SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D2025-1713
Lower Tribunal No. 2024-CF-009344

ANTHONY REEVES, III,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Polk County.
Cassandra L. Denmark, Judge.

October 9, 2026

PRATT, J.

Appellant challenges his conviction of burglary of a conveyance with an assault and a battery, as well as his sentence enhancement under the prison releasee reoffender ("PRR") statute.[1] We reject all of Appellant's arguments and affirm, but we write to explain why Appellant's conviction for burglary of a conveyance with

[1] The jury instructions and verdict form make clear that Appellant was convicted of burglary of a conveyance with an assault *and* a battery.

an assault and a battery is a qualifying offense under the catch-all provision of the PRR statute.[2]

Appellant argues that the trial court erred in determining his conviction for burglary of a conveyance with an assault and a battery is a qualifying offense under the PRR statute and that he should therefore be resentenced. He asserts that the trial court improperly focused on the offense of which he was convicted rather than the offense with which he was charged. He further asserts that because he was charged with burglary of a conveyance with an assault *or* a battery, and because a battery does not necessarily involve the use or threat of physical force or violence, his charge and by extension his conviction cannot fall within the PRR statute's catch-all provision. We disagree.

The PRR statute contains a number of enumerated felonies and the following catch-all provision which is preceded by fourteen enumerated felonies and succeeded by three enumerated felonies:

> (9)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
> a. Treason;
> b. Murder;
> c. Manslaughter;
> d. Sexual battery;
> e. Carjacking;

[2] However, we note in passing that any potential *Erlinger* issue regarding Appellant receiving a sentencing enhancement pursuant to the PRR statute was rendered moot by the jury making findings of fact consistent with *Erlinger* prior to sentencing. *See generally Erlinger v. United States*, 602 U.S. 821 (2024).

f. Home-invasion robbery;
g. Robbery;
h. Arson;
i. Kidnapping;
j. Aggravated assault with a deadly weapon;
k. Aggravated battery;
l. Aggravated stalking;
m. Aircraft piracy;
n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
o. *Any felony that involves the use or threat of physical force or violence against an individual*;
p. Armed burglary;
q. Burglary of a dwelling or burglary of an occupied structure; or
r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5);

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

§ 775.082(9)(a)1.a.-r., Fla. Stat. (2024) (emphasis added).[3]

[3] We note that the forcible felony statute similarly contains a number of enumerated felonies—including burglary—and the following catch-all provision which is preceded by fifteen enumerated felonies and succeeded by none:

> *"Forcible felony" means* treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; *burglary*; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and *any other felony which involves the use or threat of physical force or violence against any individual*.

The PRR statute's catch-all provision in section 775.082(9)(a)1.o. is virtually identical to the catch-all provision of the forcible felony statute, which reads, "any other felony which involves the use or threat of physical force or violence against any individual." § 776.08, Fla. Stat. The two are slightly different insofar as the former refers to "[a]ny felony . . . ." whereas the latter refers to "any other felony . . . ." and insofar as the former is placed in the middle of a list of enumerated felony offenses whereas the latter is placed at the end of a list of enumerated felony offenses. *See State v. Hearns*, 961 So. 2d 211, 217 (Fla. 2007) (acknowledging that the PRR statute's catch-all provision "contains the same language as the final clause of section 776.08"). *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 776.08, Fla. Stat. As such, we interpret the PRR statute's catch-all provision to have the same meaning as the forcible felony statute's catch-all provision unless there's a good textual or contextual reason not to. *See State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012) (acknowledging that "where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply" (quoting *Hearns*, 961 So. 2d at 217)); *see also Hearns*, 961 So. 2d at 217 ("Because the two statutes use identical [catch-all provision] language, whether [battery on a law enforcement officer] BOLEO is a qualifying offense must be answered consistently under both the VCC statute and the PRR statute.").

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§ 776.08, Fla. Stat. (2024) (emphasis added).

And we recently explained how the forcible felony statute's catch-all provision generally operates:

> "Section 776.08 enumerates several forcible felonies and also includes a catch-all provision covering 'any other felony which involves the use or threat of physical force or violence against any individual.'" *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012) (quoting § 776.08, Fla. Stat.). In *State v. Hearns*, 961 So. 2d 211 (Fla. 2007), the Florida Supreme Court reviewed and applied the test articulated in *Perkins v. State*, 576 So. 2d 1310 (Fla. 1991), for determining whether a criminal offense is a forcible felony that falls within the meaning of the catch-all provision of section 776.08. Consistent with *Perkins*, the *Hearns* court held among other things that a court may not "look beyond the statutory elements of an offense and analyze the evidence in a particular case"; that "the only relevant consideration is the statutory elements of the offense"; and that "[i]f the use or threat of physical force or violence against any individual is not a necessary element of the crime, then the crime is not a forcible felony within the meaning of the final clause of section 776.08." *Hearns*, 961 So. 2d at 216 (citation and internal quotation marks omitted).

Dunlap v. State, 435 So. 3d 224, 227 (Fla. 6th DCA 2026). It follows then that the catch-all provision of the PRR statute works the same way.

