

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, under the Precedential Value tab.

I. Sentencing Issues

A. 3553(a) factors and issues

U.S. v. Dunnican, 19-3092 (6/9/20)

The defendant was convicted after trial of drug trafficking and a firearm enhancement under 18 USC § 924(c). At sentencing, the district court imposed a 21 month upward variance from the guideline range due in large part to the defendant's extensive criminal record and the fact that he committed the new crimes while on post-release control from two violent offenses. On appeal, the court ruled that the sentence was procedurally and substantively reasonable. The court found that the district court had properly calculated the guideline range, and had based its decision to upwardly vary on the factors under 18 USC § 3553(a). The court emphasized that all of the factors under § 3553 are not important in every case, but that the district court was free to determine that only a few of the factors may carry great weight in a given case. Thus, the district court's reliance primarily on the need to protect the public and deter the defendant from committing further crime was reasonable. As such, the sentence was affirmed.

U.S. v. Perez-Rodriguez, 18-4203 (5/27/20)

The defendant was convicted of illegal reentry by a removed alien. At sentencing, the district court imposed an upward variance from a guideline

range of 8-14 months to a sentence of 24 months. The district court based this increase on the fact that the defendant had a prior DUI conviction, a probation violation, a prior felony for illegal reentry, and two prior removals from the U.S. On appeal, the court held that the sentence was substantively unreasonable. The court found that the defendant's sentence was a mine-run type of case for an illegal reentry defendant, and that the defendant's history was adequately accounted for by the guideline calculation. Noting that the sentence was a 108% increase from the middle of the applicable sentencing guideline range, the court ruled that the sentence was improper and created disparities between similarly situated defendants. Therefore, the sentence was vacated and the case remanded for resentencing.

B. Guideline issues

2B3.1(b)(4) – Robbery – Abduction

U.S. v. Hill, 19-1003 (6/25/20)

At sentencing for Hobbs Act robbery, the district court imposed a 4 level enhancement under USSG § 2B3.1(b)(4)(A) because the district court concluded that the defendant moved the victim to a "different location" during the robbery. The different location was the back room of the cell phone store that the defendant was robbing. On appeal, the court held that the phrase "different location" as used in the guideline section cannot refer to another room in the store being robbed.

As such, § 2B3.1(b)(4)(A) was not properly applied. Rather, the court held that the appropriate enhancement was a 2 level increase under § 2B3.1(b)(4)(B) for “physical restraint” of the victim. Accordingly, the case was remanded for resentencing.

2B1.1(b)(10)(A) – Relocation of Scheme

U.S. v. Woodson, 19-1906 (6/3/20)

The defendant participated in a scheme to rob jewelry stores. Although the home base for the scheme remained in Toledo, the defendants hit stores in multiple states, often near state borders in order to avoid detection. Upon conviction for participating in a conspiracy, the district court imposed a 2 level enhancement under USSG § 2B1.1(b)(10)(A) for relocating the scheme to avoid detection. On appeal, the court held that the enhancement was proper. In interpreting the word scheme, the court applied what it termed “corpus linguistics” to determine that a scheme refers to “concepts, plans, and criminal enterprise” rather than the simple physical location. Thus, even where criminals use a single base of operations, a district court may find that the “scheme” was “relocated” where the defendant commits the crimes in multiple locations to avoid detection. Therefore, application of the enhancement was affirmed.

2D1.1 – Drug Amount

U.S. v. Castro, 19-1166 (6/3/20)

The defendant was convicted at trial of being involved in a conspiracy to distribute less than 500 grams of cocaine. The jury specifically rejected the theory that the defendant distributed more than 500 grams of cocaine and that he also distributed heroin. At sentencing, the district court found that the evidence supported a higher drug amount for the cocaine, and that the defendant was also responsible for distributing heroin. On appeal, the court held that, as long as the increased drug amounts do not result in a sentence higher than the statutory maximum for the drug amounts found by the jury, a district

court is free to determine drug amounts at sentencing based on a preponderance of the evidence. The court ruled that the testimony of a cooperating defendant established by a preponderance of the evidence that the defendant was involved with more drugs than found by the jury at trial. Thus, the sentence was affirmed.

