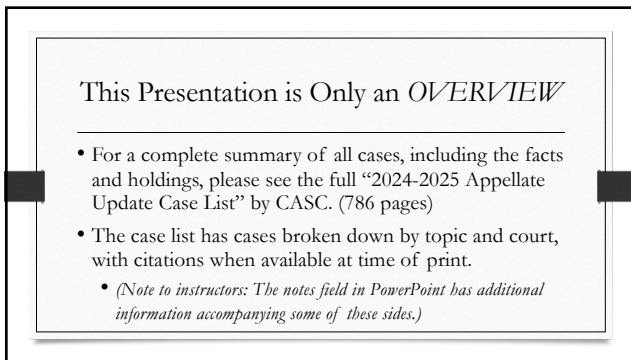
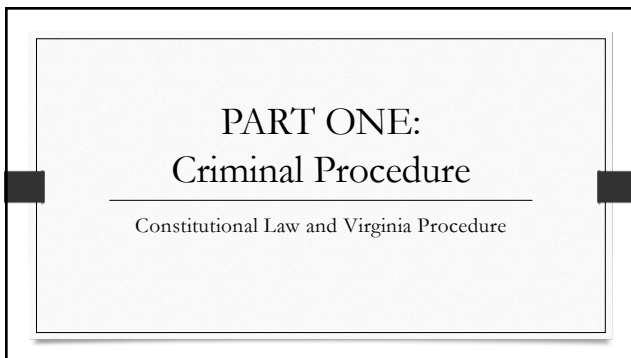


1



2



3

Fifth Amendment

Interviews and Interrogations

4

Right to Remain Silent *Paxton v. C/m*, 80 Va. App. 449 (2024)

- Defendant shot and killed his girlfriend.
- Police arrested him, advised him of his *Miranda* rights, and interviewed him.
- During the interview, the following exchange took place:

5

Defendant: Sir I did not shoot her.
Officer: You did shoot her.
Defendant: I don't wanna talk no more.
Officer: Ok, that's fair enough, absolutely fair enough. I gave you the opportunity to talk, you didn't want to talk, and that's fine, so you're being charged right now with the carjacking of the car, and use of a firearm in the commission of a felony, and you will be taken to the magistrate and processed.

6

Defendant: Sir.
Officer: Yes.
Defendant: What?
Officer: Mmm-hmm, unless you can come up with a reasonable explanation, . . .
Defendant: Sir, what else do you wanna know? I'm tellin[g] you everything.
Officer: I wanna hear the truth.

7

Court: Statement Should Have Been Suppressed

- Police did not scrupulously honor the defendant's right to cut off questioning.
- Officer "dangled the possibility of the defendant escaping criminal liability if he kept talking and provided [the defendant] with a "reasonable explanation" for the circumstances...".
- If an officer is unsure whether a suspect wishes to reinitiate the interrogation, he properly may question the suspect about whether he still wishes to remain silent.
- Here, officer did not reiterate the defendant's rights, attempt to answer the defendant's question, or ask the defendant to clarify his question.
 - Contrast *Wilson v. C/w*, January 14 (Unp)

8

Virginia Supreme Court Opinion

- This case was appealed to the Virginia Supreme Court where the Court of Appeals was reversed and reinstated the conviction.
- But the Court did so on harmless error analysis ONLY.
- It is still important to review and consider the Court of Appeals Ruling in this case.

9

Fayne v. Commonwealth, 83 Va. App. 686 (2025)

- Defendant was accused to shooting and killing his pregnant girlfriend and wounding another man after a dispute in a parking lot.
- During interrogation, the defendant unequivocally requested an attorney:
- “I feel like this is a waste of your time, my time or my money towards a lawyer. And that’s why I strongly request him here. I hate to do this in front, but before I give a statement I’m going to give, even before talking to him, I just want him.”

