CHAPTER 5 – DISCOVERY AND OTHER PRE-TRIAL MATTERS

***Koonce v. District of Columbia*, 111 A.3d 1109 (D.C. 2015).**
Government violated Rule 16 by failing to preserve stationhouse video that would have shown defendant's appearance and alleged failure to consent to testing in DUI prosecution, and by failing to preserve liquor bottle that belonged to defendant.

Trial court did not abuse discretion in failing to suppress photograph of liquor bottle discarded in DUI prosecution where no evidence of bad faith, case did not turn on whether bottle was open, and independent evidence showed defendant's intoxication.

***Foote v. United States*, 108 A.3d 1227 (D.C. 2015).**
Trial court did not abuse its discretion in denying defense motion for mistrial for Rule 16 violation – the government's failure to disclose expert's conclusion before trial – where court weighed three *Lee* factors, found no evidence of bad faith, proposed curative instruction, recognized that mistrial might make securing reluctant witnesses' testimony impossible, struck testimony in question, and defense counsel appeared to agree that instruction was adequate remedy.

***Johnson v. United States*, 118 A.3d 199 (D.C. 2015).**
Assuming government violated Rule 16 by not permitting defendant's expert to independently test recovered gun, trial court did not abuse discretion in refusing to sanction government where prosecution made evidence available for viewing at courthouse after specific defense request, and defense counsel refused court's offer of continuance to allow parties to develop solution allowing defendant's expert to test evidence.

***United States v. Gray-Buriss*, 791 F.3d 50 (D.C. Cir. 2015).**
Trial court erred in prohibiting defense from introducing document for any purpose as sanction for defendant's failure to produce same document timely requested by government under Fed. R. Crim. P. 16(b)(1)(A) where document contained potentially significant exculpatory evidence, government did not identify prejudice from defense use of document, government did not question document's authenticity, trial court did not find that defense withheld in bad faith, and trial court relied on grand jury subpoenas as basis for sanction, but harmless as to verdict where document not exculpatory to all transactions at issue.

Any error in excluding document as sanction for defendant's failure to produce document in response to subpoena was harmless relative to defendant's convictions because it would have been merely cumulative as subject matter of document was independently established at trial,

government mentioned subject matter of document in closing argument, and charged offenses required only unanimity as to single transaction for each count.

***Koonce v. District of Columbia*, 111 A.3d 1109 (D.C. 2015).**
Government violated Rule 16 by failing to preserve stationhouse video that would have shown defendant's appearance and alleged failure to consent to testing in DUI prosecution, and by failing to preserve liquor bottle that belonged to defendant.

***In re Kline*, 113 A.3d 202 (D.C. 2015).**
D.C. R. Prof. Cond. 3.8(e) requires a prosecutor to disclose all potentially exculpatory information in his or her possession regardless of whether that information would meet the materiality requirements of *Bagley*, *Kyles*, and their progeny.

***Colbert v. United States*, 125 A.3d 326 (D.C. 2015).**
Trial court did not plainly err under *Brady* by failing to *sua sponte* require government to disclose police file related to decedent's old ADW conviction in murder case where defense claimed self-defense, defense did not request file itself at trial despite knowledge of file's existence, jury heard extensive evidence about decedent's propensity for violence, government stipulated to decedent's relevant conviction, and jury acquitted defendant of first-degree murder, second-degree murder, and AWIKWA, but convicted defendant of manslaughter, ADW, and CDW despite several deep stab wounds to decedent.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Trial court did not plainly err in finding that government's failure to disclose that government witness's testimony was misleading until after defense completed cross-examination was not material for *Brady* purposes where parties later agreed to stipulation correcting facts at issue, defense did not request continuance to develop different defense, defense did not request mistrial, government introduced four confessions from defendant, and corroborating testimony from cooperating co-conspirators inculpated defendant.

***Colbert v. United States*, 125 A.3d 326 (D.C. 2015).**
See, *supra*, Chapter 5.II.A.1.c.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Trial court did not abuse discretion in denying request for mistrial made during second week of trial after defense failed to request continuance based on belated *Brady* disclosure made six weeks prior to trial, prosecution did not refer to subject of disclosure, and defense made use of disclosure in opening, cross-examination and closing.

***United States v. Pasha*, 797 F.3d 1122 (D.C. Cir. 2015).**
Defendant failed to show prejudice required for reversal based on *Brady* violation where witness' differing description of parties involved did not rule out defendant's participation in charged offense, no other evidence suggested defendant was not involved, defendant worked as investigator on relevant case, phone calls between witnesses discussed investigators' involvement in charged offense, witness testified that defendant inquired as to whereabouts of items later used in charged offense, and government introduced evidence of payments from defendant to witnesses.

Government's failure to disclose witness' statement – that witness saw approximately thirty year old male and female entering apartment carrying items previously used in photo shoot staged in same apartment on same day – for period of eight months undermined confidence in verdict, requiring reversal under *Brady* where defendant was nearly sixty years old, *Brady* witness could not clearly remember events at issue after eight month delay, two witnesses with credibility issues testified to defendant's involvement in charged offense, third witnesses testified that defendant was definitely not involved, unclear that defendant worked substantially on case at issue, and inconsistent testimony regarding defendant's presence at meeting planning staged photo shoot (charged offense).

***United States v. Bell*, 795 F.3d 88 (D.C. Cir. 2015).**
Defendant failed to show materiality required for successful *Brady* claim based on government's failure to disclose report indicating that witness believed two uncharged persons committed charged offense until trial underway where disclosed two-and-one-half months before conclusion of government's case in chief, and government presented theory that defendant was getaway driver.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Defendant failed to show prejudice required for successful *Brady* claim based on government's failure to disclose cooperating co-conspirator's prior inconsistent statement until two hours before co-conspirator's testimony where trial court granted five day mid-trial continuance to allow defense to investigate, disclosure came early in two month trial, co-conspirator admitted

lying to police in first statement, inconsistent statement did not conflict with defendant's trial strategy, and overwhelming evidence of defendant's guilt.

No plain error in finding that government's failure to disclose grand jury testimony regarding decedent's lack of a head injury until weeks after testimony of cooperating co-conspirator that defendant caused decedent's non-existent head injury did not violate *Brady* where substance of grand jury testimony was already disclosed to defense through forensic pathologist's report, defense confronted pathologist with inconsistency, and overwhelming evidence of defendant's guilt in form of defendant's two confessions, corroborating testimony from co-conspirators.

***United States v. Bell*, 795 F.3d 88 (D.C. Cir. 2015).**
Defendant failed to show prejudice required for successful *Brady* claim based on government's failure to disclose report indicating that three witnesses asserted that someone other than decedent was responsible for a killing that allegedly motivated defendant to kill decedent.

***Koonce v. District of Columbia*, 111 A.3d 1109 (D.C. 2015).**
Trial court did not abuse discretion in refusing to dismiss case on due process grounds based on failure to preserve stationhouse video where no evidence of willful refusal to preserve video was present.

CHAPTER 6 – GUILTY PLEAS AND PLEA BARGAINING

***Zalmeron v. United States*, 125 A.3d 341 (D.C. 2015).**
Defendant entitled to remand for evidentiary hearing to determine whether trial court gave required warnings concerning immigration consequences but not reversal of trial court's denial of defendant's motion to withdraw guilty plea under D.C. Code § 16-713 for failure to provide such warnings because waiver not apparent where trial court initially ruled in government's favor before time to respond lapsed, government does not respond to § 16-713 motions until ordered to do so, and subsequent government response focused on narrower issue then immediately contested.

***Zalmeron v. United States*, 125 A.3d 341 (D.C. 2015).**
Trial court may not deny motion to withdraw guilty plea under D.C. Code § 16-713 based solely on unexcused delay in filing motion, but may consider delay as one factor when evaluating credibility of claim.

***Tibbs v. United States*, 106 A.3d 1080 (D.C. 2015).**
Trial court's failure to consider third *Gooding* factor – claim of legal innocence – prior to denial of defendant's motion to withdraw guilty plea constituted abuse of discretion.

***Zalmeron v. United States*, 125 A.3d 341 (D.C. 2015).**
See, *supra*, Chapter 6.II.B.

CHAPTER 8 – THE CHARGING DOCUMENT

***Jones v. United States*, 124 A.3d 127 (D.C. 2015).**
Trial court did not err by allowing government to amend information on day of trial, depriving defendant of jury trial, because defendant failed to show prejudice as defendant did not demand a jury trial, nor object to amendment of information, and no evidence that amendment altered defendant's defense in any way was present.

***McRoy v. United States*, 106 A.3d 1051 (D.C. 2015).**
Evidence insufficient to support conviction for child sex abuse where complainant testified that abuse took place two and four years, respectively, after date alleged by government.

