

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

B. Guideline issues

2D1.1 – Drug Amount

U.S. v. Benton, 19-3287 (4/30/20)

After observing a delivery of cocaine to the defendant's home, agents conducted a search warrant and found not only the powder cocaine that was delivered, but also a large quantity of crack cocaine in a safe, with a gun nearby. At sentencing, the district court attributed the crack cocaine in the safe as relevant conduct to the powder cocaine that was delivered (and for which the defendant was convicted). On appeal, the court held that the crack was properly considered relevant conduct to the powder. First, the court found that the district court properly concluded that the defendant had the intent to sell the crack as well as the powder. Although the crack had been in the safe for some time and was of very poor quality, the defendant still had the "intent" to sell it, which is all that is required for the offense of possession with intent to distribute. Second, the court ruled that the fact that one drug was powder and one was crack did not make the crack ineligible as relevant conduct. Finally, the court held that the crack and powder were both "part of the same course of conduct," and were "part of a common scheme or plan," each of which qualified them as relevant conduct. In this regard, the court found that, although the

defendant had two different suppliers and clientele for the drugs, he possessed them at the same time, bought, sold, and stored them in the same house, and protected them with the same gun and safe. Accordingly, the court affirmed the district court's decision and sentence.

D. Recidivism enhancements

18 USC § 2251(e) – Prior Sex Offense

U.S. v. Armes, 19-5539 (3/26/20)

The defendant was convicted of production, distribution, and possession of child pornography. At sentencing, the district court determined that he qualified for the enhanced penalties under 18 USC §§ 2251(e) and 2252A(b)(1)-(2) based on his prior Kentucky conviction for third degree rape. On appeal, the court held that application of the sentence enhancement was proper. The court ruled that the district court was permitted to rely on "undisputed facts" in the PSR in order to determine "the elements of the prior conviction." Specifically, the court held that a district court may use a presentence report when "(1) the relevant part of the report is undisputed, (2) it characterizes an underlying state-court record, and (3) that underlying record is itself acceptable Shepard material." Thus, the court found that the PSR established that the defendant was convicted of third degree rape for "having sex with someone under the age of 16 when the defendant was 21 or

older,” which the court categorically held was a qualifying sex offense under the statute. Additionally, the court went on to hold that, even if the PSR finding was unclear, all three subdivisions of Kentucky’s third degree rape statute qualified as countable prior sex offenses under the statute. Accordingly the defendant’s sentence was affirmed.

18 USC § 924(e) – ACCA

U.S. v. Brown, 18-5356 (3/24/20)

After the Supreme Court’s decision in U.S. v. Stitt, the government appealed the district court’s grant of the defendant’s habeas petition. The issue was whether the defendant’s prior aggravated burglary convictions qualified as violent felonies under the ACCA. The court found that, after Stitt, Tennessee aggravated burglary qualifies as a violent felony because Tennessee’s definition of a habitation complies with the requirements of common law burglary as defined by Stitt. Addressing two additional arguments of the defendant, the court held that Tennessee’s definition of “enter” in the burglary statute was consistent with the common law meaning. Under Tennessee law, an “attempt to enter” was sufficient to violate the statute which, the defendant argued, was the equivalent of “entry only by instrument,” an offense excluded as burglary under common law. The court found that this was the kind of “arcane distinction” that the Supreme Court would disavow in defining common law burglary. Second, the court also rejected the defendant’s argument that the aggravated burglary was not a violent felony because it did not require specific intent. The court held that the defendant was convicted under the “(a)(1)” provision of the Tennessee statute, which required that the defendant enter the building “with the intent to commit a theft.” The court found that this element satisfied the generic burglary “intent” element. Accordingly, the grant of habeas relief was reversed, and the defendant’s 15 year sentence was reinstated.

III. Evidence

A. Article IV – Relevancy

404(b) – Prior Bad Acts

U.S. v. Sumlin, 18-3819 (4/21/20)

The defendant distributed drugs to his prior girlfriend’s sister and she died from the overdose. At trial, the prior girlfriend testified that she saw the defendant’s car at their home the morning of the death, and that she saw the defendant with her sister. She also testified that she had been his girlfriend in the past, and that she was a heroin user who had gotten heroin from the defendant. The district court admitted the evidence over objections under FRE 404(b). On appeal, the court held that the evidence was properly admitted. The court found that the prior girlfriend’s testimony was both intrinsic to the crime, and proper *res gestae* or background evidence. The court found that the prior relationship the girlfriend had with the defendant established her basis of knowledge of the defendant’s car and what the defendant looked like. Further, it provided the basis for understanding texts between the victim and the defendant about drugs, and verification as to how the defendant knew where to deliver the drugs (the victim and prior girlfriend’s mother’s home). Finally, the government was also permitted to admit the evidence to head off any potential impeachment by the defense that she was the past girlfriend of the defendant and may have been biased. Therefore, the admission of the evidence was affirmed.

