

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 20, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KALEB SCOTT SMITH,

Defendant - Appellant.

No. 26-5020
(D.C. No. 4:25-CR-00151-JDR-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **PHILLIPS** and **MORITZ**, Circuit Judges.

Kaleb Smith was convicted by a jury of one count of sexual abuse of a minor in Indian Country and two counts of abusive sexual contact with a minor in Indian Country. Mr. Smith moved for a new trial, arguing that the government knowingly allowed a government witness to present false testimony at trial and then failed to sufficiently cure the confusion caused by that testimony. The district court denied

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Mr. Smith's motion for new trial. Mr. Smith now appeals from that decision.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND

A. Factual Background

On August 24, 2024, Mr. Smith booked a hotel room at a hotel in Bartlesville, Oklahoma, and allowed his fourteen-year-old daughter, A.S., and her fourteen-year-old friend, T.M., to spend the night with him. Initially, all three of them got into the same bed as they prepared to sleep. But after A.S. fell asleep, Mr. Smith and T.M. moved to the second bed in the room. There, Mr. Smith lay behind T.M. and, while she was awake, moved his erect penis against her clothed buttocks while groping her stomach, waist, and chest over her clothing. Mr. Smith also showed T.M. a naked photo of himself and attempted to touch her waistband while she slept.

On September 19, 2024, Mr. Smith allowed A.S. to invite T.M. and Mr. Smith's fourteen-year-old niece, J.S., to spend the night at his house in Bartlesville, Oklahoma. At some point that night, Mr. Smith and T.M. were together in Mr. Smith's bed and Mr. Smith gave T.M. a pill to ease her anxiety. Mr. Smith then attempted to take T.M.'s underwear off. Although T.M. refused to do so, Mr. Smith pulled T.M.'s underwear to the side while holding her hands down, vaginally penetrated her with his penis, and ejaculated on her stomach and underwear. Mr. Smith later asked T.M. to have sex again, but T.M. said no. In the morning, Mr. Smith attempted to touch T.M.'s vagina, but she pushed his hand away.

Several days later, T.M. told her father and stepmother about Mr. Smith's inappropriate conduct.

During a subsequent forensic interview, J.S. told investigators that Mr. Smith had engaged in a variety of inappropriate conduct with her between August 2023 and September 2024. This included: Mr. Smith making sexual comments to her regarding the size of her breasts and the shape of her body; slapping her breasts on one occasion and telling her to get them out of his way; cuddling her from behind on multiple occasions; placing his erect penis against her clothed buttocks; exposing his bare buttocks to her; and asking her inappropriate questions about sexual activity.

B. Procedural Background

In 2025, a grand jury indicted Mr. Smith on three criminal counts. Count One, which related to Mr. Smith's conduct with T.M. on September 19 and 20, 2024, charged him with sexual abuse of a minor in Indian Country, in violation of 18 U.S.C. §§ 1151, 1153, and 2243(a). Count Two, which related to Mr. Smith's conduct with T.M. on August 24 and 25, 2024, charged him with abusive sexual contact with a minor in Indian Country, in violation of 18 U.S.C. §§ 1151, 1153, and 2244(a)(3). Count Three, which related to Mr. Smith's conduct with J.S. between August 2023 and September 2024, also charged Mr. Smith with abusive sexual contact with a minor in Indian Country.

The case proceeded to trial, where a jury found Mr. Smith guilty of all three counts.

Mr. Smith filed a motion for new trial, arguing that the government violated its obligation to correct false testimony elicited from Detective Andrew Bailey. The district court denied Mr. Smith's motion.

The district court sentenced Mr. Smith to 180 months' imprisonment on Count One and 24 months' imprisonment as to each of Counts Two and Three, with all of the sentences to run consecutively for a total term of imprisonment of 228 months.

II. DISCUSSION

Mr. Smith now appeals, arguing that the district court erred in denying his motion for new trial. We review the district court's denial of a motion for new trial "for abuse of discretion, reversing only if the court made a clear error of judgment or exceeded the bounds of permissible choice under the circumstances." *United States v. Smith*, 178 F.4th 572, 598 (10th Cir. 2026) (internal quotation marks omitted). "When the district court's decision turns on an issue of law, however, its determination on that question is reviewed *de novo*." *Skaggs v. Otis Elevator Co.*, 164 F.3d 511, 514 (10th Cir. 1998).

