

Opinions for the week of April 20 – April 24, 2020

William Lund v. City of Rockford, Illinois No. 19-1945

Argued December 9, 2019 — Decided April 20, 2020

Case Type: Civil

Northern District of Illinois, Western Division. No. 3:17-cv-50035 — **Frederick J. Kapala**, *Judge*.
Before EASTERBROOK, ROVNER, and SCUDDER, *Circuit Judges*.

ROVNER, *Circuit Judge*. William Lund, a reporter, was arrested in Rockford, Illinois after discovering a police-run prostitution sting operation in the course of his news-gathering activities. He sued the City and several officers for retaliatory arrest, malicious prosecution and several other alleged invasions of his rights under federal and state law. The district court granted summary judgment for the defendants. While Lund's case was pending, the Supreme Court issued its decision in *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019), which instructs that, in most cases, probable cause to arrest defeats a claim of retaliatory arrest. Because the police had probable cause to arrest Lund, *Nieves* controls, and we affirm the grant of summary judgment for the defendants.

Skyrise Construction Group LLC v. Annex Construction LLC No. 19-1461

Argued September 25, 2019 — Decided April 21, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 2:18-cv-00381 — **Nancy Joseph**, *Magistrate Judge*.
Before RIPPLE, ROVNER, and BRENNAN, *Circuit Judges*.

ROVNER, *Circuit Judge*. Skyrise Construction Group, LLC, a subcontractor, sued Annex Construction, LLC, a general contractor, for breach of contract, promissory estoppel, negligent misrepresentation, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, and violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. 100.18. The district court granted summary judgment in favor of the defendants on all claims. We affirm.

Kenneth Mayle v. State of Illinois No. 19-1691

Submitted April 10, 2020 — Decided April 23, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-cv-02924 — Robert W. Gettleman, *Judge*.
Before KANNE, ROVNER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. For the second time, Kenneth Mayle has sued the State of Illinois to challenge state laws prohibiting bigamy, adultery, and fornication. The district court dismissed this second suit, in part on issue preclusion and in part for lack of standing. We affirm.

USA v. Juan Perez No. 18-3156

Argued September 18, 2019 — Decided April 23, 2020

Case Type: Criminal

Western District of Wisconsin. No. 18-CR-27 — **James D. Peterson**, *Chief Judge*.
Before KANNE, HAMILTON, and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. In December 2016, law enforcement officers facilitated a controlled buy of heroin from Juan Perez—someone the officers suspected was a high-level drug dealer in the Beloit, Wisconsin area. The controlled buy was recorded: Perez sold 98 grams of heroin to a police informant. Based on that transaction alone, Perez was charged with, and pled guilty to, distributing heroin. At Perez's

sentencing hearing, the district judge expressed concern that the guidelines range of 33–41 months’ imprisonment presented in Perez’s presentence investigation report (“PSR”) did not reflect the full scope of his involvement in drug trafficking. This concern stemmed from the PSR’s description of Perez’s conduct suggesting that he was responsible for distributing large quantities of heroin, methamphetamine, and cocaine. Unsatisfied with the disparity between Perez’s guidelines range and his conduct described in the PSR, the judge continued the sentencing hearing and directed the government to file a sentencing memorandum. The memorandum was to detail which offense conduct the government could support by a preponderance of the evidence and which offense conduct it could not so support. When the parties and judge reconvened, the government presented witness testimony that elaborated on conduct described in the PSR. The judge used that evidence to calculate a higher guidelines range and impose a 121-month sentence. Perez appealed his sentence, arguing that the sentencing judge should have disqualified himself because his impartiality might reasonably be questioned. See 28 U.S.C. § 455(a). Because Perez has not demonstrated that a reasonable observer would have questioned the judge’s impartiality, we affirm the sentence.

Leonard Fuqua v. USPS No. 18-2415

Argued February 27, 2020 — Decided April 23, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:14-cv-2484 — **Charles R. Norgle**, *Judge*.
Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. This appeal asks us to consider under which federal employee compensation act a postal worker’s claim of emotional distress must be resolved.

Plaintiff Leonard Fuqua was a mail handler with the United States Postal Service at the O’Hare Airport mail center. That center was downsized and Fuqua was forced to transfer to a new location. He bid for placement at various other duty stations, but he did not receive placement within thirty miles of his home in suburban Chicago. When he was reassigned to a mail center in Kansas City, he refused to appear for work there and was fired... The Federal Employees’ Compensation Act applied to Fuqua’s claim, its administrative scheme ran its course, and his claim for emotional distress was denied for lack of evidence. The district court correctly ruled it had no subject matter jurisdiction over his claims under the Federal Tort Claims Act. So we AFFIRM its judgment.

Quincy Bioscience, LLC v. Ellishbooks No. 19-1799

Argued February 19, 2020 — Decided April 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-08292 — **Sharon Johnson Coleman**, *Judge*.
Before WOOD, *Chief Judge*, and FLAUM and RIPPLE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Quincy Bioscience, LLC (“Quincy”) filed this civil action against Ellishbooks, related individuals, and entities (collectively “Ellishbooks”) alleging claims for trademark infringement, false advertising, dilution, and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114, 1125, as well as claims under Illinois statutory and common law. The operative complaint alleged that Ellishbooks engaged in the unauthorized and unlawful sale of Quincy’s products bearing the Prevagen® trademark. Ellishbooks did not file a responsive pleading to the complaint. After entry of a default judgment, the district court awarded damages and permanent injunctive relief to Quincy. Ellishbooks now challenges the district court’s judgment on several grounds. These arguments have been waived and, in any event, are meritless. We therefore affirm the judgment of the district court.

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](#)