

# Precedential Value

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## Issue #83 March – April 2021

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](http://www.fpd-ohs.org), under the Precedential Value tab.

### I. Sentencing Issues

#### B. Guideline issues

##### 2B1.1 – Fraud Loss

###### U.S. v. Riccardi, 19-4232 (3/3/21)

The defendant was convicted of stealing gift cards from the mail. At sentencing, the district court applied the Application Note to USSG § 2B1.1(b)(1) which requires a district court to apply at least a \$500 minimum loss for each gift card stolen. On appeal, the court held that application of the \$500 per card minimum was improper. Pursuant to Sixth Circuit precedent, the court ruled that application notes may interpret guidelines, but they may not expand the reach of guidelines. Although the court found that the term “loss” may be ambiguous in terms of the breadth of its meaning, “the commentary’s \$500 minimum loss amount for gift cards does not fall within the zone of any ambiguity in this guideline.” Thus, the court concluded that the Application Note improperly expanded the reach of the loss guideline, and accordingly vacated the defendant’s sentence.

##### 3C1.1 – Obstruction of Justice

###### U.S. v. Rosales, 19-3749 (3/12/21)

Upon being arrested during a controlled delivery of drugs, the defendant threw his cell phone to the ground, thus destroying it. At sentencing for drug

trafficking, the district court imposed a 2 level enhancement for obstruction of justice. On appeal the court held that, where evidence is destroyed contemporaneously with arrest, the obstruction of justice enhancement under USSG § 3C1.1 may only apply where the conduct was willful and it resulted in a “material hindrance” of the investigation. The court ruled that, while the district court properly found that the destruction was willful, it made no finding at all regarding whether the conduct resulted in a hindrance of the government investigation. Accordingly, the case was remanded for the district court to determine this issue in the first instance.

#### D. Recidivism enhancements

##### USSG § 4B1.1 – Career Offender

###### U.S. v. Jackson, 18-5676 (4/22/21)

Upon the defendant’s drug trafficking conviction, the district court determined that the defendant was a career offender based, in part, on the defendant’s prior federal conviction for conspiracy to distribute narcotics. After the original Sixth Circuit decision, the court decided in U.S. v. Cordero that a federal drug conspiracy conviction does not count as a controlled substance offense under the guidelines. Thus, in an amended opinion, the court held that the defendant was not properly considered a career offender and the case was remanded for resentencing.

### III. Evidence

#### B. Articles VI-VII – Witness/Expert

##### 702 – Expert Testimony – DNA

###### U.S. v. Gissantaner, 19-2305 (3/5/21)

A lab tested DNA on a recovered firearm and determined that DNA existed from 3 contributors, in the amounts of 68%, 25%, and 7%. The 7% contributor matched the defendant's DNA profile. The lab utilized a probabilistic genotyping software program known as STRmix to reach its conclusions about the number of contributors in the sample and the match to the defendant. At the defendant's trial for being a felon in possession of the firearm, the district court excluded the STRmix DNA evidence after hearing from 4 different experts. The government appealed. On appeal, the court held that the DNA evidence should have been deemed admissible. The court found that the STRmix was sufficiently testable in terms of reliability, its reliability had been established to a 99% success rate, it had been subjected to peer review, and it was generally accepted in the relevant scientific community. Further, the court found that the STRmix DNA testing had been reliably applied by the lab in the case. Finally, the court concluded that the fact that only 7% of the mixture was contributed by the defendant's DNA was not a basis for exclusion. Rather, it was up to the jury to decide whether the defendant had actually possessed the gun versus the DNA being transferred to it from another source, given the small amount of his DNA on the gun. Accordingly, the district court ruling was reversed and the case remanded.

#### D. Discovery/Miscellaneous

##### Rule 16 Discovery

###### U.S. v. Stampe, 19-6293 (4/20/21)

The defendant was arrested for drug trafficking and cooperated against a coconspirator. Based on the cooperation, the government utilized an

