

## Opinions for the week of January 19 - January 22, 2015

### **USA v. Jermaine R. Speed & Rico J. Speed** Nos. 15-1520 & 15-1561

Argued November 5, 2015 — Decided January 19, 2016

Case Type: Criminal

Central District of Illinois. Nos. 14-cr-20056 & 14-cr-20057 — **Colin S. Bruce**, *Judge*.

Before FLAUM, MANION, and ROVNER, *Circuit Judges*.

MANION, Circuit Judge. Rico and Jermaine Speed are cousins who were caught dealing crack in the city of Kankakee, Illinois. Rico also sold firearms and ammunition in violation of the law. After the cousins each serve 18 years in federal prison, they must each complete eight years of supervised release. These consolidated appeals focus on three identical challenges to Rico's and Jermaine's conditions of supervised release: the district judge's decisions to limit contact with felons, impose alcohol-related restrictions, and prohibit them from using dangerous weapons. We affirm, while clarifying the standards of review that apply when defendants challenge conditions of supervised release.

### **USA v. Shane Elder** No. 15-1534

Submitted January 19, 2016 — Decided January 19, 2016

Case Type: Criminal

Central District of Illinois. No. 13-10108-001 — **Joe Billy McDade**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

### **ORDER**

After his wife found several files of child pornography on his laptop and turned him into the police, Shane Elder entered open guilty pleas to two counts of distributing pornography. See 18 U.S.C. §§ 2252A(a)(2), 2256(8)(A)–(B). The district court sentenced him below the guidelines range to 120 months' imprisonment on each count to be served concurrently. Elder filed a notice of appeal, but his lawyer has concluded that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

### **Thomas Costello v. BeavEx, Inc.** Nos. 15-1109 & 15-1110

Argued September 18, 2015 — Decided January 19, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 CV 7843 — **Virginia M. Kendall**, *Judge*.

Before BAUER, KANNE, and ROVNER, *Circuit Judges*.

KANNE, Circuit Judge. BeavEx, Inc. is a same-day delivery service that enlists 104 couriers to carry out its customers' orders throughout the state of Illinois. By classifying its couriers as independent contractors instead of employees, BeavEx is not subject to several state and federal employment laws, including the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115, which, among other things, prohibits an employer from taking unauthorized deductions from its employees' wages. Plaintiffs, and the putative class, were or are individual couriers who allege that they should have been classified as employees of BeavEx for purposes of the IWPCA, and accordingly, any deductions taken from their wages were done so illegally. Complicating Plaintiffs' position is the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1), which expressly preempts any state law that is "related to a price, route, or service of any motor carrier." BeavEx contends that the FAAAA preempts the IWPCA, making any deductions it withheld from its couriers' wages valid. The district court held that the FAAAA does not preempt the IWPCA and so denied BeavEx's motion for summary judgment. At the same time, the district court denied Plaintiffs' motion to certify the class but granted their motion for partial summary judgment, holding that Plaintiffs are employees under the IWPCA. This interlocutory appeal presents for

our review the question of whether the FAAAA preempts the IWPCA and whether the district court properly denied class certification... we affirm the district court's denial of BeavEx's motion for summary judgment, and we vacate its denial of class certification and remand for further proceedings.

**USA v. Julius Lawson** No. 14-3276

Argued November 2, 2015 — Decided January 19, 2016

Case Type: Criminal

Northern District of Indiana, Fort Wayne Division. No. 1:13-CR-4 — **Theresa L. Springmann**, *Judge*.  
Before BAUER, POSNER, and KANNE, *Circuit Judges*.

