Seventh Circuit Update 2025 – All Case Summaries
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Appellate Practice

United States v. Larry, No. 23-2790. Larry appealed his conviction for conspiring to commit sex trafficking by force, fraud, or coercion. His appointed lawyer asserted that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). In a rare published opinion granting an *Anders* motion to withdraw, the Court stated it was publishing this opinion because "counsel's brief, like many other Anders briefs, omits a step in the *Anders* analysis." In detail, the court described that counsel must first consult with the defendant to determine whether he was advised as to the risks and benefits of withdrawing a guilty plea. Second, counsel must determine whether the defendant wishes to challenge the guilty plea's validity. If the defendant does not wish to challenge the guilty plea, counsel need not address possible Rule 11 arguments in the *Anders* brief.

United States v. Johnson, No. 22-2809. In this grant of an *Anders* brief and motion to withdraw, the Court of Appeals again reminded attorneys that they must consult their clients to determine if the client wants to withdraw his guilty plea.

United States v. Henson, No. 22-2512. Henson owes thousands of dollars in restitution stemming from a federal fraud conviction. The government filed a motion to apply cash found in Henson's car toward his restitution and the magistrate judge granted the government's request. Henson argued on appeal that the money was confiscated illegally and thus should be returned to him. The Court of Appeals did not reach the merits of the case but rather dismissed the appeal because the magistrate acted outside of his authority. The Court held that a turnover motion is not a task enumerated by 28 U.S.C. § 636 and the parties did not consent to the magistrate's jurisdiction. The Court also rejected the argument that Central District of Illinois Local Rule 72.1(A)(22) created an inference that there is an automatic assignment of turnover motions under 28 U.S.C. § 3008. Because the turnover motion in this case was not properly assigned to the magistrate judge, the order issued by the magistrate judge was not an appealable, final decision.

United States v. Cargo, No. 24-3067. Cargo mailed a *pro se* notice of appeal within the 14 days required by the rules and in compliance with the prison mailbox rule. However, he failed to name the correct street when addressing the envelope. The envelope did not make it to the district court and was eventually returned to Cargo. When Cargo

learned his notice of appeal had not been filed, he filed another one, but this time the notice was four years late. The Court of Appeals dismissed his appeal, holding that Cargo had not mailed the notice of appeal in compliance with the prison mailbox rule. The Court also noted that district courts should reinforce at sentencing that defense counsel should be relied on to file a notice of appeal when requested by their clients.

United States v. Clark, No. 24-1403. The Court previously remanded Clark's case based on a challenge to an affidavit supporting an application for a warrant to search a hotel room for drugs. Clark appealed a second time, contesting the district court's findings on remand and the denial of his motion to suppress following the *Franks* hearing. The Court of Appeals affirmed. In so doing, the Court discussed at length "the missing reply brief" in appeals generally. The Court acknowledged reply briefs are not mandatory but warned attorneys "To forgo a reply brief and remain silent to an adversary's most significant points is to leave a substantial opportunity on the cutting-room floor." The Court also urged counsel "to recognize the importance of the briefing process and the significant role a tailored, efficient, and well-presented reply brief can play in an appeal. Leaving the last word unsaid seems unwise in most instances."

Armed Career Criminal Act

United States v. Anderson, No. 21-1325. The district court determined Anderson qualified for an enhanced sentence under the Armed Career Criminal Act. He argued one of the prior convictions the district court relied on—his Florida conviction in 2001 for aggravated assault—covers reckless conduct and is therefore no longer a "violent felony" after *Borden v. United States*. The Court of Appeals agreed and held that the conviction is not a predicate violent felony and that the government may not substitute one of Anderson's other prior convictions as an alternative predicate offense. Because Anderson did not have three predicate convictions, the ACCA enhancement was improper.

United States v. Johnson, No. 23-2338. Johnson pled guilty to possession of a firearm as a convicted felon. He previously had been convicted of three counts of robbery under Indiana law, which is a violent felony under ACCA. He argued that the district court erred in determining he qualified for ACCA because he had committed two of the robberies on the same occasion, rather than on "occasions different from one another." He also argued that a jury should decide whether he had committed the robberies on the same or different occasions. The Court of Appeals reversed and remanded, holding under *Erlinger v. United States*, the Fifth and Sixth Amendments entitle defendants to have a jury decide whether prior offenses were committed on the same or different occasions.

Bruen **Issues**

United States v. Scheidt, No. 23-2567. Scheidt knowingly included false information in a Firearms Transaction Record, or ATF Form 4473, in five separate gun purchases. Specifically, she provided false addresses on the forms. The false statements concerned law enforcement because it turned out Scheidt resold the firearms, with two of the guns then being used in two shootings, including a murder. Scheidt argued that her convictions were unconstitutional after *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) because Congress conditioned her right to purchase a firearm on completing ATF Form 4473 and requiring honesty on the form. The Court of Appeals rejected her argument, holding that the conduct prohibited by (a)(6) does not have protection under the Second Amendment because (a)(6) does not impose substantive restrictions on who may possessed a firearm. The Court further held that "ordinary information-providing requirements" do not infringe on the right to keep and bear arms. Importantly, the Court acknowledged that she could pursue this challenge even though she pled guilty without reserving the right to appeal citing *Class v. United States*, 583 U.S. 174 (2018).

United States v. Rush, No. 23-3256. Section 5861(d) of the National Firearms Act criminalizes receipt or possession of certain unregistered firearms including short-barreled rifles. Rush challenged his indictment and conviction, alleging that the statute unconstitutionally burdens core conduct protected by the Second Amendment. The Court of Appeals affirmed, holding binding precedent foreclosed his argument. Earlier Supreme Court precedent, *United States v. Miller*, 307 U.S. 174 (1939), upheld an analogous regulation against a Second Amendment challenge. The Court declined to find that *Bruen* overruled *Miller* because *Bruen* specifically relied on *Miller* in noting that "prohibiting the carrying of dangerous and unusual weapons is fairly supported by the historical tradition. The Court understood *Miller* to indicate the type of weapon is critical to Second Amendment analysis and licensing regimes are "categorially different" than weapons bans. The Court then engaged in the *Bruen* analysis but declined to make a finding that short-barreled rifles are "arms" protected by the Second Amendment. The Court then found that historical tradition supported the regulation here.

Counsel

United States v. Smith, No. 23-2472. Smith pled guilty to one count of conspiracy to distribute methamphetamine and to one count of money laundering conspiracy. On the day before his sentencing hearing, his retained attorney filed a motion to withdraw. At a hearing on this motion, Smith explained his dissatisfaction with his attorney's

representation and requested substitute counsel. The district court denied the motion to withdraw and declined to appoint substitute counsel. Smith received a below-guidelines sentence of 324 months' imprisonment. He appealed and argued the district court erroneously denied his request for substitute counsel and the substantive reasonableness of his sentence. The Court of Appeals affirmed, holding that the district court did not abuse its discretion in denying the motion of counsel to withdraw because Smith's request was untimely, the district court made a sufficient inquiry into his concerns, and the court correctly concluded the relationship with his attorney involved defense strategy. The Court also held that the district court adequately explained Smith's sentence and considered the § 3553(a) factors.

United States v. Elliott, No. 23-1148. Faced with more than a dozen federal charges relating to his possession of firearms, sexual exploitation of a minor, and plot to murder that minor and her mother, Elliott retained Attorney Brandon Sample to represent him. More than a year into his representation of Elliott, Sample filed a motion to withdraw. He had discovered a controlled substance concealed in documents that he had been asked to deliver to Elliott. Sample informed the court of the discovery, but neither he nor the court told Elliott. Unaware of why Sample sought to withdraw, Elliott objected to his attorney's motion. Emphasizing Elliott's right to counsel of his choice, the district court denied Sample's motion. Ten months later, Elliott, still represented by Sample, reached a plea agreement with the government and pleaded guilty to five counts. Elliott appealed. He argued that Sample had an actual conflict of interest, that the district court violated his Sixth Amendment right to conflict-free counsel by failing to inform him of this conflict, and that because his counsel was conflicted, his guilty plea was not knowing and voluntary. The government argued that Mr. Elliott's appeal is entirely foreclosed by the appellate waiver within his plea agreement. The Court of Appeals affirmed. It held that the issue was not foreclosed by the appellate waiver. However, the Court concluded that even if Sample were conflicted, Elliott could not establish that he was adversely affected by the alleged conflict of interest.

United States v. Bonds, No. 24-1576. Bonds appealed the district court's denial of his motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on Amendment 821 to the U.S. Sentencing Guidelines. The Court of Appeals ordered counsel to address whether the Criminal Justice Act, 18 U.S.C. § 3006A, authorized the appointment of appellate counsel to represent Bonds in his challenge the district court's adverse ruling on his § 3582(c)(2) motion. Each of the three judges on the panel prepared a separate opinion explaining his view on that question, including whether the question requires resolution in this appeal. The Court could not reach a consensus on the outcome of that issue but did affirm on the substantive question regarding Amendment 821.

United States v. Frazier & Frazier, Nos. 23-2642 & 23-2641. Kein Eastman was abducted from his grandmother's house at gunpoint, taken to an East St. Louis apartment, threatened, beaten, and shot at—all over a piece of jewelry. Eastman fled the scene moaning and with his face bloodied. No one has seen or heard from him since. A federal indictment followed, charging two brothers, Kenwyn Frazier and Kendrick Frazier, with kidnapping. Both went to trial, and the jury returned guilty verdicts. They appealed, raising numerous arguments. First, the Court held that the district court did not violate one of the brother's Sixth Amendment right to choice of counsel where both brothers wanted one attorney to represent them. The district appropriately handled the issue where there was uncertainty about how the prosecution would unfold and the potential conflicts that could arise with joint representation. The brothers had different degrees of culpability in charged crimes and the possibility of additional charges being added was high. In addition, there was a significant possibility of one brother testifying against the other. The Court also denied the argument that the federal kidnapping statue was unconstitutional where their use of cell phones and a car did not cross state lines. The Court held that there was "no question cars and cell phones are instrumentalities of interstate commerce."

Equal Protection

United States v. Viveros-Chavez, No. 22-3285. Viveros-Chavez, a Mexican citizen who had previously been removed from the United States, was found again in the country without lawful immigration status. The government charged him with violating 8 U.S.C. § 1326. Viveros-Chavez moved to dismiss the indictment, arguing § 1326 violates the Fifth Amendment's guarantee of equal protection because it was enacted with discriminatory intent and disproportionately impacts Mexican and Latino individuals. The Court of Appeals disagreed and affirmed. It held that there is insufficient evidence that racial animus motivated the statute's enactment and it does not violate equal protection.

Evidentiary Issues

United States v. Siepman, No. 23-2207. An automated government software program accessed and downloaded child pornography from Siepman's computer over a peer-to-peer file sharing network. He was charged with transportation of child pornography and argued that the automatic downloads were not transportation because there was no evidence "another person" downloaded the files. The Court of Appeals affirmed, holding that when a defendant makes a file available to a network of others from a computer in one location, and another user then accesses and downloads that file onto his own computer in another location over a peer-to-peer network, the defendant has

caused that file to be "transported." This applies equally to a person or a computer used by a person, *i.e.*, the agent.

