Interpersonal Violence Case Summaries
Criminal Cases

Including April 2019 – June 2019 Cases
Presented by the Publications Committee of the
Florida Court Education Council

The Publications Committee of the Florida Court Education Council presents these summaries of criminal decisions primarily of the Florida Supreme Court and intermediate appellate courts. Until June 2008, these summaries were written, edited, and reviewed quarterly by Eleventh Circuit judges and managers. The summaries are now written by the Office of the State Courts Administrator's (OSCA) Office of Court Improvement; OSCA's Publications Unit edits the summaries and prepares the index for this document. Since the summaries are written immediately after issuance of each decision, readers are encouraged to check all cases cited before relying on them. This is a cumulative collection consisting primarily of cases from 1996 to the present, but a few cases before 1996 are included as well. This collection is typically published quarterly; case summaries added in quarterly issues are indicated after the Table of Contents in **bold**.

July 2019

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Legal citations are hyperlinked to the Westlaw database. When you clink on a link you will be asked for your Westlaw sign on information. Once you are signed on, just minimize the screen. You should then be able to retrieve all of the Westlaw hyperlinks you select.

***Garcia v. State*, __ So. 3d __, 2019 WL 2607294 (Fla. 3d DCA 2019)**
The defendant claimed he could not be convicted of violating a stalking injunction because the temporary injunction had expired and he had not been served with the permanent injunction that had been ordered. The appellate court reversed, noting that the language on the temporary injunction clearly stated "EXPIRES: July 5th 2018 OR UNTIL THE FINAL JUDGMENT OF INJUNCTION OF PROTECTION IF ENTERED IS SERVED ON RESPONDENT." Therefore the temporary was still in effect when the defendant violated it.
https://www.3dca.flcourts.org/content/download/527859/5864438/file/190060_809_06262019_10222937_i.pdf

***Jacobs v. State*, __ So. 3d __, 2019 WL 2147294 (Fla. 2d DCA 2019)**
The defendant was convicted of aggravated stalking and two counts of violating a stalking injunction. He appealed, claiming the convictions were a double jeopardy violation. The appellate court affirmed, stating: "Even if he was committing both violations at the exact same time, they are distinct acts separately proscribed by the statute under which he was convicted."
https://www.2dca.org/content/download/525176/5834305/file/172437_65_05172019_08273424_i.pdf

***Palomino v. State*, 270 So. 3d 432 (Fla. 4th DCA 2019)**
The defendant was convicted of aggravated battery with a deadly weapon and two counts of violation of a domestic violence injunction, and he appealed. A record on appeal was sent to the appellate court, but the transcript from one of the days of trial was missing, and an affidavit from the court reporter stated that the electronic and backup files for that day were empty. The defendant moved to relinquish jurisdiction to reconstruct the record for that day. The parties agreed that the "missing transcript was necessary for full [appellate] review of the case" and that the "Defendant's convictions and sentences should be reversed, and that this case should be remanded for a new trial." The circuit court entered an order on relinquishment, the state filed a confession of error, and the appellate court reversed the defendant's convictions and sentences and remanded the case for a new trial.
https://www.4dca.org/content/download/524709/5829322/file/180197_1709_05082019_08541899_i.pdf

***Rodriguez v. State*, 269 So. 3d 639 (Fla. 5th DCA 2019)**
The defendant was arrested and charged with domestic battery and domestic battery by strangulation. At the time of the arrest, he was out on bond from a previous domestic battery charge. At the defendant's first appearance on the new charges, the judge ordered him held without bond on the new charges and revoked bond in the earlier case. The defendant sought a writ of habeas corpus to obtain pretrial release, which the appellate court granted, because "the State did not seek pretrial detention and the new charges did not allege a capital or life felony."
https://www.5dca.org/content/download/523903/5820321/file/191114_1255_04242019_10060967_i.pdf

***Martin v. State*, __ So. 3d __, 2019 WL 1781293 (Fla. 3d DCA 2019)**
The defendant was convicted of domestic battery by strangulation and two counts of simple battery. He appealed, claiming the convictions were a double jeopardy violation because he was "convicted twice—for domestic battery by strangulation and simple battery—for a single act of strangulation." The appellate court affirmed, noting that "[t]he record plainly reveals that [he] committed two separate, distinct acts of strangulation at two different times and in two different locations."
https://www.3dca.flcourts.org/content/download/525688/5840305/file/3D17-1848.pdf

***Russell v. State*, 269 So. 3d 621 (Fla. 1st DCA 2019)**
The defendant was convicted of aggravated stalking and appealed, arguing that the trial court abused its discretion by admitting his text messages to the victim as impeachment evidence. The appellate court affirmed, stating that the defendant "opened the door to cross-examination about those text messages because they contradicted [his] testimony that the victim repeatedly initiated contact with him because she wanted them to get back together. The texts showed it was [the

defendant] who insisted on communicating with the victim despite her efforts to avoid any further contact with him."
https://www.1dca.org/content/download/523608/5816979/file/174925_1284_04162019_02412934_i.pdf

***Lee v. State*, 268 So. 3d 904 (Fla. 1st DCA 2019)**
The defendant was convicted of aggravated stalking and appealed, claiming that the trial court improperly admitted into evidence the victim's 911 call and three of his jail calls to the victim. The appellate court affirmed, stating that "the trial judge did not err in ruling that this victim's statements to the 911 operator constituted excited utterances" and that "[t]he victim's statements, offered for a purpose other than truth—here, to provide context for [the defendant's] responses—are not hearsay."
https://www.1dca.org/content/download/522915/5809465/file/171469_1284_04032019_10281318_i.pdf

Appeals

***Palomino v. State*, 270 So. 3d 432 (Fla. 4th DCA 2019)**
The defendant was convicted of aggravated battery with a deadly weapon and two counts of violation of a domestic violence injunction, and he appealed. A record on appeal was sent to the appellate court, but the transcript from one of the days of trial was missing, and an affidavit from the court reporter stated that the electronic and backup files for that day were empty. The defendant moved to relinquish jurisdiction to reconstruct the record for that day. The parties agreed that the "missing transcript was necessary for full [appellate] review of the case" and that the "Defendant's convictions and sentences should be reversed, and that this case should be remanded for a new trial." The circuit court entered an order on relinquishment, the state filed a confession of error, and the appellate court reversed the defendant's convictions and sentences and remanded the case for a new trial.
https://www.4dca.org/content/download/524709/5829322/file/180197_1709_05082019_08541899_i.pdf

Bond

***Roberts v. State*, 10 So. 3d 1209 (Fla. 4th DCA 2009)**
The district court granted habeas relief because the defendant was entitled to have a bond set for the offense of violation of an injunction for protection against domestic violence, when the prosecutor had not moved for pretrial detention and the magistrate did not consider whether there were release conditions that could have protected the community from risk of harm.
http://www.4dca.org/opinions/June%202009/06-30-09/4D09-2376.op.pdf

***Montgomery v. Jenne*, 744 So. 2d 1148 (Fla. 4th DCA 1999)**
The magistrate setting bail in a battery case considered the arrest affidavit (but no photographs), which alleged the defendant broke the victim's ribs. Subsequently, upon the trial court's consideration of photographs showing the same injuries detailed in the arrest affidavit, the judge, on his own motion, increased the bond. Granting habeas relief, the district court held that (1) a trial judge does *not* have the authority to increase the bond on his or her own motion; (2) it was error to increase the bond without giving the defendant the required three hours' notice, especially since the case was before a judge on the defendant's motion to reduce bond; and (3) increasing the bond is improper unless the state demonstrates that such increase is justified by information *not previously available* to the committing magistrate who set the initial bond. Since the photographs amounted to "only the same information in different form," the trial judge had no authority to increase the bond.

Burglary

***State v. Byars*, 804 So. 2d 336 (Fla. 4th DCA 2001)**
The defendant was charged with first degree murder and armed burglary of an occupied structure with assault and battery. The victim had an injunction against the defendant preventing him from entering the structure where the victim was killed. The defendant successfully moved that the second count of armed burglary be dismissed based on *Miller v. State*, 733 So. 2d 955 (Fla. 1998), in which the court held that a complete defense to burglary is established when the defendant can prove that the premises were open to the public. The state challenged the dismissal because of the domestic violence injunction, which encompassed the victim's workplace. The district court ruled that the intent of *Miller* must be upheld because of the statutory wording in section 810.02(1), Florida Statutes. Because the defendant entered a store that was open to the public, a charge of burglary cannot stand.

***State v. Suarez-Mesa*, 662 So. 2d 735 (Fla. 2d DCA 1995)**
The husband, who had shared the house with his wife but was restrained by court order (an injunction) from entering the property, was subject to a burglary charge when he entered the premises with the intent to commit a crime.

Collateral Estoppel

***State v. Alberts*, 9 Fla. L. Weekly Supp. 278 (Fla. 11th Cir. Ct. 2002)**
The state is not collaterally estopped from prosecuting a defendant on the same allegations as were heard in a prior separate civil domestic violence action in which the civil petition was denied. The court held that the parties in the criminal case were different from the parties in the civil case. However, the court held that even if the parties and issues were the same, the elements for a cause of action in a civil domestic violence case were different from the elements required for proof in the criminal domestic violence action.

Conditions of Probation

***Carty v. State*, 79 So. 3d 239 (Fla. 1st DCA 2012)**
The appellant was convicted of resisting an officer without violence and sentenced to probation which included a special condition requiring him to complete a batterers' intervention program (BIP). The appellant claimed the BIP condition was invalid because it was not reasonably related to his rehabilitation. He was originally charged with battery, burglary of a conveyance with assault, and resisting an officer without violence. The jury acquitted him of the battery and burglary charges, but returned a guilty verdict on the resisting charge. However, the trial court still included the batterers' intervention program as a special condition of appellant's probation. Since the batterers' intervention program had no relationship to the appellant's conviction for resisting an officer without violence and there was nothing in the record to suggest that appellant had a propensity towards domestic violence, the court reversed.
http://opinions.1dca.org/written/opinions2012/02-17-2012/11-3512.pdf

***Jean-Louis v. State*, 82 So. 3d 1032 (Fla. 4th DCA 2011)**
The district court affirmed appellant's conviction for attempted simple stalking, but reversed a five-year concealed-weapon license revocation, which was a condition of probation. The trial court found appellant guilty and placed him on six months' probation with a condition that he not possess, carry, or own any weapons, and revoked his concealed weapons license for five years. The district court found that the trial court exceeded the time provided by statute for revocation of a concealed weapons license as section 790.06(3), Florida Statutes, limits it to three years.
http://www.4dca.org/opinions/Aug%202011/08-31-11/4D09-3556.op.pdf

***State v. Williams*, 712 So. 2d 762 (Fla. 1998)**
The requirement that the defendant pay for drug testing is a special condition of probation that the trial court must pronounce orally at sentencing.

Confidentiality

***In re Amendments to Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure*, 31 So. 3d 756 (Fla. 2010)**
The supreme court amended rule 2.420 of the Florida Rules of Judicial Administration and amended the Florida Rules of Appellate Procedure to provide comprehensive procedures for identifying and segregating confidential information in court records, for sealing and unsealing court records, and for reviewing orders issued under the rule. The revisions clarified that those records defined in the rules are confidential and may not be released except as provided, including the provision that keeps the petitioner's address confidential in domestic violence cases.
http://www.floridasupremecourt.org/decisions/2010/sc07-2050.pdf

Consent

***State v. Clyatt*, 976 So. 2d 1182 (Fla. 5th DCA 2008)**
The state sought certiorari review of a trial court order barring it from calling independent witnesses to prove that the victim did not consent to an alleged battery committed on her by the defendant. The alleged incident occurred in a fast food restaurant drive-through where many witnesses observed the defendant bashing the victim's head against the car window from inside the car and choking her. The victim refused to cooperate with the state in the defendant's prosecution, leaving the state with the options of dismissing the case or relying on third-party witness testimony to prove the case. When the state decided to proceed with the prosecution, it had to show that the victim was struck against her will. The testimony provided by third-party witnesses of the attack would constitute merely circumstantial evidence that the victim did *not* consent to the beating but also would indicate that the victim seemed to be resisting the attack and was visibly upset, thus leaving but one reasonable inference that the beating was uninvited. The state was unable to provide the trial court with a specific case where a victim's lack of consent could be proven circumstantially so the court did not allow the witnesses' testimony without having the victim's testimony as well. The district court held that lack of consent has been proven by circumstantial evidence in other types of criminal prosecutions. Additionally, circumstantial evidence has been enough to prove other issues such as a defendant's state of mind. Ultimately, the district court held that there was no distinction between consent and state of mind; consent could thus be proven by circumstantial evidence as well. Also, the district court looked to the importance of the relevance of the witnesses' testimony. By failing to allow such testimony, the trial court barred a form of evidence that could have sufficiently established the victim's lack of consent. The order barring third-party eyewitness testimony was quashed.
http://www.5dca.org/Opinions/Opin2008/031708/5D07-989.op.pdf

***State v. Conley*, 799 So. 2d 400 (Fla. 4th DCA 2001)**
The state appealed an order dismissing felony battery charges. An adversarial hearing occurred, but the state had neglected to subpoena the witnesses to the events. The victim was present and claimed that she instigated the argument and that the injuries she sustained were a result of her own actions, directly contradicting the eyewitness account. The victim claimed she never wanted charges brought against the defendant. The judge dismissed the charges despite the state's objection. In relying both on rule 3.133(b), Florida Rules of Criminal Procedure, and on *State v. Hollie*, 736 So. 2d 96 (Fla. 4th DCA 1999), the district court held that because the hearing was an adversarial hearing at which the defendant never motioned the court for dismissal and because probable cause was clearly established, a dismissal was clearly in error. Judge Warner concurred in a separate opinion, finding that the lower court made an additional error in finding that consent to battery is a defense. Consent is only a defense in cases of sexual battery, *not* domestic violence. Judge Warner continued by noting consent as a defense to domestic violence is in complete contravention to section 741.2901(2), Florida Statutes, in that the intent

behind creating the statute was to make domestic violence a criminal act as opposed to a "private matter."

Contempt

***Berrien v. State*, 189 So. 3d 285 (Fla. 1st DCA 2016)**
An unmarried mother, who had previously received a domestic violence injunction against the father, petitioned to have her injunction dissolved. The court complied. However, the father failed to comply with the terms of the injunction, and the original judge who ordered the injunction vacated the order dissolving it and pursued indirect criminal contempt charges against the father. The father appealed, and the appellate court held that once the injunction was dissolved, the father was no longer required to comply with its terms. Therefore, the successor judge was not allowed to reinstate it sua sponte or hold the father in contempt for failing to comply or failing to attend the compliance hearings. The appellate court noted that the order of dismissal removed the court's jurisdiction.
https://edca.1dca.org/DCADocs/2015/0931/150931_DC13_04122016_103610_i.pdf

***Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008)**
The appellant sought habeas corpus relief after being sentenced to jail for six months for allegedly violating a domestic violence permanent injunction with a purge provision requiring her to complete a 60-day domestic violence class. The appellee had filed an affidavit of violation of the permanent injunction by appellant, and the court issued a notice of hearing on November 8, 2007, for a hearing on December 11, 2007. The habeas petition reflected that the appellant was not served with the notice of the hearing until December 13, 2008 (two days after the hearing had been held). The court found that the appellant had been served on November 15, 2007. The appellant failed to appear at the hearing, and based on the appellee's unrebutted testimony the trial court found that the appellant had violated the injunction and ordered her to be jailed for six months. The trial court included a purge provision that the appellant would be released upon completion of a 60-day domestic violence class. The appellant was arrested and, at the time of the appeal, remained in custody. The district court held that the trial court's order clearly amounted to a finding of criminal contempt rather than civil contempt since the sanction imposed sought to punish the appellant and the purge itself required her to remain in jail for at least 60 days. The district court noted that the state did not file criminal charges for the appellant's alleged violations nor was she brought back before the court once arrested. Additionally, the state never moved for an order to show cause why the appellant should not be held in criminal contempt. The district court granted habeas corpus relief because the appellant was denied due process before being deprived of her liberty. The state was allowed to file the proper charges for the appellant's contempt in accordance with contempt proceedings that afford the appellant due process.
http://www.4dca.org/opinions/Jan2008/01-10-2008/4D08-03.op.pdf

***Jones v. Ryan*, 967 So. 2d 342 (Fla. 3d DCA 2007)**
The appellants sought habeas corpus relief as a result of being sentenced to jail time for failure to comply multiple times with an order to attend a batterers' intervention program. Both appellants had received numerous notices for civil contempt hearings for failure to comply with the order to attend the program. After being held in civil contempt several times with the ability to purge the contempt by attending the course, the appellants were issued jail sentences by the court. While understanding the trial court's frustration with the appellants' continued disregard of the court's order, the district court found that the final contempt orders were criminal in nature. All the previous contempt orders contained a purge provision, unlike the last orders under which the appellants were sentenced. The district court indicated that civil contempt is intended to obtain compliance and must include a purge provision, while criminal contempt is intended to punish and must afford the contemnor due process, including the right to be represented by counsel if indigent. Additionally, if the sentence is to last longer than six months, the contemnor has a right to a jury trial, and the court must provide a written order with the factual basis for the contempt. Accordingly, the district court granted the appellants' petitions for habeas corpus relief and ordered the release of the appellants. The district court further instructed the trial court, if it wished to impose punishment in these contempt cases, to comply with rule 3.840, Florida Rules of Criminal Procedure.

http://www.3dca.flcourts.org/Opinions/3D07-2429.pdf

***State v. Delama*, 967 So. 2d 385 (Fla. 3d DCA 2007)**
After an allegedly battered woman was subpoenaed to discuss charges brought against her alleged abuser and failed to appear, the state sought a ruling to show cause for indirect criminal contempt. The court refused to issue the show cause order. On appeal, the district court held that the trial court did not have the authority to deny the state's request to issue a show cause order against an alleged victim of domestic violence when the victim does not want to testify. Note: the dissenting opinion cites California's more "socially progressive" rule that exempts victims of domestic or sexual violence from contempt if they refuse to testify as better public policy than what has been adopted in Florida.
http://www.3dca.flcourts.org/Opinions/3D07-1361.pdf

