CPI MANUAL 2021 CASE SUPPLEMENT

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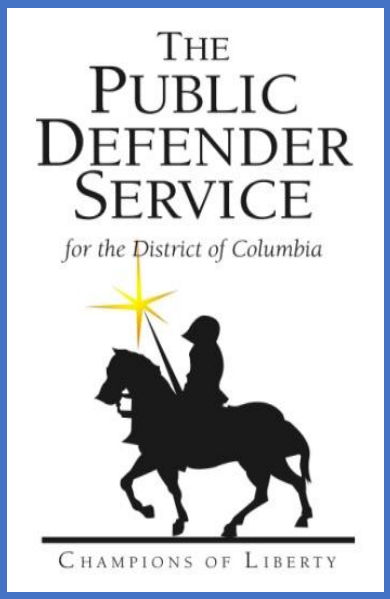

III. CHAPTER 1 – PRE-TRIAL RELEASE AND DETENTION

IV. THE STATUTE

B. Three-Day Holds and Five-Day Holds – §§ 23-1322 (a), (b) & 1325(a)

2. Three-Day Holds – § 23-1322(b) and § 23-1325(a) (Preventive Detention)

b. Section 1325(a) 1.8

***Jeffers v. United States*, 208 A.3d 357 (D.C. 2019).**
To establish a "substantial probability of guilt," giving rise to a presumption that no conditions of pre-trial release will reasonably assure community safety, "the United States must show at a minimum that it is more likely than not that the defendant would be found guilty beyond a reasonable doubt at trial of an offense permitting detention under [D.C. Code] § 23-1325."

CHAPTER 2 – INVESTIGATION

I. FACETS OF INVESTIGATION 2.2

N. Social Media 2.9

***Facebook, Inc. v. Pepe* 19-SS-1024 (D.C. Apr. 15, 2020).**
Subpoenaed records of decedent's Instagram account reflecting communications between and the defendant, and non-content information from the account identifying other Instagram accounts with which decedent had communicated around the time of the shooting fell within statutory exceptions to the Stored Communications Act's (SCA) prohibitions on disclosure of electronic records and the contents of electronic communications, and that the SCA did not empower Facebook to defy an otherwise lawful subpoena for such excepted information. Additionally, the order that Facebook not disclose the subpoena with anyone other than counsel impermissibly burdened Facebook's First Amendment rights where the government already knew the defense theory and Facebook had the ability to preserve and prevent spoliation of the information subject to the request.

CHAPTER 5 – DISCOVERY AND OTHER PRE-TRIAL MATTERS

I. DISCOVERY PURSUANT TO RULE 16

A. Practice Under Rule 16

2. Sanctions

a. Lost or destroyed evidence ……..……...….. 5.4

***Koonce v. District of Columbia*, 111 A.3d 1009 (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.

***Weems v. United States*, 191 A.3d 296 (D.C. 2018).**
Affirming Mr. Weem's convictions for shoplifting watches from a Wal-Mart and threating to do bodily harm. The government did not violate Rule 16 by failing to preserve security tags and surveillance footage that were never its possession, custody, or control. The court did not abuse its discretion in declining to sanction the government for violating Rule 16 by failing to preserve the watches as evidence, which it had control over for a brief period after Officer Webster seized them from Mr. Weems. The trail court also did not abuse its discretion in granting a motion to reduce charges, which deprived Mr. Weems of his statutory right to a jury trial.

***Askew v. United States*, 229 A.3d 1230 (D.C. 2020):** Where defendant was arrested for assaulting police officers following a traffic stop, government was obligated under Rule 16 to preserve street camera video footage from the vicinity of the arrest and stationhouse video footage from the defendant's booking, even without any request from the defendant.

***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-Burriss*, 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.

***Walker v. United States*, 167 A.3d 1191 (D.C. 2017).**
The prosecution's failure to disclose grand jury testimony until the night before trial that Mr. Yates did not drive Carraway to North Carolina to hide him from law enforcement was not a *Brady* violation because it would not have altered the outcome of his conviction for being an accessory after the fact. The prosecution's failure to disclose grand jury testimony from Mr. Yate's mother that Mr. Yates had encouraged caraway to turn himself in was also not a *Brady* violation because Mr. Yates was already aware that his mother could provide this testimony.

***Smith v. United States*, 180 A.3d 45 (D.C. 2018).**
The trial court did not abuse its discretion in denying a mid-trial continuance to allow the defense to investigate the delayed *Brady* disclosure that the prosecution's star witness, Officer Williams, was under investigation for an incident where he punched a bystander.

***Buchanan v. United States*, 165 A.3d 297 (D.C. 2017).**
Trial court erroneously denied appellant's motion to compel documents related to testing done by the DEA laboratory because the requested discovery was material to appellant's case and supported by affidavits identifying the potential for error in the testing methods, the defense's need for the information, and the absence of any burden on the government.

***Koonce v. District of Columbia*, 111 A.3d 1009 (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.

***Ashby v. United States*, 199 A.3d 634 (D.C. 2019).**
This opinion underscores the need to seek an array of remedies and sanctions for *Brady* and Rule 16 violations, including discovery. Here, even after it was clear that the government had lost evidence related to a potential alternate suspect, the government withheld investigative notes related to that missing evidence. The Court holds that the trial court had discretion to deny a more drastic sanction because it correctly ordered the disclosure of those notes, which enabled the defense to attack the integrity of the "investigatory process and conclusions." The Court does not resolve Ashby's claim that the police violated *Riley* by using his phone to make phone calls in an attempt to learn his phone number because it determines that this information bore no "fruit" in the investigation. Given the unsettled nature of this area of law, advocates should continue to argue that "manipulations" of a phone used to generate evidence require a warrant under *Riley*.

***Dickens v. United States*, 163 A.3d 804 (D.C. 2017).**
The government did not violate *Brady* or Superior Court Criminal Rule 33 in failing to turn over co-defendant statements reported in the pre-trial sentencing report about the defendant until after

his trial where the government "did not know the content of the report until it was able to access the document after trial."

***In re Klein*, 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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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 1009 (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.

***Maddux v. District of Columbia*, 212 A.3d 827 (D.C. 2019).**
Following appellant's request for pretrial release to care for his disabled children, a magistrate judge's statements that (a) she would likely detain appellant for a failed drug test until the case "resolved one way or the other" and that (b) defense counsel was "free to talk to [the government] about whether there's any kind of offer" that might let him "to return to his family" did not invalidate appellant's subsequent guilty plea. Specifically, the statements did not constitute "coercion" or "participation" in the plea negotiations in violation of Rule 11 and did not require the judge to ask whether appellant's sole reason for pleading guilty was to avoid detention.

***Mickens v. United States*, 133 A.3d 562 (D.C. 2016).**
The government violated its plea agreement with defendant on drug charges when during the sentencing proceeding, the government asked for the PWID sentence to run consecutively to the sentences on the other drug charges, contending that the PWID was not part of the same event encompassing the other charges. The court held that the offenses are part of a "single event" if "they were committed at the same time of place[] or have the same nucleus of facts."

A. Timing of the Motion
1. Pre-sentence …….…….. 6.14

***Long v. United States,* 169 A.3d 369 (D.C. 2017).**
The trial court did not err in refusing to permit the defendant to withdraw his guilty plea prior to sentencing where the default maximum 5 year sentence under the conspiracy statute was applicable here, and as stated in the plea agreement, the court informed the defendant that the conspiracy charge that he was pleading guilty carried a maximum possible sentence of five years' incarceration, and therefore the guilty plea was not rendered involuntary or unintelligent in a conspiracy to defraud prosecution. Further, the fact that his co-defendants received more favorable plea deals did not render his counsel's representative ineffective, and thus also was not a valid ground to withdraw a guilty plea.

2. Post-sentence …….……... 6.15

***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.

B. Grounds for the Motion ……...……... 6.16

***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

III. CHALLENGES DURING TRIAL – AMENDMENT AND VARIANCE
A. Amendment ……... 8.12

***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.

***McCray v. United States,* 133 A.3d 205 (D.C. 2016).**
The trial court's urban gun battle and aiding and abetting instructions did not result in a constructive amendment of the indictment where the government at trial did not rely on a set of complex facts distinctly different from that which the grand jury set forth in the grand jury.

B. Variance ……..… 8.13

***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

***Andre v. United States*, 213 A.3d 1286 (D.C. 2019).**
The Double Jeopardy Clause does not bar re-trial following the reversal of a conviction on appeal, even assuming re-conviction would expose the defendant to no additional punishment and result in no further collateral legal consequences.

***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.

***Freundel v. United States*, 146 A.3d 375 (D.C. 2016).**
The imposition of separate sentences for each of the 52 victims of the defendant's voyeurism act is affirmed, because under § 22–3531(c) of the D.C. Code there is no doubt that where each individual victim was recorded separately, the statute allowed for separate punishments for each individual victim.

***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. Additionally, 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. Acknowledging that it was a close call in upholding trial court's finding that PWID PCP and distribution of PCP did not merge here 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.

***Young v. United States*, 143 A.3d 751 (D.C. 2016).**
Possession of liquid PCP merges with PWID. Notwithstanding the D.C. Council's intent to enhance penalty when an individual is convicted of possession of PCP in liquid form, the D.C. Council did not indicate any intent to change the standard that possession is a lesser-included offense of PWID.

***In re Z.B.*, 131 A.3d 351 (D.C. 2016).**
Affirmed the trial court's finding that denied merging threats with robbery because it is possible to commit a robbery without committing verbal threats—that is, through the use of violence or conduct that puts one in fear. Also, threats did not merge with kidnapping because the "coincidental[] overlap" of one offense during the commission of another offense "cannot be imputed as an inherent element of the crime." However, assault merges as a lesser-included offense of robbery because robbery essentially requires that the government prove larceny and assault.

***Herring v. United States*, 169 A.3d 354 (D.C. 2017).**
The appeals court found that the trial court did not violate the Double Jeopardy Clause following their reinstatement of conviction for possession of firearm during crime of violence for which defendant had been given consecutive sentences (which was preceded by the clerk's incorrect vacation of consecutive possession count rather than concurrent count in judgment and commitment order). This was because the defendant did not have a legitimate expectation of finality given that the order was ambiguous on its face. The trial court could not have retained the conviction carrying concurrent sentence and at the same time committed the defendant to be incarcerated for a total term of 174 months, since retaining the conviction with concurrent sentence would have made the total sentence only 114 months. Therefore, no reasonable defendant should have disregarded this disparity, and so the defendant was not automatically entitled to less severe construction of unclear order.

***In re M.S.*, 171 A.3d 155 (D.C. 2017).**
For double jeopardy purposes, the Court of Appeals will use the rule articulated by the Supreme Court in *Blockburger* (*Blockburger v. United States*, 284 U.S. 299 (1932)), which states that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied is whether each provision requires proof of a fact the other does not. This test is relevant even in cases involving juvenile delinquency.

***Barber v. United States*, 179 A.3d 883 (D.C. 2018).**
Three third-degree sexual abuse convictions for acts committed against one victim were separate acts and properly not merged because each act demonstrated an attempt to satisfy a different kind of sexual gratification and a fresh impulse. Eight possession of a firearm during a crime of violence (PFCV) convictions also were not appropriate for merger because each constituted a fresh impulse.

***Briscoe v. United States*, 181 A.3d 651 (D.C. 2018).**
Convictions for armed robbery and assault with a deadly weapon were merged.

***Lewis v. United States*, 255 A.3d 966 (D.C. 2021).**
Defendant's convictions for felony fleeing and reckless driving did not merge for double jeopardy purposes.

***Cardozo v. United States*, 255 A.3d 979 (D.C. 2021).**
Third-degree sexual abuse did not merge with defendant's kidnapping conviction but found that his misdemeanor sexual abuse merges with his conviction for third-degree sexual abuse.

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.

***Ferguson v. United States*, 157 A.3d 1282 (D.C. 2017).**
The Superior Court of the District of Columbia has jurisdiction under D.C.'s Youth Rehabilitation Act (YRA) to address the defendant's motion for the court to set aside his misdemeanor convictions. The court held that the YRA did not confer upon the United States Parole Commission (USPC) the sole authority to grant or deny a discretionary set-aside given the legislature's intention to distinguish between youth offenders convicted of felony offenses and those convicted of misdemeanor offenses under D.C. Code §§ 24-131 and 24-906.

***Briscoe v. United States*, 181 A.3d 651 (D.C. 2018).**
D.C. Code § 22-4502(e)(1) (2012) implied that the District of Columbia Youth Rehabilitation Act, D.C. Code § 24-903 (2012), applied to first-time juvenile offenders convicted of robbery

while armed. D.C. Code § 22-4504(b) (2012) did not imply that it excluded any offenders from the mandatory minimum for possession of a firearm during a crime of violence. Defendant juvenile was not prejudiced since he was sentenced to concurrent sentences.

***In re N.H.M.*, 224 A.3d 581 (D.C. 2020).**
Criminal Justice Act requires compensation for court appointed counsel for proceedings at DYRS. Significant decision because it holds that children are entitled to free counsel at meetings where DYRS decides whether to change the child's placement or services and whether to revoke a child's community placement.

***Long v. United States*, 163 A.3d 777 (D.C. 2017).**
The trial court did not have the sentencing discretion to impose a minimum sentence of 35 years imprisonment or to dictate when the first-degree murder defendant would become eligible for parole since D.C. Code § 22-2404 (that was in effect when the defendant committed the offenses) indicated that life imprisonment was the appropriate punishment, with the defendant being automatically up for parole after 30 years.

***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.

***Dorsey v. United States*, 154 A.3d 106 (D.C. 2017).**
Following *Apprendi v. United States*, 530 U.S. 466 (2000), the trial judge was not required to submit to the jury the defendant's prior Maryland conviction for a determination of whether he was subject to the three-year mandatory minimum pursuant to § 22-4503, and the trial court legal analysis that "as a matter of law," the elements of first-degree assault in Maryland are subsumed within the scope of serious bodily injury in D.C.'s aggravated assault was not the type of factual finding that would have necessitated submission to the jury.

***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).

***Blocker v. United States*, ___ A.3d ___, 2020 WL 5949833 (D.C. 2020).**
Defendant's FIP conviction remanded for sentencing because his invalid robbery conviction had been used to justify an "illegal" sentence under § 22-4503(a)(1).

***Lucas & Lucas v. United States*, ___ A.3d ____, 2020 WL 6198434 (D.C. 2020).**
Bias-Related Crime Act requires but-for causation, such that the government must prove that the defendants committed the assault because of their prejudice against the complainant based on his sexual orientation.

***Wade v. United States*, 173 A.3d 87 (D.C. 2017).**
Mr. Wade was not entitled to a jury determination of whether his prior conviction for robbery, which was set aside under the Youth Rehabilitation Act (YRA), qualified as a crime of violence to trigger a three-year mandatory minimum sentence. The trail court correctly interpreted the YRA to authorize enhanced sentences based on prior set-aside convictions.

***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.

***Herring v. United States*, 169 A.3d 354 (D.C. 2017).**
Under D.C. Code §23-112, District of Columbia law presumes that sentences run consecutively unless the court expressly indicates otherwise.

CHAPTER 11 – POST-CONVICTION LITIGATION

***Bernal v. United States*, 162 A.3d 128 (D.C. 2017).**
Trial court had the authority to grant a reconsideration for a thirty-day continuance even though the government did not offer any new information to justify reconsideration because the continuance was based on the government's need for time to evaluate the defendant's expert notice. Finding that reconsideration was "consonant with justice" the court of appeals reasoned that the decision to grant a seven-day continuance for late expert notice showed "a thoughtful balancing of competing considerations." Although in the pre-trial context, the appellate court rejected the argument that reconsideration can only be granted when the party seeking reconsideration presents: 1) newly discovered evidence, 2) an intervening change in the law, or 3) the original decision was based on a manifest error of law or was clearly unjust.

