Case Summaries: Fourth Circuit Court of Appeals (Jan. 7, 16, & 22, 2025)

Defendant abandoned his backpack by leaving it in a publicly accessible hotel stairwell; misidentification of the defendant by cooperating witness did not defeat probable cause where the witness and defendant were communicating in real time and officers corroborated evidence of defendant's involvement in a drug transaction; motion to withdraw plea was properly denied

U.S. v. Mayberry, 125 F.4th 132 (Jan. 7, 2025). A South Carolina highway patrol officer stopped a car for speeding around 4:00 a.m. He ultimately searched the car, leading to the discovery of guns, meth, and $20,000 in cash. A passenger in the car volunteered that he was on his way to a hotel to buy four pounds of meth. The passenger stated that he had bought drugs from the dealer at the hotel before. Officers on scene showed the man a picture of a known drug dealer, and the passenger confirmed that this was the person from whom he expected to buy drugs. The passenger agreed to assist law enforcement with the investigation of the dealer. Officers used the passenger's phone to text the defendant, notifying the defendant that the passenger was on his way to the hotel. Other officers were surveilling the hotel when the defendant arrived. They watched as the defendant exited his car carrying a young child and a red, white, and blue backpack. The defendant was not the same person as the one identified by the car passenger, but his actions indicated that he was the person who was communicating with the car passenger about the meeting via text message. Two officers followed the defendant into the hotel and ran into him on the second floor, placing him under arrest. A third officer entered the hotel through the same door and found the backpack that the defendant had been carrying next to the stairwell door. That officer took the backpack to the parking lot, where a canine alerted to the presence of controlled substances inside the bag. A search of the backpack led to the discovery of more than four pounds of methamphetamine. The defendant waived his *Miranda* rights and spoke to the officers. He acknowledged that he was known by the nickname used by the would-be purchaser (the car passenger). The defendant also consented to a search of his cellphone and admitted that he was at the hotel to sell meth. A later search of the defendant's home led to the discovery of more drugs, guns, ammo, and a scale.

The defendant was charged in the District of South Carolina with various drug distribution, firearms, and conspiracy offenses (among others). He moved to suppress the evidence seized from the backpack, arguing police lacked probable cause to search the bag. The district court denied the motion, finding that the bag had been abandoned when the defendant left it in the stairwell. The defendant later filed a supplemental motion to suppress, contending that the initial tip from the passenger in the speeding car was unreliable based on the car passenger's identification of another person. The district court denied this motion too, finding that the police had probable cause based on the ongoing, real-time texts between the defendant and the officers using the passenger's phone, along with the subsequent corroboration of the planned drug deal by on-scene surveillance officers. The defendant then pled guilty pursuant to a plea bargain, reserving his right to appeal the denial of the suppression motions.

During the plea colloquy, the judge asked the defendant if he was satisfied with defense counsel's services. The defendant and his attorney conferred, and defense counsel informed the court that, despite the two having "differences in the past" and "a rocky road over the last few weeks," the defendant was satisfied with counsel's services. The judge continued questioning the defendant, giving

him time to confer with his attorney whenever he wished. When the judge asked the defendant if he had any current complaints about his lawyer, he said "no." Three times the judge asked if the defendant was entering his plea willingly, and three times the defendant confirmed that fact. Two months later, the defendant moved to withdraw his plea and asked for new counsel to be appointed, which was denied. The defendant was sentenced to 414 months in prison. On appeal, a unanimous panel of the Fourth Circuit affirmed.

As to the motion to withdraw the plea, the defendant complained that his attorney failed to disclose certain discovery and that the Assistant U.S. Attorney ("AUSA") sent defense counsel an inaccurate sentence calculation that "induced" the defendant to enter his plea. However, the defendant made no argument that he would not have pled guilty but for these alleged errors, a requirement to claim ineffective assistance of plea counsel. According to the court:

> [The defendant] is essentially asking us to surmise that had he been given access to the requested discovery materials, his assessment of the weight of the evidence against him would have been materially different and would have caused him to proceed to trial. But it is not our role to supply arguments that [the defendant] has not made." *Mayberry* Slip op. at 10.

Further, the email from the AUSA predicting potential sentencing exposure amounted to "notes" on what the defendant's sentence might look like had he entered a guilty plea to all of the charges. Nothing in the email promised or assured the defendant of his exposure, and it did not amount to an improper inducement to enter a plea. "Given [the] extensive questioning by the district court and [the defendant's] failure to provide a fair and just reason for withdrawing his plea, we hold that the district court did not abuse its discretion in denying [the defendant's] motion to withdraw his plea." *Id*. at 11.

