

THE SIXTH CENSUS

ISSUE 105 – January through March 2025

FEDERAL PUBLIC DEFENDER'S OFFICE SOUTHERN DISTRICT OF OHIO

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NAVIGATING THE NEW FORMAT

Beginning with our last submission, we have updated the format of our publication. First, we changed the name and format. In addition, we have added a link to the end of each summary. You can click this link to go to a more thorough outline of each case, if you need more information or context. As before, you can always click the name of the case to go to the Sixth Circuit's website to read the entire decision.

We have also made the decision to (except in rare cases) limit the placement of a case to one topic. Although published decisions regularly address many issues raised by the parties, the case is normally only given published status for one of those issues. Therefore, in most cases, we will only address that topic in this summary. You will also notice that we have decided to consolidate the subheadings and topics for cases.

"The liberties of none are safe unless the liberties of all are protected." – William O. Douglas, Supreme Court Justice, 1939-1975

PRETRIAL MATTERS AND DISCOVERY

[United States v. Risner](#) 24-5394

18 U.S.C. § 924(c) is not facially unconstitutional; thus the district court did not err in denying Risner's motion to dismiss. The Court also rejected an as applied change. [Read more here](#)

SUPPRESSION

[United States V. Simmons](#) 24-1057

Information from a reliable informant was sufficient to provide a nexus between a defendant's home and drug trafficking, so as to allow a search. This even though the evidence was that the defendant kept another apartment for his drug trafficking activities. [Read more here](#)

[United States v. Peake-Wright](#) 23-1898

Officers had reasonable suspicion to prolong stop of vehicle based on passenger's actions and criminal history. The drug-sniffing dog's failure to alert to the presence of controlled substances did not dispel probable cause



to search passenger's jacket for other contraband pursuant to the automobile exception. [Read more here](#)

PLEA

[United States v. Short](#) 24-5269

Even though the district court at the plea hearing did not review whether Short's prior convictions were committed "on occasions different from one another," Short's plea to an 18 U.S.C. § 922 charge and ACCA enhancement was knowing and voluntary. [Read more here](#)

TRIAL AND EVIDENCE ISSUES

[United States v. Grogan](#) 22-3651

Invocation of the Fifth Amendment by the defendant during testimony at trial does not amount to "testimony inconsistent with a proffer statement," such that the Government can use that statement to impeach at trial. [Read more here](#)

[United States v. Taylor](#) 23-5834

It was reversible error to not allow cross-examination of a Government witness on a pending charge, where there was at least a tacit promise of a benefit on that charge in exchange for the witness's testimony. [Read more here](#)

[United States v. Sittenfeld](#) 23-3840

While jury instructions were "overly broad" and could have permitted conviction on grounds not alleged in the indictment, the defendant was not entitled to relief under plain error review. Further, the defendant's (a former councilperson) actions amounted to accepting an offer of a bribe for an official act, thus the evidence was sufficient to convict. [Read more here](#)

[United States v. Silvers](#) 23-5427

"[T]o show that a particular location is within the special maritime and territorial jurisdiction of the United States, the government must prove that (1) the state in which the at-issue land is located has consented to transfer the land to the jurisdiction of the United States and (2) that the federal government has accepted that transfer of jurisdiction." The district court did not err in taking judicial notice that the location where the crime occurred was within the territorial jurisdiction of the United States, despite the defense claim that this was a factual matter for the jury to decide. [Read more here](#)

[United States v. Jakits](#) 23-3870

Asking a minor to send "naked pictures" that have "close ups" and "other body parts" qualifies as soliciting sexually explicit conduct, so as to support convictions under 18 U.S.C. § 2251 and 2422. [Read more here](#)

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*If we desire respect
for the law, we must
first make the law
respectable. - Louis
D. Brandeis*



United States v. Underwood 23-1667

Federal Rule of Evidence 803(5) permits a litigant to put into the trial record testimony from a grand jury proceeding where the witness: (1) cannot recall a certain statement, (2) the statement was “adopted” by them previously; and (3) the statement accurately reflects the witness’s then knowledge. [Read more here](#)