***Gordon v. State*, 960 So. 2d 31 (Fla. 4th DCA), clarified by 967 So. 2d 357 (Fla. 4th DCA 2007)**
A husband appealed several orders stemming from an indirect criminal contempt proceeding arising from alleged violations of a permanent injunction that his wife was granted. The wife moved to show cause why the husband should not be held in contempt for violating the injunction by allegedly sending threatening messages, making phone calls, and stalking her at a shopping center. After a hearing, the court entered an order to show cause why the husband should not be held in indirect criminal contempt and attached the wife's motion and affidavit, while the order itself stated no facts constituting the alleged contempt. At arraignment, the husband was questioned about his indigency and was found not to be indigent for the purposes of appointing a public defender. Two months later the husband renewed his request for a public defender and moved for a change of venue since the wife's new boyfriend had recently been elected a judge in the Fifteenth Judicial Circuit; both requests were denied. After a hearing, the court found that the husband knowingly and willfully violated the order, and the case was reset for sentencing after the husband spent a "brief period of time in jail." At sentencing, the court placed the husband on probation for one year, with 30 days in the county jail on weekends and regular psychological counseling. On appeal, for which a public defender was appointed to him, the husband argued that fundamental error occurred when the court failed to put forth the essential facts of the contempt and appoint him a public defender. The court held that, although the hearing could have been fashioned differently, the evidence supported the court's finding of contempt. However, while failure to appoint a public defender at the first arraignment was proper, the court held that failure to appoint a public defender for the contempt hearing was improper. Several of the husband's other contentions were also deemed meritless. The court held that the fact that the wife's new boyfriend was a judge-elect in that circuit did not mandate a change of venue, and that appointing the wife's attorney as a special prosecutor to handle the contempt charge was not improper but, rather, a means of effectuating judicial economy. The district court affirmed the trial court's ruling, but reversed and remanded on the contempt hearing to appoint counsel for the husband.
http://www.4dca.org/opinions/May2007/05-23-07/4D04-4432.op.pdf
http://www.4dca.org/opinions/Oct%202007/10-10-07/4D04-4432.rhg.2.pdf

***Saridakis v. State*, 936 So. 2d 33 (Fla. 4th DCA 2006)**
The appellant was found guilty of indirect criminal contempt for violating a "no contact" order and was sentenced to one year of probation. He appealed on the basis that because criminal contempt is not specifically designated as a first degree misdemeanor, it is a second degree misdemeanor and thus the probation term exceeded the 60-day statutory maximum. *See* section 775.081(2), Florida Statutes ("Any crime declared by statute to be a misdemeanor without specification of degree is of the second degree"). The appellant further argued that since second degree misdemeanors carry a statutory maximum of sixty days, his sentence exceeded the statutory maximum. The district court affirmed the trial court's decision, finding that although criminal contempt carries a punishment similar to a misdemeanor and "[f]or all practical purposes, criminal contempt is the equivalent of a misdemeanor," it is not a misdemeanor as the legislature did not specifically give it that designation.
http://www.4dca.org/opinions/July2006/07-12-06/4D05-2545.op.pdf

***McAtee v. State*, 899 So. 2d 1245 (Fla. 4th DCA 2005)**
In a criminal contempt hearing, the state has the burden to proceed first and prove beyond a reasonable doubt that the defendant intended to violate the court's order. The lower court's determination that the

defense should be heard first was a denial of due process as it erroneously placed the burden on the contemnor to prove that she should not be held in contempt, contrary to the procedure outlined in rule 3.840, Florida Rules of Criminal Procedure.
http://www.4dca.org/opinions/Apr%202005/04-20-05/4D04-694.pdf

***Graves v. State*, 872 So. 2d 298 (Fla. 2d DCA 2004)**
The district court affirmed a judgment that adjudicated a respondent guilty of "direct criminal contempt" for violating his injunction, despite a written order holding the respondent in "indirect criminal contempt." The district court did remand the case to the trial court to correct the court reporter's erroneous transcription of the judge's oral pronouncement.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2004/April/April%2014,%202004/2D00-3382.pdf

***Hunter v. State*, 855 So. 2d 677 (Fla. 2d DCA 2003)**
The respondent was ordered to successfully complete a batterers' intervention program as part of an injunction. He enrolled and attended eight classes before being terminated by the program for failure to pay the provider fee and provide proof of community service hours. The respondent was sentenced to 90 days in jail for indirect criminal contempt for violating the injunction. He testified that because he was sentenced to prison on an unrelated offense he did not have any income and that he wanted to complete the community service but could not because of his asthma. Furthermore, the batterers' program issued a trespass warning against him because he had failed to pay the provider fees. The district court held that the state had not established a willful violation, as the respondent demonstrated a willingness to attend class but could not.

***Hagan v. State*, 853 So. 2d 595 (Fla. 5th DCA 2003)**
The district court reversed the defendant's conviction for indirect criminal contempt for violating an injunction against repeat violence. The court held, inter alia, that the affidavit of violation was insufficient as it was not based on personal knowledge, and that the trial court committed reversible error by not having the proceeding transcribed, preventing making it impossible to refute the defendant's additional due process claims. The court reversed the decision without prejudice to new proceedings being initiated in conformity with rule 3.840, Florida Rules of Criminal Procedure.
http://www.5dca.org/Opinions/Opin2003/090103/5D02-4075.op.pdf

***Fay v. State*, 753 So. 2d 682 (Fla. 4th DCA 2000)**
The district court held that it was error for the trial court to deny a motion for judgment of acquittal when the defendant was charged with indirect criminal contempt for possession of a firearm in violation of an injunction for protection against domestic violence. The evidence that the defendant possessed a firearm prior to the issuance of the injunction, coupled with the circumstantial evidence relating to current possession of the firearm, was insufficient to rebut a reasonable hypothesis of innocence.

***Lapushinsky v. Campbell*, 738 So. 2d 514 (Fla. 1st DCA 1999)**
The district court granted a writ of habeas corpus when the trial judge, hearing the petition for permanent injunction, learned of a violation of the temporary injunction and, in addition to entering the permanent injunction, held the respondent in direct criminal contempt and sentenced him to 30 days in jail. The district court held that the trial court failed to comply with the procedural safeguards set forth in rule 3.840, Florida Rules of Criminal Procedure, when instituting the contempt action.

***Burk v. Washington*, 713 So. 2d 988 (Fla. 1998)**
The district court held that indirect criminal contempt is subject to the speedy trial rule, whether initiated by arrest or service of an order to show cause. When the defendant was arrested for violation of an injunction, the state filed a *nolle prosse* in county court after the defendant filed a motion for discharge, and the state subsequently filed a motion for an order to show cause in circuit court. The speedy trial period for the circuit court action commenced with the defendant's initial arrest rather than with the service of the show cause order. The Florida Supreme Court approved the result of the district court's opinion but held that in the future, the criminal speedy trial rule shall not apply to criminal contempt proceedings initiated by a court on its own motion.

***Brooks v. Barrett*, 694 So. 2d 38 (Fla. 1st DCA 1997)**
In a contempt proceeding, it was error for the court to amend *sua sponte*, without a notice or hearing, a previously entered mutual injunction against domestic violence by either the husband or the wife on the ground that the mutual injunction was prohibited by statute. The district court remanded.

***Pompey v. Cochran*, 685 So. 2d 1007 (Fla. 4th DCA 1997)**
Incarceration of the father for failure to pay an amount ordered in prior contempt proceedings arising out of a failure to pay child support was unlawful since there was no evidence to support the trial court's affirmative finding that the father had the ability to pay the purge amount.

***Walker v. Bentley*, 678 So. 2d 1265 (Fla. 1996)**
The statutory provision that domestic violence injunctions "shall" be enforced by civil contempt is directory or permissive rather than mandatory. The legislature cannot eliminate the court's inherent indirect criminal contempt power. The portion of the statute expressing legislative intent that indirect criminal contempt may not be used to enforce compliance with injunctions for protection against domestic violence is unconstitutional.

***Featherstone v. Montana*, 684 So. 2d 233 (Fla. 3d DCA 1996)**
The fact that the husband had previously been found in civil contempt and incarcerated for noncompliance with court orders did not bar indirect criminal contempt proceedings based on the same noncompliance.

***Zelman v. State*, 666 So. 2d 188 (Fla. 2d DCA 1995)**
The order holding the husband in indirect criminal contempt for violating a temporary restraining order against harassing his wife by failing to pay her health insurance premiums in a timely fashion was reversed. Neither the final judgment of dissolution nor the temporary restraining order adequately apprised the husband of conduct that was prohibited in regard to the timeliness of payment of the wife's health insurance premiums. The husband's payment of premiums after the due date had passed, but within the grace period, did not constitute indirect criminal contempt.

Costs

***J.Z. v. State*, 46 So. 3d 1218 (Fla. 4th DCA 2010)**
The district court affirmed a juvenile defendant's domestic violence battery conviction and the withholding of adjudication and placement on probation, but reversed the imposition of court costs. Section 775.083(2), Florida Statutes, provides for assessment of court costs when a juvenile is adjudicated delinquent. Since the trial court withheld adjudication of delinquency, the costs award was reversed. http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-1160.op.pdf

Counsel (and lack of)

***Gordon v. State*, 960 So. 2d 31 (Fla. 4th DCA), clarified by 967 So. 2d 357 (Fla. 4th DCA 2007)**
A husband appealed several orders stemming from an indirect criminal contempt proceeding arising from alleged violations of a permanent injunction that his wife was granted. The wife moved to show cause why the husband should not be held in contempt for violating the injunction by allegedly sending threatening messages, making phone calls, and stalking her at a shopping center. After a hearing, the court entered an order to show cause why the husband should not be held in indirect criminal contempt and attached the wife's motion and affidavit, while the order itself stated no facts constituting the alleged contempt. At arraignment, the husband was questioned about his indigency and was found not to be indigent for the purposes of appointing a public defender. Two months later the husband renewed his request for a public defender and moved for a change of venue since the wife's new boyfriend had recently been elected a judge in the Fifteenth Judicial Circuit; both requests were denied. After a hearing, the court found that the husband knowingly and willfully violated the order, and the case was reset for

sentencing after the husband spent a "brief period of time in jail." At sentencing, the court placed the husband on probation for one year, with 30 days in the county jail on weekends and regular psychological counseling. On appeal, for which a public defender was appointed to him, the husband argued that fundamental error occurred when the court failed to put forth the essential facts of the contempt and appoint him a public defender. The court held that, although the hearing could have been fashioned differently, the evidence supported the court's finding of contempt. However, while failure to appoint a public defender at the first arraignment was proper, the court held that failure to appoint a public defender for the contempt hearing was improper. Several of the husband's other contentions were also deemed meritless. The court held that the fact that the wife's new boyfriend was a judge-elect in that circuit did not mandate a change of venue, and that appointing the wife's attorney as a special prosecutor to handle the contempt charge was not improper but, rather, a means of effectuating judicial economy. The district court affirmed the trial court's ruling, but reversed and remanded on the contempt hearing to appoint counsel for the husband.
http://www.4dca.org/opinions/May2007/05-23-07/4D04-4432.op.pdf
http://www.4dca.org/opinions/Oct%202007/10-10-07/4D04-4432.rhg.2.pdf

***Tur v. State*, 797 So. 2d 4 (Fla. 3d DCA 2001)**
The defendant was sentenced to a term of probation after an uncounseled DUI plea pursuant to rule 3.111(b)(1), Florida Rules of Criminal Procedure (no incarceration was imposed). The defendant later violated his probation. The district court looked at whether a defendant sentenced to probation pursuant to rule 3.111 may be sentenced to incarceration after violating that probation. The district court held that as the trial court could not have imposed a jail sentence on this defendant for his uncounseled plea to the charges, it cannot later impose a jail term for a violation of the terms of the probation. The case was reversed and remanded for resentencing without incarceration.

***Harris v. State*, 773 So. 2d 627 (Fla. 4th DCA 2000)**
The defendant was charged with a crime allowing imprisonment for up to one year. The state represented that it would not seek jail time. Knowing this, the defendant was tried without a jury and without counsel but never waived those rights on the record. The defendant subsequently violated his probation and was sentenced to 60 days in jail. The defendant appealed, alleging that there was a denial of his right to a jury trial and appointed counsel at the original sentencing. In its appellate capacity, the circuit court found that because jail time was a possibility at sentencing, jail time for a probation violation was permissible. The district court held that the defendant was entitled to a jury trial as well as counsel. The court also held that the trial court could not impose jail time for either the original charge or the probation violation. The decision was reversed and remanded with instructions that the defendant was to be resentenced without any jail time.

Detention

***A.D. v. State*, 45 So. 3d 575 (Fla. 4th DCA 2010)**
The district court granted a petition for habeas corpus in which the petitioner, a juvenile, contended that the trial court unlawfully placed him in secure detention for various charges, including domestic violence against his mother. The district court granted the petition because the trial court did not make written findings reflecting clear and convincing evidence to support the secure detention as required by section 985.255(2), Florida Statutes (2010). The district court remanded, directing the trial court to make written findings or release the juvenile petitioner.
http://www.4dca.org/opinions/Oct%202010/10-22-10/4D10-4174.op.pdf

***C.D. v. Vurro*, 975 So. 2d 475 (Fla. 2d DCA 2007)**
The petitioner juvenile was charged with domestic violence battery. The trial court denied the juvenile's original petition seeking a writ of habeas corpus when the juvenile was not given a hearing every 48 hours of detention, and the juvenile filed a motion for clarification. The court granted the motion to clarify and held that the procedures followed in the detention of the petitioner were correct and reflected the legislative intent of chapter 985, Florida Statutes. The 1997 amendment of the applicable section provided that a child may continue to be held in secure detention if the court makes specific, written

findings that secure detention is necessary to protect the victim. This change provided a more formalized procedure but did not "resurrect" the requirement to hold hearings each 48-hour period the juvenile remains in secure detention.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2007/June/June%2020,%202007/2D07-1879.pdf

Dismissal of Charges

***J.Z. v. State*, 46 So. 3d 1218 (Fla. 4th DCA 2010)**
The district court affirmed a juvenile defendant's domestic violence battery conviction and the withholding of adjudication and placement on probation, but reversed the imposition of court costs. Section 775.083(2), Florida Statutes, provides for assessment of court costs when a juvenile is adjudicated delinquent. Since the trial court withheld adjudication of delinquency, the costs award was reversed.
http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-1160.op.pdf

***State v. Clyatt*, 976 So. 2d 1182 (Fla. 5th DCA 2008)**
The state sought certiorari review of a trial court order barring it from calling independent witnesses to prove that the victim did not consent to an alleged battery committed on her by the defendant. The alleged incident occurred in a fast food restaurant drive-through where many witnesses observed the defendant bashing the victim's head against the car window from inside the car and choking her. The victim refused to cooperate with the state in the defendant's prosecution, leaving the state with the options of dismissing the case or relying on third-party witness testimony to prove the case. When the state decided to proceed with the prosecution, it had to show that the victim was struck against her will. The testimony provided by third-party witnesses of the attack would constitute merely circumstantial evidence that the victim did *not* consent to the beating, but also would indicate that the victim seemed to be resisting the attack and was visibly upset, thus leaving but one reasonable inference that the beating was uninvited. The state was unable to provide the trial court with a specific case where a victim's lack of consent could be proven circumstantially so the court did not allow the witnesses' testimony without having the victim's testimony as well. The district court held that lack of consent has been proven by circumstantial evidence in other types of criminal prosecutions. Additionally, circumstantial evidence has been enough to prove other issues such as a defendant's state of mind. Ultimately, the district court held that there was no distinction between consent and state of mind; consent could thus be proven by circumstantial evidence as well. Also, the district court looked to the importance of the relevance of the witnesses' testimony. By failing to allow such testimony, the trial court barred a form of evidence that could have sufficiently established the victim's lack of consent. The order barring third-party eyewitness testimony was quashed.
http://www.5dca.org/Opinions/Opin2008/031708/5D07-989.op.pdf

***State v. Greaux*, 977 So. 2d 614 (Fla. 4th DCA 2008)**
The state appealed the *sua sponte* dismissal of charges against a defendant for domestic aggravated assault with a deadly weapon and domestic battery. At a hearing, the prosecutor explained that the defendant had been extended a plea offer and that the victim no longer wanted to prosecute. After being sworn in, the victim represented that she had not been hit or threatened by the defendant. However, after being questioned by the state, she admitted having a cell phone thrown at her, having her head pushed into a pillow on the bed, and witnessing the defendant go to a closet where a stun gun was kept. After hearing the victim assert she wanted to keep the family together and did not wish to proceed, the court dismissed the case over the state's objection. The state argued that only the prosecutor has the authority to determine whether to go forward with the prosecution. The district court agreed with the state that the sole discretion to charge and prosecute crimes lies with the prosecutor, despite the court's knowledge that the victim wishes not to proceed or to testify. Additionally, the defendant argued that dismissal was proper under the Tipsy Coachman doctrine since the state had failed to establish a prima facie case. This argument did not sway the district court since the defendant failed to move for dismissal in writing and did not notice the state of such a motion. Accordingly, the district court reversed the dismissal and remanded the case for reinstatement of the charges.
http://www.4dca.org/Jan2008/01-30-2008/4D07-1662.op.pdf

***State v. Conley*, 799 So. 2d 400 (Fla. 4th DCA 2001)**
The state appealed an order dismissing felony battery charges. An adversarial hearing occurred, but the state had neglected to subpoena the witnesses to the events. The victim was present and claimed that she instigated the argument and that the injuries she sustained were a result of her own actions, directly contradicting the eyewitness account. The victim claimed she never wanted charges brought against the defendant. The judge dismissed the charges despite the state's objection. In relying both on rule 3.133(b), Florida Rules of Criminal Procedure, and on *State v. Hollie*, 736 So. 2d 96 (Fla. 4th DCA 1999), the district court held that because the hearing was an adversarial hearing at which the defendant never motioned the court for dismissal and because probable cause was clearly established, a dismissal was clearly in error. Judge Warner concurred in a separate opinion, finding that the lower court made an additional error in finding that consent to battery is a defense. Consent is only a defense in cases of sexual battery, *not* domestic violence. Judge Warner continued by noting consent as a defense to domestic violence is in complete contravention to section 741.2901(2), Florida Statutes, in that the intent behind creating the statute was to make domestic violence a criminal act as opposed to a "private matter."

***State v. Wheeler*, 745 So. 2d 1094 (Fla. 4th DCA 1999)**
It was improper for the trial court to dismiss an aggravated stalking charge when the dismissal was based on the victim's desire not to pursue prosecution. The district court reviewed the well-recognized law regarding prosecutorial discretion in this regard.