10

Detective’s Response

- Detective acknowledged that it was the defendant’s right to request an attorney but warned that once counsel was involved it would be difficult for the defendant to make a statement.
- Detectives continued to press him despite his request for a lawyer.
- Defendant responded, “I don’t want to really say nothing.”
- After about 30 minutes more interrogation, a third detective replaced the earlier detectives and interrogated the defendant for another 40 minutes. When he finished, the defendant asked for the earlier detective who returned and coaxed a confession from the defendant after another 35 minutes of interrogation.

11

Court of Appeals Holding

- The Court suppressed the statements made after the defendant’s request for any attorney as he made a clear invocation that was not honored by the officers and any confession he made was tainted by the police misconduct while he remained in police custody.
- The Court rejected any argument of reinitiation by the defendant because the officers never paused the interrogation after the defendant’s clear invocation.

12

Good Example of Honoring an Invocation and the Defendant Reinitiating the Questioning

- *Wilson v. Commonwealth*, January 14, 2025 (unpub.): The defendant shot and killed the victim.
- Officers detained the defendant and questioned him after advising him of his Miranda rights.
- The defendant requested an attorney, and the officers ended their questioning.

13

Reinitiation

- Approximately eight to nine minutes later, an officer re-entered the room to ask the defendant if he would like anything to eat because the process may take a while and made it clear that the defendant was not being questioned.
- As the officer was leaving, the defendant asked, "Why am I here?" The officer again explained to the defendant that he was going to be charged with murder.
- The defendant then asked, "Can I talk to you?"

14

Officer Response

- After both detectives returned to the interview room, they reminded the defendant that he had previously invoked his right to counsel.
- The detectives then expressly informed the defendant that he had the right to an attorney and that he did not have to answer any of their questions.
- After hearing multiple recitations of his rights from the detectives, the defendant stated unambiguously, "I want to talk about why I'm here."
- The defendant then confessed to shooting the victim.

15

Court of Appeals Holding

- The Court of Appeals held that the officers honored his original invocation by ceasing interrogation.
- The Court noted that the defendant clearly stated he wanted to talk with the officers after he invoked his right.
- However, the officers did not immediately resume questioning but instead re-read him his rights and confirmed he wished to waive his rights prior to resuming their interrogation.

16

Fourth Amendment Search and Seizure

17

Investigative Detention

RAS for Stops
RAS for Frisks

18

Traffic Stops

- *Hinsley v. Commonwealth*, October 8, 2024 (Unp.): Stop for §46.2-848 lawful where defendant's failure to use her turn signal may have impacted the officer's vehicle on the road; whether it actually impacted the vehicle or not was not material for a violation of the statute.

19

Pat-Downs

Scope of Lawful Frisks

20

Carrying a Concealed Weapon and the 4th Amendment

- *Smith v. Commonwealth*, December 3, 2024 (Unpub.)
- Court: Under Virginia law, it is illegal for an individual to carry a concealed firearm unless the individual falls within an enumerated exception or has a valid permit.
- Court: carrying a concealed weapon in Virginia is presumptively criminal until the individual establishes that an exception applies or presents a permit.
- Officer was permitted to reasonably suspect that the weapon was contraband even without knowing whether the defendant had a valid permit.
- Also: *McRae v. C/w*, November 19, 2024 (Unpub.), *Anthony v. C/w*, September 3, 2024

21

Alvin v. C/w, April 23, 2024

- Defendant, a convicted felon, carried a concealed firearm on his person.
- While on patrol in a high crime area, officer saw the defendant walking with a heavy object swinging in his right pocket every time he made a step forward.
- The officer observed that the object “appeared heavier than a cellphone would be.”
- Officer could see the object pressed against the inside of his pants pocket on the right side, between the pants pocket and his leg, each time the defendant stepped.

22

Observations as Articulated

- Through the thin fabric of the defendant's pants, the officer could clearly see an outline of a firearm against the defendant's leg. He specified that this included the handle of the firearm and the barrel of the firearm.
- Officer knew that the area was a “high crime” neighborhood in which arrests involving weapons and narcotics had been made.
- Specifically, the defendant walking next to an apartment complex at which the officer had made several arrests involving weapons, narcotics, and stolen autos. The block that the defendant was “walking from” had been the location of a shooting during a very recent traffic stop.

