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CRIMINAL CASE LAW DIGEST

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ILLINOIS SUPREME COURT

CONSTITUTIONALITY OF STATUTE (Weapons): The weapons statute with respect to Tasers was unconstitutional.

People v. Ronald A. Greco, 2019 IL 122951, (1st Dist., March 21, 2019) Dismissal of Charges - - Affirmed.

FACTS: Webb was charged by misdemeanor complaint with violating section 24-1(a)(4) of the UUV statute (720 ILCS 5/24-1(a)(4) after he was discovered carrying a stun gun in his jacket pocket while in his vehicle on a public street. Greco was charged by misdemeanor complaint with violating section 24-1(a)(4) after he was found carrying a stun gun in his backpack in a forest preserve, a public place. Both defendants filed motions to dismiss the charges, arguing section 24-1(a)(4) operated as a complete ban on the carriage of stun guns and tasers in public and was, for this reason, unconstitutional under the second amendment. The circuit court agreed with defendants, in separate but identical orders.

APPEAL: The Supreme Court held that the statute imposes a complete ban on the public carriage of stun guns and facially violates the Second Amendment.

CASE ANALYSIS

ISSUE: Was the weapons statute with respect to Tasers unconstitutional? (Yes).

RULE #1: Stun guns are “bearable arms” within the meaning of the Second Amendment. **RULE #2:** The most reliable indicator of legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning. **RULE #3:** The words and phrases in a statute must be construed in light of the statute as a whole, with each provision construed in connection with every other section. **RULE #4:** When construing statutes, courts presume the legislature did not intend to create absurd, inconvenient, or unjust results.

FINDING: The statute that prohibits carrying or possessing a pistol, revolver, stun gun, or other firearm in a vehicle or in public, unless carried or possessed in accordance with Firearm Concealed Carry Act by a person with a license, does not merely regulate the carriage of stun guns in public, but imposes a complete ban on their carriage in public, and facially violates the Second Amendment. **WHY:** *Stun guns cannot be carried or possessed “in accordance” with the Carry Act because a concealed carry license cannot be issued for those weapons.* 430 Ill. Comp. Stat. Ann. 66/10; 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4).

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FIRST DISTRICT

CASE #1

1) CONFESSIONS AND ADMISSIONS (Voluntariness): The 50 hours this defendant spent in custody without a probable cause hearing did not render his confession involuntary.

2) **CONSTITUTIONALITY OF STATUTE (SORA)**: The constitutionality of the Sex Offender Registration Statute could not be decided on direct appeal from McArthur's conviction.

People v. Jamari McArthur, 2019 IL APP (1st) 150626-B, (1st Dist., March 18, 2019) Aggravated Criminal Sexual Abuse- - Affirmed.

FACTS: Seventeen-year-old McArthur was arrested for allegedly engaging in sexual conduct with M.W., an 11-year-old boy. McArthur confessed to the police in writing after having spent 50 hours in custody without a probable cause determination. He filed a motion to suppress his confession, arguing that the duration of his detention without a probable cause determination rendered his confession involuntary. The trial court ruled that McArthur's confession was voluntary despite the delay. A jury found him guilty of the aggravated criminal sexual abuse of M.W., and the trial court sentenced him to four years' imprisonment. McArthur's conviction triggered mandatory lifetime sex offender registration under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 et seq.). On appeal, McArthur challenged the trial court's ruling that his confession was voluntary, and the sufficiency of the evidence presented at trial. He further challenged the constitutionality of SORA and the SORA provision that precludes minors charged under the criminal laws as adults from petitioning to terminate their sex offender registration (id. § 3-5(i) (hereinafter subsection (i) of Juvenile SORA)). The appellate court affirmed the trial court's judgment. In a supervisory order, the Illinois Supreme Court directed the Court to vacate its judgment and consider the effect of *People v. Bingham*, 2018 IL 122008, on the issue of whether defendant may raise the constitutionality of SORA on direct appeal.

APPEAL: The Appellate Court held that: (a) the evidence introduced in this case supported a finding that McArthur's confession made 50 hours after his arrest, and before any probable cause hearing, was voluntary; (b) sufficient evidence supported McArthur's conviction; (c) McArthur's constitutional challenge to his mandatory lifetime sex offender registration under the Sex Offender Registration Act (SORA) could not be addressed on direct appeal from his conviction.

CASE ANALYSIS

ISSUE #1: Did the 50 hours this defendant spent in custody without a probable cause hearing render his confession involuntary? **(No)**.

RULE #1a: To determine whether a defendant's confession was voluntary, the Appellate Court considers the totality of the circumstances and the following factors: (1) age, (2) intelligence, (3) education, (4) experience, (5) physical condition at the time of the detention and interrogation, (6) the duration of the interrogation, (7) the presence of *Miranda* warnings, (8) the presence of any physical or mental abuse, and (9) the legality and duration of the detention. **RULE #1b**: A defendant's statement is voluntary unless his will is overcome by the police at the time of the confession. **RULE #1c**: Provisions of Juvenile Court Act that required police officers, who arrest a minor without a warrant, to “immediately” make a reasonable attempt to notify a parent or legal guardian, did not apply to defendant who was over 17 when he was questioned by police. **RULE #1d**: The “concerned adult factor,” used to determine whether the confession of a juvenile defendant is voluntary, requires a determination of whether (1) defendant had an opportunity to consult with an interested adult before or after interrogation and (2) police prevented defendant from contacting an interested adult or vice versa.

FINDING #1: **(A)** The absence of a concerned adult when 17-year old McArthur was questioned by the police did not render his confession involuntary under the “concerned adult” factor of the Juvenile Court Act. **WHY**: No facts indicating that the police prevented McArthur from contacting a parent; and McArthur placed a phone call to his grandmother 15 hours after his arrest. 705 Ill. Comp. Stat. Ann. 405/5-405(2). **(B)** The evidence at the suppression hearing supported a finding that the confession to sexual abuse of an 11-year old victim made by McArthur while he was in custody 50 hours after his arrest, and before any probable cause hearing, was voluntary. **WHY**: The delay was attributed to the need to speak to the child witnesses before charging McArthur with a felony offense; McArthur was read

review; however, if historical evidence is inconclusive or suggests that regulated activity is not categorically unprotected, then court applies appropriate level of heightened means-ends scrutiny and considers strength of government's justification for restricting or regulating exercise of Second Amendment rights. **RULE #1b:** Some presumptively lawful regulatory measures under the Second Amendment include longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. **RULE #1c:** The question in determining whether regulation is lawful under the Second Amendment is whether the law impermissibly encroaches on conduct at the core of the Second Amendment. **RULE #1d:** When determining whether a regulation under the Second Amendment is lawful, Illinois courts will apply the appropriate level of heightened means-ends scrutiny and consider the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights, even where a presumptively lawful regulation is involved. **RULE #1e:** Under the heightened means-end scrutiny approach to Second Amendment cases, the second step of the inquiry into the constitutionality of a restriction on the right to bear arms requires the court to examine the strength of the government's justifications for restricting certain firearm activity by evaluating the restriction the government has chosen to enact and the public-benefits ends it seeks to achieve. **RULE #1f:** Under the heightened means-end scrutiny approach to Second Amendment cases, a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end. **RULE #1g:** Under the heightened means-end scrutiny approach to Second Amendment cases, laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified than laws which place a severe burden on the core Second Amendment right of armed self-defense. **RULE #1h:** The heightened means-end inquiry into the constitutionality of a restriction on the right to bear arms protected by the Second Amendment is a sliding scale that is neither fixed nor static. **RULE #1i:** A substantial curtailment of the right of armed self-defense protected by the Second Amendment requires a greater showing of justification than merely that the public might benefit on balance from such a curtailment. **RULE #1j:** When a state bans guns merely in particular places, such as public schools, a person can preserve an undiminished right of self-defense under the Second Amendment by not entering those places; since that is a lesser burden on citizens, the state does not need to prove so strong a need as when it substantially curtails the right of armed self-defense. **RULE #1k:** When applying heightened means-end scrutiny in evaluating the constitutionality of a restriction on the right to bear arms protected by the Second Amendment, the inquiry for the court becomes determining whether the restriction at issue is a severe burden on the core Second Amendment right of armed self-defense or a law that merely regulates rather than restricts the Second Amendment right or one which places modest burdens on the right. **RULE #1l:** To answer the question of whether the restriction at issue is a severe burden on the core Second Amendment right of armed self-defense or a law that merely regulates rather than restricts the Second Amendment right or one which places modest burdens on the right, as part of a heightened means-end scrutiny evaluation, the court's first task is to determine the breadth of the law and the severity of its burden on the Second Amendment; the closer in proximity the restricted activity is to the core of the Second Amendment right and the more people affected by the restriction, the more rigorous the means-end review.

FINDING #1: The People's aim was to protect vulnerable populations in public housing facilities and it did so with a modest and easily avoidable burden on its citizens' Second Amendment rights, and, therefore, the provision in the unlawful use of weapons statute barring possession of firearms when visiting public housing was not facially unconstitutional. **WHY:** *The burden was not a categorical ban on carrying firearms in public; Illinois residents could preserve an undiminished right of self-defense by not entering public housing; there was a realistic concern for the safety of the residents of public housing and their guests; and there was more than a rational fit between protecting the safety of residents, guests, and others present at housing facilities and limiting the number of guns on public housing properties.* 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4), 5/24-1(c) (1.5).

ISSUE #2: Did the People prove all of the elements of this offense? **(No).**

FACTS: In 2008 Motassem Said (Said) was murdered. In a jury trial his nephew, Abed Othman, (Othman) was found guilty of the murder. Othman was 17 years old at the time of the crime. The trial court sentenced him to 30 years in prison for first degree murder plus a 25-year weapons enhancement. Othman will be 76 when he is released. On appeal, Othman contended (1) that the evidence did not prove him guilty beyond a reasonable doubt; (2) that (a) the trial court committed error by allowing hearsay testimony that he possessed a gun two years after the murder and (b) the trial court erred when it instructed the jury that his gun possession two years after the crime could be considered only for the purpose of intent; (3) that he was denied a fair trial when, in direct violation of the trial court's express ruling, the prosecutor, during closing argument, stated that the reason he did not admit to the shooting during a conversation with a visitor who was wearing a wire, was because he knew the visiting area of the prison was bugged; (4) that the trial court erred in the manner in which it conducted an inquiry of the prospective jurors under *People v. Zehr*, 103 Ill. 2d 472, 83 Ill. Dec. 128, 469 N.E.2d 1062 (1984); (5) that trial counsel provided ineffective assistance of counsel by failing to object to (a) the hearsay testimony of Said's girlfriend, Janice Lloyd (Lloyd), that "friends in the neighborhood" told her that Othman shot the victim and (b) the prosecutor's comments in closing that Mansour could not record a confession because Othman was worried that the visitor area of the prison was bugged; (6) that Othman's 55-year sentence is a *de facto* life sentence and is unconstitutional when imposed for a crime committed when Othman was 17; and (7) that Othman is entitled to a new sentencing hearing under section 5-4.5-105 of the criminal code because the firearm enhancement is procedural and therefore retroactively applied to cases on direct appeal.

APPEAL: The Appellate Court held that: (a) the evidence that Othman possessed a gun two years after the murder for which he was charged was inadmissible; (b) the trial court committed error when it gave the jury an instruction limiting the jury's consideration of the gun in Othman's possession to a question of intent only; (c) the trial court erred in the manner in which it conducted its inquiry of prospective jurors; (d) the quantum of admissible evidence presented by the People against Othman rendered the evidence in this case closely balanced; (e) the defense counsel's failure to object to the testimony of a witness, who testified that she heard from friends that Othman killed the victim, was not a reasonably trial strategy; (f) the cumulative effect of the prejudicial testimony, erroneous and confusing jury instruction, admission of hearsay testimony, ineffective assistance of counsel, and the trial court's error in conducting its inquiry of prospective jurors, resulted in an unfair trial; and (g) the Truth in Sentencing Act, as applied to Othman and to juvenile defendants similarly situated, was unconstitutional under Eighth Amendment prohibition against cruel and unusual punishment.

CASE ANALYSIS

ISSUE #1: Did the trial court err in allowing evidence of the defendant's possession of a firearm after the murder to be introduced? **(Yes).**

RULE #1a: When it appears that a witness has hopes of a reward from the prosecution, his testimony should not be accepted unless it carries with it an absolute conviction of its truth. **RULE #1b:** A witness can be impeached with prior silence where it is shown that the witness had the opportunity to make a statement and, under the circumstances, a person normally would have made the statement. **RULE #1c:** The fact a witness is a narcotics addict has an important bearing on his credibility. **RULE #1d:** Evidence of other crimes is not admissible to bolster the credibility of a prosecution witness. **RULE #1e:** In reviewing the trial court's evidentiary ruling for abuse of discretion, the test is whether the decision to allow the evidence is arbitrary, fanciful, or unreasonable or when no reasonable person would take the trial court's view.

FINDING #1: Evidence that Othman possessed a gun two years after the murder for which he was charged was inadmissible due to the potential for prejudicial inferences to be drawn far exceeding any legitimate purpose identified by the People. **WHY:** *The gun was not the same gun used in the murder.*

ISSUE #2: Did the trial court properly instruct Othman's jury concerning other crimes? **(No).**

FINDING #2: The trial court committed error when it gave a jury instruction limiting the jury's consideration of the gun in Othman's possession to a question of intent only. **WHY:** *The instruction was highly confusing and prejudicial.*

ISSUE #3: Did the trial court err in failing to properly question Othman's jury about their basic understanding of the rights of a defendant? **(Yes).**

RULE #3a: When a defendant's liberty interest is at stake, asking all eight questions that judges are required to ask the venire is not an unreasonable burden, even on a seasoned and busy judge. **RULE #3b:** Whether or not a single juror understands both the words and the implication of the cornerstone principles of a defendant's right to a just and unbiased jury is foundational to justice.

FINDING #3: The trial court erred in manner in which it conducted inquiry of prospective jurors in Othman's trial for murder. **WHY:** *The trial court failed to ask the jury if it understood that Othman was presumed innocent, that failure of Othman to testify on his own behalf could not be held against him, and whether it accepted that Othman was not required to offer any evidence on his own behalf.*

ISSUE #4: Was the evidence against Othman closely balanced in this case? **(Yes).**

RULE #4a: When the District Court of Appeals looks at whether a case is closely balanced, for purposes of determining whether any error was harmless, the tendency is to look at the same information the jury had to decide, but there is another, important consideration: what the jury did not have, but should have had, and/or what the jury did have, but should not have had. **RULE #4b:** Evidence can be closely balanced, for purposes of determining whether error in admission of evidence was harmless, where the evidence comes from unreliable witnesses who offer conflicting accounts or from prosecution witnesses who provide evidence favorable to the defendant.

FINDING #4: The quantum of admissible evidence presented by the People against Othman in this murder trial rendered the evidence closely balanced. **WHY:** *The trial court's error in admitting the gun that Othman had in his possession two years after the murder was committed produced a false impression of facts, and where there was ineffective assistance of counsel, the case possibly could have had a different result.*

ISSUE #5: Did Othman's counsel provide ineffective assistance by failing to object the prosecutor's improper argument? **(Yes).**

RULE #5: The constitutional guarantee of effective assistance of counsel requires a criminal defense attorney to use the applicable rules of evidence to shield his client from a trial based upon unreliable evidence.

