

Opinions for the week of December 14 – December 18, 2020

USA v. Dameion Wyatt No. 19-3378

Argued November 17, 2020 — Decided December 14, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 2:18-cr-00085-JPS-1 — **J.P. Stadtmueller**, *Judge*.

Before EASTERBROOK, HAMILTON, and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Appellant Dameion Wyatt pleaded guilty to conspiring to traffic a minor. In exchange, the government promised to join him in recommending a below-guideline sentence of ten years in prison and to advise the court about his post-plea cooperation. The government upheld only part of its bargain. It did recommend a ten-year sentence. Yet it was Wyatt's lawyer, not prosecutors, who told the court about his cooperation. Wyatt did not object at the time, and he received the jointly recommended sentence. He has appealed, nevertheless, arguing that the government's silence about his cooperation breached the plea agreement, constitutes plain error, and warrants resentencing by a different judge. We affirm Wyatt's sentence. We agree with Wyatt that the government's silence breached the plea agreement, but under these circumstances, in which the judge accepted the parties' joint recommendation of a sentence well below the guideline range, Wyatt has not shown a reasonable probability that the breach had any effect on his sentence. This was not a plain error calling for any remedy.

USA v. Deronarte Norwood No. 19-2178

Argued September 25, 2020 — Decided December 14, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:16-cr-00648-1 — **Gary Feinerman**, *Judge*.

Before RIPPLE, BRENNAN, and ST. EVE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Deronarte Norwood met a fifteen-year-old girl at a gas station in Indianapolis. Through a combination of drugs and manipulative affection, he enticed her to have sexual intercourse with him and then proceeded to prostitute her to countless men, all within a one-month time span in 2015. A jury found him guilty of one count of attempted transportation of a minor across state lines with the intent that the minor engage in prostitution, in violation of 18 U.S.C. § 2423(a) and (e). The district court denied Mr. Norwood's post-trial motions for a new trial and sentenced him to 330 months' imprisonment and five years' supervised release. Mr. Norwood filed this timely appeal, in which he alleges error at several stages of the district court proceedings. He now asks us to determine whether there is sufficient evidence to sustain the jury verdict. He also asks that we review various rulings made by the district court during trial as well as several matters that arose during the sentencing proceeding. After a review of the record and a study of the relevant authorities, we conclude that there is sufficient evidence to sustain the jury's verdict, that the district court's rulings during trial present no ground for reversal, and that the sentencing proceeding was free of error. Accordingly, we affirm the judgment of the district court in all respects.

Jennifer R. Larkin and Dorean A. Sandri v. Finance System of Green Bay, Inc. Nos. 18-3582 & 19-1557

Argued March 30, 2020 — Decided December 14, 2020

Case Type: Civil

Eastern District of Wisconsin. Nos. 18-C-496 & 18-C-1208 — **William C. Griesbach**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and ROVNER, *Circuit Judges*.

SYKES, *Chief Judge*. These consolidated appeals involve materially identical claims under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. Jennifer Larkin and Dorean Sandri received collection letters from Finance System of Green Bay, Inc., seeking payment of medical debts. Represented by the same law firm, Larkin and Sandri filed separate class-action lawsuits claiming that the letters violated §§ 1692e and 1692f of the Act, which prohibit the use of false, deceptive, or misleading representations, or otherwise unfair or unconscionable methods to collect a debt. The district court dismissed both complaints for failure to state a claim. We affirm, but on different grounds. A threshold question concerns standing to sue. Larkin and Sandri accuse Finance System of violating §§ 1692e and 1692f, but they have not alleged any injury from the statutory violations. Under *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), and *Casillas v. Madison Avenue Associates, Inc.*, 926 F.3d 329 (7th Cir. 2019), both cases should have been dismissed for lack of standing.

Christopher Gunn v. Thrasher, Buschmann & Voelkel No. 19-3514

Argued May 19, 2020 — Decided December 15, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-01385-JMS-MPB — **Jane Magnus-Stinson**, *Chief Judge*.

