

Opinions for the week of June 27 - July 1, 2016

Antoine Hill v. USA No. 16-1253

Submitted February 8, 2016; Initial Decision February 29, 2016; On Reconsideration — June 27, 2016

Case Type: Original Proceeding

Northern District of Illinois, Eastern Division, Entertain a Second or Successive Motion for Collateral Review.

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

POSNER, *Circuit Judge*. In 2003 Antoine Hill was convicted in a federal district court of several drug offenses, see 21 U.S.C. §§ 843(b), 846, and sentenced as a career offender, initially to 360 months, which was within his guidelines range of 360 months to life. But his sentence was reduced to 226 months when the sentencing guidelines were held in *United States v. Booker*, 543 U.S. 220 (2005), not to be mandatory. See also *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005). Hill had the status of career offender because of two earlier convictions, both under Illinois law. One was attempted murder (which took the form of shooting at a car and wounding two of its occupants), in violation of what is now 720 ILCS 5/8-4(a) (“a person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense”). The other offense was aggravated discharge of a firearm (on that occasion he had shot at a person rather than a car), in violation of 720 ILCS 5/24- 1.2(a) (“a person commits aggravated discharge of a firearm when he or she knowingly or intentionally discharges a firearm ... in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person”). Both offenses were “crimes of violence” within the meaning of the federal Sentencing Guidelines, which in U.S.S.G. § 4B1.2(a)(1) define a crime of violence as “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that has as an element the use, attempted use, or threatened use of physical force against the person of another”—an exact description of the two offenses that Hill had committed with a firearm. The offenses marked him as a career offender, see U.S.S.G. § 4B1.1(a)(3), raising the top of his guidelines sentencing range and thereby providing an additional ground for a long sentence... Application note 1 to U.S.S.G. § 4B1.2(a)(1) says that a “crime of violence” include[s] the offenses of aiding and abetting, conspiring, and attempting to commit such” crimes, and Illinois law makes the sentencing range for attempt depend on the crime that was attempted (not necessarily committed), 720 ILCS 5/8-4(c), which in this case was murder and so subjected Hill to punishment for murder even though his attempt to commit it failed. The district judge who sentenced Hill, and we the judges of the appellate panel, therefore know with certainty that Hill committed two crimes of violence and that his sentence—amplified by those crimes—for the federal drug offenses of which he was convicted was light, considering the circumstances: it was 11 years below the bottom of the applicable guidelines range (360 months). Because his sentence is proper, to extend this litigation (which began in 2002) to enable him to make a futile plea of mercy in the district court wouldn’t make sense. Our February 29 denial of permission to Hill to file another collateral attack on his sentence shall therefore stand.

Lonzo Stanley v. USA No. 15-3728

Submitted May 31, 2016 — Decided June 1, 2016 — Opinion Issued June 27, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 15-cv-222-bbc — **Barbara B. Crabb**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. More than a decade ago Lonzo Stanley was sentenced to 200 months’ imprisonment after he pleaded guilty to distributing crack cocaine. His sentence depended in part on the district court’s conclusion that he is a career offender under U.S.S.G. §4B1.1, which calls for extra time in prison if the defendant has two or more prior convictions for serious drug crimes or violent felonies. The court counted three qualifying convictions: one for a controlled-substance offense, another for unlawfully possessing a firearm, and a third for aggravated battery. Stanley did not appeal from his sentence or file a collateral attack under 28 U.S.C. §2255 within the year allowed by §2255(f). After the Supreme Court decided *Johnson v. United States*, 135 S. Ct. 2551 (2015), Stanley took advantage of the opportunity

created by §2255(f)(3), which allows a fresh year from “the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review”. We held in *Price v. United States*, 795 F.3d 731 (7th Cir. 2015), that the right newly identified in *Johnson* is retroactive, and in *Welch v. United States*, 136 S. Ct. 1257 (2016), the Supreme Court agreed. But the district judge concluded that *Johnson* does not affect Stanley’s sentence and denied his petition for collateral review... Stanley’s argument fails on the merits in addition to being untimely. Illinois charged Stanley with a violent battery that satisfies the elements clause. See 720 ILCS 5/12-3(a)(1). It is always possible that someone charged with a violent felony may plead guilty to a lesser offense, but a court does not assume this. It must be shown. As the proponent of collateral review, Stanley had to produce evidence demonstrating entitlement to relief... For Stanley that meant showing a difference between the charge and the conviction. A notation in the judgment of conviction might do this. Judicial findings, or stipulations during a plea colloquy, also might suffice. But Stanley did not produce any of this potentially relevant evidence. When a statute is divisible, “a silent record leaves up in the air whether an error has occurred, and the allocation to defendant of the burdens of production and persuasion makes a difference.”... The absence of any evidence to undermine the indictment’s description of a violent felony means that Stanley would have lost, even had he raised this contention on direct appeal or by a timely motion under §2255. His sentence is lawful. AFFIRMED

Nationwide Advantage Mortgage v. GSF Mortgage Corporation No. 15-3361

Argued May 27, 2016 — Decided June 27, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 2:13-cv-01420-LA — **Lynn Adelman**, *Judge*.

