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Joseph Medici

Federal Public Defender

Editors: Kaycee Berente,
Brandy Miller, and Kevin
Schad



TO 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. Deakins](#) 24-5223

Deakins' offense under 18 U.S.C. § 2421, of interstate transportation of an individual to engage in criminal sexual activity involved child sexual abuse, and therefore, the statute of limitations period applicable to offenses involving sexual abuse of minors—which permits prosecutions during the life of the child, or for ten years after the offense, whichever period is longer—applied to Deakins' offense. [Read more here](#)

SUPPRESSION

[United States v. Watson](#) 24-3679

Watson's arrest was constitutional even though the offenses for which Watson was arrested were not "arrestable offenses" under state law. Thus, the subsequent warrantless search of Watson's vehicle as incident to that arrest did not violate the Fourth Amendment. [Read more here](#)



Contact Us

**Federal Public Defenders Office
Southern District of Ohio**

10 W. Broad St., Suite 1020

Columbus, OH 43215

Phone: 614.469.2999

<https://ohs.fd.org/>

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



[United States v. Radaker-Carter](#) 24-1744

In a pre-trial identification suppression argument, the Court first settled conflicting precedent on the proper standard of review: for challenges to a pre-trial identification process, a district court's legal determinations are review de novo, while its factual findings are review for clear error. As to the merits, the identification witness was not unduly influenced by viewing a picture of the suspect prior to the police photo array. [Read more here](#)

[United States v. McCarley-Connin](#) 24-3055

A defendant was not entitled to an evidentiary hearing on his claim that a dog sniff did not provide probable cause for a search warrant based upon the dog's unreliability. Such a claim falls outside the four corners of the affidavit, and if anything, can only be made by a Frank hearing request.

[Read more here](#)

[United States v. Florence](#) 24-3729

When officers observe an individual leave a residence in their vehicle, complete a drug transaction, and then return to the residence; this is enough to establish a fair probability that the individual is storing drugs or evidence of drug trafficking in the residence to support a warrant. [Read more here](#)

PLEA

No cases this issue.

TRIAL AND EVIDENCE ISSUES

[United States v. Thomas](#) 22-6067

Failure to have a jury determine whether the defendant's prior convictions were committed on occasions different from another (an *Erlinger* error) was not structural error; therefore, in Thomas's case, the error was harmless, and Thomas could be sentenced as an Armed Career Criminal.

[Read more here](#)

[United States v. Durham](#) 23-5162/5163

The Court vacated a conviction sentence under the ACCA based upon an *Erlinger* claim where, despite the fact that one defendant had prior robberies occurring on August 6, 2008, August 18, 2008, August 31, 2008, and June 11, 2009, the Court could not determine that a jury would find that each of these occurred "on different occasions." [Read more here](#)

[United States v. Ballinger](#) 23-5579

A court may utilize information in the PSR to determine whether an *Erlinger* error occurred. Here, the error was harmless where the PSR showed a large gap in time between the offenses and no apparent connection. [Read more here](#)

[United States v. Glenn](#) 23-3926

A government witness (police officer) should not have been permitted to testify about the meaning of text messages between the defendant and another. The texts did not involve “specialized language,” and the testimony regarding his interpretation of the messages invaded the jury’s province. The Court reversed the conviction on this basis. [Read more here](#)

[United States v. Pancholi](#) 24-1127

The district court did not violate the Sixth Amendment right to present a defense by excluding a defense witness based upon a discovery violation. Although the court found that the defense did not “willfully” fail to disclose the witness in a timely fashion, such standard was not a requirement for exclusion. [Read more here](#)

[United States v. Bridges](#) 24-5874

Possession of a machinegun, in violation of 18 U.S.C. § 922(o), does not facially violate the Second Amendment, even in light of *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). Further, the defendant could not mount a successful “as applied” challenge. [Read more here](#)

[United States v. VanOchten](#) 23-1901

Possession of a firearm by an “unlawful drug user,” in violation of 18 U.S.C. § 922(g)(3), does not violate the Second Amendment as applied. While VanOchten had a right, as a drug user, to possess a firearm, because his conduct was “dangerous,” the government retained the power to disarm him. [Read more here](#)

