Published Eighth Circuit Criminal Decision Summaries
May 12, 2025–May 7, 2026[1]

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May 2025

Case #1: *United States v. Justin Fuget,* 137 F.4th 690 (8th Cir. May 12, 2025)
No. 24-1866 (E.D. Mo.) (Erickson, Arnold and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/05/241866P.pdf

Justin Fuget was found guilty by a jury of a number of offenses including possession of a firearm in furtherance of a drug trafficking crime. On appeal he argued that allowing the government's expert to testify that "the mere presence or the simple possession of a firearm while engaged in drug sales or drug distribution furthers drug trafficking." The Eighth Circuit found that the error in permitting the testimony did not prejudice Fuget. Fuget did not argue this to the district court. Therefore, the Eighth Circuit noted that Fuget's failure to challenge the purportedly erroneous admission of the testimony before the district court leaves him with the burden of demonstrating that the district court plainly erred.

The Eighth Circuit found that any misrepresentation to the jury was corrected, the jury was properly instructed, and the district court left no doubt that the jury had to apply this formulation of the law. The Eighth Circuit disagreed with the premise of Fuget's argument that the jury must have applied the wrong standard because the evidence was insufficient to support his conviction under the correct standard.

The Eighth Circuit concluded that a jury could find Fuget guilty based on the right reasons and that there was no reasonable probability that the challenged expert testimony caused it to find Fuget guilty for the wrong reason.

The Eighth Circuit affirmed.

Case #2: *United States v. Jamal Smith,* 137 F.4th 699 (8th Cir. May 13, 2025)
No. 24-1006 (N.D. Iowa) (Colloton, Benton, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/05/241006P.pdf

After the district court denied his motion to suppress evidence seized during a traffic stop in Iowa, Jamal Smith entered a conditional guilty plea to possession of a firearm in furtherance of a drug trafficking crime and possession of a machinegun, reserving his right to appeal the denial of the suppression motion**.**

Deputy Sheriff Cole Tweten conducted a traffic stop of a vehicle driven by Mr. Smith because he believed that the vehicle's windows were tinted in excess of the legal limit. When Deputy Tweten approached the vehicle, he smelled marijuana coming from the vehicle, and Mr. Smith admitted that there was marijuana in the vehicle. Deputy Tweten also tested Mr. Smith's window tint, and the test confirmed that the windows were not illegally tinted.
Because of the odor of marijuana and Mr. Smith's admission, Deputy Tweten searched the vehicle and found, among other things, a firearm equipped with a magazine, a switch device to convert the firearm to fire automatically, and marijuana.

On appeal, Mr. Smith argued that Deputy Tweten seized him unreasonably because his vehicle windows were not illegally tinted, and Deputy Tweten lacked a reasonable basis to believe that he was violating Iowa law.

The Eighth Circuit concluded that Deputy Tweten's mistaken belief about excessively tinted windows was objectively reasonable—noting his testimony that he observed a driver in the vehicle and could "[p]otentially" see the driver's arms or hands, but could not make out any other

part of the driver. The Court also noted that Deputy Tweten had recent experience investigating other vehicle windows that were confirmed as excessively tinted and that he believed based on observation that Mr. Smith's windows were comparable. The Court also found that although Deputy Tweten's suspicion was dispelled by the testing, the information available to him at the time of stop made his mistaken belief about excessive tinting objectively reasonable. Thus, the Court held that the district court properly denied Mr. Smith's motion to suppress.

The Eighth Circuit affirmed

Case #3: *United States v. Alfredo Ochoa,* 137 F.4th 702 (8th Cir. May 14, 2025)
No. 24-1415 (D.N.D.) (Colloton, Benton, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/05/241415P.pdf

While serving a term of supervised release, Alfredo Ochoa was accused of violating conditions of his supervision. Among other things, it was alleged that he committed another federal, state, or local crime; namely, aggravated assault under North Dakota law (North Dakota Century Code § 12.1-17-02(1)(a)) when he carried out an unprovoked assault on a victim at a bar. Mr. Ochoa denied committing the aggravated assault at his revocation hearing. Over Mr. Ochoa's objection, the district court admitted three exhibits: the victim's medical records, a photo of the victim's face after the assault, and a body camera video from an investigating officer at the bar. After finding that Mr. Ochoa committed the assault and that he "prepare[d] for the assault" and "engaged in a violent and unprovoked assault on a victim who clearly and immediately demonstrate[d] injury to his eye," the district court determined that the assault was a "crime of violence" that constituted a Grade A violation under the Guidelines. The district court then revoked Mr. Ochoa's supervised release and sentenced him to 40 months' imprisonment, followed by 20 months' supervised release.

On appeal, Mr. Ochoa argued that the district court violated his due process rights by considering the three exhibits. The Eighth Circuit opined it was unnecessary to address this issue because any error was harmless beyond a reasonable doubt, given that without the three exhibits, there was overwhelming evidence that Mr. Ochoa committed at least a simple assault. That is, the video of the altercation showed Mr. Ochoa remove his glasses and then attack two men from behind, and Mr. Ochoa texted that he "f**ed up" the victim and that the victim's "face is all swollen and his eyes are shut." The Court concluded that this unchallenged evidence showed overwhelmingly that Mr. Ochoa willfully caused bodily injury to the victim.

Mr. Ochoa also argued that the assault was not a "crime of violence" and thus not a Grade A violation under USSG §7B1.1(a)(1), which includes "conduct constituting . . . a federal, state, or local offense punishable by a term of imprisonment exceeding one year that . . . is a crime of violence." He further argued that the district court should have applied the categorical approach in determining whether the assault was a crime of violence and thus erred in considering his actual conduct.

Given that the record showed that Mr. Ochoa also committed aggravated assault under § 12.1-17-02(1)(c) because he "cause[d] bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being," the Court concluded that any error did not substantially influence the outcome of the proceeding and was harmless. In finding harmless error, the Court explained that a violation of § 12.1-17-02(1)(c) is categorically a crime of violence because it "has as an element the use, attempted use, or threatened use of physical force against the person of another" and that the use of physical force "encompasses the

knowing or intentional causation of bodily injury." Thus, the Court held that even under the categorical approach, Mr. Ochoa's assault necessarily qualifies as a Grade A violation.

The Eighth Circuit affirmed

Case #4: *United States v. Evan Brown Bull,* 137 F.4th 705 (8th Cir. May 14, 2025)
No. 24-1740 (D.S.D.) (Loken, Erickson, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/05/241740P.pdf

Officer Brandon Johnson conducted a traffic stop of a Ford F-150 pickup truck that was driven by Evan Brown Bull. Angel Bush was also a passenger in the truck and got out when Mr. Brown Bull pulled over. Angel Bush was later arrested based on outstanding warrants. Mr. Brown Bull stayed in the vehicle and was also arrested based on an outstanding warrant. A search of the F-150 revealed a handgun holster in the center console, three boxes of ammunition in the glove compartment, and a wooden stock to a rifle or shotgun under the rear driver's side bench seat.
Mr. Brown Bull was charged with and subsequently convicted of being a felon in possession of ammunition.

On appeal, Mr. Brown Bull argued that there was insufficient evidence he knowingly possessed ammunition—asserting, among other things, that he was not the sole occupant of the F-150 or its registered owner; he complied with the traffic stop and didn't attempt to flee; there was no fingerprint or DNA evidence linking him to the concealed ammunition; and that Angel Bush, a convicted felon with the same incentive not to be charged with being a felon in possession, was sitting directly in front of the glove box, and walked away when the traffic stop began.

The Eighth Circuit held that the evidence was sufficient to sustain Mr. Brown Bull's conviction. In so holding, the Court highlighted the following evidence: Mr. Brown Bull's girlfriend testified that she bought the F-150 truck for Mr. Brown Bull and that they both drove the truck. After the F-150 was impounded, Mr. Brown Bull, using an alias, Angelo Bustamante, "came wanting paperwork from the truck to go register it," but his request was denied because he was not the vehicle's registered owner. An ATF investigator who interviewed Angel Bush concluded that "after having interviewed hundreds of people throughout my career"—Angel Bush "had no knowledge of the ammunition." Also, Mr. Brown Bull's Facebook communications on accounts in the name Angelo Bustamante revealed his dealings in firearms and ammunition with numerous people the investigator identified as engaged in the illicit trade of firearms.

The Court concluded that the above-summarized evidence, viewed in the light most favorable to the verdict, was sufficient to permit a reasonable jury to find beyond a reasonable doubt that Mr. Brown Bull had constructive knowing possession of the ammunition found in the F-150 glove box.

The Eighth Circuit affirmed

Case #5: *United States v. Walter Holmes, Jr.*, 137 F.4th 734 (8th Cir. May 15, 2025)
No. 24-1140 (D.N.D.) (Gruender, Benton, and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/05/241140P.pdf

Walter Holmes, Jr., his father, Walter Holmes, Sr, and Monetessa Packineau were charged with conspiracy to distribute controlled substances.
Holmes Sr. and Packineau pled guilty, but Mr. Holmes Jr. proceeded to trial and requested the district court issue an order sequestering witness, which was granted.

At Mr. Holmes Jr.'s trial, Packineau testified she bought fentanyl from both Holmes Sr. and Mr. Holmes Jr. for her personal use. Another witness, A.P., also testified that Mr. Holmes Jr. regularly "fronted" her fentanyl for sale and sold her fentanyl for her personal use. The government also provided Mr. Holmes Jr. with interviews of A.P., where she disclosed that she not only received drugs from him but also from another source, J.B.

Mr. Holmes Jr. attempted to call his father as a witness, but the government argued Mr. Holmes Jr. violated the sequestration order based on jail calls between him and his father. The district court agreed and excluded Holmes Sr. as a witness.

While the jury deliberated, the district court provided two supplemental scheduling instructions to the jury, one clarifying that if the jury had not reached a verdict by 6:30 p.m., they would reconvene the following morning at 9:00 a.m. The jury reached its guilty verdict shortly after 6:30. Observing that one juror cried as the verdict was read, Mr. Holmes Jr. objected to the district court's instructions, arguing that the instructions pressured the jury into reaching a hasty verdict. He also moved for a new trial on that ground, which was denied.

Mr. Holmes Jr. was sentenced to 188 months' imprisonment. He then filed another motion for a new trial alleging a *Brady* violation, arguing that the Government had suppressed evidence of its witness, A.P., admitting to obtaining drugs from J.B. during the same time frame as this drug conspiracy. The district court found no *Brady* violation and denied the motion because the undisclosed evidence was cumulative of the information already available to Mr. Holmes Jr.

On appeal, Mr. Holmes Jr. challenged the district court's determination that he violated the sequestration order; he argued that the district court's deliberation instructions coerced the jury into reaching its verdict; and he argued that the district court abused its discretion when it refused to grant a new trial for the alleged *Brady* violation. He also argued that his sentence was both procedurally and substantively unreasonable.

Sequestration Violation: Mr. Holmes Jr. argued that he "did not relay specific testimony or in any way portray a way Holmes Sr. could tailor his testimony." The Eighth Circuit opined that the recordings tell a different story: Mr. Holmes Jr. relayed testimony by former co-defendant and Government witness Packineau. Mr. Holmes Jr. told his father that Holmes Sr. would "have to get up there," and testify in Mr. Holmes Jr.'s defense, otherwise the Government would "slam dunk" Mr. Holmes Jr. Holmes Sr. stated he would "have to fall on the sword" for his son.

The Court concluded that the district court did not clearly err in finding that Mr. Holmes Jr. relayed trial testimony to his father and provided his father advice "as to what information he needed to convey on the stand."

Mr. Holmes Jr. also argued that the district court misapplied the law in finding that the conversations violated the sequestration order, contending that post-trial amendments to Fed R. Evid. 615 demonstrate that the district court's specific order only operated to exclude Holmes Sr. from the courtroom, not to prevent Mr. Holmes Jr. from discussing trial testimony with his father. The Court explained that while these post-trial amendments might support Mr. Holmes Jr.'s interpretation, the district court was bound to apply the precedent of this circuit, which interpreted the unamended Rule 615 to extend beyond "situations where a witness is present in the courtroom while another witness is testifying" and reaches out-of-court communications from one witness who "directly disclosed details" of earlier testimony to another witness who would testify on the same subject.

Thus, the Court concluded that the district court did not err here in holding the parties to the Court's own interpretation of Rule 615, and thus, did not abuse its discretion in excluding Holmes Sr.

Jury Deliberation Instruction: Mr. Holmes Jr. argued that the district court coerced the jury into reaching a verdict when it informed the jurors that if they had not reached a verdict by 6:30 p.m., they would break for the evening and reconvene the following morning at 9:00 a.m. Though Mr. Holmes Jr. characterizes the district court's scheduling communications as "supplemental jury instructions" and invokes our "coercion" test governing those instructions, the Court disagreed that the communications qualify as "jury instructions"—noting that its research has yielded no case where the Court has treated scheduling communications with an un-deadlocked jury as "supplemental jury instructions." The Court also noted that even if it treated these communications as "jury instructions," they were still permissible because they did not coerce the jury into a premature verdict. The Court thought the content of the communication was informational, explaining the scheduling of deliberations after regular business hours. And absent some other evidence of coercion, the Court opined that that a juror crying while the verdict was read did not suggest coercion. The Court thus held that there was no abuse of discretion in giving the scheduling communications.

Brady Violation: Mr. Holmes Jr.'s argued that he was entitled to a new trial because the government violated *Brady* by failing to disclose additional evidence that A.P. obtained drugs from individuals other than him.

Explaining that there is no *Brady* violation where the government fails to disclose evidence that is cumulative of evidence already available to the defendant and that here the undisclosed information was cumulative of A.P.'s earlier interviews already in Mr. Holmes Jr.'s possession well before trial, the Court held that the district court did not err in finding no *Brady* violation and thus did not abuse its discretion in denying Mr. Holmes Jr.'s motion for a new trial.

Sentence: Mr. Holmes Jr. argued that the district court procedurally erred by failing to explain its chosen sentence, which included an upward variance from the statutory mandatory minimum sentence of 120 months' imprisonment to 188 months' imprisonment.

The Court concluded that the district court had a reasoned basis for its decision and thus did not procedurally err in sentencing Mr. Holmes Jr—noting, among other things, that the district court stated that it decided to impose a sentence outside of the advisory guidelines range after considering "the entire file in this matter . . . the sentencing guidelines, [and] the sentencing factors under 18 U.S.C. § 3553(a)" and that it explained that role the factors weighed in favor of its sentence.

Mr. Holmes Jr. further argued that his sentence was unreasonable because the district court gave undue weight to his previous federal conviction—a factor that the guidelines already took into account. Noting that the district court explained that the previous federal conviction would have made Mr. Holmes Jr. a career offender and expressed concern that he was still on supervision for his previous federal conviction when he committed this crime, the Court opined that the weight the district court placed on this factor, even if partially accounted for by the guidelines, was not undue. Therefore, the Court concluded that Mr. Holmes Jr.'s sentence was not substantively unreasonable.

The Eighth Circuit affirmed

Case #6: ***United States v. Charles Deberry*****, 137 F.4th 729 (8th Cir. May 15, 2025)**
No. 24-1661 (D. Minn.) (Kobes, with Loken, Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/05/241661P.pdf

The Eighth Circuit affirmed a felon-in-possession conviction and 108-month sentence, holding that a justification/self-defense claim under 18 U.S.C. § 922(g) is an affirmative defense that the defendant must prove by a preponderance of the evidence because it does not negate the "knowing possession" element of the offense. The Court rejected Deberry's argument that his alleged momentary possession of a firearm during a shootout was merely a "reflexive reaction" to an attack. The Court further upheld enhancements under U.S.S.G. § 2K2.1(b)(6)(B) for possessing a firearm in connection with Minnesota felony offenses, including reckless discharge and second-degree assault, and under § 3C1.1 for obstruction of justice, where Deberry participated in creating a video identifying and discussing anticipated witness testimony in a manner the district court reasonably viewed as intended to intimidate witnesses.

Affirmed.

Case #7: ***United States v. Samson Diamonte Xavior-Smith,*** **136 F.4th 1136 (8th Cir. May 19, 2025)**
No. 22-3085 (D. Minn.) (Smith, Kelly and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/05/223085P.pdf

Samson Diamonte Xavior-Smith was convicted by a jury of being a felon in possession of a firearm under 922(g). He was determined to be an armed career criminal by the district court. On appeal, Smith challenged the ACC determination.

Smith asserted that the government failed to show that it was harmless beyond a reasonable doubt for the district court to find he committed three predicate felonies on separate occasions. At trial Smith stipulated to one felony punishable by more than one year of imprisonment. At sentencing the Government admitted documentation of three previous state convictions listed in his PSR. Smith did not object. The district court found that no reasonable juror could find that Smith committed his offenses on the same occasion.

The Eighth Circuit affirmed.

Circuit Judge Kelly concurred but expressed concerns about relying on unchallenged facts at sentencing. Judge Kelly concurred based on binding precedent.

Case #8: ***United States v. Thomas W. Pitts,*** **136 F.4th 1137 (8th Cir. May 19, 2025)**
No. 24-1154 (W.D. Mo.) (Grasz, Stras, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/05/241154P.pdf

Thomas Pitts was indicted for three drug charges. Pitts was dissatisfied with his court appointed counsel. New counsel was appointed, and he was dissatisfied with new counsel and decided to represent himself. During a hearing on the next day the court questioned Pitts about his reasoning for being dissatisfied with his counsel. The Court decided to proceed with the Defendant pro se despite Pitts complaint that he had not had a chance to look through his case.

The Court instructed Pitts on basic rules. At closing Pitts cited canon law and asked that he be discharged and compensated for his false arrest. His motion was denied.

At trial, the jury convicted Pitts on all charges, and he was later sentenced to 25 years.

On appeal, Pitts contended his Sixth Amendment right was violated. The Eighth Circuit noted that the key inquiry is whether Pitts was made sufficiently aware of his right to have counsel and of the possible consequences of a decision to forgo the aid of counsel. The only warning given by the district court was that it was "not a very good decision" and even for a lawyer would be a "bad decision." The Eighth Circuit held that Pitts was not given adequate warning of the risks of representing himself. While he had extensive state criminal history, prior contact with the criminal justice system by itself is not enough to establish the required knowledge and understanding.

Judgment vacated and case remanded.

Case #9: *United States v. David Woods*, 137 F.4th 900 (8th Cir. May 23, 2025)
No. 24-1102 (S.D. Iowa) (Benton, with Gruender and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/05/241102P.pdf

Aggregate 1,200-month sentence for production, distribution, and possession of child pornography involving the defendant's foster and adopted sons. The Court rejected multiple constitutional and procedural challenges, holding: (1) the defendant knowingly and intelligently waived counsel under Faretta despite later complaints about limited legal knowledge, discovery restrictions, standby counsel, and sentencing exposure; (2) the district court properly relied on the Eighth Circuit's model reasonable-doubt instruction and correctly advised the jury that the government need not prove guilt to a "near certainty"; (3) the district court did not improperly coerce the defendant's decision not to testify by warning that false testimony could result in perjury charges or obstruction enhancements; (4) the court likewise did not improperly interfere with a defense witness by advising the witness's counsel of potential Fifth Amendment and perjury concerns; and (5) the district court did not plainly err in imposing a $2,500 AVAA special assessment based on the defendant's future prison earning capacity.

Affirmed.

Case #10: *United States v. Angelica Agena*, 138 F.4th 1063 (8th Cir. May 28, 2025)
No. 24-1323 (D. Neb.) (Colloton, Benton, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/05/241323P.pdf

In June 2022, Deputy Jason Schnieder and Deputy Taylor Castaneda stopped a vehicle in Neb. for a traffic violation because the driver's side taillight was not illuminated. The vehicle also did not have license plates, and officers saw an open alcohol container behind the passenger seat and a butane torch lighter of a type that is sometimes used to light pipes for methamphetamine or crack. The vehicle was occupied by Gary Payton, the driver, and Angelica Agena, who was sitting in the passenger seat.

Neither occupant had a valid driver's license. Suspecting criminal activity, the officer handcuffed Payton and Ms. Agena and detained them in the police cruiser. The officers searched Payton's vehicle and found in Ms. Agena's purse a gallon-sized bag containing several smaller baggies of methamphetamine, which total 170 grams of methamphetamine. Ms. Agena was subsequently arrested for possession of a controlled substance and federally charged with possession with intent to distribute five grams or more of methamphetamine (Count I) and conspiracy to distribute five grams or more of methamphetamine (Count II).

She moved to suppress the evidence seized based on alleged violations of her Fourth Amendment right to be free of unreasonable searches and seizures, which the district court denied.

Following a jury trial, Ms. Agena was convicted of possession with intent to distribute methamphetamine and conspiracy to distribute methamphetamine. The district court sentenced her to 54 months' imprisonment, followed by 5 years' supervised release.

On appeal, Ms. Agena argued the district court erred in denying her suppression motion, erred in admitting evidence, and that the evidence was insufficient to convict her.

Suppression Motion: Ms. Agena argued that the officers unlawfully prolonged the traffic stop and searched her purse without probable cause. Specifically, she argued that the officers should have simply issued Payton a ticket for the traffic infractions and released the vehicle and its occupants.

After finding that Ms. Agena had standing to challenge the reasonableness of the traffic stop and the search of her purse because she was passenger in Payton's vehicle and thus seized for purposes of the Fourth Amendment, the Eighth Circuit concluded that it was reasonable for the officers to extend the stop because they observed evidence of a crime unrelated to the traffic violation, i.e., the open alcohol container. The Court also concluded that the open container violation gave the officers probable cause to search "every part of the vehicle and its contents," including containers, that were capable of concealing evidence of the open container violation, e.g., Ms. Agena's purse.

The Court thus held that the search of Ms. Agena's purse was supported by probable cause. Ms. Agena also argued that the methamphetamine should be suppressed because her detention during the search of the vehicle constituted an unlawful arrest. The Court rejected this argument—explaining that the record supported the district court's finding that even if Ms. Agena had been allowed to leave, the officers would not have permitted her to take her purse. The Court also found that there was probable cause to seize the purse as a container that could have contained evidence of criminal activity. Thus, the discovery of the drugs stemmed from independent probable cause to search the vehicle and its contents for evidence of an open container violation.

So, even assuming that Ms. Agena shouldn't have been detained, the Court concluded that suppression was not warranted because the seizure of methamphetamine was not a fruit of her detention.

Admission of Evidence: Ms. Agena argued that the district court abused its discretion by allowing Detective William Koepke to give expert testimony about the meaning of drug related terms used in text messages between her and others: Ms. Agena told Payton, "I need some weight ... To gain ..lol." Someone identifying herself as "Ana" told Ms. Agena that her "bro" had twenty dollars and was looking for "a cute shirt and tree to plant," and asked Agena, "[C]an u help with that or no?" Agena responded, "I didn't have trees personally and I usually buy by the oz so I just didn't want to f**k with it and the cute shirt I'll get u when I get back to town."

Detective Koepke testified at trial that "weight" can be used in reference to drugs, that "tree" means "marijuana," and that "shirt" means "a 16th of an ounce of whatever controlled substance," including "methamphetamine, cocaine, and/or heroin."

Ms. Agena argued that there is "no scientific basis" for expert testimony about drug slang, and that because Detective Koepke "was not present when the texts were sent," his testimony constituted improper lay witness testimony.

The Court disagreed—explaining that it has repeatedly held "that the district court 'may allow law enforcement officers to testify as experts about drug-related activities unfamiliar to most

jurors,' including 'jargon used in the drug trade'" and that this rule applies whether or not the officer was an active participant in the conversation about which he testifies.

Noting that Detective Koepke testified at length about the specialized knowledge, experience, training, and education upon which he based his expert testimony and applied his knowledge about drug slang to help the jury understand the meaning of the messages introduced at trial, the Court held that the district court did not abuse its discretion by admitting his testimony.

The Court also rejected Ms. Agena's argument that the text messages and Detective Koepke's testimony constituted improper evidence of her bad character under Rule 404(b) or should have been excluded as unfairly prejudicial under Rule 403. The Court concluded that the messages between her and Payton (Ms. Agena told Payton that she needed "some weight ... To gain" and that,"I can help y'all better than randy ever could just sayin," and Payton responded, "Ok I got to go back to omaha and get more.") were relevant to establish Ms. Agena's commission of the conspiracy charge and admissible as intrinsic to the charged offenses—noting that Payton testified that "randy" was a drug customer and he understood Ms. Agena's offer to "help" him "better than randy" to mean that Ms. Agena would introduce Payton to some of her friends to sell methamphetamine. Payton also testified that his statement about going to Omaha referred to "getting more meth," and that Ms. Agena knew that he obtained methamphetamine in Omaha.

The Court also found that the messages between Ms. Agena and Ana were also relevant and admissible as intrinsic to the charged offense, opining her promise to deliver a "cute shirt" to Ana was relevant to her intent to distribute the seized methamphetamine.

The Court further concluded that the messages were not unfairly prejudicial because they were directly relevant to the charged offenses.

Motion for Judgment of Acquittal: Ms. Agena argued that the evidence was insufficient to prove that she knowingly possessed more than five grams of methamphetamine. She specifically argued that she did not "possess" the methamphetamine because Payton placed the bag of drugs in her purse. Noting Payton's testimony that he gave Ms. Agena the bag to hide and she placed it in her purse herself, the Court held that a reasonable jury could find that she exercised "knowing, direct, and physical control" over the methamphetamine, and that she therefore had actual possession of the drugs.

The Court also held that a reasonable jury could have concluded that Ms. Agena knowingly and intentionally conspired with Payton to distribute methamphetamine given, among other things, Payton's testimony about the text exchange in which Ms. Agena offered to help him sell drugs and that he and Ms. Agena procured the seized methamphetamine with intent to sell it to someone named "Billy—which was corroborated by text messages between Ms. Agena and Billy Walton.

The Eighth Circuit affirmed

Case #11: *United States v. Sam Boyd*, 138 F.4th 1079 (8th Cir. May 30, 2025)
No. 24-1314 (D.S.D.) (Loken, Erickson, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/05/241314P.pdf

Following a jury trial, Sam Boyd was convicted of conspiracy to distribute a controlled substance, and of being a prohibited person in possession of a firearm and ammunition.

On November 7, 2022, Mr. Boyd filed motions to dismiss or in the alternative to suppress evidence (the November Motions). The same day, the district court issued a text order continuance, setting a hearing date and stating that "[b]ased on the ends of justice and 18 U.S.C. § 3161(h)(7), the deadlines and trial date are canceled pending resolution of [R. Doc.] 105 Motion to Suppress and

[R. Doc.] 104 Motion to Dismiss." The hearing was delayed by disputes over the witness list and difficulties in procuring testimony. The court also ordered post-hearing briefing on Mr. Boyd's motion based on new information.

On February 9, 2023, Mr. Boyd filed a memorandum "in support of" the November motion to dismiss and a motion to compel discovery (the February Filings). The magistrate judge recommended that Mr. Boyd's November Motions and February Filings be denied on June 2. All reasonably expected filings were submitted by June 16, and the district court adopted the report and recommendation on August 24.

After the district court denied his motion to dismiss the indictment for violation of his Speedy Trial Act rights, see 18 U.S.C. § 3161 et seq., and denied his motion to sever the firearms counts from the drug conspiracy count, Mr. Boyd proceeded to trial and was subsequently convicted.

Mr. Boyd appealed the denial of his motion to dismiss the indictment based on violation of his Speedy Trial Act rights and the denial of his motion to sever.

As to the motion to dismiss, the Eighth Circuit explained that the "Speedy Trial Act "requires that trial begin within 70 days after a defendant is charged or makes an initial appearance." But certain periods of delay "shall be excluded" from the speedy trial calculation, and so, the speedy trial clock runs only if none of § 3161(h)'s eight enumerated exclusions apply. The Court noted that the parties agreed that 54 days accrued to Mr. Boyd's speedy trial clock. Mr. Boyd argued, however, an additional 39 days accrued between June 17, when the report and recommendation for the February Motions was "under advisement," and August 24, when the court decided the motions. According to Mr. Boyd, § 3161(h)(1)(H) is limited to 30 days and that no other exclusion could apply; thus, after the 30 excludable days expired, 39 days ran.

The main issue before the Court then was whether the district court validly issued its ends of justice continuance on November 7 because if it did, the 39 days are excludable. The Court explained that for an ends of justice continuance to be proper under that text order, the district court "must 'set forth, in the record of the case, either orally or in writing, its reasons' for finding that the ends of justice are served and they outweigh other interests."

Although the text order was short, the Court explained that it understood the reasons for the continuance—noting that the November Motions were factually complex and that the text order tells us that the district court granted the continuance so that those motions could be resolved. The Court also noted that witness issues caused the hearing to be delayed and that Mr. Boyd asked for more briefing, which led to the February Filings.

Thus, the Court held that the district court didn't abuse its discretion by granting the continuance and denying the motion to dismiss.

As to the motion to sever the firearm charges from the drug conspiracy charge, the Court explained that it can reverse the denial of a motion to sever only if "the defendant shows an abuse of discretion resulting in severe prejudice." But "[a] defendant cannot show prejudice when evidence of the joined offense would be properly admissible in a separate trial for the other crime. The Court concluded that because the guns and drugs would be admissible in separate gun and drug trials under Fed. R. Evid. 404(b), there was no prejudice to Mr. Boyd.

The Eighth Circuit affirmed

June 2025

Case #12: *United States v. Denson*, 138 F.4th 1091 (8th Cir. June 2, 2025)
No. 24-1561 (N.D. Iowa) (Loken, Shepherd, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/241561P.pdf

Denson was sentenced to 419 months and 18 days after being convicted by a jury for conspiracy to distribute meth and possession with intent to distribute heroin. This was a downward variance from a guideline range of life. Denson argued that there was insufficient evidence to convict him. The Eighth Circuit found that there was sufficient evidence. At trial, cooperating witnesses testified that they sold meth and heroin on Denson's behalf, and other witnesses testified that they purchased drugs from him. When police searched his residence, they found a safe containing $935, heroin & other drugs, and his ss card and birth certificate. Evidence does not need to be direct evidence of guilt. Further, as for the second charge, Denson was a passenger in a car that was stopped. After Denson fled on foot, they found 6 packages of heroin around the passenger area of the car. The jury was allowed to make credibility determinations of the witness.

Denson also challenged the sentence received. He received a 2-level enhancement for possessing a firearm, which was based solely on the witness testimony of two people who claimed they saw him with a gun. However, the belief of the district court in these witnesses is virtually unreviewable on appeal. As to the length of the sentence, the district court need only set forth enough explanation to satisfy the appellate court that it had considered the parties' arguments.

Affirmed.

Case #13: *United States v. Brown Bull*, 138 F.4th 1083 (8th Cir. June 2, 2025)
No. 24-2197 (D.S.D.) (Loken, Erickson, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/06/242197P.pdf

Brown Bull was convicted by a jury for conspiracy to distribute 500 or more grams of meth and sentenced to 400 months in prison. He argues on appeal that the district court erred in overruling his objections to a 2-level increase for obstruction of justice, a 4-level enhancement for being a leader/organizer in a criminal activity that involved 5 or more participants, and a 2-level enhancement because the crime was part of a pattern of criminal conduct that was engaged in as a livelihood.

At trial, 13 witnesses testified as to their individual drug dealings with Brown Bull. There were videos of controlled drug buys and Facebook messages memorializing drug transactions. The PSR detailed 31 sources of information regarding their drug and firearm dealings with Brown Bull. It included 5 paragraphs describing controlled buys and jail messages from Brown Bull regarding the drug conspiracy and trial witnesses. An amended PSR was filed when it was discovered that Brown Bull had posted a Facebook message on the day the trial ended stating "these are the people who exchanged my freedom for theirs." He listed the people who testified. His guideline range became 43, with a recommended sentence of life. The probation officer believed this was a threat or attempt to intimidate witnesses. The lower court granted in part a motion for downward variance to 400 months.

As for the obstruction enhancement, it was sufficient to show that Brown Bull had messaged someone about witnesses prior to trial about checking the jail roster and shipping the snitches. It also used his Facebook message post and warning of "wait til I run into you" as evidence of obstruction or attempted obstruction of justice. The Eighth Circuit found that an attempt to publicize witness names support an inference that he intends to intimidate or threaten them. As for being an organizer or leader and livelihood enhancement, Brown Bull need only control one other participant. Here, Brown Bull was active in the conspiracy and controlled the quantities that others received, collected debts, and fronted meth to others.

Affirmed.

Case #14: *United States v. Midder*, 139 F.4th 649 (8th Cir. June 4, 2025)
No. 23-3041 (D. Neb.) (Colloton, Benton, and Kelly (author))
https://ecf.ca8.uscourts.gov/opndir/25/06/233041P.pdf

Midder was convicted after a jury trial of sex trafficking and two counts of sexually exploiting a 16-year-old. On appeal, Midder argued that the district court abused its discretion by admitting social media evidence and witness testimony, and that insufficient evidence supported his convictions. When arrested, law enforcement seized Midder's cellphone and extracted data from it. Midder argued that there was insufficient evidence to link him to the phone and its contents. The Eighth Circuit determined that authentication of social media evidence can be done with circumstantial evidence that links a person to the social media account. Here, the government introduced evidence that Midder was holding and using the phone at the time of his arrest, data extracted from the phone included autofill information with his personal info, testimony that the phone stored autofill information of his online persona (Lisa Lowes) and that the phone was connected to the Facebook account for this online persona. Further, an email connected to the online persona was linked to an account that had posted advertisements of the minor to set up dates, and some of these photos were saved on the phone. Moreover, the application used to communicate with sex buyers were received after Midder's arrest, but no responses were sent. Therefore, the district court did not abuse its discretion in admitting the evidence.

Midder also objected to the testimony of an adult woman who claimed he previously forced her into prostitution because this was not similar conduct and it was improper propensity evidence. She was in a romantic relationship with Midder and they were both adults. The Court found that for purposes of allowing evidence of prior bad acts under Rule 404(b), this was similar in kind to the conduct charged and not overly remote in time. In addition, evidence that Midder previously trafficked the woman on the same prostitution website that he was accused of using to traffic the minor was probative of his knowledge of sex trafficking, his intent to sex traffic, and his motivation to make money from it. The district court also gave a proper limiting instruction.

The Eighth Circuit found there was sufficient evidence to convict him on all three counts. Affirmed.

Case #15: *United States v. Hilburn*, 139 F.4th 647 (8th Cir. June 4, 2025)
No. 24-1117 (W.D. Ark.) (Loken, Arnold, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/241117P.pdf

Hilburn was sentenced to 500 months and a lifetime of supervision for distribution of CP and traveling with the intent to engage in illicit sexual conduct. He was caught after sending messages to another individual about sexual interest in minor males and sending sex abuse material. On appeal he argued that he should not have received the enhancement for distribution in exchange for valuable consideration under U.S.S.G. 2G2.2(b)(3)(B). The enhancement applies if "a defendant 'agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material.'" *United States v. Hansen*, 859 F.3d 576, 577 (8th Cir. 2017) (quoting USSG § 2G2.2(b)(3)(B), comment. (n.1)). Here, the valuable consideration was more CP—in that Hilburn agreed to send the other individual CP in exchange for more CP for sexual gratification. The interactions between the two men were repeated and not anonymous. They sent several videos of CP at different times, and Hilburn admitted he had "been trading CP." Thus, the Eighth Circuit did not find that there was a "definite and firm conviction that the district court's findings are a mistake."

Affirmed.

Case #16: *United States v. McKinney*, 139 F.4th 690 (8th Cir. June 5, 2025)
No. 24-1182 (N.D. Iowa) (Loken, Arnold, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/241182P.pdf

McKinney pled guilty to possession of ammo as an unlawful drug user. He unsuccessfully tried to withdraw his guilty plea on the grounds that 18 U.S.C. § 922(g)(3) violated the Second Amendment and he was sentenced to 120 months. On appeal he argues that the district court should have allowed him to withdraw his guilty plea and that the guideline range was incorrectly calculated.

McKinney was an unlawful marijuana user. At his sentencing hearing, the officer testified that police pulled over a vehicle occupied by McKinney and B.R., a juvenile. Officers found a ghost gun with a loaded magazine in the car. B.R. was charged with possession of the gun, but McKinney's DNA was found on the gun. When interviewed, McKinney admitted he handled the firearm. B.R. claimed that McKinney threw the gun in his lap when police pulled them over. There were two other incidents where McKinney was found to be near or handling a gun. Although she did not testify at the sentencing hearing, the district court allowed Grand Jury testimony, as well as text messages with McKinney, from a woman who claimed she had purchased multiple firearms for McKinney. Images on the woman's phone showed McKinney holding a gun. The district court calculated McKinney's base offense level to be 22, because he had a prior COV. The court then applied two 4-level enhancements for: 1) the number of firearms and 2) possession of a firearm in connection with another felony offense. The guideline range became 120—the statutory max at that time.

On appeal, McKinney advances a *Bruen* challenge and argued that he should have been allowed to withdraw his plea agreement to argue that his indictment should have been dismissed. He argued that 922(g) is unconstitutional facially or as applied to marijuana users. The Eighth Circuit agreed with the district court's finding that there was no intervening change in law

regarding 922(g)(3)'s constitutionality since he entered his guilty plea that would permit a late request to withdraw his guilty plea. In addition, he had not argued that he was innocent nor did he contest that his plea was involuntary and unknowing. Here, the pretrial motions deadline was March 21, 2023, and his guilty plea was in June of 2023, making his January 2024 motion to withdraw his guilty plea and dismiss the indictment very late. Thus, no abuse of discretion in denying the motion.

Next, he argues that the base offense level was too high, the court relied on inadmissible hearsay, and it failed to properly weigh the 3553(a) factors. First, the base offense level was correct because the district court properly considered his conviction for Iowa domestic abuse to be a COV. Although he argued that this conviction postdated the conduct for which he pled guilty, the district court was allowed to find that McKinney continued the instant offense conduct past the date of this conviction. Next, it found there was no abuse of discretion in admitting hearsay testimony, which was used to apply the enhancements. Lastly, the Eighth Circuit found his sentence was not substantively unreasonable. The lower court considered his mitigating arguments but was allowed to place weight on the negative impact of guns in the community.

Affirmed.

Case #17: *United States v. Tate*, 139 F.4th 678 (8th Cir. June 5, 2025)
No. 24-2617 (D.N.D.) (Gruender, Benton, and Shepherd (author))
https://ecf.ca8.uscourts.gov/opndir/25/06/242617P.pdf

Tate appeals the denial of his motion to suppress. An officer smelled marijuana in a hotel and tracked the scent to Tate's room. Officer Collins obtained a guest list from the hotel employee and recognized Tate (who had a Michigan ID) as one with a criminal history of drugs and guns. Because Tate was not in North Dakota's identification system, he could not legally possess marijuana in the state. Ofc. Collins obtained a search warrant, identifying the smell of marijuana, his belief that it is not uncommon for those in Michigan to travel to N.D. to sell drugs, and the fact that Tate had extended his stay and asked for a room with a safe, as the basis for probable cause. Ofc. Collins found fentanyl, cash, and firearm parts. Tate was charged with 2 drug crimes and 924(c), but pled to conspiracy to distribute controlled substances and was sentenced to 48 months.

Tate argued that the search warrant was not supported by probable cause or the good-faith exception, and therefore the evidence must be excluded. He also argued the search exceeded the scope of the warrant. The district court denied the motion to suppress and found there was sufficient probable cause for the search and the warrant's scope was not exceeded. The Eighth Circuit noted that it has routinely allowed the scent of marijuana to provide a basis for probable cause. Although specific training to track the smell of marijuana is not required, Ofc. Collins had nearly a decade of law enforcement experience and had some drug identification training. Although no marijuana was found in Tate's room, this may have been due to the length of time between smelling marijuana and obtaining the search warrant (from 4:20 pm to 9:35 am). Further, Ofc. Collins identified other factors that formed a basis for the search warrant. As to the scope of the warrant, officers may search "all areas and container in which the object of the search may be found." Moreover, the incriminating nature of fentanyl and firearm parts permitted officers to seize them.

Affirmed.

Case #18: ***United States v. Drum*****, 139 F.4th 715 (8th Cir. June 6, 2025)**
No. 24-1397 (D.S.D.) (Smith (author), Gruender, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/06/241397P.pdf

Drum was convicted by a jury of aggravated sex abuse of a child under 12 (Count 1) and abusive sexual contact of a child (Count 2). Drum moved for acquittal or, in the alternative, a new trial. The district court granted the motion for the new trial and the Government appealed.

J.L.K., at age 13, reported to her principal that Drum (her mom's ex-boyfriend) inappropriately touched her while on tribal land. Drum agreed to take a polygraph test and "failed" when he denied touching J.L.K. while he was naked in the tub. Drum responded "mmhmm," to statements of "it was absolutely clear" that Drum touched J.L.K.'s vagina. Agt. Wittman testified at trial that these responses were an acknowledgement of hearing what he had said. J.L.K. testified at the trial (after being prompted by leading questions) that he had touched her on her vagina and tried to insert his penis into her. Drum moved for acquittal, arguing insufficient evidence of penetration. The district court denied the motion because penetration was not required. However, the court noted that J.L.K.'s testimony was difficult to follow.

The government then proposed Jury Instruction No. 9, which said: Evidence has been introduced that a statement accusing the defendant of a crime charged in the Indictment was made, and that the defendant did not at that time deny the accusation, object to, or contradict the statement. If you find that the defendant was present and actually heard and understood the statement, and that it was made under such circumstances that the defendant would be expected to deny, contradict, or object to it if it were not true, then you may consider whether the defendant's silence was an admission of the truth of the statement.

The court overruled Drum's objection to this jury instruction. The government argued that when Drum was confronted with Agt. Wittman's accusations, he did not deny or object to it. The government argued to the jury that Drum's "mmhmm" responses were a rolling set of admissions. The jury convicted Drum on both counts. The district court granted the motion for a new trial because it was troubled by the testimony and believed that leading questions asked of J.L.K. may have played a large role in the case. Specifically, the government introduced the word "vagina" and J.L.K. agreed that is where she was touched. J.L.K. had also said that touching was on the "outside," which is not the vagina. The court also believed that the trial outcome was likely affected by the introduction of Drum's "mmhmm" responses. It believed that Jury Instruction 9 was unfairly prejudicial. The court also stated that count one carried a 30-year minimum sentence, which was outrageous, given Drum's history and characteristics.

The Eighth Circuit considered Fed. R. Crim. P. 33(a) which provides courts with the discretion to grant a new trial, although it must be exercised sparingly. It believed the district court abused its discretion in granting a new trial because it is restricted to the grounds raised by the defendant in his Rule 33 motion. It cannot do so sua sponte. Here, Drum moved for acquittal based on the weight of the evidence and the court granted a new trial based on testimony, the use of leading questions, and the Jury Instruction. Although Drum argued that all of that went to the weight of the evidence, he did not specifically mention the use of leading questions and the jury instruction.

The Eighth Circuit also denied his request for a remand to show excusable neglect regarding new grounds. Here, Drum filed his appeal on time, but did not add the "new" arguments.

Reversed and remanded for sentencing.

Judge Stras concurred on reversing on Count 2, but would have affirmed the grant of a new trial on Count 1.