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

POSNER, *Circuit Judge*. Nationwide Advantage Mortgage Company (we’ll call it NAMC for short) of Des Moines, Iowa, a subsidiary of Nationwide Mutual Insurance Company (itself affiliated with other insurance companies, many also called Nationwide), buys, services, and sells residential mortgages. GSF Mortgage Corporation is a residential-mortgage lender that also sells mortgages; its headquarters are in Wisconsin. (The different states of the parties will figure in our analysis.) NAMC filed this diversity suit against GSF in a federal district court in Wisconsin, charging breach of contract, breach of fiduciary duty, fraud, and unjust enrichment. The district judge granted summary judgment in favor of GSF on all of NAMC’s claims, and so entered final judgment for GSF, precipitating this appeal... NAMC fires a scattershot of other arguments, all as weak as or even weaker than the ones we’ve discussed, such as that GSF was its agent and so had a fiduciary duty of care to NAMC as principal—the Correspondent Lender Purchase Agreement is explicit that the two companies are independent contractors. Enough said. The judgment of the district court is AFFIRMED.

James Baptist v. Ford Motor Company No. 15-2913

Argued April 26, 2016 — Decided June 27, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 8974 — **Virginia M. Kendall**, *Judge*.

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

SYKES, *Circuit Judge*. James Baptist, a former forklift operator at Ford Motor Company, sued Ford after he was fired—in his view—in retaliation for exercising his workers’ compensation rights. The district court granted Ford’s motion for summary judgment. Baptist contends that summary judgment should not have been granted because the district court drew improper inferences. Because there is a genuine issue of material fact about Ford’s motivation for his discharge, we vacate the grant of summary judgment and remand for further proceedings.

Robert Martin v. USA No. 15-2601

Submitted June 23, 2016 — Decided June 27, 2016

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:13-cv-59-WTL-MJD — **William T. Lawrence, Judge.**

Before FRANK H. EASTERBROOK, *Circuit Judge*;ILANA DIAMOND ROVNER, *Circuit Judge*;DIANE S. SYKES, *Circuit Judge*.

ORDER

Robert Martin, a federal inmate, brought this action under the Federal Tort Claims Act... Martin contends that medical personnel—the clinical director at the prison in Terre Haute, the prison's health-services administrator, and the assistant health-services administrator—rendered deficient treatment by failing to supervise an outside cardiologist who implanted Martin's defibrillator and by inadequately treating his other heart and gastrointestinal problems. The district court entered summary judgment for the defendants. The court concluded (1) that Martin could not prevail under the FTCA because he lacked evidence that the medical treatment he had received fell below the applicable standard of care and (2) that his *Bivens* claims were barred because they stemmed from the same subject matter as his failed FTCA claims. These conclusions are correct, so we affirm the district court's judgment.

USA v. Dante Graf No. 15-2260

Argued December 9, 2015 — Decided June 27, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 13-CR-54 — **Rudolph T. Randa, Judge.**

Before EASTERBROOK and HAMILTON, *Circuit Judges*,and PALLMEYER, *District Judge*.

HAMILTON, *Circuit Judge*. Secret Service agents observed Dante Graf twice sell counterfeit U.S. currency to an informant. Under a plea agreement, Graf pled guilty to one charge of dealing in counterfeit currency in violation of 18 U.S.C. § 473. The district court accepted Graf's plea agreement following a thorough colloquy under Federal Rule of Criminal Procedure 11. Graf later failed to appear for a bond revocation hearing and managed to avoid law enforcement for several months. After his eventual discovery and re-arrest, Graf's newly-assigned lawyer told him about the possibility of filing a motion to compel the government to disclose the identity of the confidential informant. Graf moved to withdraw his guilty plea so he could file such a motion. The district court denied the motion and then sentenced Graf to 63 months in prison. The only issue on appeal is whether the district court abused its discretion in finding that Graf had not shown a "fair and just reason" for withdrawing his plea within the meaning of Federal Rule of Criminal Procedure 11(d)(2)(B)... It did not, so we affirm.

