

Seventh Circuit Update 2024 – All Case Summaries

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Appellate Practice

***United States v. McGhee*, No. 23-1615.** In his appeal from his convictions for drug trafficking and firearm possession, McGhee raised multiple issues. The Court of Appeals affirmed, holding the district court correctly denied his motion for a *Franks* hearing because he had failed to prove the affidavit contained false statements. The Court also held that the district court correctly denied the motion to suppress because McGhee sought to suppress evidence obtained from his garbage. The Court found that out of the 10 issues McGhee raised, six of them failed because they were waived, moot, or unsupported. The Court also noted McGhee’s attorney failed to comply with the Circuit Rules governing appendices to briefs. The appendix in this case failed to contain the relevant docket entries and the district court’s rulings supporting the arguments he made on appeal. The Court declined to impose a fine in this case but admonished counsel, and reminded the bar, to adhere to Federal Rule of Appellate Procedure 30 and Circuit Rule 30.

***United States v. Tate & Kellogg*, Nos. 22-2060 & 22-2124.** Tate and Kellogg were charged with 10 others with conspiracy to distribute illegal drugs and other drug offenses. Tate and Kellogg proceeded to trial and found guilty by a jury. On appeal, they raised challenges to the sufficiency of the evidence and sentencing enhancements. The Court of Appeals affirmed, holding there was sufficient evidence to show Tate possessed the methamphetamine found in his car jointly with another person. The Court also held that the government provided by sufficient evidence that Kellogg joined the larger conspiracy, not just a conspiracy with one of its members. The Court found the sentencing enhancements were properly applied and, in Tate’s case, even if there had been error, it would be harmless. As to one of the arguments, the Court found that it had been waived because Kellogg’s attorney raised it for the first time at oral argument on appeal.

***United States v. Johnson*, No. 22-1169.** Johnson appealed from his convictions on bankruptcy fraud and related crimes for which he received seven concurrent terms of two years in prison followed by two years of supervised release. His appointed counsel moved to withdraw under *Anders v. California*, 386 U.S. 738 (1967). However, the *Anders* brief did not allege there were no nonfrivolous

issues on appeal, in fact, there was one nonfrivolous issue. But Johnson insisted that counsel raise it alongside other issues he wished to raise that counsel believed are frivolous. The Court of Appeals granted the motion to withdraw because neither current counsel nor newly appointed counsel could ethically present the frivolous issues that Johnson insists upon. The Court allowed Johnson to pursue the appeal *pro se*.

United States v. Njos, No. 21-3412. Counsel was appointed for Njos in this appeal from the revocation of his supervised release. Counsel and Njos disagreed about which issues to raise on appeal and Njos filed a motion to dismiss counsel. The Court of Appeals allowed a form of “hybrid” representation on appeal by allowing Njos to file his own brief in addition to counsel’s brief. The Court reconsidered this decision when counsel raised an meritorious issue that Njos explicitly stated he did not want to pursue and wanted to pursue his own frivolous issue instead. The Court held that hybrid representation is “forbidden” on appeal and noted that such representation may work in some cases, but not when the client expressly disavows the one argument raised by counsel. So, with thanks to counsel, the Court revisited Njos’s motion to dismiss his counsel, granted it, and affirmed on the merits of the issues that Njos wished to raise.

Bruen/§ 922(g)(1) Issues

United States v. Gay, No. 23-2097. Gay was convicted after a jury trial of being a felon in possession of a firearm and ammunition. He challenged the sufficiency of the evidence of the possession of the firearm, which was found where he had fallen after a foot chase with police. The Court of Appeals found there was sufficient evidence he possessed the firearm based on the mixture of bullets found in his motel room matching the mixture of bullets found in the firearm. In addition, the jury could infer that Gay ran from the police so he could get rid of a gun he could not possess. Gay also raised a challenge to § 922(g)(1) based on *Bruen*. The Court of Appeals rejected the challenge without any substantial analysis, noting that Gay was not a “law-abiding, responsible citizen” because he had been convicted of 22 felonies and was on parole at the time of the instant offense. The Court also noted that Gay had not filed a declaratory judgment action like the plaintiff in *Range*.

United States v. Jones, No. 23-2459. In a case granting counsel’s motion to withdraw pursuant to *Anders v. California*, the Court considered whether to suspend briefing pending *Prince* or *Rahimi*. The Court noted, “We

acknowledge that we have stayed some direct appeals until the issue of the constitutionality of § 922(g) is answered. But a stay is not necessary here because Jones has a longer concurrent sentence for his methamphetamine conviction. We have already determined that he could not challenge that longer concurrent sentence, and counsel has not suggested why, in light of this longer concurrent sentence, the Bruen issue remains relevant. Cf. *United States v. Leija-Sanchez*, 820 F.3d 899, 902 (7th Cir. 2016) (holding that the existence of concurrent sentences justifies a refusal to overturn plain error in one sentence).” It is important to note that this is in direct conflict with the Court’s practice in other cases presenting the exact same issue.

***Atkinson v. Garland*, No. 22-1557.** The Court considered a civil challenge to the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), under the Second Amendment. The district court’s decision came before the Supreme Court decided *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). The Court noted *Bruen* was significant because it announced a new framework for analyzing restrictions on the possession of firearms. Lower courts can no longer balance interests - of an individual’s right to possess a firearm and the state’s commitment to promoting personal or public safety - to resolve the constitutionality of the challenged restriction. After *Bruen*, the new approach anchors itself exclusively in the Second Amendment’s text and the pertinent history of firearms regulation, with the government bearing the burden of “affirmatively prov[ing] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127. The Court of Appeals remanded this case back to the district court to allow the district court to undertake the *Bruen* analysis in the first instance.

***United States v. Holden*, No. 22-3160.** Holden sought to buy a firearm in August 2021 and he completed ATF Form 4473. When asked whether he was then under indictment or information, he answered “no,” but that answer was false. He eventually pled guilty to violating 18 U.S.C. § 922(a)(6), which makes it a crime knowingly to make any false or fictitious oral or written statement intended to deceive [an] importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale. He then sought to withdraw the plea in order to contend that 18 U.S.C. § 922(n), which makes it a crime to purchase or receive a firearm while under indictment for a felony, violates the Second Amendment as understood in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The district judge granted this motion and dismissed the indictment, ruling that § 922(n) is invalid. The government appealed. The Court of Appeals reversed holding that the problem with the

district court's approach is that Holden was not charged with violating § 922(n); he was charged with making a false statement to a firearms dealer, in violation of §922(a)(6).

First Amendment

United States v. Osadzinski, No. 22-3140. Osadzinski appealed his conviction for providing material support to a terrorist organization. In 2019 he created a computer program that allowed ISIS and its followers to rapidly duplicate terrorist propaganda videos online and thereby to stay a step ahead of efforts by the United States and other western governments to thwart the organization's media campaign. Osadzinski shared his computer program with people he believed were ISIS supporters, taught them how to use it, and deployed it to compile and disseminate a large trove of ISIS media. Osadzinski argued on appeal that his conviction violated the First Amendment because his actions constituted independent free expression. The Court of Appeals affirmed, holding that, to the extent that Osadzinski engaged in expressive activity, the activity was coordinated with or directed by ISIS, a known terrorist organization.

United States v. Krahenbuhl, No. 22-3264. Seeking to defend veterans' right to express discontent with treatment received at VA medical centers, Jamison Krahenbuhl appealed his disorderly conduct convictions. First, he argues that his convictions violate the Constitution because he has a First Amendment right to shout profanity at medical workers and police at the VA Clinic. Second, he argued that the government failed to prove all the elements of the crimes. The Court of Appeals affirmed, holding the VA Clinic is a nonpublic forum because its primary purpose is to provide veterans with medical care, not a space to exchange ideas. The regulation of speech here was viewpoint neutral and reasonable. The Court also found the evidence was sufficient to support his convictions.

First Step Act

United States v. Williams, No. 23-2313. Williams filed a motion pursuant to the First Step Act which the district court denied. The Court of Appeals vacated and remanded by the district court failed to calculate the amended statutory sentencing range. On remand, Williams updated the motion but the district court denied Williams's request just one day after receiving the updated motion, in an order materially identical to the first one. The Court of Appeals reversed

and remanded again, holding that this was a case that required “a more complete explanation.”

Forced Medication/Sell Hearing

United States v. Fieste, No. 23-1739. Fieste faces charges for threatening to assault and murder two federal judges, three former United States presidents, and the current President. She is currently incompetent to stand trial – Fieste struggles with a mental illness that causes her to experience delusions. In custody, Fieste refused the antipsychotic medication that experts believe will restore her competence. The government moved for permission to involuntarily medicate her to render her competent to stand trial. The district court granted the motion, but the order is stayed pending appeal. The Court of Appeals affirmed in part and vacated and remanded in part. Specifically, the Court held that Fieste’s high likelihood of civil commitment was not raised in the district court and the court was not obligated to consider it *sua sponte*. The Court also rejected her argument that the length of Fieste’s pretrial detention does not extinguish the government’s interests. The Court agreed with Fieste that the district court’s order lacked constraints on medications and dosages and remanded for further proceedings on this issue.

Forfeiture

United States v. Skaggs, Jr., No. 22-2424. Skaggs was convicted in 2020 of producing and possessing child pornography. As part of his sentence, the district court included a broadly worded forfeiture order in the final judgment. Two and a half years later, well outside the 14-day period imposed by Federal Rule of Criminal Procedure 35(a) for correcting a sentence, the government filed a motion asking the court to enter a “preliminary” order of forfeiture itemizing the specific property involved. The district court acceded to the government’s request and entered a preliminary forfeiture order. The Court of Appeals vacated the order, holding any forfeiture ordered at sentencing is part of the final judgment, and the district court lacked the authority to amend that judgment years after its entry.

