

Case Summaries: Fourth Circuit Court of Appeals (Nov. 14, 20, & 26, 2024)

Substitution of juror based on her views of the evidence violated the defendant's right to an impartial jury; substitution of the same juror without permitting the defendant to be heard violated the defendant's due process right to be present

[U.S. v. Laffitte](#), 121 F.4th 472 (Nov. 14, 2024). The defendant worked as the CEO of the Palmetto State Bank in South Carolina. Along with former attorney Alex Murdaugh, he conspired to defraud Murdaugh's clients to the tune of around \$2 million dollars. The defendant was ultimately charged with wire fraud, bank fraud, and conspiracy, as well as other related offenses. During the first day of jury deliberations, one juror, Juror #93, notified the court that he needed to leave the courthouse to take prescription medicine. In a separate note from the same juror, the juror notified the district court that he was "feeling pressured to change [his] vote." *Laffitte* Slip op. at 5. The word "pressured" was underlined twice. The court informed the parties of the notes and suggested that the juror be replaced with an alternate. The defense requested that the jury be released for the day, while the government preferred that the jury continue deliberating. While this discussion was ongoing, the district court received two more notes from the jury. One of the notes was signed by multiple jurors. It indicated that one member of the jury was "hostile to hearing debate" and was unable to fairly weigh the evidence in the case. *Id.* at 6. The other note was from a single juror, Juror #88, who requested that the court replace her with an alternate juror, because she was "experiencing anxiety and [was] unable to clearly make [her] decision." *Id.* at 6-7. The district court suggested that the court interview Juror #88 on the record but outside the presence of the parties and other jurors. The parties consented to this arrangement. The juror in question reported to the district court that she had "started to feel very anxious due to the some of the reactions to [her] decision." *Id.* at 9. She also told the judge that she wanted to continue serving as a juror and did not want to be replaced with an alternate. Shortly after those statements, though, she indicated she felt like she could no longer perform her duties as a juror. The court then ordered the juror removed and replaced with an alternate on the court's motion, without giving the parties an opportunity to be heard on the issue.

The district court then proposed following the same procedure with the juror who requested leave to take medication, but that juror had already left the courthouse. The court also excused this juror and informed the parties of the substitutions of the two jurors. Defense counsel did not object to the removal of the juror who needed medication (Juror #93) but lodged an objection to the replacement of the juror with anxiety (Juror #88). The district court informed defense counsel that Juror #88 was incapable of continuing to serve on the jury and had experienced an "emotional meltdown." *Id.* at 11. With the substitution of two alternate jurors, the jury resumed deliberations and quickly reached a verdict. Between the announcement of the verdict and the reading of the verdict in open court, defense counsel again objected to the replacement of the juror experiencing anxiety, noting that defense counsel had agreed only that the court interview the juror and had not consented to the judge's unilateral decision to strike her. The district court was "surprised" by the objection and indicated its belief that the

parties had consented to the court's procedure for dealing with the jurors. The jury ultimately convicted the defendant on all counts.

The defendant moved the district court for a new trial, arguing that the substitution of the two jurors outside of his presence and without an opportunity to be heard violated his right to be present under the Due Process Clause. He also argued that the two jurors were replaced for maintaining their beliefs about the strength of the evidence in the case, in violation of his Sixth Amendment right to an impartial jury. The district court held that the defendant waived any objections to the replacement of the jurors and denied the motion for a new trial. The defendant appealed, advancing the same arguments about the juror substitutions.

On appeal, a unanimous panel of the Fourth Circuit agreed with the defendant as to Juror #88 (the one suffering from anxiety) only and ordered a new trial. The court agreed with the district court that the defendant had waived his objection to the replacement of Juror # 93, however. Defense counsel explicitly agreed that Juror #93 could be replaced. Therefore, he could not argue on appeal that the replacement constituted error. The court also found no error occurred when the district court failed to ask the defendant personally about the removal of Juror #93 before ordering the replacement and declined to hold that defense counsel was ineffective based on the attorney's handling of the issue with that juror. As to Juror #88, though, the court held that the district court erred in finding the defendant waived his challenge to the juror's removal. "[W]e conclude that the parties consented to Juror No. 88 being questioned by the district court during the *in camera* interview—not to her sua sponte removal during that interview." *Id.* at 18.