Domestic Violence Multiplier

***Brown v. State*, 21 So. 3d 108 (Fla. 4th DCA 2009)**
The defendant was charged with domestic aggravated battery and domestic aggravated assault with a deadly weapon. Neither count made statutory or factual references regarding the defendant's commission of the aggravated battery in the presence of a child. The issue on appeal was whether the trial court erred when sentencing the defendant for domestic aggravated battery, in applying the 1.5 multiplier for the presence of a child under 16, when the information failed to set forth the facts or statutory authority for such sentence enhancement. The defendant argued that because the state failed to plead the sentencing enhancement in the criminal information, his due process rights were violated when the trial judge used the enhancement during sentencing. The court noted, however, that "'not every fact with a bearing on sentencing must be alleged in the charging document'; instead, the charged facts must only make the defendant aware of the heaviest punishment he may face." The court also noted that the presence of a child under the age of 16 was not an element of the offense and thus did not need to be alleged in the information, and affirmed the lower court's ruling.
http://www.4dca.org/opinions/Oct%202009/10-28-09/4D07-4121.op.pdf

***Mathew v. State*, 837 So. 2d 1167 (Fla. 4th DCA 2003)**
The district court considered two of the defendant's claims: first, that the trial court was not neutral and participated in the case to the extent that the defendant was denied a fair trial and, second, that the use of the domestic violence multiplier in sentencing was improper absent a jury finding, beyond a reasonable doubt, that the domestic violence was committed in front of the minor child as is required in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The court affirmed the conviction and held that although the trial court's comments were improper, they did not rise to the level of fundamental error. The court reversed for resentencing without the multiplier as the jury was never instructed to consider whether the child witnessed the domestic violence.

***Rolle v. State*, 835 So. 2d 1258 (Fla. 4th DCA 2003)**
Although the conviction was affirmed, the district court held that the trial court erred in using a domestic violence multiplier when imposing the defendant's sentence as the children were not present when the violence occurred. The court considered *State v. Werner*, 609 So. 2d 585 (Fla. 1992), in its discussion of a child's "presence." The case was remanded to the trial court for sentence correction.

Double Jeopardy

***Jacobs v. State*, __ So. 3d __, 2019 WL 2147294 (Fla. 2d DCA 2019)**
The defendant was convicted of aggravated stalking and two counts of violating a stalking injunction. He appealed, claiming the convictions were a double jeopardy violation. The appellate court affirmed, stating: "Even if he was committing both violations at the exact same time, they are distinct acts separately proscribed by the statute under which he was convicted."
https://www.2dca.org/content/download/525176/5834305/file/172437_65_05172019_08273424_i.pdf

***Martin v. State*, __ So. 3d __, 2019 WL 1781293 (Fla. 3d DCA 2019)**
The defendant was convicted of domestic battery by strangulation and two counts of simple battery. He appealed, claiming the convictions were a double jeopardy violation because he was "convicted twice—for domestic battery by strangulation and simple battery—for a single act of strangulation." The appellate court affirmed, noting that "[t]he record plainly reveals that [he] committed two separate, distinct acts of strangulation at two different times and in two different locations."
https://www.3dca.flcourts.org/content/download/525688/5840305/file/3D17-1848.pdf

***Cerny v. State*, 65 So. 3d 609 (Fla. 2d DCA 2011)**
The district court reversed an order revoking probation, holding that the state failed to prove by a preponderance of the evidence a probation violation (aggravated battery). In the trial court below, appellant received four sentences of probation to run concurrently as part of a plea agreement after a guilty adjudication. Subsequently, the probation officer filed an affidavit of violation of probation alleging that appellant had violated his probation in all four cases by committing four new law violations: aggravated battery, domestic violence by strangulation, false imprisonment, and tampering with a witness. After a hearing, the circuit court dismissed all the charges but aggravated battery, and revoked appellant's probation in all four cases based on that new law violation, invoking the maximum sentence of five years in prison on each of the underlying third degree felonies. The resulting sentence, appealed to the district court, was 20 years in prison. The district court reversed the order revoking probation and the resulting sentences and stated that under the circumstances, double jeopardy would not bar a second revocation proceeding on remand based on the filing of a new affidavit alleging the same violations.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/July/July%2022,%202010/2D09-5338.pdf

***State v. Rothwell*, 981 So. 2d 1279 (Fla. 1st DCA 2008)**
The court dismissed a felony battery charge on the basis that it violated the principles of double jeopardy, and the state appealed. The defendant had been found in criminal contempt for violating a domestic violence injunction by committing a battery against the victim whom the injunction was intended to protect. The state also charged the defendant with a separate felony battery offense. The court dismissed this charge on double jeopardy grounds in that the contempt was predicated on the same offense. The district court distinguished the circumstances when double jeopardy protections are triggered as follows: Convictions on multiple offenses arising out of the same conduct are allowed if each offense requires proof of an element the other does not. However, if the elements of an offense are entirely subsumed within an adjudication or conviction, separate convictions for substantive offenses are not allowed. The focus is on the elements of the offense instead of the conduct involved. Because each offense requires proof of an element the other does not and neither offense is completely subsumed by the other, the district court held that prosecution of the separate felony battery charge did not violate double jeopardy protections, and the felony battery charge should not have been dismissed.
http://opinions.1dca.org/written/opinions2008/05-27-08/06-5713.pdf

***Vazquez v. State*, 953 So. 2d 569 (Fla. 4th DCA 2007)**
The defendant appealed a conviction of one count of aggravated stalking. The defendant argued that the trial court's decision to allow the state to amend the count in the information to include certain specific events violated his right against double jeopardy because his actions on those dates formed the basis of the original stalking charge for which he already had been charged and sentenced. While the state argued that simple stalking and aggravated stalking each contain an element that the other does not and are therefore different under the *Blockburger* test, see section 775.021(4)(a), Florida Statutes (2002), the

defendant stated the amendment violated the double jeopardy clause of the U.S. and Florida Constitutions. The district court agreed and held that since the only element that aggravated stalking requires that simple stalking does not is the existence of an injunction, the two are not separate offenses. Since the record showed that the two convictions were based on the same charging actions (harassing phone calls), the district court vacated the defendant's conviction for aggravated stalking and remanded for resentencing.
http://www.4dca.org/opinions/Feb%202007/2-14-2007/4D04-4411.op.pdf

***Doty v. State*, 884 So. 2d 547 (Fla. 4th DCA 2004)**
It was a violation of the double jeopardy clause to try a defendant for battery as well as for violation of a domestic violence injunction since the statutory elements of battery are contained within the offense of violating a domestic violence injunction, a greater offense.

***Anderson v. State*, 877 So. 2d 958 (Fla. 5th DCA 2004)**
It was not an abuse of discretion to deny a mistrial for one isolated, unsolicited reference by a witness to the defendant's previous prison sentence. Curative instruction to the jury "was sufficient to dissipate prejudice." However, the appellate court found it was double jeopardy to try a defendant for battery and battery on a person over 65 years of age as they are not separate offenses since simple battery is a lesser included.

***Young v. State*, 827 So. 2d 1075 (Fla. 5th DCA 2002)**
Double jeopardy bars conviction for both battery *and* violation of an injunction (here, for repeat violence) when the violation consists of the battery itself. Because the crime of battery did not contain any elements distinct from the elements of a violating an injunction for protection against repeat violence, the crimes are not separate.
http://www.5dca.org/Opinions/Opin2002/100702/5D01-1634.op.pdf

Due Process

***Brown v. State*, 21 So. 3d 108 (Fla. 4th DCA 2009)**
The defendant was charged with domestic aggravated battery and domestic aggravated assault with a deadly weapon. Neither count made statutory or factual references regarding the defendant's commission of the aggravated battery in the presence of a child. The issue on appeal was whether the trial court erred when sentencing the defendant for domestic aggravated battery, in applying the 1.5 multiplier for the presence of a child under 16, when the information failed to set forth the facts or statutory authority for such sentence enhancement. The defendant argued that because the state failed to plead the sentencing enhancement in the criminal information, his due process rights were violated when the trial judge used the enhancement during sentencing. The court noted, however, that "'not every fact with a bearing on sentencing must be alleged in the charging document'; instead, the charged facts must only make the defendant aware of the heaviest punishment he may face." The court also noted that the presence of a child under the age of 16 was not an element of the offense and thus did not need to be alleged in the information, and affirmed the lower court's ruling.
http://www.4dca.org/opinions/Oct%202009/10-28-09/4D07-4121.op.pdf

***Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008)**
The appellant sought habeas corpus relief after being sentenced to jail for six months for allegedly violating a domestic violence permanent injunction with a purge provision requiring her to complete a 60-day domestic violence class. The appellee had filed an affidavit of violation of the permanent injunction by appellant, and the court issued a notice of hearing on November 8, 2007, for a hearing on December 11, 2007. The habeas petition reflected that the appellant was not served with the notice of the hearing until December 13, 2008 (two days after the hearing had been held). The court found that the appellant had been served on November 15, 2007. The appellant failed to appear at the hearing, and based on the appellee's unrebutted testimony the trial court found that the appellant had violated the injunction and ordered her to be jailed for six months. The trial court included a purge provision that the appellant would be released upon completion of a 60-day domestic violence class. The appellant was arrested and, at the

time of the appeal, remained in custody. The district court held that the trial court's order clearly amounted to a finding of criminal contempt rather than civil contempt since the sanction imposed sought to punish the appellant and the purge itself required her to remain in jail for at least 60 days. The district court noted that the state did not file criminal charges for the appellant's alleged violations nor was she brought back before the court once arrested. Additionally, the state never moved for an order to show cause why the appellant should not be held in criminal contempt. The district court granted habeas corpus relief because the appellant was denied due process before being deprived of her liberty. The state was allowed to file the proper charges for the appellant's contempt in accordance with contempt proceedings that afford the appellant due process.
http://www.4dca.org/opinions/Jan2008/01-10-2008/4D08-03.op.pdf

***Jones v. Ryan*, 967 So. 2d 342 (Fla. 3d DCA 2007)**
The appellants sought habeas corpus relief as a result of being sentenced to jail time for failure to comply multiple times with an order to attend a batterers' intervention program. Both appellants had received numerous notices for civil contempt hearings for failure to comply with the order to attend the program. After being held in civil contempt several times with the ability to purge the contempt by attending the course, the appellants were issued jail sentences by the court. While understanding the trial court's frustration with the appellants' continued disregard of the court's order, the district court found that the final contempt orders were criminal in nature. All the previous contempt orders contained a purge provision, unlike the last orders under which the appellants were sentenced. The district court indicated that civil contempt is intended to obtain compliance and must include a purge provision, while criminal contempt is intended to punish and must afford the contemnor due process, including the right to be represented by counsel if indigent. Additionally, if the sentence is to last longer than six months, the contemnor has a right to a jury trial, and the court must provide a written order with the factual basis for the contempt. Accordingly, the district court granted the appellants' petitions for habeas corpus relief and ordered the release of the appellants. The district court further instructed the trial court, if it wished to impose punishment in these contempt cases, to comply with rule 3.840, Florida Rules of Criminal Procedure.
http://www.3dca.flcourts.org/Opinions/3D07-2429.pdf

***Gordon v. State*, 960 So. 2d 31 (Fla. 4th DCA), clarified by 967 So. 2d 357 (Fla. 4th DCA 2007)**
A husband appealed several orders stemming from an indirect criminal contempt proceeding arising from alleged violations of a permanent injunction that his wife was granted. The wife moved to show cause why the husband should not be held in contempt for violating the injunction by allegedly sending threatening messages, making phone calls, and stalking her at a shopping center. After a hearing, the court entered an order to show cause why the husband should not be held in indirect criminal contempt and attached the wife's motion and affidavit, while the order itself stated no facts constituting the alleged contempt. At arraignment, the husband was questioned about his indigency and was found not to be indigent for the purposes of appointing a public defender. Two months later the husband renewed his request for a public defender and moved for a change of venue since the wife's new boyfriend had recently been elected a judge in the Fifteenth Judicial Circuit; both requests were denied. After a hearing, the court found that the husband knowingly and willfully violated the order, and the case was reset for sentencing after the husband spent a "brief period of time in jail." At sentencing, the court placed the husband on probation for one year, with 30 days in the county jail on weekends and regular psychological counseling. On appeal, for which a public defender was appointed to him, the husband argued that fundamental error occurred when the court failed to put forth the essential facts of the contempt and appoint him a public defender. The court held that, although the hearing could have been fashioned differently, the evidence supported the court's finding of contempt. However, while failure to appoint a public defender at the first arraignment was proper, the court held that failure to appoint a public defender for the contempt hearing was improper. Several of the husband's other contentions were also deemed meritless. The court held that the fact that the wife's new boyfriend was a judge-elect in that circuit did not mandate a change of venue, and that appointing the wife's attorney as a special prosecutor to handle the contempt charge was not improper but, rather, a means of effectuating judicial economy. The district court affirmed the trial court's ruling, but reversed and remanded on the contempt hearing to appoint counsel for the husband.
http://www.4dca.org/opinions/May2007/05-23-07/4D04-4432.op.pdf

http://www.4dca.org/opinions/Oct%202007/10-10-07/4D04-4432.rhg.2.pdf

***Desvousges v. Desvousges*, 926 So. 2d 1293 (Fla. 2d DCA 2006)**
The appellant challenged the order from the trial court finding her guilty of violating an injunction for protection against domestic violence. The appellant argued that the trial court failed to follow the requirements of rule 3.840, Florida Rules of Criminal Procedure, for indirect criminal contempt because it failed to order a sworn affidavit from a person with knowledge of the facts. The district court agreed and reversed the order of the trial court without prejudice to new proceedings held in conformity with rule 3.840.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2006/May/May%2010,%202006/2D05-3982.pdf

***Griffith v. State*, 922 So. 2d 436 (Fla. 2d DCA 2006)**
The appellant, who was the defendant in a post-conviction criminal proceeding, challenged the denial of his two motions for relief and argued that he was denied due process when the trial court abruptly ended the hearing and removed him from the courtroom. The appellant was not able to complete his questioning of the witness, nor was he able to call any other witnesses or fully explain his position. Instead, the trial judge *sua sponte* ordered a civil injunction against the appellant and his family in favor of the witness, called the appellant a liar, and announced that he was not entitled to any post-conviction relief. The district court reversed and remanded, finding that by entering the injunctions against the appellant and his family members and by making statements that he was "incredible" and a "liar" before the completion of all of the evidence, the court had "improperly departed from its role as a neutral arbitrator," and that the appellant was entitled to a full evidentiary hearing.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2006/March/March%2010,%202006/2D04-5767.pdf

***McAtee v. State*, 899 So. 2d 1245 (Fla. 4th DCA 2005)**
In a criminal contempt hearing, the state has the burden to proceed first and prove beyond a reasonable doubt that the defendant intended to violate the court's order. The lower court's determination that the defense should be heard first was a denial of due process as it erroneously placed the burden on the contemnor to prove that she should not be held in contempt, contrary to the procedure outlined in rule 3.840, Florida Rules of Criminal Procedure.
http://www.4dca.org/opinions/Apr%202005/04-20-05/4D04-694.pdf

Evidence

***Lee v. State*, 268 So. 3d 904 (Fla. 1st DCA 2019)**
The defendant was convicted of aggravated stalking and appealed, claiming that the trial court improperly admitted into evidence the victim's 911 call and three of his jail calls to the victim. The appellate court affirmed, stating that "the trial judge did not err in ruling that this victim's statements to the 911 operator constituted excited utterances" and that "[t]he victim's statements, offered for a purpose other than truth—here, to provide context for [the defendant's] responses—are not hearsay."
https://www.1dca.org/content/download/522915/5809465/file/171469_1284_04032019_10281318_i.pdf

***Bowles v. State*, 198 So. 3d 1055 (Fla. 4th DCA 2016)**
In 2013, the defendant was ordered not to have any contact with his ex-wife except for issues related to their child. He was also required to have supervised timesharing and could not possess a firearm. The order was later amended to stop the timesharing, but allowed him phone contact with the child. Another order stopped all contact between the defendant and his child and extended the order prohibiting him from possessing a firearm. Despite these orders, the defendant sent disturbing text messages, photos, and emails to his ex-wife and her fiancé and made threats to kill them and the fiancé's family. The ex-wife obtained a domestic violence injunction against the defendant, yet he continued his threatening behavior. He was then charged with and convicted of stalking and aggravated stalking in violation of the court orders and domestic violence injunction, and he appealed. He argued that the trial court erred by admitting evidence from the family court orders that required him to complete a psychological evaluation

and prohibited him from having firearms, because the evidence was prejudicial. He claimed that the objectionable portions of the order only outlined the reason that the court temporarily suspended his timesharing, but the reason for the suspension was not relevant to any material fact in dispute in the aggravated stalking case. The appellate court agreed and reversed and remanded the case for a new trial, stating that "because the references in the court order to the requirements of a psychological evaluation and anger management course did not tend to prove or disprove a material fact, such evidence was irrelevant, and therefore, inadmissible."
http://www.4dca.org/opinions/Aug%202016/08-17-16/4D15-1929.op.pdf

***Harden v. State*, 87 So. 3d 1243 (Fla. 4th DCA 2012)**
Appellant appealed his convictions for sexual battery, false imprisonment, and domestic battery. He was accused of beating and raping his then-girlfriend following an argument. Before the trial, the prosecutor notified the trial court that he intended to ask the girlfriend about her relationship with the appellant, including a prior domestic violence incident that occurred six months earlier, and the trial court found the evidence admissible. The defendant was convicted. The appellate court reversed, holding that the trial court abused its discretion in admitting the evidence of a prior incident of domestic violence that served only to show propensity. The defendant's motive and intent were not relevant to any contested fact (i.e., victim's consent).
http://www.4dca.org/opinions/May%202012/05-23-12/4D10-2615.op.pdf

