

PRECEDENTIAL VALUE

Federal Public
Defender's
Office Southern
District of Ohio

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This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website.

I. Sentencing Issues

A. 3553 Factors

[U.S. v. Dean, 15-2238 \(4/3/17\)](#)

[Supreme Court](#)

The defendant was convicted of a drug count and a firearm enhancement under 18 USC § 924(c) charge. At sentencing, the district court expressed that it would lower the sentence on the drug count to take into account the consecutive five year sentence for the firearm enhancement, but was bound by circuit precedent not to consider it. **The Supreme Court held that nothing in the statutes or sentencing guidelines prohibited district courts from taking into consideration the effect of other sentences.** The case was therefore remanded for resentencing.

B. Guideline issues

2B1.1 – Loss Amount

[U.S. v. Myers, 15-2238 \(4/14/17\)](#)

The defendant was convicted of conspiracy, interstate transportation of stolen motor homes, and money laundering. As part of the scheme, the defendant stole motor homes, transported them to

another state, created a fake title, and resold the motor homes to dealerships who then sold them to secondary victims. At sentencing, the district court calculated the loss based not only on the value of the motor home to the original owner from whom the motor homes were stolen, but also the loss to the secondary victims who paid for motor homes from the dealers. On appeal, the court held that calculation of the loss in this fashion was appropriate. The court noted that a district court is only required to make a reasonable estimate of the loss. The court found, **although the secondary victims may have a claim against the dealers who sold them the stolen motorhomes, “often such claims may not be filed or filed successfully.”** As such, the court found no clear error in the district court's loss calculation and the sentence was affirmed.

2B1.1(b)(10) – Sophisticated Means

[U.S. v. Simmerman, 16-1019 \(3/9/17\)](#)

The defendant was a manager at a credit union who was convicted of embezzling funds. In order to steal the money, she simply took cash from the vault and pocketed it or transferred it into accounts of family members. To conceal her crimes, she manipulated the computer system and

created a dormant account. As a result, the district court applied an enhancement under USSG § 2B1.1(b)(10) for use of sophisticated means. On appeal, the court held that the enhancement was proper. **Although the stealing of the cash was simple, the defendant's actions in concealing the crime by manipulating the computer system, creating dormant accounts, and funneling the money through the accounts of relatives all amounted to sophisticated means sufficient to trigger the enhancement.** Thus, her sentence was affirmed.

U.S. v. Myers, 15-2238 (4/14/17)

The defendant was convicted of stealing motorhomes, transporting them to another state, creating fake titles, and selling them to dealerships. At sentencing, the district court applied an enhancement under USSG § 2B1.1(b)(10) for sophisticated means for the complex scheme used by the defendant to steal and transport the motorhomes. Further, the district court applied a separate enhancement under USSG § 2S1.1(b)(3) as part of his money laundering conviction for “sophisticated laundering.” This enhancement applied because of the defendant's complex acts in creating false titles and reselling the motorhomes. On appeal, the court held that the application of the two enhancements did not constitute impermissible double counting. The two guidelines may apply to a defendant's sentence where they address different aspects of the defendant's conduct. **Because the sophisticated means enhancement dealt with the defendant's actions in stealing and transporting the motor homes, and the sophisticated laundering dealt with the defendant's creation of false titles and resale of the motorhomes, both enhancements were permissible.**

2B1.1(b)(16)–Jeopardize Financial Institution

U.S. v. Simmerman, 16-1019 (3/9/17)

The defendant embezzled \$1.945 million from her employer who was a small credit union. At sentencing, the district court applied the enhancement for jeopardizing the safety and soundness of a financial institution, pursuant to USSG § 2B1.1(b)(16). On appeal, the court held that application of the enhancement was proper. **Although the credit union did not actually become insolvent, its net worth ratio fell to 1.8% and it was critically undercapitalized. The court emphasized that the \$1.945 million amount stolen represented 86% of the earnings that the credit union had accumulated over its entire 62 year history. Because the credit union was in serious jeopardy of insolvency, absent recovery on its insurance bond, the court held that the district court's application of the enhancement was appropriate.**

