

# Precedential Value

Federal Public Defender's Office, Southern District of Ohio

Deborah L. Williams, Federal Public Defender

Editors: Richard Monahan & Jacob Cairns

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

## I. Sentencing Issues

### B. Guideline issues

#### **2B3.1(b)(2) – Robbery – Dangerous Weapon**

##### **U.S. v. Tate, 20-5071 (5/28/21)**

During a bank robbery, the defendant put his hand in a bag and suggested that he had a gun. At sentencing, the district court imposed a 3 level enhancement under USSG § 2B3.1(b)(2) for the defendant's possession of a "dangerous weapon." On appeal, the court held that application of the enhancement was proper. The defendant's act of suggesting that he had a firearm was sufficient to meet the guideline definition of possessing "dangerous weapon." As such, the sentence was affirmed.

#### **3A1.2(c)(1) – Assaulting Official Victim**

##### **U.S. v. Pruitt, 20-6121 (6/14/21)**

During a stop and arrest for unlawfully possessing a firearm, the defendant attempted to flee, refused to put down his gun which he was holding by the barrel, and briefly grabbed the officer's gun by the barrel. The officer was unharmed by the conduct. At sentencing, the district court applied a 6 level enhancement under USSG § 3A1.2(c)(1) for assaulting a police officer. The defendant argued on appeal that the district court did not make sufficient findings to support an assault. First, the court held that actual

injury is not required under the guideline. However, the court ruled that a district court must make findings to support that an assault occurred. Because assault is not defined in the guideline, the court relied on the common law definition which requires either an attempted battery or an act which is intended to put the victim in immediate fear of bodily harm. The court held that the district court had not made the requisite findings to support an assault had actually occurred. Accordingly, the case was remanded for resentencing.

### D. Recidivism enhancements

#### **18 USC § 924(e) – ACCA**

##### **Borden v. U.S., 19-5410 (6/10/21)**

##### **Supreme Court**

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that he was an armed career criminal based, in part, on a prior Tennessee conviction for reckless aggravated assault. The Sixth Circuit affirmed the district court's ruling and the Supreme Court granted *certiorari*. The Court ruled that an offense with a *mens rea* element of recklessness could not be a violent felony for purposes of the ACCA. The Court held that there are four types of *mens rea* for criminal offenses: purpose, knowledge, recklessness, and negligence. The Court ruled

that, under the elements of clause of the ACCA, a defendant's prior conviction must contain a *mens rea* element of either purpose or knowledge. The Court found that this heightened *mens rea* requirement was necessary given the language of the elements clause, which mandates that the prior offense involve the "use of physical force against the person of another." Accordingly, the Sixth Circuit's ruling was reversed and the case remanded.

## **E. Fine/Restitution/Forfeiture**

### **Restitution**

#### **U.S. v. Hack, 19-6278 (6/3/21)**

After completion of his prison term for fraud, the defendant made a settlement agreement with his victims to pay them a lump sum in return for a reduced amount owed. This agreement was contrary to the district court's sentencing order, which required full restitution to be paid on a schedule that was to be determined. The defendant filed a motion to modify the restitution order, the district court denied the motion, and the defendant appealed. The court held that the motion to modify was properly considered to be a motion attempting to modify the judgment in the case rather than a motion to modify conditions of supervised release. This was based on the court's conclusion that the defendant's attempt to negotiate a settlement of the restitution directly with the victims was contrary to the plea agreement and sentence imposed by the district court. As such, the appeal was covered by the appeal waiver in the plea agreement and the appeal was properly dismissed. The court noted that the district court did retain discretion to set the schedule of restitution payments based on the defendant's ability to pay and encouraged the district court to set that schedule as required. Accordingly, the court affirmed the district court's ruling.

## **II. Plea Matters**

### **C. Hearings**

#### **U.S. v. Pitts, 20-3238 (5/14/21)**

The defendant pled guilty to providing material support to terrorists and threatening the President. The parties agreed to a sentence of 168 months. On appeal, the defendant argued that there was no factual basis for his plea, that he did not understand it, and that he was incompetent. The court first held that the factual basis for a plea may be established by a statement of facts to which the defendant admits at a plea hearing, the facts in the presentence investigation report, and facts in a charging document. The court found that all three in this case provided an adequate factual basis for the plea. Second, the court ruled that the defendant clearly understood the terms of his plea as supported by his signatures on the plea documents and his acknowledgements of the terms at the plea hearing. Finally, the court held that the defendant had undergone a psychological evaluation in which he was found competent, no party objected to those findings, and the defendant otherwise appeared to understand the proceedings as they occurred. Under the circumstances, the court found no plain error in any of the plea proceedings and affirmed the defendant's conviction.

