Phil Dixon, Jr.
919.966.4248
dixon@sog.unc.edu
UNC School of Government ©

Fourth Circuit Case Summaries: Sept. 10, 11, and 15, 2020

Reimposition of juvenile LWOP sentence unanimously affirmed

U.S. v. McCain, 974 F.3d 506 (Sept. 10, 2020). In this South Carolina case, the district court's reimposition of a life sentence without parole ("LWOP") for a juvenile offender was unanimously affirmed. The defendant was 17 years old and dealing heroin with another man in 2008. Suspecting that two buyers were acting as police informants, the defendant and his companion arranged a transaction with them, where the defendant repeatedly shot both men. After noticing one of the men was still alive, the defendant left to search for more bullets and ultimately tried to return to the scene with a knife. Police had already arrived on scene by the time the defendant tried to return, and the defendant was apprehended shortly thereafter. One of the victims died; the other survived with "permanent and disabling injuries." The defendant was prosecuted as an adult and pled guilty to witness intimidation by murder and witness intimidation by attempted murder, as well as offenses relating to his use of a firearm.

At the time of the original sentencing, the defendant had an extensive juvenile record, including attempted robbery, attempted burglary, assaults, and other offenses. While awaiting sentencing, the defendant sent threatening letters to the surviving victim, his codefendant, and witnesses in the case. Because of these acts, the defendant lost an opportunity to receive a sentence other than the mandatory minimum of life without parole. He was sentenced to two concurrent life sentences and a concurrent 30-year term. Between the original sentencing and the current proceeding, the defendant was involved in numerous fights in prison (several of which involved his use of a deadly weapon) and incurred multiple other disciplinary violations, leading to a "lengthy record of misconduct."

In 2016, the defendant moved for resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that mandatory LWOP sentences for juveniles violates the Eighth Amendment). The district court appointed counsel and authorized a neuropsychological evaluation. The defendant was transferred to a new facility to await resentencing, where he sexually assaulted a female inmate in the prison hospital. According to the defendant's expert, the defendant suffered from antisocial personality disorder and attention deficit hyperactivity disorder, in addition to a disruptive childhood. He also opined that the defendant was still developing at the time of the crime and emphasized the hopelessness of the defendant's time in prison so far. After three days of hearing, the district court "reluctantly" concluded that life without parole was the appropriate sentence and reimposed life without parole.

The defendant appealed, and the Fourth Circuit affirmed. There was no procedural error in the imposition of the new life sentence. The trial court sufficiently considered the defendant's youth at the time of the offense in its ruling. It also properly relied on the antisocial personality disorder diagnosis and evidence of the defendant's behavior in prison when determining the defendant was among the

rare class of juvenile offenders deemed incorrigible. The trial court's "thorough resentencing" was therefore procedurally reasonable.

The defendant requested at resentencing as an alternative form of relief that, in the event the court imposed an LWOP sentence, that it create a "de facto parole" mechanism, whereby the defendant's sentence could eventually be reviewed for potential release. The trial judge failed to specifically address this argument at sentencing, and the defendant maintained this too was procedurally unreasonable. The Fourth Circuit rejected the argument as near-frivolous, pointing to the abolition of federal parole in 1987 and the dearth of authority cited by the defendant in support of the request.

The defendant also challenged the substantive reasonableness of his sentence, arguing that the evidence failed to support a determination that he was "irreparably corrupt" and irredeemable. Reviewing for abuse of discretion, the court disagreed:

> Given this record, we cannot conclude that the district court abused its discretion in determining that McCain's crimes, committed when he was 7-and-a-half months shy of his 18th birthday, reflected irreparable corruption rather than 'the transient immaturity of youth.' The court acknowledged that a sentence of life imprisonment without parole for a juvenile offender should be 'uncommon,' but 'reluctantly conclude[d] this may be one of those uncommon cases where sentencing a juvenile to the hardest possible penalty is appropriate.' Giving requisite deference to the district court's role in assessing the evidence and the offender, we cannot find its sentence unreasonable. *Id*. at 22.

Another challenge to one of the defendant's convictions was rejected on plain error review, and the district court's sentence was unanimously affirmed.

(1) Parks Service officer lacked reasonable suspicion to stop truck for permit violation; (2) Government failed to show stop was a valid administrative search

U.S. v. Feliciana, 974 F. 3d 519 (Sept. 11, 2020). The defendant was the driver of a bakery truck on a parkway within the jurisdiction of the U.S. Parks Service in the Eastern District of Virginia. Under Parks Service regulations, commercial trucks must be permitted to operate on the parkway. A Parks police officer noticed the truck and stopped it "because it was a commercial truck on the Parkway." The officer smelled marijuana while interacting with the defendant, and ultimately discovered a misdemeanor amount of marijuana and paraphernalia in the truck. The district court denied the defendant's motion to suppress for lack of reasonable suspicion to stop. It alternatively found that the stop was supported by reasonable suspicion for the permit violation and was a permissible administrative search. The defendant pled guilty and appealed.

