

PRECEDENTIAL VALUE

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This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website. A combined outline of all cases published in Precedential Value since January 2015 may be found on our website at www.fpd-ohs.org.

I. Sentencing Issues

B. Guideline issues

2B1.1 – Loss amount

U.S. v. Roberts, 17-6512 (3/28/19)

The defendant was convicted of selling stolen military equipment on eBay. At sentencing, the government presented a witness to establish an estimate of the percentage of the equipment that the defendant sold on eBay that was actually stolen. The district court questioned the witness about her valuation method, but she could provide no itemization or supporting documentation to support her testimony. The district court then adopted the government's loss computation. The district court also denied the defendant's requests for CJA funds to hire an accountant to review the findings. On appeal, the court held that **a district court must specifically rule on a defendant's objections to a loss computation and make findings as to how it determines the loss amount. The court ruled that it is not sufficient for a district court to merely adopt the government's loss computation without explanation.** Accordingly, the case was remanded for resentencing. The court directed

the district court to reconsider the defendant's request for CJA funds for an accountant on remand.

2D1.1 – Drug amount

U.S. v. Armstrong, 18-5079 (4/3/19)

The defendant was convicted of selling heroin to an informant. At sentencing, the government sought an increased guideline range based on alleged sales that the defendant had made to the informant over the previous two years. To support this claim, the agent testified that he spoke to the informant, who told him that he had bought heroin from the defendant in one gram quantities for approximately two years. The agent had corroborated this information by arranging three controlled purchases of one gram of heroin from the defendant, which went off without a hitch. The district court increased the defendant's sentence based on the two years of prior heroin sales, and the defendant appealed. The court held that a district court may consider hearsay evidence at sentencing where the evidence has "some evidentiary basis to satisfy a minimal indicium of reliability." **Where a confidential informant is involved, district courts can rely on hearsay only where "there is good**

cause for the non-disclosure of the informant's identity and there is sufficient corroboration by other means." The court found that the agent had sufficiently corroborated the informant's information by actually making three one ounce purchases of heroin from the defendant. Further, the court held that the defendant actually knew who the informant was and chose not to call him as a witness at the hearing, thus any issues related to the informant's identity and the defendant's right to confrontation had been waived. Accordingly, the defendant's sentence was affirmed.

2G2.2(b)(3)(B) – Distribution of child porn

U.S. v. Oliver, 18-5465 (3/26/19)

The defendant was convicted of distributing child pornography to an undercover agent. In the online conversation, the defendant sent the child porn in an effort to convince the agent to agree to let him have sex with the agent's (fictitious) child. At sentencing, the district court imposed a 5 level enhancement because it found that the defendant distributed child porn for a thing of value, pursuant to USSG 2G2.2(b)(3)(B). On appeal, the court held for the first time that, in order to apply the 5 level enhancement for distribution of child porn for a thing of value, the government must show the following: (1) the defendant agreed to exchange with another person; (2) knowing distribution of child porn to that person; (3) the exchange was for the specific purpose of obtaining something of value; and (4) the thing of value was obtained from the same person. The court found that although the district court determined that the defendant's purpose in sending child porn to the agent was to convince the agent to agree to the sexual act, the district court did not properly determine in the first instance whether there was an actual agreement – explicit or implicit – for the exchange of child porn. Accordingly, the court remanded the case for consideration based on the proper standard.

3C1.1 – Obstruction of Justice

U.S. v. Roberts, 17-6512 (3/28/19)

The defendant testified at his trial for selling stolen military equipment on eBay. At sentencing, the district court applied a two-level enhancement for obstruction of justice based on its finding that the defendant perjured himself at trial. On appeal, the court held that the district court's ruling was inadequate. A district court may not rely on a jury verdict of guilt to establish an obstruction enhancement. Instead, the district court must (1) specifically identify the portions of the testimony it finds perjurious and (2) make specific findings, or establish the factual predicates, for each element of perjury. The court found that the district court did not satisfy either of these requirements in its ruling, and accordingly application of the enhancement was vacated and the case remanded.

