U.S. and Illinois Supreme Court Update

Illinois Public Defender Association
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People v. Shunick, 2024 IL 129244 (5/23/24)

Defendant's motion to reconsider the dismissal of his post-conviction petition was untimely. The circuit court received the petition after the due date, and while the "mailbox rule" is available to incarcerated litigants, defendant did not substantially comply with the rule's requirements.

Supreme Court Rule 373 states that documents are considered filed when they are "actually received by the clerk of the reviewing court," but in the case of incarcerated self-represented litigants, the filing date is the date of mailing. Defendants can establish the date of mailing as provided in Rule 12(b)(6) – via certification in compliance with 735 ILCS 5/1-109. Section 1-109 requires defendants to swear under penalty of perjury that the documents filed are true and correct, and state the time and place of deposit and the complete address to which the filing was mailed.

Defendant argued that Rule 12(b)(6) requires only substantial compliance, and that he met that standard by including a certification that he sent "true and correct copies" of the included documents (without swearing to their truth under penalty of perjury), the time and place of deposit, and the name, but not the address, of the clerk of the court to which he mailed the motion to reconsider. Defendant cited **People v. Dominguez,** 2012 IL 111336, which held that Rule 605(c) requires substantial, not strict, compliance.

The supreme court did agree that substantial compliance with Rule 12(b)(6) would suffice. But it affirmed the appellate court's holding that defendant failed to meet that standard. First, defendant failed to swear to the truth of the documents under penalty of perjury, which constitutes "the essence of the" rule. Defendant also failed to swear to the truth of the *contents* of the documents, another core requirement of the certification, instead stating that the "copies" were true and correct. Finally, defendant did not include the clerk's address, and to find substantial compliance despite this defect would "read the 'complete address' requirement out of Rule 12(b)(6) and render its language superfluous, which is unacceptable."

The court also rejected defendant's argument that due to his *pro se* status, the court should be willing to dispense with the strict requirements of the rule given that he made a good-faith attempt to comply. *Pro se* litigants are presumed to have full knowledge of the applicable court rules and procedures.

Finally, the court rejected defendant's request to remand to allow him to cure the defects and re-file the certification. The court rejected defendant's reliance on **People v. Cooper**, 2021 IL App (1st) 190022, finding that when the **Cooper** court agreed to remand to give defendant a chance to correct his certification, it ignored that the date of receipt controls absent compliance with the mailbox rule, making any appeal from that filing untimely, thus creating a lack of jurisdiction in the appellate court. **Cooper** acted without jurisdiction and must be overruled. The supreme court also rejected defendant's request to remand using its supervisory authority.

People v. Jefferson, 2024 IL 128676 (6/6/24)

At defendant's original trial, the jury found in a special interrogatory that the State had not proved beyond a reasonable doubt that defendant personally discharged the firearm causing death. On remand, the trial court granted a defense motion *in limine,* barring the State from presenting argument or evidence tending to show that defendant personally shot the victim. The State appealed, and defendant argued that the appellate court lacked jurisdiction. The supreme court agreed with the appellate court's holding that the State's interlocutory appeal was proper under Rule 604(a)(1).

The State has a right to file an interlocutory appeal when a trial court's order has the "substantive effect" of suppressing evidence. An order suppresses evidence within the meaning of Rule 604(a)(1) when it "prevents [the] information from being presented to the fact finder." In this case, defendant argued that the trial court's order did not qualify under Rule 604(a)(1) because it did not identify any specific information, statements, or evidence that the State could not present. The supreme court held, however, that pre-trial rulings cannot always identify every possible statement the witness might make at trial; it's impossible to know beforehand exactly what a witness will say, or attempt to say, when called to testify. "Simply because the trial court's order in this case did not set forth all the possible statements the witnesses might make does not mean that the trial court's order failed to suppress evidence."

Bail

People v. Clark, 2024 IL 130364 (9/19/24)

Pursuant to 725 ILCS 5/110-6.1(c)(1), petitions for pretrial detention must be filed at "the first appearance before a judge." Defendant argued that, because the State appeared before a judge at an *ex parte* hearing to obtain a warrant three weeks before filing its petition, the petition was untimely. The supreme court disagreed.

The laws governing pretrial detention and release do not contemplate the filing of a petition at an *ex parte* hearing. Under 725 ILCS 5/109-1, arrestees must be brought before a judge, provided an attorney if indigent, and given a hearing on pretrial detention or release. Under Article 110, once a petition for pretrial detention is filed, the court must hold a hearing "immediately." 725 ILCS 5/110-6.1(c)(2). These hearings involve several layers of due process, including the presence of defendant, counsel, the right to confer with counsel, discovery, and the rights to testify, to cross-examination, and to present evidence. Read together, these provisions make clear that the legislature envisioned a petition would be filed at *defendant's* first appearance before a judge, not the State's.

Although section 110-6.1(c)(1) did not use the phrase "defendant's first appearance," as did another provision in the Act, the supreme court held that this distinction was not meaningful in light of the totality of the various laws governing pretrial detention. Given the above procedures required for detention hearings, requiring the State to file its detention petition at an *ex parte* hearing on an arrest warrant would lead to absurd results.

Collateral Remedies

People v. Joiner, 2024 IL 129784 (5/23/24)

Defendant's attorney filed a post-conviction petition on July 7, 2021. The circuit court noted on the electronic "case summary" that he did not pay the post-conviction fee. On August 4, 2021, the case summary reflects that counsel paid the fee. The petition was file stamped on both July 7 and August 4, 2021. The circuit court summarily dismissed the petition on November 1, 2021. Defendant alleged that this ruling occurred more than 90 days after the July 7 filing, requiring automatic advancement to the second stage. The appellate court held that the ruling occurred within 90 days because the document wasn't filed until August 4. It also affirmed the summary dismissal of defendant's claim that trial counsel was ineffective for failing to call two exculpatory witnesses. The supreme court affirmed.

Section 122-2.1 states that the 90-day clock begins to run after the "filing and docketing" of the petition. In **People v. Brooks**, 221 Ill. 2d 381 (2006), the supreme court held that the petition is "docketed" when it's "entered on the court's official docket for further proceedings." Based upon this definition, defendant's petition was docketed on August 4, 2021, which was the date he paid the filing fee and a file-stamped copy of his petition bearing the August 4 date was entered into the record for further proceedings. The July 7 entry note on the case summary sheet simply states that the petition was filed on that day and "PC FEE NOT PAID," suggesting no further proceedings would occur until the fee was paid.

As to the merits of the claim, defendant did not state the gist of a claim of ineffectiveness despite including two affidavits from eyewitnesses. The first witness provided only a partial alibi, as his account established he was with defendant during most, but not all, of the relevant time period surrounding the shooting. The second witness did not witness the shooting and stated only that she saw two people walking toward the vicinity of the shots.

People v. Shunick, 2024 IL 129244 (5/23/24)

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People v. Flournoy, 2024 IL 129353 (8/22/24)

A defendant may use the same evidence to *plead* separate claims of actual innocence and constitutional trial error, but only one of those claims can succeed. Here, none of defendant's claims – actual innocence, ineffective assistance of counsel, or due process – warranted leave to file a successive petition.

Defendant's petition included a recantation affidavit from Ricks, one of the State's key witnesses at defendant's murder trial. It also included an exculpatory affidavit from Barrier, a witness who was not called at trial but who would testify that another man confessed to being the shooter. The actual innocence claim cited both affidavits. The due process claim cited the Ricks affidavit, and the ineffective assistance claim cited the Barrier affidavit.

The trial court denied leave to file, and the appellate court affirmed. In its decision, the appellate court cited **People v. Hobley** 182 Ill. 2d 404 (1998) for the proposition "that a postconviction petitioner cannot raise a 'free-standing' claim of actual innocence based on newly discovered evidence that is being used to supplement an assertion of a constitutional violation with respect to the trial." The court went on to find each claim lacked merit regardless.

