

Opinions for the week of May 23 - May 27, 2016

Mary E. McClellan v. Elaine E. Bucklo Nos. 15-2752, 15-3410

Argued March 30, 2016 — Decided May 23, 2016

Case Type: Original Proceeding

Northern District of Illinois, Eastern Division. No. 09 C 5938 — **John F. Grady, Elaine E. Bucklo, Judges.**

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

POSNER, Circuit Judge. The principal question presented by this appeal is whether an order by a district court imposing a sanction on a lawyer for misconduct in a case before the court can ever be appealed if the sanction lacks a monetary component. As part of a lawsuit charging the City of Chicago and others with malicious prosecution and other torts, the plaintiffs sought by subpoena to discover documents lodged in the Cook County State's Attorney's Office. The lawyers representing the Office, who included Mary McClellan, the appellant, told the plaintiffs' lawyers that the files they were looking for no longer existed. A year later, however, when Judge Grady, the presiding judge, ordered the Office to allow the plaintiffs' lawyers to inspect 181 boxes of documents stored in a warehouse, the lawyers quickly found the documents they'd asked for—and moved the district court to sanction McClellan and her colleagues for obstructing the plaintiffs' discovery by insisting that the documents the plaintiffs needed no longer existed. Some months after the tort suit ended in the plaintiffs' acceptance of an offer of judgment, the judge granted the motion for sanctions and ordered McClellan and the State's Attorney's Office to pay, as sanctions for what the judge concluded was indeed seriously obstructive conduct in discovery, the fees and costs that their misconduct had imposed on the plaintiffs. It fell to Judge Bucklo, who took over the case when Judge Grady retired in 2015, to calculate the dollar amount of the sanctions. She ordered McClellan and the State's Attorney's Office to pay the plaintiffs a total of \$35,522.94 in fees and costs... McClellan appealed to us, but before the appeal was heard the entire \$35,522.94 in money sanctions was paid by the Cook County State's Attorney's Office, leaving McClellan owing nothing. She didn't drop her appeal, however, doubtless because if Judge Grady's sanctions order stands it will have a number of adverse consequences for her professionally... AFFIRMED.

Left Field Media LLC v. City of Chicago No. 15-3233

Argued April 4, 2016 — Decided May 23, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 3115 — **Jorge L. Alonso, Judge.**

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

EASTERBROOK, Circuit Judge. Left Field Media publishes Chicago Baseball, a magazine that produces four issues over the course of a baseball season. Copies are sold for \$2 out-side Wrigley Field before the Chicago Cubs' home games. On the day of the Cubs' home opener in 2015, patrol officer Elias Voulgaris of Chicago's police force saw Matthew Smerge, Left Field's editor, selling the magazine at the corner of Clark and Addison streets. Voulgaris told Smerge to move across the street in order to comply with Chicago Municipal Code 4-244-140(b), which the parties call the Adjacent-Sidewalks Ordinance. Section 4-244-140(b) forbids all peddling on the streets adjacent to Wrigley Field. Smerge refused to move and was ticketed. Told that the next step would be an arrest, Smerge then crossed the street. A few days later Left Field sued under 42 U.S.C. §1983, contending that the Adjacent-Sidewalks Ordinance violates the First Amendment, applied to the states by the Fourteenth. After the district court issued a temporary restraining order, Chicago agreed not to enforce the Adjacent-Sidewalks Ordinance while the district court considered Left Field's motion for a preliminary injunction. The 2015 season ran its course, and just as the playoffs began the district court declined to issue a preliminary injunction. 2015 U.S. Dist. LEXIS 135632 (N.D. Ill. Oct. 5, 2015). The 2016 season is underway, and the Cubs are doing well on the field. Left Field hopes to do as well on appeal... The order denying Left Field's motion for a preliminary injunction is affirmed. The district court now can consider any request for a new hearing and a permanent injunction.

