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RECENT CONFESSIONS AND ADMISSIONS DECISIONS – 2016/2018

APRIL –2016

1. **People v. Keith Little**, 2016 IL App (3rd) 140124, (3rd Dist., March 23, 2016) Denial of Motion to Suppress - - Reversed and Remanded.

FACTS: The defendant filed a “Motion in Limine /Motion to Suppress Statements” on the grounds that *all of defendant's self-incriminating statements should be presumed inadmissible as evidence because the homicide detectives did not strictly comply with the requirements for electronically recording his custodial interrogation as required by section 103–2.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103–2.1 (West 2010)). In addition, the motion to suppress requested suppression of defendant's statements due to a violation of his Miranda rights.* *Miranda v. Arizona*, 384 U.S. 436 (1966).

ISSUE: Admissions and Confessions: Were the statements made by this defendant properly digitally recorded? (No).

RULE #1: The status of the declarant as an “accused,” for purposes of statute providing that a statement by an accused made as result of a custodial interrogation is presumed inadmissible unless certain recording requirements are met, must be measured by two objective factors to be considered by a neutral judge: first, and perhaps foremost, the declarant must be facing murder charges as part of a criminal proceeding when the State seeks to introduce the declarant's self-incriminating statements as evidence against the declarant, and second, the declarant's self-incriminating statement or confession must have resulted from a custodial interrogation that took place at a police station or other place of detention.

RULE #2: The subjective beliefs of police officers regarding a declarant's status as a witness or a murder suspect at the time of an unrecorded custodial interrogation is irrelevant and not determinative of the statement's presumed inadmissibility where the detectives have not strictly complied with statutory videotaping requirements.

FINDING #1: Initial portion of defendant's interview at police station was a “custodial interrogation,” as could support finding that videotaped recording of later portion of interview was inadmissible absent a recording of initial portion as well, **WHY:** *defendant was transported to police station in handcuffs, defendant remained in handcuffs in interrogation room, defendant was not able to leave interrogation room or move about without supervision, and defendant was not free to leave interview at any point.* 725 ILCS 5/103–2.1(b). **FINDING #2:** Defendant was an “accused,” as could support finding that videotaped recording of portion of interview of defendant at police station was inadmissible absent a recording of entire interview, **WHY:** *defendant was charged with murder in criminal prosecution.* **FINDING #3:** Cigarette break between first and second custodial interrogations of defendant was insufficient time to remove taint of *Miranda* violation that occurred in first interrogation, **WHY:** *defendant did not leave police station and remained in custody at all times, and defendant did not speak to anyone during the short break.*

2. **People v. Terrance Tuson**, 2016 IL App (3rd) 130861, (3rd Dist., February 22, 2016) Denial of Motion to Suppress - - Affirmed.

FACTS: The defendant appealed from an order of the circuit court denying his motion to suppress statements he made during a police interview. He claimed that *his statements should have been suppressed because they were induced by a promise of immunity.*

ISSUE: Admissions and Confessions: Were the statements made by this defendant induced by the promise of immunity from prosecution? (No).

FINDING: Any belief that defendant may have had that he was immune from state murder prosecution, under federal use immunity agreement, when he gave his statements regarding the murder to police detective, was unreasonable because his conduct clearly violated terms of the federal proffer, and thus trial court properly denied motion to suppress the statements; **WHY:** *terms of federal agreement specifically stated that immunity would no longer apply if defendant participated in any criminal activity of any kind without authorization, and defendant signed the federal use immunity agreement and was sentenced in the federal case long before he participated in the criminal plan which resulted in victim's fatal shooting.*

3. **People v. Donnie Moore**, 2016 IL App (1st) 133814, (1st Dist., February 18, 2016) First Degree Murder and Attempted First Degree Murder - - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)). The trial court sentenced the defendant to 50 years for the first-degree murder conviction, with an additional 25 years for the discharge of a firearm, and then 30 years for the attempted murder conviction, with an additional 20 years for the firearm enhancement, for a total of 125 years in prison. The defendant appealed the judgment and sentence of the trial court and contends that: **the trial court's admission of evidence from codefendant Eddie Fenton's confession was an abuse of discretion.**

ISSUES: Evidence (Confession): Should the trial court have barred evidence of a confession given by this defendant's co-defendant? (No).

FINDING: Admission of non-testifying codefendant's police statement through an officer's testimony did not violate defendant's right of confrontation, **WHY:** *defendant and codefendant were not tried jointly, officer merely stated that codefendant had made a statement and that subsequently the officers arrested defendant, and State and trial court took steps to ensure that the substance of codefendant's statement was not introduced.*

4. **In re D.L.H. Jr.**, 2016 IL App. (5th) 110341-B, (5th Dist., February 6, 2016) Adjudication of Wardship - - Reversed and Remanded.

FACTS: This case originated after the State filed a petition for adjudication of wardship in the circuit court of St. Clair County, alleging respondent, D.L.H., Jr., age 9, committed first degree murder by repeatedly striking 14-month- old T.W. about the head (720 ILCS 5/9-1(a)(2) (West 2012)). The circuit court found respondent unfit to stand trial and in a later discharge hearing found respondent "not not guilty" of murder. The circuit court remanded respondent to the Department of Human Services (the Department) for fit ness restoration for the maximum period of up to five years so that respondent may become fit and be tried for murder. Respondent appealed, **arguing inter alia that the circuit court erred in denying his motion to suppress two statements he made to police.** In an unpublished order, the appellate court found both statements involuntary, and we reversed and remanded for a new discharge hearing. It also found the other issues raised by respondent outside of the suppression issues were not likely to recur upon remand, and, therefore, did not address the other issues raised by respondent. The People filed a petition for leave to appeal, which the supreme court granted. Ultimately, the court determined the first statement was voluntary, but the second was not. The supreme court affirmed in part, reversed in part, and remanded with directions for the appellate court to conduct a harmless error analysis with regard to the second statement and "to consider any other claims of error previously raised but not decided that are necessary to the proper disposition of this case."

ISSUE: Admissions and Confessions (Involuntary): Did the admission of this Juvenile's involuntary statement deny him due process? (Yes).

FINDING #1: Defendant was in custody and thus, following his request for an attorney, defendant was not subject to further interrogation until attorney was made available to him, **WHY:** *defendant was engaged in interview with police officers, interview took place in a small room with the door closed, officers placed defendant in corner opposite the exit*

and blocked defendant's path to the exit, defendant's family and friends were absent, defendant was advised of Miranda rights at start of interview, and defendant did not drive to interview and had no reasonable means to leave police station on his own. **FINDING #2:** Police officers violated defendant's Fifth Amendment right to counsel after defendant requested an attorney during custodial interrogation, **WHY:** officers completely ignored defendant's first request for counsel and continued interrogating defendant, officers told defendant after his second request for counsel that it would be "great" if defendant would continue talking, and officer attempted to have defendant acknowledge that defendant, not police, initiated further communication even though it was clear from videotape that officer initiated communication.

5. **People v. Bruce Gempel**, 2016 IL App (3rd) 140833, (3rd Dist., January 26, 2016) Suppression of Evidence - - Affirmed.

FACTS: The People charged the defendant by indictment with two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (2)), residential arson (720 ILCS 5/20-1), and concealment of a homicidal death (720 ILCS 5/9-3.4(a)) in connection with the death of his neighbor. During the pretrial motion stage, the defendant moved to suppress statements he made to police while in custody. Specifically, the defendant **argued the police obtained his statements as a product of an illegal arrest.** Following a hearing, the court granted the defendant's motion to suppress. In turn, the People requested an evidentiary hearing to establish the statements sufficiently attenuated from the illegal arrest to allow their admission at trial. The court allowed the People's request, but after hearing the evidence and arguments, found that the People failed to meet its burden in proving attenuation. Therefore, the trial court barred the admission of the suppressed statements at the defendant's upcoming trial.

ISSUE: Suppression of Evidence (Statements): Did the trial court err in suppressing this defendant's statements to the police that were made after the defendant had been illegally arrested? (No).

RULE #1: Where the defendant gave a voluntary statement under the Fifth Amendment, following an illegal arrest, court conducts an attenuation analysis to determine whether police obtained the statement by exploiting illegal arrest under the Fourth Amendment. **RULE #2:** The fact that an illegally-seized defendant ultimately received *Miranda* warnings, waived them, and voluntarily spoke to police officers does not automatically mean that the causal connection between the illegality and the arrest has been broken for Fourth Amendment purposes.