On appeal to the supreme court, defendant argued that the appellate court misinterpreted **Hobley**, and that nothing prevents a defendant from supporting different claims – including a "free-standing" actual innocence claim – with the same evidence. Defendant also argued that the appellate court should have granted leave to file on the merits.

The supreme court conducted a detailed analysis of its actual innocence jurisprudence, starting with **People v. Washington**, 171 Ill. 2d 475 (1996). In recognizing the viability of a free-standing actual innocence claims, **Washington** clarified that the defendant's evidence was cited solely in support of his innocence claim; it was "not being used to supplement an assertion of a constitutional violation with respect to his trial." **Hobley** quoted this language when holding that defendant's claim of actual innocence could not proceed to a third-stage hearing because it relied on the same evidence as his claim of constitutional trial error, which the court had already found sufficient for a third-stage hearing. This principle has been applied consistently, including in **People v. Orange**, 195 Ill. 2d 437 (2001), and **People v. Coleman**, 2013 IL 113307.

The supreme court reaffirmed the this principle – the same evidence cannot support both a free-standing actual innocence claim and a separate claim of constitutional error. But, the court clarified, this does not mean, as some appellate courts have held, that a defendant cannot use the same evidence to *plead* both a free-

standing claim of actual innocence and another claim of error. The foregoing jurisprudence simply means that if the evidence *establishes* a claim of constitutional trial error, it cannot, by definition, establish a free-standing claim of actual innocence or, as was the case in **Washington**, vice versa. This is because these claims turn on knowledge and availability of the evidence at trial; if the evidence was unknown or unavailable at trial, it may support an actual innocence claim, but it could not support an ineffectiveness claim. The evidence cannot be both new and not new.

Turning to the merits, the supreme court affirmed the denial of leave to file. Defendant was convicted of a murder and armed robbery at a car dealership; he was alleged to have committed the crime with Smith. An eyewitness identified defendant as the shooter at trial, and Ricks testified that defendant confessed to him shortly after the offense. Trial counsel interviewed Barrier while investigating the defense theory that Smith committed the crime alone, but decided not to call her.

The petition failed to plead a colorable claim of actual innocence. First, Barrier's affidavit was not new evidence, where Barrier was known to defendant at trial and had been interviewed by trial counsel. Even if Barrier's averment that she never spoke to counsel were true, her knowledge of the shooting was discoverable at trial through due diligence. Barrier was listed on police reports as someone with knowledge about the shooting; a detective testified at trial that he spoke with Barrier during the investigation.

Nor was the information in Ricks' affidavit newly discovered. Defendant alleged in prior proceedings that Ricks admitted to him that his testimony was false. Although Ricks only recently admitted to this fact in his affidavit, defendant had previously alleged that Ricks' admissions occurred in front of his wife and lawyer. Defendant could have produced these witnesses in order to bring this claim earlier.

For similar reasons, the ineffectiveness and due process claims failed as well. Defendant could not show cause for either claim because he raised both in prior proceedings. The due process argument, which was based on a theory that the State failed to disclose Ricks' testimony resulted from a plea agreement and that it knew the evidence was false, had been raised in prior proceedings, and the evidence in Ricks' affidavit was discoverable in these prior proceedings. Similarly, the ineffectiveness claim for failing to call Barrier was raised as early as defendant's post-trial motion, and the information in her affidavit was available earlier with the exercise of due diligence.

Double Jeopardy

McElrath v. Georgia, 601 U.S. __, 144 S. Ct. 651 (2024) (2/21/24)

Defendant was charged with three crimes stemming from the stabbing death of his mother: malice murder, felony murder, and aggravated assault. The jury found defendant "not guilty by reason of insanity" of malice murder, but "guilty but mentally ill" of the other two crimes.

Under Georgia law, a jury's verdict in a criminal case can be set aside if affirmative findings by the jury are not legally and logically capable of existing simultaneously. Invoking this "repugnancy doctrine," Georgia courts nullified both the "not guilty" and "guilty" verdicts and authorized a retrial. Defendant maintained that the Fifth Amendment's Double Jeopardy Clause prevented the State from retrying him for malice murder because the "not guilty by reason of insanity" finding acted as an acquittal. The Georgia Supreme Court agreed that the verdicts were irreconcilable, requiring a new trial, but rejected defendant's double jeopardy argument because the result of the repugnant verdicts was to render them "valueless."

The U.S. Supreme Court disagreed. For double jeopardy purposes, a jury's determination that a defendant is not guilty by reason of insanity is a conclusion that "criminal culpability had not been established," just as much as any other form of acquittal. Although Georgia argued that under its statute, "repugnant" verdicts rendered the entire case a nullity, the Supreme Court pointed out that whether an acquittal has occurred for purposes of the Double Jeopardy Clause is a matter of federal, not state, law. Under federal law, "[a]n acquittal is an acquittal," and "[i]nconsistency in a verdict is not a sufficient reason for setting it aside." **Harris v. Rivera**, 454 U.S. 339, 345 (1981).

People v. Jefferson, 2024 IL 128676 (6/6/24)

A jury found defendant guilty of murder, but found in a special interrogatory that the State did not prove beyond a reasonable doubt that defendant personally discharged the firearm causing death. After defendant's case was remanded for a new trial, defendant argued that the negative finding on the special interrogatory precluded the State from presenting evidence of personal discharge, or arguing that defendant personally discharged the weapon. The trial court granted the motion, the State filed an interlocutory appeal, and the appellate court reversed. The supreme court affirmed the appellate court.

To determine whether a jury's finding on a special interrogatory affects the evidence and arguments admissible on retrial, the supreme court looked to the United States Supreme Court's jurisprudence on "issue preclusion." **See Ashe v. Swenson**, 397 U.S. 436 (1970). **Ashe** held that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." There, defendant was charged in connection with a robbery of several people playing cards. The charge against defendant alleged robbery of one victim, both as principal and accomplice. He was acquitted, and the State charged him with robbery of another one of the victims. The supreme court held that the doctrine of issue preclusion, applicable to criminal cases via the double jeopardy clause, barred the charge. There was no question the victims were robbed, and defendant was charged as an accomplice, so the only question at his trial was whether he was one of the robbers. The acquittal meant that the jury did not believe he was one of the robbers.

The Illinois Supreme Court found **Ashe** distinguishable. Unlike the acquittal in **Ashe**, "the jury's negative answer to the special interrogatory in this case is not a finding of fact. Rather, it is simply a determination by the jury that the State failed to prove the sentencing enhancement beyond a reasonable doubt." Although defendant pointed out that this finding was a factual determination that defendant's accomplice, not defendant, fired the shot that killed the victim, the court held that this is not the only conclusion to be drawn. The jury may have been divided on the issue, or it may have concluded that either defendant or his accomplice fired the shot but could not determine which. The instructions did not require unanimity on the theory of guilt. Thus, the jury could find defendant guilty without making a factual determination on his role in the offense, and retrial of defendant for being a principal would not be inconsistent with the jury's findings.

The court further held that the trial court should not instruct the jury that there was insufficient evidence that defendant fired the fatal shot, as it had planned. A rational jury in this case "could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration," **Ashe**, 397 U.S. at 444, and therefore the doctrine of issue preclusion applies. However, the State conceded, and the court agreed, that the negative finding on the interrogatory did have preclusive effect on whether or not defendant could receive the firearm sentencing enhancement.