2T1.1 – Tax Evasion

U.S. v. Ballard, 16-6254 (3/3/17)

The defendant was a securities broker who hid his income and paid no taxes for a number of years. When questioned by IRS about income he earned in 2009, the defendant stated that the income was for work completed in a previous year. The defendant was prosecuted for the false statement under 26 USC 7212(a), corruptly obstructing or impeding the tax laws. At sentencing, the district court determined that USSG § 2T1.1 (tax evasion) was the appropriate guideline. The defendant argued on appeal that the district court should have applied USSG § 2J1.2 for obstruction of justice. On appeal, **the court held that, where two guidelines are both referenced as applying to a particular crime, the district court should utilize the guideline most appropriate for the offense conduct charged. The court found that lying to IRS investigators about the timing and source of income which, if successful, would**

have evaded taxes, was more akin to tax evasion than obstruction of justice. Accordingly, the court held that § 2T1.1 was the more appropriate guideline, and affirmed the district court's ruling.

3B1.1 – Abuse of a Position of Trust

U.S. v. Simmerman, 16-1019 (3/9/17)

The defendant was a manager at a small credit union who embezzled funds. At sentencing, the district court applied a guideline enhancement for abuse of a position of trust, pursuant to USSG § 3B1.3. On appeal, the court held that the defendant was given a level of managerial discretion in her position and was rarely supervised. Further, she used that position to access cash and change financial records to conceal her crime. As such, the court found that the enhancement was proper and affirmed the district court's ruling.

D. Recidivism enhancements

2K2.1(a)(2) – Crimes of Violence

U.S. v. Harris, 16-2239 (4/4/17)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court increased his offense level under USSG § 2K2.1 because the court determined that the defendant's two prior Michigan felonious assault convictions counted as crimes of violence. On appeal, the court held that the prior felonious assault convictions were crimes of violence under the force clause of USSG § 4B1.2(a). Under the Michigan statute, a defendant could be convicted if he or she "attempted or threatened offensive touching and use[d] a dangerous weapon." The court found that the combination of the offensive touching along with the use of the dangerous weapon was sufficient to constitute at least a threat of the use of physical force under the guidelines' definition of a crime of violence. Thus, the district court's ruling was affirmed.

4B1.1 – Career Offender

U.S. v. Beckles, 15-2238 (3/6/17)

Supreme Court

In Johnson, the Supreme Court held that the "residual clause" of the ACCA was void for vagueness. At issue in Beckles was whether the identically worded residual clause under USSG § 4B1.1 was similarly constitutionally infirm. The Court held that, because the sentencing guidelines were advisory and therefore did not affix statutory minimum and maximum ranges, the void for vagueness doctrine did not apply. Therefore, the residual clause of the sentencing guidelines was upheld as constitutional.

18 USC § 924(e) – ACCA

U.S. v. Quarles, 16-1690 (3/10/17)

The defendant was convicted of being a felon in possession of a firearm and at sentencing the district court determined that he qualified as an armed career criminal. The defendant challenged on appeal that his prior Michigan conviction for third degree home invasion fell outside the definition of a generic burglary and therefore was not a violent felony. The court first held that Michigan required that the building involved be either a "structure or shelter that is used permanently or temporarily as a place of abode." With this definition in place, the court found that the offense fit within the generic definition of a burglary offense. Second, the court ruled that the intent to commit a crime need not occur at the time of entry. As long as the intent to commit a crime arose while "remaining in" the structure, the crime fell within definition of a generic burglary. Accordingly, the defendant's sentence was affirmed.

U.S. v. King, 15-4192 (3/30/17)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the

district court determined that the defendant was an armed career criminal based on three prior convictions for robbery and kidnapping that occurred on the same day. In making this determination, the district court relied on the bill of particulars that was filed in the case which provided that the three offenses happened at different locations at different times. The defendant appealed. Reversing prior circuit precedent, the court held that the categorical approach laid out by the Supreme Court in Taylor and Shepard is to be applied to the determination of whether offenses “occurred on occasions different from one another” under the ACCA. Thus, a district court may consider only the statute of conviction, the charging document, and any facts to which the defendant necessarily admitted at a plea hearing or were found by a jury at trial. Under this approach, the bill of particulars would not qualify because it was not clear from the record that the defendant admitted these additional facts at the time of this plea. Accordingly, the case was remanded for resentencing.