United States v. Lee, Nos. 22-1293 & 22-2138. Lee committed wire fraud involving a ticket sales scheme for Chicago White Sox tickets. Although the indictment expressly sought forfeiture of Lee’s ill-gotten gains and Lee raised no

objection to that request, the parties disagreed on the amount he would have to pay. The district court skipped the entry of a preliminary order of forfeiture specifying what would be due and what property was subject to forfeiture. The court ordered forfeiture orally at the sentencing hearing but failed to include the forfeiture order in the judgment. After some additional post-judgment proceedings, the court concluded that it was too late to enter a proper forfeiture order, and so it refused to amend the written judgment to reflect its oral sentence. The Court of Appeals rejected all of Lee's substantive issues but reversed and remanded on the government's cross-appeal on the forfeiture issue. The Court of Appeals concluded that, because the written judgment should conform to the oral sentence, the district court had the ability to amend the judgment under Federal Rule of Criminal Procedure 36 to include forfeiture.

Guilty Pleas

United States v. Kamkarian, No. 22-2366. Kamkarian pled guilty, without a plea agreement, to possessing child pornography. He later moved to withdraw that plea, arguing that he had not been competent to plead guilty. The district court ordered a further psychological evaluation, which found that defendant had been competent to plead, and held an evidentiary hearing where defendant testified. The district court found that defendant's testimony at the hearing was not credible, that he had been competent to plead guilty, and that he had done so knowingly and voluntarily. The Court of Appeals affirmed, holding the district court's factual findings are not clearly erroneous and the court did not abuse its discretion in denying the motion to withdraw the guilty plea.

United States v. Fears, No. 22-1934. Fears entered into a plea agreement with an appeal waiver to avoid the risk of multiple substantive sex-trafficking convictions. He argued on appeal that the plea agreement was invalid because he received no benefit because his guidelines range was still high even with charges dismissed, he did not receive acceptance of responsibility, and the government did not file a substantial assistance motion. The Court held that the conditions requiring the government to move for the third level of acceptance of responsibility and file the substantial assistance motion had not occurred because Fears had not completed the tasks required of him to trigger the government's action. The Court of Appeals dismissed the appeal after finding that "consideration for the agreement abounds; the government made multiple concessions, not the least of which was permitting Fears to plead guilty to fewer counts, carrying lower mandatory minimums, than charged in the indictment."

United States v. Crockett, Jr. No. 20--3025. Crockett pled guilty to two counts of possessing a firearm and ammunition as a felon, and he was sentenced under the Armed Career Criminal Act. The ACCA enhanced his sentence if, as he conceded in the district court, he committed three prior qualifying felonies on “occasions different from one another[.]” Crockett’s plea agreement included a waiver of his right to appeal. On appeal Crockett sought to invalidate his plea on the ground that *Wooden v. United States*, 142 S.Ct. 1063 (2022), altered the interpretation of different “occasions,” so that his plea was not voluntary or knowing. Because Crockett’s appeal waiver assumed the risk of this legal development, the Court of Appeals found the appeal waiver blocked the appeal.

Pretrial Proceedings

United States v. Aron, No. 22-2364. Aron was indicted for being a felon in possession in violation of 18 U.S.C. § 922(g)(1). He originally pled guilty pursuant to a binding plea agreement but the district court refused to accept the recommended sentence. Aron decided to proceed to trial and was found guilty. On appeal, he argued the indictment was defective in violation of *Rehaif*. However, the Court of Appeals did not reach the merits of the claim because he failed to preserve a challenge to the indictment by filing a motion to dismiss pursuant to Federal Rule of Criminal Procedure 12(b)(3). The Court also held that he had not shown good cause for failing to preserve the issue. Finally, the Court rejected his arguments that the binding plea agreement had been accepted before the district court rejected it and that the judge interfered with the plea negotiations.

United States v. Mitrovich, No. 23-1010. Mitrovich was indicted for possessing child pornography. In his defense, Mitrovich sought technical information about the software program that Australia and New Zealand had used to identify his computer. The United States did not have that information and, despite repeated efforts, was not able to obtain it. Mitrovich argued that the government was duty bound to produce the requested information under Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure and the Due Process Clause of the Fifth Amendment. The district court disagreed. The Court of Appeals affirmed, holding Rule 16 does not impose an obligation to produce documents held exclusively by foreign authorities and Mitrovich failed to prove either suppression or prejudice under *Brady v. Maryland*.

United States v. Bender, No. 23-1878. While Bender was running from a traffic stop, an officer saw him pull a handgun out of his sweatpants and toss it. Bender

was caught, arrested, and charged with unlawful possession of a firearm. Although many officers responded to the scene, at trial, the government submitted video footage from just one dashboard camera, which did not capture the gun. A jury found Bender guilty. He was convicted and sentenced to 96 months in prison, lower than the Sentencing Guidelines' recommended range but higher than the defense requested. On appeal, Bender challenged the government's conduct during his trial, the jury's credibility determinations while deliberating, and the district court's decision not to sentence him even further below the Guidelines range. The Court of Appeals affirmed, holding the government did not violate due process by failing to disclose the dashboard camera because Bender did not prove the recording was exculpatory and the government did not act in bad faith. The Court also found the jury was entitled to believe or disbelieve the testimony and the district court adequately considered the § 3553(a) factors.

***United States v. Blount*, No. 22-2470.** Blount challenged the district court's failure to make individualized Speedy Trial findings during the COVID-19 pandemic instead of relying solely on the district-wide general orders. The Court of Appeals disagreed, holding that epidemiological considerations permitted the delay of criminal jury trials during the height of the COVID19 pandemic and that district judges may rely on institutional findings such as general orders to fulfil the Speedy Trial Act.

***United States v. Miles*, No. 22-2805.** Miles was sentenced to 240 months' imprisonment for four drug and firearm offenses. On appeal, he challenged his convictions and sentence. The Court of Appeals issued a limited remand with respect to his multiplicitous firearm convictions. The Court affirmed on all other issues, rejecting a *Bruen* challenge to § 922(g)(1) because Miles had not raised the issue below and any such error could not be plain. The Court also rejected challenge to the search warrant's lack of probable cause and held his sentence was not substantively unreasonable.

***United States v. Storme*, No. 23-2615.** Storme challenged the district court's determination to terminate his pretrial release and order him detained pending trial. Storme suffers from mental illness and has attempted suicide three times, most recently threatening to take his life if the district court declined to dismiss his pending criminal charges. At the end of a motion hearing, the district court revoked Storme's pretrial release without notice and without making findings. The court later held a hearing on the issue but ordered Storme's continued detention. The Court of Appeals affirmed, holding revocation was appropriate

because the district court had probable cause to believe Storme had committed crimes while on release and violated his curfew multiple times. However, the Court also found that the violations of curfew a significant time prior to detention was not enough to justify detention. The Court then disagreed with the district court's determination that threatening suicide makes a defendant a flight risk or a risk of nonappearance. It also held that suicide risk alone is not enough to pose a significant danger to justify detention. The Court eventually affirmed because Storme's behavior was escalating in ways that conditions of release could not prevent. Through all of these findings, the Court underscored the importance of adherence to the procedural protections of the Bail Reform Act.

***United States v. Bicknell*, No. 22-2268.** The government failed to disclose evidence to Bicknell that would have been useful to impeach a witness who testified against him at sentencing. The Court of Appeals affirmed, holding the evidence would not have affected the outcome of his sentencing, so the government's failure to disclose does not lead to relief under *Brady* or *Giglio*. The Court took the government to task, however, stating, "the government's failure to adhere to its disclosure obligation deeply troubles us. It failed to inform a criminal defendant before sentencing that one of the government's key witnesses - the defendant's own son - would be testifying pursuant to a cooperation agreement. That agreement was a textbook example of *Giglio* information, and it is very unsettling that more care was not taken to ensure its disclosure before sentencing. Though we must affirm, we do so reluctantly."

Pro Se Issues

***United States v. Underwood*, No. 23-1303.** Underwood chose to represent himself at trial on a felon in possession of a firearm charge. After taking the stand to testify in his own defense, he attempted to invoke his Fifth Amendment right to silence when the prosecutor questioned him on cross-examination. For his continued refusal to answer the prosecutor's question, the judge held him in criminal contempt. Separately, the jury found him guilty of the charged offense. He argued on appeal that his pretrial waiver of counsel was not knowing and voluntary, and that the criminal contempt finding was improper. The Court of Appeals affirmed, holding that the court's inquiry into Underwood's decision to represent himself was "not as thorough as it might have been" but it was sufficient to inform him about the dangers of self-representation. The Court also held that the court does not have to list the specific defenses a pro se defendant should consider. The Court also upheld the contempt conviction.

***United States v. Nichols*, No. 19-2266.** Nichols was charged with sex trafficking and received appointed counsel. Nichols's relationship with his attorneys deteriorated and he sought new appointed counsel. The court denied his request and allowed him to proceed pro se with standby counsel. Nichols then requested a competency evaluation. The court allowed granted the request but the examiners found him competent to proceed. The court agreed. On appeal, Nichols argued the district court erred by finding him competent to stand trial and that he knowingly and intelligently waived his right to counsel. The Court of Appeals affirmed, holding district courts are not permitted to foist counsel upon competent defendants. It specifically found that Nichols's unwillingness to assist counsel does not indicate he had the incapacity to assist counsel.

Restitution

***United States v. Foxx*, Nos. 22-1761 & 22-1360.** Foxx and others were charged with engaging in a scheme to defraud by filing hundreds of fraudulent tax returns. Foxx entered a blind guilty plea to one count of wire fraud under 18 U.S.C. § 1343, and was sentenced to 18 months' imprisonment, one year of supervised release, and \$1,261,903 in restitution. The question on appeal was whether the district court adequately set forth findings as to the scope of the scheme so as to support the restitution award. The Court of Appeals affirmed, holding that evidence existed in the record to support the district court's determination that all of the false returns filed by Foxx during that time period were part of the same scheme to defraud, and the court ordered restitution only as to returns attributable to Foxx.

***United States v. Thompson*, No. 22-2254.** A jury convicted Thompson of making false statements about his loans to financial institutions, and the district court ordered him to pay restitution to cover interest that he still owed. Thompson appealed, challenging the denial of his motion for judgment of acquittal and the restitution order, but the Court of Appeals affirmed. The Court held that 18 U.S.C. § 1014 covers misleading misrepresentations and the evidence was sufficient in this case. The Court also held the district court properly ordered Thompson to pay more than \$50,000 in restitution to the FDIC based on the loan interest it lost because of his false statements.