***Frey v. United States*, 137 A.3d 1000 (D.C. 2016).**
D.C. Code § 22-3302(b) covers unlawful entry into private areas of public buildings and therefore due to the possibility of a prison sentence of more than 180 days, the defendant was entitled to a jury trial.

***Green v. United States*, 164 A.3d 86 (D.C. 2017).**
Super Ct. Crim. R. 33 allows the trial court to grant a new trial to a defendant "if the interests of justice so require" or "based on newly discovered evidence." A new trial will be ordered in the interest of justice only when, after considering the evidence, the court can find that exceptional circumstances prevented the defendant from receiving a fair trial. The desire to present a better defense is not, without more, a sufficient basis for granting a new trial under the "interests of justice" standard.

***Barber v. United States*, 179 A.3d 883 (D.C. 2018).**
The trial court did not abuse its discretion in denying defendant's motion for a new trial under D.C. Super. Ct. R. Crim. P. 33, because, although there was new evidence of systemic problems undermining the reliability of the DNA evidence presented at trial, it was not material to his case where the issues were raised at trial and it was not probable to have produced an acquittal since substantial other evidence placed defendant at the scene.

***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.

***Logan v. United States*, 147 A.3d 292 (D.C. 2016).**
The court found that the defendant had not been deprived of the right of self-representation by requiring standby counsel to aid the defendant.

***Long v. United States*, 163 A.3d 777 (D.C. 2017).**
A defendant's third motion to vacate his/her conviction was not procedurally barred as "second or successive" under D.C. Code §23-110 since the procedural bar on successive motions is judgment-based. Therefore, in this case, since the defendant filed his third motion after he was resentenced, the defendant's new judgment included the underlying conviction. This opinion is in line with the Supreme Court's opinion in *Magwood v. Patterson*, 561 U.S. 320 (2010).

***Bellinger v. United States*, 127 A.3d 505 (D.C. 2015).**
Trial court abused its discretion in summarily ruling, without holding evidentiary hearing, defendant's claim of counsel's deficient performance based on counsel's alleged failure to investigate a possible defense of communal use of the murder weapon where there was evidence that shell casings found at scene of shooting in which defendant was charged matched those found at scene of nearby murder six weeks later, and where defendant provided a sworn affidavit that trial counsel was aware of such information, but lied to defendant to cover up failure to investigate in support of his claim.

***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 defendant's presence.

***United States v. Gray-Burriss*, 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.

***Fatumabahirtu v. United States*, 148 A.3d 260 (D.C. 2016).**
Plain error where counsel, without a strategic explanation, declined to conduct a reasonable investigation to inform his decision not to raise the mistaken-identity defense, and absent the counsel's failure to raise the mistaken-identity defense, there would have been reasonable doubt in the factfinder's mind as to the defendant's guilt.

***Clark v. United States*, 136 A.3d 334 (D.C. 2016), *supra*.**
The trial court affirmed the convictions of appellant despite counsel omission of advising client regarding option to withdraw plea or have case transferred for sentencing. This case came before the court on a collateral attack on the conviction affirmed in Clark I. Clark I alleging ineffective assistance of counsel, appellant asked the court to reverse the trial court's denial, without a hearing, of his motion to vacate his conviction and sentence pursuant to D.C. Code § 23-110 (c). The court said appellant's representation was constitutionally deficient, but he suffered no prejudice as a result.

***Turner v. United States*, 166 A.3d 949 (D.C. 2017).**
Mr. Turner's counsel at trial acted reasonably under the circumstances and his representation was not constitutionally deficient. Unlike in *Padilla v. Kentucky*, 559 U.S. 356 (2010), the employment consequences for Mr. Turner as an MPD officer were not automatic. Mr. Turner's trial counsel was not obligated to inform him of the possible employment consequences of a conviction and of his decision to testify. Since Mr. Turner received effective assistance of counsel at trial, the court need not reach the issue of prejudice.

***Brown v. United States*, 181 A.3d 164 (D.C. 2018).**
Defendant's counsel had not performed in an objectively unreasonable way and were not ineffective by not raising insanity defenses. Since defendant had failed to show cause for the delay in his collateral challenges, there was no need to reach the prejudice prong. There was simply no evidence that counsel would have had a reason to investigate defendant's mental state at the time of trial. Not only had defendant not mentioned any mental condition to alert counsel, but also the psychiatric testimony in the California trial had not described, and there was no other showing of, any observable symptoms of an abnormal mental condition in the 1990s. Therefore, there was nothing which could have reasonably alerted his counsel to a possible insanity defense. Absent some indicia of a mental condition, there was sufficient ground to find counsel's actions in the 1990s reasonable.

***Andrews v. United States*, 179 A.3d 279 (D.C. 2018).**
The court affirmed the trial court's rulings that: 1) There was no merit to appellant's claim his counsel's representation of a man who was a potential third party perpetrator created a conflict of interest as appellant did not show they had an attorney client relationship and there was no reasonable possibility that the man was involved in the murder; 2) There was no conflict of interest due to a third party's payment of appellant's legal fees or defense counsel's representation of him in unrelated traffic offenses, and the evidence did not link him to the murder.

***Garza v. Idaho*, 139 S. Ct. 738 (2019).**
When trial counsel fails to file an appeal as instructed, the presumption of prejudice identified in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), applies, even when the defendant has signed an explicit waiver of appeal. This opinion abrogates *Stewart v. United States*, 37 A.3d 870, 877 (D.C. 2012).

***Blackmon v. United States*, 215 A.3d 760 (D.C. 2019).**
Where appellant claimed that counsel's ineffective assistance led him to reject a plea offer, see *Lafler v. Cooper*, 566 U.S. 156 (2012), the trial court did not err in finding that appellant was not prejudiced by his lawyer's advice regarding the maximum sentence he could receive if he went to trial, given the court's determination that appellant could not have "gotten through a plea colloquy," even if he had tried to accept the government's offer. "That finding was in essence a finding that the court would have rejected appellant's plea."

***Smith v. United States*, 203 A.3d 790 (D.C. 2019).**
In a murder case, where evidence showed that appellant left an altercation with the decedent to arm himself before returning to the altercation and shooting the decedent, trial counsel was not ineffective for failing to present a defense of perfect or imperfect self-defense (i.e., manslaughter) based on evidence that the decedent had threatened appellant with pocket knife. Such evidence could not have entitled appellant to a jury instruction on perfect or imperfect self-defense because appellant "deliberately chose to risk the fatal encounter . . . by arming himself with a deadly weapon and going to confront" the decedent, and "initiated the confrontation with the victim with the intent to kill or do great bodily harm.

***Dorsey v. United States*, 225 A.3d 724 (D.C. 2020).**
Appellant was entitled to a hearing on his counsel ineffective where the record essentially supports his assertion that counsel failed to arrange for the DNA expert assistance that counsel viewed as necessary to the defense.

***Gaulden v. United States*, 239 A.3d 592 (D.C. 2020).**
Counsel's decision not to call his former client whom he had represented in an unrelated matter as a defense witness at the defendant's trial was not ineffective assistance where no evidence supported a plausible alternative defense strategy for calling the witness. Further, there was no evidence that counsel risked acting detrimentally to either his former client or defendant by calling the witness because counsel had not acquired confidential or privileged information from the former client that could have been used for impeaching the witness.

***Jones v. United States*, 202 A.3d 1154 (D.C. 2019).**
Under the IPA, once the government proffers that it has conducted a reasonable search for testable biological material, a court may deny an application for post-conviction DNA testing without an evidentiary hearing, unless the defendant objects and raises a genuine dispute as to the reasonableness of the search. Slip Op. at 37-41. However, a hearing may be required to determine whether the government should be sanctioned for failing to preserve evidence that is relevant to a motion for new trial.

***Williams v. United States*, 187 A.3d 559 (D.C. 2018).**
The trial court did not abuse its discretion in finding that alibi witness testimony was substantially discredited and therefore did not constitute new evidence of actual innocence which would entitle Mr. Williams to a new trial under the Innocence Protection Act.

***Jordan v. United States*, 235 A.3d 808 (D.C. 2020).**
Trial court's decision to increase appellant's sentence – seventeen years after his sentence had been finalized – violated his rights under the Due Process Clause. The court reasoned that due process requirements may, in "extreme circumstances," impose a temporal limit on the power of a court to increase a sentence, even an illegal one. The Court adopted a multi-factor balancing test to determine whether a defendant's expectation of finality in his sentence has crystalized, and is therefore protected by due process, and held that the government's delay of 16 years to correct an illegal sentence violated due process.

CHAPTER 13 – ANTICIPATING AND USING THE APPELLATE PROCESS

***Furr v. United States*, 157 A.3d 1245 (D.C. 2017).**
The appeals court will review a trial court's decision to admit or exclude evidence under the abuse of discretion standard. An evidentiary ruling by a trial judge on the relevancy of a particular piece of evidence is highly discretionary and will only be upset on appeal upon a showing of grave abuse. If a piece of evidence may be minimally relevant, this does not mean that the trial court abused its discretion in excluding the evidence; under the Federal Rules of Evidence (FRE) Rule 403, the trial judge has the discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. In this case, since the police lieutenant's testimony about what occurred in an internal investigation would have led to a mini-trial over the adequacy and fairness of investigation and reasonableness of the lieutenant's conclusions, the trial court did not err in excluding such evidence.

***Gray v. United States*, 155 A.3d 377 (D.C. 2017).**
The Court of Appeals will reverse a conviction due to instruction error if the Court cannot say with fair assurance that the judgment was not substantially swayed by the error. In this case, evidence is sufficient to support a lesser included offense. Thus, a jury instruction on the lesser offense, when a reasonable jury might, after weighing the evidence, conclude that the defendant is only guilty of the lesser offense and not of the greater offense, was warranted. Regarding the defendant's challenge to the sufficiency of the evidence to support the conviction (because the Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding), under the test for plain error review of an unpreserved error, the appellant first must show 1) error 2) that is plain, and 3) that affected appellant's substantial rights, but even if all three of these conditions are met, the Court of Appeals will not reverse unless 4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

***In re T.M.*, 155 A.3d 400 (D.C. 2017).**
In order to prevail on a facial challenge to a criminal statute under plain error review, a defendant must demonstrate that: 1) the statute was unconstitutional on its face, and thus its enforcement against the defendant was erroneous; 2) the constitutional infirmities of the statute were clear and obvious at the time of adjudication and/or at the time of appellate review; 3) the enforcement of the statute affected appellant's substantial rights; and 4) the fairness, integrity and public reputation of the judicial proceedings were affected by the error.

***Jackson v. United States*, 157 A.3d 1259 (D.C. 2017).**
In this case, the statute (D.C. Code § 22-4504) governing the crime of carrying a pistol did not so clearly and obviously violate the Second Amendment to support a vacation of defendant's conviction for carrying a pistol outside his home or place of business (CP) on plain error grounds. This was because at the time of trial, the law was unsettled regarding constitutionality of complete ban on possession of a firearm outside the home.

***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.

***Fleet v. Fleet*, 137 A.3d 983 (D.C. 2016).**
A notice of appeal that provides the case number of only one of two cases need not be fatal if the two cases were, even informally, consolidated due to facts such as that the cases were called for trial on the same day, were tried in a single proceeding, before a single judge, and resulted in a single judgment.

***Deloatch v. Sessoms-Deloatch*, 229 A.3d 486 (D.C 2020).**
Consolidated appeal of divorce action four years later, and second action of appeal of defendant's motion to withdraw guilty plea seven years later, held that deadline for notices of appeals filed years after final orders can be raised *sua sponte* by the Court but also can be waived by an appellee, finding that appeal deadline is a judge-made mandatory but non-jurisdictional claims-processing rule, and thus can be relaxed if the court deems it appropriate under the circumstances.

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.

***R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160 (D.C. 2019).**
Revocation of R.O.'s community placement was unconstitutional where DYRS relied in part on an arrest that was not supported by probable cause.

***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 15 – REPRESENTING PERSONS SUBJECT TO CIVIL COMMITMENT PROCEEDINGS

III. MENTAL ILLNESS AND LIKELIHOOD OF INJURY TO SELF OR OTHERS
A. Statutory Criteria for Involuntary Hospitalization 15.10

***Tilley v. United States*, Nos. 15-CO-38 & 15-CO-240 (D.C. Oct. 1, 2020):** Sexual Psychopath Act violates substantive due process on its face because it The DCCA held that the defendant's indefinite civil commitment as a "sexual psychopath" under the Sexual Psychopath Act (SPA) is unconstitutional on its face, and could not stand because the statute does not permit a judicial finding as to whether the patient suffered from a mental illness, disorder, or abnormality that seriously impaired his ability to control his sexually dangerous behavior.

IX. VOLUNTARY AND INVOLUNTARY COMITTMENT OF MINORS ……..…. 15.55

***J.P. v District of Columbia*, 189 A.3d 212 (D.C. 2018).**
Parental consent was not required when committing a minor criminal defendant to involuntary mental health treatment under §24-531.07(a)(2) when the defendant has been declared incompetent and unlikely to gain competence.

CHAPTER 17 – IMMIGRATION ISSUES FOR CRIMINAL DEFENSE ATTORNEYS

***Bado v. United States*, 120 A.3d 50 (D.C.), *vacated and reh'g en banc granted*, 125 A.3d 1119 (D.C. 2015) (en banc).**

***Bado v. United States*, 186 A.3d 1243 (D.C. 2018).**
Non-citizen charged with misdemeanor that qualifies as "aggravated felony" under federal immigration law, such that conviction would result in removal/deportation, entitled to jury trial under the Sixth Amendment even though the offense was punishable by incarceration for up to 180 days.

***Miller v. United States*, 209 A.3d 75 (D.C. 2019).**
Failure to provide a jury trial for a deportable offense was plain error in light of *Bado v. United States*, 186 A.3d 1243 (D.C. 2018) (en banc), even if appellant was subject to deportation on other grounds at the time of trial and had no pre-existing right to remain in the U.S.

IV. CATEGORIES OF REMOVAL OFFENSES
C. Controlled Substance Offenses
1. Conviction-based Grounds for Removal ……..……. 17.20

***Mellouli v. Lynch*, 575 U.S. 798 (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.

***Del Carmen Benitez v. Doe*, 193 A.3d 134 (D.C. 2018).**
The trial court erred in determining that an unaccompanied minor who illegally entered the United States failed to present any evidence that the lack of viability was due to abandonment or neglect because the mother was not required to name the minor's biological father before she could prove abandonment and satisfy the requirements of the Special Immigrant Juvenile status statute, 8 U.S.C.S. §1101(a)(27)(J)(i)-(iii). It also erred in finding that the lack of viability was not due to the father's abandonment of the minor because the father made no effort to assume any parental responsibility for the minor ever participated, directly or indirectly, in her care and upbringing, and never made himself known.

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 …… 17.29

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

VII. RELIEF FROM REMOVAL IN IMMIGRATION COURT
H. Special Relief for Juveniles in Immigration Court and Special Immigrant Act for Children in Foster Care, 8 U.S.C. § 1101(a)(27)(j), 8 C.F.R. § 204.11(a) 17.33

***E.P.L. v. J.L.-A.*, 190 A.3d 1002 (D.C. 2018).**
Error for trial court to determine that appellant's daughter did not qualify for SIJ status when (a) child had been abandoned by her father in such a way that reunification with him was not viable as he had never fulfilled any day-to-day role in her support, care, and supervision and (b) it was not in child's best interest to return to Guatemala where there would be no one to care for her, as the child's mother lived in the United States.