USA v. Monta Anderson No. 15-3769

Submitted May 23, 2016 — Decided May 24, 2016

Case Type: Criminal

Central District of Illinois. No. 13-CR-10064-001 — **Michael M. Mihm**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Anderson pleaded guilty to conspiracy to distribute heroin... As part of the plea agreement, Anderson had waived his right to file a direct appeal. Yet he still filed a notice of appeal, and his appointed counsel now seeks to withdraw on the ground that all potential appellate claims are frivolous... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Maurice Maxwell No. 15-2799

Argued April 5, 2016 — Decided May 24, 2016

Case Type: Criminal

Western District of Wisconsin. No. 3:11-cr-00025-wmc-1 — **William M. Conley**, *Chief Judge*.

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

BAUER, *Circuit Judge*. Defendant-appellant, Maurice Maxwell, was convicted of possession with intent to distribute five grams or more of a substance containing a cocaine base in violation of 21 U.S.C. § 841(a)(1). Although his conviction was affirmed on an earlier appeal, we have remanded this case twice for resentencing in light of recent opinions from the United States Supreme Court and our own circuit. Maxwell now appeals for the third time, arguing that the district court miscalculated the applicable sentencing range under the United States Sentencing Commission Guidelines Manual. It appears that the third time's the charm; for the reasons that follow, we affirm the district court's sentence.

Barshan Islam v. Loretta Lynch No. 15-2778

Argued April 27, 2016 — Decided May 24, 2016

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. Nos. A098-505-472 & A098-505-473

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Barshan Islam, a citizen of Bangladesh, petitions for review of the denial of his application for political asylum based on the persecution he faced because of his involvement with an opposition political party. Islam's wife, Farhana Islam, derivatively claimed asylum based on his application. An immigration judge found Islam's testimony to be not credible, and Islam now challenges this finding. Because the IJ's credibility determination is supported by substantial evidence despite a mistake in law, we deny the petition.

USA v. Clinton Waters No. 15-2728

Argued April 27, 2016 — Decided May 24, 2016

Case Type: Criminal

Southern District of Illinois. No. 14-CR-40083 — **Staci M. Yandle**, *Judge*.

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

FLAUM, Circuit Judge. Clinton Waters cooked methamphetamine at locations throughout southern Illinois and taught others to do the same. He eventually was caught and pled guilty to conspiring to manufacture a controlled substance in violation of 21 U.S.C. §§ 846, 841(a)(1). Waters had several prior convictions, including for enhanced domestic battery in violation of Illinois law, which the probation office characterized as a crime of violence in the pre-sentence investigation report ("PSR"). The district court overruled Waters's challenge to that characterization and sentenced him as a career offender. Waters renews his challenge on appeal, arguing that the Illinois statute prohibiting domestic battery does not include the use of physical force as an element of the offense and thus, is not a crime of violence. Because Circuit precedent forecloses this argument and Waters does not provide a persuasive reason for overturning it, we affirm.

USA v. Joseph Phelps No. 15-2528

Submitted October 2, 2015 — Decided May 24, 2016

Case Type: Criminal

Central District of Illinois. No. 12-CR-10095-001 — **Joe Billy McDade**, *Judge*.

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

SYKES, Circuit Judge. Joseph Phelps was convicted of conspiracy to manufacture methamphetamine and was sentenced to 120 months in prison, the statutory minimum, well below the Sentencing Guidelines range of 188–235 months. A year later the government moved for a sentence reduction as a reward for his substantial assistance... The district court granted the motion and reduced the sentence to 60 months. Several months later Amendment 782 to the Sentencing Guidelines took effect, retroactively reducing Phelps's guideline range to 151–188 months. As permitted by 18 U.S.C. § 3582(c)(2), Phelps moved for a sentence reduction based on the retroactive amendment. He asked the court to reduce his sentence to 48 months... the judge held that Phelps was not eligible for the § 3582(c)(2) reduction and denied the motion... REVERSED and REMANDED.

Steven Yahnke v. County of Kane, Illinois No. 15-2162

Argued January 20, 2016 — Decided May 24, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:12-cv-05151 — **Amy J. St. Eve**, *Judge*.