D. Recidivism enhancements

18 USC § 924(e) – ACCA

Chaney v. U.S., 17-2024 (3/11/19)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that the defendant was an armed career criminal based, in part, on his prior Michigan conviction for attempted unarmed robbery. After Johnson, the defendant filed a habeas petition alleging that the robbery conviction no longer counted under the ACCA. The district court denied the motion. On appeal, the court held that the Michigan robbery offense qualified as a violent felony under the force clause of the ACCA. Specifically, the Michigan statute in effect at the time required that the robbery be committed by "putting a victim in fear of bodily injury from physical force." Further, the court emphasized that Michigan law required that the force and violence used "must be the act that is used to accomplish the taking." The court

found that these requirements in the Michigan statute satisfied the ACCA provision that the defendant threatened use of physical force against the person of another. Accordingly, application of the ACCA to the defendant was affirmed.

U.S. v. Eason, 18-5387 (3/22/19)

The defendant was convicted of being a felon in possession of a firearm, and the government argued at sentencing that the defendant was an armed career offender. The district court concluded that the defendant's prior Tennessee conviction for "purchasing an ingredient to produce methamphetamine with reckless disregard of its intended use" did not qualify as a predicate for the ACCA. The government appealed. The court held that under the ACCA's broad inclusion of any offense under state law "involving" the manufacture of a controlled substance, the Tennessee conviction counted as an ACCA predicate. The court found that the purchase of meth ingredients is an essential first step in the manufacturing process, and the fact that Tennessee required a mental state of at least recklessness ensured that the connection to the manufacturing was not too attenuated. Accordingly, the district court's ruling was reversed and the case remanded.

Lowe v. U.S., 17-5490 (4/4/19)

The defendant was convicted of being a felon in possession of a firearm, and the district court determined that he was an armed career criminal. After an unsuccessful appeal and two habeas petitions, the Sixth Circuit agreed to a certificate of appealability on the issue of whether the defendant's prior Tennessee rape conviction was a violent felony under the ACCA. The court held that it was not. Under Tennessee law at the time, a defendant could be convicted for rape by coercion. Tennessee defined coercion to include "the use of parental, custodial, or official authority over a child less than 15 years of age."

The court found that this offense was not a violent felony under the force clause of the ACCA because it did not contain as an element the use or threatened use of force. Accordingly, the court held that the rape conviction did not qualify and the defendant's ACCA sentence was vacated.

III. Evidence

A. Article IV – Relevancy

403 – Undue prejudice

U.S. v. Roberts, 17-6512 (3/28/19)

The defendant was charged with knowingly selling stolen military equipment on eBay. At trial, the defendant offered evidence of other military equipment that was for sale on eBay in order to rebut any inference that he should have known that the sale of military equipment was illegal. The district court excluded the evidence under FRE 403, the defendant was convicted, and he appealed. The court held that exclusion of the evidence under 403 was proper. The court found that the probative value of the evidence was low because the government had abundant evidence that the defendant actually knew the equipment he was selling was stolen. As such, the court ruled that the evidence would have only served to confuse the issues and may have caused the jury to acquit on an improper basis. Thus, the evidence was properly excluded under FRE 403, and the conviction was affirmed.

IV. Fourth Amendment

C. Warrant Exceptions

Probation Searches

U.S. v. Ickes, 18-5708 (4/25/19)

The defendant was on probation when he accepted a controlled delivery of methamphetamine. As a result, he was arrested and his residence and vehicle were searched by

his probation officer and law enforcement. He moved to suppress the fruits of that search, claiming that the search was not a valid probationary search because the probation officer had acted as a stalking horse for police. On appeal, the court held that the stalking horse doctrine, if it exists at all, does not apply where the defendant is subject to a valid probationary search provision and law enforcement has reasonable suspicion that the defendant committed a crime. Finding reasonable suspicion existed in the case, the court affirmed the defendant's conviction.

