

WEEKLY APPELLATE UPDATE

After a quiet week last week, this week was certainly noisy. Also, it was a week of dissents as nearly every case featured one member of the court disagreeing with the majority.

Don't forget about our upcoming seminar in Charleston, slated for August 27, 2026. Attached to the email are a registration form and the agenda.

Fourth Circuit Update



United States v. Franklin, No. 25-4037, 2026 WL 2357612, <https://www.ca4.uscourts.gov/opinions/254037.P.pdf> (Aug. 14, 2026): Franklin worked as a postal employee and used his position to steal United States Treasury checks. Forty-eight such checks were recovered following a traffic stop and a search of his vehicle; the search also uncovered a firearm. Franklin pleaded guilty to possession of stolen mail and theft of mail matter by a postal employee. At sentencing, the district court applied a firearm enhancement pursuant to U.S.S.G. § 2B1.1(b)(16)(B). Franklin did not object to the enhancement. The district court then stated it would have imposed the same sentence regardless of any guidelines errors.

On appeal, the Fourth Circuit **vacated** Franklin's sentence and **remanded for resentencing**. The Fourth Circuit concluded the district court plainly erred (since Franklin did not object at sentencing) in failing to make factual findings supporting the enhancement (even though Franklin did not object). With regard to the theft offense, the Fourth Circuit found the firearm likely had nothing to do with his ability to steal checks. With regard to the possession offense, the Fourth Circuit concluded "**district courts have an obligation to make independent evaluations of any recommended enhancements to determine whether the record supports such application**" and the firearm was merely found in proximity to the stolen checks without any further indication as to how it could have facilitated the offense. The Fourth Circuit further found the error was not harmless even though the district court announced it would have imposed the same sentence regardless of any guidelines errors because the district court did not provide any justification as to why it would have imposed an upward variant sentence if it was wrong about the guidelines. In other words, "**a district court may not shield itself from meaningful appellate review of a miscalculated Guidelines range by pronouncing *without proper justification* that it would have imposed the same sentence regardless of the correct Guidelines range.**"

Judge Agee **dissented**, concluding the enhancement was supported by the record because Franklin presumably kept the firearm around to protect against the discovery of approximately \$750,000 in stolen Treasury checks.

United States v. Roney, No. 24-4556, 2026 WL 5239537, <https://www.ca4.uscourts.gov/opinions/244556.P.pdf> (Aug. 14, 2026): Roney was found not guilty by reason of insanity for mailing threatening threats to his former lawyer. He was later conditionally discharged pursuant to 18 U.S.C. § 4243(f). One of the conditional discharge requirements recommended by his treating facility, and adopted by the district court, was that he not possess a weapon. Roney subsequently robbed a store at gunpoint. The government sought to revoke his conditional discharge based on the weapon possession. Roney argued the district court did not have the authority to impose ancillary conditions to treatment pursuant to § 4243(g), thus the district court could not revoke him for a non-medically-based reason. The district court disagreed, concluded it could impose ancillary conditions, and revoke on that basis.

On appeal, the Fourth Circuit concluded **Roney was correct—a district court does not have the authority to enter ancillary conditions for conditional discharge**. However, the Fourth Circuit concluded Roney’s firearms prohibition was not an ancillary condition; instead, it was part of the regimen of care or treatment because avoidance of firearms was necessary for Roney’s safe discharge given his “illness-driven violence, including incidents involving weapons.” Consequently, the district court properly revoked Roney’s conditional discharge.

Judge Berner **concurred in part and dissented in part**. Judge Berner agreed with the majority that district courts do not have the authority to impose ancillary conditions. Judge Berner parted ways, however, on the majority’s conclusion that the firearm restriction was part of Roney’s treatment. Judge Berner would have remanded to the district court to make that finding in the first instance rather than conclude for the district court (which found it had the authority to impose an ancillary condition) that the ancillary condition it thought it had imposed was actually a treatment condition.

