

Phil Dixon
919.966.4248
dixon@sog.unc.edu
UNC School of Government

Case Summaries: Fourth Circuit Court of Appeals (Aug. 3, 4, 9, 19, and 25, 2021)

(1) Automobile exception justified initial search of car and search of car trunk two weeks later; (2) No abuse of discretion to allow codefendant’s testimony despite an imputed conflict of interest between the codefendant’s attorney and defendant’s prior state counsel; (3) Any error in disclosure of juvenile delinquency history worksheets in lieu of the complete juvenile delinquency files was harmless

[U.S. v. Caldwell](#), 7 F.4th 191 (Aug. 3, 2021). (1) In this case from the Western District of North Carolina, the defendant was convicted of bank robbery and a firearm offense. The defendant was apprehended hiding in bushes with a bag of money, including a GPS tracker, from the bank. Officers then located a car nearby, finding a gun in plain view, another GPS tracker, a ski mask, currency bands, and other items connected with the robbery. Officer obtained a warrant and searched the interior of the car but could not open the trunk due a dead car battery. The vehicle was impounded, and the trunk searched two weeks later, leading to the discovery of another gun and other evidence. The defendant moved to suppress, arguing that the search warrant was invalid and that the inventory search of the trunk was not supported by the warrant. The district court denied the motion. It found both searches were justified by the automobile exception, and that the trunk search was alternatively justified as an inventory search.

On appeal, the Fourth Circuit agreed that the searches were justified under the automobile exception. Officers were led to the scene by the bank’s GPS trackers, and the items in plain view gave police probable cause to search the vehicle without a search warrant. The two-week delay before the car’s trunk was searched did not undermine probable cause: “[W]hen a warrantless search of a vehicle could have been conducted on the scene pursuant to the automobile exception, a warrantless search is also justified after the vehicle has been impounded and immobilized as long as probable cause still exists.” *Caldwell* Slip op. at 8 (citations omitted). While the passage of time is a factor in the probable cause analysis, here, probable cause still existed to search the trunk (even without a warrant) because officers were previously unable to open the trunk and had not yet located the second firearm involved in the robberies. The district court’s suppression ruling was therefore affirmed.

(2) Both codefendants testified against the defendant at trial. One of the codefendants was represented at the defendant’s trial by an attorney who worked in the same public defender office as another attorney who had initially represented the defendant on state charges relating to the case. The defendant argued that the codefendant should not be allowed to testify based on this alleged conflict of interest. The trial court conducted on a full hearing on the issue and determined no actual conflict of interest existed. The North Carolina State Bar was also contacted to assist in resolving any ethical concerns. It advised that this situation amounted to an imputed conflict of interest, but, under the circumstances, the court could use its discretion to allow the testimony. The testimony was allowed, and the codefendant’s attorney withdrew shortly thereafter. The Fourth Circuit found no error. When the

trial court became aware of the potential conflict, it investigated and properly used its discretion to handle the matter without prejudicing the defendant.

(3) The defendant sought juvenile delinquency records for two government witnesses. In response, juvenile delinquency history worksheets for each witness were provided to the defense (but not the actual delinquency records). The trial court refused to order the complete files disclosed, finding that the worksheets were sufficient for defense counsel to impeach the witnesses and allowing the defense to do so at trial. Any error here was harmless.

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

Ban on female toplessness does not violate Equal Protection under circuit precedent

[Eline v. Town of Ocean City, Maryland](#), 7 F.4th 214 (Aug. 4, 2021). The Town of Ocean City bans public nudity. Under the ordinance, women, but not men, are prohibited from appearing topless in public. The plaintiffs filed suit, alleging equal protection violations for gender discrimination and seeking to enjoin enforcement of the rule. The district court granted summary judgment to the town. The Fourth Circuit unanimously affirmed, noting circuit precedent dictated that result. *See U.S. v. Biocic*, 928 F.2d 112 (4th Cir. 1991) (holding that the protection of the public from seeing nude female breasts served a significant governmental interest and satisfied equal protection concerns). A majority of other courts to consider the question have likewise found that the Equal Protection Clause permits bans of public toplessness by women. The grant of summary judgment to defendant was therefore affirmed.

Chief Judge Gregory wrote separately in concurrence. He agreed that circuit precedent controlled on the issue but questioned that precedent's continuing rationale. "[L]aws that discriminate between male and female toplessness embody problematic stereotypes through the control imposed upon the bodies of women and not men." *Chelsea* Slip op. at 24 (Gregory, C.J., concurring). He encouraged the full court to reconsider the issue.