[United States v. Singh](#) 24-3655

The Court determined that a pattern jury instruction did not adequately convey the mens rea of “willfulness” necessary for a healthcare fraud conviction under 18 U.S.C. § 1347. Even though the defendant had agreed to the instruction, given other errors in the case, the error was not harmless, and required reversal. [Read more here](#)

[United States v. Mercer-Kinzer](#) 24-1227

The Court rejected an as applied challenge to 18 U.S.C. § 2252(a), finding that texts and blog posts made by the defendant regarding his views on child pornography, even if protected under the First Amendment, were relevant conduct to support a conviction. [Read more here](#)



SENTENCING

[United States v. Parkey](#) 24-5812

An enhancement under U.S.S.G. § 3B1.4 for “using a person less than eighteen years of age to commit the offense” was proper in a production of child pornography prosecution where the defendant had the minor take pictures of herself and send them. This was not improper “double counting.” [Read more here](#)

[United States v. Kidd](#) 25-5112

Since Kidd had committed three separate Grade C violations of supervised release that he did not contest, any error in finding that he committed a fourth Grade C violation was harmless, as it would not affect the sentence imposed. [Read more here](#)

[United States v. Baker](#) 24-1341

Baker’s two prior offenses committed as a juvenile for criminal sexual conduct under Michigan law resulted in “convictions,” within the meaning of 18 U.S.C. § 2251(e)’s enhancement for sexual exploitation of children if a defendant has certain prior convictions. [Read more here](#)

[Terrell Hargrove v. Ian Healy, Warden](#) 24-3809

First Step Act time credits can be used to reduce a prison term but not a supervised release term. [Read more here](#)

APPEAL AND POST CONVICTION MATTERS

[United States v. Hoyle](#) 23-3977

On plain error review, the district court did not err in its handling of defendant’s supervised release proceedings, even though the abbreviated revocation hearing was less than perfect. The defendant was made aware of his rights to object to the allegations, and the sentences which could be imposed. Further, the defendant had plead guilty to other federal charges in relation to the revocation, making it unlikely he would have contested the revocation allegations. [Read more here](#)

THE EXTENDED VERSIONS

[United States v. Thomas](#) 22-6067

Failure to have a jury determine whether the defendant's prior convictions were committed on occasions different from another (an *Erlinger* error) was not structural error; therefore, in Thomas's case, the error was harmless, and Thomas could be sentenced as an Armed Career Criminal.

The Court reviewed Shepard documents and the PSR to determine that each of Thomas's prior convictions were committed at different times and did not have a common scheme. While acknowledging that Erlinger had "harsh words" about the use of Shepard documents to determine this issue, the Court found that the defendant's failure to challenge accuracy of the Shepard documents allowed their use to determine this element of the offense. "The Shepard documents—as aggregated by the PSR—provide the necessary information to answer the occasions-different inquiry. Finding that an error was harmless does not constitute a 'denigration' of Thomas's Fifth and Sixth Amendment jury trial rights." [Go back](#)

[United States v. Watson](#) 24-3679

Watson's arrest was constitutional even though the offenses for which Watson was arrested were not "arrestable offenses" under state law. Thus, the subsequent warrantless search of Watson's vehicle as incident to that arrest did not violate the Fourth Amendment.

Watson's car was stopped because, although he stopped at a stop light, he was over the white "stop line." Once stopped, Watson refused to provide his driver's license. Further, the officer was aware that Watson had previously driven without a valid license. None of these offenses were "arrestable" under Ohio law; however, the Court determined that "the constitutionality of an arrest under the Fourth Amendment does not depend on whether state law authorizes the arrest. [] The Supreme Court (in *Virginia v. Moore*, 553 U.S. 164 (2008)) reaffirmed that an arrest is constitutionally reasonable under the Fourth Amendment so long as the officer has probable cause to believe that the individual committed even a minor offense in the officer's presence." Thus, the stop and arrest of Watson was appropriate. Further, the search of Watson's car was valid. Once stopped, the officer saw what he believed to be marijuana, packed for sale. This provided a basis for the warrantless search. [Go back](#)

