

PRECEDENTIAL VALUE

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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

B. Guideline issues

2A2.2(b)(2) – Assault - dangerous weapon

U.S. v. Duke, 16-2128 (8/29/17)

At a hearing before the district court, the defendant physically assaulted the prosecutor by slamming the prosecutor's head against a courtroom table repeatedly. As a result, the defendant was convicted of assaulting a government official. At sentencing, the district court applied an enhancement under USSG § 2A2.2(b)(2) based on its conclusion that the courtroom table qualified as a dangerous weapon. Further, the district court applied a number of enhancements that arguably double counted the defendant's conduct. On appeal, the court, applying a "functional approach," concluded that a table is in fact a dangerous weapon. *Considering the circumstances under which the table was used, its capability to inflict serious bodily harm, its size and density, and the actual injuries suffered by the prosecutor, the court found that the table qualified as dangerous weapon as used by the defendant.* Further, the court upheld the double counting of

enhancements. First, the court held that it was proper for the district court to count the defendant's use of a dangerous weapon (the table) in the determination of his offense level and as a specific offense characteristic. *Because the guideline specifically provided in the commentary to an amendment that the Sentencing Commission intended for a dangerous weapon to be double counted in this fashion, the court held that it was permissible.* Second, the court ruled that double counting the infliction of bodily harm was also proper where each provision punished distinct aspects of the defendant's conduct. Thus, § 2A2.2(b)(3)(a) punished the infliction of bodily injury, and § 2A2.2(b)(7) punished infliction of bodily injury on a government employee. *This distinction was sufficient to allow the double counting.* Finally, the court held that the increase to the base offense level under § 2A2.2 and the increase under § 3A1.2, both because the defendant was a government employee, was permissible double counting. The court found that the guidelines specifically authorized an increase under both sections. Accordingly, the defendant's sentence was affirmed in all respects.

2G2.1(d)(1) – Child porn – multiple counts**U.S. v. Schock, 16-2503 (7/10/17)**

The defendant was convicted of one count of producing child pornography in September 2013. At sentencing, the district court imposed a two level enhancement under USSG § 2G2.1(d)(1) because the defendant also produced child pornography regarding a second minor in August 2014. The court ultimately varied downward from the guideline range and imposed a sentence of 240 months. On appeal, the court held that the multiple count enhancement may only apply if the production of the child pornography counts were relevant conduct to each under USSG § 1B1.3(a)(1). This provision requires that the offense against the second victim occurred “during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection of responsibility for that offense.” The court found that, because the pictures of the victims were taken in different time periods and there was no evidence that the two were ever photographed together, the offenses were not relevant conduct to each and thus the multiple count enhancement should not have applied. Further, the court held that, even though the ultimate sentence imposed by the district court was lower than the guideline range, the court found no harmless error because the district court did not indicate that it would have imposed the same sentence had the guideline objection been sustained. Accordingly, the sentence was vacated.

C. Procedural matters**U.S. v. Albaadani, 16-6668 (7/13/17)**

The defendant was deported, but his home country of Yemen would not accept him back. Thus, he was released on GPS monitoring. During this term, he tampered with the GPS bracelet, made significant threats, and posed in pictures with firearms. As a result, the

defendant was convicted after trial of tampering with a GPS monitoring bracelet. At sentencing the district court questioned whether it could simply detain the defendant indefinitely, and made comments about him not being a citizen and having no allegiance to the U.S. The defendant argued on appeal that his sentence was impermissibly based on his national origin. The court held that the district court did not base the defendant’s sentence on national origin. The court held that, although the district court’s comments were ill advised, it was clear from the totality of the record that the district court relied properly on the defendant’s extreme threats and the pictures of the defendant with firearms in determining that a higher sentence was appropriate. Accordingly, the sentence was affirmed.

D. Recidivism enhancements**18 USC § 924(e) – ACCA****U.S. v. Ferguson, 15-6303 (8/22/17)**

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that the defendant’s 8 prior burglary convictions from Tennessee qualified him as an armed career criminal. On appeal, the court first held that 5 of the defendant’s convictions for aggravated burglary were not violent felonies under the ACCA based on the court’s recent decision in U.S. v. Stitt, which held that Tennessee’s aggravated burglary statute did not fit the generic definition of burglary. Second, the court held that Tennessee’s burglary statute does define a generic burglary and thus the offense qualifies as a violent felony under the ACCA. Specifically, the court found that generic burglary required “an unlawful or unprivileged entry into, a building or other structure, with intent to commit a crime.” The court ruled that each of the provisions of the

burglary statute met this definition. Accordingly, the district court's sentence was affirmed.