Turning to the merits of the challenge, the court noted that the Sixth Amendment right to an impartial jury requires a unanimous jury verdict. Consistent with that right, a juror cannot be removed based upon their views of the weight or sufficiency of the government's evidence. *United States v. Brown*, 823 F.2d 591, 596 (D.C. Cir. 1987). Several other circuits have followed the reasoning from *Brown*, and the Fourth Circuit formally adopted it here. Most of those circuits use a "reasonable possibility" test to determine whether a juror was removed based on their perception of the merits of the case. Without deciding the proper standard, the Fourth Circuit determined that the juror was improperly removed under any of the various approaches. According to the court:

Not only did Juror No. 88 indicate that she did *not* want to be replaced, but she reiterated her immediately prior statements that her request for removal was causally linked to her decision, that is, to her view of the case. At that point, under *Brown*, the district court had a variety of choices to protect Laffitte's Sixth Amendment right to an impartial jury: send the juror back to deliberations with instructions that the jury continue to attempt to reach agreement, recess for the evening, or declare a mistrial. The district court did none of them. *Laffitte* Slip op. at 27 (emphasis in original).

That the juror was improperly removed based on her views of the evidence was underscored by the fact that, following her replacement, the jury returned a verdict of guilty in under an hour after having previously deliberated for almost eight hours. The government argued that the juror's fragile emotional state was an independent reason justifying the juror's removal, separate and apart from her views on the case. The court agreed that a juror may be replaced when the juror's emotional state interferes with their ability to participate in the deliberative process but only when the emotional condition of the juror "bears no causal link to the juror's holdout status." *Id.* at 28 (citation omitted). Juror #88 was clear during

the in camera interview that her anxiety was related to her decision in the case and the reaction to her decision by other jurors.

The government further argued that any error in the removal of Juror #88 was harmless. The court noted that it was unclear whether improper removal of a juror constituted structural error, requiring reversal without regard to prejudice, or whether the issue was subject to harmless error review. “[W]e are unaware of any court that has decided that issue.” *Id.* at 31 (citation omitted). The court declined to resolve this question, instead concluding that the defendant was entitled to a new trial even under the harmless error standard.

The court also agreed with the defendant that the removal of Juror #88 violated his due process right to presence. Both the Fifth Amendment and Rule 43 of the Federal Rules of Criminal Procedure mandate that the defendant has a right to be present during the process of removing a juror. Because that did not happen, the defendant’s due process rights were violated. Again, the government could not demonstrate that this error was harmless, and the defendant was entitled to a new trial on these grounds as well.

The defendant’s convictions and sentence were therefore vacated, and the matter was remanded to the district court for a new trial.

Addition of six years of supervised release to the defendant’s sentence constituted a harsher sentence following his successful appeal and warranted a new sentencing hearing when the record did not rebut the presumption of vindictiveness

[U.S. v. Chang](#), 121 F.4th 1044 (Nov. 20, 2024). The defendant was convicted in the Eastern District of Virginia for drug offenses, and the district court imposed a sentence of 72 months in prison, followed by four years of supervised release. The defendant appealed, and the Fourth Circuit reversed and remanded for a resentencing. At resentencing, the district court imposed a new sentence of 69 months in prison, followed by 10 years of supervised release. The defendant again appealed, arguing that the new sentence was vindictive in violation of *North Carolina v. Pearce*, 395 U.S. 711 (1960). Under *Pearce*, a defendant may not be sentenced more seriously in response to a successful appeal as a matter of due process. A more serious sentence may, however, be supported by other independent reasons, such as intervening conduct of the defendant, but those independent reasons must appear in the record. *Alabama v. Smith*, 490 U.S. 794 (1989). Under *Smith*, a sentence will only be presumptively vindictive when there is no other explanation for the harsher sentence.

Here, the new sentence was more serious than the first sentence. While the term of imprisonment imposed at resentencing was less by three months compared to the first sentence, the term of supervised release was six years longer. The court noted that imposition of a greater term of supervised release at resentencing would not necessarily trigger the *Pearce* presumption of vindictiveness depending on the specifics of the sentence, but here, the six-year increase of supervised release was enough to consider the sentence harsher. Further, there was not sufficient evidence in the record to justify the increased sentence. While the district court was presented with more details about the defendant’s substance abuse challenges, those same issues were considered by the district court in the first sentencing hearing. “Because Chang was given a harsher sentence by the same judge, in the same posture, following a successful appeal, we conclude that *Pearce*’s presumption of vindictiveness arose and was not rebutted. *Chang* Slip op. at 11.

