

## **Appointment of Counsel**

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***United States v. Campos-Rivera, No. 19-3214.*** Campos-Rivera was indicted for unlawfully reentering the United States after removal. He was represented by an assistant federal public defender, but counsel moved to withdraw at Campos-Rivera's request based on an irreconcilable conflict between the two. The motion was granted, and a new lawyer was appointed. Campos-Rivera then filed a half-dozen pro se motions raising issues that his new attorney declined to pursue. The district judge told him that he could not proceed pro se and through counsel. Campos-Rivera asked the judge to dismiss his attorney and appoint a third. The judge declined to do so, explaining that a disagreement about motion strategy did not justify the appointment of yet another attorney. The judge gave Campos-Rivera a choice: move forward with his current lawyer or proceed pro se. Campos-Rivera chose the latter. The case proceeded to a bench trial on stipulated facts, and the judge found Campos-Rivera guilty. He appealed the judge's refusal to appoint a third lawyer and the sufficiency of the evidence on the intent element of the crime. The Court of Appeals affirmed finding that a disagreement between attorney and client over pretrial motions is not grounds for the appointment of a new attorney and Campos-Rivera validly waived his right to counsel. The challenge to his conviction failed for two reasons. First, § 1326(a) is a general-intent crime. The government need only prove that the defendant knowingly reentered the United States, not that he intended to do so unlawfully. Second, the district court is not required to make a specific factual finding regarding the intent element

***United States v. Bell, No. 20-2679.*** Bell ran a scheme which fraudulently promised homeowners that they could save their homes from foreclosure or lower their mortgage payments by paying him fees to join a trust bankrolled by Native Americans. Bell refused legal representation and represented himself. However, on the eve of trial, Bell retained a recent law school graduate, John Joyce, to represent him. Joyce was newly admitted to the Illinois Bar, had never tried a case, and had met Bell in jail only a few days before trial. In addition, Joyce had previously met with one of Bell's co-defendants at the behest of the co-defendant's attorney. The district court advised Bell against retaining Joyce but Bell insisted. The court had conflict counsel consult with Bell but he insisted on

going to trial with Joyce. He was convicted. On appeal, Bell argued the district court erred by allowing him to proceed with Joyce because Joyce had an attorney client relationship with his co-defendant. The Court of Appeals affirmed, holding there was no actual or potential conflict of interest.

## **CARES Act**

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***United States v. Coffin*, No. 20-2385.** Coffin pled guilty to two counts of being a felon in possession of a firearm in March of 2020. Shortly after, Congress enacted the CARES Act in response to the COVID-19 pandemic. The CARES Act created an exception to the rule that a defendant must be present for plea and sentencing hearings. Coffin appealed arguing presence at these hearings was non-waivable under the Seventh Circuit’s precedent and contesting the district court’s CARES Act findings. The Court of Appeals affirmed, holding that the CARES Act created an exception to the non-waivable presence rule and that Coffin waived any challenge to the district court’s findings by indicated he had no objections at the hearing.

***United States v. Howell*, No. 20-3086.** Howell appealed from his resentencing on a firearm conviction and claimed he did not properly consent to appearing by video teleconference for his resentencing under the CARES Act. The Court of Appeals held that, “[w]hile the record is not as clear as we would ordinarily expect, it shows sufficiently (a) that the defendant was informed his consent was required; (b) that the defendant conferred with his counsel on the topic; and (c) that the judge, lawyers, and defendant all proceeded with a clear understanding that the defendant had consented to the use of a video teleconference.” The Court affirmed.

***United States v. Davis*, No. 21-1854.** Davis raised a challenge to the district court’s use of videoconferencing for his change of plea and sentencing hearings. However, Davis entered into a plea agreement containing a waiver of his appellate rights. The Court of Appeals dismissed the appeal holding an alleged error in application of the CARES Act is subject to this waiver just like any other claim of error

## **Compassionate Release**

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***United States v. Black*, No. 20-2314.** Black is serving a forty-year sentence in federal prison for firearm, robbery, and drug offenses that he committed as a Chicago police officer. He moved the district court for compassionate release under 18 U.S.C. § 3852(c)(1)(A) based on his prostate cancer and the COVID-19 pandemic. The district court denied Black's motion. After the district court denied Black's motion, the Court of Appeals decided *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020), which held that the "extraordinary and compelling reasons" issue was, in the wake of the First Step Act of 2018, no longer governed by the Sentencing Commission's policy statements that the district court had relied upon here. The Court held that the district court's alternative rationale - that the § 3553(a) factors weighed against release - was not a persuasive basis for treating the legal error as harmless. The Court vacated the denial of compassionate release and remanded for reassessment.

***United States v. Ugbah*, No. 20-3073.** Ugbah moved for compassionate release under 18 U.S.C. § 3582(c)(1) arguing his medical conditions exposed him to extra risk from COVID-19. The district court denied the motion without making findings regarding whether he had shown an "extraordinary and compelling" reason for release. The Court of Appeals affirmed holding because Ugbah could not establish extraordinary and compelling reasons, it was unnecessary for the district court to consider the § 3553(a) factors. The Court concluded, "One good reason for denying a motion such as Ugbah's is enough, more would be otiose. The district judge supplied at least one good reason and no bad ones."

***United States v. Broadfield*, No. 20-2906.** Broadfield moved for compassionate release arguing his medical conditions exposed him to extra risk from COVID-19 and that the district court erroneously relied on the fact he had been convicted of a weapons offense when he had not been. The Court of Appeals affirmed finding that, although the district court made a mistake, and error was harmless because Broadfield had not shown extraordinary and compelling reasons for his release.

***United States v. Manning*, No. 20-3416.** Manning, a federal inmate who is represented by counsel recruited for him by the district court, appeals the denial

of his request for compassionate release. The government argued that the district court impermissibly appointed and compensated Manning's lawyer. The court did so pursuant to the Southern District of Illinois's Administrative Order 265, which appoints the Federal Public Defender's Office and Criminal Justice Act panel attorneys to represent indigent prisoners in non-frivolous compassionate release cases. The government contended that Order 265 and the appointment and compensation of counsel in this case defy our precedent that there is no right to counsel in a sentence-modification proceeding. The Court of Appeals declined to decide this issue because it was not properly raised in the appeal.

***United States v. Kurzynowski, No. 20-3491.*** Kurzynowski pled guilty to distributing child pornography. In 2015, the district court sentenced Kurzynowski to 96- months in prison. Kurzynowski moved for compassionate release pursuant to § 603 of the First Step Act of 2018, 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied the motion. Kurzynowski appealed, arguing the district court improperly thought the Sentencing Commission's criteria in U.S.S.G. § 1B1.13 constrained its discretion. The Court of Appeals affirmed for two reasons. First, the district court properly exercised its discretion in denying Kurzynowski's motion. Second, under *United States v. Broadfield*, 5 F.4th 801 (7th Cir. 2021), the fact that Kurzynowski is vaccinated precludes a finding that the COVID-19 pandemic presents extraordinary and compelling reasons for his release.

***United States v. Martin, No. 21-1527.*** Martin was sentenced to 43 months' imprisonment for possessing heroin with the intent to distribute. 21 U.S.C. § 841(a)(1). With his direct appeal of his sentence pending, Martin moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), raising arguments that are available to him on direct appeal. The district court denied the motion. The Court of Appeals affirmed, holding Martin showed no "extraordinary and compelling" reason for release.

***United States v. Barbee, No. 21-1356.*** Barbee appealed the denial of his motion for compassionate release. He argued his medical conditions placed him at a higher risk of severe and/or lethal complications of COVID-19. The Court of Appeals affirmed finding that, although the district court's ruling on the issue

was “terse,” remand was not necessary because reconsideration would not produce a decision in Barbee’s favor.

***United States v. Rucker, No. 21-2001.*** Rucker, a federal inmate who is obese and has hypertension, appealed the denial of his motion for compassionate release based on his heightened risk of COVID-19. The district court concluded Rucker had not shown that his medical circumstances were extraordinary and compelling, and the sentencing factors of 18 U.S.C. § 3553(a) weighed against early release. The Court of Appeals affirmed and held the district court did not abuse its discretion in applying the factors under § 3553(a). The Court noted the district court’s assessment of Rucker’s COVID-19 risk was “cursory” but found any error was harmless based on the facts of the case.

***United States v. Shorter, No. 21-2091.*** Shorter moved for compassionate release citing elevated risks from COVID-19 because of his preexisting conditions. The district court denied the motion. After filing the appeal, he was released from prison and placed on home confinement. Because, as the parties agree, a reduced prison sentence could no longer provide relief to Mr. Shorter, the Court of Appeals dismissed the case as moot.

### **Controlled Substance Issues**

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***United States v. Jackson, No. 20-2408.*** Jackson sold drugs on six occasions to a confidential source during a two-month span in 2019. He was indicated on one count of distributing 28 grams of crack cocaine. At trial, he argued there had actually being two transactions on the day in question and neither one of them reached the threshold of 28 grams of crack cocaine. The sale occurred in two steps, but that was not how the sale was originally structured. The Court of Appeals affirmed holding the argument was frivolous because the jury ultimately found Jackson ultimately gave 31 grams of cocaine to the CS on the date in question.

### **Crimes of Violence**

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***United States v. McHaney, No. 20-1690.*** McHaney argued that Hobbs Act robbery is not a crime of violence as defined under 18 U.S.C. § 924(c). The Court

of Appeals affirmed citing its “growing, unequivocal precedent to the contrary” that Hobbs Act robbery meets the definition of a crime of violence under 18 U.S.C. § 924(c) and thus is a qualifying predicate crime under the statute.