Panther Brands, LLC v. Indy Racing League, LLC No. 15-1818

Argued November 3, 2015 — Decided June 27, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-00472-TWP-TAB — **Tanya Walton Pratt, Judge.**

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

WOOD, *Chief Judge*. This case arises from the world of auto racing and the sponsorships that go along with it, but it is in the wrong court. Panther Brands is a marketing and brand management company. In 2013, Panther signed a contract with IndyCar, which authorizes the Indy Racing League car series, to purchase various marketing benefits to provide to its team sponsor. The benefits included access to coveted space in the "Fan Village" at IndyCar racing events, an area where sponsors set up displays to attract fans. The Army National Guard ("the Guard") had been Panther's team sponsor from 2008 to 2013. After it signed the 2013 contract, Panther learned that another team, Rahal Letterman Lanigan

Racing (“RLL Racing”), intended to provide the Guard with Fan Village space as a sponsorship benefit. Believing that RLL Racing had conspired with IndyCar and a bid management agency called Docupak to persuade the Guard to sponsor RLL Racing instead of Panther, Panther brought suit in state court against RLL Racing, Docupak, IndyCar, and active-duty Guard member John Metzler, who acted as the liaison between the Guard and Panther. The defendants removed the case to federal court, where the United States was substituted as a party for Metzler, see 28 U.S.C. § 2679(d); Panther then filed an amended complaint that did not name either Metzler or the United States. The district court dismissed the complaint against RLL Racing, IndyCar, and Docupak pursuant to Federal Rule of Civil Procedure 12(b)(6), and found the United States’s motion to dismiss for lack of jurisdiction moot. Because the basis for federal jurisdiction disappeared when Panther amended its complaint, we vacate the district court’s decision and remand for dismissal for lack of jurisdiction.

Kenneth Ogurek v. Jeffrey Gabor No. 15-1151

Submitted June 15, 2016 — Decided June 27, 2016

Case Type: Prisoner

Central District of Illinois. No. 1:13-CV-01423-JES-TSH — **James E. Shadid**, *Chief Judge*.

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

POSNER, *Circuit Judge*. The plaintiff, Kenneth Ogurek, a prisoner in Illinois’s Pontiac Correctional Center, seeks damages under 42 U.S.C. § 1983 from Jeffrey Gabor, one of the prison’s security investigators, who the plaintiff claims violated the First Amendment by charging him with a disciplinary infraction in retaliation for Ogurek’s having complained about Gabor to the warden. The district judge granted summary judgment in favor of the defendant on the ground that Ogurek had presented no evidence contradicting Gabor’s denial that his charging Ogurek with an infraction was motivated by Ogurek’s complaint to the warden. In a fight with another inmate Ogurek had received cuts requiring stitches, and he was charged (not by Gabor) with a disciplinary infraction. He says he told Gabor that he wanted to charge the inmate, who he said had started the fight, with assault; also that items of personal property had been stolen from his cell while he was in segregation, where he’d been placed after the fight. He wanted Gabor to investigate both the fight and the theft, and when ten days elapsed with no response he complained to the warden, who forwarded the complaint to Gabor—who according to Ogurek berated him for complaining to the warden and told him that after watching a security video of Ogurek’s fight with the other inmate he had determined that Ogurek *had* started it. When Ogurek denied this, Gabor filed a disciplinary report against him for impeding an investigation, which led to an administrative proceeding that resulted in Ogurek’s remaining in segregation for six months. But an administrative appeal of Gabor’s report resulted in its being expunged, on the ground that Gabor had both violated the procedure for issuing disciplinary, see 20 Ill. Admin. Code § 504.30, and failed to substantiate his charge against Ogurek. This suit followed... Yet the line of decisions criticized in *Herron* includes two earlier decisions of this court that are in tension with, yet are not cited in, that case. One is *Watkins v. Kasper*, 599 F.3d 791, 795 (7th Cir. 2010) (“the dynamics of the government’s relationships with prisoner-employees and with public employees are too dissimilar to transfer the public concern test to the prison context”); the other is *Bridges v. Gilbert*, 557 F.3d 541, 551 (7th Cir. 2009) (“we conclude that a prisoner’s speech can be protected even when it does not involve a matter of public concern”). No matter; an inmate’s complaint of being assaulted and injured by another inmate and then framed by a guard to prevent the victim from obtaining any redress is not a “personal gripe”; it is therefore a violation of the Constitution under *Herron*’s rule and *a fortiori* under that of *Watkins* and *Bridges*, as well as of similar cases in other circuits cited in *Bridges*, *supra*, 557 F.3d at 551–52. The grant of summary judgment in the defendant’s favor was thus premature, and so we reverse the judgment dismissing the suit and remand the case to the district court for further proceedings consistent with this opinion. REVERSED AND REMANDED

USA v. Leo Stoller No. 14-3587

Argued December 7, 2015 — Decided June 27, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 10 CR 1052 — **Virginia M. Kendall**, *Judge*.
Before FLAUM, WILLIAMS, and SYKES, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Leo Stoller filed for bankruptcy. In that proceeding, he was asked to list all property that he controlled but did not own. He answered “none,” even though he controlled a trust that owned property. He was convicted—after a guilty plea—of bankruptcy fraud, and he was sentenced to 20 months’ imprisonment. On appeal, he attacks the validity of his guilty plea on several grounds. But because he was competent to plead guilty, his plea was not coerced, and the plea colloquy included most of the basics (and Stoller was not prejudiced by any deficiency), we reject his arguments and affirm.

