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HOW TO USE THIS PUBLICATION

You can read this publication to get a summary of each Court published case or take a deeper dive. To go further, 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. Moreover, you can click the name of the case (in blue) to go to the Court's website to read the entire decision.

Note: although published decisions regularly address many issues the parties raised, 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.

"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. Schuster](#), 23-3834

Defendant's Constitutional right to a Speedy Trial was not violated despite a more than six-year delay in proceedings. The Court determined that although the district court and the Government shared in blame for the delay, most of the delay could be attributed to the defendant's actions, and therefore, no relief under the Sixth Amendment was warranted. [Read more here](#)

SUPPRESSION

[United States V. Whiteside](#) 24-11173

Even though the issuing magistrate failed to sign anything besides the first page of the warrant affidavit, the search warrant was proper, and provided a basis to search Whiteside's apartment. [Read more here](#)

[United States v. Simpson et al.](#) 23-3311

A co-defendant sold his Dodge Charger to the defendant for fentanyl and cash. Police had already been investigating the co-defendant, and had placed a GPS tracker on the Charger before the sale. The Court determined that continued use of the tracker, once the sale occurred, did not violate Simpson's Fourth Amendment rights. [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. Whitlow](#) 24-3114

A state officer had probable cause under both federal and state law to search a vehicle upon viewing loose marijuana in the center console of the vehicle, even though possession of marijuana was not illegal in that state. Observation of a federal law violation by a state officer was enough for a proper stop. [Read more here](#)

[United States v. Santiago](#) 24-5762

The smell of marijuana, localized to a particular person, can establish probable cause to arrest the person for marijuana possession. [Read more here](#)

[United States v. Smith](#) 24-1655

A defendant's actions in driving past a person three times, then stopping behind the person, walking up to the person's car with others (with hoodies pulled up and hands in pockets), and yelling at the person, provided reasonable suspicion that the defendant intended to carjack or rob the person, so as to support the investigatory stop of the defendant. [Read more here](#)

[United States v. Higgins](#) 24-5331

The officer's affidavit provided a sufficient nexus between the defendant's drug trafficking and the apartment where he resided to support the search warrant for the apartment. A confidential informant's statement that the defendant had directed him to come to his "crib" for some "clear" and "slow" (slang for drug types) provided a nexus to the residence. [Read more here](#)

PLEA

[United States v. Mitchell](#) 23-5761

An appellate waiver in a plea agreement will be enforced where the underlying plea was valid and the Government did not breach the agreement, even though the Government advocated for an enhancement not disclosed in the plea agreement itself. [Read more here](#)

TRIAL AND EVIDENCE ISSUES

[United States v. Householder](#) 23-3565

"Hobbs Act extortion and honest services fraud require the Government to show a quid pro quo—that is, the official received money in exchange for a promise to take specific official action. [] There must be an unambiguous meeting of the minds between the official and the payor. But the ways the Government can go about showing this agreement are manifold." [Read more here](#)

United States v. Fairley 22-3923

A prosecutor's questions to a potential defense witness, informing him of the potential of federal criminal liability, were not sufficient to find that the prosecutor interfered with the defendant's right to call a witness. [Read more here](#)

United States v. Knipp 24-5579

Prosecutions for 18 U.S.C. § 922(d)(1), knowingly selling or disposing of a firearm to a felon, do not offend the Second Amendment. [Read more here](#)

United States v. Prather 23-5529

In an aggravated identity theft case, even if the person whose identity Prather used "knowingly and willingly gave his identifying information to Prather, she could still be guilty of aggravated identity theft." This despite the Supreme Court's decision in *Dubin v. United States*. 599 U.S. 110, 114 (2023). [Read more here](#)

United States v. Fox 23-1014

The district court's placement of time limits on cross-examination of a co-conspirator did not violate defendants' right to confrontation. And the district court erred in placing a limitation on the admissibility of Government informant statements to only those that were "regurgitations" of statements made by a federal agent, but the exclusion of these statements was harmless. [Read more here](#)

United States v. Campbell 23-5298

A deliberate ignorance instruction adequately conveys that knowledge of lack of authorization was a required element for the unlawful distribution of controlled substances pursuant to the Supreme Court's decision in *Ruan v. United States*, 597 U.S. 450, 142 S.Ct. 2370, 213 L.Ed.2d 706 (2022). [Read more here](#)

United States v. Robinson 23-5486

The district court did not commit plain error through its ex parte communication with the jury, as the information provided only related to court scheduling. [Read more here](#)

United States v. Sadrinia 24-5464

Although sufficient evidence supported Sadrinia's conviction for knowingly prescribing a controlled substance without a legitimate medical purpose resulting in death, the district court improperly admitted testimony about bad acts unrelated to that conduct (that the doctor used foul language while firing an employee and used another doctor's prescription pad), requiring a new trial. [Read more here](#)



[United States v. Maiké](#) 22-6114

In a conspiracy to commit mail fraud and conspiracy to commit securities fraud trial, substitution of the word “pyramid scheme” for “scheme to defraud” in the jury instructions was not fatal to the instruction, as other instructions made it clear that the scheme itself was fraudulent. [Read more here](#)

SENTENCING

[United States v. Cervenak](#) 23-3466 **EN BANC**

Prior Ohio robbery convictions that do not identify the underlying predicate theft offense are not a categorical match for either Guidelines extortion or generic robbery. There is no default rule that if a predicate theft offense is not identified, O.R.C. § 2913.02 will serve as the predicate offense, abrogating *United States v. Carter*, 69 F.4th 361(6th Cir. 2023). [Read more here](#)

