

## **Appeal Waivers**

***United States v. Nulf*, No. 19-3137.** Nulf participated in a mortgage fraud scheme that caused in excess of \$2 million in losses. She was initially indicted on three felony counts and faced up to 30 years in prison, but the government later superseded those charges and substituted a single misdemeanor count. Nulf pled guilty under a written plea agreement that included an appeal waiver. The judge imposed a 12-month sentence, the statutory maximum. Nulf appealed and argued the judge interfered with her allocution, wrongly denied credit for acceptance of responsibility, and committed other assorted mistakes at sentencing. She argued these errors add up to a miscarriage of justice, making the appeal waiver unenforceable. The Court of Appeals upheld the appeal waiver and dismissed her appeal. Although Nulf relied on *United States v. Litos*, 847 F.3d 906, 910–11 (7th Cir. 2017), the Court held that decision did not announce a general “miscarriage of justice” exception to the enforcement of appeal waivers. Rather, *Litos* fell within an established line of cases recognizing a narrow set of extraordinary circumstances that justify displacing an otherwise valid appeal waiver. Nulf’s case is far from extraordinary, so the normal rule applies: the appeal waiver is enforceable unless the underlying guilty plea was invalid.

***United States v. Onamuti*, No. 19-1153.** Onamuti, a Nigerian citizen, pleaded guilty to identity theft and defrauding the U.S. Treasury out of \$ 5 million through illegitimate tax refunds. His plea agreement waived his right to appeal his conviction “on any ground” except for a claim of ineffective assistance of counsel. Onamuti later sought to withdraw his plea, arguing that his lawyer failed to advise him that his convictions would subject him to mandatory deportation. The district court denied the motion without an evidentiary hearing, a ruling Onamuti challenges on appeal. The Court of Appeals did not reach the issue, however, because Onamuti is bound by the waiver of appeal he agreed to in his plea agreement.

***United States v. Filzen*, No. 20-1071.** Filzen pled guilty to eleven felony offenses related to an armed robbery spree. His plea agreement stipulated that his

sentence would consist of 360 to 420 months' imprisonment and a special assessment of \$900, as required by a statute that mandates a \$100 special assessment per felony count. The district court sentenced Filzen to pay a special assessment of \$1,100. Filzen now challenges his guilty because of the \$200 discrepancy which was non-compliant with the Rule 11(c)(1)(C) agreement. On plain error review, the Court affirmed, finding that the court's imposition of the correct, statutorily mandated special assessment - although it differs by \$200 from that in the plea agreement - need not be undone.

### **Child Pornography**

*United States v. Fredrickson, No. 20-2051.* In challenging his conviction for inducing sexually explicit videos from a minor, Fredrickson argued the First Amendment should protect child pornography. He asserted that because he could have lawfully watched the minor where she recorded the videos (Illinois) and where he received them (Iowa), the First Amendment shields him from prosecution under 18 U.S.C. § 2251(a). But child pornography's exclusion from the First Amendment's protection does not hinge on state law, so the Seventh Circuit affirmed Fredrickson's conviction.

### **Concurrent/Consecutive Sentences**

*United States v. Mzembe, No. 20-1265.* This appeal presents several related issues about how federal judges should decide whether sentences in federal prosecutions should run consecutively to or concurrently with separate sentences in unrelated state prosecutions. The issues arise in an unusual way in this case because the state court had already decided to impose a long sentence consecutive to the federal offender's federal sentence. Intervening changes in federal law then required resentencing in federal court, where the consecutive v. concurrent question could be revisited. Mzembe argued that, in refusing to make the new federal sentence concurrent with the intervening state sentence, the district judge erred (a) by giving an inadequate explanation for his decision, (b) by deferring to the state court's intervening judgment to make the sentences consecutive, and (c) by imposing an unreasonably severe sentence that is a de facto life sentence. The Court of Appeals disagreed and affirmed.

## **Evidentiary Issues**

***United States v. Norwood, No. 19-2178.*** Norwood met a fifteen year old girl at a gas station in Indianapolis. Through a combination of drugs and manipulative affection, he enticed her to have sexual intercourse with him and then proceeded to prostitute her to countless men, all within a one-month timespan. A jury found him guilty of one count of attempted transportation of a minor across state lines with the intent that the minor engage in prostitution, in violation of 18 U.S.C. § 2423(a) and (e). Norwood appealed, arguing there was insufficient evidence to sustain the jury verdict, the district court erred in admitting the victim's medical records which included statements made by the minor victim to a sexual assault nurse examiner, the government's comments during closing argument were prosecutorial misconduct, potential juror bias, and challenges to his sentence. The Court of Appeals affirmed in all respects.

***United States v. Castro-Aguirre, et. al, Nos. 19-1074, 19-1110, 19-1126, & 19-1188.*** The Appellants distributed large quantities of cocaine and methamphetamine that moved throughout the southwestern and northeastern United States. They challenged rulings the district court made at the guilt phase, as well as some of the court's sentencing decisions. The Court of Appeals held that the cell site location data was obtained in good faith and the district court did not err in admitting evidence of gang membership. The Court found that the district court abused its discretion by admitting the extensive evidence of kidnapping and murder. However, this error was harmless given the overwhelming nature of the evidence of guilt. The Court reversed one of the defendant's convictions for conspiracy to launder money because there was insufficient evidence.

***United States v. Wehrle, No. 19-2853.*** After detecting an IP address downloading child pornography, police executed a warrant to search Wehrle's home. They seized hard drives and digital devices that contained over one million photos and videos of child pornography. The search also turned up lascivious photos taken in his home depicting the seven-year-old nephew of Wehrle's friend. Wehrle was indicted for producing and possessing child pornography. He was convicted after a bench trial and sentenced to 40 years' imprisonment. On appeal Wehrle challenges various district court rulings

underlying his conviction and sentence. The Court of Appeals affirmed. It held the district court abused its discretion by failing to qualify a police officer as an expert witness when she detailed the technical aspects of the investigation, including reviewing the hard drive and extracting images. However, the error was harmless. It also held the admission of trade inscriptions found on the seized devices did not violate the rule against hearsay and the Sixth Amendment Confrontation Clause. It also held 18 U.S.C. § 2251(a), which criminalizes the production of child pornography, does not violate the Commerce Clause.

