Seventh Circuit Update 2025

Johanna M. Christiansen

Assistant Federal Public Defender

Central District of Illinois

APPELLATE PRACTICE

United States v. Cargo, 2025 U.S. App. LEXIS 9209 (Apr. 19, 2025).

- Cargo mailed a *pro se* notice of appeal within 14 days. He failed to name the correct street when addressing the envelope. The envelope did not make it to the district court and was returned.
- When Cargo learned his notice of appeal had not been filed, he filed another one, but this time the notice was four years late.
- Appeal dismissed – not in compliance with the prison mailbox rule because it was not delivered for forwarding to the district court.
- District courts should reinforce at sentencing that defense counsel should be relied on to file a notice of appeal when requested by their clients.

APPELLATE PRACTICE

United States v. Larry, 104 F.4th 1020 (7th Cir. 2024).

- In a rare published opinion granting an *Anders* motion to withdraw, the Court stated it was publishing this opinion because "counsel's brief, like many other *Anders* briefs, omits a step in the *Anders* analysis."
  - First - consult with the defendant to advise about the risks of withdrawing a guilty plea.
  - Second - determine whether the defendant wishes to challenge the guilty plea's validity.
- If the defendant does not wish to challenge the guilty plea, counsel need not address possible Rule 11 arguments in the *Anders* brief.

ACCA / *ERLINGER*

United States v. Johnson, 114 F.4th 913 (7th Cir. 2024).

- Johnson pled guilty to possession of a firearm as a convicted felon. He previously had been convicted of three counts of robbery under Indiana law, which is a violent felony under ACCA.
- He argued that the district court erred in determining he qualified for ACCA
  - two of the robberies on the same occasion, rather than on "occasions different from one another."
  - a jury should decide whether he had committed the robberies on the same or different occasions.
- The Court of Appeals reversed and remanded, holding under *Erlinger v. United States*, the Fifth and Sixth Amendments entitle defendants to have a jury decide whether prior offenses were committed on the same or different occasions.

BRUEN ISSUES

United States v. Scheidt, 103 F.4th 1281 (7th Cir. 2024).

- Scheidt knowingly included false information on an ATF Form 4473.
- She argued that her convictions were unconstitutional after *Bruen* because Congress conditioned her right to purchase a firearm on completing ATF Form 4473 and requiring honesty on the form.
- The Court of Appeals rejected her argument, holding that the conduct prohibited does not impose substantive restrictions on who may possessed a firearm.
- Importantly, the Court acknowledged that she could pursue this challenge even though she pled guilty without reserving the right to appeal citing *Class v. United States*, 583 U.S. 174 (2018).

BRUEN ISSUES

United States v. Rush, 130 F.4th 633 (7th Cir. 2025).

- Section 5861(d) of the National Firearms Act criminalizes receipt or possession of certain unregistered firearms including short-barreled rifles. Rush argued his Second Amendment rights were implicated under *Bruen.*
- The Court of Appeals affirmed, holding *United States v. Miller,* 307 U.S. 174 (1939), upheld an analogous regulation against a Second Amendment challenge.
- *Bruen* specifically relied on *Miller* in noting that "prohibiting the carrying of dangerous and unusual weapons is fairly supported by the historical tradition."
- The Court understood *Miller* to indicate the type of weapon is critical to Second Amendment analysis and licensing regimes are "categorially different" than weapons bans.

RIGHT TO COUNSEL

United States v. Frazier, 129 F.4th 392 (7th Cir. 2025).

- Kein Eastman was abducted from his grandmother's house at gunpoint and has not been heard from since. Two brothers, Kenwyn Frazier and Kendrick Frazier, were charged with kidnapping. At trial, they wanted to be represented by the same lawyer.
- Denial of their request did not violate the Sixth Amendment right to choice of counsel.
- There was uncertainty about how the prosecution would unfold and the potential conflicts that could arise with joint representation.
- The brothers had different degrees of culpability in charged crimes and the possibility of additional charges being added was high. In addition, there was a significant possibility of one brother testifying against the other.

JURY TRIAL/EVIDENTIARY ISSUES

United States v. Echols, 104 F.4th 1023 (7th Cir. 2024).

