

Opinions for the week of April 11 - April 15, 2016

USA v. Berton Mays No. 15-2152

Argued January 14, 2016 — Decided April 11, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:13-cr-00230-JMS-TAB-1 — **Jane E. Magnus-Stinson**, *Judge*.

Before FLAUM and RIPPLE, *Circuit Judge*, and PETERSON, *District Judge*.

RIPPLE, Circuit Judge. Berton Mays left the scene of a fight and was followed by an investigating officer who wanted to interview him about the altercation. Mr. Mays repeatedly declined to stop and talk to the officer, expressing his declination in colorful and abusive language. After observing Mr. Mays's demeanor and suspecting that he might be armed, the officer told him to stop and touched his shoulder in order to keep a distance between the two. Mr. Mays's manner of turning made the officer concerned for his safety, and he employed his already drawn Taser. A semi-automatic firearm fell to the ground. Mr. Mays ultimately was prosecuted in federal court for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). He pleaded guilty to the offense, but reserved the right to appeal the district court's denial of his motion to suppress the firearm, which he contended was the product of an illegal seizure. He also reserved the right to appeal the district court's denial of his motion to suppress a statement he had made to federal agents while he was in pretrial confinement. Mr. Mays now appeals... AFFIRMED.

Ruthelle Frank v. Scott Walker No. 15-3582

Argued April 7, 2016 — Decided April 12, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 11-C-01128 — **Lynn Adelman**, *Judge*.

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

EASTERBROOK, Circuit Judge. In 2011 Wisconsin enacted a statute requiring voters to present photographic identification. 2011 Wis. Act 23. A federal district judge found that the statute violates the Constitution as well as the Voting Rights Act and enjoined its application across the board. 17 F. Supp. 3d 837 (E.D. Wis. 2014). We reversed that decision. After the Supreme Court declined to accept the case, 135 S. Ct. 1551 (2015), one of the two sets of plaintiffs asked the district court to take up some issues that it had not previously resolved. The judge then rejected on the merits plaintiffs' contention that Wisconsin violated the Equal Protection Clause by declining to accept veterans' identification cards... The state legislature soon amended Act 23 to require election officials to accept veterans' IDs. 2015 Wis. Act 261 §2. The parties agree that this makes that slice of the litigation moot, and we vacate the district court's decision on that subject and remand with instructions to dismiss this aspect of the complaint as moot.

Ricky Hall v. Jaeho Jung No. 15-2102

Argued February 25, 2016 — Decided April 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 7645 — **John Z. Lee**, *Judge*.

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

BAUER, Circuit Judge. More experienced attorneys often stress to younger attorneys the importance of preserving the record during trial. This case illustrates the importance of not only preservation of the record but also of compliance with procedural rules. Plaintiff-appellant, Ricky Hall, appeals from a jury verdict in favor of defendant-appellee, Chicago Police Officer Jaeho Jung. Hall challenges four of the district court's rulings on evidentiary issues. Because Hall failed to provide us with transcripts memorializing the proceedings regarding three of the four rulings, we are precluded from reaching the

merits of Hall's claims on those rulings. Hall's fourth challenge does not warrant reversal... the judgment of the district court is AFFIRMED.

John Doe v. Village of Deerfield No. 15-2069

Submitted February 25, 2016 — Decided April 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 7423 — **Elaine E. Bucklo**, *Judge*.
Before BAUER, MANION, and KANNE, *Circuit Judges*.

BAUER, Circuit Judge. This case presents a matter of first impression for us: whether an order denying leave to proceed anonymously is immediately appealable. Guided by the reasoning of some of our sister circuits, we find that an order denying leave to proceed anonymously does fall within the collateral order doctrine and is immediately appealable. An individual filed a lawsuit in federal district court naming the Village of Deerfield, Lisa Batchelder, and Gary Zalesny as defendants (collectively "defendants-appellees"). In his caption, the individual plaintiff identified himself as "John Doe," which is not his real name. The defendants-appellees moved to dismiss Doe's complaint for, among other things, failure to provide his true name in the caption of his complaint. The district court granted without prejudice the motion to dismiss and denied Doe's motion for leave to proceed anonymously. Doe now appeals these rulings. Although Doe has won the jurisdictional battle, he has lost the war; while we do have jurisdiction to hear Doe's appeal, we find that Doe has failed to show exceptional circumstances justifying anonymity. Therefore, we affirm the orders of the district court.