***United States v. Thomas, No. 19-2969.*** Thomas set fire to numerous properties in a mobile home park and then used the mail to collect insurance money. The government charged Thomas with mail fraud under 18 U.S.C. § 1341, which requires proof of a “scheme to defraud.” At trial Thomas argued the fires were not part of a scheme because they were not a chain of continuous and overlapping events, but rather discrete episodes of alleged criminality, so evidence of the fires as “other acts” was improperly admitted. A jury convicted Thomas, and on appeal he argues that all but one of the fires were inadmissible character evidence. The Court of Appeals affirmed, holding the district court properly decided that six of the fires were part of Thomas’s scheme and not “other acts.” The district court also properly admitted evidence of another fire that, although too far removed in time to be part of the scheme, was evidence of Thomas’s modus operandi.

***United States v. Hamzeh, No. 19-3072.*** Hamzeh was charged with illegal possession of two machineguns and a silencer, in violation of 26 U.S.C. § 5861(d). Before trial, he raised an entrapment defense, arguing he was induced by government informants and lacked the predisposition to obtain these weapons. The district court excluded many of his recorded statements and evidence of the availability of parts that could be used to assemble machineguns. The day before trial was scheduled to begin, the Government filed an interlocutory appeal. The Court of Appeals found the district court must correct the repeated errors in excluding evidence as “not probative” or irrelevant, which affected its further findings under Rule 403. The Court also found the district court erred in excluding the Government’s machinegun-availability evidence as irrelevant to the charged conduct. The Court instructed the district court to find the

Government's machinegun-availability evidence conditionally admissible, subject to Hamzeh's introduction of evidence he did not have the ability to commit the crime.

***United States v. Guzman-Cordoba & Alvarado-Santiago, Nos. 19-2526 & 19-2937.*** Guzman-Cordoba and Alvarado-Santiago participated in an extensive drug trafficking organization operating out of Indianapolis and Chicago. Guzman-Cordoba worked as a drug courier, drug seller, and stash house guard for the organization while Alvarado-Santiago laundered the drug proceeds by wiring large sums from the grocery store that he managed in Indianapolis to California and Mexico. At trial, Guzman-Cordoba presented a duress defense, in which she asserted that she had been forced to join the drug trafficking organization through violence and threats of violence to herself and her family. Alvarado-Santiago defended himself on the grounds that he did not know that the money he had sent to California and Mexico was drug money. On appeal, Guzman-Cordoba and Alvarado-Santiago argued that the district court made several errors during trial. First, Guzman-Cordoba maintained that the district court erred in limiting the evidence she attempted to introduce regarding her duress defense and also erred in instructing the jury on that defense. Guzman-Cordoba further contended that the district court erred in ordering her to forfeit roughly \$10,000 in cash that was found at one of the organization's stash houses. Alvarado-Santiago insisted that the district court erred in only admitting a portion of his post-arrest statement and further erred in admitting a statement by Guzman-Cordoba without limiting the jury's ability to consider that evidence against him. Finally, he claimed the district court erred in giving the jury an instruction on deliberate avoidance of knowledge, also known as the "ostrich instruction." Finding no reversible error as to either Guzman-Cordoba or Alvarado-Santiago, the Court of Appeals affirmed their convictions and sentences.

***United States v. Law, No. 19-2345.*** A jury convicted Rita Law of sex trafficking which the district court described as "a modern day form of slavery" the massage parlors she operated. On appeal, Law challenged several evidentiary rulings at trial, the sufficiency of the evidence for her convictions, and her sentence of 360 months' imprisonment. The Court of Appeals affirmed. It held

admitting statements made to agents during their investigation was not an abuse of discretion because the statements helped connect the dots of various portions of the complex investigation.

***United States v. Wallace, No. 20-1043.*** A jury convicted Wallace of being a felon in possession of a firearm. The judge sentenced him to 78 months in prison. He challenged his conviction appeal arguing there was insufficient evidence that he possessed a firearm. He also challenged his sentence. The Court of Appeals affirmed. It held that there was sufficient evidence because an officer testified he saw Wallace pointing a silver handgun at him. It also held the district court did not err by adding two criminal history points based on his 2015 Illinois conviction for fleeing police.

***United States v. Jones & Wansley, Nos. 19-2176 & 19-2177.*** Jones and Wansley both worked for the United States Postal Service. Over a few months in 2016, they participated in a conspiracy to ship marijuana from California to Illinois through the United States Mail. Jones provided coconspirators with addresses in his postal area. The coconspirators then mailed the illicit packages to those addresses. Jones and Wansley, using their roles in the Postal Service, intercepted the packages and handed them off to other members of the conspiracy. For their part in the operation, both of them took cash bribes. The scheme ended when federal officers arrested Jones, Wansley, and several of their coconspirators. A jury convicted Jones and Wansley of conspiracy, bribery, and obstruction of correspondence. They argued on appeal that the Government presented evidence insufficient to sustain their convictions. The Court of Appeals affirmed, holding the evidence was sufficient to support all of their convictions, particularly given their admissions during interviews with law enforcement.

### **First Step Act - Compassionate Release**

***United States v. Gunn, No. 20-1959.*** The First Step Act created a judicial power to grant compassionate release on a prisoner's own request, provided that the prisoner first allowed the Bureau to review the request and make a recommendation (or it let 30 days pass in silence). The Sentencing Guidelines have not been amended to reflect the changes made by the First Step Act. Gunn asked the district court to order her release under §3582(c)(1)(A) on the ground

that, because of her age and medical condition, she faces extra risks should she contract COVID-19. The district court denied Gunn’s motion, ruling that the guidelines language - “that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission” - prevents judges from granting compassionate release without a request from the Bureau of Prisons. Agreeing with the Second Circuit, the Court disagreed with the district court’s determination. The guidelines says that a reduction must be “consistent with” all “applicable” policy statements. Section 1B1.13 addresses motions and determinations of the Director, not motions by prisoners. In other words, the Sentencing Commission has not yet issued a policy statement “applicable” to Gunn’s request. And because the Guidelines Manual lacks an applicable policy statement, the trailing paragraph of § 3582(c)(1)(A) does not curtail a district judge’s discretion.

***United States v. Sanford*, No. 20-2445.** Sanford is serving a 15-year sentence. He moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A). He did not, however, exhaust administrative remedies within the Bureau of Prisons before filing his motion. The government raised the exhaustion problem in the district court and also opposed Sanford’s release request on the merits. The district court skipped over the exhaustion question and proceeded directly to the merits, declining to reduce Sanford’s sentence. Sanford appealed. The Court of Appeals held the exhaustion requirement in § 3582(c)(1)(A) is a mandatory claim-processing rule and therefore must be enforced when properly invoked. Three circuits agree and none have held otherwise; and the Seventh Circuit joined the emerging consensus.

