Case Summaries: Fourth Circuit Court of Appeals (April 8, 9, 18, 25 & 30, 2025)

No error to allow co-defendant to invoke privilege against self-incrimination while co-defendant's appeal was pending

U.S. v. Oliver, 133 F.th 329 (April 8, 2025). The defendant was convicted of attempted Hobbs Act robbery, conspiracy, and firearm offenses in the Eastern District of Virginia, along with a co-defendant. The defendant was sentenced to 630 months in total. He later obtained relief regarding one of his convictions and required resentencing. At the new sentencing hearing, the defendant attempted to call his co-defendant, Brown, to testify. Brown's own direct appeal was pending at the time, and he invoked his privilege against self-incrimination on the witness stand. The defendant was ultimately resentenced to 480 months in prison. The defendant appealed, arguing that the district court's decision to allow Brown to invoke his right to remain silent at the resentencing violated the defendant's due process right to present a defense. Reviewing for abuse of discretion, the court affirmed. While Brown's appeal was pending, he was potentially subject to sentencing enhancements at any resentencing that the appellate court might order, and the district court appropriately allowed Brown to invoke his privilege. In the words of the court:

> [T]he district court acted with commendable caution before permitting Brown to invoke his right against self-incrimination. The requested testimony necessarily implicated details of the underlying crime, and accordingly ran the risk of Brown offering new or inconsistent information. *Oliver* Slip op. at 11.

Other challenges to the defendant's sentence were likewise rejected, and the judgment of the district court was affirmed in full.

Denial of *Batson* challenge was not clearly erroneous

U.S. v. Chaudhri, 134F.th 166 (April 8, 2025). A mother and her two adult sons were charged and convicted of forced labor offenses relating to the enslavement of a woman who married into the family. Beyond forced labor, the victim endured extensive verbal and physical abuse from the trio and other family members. She was also denied access to her children, was forced to live in cramped and isolated conditions, and was made to perform substantial physical labor for the defendants. Each of the defendants were convicted at trial of conspiracy to commit forced labor. One of the sons was also convicted of forced labor, along with the mother, and the mother was additionally convicted of withholding the victim's identification documents.

During jury selection, six of thirteen black potential jurors were excused for cause. The prosecution used peremptory challenges to strike three of the remaining black potential jurors and three white potential jurors from the first panel. The prosecution exercised two of its peremptory challenges on black potential jurors who were under 30 years old, not married, and had no children (Jurors 9 and 26). The prosecution did not strike a third black potential juror who was older than 30, had children, and was married, but the

defense struck that juror. Once new potential jurors were added, the prosecution struck another black potential juror who was again under 30, not married, and without children (Juror 42). The prosecution did not strike another black potential juror who was over 30 and who had children but was not married (Juror 49). The defense lodged a *Batson* objection to the prosecution's use of a peremptory challenge on Juror 42, claiming that the prosecution was unconstitutionally exercising its peremptory challenges on the basis of race. The prosecution responded by arguing that they were attempting to strike all potential jurors who were younger, not married, and had no children, because they felt that jurors would have a harder time understanding aspects of the facts of the case. The district court accepted this as a race-neutral explanation and denied the defendant's *Batson* challenge.

Within minutes of that ruling, the prosecution accepted a white potential juror who was 34 years old, not married, and who had no children (Juror 38). The district court *sua sponte* inquired of the prosecution why this juror was not struck, given its earlier explanation for its use of peremptory challenges. The prosecution explained that it only had one peremptory challenge left at this point and wanted to preserve it to be potentially used later in voir dire. At the conclusion of jury selection, one black female (Juror 49) was seated on the jury, and two other black jurors were chosen as alternate jurors. During trial, Juror 49 had to be excused. Rather than have the first alternate, a white juror, replace her, the defense sought to have one of the black alternate jurors substituted in her place, pointing to the earlier *Batson* challenge. The district court denied that request as well. Ultimately, no black jurors sat on the jury when it began deliberations.

