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Fourth Circuit Case Summaries: December 14, 18, and 21, 2018

Marijuana stems and rolling papers found in single garbage search did not provide probable cause for sweeping search of residence

[U.S. v. Lyles](#), 910 F.3d 787 (Dec. 14, 2018). Maryland police discovered the defendant's phone number in the contacts of a homicide victim's phone. Suspecting the defendant's involvement, law enforcement conducted a "trash pull" and searched four bags of the defendant's garbage after they were placed on the curb. Police found "three unknown plant type stems [which later tested positive for marijuana], three empty packs of rolling papers", and mail addressed to the residence. A search warrant for evidence of drug possession, drug distribution, guns, and money laundering was obtained on that basis. The warrant authorized the search of the home for any drugs, firearms, any documents and records of nearly any kind, various electronic equipment including cell phones, as well as the search of all persons and cars. Guns, ammunition, marijuana and paraphernalia were found and the defendant was charged with possession of firearm by felon. The district court suppressed the evidence, finding that the evidence from the garbage search did not establish probable cause that more drugs would be found within the home. The trial judge declined to apply the *Leon* good-faith, finding the warrant was "plainly overbroad." The government appealed.

The Fourth Circuit affirmed. It noted *California v. Greenwood*, 486 U.S. 35 (1988) allows the warrantless search of curbside garbage. The practice is an important technique for law enforcement, but also "subject to abuse" by its very nature—guests may leave garbage at a residence that ends up on the street; evidence can easily be planted in curbside garbage. In the words of the court:

The open and sundry nature of trash requires that [items found from a trash pull] be viewed with at least modest circumspection. Moreover, it is anything but clear that a scintilla of marijuana residue or hint of marijuana use in a trash can should support a sweeping search of the residence. Slip op. at 7.

The government argued that the warrant at least supplied probable cause for drug possession, and anything else seen in the course of the execution of the warrant was properly within plain view. In its view, a single marijuana stem would always provide probable cause to search a residence for drugs. The Fourth Circuit disagreed:

The government invites the court to infer from the trash pull evidence that additional drugs probably would have been found in [the defendant's] home. Well perhaps, but not probably. . . . This was a single trash pull, and thus less likely to reveal evidence of recurrent or ongoing activity. And from that one trash pull, as defendant argues, 'the tiny quantity of discarded residue gives no indication of how long ago marijuana may have been

consumed in the home.’ This case is almost singular in the sparseness of evidence pulled in one instance from the trash itself and the absence of other evidence to corroborate even that. *Id.* at 10.

The court therefore found the magistrate lacked a substantial basis on which to find probable cause and unanimously reversed. The opinion continued, however, to note the breadth of the search. The warrant was “astonishingly broad”—it authorized the search of items “wholly unconnected with marijuana possession.” *Id.* at 11. This was akin to a general warrant and unreasonable for such a “relatively minor” offense.

The court also rejected the application of *Leon* good faith to save the warrant, despite the fact that the warrant application was reviewed by the officer’s superior and a prosecutor. “The prosecutor’s and supervisor’s review, while unquestionably helpful, ‘cannot be regarded as dispositive’ of the good faith inquiry. If it were, police departments might be tempted to immunize warrants through perfunctory superior review. . .” *Id.* at 14. Concluding, the court stated: “What we have here is a flimsy trash pull that produced scant evidence of a marginal offense but that nonetheless served to justify the indiscriminate rummaging through a household. Law enforcement can do better.” *Id.*

(1) Defendant’s statement during Miranda warning that he “wasn’t going to say anything at all” was an unequivocal invocation of his right to remain silent; (2) trial court erred in failing to conduct *in camera* review of law enforcement emails for *Brady* material

[U.S. v. Abdallah](#), 911 F.3d 201 (Dec. 18, 2018). (1) In this case from the Eastern District of Virginia, the defendant was convicted of numerous offenses relating to the sale and distribution of synthetic marijuana (a schedule I controlled substance known as “spice”). The defendant was arrested and taken to the police station for questioning. The interrogation was not recorded. During the agent’s *Miranda* warning, the defendant interrupted and remarked that he “wasn’t going to say anything at all.” The agent continued reading the *Miranda* warning and immediately thereafter asked the defendant if he knew why he was under arrest. The defendant indicated he did not, and the agent repeated the *Miranda* warning a second time without interruption. The defendant then acknowledged he understood his rights and made several inculpatory statements. Arguing that he clearly invoked his right to remain silent, the defendant moved to suppress his statements. The trial judge denied the motion, finding the invocation of his right to silence was “ambiguous, especially given the fact that he voluntarily waived his *Miranda* rights minutes later once informed of the charges against him and the subject of the interrogation.” Slip op. at 5.

