Criminal Procedure

by Charles E. Cox, Jr.*

I. INTRODUCTION

Each year the United States Court of Appeals for the Eleventh Circuit issues numerous decisions concerning the protections provided to criminal defendants by the United States Constitution. This Article surveys decisions issued in 2003 that are likely to be of interest to criminal law practitioners.

II. THE FOURTH AMENDMENT

A. Investigatory Stops and Frisks

In *United States v. Dunn*,[1] defendant was convicted of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g),[2] and defendant appealed the denial of his motion to suppress.[3] In *Dunn* private security guards hired by the Housing Authority of the City of Atlanta[4] heard more than one volley of gunshots, so they moved in the general direction of the gunshots. Within five minutes after the last volley of gunshots, the security guards encountered defendant and observed him

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1. 345 F.3d 1285 (11th Cir. 2003).

2. 18 U.S.C. § 922(g) (2000).

3. 345 F.3d at 1286. Defendant was tried in a bench trial based on stipulated facts. Defendant did not contest the evidence presented at the hearing on the motion to suppress, and the parties stipulated that the government had proven the essential elements of the case. *Id.* at 1288.

4. *Id.* The contract for the private security guards expressly contemplates that they may make arrests. *Id.*

placing an SKS assault rifle in the trunk of his automobile. The security guards drew their weapons and detained defendant in handcuffs pending the arrival of an Atlanta police officer.[5] During the approximately ten to fifteen minutes it took for the first police officer to arrive, two witnesses informed the security guards that defendant was not the person responsible for the gunshots. When the first police officer arrived, he placed defendant in the back of his patrol car and called for a gun investigator. The gun investigator arrived approximately ten minutes later and advised defendant of his *Miranda* rights. At that point defendant admitted to being a convicted felon and to owning the assault rifle.[6]

Defendant conceded on appeal that the security guards hired by the Housing Authority had reasonable suspicion under *Terry*[7] to believe that criminal activity was afoot;[8] however, defendant contended that his seizure and detention "exceeded the outer boundaries of an investigatory *Terry* stop and became a de facto arrest."[9] Defendant contended that the officer learned of defendant's status as a convicted felon as a result of defendant's unlawful detention.[10] The Eleventh Circuit pretermitted the issue of whether defendant's detention was a permissible investigative detention under *Terry* by concluding that the security guards and the police had probable cause to believe that defendant had discharged his firearm in public, violating Georgia law.[11] The court concluded that "[p]lainly, a reasonable person could have concluded that [defendant] had just fired his weapon,"[12] and the uncorroborated statements of the two witnesses and the fact that the officers found no shell casings did not change that result.[13]

The Eleventh Circuit's decision in *Dunn* is consistent with prior holdings by the Eleventh Circuit that "arresting officers, in deciding whether probable cause exists, are not required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that an offense has been committed."[14] As the Eleventh Circuit has stated, "probable cause

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5. *Id.* at 1286-87. The security guards called the police once defendant was detained. *Id.* at 1287.
6. *Id.* at 1287.
7. Terry v. Ohio, 392 U.S. 1 (1968).
8. 345 F.3d at 1289.
9. *Id.*
10. *See id.* at 1290.
11. *Id.* at 1291.
12. *Id.*
13. *Id.* at 1291-92.
14. Dahl v. Holley, 312 F.3d 1228, 1234 (11th Cir. 2002).

[does not] require certainty on the part of the police. 'Sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.'"[15]

B. Traffic Stops

In *United States v. Perkins*,[16] the Eleventh Circuit upheld the district court's order suppressing all statements made and evidence obtained during a traffic stop[17] in which an Alabama Highway Patrol officer stopped defendant driver after observing his car crossing the white line onto the shoulder of the road. The officer checked defendant's driver's license and insurance and then asked him to get out of his vehicle, so the officer could issue him a warning ticket for a lane violation. Although the officer informed defendant that he would be free to leave after receiving the warning citation, the officer checked defendant for weapons and directed him to sit in the patrol car while completing the warning ticket.[18]

Noticing that defendant had a Florida driver's license, the officer asked defendant if Florida was his destination. In response, defendant explained that he had relocated from Florida to Montgomery, Alabama, where he was employed and that he was headed to Greenville, Alabama, to visit his cousin, Shantay. During this questioning, defendant was not free to leave.[19]

After a driver's license check revealed that defendant had a valid license and no outstanding warrants, the officer gave the warning ticket to defendant for his signature and completed the portion of his investigation relating to the traffic stop.[20] Even though the officer had issued the warning citation, the officer "continued to detain [defendant] because of his nervousness; what he perceived as [defendant's] evasive behavior in response to his questions;[21] and his hunch that [defendant] was being untruthful about his destination."[22] At this point the officer decided to question defendant passenger. In response to the officer's questions, the passenger informed the officer that he and defendant driver were going to Greenville, that he was going to be visiting a girl

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15. *Id.* (quoting Craig v. Singletary, 127 F.3d 1030, 1042 (11th Cir. 1997) (en banc) (citations omitted)).

16. 348 F.3d 965 (11th Cir. 2003).

17. *Id.* at 967.

18. *Id.*

19. *Id.* at 967-68.

20. *Id.* at 968.

21. *Id.* The officer testified that defendant nervously repeated the officer's questions before answering them. *Id.*

22. *Id.*

named Quinn, and that he had no knowledge of illegal drugs in the car.[23]

After questioning the passenger, the officer returned to the patrol car, took back the signed warning ticket from the driver, and continued to question him. After defendant driver denied that drugs were in the car and denied the officer's request for consent to search, the officer called for a drug-sniffing dog. After the dog arrived, the officer placed the passenger in the patrol car with defendant driver. Unaware that their conversation was being taped, defendants had a conversation in the back of the car about whether the dog would be able to find drugs. After the officer spoke with the canine officer, he returned to the patrol car and repeatedly questioned the driver until he admitted that drugs were in the car and showed the officer where they were hidden.[24]

The Eleventh Circuit rejected defendants' arguments that the duration of the traffic stop itself was unconstitutional.[25] While "[a] traffic stop may be prolonged where an officer is able to articulate a reasonable suspicion of other illegal activity beyond the traffic offense,"[26] the court concluded that the officer did not have reasonable suspicion to continue the detention of defendants after issuing the warning ticket.[27]