United States v. Chaoqun, No. 23-1262. Chaoqun was charged with a violation of 18 U.S.C. § 951, an espionage statute. The statute imposes penalties upon anyone acting within the United States as an agent of a foreign government without first registering as such with the Attorney General, unless they fall under one of four enumerated exceptions. The relevant exception here excludes anyone "engaged in a legal commercial transaction." Chaoqun argued that the government must negate the legal commercial transaction exception as an element of the offense rather the defendant having the burden to prove the exception as an affirmative defense. He also argued the specific action a defendant takes on U.S. soil for a foreign principal is an element of the offense and therefore requires jury unanimity. The Court of Appeals affirmed, holding a jury need not unanimously decide which act a foreign agent committed when charged with violating § 951. In addition, it found that the legal commercial transaction exception is an affirmative defense and it is the defendant's burden to prove it.

United States v. Williams, No. 22-3179. Williams caused to be shipped furanyl fentanyl, a Schedule I controlled substance, to an address in Chicago. A jury later found Williams guilty of conspiring to possess and possessing at least 100 grams of furanyl fentanyl. It also determined that furanyl fentanyl is an "analogue of fentanyl," triggering a ten-year mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(A)(vi). On appeal, Williams argued furanyl fentanyl is not an "analogue of fentanyl" based on the definition of the term "controlled substance analogue" elsewhere in the statute. That definition excludes already-scheduled substances. So, because furanyl fentanyl is a Schedule I substance, he argues, it cannot be an "analogue of fentanyl." The Court of Appeals affirmed, holding the statute makes clear that a "controlled substance analogue" is a term of art quite different from the term "analogue of fentanyl," so it must look to the ordinary meaning of the word "analogue." It further held that is nothing vague about the definition that emerges as applied to furanyl fentanyl.

United States v. Marzette, No. 23-1646. Marzette appealed his conviction for possessing a firearm as a felon, challenging the district court's admission of two pieces of evidence at trial. He preserved the challenge to the chain-of-custody of DNA evidence but did not preserve a challenge to hearsay police testimony about the content of a 911 call. The Court of Appeals affirmed, holding that the government's chain-of-custody evidence was sufficient as to the DNA. As to the hearsay issue, it was a much closer case because of the plain error review. The Court did not resolve whether the admission of the hearsay was error because, even if it assumed admission was error, it could not conclude the error affected the outcome of Marzette's trial.

United States v. Echols, No. 23-1667. A jury convicted Echols of attempting to possess a controlled substance with intent to distribute it. On appeal, Echols argued the district court erred by relying on Federal Rule of Evidence 801(d)(1)(B) to admit testimony about a witness's prior consistent statement after the defense suggested that the witness had fabricated her story blaming Echols for drug shipments addressed to her through the mail. The Court of Appeals affirmed, holding that although the admission of the statement was error, review was only for plain error in this case because Echols had not objected at trial. The error was that the prior consistent statement was made after the witness's alleged motive to fabricate had already arisen. To be admitted under Rule 801(d)(1)(B) and *Tome v. United States*, 513 U.S. 150 (1995), a prior consistent statement offered to rebut charges of fabrication must have been made before the motive to fabricate arose. *This case provides a thorough review of how to adequately object to errors during trial in order to preserve the issue for appeal.*

United States v. Porter, No. 23-2184. Porter was indicted on ten counts of receipt, possession, and production of child pornography. Porter pled guilty to three of those counts but his guilty plea to the production charge was a conditional plea. Porter reserved the right to challenge on appeal whether the conduct he admitted to fell within the ambit of 18 U.S.C. § 2251(a), specifically, that he did not "use" the minors or record them engaged in "sexually explicit conduct" under the statute. The Court of Appeals disagreed and held that the videos he produced of boys in gym showers met the requirements of the statute. The Court distinguished the *Howard* and *Sprenger* cases because, in those cases, the minor was not involved in any sexual conduct. In contrast, the boys in Porter's videos were involved in such conduct.

Roalson v. Noble, No. 23-3345. Roalson was convicted in Wisconsin state court of the murder of a 93-year-old woman by stabbing and bludgeoning. An analyst performed DNA testing on the knives and barstool used in the murder and concluded Roalson was a contributor to the DNA found on them. That analyst was unavailable to testify at trial so a different analyst testified as to the first one's report. The testifying analyst said she looked at the first analyst's notes and was able to reach her own conclusions. Roalson argued that this violated the Confrontation Clause. The Seventh Circuit affirmed, noting that the Wisconsin Court of Appeals did not apply an unreasonable application of clearly established law as it existed at the time of the state court's decision. The Seventh Circuit noted that the recent Supreme Court case *Smith v. Arizona*, 144 S. Ct. 1785 (2024) did not apply here because the evaluation of the error is based on the law at the time the state court made its decision in 2014.

United States v. Carlberg, No. 23-2899. A jury convicted Carlberg of four counts of wire fraud for fraudulently obtaining disability benefits from the United States Railroad Retirement Board. Carlberg asked the district judge to set aside the jury's verdict because he believed the evidence did not show he intentionally participated in a scheme to defraud or made representations that were material to the agency's decision to grant him disability benefits. The judge denied Carlberg's motion and ordered him to pay $279,655.22 in restitution— the full value of benefits he received during the six-year period alleged in the indictment. He appealed the district court's order. The Court of Appeals affirmed, holding reasonable jurors could have easily concluded that Carlberg was engaged in the kind of "significant physical or mental duties" that would have precluded him from receiving benefits from the RRB had he reported the full extent of his work. The Court also held the district court's findings on restitution were consistent with the evidence introduced at sentencing.

United States v. Kawleski, No. 21-1279. Kawleski sexually assaulted the adolescent daughter of his then-girlfriend and recorded his crime as he committed it. Kawleski faced state charges for the assault; a federal grand jury also indicted him for producing and possessing child pornography in violation of 18 U.S.C. §§ 2251(a), 2252(a)(4). Key evidence at trial included testimony from Tracy Brown, the later-girlfriend who discovered the videos on the flash drive. Brown testified that in January 2019, she found the flash drive next to Kawleski's computer, plugged it in, saw the videos, and immediately turned the device over to the police. The jury found Kawleski guilty. Before sentencing Kawleski moved for a new trial, citing newly discovered evidence—namely, posttrial statements from an ex-boyfriend of Brown's who questioned her credibility. The district court denied the motion, explaining that the ex-boyfriend's statements would be admissible, if at all, only for impeachment and were not likely to lead to an acquittal. The Court of Appeals affirmed the district court's decision.

United States v. Peoples, No. 23-2847. Peoples and three friends planned to rob a marijuana dealer. Unfortunately, law enforcement heard about their plans over a wiretap. As the plot was playing out, the police stepped in and arrested Peoples and his friends. Peoples was charged with Hobbs Act robbery and he was convicted by a jury. On appeal, he argued the district court committed error in not granting his post-trial motions challenging the sufficiency of the government's evidence. The Court of Appeals affirmed, holding the evidence against Peoples was overwhelming, particularly the wiretap recordings.

United States v. Johnson, No. 21-3345. Johnson induced destitute women to send him sexually explicit photos of their young children by promising them money. A jury found him guilty of conspiracy to produce child pornography, distribution of child pornography,

and unlawful possession of a firearm as a felon. Johnson raised three issues on appeal: (1) a claim that the judge should have granted his requests for new counsel; (2) a challenge to the denial of his motion for a new trial based on a late disclosure of potential Brady/Giglio evidence; and (3) an argument that the judge made an improper factual finding at sentencing regarding his causal role in the suicide of one of the women who participated in his scheme. The Court of Appeals affirmed, holding the judge appropriately exercised discretion in denying Johnson's requests for new counsel. The Court also held the motion for new trial was properly denied because it was "undeveloped." Finally, the Court held that the statement at sentencing was not a factual finding, it was "part of his holistic assessment of the seriousness of the crimes."

United States v. Sheffler, No. 23-1557. Correctional officers at an Illinois state prison brutally beat and killed an inmate. For their part in his killing and its cover-up, Sheffler and two others were charged with various federal crimes. Following a mistrial, Sheffler was retried and a jury found him guilty. On appeal, Sheffler argued there was not a reasonable likelihood that an incident report he wrote and an interview he gave to the state police would reach federal officials. So, he submits, he could not have violated two federal statutes underlying some of his convictions: 18 U.S.C. § 1512, prohibiting witness tampering, and 18 U.S.C. § 1519, forbidding falsifying records in a federal investigation. Sheffler also argued the district court incorrectly ruled that he had breached a proffer agreement, as well as erroneously allowed a biased juror to sit on his trial. The Court of Appeals affirmed on all issues, holding there was sufficient evidence to support Sheffler's convictions, and neither the district court nor the prosecutor committed any reversible errors. Specifically, the Court held that Sheffler's incident report was written on an official Department of Corrections form, which was reviewed by supervisors and kept in the regular course of business. A false report therefore would be preserved for any potential investigation, including a federal one. Furthermore, the Court held that there was ample evidence that Sheffler was not truthful in his FBI interviews and, as a result, the district court did not clearly err in concluding that Sheffler had breached the proffer agreement, and by allowing the government to offer Sheffler's statements at trial. Finally, the Court warned district courts to be careful when dealing with juror bias but, in this case, the district court thoroughly vetted the matter.

United States v. Williams, No. 23-2079. Williams was a driver for hire and one of the jobs Williams accepted was transporting two teenage girls doing commercial sex work at his co-defendant's command. A jury convicted both Williams and his co-defendant of sex trafficking and conspiracy to commit sex trafficking. Williams argued the evidence to convict him was insufficient. The Court of Appeals disagreed, holding the record contained sufficient evidence for a reasonable jury to find that Williams: (1) knew the minor was performing commercial sex acts, he transported her for those acts, he made

money from those acts, he should have known she was a minor, and even if he did not know Cyan was a minor, had a reasonable opportunity to observe her.

United States v. Jacobs, No. 22-2615. Jacobs was found guilty of drug and gun possession offenses, as well as witness tampering. On appeal, he argued the district court violated his rights under the Sixth Amendment by not allowing him to confront his ex-girlfriend about possible bias arising from state criminal charges pending against her. He also argued the district court erred by admitting into evidence drugs found in Jacobs's home. The Court of Appeals affirmed. First, it held that, even if there was a violation of the Confrontation Clause, any error was harmless because Jacob's conviction did not hinge on his ex-girlfriend's testimony or credibility and the evidence of his guilt was overwhelming. Second, the Court found that Jacobs waived any argument regarding suppression of the drug evidence because he did not file a motion to suppress.

United States v. Sorenson, No. 24-1557. Sorenson was convicted under the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), which prohibits payments in return for referrals of patients for medical care that will be reimbursed under the federal Medicare or Medicaid programs. The government argued Sorenson's payments to advertising and marketing companies that worked with a manufacturer to sell orthopedic braces for Medicare patients violated the statute. Sorenson was found guilty by a jury of one count of conspiracy and three counts of offering and paying kickbacks in return for referral of Medicare beneficiaries to his company, SyMed Inc. The Court of Appeals reversed his convictions for insufficient evidence, finding the individuals and businesses Sorensen paid were advertisers and a manufacturer. They were neither physicians in a position to refer their patients nor other decisionmakers in positions to "leverage fluid, informal power and influence" over healthcare decisions. Sorensen's payments thus were not made for "referring" patients within the meaning of the statute.

United States v. Gustafson, No. 24-1599. Gustafson was convicted on wire fraud charges arising out of thefts from a storage unit in the storage facility where he was employed. The district court sentenced him to twenty-four months imprisonment, followed by two years of supervised release. The court also issued a restitution order. On appeal, Gustafson challenged both his conviction and his sentence, raising issues of sufficiency of the evidence, prosecutorial misconduct during closing argument, and that the district court erred in imposing restitution based on facts not found by a jury. The Court of Appeals affirmed and rejected all of his arguments.

