

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-7976	Briefs	CRIMINAL LAW. Whether counsel was ineffective for ignoring the defendant's direction to accept the district court's offer of a mistrial without prejudice.
US v. Nathan Chapman, Jr. (Quarles)		
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08-2378	Briefs	INSURANCE LAW. Challenges to district court's certification of class action, failure to apply S.C. Code Ann. Section 38-71-242, and interpretation on remand of this Court's ruling; other issues.
Martha Ward v. Dixie National Life Insurance (Anderson)		
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07-2070	Briefs	IMMIGRATION. Whether petitioner's conviction for unlawful export qualified as a particularly serious crime such that she is barred from the relief of asylum and withholding of removal; other issues.
Zhan Gao v. Eric Holder, Jr.		
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08-5159	Briefs	SENTENCING. Whether district court possessed authority to sentence below statutory minimum.
US v. Gregory Lively (Motz)		

Tuesday, December 01, 2009

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-2253 [Briefs](#) CONSTITUTIONAL LAW. Whether district court erred in granting two-year injunction against enforcement of county zoning bill
A Helping Hand, LLC v. Baltimore County, regarding methadone clinics.
(Blake)

08-2126 [Briefs](#) CIVIL. Whether state statutes requiring registration of motor vehicles of certain nonresidents, and of foreign vehicles of state
Brad Johnson v. County of Horry, SC residents, are constitutional; qualified immunity.
(Wooten)

08-1515 [Briefs](#) TITLE VII. Whether district court correctly granted motion to dismiss complaint alleging national origin discrimination, in violation
Irina Dolgaleva v. VA Beach City Public Schools of Title VII of the Civil Rights Act of 1964, as amended.
(Kelley)

Tuesday, December 01, 2009

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

REVD 11/13/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-1644	Briefs	SECTION 1983. Propriety of grant of summary judgment to defendants on claims of excessive force/deliberate indifference where pre-trial detainee killed by blunt force trauma.
Hilarie Scarbro v. New Hanover County (Flanagan)		
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09-1037	Briefs	AGRICULTURE. Propriety of summary judgment upholding agency's requirement that appellant repay overpayment under Crop Disaster Program.
Katherine Tyson v. USDA (Boyle)		
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08-2005	Briefs	CIVIL. Whether South Carolina state claim of false arrest could be established in absence of Fourth Amendment violation; other issues.
Hope Dorn v. The Town of Prosperity (Harwell)		

Tuesday, December 01, 2009

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

REVD 11/25/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-1704	Briefs	IMMIGRATION. Whether substantial evidence supports the Board's finding that petitioner failed to qualify for asylum and withholding of removal; other issues.
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08-1684	Briefs	IMMIGRATION. Whether the Board of Immigration Appeals abused its discretion in denying petitioner's motion to reopen.
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06-7770	Briefs	CIVIL. Whether a "per case" or "per inmate" rule applies when assessing partial filing fees under 28 U. S. C. Section 1915(b).
Torres v. O'Quinn (Conrad)		
Associations: 07-7340		

Tuesday, December 01, 2009

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

REVD 11/25/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

09-1209	Briefs	BANKRUPTCY LAW. Whether the transfers to defendant are preferential transfers under the Bankruptcy Code; whether the transfers are subject to the "new value" defense; other issues.
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09-1256	Briefs	CIVIL. Whether West Virginia Wage Payment and Collection Act applied to employee by virtue of his West Virginia residence during a portion of his term of employment; other issues.
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08-2252	Briefs	CIVIL. Whether the district court properly found appellant liable for indemnification of environmental liabilities, including mercury contamination.

Wednesday, December 02, 2009

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

REVD 11/20/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-4529	Briefs	SENTENCING. Whether district court clearly erred on remand for resentencing in applying terrorism enhancement in USSG Section 3A1.4; other issues.
US v. Ali Chandia (Hilton)		
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07-2180	Briefs	COPYRIGHT LAW. Challenge to findings of valid copyright in furniture design and of Lanham Act violation; other issues.
Universal Furniture Internatio v. Collezione (Osteen) Associations: 09-1437		
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07-6705	Briefs	HABEAS CORPUS. Whether district court erred in finding Double Jeopardy Clause was not violated by multiple punishments on robbery and abduction convictions arising out of same criminal conduct; procedural default issue.
Jones v. Sussex I State Pris (Payne)		
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08-5172	Briefs	CRIMINAL LAW & PROCEDURE. Whether the district court's refusal to forfeit \$358,390 of the proceeds of a Mann Act conspiracy was reversible error.
US v. Jalaram, Incorporated (Bailey)		