CHAPTER 9 – DOUBLE JEOPARDY

***Moghalu v. United States*, 122 A.3d 923 (D.C. 2015).**
Defendant waived double jeopardy defense to third trial by failing to raise such defense prior to third trial despite objection to court's declaring mistrial at second trial.

***Bowles v. United States*, 113 A.3d 577 (D.C. 2015).**
Defendant's conviction for three counts of assault on a police officer did not merge where: defendant intentionally bumped two officers while walking past them; defendant fought with two officers as they attempted to arrest him; and, defendant bit, kicked, and elbowed third officer as officers attempted to shackle the defendant's legs because such acts constituted separate acts committed against separate complainants.

***Hawkins v. United States*, 119 A.3d 687 (D.C. 2015).**
Convictions for obstruction of justice under D.C. Code § 22-722(a)(2)(A) and (B) merge where predicated on defendant's instruction to another to lie in an official proceeding because such instruction violates both (A) and (B).

***Jenkins v. United States*, 113 A.3d 535 (D.C. 2015).**
In exception to *Blockburger* rule, multiple convictions under street gang statute - D.C. Code § 22-951(b) – merge if predicated on different predicate felonies that each arise from same violent act.

***Johnson v. United States*, 107 A.3d 1107 (D.C. 2015).**
Possession of a firearm during a crime of violence does not merge with the underlying offense of aggravated assault while armed.

Assault with a deadly weapon, mayhem while armed, and aggravated assault while armed merge.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Obstruction of justice and perjury do not merge because perjury, unlike obstruction of justice, does not require proof of official proceeding or intent to undermine such proceeding.

***Washington v. United States*, 122 A.3d 927 (D.C. 2015).**
PWID PCP and possession of liquid PCP merge where premised upon possession of same vial of liquid PCP.

PWID PCP and distribution of PCP do not merge where defendant informed undercover officers that he possessed PCP, defendant made phone call, defendant identified principal distributor that arrived after phone call as "my man," principal distributor removed bag containing PCP from defendant's pocket at defendant's request, and principal distributor sold PCP to officers from brown paper bag.

CHAPTER 10 – SENTENCING

***Bradley v. District of Columbia*, 107 A.3d 586 (D.C. 2015).**
Sentencing violated due process where judge based sentence on an assessment of the defendant's criminal history unsupported by the record, doing so without informing the parties what materials he was reviewing or making them part of the record.

***Washington v. United States*, 122 A.3d 927 (D.C. 2015).**
Trial court did not plainly err in admitting evidence of defendant's release status where defense did not stipulate to, or otherwise concede, defendant's pretrial release status, and court gave limiting instruction that defendant's status could not serve as proof of other crimes charged following testimony of PSA officer.

***Aboye v. United States*, 121 A.3d 1245 (D.C. 2015).**
Court did not err in convicting defendant of bias-related threats under D.C. Code §§ 22-407 and 3703 because designated act required to apply bias enhancement under § 3703(1) includes any criminal act under D.C. law, including threats.

***Towles v. United States*, 115 A.3d 1222 (D.C. 2015).**
Involuntary manslaughter constitutes crime of violence within the meaning of D.C. Code § 23-1331(4), and for purposes of § 22-4503(b)(1).

***Alexander v. United States*, 116 A.3d 444 (D.C. 2015).**
Court had jurisdiction to complete revocation proceedings, even after probationary period would have otherwise ended because defendant's failure to appear for scheduled status hearing within probationary period and resulting issuance of bench warrant tolled running of probationary period until defendant's arrest.

***Alexander v. United States*, 116 A.3d 444 (D.C. 2015).**
Trial court did not violate defendant's right to due process (under plain error) by failing to conduct direct inquiry of probationer prior to revoking probation where defendant was represented by counsel at hearing, defendant did not claim ineffective assistance of counsel, defense counsel presented detailed defense, court gave defense counsel opportunity to expand upon defense by asking follow-up questions, court did not revoke probation until after hearing from defense counsel, and defendant did not proffer what he would have added to defense counsel's presentation.

CHAPTER 11 – POST-CONVICTION LITIGATION

***Jones v. United States*, 124 A.3d 127 (D.C. 2015).**
Trial court did not abuse its discretion in denying motion for new trial under Super. Ct. R. Crim. P. 33 based on defense counsel's failure to investigate and present evidence of complainant's

bias against defendant where trial court was aware of such potential bias, and trial court found that additional testimony would not have affected verdict in bench trial or outcome of motion.

***Bellinger v. United States*, 127 A.3d 505 (D.C. 2015).**
Trial court did not err in summarily denying defendant's motion for new trial under D.C. Code § 23-110 based on alleged *Brady* violations because defendant did not proffer that anyone acting on behalf of the government possessed exculpatory evidence in question; that gun recovered from different defendant used in apparently unrelated murder was same gun used in shooting in which defendant was charged.

Trial court did not abuse its discretion in denying defendant's post-conviction discovery request ostensibly aimed at supporting *Brady* claim under D.C. Code § 23-110 where request was designed not to elicit evidence that the government actually possessed exculpatory information, but to obtain evidence of government's negligence in failing to investigate, because even if proven, negligence would not entitle defendant to relief.

***Bellinger v. United States*, 127 A.3d 505 (D.C. 2015).**
Trial court abused its discretion in summarily ruling, without holding evidentiary hearing, that defendant failed to show deficient performance required for successful motion for new trial under D.C. Code § 23-110 based on trial counsel's alleged ineffectiveness for failure to investigate information that shell casings found at scene of shooting in which defendant charged matched those found at scene of nearby murder six weeks later where defendant provided sworn affidavit that trial counsel aware of such information, but lied to defendant to cover up failure to investigate, court cited defendant's delay in filing motion but did not reference laches provision of § 23-110, court erroneously relied on trial counsel's otherwise capable performance to excuse particular instance of deficient performance (failure to investigate), and record did not support conclusion that failure to investigate was objectively reasonable.

Trial court abused its discretion in summarily ruling, without holding evidentiary hearing, that defendant failed to show prejudice required for successful motion for new trial under D.C. Code § 23-110 based on trial counsel's alleged ineffectiveness for failure to investigate information that shell casings found at scene of shooting in which defendant charged matched those found at scene of nearby murder six weeks later where government alleged that it would have introduced rebuttal evidence about communal use of gun in question if defendant presented third-party perpetrator defense because government proffer failed to identify what, if any, admissible evidence it possessed at time of trial to establish communal use of gun, and defendant's access to gun.

***Haney v. United States*, 120 A.3d 608 (D.C. 2015).**
Trial court erred in concluding that admission of defendant's videotaped statement, despite defendant's unambiguous *Miranda* invocation, did not satisfy prejudice prong of *Strickland*

where trial court relied on personal estimation that admission was not prejudicial, rather than what evidence could reasonably have influenced jury, and prosecutor emphasized damaging words in closing and rebuttal arguments.

***United States v. Bell*, 795 F.3d 88 (D.C. Cir. 2015).**
Substitution of defense counsel four months into trial because of medical issue not presumptively prejudicial for ineffective assistance purposes where substitute counsel missed one-third of trial prior to substitution, court granted eleven day continuance prior to resuming government's case, and thirty-four day continuance prior to beginning of defense case.

***United States v. Cordova*, 806 F.3d 1085 (D.C. Cir. 2015) (per curiam).**
Defendant failed to show prejudice required for successful ineffective assistance of counsel claim based on off-the-record conference on proposed preliminary jury instructions where conference did not involve substantive discussion of content of instructions, but only identification of instructions about which parties disagreed to permit on-the-record discussion in defendants' presence.

***United States v. Gray-Buriss*, 791 F.3d 50 (D.C. Cir. 2015).**
Show-cause order resulting from defense counsel's failure to timely submit required pretrial materials, lack of response to government request to discuss government's proposed submissions, and unsuccessful government attempts to contact defense counsel, did not create conflict between defense counsel's personal interest and client's interests.

***United States v. Newman*, 805 F.3d 1143 (D.C. Cir. 2015).**
Non-citizen defendant failed to demonstrate deficient performance required for successful ineffective assistance of counsel claim premised on defense counsel's failure to research and consider potential immigration consequences when negotiating plea deal before Court's *Padilla* decision.

Trial court committed reversible error in denying defendant's ineffective assistance of counsel claim where claim premised on defense counsel's affirmative misrepresentation of immigration consequences of conviction, and rejected solely because inaccurate advice provided after entry of guilty plea.

***United States v. Udo*, 795 F.3d 24 (D.C. Cir. 2015).**
Trial counsel's incorrect promise that defendant would testify in tax fraud prosecution did not prejudice defendant where government introduced videotape of defendant committing crime, six witnesses testified that they informed defendant that they did not incur expenses defendant listed in tax returns submitted on witnesses' behalf, and defendant did not introduce evidence indicating that he believed that fabricating expenses was permissible.