First Step Act

United States v. Colon, No. 23-1318. Colon was convicted and is serving a life sentence for engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(a). On appeal, he challenged the denial of his motion for a reduced sentence under § 404 of the First Step Act of 2018. The district court denied his motion on the ground that Colon's continuing criminal enterprise conviction was not a "covered offense" under the Act. The Court of Appeals affirmed, holding that because the penalties under § 848(a) were not changed by the First Step, it is not a qualifying offense.

United States v. Walker, No. 23-1424. In late 1996, Walker was convicted of engaging in a continuing criminal enterprise, in violation of 21 U.S.C. § 848, and sentenced to life in prison. Following the passage of the First Step Act of 2018, Walker moved for a sentence reduction, arguing that his continuing criminal enterprise conviction qualified as a "covered offense" under the Act. The district court disagreed and denied Walker's motion. The Court of Appeals affirmed, holding first that the record supported the district court's finding that Walker was sentenced under § 848(a) rather than § 848(b). Relying on recent precedent that § 848(a) is not a covered offense, the Court held that the district court did not err in denying the motion.

United States v. Johnson, No. 23-2274. In June 2020, Johnson pled guilty to a two-count indictment charging him with distributing large volumes of cocaine on two different days in 2014. He was serving a term of supervised release for a 2001 crack cocaine conviction at the time, and so his guilty plea also led to the revocation of his supervised release. The district court held a combined sentencing hearing and addressed the new offenses and his violation of supervised release on the same day. For the former, the court imposed a sentence of 180 months of imprisonment and six years of supervised release for each count, to be served concurrently. As for the latter, the court imposed a sentence of 24 months of imprisonment, to be served concurrently with the 180–month sentence. Johnson subsequently filed a motion requesting that the 24-month sentence be reduced pursuant to the First Step Act. The district court denied the request believing that Johnson was not eligible for a reduction, and Johnson appealed. The Court of Appeals affirmed. It determined that Johnson's revocation sentence was eligible for a reduction under the First Step Act; however, his concurrent 180-month sentence renders the district court's error harmless.

United States v. Black, No. 24-1191. Before the First Step Act, second or subsequent § 924(c) convictions resulted in consecutive 25 year mandatory minimum sentences. After the First Step Act, such convictions no longer carry consecutive 25 year mandatory minimums, unless the subsequent conviction comes in a separate prosecution after the first conviction is final. In that case, the mandatory minimum sentence remains 25 years. In 2023, the United States Sentencing Commission amended a policy statement to allow

prisoners serving unusually long sentences to seek sentence reductions under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), due to a change in the law. Black, citing the First Step Act, sought such a reduction due to his stacked § 924(c) sentences. The district court found Black ineligible for a sentence reduction based on *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), that the First Step Act's anti-stacking amendment to § 924(c) is not an extraordinary and compelling reason for compassionate release. The Court of Appeals, finding that *Thacker* remains binding law and the Commission's attempt to say otherwise exceeds its statutory authority. Because § 1B1.13(b)(6) makes § 924(c)'s anti-stacking amendment an extraordinary and compelling reason, it makes the amendment retroactive. The First Step Act did not make the anti-stacking amendment retroactive. The Court noted that the circuit courts are split on this issue. Judge Hamilton dissented.

Fourth Amendment

United States v. Jackson, Nos. 23-1708 & 23-1721. A police officer pulled over a car just after midnight because its head and taillights were not lit. During the traffic stop, the officer smelled unburnt marijuana. He asked the driver, Prentiss Jackson, to exit the car and told Jackson he would search him and the vehicle. Soon after leaving the car, Jackson ran. While fleeing, a gun fell from his waistband. Jackson was indicted for possessing a firearm as a felon. He moved to suppress evidence of the gun, arguing the smell of unburnt marijuana did not provide probable cause to search the car. The district court denied Jackson's motion. He conditionally pleaded guilty, was convicted, and appealed the denial of his motion to suppress. The Court of Appeals affirmed, holding the officer had probable cause to search because there was more evidence than just the smell of unburnt marijuana. Jackson was driving without head and taillights and did not have his license with him. In addition, the smell of unburnt marijuana indicated that Jackson had marijuana in an improper container, which is a violation of Illinois law, and Jackson admitted he had smoked marijuana earlier. The Court also held that, even though Illinois has legalized marijuana, the federal government has not and the state still retains laws restricting the packaging and use of marijuana.

United States v. Dameron, No. 22-3291. Dameron was charged with being a felon in possession of a firearm. He moved to suppress the firearm and other evidence gathered when police officers stopped and frisked him while aboard a public bus in Chicago. The district court denied Dameron's motion, and a jury found him guilty at trial. On appeal Dameron renewed his contention that the police's search of him aboard the bus violated the Fourth Amendment and, in particular, the standards announced in *Terry*. He argued that Illinois permits concealed carry of a firearm and the police had no way of knowing whether Dameron was an authorized license holder. The Court of Appeals affirmed. The

Court noted the search occurred after Dameron boarded a city bus and the Illinois concealed carry act clearly prohibits carrying a firearm on public transportation. Therefore, even if Dameron was a valid license holder, he violated the law by boarding the bus thereby providing reasonable suspicion he had violated the law.

United States v. Plancarte, No. 23-2224. During a traffic stop, Wisconsin police officers used a K-9 unit to sniff a car they suspected was involved in drug trafficking. The dog returned a positive alert, so the officers searched the car and found almost eleven pounds of methamphetamine in its trunk. Plancarte was inside the car during the stop and challenged the district court's denial of his motion to suppress. He argued that because the dog was trained to alert on marijuana, he theoretically could alert officers to legal marijuana products and the search was not supported by probable cause. The Court of Appeals affirmed, holding Plancarte's reliance on *Kyllo* was not persuasive because the dog alert occurred in public and not in the home. The Court concluded, "Loki, a reliable drug detection dog, conducted an open-air sniff on a public road during an ordinary traffic stop. *Place* and *Caballes* confirm that a sniff performed in this manner is not a Fourth Amendment search because it does not disrupt any reasonable expectation of privacy."

United States v. Han, No. 23-1020. A jury convicted Han on money laundering and related charges after he used his electronic goods business to launder drug proceeds for Mexican drug traffickers. He argued on appeal he was entitled to a new trial, challenged the district court's denial of his motion to suppress, admission of threat evidence, and denial of his motion for a mistrial based on the government's closing argument. The Court of Appeals affirmed, holding Han's wife gave voluntary consent for the search of their home where she was not detained, officers did not threaten or use physical force, and effectively communicated with the officers. It also held the officers statements to his wife regarding the dangers posed by guns in the house did not render her consent involuntary. Second, the Court held the district court did not err in admitting evidence of threats because the threats were evidence of the crime, not Rule 404(b) other acts evidence. Third, the Court held defense counsel invited the government's statements during closing arguments so there was no error.

United States v. Black, No. 22-2659. Law enforcement officers intercepted a package mailed from Atlanta to a Chicago residence because they believed it contained narcotics. Officers then searched the package and found a substance containing furanyl fentanyl. They sent an undercover officer to deliver a decoy package and a woman claiming to be the intended recipient took the package. Black arrived shortly thereafter. Once the officers received a signal that the package had been opened, they approached the front door. The package was then thrown out of the back of the building, and Black fled to the

top floor, where he was arrested and found with the luminescent powder from the decoy narcotics on his hands. A jury found Black guilty of attempting to possess with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 846. Black appealed, raising four arguments: (1) the officers did not have reasonable suspicion to seize the package, and the district court should have held an evidentiary hearing to resolve related factual disputes; (2) the jury instruction about his requisite mens rea was erroneous; (3) the jury's verdict was not supported by sufficient evidence; and, solely for preservation purposes, (4) the court erred in denying his motion to dismiss based on the court's treatment of furanyl fentanyl as an analogue of fentanyl. The Court of Appeals affirmed, holding officers had reasonable suspicion to seize the package (and the court did not abuse its discretion in denying an evidentiary hearing), the challenged jury instruction accurately stated the law, the jury's verdict is supported by more than sufficient evidence, and, his motion to dismiss argument was foreclosed by precedent.

United States v. Mendez, No. 23-1460. Mendez was passing through customs at O'Hare International Airport after a trip abroad when a customs agent pulled him aside for inspection, unlocked and scrolled through his cell phone, and found child pornography in the photo gallery. Customs agents seized the phone, downloaded its contents, and discovered additional illicit images and videos of children. The district court denied Mendez's motion to suppress this evidence and he pled guilty to producing child pornography. On appeal, he argued the searches of his phone, in light of the Supreme Court's decisions in *Riley v. California*, 573 U.S. 373 (2014), and *Carpenter v. United States*, 585 U.S. 296 (2018), required a warrant, probable cause, or at least reasonable suspicion. The Court of Appeals affirmed, holding the "longstanding recognition that searches at our borders without probable cause and without a warrant are nonetheless 'reasonable' has a history as old as the Fourth Amendment itself." The Court joined the uniform view of the circuits to hold that searches of electronics at the border—like any other border search—do not require a warrant or probable cause, and that the kind of routine, manual search of the phone initially performed here requires no individualized suspicion.

United States v. Dorosheff, No. 22-2291. Dorosheff is one of many Playpen users who were identified using the NIT program and was charged with receiving and possessing child pornography. He sought to suppress the evidence recovered from his digital devices and argued the magistrate judge who issued the NIT warrant lacked the authority under Rule 41 of the Federal Rules of Criminal Procedure to authorize an electronic search extending outside her district. The Seventh Circuit has rejected this argument and affirmed the application of the good-faith exception to evidence obtained in searches flowing from the Playpen NIT warrant. Dorosheff raised a new argument

based on the Justice Department's support for an amendment to Rule 41 expressly authorizing magistrate judges to issue this kind of warrant. He argued this evidence demonstrates that highranking Department officials knew that the Playpen NIT warrant was invalid, and their knowledge should be imputed to the FBI agent who applied for the warrant, thus defeating the good-faith exception. The Seventh Circuit joined other circuits who have considered the issue and rejected it.

United States v. Campbell, No. 22-3283. Campbell sought to suppress evidence of child pornography found by his parole officers during an unannounced parole check. He argued on appeal that the incriminating statements that led to the evidence cannot be used against him, as both his parole agreement, and the officers' failure to issue *Miranda* warnings, led to violations of his Fifth Amendment rights. The Court of Appeals affirmed, holding that the agreement did not threaten to penalize him for invoking his Fifth Amendment rights. In addition, the Court found he was not in custody at the time he revealed the incriminating information. Consequently, Campbell was required to affirmatively assert his rights pursuant to the Fifth Amendment to invoke the benefits of its protection. Because he did not, the Court affirmed.

United States v. Osterman, No. 22-2773. A detective applied for a warrant so he could place a GPS tracker on Osterman's truck. After monitoring the truck, which is a search within the meaning of the Fourth Amendment, authorities prosecuted Osterman for sex trafficking a child. Osterman later learned that some information the detective included in the affidavit seeking the warrant was incorrect. He argued the affidavit failed to establish probable cause for the search, and moved the district court to suppress the fruits of the search. After an evidentiary hearing, the district court held that the affidavit established probable cause despite its inaccuracies. On appeal, the Court of Appeals agreed with Osterman that the detective acted recklessly when he failed to correct the affidavit. However, the Court took an independent look at the affidavit and concluded it established probable cause even without the misstatements. Therefore, the Court affirmed.