On appeal, the defendant argued that the district court erred by denying the *Batson* challenge regarding Juror 42. He argued the prosecution's explanation of wanting to strike younger, unmarried, and childless jurors was inconsistent with its decision to leave Juror 38 on the panel, who shared many of the characteristics the prosecution claimed to be seeking to avoid among the jurors. Reviewing for clear error, the court found none. When the final panel of jurors was seated, no juror was under 30, unmarried, and without children, consistent with the prosecution's proffered explanation. This did not rise to the level of clear error. In the words of the court:

> While we take Appellants' point that the Government was not so precise in its explanation [for its use of peremptory challenges] at trial, the record bears out the truthfulness of its assertion that it stuck potential jurors who were 'very young,' unmarried, and childless, and that its definition of 'very young' was jurors under 30. At the conclusion of jury selection, there was not a single member of the panel who met all three criteria the Government identified. *Chaudhri* Slip op. at 19.

Other challenges were similarly rejected, and the district court's judgment was affirmed in all respects.

Use of uncharged threatening letter was properly admitted into evidence; empanelment of an anonymous jury was not an abuse of discretion

U.S. v. Beeman, 135 F.4th 139 (April 18, 2025). The defendant was charged with interstate communication with intent to injure in the Eastern District of Virginia. A U.S. Attorney, Heck, prosecuted the case, and an agent with the Naval Criminal Investigative Service, Harris, acted as an investigator in the matter. The defendant ultimately pled guilty to that offense. After his guilty plea, the defendant sent two separate letters to Heck threatening to kill him, and two to Harris (although she only received one).

The defendant was charged with mailing threatening communications to federal officials and pleaded not guilty. He was convicted on all counts at trial and appealed.

At trial, the district court admitted the fourth threatening letter sent to Harris by the defendant as *res gestate* and 404(b) evidence, despite Harris never having received the letter. This was not an abuse of discretion. The fourth letter provided helpful context relevant to the crimes charged, helped to establish that the letters were true threats, and went to the defendant's motives. The district court also did not err in determining that the fourth letter was more probative than prejudicial, and admission of the letter was well within the discretion of the district court.

The district court also empaneled an anonymous jury out of concern that the defendant would threaten any identifiable jurors in the case. The parties were required to refer to jurors only by their numbers during the proceedings. The defendant objected that referring to jurors by their numbers would prejudice his case by signaling to the jurors that he was dangerous. The district court ultimately allowed defense counsel to use an unredacted jury list in voir dire but restricted the defendant to seeing a redacted jury list only.

An anonymous jury is only permitted when "(1) there is strong reason to conclude that the jury needs protection from interference or harm, or that the integrity of the jury's function will be compromised absent anonymity; and (2) reasonable safeguards have been adopted to minimize the risk that the rights of the accused will be infringed." *Beeman* Slip op. at 11 *(citing U.S. v. Dinkins*, 691 F.3d 358, 372 (4th Cir. 2012). Courts consider a variety of factors when determining whether an anonymous jury should be permitted, including whether the defendant has interfered with the judicial process before, the punishment faced by the defendant, and the publicity of the case, among other factors. Here, the district court's decision was supported by the evidence and did not amount to an abuse of discretion. The defendant had interfered with the judicial process in his first case, he expressly threatened to kill others involved in his prosecution before, he was facing a long prison sentence, and there was real potential that the jurors would be threatened if their names were released to the public. The district court still protected the defendant's rights by providing an unredacted list of the jurors to his defense counsel, by telling the jurors the process was an effort to avoid undue publicity (and not that the process was for their safety), and by otherwise not drawing the attention of the jurors to the anonymized process.

Another challenge to the prosecutor's closing remarks was similarly rejected and the district court's judgment was unanimously affirmed.

Admission of firearms toolmark testimony was not an abuse of discretion; no error to exclude polygraph results of a government witness; any Confrontation Clause error was harmless under the facts of the case

U.S. v. Seward, 135 F.4th 161 (April 25, 2025). The defendant was tried for murdering a mail carrier and related offenses in the District of South Carolina. When a mailwoman failed to deliver a package addressed to the defendant containing two pounds of marijuana, he chased her down and fatally shot her. Video surveillance footage from the defendant's house showed the defendant following the woman as she left his residence. The defendant's finger and palm prints were found in the mailwoman's car, shell casings matching a rifle the defendant owned were found in the woman's car and in the defendant's front yard, and an eyewitness saw the defendant speeding away in the woman's car around the time of her death. He was convicted at trial and appealed.

