

## **Opinions for the week of March 1 – March 5, 2021**

### **USA v. Joshua Reedy No. 20-2444**

Argued February 18, 2021 — Decided March 1, 2021

Case Type: Criminal

Western District of Wisconsin. No. 3:19-cr-159 — **William M. Conley, Judge.**

Before BRENNAN, SCUDDER, and KIRSCH, *Circuit Judges*.

SCUDDER, *Circuit Judge*. In August 2019, police responded to a call that a homeless person was sleeping in a car behind a Goodwill store in Eau Claire, Wisconsin. Officers responded and found Joshua Reedy wearing a bulletproof vest and sitting in the front passenger seat of a cluttered Kia SUV. The officers saw an open knife, crowbar, and walkie-talkie on the car's floorboard. Reedy said that his friend Jason was visiting someone in a nearby neighborhood. Telling Reedy to stay put with one officer, another officer went looking for Jason, only to find him in a backyard wearing dress clothes yet claiming to be doing lawn work. When the police searched Jason's backpack, they found methamphetamine, credit cards in others' names, latex gloves, rocks, knives, bolt cutters, shotgun ammo, and a walkie-talkie tuned to the same channel as Reedy's. All of this led to Jason's and Reedy's arrests and a search of the Kia, which turned up a shotgun. Reedy then faced a federal gun possession charge. The district court denied Reedy's motion to suppress the gun found in the Kia. Reedy then pleaded guilty while reserving his right to appeal the district court's suppression ruling. On appeal Reedy contends that he was under arrest from the moment the police told him he was not free to leave while they looked for Jason. On this view, the police could not rely on any after-the-fact evidence obtained during their encounter with Jason to supply the probable cause necessary to authorize the search of Reedy's car and his firearm-related arrest. The district court saw the evidence differently and so do we, leaving us to affirm.

### **USA v. Gerardo Sanchez, Edgar Roque, Phillip Diaz, Richard Roque, Omar Ramirez, Steven Mendoza, & Juan Cervantes**

No. 18-2538, 18-3045, 18-3088, 19-1335, 19-1591, 19-1612, & 19-3405

Argued September 30, 2020 — Decided March 1, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00485 — **Virginia M. Kendall, Judge.**

Before SYKES, *Chief Judge*, and WOOD and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. The Roque drug trafficking organization moved in excess of 1,500 kilograms of cocaine and 100 kilograms of heroin from Mexico to Chicago for distribution and sale... On appeal, the Roque organization defendants largely responsible for these crimes...do not dispute their convictions, but rather contest their sentences. Although each defendant appeals individually, they raise many of the same arguments. Most contend the district court misinterpreted the need to avoid unwarranted sentencing disparities under § 3553(a)(6) and failed to adequately consider their arguments on this issue. Two of those defendants also challenge the district court's application of the Sentencing Guidelines, and two other defendants contest the imposition of certain supervised release conditions. We conclude that the district court committed no error. The district court properly avoided unwarranted sentencing disparities, correctly applied the Sentencing Guidelines, and appropriately imposed supervised release conditions, with one minor exception that we order to be amended as necessary. In all other respects, we affirm the defendants' sentences.

### **Platinum Supplemental Insurance v. Guarantee Trust Life Insurance No. 20-1906**

Argued January 13, 2021 — Decided March 2, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-08872 & 18-cv-03109 — **Robert M. Dow, Jr., Judge.**  
Before FLAUM, BRENNAN, and SCUDDER, *Circuit Judges*.

FLAUM, *Circuit Judge*... In 2002, GTL and Platinum began their professional relationship when GTL engaged Platinum to market its insurance products through a “Marketing Agreement.” After a customer sued both parties in a costly lawsuit, GTL terminated the Marketing Agreement. The parties then entered their first settlement agreement, the “2015 Settlement Agreement.” Around the same time, GTL sued Platinum for breaching the Marketing Agreement. In arbitration, GTL and Platinum settled their disputes in a second settlement agreement, the “2017 Settlement Agreement.” That agreement resolved all their claims that had and could have been brought in that litigation. It further provided for “reasonably proportionate” attorneys fees to the prevailing party in any future litigation. Two and a half months before the parties executed the 2017 Settlement Agreement, another customer had sued GTL in Missouri. After the 2017 Settlement Agreement took effect, GTL filed a third-party complaint against Platinum in that Missouri lawsuit based on claims that Platinum breached the Marketing Agreement. In turn, Platinum sued GTL in the district court because the claims in the third-party complaint mirrored those already resolved by the 2017 Settlement Agreement and were therefore barred. The district court granted Platinum summary judgment and awarded it \$108,445.10 in attorneys fees—or 150% of the underlying damages award. We affirm the district courts grant of summary judgment because the 2017 Settlement Agreement bars the claims in GTLs third-party complaint. We also affirm the grant of attorneys fees because the award is “reasonably proportionate” to the underlying damages.

