

Precedential Value

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This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website. A combined outline of all cases published in Precedential Value since January 2015 may be found on our website at www.fpd-ohs.org, under the Precedential Value tab.

I. Sentencing Issues

B. Guideline issues

2D1.1(b)(12) – Stash House Enhancement

U.S. v. Taylor, 23-5064 (10/25/23)

Upon the defendant's conviction for participating in a drug conspiracy, the district court imposed guideline sentence enhancements for maintaining a stash house and using force to involve another in the conspiracy. On appeal, the court first held that the stash house enhancement was proper under USSG § 2D1.1(b)(12). Specifically, the court ruled that a defendant may receive the enhancement even where the defendant was not the owner or renter of the property. The guideline requires only that the defendant "maintain" the property, which the defendant may through "de facto control." The court found that the defendant had threatened his girlfriend, leaving her no choice but to allow the defendant and his coconspirators to use her home to store drugs. As such, the defendant's "maintenance" of the premises was established. Additionally, the court found that the defendant was also eligible for the using force enhancement under USSG § 2D1.1(b)(16)(A). Because the defendant used fear to get the girlfriend to permit them to use her residence, she received no compensation for it, and she had minimal knowledge of the scope of the conspiracy, the additional two level increase

under § 2D1.1(b)(16)(A) was proper. Accordingly, the sentence was affirmed.

D. Recidivism enhancements

18 USC § 924(e) – ACCA

U.S. v. Schumaker, 21-6250 (10/12/23)

At the defendant's original sentencing for being a felon in possession of a firearm the district court determined he was not an armed career criminal based on existing Sixth Circuit precedent. The government appealed, and while the appeal was pending the Supreme Court decided U.S. v. Stitt, which held that Tennessee's aggravated burglary qualifies as a violent felony under the ACCA. As such, the sentence was vacated on appeal and remanded. On remand, the defendant argued that the Supreme Court's decision in Wooden v. U.S. required that a jury decide the issue of whether the prior aggravated burglary convictions occurred on different occasions such that they would count separately under the ACCA. The district court disagreed, and the defendant again appealed. The court held that the Supreme Court in Wooden specifically declined to decide whether a jury, rather than the district judge, needs to resolve whether prior crimes occurred on a single occasion under the ACCA. Thus, the court relied on prior Sixth Circuit precedent which held that this determination was in the discretion of the sentencing judge. Thus, the

defendant's sentence as an armed career criminal was affirmed.

U.S. v. Jamison, 22-1840 (10/26/23)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that the defendant qualified as an armed career criminal based, in part, on a prior juvenile conviction for a violation of Michigan's "felony firearm statute while committing a second degree murder." On appeal, the court held that the Michigan felony firearm statute constituted a violent felony. First, the court ruled that the felony firearm statute was divisible, in that there are multiple ways under Michigan law to violate the statute. In the defendant's prior case, he violated the statute by committing a second degree murder. Thus, the court analyzed second degree murder under Michigan law and found that it required the use of force, namely causing the death of another. As such, it qualified as a violent felony under the elements clause. Further, the court held that the *mens rea* element was sufficient to constitute a violent felony under the ACCA. The court found that Michigan law required that the defendant act with a "depraved heart," which falls "pretty close to acting purposefully or knowingly on the *mens re* spectrum." Because the statute required a greater *mens rea* than recklessness, it was sufficient under the ACCA. Accordingly, the defendant's sentence was affirmed.

III. Evidence

B. Articles VI-VII – Witness/Expert

702 – Expert Testimony

U.S. v. Bauer, 22-3240 (9/25/23)

The defendant, a former physician, was charged with the unlawful distribution of controlled substances, related to his prescribing practices. At trial, the defendant attempted to testify as both a lay witness and an expert. The district court refused to admit his testimony as an expert

because he failed to provide proper notice under Rule 16. On appeal, the court affirmed the exclusion of the testimony, as the notice was indisputably insufficient. However, the court also acknowledged that the Rule 16 disclosure could constitute a constitutional violation (i.e., inhibiting one's ability to raise a complete defense) where the expert witness is the defendant. Because this issue was not raised directly, the court of appeals did not decide the matter. Accordingly, the judgment was affirmed.