FINDING #1: Defendant was in custody and thus, following his request for an attorney, defendant was not subject to further interrogation until attorney was made available to him, **WHY:** defendant was engaged in interview with police officers, interview took place in a small room with the door closed, officers placed defendant in corner opposite the exit and blocked defendant's path to the exit, defendant's family and friends were absent, defendant was advised of Miranda rights at start of interview, and defendant did not drive to interview and had no reasonable means to leave police station on his own. **FINDING #2:** Police officers violated defendant's Fifth Amendment right to counsel after defendant requested an attorney during custodial interrogation, **WHY:** officers completely ignored defendant's first request for counsel and continued interrogating defendant, officers told defendant after his second request for counsel that it would be "great" if defendant would continue talking, and officer attempted to have defendant acknowledge that defendant, not police, initiated further communication even though it was clear from videotape that officer initiated communication. **FINDING #3:** Police officers engaged in purposeful misconduct when they illegally arrested defendant for murder, as would support finding that defendant's statements following arrest were not sufficiently attenuated from illegal arrest so as to be admissible; **WHY:** at time of arrest, officers had no direct witnesses, no physical evidence, and no evidence tying defendant to crime, defendant had repeatedly denied involvement in the homicide, defendant did not attempt to flee, and at no point did officers attempt to obtain an arrest warrant. **FINDING #4:** Police misconduct regarding illegal arrest of defendant, following custodial interview, was flagrant, as would support finding that defendant's statements following arrest were not sufficiently attenuated from illegal arrest so as to be admissible, **WHY:** officers violated defendant's right to counsel after defendant requested an attorney during interview, and officers apparently arrested defendant without probable cause in hope that other evidence, such as a confession, might turn up after the arrest. **FINDING #5:** Police officers' obtaining of preliminary DNA results from murder victim's fingernail scrapings, which revealed presence of unidentified female and male DNA, did not constitute an intervening circumstance that would sever causal connection between taint of officers' illegal arrest of defendant and incriminating statement subsequently made by defendant, even if defendant was the only suspect observed by officers to have scratches on his face and body, **WHY:** results did not indicate a match with defendant, analysis did not reveal age or ethnicity of individual's DNA, and officers failed to ask

defendant how he came to have scratches. **FINDING #6:** Fact that police officers gave defendant *Miranda* warnings on several occasions during interview weighed towards finding that defendant's statements following illegal arrest of defendant after interview were not sufficiently attenuated from arrest so as to be admissible in murder prosecution; **WHY:** *officers had continuously disregarded defendant's assertion of right to counsel, demonstrating that warnings were used as coercive interrogation device to obtain statements from defendant.* **FINDING #7:** Defendant's purported waiver of *Miranda* rights, following illegal arrest of defendant, was not voluntary, and thus statements made following purported waiver were not admissible in murder prosecution, **WHY:** *police officers had illegally held defendant without probable cause for nearly 37 hours before defendant made his statements, and officers had repeatedly ignored defendant's requests to speak with an attorney.*

6. **People v. Odey Wright**, 2016 IL App. (5th) 120310, (5th Dist., January 15, 2016) Denial of Motion to Suppress Evidence - - Reversed and Remanded.

FACTS: After a jury trial, the defendant was convicted of two counts of armed robbery (720 ILCS 5/18-2(a)(2)) and one count of unlawful possession of a controlled substance (less than 15 grams of cocaine) (720 ILCS 570/402(c)). He was sentenced to 40 years on each count of armed robbery, which included an additional 15 years for use of a firearm. He was also sentenced to an extended-term sentence of six years for unlawful possession. The trial court ordered the sentences to run consecutively for a total of 86 years, plus 3 years' mandatory supervised release. Defendant raises three issues on appeal: (1) **whether the trial court erred in denying his motion to suppress.**

ISSUE: Suppression of Evidence: Did the trial court improperly deny this defendant's motion to suppress evidence after the defendant made statements to the police without first being advised of his *Miranda* rights. (Yes).

FINDING #1: Arrested defendant was subjected to interrogation by police, and therefore was entitled to *Miranda* warnings, **WHY:** *officer handcuffed defendant, placed him in the back of a patrol car, and engaged him in ongoing conversation, including asking him at least one question and discussing the evidence against him, and officer drove defendant to an area where he could see the mother of his children being placed in the back of another patrol car.*

FINDING #2: Erroneous admission of defendant's inculpatory statement to police given after defendant was subjected to custodial interrogation without *Miranda* warnings did not constitute harmless error in robbery prosecution, **WHY:** *during closing arguments, the prosecutor specifically asserted to the jury that "the bottom line" in the case was that defendant made statements no innocent man would make.*

7. **People v. Gordon L. Vanderark**, 2015 IL App. (2nd) 130790, (2nd Dist., December 23, 2015) Solicitation of Murder for Hire - - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of three counts of solicitation of murder for hire (720 ILCS 5/8-1.2) and was sentenced to a total of 40 years' imprisonment. On appeal, he argued that **the trial court erred in denying his motions to (1) suppress evidence.**

ISSUE: Confessions and Admissions: Did the trial court improperly deny this defendant's motion to suppress evidence after the People had allegedly obtained a writ of Habeas Corpus under false pretenses. (No).

FINDINGS: Suppression of defendant's statements during interview was not permissible remedy for People's purported violation of Habeas Corpus Act by having judge sign writ to produce defendant, who was incarcerated, for hearing on status of forfeiture of his vehicle following his conviction for aggravated driving under influence (DUI) driving while license revoked, when no such hearing was pending, as ruse to get defendant out of Department of Corrections in order to question him about murder for hire; **WHY:** *rather, sole remedy for violation of Act arising out of Department of Corrections' (DOC) transfer of prisoner for improper reasons was \$300 payment to DOC. 735 ILCS 5/10-103.*

JULY – 2016

1. **People v. Montago E. Suggs**, 2016 IL App (2nd) 140040, (3rd Dist., June 28, 2016) Denial of Motion to Suppress - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of the first-degree murder. The defendant appealed, arguing that (1) the trial court erred in denying his motion to suppress his custodial statement, because, when he made it, he had been held in custody for 98 hours and the People did not seek a prompt judicial determination of probable cause to arrest.

ISSUE: Admissions and Confessions: Was the confession of this defendant, who was detained for 98 hours without a probable cause hearing, involuntary? (No).

FINDING: Murder defendant's confession to police was voluntary, even though he was arrested without a warrant and detained for 98 hours prior to confessing and was not presented to a judge for a probable cause determination until approximately five days later; **WHY:** *defendant was lawfully detained on the charge of attempted armed robbery when the formal investigation of the murder commenced, defendant, who did not post the requisite \$2 million bail on the robbery charge, continued to be lawfully detained throughout his interrogation regarding the murder and professed that he wished to help the investigation in whatever way he could, and defendant had significant experience with the criminal justice system and was repeatedly advised of his Miranda rights.*

OCTOBER – 2016

1. **In re S.W.N.**, 2016 IL App (3rd) 160080, (3rd Dist., July 13, 2016) Denial of Motion to Suppress - - Reversed and Remanded.

FACTS: This juvenile appealed from his adjudication for delinquency based on the offense of criminal sexual assault. He argued that his confession, which was admitted at his trial, should have been suppressed because he did not knowingly and intelligently waive his Miranda rights.

ISSUE: ADMISSIONS AND CONFESSIONS: Did the trial court err in finding that the defendant was not in custody when he was questioned by the police and that he knowingly and voluntarily gave his statement to the police? (Yes).

RULE #1: Factors relevant to determining whether statements were made in a custodial setting include: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.

FINDING #1: Seventeen-year-old defendant was in custody, for *Miranda* purposes, when he was questioned by juvenile officer at police station; **WHY:** *the interrogation took place in a small room at police station, the substance and mode of questioning indicated that defendant was the only suspect, officer repeatedly expressed disbelief in defendant's version of events until defendant changed his declaration of innocence to agree with officer's version of events, while officer told defendant he was free to leave at any time, officer had driven defendant to the station, officer read defendant his Miranda rights, and defendant had a limited intellectual capacity.* **FINDING #1:** Juvenile's waiver of his *Miranda* rights was not knowing or intelligent; **WHY:** *officer provided very little explanation to juvenile as to what his rights entailed, four witnesses testified that juvenile was either unable to understand his Miranda rights or unable to understand what waiver of those rights entailed, and witnesses indicated that juvenile had a desire to please people and would indicate that he understood something when he actually did not understand, that he had a short attention span, and he had an inability to concentrate.*

JULY – 2017

CASE ANALYSIS

1. **People v. Sergio Hernandez, 2017 IL App (1st) 150575, (1st Dist., ~~March 31, 2017~~)** Denial of Motion to Suppress Confession - - Reversed and Remanded. (MODIFIED ON DENIAL OF REHEARING: June 9, 2017)

FACTS: After a jury trial, the defendant was found guilty of the first-degree murder. On a prior appeal, the appellate court found that the defendant's arrest was illegal, and it vacated defendant's conviction and remanded the case for an attenuation hearing. On remand, the trial court held an attenuation hearing and found that defendant's statement to the police at the police station was sufficiently attenuated from his earlier arrest to be admissible at trial; and, following our directions, the trial court reinstated the defendant's conviction. The defendant again appealed the trial court's decision, arguing that *the trial court erred in finding attenuation.*

APPEAL: The Appellate Court held that the defendant's statements to the police *were not* attenuated from the taint of the illegal arrest.