Case #19: *United States v. McWaters*, 139 F.4th 727 (8th Cir. June 9, 2025)
No. 24-1423 (S.D. Iowa) (Smith, Kelly, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/06/241423P.pdf

McWaters pled guilty to possession with intent to distribute 50+ grams of methamphetamine and was sentenced to 240 months. On appeal he argues that the district court erred in failing to apply a role reduction under USSG 3B1.2.

McWaters was arrested after a traffic stop in which officers found 19,910 grams of actual meth. He admitted that he transported meth and drug proceeds in a post-Miranda interview. The guideline range was 292 to 365 months, and the court varied downward to 240 months. To prove he is entitled to a reduction, McWaters must show that the conduct "for which [he] would otherwise be [held] accountable involved more than one participant," and that his "culpability for such conduct was relatively minor compared to that of the other participant or participants." McWaters emphasized his role as a low-level drug courier and his minimal knowledge of the drug operation. The court found that McWaters failed to identify any evidence to show how his conduct compared with other participants. In addition, his base offense level was calculated solely on the quantity of drugs he personally transported. McWaters failed to meet his burden for a reduction.

Affirmed.

Case #20: *United States v. Nesdahl*, 140 F.4th 474 (8th Cir. June 10, 2025)
No. 24-2404 (D.N.D.) (Gruender, Benton, and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/06/242404P.pdf

Nesdahl appeals his sentence and restitution order after pleading guilty to 9 child exploitation offenses. The PSR recommended a guideline range of 3,120 months in prison—the statutory maximum. The PSR also identified 9 victims of his crimes and indicated that each count was a CP offense under 18 U.S.C. § 2259(c)(3), which triggered mandatory restitution. Nesdahl did not object to this.

Nesdahl argued for a downward variance to 240 months, and the government argued for a downward variance to 480 months. However, the court sentenced him to 600 months and ordered $3,000 in restitution for each of the 9 victims. The Eighth Circuit considered Nesdahl's appeal of the restitution under plain error review since he did not object at sentencing. Section 2259(b)(2) requires a district court to impose a minimum of $3,000 dollars in restitution for each victim of "trafficking in child pornography." That phrase is limited to violations of specifically listed offenses. See 18 U.S.C. § 2259(c)(3). Receipt of child pornography under § 2252(a)(2) qualifies as such an offense but § 2251(a) does not. Several of his convictions were for violations of 2251(a). Federal courts cannot order restitution beyond that authorized by statute. In its brief, the

Government confessed its error. Here, only two of the 9 victims were entitled to restitution. Because the court was not authorized to impose this restitution order, it was plain error.

Nesdahl also argued that his sentence was substantively unreasonable as the court did not give proper weight to his lack of criminal history and his history of depression and alcohol abuse. It found that the lower court considered Nesdahl's arguments but determined that a 600-month sentence was appropriate. There was no abuse of discretion.

Vacated and remanded the restitution order but affirmed the rest of the sentence.

Case #21: *United States v. Puckett*, 139 F.4th 730 (8th Cir. June 11, 2025)
No. 24-1293 (W.D. Mo.) (Smith (author), Benton, and Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/06/241293P.pdf

Puckett was convicted of receiving CP after a bench trial and sentenced to 210 months. He appeals the denial of his motion to suppress evidence found on his cell phone and statements he made to law enforcement. He was stopped for traffic violations for improperly displaying a disabled placard by hanging it on his rearview mirror and for failing to wear a seatbelt. Puckett admitted to having an old statutory rape conviction and that he was a registered sex offender. He had not registered any social media accounts on his registration. Puckett consented to a search of his vehicle. The trooper saw a cell phone on the driver's seat and grabbed it. When the screen illuminated, Trooper Rorie saw a Facebook and Snapchat icon. Trooper Rorie asked Puckett if he had any images or apps he should not have and Puckett said he had "animated images on there." After several requests to look into his phone, Puckett stated he did not know if they're underage or not" and images "popped up." When Trooper Rorie again asked about looking at the phone, Puckett responded "I don't mind. Not a problem."

Puckett sat in the patrol car while Trooper Rorie looked through his phone and asked questions about his social media, his sex offender registration, and photographs he found on the phone. Trooper Rorie then discovered a picture he believed to be CP and arrested Puckett and advised him of *Miranda*. In a later *Miranda* interview, Puckett admitted to possessing CP. An examination of the phone revealed multiple images of CP.

On appeal Puckett argued that:

1) Trooper Rorie unlawfully extended the stop. The Eighth Circuit found that under *Rodriguez v. United States*, 575 U.S. 348, 354 (2015), Fourth Amendment jurisprudence "tolerated certain unrelated investigations that did not lengthen the roadside detention." *Id*. However, "a traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a warning ticket." *Id*. at 354–55 (quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)). This case was like Eighth Circuit cases *United States v. Salkil*, 10 F.4th 897 (8th Cir. 2021), and *United States v. Mathes*, 58 F.4th 990 (8th Cir. 2023) where police obtained the consent to search within the time reasonably required to complete the mission of the traffic stop. Here, the traffic stop's mission was not complete when he asked to search because Trooper Rorie had not issued a traffic citation or warning about the infractions. The brief duration of inquiry occurred within the reasonable period of the traffic stop's original purpose.

2) Trooper Rorie unlawfully searched and seized Puckett's cell phone when he moved it and illuminated it. Here, Puckett gave consent to a search. Trooper Rorie had questioned Puckett about whether he had anything illegal on his person or inside the car, such as "drugs, stolen

items, or something like that?" Although general consent to search a car would not extend to a search of cell phone digital data without probable cause, incidental movement of a cell phone is not unreasonable while searching the car for illegal items. The district court did not clearly err in finding that Trooper Rorie did not power the cell phone, tap the screen, or otherwise manipulate the phone to reveal digital data. His actions were reasonable given Puckett's consent to search. They found that his consent was voluntary although Trooper Rorie made repeated requests to search. There was no use of threats or intimidation, Puckett was not mentally impaired, and he had previously encountered the justice system.

3) Puckett also argued that he was subjected to a custodial interrogation. The Court considered the six Griffin factors: (1)whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning. The Court found that two factors weighed in Puckett's favor—Trooper Rorie did not tell him he was free to leave, and Puckett was placed under arrest after questioning. However, they found that his freedom of movement was not constrained to the degree associated with an arrest because he was in the front seat of the patrol car and was not handcuffed. The questioning shows that Puckett voluntarily acquiesced to the questions. Trooper Rorie did not use strong arm tactics, and the atmosphere was not police dominated. Therefore, *Miranda* warnings were not required.

Affirmed.

Case #22: *United States v. Ward*, 140 F.4th 945 (8th Cir. June 11, 2025)
No. 24-2077 (D.S.D.) (Smith, Kelly (author), and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/06/242077P.pdf

Ward was sentenced to 360 months in prison after a jury convicted him for distribution of a controlled substance resulting in serious bodily injury and conspiracy to distribute fentanyl. K.S. was revived with Narcan after an overdose. Police discovered that Ward was one of the people who had distributed fentanyl to K.S. Police initiated a traffic stop on the car where Ward was in the back seat. He provided a false name, and he was arrested for false impersonation. A search incident to arrest yielded marijuana, methamphetamine, fentanyl pills, and a gun. Ward moved to suppress evidence from the traffic stop and moved to dismiss the indictment because officers failed to reserve evidence. Both motions were denied.

As for the motion to suppress, Ward did not contest the lawfulness of the initial stop or the search of the car. Thus, the Eighth Circuit found that the officers did not unconstitutionally extend the stop by asking that he sit in the patrol car while they confirmed his identity. It determined that "a lawful detention may be prolonged for a reasonable time without violating the Fourth Amendment if complications arise while checking identification." *United States v. Cloud*, 594 F.3d 1042, 1045 (8th Cir. 2010). Here, complications arose because Ward provided fake names.

As for the denial of the motion to dismiss the indictment for destruction of evidence, there was no evidence supporting Ward's claim about the existence of his five cell phones. The

district court did not find Ward's testimony about the phones credible. Further, Ward argued that the officers failed to preserve two bags found in the trunk, although they photographed the bags' contents. Ward believed that DNA evidence from the bags would be exculpatory because it would show they belonged to someone else. The district court had found credible that the officers had not found the bags themselves to be important after removing their contents. To rule in Ward's favor, the court would have to find proof of an official animus or a conscious effort to destroy exculpatory evidence, which was not present here. *McKay v. City of St. Louis*, 960 F.3d 1094, 1100 (8th Cir. 2020).

As for the sufficiency of the evidence, reversal is appropriate "only if no reasonable jury could have found the defendant guilty beyond a reasonable doubt." There is a long explanation as to why the trial testimony and evidence was sufficient.

Affirmed.

Case #23: *United States v. Farmer*, 139 F.4th 964 (8th Cir. June 12, 2025)
No. 24-1490 (E.D. Ark.) (Gruender, Benton, and Shepherd (author))
https://ecf.ca8.uscourts.gov/opndir/25/06/241490P.pdf

Farmer was sentenced as a career offender to 240 months in prison. He did not object to the career offender designation at sentencing. Counsel acknowledged that he was a career offender in the sentencing memo and at the hearing. The defendant could not ask for plain error review when he invited the error. Because "[a]n erroneous ruling generally does not constitute reversible error when it is invited by the same party who seeks on appeal to have the ruling overturned," Farmer is unable to utilize plain error review. *Roth v. Homestake Mining Co*., 74 F.3d 843, 845 (8th Cir.1996)

Affirmed.

Case #24: *United States v. Koon*, 139 F.4th 966 (8th Cir. June 12, 2025)
No. 24-2369 (D.N.D.) (Loken, Benton (author), and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/06/242369P.pdf

Koon moved to dismiss the indictment, asserting a speedy-trial violation of the Interstate Agreement on Detainers Act (IADA). The district court granted the motion to dismiss, without prejudice. The government appeals.

Koon was serving a sentence in state prison when informed of federal charges for a drug-trafficking conspiracy. The DEA sent him a detainer, which said that he had a right to a speedy trial within 180 days after his written demand is delivered to the appropriate US attorney and US district court. His custodian, the North Dakota Department of Corrections and Rehabilitation (DOCR), sent a copy to the DEA but not the other parties. Koon was not brought to trial within 180 days after his demand. The district court found that the US attorney received "some notification" of the detainer but it was not delivered to the court or US attorney's office. The district court went on a theory of constructive delivery, but this is not adequate. The district court's theory ignores the plain language of the IADA: the IADA requires notice to the "prosecuting officer" or the "prosecuting official" – not to the "prosecuting state." See 18 U.S.C. App. 2, § 2, art. III(a), (b), (d).

Reversed and remanded.

Case #25: *United States v. Traywick*, 139 F.4th 978 (8th Cir. June 12, 2025)
No. 24-2852 (N.D. Iowa) (Loken, Shepherd, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/242852P.pdf

Anders case in which the Court believes that counsel has not reviewed all of the issues. Traywick conditionally pleaded guilty to drug and firearm charges after the district court denied his motion to suppress evidence seized from his vehicle and person at a traffic stop. He argues that the officers lacked probable cause to conduct a search.
As to the suppression issue, the traffic stop occurred because Traywick's vehicle did not have functioning license plate lights. Deputy Haas claimed he smelled marijuana and called for backup. Traywick denied that marijuana was in the vehicle but admitted he loaned out his car to someone else. When he was asked to step out of the car, officers saw the corner of a plastic bag sticking out of his pocket. Traywick pulled it out of his pocket when asked and admitted it was meth. He also produced two bags containing suspected marijuana. A vehicle search yielded a loaded handgun and suspected narcotics.

The district court adopted the magistrate judge's R&R, which commented that the issue "hinges on the odor of marijuana," recommended that the court "believe Deputy Haas" and deny the motion to suppress because the odor gave the officers probable cause to search the vehicle under *United States v. Williams*, 955 F.3d 734, 737 (8th Cir. 2020), and the subsequent searches were justified -- the search of Traywick's person when Deputy Holbach saw marijuana in plain view in Traywick's pocket became a search incident to arrest when Traywick produced a baggie of methamphetamine. The Eighth Circuit found that the district court's findings were not clearly erroneous and affirmed.

As to counsel's motion to withdraw, this was denied so that counsel could brief the supervised release condition that requires: In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.

Because Traywick received 5 years of supervision, this would conflict with the maximum recommended community service of 400 hours under USSG 5F1.3. While this appeal was pending, the Eighth Circuit held "that the district court plainly erred in imposing [a 20-hours-per week] condition without a cap on the number of hours." United States v. Hinkeldey, 124 F.4th 1093, 1094 (8th Cir. 2024), citing United States v. Carlson, 406 F.3d 529, 531 (8th Cir. 2005) (review of special condition of supervised release is for plain error when defendant fails to object).

Case #26: *United States v. Williams*, 139 F.4th 998 (8th Cir. June 13, 2025)
No. 24-2122 (W.D. Mo.) (Smith, Shepherd (author), and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/06/242122P.pdf

Williams was sentenced to 240 months for three counts of FIP. He was found to be in possession of a firearm on three separate occasions in 2020 and 2021. Williams was sent to the BOP for a competency evaluation, where he was found to be malingering. The defense's witness found he was not competent to stand trial, but recognized he had malingered when tested in the BOP. The court found he was competent.

Williams' guideline range was 130 to 162 months, but the government emphasized his lengthy criminal history and the finding that he was malingering. When defense counsel attempted to make an argument regarding the opinions as to malingering, she was told not to argue the competency issue again or she would be asked to sit down and not allowed to make further argument. Counsel asked why the AUSA was allowed to go into the competency issue and the district court responded "because he won."

Williams argues that the court procedurally erred by limiting his argument in favor of a downward variance at sentencing. The Eighth Circuit found that the district court eventually allowed defense counsel to make several points regarding his history of mental illness. Williams did not point to an argument that defense counsel wanted to make but could not. "At most, Williams was precluded from relitigating an already decided issue before the court—his competency—and was otherwise fully heard at the sentencing hearing." *Id.* (citing *United States v. Carter*, 355 F.3d 920, 926 (6th Cir. 2004)).

As to the reasonableness of the sentence, the Court found that courts can vary upward if the Guidelines are insufficient. The lower court appropriately considered his high risk of recidivism and considered his intellectual disability before ruling.

Affirmed.

Case #27: *United States v. Hope*, 140 F.4th 962 (8th Cir. June 13, 2025)
No. 24-3304 (E.D. Ark.) (Benton, Kelly, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/06/243304P.pdf

Hope's second term of supervised release was revoked and he was sentenced to 18 months in custody, with no supervision to follow. He argues that his sentence is substantively unreasonable. Within days of beginning supervision, Hope failed to report and left the district without permission. His whereabouts were unknown until his arrest. Here, the guideline range was 6 to 12 months.

The district court found that this was one of the worst technical violations because Hope did not comply with supervision at all. He was also a repeat offender on supervision, since this was his second revocation hearing. The district court properly considered the 3553(a) factors.

Affirmed.

Case #28: *United States v. Freeman Whitfield IV*, 140 F.4th 978 (8th Cir. June 18, 2025)
No. 24-1368 (E.D. Mo. – St. Louis) (Shepherd, Erickson, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/06/241368P.pdf

Whitfield was charged with several drug and firearm offenses, including discharge of a firearm in furtherance of a drug-trafficking crime resulting in death. The court denied his motions to sever the firearm counts from the drug counts and his motion to suppress evidence. He was convicted by a jury of all counts and sentenced to life in prison. He appealed the denial of his pretrial motions.

Whitfield argued that the search warrants executed on his apartments were not supported by probable cause, as the investigators' suspicion of drug activity was linked to drug transactions that occurred too remotely in time—the warrants were executed on May 4, 2021, while the drug transactions occurred back in 2020. Whitfield also argued that the affidavits failed to show why evidence related to the 2019 murder would be found in either residence. The Eighth Circuit found

that the affidavit supporting the warrant application was sufficient to establish probable cause, and that Whitfield's activities (which involved repeatedly leaving one residence to travel to the other while carrying the same bag and engaging in suspected drug transactions with other vehicles along the way) were consistent with using the residences as stash houses for drugs and drug proceeds. The panel also found that the affidavit contained evidence concerning Whitfield's suspected involvement in the murder and reasonably suggested that Whitfield might still be in possession of an old phone he was using around the time of the murder and ammunition used during the murder. The panel noted that Whitfield did not challenge the district court's finding that the officers executing the warrants relied on good faith on the issuing judge's findings of probable cause.

The affidavits supporting the search warrants included certain wiretap evidence that Whitfield argued also should have been suppressed because law enforcement did not meet the required statutory showing of necessity. The court rejected this argument, noting that the affidavits provided a detailed list of numerous investigative techniques and explained why they were not fully successful, would not be successful if tried, or were too dangerous to try.

The Eighth Circuit found no abuse of discretion concerning denial of Whitfield's motion to sever. Although the murder occurred over a year prior to the remaining charged conduct, the court found there was sufficient evidence connecting the violence to the drug conspiracy. The court also found that Whitfield failed to demonstrate any resulting prejudice from joinder of the charges.

Affirmed.

Case #29: *United States v. Kevon Spratt*, 141 F.4th 931 (8th Cir. June 20, 2025)
No. 24-1249 (N.D. Iowa) (Kelly, author, with Loken and Arnold)
https://ecf.ca8.uscourts.gov/opndir/25/06/241249P.pdf

Spratt was charged with nine offenses related to a string of robberies (and attempted robberies) over the course of approximately one month in the fall of 2022. He went to trial and was acquitted on the first two counts; he was convicted on all others. He was sentenced to a total of 432 months in prison and 5 years of supervised release.

Spratt appealed the denial of his motion to suppress evidence seized from his car at the time of his arrest. The Eighth Circuit found that law enforcement had probable cause to stop Spratt's vehicle because investigation had linked a vehicle matching its description (a silver 2-door Toyota with black top) to a robbery that occurred several weeks prior.

Spratt also appealed the denial of his motion to dismiss the count charging him with using a firearm during and in relation to an attempted bank robbery. He argued that attempted bank robbery is not a crime of violence because it can be accomplished through intimidation—which does not require the use, attempted use, or threatened use of physical force. The Eighth Circuit noted that this argument is foreclosed by its precedent, as it has "repeatedly explained that intimidation requires 'a threat of physical force.'"

Spratt argued that the district court improperly admitted evidence under FRE 404(b) regarding two uncharged robberies. The Eighth Circuit found no abuse of discretion, noting that sufficient evidence connected Spratt to the uncharged robberies and that the uncharged and charged robberies shared a unique set of signature facts; accordingly, the uncharged robberies were relevant in establishing identity, a proper purpose under Rule 404(b).

Spratt argued that there was insufficient evidence to convict him on Counts 3-8. He argued that the fact he was acquitted on Counts 1 and 2 resulted in "inconsistent verdicts," as the acquittals contradicted the government's theory at trial that the same person committed all of the robberies. The Eighth Circuit noted that, even assuming the verdicts were inconsistent, the only relevant question was whether sufficient evidence supported the convictions. The court found no basis for reversal on this point.

The Eighth Circuit also rejected Spratt's claim that the court imposed a substantively unreasonable sentence, as it acknowledged the presence of the mitigating factors but found them to be outweighed by the aggravating factors.

Affirmed.

Case #30: *United States v. Leslie Rogge*, 141 F.4th 902 (8th Cir. June 20, 2025)
No. 24-1678 (W.D. Ark.) (Loken, author, with Gruender and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/06/241678P.pdf

Rogge filed a motion for compassionate release in 2022, arguing that his age, deteriorating health, and need for specialized care are extraordinary and compelling reasons warranting his release from custody. The district court denied the motion without prejudice after finding that Rogge is not eligible to request relief himself under 18 U.S.C. § 3582(c)(1)(A). Noting this to be a question of first impression in the Eighth Circuit, the court agreed with the other circuits that have held that defendants like Rogge who committed their crimes before November 1, 1987, are not eligible to move for § 3582(c) compassionate release relief on their own behalf. Only the BOP may initiate a compassionate release request on behalf of "old law" offenders like Rogge.

Affirmed.

Case #31: *United States v. Ethan Porter*, 140 F.4th 997 (8th Cir. June 23, 2025)
No. 24-1195 (N.D. Iowa) (Kobes, author, with Smith and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/241195P.pdf

Porter pleaded guilty to possession of a firearm as a prohibited person. Porter was on supervision with the state of Iowa and, during a home visit to his hotel room, correctional services officers found a loaded gun in a backpack on his bed. Officers also saw a cooler on the bed and found three cell phones and glass vials in its main compartment; they did not search the cooler's side pockets. Later that night, Porter's father went to the hotel to clean out the room; in the early morning hours, hotel staff moved Porter's remaining belongings into a locked storage closet. Five days later, a search of the side pocket of the cooler in the storage closet revealed 6.27 grams of ice methamphetamine, 24 Xanax pills, some marijuana, and a clear bag with several smaller bags inside. At sentencing, the court applied the cross-reference for possessing a gun in connection with drug trafficking and the obstruction of justice enhancement.

The Eighth Circuit found no error in application of the cross-reference. Although Porter argued that the methamphetamine found in the cooler pocket was not his and that someone else could have put it there, the court noted that plenty of evidence linked Porter to the cooler—it was next to him on the bed when he was arrested and contained his three cell phones and an insurance card in his name. Porter also argued that the amount seized was only a user amount, as he was personally using two to three grams of methamphetamine per day. However, the Government presented unchallenged testimony that 6.27 grams of meth was "a distribution quantity" and worth

around $700. There was additional evidence supporting an inference of distribution, including scales, baggies, and multiple phones.

The obstruction enhancement was based on jail calls that the court interpreted as an attempt to have another individual say he had left the gun in Porter's hotel room. The court found that "the obstruction enhancement is not limited to conduct akin to threatening or intimidating, and the district court did not clearly err in applying it for Porter trying to have Smoke claim the gun."

Affirmed.

Case #32: *United States v. Dominique Holliday*, 140 F.4th 986 (8th Cir. June 23, 2025)
No. 24-1957 (N.D. Iowa) (Loken, Shepherd, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/06/241957P.pdf

Holliday pleaded guilty to conspiracy to distribute fentanyl and conspiracy to commit money laundering. He was sentenced to 87 months in prison followed by 5 years of supervised release. He appealed the district court's finding that he was ineligible for safety-valve relief and the reasonableness of his sentence.

Holliday shipped hundreds of fentanyl pills from Arizona where he lived to a person named C.K. in Iowa. C.K. then sold ten pills he bought from Holliday to A.R., who overdosed on them later than day. After emergency personnel administered Narcan, A.R. became responsive. The next day, C.K. sold A.R. ten more fentanyl pills obtained from Holliday. A.R. overdosed again and was again revived by emergency personnel. Holliday was found ineligible for safety valve because his offense resulted in serious bodily injury to A.R. He did not contest that an overdose qualifies as "serious bodily injury," but instead argued that the evidence failed to establish a direct chain of custody between the fentanyl pills he distributed to C.K. and those that A.R. ingested. But Holliday did not object to the information in the PSR indicating that A.R. overdosed on fentanyl she bought from C.K., and that C.K. had bought the fentanyl from Holliday.

The panel also found that the district court considered the mitigating factors pointed out by Holliday and did not abuse its discretion in imposing a sentence at the low end of the guideline range.

Affirmed.

Case #33: *United States v. Reginald Robinson, Jr.*, 140 F.4th 989 (8th Cir. June 23, 2025)
No. 24-2416 (D.S.D.) (Shepherd, author, with Gruender and Benton)
https://ecf.ca8.uscourts.gov/opndir/25/06/242416P.pdf

Robinson entered a conditional guilty plea to being a prohibited person in possession of a firearm. He preserved his right to appeal the denial of his motion to dismiss the indictment and his motion to suppress.

Robinson and another individual, Yolanda Crawford, were detained by loss prevention for shoplifting at Walmart. Officer Siferd responded and talked to the loss prevention employee, who also provided statements from Robinson and Crawford and citizen arrest forms. Officer Siferd began speaking to Robinson and Crawford and asking for ID; Robinson volunteered that he was "fresh off parole" and offered on multiple occasions to pay for the items that had not been rung up. After 15 minutes, Siferd was joined by a second officer, at which time he told Robinson he could smell marijuana on him; he later said he could smell it immediately upon encountering Robinson but waited for backup before confronting him about it, which was apparently consistent

with department policy. Robinson admitted he smoked just before coming to Walmart. Siferd began a pat-down search accompanied by additional questioning and then he put Robinson in handcuffs. He then asked where the firearm was, and Robinson responded that he did not know; Siferd asked, "so you don't have a firearm on you?" but Robinson did not respond. Siferd then removed a firearm from a holster in the front of Robinson's pants. Siferd asked Robinson if he had ever been convicted of a felony and he responded in the affirmative. Robinson was escorted outside where Siferd completed the pat-down search, finding a baggie of marijuana and around $5,000 cash. Siferd then finally informed Robinson of his *Miranda* rights, interrupted on a couple of occasions by interjections from Robinson. When Siferd asked Robinson if he understood his rights, Robinson said, "I understand everything." Siferd asked if Robinson wished to waive his rights and he said, "yeah, I'll waive that shit yo, I'll waive that shit." Siferd then questioned Robinson about the firearm and where all the money came from.

Robinson argued on appeal that Officer Siferd intentionally circumvented *Miranda* by using a two-part interrogation. The Eighth Circuit found no evidence indicating an orchestrated effort to circumvent *Miranda* by delaying the warnings until after Robinson made incriminating statements. The questioning regarding the suspected shoplifting seemed pretty standard and there were no "earmarks of coercion" noted. The court also found based on the totality of the circumstances that Robinson's waiver of rights was knowing and voluntary.

The court also found that Robinson was lawfully seized, as the suspected shoplifting or the odor of marijuana each separately provided reasonable suspicion that Robinson was engaged in criminal activity.

The court also rejected Robinson's constitutional challenge to § 922(g) based on existing precedent.

Affirmed.

Case #34: *United States v. Principal Springer*, 141 F.4th 947 (8th Cir. June 24, 2025)
No. 24-1478 (N.D. Iowa) (Loken, Benton, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/06/241478P.pdf

Springer was charged with conspiring to deal drugs within a school zone and unlawful possession of a firearms as a drug user and a person with a previous misdemeanor domestic-violence conviction. He moved to dismiss the firearm count on Second Amendment grounds.

The panel noted that Eighth Circuit precedent forecloses Springer's facial challenge to the drug-user-in-possession statute. Because his conviction based on this prohibited status was valid, the court did not need to address his as-applied challenge to the domestic-abuser-in-possession statute. The court also found no abuse of discretion in the court's refusal to vary downward.

Affirmed.

Case #35: *United States v. Lugene Shipp & Dione Mobley*, 141 F.4th 940 (8th Cir. June 24, 2025)
No. 24-1871 (S.D. Iowa) (Grasz, author, with Colloton and Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/06/241591P.pdf

Shipp and Mobley were charged with conspiracy to distribute heroin resulted in death and distribution resulting in death after M.W. died of heroin intoxication. After a bench trial, Shipp was convicted on both counts while Mobley was convicted only of conspiracy. They were both given below-guideline sentences.

The alleged conspiracy also involved Kinzenbach, who obtained heroin from Shipp and Mobley and then sold $80 worth to M.W. The defendants challenged the admissibility of electronic communications between Kinzenbach and M.W. and "Sidnee." The district court found that Kinzenbach's half of these conversations was admissible as co-conspirator statements and that M.W.'s and Sidnee's messages were admissible for the nonhearsay purpose of providing context for Kinzenbach's statements. The court also admitted some of M.W.'s messages for their truth under hearsay exceptions. The panel affirmed these conclusions and also rejected the defendants' challenge based on the Confrontation Clause, as the clause was not implicated by statements offered only for context and because M.W.'s statements admitted for their truth were not testimonial.

The panel also rejected challenges to the sufficiency of the evidence. Shipp and Mobley argued that the morphine found in M.W.'s body (which is a metabolite of heroin) could have come from somewhere other than the heroin distributed by Shipp; they also pointed out that the heroin sample found near M.W.'s body contained fentanyl, but there was no evidence of fentanyl in the toxicology report. The panel found that, based on all of the circumstances and the lack of evidence suggesting that M.W. obtained heroin from another source or used another substance for which morphine is a metabolite, the evidence was sufficient to show that M.W. consumed nearly a half gram of heroin sourced from Shipp and died from it.

The panel also rejected Mobley's claim that the court improperly considered acquitted conduct in calculating his guideline range and imposing sentence, noting, "Even if we were to assume the district court was unable to consider acquitted conduct, it did not do so here."

Affirmed.

Case #36: *United States v. Myore*, 142 F.4th 606 (8th Cir. June 27, 2025)
No. 24-1390 (D.S.D.) (Loken (author), Erickson, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/06/241386P.pdf

Myore was convicted by a jury of aiding and abetting carjacking and brandishing a firearm during a COV, and of robbery. Later, he was indicted for second -degree murder in a separate incident. The sentencings for both cases were consolidated, and he was sentenced to 540 months in prison. Myore appeals both the convictions and the combined sentence. He argues that: 1) there was insufficient evidence to support the carjacking and brandishing verdict and 2) the court violated his 5th and 6th Amendment rights by considering acquitted conduct. As to the murder conviction, he argued the court erred: 1) in instructing the jury on the second-degree murder charge and 2) in applying an obstruction of justice enhancement for perjury at trial.

First, the Eighth Circuit considered the carjacking and firearm convictions. It found that there was sufficient evidence for a conviction. Victim Arlen Swallow testified that he was driving the car owned by girlfriend Mary Jo Two Two, who was previously in a relationship with Myore. Myore and a friend (RJ Running Shield) waived Swallow down from another car. Swallow claimed to drive to Myore's residence and parked the car in the driveway with the intent of allowing Swallow to take the car. Initially, Swallow testified he did not see a gun before he reached his front porch, but heard multiple gunshots fired and saw Running Shield put the gun in his pocket. However, he later refreshed his memory with his written police statement and then recalled that both men had guns when they approached the car.

The elements of carjacking are: "(1) the defendant took or attempted to take a motor vehicle from the person or presence of another by force and violence or by intimidation; (2) the

defendant acted with the intent to cause death or serious bodily harm; and (3) the motor vehicle involved has been transported, shipped, or received in interstate or foreign commerce." *United States v. Wright*, 246 F.3d 1123, 1126 (8th Cir.), cert. denied, 534 U.S. 919 (2001); 18 U.S.C. § 2119. Here, the court found that the elements were established because "the taking occurred when Myore and Running Shield blocked the Ford Freestyle in the driveway, exited their vehicle with guns, demanded control of the vehicle, and the frightened and intimidated Swallow "abandoned the vehicle" to the carjackers." Although the trial testimony of Swallow may have been "wishy washy," the credibility determinations by the jury "are well-nigh unreviewable."

Second, the brandishing conviction was supported by Swallow's testimony that Myore and Running Shield brandished guns to force Swallow to surrender the car. This was easy to conclude after finding that he was guilty of carjacking.

Third, Myore argued that the court improperly used acquitted conduct in a sentencing enhancement if the offense involved carjacking. On the second case, he was convicted of robbery, but not of carjacking. However, the Eighth Circuit found "a jury's acquittal establishes only that the government failed to prove an essential element of an offense beyond a reasonable doubt, it is well settled that a sentencing court may consider the conduct underlying an acquitted charge so long as that conduct has been proved by a preponderance of the evidence." *United States v. Lasley*, 832 F.3d 910, 914 (8th Cir. 2016)). It recognized that this issue is "the subject of ongoing debate."

Fourth, as to the second-degree murder conviction, the district court permitted the government to include a jury instruction for the lesser included charge of voluntary manslaughter. Defense counsel opposed this because the defense was that Myore was not involved in this crime at all. However, the court overruled the defense because either party may request a lesser included offense instruction. For the first time, on appeal, Myore argued that the second-degree murder instruction failed to instruct that the government must prove the absence of heat of passion to find him guilty of second-degree murder. The Court found that the government was not required to prove every fact constituting an affirmative defense, only every fact necessary to constitute the crime for which he is charged. Moreover, Myore did not raise a heat of passion defense and any error was not plain error.

Lastly, regarding the obstruction of justice enhancement, the lower court did not err in finding that Myore testified untruthfully at trial.

Affirmed.

Case #37: *United States v. Jokhoo*, 141 F.4th 967 (8th Cir. June 27, 2025)
No. 24-3577 (D. Minn.) (Colloton, Arnold (author), and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/06/243577P.pdf

This was a revocation. Jokhoo's underlying crime was a fraudulent debt collection scheme, for which he was convicted of aggravated identity theft, impersonating a federal officer or employee, and bank, mail, and wire fraud. He committed 7 violations of SR within a month of his release from prison. He claims there was insufficient evidence for the district court to find that he failed to work regularly and held unapproved employment with fiduciary responsibilities. He also argues that his sentence was unreasonable because it was retributive. The Court stated that he only worked 1 day in the month-long period of SR, and he had time to find employment when he was at the halfway house. Further, he was not supposed to work in the debt collection industry. However, the Court did not need to decide whether the district court erred on these

violations because he does not contest the other violations of SR. The district court also did not mention his employment when discussing the length of his sentence. Therefore, any error would be harmless. Although the district court impermissibly stated that his sentence reflects "the seriousness of" the offense, Jokhoo did not object to the weighing of that prohibited consideration. Therefore, it fails to meet plain error because it did not affect his substantial rights.

Affirmed.

Case #38: *United States v. Ware*, 141 F.4th 970 (8th Cir. June 30, 2025)
No. 24-2020 (S.D. Iowa) (Colloton, Smith, and Shepherd (author))
https://ecf.ca8.uscourts.gov/opndir/25/06/242020P.pdf

Ware was convicted of several firearms charges. He entered a conditional plea, preserving his right to argue his motion to dismiss the indictment where he argued that the statutes violated the Second Amendment on their face and as applied to him. His argument is foreclosed by Eighth Circuit precedent. Section 922(g)(1) is not unconstitutional on its face or as applied to him. *See United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024).

He also argued that the district court should not consider acquitted conduct. However, this is also foreclosed by Eighth Circuit precedent, *United States v. Bullock*, 35 F.4th 666, 671 (8th Cir. 2022), and the district court was not required to consider then-pending guidelines prohibiting the use of acquitted conduct. Further, the court can use acquitted conduct under the 18 U.S.C. 3553(a) factors as the court did in this case.

In addition, Ware argued that the lower court improperly applied an enhancement under USSG § 2K2.1(a)(3) for the offense involving a firearm capable of accepting a large capacity magazine. This was a straw-purchase case where Ware was visiting a shooting range with co-conspirators. When the firearm that Ware received through the conspiracy (although not in his possession) was recovered, it was fitted with a large capacity magazine, which demonstrated it was capable of accepting such a magazine. This was relevant conduct under U.S.S.G. § 1B1.3(a)(1).

Lastly, he appealed that his federal sentence was imposed consecutively to his state sentences. Courts have discretion to impose consecutive sentences for "a defendant who is already subject to an undischarged term of imprisonment." 18 U.S.C. § 3584(a). The state cases were not necessarily relevant conduct to his federal charges.

Affirmed.

July 2025

Case #39: *United States v. Fitzgerald*, 141 F.4th 1331 (8th Cir. July 2, 2025)
No. 24-1250 (N.D. Iowa) (Smith, Kelly, and Kobes (author))
https://ecf.ca8.uscourts.gov/opndir/25/07/241250P.pdf

Fitzgerald was sentenced to 120 months in prison for being a FIP. He received a 4-level enhancement for possessing the gun in connection with another felony. Jill Walker filed a petition for relief from domestic violence after Fitzgerald had pointed a shotgun at her and held a knife to her neck. She later withdrew the petition. Six months later she called 911 and reported that he had held a gun to her head. When police arrived, Walker's timeline as to when the gun was brandished changed, but officers found the loaded shotgun in the shower. Walker died before sentencing, so the 911 recordings and body cam footage was used. Fitzgerald argued that Walker's hearsay statements were not sufficiently reliable because they were unsworn, oral statements and her story changed. The Eighth Circuit found that Walker's statements were mostly consistent. The district court could evaluate her distraught 911 call and the bodycam footage to evaluate her credibility. Walker's earlier sworn petition corroborated her complaints of Fitzgerald's threats. Further, the evidence was sufficient to show that Fitzgerald possessed the shotgun in connection with domestic abuse assault.

Affirmed.

Case #40: *United States v. Quigley*, 142 F.4th 619 (8th Cir. July 2, 2025)
No. 24-2402 (D.S.D.) (Gruender, Benton, and Shepherd (author))
https://ecf.ca8.uscourts.gov/opndir/25/07/242402P.pdf

Quigly was sentenced to 90 months in prison as a FIP after a jury trial. On appeal, he argues that the district court erred in excluding statements made by a deceased co-defendant. Officers responded to a report of a man brandishing a firearm at the home of Benjamin Fool Bull. Witnesses stated that two men entered the home, and that Quigley brandished a firearm, while Erwin White Lance carried a baseball bat. Officers later located the car that Quigley and White Lance were in, and found a .40 caliber Smith & Wesson, as well as a baseball bat, among other items. During a police interview, White Lance said "I'll take responsibility for that gun."

The Government filed a motion in limine to exclude statements made by White Lance in his post-arrest interview, specifically his statement that White Lance was invited to the residence, his denial that Quigley was with him, and that he would take responsibility for the firearm. Quigley argued these were admissible under Rule 804 as statements against interests made by an unavailable witness or under Rule 807's residual hearsay exception. The district court preliminarily granted the Government's motion as it needed to consider whether there was corroborating evidence supporting the statement's trustworthiness. It deferred until trial but ordered that these statements could not be mentioned during voir dire, opening statements, or witness testimony until the court ruled otherwise. During the trial, Quigley raised the admissibility of White Lance's statements. Considering specifically the responsibility for the gun, the court noted that there was no evidence that White Lance had a felon conviction for the responsibility for the gun statement to become admissible.

The Eighth Circuit determined that under Rule 804(b)(3), a district court must first examine the circumstances under which the statement was given. The statement is not truly self-

inculpatory if it merely attempts to shift blame or curry favor. As to the trustworthiness of a statement, "corroborating circumstances" include: (1) whether there is any apparent motive for the out-of-court declarant to misrepresent the matter, (2) the general character of the speaker, (3) whether other people heard the out-of-court statement, (4) whether the statement was made spontaneously, (5) the timing of the declaration[,] and [(6)] the relationship between the speaker and the witness. *United States v. Lindsey*, 702 F.3d 1092, 1102 (8th Cir. 2013). Here, the district court had decided that the statement was not self-inculpatory. Even so, the Eighth Circuit determined that Quigley failed to show that the statement was sufficiently trustworthy. This statement was made at the end of the interview after the interviewer said he was untrustworthy and it contradicted eye witnesses. White Lance and Quigley were close friends, providing White Lance with a motive to lie.

Further, under Rule 807, courts can admit evidence in exceptional circumstances where the evidence is necessary, highly probative, and carried a guarantee of trustworthiness equivalent to or superior to that which underlies the other recognized exceptions. The statement did not meet the standard of trustworthiness under Rule 804(b)(3), so it cannot meet the equivalent or superior standard under Rule 807.

Affirmed.

Case #41:*United States v. Wilson*, 142 F.4th 1045 (8th Cir. July 7, 2025)
No. 23-3713 (S.D. Iowa) (Loken, Shepherd, and Kelly (author))
https://ecf.ca8.uscourts.gov/opndir/25/07/233713P.pdf

Wilson was convicted after a jury trial of one count of attempted production of CP and sentenced to 240 months (a guideline sentence). He appeals his conviction and sentence. Wilson moved into a house with his then-girlfriend who had two minor children. Wilson installed cameras throughout the home, including in B.Z's room and the bathroom. He argued that he did not have the requisite intent and that the images were not CP. He also argued that he should have received a reduction for acceptance of responsibility. "[S]exually explicit conduct" includes the "lascivious exhibition of the anus, genitals, or pubic area of any person." 18 U.S.C. § 2256(2)(A)(v); *see also United States v. Burch*, 113 F.4th 815, 820 (8th Cir. 2024).

Wilson first argued there was error in the jury instructions regarding the *Dost*-plus factors, which discuss what constitutes "lascivious exhibition." He specifically found the fourth factor to be misleading because more than mere nudity is required and it states: (4) whether the minor is fully or partially clothed, or nude. However, the Eighth Circuit noted that the district court instructed that more than mere nudity is required. "Moreover, the extent of a child's nudity can provide important context in determining whether a visual depiction is lascivious." Wilson also argued that the district court refused to instruct the jury that the *Dost*-plus factors are neither definitive nor exhaustive. However, the Eighth Circuit believed that the court's instructions told the jury to approach the images holistically and they were not required to mathematically or rigidly assess the material.

Second, Wilson argued that the court erred in failing to submit his jury instruction that the jury must not consider his sexual interests, but whether on their face, the images are sexual in nature. No abuse of discretion here because Wilson's sexual interest was relevant to whether he intended to produce CP.

Third, he argued that the court should have granted his motion for a judgment of acquittal. Here, the jury could reasonably conclude that Wilson intended to capture an image of

B.Z. lasciviously displaying her genitals and took a substantial step toward this objective because he placed cameras where she was most likely to be naked and recorded for an extended period of time. Cameras were hidden and placed at angles to film the genital area. Once he obtained the footage, he took screenshots with her pubic area as the focal point, omitting her face.

Finally, he argued that he is entitled to a reduction for acceptance of responsibility. However, Wilson's trial strategy went far beyond seeking to assert and preserve and issue unrelated to factual guilt. Rather, he argued that he did not intend to create CP.

Affirmed.

Case #42:*United States v. Pineda De Aquino*, 142 F.4th 628 (8th Cir. July 7, 2025)
No. 24-2111 (W.D. Ark.) (Grasz (author), Stras, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/242111P.pdf

Pineda pled guilty to passport fraud and was sentenced to 32 months in prison—a substantial upward variance. She argues that the district court erred by not expressly accepting or rejecting her plea agreement and by imposing a substantively unreasonable sentence. During her plea hearing, she acknowledged that she had not been promised a specific sentence, and that the court could impose a sentence up to the statutory maximum. At the COP hearing, the district court accepted her guilty plea, but deferred approval of the plea agreement until it reviewed the PSR.

The PSR detailed her upbringing in abject poverty and how she relocated to the U.S. in 2005 to work. She assumed the identity of A.E., a U.S. citizen in Puerto Rico, and used this identity for employment, voting, obtaining a mortgage, declaring bankruptcy, and obtaining an Ark. driver's license. The guideline range was 0 to 6 months. At the sentencing hearing, the district court explained the guideline range and its ability to vary upward without expressly accepting or rejecting the plea agreement. Contrary to the parties' recommendations, the court varied upward above the top of the Guidelines by 26 months. The court found that beyond her conduct, she also used her fraudulent documents to commit many other crimes, such as voter fraud, bankruptcy fraud, and mortgage fraud. It felt that the sentence needed to reflect the repeated fraud's impact on A.E. and afford adequate deterrence.