2D1.1(b)(1) – Drugs – Firearm Possession

U.S. v. West, 19-6106 (6/12/20)

The defendant sold meth to an informant in February and then again in April. The April sale turned out to be fake drugs. At the time of this second sale, a gun was found in the car near the defendant and a female in the car said it was the defendant’s gun. The defendant pled guilty to the February sale, but not the gun. At sentencing, the district court imposed a 2 level increase under USSG § 2D1.1(b)(1) for possessing a gun during a drug offense. On appeal, the court first held that the district court’s fact finding was not clear error that the defendant possessed the gun. The gun was in close proximity to the defendant, and the district court was permitted to consider the hearsay evidence that the female said the gun belonged to the defendant. Second, the court found that the second drug sale, even though the drugs were fake, was relevant conduct to the first sale. The court held that the second sale was close in time to the first sale, involved the same parties, and same modus operandi. Accordingly, the gun possession could be considered relevant conduct to the drug sale for which the defendant was convicted, and the sentence was affirmed.

3C1.1 – Obstruction of Justice – Perjury

U.S. v. Castro, 19-1166 (6/3/20)

The defendant testified at his trial for participating in a drug conspiracy. He claimed that what the government established were drug transactions were actually him transferring razors back and forth as part of his business as a barber. At sentencing, the district court imposed a 2 level enhancement for obstruction of justice based on its finding that the defendant had perjured

himself. On appeal, the court held that in order to impose an obstruction of justice enhancement for perjury, the district court must make specific findings that the defendant gave false testimony concerning a material matter with the intent to provide false testimony. The court found that the defendant's testimony was "far fetched" and "incredible" given the evidence in the case, it clearly went to a material matter related to the drug transactions at issue in the case, and that the defendant intended to provide false testimony. Accordingly, the application of the enhancement was affirmed.

D. Recidivism enhancements

18 USC § 922(e) - ACCA

U.S. v. Buie, 18-6185 (5/29/20)

Upon the defendant's conviction for being a felon in possession of a firearm, the district court determined that he was an armed career offender based, in part, on two prior Tennessee convictions for aggravated burglary and arson. On appeal, the court held that both convictions qualified as violent felonies under the ACCA. The aggravated burglary conviction was already established by Sixth Circuit precedent. Further, the court ruled that the Tennessee arson statute complied with the generic meaning of arson, as listed in the enumeration clause of the ACCA. Specifically, the court found that the generic definition of arson included aiding and abetting arson, which was a grounds for criminal liability under the Tennessee statute. Further, the court held that the *mens rea* of "knowingly" was sufficient for the generic form of arson. Accordingly, the sentence was affirmed.

Porter v. U.S., 18-5091 (5/20/20)

The defendant was convicted of Hobbs Act robbery and being a felon in possession of a firearm. The district court determined that he was an armed career criminal based on prior Georgia convictions for armed robbery. After the Supreme Court's decision in Johnson v. U.S., the defendant filed a habeas petition which the

district court denied. On appeal, the court held that the Georgia armed robbery convictions were violent felonies under the ACCA. Specifically, the Georgia armed robbery statute required that the defendant took property from the person or presence of another through use of a deadly weapon or any article appearing to be such a weapon. The court ruled that the use of a deadly weapon against the person of another constituted a violent felony under the force clause of the ACCA. Further, the court found that using a replica instead of a real gun did not alter the analysis because threatening to shoot someone still constitutes a threat of force under the ACCA. Finally, the court held that Georgia case law had only permitted conviction for armed robbery where the offense was against a person, as opposed to a threat to property. Thus, the armed robbery statute was properly considered to be a violent felony and application of the ACCA enhancement was affirmed.

USSG § 4B1.1 – Career Offender

U.S. v. Smith, 19-3236 (6/5/20)

At the defendant's sentencing for drug trafficking, the district court determined that the defendant was a career offender based, in part, on his prior Ohio conviction for drug trafficking. On appeal, the court held that the prior Ohio drug trafficking conviction counted as a controlled substance offense under the guidelines. Specifically, ORC § 2925.03(A)(2) prohibits knowingly preparing drugs for distribution, knowing or having reasonable cause to know, that the drugs will be sold. The court found that the statute was indivisible, in that it defined only one offense, and that the offense was akin to possession of drugs with intent to distribute, a crime that is a controlled substance offense under the guidelines. Accordingly, the court affirmed the defendant's career offender status and his sentence.

