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JUVENILE JUSTICE CASE LAW 2015-2016

JULY - 2015

PART A - JUVENILE JUSTICE

ANALYSIS

1. **People v. Marlon Minter**, 2015 IL App. (1st) 120958, (1st Dist., June 25, 2015) Armed Robbery - - Conviction Affirmed; Sentence Vacated; Case Remanded for Resentencing.

FACTS: After a jury trial, the defendant was convicted of armed robbery and sentenced to 23 years' incarceration. The defendant, who was 16 years old at the time of the offense, was automatically tried as an adult pursuant to the Juvenile Court Act of 1987 because the charges alleged that he was armed with a firearm during the robbery. 735 ILCS 405/5-130(1) (a) (iv)) At his trial, the defendant did not deny committing the robbery. The sole issue in contention was whether the defendant's accomplice, a man known as "Breed," was armed at the time of the robbery, which, under the law of accountability, would make the defendant liable for the firearm as well. According to the victim and the defendant's incriminating statements to the police, Breed was armed. The defendant's theory, supported by his own testimony, was that Breed was unarmed. On appeal, the defendant raised six issues. Three of those issues related to alleged errors in the defendant's trial proceedings, while the other three relate to the defendant's sentence. The Court first outlined the defendant's contentions of trial error, then it outlined his three challenges to his sentence. The defendant first contended that the trial court violated his right to present a defense by preventing him from challenging his incriminating statement and from impeaching the People's only eyewitness. The defendant's second contention of trial error related to evidence of his tattoos that was presented at trial. The defendant claimed that the trial court's rulings regarding his tattoos deprived him of a fair trial because they created the possibility that the jury would view him negatively because of his tattoos. The defendant's third contention of trial error was that the trial court's improper comments and bias deprived him of his right to a fair trial. Along with the defendant's three assertions of trial error, he also raised three challenges to his 23-year sentence. First, he argued that the automatic transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130(1)(a) (West 2008)), which required that he be prosecuted as an adult, violated his right to due process of law, the Eighth Amendment of the United States Constitution (U.S. Const. amend. VIII), and the Proportionate Penalties Clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Second, he complained that the 15-year firearm enhancement to his sentence was void because it had been ruled unconstitutional at the time of the offense. Finally, he argued that the trial court improperly considered the two pending criminal charges against him as aggravating factors increasing his sentence.

ISSUE: **Constitutionality of Statute (Automatic Juvenile Transfer):** Was the automatic juvenile transfer provisions unconstitutional? (No).

2. **People v. Clifford W. Baker**, 2015 IL App. (5th) 110492, (5th Dist., ~~February 6, 2015~~) (**MODIFIED UPON DENIAL OF RECONSIDERATION: March 17, 2015**) First-Degree Murder; and Home Invasion - - Affirmed in Part; Vacated in Part; Vacated in Part; and Remanded with Instructions.

FACTS: On appeal from a 15-year-old defendant's convictions for three counts of home invasion, two counts of first degree murder and his sentences to two mandatory terms of natural life in prison for the murders and 30 years for each of the home invasions and one 30-year term consecutive to the sentences on all other counts after he was tried as an adult pursuant to the automatic transfer provision in the Juvenile Court Act, the appellate court, inter alia, vacated the mandatory natural life sentences and remanded the case to the trial court for a new sentencing hearing to determine which of the home invasion charges was the less serious offense and to vacate the less serious conviction and sentence and correct the sentencing order.

ISSUE: Constitutionality of Statute (Automatic Juvenile Transfer): Was the automatic transfer provisions of the Juvenile Court Act constitutional? **(Yes)**

FINDING #1: Sentence of two mandatory terms of natural life, imposed on juvenile defendant convicted of two counts of first degree murder, violated Eighth Amendment's prohibition against cruel and unusual punishment; there was no indication that trial court considered defendant's youth and attendant characteristics before imposing the sentence as required under *Miller v. Alabama*. 720 ILCS 5/9-1(a) (1) **FINDING #2:** Automatic transfer provision of the Juvenile Court Act, automatically transferring certain minors from jurisdiction of juvenile court to adult criminal court when one of several enumerated crimes have been charged, did not violate procedural or substantive due process rights of juvenile convicted of murder; provision was rationally based on age of offender and nature of threat posed by offense to victim and community, and provision did not allow for disparity in treatment between individuals within its classification or deprive them of meaningful opportunity to be heard. 705 ILCS 405/5-130(1) (a) **FINDING #3:** Automatic transfer provision of the Juvenile Court Act, automatically transferring certain minors from jurisdiction of juvenile court to adult criminal court when one of several enumerated crimes have been charged, did not violate Eighth Amendment or proportionate penalties rights of juvenile convicted of murder, as the automatic transfer provision was procedural rather than punitive. **FINDING #4:** Juvenile defendant's incriminating statements regarding murders during interview with police from hospital bed were voluntary, although defendant was 15 years old, was sleep-deprived and intoxicated, was taking medication for major depressive disorder, and had just undergone blood draw and catheter placement; one of the police officers present at the interview read *Miranda* warnings to defendant, defendant said he understood them, officers did not engage in coercive or abusive behavior, officers were not adversarial and they did not employ tricks, defendant did not appear confused or physically or mentally distressed during interview, and defendant responded in the affirmative each time one of the officers asked whether he understood what was happening.

3. People v. Joshua Cavazos, 2015 IL App. (2nd) 120171, (2nd Dist., March 31, 2015) First-Degree Murder and Numerous Related Offenses - - Affirmed.

FACTS: The defendant (age 17 when the shooting occurred), and his brother, Justin Cavazos (age 16 when the shooting occurred), were charged in connection with murder. The brothers were tried simultaneously (in adult court) by separate juries. Joshua's jury convicted him of two counts of first-degree murder (720 ILCS 5/9-1(a) (1), (a) (2)), attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1)), unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1)), and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2)). Further, regarding the first-degree-murder and attempted-murder convictions, the jury found that Joshua personally discharged the weapon used in those crimes. The trial court denied Joshua's post-trial motion, but granted in part his motion to reconsider his sentence and, ultimately, sentenced him to an aggregate of 75 years' imprisonment. On appeal, Joshua argued that: (1) the evidence was insufficient to sustain his convictions; (2) the jury was improperly instructed on the attempted-murder charge, where the instruction did not state that, to be found guilty, he had to specifically intend to kill the victim, as opposed to merely "an individual"; (3) the attempted-murder conviction must be reversed because no evidence established that he specifically intended to kill the victim; (4) Illinois law is unconstitutional where it automatically subjects juveniles to adult prosecution and sentencing, without consideration of youthfulness at the time of the offense; and (5) the application to juveniles of mandatory firearm enhancements (see 730 ILCS 5/5-8-1(a)(1)(d)), mandatory consecutive sentencing (see 730 ILCS 5/5-8-4(d)), and "truth in sentencing" provisions (730 ILCS 5/3-6-3(a)(2)(i), (ii) (requiring that Joshua serve 100% of the murder sentence and 85% of the attempted-murder sentence)) was unconstitutional because the provisions do not permit consideration of his youthfulness at the time of the offense. The appellate court affirmed.

ISSUE: Constitutional of Statutes: Were the "exclusive jurisdiction" provisions of the Juvenile Court Act and the sentencing provisions of the Code of Criminal Procedure unconstitutional as applied to him? **(No)**

FINDING #1: Statute excluding 17-year-old defendants from juvenile court did not violate prohibition on cruel and unusual punishment or proportionate penalties clause of state constitution, since statute was not itself a sentencing statute and, therefore, imposed no sentence. 705 ILCS 405/5-120 **FINDING #2:** Prohibition on cruel and unusual punishment or proportionate penalties clause of state constitution did not require that defendant's youth be taken into account before imposition of firearms enhancement resulting in 75-year aggregate sentence for first degree murder and attempted murder committed when defendant was 17 years old, since sentence was not highest possible penalty; trial court imposed the minimum term of imprisonment for murder and only four years above the minimum for attempted murder. 730 ILCS 5/5-8-1(a) (1) (d) (ii)

4. People v. Zachary Brown, 2015 IL App. (1st) 130048, (2nd Dist., April 20, 2015) Aggravated Battery with a Firearm and Attempted First-Degree Murder - - Affirmed as Modified.

FACTS: The defendant, a 16-year-old juvenile at the time of the offense, was tried as an adult pursuant to the mandatory transfer provision of the Juvenile Court Act of 1987. 705 ILCS 405/5-130(1) (a) (ii). A jury convicted him of aggravated battery with a firearm and three counts of attempted first degree murder. In one of the counts for attempted first degree murder, count IV, the jury found that he personally discharged a firearm that proximately caused great bodily harm. 720 ILCS 5/8-4(c) (1) (D)). The trial court merged the defendant's convictions into count IV and sentenced him to 50 years' imprisonment, which consisted of a 25-year prison term for attempted first degree murder and a 25-year sentencing enhancement for personally discharging a firearm that proximately caused great bodily harm to another. The defendant raised the following issues on appeal: (1) whether the People presented sufficient evidence to support the sentencing enhancement (720 ILCS 5/8-4(c) (1) (D)) he received based on the jury's finding that he personally discharged a firearm that caused great bodily harm; (2) whether the mandatory transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130) was constitutionally valid; (3) alternatively, whether his sentence was excessive in light of his age, family support, education, and lack of a violent criminal background; and (4) whether his mittimus needed to be corrected.

ISSUE: **Constitutionality of Statute (Automatic Juvenile Transfer):** Was the automatic juvenile transfer statute unconstitutional? (No)

FINDING: Mandatory transfer provision of Juvenile Court Act of 1987, pursuant to which 16-year-old juvenile defendant was tried as an adult for first degree attempted murder, did not violate the Eighth Amendment, the Proportionate Penalties Clause of the Illinois Constitution, or due process. 705 ILCS 405/5-130(1) (a) (ii)

5. People v. Matthew Edwards, 2015 IL App. (3rd) 130190, (3rd Dist., May 6, 2015) First-Degree Murder and Attempted First-Degree Murder - - Affirmed as Modified.

FACTS: Following a stipulated bench trial, the trial court found the defendant guilty of first-degree murder and attempted murder. Prior to trial, the defendant filed a motion to suppress, claiming his confession to police was involuntary based on the fact that he was 17 years old at the time, had a fifth grade reading level, suffered from various mental disorders, and that the investigating officers did not allow him to speak to his mother or another concerned adult despite his request to do so. The trial court denied the motion. The matter proceeded to a stipulated bench trial, following which the trial court found the defendant guilty of both first-degree murder and attempted murder. The People dismissed the aggravated battery with a firearm, home invasion, and armed robbery counts. In the sentencing phase, the People sought enhanced sentences on both charges given that the defendant personally discharged a firearm causing both death and great bodily harm. The trial court found that the People proved the enhancement factors and subsequently sentenced defendant to 50 years on the murder conviction and 40 years on the attempted murder conviction. The defendant filed a motion to reduce his sentence, arguing that it was excessive. The court denied the motion. 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; (2) the trial court erred when it failed to hold the statutorily required fitness hearing after it found a bona fide doubt of his fitness to stand trial; (3) the defendant's 90-year sentence is unconstitutional under Miller v. Alabama, 567 U.S. _____, 132 S. Ct. 2455 (2012), prohibiting offenders under the age of 18 from receiving mandatory life sentences; and (4) defendant is entitled to an additional day of presentence incarceration credit.

ISSUES: **1) Confessions and Admissions:** Was this defendant's statements to the police involuntary due to his age and limited intelligence? **(No)**; **2) Sentences (Constitutionality):** Was this 17-year-old's 90-year prison sentence unconstitutional? **(No)**

FINDING #1: Defendant's confession was voluntary, even though defendant was 17 years old, suffered from some mental health disorders, did not finish high school, and police did not contact defendant's parents or another concerned adult, where defendant was mature and articulate, interrogating detectives did not use force or deception, parties presented conflicting accounts regarding whether defendant requested to speak with his mother, and interrogation occurred more than four years prior to statutory amendment requiring police contact a parent. 705 ILCS 405/5-120, 405/5-405(2) (2008)

FINDING #2: Appellate Court would not consider juvenile defendant's challenge to constitutionality of mandatory minimum sentence of 76 years imprisonment for murder and attempted murder with firearm enhancements as a de facto life sentence in violation of ban on imposing mandatory life sentence on juvenile defendants as cruel and unusual punishment; defendant was sentenced to 90 years' imprisonment and not 76 years and defendant could not challenge constitutionality of a sentence he did not receive. 720 ILCS 5/8-4(a) (1); 730 ILCS 5/5-4.5-20(a), 5/5-4.5-25, 5/5-8-1(a) (1) (d) (iii)

6. People v. Zachary Reyes, 2015 IL App. (2nd) 120471, (2nd Dist., May 6, 2015) First-Degree Murder and Attempted Murder with a Firearm - - Affirmed.

FACTS: Following a jury trial, the juvenile defendant was convicted of one count of first-degree murder (720 ILCS 5/9-1(a) (1), (a) (2) and two counts of attempted murder with a firearm (720 ILCS 5/8-4(a), 9-1(a) (1)). The defendant was sentenced to 97 years' imprisonment. On appeal, the defendant argued that the automatic transfer statute of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-130) (also known as the excluded jurisdiction statute), which requires that certain juveniles be tried and sentenced as adults, was unconstitutional. The defendant also argued that, under the holding in Miller v. Alabama, 567 U.S. _____, 132 S. Ct. 2455 (2012), the Illinois statutory sentencing scheme was unconstitutional as applied to him.