U.S. v. Patterson, 15-4112 (4/3/17)

The defendant was convicted of being a felon in possession of a firearm and the government argued that he qualified as an armed career criminal based on prior Ohio convictions for armed robbery. The district court held that Ohio aggravated robbery was not a violent felony under the ACCA after the Supreme Court’s decision in Johnson. Upon the government’s appeal, the court held that the prior aggravated robbery conviction was a violent felony under the ACCA. Specifically, the court found that the defendant was convicted under ORC § 2911.01(A)(1) which prohibited committing or attempting a theft offense while displaying, brandishing, indicating possession, or using a firearm. The court ruled that this language suggested at a minimum that the defendant had threatened physical harm and this was sufficient

under the ACCA to be a violent felony under the force clause. Further, the court held that the state statute need not require any specific *mens rea* for the force or intimidation element in order for the crime to be considered a violent felony under the force clause of the ACCA. Thus, where the state statute has no explicit *mens rea* requirement related to the force or intimidation element of the robbery statute, the state conviction may nonetheless qualify under the force clause of the ACCA. Accordingly, the court determined that application of the ACCA was appropriate and the district court’s ruling was reversed.

E. Fine/Restitution

Restitution

U.S. v. Sizemore, 16-5700 (3/8/17)

The defendant was convicted by plea of involuntary manslaughter in the national forest for injuring passengers in his car while driving drunk. The district court ordered restitution to each of the victims, one of whom died. The defendant argued on appeal that the district court wrongfully determined that restitution was mandatory, failed to consider his financial circumstances, and failed to credit amounts paid by his insurance company to the victims. The court held that the district court did not improperly determine restitution amounts. Under 18 USC § 3553, restitution is discretionary. The court ruled that a district court must first determine whether restitution will be ordered. In making this determination, the district court must consider the defendant’s ability to pay. If the court determines that restitution is appropriate, the court then is required to impose restitution in the amount of the victim’s losses, without regard for the defendant’s ability to pay. Finally, the district court must set a payment schedule for the restitution again considering the defendant’s financial situation. The court found that the district court correctly performed this analysis.

Further, the court held that the district court did not err in refusing to credit the insurance payments because the defendant failed to satisfy his burden of establishing what the insurance payments were actually for. Because it was not clear that the insurance payments were for the exact same losses that the restitution covered, the credit was not warranted. Accordingly, the restitution order was affirmed.

II. Plea Matters

A. Agreements

Appeal Waivers

U.S. v. Morrison, 16-5452 (3/17/17)

The defendant pled guilty to being a felon in possession of a firearm based on a plea agreement that waived appeal as long as the sentence was within the guideline range, “whatever that guideline range might be.” While the case was on appeal, the Supreme Court issued the Mathis decision and the sentencing guidelines were amended to strike burglary as an enumerated offense in the crime of violence definition. The upshot of these changes in the law was that the defendant's prior Tennessee burglary conviction was likely no longer a crime of violence under the guidelines. Thus, the defendant’s guideline range should have been lower. Nonetheless, the government moved to dismiss the appeal based on the appeal waiver. The court held that, because the defendant knowingly and intelligently waived his right to appeal, the appeal waiver was enforceable. The court emphasized that it would enforce appeal waivers when the law changes in favor of a defendant and even when the changes affect constitutional rights. Further, the court found that any error in the district court’s sentence was harmless because the district court indicated at sentencing that it would impose the same sentence even if the defendant’s prior burglary conviction had not counted as a crime of

violence under the guidelines. Accordingly, the appeal was dismissed.