III. Evidence

A. Article IV – Relevancy

U.S. v. Dunnican, 19-3092 (6/9/20)

At the defendant’s trial for possession of marijuana with intent to distribute and possession of a firearm, the government introduced text messages from the defendant’s phone where he discussed selling marijuana. The defendant argued on appeal that the text messages were prohibited by FRE 404(b). The court held that the messages were properly admitted to show the defendant’s intent to distribute marijuana. The court found that the defendant challenged his intent to distribute at trial and the text messages showed that the defendant had distributed marijuana in the months leading up to the charges. Further, the court noted that the district court had twice given a proper limiting instruction that the evidence could only be considered in determining whether the defendant intended to distribute the marijuana he was in possession of. As such, the conviction was affirmed.

D. Discovery/Miscellaneous

902 – Authentication

U.S. v. Dunnican, 19-3092 (6/9/20)

During a drug investigation, officers seized the defendant’s phone and extracted forensic data from it. A summary of this evidence was admitted at the defendant’s trial for drug trafficking and possession of a firearm. The government provided notice that it intended to rely on the self-authentication feature of FRE 902(14) to admit the evidence. The defendant failed to object on this basis at trial, but assigned error to the procedure on appeal. The court held that, when proper notice is provided under the rules, a party may present a summary of electronic evidence where a qualified person certifies in writing that the evidence was copied from an electronic device through a process of digital identification, under FRE 902(14). The

court found that the certification was provided by an ATF agent who conducted the extraction and certified the reliability and verifiability of the software used. The court commented that the point of the rule was to require parties in advance of trial to determine whether authenticity of the evidence will be made and plan accordingly. Because the defendant failed to object and the certification was clearly sufficient, the court found no plain error in admission of the evidence through the written certification.

VI. Sixth Amendment

A. Right to Jury Trial

Fair Cross Section of Community

U.S. v. Dunnican, 19-3092 (6/9/20)

During jury deliberations in the defendant’s trial for drug and firearm possession, the only African American juror became ill and went to the hospital. The district court learned that there had been dissent in the jury room and complaints of race related issues. The district court waited several days to try to get the juror to return for deliberations, but ultimately proceeded with an alternate. The defendant raised on appeal that dismissal of the only African American juror was improper and that his right to a fair cross section had been violated. The court first held that the district court had taken reasonable steps to try to get the juror to return to deliberate. Further, the court found that the record did not support that the remaining jurors were impacted by any issues of “race and racial disagreements.” Finally, the court ruled that there was no legal requirement that the composition of juries must mirror the community in terms of various distinctive groups. Because the defendant could not show that African Americans were being excluded from juries or that any systematic exclusion occurred, his Sixth Amendment rights were not violated. Accordingly, the conviction was affirmed.

VIII. Defenses

K. Title III - Wire Tap

18 USC § 2518 - Wire Tap

U.S. v. Castro, 19-1166 (6/3/20)

Government agents were investigating a drug trafficking enterprise in which the defendant was engaged when the agents sought and obtained a wiretap for several of the coconspirators' phones. This evidence was later used at trial to connect the defendant to the drug trafficking activities. The defendant argued on appeal that the wiretap was improperly granted. The court held that the government had sufficiently shown that other investigative methods had either been tried and failed or were unlikely to succeed prior to obtaining the wiretap. The court found that the government sufficiently established that physical surveillance, use of informants, or arresting and interviewing codefendants were unlikely to assist the government in achieving its goal of locating the drug supplier for the organization. Further, the court held that using the wiretaps to try to identify the supplier, even when the government already had significant evidence against the coconspirators, was proper. The court ruled that "nothing requires the government to call off its investigation after it has achieved only some of its goals." Accordingly, the conviction was affirmed.

