited: U.S. v. Good, 25 F.3d 218, 221 (4th Cir. 1994); U.S. v. Kelly, 974 F.2d 22, 24 (5th Cir. 1992).
Probation & Supervised Release: Sentencing - Supervised Release Even with Maximum Sentence
Court may include a sentence of supervised release even when imposing the maximum sentence.
U.S. v. Jenkins, 42 F.3d 1370, 1371 (11th Cir. 1995)
Probation & Supervised Release: Sentencing - Terms Must Run Concurrently
U.S. v. Magluta, 198 F.3d 1265 (11th Cir. 1999)

Violation

Probation & Supervised Release: Violation – Supervised Release Isn't Tolled When Defendant Absconds
Though the majority of circuits have held to the contrary, the court held supervised release was not tolled when defendant absconded. Where the court sentenced the defendant to three years of supervised release, it meant that though the court could find a violation based on absconding, it

could not find a violation based on the battery that occurred three years after the defendant's release from prison.
U.S. v. Talley, No. 22-13921 (11th Cir. 9/7/23)

Probation & Supervised Release: Violation – Supervised Release is Not Tolled for Deportation.

U.S. v. Talley, No. 22-13921 (11th Cir. 9/7/23)

Probation & Supervised Release: Violation – Can't Impose Home Confinement if Maximum Sentence has been Imposed

In sentencing the defendant for a violation of supervised release, the court sentenced him to two years of imprisonment—the maximum—and a year of home confinement. Court of appeals held the trial court lacked the authority to impose the year of home detention. Opinion includes good discussion of the judge's authority to impose supervised release and home detention.
U.S. v. Hall, No. 22-10230 (11th Cir. 4/5/23)

Probation & Supervised Release: Violation - Credit for Overserved Sentence

BOP has created extensive regulations concerning its duty to calculate sentences, including the treatment of banked time. Among other things, BOP's regulations provide that "[a]ny prior custody time spent in official detention after the date of offense that was not awarded to the original sentence or elsewhere shall be awarded to the revocation term" when a defendant is sentenced to a term of incarceration for violating his supervised release. BOP Program Statement § 5880.28, Sentence Computation Manual-CCCA of 1984 (1999) at 1-69. For example, if a defendant's term of incarceration is partially vacated and as a result the defendant has served more time than necessary, the defendant may credit the excess time against future revocations of his supervised release term under the same sentence**.**
United States v. Jackson, 952 F.3d 492, 498 (4th Cir. 2020)

Probation & Supervised Release: Violation - Fair Sentencing Act Not Retroactive

Though the Fair Sentencing Act had reduced the offense from a Class B to a Class C felony between the initial sentencing and the VOSR, the penalties associated with a Class B felony determined the penalties for the violation.
U.S. v. Johnson, 786 F.3d 241 (2d Cir. 2015)

Probation & Supervised Release: Court Must Provide Reasons for Sentence Outside Guideline Range

The court's failure to state a reason for a sentence outside the guidelines, as required by 18 U.S.C. § 3553(c)(2) was plain error.
U.S. v. Parks, Case No. 15-11618 (11th Cir. 5/20/16)

Probation & Supervised Release: Failure to Pay Must Be Willful

But insufficient efforts at seeking employment may amount to a willful failure to pay.
U.S. v. Roberts, 380 Fed. Appx. 917 (11th Cir. 5/28/10)

Probation & Supervised Release: Violation - Sworn Petition?

The petition alleging a violation of probation or supervised release need not be sworn.
U.S. v. Presley, Case No. 05-16778 (11th Cir. 5/31/07); U.S. v. Garcia-Avalino, 444 F.3d 444 (5th Cir. 2006), *contra*: U.S. v. Vargas-Amaya, 389 F.3d 901 (9th Cir. 2004); .

Probation & Supervised Release: Violation - Imposition of Sup. Release Following Sentence for Violation of Probation

The trial court correctly concluded it was required to impose a sentence of supervised release to follow the sentence of imprisonment for the violation of probation.
U.S. v. Mitsven, 452 F.3d 1264 (11th Cir. 2006)

Probation & Supervised Release: Violation - Length of Sentence Limited Upon Reimposition

Under 18 USC § 3583(h) if the court revokes supervised release and sentences the defendant to a new prison term and an additional term of supervised release, the length of the supervised release cannot exceed the maximum supervised release term for the original conviction less any term of imprisonment. The imprisonment includes the prison term for the instant revocation as well as any prior revocations.

U.S. v. Brings Plenty, 188 F.3d 1051 (8th Cir. 9/1/99); U.S. v. Maxwell, 285 F.3d 336 (4th Cir. 2002)

Probation & Supervised Release: Violation - Reinstatement of Entire Period of Supervised Release?

See: U.S. v. Trenter, 99-30226 (9th Cir. 2/7/00)

Probation & Supervised Release: Violation - Multiple Revocations & Credit for Prior Sentences

If there are multiple violations of supervised release, the length of the sentence is limited by the aggregate of the new sentence and the prior sentences. If under 18 USC § 3483(e)(3) the maximum sentence for VOSR is 2 years, that 2 years is the total exposure regardless of the number of revocations. While that rule is clear from the 2005 version of the statute, in this instance the court interpreted the prior version of the statute in a way consistent with the new language.

U.S. v. Williams, No. 04-15732 (11th Cir. 9/19/05)

Probation & Supervised Release: Violation - Pre-Trial Detention Doesn't Toll Supervised Release

Pre-trial detention does not toll the running of supervised release. Consequently, the court had no jurisdiction to revoke supervised release where warrant issued two weeks after supervised release expired.

United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir. 1999)

Probation & Supervised Release: Violation - Detention Hearings

Rule 32.1 governs violations of supervised release. It provides that the defendant may be released pursuant to Rule 46(c). That rule, in turn, says the burden of establishing that the defendant will not flee or pose a danger rests with the defendant. It says, too, that any release shall be in accordance with 18 USC § 3143, which, like the other provisions, addresses release pending sentencing or appeal. Subsection (a) of the statute provides that the court shall order the person detained unless the judge finds by clear and convincing evidence the person is not likely to flee or pose a danger. Subsection (a)(2) provides a tougher standard for those offenses listed in subparagraphs (A), (B), or (C) of 18 USC § 3142(f) - crime of violence, offense with a maximum sentence of life or death, a federal controlled substance offense with a maximum term of 10 years or more. That tougher standard requires, in addition to the requisite clear and convincing evidence showing, that the government is not recommending incarceration on the violation charges.

U.S. v. Fernandez, 144 F.Supp.2d 114 (N.D. N.Y. 2001)

Probation & Supervised Release: Violation - Revocation After Supervised Release Has Expired

The court may revoke supervised release after the term has expired so long as it does so within any period reasonably necessary for the adjudication of matters arising before its expiration, so long as a warrant or summons has issued prior during the period of supervision.

18 USC § 3583(i)

Probation & Supervised Release: Violation - Nolo Plea Won't Support a Violation

See: United States v. Poellnitz, 372 F.3d 562 (3rd Cir. 2004); U.S. v. McGill, 2009 WL 961142 (11th Cir. April 9, 2009).

Probation & Supervised Release: Violation - Sentence for VOSR (No Credit for Prior Time on Supervised Release)

When a sentencing court imposes a new sentence for a violation of supervised release, the defendant does not get credit against the new supervised release for time previously served on supervised release. The new maximum is whatever is authorized by the statute minus the amount of incarceration received upon the violation of supervised release. That means, of course, that the judge is not limited to the period of supervised release initially imposed.

U.S. v. Pla, Case No. 02-16815 (11th Cir. 9/19/03)

Probation & Supervised Release: Violation - New Term and Credit for Prior Supervised Release

For those that were sentenced prior to September, they are not, when following a revocation and the imposition of a new period of supervised release, entitled to credit for the time previously spent on supervised release.

U.S. v Gresham, Case No. 02-11947 (11th Cir. 3/28/03)

Probation & Supervised Release: Violation of Probation - Initial Guideline Range Inapplicable

Under 18 USC § 6565(a)(2), the court is authorized to resentence a defendant upon a violation of probation without being restricted to the guideline range applicable at the time of the initial sentencing hearing; instead, a court must only comply with Subchapter A in sentencing the defendant.

U.S. v. Cook, 291 F.3d 1297 (11th Cir. 2002)

Probation & Supervised Release: Violation - Date of Violation Determines Guideline Version

With one exception, the version of the Sentencing Guidelines, as they existed at the time of the violation, are the ones to be used. That exception is the mandatory prison sentence for drug offenders that is found in 18 USC 3583(g). For those rare cases that involve an individual whose offense occurred prior to 12/31/88, when there was no requirement for a mandatory prison sentence, the application of (g) would amount to an ex post facto violation. U.S. v. Cofield, 233 F3d 405 (6th Cir. 2000); U.S. v. Schram, 9 F.3d 741 (9th Cir. 1993); U.S. v. Paskow, 11 F.3d 873 (9th Cir. 1993)

Probation & Supervised Release: Violation - Double Jeopardy and Violation Penalties

Treating post-revocation sanctions as part of the penalty for the initial offense avoids double jeopardy difficulties.

Johnson v. United States, 529 U.S. 694 (2000)

Probation & Supervised Release: Violation - Revocation Isn't Mandated

Unless mandated by law, see 18USC § 3583 and Chapter 7 of guidelines, the finding of a violation doesn't require a revocation.

U.S. v. Holland, 874 F.2d 147 (11th Cir. 1989); U.S. v. Whalen, 82 F.3d 528 (1st Cir. 1996)

Probation & Supervised Release: Violation - Inability to Pay Fines or Restitution

If the probationer could not pay despite bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if

alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay.
Bearden v. Georgia, 461 U.S., 670, 672, 103 S.Ct.2064, 2073 (1983); U.S. v. Johnson, 983 F.2d 216 (11th Cir. 1993)

Probation & Supervised Release: Violation - Insufficient Efforts to Pay Fine

A probationer's failure to make sufficient efforts to seek employment or borrow money in order to pay the fine or restitution may reflect an insufficient concern for paying the debt he owes society for his crime. In such a situation the State is likewise justified in revoking probation and using imprisonment as an appropriate penalty for the offense.
Bearden v. Georgia, 461 U.S., 670, 668, 103 S.Ct.2064, 2070 (1983)

Probation & Supervised Release: Violation - Acts Committed Prior to Sentencing

Probation can't be revoked for acts committed prior to imposition of probation.
U.S. v. Twitty, 44 F.3d 410 (6th Cir. 1995)

Probation & Supervised Release: Violation - Positive Urine Test = Possession

Trial court did not err in concluding that a positive urinalysis test was tantamount to possession for purposes of a revocation pursuant to 18 USC § 3565.
U. S. v. Granderson, 969 F.2d 980 (11th Cir. 1992)

PROSECUTORS

Prosecutors: Obligation to Exercise Discretion

The rigors of the penal system are thought to be mitigated to some degree by the discretion of those who enforce the law. See, e.g., Jackson, The Federal Prosecutor, 31 J. Am. Inst.Crim. L. & Criminology 3, 6 (1940-1941). The clemency power is designed to serve the same function. Among its benign if too-often ignored objects, the clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider. These mechanisms hold out the promise that mercy is not foreign to our system. The law must serve the cause of justice.
Dretke v. Haley, 124 S. Ct. 1847, 1856 (2004) (Kennedy, J. dissenting opinion)

Prosecutors: AUSA Reprimanded for Improper Closing Argument

The government informed us at oral argument that the prosecutor's superiors have reprimanded her for her conduct.
U.S. v. Hands, 184 F.3d 1322 (11th Cir. 1999)

Prosecutors: Role is That of Seeking Justice

Obligation is not that it shall win a case, but that justice shall be done.
Berger v. U.S., 295 U.S. 78, 88 (1935), Strickler v. Greene, 527 U.S. 263 (1999)

Prosecutors: Immunity

Prosecutors have absolute immunity from damages for acts or omissions associated with the judicial process. They are not, however, immune to claims for injunctive relief.
Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)

Prosecutors: State's Obligation to Refrain from Using Improper Methods to Obtain Conviction

Although the State is obligated to prosecute with earnestness and vigor, it is as much [its] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.
Cone v. Bell, Case No. 07-1114 (S. Ct. 12/9/08); U.S. v. Hurt, Case No. 06-16641 (11th Cir. 5/5/08)

PUBLIC DEFENDERS

Public Defender: Freedom of Information Act and Privacy Act
Neither the Freedom of Information Act (5 U.S.C. § 552) nor the Privacy Act (5 U.S.C. § 552a) applies to the judiciary, and neither is applicable to requests for release to the public records and information pertaining to activities under the CJA and related statutes.
Section 510.20 of the Guide to Judiciary Policy, Vol. 7 A.

Public Defenders: Delay Caused by Failure to Fund Indigent Defense
Delay caused by a States's failure to fund counsel for an indigent's defense should be weighed against the State in determining whether there was a deprivation of a defendant's Sixth Amendment right to a speedy trial.
Boyer v. Louisiana, Case No. 11-9953 (S. Ct. 4/29/13), *order dismissing cert. as improvidently granted,* (Sotomayor, J. dissenting)

Public Defenders: Liability
Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken.
Wilson v. Layne, 526 U.S. 603 (1999)

PUBLIC OFFICIALS

Public Officials: Public Officials Solicitation of a Gratuity - Definition of Public Official
In order to be considered a public official a defendant need not be the final decision maker as to a federal program or policy. Rather, it appears to be sufficient that the defendant is in a position of providing information and making recommendations to decision as long as the defendant's input is given sufficient weight to influence the outcome of the decisions at issue. Here, Judge Hinkle was correct in finding Mr. Kenney, who was employed as an acquisitions manager for a private company that had a contract to serve the Air Force, to be a public official.
U.S. v. Kenney, 185 F.3d 1217 (11th Cir. 1999)

Miscellaneous: Presumption Public Officials Have Discharged Duties Properly
Ordinarily, we presume public officials, including prosecutors, have properly discharged their official duties.
Banks v. Dretke, 540 U.S. 668 (2004)

QUOTES

Criticism of Judges

Quotes: Criticism of Judge – "Blink-and-you-miss-it" Analysis
In one blink-and-you-miss-it paragraph of analysis, the majority holds that Stillwell's confession does not "directly" implicate Samia for two reasons.
Samia v. U.S., 143 S. Ct. 2004 (2023) (Kagan, J. dissenting)

Quotes: Criticism of Judges - Traveling with Justice Breyer to Apprendi-land
While I am, as always pleased to travel in Justice Breyer's company, the unfortunate fact is that today's judgment has nothing to do with jury sentencing. What today's decision says is that the jury must find the existence of the *fact* that an aggravating factor existed. those states that leave the ultimate life-or-death decision to the judge may continue to do so - - by requiring a prior jury finding of aggravating factor in the sentencing phase or, more simply, by placing the aggravating-factor determination (where it logically belongs anyway) in the guilt phase. There is

really no way in which Justice Breyer can travel with the happy band that reaches today's result unless he says yes to Apprendi. Concisely put, Justice Breyer is on the wrong flight; he should either get off before the doors close, or buy a ticket to Apprendi-land.
Ring v. Arizona, 122 S. Ct. 2428, 2445 (2002) (Scalia, J. concurring)

Quotes: Criticisms of Judges – Scalia is Characteristically Inventive

Justice Ginsburg in referring to Justice Scalia's dissent says: The dissent here is characteristically inventive.
Lee v. Kemna, 534 U.S. 362 (2002)

Quotes: Criticism of Judges - Creative Reading of Statutes

That is virtuoso lexicography, but it shows only that English is rich enough to give even textualists room for creative readings. (Justice Souter's comments regarding Justice Scalia's dissent.)
Johnson v. United States, 529 U.S. 694 (2000)

Quotes: Criticism of Judges - Just Because the Court Says It's So Doesn't Make It So

It was as if the district court had said the sky is pink - the fact that it was said by the district court did not make it true. Such dicta, although confusing for the defendant, had no effect on the terms of a previously approved plea agreement.
U.S. v. Howle, 166 F.3d 1166 (11th Cir. 1999)

Criticism of Laws

Quotes: Criticism of Laws - Increasingly Vague Criminal Laws

We face a Congress that puts forth an ever-increasing volume of laws in general, and of criminal laws in particular. It should be no surprise that as the volume increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the constitution encourages imprecisions that violate the Constitution. Fuzzy, leave-the-details-to-be-sorted-out-by-the-courts legislation is attractive to the Congressman who wants credit for addressing a national problem but does not have the time (or perhaps the votes) to grapple with the nitty-gritty. In the field of criminal law, at least, it is time to call a halt.
U.S. v. Sykes, Case No. 09-11311 (S. Ct. 6/9/11) (Scalia, J., dissenting)

Criticism of Lawyers

Quotes: Criticism of Lawyers - No Border Guards at the Frontier of the Absurd

Counsel's answers show that at the frontier of the absurd there are no border guards.
Zack v. Bondi, Case No. 09-12717 (11th Cir. 1/9/13) (Carnes, J. concurring)

Quotes: Criticism of Lawyers - Apples and Aardvarks

Indeed, at least the proverbial apples and oranges are both plants. In this instance, Appellant is asking us to allow him to draw an inference between apples and aardvarks, and this we will not do.
U.S. v. Eaton, No. 97-4365, n. 7 (11th Cir. 7/7/99)

Defendant Friendly

Quotes: Defendant Friendly - Reasonable Doubt Requirement Requires Vigilance

The burden is on the government to prove all elements of a crime beyond a reasonable doubt. When a man's liberty is at stake, we must be vigilant with this burden.
U.S. v. Louis, Case No. 16-11349 (11th Cir. 7/10/17)

Quotes: Defendant Friendly - Constitutional Violations Harm All of Us

For all I know, Bryant has received his just deserts. But he surely had not received them pursuant to the procedures our Constitution requires. And what has been taken away from him has been taken away from us all.

Michigan v. Perry, Case No. 09-150 (S. Ct. 2/8/11) (Scalia, J. dissenting)

Quotes: Defendant Friendly - Hope and Long Sentences

Hope is the necessary condition of mankind, for we are all created in the image of God. A judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life. Punishment should not be more severe than that necessary to satisfy the goals of punishment.

U.S. v. Carvajal, 2005 WL 476125, *6 (S.D.N.Y. Feb. 22, 2005)

Quotes: Defendant Friendly - Technical Innocence

Perhaps some would say that Haley's innocence is a mere technicality, but that would miss the point. In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged aside as a minor detail.

Dretke v. Haley, Case No. 02-1824 (S. Ct. 5/3/04) (Kennedy, J. dissenting opinion) (Court had declined to reach the issue of whether actual innocence exception applies to non-capital sentencing error)

Quotes: Defendant Friendly - Law Applies to the Good and the Evil

Under our system of justice, however, even those who have committed horrible crimes are entitled to the benefit of the law. The defining characteristic of our rule of law is that it applies to those who are evil as well as those who are saintly, to criminals as well as the law-abiding, to murderers, kidnappers, and robbers, as well as to the rest of us.

Allen v. Warden, 161 F.3d 667 (11th Cir. 11/24/98)

Entertaining

Quotes: Entertaining - Tea Bag

He's been in and out of hot water so much that when I look at him, I think of a tea bag.

Reference by defense counsel to his client in the parole revocation case of:

Del Genio v. U.S. Bureau of Prisons, 644 F.2d 585, 586 n. 1 (7th Cir. 1980)

Praise for Lawyers

Quotes: Praise for Lawyers – Indigent Defense

Undivided allegiance and faithful, devoted service to a client are prized traditions of the American lawyer. It is this kind of service for which the Sixth Amendment makes provision. And nowhere is this service deemed more honorable than in case of appointment to represent an accused too poor to hire a lawyer, even though the accused may be a member of an unpopular or hated group, or may be charged with an offense which is particularly abhorrent.

Von Moltke v. Gillies, 332 U.S. 708, 725-726 (1948)

Statutory Interpretation

Quotes: Statutory Interpretation - Words

A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.

Towne v. Eisner, 245 U.S. 418, 425, 38 S. Ct. 158, 159 (1918) (Holmes, J.), as quoted in U.S. v. Rubbo, Case No. 04-10874 (11th Cir. 1/21/05)

Quotes: Statutory Interpretation - Rigid Interpretation

Where statutory language is ambiguous, I believe these priorities are misplaced. Language, dictionaries, and canons, unilluminated by purpose, can lead courts into blind alleys, producing rigid interpretations that can harm those whom the statute affects. If generalized, the approach, bit by bit, will divorce law from the needs, lives, and values of those whom it is meant to serve - a most unfortunate result for people who live their lives by law's light.

Duncan v. Walker, 533 U.S. 167 (2001) (Breyer dissenting opinion)

Quotes: Statutory Interpretation - Reasonable Meaning of a Word
Of course, the acid test of whether a word can reasonably bear a particular meaning is whether you could use the word in that sense at a cocktail party without having people look at you funny. The Court's assigned meaning would surely fail that test, even late in the evening.
Johnson v. United States, 529 U.S. 694 (2000) (Justice Scalia's dissenting opinion)

Trial

Quotes: Trial - Jury Most Often Gets It Right
Though popular culture sometimes asserts otherwise, the virtue of our jury system is that it most often gets it right.
U.S. v. Siegelman, Case No. 07-13163 (11th Cir. 5/10/11)
Quotes: Trial - Evidence Rules Designed to Promote the Truth Finding Process
Thus, the provisions of Federal Rule of Evidence 102, that [t]hese rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. A judge's job, accordingly, is to curb the tactics of the trial battle in favor of weighing evidence calmly and getting to the most sensible understanding of whatever gave rise to the controversy before the court. The question is not which side gains a tactical advantage, but which rule assists in uncovering the truth.
Ohler v. U.S., 529 U.S. 753 (2000) (Souter, J. dissenting opinion)

Wisdom

Quotes: Wisdom - Some Small Errors Can Seriously Affect Outcome of Case
Some toxins can be deadly in small doses.
Buck v. Davis, Case No. 15-8049 (S. Ct. 10/5/16)
Quotes: Wisdom - Agreements Don't Always Age Well
Sometimes a deal, like a tattoo, does not age well and what appeared attractive in the past seems unattractive in the future.
U.S. v. Melton, Case No. 15-15738 (11th Cir. 7/10/17)
Quotes: Wisdom: Remedy for False Speech
The remedy for speech that is false is speech that is true.
United States v. Alvarez, Case No. 11-210 (S. Ct. 6/28/12)
Quotes: Wisdom - Evil Hates the Light
The corrupt usually don't' advertise their corrupt ways, or as we noted in McNair, the extent to which the parties . . . conceal their bribes is powerful evidence of their corrupt intent. 605 F.3d at 1197, *cf* John 3:20 (RSV) (For everyone who does evil hates the light, and does not come to the light, lest his deeds should be exposed.
U.S. v. White, Case No. 10-14654 (11th Cir. 11/29/11)
Quotes: Wisdom - Telling the Truth
A man's conduct is often controlled by his conscience. . .To many people telling the truth and coming clean satisfies a basic spiritual need of one who has transgressed and provides a measure of relief.
U.S. v. Prieto, No. 98-5169 (11th Cir. 11/6/00)
Quotes: Wisdom - The Advantages of Being Brief
See: U.S. v. Battle, 163 F.3d 1 (11th Cir. 1998)

RESEARCH

Research: Legislative History

For an example of where legislative history can be located see: U.S. v. Kloess, 251 F.3d 941 (11th Cir. 2001)

RETURN OF PROPERTY

Return of Property: Money Damages

Although there is a split among the circuits, the 11th Circuit has decided that sovereign immunity protects the government from money damages sought under Rule 41(e).

U.S. v. Ramirez, No. 00-11432 (11th Cir. 8/10/01)

Return of Property: Defendant Presumed to have a Right to Return

When a Rule 41(e) motion is filed after criminal proceedings have terminated, the person from whom the property was seized is presumed to have a right to its return. To overcome the presumption, the government must show it has a legitimate reason to retain the property.

U.S. v. Ramirez, No. 00-11432 (11th Cir. 8/10/01); see also RPM memo in U.S. v. Gomes, 4:01cr35.

Return of Property: Sixty Day Period for Appeals

An appeal regarding a Rule 41 motion for return of property is considered to be a civil action, so the sixty period for appeals governs rather than the 10-day period for appeals in criminal cases.

U.S. v. Ramirez, No. 00-11432 (11th Cir. 8/10/01)

Return of Property: 8 Years Later

Under Rule 41(e) of the Federal Rules of Criminal Procedure the court had equitable jurisdiction to consider returning the defendant's seized property even though all criminal proceedings against the defendant had ended and even though 8 years had passed since the property was seized.

U.S. V. Martinez, 241 F.3d 1329 (11th Cir. 2001); but see Dusenberry v. U.S., 534 U.S. 161 (2002)

RICO

RICO - Conspiracy

To establish a RICO conspiracy, the Government had to prove the Defendants objectively manifested, through words or actions, an agreement to participate in . . . the affairs of [an] enterprise through the commission of two or more predicate acts. Specifically, the Defendants must have agreed to participate in (1) an enterprise; (2) that was engaged in or affected interstate commerce; and (3) that engaged in a pattern of racketeering activity.

U.S. v. Pipkins, Case No. 02-14306 (11th Cir. 8/2/04)

RICO - Guidelines and Predicate Acts

As the predicate act determined which guideline to use, and there was only a general verdict, the trial court was obligated to find which predicate acts had been proven.

U.S. v. Digiorgio, 193 F.3d 1175 (11th Cir. 1999)

Rico: Proof of Conspiracy

Agreement to participate in a Rico conspiracy can be proved in one or two ways: 1) by showing an agreement on an overall objection; or 2) by showing that a defendant agreed personally to commit to predicate acts and therefore to participate in the single objective conspiracy.

U.S. v. Abbell, 271 F.3d 1286 (11th Cir. 2001); U.S. v. Harriston, Case No. 01-12416 (11th Cir. 4/28/03)

Rico: Enterprise

The definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation.
U.S. v. Golden Industries, No. 97-6163 (11th Cir. 7/27/00)

RIGHT TO COUNSEL

Right to Counsel: Edwards - Passage of 14 Days
The passage of 14 days was adequate time to allow the defendant time to have rationally reflected and decided to withdraw he request for counsel.
Everett v. Secretary Fla. Dept. of Corrections, Case No. 14-11857 (11th Cir. 2/27/15)
Right to Counsel: Civil Contempt
No automatic right to counsel in civil contempt hearing for individual who is subject to a child support order. Court did not address proceedings where child support was owed to the State, nor complex cases.
Turner v. Rodgers, 564 U.S. 431 (2011)
Right to Counsel: Waiver by Uncooperative Defendant
It is possible for a valid waiver of counsel to occur when an uncooperative defendant rejects the only counsel to which he is constitutionally entitled, understanding his only alternative is self-representation with its many attendant dangers.
U.S. v. Garey, Case No. 05-14631 (11th Cir. 8/20/08); Jones v. Walker, Case No. 04-13562 (11th Cir. 8/20/08)
Right to Counsel: Attaches as of First Appearance
Sixth Amendment right to counsel applies at first appearance before a judicial officer at which a defendant is told of formal accusation against him and restrictions are imposed on his liberty.
Rothgery v. Gillespie County, Texas, 554 U.S. 191 (2008)
Right to Counsel: Unequivocal Request to Proceed Pro Se
Although the defendant repeatedly sought to dismiss the lawyer appointed to represent him, he never clearly and unequivocally asserted his desire to waive counsel and proceed pro se. Accordingly, the trial court erred when it dismissed the defendant's lawyer and did not appoint a replacement.
Jones v. Walker, Case No. 04-13562 (11th Cir. 8/22/07)
Right to Counsel: During Interrogation - Offense Specific (Different Sovereigns)
A defendant's Sixth Amendment right to counsel with respect to certain federal charges had attached before those charges had been filed when state law enforcement officers interrogated him about analogous state charges that were pending at the time of the interrogation. Contrary to an existing decision of the Fifth Circuit, the Court rejected the argument that the two cases were different for Sixth Amendment purposes because one was brought by the state and one by the federal government.
U.S. v. Mills, Case No. 04-0750 (2d Cir. 6/21/05), but see U.S. v. Harris, Case No. 07-13473 (11th Cir. 5/8/08)
Right to Counsel: Attaches Once Judicial Proceedings Have Been Initiated
The Sixth Amendment right to counsel is triggered at or after the time that judicial proceedings have been initiated whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.
Brewer v. Williams, 430 U.S. 387, 398 (1977), Fellers v. U.S., 540 U.S. 519 (2004)

Right to Counsel: Jail Sentence for VOP
If there is a possibility the defendant might go to jail for a violation of probation, the Sixth Amendment guarantees him a lawyer.
Alabama v. Shelton, 122 S. Ct. 1764 (2002)

ROBBERY

Robbery: Hobbs Act - Robbery of a Drug Dealer
Robbery of a drug dealer met the Commerce Clause element of the Hobbs Act.
Taylor v. United States, Case No. 14-6166 (U.S. 6/20/16)
Robbery: Hobbs Act - Interstate Nexus (Stash House)
Robbery of drugs from a house used to store drugs fulfilled the interstate nexus requirement of the Hobbs Act.
U.S. v. Orisnord, 483 F.3d 1169 (11th Cir. 2007)
Robbery: Taking by Intimidation from the Person or Presence of Another
Robbers who hit and jumped the bank counter with some force making a loud noise and who snatched the money out of the till within an arm's length away from a cashier, did enough to support a conviction on the basis of a taking accomplished by threats or intimidation and from the person or presence of another.
U.S. v. Kelley, Case No. 04-13002 (11th Cir. 6/16/05)
Robbery: U.S. Property - Defendant Need Not Know Property Belongs to U.S.
In the case of an assault with intent to rob persons in possession of property belonging to the U.S., 18 USC s. 2114(a) the government is not required to prove the defendant knew the property belonged to the United States.
U.S. v. Smithen, No. 99-12723 (11th Cir. 6/6/00)
Robbery: Bank Theft Not a Lesser of Bank Robbery
A defendant charged with violating 18 USC § 2113(a), which punishes whoever takes anything of value from a bank by force and violence, or by intimidation, is prohibited as a matter of law from obtaining a lesser included offense instruction on offense described in § 2113(b), which punishes whoever takes and carries away with intent to steal anything of value exceeding $1000 from a bank.
Carter v. U.S., 530 U.S. (2000)
Robbery: Armed Bank Robbery (18 USC §2113(d))
Seems to require active employment of the gun as opposed to merely carrying it.
U.S. v. Villard, 1999 WL 545260 (8th Cir. 7/28/99); U.S. v. Smith, 103 F.3d 600 (7th Cir. 1996)**;** U.S. v. Perry, 991 F.2d 304 (19930
Robbery: Hobbs Act - Robbery of Gas Station Qualified
Emphasizing that the effect on commerce need by only minimal robbery of an Amoco gas station of $300 met the jurisdictional requirements of the Hobbs Act, 18 USC § 1951.
U.S. v. Guerra, No. 97-4576 (11th Cir. 1/14/99); U.S. v. Woodruff, Case No. 01-16067 (11th Cir. 7/3/02); U.S. v. Ransfer, Case No. 12-12956 (11th Cir. 1/28/14)
Robbery: Hobbs Act - Variety of Factors Qualified Home Invasion Robbery
The fact that one of the robbers flew from one state to another, that there were interstate phone calls, and that some of the property was taken across state lines all helped to turn this home invasion robbery into a Hobbs Act violation.
U.S. v. Carcione, 272 F.3d 1297 (11th Cir. 2001)
Robbery: Hobbs Act - Standard - Substantive vs. Attempt or Conspiracy

In the case of a substantive Hobbs Act offense, the impact on commerce does not need to be substantial; all that is required is a minimal impact. Where a defendant is charged with attempt or conspiracy to violate the Hobbs Act, the interstate nexus maybe demonstrated by evidence of potential impact on interstate commerce or by evidence of actual, de minimis impact.
U.S. v. Le, No. 00-11124 (11th Cir. 7/11/01)

Robbery: Hobbs Act - Interstate Phone Calls or Transportation

The use of interstate or foreign transportation and communication facilities to carry out a scheme of robbery or extortion may constitute - in conjunction with other facts - a sufficient basis for a Hobbs Act prosecution.
U.S. v. Le, U.S. v. Le, No. 00-11124 (11th Cir. 7/11/01)

Robbery: Hobbs Act- Home Invasion Robbery

Where the money sought in a home invasion robbery was supposed to have come from the victim's business, the robbery qualified for Hobbs Act prosecution.
U.S. v. Le, U.S. v. Le, No. 00-11124 (11th Cir. 7/11/01); U.S. v. Carcione, 272 F.3d 1297 (11th Cir. 2001)

Robbery: Hobbs Act - Robbery of Motel Qualified

Five robberies of motels in Miami, that netted $2,000 qualified.
U.S. v. Rodriguez, No. 99-4098 (11th Cir. 7/14/00)

Robbery: Hobbs Act - Economic Affect Need Not Be Adverse

Despite a convincing dissent to the contrary.
U.S. v. Kaplan, 171 F.3d 1351 (11th Cir. 1999)

Hobbs Act: Robbery of Gas Station Qualified

Emphasizing that the effect on commerce need be minimal, the robbery of an Amoco gas station of $300 met the jurisdictional requirements of the Hobbs Act, 18 USC 1951.
U.S. v. Guerra, 218 F.3d 1243 (11th Cir. 2000)

SEARCH & SEIZURE

Abandonment

Search & Seizure: Abandonment - General Principles

See the District Court opinion, from south Florida of: U.S. v. Cofield, 108 F.Supp.2d 1374 (S.D. Fla. 2000); U.S. v. Johnson, Case No. 14-12075 911th Cir. 12/1/15); Pineda v. Warden, Calhoun State Prison, Case No. 14-137772 (11th Cir. 9/21/15)

Autos

Search & Seizure: Autos - Automobile Exception Inapplicable to Car in Driveway

See U.S. v. Beene, Case No. 14-30476 (5th Cir. 3/8/16)

Search & Seizure: Autos - Good Faith Reliance on Pre-Jones GPS Rulings

Court declined to suppress evidence where officers, without having obtained a warrant, attached a GPS device to the defendant's car because the officers had done so prior to the decision in Jones and had reasonably relied upon earlier decisions.
U.S. v. Ransfer, Case No. 12-12956 (11th Cir. 1/28/14); U.S. v. Smith, Case No. 12-11042 (11th Cir. 12/23/13)

Search & Seizure: Autos - GPS Tracking Device

The Government's installation of a GPS device on a target's vehicle, and its use of the device to monitor the vehicle's movement, at least over a four-week period, constitutes a search. Here the search was invalid because it was not supported by a warrant.
U.S. v. Jones, 565 U.S. 400 (2012)

Search & Seizure: Auto - Probable Cause (Officer's Motives Irrelevant)
When determining whether an officer has probable cause to believe that a traffic violation occurred, the officer's motive in making the traffic stop does not invalidate what is otherwise objectively justifiable behavior under the Fourth Amendment.
U.S. v. Harris, Case No. 07-13473 (11th Cir. 5/8/08)
Search & Seizure: Auto - Stop of Car' Seizure of Passenger
When law enforcement officers stop a car, they, for Fourth Amendment purposes, also seize the passenger. Thus, when the stop is unlawful, the passenger can claim whatever was discovered is the product of the unlawful detention and is subject to being suppressed.
Brendlin v. California, 551 U.S. 249 (2007)
Search & Seizure: Autos - Warrantless Probable Cause Searches
Only two questions need to be asked: (1) whether the car is operational and (2) whether there is probable cause.
U.S. v. Watts, Case No. 02-16835 (11th Cir. 5/8/03)
Search & Seizure: Autos - Search Incident to Arrest
Upon arresting someone in a car, law enforcement officials may search the interior of the car.
New York v. Belton, 453 U.S. 454 (1980)
Search & Seizure: Autos - No Exigency Requirement
Least there be any doubt about it, the automobile exception to the warrant requirement has no separate exigency requirement.
Maryland v. Dyson, 527 U.S. 465 (1999)
Search & Seizure: Autos - Search of Passenger's Belongings
If there is probable cause to search the car, the officer can search any belongings left by the passenger in the car, so long as they are capable of concealing the object of the search.
Wyoming v. Houghton, 526 U.S. 295, 119 S. Ct. 1297 (1999)

Border Searches

Search & Seizure: Border Searches - No Requirement for Reasonable Suspicion
The search of a station wagon's gas tank at the border between Mexico and the United States that involved removing and disassembling the gas tank did not require a reasonable suspicion. The intrusion is justified by the government's interest in protecting its border.
U.S. v. Flores-Montano, 541 U.S. 149 (2004)

Breathalyzer and Blood Draws

Search & Seizure: Breathalyzer and Blood Draws
Warrant not necessary of a breathalyzer test and nothing wrong with making it a misdemeanor offense to refuse to submit to a breathalyzer. Warrant is necessary before blood can be drawn to determine blood alcohol level. Can't make it a crime to refuse to submit to a blood test.
Birchfield v. North Dakota, Case No. 14-1468 (S. Ct. 6/23/16)
Search & Seizure: Breathalyzer and Blood Draws - Search Warrant for Blood Sample (Alcohol Analysis)
The natural metabolization of alcohol in the blood stream does not present a per se exigency that justifies an exception to the Fourth Amendment for nonconsensual blood testing in all drunk-driving cases. While it may support a finding of exigency in a specific case, as it did in Schmerber, it does not do so categorically. Whether a blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.
Missouri v. McNeely, Case No. 11-1425 (S. Ct. 2013)

Consent

Attenuation

Search & Seizure: Consent – Attenuation (Search Sufficiently Attenuated from Unlawful Entry)

Although officers entered residence with guns drawn, they holstered them shortly after entering, explained their presence, left the house entirely while the defendant got dressed, reentered only after the defendant led them back inside, and exited again when the defendant wanted to smoke a cigarette. The officers did not handcuff the defendant and the encounter was conversational. The officer told the defendant he was not under arrest and was under no obligation to speak to the officers. The amount of time that passed between the entry and the consent to search wasn't clearly established, but could have been as little as 15 minutes. Nonetheless, the court of appeals concluded that the consent given by the defendant to search his computer was sufficiently attenuated from what may have been an unlawful entry.