United States v. Griffin, No. 22-4257, 2026 WL 2357208, <https://www.ca4.uscourts.gov/opinions/224257.P.pdf> (Aug. 14, 2026): This is rarified air for criminal defendants: a successful challenge to a search warrant. Griffin was in a house searched by Maryland authorities pursuant to a search warrant. That warrant’s affidavit set forth numerous examples dating back to **2006** of drug dealings or suspected drug dealings which occurred near the residence in a larger residential area known for being an open-air drug market. However, the only instance when the residence was actually involved occurred in 2006. The district court denied Griffin’s motion to suppress, concluding the search warrant affidavit, while significantly flawed, crossed the finish line to probable cause when all the incidents were taken as a whole. Griffin appealed his conviction stemming from the evidence seized during the search.

The Fourth Circuit **reversed**. The Fourth Circuit concluded the evidence presented in the search warrant affidavit was not sufficiently connected to the residence, was too old to provide probable cause, or both. Drug activity near the residence is not sufficient, particularly when the drug activity could have come from numerous sources close to the residence searched. The Fourth Circuit further found **the good faith exception did not apply** because “[t]here was not a single fact contained in the affidavit that would allow a reasonable trained officer to believe drugs would be located in the ... residence at the time of the search.”

Judge Heytens **dissented**, concluding the good faith exception **did** apply because the affidavit was not bare bones and two judges—both the state judge who issued the warrant and the federal judge who denied Griffin’s suppression motion—concluded the affidavit did supply probable cause to search the residence. While such a fact is not dispositive, it is certainly indicative of a warrant affidavit that provided enough information to allow good faith reliance on its issuance.

United States v. Flood, No. 23-7032, 2026 WL 2342536, <https://www.ca4.uscourts.gov/opinions/237032.P.pdf> (Aug. 13, 2026): This is a 28 U.S.C. § 2255 case. Flood was charged with kidnapping resulting in death; however, the government did not pursue a capital case against him, so the only sentencing option was life imprisonment. Flood had a co-defendant and the government **did** pursue the death penalty against him. Flood proceeded to trial where he was convicted. Later, Flood filed a § 2255 motion arguing counsel was ineffective for failing to pursue a plea agreement. The district court received affidavits from the participants but did not hold an evidentiary hearing. The affidavits established the government would not consider a plea with an option for a sentence other than life unless Flood proffered against his co-defendant. The affidavits also established that Flood would not cooperate with the government. The district court dismissed the § 2255 motion without a hearing, concluding Flood could not establish ineffective assistance of counsel.

The Fourth Circuit **affirmed** and found Flood could not pursue relief based on a theory that his attorneys should have tried harder to resolve the case by plea agreement. The Fourth Circuit found the pleadings conclusively showed counsel did not perform deficiently because Flood’s argument amounted to little more than “counsel was deficient for failing to win at trial.” Moreover, Flood could not establish prejudice because he could not demonstrate there was any plea offer the government was willing to make that he was willing to take due to his unwillingness to cooperate.

Judge Heytens **dissented**, concluding the district court applied an incorrect standard (one which placed a “heavy burden” on a petitioner to obtain an evidentiary hearing) and failed to give credence to Flood’s affidavit that he would

have done anything to avoid a life sentence. That means that Flood alleged he would have been willing to cooperate, which is enough to establish a factual dispute requiring an evidentiary hearing.

United States v. Joyner, No. 24-4565, 2026 WL 2329134, <https://www.ca4.uscourts.gov/opinions/244565.P.pdf> (Aug. 12, 2026): Joyner was a physician's assistant who took a part-time telehealth position. His job was to review patient files and sign forms ordering genetic tests. Of the 607 forms he signed, he only spoke to 20 patients. Based on his orders, Medicare was billed to the tune of over \$10 million in claims. He was indicted for healthcare fraud under 18 U.S.C. § 1347, and of making false statements relating to healthcare matters under 18 U.S.C. § 1035(a). He was convicted and sentenced to 72 months' imprisonment.

