

Case Summaries: Fourth Circuit Court of Appeals (July 7, 22, & 29, 2025)

Petitioner met the standard for a claim of actual innocence and was entitled to merits adjudication of his habeas claims

[Wolfe v. Dotson](#), 144 F.4th 218 (July 7, 2025) (“*Wolfe IV*”). In 2001, Owen Barber murdered a local marijuana supplier in Bristow, Virginia. He ultimately confessed to the killing, accepted a plea to non-capital murder, and was sentenced to 60 years in Virginia state court. The state later indicted the petitioner, a friend of Barber’s, for capital murder, on the theory that he hired Barber to commit the killing. Barber was the main witness for the state at the petitioner’s trial and the only witness who testified to the petitioner’s involvement in the crime. The petitioner was convicted and sentenced to death. The conviction and sentence were affirmed on appeal and in state post-conviction. The petitioner sought federal habeas relief and a stay of execution in the Eastern District of Virginia in 2005. His counsel for the habeas proceeding produced an affidavit from Barber recanting his testimony against the petitioner at the trial and admitting that he was solely responsible for the killing. Barber’s affidavit also revealed that police threatened him with the death penalty unless he identified and testified against the petitioner and that the story of the petitioner’s involvement in the murder-for-hire scheme was first suggested to him by the police. Barber eventually agreed to testify against the petitioner at the petitioner’s capital trial to avoid the death penalty himself. Additionally, a former roommate of Barber and a former cellmate of Barber both signed affidavits stating that Barber had admitted to them that the petitioner was not involved in the murder. In light of these affidavits, the petitioner’s habeas petition was amended to include additional claims, including claims of actual innocence.

Through his claim of actual innocence, the petitioner sought to bring additional claims that were otherwise procedurally defaulted in the initial state post-conviction proceedings pursuant to *Schlup v. Delo*, 513 U.S. 298 (1995) (permitting consideration of otherwise defaulted constitutional claims when the petitioner makes a substantial showing of actual innocence). These additional claims included that the state had suppressed *Brady* impeachment material and had knowingly presented false or misleading testimony at his trial. The district court dismissed the amended habeas petition. On appeal, the Fourth Circuit reversed that decision and ordered the district court to adjudicate the actual innocence claim on the merits. *Wolfe v. Johnson*, 565 F.3d 140 (4th Cir. 2009) (“*Wolfe I*”). The district court ordered discovery, and the state produced volumes of previously undisclosed evidence. Barber testified at an evidentiary hearing and credibly recanted his trial testimony under oath. The district court granted the habeas petition for *Brady* and *Giglio* violations, as well as on other grounds. The state was ordered to either retry the petitioner within 120 days or release him.

The state appealed, and the Fourth Circuit affirmed. *Wolfe v. Clarke*, 691 F.3d 410 (4th Cir. 2012) (“*Wolfe II*”). The court held that the suppression of a single police report indicating the police had motive to manufacture evidence against the petitioner warranted habeas relief on *Brady* grounds. The court also agreed that the state committed numerous other *Brady* violations in the case. The state was again given 120 days to either retry the petitioner or unconditionally release him, running from the date of the decision’s mandate. Four days after that decision, a detective and a state prosecutor visited Barber in

prison and once again attempted to convince Barber to testify against the petitioner at a retrial and to retract his recantation. They threatened Barber with the death penalty again if he refused. The state once more indicted the petitioner for capital murder, this time adding charges of felony murder, use of a firearm in a murder, use of a firearm in an attempted robbery, and two conspiracy offenses. At a pretrial hearing, Barber was called to testify for the defense. He invoked his right to silence and refused to testify. At this point, more than 120 days had passed since the Fourth Circuit's mandate in *Wolfe II*, and the petitioner sought to enforce that judgment in the district court. The petitioner also notified the district court for the first time about the second interview between Barber and Virginia authorities that occurred after the *Wolfe II* decision.

The district court ordered the state to show cause why the petitioner should not be immediately released and why future prosecution of the petitioner should not be barred. Barber's lawyer testified at the hearing on that motion and reaffirmed that he would again advise Barber to invoke his right to silence at any future prosecution. The district court ultimately found that the state had violated its earlier order to release the petitioner or retry him within 120 days. Based on what the court called "extraordinary circumstances" relating to the second Barber interview following *Wolfe II*, the district court barred the state from prosecuting the petitioner again in relation to the murder. On appeal of that decision, the Fourth Circuit reversed. *Wolfe v. Clarke*, 718 F.3d 277 (4th Cir. 2013) ("*Wolfe III*"). There, the court determined that the remedy of a federal court barring the state from re-prosecuting the defendant was not warranted under the circumstances and that the constitutional violations suffered by the petitioner were capable of being remedied at a subsequent trial. The matter was therefore again remanded to state court.