***United States v. Blake*, No. 2145.** In this First Step Act appeal, the Seventh Circuit did not reach the merits of the case. Instead, it held that appointed counsel need not file an *Anders* brief with a motion to withdraw on appeal because defendants are not entitled to counsel in First Step Act cases and, therefore, the provisions of *Anders* do not apply. The Court granted counsel’s motion to withdraw but allowed the defendant to continue with the appeal *pro se*.

***United States v. Saunders, No. 20-2486.*** Saunders moved for compassionate release or transfer to home confinement in light of the COVID-19 pandemic and his health problems. Accepting that Saunders’s health circumstances were extraordinary and compelling, the district court denied the motion after applying the factors of 18 U.S.C. § 3553(a). It concluded that release was unwarranted because of the seriousness of Saunders’s crime and the substantial portion of his sentence remaining. Because the district court did not abuse its considerable discretion in weighing the § 3553(a) factors, the Court of Appeals affirmed.

***United States v. Williams, No. 20-2404.*** Williams sought compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied the motion, bypassing the government’s argument that Williams did not exhaust his remedies with the Bureau of Prisons and concluding that he had not shown circumstances warranting his release. The Court of Appeals with the district court’s final conclusion but issued this opinion to explain why, even if one thought that Williams had made a compelling case on the merits, he failed to exhaust. The Court held that, in order properly to exhaust, an inmate is required to present the same or similar ground for compassionate release in a request to the Bureau as in a motion to the court.

***United States v. Joiner, No. 20-2361.*** Joiner appealed the district court’s denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). On appeal, he argued the district court procedurally erred by not specifically addressing his argument that his skin color “elevates his risk from COVID-19.” In the district court, Joiner supported this contention by citing to three articles discussing disparities in health care outcomes based on race. Those articles, however, pointed to a multitude of societal factors that are not relevant to Joiner’s individual situation in federal prison. The Court of Appeals affirmed, holding that extrapolating direct relevance of the articles to Joiner’s situation requires leaps of logic that do not necessarily follow from the broad societal information he presented. Without any factual basis tying these broader societal concerns to Joiner’s individual situation, the district court was not required to address the argument.



***United States v. Jackson, No. 20-2680.*** Jackson was convicted and sentenced for bank robbery in 1986. Now 70 years old, he sought compassionate release under 18 U.S.C. § 3582(c)(1). The district court denied his motion and the Court of Appeals affirmed, holding that the First Step Act does not make “old-law” prisons eligible for release under §3582(c)(1).

***United States v. Sanders, No. 20-2561.*** When COVID-19 and Legionnaires’ disease began spreading in the prison where Sanders is serving a sentence for offenses related to manufacturing methamphetamine, she became nervous about her own health. Sanders suffers from numerous medical conditions, many of which put her at higher risk of serious illness from those diseases. She petitioned the district court for compassionate release under 18 U.S.C. § 3582(c)(1)(A) in light of the outbreaks and her particular susceptibility. The district court denied the petition because it found that, although Sanders suffers from medical conditions that place her at greater risk of serious illness, her criminal history and the court’s finding that home confinement would be unsuitable (a methamphetamine lab was found in her kitchen) weighed against sentence modification. The Court of Appeals affirmed, holding the district court did not abuse its discretion or deny Sanders due process.

***United States v. Newton, No. 20-2893.*** Newton, an inmate at FCI Seagoville in Texas, moved for compassionate release. He sought a sentence of time served because of the COVID-19 pandemic. He submitted that the combination of his asthma, hypertension, and use of a corticosteroid heightened his risk of serious consequences should he become infected. The district court denied the motion and concluded he had failed to establish the “extraordinary and compelling reasons” required under the compassionate release statute. The Court of Appeals reversed and remanded because the district court did not adequately address Newton’s arguments. The Court held that the district court should have assessed Newton’s situation in light of each individual comorbidity but also considered the situation cumulatively. Judge Kirsch dissented.

### **First Step Act - Fair Sentencing Act**

***United States v. Hogsett, No. 19-3465.*** Hogsett was sentenced to nearly thirty years in prison after a jury convicted him of three crimes. One of those crimes

was possession of crack cocaine with intent to distribute. 21 U.S.C. § 841(a)(1), (b)(1)(C). Since Hogsett’s sentencing, Congress has passed two laws – the Fair Sentencing Act of 2010 and the First Step Act of 2018 – which permit federal inmates to seek a sentence reduction for certain “covered offenses.” Hogsett argued that possession with intent to distribute crack cocaine, in violation of § 841(a)(1), (b)(1)(C), is a covered offense. The Court of Appeals agreed and reversed the district court’s conclusion to the contrary and remanded for the district court to reconsider Hogsett’s sentence. The crux of the issue was whether the Fair Sentencing Act “modified” § 841(b)(1)(C) even though it did not alter its text. The Court concluded § 841(b)(1)(C) was modified when the quantities of crack cocaine to which it applies were changed.

#### **Fourth Amendment**

*United States v. Green, No. 19-2330.* Green was indicted for possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). A security guard stopped and searched Green at a Chicago Housing Authority (CHA) public housing unit. After recovering a handgun, the security guard called the Chicago Police Department. At trial, Green moved to suppress the gun. The district court ruled that the security guard was not a state actor subject to the Fourth Amendment. Green entered a conditional guilty plea, reserving the right to appeal the denial of his motion. The Court of Appeals affirmed.

#### **Government Breach of Plea Agreement**

*United States v. Wyatt, No. 19-3378.* Wyatt pled guilty to conspiring to traffic a minor. In exchange, the government promised to join him in recommending a below-guideline sentence of ten years in prison and to advise the court about his post-plea cooperation. The government upheld only part of its bargain. It did recommend a ten-year sentence. Wyatt’s lawyer, not prosecutors, told the court about his cooperation. Wyatt did not object at the time, and he received the jointly recommended sentence. He has appealed and argued that the government’s silence about his cooperation breached the plea agreement. The Court of Appeals affirmed. Although the Court agreed that the government’s silence breached the plea agreement, under these circumstances in which the judge accepted the parties’ joint recommendation of a sentence well below the

guideline range, Wyatt did not show a reasonable probability that the breach had any effect on his sentence.