23

Court: Officer Lawfully Stopped and Patted Down Defendant for a Firearm

- Court held that the officer had reasonable suspicion to seize and then pat down the defendant for concealed weapons.
- The Court found that the totality of these circumstances, officer reasonably believed the defendant was carrying a concealed weapon, a criminal offense.
- Court noted that the Supreme Court of Virginia held in *Whitaker* that carrying a concealed weapon provides probable cause to arrest.

24

Similar: *Humphrey v. C/w*, July 2, 2024

- Defendant, a felon, carried a concealed handgun.
- Officers on patrol at the Va. Beach oceanfront due to an increase in gun violence saw the defendant walking with another man who had an outline of a firearm visible through his clothing.
- Officer approached the defendant's companion and asked him if he had a concealed weapon permit.
- Man denied having a firearm.
- Officers detained the man and, after a brief struggle, removed a gun from his pants.

25

Defendant

- Defendant began moving away from the officers.
- Officer asked defendant if he also possessed a firearm,
- Defendant responded, "nah, I'm good."
- Officer then asked for the defendant's permission to conduct a pat-down search for weapons and defendant repeated his initial response and continued moving away from the officer.
- As the defendant backed away, he tripped over a small sign and the officer saw an "angular shape[d]" item on the defendant's left side, which the officer believed to be a firearm.

26

Pat-Down

- When defendant tried to walk away, officers stopped him, handcuffed him, patted him down, and removed his handgun.
- Court of Appeals: Officers possessed reasonable suspicion to not only detain the defendant but also conduct a pat down of his person and retrieve the firearm concealed in his pants.
- See also: *Johnson v. C/w*, April 8, 2024 (Unp.).

27

Geofence Warrants- *U.S. v. Chatrue*, 4th Circuit *en banc*

- The defendant robbed a bank of roughly \$200,000 using a gun and a note claiming that he had the teller's family held hostage. Witnesses stated that the perpetrator had come from a nearby church. Law enforcement knew only that the perpetrator had a cell phone in his right hand and appeared to be speaking with someone on the device.
- After police failed to locate the suspect via reviewing camera footage, speaking with witnesses, and pursuing two leads, law enforcement obtained a "geofence" warrant from Google.

28

The Warrant

- Step 1: In this step, law enforcement would seek de-identified list of all Google users whose Location History data indicates were within the geofence during a specified timeframe.
- Step 2: In this step, law enforcement would seek additional de-identified location information for a certain device or devices to determine whether that device or devices are relevant to the investigation, and additional location coordinates beyond the time and geographic scope of the original request to eliminate devices from the investigation.
- Step 3: In this step, law enforcement would seek account-identifying information for the users the Government determined were relevant to the investigation. The warrant described the three-step process but sought authority for all three steps in one single warrant.

29

Holding

- The District Court refused to suppress the fruits of the geofence warrant because the officer acted in good faith.
- In a 14-1 per curiam ruling, the Court simply wrote: "The judgment of the district court is Affirmed." The justices followed that ruling with 124 pages of separate opinions, consisting of seven concurrences and one dissent.

30

Useful Analysis from the Opinion

- Despite the unusually divided ruling, this ruling makes clear that a substantial majority of the judges of the 4th Circuit believe that law enforcement may lawfully obtain Geofence warrants. The most useful opinion in this collection is likely Judge Berner's opinion. Judge Berner's opinion, joined by five other judges, is that "Step One" of Google's process is not a search under the fourth amendment.
- Thus, adding the seven other 6 judges who believe that the entire search is governed by the third-party doctrine, there are a total of 14 judges who agreed that "Step One" of Google's process is not a Fourth Amendment search.

31

Takeaways

- The ideal way to obtain a geofence warrant is to seek judicial authorization at each step of the process.
- Therefore, it is best to seek three separate search warrants as opposed to a single warrant that contains all three steps.

32

Exceptions to Warrant Requirement

Probable Cause *PLUS* _____
exception to warrant requirement

33

Exigent Circumstances:

Fitch v. Commonwealth, September 24, 2024 (Unp.)