4B1.1 – Career Offender

U.S. v. Yates, 16-3997 (8/9/17)

The defendant was convicted of drug trafficking and at sentencing the district court determined that he was a career offender based, in part, on his prior Ohio conviction for robbery. On appeal, the court held that the robbery conviction was not a crime of violence under USSG § 4B1.1. Specifically, the court found that the defendant was convicted under ORC § 2911.02(A)(3) which prohibited committing a theft offense and using or threatening the use of physical force against another. The court ruled that this offense was categorically not a crime of violence because Ohio courts did not define force to require “violent force,” as required by the Supreme Court. Instead, the court found that Ohio law requires as little as a bump to constitute the use of force. As such, the robbery offense could not count as a crime of violence under the force clause. Additionally, the court held that the robbery offense did not qualify as a generic robbery under the newly amended guideline which enumerated robbery as a crime of violence. The court held that the generic definition of robbery required that the victim be placed in “immediate danger” from the offense. The court found that Ohio's definition of robbery could not satisfy this immediate danger requirement. Accordingly, the defendant's robbery conviction was not a crime of violence and his sentence was vacated.

Raybon v. U.S., 16-2522 (8/14/17)

The defendant was convicted of distributing cocaine. At sentencing, the district court determined that the defendant was a career offender based, in part, on its conclusion that his Michigan conviction for assault with intent to do great bodily harm constituted a crime of violence

under USSG § 4B1.1. On appeal, the court held that the Michigan offense is a crime of violence under the force clause of the guideline. The court found that Michigan courts required either (1) a threat of force or violence to do corporal harm to another, or (2) an intent to great bodily harm less than murder. Even though Michigan law did not require that an injury actually occur, the court held that Michigan's definitions of the offense satisfied the Supreme Court's requirement of “violent force.” Accordingly, the sentence was affirmed.

II. Plea Matters

C. Hearings

Voluntariness of Plea

U.S. v. Ataya, 16-2611 (7/17/17)

The defendant was charged with health care fraud and entered into a plea agreement which waived appeal on any grounds. When the defendant appealed, the government moved to dismiss the appeal based on the appeal waiver. The court held that it was not clear from the record that the defendant's plea was entered voluntarily. The court noted that the defendant had not been advised at the plea hearing by the district court that he may have to pay restitution or a special assessment, he might be subject to forfeiture, and that he could be denaturalized and deported as a result of his conviction. Because the parties had not fully briefed the issues, the court denied the government's motion to dismiss and referred the matter to a merits panel on the issue of the voluntariness of the plea.

III. Evidence

A. Article IV – Relevancy

404(b) – Reason for not reporting crime

U.S. v. Mandoka, 16-2376 (8/24/17)

The defendant was charged with sexually abusing two minor family members. The abuse was not reported until years after the children reached adulthood. Over a FRE 404(b) objection, the district court admitted evidence that the defendant had abused their mother in front of them during the time period he was sexually abusing the victims. On appeal, the court held that admission of the evidence was proper under FRE 404(b). The court found that **the evidence was proper because it was offered for the non-propensity purpose of showing that the victims failed to report the sexual abuse for so many years because they were afraid that the defendant would hurt them like he hurt their mother.** Further, the court held that the evidence was not unfairly prejudicial to the defense at trial under FRE 403. Thus, the conviction was affirmed.

U.S. v. King, 16-4039 (8/4/17)

The defendant was an attorney charged with money laundering. During the defendant's testimony, the government cross examined him about a misdemeanor conviction he had for drug possession. The government mistakenly believed that the conviction was in 2004 and was the reason he left the prosecutor's office. The conviction in fact occurred in 2007. The defendant argued on appeal that admission of this evidence violated FRE 404(b). The court agreed that admission of the evidence was improper. **The admission of the evidence served no purpose other than to suggest that the defendant had a propensity to commit crimes.** Further, the evidence was not proper to show that the defendant left the prosecutor's office on bad terms because it was not, in fact, related to why

he left the prosecutor's office. Likewise, he had not claimed that he left on good terms during his testimony. Nonetheless, the court held that admission of the evidence was harmless because the defendant had put his own drug use at issue in order to garner jury sympathy and because the evidence of the defendant's guilt of money laundering was otherwise overwhelming. As such, the conviction was affirmed.