***United States v. Collins, No. 20-1198.*** Collins was charged distributing heroin. He pled guilty to two charges and was sentenced to 180 months in prison, the statutory mandatory minimum for those offenses. On appeal, Collins sought to withdraw his guilty plea because, he argued, at sentencing the government breached the plea agreement by failing to tell the court that he cooperated with its investigation. Collins did not raise the argument in the district court, so review was for plain error. The Court of Appeals affirmed, holding it was doubtful there was a breach of the plea agreement but, even if there was, it was not plain error. Although the government failed to tell the court about the safety valve proffer in addition to other cooperation, the district court already knew the omitted information.

### **Guidelines Issues**

***United States v. Zamora, No. 19-2707.*** While Zamora was in a federal correctional facility awaiting resentencing for past offenses, he began paying a guard to smuggle contraband into the facility. Once the smuggling operation was discovered, Zamora pleaded guilty to bribing a federal official. The Sentencing Guidelines call for a four-level enhancement for bribery offenses that “involved ... any public official in a high-level decision-making or sensitive position.” U.S.S.G. § 2C1.1(b)(3). The district court held that the guard was a public official in a sensitive position and applied the four-level enhancement. Zamora argued that the court erred because the prison guard was a low-level official with little discretionary authority and therefore did not hold a sensitive position. The Court of Appeals affirmed, holding the Guideline’s commentary, which generally binds the Court on issues of interpretation, explains that officials in sensitive positions include those who are situated similarly to a law enforcement officer.

***United States v. Jett & McKissick, Nos. 19-1622 & 19-1673.*** A jury convicted Jett and McKissick of Hobbs Act conspiracy and attempted robbery. In a previous appeal, the Court of Appeals reversed the defendants’ attempted-robbery convictions and remanded for resentencing on the conspiracy count. The defendants appealed from their resentencings, arguing the district court erred

under the Guidelines by using the preponderance-of-the-evidence standard, and not the higher beyond-a-reasonable-doubt standard, to decide whether they conspired to commit the “object offenses” of the conspiracy. The Court of Appeals agreed that the district court erred by failing to use the beyond-a-reasonable-doubt standard but any error was harmless.

***United States v. Meza, No. 19-2243.*** Meza fell for fraudulent international trading programs promising incredible profits. He then tricked people he knew into investing in these programs. The scam was a total hoax, with ridiculous promises. Meza stood trial on two counts of wire fraud. The jury acquitted him on Count I and convicted him on Count II. The district court sentenced him to 19 months in prison and ordered him to pay \$881,500 in restitution. The issues on appeal involved the amount of loss for purposes of the Sentencing Guidelines and restitution. The Court of Appeals affirmed.

***United States v. McGee, No. 19-3312.*** McGee pleaded guilty to possession with intent to distribute 100 grams or more of heroin and fentanyl. He was sentenced to 84 months’ imprisonment. On appeal, he argued the district court erred in (1) imposing a leadership enhancement, (2) failing to afford him a meaningful opportunity to allocute, and (3) calculating his criminal history points. The Court of Appeals agreed that the district court erred in imposing the leadership enhancement because there was no evidence McGee supervised others during drug distributions by an “unknown group of people.” In addition, there was no indication McGee played a superior role to the other two defendants in the case.

***United States v. Wilkinson, No. 20-1037.*** Wilkinson operated a Ponzi scheme to hide from his investors the truth that he had lost most of their money in the 2008 financial crisis. The scheme was eventually uncovered and halted in 2016 when the Commodity Futures Trading Commission filed a civil enforcement action against Wilkinson and his funds. In early 2017, Wilkinson was charged by federal indictment with mail and wire fraud. He pleaded guilty to one count of wire fraud. At sentencing, the district court applied a four-level sentencing guideline enhancement under U.S.S.G. § 2B1.1(b)(20) because it found that Wilkinson’s offense qualified as “a violation of commodities law” by a “commodity pool operator.” Wilkinson argued on appeal that the court erred in

applying this enhancement because he was not a “commodity pool operator” as that term is defined in the Commodity Exchange Act. The Court of Appeals affirmed, holding that Wilkinson’s plea agreement and presentence investigation report provided facts showing that Wilkinson was a commodity pool operator.

***United States v. Anderson, No. 19-2361.*** Anderson sold large quantities of heroin to drug dealers and users in the Indianapolis area. A jury found Anderson guilty of two drug charges - distributing a controlled substance and conspiracy to distribute. The jury also found Anderson had caused “serious bodily injury” to a user who overdosed on her drugs; that finding exposed her to an enhanced sentence. The district court imposed a below guidelines term of 300 months’ imprisonment. On appeal, Anderson’s primary arguments took issue with her distribution conviction and the applicability of the serious-bodily-injury enhancement. She urged that her distribution conviction should be vacated because it was based on an aiding-and-abetting theory of liability that was unsupported by the evidence. If her distribution conviction is vacated, the serious-bodily-injury enhancement would be vacated, because it is impossible to tell from the jury’s verdict whether that enhancement applied only to her flawed distribution conviction, only to her unchallenged conspiracy conviction, or to both. The Court of Appeals agreed with Anderson and vacated her distribution conviction and her sentence and remanded to the district court for resentencing on the conspiracy conviction without the serious-bodily-injury enhancement.

***United States v. Ford, No. 19-3486.*** Ford pled guilty to armed robbery of a taxi driver, brandishing a firearm in furtherance of that crime of violence, and attempted armed robbery of a gas station. He was sentenced to 114 months in prison. He challenged his below-guideline sentence on appeal, arguing that the district court made a guideline error by imposing a six-level enhancement under § 2B3.1(b)(2)(B) to the gas station attempt because his co-defendant “otherwise used” a firearm. The Court of Appeals affirmed, holding the enhancement was based on ample evidence that Ford was in on the co-defendant’s plan to rob the B.P. station from the start and that he continued to help after she brandished the firearm. The judge could reasonably infer that Ford had reason to know that his co-defendant would use a firearm in the attempt.

***United States v. Slone, No. 20-2721.*** After federal agents discovered guns and drugs in a basement apartment where Slone lived, a jury found him guilty of possessing firearms as a felon but acquitted him of possessing methamphetamine with intent to distribute. In calculating Slone’s imprisonment range under the Sentencing Guidelines, the district court applied a four-level enhancement under § 2K2.1(b)(6)(B) for possessing the firearms “in connection with another felony offense,” namely, drug trafficking. Slone appealed, arguing that the court erred by applying the enhancement because he was acquitted on the drug charge and no evidence supports the conclusion that his firearms facilitated drug trafficking. The Court of Appeals affirmed, holding the district court did not clearly err in finding that there was a connection, and the court emphasized that it would impose the same sentence regardless of the guidelines range.

