

Opinions for the week of April 18 - April 22, 2016

Mary Zappa v. Jeffrey Smith No. 14-3223

Argued November 3, 2015 — Decided April 18, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 6623 — **Thomas M. Durkin**, *Judge*.
Before WOOD, *Chief Judge*, EASTERBROOK, *Circuit Judge*, and BRUCE, *District Judge*.

WOOD, *Chief Judge*. This case involves a consumer dispute that blew up, unfortunately, into a federal case. Plaintiffs Randall Hahn and Mary Zappa thought that they had purchased a certain motorcycle, but it turned out that they had the wrong one. Conversations between them and the dealership degenerated into accusations of theft, which led to the involvement of the police. In the end, Hahn returned the motorcycle. Believing that their rights under the Fourth Amendment and state law had been violated, however, he and Zappa filed this lawsuit against the private entities involved, the municipality, and the police officer who was swept up in this dispute. The district court dismissed the federal claims and declined to exercise supplemental jurisdiction over the state theories, and this appeal follows. We affirm.

USA v. Daniel W. Curry No. 15-2741

Submitted April 13, 2016 — Decided April 19, 2016

Case Type: Criminal

Southern District of Indiana, Terre Haute Division. No. 2:06 CR 00011-001 — **Larry J. McKinney**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge* KENNETH F. RIPPLE, *Circuit Judge* DAVID F. HAMILTON,
Circuit Judge.

ORDER

Daniel and Arthur Curry, who are brothers, robbed four Indiana banks at gunpoint during the years 2003 through 2006. They were charged jointly with four counts of armed bank robbery, 18 U.S.C. § 2113(a), (d), and four counts of using a firearm during a crime of violence, *id.* § 924(c)(1). His brother pleaded guilty, but Daniel Curry was found guilty on all counts by a jury and, in 2007, sentenced to almost 90 years in prison. We upheld Curry's convictions and sentence on direct appeal. *United States v. Curry*, 538 F.3d 718 (7th Cir. 2008). In April 2015 he filed a motion, under the docket number of his criminal case, asking the district court to enter an order "authorizing the release of a copy of FBI DNA Case File #91A-IP-95252" from the FBI's crime lab in Quantico, Virginia. The district court rejected that request, reasoning that it lacked authority to grant it. We affirm that ruling.

Curtis Ellison v. Dushan Zatecky No. 15-1884

Submitted February 11, 2016 — Decided April 19, 2016

Case Type: Prisoner

Northern District of Indiana, South Bend Division. No. 3:12CV597 — **James T. Moody**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. A disciplinary officer found inmate Curtis Ellison guilty of possessing heroin at Pendleton Correctional Facility in Indiana. The officer punished Ellison by stripping him of 90 days' good-time credit. After exhausting his administrative remedies, Ellison petitioned the district court for collateral review under 28 U.S.C. § 2254, and he now appeals the denial of that petition. Because Ellison was prevented from defending against the accusation that he possessed a controlled substance, we vacate the district court's decision and remand for further proceedings.

USA v. Luis Contreras No. 15-1279

Argued October 29, 2015 — Decided April 19, 2016
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 11-CR-346-2 — **Samuel Der-Yeghiayan**, *Judge*.
Before FLAUM, MANION, and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. Law enforcement stumbled upon the then- unknown Luis Contreras when the original target of their narcotic sales investigation drove into Contreras' garage and the two men conducted a drug transaction with- in view of the police with Contreras' garage door ajar. Contreras eventually pleaded guilty to narcotics distribution, but reserved the right to challenge the denial of a motion to suppress the evidence found in a search of his house. We affirm.

USA v. Denise Lambert Nos. 14-3590 & 15-1131

USA v. Jose Melendez

Argued September 28, 2015 — Decided April 20, 2016

Case Type: Criminal

Northern District of Illinois, Western Division. Nos. 13 CR 50006-7 & 13 CR 50006-5 — **Frederick J. Kapala**, *Judge*.