ISSUES: 1) **Constitutionality of Statute (Automatic Juvenile Transfer):** Was the automatic juvenile transfer statute unconstitutional? **(No)**; 2) **Sentences (Constitutionality):** Was this juvenile defendant's 97-year sentence unconstitutional as applied to him? **(No)**

FINDING #1: Resultant application of mandatory consecutive sentencing and truth in sentencing did not render automatic transfer provision a sentencing statute and, therefore, automatic transfer provision of Juvenile Court Act, which required certain juveniles 15 years old or older charged with certain crimes to be tried and sentenced as adults, did not violate the cruel and unusual punishment provision or the federal constitution or proportionate penalties clause of state constitution; purpose of the automatic transfer provision was not to punish a defendant, but to establish the relevant forum for the prosecution of a juvenile charged with one of five serious crimes. 705 ILCS 405/5-130 **FINDING #2:** Automatic transfer provision of Juvenile Court Act, which required certain juveniles 15 years old or older charged with certain crimes to be tried and sentenced as adults, did not violate the due process clauses of the federal and state constitutions. 705 ILCS 405/5-130 **FINDING #3:** A 97-year aggregate prison sentence imposed on juvenile murder defendant was not de facto mandatory natural life sentence and, therefore, sentencing court was not constitutionally required to consider special characteristics of young offenders before imposing sentence; defendant did not receive the most severe of all possible penalties, such as the death penalty or life without the possibility of parole, and his consecutive term-of-years sentences were based on multiple counts and multiple victims.

7. People v. Jermaine Richardson, 2015 IL 118255, (Ill. Sup. Ct., May 21, 2015) Dismissal of Charges- - Reversed and Remanded.

FACTS: The defendant was indicted on two counts of criminal sexual assault and one count of criminal sexual abuse for acts he allegedly committed when he was 17 years old. At the time of the alleged offenses, the Juvenile Court Act only applied to those minors who were under 17 years of age. Subsequently, in July 2013, the Governor approved Public Act 98-61, section 5 (eff. Jan. 1, 2014), which amended the exclusive jurisdiction provision of the Juvenile Court Act to apply to those minors who were under 18 years of age. The amendment included a saving clause that provided: "[t]he changes made to this Section by this amendatory Act of the 98th General Assembly apply to violations or attempted violations committed on or after the effective date of this amendatory Act." Public Act 98-61, section 5, took effect on January 1, 2014. The defendant filed a motion in the trial court entitled "Motion to Declare Adult Prosecution Unconstitutional." The motion alleged that the amendment's saving clause violated the defendant's equal protection rights under both the federal and state constitutions. The defendant argued that he was similarly situated to those 17-year-olds who allegedly committed offenses on or after the amendment's effective date and there was no rational basis to treat him differently. The trial court granted the defendant's motion, declaring the amendment's saving clause unconstitutional under the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2, of the Illinois Constitution. The court found that the amendment's effective date violated the defendant's equal protection rights and declared it unconstitutional as applied to him. The court reasoned that there was no rational basis to treat the defendant

differently than a 17-year-old who is alleged to have committed an offense on or after the amendment's effective date. The defendant's case was subsequently transferred to the juvenile division of the trial court. The People's direct appeal to the Supreme Court followed.

ISSUE: Constitutionality of Statute: Was the exclusive jurisdiction provision of the Juvenile Court Act unconstitutional as applied to this juvenile? **(No.)**

FINDING: Saving clause in the exclusive jurisdiction provision of the Juvenile Court Act of 1987 is rationally related to the legislature's goal of including 17-year-olds within the jurisdiction of the Juvenile Court Act, does so in such a manner that avoids confusion and delay, and preserves judicial resources and, thus, does not violate the Equal Protection Clause. 705 ILCS 405/5-120

8. In re Isaiah D., 2015 IL App. (1st) 143507, (1st Dist., June 8, 2015) Adjudication of Delinquency - - Affirmed.

FACTS: This appeal arises from the trial court's order adjudicating this juvenile to be an habitual juvenile offender (HJO) and a violent juvenile offender (VJO) and sentencing him to the DOJJ until the age of 21, pursuant to the mandatory sentencing provisions of the Juvenile Court Act of 1987. The juvenile's appeal raised two sets of challenges to his sentence. First, the juvenile complained that his guilty plea in a prior case in 2013 cannot be used as a predicate offense to support his HJO or VJO status, due to the trial court's alleged errors in admonishing respondent in the 2013 case to ensure that his plea was knowing and voluntary. In other words, the juvenile attempted to challenge the sufficiency of the admonishments given in his 2013 guilty plea, within the context of this appeal of his 2014 conviction in which he was adjudicated an HJO and a VJO. Separately, the juvenile argued that the Juvenile Court Act's mandatory sentencing provisions for a juvenile adjudicated an HJO or a VJO violate the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution.

ISSUE: Constitutionality of Statute (Juvenile Offenders): Was the statutory provision that provides for Habitual Juvenile Offenders and Violent Juvenile Offenders unconstitutional? **(No)**

FINDING #1: Juvenile's notice of appeal following his adjudication as delinquent, stating that he was appealing finding that he had committed robbery as well as sentence to Department of Juvenile Justice (DOJJ) until age 21, was sufficiently specific to confer jurisdiction on Appellate Court to consider juvenile's challenge to the sufficiency of guilty-plea admonishments in prior adjudication, as predicate to his current adjudication as habitual juvenile offender (HJO) and violent juvenile offender (VJO); although notice of appeal did not specifically refer to HJO or VJO adjudications or to prior adjudication, juvenile's sentence was specifically mandated by the HJO and VJO provisions of the Juvenile Court Act, the guilty plea in prior case underpinned juvenile's status as an HJO and a VJO and thus was implicated by the notice of appeal. 705 ILCS 405/5-815 **FINDING #2:** In juvenile's appeal following his adjudication as delinquent, Appellate Court lacked jurisdiction to determine sufficiency of guilty plea admonishments in prior adjudication, for purposes of determining whether prior adjudication could be used as predicate in current case to support adjudication of juvenile as habitual juvenile offender (HJO) and violent juvenile offender (VJO), where juvenile failed to move to withdraw the plea in prior case and failed to file a timely notice of appeal from the sentence imposed on that plea in prior case. **FINDING #3:** Sections of Juvenile Court Act, requiring juvenile adjudicated as habitual juvenile offender (HJO) and violent juvenile offender (VJO) to be given mandatory sentence to the Department of Juvenile Justice (DOJJ) until the age of 21, did not violate constitutional prohibitions on cruel and unusual punishment; legislature was entitled to find that, in the case of a recidivist, violent offender, there were no mitigating circumstances to allow for a lesser penalty. 705 ILCS 405/5-815, 405/5-820

9. In re Maurice D., 2015 IL App. (4th) 130323, (4th Dist., May 29, 2015) Adjudication of Delinquency - - Affirmed.

FACTS: Following a bench trial, the trial court adjudicated this minor delinquent, finding the evidence supported a conviction for criminal sexual abuse (720 ILCS 5/11-1.50(c)) beyond a reasonable doubt. The court then sentenced the juvenile to 12 months' conditional discharge and ordered him to serve 30 days in the county jail, with credit for 7 days served. As a result of his conviction, respondent must register as a sex offender. 730 ILCS 150/3-5(a)). The juvenile appealed, asserting that the prosecution of a minor who engages in "consensual" sexual activity with another close-in-age minor for an imprisonable misdemeanor offense violates (1) the cruel and unusual punishment clause of the eighth

amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution and (2) substantive due process.

ISSUE: Constitutionality of Statute (Criminal Sexual Abuse): Was the statutory provision that provides for a criminal offense for “consensual” sexual activity between minors unconstitutional? **(No)**

FINDING #1: Juvenile's appeal of his adjudication as delinquent for committing criminal sexual abuse did not become moot when juvenile completed his sentence of conditional discharge, since defendant was not challenging his conditional discharge sentence, but rather was challenging the validity of his adjudication as violating the Eighth Amendment and substantive due process; nullification of juvenile's delinquency adjudication would eliminate the requirement that he register as a sex offender. **FINDING #2:** Juvenile had standing, in delinquency proceedings for committing criminal sexual abuse, to raise claim that adjudication for alleged consensual activity would violate the Eighth Amendment and substantive due process, since juvenile was within the class of persons affected by the alleged unconstitutionality. 720 ILCS 5/11-1.50(c) **FINDING #3:** Delinquency adjudication of 17-year-old juvenile for criminal sexual abuse for conduct committed with 15-year-old victim did not violate the constitutional prohibition on cruel and unusual punishment; neither the Eighth Amendment nor the proportionate penalties clause of the state constitution applied to juvenile delinquency adjudication, which was not criminal in nature and was not a direct action by the state to inflict punishment on juvenile. **FINDING #4:** Delinquency adjudication of 17-year-old juvenile for criminal sexual abuse for conduct committed with 15-year-old victim did not violate juvenile's substantive due process rights; criminal sexual abuse statute was rationally related to the legislative purpose of protecting 13 to 16 year olds from premature sexual experiences. 720 ILCS 5/11-1.50(c)

10. People v. Romarr Gipson, 2015 IL App. (1st) 122451, (1st Dist., May 27, 2015) Various Offenses Arising Out of a Shooting - - Reversed and Remanded.

FACTS: The defendant was tried and sentenced as an adult for offenses he committed as a juvenile. After he was automatically transferred from juvenile court to adult court, the court found him unfit to stand trial but later determined he had been restored to fitness. The trial court found the defendant guilty of the attempted first-degree murder, aggravated battery with a firearm and aggravated discharge of a firearm. The court also found that he personally discharged a firearm. Acknowledging its limited sentencing discretion, the trial court imposed the minimum sentence for two counts of attempted murder, a cumulative sentence of 52 years in prison. On appeal, the defendant challenged the fitness restoration proceedings, the imposition of two firearm enhancements and the constitutionality of the statutory transfer and sentencing scheme.

ISSUE: Constitutionality of Statute (Juvenile Automatic Transfer): Was the statutory provision that provides for the automatic transfer of a juvenile to the criminal court based upon allegations of the commission of certain offenses unconstitutional? **(No)**

FINDING #1: Sentence of 52 years for defendant convicted of two counts of aggravated attempted murder committed when defendant was 15 years old, which was minimum sentence required after application of automatic transfer statute and sentencing statutes including firearms-enhancement statute, did not violate Eighth Amendment prohibition on cruel and unusual punishment, since sentence was not equivalent to a sentence of life in prison. 705 ILCS 405/5-130; 720 ILCS 5/8-4(c), 5/8-4(c) (1) (C); 730 ILCS 5/5-8-1(a) (3), 5/5-8-4(a) (i) **FINDING #2:** Sentence of 52 years for defendant convicted of two counts of aggravated attempted murder committed when defendant was 15 years old, which was minimum sentence required after application of automatic transfer statute and sentencing statutes including firearms-enhancement statute, violated proportionate penalty provision of state constitution; defendant's culpability was diminished because of youth and mental illness, and 20-year firearms enhancement was over three times the length of the penalty for the attempted murder sentence.

11. People v. Jermaine Richardson, 2015 IL 118255, (Ill. Sup. Ct., May 21, 2015) Dismissal of Charges- - Reversed and Remanded.

FACTS: The defendant was indicted on two counts of criminal sexual assault and one count of criminal sexual abuse for acts he allegedly committed when he was 17 years old. At the time of the alleged offenses, the Juvenile Court Act only

applied to those minors who were under 17 years of age. Subsequently, in July 2013, the Governor approved Public Act 98-61, section 5 (eff. Jan. 1, 2014), which amended the exclusive jurisdiction provision of the Juvenile Court Act to apply to those minors who were under 18 years of age. The amendment included a saving clause that provided: “[t]he changes made to this Section by this amendatory Act of the 98th General Assembly apply to violations or attempted violations committed on or after the effective date of this amendatory Act.” Public Act 98-61, section 5, took effect on January 1, 2014. The defendant filed a motion in the trial court entitled “Motion to Declare Adult Prosecution Unconstitutional.” The motion alleged that the amendment’s saving clause violated the defendant’s equal protection rights under both the federal and state constitutions. The defendant argued that he was similarly situated to those 17-year-olds who allegedly committed offenses on or after the amendment’s effective date and there was no rational basis to treat him differently. The trial court granted the defendant’s motion, declaring the amendment’s saving clause unconstitutional under the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2, of the Illinois Constitution. The court found that the amendment’s effective date violated the defendant’s equal protection rights and declared it unconstitutional as applied to him. The court reasoned that there was no rational basis to treat the defendant differently than a 17-year-old who is alleged to have committed an offense on or after the amendment’s effective date. The defendant’s case was subsequently transferred to the juvenile division of the trial court. The People’s direct appeal to the Supreme Court followed.

ISSUE: Constitutionality of Statute: Was the exclusive jurisdiction provision of the Juvenile Court Act unconstitutional as applied to this juvenile? (*No.*)

FINDING: Saving clause in the exclusive jurisdiction provision of the Juvenile Court Act of 1987 is rationally related to the legislature's goal of including 17-year-olds within the jurisdiction of the Juvenile Court Act, does so in such a manner that avoids confusion and delay, and preserves judicial resources and, thus, does not violate the Equal Protection Clause. 705 ILCS 405/5-120

12. In re D.L.H., Jr., 2015 IL 117341, (Ill. Sup. Ct., May 21, 2015) Denial of Motion to Suppress - - Reversed in Part and Remanded.