U.S. v. Griffin, 16-4127 (4/26/17)

The defendant was convicted of participating in a conspiracy to submit false tax returns. In his plea agreement, the defendant agreed to an appeal waiver which waived his right to appeal the sentence unless it was above the guideline range determined by the district court in accordance with the plea agreement. After sentencing, the defendant appealed and argued that the district court erred in failing to award two points for acceptance of responsibility. The court held that the appeal waiver prohibited the defendant from appealing this issue. The court found that the plea agreement specifically provided that, although the government was bound to recommend the reduction, the district court would “determine whether a reduction for acceptance of responsibility was appropriate.” Thus, the court found that the district court’s denial of acceptance was not beyond what was anticipated in the plea agreement. Further, the court noted that even if the defendant’s appeal were sustained, the sentence he received of 10 months was within both the range calculated by the district court and the range argued by the defendant. Accordingly, the appeal was dismissed.

III. Evidence

A. Article IV – Relevancy

U.S. v. Luck, 15-5746 (3/31/17)

The defendant was charged with child pornography offenses based on his confession and child porn found on his two laptops. At trial, the defendant proposed to put his mother on the stand to testify about his learning disabilities, his prior leukemia and treatment problems, and the medications he was taking at the time he confessed. The district court excluded the

evidence under FRE 403. On appeal, the court held that the evidence was properly excluded. Because the defense proposed to offer his entire history of medical issues and treatment, the district court properly found that it presented significant risk of juror confusion. The court noted that **the question of how the defendant's learning disability may have affected his confession was potentially relevant, but that any error in excluding it was harmless** given the overwhelming nature of the government's evidence beyond the defendant's confession. Accordingly, the conviction was affirmed.

V. Fifth Amendment

C. Confessions/Testimonial Rights

Miranda

U.S. v. Luck, 15-5746 (3/31/17)

Agents arrived at the defendant's home with a search warrant for child pornography. The agents advised the defendant and his parents that they were free to leave but that the agents wanted to ask them some questions. Upon the defendant stating that he used a peer-to-peer program on the computer, the agents asked if he would talk to them separately in a bedroom. The defendant agreed and he subsequently confessed, in two 20-30 minute interviews, to possessing child pornography. Upon being prosecuted, the defendant moved to suppress his statements and the district court found that the defendant was not in custody for Miranda purposes. On appeal, the court held that the determination of whether an individual is in custody hinges on whether the reasonable person would feel that their freedom of movement was restrained to a degree associated with formal arrest, taking into account the following: (1) the location of the interview, (2) the length and manner of the questioning, (3) any restraints placed on the freedom of movement, and (4) whether the individual was told that he or she did not need to answer

questions. The court found that **the location of the interview was in the defendant's home, the questioning sessions were not long, there were no restraints placed on the defendant's movement, and the defendant and his parents were told that they were free to leave. Accordingly, the court ruled that the defendant was not in custody** at the time he made the statements and the district court ruling was affirmed.

Involuntariness of Confession

U.S. v. Luck, 15-5746 (3/31/17)

The defendant was 21 years old, lived with his parents, and suffered from learning disabilities. When agents arrived with a search warrant at his parents' home, the defendant was just awakening from having taken sleep medication. During this time period, agents conducted a non-custodial interrogation of him during which the defendant confessed to possessing child pornography. The defendant unsuccessfully argued in the district court that his confession was involuntary. On appeal, the court held that a three-part inquiry applies to a determination as to whether a confession is involuntary: (1) whether the police activity was objectively coercive, (2) whether the defendant's will was overborne by the coercive activity, and (3) whether the coercive conduct was the "crucial motivating factor" in obtaining the confession. The court found that, **regardless of the defendant's shortcomings, there was no evidence in the record of police coercion. Thus, the statements could not be involuntary.** The court noted that the officer's failure to follow DOJ guidance that confessions should be recorded did not rise to the level of a violation of Due Process. Accordingly, the conviction was affirmed.

D. Double Jeopardy**U.S. v. Patterson, 15-4112 (4/3/17)**

The defendant was charged with being a felon in possession of a firearm after having been convicted in state court over the same offense under state law. The defendant argued on appeal that the Double Jeopardy Clause prohibited the dual prosecution. The court held that the defendant's double jeopardy rights were not violated by the dual prosecution because the Clause does not prohibit prosecution by two different sovereigns for the same crime. **The court noted, however, that the defendant had not challenged the federal government's power under the Commerce Clause to regulate wholly intrastate possession of a firearm in light of Justice Thomas' dissent in Alderman v. U.S.. This is a question left for another day.** The district court's ruling was thus affirmed.