Venita Miller v. GreenLeaf Orthopedic Associate No. 14-1687

Argued September 22, 2015 — Decided June 27, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 10-cv-5867 — **James B. Zagel**, *Judge*.
Before FLAUM, WILLIAMS, and HAMILTON, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. A growth was discovered on Venita Miller’s pancreas and she was told that cancer could not be ruled out without further testing. She told her supervisor, Linda Miller. (From here, we’ll use their first names to avoid confusion.) One week later, Linda fired Venita. Venita sued, claiming she was fired because Linda thought she had a disability. A jury disagreed. Venita asks this court to order a new trial, arguing the trial judge abused his discretion by excluding important evidence, and that abuse of discretion prejudiced Venita at trial. We find that, for the most part, the judge did not abuse his discretion. In one instance, the judge may have erred, but he corrected his mistake and Venita has not shown she was prejudiced. So we affirm the judgment.

USA v. Jonathon Sainz No. 13-3585

Argued May 20, 2015 — Decided June 27, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 11 CR 707 — **Samuel Der-Yeghiayan**, *Judge*.
Before BAUER, FLAUM, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendant Jonathon M. Sainz appeals from his sentence for transporting and possessing child pornography. Sainz presents two arguments on appeal. First, he argues that the district court ordered him to pay too much restitution to one victim of his possession crime. Second, he argues that the district court erred by imposing three special conditions of supervised release. We affirm the restitution order, but we order a limited remand to correct some issues of vagueness and overbreadth in the conditions of supervised release.

Chun Sui Yuan v. Loretta E. Lynch No. 15-2834

Argued April 26, 2016 — Decided June 28, 2016

Case Type: Agency

Board of Immigration Appeals. No. A099-525-213

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

KANNE, *Circuit Judge*. Chun Sui Yuan, a 36-year-old Chinese citizen, applied for asylum and withholding of removal based on his asserted opposition to China’s coercive population-control policy. Central to his eligibility for relief is Yuan’s testimony that employees of a government birth-control agency assaulted him because his girlfriend had failed to attend a medical examination. An immigration judge disbelieved much of Yuan’s story, reasoning that his testimony wasn’t credible and also lacked corroboration. The Board of Immigration Appeals, in its own stand-alone decision, endorsed the adverse credibility assessment but

not the Immigration Judge's ("IJ") dissatisfaction with the amount of corroborating evidence. Yuan petitions for review of the Board's decision, arguing that the credibility finding is flawed because several of the perceived inconsistencies are illusory and the actual inconsistencies are either immaterial or trivial. We agree and, thus, remand for further proceedings.

Arlene Simpson v. St. James Hospital No. 15-2679

Argued April 27, 2016 — Decided June 28, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 5857 — **Manish S. Shah**, *Judge*.
Before FLAUM, MANION, and WILLIAMS, *Circuit Judges*.

MANION, *Circuit Judge*. Arlene Simpson, a registered nurse, claimed that she was fired from her job in a surgical unit at Franciscan St. James Health principally because she is over age 40 and African American. The district court granted St. James's motion for summary judgment, reasoning that Simpson had established a prima facie case of discrimination under the indirect method of *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973), but lacked evidence that the defendant's explanation for firing her was pretextual. We conclude, however, that Simpson did not even establish a prima facie case of discrimination, let alone that the proffered explanation was pretextual. We thus affirm the district court's judgment.

Yousef Ismail v. Megan J. Brennan No. 15-2701

Argued April 27, 2016 — Decided June 28, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 11-cv-08812 — **James B. Zagel**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Yousef Ismail, who is of "Middle Eastern descent," appeals the grant of summary judgment for his employer the United States Postal Service in this suit asserting claims under 42 U.S.C. §§ 2000e–2, 2000e–3 for disciplining him because of his race and national origin. Because the district court incorrectly concluded that Ismail had failed to establish a prima facie case of discrimination under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), we vacate the district court's order and remand the case for further proceedings.

Noah Dietchweiler v. Steve Lucas No. 15-1489

Argued November 9, 2015 — Decided June 28, 2016

Case Type: Civil

Central District of Illinois. No. 13 CV 2062 — **Harold A. Baker**, *Judge*.
Before WOOD, *Chief Judge*; ROVNER, *Circuit Judge*; and SHAH, *District Judge*.
Hon. Manish S.
ROVNER, *Circuit Judge*, with whom WOOD, *Chief Judge*, joins, concurring.

