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#### **Fourth Circuit Court of Appeals**

(Note: You may access the court's opinions by clicking on the case name)

#### **Court Rules That Inevitable Discovery Exception to the Exclusionary Rule Supported Warrantless Vehicle Search Because the Vehicle Would Have Inevitably Been Subject to an Inventory Search That Would Have Discovered Evidence Introduced at Trial**

[United States v. Bullette](#), \_\_\_ F.3d \_\_\_, 2017 WL 1406467 (4th Cir. April 20, 2017). In February 2013, officers responded to a call about a house fire that revealed chemical containers commonly used in PCP manufacturing. Neighbors told them that there had been strong chemical odors in the air for about two years before the fire. (Apparently nothing developed from an investigation of this incident.) In May 2013, officers responded to a report of suspicious activity at the same property. They saw three vehicles, all unlocked, parked by a wooden shed in an open field. No one was on the property, but evidence suggested that someone had been manufacturing PCP there. It also appeared that someone had left the property hurriedly. All three vehicles were searched. On the top of a trunk of one vehicle, a Pontiac, there were partially eaten food and a receipt for food purchased the previous day. Officers could see inside the Pontiac a backpack, amber liquid in bottles that an office believed to be finished PCP (later determined to be Pine-Sol), cellphones, and various documents. The lead officer testified that his team without a search warrant searched all three vehicles because (1) standard DEA practice was to impound and inventory vehicles when no one was present to claim them; (2) he had safety concerns concerning possible explosives in the vehicles and the vehicles' proximity to explosive materials on the property; and (3) he wanted to identify the registered owner(s) of the vehicles. A search of the Pontiac found evidence relating to a PCP conspiracy and a link to the defendant. The defendant was convicted of a drug conspiracy in a Maryland federal district court, which denied the defendant's suppression motion concerning the search of the Pontiac. The defendant appealed his conviction, including the suppression ruling.

The fourth circuit affirmed the district court's denial of the suppression motion based on the inevitable discovery exception to the exclusionary rule, without deciding whether the search was justified by the automobile exception to the search warrant requirement. The circumstances confronting the officers at the crime scene supported impoundment as a reasonable course of action. An officer's testimony substantiated the district court's finding that standard agency (DEA) practice called for impoundment of the Pontiac, and safety concerns added to the reasonableness of the impoundment. In addition, a written inventory policy is not required as long as an inventory search is conducted according to routine and standard procedures, for which there was sufficient evidence in this case.

#### **Court Rules That Defense Counsel Provided Ineffective Assistance When Defendant Pled Guilty to a Categorically Deportable Offense**

[United States v. Swaby](#), \_\_\_ F.3d \_\_\_, 2017 WL 1437210 (4th Cir. April 24, 2017). The defendant, a citizen of Jamaica, pled guilty to a counterfeit goods felony pursuant to a plea agreement in a Maryland federal district court. Based on his defense counsel's faulty advice, the defendant unknowingly had pled guilty to an aggravated felony that rendered him automatically deportable. After his release from prison, the Department of Homeland Security lodged an immigration detainer against him and planned to deport him. The defendant challenged his conviction in federal district court based on his receiving

ineffective assistance of counsel. The district court denied relief. The fourth circuit reversed the district court's ruling.

Relying on *Padilla v. Kentucky*, 559 U.S. 356 (2010), the court examined the facts surrounding the advice given to the defendant by defense counsel and ruled that counsel failed to inform the defendant that under the plea agreement the defendant would be pleading to an aggravated felony that would render him categorically deportable. Counsel only needed to read the correct version of the federal statute to determine that the crime was an aggravated felony. The court then examined the district court judge's admonitions to the defendant during the plea hearing and ruled that the court's warnings, which were general and referenced only a vague "risk" or possibility of deportation, did not cure defense counsel's deficient performance. The court then discussed the prejudice prong of ineffective assistance of counsel and concluded the defendant showed a reasonable probability that he could have negotiated a plea agreement that avoided immigration consequences or, alternatively, he would have gone to trial rather than accept the plea agreement if he was aware of the agreement's immigration consequences.

### **Court Affirms Federal District Court's Decision to Abstain from Intervening in Petitioners' Ongoing State Court Proceedings under North Carolina's Racial Justice Act**

[Robinson v. Thomas](#), \_\_\_ F.3d \_\_\_, 2017 WL 1506327 (4th Cir. April 27, 2017). After being sentenced to death after first-degree murder convictions, petitioners Robinson and Golphin sought post-conviction relief in state court under North Carolina's Racial Justice Act (RJA). Both petitioners in separate hearings were awarded relief under the act, reducing their death sentences to life imprisonment. The State of North Carolina appealed, and the North Carolina Supreme Court vacated and remanded their cases to a state trial court for additional RJA proceedings. The petitioners then brought separate actions in a North Carolina federal district court, each asserting that a second RJA proceeding would violate their double jeopardy rights. The district court abstained from exercising federal jurisdiction under *Young v. Harris*, 401 U.S. 37 (1971), which ruled that a federal court should not act to restrain a state criminal prosecution when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. The fourth circuit affirmed the district court's ruling (see the fourth circuit's opinion for a discussion of the complex issues).

### **Court Rules It is Clearly Established That an Inmate Has a First Amendment Right to be Free from Retaliation for Filing a Grievance**

[Booker v. South Carolina Department of Corrections](#), \_\_\_ F.3d \_\_\_, 2017 WL 1531576 (4th Cir. April 28, 2017). Plaintiff, an inmate in the South Carolina Department of Corrections, brought a claim under 42 U.S.C. § 1983 in a South Carolina federal district court alleging that he was charged with a disciplinary offense in retaliation for filing a prison grievance. The district court found that the plaintiff's First Amendment right to be free from retaliation for filing a grievance was not clearly established, and it ruled that prison officials were entitled to qualified immunity and summary judgment.

The fourth circuit reversed the district court's ruling; it ruled that this First Amendment right was clearly established. The court conceded that there was no published decision of the United States Supreme Court, Fourth Circuit Court of Appeals, or South Carolina Supreme Court squarely addressing the issue. However, the court noted that United States Supreme Court has recognized that courts may rely on "a consensus of cases of persuasive authority" to determine whether "a reasonable officer could not have believed that his actions were lawful." The court then examined cases from other federal appellate circuit courts and stated that it was compelled to conclude that Booker's right to file a prison

grievance free from retaliation was clearly established under the First Amendment. It noted the unanimity of the other appellate circuit courts on this issue.