FINDING #5: (A) The defense counsel's failure to object to the testimony of a witness, who testified that she heard from friends that Othman killed the victim, was not reasonably trial strategy, and therefore it amounted to deficient performance, as element of ineffective assistance of counsel. **WHY:** *The counsel's failure to object allowed the People to inject prejudicial hearsay evidence that some other witnesses would also testify that Othman committed the murder, and this set of mysterious, anonymous witnesses could not be cross-examined, nor could their credibility be considered by jury.* **(B)** The defense counsel's deficient performance prejudiced Othman and, thus, constituted ineffective assistance of counsel. **WHY:** *The jury could easily have believed that there were other, actual witnesses who implicated Othman, which could have been a significant factor in the jury's determination that Othman was guilty.*

ISSUE #6: Was Othman's 55-year sentence unconstitutional? **(Yes).**

RULE #6a: The Truth in Sentencing Act is a stand-alone act. **RULE #6b:** The Truth in Sentencing Act is in the Corrections Code because it outlines how the Department of Corrections should manage its

151938, 2018 WL 1096109), and Rodriguez petitioned for leave to appeal to the supreme court. The Illinois Supreme Court denied Rodriguez's petition for leave to appeal but issued a supervisory order directing the appellate court to vacate its judgment and reconsider its decision in light of *People v. Bingham*, 2018 IL 122008, 425 Ill. Dec. 611, 115 N.E.3d 166. In accordance with the supreme court's direction, the appellate court vacated its prior judgment and reconsider in light of *Bingham* to determine whether a different result was warranted.

APPEAL: The Appellate Court held that: (a) the “law of the case” doctrine did not preclude consideration of Rodriguez’ constitutional challenge to SORA; (b) Rodriguez had standing to mount challenge to SORA limitations on presence and residence as well as the other civil consequences he faced as result of his sex offender status; (c) the burdens imposed by SORA do not impose punishment so as to override legislature's intent to create civil sanction; (d) the SORA statutory scheme is rationally related to legitimate state interest in protecting public from sex offenders; and (e) the SORA statutory scheme was not unconstitutional as applied to Rodriguez.

CASE ANALYSIS

ISSUE: Was the Sex Offender Registration statute with unconstitutional? **(No).**

RULE #1: Determining whether a law imposes punishment, for purposes of a due process challenge based on violation of an unfit defendant's fundamental right to be free from punishment, turns first on whether the legislature intended the law to be punitive or to establish civil consequences. **RULE #2:** Even when the legislature intends to enact a civil regulatory scheme, the law may nevertheless constitute punishment, for purposes of a due process challenge based on violation of an unfit defendant's fundamental right to be free from punishment, if the clearest proof shows that it is punitive in purpose or effect. **RULE #3:** As a general rule, an as-applied constitutional challenge cannot be raised for the first time in a reviewing court in a collateral proceeding; this is because the record below is usually insufficiently developed as to the unique facts and circumstances supporting the challenge.

FINDING: (A) Because the Appellate Court did not rule on the constitutionality of the Sex Offender Registration Act (SORA) statutory scheme in a previous order related to this Rodriguez’ case, the law of the case doctrine did not preclude consideration of his constitutional challenge. **WHY:** The Appellate Court's holding in a previous order, which was a reversal of the trial court's holding that Rodriguez was not required to register pursuant to SORA due to being incapable of understanding registration requirements, did not rest on constitutional grounds, but rather, relied on case law and engaged in statutory interpretation to conclude that, notwithstanding that Rodriguez was found not guilty of sex offense, he met statutory definition of sex offender and, as such, was required to register under SORA. 730 Ill. Comp. Stat. Ann. 150/1 et seq. **(B)** Rodriguez had standing to mount a challenge to Sex Offender Registration Act (SORA) limitations on presence and residence applicable to him as well as the other civil consequences he faced as a result of his sex offender status. **WHY:** The restrictions on residency, presence, and name changes, as well as requirement to renew one's driver's license annually, were all automatically applicable to Rodriguez with sex offender status, and, even though he did not allege that he failed to register or that he had been charged with SORA's requirements, he would still be affected by SORA's penalty provisions. **(C)** The burdens imposed by the Sex Offender Registration Act (SORA) do not impose punishment so as to override legislature's intent to create civil sanction. **WHY:** The SORA's requirement of in-person registration does not amount to an affirmative restraint; act of appearing in person and registering is not traditionally regarded as punishment in same way as mandatory supervised release or parole; The SORA scheme does not promote retribution or deterrence and is instead concerned with ensuring public safety; and the legislature, by including a termination provision for juveniles adjudicated guilty of sex offenses, has considered which sex offenders should be afforded the ability to seek termination of the registration requirements and has limited that relief to those who were juveniles when adjudicated. **(D)** The Sex Offender Registration Act (SORA) statutory scheme was rationally related to a legitimate state interest in protecting the public from sex offenders. **WHY:** The SORA enables law enforcement to monitor whereabouts of sex offenders, and, by keeping sex offenders who

separately charged with four counts of attempted first degree murder (counts I through IV) (720 ILCS 5/8-4(a), 9-1(a)) and two counts of aggravated discharge of a firearm in the direction of a peace officer (counts V and VI) (720 ILCS 5/24-1.2(a)(3)). A jury acquitted him of the attempted first-degree murder charges (720 ILCS 5/8-4(a), 9-1(a)) but found defendant guilty of both counts of aggravated discharge of a firearm in the direction of a peace officer (720 ILCS 5/24-1.2(a)(3)). The trial court sentenced Meyers to two concurrent 19-year terms of imprisonment. He appealed his convictions for aggravated discharge of a firearm in the direction of a peace officer (720 ILCS 5/24-1.2(a)(3)). He argued that (1) the evidence failed to prove defendant guilty beyond a reasonable doubt, (2) the trial court abused its discretion when it admitted testimonial and photographic evidence of a bullet hole in the siding of a garage at the scene of the shooting, (3) the trial court erred when it limited defendant's cross-examination, and (4) the prosecutor's closing arguments deprived defendant of a fair trial.

APPEAL: The Appellate Court held that: (a) the evidence in this case was sufficient to find that Meyers intentionally or knowingly discharged a firearm in the direction of a person he knew to be a peace officer while that officer was executing his official duties; (b) even if the police officers' testimony at trial contained evidentiary disparities, the jury could have found Meyers guilty beyond a reasonable doubt due to direct or circumstantial evidence presented by the officers; (c) even if the police officers testified that Meyers fired a gun from his left hand, but gunshot residue allegedly indicated that he did not fire from his left hand, the evidence could have supported the jury's verdict; (d) the police officer's testimony about a bullet hole in the siding of a garage was relevant, and thus admissible; (e) the police officer's testimony regarding a bullet hole in the siding of a garage was admissible opinion testimony of a lay witness; and (f) the prosecutor's comments in closing arguments were not improper.

CASE ANALYSIS

ISSUE #1: Did the People fail to present sufficient evidence to support this defendant's convictions? **(No).**

RULE #1a: The testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant. **RULE #1b:** Even if police officers' testimony at trial for aggravated discharge of a firearm in the direction of a peace officer contained evidentiary disparities, jury could have found defendant guilty beyond a reasonable doubt due to direct or circumstantial evidence presented by officers.

FINDING #1: (A) The evidence in this case was sufficient to find that Meyers intentionally or knowingly discharged a firearm in the direction of a person he knew to be a peace officer while that officer was executing his official duties, as required to convict him of aggravated discharge of a firearm in the direction of a peace officer. **WHY:** *One police officer testified that he saw muzzle of Meyers' gun flash and heard the bullet "whizz" past him; another officer testified that he was standing three feet from the other officer, heard Meyers fire a shot and the bullet "whizz" past him; heard the other officer return fire; and saw Meyers holding a gun after a shot was fired; and the gun was recovered at the scene.* 720 Ill. Comp. Stat. Ann. 5/24-1.2(a)(3). **(B)** The Appellate Court declined to substitute its judgment for that of the jury here as to Meyers' assertion that a surveillance video showed he did not have a gun. **WHY:** *Such an assertion essentially argued that the police officer witnesses fabricated their testimony, and as the jury watched the surveillance video in open court, it was in the best position to judge the credibility and accuracy of the police officers' testimony.* **(C)** Evidence that four bullet casings were ejected from the shooting officer's gun, along with testimony by the other officer at the scene that he heard four shots fired did not create reasonable doubt that the defendant fired a gun. **(D)** Even if the police officers testified that Meyers fired a gun from his left hand, but gunshot residue allegedly indicated that Meyers did not fire from his left hand, the evidence could have supported jury's guilty verdict. **(E)** The positive presence of gunshot residue on the defendant's right hand did not conclusively establish that he did not discharge a firearm from his left hand. **WHY:** *The defendant could have had his right hand in the environment of a discharged firearm.* **(F)** The Appellate Court disregarded Meyers' argument that the police officer had a "significant incentive to lie" in order to survive the police review authority

investigation and keep his job. **WHY:** The defendant advanced this argument without citation to the record and failed to show that even the most basic foundational requirements necessary to question officer about such an investigation were satisfied in the trial court.

ISSUE #2: Did the trial court err in allowing evidence of bullet holes in buildings to be introduced? (No).

RULE #2a: Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. **RULE #2b:** A trial court may exercise its discretion to exclude evidence, even when it is relevant, if its prejudicial effect substantially outweighs its probative value.

FINDING #2: (A) The police officer's testimony about a bullet hole in the siding of a garage was relevant, and thus admissible. **WHY:** The officer testified that Meyers fired one shot in a northerly direction and that he later observed a hole in the siding of a garage that was consistent with the trajectory of the bullet discharged from defendant's gun, which was relevant and probative of the direction of the bullet discharged from defendant's gun. (B) The officer's testimony regarding a bullet hole in the siding of a garage was admissible opinion testimony of a lay witness. **WHY:** It was rationally based on the officer's perception; it was helpful to a clear understanding of his testimony and the determination of whether Meyers discharged a firearm in his direction or the direction of his fellow officer; and was not based on scientific, technical, or other specialized knowledge. (B) The photograph of a bullet hole in the siding of a garage was admissible. **WHY:** The photograph was relevant, and the police officer at the scene and the technician identified the photograph as a fair and accurate representation of what they personally observed in the garage at the scene. (C) Any prejudicial effect of the evidence regarding the bullet hole in the siding of a garage did not substantially outweigh its probative value. **WHY:** The probative value of the evidence in demonstrating the direction of the bullet that the police officer saw Meyers discharge from his gun substantially outweighed any danger of unfair prejudice. (D) Any error in the admission of the police officer's testimony that a bullet hole was created by bullet fired from Meyers' gun was harmless. **WHY:** The jury was free to accept or reject the officer's testimony as credible or incredible given his testimony on cross-examination that he "had no way of knowing" whether the hole was created by the bullet discharged from defendant's gun; the jury was informed of the officer's lack of knowledge when the technician admitted that he did not access the garage or recover the bullet; and any error in the trial court's allowing the officer to testify that the bullet hole was created by the bullet fired from Meyers' gun was harmless in light of the other testimony jury found to be credible.

ISSUE #3: Was this defendant denied due process when the trial court limited his cross-examination? (No).

RULE #3a: A criminal defendant's constitutional right to confrontation includes the right to cross-examine. **RULE #3b:** The Confrontation Clause guarantees the opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and whatever extent, the defense may wish. **RULE #3c:** A trial court is afforded broad discretion to limit the scope of cross-examination, and its restriction of cross-examination will not be reversed absent an abuse of that discretion.

FINDING #1: (A) Meyers forfeited for appeal his argument that the trial court violated his right to cross-examine the police officer under the Confrontation Clause, when it sustained the People's objection to his question of whether the surveillance video depicted Meyers running with his hands near his waistband. **WHY:** Meyers did not properly raise the constitutional issue in trial court and failed to provide any reason why trial court should have allowed him to question the officer as to what video depicted. (B) The failure by Meyers to make an offer of proof precluded the Appellate Court's review of his argument that the trial court violated his right under the Confrontation Clause to cross-examine the police officer, when it sustained the People's objection to his question of whether the surveillance video depicted Meyers running with his hands near his waistband. **WHY:** The question directed to the officer did not clearly

trial court exercised its discretion pursuant to section 5-4.5-105(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-105(b) (West 2016)) and did not impose the 25-year firearm enhancement based on the jury's finding that he personally discharged a firearm causing the victim's death. Corral appealed, arguing that (1) the People failed to prove him guilty beyond a reasonable doubt, (2) the trial court erred in denying his motion to suppress identification, (3) the trial court erred in limiting the defense expert from testifying on her opinion regarding the eyewitness's identification of Corral as the shooter, and (4) the sentence imposed by the trial court was excessive and failed to follow the dictates of *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012).

APPEAL: The Appellate Court held that: (a) the identification of Corral as the shooter was supported by sufficient evidence; (b) the lies told by an eyewitness 911 dispatcher, and the eyewitness's allegedly wrong identification, did not render the testimony not credible; (c) the evidence in this case supported the jury's finding that Corral's alibi was not as credible as the People's witnesses; (d) the trial court's determination that the photo array and the police lineup identification was not unduly suggestive was not against the manifest weight of the evidence; (e) Corral's expert was properly not permitted to testify to her opinion of eyewitness's identification of Corral; and (f) the trial court properly weighed *Miller v. Alabama* sentencing factors.

CASE ANALYSIS

ISSUE #1: Did the People fail to present sufficient evidence to support Corral's conviction for First-Degree Murder? (No).

RULE #1a: Minor inconsistencies in the testimony between witnesses or within one witness's testimony may affect the weight of the evidence but do not automatically create a reasonable doubt of guilt. **RULE #1b:** The trier of fact must judge how flaws in parts of a witness's testimony, including inconsistencies with prior statements, affect the credibility of the whole. **RULE #1c:** The trier of fact may accept or reject all or part of a witness's testimony. **RULE #1d:** Where identification is the main issue in a charged offense, the State must prove beyond a reasonable doubt the identity of the individual who committed the charged offenses. **RULE #1e:** The factors used in assessing identification testimony are: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. **RULE #1f:** When considering whether a witness had an opportunity to view the offender at the time of the offense, as factor in assessing reliability of an identification, courts look to whether the witness was close enough to the accused for a sufficient period of time under conditions adequate for observation. **RULE #1g:** Normally, the jury decides the weight that an identification of a defendant by a witness deserves, and the less reliable the jury finds the identification to be, the less weight the jury will give it.

FINDING #1: (A) The Identification of Corral as the shooter was supported by sufficient evidence in this murder prosecution. WHY: Although the attention of the eyewitness who identified Corral was focused on another individual during the incident, the witness had an opportunity to view Corral's face consistently for 30 minutes during the encounter leading up to the shooting; the witness's initial description of the shooter to the police matched Corral's description; the witness testified that he identified Corral as the shooter within three seconds of viewing a photo array and between five to ten seconds upon viewing a lineup; and the witness was presented with a photo array including Corral's image 48 days after the offense, and the identification of Corral in the lineup occurred 14 days thereafter. 720 Ill. Comp. Stat. Ann. 5/9-1(a)(1). **(B)** Lies, told by the eyewitness to the shooting, to a 911 dispatcher, and eyewitness's allegedly wrong identification of Corral in the courtroom, did not render eyewitness's testimony not credible so as to warrant reversal of Corral's murder conviction on grounds of insufficient evidence. WHY: The witness was forthcoming in testimony, that he did not tell the 911 dispatcher or the detectives at the scene of offense that he was present when the shooting occurred, and the jury was present when the alleged misidentification of Corral in the courtroom occurred, where the witness initially did not have an unobstructed view of Corral in the courtroom, but subsequently moved

*from the witness stand to gain a full view of the courtroom, where the witness then identified Corral. (C) Evidence supported the jury's finding that Corral's alibi was not as credible as the People's witnesses. **WHY:** The evidence sufficiently established that Corral participated in the shooting of the victim on a specific date, and the jury was presented with testimony from Corral's mother, cousin, and aunt, who were his alibi witness, who admitted that they had discussed the events of the date of the shooting "as a group."*

ISSUE #2: Did the trial court err in refusing to suppress Corral's identification? (No).