Darnell Tolliver v. City of Chicago No. 15-1924

Argued December 11, 2015 — Decided April 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:11-cv-008563 — **Andrea R. Wood**, *Judge*.
Before KANNE, ROVNER, and HAMILTON, *Circuit Judges*.

ROVNER, Circuit Judge. After pleading guilty to aggravated battery to a peace officer, Darnell Tolliver brought claims against the arresting officers for excessive force and conspiracy to conceal the use of excessive force, and a claim against the City of Chicago for indemnification of the officers. The district court granted summary judgment in favor of the defendants on the ground that Tolliver's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Although it is certainly possible in the abstract for a claim of excessive force to survive *Heck*, Tolliver's suit rests on a version of the event that completely negates the basis for his conviction. His claim is therefore barred by *Heck* and we affirm.

USA v. Lonnie Whitaker Nos. 14-3290 and 14-3506

Argued April 20, 2015 — Decided April 12, 2016

Case Type: Criminal

Western District of Wisconsin. Nos. 14-cr-00017, 07-cr-00123 — **Barbara B. Crabb**, *Judge*.
Before WOOD, *Chief Judge*, HAMILTON, *Circuit Judge*, and DARRAH, *District Judge*.

DARRAH, District Judge. Acting on information that drugs were being sold from a certain apartment in Madison, Wisconsin, law enforcement obtained the permission of the apartment property manager and brought a narcotics-detecting dog to the locked, shared hallway of the apartment building. The dog alerted to the presence of drugs at a near-by apartment door and then went to the targeted apartment where Whitaker was residing. After the officers obtained a search warrant, Whitaker was arrested and charged with drug and firearm crimes based on evidence found in the apartment. At the time of his arrest, Whitaker was serving a term of supervised release in Case No. 07-cr-123, a conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). After the district court denied his pretrial

motions challenging the search and the dog's reliability, Whitaker entered a conditional guilty plea that preserved his right to appeal the district court's ruling. On appeal, Whitaker raises four issues. First, he argues the use of the dog was a search under the Fourth Amendment and *Florida v. Jardines*, 133 S. Ct. 1409 (2013). Second, he contends that the district court should have granted him a Franks hearing because there was a material omission in the affidavit used to obtain the search warrant. Third, Whitaker claims that the dog's training records should have been turned over to him, pursuant to *Florida v. Harris*, 133 S. Ct. 1050 (2013). Finally, he argues his term of supervised release had expired and he should not have been sentenced after revocation... we reverse the district court's holding regarding the search. The remaining issues are therefore moot.

Alvandra Allen v. Bill Lee No. 16-1250

Submitted April 13, 2016 — Decided April 13, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 15-cv-1566-PP — **Pamela Pepper**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Alvandra Allen sued “Emmanuel or Bill Lee” for abusing him shortly after his birth in 1971 by, among other things, removing his pancreas, shooting him in the head (an episode in which he says he “died and came back to life”), and replacing his soul with an evil spirit. The district court screened the complaint under 28 U.S.C. § 1915(e)(2)(B) and dismissed it because it was frivolous and failed to state a claim. Allen, the court ruled, did not allege any federal or constitutional violations and, to the extent he tried to allege any criminal charges, he lacked standing to do so. On appeal Allen states that his “legal argument” is “to gather everyone that was there, especially my doctor at birth,” in order to hold the defendant responsible for his “violent criminal acts.” Allen develops no reasoned basis for disturbing the district court's ruling that his allegations are frivolous. See FED. R. APP. P. 28(a)(8)(A); see also *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989) (district courts may dismiss suits describing “fantastic or delusional scenarios”). We therefore AFFIRM the district court's judgment.

USA v. Edgar Hernandez No. 15-2723

Submitted April 13, 2016 — Decided April 13, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 10 CR 143 — **Samuel Der-Yeghiayan**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

ORDER

This is a direct appeal from a resentencing following our remand in *United States v. Hernandez*, No. 14-3046 (7th Cir. Mar. 6, 2015). Edgar Hernandez's appointed attorney asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*... we GRANT counsel's motion to withdraw and DISMISS the appeal.

Six Star Holdings, LLC v. City of Milwaukee No. 15-1608

Argued November 9, 2015 — Decided April 13, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 2:10-cv-893 — **Lynn Adelman**, *Judge*.