***United States v. Sweatt*, No. 23-1752.** Sweatt is serving a 384-month sentence. He asked the district court to modify the terms of his restitution obligation based on a change in his financial circumstances pursuant to 18 U.S.C. § 3664(k). The

district court denied the motion on the grounds that it lacked the authority to do so. The Court of Appeals reversed and remanded, holding the district court has the authority under §3664(k) to adjust Sweatt's restitution payment schedule. The Court noted that Sweatt had not asked the fact or amount of restitution to be altered or to usurp the Bureau of Prisons' exclusive authority to impose a pre-release payment plan. He only asked the district court to change the "payment terms" and remove the order that the restitution was payable "immediately."

Stacy v. United States, No. 22-2003. A restitution order in a criminal case required Stacy to pay the government more than one million dollars. But the government also owes Stacy \$75,000 from a Federal Tort Claims Act settlement. The government plans to offset the FTCA settlement against Stacy's restitution debt, to which he objected. The district court rejected Stacy's challenge to the government's use of offset. The Court of Appeals affirmed, holding federal law authorizes the government to offset Stacy's settlement award against his restitution debt.

Sentencing

United States v. Campbell, No. 23-1564. Campbell stole more than 25 firearms from an Indiana home. Eight of those firearms were recovered but the whereabouts of the remaining firearms is unknown. At sentencing, the district court remarked that the missing guns were "likely in the hands of other felons," because felons "are the people who buy stolen guns." On appeal, Campbell argued the district court's statement amounted to impermissible speculation requiring reversal and a new sentencing hearing. The Court of Appeals affirmed, holding that when viewing the sentencing transcript as a whole, it was unpersuaded that the district court improperly relied on either of the statements in imposing Campbell's sentence. It held that the district court had a valid concern was that the firearms were unaccounted for and could end up in the hands of felons and could be used to commit felonies.

United States v. Craft, No. 22-3015. Craft pled guilty to one count of conspiracy to distribute over fifty grams of methamphetamine. At sentencing, the district court applied an enhancement for maintaining a premises for the purpose of manufacturing or distributing a controlled substance under § 2D1.1(b)(12). Craft appealed and challenged the district court's assessment of the enhancement. The Court of Appeals reversed and remanded for resentencing because the record did not support the conclusion that Craft used his home for the primary or principal purpose of manufacturing or distributing drugs. The Court held that

the government presented no evidence that Craft received or stored methamphetamine at his home for later distribution and the parties agreed he did not manufacture methamphetamine there. He transferred methamphetamine to a co-conspirators several times over five months at the residence but did not sell methamphetamine to anyone else at or from the home. In addition, there was no other evidence in the home, such as drug trafficking paraphernalia, that might otherwise indicate that Craft primarily used the premises for drug distribution. The Court also held that the fact that a defendant makes his livelihood selling drugs is not sufficient, by itself, to support the application of the premises enhancement.

United States v. Yates & Connelly, Nos. 22-2994 & 23-1461. Yates and Connelly appeal their sentences following convictions for conspiring to distribute methamphetamine. Both challenge the district court's finding that the conspiracy involved at least 737.1 grams of "ice" methamphetamine, meaning methamphetamine that was at least 80% pure. Yates argues that the government failed to meet its burden of proving the purity of all of the methamphetamine, having only tested a small, unrepresentative amount. Connelly asserts that the court should not have relied on his coconspirators' statements to calculate the total drug weight, and that the full weight was not reasonably foreseeable to him. The Court of Appeals vacated Yates's sentence and remanded for resentencing. the Court found that, although the Guidelines allow district courts to engage in some degree of estimation when determining drug quantity and purity, the government must supply reliable evidence making that approximation reasonable. In the present case, the government failed to present such evidence and only presented purity evidence regarding a short period of a five month conspiracy. The Court affirmed Connelly's sentence.

United States v. Liestman, No. 21-3225 (en banc). Liestman challenged the sentence he received for transporting child pornography in violation of 18 U.S.C. § 2252(a)(1). The district court imposed an enhanced mandatory minimum sentence of 15 years' imprisonment under § 2252(b)(1) because Liestman had been convicted seven years earlier of possessing child pornography in violation of Wisconsin law. The Court of Appeals, sitting en banc, considered whether state conviction qualifies as a predicate conviction under § 2252(b)(1) and which standard should be used to determine whether it qualifies. The Court determined that the appropriate standard was the categorical approach and, using that approach, held Liestman's prior conviction qualified as a predicate. The Court agreed with Liestman that his prior conviction was broader than the generic definition. However, because § 2252(b)(1) requires only that the prior

conviction “relate to” the conduct to trigger an enhanced sentence, analysis is different from statutes that require the prior conviction “involve” certain conduct or necessarily include certain conduct. These requirements are narrower than the ordinary meaning of “relate to.” In so holding, the Court joined the majority of circuits to decide this issue. The majority opinion was written by Judge Scudder and was joined by Judges Sykes, Easterbrook, Brennan, St. Eve, and Kirsch. Judge Wood wrote a dissenting opinion, joined by Rovner, Jackson-Akiwumi, Lee, and Pryor.

***United States v. White*, No. 22-2014.** While serving a state sentence at the Pendleton Correctional Facility in Indiana, White and another inmate ran a heroin-distribution ring inside the prison. After three inmates fatally overdosed, the FBI launched an investigation, and White and three accomplices were indicted for conspiracy to distribute heroin. At sentencing he was qualified as a career offender. He objected to the career-offender guideline based on the Supreme Court’s decision in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019). The Court found Appeals rejected this argument, as it has repeatedly before, holding that the Supreme Court’s decision in *Stinson v. United States*, 508 U.S. 36 (1993), allows it to defer to Application Note 1 as the Sentencing Commission’s authoritative interpretation of the career-offender guideline.

***United States v. Hibbett*, No. 22-2715.** Hibbett challenged his sentence for being a felon in possession of a firearm. Hibbett argued that the district court erred in applying a two-level enhancement under United States Sentencing Guideline § 3C1.2 for reckless endangerment during flight. Hibbett’s theory was that he was merely a passenger in a car that recklessly fled from police and that he did not induce the driver to flee. The Court of Appeals affirmed, finding the evidence before the district court at Hibbett’s sentencing hearing – including video recordings of the car’s dramatic flight from police and statements from the driver that Hibbett twice directed her to continue fleeing – supported the enhancement to his guideline calculation.

***United States v. Creek*, No. 23-1942.** Creek challenged the enhancement for possessing a destructive device because he possessed a chewing tobacco tin. The Court of Appeals held such a tin could be a “destructive device” within the meaning of the National Firearms Act as long as the can is filled with energetic powder, sealed with adhesive, and outfitted with a fuse.

***United States v. Holder*, No. 23-1426.** Holder pled guilty to three charges stemming from dealing methamphetamine. The district court sentenced him to

240 months in prison, a term that was 22 months below the advisory range. Holder challenged his sentence on appeal, arguing the district court failed to consider one of his arguments and failed to attach sufficient weight to his mitigation arguments. The Court of Appeals affirmed.

United States v. Seymour, No. 23-1236. Seymour pled guilty to a RICO conspiracy charge stemming from his involvement in the street gang, Latin Dragon Nation. he was sentenced to 180 months' imprisonment, below the Sentencing Guidelines' recommendation. He argued on appeal the district court erred when (1) making certain factual findings, (2) holding him accountable for murder, and (3) failing to discuss unwarranted sentencing disparities. The Court of Appeals affirmed, finding the district court's credibility findings were not erroneous, and accurately supported its findings that Seymour was involved in murder. The Court also held that the district court considered the disparities.

United States v. King, No. 23-1138. King appealed the district court's application of a four-level enhancement for his leadership role in an arson conspiracy, arguing the district court did not support its application of the enhancement with adequate factual findings. The Court of Appeals agreed and reversed and remanded for resentencing. The Court held the district court did not adequately substantiate why the enhancement was warranted, including what conduct it relied on to find King was a leader.

United States v. Johnson, No. 22-2174. Johnson was convicted of federal firearms and methamphetamine-related drug-trafficking offenses. To determine his sentencing guideline range for the drug-trafficking offense, the district court tallied the amount of methamphetamine Johnson was responsible for dealing. In doing so, however, the district court did not account for whether the drugs in question were actual, pure methamphetamine or a mixture containing methamphetamine. In fact, the court ignored the difference between actual methamphetamine and a mixture or substance containing methamphetamine and treated all of the drugs attributable to him as though they were the former. The Court of Appeals reversed and remanded, finding that the error prejudiced Johnson.

United States v. Gulzar, No. 23-1204. Gulzar was convicted of wire fraud and sentenced to a below-Sentencing Guidelines term of 18 months' imprisonment. He challenged the district court's calculation of the amount of loss on appeal. The district court, relying on the Guidelines commentary, determined that the victim's loss here should be measured at the time she detected the loss. Gulzar

argued the district court could not determine the amount of loss based on the commentary to the guidelines. The Court of Appeals did not weigh in on the circuit split on the amount of loss commentary because either approach would result in considering the commentary. The Court affirmed.

United States v. Gamez, No. 22-2278. Gamez challenged the enhanced sentence he received under the Armed Career Criminal Act. He argued that his prior conviction for Indiana arson did not constitute a violent felony within the meaning of 18 U.S.C. § 924(e) because Indiana arson was categorically broader than generic arson. The Court of Appeals agreed and reversed and remanded for resentencing. The Court noted that the Indiana statute does not require burning and extends to property damage caused by a destructive device. Indiana’s definition of destructive device is broader than the generic definition.

United States v. Bingham, No. 23-2172. Bingham pled guilty to drug offenses. Prior to sentencing, he argued that he qualified for safety-valve relief under 18 U.S.C. § 3553(f). At sentencing, the district court found that Bingham was ineligible for the safety valve because he qualified for a firearms enhancement under U.S.S.G. § 2D1.1(b)(1). The court held he failed to satisfy the safety-valve criterion that the defendant did not possess a firearm in connection with the offense (the no-firearms condition). The Court of Appeals reversed and remanded for resentencing, holding that the safety-valve no-firearms condition is narrower than the Sentencing Guidelines firearms enhancement. The Court stated that just because a defendant qualifies for the Guidelines enhancement does not necessarily mean that he does not qualify for safety-valve relief. This is because a defendant may qualify for the enhancement based on a co-conspirator’s possession of a firearm. But the safety valve limits the accountability for the firearm to the defendant’s own conduct.