## **IV. Fourth Amendment**

### **C. Warrant Exceptions**

#### **Exigent Circumstances**

#### **Lange v. California, 20-18 (6/23/21)** **Supreme Court**

Police attempted to stop the defendant for DUI and he drove into his garage at his home. The police entered the garage in pursuit and arrested the defendant. In his prosecution for DUI, he moved to suppress evidence based on the officer's entry into his home to effectuate the arrest. The lower courts denied the motion and the Supreme Court granted *certiorari*. The Court

held that, contrary to the lower courts' rulings, the flight of a suspected misdemeanant does not always justify a warrantless entry into a suspect's home. Rather, such cases must be judged on a case by case basis. Officers may only enter a home based on exigent circumstances in such a case if it involves prevention of imminent harms of violence, destruction of evidence, or the suspect's escape from the home. Otherwise a warrant is required. Because the lower courts applied a categorical rule, the case was remanded for consideration under the appropriate standard.

**U.S. v. Williams, 18-6343 (5/26/21)**

During an investigation into a conspiracy to distribute fentanyl, the defendant was interviewed by law enforcement and admitted that he had used his cell phone to communicate with coconspirators about distributing the pills. The officers seized his phone and released the defendant. Officers later obtained a search warrant for the phone and found incriminating evidence. The defendant moved to suppress the evidence based on the seizure of the phone without a warrant and the district court denied the motion. On appeal, the court held that exigent circumstances justified the temporary seizure of the phone while obtaining a warrant. Officers had probable cause to believe that the phone contained evidence of drug trafficking based on the defendant's admission. Further, the court held: "[T]here is evidence here of the government's strong interest in preventing the destruction of evidence that could have potentially saved lives of other victims who bought counterfeit pills. The government interest here thus outweighed the individual interest." Accordingly, the court upheld the brief investigatory seizure of the phone while police obtained a warrant.

**Community Caretaking**

**Caniglia v. Strom, 20-157 (5/17/21)**

**Supreme Court**

The petitioner's wife called the police because she was concerned he may harm himself or others with his guns. Police talked the petitioner into going in for a psychiatric evaluation, but promised him they would not remove his guns from his home. After the defendant left for the hospital, the officers entered his home and seized his guns. The petitioner sued the officers for violating his Fourth Amendment rights, and the district court and First Circuit both upheld the officers' actions based on the "community caretaking" exception to the Fourth Amendment. On *certiorari*, the Court held that the community caretaking exception, which had previously been applied to automobiles, was not applicable to the search of a home. The Court found that the officers were required to get a search warrant or some recognized exception to the warrant requirement before entering a defendant's home to conduct a search. As such, the lower courts' rulings were reversed.

**E. Search Warrants**

**Probable Cause**

**U.S. v. Moore, 20-4029 (6/7/21)**

An informant notified officers that the defendant was a drug dealer, detailed his methods, provided that he had a prior conviction for drug trafficking, and indicated that the defendant had sold drugs from the residence that same month. Officers then used the informant to make a controlled purchase of drugs from the defendant at the residence. A search warrant was obtained and drugs found at the residence. The defendant moved to suppress the evidence, the district court denied the motion without a hearing, and the defendant appealed. The court held that no hearing is required when a motion to suppress challenges only the four corners of a search warrant affidavit. Further, the court found that the warrant was supported by probable cause.

Even though the officers did not attest to the informant's reliability, the detailed facts about the defendant combined with the controlled purchase from the residence were sufficient to establish probable cause for the search. Thus, the district court's ruling was affirmed.