ISSUE: SUPPRESSION OF EVIDENCE (Attenuation): Did this defendant's illegal arrest taint the subsequent statements the defendant made to the police? (Yes).

RULE #1: The conclusion that a defendant's arrest was illegal under the Fourth Amendment does not automatically mean that his subsequent statement is suppressed; the question becomes whether the statement was obtained by means sufficiently distinguishable from the illegal arrest such that the court can say that the statement is purged of, or attenuated from, the taint of the original Fourth Amendment illegality. **RULE #2:** Attenuation analysis under the Fourth Amendment concerning statements made after an illegal arrest is distinct from the threshold question of voluntariness of statements under the Due Process clause. **RULE #3:** The voluntariness of a defendant's statements does not automatically purge the taint of a prior illegal arrest. **RULE #4:** The absence of physical abuse or coercion, and the voluntariness of the defendant's statement, are merely threshold requirements for its admissibility. **RULE #5:** To determine whether a statement is attenuated from an illegal arrest, courts generally consider (1) the proximity in time between the arrest and the statement, (2) the presence of intervening circumstances, (3) the provision of Miranda warnings, and (4) the flagrancy of the police misconduct; of these four factors, the presence of intervening circumstances and the flagrancy of the police conduct are the most important. **RULE #6:** When determining whether a statement is attenuated from an illegal arrest, the temporal proximity between the arrest and the statement is often an ambiguous factor, the significance of which will depend on the circumstances of the case, including the conditions under which the time passes; the ambiguity stems from the fact that, while a lengthy lapse of time may permit the accused to reflect on his situation, a lengthy lapse of time may also enhance the coercive nature of a custodial setting. **RULE #7:** Intervening circumstances factor of test as to whether statements were attenuated from an illegal arrest actually involves two separate considerations: (1) whether the police had separate, intervening probable cause to justify the arrest, and (2) whether there were intervening events which prompted or induced defendant's confession. **RULE #8:** An intervening circumstance can be an event that prompts or induces a voluntary desire to confess, thereby breaking the causal connection between the illegal arrest and the confession, but it cannot be (1) something that was obtained illegally, such as statements from unlawfully arrested codefendants, or (2) information obtained by exploiting the illegality of the defendant's detention, such as a polygraph examination conducted during the defendant's illegal detention. **RULE #9:** "Interrogation" refers to express questioning, as well as to any words or actions on the part of the police, other than those normally accompanying arrest and custody that the police should know are reasonably likely to elicit an incriminating response from the suspect. **RULE #10:** Although police cannot dissipate the taint of an illegal arrest by simply giving *Miranda* warnings, the presence of warnings prior to an interrogation carries some weight when considering attenuation of statements made following an illegal arrest.

FINDING #1: Murder defendant's statements to police were not attenuated from the taint of the illegal arrest, and thus were inadmissible, **WHY:** *the duration between the illegal arrest and the statements was short and did not provide time for independent reflection, bogus gunshot residue test, which detective admitted was "a ruse to get [defendant] to speak," prompted statements, Miranda warnings were provided once at the start of the six-hour interrogation but were not repeated again, even when defendant specifically asked what his rights were, and apparent purpose of arrest and detention was to enable police to conduct a fishing expedition for evidence in the hopes something might turn up.* **FINDING #2:** Bogus gunshot residue test which prompted murder defendant's incriminating statements was not an intervening circumstance which helped purge taint of prior illegal arrest; **WHY:** *test itself was a form of misconduct and was used as a form of interrogation to prompt confession, and test exploited the illegality of the original arrest.*

2. **People v. Sean A. Peck**, 2017 IL App (4th) 160410, (4th Dist., April 5, 2017) Denial of Motion to Suppress Confession - - Reversed and Remanded.

FACTS: A jury found the defendant guilty of numerous drug offenses. He appealed and argued that *his trial counsel was ineffective for failing to file a motion to suppress his incriminating statements following his request for legal representation.*

APPEAL: The Appellate Court held that: (a) the defense counsel's performance fell below an objective standard of reasonableness when she failed to file motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; (b) the officer's remarks constituted an improper continuation of defendant's interrogation after he invoked his right to counsel; and (c) the defendant was prejudiced by trial counsel's deficient performance.

ISSUE: COUNSEL (Effectiveness): Did this defendant's counsel provide ineffective assistance by failing to move to suppress the statements this defendant made after he asked for counsel? (Yes).

FINDING #1: Defense counsel's performance fell below an objective standard of reasonableness when she failed to file a motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; **WHY:** *counsel's failure to file this motion was not the result of a tactical decision, but, rather, of a fundamental misjudgment, in that counsel erroneously believed a motion to suppress would be without merit because defendant had reinitiated the conversation with police.* **FINDING #2:** After defendant was read his *Miranda* rights and stated that he wanted attorney, officer's statement, that defendant's girlfriend was going to be arrested, was reasonably likely to elicit an incriminating response from defendant, and thus, officer's remarks constituted an improper continuation of defendant's interrogation after he invoked his right to counsel; **WHY:** *once defendant invoked his right to counsel, officer was required to cease the interrogation until such time as an attorney was present.* **FINDING #3:** Defendant was prejudiced by trial counsel's deficient performance, in failing to file a motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; **WHY:** *defendant's confession had an immense impact on the outcome of his case, and its admission negatively impacted defendant's ability to provide alternative theories and request jury instructions on lesser-included offenses.*

JANUARY – 2017

CASE ANALYSIS

1. **People v. Michael S. Burgund**, 2016 IL App (5th) 130119, (5th Dist., November 22, 2016) Predatory Criminal Sexual Assault of a Child - - Reversed and Remanded.

FACTS: A jury found the defendant guilty of five counts of predatory criminal sexual assault of a child (720 ILCS 5/12–14.1(a)(1)) and the trial court sentenced him to natural life in prison. The defendant appealed his conviction, *arguing that the court erred in precluding him from presenting certain testimony, including expert testimony, that he argued would have supported his claim that he gave a false confession.* He also *argued that the circuit court abused its discretion in allowing the People to present hearsay statements of one of the victims pursuant to the exception to the hearsay rule contained in section 115–10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115–10).*

ISSUE: EVIDENCE (Expert): Did the trial court err in refusing to allow the defendant to introduce expert testimony into evidence supporting his claim that he gave a false confession? (Yes).

FINDING #1: Trial court abused its discretion in excluding testimony of defendant's expert, a clinical psychologist, which defendant sought to admit in support of his claim that he gave a false confession to child abuse because of psychological pressure, manipulation, and suggestion by his wife and mother-in-law; **WHY:** *expert's proposed testimony was that defendant's personality was such that he was subject to manipulation, testimony would have aided jury in evaluating credibility of defendant's confession, since a rational juror would not readily understand why an innocent*

defendant might falsely believe he had committed a crime, and there was no suggestion that expert was unqualified or used unreliable methodology.

FINDING #2: Proffered testimony of witness that defendant's wife told witness that wife had a supernatural power to discern the lustful thoughts of other people was not hearsay, as could allow admission of testimony in prosecution for sexual abuse of defendant's child, in which defendant argued he falsely confessed to offenses due to manipulation and suggestion by wife; **WHY:** *defendant did not intend to use testimony to prove that wife did in fact have the supernatural power but rather that she made the statement to witness and thus was more likely to have made same statement to defendant.*

FINDING #3: Proffered testimony of witness, who was the defendant's wife's ex-fiance, that defendant's wife told witness that wife had a supernatural power to discern the lustful thoughts of other people was relevant, as could allow admission of testimony in prosecution for sexual abuse of defendant's children; **WHY:** *theory of defense was that wife had manipulated defendant into giving a false confession to offenses, and parallels between wife's relationship with defendant and her relationship with witness gave credibility to that theory.*

2. People v. Tryone Mabrey, 2016 IL App (1st) 141359, (1st Dist., November 17, 2016) Dismissal of Post-Conviction Petition - - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of first-degree murder and sentenced to 40 years in prison. In this appeal, he challenged the summary dismissal of his *pro se* post-conviction petition in which **he asserted claims of actual innocence and that his confession had been coerced.**

ISSUE: POST-CONVICTION PETITION: Did the trial court err in dismissing this defendant's request to refile his PCP after the defendant asserted claims of actual innocence and that his confession was coerced? (No).

