

## **Opinions for the week of November 18 – November 22, 2019**

### **Deborah Amling v. Harrow Industries, LLC** No. 19-1805

Argued September 23, 2019 — Decided November 19, 2019

Case Type: Civil

Central District of Illinois. No. 3:18-cv-03108-SEM-TSH — **Sue E. Myerscough**, *Judge*.

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

ST. EVE, *Circuit Judge*, concurring.

HAMILTON, *Circuit Judge*. Deborah Amling and her husband Robert sued Harrow Industries and other businesses in an Illinois state court for causing Robert to develop mesothelioma by exposing him to asbestos. Two years later, the Amlings sued Harrow again, this time in federal court, seeking a declaratory judgment on the meaning of an asset-purchase agreement between Harrow and another company, Nexus, also a defendant in the Amlings' state suit. The district judge thought the declaratory judgment action unripe and dismissed it. Even if it were ripe, the judge ruled in the alternative, she would decline to exercise jurisdiction over it. The Amlings appealed. Robert died while this appeal has been pending; Deborah now prosecutes the state and the federal lawsuits in her own right and as representative of Robert's estate. We affirm. It is virtually certain that the Amlings' state suit will answer the question presented by their federal suit: whether under the terms of the asset-purchase agreement Harrow or Nexus could be liable for their injuries. That fact makes this a live controversy but simultaneously justifies the district court's sound exercise of its discretion in deciding not to issue a declaratory judgment.

### **USA v. Jeremy Glispie** No. 19-1224

Argued September 25, 2019 — Decided November 19, 2019

Case Type: Criminal

Central District of Illinois. No. 1:18-cr-10002-JES-JEH-1 — **James E. Shadid**, *Judge*.

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

RIPPLE, *Circuit Judge*. On January 23, 2018, the Government filed a single-count indictment against Jeremy Glispie for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Mr. Glispie entered a plea of guilty, but reserved the right to challenge his anticipated designation as an armed career criminal based on his prior convictions for residential burglary under Illinois law. Following our guidance, the district court concluded that residential burglary in Illinois is no broader than "generic burglary" and that it therefore qualifies as a violent felony under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii). Consequently, it sentenced Mr. Glispie as an armed career criminal and imposed a sentence of 180 months. Before this court, Mr. Glispie renews his objection to his designation as an armed career criminal based on his convictions for residential burglary under Illinois law. Acknowledging that our decision in *Dawkins v. United States*, 809 F.3d 953 (7th Cir. 2016), is controlling, he urges us to revisit that decision. According to Mr. Glispie, *Dawkins* did not explore all of the relevant aspects of Illinois burglary. Had we fully considered the question, he submits, we would have reached the conclusion that residential burglary in Illinois covers a broader swath of conduct than generic burglary for purposes of the ACCA and, therefore, cannot be used as a predicate offense for purposes of the ACCA....Because the Supreme Court of Illinois has not made this determination, and because the question is likely to arise frequently and to affect the administration of justice in both the state and federal courts, we respectfully seek the assistance of the Supreme Court of Illinois by certifying this controlling question of law.

### **USA v. Derrick Neville, Jr.** No. 18-3431

Submitted October 23, 2019 — Decided November 19, 2019

Case Type: Criminal

Northern District of Illinois, Western Division. No. 3:17-cr-50032-1 — **Frederick J. Kapala**, *Judge*.  
Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DAVID F. HAMILTON,  
*Circuit Judge*.

#### **ORDER**

Derrick Neville, Jr. pleaded guilty to possessing a controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1), and being a felon in possession of a firearm, 18 U.S.C. § 922(g)(2), and was sentenced to 186 months in prison under the Armed Career Criminal Act, 18 U.S.C. § 924(e). He has appealed, but his lawyer asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Neville opposes the motion using the procedure in Circuit Rule 51(b). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Because the analysis appears thorough, we limit our review to the subjects that counsel and Neville discuss. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).... We GRANT counsel's motion to withdraw and DISMISS the appeal.

**Melody Hale v. Indiana Department of Child Se** No. 19-2517

Submitted November 1, 2019 — Decided November 20, 2019

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-01197-TWP-MJD — **Tanya Walton Pratt**,  
*Judge*.

Before AMY C. BARRETT, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y.  
SCUDDER, *Circuit Judge*.