First, Pineda argues that the court committed procedural error by failing to expressly approve or reject the plea agreement at sentencing. Although the district court did not expressly accept or reject the plea agreement here before imposing its sentence, Pineda did not object to this omission during the sentencing hearing, and therefore it is under plain error review. *See United States v. House*, 923 F.3d 512, 514 (8th Cir. 2019). Pineda cannot meet that standard. It looked like the district court constructively accepted the plea agreement. It had said it would examine the PSR before accepting the plea agreement at the COP hearing, then after accepting the PSR, it explained the sentencing steps, and then it implemented the terms of the plea agreement by dismissing count two of the indictment. Further, she could not show that the error affected the outcome of the proceedings.

Second, she argued that the 32-month sentence was substantively unreasonable. The Eighth Circuit found that the district court gave mitigating weight to her story of poverty and pursuing the American dream. However, the district court also found it very likely that she committed several other felonies that impacted the victim's life. It does not matter that the Government also recommended a guideline sentence because it is the district court who is

responsible for determining the appropriate sentence. Although this was a "sharp increase" and could be viewed as "harsh," there was no abuse of discretion.

Affirmed.

Case #43: *United States v. Jackson*, 142 F.4th 1095 (8th Cir. July 9, 2025)
Nos. 24-1326 & 24-1328 (S.D. Iowa) (Colloton, Erickson, and Grasz (author))
https://ecf.ca8.uscourts.gov/opndir/25/07/241326P.pdf

Jackson was convicted by a jury of 4 counts related to guns and drugs (including a 924(c) count). Two controlled buys of fentanyl were conducted of Jackson's vehicle. Investigators executed a search warrant at Jackson and Tyran Locure's shared apartment, where they found firearms, thousands of fentanyl pills, cell phones belonging to both, a money counter, and cocaine & weed. Jackson's wallet was found by guns and fentanyl pills. More fentanyl pills were found near a pill bottle with Locure's name on it. On Jackson's person, they found $2,263 in cash, some of which contained serialized money to buy fentanyl pills from Locure. Their snapchat accounts depicted photos of Jackson holding a firearm and messages from him and others regarding fentanyl.

First, he argued that the admission of the stipulated forensic report was in error because he had a right to cross-examine the preparer of the report under the Confrontation Clause. This was stipulated to at trial, so Jackson waived his argument.

Second, he argued that admission of Rule 404(b), prior bad acts, was improper. He stipulated to the admission of his prior conviction for possessing a firearm in furtherance of a drug trafficking crime. However, he argued that possession of the firearm and distribution quantity of marijuana is irrelevant to show that he intended to commit his current offenses. The Eighth Circuit disagreed. As to admissions of the firearm photographs, he objected to these at the pretrial conference, but did not renew it at trial. Therefore, they reviewed for clear error. Unfortunately, there was ample evidence to prove his guilt and it was not unfairly prejudicial to admit these photos.

Third, he argued the evidence was insufficient to uphold the conspiracy count. However, there was sufficient evidence to prove he was in a conspiracy to distribute fentanyl and marijuana. Two of six controlled buys were conducted out of Jackson's car. A search of his home revealed multiple drugs. In addition, snapchat and texts depicted conversations between Jackson and others regarding the sale of fentanyl and marijuana.

Affirmed.

Case #44: *United States v. Rabbitt*, 142 F.4th 1085 (8th Cir. July 9, 2025)
No. 24-1987 (D.S.D.) (Colloton, Arnold (author), and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/07/241987P.pdf

Rabbitt was found guilty after a jury trial of failure to register as a sex offender; assaulting or resisting a federal officer with a deadly weapon; and committing a COV while failing to register as a sex offender. He was sentenced to 77 months. He argues that the evidence was insufficient.

Rabbitt stopped communicating with his probation officer after it was discovered that he was not living at the address he provided. Rabbitt stated that he was struggling with his living arrangements. US Marshals contacted him in a parked car and ordered him to get out. He exited

the car while holding a metal baseball bat and faced the marshals. He ran and dropped the bat, and the marshals subdued him after a struggle.

He first argued that he had attempted to register on two different days but was told to return another time. The Eighth Circuit found that a reasonable jury could find that he was merely attempting to fulfill his biannual obligation to the registry. And, he also had an obligation to update the registry within 3 business days after changing his residence. He did not attempt to do this for months and there was evidence he did not live in the apartment listed on his registry. Rabbitt's ex-girlfriend and sister testified he had moved out of that apartment. His argument that he did not have a residence afterward fails because the girlfriend testified that they lived together for about two weeks after he moved out of his apartment. "Moving from a listed residence to anywhere else, whether a singular location or several, is a "change" of residence, as the offender can no longer be expected to be found at the place listed in the sex-offender registry." It is not an excuse that he did not know his failure to register was unlawful.

Next, he argues that he did not "forcibly assault, resist, oppose, impede, intimidate, or interfere with" the marshals pursuant to 18 U.S.C. § 111, but merely ran away while holding a bat. However, the marshals testified that after Rabbitt finally exited his car, he stood there with a bat and did not obey orders to drop the bat. Instead, he took an aggressive stance. One marshal suggested that Rabbitt had the bat in the air "like he was getting ready to swing at us." This was sufficient evidence.

Lastly, Rabbitt challenges the conviction for committing a COV while failing to register. His conviction under § 111, satisfied this crime as well.

Affirmed.

Case #45: *United States v. Pratt*, 142 F.4th 1090 (8th Cir. July 9, 2025)
No. 24-2284 (W.D. Mo.) (Smith, Shepherd (author), and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/242284P.pdf

Pratt absconded supervision while residing at a halfway house. He was arrested on a warrant 8 months later. The district court revoked him and sentenced him to 24 months based on his extensive criminal history and resistance to supervision. The guideline range was 8 to 14 months and the Government recommended 14 months.

Pratt first argues that the court failed to adequately explain the chosen sentence. However, the Eighth Circuit believed the lower court's explanation was sufficient. The court did not plainly err when considering Pratt's history of noncompliance with supervision.

Then he argues that his sentence is substantively unreasonable. However, "[t]he district court specifically referenced Pratt's criminal history and characteristics when imposing its sentence, and the district court did not abuse its discretion by placing great weight on Pratt's history of noncompliance with court supervision." No abuse of discretion here.

Affirmed.

Case #46:*United States v. Deng*, 142 F.4th 1075 (8th Cir. July 9, 2025)
No. 24-2550 (S.D. Iowa) (Gruender, Benton (author), and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/07/242550P.pdf

Deng was convicted after a jury trial with being a drug user in possession of a firearm under 18 U.S.C. § 922(g)(3). At trial, Deng attempted to introduce parts of his interview with law enforcement, but the district court refused to admit them. He argued that 922(g)(3) violated the Second Amendment, which was also denied.

Deng was a suspect in a shooting, after which a 9mm round was discovered that appeared to be a misfire. Using a CI, officers obtained a recorded statement where Deng told the informant he could not sell the gun because he needed it for a funeral. He mentioned a prior shooting where he put the wrong bullets in the gun. On the way to the funeral, officers stopped Deng. He agreed to a search and they found marijuana and a 40-caliber pistol loaded with 9mm rounds. During an interview, Deng admitted to being a drug user. There were some communication issues as Deng was from Ethopia. He denied the gun in the car was his but said "all right" multiple times during questioning.

During Voir Dire, the government struck two jurors, after which Deng exercised a *Batson* challenge. His objection was overruled. The government introduced into evidence only parts of Deng's interview, and he moved to admit other parts under the rule of completeness. See Fed. R. Evid. 106. The district court did not admit them. During trial, Deng offered parts of the interview when cross-examining Detective White. The district court ruled that they were inadmissible hearsay. See Fed. R. Evid. 802. After the government rested, Deng moved for a judgment of acquittal, arguing that section 922(g)(3) violated the Second Amendment. The district court denied the motion.

First, regarding his *Batson* challenges: One juror had immigrated from the Dominican Republic and the second juror was an African American man. As to the juror from the DR, English was not her first language and she often communicated with employees at work who did not speak English as a first language. The government was concerned that she would "start blending" Deng's situation with her experience translating to non-English speakers. (*This does not even make sense*). The district court found that it was fair to strike this juror because she may sympathize with the argument that there may be misunderstandings because of the language barrier. Further, there is an odd discussion about how she may have used pictures to communicate with people who do not use English as their first language. The Eighth Circuit found that Deng failed to carry his burden demonstrating pretext. As for the African-American juror, the government said they struck him because he couldn't remember any details about a jury he served on, including whether it was civil or criminal or when it occurred. This showed he was uninterested in this case. This juror's lack of memory about his prior jury experience was very similar to another juror who was not struck. However, the Court made every effort to show that the government showed race-neutral reasons for striking these jurors.

Second, he argues that parts of the interview with law enforcement that support his defense should have been admitted under the rule of completeness. The Eighth Circuit found this was harmless error (IF any error even occurred). There was plenty of other evidence that supported his guilt.

Third, as to the constitutionality of 922(g)(3), in *United States v. Veasley*, 98 F.4th 906, 918 (8th Cir. 2024), the Court rejected a facial challenge to section 922(g)(3)

Affirmed.

Case #47: *United States v. Porter*, 142 F.4th 1140 (8th Cir. July 10, 2025)
No. 24-1844 (E.D. Mo.) (Erickson (author), Arnold, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/07/241844P.pdf

Porter was sentenced under ACCA to 200 months. Porter appeals his sentence and argues that he does not have the requisite 3 prior felonies. These include the Mo. offenses of: (1) a 2008 domestic assault in the second degree, (2) a 2018 domestic assault in the second degree, and (3) a 2018 domestic assault in the third degree. Using the modified categorical approach, and using Shepherd documents, the Eighth Circuit determined that all qualified as violent felonies.

As to the 2008 offense, the plea states he "knowingly caused physical injury to [R.J.] on or about February 15, 2008 by striking her." This means that he violated Mo. Rev. Stat. § 565.073(1) (2000), which the court has previously determined to be an ACCA felony .

As to the 2018 offense, he again violated Mo. Rev. Stat. § 565.073(1) (2017), which is an ACCA predicate. The charging document revealed he "knowingly caused physical injury to [A.S.] by striking her multiple times in the area of her head and face with his closed fist and foot . . . ."

As to Mo. domestic assault in the third degree under Mo. Rev. Stat. § 565.074, they determined that the list of items in the statute were alternatives and not means. Here, Porter's guilty plea states that he attempted to cause physical injury to CD by striking.

Affirmed.

Case #48: *United States v. Godoy*, 142 F.4th 1144 (8th Cir. July 11, 2025)
No. 24-2278 (D.S.D.) (Smith, Kelly, and Kobes (author))
https://ecf.ca8.uscourts.gov/opndir/25/07/242278P.pdf

Godoy was charged with human-trafficking offenses. The Government gave notice that it would introduce trial testimony of two alleged victims (Brian Corado Ordonez and Juan Rivera Ruiz), who would state that Godoy beat another man, Edwin Josue. Josue was not a victim of the crimes charged in the indictment, but the Government argued this testimony showed a pattern of assaultive conduct under 404(b). The district court overruled Godoy's motion in limine objecting to these witnesses.

At trial, Corado Ordonez testified that Godoy charged him $16k to bring him to the US and 15% interest per week, which he could not afford to pay. He testified that Godoy made threats against him and his family in Guatemala. He testified that if something happened to him or his family, Godoy would be responsible. The district court overruled Godoy's objection (and motion for a mistrial) and refused to give a limiting instruction. Corado Ordonez also testified that Godoy beat Josue because he was behind on his debts. Ruiz testified that Godoy threatened him and he saw Godoy beat Josue, although he was not sure if it was due to unpaid debts.

First, Godoy argues that the district court should not have overruled his MIL, which primarily focused on Ruiz's testimony in his appeal brief. The Eighth Circuit found that Ruiz's testimony was *res gestae* evidence, which is "evidence of wrongful conduct other than the conduct at issue offered for the purpose of providing the context in which the charged crime occurred." *United States v. Campbell*, 6 F.4th 764, 771 (8th Cir. 2014). This evidence completed the story, providing the jury a total picture of what happened. It did not matter that Ruiz did not know the motive for the beatings.

Second, Godoy argued that the court's denial of his motion for a mistrial based on Corado Ordonez's statement about "something happen[ing] to me or to my family." Here, it was apparent that Corado Ordonez was a difficult witness prone to nonresponsive answers and outbursts. However, the government did not solicit this testimony. There was also plenty of other testimony showing that Godoy used fear and violence to commit his crimes.

Affirmed.

Case #49: *United States v. Robert Cottier*, 142 F.4th 1148 (8th Cir. July 14, 2025)
No. 24-1748 (D.S.D.) (Loken, author, with Erickson and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/241748P.pdf

Cottier was driving while intoxicated in Indian country; he caused a head-on collision that claimed the life of a passenger in his vehicle and severely injured five people in the other vehicle. He pleaded guilty to one count of involuntary manslaughter and one count of assault resulting in serious bodily injury. In the plea agreement, the government promised to recommend that the court impose sentences within the applicable guideline range on each count and that the sentences run consecutively. In its sentencing memo, the government recommended a sentence of 73 months after separately calculating the guideline range for each count and adding together the top end of each range. The court sentenced Cottier to 96 months, an upward variance.

Cottier argued that the government breached the plea agreement by recommending an above-guideline-range sentence. Cottier's attorney argued at sentencing that the top end of the guideline ranges for the two counts actually added up to only 64 months, so the government's request for 73 months constituted a breach of the agreement. The government responded that it was requesting consecutive sentences at the top of the guideline range for each count, "So if the [court's] calculation comes out to 64 months, then that's the United States' request."

The panel called this an "unusual (if not unprecedented) claim of plea agreement breach," and found no plain error. Even if there was an issue with the request made by the government in its sentencing memo, it was resolved when the government made clear at sentencing that it was asking for consecutive sentences within whatever guideline range the court found to be applicable. Furthermore, the court described how it arrived at a sentence of 96 months and it had nothing to do with the government's 73-month request.

Affirmed.

Case #50: *United States v. Moses Crowe*, 143 F.4th 982 (8th Cir. July 16, 2025)
No. 24-1756 (D.S.D.) (Colloton, author, with Erickson and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/241756P.pdf

Crowe was convicted of aiding and abetting a carjacking resulting in serious bodily injury, aiding and abetting the use of a firearm during an in relation to a crime of violence, and being a felon in possession of a firearm. He was sentenced to a total of 235 months in prison.

He argued on appeal that the court erred by improperly calculating his guideline range based on conduct that was not relevant conduct to his offenses of conviction. The panel determined that the court only considered this conduct under its § 3553(a) analysis, not in its calculation of the guideline range.

Crowe also argued that the court improperly applied a 4-level increase for abduction under U.S.S.G. § 2B3.1(b)(4)(A), as the abduction did not occur until after the carjacking offense was

completed. The panel determined that, even if the abduction was not intended to facilitate the carjacking, the district court did not clearly err in finding that the abduction facilitated escape following the carjacking.

Crowe finally argued that the sentence was unreasonable, but it was within the guideline range and the court "specifically discussed the most salient factors: the nature and circumstances of Crowe's offense and the history and characteristics of the defendant, including his extensive criminal history."

Affirmed.

Case #51: *United States v. Alexander Laurel-Olea*, 143 F.4th 980 (8th Cir. July 16, 2025)
No. 24-2479 (N.D. Iowa) (Colloton, author, with Erickson and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/242479P.pdf

Laurel-Olea served a 24-month sentence for being an unlawful user of a controlled substance in possession of a firearm. His supervised release was revoked after he committed 54 violations of his conditions, and he was sentenced to 14 months in prison, above the advisory guideline range of 3 to 9 months. "Given the several aggravating factors involved and the deference afforded to the sentencing court," the panel found no abuse of discretion.

Affirmed.

Case #52: *United States v. Deoman Reeves*, 143 F.4th 999 (8th Cir. July 17, 2025)
No. 24-1548 (E.D. Mo.) (Gruender, author, with Loken and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/241548P.pdf

Reeves was convicted by a jury of eleven counts of narcotics- and firearm-related crimes, including possession of a firearm in furtherance of a drug-trafficking crime resulting in death. On appeal, he challenged the district court's denial of several of his motions.

Investigators connected Reeves to a narcotics-trafficking organization in which they believed him to be an "enforcer." On October 21, 2019, Reeves shot and killed an unrelated bystander in an attempted retaliation against rival drug traffickers.

Reeves challenged the district court's denial of his motion to sever the firearm-possession-resulting-in-death count from the rest of the case. Reeves did not renew his pretrial motion at the close of the Government's case or the close of evidence. The panel noted the apparent split of authority on the appropriate standard of review applicable in such a case, but determined that reversal was not warranted under either a plain error or abuse of discretion standard. Joinder of the count was proper under Rule 8, as the offenses were of the same or similar character and were all connected to the same drug-trafficking conspiracy, and Reeves identified no substantial prejudice justifying severance under Rule 14, as evidence of his trafficking of firearms and narcotics would have been admissible in a standalone trial on the resulting-in-death count.

Reeves also challenged the denial of his motions to suppress evidence obtained pursuant to precision location warrants on his two cell phones. The panel found that the warrants were supported by probable cause, that they were sufficiently particular, and that the Government's warrant returns sufficiently catalogued the evidence seized.

Reeves challenged the denial of his motion for judgment of acquittal on the firearm-possession counts. As to the resulting-in-death count, the court found that the "in furtherance of" requirement was met because "when a drug trafficker uses a firearm while seeking to eliminate

rival traffickers, the use of the firearm is in furtherance of the drug trafficking crime." The panel also found that a reasonable jury could have convicted Reeves of possession of a firearm in furtherance of a specific controlled purchase of fentanyl, as sufficient circumstantial evidence was presented that a firearm was present during the transaction.

Reeves challenged the denial of his motion for new trial based on error in two jury instructions. Because Reeves did not object to these instructions at trial, the panel found his challenge was waived and declined to reach the merits on this issue.

Affirmed.

Case #53: *United States v. Mujera Lung'aho*, 144 F.4th 1026 (8th Cir. July 18, 2025)
No. 23-3696 (E.D. Ark.) (Kobes, author, with Stras; dissent by Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/233696P.pdf

Lung'aho damaged or destroyed three police cars by throwing Molotov cocktails. He was indicted for maliciously destroying by means of fire law enforcement vehicles possessed by local police departments receiving federal financial assistance in violation of 18 U.S.C. § 844(f)(1). He unsuccessfully argued that the statute was unconstitutional as applied to him and then appealed the denial of his motion to dismiss the indictment.

It was undisputed that the police vehicles at issue were not purchased with federal funds and that the police departments had all received a relatively small amount of federal funding as a proportion of their total budgets. But the panel majority found *Sabri v. United States*, 541 U.S. 600 (2004), to be controlling; in *Sabri*, the Court upheld a federal indictment for attempted bribery of a city official because the city received federal funds. The Supreme Court noted there that Congress has authority under the Spending Clause to appropriate federal moneys to promote the general welfare, and it has corresponding authority under the Necessary and Proper Clause to see to it that appropriated funds are in fact spent for the general welfare. The majority found that "preventing the arson of state and local police cars owned by departments receiving federal funding is a rational way of safeguarding federal dollars." The fact that the police cars were not purchased with federal funds did not matter because money is fungible.

In his *dissent*, Judge Grasz concluded that § 844(f)(1) cannot constitutionally apply where the property destroyed is not directly tied to the federal financial assistance. According to Grasz, "the majority's reasoning suggests Congress may simply purchase [plenary] police power through financial assistance—including miniscule assistance unrelated to the affected property."
It is worth noting that this was an as-applied challenge, and the majority allowed that different facts could lead to different results. Although the statute was constitutionally applied to Lung'aho, who caused $86,000 in damages, a different result might obtain if a defendant were federally indicted for causing de minimis damage by setting fire to a police-owned trash can, or doormat, or decorative plant.

Affirmed.

Case #54: *United States v. Laguerre Payen*, 144 F.4th 1019 (8th Cir. July 18, 2025)
No. 24-1166 (W.D. Mo.) (Loken, author, with Shepherd and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/07/241166P.pdf

Payen's federal sentence was about the expire when the district court ordered him committed to the custody of the Attorney General for involuntary hospitalization under 18 U.S.C.

§ 4246. He argued on appeal that the district court erred by relying on clearly erroneous facts and that the government failed to prove by clear and convincing evidence that his release would cause a substantial risk of bodily injury or serious damage to property. Payen had "an extensive history of disruptive, dangerous, and assaultive behavior in prison, committing dozens of [BOP] violations, many for assault, threatening bodily harm, destroying property, possessing a dangerous weapon, and sexual misconduct." He had extended psychotic episodes and had been diagnosed with schizophrenia, mild intellectual disability, and other conditions by multiple doctors. While he experienced periods of improvement, they appeared to occur only when he was involuntarily medicated—and he never took psychiatric medications voluntarily. The panel found no clear error in the court's dangerousness findings.

Affirmed.

Case #55: *United States v. Sharmake Abdullahi*, 144 F.4th 1034 (8th Cir. July 21, 2025)
No. 23-3144 (D.N.D.) (Shepherd, author, with Kelly) (Stras, concurring in part and concurring in the judgment)
https://ecf.ca8.uscourts.gov/opndir/25/07/233144P.pdf

A jury convicted Abdullahi of kidnapping and attempted witness tampering. Abdullahi approached a vehicle occupied by Shamsa Issack in Fargo, ND, displayed a gun, got in the car, and ordered Issack to drive across the Red River to an address in Moorhead, MN. Abdullahi made Issack pull into a drive-up ATM in Moorhead and unsuccessfully attempted to have her withdraw money for him. When he ordered her to leave the bank, she refused; he took her cell phone and fled on foot. She then entered the bank, hyperventilating and crying, and relayed her story to several bank employees while waiting for police to arrive. She later had a similar conversation with one of the responding officers, who recorded the interaction. Abdullahi was thereafter arrested on state robbery and kidnapping charges and placed in state custody. He was unaware of any federal investigation. While in custody, Abdullahi made a phone call to his sister in which he told her to look for Issack, suggesting that the case would go away if she did not show up; he suggested that someone could give Issack money and tell her to hide someplace.

Abdullahi challenged the admission of Issack's hearsay statements to bank employees at trial, but the panel found these statements to be "classic examples of excited utterances," and therefore properly admitted.

At trial, the court initially allowed the government to play for the jury the recording of Issack's statements to the responding officer, but stopped it halfway through after determining that it was largely unintelligible and risked confusing and misleading the jury. The court then instructed the jury to disregard anything it understood and heard from the recording. Abdullahi challenged the court's denial of his ensuing motion for mistrial, but the panel found no abuse of discretion.

Abdullahi challenged the sufficiency of the evidence to support his kidnapping conviction, urging the court to adopt "a limiting principle" such as that discussed by the Third Circuit in *Government of the Virgin Islands v. Berry*, 604 F.2d 221 (3d Cir. 1979). When the *Berry* factors were applied, Abdullahi argued that the evidence showed only a robbery, not a distinct kidnapping. The panel found it unnecessary to decide whether *Berry* or a similar interpretation of the federal kidnapping statute would be appropriate because a reasonable jury could find that he committed a kidnapping that was distinguishable from the robbery under any of the

alternatives. (In his concurring opinion, Judge Stras suggested that the court should have just rejected use of the *Berry* factors.)

Abdullahi successfully challenged the sufficiency of the evidence attempted witness tampering conviction. At the time of the phone call to his sister, Abdullahi knew only that he faced state charges; there was no indication he contemplated facing federal charges. The panel found that a rational jury could not have found that he contemplated a "particular, foreseeable proceeding" in federal court other than his pending state charges. (Judge Stras recognized that he was bound by precedent to concur on this point but disagreed with the prior interpretation of the statute that requires that defendant must specifically contemplate a federal court proceeding.)

Conviction for attempted witness tampering vacated; otherwise affirmed.

Case #56: *United States v. Kpangbala Blamah*, 143 F.4th 1010 (8th Cir. July 21, 2025)
No. 24-1935 (S.D. Iowa) (Erickson, author, with Colloton and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/241935P.pdf

A jury convicted Blamah of conspiracy to distribute cocaine and marijuana, possession of a firearm in furtherance of a drug trafficking crime, and FIP. He was sentenced to 360 months in prison.

Blamah argued that there was insufficient evidence establishing that the drug conspiracy involved more than five kilograms of cocaine. Evidence was presented connecting approximately 10 kilograms of cocaine to Blamah, but 7.5 kilograms of this was estimated based on the weight of ten packages he mailed via USPS. He argued that the 7.5kg estimate was too speculative because these packages were not intercepted and searched by law enforcement. The panel found that all of the evidence taken together and viewed in a light most favorable to the verdict was sufficient to support the jury's finding as to quantity.

Blamah argued that the prosecution failed to prove beyond a reasonable doubt that he possessed a firearm in furtherance of a drug trafficking crime. The panel noted that cocaine and firearms belonging to Blamah were discovered on the same shelf in a bedroom closet.

Blamah argued that evidence of two shootings was improperly admitted at trial, but the panel found that this evidence was intrinsic to the charged conduct. Regarding one shooting, the panel noted that the "evidence helped establish connections between Blamah, his co-conspirators, and the tools of their drug operation," and as to the other that the evidence "was probative as to the nature and scope of the drug trafficking conspiracy."

Affirmed.

Case #57: *United States v. Wilbur Morrison, Jr.*, 143 F.4th 1017 (8th Cir. July 21, 2025)
No. 24-2134 (D.S.D.) (Smith, author, with Kelly and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/242134P.pdf

A jury convicted Morrison of two counts of aggravated sexual abuse of a child in Indian territory and one count of assault resulting in serious bodily injury. He was sentenced to a total of 480 months in prison, a downward variance from the guideline range of life. The case involved Morrison's sexual abuse of his daughter, S.M., witnessed on one occasion by his other children.

When S.M. was asked at trial about one of her forensic interviews, she indicated she did not remember the interview; when asked, "Do you just not want to talk about the other times?" she nodded her head in agreement. The court later admitted into evidence an excerpt from the

interview and testimony from the interviewer under the residual exception to the hearsay rule. On appeal, the panel concluded that the record contained sufficient circumstantial guarantees of trustworthiness to permit admission of the hearsay.

Morrison challenged the sufficiency of the evidence to support his convictions for aggravated sexual abuse of a minor involving contact between the penis and vulva (Count One) and contact between the penis and the anus (Count Two). The issue was whether there was sufficient evidence that penetration occurred. The panel concluded that the evidence was sufficient on both counts but emphasized that the standard it applied was whether *any* reasonable jury *could have* concluded that penetration occurred. This seemed like a fairly close call, but it was supported by other circumstantial evidence, including evidence suggesting that Morrison had transmitted syphilis to S.M.

The panel also rejected Morrison's challenge to the substantive reasonableness of his sentence despite the fact that the court appeared that it might have been punishing him for proceeding to trial rather than pleading guilty.

The court's written judgment conflicted with its oral pronouncement at sentencing regarding the length of the term of supervised release for one of the counts, so the panel remanded with instructions to reconcile the written judgment with the oral pronouncement.

Conviction and sentence affirmed; remanded to correct supervised release portion of judgment.

Case #58: *United States v. Britt Lander*, 144 F.4th 1058 (8th Cir. July 21, 2025)
No. 24-2194 (N.D. Iowa) (Grasz, author, with Colloton and Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/07/242194P.pdf

A jury convicted Lander of conspiracy to distribute methamphetamine after having previously been convicted of a felony drug offense. After Lander was informed of his right to counsel during custodial interrogation, he laughed and stated, "My old lady is my attorney, I want her present." Lander was not allowed to contact his partner (who was not an attorney), the interrogation continued, and Lander admitted to his involvement in the trafficking of meth. According to Lander, he was on meth at the time of the interrogation and had not slept in a week. According to officers, Lander seemed nervous and possibly under the influence of drugs, but not enough to rise to the level that would be considered driving under the influence.

On appeal, the panel affirmed the denial of Lander's motion to suppress. While acknowledging that sleeplessness and drug use are relevant factors in assessing whether a *Miranda* waiver is voluntary, he gave appropriate responses to law enforcement and did not tell them that he was inebriated or that he had not slept. The panel also found that the surrounding context indicated that Lander's request for his "old lady" to be present was a joke and not an invocation of his right to counsel.

The panel also found no abuse of discretion in the court's denial of Lander's motion for a new trial. His motion was based on the contention that the testimony of his co-conspirators at trial was inconsistent and not credible. The panel deferred to the trial court's credibility determination on this issue.

The panel also rejected Lander's challenges to his sentence. His claim of error regarding the court's drug-quantity calculation would not have made a difference to his guideline range, and his low-end guideline range sentence was not substantively unreasonable.

Affirmed.

Case #59: *United States v. Miguel Alcantar Mercado*, 144 F.4th 1054 (8th Cir. July 21, 2025)
No. 24-2590 (S.D. Iowa) (Shepherd, author, with Colloton and Smith)
https://ecf.ca8.uscourts.gov/opndir/25/07/242590P.pdf

Alcantar Mercado pleaded guilty to a drug offense and was sentenced to 204 months in prison, 6 months below the bottom of his advisory guideline range. Following a retroactive amendment to the Guidelines that lowered his range, the district court considered whether to reduce his sentence and declined to do so. Alcantar Mercado argued that the court did not provide adequate justification for this denial. While the court did not say much, the panel essentially noted that it does not require much and found no abuse of discretion. The order denying sentencing modification referenced the § 3553(a) factors and recognized Alcantar Mercado's good behavior and efforts toward rehabilitation while incarcerated.

Affirmed.

Case #60: *United States v. William Dahl*, 144 F.4th 1076 (8th Cir. July 22, 2025)
No. 23-3721 (E.D. Mo.) (Kobes, author, with Smith and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/07/233721P.pdf

Dahl was convicted at a bench trial of production of CP and two counts of receipt of CP. He argued on appeal that the evidence was insufficient to support his convictions for receipt. He also argued that the district court erred by running his federal sentence consecutive to his sentences in six state cases.

Dahl received a video of a 16-year-old in which she "briefly flashes her pubic area, then turns around, angles her buttocks toward the camera, bends at the waist, and begins 'twerking'"; "[a]lthough shadowed, her pubic area and anus are visible as her buttocks move, and the camera is positioned specifically to capture her buttocks and pubic area." Dahl also received an image from the mother of a 7-year-old girl in which the mother's fingers are shown pulling apart the child's labia so her vagina is exposed. Dahl asserted that neither of these images contained a "lascivious exhibition of the anus, genitals, or pubic area." The panel considered the *Dost* factors and determined that a reasonable factfinder could have concluded that they both did.

The court gave some indication that it intended to run the federal sentence consecutive only to those state cases that did not involve relevant conduct, but three of the state cases apparently did. The parties agreed that remand was appropriate to allow the court to clarify what it intended.

Convictions affirmed; sentence vacated; remanded for clarification on consecutive nature of sentence.

Case #61: *United States v. Aldo Cordova Perez, Jr.*, 145 F.4th 800 (8th Cir. July 22, 2025)
No. 24-1553 (S.D. Iowa) (Kelly, author, with Loken and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/07/241553P.pdf

A jury convicted Cordova Perez of possessing a firearm as an unlawful drug user. On appeal, he argues that his conviction violates the Second Amendment. The panel vacated his conviction and remanded for further proceedings in light of *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025).

Cordova Perez was an admitted regular user of marijuana who engaged in a high-speed chase with law enforcement. He did not have a firearm with him in his vehicle at the time, but did admit to possessing a .22-caliber rifle that he kept in a closet at home.

Cordova Perez's motion for judgment of acquittal was denied before *Cooper* was decided, and the panel ultimately vacated and remanded so that the district court could consider his challenge with the benefit of *Cooper*'s guidance. The panel noted that the district court did not address whether marijuana *caused* Cordova Perez to act "mentally ill and dangerous," nor did it explicitly find that his marijuana use—either that day or more broadly—caused him to "induce terror, or pose a credible threat to the physical safety of others with a firearm." The district court also did not ask Cordova Perez's marijuana use placed him in a category of people "present[ing] a special danger of misuse" sufficient to justify disarmament irrespective of any individualized showing of dangerousness.

This opinion warrants close reading by anyone dealing with an as-applied challenge to § 922(g)(3).

Vacated and remanded for further proceedings.

Case #62: *United States v. Adan Shamburger*, 144 F.4th 1088 (8th Cir. July 22, 2025)
No. 24-1897 (W.D. Ark.) (Colloton, author, with Smith and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/07/241897P.pdf

Shamburger was originally sentenced to 48 months in prison, un upward variance from his guideline range of 30 to 37 months. The district court reduced his sentence to 46 months after finding him to be eligible for reduction because of the 2023 amendment to U.S.S.G. § 4A1.1. He argued on appeal that the degree of the sentence reduction was unreasonable because the reduced sentence is harsher than the original as compared to the applicable advisory guideline range. The panel noted that the court is under no obligation to grant a "proportional" sentence reduction, particularly in a case in which it originally "eschewed the original advisory range to impose a sentence above the range based on the § 3553(a) factors." The panel also found that the court adequately explained its decision to only reduce Shamburger's sentence by two months.

Affirmed.

Case #63: *United States v. Amikhet En Maati*, 144 F.4th 1080 (8th Cir. July 22, 2025)
No. 24-2130 (D. Neb.) (Colloton, author, with Erickson and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/07/242130P.pdf

Maati was convicted after a bench trial on five counts involving sexual exploitation of minors and sentenced to 720 months in prison. On appeal, he challenged the sufficiency of the evidence on two counts, the admission of certain evidence at trial, and the reasonableness of his sentence.

The case involved videos Maati made of his step-children. Maati challenged whether the evidence was sufficient for the court to conclude that the videos depicted a lascivious exhibition of the anus, genitals, or pubic area of a minor. Maati pointed out that the court did not explicitly discuss all of the *Dost* factors, but the panel noted that not all of the factors have to be present, and that an image can still qualify as a lascivious exhibition even if a majority of the factors are absent. The panel found that sufficient evidence was presented to support these convictions.

Maati challenged the admission of testimony from his former step-daughter claiming that he had sexually assaulted her approximately 25 years prior when she was between the age of 5 and 7. The panel found that this evidence was admissible under FRE 414 and noted that Congress placed no time limit on the admissibility of evidence under that rule.

Maati further challenged the admission of testimony from the nurse practitioner who examined the children, asserting that her testimony was unfairly prejudicial because it did not directly relate to any of the charges in the indictment. The panel found that the evidence concerning sexual abuse suffered by the children was relevant because it tended to show that Maati viewed them as sexual objects and that the videos he produced were intended to elicit a sexual response in the viewer.

Maati's challenge to the admission of testimony from a forensic scientist also failed. The testimony concerned semen and epithelial cells found on the children's bedding and DNA analysis strongly supporting the conclusion that these came from Maati. The panel found that this evidence made it more likely that he committed other acts of child molestation against the children and was accordingly admissible under Rule 414(a).

The panel also found that an incomplete *Miranda* form was properly admitted because it had bearing on whether Maati was aware of his rights and the consequences of waiving them.

Maati's challenge to the reasonableness of his sentence was summarily rejected; the panel noted that his guideline range was life.

Affirmed.

Case #64: *United States v. Eugene Hollow Horn Bear*, 144 F.4th 1105 (8th Cir. July 23, 2025)
No. 24-3394 (D.S.D.) (Erickson, author, with Loken and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/243394P.pdf

Hollow Horn Bear was convicted by a jury of two counts of abusive sexual contact; he also pleaded guilty to one count of failure to register as a sex offender. He was sentenced to a total of 108 months in prison. Hollow Horn Bear spent an evening drinking with his stepsister, B.B.H., and her adopted son, Lawrence Red Tomahawk, after which they "retir[ed] to an abandoned carwash to sleep." B.B.H. awoke during the night to find Hollow Horn Bear kneeling beside her and touching her breasts and vagina. She pushed him away and called out to Red Tomahawk for help; he awoke and saw Hollow Horn Bear's hand under B.B.H.'s pants. The incident was reported to tribal law enforcement the next morning, but no physical evidence was collected.

Hollow Horn Bear argued on appeal that the evidence was insufficient to support his convictions because they rested solely upon the testimony of two intoxicated witnesses and no forensic evidence was presented. The panel noted that credibility determinations rest squarely with the jury and are "well-nigh unreviewable" on appeal, that the absence of physical evidence is not fatal, and that the stories told by B.B.H. and Red Tomahawk about the incident matched up.

Hollow Horn Bear also argued that the indictment was multiplicitous in that it charged him with two separate offenses against B.B.H. The court found that this point was waived because it was not raised in a pretrial motion, but also that it would have failed on the merits because touching a victim's breast and genitalia are distinct violations of 18 U.S.C. § 2244.

Hollow Horn Bear's challenge to the substantive reasonableness of his guideline-range sentence also failed. Although several mitigating factors were present, they were raised at sentencing and the panel "presume[d] the district court considered the arguments before it."

Affirmed.

Case #65: *United States v. Raymond Lewis*, 146 F.4th 621 (8th Cir. July 24, 2025)
No. 24-1751 (E.D. Ark.)(Smith, Shepherd, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/241751P.pdf

A jury convicted Lewis of FIP and PWID methamphetamine. On December 20, 2018, Officer Buford responded to a report that shots had been fired and spotted a man and woman walking together in the vicinity. He believed the man was carrying a rifle. He admittedly violated department policy by failing to activate his dash cam because he wanted to maintain the element of surprise (the dash cam was activated by turning on the vehicle's blue emergency lights). When he exited his vehicle and arrested the man (who was thereafter identified as Lewis), he saw a rifle laying on the ground next to a silver handgun. Lewis had on his person a prescription pill bottle containing suspected ecstasy pills that turned out to be meth. Lewis was not indicted until May 2021, and he was arraigned on August 4, 2021. Lewis's trial did not take place until June 26, 2023.

Lewis filed a motion to suppress Officer Buford's testimony that was denied. The motion was not based on constitutional grounds but instead on Buford's violation of department policy by not activating his camera. The panel cited precedent for the proposition that courts should be wary in extending the exclusionary rule to violations that are not of constitutional magnitude and found that the violation of policy did not warrant exclusion of Buford's testimony.

Lewis filed a motion to sever requesting that proof regarding his prior convictions be considered separately from proof regarding possession of the firearm; this motion was also denied. The panel noted that courts do not typically require bifurcation on this matter and also that Lewis stipulated that he knew he was a convicted felon. Accordingly, no proof of his prior convictions was presented to the jury to prove his status as a felon and he suffered no prejudice. No abuse of discretion was found on this issue.

Lewis alleged that the time between his arrest and indictment was a delay that violated his Fifth Amendment due process rights. The panel noted that to succeed on such a claim, a defendant must show (1) that the delay resulted in actual and substantial prejudice to the presentation of the defense, and (2) that the government intentionally delayed indictment either to gain a tactical advantage or to harass him. The panel found that Lewis did not establish either of these points.

Lewis also alleged a Sixth Amendment speedy trial violation. Because there was a delay of over a year, it crossed the threshold dividing ordinary from "presumptively prejudicial" delay. However, Lewis's own motions accounted for the majority of the delay. Although the court caused 32 days of delay in connection with its decision to try an older criminal case first, this was not enough to support a finding that a constitutional violation had occurred in consideration of the other relevant factors.

Lewis's challenge to the sufficiency of the evidence also failed. The jury was entitled to credit Officer Buford's testimony and other supporting evidence (including Lewis's admission that he possessed weapons and controlled substances in a parole-revocation waiver), and to disbelieve testimony from Lewis's witnesses that they only saw him carrying his Bible that night.

Affirmed.

Case #66: *United States v. Rodney Smith*, 146 F.4th 615 (8th Cir. July 24, 2025)
No. 24-2359 (W.D. Mo.) (Smith, author, with Shepherd and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/242359P.pdf

Smith was sentenced to 37 months in prison for possession of an unregistered firearm. At sentencing, the court focused on Smith's meth addiction and need for treatment and ultimately said that it "picked out 37 months because you need about 28 months, they tell me, to 30 months to be able to get into RDAP and to complete the program and go through it."
On plain-error review, the panel agreed with Smith that the district court improperly based the length of his custodial sentence on his need for rehabilitation in violation of *Tapia*. The court noted its tendency to reject such challenges, but emphasized that the district court here made much more than a fleeting reference to Smith's need for rehabilitation. The panel also found that the district court failed to otherwise support its chosen sentence with discussion of the relevant § 3553(a) factors. Smith met his burden to demonstrate that he would have received a different sentence absent the *Tapia* error.

Sentence vacated; reversed and remanded for resentencing.

Case #67: *United States v. Markhel Harris-Franklin*, 146 F.4th 631 (8th Cir. July 24, 2025)
No. 24-2451 (D. Minn.) (Smith, author, with Kelly and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/242451P.pdf

Harris-Franklin was charged with being an armed career criminal in possession of ammunition. He moved to dismiss the indictment based on violation of the Speedy Trial Act and on the basis that 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment. The panel found Harris-Franklin's constitutional challenge to be foreclosed by circuit precedent, and it ultimately found that his rights under the Speedy Trial Act were not violated. This case involved multiple periods of delay for multiple different reasons—see pages 2-8 of the opinion for a full recitation of the factual background. The key holdings are discussed below.

The panel noted that the Speedy Trial Act places no limits on the amount of time that may be spent on a competency proceeding. The period of excludable delay begins when a party moves for, or the court *sua sponte* orders, a competency determination, and the period continues at least until a competency hearing is held. Despite the fact that the district court set the matter for a "status hearing" after the competency report was filed, the matter of Harris-Franklin's competency was discussed at the hearing and the court acknowledged at the hearing that he had been found competent. The period of excludable delay was properly found to continue through the date of the status hearing.

During the status hearing, Harris-Franklin made an oral motion for appointment of new counsel, which the district court granted. The district court ordered an open-ended continuance in light of the fact that new counsel would need time to get up to speed and prepare motions. The Eighth Circuit noted that it had not yet addressed whether ends-of-justice continuances granted under § 3161(h)(7) may be open ended. It noted a circuit split and joined the majority of courts to have decided the issue in concluding that open-ended ends-of-justice continuances may be granted based on the but may not be unreasonably long. The court held that the 40-day delay attributable to the open-ended continuance ordered by the district court was reasonable under the particular circumstances of the case.

The Eighth Circuit noted that it had also not yet addressed the issue of whether defendants waive a period of non-excludable time if they fail to raise it in their motion to dismiss or fail to renew their Speedy Trial Act claims prior to trial. The court again joined the majority of its sister circuits that have addressed the issue and concluded that waiver applies to specific non-excludable periods of time not raised in a dismissal motion or renewed dismissal motion. Harris-Franklin was found to have waived his argument regarding certain additional periods of delay by failing to renew his dismissal motion to include them.Affirmed.

Case #68: *United States v. River Smith*, 145 F.4th 862 (8th Cir. July 25, 2025)
No. 24-1196 (D. Minn.) (Grasz, author, with Loken and Smith)
https://ecf.ca8.uscourts.gov/opndir/25/07/241196P.pdf

Smith pleaded guilty to unlawful possession of a machine gun and was sentenced to 80 months in prison, an upward variance from his guideline range of 41 to 51 months. In statements made to confidential human sources and in jail calls following his arrest, he expressed his hatred of certain groups (including law enforcement); his reverence for firearms, violence, and mass shootings; his intention to use relatives to illegally obtain firearms after his release from imprisonment; his intention to kill any police that tried to arrest him or take his guns; and his intention to "lie and plead guilty, even though [he] know[s] [he is] not guilty." He had also amassed a stockpile of firearms, magazines, ammunition, and other accessories worth an estimated $20,000.