United States v. Erker 23-3109

In a prosecution for a violation of 18 U.S.C. § 1957, which requires laundering of over \$10,000 of “criminally derived proceeds,” the Court rejected the “strict tracing rule,” but left for another day which of four accounting rules/theories applied to determine whether commingled funds were “criminally derived”. In Erker’s case, the math was such that any of his withdrawals from an account containing “commingled funds” had more than \$10,000 of criminal proceeds. [Read more here](#)

SENTENCING

United States v. Cogdill 22-5603

“To prove that the Erlinger error here was harmless, the government must show, beyond a reasonable doubt, that any rational jury would have found that all three of Cogdill’s predicate offenses were “committed on occasions different from one another.” Because the Government could not prove this on appeal, a remand for resentencing was necessary. [Read more here](#)

United States v. Ramirez Gomez 24-5050

An enhancement pursuant to U.S.S.G. § 2A3.5(b)(1)(C) does not require a conviction – only a finding by the sentencing court that the defendant “committed a sex offense against a minor.” [Read more here](#)

United States v. Brown 23-5610

An enhancement under § 2D1.1(b)(1) for possession of a firearm by a co-defendant was proper where, even if the defendant did not know the co-defendant had a firearm, it was “reasonably foreseeable” that the co-defendant would possess one. [Read more here](#)

United States v. Drake 23-3304

Drake’s prior Ohio conviction for marijuana trafficking categorically qualified as a controlled substance offense under the career offender guidelines. [Read more here](#)

United States v. Ross 24-1856

In a case of first impression, the Court determined that the two level enhancement pursuant to U.S.S.G. § 2B1.1(b)(17)(A) for “deriv[ing] more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense” in a mortgage fraud case applied to banks loans



made on account of the fraud regardless of whether the bank suffered a loss or liability. [Read more here](#)

United States v. Mills 24-1270

The district court did not error in applying the second-degree murder cross-reference in sentencing Mills for being a felon in possession of ammunition. U.S.S.G. § 2K2.1(c) The court found that Mills caused the death based on the evidence presented. Second, based on actions leading up to the shooting, the court found that when Mills fired his gun, he had a “man-endangering state of mind,” or at the very least, he acted “willfully and wantonly and callously.” Nor did the court abuse its discretion by considering general deterrence of gang violence when it imposed Mills’ sentence. [Read more here](#)

APPEAL AND POST CONVICTION MATTERS

United States v. Davis-Malone 24-1099

It was not reversible error to use a standard form to deny Davis-Malone a reduction in sentence pursuant to 18 U.S.C. § 3582. The court correctly found that the retroactive Guidelines applied to the defendant and gave sufficient reasoning for denying a reduction in sentence. [Read more here](#)

United States v. Ashrafkhan 24-1472

A defendant was properly denied a motion for reduction of sentence pursuant to 18 U.S.C. § 3582 where he had received an enhancement pursuant to U.S.S.G. 3B1.1 at sentencing. The language “the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848” contained in U.S.S.G § 4C1.1 did not require that both criteria be met. **Read more here**