***United States v. Morrow*, No. 20-2259.** Morrow and several codefendants participated in four robberies. The first three robberies targeted various electronics stores in Indiana, and the fourth an electronics store in Ohio. Following his arrest, law enforcement was able to recover the electronics from the fourth robbery but not the other three. Morrow was charged in a nine-count indictment: three counts of Hobbs Act robbery (the Indiana robberies), three counts of use of a firearm in furtherance of a crime of violence (related to the Indiana robberies), one count of conspiracy to commit Hobbs Act robbery (the Ohio robbery), one count of conspiracy to use a firearm in furtherance of a crime of violence, and one count of transporting a firearm across state lines. On appeal, Morrow argued that a fake gun was used in the first two robberies, undermining the sufficiency of the government’s evidence on the two use-of-a-firearm counts related to the first two Indiana robberies. He also argued that the government improperly used the Hobbs Act conspiracy charge as a predicate for the conspiracy-to-use-a-firearm-in-furtherance-of-a-crime-of-violence charge and that because the government had the electronics from the fourth robbery in its possession at the time of sentencing, the district court erred in ordering monetary restitution for those stolen goods. The Court of Appeals affirmed Morrow’s convictions and sentence of imprisonment but remanded for correction of the restitution order. It held that the conspiracy to commit a § 924(c) offense was not based on a Hobbs Act conspiracy and the government did not have to charge a specific offense in order to charge a conspiracy to commit a § 924(c) offense. The Court denied the argument that the “firearm” charged was an Airsoft gun and thus not a firearm because there was evidence there was a real firearm used. Finally, the Court agreed that because the government had possession of the property stolen in the fourth robbery, the court erred in ordering restitution for that property.

***United States v. Love*, Nos. 20-2131 & 20-2297.** Love pled guilty to multiple drug counts and a felon-in-possession count. The government argued he had three prior offenses to trigger the Armed Career Criminal Act: a 1994 Illinois armed

robbery; a 2009 federal distribution of crack cocaine; and a 2015 Indiana Class D battery resulting in bodily injury. Love argued the ACCA should not apply for two reasons. First, he claimed he received a “restoration of rights” letter without an express reference to guns after he was released on the 1994 Illinois armed robbery conviction. Second, he argued his 2015 Indiana Class D battery-resulting-in-bodily-injury conviction was not a crime of violence under the ACCA. The district court held the armed robbery conviction was an ACCA predicate but agreed with Love that the battery-resulting-in-bodily-injury conviction was not, as a categorical matter, a “violent felony.” Love and the government both appealed. The Court of Appeals agreed with the government and found the district court was correct about the armed robbery conviction but wrong about the battery-resulting-in-bodily-injury conviction. Therefore, the matter was reversed and remanded for resentencing.

***United States v. Stevenson*, No. 20-2261.** Stevenson possessed a firearm as a felon, and as an armed career criminal he received an enhanced sentence. In the district court and on appeal, he challenged whether, given that state officials sent him a restoration of rights letter, two of his prior Illinois state convictions could support that enhancement. The district court concluded that Stevenson did not establish by a preponderance of the evidence that the letter in question pertained to those predicate convictions. The Court of Appeals agreed and affirmed.

***United States v. Cunningham*, No. 20-3203.** Cunningham appealed his sentence for unlawful possession of ammunition under 18 U.S.C. § 922(g)(1) on the ground that the district court miscalculated his range under the Sentencing Guidelines. He contended that the court erred in determining that one of his two convictions for aggravated battery under Illinois law, 720 ILCS 5/12-4 (2010), was a “crime of violence.” Cunningham argued that the court should have relied on unspecified information from the Illinois Department of Corrections to find that he was convicted under a subsection of the statute that does not categorically define a crime of violence. The Court of Appeals affirmed holding that the court-certified record of conviction – which was consistent with criminal records from two separate police departments – shows that Cunningham was convicted under 720 ILCS 5/12-4(a), which, he conceded, is a crime of violence.

***United States v. Perez, No. 19-1448.*** Perez was a member of the Latin Kings street gang and served in several leadership positions in which he ordered or personally carried out acts of violence, including the attempted murder of a former gang member. He pled guilty to a RICO conspiracy and possessing a firearm as a felon. He received a below guidelines sentence of 336 months in prison. On appeal, he argued the district court incorrectly held that the attempted murder predicate for the RICO violation increased the maximum penalty on that count to life in prison under 18 U.S.C. § 1963(a). He also argued that the judge committed a procedural error by failing to consider his argument under 18 U.S.C. § 3553(a)(6) about the need to avoid unwarranted sentencing disparities with similarly situated defendants. The Court of Appeals affirmed holding the district court correctly determined that the RICO violation was “based on” an act of racketeering that is punishable by life imprisonment under state law - discharging a firearm in an attempted murder - a predicate act that raised the applicable maximum penalty from 20 years to life under § 1963(a). Regarding the unwarranted disparity argument, the Court held it was both waived and meritless.

***United States v. Thomas, Nos. 21-1239 & 21-1240.*** Thomas pled guilty to distributing methamphetamine while on supervised release, appealed the district court’s determination that he was a career offender. He argued his prior conviction under Wisconsin’s child abuse statute is not a crime of violence under the career offender guideline because the statute prohibits intentionally causing bodily harm but does not separately include the use of physical force as an element. The Seventh Circuit affirmed based on controlling precedent that a crime including the element of intentionally causing bodily harm is a crime of violence.

***United States v. Dixon, No. 21-1469.*** Dixon pled guilty to possessing a firearm as a felon. When calculating the guidelines’ range, the district court raised his base-offense level by six levels under § 2K2.1(a)(4)(A) because he had a previous conviction for a “crime of violence.” That conviction was for the Iowa offense of intimidation with a dangerous weapon in violation of Iowa Code § 708.6(1). On appeal, Dixon argued the district court erred because the crime under the Iowa statute is not categorically a crime of violence under the Guidelines because it



directed force against property rather than a person. The Court of Appeals affirmed holding a conviction under the Iowa statute requires that the defendant have placed someone in “reasonable apprehension of serious injury.” The Court held that element necessarily includes a “threatened use of physical force,” which is sufficient for the crime to qualify as a crime of violence under the guidelines.

***United States v. Robinson*, No. 21-1622.** Robinson pled guilty to one count of being a felon in possession of a firearm. The district court sentenced Robinson as an Armed Career Criminal to the 180-month statutory minimum. Robinson argued on appeal that after *Borden v. United States*, 141 S. Ct. 1817 (2021) he no longer qualifies for the armed-career-criminal mandatory minimum. The Court of Appeals affirmed, holding that Robinson’s 1992 aggravated-discharge conviction was a predicate under the Act’s elements clause.

### **Evidentiary Issues**

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***United States v. Coscia*, Nos. 19-2010 & 20-1032.** A jury convicted Coscia of six counts of commodities fraud and six counts of spoofing. The Court of Appeals previously affirmed his conviction in a direct appeal. This present appeal is consolidated cases from the denial of his motion for new trial based on newly discovered evidence and the denial of his § 2255 petition. The newly discovered evidence consisted of data discovered after trial establishing errors in the data presented to the jury and subsequent indictments against other traders for similar spoofing activities undercut the Government’s characterization of Coscia as “unique” or a trading “outlier.” In the § 2255, Coscia claimed trial counsel provided ineffective assistance of counsel by having an undisclosed conflict of interest with several of the Government’s witnesses. The Court of Appeals affirmed, holding the district court did not abuse its discretion in denying Coscia’s motion for a new trial on newly discovered evidence grounds because he failed to demonstrate the new data cast doubt all of the data used at trial and did not offer an explanation as to why the data was sought only after trial. It also concluded the district court correctly determined that Coscia failed to demonstrate an adverse effect or prejudice in either of his ineffective assistance of counsel claims.

***United States v. Dingwall, No. 20-1394.*** Dingwall was charged with three counts of robbery and three counts of brandishing a firearm during a crime of violence. She admitted she committed the robberies but claimed she committed them under duress, in fear of brutal violence at the hands of her abusive boyfriend. Dingwall filed a motion in limine seeking a ruling on evidence to support her duress defense, including expert evidence on battering and its effects. The district court denied Dingwall’s motion. The Court of Appeals reversed and remanded, holding that although Dingwall “faces challenges in demonstrating both imminence and no reasonable alternatives,” those questions are for the jury to decide. The Court joined the Ninth, District of Columbia, and Sixth Circuits in concluding that immediate physical presence of the threat is not always essential to a duress defense and that expert evidence of battering and its effects may be permitted to support a duress defense because it may inform the jury how an objectively reasonable person under the defendant’s circumstances might behave.

***United States v. Godinez, No. 19-3425.*** Law enforcement officers entered a southwest Chicago neighborhood one night to replace tracking devices on the cars of several Latin Saints gang members. Shortly after the officers arrived, they came under gunfire and a federal agent was shot and seriously injured. A federal grand jury indicted Godinez, a member of the gang, for the shooting. A jury found Godinez guilty. Godinez now appealed, arguing that the district court wrongly admitted certain evidence and that the jury did not receive sufficient evidence to convict him of shooting Crump. The Court of Appeals affirmed and concluded that the district court properly admitted ballistics evidence concerning the shots fired, although evidence from and testimony about a gunshot detection system – ShotSpotter – should have been handled differently. However, any error was harmless. Judge Wood dissented and would have held that the government failed to present sufficient evidence that Godinez was the shooter.

***United States v. Vines, No. 19-2316.*** Vines was convicted of various sex trafficking crimes by a jury. Vines appealed, arguing the district court erred in allowing the testimony of an expert witness that related to the credibility of the minor victim; denying his motion to suppress the victim’s identification of Vines

through a Facebook photo; and denying the motions to suppress evidence obtained from a search of Vines's iPhone and from a search of his Facebook and iCloud accounts. The Court of Appeals affirmed.

***United States v. Parker, No. 20-1231.*** Parker was convicted after a jury trial of being a felon in possession of a firearm. He appealed, arguing that the district court violated his Sixth Amendment rights under the Confrontation Clause when it prohibited him from cross-examining the government witnesses about the lack of DNA evidence tying him to the firearm. The Court of Appeals affirmed, holding even if it assumed that Parker properly preserved the argument, and even if it were to determine that the district court erred by disallowing the proposed cross examination, any error would have been harmless.

***United States v. Julius, No. 20-2451.*** A jury found that Julius set fire to the building where his ex-girlfriend was living after she spurned his attempts to rekindle their relationship. On appeal, Julius argued that the district court erred in allowing lay witnesses to offer expert testimony about the process of extracting data from his cellphone and in cutting off his cross-examination of one of those witnesses. The Court of Appeals affirmed, holding that Julius could not meet the plain error standard of review and any error was harmless. However, the Court noted the record was difficult to review because the district court had ruled off the record. The Court reminded district courts to make evidentiary rulings on the record as the duty to comply with § 753(b) (the Court Reporter's Act) lies with the court and not the parties.