PER CURIAM. After he was temporarily suspended from Watseka Community High School for allegedly consuming or possessing drugs, Noah Dietchweiler through his parents Michael¹ and Ann Dietchweiler sued Iroquois County Community Unit School District 9, school administrators Steve Lucas, James Bunting, and Kenneth Lee as well as the entire school board. The Dietchweilers' suit under 42 U.S.C. § 1983 alleged primarily that the defendants violated Noah's due process rights under the Fourteenth Amendment. They also advanced state law claims for intentional infliction of emotional distress, slander, and violations of the Illinois School Code, 105 ILCS 5/10-22.6, which provides procedures for suspending

and expelling students. The district court granted the defendants' motion for summary judgment on the Dietchweilers' due process claim and dismissed the state law claims without prejudice. The Dietchweilers appeal, and we affirm.

USA v. Juan Adame No. 15-1196

Argued April 5, 2016 — Decided June 28, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 192 — **Harry D. Leinenweber**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and WILLIAMS, *Circuit Judges*.

BAUER, *Circuit Judge*. A jury convicted defendant-appellant, Juan Adame, of one count of arson affecting interstate commerce in violation of 18 U.S.C. § 844(i). Adame appeals on two grounds: that there was insufficient evidence to uphold his conviction and that the government introduced inadmissible evidence against him during trial. We find against both arguments and affirm Adame's conviction.

Jack Brown v. Kevin Smith No. 15-1114

Argued September 11, 2015 — Decided June 28, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 12 CV 1712 — **Tanya Walton Pratt**, *Judge*.
Before BAUER, WILLIAMS, and HAMILTON, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. During his lengthy tenure at the City of Anderson Transit System (CATS), Plaintiff Jack Brown developed diabetes and became unable to maintain his commercial driver's license (CDL). For nearly a decade, this development proved irrelevant—at least from an employment standpoint. However, several years after being promoted to a position that required a CDL, Brown was fired. He sued the City of Anderson and others, alleging that his termination amounted to disability discrimination since possession of a CDL was not an essential function of his job. After the City unsuccessfully moved for summary judgment, a jury sided with Brown and awarded him damages. The City raises several arguments on appeal. Principally, it contends that the district court should have ruled as a matter of law that possession of a CDL was an essential job function. Alternatively, the City claims that the district court erred in instructing the jury about the essential-function inquiry, and in concluding that Brown adequately mitigated his damages. We disagree. The essential-function issue is a factual question that was properly put before the jury, and the district court's jury instructions on this issue were consistent with federal regulations and our precedent. We also conclude that Brown reasonably attempted to mitigate his damages by starting his own trailer-hauling business, despite the fact that the business ultimately failed. So we affirm the district court's judgment.

USA v. Saliou Mbaye No. 14-3348

Argued December 7, 2015 — Decided June 28, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 11 CR 800 — **Milton I. Shadur**, *Judge*.
Before FLAUM, WILLIAMS, and SYKES, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Saliou Mbaye was charged with bank fraud and mail fraud. The government alleged that he and three co-defendants ran a mortgage-fraud scheme that "earned" them \$600,000. At trial, Mbaye testified and admitted to his conduct and to the existence of a scheme, but claimed that he lacked the requisite guilty state of mind. He said that he was duped into helping out his co-defendants, who were the only true fraudsters. The jury didn't

believe him, so he was convicted. Mbaye contends on appeal that the evidence of his guilty mind was legally insufficient, but we disagree. The adverse testimony of two of his co-defendants, along with circumstantial evidence that Mbaye was a knowing participant in the scheme, was enough to support his conviction. He also challenges the sentencing judge's finding that he obstructed justice by lying under oath about material facts. But the judge's finding was adequately explained and is supported by the record. Finally, Mbaye argues that his sentence is substantively unreasonable, but again we disagree. We affirm his conviction and sentence.

Joseph Felton v. City of Chicago No. 14-3211

Argued February 16, 2016 — Decided June 28, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 14-cv-6857 — **Milton I. Shadur**, *Judge*.
Before POSNER, WILLIAMS, and HAMILTON, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Joseph Felton sued the City of Chicago and its police superintendent, alleging that police officers used excessive force in arresting him. The district judge consulted newspaper accounts of the arrest and then, without requiring an answer from the defendants, dismissed the suit as frivolous. But the suit was not frivolous and the judge should not have dismissed it by relying on newspaper stories. We reverse.

USA v. Alexis Miranda-Sotolongo No. 14-2753

Argued April 20, 2015 — Decided June 28, 2016

Case Type: Criminal

Central District of Illinois. No. 13-10107-001 — **Joe Billy McDade**, *Judge*.
Before WOOD, *Chief Judge*, HAMILTON, *Circuit Judge*, and DARRAH, *District Judge*.