The defendant unsuccessfully sought dismissal of his case based on alleged vindictive prosecution. After that motion was denied, the defendant ultimately pleaded guilty to murder and other offenses in exchange for a sentence of 41 years. His state appeal of the resulting convictions was denied on preservation grounds, but the U.S. Supreme Court vacated the judgment of the state appellate court and directed them to consider his prosecutorial vindictiveness claim. The state appellate court again denied that challenge on remand, and both the state supreme court and the U.S. Supreme Court denied review. The petitioner again sought habeas relief in federal district court, renewing his prosecutorial vindictiveness claim and adding a claim for ineffective assistance of counsel. This habeas petition was filed one day past the statute of limitations without any apparent excuse. While the petition was pending, Barber signed a new affidavit, once more attesting to the petitioner's innocence and recounting the circumstances of his interview with state authorities after the *Wolfe II* decision. An amended habeas petition was filed in response to this new statement, adding a new actual innocence claim and a due process claim based on the state authorities' intimidation of Barber. The district court dismissed the petition, finding it was not timely. In the alternative, the district court found that the new Barber statement was not new, reliable evidence.

On appeal of that decision, a unanimous Fourth Circuit reversed. The court determined that the new affidavit from Barber was new and reliable evidence. Based on that evidence, it was more likely than not that a reasonable jury would have reasonable doubts about the petitioner's guilt. The court held that the petitioner had satisfied the high bar for an actual innocence claim under *Schlup*, which was sufficient to warrant consideration of the new claims despite the untimeliness of the amended petition.

In the words of the court:

Twenty-four years ago, the Commonwealth decided that Appellant was a guilty man. From that moment, the Commonwealth has done everything in its power to ensure that Appellant dies in prison, eschewing the Constitution, ethical strictures, and Appellant's own repeated and consistent assertions of actual innocence. *Wolfe* Slip op. at 2.

The court therefore vacated the district court's decision and remanded the matter for the district court to adjudicate the petitioner's unresolved habeas claims.

Enhanced sentence for possession of unusual weapons based on defendant's status as an unlawful user of controlled substances did not implicate the Second Amendment; unlawful user of controlled substances enhancement was not unconstitutionally vague; new sentencing ordered on other grounds

[U.S. v. Simmons](#), 143 F.4th 200 (July 7, 2025). After the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) executed a search warrant on the defendant's home, they located a number of unregistered weapons and weapon accessories (like silencers) in violation of the National Firearms Act. The defendant was charged in the Southern District of West Virginia and ultimately pleaded guilty to illegal possession of an "auto sear," an accessory that allows semi-automatic guns to fire at the rate of a fully automatic gun. ATF agents also found evidence indicating that the defendant used illegal drugs. The defendant admitted to having used methamphetamine and Adderall over the past several months. A drug test confirmed the presence of amphetamines in the defendant's system, along with marijuana. Although he was not charged with any drug offenses, his sentencing exposure was increased due to his status as an unlawful user of controlled substances. After applying several sentencing enhancements, the district court sentenced the defendant to 36 months imprisonment. He appealed, arguing that the application of the sentencing enhancements violated his Second Amendment rights. The defendant also argued that the enhancement for being an unlawful user of controlled substances under 18 U.S.C. 922(g)(3) was unconstitutionally vague. A unanimous panel of the Fourth Circuit rejected both arguments.

As to the defendant's Second Amendment challenge, the defendant admitted in his brief that there was no constitutional right to possess the specific firearms covered by the National Firearms Act (such as machine guns and short-barrel shotguns). Because the defendant was only charged with possession of items covered by the Act, this challenge failed. "The Second Amendment cannot shield Simmons from penalties for firearms that he concededly had no constitutional right to possess." *Simmons* Slip op. at 8. The court relied upon guidance from the U.S. Supreme Court distinguishing commonly used firearms from "dangerous and unusual" ones. *Id.* at 9 (internal citation omitted). The defendant did not challenge the government's designation of auto sears as machineguns, and "unless auto sears are entitled to Second Amendment protection that machineguns lack," any Second Amendment challenge necessarily failed. *Id.*

The defendant's vagueness challenge also failed. "[W]hen a defendant's conduct falls squarely within the confines of the disputed statute, he abandons the right to challenge that statute for vagueness." *U.S. v. Claybrooks*, 90 F.4th 248, 255 (4th Cir. 2024) (citation omitted). Here, there was no question that the defendant was an unlawful user of controlled substances based on his admissions to illegal drug use and his drug screen results, and this precluded his vagueness argument.

While his constitutional arguments were rejected, the court found that the district court improperly imposed two of the sentencing enhancements on other grounds. The defendant's sentence was therefore vacated, and the matter was remanded for the district court to conduct a new sentencing hearing.