***United States v. Vizcarra-Millan, et al., Nos. 19-3476, 19-3481, 19-3484, 20-1113, & 20-1266.*** Grundy and a network of drug suppliers, couriers, distributors, and dealers trafficked hundreds of pounds of methamphetamine in Indianapolis. Grundy and over two dozen co-conspirators were indicted. After a three-week trial, Grundy and four other defendants were convicted of all the charges against them. In these consolidated appeals, the five trial defendants and one defendant who pled guilty challenge their convictions. There were no sentencing issues. Grundy argued that the district court violated his Sixth Amendment right to counsel by improperly obstructing him from representing himself. Vizcarra-Millan argued that the district court should have disqualified his chosen counsel

due to a conflict of interest. Atwater, Beasley, and Moseby challenged the denials of their untimely motions to suppress evidence. Atwater, Beasley, and Neville contended that the evidence was insufficient to support some of their convictions. The Court of Appeals affirmed on all issues with the exception of the sufficiency of evidence issue raised by Beasley as to two of his convictions. Specifically, the Court reversed his conviction on the conspiracy conviction because the evidence only established Beasley had a buyer-seller relationship with his supplier and reversed his possession conviction because the government failed to prove constructive possession.

***United States v. Owens, No. 20-3189.*** Owens was charged with the distribution and possession of child pornography after a government investigator used such a program, Torrential Downpour Receptor, to download a video file containing child pornography from a folder shared via the BitTorrent network at an IP address later associated with Owens. However, a forensic search of Owens's computer at the time he was arrested failed to locate the file on his computer. Owens moved to compel the production of information relating to the government's download of the file pursuant to Federal Rule of Criminal Procedure 16. The district court denied the motion. The Court of Appeals affirmed because Owens could not sure that the pretrial disclosure of the disputed evidence would have enabled him "to substantially alter the quantum of proof in his favor."

***United States v. Perryman, No. 20-1453.*** Law enforcement searched Perryman's home and found drugs, baggies, a digital scale, and a loaded AR-15 rifle. Perryman was charged with drug and firearm offenses. At trial, he sought to impeach an officer's truthfulness by introducing a fifteen-year-old reprimand regarding an unrelated case, which the district court precluded him from doing. A jury convicted him on all counts. On appeal, Perryman argued the evidence was insufficient to convict him on any count and that the district court's exclusion of evidence reporting an incident unrelated to the case violated the Confrontation Clause. The Court of Appeals affirmed holding the evidence to convict of possession of the drugs was sufficiency where Perryman confessed the drugs were his and giving law enforcement the name of his supplier. In addition, the drugs were found in his home, in his bedroom, where he resided by

himself. In addition, the gun was in the same room “three or four steps away” from the drugs. The Court also found the proposed line of questioning of an officer did not involve “a core value” of the Confrontation Clause.

***United States v. Elizondo & Salgado*, Nos. 20-2167 & 20-2366.** Elizondo and Salgado were Chicago police officers who used their positions to embezzle drugs and cash, some of which they distributed to informants. In an FBI sting operation, Elizondo and Salgado were recorded stealing cash they recovered from an FBI-controlled rental vehicle. They were indicted on conspiracy, obstruction of justice, and theft charges related to their scheme. They went to trial and a jury found them guilty on all counts. Elizondo and Salgado appeal: (1) the use of the evidence obtained from the government’s wiretap application; (2) the district court’s *Batson* inquiry during jury selection; (3) the sufficiency of evidence on the obstruction charge; and (4) the district court’s calculation of the intended loss under the Sentencing Guidelines. The Court of Appeals affirmed. It found the wiretap application was not an improper subterfuge search because the government was forthright about the scope of its investigation. The Court also held the district court followed the applicable steps related to the *Batson* challenge and the evidence of obstruction was sufficient for the jury to infer that Elizondo acted with the intent to prevent the use of evidence in an official proceeding. Finally, there was no clear error in the district court’s loss calculation.

***United States v. Edwards*, No. 21-1874.** Edwards and several accomplices robbed three cellphone stores in northeastern Illinois. Edwards was indicted on multiple counts of Hobbs Act robbery stemming from each of the three crimes and brandishing a firearm in connection with two of the robberies. He pled guilty to robbing two stores but claimed not to be involved in the third robbery. The government sought to introduce evidence at trial of the third robbery of the two admitted crimes to prove Edwards’s identity through a common *modus operandi* in conducting each of the robberies. The district court admitted the evidence subject to a limiting instruction. After beginning deliberations, the jury sent a note asking if one of the witnesses identified Edwards. The district judge instructed the jury to “please rely on your collective memory of the testimony.” The jury convicted Edwards on the remaining charges. On appeal, Edwards

argued the district court erred by admitting evidence from the other two robberies and that the court should have provided the jury with a trial transcript in response to its question. The Court of Appeals concluded the district court did not abuse its discretion either by admitting the evidence or instructing the jury to rely on its collective memory.

***United States v. Hidalgo-Sanchez & Gomez, Nos. 21-2673 & 21-1158.*** Hidalgo-Sanchez and Gomez were indicted for their roles in a drug distribution conspiracy operating in Milwaukee, Wisconsin. Each was convicted by a jury and appealed. Hidalgo-Sanchez challenged the sufficiency of the evidence against him, the propriety of venue in the Eastern District of Wisconsin, and the failure of the trial judge to give a limiting instruction to the jury. Gomez challenged the government's use of bolstering testimony. The Court of Appeals affirmed, holding there was sufficient evidence to convict and venue proper. The Court found that the government's use of bolstering testimony constituted error, but the plain error standard was not met. The Court concluded with a warning, "In closing, we want to be very clear: the use of bolstering testimony of the nature used in this case is impermissible and it has the potential to damage our criminal courts whenever it is used. The responsibility for avoiding this falls squarely on the government. At the very least, the government should ensure that its training materials reflect the seriousness of avoiding this type of conduct. It must also do whatever else is necessary to ensure this does not happen again. Finally, we impart upon the defense bar the importance of objecting immediately to the use of this type of testimony. . . . As all criminal law attorneys are surely aware, plain error review is, by design, a much harder path to reversal than review for harmless error."

***United States v. Fitzpatrick, No. 21-1286.*** After a home invasion robbery went violently awry, a jury convicted Fitzpatrick of conspiring to possess with the intent to distribute a controlled substance and murder resulting from the use and carrying of a firearm during and in relation to a drug trafficking crime. On appeal, Fitzpatrick challenges the sufficiency of the evidence underpinning his convictions and the reasonableness of his sentence. The Court of Appeals affirmed, holding the conspiracy charge was clearly supported by circumstantial

evidence of intent to distribute. The court also held Fitzpatrick's sentence was reasonable.

## **First Step Act**

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***United States v. Fowowe, No. 20-3197.*** Fowowe filed a motion for a reduced prison sentence under § 404(b) of the First Step Act which the district court denied. On appeal, Fowowe argued the district court's evaluation of his request was deficient because the court failed to apply a Seventh Circuit decision that post-dated his initial sentencing by more than eleven years - *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). The Court of Appeals considered whether § 404(b) authorizes or requires a district court to apply a judicial decision issued after the defendant was initially sentenced. It held that § 404(b) authorizes but does not require district courts to apply an intervening judicial decision in evaluating First Step Act motions. Given this, it concluded the district court did not abuse its discretion in declining to recalculate Fowowe's sentencing range.

***United States v. Thacker, No. 20-2943.*** Thacker is serving a 33-year federal sentence for a series of armed robberies he committed in 2002. The sentence included "stacked" § 924(c) counts. The first § 924(c) conviction resulted in a mandatory minimum sentence of 7 years, and the second added a mandatory consecutive sentence of at least 25 years. Thacker sought to reduce his sentence based not only on the health risks of exposure to COVID-19 within prison, but also on the amendment Congress enacted in the First Step Act of 2018 to limit the circumstances in which multiple sentences for violations of § 924(c) can be stacked. The district court denied Thacker's motion, concluding in part that the discretion in § 3582(c)(1)(A) to reduce a sentence upon finding "extraordinary and compelling reasons" does not include the authority to reduce § 924(c) sentences lawfully imposed before the effective date of the First Step Act. The Court of Appeals affirmed, holding that given Congress's express decision to make the First Step Act's change to § 924(c) apply only prospectively, the amendment, whether considered alone or in connection with other facts and circumstances, cannot constitute an "extraordinary and compelling" reason to authorize a sentencing reduction.

***United States v. Hible & Turner*, Nos. 20-1824 & 20-2421.** These consolidated appeals present the question of whether a motion to reconsider a decision under the First Step Act of 2018 suspends the decision's finality and thus extends the time for appeal. This question has arisen before in an unpublished opinion, *United States v. Rutherford*, No. 19-3012 (7th Cir. June 23, 2020), which concluded that a motion to reconsider suspends the decision's finality. This panel of the Court of Appeals agreed and issued this published opinion.

***United States v. Blake*, No. 20-2145.** Blake appealed the denial of his motion under Section 404(b) of the First Step Act of 2018 to reduce his 420-month sentence for conspiracy to distribute crack cocaine. In denying Blake's motion, the district court sidestepped the parties' dispute about the quantity of drugs attributable to Blake for sentencing purposes and thus never calculated the retroactively lowered range under the Sentencing Guidelines. At the time, the court did not have the benefit of the decision in *United States v. Corner*, 967 F.3d 662 (7th Cir. 2020), which held that a district court commits reversible procedural error by making a discretionary decision on a First Step Act motion without determining the new sentencing parameters first. Therefore, the Court of Appeals vacated the judgment and remanded for reconsideration of the motion.

***United States v. McSwain*, No. 20-2732.** In 2007, McSwain was sentenced for his participation in a drug conspiracy and for possession of a firearm in furtherance of a drug trafficking crime. Because he was sentenced prior to the Fair Sentencing Act's enactment date, he was not eligible for a reduced sentence under the Act. However, he was made eligible by the passage of the First Step Act. He filed a motion in September of 2019 which was denied by the district court in August of 2020 because he was found guilty of an amount of heroin that qualified him for the mandatory minimum sentence. On appeal, he challenged that finding and argued a defendant who was convicted of a multi-drug conspiracy that included cocaine base and another substance is eligible for resentencing under § 404 of the First Step Act. The parties were now in agreement that such a defendant is eligible so the Court of Appeals reversed and remanded.



