

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

Thomas Wilson v. Warren County, Illinois No. 15-1939

Argued April 11, 2016 — Decided July 18, 2016

Case Type: Civil

Central District of Illinois. No. 11-CV-04078 — **Sara Darrow**, *Judge*.

Before BAUER and WILLIAMS, *Circuit Judges*, and ADELMAN, *District Judge*.

ADELMAN, *District Judge*. Plaintiffs Thomas Wilson and Randy Brown bring claims under 42 U.S.C. § 1983 against private citizen defendants, Ronald Hanson, Mark Johnson, and Douglas Reiners, as well as against Warren County, Illinois and several of its officials including Sheriff Martin Edwards, Deputy Thomas Carithers, and State Attorney Albert Algren, referred to as the public defendants. Wilson also brings a Fair Housing Act (“FHA”) claim against the private defendants, and plaintiffs assert supplemental state law claims. The claims arise out of an incident in which the private defendants seized items of plaintiffs’ personal property. The district court dismissed Wilson’s FHA claim for failure to state a claim, granted summary judgment on plaintiffs’ § 1983 claims, and chose not to address the state law claims. Plaintiffs appeal, and we affirm.

Cincinnati Insurance Company v. H.D. Smith, LLC No. 15-2825

Argued April 11, 2016 — Decided July 19, 2016

Case Type: Civil

Central District of Illinois. No. 3:12-cv-3289 — **Richard Mills**, *Judge*.

Before BAUER and WILLIAMS, *Circuit Judges*, and ADELMAN, *District Judge*.

WILLIAMS, *Circuit Judge*. According to West Virginia, it faces an “epidemic of prescription drug abuse” that costs it hundreds of millions of dollars every year. Seeking some relief, the state sued pharmaceutical distributors, asserting a variety of legal claims. One of the distributors, H.D. Smith, asked its insurer, Cincinnati Insurance Company, to defend the suit. Instead Cincinnati filed this suit seeking a declaration that its policy does not cover the suit filed by West Virginia. The district court agreed with Cincinnati and granted its motion for summary judgment. But the plain language of the policy requires Cincinnati to defend a suit brought by a plaintiff to recover money paid to care for someone who was injured by H.D. Smith. West Virginia’s suit fits that description so we reverse.

Lightspeed Media Corporation v. Anthony Smith Nos. 15-2440 & 15-2682

Argued February 18, 2016 — Decided July 19, 2016

Case Type: Civil

Southern District of Illinois. No. 3:12-cv-889-DRH-SCW — **David R. Herndon**, *Judge*.

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

WOOD, *Chief Judge*. When last we considered John Steele and Paul Hansmeier’s challenges to contempt sanctions imposed on them, we gave them some friendly advice: stop digging... Apparently they did not realize that we meant what we said. Hoping to avoid paying additional sanctions, they dissembled to the district court and engaged in discovery shenanigans. Anthony Smith, a defendant in the underlying litigation, found out what was going on and moved for yet more contempt and discovery sanctions against Steele, Hansmeier, and Paul Duffy. (We occasionally refer to them collectively as the Attorneys.) Although the district court initially denied his request, it granted Smith the requested sanctions on a motion for reconsideration. Duffy is now deceased and so beyond our jurisdiction. Hansmeier and Steele have appealed, arguing that the district court erred in (1) revisiting its initial ruling on Smith’s motion; (2) finding the Attorneys in contempt; and (3) sanctioning the attorneys for discovery misconduct. With regard to Steele, we affirm the district court’s discovery sanction and vacate its contempt sanction. We dismiss Hansmeier’s appeal.

Vaughn Neita v. City of Chicago No. 15-1404

Argued January 7, 2016 — Decided July 19, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 1107 — **James F. Holderman**, *Judge*.
Before EASTERBROOK, MANION, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Vaughn Neita was arrested and charged with multiple counts of animal cruelty and neglect under Illinois law after surrendering two dogs to Chicago's Department of Animal Care and Control. An Illinois judge found him not guilty on all counts. Neita maintains that the officials who arrested and prosecuted him had no basis to do so; he brought this suit for damages under 42 U.S.C. § 1983 and Illinois law. The district court dismissed Neita's federal claims for failure to state a claim and declined to exercise supplemental jurisdiction over the state-law claims. Because the allegations in Neita's complaint are sufficient to state claims for false arrest and illegal searches in violation of the Fourth Amendment, we reverse.