E. Miscellaneous Fifth Amendment**Due Process – Pre-Indictment Delay****U.S. v. Lively, 15-1671 (3/27/17)**

The defendant participated in producing child pornography, but the government did not indict him for the offense until four years later. The offense involved multiple jurisdictions and defendants, and the parties agree that, at most, the government was negligent in failing to move the case forward more quickly. The defendant argued that his defense was prejudiced by the delay because he was not able to effectively present an insanity defense due to the passage of time. On appeal, the court held that two factors must be satisfied by a defendant in order to obtain a dismissal based on pre-indictment delay: (1) prejudice to the right to a fair trial, and (2) the delay was intentionally caused by the government to gain a tactical advantage. The court found that **the defendant's claim regarding his insanity defense was tenuous at best, and that the**

government had not acted intentionally in failing to bring the prosecution sooner. Accordingly, the defendant's conviction was affirmed.

VI. Sixth Amendment**D. Right to Counsel/Self Represent****U.S. v. Gooch, 15-4360 (3/2/17)**

The defendant was charged with multiple robberies and he was found incompetent to stand trial. Subsequently, multiple evaluations found him competent. After the district court determined his competency, the defendant later moved to represent himself. The court engaged in the standard colloquy regarding self-representation and allowed the defendant to proceed *pro se* with standby counsel. The defendant was convicted and he argued on appeal that the district court erred in permitting him to self-represent. The court held that the **“competency standard for standing trial is identical to the standard for self-representation.”** Thus, the court found that the district court was not required to “review defendant's competency with a specific eye toward self-representation.” Accordingly, because the court found the defendant competent to stand trial and later conducted a proper colloquy regarding self-representation, the district court did not err in permitting the defendant to proceed *pro se*.

E. Indictment-Variance/Duplicity**Multiplicity****U.S. v. Myers, 15-2238 (4/14/17)**

The defendant was charged with a general conspiracy count to commit crimes against the government under 18 USC § 371, and a second conspiracy count of conspiring to commit money laundering under 18 USC § 1956(h). He was also charged with substantive counts of interstate transportation of stolen vehicles and money

laundering. The defendant argued that the various counts were multiplicitous in that they charged one crime in multiple counts. On appeal, the court held that, under the Supreme Court's Blockberger test, crimes are not multiplicitous if each offense requires an element that the other does not. The § 371 conspiracy required overt acts while the § 1956(h) conspiracy did not, and the § 1956(h) conspiracy specifically required the commission of a money laundering offense whereas the § 371 conspiracy did not. Further, the conspiracies both required an agreement between two or more people whereas the substantive offenses did not, and the substantive offenses required a completed offense and the conspiracies did not. Thus, none of the offenses were multiplicitous and the conviction was affirmed.

F. Miscellaneous Sixth Amendment

Right to Compulsory Process

U.S. v. Luck, 15-5746 (3/31/17)

The defendant was charged with distribution and receipt of child pornography. At trial, the defendant attempted to call his father as a witness for the sole purpose of the father invoking the Fifth Amendment regarding the viewing of child pornography. The district court declined to allow the defendant to call him as a witness for that purpose and the defendant appealed. The court held that it is improper for a defendant to call a witness to the stand for the sole purpose of invoking the Fifth Amendment. A jury is not entitled to draw any inferences from a witness' decision to exercise this constitutional privilege, and thus the sole purpose for call the witness was unlawful. Accordingly, the district court's ruling was affirmed.

VIII. Defenses

E. Venue/Jurisdiction

Venue

U.S. v. Myers, 15-2238 (4/14/17)

The defendant was charged with conspiracy, interstate transportation of stolen vehicles, and money laundering. The defendant stole motor homes in Michigan, transported them out of state, and then sold them with false titles he generated. At trial, the defendant challenged venue in Michigan for the money laundering conspiracy and substantive charges. The district court found venue proper and upon his conviction the defendant appealed. The court held that, pursuant to 18 USC § 1956(i)(1)(B), venue is proper for a money laundering charge in a district "if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted." The court found that the motor homes themselves were the "proceeds" of the unlawful activity and thus, when the defendant transported the motor homes from Michigan to another state before selling them, he was "transferring the proceeds" from one district to another. As such, the court concluded that venue was proper in Michigan and the district court's ruling was affirmed.