Trial counsel's acceptance of jury instruction explaining professional and legal duties of tax preparers did not prejudice defendant where instruction also accurately conveyed all elements of offense and burden of proof, and government presented overwhelming evidence of defendant's guilt.

Trial counsel's failure to object to prosecutor's remark that CPA defendant in tax fraud case is "presumed to know" the law, improperly shifting burden of proof to defense, not prejudicial in light of subsequent instructions from court that government had burden of proving all elements of offense beyond a reasonable doubt.

CHAPTER 13 – ANTICIPATING AND USING THE APPELLATE PROCESS

***Saidi v. United States*, 110 A.3d 606 (D.C. 2015).**
Where a party makes a timely request for special findings and, in the course of the proceedings, identifies with sufficient clarity the matters on which he seeks such findings, the trial judge must articulate findings specific to all issues of fact and law materially in dispute between the parties and fairly raised by the evidence and the party's request.

CHAPTER 14 – JUVENILE COURT

***In re Q.B.*, 116 A.3d 450 (D.C. 2015).**
Violation of a pretrial release order not punishable as contempt under D.C. Code §11-944 in juvenile court when release order contains no "free-standing requirement" to comply with such conditions.

***In re Q.B.*, 116 A.3d 450 (D.C. 2015).**
Juvenile Court Rules 12 and 47-I vest in trial court authority to dismiss petition for failing to state a charge before holding fact-finding hearing.

CHAPTER 17 – IMMIGRATION ISSUES FOR CRIMINAL DEFENSE ATTORNEYS

***Bado v. United States*, 120 A.3d 50 (D.C. 2015), *vacated and reh'g en banc granted*, 120 A.3d 1119 (D.C. Nov. 5, 2015).**
Non-citizen charged with misdemeanor that qualifies as "aggravated felony" under federal immigration law, such that conviction would result in deportation, entitled to jury trial.

***Mellouli v. Lynch*, 135 S. Ct. 1980 (2015).**
Conviction of possessing drug paraphernalia under Kansas statute – Kan. Stat. Ann. § 21-5709(b)(2) – that does not require that drugs and paraphernalia used to conceal fall within federal

schedule codified at 21 U.S.C. § 802 not conviction relating to controlled substance within the meaning of INA § 237(a)(2)(B)(i) (8 U.S.C. § 1227(a)(2)(B)(i)).

D. Domestic Violence Offenses
1. Federal Law ……. 17.22

***Contreras v. United States*, 121 A.3d 1271 (D.C. 2015).**Trial court did not err in denying non-citizen defendant jury trial in simple assault prosecution under D.C. Code § 22-404(a)(1) because conviction did not constitute crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E)(1) using categorical analysis for non-divisible statute at issue, and thus did not render defendant removable based on conviction.

V. EFFECTIVE REPRESENTATION OF NON-CITIZEN CLIENTS
C. The Plea Colloquy and Sentencing
2. Make Sure that the Plea Colloquy Complies with the Alien Sentencing Act …….. 17.30

***Zalmeron v. United States*, 125 A.3d 341 (D.C. 2015).**
See, *supra*, Chapter 6.II.B.

CHAPTER 19 – JOINDER AND SEVERANCE

II. SEVERANCE UNDER RULE 14
B. Severance of Defendants
3. Disparate Evidence ……. 19.23

***Jenkins v. United States*, 113 A.3d 535 (D.C. 2015).**
Trial court did not abuse its discretion in denying severance because of overwhelming evidence of defendant's guilt, court's offer to give neutralizing instruction, and because jury's partial verdict demonstrated jury's ability to differentiate evidence against each defendant.

***Rollerson v. United States*, 127 A.3d 1220 (D.C. 2015).**
Trial court did not abuse discretion in denying co-defendant's motion to sever two incidents at issue despite imbalance of charges between defendant and co-defendant because co-defendant's desire to learn who slashed co-defendant's tires led to two charged incidents, meaning that co-defendant did not play *de minimis* role in second incident, despite lack of charges against co-defendant relative to second incident, and trial court properly and repeatedly gave limiting instructions, including instruction that evidence from second incident related only to certain counts.

4. Desire to Call Co-defendant as a Witness ……... 19.24

***Rollerson v. United States*, 127 A.3d 1220 (D.C. 2015).**
Trial court did not abuse discretion in denying co-defendant's motion to sever two incidents at issue despite imbalance of charges between defendant and co-defendant because co-defendant's desire to learn who slashed co-defendant's tires led to two charged incidents, meaning that co-

defendant did not play *de minimis* role in second incident, despite lack of charges against co-defendant relative to second incident, and trial court properly and repeatedly gave limiting instructions, including instruction that evidence from second incident related only to certain counts.

CHAPTER 20 – MOTIONS TO SUPPRESS STATEMENTS

***Little v. United States*, 125 A.3d 1119 (D.C. 2015).**
Trial court erred in denying motion to suppress statements because statements were involuntary under totality of circumstances where officers administered *Miranda* warnings, defendant firmly and consistently denied culpability, officers told defendant he could avoid certain bad consequences by confessing, officers urged defendant to confess to avoid sexual assault in prison, officers repeatedly threatened to pursue charges against defendant for offenses officers admitted they did not suspect defendant of committing, and defendant made statements in question only after officers conditioned access to attorney upon defendant making statements inculpating himself.

***Little v. United States*, 125 A.3d 1119 (D.C. 2015).**
See, supra, Chapter 20.II.A.1.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Trial court did not err in denying motion to suppress on *Miranda* grounds because isolated incidents of routine cooperation – e.g., silent observation during defendant's interrogation, exchange of information between U.S. and Trinidadian law enforcement agencies, joint trip to crime scene, and FBI's provision of forensic assistance to Trinidadian authorities that also advanced U.S. investigative interests – between the Trinidadian police and the FBI do not amount to the closely coordinated investigative effort that would trigger the joint venture doctrine, and Trinidadian police not acting as agents of FBI.

***Broom v. United States*, 118 A.3d 207 (D.C. 2015).**
Trial court erred in admitting defendant's unwarned statements where defendant was handcuffed, officers told defendant that they would arrest both apartment occupants and CFS would remove children if defendant "was not honest," and defendant aware that officers believed that gun was

in apartment, and had been told that defendant knew where gun was, because defendant in custody for purposes of *Miranda*.

***Morton v. United States*, 125 A.3d 683 (D.C. 2015).**
Trial court erred in denying defendant's motion to suppress statements because defendant was in custody for *Miranda* purposes during police questioning where police chased and handcuffed defendant, police told defendant that he was not under arrest before questioning, police did not tell defendant that he could decline to answer police questions, police confronted defendant with evidence sufficient to establish probable cause, police questions took accusatory nature presupposing defendant's guilt, questioning was brief, questioning took place on public street, and police did not brandish weapons.

***Broom v. United States*, 118 A.3d 207 (D.C. 2015).**
Trial court erred in admitting defendant's unwarned statements where defendant was handcuffed, officers told defendant that they would arrest both apartment occupants and CFS would remove children if defendant "was not honest," and defendant was aware that officers believed that gun was in apartment, and had been told that defendant knew where gun was, because defendant in custody for purposes of *Miranda*.

***Morton v. United States*, 125 A.3d 683 (D.C. 2015).**
See, *supra* Chapter 20.III.B.1.a.1.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
No error in denying defendant's motion to suppress statements where court found that defendant initiated conversation with police, police did not interrogate defendant, defendant was clearheaded, and defendant did not challenge trial court's factual findings as clearly erroneous.

***In re S.W.*, 124 A.3d 89 (D.C. 2015).**
Detective's pre-*Miranda* remarks did not prevent respondent from making knowing and intelligent *Miranda* waiver where detective accurately read rights from waiver card, and trial court found that: respondent understood warnings, respondent did not ask follow-up questions concerning warnings, respondent affirmatively answered confirmatory questions regarding each warning, respondent did not appear to have mental health issues, respondent seemed lucid, and respondent answered some questions, while declining to answer others.

Detective's pre-*Miranda* remarks; that detective would only protect respondent from "lions" (other officers) and additional charges if respondent waived rights to silence and counsel; rendered *Miranda* waiver involuntary.

***Trotter v. United States*, 121 A.3d 40 (D.C. 2015).**
Trial court erred in denying motion to suppress statements because police interrogation of defendant in second interrogation after invocation of right to counsel in first interrogation five months earlier violated defendant's Fifth Amendment rights. Defendant properly invoked right to counsel in first interrogation, defendant was continuously held in pretrial custody between interrogations, and police interrogation concerned subjects for which defendant remained in pretrial custody, but harmless in light of "overwhelming" evidence of defendant's guilt.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Trial court did not err in denying motion to suppress on *Miranda* grounds based on interrogation of defendant eighteen months after defendant's invocation of right to counsel where defendant left open possibility of resuming interrogation at time of invocation, defendant left message asking initial interrogator to call defendant at number provided by initial interrogator, defendant was in a foreign custody at time of call, and defendant had not been indicted in United States at time of call.