informant to bust the codefendant. The defendant pled guilty and the codefendant decided to go to trial. Shortly before trial, the government dismissed the case against the codefendant because of some undisclosed misconduct by the informant. As a result, the defendant attempted to withdraw from her plea agreement (but still maintain her guilty plea). The district court declined to require the government to produce the evidence regarding the informant misconduct (even in camera) and denied the defendant's request to withdraw from her plea agreement. On appeal, the court upheld the district court's rulings. The court found that, under Fed. R. Crim. P. 16, the defense must make a showing as to the materiality of evidence in order to require its disclosure. Because the informant had only been involved after the defendant's arrest, the court found that the district court did not err in accepting the government's representation that the evidence was not material to the case without reviewing it, even in camera. Further, the court ruled that the district court did not err in declining to allow the defendant to withdraw from her plea agreement. While the court opined that a different standard may apply to trying to withdraw from a plea agreement as opposed to withdrawing the actual guilty plea, the court held that the defendant had made no showing that withdrawal from the plea agreement was required. Given that the questioned evidence did not affect her case and she still received the benefit of her plea through a dismissed count, there was no basis to permit her to withdraw from the plea agreement. Therefore, the district court's ruling was affirmed.

### IV. Fourth Amendment

#### B. Reasonable Suspicion/Veh. Stops

###### Torres v. Madrid, 19-292 (3/25/21)

###### **Supreme Court**

Officers went to an apartment complex to execute a warrant. An individual who was not the suspect fled the scene. At the same time, the petitioner (who was also not the suspect) jumped into the

driver's seat of a car and was ordered to stop by police with firearms drawn. Believing she was being carjacked, the petitioner took off at high speed and was shot twice by police. The petitioner later sued the officers under 42 USC § 1983 for seizing her without probable cause and excessive force. The lower court granted summary judgment to the officers on the grounds that no seizure of the defendant ever occurred. On *certiorari*, the Supreme Court held that the officers shooting the petitioner twice constituted a seizure of the person for Fourth Amendment purposes, even though it did not succeed in stopping her. The Court ruled that "the application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person." The Court noted that the appropriate inquiry is "whether the challenged conduct objectively manifests an intent to restrain." As such, the Court found that the officers' conduct in shooting the petitioner constituted a seizure under the Fourth Amendment and the case was remanded to determine whether the seizure was reasonable.

#### **D. Consent Searches and Seizures**

##### **U.S. v. Sheckles, 20-5096 (4/30/21)**

The defendant's girlfriend consented to a search of his storage unit. In his later prosecution, the defendant moved to suppress the evidence found in the search and the district court denied the motion. On appeal, the court found that the girlfriend had actual authority to search the storage unit. The defendant had listed her on the rental agreement as a person authorized to use the unit (although the agents did not know this until later) and she told the agents she had some stuff at the unit. Further, the court ruled that the girlfriend's consent was voluntary. Although the officers displayed a significant show of force in entering the defendant's residence, by the time the girlfriend consented to the search of the storage unit, things had calmed significantly and the officers had a quiet conversation with her about it. Accordingly, the court ruled that the

consent to search the storage unit was a valid and upheld the district court's ruling.

#### **E. Search Warrants**

##### **U.S. v. Reed, 20-5631 (4/1/21)**

Officers made purchases of drugs from the defendant both at a business and at his mother's residence. The informant viewed drugs being stored at these locations. The government obtained search warrants for these locations and the defendant's residence. Upon defendant's motion, the district court granted the defendant's motion to suppress related to the search of his own residence. The government filed an interlocutory appeal. The court held that the warrant was saved by good faith. The court noted that the law in the circuit regarding the required nexus between drug trafficking and a defendant's home is unclear. Given the ambiguities in the law, the court declined to address the probable cause question and instead found that the search warrant was not bare bones due to its recitation that the defendant had made multiple drug sales and stored drugs at two other locations. The court ruled that a reasonable officer would have relied on the search warrant as being in compliance with the applicable law. Accordingly, the district court's ruling was reversed.

##### **U.S. v. Sheckles, 20-5096 (4/30/21)**

The government was investigating a large scale drug trafficking operation out of Mexico when it discovered that the defendant was a local distributor for the organization in Louisville, Kentucky. As a result, the government sought a search warrant for location data on the defendant's phone and search warrants for two residences. Upon his prosecution, the defendant sought suppression of the evidence seized in these searches, the district court denied the motions, and the defendant appealed. The court first held that the search warrant for the location data was supported by probable cause. Specifically, the court found that an undercover agent learned that the large scale drug trafficker was using the defendant to move drugs in