United States v. Claybron, No. 22-2665. Claybron’s criminal history category included two “status points” for committing Hobbs Act robberies while on parole for a previous crime. After his sentencing, the United States Sentencing Commission enacted a retroactive amendment, changing how status points are applied. Had that amendment been in effect at his sentencing, Claybron’s criminal history score would have been one point lower, enough to lower his criminal history category and resulting Guidelines range. The Court of Appeals reversed and remanded based on the post-sentencing, retroactive change to the guidelines. The Court rejected the government’s argument that Claybron’s only path to receive the reduction was to file a motion under § 3582(c)(2).

***United States v. Tovar*, No. 22-3024.** Tovar pled guilty to various drug and firearm charges and was sentenced to 101 months in prison. On appeal, he raised three issues: one stemming from attempts to withdraw his guilty plea for the firearm charges and two concerning the calculation of his sentence. The Court of Appeals affirmed. It held the district court did not abuse its discretion by denying Tovar’s request for an evidentiary hearing on his motion to withdraw. The Court also rejected his argument that an Illinois cannabis conviction was broader than the federal definition of marijuana because it was foreclosed by *United States v. Ruth*. The Court also affirmed the district court’s conversion of currency in Tovar’s possession to drug amounts.

***United States v. Pemberton*, No. 21-3224.** Pemberton sold methamphetamine to an undercover informant and pled guilty to distributing drugs. The district court determined his 2003 conviction for conspiracy to commit robbery under Indiana law was a “serious violent felony” under 18 U.S.C. § 3559(c)(2)(F), thereby subjecting him to a 15-year mandatory minimum sentence. On appeal he argued Indiana’s crime of conspiracy is not a categorical match to the federal conspiracy counterpart of § 3559(c)(2)(F) and thus the state crime is not a “serious violent felony” meriting the enhanced minimum. Pemberton raised this argument for the first time on appeal and did not show the district court plainly erred when it determined his prior conviction was a serious violent felony. The Court of Appeals affirmed, holding that the answer to whether Indiana’s definition of conspiracy is a categorical mismatch to the federal counterpart is unclear. Because state and federal authorities point in different directions, it is not obvious that the generic definition of conspiracy in 1994 either included or excluded the unilateral theory of conspiracy. And because it is not obvious, the district court did not plainly err in applying the enhancement for a “serious violent felony” based on the 2003 Indiana conspiracy conviction.

***United States v. Williams*, No. 22-3099.** Williams received a 360-month term of imprisonment for his role in a large-scale methamphetamine trafficking conspiracy, to which he pled guilty. On appeal, he argued his sentence was unreasonable. Williams’s crime involved more than 48 kilograms of methamphetamine and some of the drugs he supplied caused three fatalities. The Court of Appeals affirmed, noting a challenge the reasonableness of a within-guidelines sentence is “the Mt. Everest of sentencing arguments.” Arguing that such a sentence is unreasonable is “is elusive both because of the deference appellate courts owe to district courts in sentencing generally, and because of the presumption of reasonableness attached to sentences recommended by the United States Sentencing Commission.”

***United States v. Prieto*, No. 22-3070.** Prieto appeals his 120-month sentence for unlawfully possessing firearms. The district court imposed two four-level enhancements: one for trafficking firearms to a person whose possession of which Prieto knew or had reason to believe would be unlawful, and another because his offense conduct involved eight firearms. The Court of Appeals affirmed, holding the record supported the enhancements. Specifically, Prieto knew the confidential source was on parole in the earlier transaction and had no reason to believe that changed by the second transaction. In addition, he admitted his conduct involved five firearms and the evidence showed he offered for sale three more.

***United States v. Price*, No. 22-2061.** Price is a transgender woman who was on supervised release. At her supervised release revocation hearing, Price asked the district court to consider the heightened risk of sexual assault she would face in prison. The district court acknowledged the risk of harm to Price, imposed a prison sentence slightly below the statutory maximum, and recommended that the Bureau of Prisons consider Price's safety and gender transition when selecting her incarceration facility. On appeal, Price argued that the district court committed procedural error because it failed to account for her unique vulnerability. Because the sentencing transcript demonstrates that the district court considered Price's concerns, the Court of Appeals affirmed.

***McMullen v. Dalton*, No. 20-3273.** McMullen was convicted in Indiana state court of various drug offenses. His attorney failed to conduct any mitigation investigation for sentencing. In this § 2254 proceeding, the district court concluded the attorney had rendered deficient performance at sentencing but agreed with the state appellate court that McMullen had failed to establish the attorney's deficiencies prejudiced him. The Court of Appeals disagreed, holding that the state appellate court failed to evaluate the totality of the available mitigation evidence and relied on a clear factual error. The Court remanded the case for an evidentiary hearing.

***United States v. Barker*, No. 22-2131.** Barker pled guilty to distributing methamphetamine and was sentenced to 300 months in prison. Barker appealed and argued the district court credited unreliable hearsay when determining his guidelines range. The Court of Appeals affirmed, holding the district court made findings regarding the reliability of the testimony based on the corroborating facts available to it. However, the Court noted that, in cases where hearsay statements could dramatically increase a defendant's guidelines range, the best

practice is for the district court to order the declarant to appear and testify under oath.

***United States v. Tam*, No. 22-2349.** Tam was charged with conspiracy to commit money laundering, money laundering, and operating an unlicensed money transmitting business. He pled guilty and the district court imposed a below-guidelines sentence of 65 months. He raised several challenges to this sentence on appeal. His primary argument was that the district court failed to consider the appropriate factors when denying a reduction for his minor role in the offense. The Court of Appeals affirmed, holding that the district court identified the appropriate factors and essentially adopted the government's argument about those factors.

***United States v. White*, No. 21-2296.** White and several accomplices committed a string of armed robberies in Indianapolis in the late spring of 2017. White was charged with three counts of conspiracy to commit robbery and one count of conspiracy to commit armed bank robbery and pled guilty to all four counts. The district court imposed a sentence of 108 months on each count, running concurrently. On appeal, he argues the 108-month sentence for the bank robbery conspiracy exceeds the applicable statutory maximum. He also argues the district court erroneously applied enhancements for physically restraining a victim "to facilitate commission" of a robbery. The Court of Appeals vacated White's sentence and remanded for resentencing. It held that he could receive no more than 60 months on the conspiracy conviction. It also held that one of the enhancements was incorrectly applied because an accomplice wielding a gun and ordering an employee to move to another area of the store is not a form of physical restraint.

***United States v. Long*, No. 22-2275.** Long is serving an above-guideline prison term for possessing a firearm after being convicted of a felony. He argued on appeal that the district court plainly erred by imposing a prison term in part to rehabilitate him, contrary to 18 U.S.C. § 3582(a) as construed in *Tapia v. United States*, 564 U.S. 319 (2011). The Court of Appeals affirmed, holding rehabilitation is an important consideration in most sentences and *Tapia* permits a judge to discuss rehabilitation so long as she does not make rehabilitation a primary consideration in deciding whether to impose a prison sentence or how long it should be.

***Coleman v. United States*, No. 22-1678.** In 2014, Coleman was sentenced to life imprisonment for conspiring to distribute crack cocaine based on the statutory

mandatory life sentence because he had committed two or more felony drug offenses. Coleman filed a pro se motion under 28 U.S.C. § 2255 to vacate his sentence, arguing that his defense counsel had provided ineffective assistance by not informing him of the potential life sentence. Later, he filed a motion to amend his pleading, expanding on his allegations, but, by that time, the limitations period had run. After ruling against Coleman on his original claim, the district court denied the motion to amend, finding that the amendment did not “relate back” to his initial pleading. The Court of Appeals reversed and remanded holding that the district court abused its discretion in reaching that conclusion. The Court ordered the district court to conduct additional proceedings regarding defense counsel’s failure to raise a challenge that would later become the basis for *United States v. Ruth*. *Ruth* held that the Illinois cocaine statute was broader than the federal statute and, therefore, a prior conviction involving distribution of cocaine in Illinois could not be a felony drug offense under § 851. The Court held that the groundwork for a claim such as the one made in *Ruth* was “foreshadowed” by decisions issued before Coleman’s sentencing in 2014. The Court held that “it would have been objectively unreasonable for Coleman’s defense counsel to have not even considered a categorical challenge to the government’s reliance on prior Illinois cocaine convictions to enhance Coleman’s sentence.”

United States v. Erlinger, No. 22-1926. Erlinger received a prison term of 15 years for illegally possessing a firearm after the district court determined he qualified under the Armed Career Criminal Act because he had three prior convictions for violent felonies – all three of them Indiana burglaries. Erlinger raised two issues on appeal: (1) Indiana burglary is not a predicate offense under ACCA because the state’s definition of burglary is broader than the federal statute, and (2) the three burglaries were not committed on separate occasions and, in any event, the Sixth Amendment requires a jury, not the judge, to decide this question. The Court of Appeals affirmed, holding the law of the Seventh Circuit holds otherwise on all issues.

United States v. Castaneda, No. 21-3010. Castaneda argued he should be resentenced because the district court committed two procedural errors at his sentencing, both related to the court’s mistaken belief that statutory mandatory minimum penalties applied to his case. The Court of Appeals agreed and reversed and remanded the matter for resentencing. The Court held that the district court mistakenly calculated the advisory guidelines range for his term of supervised release after he qualified for safety valve. The Court also held that the district court failed to understand that, because Castaneda met all of the

safety valve requirements, it was required to sentence him without regarding to the mandatory minimum sentence.

United States v. Freyermuth, No. 22-2814. Freyermuth received a 102-month prison sentence for conspiring to distribute methamphetamine and launder money. He appealed, arguing he should have received a minor-role reduction. The Court of Appeals affirmed because the district court adequately compared Freyermuth's role to the average conspiracy member's and applied the relevant guideline factors.

