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## Case Summaries: Fourth Circuit Court of Appeals (Nov. 9, 17, 18, and 30, 2021)

**Reasonable suspicion of trespassing, impaired driving, and illegal parking supported stop of defendant parked in high school parking lot during school hours, even without presence of crossbow in backseat; crossbow alternatively provided reasonable suspicion and any mistake of law as to the legality of the weapon on school property was reasonable**

[U.S. v. Coleman](#), 18 F.4th 131 (Nov. 9, 2021). A school official in the Western District of Virginia noticed a man parked in the high school's parking lot one morning as the school day began. The man appeared to be asleep in his car and had a crossbow in the backseat. The car was running, had its brakes on, and was parked partially in a lane of travel. The school resource officer responded. As the deputy pulled behind the defendant's car, the defendant began to drive away. The deputy then stopped the car. He saw the crossbow upon making contact and asked the defendant about other weapons. The defendant acknowledged a gun in the car, and the deputy asked him out of the car. As the defendant exited, the deputy noticed apparent marijuana inside. The defendant appeared tired and submitted to field sobriety testing. The car was searched and a gun, baggies, a scale, and methamphetamine was discovered. The defendant was charged with various federal drug and gun offenses and moved to suppress, arguing that the stop was unjustified because possession of a crossbow on school grounds is not illegal in Virginia. The district court denied the motion, finding that the deputy had reasonable suspicion to stop the vehicle based on the corroborated report from the school official about a sleeping man on school grounds with a weapon and the defendant's driving away upon the deputy's approach. It further found that any mistake by the deputy about the legality of the crossbow on school grounds was an objectively reasonable mistake of law under *Heine v. N.C.*, 574 U.S. 54 (2014). The defendant was convicted at trial and sentenced to 211 months.

On appeal, a unanimous panel of the Fourth Circuit affirmed. Even without the crossbow, the deputy had reasonable suspicion to stop the defendant's car for suspicion of trespassing on school grounds, impaired driving, and illegal parking. In the alternative, the court found that the crossbow provided reasonable suspicion by itself or in combination with other factors. The deputy was not required to ignore the presence of a strange man with a weapon on school grounds, whether or not the crossbow was legal to possess. "Here, as in *Terry*, the underlying behavior does not have to be illegal for us to conclude that Deputy Johnson had reasonable suspicion to stop Coleman." *Id.* at 15. The district court's denial of the motion to suppress was therefore affirmed.

**Murder of prison guard by inmate at an understaffed prison did not rise to the level of a state-created danger for purposes of a substantive due process claim**

[Callahan v. N.C. Dept. Public Safety](#), 18 F.4th 142 (Nov. 17, 2021). A guard at a prison in the Eastern District of North Carolina was murdered by an inmate and her estate sued under 42 U.S.C. 1983, alleging

a substantive due process violation. According to the plaintiff, the prison had notice that the inmate was homicidal and failed to take protective measures, the unit was understaffed, and the other guards on duty were not fully trained, and the combination of these factors rose to the level of a state-created danger. The district court dismissed the case, finding the complaint did not adequately plead a state-created danger or an intent by individual defendants to cause harm. The Fourth Circuit affirmed. There is generally no due process protection from the acts of third parties which the government may have been able to prevent. The state-created danger doctrine provides a narrow exception to that general rule where “(1) the state actor directly ‘created or increased the risk’ of the harm to the victim and (2) ‘did so directly through affirmative acts.’” *Callahan* Slip op. at 8 (citation omitted). The exception only applies to direct acts creating the danger and does not apply to omissions or failures to act. The complaint alleged that the defendants affirmatively sent the decedent into the unit aware of the danger and affirmatively failed to protect her from the inmate. This was insufficient to show a state-created danger, and the district court properly dismissed the complaint. The district court judgment was therefore unanimously affirmed.

