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SEARCH AND SEIZURE QUARTERLY

SUMMER ISSUE – 2018
April – June 2018 Cases

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CASE ANALYSIS

1. In re O.S., 2017 IL App (1st) 171765, (1st Dist., June 26, 2018) Denial of Motion to Suppress - - Affirmed**.**

FACTS: Following a bench trial conducted in accordance with the Juvenile Court Act of 1987 (705 ILCS 405/1–1 *et seq.*), O.S. was adjudicated delinquent of the offenses of aggravated unlawful use of a weapon and unlawful possession of a weapon and committed to the Department of Juvenile Justice for an indeterminate period of time. On appeal, he contested his delinquency adjudication, arguing (1) the trial court erred in denying his pretrial motion to suppress and (2) the People failed to prove him delinquent of the offenses beyond a reasonable doubt.

ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion to Stop): Did the police have sufficient reasonable suspicion to justify stopping the car in which this defendant rode after the driver of the car stopped his car in a no parking zone and after the Officer smelled and saw cannabis**? (Yes).**

ARGUMENTS: On appeal, respondent challenged the circuit court's denial of his pretrial motion to quash his arrest and suppress evidence. He submitted that his constitutional right to be free from unreasonable searches and seizures was violated when police officers "seized the stopped vehicle in which he was a passenger even though the driver was merely standing temporarily in a no parking zone and the smell of burnt cannabis near the vehicle did not indicate * * * criminal activity." The People responded that the circuit court properly denied respondent's motion to suppress because the police officers had a reasonable articulable suspicion to initiate a *Terry* stop. Specifically, the People argued that "there was a reasonable, articulable suspicion of criminal activity to support the brief detention of minor-respondent where the police officer smelled cannabis emanating from the illegally parked vehicle * * * which minor-respondent occupied."

FINDINGS: As a threshold matter, the parties agree that respondent was seized when police officers arrived on scene and positioned their unmarked squad car diagonally in front of Kevin's vehicle and then surrounded the vehicle. Respondent acknowledges this legal precedent; however, he submits that the odor of marijuana can no longer furnish police officers with probable cause or reasonable suspicion of criminal activity in light of the recent amendment decriminalizing the possession of small amounts of marijuana in Illinois. Upon consideration, we are unpersuaded by respondent's argument regarding the effect of the recent amendment to the Illinois Cannabis Control Act on fourth amendment search and seizure jurisprudence. Illinois law still prohibits the knowing possession of cannabis. The recent amendment to the Cannabis Control Act simply treats the possession of "not more than 10 grams of any substance containing cannabis" as a "civil law violation" punishable by a fine. Possession of more than 10 grams of cannabis remains a crime subject to criminal penalties. Because decriminalization is not synonymous with legalization, even though possession of less than 10 grams of cannabis is no longer a crime in Illinois, it remains illegal. Moreover, we note that it remains a crime to drive while impaired due to the ingestion of cannabis. We therefore conclude that case law holding that the odor of marijuana is indicative of criminal activity remains viable notwithstanding the recent decriminalization of the possession of not more than 10 grams of marijuana. Applying the aforementioned viable legal precedent, we further find that the search and seizure of respondent did not run afoul of the fourth amendment. The record establishes that at the time of the seizure, the Officer had smelled the distinctive odor of marijuana coming from the direction of a car that was idling in a no parking zone. Given that Illinois prohibits the knowing possession of marijuana and prohibits operating a vehicle while impaired and under the influence of marijuana, the distinctive odor of marijuana was indicative of criminal activity and provided the officers with reasonable suspicion to believe that criminal activity was afoot. When the officers approached the idling vehicle and spoke to the occupants through lowered windows, the odor of marijuana became more apparent. In addition, the Officer was able to see a marijuana cigarette tucked behind the ear of the rear seat passenger. Such observations provided the officers with probable cause to search the vehicle and the vehicle's occupants.