[United States v. Kimbrough](#) 23-5529

There was insufficient proof that Kimbrough committed his three prior convictions “on occasions different from one another.” Therefore, resentencing was required. [Read more here](#)

[United States v. Hinojosa](#) 24-1150

Using a “but for causation” standard for whether a prior sentence “resulted in the defendant being incarcerated during any part of such fifteen-year period” prior to the instant case, the Court found that Hinojosa’s conviction counted as a prior offense. The Court found that because a 1994 sentence (and parole violation for that offense) delayed enforcement of a subsequent 2002 conviction, that the 1994 conviction “resulted in his incarceration during ‘part’ of this period.” [Read more here](#)

[United States v. Wilkes](#) 22-1436

Prior cocaine-related Michigan offenses could count as ACCA predicates since at the time of the offenses, Michigan and federal law coterminously defined cocaine-related controlled substances. [Read more here](#)

[United States v. Bricker](#) 24-3286

The Sentencing Commission recently enacted a policy statement, U.S.S.G. § 1B1.13(b)(6), that a nonretroactive change in the law can present an “extraordinary and compelling” reason warranting a sentence reduction as long as certain conditions are met. However, the Court determined that this Amendment is invalid, as it overturns the “clear and unambiguous” language of the Guideline. [Read more here](#)



United States v. Seuell 24-1764

U.S.S.G. § 2K2.1(a)(3)(A)(i) does not contain a state-of-mind requirement, and therefore, Seuell did not have to know that his pistol could carry enough ammunition to count as accepting a large capacity magazine in order to apply this enhancement. [Read more here](#)

United States v. Mooney 24-3270

The district court failed to make the requisite independent findings of each element of perjury to apply the two-level enhancement for obstruction of justice at sentencing; therefore, resentencing was necessary. [Read more here](#)

United States v. Fike 24-5857

The district court acted within its discretion in finding that prejudgment interest more fully compensated a victim's losses under 18 U.S.C. § 3663A. [Read more here](#)

United States v. Lockridge 24-5784

District court was not required to choose at sentencing between inpatient and outpatient programs for defendant's mental health and substance use treatment as a condition of supervised release in sentencing defendant to 210 months in prison. Leaving such decision making to the probation department did not violate Article III. [Read more here](#)

APPEAL AND POST CONVICTION MATTERS

Walker v. United States 23-5265

Since the Government waived any statute of limitations defense, the district court should not have considered it in review of Walker's 28 U.S.C. § 2255 motion. [Read more here](#)

Villa v. United States 24-5973

A prosecutor's email to defense counsel was too indefinite to be regarded as a formal offer, and therefore, defense counsel was not ineffective for failing to inform the defendant about it. [Read more here](#)

United States v. Shaw 24-5461

An appeal waiver does not prevent a defendant from challenging an alleged conflict between the district court's oral sentence and the written judgment; and when the district court's oral sentence is unclear, the written judgment may be considered to resolve the ambiguity. [Read more here](#)

United States v. Tavaréz 23-3666

When a defendant seeks review of a district court's denial of an early termination of supervised release, 18 U.S.C. § 3742(a) is not applicable. District courts must demonstrate that they considered the relevant 18 U.S.C. § 3553(a) factors before denying an early termination motion.

[Read more here](#)

THE EXTENDED VERSIONS

United States v. Schuster, 23-3834

Defendant's Constitutional right to a Speedy Trial was not violated despite a more than six-year delay in proceedings. The Court determined that although the district court and the Government shared in blame for the delay, most of the delay could be attributed to the defendant's actions, and therefore, no relief under the Sixth Amendment was warranted.

Schuster was indicted in 2016. The district court dismissed his indictment for a violation of the Constitutional Speedy Trial clock in September 2022. The Court reversed, finding that the record revealed that Schuster himself was to blame for much of the delay; that he failed to "sincerely" assert his right to a speedy trial promptly; and that he failed to show that he would be prejudiced from the delay. The Court rejected a claim that the district court acted unreasonably in waiting on an appellate court decision to rule on one of Schuster's pending motions: "While waiting for some other court to act may be unreasonable in other speedy-trial cases, the record here demonstrates that Schuster was complicit in this delay. Whether or not the district court's decision to await the Court cases was reasonable, Schuster did not object to the delay and indeed acquiesced in it. Worse still, he may have been at fault for part of the delay." [Go back](#).

United States v. Householder, 23-3565

"Hobbs Act extortion and honest services fraud require the Government to show a quid pro quo—that is, the official received money in exchange for a promise to take specific official action. [] There must be an unambiguous meeting of the minds between the official and the payor. But the ways the Government can go about showing this agreement are manifold."

The defendant was a politician in the state of Ohio who colluded with a private company to obtain funds for election in exchange for the corporation obtaining a favorable contract with the state. On appeal, Householder challenged whether his actions amounted to a "quid pro quo," such that he could be convicted of bribery. The Court determined that the instructions, which allowed "bribery by implication," were accurate. The Court further held that Householder knew that the corporation's funding of his campaign was in exchange for the corporation obtaining the favorable state contract if Householder was elected. "Householder committed multiple RICO predicates when he solicited and received payments from FirstEnergy in exchange for specific official action. See 18 U.S.C. §§ 1343, 1346; 18 U.S.C. § 1951; Ohio Rev. Code Ann. § 2921.02. It was reasonable for a jury to conclude that he received money from FirstEnergy to finance a political machine that would elect him to the speakership; passed a billion-dollar bailout for FirstEnergy in return for those contributions; and solicited more contributions in exchange for agreeing to take official action to preserve that bailout." [Go back](#)

United States v. Fairley, 22-3923

An AUSA's questions to a potential defense witness, informing him of the potential of criminal liability, were not sufficient to find that the AUSA interfered with the defendant's right to call a witness.

