

## Opinions for the week of February 16 - February 19, 2016

### **USA v. Mantrell Johnson** No. 15-1161

Argued January 26, 2016 — Decided February 16, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 283-1 — **Virginia M. Kendall**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; RICHARD A. POSNER, *Circuit Judge*.

### **ORDER**

Mantrell Johnson pleaded guilty to possessing crack cocaine with intent to distribute and using a cell phone to commit that offense. See 21 U.S.C. §§ 841(a)(1), 843(b). He initially told authorities that he had purchased crack cocaine for resale weekly between 2004 and 2009, but by the time of sentencing he had recanted that testimony and argued that he should be held accountable only for two specific transactions in 2008. The district court found Johnson's recanted testimony sufficient to establish—for purposes of its analysis under 18 U.S.C. § 3553(a)—that he had engaged in "significant and serious" drug dealing. On appeal, Johnson challenges the procedural and substantive reasonableness of his above-Guidelines 180-month sentence. We affirm.

### **Danielle Pickett v. Sheridan Health Care Center** No. 14-3705

Argued September 21, 2015 — Decided February 16, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 07 CV 01722 — **Manish S. Shah**, *Judge*.

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

WILLIAMS, *Circuit Judge*. Danielle Pickett filed a Title VII retaliation lawsuit against her employer Sheridan Health Care Center. Ernest T. Rossiello & Associates represented her. After a two-day trial, the jury awarded Pickett \$65,000 in damages. She then filed a motion for attorney's fees. The district court granted in part and denied in part the motion, finding, among other facts, that the hourly market rate for Rossiello's services was \$400, not the \$540–\$620 that was requested. Pickett appealed the award of attorney's fees, arguing that the \$400 hourly rate was arbitrarily decided and erroneously reduced based on the existence of a contingent fee agreement between Pickett and Rossiello, among other improper factors. The appeal was successful. We concluded that the district court erred by making impermissible considerations when calculating the hourly rate. We vacated the award and remanded for further proceedings. On remand, the district court determined that the evidence supported a \$425 hourly rate for Rossiello and awarded fees based on that hourly rate. It also determined that the claim to attorney's fees for the work done on remand had been waived. Pickett appealed, arguing that the district court failed to rely on the district court's pre-remand factual findings and erroneously relied on a case that was wrongly decided. This time, we disagree. We find no legal error or abuse of discretion, and therefore, affirm the district court's fee award.

### **USA v. Harold Lacy** No. 15-2740

Argued January 12, 2016 — Decided February 17, 2016

Case Type: Criminal

Central District of Illinois. No. 14-cr-20073 — **Colin S. Bruce**, *Judge*.

Before BAUER and HAMILTON, *Circuit Judges*, and PETERSON, *District Judge*.

PETERSON, *District Judge*. Harold Lacy pleaded guilty to a federal charge of heroin distribution. The district court sentenced Lacy to 168 months of incarceration, consecutive to any sentence he might receive on state-court charges that were pending at the time of his federal sentencing. Lacy ultimately

received a lengthy sentence on the state charges, and he now appeals the federal court's imposition of a consecutive sentence as an abuse of discretion. But Lacy waived his right to appeal any aspect of his sentence, and thus we must dismiss Lacy's appeal, despite our reservations about the way in which the consecutive sentence was imposed here.

**Riley Forsythe v. Carolyn Colvin** No. 15-2333

Argued January 27, 2016 — Decided February 17, 2016

Case Type: Civil

Western District of Wisconsin. No. 3:14-CV-509-bbc — **Barbara B. Crabb**, *Judge*.

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

POSNER, Circuit Judge. The plaintiff applied to the Social Security Administration for disability benefits and was turned down by the administrative law judge who heard his case, and who ruled that although the injuries that the plaintiff claimed had rendered him totally disabled from gainful employment were severe, he was not totally disabled because he could, the administrative law judge decided, perform certain unskilled sedentary jobs. The district court affirmed the decision, and the plaintiff now appeals to us... REVERSED AND REMANDED, WITH INSTRUCTIONS.

**Chad Taylor v. Sardar Biglari** No. 15-1828

Argued December 4, 2015 — Decided February 17, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-00891-SEB-MJD — **Sarah Evans Barker**, *Judge*.

