The Standard of Appellate Review for Jury Instructions Generally
(current through July 1, 2019)

Generally, jury instructions are reviewed as a whole to determine whether they fairly and adequately submit the issues and applicable law to the jury. United States v. Williams, 952 F.2d 1504, 1512 (6th Cir. 1991). The district court's choice of jury instructions is reviewed according to an abuse of discretion standard. United States v. Beaty, 245 F.3d 617, 621-22 (6th Cir. 2001), *citing* United States v. Prince, 214 F.3d 740, 761 (6th Cir. 2000). If the parties request particular language, "it is not error to fail to use the language requested by the parties if the instruction as given is accurate and sufficient." *Williams*, 952 F.2d at 1512, *quoting* United States v. Horton, 847 F.2d 313, 322 (6th Cir. 1988).

When a district court refuses to give a requested instruction, the Sixth Circuit holds that it is "reversible only if that instruction is (1) a correct statement of the law, (2) not substantially covered by the charge actually delivered to the jury, and (3) concerns a point so important in the trial that the failure to give it substantially impairs the defendant's defense." *Williams*, 952 F.2d at 1512, *citing* United States v. Parrish, 736 F.2d 152, 156 (5th Cir. 1984). *See also* United States v. Sassak, 881 F.2d 276, 279 (6th Cir. 1989), *citing Parrish*, 736 F.2d at 156.

When a defendant fails to object to a jury instruction at trial, the appellate court reviews only for plain error. Federal Rule of Criminal Procedure 52(b); United States v. Olano, 507 U.S. 725, 732 (1993). "[B]efore an appellate court can correct an error not raised at trial, there must be (1) 'error,' (2) that is 'plain,' and (3) that 'affect[s] substantial rights.'" Johnson v. United States, 520 U.S. 461, 466-67 (1997), *quoting Olano*, 507 U.S. at 732. "If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *Johnson,* 520 U.S. at 467, *quoting Olano*, 507 U.S. at 732. In *Olano*, the Supreme Court discussed but did not adopt the miscarriage of justice standard, noting that the miscarriage of justice standard in the collateral review jurisprudence of the Supreme Court meant actual innocence and that it had never held that the Rule 52(b) remedy was limited to cases of actual innocence. *Olano,* 507 U.S. at 736; *see also* United States v. Thomas, 11 F.3d 620, 630 (6th Cir. 1993) ("While the Court [in *Olano*] referred to the 'miscarriage of justice standard,' it remarked that it had never held a Rule 52(b) remedy was warranted only in cases of actual innocence."). Although the Court did not adopt the miscarriage of justice standard, the Sixth Circuit has occasionally cited this standard. *See, e.g.*, United States v. King, 169 F.3d 1035, 1040 (6th Cir. 1999)("An instruction is not plainly erroneous unless there was an egregious error, one that directly leads to a miscarriage of justice."); United States v. Wilkinson, 26 F.3d 623, 625 (6th Cir. 1994).

In reviewing the substance of given instructions for plain error, the Sixth Circuit held that, "In determining the adequacy of a jury instruction, 'the instruction must be viewed in its entirety, and a misstatement in one part of the charge does not require reversal if elsewhere in the instruction the correct information is conveyed to the jury in a clear and concise manner....'" United States v. Nelson, 27 F.3d 199, 202 (6th Cir. 1994), *quoting* United States v. Pope, 561 F.2d 663, 670 (6th Cir. 1977).

In reviewing the omission of an instruction for plain error, the court has stated that "'[A]n omitted or incomplete instruction is even less likely to justify reversal, since such an instruction is not as prejudicial as a misstatement of the law.'" United States v. Sanderson, 966 F.3d 184, 187 (6th Cir.1992), *quoting* United States v. Hook, 781 F.2d 1166, 1172-73 (6th Cir. 1986).

The standard for review of jury instructions may be affected if the defendant jointly submitted the instruction or stipulated to it. In United States v. Sharpe, 996 F.2d 125 (6th Cir. 1993), the defendant and the government jointly submitted an instruction that the defendant sought to challenge on appeal. The court declined to review the instruction, citing the fact that the defendant did not object to the instructions and in fact jointly submitted them. *Id.* at 128-29, *citing* United States v. Young, 745 F.2d 733, 752 (2d Cir. 1984) and United States v. Thurman, 417 F.2d 752, 753 (D.C. Cir. 1959). In United States v. Barrow, 118 F.3d 482 (6th Cir. 1997), the defendant stipulated to an instruction that he sought to challenge on appeal. The court recounted the *Sharpe* holding but concluded that the invited error doctrine did not foreclose relief when the interests of justice demand otherwise. *Id.* at 491. The analysis of the interests of justice is left to the appellate court's discretion. Here, the court decided that the interests of justice supported review of the defendant's challenge to the instructions for two reasons: the government was as much at fault as the defendant for the stipulated instruction, and the defendant was claiming not just that the instruction was wrong but that it deprived him of his constitutional rights. *Id.* The court cited this latter factor as the distinction between this case and the *Sharpe* case. After concluding that review was warranted, the court stated that, "This does not mean however, that the fact that the parties stipulated to the instruction will not play a role in our analysis of some of defendant's claims." *Id.* The court decided to treat the stipulated instructions the same as it would treat instructions that were not objected to, by applying the plain-error standard. *Id.*

Finally, in reviewing denial of a collateral attack under 28 U.S.C. § 2255, the Sixth Circuit held that "to obtain post-conviction relief for an erroneous jury instruction to which no objection was made at trial, a defendant must show both cause excusing his procedural default and actual prejudice from the alleged error." United States v. Rattigan, 151 F.3d 551, 554 (6th Cir. 1998).