FLW Summaries for August 2024

Prepared by Laurel Cornell Niles*

Florida Supreme Court

Jermaine Foster v. State, SC2023-0831 (August 29, 2024): Appeal from summary denial of 3.851 raising an intellectual disability claim. The case he relies on has already been deemed not to apply retroactively. Affirmed. Labarga dissent: If it's not applied retroactively, a person on death row with an intellectual disability will be put to death.

Loran Cole v. State, SC2024-1170 (August 23, 2024): Petitioner under death warrant appeals the summary denial of his successive 3.851. The Court finds no error because summary denial is appropriate if the record conclusively shows he is not entitled to relief. Affirmed (and Petitioner was executed on August 29).

First DCA

Addison v. State, 1D2022-3068 (August 28, 2024): Reversed special condition that required Appellant to pay $1 per month to First Step, because although a written cost/fines form was utilized and it expressly waived oral pronouncement of the discretionary costs to be imposed, the box for First Step fine was not checked. As a result, Appellant was not informed that this fine would be imposed, and the court cannot impose it later in the written order. Reversed/Remanded in part.

McBride v. State, 1D2022-3231 (August 21, 2024): Appeal from judgment and sentence for capital sexual battery. Appellant was convicted at first trial but got a new trial for ineffectiveness for his prior trial counsel not finding records that would have impeached the alleged victim's allegation that he skipped school after he was attacked by Appellant. The trial testimony at the second trial was somewhat different, with the alleged victim testifying that he hid in the bathroom *at school* and that's what he meant by skipping school. In its order denying Appellant's motion for new

trial, the trial court found the new testimony credible and that the evidence was "weighty enough" to support the verdict. According to the trial court, the victim's school attendance records and the conflicting testimony from other witnesses did not sufficiently undermine the credibility of the victim's testimony. Appellant argues that the trial court should have granted the motion for new trial, that the trial court failed to apply the correct legal standard, and even if it applied the correct standard, the court abused its discretion because no reasonable person would find the victim's testimony credible. When considering a motion for new trial, a trial court must act as the "seventh juror" to find whether the verdict is contrary to the weight of the evidence and whether a greater amount of credible evidence supports an acquittal. The trial court did precisely that. It cannot be said that no reasonable person would adopt the same view as the trial court, so the trial court did not abuse its discretion. Affirmed.

Evans v. State, 1D2023-0916 (August 21, 2024): Claim that plea colloquy failed to comply with Fla. R. Crim. P. 3.172, which was fundamental error. DCA disagrees, finding that "a defendant cannot complain about an insufficient plea colloquy unless it rendered the plea involuntary." That was not Evans' claim. Further, a defendant cannot argue on appeal that a guilty plea was involuntary unless the defendant has presented the matter to the trial court by motion to withdraw the plea, even if the defendant claims that the error was fundamental. Fla. R. Crim. P. 3.850 expressly permits a postconviction motion on the ground that the plea was involuntary. Affirmed.

Harvill v. State, 1D2023-1355 (August 21, 2024): Four of five indecent exposure convictions must be vacated for double jeopardy violations with six counts of L&L exhibition. Each count alleges a different victim but alleges only one lewd act (done in the presence of multiple victims.) Appellant asserts that the allowable unit of prosecution is the number of lewd acts, not the number of victims, and in support, he relies on the Florida Supreme Court's holding in *Hernandez*, 596 So. 2d 671 (Fla. 1992) that when a defendant commits a single act of lewd behavior in front of multiple children, he cannot be convicted of a separate count of lewd act

for each child present. DCA says *Hernandez* does not control because of revisions to the statute that replaced the phrase "in the presence of any child" with "in the presence of a victim." Accordingly, the allowable unit of prosecution under the L&L statute is the number of victims, not the number of lewd acts. Therefore, the first six convictions/sentences are affirmed. However, unlike the L&L statute, the indecent exposure statute contemplates multiple witnesses to the vulgar act through its references to the exposure occurring in public. The rule of lenity requires the court to hold that the allowable unit of prosecution is the number of exposures, not the number of persons witnessing it. Reversed 4/5 counts of indecent exposure.

