

Case Summaries: Fourth Circuit Court of Appeals (October 24 and 31, 2023)

Trial delays primarily attributable to COVID-19 pandemic did not violate defendant's statutory or constitutional speedy trial rights

[U.S. v. Pair](#), 84 F.4th 577 (Oct. 24, 2023). The defendant was charged with distribution of fentanyl in the Eastern District of Virginia. His trial was initially scheduled for April 2020. Widespread pandemic closures and concerns were prevalent by March of that year. By multiple orders of the district's Chief Judge, jury trials were suspended, and cases were continued through September 2020. Each order detailed the potential health impacts of the COVID-19 pandemic on the ability of the trial courts to conduct safe and efficient proceedings. The Government sought continuances in the defendant's case following each order. The defendant did not object to any of the requests. The case was again continued for case-specific reasons from early September to late September. The defendant's attorney then needed emergency surgery. The defendant sought new counsel, and the case was again continued to December 2020 to allow the new attorney to prepare. In October 2020, the defendant moved to dismiss for speedy trial violations. The case was once more continued from the December setting to allow resolution of the motion to dismiss. In early 2021, there was a surge in COVID-19 cases and the Chief Judge again issued a series of orders suspending trials through February of 2021. In response, the trial court continued the defendant's case to March of 2021. The speedy trial motion was heard in January 2021, with the trial court determining that most of the delays in the case were pandemic-related and properly excluded from the speedy trial time frame. The trial court ultimately denied the motion on both statutory and constitutional grounds. The defendant's trial finally started in March of 2021 and the defendant was convicted of all counts. He appealed, complaining that the district court erred in denying his motion to dismiss (among other grounds).

On appeal, the Fourth Circuit unanimously affirmed. The COVID-19 delays were properly excluded from the statutory speedy trial timeline. Once those days were removed from the count, the defendant's trial was delayed by a mere 44 days, well within the statutory limit of 70 days. The defendant's constitutional speedy trial claim fared no better. While the length of delay was presumptively prejudicial, the remaining factors favored the Government. "[M]uch of the interruption 'was attributable to the unpredictable and unavoidable public health crisis presented by the COVID-19 pandemic.'" *Pair* Slip op. at 20 (citation omitted). The continuance for the defendant's former counsel to obtain emergency medical treatment and for his new attorney to prepare was similarly a reasonable and neutral cause for delay. Additionally, the three months of delay needed to address the defendant's motion to dismiss was attributable to the defendant. The defendant did not assert his right to a speedy trial until September 2020—eight months after the case had begun. Finally, the defendant could not show prejudice. Despite the defendant's pretrial incarceration during the pandemic, the defendant could not show "that any evidence was damaged or lost, that any witness could not be found, or that his case was harmed in any manner by the delay." *Id.* at 23 (citation omitted). This was fatal to the defendant's constitutional claim.

The defendant's other argument was likewise rejected, and the district court's judgment affirmed in full.

Judicial immunity did not apply where judge personally participated in a search and seizure of a family court litigant's home

[Gibson v. Goldston](#), 85 F.4th 218 (Oct. 30, 2023). In this case from the Southern District of West Virginia, the defendant was a state judge. She presided over the plaintiff's divorce proceedings. In a court-approved settlement, the plaintiff agreed to return certain items of personal property to his ex-wife. The plaintiff allegedly failed to return all the items required by the settlement and his ex-wife sought a contempt order around a year later. During the contempt proceedings—at which the plaintiff represented himself—the judge *sua sponte* asked the plaintiff for his address. The judge then ordered a recess and directed the parties to reconvene at the plaintiff's home. The judge then arrived at the man's home accompanied by a bailiff. The plaintiff began recording audio of the events on his phone, and his girlfriend recorded video with hers. The plaintiff moved to recuse the judge on the spot, pointing out that she was now a fact witness in the case. The judge denied the motion on procedural grounds. The plaintiff told the judge that she was not allowed in his home without a search warrant. The judge responded that she was going to enter the home. When the judge realized that she was being taped, she ordered the plaintiff and his girlfriend to stop recording on threat of jail because "parties may not record family court proceedings." *Gibson* Slip op. at 4. The plaintiff refused to stop recording and the judge commanded him to give his phone to the bailiff. She stated that the plaintiff must allow the judge into his home or be held in direct contempt. The judge then walked through the house with the ex-wife, apparently allowing the woman to take whatever items of property she identified as hers. No record of exactly what property was removed from the home was made. Additional backup deputies arrived on the scene to assist with the search of the home, but no police report was ever created. After the search, the judge directed the parties back to the courtroom, where she orally listed the items of property removed. "But no written order was ever entered describing or authorizing the search itself." *Id.* at 5.

When the audio and video recordings of the events were posted online, state authorities took note and instituted a disciplinary action against the judge. The judge admitted as a part of that investigation that she has participated in several such "home visits" and acknowledged the lack of any legal justification for such actions. Ultimately, the judge was censured by the state supreme court for the improper and illegal search. The plaintiff then sued the judge for First, Fourth, and Fourteenth Amendment violations. The judge moved for summary judgment based on judicial immunity. The district court denied that motion, finding that immunity did not apply to "nonjudicial acts." The judge appealed. The Fourth Circuit unanimously affirmed.

Judicial immunity, when applicable, is absolute—a judge is not only not liable for judicial acts but may not even be made a party in a civil suit. Judicial immunity applies to even the most egregious judicial errors, "even actions 'alleged to have been done maliciously or corruptly.'" *Id.* at 8 (citation omitted). Such protection is needed to ensure the freedom of judicial officials to exercise their judgment independent of a concern for potential personal liability incurred in the course of their official duties. This "potent" immunity, however, only extends to judicial actions. "[J]udges are not protected if they act in the 'clear absence of all jurisdiction over the subject-matter' or when they engage in nonjudicial acts." *Id.* at 9 (citation omitted). Here, the judge was not performing a judicial act and was not entitled to immunity. That the judge was ostensibly acting in connection with family court litigation—over which the judge possessed jurisdiction—did not alter the equation. "The search of someone's home and the

seizure of its contents are executive acts, not judicial ones.” *Id.* at 10. The district court’s denial of the motion for summary judgment was therefore affirmed and the matter remanded for further proceedings.