413 – Prior sex abuse

U.S. v. Mandoka, 16-2376 (8/24/17)

The defendant was charged with sexually abusing three minor relatives over a period of time. Shortly before trial, the government realized that it did not have jurisdiction over the abuse of one of the minors because it did not occur on federal land, and thus dismissed the charge. The government then sought to introduce the prior sex assault of the third minor at trial under FRE 413. The district court admitted the evidence, the defendant was convicted, and he appealed. The court first held that the evidence was relevant in the case because it tended to show that the defendant had committed the abuse of minors 1 and 2. The court found that **the abuse was sufficiently similar to the charged crimes because the minors were all relatively the same age at the time of the abuse, and the abuse occurred in a roughly similar fashion.** The court was unpersuaded by the fact that the abuse of victim 3 happened several years before the other two. Second, the court ruled that the defendant had sufficient notice of the evidence being used due to the fact that the defendant stood charged with the sexual abuse of victim 3 for over a year and that charge was dismissed only shortly before trial. **Thus, even though the government did not provide technical notice of its intent to present the evidence under FRE 413 at least 15 days prior to trial as required by the rule, the defendant had actual notice of the evidence, and this was sufficient.** Third, the court held that the evidence

was not unfairly prejudicial under FRE 403. The court found that the evidence was prejudicial to the defendant's case, but given its probative value and similarity to the other offenses that were charged, it was not unfairly prejudicial under FRE 403. Accordingly, the defendant's conviction was affirmed.

C. Article VIII – Hearsay

801 – Hearsay

U.S. v. King, 16-4039 (8/4/17)

The defendant was an attorney who approached a confidential informant who was posing as a drug dealer in a strip club and offered to launder his drug proceeds for him. The attorney proposed to do it through a method he learned from watching the T.V. show Breaking Bad. The informant agreed and recorded the conversations for the government. In the recorded conversations, the informant indicated that he had shipments of drugs arriving in the near future and that he would have about \$30,000 to launder. The defendant agreed to launder the proceeds and accepted marked government funds from the informant. At trial, the government introduced the recorded conversations but did not call the informant as a witness. The defendant argued that the recorded statements were improper hearsay evidence and violated the Confrontation Clause. On appeal, the court held that the statements were not hearsay because they were not offered for the truth of the matter asserted. There was no actual truth to the informant's assertions that he had drug shipments arriving or that the funds he received were drug proceeds. **The statements were offered merely for the purpose of showing that the informant made those assertions and that they were believed by the defendant. Further, the court held that it did not matter in the Confrontation Clause analysis that the statements happened to prove elements of the offense.**

Accordingly, the admission of the evidence was affirmed.

IV. Fourth Amendment

C. Warrant Exceptions

Community Caretaker Exception

U.S. v. Lewis, 16-5181 (8/25/17)

Officers were summoned to a Walmart on a report of an intoxicated woman causing a disturbance. Upon arriving, they located a female who appeared to be under the influence and who reported that she had been taking pain pills. The officers inquired whether she had a ride home, and she identified her boyfriend, the defendant, who was sitting in the truck. The officers went out with her to confirm that the defendant could drive her home, and saw through the window that he was asleep in the vehicle. An officer opened the car door to speak with him, and noticed the defendant attempt to conceal a bag of drugs by tossing it into the back seat. In the subsequent prosecution, the district court denied the defendant's motion to suppress the evidence and he appealed. The court held that **the community care taker exception to the warrant requirement applied in the case. The court found that the officers were not performing any form of criminal investigation when they opened the car door to speak with the defendant, but were instead merely inquiring as to whether the defendant could drive his intoxicated girlfriend home so they did not have to arrest her. At that point, probable cause to search was established because the bag of drugs was in plain view. Accordingly, no warrant was required for the officers' actions and the conviction was affirmed.**