- Defendant murdered his estranged wife.
- Police learned that the defendant's cellsite data placed him at the scene of the crime at the time of the offense.
- Police obtained a search warrant for the defendant's residence to search for, among other items, the defendant's cellphone.
- The search warrant did not authorize the seizure of the defendant's phone at any other location.

34

Defendant Appears at Police Department

- While officers were preparing to execute the search warrant, the defendant called the Police and asked to speak to an officer.
- The defendant voluntarily come to the police station for an interview.
- At the police department, the defendant spoke to an officer.
- During the interview, the defendant confirmed his cell phone number, that he only had one cell phone, and that he always carried his phone.

35

Seizure of Phone

- Additionally, defendant referenced a video that was on his phone, which he believed depicted the victim cheating on him with another man.
- Officer informed the defendant that other officers were executing a search warrant at his residence and the warrant authorized the seizure of his phone.
- Defendant asked to leave, concluding the interview.
- Officer gave the defendant a copy of the search warrant and seized the defendant's phone.

36

Court: Seizure Lawful as “Exigent Circumstances”

- Court noted that it was likely that the defendant had the phone with him when he killed the victim, based on his statements.
- Court also pointed out that the video of the victim and the other man could support a motive for the killing.
- Court reasoned that by the end of the interview, both the defendant and the officer were aware of the incriminating evidence likely present on the defendant’s phone.

37

Court: Danger of Destruction of Evidence

- Court pointed out that the defendant’s discovery that he was a suspect led him to become agitated, and as the possessor of the phone, which contained important incriminating evidence, he was “aware that the police may [have been] on [his] trail,” in the language of *Verez*.
- It was reasonable for the defendant to fear that if the defendant left the police station with his phone, he would remove evidence from it or destroy it altogether.
- Court agreed that the officer did not have time to get a new warrant allowing him to seize the phone from the defendant at the police station before the defendant left or destroyed the evidence.

38

Probable Cause and Search Incident to Arrest

Answer to a 20-Year-Old
Question

39

Search Incident to Arrest

- After arrest, an officer may search a suspect's entire person (*except for body cavities*).
- Scope of Search: The person AND the space around that person from which a weapon could be reached.
- An officer may search *an area under someone's control at the time* of their arrest.

40

Chimel:

1969 Ruling on Search Incident to Arrest

- When an officer makes a lawful custodial arrest, he may search the arrestee and the area within his control, his "wingspan."
 - *Chimel v. California*, 395 U.S. 752 (1969).
- "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment and a search incident to the arrest requires no additional justification, such as the probability in a particular arrest situation that weapons or evidence would in fact be found upon the suspect's person."
 - *United States v. Robinson*, 414 U.S. 218 (1973).

41

Timing of Search

- If the facts establish probable cause to arrest, law enforcement may conduct a search of the arrestee's person incident to that arrest.
 - See, e.g., *Joyce v. Commonwealth*, 56 Va. App. 646, 657, 696 S.E.2d 237, 242 (2010).
- It does not matter that "the formal arrest follow[s] quickly on the heels" of the search as long as the officer had probable cause to arrest at the time of the search.
 - *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980).

42

Scope of Search

- The scope of a search incident to arrest includes not only the arrestee's "person" but also "the area 'within his [or her] immediate control,'" meaning "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence."
- *Chimel v. California*, 395 U.S. 752, 763 (1969); see *Commonwealth v. Gilmore*, 27 Va. App. 320, 327-28, 498 S.E.2d 464, 468 (1998).
- The permissible scope also includes containers found on the arrestee's person or within his or her immediate control as long as the search occurs sufficiently contemporaneously.
- See *Michigan v. Summers*, 452 U.S. 692, 693, 705 (1981) (envelope); *United States v. Robinson*, 414 U.S. 218, 234-36 (1973) (package of cigarettes).