KANNE, Circuit Judge. Defendant-Appellant Julius W. Lawson and his confederate attempted to commit robbery in a United States branch post office located at a shopping center in Fort Wayne, Indiana. In the post office, the confederate pointed a firearm at a patron while Lawson looked for property to steal. Lawson was later apprehended because he left his cell phone, palm print, and fingerprints on the post office counter. His confederate was never identified. A jury convicted Lawson on all three counts related to aiding and abetting firearm use during the attempted robbery of the post office. Lawson appeals his convictions on three grounds. First, he argues that there was insufficient evidence for the jury to find that a "firearm" was used. Second, he contends that the jury was improperly instructed on the theory of aiding and abetting firearm use in light of *Rosemond v. United States*, 134 S. Ct. 1240 (2014), entitling him to a new trial. Third, he claims that he is entitled to a new trial because the government withheld evidence of an investigator offering a "bribe" to a witness and a police officer's disciplinary record in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). We disagree and affirm the judgment of the district court.

**Tyrone Hurt v. Ferguson, Missouri** No. 15-2814

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:15-cv-01054-WTL-TAB — **William T. Lawrence**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

Tyrone Hurt, a resident of Washington, D.C., is a serial filer of frivolous and indecipherable lawsuits. In this latest illegible complaint, Hurt has sued a swath of defendants, including the cities of Ferguson, Missouri; Cleveland, Ohio; and Baltimore, Maryland; "forty-seven (47) states"; the federal government; and "all law enforcement officials within this nation." The district court screened Hurt's complaint under 28 U.S.C. § 1915(e)(2) and dismissed the case as frivolous. After noting that Hurt previously had filed eight other frivolous suits in the Southern District of Indiana and been warned that further frivolous filings risked sanctions, the court imposed a bar prohibiting Hurt from filing any new cases in the district without prepaying the filing fee. The district court noted that other courts had also imposed filing restrictions on Hurt... This appeal is frivolous. We agree with the district court's dismissal in this case and think the imposition of sanctions against Hurt was proper. In addition to the eight frivolous lawsuits filed in the Southern District of Indiana, Hurt also has filed two suits in the Western District of Wisconsin and ten appeals to this court. We now order Hurt to show cause within 14 days why the court should not impose sanctions under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal. Possible sanctions include revocation of Hurt's IFP status, a fine, and an order under *Support Sys. Int'l., Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995), barring Hurt from filing any other litigation in this circuit until he has paid all the fees he owes to the district courts in this circuit and to us. AFFIRMED.

**USA v. William Elem** No. 15-2651

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 02 CR 45-1 — **John J. Tharp, Jr.**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

#### **ORDER**

William Elem moved under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on Amendment 782 to the United States Sentencing Guidelines. The district court lowered Elem's prison sentence to 292 months, the bottom of the amended range, but reasoned that it lacked statutory authority to reduce the sentence further. Elem challenges that conclusion... AFFIRMED.

#### **Jeffrey Mimms v. U.S. Bank National Association** No. 15-2454

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 CV 3369 — **Charles R. Norgle**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

#### **ORDER**

Jeffrey and Gloria Mimms defaulted on their home mortgage, and in May 2014 an Illinois court entered a judgment of foreclosure. A judicial sale was conducted in March 2015, but the following month, before the state court had approved that sale, the Mimmses brought this action in federal court under 42 U.S.C. § 1983. They essentially claim that the defendants, all private financial institutions, violated the Constitution of the United States by filing the foreclosure action. The district court dismissed the suit... AFFIRMED.

#### **USA v. Rick Boros** No. 15-1172

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 198-1 — **Charles R. Norgle**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

#### **ORDER**

After a jury trial at which he represented himself, Rick Boros was convicted of three counts of wire fraud and eight counts of money laundering. See 18 U.S.C. §§ 1343, 1957(a). The jury also found that Boros had committed wire fraud while on bond awaiting trial on federal drug charges. See *id.* § 3147; *United States v. Boros*, 668 F.3d 901 (7th Cir. 2012). He was sentenced to a total of 108 months' imprisonment followed by three years' supervised release. Boros filed a notice of appeal, but the lawyer appointed to represent him in this court has concluded that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

#### **Smith, Keith v. Sipi, LLC** No. 15-1166

Argued September 11, 2015 — Decided January 20, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 1:13-cv-06422 — **Harry D. Leinenweber**, *Judge*.

