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**Case Summaries: Fourth Circuit Court of Appeals (July ­­­7, 8, 9, 13, and 21, 2021)**

**Reasonable suspicion existed to detain armed man despite open-carry laws; type of weapon is relevant to reasonable suspicion analysis; summary judgment to officer on Fourth Amendment wrongful seizure claim affirmed**

[Walker v. Donahoe](https://www.ca4.uscourts.gov/opinions/201547.P.pdf), 3 F.4th 676 (June 7, 2021). One week after the Parkland, Florida high school shootings in 2018, the plaintiff was walking through a suburban area near a school in the Southern District of West Virginia while armed with an AR-15 assault rifle and dressed in military-style garb. In response to a 911 call about the armed man, police briefly detained the plaintiff. Open carry of weapons is permitted in the state, although state law restricts open carry to persons 18 years of age and older. The plaintiff was 24 years old at the time, but the officers believed he could have been under the legal age to carry based on his appearance. The plaintiff was polite but largely uncooperative during the encounter, refusing to answer questions about the gun or his business and disputing the justification for his detention. After a background check revealed that the defendant was eligible to possess and carry the weapon, he was released. The interaction took less than nine minutes. The plaintiff sued, alleging a Fourth Amendment illegal seizure.

The trial court granted summary judgment to the officer, finding the seizure was brief, reasonable, and supported by reasonable suspicion. It held that the officer reasonably believed that the plaintiff could have been violating the age restrictions for open carry. The trial court further found that the totality of circumstances—the recent mass shooting, the 911 report, the plaintiff’s proximity to a school, his military-style dress, and young appearance—created reasonable suspicion to believe the plaintiff may have posed a threat to the nearby school. The trial court alternatively held that the officer did not violate any clearly established rights and was therefore protected from liability by qualified immunity. A majority of the Fourth Circuit affirmed the reasonable suspicion ruling.

Under circuit precedent, “where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention.” *Walker* Slip op. at 13 (citation omitted). The district court correctly noted this rule and correctly found that the officer here had more than the mere fact of the plaintiff’s open carrying of a rifle. A suspect’s open possession of a weapon in open-carry states, while not enough on its own, may contribute to reasonable suspicion. Further, the type of firearm is a relevant consideration in the analysis. In *District of Columbia v. Heller*, 554 U.S. 570, 623 (2008), the U.S. Supreme Court noted that the right to possess and carry weapons “extends only to certain types of weapons,” observing that weapons like handguns, commonly used for self- and home-defense, were protected by the Second Amendment, while military-style weapons may be regulated without offending the constitutional right. Following *Heller*, the Fourth Circuit held that Maryland’s ban on AR-15 rifles and similar high-capacity rifles was constitutional. *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir.) (en banc), *cert. denied*, 138 S. Ct. 469 (2017). While both *Heller* and *Kolbe* dealt with Second Amendment rights rather than Fourth Amendment reasonable suspicion, the court found them “instructive” and agreed with the district court that circumstances here supported reasonable suspicion: “Simply put, the circumstances of Walker’s firearm possession were unusual and alarming enough to engender reasonable suspicion,” for all the reasons identified by the district court. *Walker* Slip op. at 18. The district court’s ruling on reasonable suspicion was therefore affirmed.

Judge Richardson concurred in judgment but would have affirmed the district court on the basis of qualified immunity.

**Tip by known informant, corroborated by law enforcement, supplied probable cause to search defendant’s vehicle for evidence of drug trafficking**

[U.S. v. Gondres-Medrano](https://www.ca4.uscourts.gov/opinions/204105.P.pdf), 3 F.4th 708 (July 8, 2021). A longtime confidential informant with a track record of reliability provided a tip to the FBI that the defendant was involved in drug trafficking. Law enforcement obtained a warrant to track the defendant’s cell phone and located him in Baltimore, Maryland. The informant provided additional information that the defendant would be moving heroin on a specific day and meeting the informant. On the day predicted by the informant, police watched as the defendant entered the informant’s car with a shoebox. The car was stopped, and the shoebox searched, revealing fentanyl and heroin. The defendant was ultimately convicted at trial and sentenced to 121 months. He appealed, arguing in part that the trial court erred in denying his motion to suppress the heroin.