XI. Appeal

Notice of Appeal

Manrique v. US, 15-7250 (4/19/17) Supreme Court

The defendant was sentenced, but the district court deferred a finding on restitution for 90 days. The defendant filed a notice of appeal at the time sentence was imposed, but did not file a second, separate notice of appeal from the restitution decision. The Court held that "a defendant who

wishes to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order. Because petitioner failed to do so, and the government objected, the court of appeals properly declined to consider his challenge to the amount of restitution imposed.”

XII. Specific Offenses

18 USC § 924(c) – Crime of Violence

U.S. v. Gooch, 15-4360 (3/2/17)

The defendant was convicted of a Hobbs Act robbery and carrying a firearm during a crime of violence. The defendant argued on appeal that the Hobbs Act contains more than one means to commit the crime, one involving robbery and one involving non-violent extortion. Thus, the defendant claimed that, under the Supreme Court’s decision in Mathis, the Hobbs Act robbery could not be considered a crime of violence and the § 924(c) enhancement was improper. The court first held that the Hobbs Act, 18 USC § 1951, is a divisible statute, meaning that it describes more than one separate crime. As such, Mathis is inapplicable, and the district court may consider documents beyond the statute, such as the indictment, in order to determine whether the conviction necessarily involved a crime of violence. The court found that the indictment described a robbery, which requires proof of “actual or threatened force, or violence, or fear of injury, immediate or future.” The court ruled that this description of robbery qualified as a crime of violence under the force clause of § 924(c). Accordingly, the defendant’s convictions and sentence were affirmed.

18 USC § 1951 & 2113(d)–Aiding and Abetting

U.S. v. Gooch, 15-4360 (3/2/17)

The defendant was charged with aiding and abetting in an armed Hobb’s Act robbery and an armed bank robbery. The defendant helped plan

the Hobb’s Act robbery but did not enter the store, and he waited outside during the armed bank robbery. Upon his conviction at trial, the defendant argued that he did not aid and abet the robberies and that he could not be held accountable for the armed robbery because there was no proof that he was aware a gun would be used. The court held that participating in the planning of a robbery is sufficient for an aiding and abetting conviction. Further, the court held that the defendant’s knowledge of a firearm could be established by circumstantial proof that the defendant knew that firearms were used in previously robberies with the same individuals. Finally, the court held that the jury instruction properly informed the jury that it must find that the defendant knew a gun would be used in the armed robbery. Accordingly, the defendant’s convictions were affirmed.

18 USC § 2251 – Production of Child Porn

U.S. v. Lively, 15-1671 (3/27/17)

The defendant abused a minor while his friend took pictures with a camera. The friend later saved the camera images to a computer. The defendant was charged with production of child pornography and at trial the government attempted to prove the interstate commerce element of 18 USC § 2251 through evidence that the computer was made out of state. The defendant argued on appeal that the computer was not used to “produce” the images and thus could not be used to meet the interstate nexus element. The court held that the computer was in fact used to “produce” the images when the images were saved from the camera to the computer. However, because the friend saved the images to the computer without participation from the defendant and without his knowledge, the court found that the defendant had not sexually abused the boy “for the purpose” of producing the images to the computer. Thus, the interstate commerce element could not be met on

this basis. Nonetheless, the court still found the defendant guilty because the government had introduced the camera and SanDisk memory card (from the camera) into evidence at trial. The court *sua sponte* reviewed this evidence and determined that **the memory card had a trade inscription on it that said “Made in China.”** Based on this evidence, even though the government never offered it for this purpose, the court ruled that **the interstate nexus requirement had been satisfied.** Accordingly, the conviction affirmed.