Before BAUER, WILLIAMS, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Federal bankruptcy law provides generally that a sale or other transfer of an insolvent debtor's property may be set aside as fraudulent if the transfer was for less than "reasonably

equivalent value.” 11 U.S.C. § 548(a)(1)(B). In this appeal, we apply this general rule to a lawfully conducted sale of real estate under Illinois property tax sale procedures. The principal question is whether compliance with state law for tax sales is sufficient to establish that the sale was for “reasonably equivalent value,” or whether the debtor may try to set aside the sale under § 548(a)(1)(B)... a tax sale lawfully conducted according to Illinois’s interest rate auction system does not necessarily establish a transfer for reasonably equivalent value within the meaning of 11 U.S.C. § 548(a)(1)(B). The bankruptcy court correctly conducted a more substantive analysis of the fair market value of the property and other factors to determine that the Smiths’ property was fraudulently conveyed. The debtors have standing to assert the claim; the bankruptcy court properly set the debtors’ recovery at the value of one home-stead exemption; SIPI is liable as the initial transferee; and the bankruptcy court did not err by finding that Midwest proved its defense to liability under 11 U.S.C. § 550(a)(2). Accordingly, the judgment of the district court is REVERSED and the judgment of the bankruptcy court is AFFIRMED in all respects.

**Jackie Carter v. Michael Meisner** No. 14-3575

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Prisoner

District Court for the Western District of Wisconsin. No. 12-cv-574-wmc — **William M. Conley**, *Chief Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

Jackie Carter, a state prisoner at Columbia Correctional Institution (“CCI”) in Wisconsin, sued several employees of the prison under 42 U.S.C. § 1983 for being deliberately indifferent to his medical need for orthotic footwear and pain medication and for failing to provide him with adequate clothing. The district court granted summary judgment to the defendants on all claims. We affirm.

**USA v. Michael Starnes** No. 14-3502

Submitted January 19, 2016 — Decided January 20, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 736-1 — **James F. Holderman**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

On three occasions Michael Starnes ordered cocaine from suppliers in Chicago for distribution in his hometown of Fort Wayne, Indiana. Each time he instructed his sister Misheela Belcher to drive from Fort Wayne to Chicago—once by herself—to retrieve the drugs. Starnes assigned this task to Belcher because, unlike him, she had a valid driver’s license and no criminal record. On the third trip back to Fort Wayne, Starnes and Belcher were arrested after agents from the Drug Enforcement Administration stopped and searched Belcher’s car. Starnes pleaded guilty to possessing cocaine with intent to distribute, 21 U.S.C. § 841(a)(1), and the district court sentenced him to 77 months’ imprisonment. Starnes filed a notice of appeal, but his appointed lawyer, who also represented him in the district court, asserts that the appeal is frivolous and seeks to withdraw... we GRANT counsel’s motion to withdraw and DISMISS the appeal.

**Larry Nelson v. City of Chicago** No. 12-3401

Argued December 4, 2014 — Decided January 20, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 09 C 883 — **Rebecca R. Pallmeyer**, *Judge*.

Before BAUER, RIPPLE, and SYKES, *Circuit Judges*.

