

Case Summaries: Fourth Circuit Court of Appeals (August 1, 4, 7, 9, 16, 24, and 31, 2023)

Vindictive sentencing claim fell outside the scope of appeal waiver; increasing sentence by around 11 years following resentencing was not vindictive when based on objective, post-sentencing information

[U.S. v. Singletary](#), 75 F.4th 416 (Aug. 1, 2023). The defendant was convicted of Hobbs Act robbery and use of a firearm during a crime of violence in the Eastern District of North Carolina. He successfully appealed, resulting in a new sentencing hearing. At that hearing, the government presented evidence of the defendant's behavior in prison since his first sentence. This included evidence of 15 infractions (several of which involved threatening prison officers and possession of weapons). The government also noted that the defendant pled guilty to multiple state charges involving another, unrelated armed robbery since his initial federal sentencing. The district court sentenced the defendant to 13.5 years, six months longer than the original federal sentence. The court also ordered the federal sentence to run consecutively to the formerly concurrent state sentence. The defendant appealed, arguing that the higher sentence amounted to vindictiveness and punishment for his first successful appeal. He noted that the new federal sentence increased his total imprisonment by around 11 years (once the consecutive state sentence was factored in). The government moved to dismiss, arguing that the appeal was barred by the appeal waiver executed as part of the plea bargain.

The Fourth Circuit first determined that a vindictive sentencing claim fell outside the scope of the appeal waiver. In its words:

. . . [W]e will decline to enforce a valid appeal waiver where the sentencing court violated a fundamental constitutional or statutory right that was firmly established at the time of sentencing, or where the court based its sentence on a constitutionally impermissible factor such as race. *Singletary* Slip op. at 7-8.

Vindictive sentencing in response to a successful appeal falls within the established categories of claims that may be considered notwithstanding an appeal waiver, and the government's motion to dismiss the appeal was denied.

On the merits, the defendant's claim of vindictiveness failed. He argued that his increased sentence triggered a presumption of vindictiveness. Under *North Carolina v. Pearce*, 395 U.S. 711 (1969), a vindictive motive may be presumed where the defendant receives a greater sentence from the same judge following a successful appeal. But later case law made clear that not all increased sentences in this posture amount to vindictiveness. See *Alabama v. Smith*, 490 U.S. 794 (1989). Where, as happened here, the sentencing court explains its reasons for the increased sentence and relies on "objective, post-sentencing developments in support" thereof, any presumption of vindictiveness is rebutted. *Singletary* Slip op. at 16. The court acknowledged that situations could arise where the explanation for the higher sentence on remand was "implausible, pretextual, or disproportionate," which may not necessarily rebut the presumption. *Id.* According to the court: ". . . [T]hat is not this case." *Id.*

The district court's sentence was therefore unanimously affirmed.

Divided panel finds prison guard and officials who failed to notice multiple, ongoing inmate murders entitled to qualified immunity

[King v. Riley](#), 76 F.4th 259 (August 4, 2023). Two state inmates in the District of South Carolina systematically murdered four other inmates over the course of two and a half hours one morning. All prisoners involved were in a special care unit designed to accommodate mentally ill inmates who had serious treatment and supervision needs but who did not qualify for in-patient hospitalization. Both inmates worked as janitors for the unit and were afforded extra freedom of movement and other privileges as so-called "ward keepers." Under prison policy, an officer was to patrol the unit every 30 minutes and check inside each cell. While an officer had patrolled the unit during the timeframe of the murders, the officer did not look inside the cell where the murders occurred. He failed to notice the bodies of the deceased inmates inside the cell and otherwise saw nothing amiss. The two inmates turned themselves in after completing the fourth killing. When corrections officials found the bodies, they did not attempt to administer medical aid and instead called for medical personnel. The estate of the plaintiff sued the officers involved and the prison administrators for Eighth Amendment deliberate indifference violations based on the deficient security checks, the failure to provide medical care, and the security risks allegedly known and ignored by prison administrators.