- This case provides review of how to adequately object to errors during trial to preserve the issue for appeal.
  - The objection must be timely
  - The objection must be specific enough to give the opposing party and the judge notice of the basis of the objection
  - Objections like "hearsay" and "foundation" are usually at a "too high level of generality."
  - A specific objection on one theory does not preserve an objection on another theory
- In this case, a general hearsay objection was not enough to alert the judge to defense counsel's theory and preserve the issue.
- Review was for plain error and the Court affirmed despite finding an error occurred that affected the defendant's substantial rights

FIRST STEP ACT

United States v. Black, 131 F.4th 542 (7th Cir. 2025).

- Before the First Step Act, second or subsequent § 924(c) convictions garnered 25 years and were "stacked," often resulting in excessively long sentences.
- In 2023, a policy statement was added to allow prisoners serving unusually long sentences to seek sentence reductions under the compassionate release statute based on a change in the law.
- Prior to the policy statement, defendants were ineligible for a sentence reduction based § 924(c) "stacking" under *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021).
- *Thacker* remains binding law and the Commission's attempt to say otherwise exceeds its statutory authority. Because § 1B1.13(b)(6) makes § 924(c)'s anti-stacking amendment an extraordinary and compelling reason, it makes the amendment retroactive. The First Step Act did not make the anti-stacking amendment retroactive.

FOURTH AMENDMENT

United States v. Jackson, 103 F.4th 483 (7th Cir. 2024).

- A police officer pulled over a car just after midnight because its head and taillights were not lit. During the traffic stop, the officer smelled unburnt marijuana. He asked Jackson to exit the car, Jackson ran, and a gun fell from his waistband.
- Jackson was indicted for possessing a firearm as a felon. He moved to suppress evidence of the gun, arguing the smell of unburnt marijuana did not provide probable cause to search the car because marijuana is legal.
- The Court of Appeals affirmed, holding the officer had probable cause to search:
  - more evidence than just the smell of unburnt marijuana.
  - no head and taillights and did not have his license with him
  - smell of unburnt marijuana indicated the marijuana was in an improper container, a violation of law
- The Court also held that, even though Illinois has legalized marijuana, the federal government has not and the state still retains laws restricting the packaging and use of marijuana.

FOURTH AMENDMENT

United States v. Dameron, 103 F.4th 467 (7th Cir. 2024).

- Dameron was charged with being a felon in possession of a firearm after police officers stopped and frisked him while aboard a public bus in Chicago.
- On appeal Dameron renewed his contention that the police's search of him aboard the bus violated the Fourth Amendment and, in particular, the standards announced in *Terry*. He argued that Illinois permits concealed carry of a firearm and the police had no way of knowing whether Dameron was an authorized license holder.
- The Court of Appeals affirmed. The Court noted the search occurred after Dameron boarded a city bus and the Illinois concealed carry act clearly prohibits carrying a firearm on public transportation. Therefore, even if Dameron was a valid license holder, he violated the law by boarding the bus thereby providing reasonable suspicion he had violated the law.

FOURTH AMENDMENT

United States v. Mendez, 103 F.4th 1303 (7th Cir. 2024).

- Mendez was passing through customs at O'Hare when an agent pulled him aside for inspection, unlocked and scrolled through his cell phone, and found child pornography in the photo gallery.
- On appeal, he argued the search of his phone, in light of the Supreme Court's decisions in *Riley* and *Carpenter*, required a warrant, probable cause, or at least reasonable suspicion.
- The Court of Appeals affirmed, holding the "longstanding recognition that searches at our borders without probable cause and without a warrant are nonetheless 'reasonable' has a history as old as the Fourth Amendment itself."
- The Court joined the uniform view of the circuits to hold that searches of electronics at the border—like any other border search—do not require a warrant or probable cause, and that the kind of routine, manual search of the phone initially performed here requires no individualized suspicion.

FOURTH AMENDMENT

United States v. Jackson, 132 F.4th 1019 (7th Cir. 2025).