SYKES, Circuit Judge. Larry Nelson was driving home one night when four Chicago police officers in two squad cars pulled him over, pointed a gun in his face, threatened to kill him, handcuffed him, and searched his car for no apparent reason. The officers have no recollection of the stop but insist that it couldn't have happened the way Nelson said it did. Their squad-car computers, however, confirm that they ran Nelson's name through the law-enforcement database at the time of the stop and turned up nothing that would justify stopping him and searching his car. Nelson sued the officers and the City of Chicago under 42 U.S.C. § 1983 alleging that the seizure and search violated his rights under the Fourth Amendment. A jury found for the defendants. On Nelson's post-trial motion, the district judge ordered a new trial based on an instructional error but later reversed course and reinstated the verdict. Nelson's appeal raises no fewer than seven claims of error. Three have merit. First, and most significantly, the district judge should not have admitted evidence of Nelson's arrest record. A second error occurred when the defense attorney was allowed to cross-examine Nelson about other civil suits he had filed against the City. Third, the judge improperly allowed one of the officers to offer generalized testimony about when the police might be justified in using firearms and handcuffs during a traffic stop. These errors were not harmless. Nelson is entitled to a new trial... the judgment is REVERSED, and the case is REMANDED for further proceedings consistent with this opinion.

**Fidlar Technologies v. LPS Real Estate Data Solutions** No. 15-1830

Argued November 5, 2015 — Decided January 21, 2016

Case Type: Civil

Central District of Illinois. No. 4:13-CV-4021 — **Sara Darrow**, *Judge*.

Before FLAUM, MANION, and ROVNER, *Circuit Judges*.

FLAUM, Circuit Judge. Fidlar Technologies ("Fidlar") brings this action against LPS Real Estate Data Solutions, Inc. ("LPS") for violations of the Computer Fraud and Abuse Act ("CFAA") and the Illinois Computer Crime Prevention Law ("CCPL"). Fidlar claims that LPS improperly downloaded county land records provided through Fidlar's services. The district court granted summary judgment in favor of LPS. It held that Fidlar failed to show that LPS acted with intent to defraud under CFAA § 1030(a)(4) or that LPS caused "damage" under § 1030(a)(5)(A). The court also rejected Fidlar's argument that LPS knew or had reason to know that it might cause loss as required by the CCPL. For the following reasons, we affirm.

**Daniel Masarik v. USA** No. 15-1636

Submitted December 16, 2015 — Decided January 21, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 11-C-0048 — **C.N. Clevert, Jr.**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

**ORDER**

After we affirmed his conviction on direct appeal, see *United States v. Bartlett*, 567 F.3d 901 (7th Cir. 2009), Daniel Masarik filed a motion for collateral relief under 28 U.S.C. §2255. The district court rejected all of Masarik's arguments. 2015 U.S. Dist. LEXIS 34350 (E.D. Wis. Mar. 19, 2015). Masarik's appeal presents only two of the contentions raised in the district court... AFFIRMED.

**USA v. Michael Segal** Nos. 13-3847, 14-2214, 14-2215, 14-3533

Argued October 30, 2015 — Decided January 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 02 CR 112-1 — **Rubén Castillo**, *Chief Judge*.  
Before POSNER, RIPPLE, and HAMILTON, *Circuit Judges*.

POSNER, Circuit Judge. Some years ago Michael Segal—lawyer, certified public accountant, insurance broker—was indicted along with Near North Insurance Brokerage (NNIB), a company he owned, for multiple violations of federal law. He was charged with racketeering, mail and wire fraud, making false statements, embezzlement, and conspiracy to interfere with operations of the Internal Revenue Service. NNIB was charged with mail fraud, making false statements, and embezzlement. Both defendants were convicted in 2004, and the following year Segal was sentenced to 121 months in prison. *United States v. Segal*, 495 F.3d 826, 830 (7th Cir. 2007). After further proceedings, see 644 F.3d 364 (7th Cir. 2011), he was resentenced to time served and ordered to pay \$842,000 in restitution and to forfeit to the government his interest in the company and \$15 million. To resolve a series of disputes that arose over the forfeiture judgment and had not been resolved either by the district court or in either of the decisions (cited above) by this court, the parties in 2013 agreed to a binding settlement that specified the final ownership and disposition of certain of Segal's assets. Segal, by then released from prison, participated actively, indeed aggressively, in the negotiation of the settlement. But after the district judge approved the settlement the parties clashed over three issues concerning the disposition of Segal's assets and returned to the district court for a resolution of those issues. The judge resolved two of them against Segal and the third in his favor, giving rise to three appeals—two by Segal, one by the government—that we have consolidated for briefing, argument, and decision. (They were separate appeals, rather than a single appeal, because the orders giving rise to them had been issued by the district court at different times.) The fourth appeal, No. 14-2215, related to a writ of mandamus filed by Segal that he has now abandoned; we ignore it... The judgment entered by the district court is therefore AFFIRMED in part and REVERSED in part, and the case REMANDED with instructions.