During trial, Fairley wanted to call a witness who was not represented by counsel. The court voir dired the witness, and informed them of their potential criminal exposure by testifying. The AUSA informed the witness of potential federal charges, depending on what he admitted on the stand. On appeal, Fairley argued that this interfered with his right to call witnesses. The Court recognized that although a prosecutor's conduct can amount to witness intimidation in violation of the Constitution, it did not do so here.

The Court did find that two statements made by the AUSA, one in opening argument and one in closing, were improper. However, Fairley had not proven that the statements effected the integrity of the trial; therefore they were not reversible error. [Go back](#)

United States v. Knipp 24-5579

Prosecutions for 18 U.S.C. § 922(d)(1), knowingly selling or disposing of a firearm to a felon, do not offend the Second Amendment. Relying on the Court's decision in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), the Court determined that there were ample historical analogues for this offense. [Go back](#)

United States V. Whiteside 24-11173

Despite the fact that the issuing magistrate failed to sign anything besides the first page of the warrant affidavit, the search warrant was proper, and provided a basis to search Whiteside's apartment. Although in previous decisions the Court had opined that where an issuing magistrate "failed to sign any copy of the warrant, it might plausibly be maintained that a warrant never issued in the first place as a matter of fact," that is not what occurred here. Here, the one signature reflected that the warrant had in fact been issued; therefore, there was no Fourth Amendment concern. [Go back](#)

United States v. Simpson et al. 23-3311

A co-defendant sold his Dodge Charger to the defendant for fentanyl and cash. Police had already been investigating the co-defendant, and had placed a GPS tracker on the Charger before the sale. The Court determined that continued use of the tracker, once the sale occurred, did not violate Simpson's Fourth Amendment rights.

The Court determined that no Fourth Amendment violation occurred for two reasons: first, the probable cause relating to the Charger and the tracker ran with the vehicle, and not the owner. Second, even if the sale somehow vitiated this probable cause, the Charger, by virtue of its sale for drugs, was forfeitable under both state and federal law, and thus was itself contraband. [Go back](#)

United States v. Kimbrough 23-5529

There was insufficient proof that Kimbrough committed his three prior convictions "on occasions different from one another." Therefore, resentencing was required. The Court determined that the Government bore the burden of proving that the prior convictions were on occasions different from one another. Here, the prior burglaries occurred on the same day, and there was no other evidence that they were "separate episodes" or had an "intervening event." Resentencing was required. The Court also noted that on remand, the defendant could pursue his argument 18 U.S.C. 922(g) was a lesser included offense of § 924(e), and thus would violate Double Jeopardy. [Go back](#)

United States v. Prather 23-5529

In an aggravated identity theft case, even if the person whose identity Prather used "knowingly and willingly gave his identifying information to Prather, she could still be guilty of aggravated identity theft." This despite the Supreme Court's decision in *Dubin v. United States*, 599 U.S. 110, 114 (2023). The Court found that in absence of the Supreme Court defining "without lawful authority" in *Dubin*, previous Court precedent allowing aggravated identity theft convictions despite acquiescence of the person whose identity was used would still apply. Further, the Court noted that in Prather's case, her claim was unpreserved, and thus could not meet the more rigorous standard of review. [Go back](#)

United States v. Hinojosa 24-1150

Using a "but for causation" standard for whether a prior sentence "resulted in the defendant being incarcerated during any part of such fifteen-year period" prior to the instant case, the Court found that Hinojosa's conviction counted as a prior offense. The Court found that because a 1994 sentence (and parole violation for that offense) delayed enforcement of a subsequent 2002 conviction, that the 1994 conviction "resulted in his incarceration during 'part' of this period." Thus, even though Hinojosa did not serve any part of the 1994 sentence within the 15-year look back period, that sentence effected the 2002 sentence such that it "resulted in" Hinojosa's incarceration during the period. [Go back](#)

United States v. Fox 23-1014

The district court's placement of time limits on cross-examination of a co-conspirator did not violate defendants' right to confrontation. And the district court erred in restricting the admissibility of Government informant statements to only those that were "regurgitations" of statements made by a federal agent, but evidence showed that excluding these statements was harmless.

In the spring of 2021, defendants, Fox and Croft, were named in a federal indictment charging them with conspiracy to kidnap Michigan's Governor, conspiracy to use a weapon of mass destruction ("WMD"), and Croft was additionally charged with possession of an unregistered destructive device. After a retrial in August 2022, both men were found guilty of all charges.

On appeal Fox and Croft raised several claims of insufficient evidence and abuse of discretion claims regarding decisions of the district court. Relevant here is the district court's decisions to place time limits on their cross-examination of a co-conspirator and limitation of informant statements to only statements that were fed to the informants by federal agents.

The Court determined the district court's time restriction on the cross-examination of a co-conspirator was not an abuse of discretion when the court warned defense counsel several times that it would likely impose such limits, the court was within its discretion to limit examination (wasting time, cumulative evidence, and jury "checking out"), and defense counsel had sufficient opportunity to effectively cross-examine the witness.