Struggs v. State, 1D2023-1738 (August 21, 2024): Appellant argues that the admission of identification testimony by a police officer—who testified that he had contact with Appellant 5-6 times a year for the previous five years—led to the conclusion that he engaged in prior criminal acts. The DCA disagrees because an officer's testimony that he is familiar with the resident of a neighborhood the officer patrols does not, by itself, imply the resident committed a prior bad act. Nothing in the testimony implied that he had engaged in any prior bad acts. Further, the officer's statement on the video that "I knew it was you!" was not improperly admitted because the officer testified at trial and was subject to cross-examination.

Bryan v. State, 1D2022-0957 (August 7, 2024): Appeal raises six claims, and the DCA reverses on two: that the trial court failed to renew offer of counsel before ruling on his motion for a new trial; and that the trial court improperly imposed consecutive, enhanced habitual felony offender sentences. Appellant represented himself at trial and was convicted. He then moved for a new trial, alleging twelve errors. The court heard argument on the motion and denied it. The court then renewed the offer of counsel before sentencing, which Appellant declined. The offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the defendant appears without counsel. See Fla. R. Crim. P. 3.111(d)(5). The trial court does not need to renew the offer each time the defendant appears in court but must renew the

offer at every "crucial stage" which includes "any stage that may significantly affect the outcome of the proceedings." *Traylor*, 596 So. 2d 957 (Fla. 1992). The trial court erred by not renewing the offer of counsel before hearing the motion for new trial. Further, consecutive HFO sentences here were illegal because they were based on offenses that occurred during a single criminal episode. When multiple sentences for offenses committed during a single criminal episode have been enhanced under the HFO statute, the total penalty cannot be further increased by imposing consecutive sentences, absent specific legislative authority. *Hale*, 630 So. 2d 521 (Fla. 1993). Reversed/Remanded for a new hearing on the motion for new trial and a new sentencing hearing.

Cooper v. State, 1D2022-4074 (August 7, 2024): Appeal of an order denying motion for postconviction relief pursuant to Fla. R. Crim. P. 3.850. Appellant was convicted in 2009 of burglary of a structure causing > $1,000 damage, petit theft, and felony fleeing/eluding, and was sentenced to 30 years in prison. In Ground 2 of his postconviction motion, Appellant alleges ineffective assistance for failing to object to inadmissible hearsay that served as the State's only evidence of the essential element of the burglary charges that the damages exceeded $1,000. The store manager testified that she "was given an estimate of about $1,500 out of pocket" that the store paid, and defense counsel did not object to hearsay, but defense counsel did cross-examine the witness that she did not have any dealings with the repairs, and someone else had told her the cost. Defense counsel moved for JOA arguing that the State didn't prove the cost of the damages because the manager didn't have direct knowledge of the amount and merely testified to what someone else told her. The State and trial court relied on the hearsay testimony (which was not objected to) to deny the motion and the defense counsel conceded that "I guess the State slipped one by me with the hearsay. I did not catch that." Appellant established a reasonable probability that the result of the trial would have been different had his counsel raised a timely hearsay objection. There is no record evidence that the State could've cured its error by calling another witness to establish the amount of damage. Reversed/remanded with directions for

the court to reduce the charge on Count 1 to simple burglary of an unoccupied structure, and to resentence Appellant accordingly.

Dennis v. State, 1D2023-0886 (August 7, 2024): Reversed convictions for failure of a sex offender who vacates his residence to report within 48 hours, and failure of a sex offender to report or register a change in address. At trial, Dennis stipulated to being a sex offender, and the State presented evidence that Dennis registered an address in May of 2022, but that renters lived at that address since 2019, and Dennis had never lived with them. The State's evidence established only that Dennis never lived at the address that he registered. The State failed to present evidence that he ever established a permanent, temporary, or transient residence and thereafter changed his residence or vacated his residence without establishing another permanent, temporary, or transient residence. Reversed and remanded for entry of judgment of acquittal. Conviction affirmed as to providing false registration information as a sex offender.