**Federal prosecution of the defendant for firearm by felon following state prosecution for capital murder did not violate double jeopardy or amount to a vindictive prosecution; state and federal offenses had different elements and were prosecuted by separate sovereigns; no improper motive shown in timing of federal charge**

[U.S. v. Ball](#), \_\_\_ F.4th \_\_\_; 2021 WL 5366991 (Nov. 18, 2021). The defendant killed a police officer during a traffic stop in the Eastern District of Virginia. He eventually plead guilty to murder of a law enforcement officer in state court under a plea agreement that provided for release after 36 years. The federal government then charged the defendant with possession of firearm by felon based on the gun used during the murder, and the defendant was ultimately sentenced to a 10-year term consecutive to his state sentence. He argued that the federal prosecution violated double jeopardy and constituted a vindictive prosecution, among other arguments.

Double jeopardy protects against prosecution for the same offense. Offenses under state law are not the same as an offense under federal law, even where both offenses have the same elements and punish the same conduct. See *Gamble v. United States*, 139 S. Ct. 1960, 1964 (2019) (affirming dual-sovereignty doctrine). Further, under *Blockburger v. U.S.*, 284 U.S. 299, 304 (1932), offenses are not the same “when each of the offenses ‘requires proof of a fact which the other does not.’” *Ball* Slip op. at 8 (citation omitted). Here, the defendant’s prosecutions were at the hands of separate sovereigns and each offense—murder of a law enforcement officer and firearm by felon—had different elements requiring different factual proof. The court similarly rejected an argument that the government was collaterally estopped from relitigating the defendant’s possession of the gun, finding that the prosecutions did not involve the same parties and did not involve the same factual issues. The federal gun prosecution therefore did not violate the defendant’s double jeopardy rights.

The defendant also claimed that the federal prosecution was improperly motivated by a desire to punish him for his successful negotiation in the state murder case. He argued that the timing of the federal prosecution—shortly after this murder plea and amidst community backlash about the sentence in that case—showed vindictiveness. The court disagreed, finding the defendant failed to meet the high burden to show a vindictive charging decision:

The federal government has articulated valid federal interests in prosecuting Ball for his violation of federal law, pointing to its prioritization of felon-in-possession cases, as well as the serious nature of Ball's conduct in murdering a law-enforcement officer. *Ball* Slip op. at 16.

Other procedural and sentencing challenges were also rejected, and the district court was affirmed in full.

**Defense counsel's failure to communicate plea offer to the defendant before it was revoked was deficient performance but not prejudicial where the defendant would not have accepted the offer**

[Walters v. Martin](#), \_\_\_ F.4th \_\_\_, 2021 WL 536509 (Nov. 18, 2021). In this case from the Northern District of West Virginia, the defendant broke into an ex-girlfriend's home and assaulted and robbed her. He was charged with robbery, burglary and related offenses in state court. The State offered a plea agreement that would have required a 20-year term on the robbery, with a concurrent term for the assault. Under this offer, the state would not pursue a sentencing enhancement and would dismiss the burglary charge. The plea offer was received by the office of the defendant's attorney but was not communicated to the defendant until a few months after the offer expired. The defendant began sending letters to the trial court requesting a bond modification and complaining of his attorney. The State then offered a new plea deal for a 28-year term on the robbery offense with all other offenses to be run concurrently. While discussing this offer with the defendant, defense counsel discovered the original plea offer in the file and notified the defendant of it. Defense counsel asked the defendant if he would accept the original offer, in the event it could be reinstated. The defendant indicated he wanted less time in prison, which defense counsel interpreted as a rejection of the plea. The defendant wrote the prosecutor requesting an alternative disposition and making inculpatory statements. He also moved for his lawyer to withdraw and ultimately filed a bar complaint against the attorney. With new counsel, the defendant pled guilty to various offenses immediately before trial and was sentenced to a term of 43-65 years. The case was affirmed on appeal, and the defendant sought state post-conviction relief, arguing his counsel was ineffective. After an evidentiary hearing, the state court concluded that the defendant could not show prejudice. Specifically, it found that he could not show that he would have accepted the original plea offer had it been conveyed to him in a timely manner, nor could he show that the trial court would have accepted the offer. After that judgment was affirmed on appeal, the defendant sought federal habeas relief. The district court denied relief, finding that the state post-conviction court's judgment was reasonable. The defendant appealed and a unanimous panel of the Fourth Circuit affirmed.

