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Fourth Circuit Court of Appeals

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

Court Rules That Prison Official Was Not Entitled to Summary Judgment in Inmate's Lawsuit Alleging That Official Violated Eighth Amendment By Failing to Protect Inmate From Attack By Another Inmate

[Raynor v. Pugh](#), 817 F.3d 123, 2016 WL 1056091 (4th Cir. March 17, 2016). The plaintiff, an inmate in a Virginia state correctional facility, brought an action in federal district court under 42 U.S.C. § 1983 alleging that a prison official violated the Eighth Amendment ("cruel and unusual punishment") by failing to protect him from an attack by another inmate. The fourth circuit reversed the federal district court's grant of summary judgment to the prison official. The court noted that an inmate must satisfy a two-part test, consisting of both an objective and subjective inquiry. First, the inmate must objectively show a serious deprivation of his rights through a serious or significant physical or emotional injury or a substantial risk of such injury. Second, the inmate must show that the prison official had a sufficiently culpable state of mind, which consists of a deliberate indifference to the inmate's health or safety: this subjective inquiry requires evidence suggesting the official had actual knowledge of an excessive risk to the inmate's safety. Although an official may have no duty to physically intervene in an assault, completely failing to take any action to stop an ongoing assault (for example, getting help) can show deliberate indifference. Reviewing the plaintiff's allegations, his verified complaint, and another inmate-witness's affidavit, the court ruled that there were genuine disputes of material fact, and thus the district court erroneously granted summary judgment to the prison official.

Court Rules That Law Enforcement Officer Was Not Entitled to Summary Judgment in Driver's Lawsuit Alleging the Officer's Excessive Use of Force Under Fourth Amendment By Repeatedly Using Taser on Nonviolent Misdemeanant Who Presented No Threat to Officer's Safety or the Public and Who Was Compliant and Not Actively Resisting Arrest or Fleeing

[Yates v. Terry](#), 817 F.3d 877, 2016 WL 1258429 (4th Cir. March 31, 2016). The plaintiff brought an action in a South Carolina federal district court under 42 U.S.C. § 1983 alleging that an officer stopped his vehicle and thereafter used excessive force under the Fourth Amendment when he tased the plaintiff three times without justification after a traffic stop. The fourth circuit affirmed the federal district court's denial of summary judgment to the officer. It examined in detail the allegations in the plaintiff's complaint and a witness's testimony and ruled that the plaintiff sufficiently alleged that the officer used excessive force under the Fourth Amendment by tasing the plaintiff, who was a nonviolent person charged with misdemeanors who presented no danger to the officer's safety or the public and was compliant and not actively resisting arrest or fleeing. In addition, the court ruled that the plaintiff's constitutional rights protecting him from the use of this type of force were clearly established when the officer allegedly committed this conduct.

Court Rules That Law Enforcement Agency's Conduct in Conducting Undercover Operation Was Not So Egregious to Violate Defendants' Due Process Rights

[United States v. Hare](#), ___ F.3d ___, 2016 WL 1567051 (4th Cir. April 19, 2016). ATF agents initiated an undercover operation offering an armed drug trafficker with the opportunity to rob a fictitious cocaine

stash house and, if the operation occurred as planned, ultimately arrest him and any accomplices for conspiring to traffic drugs and related crimes. The operation was successful and arrests, indictments, and convictions followed. The fourth circuit reviewed the evidence and rejected the defendants' argument that the government had engaged in outrageous conduct that violated their due process rights based on *United States v. Russell*, 411 U.S. 423 (1973), and related fourth circuit case law.

Officer Had Reasonable Suspicion to Stop Vehicle for Traffic Violations and Did Not Unreasonably Expand Scope of Stop

[United States v. Palmer](#), ___ F.3d ___, 2016 WL 1594793 (4th Cir. April 21, 2016). The defendant pled guilty in a Virginia federal district court to cocaine and firearm offenses after the court denied the defendant's motion to suppress evidence discovered during a traffic stop. The fourth circuit affirmed the denial of the suppression motion.