43

2009: No More Search of a *Vehicle* Incident to Arrest

- Once a person has been removed from the car and is secured in cuffs *the car is no longer under their control* and is not subject to a search incident to arrest.
 - Law Enforcement may search the passenger compartment of a car incident to arrest **ONLY** if it is reasonable to believe that the arrestee might access the car at the time of the search **OR** that the car contains evidence of the offense.
- *Arizona v. Gant*, 556 U.S. 332 (2009)

44

U.S. v. Davis, 997 F.3d 191 (4th Cir. 2021)

- Officers stopped the defendant for a traffic violation.
- However, the defendant drove away during the stop and fled police at high speed.
- He then escaped from his car and fled on foot, carrying a backpack.
- While running, he appeared to discard an object. Police chased him into a swamp, where he surrendered.

45

Backpack Search

- Davis exited the swamp, dropped the backpack to the ground, and laid prone on the ground.
- Police handcuffed him with his hands behind his back and lying on his stomach, and then an officer searched his nearby backpack.
- In the backpack, police discovered cash and two plastic bags of cocaine.
- They then searched his car and found more evidence.

46

Court: Search Unlawful

- Court decided that the Supreme Court's holding in *Arizona v. Gant* applies beyond the automobile context to the search of a backpack.
- Court concluded that *Gant* applies to searches of non-vehicular containers and concluded that police officers can conduct warrantless searches of non-vehicular containers incident to a lawful arrest "only when the arrestee is unsecured and within reaching distance of the [container] at the time of the search."

47

Searching Cars

- Under *Chimel*, police can "search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."
- Court then reasoned that, under *Gant*, an item is not within a person's immediate control if it is **unreasonable** to believe that they can access it.

48

Could Davis have reached his bag?

- Court noted that the defendant was face down on the ground and handcuffed with his hands behind his back.
- “He had just been ordered out of the swamp at gunpoint. The only other individuals within eyesight were officers, who outnumbered him three to one. And while this all took place in a residential area, it appears there was no one else around to distract the officers.”
- Court concluded that the defendant “would have had to jump up from the ground or contort his body in order to snatch the backpack away from” the officers.
- Thus, the defendant was secure and not within reaching distance of his backpack when the officers searched it

49

Davis Applied: U.S. v. Horseley, June 24, 2024

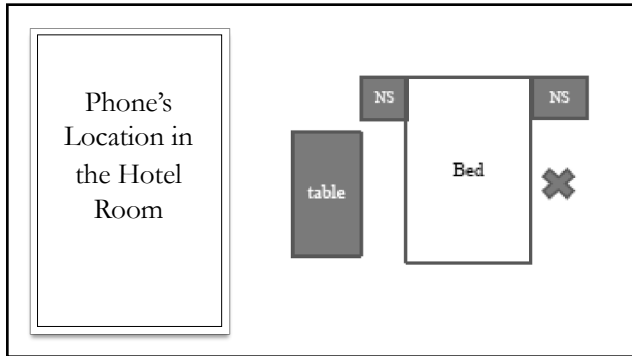
- Officers arrested the defendant for Distribution at a hotel.
- When officers visited the hotel room, the defendant answered the door without clothes on.
- Officers arrested him and put him in handcuffs while he was standing, cuffing him behind his back.
- Officers had positioned the defendant on one side of a queen-sized bed.

50

Phone Seizure

- On the other side of the queen-sized bed was a cellphone on a table, two to three feet from the edge of the bed.
- Several United States marshals were present in the room.
- At a motion to suppress, an agent testified that the defendant “could not have reached for the phones because he was under arrest” and that “he couldn’t reach because he was in handcuffs.”
- Officers seized the phone and later obtained a search warrant to search the phone.

51



52

Court: Phone Seizure Unlawful

- Court: cellphone was improperly seized incident to arrest.
- Court found that the defendant was secured, and the cellphone was not within his reach.
- Court emphasized that the relevant question is whether it is reasonable for police to believe a defendant could have accessed the item at the time of the search.

53

Administrative and Inventory Searches

No Warrant is required for the search of the personal effects of an arrestee or of a vehicle **IF**

it is part of the routine administrative booking procedure or impound procedure

54

Inventory Searches

- Inventory searches of personal effects of an arrestee at a police station are permissible under the Fourth Amendment. *Illinois v. Lafayette*, 462 U.S. 640 (1983).
- *U.S. v. Wilder*, 4th Cir. December 31, 2024: Defendant would have been arrested in any event, based on his possession of marijuana, and pursuant to department policy, the defendant's cross-body bag would have been inventoried. As a result, the firearm and ammunition underlying his conviction would have been inevitably discovered and seized.