Louisville and the phone number the defendant used related to the drug activity was the phone for which location data was sought. This information was sufficient. Second, the court held that the search warrants for the two residences were likewise supported by probable cause. The defendant actually sold drugs from one of the residences. This information combined with his connection to the drug trafficking organization was sufficient to justify this search. The other residence was the defendant's home. Although the court found it to be a close case, the court held that the warrant was sufficient to search the defendant's home. The court ruled that his connection to the drug trafficking organization, his sales of drugs from another location, and the sheer quantities of drugs involved supported probable cause to believe that the defendant would have drugs stored at his home. Further, the affidavit made a sufficient connection between the defendant's phone and the residence, and the warrant likewise sought to locate and seize the phone. Thus, considering the totality of the circumstances, the court upheld the validity of all of the search warrants and the district court's ruling was affirmed.

**U.S. v. White, 20-1633 (3/8/21)**

On two occasions, 40 days apart, an undercover officer bought drugs from an individual. On each occasion, the individual walked inside the defendant's home, came out, and delivered the drugs to the undercover officer. Based on these transactions, officers obtained a warrant for the defendant's home. The district court denied a motion to suppress the evidence seized from the home and the defendant appealed. The court held that probable cause supported the warrant. The court found that the two drug sales, where the drugs were apparently obtained from the defendant's home (even though the defendant was not involved), established a sufficient nexus to the residence. Accordingly, the district court's ruling was affirmed.

**VIII. Defenses**

**D. Statute of Limitations**

**U.S. v. Edington, 20-1420 (3/29/21)**

The defendant made false statements on an application for a loan from the Farm Services Agency. The defendant was charged 6 years later with conspiring to violate 18 USC § 1014, pursuant to 18 USC § 371. The district court utilized the statute of limitations period of 5 years, which applies to § 371, pursuant to 18 USC § 3282(a). Accordingly, the district court dismissed the case as being outside the 5 year limitations period. On appeal, the court held that the limitations period for a conspiracy to violate § 1014 is governed by 18 USC § 3293(1). Under this section, a 10 year limitations period applies to a conspiracy to violate § 1014, even where the conspiracy is charged under § 371. As such, the district court's ruling was reversed and the case remanded.

**X. Probation/ Supervised Release**

**Conditions of Supervised Release**

**U.S. v. Booker, 20-1047 (4/14/21)**

At sentencing for drug trafficking, the district court imposed supervised release conditions which included curfew, limitations on alcohol consumption, disclosure of financial information, consent to probationary searches, and limits on cell phone usage. On appeal, the defendant argued that the district court did not sufficiently explain the need for the conditions and that they were unreasonable. The court held that a district court need not separately express consideration of conditions of supervised release as long as the district court properly analyzed the § 3553 factors related to imposition of the overall sentence. The court found that the district court considered the statutory factors and the supervised release conditions in weighing the court's concerns about the defendant's lengthy criminal history at a young age, high likelihood of recidivism, and the district court's desire to protect the public and

rehabilitate the defendant from his drug trafficking lifestyle. As such, the district court had shown proper consideration for the § 3553 factors, and those factors justified the conditions of supervised release. Accordingly, the sentence was affirmed.

## **XII. Specific Offenses**

### **21 USC § 846 – Drug Conspiracy**

#### **U.S. v. Rosales, 19-3749 (3/12/21)**

The defendant picked up drugs from an informant and was immediately arrested by officers. He was charged with participating in a conspiracy to possess methamphetamine with intent to distribute and convicted after trial. On appeal, he argued that the one transaction could not support a conspiracy count. The court held that, in order to determine whether a single transaction is properly considered part of a larger conspiracy, the court must look at the following: “(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 the defendant appeared to know the parties when called by the informant about the transaction. Further, the stated location of the sale was apparently established by prior dealing. Moreover, the defendant had the necessary money for the transaction in his pocket, was driving the expected vehicle, and was being fronted over \$200,000 worth of meth for only \$5,000 up front. These factors all suggested prior dealings and a significant level of trust. As such, the conspiracy charge was supported by the evidence and the conviction was affirmed.

