

FOURTH CIRCUIT UPDATE  
August 21, 2006

***United States v. Robinson et al.*, Docket No. 03-4511, 03-4518, 03-4519 (9 August 2006)**

Court reviews defendants' sentences for the third time following jury convictions in 1999 for various offenses relating to a large drug trafficking conspiracy. This time, the Supreme Court remanded for consideration in light of *Booker*.

Defendants contended that their sentences were impermissibly based upon drug quantities found by the sentencing judge, which were neither charged in the indictment nor proven to the jury beyond a reasonable doubt. The Government contended that any *Booker* error was harmless and evidence of drug quantities involved was overwhelming and uncontroverted.

Fourth Circuit concluded that *Booker* error occurred and was not harmless where district court enhanced defendants' sentences based on court's own findings concerning drug amount, leadership role, obstruction of justice, possession of a firearm, and responsibility for an uncharged murder.

Court holds that *United States v. Cotton*, 35 U.S. 625 (2002), which permits court to affirm despite *Booker* error where evidence of drug quantities is "overwhelming" and "uncontroverted," applies only to plain error analysis, not to harmless error analysis.