Evidence

Smith v. Arizona, 602 U.S. ___, 144 S. Ct. 1785 (2024) (6/21/24)

Defendant was arrested and charged with various drug offenses after police officers executing a search warrant discovered him in a shed along with a large quantity of what appeared to be drugs. The suspected drugs were sent to the State lab, where analyst Elizabeth Rast conducted testing and prepared notes and a report documenting her work and conclusions. By the time of defendant's trial, however, Rast no longer worked at the lab. The State indicated it would present the testimony of a different lab analyst, Greggory Longoni, at trial and that Longoni would provide "an independent opinion on the drug testing performed by" Rast.

At defendant's trial, Longoni testified to the methods Rast used to analyze the suspected drugs, stated that the testing conformed to scientific principles as well as the lab's policies and practices, and related what was in Rast's notes and report. Longoni then offered his "independent opinions" as to the identity of the substances in question. Those opinions were the same as Rast's had been, and defendant was convicted of various drug offenses.

Defendant challenged Longoni's testimony as violating the confrontation clause. The confrontation clause provides that a defendant has the right to be confronted with the witnesses against him. It bars the admission into evidence at trial of an absent witness's testimonial hearsay statements unless the witness is unavailable and the defendant had a prior opportunity to cross-examine him or her.

The State argued that Longoni's testimony based on Rast's notes and report was not hearsay because Rast's underlying statements were not admitted for their truth but rather to show the basis for Longoni's independent opinions. The court rejected that argument, noting that "truth is everything" when it comes to basis-testimony for expert opinions. That is, the jury cannot decide whether to credit an expert's opinion without evaluating the truth of the basis for that opinion. Through Longoni's testimony, then, Rast's statements came in for their truth. Accordingly, they were hearsay.

The court also rejected the State's argument that the basis evidence was not hearsay because Arizona Rule of Evidence 703 authorized one expert to testify to the substance of a non-testifying expert's analysis if that analysis formed the basis of the testifying expert's opinion. "Evidentiary rules…do not control the inquiry into whether a statement is admitted for its truth."

The court did not resolve the ultimate question of whether the confrontation clause was violated here, however, because the question of whether Rast's statements were testimonial was not presented in the cert petition and thus was not before the court.

Indictments, Informations, Complaints

People v. Basile, 2024 IL 129026 (10/3/24)

The supreme court reinstated a grand jury indictment that had been dismissed on the basis of deceptive evidence. The State sought an indictment for criminal sexual assault by presenting a detective's testimony before the grand jury. The detective testified that a woman told him that after a night of drinking alcohol, defendant took her home and had sexual intercourse with her while she was unable to give consent and in and out of consciousness. After this testimony, a grand juror asked the detective if, given the complainant's extremee intoxication, there was any corroborating evidence that "this person did this to her." The detective responded, "He told me he did." The juror stated that was "all I need to know," and the grand jury issued the indictment

Defendant moved to dismiss the indictment, arguing that in defendant's recorded interview with the detective, he did not admit to sexual assault, only consensual sex. The circuit court agreed this rendered the detective's answer misleading and dismissed the indictment. The appellate court affirmed, holding the detective's answer left the grand jury with a false impression that the defendant had admitted to having intercourse without consent, and while a defendant may not generally attack an indictment, due process is violated if the prosecutor deliberately misleads the grand jury. This error was prejudicial because the State presented a single witness, who provided a secondhand account from a complainant who was admittedly inebriated and unable to recall much of the encounter.

A 4-3 supreme court majority reversed. The grand jury is historically independent, so when courts are asked to dismiss an indictment based on the denial of due process, they must proceed with restraint and find a denial of due process only if certain. Dismissal is appropriate only if the due process violation is "unequivocally clear" and leads to "actual and substantial" prejudice.

The majority held that the record did not show an unequivocally clear violation of due process. The juror's question as to whether there was additional evidence "that this person did this to her" was ambiguous. Depending on which word the juror emphasized, the question may have been about the identify of the perpetrator, the act of intercourse, or the act of intercourse without consent. In two of these interpretations, the detective's affirmative answer would not be misleading – defendant admitted he had intercourse with the victim. Defendant could not clearly establish that the juror meant to ask only about non-consensual intercourse.

Regardless, defendant could not show prejudice. The grand jury had sufficient

evidence to return a true bill of indictment based solely on the detective's testimony prior to the grand juror's question. Nothing in the record suggests that this lone juror's questions were indicative of any uncertainty of any of the other grand jurors with respect to the State's legally sufficient probable cause evidence.

The dissent would have upheld the lower courts because it was clear the juror was asking about non-consensual sex. The notion that the juror's question could be interpreted three different ways is unrealistic, given that the question was qualified with a comment about the complainant's inebriation. The juror obviously wanted to know if the events occurred as described by the complainant. The detective's answer was that yes, the defendant confirmed the events occurred as described. This was unequivocally misleading. Regarding prejudice, the dissent pointed out that the juror who asked the question, upon hearing the detective's affirmative answer, stated, "That's all I needed to know." To the dissent, this was "unequivocally clear" evidence that the misleading answer affected the indictment. The majority placed undue emphasis on the fact that only one juror asked a question, because this question and answer was dispositive.

Search & Seizure

People v. Turner, 2024 IL 129208 (9/19/24)

Defendant was charged with murder arising out of a shooting incident during which he was also shot. Prior to trial, he filed a motion to suppress evidence arguing that the warrantless seizure of his clothing while he was being treated in a trauma room in the hospital's emergency department violated his fourth amendment rights and the search and seizure clause of the Illinois constitution.

In determining whether a person has a reasonable expectation of privacy in a particular place, courts typically consider six factors: (1) ownership of the property searched; (2) whether the person was legitimately present in the area searched; (3) whether the person has a possessory interest in the area or property searched; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the person had a subjective expectation of privacy in the property.

Applying those factors to the hospital setting has led to mixed results in Illinois courts. In **People v. Hillsman**, 362 Ill. App. 3d 623 (2005), and **People v. Torres**, 144 Ill. App. 3d 187 (1986), the courts determined there was no reasonable expectation of privacy in a hospital emergency room. In **People v. Gill**, 2018 IL App (3d) 150594, the court found that the defendant did have a reasonable expectation of privacy in a private hospital room on an upper floor of the building, distinguishing that space from an emergency room given that the emergency room is typically meant for a temporary stay where a patient is unable to restrict the access of others. And, in **People v. Pearson**, 2021 IL App (2d) 190833, the court found a reasonable expectation of privacy in an emergency department trauma room where the door to the room was closed when the police entered and where there was limited access to the emergency department because it was separated from the waiting room by locked doors.

Defendant had no reasonable expectation of privacy in the trauma room here. He had no ownership or possessory interest in the room, so the first and third factors weighed against him. But the second factor weighed in his favor because he was legitimately present in the trauma room, receiving treatment for an injury. The fourth factor – prior use – is irrelevant to determining whether an individual has a reasonable expectation of privacy in an emergency department trauma room. An individual's expectation of privacy would not change regardless of whether it was his first time in the room or whether he had been treated there previously. With regard to defendant's ability to control or exclude others from the room, the only evidence was his mother's testimony that she was not allowed to go into the room for at least an hour after she

arrived. While this established that the *hospital* had the ability to exclude others from defendant's room, it was not evidence that defendant had any similar ability. And, the court rejected defendant's argument that his position as a patient in a trauma room should give him similar rights of exclusion as a hotel guest, noting among other things that the hospital was required by law to notify the police that a gunshot victim was being treated there. Finally, defendant failed to introduce any evidence that he had even a subjective interest of privacy in the trauma room. Instead, the evidence was that he willingly spoke to the police when they entered the room through its open door, that he did not ask for the door to be closed or for the detectives to leave, and that he was generally cooperative.

Accordingly, under the totality of the circumstances here, defendant failed to establish a reasonable expectation of privacy. Each case must be decided on its individual facts, such that an expectation of privacy might be found in an emergency department trauma room in some other case under some other circumstances, but defendant did not meet his burden here.