Wendell v. State, 1D2023-2478 (August 7, 2024): Affirmed denial of motion for postconviction relief. Counsel testified that over his 31 years of practice, he had developed a strategy for questioning child victims in sexual battery cases. He tried to impeach the victims' credibility without offending the jury. Pursuant to his strategy, he chose not to impeach the victim about details that would not negate the elements of the charged offenses, as this would risk inflaming the jury. But he did call the victims' credibility into question during cross-examination because the victim had opportunities to disclose the abuse and did not. The trial court found counsel's testimony on his cross-examination strategy to be credible, and because he made strategic decisions about how to impeach and cross-examine the witness, his performance was not deficient. Claims about counsel's failure to call witnesses were facially insufficient because they did not allege that the witnesses were available for trial. *Thomas v. State*, 284 So. 3d 1167 (Fla. 1st DCA 2019). The court gave him an opportunity to amend facially insufficient claims and he failed to. Finally, the claim that counsel was deficient for failing to call the victim's psychotherapist as a witness was properly denied. Affirmed.

Second DCA

Fernandez v. State, 2D2022-1630 (August 16, 2024): Appeal from judgment and sentence for felony battery with great bodily harm. Appellant was at a club in Sarasota, when his father-in-law was removed by security. The father-in-law exited the premises but continued talking to the security officer in the doorway of the club. During the interaction, the security officer was struck in the face and fell to the ground, blacking out. Someone continued to strike him while he was on the ground. Security footage showed that it was Fernandez who attacked the victim, and the victim identified Fernandez as the man in the video footage. In his defense, Appellant argued that he struck the victim in defense of his father-in-law. The father-in-law testified that Appellant was continuously trying to extinguish the situation, and Appellant said to the victim that they were going to leave as soon as the girls returned from the bathroom. Based on this testimony from the father-in-law, the court admitted Appellant's prior record because "[t]he State can use a defendant's prior conviction to impeach exculpatory hearsay statements of a defendant who does not testify but gets the statements into evidence through another witness." *Freeman v. State*, 74 So. 3d 123, 125 (Fla. 1st DCA 2011). Appellant argues that the testimony did not support the admission of his prior criminal record because it did not constitute hearsay and was not exculpatory. The DCA writes that although the statements may be considered exculpatory because they support the theory of defense, they do not constitute hearsay. The error was not harmless because the court cannot say that the verdict was not affected by the erroneous admission of his convictions. Reversed/remanded for new trial.

Jackson v. State, 2D2023-2441 (August 16, 2024): Appeal from summary denial of 3.850 motion. Appellant was serving probation after his plea to sexual battery on a child over twelve by a person in familial or custodial authority. Three years into his probation, he was violated for accessing the internet without completing a risk assessment and permission, and for refusing to answer his PO's questions. The State sought prison at the VOP hearing, and the trial court told Appellant that he could not impose

a sentence under the guidelines unless it held a "danger" hearing, and, even if he won the "danger" hearing the court probably would not sentence him to probation. The trial court asked Appellant if he would accept the State's guidelines-sentence offer (117 months), and also told him that if the State learned of any additional circumstances before the danger hearing, the State may no longer request the lowest permissible prison sentence. Appellant rejected the offer but entered an admission to the VOP. At the danger hearing, the ASA told the court that she had learned some additional things and would be advocating for a thirty-year prison sentence and told the court that the victim and her guardian wanted a life sentence. The ASA told the judge that Appellant had allegedly fathered a child with a fifteen-year-old in another district, but that the State failed to prosecute it due to a speedy trial issue. The court found that Appellant is a danger to the community and sentenced him to fifteen years in prison followed by fifteen years of sex offender probation. Appellant claimed in his 3.850 motion that his lawyer was ineffective for failing to investigate and learn of the Broward County prior criminal charge, and that if his attorney had told him the potential impact of these allegations at the danger hearing, he would have accepted the State's offer. The DCA holds that, if true, counsel's failure to learn of the Broward County charge, coupled with the failure to advise him of the possibility of the facts of that charge being used at the danger hearing could have been omissions falling outside the wide range of professional competent assistance. Accordingly, the summary denial is reversed and remanded for an evidentiary hearing.