At trial, the government called an expert witness in firearms toolmark identification. The expert testified over the defendant's objection that the shell casings found in the victim's car matched the shells found in the defendant's front yard and that the shells came from the defendant's rifle. On appeal, the defendant argued that toolmark evidence is categorically inadmissible as an unscientific method of forensic analysis. The court rejected this argument, noting that a prior panel of the Fourth Circuit had decided the issue in another case. *U.S. v. Hunt*, 99 F.4th 161, 182 (4th Cir. 2024). The defendant also complained that the witness was unqualified to present such an opinion and challenged the methodology as applied to the facts of the case under Federal Rule of Evidence 702. This too was rejected. The witness was trained by the Bureau of Alcohol, Tobacco, and Firearms in firearms forensics and had worked for the U.S. Postal Service as a firearms analyst for 18 years. The Fourth Circuit found no abuse of discretion. The district court allowed the defendant to argue his points about the witness's training and methodology to the jury and properly ruled that the defendant's arguments went to "the weight, not the admissibility" of the testimony. *Seward* Slip op. at 4 (citation omitted).

The defendant also challenged the district court's decision to exclude evidence that another government witness failed a polygraph examination. At some point during the investigation of the murder, a postal inspector applied for a search warrant for one of the victim's relatives, suspecting that the relative may have been involved in the killing. When the postal inspector denied that such a search warrant existed during his direct examination, the defendant successfully impeached his testimony with the search warrant. However, the defendant also wanted to present evidence that the same relative of the victim had failed a polygraph. While the district court excluded the polygraph examination results, it allowed the defendant to ask the postal inspector about why the search warrant for the relative was sought and whether the relative had been deceptive in his interactions with the postal inspector. This too did not amount to an abuse of discretion. Polygraph results are per se inadmissible on questions of credibility in the Fourth Circuit. *U.S. v. Prince-Oyibo*, 320 F.3d 494, 497 (4th Cir. 2003). The district court appropriately balanced the defendant's interest in presenting evidence of the relative as deceptive and allowing impeachment of the postal inspector without directly admitting evidence of the polygraph.

Finally, the defendant challenged DNA evidence presented by way of a substitute analyst as a violation of his Sixth Amendment right to confrontation. The defendant acknowledged that the substitute analyst could properly testify to the science behind DNA analysis — "what DNA is, where it is found, and how it is tested," as well as how DNA samples are collected, how DNA profiles are created, how the comparison process is conducted, and what quality control practices are needed. *Seward* Slip op. at 9. According to the court, "[t]his is all perfectly fine under the Confrontation Clause." *Id*. (*citing Smith v. Arizona*, 602 U.S. 779, 799). However, the testifying analyst did not conduct the lab analysis of the DNA samples and was not involved with the laboratory work. Instead, she simply reviewed the work of the non-testifying analyst who performed the work. This portion of the testimony was hearsay and implicated the defendant's confrontation rights. The court acknowledged that prior circuit precedent permitting a substitute analyst to offer an independent opinion based on the forensic testing of another, absent analyst was abrogated by *Smith*. According to the court:

> *Smith* makes clear that the government may not evade the Confrontation Clause by offering testimony that is based on a non-testifying analyst's work as long as the testifying expert bases an independent opinion on that material. *Smith* also emphasizes that a criminal defendant has a right to cross-examine the testing analyst about what she did and how she did it and whether her results can be trusted; the right to cross-examine

someone else is insufficient to avoid a Confrontation Clause problem. *Id*. at 11-12 (cleaned up).