[United States v. Parkey](#) 24-5812

An enhancement under U.S.S.G. § 3B1.4 for "using a person less than eighteen years of age to commit the offense" was proper in a production of child pornography prosecution where the defendant had the minor take pictures of herself and send them. This was not improper "double counting," even though the offense could not be charged without a minor being involved. The Court reasoned that because the underlying Guideline, U.S.S.G. § 2G2.1(b), did not "explicitly incorporate" the use of a minor to commit the offense, there was no double counting problem with using the § 3B1.4 enhancement. The Court recognized the "counterintuitive result" – that a person who takes pictures of a minor actually would get a lower Guidelines calculation than when the minor takes the pictures and sends them – but held that the plain language of the Guideline dictated this result. [Go back](#)

[United States v. Glenn](#) 23-3926

A government witness (police officer) should not have been permitted to testify about the meaning of text messages between the defendant and another. The texts did not involve "specialized language," and the testimony regarding his interpretation of the messages invaded the jury's province. The Court reversed the conviction on this basis. "Agent Almonte's testimony involved interpreting ordinary English language to effectively tell the jury the government's theory of the case. In similar cases, we have vacated convictions where a law enforcement officer 'effectively spoon-fed his

interpretations of the [text messages] and the government’s theory of the case to the jury, interpreting even ordinary English language.” The error was also not harmless, as even though there was sufficient evidence to convict, the other evidence was not “overwhelming.” [Go back](#)

[United States v. Pancholi](#) 24-1127

The district court did not violate the Sixth Amendment right to present a defense by excluding a defense witness based upon a discovery violation. Although the court found that the defense did not “willfully” fail to disclose the witness in a timely fashion, such standard was not a requirement for exclusion. Here, the defense, on the last day of trial, informed the court and the government for the first time that it planned on calling an unindicted co-conspirator of the defendant. The court determined that because the witness was not disclosed pursuant to the court’s standing pretrial order, they would be excluded. The Court determined “the district court excluded Shah’s potential testimony as a sanction for a discovery violation. Under the circumstances, that exclusion did not violate Pancholi’s right to present witnesses in his own defense. Rather, the district court reasonably applied the balancing test set forth in *Taylor*.” [Go back](#)

[United States v. Hoyle](#) 23-3977

On plain error review, the district court did not err in its handling of defendant’s supervised release proceedings, even though the abbreviated revocation hearing was less than perfect. The defendant was made aware of his rights to object to the allegations, and the sentences which could be imposed. Further, the defendant had plead guilty to other federal charges in relation to the revocation, making it unlikely he would have contested the revocation allegations.

“[T]he revocation hearing itself was abbreviated and did not retread all the ground covered in earlier proceedings. Also, the district court did not expressly ask whether Hoyle wished to waive his revocation hearing. But ‘the due-process rights afforded at a supervised-release-revocation hearing can be waived even without an express statement to that effect.’ [] And considering all the information Hoyle had received over the course of the proceedings relating to the substantive offense and the violation, it is difficult to see how his admission of responsibility and resultant waiver of further hearing could have been anything but knowing and voluntary.” [Go back](#)

[United States v. Bridges](#) 24-5874

Possession of a machinegun, in violation of 18 U.S.C. § 922(o), does not facially violate the Second Amendment, even in light of *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). Further, the defendant could not mount a successful “as applied” challenge. The Court determined that *Bruen* did not undermine the Court’s previous precedent rejecting a Second Amendment challenge to the statute. See *Hamblen v. United States*, 591 F.3d 471 (6th Cir. 2009). The Court ratified that “the Second Amendment categorically does not protect the possession of ‘unregistered machine guns for personal use.’” Next, the Court determined that “unlawfully owned guns” are not subject to Second Amendment protections. Finally, the Court found that machineguns were “unusual,” and therefore not the type of weapon typically possessed by law abiding citizens for lawful purposes.