Despite his guilty plea, Smith was denied a reduction for acceptance of responsibility. The panel found no clear error here, as Smith's pre- and post-plea statements reflected his lack of remorse and refusal to take responsibility for his actions. The panel also found no error in the application of certain guideline enhancements based on Smith's purchase of inert grenades from a CHS. The evidence showed that Smith intended to buy live grenades; the only reason they were inert was because it was a controlled purchase. The district court also explained that it would have imposed the same sentence regardless of its ruling on Smith's objections to the grenade-related enhancements.

Smith also challenged three special conditions of supervised release that placed restrictions on his ability to access certain "extremist" or "inappropriate" materials, the internet, and virtual means of communication (social media). The panel found that, because Smith's use of the internet consisted of lawful activity, there was not enough of a connection to his offense to warrant the extent of the restriction. While Smith's conduct was "troubling, . . . this online activity does not justify depriving a defendant's future ability to access the internet or social media without prior approval of probation of a court." The panel concluded, however, that two of the special conditions "can be modified to comply with 18 U.S.C. § 3583(d)"—essentially, the facts of the case supported the internet-monitoring and random-search aspects of the conditions. The panel vacated these conditions and remanded to the district court so they could be modified.

Special Condition 8 instructed Smith "not to possess, view, access, or otherwise use material that reflects extremist or terroristic views or as deemed to be inappropriate by the U.S. Probation Office." This condition constituted an absolute ban on certain materials without any mechanism for prior approval, and the terms "extremist" and "inappropriate" rendered the condition vague and overbroad. "A ban on anything probation deems inappropriate is unduly burdensome, vague, and unsupportable based on the facts here." The panel vacated this condition. Sentence of imprisonment affirmed; special conditions vacated; case remanded for resentencing.

Case #69: *United States v. Jimmy Hudson, Jr.*, 146 F.4th 647 (8th Cir. July 25, 2025)
No. 24-1609 (E.D. Mo.) (Shepherd, author, with Smith and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/241609P.pdf

Hudson pleaded guilty to a drug distribution charge and was sentenced as a career offender to 151 months in prison. He challenged the substantive reasonableness of his sentence, arguing that because neither of his prior federal convictions were for violent offenses, the career-offender range was unfairly high and he should have received a downward variance.
The panel acknowledged that the Sentencing Commission has recommended to Congress that the career offender directive be amended such that it no longer applies to those who currently qualify as career offenders based solely on drug offenses. The panel pointed out, however, that Congress did not accept the Commission's recommendation. The panel found that the district court did not otherwise abuse its discretion in selecting a sentence based on its consideration of relevant § 3553(a) factors.

Affirmed.

Case #70: *United States v. Vivier*, 145 F.4th 892 (8th Cir. July 28, 2025)
No. 24-2483 (D.N.D.) (Benton (author), Grasz, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/07/242483P.pdf

Vivier was convicted after a jury trial of sex abuse of an incapacitated victim and sex abuse of a minor. The district court denied his motion for judgment of acquittal as to the incapacitated victim. J.M. was the 15-year-old girlfriend of Vivier's nephew. J.M. had been drinking and was staggering. She walked by Vivier's home, and he invited her inside. Her uncle and cousin were also in the house, but she was not close to them and did not speak to them. Vivier handed her a beer and she began to feel lightheaded and nauseous. Vivier invited her to lie down in his spare bedroom, where Vivier had sex with her. J.M. told her boyfriend later that night that Vivier had raped her. J.M.'s uncle and cousin said that she did not appear drunk, but they did not speak with her, were smoking marijuana, and left shortly after she arrived. Vivier changed his story a few times, but stated that he was drunk and using methamphetamine, and that he "came to" when J.M. was on top of him and told her to get off. The FBI agent who interviewed Vivier opined that Vivier was untruthful. Vivier moved to strike the agent's testimony as undisclosed expert testimony. The lower court found that the agent had technical training and other specialized knowledge but gave a curative jury instruction.

Under 18 U.S.C. § 2242(2), the government must prove beyond a reasonable doubt that: the victim was incapacitated, and the defendant knew the victim was incapacitated. Vivier argues that there was no proof that J.M. was incapacitated, but J.M. had testified that she felt dizzy and nauseous prior to receiving more alcohol at Vivier's home. In addition, Vivier argues that there was no testimony indicating that he knew J.M. was incapacitated. However, J.M. testified that Vivier: gave her more alcohol; invited her to lie down in the spare bedroom; undressed her himself; and pulled her on top of him. A reasonable jury could infer that Vivier knew J.M. was incapacitated.

As for the argument that there should have been a mistrial based on the agent's testimony on his statements being untruthful, this is reviewed for clear error since he did not move for a mistrial at the trial. Here, even without the agent's testimony, inconsistencies called Vivier's

story into question because he initially denied knowing or having met J.M., then denied sexual activity but later admitted to it because he thought she was over 16 and the act was consensual. Other witnesses corroborated J.M.'s version of events.

Affirmed.

Case #71: *United States v. Buckley*, 146 F.4th 679 (8th Cir. July 29, 2025)
No. 24-2212 (E.D. Ark.)(Colloton, Arnold (author), and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/07/242212P.pdf

Buckley was sentenced under ACCA and argues that he is not an armed career criminal. He argued that his prior Ark. convictions for possessing cocaine with the purpose to deliver it, *see* Ark. Code Ann. § 5-64-420(a)(1) (2011), and for delivering cocaine, *see id*. § 5-64-422(a) (2011), were not serious drug offenses under the ACCA. Buckley makes the isomer argument and points out that the Ark. drug schedules include isomers of cocaine that the federal schedule does not. The Eighth Circuit has held that a state's definition of cocaine that includes "isomers" encompasses all types of isomers, not just optical and geometric ones. *United States v. Owen*, 51 F.4th 292, 295-96 (8th Cir. 2022). "And so where a state's definition of cocaine includes even one additional isomer, the state crime is categorically overbroad and cannot serve as an ACCA predicate." *See id.* at 296; *see also United States v. Myers*, 56 F.4th 595, 598–99 (8th Cir. 2022).

Nevertheless, the Eighth Circuit finds "[t]here's no reason to believe that Ark. intended to define 'cocaine' as used in §§ 5-64-420 or 5-64-422 by incorporating Ark.'s drug schedules, as opposed to giving cocaine its ordinary meaning." The Court argues that neither statute directs the reader to the schedules for a definition of cocaine. It found Ark. to be different from other states, like Mo., which defined controlled substances by incorporating its drug schedules. Further, it argued that if Ark. legislature wanted cocaine to mean something beyond its "ordinary sense," it would have "focused on a different statutory provision from the drug schedules." It cites to Ark. Code Ann. § 5-64-101(16)(B)(iv) (2011) (where it specifically defines "[n]arcotic drug" to include "[c]ocaine, its salts, optical and geometric isomers, and salts of isomers").

Affirmed the district court's finding that Buckley was an armed career criminal.

Case #72: *United States v. Ivory*, 146 F.4th 693 (8th Cir. July 30, 2025)
No. 24-2088 (W.D. Mo.) (Loken, Shepherd, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/07/242088P.pdf

Ivory was convicted of possession of cocaine and cocaine base in a federal detention facility. His guideline range was 12 to 18 months, but the district court sentenced him to **96** months in prison. He appeals based on procedural error and substantive reasonableness.

Ivory was in a county jail pending the revocation of supervision due to a charge for felony assault. A few months later, jail staff searched his cell following an overdose by another inmate. They found .24 grams of cocaine base in his sock and a razor. He pleaded guilty to that offense in October 2023, and he was separately revoked and sentenced to 24 months for SR violations. In January of 2024, jail staff found a toothbrush filed to a point and 3 Risperidone pills (which he was prescribed but had accumulated them instead of taking them daily as prescribed in violation of jail rules), and apparently the same razor. The government argued for a sentence of 96 months because of the toothbrush "shank," which it believed was to be used as a weapon, and that Ivory had committed 2 contraband offenses. Ivory argued for 3 months based

on mental health struggles. He contended that the toothbrush was not to be used for a shank but to fix wiring in his headphones and to cut holes in the bed sheets to tie it down. The district court contended that the timing of the offense was aggravating and Ivory was given lots of breaks and opportunities. He had multiple violent incidents in his criminal history. It surmised he had no respect for the law, posed a danger to those around him, and he was undeterred.

First, Ivory argues procedural error because the court based the sentence on clearly erroneous facts—incorrect conclusions as to his criminal history and assumptions for the purpose of the toothbrush and the razor found in his cell. Unfortunately, Ivory did not make Super Clear objections to these facts in the PSR or at sentencing. Objections must be very clear. The district court made no finding that the toothbrush was a shank, but the court's inference that he posed a danger to the jail staff and other inmates was factually supported. The PSR record supported the district court's recounting of Ivory's past assaults and armed robbery convictions, as well as punching an officer in the face. In addition, the court did address Ivory's mental health issues. So, the court was correct to consider the underlying drug possession as potentially violent, and the razors and filed toothbrush as posing a threat of violence.

Second, he argues his sentence was substantively unreasonable. The Eighth Circuit believed that the district court properly addressed the mitigating factors and considered Ivory's mental health. The district court could place great weight on his lenient previous sentence, his criminal history, and the need to deter similar criminal conduct.

Affirmed.

August 2025

Case #73: *United States v. Wires*, 147 F.4th 1100 (8th Cir. August 1, 2025)
No. 24-2555 (S.D. Iowa) (Colloton (author), Smith, and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/08/242555P.pdf

Wires was sentenced as an FIP to 96 months in prison (a sentence at the top of the guideline range). He appeals the district court's finding that he had a prior COV, which was Iowa second-degree robbery (Iowa Code §§ 711.1, 711.3), under USSG § 2K2.1. Wires argues that subsections of the statute are alternative means rather than elements. The Eighth Circuit found that § 711.1 has "alternative elements that define different crimes, rather than 'various factual ways of committing some component of the offense.'" *Golinveaux v. United States*, 915 F.3d 564, 570 (8th Cir. 2019) (quoting *Mathis v. United States*, 579 U.S. 500, 506 (2016)).

In the alternative, Wires argued that the record does not establish that he was convicted of a COV. However, the district court relied on Wires' admissions in the plea agreement that revealed he violated § 711.1(1)(b). That subsection provides that an offender commits robbery if he "[t]hreatens another with or purposely puts another in fear of immediate serious injury." There was some conflicting evidence about which subsection Wires' violated, however the district court did not clearly err in relying on the factual basis in the plea agreement.

Affirmed.

Case #74: *United States v. Moua*, 145 F.4th 929 (8th Cir. August 1, 2025)
No. 24-2774 (D. Minn.) (Colloton, Erickson (author), and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/08/242774P.pdf

Moua was convicted by a jury with possession with intent to distribute meth. She appeals the denial of her motion to suppress drugs found in her vehicle after a traffic stop, asserting that there was not reasonable suspicion of criminal activity and it was unreasonably extended.

Deputy Hansen saw Moua at a gas station and the premises was covered in ice and snow. She tripped getting out of the car and then realized she was on the wrong side of the pump. She maneuvered her vehicle in a way that made Hansen believe she was impaired. In addition, he did not see license plates or temporary plates on the car. He followed Moua when she left the gas station for a few miles and conducted a traffic stop (where he notices a temp tag). He believed that she had signs of drug use, due to slurred speech, bloodshot eyes, and her teeth. She agreed to a field sobriety test and gave consent to search the car. Deputy Hansen looked into her makeup bag and did not find anything. She then revoked consent. He said he was arresting her for impaired driving and for having pepper spray on her keychain. Officers conducted an inventory search of the vehicle and found one kilo of meth.

Initially, the magistrate judge granted the motion to suppress, finding that Deputy Hansen did not have reasonable suspicion to initiate the stop. However, the district court found there was based on impaired driving and vehicle registration defects. In addition, the stop was not unreasonably extended. The Eighth Circuit found that in Minn., vehicles must display both front and rear plates, and it requires temporary tags to be displayed where a license plate would normally be. Here, Deputy Hansen testified that he could not see a license plate or temp tag until after he stopped her, when he saw a paper mounted on the rear window. A traffic stop may still be lawful even when an officer's initial observations are incomplete. *See United States v.*

Hollins, 685 F.3d 703, 706 (8th Cir. 2012). Even though the still image from the gas station showed the paper temp tag in the window, it was not from the officer's vantage point. It was closer and with brighter illumination. Thus, Deputy Hansen reasonably believed that a law had been violated at the time of the stop. In addition, he had reasonable suspicion that Moua was impaired.

As to the traffic stop being unnecessarily prolonged, there is no per se time limit on traffic stops. Here, she spent 45 minutes by the side of the road. Deputy Hansen's suspicions evolved during the stop. As he spoke with her, he saw additional signs of impairment, and decided to investigate further.

Affirmed.

Judge Grasz dissents. He agreed with the magistrate judge, who he points out was the only one to see and hear witness testimony at the suppression hearing. He points out that the Government was incorrect when it stated that all drivers must place temporary licenses in the rear license plate holder even if they are from out of state. This is not correct. Thus, Judge Grasz contended there was no probable cause for the seizure of Moua. Further, the magistrate judge did not believe there was reasonable suspicion she was an impaired driver. The Judge worried that "our jurisprudence related to traffic stops is hollowing out what little Fourth Amendment protection exists on the road." He believed the deputy's mistake of law and fact were not objectively reasonable. Photographic and video evidence contradicts Deputy Hansen's conclusion. The Judge even provides photo proof in his dissent.

Case #75: *United States v. Parker*, 145 F.4th 915 (8th Cir. August 1, 2025)
No. 24-2813 (W.D. Ark.) (Colloton, Arnold, and Gruender (author))
https://ecf.ca8.uscourts.gov/opndir/25/08/242813P.pdf

Parker was sentenced to 87 months in prison after a jury found him guilty as a medical practitioner of distributing oxycodone and promethazine HCl with codeine solution in a manner unauthorized by the Controlled Substances Act. See 21 U.S.C. § 841(a)(1). Parker contends that the evidence was insufficient to support his convictions, the jury instructions were improper, and the district court committed procedural error in sentencing.

An officer pulled over N.C. for reckless driving. N.C. said he had taken Lyrica for pain. Multiple prescription bottles from Parker were found. N.C. died in the jail later that day. The DEA suspected Parker was running a pill mill to distribute opioid prescriptions. They executed a search warrant and seized clinic and patient records. The government's expert witness contended that Parker had not conformed to the conduct of Ark.'s regulations for pain management. Parker had failed to conduct necessary physical examinations for his patients, prescribed oxycodone and promethazine HCl with codeine solution inappropriately, and maintained deficient and internally inconsistent patient records. The district court gave various jury instructions, including ones that stated legitimate medical purpose and usual course of professional practice meant they were in accordance with criteria set forth for prescribing controlled substances in Ark.; and the jury could find Parker acted knowingly if it found there was a high probability that these patients were addicted to the drugs, and he took deliberate actions to avoid learning this fact. [He did get not guilty verdicts as to causing the death of N.C. and to unauthorized distribution to one of the patients the government put forth in the indictment].

At sentencing, the district court included prescriptions written to other patients for the quantity calculation, not only the ones he was found guilty of unlawfully prescribing medications, as relevant conduct. The court calculated the base-offense level to be 28, and added a 2-level enhancement for using a special skill to facilitate the offense. The guideline range was 108 to 135, so the court varied downward to 87 months. It also said that it would impose the same sentence even if it ruled in Parker's favor as to quantity.

First, he argues there was insufficient evidence to convict him because the Government failed to show that he acted without a legitimate medical purpose. However, the Governments expert claimed that the patients named in the indictment were prescribed either inappropriate controlled substances or too much of it. He also prescribed them without performing a physical exam. The jury was entitled to credit this testimony.

Second, he argues that those jury instructions were improper. This is reviewed for plain error since there was not an objection below. Parker argued that he should be judged on a national standard, not an Ark. standard. However, 841, does not suggest this. As to the second jury instruction, he argued it equated treating addicted patients with criminal conduct. The Eighth Circuit agreed that treating addicted patients is not itself criminal conduct, but found that taking all of the instructions as a whole showed he was not entitled to relief.

Third, as to procedural error at sentencing, Parker argues that the drug quantity calculation should not have included people outside of the indictment. However, they Court has held that, even when a district court miscalculates a sentence, any error is harmless "when the district court indicates it would have alternatively imposed the same sentence even if a lower guideline range applied." *United States v. Hamilton*, 929 F.3d 943, 948 (8th Cir. 2019).

Affirmed.

Case #76: *United States v. Womack*, 148 F.4th 574 (8th Cir. August 4, 2025)
No. 24-2581 (E.D. Ark.) (Colloton, Arnold, and Gruender (author))
https://ecf.ca8.uscourts.gov/opndir/25/08/242581P.pdf
*** Decision vacated after grant of panel rehearing. *See United States v. Womack*, 154. F.4th 584 (8th Cir. Oct. 1, 2025).

Case #77: *United States v. Cardinale*, 147 F.4th 853 (8th Cir. August 4, 2025)
No. 24-2784 (D. Neb.) (Colloton, Smith (author), and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/08/242784P.pdf

Cardinale appeals the denial of his motion to suppress, arguing that the traffic stop was not reasonable. Officers investigated the vehicle that Cardinale was driving at a gas station. It was registered to a woman with a history of meth use and a suspended driver's license. They followed Cardinale and stopped him, claiming that he failed to use his left turn signal more than 100 feet in advance of the turn as required by Neb. law. A K-9 sniffed the and alerted to drugs. He was indicted with possession with intent to distribute more than 50 grams of actual meth. At the suppression hearing, the officer testified that Cardinale activated his turn signal just prior to the turn, which was not 100 feet. The district court determined that the evidence did not clearly show that the officer's belief that Cardinale failed to signal properly was objectively unreasonable. The court had reviewed dashcam footage but did not feel the need to consider Cardinale's mathematical equations or maps regarding what the officer needed to access the distance regarding when Cardinale used the turn signal.

Cardinale relied on *United States v. Alvarado-Zarza*, 782 F.3d 246 (5th Cir. 2015), in which the officer pulled over a driver for failing to activate his turn signal at least 100 feet in advance of his turn in violation of Texas law. However, in the Texas case, the officer had testified that the "turn" began when he switched lanes prior to the turn. The officer's failure to differentiate between a turn and a lane change was an unreasonable mistake of law. The expert in that case was also able to show that the officer made a mistake of fact because the defendant used the turn signal well before 100-feet of the turn. In Cardinale's case, he did not provide an expert witness and the video was grainy and blurry and did not provide a clear record. Cardinale also failed to provide a proper basis for distances on the maps he attempted to bring into evidence. The actual distance is unknown in this case and the officer testified that Cardinale turned "almost immediately" after activating his turn signal. The Eighth Circuit found there was no evidence that clearly refuted the officer's testimony or is even inconsistent with it. *See United States v. Holly,* 983 F.3d 361 (8th Cir. 2020); *United States v. Houston*, 548 F.3d 1151 (8th Cir. 2008). Here, like in those cases, the officer relied on his training and experience to recognize the traffic violation.

Affirmed.

Case #78: *United States v. Nock, Brittsan, & Griffith*, 148 F.4th 607 (8th Cir. August 7, 2025) Nos. 24-1603, 24-1713, & 24-1714 (W.D. Ark.) (Colloton, Arnold (author), and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/08/241603P.pdf

The three defendants appeal their convictions and sentences after a jury trial. They were convicted of conspiracy, money laundering, and wire fraud stemming from an investment scheme (the Brittingham Group). Nock and Brittsan promised investment returns of 200 to 300 percent within 30 days. They provided fraudulent letters on third-party letterhead from financial institutions to investors to convince them their money was not at risk. The money was then directed to the accounts of others in the scheme, including Griffith. Defendants later collaborated in drafting misleading communications to offer excuses as to why the investors had not received money that was promised.

Nock first argued that the court erred in not appointing new counsel because counsel Ken Osborne had not met with him enough times to prepare for trial and the evidence was voluminous. The magistrate judge found that Osborne was an effective counselor and that there were times when Nock missed appointments with counsel. She believed that Nock had the right counsel to be ready for trial and suggested he renew the motion if circumstances changed. He did not, and he failed to object to the Magistrate Judge's Report and Recommendation regarding substitute counsel. Nock and counsel may have had a difference of opinion on the amount of time needed for his defense, but defendants are often unhappy with appointed counsel who are doing a good job. The magistrate judge was familiar with Osborne's record as a good attorney. In addition, Nock did not renew his request for new counsel before trial—therefore, there is no abuse of discretion here. The Court declined to decide his claim of ineffective counsel on direct appeal.

Nock next challenges Agt. Nantze's testimony at trial when he referenced the investors as "victims" and mentioned three unindicted people as "co-conspirators." Nantze never said that these people were conspiring with Nock, nor did he say the victims were specifically victims of Nock. In addition, Nock never argued that people were not cheated out of money, but that he and the investors were both duped. In addition, Nantze's use of terms such as "supposed" or

"purported" when describing Nock's documentary evidence is "neutral as to whether the jury should find them fake or not." These terms simply indicate that the witness cannot vouch for the authenticity of an exhibit or representation.

Lastly, Nock objects to Nantze's narrative gloss on what certain emails meant. The Eighth Circuit acknowledges that it has been skeptical of lay testimony from law enforcement officers interpreting evidence, but believed that Nantze offered little if any "narrative gloss" here. The Court admits there were some troublesome points, such as when Nantze characterized a message Nock sent a person as "lulling language." However, it did not meet plain error review. [Notably, defense counsel did not make objections to most of Nock's arguments on appeal, so they are reviewed for plain error.]

Brittsan and Griffith argue that there was insufficient evidence to suggest they had joined the conspiracy. The Court found that there was. As to Brittsan, investors testified that he made them outlandish promises about returns and falsely represented that he had access to a jet that could pick up over 100 tons of gold. Brittsan represented that Brittingham had a record of investment success, although he later testified in a civil proceeding that Brittingham never completed a single transaction or obtained any returns for clients. There was also evidence that Brittsan had prepared and sent fake letters from banks and others to ease concerns about their money. The Court found that it was a closer call with Griffith, but a reasonable jury could find that he knowingly participated in the conspiracy. There was evidence that Griffith helped Nock draft a fake bank record to make it appear authentic and forwarded fake bank letters to others. Griffith testified that he did not know at the time that the letter was fake, but the jury was not required to believe him. Griffith was on notice by that time that Brittingham might be trading in fake letters from the Royal Bank of Scotland. In addition, Griffith had vouched for Nock's track record of success, which did not exist.

Lastly, the defendants argue their sentences were unreasonable. Nock argues that his guideline was incorrectly calculated because it relied on guideline commentary to choose the greater of intended or actual loss. The Eighth Circuit precedent forecloses his argument because courts can consider guideline commentary. In addition, he argues that he should not have received a 2-level enhancement for abuse of trust. However, the Court has applied the enhancement in similar cases, such as when an investment advisor swindled investors out of money after making promises of a sizeable profit but keeping the money for himself. Brittsan received a below-guideline sentence and Griffith received a within-guideline sentence, which were both deemed to be proper based on their individual circumstances. Griffith also appealed the forfeiture of $86.5k, saying he returned this money. The court believed this argument was waived. It also found some other money he gave to another individual were proceeds of criminal activity.

Affirmed.

Case #79: *United States v. Thin Elk, Sr.*, 148 F.4th 595 (8th Cir. August 1, 2025)
No. 24-2855 (D.S.D.) (Benton (author), Grasz, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/08/242855P.pdf

Thin Elk pled guilty to unlawfully possessing a firearm. He appeals his motion to suppress. Thin Elk was a passenger in a vehicle that was stopped for having plates registered to the wrong car. Neither Thin Elk nor the driver had ownership paperwork, but the driver claimed it belonged to her boyfriend. It was not stolen, but a K-9 was dispatched. The K-9 alerted to narcotics, and the

driver was arrested on an outstanding warrant. A firearm was found in the backseat of the car and marijuana and a pen that tested positive for meth were found on Thin Elk.

The Eighth Circuit found that Thin Elk could not challenge the search of the vehicle because he did not have ownership rights, and therefore had no reasonable expectation of privacy as a passenger. Thin Elk argued the stop was unconstitutionally prolonged because the stop should have ended when officers discovered that the vehicle was not stolen. However, the K-9 had not completed the sniff until after the officer ran a license and warrant check, which are tasks related to the traffic stop. Thin Elk then asserts that the K-9 was not reliable with drug detection. While Thin Elk cannot challenge the search of the vehicle, he can challenge the search of his person. However, the K-9 had been certified since 2016, and had been recertified annually and completed additional training. A senior trainer testified that the K-9 found every odor without issue in his most recent training. Thin Elk argued that the K-9 did not give the final alert for drugs and provided his own expert testimony. However, the lower court found that the defense expert did not consider the relationship between the officer and the K-9, and the expert's suggestion that the officer had cognitive bias about finding drugs was speculative. The officer testified that the speed at which the K-9 was sniffing and inhaling indicated that he smelled narcotics.

Affirmed.

Case #80: ***United States v. Juvenile B*****, 147 F.4th 837 (8th Cir. Aug. 8, 2025)**
No. 24-1649 (D.N.D.) (Kelly, author, with Smith and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/07/241649P.pdf

Juvenile B was charged in a juvenile information with knowingly causing a minor to engage in sexual acts by use of force in violation of 18 U.S.C. §§ 2241(a) & 1153, knowingly engaging in sexual acts with a minor under the age of 12 in violation of 18 U.S.C. §§ 2241(c) & 1153, and knowingly engaging in sexual contact with a minor in violation of 18 U.S.C. §§ 2244(a)(5) & 1153. Two days after filing the juvenile information, the government moved to transfer the case to adult court under 18 U.S.C. § 5032. Juvenile B moved to dismiss the transfer motion, arguing that the alleged offenses did not qualify as "crimes of violence" under § 5032. The district court denied Juvenile B's motion and granted the government's motion to transfer.

The panel reversed. Section 5032 allows permissive transfer of a juvenile to adult court when a "juvenile is at least fifteen years old" and, after the juvenile's fifteenth birthday, they allegedly commit "what would be a felony crime of violence" if they were an adult. The panel explained that § 5032 does not define "crime of violence," but this phrase is defined in 18 U.S.C. § 16, and the court applies the categorical approach in deciding whether the offense is a crime of violence under the force clause in § 16(a).

Section 2241(a): Section 2241(a)(1) prohibits causing another person to engage in a sexual act (1) by using force against that other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping. The panel agreed with Juvenile B that § 2241(a)(2) can be violated by the threatened use of physical force against the defendant's own person and therefore is broader than the force clause in § 16(a) (which requires the use, attempted use, or threatened use of physical force against the person *of another*).

The panel also found that § 2241(a) is not divisible between subsections (a)(1) and (a)(2). It relied on the Eighth Circuit's statement of the elements of § 2241(a), the text of § 2241(a), and pattern jury instructions from other circuits.

The panel concluded that § 2241(a) is both overbroad and indivisible and cannot serve as a "crime of violence" for purposes of § 5032 permissive transfer.

Section 2241(c): As relevant here, § 2241(c) prohibits knowingly engaging in a sexual act with a minor under the age of 12. The term "sexual act" includes "the intentional touching" of the genitalia of a person under 16 years old. The panel agreed with Juvenile B that this offense lacks, as an element, the use, attempted use, or threatened use of physical force. It reasoned that there is nothing in the definition of "intentional touching" that requires physical force. Therefore, § 2241(c) does not qualify as a crime of violence under § 16(a).

Section 2245(a)(5): Finally, § 2245(a)(5) prohibits knowingly engaging in or causing sexual contact with or by another person, if to do so would violate § 2241(c) had the sexual contact been a sexual act. The term "sexual contact" is defined as "the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." The panel found that § 2244(a)(5) does not qualify as a crime of violence because the "intentional touching" in the definition of "sexual contact" can include the act of masturbating. It does not necessarily require the defendant's touching of another person, so it can be violated without the use or attempted use of physical force against another.

Finally, the government argued that even though the charges did not qualify as "crimes of violence" under § 16(a), they qualified as "enumerated" crimes of violence under § 5032. The government relied on this language of § 5032: "In the application of the [permissive transfer exception], if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), "thirteen" shall be substituted for "fifteen" and "thirteenth" shall be substituted for "fifteenth"."

The panel rejected the government's argument that this sentence defines what constitutes a "crime of violence." It explained that the charged offense must first qualify as a "crime of violence." Only if it does is it necessary to determine if "the crime of violence" falls under an enumerated statute. Because the offenses charged against Juvenile B are not crimes of violence under § 16(a), the enumerated offenses never come into play.

Reversed and remanded.

Case #81: *United States v. Rexrode*, 149 F.4th 977 (8th Cir. August 8, 2025)
No. 24-1002 (D.N.D.) (Loken (author), Arnold, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/08/241002P.pdf

Rexrode pled guilty to being a FIP. The underlying facts resulted in him shooting at a minor who had pointed a handgun at him and demanded the marijuana he agreed to sell to them. When he fled, he shot at the two people, and killed J.M., a 16-year-old. The government dismissed the murder charge. In the plea agreement, the parties agreed to a base-offense level of 20, and a 4-level enhancement for the firearm being in connection with another felony offense. They jointly recommended a sentence of 180 months. The guidelines recommended a sentence of 41 to 51 months. Despite the plea agreement, Rexrode argued for a guideline sentence. The district court applied upward departures under § 5K2.1 and § 5K2.21, increasing the total offense level to 29 and the guidelines range to 97 to 121 months imprisonment. The court sentenced him

to 120 months (5 years below the parties' recommendation). Rexrode argues on appeal that the court procedurally erred in applying the departures and that the sentence is substantively unreasonable.

Here, Rexrode consented to a specific sentence in the plea agreement and he waived the right to challenge that on appeal. Therefore, since he agreed to a sentence of 180 months and accepted that the court could depart from the guideline range, he waived that argument. Moreover, he did not object to the PSR, which identified the potential departures as being applicable. There was also an appeal waiver in the plea agreement.

As for the unreasonable sentence, the departures were properly applied, so this is a guideline sentence. In addition, he waived this argument by consenting to a 180-month sentence.

Affirmed.

Case #82: *United States v. Airhart*, 147 F.4th 860 (8th Cir. August 8, 2025)
No. 24-1210 (S.D. Iowa) (Kelly (author), Erickson, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/08/241210P.pdf

Airhart appeals his jury conviction for being in unlawful possession of ammo. He was sentenced to 15 years—the statutory maximum. Airhart was involved in an altercation after his girlfriend Tywanna Buchanan's car was vandalized. Airhart told a man named Martin Diaz that he knew his sister vandalized the car. Diaz saw that Airhart had a firearm in his waistband and went back to his vehicle when he heard a shot. When he turned, Airhart shot him in the face. Diaz grabbed his own firearm (Ruger 57 with 5.7 x 28-millimeter ammo) and shot at Airhart. Officers later found 15 5.7 x 28-millimeter shell casings, 10-millimeter shell casings, and a Ruger 57 (but not the 10-millimeter pistol). Security camera footage showed some of the gunfire and a man running to Buchanan's apartment. Pursuant to a search warrant for Buchanan's apartment, officers found an empty 10-mm ammo box, six loose rounds of 9 mm ammo, and mail addressed to Airhart inside a dresser in the master bedroom. Before trial, Airhart moved to exclude evidence of the empty ammo box and 9mm ammo under Rule 404.

Airhart first argues that the court erred in admitting evidence regarding the empty box and 9mm ammo because they were improper propensity evidence. The government argues it was intrinsic evidence. The Eighth Circuit was not convinced that these items were intrinsic evidence because the 10mm ammo box was a different name than the casings found at the shooting site and the 9mm ammo was a different size. The government did not show a connection to those items and the shooting outside. However, any error was harmless because the admissible evidence against Airhart was strong. Diaz testified that Airhart shot him and this was consistent with video footage.

Next, he argues a new trial is required because Det. Bunch improperly offered opinion testimony as a lay witness regarding his description of the video footage. Bunch stated that Airhart was holding a firearm in the video and that he was firing rounds. This is reviewed for plain error since there was no objection to this testimony. "Rule 701 provides that if a witness is not testifying as an expert, then any testimony by the witness expressing his or her opinion or inferences is limited to those that are rationally based on the witness's perception and helpful to understanding the witness's testimony or determining a fact in issue." *United States v. Smith*, 591 F.3d 974, 982 (8th Cir. 2010). Here, Bunch's testimony was not admissible under Rule 701 because it was not based on his presence at the scene but on his review of the footage (which the jury could do on its own). However, it did not affect Airhart's substantial rights because the

outcome would not be different. Bunch's testimony was very brief and the government did not mention the testimony at closing but referenced the video itself.

Finally, the Eighth Circuit concludes that there was sufficient evidence for a reasonable jury to conclude that Airhart shot and possessed the 10mm ammo.

Affirmed.

Case #83: *United States v. Thomas*, 149 F.4th 972 (8th Cir. August 8, 2025)
No. 24-1296 (S.D. Iowa) (Kelly (author), Erickson, and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/08/241296P.pdf

Thomas appeals his second revocation sentence of 24 months. His underlying crime was for conspiracy to distribute heroin. After that sentence, the government filed sex trafficking charges although his plea agreement had a "no further prosecution" clause limiting the government's ability to file additional charges against him. The sex charges were vacated on appeal. When Thomas was released from prison, the district court set a hearing to set final, modified conditions of supervised release because it wanted to ensure the safety of the community given that the court had learned of the sex trafficking that occurred in the now vacated conviction. The court imposed 20 conditions of supervised release, including "GPS monitoring until further notice of the Court," a curfew, and a prohibition against contacting children without prior approval of the probation officer, including his children and grandchildren. Thomas appealed but he was revoked during this time, making that appeal moot. Thomas did not appeal his revocation sentencing, which imposed the same conditions and added new ones.

Thomas appealed the imposition of two SR conditions—location monitoring via GPS and a curfew, and the prohibition against unapproved contact with minors. [Notably, the Court found that Thomas was not procedurally barred from this argument]. The Eighth Circuit found that location monitoring was acceptable because the district court explained that Thomas was manipulative and sophisticated in evading supervision. He had more than 300 violations of SR. Even though the court had imposed this condition until "further order of the court," it left open the possibility of modification when he earned the court's trust. As for the condition prohibiting contact with minors without pre-approval, there was evidence he forcibly sex trafficked at least one child and had a history of violent contact with the mother of his minor son.

Affirmed.

Case #84: *Lee, Jr. v. United States*, 149 F.4th 981 (8th Cir. August 8, 2025)
No. 24-2017 (D. Minn.) Benton, Kelly (author), and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/08/242017P.pdf

2255 issue: Lee was sentenced to 120 months in prison for federal arson. He filed a motion to vacate his sentence under 28 U.S.C. § 2255 about a year later. The district court dismissed it as time barred. 28 U.S.C. § 2255(f). However, the district court counted the 1-year clock from the initial judgment, not the amended judgment that added a restitution amount. At the sentencing hearing, the district court imposed sentence but stated it would impose restitution for the victim at a later date because no one had requested restitution yet. *See* 18 U.S.C. § 3664(d)(5) (providing 90-day period for victims' losses to be determined for restitution purposes). The district court held the matter open for 2 weeks until the restitution amount had

been confirmed. An initial judgment was entered against Lee, explicitly deferring a "determination of restitution . . . until January 28, 2022." However, the amended judgment was not filed until April 13, 2022, adding the restitution obligation. On April 27, 2023, 1 year and 14 days after the amended judgment, Lee filed the 2255 for ineffective assistance of counsel.

The district court believed that the initial judgment that imposed the sentence, not the amended one adding restitution was the triggering event for § 2255(f)(1). There is a long explanation of how the Eighth Circuit gets to the answer, but it discusses a split in the Circuits and that it concludes that restitution is a part of the criminal sentence. Thus, the judgment of conviction became final once the judgment was amended to add restitution.

Reversed and Remanded.

Case #85: *United States v. Jeffery Boyd*, 149 F.4th 1006 (8th Cir. August 13, 2025)
No. 24-1190 (S.D. Iowa) (Loken, author, with Arnold and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/08/241190P.pdf

Boyd pleaded guilty to conspiracy to distribute 50 grams or more of methamphetamine and was sentenced to 120 months in prison, the statutory minimum. He appealed the denial of safety-valve relief.

Boyd admitted purchasing at least four pounds of meth from one distributor, using some of the drugs himself, and selling the rest to his friends. Boyd also admitted purchasing a firearm that was found in a lock box on the kitchen counter of his residence. Investigators found 2.33 grams of meth in the adjacent living room and a scale with meth residue in the bedroom. Boyd stipulated in the plea agreement that a 2-level enhancement for possession of a dangerous weapon should apply.

Boyd argued on appeal that this stipulation in the plea agreement did not automatically preclude safety-valve relief because different standards govern application of the 2-level enhancement under U.S.S.G. § 2D1.1(b)(1) and safety-valve eligibility. The panel noted that the sentencing court did not find that Boyd was *automatically* precluded from safety-valve eligibility—instead, the court analyzed the record and found that he could not prove by a preponderance of the evidence that he did not possess a firearm in connection with his drug offense. The panel found that the district court did not clearly err in making this finding.

Affirmed.

Case #86: *United States v. George Kitchen*, 149 F.4th 1019 (8th Cir. August 13, 2025)
No. 24-1777 (S.D. Iowa) (Grasz, author, with Stras and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/08/241777P.pdf

Kitchen was convicted by a jury of two counts relating to drug distribution. An officer reportedly saw kitchen drive through a red-light intersection off Interstate 29 and conducted a traffic stop. The officer said he noticed a strong odor of marijuana emanating from the vehicle; he called for backup while running Kitchen's license and checking for warrants. When backup arrived, the officer reapproached the vehicle and told Kitchen he was going to search it. Kitchen then drove off and led police on a high-speed chase, during which pursuing officers "observed a bag fly from the passenger side of Kitchen's vehicle and explode into a white, powdery cloud upon hitting the ground." Additional items were thrown out of the vehicle after it had traveled another mile. Law enforcement later recovered three packages containing over 300 grams of meth and

one package containing over 14 grams of cocaine from the area. When the chase ended, Kitchen and his passenger were both detained. A portion of a smoked marijuana blunt was found in the vehicle along with a box of ziplock bags and two cell phones. A subsequent search of Kitchen's phone revealed photos and text messages indicating drug transactions.

Kitchen moved to suppress evidence found as a result of the traffic stop, arguing that the officer lacked reasonable suspicion or probable cause to stop him and unlawfully extended the stop. Kitchen challenged the denial of this motion on appeal. The panel found that Kitchen was essentially challenging the credibility findings of the district court. According to the panel, the court reasonably believed the testimony of the officer that he saw Kitchen commit a red-light violation and that he smelled marijuana. This provided adequate justification for the stop and its extension.

Kitchen also argued that the district court erroneously admitted hearsay statements at trial. D.S., a cooperating witness for the government, testified at trial about Kitchen's involvement in a prior drug conspiracy. D.S. had previously been indicted along with Terry Finch for a conspiracy to distribute drugs in Kansas City. D.S. testified that Finch had told D.S. that Finch was providing drugs to Kitchen to distribute as a part of their operation. This testimony was admitted under the co-conspirator hearsay exception after the court found that Kitchen had been involved in a conspiracy with D.S. and Finch and that Finch's statements to D.S. were made during and in furtherance of that conspiracy. The panel found that the district court's findings were supported by the record.

Kitchen also challenged the admission of other drug-distribution activities under Rule 404(b). At trial, Kitchen raised a "mere presence" defense by arguing his passenger and co-defendant had possessed the drugs thrown from the vehicle without his knowledge. The panel noted that this defense made Kitchen's mental state a material issue at trial "and increased the probative value of any evidence tending to show his knowledge of the drugs, his motive to flee police, or his intent to aid and abet Harris's efforts to discard the drugs." The panel found no error in admission of the 404(b) evidence; it also found that any error would have been harmless in light of the weight of other unchallenged evidence.

Affirmed.

Case #87: *United States v. Gafford*, 149 F.4th 1002 (8th Cir. August 13, 2025)
No. 24-2782 (E.D. Mo.) (Colloton, author, with Arnold and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/08/242782P.pdf

Gafford was convicted by a jury of delay and embezzlement of mail. He was sentenced to 14 months in prison on each count, to run concurrently. On appeal, he challenged the sufficiency of the evidence to support his convictions, the admission of certain testimony at trial, and the sentence imposed.

Gafford was a rural mail carrier assigned to deliver mail along a route that included the home of Karen and Doug Ressel. The Ressels noticed that anticipated mail was not being delivered to their mailbox. They inquired with the post office, and a customer service supervisor (Redden) met with Gafford to discuss the issue. Gafford asserted that the Ressels' mailbox was in an unsafe location; after investigation, it was determined that this was not the case. Gafford was repeatedly ordered to deliver the Ressels' mail to their mailbox but apparently did not do so.
Karen Ressel took matters into her own hands and mailed an envelope containing an Apple AirTag to her own address. She told Redden about her plan, and he confirmed that the post office had

received this piece of test mail. Karen tracked the mail to an unknown address, which Redden determined was Gafford's residence. The Postal Service conducted a similar investigation and ended up finding the test mail they attempted to send to the Ressels in the glove compartment of Gafford's personal vehicle.

With respect to his conviction for embezzlement, Gafford challenged the sufficiency of the evidence to prove that he intended to convert the Ressels' mail to his own use or that the items were of such value that a jury could reasonably infer that the mail would be converted for his own use. The panel noted that there was circumstantial evidence indicating that Gafford had taken mail over a period of several months and that some of the mail contained valuable items, and that Gafford refused to deliver the Ressels' mail despite being repeatedly ordered to do so. The panel concluded that a jury could reasonably infer that when Gafford placed the Ressels' mail in his personal vehicle and drove away, he intended to convert it to his own use.

With respect to his conviction for delay of mail, Gafford argued that there was insufficient evidence to prove that he acted unlawfully (the third element of the offense, as set forth in the opinion, requires proof that the defendant "unlawfully secreted, destroyed, detained, delayed, or opened the mail"). The panel concluded that "[b]ecause there was sufficient evidence to prove that Gafford intended to convert the Ressels' mail to his own use, the evidence likewise supported the jury's finding that Gafford unlawfully detained the mail."

Gafford challenged the admission of Karen's testimony at trial concerning the AirTag device. He argued that the government did not lay a proper foundation for this testimony because Karen was not familiar with the internal operations of the device. The panel found no abuse of discretion in the admission of this testimony, noting that Karen testified about having conducted a "test run" by mailing the device to her brother-in-law's residence and using her phone to see that the AirTag showed up there as expected. She also testified that she had used the AirTag in the past to locate her children and found it to be reliable. [Note: the panel refers to the AirTag as a "GPS tracking device," but this is not technically accurate. Without getting into too much nerdy detail, AirTags operate on Apple's Find My network, which uses other nearby devices to detect Bluetooth signals emitted by the Airtags. No satellites are involved in the tracking of AirTags.]