**USA v. Tyree Neal, Sr.** No. 14-3473

Argued July 8, 2015 — DECIDED JANUARY 21, 2016

Case Type: Criminal

Southern District of Illinois. No. 4:00-cr-40101-06 — **J. Phil Gilbert**, *Judge*.

Before POSNER, SYKES, and HAMILTON, *Circuit Judges*.

HAMILTON, Circuit Judge. Appellant Tyree Neal was sentenced to prison and supervised release after pleading guilty to federal drug crimes in 2001. He was released from prison in 2010 but was sent back in 2013 for another eighteen months after violating several conditions of his supervised release. When Neal completed the new term of imprisonment in 2014, he asked the district court to rescind a special condition of supervised release authorizing warrantless searches of his person and residence. That condition, Neal argued, is inappropriate for drug offenders. The district court denied the motion to rescind the condition, prompting this appeal regarding the search condition. But on appeal Neal also challenges for the first time the legality of all of the standard conditions of supervised release that were imposed initially in 2001 and again in 2013... we AFFIRM the denial of Neal's motion to modify conditions of his supervised release.

**VLM Food Trading International v. Illinois Trading Company** No. 14-2776

Argued February 24, 2015 — Decided January 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 8154 — **Harry D. Leinenweber**, *Judge*.

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

SYKES, Circuit Judge. This contract dispute between plaintiff VLM Food Trading International, Inc., a Canadian agricultural supplier, and defendant Illinois Trading Company, an Illinois produce reseller, comes to us for a second time. (Illinois Trading is not the only defendant; its president and a controlling partnership are also named.) The issue in the first appeal was whether the United Nations Convention on Contracts for the International Sale of Goods applies to the parties' dispute. We held that it does. VLM

Food Trading Int'l, Inc. v. Illinois Trading Co. ("VLM I"), 748 F.3d 780 (7th Cir. 2014). On remand the district court ruled that under the Convention a contested attorney's fees provision in VLM's trailing invoices was not a part of the parties' contracts and granted summary judgment accordingly. On appeal VLM challenges the judge's analysis of the attorney's fees provision under the Convention. VLM also takes issue with the judge's decision to give two of the three defendants the benefit of this ruling even though an order of default had been entered against them. We reject these arguments and affirm.

**Cesar Flores-Ramirez v. Brian Foster** No. 15-1594

Submitted June 22, 2015 — Decided January 22, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 14-cv-344-JPS — **J.P. Stadtmueller**, *Judge*.  
Before FLAUM and RIPPLE, *Circuit Judges*.

PER CURIAM. A Wisconsin jury convicted Cesar Flores-Ramirez of first-degree intentional homicide in 2003. In 2014, Mr. Flores-Ramirez filed his second petition for federal habeas relief, which the district court denied. Because we conclude that Mr. Flores-Ramirez has not made a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c), we deny a certificate of appealability.

**Coach, Inc. v. Di Da Import and Export, Inc.** No. 15-1480

Argued January 7, 2016 — Decided January 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 7165 — **Samuel Der-Yeghiayan**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

Coach contends in this suit under the Lanham Act that DI DA infringed its trademarked double-C logo. The district court wrote an opinion concluding that Coach is likely to prevail and is entitled to interlocutory relief. 2015 U.S. Dist. LEXIS 22222 (N.D. Ill. Feb. 25, 2015). DI DA immediately appealed... This appeal is dismissed for want of jurisdiction.

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](#).