***State v. Wright*, 74 So. 3d 503 (Fla. 2d DCA 2011)**
Wright was charged with armed kidnapping with intent to commit bodily harm or terrorize. The victim had previously obtained an injunction for protection against domestic violence, but the trial court excluded the victim's testimony about the defendant's prior domestic violence based on section 90.404(2), Florida Statutes. The state requested a writ of certiorari to quash the trial court's order. The appellate court concluded that the trial court departed from the essential requirements of the law by applying section 90.404(2), Florida Statutes, to exclude the evidence and granted the state's petition. The court noted that the evidence of Wright's prior acts of domestic violence and threats was relevant to the issues of motive and intent. Although the prior acts might not have borne a striking similarity to the charged offense of armed kidnapping, they are generally relevant pursuant to section 90.402. The court also stated that relevancy was not the only issue in determining whether to admit evidence of prior acts; the trial court must also consider whether the probative value outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury. However, in this case, while it was true that the evidence of Wright's prior acts of domestic violence and threats would be prejudicial, it was also true that without this evidence, the jury might not understand what motive or intent Wright had in kidnapping the victim. Accordingly, under the facts of this case, the probative value of the evidence outweighed the prejudicial effect.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/October/October%2005,%202011/2D10-5784.pdf

***A.D. v. State*, 45 So. 3d 575 (Fla. 4th DCA 2010)**
The district court granted a petition for habeas corpus in which the petitioner, a juvenile, contended that the trial court unlawfully placed him in secure detention for various charges, including domestic violence against his mother. The district court granted the petition because the trial court did not make written findings reflecting clear and convincing evidence to support the secure detention as required by section 985.255(2), Florida Statutes (2010). The district court remanded, directing the trial court to make written findings or release the juvenile petitioner.
http://www.4dca.org/opinions/Oct%202010/10-22-10/4D10-4174.op.pdf

***Aguiluz v. State*, 43 So. 3d 800 (Fla. 3d DCA 2010)**
The district court affirmed the defendant's conviction and sentence for second degree murder with a deadly weapon. The defendant argued that the trial court erred in admitting witness testimony regarding a collateral, uncharged crime (the victim's best friend testified about a possible domestic violence incident that had occurred between the victim and the defendant). The trial judge had given the jury specific directions on how to interpret the evidence based on *Williams v. State*, 110 So. 2d 654 (Fla.1959). The appellate court found that the trial court did not abuse its discretion and that the testimony of prior

incidents was admissible to prove motive, intent, and the absence of mistake or accident based on section 90.404(2)(a), Florida Statutes.
http://www.3dca.flcourts.org/Opinions/3D07-3191.pdf

***Bienaime v. State*, 45 So. 3d 804 (Fla. 4th DCA 2010)**

The district court reversed and remanded for new trial the defendant's conviction and sentence on charges of false imprisonment, aggravated assault with a firearm, and battery involving a domestic violence incident against his wife. An officer testified that the defendant's wife stated that the defendant said "he was not going back to prison." The defendant argued that the trial court erred in admitting the officer's testimony as to what the victim told her as an excited utterance and in denying the motions for mistrial. The appellate court reversed on two grounds. First, the wife's statements to the officer did not constitute an excited utterance because sufficient time had passed to allow the victim to reflect on what had transpired. The trial court recognized its error, but then allowed the trial to continue in hopes the victim would testify consistently, thereby rendering the error harmless. However, the opposite occurred. Second, the trial court should have granted the mistrial based on having twice improperly admitted the "prison" statement. Since the "prison" testimony implied the defendant was a convicted felon, the errors were not harmless.
http://www.4dca.org/opinions/July2010/07-07-10/4D08-2058.op.pdf

***Canavan v. State*, 38 So. 3d 885 (Fla. 2d DCA 2010)**

Canavan appealed his conviction for aggravated stalking and the court reversed and remanded the case. In 2006, Canavan's former wife obtained a temporary injunction because he was following her, she was afraid of him, and she was afraid that he would try to take their son. A permanent injunction was entered a year later at a hearing that Canavan did not attend, and the permanent injunction was not served on Canavan until he was arrested for the stalking charge at issue in this case. The court noted that if the defendant had been served with the permanent injunction, proof of service would have been sufficient to prove that he had knowledge of the injunction, a required element of the aggravated stalking charge. However, the state failed to provide any evidence that Canavan knew of the entry of the permanent injunction. Therefore, the court remanded the case for entry of a judgment of conviction for simple stalking. To prove simple stalking, the state must have proven that the defendant willfully, maliciously, and repeatedly followed, harassed, or cyberstalked the victim. By finding Canavan guilty of aggravated stalking, the jury also made the necessary finding on the elements constituting the lesser-included offense of simple stalking. The jury was given both of these instructions. The court reversed Canavan's aggravated stalking conviction because the state did not, as a matter of law, establish the third element of aggravated stalking—that factually Canavan knew the final injunction had been entered against him. However, the court did not take issue with the remaining elements of the offense.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/June/June%2030,%202010/2D08-5182rh.pdf

***Nicholson v. State*, 10 So. 3d 142 (Fla. 4th DCA 2009)**

Nicholson appealed his conviction and sentence for first degree murder, claiming that the trial court erred by denying his motion for judgment of acquittal. His motion was based on the claim that the state's case consisted of circumstantial evidence of an uncharged collateral crime which was insufficient to support the conviction. The defendant also argued that the trial court erred in admitting collateral evidence that he stalked, threatened, and assaulted the victim. The court noted that the standard of review for admission of evidence is abuse of discretion, but that discretion is limited by the rules of evidence. The appellate court concluded that the previous assault and stalking, although consisting of prior bad acts, were admissible as relevant to prove motive and intent under the *Williams* rule, and were not made a feature of the trial, and it affirmed the conviction.
http://www.4dca.org/opinions/Mar2009/03-25-09/4D06-3389.op.pdf

***State v. Clyatt*, 976 So. 2d 1182 (Fla. 5th DCA 2008)**

The state sought certiorari review of a trial court order barring it from calling independent witnesses to prove that the victim did not consent to an alleged battery committed on her by the defendant. The alleged incident occurred in a fast food restaurant drive-through where many witnesses observed the defendant bashing the victim's head against the car window from inside the car and choking her. The

victim refused to cooperate with the state in the defendant's prosecution, leaving the state with the options of dismissing the case or relying on third-party witness testimony to prove the case. When the state decided to proceed with the prosecution, it had to show that the victim was struck against her will. The testimony provided by third-party witnesses of the attack would constitute merely circumstantial evidence that the victim did *not* consent to the beating but also would indicate that the victim seemed to be resisting the attack and was visibly upset, thus leaving but one reasonable inference that the beating was uninvited. The state was unable to provide the trial court with a specific case where a victim's lack of consent could be proven circumstantially so the court did not allow the witnesses' testimony without having the victim's testimony as well. The district court held that lack of consent has been proven by circumstantial evidence in other types of criminal prosecutions. Additionally, circumstantial evidence has been enough to prove other issues such as a defendant's state of mind. Ultimately, the district court held that there was no distinction between consent and state of mind; consent could thus be proven by circumstantial evidence as well. Also, the district court looked to the importance of the relevance of the witnesses' testimony. By failing to allow such testimony, the trial court barred a form of evidence that could have sufficiently established the victim's lack of consent. The order barring third-party eyewitness testimony was quashed.
http://www.5dca.org/Opinions/Opin2008/031708/5D07-989.op.pdf

***State v. Greaux*, 977 So. 2d 614 (Fla. 4th DCA 2008)**
The state appealed the *sua sponte* dismissal of charges against a defendant for domestic aggravated assault with a deadly weapon and domestic battery. At a hearing, the prosecutor explained that the defendant had been extended a plea offer and that the victim no longer wanted to prosecute. After being sworn in, the victim represented that she had not been hit or threatened by the defendant. However, after being questioned by the state, she admitted having a cell phone thrown at her, having her head pushed into a pillow on the bed, and witnessing the defendant go to a closet where a stun gun was kept. After hearing the victim assert she wanted to keep the family together and did not wish to proceed, the court dismissed the case over the state's objection. The state argued that only the prosecutor has the authority to determine whether to go forward with the prosecution. The district court agreed with the state that the sole discretion to charge and prosecute crimes lies with the prosecutor, despite the court's knowledge that the victim wishes not to proceed or to testify. Additionally, the defendant argued that dismissal was proper under the Tipsy Coachman doctrine since the state had failed to establish a prima facie case. This argument did not sway the district court since the defendant failed to move for dismissal in writing and did not notice the state of such a motion. Accordingly, the district court reversed the dismissal and remanded the case for reinstatement of the charges.
http://www.4dca.org/Jan2008/01-30-2008/4D07-1662.op.pdf

***State v. Delama*, 967 So. 2d 385 (Fla. 3d DCA 2007)**
After an allegedly battered woman was subpoenaed to discuss charges brought against her alleged abuser and failed to appear, the state sought a ruling to show cause for indirect criminal contempt. The court refused to issue the show cause order. On appeal, the district court held that the trial court did not have the authority to deny the state's request to issue a show cause order against an alleged victim of domestic violence when the victim does not want to testify. Note: the dissenting opinion cites California's more "socially progressive" rule that exempts victims of domestic or sexual violence from contempt if they refuse to testify as better public policy than what has been adopted in Florida.
http://www.3dca.flcourts.org/Opinions/3D07-1361.pdf

***Wheeler v. State*, 956 So. 2d 517 (Fla. 2d DCA 2007)**
The defendant appealed an order denying a motion to suppress evidence seized from an alleged illegal search. Officers responded to an anonymous domestic violence phone call and arrived at the home of the defendant. After questioning the defendant at the door, the officers were presented with a scenario in which nothing seemed suspicious, nor were they led to believe that anyone other than the defendant was in the house. Acting on the information in the call, the officers decided to enter the home in search of the alleged victim since they had a "reasonable belief" that they would find the injured woman. As a result of this search, the officers found contraband. The defendant moved to suppress the evidence arguing that it was an illegal search since the officers did not have probable cause. The trial court denied his motion. On appeal, the district court found that the officers did not have a reasonable basis to believe a grave

emergency had transpired (which would give rise to an exception to the warrant requirement for them to enter) and that the officers entered illegally. To affirm on these facts would constitute adopting a per se exception to the warrant requirement that would allow police to enter a closed dwelling based solely on an anonymous phone call alleging an emergency without further corroboration at the scene. The court held that the officers needed to seek out additional factual information about what had occurred before making the decision to enter the premises. The court reversed the order denying suppression and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2007/May/May%2004,%202007/2D05-5493.pdf

***Coverdale v. State*, 940 So. 2d 558 (Fla. 2d DCA 2006)**

The defendant challenged admission of statements made at trial by the victim and detective and sought reversal of his conviction. The victim's statements dealt with the defendant's previous incarceration for other offenses and that the defendant had molested her friend's daughter. At trial, the court denied two defense motions for a mistrial and instead instructed the jury to ignore the statements of the victim. The trial court determined that the incarceration comment was not so prejudicial as to deny the defendant a fair trial. The district court agreed but found the second statement alluding to alleged child molestation to be far too prejudicial and "no curative instruction could unring that bell." The district court found that the trial court abused its discretion in denying the motion for mistrial. The detective's statement dealt with the defendant's response to her when she showed him the no-contact order and his irate reaction. At trial, the court denied the defense motion for mistrial that was based on the claim that the prejudicial effect of the statement outweighed its probative value. The district court found that the trial court erred in failing to balance the danger of unfair prejudice of the statement against its probative value. The district court reversed and remanded for a new trial based on the admission of victim's testimony regarding the child molestation and the detective's testimony.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2006/October/October%2027,%202006/2D05-1558.pdf

***Chacon v. State*, 937 So. 2d 1177 (Fla. 3d DCA 2006)**

The district court affirmed the trial court's conviction of a defendant for aggravated battery with a deadly weapon, attempted aggravated battery, and aggravated stalking over the defendant's claim that improper hearsay testimony and character evidence were admitted into evidence. The defendant's complaint that admitting the victim's testimony about his threats to the victim and her family should result in a reversal of the verdict were held to be unfounded. Admissions of a party are exceptions to the hearsay rule, and the victim's testimony went to the appellant's intent to harm rather than as bad character evidence.
http://www.3dca.flcourts.org/Opinions/3d05-0526.pdf

***Valdes v. State*, 930 So. 2d 682 (Fla. 3d DCA 2006)**

The defendant appealed convictions and sentences on 12 counts of sexual abuse, claiming that the trial court erred in allowing the defendant's former wife to testify that he had been physically violent in the home and that the testimony was irrelevant and prejudicial. The district court disagreed, finding that collateral testimony concerning domestic violence in the home was relevant to explain why minor children who were victims failed to disclose the sexual abuse for so long, and placed the entire relationship between the defendant and the two minors into perspective. The context of the crimes charged and proof of the crimes themselves could not be fully explained and adjudicated without detailed reference to the uncharged domestic violence. A trial court has broad discretion in determining the relevance of evidence, and such a determination should not be disturbed absent an abuse of discretion. The evidence of uncharged physical violence was properly admitted and was relevant to the threats and intimidation from the respondent to the victims if the abuse were disclosed, and admission of this testimony far outweighed its prejudicial nature.
http://www.3dca.flcourts.org/Opinions/3d04-0202.pdf

***Izquierdo v. State*, 890 So. 2d 1263 (Fla. 5th DCA 2005)**

The trial court did not err in allowing a deputy to read the victim's affirmative answers to a domestic violence checklist during the prosecutor's direct examination because the deputy's testimony was offered not to prove the truth of the matter but to impeach the victim's earlier testimony that her husband was "lovable and tender" and a "nice" person of whom she was never afraid.

http://www.5dca.org/Opinions/Opin2005/011705/5D03-3492.op.pdf

***Torres v. State*, 870 So. 2d 149 (Fla. 2d DCA 2004)**
The district court held that the trial court erred in basing its finding of violation of an injunction on legally insufficient evidence that should have been deemed inadmissible hearsay. The state's sole witness alleged the defendant violated his injunction by calling the witness's daughter at his household without possessing independent knowledge concerning the caller.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2004/January/January%2016,%202004/2D03-3311.pdf

***Brooks v. State*, 868 So. 2d 643 (Fla. 2d DCA 2004)**
The victim's testimony that the defendant "was sent back to prison" following a prior incident of domestic violence involving the same victim was improper and unfairly prejudicial. The district court found that error was not harmless and the trial court abused its discretion in denying a mistrial. First, the curative statement to the jury was likely to be ineffective to cure improper evidence of the defendant's prior criminal behavior. Second, the jury would be less likely to believe the defendant acted in self-defense if it believed that the defendant committed a prior act of domestic violence. Third, the victim's statement "had a substantial negative impact on the defense trial strategy" in that the defense was not planning on the defendant testifying, which he then had to do to refute the victim's statements, and was then subject to impeachment regarding two prior felony convictions.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2004/March/March%2017,%202004/2d03-833.pdf

***Pilorge v. State*, 876 So. 2d 591 (Fla. 5th DCA 2004)**
The trial court erred by denying the defendant's motion for judgment of acquittal on the charge of violation of a special pretrial condition to have no contact with the victim. The district court reversed the trial court's ruling because the state failed to provide competent substantial evidence that the appellant had notice of the special pretrial condition. Section 741.29, Florida Statutes, creates no presumption of notice, either orally or in writing. The state must prove notice of the special pretrial condition by competent, substantial evidence.
http://www.5dca.org/Opinions/Opin2004/053104/5D03-1930.pdf

***Viglione v. State*, 861 So. 2d 511 (Fla. 5th DCA 2003)**
The district court, citing *State v. Skolar*, 692 So. 2d 309 (Fla. 5th DCA 1997), recognized the rule that the victim's telephone "calls for help" to third parties made while the victim was being held against his will and threatened during a kidnapping incident are admissible under the same excited utterance or spontaneous statement exception to the hearsay rule that would permit admission of a victim's 911 call. (In *Deparvine v. State*, 995 So. 2d 351, 369 (Fla. 2008), the Florida Supreme Court abrogated *Skolar* to the extent it required the existence of a "startling or stressful event" for testimony to fall under the excited utterance hearsay exception.)
http://www.5dca.org/Opinions/Opin2003/120803/5D03-81.op.pdf

***Rodriguez v. State*, 842 So. 2d 1053 (Fla. 3d DCA 2003)**
The trial court improperly permitted the victim's testimony regarding a restraining order she obtained subsequent to an argument she and the defendant had that resulted in the defendant's charge of aggravated assault with a deadly weapon against the victim. The district court held that the testimony should not have been admitted as it improperly bolstered the victim's credibility.
http://www.3dca.flcourts.org/Opinions/3d02-1633.pdf

***Butler v. State*, 842 So. 2d 817 (Fla. 2003)**
The defendant alleged, inter alia, that the trial court erred by allowing the state to elicit testimony regarding alleged prior acts of violence committed by the defendant. The supreme court held that the trial court did not err in allowing the cross examination of defense witnesses on other crimes evidence as "the evidence was admissible to explain and modify direct testimony, was relevant and probative, and its probative value was not outweighed by the prejudicial effect."
http://www.floridasupremecourt.org/decisions/pre2004/ops/sc95158.pdf

***Gonzalez-Valdes v. State*, 834 So. 2d 933 (Fla. 3d DCA 2003)**
The defendant shot and killed the victim and raised battered woman's syndrome as a defense. The court held that the trial court did not abuse its discretion in admitting the victim's ex-wife's testimony that the victim had never abused her during their 29-year marriage. The court held that the testimony had direct bearing on the validity of the expert's opinion concerning the defendant's alleged battered woman's syndrome defense. The trial court did not abuse its discretion in denying a mistrial as a result of the prosecutor's questions regarding the defendant's relationships with men even though the court had previously granted a motion in limine to prohibit the prosecution from eliciting testimony that suggested that the defendant had been a prostitute, as the questions were not unduly prejudicial.
http://www.3dca.flcourts.org/Opinions/3d00-2972.pdf

***Robertson v. State*, 829 So. 2d 901 (Fla. 2002)**
This was a landmark collateral crimes domestic violence case. It was reversible error "as a matter of law" to allow as *Williams* rule evidence "a prior threat six years earlier against a different victim and involving a different weapon" to prove absence of mistake or accident. The supreme court noted it was "unable to find...any cases in Florida where a prior threat against a different victim was admitted under the *Williams* rule to prove the absence of mistake or accident of the present offense." The court did cite, with apparent approval, cases allowing "prior crimes against the same victim as the charged offense."
http://www.floridasupremecourt.org/decisions/pre2004/ops/sc01-890.pdf

***Franklin v. State*, 825 So. 2d 487 (Fla. 5th DCA 2002)**
The defendant appealed his conviction for violating a domestic violence injunction by making a series of three phone calls to his wife. He argued that the court abused its discretion in denying motions for mistrial when his wife gave testimony that could have been interpreted to show that he had violent tendencies. The injunction allowed for telephone contact between the parties regarding the parties' minor children if the conversation concerned visitation or emergency issues and were "sterile and focused on" the children. One of the calls in question lasted one hour, and the parties discussed the children as well as various problems the defendant was having. The court held that the victim's testimony, although problematic, did not warrant reversal as motioned by the defendant because, even if the jury had been improperly influenced by the testimony, the influence would not have affected the counts of improper contact but rather the stalking counts, of which he was acquitted.
http://www.5dca.org/Opinions/Opin2002/083002/5D01-1151.op.pdf

***Coley v. State*, 816 So. 2d 817 (Fla. 2d DCA 2002)**
Coley appealed from his judgment and sentence for aggravated battery, arguing that the trial court erred in failing to redact portions of a 911 tape admitted into evidence, which referred to a nonexistent restraining order. The state argued that, even if the reference to the restraining order should have been redacted, its admission was harmless. The test for harmless error requires the state to prove that there was no reasonable possibility that the error of complaint contributed to the verdict. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Here the state did not meet its burden, and as a result the court reversed and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2002/May/May%2017,%202002/2D01-507.pdf

***Mills v. State*, 816 So. 2d 170 (Fla. 3d DCA 2002)**
The respondent appealed his conviction for aggravated battery. The district court affirmed the lower court's decision, concluding that the domestic violence permanent injunction and the arrest warrant issued, based on alleged violations of the injunction, were admissible under section 90.402, Florida Statutes, and not *Williams* rule evidence. The court held that evidence of uncharged crimes that are inseparable from the crime charged is not *Williams* rule evidence and is admissible if it is a relevant and inseparable part of the act, which is in issue. "[I]t is necessary to admit the evidence to adequately describe the deed." *Coolen v. State*, 696 So. 2d 738, 742-743 (Fla. 1997) (quoting *Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994)).
http://www.3dca.flcourts.org/Opinions/3d99-3210.pdf

***Werley v. State*, 814 So. 2d 1159 (Fla. 1st DCA 2002)**
The district court affirmed the defendant's conviction of aggravated battery with a deadly weapon and held that (1) the trial court did not abuse its discretion in admitting 911 tapes, regardless of the fact that the victim did not call the police until an hour after the alleged battery occurred, as she was shaken and visibly frightened when the police arrived, and (2) evidence of prior convictions was admissible pursuant to section 90.806(1), Florida Statutes, for the purpose of impeaching statements made by the defendant but offered by the wife during her testimony — they were "exculpatory hearsay" offered to prove the truth of the matter asserted.