State v. Lyons, 2D2023-2358 (August 9, 2024): State certiorari petition regarding a trial court order precluding the State from applying the 2023 version of the death penalty statute. The prior version of the statute, in effect when the crimes were committed, required the jury to unanimously determine that death was the appropriate sentence before recommending a death sentence. The trial court found that the retroactive application of the current version of the statute violates the Ex Post Facto Clauses of both the state and federal constitutions. Certiorari is the proper vehicle because it exists to review nonfinal orders that impair the State's ability to prosecute its case. The trial court departed from the essential

requirements of the law by failing to apply binding precedent, as this matter was already adjudicated by the Fifth District in *Victorino II*. The law at the time the trial court rendered its decision was clear: "the amendment to section 921.141 is a quintessentially procedural change that has no substantive effect… it does not constitute an ex post facto law." Petition granted; order quashed.

Serrano-Delgado v. State, 2D2023-1086 (August 7, 2024): Appeal from judgment and sentences for battery, capital sexual battery, and lewd or lascivious molestation of a child under 12. Appellant asserts that he was entitled to a twelve-person jury in his non-capital case. Note: at the time of the offense, death was not a permissible penalty for capital sexual battery, although it now is. In *Williams v. Florida*, 399 U.S. 78 (1983), the United States Supreme Court held that Florida's use of six-person juries does not violate the Sixth or Fourteenth Amendments because a twelve-person jury is not an indispensable component of the Sixth Amendment and there is no evidence that the Framers intended to require twelve jurors. Justice Gorsuch opined in *Ramos v. Louisiana* that *Williams* should be overruled. The DCA concluded: "With all due respect, Justice Gorsuch is but one voice on the Supreme Court. We are bound by precedent, not by what one Supreme Court justice wishes. Therefore, the use of a six-person jury… did not constitute a violation of federal or Florida constitutional rights." Affirmed.

Third DCA

Gonzalez v. Florida, 3D21-1445 (August 28, 2024): Appeal from order revoking probation and sentencing him. Appellant was on probation for six cases and qualified to be a VFOSC. At his VOP sentencing, the trial court orally pronounced him to be a danger to the community but did not reduce its findings to writing. The court was required to make written findings articulating whether a VFOSC poses a danger to the community. Remanded for written order conforming to the oral pronouncement.

Barnes v. State, 3D22-0115 (August 28, 2024): Appeal from convictions for attempted second-degree murder, aggravated battery, and

shooting/throwing a deadly missile. He argues that the trial court erred in admitting a prior uncharged sexual assault involving the same victim. DCA says the trial court did not abuse its discretion in admitting this collateral crime evidence because it was necessary to establish context and explain motive. The trial court provided a limiting instruction and prevented the scope of inquiry into the prior act.

State v. Vinokurov, 3D23-1930 (August 28, 2024): State appeal from an order suppressing evidence obtained by FWC. Reversed because the FWC had authority to stop the boat to inspect licenses, registration, and safety resource equipment, and during the encounter, an occupant of the boat opened the boat's cooler, and the illegal catch was in plain view.

Martinez v. State, 3D22-2145 (August 21, 2024): Appeal alleges that the trial court committed fundamental error by allowing testimony that violated an order granting Appellant's pretrial motion in limine. The officer testified that "we had probable cause to make an arrest for multiple cases" and "we were there for a previous case" but the jury did not hear explicit details of the uncharged crimes. The officers' testimony merely explained their pursuit of Martinez to establish that the arrest was lawful, which is an element of resisting.

State v. Beach, 3D23-1444 (August 14, 2024): Trial court discharged the defendant after concluding that the State added a new charge to the information after speedy trial expired, and the State appealed. DCA says the new charge isn't "new" because the information merely re-alleged the same reference to 784.03, but just changed the subsections from (1)(a)2 to (1)(a)1. There was no intent to abandon the battery charge. Trial court abused its discretion in finding that the amended information contained a new charge and prejudiced the defendant. Reversed/remanded.