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

POSNER, Circuit Judge. This is a shareholder derivative suit against the directors of an Indiana company, Biglari Holdings, Inc., that owns two restaurant chains, Western Sizzlin' and Steak 'n Shake, both of which operate some restaurants, and franchise others, in many U.S. states. Sardar Biglari is the CEO of Biglari Holdings and also the chairman of the company's board of directors. There are five other directors. Biglari Holdings used to own an investment company named Biglari Capital Corporation, which is the controlling partner in a pair of private investment entities called The Lion Fund and The Lion Fund II. Biglari Holdings had bought Biglari Capital Corporation from Sardar Biglari in 2010, but sold it back to him in 2013. The basis of this suit is a claim by two shareholders of Biglari Holdings that in 2013 the board had approved three transactions (one of them the sale of Biglari Capital Corporation) that the plaintiffs call "entrenchment transactions," intended they say to cement Biglari's control of the company and enrich him at the expense of the other shareholders. One of the challenged transactions, a stock offering, was approved by the entire board and the other two were approved by the Governance, Compensation and Nominating Committee, consisting of four members of the board. The plaintiffs regard the board's members as Biglari's puppets... The district judge ruled that the plaintiffs had failed to demonstrate demand futility as defined in Indiana law, and so dismissed their suit, precipitating this appeal... AFFIRMED.

**Alma Glisson v. Correctional Medical Services** No. 15-1419

Argued October 26, 2015 — Decided February 17, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:12-cv-01418-SEB-MJD — **Sarah Evans Barker**, *Judge*.

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

WOOD, Chief Judge, dissenting.

BAUER, Circuit Judge. Plaintiff-appellant, Alma Glisson (“Appellant”), sued Correctional Medical Services, Inc., also known as Corizon, Inc. (“CMS”), its employees Dr. Malaka G. Hermina (“Dr. Hermina”), Mary Combs, R.N. (“Nurse Combs”), and the Indiana Department of Corrections (“IDOC”) (collectively “Appellees”), on behalf of her deceased son, Nicholas Glisson (“Glisson”). Glisson died while incarcerated at Plainfield Correctional Facility (“Plainfield”) in Plainfield, Indiana. The lawsuit’s federal claims arise under 42 U.S.C. § 1983 (“§ 1983”), specifically alleging that Appellees did not offer Glisson constitutionally adequate medical care, and that this failure violated his Eighth Amendment rights against cruel and unusual punishment. The district court granted summary judgment in favor of Appellees on all federal claims, and remanded the remaining state law claims. Appellant now only appeals the grant of summary judgment in favor of CMS, arguing that CMS’s failure to implement a particular IDOC Health Care Service Directive (the “Directive”) violated Glisson’s Eighth Amendment rights. However, because Appellant has not produced legally sufficient evidence to demonstrate a genuine issue of material fact on this matter, we affirm summary judgment for CMS.

**Melissa Callahan v. City of Chicago** No. 15-1318

Argued November 3, 2015 — Decided February 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 362 — **Manish S. Shah**, *Judge*.

Before WOOD, *Chief Judge*, EASTERBROOK, *Circuit Judge*, and BRUCE, *District Judge*.

EASTERBROOK, Circuit Judge. Between January 2009 and August 2011, Melissa Callahan frequently drove a taxicab in Chicago. She does not own a cab, nor does she own a medallion that represents the City’s permission to operate a taxi. She leased both from owners by the week, day, or half day. She brought to the transaction her time, her skill as a driver, and her chauffeur’s license, which permits her to operate leased taxis. Callahan asserts, and we assume, that her net proceeds (fares and tips, less lease fees and gasoline) averaged less than the minimum wages required by the Fair Labor Standards Act, 29 U.S.C. §§ 201–19, and the Illinois Minimum Wage Law, 820 ILCS 105/1 to 105/15. Callahan contends that the City of Chicago must make up the difference. She presents two theories: first that the City’s regulations (Chicago sets the rates, per mile and per minute of waiting time, that taxis may charge passengers) are confiscatory, and second that the City’s regulations are so extensive that Chicago must be treated as her employer. As far as we can see, both theories are novel; no other federal court has addressed either of them... AFFIRMED.

**USA v. Elston Henry** No. 14-3810

Argued January 26, 2016— Decided February 17, 2016

Case Type: Criminal

Northern District of Illinois, Western Division. No. 12 CR 50066-1— **Philip G. Reinhard**, *Judge*.

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

POSNER, Circuit Judge. The defendant pleaded guilty to conspiracy to possess an illegal drug intending to distribute it, see 21 U.S.C. §§ 846, 841, and to possession of a firearm for use in his drug trafficking, 18 U.S.C. § 924(c)(1)(A)(i). He was sentenced to 152 months in prison. His only colorable challenges on appeal are to the length of the prison term and the duration and conditions of supervised release that the district judge imposed... The judgment is vacated and the case remanded for a full resentencing.

**USA v. William Bell and Lenard Dixon** Nos. 14-3462 & 14-3470

Argued October 27, 2015 — Decided February 17, 2016

Case Type: Criminal

Southern District of Indiana, Terre Haute Division. No. 2:13-cr-00021-JMS-CMM— **Jane E. Magnus-Stinson**, *Judge*.

Before KANNE and ROVNER, *Circuit Judges*, and BRUCE, *District Judge*.