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Linda and Christopher Gunn fell behind in paying assessments owed to their homeowners' association. When the debt reached about \$2,000, the association hired a law firm (Thrasher, Buschmann & Voelkel). It sent the Gunns a letter demanding payment... Although the Gunns acknowledge that the letter's statement is true both factually and legally, they contend that it must be deemed false or misleading because the law firm would have found it too costly to pursue foreclosure to collect a \$2,000 debt. The district court dismissed the complaint on the pleadings, ruling that a true statement about the availability of legal options cannot be condemned under the Act just because the costs of collection may persuade a law firm to seek one remedy (damages) rather than another (foreclosure)... But we do not reach the merits. Like the district court's opinions, neither side's brief mentions an antecedent question: whether the complaint presents a case or controversy within the scope of Article III... Because the Gunns do not contend that the contested sentence in the defendant's letter caused them any concrete harm, the judgment of the district court is vacated and the case remanded with instructions to dismiss for want of subject-matter jurisdiction.

Darlene Brunett v. Convergent Outsourcing Inc. No. 19-3256

Argued September 16, 2020 — Decided December 15, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-C-0168 — **Lynn Adelman**, *Judge*.

Before EASTERBROOK, MANION, and SCUDDER, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Convergent Outsourcing sent Darlene Brunett a letter demanding repayment of a debt that slightly exceeded \$1,000... The letter told Brunett that, if the creditor ended up forgiving more than \$600, it would be required to report the release of indebtedness to the Internal Revenue Service on Schedule 1099-C, because federal law treats as taxable income a loan that is not repaid. Brunett contends in this suit that the statement about reporting to the IRS violates the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692e(5), (10), because it threatens action that cannot legally be taken and amounts to a false representation... Because reporting a forgiven debt to the IRS was a distinct possibility, and Brunett did not proffer evidence showing that she had been misled to her detriment, the district judge held on summary judgment that the Act had not been violated. The first question in this case, as in every other federal suit, is whether there is a case or controversy within the meaning of Article III... This returns us to the question whether Brunett has alleged injury... Brunett tells us that the letter was "intimidating" as well as "confusing." ...Attaching an epithet such as "intimidation" to

a letter does not show that injury occurred...The judgment is vacated, and the case is remanded with instructions to dismiss for lack of subject-matter jurisdiction.

USA v. Felipe Zamora No. 19-2707

Argued September 17, 2020 — Decided December 15, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:18-cr-00184-2 — **John Z. Lee**, *Judge*.

Before KANNE and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. While appellant Felipe Zamora was in a federal correctional facility awaiting resentencing for past offenses, he began paying a guard to smuggle contraband into the facility. Once the smuggling operation was discovered, Zamora pleaded guilty to bribing a federal official. The Sentencing Guidelines call for a four-level enhancement for bribery offenses that “involved ... any public official in a high-level decision-making or sensitive position.” U.S.S.G. § 2C1.1(b)(3). The district court held that the guard was a public official in a sensitive position and applied the four-level enhancement. Zamora argues that the court erred because the prison guard was a low-level official with little discretionary authority and therefore did not hold a sensitive position. But the Guideline’s commentary, which generally binds us on issues of interpretation, explains that officials in sensitive positions include those who are situated similarly to a law enforcement officer. We conclude that a non-supervisory prison guard fits within this guidance...The district court’s judgment is **AFFIRMED**.

Kyle Spuhler v. State Collection Service, Inc. No. 19-2630

Argued April 14, 2020 — Decided December 15, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 16-cv-1149 — **Nancy Joseph**, *Magistrate Judge*.

Before EASTERBROOK, KANNE, and WOOD, *Circuit Judges*.

KANNE, *Circuit Judge*. This is yet another appeal that focuses on Article III standing to sue for an alleged violation of the Fair Debt Collection Practices Act (“FDCPA”). The appeal comes to us following a magistrate judge’s grant of summary judgment to the plaintiffs on one of their assertions: that the defendant debt collector sent them collection letters that were misleading, in violation of the FDCPA, because the letters lacked a statement that interest was accruing on the debts. To demonstrate standing at the summary judgment stage of litigation, the plaintiffs must “‘set forth’ by affidavit or other evidence ‘specific facts’” demonstrating that they have suffered a concrete and particularized injury that is both fairly traceable to the challenged conduct and likely redressable by a judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Because the plaintiffs here have not carried this burden, we vacate the judgment and remand for dismissal of their challenge.

USA v. Duprece Jett and Damion McKissick No. 19-1622 & 19-1673

Argued October 27, 2020 — Decided December 15, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:16-cr-00001 — **Tanya Walton Pratt**, *Judge*.