***United States v. Williams, No. 21-2401.*** Williams, a federal inmate, appealed the denial of his motion to reduce his sentences for crack-cocaine offenses under the First Step Act. Because the district court did not calculate the amended statutory ranges that his convictions carried, as it was required to do, the Court of Appeals vacated the judgment and remanded for further proceedings. Williams failed to raise this issue but the Court of Appeals found the error was plain and affected the fairness, integrity, and public reputation of the proceedings.

## **Fraud Cases**

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***United States v. Jarigese, No. 20-1485.*** A jury convicted Jarigese of nine counts of wire fraud and one count of bribery. The district court sentenced him to forty-one months' imprisonment and three years of supervised release. On appeal, he made several arguments regarding both his convictions and his sentence. The Court of Appeals affirmed in all respects, holding the district court did not err in admitting evidence, the evidence was sufficient to convict him, and the district court did not commit procedural errors at sentencing.

***United States v. Palladinetti, No. 20-2734.*** Palladinetti participated in a scheme to defraud lenders into facilitating certain real estate transactions. He and his co-defendants were charged with many counts of bank fraud and making false statements. The district court held a bench trial on one of the bank fraud counts. The only issue was whether one of the banks Palladinetti defrauded was insured by the Federal Deposit Insurance Corporation ("FDIC"). The district court determined that it was and found him guilty. The Court of Appeals affirmed.

## **Guilty Pleas**

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***United States v. Hogue, No. 19-2354.*** Hogue was charged with receiving child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A). As a condition of his pretrial release, he stipulated to the installation of special monitoring software on his computer. The software caught him downloading child pornography again; it also detected his repeated efforts to delete and wipe the downloaded files from his hard drive to cover his tracks. The grand jury issued a superseding indictment charging Hogue with three crimes: the original charge of receiving child pornography; a second count of receiving child pornography for the

downloads while on pretrial release; and destruction of evidence with intent to obstruct an FBI investigation. Hogue pled guilty to all three counts and the district court imposed a below guidelines sentence of 20 years. Hogue argued on appeal he should be able to vacate his guilty plea to one of the counts based on a misstatement by the judge at the change-of-plea hearing about the effect of the § 3147(1) enhancement. The Court of Appeals affirmed, holding that although the judge mistakenly stated the maximum penalty on Count 2 during the plea colloquy, Hogue did not establish he would not have pleaded guilty but for this error.

***United States v. Adam Sprenger, No. 19-2779.*** Sprenger pled guilty to one count of production of child pornography and one count of possession of child pornography pursuant to a plea agreement. The production count was invalidated by *United States v. Howard*, 968 F.3d 717 (7th Cir. 2020). The government agreed the production count should be vacated. The primary issue on appeal was whether Sprenger would be allowed to withdraw his entire guilty plea and invalidate the entire agreement on the ground that the legal theory upon which his production conviction rests is invalid. The Court of Appeals held he was not, finding the plea agreement still provided an adequate factual basis for the possession conviction, which supported that Sprenger's plea to the possession offense remained knowing and voluntary notwithstanding the invalidity of the production conviction.

***United States v. Mboule, No. 20-3225.*** Mboule was charged with conspiracy to commit wire fraud and entered a plea agreement that contained a waiver of the right to appeal. Nonetheless, Mboule appealed, raising arguments regarding the district court's denial of his motion to withdraw his guilty plea and various purported problems with his sentence. Because Mboule did not show that the plea agreement should be voided in its entirety, the appellate waiver is applicable, and this appeal was dismissed.

***United States v. Merrill, No. 21-1070.*** Merrill pled guilty to producing and possessing child pornography. He appealed the denial of his motion to withdraw his pleas. He argues that he received ineffective assistance from his former attorneys in the form of an erroneous explanation of the elements of the

production offense. The Court of Appeals affirmed, holding the attorneys' advice was sound and he could not show prejudice from the supposedly erroneous advice.

### **Indictment Issues**

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***United States v. Stands Alone, No. 20-2018.*** While imprisoned at a federal correctional facility in Wisconsin, Stands Alone injured a correctional officer. After a bench trial, the district court convicted him for inflicting bodily injury to a federal officer, in violation of 18 U.S.C. § 111. Stands Alone now appealed his conviction and challenged the district court's interpretation of § 111. Stands Alone alleged that the indictment was defective because § 111 has as an element an assault which was not alleged. Rather, the indictment provided that he "resisted, intimidated, and interfered with" the correctional officer. The Court of Appeals affirmed holding that § 111(a)(1) lists six possible verbs and a proper reading of the text militates against defining all of them to require assault.

### **Jury Issues**

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***United States v. Nieto & Vallodolid, Nos. 19-2209 & 19-3408.*** Nieto and Vallodolid once led chapters of the Latin Kings gang in northwest Indiana. Both received life sentences following a jury trial resulting in convictions for violating federal racketeering and narcotics laws, with the jury also finding that Nieto and Vallodolid participated in murders to further the gang's activities. Nieto and Vallodolid raised multiple issues on appeal, ranging from a contention that the prosecution committed a *Batson* violation by striking two prospective Hispanic jurors from the venire, to challenges to the sufficiency of the evidence, and to aspects of their sentencing. The Court of Appeals affirmed finding no errors.

***United States v. Mikaitis, No. 20-2783.*** Mikaitis went to trial on drug charges where the government argued he was a no-show doctor at a weight-loss clinic who participated in illegally distributing drugs. Mikaitis denied knowing about illegal activity. The district court issued a deliberate-avoidance jury instruction. The jury convicted. Mikaitis appealed, arguing that the evidence did not support the instruction. The Court of Appeals affirmed, holding ample evidence existed to support the instruction. Specifically, Mikaitis agreed to let others use his DEA

number but arranged that he would not see patients. He only visited the office once a week, entered by a side door, and only went to one room inside. He avoided seeing anyone consulting with patients, avoided the front desk, and avoided file storage. He only retrieved cash payments and reviewed a “narrow selection of patient files.”

***United States v. Lowe, No. 20-2736.*** Lowe was found guilty of illegally possessing a firearm. He appealed his conviction and sentence on the grounds that the district court (1) admitted inadmissible “other-act evidence” at trial and (2) mishandled its response when a juror gave an “equivocal” answer about his individual verdict in jury polling. The Court of Appeals affirmed holding the district court did not error in admitting the evidence because the evidence was admitted for the purpose of proving Lowe possessed the gun. Second, the court held that the juror’s answer of “Yes. Barely.” to the question of whether the verdict constituted his individual verdict in all respects was not equivocal - it just meant the decision was a narrow one.

### **Pretrial Detention and Release**

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***United States v. Wilks, No. 21-2559.*** Wilks appealed from an order revoking his pretrial release based on his violation of his release conditions. Revocation of pretrial release is governed by 18 U.S.C. § 3148. The Court of Appeals held that the district court did not follow the statutory framework in making the revocation decision and reversed and remanded for further proceedings. The Court held that the district court failed to address why detention was necessary, which is required by the statute.

### **Restitution**

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***United States v. Morrow, No. 20-2259.*** Morrow and several codefendants participated in four robberies. The first three robberies targeted various electronics stores in Indiana, and the fourth an electronics store in Ohio.

Following his arrest, law enforcement was able to recover the electronics from the fourth robbery but not the other three. Morrow was charged in a nine-count indictment: three counts of Hobbs Act robbery (the Indiana robberies), three counts of use of a firearm in furtherance of a crime of violence (related to the Indiana robberies), one count of conspiracy to commit Hobbs Act robbery (the Ohio robbery), one count of conspiracy to use a firearm in furtherance of a crime of violence, and one count of transporting a firearm across state lines. On appeal, Morrow argued that a fake gun was used in the first two robberies, undermining the sufficiency of the government's evidence on the two use-of-a-firearm counts related to the first two Indiana robberies. He also argued that the government improperly used the Hobbs Act conspiracy charge as a predicate for the conspiracy-to-use-a-firearm-in-furtherance-of-a-crime-of-violence charge and that because the government had the electronics from the fourth robbery in its possession at the time of sentencing, the district court erred in ordering monetary restitution for those stolen goods. The Court of Appeals affirmed Morrow's convictions and sentence of imprisonment but remanded for correction of the restitution order. It held that the conspiracy to commit a § 924(c) offense was not based on a Hobbs Act conspiracy and the government did not have to charge a specific offense in order to charge a conspiracy to commit a § 924(c) offense. The Court denied the argument that the "firearm" charged was an Airsoft gun and thus not a firearm because there was evidence there was a real firearm used. Finally, the Court agreed that because the government had possession of the property stolen in the fourth robbery, the court erred in ordering restitution for that property.

***United States v. Robl*, No. 20-1790.** Robl pled guilty to one count of wire fraud for falsely holding himself out as a licensed and insured asbestos abatement contractor as part of a larger scheme to defraud customers. The district court sentenced him to a total of 144 months' imprisonment and entered its judgment on September 16, 2019. In doing so, it noted that it had not yet determined a restitution amount and set a restitution hearing. This initial restitution hearing and a subsequent one were canceled and the district court subsequently entered restitution in the amount of \$94,031.41. Robl appealed the restitution order arguing the district court lacked jurisdiction to enter the order and argued the district court denied him the right to be present under Rule 43. The Court of

Appeals affirmed and held the district court had jurisdiction to enter the restitution order and that it committed no error in the course of adjudicating the amount of restitution.

***United States v. Wyatt, No. 20-2382.*** Wyatt pled guilty to one count of interstate sex trafficking and was sentenced to ten years' imprisonment. His conviction triggered certain mandatory restitution statutes, and the district court took the restitution issue under advisement at sentencing. Following negotiations between the parties, written objections, oral argument, and supplemental briefing, the district court entered an order requiring Wyatt to pay restitution to three victims of his trafficking. He appealed the restitution order, arguing that the district court improperly delayed the restitution determination, did not rely on a statutorily required "complete accounting" of the victims' losses (and otherwise erred by relying on improper evidence and, as a result, ordered too much restitution), deprived him of counsel during the restitution process, and improperly ordered restitution outside of his presence. The Court of Appeals affirmed.

***United States v. Alvarez, No. 21-1119.*** In 2019, a jury convicted Alvarez of thirteen counts stemming from her participation in a scheme involving the creation of hundreds of fake credit cards. Alvarez appealed the second restitution order entered in this case. The Court of Appeals vacated the first order which contained several discrepancies in amount and victims. The Court vacated this case as well because the restitution order did not address Alvarez's argument for joint and several liability, or her indigency.