E. Search Warrants

Probable Cause – Staleness

U.S. v. Perry, 16-6285 (7/19/17)

Officers received complaints from neighbors about drug sales by the defendant around his residence. Officers conducted surveillance of the area and observed a large number of purported drug sales going on around the defendant's residence. In preparing a search warrant affidavit, the officer failed to provide the dates that any of the transactions occurred, but instead provided a 51 day window in which the transactions had occurred. Upon his conviction, the defendant argued on appeal that the evidence seized based on the search warrant should have been suppressed because it was stale. The court first acknowledged that **drug evidence can become stale quickly because drugs are usually sold and consumed in a "prompt fashion."** Nonetheless, the court held that given the quantity of transactions involved, the 51 day period did not render the evidence stale. Accordingly, the court ruled that probable cause supported the warrant, found that the evidence was not stale, and affirmed the defendant's conviction.

VI. Sixth Amendment

C. Speedy Trial

U.S. v. Sutton, 16-5587 (7/10/17)

The defendant was charged with robberies in both Ohio and Kentucky. He agreed to a plea agreement in Ohio in which he pled to charges in Ohio and charges from Kentucky, pursuant to Fed. R. Crim. P. 20. Through error on the part of the Ohio district court, the defendant did not enter a proper plea to the Kentucky charges and his sentence on those charges was ultimately vacated in a habeas action 10 years after his original indictment. As such, the Ohio district court

returned the case to the court in Kentucky for trial. The defendant then moved for dismissal based on speedy trial violations. The district court denied the motion and the defendant appealed. The court held that the 10 year delay in the case did not result in a Sixth Amendment violation. Applying the four factors from the Supreme Court's decision in Barker, the court held that **the delay, 10 years, was presumptively prejudicial, but that all parties had fault in the delay and the defendant had not timely asserted his right to speedy trial. Further, the court found that there was no prejudice to the defendant because he would have been in jail on the Ohio case anyway and he never asserted his innocence.** Accordingly, the conviction was affirmed.

VIII. Defenses

J. Speedy Trial Act/IAD

Speedy Trial Act

U.S. v. Sylvester, 15-1782 (8/22/17)

The defendant was charged with drug and weapon offenses. During the course of the case, the government obtained both a first and second superseding indictment. The defendant's trial counsel moved to dismiss the case based on speedy trial violations, but failed to point out to the district court exactly how the Speedy Trial Act had been violated. On appeal, the appellate attorney likewise failed to identify the violation. The defendant then filed a habeas petition in the district court claiming that both his trial and appellate counsel were ineffective for failing to delineate the issue. The district court denied the motion and the defendant appealed. The court first found that the Speedy Trial Act had in fact been violated. More than 70 countable days expired both under the first and second superseding indictment. Further, the court held that **a superseding indictment does not restart the speedy trial clock for charges contained in the preceding indictment.** Thus, it was clear that the

Speedy Trial Act had been violated. As such, the court ruled that both the trial and appellate counsel had been deficient for failing to properly raise the issue which would have required dismissal of the case. Nonetheless, the court found that counsel's deficient performance did not harm the defendant because he suffered no actual prejudice from the delay. The court found that **the defendant was not prejudiced by his prolonged detention because he was being detained already on other charges. Further, the court ruled that the delay was not the product of intentional government conduct and the government did not attempt to gain a tactical advantage from the delay.** Finally, the court found that the defendant suffered no actual prejudice from the delay in the presentation of his defense at trial. Accordingly, the habeas petition was properly denied and the defendant's conviction was affirmed.

U.S. v. Sutton, 16-5587 (7/10/17)

The defendant was charged with robberies in both Ohio and Kentucky. He agreed to a plea agreement in Ohio in which he pled to charges in Ohio and charges from Kentucky, pursuant to Fed. R. Crim. P. 20. Through error on the part of the Ohio district court, the defendant did not enter a proper plea to the Kentucky charges and his sentence on those charges was ultimately vacated in a habeas action 10 years after his original indictment. As such, the Ohio district court returned the case to the court in Kentucky for trial. The defendant then moved for dismissal based on speedy trial violations. The district court denied the motion and the defendant appealed. The court found no violation of the Speedy Trial Act. The court held that **the clock did not begin to run anew until the case had been returned to the docket of the district court in Kentucky after the habeas action. Further, the court found that the defendant had filed a motion to dismiss based on the speedy trial violation before the clock had run, which tolled**

time. Thus, the court found no speedy trial violation.

