Opinions for the week of May 11 – May 15, 2020

USA v. James Antwon Johnson No. 19-3455
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Criminal
Southern District of Illinois. No. 3:16-CR-30021-SMY-1 — **Staci M. Yandle**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
After serving 37 months in prison for possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), James Antwon Johnson began a three-year term of supervised release. Only three months later, he began violating the terms of his supervision: As he later admitted, he possessed a gun and ammunition, endangered a child's welfare, unlawfully possessed marijuana, failed to report to probation, failed to notify probation that he had been questioned by law enforcement, and failed to make monthly payments towards his financial penalty. The government charged him separately under § 922(g)(1) for possessing the gun and ammunition. The district court revoked his supervised release, *see* 18 U.S.C. § 3583(e) and (g), and imposed a 14-month prison term to run consecutive to his anticipated sentence on the new felon-in-possession charge. Johnson filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967)… Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Leonard Sharp No. 19-3136
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Criminal
Central District of Illinois. No. 12-20026-001 — **James E. Shadid**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Leonard Sharp appeals his sentence following the revocation of his supervised release. Because the district court relied on inaccurate information (Sharp's then- existing term of supervision was half as long as the judge thought), we vacate and remand for resentencing.

USA v. Nicholas Nelson No. 19-2985
Argued April 14, 2020 — Decided May 11, 2020
Case Type: Criminal
Eastern District of Wisconsin. No. 18-CR-155 — **William C. Griesbach**, *Judge*.
Before WOOD, *Chief Judge*, and EASTERBROOK and KANNE, *Circuit Judges*.

WOOD, *Chief Judge*. In the course of a police check of a suspicious vehicle, Nicholas Nelson was caught with a handgun. Because he previously had been convicted of a felony, it was a crime for him to possess such a weapon. He eventually was charged with violating 18 U.S.C. § 922(g), and he was con- victed after a jury trial. He raises two arguments on appeal, both directed to his conviction: first, he complains about some evidentiary rulings of the district court, and second, he argues that a misstatement by the prosecutor during closing argument was so prejudicial that he should receive a new trial. The applicable standard of review dooms both points, and so we affirm his conviction.

Kevin Miller v. Andrew Saul No. 19-2954

Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 17-cv-8884 **— John Z. Lee**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Kevin Miller was demoted by the Social Security Administration because he consistently failed to meet his office's productivity standard. After the Merit Systems Protection Board upheld the demotion, Miller sued, challenging that decision and further alleging that the Administration denied reasonable accommodations for his visual and mental impairments and discriminated against him based on his race. The district court entered summary judgment for the Administration, and we affirm.

Patricia Wade v. Trustees of Indiana University No. 19-2936
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Civil
Southern District of Indiana, Indianapolis Division. No. 1:16-cv-002256-TWP-MJD — **Tanya Walton Pratt**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Patricia Wade appeals the denial of her postjudgment motion to reopen her suit against her former employer for discrimination and denial of due process. We affirm.

Thomas McNeal v. Presence Chicago Hospitals Network No. 19-2851
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18 CV 5064 — **Ronald A. Guzmán**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Thomas McNeal sued his former employer, Presence Chicago Hospitals Network, contending that it fired him because of his disabling leg pain, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112. The district court entered summary judgment for Presence, concluding that McNeal was not disabled and that, in any case, Presence demonstrated that it fired him because of an inappropriate note he wrote in a patient's chart. McNeal failed to provide evidence that Presence discharged him because of his alleged disability, so we affirm.

Matthew Stechauner v. Paul Kemper No. 19-2791
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Prisoner
Western District of Wisconsin. No. 17-cv-582-jdp — **James D. Peterson**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
After he collapsed in his cell from respiratory distress, Michael Stechauner, a Wisconsin prisoner, sued two correctional officers and a nurse for deliberate indifference to his serious medical need, and the

warden for retaliating against him for filing grievances over his medical care. *See* 42 U.S.C. § 1983. A jury found in favor of the warden and the officers, and the district court entered a default judgment against the nurse. Stechauner appeals, challenging only the district court's denials of his requests for recruited counsel and his motion for issuance of trial subpoenas. We affirm.

John D. Haywood v. Randall Baylor No. 19-2319
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Prisoner
Southern District of Illinois. No. 3:18-CV-00525-NJR-GCS — **Nancy J. Rosenstengel**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
John Haywood, a prisoner at Lawrence Correctional Center in Illinois, filed a grievance with Illinois's Administrative Review Board, without first using the grievance procedures at his prison. After the Board advised Haywood to follow the standard grievance procedure at Lawrence for his complaint about an officer there, he brought this suit. Ruling that Haywood had failed to exhaust his remedies as required, the district court entered summary judgment against him. Haywood did not follow the Board's instructions on proper exhaustion, so we affirm.