Before WOOD, Chief Judge, ROVNER, *Circuit Judge*, and SHAH, *District Judge*.

WOOD, Chief Judge. This case requires us to visit the world of strip clubs—establishments that no one seems to want, officially, but that are somehow quite lucrative. Prior to March 1, 2012, the City of Milwaukee had various licensing requirements for this type of place, but it no longer defends their constitutionality... Before us now are two Milwaukee ordinances, now re-pealed, that required certain licenses before a business was permitted to offer nude or partially nude entertainment... Two companies—Six Star Holdings, LLC, which applied for a license under one of these ordinances, and Ferol, LLC, which did not—challenged these ordinances, seeking injunctive relief and damages. Once the ordinances were repealed, the plaintiffs dropped their requests for injunctive relief but continued to pursue damages. The latter request saves the case from mootness... The district court held that the ordinances addressed time, place, and manner of expression, but that they did not include the necessary procedural safeguards. A jury then decided that but for the unconstitutional ordinances, Ferol would have opened a club providing nude entertainment. It awarded Ferol compensatory damages in the form of lost profits, and gave Six Star nominal damages. The City has appealed. It argues that Ferol had no injury and therefore no standing to challenge the ordinances. It also challenges Ferol's theory of causation and the award of nominal damages to Six Star. Finding no merit in any of these points, we affirm the district court's judgment.

Beverly P. Wesley v. Julian Castro No. 15-3471

Submitted April 13, 2016 — Decided April 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 6833 — **Manish S. Shah**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Beverly Wesley lost her home in Crete, Illinois, after defaulting on her mortgage loan. An Illinois state court entered a judgment of foreclosure in April 2014 and a year later approved a judicial sale of the property. Wesley then brought this action in federal court, ostensibly under 42 U.S.C. § 1983, claiming that the “foreclosing entity,” Cagan Management Group, had violated the Constitution of the United States by commencing the foreclosure action. Wesley also listed as a defendant the Secretary of the U.S. Department of Housing and Urban Development. After Wesley failed for a second time to attend a scheduled hearing, the district court dismissed the suit for failure to prosecute. Because we conclude that the district court did not abuse its discretion, we affirm the dismissal.

George Taylor v. Leann LaRiva No. 15-3182

Submitted April 13, 2016 — Decided April 14, 2016

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:15-cv-00084-LJM-MJD — **Larry J. McKinney**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

ORDER

George Taylor is serving a 378-month federal sentence for bank robberies. He is currently imprisoned at the Federal Correctional Institution in Terre Haute, Indiana. Taylor argues in a petition for a writ of habeas corpus, see 28 U.S.C. § 2241, that the Bureau of Prisons is violating federal law by refusing to designate the state facility where he served a related state sentence as the place where he also served part of his federal sentence. This designation effectively would credit against his federal sentence the time he spent in state custody. The district court denied relief. Because the Bureau did not violate federal law regarding sentencing computation or credits, we affirm.

Julian Nettles-Bey v. Philip Williams No. 15-2704

Argued March 29, 2016 — Decided April 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 11 C 8022 — **Joan B. Gottschall**, *Judge*.
Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges*.

EASTERBROOK, Circuit Judge. Adherents to the Moorish Science Temple change their surnames to include “-Bey” or “-El”. Julian Nettles-Bey was born with that surname and does not hold Moorish beliefs. He contends in this suit under 42 U.S.C. §1983 that two police officers in South Holland, Illinois, assumed from his name that he is a Moor and on that account arrested him for trespassing, when they would not have arrested a Christian or an atheist. He maintains that official action based on a belief (accurate or not) about a person’s religion violates the Free Exercise Clause of the First Amendment, applied to the states through the Equal Protection Clause of the Fourteenth Amendment. The district court denied the arresting officers’ motion for summary judgment... The appeal is dismissed for want of jurisdiction.

Terrance Flynn v. Marion Thatcher No. 15-2458

Submitted April 13, 2016 — Decided April 14, 2016

Case Type: Prisoner

Northern District of Indiana, South Bend Division. No. 3:15 CV 66 — **Jon E. DeGuilio**, *Judge*.
Before FLAUM, RIPPLE, and HAMILTON, *Circuit Judges*.