L. Miscellaneous Defenses

Treaties – Specialty Provisions

U.S. v. Fontana, 16-2208 (8/25/17)

The defendant was a resident of Canada who was turned over to the U.S. for prosecution based on a treaty between the countries. The treaty contained a "specialty" provision which required that he be "detained, tried, or punished" only for crimes for which he was extradited. The U.S. tried him for a number of child pornography production charges, but at sentencing the district court considered a number of child victims who were not charged. On appeal, the defendant argued that consideration of the uncharged victims violated the "specialty" provision of the treaty. The court held that **consideration of the additional victims did not violate the treaty because it did not increase either the statutory or guideline range in the case. The defendant was facing the prospect of life in prison even without the additional victims and the district court ultimately imposed only 30 years in prison.** Thus, the court found that consideration of the other offenses at sentencing did not violate the treaty.

XI. Appeal

Mootness

U.S. v. Albaadani, 16-6668 (7/13/17)

The defendant was convicted of tampering with a GPS ankle monitor. He appealed his sentence but completed his term of imprisonment before the appeal was concluded. The government argued on appeal that the case was mooted. The court held that **an appeal of a sentence is not moot as long as the defendant is still serving a term of supervised release and the result of the appeal**

could result in a remand in which the district court could alter the supervised release term. Thus, the court held that the appeal was not mooted and proceeded to the merits. See supra.

XII. Specific Offenses

18 USC § 1347 – Health Care Fraud

U.S. v. Persaud, 16-3105 (7/12/17)

The defendant was convicted at trial of health care fraud under 18 USC § 1347 for providing numerous heart surgeries and treatments that were unnecessary and fraudulently billing insurance for them. On appeal, the defendant argued that the evidence was insufficient to support the verdict. The court held that the elements of health care fraud are that the defendant (1) knowingly devised a scheme to defraud a health care benefit program, (2) executed or attempted to execute the scheme, and (3) acted with intent to defraud. The court found that the defendant's challenges to the sufficiency of the evidence amounted to an attempt to relitigate the reliability and credibility of the government's numerous experts who testified that the defendant's practices were fraudulent. The court ruled that the reliability and believability of expert witnesses in a health care fraud case, once the testimony is properly admitted, is exclusively for the jury to decide. As such, the court found that the government clearly had introduced testimony sufficient to establish the elements of the offense and that the expert testimony had been properly weighed by the jury. Accordingly, the defendant's conviction was affirmed.

XIII. Post-Conviction Remedies

Raybon v. U.S., 16-2522 (8/14/17)

The defendant claimed that he was entitled to relief under the Supreme Court's decision in Johnson based upon his prior conviction for

Michigan assault, which enhanced his sentence under the Sentencing Guidelines. The defendant argued that, because he was sentenced under mandatory pre-Booker Guidelines, Johnson applied. The Court disagreed, finding that because Johnson has not yet been applied to the mandatory guidelines by the Supreme Court, it is not a "newly recognized right," and thus, was not cognizable in a § 2255 petition. Accordingly, the defendant's § 2255 petition was untimely filed, and the case dismissed.

Black v. Carpenter, 13-5224 (8.10.17)

The petitioner was convicted of capital murder in Tennessee state court and sentenced to death. In his state post-conviction proceedings, the petitioner argued that he was intellectually disabled and therefore ineligible for execution under Atkins v. Virginia, 536 U.S. 304 (2002). In raising his Atkins claim, the petitioner alleged that his IQ scores should have been retroactively lowered based on the standard error of measurement and the Flynn Effect. The Flynn Effect "describes the apparent rise in IQ scores generated by a given IQ test as time elapses from the date of that specific test's standardization" (emphasis omitted). The Sixth Circuit concluded that even if the petitioner's childhood IQ scores were adjusted for the standard error of measurement and the Flynn Effect, the evidence was still insufficient to demonstrate an entitlement to relief under Atkins. The denial of habeas corpus relief was therefore affirmed.