USA v. Karvis Carter No. 15-1335

Argued July 6, 2016 — Decided July 19, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 705-1 — **Rebecca R. Pallmeyer**, *Judge*.
Before POSNER, SYKES, and HAMILTON, *Circuit Judges*.

SYKES, *Circuit Judge*. Karvis Carter pleaded guilty to possessing cocaine with the intent to distribute it. See 21 U.S.C. § 841(a)(1). Over Carter's objection the sentencing judge applied a six-level upward adjustment to his total offense level under the Sentencing Guidelines based on a finding that he had assaulted police officers while attempting to flee an arrest. See U.S.S.G. § 3A1.2(c)(1). On appeal Carter renews his objection to the application of § 3A1.2(c)(1), arguing that the judge failed to make a specific finding about whether his conduct during the struggle was serious enough to pose "a substantial risk of serious bodily injury" to the officers, as required by § 3A1.2(c)(1). We affirm.

Darwin Montana v. James N. Cross No. 14-3313

Argued September 30, 2015 — Decided July 19, 2016

Case Type: Prisoner

Southern District of Illinois. No. 3:14-cv-01019-DRH — **David R. Herndon**, *Judge*.
Before BAUER, RIPPLE, and ROVNER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. In 1998, Darwin Montana was convicted of aiding and abetting a bank robbery in which an accomplice used a firearm, in violation of 18 U.S.C. §§ 2113 and 924(c). The United States District Court for the Northern District of Illinois sentenced him to 322 months' imprisonment: 262 months on the bank robbery charge and 60 additional months on the weapons charge. On direct review, we affirmed his conviction and sentence. *United States v. Montana*, 199 F.3d 947 (7th Cir. 1999). He thereafter filed several unsuccessful postconviction petitions, including a motion to vacate under 28 U.S.C. § 2255.

In September 2014, Mr. Montana filed a new petition under 28 U.S.C. § 2241 in the United States District Court for the Southern District of Illinois, in whose jurisdiction he currently is incarcerated. Challenging only his § 924(c) conviction for use of a firearm in a crime of violence, he contended that the Supreme Court's decision in *Rosemond v. United States*, 134 S. Ct. 1240 (2014), had narrowed the scope of criminal liability for aiding and abetting § 924(c) offenses and that the trial court therefore had erroneously instructed the jury on the elements of the offense in his earlier trial. The district court dismissed the

petition on the merits at the screening stage under Rule 4 of the Rules Governing Section 2254 Cases. Mr. Montana timely appealed... AFFIRMED.

Jenny Rubin v. Islamic Republic of Iran No. 14-1935

Argued April 23, 2015 — Decided July 19, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 03 C 9370 — **Robert W. Gettleman**, *Judge*.

Before BAUER and SYKES, *Circuit Judges*, and REAGAN, *Chief District Judge*.

HAMILTON, *Circuit Judge*, dissenting from denial of en banc review.

SYKES, *Circuit Judge*. In September 1997 three Hamas suicide bombers blew themselves up on a crowded pedestrian mall in Jerusalem. Among those grievously injured were eight U.S. citizens who later joined with a handful of their close relatives to file a civil action against the Islamic Republic of Iran for its role in providing material support to the attackers. Iran was subject to suit as a state sponsor of terrorism under the terrorism exception to the Foreign Sovereign Immunities Act ("FSIA"), then codified at 28 U.S.C. § 1605(a)(7). A district judge in the District of Columbia entered a \$71.5 million default judgment. Iran did not pay. So began more than a decade of unsuccessful litigation across the country to attach and execute on Iranian assets in order to satisfy the judgment. *See Rubin v. Islamic Republic of Iran*, No. Civ. A. 01-1655 (RMU), 2005 WL 670770, at *1 (D.D.C. Mar. 23, 2005), *vacated*, 563 F. Supp. 2d 38 (D.D.C. 2008) (granting and then vacating writs of execution against two domestic bank accounts used by Iranian consulates); *Rubin v. Islamic Republic of Iran*, 810 F. Supp. 2d 402 (D. Mass. 2011), *aff'd*, 709 F.3d 49 (1st Cir. 2013) (rejecting an effort to attach Iranian antiquities in the possession of various museums); *Rubin v. Islamic Republic of Iran*, 33 F. Supp. 3d 1003 (N.D. Ill. 2014) (same). This appeal concerns the last decision on this list... the district judge was right to conclude that attachment and execution under section 201 of TRIA is unavailable. AFFIRMED.