Judge Nalbandian issued a concurring opinion in which he noted that, in looking at historical analogues, his research showed that in the 18th Century, while there were regulations on the type of person who could possess a weapon, and how those weapons could be carried, there were no regulations on the type of weapon that could be possessed. Thus, “[t]he historical record before 1800 offers no support for a ban on any class of firearms.” [Go back](#)

[United States v. VanOchten](#) 23-1901

Possession of a firearm by an “unlawful drug user,” in violation of 18 U.S.C. § 922(g)(3), does not violate the Second Amendment as applied. While VanOchten had a right, as a drug user, to possess a firearm, because his conduct was “dangerous,” the government retained the power to disarm him. The Court first determined that its pronouncement in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024) made it clear that “§ 922(g)(3) can be applied to dangerous drug users consistent with the Second Amendment.” Next, the Court found that the finding that VanOchten was dangerous was “an easy one,” and therefore, the statute could be applied as to him. The Court rejected an argument that Congress

could not categorically disarm marijuana users – Congress can if the person is “dangerous” – a decision made on a defendant-by-defendant basis. [Go back](#)

United States v. Singh 24-3655

The Court determined that a pattern jury instruction did not adequately convey the mens rea of “willfulness” necessary for a healthcare fraud conviction under 18 U.S.C. § 1347. Even though the defendant had agreed to the instruction, given other errors in the case, the error was not harmless, and required reversal. “[T]he jury instructions did not state that the government was required to prove that Singh ‘acted with knowledge that [her] conduct was unlawful.’ [] The district court instead instructed the jury that ‘[a]n act is done ‘knowingly and willfully’ if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.’ This instruction failed to convey the scienter that the government must prove to secure a conviction under 18 U.S.C. § 1347.” The Court rejected the Government's claim that other jury instructions conveyed the correct standard. [Go back](#)

United States v. Mercer-Kinzer 24-1227

The Court rejected an as applied challenge to 18 U.S.C. § 2252(a), finding that texts and blog posts made by the defendant regarding his views on child pornography, even if protected under the First Amendment, were relevant conduct to support a conviction. The Court also denied arguments that the evidence was insufficient to convict, as the defense argued that the images were “child erotica” and not pornography. Finally, the Court rejected a claim that it was error to admit texts between the defendant and the victim showing his knowing intent. [Go back](#)

United States v. Durham 23-5162/5163

The Court vacated a conviction sentence under the ACCA based upon an *Erlinger* claim where, despite the fact that one defendant had prior robberies occurring on August 6, 2008, August 18, 2008, August 31, 2008, and June 11, 2009, the Court could not determine that a jury would find that each of these occurred “on different occasions.” The court found that both the temporal and physical proximity of the robberies, along with the fact that the offenses involved the same modus operandi, a shared victim, and not being separate by intervening arrests all led the the conclusion that “we hold that these similarities preclude us from finding that the *Erlinger* error was harmless.” [Go back](#)

United States v. Radaker-Carter 24-1744

In a pre-trial identification suppression argument, the Court first settled conflicting precedent on the proper standard of review: for challenges to a pre-trial identification process, a district court’s legal determinations are review de novo, while its factual finding are review for clear error. As to the merits, the identification witness was not unduly influenced by viewing a picture of the suspect prior to the police photo array. Here, a carjacking occurred outside a shop. A worker at the shop thought she knew one of the assailants, and showed the victim a picture of the person. Later, the victim positively identified the defendant in a photo array. The Court determined that the identification was not suppressible for two reasons: first, the actions of the worker at the shop were not police conduct. Second, the photo array process was done properly, and therefore, there was no “unduly suggestive” identification process. [Go back](#)

United States v. McCarley-Connin 24-3055

A defendant was not entitled to an evidentiary hearing on his claim that a dog sniff did not provide probable cause for a search warrant based upon the dog’s unreliability. Such a claim falls outside the four corners of the affidavit, and if anything, can only be made by a Franks hearing request. The Court reasoned that “relying on information never seen by the magistrate would render his role irrelevant.” Therefore, “after a warrant affidavit has been reviewed and approved by a neutral and detached magistrate, a defendant is entitled to a hearing based on evidence outside the four corners of the affidavit only if he makes the preliminary showing under Franks.” [Go back](#)

United States v. Florence 24-3729

Following its decision in *United States v. Sanders*, 106 F.4th 455 (6th Cir. 2024) (en banc), the Court found the warrant to search Florence’s home was supported by probable cause. Law enforcement observed Florence leave the residence, complete a controlled drug buy, and then return to the residence. This was enough to establish a fair probability that evidence of the controlled buy or drug trafficking would be present in the residence. As additional support for the warrant, the Court pointed to Florence’s phone call with the undercover where he assured the undercover that his supply wasn’t going anywhere. Shortly after, officers located Florence’s car in the driveway of the residence. Florence then texted the undercover that he would be ready soon and to meet him at the spot of two prior sales. [Go back](#)

Terrell Hargrove v. Ian Healy, Warden 24-3809

18 U.S.C. § 3632(d)(4)(C) reads: “Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities shall be applied toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.”