The panel noted that Gafford's challenge to his term of imprisonment was moot because he had already been released from prison.

Affirmed.

Case #88: *United States v. Shane Mousseaux*, 148 F.4th 973 (8th Cir. August 18, 2025)
No. 24-2688 (D.S.D.) (Erickson, author, with Loken and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/08/242688P.pdf

A jury convicted Mousseaux of several counts of sexual abuse and abusive sexual contact of a minor between the ages of 12 and 16. Mousseaux asserted that the district court erred when it allowed the government to elicit hearsay testimony from the victims and two family members. The panel concluded that, "[a]lthough it was a clear abuse of discretion to allow family members to describe repeatedly the children's emotional demeanor and restate hearsay statements that went far beyond the court's stated nonhearsay purpose, the error was harmless."

A statement is not hearsay if it is admitted to explain the origin of an investigation, such as how and when a witness learned about an incident and the steps the witness took in response. In such a case, however, it is generally improper to admit details about the incident itself, the emotions displayed, or a person's demeanor. Such additional testimony is problematic when it serves to

bolster an alleged victim's credibility and help rebut an allegation of fabrication. Here the victims' aunt and grandmother were improperly permitted to give this type of problematic testimony. The panel found a clear abuse of discretion when the court permitted testimony that went far beyond merely explaining the origin of the investigation.

However, because the court gave limiting instructions concerning the aunt's and grandmother's testimony, and because the alleged victims each testified and were subject to vigorous cross-examination, the panel found that the admission of the improper testimony was harmless.

Affirmed.

Case #89: *United States v. Vincent Barrios*, 151 F.4th 961 (8th Cir. August 19, 2025)
No. 24-1941 (D.S.D.) (Kelly, author, with Smith) (Kobes, concurring in part and dissenting in part)
https://ecf.ca8.uscourts.gov/opndir/25/08/241941P.pdf

Barrios was convicted by a jury of multiple sex offenses involving minors and sentenced to life imprisonment. Barrios was the target of multiple undercover sting operations—he thought he was communicating with minors named Stella, Nevaeh, and Macie, but these accounts were operated by law enforcement officers pretending to be 13- and 14-year-old girls. Barrios was also messaging with and receiving nude photos from Y.F., an actual 14-year-old girl. In his messages with "Stella," Barrios was expressly informed that she was 13, and the two made plans to meet up for sex.

On appeal, Barrios asserts that the evidence was insufficient regarding his knowledge and belief that Y.F. was a minor, as they did not discuss her age in their messages. However, evidence was presented that Barrios had known Y.F. for years, having first met her when she was around 4 or 5 years old. Y.F. was 15 years old when she testified at trial, and photos of Y.F. from less than 6 months before trial were introduced into evidence. Accordingly, "the jury could draw its own conclusions as to whether Y.F. presented as younger or older than eighteen."

Barrios also challenged the admission of Rule 404(b) evidence concerning his communications with Nevaeh and Macie. The panel found that any error in the admission of this evidence was harmless, as "the evidence against Barrios for his conduct with Stella and Y.F. was quite strong," and the challenged evidence did not include any sexually explicit content and was not unduly prejudicial.

Barrios challenged the substantive reasonableness of his life sentence, arguing that the district court gave significant weight to an improper factor "when it considered the trauma placed on the victim caused by Barrios exercising his right to a trial." The court purported to recognize that Barrios had the right to have a jury decide his guilt or innocence, but also concluded that it was fair for it to consider that Y.F. was retraumatized by being required to testify at trial. The panel majority stated, "Here, it is difficult to discern a meaningful difference between Barrios's decision to exercise his right to a jury trial and the impact that decision may have on the witnesses the government calls to testify in support of its case." The panel majority acknowledged that the court's sentencing decision was also motivated by other § 3553(a) factors, but noted that, "on this record, we cannot determine how much weight the court gave to Barrios's decision to go to trial when sentencing Barrios to a term of life imprisonment—a within-Guidelines range sentence, but the maximum sentence allowed by statute. Under these circumstances, we conclude the better

course of action is to remand, to allow the district court the opportunity to determine a sentence that is sufficient, but not greater than necessary, after considering the proper sentencing factors." Judge Kobes would have affirmed the life sentence.

Convictions affirmed; remanded for resentencing.

Case #90: *United States v. Ahmad Rhodes*, 147 F.4th 905 (8th Cir. August 19, 2025)
No. 24-2829 (W.D. Mo.) (Colloton, author, with Arnold and Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/08/242829P.pdf

Rhodes was convicted of several drug and firearm offenses. On appeal, he challenged the denial of his motion to suppress evidence.

Rhodes was a passenger on a Greyhound bus traveling from Los Angeles to New York. While the bus was stopped in Kansas City, a drug dog alerted to a suitcase and a backpack that were on the bus. Rhodes admitted the backpack was his. Rhodes was advised a drug dog had alerted to it, and he admitted it contained a small amount of marijuana. Rhodes consented to a search of the backpack and a patdown. Detective Love asked Rhodes to take off his coat and fanny pack; he did so and placed them on a nearby bench. Detective Garcia then asked to search the fanny pack, but Rhodes declined. When Garcia asked whether he could use his drug dog to sniff the fanny pack, Rhodes reached for the bag and stated that it contained a gun. Garcia told Rhodes to take his hands off the bag and tried to place him in handcuffs. When Rhodes did not comply, a struggle ensued. Several officers were needed to handcuff Rhodes. Rhodes was then moved to an office in the back of the station. Garcia searched Rhodes's coat and found a bottle containing fentanyl pills. Love read Rhodes a form requesting permission to search the rest of his bags and removed his handcuffs. Rhodes signed the consent form, and officers searched his bags, finding and seizing a loaded firearm, over 60 grams of meth, 330 grams of pills containing fentanyl, some marijuana, a digital scale, and packaging supplies.

Rhodes argued that officers did not have probable cause to arrest him when he was handcuffed and detained. The panel concluded that probable cause existed to arrest Rhodes for possession of marijuana after he admitted that there was some in his backpack.

Rhodes also asserted that he did not voluntarily consent to a search of his bags because the officers created a coercive environment that induced his consent. The panel found no clear error here. Rhodes had some college education, prior experience with law enforcement, and general knowledge of his rights based on his initial refusal to consent to the search of his fanny pack. He did not appear to be intoxicated or under the influence of any substance. No promises, threats, or misrepresentations were made by law enforcement. Although Rhodes was wrestled to the ground, handcuffed, and taken to a back room, the panel noted, "Context is also relevant: Rhodes should have understood that he was wrestled to the ground and handcuffed because he refused to surrender a bag that contained a gun, not because he was under pressure to consent." The court's finding that the indicia of voluntariness outweighed factors to the contrary was not clearly erroneous.

Affirmed.

Case #91: *United States v. Scott Johnson*, 151 F.4th 978 (8th Cir. August 20, 2025)
No. 24-1769 (D.N.D.) (Smith, author, with Kobes) (Kelly, concurring in part and concurring in the judgment)
https://ecf.ca8.uscourts.gov/opndir/25/08/241769P.pdf

Johnson pleaded guilty to two counts of sexual exploitation of a child. In the plea agreement, the government agreed to recommend a sentence of 25 years imprisonment. At sentencing, the government stated that, per the plea agreement, it would "restrict its recommendation to 25 years." The government also said, "I believe 25 years . . . is at least minimally justice for what happened to [the victim] in this matter," and concluded by asking the court "to impose no less than 25 years in this matter." Johnson did not object at sentencing that the government's phrasing constituted a breach of the plea agreement. The court imposed a sentence of 45 years imprisonment, in the middle of the 30 to 60 year guideline range.

Johnson argued on appeal that the government breached the plea agreement by asking for "a sentence with a floor of 25 years" rather than asking "for a 25-year sentence." The panel majority found, "There was possibly no error and certainly no plain error when the government here used the phrases 'no less than 25 years,' . . . 'restrict its recommendation to 25 years,' . . . or 'at least minimally justice,' . . . when these phrases are not in conflict with the government's obligation to recommend a sentence of 25 years." The panel majority also found that, even if the government breached the plea agreement, Johnson failed to show prejudice to his substantial rights. Johnson's challenge to the substantive reasonableness of the sentence imposed also failed. Judge Kelly concurred in the judgment, stating that she would have resolved Johnson's claim on the prejudice prong while noting that it was "far from clear . . . that there was no implicit breach of the plea agreement here."

Affirmed.

Case #92: *United States v. Christopher Sledd*, 148 F.4th 988 (8th Cir. August 21, 2025)
No. 24-2046 (W.D. Mo.) (Stras, author, with Grasz and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/08/242046P.pdf

Sledd pleaded guilty to FIP and was found by the court to be an armed career criminal. Sledd argued that he was not subject to sentencing under the ACCA because his prior convictions for conspiracy to distribute cocaine base and for PWID and distribution of cocaine base did not occur on different occasions. The district court did not make any factual findings but instead compared "the facts here" with those present in *United States v. Melbie*, 751 F.3d 586 (8th Cir. 2014), "and reasoned that if the conspiracy and possession offenses there were committed on different occasions, then so were the ones here, regardless of the specific circumstances."
The panel emphasized that a "bright-line rule" like this does not work, as the specific factual circumstances must be considered when a same-or-different occasions determination is being made even when comparing a conspiracy conviction to a related possession or distribution conviction. The panel noted, "A bright-line rule is also inconsistent with the Sixth Amendment jury-trial right recognized in *Erlinger*. . . . If a district court could simply find a case with similar facts and conclude as a matter of law that two crimes were committed on different occasions, then there would be nothing left for the jury to decide." The panel noted that, in this case, the decisionmaker was the court rather than a jury, "but only because Sledd pleaded guilty and agreed to have the court decide" whether he had three previous qualifying convictions.

Although the panel indicated that the approach taken by the district court was not the correct one, it found the error to be harmless, noting that "Sledd's plea agreement provides all the facts we need." The plea agreement indicated that the specific instance of drug distribution occurred on May 5, 1998, in Boone County, Mo., while Sledd had first conspired to sell drugs almost two years earlier beginning on June 1, 1996, in Boone, Cole, and Callaway Counties. The panel concluded that there was no "reasonable argument" that these two offenses were committed on the same occasion.

Affirmed.

Case #93: *United States v. Davis*, 151 F.4th 988 (8th Cir. August 25, 2025)
No. 24-1836 (S.D. Iowa) (Loken, Erickson (author), and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/08/241836P.pdf

Davis was convicted after a jury trial of seven drug trafficking and firearm offenses and sentenced to 360 months in prison. He appeals the district court's denial of his motion to exclude several prior Iowa convictions for controlled substances and firearms offenses at trial. In addition, he appeals the application of a 2-level enhancement for maintaining a drug premises and an enhancement for assaulting the arresting officer.

First, Davis argues that the admission of his prior Iowa convictions at trial violated Rule 404 because they were propensity evidence. Although there is a concern that cumulative prior convictions could turn into propensity evidence, the use of cumulative prior convictions may be appropriate when it goes to a permissible purpose like intent or knowledge. *United States v. Drew*, 9 F.4th 718, 724 (8th Cir. 2021). Here, these convictions were admitted properly as evidence of knowledge or intent and the lower court provided a limiting jury instruction to the jury.

Second, Davis asserts the premises enhancement is inapplicable because he shared his home with others, used it primarily as a residence, and did not use the home solely for the purpose of distributing drugs. However, there was evidence that he distributed drugs from the home and a large amount of cash was found in his room as well as meth in the basement that he was known to use. The drug distribution need not be the principal or primary use of the residence.

Lastly, Davis bit the officer's finger and he required stitches. This was enough for the assaulting the officer enhancement. In addition, there was no clear error in also assessing the obstruction enhancement. This was not double counting because Davis twice led officers on a chase. The first time he drove the wrong way on streets and ran red lights, and the second time he crashed into a house. These are distinct incidents from biting the officer's finger.

Affirmed.

Case #94: *United States v. Sorensen*, 148 F.4th 992 (8th Cir. August 27, 2025)
No. 24-3043 (D. Minn.) (Benton (author), Kelly, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/08/243043P.pdf

Sorensen was convicted by a jury of 7 counts of tax evasion and fraud in violation of 26 U.S.C. §§ 7206(1), 7201, 7203, and 18 U.S.C. § 287 and sentenced to 41 months in prison. He is a retired airline pilot who had under-withheld contributions from his paychecks against the advice of his accountant. He failed to file tax returns, filed false tax returns, filed returns

claiming refunds to which he was not entitled, hid income and assets, and refused to cooperate with the IRS. He concealed his income and assets when faced with IRS collection efforts through shell companies, as well as depositing proceeds into crypto. He filed lawsuits challenging the authority of the IRS to collect income taxes. He was held accountable for a tax loss of $370,471 relating to individual taxes evaded in tax years 2015 to 2019, and an intended tax loss of $1,491,251 relating to his false claim for a refund in tax year 2019, for a total of $1,861,722 in loss. On appeal, Sorensen challenges the district court's admission at trial of testimony from various witnesses not qualified as experts, and its application of the sophisticated means enhancement.

Sorensen argued that the district court allowed three witnesses to testify who were not experts under Fed. R. Evid. 702. Rule 701 allows a law witness to provide opinions or inferences that are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. *United States v. Ali*, 616 F.3d 745, 754 (8th Cir. 2010); Fed. R. Evid. 701. The Eighth Circuit found that the witnesses were offering lay testimony. The first witness was CPA Paul Strot, who testified from first hand knowledge as to preparing Sorensen's and his then-wife's joint tax return, and opined on documents that had been admitted into evidence. IRS agent Anna Johnson only testified as to her work on the case and her audit of the tax losses for Sorensen. She did not independently computer the calculations and her testimony was based on tax documents in evidence. "Perceptions based on industry experience are a sufficient foundation for lay opinion testimony." *United States v. Smith*, 591 F.3d 974, 982 (8th Cir. 2010). As for IRS witness coordinator Renee McClain, her testimony was simply to serve as custodian of the records. She did analyze or interpret the documents. As for the two IRS agents, Sorensen failed to object at trial. Under plain error review, these were not expert witnesses, but fact witnesses who testified about their investigation of the case, such as their attempts to collect the tax debt, the search of his home, his attempts to hide money, and admissions during an interview.

The Eighth Circuit also found that the evidence supported the sophisticated means enhancement under U.S.S.G. § 2B1.1. Sorensen created shell companies, including fictitious religious entities, to hide funds and pay personal expenses. He also liquidated retirement assets in crypto to evade IRS levies and sent "troves" of frivolous correspondence to the IRS to impede the investigation.

Affirmed.

Case #95: *Rose v. United States*, 153 F.4th 664 (8th Cir. August 29, 2025)
No. 23-3572 (E.D. Mo.) (Loken (author), Arnold, and Kelly)
https://ecf.ca8.uscourts.gov/opndir/25/08/233572P.pdf

The Eighth Circuit reviews Rose's 28 U.S.C. § 2255 claims after the district court denied him a certificate of appealability for filing a successive motion. Rose was convicted by a jury of (1) attempting to kill a person with the intent to prevent testimony in an official proceeding, in violation of 18 U.S.C. § 1512(a)(1)(A) (1996), and (2) using a firearm during a crime of violence related to the attempted killing, in violation of 18 U.S.C. § 924(c) (1998). He had attempted to kill a government witness, shooting him multiple times to prevent his testimony against Rose's associate who was charged with possession of heroin and a firearm.

In his successive § 2255 motion, he argues that the offense of witness tampering by attempted murder does not qualify as a "crime of violence" and therefore his conviction for violating § 924(c) was unlawful and must be vacated under *United States v. Davis*, 588 U.S. 445 (2019) and *United States v. Taylor*, 596 U.S. 845 (2022). 18 U.S.C. § 924(c)(1)(A) provides for increased punishment of an offender who uses or carries a firearm "during and in relation to any crime of violence." The residual clause of § 924(c)(3)(B) was held to be unconstitutionally vague. Thus, to be a violent felony (or a crime of violence), physical force means violent force -- that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010).

Because the statute for witness tampering by attempted murder (§ 1512(a)(1)) is divisible, the Eighth Circuit applied the modified categorical approach. Under *Taylor,* Rose asserts, "incipient crimes satisfied by nonviolent attempts not requiring 'the use, attempted use, or threatened use of physical force,' do not categorically satisfy" the elements clause. However, *Taylor* looked at Hobbs Act robbery and importantly, an *attempted threat* to use physical force. However, the Eighth Circuit has repeatedly held that murder is categorically a crime of violence because it involves the use of physical force against the person or property of another. A crime of violence does not require an act of violence, but only the attempted use of physical force. Here, the attempt to commit a crime requires the specific intent to commit that crime. Further, an attempt requires a substantial step to commit that crime, "such that if it had not been extraneously interrupted would have resulted in a crime." *United States v. Williams*, 136 F.3d 547, 553 (8th Cir. 1998). The Court points to its ruling in *United States v. Peeples*, where it found that attempted murder under Iowa law was a crime of violence because "physical force" is "violent force . . . capable of causing physical pain or injury to another person," and that offense "has as an element the use or attempted use of force." 879 F.3d 282, 286-87 (8th Cir. 2018). Further, SCOTUS issued a relevant ruling in *Delligatti v. United States*, where a member of the mafia recruited others to commit murder, although they "abandoned this plan." 145 S. Ct. 797, 803 (2025). "Intentional murder is the prototypical 'crime of violence.'"

Affirmed.

Sept. 2025

Case #96: *United States v. Randolph Forrest*, 153 F.4th 671 (8th Cir. Sept. 2, 2025)
No. 24-1827 (N.D. Iowa) (Erickson & Stras, & Arnold (dissenting))
https://ecf.ca8.uscourts.gov/opndir/25/09/241827P.pdf

Forrest pled guilty to wire fraud for participating in a conspiracy to roll back odometers on used vehicles. At sentencing, the district court ordered $140,178.56 in restitution, adopting a novel methodology proposed by government expert Howard Nusbaum that measured diminished "use value." Finding exact valuations impracticable and noting the impact of branded titles, the court rejected the $38,070 market-based estimate offered by Forrest's expert, probation's $76,690 figure derived from a 40% loss model approved in another circuit, and a $180,299 "total purchase price" measure of restitution.

On appeal, Forrest argued Nusbaum's approach was insufficiently individualized and failed to provide any credit at all for actual, measurable value that most purchasers enjoyed and retained, despite the inaccurate odometer clusters. The Eighth Circuit found no clear error or abuse of discretion, emphasizing that restitution needs only reasonably estimate provable loss. In making the estimate, it is the government's burden to prove the victims' losses by a preponderance, but "the court may allocate the burden of proof as to all other matters." Here, the court gave the parties the chance to litigate loss, but Forrest failed to present evidence of salvage and parts value. When advocating for his rival theory of restitution valuation, however, Forrest bore the burden to prove his method was correct and supported by evidence. The district court did not err by declining to speculate as to retained value in the vehicles. Affirmed.

Judge Arnold dissents. The district court, he says, "calculated the after-credit losses by adopting the government's model treating nearly seventy percent of those vehicles as worthless. It takes no special insight to realize that cannot be right. Automobiles have value; everyone knows that. The best the court can say for the model is that it might be less wrong than it seems. But there is no need to rationalize a valuation the record does not support, no matter how difficult it may be to estimate what Forrest's victims lost. The district court had options to simplify the problem and reach a defensible estimate, either by shifting the burden of proving the credit to Forrest or by denying restitution if calculating the amount lost turned out to be too complex. I would vacate the restitution award and remand to let it consider those options."

Case #97: *United States v. Jeremy Ward*, 150 F.4th 980 (8th Cir. Sept. 2, 2025)
No. 24-2558 (E.D. Ark.) (Colloton, Arnold & Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/09/242558P.pdf

Ward was convicted at trial of several offenses involving sexual exploitation of a minor, after exchanging explicit Snapchat messages with a 12-year-old minor claiming to be 17, and traveling from Michigan to Ark. to engage in sexual intercourse with the minor. On appeal, he challenged his conviction for enticing a minor to engage in "any sexual activity for which any person can be charged with a criminal offense," in violation of 18 U.S.C. § 2422(b). Specifically, he argued the district court erred by failing to give a jury instruction augmented to address an Ark. affirmative defense that can apply where the defendant has a "reasonable belief" the minor was 15 years of age or older. The Eighth Circuit acknowledged that in Ark., a police officer (and presumably prosecutor) lacks probable cause to arrest if he is

aware of facts and circumstances conclusively establishing an affirmative defense. Thus, an affirmative defense *can* be relevant to charging decisions and the question of whether a suspect "can be charged" with a particular criminal offense. Any error in this case was harmless though: the government's evidence showed Ward enticed sexual activity with a 12-year-old, and his asserted belief she was older was, at best, a disputed factual claim. "With or without the affirmative defense, the government's evidence showed that Ward enticed sexual activity for which he could be charged." Affirmed.

Case #98: *Browne v. Reynolds*, 150 F.4th 975, 24-1952 (8th Cir. Sept. 2, 2025)
No. 24-1952 (S.D. Iowa) (Colloton, Smith, & Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/09/241952P.pdf

Browne, convicted in Iowa in 1991 of willful injury causing serious injury (a Class C forcible felony), brought a Second Amendment challenge to Iowa's statutes that permanently bar forcible felons from possessing firearms or seeking restoration of firearm rights. He alleged that, despite decades of lawful conduct after completing his sentence, the lifetime prohibition was unconstitutional because it afforded him no opportunity for individualized consideration of current dangerousness. He sought declaratory relief that § 914.7 was unconstitutional as applied, an injunction against the governor from enforcing it, and an injunction against the sheriff requiring him to issue a handgun permit absent a finding of current dangerousness.

The Eighth Circuit held Browne had standing because applying for restoration or a permit would be futile under Iowa law, but it affirmed dismissal of his claim. Relying on *United States v. Jackson*, the court reiterated that felon-in-possession bans are constitutional on a categorical basis and do not require felony-by-felony or person-by-person assessments. Historically, legislatures imposed death or forfeiture for forcible felonies, making permanent disarmament a permissible, lesser sanction. The panel rejected Browne's contention that Iowa law bars a pardon from restoring firearm rights, explaining that the governor's constitutional pardon power—vested exclusively in the executive and beyond legislative encroachment—independently restores rights of citizenship, including firearm possession. The court also noted contrary authority from the Third Circuit (*Range v. Attorney General*), but adhered to its own precedent. "[W]e conclude that the government has satisfied its burden to show that a lifetime restriction on the right of forcible felons to possess firearms, subject to a gubernatorial pardon, is consistent with the Nation's historical tradition of firearms regulation."

Case #99: *United States v. Justin Davis*, 154 F.4th 961 (8th Cir. Sept. 2, 2025)
No. 23-2978 (W.D. Mo.) (Smith, Shepherd, Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/09/232978P.pdf

Davis represented himself at trial and a jury convicted him of aiding and abetting Hobbs Act robbery (Church's Chicken) and using a firearm during a crime of violence. On appeal, he argued the evidence was insufficient to support the jury's verdicts. Surveillance video showed two masked men, DNA strongly linked Davis to the gun, and a witness testified Davis wore a hoodie resembling that of the robber. Davis also lived near the scene and gave shifting explanations about his contact with the gun. The Court agreed the evidence was not overwhelming but, when asking whether "any reasonable jury" could find Davis guilty beyond a reasonable doubt, the answer was yes. The jury was free to draw its own inferences from the evidence, even if Davis proposed equally reasonable alternatives.

Davis next argued the verdict form was inconsistent because the jury specifically determined he neither brandished nor discharged the firearm. Since the instructions said the jury could find "use" based on brandishing, discharge, or "displaying," however, the third option could be inferred as the jury's basis for finding "use." Finally, the 180-month sentence, already a substantial downward departure from the 360-month-to-life *plus* mandatory consecutive time GL range, was reasonable despite Davis's personal hardships and mitigating characteristics.

Convictions and sentence affirmed.

Case #100: *United States v. Shaquan Coffer*, 154 F.4th 965 (8th Cir. Sept. 17, 2025)
No. 24-1635 (N.D. Iowa) (Erickson, with Grasz and Colloton (dissenting))
https://ecf.ca8.uscourts.gov/opndir/25/09/241635P.pdf

At sentencing for Coffer's § 922(g) offense, the district court applied a two-level enhancement under USSG § 3C1.2, finding that discarding a loaded gun in public while fleeing inherently created a substantial risk of harm. The Eighth Circuit disagreed, emphasizing that § 3C1.2 requires "flight plus endangerment," not mere flight with a firearm. Relying on *United States v. Brown*, 31 F.4th 39 (1st Cir. 2022), the court held that endangerment must be based on facts showing a real—not speculative—risk of serious injury or death. Here, the government showed only hypothetical risks (a bystander could have found the gun; its appearance might attract a child), but the record showed no bystanders and officers recovered the gun within seconds. Because the enhancement was unproved, the sentence was reversed and the case remanded.

Chief Judge Colloton dissented, emphasizing that the district court's finding was a factual determination subject to clear error review. In his view, discarding a loaded gun in downtown Cedar Falls at night created a real risk, and the district court's ruling should have been affirmed.

Case #101: *United States v. Eric LaDeux*, 152 F.4th 900 (8th Cir. Sept. 17, 2025)
No. 24-1529 (D.S.D.) (Kobes, with Loken & Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/09/241529P.pdf

LaDeaux was convicted after a bench trial of conspiracy to distribute controlled substances. On appeal, he argued (1) violation of the Speedy Trial Act and (2) insufficient evidence to sustain his conviction.

The Speedy Trial Act requires trial within 70 days of indictment or initial appearance, excluding certain periods under 18 U.S.C. § 3161(h). The Eighth Circuit agreed with the district court that only 32 non-excludable days had elapsed before LaDeaux's motion to dismiss, as the remainder of the delay was properly excluded under "ends of justice" continuances requested by codefendants. Although LaDeaux objected, the court found no lack of diligence by codefendants, no clear error in the district court's factual findings, and no abuse of discretion in its decision to exclude time—thus, no Speedy Trial violation.

On sufficiency, the Court reviewed the record in the light most favorable to the verdict. Coconspirators testified LaDeaux received drugs on a fronting arrangement, assisted in weighing and packaging drugs, and carried a firearm during deliveries. Facebook messages further indicated his participation in sales. Taken together, a reasonable factfinder could conclude he voluntarily joined the conspiracy.

Affirmed.

October 2025

Case #102:
***US v. Deonte Womack* –154 F. 4th 584 (8th Cir. Oct. 1, 2025).**
No. 24-2581 (E.D. Ark.) (Gruender, with Colloton and Arnold)
https://ecf.ca8.uscourts.gov/opndir/25/10/242581P.pdf

Sex-trafficking convictions under 18 U.S.C. § 1591(a), the Eighth Circuit held: (1) testimony from an uncharged victim was properly admitted under Rule 404(b) to rebut the defense claim that the charged victims voluntarily engaged in prostitution; (2) interstate transportation for prostitution under 18 U.S.C. § 2421 is not a lesser-included offense of § 1591(a) because the statutes contain different *mens rea* requirements; (3) sufficient evidence supported findings of force, threats, and coercion where victims testified to physical abuse, intimidation, stalking, and financial control; and (4) U.S.S.G. § 2G1.1(a)(1)'s base offense level of 34 applies to § 1591(a) offenses punishable under § 1591(b)(1).

Case #103: *United States v. Muhammad Arif*, 154 F.4th 592 (8th Cir. October 2, 2025)
No. 24-2323 (E.D. Ark.) (Loken with Gruender & Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/10/242323P.pdf

Arif owned convenience stores in White County, Ark.. He was found guilty by a jury of 18 U.S.C. § 1591(a)(1) for commercial sex trafficking of his handyman's 15-year-old daughter. Evidence showed he twice solicited the girl during short intrastate drives, offered her money, which she refused, and gave her $20 on one occasion. The district court set aside the verdict on the basis the government failed to prove the required interstate commerce nexus. The government appealed, arguing that Arif's use of a Mississippi-made vehicle, transfer of U.S. currency, and use of roadways were sufficient to prove the required nexus. The Eighth Circuit disagreed, holding that merely driving a car intrastate, transferring $20 without evidence of how it was spent, or speculating about roadway use did not establish an *actual effect* on interstate commerce. Unlike cases involving internet communications or cross-border transactions, the government's proof was too attenuated. The court emphasized that accepting the government's broad theory would improperly federalize local crimes and intrude on the states' police power.

Affirmed.

Case #104: *United States v. Justin Cutbank*, 154 F.4th 609 (8th Cir. Oct. 7, 2025)
No. 24-1225 (D. Minn.) (Loken, with Benton and Stras)
https://ecf.ca8.uscourts.gov/opndir/25/10/241225P.pdf

After using meth and alcohol, Cutbank woke his girlfriend, pointed a gun at her, struck her across the face with the gun, and directed her to a closet, making paranoid statements about listening devices. He later made her wake up other occupants of the house before fleeing the house with her cell phone and the gun. He entered another home's garage, and barricaded himself in the garage when police arrived. Searching the path between the garage and the girlfriend's house, officers found, among other things, a sawed-off rifle. A jury convicted Cutbank of 922(g)(1) and 924(e). He received a within-guideline sentence of 292 months.

On appeal, he first argues that the district court improperly allowed his girlfriend and her housemate to testify that they had seen Cutbank with the rifle. The Court rejected Cutbank's contention that this would be inadmissible propensity evidence, agreeing with the district court that it helped establish ownership and control of the weapon. The Court noted that Cutbank failed to cite any authority on appeal to support his argument. Second, Cutbank argued that the district court should have given the jury a limiting instruction that it could not consider as substantive evidence the statements the girlfriend made to police the night of the incident. The Court found no abuse of discretion because no hearsay evidence was admitted and the girlfriend testified, resolving any potential Confrontation Clause issue. Cutbank next argued evidentiary error from the admission of 1) the girlfriend's testimony that she did not like guns because her sister was killed by a gun, and 2) the housemate's testimony that the girlfriend's sister was killed by a gun. Because Cutbank could not point to any prejudice from the statements, and noting that the defense never objected to the housemate's testimony, the Court found no abuse of discretion.

Next the Court addressed the district court's ruling that, while cross-examining the housemate using a police report, Cutback could not read in portions of the police report without foundation. This argument was not raised by Cutback on appeal, but the government's brief defended the ruling anyway. The Court found no abuse of discretion in excluding those portions of the police report. The Court further found that the alleged evidentiary errors were harmless. Cutback also challenged his sentence, arguing the enhancement for possessing a firearm in connection with another felony offense should not apply. The Court found no error, as the PSR's unobjected-to recitation of Cutbank's prior felony convictions established the basis for the enhancement. Cutbank further argued that a within-guideline sentence after applying the enhancement is greater than necessary to meet the purposes of § 3553(a), which the court rejected.

Affirmed.

Case #105: *United States v. Ulysses Bush*, 156 F.4th 867 (8th Cir. Oct. 7, 2025)
No. 24-2170 (W.D. Ark.) (Arnold, with Smith and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/10/242170P.pdf

Bush pleaded guilty to distributing a mixture or substance containing methamphetamine and he received a sentence of 240 months. Law enforcement became aware that Bush and his girlfriend were selling methamphetamine, and learned of a storage unit in his girlfriend's name. Police searched the storage unit and found methamphetamine, fentanyl, drug paraphernalia, and a handgun wrapped in a bulletproof vest. On appeal, Bush contested the enhancement for possessing a dangerous weapon because the gun was found in the storage unit instead of on his person. The Court determined that it was not error to apply the enhancement because the evidence showed Bush constructively possessed the gun—Bush and his girlfriend worked together the sell the drugs, an officer saw Bush going to the storage facility with his girlfriend, at one point leading her there in a separate car, his phone pinged from the storage unit on fourteen separate occasions, and multiple items with his name on them were located in the unit. Bush also contested the enhancement for maintaining a premises for the purpose of distributing a controlled substance, arguing that the primary purpose of the unit was to store items, not distribute drugs. The Court rejected this challenge, concluding that Bush had total, unfettered access to the unit and engaged in substantial drug-trafficking activities from the unit (storing lots of meth and fentanyl, visiting the location frequently, and getting caught with a lot

of drugs immediately after leaving the unit). Lastly, Bush challenged the substantive reasonableness of the sentence. The Court noted that the statutory maximum capped his sentence well below the guideline range, and found that Bush's extensive criminal history, the types and amounts of drugs involved, and his continued criminal activity after posting bond supported the sentence and that the district court had considered the mitigating circumstances.

Affirmed.

Case #106: *United States v. Anthony Tucker*, 154 F.4th 616 (8th Cir. Oct. 8, 2025)
No. 24-2125 (N.D. Iowa) (Stras, with Erickson and Arnold)
https://ecf.ca8.uscourts.gov/opndir/25/10/242125P.pdf

Tucker went to trial on child pornography charges. The government sought to introduce evidence of a prior conviction for lascivious acts with a child under FRE 414(a), which allows the prior convictions to be used for propensity purposes. Tucker objected, but the district court found the prior conviction involved child molestation and was therefore admissible under Rule 414. Under the specific facts of Tucker's lascivious acts case, there was no question that he molested a child. But Tucker argued that the categorical approach should be applied, and claimed that it is possible to commit lascivious acts with a child without molestation. The Court concluded that the categorical approach does not apply to Rule 414. It explained that the categorical approach typically refers to rules and statutes that refer to convictions and elements, but Rule 414 speaks in terms of evidence and conduct. It stated that "when propensity is the purpose, conduct is what matters." It further determined that the prior conviction was not barred by Rule 403, as the evidence was prejudicial for the same reason as it was probative, and the prejudice would not be unfair.

Affirmed.

Case #107: *United States v. Edwin Diaz*, 154 F.4th 621 (8th Cir. Oct. 8, 2025)
No. 24-2438 (N.D. Iowa) (Loken, with Gruender and Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/10/242438P.pdf

Diaz pleaded guilty to possession with intent to distribute and possession of a firearm by a prohibited person. On appeal, he challenged the denial of his motion to suppress. Law enforcement searched his vehicle under the automobile exception and searched his home after getting a warrant. The vehicle search occurred after an officer saw a truck parked in a way that impeded traffic. The truck had only one working headlight and no working taillights. The officer approached the vehicle to address the traffic violations and to check on the welfare of the occupants. Upon approach he smelled marijuana, and the smell strengthened when Diaz rolled down the window. Diaz denied having marijuana and told the officer that the car had been towed to where it was parked. The officer learned that Diaz's license was suspended, so he asked Diaz and his passenger, Ms. Breen, to exit the vehicle. As Diaz exited, the officer saw him drop something from his hip onto the truck's floorboard. The officer detained Diaz and said he would search him and the truck. Diaz asked the officer if he could give the officer the marijuana. The officer searched the truck and found methamphetamine, marijuana, a pipe, and a scale.

Diaz argued that he was seized without probable cause or reasonable suspicion. The Court found that although the headlight statute does not apply to parked vehicles, it was

reasonable for the officer to suspect that Diaz had recently driven the truck with only one working headlight. It also found, that although snow could have obscured the officer's view of whether the truck was parked parallel to and within 18 inches of the curb as required by the traffic law, the dash cam video appears to show that Diaz was not parked legally, and even if he was, it was reasonable for the officer to make that mistake of fact.

In the alternative, it found that the community caretaking exception applied in light of the car's condition, the cold weather, and the late time of day on New Year's Eve. The Court questioned the district court's conclusion that a seizure even occurred, but did not decide the issue and instead assumed that Diaz was seized. Diaz next challenged the search of his home. On January 4, a Casey's employee called police because Breen appeared to be hiding from someone. She told police that Breen and his girlfriend had picked her up and during a drive, made her sign a statement taking responsibility for the items found in the vehicle search. During the drive, Breen heard the sound of handcuffs and Diaz threatened that others would hurt her. Law enforcement applied for a search warrant for Diaz's house, describing the Jan. 4 events, Diaz's history of drug convictions, and the NYE drug charge which alleged possession of 50g of meth. The warrant affidavit did not explain that Breen was charged with Diaz in the drug prosecution, that Breen was a known drug user, that officers had been investigating Diaz for three months, and that surveillance of Diaz's home and controlled purchases suggested drug trafficking. The warrant was approved and officers found handcuffs, a firearm, ammunition, scales, drug paraphernalia, and drugs. The district court found there was not a sufficient nexus in the warrant between the drugs and Diaz's home, but that the search was valid under the good faith exception. The Court agreed that under the facts, and in light of the information that the officer knew but did not present to the magistrate, it was not entirely unreasonable for an officer to rely on the search warrant, as the information in the affidavit created an inference that drug-related contraband would be found in Diaz's home.

Affirmed.

Case #108: *United States v. Wendell Clemons*, 155 F.4th 978 (8th Cir. Oct. 8, 2025)
No. 24-2980 (W.D. Mo.) (Benton, with Grasz and Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/10/242980P.pdf

A jury convicted Clemons of being a felon in possession of a firearm and forcibly assaulting, resisting, and opposing a federal law enforcement officer. He appeals his conviction, arguing the district court erred in denying his motion for a mistrial. Prior to trial, the parties submitted a joint instruction regarding the 922(g)(1) charge stating that three of Clemons' prior convictions are felonies. The jury instruction described the three prior felonies. During trial, Clemons stipulated that he had a prior felony conviction, but the jury instruction was not change or objected to. As the court read the jury instructions to the jury, it began reading the relevant instruction, but stopped after beginning to read the section describing the prior felonies. The court asked the jurors to return their instructions, then dismissed them from the courtroom. Clemons moved for a mistrial, which was denied, and the court issued a new instruction, further instructing the jury to ignore the previous instruction and not to discuss it. On appeal, the Court found the error to be harmless, noting that there is no indication any juror read all the details of the bad instruction, and even if they did, the instruction did not say that Clemons had been convicted of those crimes. Further, there was not an overwhelming probability that the jury could not follow the limiting instruction. Additionally, the evidence of

Clemons' guilt was overwhelming. Clemons also raised a Second Amendment challenge to § 922(g)(1), which the court rejected as foreclosed by precedent (*Cunningham* and *Jackson*).

Affirmed.

Case #109: *United States v. Darrell Sanders*, 157 F.4th 933 (8th Cir. Oct. 29, 2025)
No. 24-2514 (W.D. Ark.) (Colloton, with Erickson & Stras)
https://ecf.ca8.uscourts.gov/opndir/25/10/242514P.pdf

Sanders appealed his 132-month sentence for receipt and possession of child pornography. Evidence showed that he circled an elementary school in his minivan, asked one girl to see her feet (she refused), and told another to come to his van, saying "let me show you that." When questioned later by police, he admitted having "bad" sexual thoughts about young girls and possessing child pornography on his phone, which he viewed the same day as the incidents..

Sanders challenged the district court's fact-finding and its application of a five-level USSG § 2G2.2(b)(5) enhancement for engaging in a pattern of activity (defined as two or more instances) involving conduct that would qualify as sexual abuse or exploitation of a minor under 18 USC § 2422 or state law, including attempts. He argued the government did not prove he intended to persuade either girl to engage in sexual activity or took a substantial step toward persuasion. The panel found no clear or procedural error in the district court's conclusion that Sanders's conduct qualified as attempted enticement under Mo. Rev. Stat. § 566.151, which would be an attempt under § 2422(b) if in federal jurisdiction. Sanders admitted that during both school encounters, he had sexual thoughts, possessed pornographic images on his phone, and felt excited and scared. Since intent can be inferred from surrounding facts and circumstances, the record reasonably established that Sanders went beyond mere preparation and took a substantial step toward enticement. The panel also agreed the PSR contained an erroneous statement: that Sanders asked one of the girls to "lick her toes." The error was harmless, however, as the court did not rely on the statement and it did not substantially influence the outcome of the proceedings.

Affirmed.

November 2025

Case #110: *United States v. Benjamin Gentry*, 158 F.4th 937 (8th Cir. Nov. 12, 2025)
No. 24-1322 (S.D. Iowa) (Loken with Benton & Stras)
https://ecf.ca8.uscourts.gov/opndir/25/11/241322P.pdf

Investigators traced downloads of child pornography to Gentry's home and later recovered deleted images from his tablet, along with search terms and applications tied to his email. At trial, he was convicted of three counts of receipt and possession of child pornography. He moved for judgment of acquittal on the ground that he lacked adequate knowledge of the images. At no point did he mention venue, request a venue instruction, or otherwise object to or discuss venue in post-trial acquittal motions or at sentencing. The court denied Gentry's post-trial motion and imposed a sentence of 168 months.

On appeal, Gentry argued that the government failed to present evidence establishing by a preponderance that the *locus delicti*, or place where he knowingly received child pornography, was the S.D. Iowa. He admitted that he let the issue "quietly pass" during trial to avoid alerting the government to any defect. Venue is a waivable fact issue that is an essential element of every criminal case. It is not an essential element of any specific offense. A court does not commit error by failing to instruct on venue unless it is an issue in the case. Where, as here, a defendant hears trial testimony that child pornography may have been received when he and his device were in another district but fails to challenge venue before the close of trial evidence, he waives objection to any impropriety, and bars review on appeal. Gentry's post-trial argument regarding the sufficiency of *mens rea* evidence also did not preserve a venue challenge, again since, unlike *mens rea*, venue is not an element of his offense of conviction. The Court declined to address a "complex" venue question of first impression raised by the government concerning 18 USC 3237 venue (*i.e.*, that "Gentry both possessed and received the child pornography videos found on his Samsung device . . . even if he downloaded and stored the videos when the devices were located in another district and then brought the devices to the S.D. Iowa where they were seized"). It noted, however, that plain error review would have applied had Gentry's venue challenge been inadvertently missed, rather than intentionally avoided. The evidence at trial was sufficient to sustain Gentry's convictions.

Affirmed.

Case #111: *United States v. Kim Taylor*, 159 F.4th 1136 (8th Cir. Nov. 17, 2025)
No. 24-1741 (N.D. Iowa) (Stras, with Grasz & Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/11/241741P.pdf

Taylor was convicted on 52 counts for a "get-out-the-vote" effort wherein she helped Vietnamese families complete voter-registration and absentee-ballot forms, but sometimes forged voting-age children's signatures and submitted the materials herself. On appeal, she argued the jury instructions improperly lowered the *mens rea* by failing to require proof she knew her conduct violated Iowa law, and that the evidence was insufficient because it did not show she acted "knowingly and willfully." The Eighth Circuit disagreed with both assertions.

The 52 U.S.C. § 20511(2) violations contain two necessary mental states: (1) knowledge that voter-registration applications or ballots were materially false, fictitious, or fraudulent under state law (equivalent to "knowing misrepresentation"); and (2) a heightened state that the violator "knowingly *and* willfully" deprived, defrauded, or attempted to deprive or defraud state

residents of a fair and impartial election process by procuring the false document. The instructions here properly required both and correctly defined the phrase "deprive or defraud the residents of Iowa of a fair and impartially conducted election process" to mean that Taylor "acted in a manner intended to deceive or mislead election officials into accepting a document that the defendant knew to be defective under Iowa law." The instructions also listed Circuit-approved definitions of "willfully" and "knowingly." Neither the First Amendment nor statutory language require the heightened standard of willfulness used in tax law, *i.e.*, that Taylor knew the specific code section she was charged with violating. On the whole, the instructions accurately and adequately conveyed the law, requiring the jury to find both that: (1) Taylor intended to deceive or mislead election officials into accepting a document she knew to be defective under Iowa law; and (2) she acted with intent do something the law forbids.