2. In re Maurice J., 2017 IL App (1st) 172123, (1st Dist., June 20, 2018) Denial of Motion to Suppress - - Reversed and Remanded**.**

FACTS: Maurice J. was adjudicated delinquent for committing the offense of aggravated unlawful use of a weapon (AUUW) by carrying a firearm on his person while under 21 years of age. On appeal, he complained that (1) the trial

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court erroneously denied his pretrial motion to suppress evidence obtained as a result of an unreasonable traffic stop, (2) the evidence was insufficient, and (3) the trial court erroneously allowed the People to reopen its case to present evidence of his age after he had moved for a directed verdict.

ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion to Stop): Did the police have sufficient reasonable suspicion to justify stopping the car in which this defendant rode after the driver of the car tried to avoid a speed bump in the road**? (No).**

ARGUMENTS: On appeal, respondent asserts that (1) the trial court erroneously denied his pretrial motion to suppress evidence obtained as a result of an unreasonable traffic stop because it was not reasonable for an officer to believe that Wells committed a traffic violation. Specifically, the Officer's testimony failed to show that Wells drove upon or through private property to avoid a traffic control device. Additionally, respondent argues that speed bumps do not constitute traffic control devices. Respondent contends that because the Officer lacked a sufficient basis to initiate a stop, the trial court was required to suppress evidence that a firearm was subsequently recovered.

FINDINGS: Here, it is undisputed that the Officer purportedly stopped Wells's car due to a minor traffic violation. As the State acknowledges, "the only description of the minor traffic violation is that Wells 'went around the speed bump,' or 'avoided' it, by driving toward the curb with one wheel on the speed bump and one wheel on the even part of the street." Respondent essentially contends that, even taking the Officer's account as true, the traffic stop lacked a reasonable articulable basis. In contrast, the Officer did not testify that Wells drove his vehicle upon any of the enumerated areas. Rather, the Officer testified that Wells drove to the flat edge of the street itself to partly avoid the speed bump. We find the distinction between the street itself and private property, alleys, or traffic islands to be obvious. As stated, Officer Fernandez's mistaken belief that Wells committed a traffic violation was unreasonable where Wells never left the street to avoid a speed bump. It follows that the seizure of respondent as an occupant in Wells's car, which occurred when the police activated their lights and siren, was also unreasonable. In addition, the State does not dispute that this seizure is what led the officers to observe respondent with the firearm and to recover it. Consequently, respondent was entitled to the suppression of such evidence.

3. People v. Sebastian Rodriguez, 2017 IL App (1st) 141379-B, (1st Dist., June 4, 2018) First-Degree Murder - - Conviction Affirmed; Sentence Vacated; Case Remanded for Resentencing**.**

FACTS: Fifteen-year-old Sebastian Rodriguez was charged with first degree murder in connection with the shooting of thirteen-year-old Sameere Conn on October 1, 2008. At the time of the offense, 15-year-olds charged with first degree murder were automatically excluded from juvenile court jurisdiction. Sebastian was accordingly tried, convicted, and sentenced as an adult. Following his jury trial, the circuit court sentenced Sebastian to 50 years in prison: 25 years for the murder and 25 additional years pursuant to a mandatory firearm enhancement. In this direct appeal, Sebastian argues that (1) the circuit court erroneously denied his motion to suppress evidence found during a search of his home, (2) expert testimony identifying a revolver found in his home as the murder weapon was improperly admitted without a hearing to determine if it was based on generally accepted scientific methodologies, and (3) the imposition of a 50-year sentence on an offender who was 15 years old at the time of his offense is unconstitutional. Shortly after Sebastian filed his notice of appeal, the Illinois legislature raised the age of automatic transfer from juvenile court to criminal court for an individual charged with first degree murder from 15 to 16 years of age and adopted additional sentencing guidelines for defendants who were under the age of 18 at the time of their offenses, including making firearm enhancements discretionary, rather than mandatory, for such individuals. In supplemental briefing, Sebastian argues that these amendments should apply to his case.