## **XIII. Post-Conviction Remedies**

#### **U.S. v. Maxwell, 20-5755 (3/19/21)**

The defendant was convicted in 2010 of distributing crack, determined to be a career offender, and sentenced to 30 years in prison. After passage of the First Step Act, the defendant’s statutory range for the crack cocaine

offense was retroactively reduced from 20 years to life to 10 years to life. The district court applied the FSA to make this reduction, but nonetheless imposed the same 30 year sentence. On appeal, the court held that a defendant is not entitled to plenary resentencing on a FSA motion. The court held that a district court is only required to consider the retroactive, reduced crack penalties imposed by the FSA, but the district court is not required to consider other changes in sentencing law or guidelines not specifically made retroactive by the FSA. The court ruled that a district court is permitted to consider such changes in sentencing law in applying the factors under 18 USC § 3553(a), but it is not required to do so. Thus, the court found that the district court had properly applied the FSA, correctly rejected plenary resentencing, and appropriately weighed the § 3553 factors in re-imposing the same 30 year sentence. Nothing further was required and the sentence was affirmed.

#### **U.S. v. Jackson, 19-3623 (4/22/21)**

The defendant was originally sentenced prior to enactment of the FSA and received separate sentences on gun charges under 18 USC § 924(c) of 7 and 25 years. One of his § 924(c) sentences was vacated on appeal, and in the interim the FSA was passed. On remand, the district court applied the FSA and only imposed a 7 year sentence for the second § 924(c) conviction. On the government’s appeal, the court held that the FSA was inapplicable to the case. The FSA only made the amended penalties for a violation of § 924(c) available to defendants for whom “a sentence for the offense has not been imposed as of December 21, 2018.” Applying the language of the Act literally, the court ruled that because the defendant was sentenced prior to the FSA, its provisions were inapplicable to him, even though his sentence was later vacated and the case remanded. Therefore, the district court’s ruling was reversed and the case remanded.

**Alaska v. Wright, 20-940 (4/26/21)**

**Supreme Court**

The petitioner was convicted of multiple counts of sexual abuse of a minor in Alaska state court and sentenced to a prison term. After the petitioner finished serving his sentence, he moved to Tennessee but failed to register as a sex offender. He pled guilty to failure to register in federal court and was sentenced to time served and five years of supervised release. During the course of his federal criminal proceedings, the petitioner filed a federal habeas petition challenging his state court convictions in federal district court in Alaska under 28 USC §§ 2254 and 2241. The Ninth Circuit held that the petitioner satisfied the “in custody” requirement set out in § 2254(a) with respect to his state court conviction as a result of the fact that he was in federal custody and his state court convictions were a necessary predicate to the federal proceedings that had been brought against him. The Supreme Court summarily reversed, explaining that the Ninth Circuit’s decision was in conflict with Maleng v. Cook, 490 U.S. 488 (1989), which held that “a habeas petitioner does not remain ‘in custody’ under a conviction ‘after the sentence imposed for it has fully expired, merely because of the possibility that the prior conviction will be used to enhance the sentences imposed for any subsequent crimes of which he is convicted.’”

**Jones v. Mississippi, 18-1259 (4/22/21)**

**Supreme Court**

The defendant was convicted of murder in Mississippi state court at the age of 15 and was sentenced to life in prison without the possibility of parole. The Mississippi Supreme Court subsequently vacated the defendant’s sentence under Miller v. Alabama, 567 U. S. 460 (2012), and remanded the case for resentencing. On remand, the trial court once

again sentenced the defendant to life without parole, but did not make a specific factual finding that the defendant was permanently incorrigible. The Mississippi Court of Appeals affirmed, concluding that such a finding is not required by Miller and the Eighth Amendment. The United States Supreme Court affirmed. Although Miller prohibits mandatory sentences of life without parole for juveniles, it does not require a trial court to make a factual finding of permanent incorrigibility before imposing a discretionary sentence of life without parole on a juvenile.

**Mays v. Hines, 20-507 (3/29/21)**

**Supreme Court**

The petitioner was convicted of first-degree murder in Tennessee state court and sentenced to death. The jury found that the petitioner murdered a maid at a hotel. The petitioner alleged in state post-conviction proceedings that his trial attorney had been ineffective in failing to investigate and impeach the witness who discovered the body. The state courts rejected the petitioner’s claim, finding that he could not demonstrate prejudice in light of the substantial evidence of his guilt. The Sixth Circuit determined that habeas corpus relief was warranted. The Supreme Court summarily reversed, concluding that the state court’s rejection of the petitioner’s claim was entitled to deference under 28 USC § 2254(d).