B. Articles VI-VII – Witness/Expert

608(b)/613 – Impeachment

U.S. v. Craig, 19-3278 (3/27/20)

At the defendant’s trial for being a felon in possession of a firearm, he testified that he possessed the gun out of necessity, for self defense. In response, during his cross examination, the government showed the jury a

video of masked individual holding the gun on social media. The defendant denied that it was him and the government made no effort to authenticate the video. Although the video was not admitted into evidence, the government argued it as substantive evidence of guilt in closing, and the district court provided no limiting instruction. On appeal, the court held that the video was improperly shown to the jury. The video was not admissible under FRE 608(b) because (1) it was not authenticated, (2) Rule 608(b) does not permit the use of extrinsic evidence, and (3) the evidence did not go to truthfulness. Likewise, the evidence was not admissible under FRE 613 because it was not authenticated and was not a prior inconsistent statement. Further, the video was not admissible under a common law concept of “impeachment by specific contradiction” because the Sixth Circuit had not adopted such a rule, and even if it did, it would still require authentication of the evidence. Finally, the court held that the error was not harmless. Although there was overwhelming evidence the defendant possessed the gun, the court found that the evidence was not as strong to rebut the defendant’s claim of self defense. Accordingly, the conviction was reversed and the case remanded.

IV. Fourth Amendment

A. Reasonable Expectation of Privacy

U.S. v. May-Shaw, 18-1821 (4/8/20)

Officers attached a pole camera on the street in front of the defendant’s apartment complex to record drug activities in and around the parking lot and the defendant’s car port. As a result of these observations, the officers conducted a drug dog sniff around the defendant’s vehicle in his car port, which yielded a positive result. The ensuing search warrant resulted in the seizure of drugs and money. The defendant moved to suppress the evidence, the district court denied the motion, and the defendant appealed. The court first held that the pole camera was lawful. The camera saw nothing more than what was in plain view from

the public thoroughfare, and the prolonged nature of the recording had no effect on the Fourth Amendment analysis under applicable Sixth Circuit law. Second, the court held that the car port was not within the curtilage of the apartment. Although the court ruled that it was a close case, the court found that the car port was visible to the public, it was only partially enclosed, the defendant had no right to exclude others from the car port, and he had done nothing extra to block the public’s view of it. Thus, the court affirmed the district court’s ruling that the defendant had no reasonable expectation of privacy.

B. Reasonable Suspicion/Vehicle Stops

U.S. v. Jones, 19-5633 (3/23/20)

The defendant’s girlfriend contacted police and alleged that he had assaulted her by throwing cans and a soap bottle at her. Officers corroborated the physical evidence to support her story. The girlfriend also expressed fear that the defendant might get a gun and return to harm her after the officers left. While the officer was outside the home, the defendant was seen nearby in a vehicle, so the officer stopped the car. In a subsequent search, they found a firearm on the defendant. The district court suppressed the firearm based on the belief that officers could not stop a car based on a completed misdemeanor offense. On the government’s appeal, the court held that the stop was proper. The court ruled that officers may sometimes stop vehicles based on a completed misdemeanor offense based on a balancing of the following considerations: (1) whether the stop promotes the interest of crime prevention; (2) whether it furthers public safety; (3) the strength of the government’s interest in solving crimes and bringing offenders to justice; and (4) whether any delay would unnecessarily hinder police investigation or allow the suspect to flee in the interim. The court found that the belief that the defendant had committed a misdemeanor domestic violence that day, combined with the girlfriend’s continuing fears and the defendant returning to the area, justified the officers’ actions in choosing to stop the car and arrest the

defendant. Accordingly, the district court's ruling was reversed and the suppression ruling vacated.