The magistrate judge found that the defendants were not liable, and alternatively that they were entitled to qualified immunity on all claims. On appeal, a divided panel of the Fourth Circuit affirmed. As to the officer failing to conduct proper security checks, the majority determined that "there is no clearly established right to properly conducted security checks," and qualified immunity protected the officer from liability. *King* Slip op. at 7. This was so as a constitutional matter despite the existence of a prison policy requiring more rigorous security checks. Similarly, there was no clearly established right to have the officers render medical aid instead of calling for emergency medical aid. While the failure to take *any* responsive action to an unconscious inmate could constitute deliberate indifference, the officers here called for medical help immediately. This amounted to a good-faith effort to deal with the emergency and did not rise to the level of deliberate indifference. The officers were thus entitled to qualified immunity on the claim. As to the prison administrators, the plaintiff did not argue or provide evidence in support of a finding that any of the administrators committed a constitutional violation. "Nowhere does [the plaintiff] identify how each defendant violated the constitution. This is a prerequisite to a supervisory-liability claim." *Id.* at 16. This argument was properly dismissed for failure to state a claim. Concluding, the majority observed: ". . . King's brutal murder—along with three other inmates—was an atrocity. But atrocities occur in prison without the prison bearing responsibility. . . This is particularly true as long as the qualified-immunity doctrine exists." *Id.*

Judge Wynn dissented and would have allowed the estate's claims to proceed to trial.

Reversing precedent, en banc court holds that attorney fees are available to a plaintiff who prevails on a preliminary injunction in some circumstances, despite later mootness

[Stinnie v. Holcomb](#), 77 F.4th 200 (Aug. 7, 2023). The Fourth Circuit has long held that a plaintiff who wins a preliminary injunction but does not obtain a final judgment in the matter is not a "prevailing party" within the meaning of 42 U.S.C. § 1988(b) (allowing recovery of attorney fees by a prevailing party in civil rights lawsuits). *Smyth ex rel. Smyth v. Rivero*, 282 F.3d 268 (4th Cir. 2002). Here, the plaintiffs filed

a class action lawsuit challenging Virginia’s scheme of indefinitely suspending driver’s licenses for failure to pay court fees and fines. The class argued that the law violated substantive and procedural due process, as well as equal protection. The district court granted a preliminary injunction, suspending enforcement of the law and ordering the state to reinstate the licenses of plaintiffs affected. Prior to trial, the state legislature acted to suspend enforcement of the law for a year. The legislature later repealed the law altogether, rendering the lawsuit moot. The plaintiffs sought attorney fees. The district court denied the petition, noting that *Smyth* foreclosed relief. The initial panel of the Fourth Circuit agreed and affirmed. Sitting en banc to reconsider, a majority of the full court reversed. The former circuit rule was an outlier among the federal circuit courts of appeals; few other federal circuits followed such a strict interpretation of the meaning of a “prevailing party.” According to the court:

When a preliminary injunction provides the plaintiff concrete, irreversible relief on the merits of her claim and becomes moot before final judgment because no further court-ordered assistance becomes necessary, the subsequent mootness of the case does not preclude an award of attorney fees. *Stinnie* Slip op. at 18.

Smyth was therefore overruled. While not all grants of preliminary injunction will qualify a plaintiff as a prevailing party, here, the district court granted concrete relief on the merits of the claim, and its injunction afforded the relief sought by the plaintiffs on the merits. That the case was later mooted by legislative action—in part designed to avoid this litigation and the possibility of an award of attorney fees—should not act to preclude a fee award in these circumstances.

The district court’s judgment denying the petition for attorney fees was therefore reversed and the matter remanded for hearing on the appropriateness and potential amount of an award of attorney fees.

Judge Quattlebaum dissented, joined by Judges Agee, Richardson, and Rushing. The dissenting judges would have affirmed the district court and left *Smyth* intact.

Court affirms verdict and death sentence; no abuse of discretion to rely on defense experts regarding the defendant’s competency; denial of fifth continuance motion was not an abuse of discretion; limited questioning on racial bias in voir dire was not an abuse of discretion; defense counsel waived any *Batson* objection by withdrawal

[U.S. v. Council](#), 77 F.4th 240 (Aug. 9, 2023). During a bank robbery in the District of South Carolina, the defendant shot and killed a teller and bank manager. He was convicted at trial of bank robbery resulting in death and using a firearm to commit a crime of violence resulting in death. He was sentenced to death and appealed, alleging various defects in the proceedings.

The district court raised the issue of the defendant’s competency to proceed more than a year before trial. Defense counsel opposed a court-ordered evaluation, arguing that it would prejudice the defense. Defense counsel stated under oath that the defendant was able to understand the proceedings and could assist and cooperate with his defense. Defense counsel also informed the court that they had obtained a competency evaluation from a forensic psychologist to ensure that the defendant was capable of standing trial. The district court accepted these representations and did not order its own evaluation. During the guilt-innocence phase of the trial, the defendant expressed a desire to testify, a request unexpected by defense counsel. Defense counsel sought a recess and competency evaluation.