USA v. Michael Jones No. 19-2171
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Criminal
Southern District of Illinois. No. 18-CR-40077-JPG — **J. Phil Gilbert**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Michael Jones pleaded guilty to one count of conspiring to distribute methamphetamine, 21 U.S.C. §§ 841(a)(1), 846, and four counts of distributing methamphetamine, *id.* § 841(a)(1). The district court sentenced him as a career offender, U.S.S.G. § 4B1.1(a), to a within-guidelines term of 262 months in prison and five years of supervised release. Although his plea agreement contained a broad appeal waiver, Jones filed a notice of appeal. His appointed attorney asserts that the appeal is frivolous and seeks to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Jones has responded. *See* CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, we limit our review to the subjects she discusses, along with those Jones has identified in response… Because an appeal waiver "stands or falls with the guilty plea" (and as we noted, Jones does not wish to challenge his guilty plea), we must enforce the waiver here. *See United States v. Gonzalez*, 765 F.3d 732, 741 (7th Cir. 2014). Accordingly, we GRANT counsel's motion to withdraw and DISMISS the appeal.

USA v. Andrew Johnston No. 19-1624
Submitted May 11, 2020 — Decided May 11, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:17-cr-00517-1 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER

Andrew Johnston has been convicted of and sentenced for attempted bank robbery. See 18 U.S.C. § 2113(a). He now argues that, before trial, the district court should have dismissed his indictment, during trial it should have excluded evidence and instructed the jury differently, and after trial it should have entered a judgment of acquittal or sentenced him differently. His arguments are without merit, so we affirm.

Joseph Denan v. TransUnion LLC No. 19-1519
Argued November 4, 2019 — Decided May 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:18-cv-05027 — **Virginia M. Kendall**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Plaintiffs Joseph Denan and Adrienne Padgett sued consumer reporting agency Trans Union LLC, alleging violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*. We must decide whether §§ 1681e(b) and 1681i(a) of the FCRA compel consumer reporting agencies to determine the legal validity of disputed debts. The district court dismissed plaintiffs' lawsuit, holding these provisions impose no such duty. Finding no error in the district court's decision, we affirm.

Vladimir Gorokhovsky v. City of Chicago No. 19-1506
Argued April 15, 2020 — Decided May 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18-cv-02800 — **Sharon Johnson Coleman**, *Judge*.
Before DANIEL A. MANION, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
On April 13, 2018, Vladimir Gorokhovsky, a lawyer from Milwaukee, was having dinner in a Chicago restaurant with M.G., his minor son. While they were in the restaurant the City impounded their vehicle and immobilized it with a wheel clamp (or "boot") to enforce several unpaid tickets. The vehicle was owned by Gorokhovsky Law Office, LLC, of which Gorokhovsky is the sole member. The LLC is a plaintiff in this case along with Gorokhovsky and his son. Gorokhovsky went to a City impound lot with M.G. and paid the fee for the boot and the outstanding tickets. By that time, however, it was after 10 p.m., and a City employee told Gorokhovsky a technician would not be available to remove the boot until 10 a.m. the next morning. As a result, Gorokhovsky had to pay out of pocket for transportation and a hotel for the night. The plaintiffs allege M.G. was so distressed by these events he cried uncontrollably and became physically ill. The plaintiffs filed this suit *pro se* in federal court, asserting claims under § 1983 and the Fourteenth Amendment as well as state-law claims. The federal claims are substantive due process claims alleging the City interfered with the plaintiffs' property and bodily security rights by not immediately removing the boot upon payment. The state-law claims allege the City acted negligently, resulting in M.G.'s suffering. The plaintiffs sought compensatory damages for Gorokhovsky's out-of-pocket expenses and M.G.'s suffering as well as punitive damages. The district court dismissed the case with prejudice, holding the plaintiffs each lacked standing. Specifically, the court held Gorokhovsky and M.G. did not have standing because they did not own the vehicle and the LLC did not have standing because it alleged no injury. The plaintiffs appeal… Regardless, we affirm the dismissal on alternate grounds.

Israel Cobian v. Christopher McLaughlin No. 19-1066
Submitted April 29, 2020 — Decided May 11, 2020
Case Type: Prisoner
Central District of Illinois. No. 14-1218-SEM-TSH — **Sue E. Myerscough**, *Judge*.

Before ILANA DIAMOND ROVNER, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Israel Cobian, an Illinois inmate, sued prison officials for violating the Eighth Amendment by leaving him in a cell that, after a full cleansing, contained remnants of another inmate's feces. *See* 42 U.S.C. § 1983. The district court entered summary judgment for defendants. Because the conditions in Cobian's nearly clean cell did not pose a known, excessive risk to his health and safety, we affirm.

