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Case Summaries: Fourth Circuit Court of Appeals (March 2 and 30, 2022)

Counsel's failure to object to improper prison conditions evidence at penalty phase was deficient performance but did not prejudice the petitioner; death verdict affirmed

[Wood v. Stirling](#), 27 F.4th 269 (Mar. 2, 2022). The petitioner was convicted of the murder of a police officer and other offenses in this South Carolina death penalty habeas case. During the penalty phase, the State presented evidence of the conditions of general population and the privileges enjoyed by inmates there, contrasting it with the much more restrictive conditions of death row. Defense counsel did not object to this evidence, despite it being improper under state law. On cross-examination, the defense elicited testimony about the risks to inmates serving a sentence in general population. During its case-in-chief, the defense presented mitigation evidence of the petitioner's mental health conditions and of his adaptability to prison, including the lack of risk he would pose to prison staff. The State emphasized the privileges of general population in closing, again without defense objection. The jury returned a death verdict, and the case was affirmed on direct appeal. At state post-conviction, the petitioner argued ineffective assistance of counsel based on the failure of his attorneys to object to the prison conditions evidence. The state post-conviction court found that trial counsel's performance was deficient for failing to object but determined the petitioner could not show prejudice. The state high court refused review, and the petitioner sought federal habeas relief. The district court denied the petition, and the petitioner sought review at the Fourth Circuit.

Federal habeas relief for a claim considered and rejected on the merits by a state post-conviction court is only available if the state court decision was contrary to established federal law or involved an unreasonable application of the facts to the law. The petitioner argued that he met both standards. The Fourth Circuit disagreed. The case involved "extremely aggravated" facts, and the defense presented only limited mental health evidence in mitigation. Further, the defense effectively countered the State's prison conditions evidence. The district court therefore correctly determined that, while defense counsel's performance was deficient, there was no reasonable possibility of a different result, and thus the petitioner could not show prejudice. The length of deliberations (here, three days at the penalty phase) may be a factor in an ineffective assistance claim, but the state court did not err by failing to discuss it in its ruling. After an initial deadlock, the jury asked to review the mental health evidence, not the prison conditions evidence, indicating that prison conditions evidence was not the cause of the deadlock. The state court's ineffective assistance of counsel analysis was therefore reasonable and its judgment, as well as that of the federal district court, was unanimously affirmed.

Material issues of fact existed regarding whether the deceased pointed his weapon at the deputy and whether the deputy was readily identifiable as law enforcement; grant of qualified immunity reversed

[Knibb v. Momphard](#), ___ F.4th ___; 2022 WL 945713 (Mar. 30, 2022). In this case from the Western District of North Carolina, the estate of the deceased sued a Sheriff's deputy and others alleging a Fourth Amendment violation based on excessive force, among other claims. The deceased lived with his

family on a rural, private road in Macon County. Neighbors down the street hosted a gathering, and a guest pulled into the deceased's driveway by mistake. The deceased confronted him, believing the person was visiting the neighbors to purchase drugs. The two argued and the guest left. When another guest left the neighbor's party, wooden boards with nails through them were in the middle of the road and the neighbors called law enforcement. A deputy arrived and parked in the road. He did not activate the flashing lights of the patrol car, and the street did not have streetlights. The deputy saw lights on inside the house of the deceased and approached, announcing the presence of law enforcement. He knocked on different doors of the home, but no one responded. The deputy left the property to speak with the neighbors. While doing so, he noticed the lights go off at the home of the deceased. He returned to the home and walked onto the porch, again announcing that he was with the Sheriff's department. Inside the home, the deceased grabbed his shotgun and remarked to his wife that anyone could impersonate law enforcement. The deputy heard a shotgun rack from behind the porch door and believed he was about to be shot from inside. The deputy moved further onto the porch and yelled for the deceased to drop the gun. When he received no response, he again yelled for the deceased to drop the weapon and moved past some windows to obtain better cover. According to the deputy, as he began moving, he saw the deceased pointing the shotgun at him and shot six times through the window, killing the man. The Sheriff's department did not discipline the deputy, and the local district attorney declined prosecution.

During discovery, conflicting expert testimony was presented regarding whether the deceased was pointing the shotgun at the deputy at the time of the shooting. The deputy's own statements first indicated the man pointed the gun at him, but later indicated some uncertainty about its positioning. The district court granted summary judgment to the defendants, determining that the deputy was protected by qualified immunity. On appeal, a divided panel of the Fourth Circuit reversed. Taking the evidence in the light most favorable to the plaintiff, there was a genuine dispute of material fact on whether the deceased posed an immediate danger to the deputy's life and whether the deputy was easily recognizable as a law enforcement officer while on the porch, and a jury could reasonably determine those facts in the estate's favor. According to the majority:

Viewing the evidence in the light most favorable to the Estate, a jury could find that Knibbs only racked his shotgun in order to load it while investigating who was on his porch in the middle of the night. Accepting that factual premise, Knibbs' act of racking a shotgun within his own home without any other gesture would not have caused a reasonable officer to fear for his life. *Knibbs* Slip op. at 29-30.

Further, clearly established law within the Circuit holds that possession of a firearm, without more, does not justify the use of deadly force by police, nor does the lawful possession of a firearm within one's own home. That the deputy had identified himself as law enforcement and ordered the deceased to drop the weapon were not dispositive on the question under these facts. In the words of the majority:

[Circuit precedent] clearly establish[s] that the failure to obey commands by a person in possession of, or suspected to be in possession of, a weapon only justifies the use of deadly force if that person makes some sort of furtive or other threatening movement with the weapon, thereby signaling to the officer that the suspect intends to use it in a way that imminently threatens the safety of the officer or another person. *Id.* at 39-40.

Thus, the district court's ruling on qualified immunity was reversed and the matter remanded for further proceedings on the excessive force claim and others. Other aspects of the district court decision were affirmed.

Judge Niemeyer dissented and would have affirmed the district court in all respects.