United States v. Karmo, No. 23-1082. Karmo told a friend that he was traveling with firearms (including two machine guns) to Kenosha, Wisconsin, during a period of severe civil unrest and that people there were shooting others. The friend informed local police, who in turn notified the FBI that Karmo was traveling to Kenosha to shoot people and loot. The FBI submitted an exigent circumstances form to AT&T pursuant to the Stored Communications Act conveying this information and requesting real-time cell site location information (CSLI) on Karmo's phone. Based on the real-time CSLI, law enforcement located Karmo in under two hours in a hotel parking lot. He consented to searches of his vehicle and hotel room, which each contained multiple firearms and

ammunition. The next day, local police notified the FBI that, contrary to what the FBI submitted in the AT&T exigency form, Karmo did not say that he intended to shoot people and loot, just that people in general were doing so. The FBI obtained search warrants for Karmo's residence and hotel room and a criminal complaint charging him with possessing a firearm as a felon. In support of the warrants and complaint, the FBI submitted affidavits incorrectly stating the day it learned that Karmo himself did not say that he intended to shoot people and loot. Following Karmo's indictment, he moved to suppress the evidence resulting from the real-time CSLI collection and requested a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). He principally challenged the inaccurate statement in the AT&T exigency form that he intended to shoot people and loot. The district court denied his motion. Karmo later pleaded guilty and was sentenced. He appealed the denial of his *Franks* motion. The Court of Appeals affirmed, because law enforcement reasonably believed that probable cause and exigent circumstances existed.

United States v. House, No. 23-1950. The Seventh Circuit held that the warrantless use of pole cameras to observe a home does not amount to a search under the Fourth Amendment in *United States v. Tuggle*, 4 F.4th 505, 511 (7th Cir. 2021). House asked the Court to reconsider that decision. The Court of Appeals affirmed and reaffirmed *Tuggle* which rests on Supreme Court precedent and is consistent with the rulings of other federal courts to have considered this issue. The Court found that House knowingly exposed the outside of his residence to the public. Therefore, he cannot then articulate an expectation of privacy in the front of his residence that society would be willing to recognize as reasonable. The government does not invade an expectation of privacy that society is prepared to accept as reasonable when the government uses a common technology, located where officers are lawfully entitled to be, and captures events observable to passersby. The isolated use of a pole camera did not amount to a Fourth Amendment search. Judge Rovner concurred, agreeing that *Tuggle* controlled the outcome here but wrote "separately to note that this court and others will have to reconsider those holdings as the capabilities of technology change our understanding of what constitutes a reasonable expectation of privacy."

United States v. Osterman, No. 22-2773. An Oneida County, Wisconsin detective applied for a warrant so he could place a GPS tracker on Osterman's truck. After monitoring the truck—a search within the meaning of the Fourth Amendment—authorities prosecuted Osterman for sex trafficking a child. Osterman later learned that some information the detective included in the affidavit seeking the warrant was incorrect. To Osterman, this meant the affidavit failed to establish probable cause for the search, so he asked the district court to suppress the fruits of the search. After an evidentiary hearing, the district court held that the affidavit established probable cause despite its inaccuracies.

The court denied Osterman's motion to suppress, and Osterman appealed. The Court of Appeals agreed that the detective acted recklessly when he failed to correct the affidavit. However, the Court took an independent look at the affidavit and concluded that it established probable cause even without the incorrect information. The Court affirmed.

United States v. Fuchs, No. 22-3269. Fuchs was charged in connection with his sexual activity with a minor in the Philippines. He was found guilty by the district court after a bench trial. On appeal, he challenged the admissibility of the minor's birth certificate and his recorded interview at the airport. He also challenged the sufficiency of the evidence. The Court of Appeals affirmed. First, it held under Rule 902(3) that the foreign birth certificate was self-authenticating, although it expressed some concern as to the second condition – that the official vouching for the document is who he purported to be. However, any potential error was not fatal to the document's admissibility because Fuchs had adequate opportunity to investigate. Second, the Court found that Fuchs waived his argument regarding the admissibility of his recorded interview by admitting his statements to law enforcement are admissible evidence. Third, the Court found that Fuch's challenge to the sufficiency of the evidence rested entirely on the admissibility of the birth certificate and, given the Court's ruling on the issue, the evidence was sufficient.

United States v. Davis, No. 23-2259. Police officers responded to a 911 call from a fifteen-year-old calling to report Davis had threatened to kill her mother, was outside their home, and had an assault rifle in his car. The family was driving in their minivan and Davis was following. Police caught up with Davis within 10 minutes of the phone call. Officers arrested him and searched his vehicle, recovering a loaded, semi-automatic shotgun with an obliterated serial number. Davis was charged with possessing a firearm illegally, in violation of 18 U.S.C. § 922(g). After unsuccessfully moving to suppress the shotgun, he pleaded guilty but reserved the right to appeal the suppression ruling. Davis argued on appeal that the warrantless search of his vehicle violated the Fourth Amendment, requiring the suppression of the shotgun. The Court of Appeals affirmed, holding the search fell within the search incident to arrest and automobile exceptions to the warrant requirement.

United States v. Bailey, No. 23-2258. Officers responded to a call and observed a man and a woman fighting. They eventually separated them and handcuffed the man, identified as Bailey, and began walking with him back to his squad car. As they reached the car, the sergeant asked Bailey if he was carrying any weapons. After a brief pause, Bailey admitted that he had a gun hidden in his pants. Sergeant Varriale confiscated the gun and Bailey was charged with unlawfully possessing a firearm as a felon. See 18 U.S.C.

§ 922(g)(1). Bailey moved to suppress the gun, arguing that his arrest was not supported by probable cause. His motion was denied. On appeal, Bailey argues that Sergeant Varriale's testimony was not credible. The Court of Appeals affirmed, holding that credibility determinations receive special deference and that the sergeant's body cam did not contradict his testimony.

United States v. Devalois, No. 24-1787. Devalois and a travel companion were pulled over for a traffic violation. During the stop, a drug-sniffing dog alerted to narcotics in Devalois's rental vehicle. Rather than comply with a request to exit the car, Devalois initiated a high-speed chase that ended in a crash. Police searched the vehicle and found a small amount of marijuana as well as a gun. Devalois was charged with illegally possessing a firearm as a felon. He moved to suppress the gun, arguing police unconstitutionally prolonged the traffic stop to conduct a dog sniff. The district court denied his motion, and a jury found him guilty. On appeal, Devalois challenges the district court's denial of the motion. The Court of Appeals affirmed, holding that the officer "pursued the stop's mission with diligence, not delay."

United States v. Jackson, No. 23-3205. Jackson pled guilty to sex trafficking of a minor and transportation of child pornography. 18 U.S.C. §§ 1591(a)(1), (b)(2), 2252A(a)(1). On appeal, he argued the district court should have suppressed evidence (photographs, text messages, and a video) found in his cell phone. The search was authorized by a warrant supported by probable cause but he argued the police took too long—40 days after his arrest—before seeking that warrant. The district court denied the motion after concluding that the delay did not permit the police to obtain any evidence they would not have received had they sought a warrant immediately. The Court of Appeals affirmed, holding the risk associated with waiting to obtain a warrant did not exist in this case because the cell phone was in law enforcement custody for the entire 40 days and contained the same evidence on day 40 as it did on day 1. In addition, because Jackson was in custody during this time, law enforcement did not deprive him of his possessory interest in the phone.

Guilty Pleas

United States v. Foston, No. 23-1680. Foston pled guilty to four crimes: conspiracy to engage in racketeering (RICO), possession of marijuana with intent to distribute, possession of a firearm as a felon, and possession of a firearm in connection with a drug offense. Foston argued on appeal that the judge should not have accepted his guilty plea on the racketeering charge, because the colloquy under Fed. R. Crim. P. 11 did not accurately inform him of that charge's nature. Because he did not move in the district court to withdraw that plea, the Court of Appeals reviewed for plain error. The Court

affirmed, holding that even assuming that the district judge committed an error, that error was neither plain nor prejudicial.

United States v. White, Nos. 24-1229 & 24-1228. White pled guilty to two counts of unlawful possession of a firearm under 18 U.S.C. § 922(g)(1). In a plea agreement, the government promised to recommend a sentence at the low end of the guidelines range. But while out of custody pending sentencing, White again violated federal law. In response, the government moved to be released from its sentencing recommendation. The district court granted the motion and sentenced White to a prison term exceeding his guidelines range. White argued on appeal that he did not breach the plea agreement and challenged his above-guidelines sentence. The Court of Appeals affirmed. Under the express terms of the plea agreement, "[i]f the Defendant commits any violation of local, state, or federal law," the government "may ask the Court to be released from its obligations" under the agreement. The district court found White in breach of the agreement based on both his marijuana violation and his possession of a firearm as a felon. Each evidentiary finding provides an independently sufficient basis to establish breach. The district court did not commit procedural error when, after considering this evidence, it released the government from its obligations.

Habeas

Lewicki v. Emerson, No. 23-3030. Lewicki was part of a group who robbed someone and beat him. He admitted to being part of the group but said he did not take part in beating him. The jury did not believe this and found Lewicki guilty of an attempt to commit robbery causing serious bodily injury. State courts affirmed his appeals and denied his petition for collateral relief. The federal district court found that his attorney was ineffective by failing to argue the state violated the Sixth Amendment by failing to provide him with a speedy trial. However, the district court did not engage in analysis of the second prong of the Strickland test and only concluded a speedy-trial argument would have been stronger than any of the three arguments that appellate counsel did advance. The Court of Appeals reversed and remanded holding that the district court must conduct the entire analysis which requires both deficient performance and prejudice.

Yang v. United States, No. 23-2777. Yang robbed a credit union in Appleton, Wisconsin. Given his medical history and some strange aspects of his offense behavior, Yang raised an insanity defense. After a bench trial, the district court rejected Yang's insanity defense, found him guilty, and sentenced him to 168 months' imprisonment. None of the parties raised any concerns as to Yang's competency during the proceedings. Yang moved to vacate his conviction and sentence under 28 U.S.C. § 2255, arguing the court's

failure to hold a competency hearing violated due process. The district court denied Yang's motion and he appealed. In an issue of first impression, the Court of appeals held that procedural default barred Yang's competency claim. The Court rejected Yang's request for special treatment of competency claims on collateral review.

Decker v. Sireveld, No. 23-1725. Federal inmate Decker requested that his prison law library provide electronic access to full, daily editions of the Federal Register. When the Bureau of Prisons denied his request, Decker filed a lawsuit under the Administrative Procedure Act, alleging that the denial violated his First Amendment rights to receive information and petition the government in the form of public comments on notices of proposed rulemaking. The district court entered summary judgment for the BOP. Applying the framework established by the Supreme Court in *Turner v. Safley*, the district court concluded that the Bureau's policy was "reasonably related to [its] legitimate penological interest[]" in conserving limited resources and so did not violate the First Amendment. 482 U.S. 78, 89 (1987). The Court of Appeals agreed with the district court's assessment and affirmed.

Wilson v. Neal, No. 23-2316. Wilson is serving an Indiana prison sentence of 100 years for committing two murders when he was sixteen years old. He petitioned a federal court for a writ of habeas corpus, asserting the sentence violates the Eighth Amendment based on *Miller v. Alabama*, 567 U.S. 460 (2012). Miller held that a person may not be sentenced to a mandatory term of life in prison without parole for a homicide committed while under the age of eighteen. Wilson argued the reasoning of *Miller* extends to a sentence like his: a sentence for a term of years that is so long that it amounts to a de facto life sentence. The Court of Appeals affirmed, holding first that the petition was timely. The Court then held the state-court decision rejected Wilson's Eighth Amendment claim under *Miller* on the merits and that the rejection was neither contrary to nor an unreasonable application of Supreme Court precedent.