E. Search Warrants

Good faith

U.S. v. Asgari, 18-3302 (3/19/19)

The defendant was an Iranian scientist who entered the U.S. several times based on Visa applications indicating that he was visiting New York, Florida, Pennsylvania, and Los Angeles. He did not disclose that he was going to Cleveland to meet with another scientist at Case Western to study electron microscopy. In a later visit, he was hired by Case Western, but his visa did not permit this employment. The government obtained a warrant to search the defendant's emails based on an investigation for making false statements in a Visa application and violation of an executive order that prohibited exportation of technology or services to Iran. Based on the evidence obtained, the defendant was indicted for stealing trade secrets, wire fraud, and visa fraud. He moved to suppress the evidence and the district court granted the motion. The district court found no probable cause for the search warrant and that it was not saved by good faith because the agent had made intentionally false statements in the search warrant affidavit. On the government's appeal, the court held that the warrant was saved by good faith. The court found that there was sufficient information that the

defendant made false statements on his passport application regarding the location and purpose of his travel in the U.S. such that the affidavit was not bare bones. Further, the court found that, although some of the information provided by the agent may have been incomplete, it did not rise to the level of intentional or reckless falsehoods as required by Leon. Thus, the court ruled that the search warrant was saved by good faith and the district court's ruling suppressing the evidence was reversed.

Particularity

U.S. v. Chaney, 17-6167 (4/11/19)

The defendants ran a medical clinic, a certain percentage of which were pain management clientele. The government began investigating the clinic for unlawful distribution of pain pills, and as such, obtained a search warrant for patient files. The defendant argued in the district court that the search warrant was overbroad because it permitted the agents to seize all patient files. The district court disagreed, the defendant was convicted, and he appealed. The court held that the Fourth Amendment's particularity requirement generally prohibits the seizure of all the business records of an enterprise unless it is engaged in "pervasive fraud." The court first found that the "pervasive fraud" exception did not apply to allow a general warrant in the case because about 50% of the clinic's patients were not in pain management and it could not be said that the "principal purpose" of the business was to operate a pill mill. Thus, although the legitimate patient files were intermingled with the pain management files, the court held that a general warrant for all patient files was not authorized. Nonetheless, the court held that the warrant was valid on its face because it contained the limitation that the investigators could only seize patient files for evidence of violations of the federal drug distribution and money laundering statutes. The court ruled that this limitation,

combined with the detailed description in the affidavit of the nature of the pill mill operation reasonably limited the scope of the patient files to be seized. Accordingly, the warrant was sufficiently particular and the district court's ruling was affirmed.

V. Fifth Amendment

A. Prosecutor Conduct

Prosecutorial misconduct

U.S. v. Bradley, 17-1727 (3/1/19)

The defendant was charged with participating in a conspiracy to defraud the government. During opening statement, the government provided a metaphor to the jury that a criminal case was like scales, and that either side could present evidence that would tip the scales in favor of guilt or innocence. Further, during the rebuttal portion of closing argument, the government provided an additional metaphor that the criminal case was like a puzzle. Often, some of the pieces are missing, but you can still tell it is supposed to be the picture depicted on the cover of the box. The defendant failed to object to either metaphor and he was convicted. On appeal, the court held that, in assessing prosecutorial misconduct, the court first considers whether the prosecutor's comments were improper and, if so, whether they were flagrant such that reversal of the conviction is required. The court first found that the prosecutor's use of the two metaphors was in fact improper. The "scales" metaphor improperly suggested that the standard of proof was less than the reasonable doubt standard and that the defendant had some burden to put evidence on the scale. The "puzzle" metaphor improperly suggested that some evidence may be sufficient to complete the picture of the puzzle and implied that a far less demanding standard of proof than beyond a reasonable doubt was required. Nonetheless, the court ruled that neither metaphor was flagrant because they were isolated

comments, there was no suggestion that the prosecutor intentionally misled the jury, there was significant evidence of the defendant's guilt, and the district court provided a thorough and repeated instruction on the proper burdens of proof. As such, the defendant's conviction was affirmed.