U.S. v. Smith, 688 F.3d 730 (11th Cir. 2012)

Search & Seizure: Consent – Attenuation (Dissipation of Taint of Police Illegal Conduct)

Where the police arguably entered the residence illegally and secured the consent to search from the defendant's girlfriend, the search was valid because any taint from the illegal entry had dissipated. The officers advised the girlfriend of her right to deny consent, the officers entered the house because of a legitimate concern for their safety, and it was the consent of a third party, not the defendant.

U.S. v. Delancy, Case No. 06-13718 (11th Cir. 10/3/07)

Search & Seizure: Consent - Attenuation

If the ensuing search occurs after an initial illegality, such as an illegal entry or an illegal arrest, the court must first determine whether the consent to search was voluntary and then, whether the consent was tainted by the initial illegality.

U.S. vs. Ramirez-Chilel, 289 F.3d 744 (11th Cir. 2002); U.S. v. Lopez-Garcia, Case No. 08-12662 (11th Cir. 4/21/09)

Search & Seizure: Consent - Attenuation

The voluntariness of consent is only a threshold requirement; a voluntary consent to search does not remove the taint of an illegal seizure. Rather, the focus is on causation: whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiency distinguishable to be purged of the primary taint.

U.S. v. Santa, 236 F.3d 662 (11th Cir. 2000); U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03); U.S. v. Perkins, Case No. 02-15891 (11th Cir. 10/22/03); U.S. v. Lopez-Garcia, Case No. 08-12662 (11th Cir. 4/21/09)

Search & Seizure: Consent - Attenuation (Not Tainted by Unlawful Police Action)

Where police conducted an unlawful sweep of the defendant's apartment, took him out to the balcony, but the defendant, as he stood unhandcuffed on the balcony, consented to the search of the apartment, the defendant's consent was not tainted by the unlawful entry.

U. S. V. Welch, Case No. 10-14649 (11th Cir. 6/13/12)

Burden of Proof

Search & Seizure: Consent - Burden of Proof Belongs to Government

The government bears the burden of proving both the existence of consent and that the consent was not a function of acquiescence to a claim of lawful authority but rather was given freely and voluntarily.

U.S. v. Yeary, Case No. 11-13427 (11th Cir. 1/22/14)

Third Party

Search & Seizure: Consent – Third Party (Wife's Authority to Consent to Search of Husband's Computer)

Consent to search the defendant's computer was valid when given by wife of defendant, who called the police upon discovering child pornography on husband's computer that she also used.

U.S. v. Thomas, Case No. 14-14680 (11th Cir. 4/1/16)

Search & Seizure: Consent – Third Party (Wife's Consent and Defendant's More Limited Consent)

Officers told defendant they were only interested in searching computer for evidence regarding the murder of a teenager with whom the defendant was acquainted, and with the understanding that the offices would not be searching for evidence of child porn, he gave the officers consent to search the computer. Independently, the defendant's wife consented to a general search of the computer. She did so in the presence of the defendant who did not voice any objection. When the defendant was charged with possessing child porn on the basis of images found during the search, the trial court denied the defendant's motion to suppress. The court of appeals affirmed, concluding that the defendant had failed to establish the exception under Georgia v. Randolph, 547 U.S. 103 (2006).

U.S. v. Watkins, Case No. 12-12549 (11th Cir. 7/28/14)

Search & Seizure: Consent – Third Party (Officer Reasonably Believed Motel Manager Had Authority to Consent to Search of Defendant's Motel Room)

Under the circumstances, the police officer reasonably believed the motel manager had authority to consent to the search of the defendant's motel room.

U.S. v. Mercer, Case No. 06-13258 (11th Cir. 8/28/08)

Search & Seizure: Consent - Third Party (Consent Dissipates Upon Discovery of Circumstances Suggesting Lack of Authority to Consent)

Law enforcement officers should not have continued to rely on a woman's permission to search luggage after they searched the first bag and found it contained only her boyfriend's clothes and effects. The discovery of men's clothing dissipated the apparent authority to consent, and the Fourth Amendment required the officers either to obtain a warrant or to clarify the girlfriend's authority over the bags.

U.S. v. Purcell, Case No. 07-5517 (6th Cir. 5/29/08)

Search & Seizure: Consent – Third Party (Given by Informant)

Although the defendant willingly admitted an informant into his house, the informant lacked the authority to allow officers to enter the residence.

Callahan v. Millard County, Case No. 06-4135 (10th Cir. 7/16/07)

Search & Seizure: Consent - Third Party (Landlord)

Landlord can't consent to search of property leased to tenant.

Chapman v. U.S., 365 U.S. 610 (1961)

Search & Seizure: Consent - Third Party (Co-Occupant Present and Objecting)

If co-occupants are present and one consents to the search and the other objects, officers do not have consent to enter the residence.

Georgia v. Randolph, Case No. 04-1067 (S. Ct. 3/22/06); U.S. v. Thomas, Case No. 14-14680 (11th Cir. 4/1/16)

Search & Seizure: Consent - Third Party (Apparent Authority)

Consent is sufficient when given by a person who reasonably appears to have common authority but who, in fact, has not property interest in the property searched.

Illinois v. Rodriguez, 497 U.S. 177 (1990); U.S. v. Yeary, Case No. 11-13427 (11th Cir. 1/22/14); U.S. v. Barber, Case No. 13-149335 (11th Cir. 2/3/15)

Search & Seizure: Consent - Third Party Consent (Spouse)

A spouse who jointly owns and occupies the marital home with the defendant may consent to a search of it with the same effect as if the defendant himself had done so. Here the husband and wife were estranged and the wife, who gave consent to search, had been out of the residence for some time. The court, though, found that she had not abandoned the residence, but had been driven away by the husband's abusive conduct. Accordingly, the court held she still had the authority to consent to the search.

U.S. v. Backus, Case No. 03-10691 (11th Cir. 11/5/03)

Search & Seizure: Consent - Third Party Consent

The law is settled that permission to conduct a consensual search of property owned or occupied by a prospective defendant may be obtained from another person who possesses common authority over or other sufficient relationship to the premises.

U.S. v. Backus, Case No. 03-10691 (11th Cir. 11/5/03)

Search & Seizure: Consent - Third Party Consent

See: Third Part Consents to Police Entry, Fla. Bar Journal, November 2003, p. 24.; Georgia v. Randolph, Case No. 04-1067 (S. Ct. 3/22/06)

Voluntariness

Search & Seizure: Consent – Voluntariness (Having to Agree to Warrantless Searches as a Condition of Pretrial Release Did Not Render Consent Involuntary)

Opinion cites other examples, too.

U.S. v. Yeary, Case No. 11-13427 (11th Cir. 1/22/14)

Search & Seizure: Consent – Voluntariness (Police Announcement It Would Take a While to Get a Search Warrant)

Where the defendant initially denied a request for permission to search his apartment, but shortly thereafter gave his permission after being advised the officers would have to get a search warrant and it could take a while, the court found the consent to be voluntary.

U.S. v. Welch, Case No. 10-14649 (11th Cir. 6/13/12)

Search & Seizure: Consent – Voluntariness (Invalid if the Product of an Illegal Detention)

US. v. Simms, Case No. 03-13233 (11th Cir. 9/27/04)

Search & Seizure: Consent – Voluntariness (Bus)

Circumstances involved when police boarded a Greyhound bus and sought consent from already boarded passengers was not so coercive as to render consent invalid.

U.S. v. Drayton, Case No 02-631 (6/17/02)

Search & Seizure: Consent – Voluntariness (Failure to Object)

The government may not show consent to enter from the defendant's failure to object to the entry.

U.S. vs. Ramirez-Chilel, 289 F.3d 744 (11th Cir. 2002)

Search & Seizure: Consent – Voluntariness (Acquiescence to Authority)

A suspect does not consent to a search of his residence when his consent to the entry into his residence is prompted by a show of official authority.

U.S. vs. Ramirez-Chilel, 289 F.3d 744 (11th Cir. 2002)

Search & Seizure: Consent – Voluntariness (Acquiescence)

Subject's statement "You've got the badge, I guess you can," was acquiescence, not consent.

United States v. Worley, 193 F.3d 380 (6th Cir. 1999)

Search & Seizure: Consent – Voluntariness (Extent of Search Absent Express Limitations)
When an individual provides a general consent to search, without expressly limiting the terms of his consent, the search is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass . . .What would the typical reasonable person have understood by the exchange between the officer and suspect...we must consider what the parties knew to be the object of the search. Here, consent to search the car for drugs allowed the officer to peel back the door panels.
U.S. v. Zapata, No. 98-8609 (11th Cir. 7/13/99); U.S. v. Stanley, 472 F.3d 1298 (11th Cir. 2006)
Search & Seizure: Consent – Voluntariness (Ability to Understand English)
In determining whether an individual has sufficient comprehension of English to provide voluntary consent, the courts examine his ability to interact intelligently with the police.
U.S. v. Zapata, No. 98-8609 (11th Cir. 7/13/99); see also: U.S. v. Galvan-Muro, 141 F.3d 904, 907 (8th Cir. 1998)
Search & Seizure: Consent – Voluntariness (Failure to Inform of Right to Refuse Consent)
The mere fact that the officer did not inform Lorenzo of his right to refuse consent, given the lack of any coercive behavior on Phillip's part, is insufficient to render Lorenzo's consent involuntary.
U.S. v. Zapata, No. 98-8609 (11th Cir. 7/13/99); see also Ohio v. Robinette, 519 U.S. 33, 39 (1966); U.S. v. Jones, 475 F.2d 723, 730 (5th Cir. 1973)
Search & Seizure: Consent - Voluntariness (Analysis)
The voluntariness of consent analysis is conducted with reference to the totality of the circumstances and there are a number of factors for a court to consider in conducting its inquiry: the person's youth, his lack of education, evidence of the person's low intelligence, the existence of advice as to the nature of the constitutional right implicated, the length of detention preceding the request to consent, the nature of the prior questioning, the environment, and whether any physical punishment was involved.
U.S. v. Zapata, No. 98-8609 (11th Cir. 7/13/99); see also: Schenckloth v. Bustamonte, 412 U.S. 218, 222 (1973); U.S. v. Garcia, 890 F.2d 355, 360 (11th Cir. 1989); U.S. v. Ramirez-Chilel, 289 F.3d 744 (11th Cir. 2002); U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)
Search & Seizure: Consent – Voluntariness (Deception by Law Enforcement)
Defendant reported burglaries at his residence and police, appearing on the pretext of responding to the burglary report, conducted a search as part of a credit card fraud scheme. Court held that the deception did not vitiate the defendant's consent to allow the officers entry into his residence. Case includes a dissent by Judge Martin and examples of when deception vitiated consent.
U.S. v. Spivey, Case No. 15023 (11th Cir. 6/28/17)

DNA

Search & Seizure: DNA – Legitimate Booking Procedure
When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, legitimate police booking procedure that is reasonable under the Fourth Amendment.
Maryland v. King, 569 U.S. 435 (2013)
Search & Seizure: DNA - Sample from Convicted Felon
Warrantless, suspicionless, extractions of DNA samples from convicted felons for inclusion in a data base does not violate the Fourth Amendment.

Nicholas v. Goord, Case No. 04-3887 (2d Cir. 11/28/05); U.S. v. Hook, Case No. 06-1362 (7th Cir. 12/13/06)

Search & Seizure: DNA - Testing of Incarcerated Felons

Georgia state law compelling incarcerated felons to submit saliva samples for DNA profiling did not violate the Fourth Amendment.

Padgett v. Boulineau, Case no. 03-16527 (11th Cir. 3/4/2005)

Dogs

Search & Seizure: Dogs – Record of Dogs Performance

The court rejected the Florida Supreme Court's decision requiring the state to produce field records showing of a dog's performance to establish probable cause. It concluded the training and testing records were adequate to demonstrate the dog's reliability.

Florida v. Harris, 568 U.S. 237 (2013)

Search & Seizure: Dogs – Sniff at Front Door

Police officers in taking a dog to the front door of the defendant's residence to sniff for drugs, conducted a "search" within the meaning of the Fourth Amendment.

Florida v. Jardines, 569 U.S. 1 (2013)

Search & Seizure: Dogs – Delay in Traffic Stop

Absent reasonable suspicion, police extension of a traffic stop to conduct a dog sniff amounts to an unreasonable seizure.

Rodriguez v. United States, 575 U.S. 348 (2015)

Search & Seizure: Dogs - Dog Sniff at Locked Bedroom Door

A drug-dog sniff outside a defendant's locked bedroom door, inside a home he shared with a resident who had consented to the police activity was not a search withing the meaning of the Fourth Amendment.

U.S. v. Brock, Case No. 03-2279 (7th Cir. 8/2/05)

Search & Seizure: Dogs - Dog Sniff During a Lawful Traffic Stop

Dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a controlled substance does not violate the Fourth Amendment. (Case includes, in Justice Souter's dissent, a listing of cases showing that the dogs are not always accurate.)

Illinois v. Caballes, 543 U.S. 405 (2005)

Search & Seizure: Dogs - Dog's Sniff of Car

The fact that officers walk a narcotics detective around the exterior of each car at the checkpoint did not transform the seizure into a search.

City of Indianapolis v. James Edmond, 121 S. Ct. 447 (2000)

Search & Seizure: Dogs - Dog Sniff of Property in A Public Place

A dog sniff of a person's property located in a public place is not a search within the meaning of the Fourth Amendment. That is so because the constitution does not provide any expectation of privacy in the odors emanating from such things as cars or luggage.

Hearn v. Board of Public Education, 191 F.3d 1329 (11th Cir. 1999)

Search & Seizure: Dogs Alert on Cash

The probative value of dog alerts to the small of narcotics on currency has been called into question of late. Testimony indicates that as much as 80% of money in circulation may carry residue of narcotics.

U.S. v. $242,484, Case No. 01-16385 (11th Cir. 1/22/03)

Exclusionary Rule

Search & Seizure: Exclusionary Rule – Warrants (Only in Unusual Cases)

Given the good faith exception, the exclusionary rule applies on in unusual cases. Suppressing evidence discovered pursuant to a warrant generally cannot logically contribute to deterrence.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Exclusionary Rule - Use of Unlawfully Obtained Evidence at Sentencing

At a sentencing hearing, the court may use evidence seized in violation of a defendant's Fourth Amendment rights so long as the police did not intentionally violate the Fourth Amendment in order to increase the defendant's sentence.
U.S. v. Vasquez, 724 F.3d 15 (1st Cir. 2013)

Search & Seizure: Exclusionary Rule - Purpose

Exclusion is not a personal constitutional right, nor is it designed to redress the injury occasioned by an unconstitutional search. The rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations.
Davis v. U.S., 564 U.S. 229 (2011)

Search & Seizure: Exclusionary Rule - Cost-Benefit Balancing Test

See: U.S. v. Farias-Gonzalez, Case No. 08-10508 (11th Cir. 2/3/09)

Exigent Circumstances Exception to Warrant Requirement

Search & Seizure: Exigent Circumstances - Emergency Aid

Report of a bullet hole in a shared apartment wall that had been made at least 39 hours earlier did not justify a warrantless entry into the adjoining apartment.
U.S. v. Timmann, Case No. 11-15832 (11th Cir. 12/18/13)

Search & Seizure: Exigent Circumstances - Destruction of Evidence

Where police went to residence looking for drug suspect, knocked on the door, announced their presence, heard what they believed to be sounds indicating that evidence was being destroyed, their action in breaking open the door did not violate the Fourth Amendment.
Kentucky v. King, 563 U.S. 452 (2011)

Search & Seizure: Exigent Circumstances - Emergency Aid

Test is not subjective, but instead asks if there was an objectively reasonable basis for believing that medical assistance was needed.
Michigan v. Fisher, 558 U.S. 45 (2009)

Search & Seizure: Exigent Circumstances - Threat of Injury

Where police arrived at the residence on the basis of a report of a loud party and saw a fracas inside which included someone throwing a punch and an adult holding a juvenile forcefully against a refrigerator, the circumstances created the sort of exigent circumstance that justified entry into the residence. Accordingly, the contraband discovered by the police upon entering was legally discovered.
Brigham City, Utah v. Stuart, 547 U.S. 398 (2006)

Search & Seizure: Exigent Circumstances - Following Illegal Police Actions

Police, with the assistance of the motel clerk, had illegally entered the defendant's motel room and observed drugs. Subsequently, officers knocked on the door and when they heard scurrying sounds and suspected the destruction of the drugs, they forcibly entered the room. Recognizing a split among the circuits, the Court of Appeals considered the propriety of actions and investigative techniques that preceded the exigency and found the search to be unlawful.
U.S. v. Coles, Case No. 04-2134 (3d Cir. 2/9/06)

Search & Seizure: Exigent Circumstances - Entry into Home to Investigate Domestic Disturbance

Court upheld legality of officer's entry into home. He was in the front yard talking to the crying wife. Upon hearing angry yelling from inside the house the officer entered the house. The entry subsequently led to the discovery of firearms within the house. Court concluded the entry was justified on the basis of the emergency exception.
U.S. v. Martinez, Case No. 04-30098 (9th Cir. 5/16/05)

Search & Seizure: Exigent Circumstances - Must Be Probable Cause

When exigent circumstances demand an immediate response, particularly where there is a danger to human life; protection of the public becomes paramount and can justify a limited warrantless intrusion into the home. The government bears the burden of proving that the exception applies and must establish both an exigency and probable cause. In emergencies, probable cause exists where law enforcement officials reasonable believe that someone is in danger.
U.S. v. Davis, Case No. 02-12804 (11th Cir. 12/5/02)

Search & Seizure: Exigent Circumstances -Inability to Maintain Surveillance

An inability to maintain effective surveillance will not, by itself, suffice to overcome the warrant requirement.
U.S. v. Santa, 236 F.3d 662 (11th Cir. 2000)

Search & Seizure: Exigent Circumstances - In General

The general requirement that a search warrant be obtained is not lightly to be dispensed with, and the burden is on those seeking an exemption from the requirement. The exigency exception only applies when the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action. Recognized situations in which exigent circumstances exist include: danger of flight or escape; danger of harm to police officers or the general public; risk of loss, destruction, removal, or concealment of evidence; and hot pursuit.
U.S. v. Santa, 236 F.3d 662 (11th Cir. 2000); U.S. v. Timmann, 741 F.3d 1170, 1178 (11th Cir. 2013)

Search & Seizure: Exigent Circumstances - Hot Pursuit Exception

United States v. Milan-Rodriguez, 759 F.2d 1158, 1564 (11th Cir. 1985); U.S. v. Williams, Case No. 12-15313 (11th Cir. 10/2/13)

Expectation of Privacy

Search & Seizure: Expectation of Privacy - Reduced Expectation of Privacy for Those on Pretrial Intervention

Castillo v. U.S., No. 13-11757 (11th Cir. 3/15/16)

Search & Seizure: Expectation of Privacy - Cab

See: U.S. v. Harris, Case No. 07-13473 (11th Cir. 5/8/08)

Search & Seizure: Expectation of Privacy - Perimeter Fence

A perimeter fence around property does not create a constitutionally protected interest in all open fields on the property.
U.S. v. Taylor, Case No. 05-10648 (11th Cir. 7/28/06)

Search & Seizure: Expectation of Privacy - Outdoor Activities (Open Fields)

There is no reasonable expectation of privacy for activities conducted out of doors, in open fields, except in the areas shielded from view and immediately surrounding the home.
U.S. v. Taylor, Case No. 05-10648 (11th Cir. 7/28/06)

Search & Seizure: Expectation of Privacy - Property Adjacent to Home

The private property immediately adjacent to a home is entitled to the same protection against unreasonable searches and seizures as the home itself.
U.S. v. Taylor, Case No. 05-10648 (11th Cir. 7/28/06)

Search & Seizure: Expectation of Privacy - Concealed Video or Audio Recording Device in Motel Room
The use of video/audio device placed in the defendant's hotel room to record only while informer was present did not violate the Fourth Amendment. Court notes, however, that the room was rented by the informant for the defendant and that the recording device was concealed in the room by an agent who used the informant's key to gain entrance before the defendant occupied the room. The ruling would have been to the contrary had the device been installed while the defendant had an expectation of privacy at the time the recording device was installed, if the recording took place in the absence of the informant, or if placement of the device allowed for the recording of evidence that the informant could not have seen or heard while he was present. The 11th Circuit, in U.S. v. Yonn, 702 11th Cir. 1983 has reached a similar conclusion. The First Circuit, in U.S. v. Padilla, 520 F.2d 526 (1st Cir. 1975) had held to the contrary.
U.S. v. Lee, Case No. 01-1629 (3d Cir. 2/20/04)
Search & Seizure: Expectation of Privacy - Common Areas of Apartment Building
At least in this case, where the lock on the door of the building was not functioning and anyone could enter. The tenants of the large, multi-unit apartment building did not have a reasonable expectation of privacy in the common areas of the building.
U.S. v. Miravalles, 280 F.3d 1328 (11th Cir. 2002)
Search & Seizure: Expectation of Privacy -Physical Manipulation of Luggage
Border patrol agent's physical manipulation of bus passenger's carry-on bag violated 4th Amendment's proscription against unreasonable searches. Bus passenger exhibited expectation of privacy by using opaque bag and placing it directly above his seat.
Bond v. United States, 529 U.S. 334 (2000)
Search & Seizure: Expectation of Privacy - Possession of Key to Motel Room
Conceivably, possession of the key to the motel room, without more, might not establish an expectation of privacy in the motel room.
U.S. v. Cooper, 203 F.3d 1279, n. 4 (11th Cir. 2000)
Search & Seizure: Expectation of Privacy - Guests for Commercial Purposes?
We note that the Supreme Court has qualified the holding of Olson to some extent. In Minnesota v. Carter, the Court held that in order to establish a reasonable expectation of privacy in a third-party's home, an individual must demonstrate she is a guest on the premises for a personal occasion, rather than for strictly a commercial purpose. Because the evidence in this case suggests Defendants were using the hotel room predominantly to engage in narcotics trafficking, Defendants likely would lack standing even if they had been overnight guests of Gonzalez.
U.S. v. Cooper, 203 F.3d 1279 (11th Cir. 2000)
Search & Seizure: Expectation of Privacy - Guests of Hotel Registrants
An open question in the 11th Circuit.
U.S. v. Cooper, 203 F.3d 1279 (11th Cir. 2000)
Search & Seizure: Expectation of Privacy (Commercial Property)
Less than in an individual's home.
U.S. v. Chaves, 169 F3d 687 (11th Cir. 1999)
Search & Seizure: Expectation of Privacy (Social Guests)
Almost all social guests have an expectation of privacy.
U.S. v. Chaves, 169 F.3d 687 (11th 1999)
Search & Seizure: Expectation of Privacy Must Exist for 4th Amendment Claim
U.S. v. Chaves, 169 F.3d 687 (11th Cir. 1999)

Search & Seizure: Expectation of Privacy - Apartment Visitors
Where visitors to an apartment were only there a few hours, and were there to package cocaine, they did not enjoy the expectation of privacy that an overnight guest would have had, and so if the law enforcement officer that looked in through an opening in the blinds could be said to have conducted an illegal search, the visitors were in no position to object.
Minnesota v. Carter, 525 U.S. 83 (1998)
Search & Seizure: Expectation of Privacy - Search of Visitor to Work Release Center
Defendant who had entered the grounds of a work release center to visit prisoner passed by signs warning that vehicles were subject to search. When officers approached her car and asked about any contraband, she told the officers she had decided to leave rather than have her car searched. The court upheld the subsequent search.
U.S. v. Prevo, Case No. 04-15310 (11th Cir. 1/11/06)

Fruit of the Poisonous Tree

Search & Seizure: Miscellaneous - Exceptions to Fruit of the Poisonous Tree
Independent source, inevitable discovery, and the attenuation doctrine.
Utah v. Strieff, Case No. 14-1373 (S. Ct. 6/20/16); U.S. v. Watkins, Case No. 18-14336 (Dec. 3, 2020)
Search & Seizure: Miscellaneous - Fruit of the Poisonous Tree
Seizures of evidence resulting from an unlawful stop or detention must be suppressed.
Brown v. Illinois, 95 S. Ct. 2254 (1975); U.S. v. Bailey, 691 F.2d 1009, 1015 (11th Cir. 1982); U.S. v. Davis, 313 F.3d 1300, 1302-1303 (11th Cir. 2002); U.S. v. Perkins, 348 F.3d 965 (11th Cir. 2003),
Search & Seizure: Miscellaneous - Fruit of the Poisonous Tree
When the defendant has an outstanding warrant or commits a crime while being detained, such circumstances dissipate the taint of an illegal arrest or detention, and items seized subsequent to the discovery of the warrant or the commission of the new offense are admissible.
U.S. v. Green, 111 F.3d 515 (7th Cir. 1997)
Search & Seizure: Warrants – Based on Prior Illegality
[T]he exclusionary rule reaches not only the primary evidence obtained as a direct result of an illegal search or seizure . . . but also evidence later discovered and found to be derivative of an illegality or fruit of the poisonous tree. Segura v. United States, 468 U.S. 796, 804 (1984). "The question to be resolved when it is claimed that evidence subsequently obtained is tainted or is fruit of the prior illegality is whether the challenged evidence was come at by exploitation of the [initial] illegality or by means sufficiently distinguishable to be purged of the primary taint.'" Id. at 804 (quoting from Wong Sun v. United States, 371 U.S. 471, 488 (1963).
Segura v. United States, 468 U.S. 796 (1984)

Hearing

Search & Seizure: Hearing - Hearsay Admissible
See U.S. v. Fischel, 686 F.2d 1082 (5th Cir. 1982)

Incident to Arrest

Search & Seizure: Incident to Arrest - Gant Doesn't Apply to Searches That Took Place Prior to the Date of the Opinion
Although acknowledging a different view by the 9th Circuit, the Court declined to apply Gant to a pre-Gant search finding that the exclusionary rule should not be applied when the police have reasonable relied upon clear and well-settled precedent.
U.S. v. Davis, Case No. 08-16654 (11th Cir. 3/11/10)

Search & Seizure: Incident to Arrest - Search of Vehicle
Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or if it is reasonable to believe the vehicle contains evidence of the offense of arrest.
Arizona v. Gant, 129 S. Ct. 1710 (2009)
Search & Seizure: Incident to Arrest - Belton - Search Prior to Arrest?
The search of a car incident to an arrest can take place prior to the arrest.
U.S. v. Powell, Case No. 05-3047 (D.C. Cir. 4/17/07), U.S. v. Smith, 389 F.3d 944 (9th Cir. 2004); U.S. v. Lugo, 170 F.3d 996 (10th Cir. 1999)
Search & Seizure: Incident to Arrest - Belton (Occupant Recently in Car)
Right to search the interior of a car incident to arrest is not dependent upon whether the occupant was in the car when approached by the officer. Only requirement is that the individual had been a recent occupant.
Thornton v. U.S., 541 U.S. 615 (2004)
Search & Seizure: Incident to Arrest
Search incident to arrest is a limited exception; it places a temporal and spatial limitation on searches incident to arrest, excusing compliance with the warrant requirement only when the search is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. Thus, officers may only search areas within the arrestee's immediate control construed as the area from within which he might gain possession of a weapon or destructible evidence. As the Court stated, there is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs - or for that matter for searching through all the desk drawers or other closed or concealed areas in that room itself.
Holmes v. Kucynda, 321 F.3d 1069, 1082 (11th Cir. 2003)

Independent Source

Search & Seizure: Independent Source - Purges Taint of Unlawful Search
Under the independent source doctrine, the challenged evidence is admissible if it was obtained from a lawful source, independent of the illegal conduct.
U.S. v. Terzado-Madruga, 897 F.2d 1099, 1113 (11th Cir. 1990); U.S. v. Davis, Case No. 02-12804 (11th Cir. 12/5/02)

Inevitable Discovery

Search & Seizure: Inevitable Discovery - Govt Burden of Proof
Government's burden in proving inevitable discovery is that of preponderance of the evidence.
U.S. v. Watkins, Case No. 18-14336 (11th Cir. Aug. 20, 2021)
Search & Seizure: Inevitable Discovery - Active Pursuit Rule
For the inevitable discovery rule to apply, the lawful means which made discovery inevitable must have been actively pursued prior to the occurrence of the illegal conduct.
U.S. v. Delancy, Case No. 06-13718 (11th Cir. 10/3/07); U.S. v. Virden, 488 F.3d 1317 (11th Cir. 2007); U.S. v. Johnson, Case No. 13-15583 (11th Cir. 2/2/15)
Search& Seizure: Inevitable Discovery
Evidence that results from an illegal search or seizure is nonetheless admissible if the information ultimately or inevitably would have been discovered by lawful means.
Jefferson v. Fountain, Case No. 02-16059 (11th Cir. 9/1/2004); U.S. v. Delancy, Case No. 06-13718 (11th Cir. 10/3/07)

Interception of Oral Communications

Search & Seizure: Interception of Oral Communications - Recording

Although recognizing a split of authority, the Second Circuit holds that the act of simply recording a conversation does not constitute an interception of oral communications as prohibited by 18 USC § 2510.
Rias v. Mutual Central Alarm Service, 202 F.3d 553 (2nd Cir. 2000)

Search & Seizure: Interception of Oral Communications – Failure to Create Written Version of Warrant

Federal agents' failure to create the written version of a warrant that is required by the federal rule on telephonic search warrants does not trigger the Fourth Amendment's exclusionary rule.
U.S. v. Cazares-Olivas, Case No. 07-2080 (7th Cir. 1/29/08)

Inventory Searches

Search & Seizure: Inventory Searches - Arrestee's Personal Property

When police take custody of a bag, suitcase, box or any similar container following an individual's arrest, they may open it in order to itemize its contents pursuant to standard inventory procedures.
U.S. v. Farley, Case No. 08-15882 (11th Cir. 6/2/10)

Search & Seizure: Inventory Searches - Lack of Standardized Rules

While there is a split among the circuits, the Court held that the absence of standardized procedures to guide the discretion of an officer to impound a vehicle did not render the subsequent inventory of the vehicle unreasonable and did not require the suppression of the contraband discovered during the inventory search.
U.S. v. Smith, Case No. 06-3112 (3rd Cir. 4/9/08); U.S. v. Johnson, Case No. 13-15583 (11th Cir. 2/2/15); U.S. v. Johnson, 777 F.3d 1270 (11th Cir. 2015)

Knock and Announce

Search & Seizure: Knock and Announce - Exigent Circumstances

Unverified tip from an anonymous informant that there were guns in the house was insufficient to support a no-knock entry.
Doran v. Eckold, 03-1810WM (8th Cir. 4/6/04)

Search & Seizure: Knock and Announce

Fifteen to twenty second delay before forcefully entering was sufficient. At least in a drug case, the issue isn't so much whether the occupant has time to answer the door. Instead, the theory is that as the execution of the warrant occurred during the day and because drugs were the object of the search, an exigent circumstance - the possibility of the destruction of the drugs - occurs as soon as the officers knock. There is a note that in the case with no reason to suspect an immediate risk of frustration or futility in waiting at all, the reasonable wait time may well be longer when police make a forced entry . . .
U.S. v. Banks, 540 U.S. 31 (2003)

Knock and Talk

Search & Seizure: Miscellaneous - Knock and Talk (What Part of the Property May Be Entered?)