People v. Redmond, 2024 IL 129201 (9/19/24)

Following the legalization of recreational use of marijuana in Illinois, the odor of burnt cannabis emanating from a vehicle, alone, no longer provides probable cause to search. Probable cause to search exists where the evidence known to the investigating officer raises a "fair probability that contraband or evidence of a crime will be found in a particular place." An officer is not required to eliminate any innocent explanations for suspicious facts in making a probable cause determination; the analysis requires only that the facts available would warrant a reasonable man to believe there is a reasonable probability that a search will uncover contraband or evidence of criminal activity.

Prior to 2013, all cannabis was considered contraband; it could not be possessed legally for any purpose. During that time period, **People v. Stout**, 105 Ill. 2d 77 (1985), was decided, holding that the odor of cannabis emanating from a defendant's vehicle, alone, was sufficient to establish probable cause to search that vehicle. In 2013, some cannabis possession became legal for medical purposes, and in 2016, possession of less than 10 grams of cannabis was decriminalized and made a civil law violation, punishable only by fine. At that time, possession of more than 10 grams remained a criminal offense. In **People v. Hill**, 2020 IL 124595, the court considered the propriety of a search conducted during that period, holding that the odor of cannabis in a vehicle remained a factor in a probable cause analysis, but declining to address the question of whether **Stout** remained good law in light of medical use and decriminalization because the officer in **Hill** had relied on more than just the odor of cannabis.

Effective January 1, 2020, the legislature legalized cannabis possession, consumption, use, purchase, and transportation for personal use by persons at least 21 years of age. Transportation in a vehicle must be "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." 410 ILCS 705/10-35(a)(2)(D) Individuals may not use cannabis in any motor vehicle or in any public place. 410 ILCS 705/10-35(a)(3)(D), (F). And, the Illinois Vehicle Code prohibits the use of cannabis in a vehicle upon a highway and provides that no driver may possess cannabis in a vehicle upon a highway "except in a sealed, odor-proof, child-resistant cannabis container." 625 ILCS 5/11-502.15(a), (b).

Stout is no longer good law with regard to searches occurring on or after January 1, 2020. "[G]iven the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used."

Under legalization, cannabis is akin to alcohol, which also is legal to use and posses under some circumstances and illegal under others. For example, alcohol may not be transported in an open container in the passenger area of a vehicle, and a person may not drive a vehicle while the alcohol concentration in his blood, breath, or other bodily substance exceeds 0.08. The odor of alcohol, alone, is insufficient to establish probable cause to search a vehicle, and cannabis is now on the same footing.

Applying the totality of the circumstances analysis to the facts here, the Court determined that the officer did not have probable cause to search defendant's vehicle. Defendant was stopped for driving 73 miles per hour in a 70-mile-per-hour zone and having an improperly secured license plate on I-80 in Henry County. He said he was traveling from Des Moines to Chicago, which is not an inculpatory fact. While defendant's vehicle continued to smell of cannabis even after he exited it, that fact supported only the inference that he had smoked cannabis in the car at some point. But given that defendant himself did not smell of cannabis and that he exhibited no signs of impairment, the odor was not indicative of recent use. While Defendant's failure to produce his driver's license suggested a violation of the Vehicle Code provision requiring a driver to have his license in his immediate possession when operating a vehicle, that violation does not add to the probable cause analysis because it does not make it any more likely that evidence of cannabis use or possession would be found in the vehicle. Indeed, the officer confirmed during the stop that defendant did in fact have a valid Illinois driver's license. And although the officer felt defendant was not providing direct answers with regard to his living arrangements when defendant stated that he lived in Chicago but was temporarily staying in Des Moines because of the pandemic, that fact did not make it any more likely that his car contained contraband or evidence of a crime. Additional relevant facts were that defendant did

not delay in pulling over, did not make any furtive movements, cooperated with the officer, did not exhibit any signs of impairment, and did not have visible cannabis or drug paraphernalia in the vehicle. Thus, the trial court properly granted his motion to suppress.

Sentencing

Erlinger v. United States, 602 U.S. ___, 144 S. Ct. 1840 (2024)(6/21/24)

Under the Armed Career Criminal Act (ACCA), a defendant may be subject to a more severe sentence for a firearm offense if he has three prior convictions for either violent felonies or serious drug offenses that were committed on separate occasions. The question before the court was whether the judge may decide that the past offenses were committed on separate occasions under a preponderance standard or whether the question must be submitted to the jury for a unanimous finding beyond a reasonable doubt. The court held that the fifth and sixth amendments require the latter.

Here, the State pursued an ACCA sentence against defendant, relying on burglaries he had committed when he was 18. In the district court, the State pointed to evidence that defendant burglarized a pizza shop, sporting goods store, and two restaurants within a span of days, and argued that each occurred on a different occasion and thus satisfied the ACCA. Defendant, on the other hand, argued that the burglaries had occurred during a single criminal episode and thus were not committed on separate occasions. And, defendant argued that a jury should make the ultimate determination on that issue. The district court rejected that request, however, and went on to find that each of his burglaries occurred on a separate occasion, thus qualifying him for a lengthier sentence under the ACCA. And, the Seventh Circuit affirmed, despite the government's confession of error in that court.

Given the government's concession the Supreme Court appointed an *amicus* to defend the judgment below. Ultimately, the court agreed with defendant that the "occasions" determination must be made by a jury and requires proof beyond a reasonable doubt, relying heavily on its prior decisions in **Apprendi v. New Jersey**, 530 U.S. 466 (2000) and **Alleyne v. United States**, 570 U.S. 99 (2013). In reaching this conclusion, the court rejected the *amicus*'s argument that the occasions inquiry is merely a fact related to past offenses and thus appropriate for a judicial determination under **Almendarez-Torres v. United States**, 523 U.S. 224 (1998). The occasions inquiry will often be more complicated than the narrow determination of whether defendant was previously convicted and of what offense; it can involve questions of timing and location, as well as "a qualitative assessment about 'the character and relationship' of the offenses."

Justice Kavanaugh authored a dissent, joined by Justices Alito and Jackson, on the basis that **Almendarez-Torres** should permit the judge to make the occasions finding under the ACCA. Justice Jackson separately dissented on the basis that **Apprendi** was wrongly decided because juries are ill equipped to "deal with the fine-

grained, nuanced determinations" required to adjudicate complex factual questions such as the occasions-inquiry here.

Weapons

United States v. Rahimi, 602 U. S. ____, 144 S. Ct. 1889 (2024) (6/21/24)

The Supreme Court reversed the Fifth Circuit's holding that a firearm statute was unconstitutional. The statute, 18 U. S. C. §922(g)(8), barred certain individuals with a restraining order, including those who were found by the judge to pose a credible threat to an intimate partner, from possessing firearms. The defendant in this case was found to have fired his weapon in the direction of the mother of his child after abusing her in public. A court entered a restraining order, which included the finding that he posed a threat to his partner. He was later found in possession of a firearm, pled guilty under Section 922(g)(8), and, on appeal, lodged a facial challenge to the statute under the second amendment. In the aftermath of **Bruen**, the Fifth Circuit held the statute unconstitutional.

The 8-1 Supreme Court majority held that barring individuals who pose a credible threat to others from possessing a firearm "fits neatly" within the nation's tradition of firearm regulation. The court held that under **Bruen**, courts should determine whether there is a tradition of "relevantly similar" firearm regulations, and consider whether the challenged regulation is "consistent with the principles that underpin the Nation's regulatory tradition." If so, the challenged regulation is constitutional as long as it doesn't reach "to an extent beyond what was done at the founding." The majority found two such "relevantly similar" laws: the "surety laws" of the 18th century, which required gun owners to post bonds upon a finding of reasonable cause to believe the individual would engage in future violence or breach of the peace; and "going armed" laws, which prohibited individuals from carrying dangerous weapons in such a manner so as to disrupt the public order or "terrify the good people of the land." Like the surety and going armed laws, Section 922(g)(8) only disarms individuals who have been found to represent a credible threat by a court of law, and the disarmament is temporary. Together, these laws "confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."