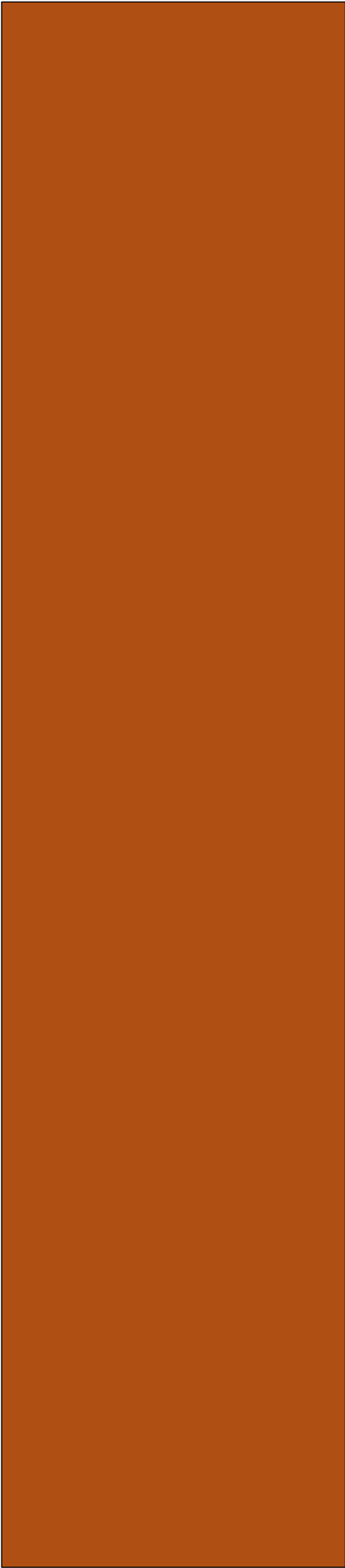
United States v. Obi 24-1482

An appeal of a sentence for “reasonableness,” where a defendant files for relief under 18 U.S.C. § 3582 might not be reviewable under 18 U.S.C. § 3742, as “unreasonableness is not a cognizable ‘violation of law’” that can satisfy this condition in a sentence reduction appeal.” The Court ultimately did not so hold, as the Government waived this issue for appeal. [Read more here](#)

United States v. Hale 24-5362

18 U.S.C. § 3583(e)(1) does not require a finding of “exceptionally good behavior” before courts may grant a motion for early termination of supervised release. [Read more here](#)

United States v. Hanson 24-3442



In a case applying the new Amendment 821 and its retroactive application of U.S.S.G. § 4C1.1., the district court did not error in finding that Hanson had caused a substantial financial hardship given the number of victims (at least 30) and amount defrauded (+\$1.1 million). The court also made sufficiently specific findings by incorporating portions of the government's opposition brief in its order that discussed individual examples. [Read more here](#)

[United States v. King 24-3095](#)

A motion for release pending appeal was properly denied where the issues on appeal were not likely to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment, or a reduced sentence. *See* 18 U.S.C. § 1343(b). [Read more here](#)

THE EXTENDED VERSIONS

United States v. Grogan 22-3651

Invocation of the Fifth Amendment by the defendant during testimony at trial does not amount to “testimony inconsistent with a proffer statement,” such that the Government can use that statement to impeach at trial. When arrested, Grogan initially cooperated and admitted to criminal conduct as part of that cooperation. He did so pursuant to a proffer agreement, in which the Government would be permitted to utilize his statements if Grogan “testifies inconsistently with the proffer or otherwise presents offers or elicits evidence or asserts facts or theories inconsistent with the proffer at any trial, sentencing, or other legal proceeding.” Grogan ultimately did not plead guilty, and went to trial. He took the stand over his defense counsel’s advice. During cross-examination, he invoked his Fifth Amendment privilege. The Government sought to introduce the proffer statements, which the district court allowed. On appeal, the Court determined that Grogan properly invoked the Fifth Amendment, and that this invocation was not a denial of guilt. Therefore, it was reversible error to admit Grogan’s statements. [Go Back](#)

United States v. Taylor 23-5834

A government witness was interviewed before a federal trial. That witness had pending state charges, and the federal agents interviewing the witness told him “to talk to his lawyer because it was possible to receive a benefit for assisting law enforcement.” At trial, the defense wanted to cross examine the witness on this pending charge and potential benefit, as a motivation for the witness’s testimony. The court did not allow this cross. The Court determined that such limitation on cross examination was a violation of the Confrontation Clause, and required a new trial. “[T]he government’s interests in excluding the evidence did not outweigh Taylor’s ‘paramount’ interest in exploring Howell’s potential bias. The district court thus violated Taylor’s confrontation right when it limited his ability to cross-examine Howell about his potential bias and motive in testifying.” [Go back](#)