Kansas v. Glover, 18-556 (4/6/20)
Supreme Court

An officer ran a vehicle license tag and determined that the registered owner's driver's license was suspended. Without verifying anything about the actual driver of the car, the officer executed a stop. It turned out that the driver was the registered owner and he was charged as being a habitual violator. The defendant argued in Kansas State courts that the stop of the vehicle was not based on reasonable suspicion. On appeal, the Supreme Court held that, unless an officer possesses information negating the inference, reasonable suspicion justifies the stop of a vehicle when the officer learns that the registered owner's driver's license is suspended. Accordingly, the defendant's conviction was affirmed.

U.S. v. Lott, 18-6066 (4/1/20)

The defendant was stopped driving slowly in the left lane of the highway while being passed by drivers on the right. He was extremely nervous throughout the stop. While the officer was running the defendant for warrants in the computer, the officer asked the defendant if he had any drugs in the car. The defendant admitted he had some marijuana. The officer then had a canine conduct a sniff, which led to the discovery of a large amount of drugs and money. The defendant appealed the district court's denial of his motion to suppress the stop. The court noted first that the defendant did not contest that he violated Kentucky law for traveling too slowly in the left lane. He argued only that the stop was pretextual. The court ruled that as long as officers have some valid basis for the stop, the issue of pretext is irrelevant. Second, the court held that the officer did not extend the stop beyond its lawful duration. The court found that the officer was still waiting for the "warrant check" on his computer when he asked the defendant about

drugs in the car. This was a proper part of the stop for the traffic violation. When the defendant admitted to marijuana in the car, he provided the necessary probable cause for the drug sniff and ultimate car search. As such, the district court's ruling was affirmed.

C. Warrant Exceptions

Inventory Search/Inevitable Discovery

U.S. v. Alexander, 19-5607 (4/1/20)

Officers were involved in a drug investigation of the defendant when they stopped his vehicle knowing that he was driving on a suspended license. The defendant was removed from the car and a full vehicle search conducted. The officer testified that it was his policy to do a full search of the car during an inventory search. The officers found a large amount of drugs and cash. The defendant moved to suppress the evidence and the district court held that it was discovered pursuant to a valid inventory search. On appeal, the court held that, although a police department's inventory search policy need not be in writing, the government must nonetheless establish that an oral policy exists and what it is. The court found that the officer's testimony as to how he did things was not sufficient to establish the inventory search policy of the police department. As such, the search was not justified under the inventory exception to the search warrant requirement. The court nonetheless held that, although not found by the district court, the search was saved by inevitable discovery because the officers found a large amount of methamphetamine on the defendant's person. Thus, based on the fact that the officers were going to arrest the defendant for driving under suspension, they would have discovered the drugs on his person, which would have provided the basis to search the car for drugs as a search incident to arrest. Accordingly, the suppression of the evidence was affirmed, albeit on different grounds.

E. Search Warrants

Probable Cause – Nexus to Home

U.S. v. Sumlin, 18-3819 (4/21/20)

The defendant distributed a heroin/fentanyl mixture that caused the death of his former girlfriend's sister. Officers were able to establish that he sold the drug to the victim, that he lived at a certain residence, and, through information from the victim's sister, that he was a drug dealer and had sold heroin in the recent past. Officers also confirmed that the defendant's vehicle was parked in the driveway of the residence in the days after the death. Based on this information, officers obtained a warrant to search the residence, and found more drugs. The district court denied the defendant's motion to suppress the fruits of the search warrant, and the defendant appealed. The court held that the search warrant established a sufficient nexus to search the defendant's home. The court found that, even where there is little evidence to tie a residence to drug trafficking, a search warrant may establish a sufficient nexus where (1) there is sufficient evidence of drug trafficking, (2) it is verified that the defendant lives at the residence, and (3) there is attestation from the affiant officer that drug traffickers keep drugs at their residence. Finding these criteria satisfied on the facts of the case, the court upheld the district court's ruling.

Good Faith

U.S. v. Gilbert, 19-3456 (3/11/20)

Agents determined the following facts regarding the defendant's alleged drug trafficking activities: (1) he sold a large amount of drugs to a person who was arrested; (2) he had a large amount of cash during a car stop a few days later; (3) he had a lengthy criminal history, including drug convictions; (4) he drove evasively to avoid surveillance; and (5) officers found "suspected marijuana crumbs within a large vacuum sealed bag" in a third trash pull from his residence. This evidence led to a search warrant for the defendant's residence and federal prosecution.

