SELECTED SUMMARIES OF RECENT CASE LAW
OCTOBER 1, 2020–MARCH 18, 2021

DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States v. Bazantes, 978 F.3d 1227 (11th Cir. 2020) (the district court misapplied U.S.S.G. § 2B1.1(b)(1) by basing a loss amount on the amount of the defendants' gain, because the government presented no evidence that the government "suffered any 'pecuniary harm,'" and Application Note 3(B) to the guideline allows a sentencing court to use gain as "an alternative measure of loss only *if there is a loss* but it reasonably cannot be determined" (emphasis added)).

United States v. Bobal, 981 F.3d 971 (11th Cir. 2020) (*Packingham v. North Carolina*, 137 S. Ct. 1730 (2017), which held that a blanket prohibition against sex offenders accessing certain social-media sites violated the First Amendment, did not establish that the district court plainly erred by imposing a special condition of supervised release prohibiting a sex offender from using a computer except for work and with the prior permission of the district court).

United States v. Bruce, 977 F.3d 1112 (11th Cir. 2020) (a recorded 911 call by an unnamed caller, reporting an ongoing verbal dispute involving a person with a gun in the front yard of a "drug house" at a specific address, had sufficient indicia of reliability under *Navarette v. California*, 572 U.S. 393 (2014), to give police reasonable suspicion to detain a man who tried to run when they arrived, and the handgun that fell from the man's waistband when an officer grabbed him was part of a lawful investigatory seizure).

United States v. Chinchilla, --- F.3d ---- 2021 WL 501100 (11th Cir. Feb. 11, 2021) (18 U.S.C. § 1546(a) prohibits, in part, the knowing forgery or use of a forged or fraudulently obtained "document prescribed by statute or regulation" as evidence of authorized stay in the United States. That term means "a document directed by a statute or regulation as proof that

its recipient has formal approval to temporarily remain in the United States," and includes an order of supervision issued when an alien is subject to an order of removal but is released and resides in the United States until he can be removed.)

United States v. Isaac, 987 F.3d 980 (11th Cir. 2021) (Under U.S.S.G. § 2G2.1(b)(5), which provides for a two-level enhancement in a child pornography offense if, in part, the minor was in the defendant's care, "care" means "having a minor in one's 'charge' or under one's 'protection' and having 'responsibility' to 'watch over or attend to' her.")

United States v. Johnson, 981 F.3d 1171 (11th Cir. 2020) (In a prosecution under 18 U.S.C. § 922(g)(9), the government carries its burden of proving the defendant's knowledge of his status as a person convicted of a misdemeanor crime of domestic violence, as required by *Rehaif v. United States*, 139 S. Ct. 2191 (2019), if it proves he knew (1) he was convicted of a misdemeanor (2) that required proof he "engaged in at least 'the slightest offensive touching'" (3) against a person with whom he shared a relationship described in 18 U.S.C § 921(a)(33)(A)(ii). Judge Martin concurred with the majority's holding that Mr. Johnson failed to show plain error, but dissented as to the standard for proving knowledge of status and would have held that the government must prove the defendant knew his prior conviction qualified as a misdemeanor crime of domestic violence.)

United States v. Knights, No. 19-10083, 2021 WL 908278 (11th Cir. Mar. 10, 2021) (in determining whether a person has been detained because a reasonable person in his position would not have felt free to terminate an encounter with police, his "race may not be a factor in the threshold seizure inquiry"; in concurrence, Judge Rosenbaum agreed "that the Equal Protection Clause precludes courts from considering race as a relevant factor," but expressed concern that the standard, which requires "sufficient affirmative acts of coercion" by police, "has become unworkable and dangerous," and she suggested that the Supreme Court "consider adopting a bright-line rule requiring officers to clearly advise citizens of their right to end a so-called consensual police encounter").

United States v. Morales, 987 F.3d 966 (11th Cir. 2021) (The Court held that the good faith exception applied where officers received a warrant after two trash pulls conducted two weeks earlier showed some minimal amounts of marijuana, relying in part on unobjected-to facts in the PSR showing that an anonymous tip prompted the trash pulls. Judge Jordan concurred in the judgment, but said that the Court should not have relied on the tip, because that information was not in the affidavit and the government and magistrate had not relied on it below.)

United States v. Watkins, 981 F.3d 1224 (11th Cir. 2020) (the "inevitable discovery" exception to the exclusionary rule requires that "the alternative means of discovery be actively underway at the time of [a Fourth Amendment] violation" *only* in "cases in which the alternative means was a search warrant," so where inevitable discovery would have resulted from "ongoing investigation and the pursuit of leads that were already in the possession of the agents at the time" of the violation, the exception made suppression inappropriate).