FINDING #1: Even assuming that affidavit by prison inmate in which he averred that he had conversation with person who was in alley with defendant when victim was shot, during which conversation person confessed to shooting and stated that defendant had "taken the fall" for murder he did not commit, was newly discovered evidence, it did not tend to establish defendant's actual innocence, as grounds for obtaining post-conviction relief that was based on defendant's assertion that other person was actual shooter and that he was nowhere near scene of crime; **WHY:** *defendant and defense counsel initially provided notice of alibi defense, but then requested that alibi defense be stricken because defendant acknowledged having been in vicinity at time of shooting, eyewitness positively identified defendant as shooter, defendant's videotaped confession was admitted in which he described events surrounding shooting in detail, confession corroborated account provided by eyewitness in several significant respects, and defendant also identified photograph of gun he used and described how he disposed of gun after shooting.*

FINDING #2: Defendant's affidavit in which he averred that purported shooter's threats against him prevented him from exposing detective's coercive interrogation techniques on motion to suppress was not new evidence warranting application of exception to res judicata bar to post-conviction claim that confession to murder was coerced, after motion to suppress confession was denied; **WHY:** *at trial, defendant was admonished by court that choice to testify was his alone, he stated that no one had threatened or forced him not to testify and that no one had promised him anything to not testify, and he presented theory of third person as perpetrator at trial.*

APRIL – 2017

CASE ANALYSIS

1. People v. Todd J. Mandoline, 2017 IL App (2nd) 150511, (2nd Dist., February 17, 2017) First-Degree Murder and Aggravated Arson - - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of first-degree murder (720 ILCS 5/9-1(a)(3)) and aggravated arson (720 ILCS 5/20-1.1(a)(2)). He appealed, **arguing that: (2) he did not voluntarily reinitiate questioning**

with the police after the initial interrogation had ceased due to his invocation of his right to counsel; (3) his statements to the police were not voluntary, knowing, and intelligent; (4) his statements were obtained in violation of section 103-2.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-2.1), which requires the electronic recording of custodial interrogations in murder investigations.

ISSUES: **1) SUPPRESSION OF EVIDENCE (Miranda):** Did the defendant voluntarily re-initiate questioning following his invocation of his right to counsel? (Yes); **2) SUPPRESSION OF EVIDENCE (Voluntariness):** Did the defendant voluntarily, knowingly, and intelligently make his statements to the police? (Yes); **3) SUPPRESSION OF EVIDENCE (Digital Recording):** Were the defendant's statement inadmissible because they were not entirely recorded? (No);

FINDING #1: Defendant was not arrested, as would require probable cause, when police officers went to defendant's home during investigation of fatal fire which occurred a few hours previously, **WHY:** *defendant agreed to accompany officers to department to answer questions, such agreement occurred within about 15 minutes of officers' arrival, officers were in plain clothes, total of four officers were present, defendant left home in unmarked police car, and officers did not display weapons or make physical contact with defendant.* **FINDING #2:** Defendant was arrested, as would require probable cause, when he arrived at police department voluntarily to answer police officers' questions and was placed into interview room, during officers' investigation of fatal house fire which had occurred a few hours previously, **WHY:** *defendant was patted down and his wallet and phone were confiscated, and officer stated that defendant would have to remain in interview room if he invoked his right to counsel.* **FINDING #3:** Evidence was sufficient to support finding that it was defendant, rather than police officers, who reinitiated discussion during custodial interrogation after defendant had invoked his right to counsel, supporting admission of statements made as result of the further interrogation, even though defendant's version of events was that officers promised he would be able to go home if he spoke to them further, **WHY:** *officers testified that, during a smoking break, defendant asked them what was going on with the investigation, that officers told defendant that they could not speak with him about the investigation because he had requested an attorney, that defendant then asked what he needed to do in order to speak with officers again, and then defendant then executed form waiving his rights.* **FINDING #4:** Defendant's statements to police officers, following waiver of rights during officers' investigation of fatal house fire which had occurred approximately 9 hours earlier, were voluntary, even if defendant had drunk approximately 15 beers in the eight hours preceding the fire, and officers ignored defendant's initial requests for counsel; **WHY:** *defendant was 23 years old and had attended some college, defendant denied that he was intoxicated, defendant was able to comprehend and appropriately respond to officers' questions, interrogation had been ongoing for only about three hours at time of waiver and defendant had been given a one-hour break, officers did not physically abuse defendant, and defendant was allowed to use restroom and to smoke cigarettes when he asked to do so.* **FINDING #5:** Defendant's statements to police officers, following waiver of rights during officers' investigation of fatal house fire which had occurred approximately 9 hours earlier, were knowing and intelligent, even though officers initially ignored defendant's requests to speak to his attorney, to make a phone call, and to be silent, **WHY:** *officers later stopped interrogation on basis that defendant had requested an attorney, officers re-administered Miranda warnings when defendant reinitiated discussion, and defendant agreed that he understood Miranda warning.* **FINDING #6:** Even if period of time when defendant, accompanied by police officers, was on smoking breaks from interview in officers' investigation of fatal house fire, was a custodial interrogation, fact that smoking break occurred in video blind spot was not a violation of statute requiring that all custodial interrogations in a murder case be recorded; **WHY:** *if breaks had been recorded, they would only have consisted of visual images and could not have allowed determination of whether officers said anything improper, and if officers had not allowed smoking breaks, defendant would have complained that he was coerced.* 725 Ill. Comp. Stat. Ann. § 5/103-2.1.

2. People v. Matthew T. Edwards, 2017 IL App (1st) 130190-B, (1st Dist., January 31, 2017) Denial of Motion to Suppress - - Affirmed.

FACTS: Following a stipulated bench trial, the defendant was found guilty of first-degree murder and attempted murder. The defendant appealed, claiming, *inter alia*, that (1) the trial court erred in denying his motion to suppress where defendant was 17 years old at the time of the arrest, had a limited education, and did not have contact with a parent or concerned adult.

ISSUE: SUPPRESSION OF EVIDENCE (Interrogation): Did the trial court err in refusing to grant this defendant's

motion to suppress evidence based upon his failure to understand his *Miranda* rights? (No).

FINDING: In prosecution for first-degree murder and attempted murder, juvenile's confession that he shot victims while searching victims' house for drugs and money was voluntary, although juvenile did not speak with his mother or another concerned adult before or during interview with detectives which resulted in his confession, **WHY:** *juvenile was 17 years old at time he confessed, juvenile responded appropriately to questioning and was articulate, both during interview with detectives and in his testimony during hearing on his motion to suppress, detectives did not use force or deception, detectives were trained juvenile officers and acted in juvenile's best interests, and detectives initially only brought juvenile in to establish his whereabouts at time of crime.*

3. People v. Raul Soto, 2017 IL App (1st) 140893, (1st Dist., January 31, 2017) Denial of Motion to Suppress - - Affirmed.

FACTS: Following a jury trial, the defendant was convicted of first-degree murder for the deadly beating of his roommate and sentenced to 27 years' imprisonment. During the murder investigation, the defendant voluntarily accompanied the police to the police station and cooperated with the investigation. After spending two nights at the police station, he made three incriminating statements confessing to the murder of his roommate. The defendant filed pretrial motions, seeking to quash his arrest, **asserting that his voluntary presence at the police station transformed into an illegal arrest, and claiming that all three incriminating statements were inadmissible because they were (1) the fruit of an illegal arrest; (2) the product of a deliberate "question first, warn later" interrogation technique; and (3) the result of an invalid waiver of his *Miranda* rights.** After hearings on the defendant's pretrial motions, the trial court found that the police never unlawfully detained him. The trial court agreed with the defendant that his first two incriminating statements were inadmissible mainly because, although the police had probable cause to arrest him for the murder, they failed to give him *Miranda* warnings before eliciting an incriminating statement and the taint from that statement rendered inadmissible his second statement given minutes after his first. But the trial court found that the defendant's third incriminating statement, given more than 24 hours later, was admissible based on the curative measures taken after the unwarned interrogation. The trial court also found that the defendant voluntarily, knowingly, and intelligently waived his *Miranda* rights, despite his asserted cognitive defects and low intelligence level. On appeal, the defendant challenged the admissibility of his third incriminating statement.

ISSUE: SUPPRESSION OF EVIDENCE (Interrogation): Did the trial court err in refusing to grant this defendant's motion to suppress evidence based upon an illegal arrest, a deliberate *Seibert* violation and the failure to properly advise the defendant of his *Miranda* rights? (No).