The defendant also argued it was unclear whether any *Miranda* warning was given at all and sought additional discovery on communications between agents. The notes taken by the one agent at the time of questioning indicated the *Miranda* warning was understood and noted that the defendant wasn’t willing to answer questions. The notes failed to mention the defendant’s interruption. Another agent later prepared a report from memory. That draft report was emailed to other agents involved in the case, and “some modifications” were made. The final report acknowledged that the defendant interrupted the first *Miranda* warning. The defendant claimed that the inconsistency between the notes (by one agent) and the final report (by another agent) required production of the emails between all of the agents involved in the modification of the final report. The district court denied the request, crediting the agent who drafted the report that “he had not removed a request for counsel or a request to remain silent [from his report].” *Id.* at 6. The defendant moved for the court to reconsider both

issues, pointing to other inconsistencies from the agent's testimony before the grand jury, at suppression, and in his final report. Specifically, the agent testified before the grand jury that the defendant waived *Miranda* "both orally and in writing" before the questioning began, and did not mention the defendant's interruption. At suppression, the same agent testified that no written *Miranda* waiver was obtained. The trial judge again denied both requests and the defendant was convicted following trial. The Fourth Circuit reversed.

The court noted that a suspect's unambiguous invocation of the right to remain silent (or request for counsel) ends the interrogation. The test is objective:

An invocation is unambiguous when a 'reasonable police officer under the circumstances would have understood' the suspect intended to invoke his Fifth Amendment rights. Accordingly, 'a suspect need not speak with the discrimination of an Oxford don' to invoke his Fifth Amendment rights. *Id.* at 9-10.

The defendant's statement here that he "wasn't going to say anything" is "materially indistinguishable" from numerous other cases where courts have found an unambiguous assertion of the right to remain silent. The statement was therefore not ambiguous, and questioning should have ceased after that remark. The district court erred in relying on the fact that the defendant later voluntarily waived *Miranda*:

When determining whether an invocation is ambiguous, courts can consider whether the 'request itself . . . or the circumstances *leading up* to the request would render the request ambiguous'. But courts cannot cast ambiguity on an otherwise clear invocation by looking to circumstances which occurred *after* the request. *Id.* at 11 (emphasis in original).

Distinguishing cases from other circuits where similar remarks were found to be ambiguous, the court recognized evidence of "context preceding the defendant's purported invocations [can render] what otherwise might have been unambiguous language open to alternative interpretations." *Id.* at 12. Here, there was no such pre-request context.

The government also argued that since the defendant invoked *Miranda* before the warning was completed by the officer, the invocation of rights could be neither knowing nor intelligent. This argument conflates the standard for waiver of *Miranda* rights with the standard for invocation of *Miranda*. "[T]here is no requirement that an unambiguous invocation of *Miranda* right also be 'knowing and intelligent.' That is the standard applied to *waiver* of *Miranda*, not to the invocation of such rights." *Id.* at 13. Thus, "[t]he officers could not ignore Defendant's unambiguous invocation merely because they decided that Defendant's invocation was not 'knowing and intelligent.'" *Id.* at 16. The statements therefore should have been suppressed. Given the detailed and damaging nature of the defendant's statements and the government's reliance on them at trial, the court declined to find the error harmless. A unanimous court reversed all of the convictions.

(2) While the *Miranda* issue effectively resolved the case, the court also addressed the discovery issue regarding the officers' emails. *Brady v. Maryland*, 373 U.S. 83 (1963), guarantees defendants the right to disclosure of evidence "favorable to the accused and material to guilt or punishment." In cases where the defense seeks *Brady* material which the government asserts is confidential or