FACTS: The People filed a petition for adjudication of wardship alleging that the defendant had committed first degree murder (720 ILCS 5/9-1(a) (2)). At the time, the defendant was just 9 years old, and the victim was 14 months old. The trial court found the defendant unfit to stand trial, and in a subsequent discharge hearing found the defendant “not not guilty” of murder. The trial court remanded the defendant to the Department of Human Services (DHS) for fitness restoration education, so that the defendant may become fit and ultimately be tried for murder. On appeal, the defendant argued, in relevant part, that the trial court erred in denying his suppression motion and, as a result, statements he made to the police were improperly admitted at his discharge hearing. The appellate court agreed with respondent and reversed and remanded for further proceedings. 2013 IL App (5th) 130341-U. The Supreme Court allowed the People’s petition for leave to appeal.

ISSUE: Confessions and Admissions: Was this 9-year-old suspect in custody when he spoke with a police detective? (*Yes and no.*)

FINDING #1: Nine-year-old child was not in custody when he was questioned regarding the death of his 14-month-old brother, for purposes of section of Juvenile Court Act requiring counsel during custodial interrogation of minor who was under 13 at time of commission of what would have been first-degree murder if committed by an adult, even though child was functioning in the borderline mentally retarded range of intelligence with a full scale IQ of 78, where interviews took place at child’s home at his kitchen table, detective, who was not in uniform, was the only officer present, child’s father was present for both interviews, each interview lasted between 30 and 40 minutes, detective adopted a conversational tone, and was unaware of child’s mental deficits, which were not objectively apparent. 705 ILCS 405/5-401.5(a)

FINDING #2: Child, who was nine years of age, made voluntary statements to detective during first interview, although clinical psychologist concluded that his cognitive abilities were only at the seven-to eight-year-old level, and that his borderline intellectual functioning, coupled with his age and developmental immaturity, substantially impaired his ability to understand the nature and purpose of the legal proceedings and to assist in his own defense and, thus, he was unfit to stand trial, where interrogation was noncustodial, detective’s questioning was not prolonged or accusatory, as detective used a conversational tone, and child’s father was present at child’s side and provided sage advice about not making any admissions. 725 ILCS 5/104-10 **FINDING #3:** Statements by nine-year-old child to detective during second interview

were not voluntary, although child's father was present during the interview and detective adopted a conversational tone, where detective admitting employing lying and trick tactics when questioning child, father assumed a passive role, detective seized on child's fear that his family would go to jail or that he would be taken away, continually reinforced the notion that no consequences would attach to an admission that child hit victim, and unceasingly told child that whatever happened was an accident or a mistake.

PART B – JUVENILE WELFARE

JULY - 2015

ANAYLSIS

1. In re Marianna F., 2015 IL App. (1st) 142897, (1st Dist., May 8, 2015) Declaration of Wardship - - Reversed and Remanded.

FACTS: Respondent Oscar F. was the natural father of the minor Marianna F.-M. Marianna was placed in the custody of the DCFS. After an adjudicatory hearing, the court found that Marianna was abused and neglected and that Oscar was the perpetrator of the abuse and neglect. The court held a dispositional hearing the same day. At the conclusion of the hearing, the court found Oscar fit, willing, and able to parent Marianna and returned Marianna home to Oscar under an order of protective supervision. The Cook County public guardian, Marianna's court-appointed attorney and guardian ad litem, filed a timely notice of appeal from the court's dispositional orders.

ISSUE: Juvenile Law (Abuse and Neglect): Did the trial court err in finding that the father of this child was able to care for her? **(Yes)**

FINDING #1: Finding that the father was fit and able to parent this minor child was against the manifest weight of the evidence. At the adjudication hearing, the trial court concluded that the child was abused due to excessive corporal punishment and at substantial risk of physical injury caused by her father and that child was neglected based on the father's delay in taking her to the hospital for her injuries. integrated assessment report observed that father's understanding of parenting was concern due to lack of knowledge of how to build supportive relationship with child, lack of understanding about child's emotional needs, limited knowledge of parenting techniques, and his own poor parental role models, and there was no evidence that father took responsibility for excessive corporal punishment that child suffered. **FINDING #2:** The trial court's finding that the father was fit, willing, and able to parent this minor child and its decision to return the child home were based on an erroneous interpretation of fact; while the trial court stated that it had taken into consideration the fact that the DCFS recommended that the child be returned home, when testifying, the DCFS staff worker did not recommend that child be returned home but, rather, that the child be placed in the guardianship of the DCFS guardianship administrator to give the father an opportunity to participate in the DCFS services that he needed and to allow the child to attend play therapy.

2. In re Audrey B., 2015 IL App. (1st) 142909, (1st Dist., April 30, 2015) Declaration of Wardship - - Affirmed.

CASE ANALYSIS: The People filed a petition for adjudication of wardship of this juvenile, and a motion for temporary custody. The same day, the trial court entered an order granting temporary custody of Audrey to the DCFS guardianship administrator, and an order appointing the County public guardian as attorney of record and guardian ad litem for the juvenile. Following a hearing, the court entered an adjudication order finding that the juvenile was abused and neglected as defined in section 2-3 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3). The court set the matter for a dispositional hearing. Following the dispositional hearing, the trial court found the juvenile's father was unable and unwilling to care for, protect, train, or discipline the minor and adjudged juvenile a ward of the court. The court placed the juvenile in the custody and guardianship of the DCFS guardianship administrator with the right to place the child and set the matter for a permanency planning hearing. The father filed a notice of appeal from the court's judgment.

ISSUE: Juvenile Law (Abuse and Neglect): Did the trial court err in finding that the father of this child was unable to care for her? **(No)**

FINDING #1: In finding child was physically abused, as would support adjudicating child a ward of the court, trial court did not rely on impermissible constellation-of-injuries theory, which relieved state of burden of proof on abusive causation for each injury, with respect to child's bilateral symmetric radius and ulna fractures and clavicle injury, even though father's expert witness, an orthopedic pediatrician, rejected abusive causation; pediatric medicine expert based opinion that forearm injuries were suspicious for inflicted injury on injuries' symmetrical nature combined with absence of identifiable causation incident, trial court treated forearm fractures as single injury independently of clavicle injury, and trial court conscientiously evaluated conflicting expert opinions and did not find orthopedic pediatrician's testimony credible. 705 ILCS 405/2-3(2) (I, ii) **FINDING #2:** Evidence supported trial court's finding that fact that child's fractured clavicle went untreated for a period of from two to six weeks constituted medical neglect, even though expert in orthopedic pediatrics testified that clavicle injuries often went undetected by parents; evidence indicated that child's pain from displaced clavicle fracture would have been readily noticeable to caretakers. 705 ILCS 405/2-3(1) (a, b)

3. In re N.T., 2015 IL App. (1st) 142391, (1st Dist., February 20, 2015) Termination of Parental Rights - - Affirmed. **(MODIFIED OPINION FILED APRIL 10, 2015)**

COURT ANALYSIS: On appeal from an order terminating respondent's parental rights to her four-year-old daughter, the termination of her rights was affirmed where the trial court's finding that the termination was in the child's best interest was not against the manifest weight of the evidence, and, furthermore, respondent was not denied a fair hearing where respondent's mother was properly informed by the trial court that adoption was favored over guardianship, that the juvenile court was not acting as an advocate by asking respondent's mother "damaging" questions during the best interest hearing, including questions eliciting her opinion that she was the de facto parent of respondent's child, and respondent was not entitled to a fitness hearing prior to the termination proceedings.

ISSUE: Juvenile Law (Termination of Rights): Did the trial court properly determine that termination of parental rights was in the best interest of this child? (Yes)

FINDING #1: Trial court's determination that termination of mother's parental rights, based on unfitness, to allow for four-year-old child's adoption by maternal grandmother, was in child's best interest was not against weight of evidence, despite evidence that mother and child shared bond, that child knew mother, and that visits between the two were generally appropriate; there was also evidence that mother's medication noncompliance resulted in behavior that placed child at risk, including physical altercation between mother and grandmother's paramour that child witnessed a few months earlier, child had been living with grandmother for her entire life and was bonded to her, turning to her for support and comfort, and grandmother was open to supervising visits between child and mother if mother was medication compliant. 750 ILCS 50/1(D) (p) **FINDING #2:** Mother opposing termination of her parental rights was not denied due process as result of juvenile court's earlier comment to maternal grandmother, during temporary custody hearing, indicating that court would consider adoption of child before guardianship would be considered; court's comment was accurate statement of law, and court was simply trying to ensure that grandmother was aware of potential consequences of her agreeing to serve as foster parent. 705 ILCS 405/2-28(2) (D, E) **FINDING #3:** Juvenile court did not act as advocate for state, in violation of mother's due process rights at best interest hearing, by questioning maternal grandmother, who had served as child's foster parent and sought to adopt child following termination of mother's parental rights, about relationship between mother and child and grandmother and child, despite mother's claim that questioning elicited damaging testimony that grandmother believed child considered grandmother to be her de facto parent; court asked total of four questions that elicited truth, clarified grandmother's testimony, and shed light on material issues regarding child, and questions could just as easily have elicited responses from grandmother that were favorable to mother. 705 ILCS 405/1-2(2) **FINDING #4:** Mother was not denied due process at proceeding for termination of parental rights as result of juvenile court's failure to sua sponte order an evaluation or hearing on mother's fitness to stand trial; while mother had interest in raising child, child also had interest in safe and stable environment, absence of hearing did not increase risk that mother's rights were erroneously terminated, and prolonging termination proceedings would leave child unable to take advantage of stability offered by maternal grandmother's adoption of her and leave state to bear increased fiscal and administrative costs. **FINDING #5:** Failure of mother's trial counsel to request a hearing on mother's fitness to stand trial was not ineffective assistance at proceeding for termination of mother's parental rights; mother had no due process right to such a hearing, and regardless, failure to request a hearing could have been a trial strategy, given that state had initially alleged that mother was unfit on two grounds, including an allegation that she was unfit due to mental illness, a claim which was not withdrawn by the state until the beginning of the proceeding, such that fitness to stand trial evaluation could have provided additional evidence against mother.

4. **In re S.W. and S.W.**, 2015 IL App. (3rd) 140981, (3rd Dist., May 26, 2015) Declaration of Wardship - - Affirmed.

FACTS: After finding minors Sh.W. and Sp.W. neglected, the court conducted an unfitness hearing and a best interests hearing. Prior to the unfitness hearing, mother of the children fired three court-appointed attorneys, each time stating that she did not think the attorney provided her with adequate representation. The court delayed the unfitness hearing for over four month to allow the mother's fourth court-appointed attorney ample time to prepare the case. On the day of the unfitness hearing, the mother told the court that she wished to continue without her fourth court-appointed attorney and requested a 90-day continuance to hire private counsel. The court informed her that it would proceed with the hearing with or without counsel. The mother still chose to fire her attorney. The court conducted the hearing and found the mother to be unfit. The court scheduled the best interests hearing for one month later. One week prior to the best interests hearing, the mother, again, requested a continuance, which the court denied. The court stated that it would proceed with the hearing whether or not the mother was present. The mother neither retained private counsel nor attended the best interests hearing. After the People presented evidence, the court found that it was in the minors' best interests to terminate respondent's parental rights. The mother appealed, arguing that the court: (1) erred by denying her requests for continuances; and (2) denied her right to due process.

ISSUE: Juvenile Law (Abuse and Neglect): Did the trial court err in refusing the request by the mother of these juveniles for a continuance to obtain private counsel after she had dismissed three separate court appointed attorneys? **(No)**

FINDING #1: Trial court acted within its discretion in denying mother's requests for continuance of unfitness and best interests hearings in termination of parental rights proceeding, where mother was appointed and subsequently fired four court-appointed attorneys, court continued unfitness trial twice in order to allow fourth court-appointed attorney time to prepare, court scheduled best interests hearing to accommodate mother's schedule, and mother had been given two months to retain private counsel for best interests hearing. 705 ILCS 405/1-1 **FINDING #2:** Mother whose parental rights were terminated was not prejudiced by trial court's denial of her requests for continuance of unfitness and best interests hearings, and thus reversal was not warranted; although mother sought continuances in order to obtain private counsel, no evidence established that mother would have been able to retain counsel had the court continued the case, she was not able to retain counsel during the extensions of time she was provided, and record supported the notion that she was simply stalling. **FINDING #3:** Evidence supported determination that it was in the best interests of children to terminate mother's parental rights; children's foster parents, with whom they had bonded, wished to adopt the children, foster parents met the children's needs and provided care, children were not attached to mother, mother failed to provide stable housing and was kicked out of her housing after breaking the rules, mother smoked marijuana while the children visited her, and mother suffered from mental health issues. **FINDING #4:** Mother was provided opportunity to be heard at a meaningful time in a meaningful manner and, thus, trial court did not deprive mother of her right to due process in termination of parental rights case when it conducted best interests hearing in mother's absence and denied her motions for continuance of best interests and unfitness hearings; trial was scheduled to accommodate mother's schedule, she was given ample time to hire a private attorney and did not do so, and record supported notion that she was stalling proceedings.

5. **In re Curtis W.**, 2015 IL App. 1st) 143860, (3rd Dist., June 12, 2015) Adjudication of Wardship- - Affirmed.