As to the suppression motions, the court agreed with the district court that the arrest of the defendant was supported by probable cause, despite the cooperating witness's initial misidentification of the defendant. The officers knew at the time that the cooperating passenger possessed drugs and a large amount of cash and was headed to a specific hotel to purchase more drugs. The passenger's phone communicated with the defendant and told him when to enter the hotel, and the officers watched as the defendant then did so. The defendant was the only person in the hallway when officers encountered him, and he was seen carrying a distinctive backpack into the hotel which officers quickly recovered from the stairwell where the defendant had just been. "These facts provided a basis for the officers to conclude that there was a probability that [the defendant] was engaging in criminal activity, namely, that [the defendant] was present at the hotel to engage in a narcotics transaction." *Id*. at 13. The car passenger's misidentification of the defendant as another person could not overcome the observations of the officers watching the defendant and reading the passenger's phone communications with the defendant in real time.

The district court also did not err in finding that the defendant abandoned the backpack. The defendant left it behind a closed door in a common area stairwell that was accessible without the use of a hotel key. The bag was not hidden or protected in any way, and the defendant walked away from the bag and down the hallway without any apparent intent to reclaim it. "So, [the defendant] 'ran the risk that complete and total strangers would come upon the bag.'" *Id*. at 18 (citation omitted). Thus, the district court ruling that the bag was abandoned was correct.

The judgment of the district court was therefore affirmed in all respects.

Undisclosed Google data was not material; undisclosed statement from Discord that no records existed for the account was not material when ample other evidence connected the defendant to the Discord account; motion for new trial properly denied

U.S. v. Kuehner, 126 F.4th 319 (Jan. 16, 2025). The defendant was charged with and convicted of engaging in a child exploitation enterprise in the Eastern District of Virginia. The charges stemmed from his production of child sexual abuse materials and his encouragement of others on an online platform to do the same. The defendant and his codefendants engaged in this activity both on a website and on the communication application Discord. Among the evidence presented at trial was the defendant's profile on the website dedicated to sexual abuse of minors showing his photograph, an accurate profile description of his physical attributes, and an admission by the defendant to law enforcement that he had used his personal email address to register on the website. Law enforcement also found child pornography on electronic devices in the defendant's home. At trial, the defendant argued that the person involved in the website and Discord activities was an impersonator. Following a bench trial, the district court convicted the defendant and sentenced him to 20 years in prison, followed by 20 years of supervised release. The defendant moved for a new trial, arguing in part that the government failed to disclose *Brady* material. Specifically, the defendant argued that certain information obtained by the government via subpoena from Google and Discord should have been disclosed to the defense to aid the defendant's argument that he was not the person associated with the website and Discord accounts. The district court denied the motion for a new trial, and the defendant appealed. A unanimous Fourth Circuit affirmed.

A *Brady* violation occurs when the prosecution knowingly fails to disclose favorable, material impeachment or exculpatory evidence. Material evidence is evidence that probably would have changed the outcome of the trial, had it been disclosed to the defense. *U.S. v. Bagley*, 473 U.S. 667, 682 (1985). During its investigation, the government subpoenaed email and Discord account information associated with the defendant, which it did not disclose to the defense. The defendant claimed the information from Google would have shown that someone else created the email address and that it was registered to another person, pointing out that someone else had used his account to log into the website at issue on a certain date. Because most of the conduct at issue took place before that date, it was immaterial that the government failed to disclose the Google data. Further, other evidence showed that a device belonging to the defendant was connected to the same email account, and that the email account was created from the defendant's IP address. This defeated any claim that the undisclosed Google information was material. Regarding the Discord subpoena, Discord indicated it had no information on the account connected to the defendant due to its data retention policy of deleting account information after 45 days. This response from Discord was also not material, since "an overwhelming amount of evidence" connected the defendant to the Discord account. The district court did not err in denying the motion to vacate the conviction or by failing to grant a new trial.

Other challenges on appeal were likewise rejected and the district court's judgment was affirmed in full.