***In re S.W.*, 124 A.3d 89 (D.C. 2015).**
See, *supra*, Chapter 20.III.B.3.

CHAPTER 22 – MOTIONS TO SUPPRESS ON FOURTH AMENDMENT GROUNDS

***Gordon v. United States*, 120 A.3d 73 (D.C. 2015).**
Trial court erred in denying motion to suppress because defendant was seized without reasonable articulable suspicion where police questioned defendant about his identity, defendant submitted to officer's show of authority consisting of aforementioned questioning and database searches, and giving a false name in high crime area did not provide grounds for detention.

***United States v. Gross*, 784 F.3d 784 (D.C. Cir. 2015).**
Defendant not seized for Fourth Amendment purposes where four officers sitting together in car turned in same direction as defendant walked on other side of street, officers slowed car for a few seconds across one lane of traffic, no indication that defendant saw officers' weapons, officer in car asked defendant standing on sidewalk whether defendant was carrying gun, and whether defendant would expose waistband.

***Towles v. United States*, 115 A.3d 1222 (D.C. 2015).**
Trial court did not err in denying motion to suppress because defendant was not seized within meaning of Fourth Amendment where court credited officers' testimony that officer asked defendant in normal tone of voice whether defendant had gun on right side, defendant showed officer cell phone in response, officer saw something heavy in appellant's pocket that officer did not believe was cell phone, defendant appeared to shield one side of body as officer approached him, officer asked defendant for consent to frisk, defendant consented, and defendant's subsequent inculpatory statements provided officers with probable cause to arrest and search defendant.

***Rodriguez v. United States*, 135 S. Ct. 1609 (2015).**
Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates Fourth Amendment.

***Rodriguez v. United States*, 135 S. Ct. 1609 (2015).**
See, *supra*, Chapter 22.II.C.2.

***Gordon v. United States*, 120 A.3d 73 (D.C. 2015).**
Trial court erred in denying motion to suppress because defendant was seized without reasonable articulable suspicion where police questioned defendant about his identity, defendant submitted to officer's show of authority consisting of aforementioned questioning and database searches, and giving a false name in high crime area did not provide grounds for detention.

***Heien v. North Carolina*, 135 S. Ct. 530 (2014).**
Objectively reasonable mistake of law can give rise to reasonable suspicion necessary to justify Fourth Amendment seizure.

***Dukore v. District of Columbia*, 799 F.3d 1137 (D.C. Cir. 2015).**
Officers had probable cause to arrest defendants for violating temporary abode regulation – D.C. Munic. Regs. tit. 24, § 121.1 – where defendants set up tent in which defendants then took shelter, signs identified tent as part of "Occupy D.C. movement," purpose of which was to physically occupy protest sites, tent located in front of Merrill Lynch building, and defendants reassembled tent after two warnings by officers to take down tent, and three warnings by officers that defendants could not lawfully remain in tent.

a. Report of crime ……..…. 22.29

***Morgan v. United States*, 121 A.3d 1235 (D.C. 2015).**
Trial court did not err in denying motion to suppress because 911 call and resulting police observations provided police with reasonable, articulable suspicion needed to conduct *Terry* stop where: caller described seeing suspect on red bicycle exchange small objects with another person; caller said that during exchange suspect reached into back of pants, pulled something out, and put object back in pants; caller provided contact information, and personally spoke to officers; and, officers saw man matching caller's description of suspect in block in question 30 seconds later on red bicycle.

b. Proximity to crime scene ……...……. 22.30

***Morgan v. United States*, 121 A.3d 1235 (D.C. 2015).**
See, *supra*, Chapter 22.II.D.2.a.

d. Presence in a high crime area …….. 22.31

***Gordon v. United States*, 120 A.3d 73 (D.C. 2015).**
See, *supra*, Chapter 22.II.D.1.a.

g. Response to questioning ……. 22.34

***Gordon v. United States*, 120 A.3d 73 (D.C. 2015).**
See, *supra*, Chapter 22.II.D.1.a.

E. The Source of the Information
2. Informant Tip
b. Veracity…….22.46

***Jackson v. United States*, 109 A.3d 1105 (D.C. 2015).**
Anonymous tip bore sufficient indicia of reliability to form basis of reasonable suspicion under *Navarette v. California*, 134 S. Ct. 1683, 1687 (U.S. 2014) where tip was made within minutes of seizure, caller used 911 system, and description was particularized to defendant, particularly given complete absence of other people around defendant.

***Morgan v. United States*, 121 A.3d 1235 (D.C. 2015).**
See, *supra*, Chapter 22.II.D.2.a.

III. CHALLENGING THE USE OF EVIDENCE SEIZED
A. The Threshold Issue: A Legitimate Expectation of Privacy
1. The Subjective Expectation of Privacy ……... 22.54

***United States v. Miller*, 799 F.3d 1097 (D.C. Cir. 2015).**
Trial court did not err in denying motion to suppress based on seizure of boxes containing incriminating information from vehicle that defendant drove on day in question where defendant

raised no claim of interference with possessory interests, and government obtained search warrant not challenged by defendant before searching boxes.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Assuming police seized defendant's clothes at public hospital, court did not err in denying suppression motion where defendant voluntarily sought treatment for gunshot wound, did not request that staff secure clothing in a locker, and officers responding to report of shooting victim had probable cause to believe that clothing in plain view contained evidence of a crime.

***United States v. Weaver*, 808 F.3d 26 (D.C. Cir. 2015).**
Exclusionary rule applies to evidence obtained as a result of a knock-and-announce violation committed when law enforcement officers execute arrest warrant.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Extraction of DNA from defendant's clothing after arrest, seized under plain view exception prior to arrest, did not violate defendant's Fourth Amendment rights.

***Akinmboni v. United States*, 126 A.3d 694 (D.C. 2015).**
Trial court erred in denying defendant's motion to suppress because warrantless search of defendant's anal cavity in cellblock day after arrest – requiring defendant to manually expose anal cavity and remove items in question – was not reasonable within meaning of Fourth Amendment where no medical personnel involved.

***Davis v. United States*, 110 A.3d 590 (D.C. 2015).**
Trial court did not err in denying suppression motion where officer entered car vacated by allegedly incapacitated defendant in order to allow free flow of traffic, and found narcotics in plain view on driver's side floorboard.

***Hawkins v. United States*, 113 A.3d 216 (D.C. 2015).**
Officers' second entry into vehicle after smelling marijuana following entry to turn off engine did not fall within exigent circumstances exception to warrant requirement because turning off vehicle is not analogous to hot pursuit, preventing destruction of evidence, or preventing immediate bodily injury, and officers lacked probable cause. Entry nonetheless did not violate Fourth Amendment, given community caretaking doctrine, because officers did not enter for

investigatory purposes, entry was necessary to safeguard car from theft in light of owner's absence, and the entry did not infringe on defendant's lessened privacy interest in the car.

***Blair v. United States*, 114 A.3d 960 (D.C. 2015).**
Assuming violation of Fourth Amendment rights, the court did not err by declining to apply the exclusionary rule to a DNA sample taken from the defendant by the Bureau of Prisons (BOP), nor second sample taken from MPD based solely on information derived from first sample, where no evidence of bad faith existed, prison staff took sample, several years passed between collection and trial, and later modification of DC law to include offense in question obviated need for deterrent effect.

CHAPTER 23 – VOIR DIRE

***Copeland v. United States*, 111 A.3d 627 (D.C. 2015).**
Defendant failed to prove prejudice under *Strickland* where defendant did not claim that he would have exercised his right to be present at bench during *voir dire*, nor that attorney should have conducted *voir dire* differently or challenged other jurors. Court cannot presume prejudice from conducting individual *voir dire* at the bench within view, but outside hearing of the public because doing so does not constitute structural error.

***Johnson v. United States*, 116 A.3d 1246 (D.C. 2015).**
Trial court did not abuse discretion in dismissing juror during trial, nor in refusing to postpone proceedings to allow further inquiry, because juror's assertion of logistical difficulty in securing childcare, taken together with previously asserted financial hardship in securing childcare, court's repeated opportunities to observe juror's demeanor, and juror's husband's appearance to corroborate juror's difficulties provided court with firm factual foundation needed to conclude that juror could not continue to serve.

***Brown v. United States*, 128 A.3d 1007 (D.C. 2015).**
Trial court did not abuse discretion in denying defendant's *Batson* challenge to government's use of six of seven peremptory strikes against black venire members because defendant did not meet burden of showing that race-neutral reasons asserted by government pretextual where defendant made only conclusory assertion that most of strikes were against black venire members, and venire member stricken on basis of criminal conviction was sufficiently differently situated from relatives of persons convicted of crimes and victims of crime.