Dekelaita v. United States, No. 22-2911. A jury found Dekelaita, a former immigration attorney, guilty of various crimes for conspiring with clients, interpreters, and his employees to defraud the United States by submitting fabricated asylum applications. Unsuccessful in his direct appeal, Dekelaita moved to vacate his sentence under 28 U.S.C. § 2255. The district court authorized broad discovery, conducted a thorough, weeklong hearing, evaluated the parties' post-hearing briefs, and denied his motion. Dekelaita appealed, arguing the district court erred in its rulings about benefits the government provided to some witnesses, before and after trial. The Court of Appeals affirmed, holding the undisclosed information about pre-trial benefits was immaterial, so the district court correctly denied Dekelaita's claims as to those benefits. In addition, Dekelaita's rights were not violated because some of the alleged post-trial benefits were

not promised to witnesses, while others would not have affected the trial's outcome had they been disclosed.

Patterson v. Adkins, No. 20-2700. In 2003, Patterson was convicted of first-degree murder, arson, and felony concealment of a homicide in connection with the 2002 death of Derrick Prout. Patterson was sentenced to 55 years in prison and the state supreme court affirmed the judgment. Patterson then filed a petition for state postconviction relief together with a motion for additional DNA testing. Protracted proceedings in state court followed. In July 2019 - more than 13 years after the Illinois Supreme Court affirmed the convictions on direct appeal - Patterson sought federal habeas review under 28 U.S.C. § 2254. The one-year limitation period had long-since expired even accounting for tolling during the pendency of Patterson's state postconviction petition. To overcome the time bar, Patterson invoked the exception for claims of actual innocence. The district court rejected his claim and dismissed the § 2254 petition as untimely. The Court of Appeals affirmed, holding Patterson's § 2254 petition was more than six years late even with tolling for a properly filed state postconviction petition. In addition, the Court found that Patterson's claim of actual innocence fell short of the necessary showing to qualify for this narrow gateway to merits review of an untimely § 2254 petition.

Norweathers v. United States, No. 23-2406. Norweathers was convicted by a jury and sentenced to 250 months' imprisonment for possessing and distributing child pornography. At trial, he attempted a public authority defense by testifying he believed he was acting at the behest of an FBI agent who misled him into collecting and forwarding child pornography as part of a nonexistent undercover operation. After an unsuccessful direct appeal, he moved to vacate his conviction and sentence under 28 U.S.C. § 2255. He claimed his trial counsel was ineffective for failing to request an apparent authority or entrapment by estoppel jury instruction and for not calling as a witness the computer forensics expert that counsel had retained and consulted. The district court denied his motion without a hearing. On appeal, Norweathers renewed his ineffective assistance of counsel claims and says the district court abused its discretion by denying his motion without a hearing. The Court of Appeals affirmed, holding Norweathers could not avail himself of either defense because his own testimony did not support them. Furthermore, the district court did not err in denying an evidentiary hearing because he did not allege detailed and specific facts entitling him to one.

Jury Instructions

United States v. Sewell, No. 23-2844. The Court considered another issue regarding whether the district court erred in failing to give the jury an entrapment instruction

where a law enforcement sting operation results in federal charges for attempted enticement of a minor. The Court held that there was no error in this case because the undercover FBI agent who posed as a 15-year-old girl on Craigslist did no more than solicit Sewell's participation in sexual activity, while Sewell pressed for the encounter to occur. On these facts, the district court committed no error in denying Sewell's request for a jury instruction on entrapment.

United States v. Day, No. 23-2311. Day challenged the district court's denial of a unanimity instruction that would have required jurors to agree on which of two weapons he possessed for purposes of an 18 U.S.C. § 922(g)(1) charge. The Court of Appeals affirmed because Day possessed the two firearms simultaneously and no such instruction was required.

United States v. Hofschulz & Hofschulz, Nos. 21-3404 & 21-3403. A jury convicted Lisa Hofschulz, a nurse practitioner, of conspiracy and 14 counts of distributing drugs. The charges arose out of her operation of a "pain clinic" as a front for a pill mill from which she dispensed opioid prescriptions for cash-only payment. Robert Hofschulz, her husband, was also convicted for his role in helping her run the opioid mill. The Hofschulzes challenged their convictions on three grounds. First, they argue that the jury instructions were inconsistent with the Supreme Court's decision in *Ruan v. United States,* 597 U.S. 450 (2022). *Ruan* held that in a § 841 case against a medical professional for distributing drugs in an unauthorized manner, the statute's intent requirement applies to the act of distribution and lack of authorization. The Court of Appeals affirmed, noting that this Circuit has long followed this rule, even before *Ruan*. In accordance with pre-*Ruan* caselaw, the district judge instructed the jury that the government must prove beyond a reasonable doubt that the Hofschulzes intended to distribute controlled substances and intended to do so in an unauthorized manner. Therefore, there was no instructional error. The Court also rejected the arguments that the judge wrongly permitted the government's medical expert to testify about the standard of care in the usual course of professional pain management and a challenge the sufficiency of the evidence to support their convictions.

United States v. Page, No. 21-3221 (en banc). Page was charged with twelve counts of attempted heroin distribution and one count of drug conspiracy. At trial, the government proved that Page repeatedly purchased distribution quantities of heroin from Terrance Hamlin for over a year. Further, the government presented evidence of Hamlin and Page's relationship that substantially showed a heightened level of trust between them. Page denied involvement in the drug trade altogether, painting Hamlin as a biased witness who wholly lied about their drug transactions. The jury convicted Page on all counts. Page appealed his conspiracy conviction and argued the district court plainly

erred by not sua sponte giving a buyer-seller jury instruction, even though he affirmatively approved the district court's final instructions and never argued that he and Hamlin had a mere buyer-seller relationship. A panel of the Court of Appeals agreed and remanded his case for a new trial. The Court of Appeals then heard the case en banc and affirmed. The Court held that repeated, distribution-quantity drug transactions alone can sustain a conspiracy conviction. Judge Easterbrook concurred and wrote separated to discuss the party-presentation principle and plain error review. Judge Jackson-Akiwumi, joined by Judges Rovner and Lee, dissented in line with the original panel opinion.

United States v. Offutt, No. 23-2211. A jury convicted Offutt of drug and firearm offenses, and he was sentenced to 300 months' imprisonment, followed by four years of supervised release. On appeal, Offutt argued he was entitled to a new trial because the district court erroneously instructed the jury that his flight from law enforcement could be considered as evidence of his consciousness of guilt. The Court of Appeals affirmed, holding the flight instruction did not impact the outcome of the trial. The Court noted that the inferential steps between his flight and his consciousness of guilt were "tenuous at best" and the district court erred by providing the flight instruction. However, the evidence was overwhelming and any error was harmless. The Court issued a warning, stating, "we take this occasion to again warn district courts of the perils of giving a flight instruction, particularly in cases like this one where the strong case the government presented makes it clear the flight instruction was entirely unnecessary."

Jury Trial Issues

United States v. Watkins, et. al, Nos. 20-2048, 20-2049, 20-2080, 20-2086, 20-2087, 20-2088, 20-2100, 20-2115, 20-2116, 20-2117, 20-2133, 20-2208, 20-2229. The defendants in this case were members of The Bomb Squad, a street gang that used violence against anyone who threatened its reputation, turf, or drug sales. They were charged with RICO violations and other offenses. Most of the charged defendants went to trial and challenged various aspects of that trial. Their principal argument on appeal was that the district judge ran afoul of *Batson v. Kentucky,* 476 U.S. 79 (1986), when selecting the jury. The Court of Appeals ordered a limited remand to permit the district court to make supplemental findings as to this issue. The Court first held that the district court committed error by requiring the defendants to prove purposeful discrimination rather than just proving a prima facie case. In addition, the government refused to give a race-neutral reason for striking one of the jurors in question and the district court failed to make a credibility finding regarding the government's proffered reasons for striking another one.

United States v. Giannini, No. 22-3139. A jury found Giannini guilty of wire fraud and honest services fraud. He appealed the denial of his motion for a mistrial based on the government's belated disclosure of investigating agents' notes regarding an inculpatory statement he made to a co-defendant. He also argued that the court erred in allowing the prosecutors, in closing arguments, to raise the conduct of another co-defendant, who was dismissed from the case following the government's case-in-chief after the court granted her motion for acquittal. The Court of Appeals affirmed and held the district court neither abused its discretion in denying the motion for a mistrial nor plainly erred in allowing the prosecutors to discuss the dismissed co-defendant's conduct.

United States v. Jenkins, No. 22-2800. Jenkins appealed his conviction and sentence for bank robbery, arguing the face mask he had to wear during his trial—which took place during the COVID-19 pandemic—led to his Fifth and Sixth Amendment rights being violated. The Court of Appeals affirmed. First, the Court held that, under plain error review, Jenkins did not show the face mask made the in-court identifications of him unduly suggestive and did not infringe upon his right to confrontation. The Court noted "the need to prevent the spread of COVID-19 was an important public policy goal that warranted the requirement of face masks in the courtroom."

Carter v. Tegels, No. 23-1266. Carter was convicted in state court and, on federal habeas review, argued that the state trial judge erred by not holding a hearing to investigate jury intrusion, contrary to *Remmer v. United States*, 347 U.S. 227 (1954). The Court of Appeals affirmed the district court's ruling but noted that there is a circuit split as to whether *Remmer* is a rule of federal constitutional law or a rule of federal criminal procedure. *Remmer* held that some forms of "communication, contact, or tampering" with the jury are presumptively prejudicial and, if they occur, the judge must hold a hearing to require that the government show why the intrusion was harmless. The Seventh Circuit has held that *Remmer* is a constitutional rule whereas the Tenth Circuit has held that it is a rule of criminal procedure.

Restitution

United States v. Harris, No. 23-1294. Harris pled guilty to arson after he set fire to a cell phone store. He was sentenced to eight years in prison and ordered to pay $195,701 in restitution. He challenged the restitution order on appeal, arguing that it was not supported by a proper investigation and determination of the loss amount. The PSR and the government's written version of the offense incorporated a 13-page insurance claim prepared by the victim's insurer itemizing the losses from the fire. Harris did not to this accounting of the loss amount and had an opportunity to review these materials before sentencing, assured the judge that he had done so, and affirmed the accuracy of the

factual material in the PSR. The Court of Appeals affirmed, holding that because he confirmed the accuracy of the facts in the PSR, he waived any argument regarding the restitution amount.

United States v. Betts, No. 21-3157. During a weekend of national unrest after a police officer murdered George Floyd, Shamar Betts posted a flyer on Facebook calling on people to bring posters, bricks, and bookbags to a "RIOT" at a mall in Champaign, Illinois. The next day, a riot ensued and several businesses were damaged. Betts was indicted for inciting a riot in violation of the Anti-Riot Act, 18 U.S.C. § 2101. He moved to dismiss the indictment arguing that the Anti-Riot Act was overbroad in violation of the First Amendment, but the district court denied his motion. He then pled guilty. At sentencing, the district court sentenced Betts to 48 months' imprisonment and ordered him to pay $1,686,170.30 to 35 businesses under the MVRA. The Court of Appeals affirmed Betts's conviction and sentence, holding that his constitutional argument was foreclosed and the district court did not err in determining which guideline to use. The Court also held that Betts's conviction under the AntiRiot Act qualifies for restitution under the MVRA. However, the court held that the government failed to meet its burden showing that he directly and proximately caused damages to all businesses included in the restitution order. The Court vacated the order for redetermination of the restitution.