Elion v. United States, No. 20-1725. Elion pled guilty to distributing methamphetamine and the district court sentenced him as a career offender. Elion's attorney did not challenge that designation, and the court imposed a 167-month prison term. Elion filed a § 2255 motion and argued that his attorney's failure to object amounts to ineffective assistance. The district court denied relief. The Court of Appeals reversed and remanded, concluded Elion does not qualify as a career offender. The Court concluded that Illinois's "look-alike statute" encompasses a larger range of conduct, including "advertising", than the guidelines definition.

United States v. Arroyo, No. 22-2008. Former State Representative Luis Arroyo accepted thousands of dollars in bribes to promote sweepstakes-gaming interests in the Illinois legislature and executive branch. When the government uncovered the bribery scheme, Arroyo was indicted and pleaded guilty to wire fraud. The district court sentenced him to 57 months' imprisonment and ordered that he forfeit \$32,500 in bribe money. On appeal, Arroyo argued that the judge erred by finding his 57-month sentence necessary to deter public corruption when the record lacked empirical evidence supporting that conclusion. The Court of Appeals rejected this argument, holding the district court "need not marshal empirical data on deterrent effects before considering whether a sentence adequately deters criminal conduct."

United States v. Hendrix, No. 21-3287. After pleading guilty to one count of possessing a firearm as a felon, Hendrix was sentenced to 78 months in prison, significantly more than the guidelines range of 46 to 57 months. Hendrix appealed, arguing the district court did not adequately consider the § 3553(a) factors. The Court of Appeals affirmed, finding the district court's explanation of the sentence was adequate and considered all of the relevant factors.

United States v. Brown, No. 22-1192. Brown was convicted of bank robbery in violation of 18 U.S.C. § 2113(a). At sentencing, the district court determined that he was a career offender. Brown appealed his sentence, challenging his designation as a career offender based on a prior conviction for aggravated vehicular hijacking. The Court of Appeals affirmed, holding its previous decision that vehicular hijacking was a crime of violence survived the Supreme Court’s decision in *Borden*.

United States v. Caraway, No. 22-2146. Caraway challenged the district court’s assessment of an enhancement for obstruction of justice. The Court of Appeals affirmed without deciding whether Caraway’s actions constituted an obstruction of justice because the district court held it would have imposed the same sentence without the enhancement.

United States v. Otradovec, No. 22-1473. In 2015, Congress enacted 18 U.S.C. § 3014 and thereby directed certain “non-indigent” sex offenders to pay a \$5,000 special assessment within twenty years from the entry of criminal judgment or their release from imprisonment. This appeal involved what it means to be “indigent” within the meaning of the statute. Consistent with the approach of every other circuit to consider the issue, the Court of Appeals held that indigency covers two things: eligibility for appointed counsel and the financial capacity to provide for oneself. Under the second meaning of indigency, district courts should consider a defendant’s financial prospects for repaying the special assessment in future years.

United States v. Saldana-Gonzalez, No. 22-1289. Saldana-Gonzalez was convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court sentenced him to an above-guidelines term of 78 months in prison. On appeal, he challenged the sentence on procedural and substantive grounds, arguing the district court erred by blaming him for Chicago’s problem with gun violence and other inflammatory findings justifying his above-guidelines sentence. The Court of Appeals affirmed, holding district courts may consider an appropriate sentence “against the backdrop of statistics and observations about widespread gun violence in the area.” However, the Court noted the district court “tread on dangerous ground” when it noted its personal fear of driving on the expressway because of “people like Saldana-Gonzalez.” The Court found these comments walked a fine line but did not cross over into “extraneous and inflammatory” comments requiring remand.

Statute of Limitations

United States v. Kelly, No. 23-1449. R. Kelly abused underage girls and was charged with doing so based on conduct occurring in the 1990s and 2000s. By employing a complex scheme to keep victims quiet, he long evaded consequences. He was convicted of this conduct and on appeal, argued that the statute of limitations prevented the prosecution against him because the current statute of limitations was enacted after his conduct. The Court of Appeals affirmed, holding it is not unconstitutional to apply a newer statute of limitations to old conduct when the defendant was subject to prosecution at the time of the change. The Court also rejected his statutory challenges, affirmed the denial of his motion to sever charges, and affirmed his sentence.

Supervised Release

United States v. Perez, No. 22-3282. While on supervised release, Perez was filmed by a surveillance camera holding what appeared to be a firearm. At the supervised release revocation hearing, the government submitted the evidence as evidence. The district court asked the probation officer to narrate the video as it was played during the hearing. Perez objected to the probation officer's narration of the video and asked to cross-examine her. The district court denied that request. The court stated the probation officer was not a witness and that he wanted the narration only to have a record of the video's contents for the hearing transcript. Perez argued on appeal that the district court violated Federal Rule of Criminal Procedure 32.1(b)(2)(C) and his Fifth Amendment right to due process by refusing to allow counsel to cross-examine her. The Court of Appeals affirmed. It held that the probation officer's narration of the video was clearly adverse to Perez and defense counsel should have had the opportunity to cross-examine the probation officer. However, the Court held the error was harmless because the district court did not rely on the probation officer's testimony on any disputed issue.

United States v. Austin, No. 23-2196. Austin violated the conditions of his supervised release and the district court revoked him and sentenced him to eight months in prison. The court did not impose a further term of supervised release. Although he raised an issue on appeal, he was released after the briefs were filed but before oral argument. The Court of Appeals dismissed the appeal because any issues were moot by his release from prison.

United States v. Wilcher, No. 22-1400. Wilcher was convicted of attempted enticement of a minor and travel with intent to engage in illicit sexual activity.

The district court sentenced him to a prison term and a term of supervised release but only discussed the seriousness of Wilcher's offense and not any of his mitigating arguments. The court imposed the mandatory minimum prison sentence but imposed a 10 year term of supervised release based only on the seriousness of the offense. Wilcher appealed, arguing that his sentence is procedurally unreasonable. The Court of Appeals reversed and remanded because the district court failed to adequately explain the chosen sentence, precluding meaningful appellate review. The Court state again that the defendant need not object to the district court's explanation of his sentence in order to preserve the issue for appeal. The Court also held that answering "no" to the question from the district court of "anything else" does not waive the issue.

United States v. Russell, No. 22-1817. A jury found Russell guilty of distributing heroin and fentanyl. The district court sentenced him to a below guidelines sentence of 96 months' imprisonment, followed by three years of supervised release. On appeal, Russell challenged one special condition of his supervised release: that he undergo a sex-offender evaluation to determine whether sex-offender treatment is necessary. In imposing the condition, the district court relied on facts from a police report, summarized in the Presentence Investigation Report. The PSR reported that Russell had been convicted of an offense that involved the sexual assault of a minor. The Court of Appeals affirmed because the district court did not abuse its discretion in imposing the sex-offender assessment as a condition of supervised release.

United States v. Maranto, No. 22-1358. Maranto pled guilty to one count of distribution of child pornography. While serving a term of supervised release for that conviction, he committed an additional offense, which violated the terms of his supervised release. For that offense and other violations of the conditions of supervised release, the district court revoked his supervision and sentenced him to an additional term of imprisonment followed by supervised release. Maranto challenged two discretionary conditions of supervised release - the financial disclosure condition and the condition requiring him to submit to polygraph examinations. The Court affirmed both conditions, holding the financial reporting condition was appropriate giving the need to monitor Maranto's employment and SORNA compliance and holding that the polygraph condition was appropriate as tool to supervise Maranto.

United States v. Cruz-Rivera, No. 22-1325. Cruz-Rivera was convicted of failing to register as a sex offender. The district court sentenced him to forty-one

months' imprisonment and five years of supervised release. Mr. Cruz-Rivera challenged the discretionary condition of supervised release that allows a probation officer, with the assistance of law enforcement, to search his person and property upon reasonable suspicion that he has violated a condition of supervised release or has committed other unlawful conduct. The Court of Appeals affirmed, concluding the district court did not err in imposing the challenged supervised release condition.

Suppression Issues

***United States v. Ostrum*, No. 23-1364.** During a search of Ostrum's home for firearms and narcotics, he told officers he had moved his belongings, including his car, to his father's house two hours away. It turns out the car was not at his father's and was not even Ostrum's. It was a stolen rental car. Ostrum's belongings were inside and a search of the stolen car revealed a gun, methamphetamine, and marijuana, all stashed in two safes. Ostrum denied he knew the car was stolen. On appeal, Ostrum argued he had standing to challenge the search of the stolen car and that search violated his Fourth Amendment rights. The Court of Appeals held that Ostrum lacked standing to challenge the search because he failed to produce evidence that he unaware the car was stolen and the car had license plates registered to him but associated with another vehicle. The Court stated that the burden of proving a privacy interest is the defendant's. The Court also held the existence of probable cause otherwise justified the search under the automobile exception to the Fourth Amendment's warrant requirement.

***Lickers v. United States*, No. 22-1179.** Lickers moved to vacate his child pornography convictions under 28 U.S.C. § 2255, alleging that his trial and appellate counsel rendered ineffective assistance in connection with an unsuccessful motion to suppress. The district court denied relief, and the Court of Appeals affirmed. Lickers was originally charged in state court but successfully moved to suppress all physical evidence seized during a traffic stop leading to his arrest. However, he was then charged in federal court based on the same evidence. The federal warrant failed to inform the judge that the state had suppressed the evidence. In the first appeal, the Court of Appeals held that neither the state nor the federal warrant were supported by probable cause but affirmed based on the good faith doctrine. In this appeal, Lickers argued that his attorneys were ineffective for failing to file a *Franks* motion, failing to question the agents about the state's suppression of the evidence, and failing to argue bad

faith. The Court held that Lickers could not prove he received ineffective assistance of counsel.