Federal habeas relief from state judgments is limited to state decisions that are contrary to clearly established law or which involve unreasonable factual determinations. Here, the state post-conviction court correctly determined that the defendant could not show prejudice. Defense counsel was deficient in failing to ensure the original plea offer was conveyed to the defendant, but no evidence supported the defendant's contention that he would have accepted it. The defendant's letters to the trial court and prosecutor indicated he was not willing to accept a long term of incarceration. Defense counsel also testified at post-conviction that the defendant believed he deserved significantly less time, and that he would never directly accept or reject the plea offers during the relevant time. The defendant personally testified that it took him some time to realize the seriousness of his situation. "These examples reflect

an individual unwilling to accept responsibility for his actions.” *Walters* Slip op. at 17. The district court’s denial of habeas relief was therefore unanimously affirmed.

### **No *Brady* or *Napue* violations for undisclosed interview tapes; court criticizes practice of adopting verbatim proposed orders**

[Burr v. Jackson](#), \_\_\_ F.4th \_\_\_; 2021 WL 5570632 (Nov. 30, 2021). The petitioner was convicted of the murder of an infant and sentenced to death in a North Carolina state court. His direct appeals were denied, and he sought state post-conviction relief. During those proceedings, tapes of interviews by law enforcement with the mother and brother of the deceased infant (both key witnesses at trial) were provided to the petitioner for the first time. In response, he filed an amended motion for appropriate relief, alleging *Brady* and *Napue* violations based on the newly uncovered evidence and alleged misleading statements made at trial in light of the new evidence. The state post-conviction court denied relief, and the state supreme court declined review. The petitioner then filed for habeas relief in federal court. The district court initially granted relief based on ineffective assistance of counsel, but that decision was reversed by the Fourth Circuit and the case remanded for the remaining claims to be heard. While that matter was pending in 2015, the State discovered more undisclosed interview tapes between law enforcement and the infant’s mother. Those interviews were admitted into the record and the district court conducted a hearing on the merits of the habeas petition. It ultimately denied relief, finding that the new evidence was unlikely to have affected the outcome of the trial.

The petitioner appealed, and a unanimous Fourth Circuit affirmed. Because the *Brady* and *Napue* claims were adjudicated on the merits in state court, the habeas court may only grant relief if the state post-conviction court’s decision was “contrary to, or involved an unreasonable application of, clearly established Federal law, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence . . .” *Burr* Slip op. at 11-12 (cleaned up). The court noted that a more lenient standard of review can be possible where the state court orders denying relief are verbatim copies of proposed orders offered by the State, a practice it criticized. In its words:

The preparation of proposed orders by parties in capital habeas cases appears to persist as a practice in North Carolina. To be clear, though we are sympathetic about the substantial caseloads facing state trial judges, there are serious problems with this practice, as we and other courts have noted previously. Those concerns are particularly pronounced when the state court adopts the State’s proposed order in a capital case, where the need for an adversarial process and a neutral arbiter is at its zenith. *Id.* at 18.

The court orders here were similar in many ways to the orders proposed by the State but also contained important changes, indicating it was the court’s independent work. Thus, the petitioner was not entitled to a different standard of review, and typical deference to the state court decision was given.

As to the *Brady* claim, the court agreed with the district court that the new evidence, individually and collectively, was unlikely to have affected the outcome at trial. “When the cumulative evidence is put aside, what remains is too insignificant to pose a realistic possibility of altering the trial outcome had Burr’s counsel been aware of it before trial.” *Id.* at 33. The *Napue* claims were based on the same evidence as the *Brady* claims and were rejected for similar reasons. The court observed that it was unclear whether it could consider the 2015 material as a part of its review but noted that its analysis would not change even if that evidence was included. “Burr has not come close to establishing that the

jury would not have found him guilty had the defense been aware of the suppressed transcripts, which would have provided at most cumulative or tangential impeachment opportunities.” *Id.* at 44.