They arranged for an evaluation to take place the next day. The district court held hearings and determined there were grounds to question the defendant's competency. The defendant was examined by two separate defense-retained professionals over a weekend break—a psychologist and a psychiatrist—who both determined that he was competent. Defense counsel, the government, and the district court agreed, and the trial proceeded. The district court did not err in failing to order its own evaluation under these circumstances or by relying on the representation of the findings of the defense experts in the competency hearing.

The district court also did not err in failing to grant an approximately three-month continuance three months before trial. The case had been continued three times previously by consent of the parties and one additional time—for a period of eight months—over the government's objection. Defense counsel claimed last-minute difficulties in completing the mitigation investigation, including problems finding certain witnesses for the penalty phase. Jury summons for the case had already been sent out at this point, and many of the potential jurors had already filled out jury questionnaires. The district court pointed to that, as well as to the facts that the defendant had been appointed four attorneys during the proceedings and that the court had previously granted liberal continuances of the matter. The district court did not abuse its discretion in so ruling.

The district court likewise did not abuse its discretion in limiting questions on racial bias during jury selection. While potential jurors were asked six questions via a supplemental questionnaire regarding their attitudes and experiences around racial bias (including whether jurors would be able to be fair in a case involving white victims and a Black defendant), defense counsel sought to have potential jurors questioned on different variations of those questions. While more precise questions about racial attitudes and bias could have been asked, the district court acted well within its discretion to conduct voir dire. According to the court:

True, some of Council's proposed questions were more tailored to the case than the ones posed by the district court. Although these questions might have better honed in on a potential juror's biases, it is also possible these more pointed questions could well have exacerbated whatever prejudice might exist without substantially aiding in exposing it. Given that balancing these concerns is a fundamentally fact and context-specific task, trial courts possess broad discretion and great latitude in deciding what questions should be asked on voir dire. *Council* Slip op. at 18 (cleaned up).

This conclusion was buttressed by the district court's decision to allow defense counsel to question jurors (as opposed to merely relying on the questionnaires and district court's questioning), and defense counsel's decision to ask only one potential juror about the subject. The district court, on the other hand, asked nine potential jurors questions about race, following up on their answers in the questionnaires. "The process of selecting an impartial jury is delicate and involves complex tradeoffs. . . . [T]he record here shows that the district court was not blind to the 'familiar and recurring evil' of racial bias." *Id.* at 20 (citation omitted).

An initial jury was sat, and each side had an opportunity to exercise peremptory strikes. After the parties exercised their strikes, the district court asked the parties if there were any objections to the jury selection process, and both sides indicated that there were none. The members of the jury were informed that they had been chosen to serve as jurors in the case and were read preliminary instructions. At this point, the defense requested a bench conference. Defense counsel asked that the

pool not yet be released so that the defense could have time to analyze the government's use of peremptory strikes for a potential *Batson* violation. The defense asked for "just a couple minutes," which the district court allowed. Following that pause, the defense lawyers informed the judge that they had no objections to the voir dire process. This amounted to a waiver of any potential *Batson* issue. "A party who identifies an issue, and then explicitly withdraws it, has waived the issue. That is exactly what happened here." *Id.* at 24 (citation omitted). The Fourth Circuit could not review the issue as a result.

Other challenges to the death verdict and penalty phase were similarly rejected, and the judgment of the district court was unanimously affirmed in full.

Grant of qualified immunity reversed where a jury could find that an armed, noncompliant man did not present an imminent threat; City was properly granted summary judgment on negligent training claim, but excessive force and state tort claims against the officer and city may proceed

[Aleman v. City of Charlotte](#), ___ F.4th ___; 2023 WL 5257679 (Aug. 16, 2023). In this case from the Western District of North Carolina, a man of Mexican descent called 911. He did not speak English. His statements indicated confusion and paranoia. For instance, he initially gave his name as "the Star God" in Spanish. He reported being followed, having a gun, and asked for police to pick him up. He would not directly respond to many of the dispatcher's questions, including what he intended to do with the gun. The man had pending charges for assault by pointing a gun and simple assault, but otherwise had no criminal record. He admitted to consuming alcohol that day. The man eventually told the dispatcher that he did not intend to hurt himself or the officers. Once the first 911 call ended, the man called 911 again. The dispatcher told him that officers had been sent to the home and instructed him to leave his gun inside. In response, the man stated his intention to give the weapon to the officers. He also told the dispatcher that the gun was not loaded. The dispatcher could hear a female voice in the background. Responding officers were advised of this information over the police radio.