XI. Appeal

U.S. v. Sineneng-Smith, 19-67 (5/7/20)

Supreme Court

The defendant operated an immigration consulting firm and she was charged with unlawfully encouraging illegal aliens to remain in the U.S., pursuant to 8 USC § 1324. In the district court and on direct appeal to the Ninth Circuit, the defendant pursued the defense that the statute did not cover the conduct. During the appeal, however, the Ninth Circuit assigned amici to the case to brief an issue not raised by the parties, namely whether §1324 violated the First

Amendment. The Ninth Circuit then reversed the conviction on this basis and the Supreme Court granted the government's request for *certiorari*. The Court held that a court of appeals generally may not decide an issue not raised by the parties in their briefing. Finding no extraordinary circumstances compelling the Ninth Circuit's actions, the Court reversed its ruling and remanded the case for it to rule on the issues originally raised by the parties.

XII. Specific Offenses

18 USC §§ 1343 & 666 – Fraud – Property

Kelly v. U.S., 18-1059 (5/7/20)

Supreme Court

The defendants were public officials, working for New Jersey Governor Chris Christie, who closed down a number of lanes to the George Washington Bridge to severely delay traffic into Manhattan. These actions were taken in order to punish the Mayor of Fort Lee for failing to support Governor Christie's reelection campaign. The defendants were prosecuted under 18 USC §§ 1343 (wire fraud) and 666 (federal program benefits fraud) for this conduct. Both of these statutes require that the object of the fraud be to obtain property. Upon their convictions, the defendant appealed and the Supreme Court ultimately granted *certiorari*. The Court held that the closure of the lanes over a period of time was an exercise of regulatory authority, an exercise that fails to meet the fraud statutes' requirement that property be obtained. Any loss of wage labor for Port Authority employees, as alleged by the government, was merely an "incidental cost" rather than the object of the public officials' scheme. Accordingly, the convictions were reversed.

21 USC § 841 – Distribution Causing Death

U.S. v. Jeffries, 18-4081 (5/8/20)

During the defendant's trial for drug trafficking which resulted in the death of another, the district court declined to provide a jury instruction

requiring proximate cause between the distribution and the death. After trial, the district court granted a new trial based on its conclusion that it should have given the proximate cause instruction. On the government's appeal, the court held that proof of proximate cause is not required to establish the results-in-death enhancement under 21 USC § 841. Rather, the but-for causation requirement from the Supreme Court's decision in Burrage v. U.S. is all that is required. Thus, the district court's ruling was reversed and the conviction reinstated.

21 USC 841(b)(1)(C) – Penalty Provisions

U.S. v. Smith, 19-3236 (6/5/20)

The defendant pled guilty pursuant to a plea agreement to drug trafficking under 21 USC §§ 841(a) and (b)(1)(C). Prior to the plea, the government filed an enhancement under 21 USC § 851, increasing the defendant's statutory maximum from 20 years to 30 years. The defendant argued on appeal that the § 851 enhancement was improper under the newly passed First Step Act. The court first held that the FSA issue was waived by the defendant's appeal waiver in the plea agreement. The court went on to hold, however, that the FSA was inapplicable. The revised definition of a prior drug felony in the FSA only amended the penalty provisions of 18 USC § 841(b)(1)(A) and (B), but not the (b)(1)(C) provision. Thus, the FSA could not apply to the § 851 enhancement of the defendant's sentence.

21 USC § 846 – Drug Conspiracy

U.S. v. Castro, 19-1166 (6/3/20)

At the defendant's trial for participating in a drug conspiracy, the government introduced evidence that the defendant bought large quantities of drugs from a coconspirator on multiple occasions. On appeal, the defendant argued that he was only involved in a buyer-seller relationship and could not be convicted of conspiracy. The court held that a mere buyer-seller relationship alone is insufficient to

establish the defendant's participation in a conspiracy. In assessing whether a conspiracy conviction is appropriate, the court must consider "(1) the length of the relationship; (2) the established method of payment; (3) the extent to which transactions are standardized; and (4) the level of mutual trust between the buyer and the seller." The court found that given the repeated transactions in kilo quantities of drugs through an established procedure for delivery, the conspiracy was proven. As such, the conviction was affirmed.