***Simmons v. State*, 790 So. 2d 1177 (Fla. 3d DCA 2001)**
The defendant was charged with aggravated battery, aggravated assault with a deadly weapon, armed kidnapping, and battery of his girlfriend. Evidence of the defendant's prior violent behavior towards the victim was properly admitted into evidence to prove the defendant's intent to commit aggravated battery, aggravated assault, and battery and to prove his intent to terrorize the victim, as contained within the kidnapping count. The state filed a notice of intent to rely on evidence of other crimes, namely the previous battery of the victim and of an ex-girlfriend. At trial, the defendant testified he had never engaged in violent behavior, and the state used the previous battery of the ex-girlfriend to impeach his testimony. On appeal, the district court held that the evidence of the prior violence was properly admitted, and no abuse of discretion existed. The court also held that since the trial court initially granted a motion for acquittal in the kidnapping charge but very soon afterward, during the same hearing, told the parties she needed to re-think it, a reversal of that decision was not in fact double jeopardy.

***Stoll v. State*, 762 So. 2d 870 (Fla. 2000)**
The supreme court rejected the state's argument that statements of the victim to a witness were admissible under the excited utterance exception to the hearsay rule when the proper predicate was not established by the state and when such a finding was not made by the trial court. An alternative argument that the witness's testimony was admissible under the state-of-mind exception to the hearsay rule was rejected because the victim's state of mind was not found to be relevant to any issue in the case. The supreme court also held that it was error to admit the victim's handwritten statement of a prior domestic violence case.

***State v. Frazier*, 753 So. 2d 644 (Fla. 5th DCA 2000)**
The district court upheld the ruling of the trial court that the victim's statements to her treating physician identifying the defendant as her assailant, because not given for purposes of medical diagnosis or treatment, were therefore inadmissible and not excepted from the hearsay rule. The district court held, however, that statements on the 911 tape identifying the defendant as her assailant may be admissible if the trial court determines on remand that the statements are hearsay but qualify as excited utterances. The statements on the 911 tape may be excluded as hearsay if the court determines that the statements are *not* excited utterances or admissible on some other grounds. The district court also held that statements on the 911 tape were not inadmissible as violative of the defendant's right to confrontation as such hearsay is evidence firmly rooted in the common law, and its reliability can be inferred.

***McFadden v. State*, 732 So. 2d 412 (Fla. 3d DCA 1999), *approved* 772 So. 2d 1209 (Fla. 2000)**
The district court, contrary to the other district courts, held that it was reversible error to allow impeachment of a testifying defendant on cross examination with evidence of a prior guilty plea for a separate aggravated battery on the same victim when adjudication was withheld. Such a prior withholding of adjudication is not a "conviction" pursuant to section 90.610(1), Florida Statutes (permitting an attack on the credibility of an accused with a prior felony conviction). The court held that it makes no difference whether the prior withholding of adjudication came about by a plea of guilty rather than a plea of *nolo contendere*. Further, the trial court erred in allowing the state to elicit evidence of "specifics" of the prior withheld adjudication offense (i.e., aggravated battery) and to identify the victim of the prior offense as the same victim in the case at bar. The "specifics" may not be elicited, even if the defendant is properly impeached with a prior conviction. Finally, the trial court erred by refusing to allow the defendant to explain to the jury that the reason that he denied being previously convicted was adjudication had, in fact, been withheld.

***Nelson v. State*, 704 So. 2d 752 (Fla. 5th DCA 1998)**
The trial court did not abuse its discretion in granting the state's motion *in limine* excluding evidence that the defendant had filed two petitions for domestic violence against the victim after the criminal incident that was the subject of this case. It was the defendant who had gone to the victim's home and initiated the encounter giving rise to the criminal charge, so the probative value of the evidence was outweighed by the danger of confusion of issues or misleading the jury.

***Williams v. State*, 714 So. 2d 462 (Fla. 3d DCA 1997)**
Statements that the victim made to the police officer and tape recordings of the 911 call, which were admitted into evidence under the excited utterances exception to the hearsay rule, were sufficient to sustain a conviction, although the victim and her son who made the 911 call gave conflicting testimony at trial.

***Boroughs v. State*, 684 So. 2d 274 (Fla. 5th DCA 1996)**
Testimony concerning the abusive nature of the defendant's relationship with the victim, including the defendant's prior "bad acts," was relevant to prove the sexual battery victim's lack of consent and to explain why the victim did not immediately contact the police.

Expunging Criminal History

***Harman v. State*, 12 So. 3d 898 (Fla. 2d DCA 2009)**
The Second District Court of Appeal found that the mere accusation of a prior domestic violence offense is insufficient reason to deny expunction of records pursuant to section 943.0585, Florida Statutes. The court held that the seriousness of the offense, standing alone, was insufficient to support denial of the petition and remanded for the trial court to reconsider the petition.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2009/July/July%2001,%202009/2D08-915.pdf

***Williams v. State*, 879 So. 2d 77 (Fla. 3d DCA 2004)**
The defendant is not entitled to expunge a criminal history for certain offenses as determined by statute, one of which is an act of domestic violence as defined in section 741.28, Florida Statutes.
http://www.3dca.flcourts.org/Opinions/3d03-3251.pdf

Habeas Corpus

***Santiago v. Ryan*, 109 So. 3d 848 (Fla. 3d DCA 2013)**
The defendant was arrested and charged with aggravated stalking of his ex-wife. While being processed, he was served with a temporary domestic violence injunction which prohibited him from contact with her. During the first appearance, the court entered a stay away order that also prohibited contact with his ex-wife. While incarcerated, the defendant made threatening phone calls to her. The next day, the defendant went to a first appearance for the new charges based upon the calls. He posted bond for both offenses, and was released. When he was arraigned for the first case, his bond was revoked because he had violated the conditions of his pretrial release by committing the new crimes, and the defendant filed a petition for a writ of habeas corpus. The court denied the writ and held that the statute governing revocation of pretrial release did apply to a defendant who committed new felonies from jail during the period between setting a bond for the prior offense and his release.
http://www.3dca.flcourts.org/Opinions/3D13-0420.pdf

Harmless Error

***Bienaime v. State*, 45 So. 3d 804 (Fla. 4th DCA 2010)**
The district court reversed and remanded for new trial the defendant's conviction and sentence on charges of false imprisonment, aggravated assault with a firearm, and battery involving a domestic violence incident against his wife. An officer testified that the defendant's wife stated that the defendant said "he was not going back to prison." The defendant argued that the trial court erred in admitting the officer's testimony as to what the victim told her as an excited utterance and in denying the motions for mistrial. The appellate court reversed on two grounds. First, the wife's statements to the officer did not constitute an excited utterance because sufficient time had passed to allow the victim to reflect on what had transpired. The trial court recognized its error, but then allowed the trial to continue in hopes the victim would testify consistently, thereby rendering the error harmless. However, the opposite occurred. Second, the trial court should have granted the mistrial based on having twice improperly admitted the "prison" statement. Since the "prison" testimony implied the defendant was a convicted felon, the errors were not harmless.
http://www.4dca.org/opinions/July2010/07-07-10/4D08-2058.op.pdf

***Coverdale v. State*, 940 So. 2d 558 (Fla. 2d DCA 2006)**
The defendant challenged admission of statements made at trial by the victim and detective and sought reversal of his conviction. The victim's statements dealt with the defendant's previous incarceration for other offenses and that the defendant had molested her friend's daughter. At trial, the court denied two defense motions for a mistrial and instead instructed the jury to ignore the statements of the victim. The trial court determined that the incarceration comment was not so prejudicial as to deny the defendant a fair trial. The district court agreed but found the second statement alluding to alleged child molestation to be far too prejudicial and "no curative instruction could unring that bell." The district court found that the trial court abused its discretion in denying the motion for mistrial. The detective's statement dealt with the defendant's response to her when she showed him the no-contact order and his irate reaction. At trial, the court denied the defense motion for mistrial that was based on the claim that the prejudicial effect of the statement outweighed its probative value. The district court found that the trial court erred in failing to balance the danger of unfair prejudice of the statement against its probative value. The district court reversed and remanded for a new trial based on the admission of victim's testimony regarding the child molestation and the detective's testimony.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2006/October/October%2027,%202006/2D05-1558.pdf

***Coley v. State*, 816 So. 2d 817 (Fla. 2d DCA 2002)**
Coley appealed from his judgment and sentence for aggravated battery, arguing that the trial court erred in failing to redact portions of a 911 tape admitted into evidence, which referred to a nonexistent restraining order. The state argued that, even if the reference to the restraining order should have been redacted, its admission was harmless. The test for harmless error requires the state to prove that there was no reasonable possibility that the error of complaint contributed to the verdict. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Here the state did not meet its burden, and as a result the court reversed and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2002/May/May%2017,%202002/2D01-507.pdf

Judicial Disqualification

***Holley v. State*, 91 So. 3d 216 (Fla. 4th DCA 2012)**
Although this was primarily a burglary case, the district court noted in a footnote that the defendant had argued that the presiding trial judge should have disqualified himself because of his previous membership in the Women in Distress Judicial and Legal Council, an organization dedicated to assisting victims of domestic violence. The court stated that the appellant's motion for disqualification did not allege that the judge had a personal bias against him, and the judge's prior membership in the Women in Distress organization was not, without more, a legally sufficient ground for disqualification. A trial judge's "alleged

desire to solve the problem of domestic violence is not a legally sufficient basis for his disqualification" (quoting *Rodgers v. State*, 948 So. 2d 655, 672–673 (Fla. 2006)).
http://www.4dca.org/opinions/June%202012/06-20-12/4D09-4066.op.pdf

Jurisdiction

***Berrien v. State*, 189 So. 3d 285 (Fla. 1st DCA 2016)**
An unmarried mother, who had previously received a domestic violence injunction against the father, petitioned to have her injunction dissolved. The court complied. However, the father failed to comply with the terms of the injunction, and the original judge who ordered the injunction vacated the order dissolving it and pursued indirect criminal contempt charges against the father. The father appealed, and the appellate court held that once the injunction was dissolved, the father was no longer required to comply with its terms. Therefore, the successor judge was not allowed to reinstate it sua sponte or hold the father in contempt for failing to comply or failing to attend the compliance hearings. The appellate court noted that the order of dismissal removed the court's jurisdiction.
https://edca.1dca.org/DCADocs/2015/0931/150931_DC13_04122016_103610_i.pdf

***Young v. State*, 739 So. 2d 1179 (Fla. 4th DCA 1999)**
The district court held that the trial court was without jurisdiction to revoke probation when the warrant charging the defendant with probation violation was delivered to the sheriff's office after the expiration of the probationary period. It was error to find that the defendant had absconded from supervision, thus tolling the probationary period, by failing to file monthly reports with her probation officer. The defendant was not hiding, nor had she departed the jurisdiction of the state.

***Paulk v. State*, 733 So. 2d 1096 (Fla. 3d DCA 1999)**
The district court held that in order to invoke jurisdiction of the court, not only must a timely affidavit of violation of probation be filed (within the period of probation), but the judge must sign and issue an arrest warrant, and that warrant must be delivered to the proper officer for execution within that same time period. The district court rejected the trial court's conclusion that a probationer absconds by failing to sign up for intake and by failing to appear at a duly noticed hearing. *See also Tatum v. State*, 736 So. 2d 1214 (Fla. 1st DCA 1999), in which it was determined that the probation revocation process was not timely and commenced when the arrest warrant was not delivered to the sheriff until the probationary term had expired.

***McGraw v. State*, 700 So. 2d 183 (Fla. 4th DCA 1997), *implied overruling on other grounds recognized by Stambaugh v. State*, 891 So. 2d 1136 (Fla. 4th DCA 2005)**
The trial court lacked jurisdiction to entertain an application for revocation of probation based on a violation that occurred during the probationary period, for which the affidavit of violation and arrest warrant were not filed with the clerk until six days after the term of probation had expired. (*Stambaugh* reiterates that it is the issuance of the arrest warrant for, not the filing of the affidavit alleging, the probation violation that commences the probation violation proceeding.)

Jury and Jurors

***Cazeau v. State*, 873 So. 2d 528 (Fla. 4th DCA 2004)**
The district court held that the trial court's failure to instruct the jury on a particular element of a crime is a fundamental error, requiring reversal, when that element is disputed at trial. In the instant case, the district court reversed the trial court because the jury was never informed that, in order to convict the defendant of aggravated stalking, it must first find that the defendant had knowledge of the injunction, which is an element of the crime.

***Peters v. State*, 874 So. 2d 677 (Fla. 4th DCA 2004)**
The trial judge in a domestic battery case did not excuse a juror who had previously been a victim of domestic abuse. The juror said she would rather sit on a different case, because she was still devastated by the abuse and believed that these experiences would play a role in how she decided this case, but that she could still decide the case based solely on the evidence and law. The district court held that "a juror's later statement that she can be fair does not erase a doubt as to impartiality when the juror has previously expressed some attitude or previous experience that continues to affect the juror in some way." The trial court should excuse any juror for cause if any reasonable doubt exists as to whether the juror is impartial.

***Tindle v. State*, 832 So. 2d 966 (Fla. 5th DCA 2002)**
It was reversible error to deny the defendant's motion to dismiss the amended information and was fundamental error to instruct the jury in a way permitting it to find that one alleged victim was threatened while the other had a well-founded fear that violence was imminent. The crime of aggravated assault requires that the victim must both have been threatened *and* have a well-founded fear that violence was imminent.
http://www.5dca.org/Opinions/Opin2002/122302/5D02-342.op.pdf

***Rodriguez v. State*, 816 So. 2d 805 (Fla. 3d DCA 2002)**
The appellant appealed his conviction for felony battery in a domestic violence case following a jury trial, claiming that the trial court erred in denying his challenge for cause to a potential juror. During *voir dire*, the trial court did not allow the defendant to strike a potential juror who had revealed that she had been exposed to domestic violence in her past. The district court held that the juror is not impartial when one side must overcome a set opinion in order to prevail. If a prospective juror's statements raise reasonable doubts as to that juror's ability to make an impartial verdict, the juror should be excused. Cases where it is not completely clear whether or not a juror should be dismissed should be resolved in favor of excusing the juror rather than leaving a doubt as to his or her impartiality. The conviction was reversed, and the case was remanded.
http://www.3dca.flcourts.org/Opinions/3d01-3507.pdf

***Henry v. State*, 756 So. 2d 170 (Fla. 4th DCA 2000)**
The defendant was convicted for violating an injunction for protection against domestic violence. A new trial was required because the trial court erroneously failed to excuse a juror for cause. The juror, who in his capacity as a paramedic and firefighter regularly worked with the police department and had responded to a number of domestic violence cases, gave answers that demonstrated reasonable doubt as to his ability to put aside a bias in favor of law enforcement.