First, it ruled that the stopping officer had reasonable suspicion to stop the vehicle driven by the defendant for window tinting offenses under Virginia state law. The court noted that the officer was familiar with window tinting limits and, in his view, the windows were too dark, and the district court did not clearly err in crediting the officer's testimony.

Second, the court ruled that the officer did not unreasonably extend the traffic stop that led to the officer's smell of marijuana within the vehicle (which occurred when the officer was investigating a potentially fraudulent inspection sticker), which gave the officer the authority to search it. The court stated that a motorist stopped by an officer is obliged to endure certain burdensome precautions that may not be directly related to the reason for the traffic stop, such as checking whether the driver has a criminal record or outstanding warrants. In this case, when the officer had learned of a "gang alert" indicating that the driver was associated with the Bounty Hunter Bloods gang that the officer knew had threatened officers and been involved in drug distribution, it was not unreasonable to briefly investigate his prior criminal record, which fell squarely within the range of permissible actions under the Fourth Amendment. After accessing the criminal record, the officer possessed reasonable suspicion that the driver was engaged in criminal activity: the district court's opinion identified eight factors supporting such a finding (high crime area where citizens were complaining about drug dealing; illegal tinting; overwhelming scent from multiple air fresheners in the vehicle; nervousness; suspected gang member; driver's license listed a P.O. box address rather than residence; vehicle registered in another person's name; driver had four prior drug arrests as well as charge of firearm possessed by convicted felon). Although some of the factors concern innocent activity, reasonable suspicion is based on the totality of circumstances and may exist even if each factor standing alone is susceptible to an innocent explanation.

Court Denies Federal Habeas Relief to Petitioner Who Alleged the State Had Failed to Disclose Materially Favorable Evidence in His Murder Trial

[Nicolas v. Attorney General of Maryland](#), ___ F.3d ___, 2016 WL 1660204 (4th Cir. April 27, 2016). Nicholas was convicted in a Maryland state court of murdering his infant daughter. After unsuccessful challenges to his conviction in state trial and appellate courts, he sought federal habeas relief in a Maryland district court based on his allegation that the state failed to disclose to Nicholas materially favorable statements of two witnesses under *Brady v. Maryland*, 373 U.S. 83 (1963), which Nicholas contended cast doubt on the time of death, which was a critical issue at trial. The district court granted relief, but the fourth circuit reversed.

The fourth court examined the two statements and the Maryland state appellate courts' rulings that upheld his conviction, noting that its review of the Maryland courts' rulings is deferential: a federal

court may not grant habeas relief unless the state court reached a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court, or a decision that was based on an unreasonable determination of the facts based on the evidence presented in state court. The fourth circuit ruled that it was not unreasonable for the state courts to conclude, when considered with all the other evidence offered at trial, the statements would have made no difference in the verdict.

Court Rules That Probation Officers Must Have Reasonable Suspicion to Arrest Probationer for Allegedly Violating Probation Conditions

[Jones v. Chandrasuwan](#), ___ F.3d ___, 2016 WL 1697682 (4th Cir. April 28, 2016). Jones was convicted in a North Carolina state court and placed on probation, which was transferred to Georgia where he later was arrested for probation violations. Jones sued North Carolina probation officers under 42 U.S.C. § 1983 alleging that his arrest pursuant to an order for arrest obtained by the officers in North Carolina violated the Fourth Amendment. The fourth circuit ruled: (1) the standard under the Fourth Amendment to arrest a probationer for an alleged probation violation is reasonable suspicion; (2) reasonable suspicion did not exist for either probation condition (failing to pay court costs and absconding); and (3) although the probation officers violated the Fourth Amendment by obtaining the order for arrest without reasonable suspicion, the constitutional right was not clearly established when the violation occurred, and thus the probation officers were entitled to qualified immunity in this lawsuit.