In re Tibbetts, 17-3609 (7.24.17)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. After his first full round of federal habeas corpus proceedings had concluded, the petitioner filed a second habeas corpus petition alleging that the use of lethal injection as a method of execution would violate his federal rights. The district court

concluded that the petition was “second or successive” under 28 U.S.C. § 2244(b), and transferred the case to the Sixth Circuit to determine if authorization to proceed was warranted. The petitioner then filed a motion to remand in which he alleged that his claims were not ripe when his first habeas corpus petition was being litigated, and that § 2244(b) was therefore inapplicable. The Sixth Circuit denied the motion to remand and dismissed the case. Under [Adams v. Bradshaw](#), 826 F.3d 306 (6th Cir. 2016), a general claim that lethal injection is *per se* unconstitutional may be raised in habeas corpus proceedings. However, a challenge to “the constitutionality of a particular application of a particular protocol to a particular person” must be raised in a civil rights case under 42 U.S.C. § 1983. Because the petitioner had the information necessary to raise a general challenge to lethal injection when his first habeas corpus case was being litigated, the Sixth Circuit rejected the petitioner’s ripeness argument and dismissed the case.

Jae Lee v. United States, 14-5369 (7.7.17)

The Sixth Circuit previously rejected the petitioner’s claims, [Jae Lee v. United States](#), 825 F.3d 311 (6th Cir. 2016), but the Supreme Court reversed in [Jae Lee v. United States](#), 137 S.Ct. 1958 (2017). The case was accordingly remanded to district court for further proceedings.

Martinez v. United States, 14-4258 (6.16.17)

The petitioner was convicted of various white-collar offenses and sentenced to life in prison. The petitioner subsequently filed a motion to vacate under 28 U.S.C. § 2255 that was 628 pages long, notwithstanding a local rule limiting motions to 20 pages. When the petitioner was provided with an opportunity to refile in compliance with the local rule, he submitted a 23

page motion, accompanied by a 628 page affidavit that merely reiterated the entirety of the earlier motion. The petitioner’s renewed motion was stricken and the case was dismissed. The Sixth Circuit concluded that the district court appropriately determined that the page limitation set out in the local rules applied to § 2255 motions, and that dismissal for non-compliance was appropriate.

Schreane v. Ebbert, 15-6141 (7.20.17)

The petitioner was convicted of murder in Tennessee state court and sentenced to life in prison. The homicide in the case went unsolved for eight years, but the petitioner contacted police while he was incarcerated on unrelated charges and claimed to have information about the murder. The petitioner subsequently confessed after being transferred to speak with detectives. The petitioner alleged that his rights under [Miranda v. Arizona](#), 384 U.S. 436 (1966), were violated because questioning persisted after he requested an attorney, and because the police questioned him for an extended length of time before reading him his [Miranda](#) rights. Under [Edwards v. Arizona](#), 451 U.S. 477 (1981), suspect-initiated contact with the police is not custody for [Miranda](#) purposes. The state courts concluded that the petitioner was not “in custody” within the meaning of [Miranda](#) and denied relief. The Sixth Circuit concluded that the state court’s rejection of the petitioner’s claim was entitled to deference under 28 U.S.C. § 2254(d), and as a result the denial of habeas corpus relief was affirmed.

Stewart v. Trierweiler, 16-2149 (8.14.17)

The petitioner was convicted of felony murder in Michigan state court and sentenced to life in prison. The petitioner was tried with a co-defendant. At trial, some of the co-defendant’s statements to police were admitted over the

petitioner's objection. The state appellate court agreed that the admission of some of the statements violated the Confrontation Clause under Crawford v. Washington, 541 U.S. 36 (2004), and Bruton v. United States, 391 U.S. 123 (1968), but found that the error was harmless. The Sixth Circuit concluded that the state court's finding of harmlessness was entitled to deference under AEDPA, and as a result the district court's grant of habeas corpus relief was reversed.

Stewart v. Trierweiler, 16-2149 (8.14.17)

The petitioner was convicted of felony murder in Michigan state court and sentenced to life in prison. On appeal, the petitioner raised various claims of prosecutorial misconduct, but the state court found that many had been forfeited and reviewed for plain error only. The Sixth Circuit concluded that "AEDPA applies to a state court's plain-error analysis if it conducts any reasoned elaboration of an issue under federal law." The Sixth Circuit further determined that AEDPA was applicable to the petitioner's claim, and that habeas corpus relief was not warranted.