FINDING: Defendant's voluntary presence at police station to assist in the investigation of his friend's murder was not transformed into an illegal seizure under the Fourth Amendment; **WHY:** *although defendant stayed two consecutive nights in interview room at police station, defendant told police he was homeless, had no place else to go, considered the police station to be warm, and wanted to find out what happened to his friend, door to the interview room was either open or unlocked, when defendant voluntarily left police station and accompanied detectives to assist with the investigation he was not handcuffed, and two different detectives told defendant that he was free to leave.* **FINDING:** Evidence supported finding that defendant voluntarily, knowingly, and intelligently waived his *Miranda* rights prior to custodial interrogation by assistant state's attorney, and thus incriminating statements made by defendant to attorney were admissible in murder trial; **WHY:** *although defendant claimed that his significant cognitive deficits, "extremely low" IQ, and alcohol withdrawal symptoms prevented valid waiver of his *Miranda* rights, trial court found credible state's witnesses who stated that defendant did not manifest any symptoms of alcohol withdrawal, such as delirium tremens or hallucinations, and discredited defendant's expert's opinion that defendant only appeared to understand the *Miranda* warnings because he learned the language of the warnings and assimilated it into rote memory following his arrest.*

4. People v. Matthew Smith, 2016 IL 119659, (Ill. Sup. Ct., Dec. 30, 2016.) Aggravated Battery of a Correctional Officer - - Affirmed.

FACTS: The defendant was charged by indictment with aggravated battery of a corrections officer, a Class 2 felony (720 ILCS 5/12-3.05(d)(4)(i), (h)). Following a jury trial, he was found guilty and was sentenced as a Class X offender to six

years in the DOC. The appellate court affirmed the defendant's conviction but vacated his sentence and remanded for a new sentencing hearing, holding that the defendant was not eligible for Class X sentencing. 2015 IL App (4th) 130453–U, 2015 WL 4110738. The Supreme Court granted the People's petition for leave to appeal.

ISSUE: SUPPRESSION OF EVIDENCE (Miranda): Was this prisoner in custody for purposes of Miranda when he was interviewed by a Correctional Officer? (No).

FINDING: Defendant, a prison inmate, was not in custody or coerced into incriminating himself during interview with corrections officer assigned to investigate an incident in which defendant threw an unidentified liquid on another corrections officer, and therefore, concerns underlying *Miranda* were not present, and the trial court did not err in denying defendant's motion to suppress; **WHY:** *defendant's freedom of movement was increased when he was taken from a segregation unit to an interview room, although handcuffed, defendant made no request to have the handcuffs removed during the interview, and the interviewing officer testified that defendant was free to leave the interview at any time.*

JULY – 2017

CASE ANALYSIS

1. People v. Sergio Hernandez, 2017 IL App (1st) 150575, (1st Dist., March 31, 2017) Denial of Motion to Suppress Confession - - Reversed and Remanded. (MODIFIED ON DENIAL OF REHEARING: June 9, 2017)

FACTS: After a jury trial, the defendant was found guilty of the first-degree murder. On a prior appeal, the appellate court found that the defendant's arrest was illegal, and it vacated defendant's conviction and remanded the case for an attenuation hearing. On remand, the trial court held an attenuation hearing and found that defendant's statement to the police at the police station was sufficiently attenuated from his earlier arrest to be admissible at trial; and, following our directions, the trial court reinstated the defendant's conviction. The defendant again appealed the trial court's decision, arguing that *the trial court erred in finding attenuation.*

APPEAL: The Appellate Court held that the defendant's statements to the police were not attenuated from the taint of the illegal arrest.

ISSUE: SUPPRESSION OF EVIDENCE (Attenuation): Did this defendant's illegal arrest taint the subsequent statements the defendant made to the police? (Yes).

RULE #1: The conclusion that a defendant's arrest was illegal under the Fourth Amendment does not automatically mean that his subsequent statement is suppressed; the question becomes whether the statement was obtained by means sufficiently distinguishable from the illegal arrest such that the court can say that the statement is purged of, or attenuated from, the taint of the original Fourth Amendment illegality. **RULE #2:** Attenuation analysis under the Fourth Amendment concerning statements made after an illegal arrest is distinct from the threshold question of voluntariness of statements under the Due Process clause. **RULE #3:** The voluntariness of a defendant's statements does not automatically purge the taint of a prior illegal arrest. **RULE #4:** The absence of physical abuse or coercion, and the voluntariness of the defendant's statement, are merely threshold requirements for its admissibility. **RULE #5:** To determine whether a statement is attenuated from an illegal arrest, courts generally consider (1) the proximity in time between the arrest and the statement, (2) the presence of intervening circumstances, (3) the provision of Miranda warnings, and (4) the flagrancy of the police misconduct; of these four factors, the presence of intervening circumstances and the flagrancy of the police conduct are the most important. **RULE #6:** When determining whether a statement is attenuated from an illegal arrest, the temporal proximity between the arrest and the statement is often an ambiguous factor, the significance of which will depend on the circumstances of the case, including the conditions under which the time passes; the ambiguity stems from the fact that, while a lengthy lapse of time may permit the accused to reflect on his situation, a lengthy lapse of time may also enhance the coercive nature of a custodial setting. **RULE #7:** Intervening circumstances factor of test as to whether statements were attenuated from an illegal arrest actually involves two separate considerations: (1) whether the police had separate, intervening probable cause to justify the arrest, and (2) whether there were intervening events which prompted or induced defendant's confession. **RULE #8:** An intervening circumstance can

be an event that prompts or induces a voluntary desire to confess, thereby breaking the causal connection between the illegal arrest and the confession, but it cannot be (1) something that was obtained illegally, such as statements from unlawfully arrested codefendants, or (2) information obtained by exploiting the illegality of the defendant's detention, such as a polygraph examination conducted during the defendant's illegal detention. **RULE #9:** "Interrogation" refers to express questioning, as well as to any words or actions on the part of the police, other than those normally accompanying arrest and custody that the police should know are reasonably likely to elicit an incriminating response from the suspect. **RULE #10:** Although police cannot dissipate the taint of an illegal arrest by simply giving *Miranda* warnings, the presence of warnings prior to an interrogation carries some weight when considering attenuation of statements made following an illegal arrest.

FINDING #1: Murder defendant's statements to police were not attenuated from the taint of the illegal arrest, and thus were inadmissible, **WHY:** *where the duration between the illegal arrest and the statements was short and did not provide time for independent reflection, bogus gunshot residue test, which detective admitted was "a ruse to get [defendant] to speak," prompted statements, Miranda warnings were provided once at the start of the six-hour interrogation but were not repeated again, even when defendant specifically asked what his rights were, and apparent purpose of arrest and detention was to enable police to conduct a fishing expedition for evidence in the hopes something might turn up.* **FINDING #2:** Bogus gunshot residue test which prompted murder defendant's incriminating statements was not an intervening circumstance which helped purge taint of prior illegal arrest; **WHY:** *test itself was a form of misconduct and was used as a form of interrogation to prompt confession, and test exploited the illegality of the original arrest.*

2. **People v. Sean A. Peck, 2017 IL App (4th) 160410, (4th Dist., April 5, 2017)** Denial of Motion to Suppress Confession - - Reversed and Remanded.

FACTS: A jury found the defendant guilty of numerous drug offenses. He appealed and **argued that his trial counsel was ineffective for failing to file a motion to suppress his incriminating statements following his request for legal representation.**

APPEAL: The Appellate Court held that: (a) the defense counsel's performance fell below an objective standard of reasonableness when she failed to file motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; (b) the officer's remarks constituted an improper continuation of defendant's interrogation after he invoked his right to counsel; and (c) the defendant was prejudiced by trial counsel's deficient performance.

ISSUE: COUNSEL (Effectiveness): Did this defendant's counsel provide ineffective assistance by failing to move to suppress the statements this defendant made after he asked for counsel? (Yes).

FINDING #1: Defense counsel's performance fell below an objective standard of reasonableness when she failed to file a motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; **WHY:** *counsel's failure to file this motion was not the result of a tactical decision, but, rather, of a fundamental misjudgment, in that counsel erroneously believed a motion to suppress would be without merit because defendant had reinitiated the conversation with police.* **FINDING #2:** After defendant was read his *Miranda* rights and stated that he wanted attorney, officer's statement, that defendant's girlfriend was going to be arrested, was reasonably likely to elicit an incriminating response from defendant, and thus, officer's remarks constituted an improper continuation of defendant's interrogation after he invoked his right to counsel; **WHY:** *once defendant invoked his right to counsel, officer was required to cease the interrogation until such time as an attorney was present.* **FINDING #3:** Defendant was prejudiced by trial counsel's deficient performance, in failing to file a motion to suppress the incriminating statements defendant made to officer after defendant invoked his right to counsel; **WHY:** *defendant's confession had an immense impact on the outcome of his case, and its admission negatively impacted defendant's ability to provide alternative theories and request jury instructions on lesser-included offenses.*

OCTOBER – 2017

CASE ANALYSIS

1. **People v. Jovan Djurdjulov, 2017 IL App (1st) 142258, (1st Dist., September 12, 2017)** First-Degree Murder - - Affirmed.

