

Opinions for the week of July 6 – July 10, 2020

City of Chicago v. Kiera Cherry, Lucinda E. Davis, Nos. 19-1534 & 19-1558

Submitted May 11, 2020 — Decided July 6, 2020

Bankruptcy from Bankruptcy Court

Northern District of Illinois, Eastern Division. Nos. 18 B 25113 & 33492 — **A. Benjamin Goldgar**, *Chief Bankruptcy Judge*.

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

EASTERBROOK, *Circuit Judge*. This is the third—and we hope final—decision in a series arising from the efforts of debtors in Chapter 13 bankruptcy proceedings to avoid or defer paying parking and other vehicular fines. The first decision, *In re Steenes*, 918 F.3d 554 (7th Cir. 2019) (*Steenes I*), interprets 11 U.S.C. §1327(b), which provides: Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor. The Bankruptcy Court for the Northern District of Illinois adopted a form confirmation order for Chapter 13 plans that retained all property in the estate, notwithstanding this statutory presumption. Because fines for parking and other vehicular offenses in Chicago are assessed against the car's owner, keeping cars in the estates meant that the automatic stay of 11 U.S.C. §362 prevented the City from using collection devices such as towing or booting. More: because the plans did not list fines as payable debts, the confirmation orders overrode any obligation to pay them. *Steenes I* holds that this approach conflicts with §1327(b). We recognized that judges have discretion to keep property in an estate but added that “the exercise of all judicial discretion requires a good reason.” 918 F.3d at 557. Debtors may need cars but also must pay the cost of their maintenance— insurance, repairs, gasoline, and parking, among other things. Using the bankruptcy process to enable debtors to operate cars while avoiding the costs that others must pay is not appropriate... A bankruptcy court may confirm a plan that holds property in the estate only after finding good case-specific reasons for that action. Because the bankruptcy court approved these plans without finding that such reasons exist, its orders are REVERSED.

Gregory Williams v. Leonta Jackson No. 18-2631

Argued April 8, 2020 — Decided July 6, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 1:14-cv-7407 — **John Z. Lee**, *Judge*.

Before RIPPLE, BRENNAN, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Gregory Williams appeals the denial of his application for federal habeas corpus relief following convictions in Illinois state court in two separate cases for raping two women— offenses that resulted in sentences totaling 66 years' imprisonment. Williams contends that his defense attorney violated his Sixth Amendment right to the effective assistance of counsel by not only advising him to reject a 41-year plea offer, but also failing to inform him of his maximum sentencing exposure if he proceeded to trial in both cases and lost. An Illinois court rejected these claims, concluding that Williams failed to provide any information pertinent to one of the two cases that gave rise to the 41-year plea offer. Without knowing anything about that case, the Illinois court reasoned, there was no way to assess defense counsel's performance and thus no way to conclude that Williams received ineffective assistance. Finding the Illinois court's conclusion reasonable, the district court denied federal habeas relief. We affirm.

Joseph Wilborn v. Alex Jones No. 18-1507

Argued December 2, 2019 — Decided JULY 6, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 14 C 05469 — **John Robert Blakey**, *Judge*.

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

BAUER, *Circuit Judge*. An Illinois jury convicted Joseph Wilborn for the murder of a rival gang member in Chicago. In opening statements, Wilborn's defense attorney told the jury it would hear from his codefendant, Cedrick Jenkins, identifying him as the actual shooter. During the trial, Jenkins indicated his testimony would no longer be favorable to Wilborn. Defense counsel, with Wilborn's approval, did not call Jenkins to the stand. Wilborn filed for *habeas corpus* relief, alleging ineffective assistance of counsel. The district court denied his petition and he appealed. We consider whether trial counsel performed deficiently and caused cognizable prejudice when he told the jury in opening statements that Wilborn's codefendant would testify but then declined to call Jenkins as a witness. For the following reasons, we affirm.

Deborah Walton v. First Merchants Bank Nos. 19-3370 and 20-1206

Submitted June 30, 2020 — Decided July 7, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:17-cv-01888-JMS-MPB — **Jane Magnus-Stinson**, *Chief Judge*.