The instructions also properly set out the elements for violations under 52 U.S.C. § 10307(c), which criminalizes knowingly *or* willfully giving false information. Mistake of law is no defense and case law establishes that one knowingly provides false information by using a forged signature, regardless of whether she knows doing so is a crime. Reviewing all evidence in the light most favorable to the jury verdict, the trial evidence –including repeated forged signatures, concealment from voting-age children, and a pattern of conduct –was sufficient to sustain the jury's verdicts.

Affirmed.

Case #112: *United States v. Isaac Charles*, 159 F.4th 545 (8th Cir. Nov. 20, 2025)
No. 24-3155 (W.D. Ark.) (Erickson, with Colloton & Stras)
https://ecf.ca8.uscourts.gov/opndir/25/11/243155P.pdf

Charles pled guilty to possessing a machine gun, in violation of 18 U.S.C. § 922(o), after the district court denied his motion to dismiss the charge as facially unconstitutional in light of *Bruen* and *Rahimi*. The majority first discusses *Fincher*, 538 F.3d 868 (8th Cir. 2008), which held that machine guns are not covered by the plain text of the 2d Amendment. That analysis, the majority notes, is equivalent to the "first step" under *Bruen* because the decision did not employ the means-end scrutiny ultimately disapproved by the Supreme Court. *Fincher* was also decided shortly after *Heller* and followed its reasoning. There is no need to decide whether *Fincher* or *Heller* are undermined, however, because Charles's facial challenge fails for another reason: there are *some* applications of § 922(o) that *are* constitutional. *Bruen* reaffirmed *Heller*'s "common use for self-defense" rationale for the private right to bear arms. The word "bear" plainly means a person must be able to "carry" the firearm for 2d Amendment protection. There exist large, mounted, military-system machine guns that are not "bearable arms." Regulation of at least those weapons would be consistent with the 2d Amendment.

Affirmed.

Judge Colloton concurs. He affirms solely on the basis that *Fincher* remains binding precedent and is not undermined by *Bruen*. He criticized the majority for "conjur[ing] up its own argument" by relying on mounted-weapon examples that are not the subject of any cited case law. "This approach is quite unfair to Charles and unsound as an adjudicatory practice" because the government did not advance this theory and Charles had no opportunity to defend against it. "The scope of the statutory definition is a matter properly left for a case in which the issue is raised, briefed, and necessary to a decision."

December 2025

Case #113: *United States v. Miller*, 160 F.4th 893 (8th Cir. Dec. 1, 2025)
No. 24-2831 (W.D. Mo.) (Smith, Gruender, Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/12/242831P.pdf

Appellant entered a conditional plea to a felon-in-possession firearms offense, permitting him to challenge the district court's denial of his motion to suppress evidence obtained by means of an investigatory vehicular stop. Briefly stated: law enforcement (LE) conducted a traffic stop of the vehicle Appellant had been operating; LE extended the stop based upon a number of factors below; and while attempting to detain Appellant, the charged firearm discharged from his pocket.

Discussion & Holdings: Appellant contends law enforcement failed to justify various aspects of the investigatory stop under the reasonable-suspicion standard, but CA8 disagrees and affirms:

(a). Extension of Stop. Extension of a vehicular stop beyond the original traffic-violation justification requires consent or reasonable suspicion of unlawful activity, and the latter cannot be based upon a mere hunch or circumstances "shared by countless wholly innocent persons." That being said, the test looks to the totality of circumstances rather than each factor in isolation, and here CA8 believes the totality of the following rose to reasonable suspicion to justify the stop extension: "(1) the vehicle was registered to another individual, (2) Miller was on probation and parole for a gun related offense and violent felony, (3) Miller could not produce insurance, (4) Miller was driving on a side street rather than a more populated street, (5) Miller's nervousness, (6) Miller had left a high-crime area, (6) the stop occurred late on a cold evening, and (7) the officers had sex-offense concerns related to Miller's female passenger."

(b). Vehicular Search. Law enforcement asked Appellant "about anything illegal" in the vehicle and Appellant replied in the affirmative; this alone provided reasonable suspicion to remove Appellant from the vehicle and search inside.

(c). Detention & Frisk. Based upon the above and Appellant's suspicious behavior upon exiting the vehicle, law enforcement had reasonable suspicion to detain and frisk Appellant.

Case #114: *United States v. Cannon*, 160 F.4th 911 (8th Cir. Dec. 2, 2025)
No. 24-2470 & -2471 (N.D. Iowa) (Grasz, with Gruender & Loken)
https://ecf.ca8.uscourts.gov/opndir/25/12/242470P.pdf

Appellant was charged with several controlled substance offenses, ultimately resulting in guilty verdicts after jury trial, as well as a lengthy prison sentence for the charged offenses plus a related revocation sentence.

Discussion & Holdings: Appellant raises a number of issues principally involving jury trial, but CA8 rejects them all and affirms—

(a). 6A Right to Representative Jury. Appellant claims a violation of the 6A right to a "jury drawn from a fair cross-section of the community * * * because there were no black people on the panel of prospective jurors." CA8 notes this claim requires the defendant to establish multiple prongs, including "systematic exclusion of [a] group in the jury selection process," such that the relevant metric "is the number of black people in the jury pool, not the number who showed up for jury selection." Here, CA8 observes that Appellant did not challenge the district

court's jury selection plan nor show that it systematically excludes black people, and hence rejects this challenge on direct appeal.

(b). FRE 404(b) Uncharged Acts Evidence. Under FRE 404(b), the district court admitted the government's proffered evidence of Appellant's prior drug convictions and photographs of him with uncharged firearms, for the purpose of showing Appellant's "knowledge and intent to conspire to distribute" the charged drugs. Appellant acknowledges CA8 circuit precedent which describes FRE 404(b) as a "rule of inclusion" and typically permits such uncharged-acts presentations for the stated purpose; but urges CA8 to abandon its precedent, an invitation that CA8 rejects under its prior panel rule.

(c). Sufficiency of Evidence. Appellant argues the evidence was insufficient to meet the beyond-reasonable-doubt standard as to the offenses of conviction, based upon the government's use of incentivized cooperator-witnesses and absence of corroborating evidence of Appellant's actions during controlled purchases of the charged drugs. CA8 rejects this argument, however, noting that illicit conspiracies are often secretive affairs, such that circumstantial evidence and/or testimony of co-conspirator/cooperators can be sufficient to meet the relevant standard of proof.

(d). Ineffective Assistance of Counsel. Appellant attempts a 6A IAC challenge based upon trial counsel's claimed failures to move for suppression of certain statements and to strike certain jurors; however, per its usual practice, CA8 declines to reach the IAC challenge on direct appeal due to a record that is not fully developed for that purpose.

Case #115: *United States v. Alvarez-Sorto et al.*, 160 F.4th 930 (8th Cir. Dec. 3, 2025)
No. 24-1888 & -1949 (D.S.D.) (Stras, J, with Benton & Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/12/241888P.pdf

This case presents a peculiar factual scenario, the high points being: (i) D1 and D2 were Colorado "drug dealers" who were driving through S.D. in a personal vehicle; (ii) a State Trooper attempted to conduct a traffic stop of D1 and D2, but the pair fled into the Pine Ridge Indian Reservation; (iii) D1 and D2 soon ran out of fuel and were stranded on the roadway; (iv) an FBI employee operating a government-owned vehicle happened by and stopped to render aid; (v) D1 and D2 drew a firearm and forced the employee into the back seat of the government vehicle; (vi) having driven the government vehicle to a nearby gas station, the FBI employee managed to escape. After a jury trial, D1 and D2 were convicted of: kidnapping a federal officer, 18 USC 1201; carjacking, 18 USC 2119; use of firearm in connection with crime of violence, 18 USC 924(c); and unlawful firearm possession, 18 USC 922(g).

Discussion & Holdings: D1 and D2 raise a large number of issues, but CA8 rejects all and affirms:

(a). Severance. D2 claims the district court should have severed the defendants for trial, based upon the government's submission of D1's redacted statement/confession. CA8 rejects this argument, noting D1's statement related primarily to D1 alone, and the government redacted most of the portions relating to D2. Thus, CA8 hold that D2 was unable to show "severe prejudice" as required to compel severance of defendants for trial.

(b). Co-Defendant Confession. Relatedly, D2 claims submission of D1's statement violated the 6A Confrontation Clause rule against a "codefendant [] confession [that] expressly implicates the non-confessing defendant," and alternatively the district court failed to give the required limiting instruction that D1's confession can only be considered as to D1. For the above reasons, CA8 concludes D1's statement did not incriminate D2 on its face; and though the

district court failed to give the limiting instruction, this was due to trial counsel's failure to request the instruction and under plain error review D2 cannot show the outcome would have been different had the instruction been given.

(c). Discovery of Victim Medical Records. D2 claims the district court erroneously refused to compel the government to produce the victim's medical records, for the purpose of showing the amount of force used during the kidnapping was less than claimed; CA8 rejects this, noting the amount of force did not matter under the charged statutes and there was ample fodder for cross-examination in the discovery provided.

(d). Uncharged Acts Evidence. Both D1 and D2 challenge the district court's admission of uncharged acts evidence in the form of "drug activity leading up to and after the carjacking and kidnapping." CA8 concludes the drug activity on the day of the kidnapping was admissible under the doctrine of "intrinsic evidence," as it "completed the story of why they took extreme measures rather than calling a tow truck." As for the prior drug activity in the weeks leading up to the charged incident, CA8 believes this was admissible under FRE 404(b) to show a motive for the kidnapping.

(e). Sufficiency of Evidence. D2 asserts the evidence was insufficient to prove the "ransom or reward or otherwise" element of the kidnapping statute, but CA8 rejects this by noting the purpose to obtain gas to salvage a drug load. D1 challenges sufficiency of the "federal officer" element based upon a claimed lack of evidence the victim was engaged in his official duties, but CA8 rejects this by noting victim was on his way back to the office after visiting a crime scene. Last, D1 notes conflicting testimony as to whether the charged firearm was the one used during the kidnapping, but CA8 points out that conflicting evidence is the province of the jury.

(f). Sentencing. D2 challenges a Guidelines enhancement for "permanent bodily injury" to the victim, but CA8 rejects this based upon testimony of victim and his physician. D1 challenges the significant upward variance sentence (additional 98 months) based upon the district court's "thin" assertion that D1 and D2 "surely would have killed [victim] had he not escaped," but ultimately affirms on plain error review due to the context of the comment and reliance on other factors beyond the challenged comment.

Case #116: *United States v. Nunn*, 161 F.4th 518 (8th Cir. Dec. 4, 2025)
No. 24-3512 (D. Minn.) (Gruender with Stras & Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/12/243512P.pdf

This case involves three separate incidents, including: an alleged armed robbery of V1 and subsequent use of her payment cards; an alleged theft from V2 and later use of her payment cards; and an alleged kidnapping of V3 and forcible commandeering of her payment cards. A jury convicted Appellant of federal offenses in connection with all three incidents, including kidnapping, bank fraud, and identity theft.

Discussion & Holdings: Appellant raises issues, CA8 rejects all and affirms—

(a). Miranda Invocation. In connection with the alleged V1 incident, law enforcement conducted a Miranda-warned custodial interrogation of Appellant; but at a mid-point Appellant stated "I think I should get a lawyer dude" which was claimed to be an invocation of the Miranda right to counsel, requiring questioning to cease and suppression of post-invocation statements. However, law enforcement is only required to cease questioning if the "suspect's request for an attorney is clear and unambiguous," and CA8 holds the district court did not commit clear error

in concluding the above phrase was not a "clear and unambiguous" request for counsel, even when surrounding context is considered.

(b). In-Court Identification. At trial V1 made a surprise in-court identification of Appellant, which was claimed to be impermissibly suggestive in violation of the 5A Due Process Clause. The substantive two-step test asks: (1) whether the procedure was "impermissibly suggestive"; and (2) whether the totality of circumstances demonstrate "a very substantial likelihood of irreparable misidentification." Under plain-error review, CA8 resolves the case at Step (1); acknowledging "inherent suggestiveness in the witnesses' knowing that appellant was the sole defendant charged with the crimes," but "not *impermissibly* suggestive" where no steps were requested to avoid the problem with seating arrangements or other remedies, and in any event the witness was subject to cross-examination.

(c). Substantive Reasonableness. Appellant argues the 288-month upward-variance sentence was substantively unreasonable upon fair consideration of the Sec. 3553(a) factors, but CA8 rejects this and states the district court was permitted to vary upward due to what it viewed as a "shockingly lengthy and nonstop" criminal history, notwithstanding Appellant's contrary arguments.

Case #117: *United States v. Holt*, 160 F.4th 945 (8th Cir. Dec. 4, 2025)
No. 25-1050 (D. Minn.) (Gruender, Stras, Kobes)
https://ecf.ca8.uscourts.gov/opndir/25/12/251050P.pdf

Appellant was charged with and convicted of a felon-in-possession firearms offense, and at trial the district court admitted FRE 404(b) evidence from Appellant's Facebook account, including posts using slang and referring to possession of firearms and glorification of violence. The district court admitted the Facebook evidence for the purpose showing Appellant's knowledge, intent, and interest in acquiring firearms, and gave a limiting instruction to that effect.

Discussion & Holdings: Appellant raises evidentiary and sentencing issues, but CA8 affirms—

(a). FRE 404(b). Appellant challenges admissibility of the Facebook evidence under FRE 404(b), claiming it was not relevant to a material issue, or otherwise its prejudicial impact outweighed any probative value, but CA8 disagrees on both fronts. First, CA8 cites its prior precedents that such evidence is relevant for the permissible purpose of showing the charged firearm possession was knowing and intentional, and also provided a motive for the charged possession. Second, CA8 holds the district court did not abuse its discretion in determining the Facebook evidence had real evidentiary value under the facts of this case, and the probative value was not substantially outweighed by the acknowledged prejudicial impact of vulgar or violent language. The district court's limiting instruction reduced unfair prejudice as well.

(b). Sentencing. Appellant challenges the sentence imposed, claiming the district court failed to fully consider or address his mitigation arguments, and the within-Guidelines sentence was substantively unreasonable. CA8 again disagrees on both fronts, noting the district court "provided a detailed rationale for its sentencing decision" showing it was "aware" of the mitigation arguments and thus presumptively considered them. The substantive reasonableness claim is rejected on the ground that a within-Guidelines sentence is presumptively reasonable and the contrary argument amounts to a mere disagreement with weighing of 3553(a) factors.

Case #118: *United States v. Garza*, 161 F.4th 530 (8th Cir. Dec. 9, 2025)
No. 24-2288 (D. Neb.) (Colloton, Loken & Benton, JJ)
https://ecf.ca8.uscourts.gov/opndir/25/12/242288P.pdf

Appellant was originally charged with a federal drug offense, which evidently was heavily reliant upon the anticipated testimony of two incentivized cooperator-witnesses. Appellant began interacting with an incarcerated associate of the two cooperator-witnesses, including: (i) providing money for the associate's use of the prison communication system and commissary; (ii) asking the associate to testify at his trial to the effect that the cooperator-witness's were untruthful in their factual assertions against Appellant. The government added a charge of witness tampering under 18 USC 1512(b)(1) & (j), and Appellant was convicted of that offense.

Discussion & Holdings: Appellant challenges the sufficiency of evidence offered to support the witness tampering conviction, the elements of which are: (1) defendant knowingly engaged in corrupt persuasion; and (2) the acts of corrupt persuasion were intended to influence the testimony of another in an official proceeding. Appellant attacks the first element, asserting that his communications merely asked the associate to testify truthfully. CA8 disagrees, however, noting the associate testified to her understanding that Appellant wished her to testify falsely that she had first-hand knowledge that Appellant was not involved with the criminal activities of the cooperator-witnesses, when in reality she had no such first-hand knowledge. In CA8's view, this conclusion was bolstered by text messages between Appellant and the associate.

Accordingly, CA8 rejects the challenge and affirms.

Case #119: *United States v. Pettyjohn*, 161 F.4th 535 (8th Cir. Dec. 10, 2025)
No. 24-3168 (S.D. Iowa) (Shepherd, with Smith & Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/12/243168P.pdf

Law enforcement attempted a traffic stop of the vehicle Appellant had been operating, but Appellant fled via vehicle and later by foot. Law enforcement eventually caught and arrested him, recovering large quantities of illegal drugs and cash, as well as a scale and firearm. After a jury trial, Appellant was convicted of federal drug distribution offenses and related firearm offenses including felon-in-possession (FIP), 18 USC 922(g)(1).

Discussion & Holdings: Appellant challenges several of the district court's pretrial and trial rulings, but CA8 affirms—

(a). Sufficiency of Evidence. Appellant challenges sufficiency of the trial evidence to support the drug distribution convictions, arguing the evidence was equally consistent with simple possession as with distribution. Viewing the evidence in a light most favorable to the government, CA8 disagrees and notes the large quantities of drugs recovered, law enforcement testimony that the quantities recovered are more consistent with distribution than possession, and the firearm and cash recovered from Appellant's person.

(b). Prior Conviction Evidence. Appellant challenges the district court's ruling which permitted the government to introduce his 2018 drug distribution conviction, under FRE 609(a)(1)(B) to impeach Appellant's credibility, and under FRE 404(b)(2) to establish his knowledge and intent to distribute illegal drugs. Appellant's defense at trial was the recovered

drugs were for personal use rather than distribution, and so CA8 views the 2018 conviction as highly relevant for both purposes, such that admission of the prior conviction was appropriate.

(c). Second Amendment. Appellant argues the FIP statute of conviction violates the Second Amendment on its face and as applied, but acknowledges the argument is foreclosed by binding circuit precedent and CA8 rejects the challenge on this basis.

Case #120: *United States v. Clay*, 161 F.4th 545 (8th Cir. Dec. 15, 2025)
No. 24-2158 (D. Neb.) (Shepherd, with Smith & Arnold)
https://ecf.ca8.uscourts.gov/opndir/25/12/242158P.pdf

Law enforcement was conducting a drug interdiction operation at a commercial bus station, which involved attempting to spot suspicious bags when any given bus opened its lower hold, allowing passengers to retrieve their stowed bags. In this manner, law enforcement focused on one particular bag, retrieving it from the hold, placing it on the pavement, and waiting for its owner to claim it. Amongst other comments, law enforcement (inaccurately) informed Appellant that their role was similar to the TSA, and Appellant consented to a search of the bag. As this was occurring, Appellant fled on foot but was subdued by law enforcement. Ultimately, multiple firearms were recovered from the bag and significant quantities of controlled substances from the backpack on Appellant's person. After a jury trial, Appellant was convicted of simple possession of the controlled substances, and felon-in-possession of the firearms (FIP); the district court imposed an upward-variance consecutive sentence totaling 144 months, the statutory maximum for both counts of conviction.

Discussion & Holdings: Appellant challenges the district court's denial of his motion to suppress evidence based upon unlawful search/seizure, as well as the sentence imposed. CA8 affirms in most respects, but reverses and remands on the fine imposed--

(a). Seizure of Bag. Appellant contends law enforcement unlawfully seized his bag when it was taken from the bus hold and placed on the pavement. In the context of law enforcement detention of a checked bag, the question of whether a 4A "seizure" occurred depends on three factors: whether the bag detention (i) delayed passenger travel or freedom of movement; (ii) delayed timely delivery of the bag; (iii) deprived carrier of its custody. Here, only Factor (iii) is at issue, and CA8 relies on its prior precedent and that of outside circuit courts to conclude that bus passengers must reasonably expect a "fair amount of handling" including removal from the baggage hold for various purposes. In CA8's view law enforcement's action did not exceed that threshold, such that there was no 4A "seizure".

(b). Pre-Flight Seizure of Person. Appellant argues law enforcement unlawfully seized his person prior to the foot flight, but CA8 disagrees, noting that law enforcement did not display weapons, order him to stay, or block his movements. Hence, no 4A "seizure" of the person, in CA8's view.

(c). Voluntariness of Consent. Appellant argues that his consent for law enforcement to search the bag was not voluntary, but CA8 disagrees, citing the same non-coercive law enforcement behavior above, as well as Appellant's age (mid-30s) and prior contacts with law enforcement. CA8 does acknowledge some factors cut the other way, including failure to advise that consent was not required and inaccurate analogy to TSA; but given the totality of the circumstances, CA8 declines to say the district court's conclusion amounted to clear error.

(d). Post-Flight Seizure of Person. Appellant makes a cursory argument that law enforcement lacked reasonable suspicion for the post-flight Terry stop of his person, but CA8

rejects this based upon the foot flight which the case law treats as a classic reasonable-suspicion scenario.

(e). Substantive Reasonableness of Sentence. Appellant argues the upward variance to a statutory maximum and consecutive sentence violates the test of substantive reasonableness based upon his view that the conduct at issue was no worse the similar cases, but CA8 disagrees and affirms based upon the district court's fulsome explanation and weighing of 3553(a) factors.

(f). Fine. Under plain error review, CA8 reverses and remands the imposition of a $2500 fine, for failure to make the required determination that Appellant had the ability to pay.

Case #121: *United States v. Adkins*, 161 F.4th 1130 (8th Cir. Dec. 16, 2025)
No. 24-3185 (S.D. Iowa) (Shepherd, with Smith & Gruender)
https://ecf.ca8.uscourts.gov/opndir/25/12/243185P.pdf

Appellant used social media to communicate with a "16-year old runaway," later meeting and transporting the minor across state lines and eventually engaging in a sexual relationship with the minor. Law enforcement discovered the victim residing at Appellant's home, as well as firearms which Appellant was ineligible to possess due to felony-level criminal history. Appellant pled guilty to one count of transportation of minor for prostitution, 18 USC 2423(a), and one count of felon-in-possession of a firearm, 18 USC 922(g)(1). At sentencing, a law enforcement witness revealed the minor victim had run away once again and thus potentially would have been unavailable for trial, and Appellant move to withdraw his plea on this ground while acknowledging the information had been available via law enforcement public releases. The district court denied the motion and imposed a 292-month prison term, with 292 months on the transportation count and concurrent 180 months on the FIP count.

Discussion & Holdings: Appellant challenges the district court's denial of his motion to withdraw guilty plea and the FIP sentence, but CA8 affirms—

(a). Post-Sentencing Motion to Withdraw Guilty Plea. Appellant sought to withdraw his guilty plea based upon the Brady Rule that requires timely disclosure of exculpatory evidence, asserting the information about an unavailable witness qualifies as such. However, CA8 notes that FRCrP 11(e) prevents a post-sentencing withdrawal of the guilty plea, and thus the district court was not authorized to grant the requested relief.

(b). Brady Rule. To the extent that Appellant asserts freestanding error under the Brady Rule, CA8 deems it "unclear" whether such a claim is available in the context of a guilty plea. But even assuming the claim is viable, it must be shown the defendant could not obtain the information from other channels, and in this case public press releases containing the information could have been discovered with reasonable diligence.

(c). Concurrent Sentence Doctrine. Appellant challenges the procedural and substantive aspects of the 180-month sentence for the FIP count, which is concurrent to and subsumed within the larger 292-month sentence for the transportation count. Under the concurrent sentence doctrine, a reviewing court may decline to review a sentence if a ruling in the defendant's favor "would not reduce the time he is required to serve." Here, even if Appellant were to succeed in a challenge to the 180-month sentence on the FIP count, he would remain subject to the same 292-month sentence on the transportation count and thus CA8 declines to consider the merits of the claim.

Case #122: *United States v. Johnson*, 162 F.4th 931 (8th Cir. Dec. 17, 2025)
No. 25-1156 (N.D. Iowa) (Benton, with Loken & Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/12/251156P.pdf

Johnson was convicted of attempted sex trafficking of a child and destruction of evidence arising from an undercover "Skip the Games" sting. The Eighth Circuit held: (1) an undercover agent's testimony interpreting the maturity and meaning of messages exchanged with the defendant was admissible lay-opinion testimony under Fed. R. Evid. 701 because the agent personally participated in the communications; (2) the district court properly denied a request to contact a juror where allegations of outside influence were purely speculative and barred by Fed. R. Evid. 606(b); and (3) the government did not engage in sentencing manipulation by portraying the fictitious victim as 13 years old to trigger enhanced penalties under 18 U.S.C. § 1591(b)(1), because targeting offenders seeking very young victims served a legitimate law-enforcement purpose.

Case #123: *United States v. Chachanko*, 162 F.4th 894 (8th Cir. Dec. 18, 2025)
No. 24-2440 (D.S.D.) (Stras, with Benton & Grasz)
https://ecf.ca8.uscourts.gov/opndir/25/12/242440P.pdf

More than two decades ago, Appellant and others committed a string of robberies in Montana and S.D., resulting in convictions/sentences in both federal districts (D. Mont. and D.S.D.) for Hobbs Act Robbery, 18 USC 1951 and related firearms offenses, 18 USC 924(c). Reading between the lines slightly, it appears the 924(c) "stacking" rules of that time resulted in a 219-month sentence imposed by D. Mont., and a consecutive 300-month sentence imposed by D.S.D. Appellant completed the D. Mont. sentence and began the D.S.D. sentence, and filed a motion for reduction in sentence under 18 USC 3582(c)(1)(A), sometimes known as the compassionate release (CR) statute.

Discussion & Holdings: Appellant challenges the district court's denial of his CR motion, but CA8 affirms—

(a). CR Regime. The CR statute provides: "**the** court * * * may reduce **the** term of imprisonment * * * if it finds that [] extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 USC 3582(c)(1)(A) (emphasis added given CA8's reasoning below). The "applicable policy statement" is found at USSG 1B1.13, which includes a number of "extraordinary and compelling reasons" that may warrant CR relief, including those invoked by Appellant and discussed below.

(b). "Unusually Long Sentence." Evidently referencing the change in law regarding 924(c) stacking, Appellant invokes the "unusually long sentence" USSG provision, which permits CR relief under certain circumstances where a change in law creates a "gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed." USSG 1B1.13(b)(6). However, this provision is available only if "a defendant * * * has served at least 10 years of the term of imprisonment," and the district court ruled that he failed to meet this requirement with respect to the D.S.D. sentence now being served (even though he had already served far more than 10 years under the prior D. Mont. sentence).

Appellant argues the consecutive sentences are treated as one single sentence under 18 USC 3584(c), but CA8 holds this treatment is limited to BOP administrative purposes and not to

CR. Rather, CA8 relies upon statutory language—particularly the definite article "the"—to conclude the CR statute refers to the single sentence that had been imposed by the court which is considering the CR motion, rather than all sentences taken together. Under that construction, Appellant has not yet served 10 years of the D.S.D. sentence, and thus CA8 holds he is ineligible for CR relief under this provision.

(c). Medical Circumstances. Appellant also challenges the district court's denial of the CR motion under the "medical circumstances" provision of USSG 1B1.13(b)(1), but CA8 notes BOP records showing Appellant's conditions are "stable" with "limited" medical needs, such that the district court did not abuse its discretion in denying CR relief on this ground.

Case #124: *United States v. Velasco*, 162 F.4th 947 (8th Cir. Dec. 23, 2025)
No. 25-2078 (W.D. Mo.) (Loken, Kelly & Erickson)
https://ecf.ca8.uscourts.gov/opndir/25/12/252078P.pdf

Discussion & Holdings: Appellant pled guilty to drug and money-laundering offenses, under the terms of a plea agreement which contained an express appeal waiver provision, with exceptions that include ineffective assistance of counsel (IAC). Appellant's counsel filed a notice of appeal, was appointed appellate counsel per CA8's general practice, and filed a motion for substitution of counsel due to Appellant's stated wish to pursue an IAC claim on direct appeal. CA8 denied the motion without prejudice, instead issuing an order that Appellant "must file a motion for substitution of counsel, stating her reasons for dissatisfaction and the issues she wishes to raise on appeal." Appellant failed to do so, and hence CA8 proceeds to decide the matter under original appointed counsel's Anders brief. CA8 dismisses the appeal finding "the appeal waiver is valid, enforceable, and applicable to the issues raised in counsel's Anders brief." CA8 further states that Appellant is allowed to raise any IAC claims (both trial and/or appeal) via timely postconviction action.

Case #125: *United States v. Wright*, 163 F.4th 469 (8th Cir. Dec. 30, 2025)
No. 24-2057 (E.D. Ark.) (Gruender, with Smith & Shepherd)
https://ecf.ca8.uscourts.gov/opndir/25/12/242057P.pdf

In 2012, Appellant was convicted of federal drug offenses and sentenced to a mandatory minimum life term of imprisonment, based upon three predicate Ark. state drug convictions. In 2024 Appellant brought a "compassionate release" (CR) motion under 18 USC 3582(c)(1)(A) based upon intervening changes in the law that were claimed to create a gross disparity between the sentence imposed in 2012 and what would have been imposed at the time of the 2024 CR motion. The district court granted the CR motion and reduced the prison sentence to a 420-month term, with Appellant taking a direct appeal with no cross-appeal by the Government. While the direct appeal was pending, POTUS commuted the prison term to 330 months.

Discussion & Holdings: Appellant challenges the extent of the district court's CR reduction, and CA8 vacates and remands:

(1). Impact of Executive Clemency. CA8 first considers whether the intervening grant of executive clemency (commutation to 330-month term) precludes a court from granting additional CR relief, and recognizes a circuit split of authority on the question. Ultimately, CA8 concludes "a commuted sentence remains a judicial sentence—but one that the executive will only enforce to a limited extent," such that "a court retains the power to hear collateral attacks to

the underlying judicial sentence." Hence, the mootness doctrine does not apply, and CA8 is able to reach the merits of the appeal.

(2). Eligibility Re: Non-Retroactive Change in Law. In determining Appellant was eligible for CR relief, the district court relied upon USSG 1B1.13(b)(6) which authorizes CR relief when there exists a "gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed" due to an intervening change in law. CA8 notes "significant tension" between the district court's reliance upon this provision and CA8 circuit precedent, and also notes that SCOTUS has granted certiorari as to the question. However, because the government failed to take a cross-appeal, CA8 "must accept the district court's determination that [Appellant] was eligible for a sentence reduction" but does so "without endorsing the district court's reasoning."

(3). Abuse of Discretion Re: Extent of Reduction. Having disposed of the above threshold issues, CA8 considers whether the limited extent of sentence reduction constituted an abuse of discretion, which includes whether the district court failed to consider a significant sentencing argument. Here, the district court failed to consider the argument that three state convictions used to impose the statutory-minimum life term no longer qualify as valid predicates, under a valid drug-overbreadth theory (categorical approach). CA8 concludes that Appellant "was correct that his prior convictions * * * are no longer predicate offenses" and the "district court's decision not to consider this argument when sentencing him was based on an erroneous legal conclusion and accordingly was an abuse of discretion." CA8 therefore vacates the sentence and remands, but notes the district need only consider the argument and is not required to accept the point as a reason to further reduce the sentence.

January 2026

Case #126: *United States v. Johnson*, 163 F.4th 518 (8th Cir. Jan. 5, 2026)
No. 24-2837 (D. Minn.) (Loken, J, with Erickson & Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/01/242837P.pdf

Pursuant to the Major Crimes Act, 18 USC 1153, Appellant and several co-defendants were charged with state offenses labeled "child torture," "child neglect," and "child endangerment"; plus a federal assault offense which carried a 10-year statutory minimum prison term. According to law enforcement, Appellant had been the Minor Victim's foster parent for 15 months, and during that period Appellant and four co-defendants had "subjected [Minor] to sustained abuse, including sleep deprivation, starvation, denial of medical care, physical torture, and psychological torment." Three co-defendants pled guilty under plea agreements; the government offered Appellant and the final co-defendant (CD) plea agreements with a 10-year statutory minimum and 12-year-capped government recommendation, but only if both agreed to plead guilty so as to spare Minor Victim from court proceedings. CD refused the offer and was convicted after jury trial, such that Appellant was unable to take advantage of the plea offer and instead entered a "straight plea" with no agreement. At sentencing, Appellant argued for a sentence close to the thwarted 12-year-recommendation-cap offer, but after directly addressing the Minor Victim with sympathetic remarks, the district court judge imposed a 216-month term, which was below the government's requested 20-year sentence.

Discussion & Holdings: Appellant argues the district court judge's "overwhelming empathy for [Minor Victim] as expressed at the sentencing hearing violated her procedural due process right to an impartial and disinterested tribunal," but CA8 affirms:

(1). Error Preservation & Jurisdiction. Appellant concedes that no Due Process neutrality objection was made to the district court, such that plain-error review is required. However, CA8 also notes that such claims are most commonly brought under federal statutes which require a timely post-sentencing motion to confer appellate jurisdiction; this claim of error is not based upon such statutes but rather the 5A Due Process Clause, but nonetheless CA8 expresses "doubt" it has appellate jurisdiction, though it declines to decide the matter and instead addresses the substantive argument under plain-error review.

(2). Recusal & Impartiality. Under the Due Process Clause, judicial recusal is required in situations where experience teaches the "probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable," such as when the judge has a pecuniary interest in the outcome or has been the target of personal abuse by a party. Citing its prior case law, CA8 concludes that a judge speaking directly to a victim and expressing empathy does not meet that "high bar"; "A judge's impromptu statement to a victim does not demonstrate bias toward the defendant; rather, it furthers the congressional policy of encouraging crime victim participation in the criminal justice process." In CA8's view, the district court's brief sympathetic remarks do not indicate any improper influence, and the district court properly weighed the sentencing factors to arrive at a sentence above the non-binding thwarted plea agreement but below the government's request.

Case #127: *United States v. Fetters*, 163 F.4th 513 (8th Cir. Jan. 5, 2026)
No. 25-1323 (S.D. Iowa) (Benton, with Grasz & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/01/251323P.pdf

In 2011, Appellant was convicted of federal drug and firearms offenses, and received a downward-variance 320-month prison term. Appellant moved for compassionate release (CR) under 18 USC 3582(c)(1)(A), first in 2020 and again in 2024. The latter CR motion relied upon numerous serious health conditions and symptoms, including need of a feeding tube and placement in a BOP "chronic care clinic."

Discussion & Holdings: To obtain CR relief, a movant must meet a number of statutory prongs including: (1) "extraordinary and compelling reasons" justify relief; (2) reduction is consistent with Sentencing Commission policy statements; and (3) sentencing factors under 18 USC 3553(a) support reduction. Appellant challenges the district court's denial of CR relief under these prongs, but CA8 affirms:

(1). Policy Statements. Appellant contends the district court erroneously used a restrictive BOP definition of "terminal illness" rather than the more lenient definition contained in USSG 1B1.13, but CA8 disagrees, noting the district court's comments that Appellant was "not per se ineligible" even under the more restrictive definition. Rather, the district court acknowledged its discretion to grant or deny relief, and properly exercised its discretion to conclude Appellant's medical conditions did not rise to the level of "extraordinary and compelling reasons" needed for CR relief.

(2). Sec. 3553(a) Factors. Moreover, after block-quoting the district court's discussion of the 18 USC 3553(a) sentencing factors (including a lengthy history of severe violence), CA8 determines the district court did not abuse its discretion in denying relief under this alternative rationale.

Case #128: *United States v. Ferguson*, 153 F.4th 541 (8th Cir. Jan. 6, 2026)
No. 24-2178 (E.D. Ark.) (Gruender, with Smith & Shepherd)
https://ecf.ca8.uscourts.gov/opndir/26/01/242178P.pdf

Appellant pled guilty to a felon-in-possession firearm offense, 18 USC 922(g)(1), and the district court imposed an enhanced prison term under the Armed Career Criminal Act (ACCA), 18 USC 924(e), which requires an enhanced statutory minimum sentence when it shown the defendant's criminal history contains "three previous convictions * * * for a violent felony or a serious drug offense." In relevant part, the district court imposed the ACCA enhancement based upon a determination that an Ark. state conviction under Ark. Code 5-64-401(a)(1)(A)(i) (2007) for delivery of a controlled substance (specifically cocaine) (statute of conviction or SOC), qualified as a "serious drug offense" ACCA predicate.

Discussion & Holdings: To qualify as a "serious drug offense" within the meaning of ACCA, a prior state conviction "must have involved a controlled substance as defined in § 102 of the [federal] Controlled Substances Act" (CSA). Under the applicable categorical approach, if a state statute-of-conviction (SOC) sweeps more broadly than the CSA, the conviction does not qualify as an ACCA predicate. Here, the CSA criminalizes cocaine and its "optical and geometric isomers"; whereas the Ark. SOC criminalizes all cocaine isomers. Under CA8 precedent "a drug statute that criminalizes even one additional isomer does not qualify" as an ACCA predicate "serious drug offense." Hence: the Ark. SOC does not qualify as an ACCA predicate; the ACCA enhancement was improper; and CA8 vacates the sentence and remands. It should also be noted the Eighth Circuit rejects a number of the government's highly technical counter-arguments, which are not addressed here in the interest of brevity.

Case #129: *United States v. Kavanagh*, 153 F.4th 1127 (8th Cir. Jan. 7, 2026)
No. 24-2930 (S.D. Iowa) (Smith, with Gruender & Shepherd)
https://ecf.ca8.uscourts.gov/opndir/26/01/242930P.pdf

Having previously accrued a felony-level criminal history, Appellant burglarized a residence, stole firearms, and later fled from law enforcement. Based upon this conduct, in relevant part Appellant was convicted of state burglary and theft offenses and received a 30-year prison term. Following state sentencing, and evidently based upon the above stolen firearms, Appellant was charged with a federal felon-in-possession offense, pled guilty, and received a bottom-of-Guidelines-range 151-month term, concurrent with the above state sentence. At sentencing and under USSG 5G1.3, Appellant requested a 17-month adjustment based upon time already served in state custody for relevant conduct, but the district court declined and imposed the 151-month term.

Discussion & Holdings: Appellant challenges the district court's application of USSG 5G1.3(b)(1), and CA8 reverses and remands—

(1). USSG 5G1.3. USSG 5G1.3(b)(1) provides: "If * * * a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction * * * the court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment * * *."

(2). Mandatory Adjustment. Under the above language, a sentencing court is required to make an adjustment to the advisory Guidelines sentence for time already served for a relevant-conduct state sentence. The adjustment is mandatory if the state sentence is based solely on "relevant conduct" to the federal offense; and discretionary if the state sentence is based only partially or not-at-all on relevant conduct. Here, it is not clear whether the district court decided whether the state sentence was based solely or only partially on relevant conduct. But CA8 notes that if the state sentence is solely based upon relevant conduct, there is no discretion which in this case would have resulted in a 134-163 month advisory range, significantly below the 151-180 month range here. CA8 further notes that even if the adjustment is applied, a district court has discretion to apply an upward variance if there are valid reasons to do so. At all events, the district court did not follow the correct USSG 5G1.3(b)(1) procedures, and CA8 reverses and remands.

Case #130: *United States v. Collins*, 164 F.4th 679, (8th Cir. Jan. 14, 2026)
No. 24-2171 (E.D. Ark.**) (**Loken, Kelly & Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/01/242171P.pdf

Appellant pled guilty to distribution of child pornography for sending contraband images to an undercover agent, 18 USC 2252(a)(2), and the PSR recommended a 5-level under USSG 2G2.2(b)(5) for "a pattern of activity involving the sexual abuse or exploitation of a minor." In relevant part, the enhancement was based upon an uncharged allegation that Appellant had sexual contact with a 12-year-old victim when he was 21 years old. The victim testified at the sentencing hearing and confirmed the allegations; the district court fully credited the victim testimony; and the district court imposed a severe 420-month prison term, against the backdrop of a 262-327 month advisory range.

Discussion & Holdings: Appellant challenges the sentence on both procedural and substantive grounds, though the former are reviewed under the plain-error standard for lack of objection to the district court, and CA8 affirms:

(1). Factual Discrepancy. The victim testified that she was 12 at the time of the uncharged act and Appellant was 21, which is factually impossible because the two are only 6 years apart in age and thus Appellant would have been 18 at the time of claimed acts. However, CA8 notes that even assuming those were the correct ages, the conduct still would have violated state and federal statutes, listed in the opinion. Further, CA8 is not convinced that acknowledgement of the victim's factual error would have changed the district court's essential findings.

(2). Statutory Basis. To apply the USSG 2G2.2(b)(5) enhancement for "sexual abuse or exploitation of a minor," the district court is required to identify a qualifying state offense which meets the criteria in the commentary, and here the district court did not do so, which CA8 acknowledges is error under circuit law. However, under plain-error review the appellant has the burden to show the error affected his substantial rights, and here Appellant has failed to show the theoretical state offense covering the above conduct falls outside the Guidelines definition of a qualifying state offense.

(3). Substantive Reasonableness. Appellant contends the district court's upward-variance sentence constituted substantive-reasonableness error, because the district court relied upon factors already accounted for in the Guidelines. CA8 notes this is permissible, but sentencing courts "should take care in doing so." Here, CA8 was satisfied with the district court's explanation in weighing the sentencing factors, such that the upward-variance sentence was not an abuse of discretion.

Case #131: *United States v. Azure*, 164 F.4th 688 (8th Cir. Jan. 15, 2026)
No. 24-2363 (D.N.D.) (Smith, Kelly & Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/01/242363P.pdf

Based upon three separate shooting incidents on the Spirit Lake Indian Reservation, Appellant was charged with three counts of assault with dangerous weapon, 18 USC 113(a)(3), each paired with a separate count of discharging a firearm in relation to crime of violence, 18 USC 924(c). The matter proceeded to trial, and the government presented testimony of numerous fact witnesses to all three incidents, as well as law enforcement witnesses who offered testimony as to the official investigation. As to the latter, the government elicited testimony of one law enforcement witness to the effect that Appellant had refused consent to a buccal swab for purposes of DNA identification; and the district court overruled a late objection to this testimony, while also giving a curative instruction. In addition, over defense objection, the district court permitted the government to introduce Facebook records which law enforcement claimed were authentic based upon the company's "law enforcement portal" which generated the requested records and a certification purportedly signed by an employee who was all-but-impossible for the defense to contact for verification purposes.

Discussion & Holdings: Appellant challenges the district court's rulings with respect to claimed prosecutorial misconduct in eliciting the buccal-swab-refusal testimony and claimed authentication error with the Facebook records, but CA8 affirms:

(1). Prosecutorial Misconduct. To establish prosecutorial misconduct, the appellant must show: (1) prosecutor's conduct was improper; and (2) said conduct prejudicially affected

defendant's substantial rights so as to deprive defendant of fair trial. Here, as to Prong (1), CA8 assumes for the sake of discussion that eliciting the buccal-swab-refusal testimony was improper, apparently due to improper implication that exercising 4A rights was inculpatory. However, CA8 affirms under Prong (2), observing that: (i) exchange was brief with little potential to affect entire trial; (ii) government presented strong independent evidence of guilty from multiple witnesses; and (iii) district court issued curative instruction.