The district court denied the defendant's motion to suppress, finding probable cause supported the warrant. On appeal, the court held that the probable cause issue was debatable, but proceeded directly to hold that good faith saved the warrant. The court found that the facts provided above were sufficient to avoid the warrant being "bare bones." As such, a reasonable officer could rely on the magistrate's finding of probable cause in executing the search warrant. Thus, the conviction was affirmed.

V. Fifth Amendment

B. Brady

U.S. v. Paulus, 19-5532 (3/5/20)

The defendant was a doctor who allegedly unnecessarily inserted a large number of stents into patients' arteries. By the government's estimation, about 30% of the stents were improper. After a first appeal, the government disclosed a study shortly before sentencing that had been conducted by the medical center where the defendant worked. The study concluded that only 7% of the medical procedures conducted by the defendant were questionable. The defense then learned that this study had been brought by the government *ex parte* to the district court prior to the trial. The medical center claimed that it had a privilege against release of the study to the defense. After the *ex parte* hearing, the district court ordered that the study not be produced to the defense. On the second appeal, the court held that the failure to disclose the study to the defense violated Brady and required a new trial. The court found that the study was exculpatory and that it was suppressed from the defense. Further, it held that the defense could not have easily otherwise obtained the information due to the fact that the medical center was claiming privilege. Moreover, the defense had no reason to know that the study was exculpatory. Additionally, the withholding of the evidence prejudiced the defendant's case because it went to the core issue at trial regarding the percentage of the defendant's practice that was questionable (30%

versus 7%). Finally, the court ruled that it was of no consequence that it was the district court that withheld the evidence, not the government, because a Brady violation does not require a showing of governmental bad faith. Accordingly, the court reversed the conviction and remanded for a new trial. The court also opined that the *ex parte* hearing may have violated the defendant's Sixth Amendment right to counsel, but it decided not to reach the issue given the Brady violation.

VI. Sixth Amendment

A. Right to Jury Trial

Ramos v. Louisiana, 18-5924 (4/20/20) Supreme Court

Louisiana does not require a unanimous jury verdict for serious offenses. Upon the defendant's conviction and sentence to life without parole, he challenged Louisiana's system through the state courts, and the Supreme Court granted *certiorari*. The Court held that the Sixth Amendment right to jury trial requires that criminal verdicts for serious, as opposed to petty, offenses requires a unanimous verdict of all twelve jurors. Accordingly, the defendant's conviction was reversed.

VIII. Defenses

E. Venue/Jurisdiction

District Court Jurisdiction

U.S. v. Hobbs, 19-3343 (3/20/20)

The defendant pled guilty to being a felon in possession of a firearm. The indictment did not charge nor did the plea colloquy advise of the Supreme Court's holding in Rehaif that knowledge of a defendant's felon status is an element of the offense under 18 USC § 922(g). The defendant did not object in the district court and argued for the first time on appeal that the district court had no jurisdiction over the offense and that plea was involuntary. The court first held that the failure to charge the knowledge

element of the § 922(g) offense did not deprive the district court of jurisdiction to hear the case. Failure to charge an element of the crime is not a problem of jurisdiction. Second, the court found no plain error in the voluntariness of the plea. The defendant could not show that he would not have pled guilty had he been properly advised of the element. Accordingly, the sentence was affirmed.

L. Competency/NGRI

NGRI

Kahler v. Kansas, 18-6135 (3/23/20) Supreme Court

Kansas' law on insanity defense did not absolve a defendant of criminal liability where the defendant was unable to appreciate the wrongfulness of the defendant's actions. The defendant argued that this law violated his right to due process. The Supreme Court held that the Constitution does not impose a due process requirement on states to adopt any particular insanity test for criminal culpability.

M. Miscellaneous Defenses

Right to Transcripts/Recordings

U.S. v. Austin, 19-2083 (3/31/20)

The defendant requested on appeal access to audio recordings of his arraignment and sentencing proceedings, even though he was provided written transcripts. The court held that when a written transcript of a proceeding is provided to a litigant, it is *prima facie* a correct statement of the testimony presented at the hearing. Because the defendant presented no evidence to rebut the presumption, his request for the audio backup recording of the hearings was properly denied.