The Court determined this provision applied to incarcerated individuals and not those who were already out on supervised release, like Hargrove, rendering his case moot. The Court also decided when an incarcerated person earns First Step Act time credits “toward” supervised release, they are moving in the direction of an earlier start date to their term of supervised release, not partial fulfillment of their supervised release term. So, time credits under the First Step Act cannot be used to reduce a term of supervised release. [Go back](#)

United States v. Deakins 24-5223

In 2022, Deakins was charged of violating 18 U.S.C. § 2421 based on his transportation of a minor across state lines in 1999. He argued for dismissal of the count pursuant to 18 U.S.C. § 3282(a), which imposes a five-year default statute of limitations on non-capital federal crimes. The government argued that 18 U.S.C. § 3283 applied since it displaces the default statute of limitations when the offense is one “involving the sexual... abuse” of a minor. The Court agreed, finding that to convict Deakins, “the government necessarily had to prove that he trafficked a minor with the intent that the child be sexually abused.” Since the intended sexual abuse of the minor was a “necessary ingredient” of the trafficking charge, Deakins’ offense was one “involving” child sexual abuse. [Go back](#)

United States v. Baker 24-1341

Baker argued that his 1997 juvenile criminal sexual conduct offenses were not “convictions” for purposes of the mandatory minimum sentencing enhancement of 18 U.S.C. § 2251(e). Rather, he argued under Michigan law, they were juvenile adjudications. The Court looked to federal law in determining whether a defendant has received a prior conviction for an offense. After giving “conviction” its ordinary meaning, as “the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere,” the Court found a guilty plea alone may be enough in some circumstances to constitute a conviction. Baker pled guilty to his juvenile offenses and nothing within his judgment of conviction or sentence suggested that he received a juvenile adjudication. Rather, his state records reflected that he was “convicted” of criminal sexual conduct. Thus, his two criminal sexual conduct offenses were convictions for purposes of § 2251(e)’s enhancement. [Go back](#)

United States v. Ballinger 23-5579

Ballinger asserted that his sentence under the Armed Career Criminal Act (ACCA) was error pursuant to *Erlinger v. United States*, 602 U.S. 821, 144 S. Ct. 1840, 219 L. Ed. 2d 451 (2024). Ballinger argued that as to the “different occasions” element of the ACCA enhancement, *Erlinger* prohibited the use of *Shepard* documents to determine facts about the prior offenses and that that a long lapse in time has been found by juries to be a single occasion. The Court determined that *Shepard* documents, which includes information contained in a PSR, may be relied on to conduct a harmless error review if the court has no reason to doubt the reliability of the information provided. As to jury findings,

the Court examines harmless error thorough “the objective lens of a reasonable jury.” And no reasonable jury would conclude that Ballinger’s predicate offenses took place on the same occasion. This was because his offenses showed a gap of more than nine months, and they involved different people without any apparent connection to one another. [Go back](#)

[United States v. Kidd](#) 25-5112

Probation asked for revocation of Kidd’s supervised release based on four different Grade C violations. Kidd only contested the allegation that he had committed a new offense. His guidelines range was 8-14 months, and the district court imposed a sentence of 14 months. On appeal, Kidd challenged the district court’s findings as to the new offense violation. But the Court determined this finding did not matter as it would not affect the district court’s decision to revoke supervised release or impose the sentence that it did. One violation standing alone would authorize revocation and since Kidds’ violations were all Grade C, he would have faced the same guidelines range had the contested violation been excluded. Further, the record showed the district court would have reached the same sentence without the new offense violation. [Go back](#)