Jury Instructions

***In re Standard Jury Instructions in Criminal Cases—Report 2016–04*, 206 So. 3d 14 (Fla. 2016)**
The supreme court adopted amendments to Standard Jury Instructions in Criminal Cases 3.3(f) (Aggravation of a Crime by Selecting a Victim Based on Prejudice), 3.6(c) (Psychotropic Medication), 8.18 (Violation of an Injunction for Protection Against Domestic Violence); 8.19 (Violation of an Injunction for Protection Against [Repeat] [Sexual] [Dating] Violence); and 8.24 (Violation of an Injunction for Protection Against [Stalking] [Cyberstalking]).
http://www.floridasupremecourt.org/decisions/2016/sc16-1183.pdf

***In re Standard Jury Instructions in Criminal Cases—Instruction 8.25*, 141 So. 3d 1201 (Fla. 2014)**
The supreme court amended the standard jury instructions proposed by the Supreme Court Committee on Standard Jury Instructions in Criminal Cases. New instruction 8.25 (Violation of a Condition of Pretrial Release from a Domestic Violence Charge) was added, to provide a standard instruction for the crime as defined in section 741.29(6), Florida Statutes, and to reflect that a person can violate a condition of pretrial release before being released from jail.
http://www.floridasupremecourt.org/decisions/2014/sc13-2453.pdf

***In re Standard Jury Instructions in Criminal Cases -- Report No. 2012-05*, 131 So. 3d 755 (Fla. 2013)**
The supreme court authorized new standard criminal jury instructions, and amended several existing standard criminal jury instructions, for crimes including aggravated stalking, violation of a stalking injunction, aggravated assault on an elderly person, and sexual battery of a victim less than 12 years of age.
http://www.floridasupremecourt.org/decisions/2013/sc12-2031.pdf

***Miller v. State*, 4 So. 3d 732 (Fla. 1st DCA 2009)**
The trial court gave an additional special instruction that stated that malice may be inferred when a defendant disregards an injunction for protection against domestic violence pursuant to section 784.048(4), Florida Statutes. The trial court instructed the jury that it could find the defendant guilty of acting maliciously even if it found only that he acted in disregard of an injunction. The special instruction effectively eliminated the element of malice that the state had the burden to prove. The statute requires more than simple disregard of an injunction. The appellate court reversed the aggravated stalking conviction and sentence, and remanded the case for retrial on the aggravated stalking count under the revised standard instructions.
http://opinions.1dca.org/written/opinions2009/02-27-2009/07-5428.pdf

Juvenile

***A.D. v. State*, 45 So. 3d 575 (Fla. 4th DCA 2010)**
The district court granted a petition for habeas corpus in which the petitioner, a juvenile, contended that the trial court unlawfully placed him in secure detention for various charges, including domestic violence against his mother. The district court granted the petition because the trial court did not make written findings reflecting clear and convincing evidence to support the secure detention as required by section 985.255(2), Florida Statutes (2010). The district court remanded, directing the trial court to make written findings or release the juvenile petitioner.
http://www.4dca.org/opinions/Oct%202010/10-22-10/4D10-4174.op.pdf

***J.Z. v. State*, 46 So. 3d 1218 (Fla. 4th DCA 2010)**
The district court affirmed a juvenile defendant's domestic violence battery conviction and the withholding of adjudication and placement on probation, but reversed the imposition of court costs. Section 775.083(2), Florida Statutes, provides for assessment of court costs when a juvenile is adjudicated delinquent, but in this case the trial court withheld adjudication of delinquency.
http://www.4dca.org/opinions/Nov%202010/11-10-10/4D09-1160.op.pdf

***C.D. v. Vurro*, 975 So. 2d 475 (Fla. 2d DCA 2007)**
The petitioner juvenile was charged with domestic violence battery. The trial court denied the juvenile's original petition seeking a writ of habeas corpus when the juvenile was not given a hearing every 48 hours of detention, and the juvenile filed a motion for clarification. The court granted the motion to clarify and held that the procedures followed in the detention of the petitioner were correct and reflected the legislative intent of chapter 985, Florida Statutes. The 1997 amendment of the applicable section provided that a child may continue to be held in secure detention if the court makes specific, written findings that secure detention is necessary to protect the victim. This change provided a more formalized procedure but did not "resurrect" the requirement to hold hearings each 48-hour period the juvenile remains in secure detention.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2007/June/June%2020,%202007/2D07-1879.pdf

Permanent Injunction

***Canavan v. State*, 38 So. 3d 885 (Fla. 2d DCA 2010)**
Canavan appealed his conviction for aggravated stalking and the court reversed and remanded the case. In 2006, Canavan's former wife obtained a temporary injunction because he was following her, she was afraid of him, and she was afraid that he would try to take their son. A permanent injunction was entered a year later at a hearing that Canavan did not attend, and the permanent injunction was not served on Canavan until he was arrested for the stalking charge at issue in this case. The court noted that if the defendant had been served with the permanent injunction, proof of service would have been sufficient to prove that he had knowledge of the injunction, a required element of the aggravated stalking charge. However, the state failed to provide any evidence that Canavan knew of the entry of the permanent injunction. Therefore, the court remanded the case for entry of a judgment of conviction for simple stalking. To prove simple stalking, the state must have proven that the defendant willfully, maliciously, and repeatedly followed, harassed, or cyberstalked the victim. By finding Canavan guilty of aggravated stalking, the jury also made the necessary finding on the elements constituting the lesser-included offense of simple stalking. The jury was given both of these instructions. The court reversed Canavan's aggravated stalking conviction because the state did not, as a matter of law, establish the third element of aggravated stalking—that factually Canavan knew the final injunction had been entered against him. However, the court did not take issue with the remaining elements of the offense.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/June/June%2030,%202010/2D08-5182rh.pdf

***Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008)**
The appellant sought habeas corpus relief after being sentenced to jail for six months for allegedly violating a domestic violence permanent injunction with a purge provision requiring her to complete a 60-day domestic violence class. The appellee had filed an affidavit of violation of the permanent injunction by appellant, and the court issued a notice of hearing on November 8, 2007, for a hearing on December 11, 2007. The habeas petition reflected that the appellant was not served with the notice of the hearing until December 13, 2008 (two days after the hearing had been held). The court found that the appellant had been served on November 15, 2007. The appellant failed to appear at the hearing, and based on the appellee's unrebutted testimony the trial court found that the appellant had violated the injunction and ordered her to be jailed for six months. The trial court included a purge provision that the appellant would be released upon completion of a 60-day domestic violence class. The appellant was arrested and, at the time of the appeal, remained in custody. The district court held that the trial court's order clearly amounted to a finding of criminal contempt rather than civil contempt since the sanction imposed sought to punish the appellant and the purge itself required her to remain in jail for at least 60 days. The district court noted that the state did not file criminal charges for the appellant's alleged violations nor was she brought back before the court once arrested. Additionally, the state never moved for an order to show cause why the appellant should not be held in criminal contempt. The district court granted habeas corpus relief because the appellant was denied due process before being deprived of her liberty. The state was allowed to file the proper charges for the appellant's contempt in accordance with contempt proceedings that afford the appellant due process.
http://www.4dca.org/opinions/Jan2008/01-10-2008/4D08-03.op.pdf

***Gordon v. State*, 960 So. 2d 31 (Fla. 4th DCA), clarified by 967 So. 2d 357 (Fla. 4th DCA 2007)**
A husband appealed several orders stemming from an indirect criminal contempt proceeding arising from alleged violations of a permanent injunction that his wife was granted. The wife moved to show cause why the husband should not be held in contempt for violating the injunction by allegedly sending threatening messages, making phone calls, and stalking her at a shopping center. After a hearing, the court entered an order to show cause why the husband should not be held in indirect criminal contempt and attached the wife's motion and affidavit, while the order itself stated no facts constituting the alleged contempt. At arraignment, the husband was questioned about his indigency and was found not to be indigent for the purposes of appointing a public defender. Two months later the husband renewed his request for a public defender and moved for a change of venue since the wife's new boyfriend had recently been elected a judge in the Fifteenth Judicial Circuit; both requests were denied. After a hearing, the court found that the husband knowingly and willfully violated the order, and the case was reset for

sentencing after the husband spent a "brief period of time in jail." At sentencing, the court placed the husband on probation for one year, with 30 days in the county jail on weekends and regular psychological counseling. On appeal, for which a public defender was appointed to him, the husband argued that fundamental error occurred when the court failed to put forth the essential facts of the contempt and appoint him a public defender. The court held that, although the hearing could have been fashioned differently, the evidence supported the court's finding of contempt. However, while failure to appoint a public defender at the first arraignment was proper, the court held that failure to appoint a public defender for the contempt hearing was improper. Several of the husband's other contentions were also deemed meritless. The court held that the fact that the wife's new boyfriend was a judge-elect in that circuit did not mandate a change of venue, and that appointing the wife's attorney as a special prosecutor to handle the contempt charge was not improper but, rather, a means of effectuating judicial economy. The district court affirmed the trial court's ruling, but reversed and remanded on the contempt hearing to appoint counsel for the husband.
http://www.4dca.org/opinions/May2007/05-23-07/4D04-4432.op.pdf
http://www.4dca.org/opinions/Oct%202007/10-10-07/4D04-4432.rhg.2.pdf

Post-Conviction Relief

***State v. Shaikh*, 65 So. 3d 539 (Fla. 5th DCA 2011)**
The state sought reversal of an order granting the appellee's motion for post-conviction relief pursuant to rule 3.850, Florida Rules of Criminal Procedure. The appellee's motion, his third, was based on *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), concerning the consequences of inadequate legal advice in connection with the risk of deportation at the time of the entry of a plea. The trial court found that his nolo contendere plea to violation of a domestic violence injunction was involuntary because of the purportedly erroneous advice given to him by his attorney. However, the appellee's plea was entered on October 29, 2007, well before *Padilla* was handed down, and the appellate court held that *Padilla* should not be applied retroactively. Since the appellee was not entitled to relief on his claim, the appellate court reversed the order granting post-conviction relief and remanded the case to the trial court to reinstate the judgment and sentence.
http://www.5dca.org/Opinions/Opin2011/053011/5D10-2515.op.pdf

Pretrial Release

***In re Standard Jury Instructions in Criminal Cases—Instruction 8.25*, 141 So. 3d 1201 (Fla. 2014)**
The supreme court amended the standard jury instructions proposed by the Supreme Court Committee on Standard Jury Instructions in Criminal Cases. New instruction 8.25 (Violation of a Condition of Pretrial Release from a Domestic Violence Charge) was added, to provide a standard instruction for the crime as defined in section 741.29(6), Florida Statutes, and to reflect that a person can violate a condition of pretrial release before being released from jail.
http://www.floridasupremecourt.org/decisions/2014/sc13-2453.pdf

***Rodriguez v. State*, 269 So. 3d 639 (Fla. 5th DCA 2019)**
The defendant was arrested and charged with domestic battery and domestic battery by strangulation. At the time of the arrest, he was out on bond from a previous domestic battery charge. At the defendant's first appearance on the new charges, the judge ordered him held without bond on the new charges and revoked bond in the earlier case. The defendant sought a writ of habeas corpus to obtain pretrial release, which the appellate court granted, because "the State did not seek pretrial detention and the new charges did not allege a capital or life felony."
https://www.5dca.org/content/download/523903/5820321/file/191114_1255_04242019_10060967_i.pdf

***Santiago v. Ryan*, 109 So. 3d 848 (Fla. 3d DCA 2013)**
The defendant was arrested and charged with aggravated stalking of his ex-wife. While being processed, he was served with a temporary domestic violence injunction which prohibited him from contact with her. During the first appearance, the court entered a stay away order that also prohibited contact with his ex-

wife. While incarcerated, the defendant made threatening phone calls to her. The next day, the defendant went to a first appearance for the new charges based upon the calls. He posted bond for both offenses, and was released. When he was arraigned for the first case, his bond was revoked because he had violated the conditions of his pretrial release by committing the new crimes, and the defendant filed a petition for a writ of habeas corpus. The court denied the writ and held that the statute governing revocation of pretrial release did apply to a defendant who committed new felonies from jail during the period between setting a bond for the prior offense and his release.
http://www.3dca.flcourts.org/Opinions/3D13-0420.pdf

Revocation of Probation

***Cerny v. State*, 65 So. 3d 609 (Fla. 2d DCA 2011)**
The district court reversed an order revoking probation, holding that the state failed to prove by a preponderance of the evidence a probation violation (aggravated battery). In the trial court below, appellant received four sentences of probation to run concurrently as part of a plea agreement after a guilty adjudication. Subsequently, the probation officer filed an affidavit of violation of probation alleging that appellant had violated his probation in all four cases by committing four new law violations: aggravated battery, domestic violence by strangulation, false imprisonment, and tampering with a witness. After a hearing, the circuit court dismissed all the charges but aggravated battery, and revoked appellant's probation in all four cases based on that new law violation, invoking the maximum sentence of five years in prison on each of the underlying third degree felonies. The resulting sentence, appealed to the district court, was 20 years in prison. The district court reversed the order revoking probation and the resulting sentences and stated that under the circumstances, double jeopardy would not bar a second revocation proceeding on remand based on the filing of a new affidavit alleging the same violations.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/July/July%2022,%202010/2D09-5338.pdf

***Roundtree v. State*, 955 So. 2d 1184 (Fla. 3d DCA 2007)**
The defendant, who pled guilty to aggravated battery, appealed the revocation of his probation for failing to report to his probation officer, changing his address without permission, not undergoing psychological evaluation, and not completing a domestic violence intervention program. After being in compliance for two months, the defendant stopped reporting to his probation officer after the hurricanes in July and August of 2005. Attempts were made to contact the defendant at his home, but the defendant never responded. At the revocation hearing, the defendant testified that he was hospitalized for six weeks and spent an additional six weeks in a convalescent home. Once he was able to return to his obligations for probation, he had lost the contact information for his probation officer, had attempted to get his psychological evaluation done but did not have enough money to pay, and was turned away from the domestic violence intervention classes because they were full. The trial court found his reasons for failing to report not to be credible and revoked his probation for the aforementioned reasons. On appeal, the court agreed with the trial court in finding that the defendant did violate the terms of his probation for not reporting to his officer and for changing his address without permission. However, the district court did not find violations for his failure to undergo a psychological evaluation and complete the classes since no specific time frame to finish these requirements was given by the trial court. A year was left on his probation, giving him sufficient time to complete these requirements. As a result, the district court reversed that portion of the revocation and remanded to the trial court for a determination on whether the sentence should be reconsidered.
http://www.3dca.flcourts.org/Opinions/3D06-2512.pdf

Risk of Deportation

***State v. Shaikh*, 65 So. 3d 539 (Fla. 5th DCA 2011)**
The state sought reversal of an order granting the appellee's motion for post-conviction relief pursuant to rule 3.850, Florida Rules of Criminal Procedure. The appellee's motion, his third, was based on *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), concerning the consequences of

inadequate legal advice in connection with the risk of deportation at the time of the entry of a plea. The trial court found that his nolo contendere plea to violation of a domestic violence injunction was involuntary because of the purportedly erroneous advice given to him by his attorney. However, the appellee's plea was entered on October 29, 2007, well before *Padilla* was handed down, and the appellate court held that *Padilla* should not be applied retroactively. Since the appellee was not entitled to relief on his claim, the appellate court reversed the order granting post-conviction relief and remanded the case to the trial court to reinstate the judgment and sentence.
http://www.5dca.org/Opinions/Opin2011/053011/5D10-2515.op.pdf

Secure Detention

***M.A.M. v. Vurro*, 2 So. 3d 388 (Fla. 2d DCA 2009)**
M.A.M., a juvenile, filed an emergency petition for writ of habeas corpus seeking to be discharged from secure detention. Although focusing on other issues, the district court reminds juvenile judges that when a child has been charged with committing an act of domestic violence that does not otherwise meet the secure detention criteria, the child may continue to be held in secure detention only if the court makes "'specific written findings' that respite care is unavailable and that secure detention is required to prevent victim injury."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2009/January/January%2007,%202009/2D08-5147.pdf

Service

***Livingston v. State*, 847 So. 2d 1131 (Fla. 4th DCA 2003)**
The district court reversed the trial court's conviction of the appellant for violation of a permanent injunction for protection against repeat violence. Service of the permanent injunction must occur regardless of the fact that the defendant had been personally served with the temporary injunction. However, the district court affirmed the trial court's denial of the motion for a judgment of acquittal for aggravated stalking even though no service of the permanent injunction occurred. The court held that "[a]ctual notice of the injunction is not an essential element that must be proved . . . beyond a reasonable doubt, as is the case in a contempt proceeding for violation of the injunction. The state must prove only that an injunction or some other restriction for protection was in place when the accused repeatedly followed or harassed the victim.

***Silas v. State*, 6 Fla. L. Weekly Supp. 628 (Fla. 20th Cir. Ct. 1999)**
The circuit court, appellate division, held that the defendant, who was charged with violation of a permanent injunction for protection against domestic violence, was entitled to a judgment of acquittal because he was never personally served with the permanent injunction in accordance with rule 12.610, Florida Family Law Rules of Procedure. The fact that the temporary injunction had been personally served does not change the requirement that the permanent injunction be personally served.

***Hernandez v. State*, 713 So. 2d 1120 (Fla. 3d DCA 1998)**
The defendant was entitled to a judgment of acquittal on the charge of violation of a domestic violence injunction because the trial court erroneously took judicial notice of the fact that the court file reflected that the defendant was personally served with a copy of the injunction. Service of an injunction is an element of the state's case that the state must prove.

***Cordova v. State*, 675 So. 2d 632 (Fla. 3d DCA 1996)**
Although judicial notice of elemental facts in a criminal case is permissible, the trial court erred in taking judicial notice of the fact that the defendant was served with a copy of the injunction he was alleged to have violated. Service of the injunction on the defendant is not a fact that is "generally known within the territorial jurisdiction of the court," nor is it the type of fact that is not subject to dispute because it is capable of accurate and ready determination by resorting to a source whose accuracy cannot be

questioned. The stamped return of service gave rise to a permissive inference that service occurred. The return of service itself, although hearsay, is admissible under the public records exception.