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

ROVNER, Circuit Judge. After the Sheriff of Kane County terminated Deputy Sheriff Steven Yahnke's employment, Yahnke sued the County and the Sheriff, alleging that he was terminated because of his political affiliation and that the termination occurred without due process. The district court granted summary judgment in favor of the defendants on both counts, and Yahnke appeals. We affirm the judgment on the due process claim but we vacate the judgment on the political affiliation count and remand for trial.

USA v. John Lewis No. 14-3635

Argued June 10, 2015 — Decided May 24, 2016

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:13-CR-00079-001 — **Jane E. Magnus-Stinson**, *Judge*.

Before MANION, WILLIAMS, and HAMILTON, *Circuit Judges*.

HAMILTON, Circuit Judge. A jury found appellant John A. Lewis guilty of five federal sex offenses. The district court sentenced Lewis, who is 66 years old and in poor health, to the statutory mandatory

minimum sentence of 35 years in prison. Lewis has appealed, but he does not challenge either his convictions or the prison term. The district judge, while recognizing that the chances Lewis will survive his prison sentence are low, also included in his sentence a life term of supervised release. The only issues before us concern the supervised release portion of his sentence... The judgment of the district court is AFFIRMED.

Eric Blackmon v. Tarry Williams No. 14-3059

Argued October 2, 2015 — Decided May 24, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 11 C 2358 — **Ronald A. Guzmán**, *Judge*.

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

POSNER, *Circuit Judge*, concurring and dissenting.

HAMILTON, *Circuit Judge*. This appeal from the denial of a habeas corpus petition presents a thicket of procedural and substantive issues arising from a murder on the streets of Chicago. On the Fourth of July in 2002, Tony Cox was standing outside a restaurant when he was gunned down by two men. The gunmen fled, but two women driving cars near the scene saw the murder and the shooters' faces. Not quite two months later, both women independently chose petitioner Eric Blackmon's photograph out of arrays, identifying him as the second shooter. They repeated those identifications at a live line-up and then again at trial. Primarily on the strength of their testimony, Blackmon was convicted of first-degree murder and sentenced to sixty years in prison. Blackmon petitioned the state courts for post-conviction relief, arguing that his attorney was constitutionally ineffective because he failed to present certain eyewitness and alibi testimony, and in the alternative, that he was actually innocent. The state courts summarily denied relief. Blackmon then sought relief in federal court under 28 U.S.C. § 2254. The district court denied Blackmon's petition... We VACATE the denial of Blackmon's petition for a writ of habeas corpus, and REMAND this matter to the district court for consideration of whether Blackmon is actually in custody in violation of the United States Constitution.

Jozef Gajewski v. Ocwen Loan Servicing No. 15-3849

Submitted May 23, 2016 — Decided May 25, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 9230 — **John W. Darrah**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND

ROVNER, *Circuit Judge*.

ORDER

Homeowners Jozef and Wieslawa Gajewski reacted to a state-court foreclosure action by claiming in this federal lawsuit that two loan servicers and the law firm representing one of those companies violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692d–1692g, and Illinois law through their collection efforts... The district court dismissed the FDCPA claims as untimely and then declined to exercise supplemental jurisdiction over the state-law claims. On appeal the Gajewskis challenge only the dismissal of their FDCPA claims. We affirm the judgment, though our reasoning differs to an extent from that of the district court.

USA v. Patrick B. Wallace No. 15-3796

Submitted May 23, 2016 — Decided May 25, 2016

Case Type: Criminal

Central District of Illinois. No. 12-30003-001 — **Richard Mills**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND

ROVNER, *Circuit Judge*.

ORDER

Patrick Wallace appeals for a second time from the denial of his motion under Federal Rule of Criminal Procedure 41(g) for the return of property that police seized during the investigation that led to his drug conviction. We vacate the district court's order and again remand for further proceedings.

USA v. Edwin Tollinchi-Rodriguez No. 15-3720

Submitted May 23, 2016 — Decided May 25, 2016

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:14CR28-001 — **Rudy Lozano**, *Judge*.