A group of three non-Spanish speaking officers were first on scene. A Spanish speaking officer was on the way, but when the officers were updated on the female voice in the background of the call, they feared a domestic violence situation and decided to approach the apartment. The officers took covered positions around the entrance to the apartment. Two officers had rifles and the other two had handguns, with one positioned closest to the door. All were wearing body cameras. When an officer called out for the man, he opened the screen door. Officers called out "hands, hands" in Spanish. The man stood in the doorway with his hands by his sides. The officer again called out "hands" in Spanish and gestured for the man to raise his hands. The man had a pistol in his left hand and raised it in response. The officers then yelled in English for the man to drop the gun. The man raised his left arm further, pointing it away from the officers. The officers continued yelling in English, and the man raised his right arm in a similar position. The officer closest to the man then shot twice, killing him. The shot came around four seconds after the officer commanded the man in English to drop the gun.

The shooting officer reported to investigators that he told the man to put his hands up in Spanish, but the video showed only that the officers said "hands" in Spanish. That officer also initially reported that the man was holding the gun in a firing position and had "pivoted" towards the officer in response to his commands. Bodycam footage showed that the man had been facing the officer the entire time, and another officer contradicted the shooting officer's version of how the man was holding the pistol. The decedent had a child with his girlfriend, and she sued on the estate's behalf for excessive force against the shooting officer, state assault claims against that officer, wrongful death and negligent infliction of

emotional distress against the officer and the City of Charlotte, and negligent training against the city. In addition to the bodycam evidence and depositions of the officers, each party obtained experts to offer opinions on the reasonableness of the officer's use of force. The district court granted summary judgment to the defendants on all counts, finding qualified immunity protected the officer and the city on the excessive force and state tort claims and insufficient evidence to support the negligent training claim.

On appeal, a divided panel of the Fourth Circuit affirmed in part and reversed in part. The district court properly granted summary judgment to the city on the negligent training claim. Uncontradicted evidence showed that the city had provided adequate training in crisis intervention and interacting with non-English speakers to the officers involved. At most, the complaint alleged that the officers failed to follow their training, and this was insufficient to support a negligent training claim. As to the excessive force claim, the court reversed. It emphasized that possession of a gun, standing alone, is insufficient to justify the use of deadly force. Instead, deadly force is only permissible when someone is threatened by the gun. *Cooper v. Sheehan*, 753 F.3d 153 (4th Cir. 2013). Similarly, the failure of an armed suspect to follow police commands cannot justify the use of force itself. Failure to follow police commands—even when the suspect is armed—only justifies the use of deadly force when there is evidence that the person intends to use the weapon. *Franklin v. City of Charlotte*, 64 F.4th 519 (4th Cir. 2023). Even then, “the commands defied by the suspect must have been ‘clear commands.’” *Aleman* Slip op. at 39 (citation omitted). Viewing the evidence in the light most favorable to the plaintiff, a jury could find that the decedent was not using the gun in an imminently threatening manner, that officer commands to the man were not clear, and that the shooting officer therefore violated the Fourth Amendment. It was clearly established at the time that deadly force is not justified against an armed suspect who ignores police commands to drop the weapon but who does not present an imminent threat, and the officer was not entitled to qualified immunity at this stage. According to the court:

The failure to obey commands by a person in possession of, or suspected to be in possession of, a weapon only justifies the use of deadly force if that person makes some sort of furtive or other threatening movement with the weapon, thereby signaling to the officer that the suspect intends to use it in a way that imminently threatens the safety of the officer or another person. *Id.* at 57 (cleaned up).

There were likewise material factual disputes to be resolved at trial regarding the state tort claims for assault, wrongful death, and negligent infliction of emotional distress against the officer and the city. The district court therefore erred in granting summary judgment on these claims, and the Fourth Circuit vacated the district court's judgment and reinstated them.

The matter was remanded for additional proceedings.

Judge Richardson dissented and would have affirmed the judgment of the district court.

Verdict against corrections officials for due process violations affirmed

[Younger v. Crowder](#), ___ F.4th ___; 2023 WL 5438171 (Aug. 24, 2023). The plaintiff was a pretrial detainee at a state facility in Maryland. He participated in an assault on a corrections officer, resulting in serious injuries to the officer. The plaintiff was put into segregation as a result. The next day, a group of officers assaulted the inmates involved in the incident, causing serious injury to the plaintiff. The

officers instructed the plaintiff to say that his injuries were caused by a fall. While the warden was required by policy to report the incident to a special investigative unit within two hours of discovering it, he failed to do so for more than a day. The plaintiff lodged administrative complaints. The record showed that the plaintiff went through two stages of the complaint process (the first and the third steps), but seemingly skipped one of the middle stages. The plaintiff then sued the officers and the warden for due process violations, ultimately obtaining a \$700,000 verdict in his favor. The officers appealed, arguing that the plaintiff failed to exhaust his administrative remedies, that the evidence in support of the verdict was insufficient as a matter of law, and that they were entitled to qualified immunity.