**Kendrick v. Parris, 19-6226 (3/2/21)**

The petitioner was convicted of first-degree murder and sentenced to life in prison in Tennessee state court after shooting his wife. The petitioner alleged at trial that the discharge of the firearm had been accidental and that the homicide was unintentional. The Tennessee Court of Criminal Appeals found that the petitioner had been deprived of the effective assistance of counsel based on his trial

attorney's failure secure a firearms expert and also to introduce hearsay statements under the excited utterance exception, but the Tennessee Supreme Court reversed and reinstated the conviction. 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.

**Miller v. Genovese, 19-6214 (4/19/21)**

The petitioner was convicted of murder in Tennessee state court. At the petitioner's first trial, a key prosecution witness claimed that she could not remember anything about the day in question. The trial judge placed the witness in jail out of the presence of the jury and allowed the parties to provide her with materials to refresh her recollection. The trial court subsequently recalled the witness and she testified consistently with the materials that the prosecution had provided to her. On cross-examination, she stated that her memory had improved because she did not want to go to jail. The Tennessee Court of Criminal Appeals concluded that the trial court's actions required reversal. The witness was unavailable to testify at the second trial and the trial court admitted her previous testimony in redacted form; as a result, the second jury did not hear the witness's statement that her improved memory had resulted from her desire not to go to jail. The petitioner was again convicted, and the state appellate court rejected the petitioner's claim that the redaction of the witness's previous testimony violated the Confrontation Clause. The Sixth Circuit concluded that the petitioner's Confrontation Clause claim was meritorious, and that the determination of the state court to the contrary was objectively unreasonable under 28 USC § 2254(d)(1). The denial of habeas corpus relief was accordingly reversed.

**Nian v. Warden, 18-3938 (4/19/21)**

The petitioner was convicted of rape in Ohio state court and sentenced to five years in prison. The petitioner filed a motion for a new trial alleging that a juror had presented extraneous information regarding the petitioner's criminal record and national origin during deliberations. The petitioner supported his motion with an affidavit from another juror and alleged that his Sixth Amendment rights had been violated. The trial court held a hearing and determined that the juror's testimony could not be considered under Ohio Rule of Evidence 606(B); the motion for a new trial was accordingly denied, and the Ohio Court of Appeals affirmed. The Sixth Circuit concluded that there was no decision on the merits in state court with respect to the petitioner's Sixth Amendment claim due to the state court's reliance on Ohio Rule of Evidence 606(B), and as a result 28 USC § 2254(d) was inapplicable. The Sixth Circuit further determined that the exclusion of the juror's testimony from the state court hearing was a constitutional violation, and that it was not harmless. As a remedy, the Sixth Circuit granted a conditional writ of habeas corpus requiring the state court to conduct an evidentiary hearing on the allegation of juror misconduct in accordance with Remmer v. United States, 347 U.S. 227 (1954).

**Pouncy v. Palmer, 20-1960 (4/6/21)**

The petitioner was a state prisoner who filed a motion for bail in district court requesting release from state prison during the pendency of his federal habeas corpus proceedings. The district court denied the motion and the petitioner appealed. The Sixth Circuit affirmed, explaining that a "prisoner seeking bail pending review of his habeas petition must, among other requirements, convince the district court that exceptional circumstances and the 'interests of justice' warrant relief.

Dotson v. Clark, 900 F.2d 77, 79 (6th Cir. 1990).” The Sixth Circuit concluded that the district court did not abuse its discretion in denying bail given the petitioner’s history of misconduct in prison, along with his failure to comply with his conditions of release when previously granted bail.

**Taylor v. Owens, 20-5648 (3/9/21)**

The petitioner was convicted in federal court of killing a person while fleeing an arrest for bank robbery. After being denied relief with respect to an earlier motion to vacate under 28 USC § 2255, the petitioner filed a habeas corpus petition under 28 USC § 2241. The petitioner alleged that his § 2241 petition was permissible under the savings clause found in § 2255(e), which ordinarily prohibits petitions under § 2241 for prisoners who have previously been denied relief in an earlier § 2255 application. The district court denied the petition on the merits. The Sixth Circuit concluded that § 2255(e) limits the subject matter jurisdiction of district courts, and that the savings clause is the only mechanism for invoking federal jurisdiction in such circumstances. Because the petitioner failed to satisfy the requirements of the savings clause, the district court erred in denying the petition on the merits. The judgment was accordingly vacated, and the case was remanded with instructions to dismiss for lack of subject matter jurisdiction.