Wednesday, December 02, 2009

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-4875 [Briefs](#) ARMED CAREER CRIMINAL ACT. Whether state conviction for drug trafficking was properly counted as predicate conviction.
US v. Kenneth Hinson
(Wooten)

08-4884 [Briefs](#) CRIMINAL. Whether aggravated identity theft statute encompasses unlawful use of personal information that is lawfully possessed; whether district court properly applied sentencing enhancement for abuse of position of trust.
US v. Mohamed Abdelshafi
(Hudson)

07-4844 [Briefs](#) CRIMINAL LAW & PROCEDURE. Numerous issues regarding venue, evidence, and sentencing, connected to mail fraud and identity theft convictions.
US v. Jonathan Giannone
(Currie)

Associations: 08-5020, 08-8386

Wednesday, December 02, 2009

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

REVD 11/25/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-4679	Briefs	SENTENCING. Whether burglary during which firearms were stolen properly constitutes predicate offense for Armed Career Criminal Act enhancement purposes; whether first-degree murder cross-reference properly applied; other issues.
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07-4493	Briefs	CRIMINAL LAW & PROCEDURE. Whether prosecutor committed plain error in closing argument when he discussed defendant's hypothetical participation in terrorist plot to blow up the courthouse; other issues.
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09-4336	Briefs	CRIMINAL. Whether district court erred in applying an armed career criminal enhancement based on a prior conviction for failure to stop for a blue light.
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09-1097	Briefs	IMMIGRATION. Whether Court can review Board of Immigration Appeals' decision not to exercise sua sponte reopening authority when it goes against Board of Immigration Appeals' policy; related issues.

Wednesday, December 02, 2009

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

REVD 11/12/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

09-1130	Briefs	PERISHABLE AGRICULTURAL COMMODITIES ACT. Does the exchange of assets violate PACA trust; is defendant a bona fide purchaser; is remedy imposed by the district court proper.
Nickey Gregory Company LLC v. Agricap LLC (Herlong)		
Associations: 09-1162		
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08-5025	Briefs	CRIMINAL LAW & PROCEDURE. Whether state law enforcement officer serving on federal task force must apply first to a federal magistrate for search warrant.
US v. Timothy Claridy (Bennett)		
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08-5235	Briefs	CRIMINAL. Whether anonymous tip was sufficiently corroborated to create reasonable suspicion of firearm possession.
US v. Raymond Cureton (Conrad)		
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08-4958	Briefs	CRIMINAL. Whether it was plain error to sentence defendant as armed career criminal based on state convictions for which defendant's rights have been restored.
US v. Barion Hairston (Osteen)		

Thursday, December 03, 2009

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-0016	Briefs	CRIMINAL. Interlocutory appeal from denial of motion to dismiss federal capital prosecution on double jeopardy grounds.
US v. Samuel Manning (Friedman)		
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08-7813	Briefs	POST CONVICTION LAW. Challenge to district court's granting of habeas corpus relief on ground of ineffective assistance of counsel.
Matthew Boseman v. Richard Bazzle (Norton)		
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08-4982	Briefs	CRIMINAL. Whether probable cause existed for warrantless search of vehicle such that district court erred in denying Kelly's pretrial motion to suppress; other issues.
US v. David Kelly, Jr. (Jackson)		
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08-5037	Briefs	CRIMINAL. Whether several convictions for breaking and entering multiple storage units on a single day were properly considered separate predicate offenses for purposes of the Armed Career Criminal Act.
US v. Daryl Carr (Flanagan)		

Thursday, December 03, 2009

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-6575	Briefs	SENTENCING. Whether district court abused discretion in failing to explicitly indicate consideration of Section 3553(a) factors or otherwise explain denial of Section 3582(c) motion; whether court abused discretion in denying motion.
US v. Maurice Stewart (Wilson)		
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08-5125	Briefs	CRIMINAL. Standard of review for error under United States v. Carter for defendant sentenced as career offender where issue not raised in district court; other issues.
US v. Mark Lynn (Williams)		
Associations: 08-5126		
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08-5132	Briefs	SENTENCING. What is the standard of appellate review applied to unpreserved Carter error when district court imposed within-guidelines sentence?
US v. Avery Peake (Herlong)		
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09-4341	Briefs	SENTENCING. What is the standard of appellate review applied to unpreserved Carter error when district court imposed a sentence outside the guidelines range?
US v. Jeremy Tucker (Floyd)		