X. Probation/ Supervised Release

Supervised Release Violation Hearings

U.S. v. Dowl, 19-2469 (4/22/20)

At his supervised release violation hearing, the district court allowed the defendant to speak extensively regarding whether he had violated his supervised release conditions, but the court failed to ask if he wished to allocute before imposing sentence. The defendant did not object, even after the district court made the required Bostic inquiry. On appeal, the court held that plain error analysis applies where a defendant fails to object to the denial of allocution at a supervised release violation hearing. Further, the court found no plain error. The defendant was afforded ample opportunity to speak about whether his supervised release should be violated, and he was unable on appeal to point to anything additional he would have said had he been allowed to allocute. Accordingly, the sentence was affirmed.

XI. Appeal

Standard of Review

Davis v. U.S., 19-5421 (3/23/20)

Supreme Court

The defendant was sentenced for possession of drugs and a firearm, and the district court imposed the sentence to run consecutively to state sentences. The defendant did not object to the consecutive sentences in the district court but raised the issue for the first time in the Fifth Circuit. The court deemed the issue waived and refused to address it. On *certiorari*, the Supreme Court held that the plain error standard should apply and remanded the case for reconsideration by the Fifth Circuit.

Jurisdiction - Supervised Release

U.S. v. Marshall, 18-2267 (3/26/20)

The defendant moved in the district court to terminate his supervised release early. The

district court denied the motion. On appeal, the court originally held that it had no jurisdiction to review the denial of an early termination of supervised release. On motion for panel rehearing, the court determined that it did have jurisdiction to hear the appeal under 18 USC § 3742. The court found, however, that there was no merit to the appeal. The defendant had been previously violated and the district court did not abuse its discretion in declining to terminate the defendant's supervised release. Accordingly, the district court's ruling was affirmed.

XII. Specific Offenses

18 USC § 922(g) – Felon in Possession

U.S. v. Ward, 19-5747 (3/30/20)

The defendant was charged, among other offenses, with being a felon in possession of a firearm based on a gun he possessed during two different shootings. At trial, he entered an Old Chief stipulation about his prior felony conviction. Subsequent to trial, the Supreme Court decided Rehaif, but the defendant had not challenged his knowledge of his prior felony during the trial proceedings. On appeal, the court held that plain error applied because the defendant failed to raise the Rehaif knowledge issue in the district court. First, the court held that the indictment was not defective under the plain error standard because it adequately advised the defendant of the charge (even though the Rehaif mens rea element was lacking) and the defendant presented no argument that he was unable to adequately defend against the charge at trial. Second, the court held that the failure to instruct the jury on the Rehaif knowledge issue was likewise not plain error because the defendant stipulated that he had the prior conviction at trial, thus suggesting his knowledge of it. Further, there was no reason offered by the defendant to suggest that the government could not have proven his knowledge of his two prior felony convictions at trial. Accordingly, the conviction was affirmed.

18 USC § 1029(a)(5) – Access Device Fraud

U.S. v. Vance, 19-5160 (4/17/20)

The defendant opened a debit card using in his great-grandfather's name and got a line of credit for approximately \$15,000 on the account. At the bench trial, he argued that he did not have the requisite intent to defraud for access device fraud under 18 USC § 1029(a)(5). The district court found him guilty and he appealed. The court held that testimony that a defendant was not authorized to use an access device is generally sufficient circumstantial evidence of the intent to defraud. The court found that, not only did the great-grandfather testify that he did not authorize the defendant's use of the card, but further the defendant pretended to be his great-grandfather in a phone call from the bank, conducted most of the transactions online which indicated the need for anonymity, and withdrew all of the money in a very short time frame. Collectively, the court ruled that this evidence was sufficient to support the district court's finding of guilt and the conviction was affirmed.

18 USC § 1028A –Aggravated Identity Theft

U.S. v. Vance, 19-5160 (4/17/20)

In addition to access device fraud for obtaining a fraudulent debit card, the defendant was charged with aggravated identity theft for using his great-grandfather's social security number to apply for a bank loan. The district court held a bench trial and found the defendant guilty. On appeal, he argued that there was insufficient evidence that he was the person who applied for the loan. The court held that the evidence was sufficient of the defendant's identity. The court found that the following evidence supported the conviction: (1) the defendant had separately committed access device fraud related to his great-grandfather; (2) the defendant had separately opened a bank account at the same bank involved in the fraudulent loan application, also using his great-grandfather's social security number; (3) the IP address used to apply for the loan came back to the defendant's mother's residence; and (4) the

great-grandfather testified that he did not take out any loans. Based on these findings, the conviction was affirmed.