otherwise protected, a defendant is required only to make a “plausible showing that exculpatory material exists” within the confidential information. *Id.* at 25. This lower standard applies because a defendant necessarily cannot know whether the confidential information will in fact contain *Brady* material. A plausible showing is made by identifying the protected information with specificity. When a plausible showing is made regarding specific evidence, the defendant is entitled to an *in camera* review by the trial judge to determine what, if any, of the information should be released to the defendant as *Brady* material. Here, the defendant made a plausible showing that the specific evidence of the email exchanges between officers regarding the drafting of the final report existed and may be exculpatory. The inconsistency between the handwritten notes by one agent and the final written report of the other officer was “sufficient to meet the ‘meager’ plausibility requirement for an *in camera* review.” *Id.* at 27. The trial court therefore erred by denying the defendant’s request and crediting the agent’s testimony that the emails would have no exculpatory value. “[T]he district court cannot solely ‘rely on the government’s good faith’ as a basis to avoid review.” *Id.* at 26. It was “plausible” that the information sought would contain evidence favorable to the defense, and an *in camera* review should have been conducted.

Due process claims for lengthy pretrial solitary confinement can proceed; summary judgment and grant of qualified immunity reversed

[Williamson v. Sterling](#), 912 F.3d 154 (Dec. 21, 2018). In this 42 U.S.C. § 1983 case from South Carolina, the court reversed a grant of summary judgment and remanded the matter for trial. The plaintiff was a pretrial detainee accused of murder, robbery and related offenses. He was seventeen years old at the time of his arrest and bail was denied. Due to the nature of his charges, he was placed in maximum security. In the third month of his confinement, the plaintiff wrote a letter to the local sheriff that threatened numerous law enforcement officers, as well as a judge. When the plaintiff was interviewed by law enforcement about the letter, he was “combative” and hit a guard. Various officials then arranged to place the plaintiff in so-called “safekeeper” status.

South Carolina law allows a pretrial detainee to be designated as a “safekeeper” where the detainee presents a high risk of escape, is extremely violent or uncontrollable, or where such placement is necessary to protect the detainee. A detainee in safekeeping is kept in solitary confinement and without normal privileges of other detainees (such as access to books, canteen, outdoor exercise, etc.). To effectuate a transfer from general population to safekeeper status, the sheriff must prepare an affidavit that explains the need for the transfer. The circuit solicitor (South Carolina’s version of a prosecutor) must agree with the sheriff’s decision to request safekeeping, and the detainee’s attorney must be served with a copy of the application. The application is then sent to the director of South Carolina Department of Corrections for review and approval. If approved, an order is prepared for the Governor to sign. Once the Governor signs the order, the detainee is delivered to the safekeeping facility. The safekeeping order is only valid for up to 120 days, with the possibility of renewal for up to an additional 90 days for “good cause and/or no material change in circumstances.” Detainees with mental illness are not eligible for safekeeper status. Here, the safekeeper order was renewed 13 times for over three years. The record showed that while there was documentation of the director’s recommendations and the Governor’s approvals of some of the renewal orders, there was nothing documenting the county’s requests for renewal of the order or any substantive record of a continuing need (or changed circumstances) for the safekeeper orders.

The plaintiff was in solitary confinement 24 hours a day for two days a week, and 23 hours a day for the other five days of the week with very limited human interaction. He ultimately spent approximately 1300 days under these or very similar conditions. Approximately 19 months after being placed into safekeeping, the plaintiff began developing serious mental health issues. He was treated for “unspecified psychosis, grief, nightmares, [and] depression.” Slip op at 12. He was prescribed anti-psychotic drugs for the first time in his life. This change in the plaintiff’s mental health was never referenced in any of the renewal applications, and it is not clear it was ever considered by officials during the course of the renewal orders. He was ultimately acquitted of murder, pled guilty to armed robbery, and his other charges were dismissed. He filed suit pro se against the director of the prison system, the local sheriff, and various other local and state officials alleging due process violations based on the conditions of his pretrial detention. The district court found no violations and alternatively held that the defendants were entitled to qualified immunity.

The Fourth Circuit affirmed the district court’s judgment as to a jail administrator and a prosecutor based on their minimal involvement in the events. “To establish personal liability under § 1983 . . . the plaintiff must ‘affirmatively show that the official charged acted personally in the deprivation of the plaintiff’s rights.’” *Id.* at 28. The sheriff and director of prisons, by contrast, were directly involved in the process of obtaining and renewing the safekeeping orders. The court therefore analyzed the claims on the merits as to those parties.

Pretrial detainees have a due process right to be free from punishment before an adjudication of guilt under *Bell v. Wolfish*, 441 U.S. 535 (1979). Substantive due process ensures that the general conditions of confinement do not constitute punishment. “In order to prevail on a substantive due process claim, a pretrial detainee must show that a particular restriction was either: 1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective.” *Id.* at 34.