Not clear whether, in executing a knock and talk procedure, officers are required to go to the front door or whether they are permitted to go to other entrances or portions of the property.
Carroll v. Carman, Case No. 14-212 (S. Ct. 11/10/14)

Search & Seizure: Miscellaneous - Entry Upon Private Land to Knock on Door

The Fourth Amendment is not implicated by the police to knock on a citizen's door for legitimate police purposes unconnected with a search of the premises.
U.S. v. Taylor, Case No. 05-10648 (11th Cir. 7/28/06)

Miscellaneous

Search & Seizure: Miscellaneous - Identity-Related Evidence (A-File in Immigration Cases)

Can't be suppressed.

U.S. v. Lopez-Garcia, Case No. 08-12662 (11th Cir. 4/21/09); U.S. v. Farias-Gonzalez, Case No. 08-10508 (11th Cir. 2/3/09)

Search & Seizure: Miscellaneous - Two Wrongs Don't Make a Right

A basic principle lies at the heart of the Fourth Amendment: Two wrongs don't make a right.

Utah v. Strieff, Case No. 14-1373 (S. Ct. 6/20/16) (Sotomayor, dissenting)

Search & Seizure: Miscellaneous - Criminal Raid Under Guise of Administrative Inspection

A criminal raid executed under the guise of an administrative inspection is constitutionally unreasonable.

Berry v. Leslie, Case No. 13-14092 (11th Cir. 9/16/14)

Search & Seizure: Miscellaneous - Limited Use of Suppression

Suppression motions are filed in approximately 7% of criminal cases; approximately 12% of suppression motions are successful.

J.D.B. v. North Carolina, Case No. 09-11121 (S. Ct. 3/23/11) (Breyer, J. dissenting)

Search & Seizure: Miscellaneous - Change in Law

When the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply. Accordingly, the validity of the search in the case, which violated the new search-incident-to-arrest rule established in Gant, was upheld because the search took place before Gant was decided.

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

Search & Seizure: Miscellaneous - Shut Down of Servers' Seizure

U.S. v. Bradley, Case No. 06-14934 (11th Cir. 6/29/11)

Search & Seizure: Miscellaneous - Home Receives Greatest Fourth Amendment Protection

U.S. v. Alfaro-Moncada, Case No. 08-16442 (11th Cir. 5/27/10)

Search & Seizure: Miscellaneous - Suppression of Statement of Officer That Defendant Pointed a Gun at Him

Although losing in the Supreme Court on another issue, the defendant succeeded in the courts of Michigan in getting a statement of the officer and (?) maybe, potential trial testimony, suppressed. The statement was that he (the officer) had seen the defendant point a gun at him. It was suppressed because the incident occurred after the police had unlawfully entered the defendant's home.

Michigan v. Fisher, Case No. 09-91 (S. Ct. 12/7/09)

Search & Seizure: Miscellaneous - Unlawful Search by Foreign Officials in Their Own Countries

The general rule is that the evidence uncovered by searches by foreign officials in their own countries is admissible regardless of whether the search fell short of U.S. constitutional standards. There are, though, two exceptions: (1) a search that shocks the judicial conscience and (2) a search in which U.S. law enforcement officials participated in a substantial way or in which the foreign officials acted as agents for the U.S. officials.

U.S. v. Emmanuel, Case No. 07-10378 (11th Cir. 4/21/09)

Search & Seizure: Miscellaneous - State Searches Governed by Federal Law

The admissibility in federal court of the products of state searches and seizures is controlled by federal law.
U.S. v. Clay, Case No. 02-15369 (11th Cir. 1/7/03)
Search & Seizure: Miscellaneous - Nighttime Searches
Nighttime searches are deemed to be more intrusive than daytime searches, and the assemblage of law enforcement officers at one's door in the middle of the night has a tendency to be more coercive than during the day.
U.S. vs. Ramirez-Chilel, No. 00-16686 (11th Cir 4/25/02)
Search & Seizure: Miscellaneous - Appellate Court Can Consider All Evidence
In reviewing the trial court's ruling on a motion to suppress, the appellate court is not limited to the evidence introduced at the hearing on the motion to suppress.
U.S. vs. Ramirez-Chilel, No. 00-16686 (11th Cir 4/25/02)
Search & Seizure: Miscellaneous - Thermal Imaging
Where government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, surveillance is Fourth Amendment search and is presumptively unreasonable without a warrant.
Kyllo v. U.S., 533 U.S. 27 (2001); less than probable cause? see: U.S. v. Kattaria, Case No. 06-3903 (8th Cir. 10/5/07)
Search & Seizure: Miscellaneous - Fourth Amendment Applicable to State Hospital
Because the hospital was a state hospital, the members of its staff are government actors, subject to the strictures of the Fourth Amendment.
Ferguson v. Charleston, 532 U.S. 67 (2001)
Search & Seizure: Miscellaneous - Medical Testing
State hospital's performance of diagnostic tests to obtain evidence of patient's criminal conduct for law enforcement purposes is an unreasonable search if the patient has not consented to the procedure.
Ferguson v. City of Charleston, 532 U.S. 67 (2001)
Search & Seizure: Miscellaneous - Homicide Crime Scene
There is no exception to the warrant requirement that is justified by the existence of a homicide crime scene. Here, where the officers searched the residence where the murder occurred for 16 hours, and in the course of the search opened and searched a brief case, the trial court should have suppressed the contents of the brief case.
Flippo v. West Virginia, 528 U.S. 11 (1999)
Search & Seizure: Miscellaneous - Man's House is His Castle
Wilson v. Layne, 526 U.S. 603 (1999)
Search & Seizure: Miscellaneous - Warrant Not Required for Seizure for Forfeiture
Florida v. White, 526 U.S. 559 (1999)
Search & Seizure: Miscellaneous - Description of Fourth Amendment's Warrant Requirement
Good for 1st paragraph of memo in support of motion challenging a warrantless search of a residence.
U.S. v. Timmann, Case No. 11-15832 (11th Cir. 12/18/13)
Search & Seizure: Miscellaneous - Reliance Upon Existing Case Law
Where officers, without a warrant, attached a GPS device to the defendant's car prior to the decision in Jones, court declined to suppress the resulting evidence because the officers had reasonably relied upon the case law that existed at the time.

U.S. v. Ransfer, Case No. 12-12956 (11th Cir. 1/28/14); U.S. v. Smith, Case No. 12-11042 (11th Cir. 12/23/13)

Search & Seizure: Miscellaneous - Curtilage

A home's curtilage is entitled to the same protection as the home. Four factors determine whether an area outside the home is considered to be curtilage: (1) the proximity of the area to the home; (2) the nature of the uses to which the area is put; (3) where there is an enclosure surrounding the area and the home; and (4) the steps the resident takes to protect the area from observation.

U.S. v. Noriega, Case No. 10-12480 (11th Cir. 4/11/12)

Mistake of Law or Fact

Search & Seizure: Mistake of Law or Fact - Stop or Arrest Based on Mistake of Fact

A traffic stop based on an officer's incorrect but reasonable assessment of facts does not violate the Fourth Amendment. Thus, if an officer makes a traffic stop based on mistake of fact, the only question is whether the mistake of fact was reasonable.

U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03)

Search & Seizure: Mistake of Law or Fact – Mistake of Law Didn't Justify Stop

While an officer's reasonable mistake of fact may provide the objective grounds for a reasonable suspicion stop or probable cause required to justify a traffic stop, an officer's mistake of law may not. In this instance, where the officer mistakenly believed it was unlawful to drive without an interior rear-view mirror, it was a mistake of law, and the trial court should have granted the defendant's motion to suppress.

U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03)

Search & Seizure: Mistake of Law or Fact - Execution of Arrest Warrant on Wrong House

Where the person who was the object of the arrest warrant had sold the residence one month prior to the execution of the arrest warrant, the discovery of the new owner's marijuana should not have been suppressed. In a discussion that includes the merits of AutoTrac the court held that the officers reasonably believed the subject of the warrant still lived at the residence.

U.S. v. Bervaldi, 226 F.3d 1257 (11th Cir. 2000)

Search & Seizure: Mistake of Law or Fact - Mistaken Belief That Warrant Was Outstanding

While the Supreme Court has declined to address whether the exclusionary rule should be applied when police personnel, rather than court personnel are responsible for the error, the court of appeals held that the negligence of an employee of the neighboring sheriff's office fell under the good faith exception.

U.S. v. Herring, Case No. 06-10795 (11th Cir. 7/17/05)

Search & Seizure: Mistake of Law or Fact - Police Negligence

Where officer arrested the defendant based on a reasonable belief that there was an outstanding warrant, but that belief turned out to be wrong because of negligent bookkeeping error by another police employee, drugs and gun found during search incident to arrest were admissible. When police mistakes are the result of negligence, rather than systematic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

Herring v. U.S., 555 U.S. 135 (2009)

Packages

Search & Seizure: Packages – Federal Express

Court held that sender who packaged cash in a Federal Express envelope lacked a reasonable expectation of privacy in that envelope and, accordingly upheld the search that occurred when

Federal Express agents acceded to IRS request to search the package. Court reasoned that there was no expectation of privacy because the sender had signed an air bill that advised that cash should not be shipped and that Federal Express retained the authority to examine packages.
U.S. v. Young, 350 F.3d 1302 (11th Cir. 2003)

Search & Seizure: Packages - Separate Boxes Within Shrink-Wrapped Pallet Amounted to One Box for Search Purposes

The shipment, by commercial carrier, consisted of a number of boxes shrink-wrapped on a single pallet. Where employees of the carrier opened one of the boxes and discovered marijuana, police were free to search the other boxes as, for Fourth Amendment purposes, the shipment of boxes was tantamount to a single box that had already been opened.
U.S. v. Garcia-Bercovich, Case No. 08-12061 (11th Cir. 9/10/09)

Probable Cause

Search & Seizure: Probable Cause - Keeps Drugs in Truck Failed to Establish Sufficiently Narrow Time Frame

Police officer lacked probable cause to believe a defendant had drugs in his car after a woman with whom he had an ongoing relationship alleged that he deals a lot of methamphetamine and keeps the drugs in a particular place in his car. The court noted that the location of mobile, easily concealed, readily consumable, and highly incriminating narcotics could quickly go stale in the absence of information indicating an ongoing and continuing narcotics operation.
U.S. v. Kennedy, Case No. 04-2634 (8th Cir. 11/7/05)

Search & Seizure: Probable Cause - General Definitions

Ornelas v. U.S., 116 S. Ct. 1657, 1663 (1996)

Search & Seizure: Probable Cause - Officer May Draw on His Own Experience

A police officer may draw inferences based on his own experience in deciding whether probable cause exists.
U.S. v. Ortiz, 422 U.S. 891 (1975); Ornelas v. U.S., 116 S. Ct. 1657, 1663 (1996)

Search & Seizure: Probable Cause - Confidential Informant May Not Need Corroboration

The existence of probable cause may arise from information provided by a confidential informant even in the absence of corroboration.
U.S. v. Brundidge, 170 F.3d 1350 (11th Cir. 1999)

Probationers and Parolees

Search & Seizure: Probationers and Parolees

Relying on *United States v. Knights*, 534 U.S. 112 (2001), the court concluded that reasonable suspicion justified the search and seizure of the probationer's computer. Given the circumstances, the search was reasonable even though, unlike the circumstances in *Knights*, the terms of the defendant's probation did not require him to consent to searched.
U.S. v. Yuknavich, Case No. 04-10852 (11th Cir. Aug. 11. 2005)

Search & Seizure: Probationers and Parolees - Search of Residence

The court upheld a warrantless suspicionless search of the home of a probationer. The condition that the defendant submit to any search requested by his probation officer and that he consent to the admissibility of anything found in the search was upheld.
U.S. v. Barnett, Case No. 04-3636 (7th Cir. 7/18/05)

Search & Seizure: Probationers and Parolees - Parolee May Be Searched Without Even a Reasonable Suspicion

Making a distinction between those on parole and those on probation, the court held that a California parolee who had agreed as a condition of his release to subject himself to searches by

his parole officer or other law enforcement officers, lacked any reasonable expectation of privacy. Accordingly, a law enforcement officer's search of the parolee which was conducted without either probable cause or a reasonable suspicion did not violate the Fourth Amendment.
Samson v California, 547 U.S. 843 (2006)

Search & Seizure: Probationers and Parolees

In the case of probationers having an order stating they must submit to searches, there is no need for a law enforcement officer to obtain a warrant to search the probationer's residence. There is, likewise, no need for probable cause, as, at least in this case, reasonable suspicion was adequate. The court declined to see whether something less would have sufficed.
U.S. v. Knights, 534 U.S. 112 (2001)

Protective Sweep

Search & Seizure: Protective Sweep - Search of Outbuilding OK

Search of an outbuilding, which was a separate structure twenty feet from the main building where the defendant was arrested, was justified as a protective sweep.
U.S. v. Williams, Case No. 16-16444 (11th Cir. 9/20/17)

Search & Seizure: Protective Sweep

Permitted only when the searching officer possess a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.
U.S. v. Chaves, 169 F3d 674 (11th Cir. 1999); U.S. v. Caraballo, Case No. 09-10428 (11th Cir. 1/27/10); U.S. v. Noriega, Case No. 10-12480 (11th Cir. 4/11/12); U.S. v. Neary, Case No. 11-13247 (11th Cir. 1/22/14)**;** U.S. v. White, Case No. 13-2130 (35d Cir. 4/14/14)

Roadblocks

Search & Seizure: Roadblocks - Exception to Requirement of Individualized Suspicion

While, ordinarily, a search or seizure in the absence of individualized suspicion is unreasonable, there are some limited exceptions: (1) if the program was designed to serve special needs beyond the normal need for law enforcement, such as random drug testing of student athletes, drug tests for United States Customs Service employees seeking transfer or promotion to certain positions, and drug and alcohol tests for railway employees involved in train accidents were found to be in violation of particular safety regulations the searches have been allowed; (2) they've also been allowed for certain administrative purposes so long as the searches are appropriately limited: administrative inspection of premises of closely regulated business; inspection of fire damaged premises to determine cause of blaze; and inspection to insure compliance with city housing code; (3) finally, suspicionless seizures of motorists at a fixed border patrol checkpoint, and at a sobriety checkpoint aimed at removing drunk drivers from the road have been permitted. There's also suggestion that a similar type roadblock could be used to verify driver's licenses and vehicle registrations.
City of Indianapolis v. James Edmond, 531 U.S. 32 (2000)

Search & Seizure: Roadblocks

Where the primary purpose of the roadblock was *not* to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime, the roadblock was valid. Accordingly, the resulting conviction for DUI that was based upon observations made upon the stop of the defendant's car was upheld.
Illinois v. Lidster, 540 U.S. 419 (2004)

Searches by Private Citizens

Search & Seizure: Searches by Private Citizens - Law Enforcement Search After Private Party Search
A warrantless law-enforcement search conducted after a private search violates the Fourth Amendment only to the extent to which it is broader that the scope of the previously occurring private search.
U.S. v. Johnson, Case No. 14-12143 (11th Cir. 12/1/15)
Search & Seizure: Searches by Private Citizens - Officers Accompanied by Press
Although it is a violation of the 4th amendment when officers execute a search warrant accompanied by the press, the exclusionary rule is inapplicable.
U.S. v. Hendrixson, 234 F.3d 494 (2000)
Search & Seizure: Searches by Private Citizens - Entry of Individuals Accompanying Police
Wilson v. Layne, 526 U.S. 603 (1999)

Strip Searches

Search & Seizure: Strip Searches – Reasonable Suspicion if for Evidentiary Purposes
Must be at least a reasonable suspicion.
Jordan v. Stephens, Case No. 02-16424 (11th Cir. 5/24/05)
Search & Seizure: Strip Searches - Jail
Arrestees who are detained in the general jail population can constitutionally be subjected to a strip search only if the search is supported by reasonable suspicion that such a search will reveal weapons or contraband.
Jordan v. Loomis, Case No. 02-16424 (11th Cir. 11/18/03); U.S. v. Pringle, Case No. 01-14602 (11th Cir. 11/14/03)

Trash Pulls

Search & Seizure: Trash Pulls
The Fourth Amendment does not prohibit the search of trash set out for collection that is outside the curtilage of the residence.
California v. Greenwood, 486 U.S. 35 (1988)

Warrants

Anticipatory Warrants

Search & Seizure: Warrants - Anticipatory Warrants (Need Not Include Triggering Event)
U.S. v. Grubbs, 547 U.S. 90 (2006)
Search & Seizure: Warrants - Anticipatory Warrants (Have Been Repeatedly Upheld)
Anticipatory search warrants, i.e., warrants that become effective upon the happening of a future event, have repeatedly been upheld where they are supported by probable cause and the conditions precedent to the search are clearly set forth in the warrant or supporting affidavit.
U.S. v. Santa, No. 99-12086 (11th Cir. 12/28/2000); U.S. v. Grubbs, 547 U.S. 90 (2006)

Cell Phones

Search & Seizure: Warrants - Cell Phones
Cell phones can't be searched incident to arrest. Officers must generally obtain a warrant before searching a cell phone.
Riley v. U.S., Case No. 13-212 (S. Ct. 6/25/15)
Search & Seizure: Warrants – Cell Phones (Good Faith)
In a robbery case where the defendant apparently used his cell phone to summon companions to rob those who had won money from the defendant in a poker game, the court relied on the good faith exception to uphold a search warrant that authorized a search of the defendant's cell phone

cloud account. In doing so, the court rejected the defendant's claims no reasonable officer would have relied on the warrant because (1) it was so lacking in indicia of probable cause and it failed to describe with particularity what was to be searched. Case includes an extensive discussion of the good faith exception.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Cell Towers

Search & Seizure – Cell Towers
Absent exigent circumstances, the government needs a warrant supported by probable cause when obtaining cell-site location information.
Carpenter v. United States, 138 S. Ct. 2206 (2018)

Delay & Staleness

Search & Seizure: Warrants – Delay & Staleness (25 Days After Seizing Computer)
Delay of 25 days in securing a warrant after seizing the defendant's computer was not unreasonable given that seizure was by consent, that the officers had already seen child pornography on the computer, that the agents had allowed the defendant to download personal files, that agent had acted diligently in drafting the affidavit, and the content of the warrant application.
U.S. v. Laist, 702 F.3d 608 (11th Cir. 2012)
Search & Seizure: Warrants – Delay & Staleness (Unreasonable Delay in Securing Warrant)
Even a seizure based on probable cause is unconstitutional if the police act with unreasonable delay in securing a warrant. In this child porn case, where the police legitimately seized the defendant's hard drive from the defendant's computer, but waited 21 days to obtain a warrant, the delay was unreasonable and the court of appeals vacated the conviction.
U.S. v. Mitchell, 565 F.3d 1347 (11th Cir. 2009)
Search & Seizure: Warrants – Delay & Staleness (Drug Trafficking is Protracted and Continuous)
Because the defendant was being investigated for drug trafficking, act which are inherently protracted and continuous, the court found the warrants were not so stale as to defeat a finding of probable cause.
U.S. v. Magluta, 198 F.3d 1265 (11th Cir. 1999); U.S. v. Bervaldi, 226 F.3d 1256 (11th Cir. 2000)

Execution

Search & Seizure: Warrants – Execution (Authority to Detain Occupants)
A warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while the search is conducted.
Croom v. Balkwill, Case No. 09-16315 (11th Cir. 7/7/11)
Search & Seizure: Warrants – Execution (Unreasonable Manner of Execution Didn't Justify Suppression)
Even assuming that the forceful, military manner in which a police SWAT team executed a search warrant violated the Fourth Amendment, the evidence that the police found during their search did not have to be suppressed as there was an insufficient causal connection between any constitutional violation and the officers' discovery of the evidence.
U.S. v. Ankeny, Case No. 05-30457 (9th Cir. 6/19/07)
Search & Seizure: Warrants – Execution (Search of Arriving Vehicles)

A valid search warrant authorizing the search of vehicles on the subject property permits the search of arriving on the property during the course of the search, so long as those vehicles could reasonably contain items the officers are searching for.
U.S. v. Tamari, Case No. 05-10618 (11th Cir. 7/6/06)

Search & Seizure: Warrants – Execution (Handcuffing During Execution of Warrant)

At least as in this instance, where the search involved wanted gang members, where there were multiple occupants, and the weapons were the subject of the search, the 2-to-3-hour detention in handcuffs was reasonable.
Muehler v. Mena, 544 U.S. 93 (2005)

Search & Seizure: Warrants – Execution (at Night)

Although FRCrP 41 requires daytime service absent some kind of showing that there is reason to execute the warrant at night, 21 USC § 879 authorizes nighttime execution. Despite some ambiguity in the wording of the statute, no special showing is needed to justify service at night.
Gooding v. U.S., 94 S. Ct. 1780 (1974); U.S. v. Williams, Case No. 16-16444 (11th Cir. 9/20/17)

Franks

Search & Seizure: Warrants – Franks (Omissions)

Deliberate omissions from the affidavit will invalidate a warrant only where the omissions are so significant they negate the probable cause.
U.S. v. Colkley, 899 F.2d 298 (4th Cir. 2014)

Search & Seizure: Warrants - Franks

For a general discussion see U.S. v. Novaton, 271 F.3d 968 (11th Cir. 2001)

Search & Seizure: Warrants - Veracity of Affidavit

To attack the validity of a warrant affidavit, a defendant must make a preliminary showing that the affiant made intentional misstatements or omissions (or made misstatements with a reckless disregard for their truth) that were essential to the finding of probable cause. Once the defendant makes such a showing, he is entitled to an evidentiary hearing on the matter; if he prevails at the hearing, the search warrant is to be voided and the fruits of the search must be excluded.
U.S. v. Burston, 159 F.3d 1328 (11th Cir. 1998)

Good Faith

Search & Seizure: Warrants – Good Faith (Surrounding Circumstances)

In rejecting the defendant's claim that the officer's reliance on the warrant was unreasonable because of the surrounding circumstances, the court cited the approval the officer received "from several other individuals, including lawyers" who had determined that it "passed factual and constitutional muster."
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Warrants – Good Faith (Sufficient Indicia of Probable Cause)

Courts look only to the face of the warrant to determine whether it lacked sufficient indicia of probably cause.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Warrants – Good Faith (Cloud Search)

In a robbery case where the defendant apparently used his cell phone to summon companions to rob those who had won money from the defendant in a poker game, the court relied on the good faith exception to uphold a search warrant that authorized a search of the defendant's cell phone cloud account. In doing so, the court rejected the defendant's claims no reasonable officer would have relied on the warrant because (1) it was so lacking in indicia of probable cause and it failed

to describe with particularity what was to be searched. Case includes an extensive discussion of the good faith exception.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Warrants – Good Faith

When the police exhibit deliberate reckless or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the costs. But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way.
J.D.B. v. North Carolina, 564 U.S. 261 (2011)

Search & Seizure: Warrants - Good Faith (Applies in All but Four Circumstances)

The good faith exception applies in all but four limited sets of circumstances: (1) where the judge issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) where the issuing judge wholly abandoned his judicial role in the manner condemned in Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979); (3) where the affidavit supporting the warrant is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where, depending upon the circumstances of the particular case, a warrant is so facially deficient - i.e., in the things to be seized - that the executing official cannot reasonably presume it to be valid.
U.S. v. Martin, 297 F.3d 1308 11th Cir. 2002); U.S. v. Robinson, Case No. 02-13686 (11th Cir. 7/9/2003)

Search & Seizure: Warrants - Good Faith (Court May Look Beyond the Affidavit)

A reviewing court may look outside the four corners of the affidavit in determining whether an officer acted in good faith when relying upon an invalid warrant.
U.S. v. Martin, Case No. 01-15691 (11th Cir. 7/18/02), but is limited to information conveyed to the judge that issued the warrant. U.S. v. Frazier, Case No. 04-5719 (6th Cir. 9/6/05); but see: U.S. v. Laughton, Case No. 03-1202 (6th Cir. 5/17/05), U.S. v. Luong, Case NO. 05-50090 (9th Cir. 12/12/06)

Search & Seizure: Warrants - Good Faith (Obvious Problem with Warrant)

Where, because of a carelessly prepared warrant, it allowed officers to search a home for any item for any reason, no officer could have reasonably regarded the warrant as valid.
U.S. v. Dunn, No. 15-1475 (10th Cir. 12/12/17)

Miscellaneous

Search & Seizure: Warrants - Miscellaneous (Search of Cloud Account)

Without deciding, court assumed a warrant was necessary to search a cloud account held by a third party.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Warrants – Miscellaneous (Example of Use of Sneak and Peak Warrant)

U.S. v. Miranda, Case No. 04-15920 (11th Cir. 9/14/05)

Search & Seizure: Warrant – Miscellaneous (Judge Can't Rely on Past Experience with Affiant)

The judge's testimony that he would not expect [the officer] to give him a stale warrant because he had been signing warrants for [the officer] for years is troubling, suggesting that [the judge] potentially relied upon his past experience with [the officer] rather than the legal validity of the warrant.
U.S. v. Martin, Case No. 01-15691 (11th Cir. 7/18/02)

Search & Seizure: Warrant – Miscellaneous (Judge Must Reach Own Conclusion)
Issuing judges should not substitute the police officer's assessment of the facts for the judge's own independent analysis of the situation.
U.S. v. Martin, Case No. 01-15691 (11th Cir. 7/18/02)
Search & Seizure: Warrants – Miscellaneous (Out of District Warrants)
District courts may issue out-of-district warrants under 18 USC § 2703(a), using procedures described in Rule 41 subsections (d) and (e), in non-terrorism-related cases.
In re: Search Warrant, Case No. 6:05mc168-Orl-31JGG, (M.D. Fla. 12/23/05)(Presnell, J.)
Search & Seizure: Warrants – Miscellaneous (Lost Warrant)
When search warrant is lost after its execution and is missing at a suppression hearing, the Fourth Amendment does not prohibit the use of other evidence to establish the existence and the contents of the lost warrant.
U.S. v. Pratt, Case No. 04-15168 (11th Cir. 2/8/06)
Search & Seizure: Warrants – Miscellaneous (Telephone Warrant)
Federal Rule of Criminal Procedure 41(c)(2)(A) provides for the issuance of a warrant without an affidavit based upon sworn testimony communicated by telephone or other appropriate means, including facsimile transmission.
U.S. v. Santa, No. 99-12086 (11th Cir. 12/28/2000)

Overbreadth

Search & Seizure: Warrants – Overbreadth (Business Records: Pervasive Fraud)
Where the Government has alleged a pervasive fraud, the courts allow broadly worded warrants.
U.S. v. Bradley, 644 F.3d 1213 (11th Cir. 2011)
Search & Seizure: Warrants - Overbreadth
The requirement that warrants particularly describe the place to be searched and the things to be seized makes general searches under them impossible. A warrant which fails to sufficiently particularize the place to be searched or the things to be seized is unconstitutionally overbroad.
U.S. v. Travers, 233 F.3d 1327 (11th Cir. 2000)
Search & Seizure: Warrants – Overbreadth (Facebook Warrant Overbroad)
A warrant directed to Facebook that required disclosure of "virtually every kind of data that could be found" in the account was overbroad, though qualified under the good faith exception.
U.S. v. Blake, Case No. 15-13395 (11th Cir. 8/21/17)

Partially Invalid Warrants

Search & Seizure: Warrants – Partially Invalid Warrants
When police use evidence gathered in violation of the Fourth Amendment to secure a warrant there is a two-part test: (1) the product of the violation is excised from the probable cause supporting the warrant and if the remaining information is sufficient to establish probable cause, the question is (2) whether the warrant would have been sought absent the wrongfully obtained information.
U.S. v. Albury, Case No. 12-15183 (11th Cir. 4/19/15)

Particularity Requirement

Search & Seizure: Warrants – Particularity Requirement (Cloud Account)
The "preferred method" of limiting the scope for a cloud account will usually be time-based.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)
Search & Seizure: Warrants – Particularity Requirement (Practical Margin of Flexibility)

The particularity requirement must be applied with a practical margin of flexibility, depending on the type of property to be seized and the property description need only be as specific as the circumstances and nature of the activity under investigation permit.
U.S. v. McCall, No. 21-13092 (11th Cir. 10/27/23)

Search & Seizure: Warrants - Particularity Requirement

The particularity requirement specifies only two matters that must be particularly described in the warrant: the place to be searched and the person or thing to be seized.
U.S. v. Grubbs, 547 U.S. 90 (2006)

Search & Seizure: Warrants - Particularity Requirement

Warrant that, because of carelessness, had a description of the residence listed instead of the list of items the officers were authorized to seize violated the 4th Amendment's requirement that the place to be searched as well as the items to be seized must be stated with particularity. The civil equivalent of the good faith exception, that of qualified immunity, did not save the day for the officer.
Groh v. Ramirez, 124 S. Ct. 1284 (2004)

Search & Seizure: Warrants - Particularity Requirement (Financial Fraud)

Cases involving complex financial fraud justify a more flexible reading of the Fourth Amendment particularity requirement.
U.S. v. Travers, 233 F.3d 1327 (11th Cir. 2000)

Probable Cause

Search & Seizure: Warrants – Probable Cause (Search of Residence Based on Drug Sale Made Elsewhere)

Purchase of drugs made away from suspect's residence can supply probable cause to believe drugs or related material can be found at the suspect's residence.
U.S. v. Spencer, 530 F.3d 1003 (D.C. Cir. 2008)

Search & Seizure: Warrants - Probable Cause (Nexus Between Crime and Place to Be Searched

Probable cause to search a residence requires some nexus between the premises and the alleged crime.
U.S. v. Bradley, 644 F.3d 1213 (11th Cir. 2011)

Search & Seizure: Warrants - Probable Cause (Inference to Establish a Nexus Between Suspected Criminal Activity and a Suspect's Home)

The Fourth Amendment allows law enforcement officers to rely on a common-sense inference that criminals keep the instrumentalities and fruits of their offenses at their residences, not only in drug-trafficking cases, but in cases involving the investigations of other crimes as well. Opinion includes a dissent.
U.S. v. Williams, 544 F.3d 683 (6th Cir. 2008), but see U.S. v. McPhearson, 469 F.3d 518 (6th Cir. 2006); U.S. v. Sanchez, 555 F.3d 910 (10th Cir. 2009)

Search & Seizure: Warrants - Probable Cause (Convicted Felons and Firearms Dealers Typically Store Their Guns at Home)

Court upheld the finding of probable cause that supported the issuance of the search warrant. Defendant, a convicted felon, was seen with firearms at gun shows and informant had reported defendant possessed over 300 firearms. Despite the absence of any evidence that the defendant kept any guns at his residence, the agent's representation in the affidavit that convicted felons and firearm dealers typically stored their guns at home, was sufficient to establish probable cause.