RULE #2a: The weight to be given alibi evidence is a question of credibility for the trier of fact, and there is no obligation on the trier of fact to accept alibi testimony over positive identification of an accused. **RULE #2b:** When challenging the propriety of a pretrial identification procedure, the defendant bears the burden of proving that the procedure was unnecessarily suggestive and created a substantial likelihood of misidentification. **RULE #2c:** State may rebut defendant's showing that a pretrial identification procedure was unnecessarily suggestive and created a substantial likelihood of misidentification by clear and convincing evidence that the witness is identifying the defendant based on his or her independent recollection of the incident. **RULE #2d:** When reviewing a claim of an unnecessarily suggestive identification, courts must look to the totality of the circumstances. **RULE #2e:** When reviewing a claim of an unnecessarily suggestive identification, the reviewing court may consider the evidence presented at trial as well as a suppression hearing. **RULE #2f:** Where a challenged identification procedure is a photo array or lineup, individuals selected for the array or lineup need not be physically identical. **RULE #2g:** When reviewing a claim of an unnecessarily suggestive identification, the reviewing court may consider the evidence presented at trial as well as a suppression hearing. **RULE #2h:** Where a challenged identification procedure is a photo array or lineup, individuals selected for the array or lineup need not be physically identical. **RULE #2i:** Differences in the appearances of the participants in a photo array or lineup go to the weight of a witness's identification, not to its admissibility. **RULE #2j:** A trial court's factual determination that an identification procedure was not unduly suggestive should not be reversed unless it is against the manifest weight of the evidence.

FINDING #2: (A) The statute governing the procedure for a police lineup did not apply to Corral's claim that the photo array and the lineup procedures employed in this murder prosecution were suggestive. **WHY:** *Although there was no dispute that the identification procedures employed in Corral's case did not comport with some of the statute's mandates, the statute was not in effect when the witnesses in this case were shown photo arrays and viewed lineups.* 725 Ill. Comp. Stat. Ann. 5/107A-2. **(B)** The trial court's determination that the photo array and the police lineup identification was not unduly suggestive was not against the manifest weight of the evidence. **WHY:** *The photos shown to eyewitness were all the same size and possessed similar clarity, all of the men in photo array appeared to be in same age range and possess similar complexions, eye colors, and nearly identical short hairstyles; and although Corral was one of only three individuals in the lineup who met the witness's previous description of the shooter, Corral did not present evidence that a three person lineup was unduly suggestive.*

ISSUE #3: Did the trial court err in limiting a defense expert's testimony concerning eyewitness identification? (No).

RULE #3a: The admission of evidence is within the sound discretion of a trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion. **RULE #3b:** Decisions of whether to admit expert testimony are reviewed using the abuse of discretion standard. **RULE #3c:** A criminal defendant's right to due process and a fundamentally fair trial includes the right to present witnesses on his or her own behalf. **RULE #3d:** Generally, an individual will be permitted to testify as expert if his experience and qualifications afford him knowledge which is not common to laypersons and if such testimony will aid trier of fact in reaching its conclusion. **RULE #3e:** Expert testimony is not admissible on matters of common knowledge unless the subject is difficult to understand and explain. **RULE #3f:** In addressing the admission of expert testimony, the trial judge should balance the probative value of the evidence against its prejudicial effect to determine the reliability of the testimony. **RULE #3g:** In assessing the admissibility of expert testimony, the necessity and relevance of

convicted.

APPEAL: The Appellate Court held that: (a) there was sufficient evidence in this case to prove that the Jackson had constructive possession of heroin to support his conviction, and (b) the trial court's error of asking potential jurors whether they had a "problem" with the principles set out in the rule governing voir dire examination, rather than whether they understood and accepted them, was not plain error.

CASE ANALYSIS

ISSUE #1) Did the People fail to prove that Jackson constructively possessed the contraband? **(No).**

RULE #1a: "Constructive possession" exists where a defendant has the intent and capability to maintain control and dominion over the contraband. **RULE #1b:** Constructive possession may be proved with evidence that the defendant had knowledge of the presence of the contraband and had immediate and exclusive control over the area where the contraband was found. **RULE #1c:** Knowledge of presence of contraband, as required for finding of constructive possession, may be inferred from surrounding circumstances, such as the defendant's actions, declarations, or other conduct, which indicate that the defendant knew the contraband existed in the place where it was found. **RULE #1d:** Control, as required for finding of constructive possession, is established when the defendant has the capability and intent to maintain dominion and control over the contraband. **RULE #1e:** Proof that a defendant had control over the premises where the contraband is found gives rise to an inference of knowledge and possession of that contraband. **RULE #1f:** A defendant's proved habitation in the premises where contraband is found is sufficient evidence of control of the location to establish constructive possession. **RULE #1g:** Constructive possession is not diminished by evidence of others' access to contraband.

FINDING #1: There was sufficient evidence that Jackson had constructive possession of heroin to support his conviction for possession of a controlled substance with intent to deliver. **WHY:** Jackson owned the apartment building in which the heroin was found in a hidden compartment; utilities to the building were in his name; he was present in the building when the search warrants were executed; and he attempted to flee when the police arrived. 720 Ill. Comp. Stat. Ann. 570/401(a)(1)(C).

ISSUE #2) Did the trial court err in failing to properly question Jackson's jury about their basic understanding of the rights of a defendant? **(Perhaps, but any error was harmless.)**

RULE #2a: Even though rule governing voir dire examination does not contain a precise formula for trial judges to use in ascertaining jurors' prejudices or attitudes, the rule requires trial courts to address each enumerated principle and mandates a specific question and response process. **RULE #2b:** Asking potential jurors whether they have a "problem" with principles set out in rule governing voir dire examination, rather than whether they understand and accept them, is clear error. **RULE #2c:** A "closely balanced" case, for purpose of plain error review, is one where the outcome of the case would have to be different had the impropriety not occurred. **RULE #2d:** In determining whether the evidence adduced at trial was close, a court reviewing for plain error must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case. **RULE #2e:** Inquiry into whether case was closely balanced, on plain error review, must involve assessing the evidence on the elements of the charged offense or offenses, along with any evidence regarding the credibility of the witnesses. **RULE #2f:** No "credibility contest" exists to render evidence "closely balanced" on plain error review when one party's version of events is unrefuted, implausible, or corroborated by other evidence.

FINDING #2: The evidence in this case was not closely balanced and thus the trial court's error of asking potential jurors whether they had a "problem" with the principles set out in the rule governing voir dire examination, rather than whether they understood and accepted them, was not plain error. **WHY:** The police officers' and Federal Bureau of Investigation (FBI) agent's overall descriptions of the events surrounding the search of the building where the heroin was found were consistent with each other and

FINDING: (A) The condition of J.P.'s probation restricting her gang-related activity, contacts, and social media usage was a valid probationary condition related to her rehabilitation following delinquency adjudication for aggravated unlawful use of a weapon (UW) and unlawful possession of a firearm. **WHY:** The juvenile denied being a gang member but acknowledged she spent time with gang members; her mother believed the juvenile was in a gang due to the gang tattoo above her eyebrow; the juvenile was found tagging school property with gang symbols; a social investigation report revealed that the juvenile was associated with a gang since she was 13 years old; the juvenile had been arrested on four prior occasions; and the juvenile was chronically truant due in part to her self-described concerns about rival peer groups or other gang members. 705 Ill. Comp. Stat. Ann. 405/5-715(2). **(B)** The condition of J.P.'s probation restricting her gang-related activity and contact was not so overbroad as to be unreasonable following her delinquency adjudication. **WHY:** At the juvenile's dispositional hearing, the trial court explained the meaning of its oral pronouncement of "no gangs, guns, or drug activities;" the trial court explained in detail the meaning of its prohibition that the juvenile was restricted from participating in any activity that furthered or promoted the function of a street gang and expressly explained the social media restrictions; and the trial court asked the juvenile if she understood and she answered in the affirmative. **(C)** The condition of J.P.'s probation requiring the removal of the juvenile's crown tattoo located on her face was not so overbroad as to be unreasonable following her delinquency adjudication. **WHY:** The trial court expressly stated that it ordered the facial crown tattoo be removed to help the juvenile avoid future hardships in gaining employment and with rival gangs, and the trial court noted her allegiance to the gang over her family would continue to pose a threat to her livelihood.

RESULT: J.P.'s adjudication for delinquency for UW was affirmed and the case remanded with directions.

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CASE #13

SEARCH AND SEIZURE (Reasonable Suspicion): The tip the arresting Officers received concerning an unknown person with a gun failed to provide sufficient reasonable suspicion to justify the detention of this defendant.

People v. Andre Holmes, 2019 IL App (1st) 160987, (1st Dist., March 5, 2019) Denial of Motion to Suppress - - Reversed and Remanded.

FACTS: A police officer received information from an unidentified security guard, whose source of information was unknown, that a man in Brainerd Park had a gun in his pocket. The man was described as black, about five-and-a-half feet tall, wearing a purple shirt and black jeans. Two or three minutes after talking to the guard, the Officer and his partner saw Holmes, who matched the description. There was nothing inappropriate about Holmes' conduct. Nonetheless, the officers approached Holmes, and the Officer immediately touched the pocket of his jeans. He felt what he recognized as the trigger and trigger guard of a gun. The officers ordered Holmes to the ground, put him in handcuffs, and placed him under arrest. Holmes challenged the initial seizure, before his arrest, as an unconstitutional Terry stop. He argued that the Officers did not have reasonable suspicion to stop him. In particular, both the security guard's identity and the source of information remained unknown, "effectively" an anonymous tip, which, without more, could not provide a reasonable suspicion of criminal activity. The People responded that the tip was reliable and not anonymous and contained sufficient information to support the Terry stop.

APPEAL: The Appellate Court held that security guard's tip was insufficient to establish reasonable suspicion to make a Terry investigatory stop of Holmes.

CASE ANALYSIS

ISSUE: Did the tip the arresting Officers received concerning an unknown person with a gun provide sufficient reasonable suspicion to justify the detention of Holmes? (No).

RULE #1: In cases involving police-citizen encounters, Terry gives officers a narrowly drawn authority to detain people and search for weapons where they reasonably believe that criminal activity may be afoot, and that the person seized may be armed and presently dangerous. **RULE #2:** A seizure, short of an arrest, is justified only where an officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. **RULE #3:** Once a suspect has been seized, he or she may only be frisked if an officer reasonably suspects that the person stopped is armed and dangerous; the validity of the initial stop constitutes a necessary precondition to the validity of any later search. **RULE #4:** For purposes of information sufficient to establish reasonable suspicion to justify a Terry investigatory stop of a suspect, cases involving known informants are stronger cases than those involving anonymous tipsters and, in all cases involving tips, anonymous or otherwise, paramount concerns involve the informant's veracity, reliability, and basis of knowledge. **RULE #5:** For purposes of information sufficient to establish reasonable suspicion to justify a Terry investigatory stop of a suspect, an anonymous tip, without more, generally provides virtually nothing, by which one could conclude that the tipster is honest, that his or her information is reliable, or that he or she has a basis by which to predict a suspect's criminal activity.

FINDING: The security guard's tip that a man in the park had a gun in his pocket was unreliable, and thus was insufficient to establish a reasonable suspicion to make a Terry investigatory stop of a suspect matching that description. **WHY:** *The tip was effectively anonymous because the police officer who encountered the suspect did not know how the security guard reported the tip; did not know whether the security guard was actually an eyewitness or learned his or her information elsewhere; and did not know whether the security guard was experienced or inexperienced.*

RESULT: The denial of Holmes' motion to suppress was reversed and this case was remanded back to the trial court.

XX

CASE #14

SEARCH AND SEIZURE (Probable Cause): The police did not err in placing this defendant under arrest after they saw him possessing a firearm in an apartment building.

People v. Markeese Thomas, 2019 IL App (1st) 170474, (1st Dist., March 19, 2019) Suppression of Evidence - - Reversed and Remanded.

FACTS: Thomas was charged with aggravated unlawful use of a weapon (AUUW) after the police observed him, while in the common area of an unlocked multiunit apartment building, hand off a gun to his friend and then flee upstairs into an apartment unit. Thomas filed a motion to quash his arrest and to suppress the evidence, which the circuit court granted. The People appealed, arguing that there was no Fourth amendment violation since defendant was not a resident of the apartment unit into which he fled and since the offense occurred in the common area of the building. The State further argues police had probable cause for the arrest even without knowing that defendant lacked licenses under both the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/0.01 et seq.) and the Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 et seq.) and, regardless, defendant had abandoned the weapon before his arrest, thus precluding application of the exclusionary rule.

APPEAL: On denial of rehearing, the Appellate Court held that: (a) there was no real encounter between the police officers and Thomas when the officers initially approached him in a police vehicle and Thomas fled; (b) No Fourth Amendment search was implicated by the police officer's warrantless entry into a

common area of the unlocked apartment building; (c) the officer had probable cause to believe that criminal activity was afoot when he arrested Thomas without a warrant; (d) Thomas had abandoned the firearm prior to its warrantless seizure by a police officer; (e) Thomas' actions provided the officer with probable cause to believe he was committing a felony in the officer's presence, justifying the officer's entry into the apartment unit; and (f) there was insufficient evidence that Thomas had a reasonable expectation of privacy in the apartment unit in which he was arrested to afford him Fourth Amendment protections in it.

CASE ANALYSIS

ISSUE: Did the police err in placing Thomas under arrest after they saw him possessing a firearm in an apartment building? (No).