United States v. Sittenfeld 23-3840

The defendant was a City of Cincinnati councilperson. He was indicted on receiving a bribe for a “quid pro quo.” He was convicted on two counts of 18 U.S.C. § 666. On appeal, he made two claims: one, that the jury instructions allowed him to be convicted based upon conduct from “Ndukwe,” when the indictment alleged that the bribe came from “Rob.” Second, that the evidence was insufficient to convict. As to the jury instructions, the Court admitted that the jury instructions were “problematic” and allowed conviction on a broader range of conduct than that alleged in the indictment. But the Court determined that, under a plain error standard, no reversible error occurred, as the Government only argued the conduct alleged in the indictment. Second, the Court found that “undercover agents can enter into bribery agreements even if they disguise their true motives, and second, a quid pro quo may exist even if the official does not uphold his end of the bargain,” and that “[i]t is bribery to knowingly accept a bribe even if the official does not intend to be influenced by the bribe in any official act despite the claimed promise to the contrary.” Under these standards, Sittenfeld’s conduct amounted to violations of 18 U.S.C. § 666. [Go back](#)

United States v. Short 24-5269

Even though the district court at the plea hearing did not review whether Short’s prior convictions were committed “on occasions different from one another,” Short’s plea to an 18 U.S.C. § 922 charge and ACCA enhancement was knowing and voluntary. The Supreme Court in [Erlinger v. United States, 602 U.S. 821 \(2024\)](#) determined that the requirement that three qualifying convictions under the ACCA be committed on separate occasions was an element of the offense, and needed to be proven to a jury. Short plead guilty to a violation of 18 U.S.C. § 922, and admitted, as part of his plea, that the ACCA applied. But the court never reviewed the *Erlinger* requirement with Short. On appeal, he argued that this rendered his plea invalid. The Court disagreed, finding “the fact that Short’s written factual basis lacks any findings on ACCA’s separate-occasions element doesn’t prohibit finding that his plea rested on a sufficient factual basis.” [Go back](#)

United States v. Davis-Malone 24-1099

It was not error to use a standard form to deny Davis-Malone a reduction in sentence pursuant to 18 U.S.C. § 3582. The court correctly found that the retroactive Guidelines applied to the defendant, and gave sufficient reasoning for denying a reduction in sentence. “Courts need not issue a written opinion engaging in a point-by-point rebuttal of every argument for every sentence-modification motion. [] Rather, they can rely on their ‘professional judgment’ about the amount of information they need to include in an order.” The Court found persuasive the fact that the new Guidelines range overlapped the original sentence imposed. [Go back](#)

United States v. Silvers 23-5427

The defendant was charged with committing a murder at Fort Campbell. On appeal, Silvers contended that whether the location where the crime occurred was within the territorial jurisdiction of the United States was a factual matter for the jury to decide, and thus, the court erred in taking judicial notice that the location was within the jurisdiction of the United States. “[T]o show that a particular location is within the special maritime and territorial jurisdiction of the United States, the government must prove that (1) the state in which the at-issue land is located has consented to transfer the land to the jurisdiction of the United States and (2) that the federal government has accepted that transfer of jurisdiction.” The Court found that jurisdiction was an adjudicative fact and thus must be proven beyond a reasonable doubt. But the court, despite the judicial notice, left the ultimate decision in the jury’s hands during the jury instructions, and thus no reversible error occurred. [Go back](#)

United States v. Jakits 23-3870

The defendant argued that even if he did ask a minor to send “naked pictures” that have “close ups” and “other body parts,” that this conduct did not qualify as soliciting sexually explicit conduct, so as to support convictions under 18 U.S.C. § 2251 and 2422. The Court disagreed, finding that under the context of the facts of the case, the defendant was referring to the lascivious exhibition of a minor’s genitals, such that the convictions could be upheld on a sufficiency review. The Court also rejected the defendant’s argument that the pattern jury instructions were incorrect. [Go back](#)