The Eleventh Circuit recognized that a traffic stop is an "'unsettling show of authority,'"[28] and the officer could not articulate any reason why he suspected that the driver's nervousness was tied to anything other than being detained by an authority figure.[29] The court rejected the argument that the driver's habit of repeating a question back to the officer before answering was odd behavior and instead attributed it to anxiety.[30] The Eleventh Circuit declared, "Indeed, it is a common occurrence at oral arguments before this Court by even the most seasoned lawyers."[31] Finally, the court reasoned that defendants' explanations of who they were intending to visit did not contradict one

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23. *Id.*
24. *Id.* at 968-69.
25. *Id.* at 969-70.
26. *Id.* at 970 (citing United States v. Purcell, 236 F.3d 1274, 1277 (11th Cir. 2001)).
27. *Id.* The Eleventh Circuit's decision in *Perkins* is in contrast to its previous decision in *United States v. Harris*, 928 F.2d 1113, 1117 (11th Cir. 1991), in which the court held that after giving defendant a warning ticket, the deputy did not unreasonably detain defendant by requesting consent to search defendant's car. *Id.* In *Harris*, however, [defendant] was: "(1) driving a rental car with a restricted license; (2) 'shaking' and acting 'extremely nervous'; and (3) gave conflicting responses as to where he had been." *Id.*
28. 348 F.3d at 970 (quoting Delaware v. Prouse, 440 U.S. 648, 657 (1979)).
29. *Id.*
30. *Id.* at 971.
31. *Id.*

another.[32] Defendants "could have intended to see both persons during their visit, or [defendant driver] could have intended to visit Shantay while [defendant passenger] visited Quinn."[33] Because the driver's consent was the result of an unlawful detention, the consent was tainted, and any statements made and evidence seized during the detention had to be suppressed.[34]

In *United States v. Chanthasouxat*,[35] defendants appealed the district court's denial of their motion to suppress. The arresting officer stopped the van in which defendants were riding for failure to have an inside rear-view mirror. After receiving permission from the driver to search the van, the arresting officer found approximately fifteen kilograms of cocaine. Defendants were placed in the back of the patrol car while the officer searched the van. Defendants' conversation, which was recorded by a video camera in the patrol car, demonstrated that defendants knew they were carrying cocaine.[36]

Defendants argued that the arresting officer lacked both probable cause and reasonable suspicion to stop the van because neither municipal nor state law requires an inside rear-view mirror. In response the Government argued that the applicable statute was ambiguous and that the applicable traffic laws reasonably could be construed to require an inside rear-view mirror.[37]

The Eleventh Circuit explained that "[a] traffic stop based on an officer's incorrect but reasonable assessment of facts does not violate the Fourth Amendment . . . . Thus, if an officer makes a traffic stop based on a mistake of fact, the only question is whether his mistake of fact was reasonable."[38] The court concluded, however, that in this case the officer's mistake was one of law.[39] The statute at issue required a rear-view mirror, but the statute contained no requirement that the mirror be located inside the vehicle.[40] Even if the statute was ambiguous, the court declined to use that ambiguity against defendants when the language of the statute did not explicitly require an inside rear-view mirror.[41] The court held that "a mistake of law, no matter how

32. *Id.*
33. *Id.*
34. *Id.*
35. 342 F.3d 1271 (11th Cir. 2003).
36. *Id.* at 1272-73.
37. *Id.* at 1275-76.
38. *Id.* (citations omitted).
39. *Id.* at 1279.
40. *Id.* at 1278.
41. *Id.* at 1279.

reasonable or understandable, can [never] provide the objectively reasonable grounds for reasonable suspicion or probable cause."[42]

The court also rejected the Government's arguments that the defendant driver's consent to search the van cured any taint on the evidence discovered as a result of the unconstitutional stop.[43] For a consent given after an illegal seizure to be valid, the Government must prove that the consent is voluntary and that the consent was not a product of the illegal seizure.[44] In determining whether a voluntary consent was a product of the illegal seizure, the court considers: "(1) the temporal proximity of the illegal conduct and the consent; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the initial misconduct."[45] After examining these three factors, the court determined there was "no break in the causal chain between the illegal traffic stop and [defendant's] consent to search the van."[46] Accordingly, the evidence obtained during the search had to be suppressed because the consent was a product of the illegal traffic stop rather than "an independent act of free will."[47]

In *United States v. Franklin*,[48] the Eleventh Circuit examined the extent to which a defendant's flight when approached by a law enforcement officer may be considered for a finding of reasonable suspicion.[49] The law enforcement officers in *Franklin* were "patrolling the 'problem areas' of the city."[50] Uniformed officers observed defendant "in a 'problem area,' at night, standing under a 'no loitering' sign."[51] The officers decided to stop and ask defendant what he was doing.[52] The court in *Franklin* assumed that these facts were insufficient to give the officers reasonable suspicion to conduct an investigatory stop; however, "[t]he officers . . . could still approach [defendant] and speak to him."[53] The Eleventh Circuit concluded, "'There is nothing in the Constitution

42. *Id.* The court also held that the statements defendants made while in the back of the patrol car were "fruits of the poisonous tree" and should be suppressed. *Id.* at 1281.

43. *Id.* at 1280.

44. *Id.*

45. *Id.* (citing United States v. Santa, 236 F.3d 662, 677 (11th Cir. 2000)).

46. *Id.*

47. *Id.*

48. 323 F.3d 1298 (11th Cir. 2003), *cert. denied*, 124 S. Ct. 166 (2003).

49. *Id.* at 1300.

50. *Id.*

51. *Id.* at 1301. In *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), the Supreme Court stated that "the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis." *Id.*

52. 323 F.3d at 1300.