21 USC § 841 – Drug Overdoses

U.S. v. Sumlin, 18-3819 (4/21/20)

The defendant was charged with distributing a heroin/fentanyl mix that resulted in the death of another. The government introduced evidence to show that the defendant was a drug dealer, the defendant was with the victim the morning of her death after she texted him asking for drugs, the victim died of a drug overdose, and the defendant changed his cell number after learning of the victim's death. Evidence was also introduced that the victim sought drugs from other drug dealers via text that same morning. Upon his conviction, he challenged the sufficiency of the evidence. The court held that, pursuant to the Supreme Court's decision in Burrage, the defendant's drug distribution must be a but-for cause of the victim's death. The court held that the government's evidence was sufficient to prove the defendant's guilt even though the victim had apparently also gotten drugs from other suppliers. The court emphasized that the defendant was the last person the victim contacted that morning, he agreed in texts to sell to her, and he was actually seen with her before her death. The court found this evidence sufficient to establish that the defendant actually provided the victim drugs which caused her death. As such, the conviction was affirmed.

21 USC §§ 846/841 – Conspiracy/Overdoses

U.S. v. Hamm, 17-6383 (3/6/20)

The defendants were charged with conspiracy and substantive counts of distributing fentanyl. One of the counts included an allegation that the distribution resulted in the death of another. At trial, the district court instructed the jury that it could find the defendants guilty for the death based on Pinkerton conspiracy liability. Upon their conviction, the defendants argued on appeal that no conspiracy existed and that the jury

instruction on the death enhancement was improper. The court first held that a conspiracy was sufficiently proven at trial. The court acknowledged that a buy-sell relationship is not enough to establish a conspiracy. The court found that, although there were only two transactions between the defendants, the drug amounts involved “20 to 30 doses” of fentanyl, required extensive planning and out of town trips, and the codefendants had offered to “teach a codefendant how to mix the drugs for resale.” Thus, conspiracy was proven. Second, the court found that the jury instruction was erroneous. The court held that Pinkerton conspiracy liability alone is insufficient to establish the but-for causation requirement for distribution resulting in death. The court ruled that the district court must instruct the jury that it must find that the defendant was “part of the distribution chain” that led to the overdose. The court found that this error was not harmless. The defendants presented evidence at trial that the coconspirator who actually provided the fentanyl to the victim also received drugs from another source. Thus, the source of the drugs that the victim received were in question. Accordingly, the conviction related to the death was overturned and the case remanded for a new trial on this charge.

XIII. Post-Conviction Remedies

U.S. v. Alexander, 19-1522 (3/10/20)

The defendant moved under the First Step Act to retroactively reduce his sentence based on the statutory amendments that reduced the crack penalties in the Fair Sentencing Act. The district court granted the motion and reduced the defendant’s sentence to the bottom end of the recalculated guideline range, which yielded a sentence of 262 months. The defendant argued that he was entitled to a *de novo* resentencing but the district court denied the request. On appeal, the court held that a defendant has no right to a *de novo* resentencing on a First Step Act motion. Thus, the district court was within its discretion to impose a bottom end of the guideline sentence without holding a resentencing hearing with the

defendant present. Accordingly, the sentence was affirmed.

U.S. v. Allen, 19-3606 (4/14/20)

The defendant moved to reduce his sentence based on the First Step Act’s provision that made the reduced crack penalties of the Fair Sentencing Act retroactive. During the resentencing, the district court held that it was prohibited from considering post offense rehabilitation in imposing a reduced sentence. On appeal, the court held that the Fair Sentencing Act does not preclude the district court from considering post offense rehabilitation at a resentencing hearing. Accordingly, the sentence was vacated.

Allen v. Mitchell, 02-4145 (3/24/20)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. During voir dire, one of the jurors revealed that a man who had been charged with recently murdering her brother had been acquitted, and that she was unsure if she could be fair and impartial at the petitioner’s trial because of this. After further questioning by the trial court, the juror stated that she could set aside her feelings and decide the case based solely on the evidence. The defendant’s challenge for cause was denied, and the Ohio Supreme Court affirmed on direct review. The Sixth Circuit concluded that the Ohio Supreme Court’s rejection of the petitioner’s claim was entitled to deference under 28 U.S.C. § 2254(d), and as a result the denial of relief was affirmed.