## VIII. Defenses

### H. Sufficiency of Evidence Generally

#### U.S. v. Burris, 20-1607 (2/25/21)

The defendant was charged with drug trafficking. During trial, the defense failed to make a Rule 29 motion for acquittal at the close of the government's case. On appeal, the defendant argued that the evidence was insufficient to support the conviction. The court held that the Sixth Circuit's standard for unpreserved sufficiency of the evidence claims on appeal is the "manifest miscarriage of justice" standard. Under this rule, a conviction may only be overturned where the record "is devoid of evidence pointing to guilt." The court noted that this standard is actually a minority view among circuit courts and opined that the Sixth Circuit "may have chosen the wrong side of this circuit split." Nonetheless, the court held that it did not have to decide the issue because the sufficiency of the evidence clearly supported the defendant's conviction under any standard, and the sentence was affirmed.

### XI. Appeal

#### Standards of Review

#### U.S. v. Montgomery, 20-1201 (5/24/21)

After the First Step Act made the amended crack cocaine penalties retroactive, the defendant filed a motion to reduce his sentence. In his *pro se* memo, he suggested to the Court that his criminal history category would remain the same as at his original sentencing, Category VI. The government agreed with this calculation. The district court granted the motion and reduced the defendant's sentence. On appeal, the defendant

argued that his criminal history category should actually have been V, in spite of his suggestion in his memo. The court used the case to explain the differences in standards of appellate review. First, a party may waive an issue, which means the party intentionally gives up a known right. A waiver makes the issue unreviewable on appeal. Second, a party may invite error, which is a suggestion by a party that the district court rule in a certain way, but is short of a knowing waiver. Where a defendant has invited error, the case may only be reviewed by the court for plain error if it first finds that the "interests of justice demand it." Otherwise, the issue is waived. Finally, a party may fail to object to an error, in which case the party has forfeited the issue. Forfeited issues are reviewed for plain error. In the case, the court ruled that the defendant had invited the error, but found that the interests of justice demanded that the court review for plain error. The court held that the defendant's criminal history should have been V instead of VI due to an amendment to the sentencing guidelines, it was a mistake made by both parties and the district court, and that the error may have affected the district court's sentencing decision. Accordingly, the case was remanded for resentencing.

## XII. Specific Offenses

### 8 USC § 1326(a) – Illegal Reentry

#### U.S. v. Florez-Perez, 20-1077 (6/16/21)

Upon being charged with illegally reentering the U.S. after deportation, the defendant collaterally attacked his prior deportation because he received no notice of the hearing and was deported *in absentia*. The district court denied the motion and the defendant appealed. The court held that in order to collaterally attack a prior deportation order, a defendant must demonstrate the following: (1) exhaustion of administrative remedies against the prior deportation order; (2) the deportation order deprived the defendant of the opportunity for judicial review; and (3) the deportation order was fundamentally unfair. The court held that the defendant entirely failed to

establish that he had exhausted administrative review of his prior deportation order, which had occurred 20 years before his arrest. Accordingly, the district court's ruling was affirmed.

**U.S. v. Palomar-Santiago, 20-437 (5/24/21)**  
**Supreme Court**

The defendant was charged with illegally reentering the U.S. after deportation and he collaterally challenged his prior deportation. The defendant had been previously deported for a prior conviction for DUI, which the Supreme Court later held was not grounds for mandatory deportation. The district court and Ninth Circuit both ruled in favor of the defendant, finding that he neither had to show exhaustion of administrative remedies nor a deprivation of judicial review. On *certiorari*, the Supreme Court held that the statutory dictates for exhaustion of administrative remedies and a showing of deprivation of judicial review were mandatory requirements that were not excused under the circumstances. An intervening change in law which invalidated the prior removal was not grounds to relieve these statutory requirements. Therefore, the Ninth Circuit's decision was reversed.

**18 USC § 922(g) – Felon in Possession**

**Greer v. U.S., 19-8709 (6/14/21)**  
**Supreme Court**

The defendant went to trial on a charge of being a felon possession of a firearm. During pendency of his appeal, Rehaif was decided by the Supreme Court, which made the defendant's knowledge of his/her status as a convicted felon an element of the offense. The defendant argued on appeal and in the Supreme Court that Rehaif required reversal of the conviction. The Court held that the issue was subject to plain error review because the defendant had forfeited the claim by failing to object to it in the district court. Further, the Court found that the defendant could not demonstrate plain error because he could not show a "reasonable probability" he would have

been acquitted had the jury been properly instructed. The defendant could make no colorable showing that he was unaware of his status as a convicted felon at the time of the offense, and thus the conviction was affirmed.