Conflict of interest at plea withdrawal hearing constituted ineffective assistance of counsel

[U.S. v. Glover](#), 8 F.4th 239 (Aug. 9, 2021). The defendant in this South Carolina case pled guilty to federal drugs and conspiracy offenses. After entering a guilty plea but before sentencing, the defendant moved pro se to withdraw his plea, accusing his attorney of misleading him, pressuring him to take the plea, and failing to pursue suppression. At hearing on the motion to withdraw the plea, the defendant argued that his counsel had a conflict of interest and should not be permitted to represent him at the hearing. The district court disagreed, giving the defendant the option to continue with his counsel, or to represent himself pro se. The defense attorney then defended the guilty plea and explained why the motion to withdraw the plea was not justified. The district court denied the motion to withdraw the plea, leading to the current appeal. A unanimous Fourth Circuit reversed.

An actual conflict of interest by defense counsel constitutes ineffective assistance of counsel under *Cuyler v. Sullivan*, 446 U.S. 335 (1980). "[W]here an attorney has an actual conflict of interest, prejudice is presumed if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance." *Glover* Slip op. at 10 (cleaned up) (citation omitted). The court observed that conflict of interest claims are generally brought in post-conviction and not on direct appeal, but that in this case, the conflict was "conclusively"

established by the record. The defendant's claims of malfeasance by his attorney directly implicated the attorney's performance and reputation, creating an actual conflict. Further, the defense attorney affirmatively argued against the withdrawal motion, praising the benefit of the plea bargain and "effectively 'testifying against his client.'" *Id.* at 13 (citation omitted). The case was therefore remanded with instructions for the defendant to receive a conflict-free attorney and a new hearing on the motion to withdraw his guilty plea.

Judge Quattlebaum wrote separately to concur. He would have decided the issue in the defendant's favor based on the functional denial of counsel at a critical stage of the proceedings, rather than under ineffective assistance of counsel standards. He further noted that not any conflict between defense counsel and client will result in an actual conflict of interest.

Death sentence vacated for failure to pursue and present mitigation evidence; new sentencing trial

[Stokes v. Stirling](#), ___ F.4th ___; 2021 WL 3669570 (Aug. 19, 2021). The defendant was convicted of capital murder in state court in South Carolina and sentenced to death. Trial counsel possessed mitigation evidence about the defendant's "extraordinarily traumatic childhood" during the penalty phase but failed to present any of it to the jury, calling only a single "counterproductive" witness. Post-conviction counsel discovered additional mitigation evidence but failed to assert a claim that trial counsel was ineffective by failing to present a stronger mitigation case. After exhausting state post-conviction avenues, the defendant sought habeas relief in federal district court, raising the mitigation-based ineffective assistance of counsel claims for the first time. The district court denied relief, finding the claim procedurally defaulted and without merit. A majority of the Fourth Circuit reversed.

State post-conviction counsel was ineffective for failing to challenge trial counsel's effectiveness during the penalty phase, and this was sufficient to excuse the procedural default. Turning to the merits of the claim, the court found that trial counsel was objectively unreasonable in failing to more fully investigate the defendant's personal history and in failing to present personal mitigation evidence about the defendant during the penalty phase. These errors were prejudicial. According to the court: "[W]hen a jury heard virtually no mitigation evidence at trial, and nothing about the defendant as an individual, the unheard personal evidence is especially impactful on the prejudice calculus." *Stokes Slip op.* at 32. The habeas petition was therefore granted, the death sentence vacated, and the matter remanded for a new sentencing.

Judge Quattlebaum dissented and would have found that the trial attorneys were not ineffective.

Death sentence for mass shooter affirmed

[U.S. v. Roof](#), ___ F.4th ___; 2021 WL 3746805 (Aug. 25, 2021). In 2015, the defendant committed a mass shooting at a historic church in Charleston, South Carolina, in apparent hopes of sparking a race war. He was convicted at trial of numerous hate crime offenses resulting in death and other offenses and was sentenced to death. He appealed, arguing various errors relating to his competency, self-representation during the penalty phase, and challenges to the statutes of conviction, among others. The entire Fourth Circuit recused itself from the case, and an out-of-circuit panel sat by special designation. In a 149-page opinion, the panel unanimously rejected all claims advanced by the defendant. The convictions and death sentence were consequently affirmed in full.