Laurence et al v. State, 3D24-0675… et al. (August 14, 2024): Writ of prohibition seeking to disqualify trial judge. Eleven other defendants whose cases are consolidated with Appellant's also seek review of their orders denying their motions to disqualify the same judge. The Judge's spouse is employed by the State Attorney's Office as the Executive Director of the office since Jan. 1, 2024. The judge wrote to the JEAC

requesting an advisory opinion on the issue of whether he should still be able to handle criminal cases, given his spouse's job. The JEAC said that he could continue to handle criminal cases, because the judge's spouse is serving in an administrative role, not a lawyer's role, and would not oversee any prosecutions. Petitioners allege that it is objectively unreasonable for them to believe that they will receive a fair trial in front of the judge because his spouse holds a senior position in the SAO. The DCA "adopts the sound reasoning of the JEAC" and holds that the judge's recusal is not required because his spouse does not have supervisory authority over prosecutors appearing before the judge. Petitions denied.

C.H. v. State, 3D22-1713 (August 7, 2024): Appeal alleges the trial court failed to conduct an adequate *Richardson* inquiry. The State disclosed witness statements to the defense during discovery that stated C.H. repeatedly threatened to kill his mother as he charged her brandishing a pipe, but at trial, the witness testified that when threatening to kill his mother, C.H. referred to her using two vulgar words. This did not "materially hinder the defense" because the words were cumulative, given the enormity of C.H.'s threats. Affirmed.

Fourth DCA

Rock v. State, 4D2023-2996 (August 21, 2024): Conviction affirmed but reversed imposition of min/man sentence for PFCF because State presented insufficient evidence of his "possession" for purposes of imposing the mandatory minimum sentence. Appellant was the sole occupant of a one-room efficiency. He did not respond to police demands to exit for thirteen minutes, during which the police saw him lift the mattress. After he was arrested, the police found a loaded gun between the mattress and box spring. The gun was wet but the mattress was dry. This was enough evidence to survive JOA, but not sufficient for "possession" under the min man statute. No testimony was presented about whether Appellant was seen carrying the gun, and the evidence was inconclusive about whether he touched it.

Sheely v. State, 4D2023-2171 (August 14, 2024): DUI conviction reversed based on burden-shifting comments of prosecutor during closing argument. Prosecutor said several times that the defendant did not seize the opportunity to dispel the officers' suspicions that he was driving while impaired. He wouldn't do the field sobriety exercises or submit to a breath test. This was an impermissible argument because it suggests to the jury that an innocent person would volunteer to do these tests to prove his or her innocence. Prosecutors can use refusal to submit to breath test as evidence of consciousness of guilt, but the prosecutor here went beyond that because it suggested to the jury that it should infer defendant's guilt because he did not take other affirmative steps to prove his innocence. Reversed/remanded for new trial.

Ramirez v. State, 4D2023-0508 (August 7, 2024): Appeals from convictions for two counts of attempted first-degree murder of a law enforcement officer, one count of attempted second-degree murder of a law enforcement officer; one count of attempted second-degree murder; and one count of fleeing or eluding. It was fundamental error not to instruct the jury on the definition of reasonable doubt and the presumption of innocence, from Standard Jury Instruction 3.7, in the final charge to the jury. Reversed/remanded.

Gracia v. State, 4D2023-0750 (August 7, 2024): Convictions of capital sexual battery affirmed. Issues raised were: (1) trial court refused to allow Appellant to impeach the victim with a prior inconsistent statement (DCA said prior statement was not inconsistent with the in-court testimony); (2) the trial court erred in denying him a bill of particulars (DCA says no error because the State alleged ongoing abuse and the State charged it as "on one or more occasions" during the time frame); (3) Richardson violation for photographs produced the day before trial (DCA says not willful because the State gave over the evidence as soon as it received it); and (4) Defendant was entitled to a twelve-person jury. (No; argument already rejected by precedent.)

Fifth DCA

Richardson v. State, 5D2023-0411 (August 30, 2024): *Melbourne* issue was not properly preserved for appellate review. Appellant did question whether the reasons given for the peremptory strike were race-neutral; however, he failed to challenge the genuineness of the reason, and did not request that court determine the genuineness. Affirmed.