HAMILTON, *Circuit Judge*. Defendant Alexis Miranda-Sotolongo challenges both his conviction and his sentence for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). First, he argues that the district court erred in denying his motion to suppress the guns used to convict him, contending that the police lacked reasonable suspicion to conduct the traffic stop that led to the discovery of the guns. We affirm the denial of the motion to suppress. The officer based the stop on the fact that the number on the defendant's car's temporary registration tag did not appear in the relevant law enforcement database. That discrepancy gave the officer a reasonable suspicion that the car was either stolen or otherwise not properly registered. Second, the defendant argues that several special conditions of supervised release are too vague and not justified. Although he did not raise these challenges in the district court and the conditions had often been imposed without controversy, recent decisions from this court require us to remand this case for reconsideration of those conditions of supervised release... Accordingly, the district court's denial of the motion to suppress is AFFIRMED, and the challenged conditions of supervised release are VACATED, and the case is REMANDED for reconsideration of those conditions of supervised release.

William Charles Construction v. Teamsters Local Union 627 No. 15-1613

Argued February 19, 2016 — Decided June 29, 2016

Case Type: Civil

Central District of Illinois. No. 14-cv-01306 — **James E. Shadid**, *Chief Judge*.
Before MANION and ROVNER, *Circuit Judges*, and BLAKEY, *District Judge*.

MANION, *Circuit Judge*. William Charles Construction Company, LLC ("William Charles") entered into a labor agreement with the Illinois Department of Transportation ("IDOT") for a construction project to

expand a section of a two-lane highway into four lanes. At the start of construction, a jurisdictional dispute arose between two unions, each claiming the right for their member drivers to operate the large trucks involved in the excavation work. The dispute was eventually resolved by an arbitrator, but a subsequent award by a Joint Grievance Committee (“JGC”) under a subordinate collective bargaining agreement caused another problem. That problem is the main subject of this case. William Charles and Teamsters Local Union 627 (“Teamsters”) dispute the validity of the JGC award. The award determined that William Charles owed the Teamsters back pay and fringe benefit contributions (amounting to approximately \$1.4 million) for having assigned the operation of the heavy trucks to the International Union of Operating Engineers Local 649 (“Engineers”) rather than the Teamsters. The case also involves a second, much smaller, JGC award that determined that William Charles was liable for two days’ back pay for having assigned work to two Teamsters in violation of two other Teamsters’ seniority rights... For the foregoing reasons, the statute of limitations does not bar William Charles from challenging the JGC awards and the JGC’s AED truck award is void because the grievance was not arbitrable. Accordingly, the judgment of the district court is REVERSED, the Teamsters’ counterclaim for enforcement of the JGC’s AED truck award is DISMISSED, and the case is REMANDED for further proceedings consistent with this opinion.

Diaunte Shields v. USA No. 14-2042

Submitted April 8, 2015 — Decided June 29, 2016

Case Type: Criminal

Western District of Wisconsin. No. 3:11-cv-00327 — **William M. Conley**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*;FRANK H. EASTERBROOK, *Circuit Judge*;ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Diaunte Shields pleaded guilty in the United States District Court for the Western District of Wisconsin on May 11, 2007, to one count of possession with intent to deliver 50 grams or more of cocaine base (“crack cocaine”). On July 25, Shields was sentenced to 290 months’ imprisonment as a career offender under the United States Sentencing Guidelines section 4B1.1. We affirmed his sentence on direct appeal... Shields now brings a collateral proceeding under 28 U.S.C. § 2255. His lawyer, whom we recruited to assist him, raises the argument that Shields’s sentence violates the cruel and unusual punishment clause of the Eighth Amendment... we VACATE the judgment of the district court and REMAND for further proceedings to develop the record relating to Shields’s ineffective assistance claim.

Anthony Parker v. UGN Inc. No. 16-1507

Submitted June 30, 2016 — Decided June 30, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:13CV420 — **James T. Moody**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*;JOEL M. FLAUM, *Circuit Judge*;MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Anthony Parker sued his former employer, U.G.N., claiming race discrimination in violation of Title VII of the Civil Rights Act of 1964, see 42 U.S.C. § 2000e-2(a), age discrimination in violation of the Age Discrimination in Employment Act, see 29 U.S.C. § 623(a), and wrongful termination in violation of state law. The district court concluded that the federal claims were untimely and granted summary judgment for U.G.N. on those claims. The court then declined to exercise supplemental jurisdiction over the state law claim. Parker appeals and we affirm the judgment.