Court Rules That Federal District Court Erred in Dismissing Plaintiff's § 1983 Lawsuit Alleging That Law Enforcement Officers Lacked Probable Cause to Seize Him for Mental Evaluation and Determination of Involuntary Commitment

[Goines v. Valley Community Services Board](#), ___ F.3d ___, 2016 WL 2621262 (4th Cir. May 9, 2016). Goines sued two Virginia law enforcement officers in a Virginia federal district court alleging under 42 U.S.C. § 1983 that he was unlawfully seized without probable cause under the Fourth Amendment when they took him for an emergency mental health evaluation to determine if he should be involuntarily committed (and in fact resulted in his detention for five days). The fourth circuit ruled, accepting Goines' allegations in this complaint as true, that Goines, although having speech and other physical difficulties, showed no signs of mental illness and made no threats to harm himself or others, but instead sought the assistance of law enforcement to avoid a confrontation and potential fight with a neighbor who had spliced into Goines' cable line. Under these factual allegations, the officers lacked probable cause for an emergency mental health detention and thus Goines' complaint alleged a Fourth Amendment violation. The officers failed as alleged to make a sufficient inquiry about the situation based on the plaintiff's allegations. And the constitutional allegation is one for which the officers would not be entitled to qualified immunity.

Court Rules That Reasonable Suspicion Supported Traffic Stop, *Miranda* Warning Were Not Required During Stop, and Officers Had Probable Cause to Search Vehicle

[United States v. Gardner](#), ___ F.3d ___, 2016 WL 2893881 (4th Cir. May 18, 2016). A local North Carolina law enforcement officer received a telephone call from a reliable confidential informant, who stated that Gardner was a convicted felon who possessed a firearm, he drove a white Lincoln Town Car, and he was currently at a particular house on Thorne Street in Farmville. The officer already had a working relationship with the informant, who had completed at least five controlled drug purchases and had consistently provided accurate information. Officers went to the house and saw a white Lincoln

Town Car parked there, and confirmed that Gardner was the vehicle's registered owner. Shortly thereafter they saw Gardner drive away in the vehicle. They followed it, put on their blue lights, and initiated a stop. One officer saw that Gardner dip down in the car and either reach for something or put something under the seat. When an officer approached the car and asked Gardner to step out, he appeared nervous and kept looking in the direction of the vehicle's floor. When told by an officer that he had information that Gardner had a firearm in his possession and then asked if Gardner had anything illegal in the car, he simply hung his head. When asked what the illegal item was, Gardner said it was a gun and later said that he was not permitted to have a gun and was a convicted felon. A search of the vehicle found a handgun under the driver's seat.

Gardner was convicted of possession of a firearm by felon in a North Carolina federal district court. The district court denied his motion to suppress, which challenged the legality of the stop, questioning at the stop without *Miranda* warnings, and the warrantless vehicle search.

The fourth circuit affirmed the district court's ruling. It ruled that the officers had reasonable suspicion to stop the vehicle for the gun. The court noted that reasonable suspicion may be supplied solely by information by a known informant such as the one in this case. But the officers in this case also corroborated some of the informant's information. Based on *Berkemer v. McCarty*, 468 U.S. 420 (1984), the court also ruled that Gardner was not entitled to *Miranda* warnings because the questioning occurred during a stop and there was no de facto arrest. Also, the court ruled that the warrantless search of the vehicle for the gun was supported by probable cause based on Gardner's acknowledgement of the gun, his furtive behavior, and the informant's information.

Court Rules That Officers Had Reasonable Suspicion to Conduct Stop and Frisk

[United States v. Foster](#), ___ F.3d ___, 2016 WL 2996904 (4th Cir. May 24, 2016). Just after midnight in Wheeling, West Virginia, the police department received a 911 hang-up-only call reporting a gunshot near a trail by a named fish market. Two officers arrived within minutes to the area, which was associated with theft, vandalism, and production of methamphetamine. They saw Foster standing and looking around in an alley between two businesses that, like all others in the area, were closed. They were about three or four blocks from the fish market. Foster was the only person the officers had encountered since arriving in the area.