A. Detective Bailey's testimony

Detective Bailey was the case agent. During its case-in-chief, the government called Detective Bailey to testify regarding his investigation of Mr. Smith's alleged sexual abuse of T.M., i.e., the conduct that gave rise to Count One. Detective Bailey testified on direct examination that he executed a search warrant at Mr. Smith's home and, during that search, used an "ALS light, which stands for alternate light source," to examine Mr. Smith's bed and comforter for "bodily fluids." *Aplt. App.*, vol. 3

at 174. According to Detective Bailey, he marked areas on Mr. Smith's mattress that potentially contained bodily fluids. He testified that one of those areas, which he noted with "marker number 5," *id.* at 178, contained a red stain that was visible without the use of the ALS light. Detective Bailey was not asked to opine what the red stain was. He proceeded to testify about how he processed the areas of interest for further review by other law enforcement sources.

On cross-examination, defense counsel asked Detective Bailey if he could "see blood" in the photographs he took of the mattress. *Id.* at 185. Detective Bailey testified, "I was able to see blood on those photographs." *Id.* Defense counsel followed up by asking, "[S]o you're saying you can see blood on the photographs?" *Id.* at 185-86. Detective Bailey responded "[c]orrect." *Id.* at 186.

During Mr. Smith's own case-in-chief, defense counsel recalled Detective Bailey and asked him if he remembered testifying that he "could see with [his] eye that there was blood on that bed?" Aplt. App., vol. 4 at 32. Detective Bailey responded, "I believe that I did, yes." *Id.* at 33. Defense counsel then asked Detective Bailey if he remembered hearing the government's expert witness testify "that in every one of those swabs, that there was no blood; isn't that true?" *Id.* Detective Bailey responded, "[T]he report stated that they did not detect blood, I don't think." *Id.* The following colloquy then took place between defense counsel and Detective Bailey:

Q. So I just wanted to give you an opportunity to explain that to this jury. Would you explain to this jury why you testified to that?

A. During the course of the investigation, it was said that T.M. left blood on the bed and on her shorts. It was also said that blood was seen on the bed the day after the incident, so that's – when I walked in, I viewed a spot on the bed that was consistent with the color of dried blood. I can't testify as far as their process of testing it. I swabbed that area and I submitted it. But as far as swabbing things, there is not always a consistent result, so I don't – I don't know why they didn't find blood in particular, but.

Q. Well, sir, could it be that you made an assumption that's not true?

A. I tend to try not to make assumptions. I take what people tell me, and I follow up on what they tell me.

Q. Would it be more accurate to say that you saw a red spot on the bed and you assumed that it was blood?

A. Again, I don't – I don't make assumptions. I did see a spot on the bed that was previously described as consistent with blood.

Q. Are you disputing that the spot you saw was not blood after hearing the testimony from the expert?

A. What am I disputing?

Q. Are you disputing that the spot was not blood after hearing the testimony from the expert?

A. I know that that spot was described as being consistent with blood. I swabbed that spot, and I submitted those swabs to the OSBI.

Id. at 33-34.

On cross-examination by the government, Detective Bailey again testified that he was “led to believe,” based on his investigation, that the red stain on Mr. Smith’s

mattress was blood. *Id.* at 36-37. But he also agreed that, based on the results of the lab testing, the swab he took of the red stain did not contain blood. *Id.* at 37.

B. Applicable Law

In *Napue v. People of State of Illinois*, 360 U.S. 264 (1959), the Supreme Court “held that a conviction knowingly ‘obtained through use of false evidence’ violates the Fourteenth Amendment’s Due Process Clause.” *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) (quoting *Napue*, 360 U.S. at 269). “To establish a *Napue* violation, a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it ‘to go uncorrected when it appear[ed].’” *Id.* (quoting *Napue*, 360 U.S. at 269). “If the defendant makes that showing, a new trial is warranted so long as the false testimony ‘may have had an effect on the outcome of the trial.’” *Id.* (quoting *Napue*, 360 U.S. at 272). “[T]his materiality standard requires the beneficiary of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Id.* (brackets and internal quotation marks omitted).