***United States v. Lundberg, No. 19-3477.*** Lundberg was convicted after a jury trial of five counts of wire fraud after she spent nearly \$6 million on luxury items on her boyfriend’s business credit card. Lundberg argued on appeal that (1) the district court erred by admitting certain evidence, (2) there was insufficient evidence to support the jury’s verdict, and (3) the district court erred at sentencing by applying the “sophisticated means enhancement” under U.S.S.G. § 2B1.1(b)(10)(C). The Court of Appeals affirmed. It held that the evidentiary issues were waived by the failure to object at trial. It also held the jury had sufficient evidence that Lundberg had the intent to deceive and cheat because the government showed she knew they were spending money that did not belong to them and they were not authorized to spend. Furthermore, the enhancement for sophisticated means was appropriate because Lundberg altered her boyfriend’s tax returns to support a lease application for a home they could not afford.

## **Jury Deliberations**

***United States v. Banks, Nos. 19-3245.*** Banks was indicted on charges of conspiracy and aiding and abetting a robbery of the United States Post Office in Gary, Indiana, where she worked as a mail clerk. After a five-day trial and four hours of deliberation that stretched to about 8:45 p.m., the jury returned a verdict of guilty on both counts. At the request of Banks’s counsel, the judge polled the jurors. The first four affirmed the verdict. The fifth did not. When asked whether

the guilty verdict was in fact his verdict, Juror 32 responded, “Forced into.” The judge repeated the question. Juror 32 responded that he needed more time. The judge continued the poll, and the remaining jurors affirmed the verdict, singling out Juror 32 as the lone dissenter. The judge then instructed the jurors to continue deliberating and sent them back to the jury room at 9:06 p.m. Twenty-nine minutes later, the jury again returned a guilty verdict. This time the poll confirmed a unanimous decision. Banks argued on appeal regarding the circumstances surrounding the jury poll, which she contends exerted impermissible pressure on the wavering juror. The Court of Appeals agreed. The totality of the circumstances – most notably, the dissenting juror’s troubling responses to the poll questions, the judge’s decision to complete the poll notwithstanding the juror’s dissent, the lateness of the hour, and the extreme brevity of the jury’s renewed deliberations – were unacceptably coercive. The Court vacated the judgment and remanded for a new trial.

### **Prior Convictions - Crimes of Violence/Violent Felonies**

***United States v. Glispie, No. 19-1224.*** The Seventh Circuit certified a question to the Illinois Supreme Court regarding whether the limited authority doctrine applies to its residential burglary statute. The Illinois Supreme Court accepted the question and held the limited authority doctrine applies to residential burglary. Based on this holding, the Seventh Circuit held a conviction for residential burglary does not qualify as generic burglary and Mr. Glispie should have been sentenced as an armed career criminal. The Court reversed and remanded for resentencing.

***United States v. Smith, No. 18-3696.*** Smith pled guilty to charges of unlawfully possessing a firearm as a felon and possession of stolen goods. He received an enhancement under § 2K2.1(a)(2) two of his prior convictions, including a 2008 Iowa conviction for aggravated assault. He objected to counting the aggravated-assault conviction as a “crime of violence” under the guidelines. The conviction rests on section 708.2(3) of the Iowa Code. Although some variants of the simple assault offense do not require the use or threat of physical force, the statute is divisible. The Court of Appeals held that records of Smith’s conviction show that he was convicted under a subsection of the assault statute that requires a threat

of physical force. The Court held that the district court properly relied on Smith's 2008 aggravated-assault conviction to elevate his base offense level under § 2K2.1(a)(2).

***United States v. Nebinger, No. 19-1504.*** Nebinger pled guilty to the charge of being a felon in possession of a firearm. The Probation Office determined that he qualified as an armed career criminal, based on his prior convictions for Illinois residential burglary, drug possession with intent to deliver, and aggravated battery. The district court agreed with Nebinger that his residential-burglary conviction was an improper ACCA predicate. The government appealed and the Court of Appeals returned the case to the district court. At resentencing, the district court increased his prison sentence to 15 years, the minimum under the ACCA. Nebinger appealed. While the appeal was pending, the Illinois Supreme Court ruled on the scope of the state residential burglary offense, and in so doing, has clarified that it cannot be used for ACCA purposes. The Court of Appeals remanded for resentencing.

***Bridges v. United States, No. 20-1623.*** The Court of Appeals Hobbs Act Robbery is not a crime of violence for career offender purposes and that defense counsel was ineffective for failing to make the argument in the district court.

***United States v. Jerry, No. 20-1298.*** Jerry robbed a cellphone store at gunpoint and then pled guilty to Hobbs Act robbery in violation of 18 U.S.C. § 1951. When he committed this crime, Jerry had previous state convictions for robbery and attempted murder. At sentencing in this case, the district court determined that those state convictions, in addition to his Hobbs Act robbery conviction, meant that Jerry qualified as a career offender under the Sentencing Guidelines. While this case was on appeal, the Seventh Circuit held in *Bridges v. United States*, 991 F.3d 793, 797 (7th Cir. 2021), that Hobbs Act robbery does not qualify as a crime of violence under the Guidelines. The Seventh Circuit held that the district court's error constituted plain error. Because the plain error standard requires courts to look to the law at the time of appeal when deciding if an error is "clear and obvious," *Henderson v. United States*, 568 U.S. 266, 269 (2013), it concluded that it was plain error to sentence Jerry as a career offender, and remanded for resentencing.



## **Prior Convictions - Drugs**

***United States v. Smith, No. 20-1117.*** Smith dealt methamphetamine in Mattoon, Illinois. After several controlled buys, Smith was arrested and charged with one count of distributing methamphetamine and one count of possessing a firearm as a felon. Represented by court-appointed counsel, Smith pleaded guilty to both counts. He then sought to retract his guilty plea, alleging ineffective assistance of counsel. The court denied Smith's motion to withdraw his guilty plea, rejected his request for an evidentiary hearing, and sentenced him on the two counts. On appeal, Smith challenged the district court's denial of his ineffective assistance of counsel claim and his career offender sentencing enhancement. The Court of Appeals affirmed, holding Smith's claims that his previous attorney failed to investigate, failed to file a motion to suppress, pressured him to plead guilty, and showed unfamiliarity with the case were meritless. The Court also held that Smith's prior conviction for conspiring to distribute cocaine was a controlled substance offender under the career offender guidelines.