Carroll v. State, 5D2023-0820 (August 30, 2024): Affirmed *Anders* appeal except reversed $250 fine.

Booker v. State, 5D2023-1024 (August 30, 2024): Appeal from an order of revocation of probation and sentencing to 15.3 months in prison. Appellant raises an issue that wasn't argued below. Affirmed.

Alston v. State, 5D2023-3696 (August 23, 2024): Reversed sentence because the trial court imposed a previously suspended twelve-year prison sentence without affording him a sentencing hearing. He was entitled to present evidence and argument regarding his sentence. Reversed/remanded.

State v. Hauter, 5D2022-2997 (August 19, 2024): State appeal from a below-guidelines sentence. The trial court articulated six reasons for the departure sentence. None were valid grounds. Reversed/remanded for a different judge to conduct a new sentencing hearing and impose a sentence permissible under Florida law.

Waite v. State, 5D2023-1354 (August 16, 2024): Reversal of the denial of a motion to dismiss the unlawful interception of an "oral communication." Defendant recorded conversations with Citrus County Sheriff's Office deputies, regarding a dispute over property boundaries (specifically, Waite believed CCSO was trespassing on his property repeatedly and CCSO believed they were on city property.) He called 911 to report what he believed was a trespass and wanted to file a complaint with internal affairs of CCSO, and the 911 operator said someone would have to call him back. He agreed and told the 911 operator that he wanted the call to be recorded. A CCSO Sergeant called him back that day, and Waite recorded the three-minute call but did not tell the Sergeant that he was doing so. He then sent a copy of the recording to the CCSO records

department and requested an internal investigation. CCSO then obtained an arrest warrant based on the recorded conversation, alleging that Waite unlawfully intercepted an "oral communication" when he recorded the call with the Sergeant without his consent. They went to his house to arrest him and a physical altercation ensued. He was charged with unlawful interception of oral communications, battery on a LEO, and resisting arrest with violence. He argued on a motion to dismiss that the recorded conversations were not "oral communications" because the deputies did not have a reasonable expectation of privacy that such communications were not subject to interception. The State argued the officers' expectation of privacy is a jury question. DCA says they did not have a reasonable expectation of privacy because they are public employees acting in furtherance of their public duties, which undermines objective expectation of privacy. Motion to dismiss reversed.

Jones v. State, 5D2023-2204, 2234, and 2311 (August 16, 2024): Appellant entered an open plea, and then did not show up for his sentencing. Based on the anticipated sentence, he was to be sentenced to five years in prison and $20,000 in restitution. He was eventually apprehended and provided a note from a nurse practitioner stating that he was in the emergency department on the day he was supposed to be in court for sentencing and that he was treated and released. On appeal he argues that his sentence, which was above the five years the parties anticipated, was erroneous because his failure to appear was not willful. A violation of Quarterman release must be willful, but Jones did not argue this in the trial court. Instead, his lawyer argued for leniency because he did not flee and he's just a kid who made a stupid decision not to show up. Counsel did not argue that the trial court remained bound to the five-year sentence because the failure to appear was not willful. The argument did not put the trial on notice of the separate and distinct argument that the FTA was not willful. If there is error here, it was not preserved. Affirmed.

Baxter v. State, 5D2023-0118 (August 2, 2024): En banc rehearing of a case of exceptional importance: whether "plain smell" doctrine still applies to the smell of cannabis in light of changes to the law regarding

hemp (i.e., legalizing hemp.) Plain smell is no longer clearly indicative of criminal activity and can no longer on its own provide reasonable suspicion to support an investigative detention. (However, affirmed because the officer relied on the law at the time of the arrest.)

