October 16, 2026

WEEKLY APPELLATE UPDATE

The Supreme Court held argument in *Beaird v. United States*, No. 25-5343 on Tuesday (noted below).

The Fourth Circuit issued two published criminal opinions. Of particular relevance, the decision in *Owens* finds that *Clemons* did not abrogate *Mack*, and that the "offer and attempt" version of SC assault and battery first, S.C. Code § 16-3-600(C)(1)(b)(1), is a crime of violence.

Fourth Circuit Update



United States v. Vick, No. 25-4275, 2026 WL 3056462, https://www.ca4.uscourts.gov/opinions/254275.P.pdf (Oct 13. 2026):

Vick pleaded guilty to bribery of prison guards and conspiracy to distribute drugs while he was in prison on federal charges. During the investigation into those offenses in April 2023, Vick's cell was searched. As officers attempted to move Vick from his cell, video established he assaulted an officer by lifting him up off the ground, throwing him against the nearby wall, and slamming him to the concrete floor. The officer hit his head on the wall and his back on the concrete floor but suffered no lasting injury that required medical treatment.

At sentencing, the district court applied a six-level enhancement under U.S.S.G. § 3A1.2(c)(2) (Official Victim), finding that Vick's conduct created a "substantial risk of serious injury" to the officer. The court sentenced Vick to the middle of the Guidelines sentencing range.

Vick challenged his sentence on several grounds. First, he argued the district court applied the wrong legal standard for the enhancement, contending the commentary to § 3A1.2 established the assault must be "tantamount to aggravated assault" under § 2A2.2 and "sufficiently serious to create at least a substantial risk of serious bodily injury," and that his conduct did not qualify because he only "grabbed the pant leg" of the officer.

The Fourth Circuit **rejected this argument**, concluding that the guideline itself requires only that the government prove the defendant "assaulted" a prison official "in a manner creating a substantial risk of serious bodily injury." Because the district court explicitly recognized and applied each of the appropriate requirements for a § 3A1.2(c)(2) enhancement, the panel **affirmed the district court.**

Vick argued the district court erred in its **assessment of the facts**. The Fourth Circuit **also rejected this argument**, finding the district court did not

clearly err in making its factual findings, and the finding that Vick created a substantial risk of serious injury was supported by the fact that similar conduct had earlier resulted in victims having to go to the hospital.

Vick also argued his sentence was **procedurally unreasonable because the district court did not adequately explain its consideration of his mitigation arguments**, including his youth, childhood trauma, self-improvement efforts, and the length of his combined sentences. The Fourth Circuit **affirmed the district court**, as the district court explained over many pages of the sentencing transcript Vick's personal circumstances in unusual detail.

Finally, Vick argued his **sentence was substantively unreasonable** because the district court failed to properly balance the § 3553(a) sentencing factors. The Fourth Circuit applied a presumption of reasonableness and found the district court considered all of the § 3553(a) factors, as well as all of Vick's arguments with respect to them, and balanced them to reach the sentence it imposed. The court concluded that **Vick failed to clear the high hurdle of rebutting the presumption of reasonableness that applies to his within-Guidelines sentence**.

United States v. Owens, No. 25-4469, 2026 WL 3079372, https://www.ca4.uscourts.gov/opinions/254469.P.pdf (Oct. 15, 2026):

Owens addresses **whether South Carolina first-degree assault and battery (AB1) qualifies as a "crime of violence" under the Sentencing Guidelines** when determining the severity of a supervised release violation.

Owens was on supervised release when he was arrested by state authorities for an assaultive crime. At a revocation hearing, the district court found he violated SC Code § 16-3-600(C)(1)(b)(i), revoked his supervised release, and sentenced him to the statutory maximum of two years' imprisonment.