FACTS: Pursuant to Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010) and Rule 306(a) (5) (eff. Feb. 16, 2011), the respondent-minor, Curtis W., Jr. (Curtis Jr.), brought this expedited appeal from an order of the trial court denying the People's petition to terminate the parental rights of the respondent-father, Curtis W., Sr. (the respondent). On appeal, Curtis Jr. argued that the trial court's determination that termination of the respondent's parental rights was not in the best interest of Curtis Jr. was against the manifest weight of the evidence. He further maintained that the trial court erred when it determined that the People failed to prove by clear and convincing evidence that the respondent was unfit under section 1(D)(b) and (i) of the Adoption Act (the Adoption Act) (750 ILCS 50/1(D)(b), (i)).

ISSUES: Juvenile Law (Wardship): Did the trial court err in finding that termination of the parental rights of the juvenile's father was not in the best interests of the juvenile? **(Yes)**

FINDING: Termination of father's parental rights was in best interests of minor child; father's ability to provide for child was based on future events and father did not provide any evidence of job skills or type of employment he could obtain after his release from incarceration, father acknowledged that whatever bond he had with child when he was born had been lost over time and that he would have to reestablish bond, child benefited from security, familiarity, love, and affection of foster mother, foster mother's partner, and their daughter, father could not have provided permanence for child in near future, as plans for taking custody of child depended on maintaining his sobriety, refraining from drugs, and obtaining employment, child had thrived while being cared for by foster mother and was well acclimated into her home and family, and foster mother desired to adopt child and to continue to provide him with a family and life where he was cared for and loved and expressed willingness to allow father with continued contact with child after adoption. 705 ILCS 405/1-3(4.05)

OCTOBER - 2015

PART A - JUVENILE JUSTICE

CASE ANALYSIS

1. **In re Deshawn G.**, 2015 IL App. (1st) 143316, (1st Dist., September 9, 2015) Adjudication of Delinquency - - Affirmed in Part; Vacated in Part.

FACTS: This juvenile was adjudicated delinquent based on a petition alleging three counts of aggravated unlawful use of a weapon (AUUW) based on his lack of a valid Firearm Owner's Identification (FOID) card; his age (under 21 years old); and his prior felony conviction. Based on the prior adjudication of delinquency for aggravated robbery (a Class 1 offense) and the Class 2 nature of the current offenses which were based upon a prior AUUW conviction, the State filed a notice of intent to prosecute respondent as a violent juvenile offender (VJO) under section 5-820 of the Act (705 ILCS 405/5-820 (West 2012)). After a jury trial, respondent was adjudicated delinquent of two counts of AUUW based on his lack of a valid FOID card and his youth. The juvenile was later sentenced to a mandatory term of confinement until age 21. He appealed, contending: (1) the subsections of the AUUW statute under which he was convicted are not severable from the section of the AUUW statute that was found unconstitutional in People v. Aguilar, 2013 IL 112116, and are, therefore, themselves unconstitutional; (2) the violent juvenile offender provision of the Juvenile Court Act under which respondent was sentenced is unconstitutional; (3) the admission of a certification alleging respondent's lack of a valid FOID card, prepared by a non-testifying witness, violated his right to confrontation; and (4) the juvenile's adjudications of delinquency for AUUW based on the lack of a valid FOID card and possessing a firearm while under age 21 violated the one-act, one-crime doctrine.

ISSUES: **1) Constitutionality of Statute:** Was the weapons statute under which this juvenile was convicted constitutional? **(Yes);** **2) Constitutionality of Statute (Violent Juvenile Offenders):** Was the statutory provision that provides for Violent Juvenile Offenders unconstitutional? **(No);** **3) Offenses (One Act – One Crime):** Could this defendant properly be convicted of two weapons violations based upon the possession of one firearm? **(No).**

FINDING #1: Violent juvenile offender provision of the Juvenile Court Act of 1987, under which juvenile twice adjudicated delinquent based on commission of felonies involving violence or firearm must be sentenced to mandatory term of confinement until the age of 21, does not violate due process. 705 ILCS 405/5-820 **FINDING #2:** Violent juvenile offender provision of the Juvenile Court Act of 1987, under which juvenile twice adjudicated delinquent based on commission of felonies involving violence or firearm must be sentenced to mandatory term of confinement until age of 21, does not violate equal protection, even though provision fails to account for age difference among juveniles, such that confinement until age of 21 might be longer than another individual's term for same offense, given considerations including that there need not be absolute symmetry in sentencing, and that purpose of Act is rehabilitation of minor as well as promoting juvenile system that protects community, imposes accountability for violations of law, and equips juvenile offenders with competencies to live responsibly and productively. 705 ILCS 405/5-101, 405/5-820. **FINDING #3:** Violent juvenile offender provision of the Juvenile Court Act of 1987, under which juvenile twice adjudicated delinquent based on commission of felonies involving violence or firearm must be sentenced to mandatory term of confinement until age of 21, does not Eighth Amendment or proportionate penalties clause of state constitution.

2. **People v. James Glazier**, 2015 IL App. (5th) 120401, (5th Dist., August 20, 2015) First Degree Murder - - Affirmed; Remanded with Directions.

FACTS: The defendant was convicted of first-degree murder after a stipulated bench trial and was sentenced to 60 years in prison. The defendant was 17 years old at the time of the murder; the victim was 15. The defendant raises numerous issues on appeal, the first being that the evidence presented at the stipulated bench trial was insufficient to prove him guilty of first-degree murder in that he did not have the specific intent to kill the victim. The defendant also contends the automatic transfer statute of the Illinois Juvenile Court Act of 1987 (705 ILCS 405/5-130) violates the United States and Illinois Constitutions because all 17-year-olds charged with first-degree murder are treated as adults during prosecution and sentencing without any consideration of their youthfulness. The defendant further argues that his 60-year sentence was excessive in light of his age, his lack of prior criminal history, his secondary role in the offense, and his strong potential for rehabilitation. The defendant also finds fault with his counsel at sentencing in that counsel agreed with the State to the maximum sentence of 60 years and completely failed to advocate on the defendant's behalf for a lesser sentence. Lastly, the defendant argues that he has been required to register as a sex offender even though the trial court made no finding that the first-degree murder was sexually motivated.

ISSUES: 1) **Constitutionality of Statute:** Was the automatic transfer provisions of the Juvenile Court Act unconstitutional? (**No**); 2) **Sentences (Excessive):** Was this 17-year-old defendant's 60-year sentence excessive? (**No**).

FINDING #1: Evidence was sufficient that defendant had specific intent to kill victim, so as to support conviction for first-degree murder; evidence showed that the sole reason defendant went to victim's house was to kill her, and that he entered her house alone, taped victim's hands and mouth and choked her until she passed out, left the scene for several minutes but came back, and helped put her body in his car and disposed of it in a creek, and defendant reported that victim had reputation for being a snitch and declared that he would do bodily harm to someone if they snitched. 720 ILCS 5/9-1(a) (1) **FINDING #2:** Treatment of 17-year-old defendant as adult in first-degree murder prosecution, under the exclusive jurisdiction and automatic transfer provisions of the Juvenile Court Act, without consideration of his youthfulness, did not constitute cruel and unusual punishment under the Eighth Amendment or violate the proportionate penalties clause of the Illinois Constitution; defendant had no constitutional, common law, or statutory right to be treated as a juvenile, and the transfer decision occurred prior to defendant's stipulated bench trial, and neither constituted punishment nor imposed a penalty upon defendant. **FINDING #3:** Defendant's sentence of 60 years for first-degree murder was not excessive even though he had just turned 17 years old at the time of the murder, lacked a prior criminal history, and had a secondary role in the offense where he was not the mastermind; defendant was charged with a murder so heinous that he was eligible for natural life in prison, defendant was charged with numerous other offenses which carried penalties up to natural-life-plus, including multiple counts of murder, aggravated kidnapping, home invasion, residential burglary, and concealment of a homicidal death, which were dismissed in exchange for his agreement to stipulated bench trial, and sentence was within statutory limits. 730 ILCS 5/5-8-1

3. **In re Montrell S.**, 2015 IL App. (4th) 150205, (4th Dist., August 13, 2015) Aggravated Robbery - - Affirmed.

FACTS: This juvenile appealed a judgment in which the trial court sentenced him, as a delinquent minor, to probation for 60 months, to end on his twenty-first birthday. He made two arguments in his appeal. First, he argued the evidence is insufficient to support his conviction of aggravated robbery (720 ILCS 5/18-1(b) (1)). Specifically, he argued that the alleged victim was a self-contradicting drug addict whose testimony is unworthy of belief. Second, he argued the trial court failed to give him enough presentence credit. One of the conditions of probation was that he serve 30 days' confinement in the juvenile detention center, and against those 30 days, the court gave him credit for only 4 days. The court stayed the remaining 26 days.

ISSUES: 1) **Reasonable Doubt (Credibility):** Did the People present sufficient evidence to support this defendant's conviction despite the apparent lack of credibility of the People's main witness? (**Yes**); 2) **Sentences (Credit):** Did the trial court abuse its discretion by failing to award this defendant sufficient credit for his pre-conviction confinement? (**Yes**).

FINDING #1: Testimony of victim that, during robbery, juvenile lifted his shirt to reveal the butt of a pistol protruding from beneath waistband of juvenile's pants was sufficient to support bench trial finding that juvenile indicated during robbery that he was armed with firearm or other dangerous weapon, as would support delinquency adjudication for

conduct that, if committed by adult, would constitute aggravated robbery, despite argument that victim's testimony was contradicted by victim's alleged prior inconsistent statement that juvenile had pulled out pistol and waved it around, and argument that victim was an inherently unreliable drug addict based on victim's possession of cannabis pipe; alleged prior inconsistent statement was not per se fatal to victim's credibility, court could not reasonably infer that victim was a drug addict simply because he possessed a cannabis pipe, and it was for trial court to make determination on victim's credibility. 720 ILCS 5/18-1(b) (1) **FINDING #2:** Time which juvenile spent on electronic home monitoring was time spent in custody for which juvenile was entitled to presentence credit; sections of Juvenile Court Act identified electronic home detention as one of the forms of detention for which a minor shall be given credit, and Act did not limit presentence credit to secure custody. 705 ILCS 405/5-710(b), 405/5-710(1) (a) (x)

JUVENILE JUSTICE CASE LAW QUARTERLY

OCTOBER - 2015

PART B - JUVENILE WELFARE

CASE ANALYSIS

1. **In re M. M. et al**, 2015 IL App. (3rd) 130856, (3rd Dist., September 2, 2015) Adjudication of Wardship - Vacated and Remanded.

FACTS: The respondent appealed from a judgment of the trial court finding that her minor children, should be placed outside of the respondent's home and appointing the Illinois Department of Children and Family Services (DCFS) as the temporary guardian of her children even though the court found the respondent to be a fit parent.

ISSUES: Juvenile Law (Procedure): Did the trial court err in declaring these children to be made wards of the Court without first explaining its reasoning? **(Yes)**

FINDING: Trial court committed reversible error in neglect case when it awarded custody of children to Department of Children and Family Services (DCFS) without a finding of unfitness or a properly supported finding that mother was unable or unwilling to care for the children; trial court merely checked the box indicating that mother was fit, and court did not check the box indicating that mother was unable or unwilling to care for the children or provide any written basis to support such a finding, and appellate court could not presume that the trial court made such findings (implicitly) based upon the strength of the evidence. 705 ILCS 405/2-27(1).

2. **In re S. B. et al**, 2015 IL App. (4th) 150260, (4th Dist., August 24, 2015) Adjudication of Wardship- Vacated and Remanded.

FACTS: The respondent is the mother of three children. In these consolidated appeals, the respondent challenges adjudicatory orders in which the trial court found the children to be neglected and dispositional orders in which the court made them wards of the court. Her only argument is that the court violated her right to due process by proceeding with the adjudicatory and dispositional hearings in her absence instead of awaiting her arrival from prison.

ISSUES: Juvenile Law (Procedure): Did the trial court err in refusing to grant a continuance so that the mother of these children could attend this hearing? **(Yes)**

FINDING: The trial court abused its discretion in denying mother's request, through counsel, for a continuance of hearing on state's petition to adjudicate mother's minor children to be neglected minors and to make them wards of the state, even though the denial in no way impacted due process, and counsel's request for a continuance was not supported by an affidavit stating what particular fact or facts mother might testify to; mother's right to the care and custody of her children was at stake, the trial court was informed that she was in route to the courthouse from prison, but the trip was taking longer than usual due to heavy snowfall, and mother had no control over the weather or the schedule of the Department of Corrections.

JANUARY - 2016

PART A - JUVENILE JUSTICE

CASE ANALYSIS

1. In re Nasie M., 2015 IL App (1st) 151678, (1st Dist., December 1, 2015) Reckless Discharge of a Firearm; Aggravated Unlawful Use of a Weapon; and Unlawful Possession of a Firearm - - Reversed.

FACTS: The People argued that this minor accidentally shot himself twice in the foot, for which they charged him with reckless discharge of a firearm, two counts of aggravated unlawful use of a weapon, and unlawful possession of a firearm. The People's case rested on a police officer who testified that the minor told him he was holding a gun and shot himself while running away from two men he thought were going to rob him. The minor, however, denied admitting he shot himself and maintained that one or both of the men shot him. The trial court found the People's theory more believable and convicted the minor on three of the four charges. The minor, on appeal, argued that his conviction should be reversed because the People presented no evidence he possessed a firearm when he was shot in the foot.