#### **ORDER**

In 1996, child-services case workers removed Melody Jackson Hale's two sons from her custody. Almost 25 years later, she filed this action in federal court against the state and county departments of child services, alleging that case workers unlawfully took custody of her children without a warrant, a court order, or probable cause. Hale seeks damages for the emotional distress she suffered as a result of her children's unlawful removal. Although Hale checked a box on her form complaint stating that she was suing for a violation of a federal law, see 28 U.S.C. § 1915(e)(2)(B), the district court at screening construed her pleadings to raise only a state-law tort claim for infliction of emotional distress. The court determined that the complaint was subject to dismissal because Hale had not alleged a basis for either federal-question or diversity jurisdiction, and because the defendants were entitled to sovereign immunity under the Eleventh Amendment. Before dismissing Hale's case, the district court gave her the opportunity to show cause why her case should not be dismissed on those two bases. Hale responded by submitting child services records and state-court records from several cases involving custody of her two sons. The district court concluded that although the documents might support the factual basis of Hale's complaint, they did not cure its jurisdictional defects....Because the complaint should not have been dismissed for lack of subject-matter jurisdiction, we modify the district court's judgment to reflect that Hale's claims are dismissed with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). See *Bovee v. Broom*, 732 F.3d 743, 744–45 (7th Cir. 2013). The judgment is AFFIRMED as modified.

**Harold Stone v. Signode Industrial Group LLC** No. 19-1601

Argued September 19, 2019 — Decided November 20, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-05360 — **Thomas M. Durkin**, *Judge*.  
Before SYKES, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendant Signode Industrial Group LLC assumed an obligation to pay health-care benefits to a group of retired steelworkers and their families. Signode then exercised its right to terminate the underlying benefits agreement. When it terminated the agreement, Signode also stopped

providing the promised benefits to the retired steelworkers and their families, despite contractual language providing that benefits would not be “terminated ... notwithstanding the expiration” of the underlying agreement. This appeal presents a single question of contract interpretation: whether the agreement in question provided for vested benefits that would survive the agreement’s termination. We hold that the contract provided for vested lifetime benefits and affirm the district court’s permanent injunction ordering Signode to reinstate the retirees’ benefits.

**USA v. Justin Krivi** Nos. 19-1067 & 19-1161

Submitted August 29, 2019 — Decided November 20, 2019

Case Type: Criminal

Southern District of Illinois. No. 3:07-cr-30143-NJR-CJP — **Nancy J. Rosenstengel**, *Chief Judge*.  
Before DIANE P. WOOD, *Chief Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

This is a consolidated appeal from four district court orders. Federal inmate Justin Krivi filed multiple motions attempting to challenge his decade-old criminal conviction and sentence for various drug offenses. The district court granted a motion to reduce Krivi’s sentence under Amendment 782 to the Sentencing Guidelines, but otherwise rejected all other requests by Krivi that sought to attack his original conviction. Krivi has appealed...We have considered Krivi’s remaining arguments, and none has merit. AFFIRMED.

**Charles Primm v. Andrew M. Saul** No. 19-1514

Argued November 14, 2019 — Decided November 21, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-CV-6173 — **Thomas M. Durkin**, *Judge*.  
Before DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

**ORDER**

Charles Primm applied for Social Security Disability Insurance Benefits, asserting that injuries he sustained on his last job, plus obesity and other ailments, so impaired him that he was unable to work from May 2006 through June 2014. An administrative law judge concluded that Primm was not disabled during that period because although he could not perform his old job, he could do light work—a conclusion upheld by the district court. Substantial evidence supports the ALJ’s decision, so we affirm.

**USA v. Adrian Grisanti** No. 18-2993 & 19-1576

Argued October 2, 2019 — Decided November 22, 2019

Case Type: Criminal

Southern District of Indiana, New Albany Division. No. 4:16-cr-00018-TWP-VTW-1 — **Tanya Walton Pratt**, *Judge*.

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

HAMILTON, *Circuit Judge*. Appellant Adrian Grisanti was convicted of child-pornography offenses and destruction of evidence. On appeal, he challenges the denial of his motion to suppress evidence and the length of his sentence. We affirm on both issues. We have already held that the good-faith exception applies to the same warrant at issue in this case, which authorized the use of a sophisticated technique to identify users of a child-pornography website. See *United States v. Kienast*, 907 F.3d 522, 529 (7th Cir. 2018). Grisanti’s reasons for reconsidering Kienast are not persuasive. Also, his sentence was not

unreasonable and the district court did not make any procedural error....The judgment of the district court is AFFIRMED.

**Pedro Donaldson v. City of Chicago** No. 19-1115

Submitted October 23, 2019 — Decided November 22, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-cv-05869 — **Charles R. Norgle**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

For a second time, Pedro Donaldson has brought a federal lawsuit challenging the Chicago police's failure to file a police report after he was allegedly assaulted by a Chicago Transit Authority train operator. At screening, 28 U.S.C. § 1915(e)(2), the district court dismissed the complaint, with prejudice, for failing to state a claim because the Due Process Clause does not establish a right to police assistance. That conclusion was correct, but the court did not address whether Donaldson could have amended his complaint to state an equal-protection claim. Res judicata bars any such claim against all but the unnamed defendants in their individual capacities....We therefore VACATE the judgment and REMAND for further proceedings with respect to Donaldson's equal protection claim against the unnamed defendants in their individual capacities. We AFFIRM in all other respects.

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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](#).