## **Sentencing Issues**

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***United States v. Esposito, No. 20-1124.*** Esposito was convicted of multiple counts of sexually exploiting a child as well as possessing child pornography. The district court sentenced him to 200 years in prison. He appealed and argued the district court erred when, rather than first determining his total punishment, imposed sentences on each individual count and then added them together. The Court of Appeals affirmed, holding that the district court essentially announced it would impose a de facto life sentence before pronouncing the prison terms on each count.

***United States v. Roush, No. 19-3217.*** Roush pled guilty to transportation of child pornography, in violation of 18 U.S.C. § 2252A(a)(1) and (b)(1), and possession of child pornography. The district court imposed a below-Guidelines sentence of 188 months' imprisonment on Count I and 120 months' imprisonment on Count II, followed by 10 years of supervised release on each count, all running concurrently. Roush appealed, arguing that the court erred in failing to properly identify the Guidelines range and that the court erred in failing to consider his primary arguments in mitigation before imposing the sentence. The Court of Appeals affirmed, holding the district court recognized the applicable guidelines range and adopted the findings of the PSR. The Court also affirmed and held the court considered Roush's arguments in mitigation.

***United States v. Alvarez-Carvajal, No. 20-2934.*** Alvarez-Carvajal was convicted by a jury of conspiracy to distribute methamphetamine, marijuana, and heroin for his role in an interstate drug-trafficking operation. When calculating the guidelines, the district court applied an enhancement for maintaining a premises for the purpose of manufacturing or distributing a controlled substance. The district court applied another enhancement for obstruction of justice. On appeal, Alvarez-Carvajal challenges the application of both enhancements to his sentence. The Court of Appeals affirmed on both issues.

***United States v. Gonzalez, No. 20-1235.*** The district court imposed a 72 month prison sentence on Gonzalez after he pled guilty to unlawful possession of a firearm by a felon. He challenged that sentence on appeal, arguing it was substantively unreasonable because the guidelines recommended a term of between 33 and 41 months. The Court of Appeals affirmed, holding Gonzalez had not shown his sentence was unreasonable.

***United States v. Rollerson, No. 20-2258.*** A jury convicted Rollerson on drug and firearm charges but acquitted him on other drug charges. He appealed and argued the district court erred by increasing his Sentencing Guideline range based on drug activity for which he was either acquitted or never charged. The Court affirmed Rollerson's sentence because the conduct at issue was supported by sufficiently reliable information and was relevant to his convictions. Although the record on the controlled buys was sparse, but in the absence of

contradictory evidence, a police officer's affidavit attesting that the buys actually occurred provided the "modicum of reliability" that is needed to find by a preponderance of the evidence that Rollerson committed those additional crimes.

***United States v. Beltran-Leon, No. 19-2615.*** Beltran-Leon's role in distributing narcotics for the Sinaloa Cartel resulted in a guidelines range of life in prison. The district court imposed a below-guidelines sentence of 28 years in prison. Beltran-Leon argued on appeal that the district court (1) violated his due process rights when the judge considered his own ethnicity in setting Beltran's sentence; (2) improperly considered irrelevant, extra-record evidence in determining his sentence; (3) failed to explain adequately the basis for the sentence; (4) improperly drew a negative inference from Beltran's failure to testify at sentencing, in violation of his Fifth Amendment rights; and (5) improperly failed to recuse from the sentencing proceeding. The Court of Appeals found no error in the court's imposition of the sentence, reasoning behind the below guidelines sentence, or failure to recuse himself.

***United States v. Hopper, No. 20-1162.*** Hopper was convicted of conspiracy to distribute fifty or more grams of a mixture containing methamphetamine. In a previous appeal. The Court of Appeals concluded that the district court had committed plain error in the calculation of the drug quantity for which Mr. Hopper was responsible and remanded the case to the district court. At resentencing, the new presentence report recalculated the amount of drugs and added an additional criminal history point for a state burglary conviction; the plea for that crime was entered after the original federal sentence had been imposed but before remand. Hopper filed a pro se objection arguing the purity of the methamphetamine but did not object to the additional criminal history point. The Court of Appeals affirmed, holding the district court correctly determined that the earlier remand order did not permit it to reconsider Hopper's argument about the drug type. The Court also held that the district court did not commit plain error in assessing an additional criminal history point.

***United States v. Ballard, No. 20-2381.*** Ballard pled guilty to being a felon in possession of a firearm. In his third appeal, he argued his above-guidelines



sentence was procedurally and substantively unreasonable. The Court of Appeals affirmed, finding the explained its reasons for the sentence thoroughly and gave compelling justifications for the sentence. The Court further found the sentence was substantively reasonable based on the nature of the offense, his long criminal history, and the need for incapacitation, deterrence, and protection of the public.

***United States v. McClain*, Nos. 21-2089 & 21-2090.** The district court modified McClain's two federal prison sentences under Rule 36 of the Federal Rules of Criminal Procedure, and McClain appealed. He argued the changes, which added 18 months of prison time and required him to re-enter federal prison after he had been released, were not merely clerical and only could have been made under Rule 35. However, Rule 35 modification was unavailable because the fourteen-day period for altering a sentence had long passed. The Court of Appeals found McClain was correct that the changes to his sentences were not merely clerical, and so the district court erred by "correcting" the sentences under Rule 36. The Court vacated both amended judgments and ordered McClain's immediate release.

***United States v. Lovies*, No. 20-2463.** Lovies was indicated kidnapping, carjacking, and brandishing a firearm during and in relation to a crime of violence. A jury found Lovies guilty on all counts, and the district judge sentenced him to an imprisonment term within the applicable Sentencing Guidelines range. Lovies appealed his conviction, arguing the district court improperly denied a *Batson* challenge he raised during jury selection. He also argued the trial court erred in applying two sentencing enhancements: one for use of a minor to commit the offense, and one for his role in the offense. The Court of Appeals affirmed. In rejecting Lovies's *Batson* challenge, the Court deferred to the district court which found the prosecutors credible and their explanation for exercising the challenged peremptory strike to be plausible. The Court also held the district court's factual findings were adequate to support the application of the two sentencing enhancements, and any error with respect to the calculation of Lovies's guidelines range would be harmless.

***United States v. Yang, No. 21-1059.*** Yang appealed his below-guidelines sentence, arguing that the district court erred because it considered an audio file at sentencing that was not publicly available on the court's electronic docket. The Court of Appeals found no merit in the argument and affirmed because district courts routinely review evidence at sentencing that is not publicly available on the court's docket. Furthermore, the audio file was readily available at the clerk's office.

***United States v. Zamudio, No. 20-3016.*** Following an investigation of an Indianapolis-based drug trafficking organization, the government secured a warrant to search Zamudio's residence, where they found large amounts of methamphetamine, a digital scale, and a loaded firearm. Zamudio pled guilty to two drug-related offenses and was sentenced to 300 months' imprisonment. He challenged several guidelines calculations on appeal including the district court's calculation of his base offense level based on the amount of drugs attributed to him; the court's application of a 2-level firearm enhancement; and the court's application of a 2-level enhancement for maintaining a drug premises. The Court of Appeals affirmed.

***United States v. Buncich, No. 20-2569.*** Buncich served as Sheriff of Lake County, Indiana and, as sheriff, received thousands of dollars from local towing companies. In return, those companies received lucrative towing contracts within the county. A jury convicted Buncich of wire fraud and bribery in 2017, and he was sentenced to 188 months in prison. Following an earlier appeal that vacated three of the six counts of conviction, he was resentenced to 151 months. Buncich challenged the resentencing on three grounds. He argued that the district court erred in its Sentencing Guideline calculation, that the court failed to explain its guideline findings sufficiently and made other procedural errors, and that his sentence was substantively unreasonable. The Court of Appeals affirmed, finding the court explained its guidelines findings, considered the § 3553(a) factors, and did not presume a guidelines sentence was reasonable.

***United States v. Issa, No. 20-2949.*** Issa embezzled tens of millions of dollars, pled guilty, and was sentenced to a below Guidelines 200 months in prison. He appealed his sentence, arguing the district court violated his due process rights

by erroneously admitting and relying statements from the victims to justify the sentence and allowing the victims' lawyer to act as a *de facto* prosecutor. He also argued the district court erroneously applied the vulnerable victim enhancement. The Court of Appeals affirmed holding that although the CVRA does not allow victims to formally intervene, it does allow the victims an opportunity to be heard, which is what occurred in this case. The Court also held Issa waived his challenge to the vulnerable victim enhancement by stipulating to it in a written plea agreement.

***United States v. Mansfield, No. 20-2981.*** Mansfield was convicted of possession with intent to distribute methamphetamine and sentenced to 188 months in prison. He argued on appeal the district court erred by considering his arrest history during sentencing. The Court of Appeals held that this challenge was waived when defense counsel did not object to the district court's consideration of the presentence investigation report or its contents. The Court also held that even if this point was not waived, a substantial history of arrests, especially if they are similar to the offense of conviction, can be a reliable factor to consider at sentencing.

***United States v. Loving, No. 21-1382.*** Loving pled guilty to drug crimes and was sentenced to 71 months in prison, the top of the Sentencing Guideline range as found by the district court. On appeal Loving argued that the district court erred in calculating his guideline range. He asserted the court did not explain how it calculated the total offense level and that, regardless of the explanation, the court made two guideline errors: disregarding the parties' agreement for an additional one-level reduction in the offense level for timely acceptance of responsibility, and misusing a departure provision of the Sentencing Guidelines to determine the calculated range rather than as a basis for an upward departure or variance. The Court of Appeals agreed, found the errors were not harmless and remanded for resentencing.

***United States v. Ford, No. 21-1398.*** Ford pled guilty to distributing and possessing methamphetamine with intent to distribute. The district court sentenced him to concurrent terms of 168 months on each count. On appeal, Ford challenged the district court's application of Sentencing Guidelines

enhancements for possessing a dangerous weapon under U.S.S.G. § 2D1.1(b)(1) and maintaining a drug premises under § 2D1.1(b)(12). He argued that the facts did not establish either that he constructively possessed the handgun in question or that he exercised sufficient control over the bedroom where agents found the handgun and drugs. The Court of Appeals affirmed holding the district court did not clearly err in finding facts that were sufficient to apply both sentencing enhancements.