Johannes Martin v. Living Essentials, LLC No. 16-1370

Submitted June 30, 2016 — Decided June 30, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 01647 — **John J. Tharp**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

For nearly twenty years Guinness World Records™ has listed suburban Chicago resident Johannes “Ted” Martin as the open singles champion for consecutive kicks of a footbag (commonly associated with the Hacky Sack brand). Martin’s record of 63,326 kicks in just under nine hours has stood since 1997, and in this lawsuit under the Lanham Act, 15 U.S.C. §§ 1051–1141n, and the Illinois Right of Publicity Act, 765 ILCS 1075, he claims that the maker of 5-hour ENERGY is using his identity without permission to market that caffeinated drink. The district court dismissed the action for failure to state a claim, see FED. R. CIV. P. 12(b)(6), and Martin appeals... AFFIRMED.

USA v. Reginald J. Coverson No. 15-3682

Submitted June 30, 2016 — Decided June 30, 2016

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:05-CR-85 — **Rudy Lozano**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Reginald Coverson appeals from an order granting him only a partial reduction in his sentence under 18 U.S.C. § 3582(c)(2) after Amendment 782 to the sentencing guidelines retroactively reduced the guidelines range applicable to his crime. Because the district court did not abuse its discretion in declining to reduce his sentence even further, we affirm.

USA v. Kenyon Walton No. 15-3626

Argued May 23, 2016 — Decided June 30, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:12-cr-30266-MJR-1 — **Michael J. Reagan**, *Chief Judge*.

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

BAUER, *Circuit Judge*. Illinois State Trooper Nate McVicker pulled over defendant-appellant, Kenyon Walton, in Madison County, Illinois, on August 29, 2012, for routine traffic violations. During the course of the traffic stop, Officer McVicker discovered that Walton possessed a large quantity of cocaine. Walton was indicted on September 5, 2012, in a single count for possession with intent to distribute cocaine in excess of five kilograms, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(ii) and 18 U.S.C. § 2. On October 22, 2012, Walton filed a motion to suppress the cocaine, arguing that the traffic stop violated his Fourth Amendment rights. There was a hearing on the motion on January 29, 2015.¹ At the hearing, Officer McVicker testified regarding the incident and the government submitted an audio/video recording captured on Officer McVicker’s dashboard camera. The district court denied Walton’s motion on August 10, 2015, and Walton appealed. We affirm the denial of the motion to suppress.

Nancy Morrow v. Megan J. Brennan Nos. 15-2522 & 15-3051

Submitted June 30, 2016 — Decided June 30, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 3614, No. 15 C 761 — Harry D. Leinenweber, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*;JOEL M. FLAUM, *Circuit Judge*;MICHAEL S. KANNE, *Circuit Judge*.

ORDER

These consolidated appeals arose out of circumstances that took place when Nancy Morrow worked as a window clerk with the United States Postal Service in Chicago. In the first suit (14 C 3614), the district court granted summary judgment to USPS on Morrow's claims that the agency discriminated against her based on age (mid-fifties) and retaliated against her when she called in sick and left work early. In the second suit (15 C 761), the court dismissed—on jurisdictional grounds for lack of service—her complaint in which she alleged that a USPS lawyer committed a constitutional tort against her (and for which it appears she wants to hold the former Postmaster General vicariously liable). We affirm both judgments.

Moses Ramirez v. John A. Barsanti No. 15-2234

Submitted June 30, 2016 — Decided June 30, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 14 C 7519 — **John Robert Blakey**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*;JOEL M. FLAUM, *Circuit Judge*;MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Moses Ramirez, who is jailed in Kane County, Illinois, filed a lawsuit raising a number of unrelated claims against the county sheriff and others under 42 U.S.C. § 1983. The district court dismissed that complaint without prejudice, telling Ramirez that he could separate his claims and bring them in distinct lawsuits... the appeal is DISMISSED.

Katrell Morris v. USA No. 16-2407

Submitted June 9, 2016 — Decided July 1, 2016

Case Type: Original Proceeding

On Motion for an Order Authorizing the District Court to Entertain a Second or Successive Motion for Collateral Review

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

PER CURIAM. Katrell Morris has filed an application pursuant to 28 U.S.C. § 2244(b)(3), seeking authorization to file a successive motion to vacate under § 2255. Morris was sentenced as an armed career criminal under 18 U.S.C. § 924(e) and now wants to challenge his sentence under *Johnson v. United States*, 135 S. Ct. 2551 (2015), which held that the residual clause of the Armed Career Criminal Act is unconstitutionally vague. The Supreme Court has made *Johnson* retroactive. *Welch v. United States*, 136 S. Ct. 1257 (2016). Morris has made a prima facie showing that he may be entitled to relief... the best course for now, in this and similar cases where application of ACCA depends on an attempt conviction, is to grant the application to allow further development of the attempt issue in the district courts.