USA v. Michael Propst No. 19-2377
Argued April 8, 2020 — Decided May 12, 2020
Case Type: Criminal
Eastern District of Wisconsin. No. 1:19-cr-00020 — **William C. Griesbach**, *Judge*.
Before RIPPLE, BRENNAN, and SCUDDER, *Circuit Judges*.

BRENNAN, *Circuit Judge*. A criminal defendant pleaded guilty to making threatening and harassing interstate tele- phone calls. He challenges his sentence, arguing the district court relied on an incorrect count of his previous similar convictions as well as insufficiently explained an upward variance in his sentence from the applicable Sentencing Guidelines range. We affirm the defendant's sentence because he has not shown the district court relied on the misinformation resulting in plain error, and the court properly justified the sentence under the statutory sentencing criteria.

USA v. Travis Barrett No. 19-2254
Submitted May 11, 2020 — Decided May 12, 2020
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:17CR1-001 — **Joseph S. Van Bokkelen**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Travis Barrett pleaded guilty to possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B) and was sentenced to 97 months' imprisonment and ten years' supervised release. Although his plea agreement contained a broad appeal waiver, Barrett filed a notice of appeal. His appointed attorney asserts the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Barrett has responded to counsel's motion. *See* CIR. R. 51(b). Counsel considers whether Barrett could challenge his sentence but concludes that any challenge would be foreclosed by the appeal waiver… Counsel's motion to withdraw is therefore DENIED, and the parties are ORDERED to brief whether Barrett procedurally waived his challenge to Condition 31 and whether that condition violates his constitutional rights. Briefing will proceed as follows: 1. The appellant's brief and required short appendix are due by June 11, 2020. 2. The appellee's brief is due by July 13, 2020. 3. The appellant's reply brief, if any, is due by August 3, 2020.

USA v. Joseph Hazley No. 19-2160
Submitted May 11, 2020 — Decided May 12, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:17-CR-00430(1) — **Sharon Johnson Coleman**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Joseph Hazley was convicted by a jury of six sex-trafficking counts related to his recruitment of two women and a minor girl into prostitution in 2016. *See* 18 U.S.C. §§ 1591(a)–(c), 1594(c), 2421(a). The district court sentenced him to a within-guidelines term of 384 months' imprisonment, to be followed by 7 years' supervised release. Hazley appeals, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Hazley has not responded to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears thorough, we limit our review to the issues that he raises. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014)… We therefore GRANT the motion to withdraw and DISMISS the appeal.

Dustin James v. Deborah Hale No. 19-1857
Argued February 14, 2020 — Decided May 14, 2020
Case Type: Civil
Southern District of Illinois. No. 3:15-cv-01335-JPG-MAB — **J. Phil Gilbert**, *Judge*.
Before RIPPLE, SYKES, and SCUDDER, *Circuit Judges*.

SYKES, *Circuit Judge*. It is axiomatic that the first step in the summary-judgment process is to ask whether the evidentiary record establishes a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). To decide this question, the judge may disregard an affidavit that attempts to create a sham issue of fact. The "sham affidavit rule" exists in every circuit. This case illustrates the wisdom of the rule… The magistrate judge disregarded the affidavit, as well as an affidavit submitted by James's mother, and recommended that the district court grant the motion. The district judge excluded the affidavits under the sham-affidavit rule and entered summary judgment for Hale. We affirm.

Keith Hoglund v. Ron Neal No. 18-2949
Argued December 4, 2019 — Decided May 14, 2020
Case Type: Prisoner
Northern District of Indiana, South Bend Division. No. 3:16-CV-313-PPS-MGG — **Philip P. Simon**, *Judge*.
Before MANION, KANNE, and BARRETT, *Circuit Judges*.

MANION, *Circuit Judge*. A jury found Keith Hoglund guilty of molesting his daughter. The district judge denied his petition for a writ of habeas corpus. We affirm.

Left Field Media LLC v. City of Chicago No. 19-2904
Submitted May 6, 2020 — Decided May 15, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15 C 3115 — **Jorge L. Alonso**, *Judge*.
Before EASTERBROOK, HAMILTON, and BRENNAN, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Four years ago we held that Chicago is entitled to limit sales on the streets adjacent to Wrigley Field, home of the Chicago Cubs. *Left Field Media LLC v. Chicago*, 822 F.3d 988 (7th Cir. 2016). But we remanded for further proceedings on a magazine seller's contention that an ordinance requiring all peddlers to be licensed is invalid because of an exception for newspapers. *Id*. at 991–94. Requiring speakers to be licensed is problematic, doubly so when government distinguishes among kinds of speech. See, e.g., *Reed v. Gilbert*, 135 S. Ct. 2218 (2015); *Watchtower Bible & Tract Society of New York, Inc. v. StraLon*, 536 U.S. 150 (2002). Our opinion pointed out, however, that Left Field Media, which publishes the magazine *Chicago Baseball*, had never applied for a license, for itself or any of its peddlers, and that none of the peddlers had ever been ticketed for not having a license.