Here, Appellant contends that the trial court should not have focused on whether his conviction falls within the ambit of the PRR statute's catch-all provision and that therefore the sentencing enhancement applied by the trial court pursuant to the PRR statute should not be upheld. He insists that the trial court should have instead inquired whether the offense with which he was charged as opposed to the offense of which he was convicted—i.e., burglary of a conveyance with an assault or battery as opposed to burglary of a conveyance with an assault and a battery—

fell within the ambit of the PRR statute's catch-all provision, and that if it had so inquired he would have been ineligible for the sentencing enhancement because burglary with a battery was a possibility and battery is not a qualifying offense under the PRR statute's catch-all provision. But Appellant's argument fails.

Appellant's argument is foreclosed by the Florida Supreme Court's decision in *Hackley*. Under *Hackley*, it's not the charged offense that matters for purposes of PRR enhancement; it's the offense of which the defendant is convicted. In *Hackley*, the Florida Supreme Court "consider[ed] whether a *conviction* for burglary of a conveyance with an assault qualifies a defendant for sentencing as a prison releasee reoffender (PRR) under section 775.082(9)(a)1, Florida Statutes." *Hackley*, 95 So. 3d at 93 (emphasis added). The *Hackley* court determined that a conviction for burglary of a conveyance with an assault falls within the ambit of the PRR statute's catch-all provision and therefore qualifies for a sentencing enhancement under the PRR statute:

> The plain language of the burglary, assault, and PRR statutes leads us to conclude that [a conviction for] burglary of a conveyance with an assault is a qualifying PRR offense. Because burglary of a conveyance with an assault is a felony that necessarily involves [under the assault statute] the "threat by word or act to do violence to the person of another," it falls within [section 775.082(9)(a)1.o., the catch-all provision] of the PRR statute, which covers "[a]ny felony that involves the use or threat of physical force or violence against an individual."

Id. at 94. The Florida Supreme Court's focus in *Hackley* upon whether the defendant's *conviction* was a qualifying offense as opposed to whether his *charge* was a qualifying offense was consistent with its prior decision in *Hearns*. *See Hackley*, 95 So. 3d at 95 ("In *Hearns*, we held that a *conviction* for BOLEO did not qualify a defendant for sentencing as a violent career criminal (VCC)." (citing *Hearns*, 961 So. 2d at 219) (emphasis added)). *Hackley*'s and *Hearns*'s focus upon a defendant's conviction instead of a defendant's charge is consistent with the text of the PRR and VCC statutes, as well as the commonsense notion that sentencing enhancements are based on established convictions rather than unproven charges. *See, e.g.*, § 775.082(9)(a)1., Fla. Stat. ("'Prison releasee reoffender' means any defendant *who commits, or attempts to commit* . . . ." (emphasis added)); § 775.084(1)(d)3., Fla. Stat. ("'Violent career criminal' means . . . [t]he primary felony offense for which the defendant is to be sentenced is a felony enumerated in [section 775.084(1)(d)1.] and *was committed* . . . ." (emphasis added)); § 775.084(1)(d)5., Fla. Stat. ("A *conviction* of a felony or other qualified offense necessary to the operation of this paragraph . . . ." (emphasis added)). In this case, Appellant was convicted of burglary of a conveyance with *both* an assault and a battery. Therefore, at a minimum, his conviction for burglary of a conveyance with an assault was sufficient to unlock the PRR statute's enhancement pursuant to the PRR statute's

catch-all provision and the trial court properly enhanced his sentence under the PRR statute.

Appellant cannot evade the consequences of his actions by asserting that because he was charged with burglary of a conveyance with an assault *or* battery that he cannot receive a PRR enhancement for being convicted of burglary of a conveyance with an assault *and* a battery. It is true that, under the reasoning of *Hearns*, battery in and of itself is not a forcible felony, as simple battery is not a felony at all, and BOLEO and by extension battery is also not a "forcible" offense within the meaning of the forcible felony statute. *See generally, e.g.*, *Hearns*, 961 So. 2d at 214, 218-19 ("The underlying conduct required for simple battery and BOLEO is identical. . . . We must determine whether intentionally touching a law enforcement officer necessarily involves the use or threat of physical force or violence as described in the final clause of section 776.08. If it does not, then BOLEO cannot be a forcible felony. . . . The felonies enumerated in section 776.08 include murder, treason, carjacking, home-invasion robbery, arson, kidnapping, discharging of a destructive device or bomb, and aircraft piracy. Merely touching a law enforcement officer is not in the same league. . . . [S]imple battery is a misdemeanor offense and can never be a forcible felony. BOLEO involves the exact same conduct as misdemeanor battery, the only difference being the victim's status. . . . BOLEO is not a forcible felony [within the meaning of the forcible felony

statute].” (citations omitted)). But it is also true under the reasoning of *Hackley* that burglary of a conveyance with an assault is a felony that necessarily involves the use or threat of physical force or violence against an individual. *See generally, e.g.*, *Hackley*, 95 So. 3d at 94, 96 (“The plain language of the burglary, assault, and PRR statutes leads us to conclude that [a conviction for] burglary of a conveyance with an assault is a qualifying PRR offense. . . . [B]attery—at least when committed in the course of another felony such as burglary of an occupied conveyance—is in the nature of things likely to be preceded by conduct that constitutes an assault.”).

