

Dan Siegel's  
Federal Criminal Defense  
**Victory Newsletter**

A weekly summary of newly filed,  
defense-favorable, published federal decisions  
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**CA11 grants new trial in prosecution for running a pill mill; under the Supreme Court's recent decision in *Ruan*, government must prove *two mens rea* elements: (1) that the defendant-doctor "knew" that he was dispensing a controlled substance, and (2) that the defendant-doctor "knew" that he was acting in an unauthorized manner; DC erred in failing to instruct on the second element.** U.S. v. Xiulu Ruan, 2023 WL 106451, No. 17-12653, CA11, Jan. 5, 2023. Government failed to show that the error was harmless beyond a reasonable doubt: "a properly instructed jury may not have convicted the defendants had it known that Dr. Ruan's and Dr. Couch's subjective beliefs that they were acting properly was a defense to these charges." Op. at \*3.

**CA8 holds that district court erred in denying defense counsel's motion to review jury questionnaires that were completed as part of voir dire.** U.S. v. Ronald Donte Finley, Jr., 2023 WL 127502, No. 22-1014, CA8, Jan. 9, 2023. In light of the Covid-19 pandemic, and with input from the parties, DC sent written questionnaires to prospective jurors. Prior to in person voir dire, D counsel moved for an opportunity to review the questionnaires. DC denied the motion, as some of the prospective jurors made "gratuitous comments" that were "not appropriate for any courtroom." Op. at \*3. In addition, DC denied defense request to maintain the questionnaires under seal for purposes of appellate review. On appeal from conviction, CA8 remands "for the limited purpose of disclosing the completed questionnaires," and then "taking any steps [DC] deems necessary to determine whether concealed jury bias prejudiced [the defendant] ... [w]e retain jurisdiction over the appeal during this limited remand." Op. at \*7.

**In prosecution for running a pill mill, DC precludes gov from introducing evidence of D's prior conviction for possessing child porn.** U.S. v. Lonnie Joseph Parker, 2022 WL 5213206, No. 19-CR-40018, W.D. Arkansas, Texarkana Div., Hickey, C.J., Oct. 5, 2022. "The [gov] may not introduce evidence of [D's] 2000 conviction unless [D] first opens the door ... the government offers little explanation as to why evidence of [D's] past conviction is probative ... evidence of crimes against children, like [D's] child pornography conviction, could invoke strong feelings among jurors, especially where the pornography possessed by [D] was sadistic in nature ...." Op. \*6, cite omitted.

**Where D charged with "involuntary manslaughter in Indian Country," & charge arose from car crash allegedly caused by D's speeding, DC precludes government from cross-examining D on prior meth distribution conviction.** U.S. v. Patrick Austin, 2022 WL 16922074, No. 19-CR-490, D. Utah, Campbell, J., Nov. 14, 2022. "[T]he fact that [D] was involved in [meth] trafficking is not particularly relevant to his character for truthfulness as a witness. Further weighing against admission is the fact that a [meth]-related conviction is highly damaging and likely to be very prejudicial. Moreover, allowing [D] to be impeached by this prior conviction will chill his testimony, which is likely to be important as to his mental state, which is ... at issue." Op. at \*7, cites omitted.

**DC abused its discretion when, without conducting evidentiary hearing, it denied motion to amend 2255 motion.** Amaury Villa, 2023 WL 19075, No. 22-5437, CA6, Jan. 3, 2023. "[DC] must hold an evidentiary hearing on motions under § 2255 'unless the record conclusively shows that the petitioner is entitled to no relief.' When a defendant presents an affidavit concerning a factual narrative of the events that is neither contradicted by the record nor inherently incredible and the [gov] offers nothing more than contrary representations to contradict it, the [D] is entitled to an evidentiary hearing." Op. at \*2, cites omitted.

**CA6 finds warrantless automobile search not justified under “plain view” exception where: (1) officer testified that he saw a “bag of dope” through the tinted window of D’s car; but (2) police photos, taken through that tinted window, failed to capture any view of the car’s interior.** U.S. v. Aaron Loines, 2023 WL 118834, No. 22-3073, CA6, Jan. 6, 2023. “[T]he photos provided by the government illustrate that it was implausible for an individual to view the ‘bag of dope’ from outside the car, thereby directly contradicting the officer’s testimony. The government offers no plausible explanation as to how the officers could see the ‘bag of dope’ through the tinted window, but the cameras could not capture any view into the interior of the car.” Op. at \*5.

**CA4 finds that DC abused its discretion when it denied motion for compassionate release without considering several factors cited in support of the motion; CA4 reverses DC order, remands “with instructions to grant [D’s] motion for compassionate release.”** U.S. v. Lonnie Edward Malone, 2023 WL 105673, No. 21-6242, CA4, Jan. 5, 2023. “Ordinarily, we understand that district courts wield broad discretion in deciding compassionate release motions. However, in cases – as in here – where the record presents such extraordinary conditions that are undisputedly severe and permanent, we are compelled to conclude that such dire circumstances warrant an exceptional case for compassionate release ... [a]ccordingly, we reverse and remand with instructions to grant [D’s] motion for compassionate release.” Op. \*8.

**Where: (1) government conducts warrantless search of third-party residence where parolee was allegedly staying, and (2) government defends search under the “parolee consent” exception to the fourth amendment warrant requirement, (3) burden rests with gov to prove that police had probable cause to believe that parolee was “actually residing” at the residence.** U.S. v. Justin William Thabit, 2023 WL 108013, No. 21-4028, CA8, Jan. 5, 2023. Upon release from prison, state parolee executed a waiver allowing police to conduct warrantless searches of his “place of residence.” Relying on this waiver, police conduct warrantless search of a third-party residence where parolee was alleged to be staying. During the search police find drugs and guns. Parolee, now a defendant, is charged with federal drug and gun offenses. D moves to suppress fruits of the warrantless search, DC grants suppression, government appeals. Court of appeals affirms, holding that burden rested with the government to prove that police had probable cause to believe that parolee “actually resided” at the residence. CA8 rejects government arguments in favor of a less demanding “reasonable suspicion” standard. Panel finds: (1) tip that D was staying at third-party residence; (2) combined with police seeing D drive away from vicinity of the residence; (3) did not establish probable cause to believe that D “actually resided” at the residence.

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