RULE #A: Requirement that defendant make prima facie showing that search and seizure was unreasonable in order to prevail on motion to suppress evidence means that the defendant has the primary responsibility for establishing the factual and legal bases for the motion to suppress. **RULE #B:** Once a defendant, in seeking to suppress evidence, makes a prima-facie showing of an illegal search and seizure, the burden then shifts to the State to produce evidence justifying the intrusion. **RULE #C:** When a defendant seeks to suppress evidence, the ultimate burden of proof remains with the defendant. **RULE #D:** Reasonableness under the fourth amendment generally requires a warrant supported by probable cause. **RULE #E:** A limited exception to the warrant requirement under *Terry* permits a police officer to briefly stop (and therefore necessarily seize) a person for temporary questioning if he reasonably believes the person has committed, or is about to commit, a crime. **RULE #F:** A "seizure" occurs under the Fourth Amendment when an officer has in some way restrained a citizen's liberty, so the person believes he is not free to leave. **RULE #G:** There are encounters between police and private citizens that involve no coercion or detention and thus do not implicate the Fourth Amendment. **RULE #H:** If there is no unreasonable government intrusion, there is no search or seizure subject to the warrant clause of the Fourth Amendment. **RULE #I:** An individual's unprovoked flight on seeing police in an area known for crime is suggestive of wrongdoing and may justify police suspecting that individual of criminal activity, which warrants further investigation. **RULE #J:** That the defendant's unprovoked flight from police in an area known for crime is susceptible to an innocent explanation does not vitiate the officer's right to detain that individual to resolve any ambiguity. **RULE #K:** The determination of reasonable suspicion of criminal activity to support a *Terry* stop must be based on commonsense judgments and inferences about human behavior, and due weight must be given to the reasonable inferences the officer is entitled to draw from the facts in light of his experience. **RULE #L:** A defendant who objects to the search of a particular area must prove a legitimate expectation of privacy in the area searched, i.e., an actual subjective expectation of privacy and one that society deems reasonable. **RULE #M:** An expectation of privacy must have a source outside the fourth amendment by reference to concepts of real or personal property or to understandings that are recognized and permitted by society. **RULE #N:** A "search" for purposes of the fourth amendment occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. **RULE #O:** Once an officer is legitimately on the property, in an area impliedly open to the public, he may properly observe any evidence lying about in the open; that is, a search implicating the Fourth Amendment does not occur when officers observe what is in open view. **RULE #P:** Police may lawfully enter the curtilage of a home under the Fourth Amendment as long as they do not exceed the scope of being there; that is, a police officer not armed with a warrant may approach a home and knock because that is no more than any private citizen might do. **RULE #Q:** The Second Amendment right to keep and bear arms extends beyond the home, although such a right is subject to meaningful regulation. **RULE #R:** Police cannot simply assume a person who possesses a firearm outside the home is involved in criminal activity, so as to merit an investigatory stop; likewise, they cannot use a firearm in partial view, such as a semi-exposed gun protruding from the pant pocket of a person on a public street, alone as probable cause to arrest an individual for illegal possession without first identifying whether the individual has the necessary licenses. 430 Ill. Comp. Stat. Ann. 65/0.01 et seq. **RULE #S:** Abandoned property is not subject to Fourth Amendment protection since no one can have a reasonable expectation of privacy in an abandoned item. **RULE #T:** Abandoned property may be searched and seized without probable cause. **RULE #U:** For abandonment, the State must demonstrate

by a preponderance of the evidence that the defendant's voluntary words or conduct would lead a reasonable person in the search officer's position to believe that the defendant relinquished his property interest in the item searched or seized. **RULE #V:** As a test for whether searching officer reasonably believed an item was abandoned, and thus not subject to Fourth Amendment protections, is objective, it matters not if the defendant desires to later reclaim the item; what matters is the external manifestations of the defendant's intent as judged by a reasonable person who possesses the same knowledge available to the police. **RULE #W:** In determining whether property subject to warrantless search has been abandoned, courts look at the totality of the circumstances, but pay particular attention to explicit denials of ownership and to any physical relinquishment of the property. **RULE #X:** The Fourth Amendment's constitutional safeguards are personal protections that may not be vicariously asserted and, thus, not every aggrieved defendant can seek to exclude evidence allegedly obtained in violation of the Fourth Amendment. **RULE #Y:** Defendant seeking to exclude evidence resulting from warrantless search bears the burden of establishing that he held a reasonable expectation of privacy, i.e., one that society is prepared to recognize as reasonable, in the place searched or the property seized. **RULE #Z:** Factors for determining a reasonable expectation of privacy in place searched or property seized without warrant include whether the defendant was legitimately present in the area searched, his possessory interest in the area or property seized, his prior use of the area searched or property seized, his ability to control or exclude others' use of the property, and his subjective expectation of privacy. **RULE #AA:** While an overnight guest in a home may claim the protection of the Fourth Amendment, one who is merely present with the consent of the householder may not.

FINDING #1: (A) No Fourth Amendment search was implicated by the police officer's warrantless entry into a common area of an unlocked apartment building after Thomas and his confederate fled into the building upon seeing a police vehicle: **WHY:** *The officer entered the building at a reasonable hour; the defendant did not present any evidence that the unlocked building was customarily locked or had a "no trespass" sign posted outside so that he might have an expectation of privacy there; and the officer remained in the common area of building.* (B) The police officer had probable cause to believe that criminal activity was afoot when he arrested Thomas without a warrant: **WHY:** *The officer witnessed Thomas fleeing from him into a nearby apartment building upon seeing the officer's police vehicle, then witnessed him handing a firearm to his confederate and fleeing upstairs upon seeing the officer in common area of building, suggesting he did not have lawful possession of the firearm; and the officer had made multiple arrests for narcotics, gangs, and drugs in the neighborhood and was patrolling due to activities of rival gangs at the time of the incident.* (C) Thomas had abandoned the firearm prior to its warrantless seizure by a police officer, thus the firearm was not subject to protection under the Fourth Amendment. **WHY:** *He physically relinquished the firearm to his confederate, while knowing the police were in hot pursuit, then shut the confederate out of his purported apartment unit, exhibiting that he did not wish to be caught in possession of firearm; and his confederate then discarded the firearm in common area of the apartment building where anyone could have retrieved it.* (D) Thomas' actions of fleeing into the apartment building upon seeing a police vehicle, then handing the firearm to his confederate and again fleeing up the stairs upon seeing a police officer enter the building's common area, provided the officer with probable cause to believe he was committing a felony in the officer's presence, and thus the officer rightfully followed Thomas into his alleged apartment unit to make a warrantless arrest, even assuming the apartment unit was his and his purported girlfriend did not lawfully consent to the police entering. (E) There was insufficient evidence that Thomas had a reasonable expectation of privacy in the apartment unit in which he was arrested to afford him Fourth Amendment protections in it. **WHY:** *Although the evidence established Thomas' presence in and access to the apartment unit, it did not establish whether the apartment unit was locked before he entered, how often he was in the apartment, whether he planned to stay there for more than a brief period of time, or whether he kept any possessions there.* (F) There was no real encounter between the police officers and Thomas when the officers, in a police vehicle, initially approached Thomas and his cohort loitering on a sidewalk, he looked directly at the officers, and he and his confederate fled into an apartment building and closed the door, and thus there was no Fourth Amendment stop or seizure. **WHY:** *The defendant and his confederate had already entered the building before the officers announced their office and chased the two men.*

RULE #1: Bizarre behavior or delusional statements do not compel an insanity finding, as a defendant can suffer mental illness without being legally insane.

FINDING #1: The defense counsel's failure to pursue an insanity defense did not constitute a deficient performance and, thus, was not ineffective assistance of counsel. **WHY:** *The record failed to show whether the counsel investigated an insanity defense and, if so, what he actually discovered, and although there was evidence in the record of Ressa's mental illness, the only an expert opinion was from a doctor who found that Ressa was not legally insane.*

ISSUE #2: Did the trial court err in allowing evidence of Ressa's writings and other materials? **(Yes).**

RULE #2: Evidence of other crimes, wrongs, or acts may be admitted for purposes other than prove the character of a person, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

FINDING #2: The evidence of Ressa's delusional and fantastical writings, online searches relating to well-known cases involving children who had been murdered and sexually molested, and other items relating to children, was relevant and admissible to prove intent or motive in trial for aggravated criminal sexual abuse. **WHY:** *The People had to prove that Ressa touched the minors for the purpose of his sexual gratification, and the facts showed that Ressa touched the minors in an arguably nonsexual manner, and the evidence at issue put Ressa's otherwise "innocent" touching in context, as a vast majority of the evidence at issue revolved around Ressa's obsession with sexual activity involving children.*

ISSUE #3: Did the People fail to present sufficient evidence to support Ressa's conviction for Aggravated Criminal Sexual Abuse and one count of Child Abduction? **(No).**

RULE #3a: When presented with a challenge to the sufficiency of the evidence, it is not the function of the Appellate Court to retry the defendant; rather, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **RULE #3b:** The trier of fact has the responsibility to assess the credibility of the witnesses, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences therefrom.

FINDING #3: There was sufficient evidence to support Ressa's convictions of aggravated criminal sexual abuse and child abduction. **WHY:** *Although Ressa touched the child victims in a manner that was not necessarily visibly sexual, a rational fact finder could infer that Ressa's intent was sexual from his attempt to lure the children with candy and money to a secluded place and from his numerous writings that concerned sexual conduct with children; and the evidence of defendant's attempts to lure other children with candy and money corroborated the victim's testimony about his attempts to lure her into his car with candy.* 720 Ill. Comp. Stat. Ann. 5/10-5(a), 5/10-5(b)(10), 5/11-1.60(c)(1)(i).

ISSUE #4: Was Ressa's aggregate sentence of 20 years excessive? **(No).**

RULE #4a: The trial court is granted deference in imposing a sentence because it is generally in a better position than the reviewing court to determine the appropriate sentence, as it has the opportunity to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. **RULE #4b:** Sentences are presumed to be proper; when a sentence falls within the statutorily prescribed range, it will not be found to be excessive or an abuse of discretion unless it greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. **RULE #4c:** The spirit and purpose of the law are promoted when the trial court's sentence reflects both the seriousness of the offense and the defendant's rehabilitative potential; however, the seriousness of the offense is the most important factor for the court to consider.

FINDING #4: Ressa's sentence of an aggregate term of 20 years' imprisonment for two counts of aggravated criminal sexual abuse and five counts of child abduction was not disproportionate to the nature of his offenses. **WHY:** *Ressa had a long history of deviant desires concerning children, which he acted upon in two separate incidents involving five children; and his psychological reports and his writings regarding his preoccupation with sexual activity with children presented Ressa as a continuing, significant danger to the public and, specifically, a danger to children.*

RESULT: Ressa's convictions for Child Abduction and Aggravated Criminal Sexual Abuse were affirmed.

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CASE #2

- 1) **DUE PROCESS (Indictment):** The People did not use misleading testimony to obtain an indictment.
- 2) **EVIDENCE (Hearsay):** The trial court did not err in refusing to allow a witness's statement against penal interest to be introduced.
- 3) **PROSECUTOR CONDUCT (Misstatement of Evidence):** The prosecutor did not deny this defendant a fair trial by misstating evidence.
- 4) **REASONABLE DOUBT (Murder):** The People presented sufficient evidence to support this defendant's murder conviction.

People v. Jose Rebollar-Vergara, 2019 IL APP (2nd) 140871, (2nd Dist. March 25, 2019) First-Degree Murder - - Affirmed.

FACTS: A jury found Rebollar-Vergara guilty of first-degree murder (720 ILCS 5/9-1(a)(1)), based on acts committed with his codefendant, Jose Garcia, who fatally shot Gabriel Gonzalez outside a convenience store. On direct appeal, Rebollar-Vergara requested a new trial to remedy three errors: (1) the People violated his right to due process by securing an indictment supported by misleading testimony that he flashed "gang signs" at Gonzalez and "confessed" to the police, (2) Garcia's statement that Rebollar-Vergara should not be charged with murder was an admission against penal interest that was erroneously excluded, and (3) the prosecutor repeatedly misstated during closing argument that Garcia held the position of "security" in the Latin Kings street gang. Rebollar-Vergara also disputed the sufficiency of the evidence.

APPEAL: The Appellate Court held that: (a) the testimony the People presented to grand jury from police officers concerning various confessions did not deprive Rebollar-Vergara of due process; (b) the questions asked by an assistant state's attorney (ASA) to were not an attempt to mislead the grand jury; (c) the statement by a codefendant was not admissible as a statement against penal interest; and (d) the evidence in this case was sufficient to prove Rebollar-Vergara's accountability through a common criminal design.

CASE ANALYSIS

ISSUE #1: Did the People use misleading testimony to obtain an indictment against Rebollar-Vergara? (No).

RULE #1a: The grand jury's role is to determine whether probable cause exists that a person has committed a crime, which would warrant a trial; prosecutors advise the grand jury by informing it of the proposed charges and the pertinent law. **RULE #1b:** A prejudicial denial of due process can occur

where an indictment is procured through prosecutorial misconduct. **RULE #1c:** The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence. **RULE #1d:** To warrant dismissal of an indictment, the denial of due process must be unequivocally clear, and the prejudice must be actual and substantial. **RULE #1e:** Prosecutorial misconduct resulting in a due process violation during a grand jury proceeding is actually and substantially prejudicial only if the grand jury would not have otherwise indicted the defendant. **RULE #1f:** A defendant claiming a due process violation based on prosecutorial misconduct before a grand jury must establish that the contested testimony was so deceptive or inaccurate that it affected the grand jury's deliberations. **RULE #1g:** A defendant charged as a principal can be convicted on a theory of accountability if supported by the evidence. 720 Ill. Comp. Stat. Ann. 5/5-2(c). **RULE #1h:** It is proper to charge a defendant as a principal even though the proof is that the defendant was only an accomplice. **RULE #1i:** A "grand jury proceeding" is not an adversarial hearing in which the guilt or innocence of the accused is adjudicated; rather, it is an ex-parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person. **RULE #1j:** To obtain a dismissal of an indictment on the ground of prosecutorial misconduct, the defendant must show that the prosecutors prevented the grand jury from returning a meaningful indictment by misleading it. **RULE #1k:** To warrant dismissal indictment, prosecutorial misconduct in connection with grand jury proceeding must rise to level of a deprivation of due process or a miscarriage of justice.

FINDING #1: (A) The testimony presented to the grand jury from police officers concerning confessions and gang signs made by Rebollar-Vergara was not an unequivocally clear error that resulted in actual and substantial prejudice to deprive Rebollar-Vergara of due process in this murder prosecution. **WHY:** Although Rebollar-Vergara claimed he did not confess to any involvement in the murder, during a police interview Rebollar-Vergara admitted to a role in the initiation and confrontation with the victim outside a convenience store before a codefendant shot victim; and validity of the indictment did not turn on whether Rebollar-Vergara explicitly "confessed" or flashed gang signs at the victim, because the grand jury heard evidence that Rebollar-Vergara and his codefendant were fellow gang members who confronted and aggressively pursued the victim, who they thought was a rival gang member. 720 Ill. Comp. Stat. Ann. 5/9-1(a)(1). **(A)** Questions asked by an assistant state's attorney (ASA) to a police officer during the grand jury proceedings concerning Rebollar-Vergara's and his codefendant's alleged confessions and use of gang signs were not an attempt to mislead the grand jury. **WHY:** At worst, the colloquy before the grand jury was an imprecise representation of Rebollar-Vergara's and the codefendant's statements to the police and hand gestures toward the victim; and the defendant offered no evidence that either the ASA or the testifying police officer deliberately attempted to mislead the grand jury.

ISSUE #2: Did the trial court err in refusing to allow a witness's statement against penal interest to be introduced? **(No).**

FINDING #2: A statement by the codefendant, that he acted alone in committing the murder; that the murder was not gang related, and that Rebollar-Vergara should not be charged, was uncorroborated and had its trustworthiness undermined, and thus, was not admissible under hearsay exception as a statement against penal interest in Rebollar-Vergara's murder prosecution. **WHY:** A surveillance video showed the codefendant and Rebollar-Vergara together following the victim across a convenience store parking lot, with the codefendant flashing gang signs, and at the time of the police interview, the codefendant was aware that he would be convicted and would receive a long prison term, and his statement purporting to exculpate Rebollar-Vergara could reasonably be interpreted as an effort to insulate a fellow gang member.

ISSUE #3: Did the prosecutor deny Rebollar-Vergara a fair trial by misstating evidence? **(No).**

RULE #3a: During closing argument, the prosecutor may comment on the evidence presented or reasonable inferences drawn from that evidence, respond to comments made by defense counsel that clearly invite response, and comment on the credibility of witnesses. **RULE #3b:** It is improper for a

prosecutor to argue inferences or facts not based upon the evidence. **RULE #3c:** Typically, a timely objection and an instruction to the jury to disregard a prosecutor's improper argument to a jury are sufficient to cure the error. **RULE #3d:** In reviewing allegations of prosecutorial misconduct in a closing argument, closing arguments of both state and defendant must be examined in their entirety and in context.