**18 USC § 1030(a)(2) – Unauthorized Access**

**Van Buren v. U.S., 19-783 (6/3/21)**  
**Supreme Court**

The defendant was a police officer who ran a license plate search in a police computer in return for money. As a result, he was charged under 18 USC § 1030(a)(2). The statute makes it unlawful "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter." His conviction was affirmed in the court of appeals and the Supreme Court granted *certiorari*. The Court held that the statute did not cover the conduct. The Court found that the statute could not be used against a defendant who has improper motives in obtaining information that is otherwise available to him/her. Rather, the statute covers only defendants who exceed their authorized access in a computer system. As such, the defendant's conviction was reversed.

**18 USC § 1951 – Hobbs Act Bribery**

**U.S. v. Henderson, 20-3707 (6/25/21)**

After an FBI sting operation, a state prison guard was convicted of accepting a bribe under color of official right, pursuant to 18 USC § 1951. The bribe included the defendant delivering a cell phone and tobacco to an inmate for \$500, and not reporting the inmate's possession of the contraband to the disciplinary committee. The defendant argued on appeal that the evidence was insufficient to support the conviction because the failure to report the incident was not an "official act" under the statute. The court held that there are two requirements for an "official act" under § 1951: (1) there must be a "question, matter, cause, suit, proceeding or controversy" which are "similar in nature to a lawsuit before a court, a

determination before an agency, or a hearing before a committee;” and (2) the public official must make a decision or take an action on the matter. The court found that the prison disciplinary board proceeding that would occur related to an inmate receiving contraband was sufficient to meet the first prong. Further, the court ruled that the defendant’s decision not to report the contraband to the disciplinary committee, thus avoiding any hearing altogether, was sufficient as official action under the statute. Accordingly, the conviction was affirmed.

### **18 USC § 2251(a) – Production of Child Porn**

#### **U.S. v. Frei, 20-5119 (5/3/21)**

At the defendant’s trial for the production of child porn, he proposed a jury instruction that would require the jury to find that he had sex with a minor for the sole purpose of producing visual depictions. Rather, the district court provided Sixth Circuit Pattern Instruction 16.01(2) which states that the jury must find that the defendant caused the minor to “engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct.” The district court then permitted the defense to argue in closing that the defendant had sex with the minor just to have sex, not for the purpose of the depictions. On appeal, the court held that the pattern instruction was proper. The court found that 18 USC § 2251(a) does not require that the production of visual depiction be the sole purpose of the sexual exploitation and the defendant was able to argue his defense in closing. Accordingly, the conviction was affirmed.

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

#### **U.S. v. Williams, 18-6343 (5/26/21)**

The defendants were convicted of conspiracy to distribute fentanyl, causing multiple overdoses. On appeal, the defendants argued that a conspiracy was not proven because they were merely in buyer-seller arrangements and further that certain defendants did not know the drugs were actually fentanyl. The court first held that

the evidence was sufficient to establish a “chain conspiracy.” In such a conspiracy, “the agreement can be inferred from the interdependent nature of the criminal enterprise,” and knowledge of the operation “may be inferred from the interrelated nature of the drug business or the volume of drugs involved.” The court found that a defendant manufactured thousands of pills, the defendants worked with intermediaries to achieve a common goal of distributing the pills, and each of the defendants got a large quantity of pills which they sold to others. As such, a chain conspiracy was proven. Further, the court held that the government need not prove *mens rea* as to the exact type of drugs involved. Thus, it was not relevant that some of the defendants did not know if the pills contained fentanyl. Therefore, the convictions were affirmed.

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

#### **U.S. v. Jarvis, 20-3912 (6/3/21)**

The defendant was convicted of multiple bank robberies and firearm enhancements under 18 USC § 924(c). The district court imposed a 5 year sentence for the first § 924(c) conviction and 20 years for the second. After his sentencing, Congress passed the First Step Act which changed the penalty structure for § 924(c), however the change was not made retroactive. The defendant then filed a motion for compassionate release, arguing that the amended § 924(c) was an “extraordinary and compelling circumstance.” The district court denied the motion. On appeal, the court held that the amendment of §924(c), which was specifically not made retroactive, cannot be a basis for “extraordinary and compelling circumstance” for purposes of a compassionate release motion. As such, the district court ruling was affirmed.