Perhaps Chicago has always treated *Chicago Baseball* as a newspaper. It was therefore not clear that the case presented a justiciable controversy. On remand Left Field Media asked the district judge to enjoin operation of the peddler's-license requirement. Before the judge acted, however, Chicago amended its ordinance to eliminate the distinction of which Left Field Media complains... Left Field Media also asserts that it incurred legal fees. If it paid a lawyer to find out how to get licenses, or to file applications, that could justify an award of damages. By contrast, the legal fees needed to pursue this litigation are not compensable, except under a fee-shifting statute such as 42 U.S.C. §1988. Left Field Media has not filed an affidavit from either Smerge or a lawyer explaining how much, if anything, it paid in an effort to comply with the ordinance, as opposed to an effort to have the ordinance held unconstitutional. And that's all there is. Because Left Field Media has not offered details, it would not be possible to conclude that it suffered even a dollar in marginal costs. A plaintiff need not do much to support an award of damages, but it must do *something*. Left Field Media has not seriously tried to show an injury, so the district court's judgment is AFFIRMED.

Anthony Martin v. Larry Fowler No. 19-2618
Submitted April 30, 2020 — Decided May 15, 2020
Case Type: Prisoner
Southern District of Indiana, Indianapolis Division. No. 1:18-cv-00992-JRS-DML — **James R. Sweeney II**, *Judge.*
Before FRANK H. EASTERBROOK, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge.*

ORDER
Anthony Martin appeals the district court's dismissal of his prisoner's-rights suit and its imposition of a filing bar as sanctions for making a false statement on his request to recruit counsel. We affirm the district court's imposition of these sanctions.

Raymond King v. Steven Newbold No. 18-3048
Case Type: Prisoner
Submitted May 11, 2020 — Decided May 15, 2020
Northern District of Illinois, Eastern Division. No. 09 C 1184 — **Sidney I. Schenkier**, *Magistrate Judge*.
Before DIANE P. WOOD, *Chief Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Raymond King, an Illinois inmate at high risk for lockjaw, sued prison dentists under the Eighth Amendment for their deliberate indifference to his medical condition. The district court entered summary judgment for the defendants on most claims and dismissed one as time-barred. We vacate and remand with respect to one defendant because a jury reasonably could conclude that this defendant recklessly ignored King's serious need for oral surgery. For all other defendants, we affirm.

J.K.J. and M.J.J. v. Polk County and Darryl L. Christensen Nos. 18-1498, 18-1499, 18-2170 & 18-2177
Argued December 5, 2019 — Decided May 15, 2020
Case Type: Civil
Western District of Wisconsin. Nos. 3:15-cv-00428 & 3:15-cv-00433 — **William M. Conley**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER, EASTERBROOK, KANNE, ROVNER, SYKES, HAMILTON, BARRETT, BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.
HAMILTON, *Circuit Judge*, concurring.
EASTERBROOK, *Circuit Judge*, dissenting in part.

BRENNAN, *Circuit Judge*, with whom BAUER and SYKES, *Circuit Judges*, join, dissenting in part.

SCUDDER, *Circuit Judge*. While confined in the Polk County Jail, two female inmates, J.K.J. and M.J.J., endured repeated sexual assaults at the hands of correctional officer Darryl Christensen. The two women brought suit in federal court against Christensen and Polk County. A trial ensued, and the jury heard evidence of Christensen's horrific misconduct over a three-year period. The County's written policy prohibited sexual contact between inmates and guards but failed to address the prevention and detection of such conduct. Nor did the County provide any meaningful training on the topic. What is more, toward the beginning of the relevant period, the County learned that another guard made predatory sexual advances toward a different female inmate. The trial evidence showed that the County imposed minor discipline on the guard but from there took no institutional response—no review of its policy, no training for guards, no communication with inmates on how to report such abuse, no nothing. In the end, the jury returned verdicts for J.K.J. and M.J.J. The case against Christensen was open and shut. But a divided panel of this court overturned the jury's verdict against Polk County, determining that the trial evidence failed to meet the standard for municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). We decided to rehear the case en banc and now affirm the jury's verdicts against both Christensen and Polk County. While the standard for municipal liability is demanding—designed to ensure that a municipality like Polk County is liable only for its own constitutional torts and not those of employees like Christensen—the evidence was sufficient to support the verdict against the County… Darryl Christensen's long-term abuse of J.K.J. and M.J.J. more than justified the jury's verdict against him. And the jury was furnished with sufficient evidence to hold Polk County liable not on the basis of Christensen's horrific acts but rather the County's own deliberate choice to stand idly by while the female inmates under its care were exposed to an unmistakable risk that they would be sexually assaulted—a choice that was the moving force behind the harm inflicted on J.K.J. and M.J.J. The jury so concluded, and we AFFIRM.