ISSUE: SEARCH AND SEIZURE (Probable Cause to Search): Did the police have sufficient probable cause to justify a search of the defendant's house**? (Yes).**

ARGUMENTS: Sebastian initially argues that the circuit court should have granted his motion to suppress because the police lacked sufficient probable cause to search his home. Sebastian does not argue that the police lacked probable cause to arrest him for murder but that having this did not necessarily mean they also had probable cause to search his home for specific evidence. According to Sebastian, the complaint submitted by the Detective in support of the search warrant was

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defective because it failed to establish a sufficient nexus between the shooting and the items sought from Sebastian's home 10 days later, *i.e.*, the murder weapon, a hooded sweatshirt worn during the shooting, and a suspected list of potential victims. The People argued that, under the circumstances of this case, it was reasonable for the circuit court to infer that such items might be found in Sebastian's home.

FINDING: We are satisfied that the Detective's complaint established probable cause to search Sebastian's home. Because we conclude that probable cause existed to search Sebastian's home, we need not reach the People's alternative arguments that the good faith exception to the exclusionary rule applies or that the admission of evidence resulting from the search was harmless error.

4. People v. Lenard A. Smock, 2018 IL App (5th) 140449, (5th Dist., April 4, 2018) Denial of Motion to Suppress - - Reversed and Remanded**.**

FACTS: Following a jury trial in the circuit court of Saline County, the defendant, Lenard A. Smock, was convicted of methamphetamine possession (720 ILCS 646/60(a)) and disorderly conduct (720 ILCS 5/26–1(a)(1)). He was sentenced to 5 years' imprisonment for possession of methamphetamine and 30 days in the Saline County jail for disorderly conduct to run concurrently with the 5–year sentence. On appeal, the defendant contends that (1) the trial court erred in denying his motion to suppress evidence obtained incident to a warrantless arrest in his home, (2) the trial court abused its discretion by refusing to appoint substitute counsel from outside the public defender's office, (3) the circuit clerk erroneously assessed $124.80 in witness fees, and (4) he is entitled to a $5 *per diem* presentence credit against his eligible fines.

ISSUE: SEARCH AND SEIZURE (Hot Pursuit): Was the warrantless entry into this defendant's house justified by the "hot pursuit" doctrine**? (No).**

APPEAL: The Appellate Court held that: (a) exigent circumstances did not justify warrantless entry into defendant's trailer, and (b) tbe "hot pursuit" exception to warrant requirement did not justify the warrantless entry.

FINDINGS: Exigent circumstances exception did not justify warrantless into defendant's trailer to arrest him for misdemeanor offense of disorderly conduct; even though defendant's arrest occurred in close proximity to the commission of the offense, police proceeded directly from their meeting with neighbor who made noise complaint to defendant's trailer in order to arrest him for disorderly conduct, which was neither a grave offense nor a crime of violence, there was no clear reason to believe that defendant was on the premises, that he possessed any weapons, posed a threat or current danger, or was a flight risk. "Hot pursuit" exception to warrant requirement did not justify warrantless entry into defendant's trailer to arrest him for disorderly conduct, where defendant spoke to police through his closed door, police assured defendant they were not there to arrest him, police officer attempted to grab defendant through doorway to effectuate arrest after defendant opened door, and defendant was not sufficiently exposed to the public since he did not step out of his trailer.

5. People v. Eduardo Gomez, 2018 IL APP (1st) 150605, (1st Dist., April 3, 2018) Armed Habitual Criminal; Aggravated Unlawful Use of a Firearm; Unlawful Use of a Firearm by a Felon - - Convictions Affirmed in Part; Vacated in Part; Case Remanded with Instructions.

FACTS: Following a bench trial, Gomez was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24–1.7 (a)), of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24–1.6), and of unlawful use of a weapon by a felon (720 ILCS 5/24–1.1). He was sentenced to three concurrent terms of seven years' imprisonment and assessed various fines, fees, and costs. On appeal, he argued that (1) the trial court erred in denying his pretrial motion to suppress, (2) his aggravated unlawful use of a weapon conviction should be vacated, and (3) the fines, fees, and costs imposed by the trial court should be reduced.