By relying upon the actual offense of conviction to determine whether the PRR statute applied to Appellant, the trial court did precisely what *Hackley* requires—basing its PRR determination on the statutory elements of the offense of conviction—and in doing so did not impermissibly “look beyond the statutory elements of an offense and analyze the evidence in a particular case” within the meaning of *Hearns*. To be clear, Appellant was not convicted of burglary of a conveyance with an assault *or* battery. He was convicted of burglary of a conveyance with an assault *and* a battery. His conviction for burglary of a conveyance with an assault was a legally sufficient basis for the PRR statute to apply.

For the foregoing reasons, we affirm.

AFFIRMED.

BROWNLEE and KAMOUTSAS, JJ., concur.
PRATT, J., concurs specially with opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

PRATT, J., specially concurring.

We have before us another appeal involving a sentencing enhancement issue that implicates the forcible felony statute's catch-all provision—this time under the prison releasee reoffender ("PRR") statute instead of the violent career criminal ("VCC") statute. *See generally Dunlap v. State*, 435 So. 3d 224 (Fla. 6th DCA 2026). I fully concur in the majority's opinion. I write separately to provide an additional reason why I believe we should affirm.

I agree with the majority that Appellant's argument is foreclosed by *State v. Hackley*, 95 So. 3d 92 (Fla. 2012). But even assuming arguendo that the trial court should have considered whether Appellant's charge of burglary of a conveyance with an assault or battery could have constituted a qualifying offense under the PRR statute as Appellant argues, or that Appellant had instead been convicted of burglary of a conveyance with an assault or battery, Appellant would still be unable to show any error. That's because under either scenario, Appellant's charge or conviction would still fall within the PRR statute's catch-all provision by way of the forcible felony statute's catch-all provision. Recall that the PRR statute's catch-all provision "[a]ny felony that involves the use or threat of physical force or violence against an

individual" and the forcible felony statute's virtually identical catch-all provision "any other felony which involves the use or threat of physical force or violence against any individual" are interpreted to have the same meaning. *See Hackley*, 95 So. 3d at 95 (quoting *State v. Hearns*, 961 So. 2d 211, 217 (Fla. 2007)); *see also Hearns*, 961 So. 2d at 217. *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 776.08, Fla. Stat. Recall also that the forcible felony statute's catch-all provision is preceded by a list of statutorily enumerated offenses—including burglary—that the Legislature has statutorily determined constitute forcible felonies. In my view, the forcible felony statute thus makes clear that the statutorily enumerated felony of "burglary" constitutes a "felony which involves the use or threat of physical force or violence against any individual." § 776.08, Fla. Stat.; *see Dunlap*, 435 So. 3d at 229 (acknowledging that the "phrase 'any other felony which involves the use or threat of physical force or violence against any individual' refers back to the immediately preceding enumerated felonies" (quoting § 776.08, Fla. Stat.)).[1] And in my view,

[1] In *Dunlap*, our Court acknowledged that the forcible felony statute's catch-all provision contains a list of statutorily enumerated felonies that the Legislature has determined necessarily involve the use or threat of physical force or violence against any individual. *See Dunlap*, 435 So. 3d at 229 (acknowledging that the "phrase 'any other felony which involves the use or threat of physical force or violence against any individual' refers back to the immediately preceding enumerated felonies" (quoting § 776.08, Fla. Stat.)). *See generally Hackley*, 95 So. 3d at 95 ("Section 776.08 enumerates several forcible felonies and also includes a catch-all provision covering 'any other felony which involves the use or threat of physical force or violence against any individual.'"). As noted by the majority, one

because "burglary" is a "felony which involves the use or threat of physical force or violence against any individual" for purposes of the forcible felony statute's catch-all provision, it necessarily follows that "burglary" is a "felony that involves the use or threat of physical force or violence against an individual" for purposes of the PRR statute's virtually identical catch-all provision. *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 776.08, Fla. Stat. To be sure, a charge of or conviction for burglary of a conveyance with an assault or battery is still a conviction for burglary. It's just a specific type or subset of burglary that falls within the broader enumerated forcible felony of burglary. And because burglary is a statutorily enumerated felony under the forcible felony statute that falls within the PRR statute's catch-all provision by way of the forcible felony statute's catch-all provision, we need not determine whether burglary would otherwise meet the Florida Supreme Court's statutory elements test, which governs whether a *non-enumerated* felony falls within one of the aforementioned catch-all provisions.