Sentencing

United States v. Kowalski, No. 23-2374. Kowalski used and abused her position as an attorney to shield her brother's assets in bankruptcy, hiding approximately $357,000 in her attorney trust account. She then obfuscated the concealment by invoking attorney-client privilege, lying under oath, and fabricating documents. She was charged with bankruptcy fraud and pled guilty to concealing assets. She appealed her within-Guidelines sentence of 37 months' imprisonment, arguing that the district court erred in applying two enhancements: the § 2B1.1(b)(10)(C) sophisticated-means enhancement, and the § 3B1.3 abuse of position of trust enhancement. She also argued her sentence was substantively unreasonable. The Court of Appeals affirmed, holding that the enhancements were appropriate in this case because she deposited and withdrew dozens of cashier's checks from her trust account, used those funds to purchase property in the name of a fictitious trust, concocted a story to cover up the fraud, invoked attorney-client privilege to shield the funds from discovery, testified falsely, and fabricated documents. The Court also concluded that she had a position of trust because she represented her brother as a lawyer before the bankruptcy court. Finally, the Court determined her sentence was substantively reasonable because she could not overcome the presumption of reasonableness of a within-guidelines sentence.

United States v. Hancock, No. 22-2614. Hancock pled guilty to being a felon in possession of a firearm. He received an enhancement for commission of a felony while possessing the firearm, specifically a violation of Indiana Code § 35-44.1-2-6, which makes it a felony for a civilian to impersonate a law enforcement officer. Hancock challenged that enhancement on appeal. The Court of Appeals affirmed, holding that the evidence supported the district court's findings that Hancock represented himself to be a police officer by wearing a variety of law enforcement paraphernalia, including an official-looking badge, gun holster, handcuffs, and a baton. The Court also rejected Hancock's constitutional challenges to the Indiana law and held Indiana Code § 35-44.1-2-6 is a permissible regulation of false speech because it is narrowly tailored to serve the government's compelling interest in public safety, and it is neither overbroad in its reach nor void for vagueness.

United States v. Brooks, No. 22-2764. Brooks pled guilty to being a felon in possession of a firearm and received an above-guidelines sentence of 96 months. On appeal, he argued the district court erred by imposing an enhancement under § 3C1.2 for reckless endangerment during flight, failed to consider his key mitigation arguments, and imposed an unreasonable sentence. The Court of Appeals affirmed. First, it held that Brooks's conduct constituted reckless endangerment because he threw a loaded firearm and extended magazine near an apartment complex, fled from police in a residential neighborhood in the middle of the day, and the firearm had an attached switch that made it fully automatic. Second, it held that the district court appropriate considered his argument that his juvenile convictions overrepresented his criminal history. Finally, the court held the above-guidelines sentence was reasonable and supported by adequate findings.

United States v. Feeney, No. 22-2607. Feeney pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and carrying an explosive during that unlawful possession in violation of 18 U.S.C. § 844(h)(2). At sentencing, the parties disagreed on the applicable base offense level under the Sentencing Guidelines for Feeney's § 922(g)(1) conviction. The government argued that Feeney's possession of an explosive warranted an increased base offense level under § 2K2.1(a)(5). Meanwhile, Feeney argued that this outcome would punish him twice for the same conduct in violation of Application Note 4 to U.S.S.G. § 2K2.4. The district court agreed with the government and applied the higher base offense level to Feeney's sentence. The Court of Appeals held that Feeney had the better interpretation of the relevant guideline and application note and vacated his sentence and remanded for resentencing.

United States v. Carr, No. 22-1245. Carr argued his three prior convictions in Illinois for armed robbery were not crimes of violence under the guidelines because he could have

been convicted as an aider and abettor to robbery rather than a principal. He asserted Illinois' common-design rule of accomplice liability is out of step with comparable accomplice-liability rules in other jurisdictions, in that the rule as articulated by Illinois courts does not require that a secondary criminal act be foreseeable to the aider and abettor; other states, by contrast, expressly limit an aider and abettor's liability to secondary criminal acts that are reasonably foreseeable to him. The Court of Appeals rejected this argument, holding each of Carr's Illinois convictions for armed robbery, and the pertinent elements of that offense, are a match for generic robbery. The abstract possibility that Carr could have been convicted as an aider and abettor rather than a principal is neither here nor there: Illinois, like every other state, does not recognize a distinction between principals and accomplices. Although it is true that Illinois articulates its "common-design" iteration of accomplice liability in broad terms, Illinois is not an outlier in the way that it applies common-design liability.

United States v. Brasher, No. 23-1180. Brasher was charged with and pled guilty to one count of conspiracy to distribute methamphetamine based on one transaction supplying methamphetamine to a confidential informant. The probation officer held him accountable for drug amounts spanning several years involving different participants, locations, and drugs. On appeal, he argued the district court erred by including these additional amounts as relevant conduct. The Court of Appeals affirmed, noting review was only for plain error, and held the record supported the relevant conduct findings.

United States v. Clayborne, No. 23-2370. Clayborne was convicted of crimes arising out of an attempted carjacking. He challenged his sentence on two grounds: whether the district court erred by denying an acceptance of responsibility reduction and whether the district court relied on inaccurate information about his criminal history. The Court of Appeals affirmed, holding that the district court adequately supported its reasons for denying the acceptance reduction by finding Clayborne had not truthfully admitted his conduct in a timely manner. Regarding the criminal history issue, Clayborne argued that the district court erroneously found his criminal history included "a lot of robbery" when he had no prior robbery offenses. The Court affirmed on this issue too finding that, although he had no robbery convictions, he had prior offenses with "similar hallmarks as robbery" such as theft, attempted theft, burglary, and attempted burglary. Although "robbery" was a misstatement, this fact had no bearing on the sentence the district court imposed.

United States v. Montgomery, No. 23-1976. Montgomery pled guilty to distributing methamphetamine. At his sentencing hearing, the government proved that Montgomery had stowed the methamphetamine (as well as other drugs), cash, and drug trafficking paraphernalia in an off-site storage unit leased by his sister. The district court

added a two-level enhancement because he "maintained a premises for the purpose of … distributing a controlled substance.") The Court of Appeals reversed and remanded for resentencing, finding the record fell short of establishing that a primary use of the storage unit was drug distribution. The Court allowed the government to present additional evidence to support the enhancement on remand.

United Sates v. Van Sach, No. 23-1367. Van Sach appeals his 87-month sentence for assaulting a correctional officer under 18 U.S.C. § 111(a), (b). He challenged the district court's calculation of the sentencing range under the guideline provision for aggravated assault, U.S.S.G. § 2A2.2, which the government conceded was applied in error. The government argued any such error was harmless, however. The Court of Appeals reversed and remanded, finding the application of § 2A2.2 was not harmless.

United States v. Johnson, No. 22-3221. Johnson purchased stolen data for thousands of credit cards and used this data to produce counterfeit cards. He was indicted and pleaded guilty to wire fraud and to aggravated identity theft. At sentencing, the district court, when calculating the loss under U.S.S.G. § 2B1.1, deferred to the guidelines commentary and therefore assessed a $500 minimum loss for each card. Johnson argued on appeal that under the standard articulated by the Supreme Court *in Kisor v. Wilkie*, 588 U.S. 558 (2019), the guidelines commentary is not entitled to deference as an interpretation of § 2B1.1. The Court of Appeals affirmed, holding that *Kisor* did not disturb the Supreme Court's holding in *Stinson v. United States*, 508 U.S. 36, 38 (1993), that guidelines commentary is "authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of" the guideline it interprets. The guidelines commentary assessing $500 minimum loss per credit card therefore remains binding under *Stinson*.

United States v. Shilbilski, No. 23-1410. Shibilski was charged with environmental and wire-fraud crimes arising from his operation of three Wisconsin-based companies engaged in the business of recycling electronic equipment. The indictment also included one count of conspiracy to defraud the United States relating to his willful nonpayment of payroll taxes for his employees. He pled guilty to a single felony count of willful failure to pay employment taxes; in exchange, the government dropped the other charges. On appeal, he argued that the district court violated Rule 32(i)(4)(A)(i) of the Federal Rules of Criminal Procedure by unduly curtailing his attorney's presentation of evidence. He also claimed that the judge improperly denied credit for acceptance of responsibility under § 3E1.1(a). The Court of Appeals affirmed, finding the district court held a seven-hour sentencing hearing, most of which was consumed by the presentation of documents and testimony, including testimony from Shibilski himself. During the evidentiary phase of the hearing, Shibilski's attorney pursued irrelevant and redundant

lines of inquiry, prompting the judge to step in to keep him on topic and on track to finish on time. The judge did not violate Rule 32. The Court also held that the district court did not err by denying acceptance of responsibility, finding that Shibilski had falsely denied responsibility for relevant conduct.

United States v. Bevly, No. 21-2785. Bevly pled guilty to two counts of bank robbery and one count of attempt and he stipulated to six additional bank robberies as relevant conduct. At sentencing the government established that Bevly made a death threat while committing two of the crimes, so the district judge increased his offense level by two levels as provided in the Sentencing Guidelines. See U.S.S.G. § 2B3.1(b)(2)(F). The judge also sentenced Bevly as a career offender based on his six prior convictions for bank robbery. On appeal, Bevly argued the government promised not to pursue the threat enhancement under § 2B3.1(b)(2)(F) and reneged on that promise. The Court of Appeals rejected that argument based on the plain terms of the plea agreement and Bevly's statements during the guilty-plea colloquy.

United States v. McKenzie, No. 23-2426. After McKenzie was sentenced for two counts of carjacking and brandishing a firearm, the U.S. Sentencing Commission enacted a retroactive amendment to the Guidelines that would have reduced his criminal history category and guidelines range. He sought relief under 28 U.S.C. § 2106, which authorizes limited or general remands for resentencing, and *United States v. Claybron,* 88 F.4th 1226, 1229 (7th Cir. 2023). However, the Court of Appeals held he was ineligible for the reduction because his sentence was below his amended guidelines range.

United States v. Ponle, No. 23-2404. Ponle stole over $8 million from seven businesses and tried to steal $51 million more in a far-reaching scheme to fraudulently induce wire transfers. He pled guilty to one count of wire fraud in violation of 18 U.S.C. § 1343. On appeal, he challenged the district court's calculation of the amount of loss for guidelines purposes. The question was whether "loss" in § 2B1.1(b) denotes only actual loss or could also mean intended but unrealized loss. The district court determined it was intended loss and applied a 22 level increase to Ponle's offense level. Ponle argued that the district court erred because it could not rely on the commentary to the guidelines to include intended loss. The Court of Appeals affirmed, holding that *Kisor* did not modify *Stinson.*

United States v. Truett, No. 22-1349. Truett ran a methamphetamine distribution operation from jail. During the change of plea hearing, he notified the judge of his mental, cognitive, and memory impairments and, before sentencing, provided additional evidence of those impairments and their degree. He argued on appeal that the district court should have sua sponte held a competency hearing because his impairments and

behavior at the change of plea hearing suggested that he might have been incompetent. He also challenged the court's guidelines calculation, contending that it was based on a drug quantity that erroneously attributed to him all the methamphetamine obtained by the conspiracy. Finally, he requested that we vacate a condition of supervised release that the court included in the written judgment but failed to orally pronounce. The Court of Appeals affirmed, concluding the district court did not err by failing to hold a competency hearing, did not err by attributing all the methamphetamine to him and, because the condition of supervised release included only in the written judgment is a mandatory condition, it declined to vacate that condition.

