

## Opinions for the week of April 25 - April 29, 2016

### **Brian Herron v. Douglas Meyer** No. 15-1659

Submitted March 18, 2016 — Decided April 25, 2016

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:13-cv-109-JMS-WGH — **Jane E. Magnus-Stinson**, *Judge*.

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

EASTERBROOK, Circuit Judge. In this Bivens suit, Brian Herron, a disabled federal prisoner, accuses guard Douglas Meyer of transferring him to a cell that the guard knew was likely to cause him injury. Meyer did this, Herron alleges, because he disliked the fact that Herron had filed grievances and had refused to share a cell with an inmate who he thought endangered him. Herron maintains that Meyer violated the First and Eighth Amendments. The district court dismissed the First Amendment theory and held that the guard is entitled to qualified immunity on the Eighth Amendment theory... The judgment of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion.

### **Angel Houston v. C.G. Security Services, Inc.** No. 15-1518

Argued February 26, 2016 — Decided April 25, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:12-cv-00328 — **William T. Lawrence**, *Judge*.

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

FLAUM, Circuit Judge. This appeal arises out of a lawsuit brought by plaintiff-appellee Angel Houston, who sustained injuries from a fall during a New Year's Eve party at a Hyatt hotel in Indianapolis. Defendant-appellant C.G. Security Services, Inc. ("C.G.") provided security personnel for the party. During litigation, Houston filed several motions for sanctions against C.G. The district court referred the matter to a sanctions judge against C.G. for discovery violations. The district court adopted the magistrate judge's report and recommendation to impose sanctions. C.G. appeals. Specifically, C.G. claims that the district court abused its discretion by adopting the report and recommendation, as well as by awarding Houston's counsel attorney's fees. We conclude that there was no abuse of discretion and affirm the judgment of the district court.

### **Quasim Bolling v. Victor Carter** No. 15-2254

Submitted April 13, 2016—Decided April 26, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 3432 — **Robert M. Dow, Jr.**, *Judge*.

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

POSNER, Circuit Judge. The plaintiff, a pretrial detainee at Cook County Jail, fell and injured his back, and sued six correctional officers, contending that they had manifested deliberate indifference to an acute medical need, thus violating his rights under the due process clause of the Fourteenth Amendment... They had refused to move him to a lower bunk even though a doctor at the jail determined that he needed to be in a lower bunk. There was no ladder to his upper bunk and because of his injury he couldn't climb up to it without a ladder and so had to sleep on the floor until his term of confinement ended and he was released from the jail. There is no suggestion that because of jail crowding or other factors it would have been infeasible to assign him to a lower bunk—or that the floor was a comfortable place for him to sleep. The district judge granted summary judgment in favor of the defendants, precipitating the plaintiff's appeal to us. The plaintiff advances other claims against the defendants besides their refusal to assign him to a lower bunk, but those claims have no merit and do not warrant discussion... The judgment is reversed in

part, with instructions to vacate the grant of summary judgment with respect to the plaintiff's claim of willful indifference to an acute medical need, but is otherwise affirmed.

**Michael Miller v. Dushan Zatecky** No. 15-1869

Argued April 18, 2016 — Decided April 26, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-913-SEB-TAB — **Sarah Evans Barker**, *Judge*.

Before EASTERBROOK and SYKES, *Circuit Judges*, and ADELMAN, *District Judge*.  
ADELMAN, *District Judge*, dissenting.

EASTERBROOK, *Circuit Judge*. Michael Miller was convicted in Indiana of three counts of child molestation and sentenced to three consecutive 40-year terms... When imposing the lengthy term (effectively life in prison), the state judge relied not only on the nature of Miller's conduct but also on his four prior convictions, his failure to reform after stretches of imprisonment, and the absence of any mitigating factors. The convictions were affirmed on direct appeal... Miller maintains that the state court's decision was "unreasonable" because, when considering dispositions of similar cases, the court of appeals did not discuss any opinion issued after June 8, 2004, the date Miller's direct appeal was decided. Later decisions, according to Miller, look more favorably on contentions that sentences in sex-offense cases are too long, and had the court of appeals used them as comparisons this would have demonstrated a "reasonable probability" of appellate success... Miller has not shown that the state judiciary made an error of federal law, so he is not entitled to collateral relief. AFFIRMED.

**USA v. Lemurel Williams** No. 15-1194

Argued September 22, 2015 — Decided April 26, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 2:14-cr-00159 — **J.P. Stadtmueller**, *Judge*.

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

WILLIAMS, *Circuit Judge*. Lemurel Williams was convicted of being a felon in possession of a gun. Williams's first argument on appeal is that the prosecution unconstitutionally rejected potential jurors because of their race. We need not decide that issue because we agree with Williams's second argument: a new trial is needed because the totality of the circumstances regarding the jury's verdict was impermissibly coercive.