***United States v. Burgess, No. 20-2940.*** Burgess burned down the apartment he shared with his girlfriend on December 7, 2018. While on the run from police, Burgess robbed a Metro PCS store at gunpoint. At sentencing, the district court applied a 2-level adjustment for obstruction of justice under U.S.S.G. § 3C1.1. The court based the adjustment on Burgess's perjurious testimony at his suppression hearing and on his violations of a no-contact order prohibiting communication with his girlfriend. On appeal, Burgess argued the factual findings at sentencing did not support either basis for the § 3C1.1 adjustment. The Court of Appeals disagreed and affirmed, holding the factual findings upon which the district court relied establish by a preponderance of the evidence that Burgess's violations of the no-contact order amounted to obstruction.

***United States v. McClinton, No. 20-2860.*** In search of pharmaceutical drugs, McClinton and six accomplices robbed a CVS pharmacy at around eight o'clock in the evening. The robbers pointed guns at customers, grabbed purses and wallets, and demanded their cell phones. The drugs proved harder to acquire than they had thought because of the time-delay safe in the pharmacy. Worried about time, the robbers left before the safe opened and drove to an alley about ten minutes away to split the proceeds. McClinton and an accomplice began arguing and the accomplice exited the car with all of the drugs. McClinton followed him out of the car and shot him four times in the back, killing him. After transfer to adult court (McClinton was three months away from his eighteenth birthday at the time of the robbery), a jury found McClinton guilty of robbing the CVS in violation of 18 U.S.C. § 1951(a); and brandishing a firearm during the CVS robbery in violation of 18 U.S.C. § 924(c)(1)(A)(ii). The jury found him not guilty of the indicted crimes of robbery of the accomplice, in violation of 18 U.S.C. § 1951(a), and causing death while using a firearm during and in

relation to the robbery of the accomplice, in violation of 18 U.S.C. § 924(j)(1). At sentencing, the district court concluded, using a preponderance of the evidence standard, that McClinton was responsible for the accomplice's murder. The district court judge therefore enhanced McClinton's offense level from 23 to 43, but also varied downward to account for McClinton's age and the sentences of his co-defendants, ultimately sentencing him to 228 months in prison. McClinton appealed and raised two issues - whether the district court could consider conduct for which McClinton was acquitted for purposes of calculating his sentence and whether McClinton's counsel was ineffective during his juvenile transfer proceeding. The Court of Appeals affirmed. It held that the argument regarding use of acquitted conduct at sentencing is currently foreclosed by circuit and Supreme Court precedent but it was not frivolous to raise it to preserve it for Supreme Court review. Defense counsel ultimately withdraw the claim of ineffective assistance of counsel at oral argument but the Court explained why that was "the most effective advocacy she could provide to her client."

***United States v. Bravo, Luczak, & Denava, Nos. 20-1105, 20-1484, & 20-3477.*** The defendants in this consolidated appeal challenged their sentences on appeal. The Court of Appeals affirmed Luczak and Denava's sentences but vacated Bravo's sentence. The Court found that the district court erred in counting Bravo's two misdemeanor offenses toward his criminal history and that error may have affected his ultimate sentence.

***United States v. Gibbs, No. 20-3304.*** Gibbs participated in a conspiracy to obtain and distribute methamphetamine. Gibbs argued on appeal that the district court erred in relying on the PSR to determine the amount of methamphetamine he should be held accountable for where the PSR did not support the calculation of the drug amounts. The Court of Appeals held that without substantiation for its statements regarding the amount of drugs, the government failed to meet its burden to prove the uncharged conduct by a preponderance of the evidence. Because the PSR charged Gibbs with an unsupported drug quantity, Gibbs's denial of the amount was enough to shift the burden of proof back to the prosecution.

***United States v. Asbury, No. 21-1385.*** Asbury was charged and convicted of distribution of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii). At his trial, the government introduced evidence showing that he had distributed the equivalent of 82.2 grams of pure methamphetamine and the jury credited that evidence and convicted him. On appeal, Asbury argued the district court erred in calculating his relevant conduct and failed to make any findings regarding the information contained in the PSR regarding drug amounts. The government agreed there had been error but argued the error was harmless. The court made several conclusory statements that it would impose the same sentence regardless of any potential guideline error. The Court of Appeals reversed and remanded for resentencing holding, “a conclusory comment tossed in for good measure is not enough to make a guidelines error harmless.” Finding the district court had made no specific findings, reversal was necessary.

***United States v. Hyatt, No. 21-1212.*** Kenneth Hyatt was charged with three child-pornography offenses: transportation, receipt, and possession. He pled guilty to the receipt offense. On appeal, he argued the district court plainly erred when it applied a two-level enhancement under § 2G2.2(b)(3)(F) for distribution of child pornography based solely on the fact that he uploaded images to a folder in his Dropbox account yet took no steps to allow any other person to obtain access to that folder. The Court of Appeals agreed this was error and remanded the case for resentencing. The Court further noted that no circuit has accepted the government’s position that a two level enhancement under § 2G2.2(b)(3)(F) for distribution of child pornography applies based solely on the upload of files to cloud-based storage.

***United States v. Boyle, No. 21-1093.*** On appeal, Boyle challenged his 50 year federal sentence he received for producing and possessing child pornography which the district court ran consecutive to his 40 year state sentence for the same conduct. Boyle argued on appeal that the district court erred by imposing the consecutive sentence. The Court of Appeals affirmed, holding the district court was well aware of the length and gravity of the 90-year cumulative sentences. In addition, the federal and state sentences punished different conduct - the state

sentence punished the abuse while the federal sentence punished the production and dissemination of child pornography.

***United States v. Major, No. 20-2829.*** Major pled guilty to three charges stemming from his activities dealing heroin and fentanyl and was sentenced to 20 years in prison. He challenged the basis of his sentence, arguing that the district court's factual findings were erroneous and caused it to calculate an incorrect Sentencing Guidelines range. He also argued that his designation as a "career offender" overstated his past criminal conduct, so that his sentencing under the career offender Guidelines range was therefore unreasonable. The Court of Appeals affirmed, holding the district court's reliance on a witness's testimony as reliable was appropriate. The Court also affirmed the enhancement for obstruction of justice despite Major's argument that he just told a witness to "tell the truth." This conduct can still be considered obstructive if its purpose is to persuade a witness to alter his or her testimony. Finally, although Major's designation as a career offender was based partially on an older conviction, the district court appropriately considered a variance and rejected it.

### **Supervised Release Issues**

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***United States v. Canfield, No. 20-3145.*** Canfield was sentenced to prison and supervised release for possessing child pornography. In a subsequent proceeding for revocation of his supervised release, the district court sentenced Canfield to twenty months' imprisonment and an additional five years' supervised release, a term of supervised release which all parties referred to as "mandatory." On appeal, Canfield challenged the application of the additional five-year term as not actually mandatory but instead the result of a mutual mistake. The Court of Appeals held Canfield waived the argument that he raised on appeal because he had ample advance notice of the terms of his supervised release, was given a meaningful opportunity to object, indeed advanced several objections to those terms, and went so far as to affirmatively advance the argument he now challenges on appeal.

***United States v. Teague & Whipple*, Nos. 20-3132 & 20-3316.** Both defendants in this consolidated appeal received a term of supervised release that was mandatory under their statute of conviction. *See, e.g.*, 21 U.S.C. § 841(b)(1)(C). The Court of Appeals considered whether a term of supervised release that is mandatory for initial sentencing remains a mandatory part of any new sentence after revocation. The Court of Appeals held that it is not and revocation proceedings operate under different rules and the initially mandatory term of supervised release is not mandatory upon revocation.

***United States v. Patlan*, No. 21-1500.** Patlan appealed from his sentence after his revocation of supervised release. He argued the district court erred in failing to recognize its discretion to treat a failed drug screening as a Grade C violation rather than a Grade B violation. The Court of Appeals affirmed, finding that Patlan repeatedly admitted possessing controlled substances (the Grade B violation) and the district court was therefore not required to exercise discretion at all. The Court affirmed the holding from *United States v. Trotter*, 270 F.3d 1150 (7th Cir. 2001) that after a defendant's failed drug test, the inference of possession is permissible but not required, depending on the circumstances.

***United States v. Wood*, No. 20-1454.** Wood stole money from homeowners in foreclosure by promising to provide financial services which he did not render. He pled guilty to various fraud charges and was sentenced to an above-Guidelines term of imprisonment. During sentencing, the district court discussed Sally Iriri, an unrelated defendant in a separate case. Wood appealed, arguing this comparison rendered his sentencing procedurally infirm. The Court of Appeals affirmed, holding that the district court's reliance on Iriri's case was not inaccurate and the court's sentencing decision was not dependent on the comparison with Iriri. The Court of Appeals also discussed the differences between errors that fall within Rule 51(a) and those that fall within Rule 51(b). In cases where the grounds for appeal exist "prior to and separate from" the district court's ultimate ruling, Rule 51(b) applies (requiring an objection to avoid plain error review). However, in cases where the grounds for appeal exist only because of part of the district court's ultimate ruling in the case, such as statements made *sua sponte* by the court, Rule 51(a) applies (not requiring an



“exception” to the court’s ruling). This ruling reconciles the Court’s prior case law.

### **Suppression Issues**

***United States v. Shelton*, No. 19-3388.** Shelton was convicted of conspiracy to commit wire fraud and conspiracy to commit honest services fraud related to her actions as an employee of the Calumet Township Trustee’s Office. Shelton learned during her trial that an FBI Agent had directed another employee to conduct warrantless searches of her office. She moved for a mistrial, asserting violations of the Fourth Amendment as well as *Brady* and *Giglio* arguments. The district court denied the motion, finding she lacked a reasonable expectation of privacy in the areas searched by the employee. The court also concluded that the warrant would have been issued even with the offending materials excised from the warrant application. The Court of Appeals disagreed and found the district court erred when it concluded that Shelton lacked any reasonable expectation of privacy in her office and desk against the intrusions of a co-worker who was working as an agent of the government. The Court then considered whether the remaining evidence against Shelton was enough to sustain her conviction and concluded it was not. It vacated her conviction.