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

KANNE, *Circuit Judge*. Defendants-Appellants Jose Melendez ("Melendez") and Denise Lambert ("Lambert") both pled guilty to participating in a heroin distribution conspiracy with Michael Craig ("Craig") and others. Melendez challenges his within-guidelines range sentence of 135 months' imprisonment, disputing the district court's finding that he is liable for between three and ten kilograms of jointly purchased heroin. Lambert challenges her within-guidelines range sentence of 80 months' imprisonment as substantively unreasonable on several grounds. We affirm both sentences.

Jaleh Banaei v. Timothy Messing No. 14-3076

Submitted December 4, 2015 — Decided April 20, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 10 C 6966 — **William T. Hart**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Jaleh Banaei, who owns an apartment building in Evanston, Illinois, was arrested by police officers Timothy Messing and Rebecca Niziolek after a heated argument with one of her tenants. The officers transported Banaei to the police station and, once there, searched her before locking her in a holding cell for several hours. During the search, Officer Niziolek, the female officer, instructed Banaei to remove her sweatshirt despite Banaei's protest that she was wearing only lingerie underneath. Niziolek then patted down Banaei over her sheer, long-sleeved shirt and bra. The charge of misdemeanor battery later was dropped, and Banaei then sued the two officers and the City of Evanston under 42 U.S.C. § 1983, claiming that she was arrested and searched in violation of the Fourth Amendment. The district court initially granted summary judgment for the defendants on both claims, but in a previous appeal we overturned the dismissal of the search claim. *Banaei v. Messing*, 547 F. App'x 774 (7th Cir. 2013). On remand a jury found for the defendants, and Banaei appeals. We affirm the judgment.

USA v. Kenneth Lewis Nos. 14-2442 & 14-2597

Argued April 11, 2016 — Decided April 20, 2016

Case Type: Criminal

Central District of Illinois. No. 1:12-cr-10082-JES-JEH — **James E. Shadid**, *Chief Judge*.
Before BAUER and WILLIAMS, *Circuit Judges*, and ADELMAN,* *District Judge*.

BAUER, *Circuit Judge*. Defendant-appellant, Kenneth Lewis, appeals his conviction and sentence for wire fraud and money laundering. The district court sentenced him to 151 months' imprisonment for the four-count wire fraud conviction, and 120 months for the eleven-count money laundering conviction. The district court ordered Lewis to serve the sentences consecutively. Lewis represented himself at trial. He appeals *pro se* as well, raising sundry challenges to his conviction and sentence. We appointed an *amicus curiae* to argue on his behalf. The *amicus* focused on Lewis' challenges to the money laundering conviction and the severity of his sentence; it did not posit any argument regarding Lewis' wire fraud conviction... Thus, we AFFIRM Lewis' conviction for wire fraud, VACATE his conviction for money laundering, and REMAND the case for resentencing consistent with this opinion.

Paysun Long v. Kim Butler No. 13-3327

April 20, 2016

Case Type: Prisoner

Central District of Illinois. No. 1:11-cv-1265-MMM — **Michael M. Mihm**, *District Judge*.

ORDER

The petition for rehearing en banc is granted. The panel's opinion and judgment are vacated.

USA v. Robert McManus Nos. 15-1862, 15-2096

USA v. Frank Orlando

Argued February 26, 2016 — Decided April 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13-cr-592 — **Edmond E. Chang**, *Judge*.
Before POSNER, FLAUM, and EASTERBROOK, *Circuit Judges*.

FLAUM, *Circuit Judge*. Defendants were convicted for their participation in a conspiracy to commit extortion. Robert McManus appeals his conviction on sufficiency of the evidence and procedural grounds. Frank Orlando appeals his sentence because of the district court's treatment of the minor role adjustment and for reasonableness. We are not persuaded by any of defendants' arguments and therefore, we affirm.

USA v. Milton Dowell No. 15-3493

Submitted February 11, 2016 — Decided April 22, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 99 CR 555 — **James B Zagel**, *Judge*.
Before RICHARD A. POSNER, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

We affirm the district court's decision for the reasons stated in the district court's October 21, 2015 Order.

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](#).