Before JOEL M. FLAUM, *Circuit Judge* MICHAEL S. KANNE, *Circuit Judge* AMY C. BARRETT, *Circuit Judge*

ORDER

Deborah Walton sued her bank for violating the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the implementing regulation of the Electronic Funds Transfer Act (Regulation E, 12 C.F.R. § 205.7). She alleged that the bank robocalled her hundreds of times and charged overdraft fees without her consent. Walton demanded a jury trial, but after some claims survived summary judgment, the district court accepted the bank's argument that Walton had contractually waived the right to a jury trial. After a bench trial, the court found for the bank and awarded it attorney's fees because, the court found, Walton pursued a Regulation E claim in bad faith. See 15 U.S.C. § 1693m(f). Walton appeals, contending that she was entitled to a jury trial and challenging the fee award. Because the bank waived its right to invoke the contractual waiver, we vacate the judgment as to the TCPA claim, but we affirm in all other respects.

USA v. Rashad Robinson No. 19-2441

Argued February 26, 2020 — Decided July 7, 2020

Case Type: Criminal

Southern District of Indiana, Evansville Division. No. 3:16-cr-00040-RLY-CMM-1 — **Richard L. Young**, *Judge*.

Before ROVNER, WOOD and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge*. Rashad Rae Robinson pled guilty to a conspiracy to distribute methamphetamine after he was caught in a controlled buy. The only question we face in this appeal is, "In his plea, how much methamphetamine did he admit to selling?" And, of course, this question is only relevant because Robinson contends his prison sentence is too long. Robinson claims on appeal that although the government indicted him for a participating in a conspiracy involving 500 grams or more of methamphetamine, he only pled guilty to a conspiracy involving a lesser or unspecified amount. The facts indicate otherwise and we affirm the district court's holding.

Anthony Lee v. Heath Parshall No. 19-2381

Argued January 14, 2020 — Decided July 7, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 3:16-cv-00524-wmc — **William M. Conley**, *Judge*.

Before ILANA DIAMOND ROVNER, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

The plaintiff Anthony M. Lee filed a suit under 42 U.S.C. § 1983, alleging that the defendant Heath Parshall, a police officer for the City of LaCrosse, used excessive force during Lee's arrest in violation of Lee's constitutional rights. After a trial, the jury found in favor of Parshall, and Lee now appeals. Lee raises two challenges regarding the trial. First, he argues that the district court's conduct of the voir dire was constitutionally deficient. In addition, he argues that the district court erred in refusing to allow testimony as to a subsequent excessive force claim against Parshall, which occurred a year after Parshall's interaction with Lee. With respect to the voir dire, Lee challenges the questioning of the jurors as to issues of race, police and crime. Those issues were significant in the jury selection process because the claim of excessive force arose in the context of an arrest of Lee, an African-American, by Parshall, a white police officer. Lee challenges the district court's decision to conduct the questioning of the jurors during the voir dire, rather than allow the attorneys themselves to question the jurors. In addition, Lee argues that the court failed to adequately explore the potential jurors' implicit biases... Lee merely states in a conclusory manner that the evidence is probative to show that Parshall had motive, opportunity, intent, knowledge and absence of mistake. Such "perfunctory and undeveloped arguments do not preserve a claim for our appellate review." *Ewell v. Toney*, 853 F.3d 911, 918 (7th Cir. 2017). Accordingly, the decision of the district court is AFFIRMED.

Monwell Douglas v. Faith Reeves No. 18-2588

Argued May 13, 2020 — Decided July 7, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:16-cv-00368-JMS-DLP — **Jane Magnus-Stinson**, *Chief Judge*.

Before FLAUM, HAMILTON, and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. In this suit under 42 U.S.C. § 1983, plaintiff Monwell Douglas, an Indiana prisoner, claims that defendant Faith Reeves, his casework manager, retaliated against him for activity protected by the First Amendment. Douglas asserts that after he successfully appealed a prison disciplinary sanction, Reeves punished him for taking the appeal by refusing to restore benefits he had lost as a result of discipline. The district court granted summary judgment to Reeves. We affirm because no reasonable jury could conclude that Reeves inflicted deprivations on Douglas likely to deter a person of ordinary firmness from engaging in First Amendment activity.

William Morgan, et al. v. Jesse White No. 20-1801

Submitted July 6, 2020 — Decided July 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 20 C 2189 — **Rebecca R. Pallmeyer**, *Chief Judge*.