USA v. Michael Chezan No. 16-1134

Argued June 2, 2016 — Decided July 20, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 10 CR 905 — **Charles R. Norgle**, *Judge*.

Before POSNER and SYKES, *Circuit Judges*, and YANDLE, *District Judge*.

POSNER, *Circuit Judge*. The defendant pleaded guilty in 2011 to aiding and abetting marriage fraud in violation of 18 U.S.C. § 1546(a), and in 2016 was sentenced to three years in prison. Not being an American citizen he is very likely to be deported upon completion of his prison sentence, because marriage fraud is an aggravated felony if the defendant is sentenced to at least twelve months in prison for it, 8 U.S.C. § 1101(a)(43)(P), and a noncitizen convicted of an aggravated felony is deportable, 8 U.S.C. § 1227(a)(2)(A)(iii), and ineligible for cancellation of removal, asylum, or naturalization. See 8 U.S.C. §§ 1229b(a)(3), 1158(b)(2)(B)(i); 8 C.F.R. § 316.10(b)(1)(ii). The defendant's principal argument is that he received ineffective assistance of counsel in the district court because he was not warned that pleading guilty would be virtually certain to result in his deportation. Had he been told, he says, he would have forgone the guilty plea and gone to trial in the hope of being acquitted. And so he asks us to let him withdraw his guilty plea and take a chance on a trial... AFFIRMED.

Elizabeth Taylor v. Carolyn Colvin No. 15-3529

Argued July 6, 2016 — Decided July 20, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-01118-DML-SEB — **Debra McVicker**

Lynch, *Magistrate Judge*.

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

POSNER, *Circuit Judge*. The plaintiff applied for Supplemental Security Income on the ground that she is intellectually disabled from full-time gainful employment. She was turned down by an administrative law judge, whose ruling was upheld on appeal to the district court by a magistrate judge, precipitating her appeal to us... The denial of the benefits sought by Taylor was unsupported, and the district court should not have affirmed it. The judgment of that court is reversed with instructions to remand the case to the Social Security Disability Office for further proceedings consistent with this opinion.

Charles W. King v. CIR No. 15-2439

Argued May 27, 2016 — Decided July 20, 2016

Case Type: Tax

Appeal from the United States Tax Court. No. 6374-11L — **Elizabeth Crewson Paris**, *Judge*.

Before POSNER and FLAUM, *Circuit Judges*, and ALONSO, *District Judge*.

POSNER, *Circuit Judge*. The late Charles King was a lawyer who for several years had failed to pay his quarterly payroll taxes (employment taxes that an employer pays directly to the government). After the Internal Revenue Service notified King of his delinquency he asked permission to pay his overdue payroll taxes in installments, and the IRS replied that it would be “happy to honor [his] request for an installment payment plan.” But after formally assessing the taxes and penalties that King owed, as well as the interest on those taxes, the IRS told him that he’d have to provide certain additional financial information before his eligibility for an installment plan could be determined. Eventually the IRS decided that King’s income and assets were too high to justify an installment program; he had had enough income and assets to pay the payroll taxes when they were due, together with any penalties and interest that had accrued by that date. He paid the taxes in October 2011 but requested abatement of (that is, not having to pay) of interest that had accrued after March 5, 2009, the date on which the IRS had told him it would honor his request for an installment payment plan... The IRS turned him down... In his suit for abatement, King asked the Tax Court to review the IRS’s rejection of his claim, arguing that the interest it had charged was excessive. The court conducted a trial at the conclusion of which it ruled that the Internal Revenue Service’s authority to abate interest that is “excessive in amount”... Despite the small cost of King’s victory to the federal fisc, the Internal Revenue Service appealed. King died shortly after the appeal was filed. We asked his widow whether she wanted to participate in the appeal (whether in person or by a lawyer), but she did not respond to our invitation; and so the only brief filed in the appeal was filed by the IRS and the only oral argument was by a lawyer from the Justice Department’s Tax Division... the consequence is that there is no appellee, and an appeal without an appellee is problematic, so we must consider carefully whether we have jurisdiction... The judgment of the Tax Court is reversed with instructions to dismiss King’s petition. REVERSED.