(1) The record failed to reflect any reason the officer had to suspect the truck did not have the necessary permit. That a truck was on the parkway that required a permit, standing alone, was "wholly innocent." The government argued on appeal that the required permits are not commonly granted. The record also did not reflect any evidence on this point, and the court was unpersuaded. Comparing the facts to the suspicionless license check stop in *Delaware v. Prouse*, 440 U.S. 648 (1979), the court stated: "Absent articulable suspicion that Feliciana lacked the required permit, Officer Alto was not entitled to stop Feliciana's vehicle at his discretion to check whether Feliciana possessed a permit." *Feliciana* Slip op. at 6. These facts were also distinguishable from those of *Kanas v. Glover*, 140 S. Ct. 1183 (2020)

(finding a traffic stop supported by reasonable suspicion where a record check revealed the registered owner of the vehicle had a suspended license). Unlike the inference at issue there —that the driver was likely the registered owner of the vehicle—here, the permit requirement was insufficient to support an inference that any vehicle on the road may be in violation of the law, justifying a traffic stop. The language of the relevant regulations also lent no support to the government's position. While an officer may well articulate a reasonable suspicion that a given vehicle is operating without a permit, the evidence here failed to support such a finding.

(2) Under *New York v. Burger*, 482 U.S. 691 (1987), businesses that are "pervasively regulated" may be subject to administrative inspection without a warrant under the Fourth Amendment in some circumstances:

> First, there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made. Second, the warrantless inspections must be necessary to further the regulatory scheme. Third, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant, that is, it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. *Burger* at 702-703 (cleaned up).

The government pointed to federal regulations of commercial trucking allowing vehicle inspections and the federal regulation of the parkway, arguing that the stop was a valid administrative inspection (and thus did not require reasonable suspicion). The court rejected this argument as well, observing that the record showed the stop was to check for a permit violation, not an equipment inspection. While other circuits have found commercial trucking a "pervasively regulated industry" for purposes of *Burger*, each of those cases involved actual administrative inspections, unlike the traffic stop at issue here. "[T]he Government cannot justify the constitutionality of this traffic stop by relying on a regulatory scheme that was not the basis for the stop. Doing so would render *Burger's* criteria for assessing constitutionality a farce." *Feliciana* Slip op. at 12. Further, there was no evidence in the record showing that the officer was authorized under the federal regulations to conduct such an inspection, and no regulation authorized a warrantless permit-check stop like the one at issue here. Without statutory or regulatory authorization for the stop, the heavy regulation of trucking and the parkway alone were insufficient to justify an administrative stop under *Burger*:

> Even considering together all of the various regulations cited by the Government, the driver of a commercial vehicle on the Parkway would have no notice that he could be stopped for a suspicionless permit check—the specific purpose of the stop at issue here. The regulations thus are no substitute for a warrant in these circumstances. *Id*. at 15.

The denial of the motion to suppress was therefore unanimously reversed, the defendant's conviction vacated, and the matter remanded for further proceedings.

Plaintiff's detention for an involuntary mental health assessment was supported by probable cause and government employees were entitled to qualified immunity on Fourth Amendment claims; state tort claims were properly dismissed

Barrett v. PAE Government Services, Inc., ___ F.3d ___; 2020 WL 5523552 (Sept. 15, 2020). In this case from the Eastern District of Virginia, the plaintiff worked for a private entity under contract with the State Department and spent several years in the Middle East in that capacity. When she returned to the United States, she continued working in Middle East intelligence matters. She reported to her employer that she was being stalked by groups of foreign men. According to the plaintiff, a group of men began stalking her while she was in the Middle East, and the men followed her home. Among other reports, she indicated the men were based in a nearby building, that her phone was being tracked, and her house was "bugged." She told her employer that she was taking steps to identify and track the men. She also made statements indicating she believed the men would have to be killed in order for the stalking to cease, that she carried her gun to the gun range so the men tracking her would know she was there, and spoke of defending herself if necessary. Her employers contacted police, who ultimately sought and received an emergency custody order authorizing an involuntary mental health evaluation based on concerns that the plaintiff was a danger to herself or others. A mental health professional diagnosed the plaintiff with post-traumatic stress disorder and as potentially suffering from a delusional disorder. An involuntary commitment order for the plaintiff was sought but denied, and the plaintiff was released.

She sued the police officers and the mental health professional involved under 42 U.S.C. § 1983, alleging a Fourth Amendment violation for unlawful seizure under the Fourth Amendment and false imprisonment under state law. She also sued her employer and several work supervisors for conspiracy under state tort law. The district court dismissed or granted summary judgment to all defendants and the plaintiff appealed. The Fourth Circuit unanimously affirmed.

As to the police officers and county mental health professional, there was probable cause to believe the plaintiff was a danger to herself or others. While acknowledging the "distinct lack of clarity in the law governing seizures for psychological evaluations," the court found that officers made "the reasonable, albeit difficult decision" to obtain the emergency detention order. Slip op. at 18, 22. Statements made to police by the plaintiff during their investigation were consistent with the remarks she had made to her employers, and police conducted a reasonable investigation before seeking the order. The mental health professional likewise conducted a thorough assessment and investigation before recommending further detention. Since all three of these defendants acted with probable cause, they were entitled to qualified immunity. Even without probable cause, it was not clearly established that the actions of these defendants were illegal: "[R]easonable officials, relying on our decisions . . . would have concluded that detaining the Plaintiff was not only reasonable, but prudent." *Id*. at 25 (cleaned up). The trial court did not therefore err in granting summary judgment based on qualified immunity to these defendants for the Fourth Amendment seizure claim.

The plaintiff failed to preserve her challenge to the trial court's ruling on state false imprisonment claims against the officer-defendants. Even if those claims had been preserved, the plaintiff's evidence was insufficient to support a verdict in her favor and the trial court properly dismissed those claims. As to the claims against her employers and supervisors, her complaint failed to allege a factual basis supporting any conspiracy and the trial court properly dismissed these claims as for failure to state a claim. The trial court was therefore unanimously affirmed.