The district court correctly ruled against the defendants on the failure to exhaust administrative remedies claim. Pursuant to state law, an inmate is not permitted to file an administrative complaint once the special investigative body charged with examining potential criminal misconduct within the prison system is involved. Had the plaintiff fully completed the administrative complaint process, policy dictated that his complaints would have been dismissed on procedural grounds. This rule rendered the administrative complaint process effectively unavailable to the plaintiff, and he was not required to “tilt at windmills” before filing his lawsuit, as the district court correctly realized. *Younger* Slip op. at 12.

The court likewise rejected the sufficiency of the evidence argument. Viewing the evidence in the light most favorable to the prevailing party, the verdict was supported by the evidence and a reasonable jury could have found (and did find) for the plaintiff as to each element of his claim.

Finally, the court rejected the qualified immunity argument. The warden knew that the officers involved had a history of excessive force and other misbehavior and should have known that the plaintiff was at risk of a retaliatory attack from them. It is clearly established that when a warden has information that his officers are likely to intentionally injure an inmate as retaliation and does nothing to prevent the attack, they may be held liable. “. . . Crowder’s inaction amounted to unconstitutional deliberate indifference.” *Id.* at 23.

The verdict and award of damages were therefore unanimously affirmed.

Totality of circumstances did not support reasonable suspicion of theft; denial of motion to suppress reversed

[U.S. v. Critchfield](#), ___ F.4th ___, 2023 WL 5618951 (Aug. 31, 2023). In this case from the Northern District of West Virginia, a Postal Inspector was leaving his home for work one morning around 8:30 am when he noticed a man walking out of a nearby ally. When the two saw each other, the Inspector believed the man’s expression was one of “Oh, no, I’m caught.” CITE. The Inspector knew that the ally was near an empty residence. The man began walking away from the Inspector, repeatedly looking over his shoulder at the Inspector in the process. The Inspector followed the man in his car and saw him turn around and begin walking back to the area where he had just come from. The Inspector also noticed that the front pocket of the man’s hoodie appeared weighted down. The Inspector contacted local police about the suspicious man and gave police his description. Police found the man walking along a nearby road and stopped him by motioning for him to stop and activating their patrol car lights. Police eventually discovered a gun, a flashlight, and small amounts of various pharmaceutical drugs on his person. They also learned that the man had THC, amphetamines, and benzodiazepines in his system at the time. The man was charged federally with possession of a firearm by an unlawful user of controlled

substances. He moved to suppress, arguing that the officers lacked reasonable suspicion to stop him. The district court denied the motion, and the defendant entered a conditional guilty plea. On appeal, a divided panel of the Fourth Circuit reversed.

The government argued that reasonable suspicion existed to believe that the defendant was committing or preparing to commit a theft. The officers did not personally observe any indications of criminal activity; rather, they based the entirety of their suspicions on the information received from the Postal Inspector. The police officers personally knew the Inspector and considered him to be a reliable source of information. The defendant was seized when he submitted to the officers' request to stop and move to the side of the road. At that point, the only information known to the officers was that the defendant was not someone that the Postal Inspector recognized; he had exited an ally near an empty home that morning and given the Inspector a subjectively suspicious look; he had repeatedly looked back at the Inspector while walking away; he had a heavy object in his front hoodie pocket; and he double-backed his path of movement when he noticed someone (the Inspector) following him. "These circumstances, without more, do not give rise to reasonable suspicion of theft." *Critchfield* Slip op. at 7. While evasive movements in response to law enforcement can support a finding of reasonable suspicion, here the defendant was evasive in response to the Postal Inspector, who was not plainly identifiable as a law enforcement officer. According to the court: "While headlong flight might provoke suspicion in any context, we think a nervous reaction and evasive route in response to being watched and followed by another civilian contribute less support to a finding a reasonable suspicion than efforts to evade law enforcement." *Id.* The weighted-down pocket of the defendant's hoodie contributed little to the calculus, as there was no reason to think that the pocket contained evidence relating to a theft. That kind of heavy item in a pocket might support reasonable suspicion to believe that a suspect is armed and dangerous, thus supporting a frisk during an otherwise lawful encounter with law enforcement, but here it was relied upon by the officers as a critical part of reasonable suspicion to stop the defendant.

The denial of the motion to suppress was therefore reversed and the matter remanded for any additional proceedings.

Judge Richardson dissented and would have affirmed the district court.