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

PER CURIAM. Illinois permits voters to place initiatives and referenda on both local and statewide ballots, but it also requires proponents to collect enough signatures to show that each proposal is likely to have a decent amount of support. The state allows 18 months for proponents to collect signatures. This year that period ended for the State of Illinois on May 3, 2020, and will end for the City of Evanston on August 3. Seven plaintiffs filed this suit under 42 U.S.C. §1983 contending that the state's requirements are too onerous, and hence unconstitutional, given the social-distancing requirements adopted by the Governor of Illinois in light of the COVID-19 pandemic. A district judge expressed skepticism that any of the plaintiffs has standing but found it unnecessary to resolve that question because she denied relief on other grounds. 2020 U.S. Dist. LEXIS 86618 (N.D. Ill. May 18, 2020). Plaintiffs have appealed. We expedited the briefing, and all litigants have agreed to waive oral argument to facilitate a faster

decision... The order denying the motion for a preliminary injunction is affirmed. The plaintiffs remain free to contend to the district court that a permanent injunction would be justified if social-distancing rules are indefinitely extended, but that long-term question does not require immediate resolution.

Myron Kykta v. Jeff Ciaccio No. 19-3412

Submitted June 22, 2020 — Decided July 8, 2020

Case Type: Civil

Northern District of Illinois, Western Division. No. 3:13-cv-50325 — **Thomas M. Durkin**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Myron Kykta asks us to overturn a jury's verdict in favor of two sheriff's deputies whom he sued under 42 U.S.C. § 1983 for violating the Fourth Amendment by allegedly stopping and searching his car without adequate justification. Because we are unable to review Mr. Kykta's challenge to the jury's verdict and because his other argument on appeal—that his recruited counsel was ineffective—lacks merit, we affirm.

USA v. Eunice Husband Nos. 19-3247 & 19-3248

Submitted June 22, 2020 — Decided July 8, 2020

Case Type: Criminal

Central District of Illinois. Nos. 3-98-cr-30050-1 & 3-19-cr-30016-1 — **Sue E. Myerscough**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Months after he was released from prison, the government charged that Eunice Husband committed a battery. The government sought revocation of his terms of supervised release. After continuances delayed the revocation hearings, the district court found that Husband had violated his terms of release, revoked his release, and resentenced him. Husband challenges both the revocation order and new sentences. We affirm. The continuances were harmless, the finding of a violation justified, and the sentences reasonable.

C.Y. Wholesale, Inc. v. Eric Holcomb No. 19-3034

Argued April 14, 2020 — Decided July 8, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-02659 — **Sarah Evans Barker**, *Judge*.

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

WOOD, *Circuit Judge*. A group of Indiana-based hemp sellers and wholesalers sued the State of Indiana and its governor, seeking to enjoin the enforcement of the state's criminal prohibition on the manufacture, delivery, or possession of smokable hemp. Ind. Code § 35-48-3-10.1. The plaintiffs (collectively "C.Y. Wholesale") argue that Indiana's law is preempted by the Agriculture Improvement Act of 2018 and barred by the Commerce Clause of the Constitution. The district court issued the requested injunction, and Indiana has appealed. We conclude that although C.Y. Wholesale may have been entitled to block certain aspects of Indiana's law, the injunction before us sweeps too broadly. We therefore vacate it and remand to the district court for further proceedings.

USA v. Kordell Payne No. 19-2384

Submitted June 9, 2020 — Decided July 8, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 2018-CR-172-PP — **Pamela Pepper**, *Chief Judge*.

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

BRENNAN, *Circuit Judge*. A defendant pleaded guilty to the crime of felon in possession of a firearm. The law now requires that the defendant's knowledge of his felon status be reviewed as part of such a plea, which was not done. We consider whether, but for that clear and obvious error, there is a reasonable probability the defendant would not have entered a guilty plea. Such a probability exists when, given the entire record, a jury might believe the defendant was plausibly ignorant of his status as a felon.