VI. Sixth Amendment

D. Right to Counsel/Self Represent

U.S. v. Steele, 18-1146 (3/26/19)

The defendant proceeded to trial on RICO, drug and firearm charges. On the seventh day of trial, the defendant requested either the substitution of counsel or to be able to question witnesses himself. The defendant claimed a breakdown in attorney-client relations, that his attorney was suffering from dementia, and that his attorney could not hear well. The district court analyzed the situation and denied the defendant's requests. On appeal, the court found that substitution of counsel was properly denied. The request seven days into trial was untimely, any issues of dementia or hearing issues were either not borne out by the record or were resolved through the use of note taking between the defendant and counsel, and there was sufficient identifiable communication between the defendant and his counsel. The court noted that much of the communication problems had been because the defendant was either late or missed meetings with counsel and that he chose to live out of state during the trial preparation period. Further, the court found that there is no right to hybrid representation, and thus the defendant's requests to question witnesses was properly denied. Accordingly, the conviction was affirmed.

E. Indictment - Variance/Duplicity**Variance from indictment****U.S. v. Bradley, 17-1727 (3/1/19)**

The defendant was charged with participating in a conspiracy to defraud the government under 18 USC § 371. The defendant was a contractor who assisted a developer to fraudulently divert funds that were supposed to be used to build charter schools. The government proved at trial that the defendant participated in a series of financial transactions through the defendant's bank accounts which diverted money away from the construction projects and into the personal account of the developer. As part of the government's case, it presented evidence that the defendant failed to properly report the income from the transactions on his relevant tax return. This tax evidence was not referenced or charged in the indictment and the defendant argued on appeal that it constituted a material variance from the indictment. The court held that, in order for evidence to constitute material variance requiring reversal, the evidence at trial must prove materially different facts from those alleged in the indictment and the defendant's case must have been prejudiced thereby. The court found that **the fraudulent transactions were detailed in the indictment and it was obvious that those transactions would have tax consequences in terms of generating income that should have been reported. The court held that the presentation of evidence by an IRS agent as to the impact of that income on the defendant's tax burden was not "materially different" from the conspiracy charge in the indictment. Further, the court ruled that the evidence did not prejudice the defendant because he had sufficient notice of its presentation, he had the opportunity to cross exam the agent and challenge the evidence, and the tax evidence was not actually inconsistent with the defendant's trial defense – he was in over his head in financial dealings and was not knowingly a part of the**

conspiracy. Accordingly, the court found that no material variance occurred and the defendant's conviction was affirmed.

VIII. Defenses**A. Severance of Counts/Defendants****Prejudicial Misjoinder****U.S. v. Jackson, 17-3896 (3/12/19)**

The defendant was charged with multiple instances of carjacking with firearms. At trial, a government witness recanted a former statement that the defendant was involved in some of the carjackings. Prior to the close of the case, the government dismissed those counts of the indictment. Upon his conviction on the remaining counts, the defendant argued on appeal that prejudicial misjoinder occurred based on the government's actions. The court held that prejudicial misjoinder may occur where prejudicial spillover of otherwise inadmissible evidence influences a jury's decision and the defendant can show either compelling prejudice or that the prosecutor acted in bad faith in bringing the dismissed charge. The court found no compelling prejudice because the dismissed carjacking counts were just more of the same type of conduct that was alleged in the remaining carjacking counts in the indictment. Further, the court ruled that no prosecutorial bad faith existed because the government witness had previously indicated that the defendant was involved in all of the carjacking incidents and the government dismissed the relevant counts once the witness recanted on the stand. Accordingly, no prejudicial misjoinder occurred and the convictions were affirmed.

E. Venue/Jurisdiction

U.S. v. Petlechkov, 18-5991 (5/1/19)

The defendant was prosecuted for multiple counts of mail fraud based on misrepresentations he made to FedEx, which caused a number of packages to be sent at a discounted rate. At trial, the government introduced evidence demonstrating that FedEx had a hub in the Western District of Tennessee where the charges were brought. Upon the defendant's conviction he appealed and argued that venue was improper. The court held that venue had not been properly established for all of the mail fraud counts. The government charged each mailing of a package as a separate mail fraud count, and thus the court ruled that the government was required to establish venue for each package. The court found that a number of the packages were neither mailed from nor received in the district. The court held that, for these packages, the government's evidence that FedEx had a hub in the district was insufficient to establish venue. The government must prove by a preponderance of the evidence that the offense had some connection to the district, and this evidence clearly fell short. Accordingly, the court held that the case had to be remanded. The court ruled that venue is not an element of the offense and as such the Double Jeopardy Clause did not apply to the venue determination. Therefore, the government could choose to retry the defendant for the counts in question.