**Northern Illinois Service Co. v. Secretary of Labor** No. 15-2640

Argued April 1, 2016 — Decided April 27, 2016

Case Type: Agency

Federal Mine Safety and Health Review Commission Nos. LAKE 2013-616-M, et al.

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

EASTERBROOK, *Circuit Judge*. Among its other activities, Northern Illinois Service Company operates portable rock-crushing units that it dispatches to quarries as needed. When inspecting some of these units, the Mine Safety and Health Administration concluded that Northern Illinois had failed to comply with some safety regulations. Inspectors issued nine citations. The company contested all nine and prevailed in part before an administrative law judge. The ALJ found six violations and labeled all six non-serious. 37 FMSHRC 1225 (June 5, 2015). He ordered Northern Illinois to pay \$100 per violation. After the Federal Mine Safety and Health Re-view Commission denied its application for discretionary review, Northern Illinois petitioned for judicial review of two of those six. One wonders why the company is paying a lawyer

many thousands of dollars to contest a \$200 penalty, but that's its prerogative... The petition for review is denied.

**Barbara Wells v. Winnebago County, Illinois** No. 15-1805

Submitted March 18, 2016 — Decided April 27, 2016

Case Type: Civil

Northern District of Illinois, Western Division. No. 11 C 50030 — **Frederick J. Kapala**, *Judge*.  
Before BAUER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

EASTERBROOK, Circuit Judge. Barbara Wells worked as a “computer navigator” at the Winnebago County courthouse. Her job was to help litigants who lack counsel deal with the judicial system’s requirements. She contends in this suit that before her departure to take what she thought would be a better job, state and county officials discriminated against her on the basis of her race (she is black) and disability (she suffers from chronic fatigue syndrome). The district court granted summary judgment to the County, giving two reasons: first, any discrimination was attributable to state rather than county workers; second, the record would not allow a reasonable jury to find actionable discrimination... AFFIRMED.

**Donovan Burris v. Judy Smith** No. 15-2891

Argued April 6, 2016 — Decided April 28, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 12-cv-00465— **Rudolph T. Randa**, *Judge*.  
Before FLAUM, RIPPLE, and HAMILTON, *Circuit Judges*.

FLAUM, Circuit Judge. Petitioner Donovan Burris argues that a supplemental jury instruction given during his trial in Wisconsin state court misled the jury in a way that violated the Constitution. On direct appeal, the Wisconsin Supreme Court held that although the instruction may have been ambiguous, it was not reasonably likely that it misled the jury. Burris petitioned for habeas relief in the district court. The district court denied habeas relief and Burris appeals. We conclude that the Wisconsin Supreme Court did not unreasonably apply clearly established federal law and affirm the judgment of the district court.

**USA v. Roberto Rebolledo-Delgadillo** No. 15-2121

Argued April 6, 2016 — Decided April 28, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13-cr-00673 — **John J. Tharp, Jr.**, *Judge*.  
Before FLAUM, RIPPLE, and HAMILTON, *Circuit Judges*.

FLAUM, Circuit Judge. Defendant Roberto Rebolledo-Delgadillo (“Rebolledo”) appeals his conviction of possession with intent to distribute more than five kilograms of cocaine under 21 U.S.C. § 841(a)(1). Rebolledo, who attempted to broker a large cocaine deal, argues that there was insufficient evidence to support his conviction. He also contends that he is entitled to a new trial because the government presented false testimony and misled the jury during closing arguments, as well as a new sentencing because the district court improperly denied safety valve relief. We affirm his conviction and his sentence.

**USA v. Kristen Smith** No. 14-3442

Argued May 29, 2015 — Decided April 28, 2016

Case Type: Criminal

Western District of Wisconsin. No. 14-cr-24-jdp — **James D. Peterson**, *Judge*.

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

SYKES, Circuit Judge. Kristen Smith took her half-sister's newborn son from his bassinette in the middle of the night and started out on the long drive from Beloit, Wisconsin, to her home in Colorado. When she reached eastern Iowa, she learned that police in Wisconsin were pursuing leads on the missing infant and wanted to interview her. She spoke by phone with a Beloit police officer who told her to pull over so that local law enforcement could speak with her. In the pre-dawn hours, Smith pulled off the interstate, wrapped the baby in blankets, placed him in a plastic container, and put the container behind a gas station. There she left the infant to freeze in sub-zero mid-winter temperatures. She then drove to another gas station, called the Beloit officer back, and was eventually arrested by Iowa police on an unrelated warrant. When the police and FBI agents questioned her, she persistently denied any knowledge of the child's whereabouts. It was only after the baby was found alive the next day that she admitted taking him. A federal jury convicted her of kidnapping. Smith raises many issues on appeal. She claims that her statements to law enforcement were the product of coercion. She argues that a subset of her statements—those the district court suppressed based on a Miranda violation—were improperly admitted for impeachment purposes. She objects to the government's inquiry during her cross-examination about the crime for which the arrest warrant was issued. Finally, she asks us to reverse on the ground that no rational jury could conclude that she lacked parental permission to take the child or that she attained a benefit from the kidnapping. We reject these arguments and affirm.