In *Gorham v. State*, 988 So. 2d 152, 153-54 (Fla. 4th DCA 2008), our sister district reasoned that reading the PRR statute's catch-all provision as incorporating all of the enumerated forcible felonies listed in the forcible felony statute's catch-all provision is "illogical and would lead to absurd results," would "essentially overrule

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of those statutorily enumerated felonies is "burglary." *See Dunlap*, 435 So. 3d at 227 (quoting § 776.08, Fla. Stat.).

the Florida Supreme Court's decision in *State v. Huggins*, 802 So. 2d 276 (Fla. 2001)," and would be contrary to the Legislature's intent in light of the expressio unius canon because the PRR statute "explicitly names only burglary of a dwelling, burglary of an occupied structure, and armed burglary as qualifying offenses." I respectfully disagree and take each point in turn. First, the absurdity canon—a canon that must be viewed with caution and employed with restraint—has no purchase here.[2] The plain language of the forcible felony statute's catch-all provision demonstrates that all of the enumerated offenses contained in the forcible felony statute—including burglary—are felonies that necessarily involve the use or threat of physical force or violence against any individual. § 776.08, Fla. Stat. ("'Forcible felony' means . . . burglary . . . *and any other* felony which involves the use or threat

[2] The absurdity canon may be applied "only under rare and exceptional circumstances." *State v. Lewars*, 259 So. 3d 793, 800 (Fla. 2018) (citation omitted). It is "not to be used as a freewheeling tool for courts to second-guess and supplant the policy judgments made by the Legislature." *Id.* (citation omitted). Under the absurdity canon, "[a] provision may be either disregarded or judicially corrected as an error (when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 234 (2012). It has two limitations: (1) "[t]he absurdity must consist of a disposition that no reasonable person could intend" and (2) "[t]he absurdity must be reparable by changing or supplying a particular word or phrase whose inclusion or omission was obviously a technical or ministerial error." Scalia & Garner at 237-38; *see also Lewars*, 259 So. 3d at 801 (explaining that the absurdity canon may only be applied to correct a "technical or ministerial error," not to "rewrite the statute" (citation omitted)). Adherence to these limitations is "necessary" to "absolve the doctrine of the charge that it is an application not of textualism but of purposivism." Scalia & Garner at 238.

of physical force or violence against any individual." (emphasis added)); *see Dunlap*, 435 So. 3d at 229 (acknowledging that the "phrase 'any other felony which involves the use or threat of physical force or violence against any individual' refers back to the immediately preceding enumerated felonies" (quoting § 776.08, Fla. Stat.)); *see also, e.g.*, *Rodriguez v. State*, 826 So. 2d 464, 465 (Fla. 3d DCA 2002) ("[T]he definition [of forcible felony under the forcible felony statute] includes all enumerated felonies, plus any additional felony which involves the use or threat of physical force or violence against an individual."). *See generally, e.g.*, *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (acknowledging that "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind'" (citation omitted)); *Shepard v. Thames*, 251 So. 2d 265, 267-68 (Fla. 1971) ("The words 'other' or 'any other' following the enumeration of particular classes are to be read 'as other such like,' and include only others of like kind or character." (citation omitted)). Because the PRR statute's catch-all provision uses virtually the same language as the forcible felony statute's catch-all provision, it should be given the same effect as and should be interpreted consistently with the forcible felony statute and its catch-all provision. *See Hackley*, 95 So. 3d at 95 (quoting *Hearns*, 961 So. 2d at 217); *see also Hearns*, 961 So. 2d at 217. As such, the PRR statute's catch-all provision clearly imports "burglary" into the PRR statute via the forcible felony statute's nearly identical catch-all provision. Second,

incorporating all of the enumerated felonies contained in the forcible felony statute into the PRR statute by way of the two statute's virtually identical catch-all provisions does not "overrule" or conflict with *Huggins*. *Huggins* neither discussed the PRR statute's catch-all provision nor the forcible felony statute's catch-all provision, so it had no occasion to determine whether the former imports from the latter the enumerated felonies contained therein—including burglary. *See generally Huggins*, 802 So. 2d at 276-79.[3] Third, the negative-implication canon expressio

[3] *Hackley* considered whether a conviction for burglary of a conveyance with an assault is a qualifying offense under the PRR statute in light of the PRR statute's catch-all provision and the forcible felony statute's catch-all provision. However, it also did not address whether the enumerated felonies contained in the forcible felony statute—including burglary—are imported into the PRR statute via the two statutes' virtually identical catch-all provisions. *See generally Hackley*, 95 So. 3d at 93-96. I am unaware of any Florida Supreme Court decision addressing this issue.

Although *Hackley* stated its agreement with the First District that "burglary of a conveyance with a *battery* is not a qualifying offense under the PRR statute," *id.* at 95, arguably that statement is dicta because the issue presented in *Hackley* was whether a conviction for burglary of a conveyance with an *assault* is a qualifying offense under the PRR statute—not whether burglary of a conveyance with a *battery* is a qualifying offense under the PRR statute. That being said, since *Hackley* made this statement before refuting the erroneous reasoning of the First District regarding the absurdity doctrine, the statement could perhaps be viewed as a holding.