CHAPTER 19 – JOINDER AND SEVERANCE

II. SEVERANCE UNDER RULE 14

A. Severance of Offenses 19.6

***Gray v. United States*, 147 A.3d 791 (D.C. 2016).**
Trial court abused its discretion when it failed to sever the unarmed robbery charge from the armed robbery charge because (1) the evidence of the armed robbery would not have been admissible for proving identity in the unarmed robbery; (2) the details of the armed robbery do not help explain any aspect of the unarmed robbery incident; and (3) the probative value of the evidence of the armed robbery was substantially outweighed by the danger of prejudice; and therefore, the likelihood of conviction for unarmed robbery based solely on criminal disposition warrants that the court vacate the conviction on that charge.

***Hughes v. United States*, 150 A.3d 289 (D.C. 2016).**
The trial court abused its discretion in denying the defendant's request to sever offenses because evidence of one offense would have been inadmissible for proof of the other two offenses.

***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.

CHAPTER 20 – MOTIONS TO SUPPRESS STATEMENTS

***Gray v. United States*, 147 A.3d 791 (D.C. 2016).**
The trial court did not abuse its discretion when it excluded defendant's testimony as to the government's delay in filing the armed robbery charge, which the defendant sought to introduce in order to explain why he did not remember his location at the time of the incident and why the defense did not try to retrieve potentially exculpatory video evidence, because such testimony would cause prejudice against the government by suggesting that the government was unfairly adding additional charges, and the defendant had notice that he was a suspect in the armed robbery when he was arrested for the unarmed robbery and therefore had opportunity to collect any helpful video evidence.

***Robinson v. United States*, 142 A.3d 565 (D.C. 2016).**
Trial court erred in not suppressing defendant's statements to law enforcement where during *Miranda* warnings the officer failed to ask defendant whether he would answer questions without a lawyer present. Despite the officer's reasoning that he only neglected to ask this because he had already told defendant "[they] "don't provide … a lawyer here," the failure to ask defendant this indicates that he could not have intentionally waived this right, whether explicitly or impliedly.

A. Involuntariness
1. Coercion ……..…….. 20.7

***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.

3. Promises and Threats …… 20.8

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

B. The *Miranda* Principle ……. 20.13

***United States v. Straker*, 800 F.3d 570 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 1170 (2016).**
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.

***Toler v. United States*, 198 A.3d 767 (D.C. 2018).**
Asking for Mr. Toler's social security number when he was in custody before reading him his rights did not violate *Miranda* because it was merely biographical information that did not relate to an element of the crime and therefore was not likely to elicit an incriminating response.

1. Custodial interrogation
a. Custody
(1) The level of intrusion …….. 20.15

***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.

***Spencer v. United States*, 132 A.3d 1163 (D.C. 2016).**
Trial court did not err in admitting defendant's and codefendant's statements as they were not in custody when they made the statements where neither were ever physically restrained or handcuffed and voluntarily went to the police station. Once at the station, they were both told they were not under arrest and were free to leave throughout the interaction.

***Johnson v. United States*, 207 A.3d 606 (D.C. 2019).**
Appellant was not in "custody" for *Miranda* purposes where detectives questioned her at her home for about half an hour; the tone of the interview was conversational, not menacing; detectives never threatened arrest; appellant was neither handcuffed nor physically restrained; detectives' weapons were concealed; and neither detective was standing guard at the door.

***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.

***Millhausen v. United States*, 253 A.3d 565 (D.C. 2021).**
Defendant's statements in the clips from body-worn-camera footage were erroneously admitted in violation of the requirements of *Miranda* where the defendant was in handcuffs, standing in the street with two police officers and during the custodial interrogation responded to questions that were volunteered as "non-responsive" "expressions of his world view. "

2. Waiver of *Miranda* rights ……...….. 20.25

***In re S.W.*, 124 A.3d 89 (D.C. 2015).**
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 juvenile's confession during custodial interrogation involuntary in spite of an effectively delivered *Miranda* warning and a knowing and intelligent wavier of *Miranda* rights.

***Toudle v. United States*, 187 A.3d 1269 (D.C. 2018).**
Affirming the trial court's decision to deny Mr. Toudle's motion to suppress his confession. Interrogators' post-waiver statements did not violate Mr. Toudle's Fifth Amendment rights or vitiate his waiver by disparaging his right to counsel, by threatening additional charges if Mr. Toudle did not cooperate, or by contradicting the *Miranda* warning by implying that a failure to make incriminating statements could be held against him. The cumulative effect of the interrogators post-waiver statements, under the totality of the circumstances also did not undermine Mr. Toudle's *Miranda* warnings or vitiate his waiver. Finally, the court held that Mr. Toudle's confession was uncoerced and voluntary.

3. Waiver after assertion of rights
   c. Assertion of the right to counsel ……..……... 20.30

***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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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.

V. "FRUITS" OF UNLAWFULLY OBTAINED STATEMENTS
   A. Subsequent Statements ……..….. 20.50

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

CHAPTER 21 – MOTIONS TO SUPPRESS EYEWITNESS IDENTIFICATION TESTIMONY

I. CONSTITUTIONAL AND EVIDENTIARY GROUNDS FOR EXCLUSION

***Wynn v. United States*, ___A.3d ___ (D.C. 2020); 2020 WL 1809688**
Reversible error where the trial court's admitted police detective's redacted interview with co-defendant, following co-defendant's arrest, violating defendant's Sixth Amendment right to confrontation.

***Long v. United States*, 156 A.3d 698 (D.C. 2017).**
The victim's identification of the defendant as one of the perpetrators of robbery was reliable since the victim's had the opportunity to observe the man who had approached him from driver's side of vehicle, the degree of attention that victim paid to perpetrator during incident, the accuracy of the victim's prior descriptions of perpetrator, the level of certainty that victim exhibited at show-up, and the passage of merely one hour and 45 minutes between the robbery and identification procedure.

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.

***Wade v. United States,* 173 A.3d 87 (D.C. 2017).**
The court affirms Mr. Wade's conviction for unlawful possession of a firearm and upholds his three-year mandatory minimum sentence. An anonymous 911 call describing a man with a gun in his waistband provided police officers with the necessary reasonable articulable suspicion to stop Mr. Wade initially. Testimony from a witness who claimed to see Mr. Wade toss a gun behind a dumpster while fleeing police provided officers with probably cause to search Mr. Wade. That the witness identified Mr. Wade at a show-up while police had him handcuffed between two police cars was not impermissibly suggestive. Therefore, the United States offered sufficient evidence for a jury to find beyond a reasonable doubt that Mr. Wade possessed the recovered gun.

***Jones v. United States,* 154 A.3d 591 (D.C. 2017).**
The defendant was "seized," within the meaning of the Fourth Amendment, at the time that a police officer exited his cruiser and asked the defendant for a cigarette box that the defendant had been carrying. The officer had pulled his cruiser up alongside defendant in a very narrow alley, opened the door in front of defendant, and then blocked the defendant's path. After the defendant provided identification information, the officer asked his partner to run the defendant's information through the system to check for outstanding warrants, at which point a reasonable person would not have felt free to leave.

***Miles v. United States,* 181 A.3d 633 (D.C. 2018).**
An anonymous tip describing "a black male with a blue army jacket… shooting a gun in the air" and Mr. Miles's subsequent flight, provoked by police blocking the sidewalk to stop him, did not amount to a reasonable suspicion for police to justify subjecting Mr. Miles to an investigatory *Terry* stop. Thus, the Court of Appeals reversed Mr. Miles's conviction on various weapons charges.

***Hooks v. United States,* 208 A.3d 741 (D.C. 2019).**
Appellant, who was sitting in a lawn chair on a walkway in front of an apartment building, was "seized" for Fourth Amendment purposes when, after driving past the building, four uniformed officers stopped their car, reversed, got out of the car, walked directly up to appellant, and told him to "get up."

***McGlenn v. United States*, 211 A.3d 1133 (D.C. 2019).**
The "community-caretaking doctrine" applies to "temporary seizures of persons who are out in public" and justified seizing appellant pending the arrival of an ambulance, where appellant's "frightening" behavior caused his mother "to run to a neighbor's house [to] call the police"; "there was reason to believe [appellant] was under the influence of PCP, a drug known to cause sudden bursts of aggressive and violent behavior"; appellant "physically resisted" officers upon

their arrival; and appellant "showed signs of [anger,] incoherence[,] and disorientation." Of Note: The DCCA "express[es] no view as to the applicability of the community-caretaking doctrine to searches of a home."

***United States v. Jackson*, 214 A.3d 464 (D.C. 2019).**
Warrantless GPS monitoring of appellant, a probationer, based on CSOSA criteria designating him a high-risk offender, was a constitutional "special needs" search because appellant's "reasonable expectation of privacy as a convicted offender on probation was diminished and . . . outweighed by the strong governmental interests in effective probation supervision," and there was no evidence "CSOSA placed him on GPS monitoring as a subterfuge to enable the police to [circumvent] the warrant and probable cause requirements of the Fourth Amendment." *Id.*

***United States v. Jackson*, 214 A.3d 464 (D.C. 2019).**
Appellant had no objectively reasonable expectation that CSOSA would withhold his GPS tracking data from the police where police engage in a narrowly tailored search to see whether any monitored probationer was present at the scene of a crime.

***Ellison v. United States*, 238 A.3d 944 (D.C. 2020).**
Duration of defendant's *Terry* detention was not the ten-plus minutes between his initial seizure and formal arrest, but, rather, the three minutes that elapsed between his seizure and the accrual of probable cause to arrest: and four officers had adequate justification for the prolonged detention of defendant attendant to an arrest, and the pre-probable-cause *Terry* detention lasting 3 minutes was reasonable.

***Ford v. United States*, 245 A.3d 977 (D.C. 2021).**
The trial court erred as a matter of law in ruling that defendant' actions did not revoke consent. An objectively reasonable officer would have understood the defendant's "act of placing his hand on the outside of his pocket exactly as Officer Branson did understand it—an unequivocal withdrawal of consent to be searched."

***Hawkins v. United States*, 248 A.3d 125 (D.C. 2021).**
The trial court erred in finding that the defendant consented to the search of his bag because as the officer aggressively approached the defendant while asking for consent to search, he immediately touched the defendant's bag before giving him the opportunity to refuse consent.

***Golden v. United States*, 248 A.3d 925 (D.C. 2021).**
Police unconstitutionally seized defendant by confronting him on the street, subjecting him to accusatory questioning, and asking him to expose his waistband for visual inspection, and unconstitutionally frisked him for a weapon without an objectively reasonable basis to suspect he was armed and dangerous and bulge on defendant's hip did not provide reasonable suspicion that defendant had weapon so as to justify frisk of defendant.

***Johnson v. United States*, 253 A.3d 1050 (D.C. 2021).**
Defendant's firearm-related convictions reversed because his flight after an unlawful seizure and pat-down did not operate to attenuate the illegal prior frisk from the subsequently-discarded and

discovered firearm and ammunition. The recovered evidence was not free of taint from the illegal seizure and should have been suppressed at trial.

***Atchison v. United States*, 257 A.3d 524 (D.C. 2021).**
Court Supervision and Offender Services Agency's (CSOSA) global positioning system (GPS) surveillance of defendants did not offend the Fourth Amendment.

***Mayo v. United States*, 266 A.3d 244 (D.C. 2022).**
Defendant was seized when the GRU officer dove to tackle him and tripped him, even though he got away, relying on the Supreme Court's recent decision in *Torres v. Madrid*, 141 S. Ct. 989 (2021), which effectively overruled this court's decision in *Henson v. United States*, 55 A.3d 859 (D.C. 2012). Second, the court held that this seizure was unsupported by reasonable, articulable suspicion and therefore unlawful; and that the items of physical evidence subsequently recovered by the police from Mr. Mayo's person and in the area of the chase were fruits of this unlawful seizure that must be suppressed.

***Byrd v. United States*, 138 S. Ct. 1518 (2018).**
An unauthorized driver of a rental car has a reasonable expectation of privacy in the car, at least assuming he had not procured the rental car via theft or fraud. The Court stated that it sees no reason why the expectation of privacy that comes from lawful possession and control and the attendant right to exclude would differ depending on whether the car in question is rented or privately owned by someone other than the person in current possession of it. Both have the expectation of privacy that comes with the right to exclude.

***Rodriguez v. United States*, 575 U.S. 348 (2015).**
Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates Fourth Amendment.

***Sharp v. United States*, 132 A.3d 161 (D.C. 2016).**
Fourth Amendment seizure of the defendant when the officer instructed him to exit his vehicle immediately after the defendant declined the officer's request to search the car. Further, there was no reasonable articulable suspicion to justify the officer's seizure of defendant because it was based solely on the officer's suspicion about the area that was unrelated to defendant and the defendant in particular showed no cause for suspicion. Consequently, the defendant's admission to law enforcement after exiting the car that he was in possession of brass knuckles should have been suppressed.

***United States v. Bumphus*, 227 A.3d 559 (D.C. 2020).**
Extended warrantless seizure of defendant's car was integral part of the but-for causal chain of events leading to recovery of gun and ammunition from defendant's car and itself caused violation of defendant's Fourth Amendment possessory interests, and thus, exclusionary rule applied.

***Rodriguez v. United States*, 575 U.S. 348 (2015).**
See, *supra*, Chapter 22.II.C.2.

D. The Degree of Justification: Articulable Suspicion for a Stop or Frisk, Probable Cause for Arrest
1. Definitions
a. Articulable Suspicion for a Stop ……. 22.19

***Heien v. North Carolina*, 574 U.S. 54 (2014).**
Objectively reasonable mistake of law can give rise to reasonable suspicion necessary to justify Fourth Amendment seizure.

***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.

***Pridgen v. United States*, 134 A.3d 297 (D.C. 2016).**
The court affirmed the lower court in denying defendant's motion to suppress because in considering the totality of the circumstances, the defendant's moving his hand around his left pocket gave the officers a reasonable basis to believe that he was armed and dangerous, and thus a reasonable basis for the investigatory seizure that led to the discovery of the tangible items the defendant sought to suppress.

***Hooks v. United States*, 208 A.3d 741 (D.C. 2019).**
Police lacked reasonable articulable suspicion to believe appellant had committed the crime of "crowding, obstructing, or incommoding" a sidewalk or entryway because his conduct could not have conceivably met the second requirement of the statute—that he resume blocking the walkway after being told to disperse.

***Newman v. United States*, 258 A.3d 162 (D.C. 2021).**
Officers encountered the defendant running away from them while clutching his waistband with one hand, in a manner that made arresting officers think defendant had "some sort of illegal contraband," in a neighborhood that was known for a lot of gun violence and drugs. The court concluded that the police were justified in conducting a *Terry* stop because the officers had reasonable articulable suspicion that defendant was engaged in criminal activity. Further, the defendant fled from officers while clutching his waistband three times, and the officer's subsequent protective pat down search for weapons was justified because the officers had a reasonable belief that the defendant was armed and dangerous.

***Maye v. United States*, 260 A,3d 638 (D.C. 2021).**
See, *infra*, Chapter 22.II.D. 2.d. (presence in high crime area).

***Mayo v. United States*, 266 A.3d 244 (D.C. 2022).**
See, infra, Chapter 22.II.D. 2.d. (presence in high crime area).

***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.

***Jenkins v. United States*, 152 A.3d 585 (D.C. 2017).**
Police lacked reasonable articulable suspicion required to conduct a stop of bicyclist even though there was an attempted robbery that occurred earlier in the day, the victim had provided police with a description of the suspect, and there was surveillance footage from the crime scene. Although the officer who watched the surveillance footage gave a description of the alleged perpetuator to the officer who conducted the stop, the surveillance footage did not depict the attempted robbery itself, so that even if the bicyclist resembled someone in the video, that would not implicate him in attempted robbery. The descriptions given by the victim and the investigating officer (indicating that suspect was a black male with blue jeans and a dark jacket or ski mask) were vague, there was 10-hour gap between attempted robbery and bicyclist's stop, and neither description involved bicycle. Thus, there was a lack of reasonable articulable suspicion.