Error to dismiss habeas petition without evidentiary hearing; petitioner had potentially meritorious ineffective assistance of counsel claims based on unfiled suppression motion and alleged failure of defense counsel to seek a plea bargain

U.S. v. McNeil, 126 F. 4th 935 (Jan. 22, 2025). Police in Fayetteville, North Carolina were patrolling in the defendant's neighborhood and noticed a car stop in front of the defendant's home. Officers saw a woman exit the car and walk to the front of the defendant's house before she stepped out of sight. The officers stopped the car for a "regulatory violation" and asked the occupants about stopping by the defendant's home. The officers searched the occupants and found a small amount of suspected marijuana. The officers then went to perform a knock and talk at the defendant's home. Two juveniles answered the door stated that they were alone. The officers nonetheless walked around the home to the backyard, entered the backyard, and approached an outdoor shed. They knocked on the shed, and, when the defendant answered from within, the officers detected a strong odor of marijuana. This led to a search warrant for the property and the eventual discovery of money, guns, and marijuana. The defendant was charged in the Eastern District of North Carolina with various guns and drug distribution offenses. The defendant pleaded guilty to marijuana distribution and gun charges without a plea agreement. Defense counsel filed no motions in the case other than one continuance motion. The defendant was sentenced to 114 months, and the judgment of the district court was affirmed on direct appeal.

The defendant sought habeas relief, arguing that defense counsel was ineffective for failing to file a motion to suppress and for failing to seek a plea agreement with the government despite repeated instructions by the defendant to do so. The district court dismissed the habeas petition without conducting an evidentiary hearing, finding that there was no potentially meritorious Fourth Amendment issue in the case. It also found that the defendant's statements during the plea colloquy attesting to his satisfaction with defense counsel precluded him from now arguing that his counsel should have sought a plea bargain. The defendant appealed the denial of habeas relief, and a unanimous Fourth Circuit reversed.

It was likely that the defendant had a meritorious suppression motion based on the undisputed facts of the case. "[I]t is clear that the police intruded into McNeil's protected curtilage without a warrant—making that intrusion presumptively unreasonable under the Fourth Amendment." *McNeil* Slip op. at 10. The district court therefore erred in dismissing the ineffective assistance claim based on the failure to pursue suppression without holding an evidentiary hearing.

Regarding the defendant's claim that counsel failed to pursue a plea bargain, the defendant never formally attested to his satisfaction with the services of defense counsel under oath. The district court asked the defendant about his satisfaction with counsel as part of a collective advisement of a group of defendants, but the answers of the defendant at that hearing were unsworn. During the sworn part of his plea colloquy, the district court failed to ask about the defendant's satisfaction with defense counsel. Here too the district court erred in dismissing the habeas petition without a hearing. In the words of the court:

> Because McNeil did not make a sworn statement of satisfaction with his lawyer's performance, and because his allegations are not otherwise so palpably incredible, patently frivolous or false as to warrant summary dismissal, we vacate this dismissal, too,

and remand for an evidentiary hearing on McNeil's *Strickland* claim. *Id*. at 16-17 (cleaned up).

The judgment of the district court was reversed, and the matter was remanded for additional proceedings.

District court properly granted the defendants' motion to dismiss; state and federal officers were entitled to qualified immunity as to all claims

Wells v. Fuentes, 126 F.4th 882 (Jan. 22, 2025). A military police officer working at Arlington National Cemetery noticed the plaintiff parked on a road between the cemetery and the Pentagon. The officer noticed that the plaintiff stepped out of his car and was talking on the phone while gesticulating wildly with his arms and hands. The officer believed the man potentially needed assistance and drove his patrol car to the scene, parking behind the man. As the officer exited his patrol car, he noticed the plaintiff's registration tag was expired. As a result, the officer notified Arlington County, Virgina law enforcement before engaging with the plaintiff. When the local police officers arrived, they confirmed that the plaintiff's registration was expired. They also discovered that the plaintiff did not possess his driver's license. The plaintiff acknowledged that he had an AR-15 rifle in the trunk and a Glock pistol in the interior console. A form of body armor known as a ballistic plate carrier was visible in plain view in the backseat of the car as well. The officers decided to tow the car, since the plaintiff could not lawfully drive it away without a license and because the car could not lawfully be parked in that location without a valid tag under Virginia state law. The officers performed an inventory search before towing the car, discovering "five loaded AR-15 magazines, a drone, a laptop, rubber knives, face masks, radios, a Texas license plate, a smoke grenade, two tactical vests, a list of weapons to be purchased," and a crowbar, in addition the weapons already discovered by police. *Wells* Slip op. at 5-6. The officers suggested that the plaintiff call someone to pick him up, but he was unable to procure a ride. The officers were concerned about sending the plaintiff along his way on foot with the weapons and gear so close to the Pentagon, and suggested they keep the gear for him temporarily. The plaintiff agreed.