**USA v. Martez Smith** No. 20-1117

Argued October 28, 2020 — Decided March 3, 2021

Case Type: Criminal

Central District of Illinois. No. 18-cr-20037 — **Michael M. Mihm, Judge.**

Before RIPPLE, WOOD, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Illinois law enforcement agents received a tip from a confidential source claiming that Martez Smith had been dealing methamphetamine in Mattoon, Illinois. The agents conducted controlled buys between Smith and the source, and in the course of the investigation, requested a patrol officer stop Smith’s vehicle. During that stop, the officer found marijuana, a marijuana grinder, and a firearm in Smith’s vehicle. The officer arrested Smith and seized the gun. A federal grand jury indicted Smith on one count of distributing methamphetamine and one count of possessing a firearm as a felon. Represented by court-appointed counsel, Smith pleaded guilty to both counts. He then sought to retract his guilty plea, alleging ineffective assistance of counsel. The court denied Smith’s motion to withdraw his guilty plea, rejected his request for an evidentiary hearing, and sentenced him on the two counts. On appeal, Smith challenges the district court’s denial of his ineffective assistance of counsel claim and his career offender sentencing enhancement. We affirm the district court’s decision in full.

**Richard Sharif v. William Stevens** No. 19-3149

Argued November 2, 2020 — Decided March 3, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 1405 — **Thomas M. Durkin, Judge.**

Before DIANE S. SYKES, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

**ORDER**

...[A]ttorney William Stevens...filed this suit under the diversity jurisdiction seeking about \$250,000 for legal services. Sharif contended that he need not pay, because Stevens committed malpractice. He

maintained that Stevens failed to file in the bankruptcy court vital documents in his possession. Sharif also contended that Stevens's forfeiture of the *Stern* issue cost him a *de novo* decision by a district judge. The district judge held a bench trial and found that Stevens had turned over in discovery all of the documents that Sharif had supplied; Sharif's contrary assertion, the judge held, is not credible. The judge also held that the forfeiture on appeal did not injure Sharif, because any district judge would have reached the same conclusion as the bankruptcy judge did. The judge then held that Sharif must pay \$150,000 of Stevens's bill... The district judge concluded that Stevens did breach a duty by raising the *Stern* argument too late. But the judge added that this did not injure Sharif, who was bound to lose even if the initial decision had been made by a district judge rather than a bankruptcy judge. That conclusion followed directly from the judge's finding that Sharif himself is responsible for the failure to produce documents in discovery. Given Sharif's defiance of multiple judicial commands to turn over information, his legal position was doomed no matter who served as the judge. That conclusion, too, is not clearly erroneous... The judgment is vacated to the extent it requires the trust to pay anything to Stevens and otherwise is affirmed.

**Jason Perry v. Mary Sims** No. 19-1497

Argued October 30, 2020 — Decided March 3, 2021

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-00197 — **Jane Magnus-Stinson**, *Chief Judge*.

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

SCUDDER, *Circuit Judge*. Jason Perry suffers from serious mental illness and is serving a 70-year sentence for murdering his former wife during a fit of paranoia in 2013. Indiana prison officials have had their hands full trying to treat and control Perry's illness. In 2016, while housed in the Wabash Valley Correctional Facility in southern Indiana, Perry's condition worsened. A medical review and administrative hearing culminated in a decision to forcibly administer the antipsychotic medication Haldol, and injections continued for about six months. Perry later sued the medical personnel who decided on this course of treatment, alleging that the forcible medication violated the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's Due Process Clause. Throughout the litigation Perry asked the district court to appoint counsel to assist him. The district court denied those requests, finding that Perry not only understood his case but also quite ably prosecuted it. In the end, the district court entered summary judgment for the defendants. We affirm on all fronts.

**Sdahrie Howard v. Cook County Sheriff's Office** No. 20-1723

Argued December 3, 2020 — Decided March 4, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 C 8146 — **Matthew F. Kennelly**, *Judge*.

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

ST. EVE, *Circuit Judge*. In this case we review the certification of a class-action lawsuit alleging a horrible "epidemic" of sexual harassment at the Cook County Jail. The named plaintiffs are ten women who work at the jail or an adjoining courthouse. They sue their employers - the Cook County Sheriff's Office and Cook County - for failing to prevent male inmates from sexually harassing them. They propose to sue not just for themselves but for thousands of other women who work at the jail or courthouse. The district court certified a class comprising all non-supervisory female employees who work with male inmates at the jail or courthouse, of whom there are about 2,000. We granted the defendants' request for an interlocutory appeal, *see* Fed. R. Civ. P. 23(f), and we now hold that the district court abused its discretion in certifying the class. The court's primary error was using the peripheral and overbroad concept of "ambient harassment" (i.e., indirect or secondhand harassment) to certify a class of employees who have endured a wide range of direct and indirect harassment. Even without this error, the class cannot stand because it

comprises class members with materially different working environments whose claims require separate, individualized analyses. We thus reverse the order certifying the class.