(2). Social Media Evidence. Authentication of evidence is governed by FRE 901, and the rules provide for a number of methods by which to make a relatively low "rational basis" threshold showing of authenticity to permit presentation of the evidence, with the jury able to draw its own conclusion as to authenticity. That being said, CA8 precedent concedes that "social media evidence presents some special challenges" due to ease of falsification, and "a certification from a social media platform alone is insufficient." Here, CA8 concludes the government's proffer included more than just a cryptic certification by a difficult-to-contact Facebook employee, including: (i) statements and testimony of Appellant's friends and acquaintances, suggesting the records reflected Appellant's Facebook account which he controlled; (ii) law enforcement testimony that Facebook was the most common communication method used on the Spirit Lake Reservation; (iii) IP address used to access account, associated with Appellant's relative.

Case #132: *United States v. Newcomer*, 164 F.4th 697 (8th Cir. Jan. 16, 2026)
Nos. 25-1088, -1089 (D. Neb.) **(**Benton, with Grasz & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/01/251088P.pdf

Appellant was charged and convicted of two separate offenses (one count involving theft at a post office and another count of unrelated felon-in-possession of firearm), and received a 30-month prison term followed by a 36-month term of supervised release (SR). While serving the SR term, Appellant committed new state offenses in violation of SR conditions, and the district court revoked SR, imposing a 24-month revocation prison term, followed by a post-revocation 24-month SR term. The latter structured as 12 months on each count of conviction, to be served consecutively.

Discussion & Holdings: Appellant contends that 18 USC 3624(e) required the post-revocation SR terms run concurrent to one another rather than consecutive, but CA8 cites prior precedent holding this provision governs initial imposition of SR, not subsequent sentencing discretion upon revocation of SR. Rather, CA8 holds that 18 USC 3583(e)(3) & (h) apply, and set limits upon duration of post-revocation SR, but do not otherwise restrict the district court's discretion to run post-revocation SR consecutive or concurrent, to prevent recidivism. In sum, CA8 affirms the district court's imposition of two consecutive terms of post-revocation SR.

Case #133: *United States v. Vannausdle*, 164 F.4th 1094 (8th Cir. Jan. 23, 2026)
No. 24-3509 (S.D. Iowa) **(**Benton, with Grasz & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/01/243509P.pdf

Via internet, Appellant exchanged sexual photos and videos with a post-pubescent minor, which included the minor sending videos of her inserting a "sex toy" into her own genitals. Based upon this conduct, Appellant pled guilty to a child pornography offense and received a

240-month prison term, based in part upon a Guidelines range that included a USSG 2G2.1(b)(4)(A) enhancement for "material that portrays * * * sadistic or masochistic conduct."

Discussion & Holdings: Appellant challenges application of the "sadistic or masochistic" enhancement under the above facts, arguing the contraband images involved a genital penetration by a postpubescent minor with a conventional "sex toy," rather than an object meant to portray pain, humiliation, etc. However, the majority cites CA8 precedent that "a minor's self-penetration by a foreign object qualifies as violence," and affirms on this principle.

Concurrence: Judge Grasz agrees that "our precedent compels affirmance," but writes to "emphasize the need for en banc clarification." Judge Grasz cites in-circuit and out-of-circuit authority to the effect that CA8's current rule amounts to a "per se rule applying the four-level sadistic or masochistic sentencing enhancement any time an already-unlawful image depicts penetration, regardless of the facts," and calling for a new or clarified rule that requires case-by-case determination.

Case #134: *United States v. Rosebear*, 165 F.4th 1081 (8th Cir. Jan. 27, 2026)
No. 24-3175 (D. Minn.) (Kobes, with Loken & Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/01/243175P.pdf

Appellant was a grandmother who resided in a home on the Red Lake Indian Reservation, where she had guardianship over 5 of her grandchildren, and also allowed her adult son Julius to live there with his own 5 children. At trial, Appellant argued "there were two households under one roof," with Appellant responsible for the 5 children for whom she served as guardian, and Julius responsible for his 5 biological children. The evidence at trial showed that Julius would frequently abandon and neglect his 5 biological children—including failure to provide sufficient food and medical care. Appellant would sporadically provide food and other necessities to Julius's children during these absences. On 12/25/22, Julius' 7-year-old daughter JF died of malnutrition and an untreated infection, while under the care of Julius.

Discussion & Holdings: Appellant (along with Julius who pled guilty) was charged with child neglect offenses under the Major Crimes Act, 18 USC 1153, and an incorporated Minn. child neglect statute, Minn. Stat. 609.378. Appellant challenges her conviction and 15-month prison sentence, but CA8 affirms:

(1). MN Child Neglect & Sufficiency of Evidence. The state child neglect statute applies to any "caretaker" who "willy deprives" a child of food and healthcare. Appellant asserts she does not qualify as a "caretaker" under the statute because the circumstances forced her to care for Julius' 5 children against her wishes and living arrangements, but CA8 holds the statute applies not only to voluntary caretakers but also to persons who "assumed responsibility" even against their will. As for the "willfully deprives" element, CA8 finds sufficient evidence by which a jury could find that Appellant was aware of JF's nutrition and healthcare needs, but failed to act.

(2). MCA & Mandatory State Guidelines. The Major Crimes Act (MCA) provides that a defendant convicted of a state law offense thereunder must be "punished in accordance with the laws of the State in which such offense was committed," and Minn. has a mandatory sentencing guidelines system (as opposed to the advisory guidelines in the federal system). In this case, the maximum punishment under the state child neglect statute was 5 years, whereas under the mandatory state guidelines system the maximum would be probation. Appellant argues that, under the MCA (along with subsequent rules of Apprendi and Blakely), the maximum

sentence was probation under the mandatory state guidelines. CA8 disagrees, however, citing its prior precedent that the statute of conviction governs the maximum sentence for MCA purposes, not any state sentencing scheme (even if mandatory, as here).

Case #135: *United States v. Domena*, 164 F.4th 1101 (8th Cir. Jan. 27, 2026)
No. 25-1657 (D. Minn.) (Shepherd, with Loken & Benton)
https://ecf.ca8.uscourts.gov/opndir/26/01/251657P.pdf

Appellant pled guilty to a drug conspiracy offense, and in the plea agreement admitted to active participation in a 1+-year multi-defendant conspiracy to ship large amounts of fentanyl pills from Arizona to Minn. for distribution. The Guidelines normally would have suggested a prison term in the range of 63-78 months, but a 120-month mandatory minimum applied and Appellant refused to make the required proffer to trigger the Safety Valve statute, 18 USC 3553(f), which would have permitted a sentence below the statutory minimum.

Discussion & Holdings: Appellant contends imposition of the 120-month statutory minimum violates the 8A "cruel and unusual punishment" prohibition, which applies to "extreme sentences that are grossly disproportionate to the crime." CA8 cites its own precedents which have "regularly affirmed the constitutionality of mandatory sentences imposed for drug offenses—up to and including mandatory life sentences." In addition, CA8 notes that Appellant was eligible for a lesser sentence but willfully refused to take the necessary steps under the Safety Valve statute.

In sum, CA8 finds "nothing unconstitutionally excessive about [the] 120-month sentence" and affirms.

February 2026

Case #136: *United States v. Higgerson*, 166 F.4th 702 (8th Cir. Feb. 5, 2026)
No. 24-3109 (S.D. Iowa) **(**Loken, with Erickson & Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/02/243109P.pdf

Appellant had been convicted of a child pornography offense and sentenced to a prison term followed by 10-year term of supervised release (SR) with release conditions. During the first SR term, Appellant refused to comply with several conditions, and for this reason the district court revoked SR and imposed a 9-month revocation sentence followed by a fresh 9-year SR term. After having begun second SR term, Appellant committed essentially the same violations of conditions and the district court imposed the same revocation sentence. On the third SR term, Appellant again violated conditions, and this time the district court imposed an 18-month revocation sentence (to be followed by yet another 9-year SR term) and during the revocation hearing the district court stated in relevant part: "I don't know what to do with him other than continue to incrementally increase the punishments that he's facing for noncompliance and continue to set rules that hopefully encourage him towards doing what he needs to do, which is getting a job, living independently, and complying with his treatment obligations."

Discussion & Holdings: SR revocation is governed by 18 USC 3583(e)(3), which partially incorporates and partially excludes sentencing factors contained in 18 USC 3553(a). One excluded factor is 18 USC 3553(a)(2)(A), which in different contexts permits a district court to consider "seriousness of the offense," "respect for the law," and "just punishment." The Supreme Court recently resolved a circuit split in holding that, because this factor is excluded from 18 USC 3583(e)(3), a sentencing court is not permitted to use the factor in crafting a revocation sentence. **Esteras v. U.S., 145 S. Ct. 2031 (2025).**

Appellant contends that in imposing the revocation sentence above, the district court improperly relied upon the 3553(a)(2)(A) excluded factor. Because no such objection was made at sentencing, plain-error review applies, and in such cases the **Esteras** opinion states the Appellant must show "it is clear or obvious that the district court actually relied on § 3553(a)(2)(A) -- because it did so expressly or by unmistakable implication." CA8 interprets this language as "virtually indistinguishable" from CA8's pre-Esteras precedent which affirms a revocation sentence if § 3553(a)(2)(A) was an "insignificant additional justification."

Here, with unusually strident language, CA8 concludes the above commentary of the sentencing judge fails to meet the above test and affirms: "Defense counsel's assertion on appeal that the court's comments appear to be more akin to a desire of the district court to promote respect for the law is worse than unfounded speculation or inference; it is outright fabrication." "Rather, the district court's comments at the revocation hearing strongly imply that its focus was primarily on the forward-looking ends of sentencing in §§ 3553(a)(2)(A)-(C) -- deterrence, incapacitation, and rehabilitation -- that a court must consider in imposing a revocation sentence."

Case #137: *United States v. Ledvina*, 166 F.4th 716 (8th Cir. Feb. 6, 2026)
No. 24-2441 (N.D. Iowa) (Erickson, with Colloton & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/02/242441P.pdf

Appellant was charged with 18 USC 922(g)(3) (unlawful possession of firearm by drug user) and 18 USC 924(a)(1)(A) (false statement during purchase of firearm). The matter proceeded to a bench trial on stipulated facts, including: Appellant had purchased a firearm from a licensed dealer in July 2022; in doing so, Appellant signed a form stating that he was not an "unlawful user of * * * marijuana * * * or any other controlled substance"; and in the months leading up to and following the purchase, Appellant was at least a 5-day-per-week user of marijuana and occasional user of cocaine. Based upon these and other relevant stipulated facts, the district court: rejected constitutional challenges to the charged statutes; found that Appellant was guilty of the charged offenses beyond a reasonable doubt; and imposed a 51-month prison term.

Discussion & Holdings: Appellant challenges the statutes of conviction, under the 5A void-for-vagueness doctrine and modern 2A right-to-keep-arms principles, and CA8 affirms in part and vacates in part.

(1). 5A Vagueness. A criminal statute is unconstitutionally vague in violation of the 5A Due Process Clause if it "fails to give ordinary people fair notice of the conduct it punishes, or is so standardless that it invites arbitrary enforcement." As to 922(g)(3), CA8 notes its controlling precedent which narrows the statute "to require a temporal nexus between firearm possession and regular drug use," and rejecting facial and as-applied challenges when, as here, "defendant admits that he frequently used marijuana and knew that he was a marijuana user when he possessed a firearm." As to 924(a)(1)(A), this statute proscribes making false statements which is a straightforward concept to "ordinary people." Hence, CA8 rejects both aspects of the 5A challenge.

(2). 2A Right to Keep Arms. Appellant presents a facial and as-applied challenge to 922(g)(3) under modern 2A principles. The facial challenge is barred by controlling precedent, and is rejected. However, recent CA8 precedent (decided after the district court proceedings at issue) permits an as-applied challenge, which the government can overcome with a showing that the defendant "would pose an unacceptable risk of danger if armed," *e.g.,* proof that defendant's particularized drug use causes him to act like someone with dangerous mental illness or otherwise to presents a credible threat to the physical safety of others. "Without more, drug use generally or marijuana use specifically does not automatically extinguish a person's Second Amendment right." And hence CA8 vacates the 922(g)(3) conviction and remands for the district court to reassess the as-applied challenge under the above principles.

Dissent: Chief Judge Colloton takes the view that the "state of the law in this circuit concerning § 922(g)(3) is untenable": (i) noting modern 2A Supreme Court decisions—particularly Rahimi—indicate that firearms laws "need not precisely match its historical precursors" and "do not preclude categorical gun regulations"; (ii) surveying a large number of Founding Era laws imposing even greater restraints than 922(g)(3) upon "habitual drunkards"; (iii) asserting that CA8's prior case law failed to consider this historical record and instead established an "ahistorical and impractical" test which is difficult for either law enforcement or common people to apply in daily affairs; (iv) moreover, in cases of stipulated facts as here, CA8 is fully capable of applying the test and should do so, rather than remanding to the district court.

Concurrence: Judge Stras responds to Chief Judge Colloton's dissent, stating the latter's preferred "categorical" approach to 922(g)(3) is unwise, and suggesting it would impose liability

too broadly, e.g., person who unwittingly drank a THC-spiked beverage while possessing a firearm.

Case #138: *United States v. Lewis*, 166 F.4th 713 (8th Cir. Feb. 6, 2026)
No. 24-2677 (E.D. Mo.) (Grasz, with Benton & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/02/242677P.pdf

Discussion & Holdings: Appellant pled guilty to a child-pornography-possession offense, and was sentenced to a prison term followed by a lifetime SR term with release conditions, including a special condition prohibiting him "from possessing or using computers." Under the federal SR scheme, a district court has broad discretion to impose release conditions, so long as they are "no greater deprivation of liberty than is reasonably necessary" for purposes of supervised release. Here, the term "computer" covers a remarkably large swath of everyday devices (e.g., televisions), and the district court did not make findings that might justify such a broad prohibition.

CA8 vacates the challenged condition and remands.

Case #139: *United States v. Carroll*, 167 F.4th 483 (8th Cir. Feb. 11, 2026)
No. 25-1396 (E.D. Mo.) (Shepherd, with Colloton & Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/02/251396P.pdf

Appellant and a business partner applied for funds under a Covid-era federal program, for the stated purpose of covering payroll and business expenses of a small business (Company A). However, the government alleged that Appellant actually used the funds for personal expenses and also to start an entirely new business (Company B). Based upon this, a grand jury returned an indictment charging Appellant and Company B with numerous financial and regulatory crimes, including federal fraud offenses involving falsehoods to obtain money as alleged above, and also regulatory offenses involving the operations of Company B. The matter proceeded to trial resulting multiple counts of conviction for both Appellant and Company B, with Appellant being sentenced to a 108-month term of imprisonment and a $3M restitution obligation. (Technically Appellant and Company B are separate parties-appellants, but the distinction does not appear to matter for purposes of this summary, so the two are treated as one Appellant here).

Discussion & Holdings: Appellant challenges the district court's denial of a motion to dismiss based upon the 5A Grand Jury Clause, and also the district court's ruling permitting the government to present evidence of Appellant's parole status, but CA8 affirms:

(1). 5A Grand Jury Clause. The 5A Grand Jury Clause provides: "No person shall be held to answer for a * * * infamous crime, unless on a presentment or indictment of a Grand Jury * * *." Appellant asserts this provision requires a degree of proof higher than probable-cause as used here, arguing that Supreme Court commentary to the contrary is mere dicta and a "founding-era analysis" indicates "more stringent" standard of proof is required. However, CA8 cites numerous Supreme Court decisions which have stated the probable-cause standard applies in this context, and cites its own precedent that "appellate courts should afford deference and respect to Supreme Court dicta, particularly where it is consistent with longstanding Supreme Court precedent." Moreover, controlling CA8 precedent has adopted the probable-cause

standard. Hence, there was no error in refusing to dismiss the indictment based upon the standard of proof used by the grand jury here.

(2). Parolee-Status Evidence. At trial, the government sought to introduce evidence of Appellant's parolee status for a number of purposes, including that he was an "owner" of Company A and failed to disclose parolee status on this application to the Covid-era program. Appellant challenges the district court's ruling permitting the parolee-status evidence, claiming that he did not qualify as an "owner" under the program definition. CA8 holds that, regardless of the technical question of what constitutes an "owner" under the federal program, the issue is properly framed as an evidentiary ruling regarding criminal history, under the balancing test of FRE 401(a) (relevant evidence has tendency to make fact of consequence more or less probable) and FRE 403 (relevant evidence may be excluded if probative value substantially outweighed by danger of unfair prejudice). Under this test, CA8 concludes "evidence of * * * parole status was highly relevant to the question of his intent in filling out the * * * application and thus his overall intent to defraud." And the district court: limited the parole-status evidence presentation; instructed the jury on a good-faith defense; and permitted Appellant to present evidence of his good-faith belief that no disclosure was required. In sum, this claim of error is rejected.

Case #140: *United States v. Johnson*, 166 F.4th 1116 (8th Cir. Feb. 12, 2026)
No. 21-3954 (D.S.D.) (Kobes, with Erickson & Stras)
https://ecf.ca8.uscourts.gov/opndir/26/02/213954P.pdf

As part of a drug-trafficking investigation, law enforcement made a pretextual traffic stop of the vehicle Appellant was driving, after it had recently left a suspect apartment building. Law enforcement determined Appellant's driving license was suspended and informed him that a ticket would be issued, but delayed the ticket-issuing process until a drug-detection dog could arrive. The dog alerted and a subsequent search of the car revealed illegal drugs, a fact which was later included in a warrant application for Appellant's apartment which revealed yet more illegal drugs. The district court denied Appellant's motion to suppress and Appellant entered a conditional guilty plea, permitting him to challenge that ruling on direct appeal.

Discussion & Holdings: Even if a traffic stop is lawful at the outset, it "still violates the Fourth Amendment if it lasts longer than necessary to effectuate its mission—to address the traffic violation that warranted the stop and attend to related safety concerns." Here, law enforcement prolonged the traffic stop beyond its mission, and there were no additional safety concerns that justified the delay. The majority acknowledges that law enforcement would theoretically be justified in staying with the vehicle until a tow arrived to make sure Appellant did not drive away on his suspended license, but the record does not reflect this is what occurred here. Hence: the prolonged stop violated 4A; the exclusionary rule required suppression of the drugs discovered in the vehicle; and since that discovery was used in a warrant application for the apartment, the fruit-of-poisonous-tree doctrine required suppression of those derivative fruits as well.

Dissent: Judge Stras acknowledges that law enforcement misled Appellant about the reasons for the prolonged stop, and the true intent all along was to delay for a drug-detection dog. However, in his view, the officer's subjective intent is irrelevant and a reasonable officer could have decided to stay with the vehicle until a tow truck or authorized driver arrived. "Until then, it was just a car parked on a public street subject to a dog sniff."

Case #141: *United States v. Wooten*, 167 F.4th 490 (8th Cir. Feb. 12, 2026)
No. 24-2940, -2941 (W.D. Mo.) (Erickson, with Gruender & Kelly)
https://ecf.ca8.uscourts.gov/opndir/26/02/242940P.pdf

Appellant was convicted of a felon-in-possession (FIP) offense and sentenced to a term of imprisonment to be followed by a term of supervised release (SR). While serving the SR term, Appellant committed another FIP offense in a different district resulting in a 120-month prison sentence. However, that offense conduct also violated SR conditions resulting in revocation proceedings, and the SR court imposed a 24-month revocation sentence to run consecutively to the 120-month criminal sentence.

Discussion & Holdings: Appellant contends the revocation sentence was an impermissible sanction on the new criminal conduct and was based upon an impermissible sentencing factor, but CA8 affirms—

(1). Punitive Sentence. When a defendant commits a criminal-offense act while serving an SR term, the act may lead to separate criminal prosecution and also constitute a violation of SR conditions and permit a revocation sentence. In such cases, "[t]o avoid double jeopardy, the revocation sentence should sanction only the defendant's breach of trust arising from the failure to follow court-ordered conditions." Here, the district court explained the revocation sentence was based upon Appellant's inability to abide by the rules and danger he posed to the community, not to punish the new criminal conduct. In addition, the district court did not abuse its discretion in running the revocation sentence consecutive to the new-offense sentence.

(2). Excluded Factor. Under the federal SR revocation scheme, some 18 USC 3553(a) factors are permitted and some are excluded; as held by a recent Supreme Court decision, one excluded factor is 18 USC 3553(a)(2)(A) involving "respect for the law" and "just punishment for the offense." Employing plain-error review for lack of objection, although the district court did mention the prohibited "respect for the law," CA8 determines its "foremost concern was Wooten's ongoing inability to follow the rules and emphasized how the nature of his supervised release violations created a danger to the public" which are permissible considerations. However, the Eighth Circuit notes that: "District courts should take care to avoid any mention of the prohibited considerations in § 3553(a)(2)(A) when imposing revocation sentences."

Case #142: *United States v. Tyus*, 167 F.4th 1008 (8th Cir. Feb. 18, 2026)
No. 24-3268 (D. Minn.) **(**Gruender, with Stras & Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/02/243268P.pdf

Law enforcement conducted a traffic stop of the vehicle Appellant had been operating, arrested Appellant for a DWI offense, and arranged to have the vehicle towed to law-enforcement-controlled parking area where an inventory search yielded no firearms. The vehicle was later transported to an impound lot, and based upon an informant's tip law enforcement conducted a second search of the vehicle which yielded the charged firearm. Meanwhile, while in jail Appellant made a number of recorded phone calls to his girlfriend, urging the latter to retrieve the vehicle and/or items contained therein. A jury convicted Appellant of a felon-in-possession offense, 18 USC 922(g)(1), for constructive possession of the firearm found in the vehicle, and the district court imposed a within-Guidelines 84-month prison term, based partly upon an obstruction-of-justice enhancement.

Discussion & Holdings: Appellant challenges the conviction based upon insufficiency of evidence and the sentence based upon the obstruction enhancement, but CA8 affirms:

(1). Sufficiency of Evidence. The elements of a FIP offense include "knowing possession" of the charged firearm, which in the context of the "constructive possession" theory at issue here requires knowledge of the firearm's presence plus control over the place where it was found. Appellant contends there was insufficient evidence of his knowledge of the firearm's presence, but CA8 disagrees noting trial evidence of: (a) Appellant's flight during the traffic stop; (b) jail phone recordings which plausibly contained "coded language" referring to the firearm in the vehicle; and (c) DNA evidence, suggesting Appellant had handled the firearm.

(2). Obstruction of Justice. USSG 3C1.1 provides for an advisory Guidelines enhancement where the government shows "the defendant willfully obstructed or impeded * * * the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." The district court applied the enhancement based upon the above trial evidence indicating that Appellant had used coded language to ask his girlfriend to remove the charged firearm from the vehicle before law enforcement could discover it, and CA8 holds there was no clear error in that finding.

March 2026

Case #143: *United States v. Brad Wendt,* 168 F.4th 1068 (8th Cir. March 3, 2026)
No. 24-2458 (S.D. Iowa) (Erickson (Author), Kelly, and Stras)
https://ecf.ca8.uscourts.gov/opndir/26/03/242458P.pdf

Brad Wendt sold firearms. He was also the police chief of Adair, Iowa. As chief, Wendt had the authority to write "law letters" which allowed the Adair Police Department to purchase machine guns. He also had the authority to write law letters which allowed licensed firearm retailers to purchase machine guns for the purpose of "demonstrating" the machine guns to the APD.

The federal government thought Wendt was making false statements in his law letters. He was prosecuted for making false statements in violation of 18 U.S.C. § 1001(a)(2), conspiracy to make false statements and defraud the ATF in violation of 18 U.S.C. § 371, and illegal possession of a machine gun in violation of 18 U.S.C. § 922(o). He was convicted on all counts after a jury trial and raised multiple issues on appeal.

Issue 1: Jury Instructions: The district court did not abuse its discretion by (1) giving a jury instruction which discussed the law letters or (2) refusing to give an instruction which stated, "the government has the burden to prove beyond a reasonable doubt that Wendt's statement was false under any reasonable interpretation of the statement." This second instruction was only necessary if Wendt's statements were made in response to ambiguous federal guidance, and the guidance here was not ambiguous.

Issue 2: § 922(o) Vagueness: Section 922(o) was unconstitutionally vague as applied to Wendt. That statute prohibits the possession or transfer of machine guns, except when the guns are being possessed/transferred "under the authority of" a government agency. Here, Wendt was convicted of illegally possessing a machine gun while he was off duty during a machine gun shoot; however, the gun in question was registered to the APD and, at the time of the shoot, Wendt was the APD police chief. A person of ordinary intelligence in Wendt's position would not have had fair notice that, under those circumstances, his possession of a machine gun was unlawful. (CA8 also saw a risk of arbitrary enforcement in this situation, and invoked the rule of lenity.)

Issue 3: Sentence: The district court did not err in applying a cross reference from USSG §2B1.1 to §2K2.1. Section 2B1.1 applies when a defendant is convicted of making false statements, and states that a cross reference should apply if the conduct alleged in the indictment "establishes the elements of another offense." Here, Wendt's conduct established the elements of 18 U.S.C. § 922(a)(6): "(1) knowingly making false statements (2) with respect to a fact material to the lawfulness or the transfer of a firearm and (3) intending to or likely to deceive an importer, manufacturer, dealer, or collector of firearms."

Reversed and remanded with respect to Wendt's conviction for the illegal possession of a machine gun. All other convictions are affirmed.

Stras, J., Concurring in Part: The possession prosecution should have never taken place. Not only was Wendt acting under Adair's authority, there is a statute—18 U.S.C. § 925(a)(1)—that ostensibly "immuniz[es] officers who possess a city-owned machine gun." This statute is consistent with our Nation's tradition of firearm regulation: per Judge Stras, we do not have a tradition of regulating law enforcement's access to dangerous weapons.

Kelly, J., Dissenting in Part: The possession conviction should stand. Wendt had a machine gun when he was off duty, working at a for-profit shooting event for his privately-owned gun shop. A person of ordinary intelligence would have known that he was not acting "under the authority" of Adair and was, in fact, acting illegally. There is no vagueness issue here.

Case #144: *United States v. Robert Walker*, 168 F.4th 533 (8th Cir. March 3, 2026)
No. 24-3580 (E.D. Ark.) (Erickson (Author), Colloton, and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/26/03/243580P.pdf

Robert Walker was convicted of distributing 50+ grams of methamphetamine. At trial, the government introduced a video of a controlled buy. Walker's counsel objected because (1) the recording could not be authenticated; (2) it contained inadmissible hearsay; and (3) it violated FRE 403 because it contained references to a gun. At sentencing, Walker personally urged the court to impose a sentence below the mandatory minimum based on the "sentencing entrapment doctrine." On appeal, he raised multiple issues.

Issue 1: Evidentiary Challenges: The district court did not abuse its discretion by admitting the video or a transcript of the video. A detective provided sufficient authentication by testifying that he watched a live feed of the controlled buy and that the recording was an accurate depiction of the controlled buy. Similarly, the transcript was admissible after the detective testified that he'd helped prepare and edit the transcript, and that the transcript was accurate.

The admission of the video and transcript did not violate FRE 403. The video was highly probative and the record establishes that, although no limiting instruction was given, the district court considered Walker's concerns before overruling his objections.

Nor was there a hearsay issue. Walker's statements were admissible because they were those of a party opponent. The CI's statements were admissible to provide context, and were not offered for the truth of the matter asserted.

Issue 2: Sentencing Challenges: "Sentencing entrapment occurs when law enforcement conduct leads a person who is otherwise indisposed to deal a larger quantity or different type of controlled substance to sell the larger quantity or different substance resulting in a longer sentence." The burden is on the person claiming entrapment, and Walker didn't offer anything to show that he was indisposed to sell 50+ grams of methamphetamine.

In addition, the district court did not commit plain error by failing to adequately explain the sentence.

Conviction and sentence affirmed.

Case #145: *United States v. Marwan Hamdan*, 168 F.4th 1087 (8th Cir. March 4, 2026)
No. 24-3108 (D.S.D.) (Gruender (Author), Stras, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/03/243108P.pdf

This case involves Fourth Amendment issues. Marwan Abdulkareem Hamdan was riding in a car when it was stopped by police for a minor traffic violation. One officer (Mayberry) took the driver's ID, ran a record check, and questioned her about a "variety of subjects." Meanwhile, the other officer (Leacraft) spoke with Hamdan and two other passengers. During this conversation, Off. Leacraft noticed a nearby Jeep whose occupants were videoing the scene. Off. Leacraft had a brief conversation with Hamdan about the Jeep; then, he took IDs from Hamdan

and the other passengers, radioed for backup, and asked dispatch to run record checks. When backup arrived, Off. Leacraft asked Off. Mayberry to run a record check on one of the Jeep's occupants; then, he asked Hamdan to step out of the car. When Hamdan did, Off. Leacraft noticed an open bottle of alcohol. As he removed the bottle, he heard back from dispatch regarding the record checks; next, he searched the car, discovered a handgun, and detained Hamdan for being a felon in possession of a firearm.

Hamdan filed a suppression motion and argued that the stop was unreasonably prolonged. CA8 reasoned that:

- Off. Mayberry's questions to the driver did not extend the stop because, during this time, Off. Leacraft was engaged in permissible activities.
- Off. Leacraft's decision to use the radio to request record checks was "well within the bounds of reasonable diligence." He was not obliged to use his patrol car's computer.
- Off. Leacraft's request to run a record check on an occupant of the Jeep did not extend the stop because he was still waiting to hear back from dispatch.
- Even if that record request *had* extended the stop, it would have been reasonable as a negligibly burdensome safety precaution.

Therefore, the district court did not err by denying the motion to suppress.

Affirmed.

Case #146: *United States v. James Darrick Beeler,* 168 F.4th 1111 (8th Cir. March 6, 2026)
No. 24-3307 (E.D. Mo.) (Erickson (Author), Colloton, and Shepherd)
https://ecf.ca8.uscourts.gov/opndir/26/03/243307P.pdf

Title 18 U.S.C. § 2252A(b)(2) requires a 10-year minimum sentence for anyone who is convicted of possessing child pornography and has previously been convicted of a crime "relating to" sexual abuse or child pornography. On appeal, Beeler argued that the mandatory minimum should not have applied in his case and that § 2252A(b)(2) was unconstitutionally vague.

Per CA8, Beeler's prior conviction for abuse of a child was related to child pornography. Applying a categorical approach, the Court first determined that the statute of conviction was overbroad but divisible; it then found that Beeler was convicted of a subsection which prohibited the filming of nude children. Although the Court acknowledged that "a mere visual depiction of a nude child does not automatically qualify as child pornography under federal law," it emphasized that "the statute triggering the mandatory minimum requires only a relation to an enumerated offense, not an equivalency."

In addition, § 2252A(b)(2) was not unconstitutionally vague as applied: "A person of ordinary intelligence would understand that recording a nude minor for sexual gratification 'relates to' child pornography.'"

Affirmed.

Case #147: *United States v. Andrew Butler*, 168 F.4th 1107 (8th Cir. March 6, 2026)
No. 25-1817 (E.D. Ark.) (Benton (Author), Smith, and Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/251817P.pdf

Butler appealed after the district court denied his motion to suppress and sentenced him to 60 months in prison. On appeal, he argued that it was unreasonable for police to enter his

workplace. CA8 disagreed: prior to entry, officers knew there was an arrest warrant for Butler and reasonably believed that he was at work. In addition, the sentence was substantively reasonable.

Affirmed.

Case #148: *United States v. Jimmie Willis,* 168 F.4th 1119 (8th Cir. March 9, 2026)
No. 24-2383 (S.D. Iowa) (Smith, Kelly, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/03/242383P.pdf

Willis appealed following his conviction for conspiracy to distribute methamphetamine and possession of a firearm in furtherance of a drug trafficking crime.

First, Willis challenged the aggravating role enhancement under USSG § 3B1.1(c). Under CA8 case law, this enhancement is affirmed "even when the defendant managed or supervised only one other participant during a single transaction." Here, Willis utilized another individual to transport methamphetamine from Arizona to Iowa at least twice, so the district court did not err in applying the enhancement.

Second, Willis argued that procedural error occurred when the district court relied upon a disputed portion of the PSR attributing four firearms to him. Willis disclaimed any knowledge of the firearms and the government offered no evidence at sentencing to prove his ownership or control over the firearms. Nevertheless, the district court referenced the firearms as an aggravating factor, using them to justify a higher sentence. That was error.

Reversed and remanded for resentencing.

Case #149: *United States v. Rodriguez-Mendez*, 168 F.4th 1123 (8th Cir. March 9, 2026)
No. 24-2854 (D. Neb.) (Loken (Author), Erickson, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/03/242854P.pdf
Note: CA8 published a previous opinion in this case at 65 F.4th 1000.

In the early 2000s, Rodriguez-Mendez was sentenced to life in federal prison. He filed a motion for a sentence reduction in April 2024, arguing that under USSG § 1B1.13(b)(6) there had been a change in law that impacted his "unusually long sentence" and produced a "gross disparity" between the sentence being served and the sentence likely to be imposed today. Rodriguez-Mendez also argued that he was suffering from a medical condition that requires long-term or specialized care which was not being provided under § 1B1.13(b)(1)(C).

CA8 concluded that Rodriguez-Mendez was *not* serving an unusually long sentence in light of his "violent and egregious conduct." It reasoned that the term "unusually long sentence" is not clearly defined and held that whether a sentence is "unusually long" can be evaluated in light of a defendant's particular conduct. In addition, CA8 concluded that there was no "gross disparity": today's Guideline range still includes a life sentence and the original sentencing judge decided to sentence Rodriguez-Mendez at the high end of the old range. Thus, Rodriguez-Mendez could not show that he would receive a more lenient sentence today.

With respect to the medical argument, CA8 found that Rodriguez-Mendez *was* receiving specialized treatment for spinal stenosis. Although consultation with a neurosurgeon and physical therapist had been delayed for months, CA8 noted that Rodriguez-Mendez had been getting injections and physical therapy and concluded that any delay did not put him at risk for serious deterioration or death.

Affirmed.

Case #150: *United States v. Michael E. Hunt, Jr.*, 169 F.4th 766 (8th Cir. March 9, 2026)
No. 25-1686 (W.D. Mo.) (Shepherd (Author), Colloton, and Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/251686P.pdf

An informant told police that "T" was planning to bring fentanyl to Springfield, MO. The informant gave a phone number for "T." Police got a search warrant to track the phone, pulled Hunt over for speeding, obtained a K-9 alert and found fentanyl. After a trial, Hunt was convicted of possession with intent to distribute. He raised a number of issues on appeal.

Motion to Suppress: Hunt moved to suppress the evidence found in his car, arguing that the search warrant that led to him being pulled over was not supported by probable cause because it identified another person as "T." CA8 rejected this argument; it found that there was probable cause to track the location of the phone even if the police believed that the phone belonged to someone else. (Other arguments about the warrant had been waived.)

Motion to Dismiss: Hunt moved to dismiss under the Speedy Trial Act, but CA8 agreed that only 55 non-excludable days had passed prior to the commencement of trial. In addition, CA8 held that delay resulting from the motion to dismiss could be excluded. CA8 also held that there was no Sixth Amendment violation, which required it to assess "(1) whether delay before trial was uncommonly long; (2) whether the government or the criminal defendant is more to blame for the delay; (3) whether, in due course, the defendant asserted his right to a speedy trial; and (4) whether he suffered prejudice as a result of the delay." Here, CA8 decided that the 25-month delay at issue was not unusually long, that Hunt was responsible for most of the delay because he filed of pretrial motions and motions to continue the trial, and that Hunt was not prejudiced.

Motion for a New Trial: Though Hunt was indicted for PWID, the jury returned its verdict on a form which found him guilty of conspiracy to distribute fentanyl. Hunt argued that this was an impermissible constructive amendment and should have resulted in a mistrial. CA8 disagreed: they thought that Hunt had invited the error by submitting an erroneous verdict form. And, for good measure, CA8 emphasized that a mistake on a verdict form, standing alone, has never been held to constitute a constructive amendment.

Affirmed.

Case #151: *United States v. Samuel Peter McElmeel,* 168 F.4th 1116 (8th Cir. March 9, 2026)
No. 25-1558 (S.D. Iowa) (Kelly (Author), Gruender, and Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/251558P.pdf

McElmeel appealed from a finding that he was not competent to proceed to trial. After the district court found that he *was* competent, he argued that his appeal was not moot. CA8 disagreed, reasoning that the initial determination of incompetency would not harm McElmeel's future interests and that any stigma, reputational damages, or collateral consequences were speculative.

Dismissed.

Case #152: ***United States v. Cory Rusher,*** **168 F.4th 1128 (8th Cir. March 9, 2026)**
No. 24-2732 (W.D. Ark.) (Gruender, Kelly, and Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/242732P.pdf

Rusher's 24-month revocation sentence was substantively reasonable. The district court did not abuse its discretion when weighing the relevant factors.

Affirmed.

Case #153: ***United States v. Shaune Aaron Price,*** **169 F.4th 779 (8th Cir. March 11, 2026)**
No. 24-2923 (W.D. Mo.) (Kobes (Author), Benton, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/03/242923P.pdf

Price was sentenced on two counts. The sentencing judge wanted to give him a total of 130 months in custody and initially announced that he'd impose two consecutive 65-month sentences. Then, Price asked for a reduction under USSG § 5G1.3(b) to account for time he'd spent in state custody. The judge took a recess; when he returned, he announced that he would impose 83 months on the first count and 71 months on the second count, running consecutively for a total of 154 months. The judge then reduced the 154-month sentence by 24 months, bringing the total time that Price would serve in federal custody to 130 months.

CA8 reasoned that any error applying § 5G1.3(b) was harmless because the judge was so clear that he wanted Price to serve 130 months "notwithstanding" his state sentence.

Affirmed.

Case #154: ***United States v. Canku Martinez*****, 169 F.4th 783 (8th Cir. March 11, 2026)**
No. 25-1189 (D.S.D.) (Kelly (Author), Smith, and Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/03/251189P.pdf

Martinez was indicted on five counts. Counts 1-3 arose from allegations of sexual assault against an adult and Counts 4-5 arose from allegations of sexual assault against a minor. After trial, Martinez was acquitted on Counts 1-3 but convicted on Counts 4-5. He argued, on appeal, that the joinder of these counts was unfairly prejudicial and the evidence was insufficient to convict him on Counts 4 and 5.

Joinder: Martinez never sought severance, so review was for plain error. Here, CA8 held that there was no plain error: a joint trial does not prejudice a defendant if "one crime would be probative and admissible at the defendant's separate trial of the other crime," and in this case the allegations relevant to Counts 1-3 would have been admissible at a trial on Counts 4-5. See Fed. R. Evid. 413(a) ("In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault.").

Sufficiency: There was sufficient evidence for a conviction on Counts 4-5. Although Martinez attacked the complaining witness's credibility, the jury believed her. And because nothing in her testimony was "physically impossible," CA8 chose to uphold the verdict based upon her testimony.

Affirmed.

Case #155: ***Anthony Fortner v. Eischen,*** **170 F.4th 655 (8th Cir. March 13, 2026)**
No. 24-3596 (D. Minn.) (Loken (Author), Smith, and Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/03/243596P.pdf

CA8 previously held that if a prisoner is not challenging the "validity of his conviction or the length of his detention . . . then a writ of habeas corpus is not the proper remedy." In this case, Fortner filed a habeas petition alleging that the BOP had improperly applied First Step Act time credits and, as a result, had delayed his release to a halfway house or to home confinement. The district court dismissed Fortner's petition, reasoning that it could not grant habeas because Fortner sought expedited eligibility for prerelease custody, which would not shorten the actual length of his detention. Fortner appealed, challenging this decision and CA8's prior case law.

After oral argument, the BOP transferred Fortner to a halfway house. CA8 determined that the appeal was moot because Fortner had obtained the relief he requested.

Case #156: ***United States v. Dana Sam*****, 170 F.4th 670 (8th Cir. March 17, 2026)**
No. 25-1136 (D.N.D.) (Smith, Kelly, Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/03/251136P.pdf

Mr. Sam pled guilty to aggravated sexual abuse by force. A PSR was prepared which contained allegations of sexual assault of other women, repeated sexual abuse of the victim, and that he had otherwise abused the victim and her siblings. At the sentencing hearing, the court informed Mr. Sam that it was considering departing upward based on those grounds. The sentencing hearing was continued and objections were filed.

At the start of the second hearing, the District Court asked if counsel had objections to the PSR and the guideline range. Counsel responded no. However, when the District Court began to explain its reasoning, counsel objected that it had relied upon allegations that were objected to and unproven. The District Court never ruled on the objections but continued to rely, in part, on some of the objected to information.

On appeal, the government argued that the objection was effectively withdrawn at the second hearing. Eighth Circuit disagreed- the District Court had asked a compound question regarding objections to the PSR and the guideline range calculated within. And once the District Court began to mention the objected to material, counsel did object. Given that, the objection was preserved and the court reviewed for abuse of discretion. Since it was clear the District Court did rely on some of the objected to information which had not been proven, the court did abuse its discretion.

Vacated and remanded for resentencing.

Case #157: ***United States v. Jimmy Timberlake*****, 170 F.4th 690 (8th Cir. March 20, 2026)**
No. 25-1351 (W.D. Mo.) (Smith, Benton, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/251351P.pdf

Mr. Timberlake was convicted of being a felon in possession of a firearm, possessing a firearm in furtherance of a drug-trafficking crime, and PWID 40 grams or more of fentanyl. His appeal focused on the introduction of his non-testifying girlfriend's statement and the introduction of a prior drug-trafficking conviction.

Police surveilled Mr. Timberlake for a few months before executing a warrant at his girlfriend's address. Once inside, they found Mr. Timberlake's wallet on the counter next to a gun, scale, car keys, sandwich bags, cash, and a knife and spatula with white powder on it. They searched the rest of the house and found more guns and 74 grams of fentanyl. While they searched, the girlfriend said the guns were not hers. Mr. Timberlake said his girlfriend did not know about any of the illegal items in the house. At trial, the defense cross-examined an officer about why the guns had not been tested for DNA or fingerprints. The officer responded that testing was unnecessary because the gun was located near Mr. Timberlake's possessions and his girlfriend disclaimed ownership.

On appeal, Mr. Timberlake argued his Confrontation rights were violated by this out-of-court statement by a non-testifying witness. The defense did not object on Constitutional grounds (only hearsay) so this claim was reviewed for plain error. The Eighth Circuit concluded that while her statements may have been testimonial, they were not hearsay. The officer's recounting of the girlfriend's statements were "outside the realm of hearsay" because the propriety of the investigation was at issue and this explained why they made the choices they did. Because it was not offered for the truth of the matter asserted, the Confrontation Clause was not implicated, and the district court did not plainly err by allowing it in.

For the prior conviction, the defense objected at the jury instruction conference and the district court ruled it admissible but instructed the defense to object when introduced at trial. The defense did not object when the government sought to introduce it. Since there was no objection at trial, there was no error in the admission. Finally, the 8th rejected his "cumulative error" claim since there was no unfairness.