The district court erred when it limited the admissibility of Government informant statements under Fed. R. Evid. 801(d)(2)(D) to only those that were "regurgitations" of statements made by a federal agent. The district court's order described merely one example of when Government informant statements may be used in furtherance of an investigative goal, but it was not the only possible scenario. Contrary to the court's reading, *United States v. Branham*, 97 F.3d 835 (6th Cir. 1996) and *United States v. Reed*, 167 F.3d 984 (6th Cir. 1999) placed no such limitations on informant statements.

The court's error was categorized as non-constitutional based on the other avenues available to defendants to support their entrapment defense that were not utilized. And this error was found to be harmless since the omitted statements offered by the defendants did not adequately support their entrapment defense, nor could they overcome the evidence presented at trial. [Go back](#)

United States v. Wilkes 22-1436

Prior cocaine-related Michigan offenses could count as ACCA predicates since at the time of the offenses, Michigan and federal law coterminously defined cocaine-related controlled substances.

Wilkes pled guilty to being a felon in possession of a firearm and received the mandatory minimum sentence of 15 years imprisonment under the Armed Career Criminal Act ("ACCA") based on the district court's finding that 4 of his prior cocaine-related Michigan convictions met the definition of a "serious drug offense."

Wilkes challenged the ACCA designation based on the inclusion of ioflupane in Michigan's definition of cocaine since federal law does not include the substance. At the time of Wilkes' state offenses, Michigan and federal law's definitions for cocaine-related offenses were coterminous. In 2015, federal law removed ioflupane from the controlled-substance schedules while Michigan did not. Wilkes argued the district court should apply the ACCA as understood at the time of sentencing.

Following the Supreme Court's decision in *Brown v. United States*, 602 U.S. 101, 144 S. Ct. 1195, 218 L. Ed. 2d 583 (2024), which held that a "state drug conviction counts as an ACCA predicate if it involved a drug on the federal

schedules at the time of that offense,” the Court affirmed the ACCA designation since Michigan’s definition of cocaine matched the federal drug schedules at the time of Wilkes’ prior offenses. [Go back](#)

United States v. Cervenak 23-3466 EN BANC

Prior Ohio robbery convictions that do not identify the underlying predicate theft offense are not a categorical match for either Guidelines extortion or generic robbery. There is no default rule that if a predicate theft offense is not identified, O.R.C. § 2913.02 will serve as the predicate offense, abrogating *United States v. Carter*, 69 F.4th 361(6th Cir. 2023).

Cervenak challenged the application of the career-offender guidelines based on his prior Ohio robbery convictions under O.R.C. § 2911.02(A)(2). His *Shepard* documents were silent as to which theft offense served as the predicate for the prior robbery convictions. The Court confirmed the modified categorical approach applied to Ohio’s robbery statutes—with the first step of divisibility being the type of robbery at issue and the second step of divisibility being the type of theft offense committed or attempted to complete the robbery.

Without any theft offense identified, the Court looked to the “least serious conduct” criminalized by § 2911.02(A)(2). This conduct included theft offenses that did not require obtaining something of value from another person making it a categorical mismatch with both Guidelines extortion and generic robbery.

The Court also rejected *Carter*’s conclusion that Ohio law presumes § 2913.02 theft is always the predicate theft offense when the indictment charging a defendant with robbery does not specify the theft offense. [Go back](#)

United States v. Campbell 23-5298

A deliberate ignorance instruction adequately conveys that knowledge of lack of authorization was a required element for the unlawful distribution of controlled substances pursuant to the Supreme Court’s decision in *Ruan v. United States*, 597 U.S. 450, 142 S.Ct. 2370, 213 L.Ed.2d 706 (2022).

Following a jury trial, defendants were convicted of conspiring to unlawfully distribute controlled substances, money laundering, health care fraud and conspiracy to commit health care fraud. Defendants brought several challenges to their convictions and sentences.

After Defendants’ convictions, the Supreme Court held that 21 U.S.C. § 841’s “knowingly or intentionally” mens rea applies to authorization. *Ruan v. United States*, 597 U.S. 450, 454 (2022). Thus, “a defendant unlawfully distributes controlled substances only where he *knows* that he is ‘acting in an unauthorized manner, or intend[s] to do so.’” *Id.* Defendants argued the district court did not instruct the jury on the mens rea required by *Ruan*.

The Court acknowledged that it was “doubtful that the[] instructions [given by the district court] conveyed the mens rea *Ruan* requires for distribution,” but determined that precedent involving nearly identical jury instructions required this Court to affirm. See *United States v. Anderson*, 67 F.4th 755 (6th Cir. 2023); *United States v. Bauer*, 82 F.4th 522 (6th Cir. 2023); and *United States v. Stanton*, 103 F.4th 1204 (6th Cir. 2024). These opinions hold that the deliberate-ignorance instruction “substantially cover[s] *Ruan*’s requirements ‘through the description of deliberate ignorance and the juxtaposition of “knowledge” with [c]arelessness, negligence, or foolishness.’” But the Court noted that going forward, these are not the instructions that should be used in unauthorized distribution cases. [Go back](#)

United States v. Robinson 23-5486

The district court did not commit plain error through its ex parte communication with the jury and its admission of “bad acts” evidence at trial. Also, the district court’s *Erlinger* error was harmless.