***United States v. Cade*, No. 23-1001.** Cade and “T.J.” were standing in the street next to a parked sedan when two Chicago police officers approached. T.J. was drinking from a red solo cup. When the officers asked her what she was drinking, she stated that the drink contained alcohol. The officers also noticed an open bottle of alcohol in the back of the sedan. As a result, the officers executed a search of the car, during which they recovered a firearm. After the officers read Cade and T.J. their *Miranda* rights, they asked about the firearm. Cade admitted that it belonged to him and that he did not have a proper license to carry the weapon. The officers consequently took Cade into custody. The government charged Cade with one count of possession of a firearm by a felon and Cade unsuccessfully sought to suppress evidence of the gun and his incriminating statements. The Court of Appeals affirmed the district court’s denial of the motion to suppress, holding that the initial encounter with the officers was consensual, and Cade’s incriminating statements were sufficiently attenuated from any allegedly unlawful seizure.

***United States v. Johnson*, No. 22-2932.** Johnson was pulled over for driving with a suspended license. The deputy had his trained dog sniff around Johnson’s car. The dog alerted to the scent of a controlled substance, prompting the deputy to search the car, finding drugs, drug paraphernalia, and two handguns. Johnson moved to suppress all evidence, contending that the search of his car violated his rights under the Fourth Amendment. The district court denied the motion. Johnson then pleaded guilty but he reserved his right to appeal the suppression ruling. The Court of Appeals found that the deputy did not unconstitutionally prolong the stop to conduct the dog sniff and affirmed.

***United States v. Hueston*, No. 23-1057.** A tipster alerted law enforcement that Hueston was dealing drugs out of apartment. After a brief investigation, detectives obtained a search warrant and discovered Hueston along with drugs, cash, a gun, and ammunition in the apartment. Hueston moved to suppress the evidence, arguing that the detectives deliberately or recklessly made misleading omissions and misrepresentations to obtain the search warrant. The district court denied Hueston’s motion to suppress after holding a *Franks* hearing. Hueston appealed. The Court of Appeals affirmed, agreeing with the district court’s denial of the motion. The Court found that the affidavit was lacking and should have included information about the tipster’s identity and the target car registration. The Court noted that the affidavit “did not give a full picture of the

investigation and fell short of what we expect from an investigating officer.” However, the Court also relied on the district court’s determination that the officers who testified at the *Franks* hearing did not act with recklessness or deliberate intent to mislead.

United States v. Hudson, No. 23-1108. Early in the morning in January of 2022, Hudson walked into the Carle BroMenn Medical Center seeking emergency treatment for a gunshot wound. While an officer investigating the shooting stood outside Hudson’s hospital room, medical staff discovered Hudson was concealing “something plastic” in his mouth. Medical staff spent nearly twenty minutes admonishing Hudson to spit out the item before he finally complied, revealing a device used to convert a firearm into a fully automatic weapon. Hudson was indicted and moved to suppress the device, arguing that the medical staff acted as government agents in conducting a warrantless search. The district court denied the motion and Hudson appealed. The Court of Appeals affirmed, holding that an officer had some interaction with medical staff but the officer did not attempt to induce or control medical staff’s actions. In addition, medical staff did not act with the purpose of assisting law enforcement.

United States v. Maxwell, No. 22-2135. During a warrantless search of Maxwell’s apartment, police found evidence of illegal drug activity. That evidence was seized, and he was charged with various drug-related crimes. Maxwell moved to suppress that evidence, arguing that the search was not justified by exigent circumstances and the officers’ manner of entry was unreasonable. The district court denied the motion and Maxwell conditionally pled guilty. He appealed, arguing the search violated the Fourth Amendment. The Court of Appeals affirmed, holding that when the police entered Maxwell’s apartment, they had an objectively reasonable basis for believing someone was injured inside, their entrance did not cause excessive or unnecessary damage, and they searched only in places where an injured person could be.

United States v. Alexander, No. 22-2802. Officers observed Alexander with a gun on surveillance footage, went to the scene, apprehended and frisked him, and found a gun in his waistband. Alexander was charged with being a felon in possession of a firearm. He moved to suppress the firearm evidence based on the lack of probable cause. The district court denied the motion and Alexander appealed. The Court of Appeals affirmed because the officers observed Alexander commit a crime and then behave suspiciously when they arrived on the scene, thereby providing probable cause.

***United States v. Outland*, No. 22-1485.** Outland was arrested and charged with distributing heroin. He moved to suppress incriminating statements that he had made to the police on the grounds that his statements were not voluntary and that he had not knowingly and intelligently waived his *Miranda* rights. The district court denied his suppression motion, and Outland entered a conditional plea of guilty, reserving the right to appeal the denial of his motion. In the first appeal, the Court of Appeals held that the district court failed to determine whether Outland had knowingly and intelligently waived his *Miranda* rights, instead focusing solely on the voluntariness of his statements. The Court remanded to permit the district court to make the omitted determination. On remand, the district court decided that Outland had knowingly and intelligently waived his *Miranda* rights. In this second appeal, the Court of Appeals affirmed.

***United States v. Jackson*, Nos. 22-1003 & 21-2811.** A jury found Jackson guilty of charges of sex-trafficking a minor (“Jane Doe”), child pornography, witness intimidation, and cyberstalking. On appeal, Jackson argued he should be granted a new trial on two grounds. First, he contended the district court erred by denying his motion to suppress incriminating statements he made to police in his first interview with them. Second, he contended he was entitled to a jury instruction limiting the use of voicemails in which he threatened Doe and her family. The Court of Appeals affirmed, holding that it did not need to determine whether Jackson’s statement that “I’d rather have a lawyer” was an unambiguous request for an attorney because Jackson reinitiated conversation with the officers after making the statement. The Court also held that because the voicemails were direct evidence of the witness intimidation offense, there was no error in the court’s failure to give a limiting instruction. In addition, the Court held that any error was harmless.

***United States v. Salazar*, No. 22-2696.** When police officers arrested Salazar, they searched his nearby jacket and found a gun. In the subsequent prosecution for possessing a firearm illegally, Salazar unsuccessfully moved to suppress the gun. The district court ruled that the police had conducted a valid search incident to arrest because Salazar could reach the jacket (and gun) and, in any event, he had abandoned the jacket. On appeal, he argued that the district court erred by finding that he could reach the gun and had abandoned the jacket. The Court of Appeals affirmed, concluding the search was a lawful search incident to Salazar’s arrest on a pending warrant. The Court concluded that *Arizona v. Gant*, 556 U.S. 332 (2009) did not require separate analyses of whether an arrestee is secured and whether the searched area is within reaching distance. Instead, *Gant* stands

for the principle that a search incident to arrest is reasonable if it is possible that an arrestee can access a weapon or destroy evidence.

***United States v. Miller*, No. 22-1896.** Miller pled guilty to possessing a firearm as a felon but reserved the right to appeal the denial of his motion to suppress the firearm and other evidence found in his car. He argued that the police conducted an unlawful search by using his key fob to identify his car. The Court of Appeals affirmed, holding it did not need to decide whether activating the key fob was a search within the meaning of the Fourth Amendment. Even if it was, the district court correctly held that the evidence was admissible under the independent source doctrine. Specifically, a warrant was obtained to search the car without reference to the key fob at all and there was additional evidence that the car belonged to Miller without the use of the key fob.

***United States v. Beechler*, No. 21-3379.** A jury convicted Beechler of drug trafficking and firearms offenses based on evidence gathered pursuant to a home detention compliance check. Beechler alleged that the search was an unlawful warrantless law enforcement search disguised as a home detention compliance check, and thus violated his Fourth Amendment rights. The Court of Appeals affirmed, finding Beecher's expectation of privacy was minimal, and the government's legitimate needs were significant. The Court held that the search did not violate his Fourth Amendment rights.

Trial Issues

***United States v. White*, No. 23-1315.** White was convicted by a jury of possessing marijuana with intent to distribute, possessing a firearm in furtherance of a drug trafficking crime, and possessing a firearm as a felon. On appeal, he challenged his firearm convictions arguing the evidence was insufficient to establish he possessed the firearm in question. He also argued the district court improperly instructed the jury, permitting it to find him guilty based solely on his admission that he touched the gun a week before his arrest. The Court of Appeals affirmed, holding the evidence sufficient for each conviction and the instruction was not misleading. The Court noted that, when White was questioned about the firearm, he knew exactly which firearm they were discussing and admitted he had touched it a week prior. The firearm was also close to White in the car on the day of the offense, close to the drugs he was charged with possessing, along with scales and other items tying him to the firearm.

United States v. Biancofiori, No. 21-3372. A jury convicted Biancofiori of sex trafficking by force, in violation of 18 U.S.C. §1591, and he was sentenced to 360 months in prison plus supervised release for life. Between 2007 and 2016, Biancofiori compelled nine adult women to engage in prostitution, beating them if they tried to escape or failed to hand over their receipts. On appeal, Biancofiori argued that §1591 covers only the sex trafficking of minors, not adults, and/or is unconstitutional. The Court of Appeals affirmed and held that the statute clearly applied to both children and adults and was constitutional.

United States v. Christophel, No. 23-1542. Christophel was convicted by a jury of knowingly attempting to persuade, induce, or entice a minor to engage in sexual activity. On appeal, he argued that the district judge erred by giving a jury instruction that misstated the elements of the crime and described a broader category of behavior than that proscribed by the statute. The Court of Appeals affirmed, holding that the jury instructions, when considered as a whole, accurately summarized the law. In addition, the Court found that Christophel was not prejudiced by any error because the evidence was overwhelming.

United States v. Johnson, No. 23-1264. Johnson was indicted for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Prior to trial, the government brought an interlocutory appeal challenging the district court's decision to exclude evidence that the firearm in question had an attached laser sight and that two key witnesses saw the sight activated when defendant possessed (and brandished) the firearm. The district court found that any evidence regarding the laser sight would cause unfair prejudice to the defendant that would substantially outweigh its probative value. The government proposed to limit the laser sight evidence to reduce any risk of unfair prejudice. The Court of Appeals reversed the district court's exclusion of the evidence, stating the government's ability to offer evidence identifying a weapon the accused is charged with possessing unlawfully is important, even if that identifying evidence tends to show the weapon is particularly dangerous. The Court held that the district court both understated the probative value of the identifying laser sight evidence and overstated the risk of unfair prejudice to the defendant. The Court ordered that, upon remand, the government would be allowed to present its limited version of the evidence, accompanied by an appropriate limiting instruction.