The majority declared that the Fifth Circuit and dissent misconstrued the degree of similarity between the challenged regulation and its historical analogue required by **Bruen**. **Bruen** made clear that "a historical twin" is not required. But Justice Thomas' dissent sought to explain that surety and going armed laws were very different from section 922(g)(8). **Bruen** looked at both the reason for the historical law and the method used to enforce the regulation – the "how and why" of the challenged regulation. Both are required to constitute a historical analogue. In Thomas' view, neither surety laws nor going armed law satisfy this test. Surety laws merely fined the

individual, they did not lead to disarmament and imprisonment, and thus do not satisfy the "how" requirement. The "affrays" and "going armed" laws were aimed against armed rebels of the King of England, not domestic abusers, thus could not satisfy the "why" requirement. In fact, Thomas believes the second amendment was a reaction to and refutation of such laws. Additionally, such laws were in fact criminal statutes, disarming individuals only through punishment for past conduct, unlike the civil restraining order process which disarms the individual in order to prevent future behavior.

The opinion has five concurrences. Justice Sotomayor, joined by Justice Kagan, celebrated the majority's embrace of a far broader definition of "historical analogue" than the exacting definition endorsed by the dissent. This concurrence noted that in the dissent's view, the "law is trapped in amber" regardless of any changes in technology or societal problems, or the recognition that a given founding-era solution was inadequate to address such problems. Justice Barrett's concurrence echoed this concern, and added that the lack of a particular historical firearm regulation does not mean that any such legislation would have been unconstitutional; this assumes "founding-era legislatures maximally exercised their power to regulate, thereby adopting a 'use it or lose it' view of legislative authority." These justices, along with Justice Jackson, whose concurrence focused on the desperate need for more guidance from the court given widespread confusion in the lower courts' attempts to apply **Bruen**, enthusiastically embraced the "principles" approach to finding a historical analogue. As Justice Barrett concluded, such principles can be general, though not so general as to "water down the right." In this case, the majority "settles on just the right level of generality" when it concludes that America has a tradition of preventing dangerous persons from possessing firearms.

People v. Harvey, 2024 IL 129357 (10/18/24)

The supreme court affirmed defendant's conviction for aggravated unlawful use of a weapon. The AUUW statute exempts those who possess or carry the weapon "in accordance with the Firearm Concealed Carry Act, by a person who has been issued a currently valid license under the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10)(iv). Defendant argued the State failed to prove beyond a reasonable doubt that this exemption did not apply to defendant. The supreme court agreed with the appellate court's holding that the State's proof was sufficient.

To prove that defendant had not been issued a currently valid license ("CCL"), the State called two police officers to testify that when they found defendant in possession of a gun, they asked if he had a CCL, and defendant said "no." Defendant argued that this evidence was insufficient to prove he didn't own a CCL. First, defendant argued the answer was vague – he may have meant that he didn't have the

license on his person. Second, defendant argued this evidence violated the *corpus delicti* rule. The State countered that the *corpus delicti* rule didn't apply, and regardless, it had no obligation to prove defendant lacked a CCL, because the statute allows proof that the possession was "not in accordance with the Firearm Concealed Carry Act," a requirement of which is to produce the license when asked by police.

The court first held that under section 24-1(a)(10)(iv), the State had to prove defendant actually lacked a CCL, not just that the possession was not in accordance with the Carry Act. The plain language of the Carry Act itself states that those in violation "shall only be subject to the penalties under this Section and shall not be subject to the penalties under *** paragraph *** (10) of subsection (a) of Section 24-1." To harmonize this language with that of section 24-1(a)(10)(iv), the court held that it was required to interpret subsection 24-1(a)(10)(iv) as exempting anyone who owns a CCL, even if they are not otherwise in compliance with the Carry Act (e.g., able to produce the CCL to the officers). (Two justices disagreed with this interpretation, and would have held that defendant's failure to produce the CCL in accordance with the Carry Act (a)(10)(iv) was enough to remove the protection of the exemption.)

The court next ruled that defendant's answers were not so vague as to raise a doubt that he did not own a CCL. While one interpretation of his response was that he did not have the license with him, the standard of review on appeal is whether any rational trier of fact could have found defendant guilty, viewing the evidence in a light most favorable to the State. Given this deferential standard, the trial court's interpretation that he lacked a license altogether was not so unreasonable as to warrant reversal.

Finally, the *corpus delicti* rule did not apply to defendant's statement. Defendant argued that the rule applies to all evidence relevant to establishing any element of the offense. But the court held that the rule applies only when the harm it seeks to limit – false confessions – is present. In this case, defendant's statement was not a confession, *i.e.*, an admission that he committed the elements of the offense. Rather, it was a factual answer to a question, relevant to only one element of the offense. As in **People v. Dalton**, 91 Ill. 2d 22 (1982), where the court found no *corpus delicti* violation when the defendant's statement established his age (also an element of the offense), defendant's answer here is the type of objective, inherently reliable statement to which the *corpus delicti* rule need not apply.

A concurring justice found this holding to be an unjustified and illogical diminishment of the *corpus delicti* rule, and would have affirmed on the basis that defendant's inculpatory statement was sufficiently corroborated by facts such as defendant's furtive movement to conceal the weapon and his failure to ask the officers for an opportunity to retrieve the CCL.

Illinois Public Defender Association 2024

Appellate Case Update

People v. Afandi, 2024 IL App (1st) 221282 (8/23/24)

The prosecutor committed plain error when she improperly claimed in rebuttal closing argument that defendant, an Iraqi immigrant, "came to this country to rape women. He came to this country for you and for the judge and then he took that oath and he desecrated it."

Defendant was charged with four counts of aggravated criminal sexual assault. The complainant testified that defendant sexually assaulted her in his car after posing as an Uber driver outside of a bar, and two propensity witnesses testified that defendant sexually assaulted them under similar circumstances. DNA testing supported all three witnesses' testimony, but defendant testified his interaction with the complainant was consensual and he had "no idea" why his DNA was found inside the propensity witnesses' bodies.

During closing argument, defense counsel, citing defendant's testimony, argued that defendant assisted U.S. forces in the Iraq war, surviving a roadside attack, and had taken refuge here after his service. Counsel added that he also came to the country to enjoy its rights, including the right to a jury trial. In rebuttal, Assistant State's Attorney Heather Kent stated, "He came to this country to rape women. He came to this country for you and for the judge and then he took that oath and he desecrated it." Counsel did not object. The jury found him guilty of all four counts plus one count of aggravated kidnapping, and he was sentenced to 45 years in prison.

Defendant argued on appeal that the prosecutor's comment was second-prong plain error. In response, the State argued that defendant "invented a claim of improper closing argument by taking a remark out of context and giving it a malicious, racist meaning." It also argued that appellate counsel's "brand of advocacy does great damage to our profession." (St. Br. 23) The State described defendant's arguments as, inter alia: outrageous, manufactured, contemptible, distorted, contorted, concocted, absurd, mendacious, duplicitous, vicious, and vitriolic. The State also accuses Afandi of: obfuscation, fabrication, and prevarication; attempting to "dupe" this Court; and engaging in "gamesmanship." (St. Br. 20-46)

The appellate court first found clear error occurred. Defendant testified he came to the country for safety after working with U.S. armed forces in Iraq, and the State

did not call any witnesses to rebut this testimony. Therefore, the prosecutor's argument that defendant "came to this country to rape women" was not based in fact. The error undermined the integrity of the judicial process by highlighting defendant's status as an immigrant. The State twice elicited from witnesses that defendant had an accent and broken English. By highlighting that he "came to this country" and did so "to rape women," the State went "beyond an attack on credibility" into "an offensive and unwarranted appeal for the jury to fear Arab and Muslim men, to demonize [defendant] as an immigrant from a Muslim country." The court found second-prong plain error and remanded for a new trial.