Robertson Fowler, III v. Keith Butts No. 15-1221

Argued April 7, 2016 — Decided July 20, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-1744-JMS-MJD — **Jane Magnus-Stinson**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. Robertson Fowler pleaded guilty in Indiana to unlawful possession of a firearm by a “serious violent felon” who was also a habitual offender. The judge sentenced him to 30 years’ imprisonment: 15 for the possession offense and 15 extra on account of his criminal history. While his case was on appeal, the Supreme Court of Indiana held that a prior conviction used to establish status as a “serious violent felon” cannot also be used to establish status as a habitual offender. *Mills v. State*, 868 N.E.2d 446 (Ind. 2007). Fowler’s appellate lawyer did not bring *Mills* to the attention of the intermediate appellate court, which affirmed his sentence... the benefit of the *Mill*s theory, and that a

careful lawyer therefore would have relied on *Mills* in the initial appeal. We do not address the substance of Fowler's argument, because a procedural problem takes precedence. District Judge Magnus-Stinson, who denied Fowler's federal collateral attack, also was the person who sentenced Fowler during her time on the state's bench... We held in *Weddington v. Zatecky*, 721 F.3d 456, 461–63 (7th Cir. 2013), that reasonable observers would doubt the impartiality of a former state judge who is asked to assess the validity of her own decision after coming to the federal bench, and that 28 U.S.C. §455(a) therefore requires the case to be heard by a different federal judge... Indiana asks us to distinguish *Weddington* on the ground that Fowler contests the performance of his appellate counsel rather than the decision by Judge Magnus-Stinson, who sentenced him before *Mills* was released. But Fowler's challenge remains one to his 30-year sentence, and if he prevails he will be entitled to a new appeal in the state system in which Indiana's appellate judiciary will have to decide whether the sentence was properly imposed, given the terms of state law and Fowler's plea bargain... The judgment is vacated, and the case is remanded for decision by a different district judge.

Carol Chesemore v. David Fenkell Nos. 14-3181, 14-3215 & 15-3740

Argued May 18, 2015 — Decided July 21, 2016

Case Type: Civil

Western District of Wisconsin. No. 09-cv-413-wmc — **William M. Conley**, *Chief Judge*.

Before KANNE and SYKES, *Circuit Judges*, and ELLIS, *District Judge*.