Nonetheless, the challenged testimony must be both offered for its truth and testimonial to violate the Confrontation Clause. A statement is testimonial when its primary purpose is to prove past facts for use in a future criminal prosecution. *Ohio v. Clark*, 576 U.S. 237, 245 (2015). Here, neither party advanced a meaningful argument about whether the challenged testimony was testimonial. This would normally require remand of the matter to the district court for additional findings on that question. However, Confrontation Clause issues are subject to harmless error review. Assuming without deciding that the testimony was also testimonial, any confrontation error here was harmless. The jury's verdict was supported by "overwhelming" evidence of the defendant's guilt, including video footage of him leaving immediately after the mailwoman failed to deliver his package of marijuana and returning with an assault rifle minutes later, his finger and palm prints inside the victim's car, and eyewitness testimony placing the defendant in the victim's car around the time of the murder. Compared to this evidence, the DNA evidence played only a minor role in the case.

The judgment of the district court was therefore unanimously affirmed in all respects.

Defendant voluntarily consented to search of his home by telling officers they could "Go check"

U.S. v. Dubon, 135 F.4th 202 (April 30, 2025). Local police in the Eastern District of Virginia received a tip that a man, Balcarcel, possessed numerous firearms and was possibly planning a mass shooting. The officers visited a residence where they believed the man to be and knocked on the door. The defendant opened the door and let the officers into the home. Once inside, the officers noticed an ammunition magazine sitting on a nearby mantle. Balcarcel was present inside the home and approached the officers in the front room, but the officers failed to immediately recognize him. One of the officers asked the men in Spanish whether they knew Balcarcel or recognized his picture. Both men denied knowing him. The officers then asked if other people or weapons were in the home. The defendant responded by saying that no other people were within the home, but did not directly respond to the question about weapons. An officer told the men that the police were going to look for other people inside. The defendant replied, "Go check, . . . there's no one else," while also gesturing with his hands in apparent assent. *Dubon* Slip op. at 2. The defendant mentioned to an officer in Spanish that he was aware that police could not enter his home without a warrant but did not otherwise explicitly object to the presence of police within his home. The officer who heard this comment did not inform the other, English-speaking officers about this comment, responding instead, "We are going to check that nobody's there." *Id*. at 3. Around 20 seconds later, another officer informed the others that he had located a gun. Police ultimately seized two rifles, a handgun, ammo magazines, and bullets from the home. The defendant was charged with possession of a firearm by a person not legally present in the country. He moved to suppress, arguing that officers violated the Fourth Amendment by leaving the front room and conducting a sweep of the home. The district court denied the motion. It found that the defendant consented to the sweep and, alternatively, that the officers were permitted to conduct a protective sweep as a matter of officer safety. The defendant entered a guilty plea, preserving his right to appeal the denial of his suppression motion.

On appeal, the Fourth Circuit agreed that the defendant consented to the search of his home. His statement to the officers to "go check" combined with his body language at the time amounted to voluntary consent under the totality of the circumstances. Although the officers told the defendant that

they were going to look around the home for other people (and did not ask), the defendant's verbal consent was given after that remark. The officers did not raise their voices or otherwise pressure the defendant to agree to the search. While most of the officers only spoke English and the defendant only spoke Spanish, this was not enough to overcome the defendant's voluntary consent, especially since the officer with whom the defendant interacted did speak Spanish. Further, the defendant's statement about police needing a warrant to search the home did not amount to a withdrawal of consent. At the time the defendant made that statement, he trailed off without finishing his thought and shrugged. At no point did the defendant expressly revoke his consent or otherwise object to the search. A reasonable officer would not have taken the defendant's reference to a search warrant as withdrawing consent. The officers also had no duty to inform the defendant of his right to withdraw his consent. *U.S. v. Mendenhall*, 446 U.S. 544, 558 (1980). The district court therefore correctly denied the motion to suppress, and it was unanimously affirmed on the grounds that the defendant consented, without addressing the protective sweep portion of the district court's order.