The trial court found the information from the reliable and known informant, corroborated by police investigation, provided probable cause to search the car for evidence of drug trafficking under the automobile exception. The Fourth Circuit agreed. Even an anonymous tipster may be sufficiently corroborated by police to provide probable cause. Here, the proven informant had “enhanced” reliability, much of his information to police was independently corroborated by them (including that the defendant would have heroin on the day of his arrest), and the informant met with police face to face (thereby subjecting himself to penalties for false information). Under the totality of circumstances, probable cause existed to search the car for drugs, and the motion to suppress was properly denied.

Other challenges were rejected, and the district court was unanimously affirmed in full.

**Divided court finds no reasonable expectation of privacy in mail addressed to another person absent some other showing of interest in the property**

[U.S. v. Rose](https://www.ca4.uscourts.gov/opinions/194755.P.pdf), 3 F.4th 722 (July 9, 2021). In this Eastern District of North Carolina case, the defendant recruited a friend to receive packages of drugs at the friend’s house. The packages were addressed to the friend’s deceased brother. When the packages would arrive, the friend would leave them on the porch and the defendant would collect them. A Drug Enforcement Agency agent noticed a suspicious package addressed to the friend’s home in the dead brother’s name at a FedEx facility. The agent confirmed that the addressee did not match anyone connected with the address. A FedEx manager opened the package, finding two kilograms of cocaine. Agents soon noticed an additional, similar package. Following a canine alert, a search warrant for the second package was obtained. It too was searched, revealing another two kilos of cocaine. Police arranged a controlled delivery of the packages, and the defendant eventually collected them from the friend’s porch. When law enforcement tried to stop the defendant as he drove away, he fled and ultimately crashed into a parked police car. He sought to suppress the cocaine. The trial court denied the motion, finding the defendant had no reasonable expectation of privacy in the packages. A majority of the Fourth Circuit agreed.

To establish a reasonable expectation of privacy in property, the defendant must show some interest in the property at the time of the search. Normally, mail is protected by a reasonable expectation of privacy. Where the defendant is not the named recipient of the mail, though, the defendant will typically lack a reasonable expectation of privacy in the property. A defendant may show some other interest in or connection to the property despite not being the named recipient of a package, such as when the named recipient of the item is an “established alias” of the defendant, but there was no such showing here. *Rose* Slip op. at 10 (citation omitted). At the time the packages were searched, the defendant had no apparent interest in the property and could not have exercised control over it, had he attempted to do so. In the words of the court:

Rose did not have a reasonable expectation of privacy in the packages addressed to Ronald West because, at the time of the searches, there were no objective indicia that Rose owned, possessed, or exercised control over the packages. *Id.* at 13 (citation omitted).

That the defendant intended to pick up the packages, or had picked up packages this way before, was not enough to demonstrate an objectively reasonable expectation of privacy in the property. The court distinguished this situation from *Byrd v. U.S*., 138 S. Ct. 1518 (2018). There, the defendant was found to have an expectation of privacy in a rental car despite not being authorized to drive the car under the rental contract, based on his possession and control of the vehicle. Unlike the defendant in *Bryd*, the defendant here did not have possession or control of the packages at the time of the search, and no other evidence supported an interest in the property. Thus, the district court did not err in denying the motion to suppress.

Challenges to the 420-month sentence were also rejected and the district court was affirmed in all respects.

Judge Gregory dissented. According to him, the defendant had “at least informal ownership, control, and possession” of the packages, which was sufficient under relevant precedent to show a reasonable expectation of privacy. The dissent faulted the majority for “effectively [requiring] formal property rights” to assert an expectation of privacy, as well as for misapplying precedent and “muddling the doctrine.” *Rose* Slip op. at 22, 23 (Gregory, J., dissenting).

**Second Amendment rights vest at age 18; federal law prohibiting handgun purchases from licensed firearms dealers by those less than 21 years old violates the Second Amendment**

[Hirschfeld v. ATF](https://www.ca4.uscourts.gov/opinions/192250.P.pdf), \_\_\_ F.4th \_\_\_; 2021 WL 2934468 (July 13, 2021; amended July 15, 2021). Federal law provides that only persons 21 years old and older may purchase handguns and handgun ammunition from a licensed firearms dealer. *See* [18 U.S.C. 922(b)(1)](https://www.law.cornell.edu/uscode/text/18/922). People under 21 years old may buy rifles or shotguns from a licensed dealer (but not handguns) and may purchase handguns from a source other than a licensed dealer. They may also be gifted handguns obtained from a licensed dealer by a parent or other person of age. The plaintiffs were people under 21 who sought to purchase handguns from licensed dealer. They sought to establish that the age restriction violated their Second Amendment rights and to enjoin the federal government from enforcing it. The district court granted summary judgment to the government and denied relief. On appeal, a majority of the Fourth Circuit reversed.