Before SYKES, *Chief Judge*, and KANNE and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. A jury convicted Duprece Jett and Damion McKissick of Hobbs Act conspiracy and attempted robbery. In a previous appeal, we reversed the defendants’ attempted-robbery convictions and remanded for resentencing on the conspiracy count. *United States v. Jett*, 908 F.3d 252 (7th Cir. 2018). The defendants now appeal from their resentencings. They claim the district court erred under the Guidelines by using the preponderance-of-the-evidence standard, and not the higher beyond-a-

reasonable-doubt standard, to decide whether they conspired to commit the “object offenses” of the conspiracy. They also fault the district court for increasing their original sentences on the conspiracy count without explaining why. On the Guidelines issue, we hold that the district court erred but that its error was harmless. We find no error in the district court’s sentencing explanation. We thus affirm the defendants’ new sentences.

Sandra Bazile v. Finance System of Green Bay, Inc. No. 19-1298

Argued April 14, 2020 — Decided December 15, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-cv-1415 — **William C. Griesbach**, *Judge*.

Before EASTERBROOK, KANNE, and WOOD, *Circuit Judges*.

KANNE, *Circuit Judge*. This appeal centers on Article III standing to sue for an alleged violation of the Fair Debt Collection Practices Act (“FDCPA”). The district court was satisfied of the plaintiff’s standing based on the court’s reasoning in a similar case, *Larkin v. Finance System of Green Bay Inc.*, No.18 - C - 496, 2018 WL 5840769 (E.D. Wis. Nov. 8, 2018). We have since reversed the district court’s decision with respect to standing in *Larkin* because the plaintiff in that case failed to allege any injury. *See Larkin v. Fin. Sys. of Green Bay, Inc.*, Nos. 18-3582 & 19-1557, --- F.3d ---, 2020 WL 7332483, at* 4 (7th Cir. 2020). Here, the plaintiff’s complaint may survive dismissal as a matter of pleading. But that’s not enough for the district court to decide the merits of the action; the truthfulness of the facts necessary for standing have been called in to doubt, requiring further inquiry in to whether the court has subject-matter jurisdiction. At this stage in the litigation, the appropriate mechanism to resolve factual disputes about standing is an evidentiary hearing on the defendant’s motion to dismiss under Rule 12(b)(1)...We are not positioned to make the necessary findings of fact, so we remand for the district court to do so.

Ismael Hernandez-Alvarez v. William Barr No. 20-1459

Argued November 6, 2020 — Decided December 16, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A043-789-540.

Before ROVNER, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Mexican citizen Ismael Hernandez-Alvarez was a permanent resident of the United States when, in 2002, he was convicted in Illinois of indecent solicitation of a child... Though Hernandez-Alvarez argued that his solicitation conviction did not qualify as an aggravated felony, an Immigration Judge (“IJ”) and the Board of Immigration Appeals (the “Board”) disagreed and ordered his removal... Fifteen years later, Hernandez-Alvarez moved for the Board to reconsider its decision and reopen his removal proceedings in light of two recent Supreme Court decisions: *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017), and *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)... The Board denied his statutory motion to reconsider and reopen, concluding that equitable tolling was not warranted because Hernandez-Alvarez failed to show due diligence. It also rejected his argument based on *Pereira* that the IJ did not have jurisdiction over his removal proceedings and declined to exercise its power to reopen the proceedings *sua sponte*. Because the Board did not abuse its discretion in denying Hernandez-Alvarez’s statutory motion to reconsider and reopen, his petition for review is denied. And because the Board did not commit legal error in declining to reopen his proceedings *sua sponte*, we dismiss that aspect of the petition for want of jurisdiction.

International Union of Operating Engineers v. James Daley and Wisconsin Legislature Nos. 20-1672 & 20-1724

Argued November 13, 2020 — Decided December 17, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 19-cv-01233 — **J. P. Stadtmueller**, *Judge*.
Before FLAUM, ROVNER, and BRENNAN, *Circuit Judges*.

FLAUM, *Circuit Judge*. This First Amendment case represents the third constitutional challenge to Wisconsin's Act 10 to reach this Court...Plaintiffs-appellants, a public-employee labor union and two of its individual members, challenged these three provisions—the annual recertification requirement, the limitations on collective bargaining, and the prohibition on payroll deduction of union dues—arguing that the provisions infringe on their First Amendment rights. The chairman of the Wisconsin Employment Relations Commission (WERC) moved to dismiss. Shortly thereafter, the Wisconsin Legislature moved to intervene. In two separate orders, the district court dismissed plaintiffs-appellants' complaint in part for lack of standing and in part for failure to state a claim. The district court also denied the Legislature's motion to intervene. Plaintiffs-appellants appeal the dismissal of their complaint. The Legislature cross-appeals the denial of its motion to intervene. We now affirm.