PER CURIAM. Terrance Flynn, an Indiana prisoner, appeals the dismissal of his suit brought under 42 U.S.C. § 1983, in which he claims that he is being denied equal protection because he does not receive the same privileges as participants in an inmate “Honor Program.” Because we agree with the district court that Flynn’s complaint fails to state a claim, we affirm the dismissal.

Brian Maus v. Diane Baker No. 15-2346

Submitted April 13, 2016 — Decided April 14, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 09-C-42 — **Charles N. Clevert, Jr.**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON,
Circuit Judge.

ORDER

Brian Maus sued jail officers and other law enforcement personnel for using excessive force against him while he was a pretrial detainee at the Langlade County Jail. See 42 U.S.C. § 1983. His claims were tried to a jury, which found for the defendants. Maus appeals, raising six arguments for a new trial. Because his trial was free of prejudicial errors, we affirm the judgment of the district court.

Shawn Bahrs v. Wexford Health Sources, Inc. No. 15-2210

Submitted April 13, 2016 — Decided April 14, 2016

Case Type: Prisoner

Central District of Illinois. No. 13-2142 — **Harold A. Baker**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*;KENNETH F. RIPPLE, *Circuit Judge*;DAVID F. HAMILTON,
Circuit Judge.

ORDER

Shawn Bahrs, an Illinois inmate suffering from Stage 4 colon cancer, brought this suit under 42 U.S.C. § 1983 against Thomas Baker, a prison doctor, and Wexford Health Sources, Inc., the healthcare provider

at Western Illinois Correctional Center. Bahrs claimed that the defendants had acted with deliberate indifference in not diagnosing and treating his cancer sooner. A jury returned a verdict for the defendants, and the district court denied Bahrs's post-judgment motion arguing that inadequate performance by his pro bono counsel warranted a new trial. Bahrs now appeals, challenging the denial of his post-judgment motion along with other evidentiary and procedural rulings. We reject his appellate claims and affirm the judgment in favor of the defendants.

Larry H. Liebzeit v. Intercity State Bank, FSB No. 15-1970

Argued October 30, 2015 — Decided April 14, 2016

Case Type: Bankruptcy from District Court

Eastern District of Wisconsin. No. 14-C-1527 — **Rudolph T. Randa**, *Judge*.

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

HAMILTON, Circuit Judge. The principal question in this appeal is whether a mortgage can properly attach a lien to a vendor's interest in a land contract under Wisconsin law. A secondary issue is whether the lender in this case perfected its lien on the vendor's interest by recording its mortgage in county land records rather than with the Wisconsin Department of Financial Institutions under Article 9 of the Uniform Commercial Code, Wis. Stat. § 409.501(1)(b). Our answer to both questions is yes, so we affirm the judgments of the bankruptcy and district courts in favor of the lender.

Susan Kuttner v. John Zaruba No. 14-3812

Argued May 29, 2015 — Decided April 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 10 C 04290 — **Edmond E. Chang**, *Judge*.

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

POSNER, *Circuit Judge*, dissenting.

SYKES, Circuit Judge. Susan Kuttner was fired from her job as a DuPage County deputy sheriff after she wore her uniform and badge while trying to collect on a loan for a friend. She sued the sheriff alleging that she was fired because of her sex. There's no direct evidence of sex discrimination, so Kuttner's lawyer embarked on a protracted fishing expedition in search of possible comparators to try to mount a case under the rubric of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Using an overbroad understanding of "similarly situated" employees, the lawyer sought the personnel files of more than 30 employees of the DuPage County Sheriff's Office. In response to these and other inappropriate discovery requests, the district judge stepped in and imposed some limits. In the end Kuttner failed to adduce evidence of sex discrimination, so the judge entered summary judgment for the sheriff. On appeal Kuttner argues that the judge unduly restricted discovery and improperly granted summary judgment. We reject these arguments and affirm.

John Lewert v. P.F. Chang's China Bistro, Inc. No. 14-3700

Argued January 13, 2016 — Decided April 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. Nos. 14 C 4787, 14 C 4923 — **John W. Darrah**, *Judge*.

Before WOOD, *Chief Judge*, and BAUER and HAMILTON, *Circuit Judges*.

WOOD, Chief Judge. About two months after they dined at P.F. Chang's China Bistro, in Northbrook, Illinois, John Lewert and Lucas Kosner received the unwelcome news that the restaurant's computer system had been hacked and debit- and credit-card data had been stolen. Lewert and Kosner brought separate suits, which were later consolidated, seeking damages resulting from the theft on behalf of

themselves and a class. Concluding that they had not suffered the requisite personal injury, the district court dismissed for lack of standing... we reverse and remand for further proceedings.