Stalking

***In re Standard Jury Instructions in Criminal Cases -- Report No. 2012-05*, 131 So. 3d 755 (Fla. 2013)**
The supreme court authorized new standard criminal jury instructions, and amended several existing standard criminal jury instructions, for crimes including aggravated stalking, violation of a stalking injunction, aggravated assault on an elderly person, and sexual battery of a victim less than 12 years of age.
http://www.floridasupremecourt.org/decisions/2013/sc12-2031.pdf

***Russell v. State*, 269 So. 3d 621 (Fla. 1st DCA 2019)**
The defendant was convicted of aggravated stalking and appealed, arguing that the trial court abused its discretion by admitting his text messages to the victim as impeachment evidence. The appellate court affirmed, stating that the defendant "opened the door to cross-examination about those text messages because they contradicted [his] testimony that the victim repeatedly initiated contact with him because she wanted them to get back together. The texts showed it was [the defendant] who insisted on communicating with the victim despite her efforts to avoid any further contact with him."
https://www.1dca.org/content/download/523608/5816979/file/174925_1284_04162019_02412934_i.pdf

***Lee v. State*, 268 So. 3d 904 (Fla. 1st DCA 2019)**
The defendant was convicted of aggravated stalking and appealed, claiming that the trial court improperly admitted into evidence the victim's 911 call and three of his jail calls to the victim. The appellate court affirmed, stating that "the trial judge did not err in ruling that this victim's statements to the 911 operator constituted excited utterances" and that "[t]he victim's statements, offered for a purpose other than truth—here, to provide context for [the defendant's] responses—are not hearsay."
https://www.1dca.org/content/download/522915/5809465/file/171469_1284_04032019_10281318_i.pdf

***Crapps v. State*, 180 So. 3d 1125 (Fla. 1st DCA 2015)**
The appellant was convicted of violating an injunction for protection against stalking (count I) and unauthorized computer use (count II) after he logged into his ex-girlfriend's Instagram account and posted nude photographs of her without her permission. The appellant challenged only his conviction on count II, and claimed that his actions did not violate section 815.06(1)(a), Florida Statutes. That statute was enacted in 1978, before the Internet and social media accounts such as Instagram existed, and "[t]he plain language of the statutory definitions of 'computer,' 'computer system,' and 'computer network' refer to tangible devices, not the data and other information located on the device. Thus, to prove a violation of section 815.06(1)(a), the State must establish that the defendant accessed one of the listed tangible devices without authorization, not that the defendant accessed a program or information stored on the device without authorization." In this case, the charge against the appellant was based only on the unauthorized access of his ex-girlfriend's Instagram account, not on a specific computer or server. Therefore, the court affirmed the trial court's decision as to count I, and reversed as to count II.
https://edca.1dca.org/DCADocs/2014/4569/144569_DC08_12082015_090851_i.pdf

***Preston v. State*, 134 So. 3d 992 (Fla. 1st DCA 2012)**
The defendant appealed his convictions and sentences for battery and two counts of aggravated stalking. The appellate court affirmed his convictions, but reversed the sentences and found that it was error to impose consecutive sentences for the two counts of aggravated stalking. The defendant was sentenced as a prison releasee reoffender (PRR) and PRR sentences may not be ordered to run consecutively when the crimes were committed during a single criminal episode.
http://opinions.1dca.org/written/opinions2012/05-18-2012/10-5085.pdf

***Jean-Louis v. State*, 82 So. 3d 1032 (Fla. 4th DCA 2011)**
The district court affirmed appellant's conviction for attempted simple stalking, but reversed a five-year concealed-weapon license revocation, which was a condition of probation. The trial court found appellant

guilty and placed him on six months' probation with a condition that he not possess, carry, or own any weapons and revoked his concealed weapons license for five years. The district court found that the trial court exceeded the time provided by statute for revocation of a concealed weapons license as section 790.06(3), Florida Statutes, limits it to three years.
http://www.4dca.org/opinions/Aug%202011/08-31-11/4D09-3556.op.pdf

***Canavan v. State*, 38 So. 3d 885 (Fla. 2d DCA 2010)**
Canavan appealed his conviction for aggravated stalking and the court reversed and remanded the case. In 2006, Canavan's former wife obtained a temporary injunction because he was following her, she was afraid of him, and she was afraid that he would try to take their son. A permanent injunction was entered a year later at a hearing that Canavan did not attend, and the permanent injunction was not served on Canavan until he was arrested for the stalking charge at issue in this case. The court noted that if the defendant had been served with the permanent injunction, proof of service would have been sufficient to prove that he had knowledge of the injunction, a required element of the aggravated stalking charge. However, the state failed to provide any evidence that Canavan knew of the entry of the permanent injunction. Therefore, the court remanded the case for entry of a judgment of conviction for simple stalking. To prove simple stalking, the state must have proven that the defendant willfully, maliciously, and repeatedly followed, harassed, or cyberstalked the victim. By finding Canavan guilty of aggravated stalking, the jury also made the necessary finding on the elements constituting the lesser-included offense of simple stalking. The jury was given both of these instructions. The court reversed Canavan's aggravated stalking conviction because the state did not, as a matter of law, establish the third element of aggravated stalking—that factually Canavan knew the final injunction had been entered against him. However, the court did not take issue with the remaining elements of the offense.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2010/June/June%2030,%202010/2D08-5182rh.pdf

***Nicholson v. State*, 10 So. 3d 142 (Fla. 4th DCA 2009)**
Nicholson appealed his conviction and sentence for first degree murder, claiming that the trial court erred by denying his motion for judgment of acquittal. His motion was based on the claim that the state's case consisted of circumstantial evidence of an uncharged collateral crime which was insufficient to support the conviction. The defendant also argued that the trial court erred in admitting collateral evidence that he stalked, threatened, and assaulted the victim. The court noted that the standard of review for admission of evidence is abuse of discretion, but that discretion is limited by the rules of evidence. The appellate court concluded that the previous assault and stalking, although consisting of prior bad acts, were admissible as relevant to prove motive and intent under the *Williams* rule and were not made a feature of the trial, and it affirmed the conviction.
http://www.4dca.org/opinions/Mar2009/03-25-09/4D06-3389.op.pdf

***Miller v. State*, 4 So. 3d 732 (Fla. 1st DCA 2009)**
The trial court gave an additional special instruction that stated that malice may be inferred when a defendant disregards an injunction for protection against domestic violence pursuant to section 784.048(4), Florida Statutes. The trial court instructed the jury that it could find the defendant guilty of acting maliciously even if it found only that he acted in disregard of an injunction. The special instruction effectively eliminated the element of malice that the state had the burden to prove. The statute requires more than simple disregard of an injunction. The appellate court reversed the aggravated stalking conviction and sentence, and remanded the case for retrial on the aggravated stalking count under the revised standard instructions.
http://opinions.1dca.org/written/opinions2009/02-27-2009/07-5428.pdf

***Menefee v. State*, 980 So. 2d 569 (Fla. 5th DCA 2008)**
The defendant and victim were both licensed amateur ham radio operators. The victim claimed that the defendant stalked him over the radio waves by making death threats and crude comments directed at the victim, causing him emotional distress. The defendant's motion to dismiss the charge, on the basis that the state had no authority to prosecute this behavior since it was regulated by federal law, was denied and the defendant was found guilty of misdemeanor stalking. On appeal, the district court affirmed because the court did have the authority to punish criminal conduct regardless of the manner in which it

was carried out. The state was not preventing or prohibiting the actual transmissions over the airwaves, but rather was exercising its right to enforce state laws that prohibit criminal behavior. The defendant's conviction was based on the nature of his criminal conduct and not on the tool with which he chose to commit the crime. The fact that the tool that the defendant used to stalk the victim was a federally regulated means of communication had no bearing on the fact that a crime was committed.
http://www.5dca.org/Opinions/Opin2008/042108/5D07-2590.op.pdf

***Vazquez v. State*, 953 So. 2d 569 (Fla. 4th DCA 2007)**
The defendant appealed a conviction of one count of aggravated stalking. The defendant argued that the trial court's decision to allow the state to amend the count in the information to include certain specific events violated his right against double jeopardy because his actions on those dates formed the basis of the original stalking charge for which he already had been charged and sentenced. While the state argued that simple stalking and aggravated stalking each contain an element that the other does not and are therefore different under the *Blockburger* test, see section 775.021(4)(a), Florida Statutes (2002), the defendant claimed the amendment violated the double jeopardy clause of the U.S. and Florida Constitutions. The district court agreed and held that since the only element that aggravated stalking requires that simple stalking does not is the existence of an injunction, so the two are not separate offenses. Since the record showed that the two convictions were based on the same charging actions (harassing phone calls), the district court vacated the defendant's conviction for aggravated stalking and remanded for resentencing.
http://www.4dca.org/opinions/Feb%202007/2-14-2007/4D04-4411.op.pdf

***St. Fort v. State*, 943 So. 2d 314 (Fla. 4th DCA 2006)**
The district court reversed the defendant's aggravated stalking conviction, holding that armed threats cannot constitute stalking under section 784.048, Florida Statutes. Because the statute's purpose is to criminalize conduct that falls short of assault or battery, actual assaults and batteries are not within its ambit and such offenses are already "condemned by other statutes." The district court reiterated a previous ruling in the Third District that "the essence of the stalking offense lies in nonconsensual contact of a harassing or intimidating nature." Although the court refused to hold that "stalking is not legally possible, while parties cohabit unestranged," it did find that the facts of this case did not constitute stalking. Since the conduct complained of was the foundation for a separate conviction on assault, battery, and related counts, these acts were "outside the 'ken' of the acts prohibited by the stalking statute."
http://www.4dca.org/opinions/Dec%202006/12-13-06/4D04-2089.cor.op.pdf

***Cazeau v. State*, 873 So. 2d 528 (Fla. 4th DCA 2004)**
The district court held that the trial court's failure to instruct the jury on a particular element of a crime is a fundamental error, requiring reversal, when that element is disputed at trial. In the instant case, the district court reversed the trial court because the jury was never informed that, in order to convict the defendant of aggravated stalking, it must first find that the defendant had knowledge of the injunction, which is an element of the crime.

***Gaspard v. State*, 848 So. 2d 1161 (Fla. 1st DCA), *opinion supplemented on reh'g*, 845 So. 2d 986 (Fla. 1st DCA 2003)**
The trial court erred in failing to instruct the jury that knowledge of an injunction is an essential element of the offense of aggravated stalking, regardless of the fact that section 784.048(4), Florida Statutes, is silent as to whether knowledge is an element. The supreme court has determined that knowledge of an injunction is a statutory element under section 784.048(4). *State v. Johnson*, 676 So. 2d 408 (Fla. 1996). The court reversed the trial court's decision.
http://opinions.1dca.org/opinions2003/4-03-03/01-2931.pdf
http://opinions.1dca.org/opinions2003/5-23-03/01-2931.pdf

***Rodriguez-Cayro v. State*, 828 So. 2d 1060 (Fla. 2d DCA 2002)**
The district court denied the petitioner's writ of certiorari to quash the circuit court's denial of his petition for a writ of prohibition to enjoin a misdemeanor stalking charge pending against him in county court. He argued that the proceedings were barred by the statute of limitations. The district court held that the

circuit court's conclusion that stalking is a "continuing course of conduct crime for which the statute of limitations begins to run only when the course of conduct stops" was correct and that the circuit court appropriately denied the writ.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2002/October/October%2023,%202002/2D02-625.pdf

***Jordan v. State*, 802 So. 2d 1180 (Fla. 3d DCA 2001)**
The defendant appealed a conviction for aggravated stalking and trespassing after violating a domestic violence injunction, on the ground that the evidence presented was not sufficient to sustain the charges. The court held that the defendant's conduct in visiting the home after the issuance of the injunction and continuing phone calls from jail subsequent to his arrest, constituted stalking under section 741.30, Florida Statutes.
http://www.3dca.flcourts.org/Opinions/3d99-2757.pdf

***Stone v. State*, 798 So. 2d 861 (Fla. 4th DCA 2001)**
The defendant appealed convictions for numerous charges including aggravated stalking. The only evidence supporting that charge was the probable cause affidavit detailing the events of the night in question. The district court held that it was improper for the court to accept a *nolo contendre* plea on that charge pursuant to section 784.048(3), Florida Statutes, as there was no factual basis outside the affidavit, and the single incident alleged occurred on one occasion. There was no other evidence presented that the defendant had prior contact with the victim at; therefore, the defendant could not have been convicted of aggravated stalking and thus the court erred in accepting the *nolo* plea to that charge.

***Butler v. State*, 715 So. 2d 339 (Fla. 4th DCA 1998)**
Disjointed and discrete incidents, interspersed with one or more reconciliations between the defendant and the victim, who were in an "on and off again" marital relationship, are not instances of repeated harassing conduct constituting aggravated stalking.
http://www.floridasupremecourt.org/decisions/pre2004/ops/sc95158.pdf

***State v. Gagne*, 680 So. 2d 1041 (Fla. 4th DCA 1996)**
Double jeopardy does not bar a subsequent prosecution for aggravated stalking when the defendant had previously been convicted for violating an injunction based on the same conduct.

***State v. Johnson*, 676 So. 2d 408 (Fla. 1996)**
The defendant was properly convicted of aggravated stalking when he had previously been convicted of contempt for violating an injunction based on the same conduct. Each of the offenses contained an element not contained in the other.

Violation of Probation or Injunction

***Garcia v. State*, __ So. 3d __, 2019 WL 2607294 (Fla. 3d DCA 2019)**
The defendant claimed he could not be convicted of violating a stalking injunction because the temporary injunction had expired and he had not been served with the permanent injunction that had been ordered. The appellate court reversed, noting that the language on the temporary injunction clearly stated "EXPIRES: July 5th 2018 OR UNTIL THE FINAL JUDGMENT OF INJUNCTION OF PROTECTION IF ENTERED IS SERVED ON RESPONDENT." Therefore the temporary was still in effect when the defendant violated it.
https://www.3dca.flcourts.org/content/download/527859/5864438/file/190060_809_06262019_10222937_i.pdf

***Hall v. State*, 181 So. 3d 581 (Fla. 2d DCA 2016)**
The defendant appealed his judgment and sentence for felony battery and his violation of an injunction for protection against domestic violence. The appellate court affirmed the criminal sentence, but reversed the

conviction of the violation charge. The court noted that the state did not prove that the defendant knew that the injunction was still in effect, and therefore could not prevail.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2016/January/January%2006,%202016/2D14-2321.pdf

***Hawxhurst v. State*, 159 So. 3d 1012 (Fla. 3d DCA 2015)**
Although primarily a criminal case revolving around a charge of possession of cocaine, the court noted that section 901.15(6), Florida Statutes, authorizes law enforcement to perform an arrest without a warrant when there is probable cause to believe that the person has committed a criminal act which violates an injunction for protection against domestic violence.
http://www.3dca.flcourts.org/Opinions/3D13-0527.pdf

***Hall v. Ryan*, 98 So. 3d 1195 (Fla. 3d DCA 2012)**
The defendant pled guilty to a charge of aggravated battery with a deadly weapon and two counts of child abuse and was sentenced to prison followed by three years of probation. The defendant's ex-wife/girlfriend was also granted a permanent injunction against him for domestic violence. During the defendant's probation period, the state filed a violation of probation affidavit alleging that the defendant had committed a new criminal violation when he contacted the petitioner's 16-year-old daughter via a Facebook "friend request." Since this request went to the petitioner's daughter who lived with the petitioner, the court found that there was probable cause to believe that the defendant violated his probation. The language of the permanent injunction stated: "Unless otherwise provided therein, Respondent shall have no contact with Petitioner. Respondent shall not directly or indirectly contact Petitioner in person, by mail, e-mail, fax, telephone, through another person, or in any other manner. Further, Respondent shall not contact or have any third party contact [with] anyone connected with Petitioner's employment or school to inquire about Petitioner or to send any messages to Petitioner."
http://www.3dca.flcourts.org/Opinions/3D12-2244.pdf

***Cerny v. State*, 65 So. 3d 609 (Fla. 2d DCA 2011)**
The district court reversed an order revoking probation, holding that the state failed to prove by a preponderance of the evidence a probation violation (aggravated battery). In the trial court below, appellant received four sentences of probation to run concurrently as part of a plea agreement after a guilty adjudication. Subsequently, the probation officer filed an affidavit of violation of probation alleging that appellant had violated his probation in all four cases by committing four new law violations: aggravated battery, domestic violence by strangulation, false imprisonment, and tampering with a witness. After a hearing, the circuit court dismissed all the charges but aggravated battery, and revoked appellant's probation in all four cases based on that new law violation, invoking the maximum sentence of five years in prison on each of the underlying third degree felonies. The resulting sentence, appealed to the district court, was 20 years in prison. The district court reversed the order revoking probation and the resulting sentences and stated that under the circumstances, double jeopardy would not bar a second revocation proceeding on remand based on the filing of a new affidavit alleging the same violations.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/July/July%2022,%202010/2D09-5338.pdf

***Roberts v. State*, 10 So. 3d 1209 (Fla. 4th DCA 2009)**
The district court granted habeas relief because the defendant was entitled to have a bond set for the offense of violation of an injunction for protection against domestic violence, when the prosecutor had not moved for pretrial detention and the magistrate did not consider whether there were release conditions that could have protected the community from risk of harm.
http://www.4dca.org/opinions/June%202009/06-30-09/4D09-2376.op.pdf

***Roundtree v. State*, 955 So. 2d 1184 (Fla. 3d DCA 2007)**
The defendant, who pled guilty to aggravated battery, appealed the revocation of his probation for failing to report to his probation officer, changing his address without permission, not undergoing psychological evaluation, and not completing a domestic violence intervention program. After being in compliance for two months, the defendant stopped reporting to his probation officer after the hurricanes in July and August of 2005. Attempts were made to contact the defendant at his home, but the defendant never

responded. At the revocation hearing, the defendant testified that he was hospitalized for six weeks and spent an additional six weeks in a convalescent home. Once he was able to return to his obligations for probation, he had lost the contact information for his probation officer, had attempted to get his psychological evaluation done but did not have enough money to pay, and was turned away from the domestic violence intervention classes because they were full. The trial court found his reasons for failing to report not to be credible and revoked his probation for the aforementioned reasons. On appeal, the court agreed with the trial court in finding that the defendant did violate the terms of his probation for not reporting to his officer and for changing his address without permission. However, the district court did not find violations for his failure to undergo a psychological evaluation and complete the classes since no specific time frame to finish these requirements was given by the trial court. A year was left on his probation, giving him sufficient time to complete these requirements. As a result, the district court reversed that portion of the revocation and remanded to the trial court for a determination on whether the sentence should be reconsidered.
http://www.3dca.flcourts.org/Opinions/3D06-2512.pdf

***Oates v. State*, 872 So. 2d 351 (Fla. 2d DCA 2004)**
In this revocation of probation case, the district court held, *inter alia*, that the state failed to prove a willful and substantial violation of probation by the defendant. Two of the violations charged were failure to pay supervision costs and completion of a treatment program. The prosecution had not shown that the defendant had the ability to make payments, and no deadline had been set to complete treatment, so these two charges were not proved. Because the state proved only two of the four violations found by the trial court, the decision was reversed and the case was remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2004/April/April%2021,%202004/2D03-1624.pdf

***Seitz v. State*, 867 So. 2d 421 (Fla. 3d DCA 2004)**
The trial court did not abuse its discretion when it revoked the appellant's probation and held that the appellant violated his previously entered injunction when he publicly published and disseminated the victim's pharmaceutical records to various persons in Miami-Dade County without a legitimate purpose. The trial court held that the defendant's actions violated his injunction because the published information caused the victim to suffer emotional distress and thus was harassment, which does not require direct contact with the victim. The defendant also argued that the trial court had no jurisdiction to revoke his probation because the probation period had not yet commenced. However, the district court held that the court is free to revoke probation at any time for misconduct that demonstrates the probationer's unfitness for probation as a sentencing alternative.
http://www.3dca.flcourts.org/Opinions/3d03-1628.pdf

***Gaspard v. State*, 845 So. 2d 986 (Fla. 1st DCA 2003)**
When a conviction for aggravated stalking has been reversed, any sentence imposed after revocation of probation based solely on the conviction must be vacated. This, however, does not preclude the state from seeking revocation of probation on other grounds.
http://opinions.1dca.org/opinions2003/5-23-03/01-2931.pdf

***Hoffman v. State*, 842 So. 2d 895 (Fla. 2d DCA 2003)**
The defendant, a respondent in a civil case, was convicted of violation of an injunction for protection by sending cards to the home of the woman who had obtained the injunction and for violating the "within 500 feet" provision of the injunction. The trial court erred in finding a violation as the cards were addressed to other residents of the household and the injunction did not specifically prohibit this. Additionally, the trial court erred in finding that the defendant had violated the 500 feet provision of the injunction as the state failed to prove the actual distance. The court held that the state's burden of proof in an indirect criminal contempt case is to prove every element beyond a reasonable doubt.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2003/February/February%2012,%202003/2D02-811.pdf

***Robinson v. State*, 840 So. 2d 1138 (Fla. 1st DCA 2003)**
The court reversed the appellant's conviction for violation of a domestic violence injunction. The trial court should have granted the appellant's motion for judgment of acquittal because the state failed to establish that the appellant knew the permanent injunction had been entered against him. The appellant's conviction for aggravated battery was upheld, however.
http://opinions.1dca.org/opinions2003/3-27-03/01-4918.pdf

***Dunkin v. State*, 780 So. 2d 223 (Fla. 2d DCA 2001)**
The defendant was placed on probation for three years and ordered to complete an outpatient sex offender treatment program until discharged by the therapist. The probation officer claimed the defendant was in violation of his probation because he was absent from the program three times without notification to the therapist. The defendant contended he missed the appointments due to illness. The terms of his probation did not specify that the defendant must successfully complete the program on the first try, just that the program be completed within the three-year period of his probation. The circuit court revoked the defendant's probation, but the district court reversed and remanded on the ground that the defendant's termination from the program was insufficient to establish a "willful and substantial" violation of probation and therefore did not warrant revocation.