A jury convicted Robinson of unlawfully possessing a firearm as a felon and the district court sentenced him to a mandatory-minimum sentence of 180 months imprisonment under the Armed Career Criminal Act (“ACCA”). On appeal, Robinson brought several challenges to his conviction and one to the court’s ACCA determination. First, Robinson argued that the district court improperly answered a question from the jury without input from counsel.

Certain questions when answered by the court without input from counsel can effectively deny a defendant the right to counsel at a critical stage. Such questions include further instructions on how to proceed with a deadlocked jury. But providing scheduling information to a jury will not trigger the 6th Amendment. Since Robinson did not object to the court's ex parte communication after the court's disclosure, this failure to object prevented the court from making an appropriate record as to disputed facts (what the juror note originally stated). Thus, accepting the note in the record, it was not plain error for the court to have reasonably interpreted the jury's note with its limited "tonight" language to be asking about scheduling rather than how to proceed if the jurors were deadlocked. So, the court did not need to seek input from counsel. [Go back](#)

Walker v. United States 23-5265

Since the Government waived any statute of limitations defense, the district court should not have considered it in review of Walker's 28 U.S.C. § 2255 motion.

In reviewing Walker's § 2255 motion, the district court considered the statute of limitations defense sua sponte and denied Walker's motion on that basis. This is allowed if the Government's failure to raise the timeliness defense amounts to forfeiture. But if the Government waived the argument, the district court cannot "bypass, override, or excuse" that waiver.

The Court determined the Government's conduct had amount to waiver where the record showed the Government understood the timeline for Walker's motion and knew that timeliness was at issue but chose not to pursue the issue.

[Go back](#)

United States v. Whitlow 24-3114

A state officer had probable cause under both federal and state law to search a vehicle upon viewing loose marijuana in the center console of the vehicle, even though possession of marijuana was not illegal in that state. Observation of a federal law violation by a state officer was enough for a proper stop.

During a traffic stop in Ohio for an expired license plate, an officer observed loose bits of marijuana in the center console of Whitlow's vehicle. The officer asked Whitlow if he had any marijuana and Whitlow responded that he did not. The officer ordered Whitlow out of the car and patted him down based on the scattered marijuana observed. The pat down revealed a bag of marijuana. The officer then searched Whitlow's car which resulted in the recovery of two firearms. Soon after Whitlow was convicted of being a felon in possession and sentenced to 120 months imprisonment.

Whitlow brought several challenges to his conviction and sentence. One of those challenges was to the warrantless search of his car. The Court determined that the officer had probable cause to search the car based on Whitlow's marijuana possession under both federal and state law. The officer's viewing of loose marijuana in the car was enough to conclude that Whitlow was violating the Controlled Substances Act. Federal and Ohio law are silent on whether a state officer may enforce the Controlled Substances Act. And when federal law is silent, the Fourth Amendment does not prevent state officers from enforcing federal law. Also, at the time of the stop, marijuana was illegal under Ohio law except for medical use and the marijuana residue viewed by the officer suggested illegal use. Coupled with Whitlow's lie that he did not have any marijuana, the facts known to the officer created a "fair probability" that contraband would be found in Whitlow's vehicle. [Go back](#)

United States v. Sadrinia 24-5464

Although sufficient evidence supported Sadrinia's conviction for knowingly prescribing a controlled substance without a legitimate medical purpose resulting in death, the district court improperly admitted testimony about bad acts unrelated to that conduct (that the doctor used foul language while firing an employee and used another doctor's prescription pad), requiring a new trial.

On appeal, Sadrinia challenged the sufficiency of the knowledge element of § 841(a) and the trial testimony of former employees admitted in violation of Fed. R. Evid. 404(b)(1), among other things. The testimony from former employees included the fact Sadrinia had used foul language while firing an employee four months after the patient's death and testimony that Sadrinia had used another doctor's prescription pad over a year prior to the death. The district court admitted this testimony on the ground that it was "intrinsic" to the charged crimes.

The Court determined the evidence was sufficient for a jury to conclude that Sadrinia, a dentist of 30 years, knew that the prescription he wrote for his patient was beyond "the usual course of his professional practice." But as to the 404(b)(1) testimony, the Court found this admission of testimony was an abuse of discretion as none of the evidence was "intrinsic" to Sadrinia's treatment of the patient who passed away. This evidence was not harmless where the district court gave no limiting instruction, the prosecutor used such testimony in its closing statement, and evidence supporting the conviction was not overwhelming. As such, Sadrinia was entitled to a new trial. [Go back](#)

United States v. Bricker 24-3286

The Sentencing Commission announced in a recently enacted policy statement, U.S.S.G. § 1B1.13(b)(6), that a nonretroactive change in the law can present an "extraordinary and compelling" reason warranting a sentence reduction as long as certain conditions are met. However, the Court has determined that this is invalid, as it overturns the "clear and unambiguous" language of the Guideline.

The Sentencing Commission announced in a recently enacted policy statement, U.S.S.G. § 1B1.13(b)(6), that a nonretroactive change in the law can present an "extraordinary and compelling" reason warranting a sentence reduction as long as certain conditions are met. But the Court in *United States v. McCall*, 56 F.4th 1048, 1066 (6th Cir. 2022) (en banc) held the phrase "extraordinary and compelling" in § 3582(c)(1)(A)(i) is clear and unambiguous and concluded that "[n]onretroactive legal developments, considered alone or together with other factors, cannot amount to an 'extraordinary and compelling reason' " for a sentence reduction. Coupled with the Supreme Court's decision in *Neal v. United States*, 516 U.S. 284, 116 S.Ct. 763, 133 L.Ed.2d 709 (1996), the Court determined that the Sentencing Commission lacked authority to overrule *McCall*'s holding regarding the plain text of the statute by promulgating a contradictory policy statement.