United States v. Rivers & Tucker, Nos. 23-1781, 23-2201, & 23-2245. Rivers and Tucker carjacked a BMW at gunpoint and led police on a high speed chase before crashing the vehicle into a guardrail and continuing their flight on foot. A jury convicted both men of carjacking. It also convicted Rivers of carrying and discharging a firearm during and in relation to a crime of violence. Tucker received a lesser conviction under the same statute only for carrying—not discharging—a firearm during and in relation to the carjacking. Tucker challenged that firearm conviction on appeal but the Court of Appeals upheld it. Rivers challenged his sentence, arguing the district court erred by applying a reckless endangerment enhancement. The Court of Appeals rejected this argument but remanded to the district court in light of retroactive Guidelines amendments under *Claybron.*

United States v. Smith, No. 23-1272. Smith pled guilty to one count of distributing methamphetamine. At sentencing, the district court applied two recidivist enhancements. Both required a prior conviction for a crime of violence, and the court found that Smith's 2008 conviction for aggravated robbery in Illinois qualified. On appeal, Smith argued this prior conviction is not a predicate because Illinois did not require the intentional use of force to sustain a conviction. The Court of Appeals affirmed, holding that based on the Illinois Supreme Court's view of robbery and *Borden*'s interpretation of "use of force," the enhancements' definitions are "broad enough to encompass the elements of [Smith's] statute[] of conviction." When Smith was convicted of aggravated robbery in Illinois, the state had to prove "the use, attempted use, or threatened use of force." A defendant who paid insufficient attention to the potential application of force to effectuate a taking would not have been convicted that crime. Thus, the conviction qualifies as a "serious violent felony" subject to the statutory enhancement in 21 U.S.C. § 841(b)(1)(B), as well as a "crime of violence" subject to the career-offender Guideline classification in U.S.S.G. § 4B1.1(a).

United States v. Cook, No. 23-1016. Armed with what appeared to be a gun, Cook entered a bank in a western Illinois village, threatened two tellers to give him money,

and fled the scene with a bag full of cash. He later pleaded guilty to one count of bank robbery under 18 U.S.C. § 2113(a). During the sentencing hearing, the parties disputed whether Cook had simply "brandished" his gun (which turned out to be an air pistol) or had "otherwise used" it in the commission of the crime; the former triggers a three-level enhancement to Cook's offense level under § 2B3.1(b)(2)(E) of the United States Sentencing Guidelines, while the latter prompts a four-level enhancement under § 2B3.1(b)(2)(D). The district court agreed with the government, applied a four-level enhancement, and sentenced Cook to 144 months of imprisonment and three years of supervised release. Cook now challenges that ruling as well as a number of other factors the court considered for sentencing. The Court of Appeals affirmed.

United States v. Bowyer, No. 23-3169. Bowyer pled guilty to illegal reentry. During his statement in allocution at sentencing, Bowyer told the court about the family ties he had and the year between his reentry and his arrest. The district judge interrupted and at great length characterized Bowyer's account as lacking insight and unconvincing. After the judge's comments took up much of Bowyer's allocution, he asked if Bowyer had more to say, and Bowyer said he did not. He received a below-guidelines sentence. Bowyer appealed, arguing that there was a violation of his right at sentencing to make his own statement, in his own words, and in his own way. The Court of Appeals affirmed, first finding that Bowyer did not object in the district court, so review was for plain error. The Court also noted that Bowyer did not indicate what he would have argued had he spoken more during his allocution, or how those arguments would have led to a lower sentence. Therefore, the Court held that, even if the judge erred, Bowyer did not show the error was plain, that it violated his substantial rights, or that it seriously affected the fairness of the proceedings.

United States v. Mireles, No. 22-1505. Mireles participated in a drug distribution conspiracy in Chicago. His role was to retrieve drug shipments and deliver them to his boss's customers in exchange for duffle bags of cash. Mireles then helped launder those proceeds back to Los Angeles, where he and the drug network's ringleader lived. On appeal, Mireles challenged his conviction by asserting that the court erred in admitting certain evidence. He also challenged his sentence, arguing the court procedurally erred and imposed a substantively unreasonable sentence. The Court of Appeals affirmed his conviction but ordered a limited remand for resentencing because it could not determine the factual basis for the obstruction of justice enhancement.

United States v. Henigan, No. 21-2649. Henigan sold heroin and cocaine in and around Peoria, Illinois. He was charged with three counts of heroin distribution and pled guilty to all three counts. As relevant conduct under the Sentencing Guidelines, the presentence report included information about three overdose deaths linked to heroin

Henigan supplied. Henigan objected, denying any connection to the deaths. Based on his denial of relevant conduct, the probation officer recommended against applying the offense-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1. After an evidentiary hearing, the district judge found insufficient evidence to trace two of the overdose deaths to heroin Henigan supplied. But the judge found him responsible for the remaining fatality. The judge credited him for accepting responsibility and reduced his offense level by two levels under § 3E1.1(a). The government, however, declined to move for the additional one-level reduction under § 3E1.1(b) because Henigan had falsely denied relevant conduct. The judge imposed an above-guidelines sentence based on Henigan's involvement in the death. Henigan challenged the prosecutor's refusal to move for the extra acceptance-of-responsibility credit and argued a 2013 amendment to the commentary to § 3E1.1 prohibits the government from withholding the motion based on the defendant's sentencing objections. The Court of Appeals affirmed based on United States v. Orona (see below). In addition, the Court held that Henigan's sentence was not procedurally and substantively flawed because the judge did not accept his argument for a lower sentence to compensate for the government's refusal to file a § 3E1.1(b) motion.

United States v. Dennis, No. 23-2865. Dennis pled guilty to possession with intent to distribute cocaine base and marijuana. At sentencing, the government referenced photos of him pointing a firearm at a man and described the incident as an "armed robbery." Based on the photos and Dennis's post-arrest statements, the district court enhanced his sentence. On appeal, Dennis challenged the enhancement and two supervised release conditions. The Court of Appeals affirmed Dennis's sentence, holding the district court did not erroneously consider and credit the government's version of events in relation to the photos. The Court also held that the district court did not expressly rely on the government's theory of armed robbery when imposing the sentence. The Court modified one discretionary condition to reflect the parties' shared understanding.

United States v. Orona, No. 21-1734. Orona was indicted for mail theft, identity theft, and other crimes stemming from his months-long scheme of stealing mail. About six weeks before trial, he pled guilty to all charges. The district judge awarded the two-level reduction for acceptance of responsibility, but the government declined to move for the extra one-level reduction, citing Orona's challenge to the loss amount, which required the government to prepare documents and witnesses to prove that guidelines enhancement at sentencing. Orona objected to the government's refusal to move for the third point. The district court held that the government had permissibly withheld the § 3E1.1(b) motion based on Orona's frivolous challenge to the loss amount. The Court of Appeals affirmed, holding that the district court's ruling was correct under

circuit precedent at the time of Orona's sentencing hearing. United States v. Nurek, 578 F.3d 618 (7th Cir. 2009), and United States v. Sainz-Preciado, 566 F.3d 708 (7th Cir. 2009). The Court rejected Orona's arguments that the Sentencing Commission abrogated this rule by amending that provision in the guidelines. ***It is important to note that the guidelines now specifically prevent the government from withholding the third point for objections made at sentencing.***

United States v. Harris, No. 24-1163. Harris and his cousin robbed a store during a blizzard. Despite hazardous road conditions, Harris drove at excessive speeds and ran through stop signs and red lights after he encountered the police. He ultimately collided with an oncoming police car that had its emergency lights activated when he tried to pass by it on a narrow, snow-covered road. On appeal, Harris argued the district court clearly erred in finding that Harris recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer under U.S.S.G. § 3C1.2. The Court of Appeals affirmed, holding Harris's conduct involving excessive speeding, running red lights, and driving toward a marked police car with lights activated supported the enhancement.

United States v. Martin, No. 23-3086. Martin received a life sentence for his role in a July 2017 federal drug offense in which a fellow drug dealer shot and killed a local car wash owner believed to possess a substantial stash of cocaine. The Court of Appeals affirmed his challenge to the procedural reasonableness of the sentence. The Court also issued a warning to the government regarding its continued misstatement of the standard of review on these issues. The Court indicated review was de novo, rejecting the government's invitation to review only for plain error. The Court continued, "We have held many times over in recent years that a defendant like Martin need not object at sentencing to an error believed to occur during sentencing itself to preserve the issue for de novo review on appeal. See, e.g., *United States v. Wood*, 31 F.4th 593 (7th Cir. 2022); *United States v. Wilcher*, 91 F.4th 864 (7th Cir. 2024); *United States v. Martin*, 109 F.4th 985 (7th Cir. 2024). That is exactly the circumstance here. We are running low on patience with the lack of adherence to our precedent in this area."

United States v. McCombs, No. 22-2829. McCombs pled guilty to two counts of drug trafficking for her role in a conspiracy to transport large amounts of methamphetamine from Arizona to Illinois. The district court sentenced her to concurrent terms of 121 months of imprisonment. On appeal, McCombs argued she was entitled to a mitigating role reduction under the guidelines, in part because one of her co-conspirators received this reduction. The Court of Appeals affirmed, holding that the district court did not err in concluding that McCombs role involved her being "more than just a courier" and

relying on her other actions of hiding drugs and delivering them to a third party for distribution.

United States v. Shehadeh, Nos. 23-2939 & 23-2938. Shehadeh bought methamphetamine from a confidential informant and a jury found him guilty. Although a career offender, he was sentenced to a prison term far below his advisory range. On appeal, he argued that the district court incorrectly precluded his cross-examination of a witness about several instances of past conduct and by applying the obstruction of justice sentencing enhancement. The Court of Appeals affirmed, holding that Shehadeh waived his evidentiary argument when defense counsel specifically stated he had no objection to the district court's evidentiary rulings. The Court also affirmed the obstruction enhancement, noting that more detailed findings could have been made on the obstruction enhancement, any error was harmless, as the career offender enhancement controlled the length of Shehadeh's sentence.

United States v. Kyereme, No. 23-3415. After pleading guilty to wire fraud, Kyereme was sentenced to three years' imprisonment, three years of supervised release, and was ordered to pay $185,500 in restitution. On appeal, Kyereme argued that the district court erred by determining that his transaction with a business associate, Da Zhou, was within the scope of his conviction. Kyereme also contends that the district court provided insufficient notice that it would rule on the Zhou transaction at the final sentencing hearing. The Court of Appeals affirmed, holding that there was sufficient evidence for the court to find at sentencing that the Zhou fraud was part of the scheme. The record also showed that the district court made it clear it would rule on the Zhou transaction at the final sentencing hearing.

United States v. Easterling, No. 23-1143. Easterling appealed his sentence for attempted robbery and possessing a firearm after sustaining a felony conviction. The guidelines in effect at the time of his sentencing assigned him two criminal history points for committing the offenses while on parole. But a retroactive amendment to the guidelines no longer includes those so-called status points and, without them, Easterling would have a lower recommended sentencing range. The Court of Appeals remanded for resentencing.

United States v. Estrada, Nos. 23-3378 & 23-3370. Estrada pled guilty possessing with intent to distribute at least 100 grams of heroin. The district court imposed a sentence at the low end of the advisory Sentencing Guidelines range. Estrada appealed, arguing the district court erred by not imposing a sentence below the applicable range because a criminal history category of III overrepresented the seriousness of his criminal history and the likelihood of recidivism. The Court of Appeals affirmed, holding that the district

court made clear enough findings regarding the arguments made at sentencing to imposed a lower sentence.