C. Article VIII – Hearsay

804(b)(6) – Forfeiture by wrongdoing

U.S. v. Roberts, 22-3587 (10/17/23)

After trial, the defendant was convicted of two counts of interstate stalking, in violation of 18 USC § 2261A, and one count of unlawful possession of a firearm (which resulted in a murder). The court considered a number of evidentiary issues with regards to the interstate stalking counts. Two matters of first impression were considered by the court. The first related to the forfeiture-by-wrongdoing exception under Fed. R. Evid. 804(b)(6). The court upheld the application of the exception where the motives for the conduct was mixed (i.e., exception will apply so long as one of the motives is to prevent someone from testifying). The second involved the admissibility of digitally enhanced still images taken from video footage. The court determined that the images were admissible if: (1) the enhancements were properly authenticated and (2) the analyst documented his steps when altering the source file.

IV. Fourth Amendment

E. Search Warrants

Good Faith

U.S. v. Davis, 22-3603 (10/23/23)

Officers obtained a warrant to search the defendant's residence that admittedly contained no nexus between the residence and the defendant's drug trafficking. In the defendant's subsequent prosecution, the officer testified before the district court that he provided sworn testimony to the state judge (who issued the search warrant) connecting the defendant's residence and the drug trafficking, but the officer could no longer remember the specifics of such testimony. The state judge also testified before the district court that it was his practice to question officers under oath about search warrants, but this testimony was not recorded and he could not remember what was said. The district court denied the defendant's motion to suppress related to the search warrant and he appealed. The court held that good faith saved the warrant. The court found that the face of the warrant itself was "bare bones" related to the nexus issue. However, the court ruled that the officer's testimony that he provided nexus information (although he could not remember what he actually said) was sufficient to provide the "modicum of evidence" necessary to clear the "bare bones" hurdle. This was particularly true given that, from review of the trial transcript, the court was aware that the officer was in possession of a significant amount of evidence at the time he obtained the warrant that drug trafficking was in fact tied to the defendant's residence. Moreover, the court was unwilling to find good faith lacking because the state judge failed to record the officer's sworn testimony. The court ruled that the Fourth Amendment protects against police misconduct, not judicial misconduct. Thus, because the officer had no fault in the state judge's failure to record testimony, the good faith exception was applicable. As such, the district court's ruling was affirmed.

U.S. v. Lewis, 22-5593 (9/1/23)

Kentucky officers received a tip that an IP address associated with the defendant was viewing child pornography. The officers visited the defendant at his house, and obtained consent to look through his phone and laptop. During the review, officers saw evidence of child pornography. As a result, the defendant was arrested and the officers prepared a search warrant that was issued by a state judge. The warrant provided that (1) "HSI" had determined that the defendant was a "person of interest," (2) officers searched the defendant's laptop and cell phone, (3) it "became apparent" that the defendant had used laptop to view images of child porn, and (4) the defendant had "demonstrated a pattern of criminal activity related to child pornography." Upon execution of the search warrant, officers conducted a forensic examination and discovered child pornography. In his federal prosecution, the defendant moved to suppress the evidence seized during the forensic examination. The district court found that the warrant was lacking in probable cause, but that it was saved by good faith. On appeal, the court held that the affidavit was bare bones. Specifically, the court found that the affidavit failed to identify who HSI was or provide any explanation of a "person of interest." Further, the court ruled that the factual statements in the affidavit were entirely conclusory. In this regard, the court took issue with the phrases that it "became apparent" that the laptop was used to view child porn, and that the defendant had "demonstrated a pattern of criminal activity related to child pornography." The court found that these statements were completely unsupported by any factual allegations and were "too vague and insubstantial" to keep the affidavit from being bare bones, such that no reasonable officer could rely on it. As such, good faith could not save the warrant and the district court's ruling was reversed.

Further, the court held that the seizure and forensic search of the devices was not supported by the defendant's earlier consent. The consent

provided by the defendant was for the officers to search through the phones at the scene when they arrived. However, the court found that the consent did not cover the later seizure and forensic examination of the devices. Similarly, the court held that the “plain view” exception was not applicable. Under the plain view doctrine, officers may seize evidence in plain view. It would not, however, permit officers to conduct a full forensic examination on devices that were seized. Accordingly, all evidence obtained from the forensic searches was suppressed.