Case #158: *United States v. Gabriel Aguirre*, 170 F.4th 695 (8th Cir. March 23, 2026)
No. 24-2081 (E.D. Ark.) (Loken, Kelly, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/242081P.pdf

Mr. Aguirre pleaded guilty to Conspiracy to possess with intent to distribute and to distribute methamphetamine. The main issues on appeal were two enhancements applied at sentencing: a three-level increase for being a manager or supervisor and a two-level increase for a pattern of criminal conduct engaged in as a livelihood.

Facts: Law enforcement had identified a drug trafficking operation based in Mexico and operating in Central Arkansas. Mr. Aguirre was identified as being a U.S. based leader who coordinated deliveries of meth to the organization's distributors and then received money via electronic transfer. At one point, law enforcement intercepted communications from Mr. Aguirre and a co-conspirator about a delivery of meth to Little Rock. Mr. Aguirre asked his co-conspirator to send money "down there" and the co-conspirator replied that he would send "at least 20" and after some back and forth about additional drugs, the co-conspirator would send "about ten" more. The courier was stopped and a case was brought against multiple people. The PSR noted Mr. Aguirre had no other income or assets.

Manager/Supervisor: Mr. Aguirre argued that taking the money for the shipment made him a criminal but not a leader of an organization. The district court believed him to be a supervisor since he coordinated the details of deliveries. The Eighth Circuit agreed and found him to be a "key link" between the supply in Mexico and the distributors in Ark.. Since there was evidence of him serving as that key link for importation of vast quantities of meth over a long

period of time and managing/supervising at least one minor participant (the courier who was caught), the enhancement applied.

Criminal Conduct as Livelihood: The test from *Ford* is 1) the defendant received an income from criminal activity that was 2,000 times the hourly federal minimum wage and 2) the criminal activity was the defendant's primary occupation. At sentencing, Mr. Aguirre argued that he was a "mere user and not getting rich off the drug trade." On appeal, he argued the government did not meet their burden of showing his income surpassed the *Ford* threshold. Because that precise issue was not raised below, the 8th reviewed for plain error.

The Circuit went on to say a district court is entitled to draw reasonable inferences in cases where circumstantial evidence might establish that the illegal earnings met the threshold. Since Mr. Aguirre did not dispute he had moved hundreds of kilograms of meth over five years, it was reasonable to assume he had made enough money. In the Eighth Circuit's opinion, it would be reasonable to infer that Mr. Aguirre was paid more than $14,500 (the threshold amount) for coordinating these deliveries since the facts showed somewhere between $20-30,000 was involved in the shipment that was intercepted.

Finally, the Eighth Circuit found his Guidelines sentence to be reasonable.

Affirmed.

Case #159: *United States v. Patrick Opdahl*, 170 F.4th 1149 (8th Cir. March 27, 2026)
No. 24-2713 (D.N.D.) (Kelly, Smith, Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/03/242713P.pdf

Mr. Opdahl appealed the denial of his motion to dismiss the indictment and the sufficiency of the evidence. He had been convicted of possession of a machinegun under 922(o) and possession of a silencer in violation of 26 U.S.C. 5841, 5861(d), and 5871.

Indictment claims: Mr. Opdahl argued the indictment did not contain a knowledge element regarding the characteristics of the items that brought them within the ambit of the statute. The Eighth Circuit noted that that Indictment did closely track the language of the statutes (though that does not necessarily cure the omission of an element). But the 8th found the Indictment as a whole sufficiently alleged his knowledge of the prohibited characteristics. They did drop a footnote lightly suggesting the Government should just start including these elements to avoid claims like this.

Sufficiency claims: There was sufficient evidence he knew about the characteristics that made it unlawful to possess (firing automatically due to the glock switch). An ATF agent explained how a visible portion of gun was the selector that allowed it to be fired automatically. Further, jail calls were played where Mr. Opdahl discussed the glock switch on the gun. The silencer was found in the basement(which served as Mr. Opdahl's room) next to his other possessions. There were again phone calls where he discussed the "suppressor kit" which was not even drilled out.

Affirmed.

Case #160: *United States v. Richard D. Sims,* 171 F.4th 1044 (8th Cir. March 30, 2026)
No. 25-1158 (W.D. Mo.) (Kelly, Gruender, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/03/251158P.pdf

Mr. Sims pled without a plea agreement to 5 counts relating to a conspiracy to distribute meth. A few months after the plea, he moved to withdraw the guilty plea and for new counsel. At the hearing, he explained his confusion about the impact of the plea and told the District Court he did not raise those concerns because he had two brain surgeries, which meant he did not think clearly. The court granted his request for new counsel but not to withdraw his plea. Ultimately, he was sentenced to 240 months despite his range being 360 to life. He appealed regarding two issues:

Withdrawing the plea. On appeal he argues he did not understand the charges due to ineffective assistance of counsel and because he was not competent to plead guilty. First, IAC could be a fair and just reason to withdraw a plea, but those claims are generally reserved for post-conviction proceedings. Here, there was no factual record to base this claim on. Second, the 8th reviewed the competency argument. The review of whether the plea was knowing and voluntary is de novo. But the record of his extensive plea colloquy confirmed he knew the charges and ranges, he objected to a factual issue after discussion with counsel, and acknowledged that this was one of the most important decisions he had ever made. Despite his significant physical health problems, neither party requested a competency hearing and the district court's observations did not suggest the need for one. 8th affirms the denial of the motion to withdraw his guilty plea.

Substantive reasonableness. Mr. Sims argued that his significant mental and physical health issues meant the district court's sentence was substantively unreasonable. However, the district court took those factors into account and explained to Mr. Sims that regardless of the number of months given, there was a chance he could die in prison and that would be taken into account. But it was weighed against one of the largest quantities of meth the court could remember. So, while another court may have balanced the factors differently, there was no abuse of discretion here.

Affirmed.

Case #161: *United States v. Cedric Mitchell*, 171 F.4th 1049 (8th Cir. March 31, 2026)
No. 25-1261 (W.D. Ark.) (Erickson, Gruender, Kelly)
https://ecf.ca8.uscourts.gov/opndir/26/03/251261P.pdf

A police officer saw a white Pontiac driving on a back road near midnight. Based on the time and location, he became interested in the car and ran the license plate through AOIVS, which is Ark.'s Online Insurance Verification system. AOIVS returned with a message saying it was unable to verify insurance for the vehicle but there may be a valid policy not available to the system. Given this ambiguous information, the officer pulled the car over. The driver could not provide a valid license or proof of insurance and Mitchell was on parole subject to search. The subsequent search led to meth in his pocket and a case against him. He entered a conditional plea so that he could appeal the denial of his motion to suppress.

Review of Mtn to suppress. Denial of a motion to suppress is a mixed standard, clear error for factual findings and de novo for whether the Fourth Amendment was violated. A traffic stop does not violate the Fourth Amendment if there is probable cause or an articulable and

reasonable suspicion of a traffic violation. The 8th concluded that in a similar case *Stephens*, they had found reasonable suspicion existed and summarized *Stephens* as finding reasonable suspicion when license plate tags were not on file. Similarly, other Circuits have found inconclusive reports sufficient to provide reasonable suspicion. Eighth Circuit concludes that an unconfirmed or "not found" database response is sufficient to justify a brief investigatory stop.

NOTE: Mr. Mitchell argued on appeal that there needs to be a showing that the database is reliable and an assessment of officer competency. But the 8th did not address the argument because it was not raised in district court.

Judge Kelly concurs in the judgment. Judge Kelly concurred in the result because the reliability of AOIVS was not in front of them. But she does not think *Stephens* should be particularly persuasive here. *Stephens*, had other important findings like a CI who had told the police he had meth and a gun, officer surveillance, and info about his expired driver's license on top of the issue with the license plate tags. In her view, this meant *Stephens* should not resolve the issue. She believed *Hanel* was more instructive. *Hanel* would require the district court to find the database was reliable, the officers were competent in their use of their laptop, and the officers were competent in their use of the database. None of those findings exist here to justify the stop. But again, because it was not in front of the court, she concurred in the judgment.

Case #162: *United States v. Christopher Hardy*, 171 F.4th 1082 (8th Cir. Apr. 1, 2026)
No. 24-3460 (D.N.D.) (Gruender, Stras, Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/04/243460P.pdf

Officer conducted a traffic stop on Mr. Hardy and found him in possession of over a thousand blue pills marked "M30" which contained fentanyl. He eventually pleaded guilty to a conspiracy to distribute and pwid fentanyl and heroin. The PSR recommended a sentencing enhancement under 2D1.1(b)(13)(A) for knowingly misrepresenting or knowingly marketing fentanyl as another substance. Mr. Hardy objected, the Government did not defend the enhancement and the district court still applied it.

2D1.1(b)(13)(A). On appeal, Mr. Hardy argued that he needed to have showed the pills to someone or told them the pills were something other than fentanyl. However, he admitted in his plea that he had placed fentanyl into the drug market by acquiring the pills in Minn., transporting them to North Dakota, and selling them through a network of sub-distributors. Though he had not yet sold the pills they found on him, he did admit they were part of the same scheme. The 8th found that "placement of [the pills] in the market constituted marketing of the pills."

There was also an argument that the "M30" marking did not indicate it was a substance other than fentanyl. Specifically that M30 is known in the illegal market is known to be fentanyl. However, this is a factual determination and the record showed the legitimate drug market has M30 markings for non-fentanyl drugs and there was no evidence of the illegal market's understanding of that marking. So it was not clear error.

Case #163: *United States v. Mark Isham*, 171 F.4th 1076 (8th Cir. Apr. 1, 2026)
No. 24-3432 (D. Minn.) (Kelly, Smith, Grasz)
https://ecf.ca8.uscourts.gov/opndir/26/04/243432P.pdf

Mr. Isham was convicted of assaulting his partner. The police were called to Mr. Isham's house on March 24, 2023. His partner, C.K. told the operator that she was in a wheelchair and Mr. Isham had beat her up a week or 4 days ago (there were allegations he had struck her on the 13th and then again on the 19th). When officers got there, Mr. Isham initially denied CK was there, but then officers heard her in the house. One officer spoke with CK in the house while the other asked Mr. Isham to talk near the front door. Mr. Isham denied anything physical had occurred and they quickly returned to the other room. Then the other officer asked Mr. Isham to speak. Mr. Isham went outside with her and he admitted that they had gotten into an argument after drinking and he hit CK. He was then arrested. On appeal, he challenges the denial of his motion to suppress statements and the admission of 404(b) evidence.

Motion to Suppress. Another decision about determining whether someone was in custody for *Miranda* purposes. Here, the trial court did not err in determining he was not in custody to trigger *Miranda*. The conversations with officers were brief, they did not involve strong arm tactics or the display of weapons. While it "may have been preferable" for the officers to tell him answering questions was voluntary, it does not render the conversation custodial. The 8th concedes that factors like it being past midnight, the officers keeping him under "constant guard" and the isolation on the front step are factors in the analysis. But both of them were awake when the police arrived and the spatial limitations of the house played a role in the arrangements. Considering the full circumstance, the 8th agreed that he was not in custody.
404(b). The Government sought to introduce evidence concerning prior times Mr. Isham had assaulted CK. Mr. Isham had raised self defense and intoxication defenses which put his intent at issue. It also was said to be relevant of CK's delay in reporting the assaults. The prior incidents were sufficiently similar in kind and time- they had only occurred in the last 8 years which was when Mr. Isham had been released from an assault sentence (on CK). Finally, the jury was given a limiting instruction. So there was no abuse of discretion by allowing this evidence in.

Case #164: *United States v. Dante D. Williams*, 171 F.4th 1086 (8th Cir. Apr. 1, 2026)
No. 23-3742 (D. Neb.) (Loken, Kelly, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/04/233742P.pdf

Mr. Williams pleaded guilty to murder with a firearm during a crime of violence, two counts of Hobbs Act robberies. After sentencing, *Taylor* meant his Hobbs act convictions no longer qualified as crimes of violence. So, the Eighth Circuit sent his case back for resentencing. Specifically, the Court sent it back saying this was an appropriate case for the sentencing package doctrine. He had initially been sentenced to 660 months (540 on Ct 1 and 120 consecutive on 2 and 3). On remand, the district court sentenced him to 222 months on Counts 2 and 3, consecutive to each other. He argue that the district court erred in applying the sentencing package doctrine, did not adequately explain them and imposed a substantively unreasonable sentence.
Sentence package doctrine. In *Greenlaw,* the sentencing package doctrine allowed a court to vacate the entire sentence so the trial court can reconfigure the sentencing plan to ensure it remains adequate to satisfy the sentencing factors of 3553(a). Trial courts can impose a longer

sentence on specific counts as long as the aggregate sentence is no longer than the aggregate sentence initially imposed. Other circuits have declined to apply this doctrine if the counts were "interdependent" meaning they were sentenced concurrently or grouped initially for guideline purposes. Williams sought to apply that rule and the Eighth Circuit declined to do so. The 8th said there is nothing in the Supreme Courts description or application of the doctrine that supports it. Further, the district courts decision applied the doctrine in line with prior Eighth Circuit cases.

Lack of explanation. This was not objected to at sentencing. "one view" is that the 8th should not even conduct plain error review if there was no objection. Regardless, there was an "extensive explanation" that was sufficient to explain the sentence.

Substantive reasonableness. Mr. Williams argues multiple factors made the sentence unreasonable. He had a difficult upbringing, was homeless at the time of the crime, lacked a violent criminal history, the victim was a drug dealer, and that his sentence was only three years shorter than two of his co-defendants who were more culpable and had worse records. Eighth Circuit found the district court considered the appropriate factors but weighed them differently than Williams would like. Further, unwarranted disparities is about national disparities, not differences between co-conspirators. That type of comparison would likely require a consolidated appeal.

Affirmed.

Case #165: *United States v. Loren Goodlow*, 171 F.4th 1106 (8th Cir. Apr. 1, 2026)
No. 24-1851 (D.S.D.) (Kobes, Smith, Kelly)
https://ecf.ca8.uscourts.gov/opndir/26/04/241851P.pdf

Mr. Goodlow was found guilty of numerous counts relating to the sexual abuse of minors and a witness tampering count. Mr. Goodlow was in his thirties and working as a ranch hand. AS was 15 when he moved onto the ranch. At a certain point, they began to talk about sex and he eventually began grabbing and touching her when they were riding on the trails. This progressed to him sending photographs of his penis and requesting nude photos in return. Eventually, he sexually abused her at "the campground" which was just north of the ranch. Another time was at an outbuilding. These acts became a regular occurrence. Then A.S.'s sister visited the ranch and he abused both girls near the campground at a rock formation. AS then told her grandmother about the abuse. Goodlow messaged the sister asking to say AS was lying. He did not want to be taken to jail or 'lose his babies.'

An investigation followed and they found snapchats between him and CJE. CJE was 16 at the time and was Goodlow's Ex's sister. He asked her for nude photographs and she sent a picture of a vagina she found on the internet. He sent a picture of his penis back in response. He appealed on multiple grounds: that the Government did not prove the abuse/abusive conduct occurred in Indian country, that he sought images depicting sexually explicit conduct, that he knew one of the victims was a minor, and that he tampered with a witness.

Sexual abuse of a minor/Abusive sexual conduct. The appeal argued that the government did not prove that several of the acts of abuse occurred in Indian country. This is a mixed question where the jury should determine where the act occurred and the judge should then determine as a matter of law whether that area is within Indian country. Here, the District Court instructed the jury that they must find the acts occurred in Indian Country to convict. However, this error is harmless when a jury has a reasonable basis for finding the crime did occur in Indian

Country. Here, there was a reasonable basis for such a finding (though it seems sparse). While no witness testified about where the rock formation or campground would be on a map, there was evidence that the incidents at the campground, rock formation and trailer, all occurred on the ranch, which was in Indian Country. They also heard testimony that it was a short ride between campground and the ranch home and saw an aerial photograph of the area. The 8th says the record as a whole gave a reasonable basis for the finding.

Attempted sexual exploitation/attempted receipt of child pornography. Mr. Goodlow challenged these convictions related to AS and CJE. Based on him sending photos of his penis to AS and asking her for pictures, asking they send "pic for pic" and then asking for a "butt pic" the jury has evidence to conclude he was attempting to get her to lasciviously exhibit her anus, genitals or pubic area. The same goes for CJE. Mr. Goodlow argued there was no proof he knew her age but given his connections to her family, a reasonable jury could find he knew she was under 18.

Witness Tampering. 8th cir. caselaw requires the Government to show that Mr. Longfellow contemplated a particular proceeding. His statements that he did not want to go to jail only shows he contemplated *a* future proceeding. When he sent the message, an investigation was not even underway. There was not enough to show he contemplated a particular proceeding.

Vacated.

Judge Kelly concurring. She would have vacated the witness tampering charge but under different reasoning. Judge Kelly notes that the proceeding contemplated should be a federal one, not simply a state case. But there is a more fundamental question of whether he even contemplated a proceeding at all. Saying he did not want to be taken to jail does not show he was contemplating trial, that is a possibility any time someone is accused of illegal behavior. "To say that any acknowledgment of that possibility supports a witness tampering charge stretches the statute beyond what it can reasonably bear…"

Judge Kelly also notes there was an instructional issue. He was charged under 1512(c)(2) but the jury instruction tracked the language of 1512(b)(1). However, that issue was not before the court

Judge Kobes, concurring specially. Judge Kobes agrees with Judge Stras that they have added an "element that does not exist." The statute does not require the intent to influence a federal proceeding. But *Petruk* requires it so he was forced to concur in the result.

April 2026

Case #166: *United States v. Robert Wilburn*, 171 F.4th 1122 (8th Cir. Apr. 3, 2026)
No. 25-1234 (E.D. Ark.) (Colloton, Shepherd, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/04/251234P.pdf

Mr. Wilburn was convicted of a 922(g)(1) charge after a jury trial. He was found in a car that was recently purchased by another individual and there was a gun in the car and ammo in the glovebox. He challenges the district court's decisions to allow in 404(b) evidence regarding his prior for unlawful possession of a firearm, allowing in evidence of his recent release from parole, and the sufficiency of the evidence.

404(b). The district court noted that 8th Cir precedent did not give it "much wiggle room" to sustain the objection and noted, to Colloton's dismay, that 8th Cir decisions on 404(b) evidence are "wrong" and this case was a good case to bring up for en banc rehearing. Nevertheless, Judge Colloton concluded the district court did not abuse its discretion by admitting the evidence. The defense was a "mere presence" defense which challenges knowledge of and intent to possess the gun. Judge Colloton explains this is not pure propensity evidence, instead, the fact that he was convicted before shows that he is the cause of the events rather than just being merely unlucky.

Evidence regarding parole. Mr. Wilburn had been released from parole less than two weeks before the arrest and a day before the gun was purchased. Therefore, a reasonable jury could find the timing increased the probability that the owner of the car had purchased the gun for Wilburn. There was little risk of unfair prejudice because the jury had heard of his prior unlawful possession conviction.

Insufficient evidence. The registered owner of the car and gun testified at trial she had put the gun in the car without Mr. Wilburn's knowledge. However, the officer testified to finding the gun in plain view on the driver's side of the vehicle. The jury was entitled to credit that evidence.

Affirmed.

Case #167: *United States v. Ryan Montgomery*, 171 F.4th 1128 (8th Cir. Apr. 3, 2026)
No. 24-2633 (W.D. Mo.) (Colloton, Shepherd, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/04/242633P.pdf

Mr. Montgomery challenges the denial of his motion to suppress. A search warrant was issued allowing officers to search Mr. Montgomery's house in the daytime 6:00 a.m. to 10:00 p.m. before November 3, 2020. On October 28, officers executed the search warrant. Mr. Montgomery claimed it occurred before 6. To succeed on a motion to suppress for a violation of Rule 41, a defendant must show the violation is of a constitutional magnitude, the defendant is prejudiced in that the search would not have taken place or not have been as intrusive, or there is evidence of an intentional and deliberate or reckless disregard for the rule.

Mr. Montgomery presented three witnesses (his family members who also lived in the home) to say the search began before 6:00 a.m. The government presented 5 witnesses to say the search began after 6. The lower court credited the testimony of the government witnesses over Mr. Montgomery's which "is almost never a clear error" on appeal. The district court believed the defense witnesses had discussed their testimony and that affected their recollections. On the other hand, the officers testified to numerous details about their awareness and respect for the

timing restriction. Mr. Montogomery's attempts to show other errors (such as a wrong date in a report or the wrong time on a later video) did not sway the 8th. The district court properly denied the motion.

Affirmed.

Case #168: *United States v. Boyer*, 171 F.4th 1131 (8th Cir. Apr. 6, 2026)
No. 25-1431 (W.D. Mo.) (Gruender, Kelly (author), Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/04/251431P.pdf

Alvin Boyer and Shayla Tilton had been "spending time" together "for a few weeks." Word of their hangouts got to Shayla's estranged husband Freddie, who then contacted Boyer. His messages were threatening at first but apparently changed their tone. Boyer and Freddie ultimately spent a few days discussing Shayla via Facebook. Boyer then arranged for Shayla to meet him at a hotel, where Freddie "came out of the bathroom and hit her in the head with the butt of a rifle." He continued assaulting her until police arrived and he fled.

Boyer faced kidnapping and conspiracy charges, which he took to trial. His defense was that he did not know Freddie intended to assault Shayla. Purportedly to rebut that argument, the government admitted evidence of Boyer's pending state charge for assaulting his own wife. The jury heard this evidence and convicted Boyer, who then received two concurrent 20-year sentences.

On appeal, Boyer argued that the evidence about his wife was irrelevant and more prejudicial than probative. The Eighth noted that the "allegations were serious and simply read to the jury from a probable cause statement," which it said "elevat[ed] the risk of unfair prejudice." And it called relevance a "close call." Yet it side-stepped the issue, saying any error was harmless because the other evidence against Boyer was "substantial." It rejected a related sufficiency claim for essentially the same reasons.

Boyer also alleged his sentence was substantively unreasonable because (in relevant part) the court gave improper weight to the pending charges discussed above. The Eighth observed that the court acknowledged Boyer had not been convicted of the charges—an observation that doesn't seem to fully address Boyer's argument. In any event, the sentence was 10 years below the guidelines range and lower than Freddie's.

The Eighth sensed no abuse of discretion.

Case #169: *United States v. Mejia*, 172 F.4th 601 (8th Cir. Apr. 7, 2026)
No. 24-3380 (W.D. Mo.) (Benton, Grasz, Stras (author))
https://ecf.ca8.uscourts.gov/opndir/26/04/243380P.pdf

Edgar Mejia pled guilty to two drug offenses and went to trial on two others. The jury convicted him and then the judge sentenced him to 322 months in prison plus five years of supervised release.

Mejia raised a sufficiency challenge to his conviction for conspiracy to distribute heroin. Based on jail calls between Mejia and alleged co-conspirator Greg Johnson, the Eighth found enough evidence of a conspiracy. It clarified that it did not matter that Johnson ended up being unable to follow through on his agreement with Mejia—"the crime was complete" at the moment that agreement was made, as "a foiled conspiracy is still a conspiracy." Further, there was evidence from which the jury could have inferred a conspiracy with an unknown supplier.

Mejia also challenged his sentence. He argued that he should not have received 3 history points for an expunged Mo. marijuana conviction. The Eighth said any error was harmless because the court made it clear that it would have landed on 322 months anyway. The opinion admitted that the Eighth once required a court to calculate an alternative range in order for such an "I would have done it anyway" statement to insulate error. But, according to Judge Stras, *Gall* caused the Circuit to shift harmlessness analysis "from mechanically requiring alternative ranges for every alleged error to evaluating whether the 'reasoning' allowed for 'meaningful appellate review.' " He declined to "turn back the clock" and require more fulsome explanation.

Side note: loyal readers will recall that the Eighth recently held (in *Lozano*) that these Mo. expungements count as convictions under the guidelines. A footnote here characterized *Lozano* as holding "that a conviction expunged for the same reason counted *under a different Sentencing Guidelines provision*," Career Offender. Given that any error was harmless, the panel found "no reason to have the parties address *Lozano*." This is at least a suggestion that the expungement analysis could be different for Career Offender vs. history points.

In its concluding paragraphs, the opinion considered an SR condition that required Mejia to perform up to 20 hours of community service every single week until he found employment. The panel suggested that such an open-ended condition might not survive review. But it found the issue not yet ripe and declined to resolve it.

Case #170: *United States v. Robertson*, 172 F.4th 608 (8th Cir. Apr. 8, 2026)
No. 25-2338 (N.D. Iowa) (Colloton, Benton (author), Kelly)
https://ecf.ca8.uscourts.gov/opndir/26/04/252338P.pdf

Officers observed suspected drug activity in and around a Chevy. They continued to surveil that car until it exited a parking lot onto a sidewalk and then onto 6th street. It did so without coming to a full stop. Officers used that supposed traffic violation as a reason to pull the car over. A consent search turned up drugs.

Antonio Robertson was in the Chevy and got tagged with PWID. He tried to suppress the drugs. That failed, so he entered a conditional plea.

His argument on appeal focused on an Iowa law that requires a vehicle to stop before exiting a "private roadway, alley, driveway, or building." Robertson argued that the parking lot was "available for public use as a traffic lane while traveling from one street to another" and therefore not "private."

The Eighth disagreed. The panel credited the lower court's factual finding that the lot was private property—its private owners could tow cars from it, shoo away trespassers, or close it for maintenance. The panel also interpreted Iowa law as foreclosing the idea that "permission to park" equates to open use for traffic purposes. It therefore affirmed.

Case #171: *United States v. Farmer*, 172 F.4th 621 (8th Cir. Apr. 10, 2026)
No. 25-1134 (W.D. Ark.) (Colloton (author), Shepherd, Erickson)
https://ecf.ca8.uscourts.gov/opndir/26/04/251134P.pdf

In 2016, Jessie Farmer pled guilty to two drug crimes. His statute of conviction authorized no more than 96 months in prison. That's what he got.

He served that time and then transitioned to supervised release. He eventually caught violations, including several for flunking or failing to show for drug tests. A judge found the

violations by a preponderance of the evidence and sent Farmer back to prison for 12 more months.

Farmer argued that his revocation and new punishment violated the Fifth and Sixth Amendments. That revocation resulted in prison time above the statutory maximum for his crime. And under *Apprendi*, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Yet there was no jury or reasonable doubt standard at Farmer's revocation.

The Eighth saw no error. It noted that the Supreme Court considered the intersection of SR and the jury right in *Haymond*. That case involved § 3583(k), which required revocation and a minimum five-year sentence for certain CP supervisees. *Haymond* invalidated that provision. In doing so, a plurality of the Justices hinted at problems with SR as a whole.

But the Eighth noted that Justice Breyer's narrower *Haymond* concurrence controls. Justice Breyer found § 3583(k) problematic because it "(1) applies only when a defendant commits a discrete set of federal criminal offenses, (2) takes away the judge's discretion to decide whether violation of a condition of supervised release should result in imprisonment and for how long, and (3) specifically limits the judge's discretion by requiring the judge to impose a mandatory minimum term of imprisonment of at least five years."

The Eighth believed that Farmer's revocation did not implicate the same problems that troubled Justice Breyer. That was true even though the statutes and issue here (§§ 3583(e) and (g)) limited the district judge's discretion. Section (g) requires revocation for some drug violations. But the Eighth said that provision is "tempered" by section (d), "which directs a court to consider whether an exception to revocation is warranted for a defendant who fails a drug test under § 3583(g)." Further, while old section (k) required a five-year sentence, sections (e) and (g) permit a court to calibrate punishment.

For these reasons, the Eighth affirmed.

Case #172: *United States v. Parrow*, 172 F.4th 625 (8th Cir. Apr. 15, 2026)
No. 25-1215 (S.D. Iowa) (Gruender, Kelly, Erickson (author))
https://ecf.ca8.uscourts.gov/opndir/26/04/251215P.pdf

A jury convicted Paul Parrow of PWID and a related conspiracy. Two issues arose during the trial.

First, trial revealed a discovery problem. A government witness—D.B.—testified about Parrow's dealing. That testimony was not described in notes of her police interview. There were other notes from an interview with someone identified by discovery only as a "concerned citizen." It turned out that citizen was *also* D.B., but nothing provided by the government revealed the link between the two interviews.

Parrow sought a mistrial for this discovery violation. The court denied that relief and instead struck "all testimony from D.B. that was not previously disclosed." On appeal, the Eighth blessed that decision because the government had not acted in bad faith and there was "little to no prejudice" resulting from the course that the court took.

The second issue involved "reverse 404(b)" evidence. Defense witness Clemmie Kirk had three drug convictions, one of which he incurred after Parrow's indictment. Clemmie was also an owner of the residence where law enforcement found drugs that the government attributed to Parrow. In fact, one of his convictions involved dealing from that very house.

The defense sought to introduce Clemmie's convictions to establish his "opportunity and knowledge regarding storing methamphetamine and fentanyl in a safe inside a bench at the house." The court did not allow the 404(b) evidence, but it did let the jury hear about the convictions under Rule 609. That admission was more limited than 404(b) admission would have been: the jury would not hear the details behind the convictions (including the link to the home) and could only consider that evidence for the purpose of deciding whether to believe Clemmie's testimony and how much weight to give it.

On appeal, the Eighth held that it was an abuse of discretion to prohibit the reverse 404(b) evidence. The convictions were relevant to the possession element and had a non-propensity purpose—to show Clemmie's opportunity. It was not fatal that the drugs involved in his convictions did not match the drugs involved in this trial. And the convictions were not too remote; the Eighth used 13 years as a remoteness benchmark and observed that Clemmie's convictions were more recent than that. Finally, there was no bar on using the conviction that Clemmie incurred between Parrow's indictment and his trial: "[t]o deny the admission of a conviction solely because it occurred after the indictment is an abuse of discretion."

The Eighth also explained that the evidence would not have been substantially more prejudicial than probative. Parrow did not seek to introduce a significant amount of evidence that would have required a "mini-trial" on Clemmie's bad acts, and the court could have used a limiting instruction as a safeguard.

Thanks to the 404(b) issue, the panel vacated the PWID conviction and remanded for a new trial. It nevertheless affirmed the conspiracy conviction because the 404(b) error was harmless as to that count.

Case #173: *United States v. Matthew Keirans* , __F.4th __ (8th Cir. Apr. 23, 2026)
No. 25-1339 (N.D. Iowa) (Colloton, Kobes, Gruender (author))
https://ecf.ca8.uscourts.gov/opndir/26/04/251339P.pdf

Pled guilty to making a false statement to a National Credit Union Administration insured institution (18 USC 1014) and aggravated identity theft (18 USC 1028A(a)(1)).

Guideline Range of 12 to 18 months followed by mandatory 24 months consecutive. Sentenced to 144 months imprisonment. Challenge to substantive reasonableness of term of imprisonment and challenge to special conditions of supervised release (mental health evaluation/treatment and substance abuse evaluation/treatment)

For thirty years, Keirans used the identity of a former co-worker, William Woods, "in virtually every aspect of his life" - obtained a job earning more than $100,000/year at a hospital, insurance, a social security card, driver's licenses, titles, loans, and credit. Keirans paid taxes under Woods's identity. When Keirans twice stole a car, authorities issued warrants and booked him under Woods's name. When Keirans got married, his wife did not know his real name and their child had Woods's surname.

In 2019, at a bank branch in California the real William Woods, "then homeless and transient", attempted to report the fraudulent use of his identity. However, the bank ended up calling Keirans as the address on the account was in Wisconsin, not California, and the real William Woods could not answer the security questions on the account. Keirans told the bank that no one in California should have access to the bank accounts, prompting the bank to then call the police. Keirans sent the police copies of a social security card, driver's license, and birth

certificate – all in William Woods's name. As a result, the real William Woods – not Keirans – was then arrested for identity theft and Keirans told police he wished to prosecute Woods.

After being charged with felony identity theft and false impersonation, Woods continued to insist he was the real William Woods, but that only got him placed into a mental hospital after being found not mentally competent to stand trial. Ultimately in March 2021, the real Woods was convicted of the felony charges and sentenced to time served and ordered to "use only [his] true name, 'Matthew Keirans.'" Altogether, the real Woods spent 428 days in jail and 147 days in a mental hospital.

After his release, the real Woods contacted the hospital where Matthew Keirans worked and told them that Keirans had stolen his identity. They then contacted law enforcement where a detective used DNA evidence to prove conclusively that Woods, not Keirans, was the true William Woods. After being confronted with this evidence, Matthew Keirans admitted to using Woods's identity, producing false documents, and lying to law enforcement.

After pleading guilty to making a false statement to a NCUA insured institution and aggravated identity theft, Keiran's guideline range was calculated to be 12 to 18 months followed by a mandatory term of 24 months. The District Court varied upward sentencing Keirans to 144 months imprisonment.

Keirans raised two claims as to why the sentence was substantively unreasonable: (1) district court committed "a clear error of judgment" in giving "little weight" to statements about his childhood; and (2) district court overstated the harm that his offenses caused.

As to the first claim, the Eighth stated although there was an "alleged inconsistency" between the district court disbelieving Keirans about his childhood but crediting his statements when imposing a condition of mental health treatment, this was not a clear error of judgment. The Eighth noted that the mental health information was also contained in the PSR, not solely Keirans's affidavit, and a "sentencing judge is free to believe all, some, or none of a witness's testimony."

As to the second claim, the Eighth found no clear error in the district court's description of Keirans's offenses and the harm caused as "the district court has wide latitude to weigh the relevant factors…" And "[a]s the district court emphasized, Keirans's conduct was 'unique, unusual, and egregious' and involved 'manipulat[ing] the criminal justice system to prosecute an innocent man.'"

Keirans also challenged the imposition of two special conditions of supervised release: (1) participate in a mental health evaluation and complete any recommended treatment; and (2) participate in a substance abuse evaluation and complete any recommended treatment". Keirans argued that both conditions were not reasonably related to his history/characteristics, imposing a deprivation of liberty greater than reasonably necessary as they were based upon his conduct from three decades ago.

However, the Eighth found that throughout those three decades Keirans continued to be someone else to the point of hiding his identity from his wife and giving his child his victim's surname. This conduct made it reasonable for the district court to conclude that Keirans needed to undergo mental health and substance abuse evaluations. "Further, [his] history of deceit undercuts the credibility of his assertions that he no longer struggles with mental health difficulties or substance abuse." Finally, the Eighth noted that he is only required to undergo treatment if the evaluations recommend it.

Judgment affirmed.

Case #174: *United States v. Hudspeth, Sr.*, __F.4th___ (8th Cir. Apr. 24, 2026)
No. 25-1434 (D.S.D.) (Benton, Shepherd, Loken (author))
https://ecf.ca8.uscourts.gov/opndir/26/04/251434P.pdf

Issue: Right to Present a Complete Defense. Jury Trial. Convicted of aggravated sexual abuse of a child (18 USC 1153, 2241(c), & 2246(2)(D)) and abusive sexual contact of a child (18 USC 1153, 2244(a)(5), & 2246(3)). Sentenced to mandatory minimum of 360 months imprisonment.

Victim testified that defendant touched her sexually on at least two occasions when she was 5-7 years old – credibility of testimony was "major issue" at trial. There was also evidence of admissions made by defendant during a FBI interview which took place after being told he failed a polygraph. District Court ruled that testimony by agent and redacted version of interview transcript would be admitted but excluded both parties from telling jury that defendant failed a polygraph test just before the interview. Defendant argued that exclusion of this evidence violated his constitutional right to present complete defense "because it prevented him from arguing…that he made the incriminating statements only to 'explain away' adverse polygraph test results."

Eighth noted there is a balance to be struck between right to present a complete defense and evidentiary rules: "ordinary evidentiary rules still apply, except when they infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." Here, Eighth found that neither requirement was satisfied.

(1) Weighty interest – defendant lacked weighty interest in excluded testimony as polygraph evidence is unreliable and disfavored. Additionally, jury was aware of the context of interview without having to be told specifically about the polygraph.

(2) Arbitrary or Disproportionate - there was strong justification for excluding mention of polygraph, including "ensuring…only reliable evidence is introduced…preserving court members' role in determining credibility", and avoiding collateral litigation. Here, "slightly less context" for admissions was "proportionate way of keeping unreliable evidence out of the trial"

Finally, even if district court erred, any error was harmless.

Judgment Affirmed.

Case #175: *United States v. Hallmon*, __F.4th ___ (8th Cir. Apr. 24, 2026)
No. 24-1837 (D. Minn.) (Benton, Kelly, and Grasz (author))
https://ecf.ca8.uscourts.gov/opndir/26/04/241837P.pdf

Issues: (1) suppression of evidence; (2) suppression of statements; (3) sufficiency of evidence that ammo travelled in interstate commerce; (4) exclusion of jail calls; (5) obstruction of justice enhancement; and (6) 2nd Amendment. Jury Trial. Convicted of being felon in possession of ammunition (18 USC 922(g)(1) & 924(a)(8). Sentenced to 74 months imprisonment.

Traffic stop for object hanging from rearview mirror and having suspended license. Four occupants – defendant, fiancée, and two children. Defendant instructed to exit vehicle and officer saw bag that appeared to be marijuana. Defendant stated there might be some marijuana in ashtray. Search of vehicle conducted. Inside fiancée's purse was a loaded "ghost gun". Fiancée told police gun belonged to defendant. Defendant stated he was "taking the fall" for firearm and that the gun was his. Indicted for being a felon in possession of ammunition.

(1) Suppression of Evidence. Defendant argued that the stop, the duration, and the subsequent search violated 4th Amendment. Eighth disagreed.
   a) Stop - probable cause for stop based upon the hanging object and suspended license as both are unlawful under Minn. law. Body camera footage showed a suspended object and defendant admitted to suspended license so validated claimed reasons for stop. Further, magistrate judge best positioned to determine credibility.
   b) Duration – Discussion of reason for stop and running criminal history check do not unreasonably prolong stop's duration. Officer observed that defendant was nervous and physical signs of marijuana use – bloodshot, watery eyes, and dilated pupils – which provided reasonable articulable suspicion to extend the stop. Although footage did not show these aspects, great deference given to lower court's credibility determinations.
   c) Search–lawfully instructed to exit; probable cause after seeing bag of marijuana and statement that may be marijuana in ash tray

(2) Suppression of Statements. D argued he was in custody during the traffic stop without Miranda. Eighth disagreed he was in custody, therefore not required to be advised of Miranda rights. Eighth noted that sometimes a motorist detained is in custody but here defendant was "not constrained to 'the degree associated with a formal arrest.'" – no cuffs, not forced to sit in car. Only 2 officers on scene and no strong arm or deceptive tactics used.

(3) Sufficiency of Interstate Commerce Evidence – Only evidence that ammo travelled in interstate commerce was ATF Agent's testimony that it travelled in interstate commerce after inspecting the ammo and its headstamps. Defendant argued that this did not disprove defendant's theory that bullets were counterfeit. Eighth found argument unpersuasive as evidence does not "need to exclude every reasonable hypothesis…" Further noted that "expert testimony about a firearm's location of manufacture satisfies the government's burden" on interstate commerce element.

(4) Exclusion of Jail Calls – Defendant sought to introduce jail calls between him and fiancée to support inference that fiancée owned firearm, rather than him. Sought introduction under FRE 803(3) – Present State of Mind; FRE 807 – Residual Exception; and Due Process. Eighth found that statements were properly excluded.
   a) Present State of Mind (803(3)) – Statements were that "she 'would've took that charge' and 'would've told [officer] that [firearm] was mine'". These were not an expression of present feelings or observations, but a reflection about the past. Further, they were not "substantially contemporaneous" with the relevant events.
   b) Residual Exception (807) – This exception applies to "exceptional circumstances where the evidence is necessary, highly probative, and carries a guarantee of trustworthiness equivalent to or superior to…other recognized exceptions." Here, not reliable – fiancée not neutral party and not made under oath. Exceptional circumstances not present.
   c) Due Process – claim that exclusion violated *Chambers v. Mississippi*, 410 U.S. 284 (1973). Eighth disagreed – *Chambers* was highly case specific and facts here not analogous.

(5) Obstruction of Justice (3C1.1) – Eighth upheld application based upon defendant attempting to get fiancée to claim ownership of gun and committing perjury by testifying that when he used the word "burner" he was referring to a phone rather than a firearm. Noted that Eighth has previously upheld enhancement where defendant did not threaten or intimidate anyone with jail calls.

(6) 2nd Amendment – Challenged both facially and as applied. Foreclosed by precedent.

May 2026

Case #176: *United States v. Weatherspoon*, __F.4th __ (8th Cir. May 5, 2026)
No. 25-1556 (S.D. Iowa) (Arnold (author), Kelly, Kobes)
https://ecf.ca8.uscourts.gov/opndir/26/05/251556P.pdf

Weatherspoon carried out a cross-country fraudulent scheme while incarcerated in a Georgia prison in which he—and others—identified women who worked in the medical profession, called them from cell phones dropped in the prison via drones, and convinced them they failed to appear in court after a subpoena. They used a spoofing application to display the local police department's phone number on Caller ID, would impersonate police officers, and threaten victims with arrest unless they paid a bond. Victims would then meet other (not-incarcerated) co-conspirators at local bail bond companies and hand over money.

Weatherspoon pleaded guilty to conspiracy to commit wire fraud, *see* 18 U.S.C. §§ 1343, 1349, and was sentenced to 130 months incarceration. On appeal, he challenged two enhancements and argued the District Court imposed an unreasonable sentence.

First, he challenged the two-level enhancement under USSG § 2B1.1(b)(10)(C) that the offense "involved sophisticated means." The court held the District Court did not clearly error in applying the enhancement as the overall scheme was more than a "garden variety phone scam" in that it involved repetitive and highly coordinated conduct across the country for over two years, duped dozens of people out of hundreds of thousands of dollars, involved numerous people who gathered information on the victims in advance, used that information and technology to trick them, and met them to receive payment. Weatherspoon also argued this enhancement should not have applied because the court had already applied the two-level enhancement for impersonating a police officer, and this amounted to double counting. *See* USSG § 2B1.1(b)(9)(A). The Eighth Circuit disagreed, explaining that the enhancement for sophisticated means was applied for multiple reasons, of which impersonating law enforcement was only one.

Second, he challenged the four-level enhancement under USSG § 3B1.1(a) for being an organizer or leader of criminal activity involving five or more participants or was otherwise extensive by arguing (1) the court should not have credited the FBI agent's testimony at sentencing that Weatherspoon was the "hub" of the conspiracy; (2) the agent testified there were a couple of conspirators higher than him in the conspiracy's hierarchy; and (3) there was no evidence he directed or made decisions for other coconspirators. The court explained (1) there was no reason to conclude the agent was not credible; (2) the enhancement is not reserved for the highest ranking participant, it is for "an" organizer or leader not "the" organizer or leader; and (3) the government presented evidence at sentencing that he did direct or make decisions for others that the District Court properly relied on.

Finally, Weatherspoon argued his criminal history level was too high because it over-represented the seriousness of his criminal history or likelihood he would recidivate. He sought a downward departure under USSG § 4A1.3(b)(1) (2024), but the district court denied the motion. The court held this was unreviewable except in circumstances not present in this case but did analyze whether the court imposed a substantively unreasonable sentence based on an over-represented criminal history. They held a sentence at the bottom of the sentencing range, after considering argument and his criminal history, including the fact that he continued to commit crimes while incarcerated, was reasonable.

Affirmed.