SUMMARIES OF RECENT CASE LAW
OCTOBER 1, 2019–DECEMBER 31, 2019

DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PUBLISHED OPINIONS

United States v. Sheffield, 939 F.3d 1274 (11th Cir. 2019) (Where the appropriate restitution amount is definite and easy to calculate, the government cannot satisfy its burden of proof by relying on a reasonable estimate of loss. Instead, the government must submit an exact calculation and figure.)

United States v. Sanchez, 940 F.3d 526 (11th Cir. 2019) (Mr. Sanchez's New York convictions for first-degree robbery and second-degree murder qualify as violent felonies under the ACCA. The Court joined other circuits in holding that the intentional causation of bodily injury or death, even by indirect means such as poisoning or withholding medical treatment or food, necessarily involves the use of physical force under the ACCA's elements clause.)

Bourtzakis v. U.S. Att'y Gen., 940 F.3d 616 (11th Cir. 2019) (An immigrant's claim in district court that a prior conviction was not an aggravated felony preserved that question for appeal, and on appeal he can "make any argument in support of" that claim; he is not limited to the precise arguments he made below.)

United States v. Thomason, 940 F.3d 1166 (11th Cir. 2019) (After granting a 28 U.S.C. § 2255 petition, the district court did not abuse its discretion by modifying the sentence without holding a resentencing hearing. A resentencing hearing was not required because the guidelines range did not change and the district court imposed a less onerous total sentence.)

United States v. Van Buren, 940 F.3d 1192 (11th Cir. 2019) (The Court vacated Mr. Van Buren's conviction for honest-services fraud for undertaking an "official act" in his capacity as a police officer in exchange for money, and remanded for a new trial. The jury instructions should have instructed that an "official act" "must be similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee.")

United States v. Bishop, 940 F.3d 1242 (11th Cir. 2019) (The Court joined other circuits to hold that mere proximity between a firearm and drugs possessed for personal use cannot support the U.S.S.G. § 2K2.1(b)(6)(B) enhancement without a finding that the gun facilitated or had the potential to facilitate the defendant's drug possession.)

United States v. Pearson, 940 F.3d 1210 (11th Cir. 2019) (The Court vacated the district court's merits denial of Mr. Pearson's unauthorized successive claims under 28 U.S.C. § 2255 and remanded with instructions to dismiss those challenges for lack of subject-matter jurisdiction. The Court also held that district court did not commit a clear error of judgment in weighing the 18 U.S.C. § 3553(a) factors and imposing a 447-month sentence.)

Steiner v. United States, 940 F.3d 1282 (11th Cir. 2019) (As an issue of first impression, the Court held that *Rosemond v. United States*, 572 U.S. 65 (2014), applies retroactively to cases on collateral review. In *Rosemond*, the Supreme Court held that the intent requirement of 18 U.S.C. § 2 in the context of 18 U.S.C. § 924(c) requires that the defendant had advance knowledge the co-conspirators would use or carry a firearm during the crime of violence.)

Gill ex rel. K.C.R. v. Judd, 941 F.3d 504 (11th Cir. 2019) (The Court affirmed the district court's conclusion that the jury's verdict that an arresting deputy had consent to enter a house was not against the great weight of the evidence and did not result in a miscarriage of justice. In analyzing the evidence, the Court explained that consent need not be verbal to be valid and that non-verbal cues can signal consent.)

United States v. Ochoa, 941 F.3d 1074 (11th Cir. 2019) (Mr. Ochoa appealed from his convictions for Hobbs Act robbery, carrying a firearm during and in relation to a crime of violence, and possessing a firearm and ammunition as a convicted felon. On appeal, he challenged the district court's (1) limitation of his cross-examination of an FBI Task Force Officer; (2) denial of his motion to suppress pre- and post-*Miranda* statements; (3) dismissal of the felon-in-possession charge without prejudice; (4) denial of his motions for judgment of acquittal; and (5) cumulative error. The Court affirmed on all grounds with Judge Rosenbaum concurring in part and dissenting in part. Judge Rosenbaum would have found reversible error on the district court's denial of the suppression motion on the public-safety exception, vacated the felon-in-possession conviction, and remanded for a new trial on that count.)

United States v. Reed, 941 F.3d 1018 (11th Cir. 2019) (On remand from the Supreme Court for reconsideration in light *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Court affirmed Mr. Reed's conviction under 18 U.S.C. § 922(g)(1). The Court concluded that the record establishes that Mr. Reed knew of his status as a felon and that any error did not affect his substantial rights or the fairness, integrity, or public reputation of his trial.)