**Nicole K. v. Terry Stigdon** No. 20-1525

Argued October 26, 2020 — Decided March 5, 2021

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-01521-JPH-MJD — **James Patrick Hanlon**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. When officials in Indiana believe that children may be suffering from abuse or neglect, they initiate a process that they call CHINS, for Child in Need of Services. The plaintiffs in this suit are children (represented by next friends) about whom CHINS proceedings are under way. Indiana automatically appoints lawyers to represent the parents in CHINS proceedings but does not do the same for children. Plaintiffs contend that the Constitution entitles each of them to appointed counsel at public expense... But the district court declined to resolve this contention, ruling that *Younger v. Harris*, 401 U.S. 36 (1971), requires abstention... Because children are not automatically entitled to lawyers...it would be inappropriate for a federal court to resolve the appointment-of-counsel question in any of the ten plaintiffs' state proceedings...In the absence of a "civil *Gideon*" analog, that question is a proper part of the state proceeding, subject...to the possibility of review by the Supreme Court once a final decision has been rendered. **AFFIRMED.**

**P.W. v. USA** No. 20-1142

Argued September 18, 2020 — Decided March 5, 2021

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:17-cv-00407-TLS-APR — **Theresa L. Springmann**, *Judge*.

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

ST. EVE, *Circuit Judge*. Dominique Woodson, individually and on behalf of her minor son, P.W., brought this action against the United States under the Federal Tort Claims Act ("FTCA") after P.W. sustained permanent injury to his left arm during birth. The United States, which is a party to this action because Ms. Woodson received pregnancy care at a federally funded health center, moved to dismiss the action, or, in the alternative, for summary judgment, arguing that the Plaintiffs' claims were untimely. The district court granted summary judgment to the United States, and we affirm.

**USA v. Adel Daoud** No. 19-2174, 19-2185 & 19-2186

Decided March 5, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. Nos. 1:12-cr-00723, 1:13-cr-00703 & 1:15-cr-00487 — **Sharon Johnson Coleman**, *Judge*.

Before SYKES, *Chief Judge*, EASTERBROOK, RIPPLE, KANNE, ROVNER, WOOD, HAMILTON, BRENNAN, SCUDDER, ST. EVE, and KIRSCH, *Circuit Judges*.  
ROVNER, *Circuit Judge*, dissenting, joined by WOOD and HAMILTON, *Circuit Judges*.

ST. EVE, *Circuit Judge*. On consideration of the petition for rehearing and rehearing en banc filed by defendant-appellee on December 30, 2020, the judges on the original panel voted to deny rehearing. A judge in regular active service requested a vote on the petition for rehearing en banc. A majority of judges

in regular active service voted to deny rehearing en banc. Judge Kenneth F. Ripple voted to deny rehearing but did not take part in the vote to rehear en banc. Judges Ilana Diamond Rovner, Diane P. Wood, and David F. Hamilton voted to grant rehearing en banc. Accordingly, the petition for rehearing and rehearing en banc is DENIED.

**USA v. Robert L. Berrios** No. 19-1871

Argued September 30, 2020 — Decided March 5, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 853-1 — **Matthew F. Kennelly**, *Judge*.

Before SYKES, *Chief Judge*, and WOOD and BRENNAN, *Circuit Judges*.

WOOD, *Circuit Judge*. During much of the year 2012, Robert Berrios and his associates engaged in a spree of armed robberies in Chicago, targeting cellphone stores, currency exchanges, dollar stores, and retail pharmacies. Berrios was eventually caught and convicted on numerous Hobbs Act counts. See 18 U.S.C. § 1951(a). He raises one issue on appeal: whether the district court erred when it denied his motion to suppress evidence that the government found through a warrantless search of his cellphone. If the evidence collected during the search was to be admitted, he contends, it was only through the application of the good-faith exception recognized in *Davis v. United States*, 564 U.S. 229, 241 (2011), and he argues that his case does not fit within *Davis*. We all agree that this was a close call. In the end, however, we conclude that although there was no binding precedent that would have exempted this search from the exclusionary rule, the independent-source rule allowed the admission of the limited evidence the government used. We therefore affirm Berrios’s conviction.

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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](#).