ISSUE: Reasonable Doubt: Did the People prove beyond a reasonable doubt that this defendant possessed a firearm? **(No).**

FINDING: The evidence in this case was insufficient to establish that this juvenile actually possessed a firearm, in his delinquency proceedings for reckless discharge of firearm, aggravated unlawful use of weapon, and unlawful possession of firearm. The People presented no eyewitness testimony that the juvenile possessed the gun and presented no forensic evidence connecting the juvenile to the shell casings recovered. Further, there was no evidence that the revolver discovered at the apartment of the juvenile's girlfriend was fired that night or in any way connected to the shooting, and, in the absence of medical or gunshot expert testimony, it was not possible to conclude that the juvenile's wounds came from a firearm and were self-inflicted. 720 ILCS 5/24-1.5(a), 5/24-1.6(a) (3) (I), 5/24-3.1(a)

2. In re H.L., 2015 IL 118529, (Ill Sup Ct., November 4, 2015) Denial of Motion to Reconsider Sentence - - Affirmed.

FACTS: This juvenile admitted to an allegation of mob action, and a robbery allegation. For these admissions he received probation. He was still on probation when he entered a blind plea admitting a cannabis offense. With this, his probation was revoked, and the judge sentenced him to an indefinite commitment to the Department of Juvenile Justice. Dissatisfied with this result, he filed a motion in the trial court for reconsideration of his sentence. The motion was denied, and he appealed.

ISSUE: Trial Procedure (Rule 604(d)): Must a Rule 604(d) certificate be filed before or during a motion to reconsider sentence in order to strictly comply with this Rule? **(No).**

FINDING: The Supreme Court declared that strict compliance with the Supreme Court rule governing appeals from a conviction or a sentence entered pursuant to a guilty plea does not require the defense counsel to file his or her certificate of compliance prior to or at the hearing on the defendant's post-plea motion, but rather requires the counsel to prepare a certificate that meets the content requirements of the rule and to file the certificate with the trial court, i.e., prior to the filing of any notice of appeal, abrogating *People v. Hermann*, 349 Ill.App.3d 107, 110, 284 Ill. Dec. 857, 810 N.E.2d 647. Sup. Ct. Rules, Rule 604(d)

3. In re M.A., 2015 IL 118049, (Ill. Sup. Ct., November 4, 2015) Violent Offender against Youth Registration Act - - Affirmed.

FACTS: When this juvenile was 13 years old, a quarrel took place between her and her 14-year-old brother over a missing shower cap. Although the brother was apparently the first one to throw a punch, the juvenile retrieved a knife from the kitchen and, after forcing her way through a door, inflicted cuts which required 3 stitches on his face and 10 on his arm. The trial court adjudicated the juvenile delinquent for having committed aggravated domestic battery, aggravated battery, and domestic battery. A probation period of 30 months was imposed, and the juvenile was ordered to register

under the Murderer and Violent Offender against Youth Registration Act. She was subject to the Act by virtue of having committed offenses enumerated therein, and both she and the victim were within the age ranges specified in the Act. One subject to the Act is required to register under it within 10 days of becoming age 17 and to maintain that registration for a period of 10 years after the adjudication. The juvenile appealed. She did not challenge the sufficiency of the evidence for her adjudication as a delinquent, but contended that the registration provisions of the Act violated her right to substantive and procedural due process, as well as equal protection.

ISSUE: Constitutionality of Statute (Violent Offender against Youth): Did this statute unconstitutionally require this 13-year-old to register for ten years after she attacked her brother during a quarrel? **(No).**

FINDING #1: (a) The Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act) did not deny juvenile violent offenders equal protection, despite the claim that they were treated differently from juvenile sex offenders. According to this court, the violent offenders were not similarly situated with the sex offenders. The juvenile sex offenders and the juvenile violent offenders were required to register under the Sex Offender Registration Act and Violent Offender Act, respectively, but the Acts addressed separate groups of offenders in a manner unique to each group. (Per Thomas, J., with two justices concurring and four justices specially concurring.) 730 ILCS 150/1 et seq., 154/5(a) (2), (b), 154/10, 154/40, 154/85(a), 154/95. **(b)** Additionally, the provision of Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act) mandating the registration of juvenile violent offenders against youth as adults regardless of circumstances of offense did not violate the procedural due process rights of this juvenile, who was adjudicated delinquent for, inter alia, aggravated domestic battery and aggravated battery. The Court concluded that the requirement was based on the fact that the juvenile was adjudicated delinquent, not on her dangerousness, and, thus, the juvenile did not have a due process right to a hearing to address dangerousness. (Per Thomas, J., with two justices concurring and four justices specially concurring.) 720 ILCS 5/12–3.05(a) (1), (h), 5/12–3.3 (a, b); 730 ILCS 154/5 (a, b), 154/100; 20 Ill. Admin. 1283.50(j). **(c)** Finally, the provision of Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act) mandating the registration of juvenile violent offenders did not violate the substantive due process rights of this juvenile, who was adjudicated delinquent for, inter alia, aggravated domestic battery and aggravated battery. The Court determined that requiring registration was rationally related to accomplishing the objective of the Violent Offender Act to protect the public. (Per Thomas, J., with two justices concurring and four justices specially concurring.)

5. In re Q.P., 2015 IL 118569, (Ill. Sup. Ct., September 24, 2015) Obstructing Justice - - Affirmed.

FACTS: This minor was found guilty of obstructing justice (720 ILCS 5/31-4(a)), for knowingly furnishing false information to a police officer with the intent to prevent his own apprehension. The appellate court reversed the trial court’s judgment, holding that the minor was already apprehended when he gave the false information, and a person already apprehended cannot act with the intent to prevent his apprehension as required to sustain the charge of obstructing justice.

ISSUE: Statutory Construction (Obstructing Justice): Can a suspect who gives a false name to the police after he had been apprehended be convicted Obstructing Justice for trying to avoid “apprehension” by giving a false name to the police? **(Yes).**

FINDING: By giving this police officer a false name and birth date, the juvenile intended to avoid “apprehension” on an outstanding arrest warrant, as required to support his adjudication of delinquency on a charge for obstruction of justice. This was the case regardless of whether the officer, who arrested the juvenile for burglary, had already handcuffed the juvenile and placed him in the back seat of a squad car when the juvenile gave the officer false information. 720 ILCS 5/31–4(a)

6. People v. David Fiveash, 2015 IL 117669, (Ill. Sup. Ct., September 24, 2015) Dismissal of Case - - Reversed and Remanded.

FACTS: In this appeal, the defendant argued the appellate court erred by interpreting section 5-120 of the Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2004)) to permit him to be tried in criminal court for acts he allegedly committed while 14 or 15 years old even though no charges were filed until he was 23 years old.

ISSUE: Statutory Construction (Juvenile Law): Can an adult be prosecuted for a criminal offense that occurred when that adult was a juvenile? (Yes).

FINDING: The Supreme Court ruled that the exclusive jurisdiction provision of the Juvenile Court Act did not bar the prosecution of this defendant, who was charged when he was over 21 years old with two counts each of criminal sexual assault and aggravated criminal sexual assault in criminal court for offenses he allegedly committed when he was 14 or 15. The defendant was 23 years old at the time he was charged and, thus, was no longer subject to the Act's provisions. According to the Court, the defendant's view that the Legislature provided only for "aging out of" defendants from juvenile court, not their "aging into" criminal court, would have effectively allowed him to escape prosecution for four felony sexual offenses allegedly committed against a six-year-old family member, and, while the defendant claimed that allowing the People to charge him in criminal court created an incentive for the People to delay prosecutions until juvenile defendants turned 21, the charges in this case were filed against him within days after the police first became aware of the allegations. 705 ILCS 405/5-120; 720 ILCS 5/12-13(a) (3), (b) (1), 5/12-14(b) (i), (d) (1)

JUVENILE JUSTICE CASE LAW QUARTERLY

JANUARY - 2016

PART B - JUVENILE WELFARE

CASE ANALYSIS

1. In re M.I., 2015 IL App. (3rd) 150403, (3rd Dist., November 20, 2015) Termination of Parental Rights - - Reversed and Remanded.

FACTS: The People brought a petition to terminate the parental rights of this juvenile's father. The trial court found the father unfit to care for his daughter and it was in the best interest of M.I. that his parental rights be terminated. The trial court granted the State's petition to terminate the father's parental rights to M.I. He appealed.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that the juveniles' father unfit and that termination of his parental rights was in the best interests of this juvenile? (Yes).

FINDING: The People failed to prove that the father of this minor child was unfit for failure to make reasonable progress toward return of his minor child within specified nine-month period after adjudication of neglect or the failure to maintain reasonable degree of interest, concern, or responsibility, in this termination of parental rights proceedings. This was the case even though a psychological exam noted that any services provided to the father needed to be modified to take into consideration his intellectual deficits, as his intelligence quotient (IQ) was only 58. The Court noted that no modifications were made that allowed him to be compliant with any tasks he was ordered to complete, and, instead of addressing father's specific needs, the People abandoned him to navigate the community social services network on his own and used his inability to do so as grounds to terminate his parental rights. 750 ILCS 50/1(D) (b), (m) (ii), (p)

2. In re S.K.B., 2015 IL App. (1st) 151249, (1st Dist., November 10, 2015) Termination of Parental Rights - - Affirmed.

FACTS: The trial court found both of the natural parents of this juvenile to be unfit. Both parents appealed those rulings. The trial court also held that it was in the best interests of the child to terminate both the natural mother and father's parental rights and to appoint a guardian with the right to consent to the adoption of the minor. That ruling is appealed by the father only.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that the juveniles' parents unfit and that termination of their parental rights was in the best interests of these juveniles? (No).

FINDING #1: (a) The appellate court first noted that the evidence in this case supported a finding that the juvenile's mother was unfit based on the mother failing to maintain a reasonable degree of responsibility, failing to make reasonable

progress on the child being returned home, and being unable to discharge her parental responsibilities because of her mental illness; a finding necessary for the termination of parental rights. In this case, the mother had previously stopped taking her medication. Further, all of the parties agreed that when the mother stopped taking her medication she was unfit. Additionally, there were incidents when the mother did not act appropriately with the child or the service providers. The mother was never allowed unsupervised visitation with the child, and while medicated the mother continued to behave erratically and to exhibit signs of anxiety, persecutory thoughts, and paranoia. 750 ILCS 50/1(D) (b), 50/1(D) (m), 50/1(D) (p) **(b)** The evidence also supported a finding that the juvenile's father was unfit based on the father failing to maintain a reasonable degree of responsibility and failing to make reasonable progress on the child being returned home; a finding necessary to support the termination of parental rights. In this case, the father failed to recognize the impact the mother's mental illness had on the child and downplayed the significance of the mother's mental illness. He indicated that he would not have any concern about allowing the mother to have unsupervised visitation with the child; he, himself, did not consistently visit the child for over two years, and he turned down additional visitation that was inconsistent with his work and personal schedule. Finally, the father frequently acquiesced to the mother's demands and wishes, even if they were unreasonable. **(c)** Finally, the evidence supported a finding that it was in the child's best interest to terminate the father's parental rights. The child's primary place of attachment was with his foster mother, the foster mother indicated that she would allow visitation with the child's natural parents, and the court found the child was deeply rooted in the foster mother's familial structure and community. 705 ILCS 405/1-3

3. In re Devon H, et al., 2015 IL App. (1st) 150926, (1st Dist., October 30, 2015) Termination of Parental Rights - - Affirmed.

FACTS: Following adjudication and disposition hearings, the trial court terminated the parental rights of the mother to her children Davon H., Lavelle H. and Savana H. It found the children to be abused and neglected, respondent to be unfit, respondent should not be allowed visitation and it was in the best interests of the children that a guardian with the right to consent to their adoption be appointed. The mother appealed, arguing the trial court's findings of abuse and neglect, unfitness and best interests were against the manifest weight of the evidence, it abused its discretion in denying respondent visitation and it erred in admitting an expert witness's testimony.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that the juveniles' mother was an "unfit person" and that termination of the parental rights of the juvenile's mother was in the best interests of these juveniles? **(No)**.