***R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160 (D.C. 2019).**
Revocation of R.O.'s community placement was unconstitutional where DYRS relied in part on an arrest that was not supported by probable cause.

***Ellison v. United States*, 238 A.3d 944 (D.C. 2020).**
Recovery of crack cocaine from the buyer after observing hand-to-hand transaction coupled with collective knowledge doctrine applied to factor the "crack recovery" into the calculus as to whether officer had probable cause to arrest defendant as the seller in the drug transaction.

***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.

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

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

***Newman v. United States,* 258 A.3d 162 (D.C. 2021).**
See, infra, Chapter 22.II.D. 1.a.

***Maye v. United States,* 260 A,3d 638 (D.C. 2021).**
The D.C. Court of Appeals held that the officers' high-crime area testimony to support the *Terry* stop was short on specifics explaining that "[w]e would need a great deal more than what the government offers here for the location of the encounter" to provide helpful context for a reasonable, articulable suspicion analysis."

***Mayo v. United States,* 266 A.3d 244 (D.C. 2022).**
Evidence of a "high crime area" as a factor supporting a *Terry* stop requires that the fact be shown with sufficient particularized, individualized suspicion to justify its reliance under *Terry*.

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

***Dozier v. United States,* 220 A.3d 933 (D.C. 2019).**
Appellant's submission to a police "request" for a pat-down was not consensual but a "seizure," where two police cars containing four officers pulled up to the alley where appellant (a Black man) was walking alone at night in a "high crime area," two armed, uniformed officers got out of their car, followed appellant, asked repeatedly if they could talk to him, asked if he had a weapon, and when he said no and lifted his jacket to show "a clean waistband," asked if they could pat him down for weapons.

***Posey v. United States,* 201 A.3d 1198 (D.C. 2019).**
Appellant's unprovoked flight from uniformed officers in a high crime area did not provide reasonable articulable suspicion to stop him for committing a robbery reported in that area, where (a) the officers had only a vague suspect descriptions, (b) the record did not show precisely when the robbery occurred, and (c) nothing about appellant or his group's conduct before or during the flight suggested involvement in the robbery—"[A] nondescript individual distinguishing himself from an equally nondescript crowd by running away from officers

unprovoked does not, without more, provide a reasonable basis for suspecting that individual of being involved in criminal activity and subjecting him or her to an intrusive stop and police search."

***Dozier v. United States*, 220 A.3d 933 (D.C. 2019).**
After appellant submitted to a pat down, testimony that appellant took flight during the pat-down and subsequently threw an object containing a controlled substance should have been suppressed as the fruits of the illegal because there was no reasonable articulable suspicion for the initial seizure.

***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 (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.

***Jackson v. United States*, 157 A.3d 1259 (D.C. 2017).**
A face-to-face tip that was received by the police officer from the mother of the victim of an armed robbery and assault with a deadly weapon (that the alleged perpetrator was located inside apartment), along with a photograph of the alleged perpetrator provided to the officer by the mother, was sufficiently reliable to provide the officer with reasonable suspicion to justify detention of the alleged perpetrator until show-up procedure was complete. Although the officer only knew that the mother's information came from "the neighborhood"; the mother's tip and photograph indicated a special familiarity with perpetrator's affairs, and the mother's actions were not anonymous, and she could have been held accountable for information she gave. Furthermore, since the officer independently corroborated important details of the mother's tip, and the mother's tip turned out to be correct, the tip was reliable.

***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.

***In re G.B.*, 139 A.3d 885 (D.C. 2016).**
Rule 41(b) and the Fourth Amendment permit investigative search warrants to forcibly take the DNA from a witness or a victim even when not suspected of participating in the crime for which the DNA is at issue.

***Burns v. United States*, 235 A.3d 758 (D.C. 2020).**
Warrant authorizing search of all data on cell phone for evidence related to murder was invalid because warrant affidavit established probable cause to believe only certain items related to the murder would be found on the phone, and the warrant did not limit the search to those particular items. Good-faith exception did not apply because the warrant was so lacking in probable cause for the all-data search that no reasonable police officer could have relied on it. Warrant was not severable because no portion of the warrant named items supported by probable cause with sufficient particularity.

***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.

***Green v. United States*, 231 A.3d 398 (2020).**
Under the Fourth Amendment, law enforcement officials effectuating an arrest warrant are not permitted to remain *inside* the residence to prevent the destruction of evidence while awaiting a search warrant once the arrestee and all other persons have been removed from the house, where they could have accomplished the same law enforcement goal of securing the premises from *outside* the residence with minimal privacy intrusion. Thus, arrest warrant did not justify law officer's actions that led to warrantless seizure of phone and neither the protective sweep exception or exigent circumstances exception were implicated to justify the search.

a. Justifying the warrantless entry
(3) Emergencies requiring preventive action 22.76

***Evans v. United States*, 160 A.3d 1155 (D.C. 2017).**
Without deciding whether police needed probable cause or only a reasonable basis to believe that entry was necessary to provide emergency aid to an injured occupant or to protect an occupant from immediate injury, the Court held that even under the "reasonable basis" standard, the police lacked adequate reason to believe that immediate entry was necessary to provide emergency aid because the office did not have a specific reason to believe that an unknown third party was in the apartment and needed immediate help. The appellate court also held that "procedural unfairness" precluded affirmance based on the "independent source" theory because the government had not argued it at trial and the trial court therefore had not made the factual findings relevant to the theory.

***Ball v. United States*, 185 A.3d 21 (D.C. 2018).**
Affirming the lower court's decision that exigent circumstances justified officers' warrantless entry into an apartment and the subsequent collection of evidence. The 911 call reporting an assault in progress, which was corroborated by an occupant in the building, and the officer's observations that they heard yelling and that the woman who answered the door seemed "panicked and concerned" provided an objectively reasonable basis for the officer's belief that they needed to enter the apartment to provide emergency assistance. Judge Easterly dissented on grounds that the government did not meet its burden to justify an emergency aid exception to the warrant requirement and the majority opinion goes too far in diminishing Fourth Amendment protections.

5. Automobile Searches …….. 22.81

***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.

***Armstrong v. United States*, 164 A.3d 102 (D.C. 2017).**
Officers did not have sufficient specificity to provide the particularized reasonable suspicion necessary to stop a vehicle with three occupants after two robberies occurred within ten minutes of each other in the same area and did not match a description based only on a broadcast look-out for two black males in a white car with tinted windows robberies occurred within ten minutes of each other in the same area.

***United States v. Bumphus*, 227 A.3d 559 (D.C. 2020).**
A 4-day delay between seizing and searching a car containing a child's backpack, wife's purse, and cell phone was unreasonable where police offered no legitimate reason for the delay. Suppression of the recovered evidence was warranted to deter unnecessary delays between the seizure and search of personal property.

***Fogg v. United States*, 247 A.2d 306 (D.C. 2021).**
An agent for a tow-truck company searched the defendant's bags that were found in the trunk of a repossessed car. The action implicated the Fourth Amendment because the MPD officers stood by during the agent's search of the bags which they reasonably knew or should have known was unauthorized. Here, the private action was transformed into state action because MPD detained appellant and showed interest in the fruits of the search, notwithstanding that appellant retained a legitimate expectation of privacy in the contents of his bags in the trunk. MPD's presence gave tacit approval of the bag search for which there was there was no probable cause to conduct the search.

***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.

***Logan v. United States*, 147 A.3d 292 (D.C. 2016).**
Officer's concern that cell phone data might be lost did not justify a search of defendant's cell phone where the police had already detained the defendant, the phone was in police possession, and there were no other exigent circumstances present to justify a warrantless search of the cell phone. However, a lawful investigation was already underway before the officer checked the contents of the cell phone, and thus the evidence discovered from the cell phone even if the search was unlawful was admissible under the inevitable discovery doctrine.

CHAPTER 23 – VOIR DIRE

***Blades v. United States,* 200 A.3d 230 (D.C. 2019).**
Use of husher during individual-juror voir dire did not constitute closure or partial closure of the courtroom, burdening the right to a public trial. Rather, it was a reasonable alternative to closing the proceeding, that protected appellant's public-trial right.

***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.

***Beasley v. United States,* 219 A.3d 1011 (D.C. 2019).**
Following defense counsel's *Batson* challenge, the trial court erred in finding no prima facie case of discrimination, where the government "used 80% of its peremptory strikes against black

jurors, a group that comprised approximately 33% of the venire." A statistical disparity of this magnitude was sufficient to create prima facie case, notwithstanding the lack of evidence regarding the racial makeup of the seated jury and the fact that the defense also struck some of the black jurors included in its prima facie case. Although the court has "taken note in some cases when certain classes of people have been totally excluded from a jury through the government's use of strikes," it has "never signaled that this factor was" either necessary or sufficient. Given that the reasons underlying the parties' overlapping strikes are "not readily apparent, the overlap [is] not a valid basis for subtracting . . . jurors from the step-one analysis of the government's strikes." Id. The trial court's erroneous finding that the defense had failed to establish a prima facie case required reversal because resuming the *Batson* inquiry on remand, after more than two years have passed, would not have been feasible. The government made "no contemporaneous proffers regarding its strikes of any jurors," and as the government conceded, the record provides no "obvious justification" for at least three of the relevant strikes.

***Haney v. United States,* 206 A.3d 854 (D.C. 2019).**
The defense established a prima facie case of discrimination under *Batson v. Kentucky*, 476 U.S. 79 (1986), where "the prosecutor used seven out of nine (or 78%) of her peremptory challenges," including every one of her first six challenges, to strike black jurors, who comprised 39% of the qualified venire, and "used four (or 44%) of her peremptory challenges to strike black males, who constituted only 18% of the venire," with the result that "no black males served on the jury in a case where the defendant is a black male." The trial court's erroneous refusal to proceed to step three of the *Batson* inquiry (based on its erroneous determination that the defense had not made a prima facie showing), required reversal, as opposed to remand, because the prosecutor proffered demeanor-based reasons for her strikes, the trial court made no contemporaneous findings regarding those reasons, the record provided no basis to test their accuracy, and, after more than two years, a remand hearing could not be expected to "replicate the probing inquiry to which appellant was entitled."

CHAPTER 25 – THE JENCKS ACT

***Rahman v. United States,* 208 A.3d 734 (D.C. 2019).**
Where appellant was arrested by an MPD officer after refusing to leave a McDonald's as requested by the special police officer (SPO) working there, the Jencks Act did not entitle appellant to receive the incident report that the SPO submitted to the McDonald's corporation. The government never "possessed" the report for Jencks Act purposes because, in preparing it, the SPO was functioning as a McDonald's contractor rather than a member of the prosecution team.

***Williams v. United States,* 230 A.3d 927 (D.C. 2020).**
Complainant's appearance and impact statement at defendant's sentencing for violating civil protection order were not enough to render Jencks Act and Rule of Criminal Procedure implementing it applicable, and thus did not require United States to produce any of her prior

statements in its possession, because the government did not call complainant to testify as a witness for the prosecution, even though prosecutor asked victim whether there was anything else she wanted to tell judge about what kind of sentence she though defendant should get, and prosecutor's questioning was merely an effort to facilitate participation of victim with critical, debilitating illness and to ensure that she was fully heard by court regarding her views about appropriate sentence.

III. THE DEFINITION OF A "STATEMENT"
D. Recurring Issues 25.4
2. Rough Notes 25.5

***Hernandez v. United States*, 129 A.3d 914 (D.C. 2016).**
The trial court erred in denying the defense counsel's request that the prosecutor's notes from an interview of the government's witness be disclosed under the Jencks Act or reviewed in camera, because the line between notes that are substantially verbatim and those that are not for the purposes of disclosure under the Jencks Act is to a degree a legal question, and the court cannot relieve itself of its duty to inquire into the nature of such notes based on the prosecutor's conclusory assertion that the notes were "selective" or "not substantially verbatim."

V. SANCTIONS FOR FAILURE TO PRODUCE JENCKS MATERIAL
B. Loss or Destruction of Material …… 25.11

***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

I. THE USE OF OBJECTIONS
A. The Law of Objecting
2. Objection to substance of answer sought ……..…. 26.2

***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.

II. CROSS-EXAMINATION
A. The Right to Cross-Examination and its Limitations ……. 26.4

***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.

In Re D.M. 254 A.3d 398 (D.C. 2020).
Trial court erred by precluding his counsel from questioning the officer about the content of a lookout that second officer broadcasted for the shooter, whether D.M. matched the description of the lookout, and whether police had reason to believe that D.M was not the shooter.

D. Discrediting the Witness
2. Assumption that witness is lying
a. General lack of credibility …….. 26.16

***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.

***Green v. United States*, 209 A.3d 738 (D.C. 2019).**
In a simple assault case, appellant cross-examined his complainant using parts of her 911 call, none of which was admitted into evidence, and the government responded on re-direct by moving the entire 911 call into evidence. The trial court violated the Confrontation Clause by denying appellant the opportunity to recross-examine the complainant on new, material information contained in the call. The trial court's error was not harmless beyond a reasonable doubt where it asked, specifically to hear 911 call and it helped bolster the complainant's credibility in a case that came down to her credibility. Of Note: The 911 call was not admissible under the rule of completeness because no part of it had been admitted into evidence up to that point.

b. Bias ……. 26.18

***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.

***Smith v. United States*, 180 A.3d 45 (D.C. 2018).**
Despite the fact that the prosecution's star witness, Officer Williams, was under investigation for an incident where he punched a bystander, the trial court did not err in precluding a line of questioning regarding corruption bias during the defense's cross-examination of the arresting police officer, and it did not abuse its discretion in sustaining an objection by the prosecution cutting off the defense's line of corruption-bias questioning.

d. Prior convictions ……. 26.27

***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.

***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.

***In re C.A.*, 186 A.3d 118 (D.C. 2018).**
Reversible error for the trial court to preclude appellant's impeachment of a government witness who testified as to the identity of the shooter, as extrinsic evidence is available to impeach a witness when the matter is central to the case. Secondly, it was reversible error to admit a prior consistent statement that the same government witness made because it occurred after the prior inconsistent statement at issue and was neither a part of, nor designed to rebut, the prior inconsistent statement.

***Moghalu v. United States*, 263 A.3d 462 (D.C. 2021).**
Pre-trial disclosure of a third-party perpetrator defense is not mandated and the error in compelling the defendant to disclose the identity of the proffered defense was not harmless.

***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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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.

***Menendez v. United States*, 154 A.3d 1168 (D.C. 2017).**
The trial court did not abuse its discretion in admitting evidence of uncharged abuse to provide context for the charged crime. Evidence of prior uncharged sexual abuse is admissible where it provides pivotal context for charged sexual abuse of a child under the factors described in Koonce v. United States, 993 A.2d 544 (D.C. 2010), and where there is clear and convincing evidence that the prior abuse occurred. The amount of uncharged abuse evidence introduced at trial did not exceed that allowed in D.C. for context of the charged crime and its prejudicial impact did not outweigh its probative value.

***Malloy v. United States*, 186 A.3d 802 (D.C. 2018).**
Reversing conviction for felony threats and remanding for further proceedings. The trial court did not abuse its discretion in admitting evidence of a previous threat because such evidence was "necessary to place the charged crime in an understandable context," Johnson v. United States 683 A.2d 1087, 1098 (D.C. 1996), and was more probative than prejudicial. The trial court also did not abuse its discretion in limiting the admission of out-of-court statements by two defense witnesses.

***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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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.

***Crawford v. District of Columbia*, 192 A.3d 568 (D.C. 2018).**
The court of appeals had no basis for determining whether the trial court's verdict properly incorporated the mens rea element of leaving after colliding with property damage in violation of D.C. Code § 50-2201.05c (2013 Supp.) because the trial court made no factual findings as to whether defendant should have known that he had been in an accident, another means to satisfy the mens rea element required under § 50-2201.05c(a). The trial court's finding that lack of knowledge was not a sufficient defense to the crime was an erroneous statement of the law.