- Jackson pled guilty to sex trafficking of a minor and transportation of child pornography.
- He argued the district court should have suppressed evidence found in his cell phone because the police took too long—40 days after his arrest—before seeking that warrant.
- The district court denied the motion after concluding that the delay did not permit the police to obtain any evidence they would not have received had they sought a warrant immediately.
- Affirmed - the risk associated with waiting to obtain a warrant did not exist in this case because the cell phone was in law enforcement custody for the entire 40 days and contained the same evidence on day 40 as it did on day 1. In addition, because Jackson was in custody during this time, law enforcement did not deprive him of his possessory interest in the phone.

SPEEDY TRIAL

United States v. Leonides-Seguria, 2025 U.S. App. LEXIS 9208 (7th Cir. 2025).

- Leonides-Seguria argued his conviction for illegal reentry should be vacated because the government violated the Speedy Trial Act by filing the criminal information more than 30 days after his apprehension on immigration charges.
- By its terms, the Act does not apply to civil custody, which included Leonides-Seguria's time in immigration detention.
- However, several courts have carved out a "ruse exception" when federal law enforcement authorities collude with immigration officials to hold an individual on immigration charges as a mere ruse for later prosecution—buying prosecutors time to build a criminal case without implicating the Act's deadlines
- The Court of Appeals held that this case was not appropriate to resolve the issue – no evidence of collusion.

JURY INSTRUCTIONS

United States v. Offutt, 122 F.4th 268 (7th Cir. 2024).

- A jury convicted Offutt of drug and firearm offenses.
- Offutt argued he was entitled to a new trial because the district court erroneously instructed the jury that his flight from law enforcement could be considered as evidence of his consciousness of guilt.
- The Court of Appeals noted that the inferential steps between his flight and his consciousness of guilt were "tenuous at best" and the district court erred by providing the flight instruction. However, the evidence was overwhelming and any error was harmless.
- The Court issued a warning, stating, "we take this occasion to again warn district courts of the perils of giving a flight instruction, particularly in cases like this one where the strong case the government presented makes it clear the flight instruction was entirely unnecessary."

JURY INSTRUCTIONS

United States v. Page, 123 F.4th 851 (7th Cir. 2024) (en banc).

- Page was charged with twelve counts of attempted heroin distribution and one count of drug conspiracy. At trial, the government proved that Page repeatedly purchased distribution quantities of heroin from one man and had a high level of trust in him.
- Page appealed his conspiracy conviction and argued the district court plainly erred by not sua sponte giving a buyer-seller jury instruction, even though he affirmatively approved the district court's final instructions and never argued a mere buyer-seller relationship.
- A panel of the Court of Appeals agreed and remanded his case for a new trial.
- The Court of Appeals then heard the case en banc and affirmed. The Court held that repeated, distribution-quantity drug transactions alone can sustain a conspiracy conviction.

JURY TRIAL ISSUES

United States v. Watkins, et. al, 107 F.4th 607 (7th Cir. 2024)

- The defendants in this case were charged with RICO violations and other offenses.
- Their principal argument on appeal was that the district judge violated *Batson* during jury selection.
- The Court of Appeals ordered a limited remand to permit the district court to make supplemental findings as to this issue.
- The Court first held that the district court committed error by requiring the defendants to prove purposeful discrimination rather than just proving a prima facie case. In addition, the government refused to give a race-neutral reason for striking one of the jurors in question and the district court failed to make a credibility finding regarding the government's proffered reasons for striking another one.

SENTENCING

United States v. Johnson, 104 F.4th 662 (7th Cir. 2024).

- Johnson purchased stolen data for thousands of credit cards and pled guilty to wire fraud and to aggravated identity theft. At sentencing, the district court, when calculating the loss under U.S.S.G. § 2B1.1, deferred to the guidelines commentary and therefore assessed a $500 minimum loss for each card.
- Johnson argued on appeal that under the standard articulated by the Supreme Court in *Kisor*, the guidelines commentary is not entitled to deference as an interpretation of § 2B1.1.
- The Court of Appeals affirmed, holding that *Kisor* did not disturb the Supreme Court's holding in *Stinson*, that guidelines commentary is "authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of" the guideline it interprets.