***Johnson v. United States*, 107 A.3d 1107 (D.C. 2015).**
Being soft spoken or non-assertive are both race-neutral explanations for a peremptory strike.

Trial court made finding on third prong of *Batson* analysis by articulating test for third prong and immediately ruling that defense failed to demonstrate legitimate *Batson* challenge.

Trial court's finding that race-neutral explanations were credible not clearly erroneous where court observed jurors, and made finding based on observations, despite lack of detailed factual findings.

CHAPTER 25 – THE JENCKS ACT

***Fadul v. District of Columbia*, 106 A.3d 1093 (D.C. 2015).**
No abuse of discretion for failure to impose sanctions for failure to produce radio run where no evidence of negligence or bad faith by government, recording did not likely contain material discussion of facts of case, and prejudice to defendant was unlikely.

CHAPTER 26 - OBJECTIONS, CROSS-EXAMINATION, AND IMPEACHMENT

***Johnson v. United States*, 116 A.3d 1246 (D.C. 2015).**
Trial court did not abuse its discretion in admitting co-defendant's opinion testimony about intended meaning of defendant's statement – "all right" – where the co-defendant heard defendant make the statement, the co-defendant knew the defendant "like a brother", and co-defendant testified to factual basis supporting co-defendant's interpretation.

***Dawkins v. United States*, 108 A.3d 1241 (D.C. 2015).**
Trial court did not abuse its discretion in relying on counsel's proffer as to past incident, rather than allowing cross-examination of involved officer on the same subject, where proffered facts, assumed as true, would not suggest bias by officer against defendant, nor change court's ruling on suppression motion.

***Moore v. United States*, 114 A.3d 646 (D.C. 2015).**
The trial court abused its discretion in precluding defendant from cross-examining witness about misrepresentations in tax return and resulting confrontation with prosecutor in instant case about the same in order to impeach witness's veracity because defense made adequate proffer, and misrepresentations bore on witness's credibility for truthfulness concerning subject relevant to trial.

b. Bias ……. 26.20

***Coates v. United States*, 113 A.3d 564 (D.C. 2015).**
Trial court violated defendant's Confrontation Clause rights by precluding the defendant from impeaching government informant's testimony with extrinsic evidence of bias – evidence that informant corruptly fabricated murder confession by innocent person in another case to curry favor with government.

d. Prior convictions ……26.30

***Johnson v. United States*, 118 A.3d 199 (D.C. 2015).**
Trial court's refusal to permit defendant to impeach complainant with prior juvenile adjudications did not violate defendant's Sixth Amendment right to confrontation where defense counsel impeached complainant's general credibility with prior drug conviction, and used complainant's pending gun charge as evidence of bias, complainant was not on supervision because of convictions at time of trial, and defense counsel failed to proffer how juvenile adjudication's showed complainant's bias.

Trial court did not abuse discretion in refusing to permit defendant to impeach complainant with prior juvenile adjudications where defendant had ample opportunity to impeach complainant's general credibility with prior drug conviction, any impeachment from juvenile adjudications would have been cumulative, and complainant's testimony was not central to government's case.

III. IMPEACHMENT – USE OF PRIOR STATEMENTS
A. Prior Inconsistent Statements: Impeachment of Other Party's Witness
1. General Considerations ……..…… 26.35

***Brooks v. United States*, 115 A.3d 1217 (D.C. 2015).**
Not plain error to permit government to impeach defense witness with prior inconsistent statements made to defense counsel and disclosed in pretrial *Winfield* proffer, nor to permit government to complete impeachment of same witness through stipulation that witness made particular statements to defense team where: witness testimony on direct examination differed from that on cross-examination, jury learned that witness gave similarly exculpatory testimony on behalf of defendant from same neighborhood in unrelated murder trial three weeks before instant case, three witnesses very familiar with defendant's appearance inculpated defendant, and prosecutor did not mention impeachment in rebuttal closing.

***McRoy v. United States*, 106 A.3d 1051 (D.C. 2015).**
Trial court erred in admitting complainant's videotaped statement as prior inconsistent statement because government failed to lay sufficient foundation – did not push complainant to answer, attempt to lead complainant through testimony or request that court order complainant to testify.

CHAPTER 27 – OTHER CRIMES EVIDENCE

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Danger of unfair prejudice resulting from admission of other crimes evidence did not substantially outweigh probative value under Fed. R. 403 in hostage-taking trial where admitted to show background of conspiracy, motive, intent, knowledge, preparation, and plan; where court excluded evidence of fatal hostage taking previously committed by defendants; where court did not permit testimony regarding all uncharged offenses identified by government; where court limited testimony regarding admissible uncharged offenses; where court gave timely limiting instructions; and, where evidence was not more emotionally charged than that relating to charged offense.

***McRoy v. United States*, 106 A.3d 1051 (D.C. 2015).**
Trial court did not err in refusing to grant mistrial because of witness'reference to defendant's incarceration where court issued curative instruction, and reference was brief, non-specific, and not intentionally elicited by the government.

***Williams v. United States*, 106 A.3d 1063 (D.C. 2015).**
Although court erred in exercise of discretion by misapprehending risk of prejudice when admitting evidence that defendant possessed what appeared to be a gun one year before crime, no abuse of discretion in light of trial court's limiting instruction, and not guilty verdict on armed offenses.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
No abuse of discretion in concluding that evidence of particular defendants' involvement in uncharged hostage takings was relevant to how those defendants began working together as kidnappers, and to motive and intent to kidnap wealthy civilians to extort ransom money, where

prior relationship helped explain how co-defendants knew they could rely on one another during charged offense, and where past conduct helped to dispel doubt that defendants knowingly and intentionally joined together to commit charged offense.

CHAPTER 28 – WITNESS ISSUES

***Hayes v. United States*, 109 A.3d 1110 (D.C. 2015).**
Trial court did not abuse discretion in applying principles of *Carter* to government's refusal to grant immunity to witness because *Carter* does not require the government to show threat of "blatant perjury", but only a reasonable basis for refusal, including fear of potential perjury, justified by clear indications of potential perjury and consideration of potential prosecution.

CHAPTER 29 – EXPERT TESTIMONY

***Miller v. United States*, 115 A.3d 564 (D.C. 2015).**
Trial court did not abuse discretion in prohibiting defense expert's testimony as a sanction for failure to comply with Rule 16 disclosure requirements where defendant proffered no good reason for failure to specifically predict expert's testimony, case had already experience significant delays (including one continuance charged to defense), evidence against defendant was strong, and testimony would likely not have significantly aided defendant's case.

***Young v. United States*, 111 A.3d 13 (D.C. 2015).**
Trial court did not abuse discretion in permitting lay witness to identify defendant from surveillance video where witness had extensive but progressively diminishing contact with defendant in two years prior to incident on video, video was of poor quality, and defendant's face was obscured in the video.

***Corbin v. United States*, 120 A.3d 588 (D.C. 2015).**
Trial court abused its discretion by allowing government to mention defendant's right to independently perform DNA testing of evidence pursuant to *Teoume-Lessane* where defense attacked competency and reliability, but not bias, of government DNA expert, but harmless where trial court issued curative instruction articulating government's burden of proof, and "ample" circumstantial evidence connected defendant to alleged offense.

CHAPTER 30 – REAL AND DEMONSTRATIVE EVIDENCE

***Johnson v. United States*, 118 A.3d 199 (D.C. 2015).**
Trial court did not abuse discretion in permitting government's DNA expert to use a demonstrative slide show when testifying where defense counsel cross-examined expert on topics not discussed in slide show, and court gave demonstrative evidence instruction before slide show.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Trial court did not abuse discretion in allowing government to put ski mask on witness and have witness stand next to photo of defendant in ski mask in order to allow jury to determine whether witness resembled person described by another witness.

CHAPTER 31 – HEARSAY

***Mayhand v. United States*, 127 A.3d 1198 (D.C. 2015).**
Trial court abused discretion in admitting accusatory portions of 911 call as excited utterances where complainant's conversation with 911 operator was reasonable and balanced, complainant had ability to return to conversational tone after yelling at defendant, trial court engaged in unsubstantiated speculation that complainant masked nervous excitement, trial court failed to make finding of contemporaneity, complainant did not express need to seek shelter, and complainant called police to document defendant's behavior and identify him to police.

***Foreman v. United States*, 114 A.3d 631 (D.C. 2015).**
Court did not err in admitting prior statement of identification as substantive evidence where witness through whom identification was made testified before grand jury that declarant had

personal knowledge of event described in statement, supporting a finding by preponderance of the evidence that the declarant was an eyewitness.