Sylvester v. United States, 15-1782 (8.22.17)

The petitioner was convicted of federal drug offenses and sentenced to 35 years in prison. The petitioner subsequently moved for relief under 28 U.S.C. § 2255 and alleged that his trial and appellate counsel had been ineffective in failing to raise claims under the Speedy Trial Act. The Sixth Circuit agreed that the Speedy Trial Act had been violated, and that counsel had performed deficiently under Strickland v. Washington, 466 U.S. 688 (1984), by failing to raise the issue. The court nevertheless found that the petitioner could not establish prejudice. Under the Speedy Trial Act, district courts have discretion to dismiss a case either with or without prejudice; because the petitioner failed to establish a reasonable probability that a dismissal with prejudice would

have been granted in his case if the issue had been raised, he could not establish prejudice under Strickland. The denial of relief under § 2255 was therefore affirmed.

Tanner v. Yukins, 15-1691 (8.15.17)

The petitioner was convicted of murder in Michigan state court and was sentenced to life in prison. The victim in the case was a bartender who was stabbed to death in the bar's basement after closing time. A detective testified that the petitioner told him that she had been in the parking lot of the bar around the time of the murder, and had identified a photograph of a knife recovered from the crime scene as hers. Other evidence at trial undercut the probative value of the detective's testimony, however. Blood at the scene matched the petitioner's blood type and PGM subtype, but millions of other people shared the same blood profile, and it was not even certain that the blood was left by the perpetrator. Furthermore, someone else's blood was on the victim's shirt, and other witnesses testified that they had seen other people near the bar around the time of the crime. On appeal, the petitioner alleged that the evidence at trial was constitutionally insufficient to support her conviction, but the Michigan Supreme Court disagreed and affirmed. In federal habeas corpus proceedings, the petitioner alleged that the state court had unreasonably applied Jackson v. Virginia, 443 U.S. 307 (1979), in rejecting her sufficiency of the evidence claim. The Sixth Circuit agreed and granted habeas corpus relief. Under Jackson, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, 443 U.S. at 319. Furthermore, because the Michigan Supreme Court denied the petitioner's claim on the merits, 28 U.S.C. § 2254(d) was applicable. Nevertheless, the Sixth Circuit

concluded that no deference was warranted under AEDPA, and habeas corpus relief was therefore granted.

Thompson v. Parker, 13-6085 (8.14.17)

The petitioner was convicted of murder in Kentucky state court and sentenced to death. In federal habeas corpus proceedings, the petitioner alleged that the jury had improperly considered extraneous evidence by discussing a news account of another offender who had committed a murder after being released on parole. At an evidentiary hearing, the jury foreman confirmed that the news account had been discussed among the jurors, and that after the discussion some holdout jurors switched their vote from life to death. The foreman further testified “that no one physically brought newspaper articles or anything similar into the jury room, but rather that someone had mentioned the story in the course of the jury’s deliberations.” The Sixth Circuit concluded that the petitioner’s rights had not been violated. “Impartiality and indifference do not require ignorance.” Jurors may draw upon their general knowledge and life experiences in considering a case, and “in the context of such deliberations, the jurors’ general knowledge about recidivism, even if it includes recollections of unrelated news coverage of other crimes, is fair game for discussion.” The denial of habeas corpus relief was therefore affirmed.

Thompson v. Parker, 13-6085 (8.14.17)

The petitioner was convicted of murder in Kentucky state court and sentenced to death. The petitioner alleged that the jury instructions at his trial violated the rule of Mills v. Maryland, 486 U.S. 367 (1988). Under Mills, jury instructions are unconstitutional if they require unanimous agreement on the existence of individual mitigating factors. A Mills violation will be established if a reasonable jury might have

interpreted the instructions in a way that is constitutionally impermissible. However, there is no Mills violation if the instructions merely required unanimous agreement that the aggravating factors outweighed whatever mitigating factors each individual juror might have found. The Sixth Circuit concluded that the state court’s rejection of the petitioner’s Mills claim was entitled to deference, and the denial of habeas corpus relief was affirmed.