***United States v. Woodfork*, No. 20-3415.** Law enforcement executed a search warrant at Woodfork’s home based on several controlled-buy drug transactions involving Woodfork. Upon executing the warrant, officers discovered methamphetamine and a firearm at Woodfork’s suspected residence and he was indicted for possession of methamphetamine with intent to distribute and possession of a firearm by a felon. Woodfork argued on appeal that the officer made material misstatements or omissions in seeking the warrant in violation of *Franks* and that probable cause to issue the search warrant was lacking in the first instance. The district court denied Woodfork’s motion to suppress and the Court of Appeals upheld that decision, finding the officer’s omission of information about the source’s background was unfortunate, it did not negate probable cause. It concluded the district court did not clearly err in denying Woodfork’s request for a *Franks* hearing.

***United States v. Chang & Lao, Nos. 19-3500 & 20-1111.*** After sliding off the road on a snowy night, Chang and Lao were arrested after a police officer, originally approaching the car to check on their safety, grew suspicious and a search eventually turned up evidence of drugs and weapons. Chang and Lao both contend that the search violated their Fourth Amendment rights. Lao also challenged the district court's ruling prohibiting the introduction of Chang's later hearsay statement claiming possession of and responsibility for all of the illegal items in the car. The Court of Appeals affirmed, holding although the defendants were correct that the officer's hunch alone was not sufficient justification for the seizure, other factors provided the reasonable suspicion necessary. It also found no abuse of the district court's discretion in barring the hearsay evidence.

***United States v. Gholston, No. 20-2168.*** Officer Cowick pulled over Gholston for turning without signaling. Because Cowick suspected that Gholston was a drug dealer, he called for a trained dog to perform a drug sniff at the scene. As Cowick was finishing the routine procedures required for a minor traffic violation, the dog arrived and alerted officers to the presence of methamphetamine. The discovery of the drugs led to charges for possession of five or more grams of methamphetamine with intent to distribute. Gholston filed a motion to suppress the evidence of the meth seized as a result of the dog sniff. He contended that Cowick unreasonably delayed the stop in order to allow the "K9" officer to arrive and perform an inspection. The district court denied the motion. Gholston challenged the denial of the motion on appeal, making the same argument. The Court of Appeals found that the district court committed no reversible error in finding that Cowick did not unlawfully prolong the stop and thus did not violate Gholston's Fourth Amendment rights.

***United States v. Leal, No. 20-3102.*** Leal used an online dating application to solicit sex acts from a user he believed was an underage boy but who was actually an FBI Agent conducting a sting operation. In an interview with law enforcement, Leal confessed. He was then arrested and charged with knowingly attempting to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b). Leal moved to suppress his incriminating statements, arguing that the agents failed to provide a *Miranda* warning before the interview. The district court granted the motion, and the government filed an interlocutory appeal. The

Court of Appeals reversed holding that Leal was not “in custody” during the interview.

***United States v. Schenck*, No. 20-2353.** Schenck produced child pornography. He moved to suppress the evidence, arguing the search warrant was not supported by probable cause because the underlying affidavit did not identify how the affiant knew a few particular pieces of information. The district court denied the motion. The Court of Appeals affirmed, holding the affidavit, read with common sense, established a reasonable probability that the search would produce evidence of child pornography.

***United States v. Tuggle*, No. 20-2352.** Tuggle’s case presented an issue of first impression for the Seventh Circuit: whether the warrantless use of pole cameras to observe a home on either a short- or long-term basis amounts to a “search” under the Fourth Amendment. Most federal courts of appeals that have weighed in on the issue have concluded that pole camera surveillance does not constitute a Fourth Amendment search. The Seventh Circuit held that the extensive pole camera surveillance in this case did not constitute a search under the current understanding of the Fourth Amendment. The government’s use of a technology in public use, while occupying a place it was lawfully entitled to be, to observe plainly visible happenings, did not run afoul of the Fourth Amendment.

***United States v. Bebris*, No. 20-3291.** Bebris sent child pornography over Facebook Messenger. Bebris’s conduct was discovered and reported by Facebook, which uses PhotoDNA to compare images on Facebook’s system with a database of known child pornography. Bebris was charged federally with possessing and distributing child pornography. He argued before the district court that the evidence against him should be suppressed, specifically contending that Facebook took on the role of a government agent by monitoring its platform for child pornography and reporting that content. On appeal, Bebris made this argument but primarily contended that he was deprived of the opportunity to prove that Facebook acted as a government agent because the district court denied his Federal Rule of Criminal Procedure 17(a) subpoena seeking pre-trial testimony from a Facebook employee with knowledge of Facebook’s use of PhotoDNA. The Court of Appeals affirmed holding, the

district court properly exercised its discretion in quashing that subpoena, as it sought cumulative testimony to material already in the record.

***United States v. Rosario*, No. 20-2330.** Several individuals burglarized a store in Ann Arbor, Michigan, stealing firearms, collector coins, and other goods. Police officers obtained cell-site location information pursuant to the Stored Communications Act and the information led to the arrest of Rosario who was charged with transporting stolen goods in interstate commerce and possession of a firearm by a felon. Rosario filed a motion to suppress the cell-site location information and argued the Fourth Amendment required the Government to secure a search warrant before obtaining cell-site location information. Applying the law as it existed prior to *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the district court denied the motion, holding that the acquisition of cell-site location information from third-party service providers did not constitute a Fourth Amendment search. The Supreme Court later issued its decision in *Carpenter*, holding that the acquisition of cell-site location information constitutes a Fourth Amendment search for which law enforcement is generally required to obtain a warrant supported by probable cause. The district court again denied Rosario's motion, holding a clear chain of probable cause would have led to the cell-site location information's inevitable discovery and that the officers had followed in good faith the requirements of the existing legal framework of the Stored Communications Act. The Court of Appeals affirmed.

***United States v. Calligan*, No. 20-1817.** Calligan was charged with gun and drug charges. He filed a motion to suppress evidence from the search of a house should be suppressed because the underlying warrant was anticipatory and should not have been executed because its triggering condition - the controlled delivery of a package with drugs, addressed to him, that police had intercepted - never occurred. The district court concluded that the warrant was supported by probable cause and had no triggering condition. The Court of Appeals agreed and held that, in any evidence, police relied on the warrant in good faith.

***United States v. McGill*, No. 19-2636.** During a visit to McGill's home, his probation officer seized a cell phone without warrant to do so. Law enforcement later discovered thousands of images of child pornography on the phone and

charged McGill accordingly. McGill, arguing that his phone had been unlawfully seized, moved to suppress the phone and all evidence obtained from it. The district court denied this motion on a number of independent grounds, concluding that McGill's cell phone was lawfully seized or otherwise need not be suppressed. The Court of Appeals agreed and held the seizure of the phone fell within two exceptions to the warrant requirement - the plain view doctrine and reasonable suspicion that he was in violation of his conditions of supervised release.

***United States v. Matthews*, No. 20-2686.** The Sheriff's Department executed a search warrant on a property where Matthews lived in a camper trailer. The warrant authorized the police to search every structure on the premises in the belief that Matthews lived on and had access to the whole property. The evidence found during the search led to a federal indictment, and Matthews moved to exclude the fruits of the search. The district court held that the warrant was not supported by probable cause to believe that any of the suspected crimes were linked to the property. The district court nevertheless concluded that the good-faith exception to the exclusionary rule applied and therefore denied the motion to suppress. On appeal, Matthews challenged this ruling. The Court of Appeals affirmed, holding an objectively reasonable officer, having consulted with the State's Attorney in the preparation of the complaint and affidavit accompanying the application for the warrant, could have relied in good faith on the search warrant that he obtained from a judge.

***United States v. Soybel*, No. 19-1936.** Soybel perpetrated a series of cyberattacks on his former employer. To confirm the source, the government sought and received a court order under the Pen Register Act, 18 U.S.C. §§ 3121 et seq., authorizing the installation of pen registers and "trap and trace" devices to monitor internet traffic. Among the data collected, the pen registers recorded the IP addresses of the websites visited by internet users within Soybel's apartment. The IP pen registers were instrumental in confirming that Soybel unlawfully accessed his employer's system. The district court denied Soybel's motion to suppress the pen-register evidence and a jury convicted him of 12 counts of violating the Computer Fraud and Abuse Act. This appeal presented a constitutional issue of first impression in this circuit: whether the use of a pen

register to identify IP addresses visited by a criminal suspect is a Fourth Amendment “search” that requires a warrant. The Court of Appeals held that it is not a search because IP pen registers are analogous in all material respects to the telephone pen registers that the Supreme Court upheld against a Fourth Amendment challenge in *Smith v. Maryland*, 442 U.S. 735 (1979).

***United States v. Wood*, No. 20-2974.** Wood was arrested for violating his parole. During the arrest, parole agents found methamphetamine hidden underneath the back cover of his cellphone. An investigator later extracted the data from his cellphone, revealing child pornography. Wood moved to suppress the data, arguing the Fourth Amendment requires a warrant before such a search, asking the Court to apply *Riley v. California* to parolees. The Court of Appeals disagreed and affirmed the denial of Wood’s motion to suppress. The Court held that Wood’s diminished expectation of privacy and the state’s strong governmental interests required a finding that the search of Wood’s cell phone was reasonable.

***United States v. Cole*, No. 20-2105 (en banc).** Cole was pulled over while traveling on an Illinois interstate with an Arizona driver’s license and a California registration. During the detention that followed, the trooper questioned Cole about his license, registration, and travel plans. Cole’s answers led the trooper to suspect that Cole was trafficking drugs. To investigate his suspicions, the trooper called for a K-9 unit to meet him and Cole at a nearby gas station. The dog alerted, and officers found large quantities of methamphetamine and heroin in Cole’s car. Cole moved to suppress the drugs as well as his statements during the stop, arguing the trooper unlawfully initiated the stop and unreasonably prolonged it without reasonable suspicion of other criminal activity. The district court denied the motion, but a divided panel of the Seventh Circuit reversed on the basis that the trooper’s initial roadside questioning unreasonably prolonged the traffic stop. The Court of Appeals heard the case *en banc* and held that travel-plan questions ordinarily fall within the mission of a traffic stop but must be reasonable under the circumstances. The Court held the questions were reasonable in this case given Cole’s answers.