***Jenkins v. United States*, 113 A.3d 535 (D.C. 2015).**
Court did not err in admitting recorded conversations between unindicted co-conspirators regarding murder at issue and other conflicts with gang rivaling that to which defendants belonged because co-conspirator doctrine does not require that declarants have personal knowledge of activities described in statements furthering conspiracy by keeping co-conspirators informed of ongoing conspiracy's activities.

***Ohio v. Clark*, 135 S. Ct. 2173 (2015).**
Three-year-old child's statements in response to questioning by teachers about visible injuries potentially suggesting child abuse not testimonial for purposes of Confrontation Clause where questions primarily aimed at protecting child from further abuse, teachers did not know who had abused child, teachers did not know whether other children were at risk, teachers did not tell child that statements would be used to punish abuser, and child did not tell teachers that statements should be used by police.

***Andrade v. United States*, 106 A.3d 386 (D.C. 2015).**
Statements by simple assault complainant in response to officers' open-ended questions testimonial where no evidence that complainant was injured, no evidence that weapon involved in assault, and both complainant and officers understood that suspect had left premises at time of the statements.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
No plain error in allowing expert witness to testify that he did not personally conduct autopsy but reviewed report where defendant did not object to expert's use of report, did not raise hearsay or confrontation objections, elicited testimony about report from expert on cross-examination, and relied on such testimony in closing argument.

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *reh'g denied* No. 11-3054 (D.C. Cir. Nov. 25, 2015), cert. denied, --S.Ct.--, 2016 WL 7663399, No. 15-7144.**
Use of non-testifying co-conspirator's statements, with names and identifying references to specific defendants eliminated without signaling that changes made, but some statements' descriptions of people doing things to advance charged offenses intact, did not violate defendants' Confrontation Clause rights under *Bruton* where government made full redactions

where doing so possible without unacceptable confusion, court gave limiting instructions, and neutral pronouns used in manner similar to that used by defendants seeking not to inculpate co-defendants.

Use of non-testifying co-conspirator's statements did not violate defendants' Confrontation Clause rights under *Gray* where 1) names and identifying references to specific defendants were eliminated without signaling that changes were made, 2) some statements' descriptions of people doing things to advance charged offenses intact, 3) number of people involved in offenses – twelve – made it unlikely that jury would link neutral pronouns to specific defendant, 4) neutral pronouns used made statements appear natural and matched defendant's own speech, 5) statements scrubbed of identifier's based on physical characteristics or role in offense, 6) statements did not refer to specific numbers of persons , and 7) documents not admitted into evidence.

Cooperating co-conspirator's use of defendant's name while testifying about contents of non-testifying co-conspirator's out-of-court statement violated defendant's Confrontation Clause rights, but harmless where only improper reference during ten week trial, reference only placed defendant at scene of charged offense and did not describe ensuing conduct, and overwhelming independent evidence of defendant's guilt.

CHAPTER 32 – THE DEFENSE CASE

***United States v. Cordova*, 806 F.3d 1085 (D.C. Cir. 2015) (per curiam).**
Error, if any, in court's entry of protective order preventing defendants from bringing any papers, including Jencks Act materials, from trial to jail during nightly recess, harmless beyond a reasonable doubt where court afforded defendants four to eight day advance receipt of Jencks materials, defense counsel had unrestricted access to materials, order did not limit defense counsel's ability to discuss subject matter of materials with defendants, defense counsel did not accept court's invitation to ask for continuance, and defense failed to identify single instance in which earlier access would have changed cross-examination or presentation of defense.

***United States v. Cordova*, 806 F.3d 1085 (D.C. Cir. 2015) (per curiam).**
No plain error in holding preliminary jury instruction conference outside defendants' presence where defendants failed to identify objections that defendants would have raised if present, defendants failed to demonstrate that presence would have contributed to discussion, conference sought only to identify agreement or disagreement on proposed instructions.

***Miller v. United States*, 115 A.3d 564 (D.C. 2015).**
Decision to exclude expert testimony as sanction for failure to comply with Rule 16 did not infringe on defendant's Sixth Amendment right to present a defense where unclear whether expert testimony would have been of meaningful significance, minor sexual assault complainant had already made repeated trips to court without testifying, and defense all but conceded in closing that forensic evidence would not have been able to verify whether alleged assault took place two years before being reported.

CHAPTER 33 – COMMON DEFENSES

***Andrews v. United States*, 125 A.3d 316 (D.C. 2015).**
Evidence sufficient to warrant forfeiture of self-defense by provocation instruction where decedent threatened defendant with knife three days before offense, decedent warned defendant not to come to decedent's home before offense, and decedent put defendant on notice that defendant would have to pass through decedent in order to enter home in question, even if defendant had legitimate reason to go to residence.

***Travers v. United States*, 124 A.3d 634 (D.C. 2015).**
Trial court abused its discretion by excluding as irrelevant in assault case evidence that complainant previously instigated violence against family members where defendant, brother of complainant, alleged self-defense, defendant testified that complainant directed second complainant to "get" defendant, defendant was aware of second complainant's military training and possession of knife, and second complainant threatened to "deal with" defendant earlier on day of incident.

CHAPTER 35 – PARTICULAR TYPES OF CASES

***Washington v. United States*, 111 A.3d 640 (D.C. 2015).**
The Marijuana Possession Decriminalization Amendment Act of 2014 does not apply retroactively to offenses committed before July 17, 2014.

CHAPTER 36 – MOTION FOR JUDGMENT OF ACQUITTAL

***Terry, et.al. v. United States*, 114 A.3d 608 (D.C. 2015).**
Evidence sufficient to prove *mens rea* required for AAWA under aiding and abetting theory where defendant sat in stolen van in vicinity of, and at time of shooting, witnesses testified to seeing defendant and co-defendant together on the morning of the shooting, defendant led officers on high-speed chase rather than pulling over, and defendant attempted to dispose of ski mask and hat when eventually stopped by officers.

***United States v. Bostick*, 791 F.3d 127 (D.C. Cir. 2015).**
Evidence sufficient to show single drug conspiracy where overwhelming evidence that defendants distributed drugs showed that defendants shared organizational goal of selling drugs, overlapping core participants on both ends of supply chain, and evidence showed interdependence among mid-level distributors, and among mid-level distributors and head of drug organization.

***Brown v. United States*, 128 A.3d 1007 (D.C. 2015).**
Evidence insufficient to satisfy possession requirement of RSP under D.C. Code § 22-3232(a) where stolen phone found in store in which defendant worked, evidence did not establish how phone came to be in store, and evidence that items in store controlled by multiple employees.

***In re D.P.*, 122 A.3d 903 (D.C. 2015).**
Evidence insufficient to support finding of "manifest extreme indifference to human life" required for conviction of aggravated assault under D.C. Code § 22-404.01 where respondents and friends involved in fight did not have weapons, assault lasted fourteen (14) seconds, assault took place on crowded bus where others could intervene, and respondents stopped assaulting complainant when complainant stopped fighting back.

***Johnson v. United States*, 118 A.3d 199 (D.C. 2015).**
Trial court did not plainly err in instructing jury that aggravated assault requires intent to cause serious bodily injury, knowledge that serious bodily injury would result from defendant's conduct, or awareness that conduct created an extreme risk of serious bodily injury where evidence sufficient to support violation by knowing or purposeful effort to cause serious bodily injury and defendant argued that he was not the shooter.

***Terry, et.al., v. United States*, 114 A.3d 608 (D.C. 2015).**
Evidence insufficient to show serious bodily injury required for AAWA where complainant was shot in the leg, testified to degree of pain as 6 or 7 on scale of 1 to 10, hopped on one leg to a nearby median, did not undergo surgery, was discharged from hospital the same night, did not take pain medication, and used crutches and a cast for a month after the shooting.

Evidence insufficient to show serious bodily injury required for AAWA where complainant was shot twice in the left forearm, shot twice below the right shoulder blade, doctor testified that complainant was reasonably stable upon arrival at hospital, was discharged from hospital day after shooting, arm was moving normally, and no evidence was introduced as to complainant's level of pain, that defendant could not walk because of pain, nor that complainant took or was prescribed pain medication.

***Walker v. United States*, 116 A.3d 434 (D.C. 2015).**
Evidence sufficient to support CDW conviction under *Pinkerton* conspiracy liability theory where: defendants arrived at scene together, defendants worked together to restrain, assault, and attempt to rob complainants; reasonably foreseeable that defendant would possess knife in furtherance of conspiracy; and, despite acquittal on actual conspiracy charge because CDW charge viewed as if separate indictment.

***Hartley v. United States*, 117 A.3d 1035 (D.C. 2015).**
Evidence insufficient to satisfy while armed enhancement – D.C. Code § 22-4502(a) – where defendant place hand in pocket, pointed his hand at the complainant while verbally threatening to shoot the complainant, complainant testified to not believing that defendant actually had a gun, and police did not find gun on or near defendant despite immediate apprehension.