The government argued that the *Pearce* issue was not preserved because the defendant failed to raise it at resentencing. It thus sought to have the matter reviewed for plain error only. The court has assumed without deciding that vindictive sentencing claims are subject to plain error review in the past, and the court took the opportunity to explicitly adopt that rule here. Because the defendant failed to raise the claim at the resentencing hearing, the claim was subject to plain error review. Even under the plain error standard, though, the defendant here was entitled to relief.

The court vacated the sentence, and the case was remanded for a third sentencing hearing by the unanimous court. The court declined the defendant's request that the case be assigned to a different judge for that hearing, finding no evidence that the district court judge was biased or otherwise unqualified to conduct the new sentencing.

Plaintiff's complaint adequately pled retaliation for exercising his First Amendment right to record the police and his Sixth Amendment right to a jury trial; dismissal for failure to state a claim reversed

[Williams v. Mitchell](#), ___ F.4th ___; 2024 WL 4886476 (Nov. 26, 2024). An officer with the Norfolk, Virginia police department arrested the plaintiff for trespassing in January of 2020. The plaintiff was convicted at trial after the officer presented false testimony. The plaintiff successfully challenged his conviction on appeal by submitting a recording of the interaction leading to the charge. The appellate court recognized the officer's perjury and dismissed the criminal charge. About two weeks after the resolution of that criminal case, the plaintiff was hit by a speeding, drunk driver, resulting in serious injuries. Other Norfolk Police officers, who were not involved in the initial trespassing case, responded and recognized the plaintiff as the person who successfully defended against the trespassing charge. Despite the physical evidence and eyewitnesses on scene, the responding officers falsified the incident report to show that the other driver was not speeding or drunk and that the cause of the accident was a mechanical defect. The plaintiff sued the officers for various constitutional claims in the Eastern District of Virginia, arguing in part that the officers conspired to minimize the accident in retaliation for the plaintiff exercising his First Amendment right to record the officer during the trespassing incident and for exercising his Sixth Amendment right to go to trial on the trespassing charge. The district court granted the defendant-officers' motion to dismiss for failure to state a claim, and the plaintiff appealed.

A unanimous panel of the Fourth Circuit reversed and reinstated the retaliation claim. To prevail on a retaliation claim, the plaintiff was required to show that his actions were constitutionally protected, that the officers negatively interfered with those rights, and that there was a causal nexus between the plaintiff's exercise of his rights and the officers' actions. *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2020). In this case, the plaintiff's conduct in recording the police during the trespassing incident was constitutionally protected. "Creating and disseminating information is protected speech under the First Amendment, including recording police encounters." *Sharpe v. Winterville Police Dep't.*, 59 F.4th 674, 680-81 (4th Cir. 2023) (cleaned up). Likewise, the plaintiff's actions in proceeding to trial on the trespassing charge and confronting his accuser were expressly protected by the Sixth Amendment. U.S. Const. amend. VI. The third element was also properly pled here, as the complaint alleged that the officers responding to the car accident were aware of the plaintiff's successful exercise of his rights, which occurred about two weeks earlier. As to the second element, the intentional falsification of the incident report amounted to a negative interference with the plaintiff's constitutional rights. In the words of the court:

That the police would purposefully falsify an accident report as payback for Williams proving his innocence is egregious, and particularly so where the officers sought to deprive Williams of a potential claim against a drunk driver where Williams was clearly not at fault. *Williams* Slip op. at 10.

The complaint sufficiently pled that the officers' actions, if proven, would act as a deterrent to a person engaging in the same kind of constitutionally protected conduct again. That the plaintiff had already settled his claims against the drunk driver was not fatal to the retaliation claim. The district court was required to view the facts in the light most favorable to the plaintiff at the motion to dismiss stage and erred by failing to do so here. As to the conspiracy claim, the defendants conceded at oral argument that the ruling dismissing the conspiracy claim would have to be reversed if the retaliation claim was reinstated. The court obliged. Thus, the district court's dismissal of the retaliation claim was reversed, and the dismissal of the conspiracy claim was vacated. A state tort claim for intentional infliction of emotional distress was similarly reinstated, and the three claims were remanded for additional proceedings.