XIII. Post-Conviction Remedies

U.S. v. Alam, 20-1298 (6/2/20)

Due to the COVID pandemic, the defendant moved for compassionate release under 18 USC § 3582(c)(1)(A). The district court denied the motion because the defendant had not exhausted his administrative remedies with the Bureau of Prisons, nor waited the required 30 days without a response from the warden. On appeal, the court first held that the administrative exhaustion requirement was not jurisdictional. Nonetheless, the court ruled that the exhaustion requirement was a mandatory claim processing rule that could not be excused. Accordingly, the defendant's motion was dismissed without prejudice.

U.S. v. Boulding, 19-1590 (6/1/20)

The defendant was convicted in 2009 to life imprisonment based on then existing crack cocaine penalties. In 2019, Congress passed the First Step Act, which made the reduction of crack penalties from the earlier enacted Fair Sentencing Act retroactive. As a result, the defendant filed a motion for resentencing. The district court granted the motion and reduced the defendant's sentence to 324 months, but declined to permit the defendant to file objections to the recalculated guideline range. The defendant appealed, and the government cross-appealed that the First Step Act was inapplicable. First, the court held that the defendant was entitled to First Step Act relief. The court found that FSA relief is based on whether the statutory penalties for crack cocaine

were reduced based on the offense of conviction, not the relevant conduct established at sentencing. Thus, because the jury found only that the defendant was guilty of conspiracy to distribute in excess of 50 grams of crack, it was irrelevant that the district court determined at sentencing that the relevant conduct amount of crack was actually over 600 grams. Second, the court held that a remand was necessary to permit the defendant to raise legal objections to the amended guideline calculation. Although the court acknowledged that a district court is not required to conduct a plenary resentencing in an FSA motion, the court nonetheless ruled that a defendant is at least entitled to make objections to the recalculated guideline range based on the FSA amendments. Whether the objections are heard orally or in writing is within the discretion of the district court. Accordingly, application of the FSA was affirmed, but the case was remanded for a proper determination of the guideline range.

U.S. v. Flowers, 19-3742 (6/23/20)

In a petition for resentencing under the First Step Act, the court held that a defendant is eligible for consideration under the FSA where the statutory penalties change, even where the guideline range remains the same. The court found that any error in the district court's contrary ruling was harmless because the district court also ruled on the merits that the defendant should not receive a reduced sentence.

U.S. v. Foreman, 19-1827 (5/7/20)

In a First Step Act petition, the court first confirmed circuit precedent that a defendant is not entitled to plenary resentencing. Second, the court held that it will review FSA sentences for reasonableness. The court found the defendant's FSA resentencing to be reasonable and affirmed.

U.S. v. Smith, 19-5281 (5/15/20)

The district court denied the defendant's First Step Act petition and declined to reduce the defendant's sentence of 240 months. This sentence was more than two times the guideline

range of 77-96 months that was appropriate based on the FSA. On appeal, the court held that a district court must give a sufficiently compelling justification before imposing a sentence that is such a significant departure from the applicable guideline range. The court found that the district court merely relied on the reasoning it provided at the original sentencing in the case, but failed to adequately consider the new guideline range and provide a sufficient basis for such a large variation from it. As such, the sentence was vacated and the case remanded.

Andrus v. Texas, 18-9674 (6/15/20)
Supreme Court

The petitioner was convicted of capital murder in Texas state court and sentenced to death. In state habeas proceedings, the petitioner alleged that he had been deprived of the effective assistance of counsel at the penalty phase of trial when his attorney failed to investigate and present evidence of his traumatic upbringing. The state habeas court recommended granting relief, but the Texas Court of Criminal Appeals summarily rejected the petitioner's claim without any meaningful explanation. The United States Supreme Court vacated the state appellate court's decision and remanded for further proceedings. The evidence developed in the state habeas proceeding clearly established that the petitioner had demonstrated deficient performance under Strickland v. Washington, 466 U.S. 668 (1984), and it was unclear whether the state appellate court had determined that the petitioner failed to demonstrate prejudice. The Supreme Court accordingly remanded the case to permit the state court to consider the question of prejudice in the first instance.