***Banks v. United States*, 237 A.3d 90 (D.C. 2020).**
Court abused its discretion under "signature crimes" exception to admissibility of other-crimes evidence by not severing trials of sexual assaults that were combined with robberies from robberies that were not combined with sexual assaults.

CHAPTER 28 – WITNESS ISSUES

***Fleming v. United States*, 148 A.3d 1175 (D.C. 2016).**
The government's inquiry into the witness' fear so as to explain the witness' reluctance and refusal to give truthful, relevant testimony, was not improper notwithstanding the court's decision to sustain the objection raised against the inquiry.

***Walker v. United States*, 167 A.3d 1191 (D.C. 2017).**
The court did not abuse its discretion in admitting the witness' lay opinion (over the defense's objection) that the defendant's statement, "let's suit up," meant "to do bodily harm to somebody."

***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.

***Gray v. United States*, 147 A.3d 791 (D.C. 2016).**
The trial court did not abuse its discretion when it restricted some of the expert testimony because (1) the restrictions were only placed on the expert's personal opinion on the accuracy of the eyewitnesses' identifications and not on the presentation of statistics and probabilities provided to help the evaluate the accuracy of such identifications, and (2) given the strong evidence confirming the eyewitness identifications in the armed robbery, any erroneous curtailment of the expert's testimony did not affect appellants' substantive rights.

***Jones v. United States*, 202 A.3d 1154 (D.C. 2019).**
False testimony regarding microscopic hair comparison was material to the outcome of appellant's armed robbery trial, given the high degree of certainty that the expert expressed regarding the comparison and the prosecutor's forceful reliance on that certainty in closing. The remaining evidence, consisting of eyewitness identifications by long-time acquaintances, was not so overwhelming as to render the hair comparison immaterial.

***Ruffin v. United States*, 219 A.3d 997 (D.C. 2019).**
Where the government sent DNA profiles generated by one laboratory (DFS) to be interpreted by a second laboratory (Bode), amid reports of serious flaws in DFS's interpretation procedures, the trial court did not abuse its discretion by allowing a Bode expert to testify regarding opinions that she derived from the data that DFS generated. The court had no reason to think the DFS data was unreliable given that "the criticisms of DFS pertained only to its statistical interpretation of DNA data," not the procedures used to generate profiles, and given the Bode expert's testimony that it was not uncommon for one laboratory to review and analyze data provided by another.

***Townsend v. United States*, 183 A.3d 727 (D.C. 2018).**
The trial court erred in admitting testimony regarding the results of a vertical gaze nystagmus (VGN) test as evidence of intoxication because the testifying officer (who had also improperly administered the test) was not offered or accepted as a qualified expert. Because the court cannot say for certain that this error was harmless, the lower court's judgment is vacated and the case remanded.

***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.

Motorola, Inc. v. Murray, 147 A.3d 751 (D.C. 2016) (en banc)
Action was brought against cell phone manufacturers, service providers, and trade associations, alleging that long-term exposure to cell phone radiation caused brain tumors. The Superior Court held evidentiary hearings on admissibility of plaintiffs' proffered expert testimony on causation and concluded that some, but not all, of the testimony was admissible under the *Dyas*/ *Frye* evidentiary standard but most, if not all, of experts would probably be excluded under the *Daubert* standard, and certified the question for interlocutory appeal of whether the *Daubert* standard should be adopted. The Court of Appeals held that the *Daubert* standard, rather than the *Dyas*/ *Frye* standard, governed the admission of expert testimony in civil and criminal cases, abrogating *Dyas v. United States*, 376 A.2d 827 (D.C. 1977) in favor of the standards embodied in Rule 702 of the Federal Rules of Evidence.

***Williams v. United States*, 210 A.3d 734 (D.C. 2019).**
After *Gardner v. United States*, 140 A.3d 1172 (D.C. 2016) and *Motorola, Inc. v. Murray*, 147 A.3d 751 (D.C. 2016) (en banc), "it is plainly error to allow a firearms and toolmark examiner to unqualifiedly opine, based on pattern matching, that a specific bullet was fired by a specific gun."

***Dickerson v. District of Columbia*, 182 A.3d 721 (D.C. 2018).**
Defendant's DUI conviction under D.C. Code § 50-2206.11 (2012 Repl.), was proper because the trial court did not abuse its discretion in limiting an expert's testimony. In part, that witness acknowledged that while he could observe nystagmus, he could not say what caused the nystagmus, and without that evidentiary foundation, he could not have opined as to the cause of defendant's nystagmus in the horizontal gaze nystagmus (HGN) test. A trial judge was not obliged to qualify a proffered expert when there were articulable reasons to doubt his competency and based on the absence of qualifications, the trial court did not err in limiting testimony on the effect that defendant's lower back pinched nerve had on his ability to perform the two balance field sobriety tests.

***Ruffin v. United States, supra*.**

***United States v. Nelson*, 217 A.3d 717 (D.C. 2019).**
The government's false hair comparison testimony was material to appellant's convictions related to the attack on a relevant complainant because it tied appellant to decedent's murder, helping the government prove appellant's alleged motive for assaulting the complainant. The prosecutor linked the two crimes in opening and closing and argued that hair analysis would prove that appellant was guilty of both. Moreover, by linking appellant to the murder, the hair analysis contradicted appellant's defense that the complainant had attacked him for refusing to help dispose of the decedent's body.

***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

***Ruffin v. United States*, 219 A.3d 997 (D.C. 2019).**
The trial court did not err in admitting into evidence a silver and black folding knife that police found in appellant's jean pocket months after the attack on complainant, given that it fit complainant's general description of the knife used during the attack. Although complainant never identified appellant's knife or mentioned its black handle in describing the knife used by her attacker, and although there was a seven-week gap between the attack and when appellant would stipulate that his knife was in his possession, none of these factors was significant enough to deprive the knife of any probative value.

***Long v. United States*, 156 A.3d 698 (D.C. 2017).**
The trial court did not abuse its discretion in admitting evidence that the contributor of DNA found in a vehicle involved in a string of robberies was the half-brother of defendant and that the contributor and the defendant were first cousins of the codefendant. This was relevant in a trial for armed robbery, conspiracy, and related offenses in that it made it probable that the contributor was inside the vehicle at some point on night of robberies, which in turn made it more likely that the defendant and the codefendant, whose DNA were not found inside vehicle, were inside the vehicle with the contributor. The evidence also posed little risk of unfair prejudice, given the uncontradicted testimony of police officers that the defendant and the codefendant were inside the vehicle at the time of a police chase, forensics expert's testimony

regarding preliminary nature of DNA match, and other evidence establishing a familial relationship.

***Thomas v. United States*, 171 A.3d 151 (D.C. 2017).**
The audio recording of a phone conversation obtained without Mr. Thomas' consent while he was in Maryland and the complainant was in D.C. is admissible and the trial court did not err in denying Mr. Thomas' motion to suppress. Although Maryland law requires two-party consent to intercept a phone call, D.C. law does not. The recording was lawfully obtained pursuant to D.C. Code § 23-542 and "[w]e see no compelling justification for why the laws of Maryland should be permitted to frustrate the prosecution of crimes within the District of Columbia by excluding lawfully obtained evidence within the District." *Thomas*, 171 A.3d at 155.

***Smith v. United States*, 175 A.3d 623 (D.C. 2017).**
Considering that the appellate court must give substantial deference to the jury's determination of witness credibility and even the imperfect testimony of a single witness is sufficient to convict, there was sufficient evidence to convict Mr. Smith of burglary, kidnapping, robbery, and threats. However, the trial court erred in allowing the prosecution to admit a pair of gloves into evidence to establish the identity of the burglary, therefore Mr. Smith is entitled to a new trial. Additionally, Mr. Smith was entitled to a jury instruction explaining the defense's theory that Mr. Smith did not know the person who jumped out of the apartment window and dropped stolen items.

***Blades v. United States*, 200 A.3d 230 (D.C. 2019).**
Any error in admitting photo arrays that contained appellant's mugshot was harmless beyond a reasonable doubt where, "[d]espite learning that appellant had broken the law" by possessing an unregistered gun and ammunition, the jury found him not guilty on some charges. In assessing whether admission of the photo arrays was harmless, the court reasoned, contrary to the trial court below, that "the unsmiling expressions on the men's faces do suggest that the photos may be mugshots."

***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

***Grimes v. United States*, 252 A.3d 901 (D.C. 2021).**
Fingerprint card was not a "testimonial statement" for confrontation clause purposes. However, a fingerprint card created in connection with an arrest unrelated to the prosecution at issue contained hearsay.

***Gabramadhin v. United States*, 137 A.3d 178 (D.C. 2016).**
Trial court erred in admitting a 911 recording into evidence because the complainant's statements were not spontaneous enough to be admissible as an excited utterance exception to the hearsay rule, when taking into account all of the following factors: the duration of the 911 call, the ability of the complainant to answer all of the operator's questions with clarity and detail, the fact that the victim initiated the phone call, and that the tone and demeanor of the victim on the 911 call did not indicate that the victim was unable to reflect or was speaking reflexively.

***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.

***Pelzer v. United States*, 166 A.3d 956 (D.C. 2017).**
Evidence was sufficient for a reasonable jury to convict Mr. Pelzer of robbery for stealing a cell phone, and although the trial court erred in admitting hearsay statements made in a 911 phone call, this error was not reversible since it did not affect the verdict. There was no basis for the trial court's conclusion that the complainant's ability to reflect was still suspended when he called 911 after some time had elapsed since the robbery. Statements made on the 911 call were also not spontaneous or sincere and the trial court misapplied the test from *Mayhand v. United States*, 127 A.3d 1198, 1205 (D.C. 2015). Therefore, the 911 call should not have been admitted under the hearsay exception for excited utterances. Additionally, the trial court had sufficient

evidence and did not abuse its discretion in giving the jury a "change of appearance" instruction, and even if the trial court erred in giving the jury a "flight" instruction, that error was harmless.

***Sims v. United States*, 213 A.3d 1260 (D.C. 2019).**
Where a government witness claimed that while talking to 911 outside of a crowded party, he overheard an unknown declarant accuse appellant of a shooting, the trial court erred by admitting the accusation as a present sense impression without sufficient evidence that it was based on personal knowledge. To satisfy the present sense impression exception, the proponent of a hearsay statement must show by a preponderance of the evidence, inter alia, that the statement was based on personal knowledge. The evidence presented did not meet this standard. No witness placed the unknown declarant at the shooting. Although the declarant was inferentially near the government witness when the witness later found decedent's body and called 911, the record does not show that this call happened close enough in time and place to the shooting to infer the declarant's presence there.

***Grimes v. United States*, 252 A.3d 901 (D.C. 2021).**
Defendant's statement stating that police could "flip this thing inside out," in response to officer's question asking whether there were any guns or drugs in the car, was hearsay and did not satisfy the "state of mind" exception to hearsay rule.

***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.

***Walker v. United States*, 167 A.3d 1191 (D.C. 2017).**
Incriminating statements Mr. Walker made to his girlfriend were admissible under the declaration against penal interest exception to the hearsay rule, and her testimony regarding Mr. Walker's statements was credible. Additionally, Walker failed to show plain error and forfeited his claim that the trial court erred in admitting hearsay evidence linking him to the murder when it allowed the arresting officer to testify about a suspect description matching Mr. Walker that he had received from unknown persons.

***Sims v. United States*, 213 A.3d 1260 (D.C. 2019).**
The trial court plainly erred in admitting evidence that when accused, appellant did not deny having dropped the clip from his gun while fleeing the scene of the shooting, under the adoptive admission exception to the hearsay rule, because government put forward no evidence from which a reasonable factfinder could infer that appellant heard and understood the accusation. *Id.* at 23-25. The trial court's errors were not harmless because the government used the erroneously admitted hearsay statements to bolster the credibility of its only eyewitness, whose account and credibility were impeached on multiple fronts.

***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.

***Grimes v. United States*, 252 A.3d 901 (D.C. 2021).**
Fingerprint card satisfied the business records exception to the rule against hearsay.

***Johnson v. United States*, 232 A.3d 156 (D.C. 2020).**
Trial court did not abuse its discretion by allowing the courtroom clerk to provide lay opinion testimony in a bench trial for violation of the Bail Reform Act (BRA) for defendant's willfully failing to appear at his initial status hearing on a simple assault charge, and was not required to qualify courtroom clerk as an expert to satisfy foundational criteria for public record exception.

***Ohio v. Clark*, 576 U.S. 237 (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), *cert. denied*, 136 S. Ct. 1170 (2016).**
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.

***Burns v. United States*, 235 A.3d 758 (D.C. 2020):** Autopsy records are testimonial when the forensic pathologist performing the autopsy "knows of or anticipates the commencement of a law enforcement investigation into the person's death." An expert witness who did not perform or witness the autopsy cannot convey the substance of testimonial autopsy records to the jury.

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.

***Johnson v. United States*, 136 A.3d 74 (D.C. 2016).**
The trial court committed reversible error under *Winfield v. United States* when it precluded him from presenting any evidence of potential third-party perpetrators to rebut the government's case against him where evidence that other men with animosity toward the victim had a comparable motive and the opportunity to commit the murder.

CHAPTER 33 – COMMON DEFENSES

***Fatumabahirtu v. United States*, 148 A.3d 260 (D.C. 2016).**
The assistance of trial counsel for the appellant was ineffective because counsel, without a strategic explanation, declined to conduct a reasonable investigation to inform his decision not to raise the mistaken-identity defense, and absent the counsel's failure to raise the mistaken-identity defense, there would have been reasonable doubt in the factfinder's mind as to appellant's guilt.

***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.

Bryant v. United States*, 148 A.3d 689 (D.C. 2016), *supra
Participating in a shootout after arriving armed in a rival gang's neighborhood can justify a first-degree murder conviction under the "urban-gun-battle" theory because provocation by presence in rival gang's neighborhood negated appellants' ability to claim self-defense. However, where

gang-affiliation evidence is admitted, this case may support an argument that at the very least, the groups should be referred to as "neighborhoods" instead of "gangs."

***Parker v. United States*, 155 A.3d 835 (D.C. 2017).**
The trial court erred as a matter of law in convicting Ms. Parker of simple assault. The government failed to disprove that Ms. Parker reasonably believed that she was in imminent danger of bodily harm, and it could not carry its burden to rebut a claim of self-defense by showing that there was another motive guiding her actions. That Ms. Parker may have experienced other emotions (such as anger) does not defeat her claim of self-defense where the trial court found that she believed that she was in imminent danger of bodily harm, and that the act of spitting on a neighbor was not an excessive use of force.

***Millhausen v. United States*, 253 A.3d 565 (D.C. 2021).**
A reasonable jury could find beyond a reasonable doubt that the defendant used excessive force in responding to a single missed punch by punching the complainant multiple times in the face, causing him to fall to the ground and lose consciousness.

***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.

***Shepherd v. United States*, 144 A.3d 554 (D.C. 2016).**
Trial court did not abuse its discretion in excluding details of complainant's prior violent history, namely a conviction for domestic violence where the domestic violence conviction involved an individual with whom the victim was in a relationship and the instance at issue at trial involved alleged violence against a stranger. The lack of similarity in conduct gave it minimal probative value, and its admission was more likely to inflame and confuse the jury.

IV. VOLUNTARY INTOXICATION

***Davidson v. United States*, 137 A.3d 973 (D.C. 2016).**
Consistent with *Comber v. United States*, 584 A.2d 26 (D.C. 1990), and following the court in *Wheeler v. United States*, 832 A.2d 1271 (D.C. 2003), voluntary intoxication will not be considered as a defense to voluntary manslaughter, and therefore, the trial court did not err in denying the appellant's request for a jury instruction on voluntary intoxication.