***Blair v. United States*, 114 A.3d 960 (D.C. 2015).**
Evidence sufficient to show that defendant's penis penetrated complainant's vulva within meaning of D.C. Code § 22-3001(8)(A) where complainant testified to feeling defendant's penis "pushing into" her vagina, and doctor found significant amount of foreign debris in complainant's vulva.

***Warner v. United States*, 124 A.3d 79 (D.C. 2015).**
Evidence sufficient to support attempted second-degree theft conviction where defendant implicitly promised to lease premises in question to complainant for period of six months if arrangement proved mutually satisfactory, complainant would not have executed lease without

such promise, and defendant offered to lease apartment to third party after receiving complainant's security deposit (before six month period began).

***Brown v. United States*, 128 A.3d 1007 (D.C. 2015).**
Evidence sufficient to support RSP conviction under D.C. Code § 22-3232(a) where stolen phone found in electronics repair store on day of theft, defendant opened door of repair store when officers arrived, defendant retrieved phone, defendant admitted that defendant knew that phone was stolen, defendant told officers that defendant knew who brought phone to store, and defendant offered to help officers catch person from whom defendant received phone if officers did not arrest defendant.

Evidence insufficient to satisfy possession requirement of RSP under D.C. Code § 22-3232(a) where stolen phone found in store in which defendant worked, evidence did not establish how phone came to be in store, and evidence that items in store controlled by multiple employees.

***Harris v. United States*, 125 A.3d 704 (D.C. 2015).**
Evidence insufficient to establish malice necessary for malicious destruction of property conviction under D.C. Code § 22-303 based on damage to door caused by defendant where trial court observed that amount of force used equally consistent with someone trying to enter home or damage door, damage to door near door knob, defendant repeatedly showed desire to stay in own home by hiding in basement, damage to door not visible to someone outside the home, and defendant testified that he had no knowledge of damage to door until arrest.

***Contreras v. United States*, 121 A.3d 1271 (D.C. 2015).**
Trial court not "plainly wrong" in rejecting parental discipline defense where trial court did not incorrectly state that there was *no* evidence to support parental discipline defense, trial court did not erroneously treat parental anger as inconsistent with parental discipline defense, and trial court gave specific reasons for explicitly discrediting defendant's claim of disciplinary purpose.

***Walker v. United States*, 116 A.3d 434 (D.C. 2015).**
Evidence sufficient to support kidnapping conviction under D.C. Code § 22-2001 where defendants forcibly moved complainant into bedroom, bound both complainant's wrists, and detained complainant's for eight to ten minutes because kidnapping does not require proof that detention was prolonged or for an appreciable length of time, and not incidental to another offense.

***Hawkins v. United States*, 119 A.3d 687 (D.C. 2015).**
Evidence insufficient to support conviction for obstruction of justice under D.C. Code § 22-722(a)(6) where defendant told first government witness, romantically involved with defendant, that second government witness should "be dealt with" or "gotten out of the way" where no evidence that defendant intended to direct first witness to take action against second witness, and no evidence that defendant intended to frighten first witness through same statements.

Evidence insufficient to support conviction for obstruction of justice under D.C. Code § 22-722(a)(3)(B) where defendant asked witness to lie so that defendant could evade law enforcement, witness returned some of defendant's calls, no evidence of how many times defendant asked witness to lie, and witness's fear of being labeled a snitch not attributable to defendant.

Defendant who obstructs justice by instructing a person to lie in an official proceeding violates both (A) and (B) of D.C. Code § 22-722(a)(2), by (A) "influencing" the person's truthful testimony, and (B) "causing or inducing the person to withhold truthful testimony."

***Mayhand v. United States*, 127 A.3d 1198 (D.C. 2015).**
Evidence sufficient to support conviction for obstruction of justice (when considering improperly admitted 911 call) under D.C. Code § 22-722(a)(4) where complainant told 911 operator that defendant threatened to harm complainant, and officer testified that defendant called complainant a snitch because obstruction does not require nexus between threats and intent to prevent witness from testifying.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Evidence sufficient to support conviction for obstruction of justice where defendant falsely testified before grand jury despite uncontroverted evidence to the contrary and prosecutor repeatedly warned defendant of consequences of false testimony.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Evidence sufficient to support conviction for second-degree murder where defendant described taking shooting victim to hospital, burned getaway car found near defendant's residence, and cell phone records suggested defendant's presence with identified co-defendant at time of murders.

***Washington v. United States*, 111 A.3d 16 (D.C. 2015).**
Trial court did not abuse its discretion in giving concurrent intent instruction regarding specific intent required for AWIKWA, nor in clarifying continuing jury confusion regarding instruction where court instructed jury that if government had proven that defendant fired multiple shots at complainant with the intent to kill him, and created zone of danger in which complaining witness was located, jury could infer defendant's specific intent to kill complaining witness, and defendant fired as many as ten shots at four people standing in close proximity to one another.

***Blair v. United States*, 114 A.3d 960 (D.C. 2015).**
Evidence sufficient to satisfy significant bodily injury element of felony assault statute – D.C. Code § 22-404(a)(2) – where doctor ordered diagnostic imaging to detect possible injury to particularly sensitive parts of body; head and neck; and were needed to rule out internal injuries, complainant's head was repeatedly banged against the ground, and complainant had abrasions and bruises over much of her body.

***In re D.P.*, 122 A.3d 903 (D.C. 2015).**
Evidence insufficient to support finding of significant bodily injury required for conviction of felony assault under D.C. Code § 22-404(a)(2) where assault left complainant with bruised face, complainant lost consciousness for less than one minute, complainant experienced minor headaches, emergency medical personnel examined complainant and sent her home without further evaluation or care, complainant did not seek or require further medical treatment, and complainant did not self-administer over-the-counter medication.

***Rollerson v. United States*, 127 A.3d 1220 (D.C. 2015).**
Evidence sufficient to establish significant bodily injury required for conviction of felony assault under D.C. Code § 22-404(a)(2) where complainant suffered injuries during "violent group attack," during which complainant was pushed to ground, stomped on, punched in face, and hit in the head with a log, complainant bled because of resulting gashes to face, complainant received nine stitches in hospital, and government introduced into evidence photographs of complainant's injuries, and complainant's medical records.

***Saidi v. United States*, 110 A.3d 606 (D.C. 2015).**
Evidence sufficient to support conviction for simple assault where occupant of residence invited complainant into residence, complainant's continued presence justified by private necessity of protecting occupants from harm, defendant expressed anger toward complainant, complainant did not provoke or use physical force against defendant, and defendant punched complainant in the chest.

***Teneyeck v. United States*, 112 A.3d 906 (D.C. 2015).**
Evidence insufficient to satisfy significant bodily injury element of felony assault statute – D.C. Code § 22-404(a)(2) – where complainant suffered cuts on hands from glass broken by defendant, complainant went to hospital but was not admitted on inpatient basis, doctors made one incision to remove piece of glass from complainant's hand, complainant received no stitches, and complainant took pain medication for two days because hospitalization requires more than admission for outpatient care, and no evidence that complainant could not have treated injuries himself or that failing to treat injuries would have caused long-term damage or severe pain.

***Williams v. United States*, 113 A.3d 554 (D.C. 2015).**
Evidence that defendants stood three to four feet away from victim in an arc, with two saying "what, what, what", insufficient to show that defendants took victim's wallet by violence or fear within meaning of robbery statute.

***Gayden v. United States*, 107 A.3d 1101 (D.C. 2014).**
Evidence insufficient to support conviction for assault on a police officer under theory of resisting where defendant wiggled a little bit and pulled away after officers handcuffed defendant without incident.

Evidence insufficient to support conviction for assault on a police officer under theory of intimidation where defendant wiggled and yelled to crowd because crowd not incited to try to free defendant from custody, and no reasonable officer would have feared crowd or been intimated by possibility of attack with five additional officers present.

***Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015).**
Requiring basic registration of long guns – D.C. Code § 7-2502.01(a) - does not impinge upon Second Amendment right to bear arms.

Requirement under D.C. Code § 7-2502.04 that persons wishing to register firearm appear in person for photographing and fingerprinting constitutional.

Requirement that persons wishing to register firearm physically bring firearm to MPD – D.C. Code § 7-2502.04(c) – unconstitutional.

Requirement of D.C. Code § 7-2502.07a – that persons re-register firearm every three years – unconstitutional.

Registration fees required under D.C. Code § 7-2502.05 constitutional.

Requirement of D.C. Code § 7-2502.03(a)(13) that prospective firearm registrants complete one-hour firearms safety training course constitutional.

Requirement of D.C. Code § 7-2502.03(a)(10) that prospective firearm registrants pass test of knowledge about local gun laws unconstitutional.