Richard N. Bell v. Cameron Taylor Nos. 15-2343, 15-3735, 15-3731

Argued May 20, 2016 — Decided July 1, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. Nos. 1:14-cv-0785, 1:13-cv-0798, — **Tanya W. Pratt**, *Judge*.

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

FLAUM, *Circuit Judge*. Richard Bell sued several defendants for copyright infringement, alleging that they impermissibly displayed a photo belonging to Bell on websites promoting their respective businesses. Bell sought damages as well as injunctive and declaratory relief in federal district court. The district court granted summary judgment for defendants, first on damages and later on injunctive and declaratory relief. Bell also filed a second copyright infringement lawsuit against some of the defendants in the same court. The district court granted defendants' motion to dismiss the second case based on res judicata. Bell appeals the grant of summary judgment for defendants in the first case and the grant of defendants' motion to dismiss in the second case. For the reasons that follow, we affirm the judgment of the district court in both cases.

Terrence Buchanan v. Jonathan Weaver No. 15-3503

Submitted June 30, 2016 — Decided July 1, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 12-cv-408-wmc — **William M. Conley**, *Chief Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER

Terrence Buchanan's suit against police officer Jonathan Weaver—over alleged violations of his civil rights during a traffic stop—was dismissed for failure to prosecute after Buchanan twice failed to appear for a pretrial conference and then did not respond to an order to show cause concerning the prospective dismissal. Months later Buchanan moved for relief from that decision under Federal Rule of Civil Procedure 60(b), but his request was denied. He appeals that ruling. We affirm the decision.

USA v. Leslie J. Woods No. 15-2498

Argued January 7, 2016 — Decided July 1, 2016

Case Type: Criminal

Southern District of Illinois. No. 15-CR-30074 — **Michael Reagan**, *Chief Judge*.

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

MANION, *Circuit Judge*. The government filed a juvenile information against Leslie Woods III, on May 18, 2015, charging him with multiple offenses related to two armed robberies. At the time the government charged Woods he was 20, but at the time of the crime he was 15 and thus, under the Juvenile Delinquency and Protection Act ("Juvenile Act"), Woods was considered a juvenile. The United States moved under the Juvenile Act to transfer Woods's case for adult prosecution. After a hearing, the district court granted that motion and transferred the case against Woods for adult prosecution. Woods filed this interlocutory appeal. We affirm.

RTP LLC v. Orix Real Estate Capital, Inc. Nos. 14-3671 & 15-1153

Argued September 29, 2015 — Decided July 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 350 — **Charles P. Kocoras**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. ORIX Real Estate Capital made a loan of about \$41 million to RTP, enabling it to buy a commercial building in North Carolina. The loan is nonrecourse, but both RTP and Inheritance Capital Group signed conditional guarantees that take effect if the borrower commits a default. (Inheritance has a new name, but we use the original, which appears throughout the litigation and the underlying documents.) The loan papers specify in detail what defaults activate the guarantees. When the real estate market turned down, the building's sole tenant decided not to renew its lease. RTP did not

find a new tenant willing to pay as much. Contending that several events of default had occurred, ORIX accelerated the loan and demanded that RTP and Inheritance make good the out-standing debt. They replied with this suit, which seeks a declaration that they do not owe ORIX anything beyond what can be paid out of the building's assets. Ruling in ORIX's favor, the district court ordered RTP and Inheritance to pay about \$30 million... After the case was argued in this court, we deferred its resolution pending the Supreme Court's decision in *Americold Realty Trust v. ConAgra Foods, Inc.*, 136 S. Ct. 1012 (2016), which posed the question whether Navarro establishes a rule applicable to all kinds of trusts. After *Americold* was released, we asked the parties for their views about its effect on this case. With those views in hand, we are ready to decide this appeal... The judgment of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion.

James Todd v. Kess Roberson No. 14-3430

Argued June 3, 2016 — Decided July 1, 2016

Case Type: Prisoner

Northern District of Illinois, Western Division. No. 14 C 50072 — **Frederick J. Kapala**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

POSNER, *Circuit Judge*. In 2010 James R. Todd, having pleaded guilty in an Illinois state court to a drug offense (he had sold 22.1 grams of cocaine to an undercover police officer), and having a criminal record that included five prison sentences totaling 22 years (though he hadn't actually served all that time), was sentenced to 25 years in prison for selling cocaine. He appealed on the ground that his lawyer at trial had been ineffective because he'd induced him to plead guilty by telling him the government would recommend no more than a 10-year sentence. The Illinois appellate court rejected his argument and the Illinois Supreme Court denied him leave to appeal. Four years later he sought habeas corpus in federal district court on the ground that he'd pressed unsuccessfully in his state court appeal. The district court ruled against him, and he has appealed to us... AFFIRMED.

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](#).