J. Speedy Trial Act/IAD

Speedy Trial Act

U.S. v. White, 16-1009 (4/10/19)

The defendant was charged with drug and firearm offenses in a criminal complaint. The parties engaged in plea negotiations pre-indictment and agreed to extend the 30 day period to indict under 18 USC § 3161(b), the Speedy Trial Act. The

defendant ultimately moved to dismiss the case because the government did not indict him within the 30 day time period. Following Sixth Circuit precedent, the district court and Sixth Circuit held that the time for plea negotiations was automatically tolled. The Supreme Court remanded the case for consideration in light of its decision in Bloate v. U.S. On remand, the court held that Bloate compelled the finding that the Speedy Trial Act is not automatically tolled whenever the parties engage in plea negotiations. Under § 3161(h)(1)(G), the speedy trial clock is only tolled when a plea agreement is actually under consideration by the district court. Thus, plea negotiations themselves, which necessarily come before a plea agreement is submitted to the district court, cannot automatically toll the speedy trial clock. Nonetheless, the court found that because the defendant agreed to waive speedy trial pre-indictment, and the district court made an ends of justice finding under § 3161(h)(7)(A), the speedy trial clock was properly tolled under that alternative basis. The court held that the parties' request to toll the speedy trial clock to have additional time to resolve a case pre-indictment was a proper basis for an ends of justice exclusion of time under the Speedy Trial Act. Accordingly, the defendant's conviction was affirmed.

IX. Jury Issues

A. Jury Instructions

18 USC § 924(c) – Firearm Enhancement

U.S. v. Steele, 18-1146 (3/26/19)

The defendant was charged with participating in a RICO conspiracy and with possession of a firearm in furtherance of drug trafficking. At trial, the government introduced evidence that the defendant possessed a number of firearms at his residence to protect his marijuana and also carried a firearm during marijuana sales. The district court did not instruct the jury that it had to

be unanimous regarding a specific firearm for the § 924(c) charge, but that it did have to agree to a specific instance of possession in order to convict. Upon his conviction, the defendant argued for the first time on appeal that the jury instruction was erroneous for failing to require specific unanimity on a single firearm. Deciding an open question, the court held that a specific unanimity instruction is not generally required regarding which specific firearm was possessed for a 924(c) charge. The court found that the defendant's right to a unanimous verdict was sufficiently protected by the district court's instruction that the jury had to agree on a specific instance of possession. Accordingly, the conviction was affirmed.

XI. Appeal

Final Order/Mandamus

U.S. v. Martirosian, 18-4035 (3/7/19)

The defendant was charged with money laundering but refused to come to the U.S. from China to answer to the indictment. Instead, his attorney filed a motion to dismiss the charges. The district court held the motion in abeyance until the defendant submitted himself to the jurisdiction of the court. The defendant appealed this decision and also filed a mandamus action asking the Sixth Circuit to order the district court to rule. The court first held that the district court's decision to hold the motion in abeyance was not a final appealable order and accordingly dismissed the appeal. Second, the court held that mandamus was not appropriate. The defendant had a clear avenue to get the district court to rule by showing up for court. Further, the court held that the district court had reasonably relied on the fugitive disentitlement doctrine to avoid ruling on the defendant's motion. Accordingly, the mandamus action was denied.