53. *Id.* at 1301.

which prevents a policeman from addressing questions to anyone on the streets.'"[54]

Defendant ran away as soon as he saw the officers. Not surprisingly, the officers chased him. When the officers finally caught and tackled defendant, he explained that he had an outstanding arrest warrant, and the officers found defendant in possession of crack cocaine and marijuana. Defendant contended that the officers lacked reasonable suspicion to stop him.[55]

The court reasoned that in seeking to establish reasonable suspicion, the officers could consider everything that happened to the point that the officers tackled and seized defendant.[56] The Supreme Court has stated that flight is a relevant consideration in determining reasonable suspicion, and defendant's flight in this instance was particularly important.[57] Defendant's flight in *Franklin* was especially suspicious because of the nature and duration of the flight.[58] Defendant "took off in 'headlong' flight,"[59] which is "'the consummate act of evasion.'"[60] The duration of his flight "more clearly indicated potential involvement in wrongdoing"[61] than simply a desire to "remove himself from a potentially dangerous situation."[62] The court concluded that defendant's flight was unprovoked and was such that a "reasonable and innocent person facing [that] situation would [not] have been caused to flee in the same manner as [defendant]."[63] Considering defendant's unprovoked flight, along with the other circumstances of the stop, the officers had reasonable suspicion to conduct a brief investigatory stop of defendant.[64]

In *United States v. Boyce*,[65] the Eleventh Circuit reversed a district court's order denying defendant's motion to suppress.[66] A Liberty County Sheriff's Deputy stopped defendant driver for driving ten miles per hour under the speed limit and weaving, suspecting that defendant

54. *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 34 (1968)).
55. *Id.* at 1300.
56. *Id.* at 1301.
57. *Id.* at 1302 (citing *Wardlow*, 528 U.S. at 124).
58. *Id.*
59. *Id.*
60. *Id.* (quoting *Wardlow*, 528 U.S. at 124).
61. *Id.*
62. *Id.*
63. *Id.* "[O]fficers cannot improperly provoke—for example by fraud—a person into fleeing and use the flight to justify a stop." *Id.*
64. *Id.* at 1303.
65. 351 F.3d 1102 (11th Cir. 2003).
66. *Id.* at 1104.

driver might be under the influence of alcohol or drugs. After questioning defendant about his travel plans, the officer informed defendant that he would not be giving him a ticket, and he told defendant to return to his car while the officer looked for his warning citation book. Seven minutes later, after receiving a license report on defendant and writing a warning citation, the officer explained that he was only giving defendant a "courtesy warning."[67] The officer then asked defendant if there were any drugs or weapons in the car. After defendant told the officer that there were no drugs in the car and refused the officer's request for a consent to search, the officer returned to his vehicle and called for a drug-sniffing dog on the radio. The officer told defendant to wait until the drug dog arrived. Approximately six minutes after calling for the drug dog, the officer radioed in a request for a criminal history check on defendant.[68] "This report had not come back six minutes later when the drug dogs arrived and alerted on [defendant's] trunk."[69]

The Eleventh Circuit court rejected the Government's arguments that the court's prior decision in *United States v. Purcell*[70] stood for the proposition that an officer "may generally detain a driver to await the results of a criminal history check so long as the detention does not last an unreasonably long time."[71] The court noted that in *Purcell*, the criminal history check was part of a routine computer check.[72] In this case, however, the criminal history check was not part of a routine computer check, and the officer did not even request the check until after he had informed the driver he would be getting a warning citation.[73] The court concluded that once the original traffic stop investigation was concluded, the officer should have released defendant "unless he had a reasonable and articulable suspicion of some other criminal wrong doing."[74]

The Eleventh Circuit in *Boyce* rejected the officer's testimony and the findings of the district court that defendant was nervous, sweating profusely, being unusually talkative, and moving back and forth like he was about to run.[75] The court stated, "We find that the district court clearly erred in finding [defendant] was 'unusually nervous' because the

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67. *Id.* at 1105.
68. *Id.* at 1104-05.
69. *Id.* at 1105.
70. 236 F.3d 1274 (11th Cir. 2001). *See* Charles E. Cox, Jr., *Constitutional Criminal Procedure*, 53 MERCER L. REV. 1339, 1339-42 (2002) (discussing the decision in *Purcell*).
71. 351 F.3d at 1107.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.* at 1108.

videotape belies [the officer's] testimony as to these behaviors."[76] Without the factors related to defendant's nervousness, the Eleventh Circuit concluded that the factors that did exist—driving a rental car on a known drug corridor and planning to return the rental car two days after expiration of the rental agreement—did not create reasonable suspicion.[77] The court reasoned that "[t]hese factors 'would likely apply to a considerable number of those traveling for perfectly legitimate purposes' and 'do not reasonably provide . . . suspicion of criminal activity.'"[78] Based on the totality of the circumstances, the court concluded that the officer could not detain defendant beyond the initial investigation of the traffic stop.[79]

The court was troubled that the officer apparently prolonged the traffic stop and called the drug dog unit simply because defendant had refused to consent to a search of his vehicle.[80] The court noted that "[t]he only significant event between the time that [the officer] wrote the warning citation and the time [the officer] called the drug dog unit was [defendant] asserting his constitutional right not to let [the officer] search his car."[81] The court stressed that law enforcement officers "cannot base their decision to prolong a traffic stop on the detainee's refusal to consent to a search. Such a refusal may only be considered when the police have already observed, before asking for permission to search, facts sufficient to raise a reasonable suspicion."[82] The videotape of the car stop in *Boyce* showed that the officer had not observed facts sufficient to give rise to reasonable suspicion prior to asking for consent.[83] The Eleventh Circuit concluded that the detention and search were unconstitutional "[b]ecause the tape shows that [the officer] did unlawfully base his decision [to call the drug dog] on [defendant's] refusal to consent."[84]

The decision in *Boyce* left unresolved defendant's argument that the officer exceeded the scope of an investigatory stop when the officer began

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76. *Id.*

77. *Id.* at 1109. *See also* United States v. $242,484.00, 351 F.3d 499, 509 n.17 (11th Cir. 2003) ("The more 'travel between source cities' comes to mean just 'travel,' the less persuasive such travel becomes in the probable-cause analysis.").

78. 351 F.3d at 1109 (quoting United States v. Smith, 799 F.2d 704, 707 (11th Cir. 1986)).

79. *Id.* at 1110.

80. *Id.*

81. *Id.*

82. *Id.* (citing United States v. Williams, 271 F.3d 1262, 1271 (10th Cir. 2001)).

83. *Id.* at 1111.

