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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 Federal District Court Erred in Granting Bureau of Prison's Motion for Summary Judgment on Federal Sexually Dangerous Civilly Committed Prisoner's Claims Concerning Alleged Constitutional Violations in Failing to Adequately Provide Various Prison Services to Deaf Prisoner

[Heyer v. United States Bureau of Prisons](#), 849 F.3d 202, 2017 WL 715823 (4th Cir. Feb. 23, 2017). The plaintiff (Heyer) is confined in a federal prison as a sexually dangerous person. He has been deaf since birth. His native language is American Sign Language (ASL) and he communicates primarily through ASL. He cannot read lips, has no ability to understand speech, and has extremely limited proficiency in English. He is expected to participate in a commitment and treatment program.

The Bureau of Prisons (BOP) refused to provide Heyer with ASL interpreters from the time of his arrival in December 2008 until late 2012, more than year after this case began. The refusal included interpreters for medical appointments, medical emergencies, and the commitment and treatment program. He was not provided effective devices to communicate with those outside the prison, and without an interpreter he had problems communicating and receiving communications within the prison.

The federal district court judge granted the BOP's motion for summary judgment, and the fourth circuit reversed. The court issued following rulings on Heyer's claims: (1) the evidence was sufficient to support a finding that the failure to provide interpreters amounts to deliberate indifference to his medical needs under the Fifth Amendment (Heyer argued that as a civil detainee he is entitled under the Fifth Amendment to at least the same protections prisoners receive under the Eighth Amendment); (2) given Heyer's evidence of the minimal cost of a videophone and the ease with which security concerns could be mitigated, a factfinder could reasonably conclude that BOP's refusal to provide a videophone violated Heyer's First Amendment right to communicate with those outside the prison; (3) there are fact issues whether the BOP violated Heyer's First Amendment rights by unreasonably restricting his access to an available TTY device; and (4) the district court erred by relying on BOP's voluntary, post-litigation actions to reject various claims.

Court Rules That Good-Faith Exception to Fourth Amendment's Exclusionary Rule Allows the Admission of Seized Evidence Based on Officer's Reasonable Reliance on Binding Appellate Precedent When Officer Extended Traffic Stop

[United States v. Hill](#), 849 F.3d 195, 2017 WL 715072 (4th Cir. Feb. 23, 2017). In 2012, an officer conducted a traffic stop that was extended for about 33 minutes. The defendant argued in a motion to suppress that the traffic stop violated the Fourth Amendment because the stop was impermissibly extended under the ruling in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). The federal district court denied the motion. The fourth circuit affirmed the district court's ruling. It stated that its affirmance was based on the narrow ground that the stop did not offend Fourth Amendment law as it existed in 2012. The court stated that the good-faith exception to the Fourth Amendment's exclusionary rule allows the admission of evidence seized based on reasonable reliance on binding appellate precedent when the officer conducted the stop.

Juror's Alleged Statement Did Not Sufficiently Indicate Actual Bias Against Defendant to Support Claim That His Lawyer Was Ineffective For Failing to Bring Statement to Trial Court's Attention

[United States v. Powell](#), ___ F.3d ___, 2017 WL 815223 (4th Cir. March 1, 2017). The defendant was convicted in federal district court of drug and firearm offenses. The defendant filed a post-trial motion to set aside his convictions on the ground that his trial counsel was ineffective for failing to bring a juror's alleged statement to the trial court's attention. The juror's statement was alleged to have occurred before trial, when the juror allegedly approached the defendant's father while entering the courthouse and told him that "everything would be alright" and that he needed to give his son "a good kick in the butt." The district court denied the defendant's motion, and the fourth circuit affirmed. The court stated that a reasonable lawyer could conclude that the statement was so ambiguous that the juror was actually incapable or unwilling to base a verdict solely on the evidence presented at trial, and the mere act of inquiring about the statement might risk alienating the juror. The court concluded that given the ambiguous content of the juror's statement and the potential consequences of pursuing it with the court, a reasonable lawyer could have concluded that her client's interests were best served by keeping mum.

Court Rules That Defendant Failed to Make the Requisite Showing for a *Franks v. Delaware* Hearing to Challenge Officer's Affidavit in Obtaining a Search Warrant

[United States v. White](#), ___ F.3d ___, 2017 WL 942653 (4th Cir. March 9, 2017). The defendant was convicted in a federal district court of various fraud-related charges. An officer submitted an affidavit for a search warrant to search the defendant's office and residence, a magistrate issued a search warrant, and incriminating evidence was found during the execution of the search warrant. The defendant requested a *Franks* hearing (*Franks v. Delaware*, 438 U.S. 154 (1978)) based on testimony given during the defendant's trial; in essence, the defendant contended that the officer made a false statement in the affidavit for the search warrant that adversely affected the statement of probable cause to support the warrant. The trial court ruled that the defendant was not entitled to a hearing. The fourth circuit affirmed. The court examined the facts and ruled that the defendant's *Franks* claim failed on the merits because she did not make a substantial showing that the officer knowingly, intentionally, or with reckless disregard made a false statement in the affidavit.

Court Rules That Trial Court Did Not Err in Considering at the Defendant's Sentencing Hearing Certain Admissions He Made While Participating in a Sex Offender Treatment Program

[United States v. Lara](#), ___ F.3d ___, 2017 WL 991700 (4th Cir. March 14, 2017). The defendant was convicted in a federal district court of violating the Federal Sex Offender Registration and Notification Act. At the sentencing hearing, admissions of his prior criminal activity were introduced. He had previously made these admissions in a state sex offender treatment program that he was ordered to complete as a condition of probation imposed as a result of a state court conviction for aggravated sexual battery of a mentally incapacitated victim. The district court ruled that the admissions could be introduced in the sentencing hearing. The fourth circuit affirmed. The court ruled that: (1) the defendant affirmatively waived any psychotherapist-patient privilege when he agreed as part of his probation conditions in the state case to the disclosure of any statements he made in the state treatment program (the court stated that a defendant's agreement to be bound by court-imposed release conditions is not rendered involuntary by the sole fact that he will be incarcerated in the absence of such acquiescence); and (2) the defendant's Fifth Amendment privilege against self-incrimination did not apply to those admissions because the defendant voluntarily made the statements while participating in the treatment

program. He was never threatened with the imposition of a penalty sufficient to overcome his freedom of choice to remain silent. There was no evidence that the defendant was told that his probation would be revoked if he did not admit to uncharged sex offenses, and revocation of probation would not have been automatic because he would have been afforded a court hearing before revocation would have occurred.