SUPREME COURT & 8TH CIRCUIT CASE LAW UPDATE

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8TH CIRCUIT CASES

First Step Act

US v. Holder, 981 F.3d 647 (8th Cir. Dec. 1, 2020) (district court erred by not correctly calculating the amended guideline range when reviewing § 404 motion).

US v. Howard, 989 F.3d 1068 (8th Cir. Mar. 10, 2021) (district court erred by denying § 404 motion without opportunity for briefing)

US v. Black, 992 F.3d 703 (8th Cir. Mar. 30, 2021) (no obligation to provide greater explanation for refusal to grant § 404 motion where guideline range had been substantially reduced)

US v. Fortenberry, 840 F. App'x 64 (8th Cir. Mar. 19, 2021) (reversed where district court gave no explanation for denying compassionate release).

Categorical Approach & Hearsay

US v. Oliver,

987 F.3d 794 (8th Cir. Feb. 11, 2021)

Software generated maps contain hearsay where they are generated to reflect human input "regarding the physical locations of . . . drug transactions . . . used to produce . . . relevant points and distances marked" on maps.

Illinois's definition of "cocaine" is categorically overbroad as a "serious drug felony."

- Illinois statute is divisible by substance.
  - Watch for cases where prior was a cocaine offense, or where no *Shepard* documents establish the substance involved.
- Joining *US v. Ruth*, 966 F.3d 642 (7th Cir. 2020) (overbroad as § 841(b)(1)(C) "felony drug offense").

Sporting exception & Rehaif

US v. Sholley-Gonzalez,

__F.3d__, 2021 WL 1845796 (8th Cir. May 10, 2021)

Rehaif requires proof defendant knew the facts that make him part of the "relevant category of persons barred from possessing a firearm," not proof that a defendant knew he was barred from possessing a firearm because of those facts.

- *See also* ***US v. Robinson,*** 982 F.3d 1181 (8th Cir. Dec. 18, 2021) (harmless error where def testified he was ignorant of law because he thought Mo. felons retained gun rights)

USSG § 2K2.1(b)(2): "If the defendant . . .**possessed** all ammunition and firearms solely for lawful sporting purposes or collection . . . decrease the offense level [to 6]."

- **Does not include attempted possession**

PRIMARY JURISDICTION

Wiseman v. Wachendorf, 984 F.3d 649 (8th Cir. Jan. 5, 2021)

When a defendant is brought from State to federal custody pursuant to a writ of habeas corpus ad prosequendum, he is merely "on loan," absent evidence the State *intended* to relinquish its primary jurisdiction. Not relevant:

- Lengthy time in federal custody
- Multiple transfers between federal jurisdictions
- Mistaken commitment to a BOP facility

JURISDICTION AND TIMELINESS

US v. Mofle,
989 F.3d 646 (8th Cir. Mar. 2, 2021)

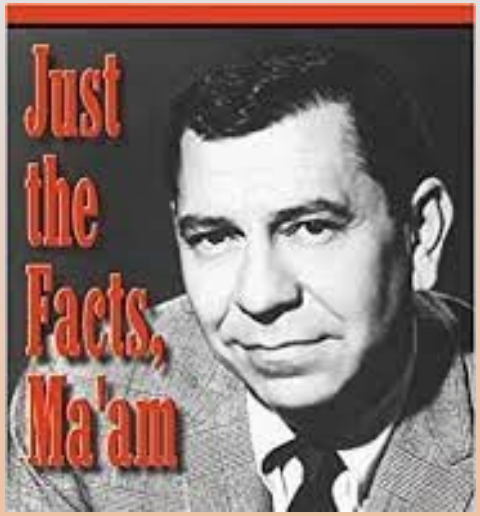
There is no jurisdictional bar to second or successive 18 USC § 3582(c)(2) motions.

The "nonjurisdictional [but] firm" deadline in Fed. R. App. P. 4(b), however, governs motions for reconsideration. Once a court issues an order denying a § 3582(c)(2) reduction, subsequent motions are subject to Rule 4(b)'s timeliness requirement if they present the same legal question that the court addressed in its previous order. "Such motions are motions for reconsideration in substance, regardless of how they are labelled."