FINDING: **(a)** The Court held that the evidence in this case supported the trial court's findings that this mother's three children were "neglected minors," as their environment was injurious to their welfare, and that mother was the perpetrator of that neglect, thus supporting the adjudication of wardship. The mother allowed her children to remain in an environment where they were either physically abused or witnessed the physical abuse of their siblings at the hands of their father. The injuries to her 8-month-old infant were severe enough to manifest visible swelling and tenderness of both sides of the infant's head. Further, the pain and distress caused by a second child's broken rib would have been evident. The mother, ignoring the physical abuse and the evidence thereof, did not get help for the children and did not protect them, and the evidence that the mother neglected two of her children was admissible evidence that she similarly neglected a third child. 705 ILCS 405/2-3(1) (b), 405/2-18(3) **(b)** This evidence also supported a finding that the mother was unable to care for, protect, train or discipline her three children, thus supporting the trial court's adjudging the mother's children wards of the court. 705 ILCS 405/2-22(1) **(c)** The trial court's finding that the mother was an unfit parent, both due to her failure to maintain a reasonable degree of interest, concern, or responsibility as to her three children's welfare and her failure to protect children from conditions within their environment injurious to their welfare, was not against the manifest weight of the evidence in this termination of parental rights proceeding. The Court noted that the mother had her first three children removed from her care after her one-month-old son was found to have a fractured femur caused by intentional physical force. She had four more children with the father, three of whom were also physically abused by father, resulting in the death of one eight-month-old child, skull fractures in a second eight-month child and a rib fracture in 21-month-old child. The mother failed to seek treatment for the children despite their evident pain and distress, and she failed to protect her children from their father or show any concern for their welfare. 750 ILCS 50/1(D) (b, g) **(d)** Next, the Court declared that the mother's right to due process was not violated despite her having been afforded no visitation or reunification services. This was because the court did not base its unfitness finding on any perceived failure by the mother to comply with the reunification services or to make progress toward the children's return. Rather, the People alleged that the mother failed to maintain a reasonable interest or concern in the children's welfare or to protect them from conditions injurious to them. 750 ILCS 50/1(D) (b, g, m) **(e)** The Court then held that this evidence supported

the trial court's finding that the termination of the mother's parental rights was in the best interest of mother's three children. The Court ruled that two of the mother's young children were physically abused while in her care and, even if she did not participate in the physical abuse, she either ignored it or did not notice it. The mother failed to protect her children from their father and the effects of his violence toward them and their siblings. She ignored or did not notice one child's evident skull swelling or the inconsolable distress from the pain of second child's broken rib. Two of the children suffered night terrors and were unable to sleep for nights at a time. The 21-month-old child "acted out" by banging his head into the floor; only after extensive and ongoing trauma therapy and time in a stable foster home did the children improve. Finally, the children had been with their foster families for two years, were attached to their new families, loved, and doing well. 705 ILCS 405/1-3 (f) Finally, the evidence supported the trial court's determination that the denial of mother's motion for supervised visitation was in the best interest of her three children. The mother allowed her children to be beaten and willfully or ignorantly failed to notice their injuries and pain at the hand of their father. She refused to accept any responsibility whatsoever for what happened to her children. Further, the children required specialized trauma therapy and their emotional state had improved only after being removed from their mother's care for over a month. Finally, the agency charged with their care determined that the children would be re-traumatized during a supervised visit with their mother. 705 ILCS 405/2-23(3)

4. In re M.H., 2015 IL App. (4th) 150397, (4th Dist., September 28, 2015) Adjudication of Wardship- - Affirmed.

FACTS: This juvenile's father appealed from a judgment in which the trial court terminated his parental rights to his daughter, M.H., born March 15, 2013. (The mother's parental rights likewise were terminated, but the only appellant in this case is the father.) The father argued that the court's underlying factual findings were unproven. Specifically, he argued it was unproven that he was an "unfit person" and that terminating his parental rights would be in M.H.'s best interest.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that the juvenile's father was an "unfit person" and that termination of the parental rights of the juvenile's father was in the best interests of the juvenile? **(No).**

FINDING #1: (a) The appellate court declared that the evidence in this case was sufficient to support a finding at a child protection proceeding that the incarceration of the juvenile's father made him an "unfit parent" under the Adoption Act. At the time the unfit person hearing was conducted on the People's petition to terminate parental rights, the child was in temporary custody of the DCFS and the father was currently incarcerated. Further, the child had been born before the father was incarcerated as a result of his conviction, even though she was born while he was in jail awaiting trial, with the father never having had contact with child, and the father's projected release date was more than two years from the filing of the petition. 750 ILCS 50/1(D) (r) (b) Additionally, the Court found that this evidence was sufficient to support a finding that the termination of father's parental rights was in the child's best interests. The Court noted that while the father had written letters to his caseworker asking about the child and had sent birthday cards, claiming it was only because of his incarceration that he had been unable to visit the child, the foster mother had established a relationship with the child, had become knowledgeable about the child's complicated medical problems, and had successfully taken care of the child from day to day, whereas the father had never had contact with the child. 750 ILCS 50/1(D) (r); 705 ILCS 405/2-29(2)

APRIL- 2016

PART A - JUVENILE JUSTICE

CASE ANALYSIS

1. In re Michael D., 2015 IL 119178, (Ill. Sup. Ct., December 17, 2015) Dismissal of Appeal - - Affirmed.

FACTS: The People filed a petition for adjudication of wardship against this juvenile charging him with two counts of misdemeanor theft. Following a bench trial, the court found him guilty of both counts and entered an order continuing the case under supervision for one year. The juvenile appealed and the appellate court dismissed the appeal for lack of jurisdiction.

ISSUE: Juvenile Law (Wardship): Did the Supreme Court rules allow for an appeal of an order continuing a juvenile's case under supervision when that order was entered after a finding of guilty? **(No)**.

FINDING #1: Supervision order, which was entered after juvenile was adjudicated delinquent for theft by deception, was not final order for purposes of appeal; juvenile delinquency proceeding had three phases and final judgment, i.e., dispositional order, would not be entered until third phase, supervision order was entered before second phase, while trial court found juvenile guilty, it did not enter judgment on finding when it agreed to continuance and supervision, trial court did not enter dispositional order, and no supreme court rule made juvenile supervision orders appealable. 705 ILCS 405/5-615(1), 720 ILCS 5/16-1(a)(2). **FINDING #2:** Juvenile, who was adjudicated delinquent for theft by deception and was subject to supervision order, failed to make threshold showing necessary to establish equal protection violation, despite claim that juveniles who received supervision, which was not appealable, after delinquency finding were similarly situated to adults who were sentenced to supervision, which was appealable, and that there was no rational basis for treating them differently; juveniles placed under supervision were not in same situation as adult criminal defendants placed under supervision, as, in criminal context, court had to wait to dismiss charges against defendant until conclusion of supervision period and could do so only if defendant successfully complied with terms of supervision, but, when juvenile was placed under supervision, court could vacate finding of delinquency at any time and could do so even if minor did not comply with all conditions. 705 ILCS 405/5-615(4), 720 ILCS 5/16-1(a)(2), 730 ILCS 5/5-6-3.1(e). **FINDING #3:** Supreme Court would decline to modify its rules to allow for appeals of post-delinquency juvenile supervision orders, in juvenile's appeal of dismissal of his appeal of delinquency adjudication for theft by deception and subsequent supervision order; bypassing rules committee and public hearing process and amending rule in opinion was power that Court exercised sparingly, although minor presented compelling argument, State provided reasonable response, and this was not situation where it was clear and obvious that respondents in juvenile delinquency cases had to be given right to appeal post-guilt supervision orders.

JUVENILE JUSTICE CASE LAW QUARTERLY

APRIL- 2016

PART B - JUVENILE WELFARE

CASE ANALYSIS

1. **In re Nylani M.**, 2016 IL App. (1st) 152262, (1st Dist., March 28, 2016) Adjudication of Parental Unfitness - - Affirmed.

FACTS: The trial court found the juvenile's mother and father unfit to parent their minor child and that it was in the best interest of the child that their parental rights be terminated. The mother appealed, arguing that she was denied a fair hearing due to improper admission of evidence and the court's findings were against the manifest weight of the evidence.

ISSUE: Juvenile Law (Parental Fitness): Did the trial court err in finding that this juvenile's parents were unfit to parent this juvenile and that it was in the best interests of the child to terminate their parental rights? **(No)**.

FINDING: Evidence was sufficient to support finding of mother's unfitness based on failure to make reasonable efforts to correct conditions that were basis for removal of child, as would support termination of parental rights; part of reason child was removed from parents' custody was because father was registered sex offender, but there was significant evidence that mother continued to allow father access to child, including child's statements that her "poppy" lived with mother and that she had visited with her poppy at the park. 750 ILCS 50/1(D)(m).

2. **In re Phoenix F.**, 2016 IL App. (2nd) 150431, (2nd Dist., March 24, 2016) Adjudication of Parental Unfitness - - Affirmed.

FACTS: Thomas F. and Sarah Z. are the biological parents of their son, Phoenix F., born December 19, 2009. Thomas appealed from the trial court's order finding him unfit to parent Phoenix. (Sarah is not a party to this appeal.) Thomas

challenged only the finding of his unfitness; he did not challenge the trial court's final order that it was in Phoenix's best interests to terminate Thomas's parental rights.

ISSUE: Juvenile Law (Parental Fitness): Did the trial court err in finding that this juvenile's father was unfit for failing to make reasonable progress toward the return of the juvenile? **(No).**

FINDING: Evidence supported finding that father failed to make reasonable progress towards child's return during a nine-month period, warranting termination of parental rights; father lived with his uncle but did not want his uncle's house inspected, he was employed part-time but then lost his job and failed to obtain full-time employment, there was no evidence father obtained court-ordered psychiatric treatment, and father threatened child's caseworkers and one of child's foster parents. 750 ILCS 50/1(D)(m) (ii, iii).

3. In re Chelsea H. and Courtney H., 2016 IL App. (1st) 150560, (1st Dist., March 14, 2016) Adjudication of Wardship - - Affirmed.

FACTS: The respondents-appellants Christopher H. (father) and Phoebe R. (mother) (together, respondents) respond, the parents of the minors-respondents-appellees Chelsea H. and Courtney H. (children), appeal from the trial court's denial of their motion to substitute judge. They also challenge the trial court's subsequent findings of abuse and neglect pursuant to the Juvenile Court Act of 1987(Act) (705 ILCS 405/1-7 et seq. (West 2012)), as well as the trial court's dispositional orders.

ISSUE: 1) Juvenile Law (Substitution of Judge): Did the trial court err in refusing to grant the respondents' motions for substitution of judge? **(No); 2) Juvenile Law (Witnesses):** Did the trial court err in allowing a doctor to testify as an expert in bone fractures? **(No); Juvenile Law (Wardship):** Did the trial court err in finding that the children in this case were abused and neglected? **(No).**

FINDING #1: Trial court's order of paternity was a ruling that directly related to the merits of child protection proceeding and, thus, parents could not substitute judge as of right after such order; the identity of children's parents was clearly relevant to the goals of a child protection proceeding, father's right to participate was dependent in part on his status as children's parent, and, under Parentage Act, finding of paternity affected substantial rights. 735 ILCS 5/2-1001; 705 ILCS 405/1-7 et seq.; 750 ILCS 45/1.1. **FINDING #2:** Trial court did not abuse its discretion in failing to qualify physician, offered by parents, to be an expert in fractures, in child protection proceeding premised on infant's unexplained broken arms, even though physician was allowed to testify as an expert in pediatric orthopedics; physician conceded that only 15 percent of his work concerned fractures. **FINDING #3:** Evidence was sufficient to support finding at child protection proceeding that infant was abused based on "physical injury" and "substantial risk of physical injury," due to having sustained two unexplained broken arms; while there was testimony to the contrary, witness who was qualified without objection as an expert in child abuse pediatrics testified that in her opinion, infant's injuries were likely the result of abuse and that infant would have cried for a few days after arm fractures were inflicted, making it implausible that parents would not have noticed if injuries had been inflicted accidentally, and parents did not take infant to emergency room at time of initial fractures. 705 ILCS 405/2-3(2)(i), 405/2-3(2)(ii). **FINDING #4:** Evidence was sufficient to support finding at child protection proceeding that infant was neglected due to injurious environment; infant sustained two unexplained broken arms, witness who was qualified without objection as an expert in child abuse pediatrics testified that in her opinion, infant's injuries were likely the result of abuse and that infant would have cried for a few days after arm fractures were inflicted, making it implausible that parents would not have noticed if injuries had been inflicted accidentally, and parents did not take infant to emergency room at time of initial fractures or initially after re-fracture. 705 ILCS 405/2-3(1)(b). **FINDING #5:** Evidence was sufficient to support finding, under theory of anticipatory neglect, that three-year-old child was neglected due to injurious environment; child's infant sibling had sustained two unexplained broken arms, perpetrator of infant's injuries was not identified, and parents were unable or unwilling to recognize infant's injuries. **FINDING #6:** Evidence was sufficient to support finding that parents were unable to care for children, who had been adjudged abused and neglected, as required to make children wards of court; parents had not yet completed some of recommended services, including nurturing parenting program. 705 ILCS 405/2-27(1).

4. In re D.M. and S.M., 2016 IL App. (1st) 152608, (1st Dist., March 10, 2016) Adjudication of Wardship - - Affirmed.

FACTS: This is an appeal from an order of the juvenile court adjudicating minors D.M. and S.M. wards of the State. A petition for adjudication of wardship was filed after the siblings' half-sister, K.S., reported that their father, Timothy M., had sexually abused her multiple times over the span of several years. Timothy confessed to sexually molesting and abusing K.S. in a video recorded statement to the police, and he has since been arrested and charged with predatory criminal sexual assault and is awaiting trial. Timothy appeals the trial court's ruling adjudicating D.M. and S.M. wards of the State arguing that the video recorded statement of K.S. was inadmissible hearsay and there was no proper foundation to admit his own video recorded statement and the video recorded statement of K.S.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that this juvenile was neglected and abused based upon proof that they had been repeated sexually abused? **(No).**

FINDING #1: Statements made by children's half-sibling during her victim sensitive interview, accusing father of sexual abuse, were admissible in proceeding to adjudicate children as wards of state, even though half-sibling was not named in petition; Juvenile Court Act provided that previous statements made by minor relating to any allegations of abuse or neglect were admissible, Act did not limit use of statements made by minor to only those allegations of abuse or neglect directly implicating minor making statements or minor named in petition, and purpose of Act to preserve and strengthen a minor's family ties whenever possible was served by admitting half-sibling's statements. 705 ILCS 405/2-18(4)(c), 405/1-3(10). **FINDING #2:** State established an adequate foundation for admission of half-sibling's recorded victim sensitive interview in proceeding to adjudicate children as wards of State, even though there was no evidence regarding recording equipment or operator; police detective testified that he monitored half-sibling's interview through a live-feed video from another room as interview was taking place, that half-sibling's statements submitted at trial were as he originally perceived them, and that he did not observe any problems in recording, and nothing in detective's testimony suggested that equipment used to record half-sibling's interview was functioning improperly. **FINDING #3:** State established an adequate foundation for admission of father's video-recorded statement in proceeding to adjudicate children as wards of state; police detective testified that he was personally present for defendant's statement, that recording was as he originally perceived it, and that he did not observe any problems in audio or video of recording. **FINDING #4:** We further find that the trial court's ruling of dependency as to D.M. and S.M. was also not against the manifest weight of the evidence because their mother is deceased and father is now incarcerated. 705 ILCS 405/2-4(1)(a), (b) (West 2012) (“Those who are dependent include any minor under 18 years of age: (a) who is without a parent, guardian or legal custodian; [or] (b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian.”).