Owens argued on appeal that AB1 is not a crime a violence under the Guidelines, contending that the court's previous decision in *United States v. Mack*, 56 F.4th 303 (4th Cir. 2022), had been abrogated by the South Carolina Supreme Court's decision in *United States v. Clemons*, 901 S.E.2d 280 (S.C. 2024). The Fourth Circuit disagreed and found that because *Clemons* had involved CDV and AB2nd, its holding had no bearing on *Mack*'s analysis of AB1. The court determined that at most, *Clemons* suggests but does not hold that AB1 may be committed recklessly. The panel also believed that because AB1 is a divisible statute, the portion of the statute in question in Owen's case—§ 16-3-600(C)(1)(b)(i), which applies to "offers or

attempts to injure another person,"—was an offense "dealing with attempt may require specific intent."

Because Owens was under plain error review, the court **affirmed the district court** and found Owens did not establish how the district court plainly erred in following *Mack*.



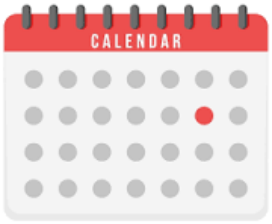
Supreme Court Upcoming/Update

The first criminal argument this Term is held on Tuesday, October 13. In *Beaird v. United States*, No. 25-5343, the issue is whether *Stinson v. United States* still correctly states the rule for deference that courts must give the Commentary of the Federal Sentencing Guidelines.

Beaird pointed a firearm at another person in an abandoned fast-food restaurant. After arresting Beaird, officers found that his handgun had a magazine capable of holding 17 rounds. Because Beaird had prior felony convictions, he was charged with and pleaded guilty to a violation of § 922(g)(1). At sentencing, § 2K2.1(a)(3) was applied as the probation office found Beaird's offense "involved" a "semiautomatic firearm that is capable of accepting a large capacity magazine." The text of Section 2K2.1 does not define that phrase, but the commentary guideline does, defining a large capacity magazine to include "a magazine . . . that could accept more than 15 rounds of ammunition."

The district judge followed the guidelines and found Beaird had a large capacity magazine, but also said that "even if the guideline range was not correctly calculated or applied correctly," the court "would have imposed the same sentence" as the court explained at sentencing. Beaird's sentence was affirmed in a brief opinion from the Fifth Circuit, which concluded that the guideline range was correctly determined and relied on prior precedent applying *Stinson* to interpret Section 2K2.1.

Here is Scotusblog's analysis of the argument:
https://www.scotusblog.com/2026/10/court-unlikely-to-alter-deference-to-sentencing-guidelines-commentary/



Following the Fourth Circuit:

On August 28, the Fourth Circuit issued its calendar for the October 2026 Term of Court. Here are some cases that we are following:

United States v. Chin, No. 25-4259: Whether district court erred in denying motion to dismiss superseding indictment for Speedy Trial Act violation; other issues.

In the Matter of the Search of: Under Seal, No. 25-4496: Whether target of search has Fourth Amendment or common law right to view preindictment warrant; other issues.

United States v. Cantrell, No. 24-4553: Whether search warrant affidavit lacked probable cause and whether good faith exception applies; whether district court erred in denying Defendant's request for a *Franks* hearing.

United States v. Scofield, No. 25-4646: Whether 18 U.S.C. § 922(n) is unconstitutional, both facially and as applied to defendant.

United States v. Beauregard, No. 25-4672: Whether possession of a controlled substance, in violation of Va. Code section 18.2-250, is necessarily a Grade B violation.

United States v. White, No. 23-4563: Whether White's written criminal judgment contains discretionary conditions of supervised release that are materially different from those pronounced at sentencing.

~~***United States v. Cayemitte***, No. 25-4288: Multiple sentencing challenges, including whether district court failed to give adequate weight to defendant's atypical and severe childhood trauma; applicability of categorical approach~~.
Removed from docket 10.8.26

United States v. Bieber, No. 25-4686: Whether admission of Google Drive evidence identified by automated system, including matching hash marks, violated Confrontation Clause; other issues**.**

United States v. Lark, No. 24-4267: Whether defendant was prejudiced by trial counsel's erroneous advice that the government could not advocated for sentencing beyond drug quantity stipulated in factual basis.