18 USC § 2252 – Child Pornography

U.S. v. Luck, 15-5746 (3/31/17)

The defendant was charged with distribution and possession of child pornography. At trial, he moved the district court to order the government to stipulate that the images involved were in fact child pornography in lieu of introducing the actual images, pursuant to the Supreme Court’s decision in Old Chief. The district court denied the request and the defendant appealed. The court held that Old Chief requires only that the government stipulate a defendant’s prior felony conviction in a firearm case in lieu of introducing the substance of the conviction. The court found, however, that **Old Chief did not apply in the child pornography context as to the issue of the whether images constitute child pornography.** Accordingly, the district court’s ruling was affirmed.

XIII. Post-Conviction Remedies

Moore v. Texas, 15-797 (3.28.17)

Supreme Court

The petitioner was convicted of capital murder in Texas state court and sentenced to death. A state habeas court subsequently found that the petitioner was intellectually disabled under Atkins v. Virginia, 536 U.S. 304 (2002), and

concluded that he was entitled to relief from his death sentence. The Texas Court of Criminal Appeals disagreed, finding that the state habeas court had erred by basing its conclusion on contemporary medical standards for determining intellectual disability, rather than the standards that the Court of Criminal Appeals had formulated in its earlier precedent. **The United States Supreme Court reversed, holding that state courts may not disregard contemporary medical standards for determining intellectual disability when considering Atkins claims.**

Rippo v. Baker, 16-6316 (3.6.17)

Supreme Court

The petitioner was convicted of first-degree murder in Nevada state court and sentenced to death. During trial, the petitioner moved to disqualify the judge on the ground that the judge was under a federal investigation; the petitioner further alleged that the trial prosecutors were likely assisting the federal authorities. The trial judge refused to recuse himself but was later indicted on federal charges. In post-conviction proceedings, the petitioner introduced evidence confirming that the trial prosecutors had been actively involved in the federal investigation. The Nevada Supreme Court denied relief, finding that the petitioner had failed to show actual bias on the part of the trial judge. **The United States Supreme Court reversed. Under the Due Process Clause, actual judicial bias need not be proven if the objective risk of actual bias is too high to be constitutionally tolerable. Because the Nevada Supreme Court applied an impermissibly stringent standard, the case was remanded for further consideration.**

Pena-Rodriguez v. Colorado, 15-606 (3.6.17)
Supreme Court

The defendant was convicted of sex offenses in Colorado state court. Following trial, defense counsel was informed that one member of the jury had expressly relied on racist views during deliberations as a basis for returning a conviction. The Colorado Supreme Court concluded that the evidence of racial bias during deliberations was inadmissible under the traditional rules prohibiting the impeachment of jury verdicts. The United States Supreme Court reversed, concluding that “where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror’s statement and any resulting denial of the jury trial guarantee.”

Phillips v. White, 15-5629 (3.15.17)

The petitioner was convicted of capital first-degree murder in Kentucky state court and was eligible for the death penalty. At the penalty phase of trial, the petitioner’s trial attorney stated on the record that he did not have any experience in capital litigation. Trial counsel did not present an opening statement at the penalty phase, and did not call any witnesses; trial counsel’s closing argument was two sentences long. The petitioner was subsequently sentenced to life in prison with parole eligibility after 25 years. In federal habeas corpus proceedings, the petitioner alleged that he had been deprived of the effective assistance of counsel at the penalty phase of trial and subsequent judicial sentencing, notwithstanding the fact that he did

not receive the death penalty. The Sixth Circuit agreed, and found that the petitioner was entitled to a presumption of prejudice under United States v. Cronin, 466 U.S. 648 (1984), based on trial counsel’s virtual abandonment of the petitioner at the penalty phase and sentencing. The Sixth Circuit further concluded that the petitioner could demonstrate actual prejudice under Strickland v. Washington, 466 U.S. 668 (1984), based on the availability of less severe sentences under Kentucky law.

Wheeler v. Simpson, 11-5707 (3.23.17)

The petitioner was convicted of intentional murder in Kentucky state court and sentenced to death. The petitioner alleged that he was deprived of the effective assistance of counsel at sentencing based on the admission of evidence that he had been granted furloughs during previous terms of incarceration. The state courts found that the admission of this evidence was part of a reasonable strategy because it demonstrated that the petitioner had been a model prisoner in the past. The Sixth Circuit concluded that the state court’s rejection of the claim was entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.