United States v. Risner 24-5394

18 U.S.C. § 924(c) is not facially unconstitutional; thus the district court did not err in denying Risner’s motion to dismiss those counts of the indictment. The Court also found Risner’s as applied challenge should be denied. “Because § 924(c)(1)(A) expressly prohibits the use of a firearm during the commission of a drug trafficking crime—an objectively unlawful purpose—and Risner admits to possessing a firearm in connection with drug trafficking, § 924(c)(1)(A) lawfully applies to Risner. And beyond being unlawful, we have also identified drug trafficking as dangerous.” [Go back](#)

United States V. Simmons 24-1057

Information from a reliable informant was sufficient to provide a nexus between a defendant’s home and drug trafficking, so as to allow a search. This even though the evidence was that the defendant kept another apartment for his drug trafficking activities. “[U]nder the continual-and-ongoing-operations theory, a dealer of this type often keeps evidence of his crimes in the home, such as records and profits. [] And probable cause is a commonsense inquiry. As the district court noted, just because Simmons had a stash house does not ‘ameliorate the idea that other information or evidence of the crime would still be contained at his [Weatherwood] residence.’ [] So based on the informant’s controlled buys and Stoddard’s assessment of Simmons based on those buys, the issuing judge had a substantial basis for concluding that a search of the Weatherwood home would uncover evidence of wrongdoing.” [Go back](#)

United States v. Underwood 23-1667

At trial, the Government put into evidence grand jury testimony from one of its witnesses when the witness could not recall what he saw on the date of the defendant’s arrest. Federal Rule of Evidence 803(5) permits a litigant to put into the trial record testimony from a grand jury proceeding where the witness: (1) cannot recall the statement, (2) the

statement was “adopted” by them previously; and (3) the statement accurately reflects the witness’s then knowledge. Under this Rule, the transcript of the grand jury testimony was admissible. [Go back](#)

United States v. Cogdill 22-5603

The defendant plead guilty to a violation of 18 U.S.C. § 922(g). At sentencing, over objection, the court enhanced Cogdill’s sentence under the ACCA. Cogdill appealed, arguing that the “on occasions different from one another” was an element of the offense. He lost, but obtained a remand from the Supreme Court pursuant to [Erlinger v. United States, 602 U.S. 821 \(2024\)](#). On remand, the Court held “[t]o prove that the *Erlinger* error here was harmless, the government must show, beyond a reasonable doubt, that any rational jury would have found that all three of Cogdill’s predicate offenses were “committed on occasions different from one another.” Because the Government could not prove this on appeal, a remand for resentencing was necessary. [Go back](#)

United States v. Erker 23-3109

The defendant was charged with violations of 18 U.S.C. § 1957, which requires laundering of over \$10,000 of “criminally derived proceeds.” The defendant contended that in order to prove guilt in a case where a defendant commingled illegal proceeds with legal ones, that the Government had to prove that all laundered withdrawals were from criminal proceeds. The Court lengthily discussed the history of considering commingled funds in criminal jurisprudence. The Court rejected the “strict tracing rule,” but left for another day which accounting rule applied. In Erker’s case, the math was such that any of his withdrawals from an account containing “commingled funds” had, mathematically, more than \$10,000 of criminal proceeds. Therefore, without deciding which rule should apply, the convictions stand. [Go back](#)

United States v. Ramirez Gomez 24-5050

An 8 level enhancement pursuant to U.S.S.G. § 2A3.5(b)(1)(C) applies where a defendant, who has failed to register as a sex offender, commits “a sex offense against a minor.” Contrary to the defendant’s argument on appeal, this does not require a conviction – only a finding, by a preponderance of the evidence of the district court at sentencing, that the offense was committed. [Go back](#)

United States v. Brown 23-5610

Brown received an enhancement under § 2D1.1(b)(1) for possession of a firearm. The firearm was found in an office owned by his co-defendant. Brown argued that he wasn’t in possession of the firearm, and did not know about it. The court determined that the enhancement was proper where, even if the defendant did not know the co-defendant had the firearm, it was “reasonably foreseeable” that the co-defendant would possess one. [Go back](#)