**Central States, SE and SW Areas Pension Fund v. Bulk Transport, Corp.** Nos. 15-3346, 15-3208

Argued April 1, 2016 — Decided April 29, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 9112 — **Thomas M. Durkin**, *Judge*.

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

POSNER, Circuit Judge. The Multiemployer Pension Plan Amendments Act of 1980 amends ERISA by imposing liability on employers who withdraw, partially or completely, from participation in an underfunded multi-employer pension fund, thus reducing the fund's resources for providing the pension money to which employees of the fund's members are contractually entitled... Central States, Southeast and Southwest Areas Pension Fund is such a fund, and Bulk Transport Corp. is a member of the Fund and has made contributions to the pension account of Terry Loniewski, one of its employees. Bulk had certified that Loniewski was entitled by a collective bargaining agreement between Bulk and a Teamsters local to participate in the Central States Pension Fund even though the agreement was limited by its terms to the drivers that Bulk employed and Loniewski was a mechanic—he had never been a driver in the more than 40 years that he had worked for the company. Although for decades Bulk had treated Loniewski as though he were covered under the company's collective bargaining agreements, it now denies that he was covered and has demanded that Central States refund the \$49,000 that Bulk had contributed to Loniewski's pension account between 2002 and 2012... The Fund denied the request and filed this suit, in which it seeks a declaratory judgment that Bulk is not entitled to the refund. Bulk counterclaimed, arguing that it is entitled to the refund, because it contributed to Loniewski's account by mistake. The district judge rejected Bulk's claim... **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**Mohsen Karroumeh v. Loretta Lynch** No. 15-2198

Argued January 20, 2016 — Decided April 29, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. A076-296-363

Before WOOD, *Chief Judge*, and MANION and ROVNER, *Circuit Judges*.

ROVNER, Circuit Judge. Mohsen Karroumeh petitions for review of a final order of removal issued by the Board of Immigration Appeals ("BIA" or "Board"). The Board determined that Karroumeh was removable

because he entered into a sham marriage for immigration purposes. We conclude that Karroumeh is entitled to a new hearing before an immigration judge (“IJ”) because he was prejudiced by his inability to cross-examine a key government witness whose evidence was presented through a written statement. We grant the petition and remand for a new hearing.

**USA v. Pavel Leiva** No. 15-1930

Argued January 13, 2016 — Decided April 29, 2016

Case Type: Criminal

Central District of Illinois. No. 3:13-cr-30059-RM-TSH-1 — **Richard Mills**, *Judge*.

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

BAUER, Circuit Judge. Defendant-appellant, Pavel Leiva, appeals his conviction for conspiracy to possess and use counterfeit credit cards with intent to defraud in violation of 18 U.S.C. §§ 1029(a)(1), 1029(a)(3), and 1029(b)(2), and possession of fifteen or more counterfeit credit cards with intent to defraud in violation of 18 U.S.C. § 1029(a)(3)... We AFFIRM Leiva’s conviction and sentence.

**Timothy Bell v. Eugene McAdory** No. 15-1036

Argued January 21, 2016 — Decided April 29, 2016

Case Type: Civil

Central District of Illinois. No. 12-3138-CSB-DGB — **Colin S. Bruce**, *Judge*.

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

EASTERBROOK, Circuit Judge. In 2006 Timothy Bell was adjudicated to be a sexually dangerous person and civilly detained under Illinois law. He was sent to the Treatment and Detention Facility in Rushville but did not stay there long. After he violently attacked a guard, he was convicted and spent the next four years in prison. When his sentence expired in 2010, he was sent back to Rushville and did not like the transfer one bit. Bell took the position that he was entitled to release from custody and declined to cooperate with Rushville’s intake procedures. He refused to answer questions. He refused to be photographed. He threatened the guards, who understandably took the threats seriously. Housed in segregation, he put paper over the windows to block monitoring and otherwise tried to frustrate the Facility’s normal operation. After the impasse had continued for 20 days, Eugene McAdory, Rushville’s Security Director, told the guards to take Bell to a secure room in the infirmary, which had larger windows, and to take away his clothing. Bell refused to cooperate with the transfer, which as a result entailed some use of force. He spent the next eight days naked in the infirmary—and, he says, uncomfortably cold, because the air conditioning was on and he lacked protection from the draft. On the ninth day Bell agreed to cooperate with Rushville’s in-take procedure. He was given clothes and moved to the general population. He filed this suit under 42 U.S.C. §1983, contending that the eight cold, uncomfortable, unclothed days, meted out without a hearing, violated the Due Process Clause of the Constitution’s Fourteenth Amendment. The district court granted summary judgment to all defendants, concluding that Bell had no constitutional right to comfort, clothes, or a hearing... The case is remanded with instructions to treat the document filed on September 11, 2014, as a request for an extension of time under Rule 4(a)(5).

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](#).