In any event, *Hackley*'s statement—dicta or holding—only focused on whether burglary of a conveyance with a *battery* is a qualifying offense by way of the statutory elements test in light of *Hearns*, not whether *burglary* is a statutorily enumerated felony under the forcible felony statute that falls within the PRR statute's catch-all provision by way of the forcible felony statute's catch-all provision.

unius est exclusio alterius does not tip the scale in favor of *Gorham*'s reading of the PRR statute. The negative-implication canon is a useful tool but it must be employed with caution, lest its focus upon a textual omission miss the textual and contextual forest for the trees. *See, e.g.*, *Nichols v. State ex rel. Bolon*, 177 So. 2d 467, 469 (Fla. 1965) ("The principle of the maxim, 'Expressio unius est exclusio alterius,' should be applied with great caution to the provisions of an organic law relating to the legislative department . . . ." (citation omitted)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) ("Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context."). *See generally* Scalia & Garner at 107 (explaining that under the "negative-implication canon" that "[t]he expression of one thing implies the exclusion of others (expressio unius est exclusio alterius)"). That caution finds good purchase here, as the PRR statute enumerates a number of qualifying offenses, then enumerates a broad catch-all that captures "[a]ny felony that involves the use or threat of physical force or violence against an individual," § 775.082(9)(a)1.o., Fla. Stat., and then enumerates several qualifying offenses. Applying the negative-implication canon here—

In other words, *Hackley* did not address whether the enumerated felonies contained in the forcible felony statute—including burglary—are imported into the PRR statute via the two statutes' virtually identical catch-all provisions. Therefore, that analytical lane remains wide open and undecided by any binding Florida Supreme Court precedent.

particularly when the PRR statute's catch-all provision is located in the middle of a list of items rather than at the end of a list of items—would improperly render the catch-all provision mere surplusage. *See, e.g.*, *Berman Constr. & Dev., Inc. v. Carnaval Home, LLC*, 434 So. 3d 729, 735 (Fla. 4th DCA 2026) ("Where the text 'contains a broad catchall provision at the end of a list of specific items,' expressio unius cannot be applied without rendering the catchall mere surplusage." (citation omitted)); Scalia & Garner at 107 ("The [negative-implication canon] properly applies only when the unius (or technically, unum, the thing specified) can reasonably be thought to be an expression of *all* that shares in the grant or prohibition involved."). It would also improperly suggest that the PRR statute's catch-all provision cannot overlap with the expressly enumerated preceding and succeeding offenses contained in the PRR statute. The point of a catch-all provision is to capture a category of offenses without requiring the enumeration of all such offenses. *See generally, e.g.*, *Houston v. City of Tampa Firefighters & Police Officers' Pension Fund Bd. of Trs.*, 303 So. 3d 233, 237 (Fla. 2d DCA 2020) (explaining that a statutory provision was "sometimes referred to as the [statute's] catch-all provision because it does not identify a specific crime but rather reaches 'any felony' bearing certain characteristics" (citation omitted)). That the Legislature deemed it appropriate to engage in a belt-and-suspenders approach by enumerating a number of offenses in the PRR statute that would also fall within the PRR statute's catch-all provision,

including murder, sexual battery, and more, does not mean that the enumerated offenses thereby limit the textual breadth of the catch-all provision's reach. *See generally* § 775.082(9)(a)1.o., Fla. Stat. (PRR statute's catch-all provision capturing "[*a*]*ny felony that involves* the use or threat of physical force or violence against an individual" (emphasis added)). I respectfully submit that that result would be inconsistent with the text and context of the PRR statute, which textually demonstrates the Legislature's intent to enumerate certain offenses and to also capture a broad category of offenses via the PRR statute's catch-all provision, even though most if not all of the preceding and succeeding enumerated offenses already overlap with or fall within the ambit of the catch-all provision. And I believe that my reading the PRR statute is consistent with several other longstanding principles of interpretation, including the presumption of consistent usage and the related statutes canons. *See* Scalia & Garner at 170 (explaining that under the "presumption of consistent usage" that "[a] word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning"); Scalia & Garner at 252 (explaining that under the "related-statutes canon" that "[s]tatutes in pari materia are to be interpreted together, as though they were one law").[4]

[4] In addition to the foregoing, I have further considered the potential relevance of the expressio unius, ejusdem generis, noscitur a sociis, and lenity canons—none of which the Florida Supreme Court mentioned or applied to the PRR statute in

Hackley and none of which change my conclusion regarding what I believe to be the clear meaning of the PRR statute and its catch-all provision in light of the forcible felony statute and its catch-all provision. *See generally* Scalia & Garner at 59 (explaining that under the "principle of interrelating canons" that "[n]o canon of interpretation is absolute" and "[e]ach may be overcome by the strength of differing principles that point in other directions").