#### **U.S. v. Wills, 20-6142 (5/14/21)**

The court applied the Jarvis ruling in a case where, post-sentencing, the First Step Act amended the penalties for an enhancement under

21 USC § 851 for the defendant's prior drug trafficking conviction.

**U.S. v. Owens, 20-2139 (5/6/21)**

The defendant was sentenced for multiple carjackings, bank robberies, and firearm enhancements under 18 USC § 924(c). Thereafter, the First Step Act amended the penalties for § 924(c). The defendant then filed a motion for compassionate release, citing the amended § 924(c) penalties and his post-offense rehabilitation. The district court denied the motion. On appeal, the court held that a district court may consider the sentence a defendant would have received under the First Step Act (had it been made retroactive) along with other considerations in determining whether there are "extraordinary and compelling circumstances" warranting relief. Thus, the case was remanded to the district court for its consideration in the first instance as to whether the combined considerations raised by the defendant were sufficient for compassionate release.

**Terry v. U.S., 20-5904 (6/14/21)**

**Supreme Court**

The defendant was convicted of possession of crack cocaine with intent to distribute under 21 USC § 841(b)(1)(C), a 0-20 offense. After his sentencing, the Fair Sentencing Act was passed, which reduced the statutory crack penalties, and later the First Step Act, which made the reduced crack penalties retroactive. The defendant filed for relief under the FSA, the district court denied the motion, and the court of appeals affirmed. The Supreme Court held that the defendant was ineligible for FSA relief because his offense carried no mandatory minimum sentence. The Court ruled that only drug offenses under § 841(b)(1)(A)(10-life) and (b)(1)(B)(5-40) are eligible for relief under the FSA. Accordingly, the lower courts' rulings were affirmed.

**Edwards v. Vannoy, 19-5807 (5/17/21)**

**Supreme Court**

The petitioner was convicted of various violent offenses in Louisiana state court by a non-unanimous jury. The Supreme Court subsequently held in Ramos v. Louisiana, 140 S.Ct. 1390 (2020), that non-unanimous jury convictions violate the Sixth Amendment. The petitioner filed a federal habeas corpus petition alleging that his convictions were invalid under Ramos. The Supreme Court concluded that Ramos was a new rule of criminal procedure that was not fully retroactive under Teague v. Lane, 489 U.S. 288 (1989), and further determined that new procedural rules can never satisfy Teague's requirements for retroactive application. The denial of habeas corpus relief was accordingly affirmed.

**Cassano v. Shoop, 18-3761 (6/17/21)**

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. The petitioner indicated on three occasions prior to trial that he wished to represent himself, but the trial court never conducted a hearing on the request as required by Faretta v. California, 422 U.S. 806 (1975). The Ohio Supreme Court held that no hearing was required because, among other reasons, the petitioner never made an unequivocal request to represent himself. The Sixth Circuit concluded that the Ohio Supreme Court overlooked one of the requests that the petitioner made, and as a result there was no decision on the merits for the purposes of 28 USC § 2254(d). Reviewing the claim *de novo*, the Sixth Circuit concluded that relief was warranted. The Sixth Circuit further determined that, to the extent that the Ohio Supreme Court denied the claim relating to one of the other requests for self-representation on the merits, no deference was warranted under

AEDPA. The judgment of the district court was accordingly reversed.

**Hughbanks v. Hudson, 18-3955 (6/21/21)**

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. After obtaining discovery in his federal habeas corpus proceedings, the petitioner returned to state court and raised a claim under Brady v. Maryland, 373 U.S. 83 (1963). The state court determined that the petitioner's claim was procedurally barred. The Sixth Circuit concluded that the petitioner's Brady claim was insufficient to establish cause and prejudice to excuse his procedural default, and as a result the denial of habeas corpus relief was affirmed.

**Hughbanks v. Hudson, 18-3955 (6/21/21)**

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. The petitioner alleged in his state post-conviction proceedings that his trial attorneys had failed to perform an adequate investigation for the mitigation phase of trial. The state appellate court concluded that the petitioner had not been deprived of the effective assistance of counsel. The Sixth Circuit concluded that the state court's rejection of the petitioner's claim was entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.