SYKES, *Circuit Judge*. Trachte Building Systems, Inc., a Wisconsin manufacturer, established an employee stock ownership plan (“ESOP”) in the mid-1980s when ESOPs were a popular employee-benefits instrument. In the late 1990s, David Fenkell and Alliance Holdings, Inc., a company he founded and controlled, developed a niche specialty in buying and selling ESOP-owned, closely held companies with limited marketability. In the typical transaction, Fenkell would merge the ESOP of an acquired company into Alliance's own ESOP, hold the company for a few years with its management in place, and then spin it off at a profit (assuming everything went as planned). In accordance with this business model, Alliance acquired Trachte in 2002 for \$24 million and folded its ESOP into Alliance's ESOP. Fenkell projected that the company would fetch around \$50 million in five years. When the time came to sell, however, Trachte's profits were flat, its growth had stalled, and no independent buyer would pay anywhere near that price. So Fenkell offloaded the company to its employees in a complicated leveraged buyout. Greatly simplified, the deal involved three steps. First, Fenkell directed the creation of a new Trachte ESOP managed by trustees beholden to him. Next, the accounts in the Alliance ESOP were spun off to the new Trachte ESOP. Finally, the new Trachte ESOP used the employees' accounts as collateral to incur debt to purchase Trachte's equity back from Alliance. Multiple interlocking transactions to that effect closed on the same day in August 2007. When all was said and done, Trachte and the new Trachte ESOP had paid \$45 million for 100% of Trachte's stock and incurred \$36 million in debt. The purchase price was inflated and the debt load was unsustainable. By the end of 2008, Trachte's stock was worth less. The losers in this deal—the employee participants in the new Trachte ESOP—sued Alliance, Fenkell, his handpicked trustees, and several other entities alleging breach of fiduciary duty in violation of ERISA. The district court held a bench trial and issued a comprehensive opinion finding the defendants liable. *Chesemore v. Alliance Holdings, Inc.* (*Chesemore I*), 886 F. Supp. 2d 1007 (W.D. Wis. 2012). After an additional hearing, the judge crafted a careful remedial order making the class and a subclass whole. *Chesemore v. Alliance Holdings, Inc.* (*Chesemore II*), 948 F. Supp. 2d 928 (W.D. Wis. 2013). The judge later awarded attorney's fees and approved settlements among some of the parties. Fenkell appealed. He concedes liability but raises many objections to the remedial order, the award of attorney's fees, and the settlements by his codefendants. The only substantial issue is a challenge to the judge's order requiring him to indemnify his cofiduciaries. We held more than 30 years ago that ERISA allows this. *Free v. Briody*, 732 F.2d 1331, 1337–38 (7th Cir. 1984). Since then a circuit split has arisen on this subject, but we're not persuaded that *Free* should be overruled. None of Fenkell's other arguments has merit... AFFIRMED.

Timothy B. Wilks v. Robert J. Rymarkiewicz No. 16-1371

Submitted July 22, 2016 — Decided July 22, 2016

Case Type: Prisoner

Eastern District of Wisconsin. No. 15-C-0254 — **C.N. Clevert, Jr.**, Judge.

Before DIANE P. WOOD, *Chief Judge*;ILANA DIAMOND ROVNER, *Circuit Judge*;DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Timothy Wilks, a Wisconsin inmate, brought this suit under 42 U.S.C. § 1983 against prison officials, challenging a disciplinary conviction and seeking, among other things, damages and the restoration of good-time credits. The district court dismissed Wilks's suit with prejudice at screening for failure to state a claim... We MODIFY the district court's judgment so that Wilks's claims challenging the validity of his disciplinary conviction are dismissed without prejudice. As so modified, the judgment is AFFIRMED.

USA v. Edward Dorsey, Sr. No. 15-3341

Argued May 24, 2016 — Decided July 21, 2016

Case Type: Criminal

Central District of Illinois. No. 14 CR 20026 — **Colin S. Bruce**, Judge.

Before WOOD, *Chief Judge*,and EASTERBROOK and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*.Defendant Edward Dorsey is best known, in legal circles, as the convicted drug trafficker in *Dorsey v. United States*,132 S. Ct. 2321 (2012), whose sentence was vacated by the Supreme Court and reduced on remand to time served and an eight-year term of supervised release. Unfortunately, Dorsey returned to criminal activity and two years later, he was charged with three new counts of drug trafficking, resulting in two proceedings against him. In the first, the present case, Dorsey pled guilty to the three new counts of drug trafficking, and the district court sentenced him to 276 months' imprisonment and eight years of supervised release. In the second, his revocation case, he pled guilty to violating the supervised release imposed after *Dorsey v. United States*,and the district court sentenced him to 51 months' imprisonment, to run concurrently with the sentence from the present case... In the present case, Dorsey successfully appealed his 276-month sentence, but at resentencing, the district court increased his sentence to 327 months' imprisonment. Here, on his second appeal, Dorsey argues that the district court should have recused itself and that the district court erred procedurally by considering his revocation case sentence. We affirm.