U.S. v. Anton, Case No. 07-13124 (11th Cir. 10/30/08)
Search & Seizure: Warrants – Probable Cause (Likelihood of Finding Evidence at a Particular Location)
Probable cause to support a search warrant exists when the totality of the circumstances allows a conclusion there is a fair probability of finding contraband or evidence at a particular location.
U.S. v. Martinelli, 454 F.3d 1300 (11th Cir. 2006)
Search & Seizure: Warrants – Probable Cause (Warrant Need Not Include Probable Cause)
The Fourth Amendment does not require that the warrant set forth the magistrate's basis for finding probable cause.
U.S. v. Grubbs, 547 U.S. 90 (2006)
Search & Seizure: Warrants – Probable Cause (Fine Points of Establishing Probable Cause)
For a good general summary of what must be alleged to establish probable cause see:
U.S. v. Martin, Case No. 01-15691 (11th Cir. 7/18/02)

Technology

Search & Seizure: Warrants - By Pass Order Requiring Apple to Assist FBI
Court held the bypass order (one requiring Apple to assist in bypassing the iPad's security features) was necessary to carry out the search warrant the district court had issued, the assistance sought was not specifically addressed by another statute, the bypass order was not inconsistent with Congress' intent, Apple was not too far removed from the underlying controversy, and the burden the order imposed on it was not unreasonable.
U.S. v. Blake, Case No. 15-13395 (11th Cir. 8/21/17)
Search & Seizure: Warrants - Stingray Mobile Phone Tracking
Warrant required before use of the Stingray device to locate defendant.
U.S. v. Ellis, No. 13-CR-00818 (N.D. Cal. 8/24/17)

SENTENCING

Appellate Review

Sentencing: Appellate Review – Incorrect Guideline Range Usually Enough to Show Probability of a Different Outcome
Molina-Martinez v. United States, 578 U.S. 189 (2016)
Sentencing: Appellate Review - Substantive Unreasonableness
Out of the hundreds of sentences we have reviewed up to this point in the five years since the Booker decision, those are the only four we have found to be substantively unreasonable.
U.S. v. Irey, 612 F.3d 1160 (2010)
Sentencing: Appellate Review - Role of 3553(a)
Section 3553(a) plays a critical role in appellate review of sentences, just as it does in the initial sentencing decision. Booker instructs that not only must district courts apply the § 3553(a) factors in making their sentencing decisions, but courts of appeals must also apply those same factors in determining whether a sentence is reasonable.
U.S. v. Irey, 612 F.3d 1160 (2010)
Sentencing: Appellate Review - Procedural or Substantive Unreasonableness
A sentence may be reviewed for procedural or substantive unreasonableness. Gall recognized a number of grounds for significant procedural error: failing to properly calculate the guideline

range, treating the guidelines as mandatory, failing to consider the 3553(a) factors, selecting a sentence on clearly erroneous facts, or failing to adequately explain the chosen sentence.
U.S. v. Ellisor, No. 05-14459 (11th Cir. 4/7/08)

Sentencing: Appellate Review - 11th Circuit Doesn't Extent Presumption of Reasonableness to Guidelines Sentence

We do not in this circuit presume reasonable a sentence within the properly calculated Guidelines range.
U.S. v. Campbell, 491 F.3d 1306 (11th Cir. 2007)

Sentencing: Appellate Review - Court of Appeals May Adopt a Presumption of Reasonableness

A court of appeals may apply a presumption of reasonableness to a sentence imposed within a properly calculated United States Sentencing Guidelines range.
Rita v. U.S., 551 U.S. 338 (2007)

Sentencing: Appellate Review - Harmless Error (Statutory vs. Constitutional Error)

In statutory error cases, if one can say with fair assurance that the sentence was not substantially swayed by the error the sentence is due to be affirmed even though there was error. Constitutional error cases, on the other hand, require application of the beyond a reasonable doubt test, instead of the fair assurance test, to determine whether the government has established error.
U.S. v. Cain, Case No. 04-15754 (11th Cir. 12/29/05)

Sentencing: Appellate Review - Harmless Error (Sentence at Top of Guidelines Range & Harmless Error)

By itself, a sentence at the top of the Guidelines range does not by itself mean the district court's constitutional error was harmless beyond a reasonable doubt.
U.S. v. Cain, Case No. 04-15754 (11th Cir. 12/29/05)

Sentencing: Appellate Review - Harmless Error (Mid-Range Sentence Doesn't Establish That Error Is Harmless)

See: U.S. v. Glover, Case No. 04-16745 (11th Cir. 11/29/05)

Sentencing: Appellate Review - Constitutional Error vs. Statutory Error

See: U.S. v. York, Case No. 04-12354 (11th Cir. 10/27/05)

Sentencing: Appellate Review - Application of 5K1.1 Sentence Reduction Didn't Eliminate the Sentencing Error

U.S. v. Davis, Case No. 04-14585 (11th Cir. 5/4/05)

Sentencing: Appellate Review - Plain Error (Sentence at Bottom of the Guideline Range)

A sentence at the bottom of the Guideline range is insufficient to show a reasonable probability that the defendant would have received a lesser sentence if the Guidelines were applied in an advisory fashion and, therefore, fails to establish that there is plain error.
U.S. v. Fields, Case No. 04-12486 (11th Cir. 5/16/05)

Sentencing: Appellate Review - Plain Error (Judges Remarks Demonstrated Existence of Plain Error)

Because the judge made statements that showed he believed the sentence was excessively harsh, the court concluded that the error met the plain error test and remanded the case for resentencing.
U.S. v. Shelton, Case No. 04-12602 (11th Cir. 2/25/05); U.S. v. Martinez, Case No. 05-10382 (11th Cir. 4/29/05); U.S. v. Dacus, case No. 04-15319 (11th Cir. 5/3/05); U.S. v. Thompson, Case No. 04-12218 (11th Cir. 9/1/05)

Sentencing: Appellate Review - No 6th Amendment Violation Where Defendant Admits Facts
So long as the defendant admits the facts that support the enhancement of his sentence, there is no violation of the 6th Amendment.
U.S. v. Frye, Case No. 03-16377 (11th Cir. 2/20/05)
Sentencing: Appellate Review for Sentence - Gall
An appellate court may take the degree of variance into account and consider the extent of a deviation from the Guidelines, but it may not require extraordinary circumstances or employ a rigid mathematical formula using a departure's percentage as a standard for determining the strength of the justification required for a specific sentence.
Gall v. United States, 552 U.S. 38 (2007)
Sentencing: Appellate Review - Guideline Calculation Error Even When Accompanied by Statement as to Why the Defendant Deserved the Maximum Still Required a Remand
U.S. v. Scott, Case No. 05-12511 (11th Cir. 3/10/06)
Sentencing: Appellate Review - District Court's Reliance on Incorrect Facts
Amounted to plain error.
U.S. v. Wilson, Case No. 08-1963 (6th Cir. 7/19/10)

Concurrent or Consecutive Sentences

Sentencing: Concurrent or Consecutive - Can't Interrupt a Previously Imposed State Sentence
Where the defendant was serving a state sentence and appeared in federal court on the basis of a writ of habeas corpus ad prosequendum and received a consecutive federal sentence, the district court lacked the authority to order the defendant to immediately begin his federal sentence in a federal prison.
U.S. v. Smith, 812 F.Supp. 368 (E.D.N.Y. 1993)
Sentencing: Concurrent of Consecutive - Presumption is That Sentences Will Run Concurrently
Pursuant to 18 U.S.C. § 3584(a), if the district court imposes multiple terms of imprisonment at the same time, but fails to address the concurrent-vs-consecutive issue, the terms run concurrently and the Bureau of Prisons is not free to use its place of imprisonment authority to achieve a different result.
Setser v. U.S., Case No. 10-7387 (S. Ct. 3/28/12)
Sentencing: Concurrent or Consecutive - Consecutive to Anticipated State Sentence
A district court, in sentencing a defendant for a federal offense, has authority to order that the federal sentence be consecutive to an anticipated state sentence that has not yet been imposed.
Setser v. U.S., Case No. 10-7387 (S. Ct. 3/28/12)
Sentencing: Concurrent or Consecutive - Armed Career Criminal and Possession of Firearm in Furtherance of a Drug Trafficking Offense
18 U.S.C. § 924(c)(1)(A) provides that the mandatory minimum sentences of § 924 apply except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of the law. Accordingly, the court of appeals held it was error to run a 10-year sentence for discharging a firearm during a crime of violence to the 15-year armed career criminal sentence. There is conflict among the circuits.
U.S. v. Whitley, 529 F.3d 150 (2d Cir. 2008)

Correction or Modification

Sentencing: Correction or Modification - Fair Sentencing Act

Court of appeals rejected effort to modify a drug mandatory minimum on the basis of the Fair Sentencing Act. The court concluded that there was no evidence that Congress intended the Fair Sentencing Act to apply to defendants who had been sentenced prior to the August 3, 2010 date of the Act's enactment.
U.S. v. Berry, Case No. 12-11150 (11th Cir. 2012), *subsequently overruled*

Sentencing: Correction - No Inherent Power to Correct

The district court has no inherent power to correct an unlawful sentence. Although prior to 1987 an illegal sentence could have been corrected at any time, Rule 35 now allows the court to correct a sentence in only three circumstances: 1) if directed to do so on remand from an appellate court; 2) within one year of the original sentence if upon a substantial assistance motion filed by the government; or 3) within seven days after the imposition of the sentence.
U.S. v. Diaz-Clark, 292 F.3d 1310 (11th Cir. 2002)

Sentencing: Correction - Rule 35(c) Seven Day Requirement

The seven days starts to run as of the oral pronouncement of the sentence. In this case, the judge issued an order vacating the original sentence during that seven-day time period, but imposed the new harsher sentence after the seven days had run. End result: original sentence remained in effect. The trial court no longer had jurisdiction to impose the second sentence.
U.S. v. Vicol, 460 F.3d 693 (6th Cir. 2006)

Sentencing: Correction - Motion to Correct Sentence

By its terms, Fed. R. Crim. P. 35(c) permits corrections of arithmetical, technical, or other clear errors. The rule is intended to be very narrow and to extend only to those cases in which an obvious error or mistake has occurred in the sentence, that is, errors which would almost certainly result in a remand of the case to the trial court for further action under Rule 35(a), requiring remand when the sentence is imposed in violation of law, as a result of an incorrect application of the sentencing guidelines, or is unreasonable. The subdivision is not intended to afford the court the opportunity to reconsider the application or interpretation of the sentencing guidelines or for the court simply to change its mind about the appropriateness of the sentence. Nor should it be used to reopen issues previously resolved at the sentencing hearing through the exercise of the court's discretion with regard to the application of the sentencing guidelines, Fed. R. Crim. P. 35 Advisory Committee's Note.
United States v. Abreu-Cabrera, 64 F.3d 67 (2d Cir. 1995)

Credit for Time Served

Sentencing: Credit for Time Served - Credit for Time in Immigration Custody

Time spent solely in civil or administrative immigration custody pending deportation cannot be credited against a federal sentence as 18 U.S.C. § 3585 only allows credit for time spent in official detention on criminal charges. However, unlike ICE detainees solely awaiting removal, those being held in immigration custody in anticipation of a federal indictment for illegal re-entry are entitled to credit for their time held awaiting indictment.
De Paz-Salvador v. Holt, Case No. 3:10CV2668 2011 U.S. Dist. LEXIS 98003 (M.D. Penn. 8/31/11)

Sentencing: Credit for Time Served – Requirement that Prisoner Seek Administrative Remedy

The Attorney General through the Bureau of Prisons, as opposed to the district courts, is authorized to compute sentence credit awards after sentencing. As a result, a federal prisoner dissatisfied with computation of his credit must pursue the administrative remedy available

through the federal prison system before seeking review of his sentence. A claim for credit for time served is brought under 28 USC § 2241 after the exhaustion of administrative remedies.
U.S. v. Williams, No. 04-15732 (11th Cir. 9/19/05), U.S. v. Alexander, Case No. 08-17062 (11th Cir. 6/25/10)

Sentencing: Credit for Time Served - Credit for Time During Mistaken Release

Defendant not entitled to credit for time he was mistakenly at liberty due to delay of several years in the commencement of sentence.
Little v. Holder, Case No. 03-13134 (11th Cir. 1/18/05)

Explanation for Sentence

Sentencing: Explanation for Sentence – Atypical Case

Based on the language of the Supreme Court sentencing cases, I believe that, for atypical or non-simple cases, it is not enough for a district court to simply state that it has considered the §3553(a) factors. Our previous holdings do not free the district court from the requirement that it adequately explain its reasoning nor free us from our obligation to ensure that all the § 3553(a) factors were truly considered.
U.S. v. Docampo, Case No. 08-10698 (11th Cir. 6/15/09) (Barkett, J. concurring in part and dissenting in part)

Sentencing: Explanation for Sentence - Gall

A district judge must consider the extent of any departure from the Guidelines and must explain the appropriateness of an unusually lenient or harsh sentence with sufficient justification. An appellate court may take the degree of variance into account and consider the extent of a deviation from the Guidelines, but it may not require extraordinary circumstances or employ a rigid mathematical formula using a departure's percentage as a standard for determining the strength of the justification required for a specific sentence.
Gall v. United States, 552 U.S. 38 (2007)

Sentencing: Explanation for Sentence - Court Must Adequately Explain Variance

Must be sufficiently explained so as to allow meaningful appellate review.
U.S. v. Livesay, Case No. 06-11303 (11th Cir. 4/23/08)

Sentencing: Explanation for Sentence - Judge Must Give Reasons for Variance

The district court must give reasons if it imposes a sentence other than the one suggested by the Guidelines.
U.S. v. Gibson, Case No. 04-14776 (11th Cir. 1/4/06)

Sentencing: Explanation for Sentence - Court Not Obligated to State That It Has Considered Each of the § 3553(a) Factors

See: U.S. v. Talley, Case No. 05-11353 (11th Cir. 12/2/05); U.S. v. Owens, Case No. 06-11448 (11th Cir. 9/15/06), U.S. v. Docampo, Case No. 08-10698 (11th Cir. 6/15/09) (Barkett, J. concurring in part and dissenting in part)

Sentencing: Explanation for Sentence – Perfunctory Statement Inadequate

Where the defendant argued for a below-the-guidelines sentence on the basis of the defendant's minimal participation in the drug transactions and on the basis of the defendant's long standing mental health problems, and where the judge seemed to rely upon the defendant's failure to cooperate, the Court vacated the conviction because of the sentencing court's failure to address the defendant's arguments. The sentencing judge's perfunctory statement that he had considered all the relevant factors didn't suffice.
U.S. v. Cunningham, Case No. 05-1774 (7th Cir. 11/14/05)

Sentencing: Explanation for Sentence - Objection to Thoroughness of Explanation

A party who is dissatisfied with the thoroughness of a sentencing judge's explanation of a sentence must object during the sentencing hearing or plain-error review applies on appeal.
U.S. v. Vonner, Case No. 05-5295 (6th Cir. 2/7/09) (en banc)

Sentencing: Explanation for Sentence - District Court Not Required to Address Each Factor in 18 USC 3553(a)

U.S. v. Scott, Case No. 05-11843 (11th Cir. 9/27/05)

Fines

Sentencing: Fines – Burden of Proving Inability to Pay Falls to Defendant

U.S. v. Dubois, No. 22-10829 (11th Cir. 3/5/24)

Sentencing: Fines – Court's Failure to Provide Explanation Justifying Fine

Where the PSR concluded that the defendant lacked the ability to pay a fine, the court imposed a fine that was three times the maximum under the guidelines, and the defendant objected, the court of appeals vacated the sentence and remanded the case for resentencing.
U.S. v. Gonzalez, Case No. 06-15365 (11th Cir. 9/2/08)

Sentencing: Fines -Apprendi Applies to Fines

Southern Union Company v. United States, 567 U.S. 343 (2012); U.S. v. Bane, No. 14158 (11th Cir. 6/28/13)

Sentencing: Fines - Grossly Disproportional

To determine whether a fine is grossly disproportional to the defendant's offense, courts consider (1) whether the defendant is in the class of persons at whom the criminal statute was primarily directed; (2) whether other penalties were authorized for the offense by the legislature or Sentencing Commission; and (3) the harm caused by the defendant.
U.S. v. Sperrazza, 804 F.3d 113 (11th Cir. 2015)

Sentencing: Fines - Presumption Constitutional

Courts presume a fine within the range allowed by Congress for the offense is constitutional.
U.S. v. Seher, 562 F.3d 1344 (11th Cir. 2009)

Sentencing: Fines - Determined by Characteristics of Offense

Whether a fine is excessive is determined in relation to the characteristics of the offense, not the characteristics of the defendant.
U.S. v. Bajakajian, 524 U.S. 321 (1998)

Hearing

Sentencing: Hearing – Explanation of Sentence

Under § 3553(c)(1), a district court must sufficiently explain its reasons for imposing the sentence—including both imprisonment and supervised release—at any particular point within the guideline range.
U.S. v. Hamilton, No. 21-14266 (11th Cir. 5/2/23)

Sentencing: Hearing - Court Should Address Defendant Directly Regarding Allocution

U.S. v. Perez, Case No. 09-13409 (11th Cir. 10/26/11)

Sentencing: Hearing - Court's Reliance Upon Pre-Prepared Sentencing Opinion

"Wilson does not object to the district court's use of a written sentencing opinion to explain the reasons for her sentence. We note, however, that this practice is somewhat disconcerting. Indeed, the use of a pre-prepared sentencing opinion in lieu of an oral recitation creates the worrisome impression that the district court's decision was etched in stone before the parties had the opportunity to be heard. If that were the case, the procedural safeguards enshrined in Federal Rule of Criminal Procedure 32(i) would be drained of meaning. Consequently, we expressly encourage judges who prepare opinions in advance to be particularly mindful of Rule 32(i)'s

requirements. In addition, we observe that a final sentencing decision should not be reached until *after* the hearing has been completed."
U.S. v. Wilson, Case No. 08-1963 (6th Cir. 7/19/10)

Sentencing: Hearing - Requirement That Court Elicit Objections

After imposing sentence, the district court should elicit fully-articulated objections to the court's findings of fact, conclusions of law, and the manner in which the sentence was imposed.
U.S. v. Jones, 899 F.2d 1097 (11th Cir. 1990), *overruled on other grounds by* United States v. Morrill, 984 F.2d 1136 (11th Cir. 1993)

Sentencing: Hearing - Confrontation

The right of confrontation set out in Crawford does not apply to sentencing hearings.
U.S. v. Cantellano, Case No. 05-11143 (11th Cir. 11/15/05)

Sentencing: Hearing - Hearsay Admissible at Sentencing Hearing

Reliable hearsay can be considered at sentencing.
U.S. v. Chau, Case No. 05-10640 (11th Cir. 9/27/05);

Sentencing: Hearing - Three Strikes (Defendant's Right to Testify Re: Predicate Offense)

Where there was some debate as to whether one of the defendant's prior convictions qualified as a predicate offense, the district court's refusal to let the defendant testify about the circumstances of that offense violated due process.
Gill v. Ayers, 322 F.3d 678 (9th Cir. 3/6/03)

Sentencing: Hearing - Allocution

Failure to provide defendant an opportunity to address the court at sentencing amounted to plain error.
U.S. v. Prouty, Case No. 01-15273 (11th Cir. 8/27/02); U.S. v. Doyle, Case No. 14-12181 (11th Cir. 5/25/17)

Sentencing: Hearing - No Absolute Right to Present Witnesses

Decisions about whether to admit evidence or hear testimony, other than the defendant's statement are left to the court's discretion.
United States v. Claudio, 44 F.3d 10, 16 (1st Cir. 1995)

Sentencing: Hearing - Reliance Upon Hearsay

The sentencing judge may consider any information, including reliable hearsay, regardless of the information's admissibility at trial, provided there are sufficient indicia of reliability to support its probable accuracy.
U.S. v. Castellanos, 904 F.2d 1490, 1495 (11th Cir. 1990); U.S. v. Zlatogur, 271 F.3d 1025 (11th Cir. 2001)

Sentencing: Hearing - Reliance Upon Testimony from Another Trial

Although evidence and testimony that was presented at another trial may be used in a defendant's sentencing hearing, the Government's references to the evidence presented at the trials of codefendants is insufficient when the defendant was not an opportunity to test its reliability or validity.
U.S. v. Lawrence, 47 F.3d 1559 (11th Cir. 1995)

Sentencing: Hearing - Use of Evidence Obtained in Violation of the Fourth Amendment

At a sentencing hearing, the court may use evidence seized in violation of a defendant's Fourth Amendment rights as long as the police did not intentionally violate the Fourth Amendment in order to increase the defendant's sentence.
United States v. Vasquez, 724 F.3d 15 (1st Cir. 2013)

Sentencing: Hearing - Evidence Seized During Unlawful Searches Admissible at Sentencing

While there may be some question about the situation where officers seize evidence for the purpose of securing a longer sentence, the exclusionary rule applicable to unlawful searches does not generally apply to sentencing.
U.S. v. Lynch, 934 F.2d 1226, 1236-1237, & n. 15 (11th Cir. 1995), U.S. v. Acosta, 303 F.3d 78 (1st Cir. 2002)

Sentencing: Hearing - Statements Obtained in Violation of Miranda

Statements obtained from the defendant in violation of the requirements of the Miranda decision are admissible at sentencing.
U.S. v. Hernandez-Villanueva, 473 F.3d 118 (4th Cir. 2007)

Sentencing: Hearing - Drug Quantities Suppressed Still Considered at Sentencing

U.S. v. Torres, 926 F.2d 321, 324-325 (3d Cir. 1991); U.S. v. Tauil-Hernandez, 88 F.3d 576, 581 (8th Cir. 1996)

Improper Considerations

Sentencing: Improper Considerations - Alternative Sentences Contingent Upon a Choice Made by the Defendant

Whatever authority federal district judges have to impose alternative sentences, it does not include the authority to make a sentence contingent upon a choice made by the defendant. Here, the judge mistakenly imposed one sentence if the defendant agreed to be deported and a harsher sentence if she did not.
U.S. v. Desantiago-Esquivel, Case No. 07-1170 (8th Cir. 5/22/08)

Sentencing: Improper Considerations – Exercise of Right to Trial

While acknowledging that the sentencing court could not penalize the defendant for exercising his right to remain silent, the court went on to hold that a sentencing court was free to consider a defendant's freely offered statements indicating a lack of remorse.
U.S. v. Stanley, Case No. 11126 (11th Cir. 1/6/14)

Sentencing: Improper Considerations - Longer Sentence for Purposes of Treatment

U.S. v. Tapia, 131 S. Ct. 2382 (2011); U.S. v. Vandergrift, 754 F.3d 1303 (11th Cir. 2014); United States v. King, No. 21-12963 (11th Cir. 1/23/23); Tapia v. U.S., 564 U.S. 319 (2011)

Sentencing: Improper Considerations - Letters Undisclosed to the Defendant

If confidential letters submitted to the sentencing judge cannot be summarized in a way that allows the defendant to rebut the credibility of their assertions, Rule 32(i)(1)(B) does not allow the judge to consider the letters. The decision relied, at least in part, on the conclusion that the defendant needed to know the identity of the letter writers so that he could reveal facts related to bias or the credibility of the writers. The defense lawyer had rejected the trial court's offer to disclose the letters to him, saying that he could not adequately rebut the claims without revealing the information to the client.
U.S. v. Hamad, Case No. 05-4196 (6th Cir. 7/19/07)

Sentencing: Improper Consideration - Incarceration Not for Rehabilitation

For purposes of determining the need for incarceration, Congress specified only those goals of punishment, general deterrence, and specific deterrence. Congress prohibited incarcerating an offender for purposes of rehabilitation. An individual's need to incarceration may be considered in prescribing the conditions of probation or supervised release.
U.S. v. Burgos, No. 00-13799 (11th Cir. 12/21/01); United States v. King, No. 21-12963 (11th Cir. 1/23/23); Tapia v. U.S., 564 U.S. 319 (2011)

Miscellaneous

Sentencing: Miscellaneous – Is a 685 Month Sentence Tantamount to a Life Sentence?

Court discusses the issue in the context of the prohibition of a life sentence for juveniles in U.S. v. Mathurin, Case No. 14-12239 (11th Cir.
8/18/17)

Sentencing: Miscellaneous – Sentencing Factor Manipulation

Sentencing factor manipulation occurs when the government manipulates a sting operation to increase a defendant's potential sentence. The defendant bears the burden of establishing that the government's conduct is sufficiently reprehensible.

U.S. v. Samiosmakac, Case No. 14-15205 (11th Cir. 8/18/17)

Sentencing: Miscellaneous - Need and Timing for Sentencing Memos

The parties should present their sentencing requests to the district court after the PSI, and any addendums to the PSR, are in final form and ready for submission to the court. Ideally, the request should be presented well in advance of the sentencing hearing in sentencing memoranda akin to the pretrial briefs parties routinely present to the district court in advance of a civil bench trial. In the sentencing memoranda, the parties should consider presenting the district court with findings of fact and conclusions of law similar to the findings of fact and conclusions of law parties in a civil case present the court prior to or following a bench trial. The memoranda would indicate the Guidelines sentencing range, the sentence the party requests, the primary § 3553(a)(2) purpose the sentence is to serve, and why the sentence would be sufficient, but not greater than necessary to comply with the § 3553(a) purposes.

United States v. Irey, 612 F.3d 1160, 1241 (11th Cir. 2010) (Tjoflat, J. dissenting opinion)

Sentencing: Miscellaneous - Due Process Right to Receive Notice of Facts Relied Upon by the Court and to Be Sentenced Upon Accurate Information

The Eleventh Circuit has acknowledged that due process includes right to be sentenced on the basis of accurate information and the right to be given adequate notice of the facts upon which he sentencing court relies and an opportunity to contest that information.

U.S. v. Jules, Case No. 08-13629 (11th Cir. 2/2/10)

Sentencing: Miscellaneous - Repeat-Offender Laws Penalize Only the Last Offense

When a defendant is given a higher sentence under a recidivism statute - or for that matter, when a sentencing judge, under a guidelines regime or a discretionary sentencing system, increases a sentence based on the defendant's criminal history - 100% of the punishment is for the offense of conviction. None is for the prior convictions or the defendant's status as a recidivist.

U.S. v. Rodriguez, 553 U.S. (2008)

Sentencing: Miscellaneous - Example of Importance of Corroboration of Defendant's Testimony at Sentencing

See: Abraham v. U.S., Case No. 06-20786 (S.D. Fla. 3/12/07) (Huck)

Sentencing: Miscellaneous – Five-Hour Sentence Didn't Satisfy Incarceration Requirement

Although not directly deciding the issue, the Court suggests that a five-hour sentence didn't amount to a real sentence, the kind that would satisfy the requirement that those convicted of a Class A or Class B felony receive a period of incarceration.

U.S. v. Crisp, Case No. 05-12304 (11th Cir. 7/7/06)

Sentencing: Miscellaneous - General Sentence

A general sentence is an undivided sentence for more than one count that does not exceed the maximum possible aggregate sentence for all the counts, but does exceed the maximum allowable sentence on one of the counts. It's illegal.

U.S. v. Moriarty, Case No. 04-13683 (11th Cir. 11/1/05); Jones v. U.S. No. 97-8958 (11th Cir. 8/29/2000)

Sentencing: Miscellaneous - Oral Prevails Over the Written
When the orally imposed sentence differs from the written order of judgment, the oral sentence controls.
U.S. v. Ridgeway, Case No. 02-11751 (11th Cir. 1/31/03)
Sentencing: Miscellaneous - Sentence Imposed When Orally Pronounced
There is a minority of jurisdictions that hold that the sentence is imposed when the judgment is entered. Here, though, the Court sided with the majority of jurisdictions and held that the sentence is imposed when it is orally pronounced. The ruling came in the context of a Rule 35 motion.
U.S. v. Aguirre, No. 99-50135 (9th Cir. 6/19/00)
Sentencing: Miscellaneous - In Absentia
Rule 43 says that if a defendant, having entered a plea, flees, he can be sentenced in absentia. That he did not review the PSI makes no difference.
U.S. v. Jordan, 216 F.3d 1248 (11th Cir. 2000)
Sentencing: Miscellaneous - Proof of Prior Conviction
Although the defendant denied one of the prior convictions mentioned in the PSI, and there was no certified copy of the conviction, the court held that the probation officer's recitation of the notes made by the probation officer initially assigned to prepare the PSI was sufficient.
U.S. v. Wilson, No. 96-6202 (11th Cir. 8/12/99)
Sentencing: Miscellaneous - Upon Its Enactment the Fair Sentencing Act Applied to Those Being Sentenced
Upon being enacted on August 3, 2010, the reduced mandatory minimum sentences established by the Fair Sentencing Act applied to those being sentenced as of that date, and was, therefore, applicable to those who had committed their crime prior to that date.
Dorsey v. United States, 567 U.S. 260 (2012)
Sentencing: Miscellaneous - Mandatory Life Sentences for Juveniles
Mandatory life sentences for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel of unusual punishments. It prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change and runs afoul of the requirement of individualized sentencing for defendants facing the most serious penalties.
Miller v. Alabama, Case No. 10-9646 (S. Ct. 2012)
Sentencing: Miscellaneous - White Collar Crimes and Greed
General deterrence is an important factor in white-collar cases where the motivation is greed.
U.S. v. Hayes, Case No. 11-13678 (11th Cir. 8/12/14)
Sentencing: Miscellaneous - Police Reports Not Always Reliable
In the context of determining whether the defendant qualified for sentencing as an armed career offender: We recognize, however, that the reliability of police reports is far from absolute.
U.S. v. Richardson, No. 99-12328 (11th Cir. 10/17/00)

Procedure

Sentencing: Procedure - Well Settled Basics
Three rules are well settled: (1) courts can make findings on the basis of the preponderance of the evidence standard; (2) courts must consult and correctly calculate the Guidelines; and (3) the district court must consider the correctly calculated Guidelines and the § 3553 factors in determining the reasonableness of the sentence.
U.S. v. Pope, 461 F.3d 1331 (11th Cir. 2006) (Judge Rodgers)

Sentencing: Procedure - Consider 3553 Factors After Reducing the Sentence for Substantial Assistance
The court should first reduce the sentence pursuant to the 5K1.1 motion and, then, consider the 3553(a) factors in arriving at the sentence.
U.S. v. McVay, 447 F.3d 1348 (11th Cir. 2006); but see U.S. v. Williams, Case No. 06-2532 (8th Cir. 1/29/07), which holds that a sentencing court can't use § 3553 factors to further reduce a sentence already reduced by 5K1.1.
Sentencing: Procedure - Court Must Consult the Guidelines and Calculate Guidelines Score Correctly
Even though the Guidelines are not mandatory, the court must consult them and correctly calculate the Guideline score.
U.S. v. Munoz, Case No. 03-16216 (11th Cir. 11/23/05); U.S. v. Gibson, Case No. 04-14776 (11th Cir. 1/4/06)
Sentencing: Procedure - Court Still Obligated to Consider Departures
The application of the guidelines is not complete until the departures, if any, are appropriately considered.
U.S. v. Jordi, 418 F.3d 1212, 1215 (11th Cir. 2005); but see: U.S. v. Mohamed, Case No. 05-50253 (9th Cir. 8/11/06) and U.S. v. Arnaout, 431 F.3d 994 (7th Cir. 2005)

PSR

Sentencing: PSR - Objections to Facts from Non-Shepard Documents
A defendant makes a proper objection when he identifies the specific PSI paragraphs to which he objects and states the reason for his objection is that the source of those facts is a particular non-Shepard document.
U.S. v. McCloud, 818 F.3d 591 (11th Cir. 2016)
Sentencing: PSR - Court's Obligation to Resolve Disputed Portions of PSI
Court is required to resolve only those disputes that affect the length of the sentence.
U.S. v. Saeteurn, Case No. 06-10401 (9th Cir. 10/15/07)
Sentencing: PSR - Requirement That Objections Be Made Within 14 Days
See: U.S. v. Edouard, Case No. 05-15808 (11th Cir. 5/11/07); U.S. v. Aguilar-Ibarra, Case No. 13-10307 (11th Cir. 1/22/14)
Sentencing: PSR - Failure to Object to Allegations of Fact
A failure to object to allegations of fact in a PSR admits those facts for purposes of sentencing.
U.S. v. Bennett, 472 F.3d 825 (11th Cir. 2006)
Sentencing: PSR - Court's Findings of Fact
A sentencing court's findings of fact may be based on undisputed statements in the PSI.
U.S. v. Bennett, Case No. 05-15376 (11th Cir. 12/13/06)
Sentencing: PSR - Rule 32 & Court's Obligation to Resolve Disputed Issues at Sentencing
Rule 32(i)(3) requires that the sentencing court rule on disputed matters and attach a copy of the court's determination to the PSR that goes to the Bureau of Prisons.
U.S. v. Spears, Case No. 04-13297 (11th Cir. 3/30/06)
Sentencing: PSR -Release of Information from Pre-Sentence Report
Although there is a presumption against the release of information from the pre-sentence report, it can be released under some circumstances - arguably, upon the showing of a compelling need. In this case, the court, upon a showing by a state prosecutor to use statements made by the defendant to impeach his upcoming defense of diminished intent.
U.S. v. Gomez, 323 F.3d 1305 (11th Cir. 2003)

Reasonableness

Sentencing: Reasonableness - Court May Review Guidelines Sentence for Reasonableness
U.S. v. Martinez, Case No. 05-12706 (11th Cir. 1/9/06); U.S. v. Fernandez, Case No. 05-1596 (2nd Cir. 4/3/06)

Sentencing: Reasonableness - Reasonableness Standard Same as Plainly Unreasonable
The reasonableness standard of Booker is essentially the same as the plainly unreasonable standard of § 3742(e)(4).
U.S. v. Sweeting, Case No. 05-11062 (11th Cir. 1/26/06)

Sentencing: Reasonableness - Reasonable Sentence Includes a Correct Application of the Guidelines
Booker's requirement that the sentencing court consult the Guidelines at a minimum obliges the district court to calculate correctly the sentencing range prescribed by the Guidelines.
U.S. v. Crawford, Case No. 03-15136 (11th Cir. 5/2/05)

Sentencing: Reasonableness - 30-Year Sentence for Child Exploitation Enterprise Not Unreasonable
U.S. v. Wayerski, Case No. 09-11380 (11th Cir. 10/26/10)

Reduction

Sentencing: Reduction – USSG 1B1.13(b)(6) ("Unusually Long Sentence") is Valid Exercise of Sentencing Commission's Authority
Judge Hinkle upheld the Sentencing Commission's rule allowing for a reduction of an "unusually long sentence."
U.S. v. Foey Padgett, Jr., No. 5:06cr13 (N.D. Fla. 1/30/24); U.S. v. Smith, No. 5:07cr48 (N.D. Fla. 2/2/24)

Resentencing

Sentencing: Resentencing - Sentencing Package Doctrine
Trial court sentenced defendant to life for witness tampering (the murder of a police officer) and to a ten-year consecutive sentence for the use of a firearm in a crime of violence. When, on appeal, the conviction for witness tampering was overturned, the trial court resentenced the defendant to life for the firearm charge. The court of appeals upheld the sentence under the sentencing package doctrine that holds a district court is free to reconstruct the sentencing package to ensure that the overall sentence remains consistent with the guidelines, the § 3553(a) factors, and the court's view concerning the proper sentence in light of all the circumstances.
U.S. v. Fowler, 749 F.3d 1010 (11th Cir. 2014); Dean v. U.S., 137 S. Ct. 1170 (2017).