First, I do not believe that the expressio unius canon applies here. In *Hearns*, the Florida Supreme Court acknowledged that "the forcible felony statute specifically enumerates two types of battery: aggravated battery and sexual battery." *Hearns*, 961 So. 2d at 219 (citing § 776.08, Fla. Stat.). It went on to explain that under the expressio unius canon "BOLEO's absence from the list of enumerated felonies [in the forcible felony statute] lends further support to the conclusion that BOLEO is not a forcible felony." *Id.*; *see id.* ("Under the canon of statutory construction expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another."). As an initial matter, respectfully, *Hearns*'s assumption that expressio unius can apply to a catch-all at the end of a list is inconsistent with what I believe is the correct view, namely, that expressio unius is not so applicable. *See generally Berman*, 434 So. 3d at 735; Scalia & Garner at 107. In any event, accepting the premise, I note that the *Hearns* court first acknowledged that "[h]ad the Legislature intended to include all types of battery as forcible felonies, it would have listed simply 'battery' rather than only the specific types enumerated." *Hearns*, 961 So. 2d at 219. In the forcible felony statute, the Legislature did just that by listing "burglary" rather than only specific types of burglary. § 776.08, Fla. Stat. And as I have explained, the PRR statute's catch-all provision clearly imports "burglary" into the PRR statute via the forcible felony statute's nearly identical catch-all provision. But unlike the forcible felony statute's catch-all provision, which is located at the end of the forcible felony statute's list, the PRR statute's catch-all provision is located in the middle of the PRR statute's list rather than at the end of its list. Therefore, although the PRR statute enumerates "[a]rmed burglary" and "[b]urglary of a dwelling or burglary of an occupied structure," § 775.082(9)(a)1.p.-q., Fla. Stat., and could perhaps be read in isolation to call for an application of the expressio unius canon to the PRR statute's catch-all provision, when the forcible felony statute and its catch-all provision are fairly read together with the PRR statute and its catch-all provision, I do not believe that the expressio unius canon applies to render the PRR statute's catch-all provision as mere surplusage or to mean something narrower than or different from the forcible felony statute's nearly identical catch-all provision.

Moreover, in light of the Florida Supreme Court's subsequent decision in *Hackley*, I conclude that the *Hearns* decision's unique, perhaps one-of-a-kind application of the expressio unius canon to a catch-all provision—i.e., the forcible felony statute's catch-all provision—does not support applying the expressio unius canon beyond the circumstances of *Hearns* to the PRR statute's catch-all provision. *Hackley* neither mentioned nor applied the expressio unius canon to the PRR statute's catch-all provision, even though *Hackley* acknowledged that the PRR statute enumerates "armed burglary" and "burglary of a dwelling or burglary of an occupied structure" and even though *Hackley* discussed *Hearns*. *See generally Hackley*, 95 So. 3d at 93-96. *Hackley* instead held that a conviction for "burglary of a conveyance with an assault"—a non-enumerated felony—is a qualifying offense under the PRR statute via the PRR statute's catch-all provision. *Id.* ("Because burglary of a conveyance with an assault is not an enumerated offense under the PRR statute, it is a qualifying offense only if it falls under [section 775.082(9)(a)1.o.]—'[a]ny felony that involves the use or threat of physical force or violence against an individual.' We conclude that it does."). Accordingly, *Hackley*'s holding forecloses any possibility of applying the expressio unius canon to the PRR statute's catch-all provision.

Second, I do not believe that the ejusdem generis canon applies here. *See generally* Scalia & Garner at 199 (explaining that under the "ejusdem generis canon" that "[w]here general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned (ejusdem generis)"). This dovetails with my point above. In *Hearns*, the Florida Supreme Court's discussion of the expressio unius canon was preceded by its discussion of the ejusdem generis canon. *See Hearns*, 961 So. 2d at 219. The *Hearns* court explained that under the ejusdem generis canon the forcible felony statute's catch-all provision "any other felony involving the use or threat of physical force or violence" was a "general phrase" that "should be interpreted to include only offenses which involve a level of physical force or violence comparable to that of the enumerated felonies." *Id.*; *see id.* ("[Under] the canon of statutory construction ejusdem generis, which states that when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed."). The *Hearns* court's application of the ejusdem generis canon to the forcible felony statute and its catch-all provision makes sense. *See generally Shepard*, 251 So. 2d at 267-68. However, unlike the forcible felony statute which contains a list of specifics followed by a general phrase, the PRR statute does not. *See generally CSX Transp., Inc. v. Ala. Dep't of Rev.*, 562 U.S. 277, 294-95 (2011) (concluding ejusdem generis was "not relevant" where "something of a catchall"

was "not a general or collective term following a list of specific[s]" but instead "one of . . . several distinct and independent prohibitions" (citations and emphasis omitted)). The PRR statute contains a list of eighteen; the first fourteen are specifics, the fifteenth is the PRR statute's catch-all provision, and the sixteenth thorough eighteenth are specifics. Moreover, unlike the forcible felony statute's catch-all provision, the PRR statute's catch-all provision is ever so slightly different insofar as it does not refer to "*any other felony* that involves the use or threat of physical force or violence against an individual"—it refers to "[*a*]*ny felony* that involves the use or threat of physical force or violence against an individual." *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 776.08, Fla. Stat. This shows that the PRR statute's catch-all provision is not subject to the ejusdem generis canon; it is a standalone catch-all that broadly captures anything that fairly falls within its text and it is not limited by the fourteen enumerated felonies that precede it or the three enumerated felonies that succeed it under the ejusdem generis canon. And for all the reasons I have explained, the PRR statute's catch-all provision catches the enumerated felony of "burglary" contained in the forcible felony statute by way of the forcible felony statute's catch-all provision, which refers back to "*any other felony* that involves the use or threat of physical force or violence against an individual." § 776.08, Fla. Stat. (emphasis added).