FINDING #3: The prosecutor's statements during closing argument that the codefendant held position of "security" in a gang were not misstatements of the evidence in Rebollar-Vergara's murder prosecution. **WHY:** The People presented evidence of gang affiliation to support an inference that Rebollar-Vergara and his codefendant acted with a common criminal design; and tattoos, clothing, hand signs flashed in photographs and on a surveillance video from the crime were presented to the jury as evidence that Rebollar-Vergara and his codefendant were members of a gang; and a police officer testified generally to gang hierarchy, where he described the role of "security," including the handling, management, and distribution of guns. 720 Ill. Comp. Stat. Ann. 5/5-2(c), 5/9-1(a)(1).

ISSUE #4: Did the People fail to present sufficient evidence to support Rebollar-Vergara's murder conviction? (No).

RULE #4a: Testimony may be found insufficient under the Jackson v. Virginia standard of review for claims that evidence was insufficient to sustain a conviction, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. **RULE #4b:** The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. **RULE #4c:** The credibility of a witness is within the province of the trier of fact, whose finding is entitled to great weight but is not conclusive; the Appellate Court will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. **RULE #4d:** Verbal agreement between offenders is not necessary to establish a common purpose to commit a crime. 720 Ill. Comp. Stat. Ann. 5/5-2(c). **RULE #4e:** In determining defendant's legal accountability, trier of fact may consider defendant's presence during commission of offense, and defendant's continued close affiliation with other offenders after commission of crime, defendant's failure to report incident, and defendant's flight from scene; the factors are not required for a finding of accountability and are instead used as considerations. **RULE #4f:** Accountability is not a crime in and of itself but, rather, a mechanism through which a criminal conviction may result. 720 Ill. Comp. Stat. Ann. 5/5-2(c). **RULE #4g:** To prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either: (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design. **RULE #4h:** Under the "common-design rule," if two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts. **RULE #4i:** Evidence that the defendant voluntarily attached himself to a group bent on illegal acts, with knowledge of its design, also supports an inference that he shared the common purpose and will sustain his conviction of an offense committed by another. **RULE #4j:** Mere presence at the scene of a crime, or even presence coupled with flight from the scene or knowledge of the commission, is not sufficient to establish accountability. **RULE #4k:** Accountability focuses on the degree of culpability of the offender and seeks to deter persons from intentionally aiding or encouraging the commission of offenses; thus, unless the accomplice intends to aid the commission of a crime, no guilt will attach.

FINDING #4: The evidence in this case was sufficient to prove Rebollar-Vergara's accountability through a common criminal design to sustain his conviction for murder following the shooting death of the victim by his codefendant. **WHY:** Although there was no evidence that Rebollar-Vergara directly participated in the actual shooting of the victim, an expert testified that Rebollar-Vergara and his codefendant were members of a gang; evidence was presented that Rebollar-Vergara made gang signs toward the victim, and he admitted he followed the victim and initiated a confrontation intending to fight the victim, which was ample evidence from which the jury could infer that Rebollar-Vergara's arguing with and pursuit of the victim from a convenience store was a cue to his codefendant to escalate the

summary suspension. The motorist thereafter moved to compel discovery, alleging that he had filed motions to a produce booking-room video and accuracy-check records from the breath-testing machine and that the People had failed to comply with the requests, and requesting that the delay in holding the hearing be attributed to the People, or, alternatively, an inference that the requested discovery materials were favorable to him. The Trial Court held the motion to compel in abeyance, ordered the People to produce discovery, and tolled the statutory period in which the motorist was entitled to hearing. The motorist then moved to rescind his suspension, arguing that he was entitled to rescission because he was not given a timely hearing.

APPEAL: The Appellate Court held that the one-week delay for the People to comply with the motorist's discovery requests was attributable to the People, and thus did not toll the statutory 30-day period for conducting a hearing on the motorist's petition.

CASE ANALYSIS

ISSUE: Did the People's delay in providing discovery deny Patel a timely and meaningful hearing? (Yes).

RULE #1: Proceedings on a petition to rescind the statutory summary suspension of a motorist's driving privileges are civil. 625 Ill. Comp. Stat. Ann. 5/2-118.1, 5/11-501.1. **RULE #2:** The motorist bears the burden of proof in a proceeding on a petition to rescind the statutory summary suspension of the motorist's driving privileges. **RULE #3:** If a motorist establishes a prima facie case for rescission of the statutory summary suspension of the motorist's driving privileges, then the burden shifts to the People to present evidence justifying the suspension. **RULE #4:** In a statute, the word "shall" conveys that the legislature intended to impose a mandatory obligation. **RULE #5:** The statute providing that a motorist petitioning to rescind the statutory summary suspension of his driving privileges "shall" be given a hearing on his petition within 30 days after the petition is received or on the first appearance date is fulfilled when the defendant is given a timely hearing. 625 Ill. Comp. Stat. Ann. 5/2-118.1(b). **RULE #6:** Failure to comply with the statute providing that a motorist petitioning to rescind the statutory summary suspension of his driving privileges "shall" be given a hearing on his petition within 30 days results in the rescission of the suspension, unless the delay is occasioned by the motorist. **RULE #7:** For purposes of the criminal speedy-trial statute, a reviewing court reviews for an abuse of discretion the trial court's decision to attribute time to the defendant. 225 Ill. Comp. Stat. Ann. 5/103-5.

FINDING: The one-week delay for the People to comply with the motorist's discovery requests was attributable to the People and thus did not toll the statutory 30-day period for conducting a hearing on the motorist's petition to rescind summary suspension of his driving privileges. **WHY:** *The motorist issued his discovery requests on the same day he filed his petition for rescission of suspension, but People failed to produce any discovery on or before the first scheduled court date, which was held 31 days after the motorist filed his petition, and the People did not dispute that it would have been feasible to produce all the responsive discovery to the motorist prior to that court date had People acted in more timely fashion.* 625 Ill. Comp. Stat. Ann. 5/2-118.1(b).

RESULT: The trial court's denial of the Patel's motion to rescind his summary suspension was reversed.

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CASE #5

1) **PROSECUTOR CONDUCT (Misstatement of Evidence):** The prosecutor did not deny this defendant a fair trial by misstating the law concerning accountability.

2) **REASONABLE DOUBT (Murder):** The People did not fail to present sufficient evidence to support this defendant's murder conviction.

People v. Ricardo A. Garcia, 2019 IL APP (2nd) 161112, (2nd Dist. March 26, 2019) First-Degree Murder - - Affirmed.

FACTS: Following a trial, a jury found Garcia guilty of first-degree murder in connection with a shooting (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3)). Garcia was also found guilty of mob action (720 ILCS 5/25-1(a)(1)). He was found not guilty, however, of the attempted murders of two other victims. The court sentenced him to 35 years in prison for first-degree murder, to be served consecutively to a 2-year sentence for mob action. On appeal, he challenged the sufficiency of the evidence. He also argued that certain examples that the prosecutor used in his closing argument to illustrate the concept of accountability constituted plain error.

APPEAL: The Appellate Court held that: (a) the evidence in this case was sufficient to support Garcia's convictions under the common-design theory, and (b) the prosecutor's error during closing argument did not constitute plain error.

CASE ANALYSIS

ISSUE #1: Did the People fail to present sufficient evidence to support this defendant's murder conviction? (No).

RULE #1a: The People may prove that a defendant possessed the requisite intent to promote or facilitate a crime by presenting evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design. 720 Ill. Comp. Stat. Ann. 5/5-2(c). **RULE #1b:** Under the "common-design rule," if two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts. **RULE #1c:** Under accountability statute, where a defendant voluntarily attaches himself to a group that is bent on illegal acts and he has knowledge of the group's design, this supports an inference that the defendant shared the common purpose and will sustain the defendant's conviction for an offense committed by another member of the group. **RULE #1d:** In evaluating whether a defendant is legally accountable for the actions of another, the trier of fact may consider factors such as whether the defendant was present during the perpetration of the offense, whether he fled from the scene, whether he maintained a close affiliation with his companions after the commission of the crime, and whether he failed to report the crime. **RULE #1e:** Active participation in the offense is not required in determining guilt under an accountability theory. **RULE #1f:** In determining guilt under an accountability theory, it is not necessary for the State to prove words of agreement to establish a common purpose to commit a crime. **RULE #1g:** Common design to commit crime can be inferred from the circumstances surrounding the perpetration of the unlawful conduct. **RULE #1h:** Fact that a defendant was present at the scene of a crime and knew that a crime was being committed, without more, does not establish accountability. **RULE #1i:** To determine whether a statement conveyed an intent to commit violence, it is important to consider the context in which the statement was made.

FINDING #1: The evidence in this case was sufficient to support Garcia's convictions for first-degree murder and mob action under a common-design theory. **WHY:** *The defendant and his fellow gang members belonged to a gang that was a rival of the gang to which the victims belonged; Garcia drove his fellow gang members to the rival gang territory for the stated purpose of "getting at somebody;" He remained in the immediate vicinity long enough for his fellow gang members to approach the victim's vehicle, engage in conversation, fire approximately a dozen shots at the vehicle, and return to the vehicle; and Garcia attempted to evade the police by driving recklessly and eventually jumped out of the vehicle to run away on foot.* 720 Ill. Comp. Stat. Ann. 5/5-2(c), 5/9-1(a), 5/25-1(a)(1).

ISSUE #2: Did the prosecutor deny Garcia a fair trial by misstating the law concerning accountability? (No).

kidnapping and argued the admission of a recording of the victim's interview at a child advocacy center (CAC) violated his right to confront witness against him. Specifically, he maintained that the victim was unavailable for cross-examination because she testified that she did not remember the events constituting the offense of predatory criminal sexual assault of a child. Smith also argued that his mandatory sentence of life imprisonment was unconstitutional as applied to him because he is intellectually disabled.

APPEAL: The Appellate Court held that: (a) the victim was available for cross-examination for purposes of the confrontation clause, and (b) the trial record was insufficient to address Smith's as-applied constitutional challenge against his mandatory sentence of life imprisonment arguing he was intellectually disabled.

CASE ANALYSIS

ISSUE #1: Did the trial court err in allowing evidence of the victim's recorded statement to be introduced against Smith? (No).

RULE #1a: When the declarant appears for cross-examination at trial, the confrontation clause places no constraints at all on the use of his prior testimonial statements. **RULE #1b:** Confrontation clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it. **RULE #1c:** In general, a witness is considered to be present, available for, or subject to cross-examination, for purposes of confrontation, when the witness takes the stand, is placed under oath, and willingly answers questions, and the opposing party has an opportunity to cross-examine the witness. **RULE #1d:** Key inquiry in determining whether the declarant is available for cross-examination, for purposes of confrontation, is whether the declarant was present for cross-examination and answered all of the questions asked of him or her by defense counsel. **RULE #1e:** Where the declarant appears for cross-examination, even where the declarant does not testify to the substance of his hearsay statement, its admission is a nonevent under the confrontation clause. **RULE #1f:** A gap in the witness' recollection concerning the content of a prior statement does not necessarily preclude an opportunity for effective cross-examination for purposes of confrontation clause. **RULE #1g:** There are no confrontation clause problems merely because the witness's memory problems preclude him from being cross-examined to the extent the parties would have liked. **RULE #1h:** Definition of unavailability in hearsay rule applies when analyzing the admissibility of hearsay statements pursuant to the exceptions outlined in the rule; however, rule does not concern availability for cross-examination under the confrontation clause.

FINDING #1: The minor sexual assault victim in this case was available for cross-examination for purposes of the confrontation clause, despite her testimony she could not remember what happened between the time she removed her clothing and the time her grandfather entered the camper in this trial for predatory criminal sexual assault of a child and aggravated kidnapping. **WHY:** The victim took the witness stand and willingly answered the questions posed to her by prosecutor and defense counsel; and victim answered every question asked of her during cross-examination.

ISSUE #2: Was Smith's mandatory life sentence unconstitutional because he was intellectually disabled? (The Court was unable to rule on this issue).

RULE #2: Post-Conviction Hearing Act specifically allows for raising constitutional questions which, by their nature, depend upon facts not found in the record. 725 Ill. Comp. Stat. Ann. 5/122-1 et seq.

FINDING #2: The appellate court concluded that the trial record in this case was insufficient to address Smith's as-applied constitutional challenge arguing his mandatory sentence of natural life imprisonment for predatory criminal sexual assault of a child violated the Eighth Amendment due to his alleged intellectual disability, but Smith was not foreclosed from bringing challenge in a post-conviction petition. **WHY:** He failed to raise this challenge in the trial court and the trial court did not make any findings of fact regarding the challenge; the record did not establish that Smith did, in fact, suffer from an intellectual disability; and the record contained no indication of Smith's intelligence quotient or a formal diagnosis of an intellectual disability.

where the evidence was closely balanced, (2) his trial counsel denied him effective assistance of counsel, (3) the trial court did not adequately address his *pro se* claims of ineffective assistance as required by *People v. Krankel*, 102 Ill. 2d 181, (1984), and (4) his conviction for criminal sexual assault should be vacated under the one-act, one-crime rule.

APPEAL: The Appellate Court held that: (a) any error resulting from the trial court's failure to properly instruct jury according to voir dire rule was not plain error; (b) the defense counsel did not abandon a promised defense, as would constitute ineffective assistance of counsel; (c) evidence at a hearing conducted pursuant to *People v. Krankel*, 102 Ill. 2d 181, 80 Ill. Dec. 62, 464 N.E.2d 1045, did not support Reveles-Cordova's claim that his trial counsel was ineffective because he failed to give Reveles-Cordova the option to proceed with a bench trial; (d) remand was required to address the ineffective assistance claims that arose after preliminary *Krankel* hearing; and (e) Reveles-Cordova's convictions for home invasion and criminal sexual assault were not required to be merged under the one act, one crime rule.

CASE ANALYSIS

ISSUE #1: Did the trial court fail to properly question this defendant's jurors concerning their understanding of the rights of a defendant? (**Perhaps, but any error was harmless.**)

RULE #1a: Pursuant to rule governing voir dire examination, and principles articulated in *People v. Zehr*, 103 Ill.2d 472, trial court must inquire whether potential jury members understand and accept four principles: that the defendant is presumed innocent, the People are required to prove guilt beyond a reasonable doubt, the defendant is not required to put on a case, and the jury cannot hold defendant's decision not to testify against him or her. **RULE #1b:** Trial court's failure to comply with voir dire examination rule requiring jurors to acknowledge and accept certain principles, such as People's burden of proof, does not automatically require remand for a new trial.

FINDING #1: The evidence in this prosecution for home invasion and criminal sexual assault was not so closely balanced that the trial court's error, in failing to properly instruct the jury according to voir dire rule as to the four principles they were required to accept, constituted plain error. **WHY:** The People's case was replete with evidence that Reveles-Cordova committed both of the charged offenses, including police photographs corroborating the victim's version of events and testimony of multiple witnesses; the defense counsel clarified the principle that Reveles-Cordova did not have to put on a case at all; and the testimony of Reveles-Cordova's sole witness, his own son, independently corroborated the victim's version of events.

ISSUE #2: Did the defense attorney provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent? (**No**).