SENTENCING

United States v. Poore, 2025 U.S. App. LEXIS 9941 (7th Cir. 2024).

- This case considered whether to overrule prior Circuit precedent regarding the applicability of commentary to the sentencing guidelines based on the Supreme Court's decision in *Loper Bright*, which overruled *Chevron*. The Court had previously held in *United States v. White* that *Kisor* had not overruled *Stinson*.
- The Court declined to overrule *White* noting that analogizing guidelines commentary to an agency's interpretation of its own legislative rules was "imprecise."
- In addition, the Court noted that the guidelines commentary is entitled to an *Auer* deference and rejected the argument that commentary should receive *Chevron* deference.

SENTENCING

United States v. Orona, 118 F.4th 858 (7th Cir. 2024)

- Orona was indicted for mail theft, identity theft, and other crimes stemming from his months-long scheme of stealing mail. About six weeks before trial, he pled guilty to all charges. The district judge awarded the two-level reduction for acceptance of responsibility, but the government declined to move for the extra one-level reduction
- The district court held that the government had permissibly withheld the § 3E1.1(b) motion based on Orona's frivolous challenge to the loss amount.
- Affirmed - the district court's ruling was correct under circuit precedent at the time of sentencing hearing. The Court rejected arguments that the Commission abrogated this rule by amending that provision in the guidelines.
- ***It is important to note that the guidelines now specifically prevent the government from withholding the third point for objections made at sentencing.***

SENTENCING

United States v. Johnson, 131 F.4th 811 (7th Cir. 2025)

- Johnson was convicted of attempting to use a minor to engage in sexually explicit conduct for the purpose of producing child pornography. The district court waived any fine based on his inability to pay, determined Johnson was indigent, and did not impose the assessment under the JVTA.
- But the court imposed a $5,000 assessment under the AVAA (18 U.S.C. § 2259A).
- On appeal, Johnson argued the AVAA assessment cannot be reconciled with a finding of indigency.
- Vacated and remanded for redetermination of the AVAA assessment. The AVAA assessment is mandatory, regardless of the defendant's ability to pay. But a court has discretion in setting the amount and must consider prescribed factors, including the defendant's financial condition.

SUPERVISED RELEASE

United States v. Ford, 106 F.4th 607 (7th Cir. 2024).

- Ford was sentenced to 96 months in prison and supervised release. The judgment imposed a condition of supervised release requiring him to pay his fine but this condition was not explicitly stated at sentencing.
- He argued that the payment condition of supervised release is unauthorized because the judge did not mention it during sentencing, and it also did not appear in the presentence report (whose recommendations were adopted orally at sentencing). The Court of Appeals struck the condition from the judgment.
- However, it noted that there is an open question as to whether the guidelines listed "mandatory" conditions of supervised release in § 5D1.3 are still mandatory following *Booker*. This issue had not been fully briefed by the parties, so the Court left it for another case.

SUPERVISED RELEASE

United States v. Carpenter, 104 F.4th 655 (7th Cir. 2024)

- Carpenter argued that a supervised release revocation proceeding held under 18 U.S.C. § 3583(e)(3) constitutes the trial of a crime or a criminal prosecution within the meaning of the United States Constitution.
- The Court of Appeals rejected this argument and held that defendants facing revocation proceedings do not have a right to jury trial.

SUPERVISED RELEASE

United States v. Reynolds, 111 F.4th 836 (7th Cir. 2024)

- Reynolds violated the terms of his release by testing positive for methamphetamine.
- He admitted to violating his release conditions, his supervised release was revoked, and he received a sentence of 21 months of custody.
- Reynolds argued that the district court erred because it failed to recognize its discretion to consider substance abuse treatment as an alternative to revocation and incarceration.
- The Court reminded district courts that § 3583(d) contains an exception to § 3583(g)'s revocation and incarceration requirement. In those instances when a defendant is subject to § 3583(g) due to a failed drug test, § 3583(d) directs that "[t]he court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception … from the rule of section 3583(g)."

QUESTIONS?

Johanna M. Christiansen

johanna_christiansen@fd.org

(309) 671-7891