## **Probation Recommendation**

***United States v. Stephens, No. 20-1463.*** Stephens pled guilty to transporting child pornography in violation of 18 U.S.C. § 2252A(a)(1). The district court sentenced him to 151 months in prison, at the bottom of the applicable Sentencing Guideline range. On appeal, Stephens challenged his sentence and argued the district court improperly disregarded the probation officer's recommendation of a below guideline sentence, his own primary arguments in mitigation, and the statutory sentencing factors set forth in 18 U.S.C. § 3553(a). The Court of Appeals affirmed, issuing this published opinion to make clear that "A district court need not address a probation officer's recommendation at sentencing." The district judge is still free to disclose the recommendation, but that disclosure did not trigger a new procedural requirement that the judge discuss the recommendation on the record.

## **Procedural Reasonableness**

***United States v. Ramirez, No. 20-1006.*** Ramirez pleaded guilty to possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), and was sentenced to 72 months in

prison, 15 months above the top of the guidelines range. Ramirez raised two arguments on appeal. First, he argued that the district court procedurally erred by not fully addressing his argument that he, at 44, was aging out of crime. Second, he argued that his sentence was substantively unreasonable because the court overemphasized the danger he created when he evaded arrest and the seriousness of his past convictions. The Court of Appeals held that the district court appropriately handled the “aging out” argument as no data supported it, and the court reasonably justified its above-guidelines sentence.

***United States v. Coe, No. 20-1990.*** Coe and two accomplices traveled from Indiana to Illinois and robbed a Verizon store at gunpoint, fleeing with more than \$25,000 in merchandise and cash. They were indicted with Hobbs Act robbery and brandishing a firearm in connection with a crime of violence. Coe pled guilty to both crimes, and the district court imposed a total sentence of 117 months in prison, the bottom of the advisory range under the Sentencing Guidelines. Coe, who is black and was 18 years old at the time of the crime, challenged his sentence on two grounds: (1) he argued that the judge improperly considered his race by relying on a false stereotype about black families; and (2) he argued that the judge committed procedural error by failing to adequately consider his argument about “brain science” and the psychological immaturity of young men in their late teens. The Court of Appeals affirmed, holding that even if the district court had made an inappropriate comment about race during sentencing, Coe had not shown the judge *relied on* an impermissible factor to arrive at the sentence imposed. The Court also held that the district court did not ignore his brain science argument; rather the argument was a “stock argument” that could be made by many defendants which required “little, if any, discussion.”

## **Restitution**

***United States v. Stivers, Nos. 20-1180 & 20-2664.*** The Court held that Rule 43, which requires the presence of the defendant at sentencing, does not apply to restitution proceedings under § 3664(d)(5).

## **Safety Valve**

***United States v. Stamps, No. 20-1336.*** Stamps pled guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). Because his conduct involved more than 50 grams of methamphetamine, Stamps faced a statutory minimum 60 month prison sentence unless he qualified for the “safety-valve” provision of 18 U.S.C. § 3553(f). The district court sentenced Stamps to 60 months in prison based on its finding that Stamps possessed a firearm in connection with his drug offense, therefore disqualifying him from safety-valve relief. The Court of Appeals found that the district court’s finding that Stamps possessed the gun in connection with his drug offense was based on a legal error. Rather than evaluating whether Stamps had shown by a preponderance of evidence that the gun was unrelated to his drug offense, the district court found only that Stamps could not prove that it was “clearly improbable” that the gun was connected to his drug offense, imposing a higher burden on Stamps than is required for him to prove safety valve eligibility. The Court of Appeals vacated and remanded for resentencing.

***United States v. Wylie, No. 19-2140.*** Wylie pleaded guilty to possession with the intent to distribute more than 5 kilograms of cocaine. As a result of Wylie qualifying for safety-valve relief under 18 U.S.C. § 3553(f), the district court had the authority to impose a sentence without regard to the statutory minimum. The court did so with regard to Wylie’s prison term, but it sentenced him to the statutory minimum of 5 years of supervised release. Because the district court imposed the term of supervised release under the erroneous belief that it was bound by the statutory minimum, the Court of Appeals vacated the portion of Wylie’s sentence and remanded for the limited purpose of determining it anew. The Court acknowledged for the first time, in line with other circuits to consider the issue, that safety valve allows the district court to impose a term of supervised release without regarding the statutory mandatory minimum for terms of supervised release.

### **Substantive Reasonableness of Sentence**

***United States v. McDonald, No. 19-3222.*** McDonald appealed his within-guidelines sentence of 156 months in prison, arguing that it is substantively unreasonable because his age and poor health make it likely that he will die

there. The Court of Appeals affirmed, holding McDonald failed to present evidence of a shortened life expectancy to the district court, and the court otherwise considered McDonald's age and medical conditions, along with the other factors enumerated in 18 U.S.C. § 3553(a), when it selected his sentence.

***United States v. Elmer, No. 19-2890.*** Elmer owned and operated multiple healthcare-related companies including Pharmakon Pharmaceuticals. His pharmacy produced and distributed drugs that Elmer knew were dangerous. Rather than halting manufacturing or recalling past shipments, sales continued and led to the near death of an infant. Federal charges followed for Elmer's actions in preparing and selling drugs that contained more or less of their active ingredient than advertised. A jury returned a guilty verdict on all but one count. Elmer appealed several of the district court's rulings related to the Rule 404(b) evidence admitted at trial and his sentence. The Court of Appeals affirmed, holding the evidence before the jury overwhelmingly proved Elmer's guilt. And the district court's imposition of a sentence of 33 months' imprisonment was more than reasonable given the gravity of Elmer's crimes.

***United States v. Barrera, No. 20-1659.*** Barrera sold a handgun to a fellow gang member who turned out to be a confidential informant. Barrera pled guilty to unlawful possession of a firearm, 18 U.S.C. § 922(g)(1), and was sentenced to 110 months' imprisonment – a term at the bottom of his guideline range. Barrera, who has cancer, appealed his sentence as unreasonable. The Court of Appeals affirmed, finding the district court adequately explained the sentence in light of the 18 U.S.C. § 3553(a) factors.

### **Supervised Release**

***United States v. Hogenkamp, No. 20-1376.*** Hogenkamp pled guilty to a federal crime and was sentenced to 10 years' imprisonment plus 25 years' supervised release. Fourteen months before the anticipated end of his custodial time (April 2021), he asked the district court to modify the terms of his supervised release. The court denied the motion, deeming it premature, and invited Hogenkamp to "discuss the terms of his supervised release with his probation officer [a]t the time that defendant is released" and "ask the court for a modification of the terms ... at that time." The Court of Appeals reversed and remanded, holding

that, to the extent that the judge believed it appropriate to defer consideration of Hogenkamp's motion until after his release, the decision is mistaken.