5. **In re Harriett L-B,** 2016 IL App. (1st) 152034, (1st Dist., March 9, 2016) Adjudication of Wardship - - Affirmed.

FACTS: Mother/respondent-appellant Tinisha L.-B. (respondent) appeals from both the trial court's adjudicatory order finding that her daughter, minor/respondent-appellee Harriett L.-B. (Harriett), was neglected and its dispositional order declaring that respondent was unable and unwilling to care for her. She contends that the trial court misapplied the doctrine of anticipatory neglect, and that its findings based on medical evidence in the record were contrary to the manifest weight of the evidence and in derogation of case law governing the practice of medicine as well as her constitutional rights regarding her own medical care. She asks that we reverse, vacate or declare void “all [o]rders entered against her in this matter” and remand for proceedings consistent with the immediate return home of Harriett.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that this juvenile was neglected and abused? **(No).**

FINDING #1: Evidence was sufficient to support finding that infant child was neglected due to injurious environment; mother had long history of seizures, including during months when she was pregnant, but refused to take medication and tested positive for marijuana at time of child's birth, mother's boyfriend had aggressive attitude, requiring child's investigator to call police over threat of physical harm, child was born premature and had hypothermia, hypoglycemia, sepsis, and a thickened frenulum of the upper lip, and mother and boyfriend removed child's medical records from hospital and refused to return them until child was released. **FINDING #2:** Evidence was sufficient to support finding that mother was unable and unwilling to care for infant child, as required to commit child to wardship after child was adjudged neglected due to injurious environment; almost eight months had passed without a visit to child from mother, mother exhibited impaired judgment and had long ago been diagnosed with schizophrenia and bipolar disorder but did not receive treatment, mother was inattentive to her own medical needs, including her seizures, and mother had not performed any of services recommended for reunification. 705 ILCS 405/2-27(1)

6. **In re Adam B. et al.**, 2016 IL App. (1st) 152037, (1st Dist., January 26, 2016) Adjudication of Wardship - Affirmed.

FACTS: The People filed a petition for adjudication of wardship alleging that the minors were neglected due to a lack of necessary care, neglected due to an injurious environment, and abused due to a substantial risk of physical injury. After hearing and reviewing all of the evidence, the trial court found that all three children were neglected due to lack of care and to an injurious environment, and that they were abused due to a substantial risk of physical injury. The trial court found that their mother perpetuated the abuse and neglect. Subsequently, the trial court found that their mother was unable for some reason other than financial circumstances to care for, protect, or train her children. All three minors were adjudicated wards of the court and placed in the guardianship of DCFS. The mother appealed. The sole issue on appeal is whether the circuit court's findings of abuse and neglect were against the manifest weight of the evidence.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that these juveniles were neglected and abused? **(No).**

FINDING #1: Adjudication of child, who had mental health diagnoses, as neglected due to lack of care, neglected due to injurious environment, and abused due to substantial risk of physical injury was not against manifest weight of evidence in wardship proceedings; child's mental health was unstable and mother's failure to follow-up with his mental health services created a substantial risk of injury for himself and for his siblings, as child was twice psychiatrically hospitalized for increased aggression, mother did not follow-up with recommendations and treatments for child's mental health needs, and as a consequence, child's aggression towards his siblings increased. 705 ILCS 405/2-3(1)(b), 405/2-3(2)(ii).

FINDING #2: Adjudication of child, who had suffered burn, as neglected due to injurious environment, neglected due to lack of care, and abused due to substantial risk of physical injury was not against manifest weight of evidence in wardship proceedings; child suffered second-degree burn and mother delayed in seeking medical attention, mother created substantial risk of injury to child by failing to take him to hospital promptly, mother was evasive and gave conflicting versions of how and when burn occurred, and mother could not protect child from his older brother's aggressions when brother attacked child, therefore creating an injurious environment for child. **FINDING #3:** Adjudication of mother's oldest child as abused due to substantial risk of physical injury, neglected due to injurious environment, and neglected due to a lack of care, under theory of anticipatory neglect based on mother's neglect of siblings, was not against manifest weight of the evidence; mother's failure to get immediate help for youngest child's second-degree burn and failure to follow-up with middle child's mental health needs created injurious environment for oldest child, and mother's noncompliance with recommended services, refusal to allow Department of Children and Family Services (DCFS) investigator to assess safety of homes, and failure to assist DCFS investigator to procure medical care for children constituted evidence of abuse and neglect of all the children.

7. **In re Jordyn L.**, 2016 IL App. (1st) 150956, (1st Dist., January 20, 2016) Adjudication of Wardship - Affirmed.

FACTS: The mother of this juvenile appealed from an order entered by the trial court finding that her daughter, Jordyn L., was neglected and abused. She maintained that the trial court erred in its determination because the evidence presented was insufficient to support its finding. She asked that the trial court's determination of neglect and abuse be vacated and the remainder of the cause be dismissed.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that this juvenile was neglected and abused? **(No).**

FINDING #1: Evidence in child dependency action was sufficient to support findings of injurious environment and substantial risk of physical injury and, thus, to support findings of neglect and abuse; there was evidence mother herself was a made a ward of the court due to abuse by her own mother and grandmother, but that, despite her very own experience, she repeatedly chose to leave her infant daughter in mother's and grandmother's dangerous homes, there was evidence mother believed there was nothing wrong with her choice, and there was evidence mother had not even started her assigned services. S.H.A. 705 ILCS 405/2-3(1, 2). **FINDING #2:** Fact that written safety plans were not submitted into evidence did not preclude finding that child was neglected and abused; court spoke at length with all the parties about why the safety plans could not be located, state provided court with two sections of safety plan, including mother's signature, there was much testimony regarding what was contained in the safety plans, and ultimate issue was not whether

mother violated the safety plans but whether a preponderance of the evidence showed that child was neglected due to an injurious environment and abused due to a substantial risk of physical injury.

8. In re Zion M., 2015 IL App. (1st) 151119, (1st Dist., December 17, 2015) Denial Adjudication of Wardship - - Affirmed.

FACTS: This juvenile is the youngest child of five children born to respondent, his mother. Prior to his birth, one of the juvenile's siblings found a gun in the home and shot another sibling in the head. The gun belonged to the mother's former live-in paramour, who was subsequently convicted and sentenced to a six-year prison term for unlawful felony possession of a gun. Following the incident, the People filed petitions for adjudication for all four of the mother's children who were in the home at the time of the shooting. Two months later, when this juvenile was born, the People also filed a petition for adjudication for him alleging he was neglected or abused. The hearing on all petitions proceeded simultaneously by stipulation. The trial court found that the mother's paramour, not the mother, was the perpetrator of the neglect and abuse of the juvenile's siblings and adjudicated the juvenile's siblings wards of the People. With respect to the juvenile, though, the trial court held that the People had failed to prove by a preponderance of the evidence that the juvenile was neglected or abused under a theory of anticipatory neglect. The public guardian appealed that decision, and the People filed a brief in support of the public guardian's appeal.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that this juvenile did not suffer from anticipatory neglect? (Yes).

FINDING #1: State failed to prove by a preponderance of evidence a case of anticipatory neglect with respect to baby, who was born two months after baby's sibling found a gun in the home and shot another sibling in the head; mother was not the person responsible for any neglect or abuse of her children, and instead, father was the perpetrator of the neglect and abuse of baby's siblings and he was no longer living in the home, and mother was not aware that father had a gun or that he had brought one into the home. **FINDING #2:** State failed to show how baby's cousin, who allegedly burned baby's sibling, posed any threat of neglect or abuse or future neglect or abuse to baby under a theory of anticipatory neglect; there was no indication that the cousin resided with mother, and mother was listed as noninvolved in the incident. **FINDING #3:** State failed to show how babysitter, who allegedly beat baby's sibling with belt, posed any threat of neglect or abuse or future neglect or abuse to baby under a theory of anticipatory neglect; babysitter lived at an address that was not the home of mother, and there was nothing in the record to suggest that mother should have known that babysitter could have posed any type of threat to her children prior to that incident occurring, and there was nothing in the record to indicate that, after this event, mother ever entrusted him to babysit her children again. **FINDING #4:** Preponderance of evidence did not show that mother was a perpetrator of abuse or neglect; baby was not present for and did not witness any of the incidents that lead to the removal of her siblings from the home because she was not yet born, and the perpetrators of those incidents that resulted in findings of neglect and abuse of baby's siblings did not live in the household with mother.

JULY - 2016

PART A - JUVENILE JUSTICE

CASE ANALYSIS

1. People v. Kevin Hunter, 2016 IL App (1st) 141904, (1st Dist., June 30, 2016) Armed Robbery; Aggravated Kidnapping; and Aggravated Vehicular Hijacking - - Affirmed; Mittimus Corrected.

FACTS: Following a bench trial, the defendant was convicted of armed robbery, aggravated kidnaping, and aggravated vehicular hijacking, and sentenced to concurrent terms of 21 years' imprisonment, which included a 15-year enhancement for his use of a firearm. The defendant, age 16 at the time of the offense, was tried and sentenced as an adult in accordance with the automatic transfer provision set forth in section 5-130 of the Juvenile Court Act of 1987 (Act) (705 ILCS405/5-130 (West 2010)). On appeal, defendant contends that: (1) the People failed to prove beyond a reasonable doubt that he was armed with a firearm during the charged offenses; (2) the trial court erred in failing to conduct a *Krankel* inquiry; (3) his case should be remanded for resentencing under new provisions contained in Public Act 99-69, section 10 (eff. Jan. 1,

2016) (adding 730 ILCS 5/5-4.5-105), which took effect during the pendency of his appeal; (4) his case should be remanded for resentencing in the juvenile court under Public Act 99-258, section 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130, 5-805)), which also took effect during the pendency of his appeal; and (5) the mittimus must be corrected to reflect the proper credit for presentence incarceration.

ISSUE: Juvenile Law (Sentences): Should this defendant be resentenced based upon legislation that went into effect during the pendency of his case? **(No).**

APPEAL: The Appellate Court held that: (a) the evidence in this case was sufficient to establish that the defendant committed his offenses while possessing a firearm; (b) the evidence was sufficient to establish that the defendant's gun did not fall within the statutory exception to the general definition of a firearm; (c) the defendant's statement in sentencing allocution did not raise a claim of ineffective assistance of counsel; (d) the statute that provided for the sentencing of individuals under the age of 18 at the time of the commission of offense did not apply retroactively; (e) the defendant's sentence did not violate the Eighth Amendment prohibition against cruel and unusual punishment; (f) the defendant's sentence did not violate the Illinois constitution's proportionate penalties clause; and (g) the amendment to the act that extended the jurisdiction of juvenile court to all minors charged with armed robbery, aggravated kidnapping, and aggravated vehicular hijacking did not apply retroactively to this defendant.

FINDING #1: The amended statute requiring a sentencing court to consider mitigating factors surrounding the defendant's age when sentencing a defendant who was under the age of 18 at the time of offense and permitting the court to decline to impose a firearm enhancement did not apply retroactively to this defendant, who's case was pending on direct appeal when the statute took effect. The Court held that nothing in the statute suggested that it applied retroactively to cases where the sentencing occurred prior to the effective date of the statute, and the defendant's sentencing for offenses occurred before that date. 730 ILCS 5/5-4.5-105. **FINDING #2:** The defendant's sentence for robbery, kidnapping, and vehicular hijacking, which included a 15-year firearm enhancement, did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. The Court reasoned that although the defendant's sentence of 21 to 45 was substantial, the trial court received a detailed presentence investigative report and was presented with and considered mitigating factors, including the defendant's youth, before imposing sentence. **FINDING #3:** The defendant's sentence of 21 to 45 years in prison, which included a 15-year firearm enhancement, did not violate Illinois constitution's proportionate penalties clause, where the mandatory firearm enhancement did not preclude the trial court from considering the defendant's age as mitigation in its determination of the defendant's sentence. **FINDING #4:** The statutory amendment that extended the jurisdiction of a juvenile court to all minors charged with armed robbery, aggravated kidnapping, and aggravated vehicular hijacking did not apply retroactively to this defendant who was convicted and sentenced before amendment was effective. This was found to have been the case where the statute contained no indication that the legislature intended the amendment to apply retroactively or prospectively from its effective date. 705 ILCS 405/5-130.

2. **In re Justin F.**, 2016 IL App. (1st) 153257, (1st Dist., June 7, 2016) Adjudication of Wardship - - Affirmed in Part; Vacated in Part; Case Remanded.

FACTS: This delinquency proceeding involved the interpretation of the Juvenile Court Act of 1987(Act) (705 ILCS 405/5-750). The trial court found this minor guilty of aggravated assault and aggravated unlawful use of a weapon. At the sentencing hearing, the parties presented no evidence concerning the services available within the Department of Juvenile Justice (DoJJ) that could meet the minor's needs. Notwithstanding this, the court committed the minor to the custody of DoJJ.