One of the officers informed Foster that they were investigating a report of a shot fired in the area. Foster did not respond and avoided eye contact. The officer then asked Foster if he had any weapons. Foster then began to put his right hand in his right front pocket. Both officers interpreted this as a security check: an instinctual movement in which, on being asked if a suspect is carrying any weapons, the suspect reaches to ensure that a concealed weapon is secure. One of the officers frisked Foster and discovered a firearm (ultimately, the officer found three firearms).

Foster was charged and convicted in a West Virginia federal district court of possession of a firearm by a prohibited person. Foster filed a motion to suppress the firearm evidence, arguing that the stop and frisk violated the Fourth Amendment. The district court denied the motion, and the fourth circuit affirmed that ruling.

The court found that five factors supported the presence of reasonable suspicion to stop and frisk: (1) the 911 call that reported a gunshot; (2) Foster was the only person they encountered in the area; (3) the stop occurred late at night in a high-crime area; (4) Foster did not respond to the officers' questions and avoided eye contact; and (5) Foster reached for his right pocket after being asked if he was carrying a weapon. The court stated that the first four factors were not sufficient to justify the stop until factor (5) occurred, which it called a security check and that can contribute to reasonable suspicion that a suspect is engaging in criminal activity. The security check along with the other factors under a totality-of-circumstances analysis was sufficient in this case to justify the stop and frisk based on

suspecting Foster committed a crime associated with discharging a firearm that was connected to the 911 gunshot report.

The court rejected Foster's argument that West Virginia law allows the open and concealed carry of firearms, and thus Foster's carrying a firearm did not suggest any evidence of criminal conduct. The court noted that the officers stopped him not merely because he might be armed, but because he might have been the source of the reported gunshot.

Court Rules That Because Search Warrant Application Omitted Material Information About Confidential Informant's Reliability, Who Was Primary Source of Information to Establish Probable Cause, Federal District Court Erred in Denying Defendant's Motion to Suppress Evidence Obtained by Search Warrant

[United States v. Lull](#), ___ F.3d ___, 2016 WL 3006286 (4th Cir. May 25, 2016). Officers in a North Carolina law enforcement agency used a confidential informant to make a controlled buy of cocaine in the defendant Lull's home. Before going to house to make the controlled buy, the informant had the exact amount for the buy and an additional \$60 at the informant's request because he said that he might be able to buy other drugs. After the controlled buy, the informant surrendered the cocaine and returned \$40 of the additional money. When officers questioned him about the missing \$20, he told them he did not know what they were talking about, but eventually said he thought he gave the money to Lull. Officers then strip searched the informant and a \$20 bill fell out of his underpants. The agency terminated him as a confidential informant because he was no longer reliable. In addition, the informant was charged with obtaining property by false pretenses concerning the \$20.

When the officer applied for a search warrant for Lull's home, he failed to mention in the affidavit anything about the events surrounding the missing \$20 and the termination of the confidential informant, including the criminal charge against the informant.

The execution of the search warrant in the home resulted in the discovery of a firearm, which led to Lull's conviction in a North Carolina federal district court of possession of a firearm in furtherance of a drug crime. The district court denied the defendant's motion to suppress evidence discovered during the execution of the search warrant.

The fourth circuit reversed the district court's denial of the suppression motion and ruled that the search warrant was void. The court discussed *Franks v. Delaware*, 438 U.S. 154 (1978) (two-prong test to challenge veracity of search warrant's affidavit) and it noted its own case law extending *Franks* to omissions of relevant facts from the affidavit. (The *Franks* ruling was limited to false statements made knowingly and intentionally, or with reckless disregard for the truth.) It then found that the defendant Lull had shown by the preponderance of evidence that the officer had omitted information with reckless disregard whether it would make the affidavit misleading, and the omission was material to a finding of probable cause. Thus the search warrant was void, and all evidence found during its execution must be suppressed.