United States v. Pierson, No. 21-3248. A jury found Pierson guilty of one count of unlawful possession of a firearm by a felon. He appealed, arguing the district court failed to hold a hearing to determine whether he had knowingly and

voluntarily waived certain rights when he entered into a proffer agreement with the government; and erred by allowing a witness to testify about the course of the investigation that led to his arrest. The Court of Appeals affirmed, holding that no hearing was necessary because Pierson had provided only conclusory statements that he did not sign the proffer agreement knowingly and voluntarily. The Court also held that there is a concern about the use of course of investigation testimony but, in this case, the evidence addressed issues created by defense counsel in opening statements and the district court issued a limiting instruction to the jury.

***United States v. McGhee*, No. 22-3306.** Early the morning of February 13, 2021, the police in Peoria, Illinois received a 911 call reporting domestic violence. The caller told responding officers that McGhee, her husband and alleged abuser, had fled the house toward a nearby apartment complex carrying a gun and leather bag. Footprints in the snow led the police to McGhee, who was hiding near an apartment building. Moments later a K-9 unit found a leather bag under a nearby dumpster. Federal charges followed for the handgun and cocaine found in the bag, and McGhee chose to go to trial. The district court precluded McGhee from testifying in any way about the domestic violence – even prohibiting him from denying the allegation – and threatened to jail him and his defense counsel for six months if they violated the court’s admonishment. Although the Court of Appeals found that the district court’s conduct was “most unsettling,” the error did not affect the trial. The Court affirmed, “with some unease.”

***United States v. Wright*, No. 22-2922.** Drug dealers from the Quad Cities traveled to Colorado to buy kilos of meth from Wright. After the dealers testified on behalf of the government, Wright was convicted of conspiring to distribute and possessing with intent to distribute methamphetamine. On appeal, Wright argued her attorney had an actual conflict of interest. A witness told the government during trial prep that Wright’s attorney had encouraged him to change his testimony. Wright conferred with her attorney during a break and confirmed she understood the potential conflict and agreed with the strategy not to call the witness. The attorney denied the allegation and neither side called the witness at trial. She also challenged the sufficiency of the evidence supporting her conspiracy conviction. The Court of Appeals found Wright had not shown there was an conflict of interest and there was sufficient evidence.

***United States v. Pacilio & Bases*, Nos. 23-1528 & 23-1530.** Pacilio and Bases appeal their convictions for fraud through the manipulation of the precious metals market by “spoofing” – placing a deceptive order with no intent to trade

to push the market in a certain direction. They challenge their convictions on due process grounds, and they dispute several evidentiary rulings at trial. They assert the commodities and wire fraud statutes are unconstitutionally vague as applied to them in violation of the Fifth Amendment's due process guarantee. They also challenge the sufficiency of the evidence supporting their convictions for conspiracy to commit wire fraud and Pacilio's conviction for commodities fraud. Finally, they argue the district court abused its discretion in admitting the testimony of the CME representatives and bank officials and excluding certain evidence of Bases's good faith. The Court of Appeals affirmed.

United States v. Medrano, No. 22-3219. A jury found Medrano guilty of conspiracy to possess with intent to distribute controlled substances. He challenged that conviction on appeal, arguing that a trial exhibit - screenshots of a text message conversation between him and another individual - should not have been admitted because the conversation was hearsay. The Court of Appeals affirmed, holding that because of the considerable evidence introduced against Medrano, any error in admitting that exhibit was harmless.

United States v. Diggs, No. 22-1502. A jury convicted Diggs of armed robbery and other associated crimes after he and three others held up an Illinois jewelry store. He challenged two evidentiary rulings on appeal. He argued that the district court should not have permitted his wife to testify against him. However, the Court of Appeals held that she was a coconspirator, so the spousal testimonial privilege did not apply. He also argued that certain hearsay testimony from the case agent should have resulted in a mistrial. The Court of Appeals held that any evidentiary error was harmless and the district court did not abuse its discretion in refusing to grant a mistrial.

United States v. Garcia, No. 21-2434. Garcia provided logistical assistance while another man unloaded items from a secret compartment on an empty bus. The items turned out to be controlled substances. Based on his involvement in the affair, Garcia was convicted of possession with the intent to distribute controlled substances, and conspiracy to do the same. On appeal, Garcia raised two issues stemming from his trial. First, he challenged the district court's denial of his motion for a judgment of acquittal based on his lack of knowledge of what was in the secret compartment. The Court of Appeals affirmed, finding there was sufficient evidence to show Garcia knew the bus contained controlled substances. Second, he challenges the court's denial of his motion for a new trial based on notes that jurors submitted to the court during trial showing the jurors were deliberating prematurely and otherwise not following the court's instructions.

The Court also affirmed on this issue, holding that, although the multiple juror notes show something strange was happening with the jury, it could not say the district court abused its discretion concluding that the strangeness did not rise to the level of misconduct.

United States v. Jones & Schimenti, Nos. 21-1482 & 21-1672. A jury convicted Jones and Schimenti of providing material support to the terrorist organization ISIS. The jury rejected an entrapment defense advanced by Jones. The district court also rejected Jones's argument that the evidence showed that the government overstepped and induced his commission of the offense. The Court of Appeals affirmed, holding the district court properly instructed the jury on the elements of entrapment and the district court correctly denied the motion for judgment of acquittal. The Court also affirmed the motion for new trial based on information learned after trial regarding a substantial payment the government made to a confidential source shortly after the jury convicted both defendants. Although the Court noted this occurrence "raises many questions," it could not conclude that an earlier disclosure of a planned or contemplated post-trial payment would have resulted in the jury acquitting Jones or Schimenti.

United States v. Gunter, No. 22-1546. Gunter was convicted of conspiracy to distribute methamphetamine and sentenced to 300 months in prison. He appealed the conviction, arguing that he was denied his Sixth Amendment right to a speedy trial and his motion to sever his trial from his co-defendant's trial. His trial was postponed after his co-defendant's defense attorney died unexpectedly two weeks prior to trial. Trial ultimately began 23 months after indictment. The Court of Appeals affirmed, holding that Gunter had failed show legal support for his argument that severance was required to protect his right to a speedy trial. The Court also held that none of the factors pointed toward a Sixth Amendment violation here.

United States v. Xiao, No. 22-2758. Xiao taught mathematics for many years at Southern Illinois University Carbondale. He also did academic work based in China, for which he has received more than \$100,000 in payments. An investigation of certain grant applications by Xiao led FBI agents to take a deeper look at his finances. He was ultimately charged with wire fraud, making a false statement, failing to disclose his foreign bank account on his income tax returns, and failing to file a required report with the Department of the Treasury. At trial, Xiao was acquitted of wire fraud and making a false statement, but a jury found him guilty of filing false tax returns and failing to file a report of a foreign bank account. He appealed, arguing the evidence was insufficient, primarily on the

question of willfulness, that the tax return question was ambiguous, and that the foreign-account reporting regulation is invalid. The Court of Appeals affirmed, holding, the government's evidence permitted the jury to find beyond a reasonable doubt that Xiao acted willfully in choosing not to disclose his foreign bank account, the tax return form was not ambiguous, and the foreign-account reporting regulation is invalid.

United States v. Simmons, No. 22-1321. Simmons used another person's Social Security number to open a savings account and apply for multiple loans and credit cards at a credit union. A jury convicted Simmons of bank fraud and aggravated identity theft. On appeal, Simmons challenged his conviction for aggravated identify theft, arguing that there was insufficient evidence to prove that he knew the Social Security number was real. He also challenged the district court's loss amount finding at sentencing. The Court of Appeals affirmed, holding it was reasonable for the jury to conclude Simmons knew the Social Security number was real because he authorized a credit report, received the report, and then used the number to apply for a credit card and a car loan. The Court also affirmed the amount of loss.

United States v. Griffin, et al., Nos. 21-3326, 21-3352, 21-3361, 22-1012, & 22-1075. A jury convicted the defendants for their roles in a scheme to defraud the Small Business Administration. The defendants challenged their convictions and sentences on multiple grounds. The Court of Appeals affirmed on all issues, with the exception of correctly a clerical error in one defendant's judgment. Specifically, the court concluded the government did not constructively amend the indictment, the government did not pursue a right to control theory of fraud but rather the deprivation of loan guarantees, the jury instructions were appropriate, and the evidence was sufficient. The Court also affirmed the calculation of the loss amount and restitution.

United States v. Newton, No. 21-3270. Newton challenged the conviction and sentence she received for her involvement in a scheme to defraud Medicare. First, she argued that she was denied a fair trial because she could not question a witness who invoked the Fifth Amendment's protections against self-incrimination. The Court of Appeals affirmed on that issue because the district court rightly concluded that the witness's invocation of the Fifth Amendment was proper and the government's refusal to issue immunity to that witness did not distort the fact-finding process. Second, Newton argued that her sentence was procedurally flawed because the district court's calculation of Medicare's loss attributable to Newton was unreasonable. The Court of Appeals agreed,

holding the district court's loss amount was based on speculation regarding the defendant's participation in the entire scheme.

United States v. Coney, No. 22-1429. A jury convicted Coney on multiple charges of sex-trafficking minors. The issue on appeal arose while the jury was deliberating. The parties and court realized that the laptop computer that had been sent back with the jury containing the evidence for the jury to consider had too many files on it. The court ordered the computer removed from the jury deliberation room. While the parties were attempting to sort out what had happened, the jury reported that it had reached a verdict. That verdict was never examined by the court but was destroyed. After a weekend break to figure out what had happened, briefing on the issue, a curative instruction, and more deliberation time, the jury returned its verdict of guilty on all counts. Coney then moved for a new trial, and the district court carefully considered the inadvertently provided evidence that the defense highlighted as unfairly prejudicial. The court denied the motion for a new trial, finding no reasonable possibility that the evidence affected the jury's verdict. The Court of Appeals affirmed, holding the error was harmless based on overwhelming evidence of guilt. The Court also held there was no reasonable possibility that the evidence affected the jury's verdict.