Before DIANE P. WOOD, Chief Judge; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Edwin Tollinchi-Rodriguez told an 11-year-old girl in his care that he needed medical attention and would take her along to the hospital as an English translator. Instead, he drove her from Indiana to a hotel in Illinois where he sexually assaulted her. After the two returned to Indiana, the girl called the police and disclosed that Tollinchi-Rodriguez had been sexually abusing her for more than three years and had threatened to kill her and her family if she told anyone. The investigation was referred to federal authorities, and Tollinchi-Rodriguez agreed to plead guilty to an information charging him with transporting a minor in interstate commerce with intent to engage in a sex offense, see 18 U.S.C. § 2423(a). As part of the written plea agreement, Tollinchi-Rodriguez agreed not to challenge his conviction or sentence on direct appeal except for a claim of ineffective assistance of counsel relating directly to negotiation of the plea agreement. Tollinchi-Rodriguez pleaded guilty before a magistrate judge, and the district court judge accepted the plea based on the magistrate judge's unopposed recommendation... Tollinchi-Rodriguez filed a notice of appeal, but his appointed attorney asserts that the appeal is frivolous... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Paul Stewart No. 15-2680

Submitted May 23, 2016 — Decided May 25, 2016

Case Type: Criminal

Western District of Wisconsin. No. 15-CR-02 — **James D. Peterson**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

After selling heroin to undercover officers, Paul Stewart pleaded guilty to one count of possessing heroin with intent to distribute. 21 U.S.C. § 841(a)(1). The district court determined that Stewart was a career offender, see 21 U.S.C. § 851(a), and sentenced him to 151 months' imprisonment, the bottom of the calculated guidelines range. Stewart filed a notice of appeal, but his appointed lawyer, who also represented Stewart in the district court, asserts that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Elia Orlando No. 15-2092

Argued January 21, 2016 — Decided May 25, 2016

Case Type: Criminal

Eastern District of Wisconsin No. 13-CR-208 — **Rudolph T. Randa**, *Judge*.

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

KANNE, Circuit Judge. Defendant Elia Orlando was indicted on charges of producing and possessing child pornography in October 2013. Orlando agreed to plead guilty to multiple counts of producing child pornography in April 2014 in exchange for the government's sentencing recommendation amongst other considerations. That decision set in motion the complex process of sentencing Orlando, a process that has already involved two sentencings and one appeal... Finding that the district court did in fact err in interpreting our remand order, we vacate Orlando's sentence and remand for a full resentencing. We do not, however, find that the government breached its plea agreement and therefore decline to reassign Orlando's case to a different judge.

USA v. Christian Peterson No. 14-3716

Argued September 28, 2015 — Decided May 25, 2016

Case Type: Criminal

Western District of Wisconsin. No. 12-cr-87-bbc — **Barbara B. Crabb**, *Judge*.

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

SYKES, Circuit Judge. Before running into legal trouble, Christian Peterson, an entrepreneur doing business in Madison, Wisconsin, owned several manufacturing and real-estate development firms. He misused corporate finances, frequently making unauthorized intercompany loans and occasionally using corporate funds to pay off his personal gambling debts. Eventually all of his business ventures failed, his companies defaulted, and federal agents launched an investigation. Peterson was indicted on thirteen criminal counts—bank fraud, making false statements to banks, money laundering, and pension theft—and a jury found him guilty of eight of those crimes. On Peterson's motion the district judge entered judgment of acquittal on two counts and at sentencing imposed a within-guidelines prison term of 84 months on the remaining six. Peterson has appealed... we VACATE the sentence and REMAND for resentencing. In all other respects the judgment is AFFIRMED.