55

Inventory Searches are *NOT* Evidentiary Searches

- “An inventory search . . . serves the strong governmental interests in:
 - 1) Protecting an owner's property while it is in police custody,
 - 2) Insuring against claims of lost, stolen, or vandalized property, and
 - 3) Guarding the police from danger.”
- *Colorado v. Bertine*, 479 U.S. 367, 367 (1987). See also, *Servis v. Commonwealth*, 6 Va. App. 507 (1988).

56

Key Limitation: Must Be Based on *Established Procedure*

- While it is not necessary for there to be independent probable cause to believe that a vehicle or personal property contains evidence or contraband, a law enforcement agency must have an established inventory procedure, especially when it comes to opening containers.
- “an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence.”
 - *Florida v. Wells*, 495 U.S. 1, 4 (1990).

57

Procedure Must Be Standardized

- As noted, there must be “‘standardized criteria,’ such as a uniform police department policy,” that “sufficiently limit[ed] [the] searching officer’s discretion[.]”
 - Colorado v. Bertine*, 479 U.S. 367, 374 n.6 (1987);
 - “For the inventory search exception to apply, the search must have been:
 - 1) Conducted according to standardized criteria AND
 - 2) Performed in good faith.
- *United States v. Clark*, 842 F.3d 288, 293 (4th Cir. 2016)

58

Case of Note

- Stamps v. C/w*, February 18, 2025 (Pub.): An inventory search that is not otherwise pretextual is not rendered invalid simply because the officer failed to strictly follow department procedures.
- Court: Minor deviations from policy do not invalidate the search itself.

59

Back to *Gant*: What is “reasonable to believe”

- Once a person has been removed from the car and is secured in cuffs *the car is no longer under their control* and is not subject to a search incident to arrest.
 - Law Enforcement may search the passenger compartment of a car incident to arrest ONLY if it is **reasonable to believe** that the arrestee might access the car at the time of the search OR that the car contains evidence of the offense.
- *Arizona v. Gant*, 556 U.S. 332 (2009)

60

U.S. v. Turner, 4th Cir., December 4, 2024

- Court: Under the automobile exception, police may search only “on a showing of probable cause,” rather than the “mere reasonable belief” that will justify a search incident to arrest under *Gant*.
- Court concluded that *Gant*’s “reasonable to believe” standard can be satisfied with something less than probable cause.
- What is the standard?
- TBD....

61

Probable Cause is NOT “More Likely Than Not” *Durham v. C/w*, 904 S.E.2d 203 (2024)

- Court: Probable cause can be found where there is a reasonable ground for belief of guilt, particularized with respect to the person to be searched or seized, or where there is a fair probability that contraband or evidence of a crime will be found in a particular place.
- Court: Probable cause “is certainly less demanding than a preponderance of the evidence standard, and it does not require that an officer believe that the search’s subject is more likely guilty than innocent.”

62

Statutory Exclusionary Rules

- *Hope v. Commonwealth*, October 22, 2024 (Unp.): Trial court did not err when it declined to instruct the jury of the considerations contained in § 19.2-390.04 as it was not in effect at the time of the interview.
- *Perez-Flores v. C/w*, 82 Va. App. 249, 906 S.E.2d 165 (2024) Statutory exclusionary rule in the taillight statute, § 46.2-1013(B), applies **only** to violations of that subsection. Examining § 46.2-1013, the Court found that subsection A is about visibility of the vehicle, and subsection B is about visibility of the license plate.