Office of the State Appellate Defender

Summary of Significant Criminal Issues Pending in the Illinois Supreme Court

October 23, 2024

JAMES E. CHADD
State Appellate Defender
KERRY J. BRYSON
SHAWN O'TOOLE
Deputy State Appellate Defenders, Editors

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Defense counsel: Michael Orenstein, Chicago OSAD

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Defense counsel: Andrew Thomas Moore, Elgin OSAD

No. 130351
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Defense counsel: Leonid Feller, Quinn Emanuel Urquhart & Sullivan, LLP, Chicago

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Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

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Defense counsel: Sarah Curry, Chicago OSAD

No. 129967
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Defense counsel: Dimitri Golfis, Ottawa OSAD

BAIL

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Defense counsel: James F. DiQuattro, Chicago

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Defense counsel: Ross Allen, Chicago OSAD

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Defense counsel: Christina O'Connor, Mt. Vernon OSAD

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Defense counsel: Jonathan Krieger, Chicago OSAD

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Defense counsel: Rebecca Levy, Chicago OSAD

No. 129718
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Defense counsel: Jennifer Lassy, Mt. Vernon OSAD

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Whether a successive post-conviction petition claiming actual innocence based on an affidavit from an exculpatory witness must assert or establish at the leave-to-file stage that the evidence could not have been discovered earlier through exercise of due diligence; and even if this showing is required, whether the evidence here should have been considered "new" where the affiant explained he did not come forward earlier for fear of reprisal, and there was no evidence defendant knew the affiant was an eyewitness until meeting him in prison. (§9-1(i)(3))

Defense counsel: Samuel Steinberg, Chicago OSAD

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Defense counsel: Joel A. Flaxman and Kenneth N. Flaxman, Chicago

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Defense counsel: Stephen Richards, Chicago

No. 130110
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Defense counsel: Caroline Bourland, Chicago OSAD

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Defense counsel: H. Candace Gorman, Chicago

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Defense counsel: Ann Fick, Elgin OSAD

COUNSEL

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Defense counsel: Anne Brenner, Ottawa OSAD

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Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

EVIDENCE

No. 130110
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Whether police statements made during recorded interrogations are admissible only if necessary to demonstrate the effect of the statement on the defendant and the probative value is not outweighed by its prejudice, or whether, as the appellate court held here, such police statements are admissible if "helpful" or "useful" to the trier-of-fact's assessment of the defendant's statements. (§§19-3, 19-10(f))

Defense counsel: Caroline Bourland, Chicago OSAD

No. 130127
People v. Smart, State leave to appeal granted 3/27/24 from 2023 IL App (1st) 220427

Whether the State may present other-crimes evidence in order to prove intent, where the defense did not dispute intent but instead denied committing the offense altogether. (§19-23(b)(3))

Defense counsel: Kara Kurland, Chicago OSAD

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No. 130932
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Whether the appellate court violated due process when it: (1) vacated the trial court's order finding defendant restored to fitness without also vacating the guilty plea that was entered after the erroneous fitness finding; and (2) ordered a retrospective restoration proceeding. (§§21-2, 21-3(f), 21-4)

Defense counsel: Bradley Jarka, Chicago OSAD

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Defense counsel: Christopher McCoy, Elgin OSAD

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Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§24-9)

Defense counsel: Rachel Kindstrand, Chicago OSAD

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Whether defendant's motion to reconsider the denial of his motion to withdraw his guilty plea tolled the 30-day deadline for the filing of a notice of appeal. (§24-8(b)(1))

Whether the sentencing court should re-admonish a *pro se* defendant pursuant to Rule 401(a) after accepting a guilty plea and imposing a sentence, before post-plea proceedings under Rule 604(d). (§24-8(b)(1))

Defense counsel: Stephen Gentry, Chicago OSAD

HOMICIDE

No. 130110
People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether a defendant may be convicted of multiple counts of concealment of a homicidal death based on a series of actions taken to conceal one homicidal death, and whether a defendant may be convicted of multiple counts of dismemberment based on actions taken to dismember one human body. (26-6)

Defense counsel: Caroline Bourland, Chicago OSAD

JUDGE

No. 129695
People v. Class, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 200903 (modified 10/13/23)

Whether the appellate court has the authority under Illinois Supreme Court Rules 366(a)(5) or 615(b)(2) to order the substitution of a new circuit court judge when remanding a criminal case, and, if so, whether the appellate court must first make a specific finding of bias or actual prejudice before so ordering. (§31-3(d))

Defense counsel: Michael Orenstein, Chicago OSAD

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No. 129676
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Whether, where a reviewing court concludes that the trial court erred in refusing to instruct the jury on an affirmative defense, the court must go on to consider whether that error is harmless in light of the trial evidence or whether the error in failing to instruct on an affirmative defense is such a grave and fundamental error that it denies a defendant due process and requires a new trial regardless of the strength of the evidence. (§32-8(e))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 130779
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Whether IPI Criminal Nos. 11.49 and 11.50 are in conflict, because when a defendant is accused of threatening a sworn law enforcement officer, the State must prove that that the threat must "contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm," and No. 11.50 includes this element while 11.49 does not. (§32-8(c))

Defense counsel: Drew Wallenstein, Elgin OSAD

No. 130919
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Whether the appellate court majority incorrectly affirmed the trial court's decision to deny a defense request for a self-defense instruction at defendant's trial for aggravated battery of a peace officer, where the appellate court deferred to the trial court's decision, finding it "within the bounds of reason," rather than applying the "some evidence" standard, and where the dissent found clear evidence that the defendant was acting in response to excessive force which, in its view, is alone sufficient to warrant a self-defense instruction. (§32-8(a))

Defense counsel: Elliott Borchardt, Elgin OSAD

JUVENILE PROCEEDINGS

No. 127304
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Whether a young adult offender must provide specific factual support for his claim that his *de facto* life sentence is unconstitutional as applied in order for his *pro se* post-conviction petition to advance beyond the first stage of post-conviction proceedings or whether it is sufficient that the petition cite scientific studies on brain development in young adults, as well as the evolution of **Miller v. Alabama**, 567 U.S. 460 (2012), and its progeny. (§33-6(g)(4))

Defense counsel: Ashlee Johnson, Chicago OSAD

No. 129767
People v. White, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 210385-U

Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§33-6(g)(4))

Defense counsel: Rachel Kindstrand, Chicago OSAD

No. 130015
People v. Spencer, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 200646-U

Whether emerging adults under the age of 21 sentenced to *de facto* life in prison can challenge the constitutionality of the sentence under the Illinois Constitution's proportionate penalties clause, despite being eligible for parole after serving 20 years. (§§33-6(g)(4), 33-6(g)(5))

Defense counsel: Chan Yoon, Chicago OSAD

PRELIMINARY HEARING

No. 130585
People v. Chambliss, State leave to appeal granted 5/29/24 from 2024 IL App (5th) 220492.

Whether the failure to hold a prompt preliminary hearing constitutes second prong plain error, requiring reversal of a conviction without retrial, where defendant does not object until after conviction following an otherwise fair trial. (§38-1)

Defense counsel: Julie Thompson, Mt. Vernon OSAD

PROSECUTOR

No. 130470
People v. Muhammad, State leave to appeal granted 5/29/24 from 2023 IL App (1st) 220372.

