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Case Summaries: Fourth Circuit Court of Appeals (Dec. 2, 3, 7, 17, and 27, 2021)

Plaintiff failed to exhaust administrative remedies for alleged due process violation and failed to plead deliberate indifference for cruel and unusual punishment claim; summary judgment to defendants affirmed

[Moss v. Harwood](#), 19 F.4th 614 (Dec. 2, 2021). The plaintiff was arrested in Madison County, North Carolina and taken into custody. During his pretrial detention, prison officials found a weapon in his cell and placed him into disciplinary segregation (or “lockdown”). The plaintiff was kept in lockdown for over two months. No disciplinary hearing was ever conducted despite jail policies requiring such a proceeding. The plaintiff also alleged that prison officials failed to ensure he received necessary medication during his detention. While in lockdown, he sued pro se in the Western District of North Carolina, claiming a due process violations based on his placement in lockdown without a hearing, as well as deliberate indifference by prison officials towards his medical needs. The district court granted summary judgment to the defendants. On appeal, the Fourth Circuit unanimously affirmed. The district court correctly found that the plaintiff failed to exhaust administrative remedies within the prison system as to his pretrial detention claim. The record was clear that the plaintiff had access to the prison complaint process while in segregation, and that he successfully availed himself to that process for other complaints. As to the deliberate indifference claim, the plaintiff could not show that the defendants, all non-medical prison officials, were aware of his medical risk and failed to take appropriate measures. He therefore failed to meet the subjective prong of a deliberate indifference claim, and the district court was correct to grant summary judgment to the defendants on this claim as well.

Peremptory strike of Hispanic juror by the government did not rise to the level of a prima facie Batson violation; assuming a prima facie violation arguendo, the government’s explanation for use of the strike was not pretextual

[U.S. v. Dennis](#), 19 F.4th 656 (Dec. 3, 2021). The defendant was charged with various drug and gun offenses in the Eastern District of Virginia following a high-speed chase and went to trial jointly with his codefendant. During jury selection, the prosecution used one of its peremptory challenges on a Hispanic juror. When the defendant challenged that strike under *Batson v. Kentucky*, 476 U.S. 79 (1986), the prosecutor explained that the juror was struck because she was a social worker. The codefendant objected that the prosecution had kept another White social worker on the jury. The government responded that the White social worker had recently experienced an illegal highway chase similar to the facts of the current case and argued that it kept the White juror for this reason. The defendant’s attorney acknowledged she did not believe the prosecutor was personally biased, and the trial court overruled the objection. It found that

the defendants failed to make a prima facie showing and that the government's explanation of the strike was legitimate. The Hispanic juror therefore remained off the jury. The empaneled jury lacked a single person of color. The defendant was convicted of all counts and appealed, complaining of a *Batson* violation and other issues.

Citing *Flowers v. Mississippi*, 139 S. Ct. 2228, 2244 (2019), the court observed that the Constitution does not permit even a single discriminatory peremptory strike. This jury, however, was initially comprised of three people of color, and the codefendant struck two of the other persons of color. These circumstances did not rise to the level of a prima facie showing and the trial court did not err in so finding. "Left with only the bare fact that the prosecutor rejected one juror with dark skin, we conclude Dennis failed to adduce sufficient prima facie evidence to trigger a *Batson* challenge." *Dennis* Slip op. at 8. The court nonetheless proceeded to examine the prosecutor's explanation of its strike of the Hispanic juror out of an abundance of caution. It agreed with the district court that the prosecutor's explanation was rational and did not apply equally to the struck juror. While both jurors were social workers, the prosecutor believed the White juror would be more favorable to the government because of her recent traumatic experience with a car chase. "This is not a case where the trial court failed to conduct a comparative juror analysis. Or a case where the trial court's conclusions cannot be defended on the record." *Id.* at 10 (cleaned up). The trial court did not therefore err in denying the *Batson* challenge.

Other challenges were similarly rejected, and the convictions were affirmed in all respects.

Undisclosed evidence violated DOJ policy but did not rise to the level of a *Brady* violation where the evidence was cumulative and otherwise available to the defendant

[U.S. v. Blankenship](#), 19 F. 4th 685 (Dec. 7, 2021). The defendant was the CEO and chairman of the board of Massey Energy Company, a mining company operating in the Southern District of West Virginia. An explosion occurred at the Upper Big Branch mine, resulting in the deaths of 29 miners. The mine had an extensive history of safety violations, and the defendant was charged with conspiracy to willfully violate federal mine safety regulations. At trial, he was acquitted on all felony counts but convicted of a lesser misdemeanor offense. After trial, the defendant sought additional information about the case, and the government provided information that should have been disclosed to the defendant before trial under Department of Justice policies. The material included interviews with seven mine employees and internal emails among Mine Health and Safety Administration ("MHSa") officials. Some of the internal emails indicated certain MHSa employees were biased against the defendant and his company. The defendant moved for a new trial based on alleged *Brady* violations and the district court conducted a hearing. It ultimately found the information was not material for purposes of *Brady* and denied relief.