United States v. Page, No. 21-3221. Page made two arguments on appeal challenging his conviction for participating in a conspiracy to sell heroin. He argued the government presented insufficient evidence at trial to justify his conviction. He also argued the district court committed plain error by failing to instruct the jury on the difference between a buyer-seller relationship, which is how Page characterizes his connection to the top drug dealer in his case, and a conspiracy, where two parties share some joint purpose in building a drug business together. The Court of Appeals agreed that the evidence at trial warranted a buyer-seller instruction to the jury and reversed and remanded on that ground.

United States v. Donoho, No. 21-2489. After downloading images of child pornography from an internet address associated with defendant Shannon Donoho, law enforcement officers executed a search warrant at his Wisconsin residence and recovered digital images of child pornography and evidence that he had produced child pornography. Donoho was charged by superseding indictment with possession of child pornography and production and attempted production of child pornography. A jury convicted him on all counts. Donoho now appealed his convictions, contending that the jury was improperly

instructed and that there was not sufficient evidence to support the jury's verdict. The Court of Appeals affirmed, holding that § 2251(a) "requires that the offender create images that depict a minor, and not the offender alone, engaged in sexually explicit conduct." So long as the visual depiction at issue depicts a minor engaged in sexually explicit conduct, a defendant may "use" the minor within the meaning of § 2251(a) without causing the minor to act in any particular way. The Court also held that the defendant's intent is a proper consideration in the determination of whether an image is "lascivious."

United States v. Evans, No. 22-1195. Evans was convicted after trial on drug and gun charges and received a sentence of about 66 years. The sentence was a product of his having a prior conviction under 18 U.S.C. § 924(c) and then being convicted of two additional § 924(c) charges in this case. On appeal, he challenged the two § 924(c) convictions and the district court's denial of his motion for a new trial. The Court of Appeals reversed, holding the district court committed error in allowing the two § 924(c) convictions to stand because the evidence before the jury showed that Evans made a single choice to possess a firearm over a continuous 30-minute span that included a sale of heroin to a confidential informant at a gas station and the police later finding methamphetamine and a gun in his car. Those facts support one § 924(c) conviction, not two. The Court also found a second aspect of the case concerning - the district court's denial of Evans's motion for a new trial without an evidentiary hearing after contending his trial attorney was ineffective as a result of heroin addiction. Evans's trial counsel overdosed on heroin less than three weeks after trial, and his counsel's girlfriend told the police that he had suffered from heroin and alcohol addiction for many years. The Court remanded and ordered the district court to hold an evidentiary hearing.

United States v. Sorenson, No. 22-1801. A grand jury indicted Sorensen on one count of possession of a firearm as a felon. He filed a motion in limine to present an innocent possession defense at trial. He conceded the only purpose of the motion was to preserve the opportunity to persuade the Court of Appeals to recognize such a defense. The district court denied the motion. Sorensen then entered a conditional guilty plea, reserving the right to appeal the denial of his motion in limine. The Court of Appeals declined to recognize an innocent possession defense to 18 U.S.C. § 922(g)(1) and affirmed.

United States v. Hartleroad, No. 22-1156. A jury found Hartleroad guilty of attempting to sexually exploit a child. That statute prohibits, among other acts, employing or using a minor to engage in sexually explicit conduct for the

purpose of producing any visual depiction or transmitting a live visual depiction of such conduct. The indictment charged him only with producing, but the jury was instructed that Hartleroad could be found guilty under either prong. On appeal, Hartleroad contested the sufficiency of the evidence sustaining his conviction. For the first time, he also argued (1) that the jury instructions constructively amended the indictment, and (2) that, in any event, the indictment charged conduct not prohibited under § 2251(a). The Court of Appeals affirmed.

United States v. Bard, et al., Nos. 21-1521, 21-2618, & 21-2689. The defendants were convicted of possession of methamphetamine with intent to distribute. McClure and Payne raised three categories of arguments on appeal. First, they argue that the government impermissibly struck a Black potential juror in violation of *Batson*. They argued that the government's explanation for striking this juror - that he had a brother with a drug dealing conviction - was pretext because some white jurors who were not stricken also had relatives who had been involved with drugs. Second, they argued that the district court erred in permitting a detective to offer both expert and lay opinions at trial, and that the court failed to adequately instruct the jury as to his dual-role testimony. Third, they contended that the evidence supporting their convictions was legally insufficient. The Court of Appeals affirmed.

United States v. States, No. 22-1477. During the summer of 2001, States belonged to a drug trafficking organization known as the Carman Brothers Crew. He participated in four kidnappings, during which he beat and threatened his victims to extort information, drugs, money, and other property for the Crew's benefit. When FBI agents and Chicago police officers went to States's apartment in 2002 to arrest him, States opened fire and hit one police officer in the finger. States was charged with racketeering, attempted murder, kidnapping, drug possession, and firearms offenses. A jury convicted him on all counts, and he was sentenced to life plus 57 years in prison. After spending more than 15 years challenging his convictions and sentence, the district court resentenced him in 2022 to 30 years. The Court of Appeals held that the Supreme Court's recent *Taylor* decision only applies to attempts to commit crimes that can be completed by threat of force. The Court then considered whether attempted murder is a crime of violence under § 924(c). The Court had previously decided that it was in *United States v. Hill*. Because a completed murder, unlike a Hobbs Act robbery, can always require use of force. The Court held *Taylor* abrogates *Hill* only to the extent that *Hill* reasoned that "when a substantive offense would be a crime of violence, an attempt to commit that offense is also a crime of violence."

The Court upheld *Hill*'s separate conclusion that "an attempt to commit a crime should be treated as an attempt to commit every element of that crime."

***United States v. Leal*, No. 22-1808.** A jury convicted Leal of attempted enticement of a minor based on his interactions on a dating application with FBI agents posing as a 15 year old boy. He appealed the district court's denial of his motion for a judgment of acquittal, challenging an instruction given to the jury regarding the government's use of deceptive practices during the investigation and the sufficiency of the evidence to prove that he was not entrapped. The Court of Appeals affirmed, holding that Leal had waived his challenge to the jury instruction when his attorney stated "no objection" during an "in-depth discussion" of the jury instructions. The Court also held the government provided sufficient evidence to show Leal was not entrapped.

***United States v. Bahena*, No. 22-1691.** Bahena appealed from a jury conviction for conspiring to possess cocaine with intent to distribute. He argued that the government's expert witness testified beyond the scope of his expertise and that the government did not present enough evidence to support the conviction. The Court of Appeals affirmed, holding that although the expert testified broadly, Bahena had not shown any potential error affected his substantial rights because there was plenty of evidence of his guilt from other sources. The Court rejected the government's argument that because the expert did not testify in a dual role capacity, any error was less prejudicial.

***United States v. Snyder*, No. 21-2986.** Snyder is a former mayor of Portage, Indiana. He was convicted of federal funds bribery in violation of 18 U.S.C. § 666(a)(1)(B) for soliciting and accepting \$13,000 in connection with the city's purchases of garbage trucks. Snyder was also convicted of obstructing the administration of federal revenue laws in violation of 26 U.S.C. § 7212(a) for concealing assets and income from the IRS. He challenged his convictions on several grounds. The Court of Appeals affirmed, holding that Snyder's Sixth Amendment right to counsel was not violated with the government seized his emails, including emails with his attorney, because the emails pre-dated his indictment. The Court also held that his conviction for obstructing the IRS was not barred by the statute of limitation and was supported by sufficient evidence. Finally, the Court held that 18 U.S.C. § 666 applies to gratuities and does not require evidence of a prior quid pro quo agreement.

***United States v. Granger, et al.*, Nos. 21-2874, 21-3056, & 21-3382.** A jury convicted Granger, King, and Walker of conspiring to distribute heroin and

methamphetamine in and around Indianapolis, Indiana. The jury also convicted them of some firearms offenses. They appealed and presented seven issues. The Court of Appeals only addressed two of them. First, the Court found that the district court did not err in failing to strike a juror for cause. The juror was a retired police officer and expressed equivocation regarding evaluation of the evidence, particularly the testimony of police officers. The Court declined to apply a de novo standard of review and concluded deferential review was appropriate. The Court also rejected the argument that the last statement made by the juror regarding evaluating the evidence fairly should be the statement used to evaluate his mindset. Second, the Court found the district court failed to address whether some relevant conduct was reasonably foreseeable to Walker and remanded for resentencing.

***United States v. Baird*, No. 22-1877.** Baird responded to an online FBI sting operation advertising the opportunity to have sex with a ten-year-old girl. Believing the ad’s author was the child’s father, Baird discussed his desired sexual activity in graphic detail and also offered to bring the child candy as a gift. Baird drove to the agreed-upon meeting place later that day only to encounter the FBI and find himself under arrest. The district court convicted him after a bench trial. Baird appealed, arguing the evidence was insufficient. The Court of Appeals, finding Baird’s sexual conversations with the “father” and bringing requested gummi bears to the agreed location where he expected to have sex with a child was enough evidence.

***United States v. Baldwin*, No. 22-1835.** Baldwin and her then-husband, Russell Taylor, sexually exploited four girls, including her two daughters and her niece. They conspired to produce and distributed explicit videos – some secretly recorded – of the girls. She sexually assaulted three of them. A jury convicted her of those crimes. On appeal she argued that her prosecution was vindictive because she was not prosecuted until after Taylor’s first conviction was vacated and that her sentence is excessive. The Court of Appeals affirmed, holding the vindictive prosecution claim lacked evidentiary or logical support. Baldwin offered only speculation about the timing of her indictment and the record reveals that she was prosecuted after new prosecutors took a new look at the case. In addition, Taylor’s case was vacated based on his attorney’s incompetence, not based on misconduct or mistakes by the government. The Court also rejected her argument that her below-guidelines sentence was unreasonable because it was less than Taylor’s sentence.

***United States v. Howard*, No. 21-2660.** A jury convicted Howard of being a felon in possession of a weapon, but he asserts that the jury trial was tainted by errors that occurred during jury selection when the district court injected the prosecutor's race into the Batson inquiry and otherwise improperly evaluated the peremptory strike against a Black juror. The Court of Appeals affirmed, holding the court held the government to its burden, properly considered the *Batson* steps, and repeatedly pushed the government about its reason for striking the juror. The district court mentioned the prosecutor's race in its ruling but did not rely on it when giving its reasoning.