The next day, a detective noticed that the plate armor from the plaintiff's car had a U.S. Army serial number. The detective also discovered that the plaintiff formerly served in the Army. When he contacted military police, they informed the detective that the plaintiff's military company had reported several thefts of plate armor around a month before the plaintiff left the military. Upon further investigation, the detective discovered that the plaintiff had returned all of his Army gear before his discharge, raising suspicions as to how the plaintiff came to possess the plate armor. When the plaintiff came to the police station to obtain his property, he was arrested on suspicion of theft of the plate armor. When questioned about the armor, the plaintiff admitted he had stolen it from his Army roommate before leaving the armed forces. Police obtained a search warrant for the car the plaintiff had driven to the station, finding drugs, weapons, and ammo inside. The plaintiff was convicted in state court of the traffic violations stemming from the encounter at the cemetery. Virginia authorities also indicted the plaintiff on receiving stolen property and drug charges but ultimately declined to proceed with the charges.

The plaintiff then sued the state and federal officers involved in his charges in the Eastern District of Virginia. He alleged Fourth Amendment violations for illegal search, seizure, and a Second Amendment violation based on the seizure of his guns against the state law enforcement officers, along with state tort claims. He also alleged that the county was liable under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). As to the federal officers, the plaintiff argued that they were liable pursuant to *Bivens v. Six*

Unknown Named Agents, 403 U.S. 388 (1971), and that the United States was liable under the Federal Tort Claims Act. The district court dismissed each of the claims, finding that (i) even assuming a *Bivens* claim was available on these facts, the federal officers were entitled to qualified immunity; (ii) the state law enforcement officers were likewise entitled to qualified immunity; (iii) the state tort claims were dismissed based on pleading defects; and (iv) that sovereign immunity precluded the claim against the United States. The plaintiff appealed, and a unanimous panel of the Fourth Circuit affirmed.

The district court correctly dismissed the Fourth Amendment claims against the state and federal officers based on qualified immunity. First, even assuming that the first officer who encountered the plaintiff seized him at the initial point of contact, the officer's actions were permissible under the community caretaking exception to the warrant requirement. "[The officer] saw a car parked outside the cemetery, and did not know if it was a medical emergency, or the car had broken down, or its occupant was upset in some way. A reasonable officer in such circumstances may well have thought caretaking was justified." *Wells* Slip op. at 17-18 (cleaned up). Next, the officers on scene lawfully detained the plaintiff based on the expired registration and searched the plaintiff's car as an inventory search, since the car could not lawfully be driven without a valid tag. According to the court:

> [B]ecause Wells could not legally drive the car away, the officers had to tow the car upon learning that Well's registration was expired. Wells may be right that local police couldn't know which of his things they would take for safekeeping until he confirmed that no one would pick him up. But they did know, long before Wells gave up trying to phone a friend, that his Mustang needed to be towed. And that triggered a constitutional inventory search. *Id*. at 21-22.

As to the safekeeping of his property, video of the encounter indisputably showed that the plaintiff gave valid consent for the police to temporarily store his weapons and body armor. "The video is clear that Wells cheerfully accepted the officers' offer." *Id*. at 22. Further, because police then had lawful possession of the property, no Fourth Amendment violation occurred when the detective re-examined it at the police station. As to his Second Amendment claim, it was not clearly established in 2020 that the plaintiff had a constitutional right to openly carry firearms, so here too the officers were entitled to qualified immunity. The state tort claims for false imprisonment and malicious prosecution were likewise properly dismissed, because the plaintiff failed to allege that his arrest pursuant to the arrest warrant was unlawful and because there was probable cause to support the plaintiff's arrest. The plaintiff also failed to allege that Arlington County had a practice or policy leading to the supposed violations of his constitutional rights, which defeated any *Monell* claim. Finally, the district court correctly found that the claims against the United States were barred by sovereign immunity.

Concluding, the court observed:

> Few parking tickets become federal cases. This one was unlucky for Wells because of the arsenal he carried in his car. But with the car where it was, police had to tow it. Needing to tow it, they had to inventory it too. And wisely or not, Wells chose to leave its contents with the police. Though what ensued proved inconvenient for Wells, it was not unconstitutional. *Id*. at 28.

The district court's dismissal of all claims was therefore affirmed.