Thursday, December 03, 2009

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (12/01/2009 - 12/04/2009 Session)

09-1167	Briefs	FEDERAL PROCEDURE. Whether failure of counsel to receive e-mail notification of motion for summary judgment constitutes either manifest injustice under F.R.C.P. 59 or excusable neglect under F.R.C.P. 60(b).
Thomas Robinson v. Wix Filtration Corporation LLC (Reidinger)		
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09-7525	Briefs	SENTENCE REDUCTION. Whether defendant who qualifies as career offender but receives downward departure at sentencing qualifies for a sentence reduction under 18 USC Section 3582(c).
US v. Raeford Munn (Fox)		
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08-7238	Briefs	SENTENCING. Whether the district court erred in concluding that it lacked the authority to reduce Fennell's sentence by more than one month.
US v. Cory Fennell (Flanagan)		
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09-1389	Briefs	INSURANCE LAW. Did district court correctly hold that coverage was excluded by terms of insurance policy.
Admiral Insurance Company v. ACE American (Wilson)		

Thursday, December 03, 2009

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-2356	Briefs	CIVIL. Whether the district court properly dismissed complaint alleging civil RICO claims, Lanham Act violation, state law claims, under Fed. R. Civ. P. 12(b)(6).
C. Foster v. Wintergreen Real Estate Compan (Moon)		
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08-1469	Briefs	CIVIL. Whether district court should consider evidence first submitted with objections to a magistrate judge's report and recommendation.
Joseph Wojcicki v. Aiken Technical College (Floyd)		
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07-7462	Briefs	HABEAS. Whether trial court erred in allowing cross-examination about excluded evidence; whether trial counsel was ineffective; whether trial court erred in failing to conduct hearing pursuant to Faretta v. California.
Koon v. Rushton (Harwell)		
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09-4084	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to dismiss the indictment based on assertion that 18 U.S.C. Section 922(g)(9) violates the Second Amendment.
US v. William Chester, Jr. (Copenhaver)		

Friday, December 04, 2009

PANEL I
Courtroom 1
Room 412 (Red Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

09-6206 [Briefs](#) HABEAS CORPUS LAW. Was habeas petition time barred; was the correct standard of review applied; was there a sufficient showing of "actual innocence."
Montoyae Sharpe v. Michael Bell
(Boyle)

08-4628 [Briefs](#) CRIMINAL. Whether district court properly denied motion for new trial based on alleged Brady violations and conspiracy by witnesses to commit perjury.
US v. Fredrick Mungro
(Voorhees)

08-6787 [Briefs](#) CRIMINAL LAW & PROCEDURE. Sufficiency of identity evidence; whether evidence of effect on interstate commerce sufficient on Counts Three and Four; other issues.
US v. Henderson Hinton
(Boyle)

Friday, December 04, 2009
PANEL II
Courtroom 2
Room 201 (Green Carpet)
8:30 a.m.

REVD 11/13/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-2381	Briefs	COPYRIGHT LAW. Whether professional football team's use of copyrighted logo constituted infringement or fair use.
Frederick Bouchat v. Baltimore Ravens Limited (Garbis)		
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08-2106	Briefs	ATTORNEYS' FEES. Whether district court abused its discretion in attorney fee award based on nominal damages.
Western Insulation, LP v. Hal Moore (Spencer)		
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08-4837	Briefs	CRIMINAL LAW & PROCEDURE: Whether the government breached the plea agreement; increased sentence based on judicial fact-
US v. Ira Taylor (Bennett) finding.		
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09-4247	Briefs	SENTENCING GUIDELINES. Whether district court erred in imposition of sentence and whether sentence was
US v. Barry Thompson (Goodwin) plainly unreasonable.		

Friday, December 04, 2009

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (12/01/2009 - 12/04/2009 Session)

08-4569	Briefs	SENTENCING GUIDELINES. Whether district court erred in assessing criminal history point for prior participation in North Carolina deferred prosecution drug program; other issues.
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08-5068	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to suppress where co-occupant with authority objected to police entry into apartment after entry was made.
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09-4007	Briefs	SENTENCING. Challenge to sentence of probation for defendant convicted of possession of child pornography.

Friday, December 04, 2009

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
8:30 a.m.

REVD 11/13/09