V. Fifth Amendment

C. Confessions/Testimonial Rights

U.S. v. Zakhari, 22-5328 (10/23/23)

During an interrogation of the defendant related to sex offenses, he requested to speak with his sister, who was an attorney. The officer continued the questioning and the defendant made inculpatory statements. The defendant then again requested counsel, and the second request was also ignored. During his prosecution for attempting to persuade a minor for sex and for attempting to send obscene images to a minor, the defendant moved to suppress the inculpatory statements based on violations of Miranda. The district court suppressed the statements after the second assertion of counsel, but declined to suppress the statements after the first request, finding it was ambiguous. The government subsequently filed a superseding indictment adding a count of attempted production of child pornography, which imposed a mandatory minimum 15 year penalty. The defendant moved to dismiss the indictment based on prosecutorial vindictiveness, which the district court denied. Upon his conviction at trial, the defendant appealed. The court held that the district court erred in failing to suppress all of the defendant’s inculpatory statements. The court found that the defendant had asked to speak to his sister, who was an attorney, and referenced the Miranda warning which indicated that he could stop the interview at any time. When the officer asked for

clarity if the defendant wanted to speak with his sister, the defendant said, “Yeah, I mean sh - . . .” The court found that this was an unambiguous assertion of the right to counsel, and that the questioning should have stopped at this point until he could speak with his attorney-sister. As such, the evidence should have been suppressed. The court further found that “a confession is like no other evidence,” and that its admission at trial was not harmless. Accordingly, the conviction was reversed on this basis.

Regarding the claim of prosecutorial vindictiveness, the court found that the defendant had demonstrated enough for the district court to presume vindictiveness. In this regard, the defendant showed that he filed substantive motions which the government vehemently opposed (including the motion to suppress based on Miranda) and that the government filed the enhanced charges thereafter. Further, the enhanced charges were based on facts known to the government since the onset of the case, and were derived from the same operative facts as the already charged counts in the indictment. Thus, the district court should have required the government to present evidence to explain its charging decisions in an effort to rebut the presumed vindictiveness. As such, the district court was directed on remand to reopen the matter and reconsider the vindictiveness argument.

VI. Sixth Amendment

A. Right to Jury Trial

B. Confrontation Clause

U.S. v. Lundy, 22-3686 (10/10/23)

Officers were called to a domestic violence scene and left to search for the defendant who had fled. Within fifteen minutes, the officers were called back to the scene because the defendant had returned with a gun. The defendant’s girlfriend reported that he had pointed a gun in her face. Officers found the defendant a short distance away near a car with a gun inside. During the defendant’s trial for being a felon in possession

of a firearm, the district court admitted the body camera footage of the girlfriend's statement. The defendant argued on appeal that the statement was hearsay and its admission violated the Confrontation Clause. The court held that admission of the evidence was proper. The court first ruled that the statement was properly admitted under the hearsay exception for an excited utterance, FRE 803(2). The court found that the defendant pointing the gun was definitely a startling event, the statement was made at least within fifteen minutes of the incident, and the girlfriend (although she did not seem that excited on the video) indicated that she was just "trying not to flip out" and "adrenaline was pumping through [her]." The court held that these circumstances satisfied the excited utterance exception.

Further, the court ruled that admission of the statement did not violate the Confrontation Clause. The court found that the purpose of the statement was to "meet an ongoing emergency," namely to stop the defendant from being a further danger with the firearm. As such, the statement was "non-testimonial," and thus did not violate the defendant's right to confrontation of the witness at trial. Accordingly, the conviction was affirmed.

XII. Specific Offenses

18 USC § 2261A – Interstate Stalking

U.S. v. Roberts, 22-3587 (10/17/23)

After trial, the defendant was convicted of two counts of interstate stalking, in violation of 18 USC § 2261A, and one count of unlawful possession of a firearm (which resulted in a murder). The defendant argued on appeal that the interstate stalking statute was not constitutionally applied in his case. On appeal, the constitutional discussion centered on a Commerce Clause argument as relates to the interstate stalking statute. The court determined that because the defendant traveled across multiple states in preparation for, and to accomplish, the crime, the

conduct affected interstate commerce (despite the fact that the criminal act occurred entirely intrastate). Finally, the court examined a multiplicity argument and held that because the two interstate stalking charges alleged separate crimes (i.e., the defendant was charged under two different provisions of the statute) with different underlying arguments, the multiplicity argument failed.

XIII. Post-Conviction Remedies

James v. Corrigan, 22-1507 (10/26/23)

The petitioner was convicted of felony murder and related offenses in Michigan state court. The petitioner alleged on direct appeal that his convictions were based on constitutionally insufficient evidence, but the Michigan Court of Appeals affirmed. The petitioner raised his claim again in federal habeas corpus proceedings. The Sixth Circuit concluded that the petitioner's claim failed under de novo review, and as a result it was not necessary to determine if the state court ruling was entitled to deference under 28 U.S.C. § 2254(d). The denial of relief was accordingly affirmed.