FACTS: A jury found Djurdjulov guilty on two counts of first-degree murder. He **argued on appeal that the trial court should have suppressed the statements he made to police, and the court should have granted his request for fees so that he could hire an expert to analyze cell phone records the prosecution used at his trial.**

ISSUE: CONFESSIONS AND ADMISSIONS (Coercion): Did the police coerce this defendant into confessing to the murder? (No).

RULE #1: While deception by police is not per se unlawful, it can contribute to the coerciveness of the interrogation and weigh against a finding of voluntariness of a confession. **RULE #2:** A police officer's brief reference to the death penalty during interrogation will not render a defendant's statement involuntary when the statement merely illustrates the seriousness of the crime and the defendant's will was not overcome as a result of the reference.

FINDING #1: Interrogation was not coercive so as to render an 18-year-old murder defendant's statements to police involuntary, even though the interrogation was 36 hours in length and the police threatened defendant with the death penalty, which was an impossibility due to his age at time of offense, **WHY:** *police accommodated defendant's physical needs, used no physical force, and made no promises when they suggested to defendant that his "way out" was to say someone else set the fire.*

2. **People v. Torolan Williams, 2017 IL App (1st) 142733, (1st Dist., August 28, 2017)** First-Degree Murder and Armed Robbery - - Affirmed.

FACTS: Williams was charged with five counts of first-degree murder and one count of armed robbery. During the ensuing trial, the State used historical cell phone site data and defendant's own statement that he was a lookout to implicate him in the crimes. After hearing all the evidence, the jury found defendant guilty on all counts. The trial court sentenced him to life in prison for the five murders and 20 years in prison for the armed robbery. Williams raised several issues on appeal. He **argued that (1) the trial court erred in failing to suppress statements that he acted as a lookout because they were the product of coercion.** ***.

ISSUE: CONFESSIONS AND ADMISSIONS (Voluntary Statement): Were the defendant's statements to the police involuntarily made because the police refused to allow him to make a telephone call? (No).

RULE #1: A defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, and even though there is ample evidence aside from the confession to support the conviction. **RULE #2:** In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case; no single factor is dispositive. **RULE #3:** Factors to consider when determining whether a defendant's statement was voluntary include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises. **RULE #4:** The test of voluntariness is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed.

FINDING #1: Defendant's statements to police officers prior to his invocation of his right to counsel were admissible, during prosecution for murder, even though defendant made several requests to be allowed to make a phone call which were denied; **WHY:** *defendant's statements were voluntary, denial of defendant's requests to make a telephone call did not render defendant's statements involuntary, defendant had previous encounters with the criminal justice system, and defendant did not inform police that he wanted to call and check on the status of his sick newborn son until several hours into his custody.* **FINDING #2:** Defendant's rights under statute, which provided that an arrested person had the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone

calls, were not violated when police officers denied defendant's multiple requests to be permitted to make a telephone call; **WHY:** *defendant did not inform police that he wanted to call an attorney or to call his family and inform them of his location. 725 Ill. Comp. Stat. Ann. 5/103-3.*

3. **People v. James R. Branch, 2017 IL App (5th) 130220, (5th Dist., August 1, 2017)** Predatory Criminal Sexual Assault of a Child - - Affirmed in Part; Remanded in Part.

FACTS: The defendant, was convicted after a jury trial of three counts of predatory criminal sexual assault of a child and was sentenced to 15 years' imprisonment on each count, to be served consecutively. The defendant **argued on appeal that the court erred in failing to suppress a statement he allegedly made to a detective upon being advised he was under arrest.**

ISSUE: CONFESSIONS AND ADMISSIONS (Spontaneous Statement): Should the defendant's statements to the police have been suppressed? (No).

RULE #1: When an accused invokes his right to have counsel present during custodial interrogation, he may not be subject to further questioning without the presence of counsel unless the accused himself initiates further communication, exchanges, or conversations with the police. **RULE #2:** Once accused invokes his right to have counsel present during custodial interrogation, if the police subsequently initiate a conversation with the accused in the absence of counsel, the accused's statements are presumed involuntary and are not admissible as substantive evidence at trial; however, if the accused, rather than the police, initiates further discussion after invoking the right to counsel, then the statements may be admissible as substantive evidence at trial.

FINDING: Defendant reopened and initiated further conversation with the police immediately after invoking the right to counsel, thereby knowingly waiving his right to the presence of counsel during questioning; **WHY:** *after the interview concluded, the detective left the room for some 20 to 30 minutes, and when he came back into the room and told defendant he was going to be arrested, defendant stated that he guessed they found his DNA on girl, detective did not question defendant in any form to elicit defendant's response, and defendant's statement was unsolicited and spontaneous.*

4. **People v. Brian D. Maggio, 2017 IL App (4th) 150287, (4th Dist., June 15, 2017)** First-Degree Murder - - Conviction Affirmed in Part and Vacated in Part; Mittimus Corrected.

FACTS: The defendant was convicted, after a jury trial, of one count of first-degree murder. 720 ILCS 5/9-1) He appealed his conviction and sentence, arguing his trial counsel was ineffective and the trial court erred by (1) failing to instruct the jury on involuntary manslaughter and (2) considering his refusal to participate in the presentence investigation in aggravation at sentencing. Defendant also argues his fines have not been offset by his *per diem* credit.

ISSUE: COUNSEL (Effectiveness): Did the defendant's counsel provide ineffective assistance by failing to move to suppress this defendant's post-Miranda statements? (No).

RULE #1: When a defendant waives his *Miranda* rights, and makes statements to police, as to the subject matter of his statements, the defendant has not remained silent at all, for purposes of the *Doyle* rule. **RULE #2:** A defendant's voluntary post-*Miranda* statements may be probed on direct examination as well as on cross-examination for impeachment purposes. **RULE #3:** The proper approach to considering whether to apply the *Doyle* rule, which states that the use for impeachment purposes of petitioners' silence, at the time of arrest and after receiving *Miranda* warnings, violates the Due Process Clause of the Fourteenth Amendment, is to first determine whether the defendant has received notice of his or her right to remain silent and then determine whether the defendant invoked the right to remain silent; where the defendant fails to invoke the right to silence, *Doyle* is inapplicable, and testimony about the inconsistency between the two statements may be elicited at trial. **RULE #4:** The fact post-*Miranda* statements omitted details later asserted at trial does not mean the omissions were an invocation of the right to remain silent.

FINDING #1: Defendant did not forfeit his ineffective assistance of counsel claim in murder prosecution based on counsel's failure to object to People's use of his post-*Miranda* statement and for failing to request the proper self-defense

jury instruction; **WHY:** *defendant's attorneys represented him throughout his trial and sentencing hearing, and were not expected to argue their own ineffectiveness, and their failure to do so does not result in forfeiture on appeal.* **FINDING #2:** The People did not violate *Doyle* rule, and thus defendant could not support ineffective assistance of counsel claim based on counsel's failure to object to People's use of his post-*Miranda* statement in murder prosecution; **WHY:** *because defendant omitted significant details in his statement to police about the events that led up to the shooting, his initial version was thus inconsistent with subsequent trial testimony and theory of defense, and the State was permitted to use that inconsistency to test defendant's self-defense theory.*

JANUARY – 2018

CASE ANALYSIS

1. People v. Gregory Sandifer, 2017 IL APP (1st) 142740, (1st Dist., December 14, 2017) First-Degree Murder, Attempt First-Degree Murder, Aggravated Criminal Sexual Assault, and Aggravated Domestic Battery - - Affirmed in Part; Vacated in Part.

FACTS: Following a bench trial, Sandifer was convicted of first-degree murder of his three-year-old son, and attempted first-degree murder, aggravated criminal sexual assault, and aggravated domestic battery of his son's mother. The trial court sentenced Sandifer to natural life in prison for the murder, a consecutive term of 25 years' imprisonment for attempted murder, and concurrent prison terms of 18 years for sexual assault and 7 years for domestic battery. On appeal, **Sandifer contended that the trial court erred when it denied his motion to suppress his statements because his severe pain and pain medication administered to him at the time of his statements rendered him unable to knowingly and intelligently waive his Miranda rights and make a voluntary statement.** **ARGUMENT:** Sandifer complained that the trial court erred when it denied his motion to suppress his statements because his severe pain and the pain medication administered to him at the time of his statements rendered him unable to knowingly and intelligently waive his *Miranda* rights and make a voluntary statement. He claimed that the videotaped statement demonstrated that he was experiencing cognitive impairment during the interrogations. He argued that, although the police testified that he was oriented and not confused, their testimony does not show that he had the cognitive ability to understand his rights.