Sentencing: Resentencing - Govt. Limited to Evidence Presented at Initial Sentencing
Where the government had an opportunity to litigate the loss amount and restitution and did not appeal the district court's ruling at the time that it was foreclosed from presenting additional evidence, the Government was limited to the same evidence at the resentencing hearing.
U.S. v. Isaacson, No. 12-14703 (11th Cir. 5/22/14)

Sentencing: Resentencing - Limited by Initial Guidelines
18 USC § 3742(g) provides that at resentencing the district court cannot impose a sentence outside the Guidelines range unless the initial sentence was outside the Guidelines range and included a written statement of reasons required by section 3553(c). In this case, however, the Court held that because the initial sentence was imposed before the enactment of 18 USC § 3742(g), the Court was free to impose an above-Guidelines sentence.
U.S. v. Amadeo, Case No. 05-11806 (11th Cir. 5/24/07)

Sentencing: Resentencing - Mandate Rule

The mandate rule is simply an application of the law of the case doctrine to a specific set of facts. It applies to findings made under the Sentencing Guidelines. there are three exceptions to the rule: (1) a subsequent trial produces substantially different evidence; (2) controlling authority has since made a contrary decision of law applicable to that issue; or (3) the prior appellate decision was clearly erroneous and would work manifest injustice.
U.S. v. Amadeo, No. 05-11806 (11th Cir. 5/24/07)

Sentencing: Resentencing - Remedy for Out-of-Time Appeal (Sentencing Hearing)

When the court grants a 2255 motion based upon the trial lawyer's failure to honor the defendant's request for an appeal, and pursuant to the procedures outlined in U.S. v. Phillips, 225 F.3d 1198 (11th Cir. 2000), resentences the defendant, the court does not have to hold a new sentencing hearing.
U.S. v. Parrish, Case No. 05-10940 (11th Cir. 9/28/05)

Sentencing: Resentencing - New Sentencing (Ordinarily De Novo)

As a general matter, when a sentence is remanded on appeal, the sentencing process commences again de novo.
U.S. v. Grant, Case No. 03-13406 (11th Cir. 1/27/05)

Sentencing: Resentencing - Original Guidelines Apply

In April 2003, Congress passed the PROTECT Act. Section 3742(g) of the act, known as the Feeney Amendment, provides that when re-sentencing after appellate remand, a district court should apply the Guidelines that were in place prior to the appeal.
U.S. v. Bordon, No. 04-10654 (11th Cir. 8/25/05)

Sentencing: Resentencing

When a criminal sentence is vacated, a district court is generally free to reconstruct the sentence using any of the sentencing components.
U.S. v. Davis, 329 F.3d 1250 (11th Cir. 2003)

Sentencing: Resentencing - Remand

Multiple count convictions present the trial judge with the need for a sentencing scheme which takes into consideration the total offense characteristics of a defendant's behavior. When the scheme is disrupted because it has incorporated an illegal sentence, it is appropriate that the entire case be remanded for resentencing.
U.S. v. Klopf, Case No. 04-10663 (11th Cir. 9/7/05)

Restitution

Ability to Pay

Sentencing: Restitution - Ability to Pay (Irrelevant)

U.S. v. Futrell, 209 F.3d 1286 (11th Cir. 2000) (11th Cir. 2000); U.S. v. Edwards, Case No. 11-15953 (11th Cir. 9/6/13)

Sentencing: Restitution – Ability to Pay (No Consideration of Defendant's Resources)

The Mandatory Victims Restitution Act which went into effect 4/24/1996 mandates that the district court order restitution in the full amount of the victim's loss without considering the defendant's financial resources.
U.S. v. Thayer, 204 F.3d 1352 (11th Cir. 3/3/00)

Amount

Sentencing Restitution – Amount (Health Care Fraud: No Credit for Lawful Services)

U.S. v. Gladden, No. 21-11621 (11th Cir. 8/17/23)

Sentencing: Restitution – Amount (Fraudulent Loans)

The Mandatory Victims Restitution Act of 1996 requires that in the case of a fraudulently obtained loan, the sentencing court must reduce the amount of the money the victim received when it sells the collateral, not the value of the collateral when the victim received it.
Roberts v. U.S., 572 U.S. 639 (2014)

Sentencing: Restitution – Amount (Mortgage Fraud: Successor Lender)

Restitution to a successor lender must typically equal the sum that lender paid to acquire the mortgage equal the sum that lender paid to acquire the mortgage less the principal payments it received and the amount recouped in the short sale. In simple terms, how much is paid minus how much it made.
U.S. v. Martin, Case No. 14-11019 (11th Cir. 9/30/15)

Sentencing: Restitution – Amount (Mortgage Fraud)

Where the loss arises out of a fraudulent mortgage transaction, the Guidelines require that if the property has been pledged as collateral for the loan has been sold, the amount recovered from that sale shall be deducted from the amount of the loan. If the property has not been sold by the time of the sentencing, one looks to the most recent tax assessment to determine fair market value and then subtract that fair market value from the loan balance.
U.S. v. Carvallo, Case No. 12-15660 (11th Cir. 6/22/15)

Sentencing: Restitution – Amount (Offset for Value Received)

To ensure a victim is compensated only for its actual loss, the court must deduct, as an offset, any value that the victim may have derived from the fraudulent scheme.
U.S. v. Carvallo, Case No. 12-15660 (11th Cir. 6/22/15)

Sentencing: Restitution – Amount (Not Intended to Be a Windfall for Victim)

U.S. v. Moran, 778 F.3d 942 (11th Cir. Case No. 12-16056 (11th Cir. 2/17/15)

Sentencing: Restitution – Amount (Offset for Value Received)

In a health care fraud case where the defendant was convicted of fraudulently providing portable oxygen to Medicare and Medicaid patients, but some 80 to 90% legitimately needed the oxygen, the district court erred in ordering the defendant to pay restitution for those who legitimately needed the oxygen.
U.S. v. Bane, Case No. 14158 (11th Cir. 6/28/13)

Sentencing: Restitution – Amount (Estimate OK)

U.S. v. Futrell, 209 F.3d 1286 (11th Cir. 2000)

Sentencing: Restitution - Amount (Fair Market Value or Cost of Replacement?)

Where actual cash value is difficult to determine, the cost of replacement is appropriate.
U.S. v. Shugart, 176 F.3d 1373 (11th Cir. 1999)

Sentencing: Restitution – Amount (Can't Exceed Loss)

U.S. v. Vaghela, 169 F.3d 729 (11th Cir. 1999)

Conspiracy

Sentencing: Restitution – Conspiracy (Conduct for Which Defendant Not Convicted)

When the crime of conviction includes a scheme, conspiracy, or pattern of criminal activity as an element of the offense, a court may order restitution for acts of related conduct for which the defendant was not convicted.
U.S. v. Edwards, No. 11-15953 (11th Cir. 9/6/13)

Sentencing: Restitution – Conspiracy (Related Conduct)

In determining, when the crime of conviction includes a scheme, conspiracy, or pattern of criminal activity as an element and whether conduct is related and supports an order of restitution, courts consider whether the victim and purpose of each scheme were the same,

whether the schemes involved the same *modus operandi*, and whether the schemes involved common participants.
U.S. v. Edwards, No. 11-15953 (11th Cir. 9/6/13)
Sentencing: Restitution - Conspiracy
Where an offense has as an element a scheme, conspiracy, or pattern of criminal activity, restitution may include losses that are directly caused by the defendant's conduct as part of the scheme, conspiracy, or pattern.
U.S. v. Spencer, 700 F.3rd 317, 324 (8th Cir. 2012); U.S. v. Edwards, 728 F.3d 1286 (11th Cir. 2013)
Sentencing: Restitution: Conspiracy (Acts of Co-Conspirators)
Here, even though the defendant was in jail during part of the conspiracy, he was still responsible for those losses that occurred during that time, because of the rule that allows the court to order restitution for all loses resulting from the conspiracy.
U.S. v. Alas, NO. 99-4184 (11th Cir. 11/24/99)

Court's Obligation

Sentencing: Restitution – Court's Obligation (Specific Finding That Victim Was Harmed)
In ordering restitution, a district court must make specific findings that the alleged victim was harmed by the defendant.
U.S. v. Edwards, No. 11-15953 (11th Cir. 9/6/13)
Sentencing: Restitution – Court's Obligation (Must Set Payment Schedule)
The court, not the probation office, must set the restitution schedule.
U.S. v. Prouty, Case No. 01-15273 (11th Cir. 8/27/02), U.S. v. Martinez, Case No. 02-14267 (11th Cir. 2/7/03)
Sentencing: Restitution – Court's Obligation (Court Must Advise Defendant of Possibility)
When the defendant enters the plea, the court, under Rule 11, must explain the possibility that restitution may be ordered.
U.S. v. Morris, 286 F.3d 1291 (11th Cir. 2002)
Sentencing: Restitution – Court's Obligation (Factual Findings)
Although the 3rd Circuit interprets the MVRA to require factual findings, the 11th Circuit does not.
U.S. vs. Jones, 289 F.3d 1260 (11th Cir. 4/8/02)

Joint and Several

Sentencing: Restitution - Joint and Several Liability
The Mandatory Victims Restitution Act, 18 U.S.C. § 3664, contemplates joint and several liability in cases involving multiple defendants. The court may make each defendant liable for the full amount or may apportion the loss based on each defendant's contribution to the victim's loss.
U.S. v. Puentes, Case No. 14-13587 (11th Cir. 10/5/15)

Miscellaneous

Sentencing: Restitution – Miscellaneous (Post-Conviction Challenge: Coram Nobis)
Probably won't work.
U.S. v. Wilkozek, 822 F.3d 364 (7th Cir. 2016)
Sentencing: Restitution – Miscellaneous (Higher Rate of Restitution Because of Participation in the IFRP)

A prisoner may be required to pay restitution at a higher or faster rate that was specified by the sentencing court as a condition of participating in the Bureau of Prison's Inmate Financial Responsibility Program.
U.S. v. Lemoine, Case No. 06-50663 (9th Cir. 10/9/08)
Sentencing: Restitution – Miscellaneous (Requirement to Pay Restitution Ordered in an Unrelated Case)
A federal district court can order a defendant as a condition of supervised release to pay unsatisfied restitution that was ordered by another court in a prior criminal case. Although the catch-all provision of the federal supervised release statute does not allow a court to order restitution in the first instance for a prior conviction, it does allow a court to require compliance with a previously ordered condition of release.
U.S. v. Love, Case No. 04-30944 (5th Cir. 11/29/05)
Sentencing: Restitution – Miscellaneous (Restitution for Grief Counseling for Bank Robbery Victims)
Government conceded that court ordered restitution ordered for grief counseling received by victims of an attempted bank robbery was invalid as it was not provided for by the Mandatory Victims Restitution Act.
U.S. v. King, Case No. 04-14021 (11th Cir. 6/30/05)
Sentencing: Restitution – Miscellaneous (Immediate Payment)
Immediate Payment did not mean immediate payment in full. Instead, it meant payment to the extent that the defendant can make it in good faith, beginning immediately. In ordering the defendant to notify the probation office of changes in his ability to pay, the court gave the defendant the opportunity to explain his financial circumstances to his probation officer should the need arise.
U.S. v. McIntosh, 198 F.3d 995 (7th Cir. 2000)
Sentencing: Restitution – Miscellaneous (Burden of Proof)
The government has the burden of proving restitution by a preponderance of the evidence.
U.S. v. Vaghela, 169 F.3d 729 (11th Cir. 1999); U.S. v. Futrell, 209 F.3d 1286 (11th Cir. 2000)
Modification
Sentencing: Restitution - Modification
The court may modify the amount of restitution only if one of the circumstances set out in 18 U.S.C. § 3664(o) applies.
U.S. v. Puentes, 803 F.3d 597 (11th Cir. 2015)
Sentencing: Restitution – Modification (Post-Sentence Change in Circumstances)
18 USC § 3664(k) provides a method for requesting a change in the restitution schedule.
Cani v. U.S., Case No. 02-12790 (11th Cir. 5/29/03)
Mandatory Victims Restitution Act (MRVA)
Sentencing: Restitution - MVRA (Includes Governments as Victim)
Despite wording that appears to the contrary, the Mandatory Victims Restitution Ac of 1996 includes governments as victims for purposes of restitution.
U.S. v. Alvarez, Case No. 08-17178 (11th Cir. 10/19/10)
Sentencing: Restitution – MRVA (Mandatory Victims Restitution Act: Offenses Against Property)
The Mandatory Victims Restitution Act specifies four types of crimes that trigger mandatory restitution: (1) crimes of violence as defined in 18 U.S.C. § 16; (2) offenses against property, including those committed by fraud or deceit; (3) offenses related to tampering with consumer

products; and (4) offense relating to theft of medical products. Here, after a lengthy discussion of what qualifies as offenses against property, the court concluded that the offense of conspiracy to accept gratuities is a violation of 18 U.S.C. § 215.
U.S. v. Collins, Case No. 15-12805 (11th Cir. 4/26/17)

Sentencing: Restitution – MRVA (Current Definition of Victim)

The earlier version of Protection Act interpreted by Hughey and Cobbs did not provide a definition for victim. The standard for causation defined in Hughey - the loss caused by the specific conduct that is the basis of the offense of conviction - is irreconcilable with the broad definition in the Restitution Act. The appropriate standard for causation is found in the Restitution Act itself: directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered . . . 18 U.S.C. § 3663A(a)(2). Accordingly, in this case, the district court properly ordered restitution to the police dept. and a condominium association where the defendant, who was charged with bank robbery, crashed into a police car and a gate into the condominium parking garage as he fled from the scene of the robbery.
U.S. v. Washington, 434 F.3d 1265 (11th Cir. 2006)

Sentencing: Restitution - MVRA (Date of Inception)

The Mandatory Victims Restitution Act applies to crimes committed on or after 4/24/96.
U.S. v. Futrell, 209 F.3d 1286 (11th Cir. 2000)

Other Laws

Sentencing: Restitution – Other Laws (Federal Order Preempts State Law)

Pursuant to 18 U.S.C. § 3613, the only exceptions to a restitution order are: wearing apparel and school books, fuel, provisions and personal effects, books and tools of a trade, business, or profession, unemployment benefits, certain annuity and pension payments, workers compensation benefits, judgments for support of minor children, certain service-connected disability payments, and assistance under the Job Training Partnership Act. Florida's homestead exemption protection, for example, offers no protection.
See: Wang v. Want, 2007 U.S. Dist, LEXIS 62545, 2007 WL 2460727 (M.D. Fla. Aug. 24, 2007)

Sentencing: Restitution – Other Laws (Survives Bankruptcy)

In re: Robinson, 764 F.3d 554 (6th Cir. 2014)

Time Limit

Sentencing: Restitution – Time Limit (90 Day Rule)

18 U.S.C. § 3664(d)(5) requires the Court to enter a restitution order within 90 days. The 90-day requirement is inapplicable if the court has stated it will impose restitution and only the amount is at issue.
U.S. v. Rodriguez, 751 F.3d 1244 (11th Cir. 2014)

Sentencing: Restitution – Time Limit (Ninety Day Time Limit Doesn't Mean Much)

A sentencing court that misses the 90-day deadline to establish restitution retains the power to order restitution - at least in cases such as this one where the court made prior to the deadline that it would order restitution.
Dolan v. U.S., Case No. 09-367 (S. Ct. 4/20/10); U.S. v. Rodriguez, [h] 751 F.3d 1244 (11th Cir. 2014)

Sentencing: Restitution – Time Limit (Order Must Be Entered Within 90 Days of Sentencing)

U.S. v. Maung, No. 00-10296 (11th Cir. 9/25/01)

Sentencing: Restitution – Time Limit (Procedure When It May Not Be Established by Sentencing)
See: U.S. v. Vandeberg, No. 98-3009 (6th Cir. 1/14/00)

Section 3553(a)

Sentencing: Section 3553(a) - Parsimony Principle
The parsimony principle requires that the sentencing court when handing down a sentence by stingy enough to avoid one that is too long, but also that it be generous enough to avoid one that is too short.
U.S. v. Alcindor, Case No. 07-14602 (11th Cir. 6/14/11)
Sentencing: Section 3553(a) - Sentences that Are Too Harsh Can Fail to Promote Respect for the Law
Promoting respect for the law turns on perception of the punishment; respect for the rule of law may be compromised if the offender or community believes that an offender's punishment was too harsh or lenient based on the facts of the case or if it leads to unwarranted disparity.
United States v. Irey, Case No. 08-10997 (11th Cir. 7/29/10) (Tjoflat, J. dissenting opinion) n. 35
Sentencing: Section 3553(a) - Parsimony Principle
The district court must be guided by the parsimony principle - that the sentence be sufficient, but not greater than necessary, to comply with the purposes of criminal punishment as expressed in § 3553(a)(2). The Court of Appeals, though, in a footnote went on to say that the term parsimony principle is an adequate catch word and that they would prefer to deal with result-neutral terms.
U.S. v. Irey, Case No. 08-10997 (11th Cir. 7/29/10)
Sentencing: Section 3553(a) - Equal Treatment
It is worth noting that equal treatment consists not only of treating like things alike, but also of treating unlike things differently according to their differences.
U.S. v. Irey, Case No. 08-10997 (11th Cir. 7/29/10)
Sentencing: Section 3553(a) - General Summary of 3553(a) Factors
"Pursuant to § 3553(a) the sentencing court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. See 18 U.S.C. § 3553(a)(2). These purposes include, inter alia, promoting the respect for the law, deterring criminal conduct, and protecting the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(2). The sentencing court must also consider the following factors in determining a particular sentence: the nature and circumstances of the offense and the history and characteristics of the defendant, the kinds of sentences available, the Guidelines range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentence disparities, and the need to provide restitution to the victims."
U.S. v. Gonzalez, 550 F.3d 1319 (11th Cir. 2008)
Sentencing: Section 3553(a) - Convenient Listing of the 3553(a) Factors
United States v. Talley, 431 F.3d 784, 786 (11th Cir. 2005); U.S. v. Williams, Case No. 07-12526 (11th Cir. 3/20/08)

Three Strikes

Sentencing: Three Strikes - State Offense of Selling Within a 1000 Feet of School Did not Qualify as a Predicate
The defendant should not have been sentenced to a mandatory life sentence under the three strikes provision as his judgment of conviction for selling cocaine within 1,000 feet of a school failed to allege the requisite drug quantity.
U.S. v. Sanchez, Case No. 06-15143 (11th Cir. 10/30/09)

Sentencing: Three Strikes - Defense Counsel Ineffective for Failing to Show Prior Walk-Away Escape Was Not a Serious Felony
Court found defense counsel was ineffective in that he/she did not argue that under the affirmative defense provision, that the defendant's walk-away escape was not a violent felony.
Abraham v. U.S., Case No. 06-20786 (S.D. Fla. 3/12/07) (Huck)
Sentencing: Three Strikes - Escape Automatically Qualifies as a serous violent felony
See: U.S. v. Abraham, Case No. 03-14201 (11th Cir. 9/30/04)
Sentencing: Three Strikes - Examination of Charging Document to Determine Predicate Offense
Under the three strikes statute a serious violent felony is one consisting the use of a firearm. The defendant, here, had been convicted of aggravated assault under the Florida statutes. Because some aggravated assaults do not involve the use firearms, it could not be determined from the judgment whether the aggravated assault conviction qualified as a predicate offense. The court held that given the ambiguity the sentencing court could look to the information.
U.S. v. Fulford, 267 F.3d 1241 (11th Cir. 2001)

SEVERANCE

Severance: Enticement and Failure to Register and a Sex Offender
Court held it was not an abuse of discretion for the trial court to deny request to sever the charges of enticing a minor to engage in sexual activity (18 U.S.C. § 2422(b)) and failing to register as a sex offender (18 U.S.C. § 2260A). In the view of the court of appeals, the prejudice was not so compelling as to deny the defendant a fair trial.
U.S. v. Slaughter, Case No. 11-15262 (11th Cir. 2/11/13)
Severance: Quality and Quantity of Evidence
While the court has never approved a severance based on the quantity of evidence, a severance may be based on the relative inequality of the evidence against defendants.
U.S. v. Tobin, Case No. 09-13944 (11th Cir. 4/12/12)
Severance: Prejudice
Discussion of the sort of showing of prejudice necessary for a severance.
U.S. v. Lopez, Case No. 09-12802 (11th Cir. 8/16/11)
Severance: Individualized Determination
A defendant may show that he suffered compelling prejudice by demonstrating the jury was unable to sift through the evidence and make and individualized determination as to each defendant.
U.S. v. Alcindor, Case No. 07-14602 (11th Cir. 6/14/11); U.S. v. Lopez, Case No. 09-12802 (11th Cir. 8/16/11)
Severance: Four Types of Prejudicial Joinder That Can Require Severance
Although rarely granted, there are four types of prejudicial joinder that can require severance under Rule 14 of the Federal Rules of Criminal Procedure: (1) mutually antagonistic defenses; (2) where one defendant will exculpate the moving defendant, but will not testify in a joint trial; (3) where inculpatory evidence is admissible against one defendant, but not the other; and (4) where a spillover effect may prevent the jury from making an individualized determination as to each defendant.
U.S. v. Chavez, Case No. 08-12638 (11th Cir. 10/16/09)
Severance: Defendant Entitled to an Individualized Determination of Guilt

On appeal a defendant can show compelling prejudice by demonstrating that the jury was unable to sift through the evidence and make an individual determination as to each defendant.
U.S. v. Ramirez, Case No. 04-12040 (11th Cir. 9/30/05)

Severance: Possibility of Co-Defendant Testifying

The defendant's motion to sever his trial from a co-defendant to enable the co-defendant to give testimony exculpating him should not be denied solely because the co-defendant was not likely to testify unless his trial took place first.
Williams v. United States, No. 97-CF-421 (D.C. Cir. 10/13/05)

Severance: Two Circumstances Where Severance of Defendants is the Only Remedy

Where defendants have been properly joined a district court should grant severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. The latter circumstance occurs when (1) compelling evidence is admissible against one defendant, but not the other; (2) where the sheer number of defendants and charges along with the massive volume of evidence make it nearly impossible for the jury to assess the guilt or innocence of each defendant independently; and (3) where one defendant is being charged with a crime that, while related, is significantly different from those of the other defendants.
U.S. v. Blankenship, Case No. 01-17064 (11th Cir. 8/26/04); U.S. v. Hassoun, Case No. 04-60001-CR-Cooke (M.D. Fla. 3/12/07)

Severance: Rule 14-Testimony of Codefendant

Affidavit from codefendant alleged that the defendant did not conspire with me or to my knowledge to anyone else was deemed inadequate to support a severance as, in the view of the court, it contained no specific and exonerative facts.
U.S. v. Novaton, 271 F.3d 968 (11th Cir. 2001)

Severance: Evidence at Trial Wasn't Relevant for Appeal

In reviewing an appeal involving the joinder of defendants, the evidence introduced at trial isn't relevant to the issue.
U.S. v. Liss, 265 Fl3d 1220 (11th Cir. 9/21/01)

Severance: Determined Upon the Allegations of the Indictment?

Although the court has repeatedly said that whether joinder is proper under Rule 8 is to be determined by examining the allegations, the court, here, explained that's not what it meant. As it turns out it is enough that when faced with a Rule 8 motion, the prosecutor proffers evidence which will show the connection between the charges. In footnote 3, the court goes on to recognize the differing standards between Rule 8 and Rule 14.
U.S. v. Dominguez, 226 F.3d 1235 (11th 2000), See also RPM memo in: U.S. v. Jose Pimentel, 4:99cr77-RH

Severance: Codefendant's Exculpatory Testimony

Where a defendant argues for severance on the ground that it will permit the exculpatory testimony of a co-defendant, he must show: (1) a bona fide need for the testimony; (2) the substance of the desired testimony; (3) the exculpatory nature and effect of the desired testimony; and (4) that the codefendant would indeed have testified at a separate trial.
U.S. v. Cobb, 185 F.3d 1193 (11th Cir. 1999); U.S. v. Green, Case No. 15-10270 (11th Cir. 4/7/16)

Severance: Similar Character

Rule 8 allows for joinder of offenses not only if they are based on the same act or connected acts, but also if the crimes are of a similar character.

U.S. v. Werner, 620 F.2d 922 (2nd Cir. 1980); U.S. v. Lewis, 626 F.2d 940 (D.C. Cir. 1979); U.S. v. Kopituk, 690 F.2d 1289 (11th Cir. 1982)

SEX OFFENSES

Advertising or Promoting

Sex Offenses: Advertising or Promoting - 18 U.S.C. § 2252A(a)(3)(B), Not Overbroad or Excessively Vague

U.S. v. Williams, Case No. 06-694 (S. Ct. 5/19/08)

Child Exploitation Enterprise

Sex Offenses: Childe Exploitation Enterprise - Life Sentence Didn't Violate Eighth Amendment

U.S. v. McGarity, Case No. 09-12070 (11th Cir. 2/6/12)

Sex Offenses: Child Exploitation Enterprise - Jury Instruction (Unanimity Instruction)

Because each individual violation of § 2252A(g)(2) is an element, the court must instruct the jury that they must unanimously agree about which of three or more predicate acts the defendant committed.

U.S. v. McGarity, Case No. 09-12070 (11th Cir. 2/6/12)

Sex Offenses: Child Exploitation Enterprise - Statute Not Unconstitutionally Vague

Court rejected claim that the child exploitation statute, 18 U.S.C. § 2252A(g), was so vague that it violated the due process clause of the Fifth Amendment.

U.S. v. Wayerski, Case No. 09-11380 (11th Cir. 10/26/10), U.S. v. McGarity, Case No. 09-12070 (11th Cir. 2/6/12)

Engaging in a Sexual Act

Sex Offenses: Engaging in a Sexual Act - 30-Year Mandatory Minimum Sentence for Crossing State Lines Doesn't Violate Eighth Amendment

U.S. v. Farley, 607 F.3d 1294 (11th Cir. 2010)

Sex Offenses: Engaging in a Sexual Act - Repeat Offender Enhancement (Looking Beyond Category of Prior Offense)

Where there was ambiguity as to the nature of the defendant's prior conviction, trial court properly examined the plea colloquy in determining that the prior conviction supported the enhancement.

U.S. v. Breitweiser, 357 F.3d 1249 (11th Cir. 2004)

Enticement

Sex Offenses: Enticement - Unanimity Instruction

Where defendant attempted to persuade the minor to engage in sexual activity and indictment alleged that the sexual activity violated multiple state offenses, the jury was not required to unanimously agree which statute was violated. Decision includes a dissent by Judge Jordan.

U.S. v. Jockisch, 857 F.3d 1122 (11th Cir. 2017)

Sex Offenses: Enticement - Underage Prostitute

Court rejected defendant's sufficiency of the evidence claim that he could not have induced an underage prostitute who holds herself out for sex.

U.S. v. Rutgerson, Case No. 14-15536 (11th Cir. 5/12/16); U.S. v. Kincherlow, No. 22-111980 (11th Cir. 12/13/23)

Sex Offense: Enticement – "Persuades, Induces, Entices, or Coerces"

The term "induce" in 18 U.S.C. § 2422 is not ambiguous and has a plain and ordinary meaning. AInduce can be defined in two ways. It can be defined as [t]o lead or move by influence or persuasion; to prevail upon, or alternatively [t]o stimulate the occurrence of; cause. In the view of the court, the latter option was intended by Congress.
U.S. v. Murrell, 368 F.3d 1283, 1287 (11th Cir. 2004); U.S. v. Daniels, 685 F.3d 1237 (11th Cir. 2012); U.S. v. Kincherlow, No. 22-111980 (11th Cir. 12/13/23)

Sex Offense: Enticement - Govt Need Not Prove Def. Knew Victim was Under Age
In prosecutions for a violation of 18 U.S.C. § 2422(b), the Government is not required to prove the defendant knew the victim was under 18 years of age.
U.S. v. Daniels, Case No. 10-14794 (11th Cir. 7/2/12)
Sex Offenses: Enticement - Conduct That Falls Short of an Attempt
Court analyzes what is necessary for an attempt and concludes defendant attempted to commit the offense of enticing a minor to engage in sexual activity in that he took a substantial step toward committing the offense.
U.S. v. Lee, 603 F.3d 904 (11th Cir. 2010)
Sex Offenses: Enticement - No Need for a Real Child
A defendant can be convicted for attempted enticement under 18 U.S.C. § 2422(b) even though there is no real child involved and all the communication has been with a law enforcement officer posing as a parent of the child.
U.S. v. Farley, Case No. 08-15882 (11th Cir. 6/2/10); U.S. v. Rothenberg, Case No. 08-17106 (11th Cir. 6/29/10), U.S. v. Lee, Case No. 08-17077 (11th Cir. 4/16/10)
Sex Offenses: Enticement - No Need to Communicate Directly with Child
A defendant can be convicted for attempted enticement under 18 U.S.C. § 2422(b) through an adult intermediary, even if he never communicated directly with anyone he believed to be a child.
U.S. v. Farley, Case No. 08-15882 (11th Cir. 6/2/10); U.S. v. Rothenberg, Case No. 08-17106 (11th Cir. 6/29/10), U.S. v. Lee, Case No. 08-17077 (11th Cir. 4/16/10)
Sex Offenses: Enticement - Attempt
Sexually graphic conversation over the internet was sufficient to support a conviction under 18 U.S.C. § 2422(b) even though the defendant failed to show at the appointed meeting place. The content of the internet conversation established the substantial step toward committing the offense.
U.S. v. Yost, 479 F.3d 815 (11th Cir. 2007); U.S. v. Rothenberg, 610 F.3d 621 (11th Cir. 2010)
Sex Offenses: Enticement - Intra State Activity (Commerce Clause)
Despite the fact that the defendant's efforts at enticing the minor to engage in prostitution were all in the state of Florida, the court found the government had met the interstate commerce element of 18 USC § 2422(b).
U.S. v. Evans, 476 F.3d 1176 (11th Cir. 2007)
Sex Offenses: Enticement – Conversation Sufficient for Conviction
Conversations the defendant had with an agent posing as a minor and the defendant's subsequent drive across state lines to meet the child, sufficed to support convictions for 18 USC § 2422(b) (attempting to persuade a minor to engage in criminal sexual activity) and 18 USC § 2423(b) (traveling in interstate commerce for purpose of engaging in a criminal sexual act with minor).
U.S. v. Root, Case No. 01-14945 (11th Cir. 7/10/02)

Failure to Register

Sex Offenses: Failure to Register - Lifetime Supervised Release Not Unreasonable
In upholding lifetime supervised release for a violation of supervised release for the offense of failing to register, the court noted that research showing the low levels of recidivism for sex offenders did not mean the defendant was not at risk for committing new offenses, that the defendant could ask for early termination, and even appeal a denial of the request.
U.S. v. Trailer, 827 F.3d 933 (11th Cir. 2016)
Sex Offenses: Failure to Register - Categorical Approach for Underlying Offense
In Texas, the determination of whether an individual is required to register, relies on the categorical approach. Here, where the underlying conviction involved a minor, but the statute did not require that the victim be a minor, there was no requirement the defendant register. Court held the defense lawyer was ineffective in letting his client enter a guilty plea to the charge of failing to register.
U.S. v. Shepard, No. 15-50991 (5th Cir. 1/26/18)
Sex Offenses: Failure to Register - Move from Kansas to Philippines
Plain text of SORNA did not require that defendant update his Kansas registration to reflect his departure from Kansas to a foreign country.
Nichols v. U.S., Case No. 15-5238 (S. Ct. 3/1/16)
Sex Offenses: Failure to Register - Retroactive Application of Amendment's to Michigan's Sex Offender Registration Act Violated Ex Post Facto Clause
Does v. Snyder, Case No. 15-1536 (6th Cir. 8/25/16)
Sex Offenses: Failure to Register - Necessary and Proper Clause (Completion of Sentence Prior to Enactment of SORNA)
The authority extended to Congress by the necessary and proper clause allowed it to apply SORNA to the defendant who had been convicted while in the military of a sex offense and had completed his sentence prior to the enactment of SORNA.
U.S. v. Kebodeaux, Case No. 12-418 (S. Ct. 6/24/13)
Sex Offenses: Failure to Register -10-Year Mandatory Sentence for Those Committing Enumerated Offenses
The 10-year-mandatory sentence for failing to register as a sex offender for those committing certain enumerated felonies involving a minor is supported by a conviction of enticement under (18 U.S.C. § 2422(b)) even if the enticement offense is a sting operation that does not involve an actual minor.
U.S. v. Slaughter, Case No. 11-15262 (11th Cir. 2/11/13)
Sex Offenses: Failure to Register - Absence of Rule by the Attorney General (7/27/06 - 2/28/07)
The Sex Offender Registration and Notification Act became effective on July 27, 2006. Congress left to the Attorney General the question of whether the Act applied to those who had committed their sex offenses prior to the enactment of the law. The Attorney General entered an interim rule on July 28, 2007, stating that the Act did apply to those who had committed their sex offenses prior to July 27, 2006. The Court, however, read the Act in such a way that it concluded that it was inapplicable to those pre-Act offenders who failed to register during the seven-month period between its enactment and the Attorney General's promulgation of the interim rule. Left open was the question about the validity of the interim rule.
Reynolds v. U.S., Case No. 10-649 (S. Ct. 1/23/12)
Sex Offenses: Failure to Register - Travel Must Occur After Defendant Becomes Subject to SORNA

Carr v. U.S., 130 S. Ct. 2229 (2010), U.S. v. Beasley, Case No. 09-11528 (11th Cir. 3/28/11)

Sex Offenses: Failure to Register - Conviction for Transferring Obscene Material to Minor Qualified Defendant as Sex Offender

U.S. v. Dodge, Case No. 08-10802 (11th Cir. 3/5/10)

Sex Offenses: Failure to Register - State's Failure to Implement SORNA Requirements Not a Defense

Eleventh Circuit's decision in United States v. Brown foreclosed defendant's argument that SORNA did not apply to him when he resided in Alabama because Alabama had not yet implemented SORNA's administrative requirements. Given the defendant's admission that he knew of his duty to register as a sex offender in Alabama, and given circumstances prompting a need for the defendant to inquire into his duty to register, there was no due process violation.