Whether the Special State's Attorney representing the State in a hearing before the Torture Inquiry and Relief Commission should have been disqualified for an actual conflict of interest under 55 ILCS 5/3-9008(a-10),based on his prior service as a high level supervisor in the Cook County State's Attorney's Office. (§40-16)

Whether the defendant's claim before the Torture Inquiry and Relief Commission should have been dismissed because the coerced statement was not a "confession" but rather a false alibi. (§40-16)

Defense counsel: H. Candace Gorman, Chicago

No. 130775
Village of Lincolnshire v. Olvera, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether the second prong of the plain error rule overcomes forfeiture when a municipal attorney acts as prosecutor without written permission from the State's Attorney, as required by 625 ILCS 5/16-102(c). (§40-16)

Defense counsel: Ann Fick, Elgin OSAD

SEARCH AND SEIZURE

No. 127838
People v. Clark, Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523; oral argument held 9/10/2024

Whether the Chicago Police Department's use of investigative alerts, whereby officers conduct warrantless arrests based on the department's internal determination of probable cause, violates the warrant clause of the Illinois Constitution. And, if this Court agrees that arrests on investigative alerts are unconstitutional, whether the good faith exception applies. (§43-5(a)(1))

Defense counsel: Todd McHenry, Chicago OSAD

No. 129237
People v. Molina, Defense leave to appeal granted 3/29/23 from 2022 IL App (4th) 220152; oral argument held 1/10/24

Whether, following the legalization of recreational use of marijuana in Illinois, the odor of raw cannabis emanating from a vehicle is sufficient to support a finding of probable cause to search the vehicle. (§§43-4(a), 43-6(c))

Defense counsel: James W. Mertes and Mitchell R. Johnston, Sterling, IL

No. 130286
People v. Hagestedt, Defense leave to appeal granted 3/27/24 from 2023 IL App (2d) 210715-U

Whether a police officer who entered a private home as part of his "community caretaking" function violated the fourth amendment when he used a flashlight to peer

into a one-inch gap in a closed and locked kitchen cabinet in that home, allowing him to view contraband contained therein. (§§43-2(b), 43-2(d)(5)(a), 43-7(a))

Whether the contents of a clearly locked cabinet within defendant's home were not in plain view, despite a one-inch gap in the closure of the cabinet, because defendant's use of a chain and lock to secure the cabinet were a clear communication of his expressed privacy interest in the contents of that cabinet. (§§43-2(b), 43-2(d)(5)(a), 43-7(a))

Defense counsel: Andrew Thomas Moore, Elgin OSAD

SENTENCING

No. 127304
People v. Williams, Defense leave to appeal granted 9/27/23 from 2021 IL App (1st) 190535

Whether a young adult offender must provide specific factual support for his claim that his *de facto* life sentence is unconstitutional as applied in order for his *pro se* post-conviction petition to advance beyond the first stage of post-conviction proceedings or whether it is sufficient that the petition cite scientific studies on brain development in young adults, as well as the evolution of **Miller v. Alabama**, 567 U.S. 460 (2012), and its progeny. (§44-1(c)(4))

Defense counsel: Ashlee Johnson, Chicago OSAD

No. 127838
People v. Clark, Defense leave to appeal granted 3/29/23 from 2021 IL App (1st) 180523; oral argument held 9/10/2024

Whether a defendant who committed his offense prior to the enactment of 730 ILCS 5/5-4.5-105, but who is resentenced after Section 5-4.5-105's effective date, is entitled to the protections of Section 5-4.5-105, specifically consideration of the **Miller** factors at resentencing. (§44-2)

Defense counsel: Todd McHenry, Chicago OSAD

No. 129767
People v. White, Defense leave to appeal granted 9/27/23 from 2023 Il App (1st) 210385-U

Whether **People v. Jones**, 2021 IL 126432, which held that a fully negotiated guilty plea precludes a subsequent collateral challenge to the constitutionality of the sentence under **Miller**, extends to defendants who enter into open or blind guilty pleas with no agreement as to the sentence. (§44-1(c)(4))

Defense counsel: Rachel Kindstrand, Chicago OSAD

No. 129795
People v. Haynes, State leave to appeal granted 11/29/23 from 2023 IL App (1st) 220048; oral argument held 9/11/2024

Whether a defendant's disproportionate response during mutual combat bars a sentence reduction under 720 ILCS 5/8-4(c)(1)(E), which provides for a reduction in the class of offense for attempt murder where defendant proves by a preponderance of the evidence that he was acting under sudden and intense passion resulting from serious provocation by the victim and, had the victim died, the cause of death would have been negligent or accidental. (§44-4(k))

Defense counsel: Sarah Curry, Chicago OSAD

No. 129906
People v. Rothe, Defense leave to appeal granted 9/27/23 from 2023 IL App (5th) 220048-U; oral argument held 9/11/2024

Whether defendant's Class X sentence for armed robbery was constitutionally disproportionate, under the identical elements test, to the Class 2 sentence for armed violence with a category III weapon, where defendant carried a large wrench that resembled a category III weapon like a bludgeon or "other dangerous weapon of like character." (§44-1(b)(2))

Defense counsel: *Pro se*

No. 130015
People v. Spencer, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 200646-U

Whether emerging adults under the age of 21 sentenced to *de facto* life in prison can challenge the constitutionality of the sentence under the Illinois

Constitution's proportionate penalties clause, despite being eligible for parole after serving 20 years. (§§44-1(c)(4), 44-1(c)(5))

Defense counsel: Chan Yoon, Chicago OSAD

No. 130344
People v. Hoffman, State leave to appeal granted 5/29/24 from 2023 IL App (2d) 230067.

Whether section 5–4–1(c-1.5) of the Code of Corrections, 730 ILCS 5/5–4–1(c-1.5), which permits sentencing courts to impose a sentence below the mandatory minimum for certain offenses, including offenses that "involve the use or possession of drugs," applies to the offense of drug-induced homicide. (§44-1(a))

Defense counsel: Ann Fick, Elgin OSAD

No. 130431
People v. Smollett, Defense leave to appeal granted 3/27/24 from 2023 IL App (1st) 220322; oral argument held 9/17/2024

Whether the condition of defendant's probation that he spend the first 150 days in jail was excessive where the offense was not violent, he was rated as a low risk by probation, he had no criminal history, and a custodial setting posed a risk to his safety due to his "unpopularity." (§§44-7(a), 44-14(a))

Whether the restitution order was unauthorized where municipalities and public agencies are not considered "victims" of disorderly conduct under the restitution statute, 730 ILCS 5/5-5-6. (§§44-7(a), 44-14(a))

Defense counsel: Nnanenyem Eziudo Uche, Uche P.C., Chicago

SPEEDY TRIAL

No. 130207
People v. Yankaway, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 220982-U; oral argument held 9/11/2024

Whether the appellate court erred when it held that, while counsel performed deficiently by failing to properly demand trial in order to trigger the speedy trial term, defendant could not show prejudice even though the trial began after 160 days, as the

court presumed the State would have tried him earlier if counsel made the demand. (§46-1(b)(2))

Defense counsel: Anthony Santella, Elgin OSAD

STATUTES

No. 129585
People v. Brown, Defense leave to appeal granted 9/27/23 from 2023 IL App (4th) 220400; oral argument held 5/14/24

Whether a statutory amendment applies retroactively where the amendment became effective after sentencing but before the defendant's motion to reconsider sentence was denied. (§§47-2(a), 47-2(c))

Whether post-plea proceedings complied with the requirements of Supreme Court Rule 604(d) where the single issue raised in the written post-plea motion was withdrawn at the post-plea hearing, and the one issue orally argued at that hearing was not included in the written post-plea motion. (§§47-2(a), 47-2(c))