USA v. Dakota Moss No. 15-3102

Submitted May 23, 2016 — Decided May 26, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:14-CR-30208-DRH-1 — **David R. Herndon**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Dakota Moss and a friend stole a pickup truck, used it to ram the 10-foot tall gate outside a farm-supply store, smashed a window to gain access and, over the course of three separate burglaries of the same store that night, stole 39 firearms, candy, and soda. They were arrested the following day and confessed to conspiring to sell the stolen firearms either to protestors in Ferguson, Missouri, or to "other criminal elements" in Centralia, Illinois. Moss pleaded guilty to stealing firearms from a federal firearms licensee, 18 U.S.C. § 922(u), conspiring to interfere with commerce by violence against a person or property, 18 U.S.C. § 371, carrying a firearm during a crime of violence, 18 U.S.C. § 924(c)(1)(A), and possessing a firearm as a felon, 18 U.S.C. § 922(g)(1). The district court sentenced him to 248 months' imprisonment, the bottom of the calculated guidelines range. Moss's plea agreement includes a broad appeal waiver, but he still filed a notice of appeal. His appointed lawyer (who represented Moss below) has concluded that the case is frivolous and moves to withdraw... counsel's motion to withdraw is GRANTED and the appeal is DISMISSED.

Jacob Lewis v. Epic Systems Corporation No. 15-2997

Argued February 12, 2016 — Decided May 26, 2016

Case Type: Civil

Western District of Wisconsin. No. 15-cv-82-bbc — **Barbara B. Crabb**, *Judge*.
Before WOOD, *Chief Judge*; ROVNER, *Circuit Judge*; and BLAKEY, *District Judge*.

WOOD, Chief Judge. Epic Systems, a health care software company, required certain groups of employees to agree to bring any wage-and-hour claims against the company only through individual arbitration. The agreement did not permit collective arbitration or collective action in any other forum. We conclude that this agreement violates the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151, et seq., and is also un-enforceable under the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1, et seq. We therefore affirm the district court's denial of Epic's motion to compel arbitration.

Darnell Fonder v. Kankakee County No. 15-2905

Argued April 18, 2016 — Decided May 26, 2016

Case Type: Civil

Central District of Illinois. No. 12-CV-2115 — **Colin S. Bruce**, *Judge*.

Before EASTERBROOK and SYKES, *Circuit Judges*; and ADELMAN, *District Judge*.

EASTERBROOK, Circuit Judge. The Sheriff of Kankakee County, Illinois, has a written policy requiring a careful visual inspection (a "strip search") of every arrestee before that person enters the general population at the Jerome Combs Detention Center. The policy permits manual body-cavity inspections of some arrestees. Three arrestees filed this suit to contest the Sheriff's policy to the extent it applies to persons whose custody has not yet been approved by a judge... The district judge certified this class: "All persons held in the custody of the Sheriff of Kankakee County from April 20, 2010 to the date of entry of judgment who, following a warrantless arrest, were strip searched in advance of a judicial determination of probable cause."... The court later held that the Sheriff's policy is valid as applied to the class so defined... The judgment is vacated, and the case is remanded for proceedings consistent with this opinion.

Casey Hunter v. Timothy Muehler No. 15-2484

Submitted May 23, 2016 — Decided May 26, 2016

Case Type: Prisoner

Central District of Illinois. No. 4:12-cv-04036 — **Sara Darrow**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Casey Hunter claimed in this suit under 42 U.S.C. § 1983 that Timothy Muehler, a police officer in Rock Island, Illinois, used excessive force in arresting him. The district court granted summary judgment for Muehler on the ground of qualified immunity, and Hunter appeals... DISMISSED.

Scott Schmidt v. Deborah McCullough No. 14-3651

Argued February 16, 2016 — Decided May 26, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 3:14-CV-00287-BBC — **Barbara B. Crabb**, *Judge*.

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

HAMILTON, *Circuit Judge*, concurring in the judgment.