Statutory Interpretation

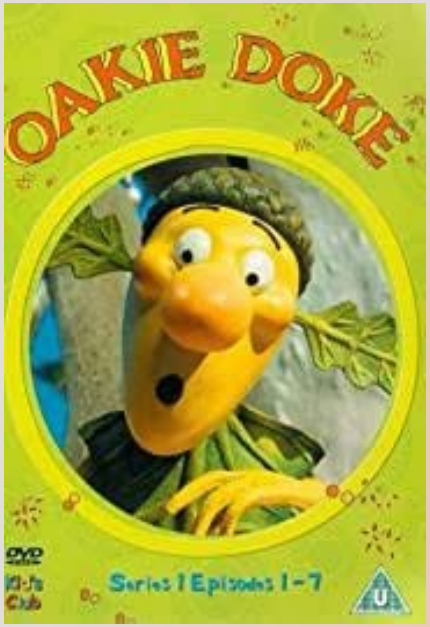
US v. Burgee,

988 F.3d 1054 (8th Cir. Feb. 24, 2021)



- **The text of the SORNA recidivism enhancement commands a circumstance-specific approach, not a categorical one.**
- **A court's review of a defendant's "conduct" under the statute is not limited to *Shepard* document**

34 USC § 20911(7): The term "specified offense against a minor" means an offense against a minor that involves any of the following . . . (I) Any conduct that by its nature is a sex offense against a minor.



Evidence

US v. Oakie,

993 F.3d 1051 (8th Cir. Apr. 2021)

Although evidence of a defendant's alleged prior sexual assault may be admissible under Fed. R. Evid. 414(a), the fact that a jury acquitted him of such conduct remains inadmissible hearsay.

EVIDENCE

US v. Zephier,
989 F.3d 629
(8th Cir. Feb. 25, 2021)

Court errs when it allows an expert to testify about typical behaviors of sexual assault victims, but refuses to let defendant present testimony about *other* sexual assaults the victim had experienced.

- In tandem, the rulings deprive a defendant the ability to mount a complete defense.

Fourth Amendment

US v. Whitehead,

__F.3d__, 2021 WL 1603810 (8th Cir. Apr. 26, 2021)

Protective sweep not overbroad where officers lifted up and checked under the mattress in a hotel room, since officer testified fugitives sometimes hide there.

Argument: Unanimity

US v. Wortham,

990 F.3d 586 (8th Cir. Mar. 3, 2021)

Where indictment charges distribution of a controlled substance, and evidence shows more than one potential recipient, court may violate a defendant's right to a unanimous jury verdict by instructing merely that intentional transfer "to another" is required.

NO EXPLANATION NEEDED

Batson & Costs

US v. Adams,

__F.3d__, 2021 WL 1703609 (Apr. 30, 2021)

Miller-El, 537 US 322 (2003) does not require district courts to make an explicit factual finding on the 3rd prong of a *Batson* analysis, because denial of the objection "is itself a finding at *Batson's* third step that the defendant failed to carry his burden of establishing ... purposeful discrimination."

28 USC § 1918(b), which allows court discretionary authority to "tax the 'costs of prosecution' against the defendant in any non-capital case," cannot include expenses of grand jury witnesses.

FOURTH AMENDMENT

US v. Moreno,

988 F.3d 1027 (8th Cir. Feb. 24, 2021)

A protective search requires an officer to articulate a reasonable suspicion, based on the totality of the circumstances, that the person may be armed and presently dangerous, *not* just reflexive desire to investigate a concealed bulge.

Speedy Trial

US v. Johnson,

990 F.3d 661 (8th Cir. Mar. 9, 2021)

Under *both* the Speedy Trial Act and the Sixth Amendment:

Where a multiple-judge court uses the individual calendar system, all judges must share responsibility for the prompt disposition of criminal cases, must employ a team approach to those cases, and, when necessary, must reassign them in order that they may be tried according to the commands of the Sixth Amendment and Criminal Rules 48(b) and 50. If a judge is otherwise long committed in another case or is delayed in getting to the criminal cases on his calendar by reason of illness, personal misfortune or press of other business, this obviously does not serve to toll the enforcement of the right of a defendant awaiting trial on that judge's criminal calendar.

