

WEEKLY APPELLATE UPDATE

Things have been very quiet this week on the published opinions front. The Fourth Circuit did not issue any published criminal decisions this week but did issue an interesting and important Fourth Amendment case in a § 1983 case.

Monday is the Supreme Court's Big Fall Conference day! We know all of you are giddy with anticipation! We'll cover any relevant cert grants next week.

Fourth Circuit Update



The Fourth Circuit did not issue any published criminal opinions this week. However, it did issue an opinion that might have some application to criminal cases.

Andrews v. Baltimore City Police Dept., No. 18-1953, 2026 WL 2872021, <https://www.ca4.uscourts.gov/opinions/181953.P.pdf> (Sept. 24, 2026): Baltimore authorities were investigating a shooting. They obtained a warrant for Andrews' arrest and a court order to permit access to certain records from Andrews' cellphone provider. Using that information, they were able to narrow his location to a few city blocks. They then used a cell-site simulator to track his cellphone location and pinpointed his cellphone to a specific townhome. With consent, detectives entered and found Andrews on a couch with his cellphone in his pocket. A subsequent search warrant led to discovery of a gun. The use of the cell-site simulator was not disclosed until a year later (likely based on the NDA that the BPD had signed with the maker of the simulator, who was required to clear release of information regarding its use with the FBI).

Andrews moved to suppress evidence. The Maryland trial court granted his motion, and the Maryland intermediate appellate court affirmed, holding that the use of the cell-site simulator was a Fourth Amendment search requiring a warrant. The court ruled the Maryland pen register statute did not authorize cell-site simulator use and that the PRO was not functionally equivalent to a search warrant. The good faith exception did not apply. Criminal charges against Andrews were thereafter dismissed.

Andrews filed a § 1983 case, alleging violations of his rights under the Fourth and Fourteenth Amendments and the Maryland Declaration of Rights. The district court initially granted summary judgment to defendants, finding the PRO authorized the simulator use. A Fourth Circuit panel reversed and remanded for discovery on several specific questions about the cell site simulator's capabilities and Baltimore PD policies. After discovery, the district court again granted

summary judgment, finding detectives entitled to qualified immunity and public official immunity, and that BPD could not be held liable under *Monell*.

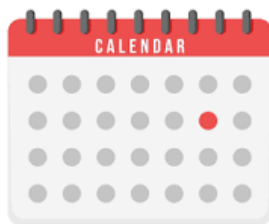
The Fourth Circuit held that **use of a cell-site simulator constitutes a search within the meaning of the Fourth Amendment**. The court relied on *Carpenter* and *Chatrue*, which established reasonable expectations of privacy in cellphone location data. The court found **cell-site simulators provide more precise location information than CSLI and that tracking Andrews inside a private residence implicated heightened privacy concerns**. The Fourth Circuit is the first appeals court to so find. As a consequence, the court concluded BPD detectives were entitled to qualified immunity because the constitutional right was not clearly established at the time of the 2014 incident. Notably, it appears DOJ instituted a new policy in 2015 that federal law enforcement officials must seek a warrant before using this technology in a criminal investigation. It does not appear South Carolina has addressed this issue in published authority.

Judge Quattlebaum concurred in the judgment, agreeing qualified immunity applied because the right was not clearly established. However, he questioned the precedential value of analyzing whether the cell-site simulator use constituted a search without completing the full constitutional violation analysis, including whether the PRO was a valid warrant. He noted the PRO application specifically sought authorization beyond a standard pen register device and included probable cause certifications with specific facts supporting Andrews's apprehension.



Supreme Court Upcoming/Update

The Court's big Fall Conference scheduled for September 28, 2026. We'll be keeping an eye on the results of that day.



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.

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. Everett, 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.

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