CHAPTER 34 – THE INSANITY DEFENSE

***Bilal v. United States*, __ A.3d __, 2020 WL 6065761 (D.C. 2020).**
Under Rule 12.2, the trial court had discretion to order a mental examination of the defendant by a government expert, where it was not barred by the Fifth Amendment because the defendant had waived its assertion by proposing to present evidence based on a mental examination, and the examination order provided appropriate limitations on its use by the government at trial.

CHAPTER 35 – PARTICULAR TYPES OF CASES

***Crane v. United States,* No. 19-CM-26 (argued Sept. 22, 2020); *Fallen v. United States*, No. 19-CM-233 (to be argued Nov. 20, 2020).**
Court will decide whether a ten-year period of sex offender registration and community notification attached to a conviction for misdemeanor child sexual abuse is a "severe" "penalty" that triggers the Sixth Amendment right to a jury trial under the principles announced in *Bado v. United States*, 186 A.3d 1243 (D.C. 2018) (*en banc*).

***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.

***McRae v. United States*, 148 A.3d 269 (D.C. 2016).**
An ounce of marijuana alone is insufficient to prove possession with intent to distribute. The D.C. Court of Appeals reversed the trial court.

***Kornegay v. United States*, 236 A.3d 414 (D.C. 2020).**
Defendant did not commit crime of possession with intent to distribute marijuana by possessing less than two ounces of marijuana. Conviction reversed because D.C. law now permits possession of ≤ 2 oz. of cannabis regardless of intent, as long as the possessor did not make it "available" for sale.

***Cruz v. United States*, 165 A.3d 290 (D.C. 2017).**
Section 24-607(b) authorizes a court to order treatment in lieu of criminal prosecution in a misdemeanor case if it finds, after a medical diagnosis and a civil hearing, that the defendant is a "chronic alcoholic" and that adequate and appropriate treatment is available. After making these

findings, the trial court has discretion whether to grant treatment in lieu of prosecution. The appellate court held that the record was inadequate to support the denial of treatment in this case where the trial court failed to explain the significance it gave the PSA officer's statement that Cruz had previously turned down an offer of treatment. In light of defense counsel's assertion that Cruz wanted treatment, the court lacked a "firm factual foundation" for giving "definitive weight to the PSA officer's representation."

VI. HOMICIDE CASES

VII. CPO's IN CHILD CUSTODY CASES

***Fleet v. Fleet,* 137 A.3d 983 (D.C. 2016).**
The issuance of CPO against the appellant was appropriate because (1) the taking of the child into his office, even if just for a few minutes, constituted a parental kidnapping, (2) the record indicated that Mr. Fleet intended to interfere with Ms. Fleet's right to custody of the child, (3) the child was in no imminent danger of physical or emotional harm, and (4) the determination that a CPO was warranted was consistent with the purposes of the Intrafamily Offenses Act.

CHAPTER 36 – MOTION FOR JUDGMENT OF ACQUITTAL

***Terry 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.

***Walker v. United States*, 167 A.3d 1191 (D.C. 2017).**
Surveillance video footage and witness testimony constituted sufficient evidence for a jury to convict Mr. Yates of second degree murder while armed for aiding and abetting in the fatal shooting of Mr. Hendy.

***Atchison v. United States*, 257 A.3d 524 (D.C. 2021).**
Evidence was sufficient for jury to find that each defendant was one of the shooters under an aiding and abetting theory in prosecution of defendants for aggravated assault while armed because evidence established more than defendants' mere presence at barbershop where shooting occurred. A witness testified that he saw three masked men run away from barbershop permitting the jury to infer from his testimony that the defendants were two of the three masked men who got into car that left the area immediately after shooting. The court found that a discrepancy in physical description of the shooters that differed from defendant's physical characteristics affected only the weight of the evidence, not its sufficiency, and evidence was sufficient for jury to find that each defendant participated with purposive attitude toward the shooting. The

evidence also permitted the jury reasonably to infer that the defendant surveilled barbershop before shooting and that the other defendant arranged for car to provide transportation to barbershop and a swift get-away to the highway after shooting.

***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.

***Fleming v. United States*, 224 A.3d 213 (D.C. 2020) (*en banc*).**
For the purpose of the District of Columbia's homicide statutes, "kill" means "cause death," and following the Supreme Court's decision in *Burrage v. United States*, 571 U.S. 204 (2014) the court applied the but-for causation requirement in the context of second-degree murder over the less stringent substantial-factor instruction advanced in *Roy v. United States*, 871 A.2d 498 (D.C. 2005) for conduct causing the death at issue during a gun battle. Consequently, the court found reversible error for trial judge to not explicitly instruct the jury that it was required to find but-for causation, when instructing the jury on how to determine whether the defendant was responsible for causing the death at issue during a gun battle.

***Fitzgerald v. United States*, 228 A.3d 429 (D.C. 2020).**
Evidence sufficient to support jury's determination that co-conspirator's possession of gun during robbery was reasonably foreseeable, as required to support convictions for kidnapping while armed, robbery while armed, assault with a dangerous weapon, and possession of a firearm during crime of violence under co-conspirator liability.

***Pannell v. United States*, 136 A. 3d 54 (D.C. 2016).**
Insufficient evidence that appellant had the intent to exercise control over two PCP-laced cigarettes solely because he was a passenger occupant in someone else's car where the drugs were found in plain view and conveniently accessible in the passenger compartment notwithstanding the fact that there were two cigarettes and only two occupants in the car with the front passenger window rolled down from its closed position.

***Lesher v. United States*, 149 A.3d 519 (D.C. 2016).**
Possession of drug paraphernalia with intent to use it in connection with a controlled substance does not require the presence of a controlled substance, whether actual or fake, and in determining whether an object is drug paraphernalia factors to consider are the proximity of the object, in time and space, to a controlled substance and expert testimony concerning its use.

Contraband found in a residence occupied by more than one person, the presence of the defendant's social security card, police report, and parking violation notice found in a bedroom where marijuana was found and there was no evidence suggesting that the room was occupied by any other person is evidence of the defendant's dominion and control permitted the court reasonably to infer that appellant was aware of what was stored or secreted in the room, including the stash of green weed-like substance behind the radiator.

***Proctor v. United States*, 172 A.3d 396 (D.C. 2017), *as amended* (Oct. 26, 2017).**
Conviction affirmed for misdemeanor possession with intent to distribute marijuana, but convictions reversed for unlawful possession of a firearm and feeding ammunition device. The evidence is insufficient to prove beyond a reasonable doubt that Mr. Proctor constructively possessed a handgun because Mr. Proctor did not have exclusive access to the bedroom where the gun was found and the government failed to present compelling evidence that Mr. Proctor was involved in a criminal enterprise of which the gun was a part.

***Kornegay v. United States*, 236 A.3d 414 (D.C. 2020).**
Defendant did not commit crime of possession with intent to distribute marijuana by possessing less than two ounces of marijuana. Conviction reversed because D.C. law now permits possession of less than 2 oz. of cannabis regardless of intent, as long as the possessor did not make it "available" for sale.

***Proctor v. United States*, 172 A.3d 396 (D.C. 2017), *as amended* (Oct. 26, 2017), *supra*.**
The government failed to present compelling evidence that Mr. Proctor was involved in a criminal enterprise of which the gun was a part.

***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.

***Hollis v. United States*, 183 A.3d 737 (D.C. 2018).**
Upholding two convictions of aggravated assault when injuries to two victims were not life-threatening, but caused unconsciousness, protracted and obvious disfigurement, and protracted impairment of function in the first victim and extreme physical pain in both victims.

***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 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.

***White v. United States*, 207 A.3d 580 (D.C. 2019).**
Evidence that, after being struck in the head with a metal pole, complainant was bloody, disoriented, and in pain but resisted going to the hospital and was discharged after receiving a CT scan and a prescription for Tylenol 3 was insufficient to establish "serious bodily injury" as required for an aggravated assault conviction but sufficient to establish "significant bodily injury" as required for felony assault.

***Ruffin v. United States*, 219 A.3d 997 (D.C. 2019).**
First-degree burglary statute covers a common hallway, located behind a locked door, of an occupied residential apartment building, constituting a dwelling even though appellant did not enter into any apartment before he fled the scene.

***Richardson 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.

***Johnson v. United States,* 207 A.3d 606 (D.C. 2019).**
Evidence was sufficient to show that the wooden stick was a "dangerous weapon" for purposes of PPW conviction, where appellant wielded it with "force hard enough to break [it] and cause bruises and marks on A.J.'s body, . . . without taking any precaution to avoid striking parts of A.J.'s body that would cause serious injury, such as his head or face," even though stick did not actually cause great bodily injury.

***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 of first degree sexual abuse was 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.

***Cardozo v. United States*, 255 A.3d 979 (D.C. 2021).**
The jury could reasonably infer sexual contact to support second and third-degree sexual assault where the evidence showed that the defendant put one or both of his hands on the complainant's breasts, move his hands along her body, and then rubbed his hands on her buttocks. Further, the evidence was sufficient to support the force requirement for third degree sexual assault because the defendant bear hugged the complainant as she was walking causing her to stumble and momentarily stop walking forward; which conduct although brief, a reasonable juror could find that the defendant used physical strength sufficient to overcome resistance and to restrain.

Evidence insufficient to support fourth-degree sexual assault because the government did not prove that at the moment the sexual contact began, the victim was incapable of appraising the nature of the conduct, declining participation in that contact, or communicating unwillingness to engage in that contact. To the contrary the evidence showed that the complainant immediately understood that she was being sexually assaulted, declined participation in the contact, and communicated unwillingness to engage in the contact.

***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.

***Long v. United States*, 163 A.3d 777 (D.C. 2017).**
Evidence did not support the jury's finding under D.C. Code § 22-3232 that the value of vehicle that the defendant and codefendant were using at time of a string of robberies had a value of $1,000 or more (as required to support convictions for felony receiving stolen property), since the prosecution presented no evidence of the cost of a new vehicle, the price the owner paid for it at an auction, the vehicle's mileage, maintenance history, or Bluebook value at time of robberies.

***Williams v. United States*, 155 A.3d 1286 (D.C. 2017).**
The Court of Appeals reversed conviction for receiving stolen property where four identification cards recovered from Mr. Williams' backpack had not been reported stolen and there was insufficient evidence to establish that Mr. Robinson knew they were stolen.

***Hollis v. United States*, 183 A.3d 737 (D.C. 2018).**
Upholding sentence enhancement for unauthorized use of a vehicle during the course of or to facilitate a crime of violence causing serious bodily injury, as even without intent, the stolen car provided a means for the appellant to scour the neighborhood and bring him to the location of the assaults.

***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.

***Johnson v. United States*, 207 A.3d 606 (D.C. 2019).**
Evidence was sufficient to show "excessive force" required for attempted second degree child cruelty conviction, where "appellant repeatedly, forcefully, and indiscriminately beat A.J. with a broomstick-like stick while he was sitting on the floor in the corner of his room with his arm over his head."

***Richardson 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 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.

***Ruffin v. United States*, 219 A.3d 997 (D.C. 2019).**
The evidence presented was sufficient to establish kidnapping, notwithstanding withstanding appellant's argument that the only detention of complainant was brief and incidental to the assault and robbery complainant suffered.

***Cardozo v. United States*, 255 A.3d 979 (D.C. 2021).**
Evidence was sufficient to support kidnapping conviction because the defendant's momentary bear hug of the complainant as she was walking restraining her against her will constituted a seizure, holding, or detention under the statute.

***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.

***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.

***Offutt v. United States*, 157 A.3d 191 (D.C. 2017).**
The absence of direct evidence of what item is taken or tampered with is not necessarily fatal to a prosecution for tampering with evidence under D.C. Code § 22-723 (a) (2016 Supp.). A reasonable juror could infer beyond a reasonable doubt that Mr. Offutt tampered with evidence by breaking into his own home and removing something while police were executing a warrant, even without specific evidence of what was removed.

***Frances v. United States*, 256 A.3d 220 (D.C. 2021).**
Evidence was sufficient to support a finding that defendant willfully disobeyed a stay-away order and docket entry sufficiently corroborated stay-away order, which was undated, to allow its admission. Further, certification of docket entry was not required to take judicial notice of it.

17. Homicide and Related Offenses

***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.

***Bassil v. United States*, 147 A.3d 303 (D.C. 2016).**
Evidence was sufficient to prove that the defendant did not act in self-defense when she testified and never claimed her life was in danger from her alleged attacker and given her failure to flee during the purported attack, the jury could have found that she did not fear for her life or that any such fear was objectively unreasonable. Evidence of the decedent's size, intoxication, and injuries, the lack of injury to the defendant, and the crime scene, as well as direct evidence of motive (e.g., text messages and public outbursts) supported the government's position that the defendant attacked the decedent in the bedroom out of pent-up rage and that she later ambushed him in the kitchen for the same reason. The jury could have found that the defendant's

statements about the stabbing and the events leading up to it were false in a way that implied consciousness of guilt.

Bryant v. United States*, 148 A.3d 689 (D.C. 2016), *supra
Participating in a shootout after arriving armed in a rival gang's neighborhood can justify a first-degree murder conviction under the "urban-gun-battle" theory because provocation by presence in rival gang's neighborhood negated appellants' ability to claim self-defense. However, where gang-affiliation evidence is admitted, this case may support an argument that at the very least, the groups should be referred to as "neighborhoods" instead of "gangs."

***Johnson v. United States*, 136 A.3d 74 (D.C. 2016).**
Trial court committed reversible error when it precluded the defendant from presenting a Winfield defense that included a proffer that another person had the "practical opportunity" to commit the crime, meaning the third party had at least "inferential knowledge" of the complainant's whereabouts satisfied the test for admissibility; and moreover, the trial court was required to "resolve close questions of admissibility in this setting in favor of inclusion, not exclusion."

***Atchison v. United States*, 257 A.3d 524 (D.C. 2021).**
Trial court did not erroneously exercise its discretion in admitting evidence of generalized inter-community hostility between defendants' neighborhoods and that of the victim. Further, the defendants' proffered evidence of intra-community hostility, to rebut government's evidence of inter-neighborhood feuding between defendants' and victim's neighborhoods, was not third-party perpetrator evidence that trial court was required to exclude.

***Hilton v. United States*, 250 A.3d 1061 (D.C. 2021).**
Evidence of animosity between neighborhoods and evidence that supported inference that victim and companions were shot in revenge for murder of defendant's friend was admissible to suggest defendant's motive and intent and to place his crime in understandable context. Further, evidence that one of the guns used in shooting of victim had been fired during robbery five miles away from scene of such shooting was too generic or speculative to be admissible as third-party perpetrator evidence; and the argument that one of the men who shot victim's companion might have murdered victim was too speculative to demonstrate reasonable possibility that person other than defendant committed charged offense.

18. Assault

***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.

***Teneyck 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.

***Belt v. United States*, 149 A.3d 1048 (D.C. 2016).**
The DCCA clarified the District's case law on what constitutes sufficient evidence to sustain a felony assault conviction on the basis of "significant bodily injury" holding that "the nature of the injury itself must, in the ordinary course of events, give rise to a 'practical need' for immediate medical attention beyond what a layperson can personally administer, either to prevent long-term physical damage or to abate severe pain."

***Cousart v. United States*, 144 A.3d 27 (D.C. 2016).**
Trial court did not commit plain error in its instructions on aggravated assault while armed (AAWA) or aggravated assault with a deadly weapon (ADW) even where trial court omitted third element of ADW "apparent ability to injure" element of attempted-battery (as it is for intent-to-frighten assault) contained in the model instruction because evidence that the defendant advanced on the security guard while brandishing the knife in a frightening enough manner to prompt him to draw his gun was sufficient to conclude that there was no reasonable probability

the jury would have reached a different verdict had it been instructed that it must find that the defendant had the apparent ability to injury the security guard.