U.S. v. Griffey, Case No. 09-11696 (11th Cir. 12/15/09)

Sex Offenses: Failure to Register - 18 U.S.C. § 1470 Not Subject to SORNA's Registration Requirement

Defendant who entered a guilty plea to a violation of 18 U.S.C. § 1470 for transferring obscene material to a minor, based on his having sent certain photos and video of himself over the internet, did not engage in conduct that was, by its nature a sex offense against a minor, and was not subject to SORNA's registration requirements.

U.S. v. Dodge, Case NO. 08-10802 (11th Cir. 1/14/09)

Sex Offenses: Failure to Register - Gap Period

SORNA was enacted on July 26, 2006. The Act delegated to the Attorney General the authority to determine whether the Act would be applied retroactively. On February 28,2007 the Attorney General enacted a rule stating that the statue applied to anyone convicted of a sex offense regardless of when the offense or conviction occurred. The defendant was convicted of a sex offense in New York in May of 2006 and subsequently moved to Florida, obtaining a driver's license in June of 2006. He was arrested for failing to register in October of 2006. The district court erroneously denied the defendant's motion to dismiss because the indictment alleged a failure to register during the gap between the enactment of the law and the enactment of the rule by the Attorney General.

U.S. v. Madera, Case No. 07-12176 (11th Cir. 5/23/08)

Sex Offenses: Failure to Register - Florida's Sex Offender Registration Requirements Held Constitutional

Court concluded Florida's sex offender registration/notification statute and DNA collection statute did not violate rights of due process, equal protection, travel, separation of powers, and freedom from ex post facto legislation.

Doe v. Moore, Case No. 04-10279 (11th Cir. 6/6/05)

Miscellaneous

Sex Offenses: Miscellaneous -Statute Prohibiting Sex Offenders from Accessing Social Media

Court held that a North Carolina statute that made it a felony for those required to register as sex offenders to access commonplace social media websites like Facebook and Twitter violated the Free Speech Clause of the First Amendment.

Packingham v. North Carolina, 137 S. Ct. 1730 (2017)

Sex Offenses – Miscellaneous - Threat of Recidivism Posed by Pedophiles

This Court has stated that the threat of recidivism by a pedophile who has sexually abused children is appalling.

United States v. Irey, Case No. 08-10997 (11th Cir. 7/29/10)

Sex Offenses: Miscellaneous - Harm Caused by Sexual Abuse of Children

Much has been said to describe and emphasize the grave harm that sexual abuse of children inflicts on its victims. Some of the best and most recent descriptions of that harm can be found in Kennedy v. Louisiana, 128 S. Ct. 2641 (2008).

United States v. Irey, Case No. 08-10997 (11th Cir. 7/29/10); U.S. v. McDaniel, Case No. 09-15038 (11th Cir. 1/28/11)

Sex Offenses: Miscellaneous - Necessary and Proper Clause (Civil Commitment of Dangerous Mentally Ill Sex Offenders)

Court upheld 18 U.S.C. § 4248, which allows for civil commitment of mentally ill sex offenders who are dangerous. The Court held it was an appropriate exercise of the Necessary and Proper Clause, At. I, § 8, cl. 18.

U.S. v. Comstock, Case No. 08-1224 (S. Ct. 5/17/10)

Sex Offenses: Miscellaneous - Undue Prejudice Did Not Outweigh Relevancy of Child Porn Images

U.S. v. Alfaro-Moncada, Case No. 08-16442 (11th Cir. 5/27/10)

Sex Offenses: Miscellaneous - Lifetime Ban on Use of Computers Invalid

Where the district court ordered, as a condition of lifetime supervised release, that defendant not have access to any computer equipment or possess any sexually explicit material, the conditions violated the requirement of 18 USC § 3583(d) that the conditions involve no greater deprivation of liberty than necessary to achieve the goals of sentencing.

US. v. Voelker, Case No. 05-2858 (3d Cir. 6/5/07); U.S. v. Goddard, Case No. 07-50402 (9th Cir. 8/11/08); U.S. v. Carpenter, 803 F.3d 1224 (11th Cir. 2015)

Sex Offenses: Miscellaneous - Record Keeping Requirements of PROTECT Act Unconstitutional

The PROTECT Act's record keeping requirements for producers of images of actual sexually explicit conduct are facially overbroad in breach of the First Amendment.

Connection Distributing Co. v. Keisler, Case No. 06-3822 (6th Cir. 10/23/07)

Possession or Receipt of Child Pornography

Sex Offenses: Possession or Receipt -18 U.S.C. § 2252(a)(4) Ten-Year Mandatory Minimum Based on Prior Conviction

18 U.S.C. § 2252(a)(4) establishes a ten-year mandatory minimum and increases the maximum penalty for possession of child pornography if the defendant has a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward. Court concluded "involving a minor or ward" modifies only abusive sexual conduct.

Lockhart v. U.S., Case No. 14-8358 (S. Ct. 3/1/16)

Sex Offenses: Possession or Receipt – Statute Not Unconstitutionally Vague

Court rejected argument that the statue was unconstitutionally vague because the statutory language was unclear as to whether one who merely views child porn on his computer has knowingly received or possessed the images.

U.S. v. Woods, Case No. 11665 (11th Cir. 2012)

Sex Offenses: Possession or Receipt - Possession Doesn't Require Deliberate Saving of Images

An intentional viewer of child-pornography images sent to his computer may be convicted whether or not he acts to save the images to a hard drive, to edit them, or otherwise to exert more

control over them. Evidence that a person has sought out child pornography on the internet and has a computer containing child-pornography images - whether in the hard drive, cache, or unallocated spaces - can count as circumstantial evidence that a person has knowingly received child pornography. Case includes footnotes explaining cache and unallocated space.
U.S. v. Pruitt, 638 F.3d 763 (11th Cir. 2011), U.S. v. Woods, 684 F.3d 1045 (11th Cir. 2012)

Sex Offenses: Possession or Receipt - Predicate Conviction in Support of Increased Penalty

In a prosecution for possession of child pornography, the increase in the maximum penalty to 20 years and the creation of a 10-year minimum mandatory sentence requires that the prior conviction occur prior to the conduct in the instant case.
U.S. v. King, Case No. 07-11808 (11th Cir. 12/14/07)

Sex Offenses: Possession or Receipt - Authority for Statute

We have held that the government may criminalize the possession of child pornography, even though it may not criminalize the mere possession of obscene material involving adults.
U.S. v. Rodriquez, Case No. 06-1646 (S. Ct. 5/19/08)

Sex Offenses: Possession or Receipt - Withholding of Adjudication Doesn't Bar Increase in the Mandatory Minimum

Prior state child pornography case where adjudication was withheld counts for purposes of the increase in the mandatory minimum in 18 U.S.C. § 2252A(b)(1) and (b)(2).
U.S. v. Maupin, Case No. 07-13341 (11th Cir. 3/24/08)

Sex Offenses: Possession or Receipt - Conviction for Both Receipt and Possession of Child Pornography Violates Double Jeopardy

U.S. v. Davenport, 519 F.3d 940 (9th Cir. 2008); United States v. Bobb, 577 F.3d 1366 (11th Cir. 2009)

Sex Offenses: Possession or Receipt - Child Pornography (Generally)

See: U.S. v. Williams, Case No. 04-15128 (11th Cir. 4/6/06)

Sex Offenses: Possession or Receipt - Downloading Images of Sexually Explicit Conduct of Minors

Downloading images of minors engaged in sexually explicit conduct from a computer billboard amounts to receiving such images, but does not constitute transporting such images in violation of 18 USC § 2252(a)(1).
U.S. v. Mohrbacher, 98-10009 (9th Cir. 6/29/99)

Sex Offenses: Possession or Receipt - Jury Instructions (Virtual Pornography)

The standard instruction that includes language that allows the jury to convict in cases of child pornography if the visual depiction . . . appears to be of a minor engaging in sexually explicit conduct is no longer valid thanks to the decision in Ashcroft v. Free Speech Coalition. In this instance the error failed the plain error test.
U.S. v. Richardson, Case No. 01-15834 (11th Cir. 9/4/02)

Sex Offenses: Possession or Receipt - Mailing by Undercover Postal Inspector Met Interstate Nexus Requirement

Evidence established that undercover postal inspector used U.S. Postal Service to mail videotape from Pennsylvania to a postal inspector in Florida, before it was delivered to the defendant, and this was sufficient to satisfy jurisdictional requirement.
U.S. v. Acosta, 421 F.3d 1195 (11th Cir. 2005)

Sex Offenses: Possession or Receipt - Registration as Sex Offender

Under USSG § 5D1.3(a)(7) a defendant convicted of receiving or distributing child pornography (18 USC § 4042(c)(4)) must register as a sex offender in any state that he resides. The court held,

too, that any challenge to Florida's sexual offender registration act would have to come after the defendant was released from prison and began serving his supervised release.
U.S. v. Veal, 322 F.3d 1275 (11th Cir. 2003)

Production of Child Pornography

Sex Offenses: Production

Section 2251(a) makes it illegal to, among other things, "use" a minor to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct. Though the Seventh Circuit has concluded otherwise, the 11th Circuit held the defendant's recording of his conduct, which amounted to masturbating in the presence of a child violated the statute even though the child was unaware of the conduct.
U.S. v. Dawson, No. 21-11425 (11th Cir. 4/5/23)

Sex Offenses: Production – Attempt (No Chance of Success)

The defendant posted his request for explicit photos on a website for mothers, one where his effort was unlikely to succeed. The court rejected his arguments that his conduct negated any suggestion he intended to complete the offense and demonstrated he knew the images would not be transmitted using a means of in interstate commerce. The court rejected his argument that his actions failed to amount to a "substantial step toward committing the offense" under the plain error standard as he failed to raise the claim when moving for a judgment of acquittal.
U.S. v. Moran, No. 21-12573 (11th Cir. 1/13/23)

Sex Offenses: Production -Transfer from Phone to Hard Drive

Production includes "transferring," so defendant's act in transferring photos from phone to hard drive qualified as production even though there was no evidence about where the phone was manufactured. In that hard drive contained components manufactured outside the United States, the transfer also fulfilled the interstate nexus requirement. The court rejected the defendant's argument that the government had to show he intended to transfer the photos when he took them.
U.S. v. Downs, No. 21-10809 (11th Cir. 3/13/23)

Sex Offenses: Production - Primary Purpose of Sexual Activity

Court of Appeals vacated conviction, concluding that a spontaneous decision to record the sexual activity as it was beginning did not meet the statutory requirement that defendant persuaded the minor to engage in sexual activity for the purpose of producing child pornography.
United States v. McCauley, 983 F.3d 690 (4th Cir. 2020); U.S. v. Gatlin, No. 19-14969 (11th Cir. 1/5/24), see Judge Jordan's dissent.

Sex Offenses: Production - Motive

The government is not required to prove that making explicit photographs was the sole or primary purpose for enticing a minor to engage in sexually explicit conduct. It is enough to show that it was a purpose for doing so.
U.S. v. Miller, Case No. 15-13355 (11th Cir. 4/27/16); U.S. v. Gatlin, No. 19-14969 (11th Cir. 1/5/24), but see Judge Jordan's dissent.

Sex Offenses: Production - Secretly Recorded Images of Nude Minor

The phrase lascivious exhibition of the genitals or pubic area includes conduct of a minor which is surreptitiously taken and made lascivious based upon the actions of the producer, not the child. In this case, the court upheld a conviction of a defendant who had recorded his step-daughter in the bathroom over a period of five months.
U.S. v. Holmes, Case No. 14-11137 (11th Cir. 2/25/16)

Sex Offenses: Production - Defendant Need Not Take the Pictures

The Government is not required to prove a defendant personally took explicit photos. It has to prove only that he persuaded or induced the minor to engage in sexually explicit conduct for the purpose of creating the image.
U.S. v. Mozie, Case No. 12-12538 (11th Cir. 5/22/14)

Sex Offenses: Production - Knowledge of Victim's Age

Knowledge of the victim's age is neither an element of § 2251 nor an affirmative defense to a prosecution for it.
U.S. v. Ruggiero, Case No. 13-14773 (11th Cir. 6/30/15); U.S. v. Mozie, Case No. 12-12538 (11th Cir. 5/22/14)

Sex Offenses: Production - Mandatory Minimum (Relating To)

The enhancement is supported by, among other things, a conviction of a state law relating to sexual abuse of a minor. The phrase relating to is interpreted so broadly that it has been supported by a Georgia conviction for discussing illicit sexual acts with a minor.
U.S. v. Mathis, 767 F.3d 1264 (11th Cir. 2014)

Sex Offenses: Production - Mandatory Minimum (Prior Conviction Need Not Be Found by Jury)

The mandatory minimum increase from 15 to 25 years based on a prior sex offense need not be alleged in the indictment or found by a jury.
U.S. v. Mathis, 767 F.3d 1264 (11th Cir. 2014)

Sex Offenses: Production of Child Pornography Not Overbroad on Its Face

The offense of production of child pornography (18 U.S.C. § 1466A(a)(2) is not facially unconstitutionally overbroad.
U.S. v. Dean, 635 F.3d 1200 (11th Cir. 2011)

Restitution

Sex Offenses: Restitution for Future Counseling

Restitution pursuant to 18 U.S.C. § 2259 may include future therapy expenses.
U.S. v. Osman, Case No. 14-14124 (11th Cir. 4/12/17)

Sex Offenses: Restitution in Child Porn Cases

Paroline v. U.S., 134 S. Ct. 1710 (2014)

Transporting Minor for Sexual Activity

Sex Offenses: Transporting Minor for Sexual Activity – Indictment

In charging a violation of 18 U.S.C. § 2423(a) for transporting a minor for sexual activity, the government need not allege the state offense making the sexual activity unlawful, though including them is the better practice.
United States v. Doak, No. 19-15106 (11th Cir. 9/7/22)

SPEEDY TRIAL

Constitutional Speedy Trial

Speedy Trial: Constitutional Speedy Trial - Two Years of Post-Indictment Delay Resulted in Dismissal

Relying on Barker v. Wingo and the concept of constitutional speedy trial, the Court directed the district court to dismiss the indictment after a two-year post-indictment delay. The delay was occasioned by the arresting officer's less than weak efforts to contact and arrest the defendant following the return of the indictment. Because the first three of the Barker factors, (1) length of the delay, (2) the reason for the delay, and (3) the defendant's assertion of his speedy trial right, weighed heavily against the government, there was no need for the defendant to show prejudice.

U.S. v. Ingram, 446 F.3d 1332 (11th Cir. 2006)

Speedy Trial: Constitutional Speedy Trial - One Year Delay Presumptively Prejudicial

See: U.S. v. Dunn, Case No. 02-14182 (11th Cir. 9/19/03)

Speedy Trial: Constitutional Speedy Trial - Test

The four factors to be considered in determining whether a defendant has been deprived of his constitutional right to a speedy trial are: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right; and (4) the prejudice to the defendant.

U.S. v. Register, 182 F.3d 820 (11th Cir. 1999); U.S. v. Dunn, Case No. 02-14182 (11th Cir. 9/19/03), U.S. V. Villarreal, Case No. 09-11348 (11th Cir. 8/13/10)

Dismissal

Speedy Trial: Dismissal -Delay in Filing Indictment

At least in theory the length of delay in the filing of the indictment can be enough by itself to justify dismissal with prejudice. In this case, the court found that a 68-day delay, which the court found amounted to a severe violation, wasn't enough to justify a dismissal with prejudice under the circumstances in the case. The opinion includes citation to a six-month delay that did not result in a dismissal with prejudice.

U.S. v. Williams, 314 F.3d 552 (11th Cir. 2002)

Speedy Trial: Dismissal - With or Without Prejudice?

For the rather vague test see the discussion in:

U.S. v. Brown, 183 F.3d 1306 (11th Cir. 1999); U.S. v. Williams, Case No. 02-10320 (11th Cir. 10/10/02); U.S. v. Jones, Case No. 08-16999 (11th Cir. 4/2/10)

Speedy Trial: Dismissal - Prosecution for Related Offenses

After an indictment is dismissed either with or without prejudice, a defendant may be prosecuted for offenses that are separate and distinct from the offenses charged in the dismissed indictment, even if those offenses all arose out of the same underlying facts.

U.S. v. Brown, 183 F.3d 1306 (11th Cir. 1999)

Ends of Justice

Speedy Trial: Ends of Justice - Findings on Remand

The Speedy Trial Act's requirement for a finding that a continuance is justified by the ends of justice cannot be made after the fact by remanding the case back to the trial court.

Zedner v. U.S., Case No. 05-5992 (U.S. 6/5/06)

Speedy Trial: Ends of Justice

The running of speedy trial is tolled for pretrial motions, certain other proceedings concerning the defendant per 18 USC § 3161(h)(1), and ends-of-justice continuances per 18 USC § 3161(h)(8)(A). Accordingly, in this case, the day of the defendant's initial appearance and the days that the preliminary hearing were held were not counted. Because, however, the magistrate failed to make an explicit ends-of-justice determination and because there was not sufficient evidence in the record to indicate that the magistrate considered the factors set forth in 18 U.S.C. § 3161(h)(8)(B) the two-day postponement of the preliminary hearing that had been requested by both the government and defense counsel was counted.

U.S. v. Williams, 314 F.3d 552 (11th Cir. 2002)

Interstate Agreement of Detainers

Speedy Trial: Interstage Agreement on Detainers - Lawyer Can Waive Speedy Trial

Court found that the lawyer could, on the client's behalf, waive speedy trial under the Interstate Act on Detainers.

New York v. Hill, 528 U.S. 110 (2000)

Speedy Trial: Interstate Agreement on Detainers - Request of Charging Jurisdiction Triggers IAD
Resolution of the charges can be triggered by the charging jurisdiction, which may request temporary custody of the prisoner for that purpose. In such case, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state.
New York v. Hill, 528 U.S. 110 (2000)
Speedy Trial: Interstate Agreement on Detainers - Failure of Prison to Serve Prisoner
Because the prison officials failed to serve the detainer upon the prisoner or notify him of its existence, the prisoner, who knew he had been indicted had not filed a demand pursuant to the Interstate Agreement on Detainers Act. When he found out later the detainer had been lodged, he moved to dismiss, saying the 180 days had run. Court ruled the prisoner was out of luck; because the prisoner had not been served the time had not begun to run.
U.S. v. Pena-Corea, No. 98-2486 (11th Cir. 1/20/99)

Miscellaneous

Speedy Trial: Miscellaneous - Trial Begins When Court Begins to Rule on Challenges
For purposes of the speedy trial act, the trial begins when the trial court starts to rule on opposed juror challenges based on the jury questionnaires.
U.S. v. Issacson, Case No. 12-14703 (11th Cir. 5/22/14)
Speedy Trial: Miscellaneous - Systematic Breakdown in the Public Defender System Could be Charged to the State
While delays caused by assigned counsel are properly charged against the defendant, it is conceivable that a systematic breakdown in the public defender system could be charged to the state.
Vermont v. Brillon, Case No. 08-88 (S. Ct. 3/9/09)
Speedy Trial: Miscellaneous - Description of What Passes for The Right to A Speedy Trial
U.S. v. Brown, 183 F.3d 1306 (11th Cir. 1999)

Setting Trial Date

Speedy Trial: Setting Trial Date -Within 30 Days of Issuance of Superseding Indictment
As the 30-day period in which trial cannot be scheduled runs from the first appearance and not the arraignment, the trial court did not err in scheduling the trial within 30 days of the issuance of a superseding indictment.
U.S. v. Schier, Case No. 05-11838 (1th Cir. 1/31/06)
Speedy Trial: Setting Trial Date - Prejudice
While 18 USC § 3161(c)(2) prohibits the judge from setting trial within 30 days of the defendant's first court appearance, a defendant must show prejudice in order to receive a new trial for a violation of that provision.
U.S. v. Edwards, No. 98-3701 (11th Cir. 5/19/00)

Start of Time Period

Speedy Trial: Start of Time Period - Superseding Indictment
New charges added by a superseding indictment do not reset the speedy-trial timetable for offenses either charged in the original indictment or required under double jeopardy principles to be joined with such charges.
U.S. v. Jones, Case No. 08-16999 (11th Cir. 4/2/10)
Speedy Trial: Start of Time Period - Date of Arrest Counts Sometimes
Speedy trial begins to run the day of the arrest unless at least a preliminary hearing, and, maybe a first appearance is held that day.

U.S. v. Williams, 314 F.3d 552 (11th Cir. 2002)

Speedy Trial: Start of Time period - 30 Days Begin Running Once in Federal Custody

Despite the use of the word arrest in the speedy trial statute, 18 USC § 3161(b), an arrest by state authorities doesn't count, and the 30 days in which the government is obligated to file an indictment doesn't start to run until the accused is in federal custody.

U.S. v. Shahryar, 719 F.2d 1522 (11th Cir. 1983)

Speedy Trial: Start of Time Period - Begins Upon Appearance Before Magistrate in District

The seventy day period within which the defendant must be brought to trial under the Speedy Trial Act commenced on the date the defendant first appeared before judicial officer in the district where the charge is pending, not in the district where arrested.

U.S. v. Wilkerson, 170 F.3d 1040 (11th Cir. 1999)

Speedy Trial: Start of Time Period - Begins to Run Only Upon Arrest

The time period for the Speedy Trial Act should begin to run only after an individual is accused either by an arrest and charge or by an indictment. Thus, in this case, where the defendant was charged with an immigration offense, speedy trial began running, not as of the date the defendant was arrested by immigration, but upon his arrest following the indictment.

U.S. v. Noel, No. 00-10259 (11th Cir. 10/25/00); U.S. v. Drummond, 240 F.3d 1333 (11th Cir. 2001)

Speedy Trial: Start of Time Period - Begins Upon Appearance Before Court That Will Hear Case

The 70-day time period begins, not just when the defendant first appears, but as pointed out by the statute, it begins on the date the defendant has appeared before a judicial officer of the court in which the charge is pending.

U.S. v. Wilkerson, 170 F.3d 1040 (11th Cir. 1999)

Tolling of Time

Speedy Trial: Tolling of Time - Govt Request for Detention Hearing Tolled Speedy Trial

U.S. v. Hughes, Case No. 14-14181 (11th Cir. 11/4/16)

Speedy Trial: Tolling of Time - Plea Negotiations

Time during which plea negotiations are being conducted is not automatically excludable from the Speedy Trial Act's thirty-day window for filing an information or indictment.

U.S. v. Mathurin, 690 F.3d 1236 (11th Cir. 2012)

Speedy Trial: Tolling of Time - When No Hearing Held, Request for Hearing Doesn't Alter 30-Day Rule

A trial court has only 30 days to rule on a motion it takes under advisement. In this case the defense had requested a hearing, but the court resolved the motion without holding a hearing. The court issued its decision, though, after more than 30 days had elapsed. The filing of the motion tolled the running of speedy trial for 30 days, but once that point in time was reached, speedy trial was no longer tolled and began running anew.

U.S. v. Jones, Case No. 08-16999 (11th Cir. 4/2/10)

Speedy Trial: Tolling of Time - Time Begins to Run Anew 30 Days After Court Takes Motion Under Advisement

18 U.S.C. § 3161(h)(1)(H); United States v. Jones, 601 F.3d 1247, 1255 (11th Cir. 2010); United States v. Davenport, 935 F.2d 1223, 1228 (11th Cir. 1991)

Speedy Trial: Tolling of Time - Time Granted to Prepare Motions

Time granted to the defendant to prepare motions is not automatically excluded from the Speedy Trial Act's 70-day time limit.
Bloate v. U.S., Case No. 08-728 (S. Ct. 3/8/10)

Speedy Trial: Tolling of Time - Motion in Limine

Where in response to the government's motion to introduce Rule 404(b) evidence, the defendant filed a motion in limine and the court did not rule on the motion until the trial, which was more than six months after the defendant filed the motion in limine, the court held that all of the time between the filing of the motion and the trial was excluded from the speedy trial calculation.
U.S. v. Nelson, 341 F.3d 1273 (11th Cir. 2003)

Speedy Trial: Tolling of Time – Need for an Evidentiary Hearing

Despite Judge Barkett's recognition in her dissenting opinion that the government may not manufacture the need for a hearing to avoid the operation of the Speedy Trial Act, the Court held that there was a need for an evidentiary hearing on the defendant's request for a bench trial on stipulated facts.
U.S. v. Dunn, Case No. 02-14182 (11th Cir. 9/19/03**)**

Speedy Trial: Tolling of Time - Motions Regarding Pretrial Release

The time between the filing of a motion for review of a detention order or any motion regarding pretrial detention and its resolution is excluded from the running of speedy trial.
U.S. v. Wirsing, 867 F.2d 1227, 1230-1231 (9th Cir. 1989); U.S. v. Severdija, 723 F.2d 791, 793 (11th Cir. 1984)

Speedy Trial: Tolling of Time - Motions Don't Have to Cause a Delay

Despite what seems to be the clear reading of the statute, the time between the filing of a motion and its resolution, regardless of whether they cause a delay in the trial, is excluded from the speedy trial time limit.
U.S. v. Miles, 290 F.3d 1341, 1350 (11th Cir. 2002); U.S. v. Tinklenberg, Case No. 09-1498 (S. Ct. 5/26/11)

Speedy Trial: Tolling of Time - Pretrial Motions

When the defendant files a pretrial motion, he tolls the running of speedy trial from the day the motion is filed until is disposed of.
U.S. v. Williams, 314 F.3d 552 (11th Cir. 2002)

Speedy Trial: Tolling of Time - Motions

Despite the wording of 18 USC § 3161, which speaks in terms of delay, the running of speedy trial is tolled once the defense files a motion. If it is a motion that requires a hearing, it is tolled until such time as the hearing takes place. If it is a motion that doesn't require a hearing, speedy trial is tolled for either 30 days from the time the judge has all the submissions necessary to make a decision, or until the decision is made. The shorter of the two options controls.
U.S. v. Davenport, 935 F.2d 1223 (11th Cir. 1991)

Waiver

Speedy Trial: Waiver - Defense Can't Prospectively Waive Speedy Trial

Because the Speedy Trial Act is designed to advance not only a defendant's interest in a speedy trial, but also the public's interest at the same time, it does not permit a defendant to waive his rights under the Act prospectively.
U.S. v. Mathurin, Case No. 690 F.3d 1236 (11th Cir. 2012)

Speedy Trial: Waiver - Govt. and Defense Can't Just Waive Speedy Trial

Even where the government and the defendant are willing to waive the protections of the Speedy Trial Act, they typically may not do so without formal findings from a court that the public interest would be served.

U.S. v. Mathurin, 690 F.3d 1236 (11th Cir. 2012)
Speedy Trial: Waiver - No Prospective Waiver
A defendant may not prospectively waive the application of the Speedy Trial Act.
Zedner v. U.S., Case No. 05-5992 (U.S. 6/5/06); U.S. v. Amar, Case No. 1312044 (11th Cir. 11/29/16)

STATUTE OF LIMITATIONS

Statute of Limitations: Conspiracy
Measured from the last alleged overt act.
U.S. v. Farias, Case No. 14-15804 (11th Cir. 9/1/16)
Statute of Limitations: Superseding Indictment
The filing of a valid indictment tolls the running of the statute of limitations for purposes of a superseding indictment if the new indictment does not broaden or substantially amend the original charges.
U.S. v. Farias, Case No. 14-15804 (11th Cir. Case No. 14-15804 9/1/16)
Statute of Limitations: May Not Be Raised for the First Time on Appeal
The statute of limitations defense in 18 U.S.C. § 3282(a) (the general federal criminal statute of limitations) may not be raised for the first time on appeal.
Musacchio v. U.S., 136 S. Ct. (2016)
Statute of Limitations Date Crime Completed
At least for purposes of the theft statute, 18 U.S.C. § 666, it is not the date the threshold dollar amount is reached and all the elements satisfied, but rather the date the defendant last received some of the funds.
U.S. v. Keen, No. 09-16027 (11th Cir. 4/5/12)
Statute of Limitations: Purpose
Statutes of limitations play an important role in ensuring the reliability of evidence presented at trial: by preventing stale claims - and the accompanying lost evidence and witnesses with faded memories - adjudication becomes both more efficient and more reliable.
U.S. v. Trainor, Case No. 03-12655 (11th Cir. 7/19/04)
Statute of Limitations: Affirmative Defense Than Can Be Waived
Expiration of the statute of limitations in criminal cases does no divest the district court of subject matter jurisdiction, but rather constitutes an affirmative defense which the defendant can waive.
U.S. v. Najjar, 283 F.3d 1306 (11th Cir. 2002)
Statute of Limitations: Failure to Appear Doesn't Always Make One a Fugitive
Although 18 USC § 3290 provides that the statute of limitations does not apply to those fleeing from justice, a failure to appear, particularly when there is no evidence that law enforcement attempted to find the defendant, may not always defeat a statute of limitations defense.
U.S. v. Sotelo-Salgado, 201 F.Supp. 2d 957 (S.D. Iowa 2002)

STATUTES

Absurdity Doctrine

Statutes: Absurdity Doctrine
See U.S. v. Garcon, No. 19-14650 (11th Cir. 12/6/22)

Common Law

Statutes: Common Law
Statutes which invade the common law are to be read with a presumption favoring the retention of long-established and familiar principles, except where a statutory purpose to the contrary is evident. This presumption, however, is no bar to a construction that conflicts with the common-law rule if the statue speaks directly to the question addressed by the common law.
Pasquantino v. Hilts, 544 U.S. 349 (2005)
Statutes: Common Law - Terms
We presume that when Congress drafts legislation incorporating common law terms it is aware of the well-established judicial construction of those terms.
U.S. v. Trainor, Case No. 03-12665 (11th Cir. 7/19/04)
Statutes: Common Law -Terms
If the common law is going to be used in interpreting the meaning of a statute the statute must first employ the terms from the common law. Here, because the statute used the word Arobbery only in the heading, and larceny was omitted altogether, there was no need to rely upon the common law meaning of those terms.
Carter v. U.S., 530 U.S. 225 (2000)

Constitutional Avoidance

Statutes: Construction – Constitutional Avoidance (Only if the Reading is Plausible)
In the absence of more than one plausible construction the canon of constitutional avoidance has no application.
Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018)
Statutes: Constitutional Avoidance - Avoid Constitutional Problems
If an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible, courts are obligated to construe the statute to avoid such problems.
INS v. St. Cyr, 533 U.S. 289 (2001)

Context

Statutes: Context - Context, Structure, and History
In construing the words within a statute, courts must do so, not in a vacuum, but with reference to the statutory context, structure, history, and purpose.
Abramski v. U.S., 573 U.S. 169 (2014); McDonnell v. U.S., Case No. 15-474 (S. Ct. 6/27/16); Durbin v. U.S., 143 S. Ct. 1557 (2023)
Statutes: Context - Definition Depends Upon Context Not Just Dictionary Definition
In law, as in life, however, the same words, placed in different contexts, sometimes mean different things.
Yates v. U.S., 574 U.S. 528 (2015)
Statutes: Context – DUI Too Dissimilar to Listed Examples
Even assuming that DUI involved conduct that presented a serious potential risk of physical injury to another, it was too dissimilar to the listed example crimes for the court to conclude it was violent felony for purposes of the armed career criminal statute.
Begay v. U.S., 553 U.S. 137 (2008)
Statutes: Context - Intent of Congress
"[T]he language of the statute that Congress enacts provides the most reliable evidence of its intent. For that reason, we typically begin the task of statutory construction by focusing on the words that the drafters have chosen. In interpreting the statute at issue, [w]e consider not only the

bare meaning of the critical word or phrase but also its placement and purpose in the statutory scheme."
Holloway v. U.S., 119 S. Ct. 966 (1999)

Element or Affirmative Defense

Statutes: Element or Affirmative Defense – Three Part Inquiry
To determine whether a statutorily created exception to a criminal offense is an element of the crime involves a three-part inquiry. First the court will examine the language and structure of the statute. Second, the court will look to the legislative history. Finally, the court will examine whether the government is well situated to prove the applicability of the exception.
U.S. v. Kloess, 251 F.3d 941 (2001)

Intrusion into State Authority

Statutes: Intrusion into State Authority - Avoiding I
In concluding that the Chemical Weapons Convention Implementation Act of 1998 did not apply to a woman who had spread toxic chemicals in hopes they would cause her husband's paramour an uncomfortable rash, the Court required a clear indication that Congress meant to reach purely local crimes before interpreting the statute's expansive language in a way that intruded upon the police power of the States.
Bond v. U.S., 572 U.S. 844 (2014); Durbin v. U.S., 143 S. Ct. 1557 (2023)
Statutes: Intrusion into State Authority - Federal-State Balance in the Prosecution of Crime
Unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes.
Fowler v. U.S., 563 U.S. 668 (2011)

Legislative History

Statutes: Legislative History - Statements on the Floor of Congress
Don't count for much.
U.S. v. Hayes, 555 U.S. 415 (2009)
Statutes: Legislative History - No Need to Review Legislative History Unless Statute Ambiguous
Review of the legislative history is not necessary unless a statute is inescapably ambiguous.
U.S. v. Orozco, No. 97-8213 (11th Cir. 11/17/98); U.S. v. Maung, 267 f.3d 1113 (11th Cir. 2011); U.S. v. Hunt, Case No. 06-16641 (11th Cir. 2008); U.S. v. Garcon, No. 19-14650 (11th Cir. 12/6/22)

Lenity

Statutes: Lenity – Protects Due Process Clause of Fair Warning
The rule of lenity exists in part to protect the Due Process Clause's promise that a fair warning should be given to the world in language that the common world will understand of what the law intends to do if a certain line is passed.
Bittner v. U.S., No. 21-1195 (S. Ct. 2/28/23)
Statutes: Lenity – Statutes Imposing Penalties Are Strictly Construed Against the Govt
Under the rule of lenity, statutes imposing penalties are to be construed strictly against the government in favor of individuals.
Bittner v. U.S., No. 21-1195 (S. Ct. 2/28/23)
Statutes: Lenity - Vague Alabama Traffic Statute - Ambiguity Can't Be Used Against the Defendant

The Court rejected the government's argument that an ambiguous Alabama traffic statute should be construed in such a way as to render the officer's stop of the defendant lawful. The court rejected the argument saying that it declined to use the vagueness of the statute against the defendant and that to do so would violate the fundamental principal that a criminal statute that is so vague that it does not give reasonable notice of what it prohibits violates due process.
U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03)

Statutes: Lenity

Ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.
Cleveland v. United States, 121 S. Ct. 365 (2000); U.S. v. Blankenship, Case No. 01-17064 (11th Cir. 8/26/04); U.S. v. Santos, Case No. 06-1005 (6/2/08); U.S. v. Hayes, Case No. 07-608 (S. Ct. 2/24/09); Skilling v. United States, Case No. 08-1394 (S. Ct. 6/24/10); See Justice Kavanaugh's concurring opinion in Wooden v. U.S., 142 S. Ct. 1063 (2022); U.S. v. Garcon, No. 19-14650 (11th Cir. 12/6/22)

Statutes: Lenity

When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity.
Ladner v. U.S., 358 U.S. 169 (1958); See: Bell v. U.S., 349 U.S. 81 (1955), and Justice Scalia's dissent in Holloway v. U.S., 526 U.S. 1 (1999); U.S. v. Shugart, 176 F.3d 1373 (11th Cir. 1999); Jones v. U.S., 529 U.S. 848 (2000)

Statutes: Lenity - Not a Doctrine of First Resort

The Rule of lenity, however, is not a doctrine of first resort whenever a criminal defendant identifies a potential ambiguity in a statute and the rule is not invoked by a grammatical possibility. Instead, the rule of lenity applies only when the traditional canons of statutory construction' fail to resolve an ambiguity.
U.S. v. Maldonado-Ramirez, 216 F3d. 940 (11th Cir. 2000); Burgess v. U.S., 553 U.S. 124 (2008); U.S. v. Hayes, 554 U.S. 415 (2009)

Miscellaneous

Statute: Miscellaneous – Purpose

Purposes, obvious or otherwise, provide no basis for skirting a statute's plain language. Judge Rosenbaum's concurring opinion elaborates.
U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)

Statutes: Miscellaneous – Redundancy

Where one possible interpretation of a statute would cause some redundancy and another would not, the difference in the two interpretations can supply a clue as to the better interpretation of a statute.
U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)

Statutes: Miscellaneous – Omission from Statute

Where Congress knows how to say something but chooses not to, its silence is controlling.
U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)

Statutes: Miscellaneous – Not Defined by Clever Prosecutors

Crimes are supposed to be defined by the legislature, not by clever prosecutors riffing on equivocal language.
Durbin v. U.S., 143 S. Ct. 1557 (2023)

Statutes: Miscellaneous – No Deference to Guidelines Definitions

We have never held that, when interpreting a term in a criminal statute, deference is warranted to the Sentencing Commission's definition of the same term in the Guidelines.