United States v. Obi 24-1482

As a result of Guidelines Amendment 821, Obi’s Guidelines range was reduced. He filed a motion pursuant to 18 U.S.C. § 3582 for a reduction in sentence. The court only reduced the sentence by 7 months, and he appealed on reasonableness grounds. The Court determined that an appeal of a sentence for “reasonableness,” where a defendant files for relief under 18 U.S.C. § 3582, might not be reviewable under 18 U.S.C. § 3742, as “unreasonableness is not a cognizable ‘violation of law’” that can satisfy this condition in a sentence reduction appeal.” The Court ultimately did not so hold, as the Government waived this issue for appeal, and the defendant’s reduction in sentence was not unreasonable. [Go back](#)

United States v. Ross 24-1856

The defendant ran a real estate management company that falsified documents to make properties the company held appear more profitable than they actually were. Ross plead guilty to one count of conspiracy to commit loan fraud. At sentencing, the court imposed a two level enhancement pursuant to U.S.S.G. § 2B1.1(b)(17)(A) for “deriv[ing] more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense.” Ross argued on appeal that the enhancement did not apply, as he derived receipts from a real-estate firm rather than a financial institution,

because his offense did not target a financial institution, and because he neither caused nor intended loss. The Court disagreed, finding that the enhancement applied in a mortgage fraud case applied to banks loans made on account of the fraud regardless of whether the bank suffered a loss or liability. The Court held “if the Commission had wanted to make the gross-receipts enhancement contingent on loss, it knew exactly how to do so. Instead, as Congress dictated, the enhancement is focused on the benefit reaped by the defendant. [] It makes perfect sense that Congress and the Commission would seek to punish adequately criminal conduct from which a defendant benefitted, even where no loss resulted, especially when, in the absence of loss, such crimes can be difficult to detect and deter.” [Go back](#)

United States v. Hanson 24-3442

Hanson pled guilty to wire fraud and conspiracy in connection with the fraudulent scheme to induce businesses to wire money to bank accounts that he controlled. With a criminal history score of zero and offense level of 22, he was sentenced to 46 months imprisonment in May 2023. Following Amendment 821 and its retroactive application of U.S.S.G. § 4C1.1, Hanson moved for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) as a zero-point offender. The government opposed the reduction, arguing that Hanson had caused “substantial financial hardship” to at least one of his victims. The district court denied the reduction finding Hanson ineligible under § 4C1.1(a)(6) as he had caused substantial financial hardship to multiple victims.

Hanson appealed the denial, taking issue with the examples of financial hardship to which the district court cited as they did not fit within any of § 2B1.1 n.4(F)’s listed factors. He also believed the court did not make specific individualized determinations regarding the financial hardship. The Court first noted that courts are not limited by the “non-exhaustive and non-binding” listed factors in U.S.S.G. § 2B1.1’s Application Note 4(F) in determining whether a defendant caused a substantial financial hardship. Second, the district court did not error in its factual findings that Hanson had caused his victims a substantial financial hardship. The number of victims and amount defrauded supported this finding as well as individual examples. Third, by referencing portions of the government’s brief that discussed specific factual findings with respect to individual victims, the court’s order made sufficiently specific findings of substantial financial harm. [Go back](#)