Also, § 1B1.13(b)(6) violated separation of powers. The policy statement's attempt to empower courts to give retroactive effect to nonretroactive sentencing amendments is contrary to 1 U.S.C. § 109, which bars retroactivity. Additionally, the compassionate-release statute does not empower courts to ignore or overcome statutory mandatory minimum sentences. Accordingly, the Sentencing Commission's policy guidance in § 1B1.13(b)(6) is invalid. [Go back](#)

United States v. Seuell 24-1764

U.S.S.G. § 2K2.1(a)(3)(A)(i) does not contain a state-of-mind requirement, and therefore, Seuell did not have to know that his pistol could carry enough ammunition to count as accepting a large capacity magazine to apply this enhancement.

Seuell pled guilty to being a felon in possession and was sentenced to 70 months. On appeal Seuell challenged his base offense level, U.S.S.G. § 2K2.1(a)(3), which sets the offense level at 22 if the defendant previously committed a "crime of violence" and used a qualifying gun while committing the instant offense. In this case it was a semiautomatic firearm capable of accepting a large capacity magazine. Seuell claimed the offense level shouldn't apply because he did not know that his pistol could carry enough ammunition to qualify as accepting a large capacity magazine.

The Court determined that U.S.S.G. § 2K2.1(a)(3)(A)(i) does not contain a state-of-mind requirement. This was because the Sentencing Commission knew how to add such a requirement and did so in adjacent provisions within the same guideline. Thus, the guideline applies whenever the firearm qualifies. [Go back](#)

United States v. Mooney 24-3270

The district court failed to make the requisite independent findings of each element of perjury to apply the two-level enhancement for obstruction of justice at sentencing.

A defendant's perjury during trial may be grounds to enhance their sentence for obstruction of justice but the district court must satisfy two requirements to apply the enhancement: (1) the court must identify the "particular portions of the defendant's testimony that it considers to be perjurious," and (2) the court "must either make specific findings for each element of perjury or at least make a finding that encompasses all of the factual predicates for a finding of perjury." For purposes of the enhancement, a finding of perjury is sufficient if the court determines that "the defendant was untruthful at trial with respect to material matters" and the "untruthful testimony on material matters was designed to substantially affect the outcome of the case."

The district failed to meet the second prong. The court identified the portion of trial testimony it considered to be an obstruction of justice, but it did not mention "perjury," nor did the court make any factual finding that Mooney committed perjury, and the court did not make any finding as to the materiality of the statement. Accordingly, the enhancement was vacated and the case remanded for resentencing. [Go back](#)

United States v. Mitchell 23-5761

An appellate waiver in a plea agreement will be enforced where the underlying plea was valid and the Government did not breach the agreement, even though the Government advocated for an enhancement not disclosed in the plea agreement itself.

Pursuant to a plea agreement under Criminal Rule 11(c)(1)(B), Mitchell agreed to waive his right to appeal unless the district court imposed an above-guidelines sentence. The district court accepted the plea and imposed a below-guidelines sentence.

On appeal, Mitchell challenged a sentencing enhancement that was not a part of his plea agreement, and the Government moved to dismiss the appeal under the waiver in the plea agreement. Mitchell argued that his plea was not valid, and the Government did not live up to its end of the bargain.

The Court determined that the district court carefully adhered to Rule 11's requirements and the record showed Mitchell understood the nature of his plea. Specifically, the court advised Mitchell that the stipulations contained in his agreement were only recommendations and did not bind the court. Nor did the Government break its promise by not objecting to the additional enhancement at sentencing. The Government did not promise that only one enhancement would apply, just recommended the one enhancement to the district court. The Government neither sought nor supported any additional enhancements and was careful to remind the court of the agreement when defense counsel objected to the additional enhancement. Accordingly, the appeal was dismissed. [Go back](#)

Villa v. United States 24-5973

A prosecutor's email to defense counsel was too indefinite to be regarded as a formal offer, and therefore, defense counsel was not ineffective for failing to inform the defendant about it.

On January 9, 2016, a Kentucky prosecutor emailed a proposed plea agreement to Villa's attorney. This offer was conveyed to Villa. On January 21, the prosecutor sent another email to Villa's attorney ruling out the consideration of a concurrent sentence, "unless there is some additional cooperation. For instance, if Villa pleaded, cooperated against Camillo [sic], and testified, I would consider changing that recommendation." The content of this email was not conveyed to Villa. The Court found that the email amounted to "an invitation to negotiate about potential cooperation, rather than a 'formal offer' with terms concrete enough to enforce." Thus, Villa's attorney did not have any obligation to inform Villa about the email, and was not ineffective for failing to do so. [Go back](#)

United States v. Shaw 24-5461

An appeal waiver does not prevent a defendant from challenging an alleged conflict between the district court's oral sentence and the written judgment; and when the district court's oral sentence is unclear, the written judgment may be considered to resolve the ambiguity.

Shaw's plea agreement contained an appellate waiver that did not allow him to appeal any sentence imposed by the court unless it was above the guidelines range. Shaw was sentenced within the range. But Shaw brought an appeal challenging the conflict between the court's oral sentence and its written judgment regarding mandatory substance-abuse treatment. The Government sought to enforce the appeal waiver.