ISSUE: CONFESSIONS AND ADMISSIONS (Voluntariness): Did the pain the defendant was suffering and the medication he was taking prevent his statements from being voluntarily given? (Yes).

FINDING: While the Court found nothing improper about the questioning by the police or the ASA, given the fact that, at the time of the videotaped statement, Sandifer was suffering a tremendous amount of excruciating pain from his shattered ankle, and that he had received multiple doses of strong pain medication, it found that he was not in a position to voluntarily confess. Therefore, based on this record, the appellate court held that the trial court's determination that Sandifer's statement was voluntary was against the manifest weight of the evidence. Accordingly, the court erred when it denied Sandifer's motion to suppress the statement.

2. People v. William L. Beck, 2017 IL APP (4th) 160654, (4th Dist., November 30, 2017) Aggravated DUI - - Affirmed.

FACTS: Following a stipulated bench trial, Beck was found guilty of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(d)(1)(C)) and sentenced to 30 months' probation. He appealed, **arguing the trial court erred by (1) denying his motion to suppress statements he made to a law enforcement officer, which he alleges occurred during the course of a custodial interrogation and without the benefit of Miranda.**

ISSUE: CONFESSIONS AND ADMISSIONS (Miranda): Did the police violate this defendant's Miranda rights by improperly conducting a custodial interrogation? (No).

APPEAL: The Appellate Court held that the defendant was not in custody when questioned by a sheriff's deputy.

RULE #1: Where a defendant challenges the admissibility of a confession through a motion to suppress, the State bears

the burden of proving the confession was voluntary by a preponderance of the evidence. **RULE #2:** The term “custodial interrogation,” during which a defendant's statements are inadmissible in the absence of certain procedural safeguards, means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. **RULE #3:** Whether a person is in custody and subject to *Miranda* warnings requires consideration of the circumstances surrounding the interrogation and whether, under those circumstances, a reasonable person would have felt at liberty to terminate the interrogation and leave. **RULE #4:** Accepted test for determining whether a person would have felt liberty to terminate the interrogation and leave, for *Miranda* purposes, is what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant's shoes. **RULE #5:** The following factors are relevant to a determination regarding whether a statement was made in a custodial setting, for purposes of *Miranda*: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of the individual's family and friends; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking, or fingerprinting; (5) how the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. **RULE #6:** Although it is generally irrelevant that the interrogating officer subjectively viewed the individual under questioning as a suspect, the officer's beliefs, if conveyed by word or deed to the individual being questioned, are relevant for *Miranda* warning purposes to the extent that they would affect how a reasonable person in the position of the individual being questioned would have gauged the breadth of his freedom of action.

FINDING: Defendant was not in custody when questioned by sheriff's deputy, and thus his statements to sheriff's deputy without receiving *Miranda* warning were admissible at trial for aggravated driving under the influence of alcohol (DUI); **WHY:** *deputy's questioning of defendant occurred in the neutral setting of hospital room defendant occupied after his car crash, defendant's parents were present in the room, and although deputy informed defendant that he intended to charge him with DUI, read to him the Warning to Motorist that contained warnings pertaining to a DUI arrest, and issued defendant a DUI citation, there was no show of weapons or force and defendant was not fingerprinted, booked, handcuffed, or restrained in any way.*

SPRING ISSUE – 2018

CASE ANALYSIS

People v. Demetrius Phillips, 2018 IL APP (3rd) 130270, (3rd Dist., February 21, 2018) First-Degree Murder - - Reversed and Remanded.

FACTS: Phillips was convicted of first-degree murder (720 ILCS 5/91(a)(2)); 730 ILCS 5/5–8–1(a)(1)(c)(ii)) and was sentenced to 25 years of imprisonment. On appeal, Phillips **argued inter alia, that his statement to police was improperly coerced such that the trial court erred when it denied his motion to suppress.**

ISSUE: CONFESSIONS AND ADMISSIONS (Voluntariness): Did the police coerce this defendant into making a statement? (Yes).

APPEAL: The Appellate Court held that defendant's statement to police was improperly coerced. One Justice filed a dissenting opinion.

RULE #1: A defendant's constitutional rights have been violated if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity; this is so even if there is ample evidence aside from the confession to support the conviction. **RULE #2:** If an individual's will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. **RULE #3:** The test for determining whether a confession was voluntary is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed. **RULE #4:** In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case; no single factor is dispositive. **RULE #5:** Factors to consider in determining whether a statement is voluntary include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises.

RULE #6: At a hearing on a motion to suppress, it is the State's burden to prove, by a preponderance of the evidence, that a confession was voluntary. **RULE #7:** The Appellate Court applies a bifurcated standard of review to a circuit court's decision on a motion to suppress: (1) the Court grants great deference to the court's factual findings and will disturb them only if they are against the manifest weight of the evidence; and (2) the Court's review de novo the court's ultimate legal ruling on the motion to suppress.

FINDING: Defendant's statement to police, in which defendant stated that child was injured after defendant tossed child onto a bed, and child hit his head on a nightstand, was improperly coerced in murder prosecution, **WHY:** *although defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning weighed in favor of a finding that the confession was voluntary, detective's statement to defendant included a suggestion that defendant's charge could change, and detective threatened defendant by telling defendant that "baby killers" faced violence in jail.* 725 Ill. Comp. Stat. Ann. 5/114-11(d).

SUMMER ISSUE – 2018
(April – June 2018 Cases)

1. People v. Pablo Colon, 2018 IL APP (1st) 160120, (1st Dist., June 28, 2018) First-Degree Murder - - Affirmed.

FACTS: Colon was convicted after a jury trial of first-degree murder and sentenced to 40 years with the Illinois Department of Corrections (IDOC). On this appeal, he claimed (1) that the **trial court erred by allowing, as a tacit admission by him, the testimony of Wayne Kates recounting statements by Marco Ramirez and Daniel Guerrero that were made during a gang meeting at which he was present and that described the murder;**

ISSUE: CONFESSIONS AND ADMISSIONS (Miranda): Did the police properly inform this defendant of his Miranda rights? (Yes).

AGRUMENTS: Defendant claims that the trial court erred by denying his pretrial motion to suppress his statement to the police, because the police did not advise him of his right to stop the questioning.

FINDINGS: Statements made during gang meeting at which defendant was present, and defendant's silence to such statements, were admissible under tacit admission rule, in prosecution of defendant for first degree murder in which several gang members were involved, **WHY:** *statements indicated that gang members "just kept beating [victim] until he stopped moving," that defendant exited vehicle with other gang members before gang beating and that "they drove off" before officers arrived, gang leadership were demanding an explanation during meeting for why area surrounding crime scene was so active with police officers that gang could no longer maintain presence in area, defendant was in close proximity to gang members who made statements during meeting of six in a living room, and defendant was not prevented in any way from objecting or replying.*

"On appeal, defendant acknowledges that some Illinois courts have found that police are not required, as part of their *Miranda* warnings, to inform a suspect that he has the right to halt questioning at any time. However, defendant argues that these cases are decades-old and that "the *Miranda* rights should include an explicit warning that the accused has the right to cut off or terminate questioning at any time." In addition, defendant argues that, even if "the federal *Miranda* guarantee does not assure such a right," such a right is provided by the Illinois constitution. In the case at bar, defendant does not claim that his attorney was at the police station when defendant was being interrogated. Rather, he claims, based on *McCauley*, that the police were required to inform him, prior to questioning and as part of their *Miranda* warnings, that he had the right to terminate questioning at any time. Defendant does not cite a single Illinois case, in the almost 25 years since *McCauley* was decided, that cites *McCauley* for such a proposition or that holds what he asks us to hold based on it. Nor can we find one. Thus, we decline his invitation to expand the required *Miranda* warnings."

2. People v. Williams J. Ross, 2018 IL APP (2nd) 161079, (2nd Dist., June 28, 2018) First-Degree Murder - - Affirmed.

FACTS: Ross was found guilty of first-degree murder and of having discharged a firearm that caused the death of Jacqueline Schaefer. 720 ILCS 5/9-1(a)(2); 730 ILCS 5/5-8-1(d)(iii). The trial court sentenced defendant to 24 years'

imprisonment for first-degree murder and a consecutive 25 years' imprisonment for the use of a firearm, for a total of 49 years' imprisonment (plus 3 years' mandatory supervised release (MSR)). Ross appealed, arguing that (1) **the trial court erred in denying his motion to suppress certain statements to police, where he did not knowingly and intelligently waive his *Miranda* rights** ***.

ISSUE: CONFESSIONS AND ADMISSIONS (Knowing): Did the defendant knowing waive his *Miranda* rights? (Yes).