Pretrial detainees may also pursue a procedural due process claim in regards to “individually-imposed restrictions.” *Bell* distinguished between impermissible “punitive measures” and permissible “regulatory restraints.” *Id.* “[J]ail officials are entitled to discipline pretrial detainees for infractions committed in custody and to impose restrictions for administrative purposes without running afoul of *Bell*.” *Id.* What process the pretrial detainee is due in such situations depends on the why the condition was imposed. The imposition of disciplinary restrictions entitles the detainee to notice, a hearing, and written explanation of the outcome. With the imposition of administrative restrictions (such as for security purposes), a detainee’s procedural rights are “diminished,” but some protections are remain. A pretrial detainee is entitled to “some” notice and at least an opportunity to be heard on the administrative restriction, although the opportunity to be heard may occur within a reasonable time after the imposition of the restriction. Both disciplinary and administrative restrictions “must yet be rationally related to a legitimate governmental purpose, regardless of the procedural protections provided.” *Id.* at 36. The court noted that a pretrial detainee necessarily retains at least the same level of protections as a convicted person. Further, pretrial detainees in solitary (like convicted prisoners) are entitled to meaningful “periodic review of their confinement to ensure that administrative segregation is not used as a pretext for indefinite confinement.” *Id.* at 38.

The district court erred by not properly analyzing the distinct due process claims presented and by failing to view the evidence in the light most favorable to the plaintiff. As to the substantive due process claim that the extended period of solitary confinement constituted an impermissible punishment, the

trial judge accepted the defendant's argument that the purpose of placing the plaintiff in solitary served a legitimate security purpose, pointing to the plaintiff's threatening letter. This "uncritical acceptance" of the defendant's stated explanation was error. "A court weighing a pretrial detainee's substantive due process claim must meaningfully consider whether the conditions of confinement were 'reasonably related' to the stated objective, or whether they were 'excessive' in relation thereto." *Id.* at 42. Here, the plaintiff spent over three years in solitary "because of single incident of unrealized and unrepeatable threats In such circumstances, a security justification for placing [the plaintiff] in solitary confinement for three-and-a-half years is difficult to discern." *Id.* at 42-43. A jury could find that the placement into solitary was excessive and therefore punishment in contravention of *Bell*. A jury might also find that the multiple renewals of the safekeeping order were improper to the point of violating substantive due process—the plaintiff had no further disciplinary issues after sending the threatening letter, the renewal orders were unsupported by documentation of the "good cause" necessary to support renewal, and the director's memos to the Governor were "perfunctory, containing the same boilerplate language over three-and-a-half years." *Id.* at 44. The director also apparently failed to consider the plaintiff's declining mental health, a "striking omission." This evidence, taken as true, supported substantive due process claims for unconstitutional punishment and the district court erred in granting the defendant's motion for summary judgment.

As to the procedural due process claim, the court determined that whether the imposition of solitary confinement here was disciplinary or administrative in nature, the condition implicated the plaintiff's liberty interests and required some level of procedural due process. At a minimum, the process must include at least some notice and some opportunity be heard within a reasonable time after being placed into solitary, as well as the opportunity to have periodic review of such detention. "Absent a right to such process, administrative segregation could become 'a pretext'—as may have occurred here." *Id.* at 53. The same facts that support the substantive due process claim also support the procedural due process claim. The question of whether the purpose of plaintiff's placement into solitary was administrative or disciplinary (and therefore what process is due), as well as whether these rights were in fact violated, are questions for the jury. Thus, summary judgement was also improper as to this claim.

The court then turned to the question of qualified immunity. Where a reasonable person would not know that the conduct at issue violated "clearly established" law, government officials are protected by qualified immunity. Here, the district court found the plaintiff's rights in this context were not clearly established. The Fourth Circuit reversed. As to the substantive due process claim: "It has been clearly established since at least 1979 that pretrial detainees are not to be punished." *Id.* As to the procedural due process claim, the court found that at least by July 2015, it was clearly established that placement into solitary confinement required at least some minimal procedural protections. Since the plaintiff was confined in solitary after that time, qualified immunity would not protect the defendants after that point if they failed to provide him at least minimal procedural due process regarding the confinement. The court indicated the jury may decide this issue as well. The unanimous court therefore affirmed in part, vacated in part, and remanded for further proceedings.