Karl Harris v. YRC Worldwide Inc. Nos. 19-1721 & 19-3255

Submitted July 1, 2020 — Decided July 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. Nos. 14 C 1500 & 14 C 8758 — **Susan E. Cox**, *Magistrate Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

Order

Eddie Williams, Jr.; Karl Harris; Thomas Jackson; and Derrick Rias are four of the many plaintiffs in this employment-discrimination litigation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-16. A magistrate judge, serving by consent under 28 U.S.C. §636(c), granted summary judgment to the employer, *McDade v. YRC Worldwide, Inc.*, 2017 U.S. Dist. LEXIS 147813 (N.D. Ill. Sept. 13, 2017), and these four plaintiffs appealed without waiting for the final resolution of the claims by all other plaintiffs. The oral argument of that appeal in February 2018 covered the merits, but we dismissed it for want of appellate jurisdiction. *Williams v. YRC Worldwide, Inc.*, No. 17-3122 (7th Cir. Feb. 22, 2018). The other plaintiffs' claims were finally resolved, and these four took a second appeal (No. 19-1721). Once the district court entered a final judgment, they appealed for a third time (No. 19-3255). Because we have heard oral argument on the merits, a second argument is unnecessary, and we resolve these follow-up appeals on the briefs and record... The magistrate judge's thorough opinion explores appellants' claims in more detail. We substantially agree with that analysis, which is consistent with what we have said above. AFFIRMED

USA v. Jesus Malagon No. 18-3200

Argued November 8, 2019 — Decided July 9, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 17 CR 326 — **Elaine E. Bucklo**, *Judge*.

Before SYKES, *Chief Judge*, and RIPPLE and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. A jury convicted Jesus Malagon of conspiracy with intent to distribute cocaine and possession of cocaine with intent to distribute, 21 U.S.C. §§ 846, 841(a)(1). The district court imposed a below-Guidelines sentence of 60 months' imprisonment, which reflected the statutory minimum. Malagon now appeals the conviction, arguing that the district court improperly admitted testimony, which tainted the conviction. He asserts that absent the improperly admitted testimony, there was insufficient evidence to support the conviction... We note that, even if Malagon had succeeded in establishing plain error, any such error would be harmless. The challenged testimony addressed whether Malagon was referring to cocaine in his discussions, but any possible ambiguity as to whether the words referred to a narcotics deal was set to rest when Malagon brought Amador and the informant into the garage to reveal the two kilograms of cocaine and referred to it as the promised delivery. The decision of the district court is AFFIRMED.

Daniel Lewis Lee v. T. J. Watson No. 20-2128

Submitted July 9, 2020 — Decided July 10, 2020

Case Type: Prison

Southern District of Indiana, Terre Haute Division. No. 2:19-CV-00468-JPH-DLP — **James Patrick Hanlon**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and BARRETT, *Circuit Judges*.

SYKES, *Chief Judge*. Daniel Lewis Lee and his codefendant, Chevy Kehoe, were members of the Aryan Peoples' Republic (a/k/a Aryan Peoples' Resistance), a white supremacist organization founded for the purpose of establishing an independent nation of white supremacists in the Pacific Northwest. In January 1996 Lee and Kehoe traveled from the State of Washington to the Arkansas home of William Mueller, a firearms dealer who owned a large collection of guns and ammunition. There they overpowered Mueller and his wife, Nancy, and questioned their eight-year-old daughter Sarah about the location of Mueller's guns, ammunition, and cash. After stealing about \$30,000 worth of weapons and \$50,000 in cash and coins, Lee and Kehoe shot all three victims with a stun gun, placed plastic bags over their heads, and sealed the bags with duct tape to asphyxiate them. They then taped rocks to the three victims and threw them into the Illinois Bayou. The bodies were discovered six months later in Lake Darnelle near Russellville, Arkansas. *United States v. Lee*, 374 F.3d 637, 642 (8th Cir. 2004). Lee and Kehoe were indicted in federal court in the Eastern District of Arkansas on three counts of capital murder in aid of racketeering, 18 U.S.C. § 1959(a)(1), and related crimes... In sum, it follows directly from *Purkey* and our earlier decision in this case that Lee's § 2241 petition was properly denied. We therefore affirm the judgment of the district court. We also deny Lee's motion for a stay of execution, filed today, which relies on the same now-rejected merits arguments. Judgment AFFIRMED; stay motion DENIED.

Cathay Industries USA, Inc. v. William Bellah No. 19-3535

Argued June 9, 2020 — Decided July 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16 C 2070 — **Maria G. Valdez**, *Magistrate Judge*.