Since a criminal defendant has a right rooted in the due process clause to be present at their sentencing, the sentence announced from the bench is the sentence and the written judgment is "merely evidence of the sentence." When a defendant argues on appeal that the written judgment and oral sentence conflict, they are not challenging their sentence. Instead, they are seeking to avoid enforcement of the written judgment which is not the sentence and may be a "nullity." In Shaw's case, he was asking the Court to vacate the written judgment's mandatory substance abuse treatment condition as he believed the condition was not part of his actual sentence.

Although the oral sentence controls when it conflicts with the written judgment, where the oral sentence is ambiguous, the written judgment can then be used to resolve that ambiguity. Based on the record, the district court's oral sentence as to the mandatory condition was unclear. The written judgment was used to clarify the ambiguity, and the mandatory substance-abuse condition was confirmed as a part of Shaw's sentence. [Go back](#)

United States v. Santiago 24-5762

The smell of marijuana, localized to a particular person, is sufficient to establish probable cause to arrest the person for marijuana possession.

Detectives in Tennessee were standing outside a car dealership when they smelled the odor of marijuana coming from a car that pulled into the parking lot. When the driver [Santiago] of the car opened their door to exit, the smell of marijuana grew stronger. No one else was in the car. As Santiago entered the dealership, detectives noticed a pistol on his waistband and suspected him of possessing a firearm while under the influence. Detectives detained Santiago on his way out, they placed him in handcuffs patted him down, retrieved his ID and ran a background check on him that disclosed his status as a felon. Santiago was then formally arrested.

Santiago moved to suppress the evidence arguing that his detention, arrest and search were unconstitutional. The district court denied his motion and Santiago challenged this denial on appeal. The Court first found that "[t]he smell of an illegal substance, like marijuana, localized to a suspect supports a *Terry* stop." The detectives had reasonable suspicion to perform the stop where they were familiar with the smell of marijuana from training, could smell the strong odor coming from Santiago's car, the odor intensified when the car door opened, and no one else was in the car. These facts provided reasonable suspicion that Santiago possessed marijuana, a crime under federal and Tennessee law.

Next, the Court determined that the smell of marijuana, localized to particular person, is sufficient to constitute probable cause to arrest the person for the crime of marijuana possession. For the same reasons detectives had reasonable suspicion to detain Santiago, they had probable cause to arrest him. [Go back](#)

United States v. Smith 24-1655

A defendant's actions in driving past a person three times, then stopping behind the person, walking up to the person's car with others (with hoodies pulled up and hands in pockets), and yelling at the person, was reasonable suspicion that the defendant intended to carjack or rob the person to support the investigatory stop of the defendant.

While waiting with another officer who was involved in a car accident, officer Wu noticed a car speed past him. Wu tried to follow the car but lost sight of it and drove back to the scene of the accident. While there, Wu saw the car reappear and move slowly past his car with two young black males in the front seat and two other occupants in the back. The stolen car made its third appearance at the scene and parked some 100 yards behind Wu's car. Wu then saw three young black men with their hoods pulled up and their hands in their pockets, five to ten yards in front of the stolen car, walking towards Wu's car. As the young men neared Wu's car, they spread out along the street and Wu saw Smith yell something towards him while looking directly at him. Wu then drove away from the scene. He turned around to see Smith and the other men walking back towards the stolen car with their hands out of their pockets. Wu relayed his suspicions to other officers who then arrived on scene and detained Smith and the other young men at gunpoint. Officers asked Smith if he had anything dangerous on him and he admitted that he did. Officers then patted him down revealing a firearm.

Smith challenged this stop and frisk on the grounds that officers lacked reasonable suspicion. The district court denied this challenge and Smith subsequently appealed. The Court found Wu's reasonable suspicion that Smith and his companions "intended to carjack or rob him was supported by articulable facts and permissible inferences from those facts." Wu made a commonsense judgment that Smith and companions had come out of the stolen vehicle, the stolen vehicle's movements appeared to be casing the scene, Wu knew from training and experience that stolen vehicles were often used in carjackings and robberies and that his car was often a target, Wu viewed Smith and companions in hoodies with one hand obscured and they spread out as they neared his vehicle, Smith made eye contact with Wu and yelled something, after driving away the men all turned around back towards the stolen car with their hands removed from their pockets, and the events took place in a high-crime area that had seen previous carjackings. The totality of the circumstances justified Smith's stop and frisk. [Go back](#)

United States v. Fike 24-5857

The district court acted within its discretion in finding that prejudgment interest more fully compensated a victim's losses under 18 U.S.C. § 3663A .

Fike pled guilty to a fraud offense with an identifiable victim, J.M., who suffered a pecuniary loss. In Fike's plea agreement, the parties agreed to restitution in the amount of \$363,657.67 which represented the principal Fike stole from J.M. In addition to the principal amount, the district court also awarded \$42,209.41 in prejudgment interest. Fike appealed the district court's inclusion of prejudgment interest in its restitution award, arguing that the Mandatory Victims Restitution Act of 1996 ("MVRA"), 18 U.S.C. § 3663A, does not authorize prejudgment interest.