POSNER, Circuit Judge. In 1990 the petitioner, Scott Schmidt, then 27 years old, was convicted in a Wisconsin state court of raping a woman multiple times, burglarizing her apartment, falsely imprisoning her, and intimidating her as a witness. He was sentenced to prison and paroled in 2003, but his parole was revoked five years later as a result of his having, in violation of its terms, viewed sexually explicit

materials on the Internet and been expelled from a treatment program for sexually violent persons. He was sent back to prison for another year and a half, and as his sentence was drawing to an end the state had him tried civilly on the ground that he was a sexually violent person as a consequence of mental disorder. The jury found him to be so and, as authorized by Wis. Stat. § 980.06, he was committed for an indefinite period to the Sand Ridge Secure Treatment Center, and there he remains... In 2014, having appealed the order of civil commitment unsuccessfully in the Wisconsin state court system, Schmidt sought federal habeas corpus. He claimed that his civil trial had violated his constitutional right to due process of law by presenting the jury with evidence of his past sexual misconduct the prejudicial effect of which outweighed its probative value. The district court dismissed the petition on the ground that Schmidt had failed to exhaust his remedies in the state judicial system, as required by 28 U.S.C. § 2254(b)(2), by presenting his federal due process claim in the state court... AFFIRMED.

USA v. Maurice D. Moore No. 15-1785

Argued January 6, 2016 — Decided May 27, 2016

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:14-CR-68 — **Hon. Jon E. DeGuilio**, *Judge*.
Before POSNER and WILLIAMS, *Circuit Judges*, and PALLMEYER, *District Judge*.

PALLMEYER, District Judge. Marcus Hayden, a federal probationer, engaged in an armed battle with police on April 9, 2012. One officer was injured in the gun fight, and Hayden himself was shot and killed. The government recovered the firearm Hayden used and has charged Defendant Maurice Moore with selling that weapon to Hayden, a known felon, and falsely reporting that the weapon was stolen. In Moore's upcoming trial, the government seeks to introduce evidence of a phone number Hayden had provided his probation officer. Moore made several calls to that number in the hours surrounding the purported theft of the firearm. The district judge has granted Moore's motion to exclude the probation officer's records as inadmissible hearsay. We conclude, however, that the records are admissible under the residual hearsay exception, Fed. R. Evid. 807, and therefore vacate the district court's order.

James Garbe v. Kmart Corporation No. 15-1502

Argued October 28, 2015 — Decided May 27, 2016

Case Type: Civil

Southern District of Illinois. No. 3:12-cv-00881-NJR-PMF — **Nancy J. Rosenstengel**, *Judge*.
Before WOOD, *Chief Judge*, and EASTERBROOK and HAMILTON, *Circuit Judges*.

WOOD, Chief Judge. James Garbe, an experienced pharmacist, began working at Kmart pharmacy in Ohio in 2007. One day, Garbe picked up a personal prescription at a competitor pharmacy. When he reviewed his receipt, Garbe got a surprise: the competitor pharmacy had charged his Medicare Part D insurer far less than Kmart ordinarily charged it for the same prescription. Curious to see whether his discovery was a one-off, he started inspecting Kmart's pharmacy reimbursement claims. His amateur detective work revealed that Kmart routinely charged customers with insurance—whether public or private—higher prices than customers who paid out of pocket. Not all cash customers were charged the same price: people in Kmart's "discount programs" paid much less. But the ensuing investigation revealed that nearly all cash customers received the lower "discount program" prices. Meanwhile, those "discount program" sales were ignored when Kmart calculated its "usual and customary" prices for its generic drugs for purposes of Medicare reimbursement. Garbe shared his discovery with the government and filed a qui tam suit on July 12, 2008. The government has not intervened... After a flurry of motions, the district court granted partial summary judgment in Garbe's favor on some issues and denied it to Kmart on others... We conclude that the district court erred when it found that the Pharmacy Benefit Managers and Plan Sponsors are "officers or employees of the United States," but we otherwise affirm the district court's rulings.

USA v. Norman Shaw, Jr. No. 14-2881

Argued February 17, 2016 — Decided May 27, 2016

Case Type: Criminal

Central District of Illinois. No. 1:13-cr-10105-JES-JEH-1 — **James E. Shadid**, *Chief Judge*.

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

BAUER, Circuit Judge. Defendant-appellant, Norman Shaw, is an inmate at the Federal Correctional Institute in Pekin, Illinois (“FCI-Pekin”). He appeals his conviction for possession of heroin while in a federal prison. He represented himself pro se at trial, and now raises seven issues on appeal. We affirm his conviction and sentence.

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](#).