84. *Id.*

questioning defendant about drugs and guns.[85] The Eleventh Circuit's previous decision in *Purcell* clearly stated that a law enforcement officer's actions "during a traffic stop must be 'reasonably related in *scope* to the circumstances which justified the interference in the first place,'"[86] and the decision identified two possible tests for determining when police questioning exceeds the permissible scope of a routine traffic stop.[87] One test limits the officer's questions to those that are justified by reasonable suspicion of criminal activity or safety concerns, and the other test prohibits questions unrelated to the duration of the initial stop if they extend the duration of the car stop.[88] The court in *Boyce* determined that it was unnecessary to determine which test is controlling in the Eleventh Circuit because the car stop in this instance was unlawful under either test.[89]

In *United States v. Clark*,[90] the court addressed whether "a law-enforcement officer may briefly detain and order a passenger to reenter an automobile to protect the officer's safety while the officer investigates a crime committed in his presence by two associates of the passenger."[91] The officer observed two men fighting in an area of the city where the officer had responded to a "'lot of calls involving violence.'"[92] The officer observed an automobile near the two men, and he observed a third man, not engaged in criminal activity, watching the fight. When the officer approached the men, all three admitted that they had been in the car.[93] The officer ordered all three men into the automobile in order "to gain control of the situation for his own safety."[94] When a backup officer arrived, he noticed defendant sitting in the car, "'fumbling around under the seat.'"[95] When the backup officer opened the door to remove defendant from the car, an Uzi, semi-automatic assault weapon, fell onto the street.[96]

The Eleventh Circuit noted that the Supreme Court previously had held that an officer could order a passenger not suspected of violating

85. *Id.*
86. 236 F.3d at 1277.
87. 351 F.3d at 1111 (citing *Purcell*, 236 F.3d at 1279-80).
88. *Id.* (citing *Purcell*, 236 F.3d at 1279-80).
89. *Id.*
90. 337 F.3d 1282 (11th Cir. 2003).
91. *Id.* at 1282.
92. *Id.* at 1283.
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*

the law to exit a vehicle out of concern for officer safety.[97] In addition, in the context of a civil rights action filed pursuant to 42 U.S.C. § 1983,[98] the Eleventh Circuit previously recognized that "'*a police officer performing his lawful duties may direct and control—to some extent—the movements and location of persons nearby, even persons that the officer may have no reason to suspect of wrongdoing*.'"[99]

After considering the totality of the circumstances, including defendant's proximity to unlawful activity, the court concluded that concerns for officer safety and the need to control a potentially dangerous situation outweighed defendant's liberty interest.[100] Therefore, the officer did not violate the Fourth Amendment when he ordered defendant back into the car.[101] In reaching its conclusion, the Eleventh Circuit stressed that this was not a case in which the officer had detained someone who was in no way associated with any criminal wrongdoing or "was simply an unrelated bystander to a traffic violation or to an altercation between other persons."[102]

C. Reasonable Expectation of Privacy and Consent

In *United States v. Young*,[103] defendant contended that the district court erred in not suppressing the results of a warrantless search conducted by the IRS on a Federal Express package addressed to defendant. The IRS was investigating defendant for various tax offenses, and the IRS believed that defendant's scheme involved sending large cash transactions via Federal Express. As part of the investigation, an IRS agent asked Federal Express to allow the IRS to view packages bearing defendant's name. Federal Express agreed, and fourteen packages x-rayed by the IRS were found to contain large amounts of currency. The search results were used to obtain other search warrants.[104]

The evidence in *Young* showed that the Federal Express airbills contained a notice advising customers that Federal Express has a "RIGHT TO INSPECT [–] We may, at our option, open and inspect your

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97. *Id.* at 1285-86 (citing Maryland v. Wilson, 519 U.S. 408 (1997)).

98. 42 U.S.C. § 1983 (2000).

99. 337 F.3d at 1286-87 (quoting Hudson v. Hall, 231 F.3d 1289, 1297 (11th Cir. 2000)).

100. *Id.* at 1287-88.

101. *Id.*

102. *Id.* at 1288.

103. 350 F.3d 1302 (11th Cir. 2003).

104. *Id.* at 1303-05. The Eleventh Circuit noted that the use of an x-ray device to reveal the objects within a package constitutes a search within the meaning of the Fourth Amendment. *Id.* at 1307 n.1.

packages prior to or after you give them to us to deliver."[105] In addition, on the outside of each package, just above the pouch that contained the airbill was another warning in all capital letters stating: "DO NOT SEND CASH."[106] The Eleventh Circuit upheld the district court's denial of the motion to suppress, reasoning that "[n]o reasonable person would expect to retain his or her privacy interest in a packaged shipment after signing an airbill containing an explicit, written warning that the carrier is authorized to act in direct contravention to that interest."[107] The Eleventh Circuit held that "[a]s a matter of law, [these warnings] eliminate[d] any expectation of privacy."[108]

Defendant in *United States v. Backus*[109] entered a plea of guilty to being a felon in possession of a firearm, conditioned on his right to appeal the district court's denial of his motion to suppress.[110] The Eleventh Circuit held that an estranged wife, who still jointly owned the marital home, but who had not resided in that home for a number of months, could effectively consent to a search of that marital home.[111] The Eleventh Circuit's opinion details the years of verbal and physical abuse to which defendant subjected his wife.[112] Defendant and his wife were married in 1990. The abuse culminated in an especially violent episode in April of 2001 that caused defendant's wife to flee the marital home with their young son.[113] Defendant's wife

> was able to take her purse, cell phone, and keys but nothing more. Left behind were all of her and [her son's] clothes except what they had on, all of his toys (he was [ten] or [eleven] years old then), and all of their personal belongings, including some of her jewelry.[114]

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105. *Id.* at 1307.
106. *Id.*
107. *Id.* at 1308.
108. *Id.* In the alternative, the court ruled that the notice contained on the airbill authorized Federal Express as bailee to consent to a search of the package. *Id.* The court stated:

> Courts have recognized that a third party has actual authority to consent to a search of a container if the owner of the container has expressly authorized the third party to give consent, or if the third party has mutual use of the container and joint access to or control over the container.

Id.
109. 349 F.3d 1298 (11th Cir. 2003).
110. *Id.* at 1299.
111. *Id.* at 1305.
112. *Id.* at 1300-01.
113. *Id.*
114. *Id.* at 1301.