XII. Specific Offenses

18 USC § 924(c) – Firearm Enhancement

U.S. v. Jackson, 17-3896 (3/12/19)

The defendant was convicted of multiple carjackings and § 924(c) enhancements. He argued on appeal that carjacking does not count as a crime of violence under § 924(c). He additionally argued that two of his carjackings occurred simultaneously, and thus he could not be sentenced for separate consecutive § 924(c) sentences. The court first held that carjacking is a crime of violence under the elements clause (also known as the force clause) of § 924(c) because even a carjacking by intimidation requires at least the threatened use of violent physical force. Thus, the carjackings were a proper basis for the § 924(c) convictions. Second, the court held that the defendant could not be sentenced for two consecutive 25 year sentences for the § 924(c) convictions where the underlying carjackings occurred simultaneously on two vehicles. The court found that the defendant made a single choice to use the same firearm to commit two crimes at once. As such, he could only be convicted of one § 924(c) offense for the two crimes. Accordingly, one of the defendant's § 924(c) convictions was vacated, and the sentence was otherwise affirmed.

21 USC §§ 841 & 846 – Pill Mills

U.S. v. Chaney, 17-6167 (4/11/19)

The defendants ran a pain clinic and were charged with unlawfully distributing pain pills outside of the course of professional medical practice. During the government's case at trial, it presented an expert who testified that only two of the defendant's patients did not have an underlying medical condition that would justify the prescribing of pain pills. As such, the defendant argued that the evidence was insufficient to support the verdict. On appeal, the court held that

three elements must be proven under 21 USC § 841 against a physician: (1) the defendant distributed a controlled substance; (2) the defendant acted intentionally or knowingly; and (3) the defendant prescribed the drug “without a legitimate medical purpose and outside the course of professional practice.” The court held that, although a patient’s underlying medical condition is a consideration, the central question is whether the doctor’s purpose was the legitimate medical treatment of the condition or some other reason. In the case, the court found ample evidence that the clinic was issuing prescriptions without proper examinations, issuing prescriptions that were signed in blank, and encouraging patients to take more pills than needed and to sell the excess. Further, the court held that, while expert testimony may be helpful to prove the government’s case, it is not required. Accordingly, the court found the evidence sufficient to support the jury’s verdict convicting the defendants.

18 USC § 1341 – Mail Fraud

U.S. v. Petlechkov, 18-5991 (5/1/19)

The defendant misrepresented to Federal Express that he was a vendor of General Dynamics, a company that was a high-volume shipper of federal express packages. As a result, Federal Express extended him a discount. The defendant then charged his customers the regular FedEx rate for shipping packages and pocketed the difference. The defendant was subsequently prosecuted for multiple counts of mail fraud, and he argued at trial that the misrepresentations he made to Federal Express were not material because vendors of General Dynamics were not actually entitled to the high-volume shipper discount with FedEx. The defendant was convicted and he appealed. The court held that regardless of whether all vendors of General Dynamics were entitled to discounts under the contract with FedEx, the defendant’s

misrepresentations about his vendor status were nonetheless material. The court found that FedEx employees have the discretion to provide customers with the discount. The defendant’s false statements certainly had the propensity to influence a FedEx employee to award the discount, and actually did cause an employee to do so in this case. Accordingly, the court found that the defendant’s statements were material and the mail fraud statute was accordingly violated.

18 USC § 1341 & 1343–Honest Services Fraud

U.S. v. Lee, 17-3868 (3/18/19)

The defendant was a city council member who was charged with agreeing with a local businessman to accept money in return for attempting to affect the outcome of a local prosecution. Specifically, the defendant agreed to call and did call the judge and prosecutor on the case. Upon his prosecution, the defendant moved to dismiss the indictment for failing to charge an offense, and argued at the close of trial that the evidence was insufficient to support the verdict. Upon her conviction, the defendant appealed. The court held that, under the honest service fraud statutes, a defendant may be criminally liable if the defendant agrees to use her official position to attempt to persuade another public official to take official action related to a matter. The court found that it was not necessary under the statute that the defendant have a supervisory or advisory role over the public official. Thus, the defendant’s agreement with the businessman to accept payments in return for attempting to influence the prosecutor and judge was conduct that fell within the statute. As such, the defendant’s conviction was affirmed.