On appeal, Joyner challenged his conviction and sentence. Spoiler alert: the Fourth Circuit **affirmed the district court in all aspects**. Joyner had argued:

- The district court erred in excluding certain evidence;
- The district court erred in excluding four of his subpoenaed witnesses who asserted their Fifth Amendment privilege;
- The prosecution's improper rebuttal argument violated his substantial rights;
- The district court gave erroneous jury instructions regarding the falsity of a statement, that intent to defraud could be proved via willful blindness, and that Joyner could be convicted under an aiding and abetting theory if he "join[ed] another person and perform[ed] acts with the intent to commit a crime;
- Sufficiency of the evidence; and
- Several points related to the procedural reasonableness of his sentence.

The Fourth Circuit found the district court **did not abuse its discretion in its evidentiary ruling regarding admission of the compliance documents under the balancing test in Rule 403**.

The court also rejected Joyner's argument regarding subpoenaed witnesses, finding that "[a] district court's decision to quash the subpoena of a witness who will invoke his Fifth Amendment privilege **is ultimately an evidentiary ruling reviewed under the same deferential standard, even when the defendant frames the exclusion as a denial of his right to present a complete defense.**" Here, the court found the district court **made a sufficiently particularized inquiry into the legitimacy and scope of the witness' assertion of the privilege**.

As to the prosecution's rebuttal argument, the government told the jury that

Joyner's counsel said in opening argument that it would hear from certain witnesses and then asked, "Did you see any of that? Did any of that actually come into evidence? . . . No, it didn't. It fell flat. It went nowhere." Noting that **it was a close question regarding whether the remarks were improper, the court applied the requisite six-part test and found the remarks did not deprive Joyner of a fair trial.**

As to jury instructions, the court found **the district court did not commit error in its instructions, plain or otherwise. The court found the district court did not abuse its discretion regarding the aiding and abetting instruction, and that the false statement instruction, even assuming plain error, did not affect his substantial rights.**

As to Joyner's sentencing arguments, the Fourth Circuit found the district court did not err in **assessing intended loss at more than \$10 million, even though Joyner neither held the labs bill Medicare nor knew how they did so.** Under relevant conduct associated with jointly undertaken criminal activity and in light of the trial evidence, the court **affirmed the district court's finding that Joyner knew there was fraudulent activity that he jointly engaged in with others.** As to the **mass-marketing enhancement**, the court **affirmed the district court's finding that mass-marketing was reasonably foreseeable to Joyner under relevant conduct as telephone solicitation was foreseeable to him.**

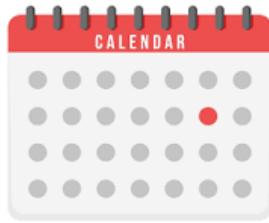
In a matter of first impression, the Fourth Circuit found that the mass-marketing enhancement applied even though Medicare was the only victim, as **"the enhancement does not require victim-directed mass-marketing."** This decision locks in a widening circuit split between Second and Eighth (strange bedfellows, indeed), and the Fourth, Fifth, and Eleventh on the other.

Finally, the court **rejected Joyner's assertion regarding the enhancement for abuse of trust of use of special skill.** Finding that Joyner **failed to challenge the abuse of trust aspect of the enhancement, which the district court independently grounded the enhancement.**



Supreme Court Upcoming/Update

All was quiet at the Court this week. The next orders list is scheduled for Monday, August 17.



Following the Fourth Circuit:

On July 17, the Fourth Circuit issued its calendar for its September 2026 Term of Court. Here are some cases that we are following:

United States v. Leticia James, No. 25-4673; ***United States v. James Comey***, 25-4674: Whether Lindsay Halligan’s appointment as U.S. Attorney was lawful; whether indictments sought and obtained by Halligan are valid.

United States v. Garcia, No. 25-4023: Whether district court erred in admitting expert testimony that defendant possessed firearm in furtherance of drug trafficking crime for § 924(c) conviction.

United States v. Peters, No. 24-6704: Whether defendant’s 18 U.S.C. §§ 2, 1028A(a)(1) conviction remains sound following *Dubin v. United States*, 599 U.S. 110 (2023).