Defendant's wife and son fled from Miami to Chicago, where they lived in shelters for six months. During those six months, defendant's wife returned to Miami only twice, and on neither occasion did she see defendant or attempt to return to the marital home.[115] In October 2001, defendant called his mother-in-law's house and "threatened to kill his wife's family and to gouge her mother's eyes out with a spoon."[116] The Miami police charged defendant with this threat, and in the context of that investigation, they spoke with defendant's wife.[117]

Defendant's wife told the Miami police that her husband, a convicted felon, had a number of firearms in the house.[118] She knew about these firearms "because her husband, whose criminal record prevented him from buying them, had made her buy them for him. He had threatened to harm her if she didn't help him get the firearms . . . ."[119] Law enforcement officers went to the marital home to arrest defendant for domestic abuse and to search for firearms. The keys belonging to defendant's wife opened the lower lock on the door, but the deadbolt looked to have been recently replaced. Defendant's wife gave officers permission to open the door by force.[120] The officers found a shotgun, three assault weapons, and about four thousand rounds of ammunition in the gun safe, "which they opened with the combination [defendant's wife] had given them."[121]

The Eleventh Circuit had no difficulty concluding that defendant's estranged wife effectively could consent to the search of the marital home.[122] The court rejected defendant's arguments that his wife had abandoned the marital home.[123] The court stated, "Only when the violence [defendant] was inflicting on [his wife and] son became too much to take did she leave the home. But for his criminal acts against them, [defendant's wife] would have stayed there."[124] The court also rejected defendant's contentions that the search infringed on his

115. *Id.* at 1301-02.
116. *Id.* at 1302.
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.* at 1303.
121. *Id.*
122. *Id.* at 1304. "We said at the beginning of this opinion that the case presents an interesting Fourth Amendment issue, and it does. We didn't say that it was a difficult issue, and it is not." *Id.* at 1303-04.
123. *Id.* at 1304.
124. *Id.* The Eleventh Circuit noted that its decision was consistent with all other circuits "that have addressed issues involving consent from an estranged wife to search the marital home from which she has fled." *Id.* at 1305.

expectations of privacy.[125] Defendant argued that he had no reason to expect that his wife would return and assert any control over the marital home.[126] First, the court reasoned that defendant's expectation of privacy in this instance was unreasonable and that "[a] lawless man cannot use violence to drive his wife away and then reasonably expect the law to give him the benefit of her absence."[127] The court also noted that if defendant truly had not expected his wife to return, it would have been unnecessary to change the deadbolt lock to prevent her key from working in it.[128]

D. Probable Cause and Arrest

1. Asset Forfeiture. In *United States v. $242,484.00*,[129] the Eleventh Circuit reversed a forfeiture order, concluding that the government had failed to establish probable cause to support the forfeiture of the cash.[130] The claimant in *$242,484.00* had purchased a round-trip ticket from Miami to New York City for $93. While in New

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125. *Id.* at 1304.

126. *Id.*

127. *Id.* The court's comments are also consistent with a general reluctance to allow defendants to use circumstances created by their own wrongdoing to form the basis for a claim of constitutional protection. *See, e.g.,* Moore v. Campbell, 344 F.3d 1313, 1321 (11th Cir. 2003)

> (The state court's . . . determination that [defendant], by his hunger strike (which contributed to his incompetency), forfeited his right to be competent at trial is neither contrary to nor an unreasonable application of the pertinent federal law in the light of the state court's reasonable determination of facts supported by the evidence presented at the state proceedings.);

United States v. Thevis, 665 F.2d 616, 630 (5th Cir. Unit B 1982).

> ([A] defendant who causes a witness to be unavailable for trial for the purpose of preventing that witness from testifying also waives his right to confrontation . . . . [W]hen confrontation becomes impossible due to the actions of the very person who would assert the right, logic dictates that the right has been waived. The law simply cannot countenance a defendant deriving benefits from murdering the chief witness against him.).

Id.

128. 349 F.3d at 1304.

129. 351 F.3d 499 (11th Cir. 2003).

130. *Id.* at 501. Because of the date this case was filed, it was not decided under the heightened burden of proof requirements of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), 106 Pub. L. No. 185, 114 Stat. 202. *Id.* at 501 n.2. CAFRA raised the government's burden of proof from probable cause to a preponderance of the evidence. *Id.* at 515 n.30. *See* 21 U.S.C. § 983(c)(1) ("In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property . . . the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture.").

York, she twice changed her return date. The claimant was stopped at the airport in Miami, Florida, by DEA agents. The claimant provided the agents with her ticket and identification, which were in her own name, and she told the agents she was carrying about $200,000 in her backpack. The agents found the cash wrapped in two packages—one in black plastic and the other in Christmas wrapping. Each package of cash contained bundles of varying sizes and denominations that did not bear the binding of a bank or other financial institution. After agreeing to accompany the DEA agents to their airport office, the claimant first stated that she was in New York for a court case, and she later stated that she was in New York to pick up the money. The agents brought in their drug-detection dog, "Rambo," who alerted to the backpack containing the cash.[131]

After noting that in determining probable cause, the courts "must consider the 'totality of the circumstances'" with a "common sense view to the realities of normal life,"[132] the Eleventh Circuit examined each circumstance relied upon to find probable cause.[133] The court recognized that carrying large amounts of cash, while being somewhat suspicious, is not unlawful.[134] Moreover, in a forfeiture under 21 U.S.C. § 881(a)(6),[135] "the government must evidence a connection—beyond proof that a drug crime may be one of several similarly likely possibilities—between the seized money and an illegal narcotics transaction."[136] In *$242,484.00* the court concluded that "it is about as likely that the money—*if* not legitimate—was the result of extortion, gun running, bank robbery, illegal gambling, simple tax evasion, exporting stolen goods, or any number of other possibilities."[137]

The court dismissed as insignificant the Government's argument that the cash was wrapped to conceal its presence.[138] The claimant never concealed from law enforcement officers that she was carrying the cash.[139] The court also dismissed the fact that the claimant was traveling between two "source cities."[140] The court noted that the significance of travel between "source cities" has decreased as the

131. 351 F.3d at 502-03.
132. *Id.* at 505 (citations omitted).
133. *Id.* at 506-10.
134. *Id.* at 507.
135. 21 U.S.C. § 881(a)(6) (2000).
136. 351 F.3d at 507.
137. *Id.* at 507-08.
138. *Id.* at 508.
139. *Id.*
140. *Id.* at 509.

number of "source cities" has increased.[141] The court stated, "The more 'travel between source cities' comes to mean just 'travel,' the less persuasive such travel becomes in the probable-cause analysis."[142] In addition, because the claimant in this case was from Miami and returning home, the court was "hesita[nt] to say that every resident of South Florida has one strike against them for forfeiture purposes should they choose to travel and then to return home."[143] The court was similarly dismissive of the drug dog's detection of the currency, stating that "when perhaps as much as [eighty percent] of currency in circulation has drug residue on it, we are concerned that Rambo would have the same reaction to [eighty percent] of the circulated currency placed in front of him."[144]