United States v. King 24-3095

King was convicted of health care fraud, making false statements relating to health care matters, and aggravated identity theft. On appeal, he only challenged his convictions for aggravated identity theft. Following [Dubin v. United States, 599 U.S. 110, 143 S.Ct. 1557, 216 L.Ed.2d 136 \(2023\)](#), King argued that his amended indictment did not state an offense for aggravated identity theft, the jury instructions were improper, and that his indictment was constructively amended. King moved for release pending his appeal. First, the Court found that the general rule that release should not be granted pending appeal when an argument would produce reversal of fewer than all counts did not apply to King who would complete his sentences for his other convictions before his appeal resolved. Second, the conduct alleged in the indictment—using patients’ identifying information to seek reimbursement for medical services never rendered—was sufficient to support a charge of aggravated identity theft. Third, the jury instructions tracked the Court’s pattern instructions and incorporated *Dubin*’s holding, informing the jurors that the “means of identification must be the crux of the facilitation or furtherance of the felony.” Given the Court’s recognition that *Dubin* did not change our law, the instructions were found to have adequately informed the jury of the relevant considerations—that the identities played a key role in the commission of the predicate felonies. Fourth, the evidence at trial and the whole of the jury instructions given did not modify the essential elements of the offense charged. Accordingly, motion for release pending appeal was denied. [Go back](#)

United States v. Mills 24-1270

In 2018 a firefright broke out between members of a Detroit gang and Mills, leaving one casualty from the shootout. Soon after a jury convicted Mills of being a felon in possession of ammunition. At sentencing, the district court enhanced Mills’ guidelines range by cross-referencing the second-degree murder guideline under U.S.S.G. § 2K2.1(c) and sentenced him to the statutory maximum penalty of 120 months imprisonment. On Mills’ initial appeal, the Court

affirmed his conviction but vacated his sentence as to the cross-reference based on insufficient factual findings on causation, Mills' mental state, and his justification defense. At resentencing, the district court addressed each issue. First, the court found that Mills caused the death based on the evidence presented. Second, based on actions leading up to the shooting, the court found that when Mills fired his gun, he had a "man-endangering state of mind," or at the very least, he acted "willfully and wantonly and callously." Third, the court rejected Mills' justification defense pointing to available alternatives & reimposed the 120 months sentence. Mills appealed, this time arguing that the court incorrectly applied the second-degree murder cross reference in light of the mens rea required and his justification defense. Mills also believed that the court improperly considered deterring gang violence as part of its § 3553(a) analysis when Mills was not a gang member.

The Court found that the district court did not error in applying the cross-reference. Second degree murder requires a finding of malice aforethought and the court determined Mills had the requisite mens rea based on three facts: (1) the circumstances prior to the shooting did not require him to inject himself into the situation, & he came out of the house w/ a loaded firearm, (2) he "willfully, wantonly, and callously" fired his gun twice, (3) his social media messages demonstrated a "murderous mental state" directed at the people involved. Additionally, Mills' justification defense was defeated by the court's finding of available alternatives. Lastly, the court did not abuse its discretion by factoring in deterrence of gang violence in imposing Mills' sentence. Although the court did not identify Mills as a gang member, the court noted that he had moved in w/ his cousin to prepare to act against gang members. [Go back](#)

United States v. Peake-Wright 23-1898

On a cold night in December 2022, Peake-Wright was riding passenger in a vehicle driven by a friend with a suspended driver's license and an outstanding warrant for her arrest when they were pulled over by law enforcement. The officer recognized Peake-Wright from prior encounters and knew that he had an extensive criminal history. The officer returned to his cruiser to run a check on the open arrest warrant and their driver licenses. During this time, another officer arrived on the scene and approached the passenger side of the vehicle. Peake-Wright did not immediately respond to the officer, instead taking off his jacket. He then opened the door of the car and stepped outside explaining that the window did not work. Both officers requested that he sit back down. Eventually, Peake-Wright complied. But then he stood up again asking questions of the officers despite their objections. At this point Peake-Wright was placed in handcuffs and put in the backseat of a cruiser for obstructing the traffic stop. One of the officers then asked the driver for permission to search the vehicle. Consent was denied. After several more minutes an officer received information back on the driver's warrant and informed her that she would not be arrested but a narcotics dog would conduct a sniff around her car. The dog did not alert. Soon after information was received that Peake-Wright had an outstanding warrant for his arrest. One of the officers then retrieved Peake-Wright's jacket from the car which was noticeably weighed down by a heavy object in one of the pockets that turned out to be a 9mm pistol.