Third, although not addressed in *Hearns* or *Gorham*, I do not believe that the noscitur a sociis canon changes the calculus here. *See generally* Scalia & Garner at 195 (explaining that under the "associated-words canon" that "[a]ssociated words bear on one another's meaning (noscitur a sociis"). Ejusdem generis and noscitur a sociis are related canons; the former is a specific application of the broader principle of the latter. *See generally, e.g.*, *State v. Weeks*, 202 So. 3d 1, 8 (Fla. 2016) ("A related canon of statutory [interpretation to ejusdem generis] is noscitur a sociis, which instructs that 'a word is known by the company it keeps.'" (citation omitted)); *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So. 2d 381, 385 (Fla. 1958) ("The [ejusdem generis canon] is merely an application of a phase of the broader maxim noscitur a sociis which simply means that general and specific words capable of analogous meaning when associated together take color from each other so that the general words are restricted to a sense analogous to the less general."). Assuming arguendo that noscitur a sociis applies here, my conclusion that the PRR statute's broad catch-all provision includes "burglary" is not inconsistent with noscitur a sociis. To the contrary, the offense of burglary rests comfortably within the company it keeps, including the PRR statute's enumerated forms of burglary; at the very least, burglary is analogous to the enumerated forms of burglary. *See generally* § 775.082(9)(a)1., Fla. Stat. In any event, as I have explained, the forcible felony

Stated differently, it is true that "burglary" is an enumerated offense under the forcible felony statute but not the PRR statute; the narrower offenses of "[a]rmed burglary" and "[b]urglary of a dwelling or burglary of an occupied structure" are enumerated offenses under the PRR statute. *Compare* § 775.082(9)(a)1.p.-q., Fla. Stat., *with* § 776.08, Fla. Stat. But that doesn't change the fact that the PRR statute

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statute's catch all provision plainly demonstrates that the forcible felony statute's enumerated offense of "burglary" necessarily involves the use or threat of physical force or violence against any individual, and the PRR statute's catch-all provision clearly imports "burglary" into the PRR statute via the forcible felony statute's nearly identical catch-all provision. This conclusion is consistent with the presumption of consistent usage and the related statutes canons, which cut against using noscitur a sociis to render the PRR statute's catch-all provision to mean something narrower than or different from the forcible felony statute's nearly identical catch-all provision.

And fourth, although not addressed in *Hearns* or *Gorham*, I do not believe that the rule of lenity applies here. *See generally* Scalia & Garner at 296 (explaining that under the "rule of lenity" that "[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant's favor"). Because the meaning of the forcible felony statute and its catch-all provision is plain, and because the forcible felony statute's catch-all provision clearly imports the forcible felony statute's enumerated offense of "burglary" into the PRR statute via the PRR statute's nearly identical catch-all provision, the rule of lenity does not come into play. *See generally Conage v. United States*, 346 So. 3d 594, 603 (Fla. 2022) (explaining that "the rule of lenity is a default rule that comes into play at the end of the interpretive process" and that it only applies "if the statute remains ambiguous after consulting traditional canons of statutory construction" (citation omitted)).

Having carefully considered the text of the PRR statute and its catch-all provision, the text of the forcible felony statute and its catch-all provision, and all of the canons I have mentioned, I adhere to my interpretation of the text of the PRR statute and its catch-all provision in light of the text of the forcible felony statute and its catch-all provision.

also contains a catch-all provision that incorporates the forcible felony of "burglary" enumerated in the forcible felony statute by way of the forcible felony statute's catch-all provision. *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 776.08, Fla. Stat. In other words, the specific enumeration of "[a]rmed burglary" and "[b]urglary of a dwelling or burglary of an occupied structure" in the PRR statute does not displace the broad meaning and reach of the PRR statute's catch-all provision, which incorporates the specific enumeration of "burglary" from the forcible felony statute into the PRR statute via the forcible felony statute's catch-all provision.[5,6]

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[5] The PRR statute's catch-all for "[a]ny felony that involves the use or threat of physical force or violence against an individual" thus accomplishes the same thing as the VCC statute's enumeration of "[a]ny forcible felony, as described in s[ection] 776.08," which includes section 776.08's catch-all "any other felony which involves the use or threat of physical force or violence against any individual." *Compare* § 775.082(9)(a)1.o., Fla. Stat., *with* § 775.084(1)(d)1.a., Fla. Stat., *and* § 776.08, Fla. Stat.