On appeal, the Fourth Circuit unanimously affirmed. For two of the employees involved in the undisclosed interviews, the information provided no new exculpatory value and was cumulative to the impeachment of the witnesses at trial. The other five employees were high ranking, in-house employees that worked closely with (and were subordinate to) the defendant. "This case instead falls squarely under the principle that the *Brady* doctrine is not available where the favorable information is available to the defendant and lies in a source where a reasonable

defendant would have looked.” *Blankenship* Slip op. at 15 (citation omitted). While it is the government’s duty to comply with its *Brady* obligations and the defendant is not required to show that the undisclosed material was diligently pursued, “[the defendant] should not be allowed to turn a willfully blind eye to available evidence and thus set up a *Brady* claim for a new trial.” *Id.* at 16. As to the MHSA emails, the government’s decision to prosecute the defendant was made independently of any regulatory decisions by MHSA, and none of the MHSA employees were witnesses at trial. “In these circumstances, it is far from clear how Blankenship would have been able to introduce these documents into evidence at trial or even use them to discover admissible evidence.” *Id.* at 18. The main issue at trial concerned whether the defendant willfully conspired to violate safety regulations, not the bias of certain MHSA employees, and the undisclosed evidence did nothing to undercut the evidence at trial in support of the guilty verdict. Thus, the district court correctly found that the undisclosed evidence was not material and was unlikely to have affected the verdict. The court concluded:

The circumstances that have brought us to this point in the prosecution of Blankenship are not flattering to the government, and Blankenship’s protest is not a frivolous one. Nonetheless, after a careful review, we conclude that the suppression at issue — both with respect to the individual categories of documents and when they are considered cumulatively — does not undermine confidence in the verdict. The verdict that Blankenship conspired to willfully violate mandatory mine standards was supported by ample evidence, and there is not a reasonable probability that the jury’s conclusion would have been altered by the documents’ disclosure. *Id.* at 19-20.

Recent occupant of car did not have standing to challenge search or stop when he was not actually present at the time and otherwise had no possessory or other interest in the property

[U.S. v. Smith](#), 21 F.4th 122 (Dec. 17, 2021). Greensboro police were surveilling a nightclub and saw the defendant leave in a car with a known felon around 2 am. The defendant was sitting in the front passenger seat of car, which police followed from the nightclub to a gas station. Officers believed the car had a fake license plate, but it was later determined that an officer misread the license plate number. At the gas station, the defendant exited the car with the driver and was inside the convenience store when police arrived. The backseat passenger was in the parking lot at the time and was detained at gunpoint by law enforcement. Officers shined a light inside the car the men had been travelling in and immediately saw a gun on the floorboard of the front passenger area. Another officer soon noticed a second gun. Two other officers approached the two men inside the store and informed the defendant he was being detained for fictitious tags. The defendant immediately stated that the car did not belong to him. During the encounter inside the store, the officers did not know that guns had been discovered in the car by other officers outside. A full search of the car lead to the discovery of heroin on the front passenger side of the car, where the defendant had been sitting, along with the defendant’s cell phone. When the defendant was informed that he was being charged with trafficking heroin, he protested that the drugs did not weigh more than 3.5 grams and were therefore under the state trafficking amount of 4.0 grams. The drugs in fact weighed 3.3 grams. The defendant was charged with various federal drug and gun offenses and moved to suppress. The trial court denied the motion, and the Fourth Circuit affirmed.

It is the defendant's burden to demonstrate a reasonable expectation of privacy in property in order for Fourth Amendment protections to apply. Here, the defendant neither owned nor claimed any other interest in the car searched by the police. "[I]f a passenger asserts neither a property or possessory interest in the car and simultaneously disclaims any interest in the seized objects, that passenger normally has no legitimate expectation of privacy." *Smith* Slip op. at 6-7 (citation omitted). The presence of the defendant's cell phone in the car was another factor to be considered but was insufficient on its own to confer an expectation of privacy in the car, particularly in light of the fact that the defendant left it in the car when he went inside the store. According to the court: "When someone leaves personal belongings behind in another's car, he assumes the risk that the car's owner will consent to a search of the car or that the car's contents will come into plain view of the police." *Id.* at 8 (citation omitted). The fact that the defendant was detained inside the store also did not convert the defendant from a recent passenger to an actual one. Once inside, the defendant appeared to ignore the activity in the parking lot outside and admitted to attempting to mislead the police inside about his connection to the car. "Smith cannot initially pretend to be unassociated with the Malibu and then later declare a privacy interest in it. Such conduct suggests that his assertion of privacy is contrived rather than legitimate." *Id.* at 9. For the same reasons that the defendant lacked standing to object to the search of the car, he lacked standing to challenge the stop of the vehicle, and the district court was correct to deny the suppression motion.

Other challenges were similarly rejected, and the district court's judgment affirmed in all respects. Judge Wynn dissented in part and dissented in judgment. He would have granted the defendant a new trial based on the trial court's failure to instruct on a lesser-included drug offense, but otherwise concurred in the majority opinion.

Qualified right to disclosure of prison surveillance video in disciplinary proceeding was not retroactive to cases on collateral review

[Wall v. Kiser](#), ___ F.4th ___, 2021 WL 6109630 (Dec. 27, 2021). In this case from the Western District of Virginia, the petitioner was accused of a disciplinary violation for allegedly assaulting prison guards. Prison officials refused to disclose video footage of the incident and ultimately found the petitioner responsible for the assault in administrative disciplinary proceedings. This finding resulted in a loss of 270 days of gained time against his sentence. After exhausting his administrative and state court remedies, the petitioner sought habeas relief, alleging a due process violation. The district court dismissed the case. While the appeal of that dismissal was pending, the Fourth Circuit decided *Lennear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), a case holding that prisoners had a qualified right to disclosure of surveillance video where the loss of gained time credits are at stake. The petitioner argued on appeal that *Lennear* was applicable to his case retroactively. Rejecting this argument, a divided Fourth Circuit held that the rule was procedural and did not apply retroactively. Under *Teague v. Lane*, 489 U.S. 288 (1989), "'new procedural rules apply to cases pending in trial courts and on direct review,' [but] they 'do not apply retroactively on federal collateral review.'" *Wall* Slip op. at 7. Thus, the district court was affirmed.

Judge Gregory dissented. He would have found that federal habeas was the petitioner's first meaningful opportunity for review of the prison's decision to forfeit close to nine months of gained time against the sentence, and that *Teague* did not apply to the posture of this case.