ROVNER, Circuit Judge. A jury convicted William Bell and Lenard Dixon of first-degree murder and being an accessory after the fact to the murder, respectively, in the death of a fellow inmate at the federal penitentiary in Terre Haute, Indiana. Each appeals the sufficiency of the evidence underlying his conviction: Bell contends in particular that the evidence is insufficient to establish that he premeditated the murder, and Dixon contends that the evidence is insufficient to establish that he aided Bell with the intent to prevent Bell from being held to account for the murder. Bell additionally challenges the decision to admit evidence concerning an inculpatory statement he made regarding the murder, and Dixon challenges the decision to shackle his legs during the trial. We affirm the convictions.

**USA v. Gregorio Paniagua-Garcia** No. 15-2540

Argued January 27, 2016 — Decided February 18, 2016

Case Type: Criminal

Southern District of Indiana, Terre Haute Division. No. 2:14-cr-00027-JMS-CMM-01 — **Jane E. Magnus-Stinson**, *Judge*.

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

POSNER, Circuit Judge. An Indiana statute forbids drivers to use a telecommunications device (normally a cellphone) to type, transmit, or read a text message or an electronic-mail message, Ind. Code § 9-21-8-59(a)—in short it prohibits “texting” (sending or receiving textual material on a cellphone or other handheld electronic device; also called “text messaging” or “wireless messaging”) or emailing while operating a motor vehicle. All other uses of cellphones by drivers are allowed... An Indiana police officer, in the course of passing a car driven by Gregorio Paniagua-Garcia (whom for the sake of brevity we’ll call just Paniagua) on an interstate highway, saw that the driver was holding a cellphone in his right hand, that his head was bent toward the phone, and that he “appeared to be texting.” Paniagua denies that he was texting, the officer has never explained what created the appearance of texting as distinct from any one of the multiple other—lawful—uses of a cellphone by a driver, and the government now concedes that Paniagua was not texting—that as he told the officer he was just searching for music. An examination of his cellphone revealed that it hadn’t been used to send a text message at the time the officer saw him fussing with the cellphone. The officer pulled over Paniagua, questioned him at length, eventually asked and received Paniagua’s permission to search the car, and discovered in the search five pounds of heroin concealed in the spare tire in the car’s trunk. Paniagua was prosecuted in federal court for possession of the heroin, and though the police officer was mistaken in thinking that Paniagua had been texting when the officer drove by and saw him holding the cellphone, the district judge ruled that the officer had reasonably believed that Paniagua was texting. Paniagua pleaded guilty to possession of heroin intending to distribute it and was sentenced to 36 months’ imprisonment. But he reserved the right to appeal the denial of his motion to suppress the evidence of the heroin. He argued that it had been discovered by an illegal stop, amounting to a seizure of his person... REVERSED AND REMANDED.

**Leatrice Lumpkin v. Cook County Public Defender's Office** No. 15-2424

Submitted December 4, 2015 — Decided February 19, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 5889 — **Joan B. Gottschall**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; KENNETH F. RIPPLE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Leatrice Lumpkin, a stenographer formerly employed by the Cook County Public Defender’s Office, appeals the entry of summary judgment against her on her claim of retaliatory discharge as well as the denial of her request for recruited counsel. Because Lumpkin has not created an issue of triable fact and because she was not prejudiced by her lack of counsel, we affirm.

**Steven Wrightsman v. Marion Thatcher** No. 15-2267

Submitted February 11, 2016 — Decided February 19, 2016

Case Type: Prisoner

Northern District of Indiana, South Bend Division. No. 3:15-cv-00087 — **Theresa L. Springman**, *Judge*.  
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ANN CLAIRE WILLIAMS,  
*Circuit Judge*.

**ORDER**

Steven Wrightsman, an Indiana prisoner, challenges the dismissal of his complaint brought under 42 U.S.C. § 1983. Wrightsman claims that he is being denied equal protection because other inmates in an “Honor Program” at his prison are rewarded with privileges not available to him and others in the general population. Because Wrightsman’s complaint does not state a claim, we affirm the dismissal.

**Bathusi Musa v. Loretta Lynch** No. 15-2046

Argued December 15, 2015 — Decided February 19, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A087-244-589  
Before BAUER, POSNER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Bathusi Musa, a citizen of Botswana, petitions for review of the denial of her application for asylum, withholding of removal, and protection under the Convention Against Torture, all based on her fear that her family will force her to undergo female genital mutilation (FGM) if she returns. We grant the portion of the petition requesting withholding of removal.

**USA v. Lon Campbell** No. 15-1188

Argued January 27, 2016 — Decided February 19, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:13-CR-00185-018 — **Tanya Walton Pratt**,  
*Judge*.  
Before POSNER, KANNE, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Appellant Lon Campbell pled guilty to using a social security number fraudulently. The district court sentenced him to 21 months in prison followed by three years of supervised release. He waived his right to appeal the sentence in the written plea agreement. He has appealed nonetheless, contending that several conditions of his supervised release are unconstitutionally vague. We enforce the appellate waiver and dismiss the appeal.

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](#).