Phoenix Entertainment Partners v. Dannette Rumsey No. 15-2844

Argued February 12, 2016 — Decided July 21, 2016

Case Type: Civil

Central District of Illinois. No. 1:15-cv-01009-JBM-JEH — **Joe Billy McDade**, Judge.

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

ROVNER, *Circuit Judge*.Slep-Tone Entertainment Corporation and its successor in interest, Phoenix Entertainment Partners, LLC (collectively, "Slep-Tone") contend in this litigation that the defendants, a pub and its owner, committed trademark infringement by passing off unauthorized digital copies of Slep-Tone karaoke files as genuine Slep-Tone tracks... Because we agree with the district court that Slep-Tone has not plausibly alleged that the defendants' conduct results in consumer confusion as to the source of any tangible good sold in the marketplace, we affirm the dismissal of its complaint.

Leroy S. Poullard v. Robert A. McDonald No. 15-1962

Argued December 3, 2015 — Decided July 21, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 7497 — **Joan H. Lefkow**, *Judge*.
Before WOOD, *Chief Judge*, and MANION and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Since 2004, plaintiff Leroy Poullard has worked at the North Chicago Veterans Affairs Medical Center as a training specialist in the Education Department. He received a promotion to the GS-11 pay grade in 2006, but since then, he has received neither a permanent promotion nor a raise in his pay grade. He brought this suit against the Secretary of the U.S. Department of Veterans Affairs alleging that this refusal to promote him or increase his salary constituted discrimination based on sex and race (Poullard is African-American). He also says that he was subjected to unlawful retaliation and a hostile work environment based on the same lack of pay and recognition, as well as a number of other incidents. The district court granted the Secretary's motion for summary judgment, concluding that many of Poullard's claims were time-barred based on his failure to timely exhaust certain administrative remedies. On the timely claims, the court held that Poullard had not suffered an adverse employment action and that a reasonable jury could not find that the alleged harassment was sufficiently severe or pervasive to support a hostile work environment claim. We affirm.

Vonzell White v. City of Chicago No. 15-1280
Argued December 11, 2015 — Decided July 21, 2016
Case Type: Civil

Northern District of Illinois, Eastern Division. No. 11-cv-7802 — **John Z. Lee**, *Judge*.
Before KANNE, ROVNER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. From 2008 until 2010, the FBI and Chicago Police Department conducted a narcotics investigation on Chicago's West Side called "Operation Blue Knight." As the operation was wrapping up, defendant Officer John O'Donnell applied for dozens of arrest warrants, including one for Vonzell White, the plaintiff in this civil case. Other officers had observed White and his brother sell heroin to an informant. The observations were in a more comprehensive report that O'Donnell used as the basis for his arrest warrant application. White was arrested, but the charge was dropped. He then brought this civil lawsuit alleging that Officer O'Donnell's actions and a City of Chicago policy violated his Fourth Amendment rights. All of White's claims are based on the theory that Officer O'Donnell failed to present the judge who issued the warrant enough information to establish probable cause for the arrest. The district court dismissed the policy claim against the City on the pleadings and later granted summary judgment to Officer O'Donnell on the individual claim against him. Although we agree with White on some important legal points, in the end we affirm the judgment in favor of the defendants. Officer O'Donnell's written application for an arrest warrant, supported by his oral testimony about the report of the surveillance of the drug deal, provided probable cause for the arrest warrant.

Donna Flournoy v. City of Chicago No. 14-3776
Argued March 31, 2016 — Decided July 21, 2016
Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:09-cv-07159 — **William T. Hart**, *Judge*.
Before KANNE and MANION, *Circuit Judges*, and PEPPER, *District Judge*.