United States v. Harris, 941 F.3d 1048 (11th Cir. 2019) (Alabama attempted first-degree assault qualifies as a violent felony under the ACCA's elements clause. An attempt requires specific intent, and the only ways an attempted assault can occur are causation of serious injury and serious disfigurement, both of which qualify under the elements clause.)

United States v. Hunt, 941 F.3d 1259 (11th Cir. 2019) (Following *Stokeling v. United States*, 139 S. Ct. 544, 555 (2019) and *In re Welch*, 884 F.3d 1319, 1320 (11th Cir. 2018), all degrees of Alabama robbery qualify as "violent felonies" under the elements clause of the ACCA and as "crimes of violence" under the elements clause of U.S.S.G. § 4B1.2.).

In re Wright, 942 F.3d 1063 (11th Cir. 2019) (The Court denied Mr. Wright's application for leave to file a successive 28 U.S.C. § 2255 motion

related to *Rehaif v. United States*, 139 S. Ct. 2191 (2019). *Rehaif* did not announce a new rule of constitutional law, and the Supreme Court did not make it retroactive to cases on collateral review.)

Brown v. United States, 942 F.3d 1069 (11th Cir. 2019) (The Court joined other circuits to hold that after *Davis v. United States*, 139 S. Ct. 2319 (2019), conspiracy to commit Hobbs Act robbery does not qualify as a "crime of violence" as defined by 18 U.S.C. § 924(c)(3)(A).)

United States v. Achey, 943 F.3d 909 (11th Cir. 2019) (If an indictment, fairly read, charges that the defendant conspired to violate 21 U.S.C. § 841 with the specific substance, the government must prove the defendant's *mens rea* regarding that specific substance. But if the specific substance is referenced only for sentencing purposes, the government is not required to prove the defendant's *mens rea* regarding the specific substance, and proof of the defendant's *mens rea* regarding generic controlled substances will suffice.)

United States v. Perez, 943 F.3d 1329 (11th Cir. 2019) (The district court clearly erred in applying an enhancement under U.S.S.G. § 2B3.1(b)(2)(F) because Mr. Perez's conduct and language during a bank robbery did not rise to the level of a threat of death. That enhancement pertains to only those robberies where the defendant relied on a threat of death in committing the robbery.)

United States v. Vineyard, 945 F.3d 1164 (11th Cir. 2019) (N.D. Ala. No. 5:17-cr-00383-RDP-JHE-1) (The Court held that (1) the categorical approach applies to determine whether an offense is a "sex offense" that falls under SORNA, and (2) "sexual contact," as that term is used in SORNA, means "a touching or meeting of body surfaces where the touching or meeting is related to or for the purpose of sexual gratification.")

United States v. Bankston, 945 F.3d 1316 (11th Cir. 2019) (The district court clearly erred in applying an enhancement under U.S.S.G. § 3B1.5 for the "use" of body armor. Merely selling—as opposed to bartering with—body armor is not a "use" of body armor that gives rise to the enhancement.)

UNPUBLISHED OPINIONS FROM THE NORTHERN DISTRICT OF ALABAMA

United States v. Rash, 787 F. App'x 648 (11th Cir. 2019) (N.D. Ala. No. 2:17-cr-535-LSC-JHE) (The district court did not commit clear error in denying Mr. Rash's motion to suppress. The Court found no error in the district court's crediting of the officers' testimony and determining that the automobile exception to the Fourth Amendment's warrant requirement applied.)

Boykin v. United States, 783 F. App'x 1001 (11th Cir. 2019) (N.D. Ala. No. 2:16-cv-8081-LSC) (The Court affirmed the district court's dismissal of Mr. Boykin's motion under 28 U.S.C. § 2255 in light of *United States v. Hunt*, 941 F.3d 1259 (11th Cir. 2019).)

United States v. Collins, 794 F. App'x 825 (11th Cir. 2019) (N.D. Ala. No. 7:17-cr-79-LSC-JHE) (The 240-month total sentence for bank robbery and hostage taking during the robbery was reasonable because the district court provided a sufficiently compelling justification for the 120-month upward variance. The court considered the nature and circumstances of the offense, victim impact, Mr. Collins's criminal history, and the need to promote respect for the law and to protect the public.)

United States v. Cheeks, 795 F. App'x 805 (11th Cir. 2019) (N.D. Ala. No. 1:17-cr-467-MHH-TMP) (The district court properly denied the motion to suppress evidence seized following a traffic stop for failure to signal throughout the entire time the car was changing lanes. The district court did not err in finding that traffic stop was valid because the police officer reasonably believed that a turn signal must be given through completion of the lane change. The officer's testimony that he smelled marijuana also provided reasonable suspicion, justifying an extension of the stop to investigate drug crimes.)