Bannister v. Davis, 18-6943 (6/1/20)
Supreme Court

The petitioner was convicted of aggravated assault in Texas state court and sentenced to

prison. After the denial of his federal habeas corpus petition, the petitioner filed a timely motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e), and filed a timely notice of appeal following the motion's denial. The Fifth Circuit held that motions under Rule 59(e) were unavailable in habeas corpus proceedings under 28 USC § 2254, and that the petitioner's motion was actually an unauthorized second or successive petition that did not toll the time for filing the notice of appeal. The petitioner's appeal was therefore dismissed as untimely. The United States Supreme Court reversed, concluding that timely motions under Rule 59(e) are permissible and do not constitute second or successive petitions, and that the petitioner's appeal was therefore timely.

Broom v. Shoop, 19-3356 (6/23/20)

The petitioner was convicted of aggravated murder and sentenced to death in Ohio state court. The state attempted to execute the petitioner, but abandoned the effort after two hours of unsuccessful efforts to obtain access to a vein. The state courts rejected the petitioner's claim that a second attempt to execute him would violate his rights against double jeopardy and cruel and unusual punishment. The Sixth Circuit concluded that the state court's rejection of the petitioner's claims was entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.

Davenport v. MacLaren, 17-2267 (6/30/20)

The petitioner was convicted of first-degree murder in Michigan state court. The petitioner was visibly shackled at trial in violation of Deck v. Missouri, 544 U.S. 622 (2005). The state courts agreed that the petitioner's rights were violated, but found the error harmless beyond a reasonable doubt under Chapman v.

California, 386 U.S. 18 (1967). The Sixth Circuit concluded that the respondent failed to show that the violation did not have a substantial and injurious effect on the verdict under Brecht v. Abrahamson, 507 U.S. 619 (1993), and as a result the denial of habeas corpus relief was reversed.

Freeman v. Wainwright, 18-3913 (5/12/20)

The petitioner pleaded guilty to felony murder in Ohio state court and was sentenced to fifteen years to life in prison, along with post-release control. Fifteen years later, the petitioner successfully eliminated the requirement of post-release control from his sentencing judgment. The petitioner then filed a petition for federal habeas corpus relief, and argued that the removal of post-release control from his sentence resulted in a new judgment that reset the AEDPA statute of limitations. The Sixth Circuit disagreed, explaining that a limited resentencing that is beneficial to the petitioner does not result in a new judgment. The dismissal of the petition was accordingly affirmed.

Hill v. Anderson, 99-4317, 14-3718 (5/20/20)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. The Sixth Circuit previously granted relief on the petitioner's claim of intellectual disability under Atkins v. Virginia, 536 U.S. 304 (2002). Hill v. Anderson, 881 F.3d 483 (6th Cir. 2018). The United States Supreme Court subsequently vacated the decision and remanded for further proceedings, finding that the Sixth Circuit improperly relied on the later occurring decisions in Moore v. Texas, 137 S. Ct. 1039 (2017), and Hall v. Florida, 572 U.S. 701 (2014), in conducting its analysis of the state court merits ruling under 28 USC § 2254(d)(1). Shoop v. Hill, 139 S. Ct. 504 (2019). On remand, the Sixth Circuit once

again concluded that the state court decision was not entitled to deference, even limiting its analysis under § 2254(d)(1) to precedent that was clearly established at the time of the state court ruling. Furthermore, the state court's decision was based on an unreasonable determination of the facts under § 2254(d)(2), which provided an independent basis for overcoming AEDPA's bar on relitigation. The judgment of the district court denying relief on the petitioner's claim of intellectual disability was accordingly reversed.

Moody v. United States, 19-5015 (5/6/20)

The petitioner was convicted of federal firearms and drug charges and sentenced to life in prison. The petitioner subsequently filed a motion to vacate under 28 USC § 2255. The district court denied the petition but granted a certificate of appealability on several claims. The Sixth Circuit vacated the certificate of appealability and dismissed the case, explaining that a claim should not be certified unless every independent basis for denying the claim is reasonably debatable. For example, even a clearly meritorious claim should not be certified if it is also indisputably defaulted. Because none of the petitioner's claims met the standard for a certificate of appealability, the case was dismissed.