United States v. Poore, No. 22-3154. This case considered whether to overrule prior Circuit precedent regarding the applicability of commentary to the sentencing guidelines based on the Supreme Court's decision in *Loper Bright*, which overruled *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.* The Court had previously held in *United States v. White* that *Kisor* had not overruled *Stinson*. The Court declined to overrule *White* noting that analogizing guidelines commentary to an agency's interpretation of its own legislative rules was "imprecise." In addition, the Court noted that the guidelines commentary is entitled to an *Auer* deference and rejected the argument that commentary should receive *Chevron* deference.

United States v. Johnson, No. 23-3251. A jury convicted Gregory Johnson of attempting to use a minor to engage in sexually explicit conduct for the purpose of producing child pornography. When imposing the sentence, the district court waived any fine based on his inability to pay and determined Johnson was indigent and therefore not subject to the discretionary assessment under the JVTA. But the court imposed a $5,000 assessment under the AVAA. On appeal, Johnson challenged the imposition of the AVAA assessment, arguing that it cannot be reconciled with the court's finding of indigency. The Court of Appeals vacated and remanded for redetermination of the AVAA assessment. The Court noted the AVAA assessment is mandatory, regardless of the defendant's ability to pay. But a court has discretion in setting the amount and must consider prescribed factors, including the defendant's financial condition.

United States v. Ferguson, No. 24-1130. Ferguson was sentenced to a term of imprisonment for violating 18 U.S.C. § 844(i) – the federal arson statute. The district court determined he was a career offender under U.S.S.G. § 4B1.1(a) after concluding that §844(i) is a "crime of violence." Section 4B1.2(a)(2) specifies that "arson" is a "crime of violence." Ferguson argued that a violation of § 844(i) does not count as "arson" for the purpose of §4B1.2(a)(2) because it does not require proof that a defendant who burned his own property did so to collect insurance. He relied on the Model Penal Code's definition when a defendant owned the property, to acts designed to collect insurance. The Court of Appeals affirmed, holding that when the Guidelines were adopted, the approach to arson prevailing among the states largely matched the definition in § 844(i). The Court held that a conviction under § 844(i) is one for "arson" as that term appears in the career-offender guideline.

United States v. Thompson, No. 24-1390. Thompson was sentenced as a career offender after his conviction for distributing heroin, fentanyl, and an analogue of fentanyl. At

sentencing, the district court noted that Thompson had nine other felony convictions and had not shown any sign of reform. On appeal, he argued that one of those nine convictions was invalid. The Court of Appeals affirmed, finding that he could not show he was prejudiced by the error and questioned whether there was error at all. Although it did not decide the issue, the Court noted *Custis v. United States*, 511 U.S. 485 (1994) might prevent defendants from asking a federal sentencing judge to rule on the validity of a prior conviction.

Speedy Trial Act

United States v. Avila, No. 22-3231. Police found a loaded handgun underneath Avila's shirt during a series of patdowns at a traffic stop. After the district court denied both his motion to suppress and his motion to dismiss the indictment based on a violation of the Speedy Trial Act. Avila entered a conditional plea to a felony charge of being a felon in possession of a firearm. Avila reserved his right to challenge the district court's denial of his suppression motion as well as the motion to dismiss based on the Speedy Trial Act. The Court of Appeals affirmed the denial of the motion to suppress, holding most of Avila's challenges were challenges to the district court's credibility findings and the district court did err in making those findings. The Court reversed and remanded, however, finding the district court violated the Speedy Trial Act by making retroactive findings about exclusion of time based on factors that did not exist during the relevant time period. The Court was also troubled that the district court referred to its "crowded calendar" when excluding time because "busyness is a factor wholly impermissible for consideration in support of an ends of justice continuance."

United States v. Bradley, No. 23-2830. After an assessment concluded that Bradley was incompetent to assist in the defense of pending criminal charges, a district court referred her to the Bureau of Prisons under 18 U.S.C. §4241 so that it could evaluate whether any therapy would restore her competence. She reported to the United States Marshal on January 28, 2022. The Bureau released her on August 24 and six days later filed with the court a report stating that Bradley was competent. She pled guilty to ten counts of fraud and aggravated identity theft, for which she was sentenced to 198 months' imprisonment. Her conditional guilty plea reserved a single issue for appellate review: whether the passage of seven months between reporting and release required the district court to dismiss Bradley's indictment with prejudice. The Court of Appeals found dismissal with prejudice was not required by the statute noting that no remedy is contained with in the statute.

United States v. Leonides-Seguria, No. 24-1765. Leonides-Seguria argued his conviction for illegal reentry should be vacated because the government violated the Speedy Trial

Act by filing the criminal information more than 30 days after his apprehension on immigration charges. By its terms, the Act does not apply to civil custody, which included Leonides-Seguria's time in immigration detention. However, several courts have carved out an exception when federal law enforcement authorities collude with immigration officials to hold an individual on immigration charges as a mere ruse for later prosecution—buying prosecutors time to build a criminal case without implicating the Act's deadlines, while their target nevertheless remains in custody. Leonides-Seguria asked the Court to recognize this "ruse exception." However, the Court of Appeals held that this case was not appropriate to resolve the issue because it fell short of presenting circumstances that would give rise to its application.

Supervised Release

United States v. Anderson, No. 23-2931. In a decision granting counsel's motion to withdraw, the Court noted that the statutory maximum possible sentence in revocation cases is not reduced by the time previously served in prison after revocation. See *United States v. Perry*, 743 F.3d 238 (7th Cir. 2014) (holding that "prior time served for violations of supervised release is not credited towards and so does not limit the statutory maximum that a court may impose for subsequent violations of supervised release pursuant to § 3583(e)(3)").

United States v. Townsend, No. 23-2875. . After his conviction for attempted enticement of a minor, 18 U.S.C. §2422(b), Townsend was sentenced to 10 years' imprisonment, to be followed by 10 years' supervised release. On appeal, he argued the district judge erred by allowing his crime's seriousness to affect the length of supervision. In *Wilcher*, the Court of Appeals held that the length of supervised release could not rest solely on the seriousness of the crime. Townsend asked the Court to hold that the seriousness of the crime cannot be considered at all when imposing supervised release. The Court of Appeals affirmed, holding that the § 3553(a) factors the district court can consider correlate with the seriousness of the crime and therefore, it can be considered in conjunction with other factors.

United States v. Ford, No. 23-1830. Ford was sentenced to 96 months in prison for being a felon in possession of a firearm. The judgment imposed a condition of supervised release requiring him to pay his fine but this condition was not explicitly stated at sentencing. He argued that the payment condition of supervised release is unauthorized because the judge did not mention it during sentencing, and it also did not appear in the presentence report (whose recommendations were adopted orally at sentencing). The Court of Appeals struck the condition from the judgment. However, it noted that there is an open question as to whether the guidelines listed "mandatory" conditions of

supervised release in § 5D1.3 are still mandatory following *Booker*. This issue had not been fully briefed by the parties, so the Court left it for another case.

United States v. Carpenter, No. 23-3295. Carpenter argued that a supervised release revocation proceeding held under 18 U.S.C. § 3583(e)(3) constitutes the trial of a crime or a criminal prosecution within the meaning of the United States Constitution. The Court of Appeals rejected this argument and held that defendants facing revocation proceedings do not have a right to jury trial.

United States v. Reynolds, No. 23-1968. Reynolds began a 60-month term of supervised release in 2020. He violated the terms of his release by testing positive for methamphetamine. The Probation Office attempted twice to help Reynolds access drug treatment services rather than seeking revocation. But these efforts were unsuccessful, and the Probation Office asked the district court to revoke Reynolds's supervised release. At the revocation hearing, Reynolds admitted to violating his release conditions, and the district court revoked his supervised release, sentencing him to 21 months of custody. Reynolds appealed and argued that the district court erred because it failed to recognize its discretion to consider substance abuse treatment as an alternative to revocation and incarceration. The Court of Appeals affirmed, holding that if there was an error, it was harmless. The Court reminded district courts that § 3583(d) contains an exception to § 3583(g)'s revocation and incarceration requirement. In those instances when a defendant is subject to § 3583(g) due to a failed drug test, § 3583(d) directs that "[t]he court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception … from the rule of section 3583(g)."

United States v. Martin, No. 23-2317. Martin served his custodial sentence and began a three-year term of supervised release. Before long, the government asked the district court to revoke Martin's supervised release and return him to prison, alleging that he had violated the terms of his supervised release in multiple ways. Martin ultimately admitted to committing several violations, and the district court revoked his supervised release and sentenced him to twenty months of imprisonment with one year of supervised release. On appeal, Martin argued that the district court procedurally erred because it failed to calculate his guidelines range. He also argued the court improperly relied on certain facts when determining his sentence upon revocation in violation of 18 U.S.C. § 3583(e). The Court of Appeals affirmed, holding the record as a whole reflected the district court considered the guidelines range and sentenced Martin within it. the Court also held the district court appropriately considered the sentencing factors.

United States v. Cotton, No. 23-1591. Cotton violated his supervised release by using cocaine and losing all contact with his probation officer. After the district court revoked the release, a dispute arose over the maximum period of imprisonment Cotton could face for the violations. The district court determined that the answer was two years, disagreeing with the government's contention that Cotton faced a maximum revocation sentence of five years. The Court of Appeals disagreed and reversed and remanded for resentencing. The Court held that the calculation of the maximum term of imprisonment is based on the statute in effect at the time of the defendant's conviction. However, the Court noted that the district court could consider the changes in the law since Cotton was convicted.

United States v. Harris, No. 23-2421. Harris violated the conditions of both his federal and state terms of supervised release. After a two-day evidentiary hearing, the district court revoked Harris's federal supervised release. Harris appealed, arguing that the district court did not have jurisdiction to rule on the alleged supervised release violations because his term of supervised release had expired by the time of the court's decision, as well as that the court made mistakes during the revocation hearing. The Court of Appeals concluded that the district court had jurisdiction and committed no procedural errors. Regarding jurisdiction, the Court held that Harris's federal supervised release was tolled during the five months he was incarcerated for violating his state supervised release. Therefore, the term expired after the court made the revocation findings. The Court also held that the tolling provision of § 3624(e) is not limited to new convictions or to terms of imprisonment imposed in the immediate wake of sentencing.

United States v. Malinowski, No. 24-1831. Malinowski's supervised release was revoked and, on appeal, he challenged the 12 month sentence and seeks to modify the conditions of his new period of supervision. The Court of Appeals found no error in his sentence but vacated two conditions of supervised release and remanded for reconsideration. One condition banning possessing any "sexually stimulating materials" was overbroad and unconstitutionally vague. The second condition was inconsistent between the language of the oral pronouncement and the written judgment.

United States v. Sutton, Nos. 24-1921 & 23-3170. Sutton appealed her conviction and sentencing for conspiracy to commit health care fraud. She challenged the district court's denial of her request to substitute appointed counsel, claiming a deprivation of her Sixth Amendment right to counsel of choice. She also challenged a condition of supervised release. The Court of Appeals affirmed, holding the Sixth Amendment argument failed because a defendant has no right to insist on counsel she cannot afford. The Court also held that Sutton waived the challenge to the condition of supervised release because she had notice and an opportunity to make the objection in the district

court, she submitted other sentencing challenges, and she declined reading of the conditions and their justifications at sentencing.

United States v. Gibbs, No. 23-2883. Gibbs pled guilty to conspiracy to obtain and distribute methamphetamine. The district court sentenced Gibbs to 180 months of imprisonment and 5 years of supervised release. For the first time on appeal, Gibbs argued two conditions of his supervised release are unconstitutionally vague and overbroad. The Court of Appeals affirmed, holding Gibbs waived this challenge at sentencing.