XIII. Post-Conviction Remedies

Bucklew v. Precythe, 17-8151 (4/1/19) **Supreme Court**

The plaintiff was convicted of murder in Missouri state court and sentenced to death. The plaintiff subsequently filed suit under 18 USC § 1983 and alleged that the use of lethal injection as a method of execution would amount to cruel and unusual punishment in violation of the Eighth Amendment. The plaintiff argued that even though the state's lethal injection protocol might be constitutional if implemented on other inmates, it was unconstitutional as applied to him due to his serious health conditions. The plaintiff further argued that because he was raising an "as applied" challenge, it was not necessary for him to establish an alternative method of execution, as normally required by Glossip v. Gross, 135 S. Ct. 2726 (2015). In the alternative, the plaintiff alleged that nitrogen gas was an available alternative under Glossip.

The Supreme Court rejected the plaintiff's arguments. Under Glossip, an Eighth Amendment challenge to a method of execution must allege an alternative method, irrespective of whether the plaintiff is raising a facial challenge or an as applied challenge. The plaintiff is not limited to alternative methods that are currently available under state law, however. The Court further concluded that the plaintiff failed to demonstrate that nitrogen gas was a feasible and readily implemented alternative, or that it would substantially reduce the risk of severe pain, as required by Glossip. The grant of summary judgment against the plaintiff was accordingly upheld.

Daniel v. Burton, 18-1276 (3/27/19)

The petitioner was convicted of murder in Michigan state court. At trial, the petitioner was

required to wear an electronic restraint underneath his clothing. The petitioner alleged that the restraint interfered with his ability to consult with his attorney because he feared that the courtroom guards would activate it. The Michigan Court of Appeals rejected the petitioner's claim on the merits. The Sixth Circuit concluded that the state court's rejection of the petitioner's claim was entitled to deference under 28 USC § 2254(d), and as a result, the denial of habeas corpus relief was affirmed.

Edmonds v. Smith, 17-5982 (4/26/19)

The petitioner and a co-defendant were tried together in Kentucky state court and convicted of murder. The state court appeals were consolidated and the convictions were affirmed. The co-defendant filed a federal habeas corpus petition but relief was denied. The petitioner then filed his own federal habeas corpus action raising claims that overlapped with those that had previously been rejected in the co-defendant's case. The district court dismissed the petitioner's claims under the law of the case doctrine based on the earlier rejection of the co-defendant's overlapping claims. The Sixth Circuit concluded that the law of the case doctrine does not apply to separate habeas corpus actions brought by separate petitioners. The decision of the district court was therefore reversed, and the case was remanded for further proceedings.

In re Caldwell, 18-6074 (3/8/19)

The petitioner pleaded guilty to murder and aggravated robbery in two separate cases in Tennessee state court on the same day. The petitioner filed a federal habeas corpus petition that was limited to challenging his murder conviction; relief was denied. The petitioner subsequently filed a second petition attacking both his murder conviction and his aggravated robbery conviction from the second case. The

district court concluded that the petition was second or successive under 28 USC § 2244(b)(3) and transferred the case to the Sixth Circuit to determine if authorization to proceed was warranted. **The Sixth Circuit concluded that the petition was only second or successive to the extent that it challenged his murder conviction, and that it could proceed as a first petition with respect to the aggravated robbery conviction.** The Sixth Circuit further concluded that the petitioner failed to satisfy the requirements for authorization to file a second or successive petition with respect to his murder conviction. The petitioner's case was accordingly dismissed to the extent that it challenged his murder conviction and transferred back to the district court to the extent that it challenged his aggravated robbery conviction.

Sampson v. Garrett, 18-1900 (3/6/19)

The plaintiff was sentenced to life in prison in Michigan state court. The plaintiff sued various officials under 42 USC § 1983 and alleged that they had interfered with his direct criminal appeal by depriving him of trial transcripts and other materials in order to limit his access to the courts. The Sixth Circuit concluded that the plaintiff's claim was not cognizable under § 1983. **Heck v. Humphrey, 512 U.S. 477 (1994), bars a § 1983 claim if success on the claim would necessarily imply that the plaintiff's conviction or sentence was invalid.** A successful access to the courts claim requires a prisoner to show that his underlying claim is nonfrivolous and arguable. As a result, a judgment in favor of the plaintiff would necessarily imply that his convictions were invalid, and his claim could not be raised in a civil rights suit under § 1983.