***United States v. Barrett, No. 19-2254.*** Barrett challenged one condition of supervised release that had previously been held by the Seventh Circuit to be vague and overbroad. However, he had not raised a challenge to this condition in the district court, although he objected to others. The Court of Appeals held that this constitutes waiver, rendering the challenge unreviewable on appeal. The Court also held that the exception to appeal waivers did not apply in this situation.

***United States v. Dawson, No. 20-1233.*** Dawson violated the conditions of his supervised release after his release from prison; one of Dawson's violations was possessing a loaded, semiautomatic firearm. That violation separately resulted in state criminal charges. The state charges were still pending when the federal district court in this case revoked Dawson's supervised release and imposed a new 24-month prison term. On appeal, Dawson argued the district court chose its 24-month sentence – the statutory maximum – to punish him for possessing the firearm, when it should have focused on his breach of the court's trust and left any punishment to the state-court system. He also argued that the court disregarded his mitigation arguments and the relevant sentencing factors, and that the sentence was plainly unreasonable. The Court of Appeals affirmed.

***United States v. Daoud, Nos. 19-2174, 19-2185, & 19-2186.*** Daoud pressed the button to detonate a bomb that would have killed hundreds of innocent people in the name of Islam. In reality, the bomb was fake, but the FBI arrested him on the spot. Two months later, while in pretrial custody, Daoud solicited the murder of the FBI agent who supplied the fake bomb. Two and a half years later, while awaiting trial on the first two charges, Daoud tried to stab another inmate to death using makeshift weapons after the inmate drew a picture of the Prophet Muhammad. Daoud eventually entered an *Alford* plea, and the cases were consolidated for sentencing. The district court sentenced Daoud to a combined total of 16 years' imprisonment for the crimes. The government appealed the sentence on the ground that it was substantively unreasonable. The Court of Appeals agreed and remanded for resentencing. The Court held that the district

court “downplayed the extreme seriousness of Daoud’s offenses in ways that conflict with the undisputed facts.” The Court also held that the district court failed to account for the need to protect the public from Daoud’s demonstrably high risk of reoffending. Finally, the Court held the district court “improperly distinguished the sentences of similar offenders by relying on Daoud’s long period of pretrial confinement.”

***United States v. Morgan, No. 19-2737.*** Morgan pled guilty to conspiring to receive seven firearms from out of state without the necessary licenses, in violation of 18 U.S.C. § 371. The district court imposed a 48-month sentence and various conditions of supervised release. Morgan raised several challenges to his sentence, including that the district court failed to justify supervised-release condition 23 with reference to the sentencing criteria in 18 U.S.C. § 3553, and that it did not explain why this condition had to be added to the rest of the discretionary conditions. Condition 23 authorized the probation office to search Morgan’s “person, property, house, residence, vehicle, papers, [computers], or office,” if the search was supported by reasonable suspicion. The Court of Appeals agreed and issued a limited remand for the district court to determine whether the condition was necessary.

***United States v. Strobel, No. 20-1092.*** Strobel pled guilty to unlawful possession of a firearm. At his sentencing hearing, he raised no objections to the conditions of supervised release proposed in the presentence report and waived a full reading of those conditions. The district court imposed explicitly the term of supervised release but neglected to impose explicitly the conditions of supervised release. The district court issued its written judgment, which included all the conditions of supervised release recommended by the presentence report. On appeal, Strobel submits that the district court’s failure to impose explicitly the conditions of supervised release during the sentencing hearing renders the written judgment inconsistent with the court’s earlier oral pronouncement. That error, Strobel continued, requires the vacation of his sentence and permits a remand for a complete resentencing. The Court of Appeals disagreed and determined there was no impermissible inconsistency between the district court’s oral pronouncement and its written judgment.

***United States v. Sanchez, et al.*, Nos. 18-2538, 18-3045, 18-3088, 19-1335, 19-1591, 19-1612, 19-3405.** The Roque drug trafficking organization moved in excess of 1,500 kilograms of cocaine and 100 kilograms of heroin from Mexico to Chicago for distribution and sale. On appeal, the defendants convicted of the conspiracy did not dispute their convictions, but contested their sentences. They argue the district court misinterpreted the need to avoid unwarranted sentencing disparities under § 3553(a)(6) and failed to adequately consider their arguments on this issue. Two defendants challenged the district court's application of the Sentencing Guidelines, and two other defendants contest the imposition of certain supervised release conditions. The Court of Appeals affirmed, concluding the district court committed no error. It held the district court properly avoided unwarranted sentencing disparities, correctly applied the Sentencing Guidelines, and appropriately imposed supervised release conditions, with one minor exception which was ordered amended.

***United States v. Jordan*, No. 19-2970.** During his first three months while on supervised release, Jordan consistently tested negative on drug tests and called the probation office to find out about his next required tests. Nonetheless, over two days in June 2019, he missed a drug test and two assessments, prompting his probation officer to petition to revoke his supervised release. The district court ruled that Jordan had committed the violations, revoked his supervised release, and sentenced him to six months in prison followed by 26 months of supervised release (including 120 days in a halfway house). Jordan appealed. The Court of Appeals concluded that the district court did not sufficiently explain its decision, consider Jordan's defense that his violation was unintentional, or otherwise ensure that its sentence conformed to the parsimony principle of 18 U.S.C. § 3553(a).

### **Suppression of Evidence**

***United States v. Reedy*, No. 20-2444.** Police responded to a call that a homeless person was sleeping in a car behind a Goodwill store in Eau Claire, Wisconsin. Officers responded and found Joshua Reedy wearing a bulletproof vest and sitting in the front passenger seat of a cluttered Kia SUV. The officers saw an open knife, crowbar, and walkie-talkie on the car's floorboard. Reedy said that

his friend Jason was visiting someone in a nearby neighborhood. Officers told Reedy to stay put while they looked for Jason. After they found Jason, they searched the Kia and found a shotgun. Reedy was charged with a federal gun possession charge. The district court denied Reedy's motion to suppress the gun found in the Kia. On appeal, Reedy argued that he was under arrest from the moment the police told him he was not free to leave while they looked for Jason. Therefore, the police could not rely on any after-the-fact evidence obtained during their encounter with Jason to supply the probable cause necessary to authorize the search of Reedy's car and his firearm-related arrest. The Court of Appeals affirmed, holding the police had ample authority to direct Reedy to step out of his car and to subject him to further questioning and investigation consistent with *Terry*.