The court in *$242,484.00* concluded that the evidence fell well short of showing probable cause to believe that "a 'substantial connection' exists between the funds at issue here and a narcotics transaction."[145] The court also emphasized the limited nature of its holding.[146] The court stated that "[o]ther cases are not before us; so, every word we have written must be read in the context of this forfeiture case."[147] The court stressed that while the standard for probable cause remains the same for determining the legality of arrests, searches, and seizures, the quantum of evidence necessary to meet the probable cause standard varies "depending on what kind of government act the probable cause is to justify."[148]

2. Information Obtained by Private Persons. In *United States v. Steiger*,[149] defendant appealed the district court's denial of his motion to suppress. An anonymous source sent an e-mail to the Montgomery, Alabama, Police Department on July 16, 2000, advising the Department that he had found a child molester on the Internet who was abusing children. The source attached to the e-mail an electronic image file depicting a white male abusing a white female approximately four

141. *Id.* at 509 n.17.
142. *Id.*
143. *Id.*
144. *Id.* at 511. The court also noted the irony in the fact that the DEA exchanged the seized currency for a cashier's check at a bank, where the tainted currency "was, possibly, placed back into circulation for innocent people to possess." *Id.* at 510 n.21.
145. *Id.* at 513.
146. *Id.* at 516 n.33.
147. *Id.*
148. *Id.* The court cites a number of cases that discuss the quantum of evidence necessary to establish probable cause in varying circumstances. *Id.*
149. 318 F.3d 1039 (11th Cir. 2003).

to six years old. A police officer replied to the e-mail on July 17, 2000, asking the source to call him. The source responded that he would not call, but he could send everything via e-mail. The officer invited the anonymous source to send any information he had. In response the source e-mailed eight images showing the adult white male sexually abusing a very young girl. The source identified the molester by name, provided the molester's Internet service account information with AT&T Worldnet, provided a possible home address for the molester, and provided a telephone number the molester used to connect to the Internet. The source also advised the police officer that he had the molester's Internet Protocol (IP) number.[150] In response to a request from the police officer, the source provided three IP addresses used by the molester on July 14 and 15. The source also provided unsolicited information, providing the molester's checking account records and specific folders where the pornographic images were stored on the molester's computer.[151]

The police officer in *Steiger* provided the information to an FBI agent, who independently verified much of the information. The FBI agent then prepared an affidavit stating that an anonymous source had located a child molester on the Internet, described the information that the source had obtained prior to making any contact with the police, and described the steps the agent took to corroborate that information. The agent did not specifically state in the affidavit that the source had obtained the information by hacking into the molester's computer.[152]

The Eleventh Circuit rejected the molester's claims that the search warrant was obtained in violation of the Fourth Amendment.[153] The court stressed that the source acted as a private individual, and "[a] search by a private person does not implicate the Fourth Amendment unless he acts as an instrument or agent of the government."[154] An individual is not considered an "agent of the government" unless "the government knew of and acquiesced in the intrusive conduct, and . . . the

150. *Id.* at 1041-42. "An IP number, also known as an Internet Protocol ("IP") address, 'is the unique address assigned to a particular computer connected to the Internet.'" *Id.* (quoting Daniel J. Solove, *Digital Dossiers and the Dissipation of Fourth Amendment Privacy*, 75 S. CAL. L. REV. 1083, 1145 (2002)).

151. *Id.* at 1042.

152. *Id.* at 1043. The court in *Steiger* explains in detail how the source was able to hack into the molester's computer. *Id.* at 1043-44. In e-mail correspondence between the source and the police, the source described himself in a manner that can best be described as a cyber-vigilante, and he claimed to have caught at least 2000 child pornographers in his trap. *Id.*

153. *Id.* at 1048.

154. *Id.*

private actor's purpose was to assist law enforcement efforts rather than to further his own ends."[155] In concluding that the source acted as a private person, the court stressed that the probable cause determination was based on information conveyed in the first two e-mails, which the source obtained prior to making contact with the police department and the FBI agent's corroboration of some of that information.[156]

The court also rejected the molester's arguments for suppression based on the FBI agent's failure to state in the warrant affidavit that the source had obtained the information by hacking into the molester's computer.[157] The court reasoned, "To justify suppression of evidence seized under a warrant, the alleged deliberate or reckless failure to include material information in the affidavit must conceal information that would defeat probable cause."[158] The court reasoned that because the source in this case acted as a private person who was not subject to the Fourth Amendment's exclusionary rule, "a statement that the anonymous source had hacked into [the molester's] computer to obtain that information would not have affected the magistrate's finding of probable cause."[159]

E. Strip Searches

The issue before the court in *Evans v. City of Zebulon*[160] was whether the district court properly denied defendant police officer qualified immunity.[161] Plaintiffs brought an action pursuant to 42 U.S.C. § 1983,[162] contending that the defendant police officer subjected them to an unconstitutional strip search. Plaintiffs were subjected to a pat-down search at the time of their arrest and upon their arrival at the jail. In addition the arresting officer conducted a thorough search of the car and area surrounding it, finding only a beer can and a poptop.[163] The

155. *Id.* (citing United States v. Simpson, 904 F.2d 607, 610 (11th Cir. 1990) (in which searches initiated by Federal Express employees in the normal course of business for the purpose of determining where to deliver a parcel discovered child pornography in the parcel)).

156. *Id.*

157. *Id.* at 1045-46.

158. *Id.* at 1046.

159. *Id.* The court also rejected the molester's arguments that the evidence should be suppressed because it was obtained in violation of the Wiretap Act. *Id.* Even if the information was obtained in violation of the Wiretap Act, the court concluded that the Act only provides for suppression of wire or oral communications, not stored electronic communications of the type involved in the case before it. *Id.* at 1050.

160. 351 F.3d 485 (11th Cir. 2003).

161. *Id.* at 487.

162. 42 U.S.C. § 1983 (2000).