63

PART TWO: Crimes & Offenses

New Cases Worth Noting

64

Weapons & The Second Amendment

Bruen, Rahimi, and Firearm Offenses

65

Ghost Gun Kits- *Bondi v. Vanderstock*, 145 S.Ct. 857 (2025):

- ATF interpreted the definitional language of “firearms” to embrace weapon parts kits “that [are] designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.”
- Those who make or sell kits that satisfy this test, ATF said, must comply with the GCA by securing federal licenses, conducting background checks, keeping sales records, and marking their products with serial numbers.
- To decide whether a kit “may readily be converted” into a working gun, ATF added, it will consider several factors, including the time, ease, expertise, and equipment required to complete a weapon, as well as the availability of other necessary parts.

66

Some Ghost Gun Kits May Be Regulated

- The ATF's two rules have at least some constitutional applications and therefore the plaintiffs fail on their facial challenge of the rule which requires the rule to be inconsistent with the statute on its face.
- The Court discussed an example gun kit, Polymer80's "Buy Build Shoot" kit which allowed the creation of a Glock style pistol in 21 minutes in an ATF test with someone who had never seen the kit before and who built the gun using only common tools and a YouTube video.

67

What This Means

- This is the start of regulations that can help law enforcement track the purchases of "ghost guns" and it may reduce the number of sales of these kits as they can be subject to ATF regulation.

68

U.S. v. Rabimi, 602 U. S. 680 (2024)

- When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect.
- Court pointed out that §922 (g)(8) applies only once a court has found that the defendant "represents a credible threat to the physical safety" of another, which the Court concluded matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon

69

Post-*Rahimi* Rulings:
4th Circuit

- *U.S. v. Hunt*, Dec. 18, 2024 and *U.S. v. Canada*, Dec. 5, 2024: Lawful to prohibit felons from poss'n.
- *U.S. v. Saleem*, Dec. 12, 2024: Suppressors (Silencers) and sawed-off shotguns not protected by 2nd Amendment.
- *U.S. v. Price*, 111 F.4th 392 (2024): Obliterated serial number not protected.

70

Post-*Rahimi* Rulings:
4th Circuit

- *Bianchi v. Brown*, 111 F.4th 438 (2024): "Assault" firearms not protected.
- *U.S. v. Nutter*, 4th Cir., May 14, 2025: Lawful to prohibit those convicted of misdemeanor domestic violence from possessing firearms.

71

Post-*Rahimi* Rulings:
Virginia Courts

- *Ginevan v. C/w*: December 17, 2024 (Pub.): Lawful to prohibit violent/dangerous felons from possession of a firearm.
 - Non-violent felons? Undecided
- *Watkins v. C/w*: January 28, 2025 (Pub.): Lawful to prohibit current drug users from possession of a firearm.
 - Mere possession? Undecided

72

Homicide

Cases of Note

73

Poindexter v. C/n, July 23, 2024 (Unp.)

- Defendant acted with a callous disregard for human life when she left the loaded firearm unsecured in a place where the ten-year-old could easily access it.
- "In a volatile environment, where Jones and Poindexter had heated confrontations all day, rather than keep the gun on her person for protection, or secure the gun in a safe, locked location, Poindexter chose to place the loaded gun on the coffee table, within reach of her young children."

74

Obstruction of Justice

- *Wlash v. C/n*, April 1, 2025 (unpublished): Officers possessed an arrest warrant giving them the right of entry to defendant's home. Defendant refused to answer the door and demanded the officers kick the door in for them to enter the home.
- Because the officers had a lawful right of entry, the defendant's passive and active resistance to the officers serving the warrant on him constituted obstruction under §18.2-460.

75

Compare *Lickey v. Commonwealth*, Aug 2, 2024
(unpublished)

- Defendant passenger passed a glass smoking device from the glove box to the driver who concealed it on her person.
- When ordered to get out of the vehicle, the driver threw the glass smoking device over their truck and onto the highway where it was recovered intact.
- Held: Even if the court inferred that the defendant knew that the officer had seen the smoking device, and thus intended to obstruct any investigation, the defendant's removal of the smoking device from the glove box and passing it to the driver did not prevent the officer from conducting that investigation and the device was found intact.

