
SUMMARIES OF RECENT CRIMINAL CASE LAW
OCTOBER 1, 2018–DECEMBER 31, 2018

**DECISION OF THE
SUPREME COURT OF THE UNITED STATES**

[*United States v. Stitt*, 139 S. Ct. 399 \(2018\)](#) (a burglary conviction under a statute that prohibits the unlawful entry into a building, structure, or vehicle that has been adapted or is customarily used for overnight accommodation to commit a crime “is burglary” under the Armed Career Criminal Act, § 924(e)(2)(B)(ii)).

**DECISIONS OF THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
PUBLISHED OPINIONS**

[*United States v. Ovalles*, 905 F.3d 1231 \(11th Cir. 2018\) \(en banc\)](#) (the court en banc overruled prior precedent holding that 18 U.S.C. § 924(c)(3)(B) requires a categorical approach to classify an offense as a “crime of violence” under that definition’s “residual clause”; the majority held that in light of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), the doctrine of constitutional avoidance required “a conduct-based approach that accounts for the actual, real-world facts of the crime’s commission” instead of the voiding of the § 924(c) residual clause; Jill Pryor, J., joined by Wilson, Martin, and Jordan, JJ., dissented, and would have held that § 924(c)(3)(B) is void for vagueness because its text is identical to 18 U.S.C. § 16(b), which *Dimaya* held to be void on that basis).

[*United States v. Ovalles*, 905 F.3d 1300 \(11th Cir. 2018\)](#) (on remand from the en banc court, the panel held as an independent ground for affirmance that attempted carjacking categorically qualifies as a crime of violence under the elements clause of 18 U.S.C. § 924(c)).

[United States v. Couch, 906 F.3d 1223 \(11th Cir. 2018\)](#) (the False Claims Act does not permit a *qui tam* plaintiff to intervene in criminal forfeiture proceedings).

[United States v. Garcia, 906 F.3d 1255 \(11th Cir. 2018\)](#) (the trial court's error in allowing the government to introduce inculpatory evidence while Ms. Garcia and her counsel were absent did not require reversal of the convictions; Ms. Garcia did not object to the error and could not prove that it affected her substantial rights because their absence was brief, the testimony during their absence did not pertain to the contested issues at trial and was largely cumulative, the government's case was strong, and the defense was subsequently able to address the testimony; the error was also not structural).

[United States v. Carthen, 906 F.3d 1315 \(11th Cir. 2018\)](#) ((1) the district court properly excluded, under Fed. R. Evid. 608(b), defense witnesses who would have impeached a government witness by contradicting his testimony that he had not previously lied under oath, and (2) a 57-year mandatory-minimum sentence for three 18 U.S.C. § 924(c) convictions under prior law was not cruel or unusual under the Eighth Amendment; William Pryor, J., concurred, but wrote separately to note that current circuit precedent holding that Rule 608(b) embodies the common-law bar against impeachment by contradiction—i.e., by “extrinsic evidence of ‘collateral’ facts”—is contrary to the current rule’s text, as other circuits have held).

[United States v. Jones, 906 F.3d 1325 \(11th Cir. 2018\)](#) (a Florida conviction for second-degree murder qualifies as a violent felony under the ACCA’s elements clause; prior precedent established that a conviction for first-degree murder qualified as an elements-clause violent felony and the element of premeditation is the only difference between first- and second-degree murder).

[United States v. Hernandez, 906 F.3d 1367 \(11th Cir. 2018\)](#) (the Federal Rules of Evidence do not apply to 21 U.S.C. § 851 evidentiary hearings because they are miscellaneous proceedings akin to sentencing hearings;

to be admissible at such a hearing, evidence simply must have a “sufficient indicia of reliability”).

[*In re: Garrett*, 908 F.3d 686 \(11th Cir. 2018\)](#) (following the court’s en banc opinion in *Ovalles*, a vagueness challenge to the residual clause in 18 U.S.C. § 924(c) based on *Johnson v. United States* or *Sessions v. Dimaya* cannot support a second or successive § 2255 motion).

[*United States v. St. Hubert*, 909 F.3d 335 \(11th Cir. 2018\)](#) (the court *sua sponte* issued a modified opinion following *Ovalles* (1) reinstating in full its prior opinion holding that Hobbs Act robbery categorically qualifies as a violent felony under § 924(c)’s use-of-force clause, and (2) determining that Mr. St. Hubert’s robbery was a crime of violence under § 924(c)(3)(B) because it involved a substantial risk that physical force might be used when he brandished a firearm and threatened to shoot store employees).

[*United States v. Oliva*, 909 F.3d 1292 \(11th Cir. 2018\)](#) (the district court did not err in denying a motion to dismiss for a speedy-trial violation, though the government’s gross negligence caused a delay of nearly 23 months between indictment and arrest, the delay did not amount to a Sixth Amendment violation because the defendants did not prove actual prejudice).

[*United States v. Barton*, 909 F.3d 1323 \(11th Cir. 2018\)](#) (the district court did not abuse its discretion in admitting expert testimony regarding DNA evidence, despite Mr. Barton’s argument that the expert’s methods were not sufficiently reliable under Fed. R. Evid. 702 because Rule 702 is only a screening procedure, and Mr. Barton’s reliability arguments went to the weight of the evidence, not its admissibility).