ISSUES: 1) SEARCH AND SEIZURE (Consensual Encounter): Did the Officers have sufficient reasonable suspicion when they detained these suspects**? (Yes); 2) OFFENSES (One Act – One Crime):** Was this defendant

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improperly convicted of both AHC and his weapons charge**? (Yes).**

APPEAL: The Appellate Court held that: (a) the defendant was not "seized," within meaning of Fourth Amendment, at the moment officers pulled up next to his car; (b) the conversation that ensued between officer and defendant after officer pulled his squad car alongside of defendant's parked car was not indicative of a "seizure" under Fourth Amendment; (c) the officers' use of flashlights as they approached defendant's parked car at night did not transform the consensual encounter into a seizure; (d) the positioning of the officers around defendant's parked vehicle, coupled with orders for vehicle's occupants to exit vehicle, transformed the consensual encounter into a seizure; (e) the officer had reasonable suspicion to suspect that criminal activity was afoot so as to justify seizure of the defendant;

FINDINGS: Defendant was not "seized," within meaning of Fourth Amendment, at the moment officers pulled up next to his parked car; officer observed car in a residential neighborhood on three occasions in a 30 to 40-minute period of time, he pulled his unmarked squad car alongside of defendant's parked car, defendant's car was not blocked in, and police car and defendant's car were positioned parallel to each other. Conversation that ensued between officer and defendant after officer pulled his squad car alongside of defendant's parked car was not indicative of a "seizure" under Fourth Amendment; officer stopped his vehicle alongside defendant's car, officer conversed briefly with defendant while windows of both cars were lowered, and although officer was accompanied by two other officers at the time, none of the officers brandished weapons or physically touched defendant, and officer asked defendant what he was doing and if he lived around there and requested defendant to identify his exact address, and defendant was willing to answer officer's questions. Officers' use of flashlights as they approached defendant's parked car at night did not transform the consensual encounter into a seizure for Fourth Amendment purposes; although the officers approached with flashlights, the use of a flashlight was not per se coercive, especially where the police-citizen encounter took place at night and the flashlights were simply used to illuminate the scene. Positioning of officers around defendant's parked vehicle, coupled with orders for the vehicle's occupants to put their hands up and to exit the vehicle, constituted a show of force and authority, which transformed the consensual encounter between defendant and police into a seizure under Fourth Amendment. Officer had reasonable suspicion to suspect that criminal activity was afoot so as to justify seizure of defendant; officer had initially pulled alongside of defendant's car after officer had noticed it in the neighborhood he was patrolling on three occasions during a short period of time, and during course of his encounter with defendant in the car, which was now parked, officer observed defendant slouch further and further down in his seat until only his head was visible, officer found defendant's continued furtive movements to be suspicious and became concerned with officer safety, officer ordered defendant to raise his hands into air, and when defendant did so in manner that allowed him to continue concealing his waist, officer's suspicion that defendant was armed was strengthened. Defendant's furtive behavior and repeated efforts to conceal weapon provided officers with reasonable suspicion that defendant was not in lawful possession of the firearm so as to justify *Terry* stop.

6. People v. Steve W. Gill, 2018 IL APP (3rd) 150594, (3rd Dist., April 3, 2018) Aggravated Arson - - Reversed and Remanded**.**

FACTS: Gill appealed following his conviction for aggravated arson. He argued on appeal that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. He also argued that the trial court erred in failing to suppress certain pieces of evidence at trial. Further, he urged that he was denied a fair trial.