DePierre v. U.S., 564 U.S. 70 (2011)
Statutes: Miscellaneous - Regulations Must Be Construed in Light of Statute
When a regulation implements a statute, the regulation must be construed in light of the statue, but where a regulation conflicts with a statute, the statute controls.
U.S. v. Marte, 365 F.3d 1336 (11th Cir. 2004)
Statutes: Miscellaneous - Outer Limits of Congressional Power
When a particular interpretation of a statute invokes the outer limits of Congress's power, we expect a clear indication that Congress intended that result.
INS v. St. Cyr, 533 U.S. 289 (2001)
Statutes: Miscellaneous - The Title
The title of the statute is of use in interpreting the meaning of that statute only if it sheds light on some ambiguous word or phrase within the text.
Carter v. U.S., 530 U.S. 225 (2000); INS v. St. Cyr, 533 U.S. 289 (2001); Durbin v. U.S., 143 S. Ct. 1557 (2023)
Statutes: Miscellaneous - Effective Date
The general rule is that when a statute has no effective date, absent a clear direction by Congress to the contrary, it takes effect on the date of its enactment.
Johnson v. United States, 529 U.S. 694 (2000)
Statutes: Miscellaneous - Carjacking Statute Created Three Separate Crimes
In concluding the federal carjacking statute, 18 USC § 2119, created three separate crimes with differing elements, the Court rejected the claim that there was only one offense with aggravating circumstances relevant only to sentencing. The circumstances were instead elements that must be plead and proven before the jury.
Jones v. U.S., 526 U.S. 227 (1999)
Statutes: Miscellaneous - Two Statutes Encompassing Similar Conduct
The fact that congress has enacted two sections encompassing similar conduct but prescribing different penalties does not compel a conclusion that one statute was meant to limit, repeal, or affect enforcement of the other.
U.S. v. Zheng, 306 F.3d 1080, 1085 (11th Cir. 2002)
Statutes: Miscellaneous – No Presumption Law is Retroactive
Congressional enactments will not be construed to have retroactive effect unless their language requires this result.
INS v. St. Cyr, 533 U.S. 289 (2001)

Neighboring Words

Statutes: Neighboring Words – "Catch-All" Clause Includes Only Categories Similar to Those Enumerated
A familiar canon of statutory construction that [catchall] clauses are to be read as bringing within the statute categories similar in type to those specifically enumerated.
Paroline v. United States, 572 U.S. 434 (2014)
Statutes: Neighboring Words - Series-Qualifier Principle
Requires a modifier to apply to all items in a series when such an application would represent a natural construction.
Lockhart v. United States, No. 14-8358 (S. Ct. 3/1/16)
Construction- Neighboring Words - A Word Is Known by the Company It Keeps
The principle noscitur a sociis, a word is known by the company it keeps, avoids ascribing to one word a meaning so broad that it is inconsistent with its accompanying words.

Yates v. U.S., 574 U.S, 528 (2015); Durbin v. U.S., 143 S. Ct. 1557 (2023); U.S. v. Pugh, No. 21-13136 (11th Cir. 1/18/24)

Statutes: Neighboring Words - Ejusdem Generis

Where general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.

Yates v. U.S., 574 U.S, 528 (2015)

Statutes: Neighboring Words - Rule of the Last Antecedent

The rule of last antecedent provides that a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows.

U.S. v. Hayes, 555 U.S. 415 (2009); Lockhart v. U.S., Case No. 14-8358 (S. Ct. 3/1/16); Paroline v. United States, 572 U.S. 434 (2014)

Statutes: Neighboring Words – Noscitur a Sociis

Meanings are narrowed by the commonsense canon of *noscitur a sociis* - which counsels that a word is given more precise content by the neighboring words with which it is associated.

U.S. v. Rodriguez, 553 U.S. 377 (2008)

Statutes: Neighboring Words - *Ejusdem Generis*

Under the *ejusdem generis* canon of construction, where general words follow specific enumeration of persons or things, the general words should be limited to persons or things similar to those specifically enumerated.

Allen v. Warden, 161 F.3d 667 (11th Cir. 1998)

Ordinary Meaning

Statutes: Ordinary Meaning – Exclusion of Meaning Not Stated

A definition which declares what a term means excludes any meaning that is not stated.

Burgess v. U.S. 553 U.S. 124, 130 (2008); U.S. v. Dupree, No. 19-13766 (11th Cir. 1/18/23)

Statutes: Ordinary Meaning

The ordinary-meaning canon is the most fundamental semantic rule of interpretation.

U.S. v. Garcon, No. 19-14650 (11th Cir. 12/6/22); U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)

Statutes: Ordinary Meaning - When Legislation Was Passed

It is axiomatic that, in interpreting statutes, we must interpret the words of a statute by taking the common meaning of the words at the time Congress enacted the statute.

U.S. v. Giaradot, Case No. 05-13809 (11th Cir. 2/2/09)

Statutes: Ordinary Meaning - Outer Limits of Its Definitional Possibilities

A word in a statute may or may not extend to the outer limits of its definitional possibilities.

Abuelhawa v. U.S., 556 U.S. 816 (2009)

Statutes: Ordinary Meaning - Statute Means What It Says

Courts must presume that a legislature says in the statute what it means and means in a statute what it says.

U.S. v. Kloess, 251 F.3d 941 (11th Cir. 2001); U.S. v. Pirela, case No. 14-13767 (11th Cir. 12/22/15)

Statutes: Ordinary Meaning - Contemporary Meaning

We give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import.

Williams v. Taylor, 529 U.S. 420 (2000)

Statutes: Ordinary Meaning - No Ambiguity Means No Need for Judicial Inquiry

It is well established that when the words of a statute are unambiguous the judicial inquiry is complete.
U.S. v. McNab, Case No. 01-15148 (11th Cir. 5/29/03)

Particular Words

Statutes: Particular Words: "Uses" and "In Relation To"
Durbin v. U.S., 143 S. Ct. 1557 (2023)
Statutes: Particular Words - "And"
"And" means "and."
U.S. v. Garcon, No. 19-14650 (11th Cir. 12/6/22)
Statutes: Construction - Use of the Word "Willful" Doesn't Always Mean Specific Intent
Where the defendant was charged with willfully communicating a distress message to the coast guard when no help was needed, the court concluded the offense was one of general intent.
U.S. v. Haun, Case No. 06-14556 (11th Cir. 8/6/07)

Practical Considerations

Statutes: Practical Considerations
Practical considerations strongly support our reading of §921(a)(33)(A)'s language.
U.S. v. Hayes, 555 U.S. 415 (2009)

Same Words Within Same Statute

Statutes: Same Words within Same Statute
A drafting body such as the Sentencing Commission generally acts intentionally when I it uses particular language in one section but omits it in another.
Dep't of Homeland Sec. v. MacLean, 574 U.S. 383, 391 (2015); U.S. v. Dupree, No. 19-13766 (11th Cir. 1/18/23); U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)
Statutes: Same Words within Same Statute - Can Have Different Meanings
Envtl. Def. v. Duke Energy Corp., 549 U.S. 561 (2007)
Statutes: Same Words within Same Statute - Language in One Section of a Statute, But Not in Another
Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion and exclusion.
Cullen v. Pinholster, 563 U.S. 170 (2011)
Statutes: Same Words within Same Statute - Meaning of the Words Within a Statute Must Be Consistent
The meaning of words within a statute cannot change with the statute's application.
U.S. v. Santos, 553 U.S. 507 (S. Ct. 2008)
Statutes: Same Words within Same Statute - Inclusion of Particular Language in One Section, but Not Another
It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.
U.S. v. Griffith, 455 F.3d 1339 (11th Cir. 2006); U.S. v. Pirela, Case No. 14-13767 (11th Cir. 12/22/15)

Surplusage

Statutes: Surplusage - Terms Shouldn't Be Treated as Surplusage
Judges should hesitate to treat statutory terms in any setting as surplusage.

Jones v. U.S., 529 U.S. 362, 404 (2000); McDonnell v. U.S., 15-474 (S. Ct. 6/27/16); Durbin v. U.S., 143 S. Ct. 1557 (2023); U.S. v. Pate, No. 20-10545 (11th Cir. 10/11/23) (en banc)

Statutes: Surplusage - Meaning Given to Every Word

It is a cardinal principle of statutory construction that we must give effect if possible to every clause and word of a statute.

Williams v. Taylor, 529 U.S. 362, 404 (2000); Fowler v. U.S., 563 U.S. 668 (2011); U.S. v. Pirela, Case No. 14-13767 (11th Cir. 12/22/15)

STOP AND FRISK

Arrest?

Stop & Frisk: Miscellaneous - Line Between an Arrest and a Stop

In drawing the line between a stop and an arrest, the court relies on four non-exclusive factors: the law enforcement purposes served by the detention, the diligence with which the police pursue the investigation, the scope and intrusiveness of the detention, and the duration of the detention.

U.S. v. Acosta, 363 F.3d 1141 (11th Cir. 2004); U.S. v. Perez, 443 F.3d 772 (11th Cir. 2006)

Autos

Stop& Frisk: Autos – Window Tint

See U.S. v. Longoria, 183 F.Supp.3d 1164 (N.D. Fla. 2016)

Stop & Frisk: Autos - Reasonable Suspicion Sufficient for Routine Traffic Infraction?

See LaFave, Search and Seizure: A Treatise on the Fourth Amendment §9.3(a)

Stop & Frisk: Autos - Effect

Traffic stops can be annoying, frightening, and perhaps humiliating.

Hein v. North Carolina, 574 U.S. 54 (2014) (Kagan, J. concurring)

Stop & Frisk: Autos - Mistake of Law

Reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition, but only if the statute is genuinely ambiguous.

Heien v. North Carolina, Hein v. North Carolina, 574 U.S. 54 (2014)

Stop & Frisk: Autos - Moving Car for Search

Where upon legitimately stopping the defendant, the officer, chose to move the defendant's car for the purpose of having a drug dog sniff the exterior of the car. The drugs subsequently found should have been suppressed as in moving the car the officer exceeded what was permissible on the basis of the stop.

U.S. v. Virden, 488 F.3d 1317 (11th Cir. 2007)

Stop & Frisk: Auto - Stop of Car = Seizure of Passenger

When law enforcement officers stop a car, they, for Fourth Amendment purposes, also seize the passenger. Thus, when the stop is unlawful, the passenger can claim whatever was discovered is the product of the unlawful detention and is subject to being suppressed.

Brendlin v. California, 551 U.S. 249 (2007)

Stop & Frisk: Autos - Questions Unrelated to the Stop

Although there is some disagreement among courts on the issue, in this instance the 10th Circuit held that an officer who asks the detained driver whether there are any weapons or contraband in the vehicle during the course of a traffic stop does not violate the Fourth Amendment so long as the questioning does not overly prolong the detention.

U.S. v. Stewart, Case No. 05-4225 (10th Cir. 1/19/07), U.S. v. Mendez, Case No. 05-10205 (9th Cir. 2/23/07), U.S. v. Valenzuela, Case No. 06-1222 (10th Cir. 7/12/07)

Stop & Frisk: Autos - Questions Limited to Traffic Stop?

At least the 9th Circuit limits questioning to matters pertinent to the stop.
U.S. v. Mendez, Case No. 05-10205 (9th Cir. 10/30/06)

Stop & Frisk: Autos - Reasonable Suspicion Developed During Traffic Stop May Justify Further Detention

Reasonable suspicion developed prior to the conclusion of the traffic stop is relevant in assessing whether an officer had reasonable suspicion justifying further detention.
U.S. v. Sanchez, Case No. 05-20223-CR (S.D. Fla. 12/14/05) (Moreno, J.)

Stop & Frisk: Autos - Questions That Exceed the Scope of the Detention

There are two tests. The Tenth Circuit limits the questions to those that are justified by reasonable suspicion of criminal activity or reasonable safety concerns. The Fifth has a different test - holding that questions unrelated to the reason for the initial stop are only unlawful if they extend the duration of the initial seizure. The Eleventh hasn't taken sides.
U.S. v. Boyce, Case No. 02-15183 (11th Cir. 11/28/03)

Stop & Frisk: Auto - Officer May Detain and Order Passenger Back into the Car

Court held that an officer could briefly detain and order passenger to reenter automobile to protect the officer's safety while the officer investigated a crime committed in his presence by two associates of the passenger.
U.S. v. Clark, Case No. 02-14383 (11th Cir. 7/16/03)

Stop & Frisk: Auto - List of Reasons Justifying Extended Traffic Stop

See: U.S. v. Pruitt, 174 F.3d 1215 (11th Cir. 1999)

Stop & Frisk: Auto - Traffic Stop and Delay for the Dogs

Because officer had all evidence necessary to prosecute speeding offense at the time of the stop, officer's questioning following the stop should have been directed to securing defendant's driver's license, registration, and insurance and defendants should have been free to go after such brief questioning was completed.
U.S. v. Pruitt, 174 F.3d 1215 (11th Cir. 1999)

Stop & Frisk: Autos - Can't Search Incident to a Traffic Citation

Despite fact that Iowa law gave the officer the option of arresting the driver for a traffic infraction, when officer only gave the driver a citation, he was without authority to search the car incident to the issuance of the citation.
Knowles v. Iowa, 525 U.S. 113 (1998)

Stop & Frisk: Auto - Checks on Driver Following Traffic Stop

Following a valid stop, police are authorized to conduct a variety of checks on the driver and his car, including questioning the driver about the traffic violation, requesting consent to search the car, and running a computer check for outstanding warrants.
U.S. v. Simmons, 172 F.3d 775 (11th Cir. 1999)

Stop & Frisk: Auto - Officer's Motives Irrelevant

an officer's motive in making the traffic stop does not invalidate what is otherwise objectively justifiable under the Fourth Amendment.
U.S. v. Simmons, 172 F.3d 775 (11th Cir. 1999), Whren v. U.S., 517 U.S. 806, 810, (1996)

Stop & Frisk: Autos - Reasonable to Keep License for Brief Period of Time

During the stop of the suspect's car, it was reasonable for the officers to retain his license during the short period of time while the officers were conduction an identity check.
U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)

Consensual Encounter

Stop & Frisk: Consensual Encounter - Questioning Without More Isn't Necessarily a Seizure
U.S. v. Caraballo, Case No. 09-10428 (11th Cir. 1/27/10)
Stop & Frisk: Consensual Encounter - Based on Ethnicity
Court did not reach the issue of whether a consensual encounter based solely upon the ethnicity of the defendant violated the equal protection clause. Court concluded, though, that consensual encounter based upon ethnicity and other factors did not violate the equal protection clause.
U.S. v. Quintana, Case No. 08-12967 (11th Cir. 10/22/09)
Stop & Frisk: Consensual Encounter - Stop Requires Show of Authority
The test is whether the police exert a show of authority that communicates to reasonable person that his liberty is restrained, meaning the person detained is not free to leave.
U.S. vs. Baker, 432 F.3d 1189 (11th Cir. 5/8/02); U.S. v. Perez, 443 F.3d 772 (11th Cir. 2006); U.S. v. Stanley, 472 F.3d 1298 (11th Cir. 2006), Miller v. Hargret, 458 F.3d 1251 (11th Cir. 2006)
Stop & Frisk: Consensual Encounter: Not While Office Has Driver's License
U.S. v. Pruitt, 174 F.3d 1215 (11th Cir. 1999); U.S. v. McKneely, 6 F.3d 1447, 1451 (10th Cir. 1993)

Founded Suspicion

Anonymous Source

Stop & Frisk: Founded Suspicion - Anonymous Source (Anonymous 911 Call About Drunken Driver)
Anonymous 911 call saying an apparent drunken driver had run the caller off the road that included details about where the incident had occurred and the make and license plate of the truck provided a founded suspicion that supported officer's decision to stop the truck.
Navarette v. California, 572 U.S. 393 (2014)
Stop & Frisk: Founded Suspicion – Anonymous Source (Anonymous Caller's Play-by-Play of Suspect's Actions)
An anonymous caller's accurate description of an alleged criminal's movement as he was being followed were not the sort of predictive details that will demonstrate that a tip is sufficiently reliable to provide reasonable suspicion.
U.S. v. Reaves, Case No. 06-5073 (4th Cir. 1/8/08)
Stop & Frisk: Founded Suspicion - Anonymous Source (Tip Didn't Justify Stop and Frisk for Firearm)
No firearm exception to founded suspicion requirement. Consequently, anonymous tip that merely provided a description, and accordingly, failed to establish a founded suspicion, didn't justify the stop and frisk.
Florida v. J.L., 529 U.S. 266 (S. Ct. 2000)
Stop & Frisk: Founded Suspicion - Anonymous Source
Despite lack of any sort of predictive quality, the anonymous tip in this case was sufficient when coupled with information officers knew about recent crimes.
U.S. v. Lindsey, Case No. 05-11273 (11th Cir. 3/27/07)

Conflicting Answers

Stop & Frisk: Founded Suspicion – Conflicting Answers (About Travel Plans)
Conflicting answers about where one is traveling to or from may give rise to a suspicion of drug activity because most drivers know the answers to these questions and because the driver may be trying to hide the fact that he is going to or from a known drug-source state.

U.S. v. Boyce, Case No. 02-15183 (11th Cir. 11/28/03); U.S. v. Sanchez, Case No. 05-20223-CR (S.D. Fla. 12/14/05) (Moreno, J.)

Flight

Stop & Frisk: Founded Suspicion - Flight

Despite a dissenting opinion that the flight was provoked and, therefore, did not give rise to a reasonable suspicion, the court found that headlong flight, flight that is fast and of some duration, was enough to establish a reasonable suspicion. The court gave little attention to the requirement that the flight occurred in an area that seemed to fall short of what existed in Illinois v. Wardlow.

U.S. v. Franklin, 323 F.3d 1298 (11th Cir. 2003)

Stop & Frisk: Founded Suspicion – Flight (Walking Away Upon Arrival of Officers)

Defendants, who were at about 8:00 P.M. were standing ten feet away from a car in a high crime area of largely abandoned businesses, gave police a founded suspicion to believe they were engaged in criminal activity when they, upon seeing the police quickly walked to their car and drove away.

U.S. v. Gordon, No. 99-12361(11th Cir. 10/23/00); U.S. v. Hunter, No. 01-16759 (11th Cir. 5/21/02)

Stop & Frisk: Founded Suspicion - Flight (Provides Founded Suspicion)

Flight, at least in a high crime area provides reasonable suspicion to detain someone.

Illinois v. Wardlow, 528 U.S. 119 (2000)

Hearing

Stop & Frisk: Founded Suspicion - Hearing (Government's Burden)

Government need establish the existence of a reasonable suspicion only by the preponderance of the evidence.

U.S. v. Atlas, 94 F.3d 447, 451 (8th Cir. 1996)

High Crime Area

Stop & Frisk: Founded Suspicion – Hight Crime Area (Reputation of Area in Proximity to Crime)

The reputation of an area for criminal activity as well as an individual's proximity to illegal activity may be considered in determining whether there is a founded suspicion.

U.S. v. Hunter, No. 01-16759 (11th Cir. 5/21/02)

Miscellaneous

Stop & Frisk: Founded Suspicion – Miscellaneous (Mistake of Law Renders Stop Unlawful)

While an officer's reasonable mistake of fact may provide the objective grounds for a reasonable suspicion stop or probable cause required to justify a traffic stop, an officer's mistake of law may not. In this instance, where the officer mistakenly believed it was unlawful to drive without an interior rearview mirror, it was a mistake of law, and the trial court should have granted the defendant's motion to suppress.

U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03)

Stop & Frisk: Founded Suspicion – Miscellaneous (Must Be Based on Objective Manifestation)

U.S. v. Cortez, 449 U.S. 411 (1981)

Stop & Frisk: Founded Suspicion – Miscellaneous (Not Limited to Officer's Observations)

Adams v. Williams, 407 U.S. 143 (1972)

Stop & Frisk: Founded Suspicion – Miscellaneous (Definition)

Ornelas v. U.S., 517 U.S. 690 (1996); U.S. v. Taia, 912 F.2d 1367, 1370 (11th Cir. 1990);

Stop & Frisk: Founded Suspicion -Miscellaneous (Unsupported Hunch Doesn't' a Founded Suspicion)
U.S. v. Pruitt, 174 F.3d 1215 (11th Cir. 1999); U.S. v. Boyce, 351 F.3d 1102 (11th Cir. 2003); U.S. v. Perkins, Case No. 02-15891 (11th Cir. 10/22/03)
Stop & Frisk: Founded Suspicion – Miscellaneous (In General: Reasonable Suspicion, Right to Stop, More than a Hunch, Objective Test)
U.S. v. Hernandez, Case No. 04-14995 (11th Cir. 7/11/06)

Miscellaneous Facts

Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Admission to Having a Concealed Weapon Justifies Stop)
The defendant's admission to police officer that he had a concealed weapon was sufficient to justify briefly stopping him before inquiring further about whether he had an affirmative defense in the form of a valid concealed-weapons permit.
U.S. v. Lewis, Case No. 10-13567 (11th Cir. 3/23/12)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Car Pulling Out of Housing Project Late at Night Within Seconds of Gunshot)
There was founded suspicion to stop the car being driven by the defendant where the office saw the lone car hurriedly pulling out of what was a high-crime housing project in the middle of the night within seconds of the sound of a gunshot.
U.S. V. Williams, Case No. 10-10612 (11th Cir. 9/13/10)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Hand-to-Hand Drug Transaction)
See U.S. v. Lopez-Garcia, Case No. 08-12662 (11th Cir. 4/21/09)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Minimal Circumstances)
The officer had a founded suspicion to believe the occupants of a car were engaged in criminal activity because: (1) the driver gave what appeared to be a false explanation as to why he was speeding (said he was trying to get to a bathroom and had just driven past an exit); (2) there were empty food containers in the car; (3) the driver and the passenger gave different stories about the trip's length and purpose; (4) both the driver and passenger displayed abnormal nervousness; (5) purported nonstop travel from Houston to Atlanta when there was bad weather in Houston; (6) the passenger couldn't say where in Atlanta they were going; (5) they were traveling between two main source cities for narcotics; (8) minimal luggage.
U.S. v. Hernandez, No. 04-11776 (11th Cir. 7/29/05)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (May Be Based on Observation of Legal Activity)
A reasonable suspicion of criminal activity may be formed by observing exclusively legal activity.
U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Refusal to Consent)
Refusal to consent to a search doesn't create a reasonable suspicion.
U.S. v. Boyce, Case No. 02-15183 (11th Cir. 11/28/03)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Limits on What Amounts to Being Suspicious)
The factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied.
U.S. v. Boyce, Case No. 02-15183 (11th Cir. 11/28/03)
Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Innocent Conduct)

A determination that reasonable suspicion exists need not rule out the possibility of innocent conduct.
U.S. v. Arvizu, 534 U.S. 266 (2002)

Stop & Frisk: Founded Suspicion – Miscellaneous Facts (Thin Grounds)

For a case involving the stop of some suspected of being involved in a drug transaction with little justification, and that includes a recitation of the basic law see:
U.S. v. Powell, 222 F.3d 913 (11th Cir. 2000)

Nervousness

Stop & Frisk: Founded Suspicion - Nervousness (Doesn't Count for Much)

U.S. v. Griffin, 730 F.3d 1252 (11th Cir. 2013) (11th Cir. 8/20/13) *Order on Rehearing En Banc* (Barkett, J. dissent)

Stop & Frisk: Founded Suspicion - Nervousness

The nervousness of one stopped for a traffic offense doesn't necessarily create a reasonable suspicion
U.S. v. Perkins, Case No. 02-15891 (11th Cir. 10/22/03); U.S. v. Sanchez, Case No. 05-20223-CR (S.D. Fla. 12/14/05) (Moreno, J.)

Totality of the Circumstances

Stop & Frisk: Founded Suspicion - Totality of the Circumstances

The Supreme Court has rejected this kind of divide-and-conquer analysis and made clear that reasonable suspicion may exist even if each fact alone is susceptible of innocent explanation.
U.S. v. Bautista-Silva, Case No. 08-13803 (11th Cir. 5/11/09)

Stop & Frisk: Founded Suspicion – Totality of the Circumstances (Collective Knowledge of Officers)

A stop is permitted if under the totality of the circumstances, from the collective knowledge of the officers involved in the stop, they have an objectively reasonable suspicion that the suspect had engaged, or was about to engage in a crime.
U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)

Frisk

Stop & Frisk: Frisk – Traffic Stop

To justify a pat down of the driver or passenger during traffic stop, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.
Arizona v. Johnson, 555 U.S. 323 (2009)

Stop & Frisk: Frisk - Always Permitted in Cases of Burglary and Theft?

Some circuits have held that a frisk is always permitted in cases where the individual is reasonably suspected of theft and burglary. The Eleventh Circuit, though, has not decided the issue.
U.S. v. Griffin, Case No. 11-15558 (11th Cir. 10/2/12)

Stop & Frisk: Frisk - High Crime Area

[W]e conclude the facts known by Officer Edwards at the time permitted him to frisk Mr. Griffin consistent with the Fourth Amendment. First, Officer Edwards was alone at night in a high crime area and had not been told anything specific about Mr. Griffin, other than that he had tried to steal some articles of clothing. Second, Mr. Griffin - who was in the vicinity of six to eight other persons acted evasively and refused to obey Edwards's command that he stop. Third, Officer Edwards had not finished investigating the alleged attempted theft.
U.S. v. Griffin, 696 F.3d 1354 (11th Cir. 2012)

Stop & Frisk: Frisk - Generous Application of Test
Court of appeals affirmed trial court's holding that following facts justified a frisk: (1) officer responded late at night to a noise complaint in a high-crime area; (2) the officers were out-numbered two-to-one; (3) none of the occupants could provide identification; and (4) the officer recognized the soon-to-be defendant as someone he had had trouble with in the past.
U.S. v. White, Case No. 08-16010 (11th Cir. 1/11/10)
Stop & Frisk: Frisk - Belief That Defendant Had Lots of Money in Car Justified Frisk ???
Based on the nature of the officers' reasonable suspicion that Acosta was carrying a large amount of money in his car, the offices were justified in suspecting that he may have had a weapon to protect himself and money. It was reasonable for one of more officers to draw a gun momentarily as Acosta exited his car, and for the officers to frisk Acosta for weapons.
U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)
Stop & Frisk: Frisk - Discovery of Item That Might Be a Weapon
When conduction a Terry frisk the officer discovers an object that he reasonably believes to be a weapon, he can search the pocket of the detained individual.
U.S. v. Clay, Case No. 06-10088 (11th Cir. 4/3/07)

Length of Detention

Stop & Frisk: Length of Detention – Questions Unrelated to the Stop
An officer's inquiries into matters unrelated to the justification for the stop do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.
Muehler v. Mena, 544 U.S. 93, 100-101 (2005); Arizona v. Johnson, 555 U.S. 323 (2009)
Stop & Frisk: Length of Detention - Transporting Detainee for Show Up
Where there was a reasonable suspicion supporting the detention, the transport of the defendant to the bank for a show up was permissible.
U.S. v. Martinez, Case No. 05-4275 (8th Cir. 9/11/06)
Stop & Frisk: Length of Detention - 75 Minutes in Handcuffs OK
Despite the fact that the defendant was handcuffed and held in the back of a patrol car for 75 minutes, the Court, concluding the defendant was detained for only as long as it was necessary to complete (the) investigation...., upheld the detention.
U.S. v. Gil, No. 98-5822 (11th Cir. 3/3/2000); U.S. v. Acosta, Case No. 02-16167 (11th Cir. 3/25/04)
Stop & Frisk: Length of Detention (26 Minutes)
Seventeen to twenty-six minutes spent attempting to verify the existence of an outstanding warrant wasn't too long.
U.S. v. Simmons, 172 F.3d 775 (11th Cir. 1999); U.S. v. Perkins, Case No. 02-15891 (11th Cir. 10/22/03); U.S. v. Vargas, Case No. 16-14714 (11th Cir. 2/6/17)
Stop & Frisk: Length of Detention - Traffic Stop Limited to Time Necessary to Resolve Stop
A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures.
Rodriguez v. U.S., 575 U.S. 348 (2015); United States v. Campbell, No. 16-10128 (11th Cir. 2/16/22)
Stop & Frisk: Length of Detention - Seventeen Minutes to Issue Warning OK

The passage of 17 minutes from the time of the stop, during which time the officer was preparing a written warning for speeding (78 mph in a 70-mph zone) and contacting United States Customs, was not so long a delay as to render the detention unlawful.
U.S. v. Hernandez, No. 04-11776 (11th Cir. 7/29/05)

Stop & Frisk: Length of Detention - Detention Beyond Point When License Should Have Been Returned

Ordinarily, when a citation or warning has been issued and all record checks have been completed and come back clean, the legitimate investigative purposes of the traffic stop is fulfilled, and the driver's license and other documents should be returned. If the stop is unjustifiably prolonged past that point, the valid stop may be found to have ended when the documents should have been returned rather than when they were actually returned.
U.S. v. Simms, 385 F.3d 1347 (11th Cir. 2004)

Stop & Frisk: Length of Detention - Reasons to Prolong a Traffic Stop

An officer may only prolong a traffic stop in special circumstances. First, police officers conducting a traffic stop may prolong the detention to investigate the driver's license and the vehicle registration, and may do so by requesting a computer check. Similarly, out of interest for the officer's safety, the court has found that officers may permissibly prolong a detention while waiting for the results of a criminal history check *that is part of the officer's routine traffic investigation.* In addition, an officer may prolong a traffic stop if he has articulable suspicion of other illegal activity.
U.S. v. Boyce, 351 F.3d 1102 (11th Cir. 2003)

Stop & Frisk: Length of Detention - 45 Minute Terry Stop OK

Where there was a 45-minute wait for the dogs during which time the officers had difficulty confirming the existence of an outstanding warrant for someone with the same common name of the defendant but with a different DOB, the Court found the delay to be reasonable, and upheld the denial of the motion to suppress the subsequently seized drugs.
U.S. v. Simmons, 172 F.3d 775 (11th Cir. 4/14/99)

Miscellaneous

Search & Seizure: Stop and Frisk – Miscellaneous (Degrading Nature of a Stop)

See Utah v. Strieff, Case No. 14-1373 (S. Ct. 6/20/16) (Sotomayor, dissenting)

Search & Seizure: Stop and Frisk – Miscellaneous (Attenuation: Existence of Warrant)

Though the stop was invalid, the existence of an outstanding warrant made the link between the stop and the discovery of the drugs based on an outstanding warrant too attenuated to justify suppression.
Utah v. Strieff, 579 U.S. 232 (2016)

Stop & Frisk: Transportation Exceeds Parameters of a Terry Stop

Marshall v. Secretary, Florida Dept. of Corrections, Case No. 13-13775, n. 6 (11th Cir. 7/12/16) (Rosenabaum, J. Concurring)

Stop & Frisk: Inside a Person's Home

In the absence of exigent circumstances, an officer may not conduct the equivalent of a Terry stop inside a person's home.
Moore v. Pederson, Case No. 14-14201 (11th Cir. 10/15/15)

Stop & Frisk - Requires Some Exigency

A justification for a Terry stop based on the exigent circumstances of the moment, cannot be put in the bank and saved for use on a rainy day, long after any claimed exigency has expired. In this instance, the court of appeals held that the trial court should have suppressed the defendant's

statement because the stop that led to the statement was based on suspicious behavior that had occurred a week prior to the stop.
U.S. v. Balerio, Case No. 12-12235 (11th Cir. 6/20/13)
Stop & Frisk: Detention of Those Accompanying Individual Stopped
For safety reasons, police officers my, in some circumstances, briefly detain individuals about whom they had no individualized reasonable suspicion of criminal activity in the course of conducting a valid Terry stop as to other related individuals.
U.S. v. Lewis, Case No. 10-13567 (11th Cir. 3/23/12)
Stop & Frisk: Miscellaneous - Roadblocks
Although a roadblock to verify driver's licenses and registrations would be permissible to serve a highway safety interest, and roadblocks for the purpose of intercepting illegal aliens, and a sobriety check point aimed at removing drunk drivers from the road are all permissible, the roadblock, here, with a primary purpose of interdicting unlawful drugs, violated the Fourth Amendment.
City of Indianapolis v. Edmond, 121 S. Ct 447 (2000)
Stop & Frisk: Miscellaneous - Results of Search Doesn't Justify Detention
U.S. v. Pruitt, 174 F.3d 1215 (11th Cir. 1999)
Stop & Frisk: Miscellaneous - Good Faith and Traffic Stops
Lopez rightly points out that this Court should be leery of extending the good-faith exception to this appeal. Under the general rule established in Whren, a traffic infraction can justify a stop even where the police officer made the stop for a reason other than the occurrence of the traffic infraction. But if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive. Accordingly, we hold that Flori's actions do not pass muster under the good-faith exception to the exclusionary rule.
U.S. v. Lopez-Valdez, 1999 WL 350627 (5th Cir. 6/1/99)
Stop & Frisk: Miscellaneous - Stop Based on Mistake of Fact
A traffic stop based on an officer's incorrect but reasonable assessment of facts does not violate the Fourth Amendment. Thus, if an officer makes a traffic stop based on mistake of fact, the only question is whether the mistake of fact was reasonable.
U.S. v. Chanthassouxat, Case No. 01-17158 (11th Cir. 8/22/03)

Seizure?