MANION, *Circuit Judge*. Donna Flournoy was severely injured by a flashbang grenade deployed by Chicago police during their execution of a search warrant for a suspected drug dealer. Flournoy responded with this lawsuit against two of the officers involved in the search, alleging that they used excessive force in violation of the Fourth Amendment. The case went to trial and the jury found for the defendants. Flournoy now seeks a new trial on several grounds. She asserts that the jury's verdict has no reasonable basis in the record; that the district court erroneously excluded a key piece of evidence at trial; and that a signed statement submitted by the jurors with their verdict shows that they disregarded the law in finding for the defendants. We affirm. The jury's verdict is supported by the record and is not against the manifest weight of the evidence; the district court's evidentiary ruling was not an abuse of discretion;

and the jury's statement is consistent with the verdict and does not affect the verdict's validity. Flournoy received a fair trial before a jury of her peers, and is not entitled to a new trial.

Christopher Pyles v. Sam Nwaobasi No. 14-3289

Argued January 13, 2016 — Decided July 21, 2016

Case Type: Civil

Southern District of Illinois. No. 13-CV-0770-MJR-SCW — **Michael J. Reagan**, *Chief Judge*.
Before WOOD, *Chief Judge*, and BAUER and HAMILTON, *Circuit Judges*.

WOOD, *Chief Judge*. Christopher Pyles, a state prisoner at the Menard Correctional Center, brought a lawsuit alleging that Dr. Samuel Nwaobasi, Dr. Robert Shearing, and their employer, Wexford Health Sources, Inc., provided him constitutionally inadequate medical care. This appeal is about whether he can step up to the plate and take a cut at his case — something he may do only if he properly exhausted his administrative remedies as required by the Prison Litigation Reform Act. Two grievances are at issue. Pyles does not claim to have completed the grievance procedure for either one. Instead, he argues that his lack of compliance should be excused, in the first case because he had good cause for his actions, and in the second because he never received a response to his grievance. After an evidentiary hearing, the magistrate judge found that he had failed properly to exhaust both grievances and recommended summary judgment for the defendants. The district court agreed with that recommendation, but we do not, and so we reverse the district court's judgment in the defendants' favor.

USA v. Raul Palacios-De Paz No. 16-1080

Submitted July 22, 2016 — Decided July 22, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:15-cr-00037-SEB-DML-1 — **Sarah Evans Barker**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Raul Palacios-De Paz, a Mexican citizen, pleaded guilty to being found in the United States without permission of the Attorney General after having been removed following conviction for commission of an aggravated felony. See 8 U.S.C. § 1326(a). The district court sentenced him to 46 months' imprisonment, the bottom of his calculated guidelines range, revoked his supervised release imposed for his aggravated felony, and tacked on 10 months' imprisonment to run concurrently with the 46-month sentence. Palacios-De Paz filed a notice of appeal from the new conviction, but his appointed attorney has concluded that the appeal is frivolous and moves to withdraw... Palacios-De Paz opposes counsel's motion... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED. Palacios-De Paz's motion for appointment of substitute counsel is DENIED.

USA v. Eric Kelly No. 16-1038

Submitted July 22, 2016 — Decided July 22, 2016

Case Type: Criminal

Northern District of Illinois, Western Division. No. 12 CR 50049-1 — **Frederick J. Kapala**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Eric Kelly sought to reduce his 123-month prison sentence based on Amendment 782 to the federal

sentencing guidelines, which retroactively reduced the imprisonment range for his drug conviction. The district court declined to reduce the sentence. We affirm that ruling.

USA v. Marlyn Barnes No. 15-3573

Submitted July 22, 2016 — Decided July 22, 2016

Case Type: Criminal

Northern District of Indiana, Fort Wayne Division. No. 1:06-CR-23-001 — **Theresa L. Springmann, Judge.**

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Marlyn Barnes was sentenced to 292 months' imprisonment for conspiring to possess with intent to distribute more than five kilograms of cocaine... In September 2015, he asked the district court for a lawyer's help with filing a motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on the retroactive application of Amendment 782 to the federal sentencing guidelines. A federal public defender entered an appearance on Barnes's behalf and filed an unopposed motion requesting a 58-month reduction in his sentence. The district court granted the motion and entered an order lowering Barnes's sentence to 234 months. Not satisfied with the new sentence, Barnes a week later asked the court for an extension of time to file a pro se motion "raising specific mitigating factors" not presented by his lawyer. (He did not specify what those factors were.) The court denied the extension. Barnes disregarded the court's ruling and, a month after the district court had entered the order lowering his sentence, filed a motion seeking a further reduction under Amendment 782. The court denied that motion as well, and Barnes filed a notice of appeal nine days later... AFFIRMED.