United States v. Jones, No. 25-4084: Whether 18 U.S.C. § 3553(f)(1)(A) excludes all offenses assigned one point, including status point assigned to instant offense under USSG § 4A1.1(e).

United States v. Vause, No. 25-4119: Whether three consecutive sentences for three false statements in a single interview created multiplicity issue; whether *Apprendi* error was harmless.

United States v. Reed, No. 25-4013: Whether sufficient evidence supported continuing criminal enterprise conviction; whether district court abused its discretion by admitting certain video evidence at trial; other issues.

United States v. Everette, No. 25-4453: Whether official victim enhancement at USSG § 3A1.2(c)(1) applies; whether district court adequately explained its rationale.

United States v. Rogers, No. 25-4465: Whether district court erred in denying motion to suppress when K-9 repeatedly touched car during sniff; other issues.

United States v. Herring, No. 24-4437: Whether, in Hobbs Act robbery prosecution, the government adduced sufficient evidence that robberies affected interstate commerce; other issues.

United States v. Smith, No. 24-6528: Whether trial and appellate counsel rendered ineffective assistance of counsel by failing to challenge defendant's career offender enhancement.

United States v. Nunez-Couret, No. 25-4587: Whether felony violation of 18 U.S.C. § 111(a)(1) requires proof that defendant forcibly and intentionally caused physical contact with assault victim; other issues.

United States v. Massey, No. 25-4542: In prosecution for § 922(g)(1), was evidence sufficient for jury to find appellant knew decades-old convictions were felonies.

On October 9, the Fourth Circuit issued its calendar for the December 2026 Term of Court. Here are some cases that we are following:

United States v. Cross, No. 24-4676: In prosecution for healthcare benefit fraud, whether people whose identities were used by defendant were properly considered vulnerable victims for purpose of sentencing enhancement.

United States v. Hale, No. 25-4365: Whether defendant transmits a threat in interstate commerce, 18 U.S.C. § 875(c), when he transmits it within state, and it subsequently crosses state lines.

United States v. Chatrie, No. 22-4489: Whether search conducted by accessing cell-site location information was reasonable under the Fourth Amendment.

United States v. Fenderson, No. 25-4616: Whether denial of motion to discharge local counsel violated Sixth Amendment; whether court erred in declining to strike potential jurors for cause; other issues.

United States v. Jiang, No. 25-4382: Whether indictment for religious obstruction, 18 U.S.C. § 247(a)(2), was duplicitous; whether religious obstruction involving intent to kill is crime of violence; other issues.

United States v. Patterson, No. 21-4680: Whether Government forfeited right to invoke appeal's untimeliness by seeking dismissal only after this Court's Anders review; whether risk-notification condition violates Article III.

United States v. Dixie, No. 25-4067(L): Whether failure to sever resulted in unfair prejudice to defendants that could not be cured by jury instruction; sufficiency of evidence; other issues.

United States v. Merritt, No. 26-4064: Whether imposition of life term of supervised release violated Ex Post Facto Clause; whether district court erred in imposing location monitoring condition.

United States v. Russell, No. 25-4438: Whether 18 U.S.C. § 3504(a) requirement applies to surveillance under FISA, 50 U.S.C. §§ 1801 to 1818; other issues.

United States v. Randolph, No. 25-4325: Whether a driver's furtive movement coupled with close proximity justifies a constructive possession finding.

United States v. Goins, No. 25-4658: Whether law enforcement's use of pole cameras to surveil defendant for about five months constituted search under Fourth Amendment; other issues.

United States v. Overstreet, No. 24-4121: Whether district court erred in limiting cross-examination of detective; whether court abused its discretion in determinations regarding hearsay and present sense impression; other issues.

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