June 2023 Brown Bag
Summaries of Recent Criminal Decisions by the United States Court of Appeals for the Eleventh Circuit

Jackson v. United States, --- S. Ct. ---, 2023 WL 3440568 (U.S. May 15, 2023) (The Supreme Court granted certiorari to review *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022), and *United States v. Brown*, 47 F.4th 147 (3d Cir. 2022), which could revive arguments that prior marijuana convictions predating the 2018 descheduling of hemp, and prior cocaine convictions predating the 2018 descheduling of the cocaine isomer ioflupane, are not "serious drug offenses" under the Armed Career Criminal Act.).

United States v. Verdeza, --- F.4th ---, 2023 WL 3728960 (11th Cir. May 31, 2023) (Admission of other-acts evidence under Federal Rule of Evidence 404(b) without pretrial notice from government as to evidence's permitted purpose was not error under the pre-2020 rule that applied at time of trial. Until the 2020 amendment to Rule 404, the government was not required—as it now is, under Rule 404(b)(3)(B)—to give pretrial notice of a permitted purpose for which it intends to offer other-acts evidence.).

United States v. Laines, --- F.4th ---, 2023 WL 3835113 (11th Cir. June 6, 2023) (Mr. Laines was not entitled to a new trial under *Brady v. Maryland*, 373 U.S. 83 (1963), for prosecution's failure to disclose before trial that police briefly searched his phone after his arrest, nor under *Giglio v. United States*, 405 U.S. 150 (1972), for his posttrial discovery that "an arresting officer and prosecution witness was the subject of internal investigations." The phone search did not yield any incriminating evidence that could have been suppressed; the fact that the search didn't uncover evidence of drug dealing was not weighty enough to establish a reasonable probability of a different result because the search was too brief to demonstrate that no such evidence was on the phone; and Mr. Laines's familiarity with his own phone meant his counsel could have reviewed the phone's contents themselves if they believed the contents would have been exculpatory. Likewise, evidence impeaching the officer did not satisfy Mr. Laines's *Giglio* burden to show "that the prosecution's case included perjured testimony," and the evidence's potential for impeachment at a suppression hearing could not satisfy *Brady*'s materiality requirement because it was not material to guilt or punishment.).