ISSUES: 1) SEARCH AND SEIZURE (Clothes): Did the People violate this defendant's Fourth Amendment rights by ordering a nurse to enter the defendant's hospital room and seize his clothes**? (Yes); 2) SEARCH AND SEIZURE (Truck):** Did the People violate this defendant's Fourth Amendment rights by seizing his truck**? (No).**

APPEAL: The Appellate Court held that: (a) the nurse, who retrieved defendant's clothing from his hospital room and provided them to police, was acting as an agent for the government; (b) the defendant had a reasonable expectation of privacy in hospital room; (c) the People failed to establish an exception to the search warrant requirement applied to justify their warrantless seizure of defendant's clothing from hospital room; and (d) the police had probable cause to believe that defendant's truck contained evidence of a crime and that exigent circumstances existed that would make obtaining a search warrant prior to seizing the truck impracticable.

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FINDINGS: The trial court's determination, in proceeding on defendant's motion to suppress evidence, that defendant's clothing was recovered from the nurse's station at hospital, and not from defendant's hospital room, was not supported by the manifest weight of the evidence, during aggravated arson prosecution, where nurse stated repeatedly that he had retrieved the bag of defendant's clothing from defendant's hospital room, and he recalled the room number, the specific location of the clothing within the room, and even other nurses telling him that the clothing was in defendant's room. Nurse, who retrieved defendant's clothes from his hospital room and provided them to police was acting as an agent for the government, for Fourth Amendment purposes, when he removed the clothing; nurse's actions were not privately motivated, as he retrieved defendant's clothing at the specific request of an investigator. State failed to establish an exception to the search warrant requirement applied to justify warrantless seizure of defendant's clothing from hospital room, during investigation of arson; there was no concern that defendant would destroy evidence, defendant was unaware he was being investigated until after his clothing was seized, and when the clothing was seized several investigators were at the hospital and one investigator could have stayed with defendant, if they believed it was necessary, while another investigator left to obtain the warrant. Police had probable cause to believe that defendant's truck contained evidence of a crime and that exigent circumstances existed that would make obtaining a search warrant prior to seizing the truck impracticable, during arson investigation; the scene of house fire smelled of gasoline, defendant had argued with an occupant of house just prior to the fire, when investigators arrived at hospital where defendant was located they learned defendant had smelled of gasoline when he was admitted, defendant's truck was inherently mobile, a gas can and rag were visible in the bed of the truck, and the evidence could have been degraded by the weather. Arrest statute provided East Peoria detective with the authority to execute seizure in North Pekin, during arson investigation; the arrest statute delineated situations in which an extra-jurisdictional arrest was authorized, the statute illustrated the legislature's intent that police actions taken outside of their jurisdiction may, in certain contexts, be justified, and it followed that the lesser intrusion of seizure of property would also be warranted in similar contexts. 65 Ill. Comp. Stat. Ann. 5/7-4-8; 725 Ill. Comp. Stat. Ann. 5/107-4(a-3).

7. **People v. John Carlos Boose, 2018 IL App (2nd) 170016, (2nd Dist., March 28, 2018)** Suppression of Evidence - - Affirmed**.**

FACTS: Boose was charged with six counts of first-degree murder (720 ILCS 5/9–1(a)(1), (a)(2)) in connection with the death of his wife. He moved to quash a search warrant and to suppress evidence seized as a result of the execution of the warrant and pointed out that the items to be seized, as described in the warrant, would have pertained to the investigation of a drug offense. The officers who executed the warrant seized items related to the investigation of the death of the victim, but those items were not described in the warrant. The trial court denied the motion to quash and suppress. However, Boose moved to reconsider and the trial court granted the motion. The People appealed**.**

ISSUE: SEARCH AND SEIZURE (Defective Warrant): Was this search valid despite a defective search warrant**? (No).**

APPEAL: The Appellate Court held that search warrant for defendant's home failed to state with particularity items to be seized, as required by Fourth Amendment.

FINDINGS: Search warrant for murder suspect's home failed to state with particularity items to be seized, as required by Fourth Amendment, where on its face warrant described items relevant to investigation of drug-related offense but did not describe items related to murder investigation, and although detective's complaint for search warrant and accompanying affidavit established probable cause to search for and seize evidence of offense of murder, warrant did not expressly adopt complaint's description of items to be seized, but instead merely acknowledged complaint before expressing different description of items to be seized.

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