In *Glossip*, the Supreme Court determined that a *Napue* error occurred during the trial of an Oklahoma capital defendant and that the error prejudiced his defense. In doing so, the Court clarified that “materiality . . . always requires courts to assess whether the error complained of could have contributed to the verdict.” *Id.* at 253 (internal quotation marks omitted). Thus, the Court explained, when “the prosecutor’s failure to correct” a witness’s “false testimony is the relevant error,” the question is “whether a correction could have made a material difference.” *Id.*

C. The district court's decision

In denying Mr. Smith's motion for new trial based on *Napue* and *Glossip*, the district court concluded as an initial matter that Mr. Smith failed to "present[] evidence that Detective Bailey knew his testimony to be false." *Aplt. App.*, vol. 1 at 39. The district court explained that "Detective Bailey's initial testimony concerned only the color and appearance of the stain he observed," and that "although he did go on to state an opinion that the stain was blood, there [wa]s no evidence that he believed the stain to be anything else." *Id.* Thus, the district court concluded that Mr. Smith failed to establish "a knowing act of perjury by Detective Bailey." *Id.*

The district court also concluded that "[e]ven if the evidence could support the inference that Detective Bailey engaged in perjury, . . . the Government did not allow his testimony to go uncorrected." *Id.* The district court noted in support that "[a]lthough Detective Bailey agreed with defense counsel's suggestion that the stain was blood," both defense counsel and the government later "clarified through testimony that, although the stain appeared consistent with blood, Detective Bailey could not explain why blood was not detected in the samples he collected and could not make a definitive statement as to what the stain was composed of." *Id.* In particular, "[t]he Government . . . elicited a statement expressly stating that the swabs Detective Bailey collected 'did not contain blood.'" *Id.*

D. Analysis

Mr. Smith asserts two arguments on appeal. First, he argues that the district court applied the wrong legal standard in concluding he had to prove that Detective Bailey committed perjury. Second, he argues that the district court's determination that the government did not allow Detective Bailey's testimony to go uncorrected "is factually untrue and is clear [sic] erroneous." Aplt. Br. at 19 (capitalization omitted). As discussed below, we need not resolve Mr. Smith's first argument because we conclude there is no merit to his second argument.

To establish a *Napue* violation, a defendant must first establish that a prosecution witness gave "false testimony." *Napue*, 360 U.S. at 269; *Glossip*, 604 U.S. at 246. Some of our post-*Napue* decisions, including one the district court relied on, have framed this requirement as whether "a government witness committed perjury." *United States v. Garcia*, 793 F.3d 1194, 1207 (10th Cir. 2015). Mr. Smith argues that this is an improper framing of the first *Napue* requirement. More specifically, he argues that all that *Napue* and *Glossip* require is that the government witness gave false testimony, not that the government witness knowingly did so.

We need not decide this issue, however, because even assuming the district court applied the wrong standard, we conclude the error was harmless. To begin with, we are not necessarily persuaded that Detective Bailey's testimony was objectively false. As we read Detective Bailey's testimony, he did not affirmatively assert that the red stain on the mattress was blood. Rather, he testified that when he observed the red stain on the mattress he believed it was blood. In any event, the

government corrected any confusion caused by Detective Bailey’s testimony by having him expressly acknowledge that the swabs he took from Mr. Smith’s mattress did not contain blood. Although Mr. Smith argues in his appeal that “Detective Bailey refused to admit that the stain that he saw on the mattress was not blood,” Aplt. Br. at 23, the trial transcript plainly indicates otherwise. Specifically, Detective Bailey testified, under cross-examination by the government during Mr. Smith’s case-in-chief, that the swabs he took from the mattress did not contain blood. Aplt. App., vol. 4 at 37.

III. CONCLUSION

We affirm the judgment of the district court.

Entered for the Court

Jerome A. Holmes
Chief Circuit Judge