Bank records and administrative court order were relevant evidence and not testimonial; no Confrontation Clause violation

[U.S. v. Booker](#), 143 F.4th 200 (July 22, 2025). The defendant owned a substance abuse treatment company as well as a drug testing services company. According to the government, he defrauded Medicaid by billing it for unnecessary drug tests and paying kickbacks to others who provided the companies opportunities for regular drug testing of Medicaid beneficiaries. The defendant was indicted for fraud, conspiracy, money laundering, paying illegal kickbacks, and other offenses in the Western District of North Carolina. The defendant represented himself at trial and testified in his defense. On cross-examination, the prosecutor elicited testimony from the defendant that he deposited \$1 million dollars into his personal bank account on the same day that \$1 million dollars was withdrawn from one of his business accounts. The government also introduced a redacted version of an order from an administrative court that had affirmed civil sanctions against the defendant's company for fraud. The jury ultimately convicted defendant on all counts, and he was sentenced to 200 months in prison. On appeal, the defendant argued that the admission of testimony about the \$1 million dollar deposit and the administrative court order was unfairly prejudicial and violated his confrontation rights.

The administrative order was entered into evidence only after the defendant testified that the leaders of his company were unaware of the company's fraudulent practices. The appellate court concluded the order was relevant to impeach the defendant, and the district court did not err in allowing it. Even if the administrative court order was testimonial (which the court doubted), it was not offered for its truth in this context. Rather, the order was used only to show that leadership at the defendant's company was aware of the company's wrongdoing. Because the Confrontation Clause only protects against the admission of testimonial hearsay statements and this document was not offered for its truth, the order did not violate the defendant's confrontation rights.

Similarly, the testimony regarding the \$1 million dollar deposit was "highly probative of [the defendant's] intent or motive to commit Medicaid fraud." *Booker* Slip op. at 20. The court held that the same testimony did not violate the Confrontation Clause because the bank records showing the timing of the deposit were not testimonial. "Bank account transaction ledgers aren't generally 'created as an out-of-court substitute for trial testimony,' and therefore aren't testimonial statements subject to the Confrontation Clause." *Id.* at 21 (citation omitted).

The court likewise rejected challenges to the sufficiency of the evidence and his sentence, and the judgment of the district court was unanimously affirmed in all respects.

Federal ban on possession of firearms by people adjudicated mentally defective or who have been involuntarily committed is facially constitutional

[U.S. v. Gould](#), ___ F.4th ___ (July 29, 2025). Between 2016 and 2019, the defendant was involuntarily committed to a facility for mental health treatment on four separate occasions. In 2022, authorities found the defendant in possession of a shotgun and indicted him in the Southern District of West

Virginia for violating the federal ban on possession of firearms by a person who has been committed to a mental institution under 18 U.S.C. 922(g)(4). The defendant moved to dismiss, arguing that that 922(g)(4) was facially unconstitutional under the Second Amendment. The district court rejected the challenge, finding that the nation's historical tradition included disarming people who were dangerous to themselves or others. The defendant then pleaded guilty and appealed the denial of his motion to dismiss.

On appeal, the court noted that the U.S. Supreme Court has consistently and repeatedly observed in Second Amendment cases that limitations on the ability of the mentally ill to possess firearms are presumptively valid. However, the Court has not defined the term "mentally ill," and 922(g)(4) applies not only to people who are currently mentally ill, but also to someone who was committed involuntarily for mental illness who has since recovered. Thus, the statute could be applied to a person who is no longer mentally ill and otherwise a law-abiding, responsible citizen. Here, though, the defendant only raised a facial challenge to the statute. His burden for such a challenge is to demonstrate that the statute cannot be constitutionally applied to any defendant under any set of facts. The appellate court agreed with the trial court that while federal law affects conduct protected by the Second Amendment, there is a historical tradition of disarming people who present a danger to themselves or the public, and that tradition includes disarming people who are dangerous due to mental illness. Early legislatures frequently limited the freedom of people suffering from mental illness, and the mentally ill would often be incarcerated if they had no friends or family to care for them. This practice developed in response to the perceived threat to public safety and order presented by the mentally ill. Early legislatures also frequently disarmed entire categories of individuals such as religious and racial minorities, based on the perception that a group was dangerous. This history presented an analogous historical tradition akin to 922(g)(4). In the words of the court:

In sum, history shows that legislatures had the authority, consistent with the understanding of the individual right to keep and bear arms, to disarm categories of people based on a belief that the class posed a threat of dangerousness. And when combined with the historical treatment of those who suffered mental illness, we perceive an unambiguous history and tradition of disarming and incarcerating those whose illness made them a danger to themselves or others.
Gould Slip op. at 19.

In conclusion, the court stressed that its holding was narrow—922(g)(4) is facially constitutional because it may be constitutionally applied to at least some people within its reach. The court expressly declined to opine on potential as-applied challenges to the same law.

The district court was therefore unanimously affirmed.