UNPUBLISHED OPINIONS FROM THE NORTHERN DISTRICT OF ALABAMA

[*United States v. Jones*, --- F. App’x ---, 2018 WL 4944819 \(11th Cir. Oct. 12, 2018\)](#) (N.D. Ala. No. 1:17-cr-00326-LSC-JHE-) (an officer had reasonable suspicion to stop Mr. Jones where the officer encountered him walking in a high-crime area shortly after several shots were fired in the

neighborhood, he appeared nervous, and he matched the description of the shooter provided over the radio).

[United States v. Simeon, --- F. App'x ---, 2018 WL 4998132 \(11th Cir. Oct. 16, 2018\)](#) (N.D. Ala. No. 2:16-cr-00319-AKK-JHE) (police lawfully prolonged a traffic stop for a dog sniff based on reasonable suspicion that the car contained contraband, in light of Mr. Simeon's arrest warrant for fraud, conflicting accounts from him and the driver as to whether he had luggage in the car, and the driver's visible agitation when questioned by police).

[United States v. Jones, --- F. App'x ---, 2018 WL 5116334 \(11th Cir. Oct. 19, 2018\)](#) (N.D. Ala. No. 4:17-cr-00336-LSC-JHE) (Mr. Jones's 60-month sentence, imposed as an upward variance from his 21-to-27-month Guideline range, was (1) procedurally reasonable because the court's explanation of the sentence, though brief, demonstrated that it considered the 18 U.S.C. § 3553(a) factors, and (2) substantively reasonable because the court acted within its discretion in giving great weight to Mr. Jones's criminal history).

[United States v. Canales-Licona, --- F. App'x ---, 2018 WL 5778124 \(11th Cir. Nov. 2, 2018\)](#) (N.D. Ala. No. 7:17-cr-00081-LSC-JHE) ((1) in a trial for possession with intent to distribute cocaine concealed in a truck trailer, the admission of testimony that Mr. Canales-Licona previously transported cocaine concealed in his truck's cab did not abuse the district court's discretion under Fed. R. Evid. 403 or 404; (2) the denial of a minor-role adjustment was not clear error under U.S.S.G. § 3B1.2 because Mr. Canales-Licona's "base offense level accounted for the actual amount of drugs involved in his offense," so "the relevant conduct attributed to him is identical to his actual conduct").

[United States v. Russell, --- F. App'x ---, 2018 WL 5791848 \(11th Cir. Nov. 5, 2018\)](#) (N.D. Ala. No. 4:17-cr-00337-LSC-JHE) (a 15-year term of supervised release was not imposed in plainly erroneous reliance on the impermissible factor of retribution, was adequately explained, and was substantively reasonable for three counts of heroin distribution despite

being well above the Sentencing Guidelines' recommendation of three years).

[United States v. Collins, --- F. App'x ---, 2018 WL 5783683 \(11th Cir. Nov. 5, 2018\)](#) (N.D. Ala. No. 7:17-cr-00079-LSC-JHE) (the district court plainly erred by treating as statutorily mandated the special condition of supervised release that Mr. Collins register as a sex offender; when a defendant was less than 14 years old at the time of a prior sex offense, the registration condition is discretionary rather than mandatory).

[United States v. Brown, --- F. App'x ---, 2018 WL 5879686 \(11th Cir. Nov. 8, 2018\)](#) (N.D. Ala. No. 2:16-cr-00167-AKK-SGC) (the district court did not plainly err by accepting Mr. Brown's guilty plea to bank robbery, despite his denial that he reached into his jacket during the offense because the government's factual basis alleged, because other undisputed details in the factual basis could establish "intimidation" by themselves).

[United States v. Adams, --- F. App'x ---, 2018 WL 6177151 \(11th Cir. Nov. 26, 2018\)](#) (N.D. Ala. No. 5:16-cr-00221-RDP-JHE) (the district court did not plainly err in admitting cell-site records because testimony at the detention hearing showed that the FBI obtained the records via warrant).

[United States v. Chimaera-El, --- F. App'x ---, 2018 WL 6435719 \(11th Cir. Dec. 7, 2018\)](#) (N.D. Ala. No. 2:17-cr-00150-MHH-SGC) (the district court erred under Fed. R. Crim. P. 11 by failing to warn Mr. Chimaera-El that he could not withdraw his plea if the court did not follow the government's sentencing recommendation, but the error did not warrant reversal under the plain error standard because the record as a whole reflected that he knew this fact).

[United States v. Sewell, --- F. App'x ---, 2018 WL 6567942 \(11th Cir. Dec. 13, 2018\)](#) (N.D. Ala. No. 7:17-cr-00434-AKK-HNJ) (binding precedent supported the district court's classification of Mr. Sewell's prior Alabama conviction for trafficking marijuana as a controlled substance offense under U.S.S.G. § 4B1.2(b), and even if the classification had been error, it would have been harmless because the court would have imposed the same sentence and the sentence was reasonable).