Merrill Roberts v. CIR No. 15-3396

Argued April 1, 2016 — Decided April 15, 2016

Case Type: Tax

Appeal from the United States Tax Court. No. 12010-11 — **Elizabeth C. Paris**, *Judge*.

Before POSNER, EASTERBROOK, and WILLIAMS, *Circuit Judges*.

POSNER, Circuit Judge. The Internal Revenue Code allows a taxpayer to deduct “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” 26 U.S.C. § 162(a). But if the activity giving rise to the expenses “is not engaged in for profit,” section 183 permits deduction of expenses incurred in the activity “only to the extent that the gross income derived from such activity [i.e., the not-for-profit activity] for the taxable year exceeds the deductions.” 26 U.S.C. § 183(a), (b)(2). The activities governed by section 183 are usually referred to as “hobbies,” and the provisions we’ve just quoted allow hobby expenses to be deducted from hobby profits but not from any other income that the taxpayer may have... In 2014 the Tax Court held that the taxpayer, petitioner Merrill Roberts, had deducted the expenses of his horseracing enterprise on his federal income tax returns for 2005 and 2006 erroneously because the enterprise was a hobby rather than a business. The court assessed tax deficiencies of \$89,710 for 2005 and \$116,475 for 2006. But it also ruled that his business had ceased to be a hobby, and had become a bona fide business, in 2007, and the Internal Revenue Service has not challenged Roberts’ bona fides since, as far as we know. Though now in his seventies, he continues to operate his horse-racing business. His appeal challenges the assessments for 2005 and 2006... The Tax Court’s judgment, insofar as it upholds the deficiencies assessed against the petitioner by the Internal Revenue Service for business deductions in 2005 and 2006, is reversed with instructions to void the deficiencies.

USA v. Ankur Roy No. 15-2202

Argued February 16, 2016—Decided April 15, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 377-1 — **Gary Feinerman**, *Judge*.

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

POSNER, Circuit Judge. The defendant was prosecuted for defrauding Medicare and Blue Cross Blue Shield by submitting claims for reimbursement for respiratory therapy that he (more precisely the company of which he was Chief Executive Officer) had not provided. He was convicted by a jury and sentenced to 75 months in prison to be followed by three years of supervised release, and also ordered to pay restitution to the victims of the fraud of some \$2.5 million. His principal claim on appeal is that his constitutional right to be tried by an impartial jury was violated, primarily because the district judge refused to order the jurors to return to court after the trial for a hearing about alleged juror misconduct or to order a new trial... AFFIRMED.

Consumer Health Information Co. v. Amylin Pharmaceuticals, Inc. No. 14-3231

Argued May 28, 2015 — Decided April 15, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-01061-TWP-DML — **Tanya Walton Pratt**, *Judge*.

Before FLAUM, KANNE, and SYKES, *Circuit Judges*.

SYKES, Circuit Judge. Consumer Health Information Corporation sued Amylin Pharmaceuticals, Inc., alleging copy-right infringement. 17 U.S.C. §§ 101 et seq. The dispute centers on copyright ownership: Who owns the copyright in certain patient-education materials Consumer Health developed for Amylin's use in marketing its diabetes drug Byetta? The parties' contract, executed in March 2006, unambiguously assigns the copyright to Amylin. This suit is an attempt to reclaim ownership of the copyright and recover damages for infringement. To that end, Consumer Health alleges that the contract was induced by fraud or economic distress and seeks rescission. The district court dismissed the suit as untimely. We affirm.

Patricia Jepson v. Bank of New York Mellon No. 14-2459

April 15, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 1:14-cv-00423 — **James F. Holderman**, *Judge*.

ON MOTION FOR STAY OF MANDATE

RIPPLE, Circuit Judge (in chambers). Patricia Jepson has filed a motion requesting that I stay this court's mandate pending final disposition of this litigation in the Supreme Court of the United States. She represents that she plans to file a petition for a writ of certiorari within the next ninety days. Because I do not believe that she has presented any issue upon which the Court will grant certiorari and because I believe that, even if certiorari were granted, a majority of the Court would not reverse our judgment, I deny the motion.

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](#).