163. 351 F.3d at 491.

arresting officer did not observe plaintiffs attempt to hide anything beneath their clothing prior to arrest, and plaintiffs, "who presumably did not anticipate being arrested that night, had no apparent motive at the time of the traffic stop to conceal contraband underneath their clothing for smuggling into the jail."[164]

The court recognized that "[a]rrestees who are to be detained in the general jail population can constitutionally be subjected to a strip search only if the search is supported by reasonable suspicion that such a search will reveal weapons or contraband."[165] In this case, there was nothing to provide support for such a search.[166] The fact that plaintiffs had been subjected to two pat-down searches prior to the strip search, which did not reveal incriminating evidence, only tended to dispel, rather than heighten, any reasonable suspicion.[167] Although the court found the strip searches unconstitutional, defendant officer was entitled to qualified immunity in the civil context because the law was not clearly established at the time of the searches that reasonable suspicion was required to conduct the strip searches.[168]

The court also concluded that the manner in which the searches were conducted, as described by plaintiffs, violated the Fourth Amendment.[169] The court stated that in considering the reasonableness of the manner in which strip searches are conducted, courts should consider (1) the degree of privacy afforded the individual being searched; (2) whether the person conducting the search was of the same sex as the person being searched; (3) whether the search was conducted under hygienic conditions; (4) whether the search involved physical contact; and (5) whether the search was conducted in a professional manner.[170] In this case plaintiffs were not searched in a private location, they were taunted with threats and abusive language, and defendant officer did not clean or use other sanitary safeguards on the slender metal object used for the body cavity search of one plaintiff before using it on the next plaintiff.[171] Again, however, defendant was entitled to qualified immunity in the civil context because the law was not clearly established at the time of the searches that the manner in which he conducted the searches was unconstitutional.[172]

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164. *Id.*
165. *Id.* at 490.
166. *Id.* at 491.
167. *Id.* at 491-92.
168. *Id.* at 492.
169. *Id.* at 493.
170. *Id.* at 492.
171. *Id.* at 493.
172. *Id.* at 494.

F. Warrants: Sufficiency and Good Faith

Defendant in *United States v. Robinson*[173] contended on appeal that the district court erred in denying his motion to suppress and applying the "good-faith" exception to the exclusionary rule. The warrant affidavit in *Robinson* relied upon information from two different confidential informants that defendant was cooking and storing crack cocaine. At the time the warrant was issued, the information from one informant was almost three months old, and the information from the other informant was over ten months old. The affidavit stated that the officer independently verified the information in the warrant, but it did not state how the officer verified the information.[174] The officer did conduct two "trash pulls;" however, these were conducted from a multi-family trash receptacle.[175] The officer did not testify at the suppression hearing.[176]

The Eleventh Circuit explained that the "good-faith" exception set forth in *United States v. Leon*[177] "'stands for the principle that courts generally should not render inadmissable evidence obtained by police officers acting in reasonable reliance upon a search warrant that is ultimately found to be unsupported by probable cause.'"[178] The *Leon* good-faith exception does not apply when: (1) an officer deliberately, or in reckless disregard of the truth, places false or misleading information in a warrant; (2) the issuing judge wholly abandons his or her role; (3) the affidavit is so lacking in indicia of probable cause as to render unreasonable official belief in the existence of probable cause; and (4) the warrant is so facially deficient that the officers reasonably cannot presume the warrant to be valid.[179]

The court quickly rejected defendant's argument that the search warrant affidavit was so lacking in indicia of probable cause as to render unreasonable the official belief in its existence.[180] The court also

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173. 336 F.3d 1293 (11th Cir. 2003).

174. *Id.* at 1294-95.

175. *Id.* at 1295. "A 'trash pull' is an undercover investigative technique in which the police search a person's trash which has been placed at or near the street, which is outside the curtilage of the home." United States v. Chapman, 196 F. Supp. 2d 1279, 1282 (M.D. Ga. 2002). There is no Fourth Amendment protection for garbage or trash when it is set out for collection. California v. Greenwood, 486 U.S. 35, 37 (1988).

176. 336 F.3d at 1294.

177. 468 U.S. 897 (1984).

178. 336 F.3d at 1295-96 (quoting United States v. Martin, 297 F.3d 1308, 1313 (11th Cir. 2002)).

179. *Id.* at 1296.

180. *Id.*

rejected defendant's argument that, regardless of the applicability of any of the four exceptions to *Leon*, the Government failed to carry the burden of demonstrating the applicability of the good-faith exception when it did not "present evidence beyond the four corners of the affidavit to demonstrate that [the officer] reasonably relied on the search warrant."[181] The Eleventh Circuit explained that while a court "*may* consider information known to [the officer] that was not presented in the initial search warrant application or affidavit"[182] in determining whether execution of the search warrant was reasonable, there is no requirement that the Government must present evidence beyond the four corners of the affidavit to meet its burden of demonstrating applicability of the *Leon* good-faith exception.[183] The court pointed out that if evidence existed suggesting that the officer's reliance on the warrant was objectively unreasonable, defendant was free to present that evidence.[184]

III. THE FIFTH AMENDMENT

A. Waiver of Miranda Rights

In *Hart v. Attorney General of Florida*,[185] the Eleventh Circuit, after examining the totality of the circumstances, concluded that defendant's waiver of his *Miranda* rights was "the product of deception and was not 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'"[186] In *Hart* a detective presented a *Miranda* wavier form to defendant, explained each right on the form, and had defendant initial each right indicating he understood the right. Defendant also signed that he was willing to answer questions without an attorney being present.[187]

The Eleventh Circuit stated that "[a]lthough a signed *Miranda* waiver form is 'usually strong proof' that a suspect voluntarily waived his rights, it is not conclusive on this issue."[188] In this case the trial court erred by not examining the totality of the circumstances when determining whether defendant's waiver of *Miranda* rights was voluntary,

181. *Id.* at 1297.
182. *Id.* (quoting *Martin*, 297 F.3d at 1318). *See* Cox, *supra* note 70, at 1416-19.
183. 336 F.3d at 1297.
184. *Id.*
185. 323 F.3d 884 (11th Cir.), *cert denied*, 124 S. Ct. 813 (2003).
186. *Id.* at 893 (quoting Moran v. Burbine, 475 U.S. 412, 421 (1986)).
187. *Id.* at 887-88.
188. *Id.* at 893.

knowing, and intelligent.[189] Significantly, the Eleventh Circuit not only looked at the circumstances leading up to execution of the waiver form, but it also looked at the events that transpired after execution of the waiver form.[190] The court "examine[d] the 'totality of the circumstances surrounding the interrogation' to determine whether [defendant's] decision to waive his rights was made voluntarily, knowingly, and intelligently."[191]