Divided en banc court affirms geofencing decision per curiam without a majority opinion

U.S. v. Chatrie, ___ F.4th ___; 2025 WL 1242063 (April 30, 2025) (en banc). The defendant was charged with offenses relating to a bank robbery in the Eastern District of Virginia. Police obtained a geofencing warrant for two hours of time relevant to the robbery for phones in the vicinity of the crime, which ultimately led to the defendant's apprehension. He moved to suppress, arguing that the geofencing warrant violated the Fourth Amendment. The district court denied the motion, finding that officers relied on the warrant in good faith. It declined to squarely address the Fourth Amendment argument. A divided panel of the Fourth Circuit affirmed, finding that the defendant voluntarily shared his location information with Google and applying the third-party doctrine to hold that the geofence warrant did not amount to a search (summarized here). On rehearing en banc, the full Fourth Circuit affirmed per curiam.

Chief Judge Diaz separately concurred in the judgment. He agreed that the district court's ruling should be affirmed but would have done so solely on the grounds that the *Leon* good-faith exception applied.

Judge Wilkinson separately concurred, joined by Judges Niemeyer, King, Agee, and Richardson. According to Judge Wilkinson, the use of the geofence warrant did not amount to a Fourth Amendment search and the suppression motion was properly denied as a straightforward application of the third-party doctrine. He praised geofencing warrants as a valuable investigative tool and cautioned against hamstringing law enforcement's use of such techniques. He also warned of the toll on society of extending the exclusionary rule in this context without legislative input.

Judge Niemeyer concurred separately in the judgment as well. He would have held that no search occurred, comparing the data obtained from the geofencing warrant to other, more traditional investigative leads like shoe prints, tire tracks, DNA markers, bank records, and video surveillance. "[T]he data, when limited to the time and place of the crime, were no different than any other marker left behind by a perpetrator." *Chatrie* Slip op. at 31 (Niemeyer, J., concurring). Alternatively, Judge Niemeyer agreed that exclusion of the evidence was inappropriate in light of the officer's good-faith reliance on the search warrant.

In a separate concurrence, Judge King agreed with Judges Wilkinson and Richarson that no search occurred and agreed that the district court should be affirmed based on the good-faith exception.

Judge Wynn penned a separate concurrence, joined by Judges Thacker, Harris, Benjamin, and Berner, with Judge Gergory joining all but the first footnote of the opinion. Judge Wynn argued that the court was obligated to decide the Fourth Amendment issue on the merits rather than apply the good-faith exception. He believed the geofence warrant amounted to a Fourth Amendment search, while acknowledging in footnote one that the good-faith exception also applied on the facts of the case.

Judge Richardson concurred separately, joined by Judges Wilkinson, Niemeyer, King, Agee, Quattlebaum, and Rushing. He would have ruled that "obtaining just two hours of location information that was voluntarily exposed is not a Fourth Amendment search and therefore doesn't require a warrant at all." *Id*. at 64 (Richardson, J., concurring).

Judge Heytens concurred separately, joined by Judges Harris and Berner. Without deciding the merits of the Fourth Amendment issue, Judge Heytens would have affirmed the district court based on the good-faith exception. Because the legal landscape of geofencing warrants was unsettled and because the officer consulted with prosecutors in the past before obtaining prior geofencing warrants, it was objectively reasonable for the officer to believe that the geofencing warrant was legal. Thus, application of the exclusionary rule was unwarranted under the facts of the case.

Judge Berner wrote a separate concurrence as well, joined by Judges Gregory, Wynn, Thacker, and Benjamin. Judge Heytens joined the opinion only as to Parts I, II(A), and II(B). Judge Berner felt that the defendant lacked a reasonable expectation of privacy in his anonymized location history (the information Google provides at the first step of the geofencing process). The defendant had a reasonable expectation of privacy, however, in the subsequent non-anonymized data provided at the second and third steps of the geofencing process, because that data was likely to reveal his identity. Judge Berner argued that, because police lacked probable cause to search for a specific person at the time of the warrant request, the warrant was illegal and amounted to a Fourth Amendment violation.

Judge Gregory dissented. He believed that the geofencing warrant violated the Fourth Amendment and that application of the good-faith exception was inappropriate. He compared the geofencing warrant to a general warrant and that no reasonable officer would have believed that it was lawful, given its lack of particularity to any single individual.

[*Author's note*: Seven judges would have found that no search occurred, while seven other judges would have held that the geofencing warrant was a search. Judge Diaz expressed no view on the merits of the Fourth Amendment question.]