Peake-Wright was charged with being a felon in possession and he moved to suppress the discovery of the firearm as a result of an unreasonably prolonged traffic stop and lack of probable cause to search his jacket. The Court held the traffic stop was not unreasonably prolonged where officers' justification for the stop—driver's open arrest warrant—was being diligently pursued and by the time that investigation concluded, they had independent reasonable suspicion to prolong the stop based on Peake-Wright's strange behavior. That behavior included: removing his jacket despite it being "bitterly cold," "freak[ing] out" as the officers approached him, repeatedly disobeying the officers' instructions, and his criminal history. The drug dog's failure to alert only dispelled probable cause as to the presence of controlled substances. The totality of the circumstances justified the search of Peake-Wright's jacket under the automobile exception to the warrant requirement. Those circumstances include the factors mentioned above and the fact that Peake-Wright had turned away from the officer prior to the stop, his specific history of unlawful possession of firearms, and video footage that shows he appeared to be trying to distance himself from his jacket. The Court concluded that their holding is case-specific as erratic behavior plus a criminal history will not always justify probable cause. [Go back](#)

United States v. Drake 23-3304

At Drake’s sentencing for possession with intent to distribute unlawful substances, the district court concluded that Drake qualified as a “career offender” based in part on his 2016 Ohio conviction for marijuana trafficking. In determining whether this prior conviction qualifies as a “controlled substance offense” under U.S.S.G. § 4B1.2, the “categorical approach” is employed—which requires the court to identify the “least culpable conduct” that the state drug crime covers and determine whether this conduct meets § 4B1.2’s definition. For purposes of the appeal, both parties agreed that since § 4B1.2 does not identify drugs that qualify as controlled substances, federal and state law drug schedules would control, and that distribution of hemp was the “least culpable conduct” that could have stemmed from the 2016 conviction. So the question came down to the timing of § 4B1.2’s definition. Drake argued that § 4B1.2’s definition takes a time-of sentencing approach and by the time of his sentence, both Congress and Ohio had amended their drug schedules to exclude hemp. The government argued for a time-of-conviction approach. Court precedent—*United States v. Clark*, 46 F.4th 404 (6th Cir. 2022)—had determined that § 4B1.2 adopted a time-of-conviction rule. In 2016 both drug schedules included hemp. Drake acknowledged precedent, but pointed to a recent supreme court decision that also adopted the time-of-conviction approach in reading the Armed Career Criminal Act (“ACCA”) but dropped in a footnote that the ACCA was distinguished from the Sentencing Guidelines after the defendant pointed out that district courts apply the most recent version of the guidelines manual at sentencing. The Court found the footnote did not affect *Clark* which held the requirement to apply the guidelines manual in effect at the time of sentencing does not answer what the term “controlled substance” means. Lastly, Drake did not overcome the appellate presumption of reasonableness of his within guidelines sentence. The district court was within its discretion to focus on penological goals over retribution in choosing its sentence. [Go back](#)

United States v. Hale 24-5362

18 U.S.C. § 3583(e)(1) does not require a finding of “exceptionally good behavior” before courts may grant a motion for early termination of supervised release. Hale moved for early termination of his supervised release four years and four months into his ten-year term. Hale argued that despite his violation three years earlier for consuming alcohol, he had been compliant with the terms of his supervision, received treatment, and had letters of support from his state probation officer, therapist, and friend. The government did not oppose early termination. The district court denied Hale’s motion but commended him for his positive behavior. The Court vacated the district court’s order and remanded for reconsideration after finding the court had relied on unpublished caselaw that required a showing of “exceptionally good” behavior as the criterion to relief. Pointing to the language of § 3583(e)(1), which gives courts discretion to terminate supervision that is “warranted by the ‘conduct’ of the defendant released and the interest of justice,” the Court noted that “conduct” is not qualified by “exceptionally good.” Thus, a “blanket rule” requiring exceptional conduct as a prerequisite to early termination is unreasonable. But courts are still free to consider such conduct as part of their broad discretion in resolving § 3583(e)(1) motions. [Go back](#)