[6] Sections 775.082 and 775.084 collectively contain the PRR statute, the VCC statute, the habitual felony offender ("HFO") statute, the habitual violent felony offender ("HVFO") statute, and the three-time violent felony offender ("3VFO") statute. *See generally* § 775.082(9)(a)1., Fla. Stat. (PRR statute); § 775.084(1)(d), Fla. Stat. (VCC statute); § 775.084(1)(a), Fla. Stat. (HFO statute); § 775.084(1)(b), Fla. Stat. (HVFO statute); § 775.084(1)(c), Fla. Stat. (3VFO statute). The Legislature may wish to re-examine sections 775.082 and 775.084 to consider whether the enumerated offenses listed in the PRR statute, the VCC statute, the HFO statute, the HVFO statute, and the 3VFO statute as written—some of which incorporate the forcible felony statute and its catch-all provision for "any other felony which involves the use or threat of physical force or violence against any individual" and some of which do not—align with the Legislature's intent. Sections 775.082 and 775.084 were last amended in 2019, and section 776.08—the forcible felony statute—was last amended in 1995. *See generally* § 775.082, Fla. Stat. (refer to

I acknowledge that my interpretation of the PRR statute conflicts with the interpretation of the PRR statute reached by our sister districts in *Smith v. State*, 338 So. 3d 390 (Fla. 3d DCA 2022), *Crosley v. State*, 247 So. 3d 69 (Fla. 1st DCA 2018), *Suffield v. State*, 132 So. 3d 333 (Fla. 4th DCA 2014), *Santiago v. State*, 76 So. 3d 1027 (Fla. 3d DCA 2011), *Wilson v. State*, 76 So. 3d 332 (Fla. 2d DCA 2011), *Williams v. State*, 2 So. 3d 984 (Fla. 2d DCA 2008), and *Gorham*. In all of those cases, the First, Second, Third, and Fourth Districts were presented with scenarios in which a defendant was convicted of burglary of a conveyance with an assault or battery. And in all of those cases, the district courts erroneously determined that a defendant was ineligible for PRR enhancement because the either-or possibility of a conviction of burglary of a conveyance with an assault *or* battery meant that the defendant could have been convicted of an offense that does not necessarily involve the use or threat of physical force or violence against an individual—i.e., battery. *See, e.g.*, *Crosley*, 247 So. 3d at 70 ("Since a battery can be committed merely by the intentional touching of another person, which may not involve the use or threat of force or violence, the crime of burglary of a conveyance with assault or battery can be committed without the use or threat of physical force or violence."). Respectfully, I believe our sister districts erred because they failed to acknowledge

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history line following statutory text listing statutory amendments); § 775.084, Fla. Stat. (same); § 776.08, Fla. Stat. (same).

that "burglary"—the featured offense in a charge of or conviction for burglary of a conveyance with an assault or battery—is an enumerated offense under the forcible felony statute that necessarily involves the use or threat of physical force or violence against an individual by virtue of its statutory enumeration as a forcible felony, and that burglary is a qualifying offense under the PRR statute because the PRR statute's catch-all provision imports burglary into the PRR statute via the forcible felony statute's catch-all provision. *See* § 775.082(9)(a)1.o., Fla. Stat. ("'Prison releasee reoffender' means any defendant who commits, or attempts to commit . . . [a]ny felony that involves the use or threat of physical force or violence against an individual. . . ."); § 776.08, Fla. Stat. ("'Forcible felony' means . . . burglary . . . and any other felony which involves the use or threat of physical force or violence against any individual."). It is for this reason that I reach the opposite conclusion reached by our sister districts and would make the reasoning of my concurrence our second holding in this case. *See generally Bank of New York as Tr. for Certificateholders CWABS Asset-Backed Certificates, Series 2005-BC4 v. Henry*, No. 6D2024-2168, 2026 WL 1998614, at *7 n.6 (Fla. 6th DCA July 10, 2026) ("Though we could affirm on either point without deciding the other, both justifications are holding." (citing *Parsons v. Fed. Realty Corp.*, 143 So. 912, 920

(Fla. 1931); *Crecelius v. Rizzitano*, 430 So. 3d 268, 286 (Fla. 6th DCA 2026) (Gannam, J., concurring))).[7]

For the foregoing reasons, I agree with the majority's decision to affirm. However, I would also affirm for the additional reason addressed in this concurring opinion and, consistent with the reasoning of my concurrence, I would certify direct conflict with *Smith*, *Crosley*, *Suffield*, *Santiago*, *Wilson*, *Williams*, and *Gorham*. *See* art. V, § 3(b)(4), Fla. Const.

[7] I respectfully reject the reasoning of our sister districts in *Ellis v. State*, 135 So. 3d 478 (Fla. 2d DCA 2014), and *Tumblin v. State*, 965 So. 2d 354 (Fla. 4th DCA 2007), which relied on the same erroneous reasoning I've identified above regarding the PRR statute's catch-all provision. However, because *Ellis* and *Tumblin* involved burglary of a dwelling with an assault or battery rather than burglary of a conveyance with an assault or battery, I would decline to certify conflict in this case.

I separately note that *Ellis* and *Tumblin* are also inconsistent with the PRR statute's enumerated felony offense "[b]urglary of a dwelling or burglary of an occupied structure," which necessarily includes burglary of a dwelling with an assault or battery. § 775.082(9)(a)1.q., Fla. Stat. Burglary of a dwelling with an assault or battery is still burglary of a dwelling. It's just a specific type or subset of burglary of a dwelling.

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