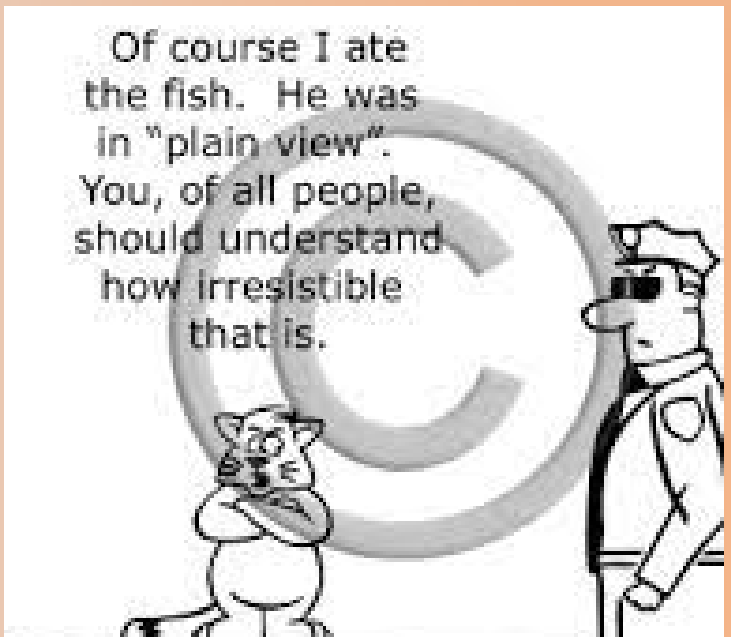
U.S. v. Arredondo,

__ F.3d __, 2021 WL 1849147

(8th Cir. Dec. 29, 2020)

Fourth Amendment

Under the plain view doctrine, an items "incriminating character" must be "immediately apparent," which means the officer must have probable cause to associate the item with criminal activity.



Indigence

US v. Barthman,

983 F.3d 318

(8th Cir. Dec. 17, 2020)

District court errs by implicitly finding the defendant non-indigent for purposes of the $5000 assessment under the Justice for Victims of Trafficking Act (18 USC § 3014), where he had a "substantial negative net worth."

Lesser Included Instruction

US v. Parker,

993 F.3d 595 (8th Cir. Apr. 5, 2021)

Federal drug distribution charges do not require an exchange for value, and thus a defendant distributes a controlled substance *anytime* he gives it to a third party.

Joint Trial

US v. Weckman,
982 F.3d 1167 (8th Cir. Dec. 16, 2020)

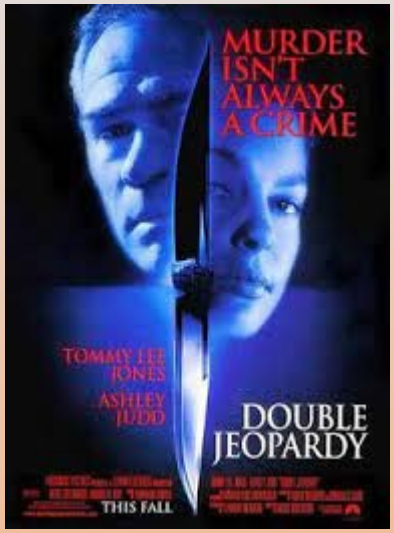
Mutually antagonistic defenses are not per se prejudicial, and require severance only where there is a danger the jury will unjustifiably infer the conflict alones demonstrates both are guilty.

Not prejudicial:
- Defense of one directly inculpates the other
- Logically impossible for jury to believe both defenses

Double Jeopardy

US v. Carrillo,

982 F.3d 1134 (8th Cir. Dec. 15, 2020)



Double Jeopardy is a "personal" right that can be waived by pleading guilty "unless the face of the record at the time the plea was entered showed that the district court did not have the power to enter the second conviction or to impose sentence."