Stop & Frisk: Seizure? – Traffic Stop (Passenger)
A traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will.
Arizona v. Johnson, 555 U.S. 323 (2009)
Stop & Frisk: Seizure? - Ordering Passengers from Bus Wasn't a Seizure
A drug interdiction officer did not violate the Fourth Amendment when he directed the passengers on an interstate bus to exit and claim their luggage, and then searched a suitcase of a passenger who claimed the bag was not his. The passengers were not seized for Fourth Amendment purposes because they would not have reasonably perceived that their liberty had been restrained.????
U.S. v. Ojeca-Ramos, Case No. 04-5118 (10th Cir. 7/31/06)
Stop & Frisk: Seizure - Questioning Doesn't Equal a Seizure
We have held repeatedly that mere police questioning does not constitute a seizure.

Muehler v. Mena, Case No. 03-1423 (U.S. 3/22/05)
Stop & Frisk – Seizure? No Minimum Time on Restraint
The restraint on one's freedom of movement does not have to endure for any minimum of time period before it becomes a seizure for Fourth Amendment purposes.
West v. Davis, Case No. 13-14805 (11th Cir. 9/8/14)

SUBPOENAS

Subpoenas: Federal Public Defender Not a "Government Entity" for Purposes of Stored Wire and Electronic Communications
United States v. Amawi, 552 F.Supp.2d 679 (N.D. Ohio 2008)
Subpoenas: Rule 17(C) Subpoenas - Supervision Belongs to the Sound Discretion of District Court
Opinion includes a discussion of the history of the rule and the different court interpretations.
U.S. v. Llanez-Garcia, 735 F.3d 483 (6th Cir. 2013)

SUFFICIENCY OF EVIDENCE

Sufficiency: Defendant's Testimony May Exclude Sufficiency Argument
A statement by a defendant may be disbelieved by the jury, so may be considered as substantive evidence of the defendant's guilt.
U.S. v. Brown, 53 F.3d 312 (11th Cir. 1995)
Sufficiency: Credibility Determinations Belong to the Jury
U.S. v. Ndiaye,434 F.3d 1270 (11th Cir. 2006) U.S. v. Moore, 525 f3d 1033 (11th Cir. 2008)
Sufficiency: Constructive Possession
A defendant has constructive possession if he exercises ownership, dominion, or control over the firearm. A defendant *also* has constructive possession if he has the power and intention to exercise that dominion or control.
U.S. v. Gunn, Case No. 02-13256 (11th Cir. 2004)
Sufficiency: Some Limit on Jury's Ability to Infer Guilt from Circumstantial Evidence
Although a jury has wide latitude to determine factual issues and to draw reasonable inferences form circumstantial evidence, this power is not without limits, and this Court cannot affirm a criminal conviction by an unlimited application of a jury's power to infer no matter how attenuated the link between the evidence and the defendant's guilt on a necessary element of the offense of conviction.
U.S. v. McCarrick, Case No. 01-15065 (11th Cir. 6/18/02)
Sufficiency: Constructive Possession: Multiple Occupants of Motel Room & Conspiracy
Although, there were several occupants of the motel room, the defendant's use of the motel room, coupled with the discovery of $6,500 in cash on the defendant's person and a large quantity of drugs within the room was enough to support a conviction for substantive drug offense and a related conspiracy charge.
U.S. v. Cooper, 203 F.3d 1279 (11th Cir. 2000)
Sufficiency: No Need to Exclude Every Reasonable Hypothesis of Innocence
U.S. v. Majors, NO. 97-2803 (11th Cir. 11/19/99); U.S. v. Abbell, 271 F.3d 1286 (11th Cir. 2001); U.S. v. Ndiaye, Case No. 04-11283 (11th Cir. 1/6/06)
Sufficiency: Defendant's False Testimony - Must Be Something More to Withstand JOA
It is only the defendant's false testimony in combination with other evidence of guilt that is sufficient to withstand a motion for a judgment of acquittal.

U.S. v. McCarrick, Case No. 01-15065 (11th Cir. 6/18/02), U.S. v. Williams, Case No. 03-15395 (11th Cir. 11/16/04)

Sufficiency: Defendant's False Testimony Might Be Viewed as Additional Evidence

AWhen a defendant chooses to testify, he runs the risk that if disbelieved the jury might conclude the opposite of his testimony is true.

U.S. v. Rudisill, No. 98-6396 (11th Cir. 9/3/99), but see U.S. v. Williams, Case No. 03-15395 (11th Cir. 11/16/04) (Corrigan, J. concurring opinion)

Sufficiency: Confessions (Won't Support Conviction if Uncorroborated)

Smith v. U.S., 75 S. Ct. 194 (1954); Opper v. U.S. 75 S. Ct. 164 (1954); U.S v. Dickerson, 163 F.3d 639 (D.C. Cir. 1999); U.S. v. Jackson, 103 F.3d 561, 566 (7th Cir. 1996); U.S. v. Kerley, 838 F.2d 932 (7th Cir. 19880; U.S. v. Todd 657 F.2d 212 (8th Cir. 1981); U.S. v. Micieli, 594 F.2d 102 (5th Cir. 1979)

Sufficiency: Witness Incredible as a Matter of Law

For testimony of a government witness to be incredible as a matter of law, it must be unbelievable on its face, and must relate to facts that the witness physically could not have possibly observed or events that could not have occurred under the laws of nature.

U.S. v. Calderon, 127 F.3d 1314, 1325 (11th Cir. 1997); U.S. v. Steele, No. 94-3139 (11th Cir. 6/25/99)

Sufficiency: Standard

The evidence in a case is sufficient to support a conviction, if, after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307 (1979); U.S. v. Mount, 161 F.3d 675 (11th Cir. 1998)

TAX FRAUD

Tax Fraud: Good Faith Exception

If someone simply fails to understand that he has a duty to pay income taxes under the Internal Revenue Code, he cannot be guilty of willfully evading those taxes.

U.S. v. Dean, Case No. 06-13946 (11th Cir. 5/25/07)

Tax Fraud: Conspiracy (Tax Purpose Must Be the Object)

The tax purpose must be the object of a Klein conspiracy, and not merely a foreseeable consequence of some other conspiratorial scheme. If impeding the IRS is only a collateral effect of an agreement, rather than one of its purposes, then a conviction for a Klein conspiracy cannot stand.

U.S. v. Adkinson, No. 92-2872 (11th Cir. 10/26/98)

Tax Fraud: Failure to Disclose Income Not Sufficient to Prove Conspiracy

The mere failure to disclose income would not be sufficient to show a section 371 conspiracy to defraud the United States.

U.S. v. Adkinson, No. 92-2872 (11th Cir. 10/26/98)

TREATIES

Treaties: Transfer - U.S. Parole Commission's Sentencing Determination

For the general process and an example of a challenge to the sentence calculation see:

Odill v. United States Parole Commission, Case No. 05-12717 (11th Cir. 1/10/07)

Treaties: Vienna Convention on Consular Relations

Court held that the suppression of the defendant's statements was not an appropriate remedy for the failure of the trial court to advise a Mexican national of his right to assistance from the Mexican Consul.
Sanchez-Llamas v Oregon, 126 S. Ct. 2669 (2006)
Treaties: List of Treaties in Force
The U.S. State Department maintains a listing of all the treaties in force: Office of the Legal Advisor, U.S. Dep't of State, *Treaties in Force.*
Kastnerova v. U.S., Case No. 03-14119 (11th Cir. 4/8/04)
Treaties: International Covenant of Rights
The plain terms of the International Covenant on Civil and Political Rights govern the relationship between a State and the individuals within the State's territory. The treaty, furthermore, does not create judicially enforceable rights. Thus, in this case the treaties failed to provide a remedy for the defendant.
U.S. v. Duarte-Acero, Case No. 01-13457 (11th Cir. 7/12/02)
Treaties: Article 36 of Vienna Convention
Even if Article 36 creates rights enforceable by individuals, . . . the remedies available for violation of Article 36 do not include the suppression of evidence or the dismissal of an indictment.
U.S. v. Cordoba-Mosquera, 212 F.3d 1194 (11th Cir. 2000); U.S. v. Duarte-Acero, Case No. 01-13457 (11th Cir. 7/12/02); but see Medellin v. Dretke, Case NO. 04-5928 (S. Ct. 5/23/05); Maharaj v. Secretary for the Dept. of Corrections, Case No. 04-14669 (11th Cir. 12/15/05)
Treaties: Transfer of Sentenced Persons - In General
Bishop v. Reno, No. 98-4109 (11th Cir. 4/24/00)
Treaties: ICCPR - Double Jeopardy
The provisions of the International Covenant on Civil and Political Rights did not bar criminal prosecution in the U.S. for the same crimes of which defendant had been convicted in Columbia. The provisions of the treaty govern the relationship between an individual and his state, not affairs between nations.
U.S. v. Duarte-Acero, 208 F.3d 1282 (11th Cir. 4/13/00)
Treaties: Extradition - Specialty Doctrine
Doctrine of specialty does not restrict scope of proof of other crimes that may be considered in sentencing process if that evidence is germane to determination of punishment for extradited crime. Consequently, in determining relevant conduct under Sentencing Guidelines and in departing upward from Guideline range, sentencing court's consideration of defendant's marijuana dealings beyond those to which he pled guilty and defendant's murder of his marijuana distributor did not violate provision in extradition treaty that a person extradited shall not be detained, tried, or punished or offense other than that for which extradition has been granted.
U.S. v. Garcia, No. 97-3222 (11th Cir. 4/10/2000)

TRIAL

Comment on Silence

Trial: Comment on Silence - Pre-Miranda Silence
Eleventh Circuit has held that comments on silence between arrest and the Miranda warnings do not violate due process and that such silence can be considered as evidence of guilt. There is a

significant split in the circuits with some courts holding that even pre-arrest silence can't be considered as evidence of guilt.
U.S. v. Wilchcombe, Case No. 14-14991 (11th Cir. 10/4/16)

Trial: Comment on Silence - Pre-Arrest

Where defendant was not arrested until two weeks after the murder and he testified at trial that he acted in self-defense, the prosecutor's questioning of the defendant as to why he had not reported the incident earlier and his argument that the failure to report the crime was evidence of guilt did not violate the Fifth Amendment.
Jenkins v. Anderson, 447 U.S. 231 (1980)

Trial: Comment on Silence

Comment on defendant's silence during custodial interrogation violates the Fifth Amendment
Salinas v. Texas, Case No. 12-246 (S. Ct. 6/17/13) (Breyer, J. dissenting); U.S. v. Zitron, Case No. 14-10009 (11th Cir. 1/21/16)

Trial: Comment on Silence - Questioning of Defendant About Omission from Statement Given to Police

Where the defendant invokes his or her Fifth Amendment right to remain silent after having given a statement, the prosecutor may not ask, at trial, about omissions from the statement. Here the defendant had told officers she had loaned the truck in which cocaine was found to someone whom she did not name, but subsequently invoked her right to remain silent. When at trial, she said she had loaned the truck to a relative of a friend, the prosecutor's questioning about the omission violated the defendant's Fifth Amendment right to remain silent.
U.S. v. Caruto, Case No. 07-50041 (9th Cir. 5/12/08)

Trial: Comment on Silence – Statements Given in the Absence of Miranda Warnings

Due process is not violated by the use for impeachment purposes of a defendant's silence prior to arrest or after arrest if no Miranda warnings are given.
U.S. v. O'Keefe, Case No. 05-11924 (11th Cir. 8/22/06)

Trial: Comment on Silence - Not Always a Due Process Violation

While use of the defendant's silence at the time of arrest and after receiving Miranda warnings in an effort to impeach him at trial violates the Due Process Clause, if the prosecution mentions the defendant's silence only in passing, and makes no specific inquiry or argument about the defendant's post-arrest silence, there is no due process violation.
U.S. v. Baker, Case No. 00-13083 (11th Cir. 12/13/06)

Trial: Comment on Silence

A comment is deemed to be a reference to the defendant's silence if either (1) it was the prosecutor's manifest intention to refer to the defendant's silence, or (2) the remark was of such a character that the jury would naturally and necessarily take it to be a comment on the defendant's silence.
U.S. v. Guerra, Case No. 00-10744 (11th Cir. 6/11/02); U.S. v. Thompson, Case No. 04-12218 (11th Cir. 9/1/05)

Cross-Examination

Trial: Cross-Examination - Informants

Importance of being able to cross examine an informant.
Childers v. Floyd, Case No. 08-15590 (11th Cir. 6/8/10)

Trial: Cross-Examination - Limitations

A defendant's confrontation rights are satisfied when the cross-examination permitted exposes the jury to facts sufficient to evaluate the credibility of the witnesses and enables defense counsel

to establish a record from which he can properly argue why the witness is less than reliable. Once a defendant has engaged in sufficient cross-examination to satisfy the Confrontation Clause, further questioning is within the trial court's discretion.
Mills v. Singletary, No. 96-3506 (11th Cir. December 1, 1998)

Defendant's Right to be Present

Trial: Defendant's Right to be Present - Pretrial Hearings
In a Pensacola case, the judge, in a teleconference with only the lawyers, announced he was going to discharge the yet-to-be sworn jury because of the approaching hurricane. The court of appeals rejected the defendant's arguments that the hearing conducted in his absence violated the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment. The court, however, concluded the hearing violated the requirements of Rule 43 of the Criminal Rules of Procedure. In the absence of any objection, however, the court reviewed only for plain error and found the error was harmless.
U.S. v. Downs, No. 21-10809 (11th Cir. 3/13/23)
Trial: Defendant's Right to be Present - Defendant Who Flees During Trial
See U.S. v. Stanley, Case No. 12-11126 (11th Cir. 1/6/14)
Trial: Defendant's Right to be Present - Disruptive Defendant Who Refuses to Attend Trial
F.R.Cr.P. 43 allows defendant to voluntarily absent himself from trial after the trial has begun. Court held that defendant's presence in the holding cell prior to jury selection and the exchange between the trial judge and the defendant at that time satisfied the rule's requirement.
U.S. v. Sterling, 738 F.3d 228 (11th Cir. 2013)
Trial: Defendant's Right to be Present - Voluntary Absence
For an example of where the defendant's absence due to illness was cause of new trial, see U.S. v. Novaton, 271 F.3d 968 (11th Cir. 2001)
Trial: Defendant's Right to be Present - Contumacious Conduct
Consideration of relevant factors including the defendant's "contumacious conduct," in certain circumstances, may support a district court's decision to proceed with trial in a single-defendant case.
U.S. v. Bradford, 237 F.3d 1306 (11th Cir. 2001)
Trial: Defendant's Right to be Present - Jury Selection Begins Trial
For purposes of Rule 43, which allows the trial to proceed in the defendant's absence once the trial begins, the beginning of jury selection begins the trial.
U.S. v. Bradford, 237 F.3d 1306 (11th Cir. 2001)

Jail Clothes

Trial: Jail Clothes
Where the defendant who was representing himself and prior to the trial date had told the court he would have street clothing, the trial court justifiably denied the defendant's request for a continuance when, on the day of trial, he did not have them. Under the circumstances, the defendant's appearance in street clothes did not violate due process.
U.S. v. Graham, Case No. 08-14736 (11th Cir. 6/14/11)
Trial: Jail Clothes - Expense of Providing Clothes to Client Standing Trial
Court held F. Lee Bailey should have been reimbursed for purchasing suit of clothes for client.
U.S. v. F. Lee Bailey, 175 F.3d 966 (11th Cir. 1999)

Miscellaneous

Trial: Miscellaneous - Defense Counsel's Temporary Absence was not Structural Error
U.S. v. Roy, Case No. 12-15093 (11th Cir. 4/26/17)

Trial: Miscellaneous - Challenge to Accuracy of Translation
This circuit has established a procedure for challenging the accuracy of an English-language transcript of a conversation conducted in a foreign language. If the parties cannot agree on a stipulated transcript, then each side should produce its own version of a transcript or its own version of the disputed portions. When a defendant does not avail himself of this procedure, he waives his right to challenge the translation and the transcripts.
U.S. v. Curbelo, Case No. 10-14665 (11th Cir. 8/9/13)
Trial: Miscellaneous - Indigent Defendant's Right to Assistance from Expert
U.S. v. Feliciano, Case No. 12-15341 (11th Cir. 4/3/14)
Trial: Miscellaneous - Directive that Defendant Not to Discuss Testimony with Lawyer During Break in Trial
Where, after the defendant had begun testifying and the trial was about to break for the evening, the court directed the defendant not to discuss his testimony with anyone, though he could discuss his constitutional rights with his lawyer, the court of appeals held that the trial court violated the defendant's Sixth Amendment right to counsel and ordered a new trial.
U.S. v. Cavallo, Case No. 12-15660 (11th Cir. 6/22/15)
Trial: Miscellaneous - Example of Trial Based on Stipulated Facts
Done, in this instance, because the defendant wanted to appeal the denial of his motion to suppress, and the government wouldn't agree to a conditional plea.
U.S. v. Timmann, Case No. 11-15823 (11th Cir. 12/18/13)
Trial: Miscellaneous - Jury Not Required to Determine Voluntariness of Confession
The jury is not required to make an independent finding on whether a defendant's confession was voluntary.
U.S. v. Woods, 684 F.3d 1045 (11th Cir. 2012)
Trial: Miscellaneous - In-Court Identification Involve Suggestive Circumstances
Most eyewitness identifications involve some element of suggestion. Indeed, all in-court identifications do.
Perry v. New Hampshire, Case No. 10-8974 (S. Ct. 11/2/11)
Trial: Miscellaneous - Colloquy About Defendant's Decision Not to Testify
The district court does not normally engage in a colloquy with the defendant to ensure that the decision not to testify was made knowingly and intelligently. Such a colloquy would improperly disturb the attorney-client relationship and would suggest the district court believed the defendant's choice improvident.
U.S. v. Ly, Case No. 09-12515 (11th Cir. 7/20/11)
Trial: Miscellaneous - Judges Right to Comment on Evidence, Question Witnesses, and Cut Off Counsel
Judge may do all of these things and commits error only when he strays from neutrality.
U.S. v. Alcincor, Case No. 07-14602 (11th Cir. 6/14/11)
Trial: Miscellaneous - Rule of Sequestration (Exception for Victim)
See: U.S. v. Edwards, Case No. 06-11643 (11th Cir. 5/5/08)
Trial: Miscellaneous - Rebuttal (Sandbagging OK?)
Judge is vested with considerable discretion.
U.S. v. Chrzanowski , 502 F.2d 573 (3d Cir. 1974); U.S. v. Sadler, 488 F.2d 434 (5th Cir. 1974)
Trial: Miscellaneous - Substitution of Judge During Trial
Isn't structural error and is subject to harmless error analysis.
McIntyre v. Williams, 216 F.3d 1255 (11th Cir. 2000)

Mistrial

Trial: Mistrial - Retrial

The law is settled that a mistrial requested by the defendant because of prosecutorial misconduct does not bar a retrial under double jeopardy principles, unless the prosecutor intentionally misbehaved for the specific purpose of goading the defendant into moving for the mistrial.
U.S. v. Jordan, Case No. 04-15381 (11th Cir. 11/3/05)

Trial: Mistrial - Judge's Authority to Declare a Mistrial on Basis of Hung Jury

See Renico v. Lett, Case No. 09-338 (S. Ct. 5/3/10)

Right to Public Trial

Trial: Right to Public Trial - Exclusion of Public from Trial

There was room only for the venire during jury selection and others, including the defendant's family members were excluded from the courtroom during jury selection. There was no objection from the defense. While the exclusion of the public was structural error, in the absence of an objection, the defendant has the burden of establishing prejudice. Here, the defendant failed to make that showing and his conviction was upheld.
Weaver v. Massachusetts, Case No. 16-240 (S. Ct. 6/22/17)

Shackles

Trial: Shackles

The decision to use shackles to restrain a defendant at trial should rarely be employed as a security device. The Supreme Court has observed that no person should be tried while shackled except as a last resort.
U.S. v. Baker, Case No. 00-13083 (11th Cir. 12/13/06)

Trial: Shackles

The constitution forbids the use of visible shackles during the penalty phase in a death penalty case, as it forbids their use during the guilt phase, unless that use is justified by an essential state interest such as the interest in courtroom security specific to the defendant on trial.
Deck v. Missouri, Case No. 04-5293 (S. Ct. 5/23/05)

Trial: Shackles

No abuse in discretion in decision that shackling was appropriate during prisoner's trial and that leg irons were the least restrictive means of effective restraint.
U.S. v. Mayes, NO. 96-6753 (11th Cir 10/29/98); U.S. v. Battle, No. 97-9027 (11th Cir. 4/28/99)

U.S. ATTORNEY

U.S. Attorney: Disqualification

Federal prosecutors are prohibited from representing the government in any matter in which they, their family, or their business associates have any interest.
Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 707 (1987)

U.S. Attorney: Right to a Disinterested Prosecutor

See: U.S. v. Siegelman, Case No. 12-14373 (11th Cir. 5/20/15)

U.S. Attorney: Court's Jurisdiction Limited by Prosecutor's Authority to Prosecute

While a district court lacks jurisdiction to entertain a criminal case if it appears the government lacks the power to prosecute the defendant, in this instance, where the claim was that the appointment of the U.S. Attorney was not made as provided by the Appointments Clause of the Constitution, it did not affect the government's authority to prosecute.
U.S. v. Suescun, 237 F.3d 1284 (11th Cir. 1/8/01)

VENUE

Venue: Retrial

If on appeal the court concludes the venue was improper, the remedy is a new trial in the correct district. North Florida case.

Smith v. U.S., 143 S. Ct 1594 (2023)

Venue: Pervasive Community Prejudice

In a case involving alleged unregistered intelligence agents and the shoot down of a U.S. civilian aircraft outside of Cuban and U.S. airspace, the Court held the failure to change venue in the face of pervasive community prejudice, and extensive publicity before and during the trial did not require a new trial.

U.S. v. Campa, Case No. 01-17176 (11th Cir. 8/9/05)

Venue: Government's Burden of Proof

Government must show by a preponderance of the evidence that the crime occurred in the district where the defendant is being prosecuted.

U.S. v. Breitweiser, Case No. 02-15095 (11th Cir. 1/26/04)

Venue: Crimes Involving Use of Transportation

Under 18 USC § 3237, crimes involving transportation in interstate commerce may be prosecuted in any district through which the defendant travels.

U.S. v. Breitweiser, Case No. 02-15095 (11th Cir. 1/26/04)

Venue: Interstate Transportation

Any offense involving the use of transportation in interstate or foreign commerce is a continuing offense and, except as otherwise expressly provided by Congress, may be prosecuted in any district through which such commerce moves.

U.S. v. Breitweiser, Case No. 02-15095 (1/26/04)

Venue: Right to Be Tried in District Where Offense Committed - Waiver

The Sixth Amendment and FRCrP 18 guarantee the right to be tried in the district where the offense was committed. If the absence of proper venue is apparent from the face of the indictment, the right is waived if an objection is not raised prior to trial.

U.S. v. Roberts, Case No. 02-10018 (11th Cir. 10/4/02); U.S. v. Breitweiser, Case No. 02-15095 (1/26/04); U.S. v. Greer, Case No. 05-11295 (11th Cir. 12/24/06)

Venue: Jurisdiction May Be Determined by Court

In this case, involving the Maritime Drug Law Enforcement Act, the Court found that the 1996 Amendment to the Act resolved any prior ambiguity and established that the trial court, rather than the jury, was responsible for determining whether the court had jurisdiction over the case. Court went on to hold that, despite an arguably poor effort on the part of the Coast Guard to determine whether the ship was registered in Columbia, the trial court properly found the Government had meet its burden of showing that the ship was a vessel without nationality and, thus, subject to the jurisdiction of the court.

U.S. v. Tinoco, Case No. 01-11012 (11th Cir. 9/4/02)

Venue: Maritime Drug Law Enforcement Act

Seizure of a ship, by the U.S. Coastguard, 475 miles west of the Columbian/Ecuadorian border in the Eastern Pacific Ocean, properly tried in the Middle District of Florida because, pursuant to the act, it was treated as a vessel without nationality and, thus, subject to the jurisdiction of the United States.

U.S. v. Tinoco, Case No. 01-11012 (11th Cir. 9/4/02); U.S. v. Rendon, Case No. 02-16208 (11th Cir. 12/31/03)

Venue: Kidnaping DEA Agents in Columbia
Nothing wrong with tricking defendant into crossing into Ecuador from Columbia, where he was arrested by DEA and Ecuadorian police and delivered to the United States for trial. Offense was that of kidnaping two DEA agents from a hotel room in Columbia.
U.S. v. Duarte-Acero, 296 F.3d 1277 (11th Cir. 2002)
Venue: Change Due to Publicity
To establish that pretrial publicity prejudiced the defendant without an actual showing of prejudice in the jury box, the defendant must show first that the pretrial publicity was sufficiently prejudicial and inflammatory and second that the prejudicial pretrial publicity saturated the community where the trial was being held.
Spivey v. Head, 207 F.3d 1263; Meeks v. Moore, 216 F.3d 951(11th Cir. 6/27/00)
Venue: Firearm Possession (924(c)(1)
In this kidnaping offense that covered many states, the Court held the defendant could be charged with possession of a firearm during a crime of violence in any of the districts despite the fact the gun was possessed in only one district.
U.S. v. Rodriguez-Moreno, 526 U.S. 275 (1999)
Venue: Crime Occurring in Multiple Districts
Title 18 of the United States Code, governing the jurisdiction and venue of the federal courts, provides that any offense begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed. 18 U.S.C. § 3237(a).
U.S. v. Matthews,
Venue: Conspiracies
Where a conspiracy is concerned, venue is thus proper in any district where an overt act was committed in furtherance of the conspiracy. The overt act need not be committed by a defendant in the case; the acts of accomplices and unindicted co-conspirators can also expose the defendant to jurisdiction. Moreover, the fact that a majority of a conspiracy's activity took place in a venue other than the one where the trial takes place does not destroy venue.
U.S. v. Matthews, 168 F.3d 1234 (11th Cir. 1999)

VERDICT

Verdict: Supported on One Ground but Not Another
The jury's verdict must be set aside if it could be supported on one ground and not another, and the reviewing court was uncertain which of the two grounds was relied upon by the jury in reaching the verdict.
U.S. v. McNab, Case No. 01-15148 (11th Cir. 5/29/03)
Verdict: Logical Impossibility
Even where conviction on one count and acquittal on another count is a logical impossibility, the conviction will stand unless it was otherwise obtained in error.
U.S. v. Schlaen, Case No. 01-10683 (11th Cir. 8/8/02)
Verdict: Alternative Ways of Committing Crime Need Not Have Unanimous Support
In that "use and carry" are alternative means of violating section 924(c)(1), jury unanimity is not required with respect to the "use and carry" elements. In other words, a jury could legitimately convict a defendant even if some of the jurors thought that the defendant "used," but did not "carry" a firearm, while the other jurors thought that the defendant "carried," but did not "use" a firearm.

U.S. v. Wilson, 183 F.3d 1291 (11th Cir. 1999)

WIRETAPS

Wiretaps: Necessity Requirement
The necessity requirement of 18 U.S.C. § 2518 ensures that law enforcement does not use electronic monitoring when less intrusive methods will suffice.
U.S. v. Perez, Case No. 09-13409 (11th Cir. 10/26/11)

Wiretaps: New Alias
The provision in the federal wiretap act that requires law enforcement agents to minimize the interception of communications not covered in a court order does not obligate them to halt surveillance and seek a new order each time a suspect takes on a new name.
U.S. v. Fernandez, Case No. 06-50595 (9th Cir. 5/27/08)

Wiretaps: Good Faith Exception for Search Warrants Doesn't Apply to Wiretap Warrants
The exclusionary remedy provided by Title III (18 USC §§ 2510-20), unlike the judicially created rule for constitutional violations, is a creature of legislative action and, therefore, not subject to the good faith exception created in U.S. v. Leon, 468 U.S. 897 (1984).
U.S. v. Rice, Case No. 06-5245 (6th Cir. 3/2/07)

Wiretaps: Failure to Immediately Seal Recordings
There was no merit to the defendant's contention that the district court erred in admitting recordings of the two telephone conversations because recordings were not sealed in compliance with 18 USC § 2518(a), which requires that recordings be sealed immediately upon expiration of the period of the order authorizing the interception of communications. Within one or two days is a reasonable, workable interpretation of the term "immediately upon the order's expiration."
U.S. v. Matthews, Case No. 03-15528 (11th Cir. 12/6/05)

Wiretaps: Violation Provides No Basis for Suppression
While the Wiretap Act clearly provides criminal and civil sanctions for the unlawful interception of electronic communications, the Act provides no basis for moving to suppress such communications.
U.S. v. Steiger, Case No. 01-5788 (11th Cir. 1/14/03)

Wiretaps: Hacking into Another's Computer Didn't Violate Act
Where information provided in confidential source's emails to police was obtained through the use of a computer virus that allowed the source to access and download information stored on the defendant's personal computer, that conduct did not constitute an interception of electronic communications in violation of the Wiretap Act.
U.S. v. Steiger, Case No. 01-5788 (11th Cir. 1/14/03)

WITNESSES

Witnesses: Legal Implications of Conduct
A witness may not testify to the legal implications of conduct, the court must be the jury's only source of the law.
U.S. v. Daniels, No. 22-10408 (11th Cir. 1/24/24)

Witnesses – Impeachment – Convictions More Than 10 Years Old
There is a strong presumption against the using a conviction to impeach a witness if the conviction is more than 10 years old from the date the defendant was last released from custody.
U.S. v. Moore, No. 21-12291 (11th Cir. 8/11/23)

Witnesses - Reliability of Ordinary Witnesses

The courts have traditionally viewed information drawn from an ordinary witness or crime victim with considerably less skepticism than information derived from anonymous sources.
U.S. v. Martinelli, Case No. 04-13977 (11th Cir. 7/10/06)

Witnesses: Cross Examination of Informants

Importance of being able to cross examine an informant.
Childers v. Floyd, Case No. 08-15590 (11th Cir. 6/8/10)

Witnesses: Vague Promise of Favorable Treatment

Rather than weakening the significance for credibility purposes of an agreement for favorable treatment, tentativeness may increase its relevancy. This is because a promise to recommend leniency (without assurance of it) may be interpreted by the promise as contingent upon the quality of the evidence produced - the more uncertain the agreement, the greater the incentive to make the testimony pleasing to the promisor.
U.S. v. Curtis, Case No. 02-16224 (8/11/04 11th Cir.) (quoting from Boone v. Paderick, 541 F.2d 447, 451 (4th Cir. 1976))

Witnesses: Detention of Material Witnesses

18 U.S.C. § 3144 provides for the detention of material witnesses. In this case the court concluded it extends to grand jury witnesses.
U. S. v. Awadallah, Case No. 02-1269 (2d Cir. 11/7/03)

Witnesses: Substantial Assistance Witnesses Subject to Credibility Problems

In the context of conducting a harmless error analysis, the Court recognizes the credibility problems with those witnesses that benefit from their testimony.
U.S. v. Hands, 184 F.3d 1322 (11th Cir. 1999)

Witnesses: Impeachment - Prior Convictions

Rule 609 requires that evidence of prior convictions of a non-defendant witness be admitted if (1) the convictions are for crimes punishable by death or imprisonment in excess of one year, (2) the convictions are less than ten years old, and (3) the evidence is being used to attack the witness' credibility. The rule requires a district court to admit evidence of the nature and number of a non-defendant witness' prior felony convictions.
U.S. v. Burston, 159, F.3d 1328 (11th Cir. 1998)