~~***United States v. Bixler***, No. 25-4091: Procedural and substantive reasonableness of significant upward variant sentence imposed on conviction for failure to register as sex offender.~~ ***Removed from argument calendar 8.10.26***

United States v. Ajayi, No. 25-4523: Whether district court erred in denying motion to suppress evidence obtained pursuant to search warrant for defendant’s Google accounts; other issues.

In re: Application, No. 26-4303: Challenge to district court’s order related to application for order pursuant to 18 U.S.C. § 2703(d).

United States v. Hess, No. 25-4511: Whether defendant’s right to impartial jury was contravened; whether DEA criminal investigation is “pending proceedings” for purposes of 18 U.S.C. § 1505; evidentiary issues.

United States v. St. Felix, No. 24-4578: Whether evidence sufficient for Hobbs Act robbery conviction when victim’s cryptocurrency funds were not taken from victim’s person or physical presence; other issues.

United States v. Vick, No. 25-4275: Whether district court erroneously enhanced offense level under USSG § 3A1.2(c)(2).

United States v. Owens, No. 25-4469: Whether South Carolina first-degree assault and battery remains “crime of violence” after *United States v. Clemons*, 901 S.E.2d 280 (S.C. 2024).

In re: US, No. 26-1545: Whether, after *Erlinger v. United States*, 602 U.S. 821 (2024), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the district court erred in finding that an ACCA-eligible offense is not a single aggravated crime, and permitting the defendant to plead guilty to violation of 18 U.S.C. § 922(g)(1), while ordering a jury trial on the ACCA elements of § 924(e).

United States v. Henderson, No. 24-4536: Whether, in appeal after remand and resentencing, government has forfeited right to invoke appeal waiver by not raising the issue during the first appeal.

United States v. Street, No. 25-4051: Propriety of enhancement under USSG for reckless endangerment during flight; whether alternative variant sentence is based on clearly erroneous factual findings.

United States v. Chhippa, No. 25-4276: Multi-issue appeal from convictions for conspiracy to provide and provision of material support to foreign terrorist organization.

United States v. Wilder, No. 25-4444: Whether district court erred in granting motion to suppress based on finding 911 call did not provide reasonable suspicion for stop and frisk.

United States v. Bagayoko, No. 25-4230: Whether traffic stop was unnecessarily prolonged; whether individual bottles of pesticide in one box constituted a “single package” under Hazardous Materials Transportation Act.

United States v. Chafin, No. 25-4521: Whether district court’s consideration of “breach of trust” during a sentencing in a revocation hearing was a retributive and prohibited purpose.

United States v. Brooks, No. 25-4127: Whether the government breached defendant’s plea agreement, thereby requiring resentencing; other issues.

~~***United States v. Ray***, No. 25-4016: Whether district court abused its discretion by removing juror for misconduct after jury deliberations had begun; other issues.~~ ***Removed from argument calendar 7.28.26***

United States v. Zacarias, No. 25-4242: Whether prosecution under the Maritime Drug Law Enforcement Act (MDLEA) was constitutional; whether government adequately established jurisdiction; other issues.

United States v. Wright, No. 18-4215: Whether Wright has established that plain error under *Erlinger* affected his substantial rights.

United States v. Nguyen, No. 21-4620: Whether appeal waiver valid when court failed to advise defendant of right to have jury determine occasions element of ACCA.

United States v. Sims, No. 23-4723: Whether harmless error is proper standard of review for preserved error under *Erlinger*; other issues.

~~***United States v. Dixie***, No. 25-4067: Whether failure to sever resulted in unfair prejudice to defendants that could not be cured by jury instruction; sufficiency of evidence; other issues.~~ ***Continued from argument calendar***
7.21.26

Appellate Division Contact Information

Office of the Federal Public Defender
District of South Carolina
1901 Assembly Street
Suite 200
Columbia, South Carolina 29201

Kim Albro – 803-765-5088, Kimberly_Albro@fd.org
Emily Deck Harrill – 803-765-5079, Emily_Harrill@fd.org

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