RULE #2a: To show ineffective assistance of counsel, a defendant must show counsel's representation fell below an objective standard of reasonableness and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial. **RULE #2b:** To establish ineffective assistance of counsel, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. **RULE #2c:** For purposes of showing a reasonable probability that result of proceeding would have been different but for counsel's unprofessional errors, as required to establish ineffective assistance of counsel, "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

FINDING #1: (A) The counsel for Reveles-Cordova charged with criminal sexual assault of his ex-girlfriend did not abandon a promised defense, as would constitute ineffective assistance of counsel, by telling the jury in opening statement that the issue in the case would be consent, and then not requesting a jury instruction on consent. **WHY:** The counsel's statement indicated that the People would not be able to prove beyond a reasonable doubt that Reveles-Cordova used force to have sex with the victim and did

not receive consent, but he never claimed he would be presenting a case demonstrating that the victim consented to intercourse, and in fact he explicitly told the jury he might not present a case at all, as it was within Reveles-Cordova's rights to present no evidence and let the People's case speak for itself. (B) The defense counsel's failure to obtain a ruling before opening statements on the People's ability to impeach Reveles-Cordova regarding his proffered testimony to show consent did not constitute ineffective assistance of counsel. **WHY:** *Although the counsel told the jury during opening statements that an issue in the case would be consent, the counsel did not promise a consent defense.* (C) The defense counsel's decision not to present a consent defense after Reveles-Cordova received an adverse ruling on whether the People could impeach him with his lack of testimony in his first trial on the same charges if he testified in his second trial was not objectively unreasonable, and thus did not constitute ineffective assistance. **WHY:** *Reveles-Cordova had affirmatively waived his right to testify, but his testimony was necessary for his counsel to support a consent defense; and although he maintained that he should have taken the stand to provide some evidence of consent regardless of the adverse ruling, his testimony was unlikely to have impacted the outcome of trial, given the fact that he was convicted in his first trial after having testified.*

ISSUE #3: Did the trial court err in failing to properly inquire into Reveles-Cordova's complaints about his counsel? (Yes).

RULE #3a: The defendant retains authority over the decision of whether to testify. **RULE #3b:** When conducting a hearing under *People v. Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, trial court must examine defendant's pro se claims to determine whether they have merit or concern matters of purely trial strategy. **RULE #3c:** In conducting a hearing under *People v. Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, if the defendant's allegations show possible neglect of the case, new counsel should be appointed to fully prosecute the ineffectiveness claim before the trial court. **RULE #3d:** When reviewing the issue of whether the trial court properly conducted a hearing under *People v. Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, the operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's pro se allegations of ineffective assistance of counsel. **RULE #3e:** When reviewing the issue of whether the trial court properly conducted a hearing under *People v. Krankel* to determine whether to appoint postconviction petitioner new counsel to litigate claims alleging ineffective assistance of trial counsel, the operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's pro se allegations of ineffective assistance of counsel.

FINDING #3: (A) The evidence at the hearing to determine whether to appoint Reveles-Cordova a new counsel for his postconviction claims alleging ineffective assistance of trial counsel did not support a finding that the trial counsel failed to give him the option to proceed with a bench trial. **WHY:** *The trial counsel testified that he had a conversation with Reveles-Cordova about his options at trial and advised against a bench trial; a memo in the trial counsel's case file documented the conversations regarding a bench trial; Reveles-Cordova chose to proceed before a jury at both his first and second trials; and he never mentioned an issue with the jury despite being present at every step of the proceeding.* (B) The trial court's failure to inquire into Reveles-Cordova's postconviction claims alleging ineffective assistance of trial counsel, which arose after the preliminary hearing under *People v. Krankel* required remand of this case for a hearing to address such subsequent claims. **WHY:** *Reveles-Cordova was entitled to more than one Krankel inquiry.*

ISSUE #4: Could Reveles-Cordova properly have been convicted of both Home Invasion and Criminal Sexual Assault? (Yes).

RULE #4a: Under the one-act, one-crime rule, a defendant may only be convicted and sentenced for the most serious offense if multiple charges arise out of the same act. **RULE #4b:** Defendant's convictions for home invasion and criminal sexual assault were not required to be merged under the one act, one

defendant a fair trial by misstating evidence.

2) REASONABLE DOUBT (Burglary): The People failed to present sufficient evidence to support this defendant's Burglary conviction.

3) REASONABLE DOUBT (Retail Theft): The People did not fail to present sufficient evidence to support this defendant's Retail Theft conviction.

People v. Frederick L. Holt, 2019 IL APP (3rd) 160504, (3rd Dist., March 7, 2019) Burglary and Retail Theft - - Affirmed in Part; and Reversed in Part.

FACTS: Holt was convicted of burglary (720 ILCS 5/19-1(a)) and retail theft (id. § 16-25(a)(1)) and was sentenced to concurrent prison terms of eight and three years, respectively. On appeal, Holt argues that (1) the People failed to prove that he committed the offense of burglary, (2) they also failed to prove him guilty beyond a reasonable doubt of retail theft, and (3) he was entitled to a new trial due to prosecutorial misconduct in closing arguments.

APPEAL: The Appellate Court held that: (a) Holt did not enter the retail store without authority, for purposes of the burglary statute; (b) sufficient evidence supported Holt's conviction for retail theft; (c) The evidence in this case was not closely balanced, and, therefore, Holt failed to meet his burden of proving plain-error; and (d) the defense counsel's failure to object to the prosecutor's improper comments during closing arguments did not prejudice Holt, and thus could not amount to ineffective assistance.

CASE ANALYSIS

ISSUE #1: Did the People present sufficient evidence to support Holt's Burglary conviction? **(No).**

FINDING #1: Holt did not enter the retail store without authority, for purposes of burglary statute. **WHY:** The store was a business open to the public and Holt entered store during normal business hours. 720 Ill. Comp. Stat. Ann. 5/19-1(a).

ISSUE #2: Did the People fail to present sufficient evidence to support this defendant's Retail Theft conviction? **(No).**

FINDING #2: Sufficient evidence supported Holt's conviction of retail theft. **WHY:** A witness saw Holt take merchandise out of his clothes and place them in a backpack before reentering store; the witness saw a backpack in the store vestibule; a police officer testified that the backpack contained items from inside the store; no receipts for items in backpack were found in backpack or in the possession of Holt; and the store manager scanned the items found in the backpack and determined that they were items offered for sale by the store. 720 Ill. Comp. Stat. Ann. 5/16-25(a).

ISSUE #3: Did the prosecutor deny this defendant a fair trial by misstating evidence? **(No).**

FINDING #3: **(A)** The prosecutor's comments during closing arguments were intended to invite the jury to use the Holt's post-arrest silence as a tacit admission of guilt, in violation of his Fifth Amendment right against self-incrimination, and, therefore, the comments constituted clear and obvious error. **(B)** Holt forfeited his claim that he was entitled to a new trial due to prosecutorial misconduct during closing arguments. **WHY:** The defense counsel failed to object to the prosecutor's comments at trial. **(C)** The evidence in this case was not closely balanced, and thus the clear and obvious error that occurred during closing arguments when the prosecutor violated Holt's Fifth Amendment right against self-incrimination by making comments regarding his failure to tell the police why he had clothes in his pants did not constitute plain error. **WHY:** Holt was observed removing items from his clothes and placing them in a backpack; the backpack contained merchandise offered for sale by the store; Holt had merchandise offered for sale by the store concealed in his pants; and he was outside the store vestibule with the

backpack. (D) The defense counsel's failure to object to the prosecutor's improper comments during closing arguments did not prejudice Holt, and thus could not amount to ineffective assistance, in prosecution for retail theft. WHY: The evidence of Holt's guilt was not closely balanced, and there was no reasonable probability that outcome of proceeding would have been different had defense counsel objected to prosecutor's improper comments.

RESULT: Holt's convictions for Burglary and Retail Theft were affirmed in part; and reversed in part.

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CASE #7

1) REASONABLE DOUBT (Domestic Battery): The People overcame the defendant's "defense of property" defense in his Domestic Battery case.

2) SENTENCES (Credit): The defendant failed to properly establish that he was entitled to additional sentence credit.

People v. Eric D. Bausch, 2019 IL APP (3rd) 170001, (3rd Dist., March 8, 2019) Domestic Battery - - Affirmed.

FACTS: Bausch appealed his conviction for domestic battery and argued that the People failed to disprove beyond a reasonable doubt that he acted in defense of his property during the underlying incident. He also argued that his fines should have been offset by an additional \$ 5 in monetary credit.

APPEAL: The Appellate Court held that: (a) sufficient evidence established the defendant's use of force against his wife was excessive and not justified with respect to the affirmative defense of defense of property, and (b) the defendant failed to establish, with sufficient clarity, that he spent three days in presentence custody.

CASE ANALYSIS

ISSUE #1: Did the People fail to overcome the defendant's "defense of property" defense in his Domestic Battery case? **(No).**

FINDING #1: Sufficient evidence established that Bausch's use of force against his wife was excessive and not justified in his affirmative defense of defense of property in conviction for domestic battery. WHY: Bausch admitted he did not know that the boat keys and title papers were in his wife's purse; rather he suspected those items were in the purse because he did not see them in the visor of wife's vehicle; and his mere suspicion that his property was located in his wife's purse did not justify him in forcefully grabbing his wife's arm or purse. 720 Ill. Comp. Stat. Ann. 5/12-3.2(a)(2).

ISSUE #2: Did the defendant properly establish that he was entitled to additional sentence credit? **(No).**

RULE #2: An application for monetary credit against a fine may be raised at any time and at any stage of the court proceedings if the basis for granting the application of the defendant is clear and available from the record.

FINDING #2: Bausch failed to establish with sufficient clarity that he spent three days in presentence custody rather than two, for purposes of entitling him to an additional day in monetary credit to be applied against his fine for the days he spent in custody. WHY: Bausch and his attorney both advised the circuit court that he spent two days in presentence custody; the mittimus for failure to give bail and the bail bond deposit demonstrated that he spent two days in presentence custody; and the police officer did not testify as to when Bausch t was taken into custody. 725 Ill. Comp. Stat. Ann. 5/110-14(a).

1. **People v. Bryant K. Mooney, Jr., 2019 IL App (3rd) 150607, (3rd Dist., March 1, 2019)** DWLS - - Reversed.

FACTS: Mooney appealed following his conviction for driving while license suspended. He argued, *inter alia*, that his defense counsel was ineffective for twice agreeing to the People's motions for continuances on the day of trial, thus tolling the speedy trial clock.

ISSUE: TRIAL PROCEDURE (Speedy Trial): Did the continuances the trial court granted the People in this case violate the defendant's right to a speedy trial? **(Yes).**

2. **Hosey v. City of Joliet, 2019 IL App (3rd) 180118, (3rd Dist., March 6, 2019)** Denial of FOIA Request - - Affirmed.

FACTS: Hosey submitted four Freedom of Information Act (FOIA) (5 ILCS 140/1 et seq.) requests to obtain videotaped police interviews of several individuals; defendant, City of Joliet (City), denied the requests. The Illinois Attorney General was asked to review the denials and determined that plaintiff was entitled to the videotapes. When the City still failed to process his requests, Hosey filed a complaint for injunctive relief in the circuit court. Thereafter, both parties filed motions for summary judgment. The trial court granted summary judgment in favor of Joliet and against Hosey, finding that (1) section 103-2.1(g) of the Code of Criminal Procedure of 1963 (Criminal Code) (725 ILCS 5/103-2.1(g) (West 2016)) prohibits disclosure by the City in this case and (2) the City failed to establish its defenses under FOIA that (a) the disclosure constituted an invasion of personal privacy and (b) the disclosure was unduly burdensome. Plaintiff appealed.

ISSUE: FREEDOM OF INFORMATION (Exemption): Did the City properly deny this request for the release of public records pursuant to FOIA? **(Yes).**

3. **People v. Ricky Lee Lobdell, 2019 IL APP (3rd) 180385, (3rd Dist., March 7, 2019)** Criminal Sexual Assault - - Affirmed.

FACTS: Lobdell appealed from a preliminary *Krankel* inquiry, arguing that the court erred in finding that he had not met the requirements of *Krankel* and that counsel did not need to be appointed.

ISSUE: COUNSEL (Krankel Hearing): Did the trial court err in failing to properly inquire into the defendant's complaints about his counsel? **(No).**

4. **In re K.C., 2019 IL APP (4th) 180693, (4th Dist., March 14, 2019)** Adjudication of Delinquency - - Affirmed.

FACTS: The People filed a petition for adjudication of delinquency and wardship, alleging that K.C. was a delinquent minor because he unlawfully possessed a stolen vehicle (625 ILCS 5/4-103(a)(1)) and the debit card of another person (720 ILCS 5/17-32(b)). Following a detention hearing, the trial court found it was a matter of immediate and urgent necessity to detain respondent. Respondent was subsequently released from detention. The People then filed a supplemental petition for adjudication of delinquency and wardship, alleging respondent committed burglary to a motor vehicle (*id.* § 19-1(a)) and unlawful use of a weapon (*id.* § 24-1(a)(1)). The court again found it was a matter of immediate and urgent necessity to detain respondent. K.C. pleaded guilty to burglary of a motor vehicle. The court conditionally released him from detention. The People then filed a supplemental petition for adjudication of delinquency and wardship, alleging K.C. committed retail theft (*id.* § 16-25(a)(1)). The court found it was a matter of immediate and urgent necessity to detain K.C. The court ordered K.C. to be committed to the Department of Juvenile Justice. He appealed, asserting (1) the trial court failed to consider the

requisite statutory factors prior to ordering his detention and (2) although moot, this court should consider the issue under the public interest exception.

ISSUE: JUVENILE LAW (Sentences): Did the trial court err in failing to properly consider the requisite statutory factors before ordering this juvenile's detention? (No).

5. People v. Abel Ruiz, 2019 IL APP (1st) 152157, (1st Dist., March 15, 2019) First-Degree Murder - - Affirmed; Mittimus Corrected.

FACTS: Following a jury trial, Ruiz was convicted of first-degree murder and sentenced to 51 years in prison. On appeal, he argued that the trial court should not have allowed into evidence, as tacit admissions, portions of a police station video recording that included certain statements from a co-arrestee. He also complained that his mittimus should be corrected to reflect an additional day of presentence custody credit.

ISSUES: 1) EVIDENCE (Video): Did the trial court err in allowing into evidence a video of certain statements made by a co-defendant? (No); **2) MITTIMUS (Correction):** Was this defendant entitled to an additional day of sentence credit? (Yes).

6. People v. Johnathon R. Bever, 2019 IL APP (3rd) 170681, (3rd Dist., March 18, 2019) Criminal Sexual Assault - - Affirmed.

FACTS: Bever argued that plain error occurred when the judge considered matters outside the record—namely, his son's Army experiences—in determining defendant's guilt.

ISSUES: JUDICIAL CONDUCT (Consideration of Evidence Outside of the Record): Did the trial court err by considering evidence outside of the trial record; i.e., his son's Army experience? (No).

7. People v. Jamariol D. Funches, 2019 IL APP (3rd) 160644, (3rd Dist., March 19, 2019) DWLS - - Appeal Dismissed.

FACTS: Funches pled guilty to the offense of driving while driver's license is suspended (625 ILCS 5/6-303(d)). Pursuant to the plea agreement, he was placed on a term of 18 months of probation and ordered to serve 148 days in the county jail as a condition of probation. Thereafter, Funches admitted to the allegations contained in the People's amended petition, alleging he violated the terms of his probation. The trial court revoked his probation and sentenced him to two years' imprisonment and one year of mandatory supervised release (MSR). The court credited him with presentence custody credit. Funches filed a motion to withdraw his guilty plea and a motion to reduce his sentence. The trial court denied both motions. Funches filed a notice of appeal. Prior to filing his opening brief in this appeal, Funches's appellate counsel received eight extensions of time to file his brief. Thereafter, Funches filed his opening brief. After the parties submitted their briefs, the appellate court entered a minute order directing the parties to file a stipulation as to Funches' current incarceration and MSR status. The parties filed a stipulation, which revealed that Funches was released from physical custody of the Illinois Department of Corrections and was completely discharged from his sentence. In other words, at the time defendant filed his opening brief on appeal, he was completely discharged from his sentence.