USA v. Michael Triplett No. 19-1336

Argued December 2, 2020 — Decided December 17, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 446 — **Charles R. Norgle**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; KENNETH F. RIPPLE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

After the district judge denied a motion to suppress evidence discovered in Michael Triplett's car, he pleaded guilty to two firearms offenses and was sentenced to a total of 240 months' imprisonment. The plea reserved the right to contest the denial of the motion to suppress, see Fed. R. Crim. P. 11(a)(2), and that is the sole issue on appeal...That officer did not require probable cause to look through the car's window, and what he saw dispels any possibility that the transaction was legitimate. Triplett does not even *contend* that any lawful sale is accomplished by retrieving baggies from behind a car's visor. Magistrate Judge Cox stated that she believed the officers and disbelieved Triplett's witnesses, so we take this officer's testimony as an established fact. And given this evidence, there can be no doubt that the arrest and search were supported by probable cause. AFFIRMED

Richard Spinnenweber v. Robert Laducer No. 20-1534

Argued October 29, 2020 — Decided December 18, 2020

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 14-cv-101 — **John E. Martin**, *Magistrate Judge*.
Before FLAUM, KANNE, and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*. In this run-of-the-mill car accident case, Defendants conceded liability, and the parties went to trial over causation and damages. Plaintiff sought compensatory damages for his physical injuries and presented evidence that he suffered whiplash and a possible minor concussion from the crash. He did not seek to recover medical expenses, lost wages, or punitive damages. And he did not seek damages for mental or emotional injuries. Nevertheless, the jury awarded Plaintiff a million-dollar verdict. The district court was understandably shocked by this award and, upon motion from Defendants, ordered Plaintiff to either accept a reduced verdict of \$250,000 or opt for a new trial. Plaintiff chose a new trial and, through an odd turn of events, ended up with a \$0 verdict. Plaintiff now appeals, arguing that the district court erred in granting the Defendants' motion for remittitur or a new trial...We AFFIRM the decision of the district court granting Defendants motion for a new trial or a reduced verdict and the district court's final judgment of \$0.

USA v. Tanisha Banks No. 19-3245

Argued September 22, 2020 — Decided December 18, 2020

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:18CR61-3 — **Theresa L. Springmann**, *Judge*.
Before SYKES, *Chief Judge*, and FLAUM and ROVNER, *Circuit Judges*.

SYKES, *Chief Judge*. Tanisha Banks was indicted on charges of conspiracy and aiding and abetting a robbery of the United States Post Office in Gary, Indiana, where she worked as a mail clerk. See 18 U.S.C. §§ 371, 2114(a). After a five-day trial and four hours of deliberation that stretched to about 8:45 p.m., the jury returned a verdict of guilty on both counts... Banks raises several issues on appeal, but her main argument concerns the circumstances surrounding the jury poll, which she contends exerted impermissible pressure on the wavering juror. We agree. The totality of the circumstances—most notably, the dissenting juror’s troubling responses to the poll questions, the judge’s decision to complete the poll notwithstanding the juror’s dissent, the lateness of the hour, and the extreme brevity of the jury’s renewed deliberations—were unacceptably coercive. We vacate the judgment and remand for a new trial.

USA v. Taiwo Onamuti No. 19-1153

Argued October 6, 2020 — Decided December 18, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:16-cr-00093-1 — **James R. Sweeney, II**, *Judge*.
Before WOOD, BRENNAN, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Taiwo Onamuti, a Nigerian citizen, pleaded guilty to identity theft and defrauding the U.S. Treasury out of \$5 million through illegitimate tax refunds. His plea agreement with the government waived his right to appeal his conviction “on any ground” except for a claim of ineffective assistance of counsel. Onamuti later sought to withdraw his plea, arguing that his lawyer failed to advise him that his convictions would subject him to mandatory deportation. The district court denied the motion without an evidentiary hearing, a ruling Onamuti challenges on appeal. We cannot reach the issue, however, and indeed dismiss the appeal, as Onamuti is bound by the waiver of appeal he agreed to in his plea agreement.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).