Subsequent to defendant's execution of the waiver form, defendant asked another detective several questions about whether he needed a lawyer and about the pros and cons of hiring a lawyer.[192] The court stated, "Although asking for the pros and cons of hiring a lawyer is not an unequivocal request for counsel, it does indicate that [defendant] did not fully understand his right to counsel and was asking for clarification of that right."[193] In response to defendant's subsequent questions about an attorney, the detective advised him that "the disadvantage of having a lawyer present was that the lawyer would tell [defendant] not to answer incriminating questions."[194] In contrast to the advice the detective gave to defendant, "The reason for requiring a lawyer during custodial interrogation is to protect a suspect's privilege against self-incrimination."[195] The detective also told the defendant that "'honesty wouldn't hurt him'"[196] yet that advice contradicted and was incompatible with the Miranda warning that "'anything you say can be used against you in court.'"[197] The court concluded that

> [g]iven the totality of the circumstances surrounding the interrogation . . . [defendant's] decision to waive his rights and confess was the product of [the detective's] deception and, as a result of her contradictory statements, he did not truly understand the nature of his right

189. *Id.*
190. *Id.* at 893-94.
191. *Id.* at 893 (emphasis added).
192. *Id.* at 894.
193. *Id.* The lower court, relying on *Davis v. United States*, 512 U.S. 452, 459-61 (1994) (After a suspect waives the right to counsel, officers need not terminate an interrogation unless the suspect unambiguously requests counsel. Officers need not cease questioning upon "an ambiguous or equivocal reference to an attorney"), concluded that defendant's questions did not amount to an unequivocal request for an attorney, and it denied the motion to suppress. 323 F.3d at 890. The Eleventh Circuit held that the lower court erred by only applying *Davis*, without also following the direction of the Supreme Court's subsequent decision in *Moran* to consider the totality of the circumstances of the interrogation. *Id.* at 892-93 (citing *Moran*, 475 U.S. at 421).
194. 323 F.3d at 892-93.
195. *Id.*
196. *Id.*
197. *Id.*

> against self-incrimination or the consequences that would result from waiving it.[198]

Therefore, defendant's statements were obtained in violation of *Miranda*.[199]

IV. FEDERAL RULES OF CRIMINAL PROCEDURE

A. Rule 11

Some of the cases surveyed in this Article arose after a defendant entered a guilty plea, conditioned on his right to appeal the lower court's denial of a motion to suppress. In addition to the constitutional protections provided to criminal defendants, Rule 11 of the Federal Rules of Criminal Procedure[200] provides certain core protections to a defendant entering a plea of guilty. In *United States v. Monroe*,[201] defendant contended that the district court erred under Rule 11 when it did not explicitly inform him of his right against compelled self-incrimination when he entered his guilty plea.[202] The Eleventh Circuit reviewed defendant's claim of error under the plain-error analysis[203] because defendant did not object to the plea colloquy during the plea hearing or at sentencing, and he did not file a motion to withdraw his guilty plea.[204] The court noted that plain-error review and harmless-error review have two important differences.[205] First, while the Government bears the burden of proving that the claimed error does not prejudice a

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198. *Id.* at 895.

199. *Id.*

200. FED. R. CRIM. P. 11.

201. 353 F.3d 1346 (11th Cir. 2003).

202. *Id.* at 1349.

203. *Id.*

> Under plain-error review, the defendant has the burden to show that "there is (1) 'error' (2) that is 'plain' and (3) that 'affect[s] substantial rights.'" . . . "If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error 'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'"

Id. (citations omitted).

204. *Id.* The court noted that the Supreme Court clearly decided in *United States v. Vonn*, 535 U.S. 55, 74 (2002), that plain-error review can apply to claimed Rule 11 violations, even though Rule 11 contains only a harmless-error review provision in subsection (h). 353 F.3d at 1353. In contrast to the situation in *Monroe*, the Eleventh Circuit reviews the denial of a motion to withdraw a guilty plea based on a Rule 11 violation under the harmless error standard. *Id.* at 1349-50 n.2.

205. 353 F.3d at 1352. In the appellate context, whether a procedural error will result in any relief to defendant often is determined by the standard of review utilized by the court of appeals when reviewing the claimed error. *Id.*

defendant's substantial rights under harmless-error review, the defendant bears the burden of proving the effect on substantial rights under plain-error analysis.[206] Second, in plain-error review, a court can exercise its discretion to notice error "only if the error also 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'"[207]

The court determined that defendant failed to carry his burden of showing that his rights were substantially affected by the district court's failure to specifically advise him of his right against compelled self-incrimination.[208] Defendant did not show, or even argue, that he would not have pleaded guilty had the court fully advised him of his right against compelled self-incrimination.[209] In addition, the plea colloquy did satisfy the core concerns of Rule 11.[210] The district court's plea colloquy made clear to defendant that he had numerous rights, that he did not have to plead guilty, that he could continue in his plea of not guilty and proceed to trial, and that he was waiving these rights by pleading guilty.[211] Perhaps recognizing the seeming incongruity in the reasoning that defendant was not prejudiced because he waived a right that he had not been informed he possessed, the court held in the alternative that the court should not exercise its discretion to notice plain error because the error did not "'seriously affect[] the fairness, integrity, or public reputation of judicial proceedings.'"[212] The court explained that defendant "faced overwhelming evidence,"[213] and "'it would be the reversal of a conviction such as this which would [seriously

206. *Id.*
207. *Id.*
208. *Id.* at 1356.
209. *Id.*
210. *Id.* The "core objectives" of Rule 11 are "(1) ensuring that the guilty plea is free of coercion; (2) ensuring that the defendant understands the nature of the charges against him; and (3) ensuring that the defendant is aware of the direct consequences of the guilty plea." *Id.* at 1354.
211. *Id.* at 1356. The court distinguished four prior plain-error cases in which the court concluded that a Rule 11 error did substantially affect a defendant's rights. *See* United States v. Telemaque, 244 F.3d 1247 (11th Cir. 2001); United States v. Hernandez-Raire, 208 F.3d 945 (11th Cir. 2000); United States v. James, 210 F.3d 1342 (11th Cir. 2000); United States v. Quinones, 97 F.3d 473 (11th Cir. 1996). In each of those prior cases, the plea colloquy not only failed to inform the defendant of certain rights, but the plea colloquy also failed to inform the defendant that he waived those rights by pleading guilty. 353 F.3d at 1355.
212. 353 F.3d at 1356 (quoting *Vonn*, 535 U.S. at 63).
213. *Id.* at 1357.

affect the fairness, integrity, or public reputation of judicial proceedings].'"[214]

214. *Id.* (quoting Johnson v. United States, 520 U.S. 461, 470 (1997)).