***Hernandez v. United States*, 129 A.3d 914 (D.C. 2016).**
There was sufficient evidence of assault despite the trial court's finding that the complainant was (1) reluctant in the presence of the defendant to tell the police what happened, (2) made a mistaken conclusory assertion that she was not assaulted, and (3) was angry during and after the incident because her reluctance did not indicate a lack of credibility; the facts presented in her testimony supported a finding of assault, and establishing assault does not require proof of fear.

***Lewis v. United States*, 138 A.3d 1188 (D.C. 2016).**
Misdemeanor "threats to do bodily harm" under D.C. Code § 22-407 did not require proof that defendant's uttered words threatened "serious bodily harm," as opposed to just "bodily harm."

***Cheeks v. United States*, 168 A.3d 691 (D.C. 2017).**
"[A]lthough a 'significant bodily injury' is one calling for professional medical treatment to prevent long-term physical damage or avert severe pain, it also may be an injury that poses a manifest risk of such harm and requires diagnostic testing to evaluate the danger and need for treatment – even if testing reveals that treatment is unnecessary." The complainant's treating physician described extensive bodily injuries that required a CAT scan to diagnose brain damage, broken bones, and internal injury. As in *Blair v. United States*, 114 A.3d 960 (D.C. 2015), this testimony supported a finding that the injuries required diagnostic testing to evaluate the need for treatment.

***Blair v. District of Columbia*, 190 A.3d 212 (D.C. 2018).**
The trial court properly granted summary judgment to an off-duty police officer (PO) and the District of Columbia (DC) on negligence and gross negligence claims by a nightclub patron, alleging that he was injured by the PO during a melee outside the nightclub, as the claims were based on the PO's intentional conduct and there were no alternate scenarios pled, such that the claims were time-barred by the one-year limitations period; The DC was also properly granted summary judgment on the negligent hiring, training, and supervision claim because the patron failed to establish what a national standard of care was in order to show that such standard was breached; However, it was error to grant summary judgment to the DC as to the assault and battery claim against it based on respondent superior because the PO's actions could have been within the scope of his employment.

***Perez Hernandez v. United States*, 207 A.3d 594 15-CM-130 (argued en banc Dec. 17, 2019):**
Court will clarify the elements of simple assault, including the actus reus and mens rea for an attempted-battery assault based on an "offensive touching."

***Powell v. United States*, No. 19-CM-48 (D.C. Oct. 1, 2020).**
Evidence was insufficient to support defendant's conviction for "intent-to-frighten" assault where video footage showed officer pulling out her ASP after the defendant was seen kicking a police car but before defendant approached officer's angrily, and ignored officers' repeated orders to "back up" and thus the evidence did not support the trial court's finding that it was

appellant's approach in "a reasonably threatening manner" that "caused [] [the officer to pull out her asp weapon," in fear of immediate injury.

20. Robbery

***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.

***Gray v. United States*, 155 A.3d 377 (D.C. 2017).**
A reasonable jury could have found that the defendant was not conscious of any fear by complainant, her sister-in-law, and their young children when he took the complainant's purse and removed a small amount of money as he had engaged in highly erratic behavior before he took the purse. Even though he had assaulted the complainant and others by touching their foreheads before taking the purse, he did not immediately grab the purse after the assault, made no attempts to conceal his identity, and took no other items. Thus, under D.C. Code §§22-2801, a reasonable jury could have found that there was no "sudden or stealthy seizure or snatching" of the victim's property, and so the trial court's decision to withhold this information from the jury was not harmless error.

21. Assault on a Police Officer

***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 either (1) resisting --the defendant wiggled a little bit and pulled away after officers handcuffed defendant without incident; or (2) intimidation --the 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.

***Foster v. United States*, 136 A.3d 330 (D.C. 2016).**
The evidence was sufficient to support a conviction of assault on a police officer where the defendant knew was determined not to go with the police officer by using his shoulder to push past the officer and later lying on the ground with his hands underneath him to prevent the officer from handcuffing him,

23. Weapons

***Hooks v. United States*, 191 A.3d 1141 (D.C. 2018).**
Evidence was sufficient to support the jury's inference that appellant possessed gun that police found in a dumpster, when officers saw appellant walk toward dumpster as they approached, and then heard a loud metallic noise as appellant moved his hand away from the dumpster opening, and appellant was the only one they had seen near the dumpster.

Additionally, appellant's conviction for carrying a pistol without a license (CPWL) did not violate Second Amendment, as he had a prior felony conviction, and the decision in *Wrenn v.*

District of Columbia, 864 F.3d 650 (D.C. Cir. 2017) did not invalidate the CPWL statute; it only invalidated the requirement to demonstrate "good reason to fear injury" or some other "proper" need to carry a pistol before obtaining a license to do so.

***Grady v. United States*, 180 A.3d 652 (D.C. 2018).**
In CPWL case where government alleged that the defendant dropped a gun that was found on the ground, it was not error for trial court to quash defense's overbroad subpoenas for all data pertaining to gun crimes in a neighborhood, and not error for court to preclude the defense from cross-examining police officer on his knowledge of gun-crime rates in that neighborhood when nothing in the record suggested that anyone other than the defendant dropped the gun.

***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.

***Toler v. United States*, 198 A.3d 767 (D.C. 2018).**
Affirming Mr. Toler's conviction under D.C. Code § 7-2502.01(a) for possession of an unregistered firearm. The government was not required to prove that the recovered firearms were not antique as part of its case-in-chief. Rather, "the antique nature of a firearm is an affirmative defense; only when some evidence indicates that the firearm is antique must the government then prove that it is not antique."

25. Operating Under the Influence

***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.

***Bell v. District of Columbia,* 132 A.3d 854 (D.C. 2016).**
The evidence of DUI was sufficient where the defendant was in "actual physical control" of his car because he was alone, behind the steering wheel, and had the car keys in his pocket, and "was capable of starting the vehicle should he have awakened and, in his impaired state, made a decision to drive."

Reviewing for plain error, the Court of Appeals held that the Implied Consent Act's statutory presumption that individuals with a prior DUI conviction who refuse a breathalyzer test are "under the influence" is not a mandatory presumption and jurors "may, but are not required to, conclude that s/he was under the influence."

***Muir v. District of Columbia,* 129 A.3d 265 (D.C. 2016).**
The DC Court of Appeals reversed the trial court and remanded for further proceedings. Appellant went to trial in 2011 on charges of driving under the influence (—DUI) and operating a vehicle while impaired (—OWI). The trial judge instructed the jury that it could convict the defendant of OWI if it found his consumption of alcohol had impaired his ability to operate a motor vehicle —in any way, while it would have to find —an "appreciable degree" of impairment to convict appellant of DUI. The defense did not object to this instruction. The jury proceeded to find him guilty of OWI and acquit him of DUI. Following this verdict, the judge concluded that OWI actually requires the same —appreciable degree of impairment as DUI requires. Nonetheless, concluding that the law on this point was unsettled and that the instructional error was neither plain nor prejudicial, the judge declined to set the verdict aside. Subsequently, this court clarified in Taylor v. District of Columbia that the alcohol-impairment threshold is the same for OWI and DUI, and that both offenses require proof of an — "appreciable degree" of impairment. Relying on the decision in Taylor, the defendant asked the court to reverse his OWI conviction on the ground that the instruction given at his trial unconstitutionally allowed the jury to convict him without finding the requisite degree of impairment.

***Townsend v. District of Columbia,* 183 A.3d 727 (D.C. 2018).**
The trial court erred in admitting testimony regarding the results of a vertical gaze nystagmus (VGN) test as evidence of intoxication because the testifying officer (who had also improperly administered the test) was not offered or accepted as a qualified expert. Because the court cannot say for certain that this error was harmless, the lower court's judgment is vacated, and the case remanded.

27. Misdemeanor Sexual Abuse
    a. Unlawful Disclosure

***Roberts v. United States*, 216 A.3d 870 (D.C. 2019).**
There was sufficient evidence to support the defendant's unlawful disclosure [D.C. Code § 22-3052] convictions because, for each count, there was evidence that the defendant made a sexual image available for viewing by someone other than the person depicted, and the person depicted was "identified or identifiable" to herself or, in one case, her mother. Unlawful disclosure does not require that the person depicted be "identified or identifiable" based on the content of the image alone. Nor does it require that the person depicted be identified by, or identifiable to, anyone other than the person depicted.

31. Unlawful Entry

***Frey v. United States*, 137 A. 3d 1000 (D.C. 2016).**
D.C. Code § 22-3302(b) covers unlawful entry into private areas of public buildings and therefore due to the possibility of a prison sentence of more than 180 days, the defendant was entitled to a jury trial.

***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.

***Foster v. United States*, 218 A.3d 1142 (D.C. 2019).**
Evidence that appellant violated a notice purporting to bar him from three out of six buildings in the DCHA development where he lived with his mother was insufficient to establish the crime of unlawful entry, where appellant's mother's lease apparently granted appellant access to the entire development, including all common areas and grounds associated with all buildings. Although special police officers testified that the development had been subdivided into three-building sections for purposes of issuing and enforcing barring notices, and that appellant had been barred from the section where he did not reside, the alleged subdivision was not reflected in appellant's mother's lease agreement, which listed appellant as a household member and which was further binding on DCHA. Accordingly, the government failed to prove that appellant was an "unauthorized person" subject to barring on the property listed in the notice, i.e., that he was not a "member of [a] resident's household" on the property in question. 14 DCMR § 9600.2.

***Rahman v. United States*, 208 A.3d 734 (D.C. 2019).**
The trial court's finding that appellant failed to leave a McDonald's after a special police officer asked him to do so several times was sufficient to support appellant's conviction for unlawful entry.

***Wicks v. United States*, 226 A.3d 743 (D.C. 2020).**
Insufficient evidence that the sidewalk on which ticket scalper was standing immediately in front of ticket window was stadium property or that ticket scalper knew or should have known that he had entered onto stadium property and that his presence was unauthorized.

***Odumn v. United States*, 227 A.3d 1099 (D.C. 2020).**
Defendant, a tenant's guest could not be convicted of unlawful entry where landlord prohibited tenant from inviting guest onto tenant's property for a lawful purpose, and reasonably used common space for entry/exit.

***Broome v. United States*, __ A.3d___, 2020 WL 6065764 (D.C. 2020).**
Evidence sufficient to support finding that the Howard University Hospital was a private building for purposes of the unlawful entry statute.

32. Threats

***Carrell v. United States*, 165 A.3d 314 (D.C. 2017).**
A threats conviction "requires more than evidence that the defendant intended to utter the words that constitute the threat," but rather that the government must prove the defendant's mens rea to utter the words as a threat by establishing that the defendant acted with the purpose to threaten or with knowledge that his words would be perceived as a threat. Note, the Court endorsed the Model Penal Code's gradations of intent (purpose, knowledge, recklessness, negligence) over the vague concepts of general and specific intent.

***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*, 573 U.S. 916 (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).**
An attempted threat 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.

35. Perjury

***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.

40. Carjacking

***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.

41. Stalking

***Beachum v. United States*, 197 A.3d 508 (D.C. 2018).**
D.C. Code § 22-3133(a)(3) (2012 Repl.) was not unconstitutional. The Constitution did not forbid crimes that required only a showing of negligence with respect to an element of the crime. The Elonis decision and the Carrell decision did not support defendant's contention that § 22-3122(a)(3) was unconstitutional because it permitted conviction based on a defendant's negligent failure to realize that the defendant's conduct would cause a reasonable person to feel fear, serious alarm, or emotional distress.

***Coleman v. United States*, 202 A.3d 1127 (D.C. 2019).**
To support a conviction for attempted stalking under D.C. Code 22-3133(a), the government must prove beyond a reasonable doubt that the defendant: (1) purposely engaged in a course of conduct involving at least two occasions of statutorily proscribed behavior (e.g., following, monitoring, or communicating) and (2) possessed the requisite mental state—e.g., should have known that a "reasonable person in [complainant's] circumstances" would fear for her or another's safety, "[f]eel seriously alarmed, disturbed, or frightened," or "[s]uffer emotional distress"—on at least two of the occasions comprising the "course of conduct."

The "should have known" standard is objective and depends on whether a reasonable person in the defendant's circumstances would have known that his conduct would cause a reasonable person in the complainant's position to feel the requisite fear, alarm, disturbance, fright, or emotional distress. "[T]he level of fear, alarm, or emotional distress" that a reasonable complainant would experience as a result of the defendant's conduct "must rise significantly

above that 'which [is] commonly experienced in day to day living,' and must involve a 'severe[] intrusion on the victim's personal privacy and autonomy[.]' Ordinary 'uneasiness, nervousness, [and] unhappiness' are insufficient."

42. Escape

***Davis v. United States*, 166 A.3d 944 (D.C. 2017).**
Fleeing from an attempted, but not yet completed, arrest did not violate the escape statute. The D.C. escape statute prohibits, in pertinent part, escaping from the "lawful custody" of a police officer. D.C. Code § 22-2601(a)(2). The DCCA had previously held in Mack v. United States, 772 A.2d 813 (D.C. 2001), that the escape statute applies to escapes from an officer's physical restraint pursuant to a lawful arrest. However, after reviewing cases from other jurisdictions, the court declined to extend Mack to an escape from physical restraint while attempting to make a lawful arrest. The court noted that a different statute, D.C. Code § 22-405, criminalizes efforts to evade arrest. But Mr. Davis was charged with escape, and that crime he did not commit.

43. Voyeurism

***Valenzuela-Castillo v. United States*, 180 A.3d 74 (D.C. 2018).**
Affirming conviction for attempted voyeurism in violation of D.C. Code 22-3531(b)(1), and finding that Mr. Valenzuela Castillo "occupied a hidden observation post" while observing a female customer using the bathroom stall at the restaurant where he worked as a janitor. Judge Easterly dissented on grounds that the majority misinterpreted what it means to "occupy a hidden observation post" and exceeded its judicial role.

44. Disorderly Conduct

***Solon v. United States*, 196 A.3d 1283 (D.C. 2018).**
Reversing Ms. Solon's conviction for "Disorderly Conduct – Creating Fear" and interpreting D.C. Code § 22-1321 (a)(1) to require proof that the person charged places another person in actual fear of reasonable harm to his or her person or property. That Ms. Solon's actions confronting climate protestors would have put an ordinary person in reasonable fear is not sufficient, and the record does not support that the climate protestors actually feared for their persons or property.

45. Bail Reform Act

***Laniyan v. United States*, 226 A.3d 1146 (D.C. 2020).**
Remand was required for trial court to make finding that defendant's failure to appear for court was willful, without relying solely on statutory inference of willfulness.

***Johnson v. United States*, 232 A.3d 156 (D.C. 2020).**
Evidence sufficient to support Bail Reform Act violation where evidence of defendant's failure to appear after he was given notice of the appearance met the statutory presumption that defendant's failure to return to court was "willful," and no evidence was admitted to rebut the presumption.

46. PWID-Marijuana

***Kornegay v. United States*, ___A.3d___ (D.C. 2020).**
Defendant did not commit crime of possession with intent to distribute marijuana by possessing less than two ounces of marijuana.

C. Other Sufficiency Issues
1. Jurisdiction ……..……. 36.32

***Jenkins v. United State*s, 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.

2. CPO Violation

***Holmon v. District of Columbia*, 202 A.3d 512 (D.C. 2019).**
Intentional placement of telephone calls may qualify as "contact" for the purposes of a CPO violation, even where the calls go unanswered. Even assuming that the recipient had to be aware of the call while the defendant was making it, the record supports that the recipient was aware of the defendant's calls and chose not to answer them.

***Ramirez v. Salvaterra*, 232 A.3d 169 (2020):** The court clarified the two-part inquiry for extending a civil protection order (CPO) under the Intrafamily Offenses Act, D.C. Code §§16-1001-1006. First, the trial court must determine whether there is "good cause," defined as a cognizable danger that the respondent will commit or threaten to commit a criminal offense against the petitioner in the second year if the CPO is not extended. Second, if good cause exists, the trial court must balance the harms to each party of extending or not extending the CPO.