AGRUMENTS: Defendant argues first that the trial court erred in admitting his statements to the Detectives in Las Vegas, because defendant did not knowingly and intelligently waive his *Miranda* rights. He contends that he told the detectives that he did not understand the *Miranda* warnings and yet they continued the interrogation without ever establishing otherwise. For the following reasons, we reject defendant's argument. Defendant argues that the interrogation transcript reveals that he did not understand the rights as they were read to him.

FINDINGS: Defendant impliedly waived his *Miranda* rights during police interrogation, although he stated that he did not understand such rights and refused to sign a written waiver; **WHY:** *defendant's responses to detectives, such as that he did not "like those rights," were argumentative and displayed a feigned lack of understanding, given his MBA-level education, work experience in sales, and the fact that he requested an attorney once the interrogation became confrontational, and defendant failed to present any expert testimony in support of his claim that alcoholism impaired his intellectual ability.*

3. People v. Jamari McArthur, 2017 IL App (1st) 150626, (1st Dist., June 25, 2018) Aggravated Criminal Sexual Abuse - - Affirmed.

FACTS: Seventeen-year-old McArthur was arrested for allegedly engaging in sexual conduct with M.W., an 11-year-old boy. He confessed to the police in writing after having spent 50 hours in custody without a probable cause determination. McArthur filed a motion to suppress his confession arguing that the duration of his detention without a probable cause determination rendered his confession involuntary. The trial court ruled that his confession was voluntary despite the delay. A jury found him guilty of the aggravated criminal sexual abuse of M.W. and the trial court sentenced him to four-years' imprisonment. As a result of his conviction, McArthur was ordered to register as a sex offender under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.*) for the remainder of his natural life. On appeal, **McArthur challenged the trial court's ruling that his confession was voluntary, and the sufficiency of the evidence presented at trial.** ***.

ISSUE: CONFESSIONS AND ADMISSIONS (Voluntariness): Did this defendant voluntarily confess to the police despite the fact that he had spent more than 50 hours in custody without being given a probable cause hearing? (Yes).

AGRUMENTS: The issues on appeal are whether the trial court erred in ruling that defendant's confession was voluntary. Defendant argues that Detective Erickson violated his rights under the provision of the Juvenile Court Act (JCA) that requires police officers, who arrest a minor without a warrant, to "immediately" make a reasonable attempt to notify a parent or legal guardian and to take the minor to the nearest juvenile officer "without unnecessary delay." Alternatively, defendant argues that we should consider the "concerned adult" factor to find that his confession was involuntary.

FINDINGS: Juvenile defendant's confession that he placed his mouth around 11-year-old victim's penis was voluntary under totality of circumstances, **WHY:** *defendant was 17-year-old high-school student, there was no evidence that defendant was "below intelligence" or "special needs student," there was no indication of police mistreatment or mental abuse during defendant's questioning, defendant was provided his *Miranda* rights before questioning, questioning was not unreasonable in duration, and although police clearly exceed 48-hour limit for providing defendant with probable-cause determination by not providing determination until 73 hours after defendant's arrest, delay was attributable to need for police to speak with child witnesses before charging defendant with felony offense.*

4. People v. Wesley Lawrence Whitfield, 2018 IL APP (4th) 150948, (4th Dist., June 8, 2018) Aggravated Battery of a Child - - Affirmed.

FACTS: Following a jury trial, Whitfield was convicted of aggravated battery of a child (720 ILCS 5/12-3.05(b)(2)) and sentenced to four years in prison. He appealed, *arguing (1) portions of his videotaped interrogation were improperly admitted at his trial and played for the jury* ***.

ISSUE: CONFESSIONS AND ADMISSIONS (Recordings): Did the trial court err in allowing portions of the defendant's recorded statement to be admitted at his trial and played for his jury? (No).

AGRUMENTS: On appeal, defendant argues he was denied a fair trial because certain portions of his interrogation video were played for the jury and admitted into evidence at trial. He maintains the video contained inadmissible hearsay assertions from the investigating officers, improper opinions and commentary from the officers on his credibility and eventual defenses, and improper opinions from the officers on the strength of the State's evidence. Defendant contends the challenged statements from the officers were irrelevant and unduly prejudicial.

FINDINGS: (A) Statements made by police officers during interrogation of defendant, which was video recorded and played for jury at trial, were not offered for truth of matter asserted, and thus were not hearsay; **WHY:** *statements were helpful to jury in that they provided context for what occurred during interrogation and were useful in explaining defendant's statements and admissions, without officers' statements and questions, meaning and significance of defendant's answers, comments, behaviors, or even, at times, his silence, would have been difficult to discern, and, further, defendant conceded that statements he made during interrogation were relevant and admissible.* (B) Final "35 minutes or so" of video recording of defendant's interrogation by police contained relevant statements by defendant that held probative value, and thus entire recording was admissible at trial for aggravated battery of a child, although initial portion of video contained relevant admissions by defendant, **WHY:** *defendant thereafter continued to make relevant statements, implicating himself in crime and contradicting defenses he made at trial.* 720 Ill. Comp. Stat. Ann. 5/12-3.05(b)(2). (C) Police officers' statements and questions during defendant's video-recorded interrogation did not constitute improper lay witness opinions on defendant's credibility and strength of State's case, and thus statements and questions were properly admitted at trial; **WHY:** *statements and questions were not testimony and were not present opinions, and, further, statements and questions were helpful to jury so as to place defendant's statements, and his silence, into context, and their probative value outweighed their prejudicial effect.* (D) Assuming trial court clearly and obviously erred during trial for aggravated battery of a child by admitting statements made by police officers during defendant's interrogation, which was video recorded and played for jury, evidence of defendant's guilt was strong and was not closely balanced, and defendant thus could not establish first-prong plain error, **WHY:** *defendant admitted during interrogation that he spanked victim, his two-year-old child, with belt made of "thin leather" on his bare buttocks and that victim "squirmed" or moved around during spankings, causing defendant to strike victim's arm, hand, and legs, State presented photographs depicting victim's injuries, and physician opined that victim's injuries were "consistent with being whipped with a cord or a belt."* 720 Ill. Comp. Stat. Ann. 5/12-3.05(b)(2).

5. People v. Jesus Sanchez, 2018 IL APP (1st) 143899, (1st Dist., April 10, 2018) First-Degree Murder - - Reversed.

FACTS: A jury found Sanchez guilty of a murder committed in 2013, when Sanchez was 18 years old. The trial court sentenced him to 45 years in the penitentiary. On appeal, *Sanchez contended that *** and that the trial court should have suppressed the statements he made.*

ISSUE: CONFESSIONS AND ADMISSIONS (Voluntariness): Did the defendant voluntarily waive his Fifth Amendment rights? (No).

APPEAL: The Appellate Court held that the defendant's confession was neither voluntary nor reliable.

RULE: To determine the voluntariness of a defendant's statement, the court should consider the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning, the

legality and duration of the detention, the duration of the questioning, and any physical or mental abuse by police, including the existence of threats or promises. 725 Ill. Comp. Stat. Ann. 5/103-2.1(d).

FINDINGS: Defendant's confession was neither voluntary nor reliable, and thus trial court had a duty to suppress it at murder trial after State violated requirement that interrogations be recorded; **WHY:** *police arrested defendant without probable cause and held him for 12 hours before he confessed, refusing to let him call his mother until he agreed with them that he shot victim, and defendant's confession contradicted both physical evidence and eyewitness testimony.* 725 Ill. Comp. Stat. Ann. 5/103-2.1(b), 5/103-3(a).

6. People v. Scott Peters, 2018 IL APP (2nd) 150650, (2nd Dist., March 6, 2018) Attempted First-Degree Murder - Affirmed.

FACTS: Peters was convicted of the attempted murder (720 ILCS 5/9-1(a)(1), (b)(1), 8-4(a)) of three deputy sheriffs and was sentenced to a total of 135 years' imprisonment. On appeal, he argued that (1) ***, (2) **the trial court did not conduct a proper hearing on his motion under People v. Krankel**, 102 Ill. 2d 181, 187-89, 80 Ill. Dec. 62, 464 N.E.2d 1045 (1984), ***.

ISSUE: COUNSEL (Effectiveness): Did the defendant's counsel provide ineffective assistance by failing to object to the above trial errors? (No).

APPEAL: The Appellate Court held that the defendant's statement that he could not afford an attorney was not a clear and unequivocal request for an attorney.

FINDINGS: When informed of his *Miranda* rights, defendant's statement that he could not afford an attorney was not a clear and unequivocal request for an attorney and, thus, was insufficient to invoke his *Miranda* rights, and consequently, defendant's subsequent statements were not given in violation of *Miranda*. **WHY:** *the record indicated that the defendant waived his Miranda rights, defense counsel was not ineffective for not filing a motion to suppress the defendant's statements based on a Miranda violation.*