Gillespie v. State, 5D2023-0888 (August 2, 2024): Appeal from conviction for direct criminal contempt. Appellant appeared pro se for a hearing on his pending criminal charges and "yelled" at the court. The court admonished him, and he said he has a speech impairment that makes it difficult for him to project his voice. He appeared in court again and the judge brought up the previous appearance where Appellant "yelled," and said that it would hold him in contempt. The court did not inquire into whether he had any cause to show why he should not be adjudged guilty of contempt, and did not provide him the opportunity to present evidence or mitigation, in accordance with Fla. R. Crim. P. 3.830. Ultimately, the court pronounced him guilty of criminal contempt and sentenced him to 30 days in jail. Reversed/remanded for the trial court to hold a hearing which adheres to the express requirements of 3.830. Also ordered that a different judge should be assigned.

Vavra v. State, 5D2023-2240 (August 2, 2024): Appellant argues that the imposition of restitution was erroneous because the State did not request restitution and the record failed to establish a causal and significant relationship with his offense (ten counts of possession of child pornography.) Further, the imposition of over three thousand dollars in the written sentencing was erroneous because that amount conflicts with the oral pronouncement and did not include any statutory authority. State agrees that $150 in restitution was erroneous because restitution was not mentioned in the record, and also agrees that the written judgment and sentence fails to reflect the costs imposed at sentencing. Accordingly, DCA strikes the imposition of restitution and remands for entry of an order reflecting the correct amount of costs imposed at sentencing and proper basis for each.

Sixth DCA

Dixon v. State, 6D2023-0708 (August 16, 2024): Appeal from conviction and sentence for armed burglary of a conveyance with a battery. Trial courts must impose no-contact orders for certain offenses, but the court did not enter a no-contact order at his sentencing and the State did not request one before Dixon filed his notice of appeal. The State moved to correct his sentence, to include the no-contact order, and Dixon objected, arguing that the State could not seek this relief during his appeal. DCA agrees—The trial court did not have jurisdiction to consider the State's motion to correct sentencing error while the appeal was pending.

Lovett v. State, 6D2023-2137 (August 16, 2024): Appellant was sentenced, after a jury trial, to ten years in prison for felony battery, the first five years of which would be PRR, followed by five years HFO. Appellant challenged the legality of the sentence, contending that the trial court could not impose an equal PRR and HFO sentence, and second, that the two consecutive five-year sentences exceeded the statutory maximum for third degree felony. DCA says that a ten-year HFO sentence running concurrently with a five-year PRR sentence would be a legal sentence, but the trial court cannot impose equal PRR and HFO sentences if run concurrently; the PRR sentence must be longer. Also, a trial court can impose consecutive sentences when a defendant is convicted of two or more offenses charged in the same information, but Appellant was convicted of only one count of felony battery, so his sentence appears illegal. Reversed/remanded.

State v. Crume, 6D2023-2304 (August 21, 2024): State appeal from an order granting a motion to suppress a firearm found in Appellee's car following a traffic stop for careless driving; trial court suppressed the evidence because it found no RS to make the stop. An officer saw a vehicle in a turn-only lane cut in front of a line of traffic when the stoplight turned green. The officer believed that such a maneuver more likely than not endangered the driver or others. Accordingly, the stop was valid. Reversed/remanded.

* Laurel Cornell Niles graduated cum laude from the Florida State University College of Law, where she was an Ucola Katzentine & Tobias Simon Scholar, on the Dean's List, and inducted into the Phi Delta Phi Legal Honor Society.

Mrs. Niles has been licensed as an attorney since 2013. She has litigated every stage of the criminal legal process, from first appearance through certiorari petition to the United States Supreme Court, providing zealous advocacy for individuals accused of misdemeanor, felony, and capital offenses. In addition to first-chair representation at the trial court level, Mrs. Niles has represented clients as appellate counsel, having briefed hundreds of direct appeals, as well as final orders from postconviction petitions. Mrs. Niles has argued in the Florida Supreme Court and is admitted to practice in all state courts of Florida and the United States District Court for the Northern District of Florida.

Mrs. Niles has presented Continuing Legal Education workshops and has lectured at the Florida State University College of Law on the topics of Fourth Amendment searches and Sixth Amendment right to counsel. Mrs. Niles is a member of the Florida Bar Criminal Law Section and the Florida Association for Criminal Defense Lawyers.

Mrs. Niles and her family reside in Tallahassee, Florida.