***United States v. Ahmad*, No. 19-3490.** A deputy sheriff observed an RV with a dirty license plate traveling on Interstate 72 and followed it as it pulled into a

truck-stop parking lot. Ahmad, the driver, entered the convenience store with one of his passengers. A store employee informed the deputy that the two men were acting strangely and the officer asked to speak with them before they reentered the RV. They agreed. After a few questions, the deputy asked for his driver's license and rental agreement and then consent to search the RV. Ahmad agreed and also agreed to a dog sniff of the RV. The dog quickly alerted and Ahmad was detained while the deputy searched the RV, where a large quantity of marijuana was discovered. Ahmad moved to suppress the drugs, arguing that his consent to search was involuntary because he had already been seized for Fourth Amendment purposes at the moment the deputy retained his driver's license and the RV rental agreement. The district judge disagreed and denied the motion. The Court of Appeals affirmed finding the deputy's brief possession of Ahmad's license and rental agreement did not transform this otherwise consensual encounter into a seizure. Ahmad voluntarily consented to both the external dog sniff and the search of the RV.

***United States v. Shaffers, No. 21-1134.*** Shaffers was charged with possession of a firearm by a convicted felon after a gun was recovered from his car during an encounter with Chicago police. Shaffers appealed his felon-in-possession conviction on four separate grounds. He argued that the gun should have been suppressed; that his Confrontation Clause rights were violated by admitting a witness's grand jury testimony; that the evidence of possession was insufficient to support his conviction; and that his prior aggravated assault conviction was improperly considered a "crime of violence" at sentencing. The Court of Appeals affirmed. Regarding the suppression issue, it held that based on the totality of the circumstances, including the combination of the loud music and the smell of marijuana coming from his car, the officers had a sufficient basis to block Shaffers' car and investigate. The Court also held that admission of a witness's grand jury testimony did not violate the Confrontation Clause and the evidence of possession was sufficient based on Shaffers' furtive movements in the car and flight from officers. Finally, the Court held his prior Illinois aggravated assault conviction was a crime of violence under the guidelines.

***United States v. Jones, No. 21-1293.*** Jones entered a conditional guilty plea to possessing a firearm as a convicted felon after law enforcement discovered a gun

during a warrantless search of his motel room. A magistrate judge conducted an evidentiary hearing and recommended denying his motion to suppress the gun. The district court accepted the magistrate judge's report and recommendation, concluding that Jones had not been seized, that he consented to the search, and that the search was within the scope of his consent. Jones appealed the denial of his motion to suppress, arguing that he was seized when officers knocked on his motel room door and displayed an arrest warrant for a woman reportedly staying in his motel room. Alternatively, he argues any consent he provided was not voluntary and that the search exceeded the scope of his consent. The Court of Appeals affirmed holding it was clear he was not seized when the officers knocked on the door and his consent was voluntary given the circumstances.

***United States v. Goodwill, No. 20-3188.*** Detectives stopped Goodwill for a window tint violation. After asking Goodwill to sit in the squad car, one detective began completing the paperwork while both detectives asked Goodwill some questions. A canine unit arrived minutes later, before the detective had finished filling out the warning form. The dog alerted to the presence of drugs, and a search revealed two kilograms of cocaine. A grand jury indicted Goodwill on one count of possession of cocaine with intent to distribute. Goodwill moved to suppress the drugs, arguing that the officers unlawfully prolonged the search by asking unrelated questions and conducted the dog sniff without his consent. The district court found that the questions posed to Goodwill did not extend the stop and denied the motion to suppress. Goodwill appealed. The Court of Appeals concluded that the district court did not clearly err and therefore affirm.

***United States v. Skaggs, No. 20-1229.*** Skaggs was charged with twelve counts related to his production and possession of child pornography, based on evidence found in several thumb drives seized from him pursuant to a warrantless border search at Minneapolis-St. Paul International Airport. Skaggs filed a motion to suppress the evidence, which the district court denied. After a bench trial, the district court convicted Skaggs of all counts and sentenced him to mandatory life in prison under § 3559(e). Skaggs challenged the district court's denial of the suppression motion and his sentence on appeal. The Court of Appeals affirmed. First, the Court held that "[n]o court has ever required more than reasonable suspicion for a border search. Because reasonable suspicion



existed here, the district court correctly denied Skaggs's motion to suppress, given the good faith exception." Second, the Court held that the district court made an error in determining the nature of Skaggs's prior convictions under § 39559(e) but the error was harmless because he would have received the same sentence.

***United States v. Price*, No. 20-3191.** Price was convicted by a jury of unlawfully possessing firearms and ammunition as a felon. On appeal, he challenged the district court's denial of his motion to suppress evidence located during warrantless searches, arguing that federal law enforcement used parole officers as a "stalking horse" to circumvent the Fourth Amendment's protections. He also argued the sufficiency of the evidence and various sentencing enhancements. The Court of Appeals affirmed. The Court found that, as a parolee, Price had reduced privacy expectations and his parole agreement included a provision that allowed probation officers to conduct a search based on "reasonable cause." Because probation officers reasonably believed he purchased ammunition and a magazine and went to a shooting range, there was reasonable cause to arrest and search him. The Court also held that the Supreme Court's subsequent decisions in *Knights* and *Samson* have eroded the rationale from *Griffin* which first promulgated the concept of a "stalking horse." The court held that when the government relies on the totality-of-the-circumstances analysis as articulated in *Knights* and *Samson* to justify a parole search under the Fourth Amendment, the stalking horse theory has no application. It reserved for another day whether the doctrine has viability for searches that rely solely on the "special needs" of a state's parole system.

***United States v. Ambriz-Villa*, No. 21-1362.** Following a traffic stop, Ambriz-Villa was arrested after he agreed to a search of his car that turned up nearly 13 kilograms of methamphetamine. Ambriz-Villa moved to suppress the drugs; the district court denied his motion. On appeal, Ambriz-Villa argued that both the traffic stop and the subsequent search of his car violated his Fourth Amendment rights. First, he argued that the scope and manner of the stop was unreasonable, because the officer asked him repetitive and persistent questions not tailored to the reason for the initial stop. Second, he argued that the search was unlawful, either because his consent to search was tainted by an unlawful stop or, even if

the stop was lawful, his consent was not voluntary. The Court of Appeals affirmed holding the stop was not unlawful, and Ambriz-Villa voluntarily consented to the search.

***United States v. Swinney, No. 21-1006.*** The police received an anonymous 911 call reporting that a man wearing a black skullcap and a black coat with fur had just pulled a large gun out of his pocket and walked into a liquor store. After arriving at the liquor store, officers observed Swinney wearing the clothing described in the call and patted him down, finding a loaded gun in his coat pocket. On appeal, Swinney argued the district court should have suppressed the gun because the police did not have reasonable suspicion. The Court of Appeals affirmed, agreeing with the district court that there was reasonable suspicion to detain Swinney because the anonymous call reliably reported criminal activity.

***United States v. Segoviano, No. 20-2930.*** Segoviano was charged in a two-count indictment with possession with intent to distribute a controlled substance and possession of a firearm in furtherance of a drug trafficking crime. Segoviano filed a motion to suppress the evidence uncovered during a search of his apartment and statements made by him to them during his detention. The district court determined that no evidentiary hearing was necessary and denied the motion. He appealed the denial of the motion. The Court of Appeals reversed and remanded holding the pre-arrest detention was constitutionally problematic. The facts relied upon by the district court are insufficient as a matter of law to constitute reasonable suspicion that Segoviano was harboring a fugitive. Therefore, under well-established Fourth Amendment jurisprudence, it was not enough for Segoviano to merely be present in a building in which the agents believed that the fugitive could be located; the mere propinquity to where the fugitive might be located was insufficient to provide reasonable suspicion to detain Segoviano, whose only connection to the facts known to the agents was his residence in the building

***United States v. Ochoa-Lopez, No. 20-3063.*** Agents investigating a suspected drug dealer and his supplier learned that the two men agreed to a large heroin purchase. The supplier, who had recently suffered a leg injury, planned to arrive at a location in Rockford, Illinois to complete the transaction. Shortly after, a

white Corolla pulled into the dealer's driveway for ten to fifteen minutes before leaving. Law-enforcement officers followed the car and pulled it over after observing two traffic violations. Ochoa-Lopez was the driver and the supplier was the passenger. The supplier had a leg injury that required the use of an assistive device. Ochoa-Lopez claimed the two men were just transporting the car for a company. The agents searched the vehicle and discovered a backpack containing over \$47,000 in cash. A grand jury indicted Ochoa-Lopez on drug charges, and Ochoa-Lopez filed a motion to suppress the evidence recovered during the warrantless search of the car. The district court concluded the search of the car was constitutional and denied the motion. The Court of Appeals affirmed finding the agents had probable cause to search the car. The officers had been investigating the drug dealer for several months and had him under surveillance during the day of the transactions. They knew the supplier was coming and had a leg injury.

***United States v. Smith, No. 21-1266.*** Chicago police found a loaded handgun in Smith's underwear after a series of pat-downs during a traffic stop. The government charged Smith with being a felon in possession of a firearm, and he moved to suppress the gun. The district court concluded that the officer had reasonable suspicion to conduct each pat-down because of Smith's unusual body language throughout the stop: repeatedly leaning his pelvis against a car, waddling as if he had something between his legs, and appearing unusually nervous. Smith appealed the denial of the suppression motion. The Court of Appeals affirmed, holding the second and third pat-downs were reasonable after observing Smith's behavior that seemed to indicate something was in his pants. The Court cautioned that "multiple pat-downs during a traffic stop are not the norm and reasonable suspicion must support each pat-down as the stop unfolds."

***United States v. Edwards, No. 20-3297.*** A string of ten armed robberies occurred around the Madison, Wisconsin area in the fall of 2018. Law enforcement believed that one man was behind all ten. One of these robberies occurred on the evening of November 4, 2018, when the unidentified suspect, subsequently identified as Edwards, robbed Neil's Liquor in Middleton, Wisconsin. Security camera footage enabled law enforcement officers to obtain a warrant for a GPS

tracking device on Edwards's vehicle, a black Mitsubishi Outlander. After another armed robbery, a high-speed chase, and the seizure of key evidence, the government charged Edwards with Hobbs Act robbery, brandishing a firearm in furtherance of a crime of violence, being a felon in possession of a firearm, possession with intent to distribute marijuana, and possession of a firearm in furtherance of a drug trafficking crime. A jury found Edwards guilty of all counts. Edwards appealed but the Court of Appeals affirmed. It held there was no error in the denial of the motion to suppress because Edwards failed to identify a false statement or misleading omission in the supporting affidavit. The Court also held the photo identification line up was not unreliable.