76

Malicious Wounding

- *Chisholm v. Commonwealth*, March 24, 2025 (unpub.): Defendant and victim were coworkers.
- Defendant pulled victim out of a work vehicle and, despite attempts to calm him down, punched him one time in the jaw with a hard hat.
- Victim fell unconscious and had significant injury to his jaw.
- Evidence sufficient for malicious wounding despite a single punch given the significance of the injury, the use of the hat and the lack of provocation.

77

Sexual Assault and
Related Crimes

78

Aggravated Sexual Battery

- In *Izaguirre v. Commonwealth*, May 6, 2025, The Court of Appeals applied the plain meaning of the words, “directly” and “covering” and construed the phrase, “material directly covering such intimate parts,” in Code § 18.2-67.10 to include material that conceals, but is not necessarily in physical contact with, a victim’s intimate parts.
- The defendant molested the victim by touching her vagina while she was wearing sleep shorts and underwear.

79

Obscene Sexual Display

- *Harris v. Commonwealth*, 83 Va. App. 571 (2025): the defendant exposed himself, while masturbating, to two women in a public park. As a result, he was charged with two counts of obscene sexual display under §18.2-387.1.
- The Court of Appeals held that the “unit of prosecution,” for §18.2-387.1 is not the number of victims who witness the obscene sexual display but is instead the number of separate occasions on which the defendant exposed himself.
- Thus, in this case, he was guilty of one count, not two.

80

Hit and Run

- *Evans v. Commonwealth*, 82 Va.App. 612 (2024): The defendant’s live-in boyfriend took the defendant’s rental car without her permission to pick up three teenage girls in the middle of the night.
- The defendant, furious, used a separate car to find the defendant (and the girls) and chased them for over an hour.
- Eventually, the defendant’s efforts led to a roll-over crash wherein her boyfriend and three girls were injured.

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The Issue

- The defendant claimed the Commonwealth could not prove she caused the crash because the evidence was inconclusive as to whether or not she made contact with the vehicle driver by her boyfriend.
- The Court of Appeals held that proof of physical contact of with her boyfriend's vehicle was unnecessary to prove that she caused the crash as contemplated by the statute.

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Causation

- The Court observed that the first step in determining factual causation is often described as the "but for" cause.
- In this case, the Court concluded that but for the car chase, the boyfriend would not have tried to outrun the defendant and the crash would not have occurred.
- The Court then examined the second step in determining causation, proximate cause, which asks whether a but-for cause is nevertheless so attenuated from the resulting harm that it fails to constitute a legal cause.
- The Court found that the crash here was like the crashes that resulted from the intentional or reckless actions of the defendants, thus foreseeable and proximate.

83

Authentication and Electronic Evidence

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“Best Evidence”

- *Dolson v. C/w*, October 15, 2024 (Pub): Proper to treat the photographs of a check, a customer form, and computer database as duplicate originals.

85

Video Evidence

- *Baez v. C/w*, December 19, 2024 (Va.S.Ct): Officer body camera video admissible when officer did not testify.
- *Cunningham v. C/w*, February 25, 2025 (Unp.): Property manager testimony satisfied 2:901's authentication requirement; mere fact that others had access to the camera system—absent any evidence that anyone altered or tampered with the surveillance footage—went to weight, not admissibility.
- *Syed v. C/w*, November 5, 2024 (Unp.): Lawful to admit video stills when neighbor sufficiently identified the photographs and videos made by her surveillance cameras.

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Chain of Custody

- *Muhammad v. C/w*, June 11, 2024: Although the transport officer did not testify at trial, the Court ruled that the RFLEs establish that he retrieved the evidence, transported it to the lab, and that he was authorized to do so.
- *Ward v. C/w*, April 8, 2024: To admit certificate of analysis, trial court did not need to hear from “every witness who physically handled the samples for the evidence to be admissible.”

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<u>Elliott Casey</u>	<u>Jason Kowalski</u>
Commonwealth's Attorneys' Services Council	Commonwealth's Attorneys' Services Council
Director	Staff Attorney
P. O. Box 3549	P. O. Box 3549
Williamsburg, Virginia 23187	Williamsburg, Virginia 23187
ejcasey@wm.edu	jmkowalski@wm.edu