D.C. Code § 7-2502.03(e)'s prohibition on registering more than one pistol during any thirty day period unconstitutional.

***United States v. Bostick*, 791 F.3d 127 (D.C. Cir. 2015).**
Multiple convictions for PFCV (D.C. Code § 22-4504(b)) merge where predicated on uninterrupted gun possession during multiple killings by same defendant.

***Fadul v. District of Columbia*, 106 A.3d 1093 (D.C. 2015).**
Evidence sufficient to show "operation" or "physical control" over vehicle within the meaning of D.C. Code § 50-2206.11 (DUI) where defendant slept in driver's seat of parked car with engine idling.

***Winston v. United States*, 106 A.3d 1087 (D.C. 2015).**
Where government seeks to prove unlawful entry premised on violation of DCHA barring order, it must prove that barring order was issued for reason described in DCHA regulations, and must offer evidence that DCHA official had objectively reasonable basis for believing that criteria identified in relevant regulation were satisfied.

***Aboye v. United States*, 121 A.3d 1245 (D.C. 2015).**
Evidence sufficient to support threats conviction under D.C. Code § 22-407 where no evidence that dog with which defendant threatened complainants was dangerous, defendant loudly yelled homophobic slurs at complainants, defendant repeatedly threatened to kill complainants, defendant had history of making antagonistic remarks toward complainants, and defendant told complainants that defendant's dog was hostile to homosexuals.

***Andrews v. United States*, 125 A.3d 316 (D.C. 2015).**
Evidence sufficient to support threats conviction under D.C. Code § 22-1810 where defendant made ambiguous, angry statements by text message, defendant stalked complainant days before statements in question, defendant had heated confrontations with complainant and complainant's brother, and statements made complainant scared and anxious.

***Elonis v. United States*, 134 S. Ct. 2819 (2015).**
Instruction requiring only negligent communication of threat for conviction under federal threats statute,18 U.S.C. § 875(c), erroneous because reading into statute *mens rea* necessary to separate wrongful conduct from otherwise innocent conduct requires that defendant have knowledge that others will view communication as a threat or transmit communication for purpose of issuing a threat.

***Gayden v. United States*, 107 A.3d 1101 (D.C. 2014).**
Defendant's statement that officer should call for back up because officer could get "hit" in manner similar to previous incident in which defendant's brother pointed two guns at officer's head sufficient to support attempted threats conviction because words intentionally and explicitly

invoked previous violence, suggested violence against officer, and would reasonably convey fear of bodily harm to ordinary hearer.

***Jones v. United States*, 124 A.3d 127 (D.C. 2015).**
Attempted threats is a valid offense in the District.

Evidence sufficient to support attempted threats conviction where trial court credited testimony that defendant told complainant that defendant would "smack the shit out of [complainant]," even if made in normal tone of voice, defendant and complainant had preexisting emotionally charged relationship, and defendant later yelled and gesticulated at complainant.

***Sheffield v. United States*, 111 A.3d 611 (D.C. 2015).**
Evidence sufficient to support conviction for perjury where defendant stated without qualification that co-defendant was with her during entire time period despite awareness that defendant was actually at hospital without defendant prior to end of time period in question.

***Corbin v. United States*, 120 A.3d 588 (D.C. 2015).**
D.C. Code § 22-2803(a)(1) does not proscribe unarmed attempted carjacking – where the defendant does not take immediate actual control of another person's motor vehicle – conduct which can only be charged under D.C. Code § 22-1803 the general attempt statute.

***Jenkins v. United States*, 113 A.3d 535 (D.C. 2015).**
Acquittal of all crimes conferring jurisdiction over child under eighteen years old to Superior Court, enumerated in D.C. Code § 16-2301, does not deprive Superior Court of continuing jurisdiction over minor child.

CHAPTER 37 – CLOSING ARGUMENT

***Trotter v. United States*, 121 A.3d 40 (D.C. 2015).**
Trial court did not abuse discretion in denying defense motion for mistrial based on prosecutor's improper comments that defense counsel attempted to distract jury from evidence because defense counsel knew that jury would convict client, and improper comments that defense counsel's denials of defendant's guilt stemmed from bad facts and law in light of prosecutor's legal education where comments were isolated remarks in lengthy government rebuttal, trial court sustained objection to remarks, and gave additional curative instruction.

***United States v. Miller*, 799 F.3d 1097 (D.C. Cir. 2015).**
Government's references to defendant as "con artist" and "con man" did not constitute personal opinion as to defendant's guilt where descriptions tied to specific conduct at issue in trial, and references characterized manner in which government alleged that defendant conducted charged scheme.

***United States v. Miller*, 799 F.3d 1097 (D.C. Cir. 2015).**
Statement in closing argument that witness believed that defendant, "like herself was trying to help African-American families, trying to help them get into homes, not trying to hurt them," did not violate *McCleskey*'s prohibition on racially biased prosecutorial arguments where statement accurately summarized witness's properly admitted testimony.

CHAPTER 38 – JURY ISSUES: INSTRUCTIONS, DELIBERATIONS, AND IMPEACHING THE VERDICT

***Corbin v. United States*, 120 A.3d 588 (D.C. 2015).**
Trial court did not abuse its discretion in rejecting defendant's proposed jury instruction referencing scientific research regarding eyewitness identification where neither party introduced expert testimony or scientific studies regarding eyewitness identification.

***Williams v. United States*, 106 A.3d 1063 (D.C. 2015).**
No plain error where judge reminded complainant of oath and obligation to answer truthfully because error, if any, would not have been obvious to the judge as DCCA has never squarely addressed propriety of such instructions.

***Atkinson v. United States*, 121 A.3d 780 (D.C. 2015).**
Trial court erred by issuing instruction allowing jury to convict defendant of stalking under D.C. Code § 22-3133 if jury found that complainant subjectively, but unreasonably, experienced required emotional harm, but harmless where defendant's conduct; sending repeated, unsolicited emails to complainant over course of six years; repeatedly calling complainant, including during early morning; contacting complainant's parents; and, appearing unannounced at complainant's residence despite knowledge of CPO; was "objectively frightening and alarming."

Trial court did not plainly err in failing to define "course of conduct" in jury instruction in stalking prosecution under D.C. Code § 22-3133 where no evidence that jury misunderstood term.

***Hawkins v. United States*, 119 A.3d 687 (D.C. 2015).**
Trial court did not err in instructing jury that intent required for obstruction of justice was "an intent to undermine the integrity of the proceeding" because such instruction adequately ensured that jury would only convict defendant upon finding that defendant acted "corruptly," as required by D.C. Code § 22-722(a)(2)(A)-(B).

***Koonce v. District of Columbia*, 111 A.3d 1109 (D.C. 2015).**
Trial court did not abuse discretion in refusing to grant request for missing evidence instruction regarding negligently destroyed stationhouse video where other evidence about defendant's appearance and behavior suggested intoxication

***Washington v. United States*, 111 A.3d 16 (D.C. 2015).**
Trial court did not abuse discretion in refusing to give missing evidence instruction regarding DNA swabs lost by government where: loss negligent; impossible to know whether swabs would have contained DNA, exculpated or inculpated defendant; defense addressed issue in closing; and, defense cross-examined evidence technicians and witness who directed officers to area.

***Warner v. United States*, 124 A.3d 79 (D.C. 2015).**
Attempted second-degree theft is a lesser included offense of second-degree fraud.

***Jenkins v. United States*, 113 A.3d 535 (D.C. 2015).**
Street gang statute - D.C. Code § 22-951(b) – does not require special unanimity instruction because any way of committing crime described by statute satisfies required link of gang-relatedness between commission of predicate crime and participation in gang.

***Sanders v. United States*, 118 A.3d 782 (D.C. 2015).**
Trial court abused discretion in refusing to answer legal question from jury; whether AWIR required intent to rob at the time of the assault, or could be satisfied by intent to rob immediately prior to assault; instead saying that determination "was up to the jury," allowing jury to convict defendant of AWIR without concurrence of intent and assault.

***Washington v. United States*, 111 A.3d 16 (D.C. 2015).**
Trial court did not abuse its discretion in giving concurrent intent instruction regarding specific intent required for AWIKWA, nor in clarifying continuing jury confusion regarding instruction

where court instructed jury that if government had proven that defendant fired multiple shots at complainant with intent to kill him, and created zone of danger in which complaining witness was located, jury could infer defendant's specific intent to kill complaining witness, and defendant fired as many as ten shots at four people standing in close proximity to one another.

CHAPTER 39 – CONTEMPT

***Salvattera v. Ramirez*, 105 A.3d 1003 (D.C. 2015).**

The catchall provision of D.C. Code § 16-1005(c)(11) authorized the trial court to order the respondent to vacate his own home in order to ensure the effectiveness of the trial court's stayaway order, given that the home in which the petitioner and the respondent previously resided contained only one staircase.