Janet Riley v. Elkhart Community Schools No. 15-3166

Argued April 11, 2016 — Decided July 22, 2016

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 3:12-cv-00564-CAN—**Christopher A. Nuechterlein, Magistrate Judge.**

Before BAUER and WILLIAMS, *Circuit Judges*, and ADELMAN, *District Judge*.

BAUER, *Circuit Judge*. Plaintiff-appellant, Janet Riley, sued defendant-appellee, Elkhart Community Schools ("ECS"), for discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"), discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621 ("ADEA"), and violation of her equal rights under 42 U.S.C. § 1981. Riley roots her causes of action in ECS's failure to promote her to various positions during her career as a teacher with the school district. The district court granted summary judgment for ECS on all claims, based on procedural bars and insufficient evidence. We affirm.

Mustafa-El Ajala v. Craig Tom No. 15-3101

Submitted May 13, 2016 — Decided July 22, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 13-cv-102 — **Barbara B. Crabb, Judge.**

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Mustafa-El Ajala, a Wisconsin prisoner, alleges in this lawsuit under 42 U.S.C. § 1983 that two correctional officers violated the Eighth Amendment by refusing to loosen painfully tight handcuffs for

several hours, causing lasting damage and pain. The district court granted summary judgment for the Defendants on the ground of qualified immunity. We vacate and remand for further proceedings.

USA v. Christopher Eberts No. 15-2596

Argued June 8, 2016 — Decided July 22, 2016

Case Type: Criminal

Central District of Illinois. No. 13-10070-001 — **Joe Billy McDade**, *Judge*.

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

PER CURIAM. Christopher Eberts, a Canadian citizen and U.S. permanent resident, is a film producer whose notable credits include *Lord of War*(2005) and *Lucky Number Slevin*(2006). But after producing a string of failed movies, in 2009 he filed for bankruptcy. He also convinced a novice author from Illinois to wire him over \$600,000 so that Eberts could adapt his book into a movie. Eberts instead used that money to buy lavish personal items, and his actions led to criminal charges. He pleaded guilty to seven counts of wire fraud, see 18 U.S.C. § 1343, and three counts of money laundering, see id. § 1957, and he was sentenced to 46 months' imprisonment. He argues that the district court failed to consider the 18 U.S.C. § 3553(a) sentencing factors or Eberts's mitigation arguments and instead based the sentence on unsupported facts. We disagree and affirm the judgment.

USA v. Billy Robinson, Jr. No. 15-2019

Argued January 20, 2016 — Decided July 22, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 14-cr-150 — **Rudolph T. Randa**, *Judge*.

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

WOOD, *Chief Judge*. Billy Robinson's guilty plea was routine; his sentencing hearing was not. Robinson pleaded guilty to two counts of traveling in interstate commerce to facilitate heroin distribution, in violation of 18 U.S.C. § 1952(a)(3). During his sentencing hearing, the district court went far afield in its comments. We are left without the ability to say confidently that the sentence was imposed in accordance with the proper procedures. We therefore vacate Robinson's sentence and remand for resentencing.

Pierre James v. Kevin Cartwright No. 15-1627

Submitted July 22, 2016 — Decided July 22, 2016

Case Type: Prisoner

Southern District of Illinois. No. 11-1083-SCW — **Stephen C. Williams**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Pierre James, an Illinois prisoner, sued a number of Department of Corrections employees under 42 U.S.C. § 1983. At screening, see 28 U.S.C. § 1915A, the district court dismissed all but a single claim that seven members of a tactical team at Menard Correctional Center used excessive force in removing James from his cell. Those defendants prevailed at trial. James appeals on a number of grounds relating to the screening of his complaint, the handling of discovery, and the jury charge. We reject his contentions and affirm the judgment.

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](#).