Before DIANE S. SYKES, *Chief Judge* MICHAEL S. KANNE, *Circuit Judge* MICHAEL B. BRENNAN, *Circuit Judge*

ORDER

Invoking federal diversity jurisdiction, Cathay Industries USA, Inc., sued William J. Bellah for breach of contract based on his failure to pay on a \$1.5 million promissory note. Bellah signed the note as part of a merger of companies; when those companies later split up, Bellah contends, Cathay USA released his debt under the note. The district court ruled in favor of Bellah based on extrinsic evidence that the parties intended for Bellah's debt to end when the companies split up. Because the district court properly admitted extrinsic evidence and made no clear error in finding that Cathay USA released Bellah when the merged companies split, we affirm.

Earlene Branch Peterson v. William P. Barr No. 20-2252

Submitted July 11, 2020 — Decided July 12, 2020

Case Type: Civil

Southern District of Indiana, Terre Haute Division. No. 2:20-cv-00350-JMS-DLP — **Jane Magnus-Stinson**, *Chief Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and BARRETT, *Circuit Judges*.

SYKES, *Chief Judge*. In 1996 Daniel Lewis Lee murdered an Arkansas family of three in pursuit of funds to support the racketeering activities of a white supremacist organization. The crimes were particularly

heinous. Lee and his codefendant were members of the Aryan Peoples' Republic, a white supremacist group that sought to establish an independent nation in the Pacific Northwest. In January 1996 they traveled from the State of Washington to the Arkansas home of firearms dealer William Mueller; his wife, Nancy; and their eight-year-old daughter Sarah. After stealing a cache of weapons and a large amount of cash and coins, they shot the three victims with a stun gun, duct taped plastic bags over their heads to asphyxiate them, weighed their bodies down with rocks, and threw them in a bayou. The bodies washed up in an Arkansas lake about six months later. In 1999 a federal jury in the Eastern District of Arkansas convicted Lee of three counts of capital murder in aid of racketeering, 18 U.S.C. § 1959(a)(1), and sentenced him to death. Now more than two decades later, Lee has exhausted all appeals, including multiple rounds of postconviction review, and is scheduled to be executed on Monday, July 13, 2020, at the United States Penitentiary in Terre Haute, Indiana. The execution was originally scheduled to take place on December 9, 2019, but was enjoined by two district judges, one in the Southern District of Indiana (where the prison is located) in connection with Lee's petition for habeas corpus under 28 U.S.C. § 2241, and another in the District of Columbia who was hearing a challenge to the federal execution protocol brought by Lee and other death-row inmates at the Terre Haute prison. We described this litigation history in our opinion two days ago affirming the Indiana judge's final order denying § 2241 relief. *Lee v. Watson*, No. 20-2128, slip op. at 3–6 (7th Cir. July 10, 2020). For present purposes, it's enough to say that on December 6, 2019, we vacated the stay in the § 2241 habeas proceeding, *Lee v. Watson*, No. 19-3399, 2019 WL 6718924 (7th Cir. Dec. 6,

2019), and the Court of Appeals for the District of Columbia Circuit vacated the injunction in the execution-protocol case on April 7, 2020, *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F.3d 106 (D.C. Cir. 2020). The Bureau of Prisons ("BOP") thereafter rescheduled Lee's execution for July 13, 2020, at 4 p.m. EDT... Nothing in any of the separate opinions in *Execution Protocol Cases* supports the judge's conclusion that § 3596(a) incorporates the Arkansas Code provision governing execution witnesses. To the contrary, the debate among the D.C. Circuit judges was limited to state laws, regulations, and protocols governing *procedures for effectuating death*. Indeed, even the dissenting judge accepted that § 3596(a) does not require the BOP to follow "every nuance" of state execution procedure, but rather only "those procedures that effectuate the death, including choice of lethal substances, dosages, vein-access procedures, and medical-personnel requirements." *Id.* at 151 (alteration and citations omitted). Section 3596(a) cannot be reasonably read to incorporate every aspect of the forum state's law regarding execution procedure. We do not understand the word "manner" as used in § 3596(a) to refer to details such as witnesses. The word concerns how the sentence is carried out, not who watches. In short, section 16-90-502(e)(1) of the Arkansas Code, the provision governing execution witnesses, is irrelevant here. The judge was wrong to insert it into this case. INJUNCTION VACATED

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](#).