The Court determined the MVRA gives district courts discretion to award prejudgment interest as part of restitution when that interest is necessary to make the victim whole. The district court acted within its discretion in finding the prejudgment interest more fully compensated J.M.'s losses when Fike had stolen from J.M. for over four years and severed J.M.'s ability to earn interest on the stolen funds. "Because of the time value of money, the funds' value at sentencing had decreased from their value at the time of defendant's fraud. So the district court was justified in finding the return of the principal inadequate." [Go back](#)

United States v. Lockridge 24-5784

District court was not required to choose at sentencing between inpatient and outpatient programs for defendant's mental health and substance use treatment as condition of supervised release in sentencing defendant to 210 months in prison, and leaving such decision making to the probation department did not violate Article III.

Lockridge was sentenced to 210 months in prison and three years of supervised release. Two special conditions of release required Lockridge to "participate in a program of mental health treatment, as directed by the probation officer, until such time as [he] is released from the program by the probation officer"; and "participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as [he] is released from the program by the probation officer." Lockridge objected to these conditions, arguing that the district court

cannot constitutionally delegate these decisions to probation. Rather, the court must “preauthorize any inpatient treatment as opposed to outpatient treatment.”

The Court determined that the district court did not relinquish its authority to select treatment programs to the probation officer by not making that choice at sentencing. Instead, the court merely delayed making the choice. It did not make sense at the time of Lockridge’s sentencing for the court to determine what kind of treatment would be necessary when Lockridge would spend almost two decades in prison. During this time, Lockridge is likely to attend 500 hours of substance-abuse treatment, attend other programming related to mental health, and “undergo any number of personal changes.” The district court cannot predict whether Lockridge will require inpatient treatment when he begins his term of supervised release. Thus, the record required a reading of the sentence that reserves the district court’s choice of treatment programs at a time closer to Lockridge’s supervision. [Go back](#)

United States v. Tavaréz 23-3666

When a defendant seeks review of a district court’s denial of an early termination of supervised release, 18 U.S.C. § 3742(a) does not apply. District courts must establish that they considered the relevant 18 U.S.C. § 3553(a) factors before denying an early termination motion.

Tavaréz brought an appeal seeking review of the district court’s denial of his motion for early termination from supervised release. The district court had denied the motion by refilling the probation officer’s confidential Supervision Report with a check in a box next to “the request is denied” and a signature.

The Government argued that 18 U.S.C. § 3742(a) prevents the Court from granting relief on early termination motions. But the Court found that although “an early termination motion may ultimately result in relief from a sentence, such a motion does not challenge or seek review of the validity of the sentence itself.” Thus, § 3742(a) does not “provide the basis or the criteria for reviewing” the denial order where the district court did not impose a new or modified sentence and Tavaréz does not seek review of such a sentence. In other words, § 3742(a) neither limits the jurisdiction over the appeal of a motion for early termination, nor does it confine the power of an appellate court to grant relief.

In reviewing a denial of early termination and whether the district court has abused its discretion, the Court determined that the record must reveal that the court considered the relevant § 3553(a) factors before denying an early termination motion. The district court does not need to “articulate its analysis of each sentencing factor as long as the record demonstrates that the court considered the relevant factors.” And in Tavaréz’s case, the refiling of probation’s Supervision Report offered no explanation of its reasoning or demonstration that the court had considered the required sentencing factors. [Go back](#)

United States v. Maike 22-6114

In a conspiracy to commit mail fraud and conspiracy to commit securities fraud trial, substitution of the word “pyramid scheme” for “scheme to defraud” in the jury instructions was not fatal to the instruction, as other instructions made it clear that the scheme itself was fraudulent.

Defendants—president for sales, vice president for sales, and distributor—in a multilevel marketing company that turned out to be pyramid scheme, were convicted of conspiracy to commit mail fraud and conspiracy to commit securities fraud. The jury instructions defined the term “pyramid scheme” – one that allowed the jury to find that the defendants participated in a pyramid scheme and not a scheme to defraud. As the Court noted “in the jury’s mind, a finding that defendants participated in a pyramid scheme could substitute for a finding that they participated in a fraudulent scheme. And the court’s definition of a pyramid scheme, as noted above, did not require the jury expressly to find that it was fraudulent.” Nonetheless, the Court determined that the court had also defined “scheme to defraud” elsewhere in the instructions, and that this directed the jury to find that such a scheme was present even if they also found that a “pyramid scheme” occurred. Thus, the instructions were not reversible error. [Go back](#)

United States v. Higgins 24-5331

Officer's affidavit provided a sufficient nexus between the defendant's drug trafficking and the apartment where he resided to support the search warrant for the apartment. A confidential informant's information that the defendant had directed him to come to his "crib" for some "clear" and "slow" (slang for drug types) provided a nexus to the residence.

Higgins challenged whether there was a sufficient nexus between his drug trafficking and his residence to support the search warrant. The affidavit at issue detailed why Higgins became a focus in the officer's investigation: a confidential source (CI) had received a pound of methamphetamine from Higgins and revealed that they had received similar quantities of meth from Higgins on at least 10 prior occasions. The officer used the CI to conduct two controlled buys from Higgins and the CI had received a text a day before the officer presented the warrant to a magistrate judge that directed the CI to come to Higgins' "crib" for some "clear" and "slow" which were slang for meth and some combination of heroin and fentanyl—according to the CI. The affidavit also outlined Higgins' history with drug dealing.

The Court determined that the fact Higgins was listed as a tenant at his apartment coupled with evidence of continual drug dealing was alone sufficient to provide probable cause to search the apartment. Also, Higgins had just directed a repeat customer to come to his residence to buy drugs. This created a "fair probability" that contraband would be found in Higgins' apartment. [Go back](#)