ISSUES: SENTENCES (Credit): Did the fact that the defendant has served his sentence render this appeal wherein he argued that his was entitled to additional sentence credit moot? (Yes).

8. People v. Bernon L. Howery, 2019 IL APP (3rd) 160603, (3rd Dist., March 21, 2019) Denial of Motion for Successive PCP - - Affirmed.

FACTS: Howery appealed the denial of his *pro se* motion for leave to file a successive postconviction petition and motion for discovery.

ISSUE: POST-CONVICTION PETITION (Successive): Did the trial court err in denying this defendant's motion seeking permission to file a successive Post-Conviction Petition? (No).

9. People v. Gerald Drake, 2019 IL 123734, (Ill. Sup. Ct., March 21, 2019) Dismissal of Charges - - Affirmed.

FACTS: Drake was convicted of aggravated battery following a bench trial in the circuit court of Cook County. The appellate court reversed his conviction and held that retrial was barred by the double jeopardy clause.

ISSUE: TRIAL PROCEDURE (Double Jeopardy): Did Double Jeopardy bar the retrial of his defendant? (No).

10. People v. Matthew J. Petrakis, 2019 IL APP (3rd) 160399, (3rd Dist., March 22, 2019) Aggravated Criminal Sexual Abuse - - Affirmed.

FACTS: Petrakis appealed from his aggravated criminal sexual abuse conviction. He argued the People presented and the court erroneously admitted prejudicial evidence that he had committed other acts of promoting prostitution.

ISSUES: EVIDENCE (Other Bad Acts): Did the trial court err in allowing evidence of the defendant's prior promotion of prostitution? (Perhaps, but any error was harmless.).

11. People v. Cedric Johnson, 2019 IL APP (1st) 162517, (1st Dist. March 25, 2019) Armed Violence, Possession of a Controlled Substance and Unauthorized Possession of a Firearm by a Felon - - Reversed and Remanded.

FACTS: Following a bench trial, Johnson was found guilty of armed violence, possession of heroin with the intent to deliver, and the unauthorized use or possession of a weapon by a felon. The trial court merged the unauthorized use or possession of a weapon by a felon count into the armed violence count and sentenced defendant to 15 years in prison for armed violence. The court also sentenced him to a consecutive nine-year sentence for possession of heroin with the intent to deliver. On appeal, Johnson argued that this cause should be remanded for a new trial when he did not waive his right to a jury in open court. He further contended that he was not proven guilty of armed violence beyond a reasonable doubt when the People failed to establish that he had access to a weapon when there was an immediate potential for violence. He also argued that the cause must be remanded for a new trial when he was deprived of his right to a fair trial before an unbiased trier of fact. He finally contended that his mittimus must be corrected.

ISSUE: DUE PROCESS (Jury Trial): Was this defendant denied due process when he did not waive his right to a jury trial in open court? (Yes).

12. People v. Demario D. Reed, 2019 IL APP (4th) 170090, (4th Dist., March 27, 2019) Denial of PCP - - Affirmed.

FACTS: After an evidentiary hearing, the trial court denied postconviction relief to Reed, who is serving a prison sentence of 15 years for armed violence (720 ILCS 5/33A-2(a), 33A-3(a)). He appealed, arguing that newly discovered evidence he presented to the court in the postconviction hearing proved, clearly and convincingly, that he actually was innocent of armed violence despite his earlier negotiated guilty plea to that offense.

ISSUE: POST-CONVICTION PETITION (Dismissal): Did the trial court err in denying this defendant's Post-Conviction Petition following his negotiated guilty plea? (No).

13. People v. Robert Schultz, 2019 IL APP (1st) 163182, (1st Dist., March 29, 2019) UUWF - - Affirmed.

FACTS: Schultz sought a reduction of his Class 2 conviction for unlawful use or possession of a weapon by a felon (UUWF) to a Class 3 offense, because he claimed that the People did not prove that he had a prior conviction for a "forcible felony."

ISSUE: REASONABLE DOUBT (UUWF): Did the People fail to prove that the defendant had a prior conviction for a "forcible felony?" (No).

14. People v. Nathaniel McCurine, 2019 IL App (1st) 160817, (1st Dist., March 29, 2019) Armed Habitual Criminal - - Affirmed.

FACTS: McCurine was convicted of one count of armed habitual criminal and sentenced to nine years with the Illinois Department of Corrections (IDOC). On appeal, he argued, first, that the People's evidence that he constructively possessed a gun was insufficient, where the gun was found in the smaller bedroom of his two-bedroom apartment and his girlfriend testified that he shared the apartment with another tenant who occupied the smaller bedroom. Second, he claimed that the Armed Habitual Criminal statute created an unfair prejudice against the accused in the eyes of the jury, thereby violating due process.

ISSUES: 1) REASONABLE DOUBT (Armed Habitual Criminal): Did the People fail to prove that the defendant had constructive possession of a firearm? (No); **1) CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal):** Was the Armed Habitual Criminal statute unconstitutional? (No).

15. People v. Juan Lewis, 2019 IL APP (1st) 160864, (1st Dist. March 29, 2019) Aggravated Discharge of a Firearm - - Affirmed.

FACTS: Lewis was convicted of aggravated discharge of a firearm and sentenced to 16 years in prison. On appeal, Lewis argued that his right to confront witnesses was violated when the People presented the conclusions of one firearms identification expert through the testimony of another expert, who did not do the testing that led to those conclusions. Lewis did not object to the testimony at trial but asks the appellate court to reverse for plain error.

ISSUE: DUE PROCESS (Confrontation): Was this defendant denied due process when he was denied his right to confront witnesses? (Perhaps, but he forfeited any complaint by failing to object.).

16. People v. Courtney Lewis, 2019 IL APP (1st) 160705, (1st Dist., March 29, 2019) AUUW - - Affirmed; Fees and Fines Corrected.

FACTS: Lewis was convicted after a jury trial of aggravated unlawful use of a weapon (AUUW) and sentenced to one year in the Illinois Department of Corrections (IDOC). On appeal, he argued: that the People failed to perfect its impeachment of defense witnesses; that the trial court abused its discretion by denying defense counsel's request to have the gun tested for fingerprints; and that the fines and fees order must be corrected.

ISSUES: 1) TRIAL PROCEDURE (Impeachment): Did the People fail to complete their impeachment of a witness for the defendant? (No); **3) DUE PROCESS (Fingerprint Testing):** Was the

defendant denied due process when the trial court refused to order fingerprint testing on a firearm? (No);
4) **FEES AND FINES (Correction):** Should various fees and fines imposed upon this defendant be corrected? (Yes).

17. **People v. Kevin Jackson, 2018 IL App (1st) 171773, (1st Dist., September 28, 2018)** Denial of Request to File Successive Post-Conviction Petition - - Affirmed. **REHEARING DENIED: March 29, 2019.**

FACTS: Following a jury trial, Jackson was convicted of first-degree murder and aggravated battery with a firearm, convictions the appellate court affirmed on direct appeal. The People's case rested on the prior inconsistent statements of three eyewitnesses. By the time of trial, each of those witnesses had recanted, telling the jury that their previous statements identifying Jackson as the shooter were the result of police coercion. Jackson appealed from the denial of his motion seeking leave to file a successive postconviction petition, which was supported by documents he contended establish a pattern and practice of misconduct by the group of detectives responsible for the investigation that led to his trial and conviction. He argued that the trial court incorrectly determined that this new evidence of a pattern and practice of police misconduct was insufficient to establish either a freestanding claim of actual innocence or to make the threshold showing of cause and prejudice otherwise necessary to file a successive petition. He asked the Court to reverse the trial court's order and to remand this matter either for a second-stage hearing, to determine if there is a substantial basis for his claimed constitutional violations, or for a third-stage evidentiary hearing, on the basis that he has already made such a showing.

ISSUE: POST-CONVICTION PETITION (Successive): Did the trial court err in denying this defendant's request for permission to file a successive post-conviction petition after he claimed that his evidence proved a pattern of improper police misconduct that caused three witnesses to falsely testify against him? (No).

18. **People v. Rodney Burnett, 2019 IL APP (1st) 163018, (1st Dist., March 29, 2019)** Weapons Violation - - Affirmed.

FACTS: Burnett appealed his criminal conviction stemming from his arrest for unlawfully possessing a weapon. He argued that his trial counsel was ineffective for failing to file a motion to quash his arrest since, according to Burnett, he was arrested without probable cause.

ISSUE: COUNSEL (Effectiveness): Did the defense counsel provide ineffective assistance by failing to move to suppress evidence based upon the illegal arrest of this defendant? (No).

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INDEX OF PUBLISHED OPINIONS FOR THE MONTH OF MARCH OF 2019

Title	Citation.	Date.
1. People v. Bryant K. Mooney, Jr., 2019 IL App (3rd) 150607, (3rd Dist., March 1, 2019) DWLS - - Reversed. ISSUE: TRIAL PROCEDURE (Speedy Trial): Did the continuances the trial court granted the People in this case violate the defendant's right to a speedy trial? (Yes). Page 55.		
2. In re J.P., 2019 IL APP (1st) 181087, (1st Dist., March 1, 2019) UUW - - Affirmed and Remanded with Directions. ISSUE: 1) SENTENCES (Constitutionality): Were the conditions of this defendant's probation unconstitutional? (No). Page 27.		

3. **People v. Brandon Meyers, 2019 IL APP (1st) 140891, (1st Dist., December 3, 2018)** Aggravated Discharge of a Firearm - - Affirmed. (MODIFIED upon denial of Rehearing; March 4, 2019). **ISSUES:** 1) **DUE PROCESS (Cross-examination)**: Was this defendant denied due process when the trial court limited his cross-examination? (No); 2) **EVIDENCE (Relevance)**: Did the trial court err in allowing evidence of bullet holes in buildings to be introduced? (No); 3) **REASONABLE DOUBT (Aggravated Discharge)**: Did the People fail to present sufficient evidence to support this defendant's convictions? (No); 4) **PROSECUTOR CONDUCT (Misstatement of Evidence)**: Did the prosecutor deny this defendant a fair trial by misstating evidence? (No). Page 16.

4. **People v. Derrick Macklin, 2019 IL APP (1st) 161165, (1st Dist., March 5, 2019)** Armed Robbery - - Affirmed. **ISSUES:** 1) **REASONABLE DOUBT (Armed Robbery)**: Did the People fail to present sufficient evidence to support this defendant's conviction for Armed Robbery? (No); 2) **COUNSEL (Effectiveness)**: Did the defense counsel provide ineffective assistance by failing to use an expert witness to show the unreliability of eyewitness testimony? (No). Page 15.

5. **People v. Andre Holmes, 2019 IL App (1st) 160987, (1st Dist., March 5, 2019)** Denial of Motion to Suppress - - Reversed and Remanded. **ISSUE:** **SEARCH AND SEIZURE (Reasonable Suspicion)**: Did the tip the arresting Officers received concerning an unknown person with a gun provide sufficient reasonable suspicion to justify the detention of this defendant? (No). Page 28.

6. **People v. Elton Henderson, 2019 IL APP (4th) 170305, (4th Dist., March 6, 2019)** Unlawful Communications with a Witness - - Affirmed. **ISSUE:** **REASONABLE DOUBT (Juvenile Law)**: Did the recent change in the Juvenile Code which modified the automatic transfer age apply in this case? (Yes). Page 55.

7. **Hosey v. City of Joliet, 2019 IL App (3rd) 180118, (3rd Dist., March 6, 2019)** Denial of FOIA Request - - Affirmed. **ISSUE:** **FREEDOM OF INFORMATION (Exemption)**: Did the City properly deny this request for the release of public records pursuant to FOIA? (Yes). Page 55.

8. **People v. Michael E. Spicer, 2019 IL APP (3rd) 170814, (3rd Dist., March 7, 2019)** Denial of Motion to Compel - - Affirmed. **ISSUES:** 1) **APPELLATE JURISDICTION (Motion to Compel)**: Did the People have the authority to appeal for the denial of their motion to compel the defendant to reveal the pass code securing his cell phone? (Yes); 2) **CONFESSIONS AND ADMISSIONS (Pass Code)**: Would Spicer's Fifth Amendment rights be violated if he was required to provide a pass code to unlock his cell phone? (Yes). Page 42.

9. **People v. Ricky Lee Lobdell, 2019 IL APP (3rd) 180385, (3rd Dist., March 7, 2019)** Criminal Sexual Assault - - Affirmed. **ISSUE:** **COUNSEL (Krankel Hearing)**: Did the trial court err in failing to properly inquire into the defendant's complaints about his counsel? (No). Page 55.

10. **People v. Frederick L. Holt, 2019 IL APP (3rd) 160504, (3rd Dist., March 7, 2019)** Burglary and Retail Theft - - Affirmed in Part; and Reversed in Part. **ISSUES:** 1) **REASONABLE DOUBT (Burglary)**: Did the People present sufficient evidence to support this defendant's Burglary conviction? (No); 2) **REASONABLE DOUBT (Retail Theft)**: Did the People fail to present sufficient evidence to support this defendant's Retail Theft conviction? (No); 3) **PROSECUTOR CONDUCT (Misstatement of Evidence)**: Did the prosecutor deny this defendant a fair trial by misstating evidence? (No). Page 50.

11. **People v. Eric D. Bausch, 2019 IL APP (3rd) 170001, (3rd Dist., March 8, 2019)** Domestic Battery - - Affirmed. **ISSUES:** 1) **REASONABLE DOUBT (Domestic Battery)**: Did the People fail to overcome the defendant's "defense of property" defense in his Domestic Battery case? (No); 2)

SENTENCES (Credit): Did the defendant properly establish that he was entitled to additional sentence credit? (No). Page 51.

12. **People v. Luis J. Sanchez, 2019 IL APP (3rd) 160643, (3rd Dist., March 11, 2019)** DUI - - Affirmed. **ISSUE: REASONABLE DOUBT (DUI):** Did the People fail to prove that the defendant was intoxicated when he drove his vehicle? (No). Page 52.

13. **People v. Chas Washington Ali, 2019 IL APP (2nd) 161016, (2nd Dist., March 11, 2019)** Criminal Contempt of Court - - Affirmed. **ISSUE: PROSECUTOR CONDUCT (Fifth Amendment):** Did the comments of the prosecutor during closing argument referring to his invocation of his Fifth Amendment rights violate the defendant's right to a fair trial? (No). Page 41.

14. **People v. Andrew Grant, 2019 IL APP (3rd) 160758, (3rd Dist., March 12, 2019)** Denial of a Motion for a New Trial - - Affirmed. **ISSUES: EVIDENCE (Destruction):** Did the trial court err in denying this defendant's motion for a new trial after the People had destroyed DNA evidence before the defendant could have it tested? (No). Page 49.

15. **People v. Abed Othman, 2019 IL APP (1st) 150823, (1st Dist., March 12, 2019)** First-Degree Murder - - Reversed and Remanded. **ISSUES: 1) REASONABLE DOUBT (First-Degree Murder):** Did the People fail to present sufficient evidence to support this defendant's conviction for Murder? (No); **2) EVIDENCE (Other Bad Acts):** Did the trial court err in allowing evidence of the defendant's possession of a firearm after the murder to be introduced? (Yes); **3) JURY INSTRUCTIONS (Other Crimes Evidence):** Did the trial court properly instruct the defendant's jury concerning other crimes? (No); **4) JURY SELECTION (Zehr Questions):** Did the trial court err in failing to properly question the defendant's jury about their basic understanding of the rights of a defendant? (Yes); **5) COUNSEL (Effectiveness):** Did the defendant's counsel provide ineffective assistance by failing to object to the prosecutor's improper argument? (Yes); **6) CONSTITUTIONALITY OF STATUTE (Juvenile Sentences):** Was this defendant's 55-year sentence unconstitutional? (Yes). Page 10.

