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# Case Summaries: Fourth Circuit Court of Appeals (April 7, 8, and 26, 2022)

**Stop was not unreasonably extended, and the trial court did not err in crediting officer's testimony**

U.S. v. Perez, 30 F.4th 369 (April 7, 2022). The defendant was stopped for expired registration in the Western District of North Carolina. Law enforcement had received a confidential tip that the defendant was involved in drug sales, but the prosecution stipulated that the stop was solely based on the traffic violation. The stopping officer also suspected that the defendant's temporary license tag was fictitious. More officers arrived on scene, and one officer requested the defendant's license but did not request his registration. That officer called into police headquarters to check the license because he did not have a computer in his patrol car. At the same time, the stopping officer continued to investigate the license plate and began running computer checks on the driver's license. The defendant was eventually asked about his registration but was unable to produce it. Six minutes into the stop, the defendant was asked to exit the car. At around the eight-minute mark, officers determined that the defendant's license was suspended for impaired driving convictions. Officers then collected the VIN from the defendant's car and determined that the car had a valid registration but was not registered to the defendant and that the license plate was not the plate registered to the car. A canine unit arrived around 15 minutes into the stop and alerted, leading to the discovery of methamphetamine and guns. The defendant was charged with federal gun and drug distribution charges and moved to suppress, arguing that the stop was improperly extended. The trial court denied the motion and the defendant pled guilty, reserving his right to appeal the denial of the motion.

On appeal, a unanimous panel of the Fourth Circuit affirmed. The district court correctly determined that the officers acted reasonably given the number of offenses under investigation. "…[T]though the stop began with the expired tag, it developed into an investigation for a fictitious plate and revoked license." *Perez* Slip op. at 10. The investigation into the traffic offenses was not complete and no citations had been issued at the time of the canine sniff. Further, officers had called in for the defendant's car to be towed for the license plate violation, which had not yet occurred at the time of the sniff. While some of the efforts of the officers were redundant or could have possibly been completed more efficiently, their actions were reasonable under the circumstances and did not unduly prolong the traffic stop.

The district court also did not err in crediting the testimony of the initial stopping officer. While the defense impeached the officer with a prior inconsistent statement about which side of the defendant's car the officer approached at the beginning of the traffic stop, this inconsistency was "minor" and did not clearly undermine the rest of the officer's testimony. Thus, the district court was affirmed in all respects.

Judge Motz wrote separately to concur. She agreed that the stop was not unconstitutionally prolonged given the need for the defendant's car to be towed but emphasized that a routine traffic stop may not be intentionally extended to effectuate a canine sniff. She noted that some of the timing of the officers' actions indicated deliberate delay and believed that the stop may have been unconstitutional absent the need to tow the vehicle.

**Failure to object to stand-up order after the close of evidence was ineffective assistance; denial of habeas relief reversed**

Witherspoon v. Stonebreaker, 30 F.4th 381 (April 8, 2022). In this habeas case from South Carolina, the petitioner was convicted of drug distribution in state court. At trial, the State presented testimony from an informant and a video of a controlled drug buy allegedly showing the petitioner as the seller, but the images did not clearly identify him. The jury initially deadlocked and was given an *Allen* charge. During further deliberations and after the close of evidence, the jury requested to see an enlarged still image from the video, which was granted. The jury later requested that the petitioner stand beside the image for a jury comparison of the two. Trial counsel was given an opportunity to object but only stated, "I would [object], Your Honor, but . . ." A few minutes after the comparison, the petitioner was convicted and was sentenced to 17 years. After losing his direct appeal, he pursued state post-conviction relief, arguing that his trial counsel was ineffective. The state post-conviction court denied relief, finding that defense counsel was not deficient, and that the petitioner could not show prejudice. He filed for federal habeas relief, alleging that the state post-conviction court unreasonably applied federal law to the facts of his claim. The district court disagreed and denied relief.

On appeal, a divided panel of the Fourth Circuit agreed with the petitioner and reversed. The state post-conviction correctly found that trial counsel merely attempted to object to the stand-up order. It erred, however, in finding that counsel's performance was not deficient and misapplied the standard for prejudice for ineffective assistance claims. Trial counsel only attempted to object to the order compelling the petitioner to stand beside the enhanced image. "Simply put, trial counsel cannot be found to have operated within the admittedly broad scope of *Strickland's* measure of competence when she only attempted — and thereby failed — to object to the stand-up order." *Witherspoon* Slip op. at 23. South Carolina law prohibits the introduction of new evidence during jury deliberations as a generally prejudicial error, and the enhanced image and jury comparison here qualified as new evidence. An objection to the stand-up order would have therefore been meritorious. The prosecution case was "relatively thin," as evidenced by the lack of direct evidence and the jury's initial deadlock, and there was no strategic reason not to object to the order. Under these circumstances, the failure to object constituted deficient performance and there was a reasonable possibility of a different result had the objection been lodged. "In sum, Witherspoon's trial counsel's failure to object to the stand-up order was objectively deficient, prejudiced Witherspoon, and amounted to constitutionally ineffective assistance of counsel." *Id*. at 34. The district court therefore erred in finding that the state post-conviction court reasonably applied federal law, and the petitioner was entitled to relief. The matter was therefore reversed and remanded for the district court to grant the petition unless the State seeks retrial.

Judge Rushing dissented and would have affirmed the district court's judgment.

**Where the legislative change to North Carolina's system of determining substantial similarity of out of state reportable sex convictions occurred after the district court granted summary judgment to the plaintiff and in response to that relief, the plaintiff was the prevailing party entitled to attorney fees**

Grabarczyk v. Stein, ___ F. 4th ___; 2022 WL 1216399 (April 26, 2020). The plaintiff was convicted of a registrable sex offense in Wisconsin and moved to North Carolina. Pursuant to then-existing law, the local Sheriff determined that the offense of conviction was substantially similar to a North Carolina offense and noticed the plaintiff that he was required to register as a sex offender in the state. He sued in federal court, arguing that the lack of procedure violated due process. The district court granted summary judgment to the plaintiff. While the case was on appeal to the Fourth Circuit, North Carolina amended its laws to provide for a judicial determination of substantial similarity. G.S. 14-208.12B (2020) (discussed by Jamie Markham here). This mooted the plaintiff's case and the appeal, and the matter was dismissed on remand to the district court. The plaintiff then sought attorney fees under 42 U.S.C. 1988 as the prevailing party. North Carolina officials argued that the plaintiff did not qualify for relief because the order granting relief was vacated. The district court granted the plaintiff attorney fees totaling more than $60,000.00, finding that the plaintiff qualified as the prevailing party since the legislative change occurred only after the court order granting relief and as a result of that order. The Fourth Circuit unanimously affirmed the award on appeal. "When the reason for mootness and an accompanying vacatur is that a state legislature acted to remedy a violation of federal law declared by the district court, the plaintiff who proved that violation in court has prevailed." *Grabarczyk* Slip op. at 8. Further, the award was not excessive, and the district court did not err in calculating that amount. The district court's judgment was therefore affirmed in all respects.