ISSUE: Sentences (Juvenile Law): Did the trial court err in failing to hear and consider evidence concerning the services available to minors committed to the DoJJ and this minor's particular needs before committing this minor to the DoJJ? **(Yes).**

APPEAL: The Appellate Court held that: evidence supported finding of delinquency for aggravated assault; (b) since the juvenile committed only one act of possessing a firearm, the appellate court, pursuant to the one-act, one-crime rule, vacated the less serious of the juvenile's two gun convictions; and (c) the trial court did not comply with Juvenile Court Act.

FINDING #1: The evidence in this delinquency proceeding supported the trial court's finding that this juvenile placed his victim in reasonable apprehension of receiving a battery and thus committed aggravated assault. Here the evidence indicated that the juvenile, while reaching towards his back pocket to pull out a gun, asked the victim whether he remembered the juvenile and then stated "Yeah, you remember me." **FINDING #2:** The trial court adequately inquired into less restrictive alternatives for this juvenile when committing him to the Department of Juvenile Justice. The trial court referred the juvenile to intensive probation supervision for evaluation. The probation officers stated that the juvenile was inappropriate for the intensive probation supervision program, and the court did not further consider the possibility of regular probation or any other alternative less restrictive than intensive probation given the juvenile's three violations of probation and his commission of the current offenses while on parole. 705 ILCS 405/5– 750(1) **FINDING #3:** However, the Court also ruled that despite the box checked on the sentencing form in this case, the trial record showed that the trial court did not comply with the Juvenile Court Act, in that the record included no evidence concerning the availability of services for the juvenile in Department of Juvenile Justice (DoJJ), which was one of factors the trial court needed to consider before committing the juvenile to the DoJJ. Because the trial court failed to follow the mandate of Act, the Appellate Court vacated the juvenile's order of commitment and remanded this case for full compliance with the Act. 705 ILCS 405/5–750(1)(G)

3. **In re A.C.**, 2016 IL App. (1st) 153047, (1st Dist., May 12, 2016) Adjudication of Wardship - - Affirmed.

FACTS: Following a hearing in Juvenile Court, the trial court adjudicated this juvenile delinquent of aggravated criminal sexual abuse and he was ordered to register under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.). The juvenile appealed contending that the provisions of SORA and the Sex Offender Community Notification Law (Notification Law) (730 ILCS 152/101 et seq.) which are applicable to juveniles, violated federal and state substantive due process and procedural due process. In addition, the juvenile argued that both of these statutes violated the prohibition against cruel and unusual punishment under the eighth amendment and the proportionate penalties clause of the federal constitution.

ISSUE: Sentences (Juvenile Law): Is the application of the sex offense registration requirements to juveniles unconstitutional? (No).

APPEAL: The Appellate Court held that: (a) this juvenile lacked standing to challenge the penalty provisions of SORA; (b) the sex offender registration and notification provisions did not implicate fundamental rights warranting a strict scrutiny analysis; (c) the application of the registration and notification requirements to this juvenile offender was rationally related to a legitimate interest; (d) the imposition of the registration and notification requirements without individualized risk assessment did not violate procedural due process; and (e) the registration and notification requirements were not punitive for purposes of the Eighth Amendment and the proportionate penalties clause.

FINDING #1: This juvenile lacked standing on direct appeal to challenge the penalty provisions of SORA, where he was not suffering or in immediate danger of suffering a direct injury as a result of the enforcement of such provisions. In this case, there was no allegation that the juvenile had failed to comply with his SORA registration requirements and was being charged with a felony. 730 ILCS 150/10. **FINDING #2:** The application of the registration and notification requirements to this juvenile sex offender was rationally related to a legitimate interest in protecting the public, and thus did not violate substantive due process. According to the Court, the statutes provided additional protections for juvenile offenders, accounting for the fact that juveniles are different from adults, and afforded a right to petition for termination after five years. 730 ILCS 150/1 et seq.; 730 ILCS 152/101 et seq. **FINDING #3:** The imposition of the registration and notification requirements on juveniles upon adjudication of specified sex offenses without first providing an individualized determination regarding the risk level did not violate procedural due process. The juveniles were afforded key procedural safeguards in these delinquency proceedings. Further, the statutes provided additional protections for juvenile offenders. This accounted for the fact that juveniles are different from adults, and the registration and notification requirements were in accord with the purposes of Juvenile Court Act, which include the rehabilitation of minors, protecting the public from juvenile crime, and holding juvenile offenders accountable. **FINDING #4:** The Sex Offender Registration Act (SORA) and the Sex Offender Community Notification Law were not punitive for purposes of the Eighth Amendment prohibition against cruel and unusual punishment and the Illinois constitutional proportionate penalties clause, notwithstanding the social changes with respect to collateral consequences, and the amendments expanding the scope of those who must register to include those who commit certain "precursor" crimes, and requiring that an offender provide additional information, such as social media information.

4. **In re H.L.**, 2016 IL App. (2nd) 140486-B, (2nd Dist., May 12, 2016) Adjudication of Wardship - - Reversed and Remanded.

FACTS: Beginning in approximately 2010, this juvenile became involved in the juvenile justice system, admitting to an allegation of mob action, for which he received a five-year term of probation. His behavior would appear to improve, but then he would continue to take backward steps. In 2012, the juvenile admitted to an allegation of robbery, for which he received a modified term of probation to continue until his twenty-first birthday. In 2013, he admitted to a charge of unlawful possession of cannabis, and this time, the court sentenced him to an indeterminate term in the Department of Juvenile Justice (Department). In this appeal, the juvenile raised the issue of whether the trial court abused its discretion in committing him to the Department for an indeterminate term. He argued that the trial court failed to first consider less restrictive alternatives to indeterminate incarceration with the Department and that the trial court failed to address the appropriate factors in passing sentence.

ISSUE: Sentences (Juvenile Law): Did the trial court abuse its discretion in committing this juvenile to the DOC without first considering less restrictive alternatives? **(Yes).**

APPEAL: On remand, the Appellate Court held that: (a) before committing this juvenile to the DJJ for an indeterminate period not to exceed his 21st birthday, upon adjudication of delinquency and revocation of probation, the trial court was required to make express finding on record that such commitment was least restrictive alternative available for juvenile, and (b) the trial court's findings in record did not satisfy the statutory requirement of an express finding that the DJJ commitment was the least restrictive alternative available to the juvenile.

FINDING: This trial court's findings that this juvenile's parents were unable, for a reason other than financial circumstances alone, to care for, protect, train, or discipline the juvenile, that the best interests of the juvenile and public would not be served by placement of the juvenile in an alternative custodial setting, and that confinement in the Department of Juvenile Justice was necessary to ensure the protection of public, did not satisfy the statutory requirement that, prior to ordering the commitment of a juvenile to the DJJ upon an adjudication of delinquency for possession of cannabis and revocation of probation for mob action and robbery, the trial court make an express finding on the record that this commitment to the DJJ was the least restrictive alternative available to the juvenile. 705 ILCS 405/5-740, 405/5-750(1)(a), (b).

JUVENILE JUSTICE CASE LAW QUARTERLY

JULY- 2016

PART B - JUVENILE WELFARE

CASE ANALYSIS

1. **In re K. I.**, 2016 IL App. (3rd) 160010, (3rd Dist., June 9, 2016) Termination of Parental Rights - - Affirmed.

FACTS: The mother of this juvenile appealed from a judgment finding her to be an unfit parent under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii)) and terminating her parental rights. She claimed that the trial court's finding that she failed to make reasonable progress toward the return home of her child within the relevant nine-month period was against the manifest weight of the evidence. She also argued that the trial court abused its discretion in (1) admitting her counseling records, (2) denying her motion for payment of expert witness fees, (3) refusing to find that the People violated discovery, (4) allowing the foster mother to testify at the best interest hearing, and (5) terminating her parental rights without finding that the People had proved termination was in the juvenile's best interest by a preponderance of the evidence.

ISSUE: Juvenile Law (Termination of Parental Rights): Did the trial court err in finding that the mother of this juvenile was unfit and the termination of her parental rights was in the best interest of the child? **(No).**

APPEAL: The Appellate Court held that: (a) the evidence supported finding that mother failed to make reasonable progress towards the return of child during the nine-month period following neglect adjudication; (b) the mother's counseling records were admissible during termination of parental rights proceeding; (c) the trial court's denial of mother's request for expert witness fees was not an abuse of discretion; and (d) the trial court's determination that it was in child's best interest to terminate mother's parental rights was not against the manifest weight of the evidence.

FINDING #1: This evidence supported the trial court's finding that this juvenile's mother failed to make reasonable progress towards the return of her child during the nine-month period following the neglect adjudication, which was an element necessary to terminate the mother's parental rights to the child. Here, the mother met with a counselor but was discharged due to lack of engagement. She was sporadic in attending drug testing, and of the drug tests the mother completed, only one was not positive for marijuana, showing the mother continued to use marijuana. 750 ILCS 50/1(D)(m)(ii) **FINDING #2:** The mother's counseling records were admissible during this termination of parental rights proceeding, even though the court failed to require a witness to lay a foundation for the admission of the records under the business records exception to the hearsay rule. The Court determined that a parental fitness hearing was a continuation of the abuse, neglect, or dependency proceeding under the Juvenile Court Act. Further, the Juvenile Court Act provided that certified records of hospitals and public or private agencies concerning a condition, act, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding was admissible as proof of the condition, act, occurrence or event, and the mother's records described what occurred during her counseling sessions and her mental health sessions concerning her condition. 750 ILCS 50/2.1; 705 ILCS 405/2-18(4)(a) **FINDING #3:** The trial court's denial of the mother's request for expert witness fees was not an abuse of discretion, in termination of parental rights proceeding; no provision in the Code of Civil Practice provided for the payment of expert witnesses, and mother failed to establish that she was prejudiced by the denial of her request for expert witness fees. **FINDING #4:** The trial court's denial of mother's oral motion to exclude evidence because the witnesses and exhibits had not been disclosed in pretrial discovery was not an abuse of discretion, during termination of parental rights proceeding, where the trial court requested the exhibit list at the adjudication hearing, mother objected, and mother then clarified that she was only objecting to the witnesses that had not been disclosed, and mother did not request a remedy for failing to disclose witnesses. **FINDING #5:** The trial court's admission of a statement from foster mother describing child's general well-being and explaining his attachment to foster family was not an abuse of discretion, during termination of parental rights proceeding; the Juvenile Court Act afforded a foster parent a right to be heard by the court, and the Adoption Act was to be construed in accordance with the Juvenile Court Act. 750 ILCS 50/2.1; S.H.A. ILCS 405/1-5(2)(a). **FINDING #6:** The trial court's determination that it was in child's best interest to terminate mother's parental rights was not against the manifest weight of the evidence; child had a strong bond with his foster family, and child was six years old at the time of the termination hearing and had lived with foster family for three years. 705 ILCS 405/1-3.

2. **In re J.L., M.L. and A.L.**, 2016 IL App. (1st) 152479, (1st Dist., May 14, 2016) Adjudication of Wardship - - Affirmed.

FACTS: The father of these juveniles appealed from (a) adjudication orders finding that he abused and neglected three of his minor children and (b) a disposition order finding him unfit and adjudging the children wards of the court. The father argued that the trial court's finding that his younger daughter was sexually abused was against the manifest weight of the evidence "because it was based on inadmissible hearsay evidence regarding statements made by" his older daughter. He also argued that his due process rights were violated because "he was denied the right to defend himself against the allegations and subsequent findings of sexual abuse against" the older daughter (C.L.). The Public Guardian and the People asserted that the findings were supported by the manifest weight of the evidence and that the father's due process rights were not violated.

ISSUE: Juvenile Law (Wardship): Did the trial court err in finding that the children in this case were abused and neglected after evidence showed that they had been sexually abused? **(No)**.

APPEAL: The Appellate Court held that: (a) the trial court's determination that this child was sexually abused by the father was not against the manifest weight of the evidence; (b) the child's uncorroborated statements were admissible; (c) the child's hearsay statements were sufficiently corroborated to establish abuse or neglect by father; and (d) the older sibling's hearsay statements within hospital medical records were admissible under the medical records exception.

FINDING #1: This child's uncorroborated statements were admissible during an abuse and neglect proceeding. According to the Court, the Juvenile Court Act provided that previous statements made by a minor relating to any allegations of abuse or neglect were admissible, but that statements that were not corroborated or subject to cross-examination were insufficient, by themselves, to support a finding of abuse or neglect. 705 ILCS 405/2-18(4)(c); **FINDING #2:** This child's hearsay statements were sufficiently corroborated to establish abuse or neglect by the father. Here the child's older sibling made statements describing her own abuse by their father and the child's statements to her about her father's abuse, and the child and her sibling's statements of abuse were similar, as they both described being asleep in their father's bed when their father began fondling them while laying behind them. **FINDING #3:** This corroborating evidence of the abuse or neglect requires there to be independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred. In essence, the corroborating evidence is evidence that makes it more probable that the minor was abused or neglected. **FINDING #4:** The older sibling's hearsay statements within the hospital medical records were admissible under the medical records exception, which allowed for the admission of medical records related to any condition, act, transaction or occurrence related to a minor in an abuse, neglect or dependency proceeding as long as the document was made in the regular course of business at or within a reasonable time of the act or event, to corroborate the child's hearsay allegations of sexual abuse by her father, in this abuse or neglect proceeding. The medical records exception in the Juvenile Court Act allowed for the admission of records for individuals other than the minors who were parties to the proceedings, and the statements and diagnoses within the records, which described the older sibling's own abuse by their father and the child's statements regarding her abuse by her father, corroborated the child's statements regarding her allegations of abuse. 705 ILCS 405/2-18(4)(a).