Defense counsel: Christopher McCoy, Elgin OSAD

No. 129965
People v. Thompson, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 220429-U

Whether section (3)(A-5) of the aggravated unlawful use of a weapon statute, which criminalizes possession of a firearm in a vehicle without having a Concealed Carry License, even if the defendant owns a valid Firearm Owner's Identification Card, is unconstitutional under **Bruen**, where there is no historical tradition of requiring two licenses for open carry. (§47-3(b)(2)(b))

Whether a defendant who is convicted under section (3)(A-5) has standing to attack the constitutionality of the Concealed Carry License Act, or whether standing extends only to those who applied for and were denied a license. (§47-3(b)(2)(b))

Defense counsel: Eric Castañeda, Chicago OSAD

No. 130447
People v. Johnson, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§47-1(b))

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§47-1(b))

Defense counsel: Gilbert Lenz, Chicago OSAD

TRAFFIC OFFENSES

No. 130775
Village of Lincolnshire v. Olvera, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether defendant was proven guilty beyond a reasonable doubt of driving under the influence of a drug, where the driving instructor who was observing the 16 year-old defendant drive never suggested he was "incapable of driving safely" under 625 ILCS 5/11-601(a)(4), but instead felt that any deficiencies in his driving could have been caused by nervousness. (§49-2(b))

Defense counsel: Ann Fick, Elgin OSAD

TRIAL PROCEDURES

No. 130067
People v. Smith, State leave to appeal granted 1/24/24 from 2023 IL App (1st) 181070

Whether the trial court's exclusion of defendant's mother from the courtroom, based on the State's representation that it might call her as an impeachment witness, infringed on defendant's right to a public trial. (§51-1)

Defense counsel: Steven Greenberg, Chicago

No. 130716
People v. Hietschold, State leave to appeal granted 9/25/24 from 2024 IL App (2d) 230047

Whether the appellate court correctly reversed and remanded a trial held *in absentia* on the grounds that the circuit court's admonishments failed to substantially comply with 725 ILCS 5/113-4(e), as they neglected to inform defendant that his failure to appear at trial would constitute a waiver of his right to confront witnesses. (§51-2(b))

Defense counsel: Elliott Borchardt, Elgin OSAD

VENUE & JURISDICTION

No. 130082
People v. Dyas, State leave to appeal granted 3/27/24 from 2023 IL App (3d) 220112

Whether defendant's motion to reconsider the denial of his motion to withdraw his guilty plea tolled the 30-day deadline for the filing of a notice of appeal. (§52)

Whether the sentencing court should re-admonish a *pro se* defendant pursuant to Rule 401(a) after accepting a guilty plea and imposing a sentence, before post-plea proceedings under Rule 604(d). (§52)

Defense counsel: Stephen Gentry, Chicago OSAD

VERDICTS

No. 129967
People v. Guy, State leave to appeal granted 11/29/23 from 2023 IL App (3d) 210423

Whether the jury's finding that defendant acted with unreasonable belief in the need for self-defense, resulting in a verdict of second degree murder as to one victim, is legally inconsistent with the intent required to convict defendant of attempt first degree murder against a separate victim during the same incident. (§53-2)

Defense counsel: Dimitri Golfis, Ottawa OSAD

No. 130110
People v. Keys, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 210630

Whether a defendant may be convicted of multiple counts of concealment of a homicidal death based on a series of actions taken to conceal one homicidal death, and whether a defendant may be convicted of multiple counts of dismemberment based on actions taken to dismember one human body. (§53-3(a))

Defense counsel: Caroline Bourland, Chicago OSAD

WAIVER - PLAIN ERROR - HARMLESS ERROR

No. 128805
People v. Quezada, State leave to appeal granted 11/30/22 from 2022 IL App (2d) 200195; oral argument held 3/12/24

Whether two evidentiary errors – improper gang evidence and hearsay statements from a witness interrogation video – amounted to cumulative, reversible error, where both errors were forfeited, and neither of the claims were individually reversible as plain error or ineffective assistance of counsel. (§54-3(d)(8)(b))

Defense counsel: Andrew Moore, Elgin OSAD

No. 129676
People v. Sloan, State leave to appeal granted 9/27/23 from 2023 IL App (5th) 200225; oral argument held 9/11/2024

Whether, where a reviewing court concludes that the trial court erred in refusing to instruct the jury on an affirmative defense, the court must go on to consider whether that error is harmless in light of the trial evidence or whether the error in failing to instruct on an affirmative defense is such a grave and fundamental error that it denies a defendant due process and requires a new trial regardless of the strength of the evidence. (§54-3(a))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 130191
People v. Johnson, Defense leave to appeal granted 1/24/24 from 2023 IL App (4th) 230087-U; oral argument held 9/12/2024

Whether the Fourth District Appellate Court erred when it refused to invoke the second prong of the plain error rule to review a forfeited claim that the sentencing court considered improper factors in aggravation, where the supreme court and all four of Illinois' other appellate court districts have repeatedly held that review of this issue is cognizable as second-prong plain error because it affects the defendant's fundamental right to liberty. (§54-2(d); 54-2(e)(6)(a))

Defense counsel: Zachary Wallace, Elgin OSAD

No. 130447
People v. Johnson, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§§54-1(b)(1), 54-2(b))

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§§54-1(b)(1), 54-2(b))

Defense counsel: Gilbert Lenz, Chicago OSAD

No. 130775
Village of Lincolnshire v. Olvera, Defense leave to appeal granted 9/25/24 from 2024 IL App (2d) 230255

Whether the second prong of the plain error rule overcomes forfeiture when a municipal attorney acts as prosecutor without written permission from the State's Attorney, as required by 625 ILCS 5/16-102(c). (§54-2(d))

Defense counsel: Ann Fick, Elgin OSAD

WEAPONS

No. 129965
People v. Thompson, Defense leave to appeal granted 11/29/23 from 2023 IL App (1st) 220429-U

Whether section (3)(A-5) of the aggravated unlawful use of a weapon statute, which criminalizes possession of a firearm in a vehicle without having a Concealed Carry License, even if the defendant owns a valid Firearm Owner's Identification Card, is unconstitutional under **Bruen**, where there is no historical tradition of requiring two licenses for open carry. (§55-1(b))

Whether a defendant who is convicted under section (3)(A-5) has standing to attack the constitutionality of the Concealed Carry License Act, or whether standing extends only to those who applied for and were denied a license. (§55-1(b))

Defense counsel: Eric Castañeda, Chicago OSAD

No. 130173
People v. Wallace, Defense leave to appeal granted 5/29/24 from 2023 IL App (1st) 200917.

Whether the State failed to prove Armed Habitual Criminal beyond a reasonable doubt where defendant was 17 years old at the time he committed one of the alleged predicate felonies, and under the amended version of the Juvenile Court Act in place at the time of the alleged AHC, this predicate felony is no longer automatically tried in adult court. (§55-3)

Defense counsel: Stephanie Puente, Chicago OSAD

WITNESSES

No. 130447
People v. Johnson, Defense leave to appeal granted 5/29/24 from 2023 IL App (4th) 221021-U.

Whether 725 ILCS 5/115-4(k) requires the trial court to rule on a motion for directed verdict at the close of the State's evidence, before the defense presents its case, ensuring the defendant's decision as to whether to exercise his right to testify is fully informed. (§56-5)

Whether section 115-4(k) requires a defendant to do more than make a timely motion for directed verdict at the close of the State's evidence to trigger the court's duty to rule on that motion before proceeding further; or whether defendant forfeited the issue by failing to object when the court indicated it would reserve its ruling, even though the issue was raised in a post-trial motion; if so, whether "clear error" occurred given contradictory caselaw. (§56-5)

Defense counsel: Gilbert Lenz, Chicago OSAD