The court first determined that Second Amendment rights vest at age 18. “A review of the Constitution’s text, structure, and history reveals that 18-year-olds are covered by the Second Amendment.” *Hirschfeld* Slip op. at 60. It went on to find that the prohibition on handgun purchases by those less than 21 failed to meet intermediate scrutiny and could not survive. “Eighteen- to twenty-year-old’s have Second Amendment rights, and the challenged laws impermissibly burden those rights.” *Id.* at 83. The matter was therefore reversed and remanded for additional proceedings.

Judge Wynn dissented and would have affirmed the district court. He would have found the age restriction for handgun purchases from licensed dealers was lawful under relevant U.S. Supreme Court precedent and noted that the majority’s ruling creates a circuit split, among other arguments. *See Nat’l Rifle Ass’n of Am., Inc. v. ATF*, 700 F.3d 185 (5th Cir. 2012) (upholding federal age limit for handgun purchases from licensed dealers).

**(1) Restrictions on social media use affirmed; (2) Probation officer sitting with prosecutor at revocation hearing was not plain error, but court cautions against practice**

[U.S. v. Comer](https://www.ca4.uscourts.gov/opinions/194466.P.pdf), \_\_\_ F.4th \_\_\_; 2021 WL 3072894 (July 21, 2021). The defendant was convicted of sex trafficking in the Western District of North Carolina. Her crimes involved recruiting woman on social media to join a prostitution ring, and, in at least one instance, using social media to attempt to coerce a woman into returning to prostitution. While on supervised release, she also used social media to set up a drug sale. The district court required that the defendant have no social media accounts without the consent of her probation officer as a special condition of supervised release. The defendant challenged this condition on appeal. She also complained that her probation officer sat with the government attorney during her supervised release revocation hearing, alleging a due process violation and separation of powers issues.

(1) The district court did not err in imposing the social media restriction. The condition was not unduly vague and the probation officer’s testimony at the revocation hearing gave the defendant fair notice of what conduct would be prohibited. The restriction would not bar the defendant from pursuing professional opportunities or staying informed of current events but would preclude the defendant from pursuing purely social activities through social media absent the consent of her probation officer. Should the restriction become unwieldy or be applied in an unpredictable way, the defendant could challenge that application at that time. The restriction was also not a greater deprivation than was needed to ensure the goals of supervision. Given that her underlying crime involved the use of social media, her continued use of social media to facilitate criminal activity even during her period of supervision, and her past efforts to circumvent internet restrictions, the condition was not overbroad and did not impermissibly restrict the defendant’s liberty. Finally, the condition was not an improper delegation of authority to the probation officer. This was consistent with circuit precedent and that of other circuits. According to the court: “[A]s long as the court orders the broad principle guiding the condition of release and retains the ultimate authority over revoking release, the court may allow the probation officer to fill in many of the details necessary for applying the condition.” *Comer* Slip op. at 19.

(2) The defendant did not object to the probation officer sitting with and whispering with the government attorney during her revocation hearing. A Seventh Circuit case suggests that the practice of a probation officer sitting at the government’s table during court proceedings is improper. *U.S. v. Turner*, 203 F.3d 1010 (7th Cir. 2000), and the defendant pointed to that case, arguing plain error. The defendant was not entitled to relief under *Turner*. Because it was an out-of-circuit case and merely advised against the challenged practice, the defendant could not establish plain error. However, the court agreed that the best practice would be to avoid having probation officers sit with the government during court hearings. In its words:

With that said, we understand Comer’s frustration with this arrangement and, like the Seventh Circuit, believe that the perception of fairness in federal courts will be strongly advanced by sitting probation officers apart from either defendants or the Government. After all, ‘the probation officer is an agent of the court.’ ‘As an arm of the court, [they are] not supposed to take an adversarial role in a sentencing or revocation hearing.’ Defendants will better understand this crucial role if probation officers are not literally sitting with the prosecution. As a result, they may come to better trust the officers tasked with helping them transition to law-abiding lives. At the end of the day, by sitting at a separate table, the probation officer, as an arm of court, avoids the appearance of impropriety and so promotes the public’s confidence in the evenhanded administration of justice. *Comer* Slip op. at 23 (internal citations omitted).