3. POCA Statute

***Campbell v. United States*, 163 A.3d 790 (D.C. 2017).**
Amendment to POCA statute changing the term "parking" to "parking area" was not intended to expand the meaning of the term to "parking lot area" beyond the POCA statute's original meaning and does not include the location where the appellant was arrested which was in a car parked on an unmarked grassy area between two church parking lots.

***Campbell v. United States*, 224 A.3d 205 (D.C. 2020).**
Officer's mistaken belief that the grassy median upon which the defendant was parked does not qualify as a "parking area" within the ambit of the POCA statute was objectively reasonable, and because officer likely had probable cause to arrest appellant for DUI the defendant did not establish a reasonable probability that his motion to suppress on a statutory construction argument would have been successful prevailed on the merits.

***Mejia-Cortez v. United States*, 256 A.3d 210 (D.C. 2021).**
Defendant's failure to request special findings of fact did not waive challenge to sufficiency of the evidence of POCA statute and conviction reversed and remanded because trial court's judicial notice of statute prohibiting beverages in train station was insufficient to permit Court of Appeals from taking judicial notice that train station lacked alcohol sale license.

CHAPTER 37 – CLOSING ARGUMENT

***Fleming v. United States*, 148 A.3d 1175 (D.C. 2016).**
The admission after closing arguments of a single video disc containing a compilation of the videos already presented and admitted during trial did not constitute an unfair surprise and was therefore not improper, because the clips in the compilation were not altered, nothing new was added, and there was no evidence that the exhibit was deliberately withheld to gain some tactical advantage.

III. PROSECUTORIAL MISCONDUCT

***Walker v. United States*, 167 A.3d 1191 (D.C. 2017).**
The prosecutor did not misstate the evidence in her closing argument when she argued that Walker stated "somebody gonna die today" before driving to the scene of the murder.

***Blades v. United States*, 200 A.3d 230 (D.C. 2019).**
The prosecutor's closing argument suggesting that appellant could not claim self-defense because he "brought [a] gun to the neighborhood" had the potential to convey an "erroneous" message about loss of the right to claim self-defense but ultimately did not when taken together with the remainder of the closing. Any error in instructing the jury that first aggressors and provocateurs forfeit the right to self-defense was harmless.

***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.

***Fleming v. United States*, 148 A.3d 1175 (D.C. 2016).**
The comments made and rhetorical questions asked by the prosecutor during closing statements, about the credibility of the government's key witness, did not suggest that the prosecutor had knowledge outside of the evidence presented to the jury at trial, because they were in the context of an argument drawing reasonable inferences supported by evidence as to why the witness might not have remembered certain aspects of the incident, and therefore, the comments were not improper.

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.

***Davidson v. United States*, 137 A.3d 973 (D.C. 2016).**
Consistent with *Comber v. United States*, 584 A.2d 26 (D.C. 1990), and following the court in *Wheeler v. United States*, 832 A.2d 1271 (D.C. 2003), voluntary intoxication will not be considered as a defense to voluntary manslaughter, and therefore, the trial court did not err in denying the appellant's request for a jury instruction on voluntary intoxication.

***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.

***Coley v. United States*, 196 A.3d 414 (D.C. 2018).**
The trial court erred in denying defendant's motion for a new trial because a poll of the jury that revealed a breakdown and a subsequent note from a juror stating that she did not believe defendant "did it" demonstrated a substantial likelihood of a coerced verdict, and the procedure used by the court - giving the juror's note to a different judge to review - denied defendant his right to be present at a critical stage of his trial, impaired his ability to argue effectively for a

proper response under D.C. Super. Ct. R. Crim. P. 43, and prevented either judge from appreciating the substantial risk of juror coercion, and the trial court was obligated, at a minimum, to give an instruction that would assure the dissenting juror that she would not be compelled to give up her honest convictions for the sake of achieving a unanimous verdict.

***Dawkins v. United States*, 189 A.3d 223 (D.C. 2018).**
In defendant's criminal trial for voluntary manslaughter under D.C. Code § 22-2105 (2013 Repl.), the jury instruction regarding his claim of self-defense was deficient because it permitted the jury to reject his self-defense claim based on his failure to retreat before defendant employed deadly force or had any possible justification to use it, such that it was not temporally limited to the time at which he used deadly force; Moreover, the error was not harmless and caused prejudice to defendant, based on the government's repeated suggestions that the jury could consider defendant's failure to walk away before he had any possible justification to use deadly force.

***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).

***Bryant v. United States*, 148 A.3d 689 (D.C. 2016), *supra*.**
The trial court instructed the jury that the government could disprove self-defense if there was evidence the appellants provoked the action from which they were defending themselves. Appellants argued that in accordance with *Tibbs v. United States*, 106 A.3d 1080, 1085 (D.C. 2015), provocation requires that the defendants engaged in a "violent or threatening encounter with specific individuals and then shortly thereafter sought out those same individuals again." The Court agreed that violent or threatening conduct can be sufficient to justify a provocation instruction but declined to limit the instruction to only such situations. The Court ruled that even without any violent conduct, there was some evidence of provocation, primarily based on testimony that the defendant was "mean mugging" others and that he intentionally went to a rival gang's neighborhood armed with weapons. Accordingly, the Court "reviewing only for plain

error," found no error. As such, absent any specific evidence of a threatening or violent encounter with specific individuals immediately followed by seeking out those individuals, objection to any provocation instruction will preserve the record.

***Buskey v. United States*, 148 A.3d 1193 (D.C. 2016).**
Trial court erred in its initial aiding and abetting instruction that included a general explanation, and then included offense specific instructions for burglary, robbery, and kidnapping, but included no offense specific instruction for carrying a dangerous weapon (CDW).

Trial court erred when reinstructing the jury that to convict of aiding and abetting CDW, the jury needed to find that the defendant "acted with the intent that the weapon be used unlawfully," but failed to instruct it to find that the accomplice had "aid[ed] and abet[ted] the principal's 'carrying' of the dangerous weapon . . . [by] tak[ing] some step]to further the carrying.'"

The trial court's placement of its instruction on co-conspirator liability between two instructions relating to the substantive charge of conspiracy as a distinct crime was plain error. That is because jury instructions "as a whole should provide the jury with a clear path to understanding the substantive law, the theories of defendant liability, and the general but fundamental principles governing a defendant's guilt," which these instructions failed to do.

The trial court's failure to read its supplemental jury instructions (in response to several jury notes) in open court was error. The DCCA did not seem to find this error plain in this case, given the dearth of on-point case law in this jurisdiction, although henceforth, it will be.

***Cousart v. United States*, 144 A.3d 27 (D.C. 2016).**
The DCCA warned that the "while armed" instruction can impermissibly imply that defendant did, in fact, possess charged weapon. "when this instruction is simply tacked on to a prior instruction without a clear indication that it is a statement of what the jury must find and not an assertion that the defendant did in fact carry some particular item, it could be subject to misinterpretation."

***Fleming v. United States*, 148 A.3d 1175 (D.C. 2016).**
Jury instruction on the gun battle theory of causation was not improper in case involving the death of a combatant and not merely an innocent bystander because the theory is rooted in liability based on proximate causation, and the defendant's conduct contributed substantially to the fatal injury and the death was a reasonably foreseeable consequence of the conduct. It made no meaningful difference that the victim was a participant in the battle rather than an innocent bystander.

***Gray v. United States*, 147 A.3d 791 (D.C. 2016).**
The trial court did not commit plain error when, on the charge of aiding and abetting armed robbery, it failed to instruct the jury that the aider and abettor must have had "actual knowledge" that his accomplice was armed, because the court's instruction that the aider and abettor must have "acted with the same intent" as his accomplice would have sufficiently informed the jury of the requirement of actual knowledge, and the record showed sufficient evidence to prove beyond a reasonable doubt that the aider and abettor knew that his accomplice was carrying a weapon.

***Griffin v. United States*, 144 A.3d 34 (D.C. 2016).**
The reasonable doubt instruction was taken verbatim from Red Book Instruction 2.108, except it omitted three lines comparing the burden of proof in civil and criminal cases: *In civil cases, it is only necessary to prove that a fact is more likely true than not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt*. The Court of Appeals found instructional error, because of the trial court's omission of language in the Red Book instruction, but held that the instruction in this case is subject to plain error-review because the defendant did not timely object to the instruction which altered the Red Book instruction, and thus the conviction stands which replicates the reasonable doubt instruction adopted by the Court in *Smith v. United States*, 709 A.2d 78, 82 (D.C. 1998) (en banc), because the *Smith* court advised "in the strongest terms" that trial courts are not to alter or embellish the language it crafted. *Id.* at 82-83. Nevertheless, the instructions as a whole — which contained the bulk of Red Book Instruction 2.108 along with several other statements that the government must prove each element of the charged offenses beyond a reasonable doubt — "correctly convey[ed] the concept of reasonable doubt" and did "not inaccurately describe that concept or lessen the government's burden."

***Washington v. United States*, 135 A.3d 325 (D.C. 2016).**
Trial court did not err in its clarifying instruction to the jury repeating the definition of "dangerous weapon," where defendant was charged with assault with a deadly weapon, though he was carrying a cell phone and not a gun. The court later supplemented its instruction to inform the jury that an object could be considered a dangerous weapon if it was brandished in such a way that caused the complainant to reasonably believe it could cause bodily harm. The trial court's instruction was consistent with precedent that, regardless if the object in question is physically similar to a firearm, it is sufficiently a dangerous weapon if it was perceived to be a firearm by another individual, and the victim in this case testified as to her belief that the cell phone was a firearm.

***Dickens v. United States*, 163 A.3d 804 (D.C. 2017).**
The court did not err when it instructed the jury on aiding and abetting where the government's theory and evidence identified him as the principal because the evidence was sufficient in this case to have supported a conviction under either accessory or principal liability.

***Gray v. United States*, 155 A.3d 377 (D.C. 2017).**
The trial court erred in not giving an instruction on the lesser included offense of second-degree theft because the evidence would have supported a finding by the jury that the assaults and taking of the complainant's money were distinct from one another. On the "unusual facts of this case," the DCCA held that the evidence supported a rational conclusion that the defendant neither assaulted the complainants with the intent of effectuating a subsequent taking, nor consciously exploited the fear created by the assaults when taking the money. The DCCA found that based on the evidence presented—particularly the camera footage—the jury could rationally have concluded that "the assaults and the theft were not connected but rather resulted from a series of separate, erratic impulses." In other words, the defendant's behavior was so strange that the jury could well have believed that the theft of the $7 dollars was spontaneous and

unconnected to this touching the complainants with the palm of his hand. The majority opinion draws two important legal conclusions about the robbery statute in the course of its analysis on this point. First, while case law makes clear a defendant can commit a robbery when she takes advantage of the fear created by assaultive acts that were committed with no robbery in mind, the defendant must purposefully take advantage of that fear, not simply coincidentally benefit from it. The second is that simply taking something from a victim's "immediate actual possession" (as opposed to the victim's person) does not constitute robbery because "such a principle would completely nullify the 'by force or violence' element of robbery."

***Payne v. United States*, 154 A.3d 602 (D.C. 2017).**
An instructional error by the trial judge when omitting the word "not" in oral instructions to the jury before deliberation did not amount to a constitutional error because when taken in context, the jurors were not reasonably likely to have understood that the trial judge was instructing them to find Mr. Payne guilty no matter what.

***Smith v. United States,* 203 A.3d 790 (D.C. 2019).**
In a murder case, where evidence showed that appellant left an altercation with the decedent to arm himself before returning to the altercation and shooting the decedent, trial counsel was not ineffective for failing to present a defense of perfect or imperfect self-defense (i.e., manslaughter) based on evidence that the decedent had threatened appellant with pocket knife. Such evidence could not have entitled appellant to a jury instruction on perfect or imperfect self-defense because appellant "deliberately chose to risk the fatal encounter . . . by arming himself with a deadly weapon and going to confront" the decedent, and "initiated the confrontation with the victim with the intent to kill or do great bodily harm.

***Fitzgerald v. United States,* 228 A.3d 429 (D.C. 2020).**
Reversible error when in response to a jury's question trial judge re-instructed about obstruction of justice offense and omitted motive element of the offense.

***Fleming v. United States*, 224 A.3d 213 (D.C. 2020) (*en banc*).**
"Gun battle" instruction from *Roy v. United States*, 871 A.2d 498 (D.C. 2005), was erroneous because it did not require the jury to find that the defendant's action was a "but-for" cause of the death. For the purpose of the District of Columbia's homicide statutes, "kill" means "cause death," and following the Supreme Court's decision in *Burrage v. United States*, 571 U.S. 204 (2014) the court applied the but-for causation requirement in the context of second-degree murder over the less stringent substantial-factor instruction advanced in *Roy v. United States*, 871 A.2d 498 (D.C. 2005) for conduct causing the death at issue during a gun battle. Consequently, the court found reversible error for trial judge to not explicitly instruct the jury that it was required to find but-for causation, when instructing the jury on how to determine whether the defendant was responsible for causing the death at issue during a gun battle. Court announces new model jury instruction on homicide causation.

***Lucas & Lucas v. United States,* ___ A.3d ____, 2020 WL 6198434 (D.C. 2020).**
Trial court properly conveyed but-for causation required under Bias-Related Crime Act when it instructed the jury " that there may be 'additional motives' other than bias or prejudice that caused appellants to attack the complainant, but nonetheless, the jury may convict if it finds

beyond a reasonable doubt that the they committed the aforementioned crimes 'because of prejudice based on the actual or perceived sexual orientation of' of the [][complainant].

***Koonce v. District of Columbia*, 111 A.3d 1009 (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.

***Roberts v. United States,* 213 A.3d 593 (D.C. 2019).**
Where a juror's note indicated a possible deadlock and a numerical split in the jury's voting, the trial court erred and violated appellant's constitutional right to be present and represented by counsel at trial when, in an effort to prevent itself from learning the numerical split, the court refused to allow defense counsel to read the note. The trial court's error was not harmless beyond a reasonable doubt because, had defense counsel been able to read the note, he could have relayed its contents (minus the numerical split) and argued—"with authority" and a "reasonable possibility" of success—for a mistrial or an instruction that no juror should "surrender [her] honest conviction as to the weight or effect of evidence solely because of the opinion of [her] fellow jurors, or only for the purpose of returning a verdict." Although defense counsel sought these remedies unsuccessfully below, the trial court's reason for refusing to grant them was its self-imposed ignorance regarding the note's content.

***Frey v. United States,* 137 A.3d 1000 (D.C. 2016).**
The jury verdict here might have been affected by the erroneously admitted evidence because, (1) the contents of the phone call purport to show whether or not the sexual encounter was consensual, which was the central issue at trial, and bolstering the witness' credibility could have swayed the jury, (2) the physical evidence and testimony in this case did not support either account over the other, (3) the temporal proximity of the call to the incident might have made the contents therein more persuasive to the jury, and (4) the prosecutor relied heavily on the recording of the phone call, and the stress placed on a piece of evidence by a prosecutor tells a good deal about whether or not the evidence may have been prejudicial.

CHAPTER 39 – CONTEMPT

***Salvattera v. Ramirez,* 105 A.3d 1003 (D.C. 2014).**
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.

***Lopez-Ramirez v. United States*, 171 A.3d 169 (D.C. 2017).**
Victims of Violent Crime Compensation Act (VVCCA) assessments should not be treated as fines or penalties under the statute. Thus, allowing a defendant to demand a trial by jury if he is charged with two or more offenses which are punishable by a cumulative fine or penalty of more than $4,000 is not permissible. The word "assessment" was used in the VVCCA, rather than "fine" or "penalty," and the statute provided that VVCCA assessments shall be collected as fines, and this language would be unnecessary if legislature otherwise equated "assessments" with "fines."