16. **In re K.C., 2019 IL APP (4th) 180693, (4th Dist., March 14, 2019)** Adjudication of Delinquency - - Affirmed. **ISSUE: JUVENILE LAW (Sentences):** Did the trial court err in failing to properly consider the requisite statutory factors before ordering this juvenile's detention? (No). Page 55.

17. **People v. Nilesh H. Patel, 2019 IL APP (2nd) 170766, (2nd Dist., March 15, 2019)** Denial of Motion to Rescind Summary Suspension - - Reversed. **ISSUES: EVIDENCE (Discovery):** Did the People's delay in providing discovery deny this defendant a timely and meaningful hearing? (Yes). Page 38.

18. **People v. Abel Ruiz, 2019 IL APP (1st) 152157, (1st Dist., March 15, 2019)** First-Degree Murder - - Affirmed; Mittimus Corrected. **ISSUES: 1) EVIDENCE (Video):** Did the trial court err in allowing into evidence a video of certain statements made by a co-defendant? (No); **2) MITTIMUS (Correction):** Was this defendant entitled to an additional day of sentence credit? (Yes). Page 56.

19. **People v. Danyel B. J. Smith, 2019 IL APP (3rd) 160631, (3rd Dist., March 18, 2019)** Predatory Criminal Sexual Assault of a Child - - Affirmed. **ISSUES: 1) EVIDENCE (Video):** Did the trial court err in allowing evidence of the victim's recorded statement to be introduced against this defendant? (No); **2) CONSTITUTIONALITY OF STATUTE (Sentences):** Was this defendant's mandatory life sentence unconstitutional because he was intellectually disabled? (No). Page 43.

20. **People v. Johnathon R. Bever, 2019 IL APP (3rd) 170681, (3rd Dist., March 18, 2019)** Criminal Sexual Assault - - Affirmed. **ISSUES: JUDICIAL CONDUCT (Consideration of Evidence Outside of the Record):** Did the trial court err by considering evidence outside of the trial record; i.e.,

his son's Army experience? (No). Page 57.

21. **People v. Jamari McArthur**, 2019 IL APP (1st) 150626-B, (1st Dist., March 18, 2019) Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUES: 1) CONFESSIONS AND ADMISSIONS (Voluntariness)**: Did the 50 hours this defendant spent in custody without a probable cause hearing render his confession involuntary? (No); 2) **CONSTITUTIONALITY OF STATUTE (SORA)**: Was the Sex Offender Registration Statute unconstitutional? (Appeal Dismissed). Page 7.

22. **People v. Willie Harper**, 2019 IL APP (4th) 180160, (4th Dist., March 19, 2019) Denial of Motion for DNA Testing - - Affirmed. **ISSUE: EVIDENCE (DNA)**: Did the trial court err in denying this defendant's motion to conduct DNA testing? (No). Page 53.

23. **People v. Jamariol D. Funches**, 2019 IL APP (3rd) 160644, (3rd Dist., March 19, 2019) DWLS - - Appeal Dismissed. **ISSUE: SENTENCES (Credit)**: Did the fact that the defendant has served his sentence render this appeal wherein he argued that his was entitled to additional sentence credit moot? (Yes). Page 56.

24. **People v. Markeese Thomas**, 2019 IL App (1st) 170474, (1st Dist., March 19, 2019) Suppression of Evidence - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Probable Cause)**: Did the police err in placing this defendant under arrest after they saw him possessing a firearm in an apartment building? (No). Page 29.

25. **People v. Gerald James**, 2019 IL APP (1st) 170594, (1st Dist., March 19, 2018) Violating SORA - - Reversed. **ISSUE: REASONABLE DOUBT (SORA)**: Did the People present sufficient evidence to support this defendant's convictions for violating SORA? (No). Page 26.

26. **People v. Marcus Jackson**, 2019 IL APP (1st) 161745, (1st Dist., March 19, 2019) Possession of a Controlled Substance with the Intent to Deliver - - Affirmed; Mittimus Corrected. **ISSUES: 1) REASONABLE DOUBT (Possession of a Controlled Substance)**: Did the People fail to prove that the defendant constructively possessed the contraband? (No); 2) **JURY SELECTION (Zehr Questions)**: Did the trial court err in failing to properly question the defendant's jury about their basic understanding of the rights of a defendant? (Perhaps, but any error was harmless.); 2) **MITTIMUS (Correction)**: Should the defendant's mittimus be corrected to reflect the correct charge for which he was convicted? (Yes). Page 23.

27. **People v. Bernon L. Howery**, 2019 IL APP (3rd) 160603, (3rd Dist., March 21, 2019) Denial of Motion for Successive PCP - - Affirmed. **ISSUE: POST-CONVICTION PETITION (Successive)**: Did the trial court err in denying this defendant's motion seeking permission to file a successive Post-Conviction Petition? (No). Page 56.

28. **People v. Ronald A. Greco**, 2019 IL 122951, (Ill. Sup. Ct., March 21, 2019) Dismissal of Charges - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (Weapons)**: Was the weapons statute with respect to Tasers unconstitutional? (Yes). Page 6.

29. **People v. Gerald Drake**, 2019 IL 123734, (Ill. Sup. Ct., March 21, 2019) Dismissal of Charges - - Affirmed. **ISSUE: TRIAL PROCEDURE (Double Jeopardy)**: Did Double Jeopardy bar the retrial of his defendant? (No). Page 57.

30. **People v. Matthew J. Petrakis**, 2019 IL APP (3rd) 160399, (3rd Dist., March 22, 2019) Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUES: EVIDENCE (Other Bad Acts)**: Did the trial court err in allowing evidence of the defendant's prior promotion of prostitution? (Perhaps, but any error was harmless.). Page 57.

31. **People v. Jeffrey L. Thomas**, 2019 IL APP (2nd) 160767, (2nd Dist., March 25, 2019) Delivery of a Controlled Substance - - Affirmed. **ISSUES: 1) DUE PROCESS (Bench Trial)**: Did the trial court err in proceeding with a bench trial after the defendant orally waived a jury trial but refused to sign a jury waiver? (No); 2) **REASONABLE DOUBT (Delivery of a Controlled Substance)**: Did the People fail to present sufficient evidence to support this defendant's drug conviction? (No). **Page 37.**

32. **People v. Jose Rebollar-Vergara**, 2019 IL APP (2nd) 140871, (2nd Dist. March 25, 2019) First-Degree Murder - - Affirmed. **ISSUES: 1) DUE PROCESS (Indictment)**: Was this defendant denied due process when the People used misleading testimony to obtain an indictment? (No); 2) **EVIDENCE (Hearsay)**: Did the trial court err in refusing to allow a witness's statement against penal interest to be introduced? (No); 3) **PROSECUTOR CONDUCT (Misstatement of Evidence)**: Did the prosecutor deny this defendant a fair trial by misstating evidence? (No); 4) **REASONABLE DOUBT (Murder)**: Did the People fail to present sufficient evidence to support this defendant's murder conviction? (No). **Page 34.**

33. **People v. Cedric Johnson**, 2019 IL APP (1st) 162517, (1st Dist. March 25, 2019) Armed Violence, Possession of a Controlled Substance and Unauthorized Possession of a Firearm by a Felon - - Reversed and Remanded. **ISSUE: DUE PROCESS (Jury Trial)**: Was this defendant denied due process when he did not waive his right to a jury trial in open court? (Yes). **Page 57.**

34. **People v. Ricardo A. Garcia**, 2019 IL APP (2nd) 161112, (2nd Dist. March 26, 2019) First-Degree Murder - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Murder)**: Did the People fail to present sufficient evidence to support this defendant's murder conviction? (No); 2) **PROSECUTOR CONDUCT (Misstatement of Evidence)**: Did the prosecutor deny this defendant a fair trial by misstating the law concerning accountability? (No). **Page 39.**

35. **People v. Juan Rodriguez**, 2019 IL App (1st) 151938-B, (1st Dist., March 26, 2019) Registration under SORA - - Affirmed. **ISSUE: CONSTITUTIONALITY OF STATUTE (SORA)**: Was the Sex Offender Registration statute with unconstitutional? (No). **Page 13.**

36. **People v. Ronald Smith**, 2019 IL APP (1st) 161246, (1st Dist., March 27, 2019) Aggravated Criminal Sexual Assault - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Aggravated Criminal Sexual Assault)**: Did the People fail to prove that the defendant used a knife during the commission of the sexual assault? (No); 2) **JURY INSTRUCTIONS (Criminal Sexual Assault)**: Did the trial court err in failing to instruct the defendant's jury on the offense of Criminal Sexual Assault? (No). **Page 25.**

37. **People v. Demario D. Reed**, 2019 IL APP (4th) 170090, (4th Dist., March 27, 2019) Denial of PCP - - Affirmed. **ISSUE: POST-CONVICTION PETITION (Dismissal)**: Did the trial court err in denying this defendant's Post-Conviction Petition following his negotiated guilty plea? (No). **Page 38.**

38. **People v. Alejandro Reveles-Cordova**, 2019 IL APP (3rd) 160418, (3rd Dist., January 17, 2019) Home Invasion and Criminal Sexual Assault - - Affirmed. **Affirmed in Part; Reversed in Part; Case Remanded. (MODIFIED UPON DENIAL OF REHEARING: March 27, 2019.) ISSUES: 1) JURY SELECTION (Zehr principles)**: Did the trial court fail to properly question this defendant's jurors concerning their understanding of the rights of a defendant? (Perhaps, but any error was harmless.); 2) **COUNSEL (Effectiveness)**: Did the defense attorney provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent? (No); 3) **COUNSEL (Krankel Hearing)**: Did the trial court err in failing to properly inquire into the defendant's complaints about his counsel? (Yes); 4) **OFFENSES (One Act – One Crime)**: Could the defendant properly have been convicted of both Home Invasion and Criminal Sexual Assault? (Yes). **Page 46.**

39. People v. Erick M. Maya, 2019 IL APP (3rd) 180275, (3rd Dist., March 28, 2019) First-Degree Murder - - Reversed and Remanded. **ISSUES: 1) **COUNSEL (Effectiveness)**: Did the defense attorney provide ineffective assistance by failing to secure a jury instruction of the affirmative defense of consent? (No); 2) **COUNSEL (Krankel Hearing)**: Did the trial court err in failing to appoint this defendant counsel after his *Krankel* hearing? (Yes). Page 45.**

40. People v. Pedro Caraballo, 2019 IL APP (1st) 171993, (3rd Dist., March 29, 2019) DUI - - Affirmed in Part; Reversed in Part. **ISSUE: EVIDENCE (Breathalyzer Result): Did the trial court properly allow the results of the defendant's breathalyzer test to be introduced against him where the operator of the Breathalyzer was not licensed at time the defendant took the test? (No). Page 19.**

41. People v. Guiseppe Ressa, 2019 IL APP (2nd) 170439, (2nd Dist., March 29, 2019) Child Abduction and Aggravated Criminal Sexual Abuse - - Affirmed. **ISSUES: 1) **COUNSEL (Effectiveness)**: Did the defendant's counsel provide ineffective assistance by failing to pursue an insanity defense? (No); 2) **EVIDENCE (Other Bad Acts)**: Did the trial court err in allowing evidence of the defendant's writings and other materials? (Yes); 3) **REASONABLE DOUBT (Aggravated Criminal Sexual Abuse and Child Abduction)**: Did the People fail to present sufficient evidence to support this defendant's conviction for Aggravated Criminal Sexual Abuse and one count of Child Abduction? (No); 4) **SENTENCES (Excessive)**: Was this defendant's aggregate sentence of 20 years excessive? (No). Page 32.**

42. People v. Robert Schultz, 2019 IL APP (1st) 163182, (1st Dist., March 29, 2019) UUWF - - Affirmed. **ISSUE: REASONABLE DOUBT (UUWF): Did the People fail to prove that the defendant had a prior conviction for a "forcible felony?" (No). Page 58.**

43. People v. Nathaniel McCurine, 2019 IL App (1st) 160817, (1st Dist., March 29, 2019) Armed Habitual Criminal - - Affirmed. **ISSUES: 1) **REASONABLE DOUBT (Armed Habitual Criminal)**: Did the People fail to prove that the defendant had constructive possession of a firearm? (No); 1) **CONSTITUTIONALITY OF STATUTE (Armed Habitual Criminal)**: Was the Armed Habitual Criminal statute unconstitutional? (No). Page 58.**

44. People v. Juan Lewis, 2019 IL APP (1st) 160864, (1st Dist. March 29, 2019) Aggravated Discharge of a Firearm - - Affirmed. **ISSUE: DUE PROCESS (Confrontation): Was this defendant denied due process when he was denied his right to confront witnesses? (Perhaps, but he forfeited any complaint by failing to object.). Page 58.**

45. People v. Courtney Lewis, 2019 IL APP (1st) 160705, (1st Dist., March 29, 2019) AUUW - - Affirmed; Fees and Fines Corrected. **ISSUES: 1) **TRIAL PROCEDURE (Impeachment)**: Did the People fail to complete their impeachment of a witness for the defendant? (No); 3) **DUE PROCESS (Fingerprint Testing)**: Was the defendant denied due process when the trial court refused to order fingerprint testing on a firearm? (No); 4) **FEES AND FINES (Correction)**: Should various fees and fines imposed upon this defendant be corrected? (Yes). Page 58.**

46. People v. Kevin Jackson, 2018 IL App (1st) 171773, (1st Dist., ~~September 28, 2018~~) Denial of Request to File Successive Post-Conviction Petition - - Affirmed. **REHEARING DENIED: March 29, 2019. ISSUE: POST-CONVICTION PETITION (Successive): Did the trial court err in denying this defendant's request for permission to file a successive post-conviction petition after he claimed that his evidence proved a pattern of improper police misconduct that caused three witnesses to falsely testify against him? (No). Page 59.**

47. People v. Daekwon Cunningham, 2019 IL App (1st) 160709, (1st Dist., March 29, 2019) UUW and Aggravated Discharge of a Firearm - - Affirmed in Part and Reversed in Part; Mitimus Corrected.

ISSUES: 1) CONSTITUTIONALITY OF STATUTE (UW): Was the UW statute unconstitutional? (No); **2) REASONABLE DOUBT (Aggravated Discharge of a Firearm):** Did the People prove all of the elements of this offense? (No). **Page 8.**

48. People v. Pedro Corral, 2019 IL APP (1st) 171501, 1st Dist., March 29, 2019 First-Degree Murder - - Affirmed. **ISSUES: 1) REASONABLE DOUBT (Aggravated Criminal Sexual Abuse and Child Abduction):** Did the People fail to present sufficient evidence to support this defendant's conviction for First-Degree Murder? (No); **1) EVIDENCE (Identification):** Did the trial court err in refusing to suppress the defendant's identification? (No); **2) EVIDENCE (Expert):** Did the trial court err in limiting a defense expert's testimony concerning eyewitness identification? (No); **4) SENTENCES (Excessive):** Was this defendant's sentence of 31 years excessive? (No). **Page 20.**

49. People v. Rodney Burnett, 2019 IL APP (1st) 163018, (1st Dist., March 29, 2019) Weapons Violation - - Affirmed. **ISSUE: COUNSEL (Effectiveness):** Did the defense counsel provide ineffective assistance by failing to move to suppress evidence based upon the illegal arrest of this defendant? (No). **Page 59.**



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