***Muthra v. State*, 777 So. 2d 1067 (Fla. 3d DCA 2001)**
The district court held that the trial court abused its discretion when it found that the defendant had violated the terms of and revoked probation for failing to pay restitution and perform community service hours. The court reversed the probation revocation on the grounds that the original order never specified a schedule for completing the conditions, and there was still sufficient time in the probationary period for the sentence to be completed. The court also held that a violation cannot be deemed willful when a defendant, as this one, was incarcerated on unrelated charges for the first three months of the probationary period.

***Suggs v. State*, 795 So. 2d 1028 (Fla. 2d DCA 2001)**
The defendant appealed a denial of her motion to dismiss an aggravated stalking charge. The court reversed and remanded the decision on the ground that a defendant cannot be charged with a violation of a permanent injunction unless the defendant was served with the injunction. In this case, there was no service on the defendant.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2001/September/September%2007,%20200 1/2d00-2446.pdf

***Brown v. State*, 776 So. 2d 329 (Fla. 5th DCA 2001)**
The defendant failed to complete an intake interview with the probation officer, as the court ordered, and was asked to call back and provide the information requested by the officer. The defendant failed to do so, and the district court held that the defendant's failure to complete the intake procedure was a substantial enough violation to justify the revocation of the probation.
http://www.4dca.org/opinions/Oct%202009/10-28-09/4D07-4121.op.pdf

***Meadows v. State*, 747 So. 2d 1043 (Fla. 4th DCA 2000)**
When the state agreed at the beginning of a probation violation hearing not to proceed on a count alleging aggravated battery and domestic violence, but did proceed on a second count alleging accessing 911 for a non-emergency purpose, the case was reversed and remanded by the district court. Because the revocation of probation was based on two violations, it was not apparent whether the trial court would have revoked the defendant's probation based on the remaining violation.

***Young v. State*, 739 So. 2d 1179 (Fla. 4th DCA 1999)**
The district court held that the trial court was without jurisdiction to revoke probation when the warrant charging the defendant with probation violation was delivered to the sheriff's office after the expiration of the probationary period. It was error to find that the defendant had absconded from supervision, thus tolling the probationary period, by failing to file monthly reports with her probation officer. The defendant was not hiding, nor had she departed the jurisdiction of the state.

***Mitchell v. State*, 717 So. 2d 609 (Fla. 4th DCA 1998)**
The claim that the trial court erred in finding the defendant in violation of probation because the order of probation did not specify the time frame for completion of a domestic batterers' intervention program was not preserved for appellate review. The district court found that there was no merit to the claim because the time period for completion of the program "was implicit in other dictates imposed by the order."

***Rawlins v. State*, 711 So. 2d 137 (Fla. 5th DCA 1998)**
The trial court may find that two unexcused absences from a substance abuse treatment program amounts to a material probation violation. And the appellant's defense for non-attendance based on his claim that the probation officer lacked the authority to substitute a program different from that ordered by the court is meritless because of his failure to complete either program.

Violence Against Women Act (Federal)

***U.S. v. Bailey*, 112 F.3d 758 (4th Cir. 1997)**
The provision of the Violence Against Women Act that makes it a federal crime to cause bodily injury to one's spouse or partner after crossing state lines with the intent to do so, 18 U.S.C. § 2261(a)(2), does not exceed Congress' authority under the Commerce Clause.
http://isysweb.ca4.uscourts.gov/isysquery/843dc537-8eb5-4f5b-b290-1b9602d4335e/1/doc/

Visitation

***Singletary v. Bullard*, 701 So. 2d 590 (Fla. 5th DCA 1997)**
The trial court exceeded its authority by entering a post-conviction order requiring the Department of Corrections to allow visitation between the inmate and his minor child during the inmate's incarceration. The statutory provision permitting the trial court to grant the court permission for special visitation when visiting was restricted by court order did not apply in the case when the trial court was not eliminating the restriction it had earlier imposed.

Warrantless Entry

***Wheeler v. State*, 956 So. 2d 517 (Fla. 2d DCA 2007)**
The defendant appealed an order denying a motion to suppress evidence seized from an alleged illegal search. Officers responded to an anonymous domestic violence phone call and arrived at the home of the defendant. After questioning the defendant at the door, the officers were presented with a scenario in which nothing seemed suspicious, nor were they led to believe that anyone other than the defendant was in the house. Acting on the information in the call, the officers decided to enter the home in search of the alleged victim since they had a "reasonable belief" that they would find the injured woman. As a result of this search, the officers found contraband. The defendant moved to suppress the evidence arguing that it was an illegal search since the officers did not have probable cause. The trial court denied his motion. On appeal, the district court found that the officers did not have a reasonable basis to believe a grave emergency had transpired (which would give rise to an exception to the warrant requirement for them to enter) and that the officers entered illegally. To affirm on these facts would constitute adopting a per se exception to the warrant requirement that would allow police to enter a closed dwelling based solely on an anonymous phone call alleging an emergency without further corroboration at the scene. The court held that the officers needed to seek out additional factual information about what had occurred before making the decision to enter the premises. The court reversed the order denying suppression and remanded.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2007/May/May%2004,%202007/2D05-5493.pdf

***Espiet v. State*, 797 So. 2d 598 (Fla. 5th DCA 2001)**
The trial court erred in failing to grant a motion for judgment of acquittal as to aggravated assault and resisting without violence charges because the state failed to adduce evidence that the deputies were in lawful performance of their duties when they entered the defendant's home without a warrant, which both offenses include as an element. A deputy entered the house to arrest the defendant on a misdemeanor charge of domestic violence, but the courts generally agree that a law enforcement officer may not make a warrantless entry into a person's home to arrest the person for a misdemeanor offense, and the provisions of section 901.15(7), Florida Statutes, that allow a law enforcement officer to arrest a person for an act of domestic violence without a warrant do not permit forcible entry into a person's home to effectuate the arrest based on a misdemeanor offense. The decision of the trial court as to the count of resisting arrest without violence was reversed and remanded. However, at one point the defendant got a gun, and his conviction of aggravated assault on a law enforcement officer with a firearm was affirmed because, even if an officer is not within the legal duties when entering a home to make a warrantless arrest, "the individual is not justified in using force to resist the illegal arrest" (citing *State v. Barnard*, 405 So. 2d 210 (Fla. 5th DCA 1981)).

Williams Rule (Other Crimes) Evidence

***Aguiluz v. State*, 43 So. 3d 800 (Fla. 3d DCA 2010)**
The district court affirmed the defendant's conviction and sentence for second degree murder with a deadly weapon. The defendant argued that the trial court erred in admitting witness testimony regarding a collateral, uncharged crime (the victim's best friend testified about a possible domestic violence incident that had occurred between the victim and the defendant). The trial judge had given the jury specific directions on how to interpret the evidence based on *Williams v. State*, 110 So. 2d 654 (Fla.1959). The appellate court found that the trial court did not abuse its discretion and that the testimony of prior incidents was admissible to prove motive, intent, and the absence of mistake or accident based on section 90.404(2)(a), Florida Statutes.
http://www.3dca.flcourts.org/Opinions/3D07-3191.pdf

***Bienaime v. State*, 45 So. 3d 804 (Fla. 4th DCA 2010)**
The district court reversed and remanded for new trial the defendant's conviction and sentence on charges of false imprisonment, aggravated assault with a firearm, and battery involving a domestic violence incident against his wife. An officer testified that the defendant's wife stated that the defendant said "he was not going back to prison." The defendant argued that the trial court erred in admitting the officer's testimony as to what the victim told her as an excited utterance and in denying the motions for mistrial. The appellate court reversed on two grounds. First, the wife's statements to the officer did not constitute an excited utterance because sufficient time had passed to allow the victim to reflect on what had transpired. The trial court recognized its error, but then allowed the trial to continue in hopes the victim would testify consistently, thereby rendering the error harmless. However, the opposite occurred. Second, the trial court should have granted the mistrial based on having twice improperly admitted the "prison" statement. Since the "prison" testimony implied the defendant was a convicted felon, the errors were not harmless.
http://www.4dca.org/opinions/July2010/07-07-10/4D08-2058.op.pdf

***Fiddemon v. State*, 858 So. 2d 1100 (Fla. 4th DCA 2003)**
The district court reversed the trial court's judgment convicting the defendant of the second degree murder of his girlfriend. Prior to the trial, the court granted the defendant's motion *in limine* to preclude evidence regarding the defendant's prior assault on his girlfriend. At the trial, the court allowed the state to introduce evidence of the assault based on the theory that the defense had "opened the door" by asking about the police detective's failure to discover a ten-year-old restraining order the girlfriend had obtained against her former husband. The district court held that in order for prior bad acts to be admitted into evidence under the "opening the door" argument, the defense must have presented misleading testimony or a factual assertion that the state would have the right to correct. (Note: the court discussed in a footnote that evidence of prior violence or assaults may be relevant to establish motive, intent, or premeditation.)

***Robertson v. State*, 829 So. 2d 901 (Fla. 2002)**
This was a landmark collateral crimes domestic violence case. It was reversible error "as a matter of law" to allow as *Williams* rule evidence "a prior threat six years earlier against a different victim and involving a different weapon" to prove absence of mistake or accident. The supreme court noted it was "unable to find...any cases in Florida where a prior threat against a different victim was admitted under the *Williams* rule to prove the absence of mistake or accident of the present offense." The court did cite, with apparent approval, cases allowing "prior crimes against the same victim as the charged offense."
http://www.floridasupremecourt.org/decisions/pre2004/ops/sc01-890.pdf

***Mills v. State*, 816 So. 2d 170 (Fla. 3d DCA 2002)**
The respondent appealed his conviction for aggravated battery. The district court affirmed the lower court's decision, concluding that the domestic violence permanent injunction and the arrest warrant issued, based on alleged violations of the injunction, were admissible under section 90.402, Florida Statutes, and not *Williams* rule evidence. The court held that evidence of uncharged crimes that are inseparable from the crime charged is not *Williams* rule evidence and is admissible if it is a relevant and inseparable part of the act, which is in issue. "[I]t is necessary to admit the evidence to adequately describe the deed." *Coolen v. State*, 696 So. 2d 738, 742–743 (Fla. 1997) (quoting *Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994)).
http://www.3dca.flcourts.org/Opinions/3d99-3210.pdf

***Simmons v. State*, 790 So. 2d 1177 (Fla. 3d DCA 2001)**
The defendant was charged with aggravated battery, aggravated assault with a deadly weapon, armed kidnapping, and battery of his girlfriend. Evidence of the defendant's prior violent behavior towards the victim was properly admitted into evidence to prove the defendant's intent to commit aggravated battery, aggravated assault, and battery and to prove his intent to terrorize the victim, as contained within the kidnapping count. The state filed a notice of intent to rely on evidence of other crimes, namely the previous battery of the victim and of an ex-girlfriend. At trial, the defendant testified he had never engaged in violent behavior, and the state used the previous battery of the ex-girlfriend to impeach his testimony. On appeal, the district court held that the evidence of the prior violence was properly admitted, and no abuse of discretion existed. The court also held that since the trial court initially granted a motion for acquittal in the kidnapping charge, but very soon afterward, during the same hearing, told the parties she needed to re-think it, a reversal of that decision was not in fact double jeopardy.
http://www.3dca.flcourts.org/Opinions/3d99-2408.pdf

***Boroughs v. State*, 684 So. 2d 274 (Fla. 5th DCA 1996)**
Testimony concerning the abusive nature of the defendant's relationship with the victim, including the defendant's prior "bad acts," was relevant to prove the sexual battery victim's lack of consent and to explain why the victim did not immediately contact the police.

Witnesses

***State v. Clyatt*, 976 So. 2d 1182 (Fla. 5th DCA 2008)**
The state sought certiorari review of a trial court order barring it from calling independent witnesses to prove that the victim did not consent to an alleged battery committed on her by the defendant. The alleged incident occurred in a fast food restaurant drive-through where many witnesses observed the defendant bashing the victim's head against the car window from inside the car and choking her. The victim refused to cooperate with the state in the defendant's prosecution, leaving the state with the options of dismissing the case or relying on third-party witness testimony to prove the case. When the state decided to proceed with the prosecution, it had to show that the victim was struck against her will. The testimony provided by third-party witnesses of the attack would constitute merely circumstantial evidence that the victim did *not* consent to the beating but also would indicate that the victim seemed to be resisting the attack and was visibly upset, thus leaving but one reasonable inference that the beating was uninvited. The state was unable to provide the trial court with a specific case where a victim's lack of consent could be proven circumstantially so the court did not allow the witnesses' testimony without having the victim's testimony as well. The district court held that lack of consent has been proven by

circumstantial evidence in other types of criminal prosecutions. Additionally, circumstantial evidence has been enough to prove other issues such as a defendant's state of mind. Ultimately, the district court held that there was no distinction between consent and state of mind; consent could thus be proven by circumstantial evidence as well. Also, the district court looked to the importance of the relevance of the witnesses' testimony. By failing to allow such testimony, the trial court barred a form of evidence that could have sufficiently established the victim's lack of consent. The order barring third-party eyewitness testimony was quashed.
http://www.5dca.org/Opinions/Opin2008/031708/5D07-989.op.pdf

***Valdes v. State*, 930 So. 2d 682 (Fla. 3d DCA 2006)**
The defendant appealed convictions and sentences on 12 counts of sexual abuse, claiming that the trial court erred in allowing the defendant's former wife to testify that he had been physically violent in the home and that the testimony was irrelevant and prejudicial. The district court disagreed, finding that collateral testimony concerning domestic violence in the home was relevant to explain why minor children who were victims failed to disclose the sexual abuse for so long, and placed the entire relationship between the defendant and the two minors into perspective. The context of the crimes charged and proof of the crimes themselves could not be fully explained and adjudicated without detailed reference to the uncharged domestic violence. A trial court has broad discretion in determining the relevance of evidence, and such a determination should not be disturbed absent an abuse of discretion. The evidence of uncharged physical violence was properly admitted and was relevant to the threats and intimidation from the respondent to the victims if the abuse were disclosed, and admission of this testimony far outweighed its prejudicial nature.
http://www.3dca.flcourts.org/Opinions/3d04-0202.pdf

***Zuchel v. State*, 824 So. 2d 1044 (Fla. 4th DCA 2002)**
The defendant, charged with aggravated stalking and violation of a restraining order, filed a petition for a writ of prohibition after the trial court denied his motion for disqualification. The district court granted the defendant's petition and remanded the case to the trial court for assignment of a new judge, holding that the trial court's denial of the basic fundamental right to cross examine the victim "would give a reasonably prudent person a well-founded fear of judicial bias." The state had used the victim's testimony in its opposition to the motion to reduce bond.

***Kronjack v. State*, 8 Fla. L. Weekly Supp. 282 (Fla. 10th Cir. Ct. 2001)**
The Tenth Judicial Circuit Court held that the trial court did not abuse its discretion in finding a child competent to testify in a domestic violence battery trial when the trial judge found that the seven-year-old child was in the correct grade for her age, making good progress in school, understood the obligation to tell the truth, and understood the difference between what she observed and what someone else may have told her, in accordance with the standard set out in *Kertell v. State*, 649 So. 2d 892 (Fla. 2d DCA 1995).
http://www.jud10.flcourts.org/sites/all/files/docs/MM99-05407A-XX.pdf

***Lima v. State*, 732 So. 2d 1173 (Fla. 3d DCA 1999)**
The district court held that in a probation revocation hearing regarding a domestic violence-related battery, it is not a denial of the Confrontation Clause of the Sixth Amendment to present the victim's testimony via satellite transmission, so long as there is a showing that the victim is outside the court's jurisdiction or may not be able to attend. This holding will also apply to the trial itself, not just a probation violation hearing.