***United States v. Berrios, No. 19-1871.*** Berrios and others engaged in a spree of armed robberies targeting cellphone stores, currency exchanges, dollar stores, and retail pharmacies. Berrios was convicted on numerous Hobbs Act counts. He raised one issue on appeal: whether the district court erred when it denied his motion to suppress evidence that the government found through a warrantless search of his cellphone. If the evidence collected during the search was to be admitted, he contended, it was only through the application of the good-faith exception recognized in *Davis v. United States*, 564 U.S. 229, 241 (2011), and he argued that his case does not fit within *Davis*. The Court of Appeals affirmed, calling this case "a close call." In the end, however, the Court concluded that although there was no binding precedent that would have exempted this search from the exclusionary rule, the independent-source rule allowed the admission of the limited evidence the government used.

***United States v. Bacon, No. 20-1415.*** After receiving anonymous tips that Bacon was selling drugs from his home, officers conducted two controlled buys. These controlled buys were unique in that there was a second layer of separation between the officers and Bacon: an acquaintance of the informant who acted as a middleman. At the informants' requests, the middlemen went to Bacon's home, bought drugs from Bacon (or so they said), and then gave the drugs to the informants, who turned them over to the police. Officers kept the informants under close watch, but they did not search or wire the middlemen, who were



unaware of law enforcement involvement. These middlemen were unwitting participants in the controlled buys. Based largely on the anonymous tips and the controlled buys, officers obtained a warrant to search Bacon's home, where they found an array of drugs and weapons. Federal charges followed, and a jury convicted Bacon on all counts. On appeal, Bacon submits that the district court should have granted his motion to suppress because the "uncontrolled" middlemen derailed probable cause for the search warrant. The Court of Appeals Affirmed, holding the controlled buys, in addition to the anonymous tips, in this case were reliable indicators that Bacon was selling drugs from his home.

***United States v. Outland*, No. 20-1160.** Shortly after police arrested him for suspected drug dealing, Outland overdosed on heroin in the back of the police car and fell unconscious. The officers brought Outland to a local hospital where, after receiving care, he agreed to talk to the police, received *Miranda* warnings, and made several incriminating statements which led to federal charges for distributing heroin. Outland moved to suppress his statements, arguing that he was in no condition at the hospital either to knowingly and intelligently waive his *Miranda* rights or to otherwise give voluntary statements to the police. The district court denied Outland's motion, finding that his statements were voluntary. The Court of Appeals reversed and remanded, finding that at no point, did the district court analyze or answer whether Outland knowingly and intelligently waived his *Miranda* rights. The questions are not one and the same: to the contrary, whether a defendant knowingly and intelligently waived his rights at the outset of a police interview is a distinct and separate inquiry from whether, in the circumstances of the interview as a whole, the defendant's statements were voluntary. Given that Outland was unconscious and entirely incapacitated from an overdose and multiple lifesaving medical interventions just two hours before police questioned him, a finding on the former question matters.

***United States v. Cole*, No. 20-2105.** Cole was stopped after law enforcement reported his car was suspicious and he made a minor traffic violation. This was a pretextual traffic stop for purposes of drug interdiction. The Court of Appeals reversed the district court's denial of Cole's suppression motion finding that, even assuming that the stop was permissible at the outset, the record showed that the

officer prolonged the stop by questioning the driver at length on subjects going well beyond the legal justification for the stop. Under *Rodriguez v. United States*, 575 U.S. 348 (2015), prolonging the stop violated the Fourth Amendment and required suppression of evidence found much later as a result of the actions that prolonged the stop.

***United States v. Carswell*, No. 20-1036.** A jury convicted on drug and firearm offenses, including possession of heroin with intent to distribute. He raised two issues on appeal. First, he argued the search warrant for his residence was issued without probable cause, so that the heroin, cash, and firearms found there should have been suppressed. Second, he argued several portions of the prosecutor's closing arguments violated his constitutional rights. The Court of Appeals affirmed, holding the judge who issued the search warrant had a reasonable basis for thinking evidence of drug and firearm crimes was likely to be found at Carswell's home based on a trash pull that found drugs, drug residue, drug packaging materials, and a receipt for a firearm and ammunition. Further, the Court held that the prosecution's closing arguments were not improper, did not make Carswell's trial unfair, and did not deny him due process of law.

***United States v. Gibson & Harris*, Nos. 20-1236 & 20-2234.** An informant gave South Bend police the number to a phone that drug dealers in the South Bend area were supposedly using to sell drugs. To confirm this tip, officers carried out a series of controlled buys in which confidential informants or undercover officers called the number and followed instructions to buy heroin. Relying on the controlled buys, officers submitted an affidavit to a state court judge requesting an order for the phone's service provider to share 30 days of precise, real-time GPS location data for the phone. The state court judge issued a "court order" granting the request. Relying on similar affidavits, officers later obtained two more court orders authorizing an additional 60 days of real-time tracking. The investigation ultimately led officers to two men at the top of the drug-trafficking conspiracy - Gibson and Harris. The men proceeded to trial but before trial, the district court denied their motion to suppress evidence obtained through the cellphone tracking. The court treated the state court orders as valid search warrants for the tracking. On appeal, the defendant's challenged the district court's denial of the motion to suppress. The Court of Appeals affirmed,

holding the “court orders” satisfied the requirements for a search warrant. First, there was no reason to believe that the state court judge who issued the orders was anything but neutral and detached. Second, the orders cited Rule 41 and found probable cause to believe that the cellphone tracking would lead to the apprehension of drug traffickers. Third, the orders particularly described the object of the search: the location of the -5822 phone.

### **Waiver of the Right to Counsel**

*United States v. Johnson, No. 19-2718.* Johnson elected to represent himself at trial on federal fraud charges and lost. He appealed his waiver of counsel, arguing the district court failed to confirm that his decision to waive counsel was knowing and intelligent. The Court of Appeals agreed the district court’s colloquy with Johnson was lacking, but upheld Johnson’s waiver of counsel. Johnson had previously represented himself at a federal fraud trial, lost, and then unsuccessfully appealed that waiver of counsel. Given this history, and Johnson’s separate and more thorough colloquy with the magistrate judge in this case, the Court could not conclude that Johnson’s decision to forgo counsel the second time around was uninformed.