In re John W. Franklin, 19-6093 (3/3/20)

The petitioner was convicted of, among other things, arson in violation of 18 USC § 844(i), and using a destructive device in furtherance of a crime of violence in violation of 18 USC § 924(c)(1)(B)(ii). The petitioner filed a motion for authorization to file a second or successive motion to vacate under 28 USC 2255, alleging

that his arson conviction no longer qualified as a crime of violence under United States v. Davis, 139 S.Ct. 2319 (2019). The Sixth Circuit concluded that although the Supreme Court has not expressly held that Davis is fully retroactive on collateral review, the decision in Welch v. United States, 136 S.Ct. 1257 (2016), necessarily dictated that Davis is fully retroactive. Accordingly, the petitioner's motion for authorization was granted.

Leavy v. Hutchinson, 18-6246 (3/19/20)

The petitioner was convicted of first degree murder and other offenses in Tennessee state court. Following the denial of relief in proceedings under 28 USC § 2254, the petitioner filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b), which was denied. The district court subsequently issued a formal judgment reflecting the denial of the 60(b) motion. The petitioner filed his notice of appeal within 30 days of the formal judgment, but not the original order. The Sixth Circuit concluded that the petitioner's time to appeal ran from the original order, and the appeal was accordingly dismissed.

Reiner v. Woods, 18-1413 (3/10/20)

The petitioner was convicted of murder in Michigan state court. The Michigan Court of Appeals agreed that the petitioner's Sixth Amendment right to confrontation had been violated by the introduction of testimonial hearsay, but held that the error was harmless. The Sixth Circuit concluded that the introduction of the statements left grave doubt as to whether the error had a substantial and injurious effect on the verdict under Brecht v. Abrahamson, 507 U.S. 619 (1993), and O'Neal v. McAninch, 513 U.S. 432 (1995). The denial of habeas corpus relief was accordingly reversed.

Smith v. Cook, 17-4118 (4/15/20)

The petitioner was convicted in Ohio state court of crimes relating to a string of armed robberies. At trial, the petitioner's attorney stipulated to what numerous various witnesses would have testified to. The petitioner alleged that his rights under the Confrontation Clause had been violated because the trial court failed to obtain the petitioner's personal consent to the stipulations on the record. The Ohio Court of Appeals rejected the petitioner's claim. The Sixth Circuit concluded that the state court did not contravene or unreasonably apply clearly established Supreme Court precedent, and as a result the denial of relief was affirmed.

Smith v. Cook, 17-4118 (4/15/20)

The petitioner was convicted in Ohio state court of crimes relating to a string of armed robberies. Prior to trial, the petitioner's attorney failed to convey a plea offer to him. The Ohio Court of Appeals rejected the petitioner's claim on the ground that he could not establish prejudice under Strickland v. Washington, 466 U.S. 668 (1984), rather than applying the correct prejudice framework set out in Missouri v. Frye, 566 U.S. 134 (2012), and Lafler v. Cooper, 566 U.S. 156 (2012). As a result, the state court contravened clearly established Supreme Court precedent, and as a result no deference was warranted under 28 U.S.C. § 2254(d)(1). The Sixth Circuit nevertheless concluded that the petitioner's claim failed even under de novo review. The denial of relief was therefore affirmed.

Tackett v. Trierweiler, 19-1037 (4/15/20)

The petitioner was convicted of first degree murder in Michigan state court and sentenced to life without parole. In federal habeas corpus proceedings, the petitioner alleged that his

rights had been violated when the jury was not instructed that they had to unanimously agree on whether he had been the principal offender or an aider and abettor. The Sixth Circuit rejected the petitioner's claim, explaining that there is no constitutional right to have a jury unanimously agree on a particular theory of guilt. The denial of relief was therefore affirmed.

Tackett v. Trierweiler, 19-1037 (4/15/20)

The petitioner was convicted of first degree murder in Michigan state court and sentenced to life without parole. In federal habeas corpus proceedings, the petitioner alleged that his rights had been violated because his co-defendants had been convicted of second degree murder based on the same facts and circumstances. The Sixth Circuit rejected the petitioner's claim, explaining that inconsistent verdicts do not violate the Constitution. The denial of relief was therefore affirmed.

Winburn v. Nagy, 19-2398/99 (4/23/20)

The petitioner filed for habeas corpus relief under 28 USC § 2241 seeking relief in advance of his second trial on various grounds. The Sixth Circuit held that a pretrial detainee proceeding under § 2241 is required to obtain a certificate of appealability in order to appeal, and certified one of the petitioner's issues for appellate review.