Smith v. Nagy, 18-1751 (6/15/20)

The petitioner was convicted of first degree felony murder in Michigan and sentenced to life in prison without parole. Following trial, two jurors disclosed to defense counsel that they had changed their votes from not guilty to guilty because they believed a felony murder conviction would result in a relatively light sentence. Defense counsel requested an evidentiary hearing but this was denied, and the ruling was upheld on appeal on the ground that the petitioner failed to allege that an external

influence had infected the jury's deliberations. In federal habeas corpus proceedings, the petitioner alleged that the trial court's failure to grant him an evidentiary hearing in accordance with Remmer v. United States, 347 U.S. 227 (1954), violated his Sixth Amendment right to an impartial jury. The Sixth Circuit concluded that the state court rejection of the petitioner's claim was entitled to deference under 28 USC § 2254(d), and as a result the denial of relief was affirmed.

Smith v. Nagy, 18-1751 (6/15/20)

The petitioner was convicted of first degree felony murder in Michigan and sentenced to life in prison without parole. In federal habeas corpus proceedings, the petitioner raised a freestanding claim of actual innocence. The Sixth Circuit concluded that, even assuming a freestanding claim of actual innocence is a cognizable ground for federal habeas relief, the petitioner's evidence was not sufficient to affirmatively prove that he was innocent. The denial of relief was accordingly affirmed.

Stermer v. Warren, 19-1075 (5/15/20)

The petitioner was convicted of felony murder in Michigan state court and sentenced to life in prison. The prosecution alleged at trial that the petitioner had murdered her husband by setting him and their house on fire. The petitioner testified in her own defense. In state post-conviction proceedings, the petitioner alleged that the prosecution engaged in misconduct in closing arguments by repeatedly calling her a liar, misrepresenting her testimony, and bolstering the testimony of other witnesses; her claim was summarily rejected on the merits. The Sixth Circuit concluded that no deference was warranted under 28 USC § 2254(d) and Harrington v. Richter, 562 U.S. 86 (2011), because there was no reasonable basis for the state court to deny relief; as a result, the district

court's grant of habeas corpus relief was affirmed.

Wilson v. Williams, 20-3447 (6/9/20)

The petitioners were a subclass of medically vulnerable inmates at a federal correctional facility where an outbreak of COVID-19 was taking place. The petitioners, along with other inmates, filed a petition for habeas corpus relief under 28 USC § 2241 alleging that their continued confinement at the facility violated the Eighth Amendment because there was no set of protocols that could prevent the further spread of COVID-19 within the institution. The petitioners requested, among other things, release from the institution. The district court found that the petitioners demonstrated a substantial likelihood of success on their Eighth Amendment claim and granted a preliminary injunction. The Sixth Circuit reversed. Although the petitioners demonstrated a substantial risk of serious harm, they failed to establish that the Bureau of Prisons had been deliberately indifferent to the health risks posed by the outbreak within the facility. The Bureau was aware of the risk of harm posed by the virus, and the Sixth Circuit concluded that the steps that had been taken in response to it were reasonable. The district court's grant of a preliminary injunction was accordingly reversed.

Woods v. Cook, 19-3254 (5/22/20)

The petitioner was convicted of murder in Ohio state court. The victim did not immediately die, and identified the petitioner by blinking his eyes to communicate with police on his deathbed. The petitioner alleged that the introduction of the identification violated his Confrontation Clause rights, but the state courts concluded that it was admissible as a dying declaration. The Sixth Circuit found that the state courts did not contravene or unreasonably

apply clearly established federal law, and as a result the denial of relief was affirmed.

Woods v. Cook, 19-3254 (5/22/20)

The petitioner was convicted of murder in Ohio state court. At trial, the petitioner raised a challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986), after the prosecution exercised a peremptory challenge against an African-American juror. The trial court did not require the prosecution to offer a race-neutral explanation for the challenge. The petitioner subsequently raised a second *Batson* challenge when a second juror was removed, and at that point the trial court returned to the removal of the first juror and required a race-neutral explanation from the prosecution, which it accepted. The Sixth Circuit concluded that the state court's variation from the normal *Batson* procedure was permissible, and the denial of habeas corpus relief was affirmed.